

SENATE BILL No. 657

September 20, 2001, Introduced by Senator STILLE and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1970 PA 91, entitled "Child custody act of 1970," by amending sections 2, 6a, and 7 (MCL 722.22, 722.26a, and 722.27), section 2 as amended by 1999 PA 156, section 6a as added by 1980 PA 434, and section 7 as amended by 2001 PA 108.

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
8 in a traditional attorney-client relationship with the child, as
9 governed by the Michigan rules of professional conduct. An

1 attorney defined under this subdivision owes the same duties of
2 undivided loyalty, confidentiality, and zealous representation of
3 the child's expressed wishes as the attorney would to an adult
4 client.

5 (c) "Child" means minor child and children. Subject to sec-
6 tion ~~4a~~ 5B OF THE SUPPORT AND PARENTING TIME ENFORCEMENT ACT,
7 1982 PA 295, MCL 552.605B, for purposes of providing support,
8 child includes a child and children who have reached 18 years of
9 age.

10 (d) "Guardian ad litem" means an individual whom the court
11 appoints to assist the court in determining the child's best
12 interests. A guardian ad litem does not need to be an attorney.

13 (e) "Lawyer-guardian ad litem" means an attorney appointed
14 under section 4. A lawyer-guardian ad litem represents the
15 child, and has the powers and duties, as set forth in section 4.

16 (f) "State disbursement unit" or "SDU" means the entity
17 established in section 6 of the office of child support act, 1971
18 PA 174, MCL 400.236.

19 (g) "Third person" means any individual other than a
20 parent.

21 Sec. 6a. (1) In custody disputes between parents, the par-
22 ents shall be advised of joint custody. At the request of either
23 parent, the court shall consider an award of joint custody, and
24 shall state on the record the reasons for granting or denying a
25 request. In other cases, joint custody may be considered by the
26 court. The court shall determine whether joint custody is in the
27 best interest of the child by considering the following factors:

1 (a) The factors enumerated in section 3.

2 (b) Whether the parents will be able to cooperate and gener-
3 ally agree concerning important decisions affecting the welfare
4 of the child.

5 (2) If the parents agree on joint custody, the court shall
6 award joint custody unless the court determines on the record,
7 based upon clear and convincing evidence, that joint custody is
8 not in the best interests of the child. IF THE CHILD IS AGE 12
9 OR OLDER, THE COURT SHALL ORDER JOINT PHYSICAL CUSTODY OF THE
10 CHILD UNLESS THE COURT DETERMINES ON THE RECORD, UPON CLEAR AND
11 CONVINCING EVIDENCE, THAT JOINT CUSTODY IS NOT IN THE BEST INTER-
12 ESTS OF THE CHILD.

13 (3) If the court awards joint custody, the court may include
14 in its award a statement regarding when the child shall reside
15 with each parent, or may provide that physical custody be shared
16 by the parents in a manner to assure the child continuing contact
17 with both parents. IF THE COURT AWARDS JOINT PHYSICAL CUSTODY OF
18 A CHILD, SUBJECT TO THE BEST INTERESTS OF THE CHILD, THE COURT
19 SHALL ORDER THAT THE CHILD RESIDE WITH EACH PARENT FOR A SUBSTAN-
20 Tially EQUAL AMOUNT OF TIME DURING EACH CALENDAR YEAR.

21 (4) During the time a child resides with a parent, that
22 parent shall decide all routine matters concerning the child.

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

26 (6) Joint custody ~~shall~~ DOES not eliminate the
27 responsibility for child support. Each parent ~~shall be~~ IS

1 responsible for child support based on the needs of the child and
2 the actual resources of each parent. If a parent would otherwise
3 be unable to maintain adequate housing for the child and the
4 other parent has sufficient resources, the court may order modi-
5 fied support payments for a portion of housing expenses even
6 during a period when the child is not residing in the home of the
7 parent receiving support. An order of joint custody, in and of
8 itself, ~~shall~~ DOES not constitute grounds for modifying a sup-
9 port order.

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

12 (a) That the child shall reside alternately for specific
13 periods with each of the parents.

14 (b) That the parents shall share decision-making authority
15 as to the important decisions affecting the welfare of the
16 child.

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

22 (a) Award the custody of the child to 1 or more of the par-
23 ties involved or to others and provide for payment of support for
24 the child, until the child reaches 18 years of age. Subject to
25 section 5b of the support and parenting time enforcement act,
26 1982 PA 295, MCL 552.605b, the court may also order support as
27 provided in this section for a child after he or she reaches

1 18 years of age. The court may require that support payments
2 shall be made through the friend of the court, court clerk, or
3 state disbursement unit.

4 (b) Provide for reasonable parenting time of the child by
5 the parties involved, by the maternal or paternal grandparents,
6 or by others, by general or specific terms and conditions.

7 Parenting time of the child by the parents is governed by
8 section 7a.

9 (c) Modify or amend its previous judgments or orders for
10 proper cause shown or because of change of circumstances until
11 the child reaches 18 years of age and, subject to section 5b of
12 the support and parenting time enforcement act, 1982 PA 295, MCL
13 552.605b, until the child reaches 19 years and 6 months of age.
14 ~~The~~ SUBJECT TO SUBSECTION (2), THE court shall not modify or
15 amend its previous judgments or orders or issue a new order so as
16 to change the established custodial environment of a child unless
17 there is presented clear and convincing evidence that it is in
18 the best interest of the child. The custodial environment of a
19 child is established if over an appreciable time the child natu-
20 rally looks to the custodian in that environment for guidance,
21 discipline, the necessities of life, and parental comfort. The
22 age of the child, the physical environment, and the inclination
23 of the custodian and the child as to permanency of the relation-
24 ship shall also be considered.

25 (d) Utilize a guardian ad litem or the community resources
26 in behavioral sciences and other professions in the investigation

1 and study of custody disputes and consider their recommendations
2 for the resolution of the disputes.

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

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

8 (2) REGARDLESS OF AN ESTABLISHED CUSTODIAL ENVIRONMENT, IF,
9 AFTER A CHILD BECOMES 12 YEARS OF AGE, THE CHILD'S NONCUSTODIAL
10 PARENT SUBMITS A REQUEST FOR JOINT PHYSICAL CUSTODY, THE COURT
11 SHALL ORDER JOINT PHYSICAL CUSTODY OF THE CHILD UNLESS THE COURT
12 DETERMINES ON THE RECORD, UPON CLEAR AND CONVINCING EVIDENCE,
13 THAT JOINT CUSTODY IS NOT IN THE BEST INTERESTS OF THE CHILD. IF
14 THE COURT AWARDS JOINT PHYSICAL CUSTODY OF A CHILD, SUBJECT TO
15 THE BEST INTERESTS OF THE CHILD, THE COURT SHALL ORDER THAT THE
16 CHILD RESIDE WITH EACH PARENT FOR A SUBSTANTIALLY EQUAL AMOUNT OF
17 TIME DURING EACH CALENDAR YEAR.

18 (3) ~~(2)~~ A judgment or order entered under this act provid-
19 ing for the support of a child is governed by and is enforceable
20 as provided in the support and parenting time enforcement act,
21 1982 PA 295, MCL 552.601 to 552.650. If this act contains a spe-
22 cific provision regarding the contents or enforcement of a sup-
23 port order that conflicts with a provision in the support and
24 parenting time enforcement act, 1982 PA 295, MCL 552.601 to
25 552.650, this act controls in regard to that provision.