

SUBSTITUTE FOR  
SENATE BILL NO. 33

A bill to amend 1970 PA 91, entitled "Child custody act of 1970," by amending sections 3 and 6a (MCL 722.23 and 722.26a), section 3 as amended by 1993 PA 259 and section 6a as added by 1980 PA 434, and by adding sections 11 and 12.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

4       (a) The love, affection, and other emotional ties existing  
5 between the parties involved and the child.

6       (b) The capacity and disposition of the parties involved to  
7 give the child love, affection, and guidance. ~~and~~

**SB 33, As Passed Senate, March 11, 1997**

Senate Bill No. 33

2

1 (C) THE CAPACITY AND DISPOSITION OF THE PARTIES INVOLVED to  
2 continue the education and raising of the child in his or her  
3 religion or creed, if any.

4 (D) ~~(c)~~ The capacity and disposition of the parties  
5 involved to provide the child with food, clothing, medical care  
6 or other remedial care recognized and permitted under the laws of  
7 this state in place of medical care, and other material needs.

8 (E) ~~(d)~~ The length of time the child has lived in a  
9 stable, satisfactory environment, and the desirability of main-  
10 taining continuity.

11 (F) ~~(e)~~ The permanence, as a family unit, of the existing  
12 or proposed custodial home or homes.

13 (G) ~~(f)~~ The moral fitness of the parties involved.

14 (H) ~~(g)~~ The mental and physical health of the parties  
15 involved.

16 (I) ~~(h)~~ The home, school, and community record of the  
17 child.

18 (J) ~~(i)~~ The reasonable preference of the child, if the  
19 court considers the child to be of sufficient age to express  
20 preference.

21 (K) ~~(j)~~ The willingness and ability of each of the parties  
22 to facilitate and encourage a close and continuing parent-child  
23 relationship between the child and the other parent or the child  
24 and the parents.

25 (l) ~~(k)~~ Domestic violence, regardless of whether the vio-  
26 lence was directed against or witnessed by the child.

**SB 33, As Passed Senate, March 11, 1997**

Senate Bill No. 33

3

1 (M) ~~(I)~~ Any other factor considered by the court to be  
2 relevant to a particular child custody dispute.

3 Sec. 6a. (1) ~~In custody disputes between parents,~~ THE  
4 COURT SHALL PRESUME THAT SHARED PARENTAL RESPONSIBILITY SHOULD BE  
5 ORDERED, AND the parents shall be advised of ~~joint custody~~ THIS  
6 PRESUMPTION OF SHARED PARENTAL RESPONSIBILITY. ~~At the request~~  
7 ~~of either parent, the court shall consider an award of joint cus-~~  
8 ~~tody, and~~ THE COURT shall state on the record the reasons for  
9 granting or denying ~~a request~~ SHARED PARENTAL RESPONSIBILITY.  
10 ~~In other cases joint custody may be considered by the court.~~

11 ~~The~~ EXCEPT AS PROVIDED IN SUBSECTION (2), THE court shall  
12 ~~determine whether joint custody~~ ORDER SHARED PARENTAL RESPONSI-  
13 BILITY UNLESS THE COURT DETERMINES ON THE RECORD THAT SHARED  
14 PARENTAL RESPONSIBILITY is NOT in the best ~~interest~~ INTERESTS  
15 of the child. ~~by considering the following factors:~~

16 (a) ~~The factors enumerated in section 3.~~

17 (b) ~~Whether the parents will be able to cooperate and gener-~~  
18 ~~ally agree concerning important decisions affecting the welfare~~  
19 ~~of the child.~~

20 (2) ~~If the parents agree on joint custody, the court shall~~  
21 ~~award joint custody unless the court determines on the record,~~  
22 ~~based upon clear and convincing evidence, that joint custody is~~  
23 ~~not in the best interests of the child.~~ IF THE PARENTS AGREE TO  
24 A PARENTING PLAN AS DESCRIBED IN SECTION 11 OTHER THAN SHARED  
25 PARENTAL RESPONSIBILITY, THE PRESUMPTION PRESCRIBED BY  
26 SUBSECTION (1) DOES NOT APPLY, AND THE COURT SHALL ORDER THE  
27 PARENTING PLAN AS PROVIDED IN THE AGREEMENT UNLESS THE COURT

**SB 33, As Passed Senate, March 11, 1997**

Senate Bill No. 33

4

1 DETERMINES ON THE RECORD, BASED UPON CLEAR AND CONVINCING  
2 EVIDENCE, THAT THE PARENTING PLAN IS NOT IN THE BEST INTERESTS OF  
3 THE CHILD.

4 (3) If the court awards ~~joint custody~~ SHARED PARENTAL  
5 RESPONSIBILITY, the court ~~may~~ SHALL include in its award a  
6 statement regarding when the child shall reside with each parent  
7 ~~, or may provide that physical custody be shared by the parents~~  
8 ~~in a manner~~ to assure the child continuing contact with both  
9 parents. SHOULD THE PARENTS INVOLVED IN THE PARENTING DETERMINA-  
10 TION HAVE AN AGREED UPON PARENTING PLAN AS DESCRIBED IN  
11 SECTION 11, THE COURT SHALL ORDER PARENTING TIME AS PROVIDED IN  
12 THE PLAN UNLESS THE COURT DETERMINES ON THE RECORD, BASED UPON  
13 CLEAR AND CONVINCING EVIDENCE, THAT THE AGREEMENT IS NOT IN THE  
14 BEST INTERESTS OF THE CHILD.

15 (4) During the time a child resides with a parent, that  
16 parent shall decide all routine matters concerning the child.

17 (5) If there is a dispute regarding residency, the court  
18 shall state the basis for a residency award on the record or in  
19 writing.

20 (6) ~~Joint custody shall~~ SHARED PARENTAL RESPONSIBILITY  
21 DOES not eliminate the ~~responsibility for child support~~  
22 RESPONSIBILITIES ESTABLISHED UNDER THE SUPPORT AND PARENTING TIME  
23 ENFORCEMENT ACT, 1982 PA 295, MCL 552.601 TO 552.650. Each  
24 parent ~~shall be~~ IS responsible for child support based on the  
25 needs of the child and the actual resources of each parent. If a  
26 parent would otherwise be unable to maintain adequate housing for  
27 the child and the other parent has sufficient resources, the

**SB 33, As Passed Senate, March 11, 1997**

Senate Bill No. 33

5

1 court may order modified support payments for a portion of  
2 housing expenses even during a period when the child is not  
3 residing in the home of the parent receiving support. An order  
4 of ~~joint custody~~ SHARED PARENTAL RESPONSIBILITY, in and of  
5 itself, ~~shall~~ DOES not constitute grounds for modifying a sup-  
6 port order.

7 (7) THIS SECTION DOES NOT PROHIBIT THE COURT FROM AWARDING  
8 JOINT LEGAL CUSTODY, WHICH ORDERS THE PARENTS TO SHARE  
9 DECISION-MAKING AUTHORITY AND RESPONSIBILITY AS TO THE IMPORTANT  
10 DECISIONS AFFECTING THE CHILD'S WELFARE, WITHOUT AN AWARD OF  
11 SHARED PARENTAL RESPONSIBILITY.

12 (8) ~~(7)~~ As used in this section, ~~"joint custody"~~ "SHARED  
13 PARENTAL RESPONSIBILITY" means an order of the court in which ~~it~~  
14 ~~or~~ both of the following ~~is~~ ARE specified:

15 (a) That the child shall reside ~~alternately for specific~~  
16 ~~periods~~ with each ~~of the parents~~ PARENT FOR SPECIFIED PERIODS  
17 OF TIME. THIS SUBDIVISION DOES NOT REQUIRE THAT THE CHILD RESIDE  
18 WITH EACH PARENT FOR AN EQUAL OR NEARLY EQUAL AMOUNT OF TIME  
19 DURING ANY GIVEN TIME PERIOD.

20 (b) That the parents shall share decision-making authority  
21 AND RESPONSIBILITY as to the important decisions affecting the  
22 CHILD'S welfare. ~~of the child.~~

23 SEC. 11. IN AN ACTION UNDER THIS ACT, A CHILD'S PARENTS MAY  
24 SUBMIT A PROPOSED PARENTING PLAN TO THE COURT, WHICH PLAN MAY  
25 INCLUDE PROVISIONS REGARDING THE FOLLOWING:

26 (A) THE CHILD'S RESIDENCE.

**SB 33, As Passed Senate, March 11, 1997**

Senate Bill No. 33

6

1 (B) THE CHILD'S EDUCATION, INCLUDING POSTSECONDARY  
2 EDUCATION.

3 (C) THE CHILD'S RELIGIOUS AFFILIATION.

4 (D) THE CHILD'S MEDICAL CARE.

5 (E) EACH PARENT'S DECISION-MAKING AUTHORITY.

6 (F) OTHER RELATED ISSUES CONSISTENT WITH THE PROVISIONS OF  
7 THIS ACT, INCLUDING PROPOSED ALTERNATIVE DISPUTE RESOLUTION MECH-  
8 ANISMS TO RESOLVE FURTHER DISPUTES WITHOUT LITIGATION.

9 SEC. 12. THE AMENDMENTS ENACTED BY THE AMENDATORY ACT THAT  
10 ADDED THIS SECTION SHALL NOT BE USED AS A BASIS TO PETITION FOR A  
11 MODIFICATION OF AN ORDER GOVERNING CHILD CUSTODY OR PARENTING  
12 TIME THAT WAS ISSUED BEFORE THE EFFECTIVE DATE OF THAT AMENDATORY  
13 ACT.