



**House
Legislative
Analysis
Section**

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**PARENTING TIME ORDERS,
HEALTH CARE EXPENSES**

**House Bill 6007 (Substitute H-3)
Sponsor: Rep. Andrew Raczkowski
Committee: Civil Law and Judiciary**

**House Bill 6009 (Substitute H-3)
Sponsor: Rep. Barb Vander Veen**

**House Bill 6020 (Substitute H-1)
Sponsor: Rep. Joanne Voorhees**

Committee: Family and Children Services

Revised First Analysis (5-28-02)

THE APPARENT PROBLEM:

Left in the wake of many divorce proceedings is the needs and best interests of the parties' children. For children, these tumultuous proceedings can be very taxing physically, emotionally, and psychologically. In recognition of this, the Child Custody Act of 1970 (Public Act 91 of 1970) establishes a presumption that it is in the best interest of a child to have a strong relationship with both parents, with parenting time to be granted accordingly. The act even goes so far as to state that a child has a right to parenting time with a parent (unless it is shown on the record by clear and convincing evidence that parenting time would endanger the child's physical, mental, or emotional health). Parenting time ensures that each parent is afforded the opportunity for continued parental responsibility for the child and parental access to the child, and goes well beyond the traditional view of "visitation".

Structured parenting time schedules are extremely beneficial to parents who do not work well together, inasmuch as the structured schedule seeks to remove the adversarial relationship between the parents with regard to parenting time. Parenting time schedules provide children with a stable routine, though should be flexible enough to meet the changing needs of the children and parents. Parenting time orders dictate which parent the child will spend time with after school, and on weekdays, holidays, and extended school breaks.

Both parents are expected to exercise all reasonable means necessary to ensure that the parenting time occurs as scheduled. The Friend of the Court is required pursuant to the Friend of the Court Act (Public Act 294 of 1982) to enforce parenting time

orders. The Friend of the Court enforces the parenting time orders pursuant to the provisions of the Friend of the Court Act or the Support and Parenting Time Enforcement Act (Public Act 295 of 1982). Under the Friend of the Court Act, the office may schedule a hearing or refer the parties to a domestic relations mediator, or taken any action under the Support and Parenting Time Enforcement Act if the parties are still unable to resolve their differences. Under the Support and Parenting Time Enforcement Act the office may apply a parenting time makeup policy, commence a civil contempt proceeding, or petition the court to modify the existing parenting time order.

Some people believe that current law does not provide adequate procedures for using joint meetings as a viable enforcement remedy. Under current law, absent a court order, there is not any requirement that a person attend a joint meeting nor does the Friend of the Court have the authority to impose a solution during a joint meeting. Legislation has been introduced to strengthen and clarify certain enforcement remedies for use by the Friend of the Court to enforce parenting time orders.

Along similar lines, the Family Support Act (Public Act 138 of 1966) provides for the provision of child support payments when a couple separates without actually getting a divorce. The intent of the act originally was to provide support to custodial parents who eventually went on public assistance, as a way to reimburse the state for providing the assistance. However, in recent years, the act has been increasingly used in cases in which parents of a child are not married. Generally, if paternity is disputed,

House Bill 6007, 6009 and 6020 (5-28-02)

the Paternity Act is followed to establish paternity and support orders. However, with the advent of DNA technology there are very few court cases brought forth involving the Paternity Act. When paternity is acknowledged, the Family Support Act is used to establish a support order.

In an unrelated matter, current law requires all support orders to contain a provision pertaining to the health care expenses of the child. Under current law, if parties seek to collect the health care expenses from the parties responsible for the costs, they must go through the court system. Current law, however, does not contain any specific provisions for parties to collect any health care expenses for the party that is responsible for those health care expenses. Legislation has been introduced to explicitly state the procedures to be taken to collect payment for any uninsured health care costs.

THE CONTENT OF THE BILLS:

House Bill 6007 would amend the Support and Parenting Time Enforcement Act (MCL 552.602 et al). It would take effect June 1, 2003.

The bill would define “custody or parenting time order violation” to mean an individual’s act or failure to act that interferes with a parent’s right to interact with his or her child in the time, place, and manner established in the order that governs custody or parenting time between the parent and the child, and to which the individual accused of interfering is subject.

Duties of the Friend of the Court. Under the act, with certain exceptions, in a dispute regarding parenting time, the Friend of the Court is required to apply a makeup parenting time policy, commence a civil action, or petition the court for a modification of existing parenting time provisions. The bill states that the Friend of the Court would take any of the actions above in response to an alleged custody or parenting time order violation. In addition to the above actions, the office would be allowed to schedule a mediation hearing or schedule a joint meeting.

The bill would delete a provision that requires the Friend of the Court to include a written report and recommendation with its petition to modify an existing order. The bill would also delete a provision that states that the Friend of the Court is not required to take any of the above actions listed in the act if the parties resolve their dispute through an informal joint meeting or through domestic relations mediation.

The bill would add that the Friend of the Court would be allowed to not respond to an alleged custody or parenting time order violation under the following circumstances:

- The complaining party has previously submitted at least two other complaints alleging a custody or parenting time order violation that were found to be unwarranted; the party was assessed costs because a complaint was not warranted; and he or she has not paid those costs.
- The alleged violation occurred more than 56 days before the complaint was submitted.
- The order does not include any enforceable provision that is considered to be relevant to the alleged violation.

The act requires each circuit to establish a makeup parenting time policy that allows a noncustodial parent who has been wrongfully denied parenting time to make up the time at a later date. Under the bill, the makeup parenting time would be *at least* the same type and duration as the denied parenting time. The bill would add that, among other requirements listed in the act, the policy would have to include that the wrongfully denied parent notify the Friend of the Court and the custodial parent in writing prior to using makeup time. The bill retains a provision that if the noncustodial parent plans to use a makeup weekend or weekday, the office and the custodial parent would have to be notified at least one week beforehand. However, the bill would require the noncustodial parent to provide notification at least 28 days (rather than 30 days) prior to a makeup holiday or summer.

The bill would delete a requirement that the Friend of the Court keep an accurate record of alleged parenting time arrears. The bill would also delete a requirement that the noncustodial parent give the Friend of the Court written notice of an alleged, wrongfully denied parenting time within seven days of the denial.

Under the act, if a wrongfully denied parenting time is alleged, and the Friend of the Court determines that action should be taken, the office is required to notify the custodial parent within five days that a failure to respond to the notification within seven days shall be considered to be an agreement that the parenting time was indeed wrongfully denied. Under the bill, the custodial parent would be notified that he or she would have to respond in writing within 14 days. The custodial parent would also be notified that the

makeup parenting time established by the court would be applied if he or she fails to respond to the notification.

The bill would delete a provision (and other related provisions) that requires a hearing to be held by a referee or a circuit court judge if the custodial parent makes a timely reply contesting the alleged wrongful denial of parenting time.

The bill would add that if a party to the parenting time order does *not* respond in writing to the Friend of the Court within 14 days, the office would notify each party that the makeup parenting time policy applies. In addition, if a party made a timely response to the notification, the office would be required to commence a civil action, petition the court, schedule mediation, or schedule a joint meeting.

Joint Meeting. The bill would add a section pertaining to the procedures for a joint meeting, which could either take place in person or through telecommunications equipment. At the start of the meeting, the parties would be advised that the purpose of the meeting is to reach some sort of accommodation, and that the individual conducting the meeting could recommend an order that the court could issue to resolve the dispute.

If the parties reached an accommodation, that accommodation would be recorded in writing with each party receiving a copy. If the parties did not reach an agreement, the individual conducting the meeting would submit to the court his or her recommendation resolving the dispute. If the individual issued a recommendation to the court, he or she would notify each party that participated in the joint meeting. The notification would include a copy of the recommendation; notice that the court could issue the recommended order unless a party objects to the recommendation within 14 days; when and where a written objection could be submitted; and notice that the party could waive the 14-day objection by returning a signed copy of the recommendation. If a party filed a written objection within the 14-day period, the Friend of the Court would set a court hearing, before a judge or referee, to resolve the dispute. If a party failed to file a written objection within the time limit, the office would submit the proposed order to the court for entry if the court approves it. If a hearing is held before a referee, either party would be entitled to a *de novo* hearing before a judge as provided under the Friend of the Court Act.

Civil Contempt Proceedings. Under the act, if the Friend of the Court determines that applying makeup parenting time does not resolve a dispute, the office is required to commence a civil contempt proceeding to resolve the dispute. Under the bill, if the Friend of the Court determined that any of the allowable actions listed above (applying the makeup policy; petitioning to modify an existing parenting time order; scheduling mediation; scheduling a joint meeting), with the exception of commencing a civil proceeding, did not resolve the parenting time dispute, the office would then be required to commence a civil proceeding to resolve the dispute.

Under the bill, if the court found that a party acted in bad faith, the court would be required to order the party to pay a sanction of not exceeding \$250 for the first incident, not exceeding \$500 for the second incident, and not exceeding \$1,000 for each subsequent incident. A sanction would be deposited into the Friend of the Court Fund. In addition, a sanction, a fine, and any costs ordered would become a judgement at the time that they are ordered. Furthermore, if the court finds that a party acted in bad faith, the court would also be required to pay the other party's costs.

House Bill 6009 would add provisions to the Friend of the Court Act (MCL 552.502 et al.) pertaining to enforcement procedures for uninsured health care expenses and custody or parenting time order violations. The bill would take effect June 1, 2003.

Uninsured Health Care Expenses. A complaint seeking enforcement for the payment of a health care expense would have to show that all of the following have been met:

- The parent against whom the complaint is issued is obligated to pay the uninsured health care expenses, a demand was made for payment of the uninsured portion within 28 days of the insurers' final payment or denial, and that parent did not pay the uninsured portion.
- The complaint was submitted on or before one year after the expense was incurred; or six months after the insurers' final payment or denial of coverage, if all measures necessary to submit a claim were completed within two months after the expense was incurred; or six months after a parent defaults in paying for the health care expense as required under a written agreement, signed by both parents that states specific bills covered, the amounts to be paid, and a payment schedule.

The office would send a copy of the complaint to the parent who is obligated to pay the uninsured health care expenses, and notify the person of his or her ability to file an objection. If the parent did not file a written objection within 14 days after receiving the complaint and notice, the amount of the expense stated in the complaint would become a support arrearage and would be subject to any enforcement procedure. If, however, the parent filed an objection within the 14-day period, the office would set a court hearing to resolve the matter.

Parenting Time. The act states that if the office receives a complaint alleging a custody or parenting time order violation, the office is required to send notice to the alleged violator informing him or her of the nature of the alleged violation, any proposed action, the availability of mediation, the right to petition to modify an order, and stating that a failure to respond within 14 days may result in contempt proceedings. Under the bill, if the office received a complaint, within 14 days after receiving the complaint, the office would send a copy of the complaint to the accused individual and each other party to the custody or parenting time order.

The bill would also clarify language pertaining to the duties of the office after it receives a complaint. Under the act, 14 days after notifying the alleged violator, the office may schedule joint meeting, refer the parties to a domestic relations mediator, or proceed with enforcement actions under section 41 of the Support and Parenting Time Enforcement Act (which includes commencing a civil contempt proceeding, filing a motion to modify an existing order, and applying the makeup policy). The bill states that if the office believed that the alleged violation could be addressed by taking an action under section 41, the office would be required to proceed with that action. [Note: House Bill 6007 would add to section 41 that the office could schedule a mediation hearing or schedule a joint meeting.]

Furthermore, the act allows the office to petition the court for a modification of the parenting time order, if there is a dispute regarding parenting after a final parenting time order has been entered in a domestic relations matter. Under the bill, for an open Friend of the Court case, if there was an unresolved dispute, the office could file a motion for modification, and the office would be required to send each party to the parenting time order a notice of the filing of the motion. The motion and each notice would have to include a written report and recommendation, and a statement notifying the parties of their ability to object to the modification. If no party objected to the

modification within 14 days after receiving notice, the office could submit an order incorporating the recommendation to the court for the court's adoption. If a party objected within the 14-day period, there would be a hearing before a judge or referee. At that hearing, the judge or referee could use statements of fact in the office's report or recommendation as evidence to prove a fact, if no other evidence were presented concerning that fact.

House Bill 6020 would amend the Family Support Act (MCL 552.452 et al) to allow the circuit courts to enter orders governing custody and support orders.

Under the bill, where there was no dispute regarding a child's custody, the court would include in an order for support, specific provisions governing custody of and parenting time for the child in accordance with the Child Custody Act of 1970 (Public Act 91 of 1970). If there were a dispute, the court would include in its order for support, specific *temporary* provisions governing custody of and parenting time for the child. Pending a hearing or other resolution of the dispute, the court could refer the matter to the Friend of the Court for a written report and recommendation. In a dispute, the prosecuting attorney would not be required to represent either party.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bill 6009 would have no fiscal impact. House Bills 6007 and 6020 would have no fiscal impact on the state, but could result in additional revenue or savings for local units of government. (5-23-02)

ARGUMENTS:

For:

Current law requires all support orders to contain a provision for health care coverage for the child. However, there does not exist in current law any provisions for the custodial parent to collect the uninsured health care costs from the parent who is responsible for those costs (such as if one parent is responsible for dental expenses, yet the other parent pays). House Bill 6009 would add language setting forth the administrative procedures necessary to collect for the costs of the uninsured health care expenses. These administrative procedures could be utilized as a means of keeping the matter out of the court whenever possible. This would enable the court to move other pending domestic relations matters through the system in a more expedited

manner. As a result, as more cases are handled administratively rather than judicially, the courts may have fewer operating expenses.

Against:

The 14-day period for an objection is not nearly long enough to provide parties involved in an alleged custody or parenting time dispute with adequate due process under the law.

Against:

As originally introduced, House Bill 6009 would have required a person pay the cost of the uninsured health care expense before being able to bring an action for recouping that expense under the bill. A great deal of debate took place in committee regarding this section. Many felt that requiring a person actually pay the cost of the uninsured health care expense would effectively prohibit low-income parents from obtaining the necessary health care for their child or children. However, some believe this would not be the case. The added provisions of the bill would be an administrative remedy, as a means of sidestepping the judicial process. Originally, the administrative remedy would have been allowed for cases in which the health care expense had already been paid. However, regardless of whether or not a person paid the uninsured health care expense, there still exists the traditional judicial remedy. The intent of the original language was to ensure that each party had paid their portion of the health care expense.

Response:

By not requiring payment of the uninsured health care expense, the bill provides complaining parents with equal opportunity for redress.

For:

For children, divorce proceedings can be very taxing physically, emotionally, and psychologically. In recognition of the importance of continued relationships with both parents after a divorce, court orders include specific provisions relating to parenting time. In many instances, many parents do not act with the best interests of the child when it comes to parenting time. Many parents deny the other parent parenting time as a means to “punish” the other parent. The bills would strengthen provisions regarding parenting time violations to deter parents from denying the other parent parenting time without good cause. House Bill 6007 states that makeup parenting time would be *at least* the same type and duration as the denied parenting time. This potentially increases the parenting time that the denying parent could lose. A parent might reconsider his or her decision to deny the other parent parenting

time if it meant they would actually lose more time beyond the time that they denied the other parent. In addition, the bill allows the court to sanction a party who acts in bad faith. This, too, will deter parents from denying the other parent parenting time without cause.

For:

House Bill 6020 would add language pertaining to parenting time in the Family Support Act. In recent years, this has been increasingly used to provide children born out-of-wedlock with support, when paternity is acknowledged. However, the act only contains provisions relating to support, and does not address parenting time. The bill would allow courts to issue parenting time orders without going through the procedures necessary to establish custody of the child.

POSITIONS:

The Family Independence Agency supports the bill. (5-21-02)

The Friend of the Court Association supports the concept of the bills. (5-22-02)

The Association for Children for Enforcement of Support supports the bills. (5-22-02)

Dads of Michigan PAC supports the bills. (5-22-02)

Analyst: M. Wolf

■ 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.