

HOUSE BILL NO. 4074

January 23, 2019, Introduced by Reps. Hope, Pagan, Ellison, Rendon, Anthony, Brixie and Love and referred to the Committee on Judiciary.

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

1 presume that the best interests of the child are served by awarding
2 custody to the parent or parents, unless the contrary is
3 established by clear and convincing evidence.

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

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

23 (4) Notwithstanding other provisions of this act, subsection
24 (2) does not relieve an offending parent of any support or
25 maintenance obligation to the child. The other parent or the
26 guardian of the child may decline support or maintenance from the
27 offending parent.

28 (5) A parent may assert an affirmative defense of the
29 provisions of subsection (2) in a proceeding brought by the

1 offending parent regarding a child described in subsection (2).

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

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

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

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

28 (3) A child has a right to parenting time with a parent unless
29 it is shown on the record by clear and convincing evidence that it

1 would endanger the child's physical, mental, or emotional health.

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

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

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

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

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

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

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

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

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

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

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

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

25 (i) Any other relevant factors.

26 (8) Parenting time shall be granted in specific terms if
27 requested by either party at any time.

28 (9) A parenting time order may contain any reasonable terms or
29 conditions that facilitate the orderly and meaningful exercise of

1 parenting time by a parent, including 1 or more of the following:

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

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

4 (c) Restrictions on the presence of third persons during
5 parenting time.

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

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

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

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

14 (h) Requirements of reasonable notice when parenting time will
15 not occur.

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

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

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

29 (12) ~~Prior to~~ **Before** entry of a temporary order, a parent may

1 seek an ex parte interim order concerning parenting time. If the
2 court enters an ex parte interim order concerning parenting time,
3 the party on whose motion the ex parte interim order is entered
4 ~~shall~~**must** have a true copy of the order served on the friend of
5 the court and the opposing party.

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

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

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

28 NOTICE:

- 29 1. You may file a written objection to this order or a motion

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

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

12 (16) As provided in the servicemembers civil relief act, 50
13 USC 501 to 597b, if a motion for change of parenting time is filed
14 during the time a parent is on deployment, a parent may file and
15 the court shall entertain an application for stay. The court shall
16 presume that the best interests of the child are served by not
17 entering an order modifying or amending a previous judgment or
18 order, or issuing a new order, that changes the parenting time that
19 existed on the date the parent was called to deployment, unless the
20 contrary is established by clear and convincing evidence, at which
21 time the court may enter a temporary parenting time order. When a
22 temporary parenting time order is issued under this subsection, the
23 court may include a limit on the period of time that the temporary
24 parenting time order remains in effect. At any stage before final
25 judgment in the proceeding, the parent may file an application for
26 stay or otherwise request a stay of proceedings or file an
27 application for an extension of a stay. The parent and the
28 custodial child are not required to be present to consider the
29 application for stay or extension of a stay. The application for

1 stay or extension of a stay is sufficient if it is a signed,
2 written statement, certified to be true under penalty of perjury.
3 The same conditions for the initial stay apply to applications for
4 an extension of a stay.

5 (17) The parent shall inform the court of the deployment end
6 date before or within 30 days after that deployment end date. Upon
7 notification of a parent's deployment end date, the court shall
8 reinstate the parenting time order in effect immediately preceding
9 that period of deployment. If a motion for change of parenting time
10 is filed after a parent returns from deployment, the court shall
11 not consider a parent's absence due to that deployment in making a
12 determination regarding change of parenting time. Future
13 deployments shall not be considered in making a best interest of
14 the child determination.

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

18 (19) As used in this section, "offending parent" means a
19 parent who has been convicted of criminal sexual conduct as
20 described in subsection (4) or who has been found by clear and
21 convincing evidence in a fact-finding hearing to have committed
22 acts of nonconsensual sexual penetration as described in subsection
23 (4).

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