

# HOUSE BILL No. 4174

January 30, 2007, Introduced by Reps. Pearce, Rick Jones, Caul, Hildenbrand, Steil, Proos, Pastor, Brandenburg, Dean, LaJoy, Green and Sheen and referred to the Committee on Families and Children's Services.

A bill to amend 1970 PA 91, entitled "Child custody act of 1970," by amending sections 7a, 7b, and 11 (MCL 722.27a, 722.27b, and 722.31), section 7a as amended by 1996 PA 19, section 7b as amended by 2006 PA 353, and section 11 as added by 2000 PA 422.

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

1       Sec. 7a. (1) Parenting time shall be granted in accordance  
2 with the best interests of the child. It is presumed to be in the  
3 best interests of a child for the child to have a strong  
4 relationship with both of his or her parents. Except as otherwise  
5 provided in this section, parenting time shall be granted to a  
6 parent in a frequency, duration, and type reasonably calculated to  
7 promote a strong relationship between the child and the parent

1 granted parenting time.

2 (2) If the parents of a child agree on parenting time terms,  
3 the court shall order the parenting time terms unless the court  
4 determines on the record by clear and convincing evidence that the  
5 parenting time terms are not in the best interests of the child.

6 (3) A child has a right to parenting time with a parent unless  
7 it is shown on the record by clear and convincing evidence that it  
8 would endanger the child's physical, mental, or emotional health.

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

24 (5) Notwithstanding other provisions of this act, if an  
25 individual is convicted of criminal sexual conduct as provided in  
26 sections 520a to 520e and 520g of ~~Act No. 328 of the Public Acts of~~  
27 ~~1931~~ **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A TO 750.520E**

1 **AND 750.520G**, and the victim is the individual's child, the court  
2 shall not grant parenting time with that child or a sibling of that  
3 child to that individual, unless both the child's other parent and,  
4 if the court considers the child or sibling to be of sufficient age  
5 to express his or her desires, the child or sibling consent to the  
6 parenting time.

7 (6) The court may consider the following factors when  
8 determining the frequency, duration, and type of parenting time to  
9 be granted:

10 (a) The existence of any special circumstances or needs of the  
11 child.

12 (b) Whether the child is a nursing child less than 6 months of  
13 age, or less than 1 year of age if the child receives substantial  
14 nutrition through nursing.

15 (c) The reasonable likelihood of abuse or neglect of the child  
16 during parenting time.

17 (d) The reasonable likelihood of abuse of a parent resulting  
18 from the exercise of parenting time.

19 (e) The inconvenience to, and burdensome impact or effect on,  
20 the child of traveling for purposes of parenting time.

21 (f) Whether a parent can reasonably be expected to exercise  
22 parenting time in accordance with the court order.

23 (g) Whether a parent has frequently failed to exercise  
24 reasonable parenting time.

25 (h) The threatened or actual detention of the child with the  
26 intent to retain or conceal the child from the other parent or from  
27 a third person who has legal custody. A custodial parent's

1 temporary residence with the child in a domestic violence shelter  
2 shall not be construed as evidence of the custodial parent's intent  
3 to retain or conceal the child from the other parent.

4 (i) Any other relevant factors.

5 (7) Parenting time shall be granted in specific terms if  
6 requested by either party at any time.

7 (8) A parenting time order may contain any reasonable terms or  
8 conditions that facilitate the orderly and meaningful exercise of  
9 parenting time by a parent, including 1 or more of the following:

10 (a) Division of the responsibility to transport the child.

11 (b) Division of the cost of transporting the child.

12 (c) Restrictions on the presence of third persons during  
13 parenting time.

14 (d) Requirements that the child be ready for parenting time at  
15 a specific time.

16 (e) Requirements that the parent arrive for parenting time and  
17 return the child from parenting time at specific times.

18 (f) Requirements that parenting time occur in the presence of  
19 a third person or agency.

20 (g) Requirements that a party post a bond to assure compliance  
21 with a parenting time order.

22 (h) Requirements of reasonable notice when parenting time will  
23 not occur.

24 (i) Any other reasonable condition determined to be  
25 appropriate in the particular case.

26 (9) During the time a child is with a parent to whom parenting  
27 time has been awarded, that parent shall decide all routine matters

1 concerning the child.

2 (10) Prior to entry of a temporary order, a parent may seek an  
3 ex parte interim order concerning parenting time. If the court  
4 enters an ex parte interim order concerning parenting time, the  
5 party on whose motion the ex parte interim order is entered shall  
6 have a true copy of the order served on the friend of the court and  
7 the opposing party.

8 (11) If the opposing party objects to the ex parte interim  
9 order, he or she shall file with the clerk of the court within 14  
10 days after receiving notice of the order a written objection to, or  
11 a motion to modify or rescind, the ex parte interim order. The  
12 opposing party shall have a true copy of the written objection or  
13 motion served on the friend of the court and the party who obtained  
14 the ex parte interim order.

15 (12) If the opposing party files a written objection to the ex  
16 parte interim order, the friend of the court shall attempt to  
17 resolve the dispute within 14 days after receiving it. If the  
18 matter cannot be resolved, the friend of the court shall provide  
19 the opposing party with a form motion and order with written  
20 instructions for their use in modifying or rescinding the ex parte  
21 order without assistance of counsel. If the opposing party wishes  
22 to proceed without assistance of counsel, the friend of the court  
23 shall schedule a hearing with the court that shall be held within  
24 21 days after the filing of the motion. If the opposing party files  
25 a motion to modify or rescind the ex parte interim order and  
26 requests a hearing, the court shall resolve the dispute within 28  
27 days after the hearing is requested.

1 (13) An ex parte interim order issued under this section shall  
2 contain the following notice:

3 NOTICE:

4 1. You may file a written objection to this order or a motion  
5 to modify or rescind this order. You must file the written  
6 objection or motion with the clerk of the court within 14 days  
7 after you were served with this order. You must serve a true copy  
8 of the objection or motion on the friend of the court and the party  
9 who obtained the order.

10 2. If you file a written objection, the friend of the court  
11 must try to resolve the dispute. If the friend of the court cannot  
12 resolve the dispute and if you wish to bring the matter before the  
13 court without the assistance of counsel, the friend of the court  
14 must provide you with form pleadings and written instructions and  
15 must schedule a hearing with the court.

16 (14) A PARENT MAY REQUEST ELECTRONIC COMMUNICATION IN ADDITION  
17 TO PARENTING TIME UNDER THIS SECTION. IF A PARENT REQUESTS  
18 ELECTRONIC COMMUNICATION UNDER THIS SECTION, THE COURT MAY GRANT  
19 THAT PARENT A REASONABLE AMOUNT OF ELECTRONIC COMMUNICATION WHILE  
20 THE CHILD IS IN THE OTHER PARENT'S CARE IF THE COURT FINDS BOTH OF  
21 THE FOLLOWING:

22 (A) THE EQUIPMENT FOR PROVIDING THE TYPE OF ELECTRONIC  
23 COMMUNICATION REQUESTED AND THE SERVICE FOR UTILIZING THAT  
24 EQUIPMENT IS AVAILABLE TO BOTH PARENTS.

25 (B) THE ELECTRONIC COMMUNICATION REQUESTED IS IN THE BEST  
26 INTERESTS OF THE CHILD.

27 (15) A COURT SHALL NOT USE ELECTRONIC COMMUNICATION AS A

1 SUBSTITUTE FOR PARENTING TIME UNDER THIS SECTION.

2 (16) THE AMOUNT OF ELECTRONIC COMMUNICATION BETWEEN A PARENT  
3 AND CHILD SHALL NOT BE USED AS A FACTOR IN THE CALCULATION OF CHILD  
4 SUPPORT.

5 (17) IF A PARENTING TIME ORDER CONTAINS A REQUIREMENT THAT  
6 PARENTING TIME OCCUR IN THE PRESENCE OF A THIRD PERSON OR AGENCY,  
7 ANY ELECTRONIC COMMUNICATION GRANTED UNDER THIS SECTION SHALL ALSO  
8 OCCUR IN THE PRESENCE OF A THIRD PERSON OR AGENCY.

9 (18) AS USED IN THIS SECTION, "ELECTRONIC COMMUNICATION" MEANS  
10 COMMUNICATION BETWEEN A PARENT AND HIS OR HER CHILD BY TELEPHONE,  
11 ELECTRONIC MAIL, INSTANT MESSAGING, VIDEO CONFERENCING, WEBCAM, OR  
12 ANY OTHER ELECTRONIC COMMUNICATION DEVICE.

13 Sec. 7b. (1) A child's grandparent may seek a grandparenting  
14 time **OR ELECTRONIC COMMUNICATION** order under 1 or more of the  
15 following circumstances:

16 (a) An action for divorce, separate maintenance, or annulment  
17 involving the child's parents is pending before the court.

18 (b) The child's parents are divorced, separated under a  
19 judgment of separate maintenance, or have had their marriage  
20 annulled.

21 (c) The child's parent who is a child of the ~~grandparents~~  
22 **GRANDPARENT** is deceased.

23 (d) The child's parents have never been married, they are not  
24 residing in the same household, and paternity has been established  
25 by the completion of an acknowledgment of parentage under the  
26 acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to  
27 722.1013, by an order of filiation entered under the paternity act,

1 1956 PA 205, MCL 722.711 to 722.730, or by a determination by a  
2 court of competent jurisdiction that the individual is the father  
3 of the child.

4 (e) Except as otherwise provided in subsection (13), legal  
5 custody of the child has been given to a person other than the  
6 child's parent, or the child is placed outside of and does not  
7 reside in the home of a parent.

8 (f) In the year preceding the commencement of an action under  
9 subsection (3) for grandparenting time, the grandparent provided an  
10 established custodial environment for the child as described in  
11 section 7, whether or not the grandparent had custody under a court  
12 order.

13 (2) A court shall not permit a parent of a father who has  
14 never been married to the child's mother to seek an order for  
15 grandparenting time **OR ELECTRONIC COMMUNICATION** under this section  
16 unless the father has completed an acknowledgment of parentage  
17 under the acknowledgment of parentage act, 1996 PA 305, MCL  
18 722.1001 to 722.1013, an order of filiation has been entered under  
19 the paternity act, 1956 PA 205, MCL 722.711 to 722.730, or the  
20 father has been determined to be the father by a court of competent  
21 jurisdiction. The court shall not permit the parent of a putative  
22 father to seek an order for grandparenting time **OR ELECTRONIC**  
23 **COMMUNICATION** unless the putative father has provided substantial  
24 and regular support or care in accordance with the putative  
25 father's ability to provide the support or care.

26 (3) A grandparent seeking a grandparenting time **OR ELECTRONIC**  
27 **COMMUNICATION** order shall commence an action for grandparenting

1 time, as follows:

2 (a) If the circuit court has continuing jurisdiction over the  
3 child, the child's grandparent shall seek a grandparenting time **OR**  
4 **ELECTRONIC COMMUNICATION** order by filing a motion with the circuit  
5 court in the county where the court has continuing jurisdiction.

6 (b) If the circuit court does not have continuing jurisdiction  
7 over the child, the child's grandparent shall seek a grandparenting  
8 time **OR ELECTRONIC COMMUNICATION** order by filing a complaint in the  
9 circuit court for the county where the child resides.

10 (4) All of the following apply to an action for grandparenting  
11 time under subsection (3):

12 (a) The complaint or motion for grandparenting time **OR**  
13 **ELECTRONIC COMMUNICATION** filed under subsection (3) shall be  
14 accompanied by an affidavit setting forth facts supporting the  
15 requested order. The grandparent shall give notice of the filing to  
16 each person who has legal custody of, or an order for parenting  
17 time with, the child. A party having legal custody **OF THE CHILD** may  
18 file an opposing affidavit. A hearing shall be held by the court on  
19 its own motion or if a party requests a hearing. At the hearing,  
20 parties submitting affidavits shall be allowed an opportunity to be  
21 heard.

22 (b) In order to give deference to the decisions of fit  
23 parents, it is presumed in a proceeding under this subsection that  
24 a fit parent's decision to deny grandparenting time **OR ELECTRONIC**  
25 **COMMUNICATION** does not create a substantial risk of harm to the  
26 child's mental, physical, or emotional health. To rebut the  
27 presumption created in this subdivision, a grandparent filing a

1 complaint or motion under this section must prove by a  
2 preponderance of the evidence that the parent's decision to deny  
3 grandparenting time **OR ELECTRONIC COMMUNICATION** creates a  
4 substantial risk of harm to the child's mental, physical, or  
5 emotional health. If the grandparent does not overcome the  
6 presumption, the court shall dismiss the complaint or deny the  
7 motion.

8 (c) If a court of appellate jurisdiction determines in a final  
9 and nonappealable judgment that the burden of proof described in  
10 subdivision (b) is unconstitutional, a grandparent filing a  
11 complaint or motion under this section must prove by clear and  
12 convincing evidence that the parent's decision to deny  
13 grandparenting time **OR ELECTRONIC COMMUNICATION** creates a  
14 substantial risk of harm to the child's mental, physical, or  
15 emotional health to rebut the presumption created in subdivision  
16 (b).

17 (5) If 2 fit parents sign an affidavit stating that they both  
18 oppose an order for grandparenting time **OR ELECTRONIC**  
19 **COMMUNICATION**, the court shall dismiss a complaint or motion  
20 seeking an order for grandparenting time **OR ELECTRONIC**  
21 **COMMUNICATION** filed under subsection (3). This subsection does not  
22 apply if 1 of the fit parents is a stepparent who adopted a child  
23 under the Michigan adoption code, chapter X of the probate code of  
24 1939, 1939 PA 288, MCL 710.21 to 710.70, and the grandparent  
25 seeking the order is the natural or adoptive parent of a parent of  
26 the child who is deceased or whose parental rights have been  
27 terminated.

1           (6) If the court finds that a grandparent has met the standard  
2 for rebutting the presumption described in subsection (4), the  
3 court shall consider whether it is in the best interests of the  
4 child to enter an order for grandparenting time **OR ELECTRONIC**  
5 **COMMUNICATION**. If the court finds by a preponderance of the  
6 evidence that it is in the best interests of the child to enter a  
7 grandparenting time **OR ELECTRONIC COMMUNICATION** order, the court  
8 shall enter an order providing for reasonable grandparenting time  
9 ~~of~~ **OR ELECTRONIC COMMUNICATION WITH** the child by the grandparent by  
10 general or specific terms and conditions. In determining the best  
11 interests of the child under this subsection, the court shall  
12 consider all of the following:

13           (a) The love, affection, and other emotional ties existing  
14 between the grandparent and the child.

15           (b) The length and quality of the prior relationship between  
16 the child and the grandparent, the role performed by the  
17 grandparent, and the existing emotional ties of the child to the  
18 grandparent.

19           (c) The grandparent's moral fitness.

20           (d) The grandparent's mental and physical health.

21           (e) The child's reasonable preference, if the court considers  
22 the child to be of sufficient age to express a preference.

23           (f) The effect on the child of hostility between the  
24 grandparent and the parent of the child.

25           (g) The willingness of the grandparent, except in the case of  
26 abuse or neglect, to encourage a close relationship between the  
27 child and the parent or parents of the child.

1 (h) Any history of physical, emotional, or sexual abuse or  
2 neglect of any child by the grandparent.

3 (i) Whether the parent's decision to deny, or lack of an offer  
4 of, grandparenting time **OR ELECTRONIC COMMUNICATION** is related to  
5 the child's well-being or is for some other unrelated reason.

6 **(J) WHETHER THE EQUIPMENT FOR PROVIDING THE TYPE OF ELECTRONIC**  
7 **COMMUNICATION REQUESTED AND THE SERVICE FOR USING THE EQUIPMENT IS**  
8 **AVAILABLE TO THE PARENT OF THE CHILD.**

9 **(K)** ~~(j)~~—Any other factor relevant to the physical and  
10 psychological well-being of the child.

11 (7) If the court has determined that a grandparent has met the  
12 standard for rebutting the presumption described in subsection (4),  
13 the court may refer that grandparent's complaint or motion for  
14 grandparenting time **OR ELECTRONIC COMMUNICATION** filed under  
15 subsection (3) to domestic relations mediation as provided by  
16 supreme court rule. If the complaint or motion is referred to the  
17 friend of the court mediation service and no settlement is reached  
18 through friend of the court mediation within a reasonable time  
19 after the date of referral, the complaint or motion shall be heard  
20 by the court as provided in this section.

21 (8) A grandparent may not file more than once every 2 years,  
22 absent a showing of good cause, a complaint or motion under  
23 subsection (3) seeking a grandparenting time **OR ELECTRONIC**  
24 **COMMUNICATION** order. If the court finds there is good cause to  
25 allow a grandparent to file more than 1 complaint or motion under  
26 this section in a 2-year period, the court shall allow the filing  
27 and shall consider the complaint or motion. Upon motion of a

1 person, the court may order reasonable attorney fees to the  
2 prevailing party.

3 (9) The court shall not enter an order prohibiting an  
4 individual who has legal custody of a child from changing the  
5 domicile of the child if the prohibition is primarily for the  
6 purpose of allowing a grandparent to exercise the rights conferred  
7 in a grandparenting time **OR ELECTRONIC COMMUNICATION** order entered  
8 under this section.

9 (10) A grandparenting time **OR ELECTRONIC COMMUNICATION** order  
10 entered under this section does not create parental rights in the  
11 individual or individuals to whom grandparenting time **OR ELECTRONIC**  
12 **COMMUNICATION** rights are granted. The entry of a grandparenting  
13 time **OR ELECTRONIC COMMUNICATION** order does not prevent a court of  
14 competent jurisdiction from acting upon the custody of the child,  
15 the parental rights of the child, or the adoption of the child.

16 (11) A court shall not modify or terminate a grandparenting  
17 time **OR ELECTRONIC COMMUNICATION** order entered under this section  
18 unless it finds by a preponderance of the evidence, on the basis of  
19 facts that have arisen since entry of the grandparenting time **OR**  
20 **ELECTRONIC COMMUNICATION** order or were unknown to the court at the  
21 time it entered that order, that a change has occurred in the  
22 circumstances of the child or his or her custodian and that a  
23 modification or termination of the existing order is necessary to  
24 avoid creating a substantial risk of harm to the mental, physical,  
25 or emotional health of the child. A court modifying or terminating  
26 a grandparenting time **OR ELECTRONIC COMMUNICATION** order under this  
27 subsection shall include specific findings of fact in its order in

1 support of its decision.

2 (12) The court shall make a record of its analysis and  
3 findings under subsections (4), (6), (8), and (11), including the  
4 reasons for granting or denying a requested grandparenting time **OR**  
5 **ELECTRONIC COMMUNICATION** order.

6 (13) Except as otherwise provided in this subsection, adoption  
7 of a child or placement of a child for adoption under the Michigan  
8 adoption code, chapter X of the probate code of 1939, 1939 PA 288,  
9 MCL 710.21 to 710.70, terminates the right of a grandparent to  
10 commence an action for grandparenting time with that child.

11 Adoption of a child by a stepparent under the Michigan adoption  
12 code, chapter X of the probate code of 1939, 1939 PA 288, MCL  
13 710.21 to 710.70, does not terminate the right of the parent of a  
14 deceased parent of the child to commence an action for  
15 grandparenting time with that child.

16 **(14) AS USED IN THIS SECTION, "ELECTRONIC COMMUNICATION" MEANS**  
17 **COMMUNICATION BETWEEN A GRANDPARENT AND HIS OR HER GRANDCHILD BY**  
18 **TELEPHONE, ELECTRONIC MAIL, INSTANT MESSAGING, VIDEO CONFERENCING,**  
19 **WEBCAM, OR ANY OTHER ELECTRONIC COMMUNICATION DEVICE.**

20 Sec. 11. (1) A child whose parental custody is governed by  
21 court order has, for the purposes of this section, a legal  
22 residence with each parent. Except as otherwise provided in this  
23 section, a parent of a child whose custody is governed by court  
24 order shall not change a legal residence of the child to a location  
25 that is more than 100 miles from the child's legal residence at the  
26 time of the commencement of the action in which the order is  
27 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, and whether the parent's plan to change the  
23 child's legal residence is inspired by that parent's desire to  
24 defeat or frustrate the parenting time schedule.

25           (c) The degree to which the court is satisfied that, if the  
26 court permits the legal residence change, it is possible to order a  
27 modification of the parenting time schedule and other arrangements

1 governing the child's schedule in a manner that can provide an  
2 adequate basis for preserving and fostering the parental  
3 relationship between the child and each parent; and whether each  
4 parent is likely to comply with the modification.

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

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

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

21 (6) If this section applies to a change of a child's legal  
22 residence and the parent seeking to change that legal residence  
23 needs to seek a safe location from the threat of domestic violence,  
24 the parent may move to such a location with the child until the  
25 court makes a determination under this section.

26 (7) **THE COURT MAY NOT USE THE AVAILABILITY OF ELECTRONIC**  
27 **COMMUNICATION UNDER SECTION 7A TO JUSTIFY OR SUPPORT A CHANGE OF**

1 LEGAL RESIDENCE UNDER THIS SECTION.