



# HOUSE BILL No. 5938

November 10 1994, Introduced by Rep DeMars and referred to the Committee on Judiciary

A bill to amend section 7a of Act No 91 of the Public Acts of 1970, entitled as amended "Child custody act of 1970," as amended by Act No 259 of the Public Acts of 1993, being section 722 27a of the Michigan Compiled Laws

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Section 7a of Act No 91 of the Public Acts of  
2 1970, as amended by Act No 259 of the Public Acts of 1993, being  
3 section 722 27a of the Michigan Compiled Laws, is amended to read  
4 as follows

5 Sec 7a (1) Visitation shall be granted in accordance with  
6 the best interests of the child It is presumed to be in the  
7 best interests of a child for the child to have a strong  
8 relationship with both of his or her parents Except as  
9 otherwise provided in this section, visitation shall be granted

1 to a parent in a frequency duration and type reasonably  
2 calculated to promote a strong relationship between the child and  
3 the parent granted visitation UPON PETITION OF A CHILD SUPPORT  
4 PAYER AND SUBJECT TO THE OTHER PROVISIONS OF THIS SECTION, THE  
5 COURT SHALL GRANT THE PAYER VISITATION WITH THE CHILD FOR WHOM  
6 THE SUPPORT IS BEING PAID

7 (2) If the parents of a child agree on visitation terms the  
8 court shall order the visitation terms unless the court deter-  
9 mines on the record by clear and convincing evidence that the  
10 visitation terms are not in the best interests of the child

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

15 (4) Notwithstanding other provisions of this act if a pro-  
16 ceeding regarding visitation involves a child who is conceived as  
17 the result of acts for which 1 of the child s biological parents  
18 is convicted of criminal sexual conduct as provided in  
19 sections 520a to 520e and 520g of the Michigan penal code Act  
20 No 328 of the Public Acts of 1931, being sections 750 520a to  
21 750 520e and 750 520g of the Michigan Compiled Laws the court  
22 shall not grant visitation to the convicted biological parent  
23 This subsection does not apply to a conviction under section  
24 520d(1)(a) of the Michigan penal code, Act No 328 of the Public  
25 Acts of 1931, being section 750 520d of the Michigan Compiled  
26 Laws This subsection does not apply if, after the date of the

1 conviction the biological parents cohabit and establish a mutual  
2 custodial environment for the child

3 (5) Notwithstanding other provisions of this act if an  
4 individual is convicted of criminal sexual conduct as provided in  
5 sections 520a to 520e and 520g of Act No 328 of the Public Acts  
6 of 1931 and the victim is the individual s child, the court shall  
7 not grant visitation with that child or a sibling of that child  
8 to that individual unless both the child s other parent and, if  
9 the court considers the child or sibling to be of sufficient age  
10 to express his or her desires, the child or sibling consent to  
11 the visitation

12 (6) The court may consider the following factors when deter-  
13 mining the frequency, duration, and type of visitation to be  
14 granted

15 (a) The existence of any special circumstances or needs of  
16 the child

17 (b) Whether the child is a nursing child less than 6 months  
18 of age, or less than 1 year of age if the child receives substan-  
19 tial nutrition through nursing

20 (c) The reasonable likelihood of abuse or neglect of the  
21 child during visitation

22 (d) The reasonable likelihood of abuse of a parent resulting  
23 from the exercise of visitation

24 (e) The inconvenience to and burdensome impact or effect  
25 on, the child of traveling to and from the visitation time

26 (f) Whether the visiting parent can reasonably be expected  
27 to exercise visitation in accordance with the court order

1 (g) Whether the visiting parent has frequently failed to  
2 exercise reasonable visitation

3 (h) The threatened or actual detention of the child with the  
4 intent to retain or conceal the child from the other parent or  
5 from a third person who has legal custody A custodial parent's  
6 temporary residence with the child in a domestic violence shelter  
7 shall not be construed as evidence of the custodial parent's  
8 intent to retain or conceal the child from the other parent

9 (i) Any other relevant factors

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

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

15 (a) Division of the responsibility to transport the child

16 (b) Division of the cost of transporting the child

17 (c) Restrictions on the presence of third persons during  
18 visitation

19 (d) Requirements that the child be ready for visitation at a  
20 specific time

21 (e) Requirements that the parent arrive for visitation and  
22 return the child from visitation at specific times

23 (f) Requirements that visitation occur in the presence of a  
24 third person or agency

25 (g) Requirements that a party post a bond to assure compli-  
26 ance with a visitation order

1 (h) Requirements of reasonable notice when visitation will  
2 not occur

3 (1) Any other reasonable condition determined to be appro-  
4 priate in the particular case

5 (9) During the time a child is with a parent to whom visita-  
6 tion has been awarded, that parent shall decide all routine mat-  
7 ters concerning the child

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

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

21 (12) If the opposing party files a written objection to the  
22 ex parte interim order the friend of the court shall attempt to  
23 resolve the dispute within 14 days after receiving it If the  
24 matter cannot be resolved the friend of the court shall provide  
25 the opposing party with a form motion and order with written  
26 instructions for their use in modifying or rescinding the ex  
27 parte order without assistance of counsel If the opposing party

1 wishes to proceed without assistance of counsel the friend of  
2 the court shall schedule a hearing with the court that shall be  
3 held within 21 days after the filing of the motion. If the  
4 opposing party files a motion to modify or rescind the ex parte  
5 interim order and requests a hearing, the court shall resolve the  
6 dispute within 28 days after the hearing is requested.

7 (13) An ex parte interim order issued pursuant to this sec-  
8 tion shall contain the following notice

9 NOTICE

10 1 You may file a written objection to this order or a  
11 motion to modify or rescind this order. You must file the writ-  
12 ten objection or motion with the clerk of the court within 14  
13 days after you were served with this order. You must serve a  
14 true copy of the objection or motion on the friend of the court  
15 and the party who obtained the order.

16 2 If you file a written objection the friend of the court  
17 must try to resolve the dispute. If the friend of the court  
18 cannot resolve the dispute and if you wish to bring the matter  
19 before the court without the assistance of counsel, the friend of  
20 the court must provide you with form pleadings and written  
21 instructions and must schedule a hearing with the court.