

PUBLICATION UPDATE

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Texas Family Law Practice and Procedure

Publication 705

Release 84

November 2021

HIGHLIGHTS

TEXAS FAMILY LAW RELEASE 84

- **Reinstatement of parental rights.** New Family Code Section 161.301 et seq. provide that, under certain limited circumstances, a parent whose parental rights have been terminated may have his or her parental rights reinstated by court order. See New Task S6, Reinstatement of Parental Rights.
- This release updates the set to incorporate amendments to the Texas Family Code enacted by the 87th Legislature and recent case law developments.

Pick-up and drop-off times in standard possession order. For non-custodial parents who live within 50 miles of the child's primary residence, the standard possession order

now provides default expanded beginning and ending times for some periods of possession, including routine weekend and midweek periods, spring vacation, and some holidays. The expanded times generally start when school is dismissed and end when school resumes. The noncustodial parent may opt out of any component of the expanded schedule but must take affirmative steps to do so. See Task B2, Determining Custody of Children, § B2.05[1][d][ii]; Task F1, Preparing the Final Decree, § F1.11[3].

Jury verdict. Family Code Section 105.002 has been amended to provide that a jury verdict on the question of whether to impose a geographic restriction on a sole managing conservator is binding on the court. The former version of the statute allowed the jury to impose a geographic restriction on a joint man-

aging conservator but was silent as to sole managing conservators. See Task B2, Determining Custody of Children, § B2.07[8].

Child support—minimum wage presumption. New Family Code Section 154.0655(c) provides that, when basing a child support order on the minimum wage presumption, the court must consider the obligor’s background circumstances, such as job skills, education, literacy, age, health, criminal history, barriers to employment, and record of seeking work. See Task B3, Calculating Child Support, § B3.02[2][b].

Child support guidelines for low-income obligors. A new set of child support guidelines applies to obligors with less than \$1,000 in monthly net resources. See Task B3, Calculating Child Support, § B3.02[5][a], [b].

Child support when obligor is intentionally unemployed. New Family Code Section 154.0655(c) provides that, when considering the issue of unemployment or underemployment, the court must consider the obligor’s background circumstances, such as job skills, education, literacy, age, health, criminal history, barriers to employment, and record of seeking work. Under new Family Code Section 154.066(c), the court may not consider incarceration as intentional unemployment or underemployment when establishing or modifying a support order. See Task B3, Calculating Child Support, § B3.02[7][a].

Spousal maintenance payments. Under new Family Code Section 8.062 applicable to spousal mainte-

nance orders rendered on or after September 1, 2021, if the obligor is ordered to pay an obligee both spousal maintenance and child support, the court must order the obligor to send the maintenance payments to the state disbursement unit. See Task B4, Determining Spousal Support and Maintenance, § B4.02[5A].

Admission of changed circumstances re spousal maintenance. Under new Family Code Section 8.057(c-1), a party who files a motion to modify spousal maintenance based on a material and substantial change of circumstances may not be considered on that basis alone to have admitted a material and substantial change of circumstances regarding any other matter. See Task B4, Determining Spousal Support and Maintenance, § B4.02[7].

QDRO to enforce spousal maintenance. Under new Family Code Section 8.351 et seq., a party to a spousal maintenance order may petition the court for a maintenance qualified domestic relations order (QDRO). A maintenance QDRO permits direct payments of pension, retirement plan, or other employee benefits to an alternate payee to satisfy amounts due under a spousal maintenance order. See Task B4, Determining Spousal Support and Maintenance, § B4.02[8][d]; Task I2, Enforcing Contractual Alimony and Spousal Maintenance, § I2.01[7].

Child custody evaluation. Under new Family Code Section 107.103(e), when a child custody evaluator is appointed in a suit in

which a party does not speak English as a primary language, the evaluator must either be able to communicate in the party's primary language or be assisted by an interpreter. See Task C3, Drafting the Petition and SAPCR, § C3.10A[3].

Divorce decree. Under new Family Code Section 6.712, a divorce decree must state the date the parties were married. See Task F1, Preparing the Final Decree, § F1.04[4].

Admission of changed circumstances re SAPCR order. Under new Family Code Section 156.007, a party who files a motion to modify a SAPCR order based on a material and substantial change of circumstances may not be considered on that basis alone to have admitted a material and substantial change of circumstances regarding any other matter. See Task H2, Initiating SAPCR Modification Proceedings, § H2.02[3][b]; Task H4, Establishing Grounds for Modification of Conservatorship, § H4.02[3][c].

Modification of conservatorship. Under new Family Code Section 156.106, the death of a child's conservator is a material and substantial change of circumstances sufficient to justify modification of an existing conservatorship or possession order. See Task H4, Establishing Grounds for Modification of Conservatorship, § H4.02[3][f.1].

Modification of child support. Under new Family Code Section 156.401(c-1), the incarceration of a child support obligor for more than 180 days is a material and substantial

change of circumstances for support modification purposes. See Task H5, Establishing Grounds for Modification of Child Support, § H5.01[1][c][iv][E].

Child support arrearages. As amended, Family Code Section 157.263 now requires courts to render separate cumulative judgments for arrearages of child support, medical support, and dental support when rendering an enforcement order. See Task J1, Choosing Which Remedies To Seek, § J1.03[1][a].

Income withholding for child support. Child support may now be withheld from earnings from transportation and delivery companies like Uber, Lyft, Doordash, and Grubhub. See Task J1, Choosing Which Remedies To Seek, § J1.04[3].

QDRO for child support enforcement. Under new Family Code Section 157.501 et seq., a party to a child support order may petition the court for a child support qualified domestic relations order (QDRO). A child support QDRO permits direct payments of pension, retirement plan, or other employee benefits to an alternate payee to satisfy amounts due under a child support order. See Task J1, Choosing Which Remedies To Seek, § J1.06.

Agreed protective order. An agreed protective order is enforceable civilly or criminally regardless of whether it recites the court's findings that family violence has occurred and is likely to occur in the future. See Task P2, Following Procedure to Obtain Protective Order, § P2.06[1].

Warning on protective order.

New language has been added to the statutory warnings required on protective orders. The new language states that the order's expiration date is automatically extended if the subject is incarcerated. See Task P2, Following Procedure to Obtain Protective Order, § P2.08[7].

Protective order: separate wireless telephone service account. Under new Family Code Section 85.0225, the person protected by a family violence protective order may obtain a court order requiring a wireless telephone service provider to separate his or her wireless telephone number from the respondent's wireless telephone service account. See Task P2, Following Procedure to Ob-

tain Protective Order, § P2.15.

Termination of parental rights.

Family Code Section 161.001(b)(1)(M) allows termination of parental rights based on a prior termination on endangerment grounds. Under new Family Code Section 161.001(d-1), effective September 1, 2021, a court may not order termination under Subsection (M) unless the petition was filed within one year of the date DFPS was appointed as the child's managing conservator in the case that resulted in termination on endangerment grounds. See Task S3, Establishing Grounds for Termination, § S3.02[10A].

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