

BILL ANALYSIS

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S.B. 1014
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B.1014 recodifies current statutes relating to the possession of and access to a child in a suit affecting the parent-child relationship in which there is evidence of family violence, child abuse or neglect, or the sexual assault of one parent by the other parent, to make them more readable so that courts may more effectively apply them.

This bill uses clearer definitions (already statutorily defined in more appropriate places) for family violence and child abuse and neglect.

It addresses family violence and child abuse by a conservator and corrects a problematic distinction presently in the statute. Specifically, under current law, if a party committed family violence at any time (not just in the two-years preceding suit), that party cannot be a joint managing conservator. Oddly, there is no prohibition against that same party being named a sole managing conservator. There is, however, a presumption that a party should not have primary care of a child if they committed family violence. This presumption also applies to violence that occurred at any time; not just during the two-year period preceding suit. Consequently, the statute currently makes possible a case where a conservator may have an episode of very old family violence but is prohibited from being a joint managing conservator. Also, currently possible, a conservator could have a significant pattern of family violence and still be a sole managing conservator.

In S.B. 1014, a two-year period is now operative throughout the statute and it prohibits both a sole and joint managing conservatorship. Also, if a conservator committed family violence within the two years, he or she is prohibited from having possession of a child unless the court makes findings in the best interest of the child and renders a possession order with several possible safeguards.

This bill has a provision allowing a court to appoint both parties as joint managing conservator or one party as sole managing conservator if both parties have committed family violence and the court makes findings that the appointment is in the child's best interest.

This bill also moves into new sections statutes prohibiting a parent from being named a sole, joint, or possessory conservator, or having any possession of or access to a child, if that parent committed sexual assault under that resulted in the birth of the child, unless the court finds that denial of conservatorship or possession is not in the best interest of the child. The court's use of these prohibitions does not relieve a parent from an obligation to pay child support.

As proposed, S.B. 1014 amends current law relating to the possession of and access to a child in a suit affecting the parent-child relationship in which there is evidence of family violence, child abuse or neglect, or the sexual assault of one parent by the other parent.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 153.004, Family Code, as follows:

Sec. 153.004. New heading: PATTERN OF FAMILY VIOLENCE OR CHILD ABUSE OR NEGLECT. (a) Defines "child abuse or neglect" and "family violence."

(a-1) Creates this subsection from existing text. Requires the court, in determining whether to appoint a party as the sole managing conservator or a joint managing conservator of a child, to consider evidence that in the two-year period preceding the filing of the suit or during the pendency of the suit, the party:

(1) engaged in family violence or child abuse or neglect; or

(2) was subject to a protective order entered under Chapter 85 (Issuance of Protective Order) in which the protected person was not the child, the other party, or a member of the party's family or household.

Deletes existing text requiring the court to consider evidence of the intentional use of abusive physical force, or evidence of sexual abuse, by a party directed against the party's spouse, a parent of the child, or any person younger than 18 years of age committed within a two-year period preceding the filing of the suit or during the pendency of the suit, in determining whether to appoint a party as a sole or joint managing conservator. Makes a nonsubstantive change.

(b) Prohibits the court from appointing a party as the sole managing conservator or a joint managing conservator of a child if credible evidence is presented to the court that in the two-year period preceding the date of the filing of the suit or during the pendency of the suit, except as provided by Subsection (b-1), the party:

(1) engaged in a pattern of family violence or child abuse or neglect;

(2) was subject to a protective order entered under Chapter 85 in which the protected person was the child, the other party, or a member of the party's family or household.

Deletes existing text prohibiting the court from appointing joint managing conservators if credible evidence is presented of a history or pattern of past or present child neglect or to the physical or sexual abuse by one parent directed against the other parent, a spouse, or a child, including a sexual assault in violation of Section 22.011 or 22.021, Penal Code, that results in the other parent becoming pregnant with the child.

Deletes existing text providing that a history of sexual abuse includes a sexual assault that results in the other parent becoming pregnant with the child, regardless of the prior relationship of the parents.

Deletes existing text providing that it is a rebuttable presumption that the appointment of a parent as the sole managing conservator of a child or as the conservator who has the exclusive right to determine the primary residence of a child is not in the best interest of the child if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by that parent directed against the other parent, a spouse, or a child.

Makes nonsubstantive changes.

(b-1) Authorizes the court to appoint a party as sole managing conservator or both parties as joint managing conservators, if the court finds that both parties have engaged in conduct described by Subsection (b)(1) or were subject to a protective order described by Subsection (b)(2) in the two-year period preceding the date of the filing of the suit or during the pendency of the suit and if the court finds that the appointment:

(1) does not endanger the child's physical health or emotional welfare; and

(2) is in the best interest of the child.

(b-2) Authorizes the court to render any appropriate order designed to protect the safety and well-being of the child, another party, or any other person in the family or household of a party, if the court appoints a party as sole managing conservator or both parties as joint managing conservators under Subsection (b-1). Authorizes an order under this subsection to include a requirement that:

(1) the exchange of possession of the child occur in a protective setting;

(2) the conservator abstain from consuming alcohol or a controlled substance, as defined by Chapter 481 (Texas Controlled Substances Act), Health and Safety Code, beginning 12 hours before and during the period of possession of or access to the child; or

(3) the conservator attend and complete a battering intervention and prevention program as provided by Article 42.141 (Battering Intervention and Prevention Program), Code of Criminal Procedure, or, if such a program is not available, complete a course of treatment under Section 153.010 (Order for Family Counseling).

(c) Requires the court to consider evidence of whether the party engaged in conduct described by Subsection (a-1)(1) or whether a protective order described by Subsection (a-1)(2) was entered against the party in the two-year period preceding the date of the filing of the suit or during the pendency of the suit. Deletes existing text requiring the court to consider the commission of family violence or sexual abuse in determining whether to deny, restrict, or limit the possession of a child by a parent who is appointed as possessory conservator.

(d) Prohibits the court from allowing a parent to have access to a child if credible evidence is presented to the court that the party engaged in conduct described by Subsection (b)(1) or a protective order described by Subsection (b)(2) was entered against the party in the two-year period preceding the date of the filing of the suit or during the pendency of the suit.

Deletes existing text prohibiting the court from allowing a parent to have access to a child for whom it is shown by a preponderance of the evidence that there is a history or pattern of committing family violence during the two years preceding the date of the filing of the suit or during the pendency of the suit or the parent engaged in conduct that constitutes an offense under Section 21.02, 22.011, 22.021, or 25.02, Penal Code, and that as a direct result of the conduct, the victim of the conduct became pregnant with the parent's child.

(d-1) Authorizes the court to allow a party who engaged in conduct described by Subsection (b)(1) or was subject to a protective order described by Subsection (b)(2) to have access to a child if the court:

(1) finds that awarding the party periods of possession of or access to the child does not endanger the child's physical health or emotional welfare and is in the best interest of the child; and

(2) renders a possession order that is designed to protect the safety and well-being of the child, another party, or any other person in the family or household of a party and that may include a requirement that:

(A) and (B) Makes no change to these subdivisions;

(C) the party abstain from consuming alcohol or a controlled substance, as defined by Chapter 481, Health and Safety Code, beginning 12 hours before and during the period of possession of or access to the child; or

(D) Changes a reference to parent to party.

Deletes existing text authorizing the court, notwithstanding Subsection (d), to allow a parent to have access to a child and with certain requirements. Makes nonsubstantive changes.

(e) Provides that it is a rebuttable presumption that it is not in the best interest of a child for a party to have unsupervised possession of or access to the child if credible evidence is presented that the party engaged in conduct described by Subsection (b)(1) or was subject to a protective order described by Subsection (b)(2), rather than provides that it is a rebuttable presumption that it is not in the best interest of a child for a parent to have unsupervised visitation with the child if credible evidence is presented of a history or pattern of past or present child neglect or physical or sexual abuse by that parent directed against the other parent, a spouse, or a child.

(f) Provides that the rendering by the court of an order awarding a party conservatorship of or possession of or access to a child does not prevent the court from ordering a party to perform other parental duties, including paying child support. Deletes existing text requiring the court to consider whether a protective order was rendered under Chapter 85, Title 4, against the parent during the two-year period preceding the filing of the suit or during the pendency of the suit in determining under this section whether there is credible evidence of a history or pattern of past or present child neglect or physical or sexual abuse by a parent directed against the other parent, a spouse, or a child.

SECTION 2. Amends Subchapter A, Chapter 153, Family Code, by adding Section 153.0041, as follows:

Sec. 153.0041. SEXUAL ABUSE OR ASSAULT RESULTING IN PREGNANCY. (a) Prohibits the court from appointing a parent as the sole managing conservator, a joint managing conservator, or a possessory conservator or allowing a parent to have possession of or access to a child if the court finds that a parent has engaged in conduct that constitutes an offense under Section 21.02 (Continuous Sexual Abuse of Young Child or Children), 22.011(Sexual Assault), or 22.021(Aggravated Sexual Assault), Penal Code, and the victim of the conduct became pregnant with the child of that parent, unless the court finds that the denial of the appointment of conservatorship or possession of or access to the child is not in the best interest of the child.

(b) Authorizes the court to render any appropriate order designed to protect the safety and well-being of the child and the parent who was the victim of the conduct constituting the offense in appointing a parent who has engaged in conduct that constitutes an offense under Section 21.02, 22.011, or 22.021, Penal Code, as a conservator of a child or allowing that parent possession of or access to the child.

(c) Provides that the rendering by the court of an order awarding a parent conservatorship of or possession of or access to the child does not prevent the court from ordering the parent who engaged in conduct that constitutes an offense under Section 21.02, 22.011, or 22.021, Penal Code, to perform other parental duties, including paying child support.

(d) Provides that this section does not apply to the conservatorship of a child or possession of or access to a child if the parent that engaged in the conduct that constitutes an offense under Section 21.02, 22.011, or 22.021, Penal Code, was the spouse of the victim or had a dating relationship with the victim, as that term is defined by Section 71.0021(b) (defining "dating relationship"), before the child was born and that relationship continued following the birth of the child.

SECTION 3. Amends Section 153.131(a), Family Code, as follows:

(a) Requires a parent to be appointed sole managing conservator or both parents to be appointed as joint managing conservators of the child, subject to the prohibitions in Sections 153.004 and 153.0041, unless the court finds that appointment of the parent or parents would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development.

SECTION 4. Provides that the change in law made by this Act applies to a suit affecting the parent-child relationship that is pending in a trial court on or filed on or after the effective date of this Act.

SECTION 5. Effective date: September 1, 201