

HOUSE BILL No. 5132

October 18, 2017, Introduced by Rep. Faris and referred to the Committee on Law and Justice.

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending sections 5 and 7a (MCL 722.25 and 722.27a), as amended
by 2016 PA 96.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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.

8 (2) Notwithstanding other provisions of this act, if a child
9 custody dispute involves a child who is conceived as the result of

1 acts for which 1 of the child's biological parents is convicted of
2 criminal sexual conduct as provided in sections 520a to 520e and
3 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to
4 750.520e and 750.520g, or a substantially similar statute of
5 another state or the federal government, or is found by clear and
6 convincing evidence in a fact-finding hearing to have committed
7 acts of nonconsensual sexual penetration, the court shall not award
8 custody to that biological parent. ~~This subsection does not apply~~
9 ~~to a conviction under section 520d(1)(a) of the Michigan penal~~
10 ~~code, 1931 PA 328, MCL 750.520d.~~ This subsection does not apply if,
11 after the date of the conviction, or the date of the finding in a
12 fact-finding hearing described in this subsection, the biological
13 parents cohabit and establish a mutual custodial environment for
14 the child.

15 (3) An offending parent is not entitled to custody of a child
16 described in subsection (2) without the consent of that child's
17 other parent or guardian.

18 (4) Notwithstanding other provisions of this act, subsection
19 (2) does not relieve an offending parent of any support or
20 maintenance obligation to the child. The other parent or the
21 guardian of the child may decline support or maintenance from the
22 offending parent.

23 (5) A parent may assert an affirmative defense of the
24 provisions of subsection (2) in a proceeding brought by the
25 offending parent regarding a child described in subsection (2).

26 (6) Notwithstanding other provisions of this act, if an
27 individual is convicted of criminal sexual conduct as provided in

1 sections 520a to 520e and 520g of the Michigan penal code, 1931 PA
2 328, MCL 750.520a to 750.520e and 750.520g, and the victim is the
3 individual's child, the court shall not award custody of that child
4 or a sibling of that child to that individual, unless both the
5 child's other parent and, if the court considers the child or
6 sibling to be of sufficient age to express his or her desires, the
7 child or sibling consent to the custody.

8 (7) As used in this section, "offending parent" means a parent
9 who has been convicted of criminal sexual conduct as described in
10 subsection (2) or who has been found by clear and convincing
11 evidence in a fact-finding hearing to have committed acts of
12 nonconsensual sexual penetration as described in subsection (2).

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

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

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

1 (4) Notwithstanding other provisions of this act, if a
2 proceeding regarding parenting time involves a child who is
3 conceived as the result of acts for which 1 of the child's
4 biological parents is convicted of criminal sexual conduct as
5 provided in sections 520a to 520e and 520g of the Michigan penal
6 code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, or a
7 substantially similar statute of another state or the federal
8 government, or is found by clear and convincing evidence in a fact-
9 finding hearing to have committed acts of nonconsensual sexual
10 penetration, the court shall not grant parenting time to that
11 biological parent. ~~This subsection does not apply to a conviction~~
12 ~~under section 520d(1)(a) of the Michigan penal code, 1931 PA 328,~~
13 ~~MCL 750.520d.~~ This subsection does not apply if, after the date of
14 the conviction, or the date of the finding in a fact-finding
15 hearing described in this subsection, the biological parents
16 cohabit and establish a mutual custodial environment for the child.

17 (5) A parent may assert an affirmative defense of the
18 provisions of subsection (4) in a proceeding brought by the
19 offending parent regarding a child described in subsection (4).

20 (6) Notwithstanding other provisions of this act, if an
21 individual is convicted of criminal sexual conduct as provided in
22 sections 520a to 520e and 520g of the Michigan penal code, 1931 PA
23 328, MCL 750.520a to 750.520e and 750.520g, and the victim is the
24 individual's child, the court shall not grant parenting time with
25 that child or a sibling of that child to that individual, unless
26 both the child's other parent and, if the court considers the child
27 or sibling to be of sufficient age to express his or her desires,

1 the child or sibling consent to the parenting time.

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

5 (a) The existence of any special circumstances or needs of the
6 child.

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

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

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

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

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

18 (g) Whether a parent has frequently failed to exercise
19 reasonable parenting time.

20 (h) The threatened or actual detention of the child with the
21 intent to retain or conceal the child from the other parent or from
22 a third person who has legal custody. A custodial parent's
23 temporary residence with the child in a domestic violence shelter
24 shall not be construed as evidence of the custodial parent's intent
25 to retain or conceal the child from the other parent.

26 (i) Any other relevant factors.

27 (8) Parenting time shall be granted in specific terms if

1 requested by either party at any time.

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

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

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

7 (c) Restrictions on the presence of third persons during
8 parenting time.

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

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

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

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

17 (h) Requirements of reasonable notice when parenting time will
18 not occur.

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

21 (10) Except as provided in this subsection, a parenting time
22 order shall contain a prohibition on exercising parenting time in a
23 country that is not a party to the Hague Convention on the Civil
24 Aspects of International Child Abduction. This subsection does not
25 apply if both parents provide the court with written consent to
26 allow a parent to exercise parenting time in a country that is not
27 a party to the Hague Convention on the Civil Aspects of

1 International Child Abduction.

2 (11) During the time a child is with a parent to whom
3 parenting time has been awarded, that parent shall decide all
4 routine matters concerning the child.

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

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

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

1 a motion to modify or rescind the ex parte interim order and
2 requests a hearing, the court shall resolve the dispute within 28
3 days after the hearing is requested.

4 (15) An ex parte interim order issued under this section shall
5 contain the following notice:

6 NOTICE:

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

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

19 (16) As provided in the servicemembers civil relief act, 50
20 USC 501 to 597b, if a motion for change of parenting time is filed
21 during the time a parent is on deployment, a parent may file and
22 the court shall entertain an application for stay. The court shall
23 presume that the best interests of the child are served by not
24 entering an order modifying or amending a previous judgment or
25 order, or issuing a new order, that changes the parenting time that
26 existed on the date the parent was called to deployment, unless the
27 contrary is established by clear and convincing evidence, at which

1 time the court may enter a temporary parenting time order. When a
2 temporary parenting time order is issued under this subsection, the
3 court may include a limit on the period of time that the temporary
4 parenting time order remains in effect. At any stage before final
5 judgment in the proceeding, the parent may file an application for
6 stay or otherwise request a stay of proceedings or file an
7 application for an extension of a stay. The parent and the
8 custodial child are not required to be present to consider the
9 application for stay or extension of a stay. The application for
10 stay or extension of a stay is sufficient if it is a signed,
11 written statement, certified to be true under penalty of perjury.
12 The same conditions for the initial stay apply to applications for
13 an extension of a stay.

14 (17) The parent shall inform the court of the deployment end
15 date before or within 30 days after that deployment end date. Upon
16 notification of a parent's deployment end date, the court shall
17 reinstate the parenting time order in effect immediately preceding
18 that period of deployment. If a motion for change of parenting time
19 is filed after a parent returns from deployment, the court shall
20 not consider a parent's absence due to that deployment in making a
21 determination regarding change of parenting time. Future
22 deployments shall not be considered in making a best interest of
23 the child determination.

24 (18) If the deploying parent and the other parent share
25 custody, the deploying parent must notify the other parent of an
26 upcoming deployment within a reasonable period of time.

27 (19) As used in this section, "offending parent" means a

1 parent who has been convicted of criminal sexual conduct as
2 described in subsection (4) or who has been found by clear and
3 convincing evidence in a fact-finding hearing to have committed
4 acts of nonconsensual sexual penetration as described in subsection
5 (4) .

6 Enacting section 1. This amendatory act takes effect 90 days
7 after the date it is enacted into law.