CHILD CUSTODY ACT OF 1970 (EXCERPT)
Act 91 of 1970

722.27 Child custody disputes; powers of court; support order; enforcement of judgment or order; child custody while parent on deployment.

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

(a) Award the custody of the child to 1 or more of the parties involved or to others and provide for payment of support for the child, until the child reaches 18 years of age. Subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, the court may also order support as provided in this section for a child after he or she reaches 18 years of age. The court may require that support payments shall be made through the friend of the court, court clerk, or state disbursement unit.

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

(c) Subject to subsection (3), modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches 18 years of age and, subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, until the child reaches 19 years and 6 months of age. The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered. If a motion for change of custody is filed while a parent is active duty, the court shall not consider a parent's absence due to that active duty status in a best interest of the child determination.

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

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

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

(2) A judgment or order entered under this act providing for the support of a child is governed by and is enforceable as provided in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650. If this act contains a specific provision regarding the contents or enforcement of a support order that conflicts with a provision in the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650, this act controls in regard to that provision.

(3) As provided in the servicemembers civil relief act, 50 USC 501 to 597b, if a motion for change of custody is filed during the time a parent is on deployment, a parent may file and the court shall entertain an application for stay. The court shall not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child's placement that existed on the date the parent was called to deployment, except that the court may enter a temporary custody order if there is clear and convincing evidence that it is in the best interests of the child. When a temporary custody order is issued under this subsection, the court may include a limit on the period of time that the temporary custody order remains in effect. At any stage before final judgment in the proceeding, the parent may file an application for stay or otherwise request a stay of the proceedings or file an application for an extension of a stay. The parent and the custodial child are not required to be present to consider the application for stay or extension of a stay. The application for stay or extension of a stay is sufficient if it is a signed, written statement, certified to be true under penalty of perjury. The same conditions for the initial stay apply to an application for an extension of a stay. The parent's duration of deployment shall not be considered in making a best interest of the child determination.

(4) The parent shall inform the court of the deployment end date before or within 30 days after that deployment end date. Upon notification of a parent's deployment end date, the court shall reinstate the custody order in effect immediately preceding that period of deployment. If a motion for change of custody is filed after a parent returns from deployment, the court shall not consider a parent's absence due to that deployment in making a best interest of the child determination. Future deployments shall not be considered in making a best interest of the child determination.

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

History: 1970, Act 91, Eff. Apr. 1, 1971;—Am. 1980, Act 161, Imd. Eff. June 18, 1980;—Am. 1985, Act 215, Eff. Mar. 1, 1986;—Am. 1988, Act 377, Eff. Mar. 30, 1989;—Am. 1989, Act 275, Imd. Eff. Dec. 26, 1989;—Am. 1990, Act 245, Imd. Eff. Oct. 10, 1990;—Am. 1990, Act 293, Imd. Eff. Dec. 14, 1990;—Am. 1996, Act 19, Eff. June 1, 1996;—Am. 1998, Act 482, Eff. Mar. 1, 1999;—Am. 1999, Act 156, Imd. Eff. Nov. 3, 1999;—Am. 2001, Act 108, Eff. Sept. 30, 2001;—Am. 2005, Act 328, Imd. Eff. Dec. 28, 2005;—Am. 2015, Act 52, Eff. Sept. 7, 2015.

CHILD CUSTODY ACT OF 1970 (EXCERPT)
Act 91 of 1970

722.27a Parenting time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Any other relevant factors.

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

(9) A parenting time order may contain any reasonable terms or conditions that facilitate the orderly and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTICE:

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

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

(16) As provided in the servicemembers civil relief act, 50 USC 501 to 597b, if a motion for change of parenting time is filed during the time a parent is on deployment, a parent may file and the court shall entertain an application for stay. The court shall presume that the best interests of the child are served by not entering an order modifying or amending a previous judgment or order, or issuing a new order, that changes the parenting time that existed on the date the parent was called to deployment, unless the contrary is established by clear and convincing evidence, at which time the court may enter a temporary parenting time order. When a temporary parenting time order is issued under this subsection, the court may include a limit on the period of time that the temporary parenting time order remains in effect. At any stage before final judgment in the proceeding, the parent may file an application for stay or otherwise request a stay of proceedings or file an application for an extension of a stay. The parent and the custodial child are not required to be present to consider the application for stay or extension of a stay. The application for stay or extension of a stay is sufficient if it is a signed, written statement, certified to be true under penalty of perjury. The same conditions for the initial stay apply to applications for an extension of a stay.

(17) The parent shall inform the court of the deployment end date before or within 30 days after that

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deployment end date. Upon notification of a parent's deployment end date, the court shall reinstate the parenting time order in effect immediately preceding that period of deployment. If a motion for change of parenting time is filed after a parent returns from deployment, the court shall not consider a parent's absence due to that deployment in making a determination regarding change of parenting time. Future deployments shall not be considered in making a best interest of the child determination.

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

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

History: Add. 1988, Act 377, Eff. Mar. 30, 1989;—Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993;—Am. 1996, Act 19, Eff. June 1, 1996;—Am. 2012, Act 600, Imd. Eff. Jan. 9, 2013;—Am. 2015, Act 50, Eff. Sept. 7, 2015;—Am. 2016, Act 96, Eff. Aug. 1, 2016.

Compiler's note: Former MCL 722.27a, which pertained to action by parent of deceased father or mother for visitation of unmarried minor child, was repealed by Act 161 of 1980, Imd. Eff. June 18, 1980.

CHILD CUSTODY ACT OF 1970 (EXCERPT)
Act 91 of 1970

722.27b Order for grandparenting time; circumstances; acknowledgment of parentage; commencement of action; procedures; affidavit; basis for entry of order; best interests of child; alternative dispute resolution; frequency of filing complaint or motion seeking order; attorney fees; order prohibiting change of domicile of child; effect of entry of order; modifying or terminating order; record; termination of grandparent's right to commence action.

Sec. 7b. (1) A child's grandparent may seek a grandparenting time order under 1 or more of the following circumstances:

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

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

(c) The child's parent who is a child of the grandparents is deceased.

(d) The child's parents have never been married, they are not residing in the same household, and paternity has been established by the completion of an acknowledgment of parentage under the acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013, by an order of filiation entered under the paternity act, 1956 PA 205, MCL 722.711 to 722.730, or by a determination by a court of competent jurisdiction that the individual is the father of the child.

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

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

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

(3) A grandparent seeking a grandparenting time order shall commence an action for grandparenting time, as follows:

(a) If the circuit court has continuing jurisdiction over the child, the child's grandparent shall seek a grandparenting time order by filing a motion with the circuit court in the county where the court has continuing jurisdiction.

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

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

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(a) The complaint or motion for grandparenting time filed under subsection (3) shall be accompanied by an affidavit setting forth facts supporting the requested order. The grandparent shall give notice of the filing to each person who has legal custody of, or an order for parenting time with, the child. A party having legal custody may file an opposing affidavit. A hearing shall be held by the court on its own motion or if a party requests a hearing. At the hearing, parties submitting affidavits shall be allowed an opportunity to be heard.

(b) In order to give deference to the decisions of fit parents, it is presumed in a proceeding under this subsection that a fit parent's decision to deny grandparenting time does not create a substantial risk of harm to the child's mental, physical, or emotional health. To rebut the presumption created in this subdivision, a grandparent filing a complaint or motion under this section must prove by a preponderance of the evidence that the parent's decision to deny grandparenting time creates a substantial risk of harm to the child's mental, physical, or emotional health. If the grandparent does not overcome the presumption, the court shall dismiss the complaint or deny the motion.

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

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

(6) If the court finds that a grandparent has met the standard for rebutting the presumption described in subsection (4), the court shall consider whether it is in the best interests of the child to enter an order for grandparenting time. If the court finds by a preponderance of the evidence that it is in the best interests of the child to enter a grandparenting time order, the court shall enter an order providing for reasonable grandparenting time of the child by the grandparent by general or specific terms and conditions. In determining the best interests of the child under this subsection, the court shall consider all of the following:

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

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

(c) The grandparent's moral fitness.

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

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

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

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

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

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

(j) Any other factor relevant to the physical and psychological well-being of the child.

(7) If the court has determined that a grandparent has met the standard for rebutting the presumption described in subsection (4), the court may refer that grandparent's complaint or motion for grandparenting time filed under subsection (3) to alternative dispute resolution as provided by supreme court rule. If the complaint or motion is referred to the friend of the court for alternative dispute resolution and no settlement is reached through friend of the court alternative dispute resolution within a reasonable time after the date of referral, the complaint or motion shall be heard by the court as provided in this section.

(8) A grandparent may not file more than once every 2 years, absent a showing of good cause, a complaint or motion under subsection (3) seeking a grandparenting time order. If the court finds there is good cause to allow a grandparent to file more than 1 complaint or motion under this section in a 2-year period, the court shall allow the filing and shall consider the complaint or motion. Upon motion of a person, the court may order reasonable attorney fees to the prevailing party.

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

(10) A grandparenting time order entered under this section does not create parental rights in the individual

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or individuals to whom grandparenting time rights are granted. The entry of a grandparenting time order does not prevent a court of competent jurisdiction from acting upon the custody of the child, the parental rights of the child, or the adoption of the child.

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

(12) A court shall make a record of its analysis and findings under subsections (4), (6), (8), and (11), including the reasons for granting or denying a requested grandparenting time order.

(13) Except as otherwise provided in this subsection, adoption of a child or placement of a child for adoption under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, terminates the right of a grandparent to commence an action for grandparenting time with that child. Adoption of a child by a stepparent under the Michigan adoption code, chapter X of the probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70, does not terminate the right of the parent of a deceased parent of the child to commence an action for grandparenting time with that child.

History: Add. 1982, Act 340, Imd. Eff. Dec. 17, 1982;—Am. 1996, Act 19, Eff. June 1, 1996;—Am. 2004, Act 542, Imd. Eff. Jan. 3, 2005;—Am. 2006, Act 353, Imd. Eff. Sept. 18, 2006;—Am. 2009, Act 237, Imd. Eff. Jan. 8, 2010.

Constitutionality: The Michigan Court of Appeals in DeRose v DeRose, 249 Mich App 388; 643 NW2d 259 (2002) held that section 7b of the child custody act of 1970, 1970 PA 91, MCL 722.27b, is unconstitutional. The Michigan Supreme Court affirmed. [DeRose v DeRose, 496 Mich 320; 666 NW2d 636 (2003)] The Michigan Supreme Court held that it was bound by the decision in US Supreme Court in Troxel v Granville, 530 US 57; 120 S Ct 2054; 147 L Ed 2d 49 (2000). The US Supreme Court established in that decision that parents have a fundamental right to raise their children, and on that basis, "the parents have the right to make decisions for children, and such decisions must be accorded deference or weight." The Michigan Supreme Court held that MCL 722.27b failed to "require that a trial court accord deference to the decisions of fit parents regarding grandparent visitation" and is therefore constitutionally invalid.

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