

## CHAPTER 165

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**CHILDREN AND DOMESTIC MATTERS**

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**SENATE BILL 93-25**

BY SENATORS Traylor, Bishop, Feeley, Gallagher, Groff, Hopper, Johnson, Mares, Martinez, Mendez, Pastore, Peterson, L. Powers, Trujillo, Wattenberg, Weissmann, and Wham;  
also REPRESENTATIVES Rupert, Benavidez, Armstrong, Keller, Knox, Owen, Pierson, Romero, Tanner, Williams, and Wright.

**AN ACT**

**CONCERNING A CHANGE IN THE TERM "VISITATION" TO "PARENTING TIME".**

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

**SECTION 1. Legislative declaration.** The general assembly hereby finds, determines, and declares that the term "visitation" when used in the Colorado Revised Statutes to refer to the time a noncustodial parent spends with his or her child has a connotation which does not adequately express the importance of the relationship between the noncustodial parent and the child. The task force on family issues established in article 7.6 of title 26, Colorado Revised Statutes, has studied this issue and has recommended that the term be changed to "parenting time". It is the intent of the general assembly in making this change to reflect the importance of the time a noncustodial parent spends with his or her child. It is not the intent of the general assembly to modify or change the meaning of the term "visitation" nor to alter the legal rights of a noncustodial parent with respect to the child as a result of changing the term "visitation" to "parenting time".

**SECTION 2.** 13-5-301 (3) (e) (V), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**13-5-301. Family law magistrates - qualifications - duties.** (3) Subject to the provision that no magistrate may preside in any trial by jury, family law magistrates shall have the following duties, powers, and authority:

(e) To conduct hearings under the "Uniform Dissolution of Marriage Act", article 10 of title 14, C.R.S., including:

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

(V) ~~Visitation~~ PARENTING TIME, and the modification thereof, including motions to restrict ~~visitation~~ PARENTING TIME or parental contact, where custody is not an issue;

**SECTION 3.** 14-4-102 (2) (d) (II), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**14-4-102. Restraining orders to prevent domestic abuse.** (2) A temporary or permanent restraining order to prevent domestic abuse may include:

(d) (II) If temporary care and control is awarded the order may include ~~visitation~~ PARENTING TIME rights for the other party involved.

**SECTION 4.** 14-5-124 (1), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**14-5-124. Rules of evidence - financial affidavit.** (1) In any hearing for the civil enforcement of this article, the court shall be governed by the rules of evidence applicable in a civil court action in the district court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to parentage or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee shall be unaffected by any interference by another obligee with rights of custody or ~~visitation~~ PARENTING TIME granted by a court.

**SECTION 5.** 14-10-103, Colorado Revised Statutes, 1987 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**14-10-103. Definition and interpretation of terms.** (3) ON AND AFTER JULY 1, 1993, THE TERM "VISITATION" HAS BEEN CHANGED TO "PARENTING TIME". IT IS NOT THE INTENT OF THE GENERAL ASSEMBLY TO MODIFY OR CHANGE THE MEANING OF THE TERM "VISITATION" NOR TO ALTER THE LEGAL RIGHTS OF A NONCUSTODIAL PARENT WITH RESPECT TO THE CHILD AS A RESULT OF CHANGING THE TERM "VISITATION" TO "PARENTING TIME".

**SECTION 6.** 14-10-112 (1), (2), and (6), Colorado Revised Statutes, 1987 Repl. Vol., are amended to read:

**14-10-112. Separation agreement.** (1) To promote the amicable settlement of disputes between the parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for the maintenance of either of them, the disposition of any property owned by either of them, and the custody, support, and ~~visitation~~ PARENTING TIME of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except terms providing for the custody, support, and ~~visitation~~ PARENTING TIME of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant

evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(6) Except for terms concerning the support, custody, or ~~visitation~~ PARENTING TIME of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides.

**SECTION 7.** 14-10-115 (3) (b) (III), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

**14-10-115. Child support - guidelines - schedule of basic child support obligations.** (3) (b) (III) Upon request of the noncustodial parent, the court may order the custodial parent to submit an annual update of financial information using the approved standardized child support guideline forms, including information on the actual expenses relating to the children of the marriage for whom support has been ordered. The court shall not order the custodial parent to update such financial information pursuant to this subparagraph (III) in circumstances where the noncustodial parent has failed to exercise ~~visitation~~ PARENTING TIME rights or when child support payments are in arrears or where there is documented evidence of domestic violence, child abuse, or a violation of a restraining order on the part of the noncustodial parent. The court may order the noncustodial parent to pay the costs involved in preparing an update to the financial information. If the noncustodial parent claims, based upon the information in the updated form, that the custodial parent is not spending the child support for the benefit of the children, the court may refer the parties to a mediator to resolve the differences. If there are costs for such mediation, the court shall order that the party requesting the mediation pay such costs.

**SECTION 8.** 14-10-116, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

**14-10-116. Representation of child.** The court may, upon the motion of either party or upon its own motion, appoint an attorney to represent the interests of a minor or dependent child with respect to ~~his~~ custody, support, and ~~visitation~~ PARENTING TIME. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against any or all of the parties; except that, if the responsible party is indigent, the costs, fees, and disbursements shall be borne by the state.

**SECTION 9.** 14-10-121, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

**14-10-121. Independence of provisions of decree or temporary order.** If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit ~~visitation~~ PARENTING TIME is not suspended; but ~~he~~ SAID PARTY may move the court to grant an appropriate order.

**SECTION 10.** The introductory portions to 14-10-127 (1) (a) (I) and (4) and 14-10-127 (7) (b) (IV), Colorado Revised Statutes, 1987 Repl. Vol., as amended, are amended to read:

**14-10-127. Evaluation and reports.** (1) (a) (I) In all custody proceedings, the court shall, upon motion of either party, or may, upon its own motion, order the court probation department, any county or district social services department, or a licensed mental health professional qualified pursuant to subsection (4) of this section to perform an evaluation and file a written report concerning custodial or ~~visitation~~ PARENTING TIME arrangements, or both, for the child, unless such motion by either party is made for the purpose of delaying the proceedings. No later than January 1, 1990, any court or social services department personnel appointed by the court to do such evaluation shall be qualified pursuant to subsection (4) of this section. When a mental health professional performs the evaluation, the court shall appoint or approve the selection of the mental health professional. The moving party shall, at the time of the appointment of the evaluator, deposit a reasonable sum with the court to pay the cost of the evaluation. The court may order the reasonable charge for such evaluation and report to be assessed as costs between the parties. The court shall appoint another mental health professional to perform a supplemental evaluation at the initial expense of the moving party, unless the court determines that any of the following applies, based on motion and supporting affidavits:

(4) A person shall not be allowed to testify regarding a custody or ~~visitation~~ PARENTING TIME evaluation which ~~he~~ THE PERSON has performed pursuant to this section unless the court finds that ~~he~~ THE PERSON is qualified as competent, by training and experience, in the areas of:

(7) (b) The report of the evaluation shall include, but need not be limited to, the following information:

(IV) Recommendations concerning custody, ~~visitation~~ PARENTING TIME, and other considerations; and

**SECTION 11.** 14-10-129 (1), (2), (3) (a), and (4), Colorado Revised Statutes, 1987 Repl. Vol., as amended, are amended to read:

**14-10-129. Parenting time.** (1) A parent not granted custody of the child is entitled to reasonable ~~visitation~~ PARENTING TIME rights unless the court finds, after a hearing, that ~~visitation~~ PARENTING TIME by the parent would endanger the child's physical health or significantly impair ~~his~~ THE CHILD'S emotional development.

(2) The court may make or modify an order granting or denying ~~visitation~~ PARENTING TIME rights whenever such order or modification would serve the best interests of the child; but the court shall not restrict a parent's ~~visitation~~ PARENTING TIME rights unless it finds that the ~~visitation~~ PARENTING TIME would endanger the child's physical health or significantly impair ~~his~~ THE CHILD'S emotional development. Nothing in this section shall be construed to affect grandparent visitation granted pursuant to section 19-1-117, C.R.S.

(3) (a) If a noncustodial parent has been convicted of any of the crimes listed in paragraph (b) of this subsection (3), or convicted of any crime in which the underlying factual basis has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3 (1), C.R.S., which constitutes a potential threat or endangerment to the child, the custodial parent or any other person who has been granted custody of the child pursuant to court order may file an

objection to ~~visitation~~ PARENTING TIME with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of such objection as provided by the Colorado rules of civil procedure, and the noncustodial parent shall have twenty days from such notice to respond. If the noncustodial parent fails to respond within twenty days, the ~~visitation~~ PARENTING TIME rights of the noncustodial parent shall be suspended until further order of the court. If the noncustodial parent responds and objects, a hearing shall be held within thirty days of such response. The court may determine that any noncustodial parent who responds and objects shall be responsible for the costs associated with any hearing, including reasonable attorney fees incurred by the custodial parent. In making such determination, the court shall consider the criminal record of the noncustodial parent and any actions to harass the custodial parent and the children, any mitigating actions by the noncustodial parent, and whether the actions of either parent have been substantially frivolous, substantially groundless, or substantially vexatious. The noncustodial parent shall have the burden at the hearing to prove that ~~visitation~~ PARENTING TIME by the noncustodial parent is in the best interest of the child or children.

(4) A motion to restrict ~~visitation~~ PARENTING TIME or parental contact with a parent which alleges that the child is in imminent physical or emotional danger due to the ~~visitation~~ PARENTING TIME or contact by the parent shall be heard and ruled upon by the court not later than seven days after the day of the filing of the motion. Any ~~visitation~~ PARENTING TIME which occurs during such seven-day period after the filing of such a motion shall be supervised by an unrelated third party deemed suitable by the court or by a licensed mental health professional, as defined in section 14-10-127 (1) (b). This subsection (4) shall not apply to any motion which is filed pursuant to subsection (3) of this section.

**SECTION 12.** The introductory portion to 14-10-129.5 (1) and 14-10-129.5 (2), Colorado Revised Statutes, 1987 Repl. Vol., are amended to read:

**14-10-129.5. Disputes concerning parenting time.** (1) Upon a verified motion by either parent or upon the court's own motion alleging that a parent is not complying with a ~~visitation~~ 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 continuing noncompliance with the ~~visitation~~ PARENTING TIME order or schedule and either:

(2) After the hearing, if a court finds that a parent has not complied with the ~~visitation~~ 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:

(a) Imposing additional terms and conditions which are consistent with the court's previous order; except that the court shall separate the issues of child support and ~~visitation~~ PARENTING TIME and shall not condition child support upon ~~visitation~~ PARENTING TIME;

(b) Modifying the previous order to meet the best interests of the child;

(c) Requiring the violator to post bond or security to insure future compliance;

(d) Requiring that makeup ~~visitation~~ PARENTING TIME be provided for the aggrieved parent or child under the following conditions:

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

(II) That such ~~visitation~~ PARENTING TIME is made up within one year after the noncompliance occurs;

(III) That such ~~visitation~~ PARENTING TIME is in the manner chosen by the aggrieved parent if it is in the best interests of the child;

(e) Finding the parent who did not comply with the ~~visitation~~ PARENTING TIME schedule in contempt of court and imposing a fine or jail sentence;

(f) 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 ~~visitation~~ PARENTING TIME. Nothing in this section shall preclude a party's right to a separate and independent legal action in tort.

**SECTION 13.** 14-10-130 (2), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

**14-10-130. Judicial supervision.** (2) If both parents or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or ~~his~~ THE CHILD'S emotional development significantly impaired, the court may order the county or district welfare department or the court's probation department to exercise continuing supervision over the case to assure that the custodial or ~~visitation~~ PARENTING TIME terms of the decree are carried out.

**SECTION 14.** 14-13-103 (1) and (2), Colorado Revised Statutes, 1987 Repl. Vol., are amended to read:

**14-13-103. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Contestant" means a person, including a parent, who claims a right to custody, ~~or~~ GRANDPARENT visitation RIGHTS, OR PARENTING TIME rights with respect to a child.

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including GRANDPARENT visitation OR PARENTING TIME rights; it does not include a decision relating to child support or

any other monetary obligation of any person.

**SECTION 15.** The introductory portion to 14-13-110 (1) and 14-13-110 (1) (c), Colorado Revised Statutes, 1987 Repl. Vol., are amended to read:

**14-13-110. Information under oath to be submitted to the court.** (1) Every party in a custody proceeding under section 14-10-123 shall, in ~~his~~ SAID PERSON'S first pleading or in an affidavit attached to that pleading, give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit, every party shall further declare under oath whether:

(c) ~~He~~ SAID PARTY knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody, ~~or~~ GRANDPARENT visitation RIGHTS, OR PARENTING TIME rights with respect to the child.

**SECTION 16.** 14-13-111, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

**14-13-111. Additional parties.** If the court learns from information furnished by the parties pursuant to section 14-13-110 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody, ~~or~~ GRANDPARENT visitation RIGHTS, OR PARENTING TIME rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of ~~his~~ THAT PERSON'S joinder as a party. If the person joined as a party is outside this state, ~~he~~ SAID PERSON shall be served with process or otherwise notified in accordance with section 14-13-106.

**SECTION 17.** 14-14-104 (4), Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

**14-14-104. Recovery for child support debt.** (4) Any parental rights with respect to custody or ~~visitation~~ PARENTING TIME which are granted by a court of competent jurisdiction or are subject to court review, shall remain unaffected by the establishment or enforcement of a child support debt or obligation by the county department of social services or other person pursuant to the provisions of this article; and the establishment or enforcement of any such child support debt or obligation shall also remain unaffected by such parental rights with respect to custody or ~~visitation~~ PARENTING TIME.

**SECTION 18.** 19-1-117 (5), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**19-1-117. Visitation rights of grandparents.** (5) Any order granting or denying ~~visitation~~ PARENTING TIME rights to the parent of a child shall not affect visitation rights granted to a grandparent pursuant to this section.

**SECTION 19.** 19-3-101 (1), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**19-3-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after legal custody, guardianship of the person, or both have been vested in another person, agency, or institution, including, but not necessarily limited to, the responsibility for support, the right to consent to adoption, the right to reasonable ~~visitation~~ PARENTING TIME unless restricted by the court, and the right to determine the child's religious affiliation.

**SECTION 20.** 19-3-702 (5) (a) (I), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**19-3-702. Permanency planning hearing.** (5) In order to enable the child to obtain a permanent home, the court may make the following determinations and orders:

(a) If the court finds from the materials submitted by the county department of social services that the child appears to be adoptable and meets the criteria for adoption in section 19-5-203, the court may order the county department of social services to show cause why it should not file a motion to terminate the parent-child legal relationship pursuant to part 6 of this article. Cause may include, but need not be limited to, any of the following conditions:

(I) The parents or guardians have maintained regular ~~visitation~~ PARENTING TIME and contact with the child, and the child would benefit from continuing this relationship; or

**SECTION 21.** 19-4-116 (3), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

**19-4-116. Judgment or order.** (3) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the recovery of child support debt pursuant to section 14-14-104, C.R.S., the custody and guardianship of the child, ~~visitation~~ PARENTING TIME privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

**SECTION 22.** 26-13.5-105 (3), Colorado Revised Statutes, 1989 Repl. Vol., as amended, is amended to read:

**26-13.5-105. Negotiation conference - issuance of order of financial responsibility - filing of order with district court.** (3) If no stipulation is agreed upon at the negotiation conference because the obligor contests the issue of paternity, the delegate child support enforcement unit shall file the notice of financial responsibility and proof of service with the clerk of the district court in the county in which the notice of financial responsibility was issued or in the district court where an action relating to child support is pending or an order exists but is silent on the issue of child support, and shall request the court to set a hearing for the matter. If no stipulation is agreed upon at the negotiation conference and paternity is not an

issue, the delegate child support enforcement unit shall issue temporary orders establishing child support and shall file the notice of financial responsibility and proof of service with the clerk of the district court in the county in which the notice of financial responsibility was issued and shall request the court to set a hearing for the matter. Notwithstanding any rules of the Colorado rules of civil procedure, a complaint is not required in order to initiate a court action pursuant to this subsection (3). The court shall inform the delegate child support enforcement unit of the date and location of the hearing and the court or the delegate child support enforcement unit shall send a notice to the obligor informing the obligor of the date and location of the hearing. In order to meet federal requirements of expedited process for child support enforcement, the court shall hold a hearing and decide only the issue of child support within ninety days after receipt of notice, as defined in section 26-13.5-102 (13), or within one year after receipt of notice, as defined in section 26-13.5-102 (13), if the obligor is contesting the issue of paternity. If the obligor raises issues relating to custody or ~~visitation~~ PARENTING TIME and the court has jurisdiction to hear such matters, the court shall set a separate hearing for those issues after entry of the order of support. In any action, including an action for paternity, no additional service beyond that originally required pursuant to section 26-13.5-104 shall be required if no stipulation is reached at the negotiation conference and the court is requested to set a hearing in the matter.

**SECTION 23. Effective date.** This act shall take effect July 1, 1993.

**SECTION 24. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 30, 1993