

HOUSE BILL No. 5575

January 29, 2002, Introduced by Rep. Spade and referred to the Committee on Family and Children Services.

A bill to amend 1970 PA 91, entitled "Child custody act of 1970," by amending sections 2, 3, 5, 6a, 7, 7a, and 7b (MCL 722.22, 722.23, 722.25, 722.26a, 722.27, 722.27a, and 722.27b), sections 2 and 7 as amended by 1999 PA 156, sections 3 and 5 as amended by 1993 PA 259, section 6a as added by 1980 PA 434, and sections 7a and 7b as amended by 1996 PA 19, and by adding section 5a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Agency" means a legally authorized public or private
3 organization, or governmental unit or official, whether of this
4 state or of another state or country, concerned in the welfare of
5 minor children, including a licensed child placement agency.

6 (b) "Attorney" means, if appointed to represent a child
7 under this act, an attorney serving as the child's legal advocate

1 in a traditional attorney-client relationship with the child, as
2 governed by the Michigan rules of professional conduct. An
3 attorney defined under this subdivision owes the same duties of
4 undivided loyalty, confidentiality, and zealous representation of
5 the child's expressed wishes as the attorney would to an adult
6 client.

7 (c) "Child" means minor child and children. Subject to
8 section 4a, for purposes of providing support, child includes a
9 child and children who have reached 18 years of age.

10 (D) "DE FACTO CUSTODIAN" MEANS AN INDIVIDUAL WHO HAS BEEN
11 THE PRIMARY CAREGIVER FOR, AND FINANCIAL SUPPORT OF, A CHILD WHO
12 HAS RESIDED WITH THE INDIVIDUAL FOR AT LEAST 6 MONTHS IF THE
13 CHILD IS YOUNGER THAN 3 YEARS OLD OR FOR AT LEAST 1 YEAR IF THE
14 CHILD IS 3 YEARS OLD OR OLDER. DE FACTO CUSTODIAN DOES NOT
15 INCLUDE AN INDIVIDUAL WHO CARES FOR A CHILD IN A FOSTER FAMILY
16 HOME OR FOSTER FAMILY GROUP HOME AS THOSE TERMS ARE DEFINED IN
17 SECTION 1 OF 1973 PA 116, MCL 722.111. A PERIOD OF TIME AFTER A
18 CHILD CUSTODY ACTION IS COMMENCED SHALL NOT BE INCLUDED IN DETER-
19 MINING WHETHER THE CHILD HAS RESIDED WITH AN INDIVIDUAL FOR THE
20 REQUIRED MINIMUM PERIOD.

21 (E) ~~(d)~~ "Guardian ad litem" means an individual whom the
22 court appoints to assist the court in determining the child's
23 best interests. A guardian ad litem does not need to be an
24 attorney.

25 (F) ~~(e)~~ "Lawyer-guardian ad litem" means an attorney
26 appointed under section 4. A lawyer-guardian ad litem represents

1 the child, and has the powers and duties, as set forth in section
2 4.

3 (G) ~~(f)~~ "State disbursement unit" or "SDU" means the
4 entity established in section 6 of the office of child support
5 act, 1971 PA 174, MCL 400.236.

6 (H) ~~(g)~~ "Third person" means ~~any~~ AN individual other
7 than a parent.

8 Sec. 3. As used in this act: ~~, "best interests of the~~
9 ~~child"~~

10 (A) "CHILD'S BEST INTERESTS" means the sum total of the fol-
11 lowing factors to be considered, evaluated, and determined by the
12 court:

13 (i) ~~(a)~~ The love, affection, and other emotional ties
14 existing between ~~the parties~~ EACH PARTY involved and the
15 child.

16 (ii) ~~(b)~~ The capacity and disposition of ~~the parties~~
17 EACH PARTY involved to give the child love, affection, and guid-
18 ance and to continue the education and raising of the child in
19 his or her religion or creed, if any.

20 (iii) ~~(c)~~ The capacity and disposition of ~~the parties~~
21 EACH PARTY involved to provide the child with food, clothing,
22 medical care or other remedial care recognized and permitted
23 under the laws of this state in place of medical care, and other
24 material needs.

25 (iv) ~~(d)~~ The length of time the child has lived in a
26 stable, satisfactory environment, and the desirability of
27 maintaining continuity.

1 (v) ~~(e)~~ The permanence, as a family unit, of the existing
2 or proposed custodial home or homes.

3 (vi) ~~(f)~~ The moral fitness of ~~the parties~~ EACH PARTY
4 involved.

5 (vii) ~~(g)~~ The mental and physical health of ~~the parties~~
6 EACH PARTY involved.

7 (viii) ~~(h)~~ The CHILD'S home, school, and community record.
8 ~~of the child.~~

9 (ix) ~~(i)~~ The CHILD'S reasonable preference, ~~of the~~
10 ~~child,~~ if the court considers the child to be of sufficient age
11 to express A preference.

12 (x) ~~(j)~~ The willingness and ability of each ~~of the~~
13 ~~parties~~ PARTY to facilitate and encourage a close and continuing
14 parent-child relationship between the child and the other parent
15 or the child and the parents.

16 (xi) ~~(k)~~ Domestic violence, regardless of whether the vio-
17 lence was directed against or witnessed by the child.

18 (xii) EVIDENCE THAT 1 OR MORE DE FACTO CUSTODIANS HAVE CARED
19 FOR THE CHILD. IF THE EVIDENCE IS SUFFICIENT IN COMPLIANCE WITH
20 SECTION 5A, THE COURT SHALL ALSO CONSIDER, EVALUATE, AND DETER-
21 MINE THE FACTORS LISTED IN SUBDIVISION (B).

22 (xiii) ~~(l)~~ Any other factor ~~considered by~~ the court ~~to~~
23 ~~be~~ CONSIDERS relevant to a particular child custody dispute.

24 (B) "CHILD'S BEST INTERESTS" INCLUDES, IF REQUIRED BY SUBDI-
25 VISION (A)(XII), ALL OF THE FOLLOWING FACTORS:

26 (i) EACH DE FACTO CUSTODIAN'S WISHES.

1 (ii) THE EXTENT TO WHICH EACH DE FACTO CUSTODIAN HAS CARED
2 FOR, NURTURED, AND SUPPORTED THE CHILD.

3 (iii) THE INTENT OF THE CHILD'S PARENT IN LEAVING THE CHILD
4 WITH A DE FACTO CUSTODIAN.

5 (iv) THE CIRCUMSTANCES UNDER WHICH THE CHILD WAS ALLOWED TO
6 REMAIN IN A DE FACTO CUSTODIAN'S CUSTODY, INCLUDING WHETHER THE
7 CHILD WAS IN THE DE FACTO CUSTODIAN'S CUSTODY TO ALLOW A PARENT
8 WHO IS NOW SEEKING CUSTODY TO WORK, SEEK EMPLOYMENT, OR ATTEND
9 SCHOOL.

10 Sec. 5. (1) If a child custody dispute is between the par-
11 ents, BETWEEN A PARENT OR THE PARENTS AND A DE FACTO CUSTODIAN,
12 between agencies, or between third persons, the CHILD'S best
13 interests ~~of the child~~ control. If the child custody dispute
14 is between ~~the~~ A parent, ~~or~~ THE parents, OR A DE FACTO
15 CUSTODIAN and an agency or a third person OTHER THAN A DE FACTO
16 CUSTODIAN, the court shall presume that the CHILD'S best inter-
17 ests ~~of the child~~ are served by awarding custody to the parent,
18 ~~or~~ parents, OR DE FACTO CUSTODIAN, unless the contrary is
19 established by clear and convincing evidence.

20 (2) Notwithstanding other provisions of this act, if a child
21 custody dispute involves a child who is conceived as the result
22 of acts for which 1 of the child's biological parents is con-
23 victed of criminal sexual conduct as provided in sections 520a to
24 520e and 520g of the Michigan penal code, ~~Act No. 328 of the~~
25 ~~Public Acts of 1931, being sections 750.520a to 750.520e and~~
26 ~~750.520g of the Michigan Compiled Laws~~ 1931 PA 328, MCL 750.520A
27 TO 750.520E AND 750.520G, the court shall not award custody to

1 the convicted biological parent. This subsection does not apply
2 to a conviction under section 520d(1)(a) of the Michigan penal
3 code, ~~Act No. 328 of the Public Acts of 1931, being section~~
4 ~~750.520d of the Michigan Compiled Laws~~ 1931 PA 328, MCL
5 750.520D. This subsection does not apply if, after the date of
6 the conviction, the biological parents cohabit and establish a
7 mutual custodial environment for the child.

8 (3) Notwithstanding other provisions of this act, if an
9 individual is convicted of criminal sexual conduct as provided in
10 sections 520a to 520e and 520g of ~~Act No. 328 of the Public Acts~~
11 ~~of 1931~~ THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A TO
12 750.520E AND 750.520G, and the victim is the individual's child,
13 the court shall not award custody of that child or a sibling of
14 that child to that individual, unless both the child's other
15 parent and, if the court considers the child or sibling to be of
16 sufficient age to express his or her desires, the child or sib-
17 ling consent to the custody.

18 SEC. 5A. (1) THIS SECTION APPLIES IF THE COURT FINDS BY
19 CLEAR AND CONVINCING EVIDENCE THAT 1 OR MORE DE FACTO CUSTODIANS
20 HAVE CARED FOR A CHILD WHO IS THE SUBJECT OF A CUSTODY DISPUTE.

21 (2) IF THE COURT MAKES THE FINDING DESCRIBED IN SUBSECTION
22 (1), THE COURT SHALL INCLUDE IN ITS DETERMINATION OF THE CHILD'S
23 BEST INTERESTS THE FACTORS LISTED IN SECTION 3(B).

24 (3) IF THE COURT DETERMINES THAT THE CHILD IS IN A DE FACTO
25 CUSTODIAN'S CUSTODY, THE COURT SHALL MAKE THAT DE FACTO CUSTODIAN
26 A PARTY TO THE ACTION.

1 Sec. 6a. (1) In custody disputes between parents, the
2 parents shall be advised of joint custody. At the request of
3 either parent, the court shall consider an award of joint custo-
4 dy, and shall state on the record the reasons for granting or
5 denying a request. In other cases joint custody may be consid-
6 ered by the court. The court shall determine whether joint cus-
7 tody is in the CHILD'S best ~~interest of the child~~ INTERESTS by
8 considering the following factors:

9 (a) The factors enumerated in section ~~3~~ 3(A) AND, IF
10 APPLICABLE, SECTION 3(B).

11 (b) Whether the parents, OR A PARENT OR THE PARENTS AND A DE
12 FACTO CUSTODIAN, will be able to cooperate and generally agree
13 concerning important decisions affecting the CHILD'S welfare. ~~of~~
14 ~~the child.~~

15 (2) If the parents agree on joint custody, the court shall
16 award joint custody unless the court determines on the record,
17 based upon clear and convincing evidence, that joint custody is
18 not in the CHILD'S best interests. ~~of the child.~~ IF A DE FACTO
19 CUSTODIAN WHO IS A PARTY TO THE ACTION OBJECTS TO AN AWARD OF
20 JOINT CUSTODY TO ONLY THE PARENTS, THE COURT SHALL NOT ACT UNDER
21 THIS SUBSECTION, BUT SHALL PROCEED WITH A DETERMINATION OF THE
22 CHILD'S BEST INTERESTS.

23 (3) If the court awards joint custody, the court may include
24 in its award a statement regarding when the child shall reside
25 with each parent, or may provide that physical custody be shared
26 by the parents in a manner to assure the child continuing contact
27 with both parents. IF A DE FACTO CUSTODIAN IS TO SHARE JOINT

1 CUSTODY WITH A PARENT OR THE PARENTS, THE COURT SHALL INCLUDE
2 PROVISIONS REGARDING THE DE FACTO CUSTODIAN IN A STATEMENT UNDER
3 THIS SUBSECTION.

4 (4) During the time a child resides with a parent OR DE
5 FACTO CUSTODIAN, that ~~parent~~ INDIVIDUAL shall decide all rou-
6 tine matters concerning the child.

7 (5) If there is a dispute regarding residency, the court
8 shall state the basis for a residency award on the record or in
9 writing.

10 (6) Joint custody ~~shall~~ DOES not eliminate the responsi-
11 bility for child support. Each parent ~~shall be~~ IS responsible
12 for child support based on the CHILD'S needs ~~of the child~~ and
13 ~~the~~ EACH PARENT'S actual resources. ~~of each parent.~~ If a
14 parent OR DE FACTO CUSTODIAN would otherwise be unable to main-
15 tain adequate housing for the child and ~~the other~~ A parent has
16 sufficient resources, the court may order modified support pay-
17 ments for a portion of housing expenses even during a period when
18 the child is not residing in the home of the parent OR DE FACTO
19 CUSTODIAN receiving support. An order of joint custody, in and
20 of itself, ~~shall~~ DOES not constitute grounds for modifying a
21 support order.

22 (7) As used in this section, "joint custody" means an order
23 of the court in which 1 or both of the following is specified:

24 (a) That the child shall reside alternately for specific
25 periods with each ~~of the parents~~ PARENT OR SHALL RESIDE FOR
26 SPECIFIC PERIODS WITH A PARENT OR EACH PARENT AND 1 OR MORE DE
27 FACTO CUSTODIANS.

1 (b) That the parents, OR A PARENT OR THE PARENTS AND 1 OR
2 MORE DE FACTO CUSTODIANS, shall share decision-making authority
3 as to the important decisions affecting the CHILD'S welfare. ~~of~~
4 ~~the child.~~

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

11 (a) Award the custody of the child to 1 or more of the par-
12 ties involved or to others and provide for payment of support for
13 the child, until the child reaches 18 years of age. Subject to
14 section 4a, the court may also order support as provided in this
15 section for a child after he or she reaches 18 years of age. The
16 court may require that support payments shall be made through the
17 friend of the court, court clerk, or state disbursement unit.

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

23 (c) Modify or amend its previous judgments or orders for
24 proper cause shown or because of change of circumstances until
25 the child reaches 18 years of age and, subject to section 4a,
26 until the child reaches 19 years and 6 months of age. The court
27 shall not modify or amend its previous judgments or orders or

1 issue a new order so as to change the established custodial
2 environment of a child unless there is presented clear and con-
3 vincing evidence that it is in the CHILD'S best ~~interest of the~~
4 ~~child~~ INTERESTS. The custodial environment of a child is estab-
5 lished if over an appreciable time the child naturally looks to
6 the custodian in that environment for guidance, discipline, the
7 necessities of life, and parental comfort. The age of the child,
8 the physical environment, and the inclination of the custodian
9 and the child as to permanency of the relationship shall also be
10 considered.

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

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

17 (f) Upon petition consider the reasonable grandparenting
18 time of maternal or paternal grandparents as provided in section
19 7b and, if denied, make a record of the denial.

20 (2) Except as otherwise provided in this section, the court
21 shall order support in an amount determined by application of the
22 child support formula developed by the state friend of the court
23 bureau. The court may enter an order that deviates from the for-
24 mula if the court determines from the facts of the case that
25 application of the child support formula would be unjust or inap-
26 propriate and sets forth in writing or on the record all of the
27 following:

1 (a) The support amount determined by application of the
2 child support formula.

3 (b) How the support order deviates from the child support
4 formula.

5 (c) The value of property or other support awarded in lieu
6 of the payment of child support, if applicable.

7 (d) The reasons why application of the child support formula
8 would be unjust or inappropriate in the case.

9 (3) Subsection (2) does not prohibit the court from entering
10 a support order that is agreed to by the parties and that devi-
11 ates from the child support formula, if the requirements of sub-
12 section (2) are met.

13 (4) Beginning January 1, 1991, each support order entered,
14 modified, or amended by the court shall provide that each party
15 shall keep the office of the friend of the court informed of both
16 of the following:

17 (a) The name and address of his or her current source of
18 income. As used in this subdivision, "source of income" means
19 that term as defined in section 2 of the support and parenting
20 time enforcement act, 1982 PA 295, MCL 552.602.

21 (b) Any health care coverage that is available to him or her
22 as a benefit of employment or that is maintained by him or her;
23 the name of the insurance company, health care organization, or
24 health maintenance organization; the policy, certificate, or con-
25 tract number; and the names and birth dates of the persons for
26 whose benefit he or she maintains health care coverage under the
27 policy, certificate, or contract.

1 (5) For the purposes of this act, "support" may include
2 payment of the expenses of medical, dental, and other health
3 care, child care expenses, and educational expenses. The court
4 shall require 1 or both parents of a child who is the subject of
5 a petition under this section to obtain or maintain any health
6 care coverage that is available to them at a reasonable cost, as
7 a benefit of employment, for the benefit of the child. If a
8 parent is self-employed and maintains health care coverage, the
9 court shall require the parent to obtain or maintain dependent
10 coverage for the benefit of the child, if available at a reason-
11 able cost.

12 (6) A judgment or order entered under this act providing for
13 the support of a child is enforceable as provided in the support
14 and parenting time enforcement act, 1982 PA 295, MCL 552.601 to
15 552.650.

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

1 the parenting time terms are not in the CHILD'S best interests.
2 ~~of the child.~~

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

7 (4) Notwithstanding other provisions of this act, if a pro-
8 ceeding regarding parenting time involves a child who is con-
9 ceived as the result of acts for which 1 of the child's biologi-
10 cal parents is convicted of criminal sexual conduct as provided
11 in sections 520a to 520e and 520g of the Michigan penal code,
12 ~~Act No. 328 of the Public Acts of 1931, being sections 750.520a~~
13 ~~to 750.520e and 750.520g of the Michigan Compiled Laws~~ 1931 PA
14 328, MCL 750.520A TO 750.520E AND 750.520G, the court shall not
15 grant parenting time to the convicted biological parent. This
16 subsection does not apply to a conviction under section
17 520d(1)(a) of ~~Act No. 328 of the Public Acts of 1931, being sec-~~
18 ~~tion 750.520d of the Michigan Compiled Laws~~ THE MICHIGAN PENAL
19 CODE, 1931 PA 328, MCL 750.520D. This subsection does not apply
20 if, after the date of the conviction, the biological parents
21 cohabit and establish a mutual custodial environment for the
22 child.

23 (5) Notwithstanding other provisions of this act, if an
24 individual is convicted of criminal sexual conduct as provided in
25 sections 520a to 520e and 520g of ~~Act No. 328 of the Public Acts~~
26 ~~of 1931~~ THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A TO
27 750.520E AND 750.520G, and the victim is the individual's child,

1 the court shall not grant parenting time with that child or a
2 sibling of that child to that individual, unless both the child's
3 other parent and, if the court considers the child or sibling to
4 be of sufficient age to express his or her desires, the child or
5 sibling consent to the parenting time.

6 (6) The court may consider the following factors when deter-
7 mining the frequency, duration, and type of parenting time to be
8 granted:

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

11 (b) Whether the child is a nursing child less than 6 months
12 of age, or less than 1 year of age if the child receives substan-
13 tial nutrition through nursing.

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

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

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

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

22 (g) Whether a parent has frequently failed to exercise rea-
23 sonable parenting time.

24 (h) The threatened or actual detention of the child with the
25 intent to retain or conceal the child from the other parent or
26 from a third person who has legal custody. A custodial parent's
27 temporary residence with the child in a domestic violence shelter

1 shall not be construed as evidence of the custodial parent's
2 intent to retain or conceal the child from the other parent.

3 (i) Any other relevant factors.

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

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

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

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

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

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

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

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

20 (g) Requirements that a party post a bond to assure compli-
21 ance with a parenting time order.

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

24 (i) Any other reasonable condition determined to be appro-
25 priate in the particular case.

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

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

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

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

1 interim order and requests a hearing, the court shall resolve the
2 dispute within 28 days after the hearing is requested.

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

5 NOTICE:

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

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

18 Sec. 7b. (1) Except as provided in this subsection, a
19 grandparent of the child may seek an order for grandparenting
20 time in the manner set forth in this section only if a child cus-
21 tody dispute with respect to that child is pending before the
22 court. If a natural parent of an unmarried child is deceased, a
23 parent of the deceased person may commence an action for grand-
24 parenting time. Adoption of the child by a stepparent under
25 chapter X of ~~Act No. 288 of the Public Acts of 1939, being sec-~~
26 ~~tions 710.21 to 710.70 of the Michigan Compiled Laws~~ THE PROBATE
27 CODE OF 1939, 1939 PA 288, MCL 710.21 TO 710.70, does not

1 terminate the right of a parent of the deceased person to
2 commence an action for grandparenting time.

3 (2) As used in this section, "child custody dispute"
4 includes a proceeding in which any of the following occurs:

5 (a) The marriage of the child's parents is declared invalid
6 or is dissolved by the court, or a court enters a decree of legal
7 separation with regard to the marriage.

8 (b) Legal custody of the child is given to a party other
9 than the child's parent, or the child is placed outside of and
10 does not reside in the home of a parent, excluding any child who
11 has been placed for adoption with other than a stepparent, or
12 whose adoption by other than a stepparent has been legally
13 finalized.

14 (3) A grandparent seeking a grandparenting time order may
15 commence an action for grandparenting time, by complaint or com-
16 plaint and motion for an order to show cause, in the circuit
17 court in the county in which the grandchild resides. If a child
18 custody dispute is pending, the order shall be sought by motion
19 for an order to show cause. The complaint or motion shall be
20 accompanied by an affidavit setting forth facts supporting the
21 requested order. The grandparent shall give notice of the filing
22 to each party who has legal custody of the grandchild. A party
23 having legal custody may file an opposing affidavit. A hearing
24 shall be held by the court on its own motion or if a party so
25 requests. At the hearing, parties submitting affidavits shall be
26 allowed an opportunity to be heard. At the conclusion of the
27 hearing, if the court finds that it is in the CHILD'S best

1 interests ~~of the child~~ to enter a grandparenting time order,
2 the court shall enter an order providing for reasonable grandpar-
3 enting time of the child by the grandparent by general or spe-
4 cific terms and conditions. If a hearing is not held, the court
5 shall enter a grandparenting time order only upon a finding that
6 grandparenting time is in the CHILD'S best interests. ~~of the~~
7 ~~child.~~ A grandparenting time order shall not be entered for the
8 parents of a putative father unless the father has acknowledged
9 paternity in writing, has been adjudicated to be the father by a
10 court of competent jurisdiction, or has contributed regularly to
11 the support of the child or children. The court shall make a
12 record of the reasons for a denial of a requested grandparenting
13 time order.

14 (4) A grandparent may not file more than once every 2 years,
15 absent a showing of good cause, a complaint or motion seeking a
16 grandparenting time order. If the court finds there is good
17 cause to allow a grandparent to file more than 1 complaint or
18 motion under this section in a 2-year period, the court shall
19 allow the filing and shall consider the complaint or motion. The
20 court may order reasonable attorney fees to the prevailing
21 party.

22 (5) The court shall not enter an order restricting the move-
23 ment of the grandchild if the restriction is solely for the pur-
24 pose of allowing the grandparent to exercise the rights conferred
25 in a grandparenting time order.

26 (6) A grandparenting time order entered in accordance with
27 this section shall not be considered to have created parental

1 rights in the person or persons to whom grandparenting time
2 rights are granted. The entry of a grandparenting time order
3 shall not prevent a court of competent jurisdiction from acting
4 upon the custody of the child, the parental rights of the child,
5 or the adoption of the child.

6 (7) The court may enter an order modifying or terminating a
7 grandparenting time order whenever such a modification or termi-
8 nation is in the CHILD'S best interests. ~~of the child.~~