

SENATE BILL No. 547

June 30, 2011, Introduced by Senators MOOLENAAR, GLEASON, GREEN, EMMONS, HILDENBRAND, CASWELL, HUNTER, MEEKHOF, JANSEN, JONES and KOWALL 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, 2, 4, and 11 (MCL 722.21, 722.22, 722.24, and 722.31), the title as amended by 1996 PA 19, section 2 as amended by 2005 PA 327, section 4 as amended by 1998 PA 482, and section 11 as added by 2000 PA 422, and by adding section 5a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to declare the ~~CERTAIN~~ inherent rights of ~~minor~~
~~children, to establish~~ **A CHILD IN RELATION TO HIS OR HER PARENTS;**
TO REQUIRE THE ESTABLISHMENT OF PARENTING PLANS IN ACTIONS
INVOLVING CUSTODY DISPUTES; TO PRESCRIBE PROCEDURES TO DETERMINE
rights and duties ~~to their~~ **REGARDING A CHILD'S** custody, support,

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

6 Sec. 1. This act shall be known and may be cited as the "child
 7 **PARENTING PLAN OR** custody **DISPUTE** act". ~~of 1970~~.

8 Sec. 2. As used in this act:

9 (a) "Active military duty" means ~~when~~ **ACTIVE MILITARY DUTY AS**
 10 a reserve unit member or national guard unit member. ~~is called into~~
 11 ~~active military duty.~~

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

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

23 (d) "Child" means minor child and children. Subject to section
 24 5b of the support and parenting time enforcement act, 1982 PA 295,
 25 MCL 552.605b, for purposes of providing support, child includes a
 26 child and children who have reached 18 years of age.

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

1 1 OF 1978 PA 389, MCL 400.1501.

2 (F) ~~(e)~~—"Grandparent" means a natural or adoptive parent of a
3 child's natural or adoptive parent.

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

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

10 (I) ~~(h)~~—"Parent" means the natural or adoptive parent of a
11 child.

12 (J) "PERSONAL PROTECTION ORDER" MEANS AN ORDER ISSUED UNDER
13 SECTION 2950 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236,
14 MCL 600.2950.

15 (K) "SERIOUS EMOTIONAL ABUSE" MEANS ABUSE THAT WOULD CAUSE A
16 REASONABLE PERSON TO FEEL TERRORIZED, INTIMIDATED, OR THREATENED.

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

20 (M) ~~(j)~~—"Third person" means an individual other than a
21 parent.

22 Sec. 4. (1) In ~~all actions~~ **AN ACTION** involving dispute of a
23 minor 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 A CHILD'S PARENTS HAVE SUBMITTED A PARENTING PLAN UNDER**
27 **SECTION 5A, THE COURT SHALL APPROVE OR DISAPPROVE THE PLAN. IF THE**

1 COURT APPROVES OF THE PARENTING PLAN, THE COURT SHALL ADOPT THE
2 PLAN AND DECLARE ALL OTHER RIGHTS OF THE CHILD AND DUTIES OF THE
3 PARENTS NECESSARY TO PROTECT THE CHILD'S BEST INTERESTS.

4 (3) IF THE PARENTS HAVE NOT SUBMITTED A PARENTING PLAN UNDER
5 SECTION 5A, THE COURT SHALL TAKE ANY ACTION THE COURT CONSIDERS
6 APPROPRIATE, CONSIDERING THE RESOURCES OF THE PARTIES AND ANY OTHER
7 LIMITING FACTORS, TO ASSIST THE PARTIES IN DEVELOPING A PARENTING
8 PLAN OR ENTER AN ORDER DECLARING THE CHILD'S INHERENT RIGHTS AND
9 ESTABLISHING THE DUTIES OF THE PARENTS TO IMPLEMENT THOSE RIGHTS,
10 INCLUDING ORDERING EVALUATIONS, REQUIRING THE PARTIES TO ENGAGE IN
11 COUNSELING, REQUIRING THE PARTIES TO ENGAGE IN ALTERNATIVE DISPUTE
12 RESOLUTION, AND CONDUCTING HEARINGS.

13 (4) IN ALL ACTIONS INVOLVING DISPUTE OF A MINOR CHILD'S
14 CUSTODY OR PARENTING TIME, NEITHER THE COURT NOR THE FRIEND OF THE
15 COURT SHALL ADVOCATE ON BEHALF OF A PARTY OR A MINOR CHILD. IN ALL
16 ACTIONS INVOLVING DISPUTE OF A MINOR CHILD'S CUSTODY OR PARENTING
17 TIME, THE CHILD'S PARENTS SHALL REPRESENT THE CHILD'S BEST
18 INTERESTS.

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 XIIA of **THE PROBATE CODE OF 1939**, 1939 PA
25 288, MCL 712A.17d. All provisions of section 17d of chapter XIIA of
26 **THE PROBATE CODE OF 1939**, 1939 PA 288, MCL 712A.17d, apply to a
27 lawyer-guardian ad litem appointed under this act.

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

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

SEC. 5A. (1) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2), IN ALL ACTIONS INVOLVING A MINOR CHILD'S CUSTODY, THE PARENTS' OBLIGATION TO REPRESENT THE CHILD'S BEST INTERESTS SHALL INCLUDE AN ATTEMPT TO ESTABLISH A PARENTING PLAN. A PARENTING PLAN SHALL BE AGREED TO BY BOTH PARENTS AND SHALL DO AT LEAST ALL OF THE FOLLOWING:

(A) PROVIDE THAT THE CHILD BE REARED BY BOTH THE CHILD'S FATHER AND THE CHILD'S MOTHER IN A MANNER THAT CLOSELY APPROXIMATES THEIR REARING OF THE CHILD BEFORE ESTABLISHING SEPARATE DOMICILES OR FILING FOR DIVORCE, UNLESS IT IS NOT IN THE CHILD'S BEST INTERESTS.

(B) PROVIDE FOR THE CHILD'S CARE AND SET FORTH THE AUTHORITY

1 AND RESPONSIBILITIES OF EACH PARENT WITH RESPECT TO THE CHILD. A
2 PARENTING PLAN IS NOT REQUIRED TO DESIGNATE A PARENT AS EITHER THE
3 LEGAL OR PHYSICAL CUSTODIAN OF THE CHILD.

4 (C) ENCOURAGE NONADVERSARIAL DISPUTE RESOLUTION RATHER THAN
5 RELY ON JUDICIAL INTERVENTION TO RESOLVE A DISPUTE.

6 (2) THE COURT SHALL NOT REQUIRE A PARENT TO SUBMIT A PARENTING
7 PLAN IF THAT PARENT FILES A SWORN STATEMENT STATING THAT HE OR HE
8 IS A VICTIM OF DOMESTIC VIOLENCE BY THE OTHER PARENT. THE SWORN
9 STATEMENT SHALL BE CONFIDENTIAL, SHALL BE REVIEWED ONLY BY THE
10 COURT OR, DURING A CRIMINAL INVESTIGATION, BY A LAW ENFORCEMENT
11 OFFICER OR PROSECUTOR, AND SHALL NOT BE A PART OF THE PUBLIC RECORD
12 IN THE ACTION INVOLVING CUSTODY. THE SWORN STATEMENT IS EXEMPT FROM
13 THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

14 (3) THE COURT SHALL NOT APPROVE A PARENTING PLAN THAT REQUIRES
15 MUTUAL DECISION MAKING OR DESIGNATION OF AN ALTERNATIVE DISPUTE
16 RESOLUTION PROCESS IF THE COURT FINDS THAT A PARENT HAS ENGAGED IN
17 OR COMMITTED ANY OF THE FOLLOWING:

18 (A) WILLFUL ABANDONMENT OF THE CHILD FOR AN EXTENDED PERIOD OF
19 TIME OR SUBSTANTIAL REFUSAL TO PERFORM PARENTING FUNCTIONS.

20 (B) PHYSICAL, SEXUAL, OR A PATTERN OF EMOTIONAL ABUSE OF A
21 CHILD.

22 (C) MULTIPLE ACTS OF DOMESTIC VIOLENCE OR AN ASSAULT OR SEXUAL
23 ASSAULT THAT CAUSES GRIEVOUS BODILY HARM OR THE FEAR OF THAT HARM.

24 (4) THE STATE COURT ADMINISTRATIVE OFFICE, AT THE DIRECTION OF
25 THE SUPREME COURT, SHALL DEVELOP A FORM FOR USE BY A PARENT IN
26 COMPLETING A PARENTING PLAN. THE FORM SHALL BE MADE AVAILABLE TO
27 ALL PARTIES TO ACTIONS INVOLVING CHILD CUSTODY.

1 (5) IF 1 OR MORE PARTIES OBTAIN LEGAL COUNSEL IN COMPLETING A
2 PARENTING PLAN, THE PARTIES SHALL DISCLOSE TO THE COURT THAT LEGAL
3 COUNSEL WAS OBTAINED.

4 (6) IF THE COURT FINDS THAT A PARENT REFUSES TO ATTEND
5 ALTERNATIVE DISPUTE RESOLUTION AS PROVIDED IN A PARENTING PLAN, THE
6 COURT MAY ASSESS COSTS AND MAY AWARD ATTORNEY FEES AND COSTS TO THE
7 OTHER PARENT.

8 (7) IF A PARENT FAILS TO COMPLY WITH A PARENTING PLAN OR A
9 CHILD SUPPORT ORDER, THE OTHER PARENT'S OBLIGATIONS UNDER THE
10 PARENTING PLAN OR THE CHILD SUPPORT ORDER ARE NOT AFFECTED. THE
11 COURT MAY HOLD A PARENT WHO FAILS TO COMPLY WITH A PARENTING PLAN
12 IN CONTEMPT OF COURT.

13 (8) A PARENT SEEKING MODIFICATION OF A PARENTING PLAN SHALL
14 SEEK THE APPROVAL OF THE OTHER PARENT AND USE THE DISPUTE
15 RESOLUTION PROCEDURES IN THE PARENTING PLAN. IF THE PARENTS CANNOT
16 AGREE TO A MODIFICATION OF THE PARENTING PLAN, A PARENT MAY FILE A
17 MOTION WITH THE COURT THAT HAS JURISDICTION OVER THE CASE. THE
18 COURT MAY ASSESS COSTS AGAINST A PARENT WHO DOES NOT FIRST SEEK THE
19 APPROVAL OF THE OTHER PARENT OR USE THE DISPUTE RESOLUTION
20 PROCEDURES IN THE PARTIES' PARENTING PLAN BEFORE FILING A MOTION
21 WITH THE COURT.

22 (9) THE COURT SHALL NOT MODIFY A PARENTING PLAN TO CHANGE THE
23 CUSTODIAL ENVIRONMENT OF THE CHILD OVER THE OBJECTION OF A PARENT
24 UNLESS THE MODIFICATION IS WARRANTED UNDER SECTION 7(1)(C).

25 (10) IF THE COURT FINDS THAT A MOTION TO MODIFY AN EARLIER
26 PARENTING PLAN IS BROUGHT IN BAD FAITH, OR A REFUSAL TO AGREE TO A
27 MODIFICATION IS MADE IN BAD FAITH, THE COURT MAY ASSESS ATTORNEY

1 FEES AND COURT COSTS AGAINST THE PARTY ACTING IN BAD FAITH.

2 (11) SOLELY FOR THE PURPOSES OF OTHER STATE OR FEDERAL
3 STATUTES OR OTHER LEGAL REQUIREMENTS THAT REQUIRE A DESIGNATION OR
4 DETERMINATION OF LEGAL OR PHYSICAL CUSTODY FOR PURPOSES SUCH AS, BY
5 WAY OF EXAMPLE AND NOT LIMITATION, TAX EXEMPTIONS OR HEALTH CARE
6 BENEFITS, THE COURT MAY DESIGNATE IN THE PARENTING PLAN OR BY
7 SEPARATE ORDER A CHILD'S LEGAL OR PHYSICAL CUSTODIAN OR CUSTODIANS.
8 THIS DESIGNATION DOES NOT AFFECT EITHER PARENT'S RIGHTS AND
9 RESPONSIBILITIES UNDER THE PARENTING PLAN OR ANOTHER PROVISION OF
10 THIS ACT. IN THE ABSENCE OF A DESIGNATION ALLOWED UNDER THIS
11 SECTION, THE PARENT WITH WHOM THE CHILD IS SCHEDULED TO RESIDE THE
12 MAJORITY OF THE TIME SHALL BE CONSIDERED THE CHILD'S CUSTODIAN FOR
13 THOSE PURPOSES.

14 Sec. 11. (1) A child whose parental custody is governed by
15 court order OR WHO IS THE SUBJECT OF A COURT-APPROVED PARENTING
16 PLAN has, for the purposes of this section, a legal residence with
17 each parent. Except as otherwise provided in this section, a parent
18 of a child whose custody is governed by court order shall not
19 change a legal residence of the child to a location that is more
20 than 100 miles from the child's legal residence at the time of the
21 commencement of the action in which the order is issued.

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

1 (3) This section does not apply if, at the time of the
2 commencement of the action in which the custody order is issued,
3 the child's 2 residences were more than 100 miles apart. This
4 section does not apply if the legal residence change results in the
5 child's 2 legal residences being closer to each other than before
6 the change.

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

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

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

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

27 (d) The extent to which the parent opposing the legal

1 residence change is motivated by a desire to secure a financial
2 advantage with respect to a support obligation.

3 (e) Domestic violence, regardless of whether the violence was
4 directed against or witnessed by the child.

5 (5) Each order determining or modifying custody or parenting
6 time of a child **OR A PARENTING PLAN** shall include a provision
7 stating the parent's agreement as to how a change in either of the
8 child's legal residences will be handled. If such a provision is
9 included in the order **OR PARENTING PLAN** and a child's legal
10 residence change is done in compliance with that provision, this
11 section does not apply. If the parents do not agree on such a
12 provision, the court shall include in the order the following
13 provision: "A parent whose custody or parenting time of a child is
14 governed by this ~~order~~**ORDER/PARENTING PLAN** shall not change the
15 legal residence of the child except in compliance with section 11
16 of the "Child **PARENTING PLAN OR** Custody ~~Act of 1970~~**DISPUTE ACT**",
17 1970 PA 91, MCL 722.31.".

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