



HOUSE BILL No. 5154

December 1, 1999, Introduced by Reps. Spade, Wojno, Jamnick, Bovin, Schauer, Bogardus, Pappageorge, DeHart, Switalski and Jacobs and referred to the Committee on Family and Civil Law.

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending sections 2, 3, 5, and 6a (MCL 722.22, 722.23, 722.25,
and 722.26a), section 2 as amended by 1999 PA 156, sections 3 and
5 as amended by 1993 PA 259, and section 6a as added by 1980 PA
434, and by adding section 5a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2. As used in this act:

(a) "Agency" means a legally authorized public or private
organization, or governmental unit or official, whether of this
state or of another state or country, concerned in the welfare of
minor children, including a licensed child placement agency.

(b) "Attorney" means, if appointed to represent a child
under this act, an attorney serving as the child's legal advocate
in a traditional attorney-client relationship with the child, as

1 governed by the Michigan rules of professional conduct. An
2 attorney defined under this subdivision owes the same duties of
3 undivided loyalty, confidentiality, and zealous representation of
4 the child's expressed wishes as the attorney would to an adult
5 client.

6 (c) "Child" means minor child and children. Subject to
7 section 4a, for purposes of providing support, child includes a
8 child and children who have reached 18 years of age.

9 (D) "DE FACTO CUSTODIAN" MEANS AN INDIVIDUAL WHO HAS BEEN
10 THE PRIMARY CAREGIVER FOR, AND FINANCIAL SUPPORT OF, A CHILD WHO
11 HAS RESIDED WITH THE INDIVIDUAL FOR AT LEAST 6 MONTHS IF THE
12 CHILD IS YOUNGER THAN 3 YEARS OLD OR FOR AT LEAST 1 YEAR IF THE
13 CHILD IS 3 YEARS OLD OR OLDER. DE FACTO CUSTODIAN DOES NOT
14 INCLUDE AN INDIVIDUAL WHO CARES FOR A CHILD IN A FOSTER FAMILY
15 HOME OR FOSTER FAMILY GROUP HOME AS THOSE TERMS ARE DEFINED IN
16 SECTION 1 OF 1973 PA 116, MCL 722.111. A PERIOD OF TIME AFTER A
17 CHILD CUSTODY ACTION IS COMMENCED SHALL NOT BE INCLUDED IN DETER-
18 MINING WHETHER THE CHILD HAS RESIDED WITH AN INDIVIDUAL FOR THE
19 REQUIRED MINIMUM PERIOD.

20 (E) ~~-(d)-~~ "Guardian ad litem" means an individual whom the
21 court appoints to assist the court in determining the child's
22 best interests. A guardian ad litem does not need to be an
23 attorney.

24 (F) ~~-(e)-~~ "Lawyer-guardian ad litem" means an attorney
25 appointed under section 4. A lawyer-guardian ad litem represents
26 the child, and has the powers and duties, as set forth in section
27 4.

1 (G) ~~(f)~~ "State disbursement unit" or "SDU" means the
2 entity established in section 6 of the office of child support
3 act, 1971 PA 174, MCL 400.236.

4 (H) ~~(g)~~ "Third person" means ~~any~~ AN individual other
5 than a parent.

6 Sec. 3. As used in this act: ~~-, "best interests of the~~
7 ~~child"~~

8 (A) "CHILD'S BEST INTERESTS" means the sum total of the fol-
9 lowing factors to be considered, evaluated, and determined by the
10 court:

11 (i) ~~(a)~~ The love, affection, and other emotional ties
12 existing between ~~the parties~~ EACH PARTY involved and the
13 child.

14 (ii) ~~(b)~~ The capacity and disposition of ~~the parties~~
15 EACH PARTY involved to give the child love, affection, and guid-
16 ance and to continue the education and raising of the child in
17 his or her religion or creed, if any.

18 (iii) ~~(c)~~ The capacity and disposition of ~~the parties~~
19 EACH PARTY involved to provide the child with food, clothing,
20 medical care or other remedial care recognized and permitted
21 under the laws of this state in place of medical care, and other
22 material needs.

23 (iv) ~~(d)~~ The length of time the child has lived in a
24 stable, satisfactory environment, and the desirability of main-
25 taining continuity.

26 (v) ~~(e)~~ The permanence, as a family unit, of the existing
27 or proposed custodial home or homes.

1 (vi) ~~(f)~~ The moral fitness of ~~the parties~~ EACH PARTY
2 involved.

3 (vii) ~~(g)~~ The mental and physical health of ~~the parties~~
4 EACH PARTY involved.

5 (viii) ~~(h)~~ The CHILD'S home, school, and community record.
6 ~~of the child.~~

7 (ix) ~~(i)~~ The CHILD'S reasonable preference, ~~of the~~
8 ~~child,~~ if the court considers the child to be of sufficient age
9 to express A preference.

10 (x) ~~(j)~~ The willingness and ability of each ~~of the~~
11 ~~parties~~ PARTY to facilitate and encourage a close and continuing
12 parent-child relationship between the child and the other parent
13 or the child and the parents.

14 (xi) ~~(k)~~ Domestic violence, regardless of whether the vio-
15 lence was directed against or witnessed by the child.

16 (xii) EVIDENCE THAT 1 OR MORE DE FACTO CUSTODIANS HAVE CARED
17 FOR THE CHILD. IF THE EVIDENCE IS SUFFICIENT IN COMPLIANCE WITH
18 SECTION 5A, THE COURT SHALL ALSO CONSIDER, EVALUATE, AND DETER-
19 MINE THE FACTORS LISTED IN SUBDIVISION (B).

20 (xiii) ~~(l)~~ Any other factor ~~considered by~~ the court ~~to~~
21 ~~be~~ CONSIDERS relevant to a particular child custody dispute.

22 (B) "CHILD'S BEST INTERESTS" INCLUDES, IF REQUIRED BY SUBDI-
23 VISION (A)(XII), ALL OF THE FOLLOWING FACTORS:

24 (i) EACH DE FACTO CUSTODIAN'S WISHES.

25 (ii) THE EXTENT TO WHICH EACH DE FACTO CUSTODIAN HAS CARED
26 FOR, NURTURED, AND SUPPORTED THE CHILD.

1 (iii) THE INTENT OF THE CHILD'S PARENT IN LEAVING THE CHILD
2 WITH A DE FACTO CUSTODIAN.

3 (iv) THE CIRCUMSTANCES UNDER WHICH THE CHILD WAS ALLOWED TO
4 REMAIN IN A DE FACTO CUSTODIAN'S CUSTODY, INCLUDING WHETHER THE
5 CHILD WAS IN THE DE FACTO CUSTODIAN'S CUSTODY TO ALLOW A PARENT
6 WHO IS NOW SEEKING CUSTODY TO WORK, SEEK EMPLOYMENT, OR ATTEND
7 SCHOOL.

8 Sec. 5. (1) If a child custody dispute is between the par-
9 ents, BETWEEN A PARENT OR THE PARENTS AND A DE FACTO CUSTODIAN,
10 between agencies, or between third persons, the CHILD'S best
11 interests ~~of the child~~ control. If the child custody dispute
12 is between ~~the~~ A parent, ~~or~~ THE parents, OR A DE FACTO
13 CUSTODIAN and an agency or a third person OTHER THAN A DE FACTO
14 CUSTODIAN, the court shall presume that the CHILD'S best inter-
15 ests ~~of the child~~ are served by awarding custody to the parent
16 or parents, unless the contrary is established by clear and con-
17 vincing evidence.

18 (2) Notwithstanding other provisions of this act, if a child
19 custody dispute involves a child who is conceived as the result
20 of acts for which 1 of the child's biological parents is con-
21 victed of criminal sexual conduct as provided in sections 520a to
22 520e and 520g of the Michigan penal code, ~~Act No. 328 of the~~
23 ~~Public Acts of 1931, being sections 750.520a to 750.520e and~~
24 ~~750.520g of the Michigan Compiled Laws~~ 1931 PA 328, MCL 750.520A
25 TO 750.520E AND 750.520G, the court shall not award custody to
26 the convicted biological parent. This subsection does not apply
27 to a conviction under section 520d(1)(a) of the Michigan penal

1 code, ~~Act No. 328 of the Public Acts of 1931, being section~~
2 ~~750.520d of the Michigan Compiled Laws~~ 1931 PA 328, MCL
3 750.520D. This subsection does not apply if, after the date of
4 the conviction, the biological parents cohabit and establish a
5 mutual custodial environment for the child.

6 (3) Notwithstanding other provisions of this act, if an
7 individual is convicted of criminal sexual conduct as provided in
8 sections 520a to 520e and 520g of ~~Act No. 328 of the Public Acts~~
9 ~~of 1931~~ THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A TO
10 750.520E AND 750.520G, and the victim is the individual's child,
11 the court shall not award custody of that child or a sibling of
12 that child to that individual, unless both the child's other
13 parent and, if the court considers the child or sibling to be of
14 sufficient age to express his or her desires, the child or sib-
15 ling consent to the custody.

16 SEC. 5A. (1) THIS SECTION APPLIES IF THE COURT FINDS BY
17 CLEAR AND CONVINCING EVIDENCE THAT 1 OR MORE DE FACTO CUSTODIANS
18 HAVE CARED FOR A CHILD WHO IS THE SUBJECT OF A CUSTODY DISPUTE.

19 (2) IF THE COURT MAKES THE FINDING DESCRIBED IN SUBSECTION
20 (1), THE COURT SHALL INCLUDE IN ITS DETERMINATION OF THE CHILD'S
21 BEST INTERESTS THE FACTORS LISTED IN SECTION 3(B).

22 (3) IF THE COURT DETERMINES THAT THE CHILD IS IN A DE FACTO
23 CUSTODIAN'S CUSTODY, THE COURT SHALL MAKE THAT DE FACTO CUSTODIAN
24 A PARTY TO THE ACTION.

25 Sec. 6a. (1) In custody disputes between parents, the par-
26 ents shall be advised of joint custody. At the request of either
27 parent, the court shall consider an award of joint custody, and

1 shall state on the record the reasons for granting or denying a
2 request. In other cases joint custody may be considered by the
3 court. The court shall determine whether joint custody is in the
4 CHILD'S best ~~interest of the child~~ INTERESTS by considering the
5 following factors:

6 (a) The factors enumerated in section ~~3~~ 3(A) AND, IF
7 APPLICABLE, SECTION 3(B).

8 (b) Whether the parents, OR A PARENT OR THE PARENTS AND A DE
9 FACTO CUSTODIAN, will be able to cooperate and generally agree
10 concerning important decisions affecting the CHILD'S welfare. ~~of~~
11 ~~the child.~~

12 (2) If the parents agree on joint custody, the court shall
13 award joint custody unless the court determines on the record,
14 based upon clear and convincing evidence, that joint custody is
15 not in the CHILD'S best interests. ~~of the child.~~ IF A DE FACTO
16 CUSTODIAN WHO IS A PARTY TO THE ACTION OBJECTS TO AN AWARD OF
17 JOINT CUSTODY TO ONLY THE PARENTS, THE COURT SHALL NOT ACT UNDER
18 THIS SUBSECTION, BUT SHALL PROCEED WITH A DETERMINATION OF THE
19 CHILD'S BEST INTERESTS.

20 (3) If the court awards joint custody, the court may include
21 in its award a statement regarding when the child shall reside
22 with each parent, or may provide that physical custody be shared
23 by the parents in a manner to assure the child continuing contact
24 with both parents. IF A DE FACTO CUSTODIAN IS TO SHARE JOINT
25 CUSTODY WITH A PARENT OR THE PARENTS, THE COURT SHALL INCLUDE
26 PROVISIONS REGARDING THE DE FACTO CUSTODIAN IN A STATEMENT UNDER
27 THIS SUBSECTION.

1 (4) During the time a child resides with a parent OR DE
2 FACTO CUSTODIAN, that ~~parent~~ INDIVIDUAL shall decide all rou-
3 tine matters concerning the child.

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

7 (6) Joint custody ~~shall~~ DOES not eliminate the responsi-
8 bility for child support. Each parent ~~shall be~~ IS responsible
9 for child support based on the CHILD'S needs ~~of the child~~ and
10 ~~the~~ EACH PARENT'S actual resources. ~~of each parent.~~ If a
11 parent OR DE FACTO CUSTODIAN would otherwise be unable to main-
12 tain adequate housing for the child and ~~the other~~ A parent has
13 sufficient resources, the court may order modified support pay-
14 ments for a portion of housing expenses even during a period when
15 the child is not residing in the home of the parent OR DE FACTO
16 CUSTODIAN receiving support. An order of joint custody, in and
17 of itself, ~~shall~~ DOES not constitute grounds for modifying a
18 support order.

19 (7) As used in this section, "joint custody" means an order
20 of the court in which 1 or both of the following is specified:

21 (a) That the child shall reside alternately for specific
22 periods with each ~~of the parents~~ PARENT OR SHALL RESIDE FOR
23 SPECIFIC PERIODS WITH EACH PARENT AND 1 OR MORE DE FACTO
24 CUSTODIANS.

25 (b) That the parents, OR A PARENT OR THE PARENTS AND 1 OR
26 MORE DE FACTO CUSTODIANS, shall share decision-making authority

1 as to the important decisions affecting the CHILD'S welfare. ~~of~~
2 ~~the child.~~