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Senate Bill 547 (as introduced 6-30-11)
Sponsor: Senator John Moolenaar
Committee: Judiciary

Date Completed: 10-25-11

CONTENT

The bill would amend the Child Custody Act to do the following:

- **Make it an obligation of the parents, in all actions involving a minor child's custody, to attempt to establish a parenting plan.**
- **Require a parenting plan to be agreed to by both parties, and specify minimum requirements for a plan.**
- **Prohibit a court from requiring a parenting plan if a parent filed a sworn statement that he or she was a victim of domestic violence by the other parent.**
- **Prohibit a court from approving a parenting plan that required mutual decision-making or alternative dispute resolution if one parent had committed an act involving abandonment, child abuse, domestic violence, or assault.**
- **Allow the court to assess costs and impose sanctions under certain circumstances.**
- **Require the court to approve or disapprove a parenting plan, and assist parties in developing a plan if they did not submit one.**
- **Include a court-approved parenting plan in provisions regulating a change in a child's legal residence.**

The bill also would change the name of the Act to the "Child Parenting Plan or Custody Dispute Act".

Parenting Plan

Under the bill, except as otherwise provided, in all actions involving a minor child's custody, the parents' obligation to represent the child's best interests would have to include an attempt to establish a parenting plan. A parenting plan would have to be agreed to by both parents and do at least all of the following:

- Provide that the child be reared by both his or her father and mother in a manner that closely approximated their rearing of the child before establishing separate domiciles or filing for divorce, unless it were not in the child's best interests.
- Provide for the child's care and set forth the authority and responsibilities of each parent with respect to the child.
- Encourage nonadversarial dispute resolution rather than rely on judicial intervention to resolve a dispute.

A parenting plan would not be required to designate a parent as either the legal or physical custodian of the child.

The court could not require a parent to submit a parenting plan if that parent filed a sworn statement stating that he or she was a victim of domestic violence by the other parent. The sworn statement would be confidential and could be reviewed only by the court or, during a criminal investigation, by a law enforcement officer or prosecutor. The statement would not be a part of the public record in the custody action and would be exempt from the Freedom of Information Act.

The court could not approve a parenting plan that required mutual decision-making or designation of an alternative dispute resolution process if the court found that a parent had engaged in or committed any of the following:

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

The State Court Administrative Office, at the direction of the Supreme Court, would have to develop a form for use by a parent in completing a parenting plan. The form would have to be made available to all parties to actions involving child custody.

If one or more parties obtained legal counsel in completing a parenting plan, the parties would have to disclose to the court that legal counsel was obtained.

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

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

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, a parent could file a motion with the court, and the court could assess costs against a parent who did not first seek the approval of the other parent or use the dispute resolution procedures in the plan before filing a motion.

The court could not modify a parenting plan to change the custodial environment of the child over the objection of a parent unless the modification were warranted under Section 7(1)(c) of the Act. (That provision specifies conditions under which a court may modify previous orders or judgments in a child custody dispute.)

If the court found that a motion to modify an earlier parenting 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.

Solely for the purposes of other State or Federal statutes or other legal requirements that require a designation or determination of legal or physical custody for purposes, such as tax exemptions or health care benefits, the court could designate in a parenting plan or by separate order a child's legal or physical custodian or custodians. 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 such 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.

Court Approval or Disapproval

The Act requires the court, in all actions involving dispute of a minor child's custody, to declare the child's inherent rights and establish the rights and duties as to the child's custody, support, and parenting time.

The bill specifies that, if a child's parents had submitted a parenting plan, the court would have to approve or disapprove the plan. If the court approved it, the court would have to adopt the plan and declare all other rights of the child and duties of the parents necessary to protect the child's best interests.

If the parents did not submit a parenting plan, the court would have to take any action it considered appropriate, considering the resources of the parties and any other limiting factors, to assist the parties in developing a parenting plan, or 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 to engage in counseling, requiring the parties to engage in alternative dispute resolution, and conducting hearings.

In all 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, and the child's parents would have to represent the child's best interests.

Child's Legal Residence & Parenting Time

The Act provides that a child whose parental custody is governed by court order has a legal residence with each parent. Under the bill, a child who was the subject of a court-approved parenting plan also would have a legal residence with each parent.

Under the Act, except as otherwise provided, a parent of a child whose custody is governed by court order may not change a legal residence of the child to a location that is more than 100 miles from the child's legal residence when the action commenced. This provision does not restrict a parent's change of a child's legal residence, however, if the other parent consents to, or if the court permits, the residence change.

Before permitting a legal residence change that otherwise is restricted, the court must consider certain factors, with the child as the primary focus in the court's deliberations. One of those factors is the degree to which each parent has complied with and used his or her time under a court order governing parenting time, and whether the parent's plan to change the child's legal residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule. The bill would refer to a court order governing parenting time, or a parenting plan, in those provisions.

In determining whether to permit a change of a child's legal residence, the court also must consider the degree to which the court is satisfied that, if the court permits the change, it is possible to order a modification of the parenting time schedule and other arrangements governing the child's schedule in a manner that can provide an adequate basis for preserving and fostering the parental relationship between the child and each parent. The bill would refer to a modification of the parenting time schedule or parenting plan in that provision.

Under the Act, each order determining or modifying custody or parenting time must include a provision stating the parent's agreement as to how a change in either of the child's legal residences will be handled. The bill would extend this requirement to a parenting plan.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. To the extent that the bill increased the administrative workload of various courts, local jurisdictions could incur additional costs. To the extent that the bill increased the responsibilities of the State Court Administrative Office, the State would incur additional costs.

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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.