

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1207 w/CS Parenting Coordination

**SPONSOR(S):** Garcia

**TIED BILLS:** IDEN./SIM. BILLS: CS/SB 2640

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families	16 Y, 0 N	Preston	Liem
2) Judiciary	16 Y, 0 N w/CS	Birtman	Havlicak
3) Judicial Appropriations (Sub)			
4) Appropriations			
5)			

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### SUMMARY ANALYSIS

The bill creates two new statutory definitions for the terms "parenting coordination" and "shared parenting plan", creates a new section of statute related to court-ordered parenting coordination, and delineates the specific requirements and parameters for the use of those coordinators.

The bill is anticipated to have no fiscal impact.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h1207c.ju.doc

**DATE:** April 1, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |   |  |   |
|--------------------------------------|---|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/>            | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |
| 5. Empower families?                 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            | N/A <input type="checkbox"/>            |

For any principle that received a “no” above, please explain:

To the extent that the bill allows legal disputes to be facilitated by a third party, it would appear that the size of government is not reduced.

#### B. EFFECT OF PROPOSED CHANGES:

Throughout courtrooms nationwide, a fairly recent trend has been the increasing use of therapists as parent coordinators. Some experts believe that families in high conflict are not receiving the services they require to succeed.<sup>1</sup> Even though these families have professionals such as judges, guardians, custody evaluators, attorneys and mental health providers, it seems that no one of these professional can impact these families in a therapeutic and long-term manner. Historically, judges have referred families to services such as mediation, parent education, and counseling. Unfortunately, the families most in need of ongoing monitoring often fall through the cracks and end up in the revolving door of court appearances.

Parent coordinators are typically experienced mental health professionals with additional training and experience who are granted limited authority to intervene in high-conflict divorce situations. Parent coordinators serve in a role similar to that of a guardian ad litem, by primarily working in the child’s best interest. However, unlike a guardian who is time-limited, the professional assigned as a parent coordinator is available in the future as needed to assist the family.

The role of the parent coordinator is to educate, mediate, monitor, ensure the court order is enforced, and assist the parents in implementing a workable parenting plan.<sup>2</sup>

The biggest difference a parenting coordinator typically makes is in fostering communication and problem-solving skills between the parents. This, in addition to counseling the parents on the underlying issues that cause the parental conflict, can help the parents to cooperatively parent their children. Studies have shown that parents who can cooperate in the co-parenting process without conflict raise children with fewer emotional problems. If that goal is not possible, than the parenting coordinator teaches parents to interact in front of the children without conflict which is the next best situation for the children.<sup>3</sup>

The number of states that use parent coordinators are increasing in number including Georgia, Florida, California and Pennsylvania. In Lee and Collier counties in Florida, attorneys and judges have been using parenting coordinators with great success to assist in high-conflict divorces where custody or

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<sup>1</sup> See Boyan, S. What is a Parent Coordinator?, Family Therapy News, American Association of Marriage and Family Therapists, June/July 2002.

<sup>2</sup> Id.

<sup>3</sup> See Ho, Victoria, “Parent Coordinators: An effective New Tool in Resolving Parental Conflict in Divorce”, The Florida Bar Journal, June 2000.

visitation issues are involved. Members of the bench and the bar have expressed concern related to the lack of statutory authority and standards for the practice.<sup>4</sup>

The bill provides the authority and standards, both for the use of parenting coordinators and the educational and experience requirements for such professionals, as well as guidelines under which their services may be utilized with families.

Specifically, the bill allows the court, upon its own motion or upon motion by one of the parties, to appoint a parenting coordinator if the court finds that the parties have failed to adequately implement their shared parenting plan; mediation has not been successful or has been determined to be inappropriate; and is in the best interests of the child. The bill provides that the determination of the parenting coordinator must be in writing, and is binding until a court orders otherwise, and is subject to a de novo review.

The bill provides that communications with the parenting coordinator are not confidential, unless a judge finds that confidentiality is in the children's best interests, provided that all parties and the parenting coordinator agree.

Parenting coordinators are required by the bill to meet all of the following qualifications, unless the parties agree otherwise, or unless otherwise ordered by the court:

- Licensure as a psychologist, school psychologist, clinical social worker, marriage and family therapist, mental health counselor, psychotherapist; or licensure as a physician with certification by the American Board of Psychiatry and Neurology;
- Three years of postlicensure practice;
- Completion of a Florida Supreme Court certified family mediation training program; and
- A minimum of 20 hours of specified parenting coordination training.

The bill allows additional qualifications to be established by the Florida Supreme Court or by the chief judge in the circuit in which the parenting coordinator provides services.

The bill requires the parenting coordinator to protect the best interests of the children, and provides the following duties:

- Assisting the parents in implementing the parenting plan, and developing structured guidelines for implementation of the plan;
- Developing guidelines for communication between the parents;
- Assisting the parents in developing parenting strategies in a manner that minimizes conflict;
- Teaching communication skills and principles of child development; and
- Educating both parents about the sources of their conflict and its effect on the children.

The bill also prohibits parenting coordinator from:

- Serving as a child custody evaluator in a proceeding involving the parties for whom he or she has provided prior parenting coordination services;
- Providing a determination, recommendation, or opinion on child custody or primary physical residence;
- Providing a determination on financial matters;
- Modifying the substantive rights of the parties as provided in the parenting agreement or other valid court order; and
- Serving in the role of therapist.

The bill allows courts to refer parties to parenting coordinators that charge a fee only upon a determination that the parties have the ability to pay, and provides that the parenting coordinator may be paid by the parties, or by public funds to the extent available.

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<sup>4</sup> Id.

The bill provides immunity from civil liability for a duly appointed parenting coordinator acting within the scope of performing their statutory duties, unless such person acted in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of the parties.

C. SECTION DIRECTORY:

**Section 1.** Amends s. 61.046, Florida Statutes, to define the terms “parenting coordination”.

**Section 2.** Creates s. 61.125, Florida Statutes, related to court-ordered parenting coordination; provides for appointment, confidentiality of communications, educational requirements, duties, compensation, prohibitions, a definition, and immunity.

**Section 3.** Provides for an effective date of October 1, 2004.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase court-ordered referrals to parenting coordinators, who would see an increase in clients served.

D. FISCAL COMMENTS:

The bill references the option of parenting coordinators being compensated by the parties or public funds without identifying the source of those funds. It does not appear that parenting coordinators are part of the ‘state court system’ as defined by s. 29.004, F.S., which would require funding from state revenues appropriated by general law.<sup>5</sup>

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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<sup>5</sup> See s. 29.004, F.S., as amended by s. 40, ch. 2003-402, effective July 1, 2004.

The bill does not affect county or municipal government.

2. Other:

**Access to Courts** - Article I, section 21 of the State Constitution provides: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." No similar provision exists in the federal constitution. Where citizens have enjoyed a historical right of access, the Legislature can only eliminate a judicial remedy under two circumstances: a valid public purpose coupled with a reasonable alternative,<sup>6</sup> or an overriding public necessity.<sup>7</sup> To the extent that this bill provides immunity from liability for the acts of parenting coordinators, it would not appear that a valid public purpose or overriding public necessity has been explicitly stated in the bill.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is silent as to who would be responsible for determining that parenting coordinators have met the statutory qualifications for service, and how such person would be compensated.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The sponsor offered an amendment at the Judiciary Committee meeting on March 24, 2004, that makes the following changes:

- Specifies that the determination of the parenting coordinator shall be in writing, and copied to all parties and their attorneys;
- Moves the definition of "parenting plan" to the substantive provisions of the bill;
- Requires that the parenting coordinator must generally act to protect the best interests of the children involved;
- Provides for the duties of the parenting coordinator;
- Provides for prohibitions;
- Tightens the immunity provisions by providing immunity only to duly appointed parenting coordinators in the performance of their statutory duties.

There were two amendments to the amendment that were also adopted. The first amendment, by Rep. Ambler, clarifies that a parenting coordinator may assist in developing structured guidelines for the implementation of the parenting plan. The second amendment, by Rep. Seiler, allows the court to appoint a parenting coordinator that does not otherwise meet the statutory qualifications and deletes language that would grandfather in parenting coordinators who do not meet the qualifications.

This analysis is to the bill as amended.

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<sup>6</sup> See *Kluger v. White*, 281 So.2d 1 (Fla. 1973).

<sup>7</sup> See *Rotwein v. Gersten*, 36 So.2d 419 (Fla. 1948).