

Act No. 259  
Public Acts of 1993  
Approved by the Governor  
November 29, 1993  
Filed with the Secretary of State  
November 29, 1993

**STATE OF MICHIGAN**  
**87TH LEGISLATURE**  
**REGULAR SESSION OF 1993**

Introduced by Rep. Gubow

Reps. Agee, Allen, Alley, Anthony, Bankes, Bodem, Brackenridge, Bryant, Byrum, Clack, Crissman, Curtis, Dalman, DeLange, DeMars, Dobb, Dobronski, Dolan, Gagliardi, Galloway, Gernaat, Gilmer, Gire, Goschka, Hammerstrom, Harder, Hill, Hollister, Hood, Jacobetti, Jersevic, Johnson, Kaza, Kilpatrick, Llewellyn, London, Mathieu, McBryde, McManus, Murphy, Nye, Pitoniak, Points, Porreca, Profit, Randall, Rhead, Rivers, Schroer, Scott, Shugars, Stallworth, Varga, Voorhees, Vorva, Wallace, Whyman and Yokich named co-sponsors

# **ENROLLED HOUSE BILL No. 4064**

AN ACT to amend sections 3, 5, 6, 6b, and 7a of Act No. 91 of the Public Acts of 1970, entitled as amended "An act to declare the inherent rights of minor children; to establish rights and duties to their custody, support and visitation in disputed actions; to establish rights and duties to provide support for a child after the child reaches the age of majority under certain circumstances; to provide for certain procedure and appeals; and to repeal certain acts and parts of acts," section 3 as amended by Act No. 434 of the Public Acts of 1980, section 6 as amended and section 6b as added by Act No. 315 of the Public Acts of 1990, and section 7a as added by Act No. 377 of the Public Acts of 1988, being sections 722.23, 722.25, 722.26, 722.26b, and 722.27a of the Michigan Compiled Laws; and to add sections 6c, 6d, and 6e.

*The People of the State of Michigan enact:*

Section 1. Sections 3, 5, 6, 6b, and 7a of Act No. 91 of the Public Acts of 1970, section 3 as amended by Act No. 434 of the Public Acts of 1980, section 6 as amended and section 6b as added by Act No. 315 of the Public Acts of 1990, and section 7a as added by Act No. 377 of the Public Acts of 1988, being sections 722.23, 722.25, 722.26, 722.26b, and 722.27a of the Michigan Compiled Laws, are amended and sections 6c, 6d, and 6e are added to read as follows:

Sec. 3. As used in this act, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.
- (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

- (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (f) The moral fitness of the parties involved.
- (g) The mental and physical health of the parties involved.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
- (j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.
- (k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- (l) Any other factor considered by the court to be relevant to a particular child custody dispute.

Sec. 5. (1) If a child custody dispute is between the parents, between agencies, or between third persons, the best interests of the child control. If the child custody dispute is between the parent or parents and an agency or a third person, the court shall presume that the best interests of the child are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence.

(2) Notwithstanding other provisions of this act, if a child custody dispute involves a child who is conceived as the result of acts for which 1 of the child's biological parents is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.520a to 750.520e and 750.520g of the Michigan Compiled Laws, the court shall not award custody to the convicted biological parent. This subsection does not apply to a conviction under section 520d(1)(a) of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.520d of the Michigan Compiled Laws. This subsection does not apply if, after the date of the conviction, the biological parents cohabit and establish a mutual custodial environment for the child.

(3) Notwithstanding other provisions of this act, if an individual is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of Act No. 328 of the Public Acts of 1931 and the victim is the individual's child, the court shall not award custody of that child or a sibling of that child to that individual, unless both the child's other parent and, if the court considers the child or sibling to be of sufficient age to express his or her desires, the child or sibling consent to the custody.

Sec. 6. (1) This act is equitable in nature and shall be liberally construed and applied to establish promptly the rights of the child and the rights and duties of the parties involved. This act applies to all circuit court child custody disputes and actions, whether original or incidental to other actions. Those disputes and actions shall have precedence for hearing and assignment for trial over other civil actions.

(2) Except as otherwise provided in section 6b or 6e, if the circuit court of this state does not have prior continuing jurisdiction over a child, the action shall be submitted to the circuit court of the county where the child resides or may be found by complaint or complaint and motion for order to show cause. An application for a writ of habeas corpus or for a warrant in its place to obtain custody of a child shall not be granted unless it appears that this act is inadequate and ineffective to resolve the particular child custody dispute.

Sec. 6b. (1) Except as otherwise provided in subsection (2), a guardian or limited guardian of a child has standing to bring an action for custody of the child pursuant to this act.

(2) A limited guardian of a child does not have standing to bring an action for custody of the child if the parent or parents of the child have substantially complied with a limited guardianship placement plan regarding the child entered into pursuant to section 424a of the revised probate code, Act No. 642 of the Public Acts of 1978, being section 700.424a of the Michigan Compiled Laws.

(3) If the circuit court does not have prior continuing jurisdiction over the child, a child custody action brought by a guardian or limited guardian of the child shall be filed in the circuit court in the county in which the probate court appointed the guardian.

(4) Upon the filing of a child custody action brought by a guardian or limited guardian of the child, all guardianship proceedings concerning that child in the probate court shall be stayed until disposition of the child custody action. An order of the probate court concerning the guardianship of the child shall continue in force until superseded by an order of the circuit court. If the circuit court awards custody of the child, it shall send a copy of the judgment or order of disposition to the probate court in the county that appointed the guardian or limited guardian for the child.

(5) If a guardian or limited guardian of a child brings a child custody action, the circuit court shall request the supreme court pursuant to section 225 of the revised judiciary act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.225 of the Michigan Compiled Laws, to assign the judge of the probate court who appointed that guardian or limited guardian to serve as a judge of the circuit court and hear the child custody action.

Sec. 6c. (1) A third person may bring an action for custody of a child if the court finds either of the following:

(a) Both of the following:

(i) The child was placed for adoption with the third person under the adoption laws of this or another state, and the placement order is still in effect at the time the action is filed.

(ii) After the placement, the child has resided with the third person for a minimum of 6 months.

(b) All of the following:

(i) The child's biological parents have never been married to one another.

(ii) The child's parent who has custody of the child dies or is missing and the other parent has not been granted legal custody under court order.

(iii) The third person is related to the child within the fifth degree by marriage, blood, or adoption.

(2) A third person shall include with an action filed under this section both of the following:

(a) An affidavit setting forth facts relative to the existence of the prerequisites required by subsection (1)(a) or (b).

(b) Notice that a defense or objection to a third person's right to bring an action for custody may be raised as an affirmative defense or by a motion for summary disposition based on lack of standing as provided in the Michigan court rules.

Sec. 6d. A third person filing an action under section 6c shall proceed as follows:

(a) If the circuit court has continuing jurisdiction over the child, the action shall be filed in the circuit court that has continuing jurisdiction over the child.

(b) If the circuit court does not have continuing jurisdiction over the child, the action shall be filed in the circuit court in the county where the child has resided for the 6 months immediately preceding the filing of the action or, if the child has not resided in any county for the 6 months immediately preceding the filing of the action, the action shall be filed in the circuit court in the county having the most significant connection with the child.

Sec. 6e. (1) A third person filing an action under section 6c shall send notice of the action to each party who has legal custody of the child and to each parent whose parental rights have not been terminated.

(2) In addition to other powers of the court, in an action under section 6c, the court may do any of the following:

(a) Appoint an attorney for a parent.

(b) Order that a necessary and reasonable amount of money be paid to the court for reimbursement of a party's attorney. A party may request an order under this subdivision. The moving party shall allege facts showing that the party is otherwise unable to bear the expense of the action. The court shall require the disclosure of attorney fees or other expenses paid.

(c) The court may award costs and fees as provided in section 2591 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.2591 of the Michigan Compiled Laws.

Sec. 7a. (1) Visitation shall be granted in accordance with the best interests of the child. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents. Except as otherwise provided in this section, visitation shall be granted to a parent in a frequency, duration, and type reasonably calculated to promote a strong relationship between the child and the parent granted visitation.

(2) If the parents of a child agree on visitation terms, the court shall order the visitation terms unless the court determines on the record by clear and convincing evidence that the visitation terms are not in the best interests of the child.

(3) A child has a right to visitation with a parent unless it is shown on the record by clear and convincing evidence that it would endanger the child's physical, mental, or emotional health.

(4) Notwithstanding other provisions of this act, if a proceeding regarding visitation involves a child who is conceived as the result of acts for which 1 of the child's biological parents is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.520a to 750.520e and 750.520g of the Michigan Compiled Laws, the court shall not grant visitation to the convicted biological parent. This subsection does not apply to a conviction under section 520d(1)(a) of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being section 750.520d of the Michigan Compiled Laws. This subsection does not apply if, after the date of the conviction, the biological parents cohabit and establish a mutual custodial environment for the child.

(5) Notwithstanding other provisions of this act, if an individual is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of Act No. 328 of the Public Acts of 1931 and the victim is the individual's child, the court shall not grant visitation with that child or a sibling of that child to that individual, unless both the child's other

parent and, if the court considers the child or sibling to be of sufficient age to express his or her desires, the child or sibling consent to the visitation.

(6) The court may consider the following factors when determining the frequency, duration, and type of visitation to be granted:

- (a) The existence of any special circumstances or needs of the child.
- (b) Whether the child is a nursing child less than 6 months of age, or less than 1 year of age if the child receives substantial nutrition through nursing.
- (c) The reasonable likelihood of abuse or neglect of the child during visitation.
- (d) The reasonable likelihood of abuse of a parent resulting from the exercise of visitation.
- (e) The inconvenience to, and burdensome impact or effect on, the child of traveling to and from the visitation time.
- (f) Whether the visiting parent can reasonably be expected to exercise visitation in accordance with the court order.
- (g) Whether the visiting parent has frequently failed to exercise reasonable visitation.
- (h) The threatened or actual detention of the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody. A custodial parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the custodial parent's intent to retain or conceal the child from the other parent.
- (i) Any other relevant factors.

(7) Visitation shall be granted in specific terms if requested by either party at any time.

(8) A visitation order may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of visitation by a parent, including 1 or more of the following:

- (a) Division of the responsibility to transport the child.
- (b) Division of the cost of transporting the child.
- (c) Restrictions on the presence of third persons during visitation.
- (d) Requirements that the child be ready for visitation at a specific time.
- (e) Requirements that the parent arrive for visitation and return the child from visitation at specific times.
- (f) Requirements that visitation occur in the presence of a third person or agency.
- (g) Requirements that a party post a bond to assure compliance with a visitation order.
- (h) Requirements of reasonable notice when visitation will not occur.
- (i) Any other reasonable condition determined to be appropriate in the particular case.

(9) During the time a child is with a parent to whom visitation has been awarded, that parent shall decide all routine matters concerning the child.

(10) Prior to entry of a temporary order, a parent may seek an ex parte interim order concerning visitation. If the court enters an ex parte interim order concerning visitation, the party on whose motion the ex parte interim order is entered shall have a true copy of the order served on the friend of the court and the opposing party.

(11) If the opposing party objects to the ex parte interim order, he or she shall file with the clerk of the court within 14 days after receiving notice of the order a written objection to, or a motion to modify or rescind, the ex parte interim order. The opposing party shall have a true copy of the written objection or motion served on the friend of the court and the party who obtained the ex parte interim order.

(12) If the opposing party files a written objection to the ex parte interim order, the friend of the court shall attempt to resolve the dispute within 14 days after receiving it. If the matter cannot be resolved, the friend of the court shall provide the opposing party with a form motion and order with written instructions for their use in modifying or rescinding the ex parte order without assistance of counsel. If the opposing party wishes to proceed without assistance of counsel, the friend of the court shall schedule a hearing with the court that shall be held within 21 days after the filing of the motion. If the opposing party files a motion to modify or rescind the ex parte interim order and requests a hearing, the court shall resolve the dispute within 28 days after the hearing is requested.

(13) An ex parte interim order issued pursuant to this section shall contain the following notice:

#### NOTICE:

1. You may file a written objection to this order or a motion to modify or rescind this order. You must file the written objection or motion with the clerk of the court within 14 days after you were served with this order. You must serve a true copy of the objection or motion on the friend of the court and the party who obtained the order.

2. If you file a written objection, the friend of the court must try to resolve the dispute. If the friend of the court cannot resolve the dispute and if you wish to bring the matter before the court without the assistance of counsel, the

friend of the court must provide you with form pleadings and written instructions and must schedule a hearing with the court.

Section 2. Sections 6c to 6e as added by this amendatory act are remedial in nature and apply retroactively.

This act is ordered to take immediate effect.

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Co-Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.