SUBJECT: Parenting plans and coordinators in parent-child relationship suits

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 7 ayes — Dutton, Eiland, Bolton, Farias, Farrar, Gonzalez Toureilles, Hernandez

0 nays

2 absent — Strama, Vaught

WITNESSES: For — Deborah Cashen, CFLE and Susan Marsh, Parenting Partnerships, Inc.; and eight others; (*Registered, but did not testify:* Mark Ashworth, Manager of Family Court Services, Travis County Domestic Relations; Thao M. Phan, Licensed Marriage and Family Therapist Association; Susie Shields, Texas Association for Marriage and Family Therapy; Trevor Townes, Harris County Domestic Relations Office; and two others)

Against —None

On — Steve Bresnen, Texas Family Law Foundation; Jim Loveless, State Bar of Texas-Family Law Section; Jack Marr, Texas Family Law Foundation; and three others; (*Registered, but did not testify:* Beth Engelking, Department of Family and Protective Services; and nine others)

BACKGROUND: In 2005, the 79th Legislature enacted HB 252 by Goodman, which amended the Family Code to require parenting plans and parenting coordinators in child custody lawsuits and establish procedures for their use.

Temporary and final orders in child custody lawsuits must include final parenting plans that establish the rights and duties of parents, minimize the child's exposure to harmful parental conflict, provide for the child's changing needs in a way that minimizes the need to modify the final parenting plan, and provide for dispute resolution procedures before court action, unless precluded or limited by previous binding arbitration.

If the parties cannot reach an agreement on a final parenting plan, the court may order appropriate dispute resolution proceedings to determine a final plan. If the parties do not reach an agreement 30 days before their trial date, each party may file with the court a proposed final parenting plan. Failure to submit a plan may result in the court's adoption of the other party's plan if the court found it to be in the best interest of the child.

The court may appoint a parenting coordinator to help resolve parenting and other family issues in the suit. The court order specifies the parenting coordinator's authority, which is limited to helping the parties identify disputed issues, reduce misunderstandings, clarify priorities, explore problem-solving, develop collaboration in parenting, develop a parenting plan, and comply with the court's order regarding conservatorship or possession of and access to the child.

Meetings between the coordinator and the parties may be informal and do not have to follow any specific procedures. A parenting coordinator does not have to produce work product or disclose the source of any information, testify in court, or submit a report into evidence, except written reports required by the court giving an opinion of whether the parenting coordination should continue.

A parenting coordinator may not be appointed if any party objects, unless the court finds that the case is or is likely to become a high-conflict case or the appointment of a parenting coordinator is in the best interest of a minor child in the lawsuit.

The court may reserve the right to remove a parenting coordinator at its discretion, on the request and agreement of both parties, or on the motion of a party, if good cause were shown.

A court cannot appoint a parenting coordinator who is not an employee of the court or a volunteer unless the court finds that the parties can pay the coordinator's fees. Fees to pay the parenting coordinator are allocated between the parties by the court. Public funds may not be used to pay a parenting coordinator, but the court may appoint an employee, the domestic relations office, or a comparable county agency to act as a parenting coordinator if personnel were available for that function.

Legislative findings have shown that conciliatory forms of dispute resolution promote the state's policy of assuring that children have

continued contact with parents who may act in the best interest of the child, provide a safe, stable and nonviolent environment, and encourage parents to share rights and duties of raising the child after separation or divorce.

DIGEST:

CSHB 555 would modify the application and use of parenting plans and parenting coordinators in suits affecting the parent-child relationship.

The bill would eliminate the requirement that parents address a court before trial to establish the details of a final parenting plan, but would allow parents to retain the option to do so. Temporary orders affecting a parent-child relationship no longer would require a parenting plan, but final orders still would require the inclusion of a plan. The bill would modify the specifications of a parenting plan to set out the rights and duties of a parent or conservator of the child, provide for child support, and optimize the development of a close and continuing relationship between each parent and the child. If an agreed parenting plan was not found to meet the best interests of a child, a court could order a parenting plan that would conform to the best interest of the child.

Orders that modify child support, terminate parental rights, or call for the dismissal of a suit affecting parent-child relationships would not require a parenting plan under the bill.

The definition of "dispute resolution process" would be modified to include any method of voluntary dispute resolution. If parties could not reach agreement on a final parenting plan, a court still would be able to order dispute resolution as appropriate. However, a parent would not be required to engage in dispute resolution before filing an action with a court over an action:

- to modify a plan in an emergency situation;
- to modify child support;
- to allege that the child's current circumstances would impair the child's health;
- to enforce the plan; or
- showing that binding arbitration limited a parent's ability to enforce a plan.

A parenting coordinator could be appointed by the court's own motion or on the motion of or agreement of the parties to assist in resolving

parenting issues. A court could not appoint a parenting coordinator unless, after notice and a hearing, the court made the specific finding that the case was one of high conflict or good cause was shown.

A "high-conflict case" would be defined to mean that a court found the parties had demonstrated an unusual degree of repetitiously resorting to adjudicative process, anger and distrust, and difficulty in communicating about and cooperating in the care of their children.

Parenting coordinators additionally would become responsible for assisting with the understanding of parenting plans and reaching agreements about parenting issues to be included in the plan, among other assistance such as identifying disputes and clarifying priorities. After meeting with both parties, a parenting coordinator would be limited to providing a statement as to whether the parenting coordination should continue.

The bill would require that the confidentiality provisions of alternative dispute resolution procedures under the Civil Practice and Remedies Code to apply to the work of a parenting coordinator and other parties participating in the parenting coordination. These provisions would not affect the duty of a person to report abuse or neglect of a child.

A court could appoint a parenting coordinator when it was determined that the parties could not afford to hire one. The bill would require a notice and hearing for the determination of whether parties could afford the coordinator's fees. If a hearing demonstrated the parties did not have the resources to pay the fees, the court could appoint an employee only from the domestic relations office or a comparable county agency.

The bill would allow parents to file a written objection to the appointment of a parenting coordinator at any time, and the court would required, rather than allowed, to remove the parenting coordinator on the request and agreement of both parties or on a motion of one party where good cause was shown.

The bill would repeal the need for parenting plans to be filed where parents wished to modify the terms of a court order, and also would repeal the limitation that parenting coordinators could not be called to disclose sources of information or participate in court proceedings.

The bill would take effect September 1, 2007.

NOTES:

The identical companion bill, SB 1367 by Harris, is pending in the Senate Jurisprudence Committee, where testimony was taken in a hearing on April 11.