



Texas Visitation Guidelines

Overview: The Texas Family Code (the “Code”) requires that specific provisions for possession of and access to a child be included in every child support order –whether issued by a court or through the IV-D child support review (quasi-administrative) process. Underlying this requirement is Texas’ public policy that the state ensure that: (1) children have “frequent and continuing contact with parents who have shown the ability to act in the best interests of the child;” (2) children be provided “a safe, stable, and nonviolent environment;” and (3) parents be encouraged to share the responsibilities and duties of parenting after their separation or the dissolution of their marriage [Tex. Fam. Code § 153.001].

While every child support order must provide for visitation, the Code makes clear that the respective rights of the parents, including the terms of visitation, may not be conditioned on the payment of child support. [*Id.*] Conversely, a violation of the visitation rights of the non-custodial parent (as the child support obligor) is not an affirmative defense to the failure of that parent to pay ordered support. There are, however, enforcement remedies for a failure to comply with the terms and conditions of

visitation in an order, including contempt and suspension of a driver's, occupational, or other license.

Evolution of a “Standard Order:” While the Title IV-D agency must ensure that its child support orders contain provisions for visitation when they are established, the agency itself is not authorized to enforce possession or access. Nor is it required to construct the contents of visitation provisions within its order. The fundamentals of visitation arrangements are already laid out in the Code's “Standard Possession Order,” which prescribes the basic guidelines for the interaction of the parents in meeting their assigned rights and duties under a decree or order [Tex. Fam. Code, § 153.3101 *et seq.*]. In its development, the statutory Standard Possession Order has a history nearly as long as that of the Code itself.¹

Prior to 1969, there was no Texas Family Code as such. Texas had a few statutes affecting domestic relations, but these were scattered throughout the general civil statutes. In 1969, statutory law in Texas concerning child custody, visitation, and support was tied into provisions for the granting of a divorce and was at the time reducible to little over a single page of text. Matters of visitation and custody were not considered by the courts apart from the granting of a divorce. As one of the sections of the Civil Statutes provided:

¹ The historical development of the Texas Standard Possession Order is laid out by Professor John Sampson of the University of Texas in two articles to which this discussion is indebted: “Bringing The Courts to Heel: Substituting Legislative Policy for Judicial Discretion,” @ 33 Fam. L.Q. 565 (Fall, 1999); and “Choking on Statutes Revisited: A History of Legislative Preemption of Common Law Regarding Child Custody,” @ 45 Fam. L.Q. 95 (Spring, 2011).

The court shall have power, in all divorce suits, to give the custody and education of the children to either father or mother, as the court shall deem right and proper, having regard to the prudence and ability of the parents, and the age and sex of the children, to be determined on the petition of either party . . .

The establishment of the Title IV-D program in 1975 (Public Law 93-647) and the ensuing succession of congressional acts affecting Title IV-D significantly changed the contents and character of Texas domestic relations law, as it did the laws of the other states. Although states were already required under a federal regulation to establish a formula for setting child support amounts, the majority of states – Texas included – had not done so. The absence of specific guidelines led to inconsistency in support awards within a state, with amounts being based upon the subjective evaluations of individual courts. This resulted quite often in awards of insufficient amounts for the support of children.

In 1982, a blue ribbon committee of citizens led by a member of the Texas Senate set out to examine how Texas courts set child support obligations. It discovered that applicable appellate case law held that a trial judge who used a formula or guidelines in setting support committed reversible error. The prevailing notion was that each case needed to be assessed with respect to its specific facts. The committee also discovered that there were similar appellate impediments to the granting by the trial court of visitation rights to noncustodial parents, as well as the setting of the terms of custody. The normal provision for “reasonable visitation” in orders apparently was

regarded as a sufficient guarantee that the parties would – between themselves and with the agreement of the court – achieve a workable arrangement for access and visitation.

As a result of the committee’s investigations and deliberations, the Texas Legislature in 1983 enacted a statute authorizing local courts to lay out guidelines for both child support and visitation. Furthermore, under the statute – except for good cause shown – visitation provisions had to be specific and clearly stated in the order. In other words, the Legislature understood that a generally-stated provision for “reasonable visitation” did not ensure that both parents had truly reasonable access to the child. The response of local courts to the legislative authorization to promulgate advisory guidelines was mixed: a few courts laid out guidelines, while most did not.

Further developments in federal child support enforcement requirements moved along consideration in the Texas Legislature not only of child support statutes but also of statutory law governing the inclusion of visitation and custody provisions in decrees and orders. Under the Child Support Enforcement Amendments of 1984 (Public Law 98-378), Congress mandated that by October 1, 1987 states develop guidelines for determining appropriate child support obligation amounts and make these guidelines available to judges and others in the state responsible for setting child support amounts. At this point, however, the use of such state guidelines was only discretionary, not mandatory. Under the Family Support Act of 1988, the discretionary child support guidelines were made mandatory and subject to review by the state at least once every

four years. Responding to the 1988 federal act, the Texas Legislature moved forward in its 1989 session to promulgate not only mandatory child support guidelines but also visitation guidelines in the form of a statutorily prescribed standard order.

Fundamentals of the Texas Visitation Order: The Standard Possession Order decreed by the legislature was designed as the norm which every court must apply to children three years of age and older, unless the court finds good reason to deviate from the standard order. Moreover, the parties themselves may agree to vary the terms of visitation at any time, with the terms laid out in the standard order taking effect *only* when mutual agreement is not reached or rescinded. In effect, the standard visitation is a default order that takes care of issues not agreed upon by the parties. As Section 153.311 of the Code recites:

The court shall specify in a standard possession order that the parties may have possession of the child at times mutually agreed to in advance by the parties and, in the absence of mutual agreement, shall have possession of the child under the specified terms set out in the standard possession order.

All petitions for child support filed by the Texas Title IV-D agency include a request for possession and visitation provisions addressing the rights and duties of both parents. In most cases, the parents are satisfied with the Standard Possession Order, which is easily and routinely included in the order establishing a child support obligation. However, the IV-D agency is *not* involved in the

resolution of possession or visitation disputes between the parties. The resolution of such issues is left to the parties themselves – often, as encouraged by the agency, through the use of external mediation services and/or those of an attorney. Any disputes regarding possession and visitation orders are referred to non-IV-D district court, generally after the entry of a temporary child support order in IV-D court.

Fundamental to the standard visitation order is the assumption that all children in a family should visit together. Moreover, it is a rebuttable presumption that the application of the standard visitation order is in the best interest of the child(ren) affected by the order. The Code provides, however, that the court adjust the standard order for a child under three (taking into consideration specific factors identified by the legislature in 2011 – e.g., care provided to the child before and during the current lawsuit and the physical, medical, behavioral, and developmental needs of the child, as well as the physical, medical, emotional, economic, and social conditions of the parents. The court may also alter the standard order if a parent's work schedule or year-round school makes the standard order inappropriate or unworkable. The specific reasons for any variances from the standard order must be stated by the court in writing.

Much of the debate in the Texas Legislature in 1989, when it was working out the specifics of the standard order, focused on the allocation of time between the parties, in particular how time during recognized school vacations and holidays would be meted

out. Also of concern to the legislators (or the constituents they represented) was the exchange of the child - who would pick up the child where, as well as when, and who would deliver the child back to the primary place of residence (i.e., the custodial parent's home). In the end, the standard order enacted in 1989 granted the non-custodial parent liberal access to the child - certainly more than had been available through the courts up to that time. While liberal visitation is granted the non-custodial parent under the standard order, there is no requirement in the order that the non-custodial parent actually use visitation time. The order might be modified if the non-custodial parent repeatedly fails to give the custodial parent notice that the visitation time will not be used. However, a non-custodial parent who rarely uses the allotted visitation time, but regularly informs the custodial parent that the time will not be used, is not in violation of the order, and the court will not consider this situation as grounds for modification. While visitation with the child is a right, it is not a duty. Child support, on the other hand, is a duty, and failure to exercise visitation rights – or a violation of those rights – does not mitigate the support duty.

Since its enactment in 1989, the standard order has remained substantively unchanged. Indeed, the only significant change enacted in 2003 had to do (once again!) with the allocation of time between the parties - moving the mid-week visit from Wednesday to Thursday evening. This could, of course, have the effect of giving the non-custodial parent greater visitation time if the visit can be extended overnight Thursday, allowing an extended weekend possession from Thursday evening to Monday morning or longer. Apart from this relatively major change, the statutory provisions, at least with respect to

the basic structure of the standard visitation order, have been only touched up here and there since 1989.

It should be noted that in 1995 the Texas Legislature enacted a Code provision that “it is a rebuttable presumption that the appointment of the parents of a child as joint custodians is in the best interest of the child” [Sec. 153.131(b)]. Joint custody does not mean, however, that the parties have a fifty-fifty split of time with the child. Even under joint custody arrangements the non-custodial parent still has less time with the child than the custodial parent but at least as much time as the standard possession order would allow - something on the order of a seventy-thirty percent division between the custodial and non-custodial parent.

Special Visitation Projects: While possession and visitation are, from a legislative standpoint, settled matters in Texas, the state’s Title IV-D agency has been actively involved in developing and promoting cooperative parenting programs through grants to community and governmental organizations. The primary funding for these programs has come from the federal Access and Visitation Grant, which in the last fiscal year provided the means to serve over 45,000 Texas children and more than 34,000 parents and caregivers. In addition to these programs, the Texas agency has used a special projects grant to support services provided by various organizations across the state for conflict resolution, parent education, counseling, and visitation compliance services. All providers are required to describe their family violence screening and management processes and are contractually required to ensure customer safety throughout. These

special programs and services are enterprises to which we are enthusiastically and resolutely committed.

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