

# Legislative Analysis



## PARENTING COORDINATOR: CREATE POSITION

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**House Bill 5082 (Substitute H-1)**

**Sponsor: Rep. Kurt Heise**

**Committee: Judiciary**

**Complete to 5-20-14**

## A SUMMARY OF HOUSE BILL 5082 AS REPORTED BY COMMITTEE 5-18-14

The bill would add a new section to the Child Custody Act to:

- Allow for the court appointment of a parenting coordinator in child custody disputes.
- Require both parties to agree to the appointment.
- Prescribe the scope of the parenting coordinator's duties.
- Identify relationships with a history of coercion or violence and require additional safety protocols.
- Specify what must and what may be included in a parenting coordinator order.
- Require a report to DHS by a PC if child abuse or neglect is suspected.
- Provide limited civil immunity to the PC.
- Require the State Court Administrative Office (SCAO) to develop qualification and training standards for PCs under the direction of the state supreme court.
- Require all PCs to complete that training.

Under the bill, a parenting coordinator would be a person appointed by the court for a specified time to help implement the parenting time orders of the court and to help resolve parenting disputes that fall within the scope of the PC's appointment. The parties and the PC must agree to the appointment and its scope.

Qualifications and standards for the training of PCs would be developed by the State Court Administrative Office (SCAO) as directed by the state supreme court. The training would have to include instruction regarding coercive and violent domestic relationships. A PC must complete the training within two years of when the standards are promulgated.

### Appointment and role of a parenting coordinator

Before appointing a PC, the court must consider any history of a coercive or violent relationship between the parties. The court must ensure that the order appointing a PC provides adequate protection to the victim of a coercive or violent relationship.

If the court finds that the appointment of a PC is no longer helpful to the court in resolving parenting disputes, or if the process is no longer safe for a party or child, the court could terminate the appointment.

A PC could resign at any time, but would need to provide notice to the parties and to the court. If the court finds that a party has refused to pay its share of the PC costs as a

means to force the PC to resign, the court could use contempt sanctions to enforce payment of the PC's fee.

The PC would make recommendations in writing and provide copies to the parties in the manner specified in the parenting coordination order. If a party attaches the recommendation to a motion or other filing, the court would have the discretion to read and consider the recommendation; however, the recommendation is not evidence unless the parties stipulate that it is.

A parent coordinator could not recommend relief that is less protective than any other order related to the parties.

Subject to the Michigan Rules of Evidence, the court could allow the testimony of the PC if it finds the testimony useful to the resolution of a pending dispute. The PC could not testify regarding statements received from a child involved in the parenting coordination if the PC believes the disclosure would be damaging to the child.

#### Coercive or violent relationships

A PC would have to make reasonable inquiries whether either party has a history of a coercive or violent relationship with the other party. A "reasonable inquiry" would include the use of the domestic violence screening protocol for mediation provided by SCAO.

If the PC determined that a history of a coercive or violent relationship exists between the parties, the PC could not bring the parties within proximity of each other unless the party at risk from violence or coercion requests it and the PC determines with that party what reasonable steps, if any, can be taken to address concerns regarding coercion or violence.

A PC would not be required to disclose information if doing so would compromise the safety of a party or a child.

#### Suspected child abuse

A PC having reasonable cause to suspect child abuse or neglect must immediately make oral and written reports, or cause oral and written reports to be made, to the Department of Human Services as provided in Section 3 of the Child Protection Act.

#### Civil immunity

If acting within the scope of authority as parenting coordinator, a PC would be immune from civil liability for an injury to a person or damage to property.

#### Parenting coordinator order

An order appointing a PC would have to include all of the following:

- ❖ An acknowledgement that each party has had the opportunity to consult with an attorney and a domestic violence counselor.
- ❖ An acknowledgement that:
  - The PC is neutral.

- The PC may have ex parte communications with the parties, their attorneys, and third parties ("ex parte" refers to contact with one party outside the presence of the other).
  - Except as provided in the bill, communications with the PC are not privileged or confidential.
  - By agreeing to the order, the parties are giving the PC authority to make recommendations regarding disputes.
- ❖ The specific duration of the order and a statement that the PC may resign due to nonpayment of the fee. The order may include that the PC's term could be extended by consent of the parties for specific periods of time.
- ❖ An explanation of the parent coordinator's costs and each party's responsibility for those costs, including any required retainer and required court appearance fees. The order could allow the PC to allocate specific costs to one party for cause.
- ❖ The scope of the PC's duties, which could include the following:
    - Transportation and transfers of the child between parents.
    - Vacation and holiday schedules and implementation.
    - Daily routines.
    - Activities and recreation.
    - Discipline.
    - Health care management, including determining and recommending appropriate medical and mental health evaluation and treatment (which would include psychotherapy, substance use disorder and batterer intervention treatment or counseling, and parent classes) for the child and the parents. The PC would designate whether recommended counseling was to be confidential. The PC could recommend how a health care provider is chosen.
    - School-related issues.
    - Parenting schedule alterations, as long as the basic time-sharing arrangement is not changed by more than a specified number of days per month.
    - Phase in provision of court orders.
    - Participation of other persons in parenting time.
    - Child care and babysitting issues.
    - Any other matters submitted to the PC jointly by the parties before the PC's appointment expires.
- ❖ Authorization for the PC to have access that may include all of the following:
    - Reasonable access to the child.
    - Notice of all proceedings, including requests for examinations affecting the child.
    - Access to any therapist of any of the parties or the child; school, medical, and activity records; and to the child's principal, teachers, and teacher's aides.
    - Copies of all evaluations and psychological test results performed on any child or parent, custodian, guardian, or other person living in the parent's

households (this could include, but would not be limited to, Friend of the Court reports and psychological evaluations).

- The right to interview the parties, attorneys, or the child in any combination, and to exclude any party or attorney from an interview.
  - The right to interview or communicate with any other person the PC considers relevant to resolve an issue or to provide information and counsel to promote the best interests of the child.
- ❖ The PC's dispute resolution process, explaining how the PC will make recommendations on issues, and the effect to be given to those recommendations. Both parties would have to be given an opportunity to be heard on issues under consideration by the PC and to respond to relevant allegations against them before a recommendation were made. The parties could agree that on specific types of issues, they must follow a PC's recommendations until modified by the court.

MCL 722.27c, proposed

#### **FISCAL IMPACT:**

House Bill 5082 would have a one-time fiscal cost on the State Court Administrative Office to develop parenting coordinator standards and training materials, and could increase costs to local units of government. The appointment of a parenting coordinator is permissive, so a local court would only incur costs after that court decides to appoint a parenting coordinator.

#### **POSITIONS:**

The State Bar of Michigan indicated support for the bill. (5-1-14)

The Family Law Section of the State Bar of Michigan indicated support for the bill. (5-8-14)

The Supreme Court Administrative Office indicated a neutral position. (5-1-14)

The Michigan Association for Justice indicated a neutral position, with concerns. (5-1-14)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.