

# Legislative Analysis

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## CHANGE TERM "CHILD CUSTODY" TO "CHILD PARENTING"

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**House Bill 5949 as introduced**  
**Sponsor: Rep. Jim Howell**  
**Committee: Judiciary**  
**First Analysis (6-2-04)**

**BRIEF SUMMARY:** The bill would rename the Child Custody Act as the Child Parenting Time Act and replace terms pertaining to child custody with references to parenting time.

**FISCAL IMPACT:** The bill would have no fiscal impact on the state or local units of governments.

### ***THE APPARENT PROBLEM:***

Terminology often changes through the years and thus necessitates updates to state laws. For instance, in the mid-1990s, there was a change among mental health providers to use what is known as person-first terminology. For example, the term “person with a mental illness” replaced a “mentally ill person”, and now it is proper to say “person with a disability” instead of “handicapped”, and so forth. The reasoning behind such changes in terminology was to focus on the individual’s personhood rather than defining a person by a mental or physical illness or condition.

In the area of family law, the term “visitation” has been replaced recently in some statutes with “parenting time” to more accurately describe and encourage the relationship between a child and his or her non-custodial parent. Some people believe that the term “custody”, like “visitation” before it, can also be viewed as a negative term that gets in the way when parents who are no longer together discuss the care of their children. It has been suggested that provisions of law pertaining to child custody be revised to instead refer to parenting time.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Child Custody Act to rename the act as the “Child Parenting Time Act”, revise terms pertaining to child custody to refer to parenting time, and delete duplicative provisions. Specifically, the term “parental” would replace “custodial”, “parenting time and support” would replace the phrase “custody, support, and parenting time”, and “custody” would be replaced with “parenting time”. The bill would also make a number of editorial changes, including deleting duplicative provisions pertaining to the denial of parenting time for a parent convicted of criminal sexual conduct if the crime resulted in the conception of the child in question or the child was the victim of the crime.

The bill would take effect January 1, 2005.

## **ARGUMENTS:**

### ***For:***

When families dissolve, there often is an air of contentiousness, especially in decisions pertaining to the children. Unfortunately, some parents use the dissolution of the relationship as an excuse to abdicate responsibility for the children, whereas others may exhibit possessiveness towards the children and seek to limit the other parent's involvement in the child's life. Public Act 19 of 1996 addressed this problem in part by amending the Child Custody Act to replace the term "visitation" with "parenting time". Far from being a game of semantics, the change was to acknowledge the relationship between the child and the parent who did not have physical custody; that these "visits" involved nurturing, instruction, and care that went beyond just a "visit" and that did indeed encompass the elements of parenting. Also, it was hoped that the change in terminology would have a positive effect regarding how the time spent with the non-custodial parent was viewed by the parties involved.

Some believe the term "custody" to also be problematic and therefore needing to be changed to reflect an ongoing relationship with both parents. The bill is the first of what will be a multi-bill, bi-partisan legislative package to amend various statutes to replace "custody" with "parenting time" where appropriate. Some uses of the term "custody" are appropriate and therefore would not be changed. However, those involved in family law have noted that the issue of custody, and even the word itself, is at times a stumbling block. It is hoped that by changing appropriate references to "custody" and "custodial" to "parenting time" and "parental" will help shift the focus back to the relationships between the children and the parents and the desirability to reach an agreement regarding physical custody, joint custody, sole custody, and visits with the noncustodial parent that will indeed be in the best interest of the child.

### ***Against:***

Previous legislation replaced "visitation" with "parenting time" in various family law statutes. House Bill 5949 is the first of many bills to amend the same acts to replace "custody" and "custodial" with "parenting time" and "parental". In effect, the combination of the past legislation with the proposed legislation would be that two legal terms that describe very different actions and responsibilities would be merged into just one term.

"Parenting time", as a replacement for "visitation", currently refers to the periods of time spent by the noncustodial parent with the child. But "custody" is quite different and includes the legal authority to make decisions regarding the child's care, either solely or in conjunction with the other parent. By merging these two distinct concepts into one term, confusion could arise that may result in inadvertent but serious consequences, especially if domestic violence had occurred between the parents.

As an example, Section 7 of the Child Custody Act currently pertains to the awarding of custody in cases involving a dispute. In this sense, the issues are who the child should live with (equal time with both, summers with one and the school year with the other,

etc.) who will have the decision-making authority (one parent with sole legal authority or authority for major decisions shared between the two parents), who will bear the burden of providing support to the other parent, and the establishment of reasonable parenting time for the other parent. Section 7a further provides statutory guidelines for parenting time. However, all the references in Section 7 and 7a regarding “custody” would be replaced by “parenting time”. How then is a distinction to be made in regards to those issues involving legal decision-making authority and who the child resides with from those issues involving simply spending time with the other parent?

Regarding cases involving past domestic violence, batterers may use the confusion and blurring of these terms and concepts to continue to maintain power and control over the ex-partner and the children, as well as to get around court orders restricting his or her time with the child and authority over that child.

In addition, confusion generated by the bill and its forthcoming companions could lead to increased litigation to sort out the legal responsibilities and limitations of each parent. This could increase the burdens on court dockets, increase out-of-pocket expenses for parents, and disadvantage the lower income parent who may not have the resources to pay for higher legal fees.

The intention of identifying a less emotionally charged term for custody is certainly worthwhile; however, the potential for confusion that could lead to serious consequences is too great. At the very least, more time is needed to scrutinize the potential impact of the legislation as written and to explore terminology that would bring about the intended benefits without engendering unintended pitfalls.

### ***POSITIONS:***

The National Family Justice Association supports the bill. (6-1-04)

The Michigan Coalition Against Domestic and Sexual Violence opposes the bill as written. (6-1-04)

A representative of the Family Law Section of the State Bar of Michigan indicated that the section does not have a position at this time. (6-1-04)

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