

SUBSTITUTE FOR
HOUSE BILL NO. 5701

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending the title and sections 1, 2, 4, and 11 (MCL 722.21,
722.22, 722.24, and 722.31), the title as amended by 1996 PA 19,
section 2 as amended by 2005 PA 327, section 4 as amended by 1998
PA 482, and section 11 as added by 2000 PA 422, and by adding
section 5a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

2

An act to declare ~~the~~ **CERTAIN** inherent rights of ~~minor~~

3

~~children; to establish~~ **A CHILD IN RELATION TO HIS OR HER PARENTS;**

4

TO ESTABLISH A PARENTING PLAN; TO PRESCRIBE PROCEDURES TO DETERMINE

1 rights and duties ~~to their~~ **REGARDING A CHILD'S** custody, support,
 2 ~~and OR~~ parenting time; ~~in disputed actions;~~ to establish rights
 3 and duties to provide support for a child after the child reaches
 4 the age of majority under certain circumstances; to provide for
 5 certain procedure and appeals; and to repeal ~~certain~~ acts and
 6 parts of acts.

7 Sec. 1. This act shall be known and may be cited as the "child
 8 **PARENTING PLAN OR** custody **DISPUTE** act". ~~of 1970~~.

9 Sec. 2. As used in this act:

10 (a) "Active military duty" means when a reserve unit member or
 11 national guard unit member is called into active military duty.

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

16 (c) "Attorney" means, if appointed to represent a child under
 17 this act, an attorney serving as the child's legal advocate in a
 18 traditional attorney-client relationship with the child, as
 19 governed by the Michigan rules of professional conduct. An attorney
 20 defined under this subdivision owes the same duties of undivided
 21 loyalty, confidentiality, and zealous representation of the child's
 22 expressed wishes as the attorney would to an adult client.

23 (d) "Child" means minor child and children. Subject to section
 24 5b of the support and parenting time enforcement act, 1982 PA 295,
 25 MCL 552.605b, for purposes of providing support, child includes a
 26 child and children who have reached 18 years of age.

27 **(E) "DOMESTIC VIOLENCE" MEANS THAT TERM AS DEFINED IN SECTION**

1 1 OF 1978 PA 389, MCL 400.1501.

2 (F) ~~-(e)-~~ "Grandparent" means a natural or adoptive parent of
3 a child's natural or adoptive parent.

4 (G) ~~-(f)-~~ "Guardian ad litem" means an individual whom the
5 court appoints to assist the court in determining the child's best
6 interests. A guardian ad litem does not need to be an attorney.

7 (H) ~~-(g)-~~ "Lawyer-guardian ad litem" means an attorney
8 appointed under section 4. A lawyer-guardian ad litem represents
9 the child, and has the powers and duties, as set forth in section
10 4.

11 (I) ~~-(h)-~~ "Parent" means the natural or adoptive parent of a
12 child.

13 (J) "PERSONAL PROTECTION ORDER" MEANS AN ORDER ISSUED UNDER
14 SECTION 2950 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236,
15 MCL 600.2950.

16 (K) "SERIOUS EMOTIONAL ABUSE" MEANS ABUSE THAT WOULD CAUSE A
17 REASONABLE PERSON TO FEEL TERRORIZED, INTIMIDATED, OR THREATENED.

18 (L) ~~-(i)-~~ "State disbursement unit" or "SDU" means the entity
19 established in section 6 of the office of child support act, 1971
20 PA 174, MCL 400.236.

21 (M) ~~-(j)-~~ "Third person" means an individual other than a
22 parent.

23 Sec. 4. (1) In ~~all actions~~ **AN ACTION** involving dispute of a
24 minor child's custody, the court shall declare the child's inherent
25 rights and establish the rights and duties as to the child's
26 custody, support, and parenting time in accordance with this act.

27 (2) IF A CHILD'S PARENTS HAVE SUBMITTED A PARENTING PLAN UNDER

1 SECTION 5A, THE COURT SHALL APPROVE OR DISAPPROVE THE PLAN. IF THE
2 COURT APPROVES OF THE PARENTING PLAN, THE COURT SHALL ADOPT THE
3 PLAN AND DECLARE ALL OTHER RIGHTS FOR THE CHILD AND DUTIES FOR THE
4 PARENTS NECESSARY TO PROTECT THE CHILD'S BEST INTERESTS.

5 (3) IF THE PARENTS HAVE NOT SUBMITTED A PARENTING PLAN UNDER
6 SECTION 5A, THE COURT SHALL TAKE ANY ACTION THE COURT CONSIDERS
7 APPROPRIATE, CONSIDERING THE RESOURCES OF THE PARTIES AND ANY OTHER
8 LIMITING FACTORS, TO ASSIST THE PARTIES IN DEVELOPING A PARENTING
9 PLAN OR ENTER AN ORDER DECLARING THE CHILD'S INHERENT RIGHTS AND
10 ESTABLISHING THE DUTIES OF THE PARENTS TO IMPLEMENT THOSE RIGHTS,
11 INCLUDING, BUT NOT LIMITED TO, ORDERING EVALUATIONS, REQUIRING THE
12 PARTIES TO ENGAGE IN COUNSELING, REQUIRING THE PARTIES TO ENGAGE IN
13 ALTERNATIVE DISPUTE RESOLUTION, AND CONDUCTING HEARINGS.

14 (4) IN ALL ACTIONS INVOLVING DISPUTE OF A MINOR CHILD'S
15 CUSTODY OR PARENTING TIME, NEITHER THE COURT NOR THE FRIEND OF THE
16 COURT SHALL ADVOCATE ON BEHALF OF A PARTY OR A MINOR CHILD. IN ALL
17 ACTIONS INVOLVING DISPUTE OF A MINOR CHILD'S CUSTODY OR PARENTING
18 TIME, THE CHILD'S PARENTS SHALL REPRESENT THE CHILD'S BEST
19 INTERESTS.

20 ~~——(2)——~~ If, at any time in the proceeding, the court determines
21 that the child's best interests are inadequately represented, the
22 court may appoint a lawyer-guardian ad litem to represent the
23 child. A lawyer-guardian ad litem represents the child and has
24 powers and duties in relation to that representation as set forth
25 in section 17d of chapter XIIA of **THE PROBATE CODE OF 1939**, 1939 PA
26 288, MCL 712A.17d. All provisions of section 17d of chapter XIIA of
27 **THE PROBATE CODE OF 1939**, 1939 PA 288, MCL 712A.17d, apply to a

1 lawyer-guardian ad litem appointed under this act.

2 (5) ~~—(3)—~~ In a proceeding in which a lawyer-guardian ad litem
3 represents a child, he or she may file a written report and
4 recommendation. The court may read the report and recommendation.
5 The court shall not, however, admit the report and recommendation
6 into evidence unless all parties stipulate the admission. The
7 parties may make use of the report and recommendation for purposes
8 of a settlement conference.

9 (6) ~~—(4)—~~ After a determination of ability to pay, the court
10 may assess all or part of the costs and reasonable fees of the
11 lawyer-guardian ad litem against 1 or more of the parties involved
12 in the proceedings or against the money allocated from marriage
13 license fees for family counseling services under section 3 of 1887
14 PA 128, MCL 551.103. A lawyer-guardian ad litem appointed under
15 this section shall not be paid a fee unless the court first
16 receives and approves the fee.

17 **SEC. 5A. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2),**
18 **IN ALL ACTIONS INVOLVING A MINOR CHILD'S CUSTODY, THE PARENTS'**
19 **OBLIGATION TO REPRESENT THE CHILD'S BEST INTERESTS SHALL INCLUDE AN**
20 **ATTEMPT TO ESTABLISH A PARENTING PLAN. A PARENTING PLAN SHALL BE**
21 **AGREED TO BY BOTH PARENTS AND SHALL CONTAIN AT LEAST ALL OF THE**
22 **FOLLOWING:**

23 (A) TO HAVE THE CHILD REARED BY BOTH THE CHILD'S FATHER AND
24 THE CHILD'S MOTHER IN A MANNER THAT CLOSELY APPROXIMATES THEIR
25 REARING OF THE CHILD PRIOR TO ESTABLISHING SEPARATE DOMICILES OR
26 FILING FOR DIVORCE, UNLESS IT IS NOT IN THE CHILD'S BEST INTERESTS.

27 (B) TO PROVIDE FOR THE CHILD'S CARE AND SET FORTH THE

1 AUTHORITY AND RESPONSIBILITIES OF EACH PARENT WITH RESPECT TO THE
2 CHILD. A PARENTING PLAN IS NOT REQUIRED TO DESIGNATE A PARENT AS
3 EITHER THE LEGAL OR PHYSICAL CUSTODIAN OF THE CHILD.

4 (C) TO ENCOURAGE NONADVERSARIAL DISPUTE RESOLUTION IN THE
5 PARENTING PLAN, RATHER THAN RELYING ON JUDICIAL INTERVENTION TO
6 RESOLVE A DISPUTE.

7 (2) THE COURT SHALL NOT REQUIRE A PARENT TO SUBMIT A PARENTING
8 PLAN IF THAT PARENT FILES A SWORN STATEMENT STATING THAT HE OR HE
9 IS A VICTIM OF DOMESTIC VIOLENCE BY THE OTHER PARENT. THE SWORN
10 STATEMENT SHALL BE CONFIDENTIAL, SHALL BE REVIEWED ONLY BY THE
11 COURT OR, DURING A CRIMINAL INVESTIGATION, BY LAW ENFORCEMENT OR A
12 PROSECUTOR, AND SHALL NOT BE A PART OF THE PUBLIC RECORD OF THAT
13 DIVORCE ACTION. THE SWORN STATEMENT IS EXEMPT FROM THE FREEDOM OF
14 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

15 (3) THE COURT SHALL NOT APPROVE A PARENTING PLAN THAT REQUIRES
16 MUTUAL DECISION MAKING OR DESIGNATION OF AN ALTERNATIVE DISPUTE
17 RESOLUTION PROCESS IF THE COURT FINDS THAT A PARENT HAS ENGAGED IN
18 ANY OF THE FOLLOWING:

19 (A) WILLFUL ABANDONMENT OF THE CHILD THAT CONTINUES FOR AN
20 EXTENDED PERIOD OF TIME OR SUBSTANTIAL REFUSAL TO PERFORM PARENTING
21 FUNCTIONS.

22 (B) PHYSICAL, SEXUAL, OR A PATTERN OF EMOTIONAL ABUSE OF A
23 CHILD.

24 (C) A HISTORY OF ACTS OF DOMESTIC VIOLENCE OR AN ASSAULT OR
25 SEXUAL ASSAULT THAT CAUSES GRIEVOUS BODILY HARM OR THE FEAR OF THAT
26 HARM.

27 (4) THE STATE COURT ADMINISTRATIVE OFFICE, AT THE DIRECTION OF

1 THE SUPREME COURT, SHALL DEVELOP A FORM FOR USE BY A PARENT IN
2 COMPLETING A PARENTING PLAN. THE FORM SHALL BE MADE AVAILABLE TO
3 BOTH PARTIES AND INDIVIDUALS AUTHORIZED TO CONDUCT A DIVORCE
4 EDUCATION PROGRAM AS PROVIDED IN SECTION 5 OF 1846 RS 84, MCL
5 552.5.

6 (5) IF 1 OR MORE PARTIES OBTAIN LEGAL COUNSEL IN COMPLETING
7 THE PARENTING PLAN, THE PARTIES SHALL DISCLOSE TO THE COURT THAT
8 LEGAL COUNSEL WAS OBTAINED.

9 (6) IF THE COURT FINDS THAT A PARENT REFUSES TO ATTEND
10 ALTERNATIVE DISPUTE RESOLUTION AS PROVIDED IN THE PARENTING PLAN,
11 THE COURT MAY ASSESS COSTS AND MAY AWARD ATTORNEY FEES AND COSTS TO
12 THE OTHER PARENT.

13 (7) IF A PARENT FAILS TO COMPLY WITH THE PARENTING PLAN OR A
14 CHILD SUPPORT ORDER, THE OTHER PARENT'S OBLIGATIONS UNDER THE
15 PARENTING PLAN OR THE CHILD SUPPORT ORDER ARE NOT AFFECTED. THE
16 COURT MAY HOLD A PARENT WHO FAILS TO COMPLY WITH A PARENTING PLAN
17 IN CONTEMPT OF COURT.

18 (8) A PARENT SEEKING MODIFICATION OF A PARENTING PLAN SHALL
19 SEEK THE APPROVAL OF THE OTHER PARENT AND USE THE DISPUTE
20 RESOLUTION PROCEDURES IN THE PARENTING PLAN. IF THE PARENTS CANNOT
21 AGREE TO A MODIFICATION OF THE PARENTING PLAN, A PARENT MAY FILE A
22 MOTION WITH THE COURT THAT HAS JURISDICTION OVER THE CASE. THE
23 COURT MAY ASSESS COSTS AGAINST A PARENT WHO DOES NOT FIRST SEEK THE
24 APPROVAL OF THE OTHER PARENT OR USE THE DISPUTE RESOLUTION
25 PROCEDURES IN THE PARTIES' PARENTING PLAN BEFORE FILING A MOTION
26 WITH THE COURT.

27 (9) THE COURT SHALL NOT MODIFY A PARENTING PLAN TO CHANGE THE

1 CUSTODIAL ENVIRONMENT OF THE CHILD OVER THE OBJECTION OF A PARENT
2 UNLESS THERE IS PRESENTED CLEAR AND CONVINCING EVIDENCE THAT IT IS
3 IN THE BEST INTEREST OF THE CHILD.

4 (10) IF THE COURT FINDS THAT A MOTION TO MODIFY AN EARLIER
5 PARENTING PLAN IS BROUGHT IN BAD FAITH, OR A REFUSAL TO AGREE TO A
6 MODIFICATION IS MADE IN BAD FAITH, THE COURT MAY ASSESS ATTORNEY
7 FEES AND COURT COSTS AGAINST THE PARTY ACTING IN BAD FAITH.

8 (11) SOLELY FOR THE PURPOSES OF OTHER STATE OR FEDERAL
9 STATUTES OR OTHER LEGAL REQUIREMENTS THAT REQUIRE A DESIGNATION OR
10 DETERMINATION OF LEGAL OR PHYSICAL CUSTODY FOR PURPOSES SUCH AS, BY
11 WAY OF EXAMPLE AND NOT LIMITATION, TAX EXEMPTIONS OR HEALTH CARE
12 BENEFITS, THE COURT MAY DESIGNATE IN THE PARENTING PLAN OR BY
13 SEPARATE ORDER A CHILD'S LEGAL OR PHYSICAL CUSTODIAN OR CUSTODIANS.
14 THIS DESIGNATION DOES NOT AFFECT EITHER PARENT'S RIGHTS AND
15 RESPONSIBILITIES UNDER THE PARENTING PLAN OR ANOTHER PROVISION OF
16 THIS ACT. IN THE ABSENCE OF A DESIGNATION ALLOWED UNDER THIS
17 SECTION, THE PARENT WITH WHOM THE CHILD IS SCHEDULED TO RESIDE THE
18 MAJORITY OF THE TIME SHALL BE CONSIDERED THE CHILD'S CUSTODIAN FOR
19 THOSE PURPOSES.

20 Sec. 11. (1) A child whose parental custody is governed by
21 court order OR WHO IS THE SUBJECT OF A COURT-APPROVED PARENTING
22 PLAN has, for the purposes of this section, a legal residence with
23 each parent. Except as otherwise provided in this section, a parent
24 of a child whose custody is governed by court order shall not
25 change a legal residence of the child to a location that is more
26 than 100 miles from the child's legal residence at the time of the
27 commencement of the action in which the order is issued.

1 (2) A parent's change of a child's legal residence is not
2 restricted by subsection (1) if the other parent consents to, or if
3 the court, after complying with subsection (4), permits, the
4 residence change. This section does not apply if the order
5 governing the child's custody grants sole legal custody to 1 of the
6 child's parents.

7 (3) This section does not apply if, at the time of the
8 commencement of the action in which the custody order is issued,
9 the child's 2 residences were more than 100 miles apart. This
10 section does not apply if the legal residence change results in the
11 child's 2 legal residences being closer to each other than before
12 the change.

13 (4) Before permitting a legal residence change otherwise
14 restricted by subsection (1), the court shall consider each of the
15 following factors, with the child as the primary focus in the
16 court's deliberations:

17 (a) Whether the legal residence change has the capacity to
18 improve the quality of life for both the child and the relocating
19 parent.

20 (b) The degree to which each parent has complied with, and
21 utilized his or her time under, a court order governing parenting
22 time with the child **OR A PARENTING PLAN**, and whether the parent's
23 plan to change the child's legal residence is inspired by that
24 parent's desire to defeat or frustrate the parenting time schedule
25 **OR THE PARENTING PLAN.**

26 (c) The degree to which the court is satisfied that, if the
27 court permits the legal residence change, it is possible to order a

1 modification of the parenting time schedule **OR PARENTING PLAN** and
2 other arrangements governing the child's schedule in a manner that
3 can provide an adequate basis for preserving and fostering the
4 parental relationship between the child and each parent; and
5 whether each parent is likely to comply with the modification.

6 (d) The extent to which the parent opposing the legal
7 residence change is motivated by a desire to secure a financial
8 advantage with respect to a support obligation.

9 (e) Domestic violence, regardless of whether the violence was
10 directed against or witnessed by the child.

11 (5) Each order determining or modifying custody or parenting
12 time of a child **OR A PARENTING PLAN** shall include a provision
13 stating the parent's agreement as to how a change in either of the
14 child's legal residences will be handled. If such a provision is
15 included in the order **OR PARENTING PLAN** and a child's legal
16 residence change is done in compliance with that provision, this
17 section does not apply. If the parents do not agree on such a
18 provision, the court shall include in the order the following
19 provision: "A parent whose custody or parenting time of a child is
20 governed by this ~~order~~ **ORDER/PARENTING PLAN** shall not change the
21 legal residence of the child except in compliance with section 11
22 of the "Child **PARENTING PLAN OR** Custody ~~Act of 1970~~ **DISPUTE**
23 **ACT**", 1970 PA 91, MCL 722.31.".

24 (6) If this section applies to a change of a child's legal
25 residence and the parent seeking to change that legal residence
26 needs to seek a safe location from the threat of domestic violence,
27 the parent may move to such a location with the child until the

1 court makes a determination under this section.