

BILL ANALYSIS

Senate Research Center

S.B. 495
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State Affairs
5/23/2017
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 495 would provide a court greater latitude to take into account the best interest of the child during a custody dispute. The current statute assumes that unsupervised visitation with a child is in the child's best interest unless there is credible evidence that the parent has a demonstrated pattern or history of neglect, physical abuse, or sexual abuse against the child or the spouse. The statute does not allow the judge to consider the risk posed by other people who are likely to reside in the house and have unsupervised access to the child. This bill extends the current rebuttable presumption regarding unsupervised visitation and the risk posed by an abusive parent to other people with a history or pattern of physical or sexual abuse and who are likely to have unsupervised access to the child.

If a couple has gone through a mediated settlement, the current statute only allows a court to refuse to enter judgment if one of the parties was a victim of family violence and that those circumstances impaired his ability to make decisions. The court is not allowed in statute to take into account any other factors. S.B. 495 allows a court to decline judgment on a mediated settlement agreement if the agreement would allow a person, who is required to register as a sex offender or who has a history or pattern of physical or sexual abuse directed against any person, to live with the child or have unsupervised access to the child.

The bill does not change the statute regarding modifications to a mediated settlement agreement, which has been approved by the court, and it does not prohibit the court from entering judgment on a mediated settlement agreement despite the past history of anyone in the household.

S.B. 495 amends current law relating to certain procedural measures in a suit affecting a parent-child relationship to protect a child against child neglect or physical or sexual abuse.

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, by amending Subsections (e) and (f) and adding Subsection (g), as follows:

(e) 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 or past or present child neglect or abuse or family violence, rather than physical or sexual abuse, by:

(1) that parent; or

(2) any person who resides in that parent's household or who is permitted by that parent to have unsupervised access to the child during that parent's periods of possession of or access to the child, rather than directed against the other parent, a spouse, or a child.

(f) Requires the court, in determining whether there is credible evidence of a history or pattern of past or present child neglect or abuse or family violence by a parent or other person, as applicable, rather than neglect or physical or sexual abuse by a parent directed against the other parent, a spouse, or a child, to consider whether a protective order was rendered against the parent or other person during certain time periods.

(g) Defines "abuse," "neglect," and "family violence."

SECTION 2. Amends Section 153.0071(e-1), Family Code, as follows:

(e-1) Authorizes a court, notwithstanding certain subsections, to decline to enter a judgment on a mediated settlement agreement if the court finds:

(1) that:

(A) redesignates existing Subdivision (1) as Paragraph (A) and makes a nonsubstantive change; or

(B) the agreement would permit a person who is subject to registration under Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure, on the basis of an offense committed by the person when the person was 17 years of age or older or who otherwise has a history or pattern of past or present physical or sexual abuse directed against any person to reside in the same household as the child or otherwise have unsupervised access to the child; and

(2) makes a nonsubstantive change.

SECTION 3. Provides that the changes in law made by this Act apply only to a suit affecting the parent-child relationship pending in a trial court on the effective date of this Act or filed on or after that date. Provides that a suit affecting the parent-child relationship in which a final order is rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

SECTION 4. Effective date: September 1, 2017.