

HOUSE BILL No. 5100

August 24, 2005, Introduced by Rep. Jones and referred to the Committee on Family and Children Services.

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending sections 2, 5, and 7 (MCL 722.22, 722.25, and 722.27),
section 2 as amended by 2004 PA 542, section 5 as amended by 1993
PA 259, and section 7 as amended by 2001 PA 108.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

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

6 (b) "Attorney" means, if appointed to represent a child under
7 this act, an attorney serving as the child's legal advocate in a

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

6 (c) "Child" means minor child and children. Subject to section
7 5b of the support and parenting time enforcement act, 1982 PA 295,
8 MCL 552.605b, for purposes of providing support, child includes a
9 child and children who have reached 18 years of age.

10 (D) **"MILITARY SERVICE" MEANS A RESERVE UNIT MEMBER OR NATIONAL**
11 **GUARD UNIT MEMBER CALLED INTO ACTIVE MILITARY DUTY.**

12 (E) ~~-(d)-~~ "Grandparent" means a natural or adoptive parent of
13 a child's natural or adoptive parent.

14 (F) ~~-(e)-~~ "Guardian ad litem" means an individual whom the
15 court appoints to assist the court in determining the child's best
16 interests. A guardian ad litem does not need to be an attorney.

17 (G) ~~-(f)-~~ "Lawyer-guardian ad litem" means an attorney
18 appointed under section 4. A lawyer-guardian ad litem represents
19 the child, and has the powers and duties, as set forth in section
20 4.

21 (H) ~~-(g)-~~ "Parent" means the natural or adoptive parent of a
22 child.

23 (I) ~~-(h)-~~ "State disbursement unit" or "SDU" means the entity
24 established in section 6 of the office of child support act, 1971
25 PA 174, MCL 400.236.

26 (J) ~~-(i)-~~ "Third person" means an individual other than a
27 parent.

1 Sec. 5. (1) If a child custody dispute is between the parents,
2 between agencies, or between third persons, the best interests of
3 the child control. If the child custody dispute is between the
4 parent or parents and an agency or a third person, the court shall
5 presume that the best interests of the child are served by awarding
6 custody to the parent or parents, unless the contrary is
7 established by clear and convincing evidence. **IF A PARENT IS CALLED**
8 **TO MILITARY SERVICE, THE COURT SHALL NOT MAKE A BEST INTEREST**
9 **DETERMINATION BASED ON THAT PARENT'S SEPARATION FROM HIS OR HER**
10 **CHILD DUE TO THE MILITARY SERVICE.**

11 (2) Notwithstanding other provisions of this act, if a child
12 custody dispute involves a child who is conceived as the result of
13 acts for which 1 of the child's biological parents is convicted of
14 criminal sexual conduct as provided in sections ~~520a~~ **520B** to 520e
15 and 520g of the Michigan penal code, ~~Act No. 328 of the Public~~
16 ~~Acts of 1931, being sections 750.520a to 750.520e and 750.520g of~~
17 ~~the Michigan Compiled Laws~~ **1931 PA 328, MCL 750.520B TO 750.520E**
18 **AND 750.520G**, the court shall not award custody to the convicted
19 biological parent. This subsection does not apply to a conviction
20 under section 520d(1)(a) of the Michigan penal code, ~~Act No. 328~~
21 ~~of the Public Acts of 1931, being section 750.520d of the Michigan~~
22 ~~Compiled Laws~~ **1931 PA 328, MCL 750.520D**. This subsection does not
23 apply if, after the date of the conviction, the biological parents
24 cohabit and establish a mutual custodial environment for the child.

25 (3) Notwithstanding other provisions of this act, if an
26 individual is convicted of criminal sexual conduct as provided in
27 sections ~~520a~~ **520B** to 520e and 520g of ~~Act No. 328 of the Public~~

~~Acts of 1931~~ **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B TO 750.520E AND 750.520G**, 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. 7. (1) If a child custody dispute has been submitted to the circuit court as an original action under this act or has arisen incidentally from another action in the circuit court or an order or judgment of the circuit court, for the best interests of the child the court may do 1 or more of the following:

(a) Award the custody of the child to 1 or more of the parties involved or to others and provide for payment of support for the child, until the child reaches 18 years of age. Subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, the court may also order support as provided in this section for a child after he or she reaches 18 years of age. The court may require that support payments shall be made through the friend of the court, court clerk, or state disbursement unit.

(b) Provide for reasonable parenting time of the child by the parties involved, by the maternal or paternal grandparents, or by others, by general or specific terms and conditions. Parenting time of the child by the parents is governed by section 7a.

(c) Modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches 18 years of age and, subject to section 5b of the

support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, until the child reaches 19 years and 6 months of age.

MILITARY SERVICE BY A CUSTODIAL PARENT IS NOT PROPER CAUSE SHOWN OR A CHANGE OF CIRCUMSTANCES SUFFICIENT TO JUSTIFY A MODIFICATION OR AMENDMENT OF A PREVIOUS CUSTODY JUDGMENT OR ORDER. The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered. **IF A PARENT IS CALLED TO MILITARY SERVICE, A PERMANENT CUSTODIAL ENVIRONMENT MAY NOT BE ESTABLISHED DURING THAT PERIOD OF SERVICE.**

(d) Utilize a guardian ad litem or the community resources in behavioral sciences and other professions in the investigation and study of custody disputes and consider their recommendations for the resolution of the disputes.

(e) Take any other action considered to be necessary in a particular child custody dispute.

(f) Upon petition consider the reasonable grandparenting time of maternal or paternal grandparents as provided in section 7b and, if denied, make a record of the denial.

(2) A judgment or order entered under this act providing for

1 the support of a child is governed by and is enforceable as
2 provided in the support and parenting time enforcement act, 1982 PA
3 295, MCL 552.601 to 552.650. If this act contains a specific
4 provision regarding the contents or enforcement of a support order
5 that conflicts with a provision in the support and parenting time
6 enforcement act, 1982 PA 295, MCL 552.601 to 552.650, this act
7 controls in regard to that provision.