

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1781

Short Title: Divorce Effects Program/Parenting Plan. (Public)

Sponsors: Representatives Hilton, Tillis (Primary Sponsors); Avila, Current, and Samuelson.

Referred to: Children, Youth and Families, if favorable, Judiciary III.

April 19, 2007

A BILL TO BE ENTITLED

AN ACT REQUIRING THE PARENTS OF MINOR CHILDREN OR THE CUSTODIANS OF MINOR CHILDREN TO COMPLETE A DIVORCE EFFECTS PROGRAM AND TO ENTER INTO A PARENTING AGREEMENT BEFORE ENTRY OF A JUDGMENT OF DIVORCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 50 of the General Statutes is amended by adding the following new sections to read:

"§ 50-25. Divorce effects program.

(a) The parties to a divorce shall complete a divorce effects program and may complete a questionnaire as provided in this section before entry of the judgment of divorce. This subsection applies only if one or more of the following criteria are met:

(1) The parties to the divorce are the parents of a minor child.

(2) Either party is the physical custodian of a minor child when the complaint for divorce is filed.

(3) The wife is pregnant and, after the child is born, the husband would be the child's presumed father. If the pregnancy is discovered after the complaint is filed, but before entry of the judgment of divorce, the court shall not enter the judgment until the parties comply with this section.

(b) The divorce effects program shall include information related to all of the following subjects:

(1) A child involved in the action, including:

a. Developmental stages of the child;

b. Responses to divorce, including possible expected responses of the child to the parents' divorce;

c. Symptoms of maladjustment to divorce and responses to maladjustment; and

- 1 d. Education or counseling options for the child.
- 2 (2) Parties to the action, including:
- 3 a. Communication skills;
- 4 b. Conflict resolution skills;
- 5 c. Emotional adjustment, family adjustment, financial adjustment,
- 6 and work adjustment techniques;
- 7 d. Stress reduction techniques;
- 8 e. Parallel and cooperative parenting techniques;
- 9 f. Reconciliation and counseling options, and remarriage issues;
- 10 and
- 11 g. Substance abuse information and referral.
- 12 (3) Court procedures and processes as described in information available
- 13 from the relevant office of the court.
- 14 (c) The provider of a divorce effects program shall issue a certificate to each
- 15 individual who completes the program.
- 16 (d) The court shall not order a divorce effects program if a party to the marriage
- 17 files a sworn statement that the party is a victim of domestic violence committed by the
- 18 other party or the party has been willfully abandoned by the other party for an extended
- 19 period of time. The sworn statement shall be confidential, reviewed only by the court or,
- 20 during a criminal investigation, a law enforcement officer or prosecutor, and shall not
- 21 be a part of the public record of the divorce action. The sworn statement shall be exempt
- 22 from the 'Freedom of Information Act,' 5 U.S.C. § 552.
- 23 (e) Parties required to complete a divorce effects program pursuant to this section
- 24 may complete a confidential questionnaire before finishing the divorce effects program.
- 25 Only the program provider and the court or court staff or, during a criminal
- 26 investigation, a law enforcement officer or prosecutor may review the questionnaire.
- 27 The questionnaire shall not be a part of the public record of the divorce action and is
- 28 exempt from the 'Freedom of Information Act,' 5 U.S.C. § 552. The questionnaire shall
- 29 discuss whether the divorce will:
- 30 (1) Improve, maintain, or diminish the love, affection, and other emotional
- 31 ties existing between the parties involved and the child.
- 32 (2) Improve, maintain, or diminish the capacity and disposition of the
- 33 parties involved to give the child love, affection, and guidance and to
- 34 continue educating and raising the child in the child's religion or creed,
- 35 if applicable.
- 36 (3) Improve, maintain, or diminish the capacity and disposition of the
- 37 parties involved to provide the child with food, clothing, medical care,
- 38 or other remedial care recognized and permitted under the laws of this
- 39 State in place of medical care and other material needs.
- 40 (4) Upset a stable, satisfactory environment.
- 41 (5) Result in a suitable living arrangement for the child involved.
- 42 (6) Improve, maintain, or diminish the mental or physical health of the
- 43 parties involved.

- 1 (7) Improve, maintain, or diminish school or community record of the
2 child.
- 3 (8) Improve, maintain, or diminish the willingness and ability of each of
4 the parents to facilitate and encourage a close and continuing parental
5 relationship between the child and the other parent.
- 6 (9) Reduce domestic violence or mental anguish of any of the parties
7 involved.

8 **"§ 50-25.1. Parenting plan.**

9 (a) Parties required to complete a divorce effects program in accordance with
10 G.S. 50-25 shall at all times during the divorce proceeding or during an action involving
11 a minor child's custody represent the child's best interests, which representation shall
12 include establishing a parenting plan. Both parties shall agree to a parenting plan that:

- 13 (1) Allows the child to be reared by both the child's father and the child's
14 mother in a manner that closely approximates the parents' rearing of
15 the child before establishing separate domiciles or filing for divorce,
16 unless it is not in the child's best interests;
- 17 (2) Provides for the child's care and sets forth the authority and
18 responsibilities of each parent with respect to the child. A parenting
19 plan may designate a parent as either the legal or physical custodian of
20 the child and may designate joint custody or sole custody to one
21 parent;
- 22 (3) Provides for a parenting time schedule, including custody rights on
23 weekends, weekdays, summer vacation, holidays, winter vacation,
24 birthdays, and other school vacation days;
- 25 (4) Sets forth requirements about sharing information pertaining to the
26 minor child, the move of a parent, parent-child communications, the
27 exchange of a child from one parent to the other, school involvement,
28 parental control of the child's activities, and missed parenting time;
29 and
- 30 (5) Encourages nonadversarial dispute resolution in the parenting plan
31 rather than relying on judicial intervention to resolve a dispute.

32 (b) The court shall not require a parent to submit a parenting plan if the parent
33 files a sworn statement that the parent is a victim of domestic violence committed by the
34 other parent or the parent has been willfully abandoned by the other parent for an
35 extended period of time. The sworn statement shall be confidential, reviewed only by
36 the court or, during a criminal investigation, by a law enforcement officer or prosecutor,
37 and shall not be a part of the public record of the divorce action. The sworn statement
38 shall be exempt from the 'Freedom of Information Act,' 5 U.S.C. § 552.

39 (c) The court shall not approve a parenting plan that requires mutual decision
40 making or designation of an alternative dispute resolution process if the court finds that
41 a parent has engaged in any of the following:

- 42 (1) Willful abandonment of the child that continues for an extended period
43 of time or substantial refusal to perform parenting functions.
- 44 (2) Physical or sexual abuse or a pattern of emotional abuse of a child.

1 (3) A history of acts of domestic violence or an assault or sexual assault
2 that causes grievous bodily harm or the fear of that harm.

3 (d) The Administrative Office of the Courts shall develop a form for use by a
4 parent in completing a parenting plan. The form shall be made available to both parties
5 and to individuals authorized to conduct a divorce effects program in accordance with
6 G.S. 50-25. The Administrative Office of the Courts may adopt rules necessary to carry
7 out the provisions of this section.

8 (e) If one or more parties obtain legal counsel in completing the parenting plan,
9 the parties shall disclose to the court that the party obtained legal counsel.

10 (f) If the court finds that a parent refuses to attend alternative dispute resolution
11 as provided in the parenting plan, the court may assess costs against the parent and
12 award attorneys' fees to the other parent. If a parent fails to comply with the parenting
13 plan or a child support order, the other parent's obligations under the parenting plan or
14 the child support order are not affected. The court may hold a parent who fails to
15 comply with a parenting plan in contempt of court.

16 (g) A parent seeking modification of a parenting plan shall seek the approval of
17 the other parent and use the dispute resolution procedures in the parenting plan. If the
18 parents cannot agree to a modification of the parenting plan, a parent may file a motion
19 with the court having jurisdiction over the case. The court may assess costs against a
20 parent who does not first seek the approval of the other parent or does not use the
21 dispute resolution procedures in the parties' parenting plan before filing a motion with
22 the court.

23 (h) The court shall not modify a parenting plan to change the custodial
24 environment of the child over the objection of a parent unless there is clear and
25 convincing evidence that it is in the best interests of the child.

26 (i) If the court finds that a motion to modify an earlier parenting plan is brought
27 in bad faith, or a refusal to agree to a modification is made in bad faith, the court may
28 assess attorneys' fees and court costs against the party acting in bad faith.

29 (j) If the parents are unable to agree on a parenting plan in accordance with this
30 section, the court shall enter an order determining the care, custody, tuition, and
31 maintenance of the minor child in accordance with the provisions of this Chapter."

32 **SECTION 2.** This act is effective when it becomes law and applies to
33 actions for divorce instituted on or after that date.