

HOUSE BILL No. 5949

May 27, 2004, Introduced by Rep. Howell and referred to the Committee on Judiciary.

A bill to amend 1970 PA 91, entitled
 "Child custody act of 1970,"
 by amending the title and sections 1, 3, 4, 5, 6, 6a, 6b, 6c, 6e,
 7, 7a, 7b, 8, 10, and 11 (MCL 722.21, 722.23, 722.24, 722.25,
 722.26, 722.26a, 722.26b, 722.26c, 722.26e, 722.27, 722.27a,
 722.27b, 722.28, 722.30, and 722.31), the title and sections 7a
 and 7b as amended by 1996 PA 19, sections 3, 5, and 6 as amended
 and sections 6c and 6e as added by 1993 PA 259, section 4 as
 amended by 1998 PA 482, section 6a as added by 1980 PA 434,
 section 6b as amended by 2000 PA 60, section 7 as amended by 2001
 PA 108, section 10 as added by 1996 PA 304, and section 11 as
 added by 2000 PA 422.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to declare the inherent rights of minor children; to

1 establish rights and duties to their ~~custody, support, and~~
2 parenting time **and support** in disputed actions; to establish
3 rights and duties to provide support for a child after the child
4 reaches the age of majority under certain circumstances; to
5 provide for certain procedure and appeals; and to repeal
6 ~~certain~~ acts and parts of acts.

7 Sec. 1. This act shall be known and may be cited as the
8 "child ~~custody act of 1970~~ **parenting time act**".

9 Sec. 3. As used in this act, "best interests of the child"
10 means the sum total of the following factors to be considered,
11 evaluated, and determined by the court:

12 (a) The love, affection, and other emotional ties existing
13 between the parties involved and the child.

14 (b) The capacity and disposition of the parties involved to
15 give the child love, affection, and guidance and to continue the
16 education and raising of the child in his or her religion or
17 creed, if any.

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

22 (d) The length of time the child has lived in a stable,
23 satisfactory environment, and the desirability of maintaining
24 continuity.

25 (e) The permanence, as a family unit, of the existing or
26 proposed ~~custodial~~ **parental** home or homes.

27 (f) The moral fitness of the parties involved.

1 (g) The mental and physical health of the parties involved.

2 (h) The home, school, and community record of the child.

3 (i) The reasonable preference of the child, if the court
4 considers the child to be of sufficient age to express
5 preference.

6 (j) The willingness and ability of each of the parties to
7 facilitate and encourage a close and continuing parent-child
8 relationship between the child and the other parent or the child
9 and the parents.

10 (k) Domestic violence, regardless of whether the violence was
11 directed against or witnessed by the child.

12 (l) Any other factor considered by the court to be relevant
13 to a particular child ~~custody~~ **parenting time** dispute.

14 Sec. 4. (1) In all actions involving dispute of **parenting**
15 **time of** a minor ~~child's custody~~ **child**, the court shall declare
16 the child's inherent rights and establish the rights and duties
17 as to the child's ~~custody, support, and~~ parenting time **and**
18 **support** in accordance with this act.

19 (2) If, at any time in the proceeding, the court determines
20 that the child's best interests are inadequately represented, the
21 court may appoint a lawyer-guardian ad litem to represent the
22 child. A lawyer-guardian ad litem represents the child and has
23 powers and duties in relation to that representation as set forth
24 in section 17d of chapter XIIIA of 1939 PA 288, MCL 712A.17d. All
25 provisions of section 17d of chapter XIIIA of 1939 PA 288,
26 MCL 712A.17d, apply to a lawyer-guardian ad litem appointed under
27 this act.

1 (3) In a proceeding in which a lawyer-guardian ad litem
2 represents a child, he or she may file a written report and
3 recommendation. The court may read the report and
4 recommendation. The court shall not, however, admit the report
5 and recommendation into evidence unless all parties stipulate the
6 admission. The parties may make use of the report and
7 recommendation for purposes of a settlement conference.

8 (4) After a determination of ability to pay, the court may
9 assess all or part of the costs and reasonable fees of the
10 lawyer-guardian ad litem against 1 or more of the parties
11 involved in the proceedings or against the money allocated from
12 marriage license fees for family counseling services under
13 section 3 of 1887 PA 128, MCL 551.103. A lawyer-guardian ad
14 litem appointed under this section shall not be paid a fee unless
15 the court first receives and approves the fee.

16 Sec. 5. (1) If a child ~~custody~~ **parenting time** dispute is
17 between the parents, between agencies, or between third persons,
18 the best interests of the child control. If the child ~~custody~~
19 **parenting time** dispute is between the parent or parents and an
20 agency or a third person, the court shall presume that the best
21 interests of the child are served by awarding ~~custody~~ **parenting**
22 **time** to the parent or parents, unless the contrary is established
23 by clear and convincing evidence.

24 (2) Notwithstanding other provisions of this act, if a child
25 ~~custody~~ **parenting time** dispute involves a child who is
26 conceived as the result of acts for which 1 of the child's
27 biological parents is convicted of criminal sexual conduct as

1 provided in sections 520a to 520e and 520g of the Michigan penal
2 code, ~~Act No. 328 of the Public Acts of 1931, being~~
3 ~~sections 750.520a to 750.520e and 750.520g of the Michigan~~
4 ~~Compiled Laws~~ **1931 PA 328, MCL 750.520a to 750.520e and**
5 **750.520g**, the court shall not award ~~custody~~ **parenting time** to
6 the convicted biological parent. This subsection does not apply
7 to a conviction under section 520d(1)(a) of the Michigan penal
8 code, ~~Act No. 328 of the Public Acts of 1931, being section~~
9 ~~750.520d of the Michigan Compiled Laws~~ **1931 PA 328, MCL**
10 **750.520d**. This subsection does not apply if, after the date of
11 the conviction, the biological parents cohabit and establish a
12 mutual ~~custodial~~ **parental** environment for the child.

13 (3) Notwithstanding other provisions of this act, if an
14 individual is convicted of criminal sexual conduct as provided in
15 sections 520a to 520e and 520g of ~~Act No. 328 of the Public Acts~~
16 ~~of 1931~~ **the Michigan penal code, 1931 PA 328, MCL 750.520a to**
17 **750.520e and 750.520g**, and the victim is the individual's child,
18 the court shall not award ~~custody of~~ **parenting time with** that
19 child or a sibling of that child to that individual, unless both
20 the child's other parent and, if the court considers the child or
21 sibling to be of sufficient age to express his or her desires,
22 the child or sibling consent to the ~~custody~~ **parenting time**.

23 Sec. 6. (1) This act is equitable in nature and shall be
24 liberally construed and applied to establish promptly the rights
25 of the child and the rights and duties of the parties involved.
26 This act applies to all circuit court child ~~custody~~ **parenting**
27 **time** disputes and actions, whether original or incidental to

1 other actions. Those disputes and actions shall have precedence
2 for hearing and assignment for trial over other civil actions.

3 (2) Except as otherwise provided in section 6b or 6e, if the
4 circuit court of this state does not have prior continuing
5 jurisdiction over a child, the action shall be submitted to the
6 circuit court of the county where the child resides or may be
7 found by complaint or complaint and motion for order to show
8 cause. An application for a writ of habeas corpus or for a
9 warrant in its place to obtain ~~custody of~~ **parenting time** with a
10 child shall not be granted unless it appears that this act is
11 inadequate and ineffective to resolve the particular child
12 ~~custody~~ **parenting time** dispute.

13 Sec. 6a. (1) In ~~custody~~ **parenting time** disputes between
14 parents, the parents shall be advised of joint ~~custody~~
15 **parenting time**. At the request of either parent, the court shall
16 consider an award of joint ~~custody~~ **parenting time**, and shall
17 state on the record the reasons for granting or denying a
18 request. In other cases joint ~~custody~~ **parenting time** may be
19 considered by the court. The court shall determine whether joint
20 ~~custody~~ **parenting time** is in the best interest of the child by
21 considering the following factors:

22 (a) The factors enumerated in section 3.

23 (b) Whether the parents will be able to cooperate and
24 generally agree concerning important decisions affecting the
25 welfare of the child.

26 (2) If the parents agree on joint ~~custody~~ **parenting time**,
27 the court shall award joint ~~custody~~ **parenting time** unless the

1 court determines on the record, based upon clear and convincing
2 evidence, that joint ~~custody~~ **parenting time** is not in the best
3 interests of the child.

4 (3) If the court awards joint ~~custody~~ **parenting time**, the
5 court may include in its award a statement regarding when the
6 child shall reside with each parent, or may provide that physical
7 ~~custody~~ **parenting time** be shared by the parents in a manner to
8 assure the child continuing contact with both parents.

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

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

14 (6) Joint ~~custody shall~~ **parenting time does** not eliminate
15 the responsibility for child support. Each parent ~~shall be~~ **is**
16 responsible for child support based on the needs of the child and
17 the actual resources of each parent. If a parent would otherwise
18 be unable to maintain adequate housing for the child and the
19 other parent has sufficient resources, the court may order
20 modified support payments for a portion of housing expenses even
21 during a period when the child is not residing in the home of the
22 parent receiving support. An order of joint ~~custody~~ **parenting**
23 **time**, in and of itself, ~~shall~~ **does** not constitute grounds for
24 modifying a support order.

25 (7) As used in this section, "joint ~~custody~~ **parenting time**"
26 means an order of the court in which 1 or both of the following
27 is specified:

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

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

5 Sec. 6b. (1) Except as otherwise provided in subsection
6 (2), a guardian or limited guardian of a child has standing to
7 bring an action for ~~custody of~~ **parenting time with** the child as
8 provided in this act.

9 (2) A limited guardian of a child does not have standing to
10 bring an action for ~~custody of~~ **parenting time with** the child if
11 the parent or parents of the child have substantially complied
12 with a limited guardianship placement plan regarding the child
13 entered into as required by section 5205 of the estates and
14 protected individuals code, 1998 PA 386, MCL 700.5205, or section
15 424a of former 1978 PA 642.

16 (3) If the circuit court does not have prior continuing
17 jurisdiction over the child, a child ~~custody~~ **parenting time**
18 action brought by a guardian or limited guardian of the child
19 shall be filed in the circuit court in the county in which the
20 probate court appointed the guardian.

21 (4) Upon the filing of a child ~~custody~~ **parenting time**
22 action brought by a child's guardian or limited guardian,
23 guardianship proceedings concerning that child in the probate
24 court are stayed until disposition of the child ~~custody~~
25 **parenting time** action. A probate court order concerning the
26 guardianship of the child continues in force until superseded by
27 a circuit court order. If the circuit court awards ~~custody of~~

1 **parenting time with** the child, it shall send a copy of the
2 judgment or order of disposition to the probate court in the
3 county that appointed the child's guardian or limited guardian.

4 (5) If a child's guardian or limited guardian brings a child
5 ~~custody~~ **parenting time** action, the circuit court shall request
6 the supreme court in accordance with section 225 of the revised
7 judicature act of 1961, 1961 PA 236, MCL 600.225, to assign the
8 probate court judge who appointed that guardian or limited
9 guardian to serve as the circuit court judge and hear the child
10 ~~custody~~ **parenting time** action.

11 Sec. 6c. (1) A third person may bring an action for
12 ~~custody of~~ **parenting time with** a child if the court finds
13 either of the following:

14 (a) Both of the following:

15 (i) The child was placed for adoption with the third person
16 under the adoption laws of this or another state, and the
17 placement order is still in effect at the time the action is
18 filed.

19 (ii) After the placement, the child has resided with the
20 third person for a minimum of 6 months.

21 (b) All of the following:

22 (i) The child's biological parents have never been married to
23 one another.

24 (ii) The child's parent who has ~~custody of~~ **parenting time**
25 **with** the child dies or is missing and the other parent has not
26 been granted legal ~~custody~~ **parenting time** under court order.

27 (iii) The third person is related to the child within the

1 fifth degree by marriage, blood, or adoption.

2 (2) A third person shall include with an action filed under
3 this section both of the following:

4 (a) An affidavit setting forth facts relative to the
5 existence of the prerequisites required by subsection (1)(a) or
6 (b).

7 (b) Notice that a defense or objection to a third person's
8 right to bring an action for ~~custody~~ **parenting time** may be
9 raised as an affirmative defense or by a motion for summary
10 disposition based on lack of standing as provided in the Michigan
11 court rules.

12 Sec. 6e. (1) A third person filing an action under section
13 6c shall send notice of the action to each party who has ~~legal~~
14 ~~custody of~~ **parenting time with** the child and to each parent
15 whose parental rights have not been terminated.

16 (2) In addition to other powers of the court, in an action
17 under section 6c, the court may do any of the following:

18 (a) Appoint an attorney for a parent.

19 (b) Order that a necessary and reasonable amount of money be
20 paid to the court for reimbursement of a party's attorney. A
21 party may request an order under this subdivision. The moving
22 party shall allege facts showing that the party is otherwise
23 unable to bear the expense of the action. The court shall
24 require the disclosure of attorney fees or other expenses paid.

25 (c) The court may award costs and fees as provided in
26 section 2591 of the revised judicature act of 1961, ~~Act No. 236~~
27 ~~of the Public Acts of 1961, being section 600.2591 of the~~

1 ~~Michigan Compiled Laws~~ 1961 PA 236, MCL 600.2591.

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

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

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

22 (c) Modify or amend its previous judgments or orders for
23 proper cause shown or because of change of circumstances until
24 the child reaches 18 years of age and, subject to section 5b of
25 the support and parenting time enforcement act, 1982 PA 295, MCL
26 552.605b, until the child reaches 19 years and 6 months of age.
27 The court shall not modify or amend its previous judgments or

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

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

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

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

20 (2) A judgment or order entered under this act providing for
21 the support of a child is governed by and is enforceable as
22 provided in the support and parenting time enforcement act, 1982
23 PA 295, MCL 552.601 to 552.650. If this act contains a specific
24 provision regarding the contents or enforcement of a support
25 order that conflicts with a provision in the support and
26 parenting time enforcement act, 1982 PA 295, MCL 552.601 to
27 552.650, this act controls in regard to that provision.

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

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

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

18 ~~(4) Notwithstanding other provisions of this act, if a~~
19 ~~proceeding regarding parenting time involves a child who is~~
20 ~~conceived as the result of acts for which 1 of the child's~~
21 ~~biological parents is convicted of criminal sexual conduct as~~
22 ~~provided in sections 520a to 520e and 520g of the Michigan penal~~
23 ~~code, Act No. 328 of the Public Acts of 1931, being~~
24 ~~sections 750.520a to 750.520e and 750.520g of the Michigan~~
25 ~~Compiled Laws, the court shall not grant parenting time to the~~
26 ~~convicted biological parent. This subsection does not apply to a~~
27 ~~conviction under section 520d(1)(a) of Act No. 328 of the Public~~

1 Acts of 1931, being section 750.520d of the Michigan Compiled
2 Laws. This subsection does not apply if, after the date of the
3 conviction, the biological parents cohabit and establish a mutual
4 custodial environment for the child.

5 ——— (5) Notwithstanding other provisions of this act, if an
6 individual is convicted of criminal sexual conduct as provided in
7 sections 520a to 520e and 520g of Act No. 328 of the Public Acts
8 of 1931 and the victim is the individual's child, the court shall
9 not grant parenting time with that child or a sibling of that
10 child to that individual, unless both the child's other parent
11 and, if the court considers the child or sibling to be of
12 sufficient age to express his or her desires, the child or
13 sibling consent to the parenting time.

14 (4) —(6)— The court may consider the following factors when
15 determining the frequency, duration, and type of parenting time
16 to be granted:

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

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

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

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

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

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

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

5 (h) The threatened or actual detention of the child with the
6 intent to retain or conceal the child from the other parent or
7 from a third person who has ~~legal custody~~ **parenting time**. ~~A~~
8 ~~custodial parent's~~ **If a parent granted parenting time seeks**
9 temporary residence with the child in a domestic violence
10 shelter, ~~shall not be construed as~~ **that temporary residence is**
11 **not** evidence of the ~~custodial~~ parent's intent to retain or
12 conceal the child from the other parent.

13 (i) Any other relevant factors.

14 **(5)** ~~(7)~~ Parenting time shall be granted in specific terms
15 if requested by either party at any time.

16 **(6)** ~~(8)~~ A parenting time order may contain any reasonable
17 terms or conditions that facilitate the orderly and meaningful
18 exercise of parenting time by a parent, including 1 or more of
19 the following:

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

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

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

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

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

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

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

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

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

9 ~~(7) -(9)-~~ During the time a child is with a parent to whom
10 parenting time has been awarded, that parent shall decide all
11 routine matters concerning the child.

12 ~~(8) -(10)-~~ Prior to entry of a temporary order, a parent may
13 seek an ex parte interim order concerning parenting time. If the
14 court enters an ex parte interim order concerning parenting time,
15 the party on whose motion the ex parte interim order is entered
16 shall have a true copy of the order served on the friend of the
17 court and the opposing party.

18 ~~(9) -(11)-~~ If the opposing party objects to the ex parte
19 interim order, he or she shall file with the clerk of the court
20 within 14 days after receiving notice of the order a written
21 objection to, or a motion to modify or rescind, the ex parte
22 interim order. The opposing party shall have a true copy of the
23 written objection or motion served on the friend of the court and
24 the party who obtained the ex parte interim order.

25 ~~(10) -(12)-~~ If the opposing party files a written objection
26 to the ex parte interim order, the friend of the court shall
27 attempt to resolve the dispute within 14 days after receiving

1 it. If the matter cannot be resolved, the friend of the court
2 shall provide the opposing party with a form motion and order
3 with written instructions for their use in modifying or
4 rescinding the ex parte order without assistance of counsel. If
5 the opposing party wishes to proceed without assistance of
6 counsel, the friend of the court shall schedule a hearing with
7 the court that shall be held within 21 days after the filing of
8 the motion. If the opposing party files a motion to modify or
9 rescind the ex parte interim order and requests a hearing, the
10 court shall resolve the dispute within 28 days after the hearing
11 is requested.

12 (11) ~~(13)~~ An ex parte interim order issued under this
13 section shall contain the following notice:

14 NOTICE:

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

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

27 Sec. 7b. (1) Except as provided in this subsection, a

1 grandparent of the child may seek an order for grandparenting
2 time in the manner set forth in this section only if a child
3 ~~custody~~ **parenting time** dispute with respect to that child is
4 pending before the court. If a natural parent of an unmarried
5 child is deceased, a parent of the deceased person may commence
6 an action for grandparenting time. Adoption of the child by a
7 stepparent under **the Michigan adoption code**, chapter X of ~~Act~~
8 ~~No. 288 of the Public Acts of 1939, being sections 710.21 to~~
9 ~~710.70 of the Michigan Compiled Laws~~ **the probate code of 1939,**
10 **1939 PA 288, MCL 710.21 to 710.70**, does not terminate the right
11 of a parent of the deceased person to commence an action for
12 grandparenting time.

13 (2) As used in this section, "child ~~custody~~ **parenting time**
14 dispute" includes a proceeding in which any of the following
15 occurs:

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

19 (b) ~~Legal custody~~ **Parenting time** of the child is given to a
20 party other than the child's parent, or the child is placed
21 outside of and does not reside in the home of a parent, excluding
22 ~~any~~ a child who has been placed for adoption with other than a
23 stepparent, or whose adoption by other than a stepparent has been
24 legally finalized.

25 (3) A grandparent seeking a grandparenting time order may
26 commence an action for grandparenting time, by complaint or
27 complaint and motion for an order to show cause, in the circuit

1 court in the county in which the ~~grandchild~~ **child** resides. If
2 a child ~~custody~~ **parenting time** dispute is pending, the order
3 shall be sought by motion for an order to show cause. The
4 complaint or motion shall be accompanied by an affidavit setting
5 forth facts supporting the requested order. The grandparent
6 shall give notice of the filing to each party who has ~~legal~~
7 ~~custody of the grandchild~~ **parenting time with the child**. A
8 party having ~~legal custody~~ **parenting time** may file an opposing
9 affidavit. A hearing shall be held by the court on its own
10 motion or if a party so requests. At the hearing, parties
11 submitting affidavits shall be allowed an opportunity to be
12 heard. At the conclusion of the hearing, if the court finds that
13 ~~it~~ **the grandparent's request for parenting time** is in the best
14 interests of the child, ~~to enter a grandparenting time order,~~
15 the court shall enter an order providing for reasonable
16 grandparenting time ~~of~~ **with** the child by the grandparent by
17 general or specific terms and conditions. If a hearing is not
18 held, the court shall enter a grandparenting time order only upon
19 a finding that grandparenting time is in the best interests of
20 the child. A grandparenting time order shall not be entered for
21 the parents of a putative father unless the father has
22 acknowledged paternity in writing, has been adjudicated to be the
23 father by a court of competent jurisdiction, or has contributed
24 regularly to the support of the child or children. The court
25 shall make a record of the reasons for a denial of a requested
26 grandparenting time order.

27 (4) A grandparent may not file more than once every 2 years,

1 absent a showing of good cause, a complaint or motion seeking a
2 grandparenting time order. If the court finds there is good
3 cause to allow a grandparent to file more than 1 complaint or
4 motion under this section in a 2-year period, the court shall
5 allow the filing and shall consider the complaint or motion. The
6 court may order reasonable attorney fees to the prevailing
7 party.

8 (5) The court shall not enter an order restricting the
9 movement of the ~~grandchild~~ **child** if the restriction is solely
10 for the purpose of allowing the grandparent to exercise the
11 rights conferred in a grandparenting time order.

12 (6) A grandparenting time order entered in accordance with
13 this section ~~shall not be considered to have created~~ **does not**
14 **create** parental rights in the person or persons to whom
15 grandparenting time rights are granted. The entry of a
16 grandparenting time order ~~shall~~ **does** not prevent a court of
17 competent jurisdiction from acting upon the ~~custody of~~
18 **parenting time with** the child, the parental rights of the child,
19 or the adoption of the child.

20 (7) The court may enter an order modifying or terminating a
21 grandparenting time order ~~whenever such~~ **if** a modification or
22 termination is in the best interests of the child.

23 Sec. 8. To expedite the resolution of a child ~~custody~~
24 **parenting time** dispute by prompt and final adjudication, all
25 orders and judgments of the circuit court shall be affirmed on
26 appeal unless the trial judge made findings of fact against the
27 great weight of evidence or committed a palpable abuse of

1 discretion or a clear legal error on a major issue.

2 Sec. 10. Notwithstanding ~~any other~~ **another** provision of
3 law, a parent shall not be denied access to records or
4 information concerning his or her child because the parent ~~is~~
5 ~~not the child's custodial parent~~ **does not have parenting time**
6 **with the child**, unless the parent is prohibited from having
7 access to the records or information by a protective order. As
8 used in this section, "records or information" includes, but is
9 not limited to, medical, dental, and school records, day care
10 provider's records, and notification of meetings regarding the
11 child's education.

12 Sec. 11. (1) A child whose ~~parental custody~~ **parenting**
13 **time** is governed by court order has, for the purposes of this
14 section, a legal residence with each parent. Except as otherwise
15 provided in this section, a parent of a child whose ~~custody~~
16 **parenting time** is governed by court order shall not change a
17 legal residence of the child to a location that is more than
18 100 miles from the child's legal residence at the time of the
19 commencement of the action in which the order is issued.

20 (2) A parent's change of a child's legal residence is not
21 restricted by subsection (1) if the other parent consents to, or
22 if the court, after complying with subsection (4), permits, the
23 residence change. This section does not apply if the order
24 governing the child's ~~custody~~ **parenting time** grants ~~sole legal~~
25 ~~custody~~ **parenting time** to **only** 1 of the child's parents.

26 (3) This section does not apply if, at the time of the
27 commencement of the action in which the ~~custody~~ **parenting time**

1 order is issued, the child's 2 residences were more than
2 100 miles apart. This section does not apply if the legal
3 residence change results in the child's 2 legal residences being
4 closer to each other than before the change.

5 (4) Before permitting a legal residence change otherwise
6 restricted by subsection (1), the court shall consider each of
7 the following factors, with the child as the primary focus in the
8 court's deliberations:

9 (a) Whether the legal residence change has the capacity to
10 improve the quality of life for both the child and the relocating
11 parent.

12 (b) The degree to which each parent has complied with, and
13 utilized his or her time under, a court order governing parenting
14 time with the child, and whether the parent's plan to change the
15 child's legal residence is inspired by that parent's desire to
16 defeat or frustrate the parenting time schedule.

17 (c) The degree to which the court is satisfied that, if the
18 court permits the legal residence change, it is possible to order
19 a modification of the parenting time schedule and other
20 arrangements governing the child's schedule in a manner that can
21 provide an adequate basis for preserving and fostering the
22 parental relationship between the child and each parent; and
23 whether each parent is likely to comply with the modification.

24 (d) The extent to which the parent opposing the legal
25 residence change is motivated by a desire to secure a financial
26 advantage with respect to a support obligation.

27 (e) Domestic violence, regardless of whether the violence was

1 directed against or witnessed by the child.

2 (5) Each order determining or modifying ~~custody or~~
3 parenting time of a child shall include a provision stating the
4 parent's agreement as to how a change in either of the child's
5 legal residences will be handled. If such a provision is
6 included in the order and a child's legal residence change is
7 done in compliance with that provision, this section does not
8 apply. If the parents do not agree on ~~such~~ a provision, the
9 court shall include in the order the following provision: "A
10 parent whose ~~custody or~~ parenting time of a child is governed
11 by this order shall not change the legal residence of the child
12 except in compliance with section 11 of the "Child ~~Custody Act~~
13 ~~of 1970~~ **Parenting Time Act**", 1970 PA 91, MCL 722.31.".

14 (6) If this section applies to a change of a child's legal
15 residence and the parent seeking to change that legal residence
16 needs to seek a safe location from the threat of domestic
17 violence, the parent may move to ~~such~~ a **safe** location with the
18 child until the court makes a determination under this section.

19 Enacting section 1. This amendatory act takes effect
20 January 1, 2005.