

**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2016**

Introduced by Reps. Lyons, Faris, Brinks, Hughes, Garcia, Crawford, Price, Hooker, Glenn, Cox, Heise, Webber, Guerra, Pscholka, Chatfield, LaVoy, Kelly, Love, Schor, Driskell, Pagan, Gardon, Santana and Franz

ENROLLED HOUSE BILL No. 4481

AN ACT to amend 1970 PA 91, entitled “An act to declare the inherent rights of minor children; to establish rights and duties to their custody, support, and parenting time in disputed actions; to establish rights and duties to provide support for a child after the child reaches the age of majority under certain circumstances; to provide for certain procedure and appeals; and to repeal certain acts and parts of acts,” by amending sections 5 and 7a (MCL 722.25 and 722.27a), section 5 as amended by 1993 PA 259 and section 7a as amended by 2015 PA 50.

The People of the State of Michigan enact:

Sec. 5. (1) If a child custody dispute is between the parents, between agencies, or between third persons, the best interests of the child control. If the child custody dispute is between the parent or parents and an agency or a third person, the court shall presume that the best interests of the child are served by awarding custody to the parent or parents, unless the contrary is established by clear and convincing evidence.

(2) Notwithstanding other provisions of this act, if a child custody dispute 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 award custody 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.

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

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

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

(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 award custody of 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 custody.

(7) As used in this section, "offending parent" means a parent who has been convicted of criminal sexual conduct as described in subsection (2) 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 (2).

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 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 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).

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor