

Legislative Analysis



DIVORCE EFFECTS PROGRAMS AND PARENTING PLANS

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

House Bill 5698

Sponsor: Rep. Barb Vander Veen

House Bill 5701

Sponsor: Rep. John Moolenaar

Committee: Family and Children Services

Complete to 3-15-06

A SUMMARY OF HOUSE BILLS 5698 AND 5701 AS INTRODUCED 2-16-06

House Bill 5698 would require parties to a divorce to complete, either together or separately, a **divorce effects program** and 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 a divorce, separate maintenance, or annulment action to file with a court a **proposed parenting plan** before a hearing on or determination of issues regarding a child of the marriage. House Bill 5701 is tie-barred to House Bill 5698.

Following is a more detailed description of each bill.

House Bill 5698

The bill would amend Chapter 84 of the Revised Statutes of 1846, entitled "Of divorce" (MCL 552.5), to require that, unless exempted or excused, the parties to a divorce complete a divorce effects program and 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 have to 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, law enforcement or a prosecutor during a criminal investigation. The questionnaire would not be part of the public record of the divorce and would be exempt from the Freedom of Information Act.

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.

The Divorce Effects Program

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

- The child (or children's) developmental stages, responses to divorce, symptoms of maladjustment to divorce and response to maladjustment, and education or counseling options for the child.
- The 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 procedure 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 would be prohibited from ordering 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 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.

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." The bill is tie-barred to House Bill 5698, meaning that the bill would not take effect unless House Bill 5698 were also enacted.

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, 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 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 Objectives

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 be given to both parents when either party filed for divorce and made available to individuals authorized to conduct divorce education programs. A parenting plan would have the following objectives:

- 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 filing for divorce unless it were not in the child's best interests.

- To provide for the child's care and set forth the authority and responsibilities of each parent with respect to the child.
- To encourage the parents to meet their responsibilities to their children through cooperative arrangements in the parenting plan, rather than by relying on judicial intervention.

The form would need to indicate that the subjects to be addressed in a parenting plan and would include a sworn statement, signed by each parent, that the proposed parenting plan had been proposed in good faith. The form would also contain a notice that either party could obtain legal counsel. If one or more of the parties obtained legal counsel in completing the parenting plan, that party (or parties) must disclose to the court that legal counsel was obtained.

If a child was the subject of a court-approved parenting plan, the child's custody would not be in dispute and the court could order the child's parents be governed by the parenting plan without designating either parent as the legal or physical custodian of the child (unless a special designation or determination was made under the act for the purposes of satisfying other state or federal statutes, as described later).

Parenting Plan Process

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: 1) 28 days after either parent filed and served a notice requesting a pretrial conference; or 2) 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.

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

Alternative Dispute Resolution

If each parent filed a separate 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 preside over the conference. The parent would be required to review the proposed terms of the plan or action, in good faith, with the judge or referee. 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 was 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: 1) willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; 2) physical, sexual, or a pattern of emotional abuse of a child; and 3) a history of acts of domestic violence or an assault or sexual assault that caused grievous bodily harm or the fear of that harm.

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.

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.