

HOUSE BILL No. 5812

August 15, 2012, Introduced by Rep. Damrow and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending sections 2, 3, 4, 5, 6a, 7, 7a, and 7b (MCL 722.22,
722.23, 722.24, 722.25, 722.26a, 722.27, 722.27a, and 722.27b),
section 2 as amended by 2005 PA 327, sections 3 and 5 as amended by
1993 PA 259, section 4 as amended by 1998 PA 482, section 6a as
added by 1980 PA 434, section 7 as amended by 2005 PA 328, section
7a as amended by 1996 PA 19, and section 7b as amended by 2009 PA
237, and by adding sections 3a and 6f.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (A) "ABANDONMENT" MEANS THE PERSON RESPONSIBLE FOR THE CHILD'S
3 HEALTH AND WELFARE LEAVES THE CHILD WITH AN AGENCY, PERSON, OR
4 OTHER ENTITY THAT IS UNABLE OR UNWILLING TO ASSUME RESPONSIBILITY

1 FOR THE CHILD. ABANDONMENT INCLUDES WHEN A PARENT, HAVING THE
2 ABILITY TO VISIT, CONTACT, OR COMMUNICATE WITH THE CHILD, HAS
3 REGULARLY AND SUBSTANTIALY FAILED OR NEGLECTED, WITHOUT GOOD
4 CAUSE, TO DO SO FOR A PERIOD OF 1 YEAR OR MORE BEFORE THE FILING OF
5 A PETITION UNDER THIS ACT.

6 (B) ~~(a)~~—"Active military duty" means when a reserve unit
7 member or national guard unit member is called into active military
8 duty.

9 (C) ~~(b)~~—"Agency" means a legally authorized public or private
10 organization, or governmental unit or official, whether of this
11 state or of another state or country, concerned in the welfare of
12 minor children, including a licensed child placement agency.

13 (D) ~~(c)~~—"Attorney" means, if appointed to represent a child
14 under this act, an attorney serving as the child's legal advocate
15 in a traditional attorney-client relationship with the child, as
16 governed by the Michigan rules of professional conduct. An attorney
17 defined under this subdivision owes the same duties of undivided
18 loyalty, confidentiality, and zealous representation of the child's
19 expressed wishes as the attorney would to an adult client.

20 (E) ~~(d)~~—"Child" means minor child and children. Subject to
21 section 5b of the support and parenting time enforcement act, 1982
22 PA 295, MCL 552.605b, for purposes of providing support, child
23 includes a child and children who have reached 18 years of age.

24 (F) "CHILD ABUSE", "CHILD NEGLECT", AND "SEXUAL ABUSE" MEAN
25 THOSE TERMS AS DEFINED IN SECTION 2 OF THE CHILD PROTECTION LAW,
26 1975 PA 238, MCL 722.622.

27 (G) "DOMESTIC VIOLENCE" MEANS THAT TERM AS DEFINED IN SECTION

1 1 OF 1978 PA 389, MCL 400.1501.

2 (H) "EMOTIONAL ABUSE" MEANS AN INJURY TO THE CHILD'S MENTAL
3 CONDITION OR WELFARE THAT IS NOT NECESSARILY PERMANENT BUT RESULTS
4 IN SUBSTANTIAL AND PROTRACTED, VISIBLY DEMONSTRABLE MANIFESTATIONS
5 OF MENTAL DISTRESS.

6 (I) ~~(e)~~—"Grandparent" means a natural or adoptive parent of a
7 child's natural or adoptive parent.

8 (J) ~~(f)~~—"Guardian ad litem" means an individual whom the court
9 appoints to assist the court in determining the child's best
10 interests. A guardian ad litem does not need to be an attorney.

11 (K) ~~(g)~~—"Lawyer-guardian ad litem" means an attorney appointed
12 under section 4. A lawyer-guardian ad litem represents the child,
13 and has the powers and duties, as set forth in section 4.

14 (L) "MALTREATMENT" MEANS THE TREATMENT OF A CHILD THAT INVOLVES
15 CRUELTY OR SUFFERING THAT A REASONABLE PERSON WOULD RECOGNIZE AS
16 EXCESSIVE.

17 (M) "MEDICAL NEGLECT" MEANS FAILURE TO SEEK, OBTAIN, OR FOLLOW
18 THROUGH WITH MEDICAL CARE FOR THE CHILD, WITH THE FAILURE RESULTING
19 IN OR PRESENTING SUBSTANTIAL RISK OF DEATH, DISFIGUREMENT, OR
20 BODILY HARM OR WITH THE FAILURE RESULTING IN AN OBSERVABLE AND
21 MATERIAL IMPAIRMENT TO THE GROWTH, DEVELOPMENT, OR FUNCTIONING OF
22 THE CHILD. MEDICAL NEGLECT INCLUDES FAILURE TO OBTAIN AND MAINTAIN
23 HEALTH CARE COVERAGE FOR THE CHILD IF ORDERED TO DO SO BY THE
24 COURT.

25 (N) "MENTAL INJURY" MEANS A PSYCHOLOGICAL CONDITION THAT IS
26 DIAGNOSED BY A MENTAL HEALTH PROFESSIONAL AND IS CAUSED BY PHYSICAL
27 OR VERBAL ACTS, OMISSIONS, INCLUDING THE DENIAL OF APPROPRIATE

1 TREATMENT, OR MAINTAINING AN ENVIRONMENT BY THE PERSON RESPONSIBLE
2 FOR THE CHILD'S HEALTH AND WELFARE THAT RENDERS THE CHILD
3 CHRONICALLY ANXIOUS, AGITATED, DEPRESSED, SOCIALLY WITHDRAWN, OR
4 PSYCHOTIC, CAUSES AN UNREASONABLE FEAR THAT THE CHILD'S LIFE OR
5 SAFETY OR THE LIFE OR SAFETY OF ANOTHER FAMILY MEMBER IS
6 THREATENED, OR CHRONICALLY INTERFERES WITH THE CHILD'S ABILITY TO
7 ACCOMPLISH AGE-APPROPRIATE MILESTONES.

8 (O) ~~(h)~~—"Parent" means the natural or adoptive parent of a
9 child.

10 (P) ~~(i)~~—"State disbursement unit" or "SDU" means the entity
11 established in section 6 of the office of child support act, 1971
12 PA 174, MCL 400.236.

13 (Q) ~~(j)~~—"Third person" means an individual other than a
14 parent.

15 Sec. 3. As used in this act, "best interests of the child"
16 means the sum total of the following factors to be considered,
17 evaluated, and determined by the court **IN BOTH CUSTODY AND**
18 **PARENTING TIME DISPUTES:**

19 (A) **CHILD ABUSE OR CHILD NEGLECT, INCLUDING, BUT NOT LIMITED**
20 **TO, 1 OR MORE OF THE FOLLOWING:**

21 (i) **PHYSICAL ABUSE. NONACCIDENTAL INJURY TO A CHILD BY THE**
22 **PERSON RESPONSIBLE FOR THE CHILD'S HEALTH AND WELFARE.**

23 (ii) **SEXUAL ABUSE.**

24 (iii) **MALTREATMENT.**

25 (iv) **MENTAL INJURY.**

26 (v) **ABANDONMENT.**

27 (vi) **EMOTIONAL ABUSE.**

1 (vii) **MEDICAL NEGLECT.**

2 (B) ~~(a)~~—The love, affection, and other emotional ties existing
3 between the parties involved and the child.

4 (C) ~~(b)~~—The capacity and disposition of the parties involved
5 to give the child love, affection, and guidance and to continue the
6 education and raising of the child in his or her religion or creed,
7 if any.

8 (D) ~~(c)~~—The capacity and disposition of the parties involved
9 to provide the child with food, clothing, medical care or other
10 remedial care recognized and permitted under the laws of this state
11 in place of medical care, and other material needs.

12 (E) ~~(d)~~—The length of time the child has lived in a stable,
13 satisfactory environment, and the desirability of maintaining
14 continuity.

15 (F) ~~(e)~~—The permanence, as a family unit, of the existing or
16 proposed custodial home or homes.

17 (G) ~~(f)~~—The moral fitness of the parties involved.

18 (H) ~~(g)~~—The mental and physical health of the parties
19 involved.

20 (I) ~~(h)~~—The home, school, and community record of the child.

21 (J) ~~(i)~~—The reasonable preference of the child, if the court
22 considers the child to be of sufficient age to express preference.

23 (K) ~~(j)~~—The willingness and ability of each of the parties to
24 facilitate and encourage a close and continuing parent-child
25 relationship between the child and the other parent or the child
26 and the parents. **THIS SUBDIVISION DOES NOT APPLY IF DOMESTIC**
27 **VIOLENCE IS PRESENT.**

1 (l) ~~(k)~~ Domestic violence, regardless of whether the violence
2 was directed against or witnessed by the child.

3 (M) PATTERNS OF BEHAVIOR, INCLUDING, BUT NOT LIMITED TO,
4 DOMESTIC VIOLENCE OR CHILD ABUSE.

5 (N) ~~(l)~~ Any other factor considered by the court to be relevant
6 to a particular child custody dispute.

7 SEC. 3A. (1) IF AN INDIVIDUAL WHO IS 18 OR OVER RESIDES WITH
8 ANY PARTY TO A CUSTODY ACTION OR PARENTING TIME DISPUTE, THE COURT
9 SHALL APPLY THE BEST INTEREST OF THE CHILD DETERMINATION TO THAT
10 INDIVIDUAL AS WELL AS TO THE PARTIES OF THE DISPUTE.

11 (2) IF THE COURT DETERMINES THAT AN INDIVIDUAL DESCRIBED IN
12 SUBSECTION (1) IS UNFIT IN ACCORDANCE WITH THE BEST INTEREST OF THE
13 CHILD FACTORS, THAT INDIVIDUAL MUST COMPLY WITH ALL TREATMENT
14 REQUIRED BY THE COURT AS IF THAT INDIVIDUAL WERE A PARTY TO THE
15 ACTION. IF THAT INDIVIDUAL REFUSES TO COMPLY, THE COURT SHALL ORDER
16 SUPERVISED VISITS WHEN THE INDIVIDUAL IS PRESENT.

17 (3) IF THE PARENT WITH WHOM THE INDIVIDUAL DESCRIBED IN
18 SUBSECTION (1) RESIDES DOES NOT COMPLY WITH A COURT ORDER UNDER
19 THIS SECTION, THE COURT SHALL ORDER SUPERVISED VISITS FOR THAT
20 PARENT WITH THE CHILD UNTIL ALL THE CONDITIONS OF AN ORDER UNDER
21 THIS SECTION ARE MET.

22 Sec. 4. (1) In all actions involving dispute of a minor
23 child's custody, the court shall declare the child's inherent
24 rights and establish the rights and duties as to the child's
25 custody, support, and parenting time in accordance with this act.

26 (2) If, at any time in the proceeding, the court determines
27 that the child's best interests are inadequately represented, the

1 court ~~may~~**SHALL** appoint a lawyer-guardian ad litem to represent the
2 child. A lawyer-guardian ad litem represents the child and has
3 powers and duties in relation to that representation as set forth
4 in section 17d of chapter XIIIA of 1939 PA 288, MCL 712A.17d. All
5 provisions of section 17d of chapter XIIIA of 1939 PA 288, MCL
6 712A.17d, apply to a lawyer-guardian ad litem appointed under this
7 act.

8 (3) In a proceeding in which a lawyer-guardian ad litem
9 represents a child, he or she may file a written report and
10 recommendation. The court may read the report and recommendation.
11 The court shall not, however, admit the report and recommendation
12 into evidence unless all parties stipulate the admission. The
13 parties may make use of the report and recommendation for purposes
14 of a settlement conference.

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

23 Sec. 5. (1) If a child custody dispute is between the parents,
24 between agencies, or between third persons, the best interests of
25 the child control. If the child custody dispute is between the
26 parent or parents and an agency or a third person, the court shall
27 presume that the best interests of the child are served by awarding

1 custody to the parent or parents, unless the contrary is
 2 established by clear and convincing evidence.

3 (2) Notwithstanding other provisions of this act, if a child
 4 custody dispute involves a child who is conceived as the result of
 5 acts for which 1 of the child's biological parents is convicted of
 6 criminal sexual conduct ~~as provided in~~ **UNDER** sections 520a to 520e
 7 and 520g of the Michigan penal code, ~~Act No. 328 of the Public Acts~~
 8 ~~of 1931, being sections 750.520a to 750.520e and 750.520g of the~~
 9 ~~Michigan Compiled Laws, 1931 PA 328, MCL 750.520A TO 750.520E AND~~
 10 **750.520G**, the court shall not award custody to the convicted
 11 biological parent. This subsection does not apply to a conviction
 12 under section 520d(1)(a) of the Michigan penal code, ~~Act No. 328 of~~
 13 ~~the Public Acts of 1931, being section 750.520d of the Michigan~~
 14 ~~Compiled Laws. 1931 PA 328, MCL 750.520D.~~ This subsection does not
 15 apply if, after the date of the conviction, the biological parents
 16 cohabit and establish a mutual custodial environment for the child.

17 (3) Notwithstanding other provisions of this act, if an
 18 individual is convicted of criminal sexual conduct ~~as provided in~~
 19 **UNDER** sections 520a to 520e and 520g of ~~Act No. 328 of the Public~~
 20 ~~Acts of 1931~~ **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A TO**
 21 **750.520E AND 750.520G**, and the victim is the individual's child,
 22 the court shall not award custody of ~~that~~ **THE** child or a sibling of
 23 ~~that~~ **THE** child to ~~that~~ **THE** individual, unless both the child's
 24 other parent and, if the court considers the child or sibling to be
 25 of sufficient age to express his or her desires, the child or
 26 sibling consent to the custody.

27 (4) **IN CONSIDERING, EVALUATING, AND DETERMINING THE BEST**

1 INTERESTS OF THE CHILD WHEN MAKING A DECISION REGARDING CUSTODY, IF
2 THE COURT DETERMINES THAT A PARENT HAS SEXUALLY, PHYSICALLY,
3 MENTALLY, OR EMOTIONALLY ABUSED THE CHILD, THE COURT SHALL GIVE
4 ADDITIONAL WEIGHT TO THAT FACT AND TO THE FACTORS UNDER SECTION
5 3(G), (J), AND (I).

6 Sec. 6a. (1) In custody disputes between parents, the parents
7 shall be advised of joint custody. At the request of either parent,
8 the court shall consider an award of joint custody, and shall state
9 on the record the reasons for granting or denying a request. In
10 other cases joint custody may be considered by the court. The court
11 shall determine whether joint custody is in the best interest of
12 the child by considering the following factors:

13 (a) The factors enumerated in section 3.

14 (b) Whether the parents will be able to cooperate and
15 generally agree concerning important decisions affecting the
16 welfare of the child.

17 (C) WHETHER DOMESTIC VIOLENCE HAS OCCURRED.

18 (2) If the parents agree on joint custody, the court shall
19 award joint custody unless the court determines on the record,
20 based upon clear and convincing evidence, that joint custody is not
21 in the best interests of the child. **IF THE COURT DETERMINES THAT**
22 **DOMESTIC VIOLENCE HAS OCCURRED, THE COURT SHALL MAKE A**
23 **DETERMINATION THAT IT IS NOT IN THE CHILD'S BEST INTEREST TO AWARD**
24 **SOLE CUSTODY, JOINT CUSTODY, OR PHYSICAL CUSTODY TO THE PERPETRATOR**
25 **OF THE DOMESTIC VIOLENCE.**

26 (3) If the court awards joint custody, the court may include
27 in its award a statement regarding when the child shall reside with

1 each parent, or may provide that physical custody be shared by the
2 parents in a manner to assure the child continuing contact with
3 both parents.

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

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

8 (6) Joint custody shall not eliminate the responsibility for
9 child support. Each parent shall be responsible for child support
10 based on the needs of the child and the actual resources of each
11 parent. If a parent would otherwise be unable to maintain adequate
12 housing for the child and the other parent has sufficient
13 resources, the court may order modified support payments for a
14 portion of housing expenses even during a period when the child is
15 not residing in the home of the parent receiving support. An order
16 of joint custody, in and of itself, shall not constitute grounds
17 for modifying a support order.

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

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

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

24 **SEC. 6F. (1) IN A CHILD CUSTODY OR PARENTING TIME DISPUTE, THE**
25 **COURT MAY INTERVIEW THE CHILD PRIVATELY TO DETERMINE IF THE CHILD**
26 **IS OF SUFFICIENT AGE TO EXPRESS A PREFERENCE REGARDING CUSTODY OR**
27 **PARENTING TIME, AND, IF SO, THE REASONABLE PREFERENCE OF THE CHILD.**

1 THE COURT SHALL FOCUS THE INTERVIEW ON THESE DETERMINATIONS, AND
2 THE INFORMATION RECEIVED SHALL BE APPLIED ONLY TO THE REASONABLE
3 PREFERENCE FACTOR.

4 (2) IF A COURT IN A CHILD CUSTODY OR PARENTING TIME DISPUTE
5 ALLOWS THE TESTIMONY OF THE CHILD TO BE TAKEN IN COURT AND THE
6 CHILD IS UNDER THE AGE OF 16 YEARS OLD, ALL OF THE FOLLOWING
7 PROCEDURES APPLY:

8 (A) IF PERTINENT, THE WITNESS SHALL BE PERMITTED THE USE OF
9 DOLLS OR MANNEQUINS, INCLUDING, ANATOMICALLY CORRECT DOLLS OR
10 MANNEQUINS, TO ASSIST THE WITNESS IN TESTIFYING ON DIRECT AND
11 CROSS-EXAMINATION.

12 (B) THE WITNESS SHALL BE PERMITTED TO HAVE A NAMED SUPPORT
13 PERSON SIT WITH, ACCOMPANY, OR BE IN CLOSE PROXIMITY TO THE WITNESS
14 DURING HIS OR HER TESTIMONY. A NOTICE OF INTENT TO USE A NAMED
15 SUPPORT PERSON SHALL NAME THE SUPPORT PERSON, IDENTIFY THE
16 RELATIONSHIP THE SUPPORT PERSON HAS WITH THE WITNESS, AND GIVE
17 NOTICE TO ALL PARTIES TO THE PROCEEDING THAT THE WITNESS MAY
18 REQUEST THAT THE NAMED SUPPORT PERSON SIT WITH THE WITNESS WHEN THE
19 WITNESS IS CALLED UPON TO TESTIFY DURING ANY STAGE OF THE
20 PROCEEDING. THE NOTICE OF INTENT TO USE A NAMED SUPPORT PERSON
21 SHALL BE FILED WITH THE COURT AND SHALL BE SERVED UPON ALL PARTIES
22 TO THE PROCEEDING. THE COURT SHALL RULE ON A MOTION OBJECTING TO
23 THE USE OF A NAMED SUPPORT PERSON BEFORE THE DATE ON WHICH THE
24 WITNESS DESIRES TO USE THE NAMED SUPPORT PERSON.

25 (C) IF, ON THE MOTION OF A PARTY MADE BEFORE A HEARING, THE
26 COURT FINDS ON THE RECORD THAT THE SPECIAL ARRANGEMENTS SPECIFIED
27 IN SUBDIVISION (D) ARE NECESSARY TO PROTECT THE WELFARE OF THE

1 WITNESS, THE COURT SHALL ORDER THOSE SPECIAL ARRANGEMENTS. IN
2 DETERMINING WHETHER IT IS NECESSARY TO PROTECT THE WELFARE OF THE
3 WITNESS, THE COURT SHALL CONSIDER ALL OF THE FOLLOWING:

4 (i) THE AGE OF THE WITNESS.

5 (ii) THE NATURE OF THE CONDUCT THAT WILL BE THE SUBJECT OF THE
6 TESTIMONY.

7 (iii) THE DESIRE OF THE WITNESS OR THE WITNESS'S PARENT,
8 GUARDIAN, OR OTHER PARTY TO THE ACTION TO HAVE THE TESTIMONY TAKEN
9 IN A ROOM CLOSED TO THE PUBLIC.

10 (D) IF THE COURT DETERMINES ON THE RECORD UNDER SUBDIVISION
11 (C) THAT IT IS NECESSARY TO PROTECT THE WELFARE OF THE WITNESS, THE
12 COURT MAY ORDER BOTH OF THE FOLLOWING:

13 (i) THAT ALL PERSONS NOT NECESSARY TO THE PROCEEDING BE
14 EXCLUDED FROM THE COURTROOM DURING THE WITNESS'S TESTIMONY.

15 (ii) TO PROTECT THE WITNESS FROM DIRECTLY VIEWING THE
16 DEFENDANT, THAT THE COURTROOM BE ARRANGED SO THAT A PARTY IS SEATED
17 AS FAR FROM THE WITNESS STAND AS IS REASONABLE AND NOT DIRECTLY IN
18 FRONT OF THE WITNESS STAND. THE PARTY'S POSITION SHALL BE LOCATED
19 IN A MANNER THAT ALLOWS THE PARTY TO HEAR AND SEE THE WITNESS AND
20 BE ABLE TO COMMUNICATE WITH HIS OR HER ATTORNEY.

21 (E) IF, ON THE MOTION OF A PARTY OR ON THE COURT'S OWN MOTION,
22 THE COURT FINDS ON THE RECORD THAT THE WITNESS IS OR WILL BE
23 PSYCHOLOGICALLY OR EMOTIONALLY UNABLE TO TESTIFY AT A COURT
24 PROCEEDING EVEN WITH THE BENEFIT OF THE PROTECTIONS AFFORDED THE
25 WITNESS UNDER SUBDIVISIONS (A) TO (D), THE COURT SHALL ORDER THAT A
26 DEPOSITION OF THE WITNESS'S TESTIMONY BE TAKEN TO BE ADMITTED INTO
27 EVIDENCE INSTEAD OF THE WITNESS'S LIVE TESTIMONY. THE COURT MAY

1 IMPOSE RESTRICTIONS ON A DEPOSITION UNDER THIS SUBDIVISION THAT THE
2 COURT DETERMINES ARE NECESSARY TO PROTECT THE WITNESS.

3 (F) ANY OTHER PROTECTIONS OR PROCEDURES AFFORDED TO THE
4 WITNESS BY LAW OR COURT RULE.

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

10 (a) Award the custody of the child to 1 or more of the parties
11 involved or to others and provide for payment of support for the
12 child, until the child reaches 18 years of age. Subject to section
13 5b of the support and parenting time enforcement act, 1982 PA 295,
14 MCL 552.605b, 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 the
19 parties involved, by the maternal or paternal grandparents, or by
20 others, by general or specific terms and conditions. Parenting time
21 of the child by the parents is governed by section 7a.

22 (c) Modify or amend its previous judgments or orders for
23 proper cause shown or because of change of circumstances until the
24 child reaches 18 years of age and, subject to section 5b of the
25 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 BEFORE THE COURT MODIFIES OR AMENDS A PREVIOUS JUDGMENT OR ORDER,

1 **THE MOVING PARTY MUST PROVE THAT A CHANGE OF CIRCUMSTANCE HAS**
2 **OCCURRED.** The court shall not modify or amend its previous
3 judgments or orders or issue a new order so as to change the
4 established custodial environment of a child unless there is
5 presented clear and convincing evidence that it is in the best
6 interest of the child. The custodial environment of a child is
7 established if over an appreciable time the child naturally looks
8 to the custodian in that environment for guidance, discipline, the
9 necessities of life, and parental comfort. The age of the child,
10 the physical environment, and the inclination of the custodian and
11 the child as to permanency of the relationship shall also be
12 considered. If a motion for change of custody is filed during the
13 time a parent is in active military duty, the court shall not enter
14 an order modifying or amending a previous judgment or order, or
15 issue a new order, that changes the child's placement that existed
16 on the date the parent was called to active military duty, except
17 the court may enter a temporary custody order if there is clear and
18 convincing evidence that it is in the best interest of the child.
19 Upon a parent's return from active military duty, the court shall
20 reinstate the custody order in effect immediately preceding that
21 period of active military duty. If a motion for change of custody
22 is filed after a parent returns from active military duty, the
23 court shall not consider a parent's absence due to that military
24 duty in a best interest of the child determination.

25 (d) Utilize a guardian ad litem or the community resources in
26 behavioral sciences and other professions in the investigation and
27 study of custody disputes and consider their recommendations for

1 the resolution of the disputes.

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

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

7 (2) A judgment or order entered under this act providing for
8 the support of a child is governed by and is enforceable as
9 provided in the support and parenting time enforcement act, 1982 PA
10 295, MCL 552.601 to 552.650. If this act contains a specific
11 provision regarding the contents or enforcement of a support order
12 that conflicts with a provision in the support and parenting time
13 enforcement act, 1982 PA 295, MCL 552.601 to 552.650, this act
14 controls in regard to that provision.

15 Sec. 7a. (1) Parenting time shall be granted in accordance
16 with the best interests of the child. It is presumed to be in the
17 best interests of a child for the child to have a strong
18 relationship with both of his or her parents **ABSENT ANY FORM OF**
19 **ABUSE OR DANGER TO THE CHILD. IF THE COURT DETERMINES THAT THERE IS**
20 **ABUSE OR DANGER TO THE CHILD, THERE IS A PRESUMPTION THAT THE**
21 **CHILD'S SAFETY IS THE BEST INTEREST OF THE CHILD.** Except as
22 otherwise provided in this section, parenting time shall be granted
23 to a parent in a frequency, duration, and type reasonably
24 calculated to promote a strong relationship between the child and
25 the parent granted parenting time.

26 (2) If the parents of a child agree on parenting time terms,
27 the court shall order the parenting time terms unless the court

1 determines on the record by clear and convincing evidence that the
2 parenting time terms are not in the best interests of the child.

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

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

21 (5) Notwithstanding other provisions of this act, if an
22 individual is convicted of criminal sexual conduct as provided in
23 sections 520a to 520e and 520g of ~~Act No. 328 of the Public Acts of~~
24 ~~1931~~ **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A TO 750.520E**
25 **AND 750.520G**, and the victim is the individual's child, the court
26 shall not grant parenting time with ~~that~~ **THE** child or a sibling of
27 ~~that~~ **THE** child to ~~that~~ **THE** individual, unless both the child's

1 other parent and, if the court considers the child or sibling to be
2 of sufficient age to express his or her desires, the child or
3 sibling consent to the parenting time.

4 (6) IN CONSIDERING, EVALUATING, AND DETERMINING THE BEST
5 INTERESTS OF THE CHILD AND CONSIDERING THE FACTORS UNDER SUBSECTION
6 (7) WHEN MAKING A DECISION REGARDING PARENTING TIME, IF THE COURT
7 DETERMINES THAT A PARENT HAS SEXUALLY, PHYSICALLY, MENTALLY, OR
8 EMOTIONALLY ABUSED THE CHILD, THE COURT SHALL GIVE ADDITIONAL
9 WEIGHT TO THAT FACT AND TO THE FACTORS UNDER SECTION 3(G), (J), AND
10 (I) AND SUBSECTION (7)(C) AND (D).

11 (7) ~~(6)~~—The court may consider the following factors when
12 determining the frequency, duration, and type of parenting time to
13 be granted:

14 (a) The existence of any special circumstances or needs of the
15 child.

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

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

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

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

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

27 (g) Whether a parent has frequently failed to exercise

1 reasonable parenting time.

2 (h) The threatened or actual detention of the child with the
3 intent to retain or conceal the child from the other parent or from
4 a third person who has legal custody. A custodial parent's
5 temporary residence with the child in a domestic violence shelter
6 shall not be construed as evidence of the custodial parent's intent
7 to retain or conceal the child from the other parent.

8 (i) Any other relevant factors.

9 (8) ~~(7)~~—Parenting time shall be granted in specific terms if
10 requested by either party at any time.

11 (9) ~~(8)~~—A parenting time order may contain any reasonable
12 terms or conditions that facilitate the orderly and meaningful
13 exercise of parenting time by a parent, including 1 or more of the
14 following:

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

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

17 (c) Restrictions on the presence of third persons during
18 parenting time.

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

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

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

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

27 (h) Requirements of reasonable notice when parenting time will

1 not occur.

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

4 (10) ~~(9)~~—During the time a child is with a parent to whom
5 parenting time has been awarded, that parent shall decide all
6 routine matters concerning the child.

7 (11) IF A PARENT HAS BEEN AWARDED SOLE CUSTODY UNDER A COURT
8 ORDER THAT DOES NOT ARISE FROM AN AGREEMENT OF THE PARENTS, THE
9 CUSTODIAL PARENT MAY DEVIATE FROM THE FRIEND OF THE COURT'S
10 SUGGESTED PARENTING TIME SCHEDULE FOR ANY PERIOD THAT LASTS 1 WEEK
11 OR LONGER.

12 (12) ~~(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 (13) ~~(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 (14) ~~(12)~~—If the opposing party files a written objection to
26 the ex parte interim order, the friend of the court shall attempt
27 to resolve the dispute within 14 days after receiving it. If the

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

11 (15) ~~(13)~~—An ex parte interim order issued under this section
12 shall contain the following notice:

13 NOTICE:

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

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

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

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

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

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

8 (d) The child's parents have never been married ~~, they~~ **AND** are
9 not residing in the same household ~~, and~~ paternity has been
10 established by the completion of an acknowledgment of parentage
11 under the acknowledgment of parentage act, 1996 PA 305, MCL
12 722.1001 to 722.1013, by an order of filiation entered under the
13 paternity act, 1956 PA 205, MCL 722.711 to 722.730, or by a
14 determination by a court of competent jurisdiction that the
15 individual is the father of the child.

16 (e) Except as otherwise provided in subsection ~~(13)~~, **(14)**,
17 legal custody of the child has been given to a person other than
18 the child's parent, or the child is placed outside of and does not
19 reside in the home of a parent.

20 (f) In the year preceding the commencement of an action under
21 subsection (3), ~~for grandparenting time,~~ the grandparent provided
22 an established custodial environment for the child as described in
23 section 7, whether or not the grandparent had custody under a court
24 order.

25 (2) A court shall not permit a parent of a father who has
26 never been married to the child's mother to seek an order for
27 grandparenting time under this section unless the father has

1 completed an acknowledgment of parentage under the acknowledgment
2 of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013, an order
3 of filiation has been entered under the paternity act, 1956 PA 205,
4 MCL 722.711 to 722.730, or the father has been determined to be the
5 father by a court of competent jurisdiction. The court shall not
6 permit the parent of a putative father to seek an order for
7 grandparenting time unless the putative father has provided
8 substantial and regular support or care in accordance with the
9 putative father's ability to provide the support or care.

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

12 (a) If the circuit court has continuing jurisdiction over the
13 child, ~~the child's grandparent shall seek a grandparenting time~~
14 ~~order~~ by filing a motion with the circuit court in the county where
15 the court has continuing jurisdiction.

16 (b) If the circuit court does not have continuing jurisdiction
17 over the child, ~~the child's grandparent shall seek a grandparenting~~
18 ~~time order~~ by filing a complaint in the circuit court for the
19 county where the child resides.

20 (4) All of the following apply to an action ~~for grandparenting~~
21 ~~time~~ under subsection (3):

22 (a) The complaint or motion for grandparenting time ~~filed~~
23 ~~under subsection (3)~~ shall be accompanied by an affidavit setting
24 forth facts supporting the requested order. The grandparent shall
25 give notice of the filing to each person who has legal custody of,
26 or an order for parenting time with, the child. A party having
27 legal custody may file an opposing affidavit. A hearing shall be

1 held by the court on its own motion or if a party requests a
2 hearing. At the hearing, parties submitting affidavits shall be
3 allowed an opportunity to be heard.

4 (b) ~~In order to~~ **TO** give deference to the decisions of fit
5 parents, ~~it is presumed in a proceeding under this subsection~~ **THERE**
6 **IS A PRESUMPTION** that a fit parent's decision to deny
7 grandparenting time does not create a substantial risk of harm to
8 the child's mental, physical, or emotional health. To rebut the
9 presumption created in this subdivision, a grandparent ~~filing a~~
10 ~~complaint or motion under this section~~ must prove by a
11 preponderance of the evidence that the parent's decision to deny
12 grandparenting time creates a substantial risk of harm to the
13 child's mental, physical, or emotional health. If the grandparent
14 does not overcome the presumption, the court shall dismiss the
15 complaint or deny the motion.

16 (c) If a court of appellate jurisdiction determines in a final
17 and nonappealable judgment that the burden of proof described in
18 subdivision (b) is unconstitutional, a grandparent ~~filing a~~
19 ~~complaint or motion under this section~~ must prove by clear and
20 convincing evidence that the parent's decision to deny
21 grandparenting time creates a substantial risk of harm to the
22 child's mental, physical, or emotional health to rebut the
23 presumption created in subdivision (b).

24 (5) If 2 fit parents sign an affidavit stating that they both
25 oppose an order for grandparenting time, the court shall dismiss a
26 complaint or motion seeking an order for grandparenting time filed
27 under subsection (3). This subsection does not apply if 1 of the

1 fit parents is a stepparent who adopted a child under the Michigan
2 adoption code, chapter X of the probate code of 1939, 1939 PA 288,
3 MCL 710.21 to 710.70, and the grandparent seeking the order is the
4 natural or adoptive parent of a parent of the child who is deceased
5 or whose parental rights have been terminated.

6 (6) If the court finds that a grandparent has met the standard
7 for rebutting the presumption described in subsection (4), the
8 court shall consider whether it is in the best interests of the
9 child to enter an order for grandparenting time. If the court finds
10 by a preponderance of the evidence that it is in the best interests
11 of the child to enter a grandparenting time order, the court shall
12 enter an order providing for reasonable grandparenting time of the
13 child by the grandparent by general or specific terms and
14 conditions. In determining the best interests of the child under
15 this subsection, the court shall consider all of the following:

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

18 (b) The length and quality of the prior relationship between
19 the child and the grandparent, the role performed by the
20 grandparent, and the existing emotional ties of the child to the
21 grandparent.

22 (c) The grandparent's moral fitness.

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

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

26 (f) The effect on the child of hostility between the
27 grandparent and the parent of the child.

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

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

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

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

11 **(7) IN CONSIDERING THE BEST INTERESTS OF THE CHILD UNDER THIS**
12 **SECTION, IF THE COURT DETERMINES THAT A GRANDPARENT HAS SEXUALLY,**
13 **PHYSICALLY, MENTALLY, OR EMOTIONALLY ABUSED THE CHILD, THE COURT**
14 **SHALL GIVE ADDITIONAL WEIGHT TO THAT FACT AND TO THE FACTORS UNDER**
15 **SUBSECTION (6) (C), (E), AND (H).**

16 **(8) ~~(7)~~**—If the court has determined that a grandparent has met
17 the standard for rebutting the presumption described in subsection
18 (4), the court may refer that grandparent's complaint or motion for
19 grandparenting time ~~filed under subsection (3)~~ to alternative
20 dispute resolution as provided by supreme court rule. If the
21 complaint or motion is referred to the friend of the court for
22 alternative dispute resolution and no settlement is reached through
23 friend of the court alternative dispute resolution within a
24 reasonable time after the date of referral, the complaint or motion
25 shall be heard by the court as provided in this section.

26 **(9) ~~(8)~~ A** **ABSENT A SHOWING OF GOOD CAUSE, A** grandparent ~~may~~
27 **SHALL** not file **A COMPLAINT OR MOTION UNDER SUBSECTION (3)** more than

1 once every 2 years. ~~, absent a showing of good cause, a complaint~~
 2 ~~or motion under subsection (3) seeking a grandparenting time order.~~

3 If the court finds there is good cause to allow a grandparent to
 4 file more than 1 complaint or motion under ~~this section~~ **SUBSECTION**
 5 **(3)** in a 2-year period, the court shall allow the filing and shall
 6 consider the complaint or motion. Upon motion of a person, the
 7 court may order reasonable attorney fees to the prevailing party.

8 **(10)** ~~(9)~~ The court shall not enter an order prohibiting an
 9 individual who has legal custody of a child from changing the
 10 domicile of the child if the prohibition is primarily for the
 11 purpose of allowing a grandparent to exercise the rights conferred
 12 in a grandparenting time order entered under this section.

13 **(11)** ~~(10)~~ A grandparenting time order entered under this
 14 section does not create parental rights in ~~the~~ **AN** individual ~~or~~
 15 ~~individuals~~ to whom grandparenting time rights are granted. The
 16 entry of a grandparenting time order does not prevent a court of
 17 competent jurisdiction from acting upon the custody of the child,
 18 the parental rights of the child, or the adoption of the child.

19 **(12)** ~~(11)~~ A court shall not modify or terminate a
 20 grandparenting time order entered under this section unless it
 21 finds by a preponderance of the evidence, on the basis of facts
 22 that have arisen since entry of the grandparenting time order or
 23 were unknown to the court at the time it entered ~~that~~ **THE** order,
 24 that a change has occurred in the circumstances of the child or his
 25 or her custodian and that a modification or termination of the
 26 existing order is necessary to avoid creating a substantial risk of
 27 harm to the mental, physical, or emotional health of the child. A

1 court modifying or terminating a grandparenting time order under
2 this subsection shall include specific findings of fact in its
3 order in support of its decision.

4 (13) ~~(12)~~—A court shall make a record of its analysis and
5 findings under subsections (4), (6), ~~(8)~~, and ~~(11)~~, **(9), AND (12)**,
6 including the reasons for granting or denying a ~~THE~~ requested
7 grandparenting time order.

8 (14) ~~(13)~~—Except as otherwise provided in this subsection,
9 adoption of a child or placement of a child for adoption under the
10 Michigan adoption code, chapter X of the probate code of 1939, 1939
11 PA 288, MCL 710.21 to 710.70, terminates the right of a grandparent
12 to commence an action for grandparenting time with ~~that~~ **THE** child.
13 Adoption of a child by a stepparent under the Michigan adoption
14 code, chapter X of the probate code of 1939, 1939 PA 288, MCL
15 710.21 to 710.70, does not terminate the right of the parent of a
16 deceased parent of the child to commence an action for
17 grandparenting time with ~~that~~ **THE** child.

18 Enacting section 1. This amendatory act may be referred to as
19 "Sean's Law".