

# Legislative Analysis

---



## DIVORCE EFFECTS PROGRAMS AND PARENTING PLANS

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5698 (Substitute H-1)**  
**Sponsor: Rep. Barb Vander Veen**

**House Bill 5701 (Substitute H-3)**  
**Sponsor: Rep. John Moolenaar**  
**Committee: Family and Children Services**

**Complete to 5-16-06**

## A SUMMARY OF HOUSE BILLS 5698 AND 5701 AS REPORTED FROM COMMITTEE 5-4-06

House Bill 5698 would require parties to a divorce to complete a **divorce effects program** and would allow them complete a **questionnaire** about the impact of the divorce before entry of the judgment of divorce. This would only apply when the parties are parents of a minor child; either party is a minor child's physical custodian; or the wife is pregnant and the husband would be the child's presumed father.

House Bill 5701 would amend the Child Custody Act and rename it the Child Parenting Plan or Custody Dispute Act. The bill would, generally speaking, require parents involved in an action involving a minor child's custody to file with a court a **proposed parenting plan** before a hearing on or determination of issues regarding a child of the marriage.

A more detailed description of each bill follows.

### **House Bill 5698**

The bill would amend Chapter 84 of the Revised Statutes of 1846, entitled "Of divorce" (MCL 552.5), to say that, unless exempted or excused, the parties to a divorce would have to complete a divorce effects program and could complete a questionnaire before the entry of the judgment of divorce, if there are minor children (or if the wife is pregnant and the husband would be the presumed father under the law). The questionnaire, as prescribed in the bill, would be completed prior to completing a divorce effects program. It would be confidential and only reviewed by the program provider, court or court staff, or, during a criminal investigation, by law enforcement or a prosecutor. The questionnaire would not be part of the public record of the divorce action and would be exempt from the Freedom of Information Act.

#### The Divorce Effects Program

A program would have to cover at least all of the following subjects.

- For a child: developmental stages, responses to divorce, symptoms of maladjustment to divorce and response to maladjustment, and education or counseling options for the child.
- For adult parties: communication skills; conflict resolution skills; emotional adjustment, family adjustment, financial adjustment, and work adjustment techniques; stress reduction; parallel and cooperative parenting techniques; reconciliation and counseling options, and remarriage issues; and substance abuse information and referral.
- Court procedures and process as described in information available from the Friend of the Court.

If the individual conducting a program was an official representative of a religious institution, the program could omit a subject if training or education on that subject would violate a tenet of the religious institution.

The provider of a program would have to issue a certificate indicating completion of the program to each individual who completed the program.

#### Domestic Violence and Other Exceptions

The court could not order a divorce effects program if a party to the marriage filed a sworn statement that he or she is a victim of domestic violence. The statement would be confidential and could be reviewed only by the court, or during a criminal investigation, by law enforcement or a prosecutor. It would not be a part of public record of the divorce action and would be exempt from Freedom of Information Act. Further, the court could otherwise excuse a party from attending a program for good cause, including availability of the program or the party's ability to pay.

A party who was not excused or exempted under this provision and who failed to complete the program could be held in contempt by the court, or be subject to another reasonable sanction imposed by the court. The court could also enter a judgment of divorce despite the party's failure to complete a divorce effects program.

#### Existing Programs

If a court has instituted a program similar to a divorce effects program described in the bill, beginning on the effective date of the amendatory act that added this section, the court would be considered to be in compliance with this section and would not be required to institute or order another program.

#### The Questionnaire

Questions would include whether the divorce would 1) improve, maintain, or diminish the love, affection, and other emotional ties existing between the parties involved and the child; 2) improve, maintain, or diminish the capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue in the education and raising of the child the child's religion or creed, if any; 3) improve, maintain, or

diminish the capacity and disposition of the parties involved to provide food, clothing, medical care, or other remedial care recognized and permitted under state law in place of medical care and other material needs; 4) upset a stable, satisfactory environment; 5) result in a suitable living arrangement for the child; 6) improve, maintain, or diminish the mental or physical health of the parties involved; 7) improve, maintain, or diminish the school or community record of the child; 8) improve, maintain, or diminish the willingness and ability of each of the parents to facilitate and encourage a close relationship between the child and the other parent; and 9) reduce domestic violence or mental anguish of any of the parties involved.

## **House Bill 5701**

The bill would amend the Child Custody Act (MCL 722.21, et. al.), which the bill would rename the "Child Parenting Plan or Custody Dispute Act."

### Custody Dispute and 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, if a child's parents have submitted a parenting plan, the court would be required to approve or disapprove it. If the court approves, the plan would be adopted and all rights and duties necessary to protect the child's best interest would be declared.

If the parents have not submitted a parenting plan, the court would take appropriate action to assist in developing a plan, or would enter an order declaring the child's inherent rights and establishing the duties of the parents to implement those rights, including ordering evaluations, requiring the parties engage in counseling, requiring the parties to engage in alternate dispute resolution, and conducting hearings.

In actions involving dispute of a minor child's custody or parenting time, neither the court nor the Friend of the Court could advocate on behalf of a party or a minor child. In all actions involving dispute of a minor child's custody or parenting time, the child's parents would be required to represent the child's best interests. The parents' obligation to represent the child's best interests would include an attempt to establish a parenting plan.

### Parenting Plan

The bill would require the State Court Administrative Office, at the direction of the Michigan Supreme Court, to develop and make available a form for use by a parent in completing a parenting plan. The form would be made available to both parties and made available to individuals authorized to conduct divorce education programs. A parenting plan would have to be agreed to by both parents and contain at least the following.

- To have the child reared by both the father and the mother in a manner that closely approximates the rearing of the child prior to establishing separate domiciles or filing for divorce, unless it were not in the child's best interest.

- To provide for the child's care and set forth the authority and responsibilities of each parent with respect to the child. However, a parenting plan would not be required to designate a parent as legal or physical custodian of the child.
- To encourage non-adversarial dispute resolution in the parenting plan rather than relying on judicial intervention to resolve a dispute.

The court could not approve a parenting plan that requires mutual decision making or the designation of an alternative dispute resolution process if it finds a parent engaged in the following:

- Willful abandonment of the child that continues for an extended period of time or substantial refusal to perform parenting functions.
- Physical, sexual, or a pattern of emotional child 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.

If one or more parties obtain legal counsel in completing the parenting plant, the parties would have to disclose that fact to the court.

#### Modification of Plan

A parent seeking modification of a parenting plan would have to seek the approval of the other parent and use the dispute resolution procedures in the plan. If the parents could not agree to a modification of the plan, a parent could file a motion with the court that had jurisdiction over the case. The court could assess costs on the parent who does not seek approval of the other parent or did not use dispute resolution procedures before filing a motion with the court.

The court could not modify a parenting plan to change the custodial environment of the child over the objection of a parent unless there was clear and convincing evidence that it was in the best interest of the child. 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 could assess attorney fees and court costs against the party acting in bad faith.

#### 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 a parent who failed to comply with a parenting plan in contempt of court. If a court found that a parent refused to attend alternative dispute resolution as provided in the parenting plan, the court could assess costs and award attorney fees and costs to the other parent.

### 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.

### **FISCAL IMPACT:**

The bills would have an indeterminate fiscal impact. The state court administrative office could incur costs of forms development, and local courts and agencies could experience additional administrative costs.

Legislative Analyst: E. Best  
Fiscal Analyst: Marilyn Peterson

---

■ 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.