

CHILD CUSTODY: PARENTING PLAN

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House Bill 5471

Sponsor: Rep. John Moolenaar

Committee: Judiciary

Complete to 3-29-04

A SUMMARY OF HOUSE BILL 5471 AS INTRODUCED 2-5-04

The bill would add several new sections to the Child Custody Act to provide for parenting plans. It would rename the act as the “Child Parenting Plan or Custody Dispute Act”, and require the adoption of parenting plans before the entry of an order for divorce, separate maintenance, or annulment. A parenting plan would have to be in the “child’s best interests”. (This term would replace the term currently used in the act, the “best interests of the child”, though the definition would remain as under current law.) A parenting plan would cover issues of custody, parenting time, support, grandparenting time, and related issues. A parenting plan would have as its objectives:

- To have the child reared by both parents, unless that is not in the child’s best interests.
- To provide for the child’s care, including the specification of responsibility for health care expenses and coverage.
- To set forth the authority and responsibilities of each parent with respect to the child, consistent with the provisions of the bill.
- To encourage the parents to meet their responsibilities to their children through agreements in the parenting plan, rather than through judicial intervention.

Custody of child. Under the bill, in an action involving a dispute over a minor child’s custody, a court would establish the rights and duties [of the parties] as to the child’s custody, support, and parenting time under court order or under a court-approved parenting plan according to the act. If a child were the subject of a court-approved parenting plan, the court could order the child’s parents to be governed by the parenting plan without designating either parent as the legal or physical custodian of the child. However, the bill would allow a designation of legal or physical custody solely for purposes of other state or federal statutes or other legal requirements (e.g., tax exemptions, health care benefits), or, in the absence of such a designation, the bill specifies that the parent with whom the child was scheduled to reside the majority of the time would be considered to be the child’s custodian for such purposes. A designation of custody made under these provisions would not affect either parent’s rights or responsibilities under the parenting plan or any other provision of the act.

Further, the bill specifies that a parenting plan would not affect the right of a person not governed by the plan to pursue and establish parenting or grandparenting time with a child, as authorized under other provisions of law. And, if a parenting plan did not resolve the issue of a child's custody, the court would be required to determine the child's custody as under current law.

Requirement for parents to file a parenting plan. The State Court Administrative Office would have to develop and make available a form for use by parents in completing a parenting plan, listing the subject matter required to be addressed in a parenting plan, and specifying that either party could retain legal counsel. In a divorce, separate maintenance, or annulment action involving parents of a child, the parents would be required to file with the court a proposed parenting plan. The plan would have to be filed before a hearing on or determination of issues regarding a child.

If there was evidence that either parent has committed domestic violence, or if the parents did not agree on a parenting plan, each parent would have to file a plan with the court and file it with the other party. This would have to be done on or before 28 days after either parent filed and served notice requesting a pretrial conference, or 26 weeks after commencement of the action (or longer if an extension was agreed to by the parents), whichever was earlier. A parent who filed a proposed plan under this provision could move the court for an order adopting his or her plan if the other parent failed to file a proposed plan.

A parent submitting a proposed parenting plan would have to attach a sworn statement that the plan was proposed in good faith. Either parent could file and serve an amended plan according to the rules for amending pleadings.

Disputed parenting plan. If the parenting plan or plans were in dispute, the parents would be required to attempt to arrive at a mutually agreed upon plan using an alternative dispute resolution process, through the friend of the court or through another agency or individual agreed upon by both parties. (This would not apply if domestic violence was a factor.)

If the alternative dispute resolution process was unsuccessful or inapplicable, and a mandatory settlement conference was provided by court rule, the parents would be required to attend a mandatory settlement conference. A judge or friend of the court referee would preside over the settlement conference and apply the criteria listed in the bill. The bill would require that the parents review in good faith the proposed terms of the parenting plans and other relevant issues. A fact or legal issue that was not in dispute would be entered as stipulated for purposes of the final hearing or trial in the matter.

A court could not issue an order implementing a disputed parenting plan until it held a hearing on the plan. An action involving a child under the bill would have precedence for hearing and assignment for trial over other civil actions.

Parenting plan to include plans for resolving future disputes. A parenting plan would have to contain provisions governing the resolution of future disputes between the parties, including alternatives to court action such as counseling, mediation, or arbitration by a specified individual or agency, including the friend of the court. However, if a court found that a party used or frustrated the use of an alternative dispute resolution process without good cause, it would have to award attorney fees and financial sanctions to the other party.

In designating a dispute resolution process, the court would have to consider differences between the parties that would substantially inhibit their effective participation, the parents' wishes or agreements (and whether agreements were made knowingly), and differences in the parents' financial circumstances that could affect their ability to participate fully in a given process.

Limitations on alternative dispute resolution. If either parent was unable to afford the cost of the proposed dispute resolution process, the court could not order one. Further, a parenting plan could not require mutual decision making or designation of an alternative dispute resolution process if the court found that a parent had engaged in:

- Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions.
- Physical, sexual, or a pattern or emotional abuse of a child.
- A history of acts of domestic violence or an assault or sexual assault that causes grievous bodily harm or the fear of that harm.
- Limitations on parenting time. The court would be required to limit a parent's parenting time with his or her child if it found that the parent had engaged in:
 - Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions.
 - Physical, sexual, or a pattern or emotional abuse of a child.
 - A history of acts of domestic violence or an assault or sexual assault that causes grievous bodily harm or the fear of that harm.

However, in limiting parenting time based on such conduct, the court would have to consider the amount of time that had passed since the conduct occurred.

Parenting time would also be limited for a parent who resides with another person who had engaged in child abuse or domestic violence.

Limitations on parenting time based on the above factors would have to be reasonably calculated to protect the child from physical, sexual, or emotional abuse or harm that could result if the child had contact with that parent. If limiting parenting time would not adequately protect the child from harm or abuse, the court would be required to restrain

the parent from all contact with the child for a period of time to be determined by the court. Further, the court could not enter an order allowing a parent to have contact with a child if the parent (or a person living with the parent) were found by clear and convincing evidence in a civil action, or by a preponderance of the evidence in an action under the juvenile code, to have sexually abused a child. However, contact could occur under this provision if the offender was a child or ward of the parent, and if the safety and welfare of the child subject to the parenting plan would be adequately protected.

If a parent was convicted as an adult of criminal sexual conduct, or assault with intent to commit criminal sexual conduct, the court would be required to restrain the parent from contact with a child that would otherwise be allowed under the act. Further, if a parent resided with another person who had been convicted of those offenses (or adjudicated as a juvenile), the court would restrain that parent's contact with the child except contact that occurred outside the other person's presence. However, contact could occur under this provision if the offender was a child or ward of the parent, and if the safety and welfare of the child subject to the parenting plan would be adequately protected.

If a court limited parenting time by requiring supervised contact between the child and the parent, the court could not approve of a supervisor who had engaged in physical, sexual, or a pattern of emotional abuse of a child. The court could not approve of a supervisor unless he or she accepted that the harmful conduct (that was the basis for limiting parenting time) had occurred and was willing and capable of protecting the child from harm. The court would have to revoke its approval of a supervisor upon finding, based on the evidence and on the record, that the supervisor had failed to protect the child or was no longer willing to do so.

Further, if the court expressly found, based on evidence and on the record, that contact between the parent and the child would not cause physical, sexual, or emotional abuse or harm to the child, and that the probability that the conduct would recur was so remote that it would not be in the child's best interests to apply a limitation, then the court would not have to apply the limitations. However, this exception would not apply if the court were required to restrain contact with the child under the bill, rather than to limit it.

Preclusion or limitation of parenting plan. The bill would allow the court to preclude or limit a parenting plan if a parent's involvement or conduct could have an adverse effect on the child's best interests, as evidenced by any of the following:

- A parent's neglect or substantial nonperformance of parenting functions;
- A long term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;
- The absence or substantial impairment of emotional ties between the parent and the child;
- The abusive use of conflict by the parent that creates a danger of serious damage to the child's psychological development;

- A parent's withholding of access to the child from the other parent for a protracted period without good cause; or,
- Other factors the court expressly found to be adverse to the child's best interests.

In determining whether such conduct had occurred, the court would have to apply the civil rules of evidence, proof, and procedure.

Failure to comply with parenting plan. The bill specifies that if a parent failed to comply with the parenting plan or with a child support order, the other parent's obligations would not be affected. The court could hold a parent who failed to comply in contempt of court.

Modification of a parenting plan. A parent seeking modification of a parenting plan would have to submit a sworn statement setting forth the facts supporting the requested modification, and would have to give notice and a copy of his or her statement to other parties to the proceedings, who then could file opposing statements. The court would have to deny the petition unless it found proper cause for hearing the motion in the sworn statements. In that event, it would set a date for a hearing on an order to show cause why the requested modification should not be ordered.

A petition for modification of a parenting plan could be filed only in the county of the court that had jurisdiction over the case.

The court could not modify a parenting plan unless the moving party showed proper cause for a modification, or a change of circumstances since approval of the parenting plan. In such a case, the court could modify the parenting plan if it found that the modification would be in the child's best interests.

If the court found that a party brought a petition to modify a parenting plan (or refused to agree to a modification) in bad faith, then the court would be required to assess attorney fees and court costs against the party who acted in bad faith.

Effective date. The bill would take effect January 1, 2004

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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.