

- SUBJECT:** Clarifying a jury's authority to impose residential restrictions at trial
- COMMITTEE:** Juvenile Justice and Family Issues — favorable, without amendment
- VOTE:** 7 ayes — Neave, Swanson, Cook, Frank, Ramos, Talarico, Vasut
0 nays
2 absent — Leach, Wu
- WITNESSES:** For — Keith Maples, Texas Family Law Foundation; (*Registered, but did not testify*: Amy Bresnen, Texas Family Law Foundation; Cecilia Wood)
Against — None
- BACKGROUND:** Under Family Code sec. 105.002 (c), in a jury trial for suits affecting the parent-child relationship, a party is entitled to a verdict by a jury and the court may not contravene a jury verdict on certain issues. Those issues include the determination of which joint managing conservator has the exclusive right to designate the primary residence of a child and whether to impose a restriction on the geographic area within which a joint managing conservator may designate the child's primary residence.
- DIGEST:** Under HB 868, in a suit affecting the parent child-relationship where a party was entitled to a verdict by a jury, the court could not contravene the jury's verdict on:
- determining whether to impose a restriction on the geographic area in which a sole or joint managing conservator could designate the child's primary residence; and
 - the determination of the geographic area within which the sole or joint managing conservator would have to designate the child's primary residence, if a restriction was made.

The court could submit questions to the jury on the above issues.

The bill would take effect September 1, 2021, and would apply only to a suit affecting the parent-child relationship filed on or after that date.

**SUPPORTERS
SAY:**

HB 868 would eliminate confusion about when a court could impose a geographic restriction on a child's primary residence by clarifying that a jury could impose such restrictions whether the parent was a sole managing conservator or a joint managing conservator. This would help ensure that Texas children have frequent and continuing contact with a noncustodial parent who has shown the ability to act in the child's best interest after divorce.

While the Family Code specifically provides that a jury may impose a geographic restriction on a child's residence when parents are appointed joint managing conservators, the statute is silent on whether juries may impose such a restriction when one parent is appointed sole managing conservator. The statutory omission has resulted in inconsistent use of the court's authority, with some judges imposing domicile restrictions on sole managing conservators after a jury trial and others believing they lack the authority to do so.

HB 868 would clear up this ambiguity in Texas family law by specifying that a sole managing conservator, like joint managing conservators, could be subject to a jury-imposed geographic restriction on a child's primary residence. The bill would allow, not mandate, that a jury impose a geographic restriction on a sole managing conservator. Enlightened juries would likely strike a balance between a parent's freedom to relocate for good cause with ensuring a child had access to both parents, with the child's best interest given priority.

**CRITICS
SAY:**

By allowing a jury to impose a geographic restriction on a sole managing conservator, HB 868 could limit a custodial parent's freedom to relocate with a child to find work, advance a career, get an education, or otherwise pursue economic stability. Some parents may need to move for employment reasons following a divorce, and allowing a jury to impose such restrictions could make it more difficult for a parent to find suitable work in a particular geographic area.

