

BILL ANALYSIS

S.B. 820
By: Harris
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Family Code does not provide a court with factors to consider in rendering an order for the possession of a child less than three years of age. Possession of a child less than three years of age is generally different than possession of a child three or older because the child is not in school and has different needs than an older child. Therefore, the standard possession order used in most cases is usually inappropriate for a child less than three.

S.B. 820 lists several factors that a court should consider in making an order for the possession of a child less than three years of age. Those factors include the caregiving provided for the child and the effect on the child that may result from separation from either party. A court may be required to make findings in support of an order if requested by a party to the suit.

As proposed, S.B. 820 amends current law relating to a court order for the possession of or access to a child under three years of age.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Section 153.254, Family Code, as follows:

Sec. 153. 254. CHILD LESS THAN THREE YEARS OF AGE. (a) Requires the court, in rendering an order for possession of a child less than three years of age, to consider evidence of all relevant factors, including:

- (1) the caregiving provided to the child before and during the current suit;
- (2) the effect on the child that may result from separation from either party;
- (3) the availability of the parties as caregivers and the willingness of the parties to personally care for the child;
- (4) the physical, medical, behavioral, and developmental needs of the child;
- (5) the physical, medical, emotional, economic, and social conditions of the parties;
- (6) the impact and influence of individuals, other than the parties, who will be present during periods of possession;
- (7) the presence of siblings during periods of possession;
- (8) the child's need to develop healthy attachments to both parents;
- (9) the child's need for continuity of routine;
- (10) the location and proximity of the residences of the parties;

(11) the need for a temporary possession schedule that incrementally shifts to the schedule provided in the prospective order under Subsection (d) based on:

(A) the age of the child; or

(B) minimal or inconsistent contact with the child by a party;

(12) the ability of the parties to share in the responsibilities, rights, and duties of parenting; and

(13) any other evidence of the best interest of the child.

(b) Requires the court, notwithstanding the Texas Rules of Civil Procedure, in rendering an order under Subsection (a), to make findings in support of the order, contingent on certain provisions.

(c) Requires the court to make and enter the findings required by Subsection (b) not later than the 15th day after the date the party makes the request.

(d) Redesignates existing Subsection (b) as Subsection (d). Makes no further changes.

SECTION 2. Provides that the enactment of this Act does not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for the possession of or access to a child rendered before the effective date of this Act.

SECTION 3. 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 the effective date of this Act or that is filed on or after the effective date of this Act.

EFFECTIVE DATE

September 1, 2011.