

SENATE BILL No. 1015

July 16, 2014, Introduced by Senator JONES and referred to the Committee on Judiciary.

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending sections 7 and 7a (MCL 722.27 and 722.27a), section 7
as amended by 2005 PA 328 and section 7a as amended by 2012 PA 600.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7. (1) If a child custody dispute has been submitted to
2 the circuit court as an original action under this act or has
3 arisen incidentally from another action in the circuit court or an
4 order or judgment of the circuit court, for the best interests of
5 the child the court may do 1 or more of the following:

6 (a) Award the custody of the child to 1 or more of the parties
7 involved or to others and provide for payment of support for the
8 child, until the child reaches 18 years of age. Subject to section
9 5b of the support and parenting time enforcement act, 1982 PA 295,

1 MCL 552.605b, the court may also order support as provided in this
2 section for a child after he or she reaches 18 years of age. The
3 court may require that support payments shall be made through the
4 friend of the court, court clerk, or state disbursement unit.

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

9 (c) Modify or amend its previous judgments or orders for
10 proper cause shown or because of change of circumstances until the
11 child reaches 18 years of age and, subject to section 5b of the
12 support and parenting time enforcement act, 1982 PA 295, MCL
13 552.605b, until the child reaches 19 years and 6 months of age. The
14 court shall not modify or amend its previous judgments or orders or
15 issue a new order so as to change the established custodial
16 environment of a child unless there is presented clear and
17 convincing evidence that it is in the best interest of the child.
18 The custodial environment of a child is established if over an
19 appreciable time the child naturally looks to the custodian in that
20 environment for guidance, discipline, the necessities of life, and
21 parental comfort. The age of the child, the physical environment,
22 and the inclination of the custodian and the child as to permanency
23 of the relationship shall also be considered. ~~If a motion for~~
24 ~~change of custody is filed during the time a parent is in active~~
25 ~~military duty, the court shall not enter an order modifying or~~
26 ~~amending a previous judgment or order, or issue a new order, that~~
27 ~~changes the child's placement that existed on the date the parent~~

1 ~~was called to active military duty, except the court may enter a~~
2 ~~temporary custody order if there is clear and convincing evidence~~
3 ~~that it is in the best interest of the child.~~ IN ADDITION TO THE
4 CHILD CUSTODY RIGHTS AND REMEDIES PROVIDED IN THE SERVICEMEMBERS
5 CIVIL RELIEF ACT, 50 USC 501 TO 597B, IF A MOTION FOR CHANGE OF
6 CUSTODY IS FILED DURING THE TIME A PARENT IS IN ACTIVE MILITARY
7 DUTY, THE COURT SHALL ASK THE PARENT IF AN APPLICATION FOR STAY IS
8 REQUESTED AND SHALL NOT ENTER AN ORDER MODIFYING OR AMENDING A
9 PREVIOUS JUDGMENT OR ORDER, OR ISSUE A NEW ORDER, THAT CHANGES THE
10 CHILD'S PLACEMENT THAT EXISTED ON THE DATE THE PARENT WAS CALLED TO
11 ACTIVE MILITARY DUTY, EXCEPT THAT THE COURT MAY ENTER A TEMPORARY
12 CUSTODY ORDER IF THERE IS CLEAR AND CONVINCING EVIDENCE THAT IT IS
13 IN THE BEST INTEREST OF THE CHILD. AT ANY STAGE BEFORE FINAL
14 JUDGMENT IN THE PROCEEDING, THE PARENT MAY FILE AN APPLICATION FOR
15 STAY OR OTHERWISE REQUEST A STAY OF THE PROCEEDINGS. THE PARENT,
16 THE PARENT'S CUSTODIAL DESIGNEE, AND THE CUSTODIAL CHILD SHALL NOT
17 BE REQUIRED TO BE PRESENT TO CONSIDER THE APPLICATION FOR STAY. THE
18 COURT SHALL CONSIDER THE STAY APPLICATION SUFFICIENT IF IT IS A
19 SIGNED, WRITTEN STATEMENT, CERTIFIED TO BE TRUE UNDER PENALTY OF
20 PERJURY. A GOOD-FAITH ESTIMATED FUTURE DATE OF THE PARENT'S ABILITY
21 TO APPEAR IS SUFFICIENT TO CONSIDER THE APPLICATION FOR STAY, AND
22 THE LENGTH OF THE STAY SHALL BE SET TO THIS ESTIMATED FUTURE DATE
23 OR 720 DAYS, WHICHEVER IS SHORTER. THE PARENT'S DURATION OF
24 DEPLOYMENT, PRISONER OF WAR STATUS, OR BEING MISSING IN ACTION BUT
25 NOT DECLARED DEAD BY A COURT SHALL NOT BE CONSIDERED IN A BEST
26 INTEREST OF THE CHILD DETERMINATION. THE SAME CONDITIONS FOR THE
27 INITIAL STAY APPLY TO APPLICATIONS FOR EXTENSIONS OF THE STAY. THE

1 PARENT SHALL INFORM THE COURT OF THE OFFICIAL ACTIVE DUTY END DATE
2 BEFORE OR WITHIN 30 DAYS AFTER THAT OFFICIAL ACTIVE DUTY END DATE,
3 AND THE STAY SHALL BE ADJUSTED TO NOT LESS THAN 90 DAYS, AND NOT
4 MORE THAN 180 DAYS, AFTER THE OFFICIAL ACTIVE DUTY END DATE. THE
5 COURT SHALL REQUEST REVIEW WITHIN 24 HOURS OF DENYING EITHER THE
6 INITIAL APPLICATION FOR A STAY OR AN APPLICATION FOR AN EXTENSION
7 OF A STAY BY THE STATE COURT ADMINISTRATIVE OFFICE ACCORDING TO
8 MICHIGAN COURT RULE 8.113. THIS REVIEW BY THE STATE COURT
9 ADMINISTRATIVE OFFICE SHALL NOT PRECLUDE OR PREJUDICE ANY RIGHTS OF
10 APPEAL OR ADDITIONAL REMEDIES. Upon a parent's return from active
11 military duty, the court shall reinstate the custody order in
12 effect immediately preceding that period of active military duty.
13 If a motion for change of custody is filed after a parent returns
14 from active military duty, the court shall not consider a parent's
15 absence due to that military duty in a best interest of the child
16 determination.

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

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

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

26 (2) A judgment or order entered under this act providing for
27 the support of a child is governed by and is enforceable as

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

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

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

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

22 (4) Notwithstanding other provisions of this act, if a
23 proceeding regarding parenting time involves a child who is
24 conceived as the result of acts for which 1 of the child's
25 biological parents is convicted of criminal sexual conduct as
26 provided in sections 520a to 520e and 520g of the Michigan penal
27 code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, the court

1 shall not grant parenting time to the convicted biological parent.
2 This subsection does not apply to a conviction under section
3 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d.
4 This subsection does not apply if, after the date of the
5 conviction, the biological parents cohabit and establish a mutual
6 custodial environment for the child.

7 (5) Notwithstanding other provisions of this act, if an
8 individual is convicted of criminal sexual conduct as provided in
9 sections 520a to 520e and 520g of the Michigan penal code, 1931 PA
10 328, MCL 750.520a to 750.520e and 750.520g, and the victim is the
11 individual's child, the court shall not grant parenting time with
12 that child or a sibling of that child to that individual, unless
13 both the child's other parent and, if the court considers the child
14 or sibling to be of sufficient age to express his or her desires,
15 the child or sibling consent to the parenting time.

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

19 (a) The existence of any special circumstances or needs of the
20 child.

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

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

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

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

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

5 (g) Whether a parent has frequently failed to exercise
6 reasonable parenting time.

7 (h) The threatened or actual detention of the child with the
8 intent to retain or conceal the child from the other parent or from
9 a third person who has legal custody. A custodial parent's
10 temporary residence with the child in a domestic violence shelter
11 shall not be construed as evidence of the custodial parent's intent
12 to retain or conceal the child from the other parent.

13 (i) Any other relevant factors.

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

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

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

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

21 (c) Restrictions on the presence of third persons during
22 parenting time.

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

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

27 (f) Requirements that parenting time occur in the presence of

1 a third person or agency.

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

4 (h) Requirements of reasonable notice when parenting time will
5 not occur.

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

8 (9) Except as provided in this subsection, a parenting time
9 order shall contain a prohibition on exercising parenting time in a
10 country that is not a party to the Hague convention on the civil
11 aspects of international child abduction. This subsection does not
12 apply if both parents provide the court with written consent to
13 allow a parent to exercise parenting time in a country that is not
14 a party to the Hague convention on the civil aspects of
15 international child abduction.

16 (10) During the time a child is with a parent to whom
17 parenting time has been awarded, that parent shall decide all
18 routine matters concerning the child.

19 (11) Prior to entry of a temporary order, a parent may seek an
20 ex parte interim order concerning parenting time. If the court
21 enters an ex parte interim order concerning parenting time, the
22 party on whose motion the ex parte interim order is entered shall
23 have a true copy of the order served on the friend of the court and
24 the opposing party.

25 (12) If the opposing party objects to the ex parte interim
26 order, he or she shall file with the clerk of the court within 14
27 days after receiving notice of the order a written objection to, or

1 a motion to modify or rescind, the ex parte interim order. The
2 opposing party shall have a true copy of the written objection or
3 motion served on the friend of the court and the party who obtained
4 the ex parte interim order.

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

18 (14) An ex parte interim order issued under this section shall
19 contain the following notice:

20 NOTICE:

21 1. You may file a written objection to this order or a motion
22 to modify or rescind this order. You must file the written
23 objection or motion with the clerk of the court within 14 days
24 after you were served with this order. You must serve a true copy
25 of the objection or motion on the friend of the court and the party
26 who obtained the order.

27 2. If you file a written objection, the friend of the court

1 must try to resolve the dispute. If the friend of the court cannot
2 resolve the dispute and if you wish to bring the matter before the
3 court without the assistance of counsel, the friend of the court
4 must provide you with form pleadings and written instructions and
5 must schedule a hearing with the court.

6 (15) IN ADDITION TO THE CHILD CUSTODY RIGHTS AND REMEDIES
7 PROVIDED IN THE SERVICEMEMBERS CIVIL RELIEF ACT, 50 USC 501 TO
8 597B, IF A MOTION FOR CHANGE OF PARENTING TIME IS FILED DURING THE
9 TIME A PARENT IS IN ACTIVE MILITARY DUTY, THE COURT SHALL ASK THE
10 PARENT IF AN APPLICATION FOR STAY IS REQUESTED AND SHALL NOT ENTER
11 AN ORDER MODIFYING OR AMENDING A PREVIOUS JUDGMENT OR ORDER, OR
12 ISSUE A NEW ORDER, THAT CHANGES THE PARENTING TIME THAT EXISTED ON
13 THE DATE THE PARENT WAS CALLED TO ACTIVE MILITARY DUTY, EXCEPT THAT
14 THE COURT MAY ENTER A TEMPORARY PARENTING TIME ORDER IF THERE IS
15 CLEAR AND CONVINCING EVIDENCE THAT IT IS IN THE BEST INTEREST OF
16 THE CHILD. AT ANY STAGE BEFORE FINAL JUDGMENT IN THE PROCEEDING,
17 THE PARENT MAY FILE AN APPLICATION FOR STAY OR OTHERWISE REQUEST A
18 STAY OF PROCEEDINGS. THE PARENT, THE PARENT'S CUSTODIAL DESIGNEE,
19 AND THE CUSTODIAL CHILD SHALL NOT BE REQUIRED TO BE PRESENT TO
20 CONSIDER THE APPLICATION FOR STAY. THE COURT SHALL CONSIDER THE
21 STAY APPLICATION SUFFICIENT IF IT IS A SIGNED, WRITTEN STATEMENT,
22 CERTIFIED TO BE TRUE UNDER PENALTY OF PERJURY. A GOOD-FAITH
23 ESTIMATED FUTURE DATE OF THE PARENT'S ABILITY TO APPEAR IS
24 SUFFICIENT TO CONSIDER THE APPLICATION FOR STAY, AND THE LENGTH OF
25 THE STAY SHALL BE SET TO AT LEAST 180 DAYS OR ANY PORTION OF THE
26 ACTIVE DUTY DEPLOYMENT OVER 180 DAYS. THE SAME CONDITIONS FOR THE
27 INITIAL STAY APPLY TO APPLICATIONS FOR AN EXTENSION OF A STAY. THE

1 PARENT SHALL INFORM THE COURT OF THE OFFICIAL ACTIVE DUTY END DATE
2 BEFORE OR WITHIN 15 DAYS AFTER THAT ACTIVE DUTY END DATE, AND THE
3 STAY SHALL BE ADJUSTED TO NOT LESS THAN 60 DAYS, AND NOT MORE THAN
4 90 DAYS, AFTER THE OFFICIAL ACTIVE DUTY END DATE. THE COURT SHALL
5 REQUEST REVIEW WITHIN 5 BUSINESS DAY OF DENYING EITHER THE INITIAL
6 APPLICATION FOR A STAY OR AN APPLICATION FOR AN EXTENSION OF A STAY
7 BY THE STATE COURT ADMINISTRATIVE OFFICE ACCORDING TO MICHIGAN
8 COURT RULE 8.113. NO PARENTING TIME SHALL BE SCHEDULED UNTIL THIS
9 REVIEW IS COMPLETED. THIS REVIEW BY THE STATE COURT ADMINISTRATIVE
10 OFFICE DOES NOT PRECLUDE OR PREJUDICE ANY RIGHTS OF APPEAL OR
11 ADDITIONAL REMEDIES. UPON A PARENT'S RETURN FROM ACTIVE MILITARY
12 DUTY, THE COURT SHALL REINSTATE THE PARENTING TIME ORDER IN EFFECT
13 IMMEDIATELY PRECEDING THAT PERIOD OF ACTIVE MILITARY DUTY. IF A
14 MOTION FOR CHANGE OF PARENTING TIME IS FILED AFTER A PARENT RETURNS
15 FROM ACTIVE MILITARY DUTY, THE COURT SHALL NOT CONSIDER A PARENT'S
16 ABSENCE DUE TO THAT MILITARY DUTY.