

SENATE BILL No. 131

January 31, 2013, Introduced by Senators HOPGOOD, SMITH, BIEDA, GREGORY, YOUNG, CASPERSON, HUNTER, JOHNSON, JONES and EMMONS and referred to the Committee on Judiciary.

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
(MCL 722.21 to 722.31) by adding section 5a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 5A. (1) SUBJECT TO SECTIONS 5(2) AND (3) AND 7A(4) AND
2 (5), AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, THE
3 PROVISIONS OF THIS SECTION APPLY IN EITHER OF THE FOLLOWING
4 INSTANCES:

5 (A) A PARTY TO A CHILD CUSTODY DISPUTE IS AN INDIVIDUAL
6 REQUIRED TO REGISTER AS A SEX OFFENDER FOR AN OFFENSE IN WHICH THE
7 VICTIM WAS A CHILD.

8 (B) A PARTY TO A CHILD CUSTODY DISPUTE RESIDES IN THE SAME
9 HOUSEHOLD WITH AN INDIVIDUAL REQUIRED TO REGISTER AS A SEX OFFENDER
10 FOR AN OFFENSE IN WHICH THE VICTIM WAS A CHILD.

11 (2) SUBJECT TO SECTIONS 5(2) AND (3) AND 7A(4) AND (5), THE

1 COURT MAY NOT GRANT CUSTODY OR PARENTING TIME TO A PARTY TO A CHILD
2 CUSTODY DISPUTE DESCRIBED IN SUBSECTION (1) UNLESS THE COURT FINDS
3 BOTH OF THE FOLLOWING:

4 (A) THERE IS CLEAR AND CONVINCING EVIDENCE DEMONSTRATING THAT
5 CUSTODY OR PARENTING TIME WITH THAT PARTY PRESENTS NO SUBSTANTIAL
6 RISK TO THE CHILD.

7 (B) THERE IS A PREPONDERANCE OF EVIDENCE DEMONSTRATING THAT
8 DENYING CUSTODY OR PARENTING TIME WITH THAT PARTY CREATES A
9 SUBSTANTIAL RISK OF HARM TO THE CHILD'S MENTAL, PHYSICAL, OR
10 EMOTIONAL HEALTH.

11 (3) IF A PARTY SEEKING CUSTODY OR PARENTING TIME IS AN
12 INDIVIDUAL REQUIRED TO REGISTER AS A SEX OFFENDER FOR AN OFFENSE IN
13 WHICH THE VICTIM WAS A CHILD, THAT PARTY HAS THE BURDEN OF PROOF
14 WITH RESPECT TO THE FINDINGS REQUIRED IN SUBSECTION (2). IF A PARTY
15 SEEKING CUSTODY OR PARENTING TIME RESIDES IN THE SAME HOUSEHOLD
16 WITH AN INDIVIDUAL REQUIRED TO REGISTER AS A SEX OFFENDER FOR AN
17 OFFENSE IN WHICH THE VICTIM WAS A CHILD, THAT PARTY HAS THE BURDEN
18 OF PROOF WITH RESPECT TO THE FINDINGS REQUIRED IN SUBSECTION (2).

19 (4) IN DECIDING WHETHER TO AWARD CUSTODY OR PARENTING TIME TO
20 A PARTY DESCRIBED IN SUBSECTION (1), THE COURT SHALL CONSIDER AND
21 MAKE SPECIFIC FINDINGS IN WRITING OR ON THE RECORD REGARDING BOTH
22 OF THE FOLLOWING:

23 (A) THE FACTORS SET FORTH IN SECTION 3. SECTION 3(J) SHALL NOT
24 BE APPLIED TO THE DETRIMENT OF A PARTY WHO OBJECTS TO A CHILD
25 HAVING CONTACT WITH AN INDIVIDUAL REQUIRED TO REGISTER AS A SEX
26 OFFENDER FOR ANY OFFENSE, OR WHO TAKES ACTION TO PROTECT THE CHILD
27 OR HIMSELF OR HERSELF FROM THAT INDIVIDUAL.

1 (B) ALL OF THE FOLLOWING ADDITIONAL FACTORS:

2 (i) WHETHER THERE ARE OBJECTIONS TO CUSTODY OR PARENTING TIME
3 WITH THE PARTY DESCRIBED IN SUBSECTION (1), RAISED BY THE OTHER
4 PARTY OR BY THE CHILD, IF THE COURT CONSIDERS THE CHILD TO BE OF
5 SUFFICIENT AGE TO EXPRESS HIS OR HER DESIRES.

6 (ii) IF THE PARTY SEEKING CUSTODY OR PARENTING TIME RESIDES IN
7 THE SAME HOUSEHOLD WITH AN INDIVIDUAL REQUIRED TO REGISTER AS A SEX
8 OFFENDER FOR AN OFFENSE IN WHICH THE VICTIM WAS A CHILD, WHETHER
9 CUSTODY OR PARENTING TIME CAN BE EXERCISED IN A MANNER THAT ENSURES
10 THE CHILD WILL HAVE NO CONTACT WITH THE INDIVIDUAL REQUIRED TO
11 REGISTER AS A SEX OFFENDER.

12 (iii) WHETHER FEASIBLE SAFEGUARDS CAN BE PUT IN PLACE TO
13 ELIMINATE THE RISK TO THE CHILD. THOSE SAFEGUARDS INCLUDE, BUT ARE
14 NOT LIMITED TO, SUPERVISION OF PARENTING TIME BY A PARENT OF THE
15 CHILD IF THAT PARENT IS NOT REQUIRED TO REGISTER AS A SEX OFFENDER
16 OR BY A PERSON OR AGENCY WITH EXPERTISE IN CHILD SEXUAL ABUSE.

17 (iv) WHETHER CUSTODY OR PARENTING TIME WOULD BE CONSISTENT WITH
18 EXISTING CONDITIONS OF PAROLE OR OTHER COURT ORDERS GOVERNING
19 CONTACT WITH THE CHILD OR THE OTHER PARTY BY THE INDIVIDUAL
20 REQUIRED TO REGISTER AS A SEX OFFENDER FOR AN OFFENSE IN WHICH THE
21 VICTIM WAS A CHILD.

22 (v) WHETHER THE INDIVIDUAL REQUIRED TO REGISTER AS A SEX
23 OFFENDER FOR AN OFFENSE IN WHICH THE VICTIM WAS A CHILD HAS
24 COMPLIED WITH EXISTING CONDITIONS OF PAROLE OR WITH OTHER COURT
25 ORDERS GOVERNING THAT INDIVIDUAL'S CONTACT WITH THE CHILD OR THE
26 OTHER PARTY.

27 (vi) ANY HISTORY OF DOMESTIC VIOLENCE, OTHER SEXUAL OFFENSES,

1 OR OTHER ACTS OR THREATS OF VIOLENCE AGAINST ANY PERSON BY THE
2 INDIVIDUAL REQUIRED TO REGISTER AS A SEX OFFENDER FOR AN OFFENSE IN
3 WHICH THE VICTIM WAS A CHILD.

4 (vii) ANY SPECIALIZED RISK ASSESSMENT PERFORMED ON THE
5 INDIVIDUAL REQUIRED TO REGISTER AS A SEX OFFENDER FOR AN OFFENSE IN
6 WHICH THE VICTIM WAS A CHILD BY A PERSON OR AGENCY WITH EXPERTISE
7 IN CHILD SEXUAL ABUSE.

8 (viii) WHETHER THE INDIVIDUAL REQUIRED TO REGISTER AS A SEX
9 OFFENDER FOR AN OFFENSE IN WHICH THE VICTIM WAS A CHILD HAS
10 SUCCESSFULLY COMPLETED A PROGRAM OF EVALUATION AND COUNSELING
11 DESIGNED SPECIFICALLY FOR SEX OFFENDERS AND CONDUCTED BY A PUBLIC
12 OR PRIVATE AGENCY OR A MENTAL HEALTH PROFESSIONAL AS THAT TERM IS
13 DEFINED IN SECTION 100B OF THE MENTAL HEALTH CODE, 1974 PA 258, MCL
14 330.1100B, AND AS A RESULT OF COMPLETING THAT PROGRAM, DOES NOT
15 POSE A RISK TO CHILDREN.

16 (ix) WHETHER THE INDIVIDUAL REQUIRED TO REGISTER AS A SEX
17 OFFENDER FOR AN OFFENSE IN WHICH THE VICTIM WAS A CHILD HAS
18 SUCCESSFULLY COMPLETED A PROGRAM OF SUBSTANCE ABUSE COUNSELING OR
19 BATTERER INTERVENTION IF THE COURT DETERMINES THAT THAT IS
20 APPROPRIATE.

21 (x) THE NATURE OF THE EXISTING RELATIONSHIP BETWEEN THE CHILD
22 AND THE INDIVIDUAL REQUIRED TO REGISTER AS A SEX OFFENDER FOR AN
23 OFFENSE IN WHICH THE VICTIM WAS A CHILD.

24 (xi) WHETHER BOTH PARTIES ARE SUBJECT TO THE PROVISIONS OF
25 SUBSECTION (2).

26 (5) IF THE COURT DETERMINES THAT IT WILL GRANT CUSTODY OR
27 PARENTING TIME TO A PARTY TO A CHILD CUSTODY DISPUTE DESCRIBED IN

1 SUBSECTION (1), THE COURT'S ORDER FOR CUSTODY OR PARENTING TIME
2 SHALL NOT BE LESS RESTRICTIVE THAN ANY EXISTING CONDITIONS OF
3 PAROLE OR OTHER COURT ORDER GOVERNING THE INDIVIDUAL'S CONTACT WITH
4 THE CHILD OR THE OTHER PARTY.

5 (6) IF THE COURT DETERMINES THAT IT WILL GRANT CUSTODY OR
6 PARENTING TIME TO A PARTY TO A CHILD CUSTODY DISPUTE DESCRIBED IN
7 SUBSECTION (1), THE COURT'S ORDER MAY ALSO PROVIDE FOR PERIODIC
8 JUDICIAL REVIEW OF THE CASE AT SPECIFIED TIMES IN THE COURT'S
9 DISCRETION TO DETERMINE WHETHER THERE ARE GROUNDS TO MODIFY THE
10 ORDER. AN ORDER FOR CUSTODY OR PARENTING TIME WITH A PARTY
11 DESCRIBED IN SUBSECTION (1) MAY BE MODIFIED AS PROVIDED IN SECTION
12 7(1)(C), WITH CONSIDERATION FOR THE REQUIREMENTS SET FORTH IN THIS
13 SECTION. PROPER CAUSE TO MODIFY A CUSTODY ORDER UNDER SECTION
14 7(1)(C) EXISTS IF, AFTER THE ISSUANCE OF THE ORDER, A PARTY TO THE
15 ORDER OR AN INDIVIDUAL LIVING IN A PARTY'S HOUSEHOLD IS REQUIRED TO
16 REGISTER AS A SEX OFFENDER FOR AN OFFENSE IN WHICH THE VICTIM WAS A
17 CHILD.

18 (7) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE
19 CONTRARY, IF A PARTY TO A CUSTODY DISPUTE IS REQUIRED TO REGISTER
20 AS A SEX OFFENDER FOR AN OFFENSE IN WHICH THE VICTIM WAS A CHILD,
21 BEFORE THE COURT ORDERS MEDIATION OR CONDUCTS CONCILIATION OR A
22 JOINT MEETING AS PROVIDED IN SECTION 41(1)(E) OF THE SUPPORT AND
23 PARENTING TIME ENFORCEMENT ACT, 1982 PA 295, MCL 552.641, THE COURT
24 SHALL CONDUCT A HEARING TO DETERMINE IF EITHER OF THOSE IS
25 APPROPRIATE.

26 (8) AS USED IN THIS SECTION, "INDIVIDUAL REQUIRED TO REGISTER
27 AS A SEX OFFENDER" MEANS AN INDIVIDUAL WHO IS REQUIRED TO REGISTER

1 UNDER THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL 28.721
2 TO 28.736, OR A SUBSTANTIALLY SIMILAR LAW OF ANOTHER JURISDICTION.