

BILL ANALYSIS

Senate Research Center
80R2645 KSD-D

S.B. 1367
By: Harris
Jurisprudence
4/4/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 252, enacted by the 79th Legislature, incorporates parenting plans and parenting coordinators into Subchapter J (Rights of Siblings), Chapter 153, Family Code. However, many courts have not implemented the provisions of H.B. 252, and attorneys practicing family law have expressed concerns about increased costs to families stemming from the legislation. Clarification may be necessary regarding the enacted statutes and how the provisions within those statutes are to be applied.

As proposed, S.B. 1367 amends Subchapter J, Chapter 153, Family Code, to incorporate amendments discussed by the family practice bar and proponents of the original legislation regarding the kinds of cases to which the subchapter applies, the duties and authority of parenting coordinators, and the role of alternative dispute resolution as described by current law.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 153.007(d), Family Code, to authorize the court, after notice and hearing, to render an order for the conservatorship and possession of a child if the court finds the agreed parenting plan is not in the child's best interest.

SECTION 2. Amends Subchapter J, Chapter 153, Family Code, by amending Sections 153.601 through 153.603 and by adding Section 153.6031, as follows:

Sec. 153.601. DEFINITIONS. Redefines "dispute resolution process," "high-conflict case," "parenting coordinator," and "parenting plan."

Sec. 153.602. New heading: REQUIREMENT FOR PARENTING PLAN IN TEMPORARY ORDER. (a) Requires a temporary order that establishes a conservatorship in a suit affecting the parent-child relationship to include a parenting plan, rather than incorporate a temporary parenting plan. Deletes existing text requiring the parenting plan to comply with the requirements for a final parenting plan under Section 153.603, Family Code.

(b) Provides that, notwithstanding Section 153.601(4), a parenting plan in a temporary order is not required to include provisions that address the child's changing needs or that set out a dispute resolution process for future disputes. Deletes existing text authorizing the court, on its own motion or the motion of a party, to order the parties to participate in a dispute resolution process to establish a temporary parenting plan if the parties cannot agree to such a plan. Deletes existing Subsection (c), authorizing a party to file a written objection to the referral of the suit to a dispute resolution process, if the court orders as such, on the basis of family violence having been committed by another party against the objecting party. Deletes existing text outlining the process of altering the dispute resolution process to accommodate the party who had been the target of previous family violence by another party. Deletes existing Subsection (d), authorizing a party to request and authorizing the court to order an expedited hearing to

establish a temporary parenting plan if a dispute resolution process is unavailable or unsuccessful.

Sec. 153.603. New heading: REQUIREMENT OF PARENTING PLAN IN FINAL ORDER. (a) Requires a final order in a suit affecting the parent-child relationship to include a parenting plan, rather than incorporating a final parenting plan. Deletes existing text requiring that certain provisions be included in a final parenting plan.

(b) Provides that an order that only modifies child support, an order that only terminates parental rights, or certain final orders that do not create continuing, exclusive jurisdiction for the court, as described by Section 155.001(b), Family Code, are orders that are not required to include a parenting plan. Deletes existing text requiring a parenting plan, in providing for a dispute resolution process, to state that preference is required to be given to carrying out the parenting plan and that the parties are required to use the designated process to resolve disputes. Deletes existing Subsection (c) authorizing the court, on its own motion or the motion of a party, to order appropriate dispute resolution proceedings under Section 153.0071 (Alternate Dispute Resolution Procedures), Family Code, to determine a final parenting plan.

(c) Redesignates text from existing Subsection (d). Makes conforming changes.

(d) Redesignates text from existing Subsection (e). Requires each party filing a proposed parenting plan to sign a statement that the plan is proposed in good faith and is in the best interest of the child, rather requiring the signing of the verified statement relating to said plan and the attaching of a verified statement of income determined in accordance with the child support guidelines and related provisions prescribed by Chapter 154 (Child Support), Family Code.

(e) Provides that this section does not preclude the parties from requesting the appointment of a parenting coordinator to resolve parental conflicts.

Sec. 153.6031. EXCEPTION TO DISPUTE RESOLUTION PROCESS REQUIREMENT. Provides that a party to a parenting plan is not required to use the dispute resolution process provided in a parenting plan before initiating or participating in certain legal actions, or on a showing that enforcement of the requirement is precluded or limited by Section 153.0071, Family Code.

SECTION 3. Amends Section 153.605, Family Code, as follows:

Sec. 153.605. APPOINTMENT OF PARENTING COORDINATOR. (a) Authorizes the court, on its own motion or the motion of a party, to appoint a parenting coordinator to assist the parties in resolving parenting issues, rather than issues related to parenting or other family issues in the suit.

(b) Prohibits the court from appointing a parenting coordinator unless, after notice and hearing, the court makes a specific finding that the case is, rather than is or is likely to become, a high-conflict case or if there is good cause shown for the appointment of a parenting coordinator and the appointment is in the best in the best interest of any minor child in the suit. Deletes existing text prohibiting the court from appointing a parenting coordinator if any party objects.

(c) Deletes existing text authorizing a party to file a written objection to the appointment of a parenting coordinator, on the basis of family violence, prior to said appointment.

(d) Provides that the work of a parenting coordinator is an alternative dispute resolution procedure under Chapter 154 (Alternative Dispute Resolution Procedure), Civil Practice and Remedies Code.

SECTION 4. Amends the heading to Section 153.606, Family Code, to read as follows:

Sec. 153.606. DUTIES OF PARENTING COORDINATOR.

SECTION 5. Amends Sections 153.606(a), (c), (e), and (f), Family Code, as follows:

(a) Requires the duties, rather than the authority, of a parenting coordinator to be specified in the order appointing the parenting coordinator. Sets forth certain limitations on the duties of the parenting coordinator.

(c) Deletes existing text authorizing a parenting coordinator to urge or suggest that the parties agree to minor temporary departures from a parenting plan if the parenting coordinator is authorized by the court to do so. Requires, rather than authorizes, any agreement made by the parties with the assistance of the parenting coordinator to be reduced to writing, signed by the parties and their attorneys, if any, and filed with the court, rather than presented to the court for approval, if a suit is pending. Makes conforming changes.

(e) Deletes existing text prohibiting a parenting coordinator from taking certain legal actions that would disclose certain information before the court. Provides that this subchapter does not affect the duty to report child abuse or neglect under Section 261.101 (Investigation of Report of Child Abuse or Neglect), Family Code.

(f) Redesignates text as Subsection (e).

SECTION 6. Amends Section 153.607(b), Family Code, by requiring, rather than authorizing, the court to remove the parenting coordinator on the request and agreement of both parties or on the motion of a party if good cause is shown.

SECTION 7. Amends Section 153.608, Family Code, as follows:

Sec. 153.608. REPORT OF PARENTING COORDINATOR. Requires a report submitted by a parenting coordinator to be limited to a statement of whether the parenting coordination should continue, rather than authorizing the parenting coordinator to give an opinion on whether the parenting coordination is succeeding and should continue.

SECTION 8. Amends Sections 153.609(a) and (c), Family Code, as follows:

(a) Prohibits the court from appointing a parenting coordinator, other than a domestic relations office or a comparable county agency appointed under Subsection (c), rather than an employee described by Subsection (c), unless the parties have the means to pay the coordinator's fees. Makes a conforming change.

(c) Deletes existing text authorizing a court to appoint an employee of the court to act as a parenting coordinator.

SECTION 9. Repealer: Section 153.604 (Modification of Final Parenting Plan), Family Code.

SECTION 10. Makes application of this Act prospective.

SECTION 11. Effective date: September 1, 2007.