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BILL



ANALYSIS

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House Bill 4481 (Substitute S-1)  
Sponsor: Representative Lisa Posthumus Lyons  
House Committee: Criminal Justice  
Senate Committee: Judiciary

Date Completed: 12-8-15

### **CONTENT**

**The bill would amend the Child Custody Act to expand current prohibitions against a biological parent's being awarded custody of a child or parenting time with a child, if the child was conceived as a result of criminal sexual conduct (CSC) under the Michigan Penal Code. Under the bill, those prohibitions would apply in the case of a child conceived as the result of CSC under the Penal Code or a substantially similar statute of another state or the Federal government or if the biological parent were found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration.**

**The bill also would do the following:**

- Specify that an offending parent would not be entitled to custody of the child without the consent of the other parent or guardian.**
- Specify that the prohibition against gaining custody would not relieve an offending parent of any support or maintenance obligation to the child.**
- Authorize a parent to assert an affirmative defense that the child was conceived as the result of CSC or nonconsensual sexual penetration in a custody or parenting time proceeding brought by the offending parent.**

The bill would take effect 90 days after its enactment.

### **Child Custody**

Under the Act, if a child custody dispute involves a child who is conceived as the result of acts for which one of the child's biological parents is convicted of CSC under the Michigan Penal Code, the court may not award custody to that biological parent. Under the bill, that provision would apply if the dispute involved the custody of a child conceived as the result of acts for which one of the biological parents was convicted of CSC under the Penal Code or a substantially similar statute of another state or the Federal government. It also would apply if the child were conceived as the result of acts for which one of the child's biological parents was found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual penetration.

This prohibition against awarding custody does not apply if, after the date of conviction, the biological parents cohabit and establish a mutual custodial environment for the child. Under the bill, the prohibition also would not apply if the parents took those actions after the date of the finding in a fact-finding hearing.

The bill specifies that an offending parent would not be entitled to custody of a child conceived as a result of CSC or nonconsensual sexual penetration without the consent of the child's other parent or guardian.

The prohibition against awarding custody would not relieve an offending parent of any support or maintenance obligation to the child. The other parent or the child's guardian could decline support or maintenance from the offending parent, however.

The bill would authorize a parent to assert an affirmative defense that the child was conceived as the result of CSC or nonconsensual sexual penetration in a custody proceeding brought by the offending parent.

"Offending parent" would mean a parent who has been convicted of CSC, or who has been found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration, that resulted in conception of the child.

### Parenting Time

Under the Act, if a proceeding regarding parenting time involves a child who is conceived as the result of acts for which one of the child's biological parents is convicted of CSC under the Penal Code, the court may not grant parenting time to that biological parent. Under the bill, that provision would apply to a biological parent convicted of CSC under the Penal Code or a substantially similar statute of another state or the Federal government. It also would apply if the child were conceived as the result of acts for which one of the child's biological parents was found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual penetration.

The prohibition does not apply if, after the date of conviction, the biological parents cohabit and establish a mutual custodial environment for the child. Under the bill, the prohibition also would not apply if the parents took those actions after the date of the finding in a fact-finding hearing.

The bill would authorize a parent to assert an affirmative defense that the child was conceived as the result of CSC or nonconsensual sexual penetration in a parenting time proceeding brought by the offending parent.

MCL 722.25 & 722.27a

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have an indeterminate, though likely small, fiscal impact on the State and local governments. It is not known whether the provisions of the bill would increase or decrease the number of hearings and determinations on child custody and parenting time. An increase in hearings and determinations could place incremental resource demands on court systems. Conversely, a decrease in hearings and determinations could incrementally reduce resource demands on court systems.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.