

DRAFT "VIRTUAL VISITATION" BILL

Amends Title 14, Article 10 and 14 and Title 19 Article 1 of the Colorado Code:

CHAPTER 277

CHILDREN AND DOMESTIC MATTERS

HOUSE/SENATE BILL 07-XYZZ

BY REPRESENTATIVE(S)

also SENATOR(S).

AN ACT

CONCERNING JUDICIAL DISCRETION TO DENY A SUPPLEMENTAL EVALUATION RELATED TO THE ALLOCATION OF PARENTAL RESPONSIBILITIES IN A DOMESTIC RELATIONS PROCEEDING BASED ON THE BEST INTERESTS OF THE CHILD.

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

SECTION 1. 14-10-103 (3) (a) and (b), Colorado Revised Statutes, is added to read:

14-10-103. Definitions and interpretation of terms.

Statute text

(1) As used in this article, unless the context otherwise requires, the term "decree" includes the term "judgment"; and, for the purposes of the tax laws of the state of Colorado or of any other jurisdiction, the term "maintenance" includes the term "alimony".

(2) Whenever any law of this state refers to or mentions divorce, annulment, or separate maintenance, said law shall

be interpreted as if the words dissolution of marriage, declaration of invalidity of marriage, and legal separation, respectively, were substituted therefor.

(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 parent with respect to the child as a result of changing the term "visitation" to "parenting time".

(a) "Parenting Time", means in-person time spent between a child and their parent including any form of visitation and any Electronic Communication;

(b) "Electronic communication" means time during which a parent and his or her child communicate by using communication tools such as the telephone, electronic mail, instant messaging, video conferencing or other wired or wireless technologies via the Internet, or another medium of communication.

SECTION 2. 14-10-115 (1) (f), Colorado Revised Statutes, is added to read:

14-10-115. Child support - guidelines - schedule of basic child support obligations.

Statute text

(1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the child's support and may order an amount determined to be reasonable under the circumstances for a time period that occurred after the date of the parties' physical separation or the filing of the petition or service upon the respondent, whichever date is latest, and prior to the entry of the support order, without regard to marital misconduct, after considering all relevant factors including:

(a) The financial resources of the child;

(b) The financial resources of the custodial parent;

(c) The standard of living the child would have enjoyed had the marriage not been dissolved;

(d) The physical and emotional condition of the child and his educational needs; and

(e) The financial resources and needs of the noncustodial parent.

(f) The amount of time Electronic Communication is used shall not be a factor in the calculation of Child Support.

SECTION 3. 14-10-124 (1.5) (a) and (1.5) (a) (I), Colorado Revised Statutes, is amended and (9) and (10) added to read:

14-10-124. Best interests of child.

Statute text

(1.5) Allocation of parental responsibilities. The court shall determine the allocation of parental responsibilities, including parenting time and decision-making responsibilities, in accordance with the best interests of the child giving paramount consideration to the physical, mental, and emotional conditions and needs of the child as follows:

(a) **Determination of parenting time.** The court, upon the motion of either party or upon its own motion, may make provisions for parenting time **and any electronic communication** that the court finds are in the child's best interests unless the court finds, after a hearing, that parenting time by the party would endanger the child's physical health or significantly impair the child's emotional development. In determining the best interests of the child for purposes of parenting time, the court shall consider all relevant factors, including:

(I) The wishes of the child's parents as to parenting time **including any electronic communication;**

(9) The court may grant a reasonable amount of Electronic Communication at reasonable hours to either or both parents when the child is not in the parent's physical custody if the equipment is reasonably available.

(10) Electronic Communication with the child may be used only to supplement a parent's periods of parenting time with the child. Electronic Communication may not be used as a replacement or as a substitute for custody or a parent's periods of parenting time with the child.

SECTION 4. 14-10-129 (2) (c) (X), Colorado Revised Statutes, is added to read:

14-10-129. Modification of parenting time.

Statute text

(2) The court shall not modify a prior order concerning parenting time that substantially changes the parenting time as well as changes the party with whom the child resides a majority of the time unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or the party with whom the child resides the majority of the time and that the modification is necessary to serve the best interests of the child. In applying these standards, the court shall retain the parenting time schedule established in the prior decree unless:

(a) The parties agree to the modification; or

(b) The child has been integrated into the family of the moving party with the consent of the other party; or

(c) The party with whom the child resides a majority of the time is intending to relocate with the child to a residence that substantially changes the geographical ties between the child and the other party. A court hearing on any modification of parenting time due to an intent to relocate shall be given a priority on the court's docket. In determining whether the modification of parenting time is in the best interests of the child, the court shall take into account all relevant factors, including whether a party has been a perpetrator of spouse abuse as that term is defined in section 14-10-124 (4) which factor shall be supported by credible evidence, whether such spouse abuse occurred before or after the prior decree, and all other factors enumerated in section 14-10-124 (1.5) (a) and:

(I) The reasons why the party wishes to relocate with the child;

(II) The reasons why the opposing party is objecting to the proposed relocation;

(III) The history and quality of each party's relationship with the child since any previous parenting time order;

(IV) The educational opportunities for the child at the existing location and at the proposed new location;

(V) The presence or absence of extended family at the existing location and at the proposed new location;

(VI) Any advantages of the child remaining with the primary caregiver;

(VII) The anticipated impact of the move on the child;

(VIII) Whether the court will be able to fashion a reasonable parenting time schedule if the change requested is permitted; and

(IX) Any other relevant factors bearing on the best interests of the child;

(X) The court may not use the availability of Electronic Communication as a factor to justify or in support of a relocation by the custodial parent out of the immediate area or state; or

SECTION 5. 14-10-129 (4), Colorado Revised Statutes, is amended to read:

14-10-129. Modification of parenting time.

Statute text

(4) A motion to restrict parenting time or parental contact with a parent which alleges that the child is in imminent physical or emotional danger due to the 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 parenting time or any electronic communication 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 6. 14-10.5-104 (1) (a) (VI), Colorado Revised Statutes, is amended to read:

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

Statute text

(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 the parents with whom such children reside less than the majority of the time 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 **including any electronic communication**;

(VII) Alternative arrangements with respect to parental responsibilities;

(b) The parenting time enforcement program, if developed, may be operated on a statewide basis or on a representative pilot basis.

SECTION 7. 14-13-102 (17) and (18), Colorado Revised Statutes, is added to read:

14-13-102. Definitions.

Statute text

(17) "Parenting Time", means in-person time spent between a child and their parent including any form of visitation and any Electronic Communication;

(18) "Electronic communication" means time during which a parent and his or her child communicate by using communication tools such as the telephone, electronic mail, instant messaging, video conferencing or other wired or wireless technologies via the Internet, or another medium of communication.

SECTION 8. 14-13-304 (1) (a) and (1) (b), Colorado Revised Statutes, is amended to read:

14-13-304. Temporary visitation or parenting time.

Statute text

(1) A court of this state that does not have jurisdiction to modify a child-custody determination may issue a temporary order enforcing:

(a) A visitation or parenting time or any electronic communication schedule made by a court of another state; or

(b) The visitation or parenting time provisions of a child-custody determination of another state that does not provide for a specific visitation, ~~or~~ parenting time or any electronic communication schedule.

SECTION 9. 19-1-117 (1), Colorado Revised Statutes, is amended to read:

19-1-117. Visitation rights of grandparents.

Statute text

(1) Any grandparent of a child may, in the manner set forth in this section, seek a court order granting the grandparent reasonable grandchild visitation and any

electronic communication rights when there is or has been a child custody case or a case concerning the allocation of parental responsibilities relating to that child. Because cases arise that do not directly deal with child custody or the allocation of parental responsibilities but nonetheless have an impact on the custody of or parental responsibilities with respect to a child, for the purposes of this section, a "case concerning the allocation of parental responsibilities with respect to a child" includes any of the following, whether or not child custody was or parental responsibilities were specifically an issue:

References:

- www.InternetVisitation.org

Existing Laws:

- Utah Bill: HB 0082s01
- Wisconsin Bill - SB 244

Existing Bills:

- Missouri - Bill submitted by Rep Michael Brown
- Ohio - SB 341 submitted by Senator Marc Dunn
- South Carolina - Bill created SB1344 by Senator Mescher
- Illinois - Bill submitted HB5379 by Representative Ruth Munson
- Virginia - Bill submitted SB123 by Senator Jay O'Brien
- Michigan - Bill submitted HB6452 by Rep Tom Pearce