

Olds Plaza Building, 10th Floor Lansing, Michigan 48909 Phone: 517/373-6466

## PARENTING PLAN ACT

House Bill 5637

Sponsor: Rep. Jessie Dalman

Committee: Judiciary and Civil Rights

Complete to 3-26-96

## A SUMMARY OF HOUSE BILL 5637 AS INTRODUCED 2-27-96

House Bill 5637 would create the Parenting Plan Act. Whenever a court entered a decree for divorce, separate maintenance, or annulment, the court would be required to establish a parenting plan for any minor children of the marriage.

The bill would require the parents of any child involved in a custody dispute to file a proposed parenting plan with the court in accordance with the rules set forth in the bill. Each parenting plan would be required to contain provisions that would govern the resolution of future disputes between the parents, allocate decision making authority, schedule parenting time, and set forth the child's residential schedule.

Objectives of the Parenting Plan. A parenting plan would have the following objectives:

a) to provide for the physical care (including specification of responsibility for health care expenses and health care coverage) of the child, b) to maintain the child's emotional stability, c) to provide for the child's needs as he or she matures in a way that will minimize the necessity for future modifications to the plan (including consideration of the child's secondary and post-secondary education), d) to specify the authority and responsibilities of each parent consistent with the other provisions of the bill, e) to minimize the child's exposure to harmful parental conflict, f) to encourage the parents to meet their responsibilities to their children through agreements set forth in the plan rather than by relying on judicial intervention, and g) to otherwise protect the best interests of the child.

A parenting plan would be required contain specific alternatives to court action for resolving disputes between the parents. Alternative dispute resolution processes could include counseling, mediation, or arbitration by a specified individual or agency (including the friend of the court). The alternative dispute resolution process ordered in the plan would have to give preference to carrying out the parenting plan and a written record of an agreement reached by the parties through the plan's alternative dispute resolution process would have to be prepared and provided to each parent. The parents would be required to follow the dispute resolution process indicated in the plan to resolve disputes unless an emergency existed or the dispute related to financial support. If the court found that either parent used or frustrated the use of the dispute resolution process without good cause, the court would be required to award attorney fees and financial sanctions to the prevailing parent. In addition, the resolution reached by the alternative dispute resolution process would be subject to court review in an appeal by right by either parent.

Although either parent would have the authority to make emergency decisions regarding the child's health or safety, the parenting plan would have to allocate decision making authority to one or both of the parents with regard to the child's education, health care, and religious upbringing. The bill would allow a parenting plan to include any agreements between the parents concerning the child's care and growth in the specified areas or in any other areas. However, regardless of how the parenting plan allocated decision making authority, each parent would have the authority to make day to day decisions concerning care and control of the child during the time the child was residing with that parent. If the parenting plan prescribed mutual decision making and the parents were unable to reach a mutual decision on their own, they would be required to make a good faith effort to resolve the issue through the alternative dispute resolution process indicated in the plan.

The parenting plan would also have to include a residential schedule designating which parent the child would reside with on given days of the year. Specifically, the plan would have to indicate where the child would reside for holidays, vacations, birthdays of family members, and other special occasions.

Establishing and Implementing a Parenting Plan. Generally, parents would be required to agree upon and file a proposed parenting plan with the court before the hearing or determination of the child's custody. However, if the parents were unable to agree on the elements of the plan or there was evidence of domestic violence, each parent would have to file and serve separate proposed parenting plans. Each parent's proposed plan would be required to have a verified statement attached to it indicating that the plan had been proposed in good faith. The parents would have to file their respective plans by the earliest of either: 30 days after either parent files and serves notice for trial, or 180 days after the commencement of the action (however, the parents could stipulate to extend this deadline). If necessary, either parent could amend his or her proposed plan in accordance with the court rules regarding the amendment of pleadings.

The court could not order the implementation of any parenting plan until it had held a hearing on the plan. However, if one of the parties filed a proposed plan and the other did not, the party that had filed its plan could ask the court to adopt its plan and find the other party in default. When scheduling a hearing or trial on an action involving minor children under the parenting plan act, the court would be required to give precedence to that action over other civil actions.

If the court rules provided for it, parents who had filed separate proposed plans could be required to attend a mandatory settlement conference presided over by the judge or a friend of the court referee. The parents would be required to review the terms of each other's proposed plan and review any other issues relevant to the action with the judge or referee. Any facts or legal issues which the parties agreed upon or were not in dispute at that time would be entered as stipulated for the purposes of the final hearing or trial. (If necessary, the judge or referee could limit a parent's access to and control over the child as required by the act, in spite of any agreement by the parents.)

The court could hold a parent in contempt for failing to comply with the provisions of a parenting plan; however, the failure to comply with the provisions of a parenting plan or a

child support order by one parent would not relieve the other parent of his or her responsibilities under that plan or order. Furthermore, the language of the parenting plan would have to specifically state that a failure to comply with its provisions by one party would not serve to release the other party from his or her responsibilities.

A permanent parenting plan would also be required to contain language specifying that the parties would be required to give preference to carrying out the plan. In addition, the plan would have to indicate that the parents would be required to use the designated dispute resolution process to resolve disputes (unless an emergency existed or the dispute related to financial support), and that a written record of any agreements reached through alternative dispute resolution would be made and a copy of that agreement would be provided to each parent. The plan would also have to include provisions allowing either parent to make emergency decisions affecting the child's health or safety, and to make decisions regarding the child's day-to-day care and control while the child is residing with that parent.

Furthermore, if the parenting plan provided for mutual decision making by the parents, but the parents were unable to reach a consensus on a particular decision, the parents would be required to make a good faith effort to resolve the dispute through the use of the prescribed alternative dispute resolution process. In addition, the plan would have to contain language requiring such behavior of the parents.

<u>Decision Making Authority</u>. The court would be required to approve an allocation of decision making authority or specification of rules regarding the child's upbringing that had been agreed upon by the parents of the child, provided that the court found the agreement was consistent with any limitations mandated by the act, was made knowingly and voluntarily, and was in the best interests of the child. (Note: the language of the bill requires the court to find "both" of three listed criteria.)

The court would be required to provide sole decision making authority to one of the parents, if the court found any of the following: a parent had willfully abandoned the child for an extended period of time or substantially refused to perform parenting functions, a parent had engaged in physical, sexual, or a pattern of emotional abuse of the child, or had a history of acts of domestic violence, assault, or sexual assault; both parents were opposed to mutual decision making; or one parent was opposed to mutual decision making and that opposition was reasonable based upon the following factors: the history of each parent's decision making regarding the child's education, health care and religious upbringing; whether the parents have demonstrated an ability and desire to cooperate with one another in decisions regarding the child; and the parents' geographical proximity to one another to the extent that it affects their ability to make timely mutual decisions. These same factors would have to be considered by the court in allocating decision making authority.

Residential or Parenting Time. In establishing residential or parenting time provisions in a plan, the court would be required to base those provisions on the best interests of the child to encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. Provided that the court found none of the factors listed in the bill that would limit one of the parent's contact with the child (abuse, etc.), the court, when determining the

child's residential schedule, would be required to give the greatest weight to the relative strength, nature, and stability of the child's relationship with each parent, including consideration of which parent had taken greater responsibility in performing parenting functions relating to the child's daily needs. The court would also have to consider the following factors: 1) the existence of an agreement, entered knowingly and voluntarily, between the parents, 2) the past and potential future performance of parenting functions by each parent, 3) the emotional needs and developmental level of the child, 4) the child's relationship with siblings and other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities, 5) the wishes of the parents and those of the child (provided that the child is sufficiently mature to express reasoned and independent preferences), and 6) each parent's employment schedule.

In order to determine a child's wishes regarding the child's residential schedule in a proceeding for a divorce, separate maintenance, or annulment, the court would be allowed to interview the child in chambers. If it so chooses, the court could allow counsel to be present during the court's interview with the child. In addition, the court could seek the advice of professional personnel, whether or not employed by the court. The advice of such professionals would be required to be made in writing and would have to be made available to the parties' counsel on request. Any professional consulted by the court could be called by the counsel of either party for the purpose of cross-examination.

If appropriate, the court could order that the plan require the child to frequently alternate residence between the parents' households for brief and substantially equal intervals of time. In order to make such a provision part of the plan, the court would be required to make all of the following findings: a) such a schedule would be in the best interests of the child, b) neither parent was subject to any limitations or restrictions on their contact with the child under the bill, and c) either the parents have agreed on the schedule or the parents have a history of cooperation and shared performance of parenting functions, and are available to each other, especially in geographic proximity, to the extent necessary to ensure shared performance of parenting functions.

Alternative Dispute Resolution. In designating the form of alternative dispute resolution to be used under the plan the court would have to consider all of the relevant factors. These factors would include, but not be limited to, all of the following: differences between the parents that would substantially inhibit their ability to effectively participate in any designated process, the parents' wishes or agreements (provided they were made knowingly and voluntarily), and differences in the parents' financial circumstances which could affect their ability to participate fully in a given dispute resolution process.

Limitations on the elements of parenting plan. The court could not establish a parenting plan that would require alternative dispute resolution if either of the parents was unable to afford the cost of the proposed resolution process. Furthermore, the court could not establish a parenting plan that would require mutual decision making or designation of an alternative dispute resolution process if the court found that one of the parents had engaged in any of the following conduct: a) willful abandonment for an extended period of time or substantial refusal to perform parenting functions, b) physical, sexual, or a pattern of emotional abuse of a child, c) a history of domestic violence or an assault or sexual assault that caused grievous bodily harm or fear of

such harm. In addition, if the court determined that one of the parents had engaged in any of the preceding activities, the plan would have to *limit* that parent's parenting time with the child.

The plan would also be required to *limit* a parent's parenting time if the court found that the parent was residing with an individual who had engaged in either the physical, sexual, or emotional abuse of a child, or had a history of acts of domestic violence or assault or sexual assault that caused grievous bodily harm or the fear of such harm.

Furthermore, if a parent had been convicted as an adult of committing an act that was a violation of Michigan's criminal sexual conduct (CSC) statute, the court would be required to establish a plan which restrained that parent from having contact with the child. The plan would also have to restrain a parent from having contact with his or her child if the parent resided with a third party who had been convicted as an adult or adjudicated as a juvenile for one or more violations of the CSC statutes, except that the plan could allow the parent to have contact with the child provided that the child's contact with the parent only occurred outside of the other person's presence.

Any restrictions set forth in the parenting plan *limiting* a parent's contact with his or her child, based upon the reasons cited above, would have to be reasonably calculated to protect the child from physical, sexual, or emotional abuse or harm. If the court expressly found, based upon the evidence, that merely *limiting* the parent's parenting time would not adequately protect the child, the court would be required to *restrain* the parent from having any contact with the child. Furthermore, if either the parent or an individual that the parent resided with had been found to have sexually abused the child either by clear and convincing evidence in a civil action or by a preponderance of the evidence in a juvenile action, the court could not enter a order that would permit that parent to have any contact with the child.

If the court decided to limit a parent's parenting time, it could require that the parent have only supervised contact with the child. The court could only appoint an individual as a supervisor if the court found, based upon the evidence, that prospective supervisor had accepted that the parent in question had abused the child and that he or she, as supervisor, was willing to protect the child and was capable of doing so. If at any time the court found, based upon the evidence, that the supervisor had failed to protect the child, was no longer willing to protect the child, or was no longer capable of doing so, the court would be required to revoke its approval of that individual as a supervisor.

If the court found that the 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 either the parent or another individual will harm the child is so remote that it would be in the child's best interests to ignore the act's limitations, or if the court found that the parent's conduct did not have an impact on the child, then the court could choose not to apply the limitations required by the act. However, if the parent had been convicted of criminal sexual conduct as an adult or was residing with someone who had been convicted as an adult or adjudicated as a juvenile of CSC, or if the court determines that limitation on the parent's parenting time would not adequately protect the child from harm or abuse that could result if the parent was allowed to have contact with the child, the court could not ignore the limitations required by the act. In

addition, it would be within the court's discretion to decide on what amount of weight should be given to the existence of a personal protection order in making its determinations.

In addition, the court could "preclude or limit the parenting plan" if a parent's involvement or conduct could have an adverse effect on the best interests of the child. An adverse effect could be evidenced by any of the following factors: parental neglect or substantial nonperformance of parenting functions; a long-term emotional or physical impairment that interferes with the parent's performance of parenting functions; a long term impairment due to drug, alcohol, or other substance abuse that interferes with the parent's performance of his or her 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 the danger of serious damage to the child's psychological development; a finding that the parent had withheld access to the child from the other parent for a protracted period of time without good cause; or, any other factors that the court expressly finds are adverse to the child's best interests. The court would be required to follow the civil rules of evidence, proof, and procedure to determine whether any of the conduct listed above had occurred.

Temporary Orders. Either parent could seek to have a proposed temporary parenting plan entered as part of a temporary order. The parent would be required to file and serve a proposed temporary parenting plan by motion. If the other party was contesting the proposed temporary parenting plan, he or she would have to file and serve a responsive proposed parenting plan. The parents could enter an agreed temporary parenting plan at any time as part of a temporary order. The proposed temporary parenting plan could be supported by relevant evidence and would be required to be accompanied by an affidavit that states at a minimum all of the following: a) the name, address, and length of residence of the individual or individuals that the child has resided with for the preceding twelve months; b) the performance by each parent of the parenting functions relating to the child's daily needs during the preceding twelve months; c) the parents' work and child care schedules for the preceding twelve months; d) the parents' current work and child care schedules; and e) any reasons under the act that either parent's contact with the child could be limited or restrained that are likely to pose a serious risk to the child and warrant limitation on the temporary residence or parenting time pending the entry of a permanent plan.

The court would be required to enter a temporary parenting order that would incorporate a temporary parenting plan that included all of the following: a schedule for the child's parenting time with each parent when appropriate, designation of temporary residence, allocation of decision making authority, if any (if no allocation of decision making authority can be made, neither party would be allowed to make a decision for the child other than those relating to day-to-day or emergency care), temporary support for the child, and a personal protection order, where applicable.

A parent could make a motion to amend a temporary parenting plan, and the court could order the amendment of a plan, if the amendment conformed with the limitations under the act and was in the best interests of the child. Any temporary order or temporary parenting plan would be vacated if the proceeding for divorce, separate maintenance, or annulment from which it had arisen was dismissed.

The court would not be allowed to draw any presumptions from the provisions of a temporary plan when entering a permanent plan.

Modification of Parenting Plans. The court would not be allowed to modify an earlier custody order or parenting plan unless there was clear and convincing evidence based upon facts that had arisen since the earlier order or plan (or facts that had been unknown to the court at the time of the order or plan) indicating that a substantial change in circumstances of the child or the non-moving party had occurred and that modification would be in the best interests of the child and is necessary to serve the best interests of the child. The court would not be able to modify the residential schedule unless one of the following was true: 1) the parents agreed to the modification; 2) the child had been integrated into the family of the petitioner with the other parent's consent and the integration was in substantial deviation from the original plan; 3) the child's present environment was detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by the change in environment would be outweighed by the advantage of the change to the child; or 4) the court had found the non-moving parent in contempt at least twice within three years due to the parent's failure to comply with the residential schedule or the parenting time provisions, or the parent had been convicted of custodial interference.

However, despite the restrictions noted above, the court could order adjustments to the plan upon a showing of a substantial change in circumstances of either the parent or the child, provided that the proposed modification was only one or more of the following: a) a modification of the dispute resolution process, b) a minor modification of the residential schedule that did not change the residence that the child was scheduled to reside in the majority of the time and didn't exceed 24 full days in a calendar year or 5 days in a calendar month, c) a modification that was due to a change in residence or an involuntary change in work schedule that made the current residential schedule impractical to follow. A conviction for custodial interference would also constitute a substantial change of circumstances.

If the court found that a petition to modify an order or parenting plan had been brought in bad faith, the court would be required to assess the attorney fees and court costs of the non-moving parent against the moving party.

A parent seeking a temporary custody order or a temporary parenting plan or seeking to modify an existing parenting plan or custody order would be required to submit an affidavit with his or her petition. The affidavit would have to set forth the facts supporting the requested order or modification. A petition for modification of a parenting plan would have to be filed in the county of the court that had issued the order implementing the plan. If an affidavit accompanying a petition to modify a parenting plan did not allege facts that constituted a substantial change in circumstances, the court could summarily dismiss the petition. The party seeking the temporary order or modification would also have to provide the other parties to the proceeding with notice of the petition and a copy of the affidavit. The opposing party could then file opposing affidavits. Unless the court found adequate cause for having a hearing on the matter based on the affidavits, the court would be required to deny the petition. If the court found cause to have a hearing on the matter, it could set a date for hearing on an order to show cause why the requested order or modification should not be granted.

Designation of Custodial Parent. Solely for the purposes of determining the legal or physical custody of a child as required in other state or federal statutes, such as, for example, tax exemptions or health care benefits, the court could specifically designate (either in the parenting plan or in a separate order) the child's legal or physical custodian. The designation would not affect the rights and responsibilities of either parent under the parenting plan. If the court does not make such a designation, the parent with whom the child spends the majority of time would be considered the child's custodian.

<u>Tie-bar</u>. The bill is tie-barred to House Bills 4432 (which would amend the divorce statute), 5635 (which would require counseling before issuance of a marriage license), 5636 (amending the Child Custody Act), and 5634 (which would consolidate certain provisions of several acts dealing with child support into the Support and Parenting Time Enforcement Act).

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.