

AN ACT

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

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

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

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

SUBCHAPTER J. PARENTING PLAN AND PARENTING COORDINATOR

Sec. 153.601. DEFINITIONS. In this subchapter:

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

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

(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 Sec. 153.611. EXCEPTION FOR CERTAIN TITLE IV-D PROCEEDINGS.
16 Notwithstanding any other provision of this subchapter, this
17 subchapter does not apply to a proceeding in a Title IV-D case
18 relating to the determination of parentage or establishment,
19 modification, or enforcement of a child support or medical support
20 obligation.

21 SECTION 3. Section 153.007, Family Code, is amended to read
22 as follows:

23 Sec. 153.007. AGREED PARENTING PLAN [~~AGREEMENT CONCERNING~~
24 ~~CONSERVATORSHIP~~]. (a) To promote the amicable settlement of
25 disputes between the parties to a suit, the parties may enter into a
26 written agreed parenting plan [~~agreement~~] containing provisions
27 for conservatorship and possession of the child and for

1 modification of the parenting plan [~~agreement~~], including
2 variations from the standard possession order.

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

6 (c) Terms of the agreed parenting plan [~~agreement~~]
7 contained in the order or incorporated by reference regarding
8 conservatorship or support of or access to a child in an order may
9 be enforced by all remedies available for enforcement of a
10 judgment, including contempt, but are not enforceable as a
11 contract.

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

17 SECTION 4. Section 153.133, Family Code, is amended to read
18 as follows:

19 Sec. 153.133. PARENTING PLAN [~~AGREEMENT~~] FOR JOINT MANAGING
20 CONSERVATORSHIP. (a) If a written agreed parenting plan
21 [~~agreement of the parents~~] is filed with the court, the court shall
22 render an order appointing the parents as joint managing
23 conservators only if the parenting plan [~~agreement~~]:

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

26 (A) establishes, until modified by further
27 order, the geographic area within which the conservator shall

1 maintain the child's primary residence; or

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (5) the geographical proximity of the parents'
12 residences;

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

16 (7) any other relevant factor.

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

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

David Swinkus

President of the Senate

Jim Cuddih

Speaker of the House

I certify that H.B. No. 252 was passed by the House on April 22, 2005, by a non-record vote.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 252 was passed by the Senate on May 24, 2005, by the following vote: Yeas 31, Nays 0.

Latsy Gau

Secretary of the Senate

APPROVED: 17 JUNE '05

Date

RICK PERRY

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:20 A.M. O'CLOCK

JUN 17 2005
Roger Williams
Secretary of State