

1-1 By: Goodman (Senate Sponsor - Harris) H.B. No. 252
1-2 (In the Senate - Received from the House April 25, 2005;
1-3 April 26, 2005, read first time and referred to Committee on
1-4 Jurisprudence; May 13, 2005, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 13, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the use of parenting plans and parenting coordinators
1-9 in suits affecting the parent-child relationship.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. The legislature finds that the use of parenting
1-12 plans and parenting coordinators in suits affecting the
1-13 parent-child relationship will assist in promoting the best
1-14 interest of children and in helping litigants resolve their issues
1-15 relating to parenting. The legislature further finds that
1-16 conciliatory forms of dispute resolution, including mediation and
1-17 the use of parenting coordinators, promote the policy set forth in
1-18 Section 153.001, Family Code.

1-19 SECTION 2. Chapter 153, Family Code, is amended by adding
1-20 Subchapter J to read as follows:

1-21 SUBCHAPTER J. PARENTING PLAN AND PARENTING COORDINATOR

1-22 Sec. 153.601. DEFINITIONS. In this subchapter:

1-23 (1) "Dispute resolution process" means a process of
1-24 alternative dispute resolution conducted in accordance with
1-25 Section 153.0071 of this chapter and Chapter 154, Civil Practice
1-26 and Remedies Code.

1-27 (2) "High-conflict case" means a suit affecting the
1-28 parent-child relationship in which the parties demonstrate a
1-29 pattern of:

1-30 (A) repetitious litigation;

1-31 (B) anger and distrust;

1-32 (C) difficulty in communicating about and
1-33 cooperating in the care of their children; or

1-34 (D) other behaviors that in the discretion of the
1-35 court warrant the appointment of a parenting coordinator.

1-36 (3) "Parenting coordinator" means an impartial third
1-37 party appointed by the court to assist parties in resolving issues
1-38 relating to parenting and other family issues arising from an order
1-39 in a suit affecting the parent-child relationship.

1-40 (4) "Parenting plan" means a temporary or final court
1-41 order that sets out the rights and duties of parents in a suit
1-42 affecting the parent-child relationship and includes provisions
1-43 relating to conservatorship, possession of and access to a child,
1-44 and child support, and a dispute resolution process to minimize
1-45 future disputes.

1-46 Sec. 153.602. REQUIREMENT FOR TEMPORARY PARENTING PLAN.

1-47 (a) A temporary order that establishes a conservatorship in a suit
1-48 affecting the parent-child relationship must incorporate a
1-49 temporary parenting plan. The temporary parenting plan must comply
1-50 with the requirements for a final parenting plan under Section
1-51 153.603.

1-52 (b) Subject to Subsection (c), if the parties cannot agree
1-53 to a temporary parenting plan, the court may, on the motion of a
1-54 party or on the court's own motion, order the parties to participate
1-55 in a dispute resolution process to establish a temporary parenting
1-56 plan.

1-57 (c) At any time before the court orders the parties to
1-58 participate in a dispute resolution process under Subsection (b), a
1-59 party may file a written objection to the referral of the suit to a
1-60 dispute resolution process on the basis of family violence having
1-61 been committed by another party against the objecting party or a
1-62 child who is the subject of the suit. After an objection is filed,
1-63 the suit may not be referred to a dispute resolution process unless,
1-64 on the request of a party, a hearing is held and the court finds that

2-1 a preponderance of the evidence does not support the objection. If
 2-2 the suit is referred to a dispute resolution process, the court
 2-3 shall order appropriate measures be taken to ensure the physical
 2-4 and emotional safety of the party who filed the objection. The
 2-5 order may provide that the parties not be required to have
 2-6 face-to-face contact and that the parties be placed in separate
 2-7 rooms during the dispute resolution process.

2-8 (d) If a dispute resolution process is not available or is
 2-9 not successful, a party may request and the court may order an
 2-10 expedited hearing to establish a temporary parenting plan.

2-11 Sec. 153.603. REQUIREMENT OF FINAL PARENTING PLAN. (a) A
 2-12 final order in a suit affecting the parent-child relationship must
 2-13 incorporate a final parenting plan. A final parenting plan must:

2-14 (1) establish the rights and duties of each parent
 2-15 with respect to the child, consistent with the criteria in this
 2-16 chapter;

2-17 (2) minimize the child's exposure to harmful parental
 2-18 conflict;

2-19 (3) provide for the child's changing needs as the child
 2-20 grows and matures, in a way that minimizes the need for further
 2-21 modifications to the final parenting plan; and

2-22 (4) provide for a dispute resolution process or other
 2-23 voluntary dispute resolution procedures, before court action,
 2-24 unless precluded or limited by Section 153.0071.

2-25 (b) In providing for a dispute resolution process, the
 2-26 parenting plan must state that:

2-27 (1) preference shall be given to carrying out the
 2-28 parenting plan; and

2-29 (2) the parties shall use the designated process to
 2-30 resolve disputes.

2-31 (c) If the parties cannot reach agreement on a final
 2-32 parenting plan, the court, on the motion of a party or on the
 2-33 court's own motion, may order appropriate dispute resolution
 2-34 proceedings under Section 153.0071 to determine a final parenting
 2-35 plan.

2-36 (d) If the parties have not reached agreement on a final
 2-37 parenting plan on or before the 30th day before the date set for
 2-38 trial, each party shall file with the court and serve a proposed
 2-39 final parenting plan. Failure by a party to comply with this
 2-40 subsection may result in the court's adoption of the proposed final
 2-41 parenting plan filed by the opposing party if the court finds that
 2-42 plan to be in the best interest of the child.

2-43 (e) Each party filing a proposed final parenting plan must
 2-44 attach:

2-45 (1) a verified statement of income determined in
 2-46 accordance with the child support guidelines and related provisions
 2-47 prescribed by Chapter 154; and

2-48 (2) a verified statement that the plan is proposed in
 2-49 good faith and is in the best interest of the child.

2-50 Sec. 153.604. MODIFICATION OF FINAL PARENTING PLAN. (a) In
 2-51 a suit for modification, a proposed parenting plan shall be filed
 2-52 with the court and served with the petition for modification and
 2-53 with the response to the petition for modification, unless the
 2-54 modification is sought only with regard to child support. The
 2-55 obligor party's proposed parenting plan must be accompanied by a
 2-56 verified statement of income determined in accordance with the
 2-57 child support guidelines and related provisions prescribed by
 2-58 Chapter 154.

2-59 (b) The procedure for modifying a final parenting plan is
 2-60 governed by Chapter 156.

2-61 Sec. 153.605. APPOINTMENT OF PARENTING COORDINATOR. (a)
 2-62 In a suit affecting the parent-child relationship, the court may,
 2-63 on its own motion or on a motion or agreement of the parties,
 2-64 appoint a parenting coordinator to assist the parties in resolving
 2-65 issues related to parenting or other family issues in the suit.

2-66 (b) The court may not appoint a parenting coordinator if any
 2-67 party objects unless the court makes specific findings that:

2-68 (1) the case is or is likely to become a high-conflict
 2-69 case; or

3-1 (2) the appointment of a parenting coordinator is in
 3-2 the best interest of any minor child in the suit.

3-3 (c) Notwithstanding any other provision of this subchapter,
 3-4 a party may at any time prior to the appointment of a parenting
 3-5 coordinator file a written objection to the appointment of a
 3-6 parenting coordinator on the basis of family violence having been
 3-7 committed by another party against the objecting party or a child
 3-8 who is the subject of the suit. After an objection is filed, a
 3-9 parenting coordinator may not be appointed unless, on the request
 3-10 of a party, a hearing is held and the court finds that a
 3-11 preponderance of the evidence does not support the objection. If a
 3-12 parenting coordinator is appointed, the court shall order
 3-13 appropriate measures be taken to ensure the physical and emotional
 3-14 safety of the party who filed the objection. The order may provide
 3-15 that the parties not be required to have face-to-face contact and
 3-16 that the parties be placed in separate rooms during the parenting
 3-17 coordination.

3-18 Sec. 153.606. AUTHORITY OF PARENTING COORDINATOR. (a) The
 3-19 authority of a parenting coordinator must be specified in the order
 3-20 appointing the parenting coordinator and limited to matters that
 3-21 will aid the parties in:

3-22 (1) identifying disputed issues;
 3-23 (2) reducing misunderstandings;
 3-24 (3) clarifying priorities;
 3-25 (4) exploring possibilities for problem solving;
 3-26 (5) developing methods of collaboration in parenting;
 3-27 (6) developing a parenting plan; and
 3-28 (7) complying with the court's order regarding
 3-29 conservatorship or possession of and access to the child.

3-30 (b) The appointment of a parenting coordinator does not
 3-31 divest the court of:

3-32 (1) its exclusive jurisdiction to determine issues of
 3-33 conservatorship, support, and possession of and access to the
 3-34 child; and
 3-35 (2) the authority to exercise management and control
 3-36 of the suit.

3-37 (c) The parenting coordinator may not modify any order,
 3-38 judgment, or decree but may urge or suggest that the parties agree
 3-39 to minor temporary departures from a parenting plan if the
 3-40 parenting coordinator is authorized by the court to do so. Any
 3-41 agreement made by the parties and the parenting coordinator may be
 3-42 reduced to writing and presented to the court for approval.

3-43 (d) Meetings between the parenting coordinator and the
 3-44 parties may be informal and are not required to follow any specific
 3-45 procedures.

3-46 (e) A parenting coordinator may not:

3-47 (1) be compelled to produce work product developed
 3-48 during the appointment as parenting coordinator;
 3-49 (2) be required to disclose the source of any
 3-50 information;
 3-51 (3) submit a report into evidence, except as required
 3-52 by Section 153.608; or
 3-53 (4) testify in court.

3-54 (f) Subsection (e) does not affect the duty to report child
 3-55 abuse or neglect under Section 261.101.

3-56 Sec. 153.607. REMOVAL OF PARENTING COORDINATOR. (a)
 3-57 Except as otherwise provided by this section, the court shall
 3-58 reserve the right to remove the parenting coordinator in the
 3-59 court's discretion.

3-60 (b) The court may remove the parenting coordinator:
 3-61 (1) on the request and agreement of both parties; or
 3-62 (2) on the motion of a party, if good cause is shown.

3-63 Sec. 153.608. REPORT OF PARENTING COORDINATOR. A parenting
 3-64 coordinator shall submit a written report to the court and to the
 3-65 parties as often as ordered by the court. In the report, the
 3-66 parenting coordinator may give only an opinion regarding whether
 3-67 the parenting coordination is succeeding and should continue.

3-68 Sec. 153.609. COMPENSATION OF PARENTING COORDINATOR. (a)
 3-69 A court may not appoint a parenting coordinator, other than an

4-1 employee described by Subsection (c) or a volunteer appointed under
 4-2 Subsection (d), unless the court finds that the parties have the
 4-3 means to pay the fees of the parenting coordinator.

4-4 (b) Any fees of a parenting coordinator appointed under
 4-5 Subsection (a) shall be allocated between the parties as determined
 4-6 by the court.

4-7 (c) Public funds may not be used to pay the fees of a
 4-8 parenting coordinator. Notwithstanding this prohibition, a court
 4-9 may appoint an employee of the court, the domestic relations
 4-10 office, or a comparable county agency to act as a parenting
 4-11 coordinator if personnel are available to serve that function.

4-12 (d) If due to hardship the parties are unable to pay the fees
 4-13 of a parenting coordinator, and a public employee is not available
 4-14 under Subsection (c), the court, if feasible, may appoint a person
 4-15 to act as a parenting coordinator on a volunteer basis.

4-16 Sec. 153.610. QUALIFICATIONS OF PARENTING COORDINATOR. (a)
 4-17 The court shall determine the required qualifications of a
 4-18 parenting coordinator, provided that a parenting coordinator must
 4-19 at least:

4-20 (1) hold a bachelor's degree in counseling, education,
 4-21 family studies, psychology, or social work and, unless waived by
 4-22 the court, complete a parenting coordinator course of at least 16
 4-23 hours; or

4-24 (2) hold a graduate degree in a mental health
 4-25 profession, with an emphasis in family and children's issues.

4-26 (b) In addition to the qualifications prescribed by
 4-27 Subsection (a), a parenting coordinator must complete at least
 4-28 eight hours of family violence dynamics training provided by a
 4-29 family violence service provider.

4-30 (c) The actions of a parenting coordinator who is not an
 4-31 attorney do not constitute the practice of law.

4-32 Sec. 153.611. EXCEPTION FOR CERTAIN TITLE IV-D PROCEEDINGS.
 4-33 Notwithstanding any other provision of this subchapter, this
 4-34 subchapter does not apply to a proceeding in a Title IV-D case
 4-35 relating to the determination of parentage or establishment,
 4-36 modification, or enforcement of a child support or medical support
 4-37 obligation.

4-38 SECTION 3. Section 153.007, Family Code, is amended to read
 4-39 as follows:

4-40 Sec. 153.007. AGREED PARENTING PLAN [~~AGREEMENT CONCERNING~~
 4-41 ~~CONSERVATORSHIP~~]. (a) To promote the amicable settlement of
 4-42 disputes between the parties to a suit, the parties may enter into a
 4-43 written agreed parenting plan [~~agreement~~] containing provisions
 4-44 for conservatorship and possession of the child and for
 4-45 modification of the parenting plan [~~agreement~~], including
 4-46 variations from the standard possession order.

4-47 (b) If the court finds that the agreed parenting plan
 4-48 [~~agreement~~] is in the child's best interest, the court shall render
 4-49 an order in accordance with the parenting plan [~~agreement~~].

4-50 (c) Terms of the agreed parenting plan [~~agreement~~]
 4-51 contained in the order or incorporated by reference regarding
 4-52 conservatorship or support of or access to a child in an order may
 4-53 be enforced by all remedies available for enforcement of a
 4-54 judgment, including contempt, but are not enforceable as a
 4-55 contract.

4-56 (d) If the court finds the agreed parenting plan [~~agreement~~]
 4-57 is not in the child's best interest, the court may request the
 4-58 parties to submit a revised parenting plan [~~agreement~~] or the court
 4-59 may render an order for the conservatorship and possession of the
 4-60 child.

4-61 SECTION 4. Section 153.133, Family Code, is amended to read
 4-62 as follows:

4-63 Sec. 153.133. PARENTING PLAN [~~AGREEMENT~~] FOR JOINT MANAGING
 4-64 ~~CONSERVATORSHIP~~. (a) If a written agreed parenting plan
 4-65 [~~agreement of the parents~~] is filed with the court, the court shall
 4-66 render an order appointing the parents as joint managing
 4-67 conservators only if the parenting plan [~~agreement~~]:

4-68 (1) designates the conservator who has the exclusive
 4-69 right to designate the primary residence of the child and:

5-1 (A) establishes, until modified by further
5-2 order, the geographic area within which the conservator shall
5-3 maintain the child's primary residence; or

5-4 (B) specifies that the conservator may designate
5-5 the child's primary residence without regard to geographic
5-6 location;

5-7 (2) specifies the rights and duties of each parent
5-8 regarding the child's physical care, support, and education;

5-9 (3) includes provisions to minimize disruption of the
5-10 child's education, daily routine, and association with friends;

5-11 (4) allocates between the parents, independently,
5-12 jointly, or exclusively, all of the remaining rights and duties of a
5-13 parent provided by Chapter 151;

5-14 (5) is voluntarily and knowingly made by each parent
5-15 and has not been repudiated by either parent at the time the order
5-16 is rendered; and

5-17 (6) is in the best interest of the child.

5-18 (b) The agreed parenting plan must [~~agreement may~~] contain
5-19 an alternative dispute resolution procedure that the parties agree
5-20 to use before requesting enforcement or modification of the terms
5-21 and conditions of the joint conservatorship through litigation,
5-22 except in an emergency.

5-23 SECTION 5. Section 153.134(a), Family Code, is amended to
5-24 read as follows:

5-25 (a) If a written agreed parenting plan [~~agreement of the~~
5-26 ~~parents~~] is not filed with the court, the court may render an order
5-27 appointing the parents joint managing conservators only if the
5-28 appointment is in the best interest of the child, considering the
5-29 following factors:

5-30 (1) whether the physical, psychological, or emotional
5-31 needs and development of the child will benefit from the
5-32 appointment of joint managing conservators;

5-33 (2) the ability of the parents to give first priority
5-34 to the welfare of the child and reach shared decisions in the
5-35 child's best interest;

5-36 (3) whether each parent can encourage and accept a
5-37 positive relationship between the child and the other parent;

5-38 (4) whether both parents participated in child rearing
5-39 before the filing of the suit;

5-40 (5) the geographical proximity of the parents'
5-41 residences;

5-42 (6) if the child is 12 years of age or older, the
5-43 child's preference, if any, regarding the appointment of joint
5-44 managing conservators; and

5-45 (7) any other relevant factor.

5-46 SECTION 6. Subchapter J, Chapter 153, Family Code, as added
5-47 by this Act, and the changes in law made by this Act to Sections
5-48 153.007, 153.133, and 153.134, Family Code, apply only to a suit
5-49 affecting the parent-child relationship filed on or after the
5-50 effective date of this Act. A suit affecting the parent-child
5-51 relationship filed before the effective date of this Act is
5-52 governed by Chapter 153, Family Code, as it existed before
5-53 amendment by this Act, and the former law is continued in effect for
5-54 that purpose.

5-55 SECTION 7. This Act takes effect September 1, 2005.

5-56 * * * * *