

PARENTING PLAN PROCESS EVALUATION

Presented to:

House Children and Family Affairs Committee

**Senate General Welfare, Health and Human Resources
Committee**

House Health and Human Resources Committee

House Judiciary Committee

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EXECUTIVE SUMMARY

In 2000, the Tennessee General Assembly enacted Public Chapter 889 known as the Tennessee Parenting Plan Law. Pursuant to T.C.A. §36-6-414, the Administrative Office of the Courts (“AOC “) has been charged with the evaluation of the parenting plan processes. Pursuant to such statutory responsibility this report is being submitted to the Committee on Children and Family Affairs of the House of Representatives; the General Welfare, Health and Human Resources Committee of the Senate; the Health and Human Resources Committee of the House of Representatives; and the Judiciary Committees of the House of Representatives and the Senate.

There are three primary components of the parenting plan law. They are:

- Parent education,
- Alternative dispute resolution, and
- Parenting plan statutory process.

This report provides information on each component.

To obtain information for this report surveys were developed and distributed to parents, parent education providers, family mediators, judges, clerks, and attorneys. 591 surveys were generated to parents randomly selected across the state who had gone through a divorce proceeding completed within the first 6 months of 2003. 105 were returned as undeliverable. 72 surveys were completed and returned by parents. 89 surveys were sent to randomly selected education providers throughout the state. 41 were returned. 422 surveys were sent to family mediators throughout the state. 108 of those were returned. Surveys were sent via facsimile to all trial court judges throughout the state and were also distributed at judicial conferences. 58 were returned. Surveys were distributed in the same manner to all trial court clerks. 81 were returned. 293

surveys were generated to attorneys randomly selected across the state who had represented parents in divorce proceedings completed within the first 6 months of 2003. A total of 68 surveys were completed and returned.

Information was also gathered through random interviews with parents, educators, mediators, attorneys, judges and clerks. In addition, the nine parenting plan coordinators were interviewed.

This report is also based on information accessed from the Tennessee Judicial Information System ("TJIS") and from a file review of 627 divorce cases. The case file review sampling represented rural and urban judicial districts as well as districts that had parenting plan coordinators and districts that did not have coordinators.

It appears that the legislative goal to foster the parent-child relationship when parents divorce is being met by the parenting plan. Over 90% of the parents participating in the study found the parenting plan law provided an adequate means to foster their parental involvement. 67% of the attorneys felt the parenting plan law improved divorce procedure in Tennessee, while over 90% of the attorneys found the forms and parenting plan process satisfactory.

The study shows that judges also are satisfied with the plan. Court clerks observed that since implementation of the plan parents seem to have less confusion about their children and there were generally fewer post-divorce issues.

Between 2001 and October 2003, it is estimated that over 50,000 people have attended parenting education courses. Statistics from 65 University of

Tennessee extension offices, one of the major parent education providers in Tennessee, found that over 90% of the participants stated that the classes were helpful. Of particular note, over 90% of the participants stated the classes increased both their understanding of the importance for parents to work cooperatively with each other and the importance of children having meaningful relationships with each parent. 87% of the judges and 88% of the attorneys surveyed were satisfied with the parenting education component of the parenting plan.

Judges have been pleased with the mediation component of the parenting plan law. 78% of the parents surveyed were satisfied with the mediation services received and 67% of attorneys were satisfied with the mediation component.

The study does not indicate a need for legislative changes. While the study shows that participants are satisfied with the parenting plan law the study suggests several areas to focus on in the future. These include:

- Continue educating attorneys, parents, mediators, clerks, and parent education providers about the parenting plan process specifically the availability of reduced cost education and mediation services;
- Present the specific issue of a possible uniform parenting plan form to the Self-Represented Litigants task force that the AOC has convened and that is reviewing domestic relations/family law forms for possible uniformity throughout the state;
- Continue to be involved in ongoing policy discussions relating to the use of the parenting plan law and its processes in juvenile court paternity and custody issues; and
- Review the development of parent education courses specifically for post-divorce issues.

The AOC is willing to provide leadership, as appropriate, to address these issues.

EDUCATIONAL COMPONENT OF PARENTING PLAN LAW

The legislature mandated that divorcing couples with minor children or parents returning to court for issues related to children attend a parent education seminar. The seminar teaches the importance of protecting and enhancing the child's emotional development as well as informing parents of the legal process. The parent education seminar cannot be less than four hours in duration.

There are approximately 94 private education providers listed throughout Tennessee. Additionally, the University of Tennessee has 65 extension agents offering education classes across the state. The frequency of the parenting education classes is dependent upon individual needs and schedule demands of the counties served. Minimum qualifications for educational providers were established as a result of the Parenting Plan Pilot. However, courts and/or their own broad-based community education committee established within each judicial district a selection process, provider qualifications, and program curriculum and provider evaluation.

It is estimated that 50,002 participants have attended parenting education classes from 2001 through October 2003. This figure was obtained from information the parent educators provided to the AOC. Of those attending the classes, 86% were currently going through divorce proceedings, 11% of attendees were involved in post-divorce child custody issues and 3% attended classes for reasons other than divorce or post-divorce issues. At least 17% of the attendees have attended mediation prior to class.

Participant evaluations of the courses are voluntary. Evaluations of parenting classes provided by the 65 University of Tennessee Extension Offices for the time period January 2003 through August 2003 show 90.5% parents responding to the voluntary survey strongly agreed or agreed that the class was helpful; 93.2% strongly agreed or agreed that the class helped them understand about divorce; 91.6% strongly agreed or agreed that the class increased their understanding of why it is important for parents to work cooperatively with each other; 90.3% strongly agreed or agreed that they wanted to make a stronger effort to work with the other parent for the children's sake; 89.9% strongly agreed or agreed that the class helped them understand the importance of the children having a meaningful relationship with both parents; and 91.6% strongly agreed or agreed that the class helped them increase communication skills so as to be able to communicate with the former spouse. Comments from parents in the follow-up evaluations addressed things the parents learned from the course. These included the following:

- ... I have to be careful what I say or do, because it could hurt my child;
- Understanding things from the child's point of view, and knowing how their actions indicate they are having a problem and to remind the children daily that the other parent loves them though he is not here daily;
- Learning not to put the child in the middle;
- To realize that both parents have to cooperate for the good of the kids;
- Thank you state of TN as the class is most helpful. I learned a lot. I'm really glad this law has been passed to attend the class;
- State laws!;
- Kept me from being in contempt of court; and
- His attorney scheduled the mediation for the outstanding issues. The children being one of them. The custody of the children were the only thing we came to agreement on.

It appears that the parent education courses are providing what the legislature mandated. The classes are effectively educating parents on how to protect and enhance the child's emotional development while informing the parents regarding the legal process.

Throughout the state, 42% of the educators have Masters degrees in areas including Counseling, Social Work, Education and Psychology. 41% have a Masters degree and another degree or professional license, including licenses in the areas of Counseling, Psychology, Social Worker and Marriage and Family Counseling. 82% of the educational providers reported having received special training regarding parenting classes. 99% of the education providers were selected through a process established by the judicial districts where the providers wished to provide services.

Education Providers offered the following suggestions to help improve future parenting classes:

- Obtain feedback from judges and attorneys on specific information they would like provided in the classes;
- Receive legislative updates concerning child support, parenting plans and custody issues;
- Establish reporting requirements for all education providers,
- Provide additional training for attorneys on utilization of the parenting plan and parenting classes; and
- Establish a uniform process for handling certificates upon class completion.

In addition, some parent educators have questioned whether one 4-hour class is sufficient to make lasting, significant difference in parenting behaviors. Of particular interest, one judicial district offers a 12-hour parenting class over six 2-hour sessions. The philosophy behind the multiple sessions, was stated in this

way: “People need time to process information. If time is allowed to process information [that is] learned adults become more motivated.” From the survey responses, however, it appears parents feel the current classes are educational and helpful.

Currently, courts cannot deny a couple a divorce because either one or both parents did not attend the parent education course. The courts, however, are encouraging parents to attend classes using several methods. These methods consist of issuing show cause orders requiring parties to appear before the court to explain lack of attendance. Parties can be held in contempt of court for failure to attend the course and therefore can be punished by fine and/or up to ten days in jail. The party who fails to attend a parenting education class may have his or her visitation rights withheld or restricted until class requirements are completed. Courts have also granted sole-decision making authority to the other parent if one does not attend seminar. It appears the law gives the courts sufficient ability to enforce attendance without the option of denying a divorce for lack of compliance.

The majority of judges, attorneys, clerks, and mediators have indicated parenting classes are effective. 87% of the judges surveyed were very satisfied or satisfied with the parent education component of the parenting plan. One judge commented that “the parent education classes are a key factor by confronting the parents to show that their own conduct, and not necessarily just the other parent’s conduct, can have an adverse [effect] on the children who are caught in the middle.” 88% of attorneys are satisfied with the parent education

component of the law. Clerks also felt the courses helped parents through the process. A parent's attendance at a parenting education class, especially during the early stages of a divorce proceeding, positively impacts both the development of parenting plans and settlement in mediation. The survey of the family mediators indicated that in 61% of the cases they mediated, the parents had attended to the parent education course first. 74% of these cases resulted in total or partial parenting plan agreements being reached. 51% of the mediators stated that the parents' attendance at the parent education course helped with the mediation process. Mediator comments include the following:

- If both parents attend class, settlement percentage increases substantially.
- Parties are informed by the class and thus have equal bargaining powers since knowledge is power.

It appears that the parenting education course is following the statutory mandates and is in fact accomplishing the intent of the parenting plan law by protecting and enhancing the child's emotional development and informing the parents regarding the legal process.

MEDIATION COMPONENT OF PARENTING PLAN LAW

Mediation for development of parenting plans is not mandatory. Parents may voluntarily enter into the mediation process at any time during the divorce process, or the court may issue an order requiring mediation. To date, many judicial districts strongly encourage mediation before setting a trial date.

Local court rules vary regarding mediation. Some local court rules require parties to mediate if an agreement is not reached forty-five days prior to setting a trial date. Other local court rules require parents to go to mediation if a

permanent parenting plan is not signed by both parties, approved by the judge and filed with the clerk within 120 days of service of process. Judges account for 33% of referrals to family mediators for divorce/post -divorce parenting plan mediation. 56% of referrals to family mediators are initiated by the attorney recommending it to his/her client. The AOC will refer this finding to the Tennessee Judicial Conference Bench/Bar Committee. This committee, composed of both representatives of the judiciary and the bar, has been involved in studying local rules of practice.

Should the court order mediation, a Supreme Court Rule 31 listed mediator must be used. These mediators must have a minimum of 46 hours of training in mediation. To become a Family Mediator listed as having special training in domestic violence, the mediator must complete additional training on domestic violence issues. T.C.A. §36-6-409(5)(B) Courts are provided a list of approved Rule 31 mediators by the AOC. The AOC website also lists all Rule 31 listed mediators willing to mediate in each county. Mediation fees may be taxed as court costs. Courts may also determine that cases are appropriate for pro bono mediation. Pro bono mediations are processed through legal services offices. The court can order that the costs of reduced fee or no fee mediations be paid through the Parent Education and Mediation Fund that is managed by the AOC and is distributed pursuant to Supreme Court Rule 38. If ordered to be paid from this fund, mediators can charge a maximum of \$50 per hour in-session time and \$40 per hour out of session time for a total of 10 hours. It should be noted this is the same rate of pay that attorneys receive in court-appointed indigent

cases. The judge may select a mediator for the parties, or the parties may agree on a particular mediator. Mediators are available in all counties because many mediators are willing to work statewide. If mediators are not readily available, the court can order a settlement conference with a Special Master. T.C.A. §36-6-402.

The court cannot order mediation in every case. Dispute resolution is prohibited if a parent has willfully abandoned a child for an extended period of time; if there has been substantial refusal to perform parenting responsibilities; or if a parent has engaged in physical or sexual abuse or a pattern of emotional abuse of the parent, child or of another person living with that child. T.C.A. §36-6-406(a) In cases where there are allegations of domestic violence, where there is an order of protection, or where there is a criminal conviction for domestic abuse mediation can only take place after the court makes certain findings as delineated in T.C.A. §36-6-409(5).

Most parents that were surveyed by the University of Tennessee Extension Office learned about mediation because of an attorney recommendation or it was court ordered. 16% learned about mediation through the parent education course. Parents in the same survey who did not participate in mediation did not do so because the parties were able to work out the parenting plan without the need for outside help. 27% of those that did not attend mediation stated their attorneys completed the parenting plans.

Of the parents surveyed, 78% were satisfied with the services received in the mediation process. 67% of the attorneys were satisfied with the mediation

component of the parenting plan law. Attorneys were generally satisfied with the services their clients received in the mediation. Judges were pleased with the mediation component of the parenting plan law also. Comments from the judges included:

- A strength of the plan is mediation for future disputes;
- The parenting plan along with mediation has drastically reduced contested divorces and reduced cases coming back; and
- Changes which will surely occur are provided by providing means of changing permanent parenting plans through mediation first, then trial.

It was also learned in this study that juvenile courts are sending parties to mediation for parenting plans in paternity cases. Currently, there are two counties using specially trained mediators for juvenile cases and the mediation is provided without cost to the parents. According to the Tennessee Council of Juvenile and Family Court Judges 2002 Annual Report, there were 18,003 referrals to juvenile court for parentage issues (custody, visitation, paternity/legitimization and child support) during the time period of January 1, 2002 and December 31, 2002. This represents 12.5% of all juvenile court referrals. Given the large number of custody cases heard by juvenile courts, the legislature may wish to address the issue of whether the parenting plan law should be expanded to juvenile courts, and whether any modifications to the law would be necessary due to the large numbers of self-represented litigants in juvenile court.

PARENTING PLAN AND PROCESS

The parenting plan process in Tennessee has provided the opportunity for parents to feel more involved in decisions concerning their children's future when a divorce takes place. Research has shown that most parents, attorneys and

judges have found that the process is not too difficult or complex. Research also shows that parents, judges, attorneys and mediators feel the parent education course provides the parents with information to help them with the parenting plan process and that mediation helps with the process of developing a parenting plan. To date, post-divorce modifications of the parenting plans are not occurring in the majority of cases. When modifications occur, most are often regarding issues of child support. It appears the parenting plan process is meeting the legislative intent to foster the child and parent relationship.

Of parents surveyed, 91% felt the parenting plan forms were adequate. 94% of parents surveyed felt the parenting plan law allowed him/her to adequately participate as a parent. 94% felt the procedures for the parenting plan, specifically its formation and filing, were not too difficult to comply with or understand. Parents' comments included the following when asked for strengths of the parenting plan process:

- Gives guidelines for parents to follow,
- For parents who argue over visitation, the plan covers it all,
- Defines clearly the schedule and is fair to all,
- It preempts many problems. It's great to have it in writing,
- The parenting plan offers a variety of options, however parents should be stressed to follow it.

A weakness of the parenting plan process is the fact that 86% of the parents surveyed did not know that there was a process for reduced fee or no-fee parent education or mediation. Most attorneys surveyed had not used the process. One commented it was too burdensome a process. All other attorneys that had used the process felt it was satisfactory.

Education regarding the availability of this benefit appears to be necessary.

Attorneys appear to be content with the parenting plan law. 92% of attorneys surveyed were generally satisfied with the parenting plan form. 89% stated that the forms and the procedures were not difficult to comply with. 75% felt that there should be a parenting plan form that is statutorily mandated for use by every court with divorce jurisdiction. Overall, 67% of attorneys felt that the Tennessee parenting plan law improved divorce procedure. Strengths of the parenting plan law per the attorneys are that the plan:

- Provides answers to facts and questions; roadmap for parents,
- Reduces litigation especially post divorce litigation,
- Provides consistency,
- Is really a lifesaver for the lawyers as much as the parents,
- Requires greater attorney/client interaction which I believe takes more time, but is beneficial to the parents and children,
- Is a huge step in family law progress and family relationships all together. I spend a considerable amount of time in the details of the plan with my client. When that is done, and the client and the other parent have a detailed plan there is minimal to no future problems even in the most heated case. This is beneficial to all involved, especially the children,
- I am an advocate for the amount of detail the law mandates and I feel the parties are much less likely to return to court as a result thereof, and
- ... it was common practice in this judicial district for attorneys to submit marital dissolution agreements that provided that the non-resident parent would have liberal visitation with the parties children. These plans inevitably lead to further litigation because one parties view of liberal visitation was often different then the others. Forcing attorneys to focus on those things which they should have focused on prior to the adoption of the parenting plan law has ended this shoddy practice.

When asked about the weaknesses of the parenting plan process attorneys responded as follows:

- Temporary parenting plan starts battle as to who will “have control.”,
- I believe it has complicated an already complicated system and that it has financially overburdened the participants of the divorce,

- Get rid of all local rules of court as they apply to the parenting plan and make it a statewide uniform rule,
- Increases costs because of mediation and education course costs being added,
- Need flexibility in addressing variations that are bound to occur, and
- Too much paperwork.

Judges surveyed were satisfied with the parenting plan law. When asked about the strengths of the plan judges responded that:

- ... the parenting plan law has made a significant impact to decrease the adverse affects that divorce has upon minor children,
- Since implementation of the parenting plan law and its requirements, I have seen a significant drop in the number of contested custody cases, both temporary and final. A contested matter is now the exception rather than the rule, and
- I have gone from weekly contested temporary custody and final custody hearings to an average of less than 8 a year.

Judges did not have any overall concerns regarding the plan. Statistics show that in the years 2001 through 2003, in divorces with children, the number of cases with parenting plans averaged 91%. In approximately 70% of cases either one parent or both parents had attended the parent education course. In an average of 16% of the cases, mediation was used to try to come to an agreement without the necessity of a contested court hearing. During this time period, there was no further court action post-divorce in 83% of the cases. Cases that were re-opened were due to circumstances that could not have been contemplated when the parenting plan was initiated. According to judges, reasons for re-opening cases included: employment of one spouse so child support becomes an issue; a change in the child's needs because of age or one party remarries; an introduction of a step-parent, or alcohol or drug abuse; or one parent re-locating. During the study's time period, July 2001 through December

2003, statistics indicate that 34% of cases were re-opened due to contempt issues – failure to obey a court order. Almost 25% of all re-opened cases were due to child support issues. Only 18% of re-opened cases were due to residential parenting issues. Parenting plans were determined by the court, and not by parental agreement, in 23% of the cases in 2001. In 2003, they were court determined in only 8% of the cases.

Clerks (often the first person in the court system that many parents see) reported there was less confusion among parents concerning their children since the implementation of the parenting plan law. The clerks also observed there were less post-divorce issues. Statistics noted above support these contentions.

Mediators surveyed indicated that when the parents are familiar with the parenting plan process they are more apt to work together to obtain mutually agreed upon decisions concerning the children. The fact that 74% of the mediated cases resulted in partial or total mediated parenting plans when the parents had also attended the parenting education class is consistent with that observation.

Parenting plan coordinators noted that the parenting plan process is in fact doing as the legislature intended and requiring parents to address residential, emotional, and stability issues for the children. Coordinators' concerns focused on: the lack of uniformity of the plans and enforcement throughout the state; the perception of attorneys and clerks of added paperwork; and the lack of education on the part of the parents and attorneys about the process.

CONCLUSION

Based upon 2001 – 2003 case data, the Parenting Plan Law has had a positive overall effect on the divorce process. The Parenting Plan processes and procedures are being effectively utilized across Tennessee. This study has indicated that the rate of compliance with the parenting plan law is similar regardless of whether a judicial district benefits from the services of a parenting plan coordinator or not. The study has raised areas to focus on in the continued implementation of the law. The AOC is willing to provide leadership as may be appropriate. Specific areas to focus on include:

- Education of attorneys, parents, mediators, clerks, and parent education providers about the parenting plan process specifically the availability of reduced cost education and mediation services;
- Uniform parenting plan issue to be provided to the Self-Represented Litigants task force that the AOC has convened and that is reviewing domestic relations/family law forms for possible uniformity throughout the state;
- Ongoing policy discussions relating to the use of the parenting plan law and its processes in juvenile court paternity and custody issues; and
- Review the development of parent education courses specifically for post-divorce issues.

As the AOC continues in its responsibility as the steward of the Parent Education and Mediation Fund, the information from this study will provide guidance in the best way to utilize those funds.