



**House
Legislative
Analysis
Section**

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PARENTING TIME ORDERS

**House Bill 6007 as passed by the House
Sponsor: Rep. Andrew Raczkowski
Committee: Civil Law and Judiciary**

**House Bill 6020 as passed by the House
Sponsor: Rep. Joanne Voorhees
Committee: Family and Children Services**

Second Analysis (6-4-02)

THE APPARENT PROBLEM:

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.

Legislation has been introduced to strengthen and clarify certain enforcement remedies for use by the Friend of the Court to enforce parenting time orders, and would add provisions relating to parenting time in the Family Support Act.

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 21 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 21 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 21 days; when and where a written objection could be submitted; and notice that the party could waive the 21-day objection by returning a signed copy of the recommendation. If a party filed a written objection within the 21-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.

In addition, under the act, a person who is notified of a show cause hearing may request a hearing on the proposed modification within 14 days of the notification. The bill would require the person to request a hearing within 21 days of the notice.

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. The bill would take effect on June 1, 2003.

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.

BACKGROUND INFORMATION:

The bills are part of a larger package of bills proposed by Governor John Engler and state Supreme Court Chief Justice Maura Corrigan that is designed to clarify and strengthen existing law, and centralize and streamline procedures taken to enforce orders, both of which are intended to better enable the local Friend of the Court Offices to refocus their resources, improve service, and increase child support collections. [See House Bills 6004-6012, 6017, and 6020.]

FISCAL IMPLICATIONS:

Fiscal information is not yet available.

ARGUMENTS:

For:

Left in the wake of many divorce proceedings are the needs and best interests of the parties' children. For children, these tumultuous proceedings can be very taxing physically, emotionally, and psychologically. Parenting time orders are designed in such a manner to provide the child with a stable environment that meets his or her best interests and needs. However, in many instances, parents do not act with the best interests of the child when it comes to parenting time. Often, parents deny the other parent parenting time as a means to "punish" the other parent. For instance, a parent may deny the other parent parenting time because the other parent is behind in support payments. In other instances, parents simply do not make a good faith effort to comply with the parenting time order such as denying parenting time because the child had a minor illness, the weather was bad, or he or she simply does not want the child to go. House Bill 6007 would strengthen provisions regarding parenting time order violations to deter parents from denying the other parent parenting time without good cause. The bill 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 he or she would actually lose more time beyond the time that he or she denied the other parent. In addition, the bill allows the court to sanction a party who acts in bad faith, depending on the number of violations. This too, will deter parents from denying the other parent parenting time without good cause.

In addition, the bill expands the use of, and strengthens procedures relating to, joint meetings. Joint meetings are called to have the parties discuss the allegations of a parenting time order violation and are intended to have the parties resolve their differences. However, absent a court order, the parties are not required to attend a joint meeting. In addition, the Friend of the Court does not have the authority to impose a solution. Under the bill, prior to the start of a joint meeting, the person conducting the meeting would advise the parties that the purpose of the meeting is for the parties to reach an agreement to resolve the dispute, and that he or she may submit to the court a recommendation resolving the dispute. At the conclusion of a joint meeting, the person conducting the meeting would either record the decision agreed upon by both of the parties or issue a recommendation to the court. This is intended to encourage the parties to work through their disagreement without going through judicial hearings to resolve the matter. By having the parties work together, the bill would help to lessen the confrontational and adversarial interactions that often permeate disputes involving parenting time. If parties can work out their disagreement on their own, it is more likely that they will work together and be more empathetic in the future when making decisions regarding parenting time.

Against:

House Bill 6007 would permit the Friend of the Court to decline to respond to an alleged custody or parenting time order violation if the complaining party submitted at least two complaints that were previously found to be unwarranted, and if the party had not paid costs that were assessed. In addition, the Friend of the Court would be permitted to decline to respond if the alleged violation occurred more than 56 days prior to the complaint. Both of these provisions fail to provide the complaining party with adequate protection under the law. The bill presumes that because a complaining parent has had prior complaints that were determined to be unwarranted, the next complaint that the person raises also must be unwarranted. Under this provision, a parent could have a legitimate complaint that could potentially not even be investigated by the Friend of the Court. In addition, the 56-day requirement to file a complaint potentially prohibits any investigation by the office into an alleged violation because the complaint was apparently not filed in a timely manner. If a parent was wrongfully denied parenting time, he or she should have every opportunity to have the situation remedied. Parenting time is a significant time in the lives of the children and the parents involved. The time lost is not made any less significant because it

occurred 56 days ago. Furthermore, the Child Custody Act states that a child has the right to parenting time. Enacting these exceptions effectively denies children the right to have parenting time with their parents.

For:

House Bill 6020 would add language pertaining to parenting time in the Family Support Act. The act provides for the provision of child support payments when a couple separates without actually getting a divorce. The intent of the act 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 the parents of a child are not married. Generally, if paternity is disputed, the Paternity Act is followed to establish paternity and support. 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. However, the act does not contain any provisions relating to parenting time.

Adding parenting time provisions in the Family Support Act serves the best interests of the child involved. As stated earlier, the act has been increasingly used in cases of out-of-wedlock births. While many of these parents may eventually marry each other, there remain a great number of “couples” with no relationship with each other, beyond the fact that the couple had a child together. While the Family Support Act provides support for the child, there are not any provisions relating to parenting time. The involvement of both parents in the lives of a child is extremely important. The Child Custody Act even states that it is in the best interest of the child to have a stable relationship with both parents. In addition, there have been numerous studies that indicate that the absence of fathers in the lives of their children can have a detrimental effect on a child’s well-being, and increase the likelihood of poverty, psychological problems, criminal activity or violence, drug and alcohol abuse, suicide, being a school drop-out, and teenage pregnancy. This is not to say that the absence of mothers in their children’s lives does not adversely affect a child, but rather that, in most instances of out-of-wedlock births, the mother retains full custody of the child. In most instances, absent a dispute over custody when children are born out-of-wedlock, parenting time is arranged informally between the parents. However, if problems arise out of the parenting time, there are no formal orders that can be enforced. Adding

parenting time provisions to the Family Support Act would alleviate this problem, and allow for the involvement of the Friend of the Court to enforce parenting time orders.

Furthermore, when there is a dispute over child custody, there are judicial proceedings to determine custody and parenting time. House Bill 6020 allows for the entering of a parenting time order absent a custody dispute. These added provisions allow the court to set parenting time, without going through the cumbersome process of establishing custody.

POSITIONS:

The Family Independence Agency supports the bills. (5-30-02)

The Friend of the Court Association supports the bills. (5-31-02)

The Association for Children for Enforcement of Support (ACES) supports the bills. (5-31-02)

Dads of Michigan PAC supports the bills. (6-3-02)

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.