

HOUSE BILL No. 4399

March 4, 1997, Introduced by Reps. Dalman, Nye, McBryde, Cropsey, Jelinek, Curtis, McNutt, Gernaat, Walberg, Raczkowski, Goschka, Horton, Jansen, Olshove, LaForge, Varga, Bankes and Johnson and referred to the Committee on Judiciary.

A bill to require establishment of parenting plans for minor children in certain circumstances; to provide the procedure for establishing and modifying parenting plans; and to prescribe the contents of parenting plans.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "parenting plan act".

3 Sec. 2. As used in this act:

4 (a) "Best interests of the child" means that term as defined
5 in section 3 of the child custody act of 1970, 1970 PA 91, MCL
6 722.23.

7 (b) "Domestic violence" means an act of physical, sexual, or
8 serious emotional abuse by an individual against his or her
9 spouse, or former spouse, or against another individual with whom

1 the individual has a child in common or with whom the individual
2 has resided.

3 (c) "Personal protection order" means an order issued under
4 section 2950 of the revised judicature act of 1961, 1961 PA 236,
5 MCL 600.2950.

6 (d) "Serious emotional abuse" means abuse that would cause a
7 reasonable person to feel terrorized, intimidated, or
8 threatened.

9 Sec. 3. (1) In entering a decree of divorce, separate main-
10 tenance, or annulment, the court shall establish a parenting plan
11 for a minor child of the marriage as provided in this act.

12 (2) A parenting plan established under this act does not
13 affect the right of an individual who is not a parent governed by
14 that parenting plan to pursue and establish parenting or grand-
15 parenting time with a child as authorized under another law of
16 this state.

17 (3) The state court administrative office shall develop and
18 make available a form for use by a parent in completing a parent-
19 ing plan, which form shall indicate the subject matter that must
20 be addressed in a parenting plan as required by this act. A form
21 developed under this subsection shall contain notice that either
22 party may obtain their own legal counsel.

23 Sec. 4. (1) Except as otherwise provided in this act, in a
24 custody dispute between a child's parents, the parents shall file
25 with the court, before a hearing on or determination of the
26 child's custody, a proposed parenting plan that is agreed on by
27 the parents and that conforms to the requirements of this act.

1 If there is evidence that either parent has committed domestic
2 violence or the parents do not agree on a parenting plan, each
3 parent shall file and serve a proposed parenting plan on or
4 before the earliest date of 1 of the following:

5 (a) Thirty days after either parent files and serves a
6 notice requesting a pretrial conference.

7 (b) One hundred eighty days after commencement of the
8 action. The parents may extend this period by stipulation.

9 (2) A parent who files a proposed parenting plan in compli-
10 ance with this section may move the court for an order of default
11 adopting that parent's parenting plan if the other parent fails
12 to file a proposed parenting plan as required in this section.

13 Sec. 5. (1) A parent submitting a proposed parenting plan
14 shall attach a verified statement that the plan is proposed by
15 that parent in good faith. Either parent may file and serve an
16 amended proposed parenting plan according to the rules for amend-
17 ing pleadings.

18 (2) If each parent files a parenting plan or the parenting
19 plan is otherwise in dispute, the parents shall attempt to arrive
20 at a mutually agreed upon parenting plan by an alternative dis-
21 pute resolution process either through the friend of the court
22 mediation services or through another agency or an individual
23 that both parties agreed upon. This subsection does not apply if
24 there is evidence that either parent has committed domestic
25 violence.

26 (3) If an alternative dispute resolution process is
27 unsuccessful or inapplicable, and a mandatory settlement

1 conference is provided by court rule, the parents shall attend a
2 mandatory settlement conference. A judge or a friend of the
3 court referee shall preside over the mandatory settlement confer-
4 ence and shall apply the criteria in sections 10 to 17. The par-
5 ents shall in good faith review the proposed terms of the parent-
6 ing plans and other issues relevant to the action with the judge
7 or referee. A fact or legal issue that is not then in dispute
8 shall be entered as stipulated for purposes of final hearing or
9 trial in the matter.

10 (4) The court shall not issue an order implementing a dis-
11 puted parenting plan until the court holds a hearing on the pro-
12 posed plan or plans. An action involving minor children governed
13 by this act shall have precedence for hearing and assignment for
14 trial over other civil actions.

15 Sec. 6. (1) A parenting plan shall have the following
16 objectives:

17 (a) To have the child reared by both the child's father and
18 the child's mother unless it is not in the best interests of the
19 child.

20 (b) To provide for the child's physical care, including the
21 specification of responsibility for health care expenses and
22 health care coverage.

23 (c) To maintain the child's emotional stability.

24 (d) To provide for the child's changing needs as the child
25 grows and matures in a way that minimizes the need for future
26 modifications to the parenting plan. This includes, but is not

1 limited to, consideration of provision for the child's
2 education.

3 (e) To set forth the authority and responsibilities of each
4 parent with respect to the child, consistent with the criteria in
5 sections 10 to 17.

6 (f) To minimize the child's exposure to harmful parental
7 conflict.

8 (g) To encourage the parents, where appropriate under
9 sections 10 to 17, to meet their responsibilities to their minor
10 children through agreements in the parenting plan, rather than by
11 relying on judicial intervention.

12 (h) To otherwise protect the best interests of the child.

13 (2) The parenting plan shall contain provisions governing
14 resolution of future disputes between the parents, allocation of
15 decision making authority, parenting time, and the child's resi-
16 dential schedule.

17 Sec. 7. (1) Unless precluded or limited by sections 10 to
18 17, the court shall provide alternatives to court action for
19 resolving disputes, which may include counseling, mediation, or
20 arbitration by a specified individual or agency, including the
21 friend of the court. An alternative dispute resolution process
22 shall conform to all of the following:

23 (a) Preference shall be given to carrying out the parenting
24 plan.

25 (b) Unless an emergency exists, the parents shall use the
26 designated process to resolve disputes relating to implementation
27 of their parenting plan.

1 (c) A written record shall be prepared of an agreement
2 reached in counseling or mediation and of each arbitration award,
3 and shall be provided to each parent.

4 (d) If the court finds that a parent uses or frustrates the
5 use of the dispute resolution process without good cause, the
6 court shall award attorney fees and financial sanctions to the
7 prevailing parent.

8 (e) Upon the petition of either parent, the court shall
9 review the dispute resolution process and its results.

10 (2) The court shall set forth the requirements of subsection
11 (1) in the order establishing the parenting plan.

12 Sec. 8. (1) The parenting plan shall allocate decision
13 making authority to 1 or both parents regarding their child's
14 education, health care, and religious upbringing. The parents
15 may incorporate an agreement related to their child's care and
16 growth in these specified areas, or in other areas, into their
17 parenting plan consistent with the criteria in sections 10 to
18 17.

19 (2) Regardless of the allocation of decision making in the
20 parenting plan, either parent may make emergency decisions
21 affecting the child's health or safety. Each parent may make
22 decisions regarding the child's day-to-day care and control while
23 the child is residing with that parent.

24 (3) If the parenting plan prescribes mutual decision making,
25 but a mutual decision cannot be reached, the parents shall make a
26 good-faith effort to resolve the issue through an alternative
27 dispute resolution process.

1 Sec. 9. (1) A parenting plan shall include a residential
2 schedule that designates in which parent's home each minor child
3 shall reside on given days of the year, including provision for
4 holidays, birthdays of family members, vacations, and other spe-
5 cial occasions, consistent with the criteria in sections 10 to
6 17.

7 (2) If a parent fails to comply with the parenting plan or a
8 child support order, the other parent's obligations under the
9 parenting plan or the child support order are not affected. The
10 court may hold a parent who fails to comply with a parenting plan
11 in contempt of court.

12 (3) A permanent parenting plan shall set forth the provi-
13 sions of subsection (2) and sections 7(1)(a) to (c) and 8(2) and
14 (3).

15 Sec. 10. The court shall not order an alternative dispute
16 resolution process if the court finds that a limiting factor
17 under sections 13 to 17 applies or that either parent is unable
18 to afford the cost of the proposed dispute resolution process.
19 If a dispute resolution process is not precluded or limited,
20 then, in designating the process, the court shall consider all
21 relevant factors, including, but not limited to, all of the
22 following:

23 (a) Differences between the parents that would substantially
24 inhibit their effective participation in a designated process.

25 (b) The parents' wishes or agreements and, if the parents
26 have entered into agreements, whether the agreements were made
27 knowingly and voluntarily.

1 (c) Differences in the parents' financial circumstances that
2 may affect their ability to participate fully in a given dispute
3 resolution process.

4 Sec. 11. (1) The court shall approve the parties' agreement
5 allocating decision making authority or specifying rules in the
6 areas listed in section 8(1) if the court finds all of the
7 following:

8 (a) The agreement is consistent with a limitation on a
9 parent's decision making authority mandated by sections 13 to
10 17.

11 (b) The agreement is made knowingly and voluntarily.

12 (c) The agreement is in the best interests of the child.

13 (2) If the parties do not reach an agreement on allocating
14 decision making authority or the court does not approve the
15 parties' agreement as provided in subsection (1), the court shall
16 allocate decision making authority based upon the best interests
17 of the child. The court shall order sole decision making to 1
18 parent if the court finds any of the following:

19 (a) A limitation on the other parent's decision making
20 authority is mandated by sections 13 to 17.

21 (b) Both parents are opposed to mutual decision making.

22 (c) One parent is opposed to mutual decision making and the
23 opposition is reasonable based on the criteria in subsection
24 (3).

25 (3) Except as provided in subsections (1) and (2), the court
26 shall consider all of the following criteria in allocating
27 decision making authority:

(a) The existence of a limitation under sections 13 to 17.

(b) The history of participation of each parent in decision making in each of the areas listed in section 8(1).

(c) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas listed in section 8(1).

(d) The parents' geographic proximity to one another to the extent that it affects their ability to make timely mutual decisions.

Sec. 12. (1) The court shall order residential or parenting time provisions for a child based on the best interests of the child that encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule or parenting time shall be consistent with sections 13 to 17. If the limitations of sections 13 to 17 are not dispositive of the child's residential schedule or parenting time, the court shall consider all of the following factors:

(a) The relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting functions relating to the child's daily needs.

(b) An agreement by the parties, provided it was entered into knowingly and voluntarily.

(c) Each parent's past and potential for future performance of parenting functions.

(d) The child's emotional needs and developmental level.

(e) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities.

(f) The child's wishes if the child is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule or parenting time.

(g) Each parent's employment schedule. The residential schedule or parenting time shall accommodate those employment schedules.

(2) The court may order that a child frequently alternate his or her residence between the parents' households for brief and substantially equal intervals of time only if the court finds all of the following:

(a) The provisions are in the best interests of the child.

(b) No limitation exists under sections 13 to 17.

(c) Either of the following:

(i) The parents have agreed to the provisions and the agreement was knowingly and voluntarily entered into.

(ii) The parents have a satisfactory history of cooperation and shared performance of parenting functions and the parents are available to each other, especially in geographic proximity, to the extent necessary to ensure their ability to share performance of the parenting functions.

Sec. 13. A parenting plan shall not require mutual decision making or designation of an alternative dispute resolution

1 process if the court finds that a parent has engaged in any of
2 the following conduct:

3 (a) Willful abandonment that continues for an extended
4 period of time or substantial refusal to perform parenting
5 functions.

6 (b) Physical, sexual, or a pattern of emotional abuse of a
7 child.

8 (c) A history of acts of domestic violence or an assault or
9 sexual assault that causes grievous bodily harm or the fear of
10 that harm.

11 Sec. 14. (1) Subject to subsection (3), a parent's parent-
12 ing time with his or her child shall be limited if the court
13 finds that the parent has engaged in any of the following
14 conduct:

15 (a) Willful abandonment that continues for an extended
16 period of time or substantial refusal to perform parenting
17 functions.

18 (b) Physical, sexual, or a pattern of emotional abuse of a
19 child.

20 (c) A history of acts of domestic violence or an assault or
21 sexual assault that causes grievous bodily harm or the fear of
22 that harm.

23 (2) Subject to subsection (3), a parent's parenting time
24 with his or her child shall be limited if it is found that the
25 parent resides with an individual who has engaged in any of the
26 following conduct:

1 (a) Physical, sexual, or a pattern of emotional abuse of a
2 child.

3 (b) A history of acts of domestic violence or an assault or
4 sexual assault that causes grievous bodily harm or the fear of
5 that harm. This subsection does not apply if subsection (3)
6 applies.

7 (3) If a parent is convicted as an adult of a violation of
8 any of sections 520b to 520g of the Michigan penal code, 1931 PA
9 328, MCL 750.520b to 750.520g, the court shall restrain the
10 parent from contact with a child that would otherwise be allowed
11 under this chapter. If a parent resides with an adult who has
12 been convicted, or with a juvenile who has been adjudicated, of a
13 violation of any of sections 520b to 520g of the Michigan penal
14 code, 1931 PA 328, MCL 750.520b to 750.520g, the court shall
15 restrain the parent from contact with the parent's child except
16 contact that occurs outside that adult's or juvenile's presence.
17 If the court finds that the individual described in this subsec-
18 tion who resides with the parent is the parent's minor child or
19 ward, and finds that the safety and welfare of the child subject
20 to the parenting plan will be adequately protected, the court may
21 permit contact with that parent in that individual's presence.

22 (4) In limiting parenting time based on conduct found under
23 subsection (1), the court shall consider the amount of time that
24 has passed since the conduct occurred or the last occurrence of
25 the conduct upon which the limitation is being based.

26 Sec. 15. (1) The limitations imposed by the court under
27 section 14(1) and (2) shall be reasonably calculated to protect

1 the child from physical, sexual, or emotional abuse or harm that
2 could result if the child has contact with the parent requesting
3 parenting time. If the court expressly finds, based on the evi-
4 dence and on the record, that limitation on the parenting time
5 with the child does not adequately protect the child from the
6 harm or abuse that could result if the child has contact with the
7 parent requesting parenting time, the court shall restrain the
8 parent requesting parenting time from all contact with the
9 child.

10 (2) The court shall not enter an order under subsection (1)
11 allowing a parent to have contact with a child if the parent is
12 found by clear and convincing evidence in a civil action or by a
13 preponderance of the evidence in an action under the juvenile
14 code, chapter XIIIA of 1939 PA 288, MCL 712A.1 to 712A.32, to have
15 sexually abused the child. The court shall not enter an order
16 allowing a parent to have contact with the child if the parent
17 resides with an individual who is found by clear and convincing
18 evidence in a civil action or by a preponderance of the evidence
19 in an action under the juvenile code, chapter XIIIA of 1939 PA
20 288, MCL 712A.1 to 712A.32, to have sexually abused a child. If
21 the court finds that the individual described in this subsection
22 who resides with the parent is the parent's minor child or ward,
23 and finds that the safety and welfare of the child subject to the
24 parenting plan will be adequately protected, the court may permit
25 contact with that parent.

26 (3) If the court limits parenting time under section 14(1)
27 or (2) by requiring supervised contact between the child and the

1 parent, the court shall not approve of a supervisor who has
2 engaged in physical, sexual, or a pattern of emotional abuse of
3 the child. The court shall not approve of a supervisor unless
4 the supervisor accepts that the harmful conduct under section
5 14(1) or (2) occurred and is willing to and capable of protecting
6 the child from harm. The court shall revoke court approval of
7 the supervisor upon finding, based on the evidence and on the
8 record, that the supervisor has failed to protect the child or is
9 no longer willing to or capable of protecting the child.

10 Sec. 16. If the court expressly finds, based on the evi-
11 dence and on the record, that contact between the parent and the
12 child will not cause physical, sexual, or emotional abuse or harm
13 to the child and that the probability that the parent's or
14 another individual's harmful or abusive conduct will recur is so
15 remote that it would not be in the child's best interests to
16 apply the limitations of sections 14(1), (2), and (3) and 15(2)
17 and (3), then the court need not apply those limitations. This
18 section does not apply if section 15(1) applies.

19 Sec. 17. (1) The court may preclude or limit the parenting
20 plan if a parent's involvement or conduct could have an adverse
21 effect on the best interests of the child as evidenced by the
22 existence of any of the following factors:

23 (a) A parent's neglect or substantial nonperformance of par-
24 enting functions.

25 (b) A long-term impairment resulting from drug, alcohol, or
26 other substance abuse that interferes with the performance of
27 parenting functions.

1 (c) The absence or substantial impairment of emotional ties
2 between the parent and the child.

3 (d) The abusive use of conflict by the parent that creates
4 the danger of serious damage to the child's psychological
5 development.

6 (e) A parent's withholding of access to the child from the
7 other parent for a protracted period without good cause.

8 (f) Other factors the court expressly finds adverse to the
9 best interests of the child.

10 (2) In entering a parenting plan, the court shall not draw a
11 presumption from the provisions of a temporary parenting plan.

12 (3) In determining whether conduct described in this section
13 has occurred, the court shall apply the civil rules of evidence,
14 proof, and procedure.

15 Sec. 18. (1) A parent seeking a temporary order relating to
16 parenting shall file and serve a proposed temporary parenting
17 plan by motion. If contesting the proposed temporary parenting
18 plan, the other parent shall file and serve a responsive proposed
19 parenting plan. Either parent may move to have a proposed tempo-
20 rary parenting plan entered as part of a temporary order. The
21 parents may enter an agreed temporary parenting plan at any time
22 as part of a temporary order. The proposed temporary parenting
23 plan may be supported by relevant evidence and shall be accom-
24 panied by an affidavit that states at a minimum all of the
25 following:

1 (a) The name, address, and length of residence with the
2 individual or individuals with whom the child has lived for the
3 preceding 12 months.

4 (b) The performance by each parent during the last 12 months
5 of the parenting functions relating to the daily needs of the
6 child.

7 (c) The parents' work and child care schedules for the pre-
8 ceding 12 months.

9 (d) The parents' current work and child care schedules.

10 (e) Any of the circumstances set forth in sections 13 to 17
11 that are likely to pose a serious risk to the child and that war-
12 rant limitation on the award to a parent of temporary residence
13 or parenting time with the child pending entry of a permanent
14 parenting plan.

15 (2) The friend of the court shall make a determination and
16 proposed order regarding a temporary parenting plan. If the
17 friend of the court cannot reach a determination or there is
18 objection to the proposed order, either party may make a motion
19 to the court to proceed with a hearing and determination as pro-
20 vided in sections 19 and 20.

21 Sec. 19. (1) At a hearing on a motion brought under section
22 18, the court shall enter a temporary parenting order incorporat-
23 ing a temporary parenting plan that includes all of the
24 following:

25 (a) A schedule for the child's parenting time with each
26 parent when appropriate.

1 (b) Designation of a temporary residence or residences for
2 the child.

3 (c) Allocation of decision making authority, if any. Absent
4 allocation of decision making authority consistent with
5 section 11, neither party shall make a decision for the child
6 other than those relating to day-to-day or emergency care of the
7 child, which shall be made by the party who is present with the
8 child.

9 (d) Temporary support for the child.

10 (e) A personal protection order, if applicable.

11 (2) A parent may make a motion for an order to show cause
12 and the court may enter a temporary order, including a temporary
13 parenting plan, upon a showing of necessity.

14 (3) A parent may move for amendment of a temporary parenting
15 plan, and the court may order amendment to the temporary parent-
16 ing plan, if the amendment conforms to the limitations of
17 sections 13 to 17 and is in the best interests of the child.

18 (4) If a proceeding for divorce, separate maintenance, or
19 annulment is dismissed, any temporary order or temporary parent-
20 ing plan is vacated.

21 Sec. 20. (1) After considering the affidavit required by
22 section 18 and other relevant evidence presented, the court shall
23 order a temporary parenting plan that is in the best interests of
24 the child. In making this determination, the court shall give
25 particular consideration to each of the following:

1 (a) Which parent has taken greater responsibility during the
2 last 12 months for performing parenting functions relating to the
3 daily needs of the child.

4 (b) Which parenting arrangements will cause the least dis-
5 ruption to the child's emotional stability while the action is
6 pending.

7 (2) The court shall also consider the factors used to deter-
8 mine a residential schedule or parenting time in a permanent par-
9 enting plan.

10 Sec. 21. (1) The court may interview the child in chambers
11 to ascertain the child's wishes as to the child's residential
12 schedule in a proceeding for divorce, separate maintenance, or
13 annulment. In its discretion, the court may permit counsel to be
14 present at the interview.

15 (2) The court may seek the advice of professional personnel,
16 whether or not they are employed on a regular basis by the
17 court. The advice given shall be in writing and shall be made
18 available by the court to counsel upon request. Counsel may call
19 for cross-examination a professional consulted by the court.

20 Sec. 22. At the end of each 5-year period during which a
21 parenting plan is in effect and upon the filing of a petition by
22 1 of the parties governed by the parenting plan, the court shall
23 hold a hearing to review the parenting plan as to whether the
24 parenting plan continues to address the best interests of the
25 child. If the court finds that modification is in the best
26 interests of the child, the court shall modify the parenting
27 plan.

1 Sec. 23. (1) Except as otherwise provided in section 22 or
2 subsection (2), the court shall not modify a permanent parenting
3 plan unless the moving party shows proper cause for a modifica-
4 tion or a change of circumstances since entry of the parenting
5 plan order. If the moving party makes the showing required by
6 this subsection, the court shall modify the parenting plan upon
7 presentation of clear and convincing evidence that the modifica-
8 tion is in the best interests of the child.

9 (2) The court may order adjustments to a parenting plan upon
10 a showing of a change in circumstances of either parent or of the
11 child if the proposed modification is only 1 or more of the
12 following:

13 (a) Modification of the dispute resolution process.

14 (b) Minor modification in the residential schedule that does
15 not do either of the following:

16 (i) Change the residence the child is scheduled to reside in
17 the majority of the time.

18 (ii) Exceed 24 full days in a calendar year or 5 full days
19 in a calendar month.

20 (c) Based on a change of residence or an involuntary change
21 in work schedule by a parent that makes the residential schedule
22 in the parenting plan impractical to follow.

23 (3) If the court finds that a petition to modify an earlier
24 parenting plan is brought, or a refusal to agree to a modifica-
25 tion is made, in bad faith, the court shall assess the attorney
26 fees and court costs of the nonmoving parent against the moving
27 party.

1 Sec. 24. (1) A parent seeking a temporary parenting plan or
2 modification of a parenting plan shall submit, together with his
3 or her petition, an affidavit setting forth facts supporting the
4 requested plan or modification and shall give notice, together
5 with a copy of his or her affidavit, to other parties to the pro-
6 ceedings, who may file opposing affidavits. The court shall deny
7 the petition unless it finds that adequate cause for hearing the
8 motion is established by the affidavits, in which case it shall
9 set a date for hearing on an order to show cause why the
10 requested plan or modification should not be ordered.

11 (2) A parent may file a petition for modification of a par-
12 enting plan only in the county of the court that issued the order
13 implementing that plan.

14 Sec. 25. Solely for the purposes of other state or federal
15 statutes or other legal requirements that require a designation
16 or determination of legal or physical custody for purposes such
17 as, by way of example and not limitation, tax exemptions or
18 health care benefits, the court may designate in the parenting
19 plan or by separate order a child's legal or physical custodian
20 or custodians. This designation does not affect either parent's
21 rights and responsibilities under the parenting plan. In the
22 absence of such a designation, the parent with whom the child is
23 scheduled to reside the majority of the time shall be considered
24 the child's custodian for those purposes.

25 Enacting section 1. This act takes effect January 1, 1998.

1 Enacting section 2. This act does not take effect unless
2 Senate Bill No. _____ or House Bill No. _____ (request
3 no. 00059'97 a) of the 89th Legislature is enacted into law.