

# SENATE BILL No. 989

February 29, 2012, Introduced by Senator HOPGOOD and referred to the Committee on Judiciary.

A bill to amend 1970 PA 91, entitled  
"Child custody act of 1970,"  
by amending sections 2, 5, and 7a (MCL 722.22, 722.25, and  
722.27a), section 2 as amended by 2005 PA 327, section 5 as amended  
by 1993 PA 259, and section 7a as amended by 1996 PA 19, and by  
adding section 5a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 2. As used in this act:

2       (a) "Active military duty" means when a reserve unit member or  
3 national guard unit member is called into active military duty.

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

1 (c) "Attorney" means, if appointed to represent a child under  
2 this act, an attorney serving as the child's legal advocate in a  
3 traditional attorney-client relationship with the child, as  
4 governed by the Michigan rules of professional conduct. An attorney  
5 defined under this subdivision owes the same duties of undivided  
6 loyalty, confidentiality, and zealous representation of the child's  
7 expressed wishes as the attorney would to an adult client.

8 (d) "Child" means minor child and children. Subject to section  
9 5b of the support and parenting time enforcement act, 1982 PA 295,  
10 MCL 552.605b, for purposes of providing support, child includes a  
11 child and children who have reached 18 years of age.

12 (e) "Grandparent" means a natural or adoptive parent of a  
13 child's natural or adoptive parent.

14 (f) "Guardian ad litem" means an individual whom the court  
15 appoints to assist the court in determining the child's best  
16 interests. A guardian ad litem does not need to be an attorney.

17 (g) "Lawyer-guardian ad litem" means an attorney appointed  
18 under section 4. A lawyer-guardian ad litem represents the child,  
19 and has the powers and duties, as set forth in section 4.

20 **(H) "MICHIGAN PENAL CODE" MEANS THE MICHIGAN PENAL CODE, 1931**  
21 **PA 328, MCL 750.1 TO 750.568.**

22 **(I) ~~(h)~~**"Parent" means the natural or adoptive parent of a  
23 child.

24 **(J) "SEX OFFENDERS REGISTRATION ACT" MEANS THE SEX OFFENDERS**  
25 **REGISTRATION ACT, 1994 PA 295, MCL 28.721 TO 28.736.**

26 **(K) ~~(i)~~**"State disbursement unit" or "SDU" means the entity  
27 established in section 6 of the office of child support act, 1971

1 PA 174, MCL 400.236.

2 (I) ~~(j)~~ "Third person" means an individual other than a parent.

3 Sec. 5. (1) If a child custody dispute is between the parents,  
4 between agencies, or between third persons, the best interests of  
5 the child control. If the child custody dispute is between the  
6 parent or parents and an agency or a third person, the court shall  
7 presume that the best interests of the child are served by awarding  
8 custody to the parent or parents, unless the contrary is  
9 established by clear and convincing evidence.

10 (2) Notwithstanding other provisions of this act, if a child  
11 custody dispute involves a child who is conceived as the result of  
12 acts for which 1 of the child's biological parents is convicted of  
13 criminal sexual conduct as provided in sections 520a to 520e and  
14 520g of the Michigan penal code, ~~Act No. 328 of the Public Acts of~~  
15 ~~1931, being sections 750.520a to 750.520e and 750.520g of the~~  
16 ~~Michigan Compiled Laws~~ **MCL 750.520A TO 750.520E AND 750.520G**, the  
17 court shall not award custody to the convicted biological parent.  
18 This subsection does not apply to a conviction under section  
19 520d(1)(a) of the Michigan penal code, ~~Act No. 328 of the Public~~  
20 ~~Acts of 1931, being section 750.520d of the Michigan Compiled Laws~~  
21 **MCL 750.520D**. This subsection does not apply if, after the date of  
22 the conviction, the biological parents cohabit and establish a  
23 mutual custodial environment for the child.

24 (3) Notwithstanding other provisions of this act, if an  
25 individual is convicted of criminal sexual conduct as provided in  
26 sections 520a to 520e and 520g of ~~Act No. 328 of the Public Acts of~~  
27 ~~1931~~ **THE MICHIGAN PENAL CODE, MCL 750.520A TO 750.520E AND**

1 750.520G, and the victim is the individual's child, the court shall  
2 not award custody of that child or a sibling of that child to that  
3 individual, unless both the child's other parent and, if the court  
4 considers the child or sibling to be of sufficient age to express  
5 his or her desires, the child or sibling consent to the custody.

6 (4) NOTWITHSTANDING OTHER PROVISIONS OF THIS ACT, IF AN  
7 INDIVIDUAL IS REQUIRED TO REGISTER UNDER THE SEX OFFENDERS  
8 REGISTRATION ACT, THE PROVISIONS OF SECTION 5A CONTROL.

9 SEC. 5A. (1) NOTWITHSTANDING OTHER PROVISIONS OF THIS ACT, A  
10 COURT SHALL NOT GRANT CUSTODY OF OR PARENTING TIME WITH A CHILD TO  
11 AN INDIVIDUAL WHO IS REQUIRED TO REGISTER UNDER THE SEX OFFENDERS  
12 REGISTRATION ACT FOR AN OFFENSE THAT WOULD MAKE IT CONTRARY TO THE  
13 BEST INTERESTS OF THE CHILD'S HEALTH, SAFETY, OR PROTECTION FOR  
14 SUCH CUSTODY OR PARENTING TIME OR FOR AN OFFENSE IN WHICH THE  
15 VICTIM WAS A CHILD OR IF THE INDIVIDUAL HAS BEEN CONVICTED UNDER  
16 SECTION 145A, 145B, 145D, 520B TO 520E, OR 520G OF THE MICHIGAN  
17 PENAL CODE, MCL 750.145A, 750.145B, 750.145D, 750.520B TO 750.520E,  
18 AND 750.520G, UNLESS THE COURT FINDS THAT THERE IS NO SIGNIFICANT  
19 RISK TO THE CHILD AND STATES ITS REASONS IN WRITING OR ON THE  
20 RECORD AND BOTH THE CHILD'S OTHER PARENT AND, IF THE COURT  
21 CONSIDERS THE CHILD TO BE OF SUFFICIENT AGE TO EXPRESS HIS OR HER  
22 DESIRES, THE CHILD CONSENT TO THE CUSTODY OR PARENTING TIME.

23 (2) NO INDIVIDUAL SHALL BE GRANTED CUSTODY OF OR PARENTING  
24 TIME WITH A CHILD IF ANYONE RESIDING IN THE INDIVIDUAL'S HOUSEHOLD  
25 IS REQUIRED TO REGISTER UNDER THE SEX OFFENDERS REGISTRATION ACT AS  
26 A RESULT OF A FELONY CONVICTION IN WHICH THE VICTIM WAS A CHILD OR  
27 FOR AN OFFENSE THAT WOULD MAKE IT CONTRARY TO THE BEST INTERESTS OF

1 THE CHILD'S HEALTH, SAFETY, OR PROTECTION FOR SUCH CUSTODY OR  
2 PARENTING UNLESS THE COURT FINDS THAT THERE IS NO SIGNIFICANT RISK  
3 TO THE CHILD AND STATES ITS REASONS IN WRITING OR ON THE RECORD AND  
4 BOTH THE CHILD'S OTHER PARENT AND, IF THE COURT CONSIDERS THE CHILD  
5 TO BE OF SUFFICIENT AGE TO EXPRESS HIS OR HER DESIRES, THE CHILD  
6 CONSENT TO THE CUSTODY OR PARENTING TIME.

7 (3) THE FACT THAT A CHILD IS PERMITTED UNSUPERVISED CONTACT  
8 WITH AN INDIVIDUAL WHO IS REQUIRED, AS A RESULT OF A FELONY  
9 CONVICTION IN WHICH THE VICTIM WAS A CHILD, TO BE REGISTERED UNDER  
10 THE SEX OFFENDERS REGISTRATION ACT IS PRIMA FACIE EVIDENCE THAT THE  
11 CHILD IS AT SIGNIFICANT RISK. WHEN MAKING A DETERMINATION REGARDING  
12 SIGNIFICANT RISK TO THE CHILD, THE PRIMA FACIE EVIDENCE CONSTITUTES  
13 A PRESUMPTION AFFECTING THE BURDEN OF PRODUCING EVIDENCE. THE  
14 INDIVIDUAL REQUIRED TO REGISTER UNDER THE SEX OFFENDERS  
15 REGISTRATION ACT HAS THE BURDEN OF REBUTTING THE PRESUMPTION. THIS  
16 PRESUMPTION DOES NOT APPLY IF THERE ARE FACTORS MITIGATING AGAINST  
17 ITS APPLICATION, INCLUDING WHETHER THE OTHER PARTY SEEKING CUSTODY  
18 OR PARENTING TIME IS ALSO REQUIRED, AS THE RESULT OF A FELONY  
19 CONVICTION IN WHICH THE VICTIM WAS A CHILD, TO REGISTER UNDER THE  
20 SEX OFFENDERS REGISTRATION ACT.

21 (4) BEFORE MAKING A DETERMINATION UNDER SUBSECTION (1) OR (2)  
22 TO GRANT CUSTODY OF OR PARENTING TIME WITH A CHILD, THE COURT SHALL  
23 DETERMINE IF THE CHILD'S PARENT WHO IS NOT REQUIRED TO REGISTER  
24 UNDER THE SEX OFFENDERS REGISTRATION ACT IS A FIT PARENT AND IF  
25 THAT PARENT IS MAKING THE DECISION ON CUSTODY OR PARENTING TIME IN  
26 THE BEST INTEREST OF THE CHILD'S HEALTH, SAFETY, OR PROTECTION. IF  
27 THE COURT DETERMINES THAT THE PARENT DESCRIBED IN THIS SUBSECTION

1 IS FIT AND IS MAKING THE DECISION ON CUSTODY OR PARENTING TIME IN  
2 THE BEST INTEREST OF THE CHILD'S HEALTH, SAFETY, OR PROTECTION, THE  
3 COURT MAY ALLOW THAT PARENT TO EXERCISE HIS OR HER ABILITY TO DENY  
4 CUSTODY OR PARENTING TIME AS PROVIDED IN SUBSECTION (1) OR (2). IF  
5 THE COURT DETERMINES THAT THE PARENT DESCRIBED IN THIS SUBSECTION  
6 IS NOT FIT OR IS NOT ACTING IN THE BEST INTEREST OF THE CHILD'S  
7 HEALTH, SAFETY, OR PROTECTION, THE COURT SHALL STATE IN WRITING WHY  
8 THE COURT DOES NOT CONSIDER THAT PARENT FIT, WHY THE COURT  
9 DETERMINED THAT THE PARENT IS NOT ACTING IN THE BEST INTEREST OF  
10 THE CHILD'S HEALTH, SAFETY, OR PROTECTION, OR WHY THE COURT HAS  
11 DETERMINED THAT THE CHILD WOULD NOT BE AT SIGNIFICANT RISK IF THE  
12 COURT GRANTS CUSTODY OR PARENTING TIME TO THE PARENT REQUIRED TO  
13 REGISTER UNDER THE SEX OFFENDERS REGISTRATION ACT.

14 Sec. 7a. (1) Parenting time shall be granted in accordance  
15 with the best interests of the child. It is presumed to be in the  
16 best interests of a child for the child to have a strong  
17 relationship with both of his or her parents. Except as otherwise  
18 provided in this section, parenting time shall be granted to a  
19 parent in a frequency, duration, and type reasonably calculated to  
20 promote a strong relationship between the child and the parent  
21 granted parenting time.

22 (2) If the parents of a child agree on parenting time terms,  
23 the court shall order the parenting time terms unless the court  
24 determines on the record by clear and convincing evidence that the  
25 parenting time terms are not in the best interests of the child.

26 (3) ~~A-EXCEPT AS PROVIDED IN SECTION 5A,~~ A child has a right to  
27 parenting time with a parent unless it is shown on the record by

1 clear and convincing evidence that it would endanger the child's  
2 physical, mental, or emotional health.

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

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

1           (6) NOTWITHSTANDING OTHER PROVISIONS OF THIS ACT, IF AN  
2 INDIVIDUAL IS REQUIRED TO REGISTER UNDER THE SEX OFFENDERS  
3 REGISTRATION ACT, THE PROVISIONS OF SECTION 5A CONTROL.

4           (7) ~~(6)~~—The court may consider the following factors when  
5 determining the frequency, duration, and type of parenting time to  
6 be granted:

7           (a) The existence of any special circumstances or needs of the  
8 child.

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

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

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

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

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

20           (g) Whether a parent has frequently failed to exercise  
21 reasonable parenting time.

22           (h) The threatened or actual detention of the child with the  
23 intent to retain or conceal the child from the other parent or from  
24 a third person who has legal custody. A custodial parent's  
25 temporary residence with the child in a domestic violence shelter  
26 shall not be construed as evidence of the custodial parent's intent  
27 to retain or conceal the child from the other parent.

1 (i) Any other relevant factors.

2 (8) ~~(7)~~—Parenting time shall be granted in specific terms if  
3 requested by either party at any time.

4 (9) ~~(8)~~—A parenting time order may contain any reasonable  
5 terms or conditions that facilitate the orderly and meaningful  
6 exercise of parenting time by a parent, including 1 or more of the  
7 following:

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

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

10 (c) Restrictions on the presence of third persons during  
11 parenting time.

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

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

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

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

20 (h) Requirements of reasonable notice when parenting time will  
21 not occur.

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

24 (10) ~~(9)~~—During the time a child is with a parent to whom  
25 parenting time has been awarded, that parent shall decide all  
26 routine matters concerning the child.

27 (11) ~~(10)~~—Prior to entry of a temporary order, a parent may

1 seek an ex parte interim order concerning parenting time. If the  
2 court enters an ex parte interim order concerning parenting time,  
3 the party on whose motion the ex parte interim order is entered  
4 shall have a true copy of the order served on the friend of the  
5 court and the opposing party.

6 (12) ~~(11)~~—If the opposing party objects to the ex parte  
7 interim order, he or she shall file with the clerk of the court  
8 within 14 days after receiving notice of the order a written  
9 objection to, or a motion to modify or rescind, the ex parte  
10 interim order. The opposing party shall have a true copy of the  
11 written objection or motion served on the friend of the court and  
12 the party who obtained the ex parte interim order.

13 (13) ~~(12)~~—If the opposing party files a written objection to  
14 the ex parte interim order, the friend of the court shall attempt  
15 to resolve the dispute within 14 days after receiving it. If the  
16 matter cannot be resolved, the friend of the court shall provide  
17 the opposing party with a form motion and order with written  
18 instructions for their use in modifying or rescinding the ex parte  
19 order without assistance of counsel. If the opposing party wishes  
20 to proceed without assistance of counsel, the friend of the court  
21 shall schedule a hearing with the court that shall be held within  
22 21 days after the filing of the motion. If the opposing party files  
23 a motion to modify or rescind the ex parte interim order and  
24 requests a hearing, the court shall resolve the dispute within 28  
25 days after the hearing is requested.

26 (14) ~~(13)~~—An ex parte interim order issued under this section  
27 shall contain the following notice:

## NOTICE:

1  
2       1. You may file a written objection to this order or a motion  
3 to modify or rescind this order. You must file the written  
4 objection or motion with the clerk of the court within 14 days  
5 after you were served with this order. You must serve a true copy  
6 of the objection or motion on the friend of the court and the party  
7 who obtained the order.

8       2. If you file a written objection, the friend of the court  
9 must try to resolve the dispute. If the friend of the court cannot  
10 resolve the dispute and if you wish to bring the matter before the  
11 court without the assistance of counsel, the friend of the court  
12 must provide you with form pleadings and written instructions and  
13 must schedule a hearing with the court.