

HOUSE BILL No. 5987

November 8, 2012, Introduced by Rep. Johnson and referred to the Committee on Judiciary.

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending section 7b (MCL 722.27b), as amended by 2009 PA 237.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

10 (d) The child's parents have never been married, they are not
11 residing in the same household, and paternity has been established

1 by the completion of an acknowledgment of parentage under the
2 acknowledgment of parentage act, 1996 PA 305, MCL 722.1001 to
3 722.1013, by an order of filiation entered under the paternity act,
4 1956 PA 205, MCL 722.711 to 722.730, or by a determination by a
5 court of competent jurisdiction that the individual is the father
6 of the child.

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

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

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

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

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

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

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

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

22 (b) In order to give deference to the decisions of fit
23 parents, it is presumed in a proceeding under this subsection that
24 a fit parent's decision to deny grandparenting time does not create
25 a substantial risk of harm to the child's mental, physical, or
26 emotional health. To rebut the presumption created in this
27 subdivision, a grandparent filing a complaint or motion under this

1 section must prove by a preponderance of the evidence that the
2 parent's decision to deny grandparenting time creates a substantial
3 risk of harm to the child's mental, physical, or emotional health.
4 If the grandparent does not overcome the presumption, the court
5 shall dismiss the complaint or deny the motion.

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

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

23 (6) If the court finds that a grandparent has met the standard
24 for rebutting the presumption described in subsection (4), the
25 court shall consider whether it is in the best interests of the
26 child to enter an order for grandparenting time. If the court finds
27 by a preponderance of the evidence that it is in the best interests

1 of the child to enter a grandparenting time order, the court shall
2 enter an order providing for reasonable grandparenting time of the
3 child by the grandparent by general or specific terms and
4 conditions. In determining the best interests of the child under
5 this subsection, the court shall consider all of the following:

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

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

12 (c) The grandparent's moral fitness.

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

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

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

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

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

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

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

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

11 (8) A grandparent may not file more than once every 2 years,
12 absent a showing of good cause, a complaint or motion under
13 subsection (3) seeking a grandparenting time order. If the court
14 finds there is good cause to allow a grandparent to file more than
15 1 complaint or motion under this section in a 2-year period, the
16 court shall allow the filing and shall consider the complaint or
17 motion. Upon motion of a person, the court may order reasonable
18 attorney fees to the prevailing party.

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

24 (10) A grandparenting time order entered under this section
25 does not create parental rights in the individual or individuals to
26 whom grandparenting time rights are granted. The entry of a
27 grandparenting time order does not prevent a court of competent

1 jurisdiction from acting upon the custody of the child, the
2 parental rights of the child, or the adoption of the child.

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

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

18 (13) Except as otherwise provided in this subsection, adoption
19 of a child or placement of a child for adoption under the Michigan
20 adoption code, chapter X of the probate code of 1939, 1939 PA 288,
21 MCL 710.21 to 710.70, terminates the right of a grandparent to
22 commence an action for grandparenting time with that child.
23 Adoption of a child by a stepparent under the Michigan adoption
24 code, chapter X of the probate code of 1939, 1939 PA 288, MCL
25 710.21 to 710.70, does not terminate the right of the parent of a
26 deceased parent of the child to commence an action for
27 grandparenting time with that child.

1 (14) UPON SENTENCING FOR CRIMINAL SEXUAL CONDUCT IN WHICH A
2 GRANDPARENT WHO HAS A GRANDPARENTING TIME ORDER IN PLACE HAS ABUSED
3 A CHILD OR A SIBLING OF A CHILD AND THE ABUSE INCLUDES CRIMINAL
4 SEXUAL CONDUCT INVOLVING PENETRATION, ATTEMPTED PENETRATION, OR
5 ASSAULT WITH INTENT TO PENETRATE, THE SENTENCING COURT SHALL ENTER
6 AN ORDER TERMINATING THE GRANDPARENTING TIME ORDER WITHOUT
7 REQUIRING A SEPARATE HEARING.