

CHAPTER 190

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 97-1164

BY REPRESENTATIVES Sullivan, K. Alexander, G. Berry, Dyer, Nichol, Reeser, Dean, McElhany, Paschall, Mace, Pankey, Schwarz, Smith, and Tool;
also SENATORS Mutzebaugh, Matsunaka, and Powers.

AN ACT

CONCERNING THE ENFORCEMENT OF PARENTING TIME ORDERS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 14-10-129.5, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

14-10-129.5. Disputes concerning parenting time. (1) ~~Upon~~ **WITHIN THIRTY DAYS AFTER THE FILING OF** a verified motion by either parent or upon the court's own motion alleging that a parent is not complying with a parenting time order or schedule and setting forth the possible sanctions that may be imposed by the court, the court shall determine from the verified motion, and response to the motion, if any, whether there has been or is likely to be a substantial ~~and~~ **OR** continuing noncompliance with the parenting time order or schedule and either:

- (a) Deny the motion, if there is an inadequate allegation; or
 - (b) Set the matter for hearing with notice to the parents of the time and place of the hearing **AS EXPEDITIOUSLY AS POSSIBLE**; or
 - (c) Require the parties to seek mediation and report back to the court on the results of the mediation within sixty days. Mediation services shall be provided in accordance with section 13-22-305, C.R.S. At the end of the mediation period, the court may approve an agreement reached by the parents or shall set the matter for hearing.
- (2) After the hearing, if a court finds that a parent has not complied with the

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

parenting time order or schedule and has violated the court order, the court, in the best interests of the child, ~~may issue orders which may include but need not be limited to~~ SHALL ISSUE AN ORDER WHICH MAY INCLUDE BUT NOT BE LIMITED TO ONE OR MORE OF THE FOLLOWING ORDERS:

(a) AN ORDER imposing additional terms and conditions ~~which~~ THAT are consistent with the court's previous order; except that the court shall separate the issues of child support and parenting time and shall not condition child support upon parenting time;

(b) AN ORDER modifying the previous order to meet the best interests of the child;

(b.3) AN ORDER REQUIRING EITHER PARENT OR BOTH PARENTS TO ATTEND A PARENTAL EDUCATION PROGRAM AS DESCRIBED IN SECTION 14-10-123.7, AT THE EXPENSE OF THE NONCOMPLYING PARENT;

(b.7) AN ORDER REQUIRING THE PARTIES TO PARTICIPATE IN FAMILY COUNSELING PURSUANT TO SECTION 13-22-313, C.R.S., AT THE EXPENSE OF THE NONCOMPLYING PARENT;

(c) AN ORDER requiring the violator to post bond or security to insure future compliance;

(d) AN ORDER requiring that makeup parenting time be provided for the aggrieved parent or child under the following conditions:

(I) That such parenting time is of the same type and duration of parenting time as that which was denied, including but not limited to parenting time during weekends, on holidays, and on weekdays and during the summer;

(II) That such parenting time is made up within ~~one year~~ SIX MONTHS after the noncompliance occurs, UNLESS THE PERIOD OF TIME OR HOLIDAY CAN NOT BE MADE UP WITHIN SIX MONTHS IN WHICH CASE THE PARENTING TIME SHALL BE MADE UP WITHIN ONE YEAR AFTER THE NONCOMPLIANCE OCCURS;

(III) That such parenting time ~~is~~ TAKES PLACE AT THE TIME AND in the manner chosen by the aggrieved parent if it is in the best interests of the child;

(e) AN ORDER finding the parent who did not comply with the parenting time schedule in contempt of court and imposing a fine or jail sentence;

(e.5) AN ORDER IMPOSING ON THE NONCOMPLYING PARENT A CIVIL FINE NOT TO EXCEED ONE HUNDRED DOLLARS PER INCIDENT OF DENIED PARENTING TIME;

(f) AN ORDER scheduling a hearing for modification of custody with respect to a motion filed pursuant to section 14-10-131 or 14-10-131.5;

(g) ~~Awarding to the aggrieved party, where appropriate, actual expenses, including attorney fees, court costs, and expenses incurred by a parent because of the other parent's failure to provide or exercise court-ordered parenting time. Nothing in this section shall preclude a party's right to a separate and independent legal action in tort.~~

(h) ANY OTHER ORDER THAT MAY PROMOTE THE BEST INTERESTS OF THE CHILD OR CHILDREN INVOLVED.

(3) ANY CIVIL FINES COLLECTED AS A RESULT OF AN ORDER ENTERED PURSUANT TO PARAGRAPH (e.5) OF SUBSECTION (2) OF THIS SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE DISPUTE RESOLUTION FUND CREATED IN SECTION 13-22-310, C.R.S.

(4) IN ADDITION TO ANY OTHER ORDER ENTERED PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE COURT SHALL ORDER A PARENT WHO HAS FAILED TO PROVIDE COURT-ORDERED PARENTING TIME OR TO EXERCISE COURT-ORDERED PARENTING TIME TO PAY TO THE AGGRIEVED PARTY, ATTORNEY'S FEES, COURT COSTS, AND EXPENSES THAT ARE ASSOCIATED WITH AN ACTION BROUGHT PURSUANT TO THIS SECTION. IN THE EVENT THE PARENT RESPONDING TO AN ACTION BROUGHT PURSUANT TO THIS SECTION IS FOUND NOT TO BE IN VIOLATION OF THE PARENTING TIME ORDER OR SCHEDULE, THE COURT MAY ORDER THE PETITIONING PARENT TO PAY THE COURT COSTS, ATTORNEY FEES, AND EXPENSES INCURRED BY SUCH RESPONDING PARENT. NOTHING IN THIS SECTION SHALL PRECLUDE A PARTY'S RIGHT TO A SEPARATE AND INDEPENDENT LEGAL ACTION IN TORT.

SECTION 2. Title 14, Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 10.5
Parenting Time Enforcement Act

14-10.5-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO PARENTING TIME ENFORCEMENT ACT".

14-10.5-102. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT IN MOST SITUATIONS IT IS IMPORTANT TO THE HEALTHY DEVELOPMENT OF CHILDREN THAT THE CHILDREN SPEND QUALITY TIME WITH BOTH PARENTS. THE GENERAL ASSEMBLY FURTHER FINDS THAT DUE TO DISSOLUTION OF MARRIAGE, LEGAL SEPARATION, AND OUT-OF-WEDLOCK BIRTHS, FAMILIES ARE OFTEN DIVIDED AND AS A RESULT, MANY CHILDREN DO NOT HAVE THE OPPORTUNITY TO SPEND THE TIME WITH BOTH PARENTS THAT A COURT MAY HAVE DETERMINED IS IN THEIR BEST INTERESTS.

(2) THE GENERAL ASSEMBLY FURTHER FINDS THAT THE FEDERAL "PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996", PUBLIC LAW 104-193, ALLOWS STATES TO SEEK GRANTS OF FEDERAL FUNDS FOR THE ESTABLISHMENT AND ADMINISTRATION OF PROGRAMS TO SUPPORT AND FACILITATE CHILDREN'S ACCESS TO TIME WITH THEIR NONCUSTODIAL PARENT.

(3) IT IS THE PURPOSE OF THIS ARTICLE TO ENHANCE CHILDREN'S OPPORTUNITIES FOR ACCESS TO THEIR NONCUSTODIAL PARENT IN COMPLIANCE WITH ANY ORDERS ENTERED IN THAT REGARD. TO THAT END, THE GENERAL ASSEMBLY HEREBY DETERMINES THAT IT IS APPROPRIATE FOR THE STATE TO SEEK THE FEDERAL GRANT DESCRIBED IN SECTION 391 OF THE FEDERAL "PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996", PUBLIC LAW 104-193, IN ORDER TO EXPLORE ALTERNATIVE METHODS BY WHICH TO SUPPORT AND FACILITATE A CHILD'S

ACCESS TO AND TIME WITH HIS OR HER NONCUSTODIAL PARENT IN CONTESTED PARENTING TIME PROCEEDINGS.

14-10.5-103. Definition. FOR PURPOSES OF THIS ARTICLE, "NONCUSTODIAL PARENT" MEANS THE PARENT OF A CHILD WHO IS THE SUBJECT OF A PARENTING TIME COURT PROCEEDING AND WHO, PURSUANT TO A COURT ORDER, EITHER WAS NOT GRANTED CUSTODY BUT WAS AWARDED PARENTING TIME WITH HIS OR HER CHILD OR WHO WAS GRANTED JOINT CUSTODY AND PARENTING TIME WITH HIS OR HER CHILD BUT WHO IS NOT THE PARENT WITH WHOM THE CHILD PRIMARILY RESIDES.

14-10.5-104. Parenting time enforcement program - authorization.

(1) (a) THE APPROPRIATE STATE AGENCY, AS DETERMINED BY THE GOVERNOR, IS HEREBY AUTHORIZED TO DEVELOP A PARENTING TIME ENFORCEMENT PROGRAM. THE PROGRAM, IF DEVELOPED, SHALL COMPLY WITH ALL REQUIREMENTS AND RESTRICTIONS, IF ANY, SET FORTH IN FEDERAL LAW OR IN FEDERAL REGULATION PROMULGATED BY THE SECRETARY OF THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES AND, IF IN COMPLIANCE WITH FEDERAL LAW AND REGULATION, SHALL ADDRESS THE ENHANCEMENT AND FACILITATION OF CHILDREN'S ACCESS TO THEIR NONCUSTODIAL PARENTS BY ANY ONE OR ANY COMBINATION OF THE FOLLOWING METHODS:

(I) MEDIATION, BOTH VOLUNTARY AND MANDATORY;

(II) FAMILY COUNSELING;

(III) PARENTAL EDUCATION;

(IV) DEVELOPMENT OF PARENTING PLANS;

(V) PARENTING TIME ENFORCEMENT PROCEDURES, INCLUDING MONITORED PARENTING TIME, SUPERVISED PARENTING TIME, OR NEUTRAL DROP-OFF AND PICKUP LOCATIONS;

(VI) PARENTING TIME GUIDELINES;

(VII) ALTERNATIVE CUSTODY ARRANGEMENTS.

(b) THE PARENTING TIME ENFORCEMENT PROGRAM, IF DEVELOPED, MAY BE OPERATED ON A STATEWIDE BASIS OR ON A REPRESENTATIVE PILOT BASIS.

(2) THE SELECTED STATE AGENCY SHALL MONITOR, EVALUATE, AND REPORT ON THE PARENTING TIME ENFORCEMENT PROGRAM, IF DEVELOPED, IN ACCORDANCE WITH THE REGULATIONS PRESCRIBED BY THE SECRETARY OF THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES. SUCH AGENCY SHALL ALSO EVALUATE AND REPORT ON THE EFFECTIVENESS OF THE AMENDMENTS MADE TO SECTION 14-10-129.5, AS CONTAINED IN HOUSE BILL 97-1164.

SECTION 3. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 22, 1997