



1-1-1987

Family Law - Overview of Significant 1987 Legislation Passed in the 70th Session of the Texas Legislature Recent Development.

Patricia A. Foster

Follow this and additional works at: <https://commons.stmarytx.edu/thestmaryslawjournal>



Part of the [Environmental Law Commons](#), [Health Law and Policy Commons](#), [Immigration Law Commons](#), [Jurisprudence Commons](#), [Law and Society Commons](#), [Legal Ethics and Professional Responsibility Commons](#), [Military, War, and Peace Commons](#), [Oil, Gas, and Mineral Law Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Patricia A. Foster, *Family Law - Overview of Significant 1987 Legislation Passed in the 70th Session of the Texas Legislature Recent Development.*, 19 ST. MARY'S L.J. (1987).

Available at: <https://commons.stmarytx.edu/thestmaryslawjournal/vol19/iss2/11>

This Article is brought to you for free and open access by the St. Mary's Law Journals at Digital Commons at St. Mary's University. It has been accepted for inclusion in St. Mary's Law Journal by an authorized editor of Digital Commons at St. Mary's University. For more information, please contact egoode@stmarytx.edu, sfowler@stmarytx.edu.

RECENT DEVELOPMENTS

FAMILY LAW—OVERVIEW OF SIGNIFICANT 1987 LEGISLATION PASSED IN THE 70TH SESSION OF THE TEXAS LEGISLATURE

The 70th Legislature of Texas in 1987 produced some sixty-five statutory changes which directly or indirectly affect the practice of family law. This overview highlights a number of the more significant of these amendments, several of which are set forth in detail in the first part of this article, and thereafter briefly summarizes and describes selected additional amendments. The majority of these amendments became effective September 1, 1987, although several became effective earlier in the year.

UNIFORM PREMARITAL AGREEMENT ACT ADOPTED/SPOUSE'S BURDEN OF DEFEATING MARITAL OR PREMARITAL AGREEMENT ALTERED

Texas has adopted, effective September 1, 1987, the Uniform Premarital Agreement Act (UPAA or Act), the text of which replaces pre-existing Family Code sections 5.41 through 5.46. *See* Act of June 18, 1987, ch. 678, § 1, 1987 Tex. Sess. Law Serv. 5063 (Vernon). The UPAA sets forth the formal requirements, permissible scope, and enforceability of premarital agreements, which the Act defines as any "agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage." *Id.* at 5063 (codified at Tex. Fam. Code § 5.41(1)). The permissible subject matter of such agreements is broad, including but not limited to property rights and obligations, spousal support, testamentary dispositions, trust arrangements, life insurance, and choice of law. *See id.* at 5063-64 (codified at Tex. Fam. Code § 5.43(a)). To be valid, a premarital agreement must be in writing and signed by both parties, but no consideration is required to support the agreement. *Id.* at 5063 (codified at Tex. Fam. Code § 5.42). A premarital agreement, however, which adversely affects child support obligations is void and unenforceable. *Id.* at 5064 (codified at Tex. Fam. Code § 5.43(b)). After the contemplated marriage has occurred, the premarital agreement may be amended or revoked by written agreement of

the parties, again without consideration. *See id.* (codified at Tex. Fam. Code § 5.45).

The 70th Legislature also altered the Family Code sections dealing with marital agreements to partition or exchange community property and agreements involving income or property derived from separate property. These provisions, which were contained in sections 5.42 through 5.44, have been displaced by the UPAA, and are now codified in sections 5.51 through 5.56. *See id.* at 5065-67. The substance of these provisions remains largely unchanged. Former section 5.45, however, which required a spouse seeking to enforce a provision of a marital agreement against the other to establish by clear and convincing evidence that the other "gave informed consent not procured by fraud, duress or overreaching," Tex. Fam. Code Ann. § 5.45 (Vernon Supp. 1987), was eliminated. Instead, the Code now places the burden of proof on the party against whom enforcement is sought. Such a party must show, in order to defeat enforcement of a provision of a marital agreement, that he or she signed involuntarily, or that the agreement was unconscionable and that knowledge of the other spouse's financial situation was undisclosed and not otherwise known or reasonably discoverable. *See id.* at 5066 (codified at Tex. Fam. Code § 5.55(a)). This same burden and required showing is applicable to a spouse seeking to avoid enforcement of a premarital agreement. *See id.* at 5064-65 (codified at Tex. Fam. Code § 5.46(a)).

SPOUSES MAY CREATE SURVIVORSHIP BY AGREEMENT IN COMMUNITY PROPERTY

The 70th Legislature, in the same act in which it adopted the UPAA, amended the Texas Probate Code to allow spouses to create survivorship rights in community property. *See* Act of June 18, 1987, ch. 678, § 2, 1987 Tex. Sess. Law Serv. 5069 (Vernon)(amending Tex. Prob. Code Ann. § 46 (Vernon Supp. 1987)). Section 46 of the Probate Code now provides that "spouses may agree in writing that all or part of their community property which is titled or held with indicia of title becomes the property of the surviving spouse on the death of a spouse." *Id.* at 5068 (amending Tex. Prob. Code Ann. § 46(b) (Vernon Supp. 1987)). This addition became effective upon the November 3, 1987, adoption of an analogous amendment to article 16, section 5, of the Texas Constitution. *See id.* § 3, at 5069 (statutory change contingent on constitutional amendment). Before this amendment, the Texas Constitution did not authorize spouses to execute survivorship agreements concerning community property. *See* Tex. Const. art. XVI, § 15 (amended 1987).

PUTATIVE ILLEGITIMATE CHILD MAY PETITION PROBATE COURT FOR DETERMINATION OF RIGHT TO INHERIT

As of September 1, 1987, section 42(b) of the Texas Probate Code permits

an illegitimate child claiming a paternal inheritance to petition the probate court for a determination of his or her right to inherit. *See* Act of June 17, 1987, ch. 464, § 1, 1987 Tex. Sess. Law Serv. 4085-86 (Vernon)(amending Tex. Prob. Code Ann. § 42(b) (Vernon 1980)). The probate court, at the behest of a “person claiming to be an illegitimate child, or claiming inheritance through an illegitimate child,” is now vested with the authority to make a determination of paternity, when proven by clear and convincing evidence, resulting in legitimation of the child for inheritance purposes. *Id.* Although section 42(b) provides that a statement of paternity executed by the father under section 13.22 of the Texas Family Code is prima facie proof of paternity, *see* Tex. Fam. Code Ann. § 13.22 (Vernon 1986), because section 42(b) of the Texas Probate Code, as amended, requires a person claiming to be or claiming through an illegitimate child to prove such status by clear and convincing evidence, an uncontroverted statement of paternity may not be sufficient to prove entitlement to inheritance in such an action. *See* Act of June 17, 1987, ch. 464, § 1, 1987 Tex. Sess. Law Serv. 4086 (Vernon)(amending Tex. Prob. Code Ann. § 42(b) (Vernon 1980)). One notable omission in the amendment exists in the fact that no specific statute of limitations is prescribed for determination of an illegitimate child’s right to inherit. *See id.* at 4085-86.

CHANGES IN THE TEXAS FAMILY CODE DEALING WITH SUITS TO
ESTABLISH PATERNITY, SUPPORT OBLIGATIONS, OR TO
TERMINATE RIGHTS OF PUTATIVE FATHERS

Several sections of the Texas Family Code pertaining to suits affecting parent-child relationships have been recently amended. *See generally* Act of June 18, 1987, ch. 689, §§ 1-13, 1987 Tex. Sess. Law Serv. 5095-5103 (Vernon). Most notably, Texas Family Code section 11.01(3), defining “parent,” has been changed to include “a man who has been adjudicated to be the biological father by a court of competent jurisdiction.” *Id.* at 5095. The previous definition included only “the mother, a man as to whom the child is legitimate, or an adoptive mother or father” Tex. Fam. Code Ann. § 11.01(3) (Vernon 1986), *amended by* Act of June 18, 1987, ch. 689, § 1, 1987 Tex. Sess. Law Serv. 5095 (Vernon). The statutory definition of “illegitimate child” has also been amended to include “the biological child of a man whose paternity has not been adjudicated by a court.” Act of June 18, 1987, ch. 689, § 1, 1987 Tex. Sess. Law Serv. 5096 (Vernon)(amending Tex. Fam. Code Ann. § 11.01(8) (Vernon 1986)). Section 11.01(8) previously defined an illegitimate child as a child “who is not and has never been the legitimate child of a man, and whose parent-child relationship with its natural mother has not been terminated by court decree.” Tex. Fam. Code Ann. § 11.01(8) (Vernon 1986)(amended 1987).

In any suit concerning a parent-child relationship, a wife is now permitted

to deny "the husband's paternity of the child who is the subject of the suit and who was born or conceived during the marriage of the parties." Act of June 18, 1987, ch. 689, § 5, 1987 Tex. Sess. Law Serv. 5099 (Vernon) (amending Tex. Fam. Code Ann. § 12.06(a) (Vernon 1986)). Previously, only the husband was expressly authorized by statute to deny his paternity in such suits. *See* Tex. Fam. Code Ann. § 12.06(a) (Vernon 1986)(amended 1987). The spouse seeking to disprove paternity must expressly deny such paternity in the pleadings, *see* Act of June 18, 1987, ch. 689, § 5, 1987 Tex. Sess. Law Serv. 5099 (Vernon)(amending Tex. Fam. Code Ann. § 12.06(a) (Vernon 1986)), and must overcome the presumption that the child is legitimate, *id.* § 5 (amending Tex. Fam. Code Ann. § 12.06(c) (Vernon 1986)).

The parties who may bring suit to establish the parent-child relationship are now enumerated in section 13.01 of the Texas Family Code. *See* Act of June 18, 1987, ch. 689, § 6, 1987 Tex. Sess. Law Serv. 5099 (Vernon) (amending Tex. Fam. Code Ann. § 13.01 (Vernon 1986)). Individuals with standing to bring suit include the child's mother, a man claiming to be or capable of being the father, and any other person named in section 11.03, the Family Code's general standing provision. *See id.* This amendment specifically allows suits to establish paternity to be brought before the child's birth, but preserves the time limitation requiring paternity suits to be brought "on or before the second anniversary of the day the child becomes an adult" *Id.*

Another significant change is found in the amendment to section 13.21, which now requires that in voluntary legitimation proceedings, a court decree of paternity and legitimacy be issued if the court finds that the man claiming paternity executed a statement of paternity as provided in section 13.22 of the Family Code, and that the facts contained in the statement of paternity are true. *See* Act of June 18, 1987, ch. 689, § 8, 1987 Tex. Sess. Law Serv. 5100 (Vernon)(amending Tex. Fam. Code Ann. § 13.21 (Vernon 1986)). The man claiming paternity may now petition for such an adjudication. *See id.* This amendment authorizes an order of paternity without the earlier requirements that "the parent-child relationship between the child and its original mother" not be terminated by court decree, and that "the mother or managing conservator" consent to the decree of paternity and legitimacy. Tex. Fam. Code Ann. § 13.21 (Vernon 1986)(amended 1987).

Upon a finding of paternity, the court is now authorized by section 13.42, as amended, to order support payments "retroactive to the time of the filing of the suit and . . . order a party to pay an equitable portion of all prenatal and postnatal related health care expenses of the mother and child." Act of June 18, 1987, ch. 689, § 9, 1987 Tex. Sess. Law Serv. 5101 (Vernon) (amending Tex. Fam. Code Ann. § 13.42 (Vernon 1986)).

Section 15.021, as amended, permits a party to petition for "involuntary termination of the rights of an alleged or probable father of an illegitimate

child" before the child's birth. *See* Act of June 18, 1987, ch. 689, § 12, 1987 Tex. Sess. Law Serv. 5102 (Vernon)(amending Tex. Fam. Code Ann. § 15.021(a) (Vernon 1986)). However, the standards for termination of parental rights under the Family Code also apply to "termination of the rights of an alleged or probable father with respect to an illegitimate child." *Id.* at 5102-03 (codified at Tex. Fam. Code § 15.023). Parental rights may also be terminated if, "after being served with citation in a suit affecting the parent-child relationship, the alleged or probable father does not respond by timely filing an admission of paternity or by filing a counterclaim for paternity or for voluntary legitimation." *Id.* at 5103.

SUPREME COURT'S SUBJECT MATTER JURISDICTION EXPANDED TO INCLUDE DIVORCE, CHILD CUSTODY, AND SUPPORT DISPUTES

Effective June 20, 1987, the Texas Legislature amended section 22.225 of the Government Code to give the Texas Supreme Court subject matter jurisdiction over cases of divorce, child custody, support, and reciprocal support. *See* Act of June 20, 1987, ch. 1106, §§ 1-3, 1987 Tex. Sess. Law Serv. 7650 (Vernon)(amending Tex. Gov't Code Ann. § 22.225 (Vernon Pamph. 1987)). Under prior law, the Texas Supreme Court acquired jurisdiction over such cases only when the court of appeals' justices disagreed on questions of law material to the decision, or when the court of appeals decision conflicted with a Texas Supreme Court or another court of appeals decision. *See* Tex. Gov't Code Ann. § 22.225(b)(3), (c) (Vernon Pamph. 1987)(amended 1987). The effect of this amendment is to permit the Supreme Court to hear such cases not only when there is a conflict between court of appeals justices or among Texas appellate courts, but also when the case necessarily involves statutory construction or a determination of the validity of a statute, *see* Tex. Gov't Code Ann. § 22.001(a)(3) (Vernon Pamph. 1987), or when the court of appeals has committed an error of law which "is of such importance to the jurisprudence of the state that, in the opinion of the supreme court, it requires correction . . .," Act of June 20, 1987, ch. 1106, § 1, 1987 Tex. Sess. Law Serv. 7650 (amending Tex. Gov't Code Ann. § 22.001(a)(6) (Vernon Pamph. 1987)). Theoretically, this amendment should produce more consistent results in divorce, child custody, and support cases.

APPOINTMENT, POWERS, AND RIGHTS OF JOINT CONSERVATORS

Section 14.01 of the Texas Family Code, as amended, now grants discretion to the court to appoint not only a managing conservator, but either a sole managing conservator or joint managing conservators. *See* Act of June 20, 1987, ch. 744, § 4, 1987 Tex. Sess. Law Serv. 5340 (Vernon)(amending Tex. Fam. Code Ann. § 14.01(a) (Vernon 1986)). The court must further

“order reasonable terms and conditions for the implementation of the managing conservatorship.” *Id.*

Under section 14.02(e), a new addition to the Family Code, if both parents are appointed as joint managing conservators, the court must specify the “rights, privileges, duties, and powers of a parent that are to be retained by both parents to be exercised jointly” and those which are to be “exercised exclusively by one parent.” *Id.* § 5, at 5341-42 (codified at Tex. Fam. Code § 14.02(e)).

New section 14.021 deals at length with appointment of joint managing conservators. *See generally id.* § 6, at 5342-45 (codified at Tex. Fam. Code § 14.021)). This statute requires the appointment of both parents as joint managing conservators if a written agreement between the parents is filed with the court, and the agreement satisfies certain requirements, including that it be voluntary, delineate each spouse’s rights and obligations concerning the child, and be in the child’s best interests. *See id.* at 5342-43 (codified at Tex. Fam. Code § 14.021(c)). In addition, the parental agreement is permitted to include a dispute resolution procedure to be used before the parties resort to litigation to enforce or modify the joint conservatorship decree. *See id.* at 5343 (codified at Tex. Fam. Code § 14.021(d)). If no parental agreement is filed, the parents may still be appointed as joint managing conservators if the factfinder finds by a preponderance of the evidence that such appointment is in the child’s best interests. *See id.* (codified at Tex. Fam. Code § 14.021(e)). Seven specific factors are to be considered in the determination of the child’s best interests, including the mental and physical needs and development of the child, the parents’ ability to “give first priority to the welfare of the child and reach shared decisions in the child’s best interest,” “whether each parent can encourage and accept a positive relationship between the child and the other parent,” each parent’s past participation in the child’s upbringing, the distance between the households, the preference of the child (if at least age fourteen), and “any other relevant factor.” *Id.* at 5343-44 (codified at Tex. Fam. Code § 14.021(e)(1)-(7)). Where joint managing conservators are appointed, the court retains full authority to order support of the child, expressly including an order that one joint managing conservator pay the other. *Id.* at 5344 (codified at Tex. Fam. Code § 14.021(g)).

New section 14.081(b) governs the requirements and procedures for modification of joint conservatorships. *See id.* § 9, at 5347 (codified at Tex. Fam. Code § 14.081(b)). This statute permits joint managing conservators to submit to the court a written agreement to modify existing conditions and terms of a joint conservatorship, based upon which the court may modify the decree if the agreement complies with the requirements of section 14.021. *See id.* Pursuant to the addition of section 14.082, upon a finding that a party has moved to modify a joint conservatorship decree frivolously or for pur-

poses of harassment, the court is required to award attorney's fees against the party. *Id.* § 10, at 5348 (codified at Tex. Fam. Code § 14.082).

NEW TITLE GOVERNING ALTERNATIVE DISPUTE RESOLUTION ADDED
TO TEXAS CIVIL PRACTICE AND REMEDIES CODE

Effective June 20, 1987, Title 7 of the Civil Practice and Remedies Code provides for alternative methods of resolving pending disputes prior to litigation. *See* Act of June 20, 1987, ch. 1121, § 1, 1987 Tex. Sess. Law Serv. 7725 (Vernon). This title was added pursuant to the state's policy to "encourage the peaceable resolution of disputes . . ." *Id.* § 2, at 7726 (codified at Tex. Civ. Prac. & Rem. Code § 154.002). The statute explicitly emphasizes disputes involving the parent-child relationship, mentioning such issues as conservatorship, possession, and support of children. *See id.* Pending disputes deemed appropriate for resolution by alternative methods may be referred by a court for alternative dispute resolution on the court's own motion or upon motion by a party. *Id.* (codified at Tex. Civ. Prac. & Rem. Code § 154.021(a)). When the court identifies such disputes, it must confer with the parties to determine which alternative dispute resolution procedure is most appropriate. *Id.* (codified at Tex. Civ. Prac. & Rem. Code § 154.021(b)). Five types of alternative dispute resolution are outlined by the statute, including mediation, mini-trial, moderated settlement conference, summary jury trial, and arbitration. *See id.* at 7727-28 (codified at Tex. Civ. Prac. & Rem. Code §§ 154.023-.027). The parties are accorded notice of the court's decision to refer any case, and are given an opportunity to object to the referral. *See id.* at 7727 (codified at Tex. Civ. Prac. & Rem. Code § 154.022(a)). When a dispute is referred to alternative resolution, one or more qualified impartial third parties may be appointed by the court to facilitate the alternative resolution procedure and to encourage and assist settlement of the dispute. *Id.* at 7728-29 (codified at Tex. Civ. Prac. & Rem. Code § 154.051, .053(a)). The impartial third party is not, however, authorized to "compel or coerce" the parties to reach an agreement. *See id.* (codified at Tex. Civ. Prac. & Rem. Code § 154.053(a)). Matters relating to the dispute must be held in strictest confidence by the third party and may not be disclosed to anyone, including the appointing court, without the consent of all parties. *Id.* (codified at Tex. Civ. Prac. & Rem. Code § 154.053(b), (c)). Qualifications for appointment as an impartial third party include forty hours training in dispute resolution and, in disputes involving family matters, an additional twenty-four hours of training in the parent-child relationship. *Id.* (codified at Tex. Civ. Prac. & Rem. Code § 154.052(a), (b)). The court, however, may in its discretion base an appointment on qualifications other than training or experience. *See id.* (codified at Tex. Civ. Prac. & Rem. Code § 154.052(c)).

The new alternative dispute resolution statute also deals with the effect of

settlement agreements and confidentiality of the proceedings. *See id.* at 7730 (codified at Tex. Civ. Prac. & Rem. Code § 154.071, .073). Under section 154.071, a written settlement agreement is enforceable as a written contract, and the terms of the agreement may be incorporated into the court's final decree in the case. *See id.* (codified at Tex. Civ. Prac. & Rem. Code § 154.071(a), (b)). Section 154.073 provides that communications made by participants in an alternative dispute resolution procedure are confidential and may not be used as evidence in any further administrative or judicial proceeding. *See id.* (codified at Tex. Civ. Prac. & Rem. Code § 154.073(a)). Neither the participants nor the third party may be required to testify in related proceedings, and material used or disclosed in the alternative dispute resolution procedure is not discoverable nor admissible except on grounds independent of the resolution procedure. *Id.* (codified at Tex. Civ. Prac. & Rem. Code § 154.073(b), (c)). When conflicts of law as to the disclosability of communications or materials involved in an alternative dispute resolution procedure arise, an in camera hearing is required on the issue of confidentiality, and the court must determine whether the information is subject to disclosure or whether a protective order is warranted. *Id.* at 7731 (codified at Tex. Civ. Prac. & Rem. Code § 154.073(d)).

The new statute for alternative dispute resolution will significantly benefit the parties to a dispute, not only because it insures the confidentiality of the proceedings, but also because it encourages voluntary settlement of disputes. Many individual parties, particularly those in family law disputes, may forego the rigors of full adversarial trial, and arrive at a mutually more satisfactory agreement negotiated between and by themselves, than with a decree by a court of law. However, since the use of alternative dispute resolution is within each court's discretion, the ultimate impact of this new provision will depend on its reception and use by the courts.

In addition to the changes presented in the preceding discussion, several additional amendments in the area of family law merit consideration. These changes are briefly summarized in the following paragraphs.

ALIENATION OF AFFECTION ACTIONS NO LONGER AUTHORIZED

A spouse's right of action against a third person for alienation of affection is now explicitly abolished in Texas. *See Act of June 17, 1987, ch. 453, § 1, 1987 Tex. Sess. Law Serv. 4042 (Vernon)*(codified at Tex. Fam. Code § 4.06).

LOSS OF HOMESTEAD NOTICE REQUIRED IN HOME IMPROVEMENT CONTRACTS

Home improvement contracts must contain a specific printed notice to the homeowner that failure to meet the contract's terms can result in the loss of ownership rights. *See Act of May 19, 1987, ch. 116, § 1, 1987 Tex. Sess. Law*

Serv. 556 (codified at Tex. Prop. Code § 41.005(a)). The failure to comply with this notice requirement is actionable under the Texas Deceptive Trade Practices-Consumer Protection Act. *See id.* at 557 (codified at Tex. Prop. Code § 41.005(b)). This new statute applies only to contracts signed on or after its effective date, September 1, 1987. *See id.* § 2.

STATUTE OF FRAUDS APPLIED TO PALIMONY AGREEMENTS

Palimony agreements, made on “consideration of non-marital conjugal cohabitation,” are now included within the Statute of Frauds. *See Act of June 18, 1987, ch. 551, § 1, 1987 Tex. Sess. Law Serv. 4422 (Vernon) (amending Tex. Bus. & Com. Code Ann. § 26.01(b) (Vernon Supp. 1987))*. This amendment supplements the existing statute requiring agreements made upon consideration of marriage to be within the Statute of Frauds. *See id.*

CERTAIN RETIREMENT PLANS EXEMPT FROM ATTACHMENT, EXECUTION, OR SEIZURE

Qualifying interests in certain retirement plans, or interests in individual retirement accounts or annuities, are now exempt from attachment, execution, and seizure for the satisfaction of debts. *See Act of June 16, 1987, ch. 376, § 1, 1987 Tex. Sess. Law Serv. 3735-36 (Vernon)(codified at Tex. Prop. Code § 42.0021(a))*. However, individual retirement account contributions exceeding the amounts deductible under the Internal Revenue Code of 1986 are not exempt under this section. *See id.* at 3735 (codified at Tex. Prop. Code § 42.0021(b)). However, this exemption does not apply to property subject, on the amendment’s effective date, September 1, 1987, to a voluntary bankruptcy proceeding or to claims of a judgment holder with rights superior to those of a bankruptcy trustee. *See id.* § 2, at 3736.

TERMINATION OF PARENT-CHILD RELATIONSHIP ON GROUNDS OF PSYCHOLOGICAL DISORDER OF PARENT

Involuntary termination of a parent-child relationship, upon petition by the Texas Department of Human Services, is permitted where a parent has a mental or emotional disorder and is unable to provide for the child’s needs, if such is in the best interests of the child, and the Department has acted as permanent managing conservator of the child for six months. *See Act of June 20, 1987, ch. 934, § 1, 1987 Tex. Sess. Law Serv. 6280 (Vernon)(codified at Tex. Fam. Code § 15.024(a))*. An attorney ad litem must be appointed to represent the parent’s interests. *See id.* (codified at Tex. Fam. Code § 15.024(b)).

ADOPTIVE GRANDPARENT MAY SEEK REASONABLE ACCESS TO CHILD

The 70th Legislature has expressly authorized both biologic and adoptive grandparents to seek, and a trial court to order, reasonable access to a child. *See* Act of June 18, 1987, ch. 587, § 1, 1987 Tex. Sess. Law Serv. 4607-08 (Vernon)(amending Tex. Fam. Code Ann. § 14.03(e) (Vernon 1986)). A grandparent may now seek such relief by original suit, petition in a court with ongoing jurisdiction over the child, or by motion to modify a prior court order. *See id.* at 4608 (codified at Tex. Fam. Code § 14.03(f)). If the grandparent, however, is the “parent of a person whose parental rights have been terminated by court order or death; and the child has been adopted by a person other than the spouse of the parent’s former spouse,” the grandparent may not bring such an action for access. *Id.* at 4608-09 (codified at Tex. Fam. Code § 14.03(g)).

STANDING OF GRANDPARENT OR PERSON NOT OTHERWISE GRANTED STANDING TO SEEK MANAGING CONSERVATORSHIP LIMITED

Section 11.03(b) of the Texas Family Code, before its recent amendment, permitted a grandparent, or another person who had “substantial past contact with the child sufficient to warrant standing,” to bring an original suit seeking managing conservatorship only upon a showing that the child’s parents or managing conservator or custodian initiated or consented to the suit, *see* Tex. Fam. Code Ann. § 11.03(b)(2) (Vernon 1986), or the child’s surroundings constituted a possible danger to the child’s physical health or emotional development, *see id.* § 11.03(b)(1), *amended by* Act of June 20, 1987, ch. 744, § 1, 1987 Tex. Sess. Law Serv. 5338-39 (Vernon). The 70th Legislature altered the burden of a person claiming standing under the latter of these provisions—such a person must now demonstrate that there is a “serious and immediate question concerning the welfare of the child.” *Id.* Although this change seems to limit the ability of grandparents (and others not given all-purpose standing to bring suit to affect the parent-child relationship) to pursue managing conservatorship by demanding a showing of danger not required by the former version, it does eliminate the language referring to the child’s environment and physical and emotional health, and in that respect arguably expands the possible grounds available to such persons.

PROTECTIVE ORDER AGAINST GOING NEAR CHILD’S RESIDENCE OR SCHOOL EXPRESSLY AUTHORIZED

A judicial protective order may prohibit a party from “going to or near the residence, child care facility, or school” where a child who is protected under the order resides or attends. Act of May 28, 1987, ch. 228, § 1, 1987 Tex. Sess. Law Serv. 2993 (Vernon)(codified at Tex. Fam. Code 71.11(b)(4)).

A copy of such a protective order must now be sent to the child care facility or school by the party requesting the order. *Id.* § 2, at 2994 (codified at Tex. Fam. Code § 71.17(c)).

PROTECTIVE ORDERS—DISSEMINATION BY POLICE AND NOTICE OF PENALTY FOR VIOLATION

Copies of protective orders regarding family violence are to be sent by the court clerk to law enforcement agencies where the person resides, and law enforcement officials are responsible for disseminating the information contained in the orders. Act of June 19, 1987, ch. 677, § 2, 1987 Tex. Sess. Law Serv. 5059-60 (Vernon)(codified at Tex. Fam. Code §§ 3.582(c), .583). A protective order other than a temporary ex parte order must contain a notice, set forth in the statute, that violation of a term of the protective order is a misdemeanor punishable by fine up to \$1000 and/or up to six months imprisonment, and that an act of family violence may be a felony or misdemeanor punishable by a fine exceeding \$1000 and/or imprisonment exceeding six months. *Id.* § 7, at 5061 (amending Tex. Fam. Code Ann. § 71.16(b) (Vernon 1986)).

NEW STANDARDS FOR BLOOD TESTING IN PATERNITY SUITS

In a paternity suit, a court order to submit to blood testing must require testing to include “a minimum of seven independent genetic systems, and at least 95% of the male population must be excluded from the possibility” of being the child’s father. Act of June 18, 1987, ch. 1063, § 1, 1987 Tex. Sess. Law Serv. 7223-24 (Vernon)(amending Tex. Fam. Code Ann. § 13.02(a) (Vernon 1986)). Further blood testing may be omitted if the testing sufficiently establishes that the alleged father is not the child’s father, or if costs of such testing reach a court-determined amount. *Id.* Prima facie proof of paternity exists “if the tests show the possibility of the alleged father’s paternity, and that at least 95% of the male population is excluded from the possibility of being the father.” *Id.* § 2 (amending Tex. Fam. Code Ann. § 13.06(c) (Vernon 1986)).

CONCLUSION

The list presented above represents a small sampling of the 1987 legislative changes affecting family law. While it is not intended to be comprehensive, the list is indicative of the current climate of change in this area of the law. In addition, the true impact of these amendments will only be determined as Texas courts apply and interpret the new provisions. Future changes may be anticipated as the strengths and weaknesses of the amendments become apparent.

Patricia A. Foster