

HB 803 Analysis



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Please independently verify the accuracy of all
information and opinions contained herein.

First, let's set up the **problem**.

The Texas Family Code has 3 important **rebuttable presumptions**, which are like “defaults,” that aim to guide families, lawyers, and judges in situations where parents have decided to live apart.

Each of these “defaults” **can** be overcome if warranted, but the ***influence*** of these rebuttable presumptions **affect every family in Texas.**

Three Key “Defaults” (Presumptions) in the Family Code

Rebuttable Presumption that a Specific Parenting Schedule is in a Child’s Best Interest

- Created in **1989** ([Sec. 152.253](#))
- It’s presumed SPO is in the best interest of a child.
- A child spends 4 hours with their minimized parent in the 12 days between weekend sleepovers, alternating vacation times.
- Remains largely unchanged after 32 years.

Rebuttable Presumption that Parents Share Legal Custody

- Created in **1995** ([Sec. 153.131](#))
- It’s presumed it’s in a child’s best interest for parents to fully share legal custody.

Rebuttable Presumption for Domestic Violence Protections

- Created in **1995** ([Sec. 153.004](#))
- Family violence removes the presumption that parents should share legal custody, and there is a presumption there should be supervised parenting time if a finding of family violence.

Problem #1:

The Texas Family Code **still includes** the 32-year old presumption that it's in a child's best interest to lose most access to one parent through the Standard Possession Order as the default schedule.

We know now this is NOT in the best interest of children, and **we badly need an update.**

Problem #2:

The Family Code Has
Some Other Standard
Parenting Schedule
Options, But **NONE**
Provide a Child with
Maximized Time
with Both Parents

In 1989 the Standard Possession Order was created, and is presumed in the best interest of the child.

In 1995, legislators added options for the “non-primary” parent to expand their parenting time if they choose options **at the time of their first order**.

In 2021, if non-primary parents elect ALL available options, a child still **does not** have the privilege of maximized time with both parents.

Under the current maximized elections, a child spends Thursday night with their “non-primary” parent, and alternating weekends and vacations with each, but otherwise they are with their “primary” parent. Clearly, a child does not experience balance under this schedule.

Why does it matter that the Family Code does not contain a codified schedule that maximizes time with parents?

It matters because legislators have spent 30 years refining the codified schedule language to plug schedule loopholes and reduce ambiguity for parents. Research says that maximized time with parents is a best-case scenario for kids when it's possible. The Texas Family Code does NOT provide a codified schedule option to support it, leaving parents, lawyers, and judges to make it up, which increases the potential for unintentional loopholes and ambiguity, and creates friction for all parties.

This maximized schedule omission significantly reduces the likelihood that a child will receive maximized parenting time.

As a recap, there are two important issues in the Texas Family Code that can **negatively affect Texas children** when their parents decide to live apart:

1. The Texas Family Code contains a rebuttable presumption of the Standard Possession Order is in the best interest of the children of Texas. **This very unbalanced schedule presumption creates instant anxiety and conflict between parents, who each desperately don't want to be the minimized parent.** As the default schedule, it also means this is the most commonly issued possession schedule for Texas kids.
2. **The Texas Family Code has NO codified schedule for parents to fully share parenting time**, which experts agree is best for kids. This lack of a balanced schedule dramatically increases the likelihood of using one of the default, unbalanced schedules in the Code. *This means maximized time with parents is an exception when it happens.*

What is the Standard Possession Order?

What are the maximized “elections” for extra parenting time?

SPO - By the Numbers (Hours & Overnights)

The Texas Family Code presumes that the schedule below is in the best interest of the child. You can read the details in [Sec. 153.312](#) that would apply to families who live less than 100 miles apart. In situations with two fit, willing, and able parents, who are joint managing conservators (as all Texas parents are presumed to be by default), **this schedule significantly limits a child's access to one parent.** And because this is a *codified presumption*, one parent will need to mount a legal effort to overcome it if parents disagree over schedule decisions. In a time of family crisis, this presumption means that parents must battle to prevent becoming the marginalized parent.

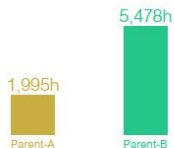
2021 SPO Parenting Time

This timeshare and overnight computation is for the period of time from 1/1/21 to 12/31/21. Parents are Parent-A and Parent-B.

Time per parent

26.7% PARENT-A
⌚ 1,995 hours

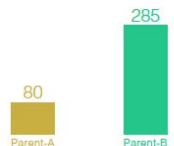
73.3% PARENT-B
⌚ 5,478 hours



Overnights per parent

21.9% PARENT-A
🌙 80 nights

78.1% PARENT-B
🌙 285 nights



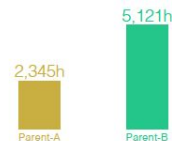
2022 SPO Parenting Time

This timeshare and overnight computation is for the period of time from 1/1/22 to 12/31/22. Parents are Parent-A and Parent-B.

Time per parent

31.4% PARENT-A
⌚ 2,345 hours

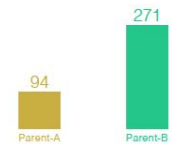
68.6% PARENT-B
⌚ 5,121 hours



Overnights per parent

25.8% PARENT-A
🌙 94 nights

74.2% PARENT-B
🌙 271 nights

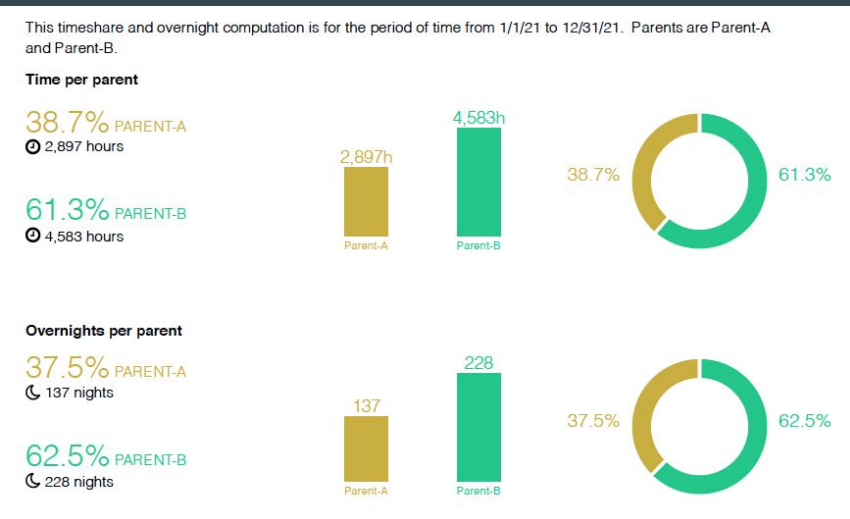


[Click for complete 2021 and 2022 SPO Calendars.](#) This SPO calendar matches time and holidays with this [sample calendar](#) provided to legislators.

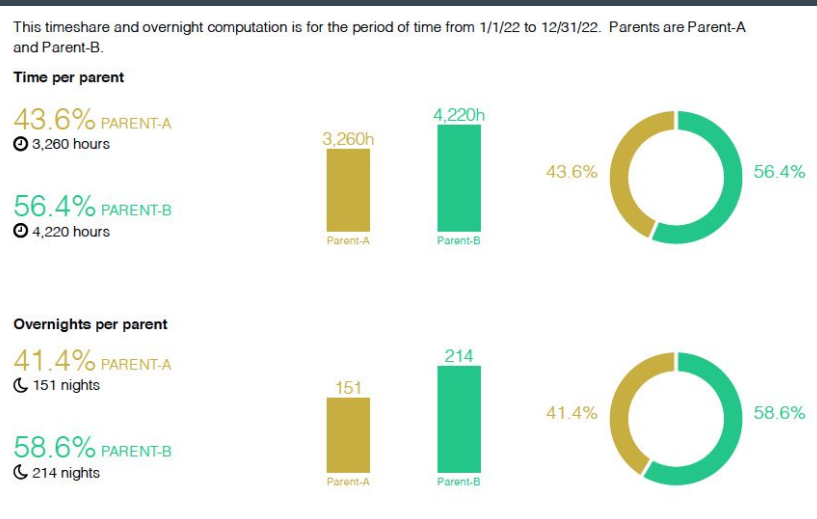
SPO & All Available “Elections” - By the Numbers

Under [Sec. 153.317](#), at the time of the first order (and not at any point after), a non-primary/non-custodial parent can “elect” to expand their SPO parenting time by using one, some, or all of the alternative start and end times provided, as long as it’s in a child’s best interest, and they are aware they have the option to do so. As you can see below, **using all current elections does NOT provide a child with maximized time with both of their parents.** There is currently **no codified schedule** for families, lawyers, and judges to offer children maximized parenting time, creating further friction for this best-interest scenario.

2021 SPO + All Elections Parenting Time



2022 SPO + All Elections Parenting Time



[Click for complete 2021 and 2022 SPO + Elections Calendars.](#) This SPO calendar matches time and holidays with this [sample calendar](#) provided to legislators.

Side-by-Side Codified Schedule Comparison

Standard Possession Order		SPO + All Available “Elections”	
Two hours on Thursday night (6-8pm) with Parent A .		Thursday overnight from school pick-up to school drop-off with Parent A .	
6pm Friday to 6pm Sunday with Parent A on the 1st and 3rd weekend of the month, and an extra weekend (5th) three or four times a year.		1st and 3rd weekend with Parent A from school pick-up to drop-off, and an extra weekend (5th) three or four times a year.	
<i>Holidays are allocated to each parent and alternate each year.</i>		<i>Holidays are allocated to each parent and alternate each year.</i>	
At all other times, a child is with Parent B.		At all other times, a child is with Parent B.	
2021 22% (80 overnights w/ Parent A) 78% (285 overnights w/ Parent B)	2022 29% (94 overnights w/ Parent A) 74% (271 overnights w/ Parent B)	2021 38% (137 overnights w/ Parent A) 62% (228 overnights w/ Parent B)	2022 41% (151 overnights w/ Parent A) 59% (214 overnights w/ Parent B)

[Full 2021 & 2022 SPO Calendar](#)

[Full 2021 & 2022 SPO + All Available Elections Calendar](#)

Commonly Asked Questions About Maximized Parenting Time in Texas

Doesn't the Code allow for parents to equally share parenting time already?

Yes, the Code ***allows*** parents to agree to any plan in a child's best interest - on their own or with the help of attorneys - including equal.

Yes, judges ***can*** award any parenting plan in a child's best interest - including equal.

However, the Code's presumption for SPO heavily influences parents, lawyers and judges. Presumptions need to be overcome to do something different. Our Code makes a best case scenario ***hard***.

So yes, equally shared parenting ***CAN*** happen now, but only with significant effort and expense (if parents don't immediately agree). And even in those cases, ***it often doesn't happen at all***. Many parents don't even try because of this, and that's when kids lose.

Isn't it true that when a judge doesn't award equal time, it's because the facts of the case don't support it?

Yes, sometimes. And preserving judicial discretion is essential.

But in many cases, it's because **judges are, *understandably*, following the 32-year old rebuttable presumption** of the Standard Possession Order in the Texas Family Code. They are responsible for upholding the law.

And non-primary parents who agree to SPO **often** do so because they are advised that overturning the default schedule can be ***extremely expensive, often traumatic, and likely unsuccessful***. The influence of this schedule presumption **cannot be understated**.

Do “non-primary” parents really understand how much work is involved with maximized parenting time?

The best way to answer this is to compare the current codified maximized parenting time to what truly maximized parenting time would look like and see how much more time it is.

For the last 26 years, “non-primary” parents, who share legal custody of their children, have been able to “elect” alternative start and end time options to expand the Standard Possession Order from [Sec. 153.317](#). This election option has worked well for decades, *as long as parents have good legal help to know about these options at the time of the first order*. Otherwise, this is not available to parents to elect later, unfortunately.

What would that schedule look like with maximizing parenting time? **It would mean adding a new option of also parenting on Wednesday night during the school year.** That would be balanced for a child. If anyone were to suggest that “non-primary” parents cannot handle maximized parenting duties, please know that means they are suggesting they cannot handle parenting on Wednesday night to Thursday morning. Otherwise, they have been doing this for decades with the support of the Code.

But aren't 50/50 cases
modified more frequently?
Didn't a recent survey of
attorneys find that 72%
have had to modify a
prior 50/50 agreement?

How many of these attorneys have had to modify a
prior Standard Possession Order agreement?

How many of these attorneys have had to modify a
prior custom parenting plan agreement?

Modifications of parenting plan schedules support growing kids, whose families sometimes move, whose families sometimes expand through re-marriage and new children, and sometimes kids just need adjustments to thrive.

To expect that a schedule for a 4-year old child will work until the child is 18 is unreasonable, and likely unhealthy for the child.

Ultimately, assuming that one parent will mostly remove themselves from a child's life when divorcing or separating **does not reflect 2021 Texas families, culture, and societal norms.**

This assumption is NOT how we aim to raise children in Texas, ***but the law still says it's best.***

Attempts to address how the aging presumption of the Standard Possession Order affects Texas families have taken many forms over the years.

HB 803 is the latest effort, but it's the 6th time a substantially similar bill has been filed since the 80th legislative session. Let's see how this bill would help children keep their fit, willing, and able parents after they decide to live apart. (And perhaps why it hasn't passed yet.)

HB 803 Deconstructed:

The Bill Language & Concerns

Section 1 Update: Deconstructed

SECTION 1. Section 153.001(a), Family Code, is amended to read as follows:

(a) The public policy of this state is to:

(1) assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child;

(2) provide a safe, stable, and nonviolent environment for the child; and

(3) encourage parents to share equally in the rights and duties of raising their child after the parents have separated or dissolved their marriage.

The last update to this section was in 1999 (74R) when “safe” and “nonviolent” were added via HB 1411.

This update would add “equally” to the rights and duties section.

Section 1 Update: Concerns

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(3) encourage parents to share equally in the rights and duties of raising their child after the parents have separated or dissolved their marriage.

How is “equally” defined when it comes to rights and duties? If it’s not spelled out here, will litigation determine how this is successfully achieved?

Is this necessary to include to ensure kids keep their parents as often as it’s in their best interest to do so?

Section 2 Update: Deconstructed

SECTION 2. Section 153.134, Family Code, is amended by adding Subsection (c) to read as follows:

(c) If the court renders an order appointing the parents joint managing conservators under this section, the court shall enter a possession order under Subchapter F-1 that provides for equal parenting, unless the court determines that order is not in the best interest of the child, in which case the court may enter:

(1) a standard possession order as provided by Subchapter F; or

(2) another order regarding possession that the court determines is in the best interest of the child.

This adds a new subsection to [Sec. 153.134](#), which includes direction to the court on how to determine if the parents should be joint managing conservators (shared legal custody) when parents do not file an agreed upon parenting plan.

If the court finds joint managing conservatorship (shared legal custody) is in the best interest of the child, this bill states the judge “shall” enter an “equal” parenting plan, unless it is not in the best interest of the child.

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(1) a standard possession order as provided by Subchapter F; or

(2) another order regarding possession that the court determines is in the best interest of the child.

The intent here is to ask the court to start at balance for the child and limit a child's maximized access to their parent only to preserve the child's best interest.

However, that's not exactly what this says. "Equal" is a term of measurement. This is ordering equal without any definition of the measurement used. Are we counting hours, days, or overnights to determine what's equal? Will future litigation define this for Texas families? Will attorneys go back and forth to resolve on a case-by-case basis? Further, the Code **still would not** say that "equal" is in a child's best interest. Instead, it would say SPO is in the child's best interest, but a judge shall order equal unless it's not in a child's best interest. This circular reference is of concern.

There has been much back and forth over multiple sessions, between the supporters of Code changes and those who oppose, about measuring the existing schedules in the Code (*are they already 50/50 or not?*). **This has primarily caused on this issue:** a lack of definition of measurement creates ambiguity, and ambiguity creates tension and arguing between parents, and ambiguity often requires litigation to solve. Let's solve it now, not later.

New Subchapter F-1: Deconstructed

SUBCHAPTER F-1. EQUAL PARENTING ORDER

Sec. 153.351. AUTHORITY TO ENTER EQUAL PARENTING ORDER.

Notwithstanding any other provision of this chapter, a court shall, as an alternative to the standard possession order under Subchapter F, enter an order providing for periods of possession of a child in accordance with this subchapter if the court:

(1) appoints the parents joint managing conservators under Section 153.134; and

(2) determines that the order would be in the best interest of the child.

This adds a brand new subchapter section to Subchapter F, which is the existing subchapter that details the Standard Possession Order.

It says a court “shall” create an equal parenting plan if the parents share legal custody, and it’s in the best interest of the child.

New Subchapter F-1: Concerns

SUBCHAPTER F-1. EQUAL PARENTING ORDER

Sec. 153.351. AUTHORITY TO ENTER EQUAL PARENTING ORDER.

Notwithstanding any other provision of this chapter, a court shall, as an alternative to the standard possession order under Subchapter F, enter an order providing for periods of possession of a child in accordance with this subchapter if the court:

(1) appoints the parents joint managing conservators under Section 153.134; and

(2) determines that the order would be in the best interest of the child.

Do courts need the authority to do something they can do today?

“If parents share legal custody, the court shall order equal, if it’s in the best interest of the child.”

Adding a new subchapter the right way to make these important updates so kids keep their parents as often as possible when it’s in their best interest to do so?

New Sec. 153.352: Deconstructed

Sec. 153.352. PERIODS OF POSSESSION UNDER EQUAL PARENTING ORDER.

(a) Subject to Subsection (b), a court may enter an order under this subchapter that provides that each parent has the right to possession of the child under a schedule specified by the court, provided that:

(1) the schedule may not grant possession to a parent for a number of days each year that exceeds the number of days of possession granted to the other parent for that year by more than five days; and

(2) the schedule must alternate on a yearly basis the parent who is granted possession for a number of days for the year that exceeds the number of days granted to the other parent.

(b) A court shall provide parents with the opportunity to select by agreement a schedule for possession described by Subsection (a), subject to the court's determination that the proposed schedule is in the best interest of the child. If the parents do not agree, the court may order possession under any schedule described by Subsection (a).

In the newly created Subchapter F-1, this proposed Sec. 153.352 details the guideline of an “equal” parenting plan.

This bill defines an “equal” plan as no more than five days difference per year.

And each year, the child’s schedule must flip, so the parent with fewer days the year prior has more the following year.

This also reiterates that parents can agree upon a schedule in the child’s best interest, rather than having one awarded.

New Sec. 153.352: Concerns

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(2) the schedule must alternate on a yearly basis the parent who is granted possession for a number of days for the year that exceeds the number of days granted to the other parent.

(b) A court shall provide parents with the opportunity to select by agreement a schedule for possession described by Subsection (a), subject to the court's determination that the proposed schedule is in the best interest of the child. If the parents do not agree, the court may order possession under any schedule described by Subsection (a).

This section aims to define equal as less than five days difference per year. How do you measure a day? Do we measure by hours per parent? Do we measure by overnights? Is it counted as a “day” if a child sees a parent in the morning before school but not after school? Does that day count as a “day” for both parents since the child saw both? What if parents measure differently and each insists on using their method? Who decides?

The inclusion of the five days detail can surely only be to appease parents. A child does not measure their time with parents in annual terms, but by frequent and ongoing contact on a near-term basis, which is not a provision here. It is not in a child’s best interest to change their schedule every 12 months without good cause. That may be disorienting and destabilizing for a child, with no clear basis to do so.

What does a parenting plan that meets a child’s best interest AND this standard look like? None is presented in the bill, nor have any been shared with legislators, leaving parents, lawyers, legislators to start from scratch.

Further Concerns with HB 803

- We've spent 30 years relying upon codified "standard" schedules to support families, lawyers, and judges in times of family crisis. And yet, **this bill does not provide a single codified schedule option that meets its 5-day requirement, nor are any existing codified schedules considered "equal."** This lack of codified schedule options will undoubtedly **increase work** for parents, attorneys, and judges. It will potentially lead to more modifications to address bespoke schedules that are not as fully formed or tested as the codified schedules.
- **Does this bill language support families determining a shared path forward?** Or is this written for courts, where most families will never go? Where may parents potentially flounder as a result?
- HB 803 **may increase modifications** because there are no unambiguous codified "equal" schedule options, and the 5 days difference **may need to be re-addressed each year**. What's the process for updating? What if parents can't agree on an "equal" schedule update? A schedule that's 5 days different in the first year, likely won't be the next, especially when flipped + vacations..
- Families in transition **need more support, not new and ambiguous language**. Review Subchapter F revisions over the last decades - they were largely to shore up gaps in the schedules and clarify intent.
- **Who wins when laws are vague?** Will there be increased litigation to get answers that were left out when the bill passed?

How to Address HB 803

Language and Concerns

The two key issues that can prevent Texas children from having maximized time with fit, willing, and able parents are:

1. The Texas Family Code contains a rebuttable presumption that the Standard Possession Order is in the best interest of the children of Texas. **This extremely unbalanced schedule presumption creates instant anxiety and conflict between parents, who each desperately don't want to be the minimized parent.** As the default schedule, it also means this is the most commonly issued possession schedule for Texas kids.
2. **The Texas Family Code has NO codified schedule for parents to fully share parenting time,** which experts agree is best for kids. This lack of a balanced schedule dramatically increases the likelihood of using one of the default, unbalanced schedules in the Code. *This means maximized time with each parent is an exception when it happens.*

1. Does HB 803 update the current rebuttable presumption that says SPO is best for kids?

No, the presumption remains that the Standard Possession Order is in the best interest of the child ([Sec. 153.252](#)).

This bill says a court shall order equal, unless it's not in the best interest of the child to do so, while the Code defines a child's best interest as the Standard Possession Order. This is unnecessarily circular.

2. Does HB 803 provide for equal schedule options, that build on the existing codified schedules, for use by families, lawyers, and judges?

No, HB 803 contains no equal schedule options for parents, lawyers, and judges to use.

Further, it defines equal as 5 days different per year, with no explanation for how to measure - hours, overnights, days with contact, or something else.

Recommended Updates for HB 803

Align with Research

No research on children's best interest narrows in on the conclusion that only exactly "equal" is best. As much time as possible (up to equal), yes. Five days difference per year? No. Ensure the language reflects what science says is best: kids thrive with as much time as possible with a fit, willing, and able parent when parents live apart. Let's start there for all kids with JMC parents and then adjust when a child's situation calls for it. No current codified schedule meets this best interest standard, and that's a problem.

Redefining "Equal"

Instead of defining "equal" on an annual basis, focus on **balanced schedule rhythms** that give kids as much time as possible with their parents on a near-term basis, which will result in an yearly balance when the standard alternating vacations are included. We need to explore these solutions from a child's perspective. For example, "equal" by HB 803 standards could be six months at one home and six months at another. Would that benefit a child? No. The day-to-day and weekly rhythm matters to a child greatly. Let's keep our focus on a child's lived experience.

Include Schedule Options

Parents, lawyers, and judges need support - not ambiguity - in a time of family crisis, and every family has different schedule needs. Include sample schedules with the same clarity and certainty that SPO and current elections provide. Examples with maximized time that could extend the existing codified schedules and language include:

- 2-2-3 (see example [here](#), & next page)
- 2-2-5-5
- 3-4-4-3
- Alternating weeks

Example of a Potential Codified “Equal” Schedule

SPO + All “Elections” (CURRENT MAXIMUM)		SPO + All “Elections” + Wed Election (2-2-3) (“EQUAL”)	
<u>Thursday</u> overnight from school pick-up to school drop-off with Parent A .		<u>Wednesday and Thursday</u> overnight from school pick-up to school drop-off with Parent A .	
<u>1st and 3rd weekend</u> with Parent A from school pick-up to school drop-off, and an extra weekend (5th) 3 times a year.		<u>1st and 3rd weekend</u> with Parent A from school pick-up to school drop-off, and an extra weekend (5th) 3 times a year.	
<i>Holidays are allocated to each parent and alternate each year.</i>		<i>Holidays are allocated to each parent and alternate each year.</i>	
<i>At all other times, a child is with Parent B.</i>		<i>At all other times, a child is with Parent B.</i>	
2021 38% (137 overnights) w/ Parent A 62% (228 overnights) w/ Parent B	2022 41% (151 overnights) w/ Parent A 59% (214 overnights) w/ Parent B	2021 48% (174 overnights) w/ Parent A 52% (191 overnights) w/ Parent B	2022 51.5% (188 overnights) w/ Parent A 48.5% (177 overnights) w/ Parent B

[Full 2021 & 2022 SPO + All Available Elections Calendar](#)

[Full 2021 & 2022 SPO + All Elections + Wednesday Election Calendar](#)

In summary, **parts of the Texas Family Code require an update.**

Over the last 32 years, we've learned that **kids thrive** when they have maximized time with their parents if their parents live apart. But, our Family Code **STILL presumes a child should lose most access** to one parent if their parents live apart through a “default” schedule of SPO. This default affects what happens in every agreed-upon and contested case.

HB 803 aims to update the Code so more kids keep their parents fully involved in their lives after separation or divorce, **but it does not modernize** the rebuttable presumption of SPO. It also **does not support parents**, lawyers, and judges, to both choose - and award - maximized parent time through codified schedules that would leverage the closed loopholes and reduced ambiguity achieved through decades of schedule language optimization by legislators.

Let's address these two issues so we don't have 2 more years of children who may lose most access to one parent when they decide to live apart - because Texas says it's best for them.

Appendix:

Example Parenting Plan Calendars

All sample calendars are based on the [example calendar provided to legislators](#). Actual parenting plans will vary based on the local school district calendar.

[Click here](#) for complete 2021 and 2022 sample parenting time calendars for:

- SPO (default)
- ESPO (current codified max)
- ESPO + Wed (a proposed codified max option)

In ALL provided samples above that include parenting hours calculations, 8am to 3pm was not allocated to either parent during the school day (see gray blocks on the calendar), though the “primary” parent technically has possession of a child during all school hours, which means the “non-primary” parent can technically never pick up a sick child from school, even if they have possession at the end of the school day.
