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BILL



ANALYSIS

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Senate Bill 966 (as introduced 2-5-04)  
Sponsor: Senator Wayne Kuipers  
Committee: Judiciary

Date Completed: 9-14-04

## **CONTENT**

**The bill would amend the Child Custody Act, which the bill would rename the "Child Parenting Plan or Custody Dispute Act", to do the following:**

- **Require a court to approve a parenting plan that was in a child's best interests, before entering a decree of divorce, separate maintenance, or annulment.**
- **Require a child's parents to propose an agreed-upon parenting plan in a divorce, separate maintenance, or annulment action, or require each parent to file a proposed plan.**
- **Allow the court to order a child's parent to be governed by a parenting plan without designating either parent as the legal or physical custodian of the child.**
- **Require a parenting plan to contain provisions governing the resolution of future disputes.**
- **Require the court to limit a parent's parenting time if the parent had engaged in certain conduct involving abuse, assault, or abandonment.**
- **Allow the court to preclude or limit parenting time if a parent's involvement or conduct could have an adverse effect on the child's best interest, under certain circumstances.**
- **Provide that sections of the Act governing joint custody and parenting time would not apply if custody were resolved in a court-approved parenting plan.**
- **Authorize a court to provide for child support if a parenting plan were submitted for approval.**

### Custody Dispute; Child Support

Currently, in an action involving dispute of a minor child's custody, the court must declare the child's inherent rights and establish the rights and duties as to the child's custody, support, and parenting time in accordance with the Act. Under the bill, the court would have to establish these rights and duties "under court order or a court-approved parenting plan", in accordance with the Act.

The Act states that the child's best interests control if a child custody dispute is between the parents, between agencies, or between third parties. If the custody dispute is between the parent or parents and an agency or third party, the court must presume that the child's best interests are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence. The bill specifies that a child's custody would not be in dispute if the issue were resolved in a court-approved parenting plan.

Under the Act, in a child custody dispute, the court may provide for payment of support for the child until he or she reaches 18 years of age, and may order support for a child after he or she reaches 18 subject to the Support and Parenting Time Enforcement Act. Under the bill, if a child custody dispute were submitted or a parenting plan were filed for approval, in addition to determining the child's custody or approving a parenting plan, for the child's best interests, the court could provide for support as presently allowed.

### Parenting Plan Requirement; Objectives

The bill would require the court, before entering a decree of divorce, separate maintenance, or annulment, to approve a parenting plan for a child of the marriage that was in the child's best interests. A parenting plan would have to have the following objectives:

- To have the child reared by both his or her father and his or her mother unless it were 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 criteria described in the bill.
- To encourage the parents, where appropriate, to meet their responsibilities to their children through agreements in the parenting plan, rather than by relying on judicial intervention.

The bill states that a parenting plan would not affect the right of an individual who was not a parent governed by the plan to pursue and establish parenting or grandparenting time with a child as authorized under other State law. If a court-approved parenting time did not resolve the issue of a child's custody, the court would have to determine the custody as provided in Section 5 of the Act (which applies to the determination of child custody disputes).

The bill would require the State Court Administrative Office to develop and make available a form for use by a parent in completing a parenting plan. The form would have to indicate the subject matter that the plan would have to address, and contain notice that either party could obtain legal counsel.

### Parenting Time Proposals

In a divorce, separate maintenance, or annulment action involving a child's parents, the parents would have to file with the court a proposed parenting plan that they agreed upon and that conformed to the Act's requirements. The parents would have to file the plan before a hearing on or determination of issues regarding a child of the marriage.

If the parents did not agree on a parenting plan, or if there were evidence that either parent had committed domestic violence, each parent would have to file a proposed plan with the court and serve it on the other parent by the earlier of the following dates:

- 28 days after either parent filed and served a notice requesting a pretrial conference.
- 26 weeks after the action was commenced, although the parents could extend this period by stipulation.

If a parent filed a proposed plan in compliance with this requirement, he or she could move the court for an order of default adopting that plan if the other parent failed to file a plan. Either party could file and serve an amended proposed parenting plan according to the rules for amending pleadings.

If each parent filed a parenting plan or the plan were otherwise in dispute, the parents would have to attempt to arrive at a mutually agreed upon plan by an alternative dispute resolution process, either through the Friend of the Court (FOC) mediation services or through another agency or individual agreed upon by both parents. This provision would not apply if there was evidence that either parent had committed domestic violence.

If an alternative dispute resolution process were unsuccessful or did not apply, and a mandatory settlement conference were provided by court rule, the parents would have to attend a mandatory settlement conference. A judge or FOC referee would have to preside over the conference and apply the criteria set forth in the bill. A fact or legal issue that was not in dispute at the time of the conference would have to be entered as stipulated for purposes of final hearing or trial in the matter.

The court could not issue an order implementing a disputed parenting plan until the court held a hearing on the plan or plans. An action involving a child governing by the Act would have precedence for hearing and assignment for trial over other civil actions.

## Future Dispute Resolution

A parenting plan would have to contain provisions governing resolution of future disputes between the parents. Unless otherwise precluded or limited by the bill, the court would have to provide alternatives to court action for resolving disputes regarding the establishment or modification of a parenting plan. Alternatives could include counseling, mediation, or arbitration by a specified individual or agency, including the FOC. If the court found that a parent used or frustrated the use of an alternative dispute resolution process without good cause, the court would have to award attorney fees and financial sanctions to the other parent. The court would have to set forth these alternative dispute resolution requirements in the order approving the parenting plan.

The court could not order an alternative dispute resolution process if it found that a limiting factor applied, or that either parent was unable to afford the cost of the process. If a dispute resolution process were not precluded or limited, the court would have to consider all relevant factors, including the following, in designating the process:

- Differences between the parents that would substantially inhibit their effective participation in a designated process.
- The parents' wishes or agreements, and whether agreements they had entered into were made knowingly and voluntarily.
- Differences in the parents' financial circumstances that could affect their ability to participate fully in a given dispute resolution process.

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 any of the conduct that would require limited parenting time (described below).

## Limiting Factors

If the court found that a parent had engaged in any of the following conduct, the court would have to limit a parent's parenting time with his or her child:

- Willful abandonment that continued for an extended period of time or substantial refusal to perform parenting functions.
- Physical, sexual, or a pattern of emotional abuse of a child.
- A history of acts of domestic violence or an assault or sexual assault that caused grievous bodily harm or the fear of that harm.

A parent's parenting time also would have to be limited if it were found that the parent resided with an individual who had engaged in the conduct involving abuse, domestic violence, or assault.

If a parent were convicted as an adult of criminal sexual conduct (CSC), the court would have to restrain the parent from contact with the child that otherwise would be allowed under the Act. If a parent lived with an adult who had been convicted of CSC, or with a juvenile who had been adjudicated to have committed CSC, the court would have to restrain the parent from contact with his or her child except contact that occurred outside that adult's or juvenile's presence. If the court found that the convicted or adjudicated individual was the parent's child or ward, and found that the safety and welfare of the child subject to the parenting plan would be adequately protected, the court could permit contact with that parent in that individual's presence.

In limiting parenting time based on conduct described above, the court would have to consider the amount of time that had passed since the conduct occurred or the last occurrence of the conduct that was the basis for the limitation.

The limitations imposed by the court under these provisions 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 the parent requesting parenting time. If the court expressly found, based on the evidence and the record, that a limitation on parenting time did not adequately protect the child, the court could restrain the parent requesting parenting time from all contact with the child for a court-determined period of time.

The court could not enter an order allowing limited parenting time if 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 the child. The court also could not allow limited parenting time if the parent lived with an individual who was found by such evidence to have sexually abused a child. If the individual living with the parent were his or her child or ward, the court could permit contact with the parent if it found that the safety and welfare of the child subject to the parenting plan would be adequately protected.

If the 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 abusive conduct (the limiting factor) had occurred and was willing to and capable of protecting the child from harm. The court would have to revoke approval of the supervisor upon finding that he or she had failed to protect the child or was no longer willing or able to do so.

The court would not have to apply a parenting time limitation if it expressly found, based on the evidence and 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 parent's or another individual's harmful or abusive conduct would recur was so remote that it would not be in the child's best interests to apply a limitation.

#### Parenting Plan Limitation

The court could 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 shown by the existence of one or more of the following factors:

- A parent's neglect or substantial nonperformance of parenting functions.
- A long-term impairment resulting from drug, alcohol, or other substance abuse that interfered with the performance of parenting functions.
- The absence or substantial impairment of emotional ties between the parent and the child.

- The parent's abusive use of conflict that created the 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.
- Other factors the court expressly found adverse to the child's best interests.

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

#### Modification of Plan

A parent seeking modification of a parenting plan would have to submit, together with his or her petition, a sworn statement setting forth facts supporting the requested modification. The parent also would have to give notice, along with his or her sworn statement, to other parties to the proceedings. The other parties could file opposing sworn statements. The court would have to deny the petition unless it found that the sworn statements established proper cause for hearing the motion. If it found proper cause, the court would have to set a date for a hearing on an order to show cause why the requested modification should not be ordered. A parent could file a petition for modification of a parenting plan only in the county of the court that had jurisdiction over the case.

Except as provided in the bill for the resolution of disputes, the court could not modify a parenting plan unless the moving party showed proper cause for a modification or a change of circumstances since entry of the order approving the parenting plan order. If the moving party made the required showing, and if the court found that the modification was in the child's best interests, the court would have to modify the parenting plan.

If the court found that a petition to modify an earlier plan was brought in bad faith, or a refusal to agree to a modification was made in bad faith, the court would have to assess attorney fees and court costs of the nonmoving party against the moving party.

#### Failure to Comply

If a parent failed to comply with a parenting plan or a child support order, the other parent's obligations under the plan or order

would not be affected. The court could hold in contempt a parent who failed to comply with a parenting plan.

#### Designated Custodian

The bill would allow the court to designate in a parenting plan or by separate order a child's legal or physical custodian or custodians, solely for the purposes of other State or Federal statutes or other legal requirements for a designation or determination of legal or physical custody for purposes such as tax exemptions or health care benefits. This designation would not affect either parent's rights and responsibilities under the parenting plan or another provision of the Act. In the absence of a designation, the parent with whom the child was scheduled to reside the majority of the time would be considered the child's custodian for those purposes.

MCL 722.21 et al.

Legislative Analyst: Suzanne Lowe

#### **FISCAL IMPACT**

To the extent that the proposed changes would affect judicial efficiency and administrative costs, the bill could have an indeterminate fiscal impact on local court funding units. The bill would have no fiscal impact on the State.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.