

By: Goodman

H.B. No. 252

Substitute the following for H.B. No. 252:

By: Strama

C.S.H.B. No. 252

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the use of parenting plans and parenting coordinators  
3 in suits affecting the parent-child relationship.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The legislature finds that the use of parenting  
6 plans and parenting coordinators in suits affecting the  
7 parent-child relationship will assist in promoting the best  
8 interest of children and in helping litigants resolve their issues  
9 relating to parenting. The legislature further finds that  
10 conciliatory forms of dispute resolution, including mediation and  
11 the use of parenting coordinators, promote the policy set forth in  
12 Section 153.001, Family Code.

13 SECTION 2. Chapter 153, Family Code, is amended by adding  
14 Subchapter J to read as follows:

15 SUBCHAPTER J. PARENTING PLAN AND PARENTING COORDINATOR

16 Sec. 153.601. DEFINITIONS. In this subchapter:

17 (1) "Dispute resolution process" means a process of  
18 alternative dispute resolution conducted in accordance with  
19 Section 153.0071 of this chapter and Chapter 154, Civil Practice  
20 and Remedies Code.

21 (2) "High-conflict case" means a suit affecting the  
22 parent-child relationship in which the parties demonstrate a  
23 pattern of:

24 (A) repetitious litigation;

1 (B) anger and distrust;

2 (C) difficulty in communicating about and  
3 cooperating in the care of their children; or

4 (D) other behaviors that in the discretion of the  
5 court warrant the appointment of a parenting coordinator.

6 (3) "Parenting coordinator" means an impartial third  
7 party appointed by the court to assist parties in resolving issues  
8 relating to parenting and other family issues arising from an order  
9 in a suit affecting the parent-child relationship.

10 (4) "Parenting plan" means a temporary or final court  
11 order that sets out the rights and duties of parents in a suit  
12 affecting the parent-child relationship and includes provisions  
13 relating to conservatorship, possession of and access to a child,  
14 and child support, and a dispute resolution process to minimize  
15 future disputes.

16 Sec. 153.602. REQUIREMENT FOR TEMPORARY PARENTING PLAN.

17 (a) A temporary order that establishes a conservatorship in a suit  
18 affecting the parent-child relationship must incorporate a  
19 temporary parenting plan. The temporary parenting plan must comply  
20 with the requirements for a final parenting plan under Section  
21 153.603.

22 (b) Subject to Subsection (c), if the parties cannot agree  
23 to a temporary parenting plan, the court may, on the motion of a  
24 party or on the court's own motion, order the parties to participate  
25 in a dispute resolution process to establish a temporary parenting  
26 plan.

27 (c) At any time before the court orders the parties to

1 participate in a dispute resolution process under Subsection (b), a  
2 party may file a written objection to the referral of the suit to a  
3 dispute resolution process on the basis of family violence having  
4 been committed by another party against the objecting party or a  
5 child who is the subject of the suit. After an objection is filed,  
6 the suit may not be referred to a dispute resolution process unless,  
7 on the request of a party, a hearing is held and the court finds that  
8 a preponderance of the evidence does not support the objection. If  
9 the suit is referred to a dispute resolution process, the court  
10 shall order appropriate measures be taken to ensure the physical  
11 and emotional safety of the party who filed the objection. The  
12 order may provide that the parties not be required to have  
13 face-to-face contact and that the parties be placed in separate  
14 rooms during the dispute resolution process.

15 (d) If a dispute resolution process is not available or is  
16 not successful, a party may request and the court may order an  
17 expedited hearing to establish a temporary parenting plan.

18 Sec. 153.603. REQUIREMENT OF FINAL PARENTING PLAN. (a) A  
19 final order in a suit affecting the parent-child relationship must  
20 incorporate a final parenting plan. A final parenting plan must:

21 (1) establish the rights and duties of each parent  
22 with respect to the child, consistent with the criteria in this  
23 chapter;

24 (2) minimize the child's exposure to harmful parental  
25 conflict;

26 (3) provide for the child's changing needs as the child  
27 grows and matures, in a way that minimizes the need for further

1 modifications to the final parenting plan; and

2 (4) provide for a dispute resolution process or other  
3 voluntary dispute resolution procedures, before court action,  
4 unless precluded or limited by Section 153.0071.

5 (b) In providing for a dispute resolution process, the  
6 parenting plan must state that:

7 (1) preference shall be given to carrying out the  
8 parenting plan; and

9 (2) the parties shall use the designated process to  
10 resolve disputes.

11 (c) If the parties cannot reach agreement on a final  
12 parenting plan, the court, on the motion of a party or on the  
13 court's own motion, may order appropriate dispute resolution  
14 proceedings under Section 153.0071 to determine a final parenting  
15 plan.

16 (d) If the parties have not reached agreement on a final  
17 parenting plan on or before the 30th day before the date set for  
18 trial, each party shall file with the court and serve a proposed  
19 final parenting plan. Failure by a party to comply with this  
20 subsection may result in the court's adoption of the proposed final  
21 parenting plan filed by the opposing party if the court finds that  
22 plan to be in the best interest of the child.

23 (e) Each party filing a proposed final parenting plan must  
24 attach:

25 (1) a verified statement of income determined in  
26 accordance with the child support guidelines and related provisions  
27 prescribed by Chapter 154; and

1           (2) a verified statement that the plan is proposed in  
2 good faith and is in the best interest of the child.

3           Sec. 153.604. MODIFICATION OF FINAL PARENTING PLAN. (a) In  
4 a suit for modification, a proposed parenting plan shall be filed  
5 with the court and served with the petition for modification and  
6 with the response to the petition for modification, unless the  
7 modification is sought only with regard to child support. The  
8 obligor party's proposed parenting plan must be accompanied by a  
9 verified statement of income determined in accordance with the  
10 child support guidelines and related provisions prescribed by  
11 Chapter 154.

12           (b) The procedure for modifying a final parenting plan is  
13 governed by Chapter 156.

14           Sec. 153.605. APPOINTMENT OF PARENTING COORDINATOR. (a)  
15 In a suit affecting the parent-child relationship, the court may,  
16 on its own motion or on a motion or agreement of the parties,  
17 appoint a parenting coordinator to assist the parties in resolving  
18 issues related to parenting or other family issues in the suit.

19           (b) The court may not appoint a parenting coordinator if any  
20 party objects unless the court makes specific findings that:

21                   (1) the case is or is likely to become a high-conflict  
22 case; or

23                   (2) the appointment of a parenting coordinator is in  
24 the best interest of any minor child in the suit.

25           (c) Notwithstanding any other provision of this subchapter,  
26 a party may at any time prior to the appointment of a parenting  
27 coordinator file a written objection to the appointment of a

1 parenting coordinator on the basis of family violence having been  
2 committed by another party against the objecting party or a child  
3 who is the subject of the suit. After an objection is filed, a  
4 parenting coordinator may not be appointed unless, on the request  
5 of a party, a hearing is held and the court finds that a  
6 preponderance of the evidence does not support the objection. If a  
7 parenting coordinator is appointed, the court shall order  
8 appropriate measures be taken to ensure the physical and emotional  
9 safety of the party who filed the objection. The order may provide  
10 that the parties not be required to have face-to-face contact and  
11 that the parties be placed in separate rooms during the parenting  
12 coordination.

13 Sec. 153.606. AUTHORITY OF PARENTING COORDINATOR. (a) The  
14 authority of a parenting coordinator must be specified in the order  
15 appointing the parenting coordinator and limited to matters that  
16 will aid the parties in:

- 17 (1) identifying disputed issues;  
18 (2) reducing misunderstandings;  
19 (3) clarifying priorities;  
20 (4) exploring possibilities for problem solving;  
21 (5) developing methods of collaboration in parenting;  
22 (6) developing a parenting plan; and  
23 (7) complying with the court's order regarding  
24 conservatorship or possession of and access to the child.

25 (b) The appointment of a parenting coordinator does not  
26 divest the court of:

- 27 (1) its exclusive jurisdiction to determine issues of

1 conservatorship, support, and possession of and access to the  
2 child; and

3 (2) the authority to exercise management and control  
4 of the suit.

5 (c) The parenting coordinator may not modify any order,  
6 judgment, or decree but may urge or suggest that the parties agree  
7 to minor temporary departures from a parenting plan if the  
8 parenting coordinator is authorized by the court to do so. Any  
9 agreement made by the parties and the parenting coordinator may be  
10 reduced to writing and presented to the court for approval.

11 (d) Meetings between the parenting coordinator and the  
12 parties may be informal and are not required to follow any specific  
13 procedures.

14 (e) A parenting coordinator may not:

15 (1) be compelled to produce work product developed  
16 during the appointment as parenting coordinator;

17 (2) be required to disclose the source of any  
18 information;

19 (3) submit a report into evidence, except as required  
20 by Section 153.608; or

21 (4) testify in court.

22 (f) Subsection (e) does not affect the duty to report child  
23 abuse or neglect under Section 261.101.

24 Sec. 153.607. REMOVAL OF PARENTING COORDINATOR. (a)  
25 Except as otherwise provided by this section, the court shall  
26 reserve the right to remove the parenting coordinator in the  
27 court's discretion.

1        (b) The court may remove the parenting coordinator:

2            (1) on the request and agreement of both parties; or

3            (2) on the motion of a party, if good cause is shown.

4        Sec. 153.608. REPORT OF PARENTING COORDINATOR. A parenting  
5 coordinator shall submit a written report to the court and to the  
6 parties as often as ordered by the court. In the report, the  
7 parenting coordinator may give only an opinion regarding whether  
8 the parenting coordination is succeeding and should continue.

9        Sec. 153.609. COMPENSATION OF PARENTING COORDINATOR. (a)  
10 A court may not appoint a parenting coordinator, other than an  
11 employee described by Subsection (c) or a volunteer appointed under  
12 Subsection (d), unless the court finds that the parties have the  
13 means to pay the fees of the parenting coordinator.

14        (b) Any fees of a parenting coordinator appointed under  
15 Subsection (a) shall be allocated between the parties as determined  
16 by the court.

17        (c) Public funds may not be used to pay the fees of a  
18 parenting coordinator. Notwithstanding this prohibition, a court  
19 may appoint an employee of the court, the domestic relations  
20 office, or a comparable county agency to act as a parenting  
21 coordinator if personnel are available to serve that function.

22        (d) If due to hardship the parties are unable to pay the fees  
23 of a parenting coordinator, and a public employee is not available  
24 under Subsection (c), the court, if feasible, may appoint a person  
25 to act as a parenting coordinator on a volunteer basis.

26        Sec. 153.610. QUALIFICATIONS OF PARENTING COORDINATOR. (a)  
27 The court shall determine the required qualifications of a



1 parenting coordinator, provided that a parenting coordinator must  
2 at least:

3 (1) hold a bachelor's degree in counseling, education,  
4 family studies, psychology, or social work and, unless waived by  
5 the court, complete a parenting coordinator course of at least 16  
6 hours; or

7 (2) hold a graduate degree in a mental health  
8 profession, with an emphasis in family and children's issues.

9 (b) In addition to the qualifications prescribed by  
10 Subsection (a), a parenting coordinator must complete at least  
11 eight hours of family violence dynamics training provided by a  
12 family violence service provider.

13 (c) The actions of a parenting coordinator who is not an  
14 attorney do not constitute the practice of law.

15 SECTION 3. Section 153.007, Family Code, is amended to read  
16 as follows:

17 Sec. 153.007. AGREED PARENTING PLAN [~~AGREEMENT CONCERNING~~  
18 ~~CONSERVATORSHIP~~]. (a) To promote the amicable settlement of  
19 disputes between the parties to a suit, the parties may enter into a  
20 written agreed parenting plan [~~agreement~~] containing provisions  
21 for conservatorship and possession of the child and for  
22 modification of the parenting plan [~~agreement~~], including  
23 variations from the standard possession order.

24 (b) If the court finds that the agreed parenting plan  
25 [~~agreement~~] is in the child's best interest, the court shall render  
26 an order in accordance with the parenting plan [~~agreement~~].

27 (c) Terms of the agreed parenting plan [~~agreement~~]

1 contained in the order or incorporated by reference regarding  
2 conservatorship or support of or access to a child in an order may  
3 be enforced by all remedies available for enforcement of a  
4 judgment, including contempt, but are not enforceable as a  
5 contract.

6 (d) If the court finds the agreed parenting plan [~~agreement~~]  
7 is not in the child's best interest, the court may request the  
8 parties to submit a revised parenting plan [~~agreement~~] or the court  
9 may render an order for the conservatorship and possession of the  
10 child.

11 SECTION 4. Section 153.133, Family Code, is amended to read  
12 as follows:

13 Sec. 153.133. PARENTING PLAN [~~ACREEMENT~~] FOR JOINT MANAGING  
14 CONSERVATORSHIP. (a) If a written agreed parenting plan  
15 [~~agreement of the parents~~] is filed with the court, the court shall  
16 render an order appointing the parents as joint managing  
17 conservators only if the parenting plan [~~agreement~~]:

18 (1) designates the conservator who has the exclusive  
19 right to designate the primary residence of the child and:

20 (A) establishes, until modified by further  
21 order, the geographic area within which the conservator shall  
22 maintain the child's primary residence; or

23 (B) specifies that the conservator may designate  
24 the child's primary residence without regard to geographic  
25 location;

26 (2) specifies the rights and duties of each parent  
27 regarding the child's physical care, support, and education;

1 (3) includes provisions to minimize disruption of the  
2 child's education, daily routine, and association with friends;

3 (4) allocates between the parents, independently,  
4 jointly, or exclusively, all of the remaining rights and duties of a  
5 parent provided by Chapter 151;

6 (5) is voluntarily and knowingly made by each parent  
7 and has not been repudiated by either parent at the time the order  
8 is rendered; and

9 (6) is in the best interest of the child.

10 (b) The agreed parenting plan must [~~agreement may~~] contain  
11 an alternative dispute resolution procedure that the parties agree  
12 to use before requesting enforcement or modification of the terms  
13 and conditions of the joint conservatorship through litigation,  
14 except in an emergency.

15 SECTION 5. Section 153.134(a), Family Code, is amended to  
16 read as follows:

17 (a) If a written agreed parenting plan [~~agreement of the~~  
18 ~~parents~~] is not filed with the court, the court may render an order  
19 appointing the parents joint managing conservators only if the  
20 appointment is in the best interest of the child, considering the  
21 following factors:

22 (1) whether the physical, psychological, or emotional  
23 needs and development of the child will benefit from the  
24 appointment of joint managing conservators;

25 (2) the ability of the parents to give first priority  
26 to the welfare of the child and reach shared decisions in the  
27 child's best interest;

1           (3) whether each parent can encourage and accept a  
2 positive relationship between the child and the other parent;

3           (4) whether both parents participated in child rearing  
4 before the filing of the suit;

5           (5) the geographical proximity of the parents'  
6 residences;

7           (6) if the child is 12 years of age or older, the  
8 child's preference, if any, regarding the appointment of joint  
9 managing conservators; and

10           (7) any other relevant factor.

11           SECTION 6. Subchapter J, Chapter 153, Family Code, as added  
12 by this Act, and the changes in law made by this Act to Sections  
13 153.007, 153.133, and 153.134, Family Code, apply only to a suit  
14 affecting the parent-child relationship filed on or after the  
15 effective date of this Act. A suit affecting the parent-child  
16 relationship filed before the effective date of this Act is  
17 governed by Chapter 153, Family Code, as it existed before  
18 amendment by this Act, and the former law is continued in effect for  
19 that purpose.

20           SECTION 7. This Act takes effect September 1, 2005.