

Legislative Analysis



CHILD CUSTODY: PARENTING PLAN

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House Bill 5471 (Substitute H-3)
Sponsor: Rep. John Moolenaar
Committee: Judiciary
First Analysis (6-22-04)

BRIEF SUMMARY: The bill would allow, in a divorce proceeding involving a minor child, the parents to complete a parenting plan regarding custody of and parenting time with the child.

FISCAL IMPACT: The bill would have an indeterminate impact on the judiciary.

THE APPARENT PROBLEM:

When couples with minor children divorce, discussions and decisions regarding such matters as which parent the child will live with, where will the child spend holidays, who will take the child to school and to soccer practice, and so forth, can be difficult at best and acrimonious or violent at worst. Some people who have experienced the emotional toll that custody proceedings can take on family members, whether by personal experience or in the course of their employment, have expressed a desire to create a mechanism that would put the focus back on the best interests of the child and that could encourage parents to design a parenting plan that they both can agree to.

Originally part of the legislative package known as the Marriage and Family Preservation Program (see Background Information for more information), the bill discussed in this analysis would supplement the package by requiring a court to implement a parenting plan that both parents agreed upon, as long as the court felt that the plan represented the best interests of the child or children involved.

THE CONTENT OF THE BILL:

The Child Custody Act requires, in an action involving a dispute of a minor child's custody, the court to declare the child's inherent rights and establish the rights and duties as to the child's custody, support, and parenting time. House Bill 5471 would amend the act to add that the above would be done under a court order or a court-approved parenting plan. The bill would also require the court to declare a parenting plan established by the child's parents as the child's inherent rights.

In addition, the bill would require the State Court Administrative Office (SCAO), with the approval and at the direction of the state supreme court, to develop and make available a form that a parent could use to complete a parenting time plan. A court would have to make the form available if a minor child were part of the marriage.

The form for the parenting plan would have to:

- Indicate the subject matter to be addressed in a parenting plan;
- contain a sworn statement signed by each parent that the proposed parenting plan was proposed in good faith; and,
- contain a notice that either party could obtain legal counsel.

If the parents created a parenting plan, it would have to be filed with the court before a hearing on or determination of issues regarding a child of the marriage. Unless the court determined by clear and convincing evidence that the terms in a parenting plan were not in the child's best interest, the court would have to order the terms agreed on by the parents in the parenting plan.

MCL 722.24 and 722.27a

BACKGROUND INFORMATION:

House Bill 5471 is part of a package of bills known as the Marriage and Family Preservation Program; the other bills were passed by the full House earlier this year and are now pending action in the Senate. (See the House Fiscal Agency's legislative analysis of House Bills 5467-5470 and 5472-5474 dated 5-18-04.) One of the bills in the package, House Bill 5470, would require that, unless exempted or excused, the parties to a divorce complete a divorce effects educational program and a questionnaire before the entry of the judgment of divorce, if there are minor children. The minimal required components of a divorce effects program would include information to increase the communication and conflict resolution skills of the parties, teach parallel and cooperative parenting techniques, and give information on children's responses to divorce, symptoms of maladjustment to divorce, and education or counseling options for children. The required questionnaire would have to contain questions designed to encourage the parents to think about the effects of the divorce on the child.

ARGUMENTS:

For:

Divorce has a great impact on minor children, but its negative effects can be somewhat mitigated when parents agree on parenting issues that fairly distribute the responsibilities of parenting, provide the children with ample opportunities to maintain a close relationship with each parent, and that fairly provide for the support of the children. The bill would encourage such cooperation between divorcing parents by requiring a court to implement the terms of a parenting plan that both parties agreed to. Should the court determine, by clear and convincing evidence, that the terms of the parenting plan did not reflect the child's or children's best interests, the court would still maintain discretion to order different terms.

The bill would also require the State Court Administrative Office to create a parenting plan form and get it to the divorcing parents of minor children. The hope and expectation

of the legislation is that the form would encourage the type of dialogue and discussion between parents that may lead to a mutually acceptable parenting plan that would lessen the contention and unpleasantness that so often accompanies discussion of parenting time. The availability of the form may also serve as a tool for attorneys to facilitate amenable discussions between parents.

Since the creation of a parenting plan under the bill would be voluntary, there would be no pressure on victims of domestic or sexual violence to participate in establishing one. However, since the bill would require certain legal filings, each party should have its own legal counsel. Therefore, negotiations could be facilitated by the parties' attorneys even in those situations in which face to face discussions would not be viable or prudent. The required filings may also discourage one parent from pressuring the other to agree to a plan that is objectionable to him or her, or discourage a parent from trying to get around the attorneys involved in the case. If a mutually-acceptable plan cannot be agreed upon, the court could still order the parenting plan, custody, and support.

Proponents of the legislation believe that the bill will encourage parents to refocus on their child's or children's best interests rather than fighting over self-serving schemes that serve more to punish each other than to help the children involved. Encouraging parents to agree on a parenting plan could reduce litigation time, reduce the court's involvement, and hopefully, reduce costs to the couple seeking the divorce and even to taxpayers.

Against:

The bill appears to attempt to begin to blend several different legal concepts into a single, less contentious term, just as an earlier package of bills attempted to do.

Currently, Section 7a of the Child Custody Act pertains to establishing parenting time (formerly known as "visitation"). The bill would require that a court order the parenting time conditions (visitation conditions) contained in a mutually agreed upon parenting plan. This does not appear problematic when read in isolation. In that context, the bill does well by requiring a court – unless the plan is proved by clear and convincing evidence not to be in the child's best interest – to implement a parenting (visitation) plan that had been agreed upon by both parents.

The problem is with the new language that the bill would insert into Section 4 that would require a court to declare a parenting plan established under Section 7a as the child's inherent rights under Section 4(1) and that would require the court to establish the rights and duties regarding custody, support, and parenting time under court order or a court-approved parenting plan.

The result is that the bill would begin to blur the distinction between several different legal concepts. The parenting plan governed by Section 7a only deals with what was formerly referred to as visitation time – the time spent by a child with the parent with whom he or she does not physically reside. But, the bill would equate the agreed-upon parenting plan with the child's inherent rights even though a child's inherent rights go beyond mere visitation/parenting time with the noncustodial parent. And, it would seem

that the bill is expanding the concept of a parenting plan [via the new language inserted into Section 4(1)] to equate a court order with an agreed-upon parenting plan so that either one could establish parental rights and duties regarding custody (decision-making/residence), support (financial support of the child), and parenting time (visitation).

House Bill 5949 (which was reported from the House Judiciary Committee but then sent back to committee) and several companion bills would amend various acts to replace terms referring to custody with “parenting time”. The bills have met with opposition from those concerned that the result would be a confusing and ineffective merger of distinct legal concepts, though there is agreement that the terms “custody” and “custodial” are often contentious and can inflame custodial proceedings.

Until such time as the discussions over how to effectively replace the terms used to identify what occurs under a custodial order are complete, it would be better that this bill be limited to requiring the court to accept mutually-agreed upon parenting (visitation) plans and eliminate the provisions that could prove problematic.

Against:

Several concerns have been raised about the bill. In particular, the bill applies to parenting plans agreed upon between parents in a divorce proceeding. However, the form provided by the courts could be useful for establishing parenting plans for parents who never married and so should also be made available to those parents.

In addition, some feel that the bill is missing several important procedural steps for resolving disputes in divorce proceedings. Others feel that there is no uniformity in parenting time orders across the state and so feel that the bill should be more specific as to what the court-issued form would contain. It has also been recommended that the court collect data on benefits of the form on the creation of parenting plans and whether or not those plans have a greater compliance rate.

POSITIONS:

A representative of the Michigan Family Forum indicated support for the bill. (6-15-04)

A representative of the Michigan Coalition Against Domestic and Sexual Violence indicated the coalition supports the bill in principle. (6-15-04)

A representative of the Michigan Conference – National Organization for Women (MI NOW) indicated that the organization has a neutral position on the bill. (6-15-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.