CHILD CUSTODY ACT OF 1970

Act 91 of 1970

AN ACT to declare the inherent rights of minor children; to establish rights and duties to their custody, support, and parenting time in disputed actions; to establish rights and duties to provide support for a child after the child reaches the age of majority under certain circumstances; to provide for certain procedure and appeals; and to repeal certain acts and parts of acts.

History: 1970, Act 91, Eff. Apr. 1, 1971 ;-- Am. 1990, Act 245, Imd. Eff. Oct. 10, 1990 ;-- Am. 1996, Act 19, Eff. June 1, 1996

The People of the State of Michigan enact:

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722.21 Child custody act; short title.

Sec. 1.

This act shall be known and may be cited as the "child custody act of 1970".

History: 1970, Act 91, Eff. Apr. 1, 1971

722.22 Definitions.

Sec. 2.

As used in this act:

(a) "Active duty" means that term as defined in section 101 of the servicemembers civil relief act, 50 USC 511, except that "active duty" includes full-time national guard duty.

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

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

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

(e) "Deployment" means the movement or mobilization of a servicemember to a location for a period of longer than 60 days and not longer than 540 days under temporary or permanent official orders as follows:

(i) That are designated as unaccompanied.

(ii) For which dependent travel is not authorized.

(iii) That otherwise do not permit the movement of family members to that location.

(iv) The servicemember is restricted from travel.

(f) "Grandparent" means a natural or adoptive parent of a child's natural or adoptive parent.

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

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

(i) "Parent" means the natural or adoptive parent of a child.

(j) "State disbursement unit" or "SDU" means the entity established in section 6 of the office of child support act, 1971 PA 174, MCL 400.236.

(k) "Third person" means an individual other than a parent.

History: 1970, Act 91, Eff. Apr. 1, 1971 ;-- Am. 1990, Act 245, Imd. Eff. Oct. 10, 1990 ;-- Am. 1998, Act 482, Eff. Mar. 1, 1999 ;-- Am. 1999, Act 156, Imd. Eff. Nov. 3, 1999 ;-- Am. 2002, Act 9, Imd. Eff. Feb. 14, 2002 ;-- Am. 2004, Act 542, Imd. Eff. Jan. 3, 2005 ;-- Am. 2005, Act 327, Imd. Eff. Dec. 28, 2005 ;-- Am. 2015, Act 51, Eff. Sept. 7, 2015

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722.23 "Best interests of the child" defined.

Sec. 3.

As used in this act, "best interests of the child" means the sum total of the following factors to be considered, evaluated, and determined by the court:

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

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

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

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(f) The moral fitness of the parties involved.

(g) The mental and physical health of the parties involved.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents. A court may not consider negatively for the purposes of this factor any reasonable action taken by a parent to protect a child or that parent from sexual assault or domestic violence by the child's other parent.

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

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

History: 1970, Act 91, Eff. Apr. 1, 1971 ;-- Am. 1980, Act 434, Imd. Eff. Jan. 14, 1981 ;-- Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993 ;-- Am. 2016, Act 95, Eff. Aug. 1, 2016

722.24 Child custody disputes; powers of court; appointment of lawyer-guardian ad litem.

Sec. 4.

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

(2) If, at any time in the proceeding, the court determines that the child's best interests are inadequately represented, the court may appoint a lawyer-guardian ad litem to represent the child. A lawyer-guardian ad litem represents the child and has powers and duties in relation to that representation as set forth in section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d. All provisions of section 17d of chapter XIIA of 1939 PA 288, MCL 712A.17d, apply to a lawyer-guardian ad litem appointed under this act.

(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.

(4) After a determination of ability to pay, the court may assess all or part of the costs and reasonable fees of the 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 and approves the fee.

History: 1970, Act 91, Eff. Apr. 1, 1971 ;-- Am. 1996, Act 19, Eff. June 1, 1996 ;-- Am. 1998, Act 482, Eff. Mar. 1, 1999

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722.24a Repealed. 2001, Act 108, Eff. Sept. 30, 2001.

Compiler's Notes: The repealed section pertained to support of child after child reaches 18 years of age.

722.25 Child custody dispute; controlling interests, presumption; award of custody to parent convicted of criminal sexual conduct or acts of nonconsensual sexual penetration; prohibition; support or maintenance obligation; defense; "offending parent" defined.

Sec. 5.

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

(2) Notwithstanding other provisions of this act, if a child custody dispute involves a child who is conceived as the result of acts for which 1 of the child's biological parents is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, or a substantially similar statute of another state or the federal government, or is found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration, the court shall not award custody to that biological parent. This subsection does

not apply to a conviction under section 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d. This subsection does not apply if, after the date of the conviction, or the date of the finding in a fact-finding hearing described in this subsection, the biological parents cohabit and establish a mutual custodial environment for the child.

(3) An offending parent is not entitled to custody of a child described in subsection (2) without the consent of that child's other parent or guardian.

(4) Notwithstanding other provisions of this act, subsection (2) does not relieve an offending parent of any support or maintenance obligation to the child. The other parent or the guardian of the child may decline support or maintenance from the offending parent.

(5) A parent may assert an affirmative defense of the provisions of subsection (2) in a proceeding brought by the offending parent regarding a child described in subsection (2).

(6) Notwithstanding other provisions of this act, if an individual is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, and the victim is the individual's child, the court shall not award custody of that child or a sibling of that child to that individual, unless both the child's other parent and, if the court considers the child or sibling to be of sufficient age to express his or her desires, the child or sibling consent to the custody.

(7) As used in this section, "offending parent" means a parent who has been convicted of criminal sexual conduct as described in subsection (2) or who has been found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration as described in subsection (2).

History: 1970, Act 91, Eff. Apr. 1, 1971 ;-- Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993 ;-- Am. 2016, Act 96, Eff. Aug. 1, 2016

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722.26 Liberal construction and application of act; purpose; provisions applicable to child custody disputes and actions; precedence of other actions; submission of action; habeas corpus or warrant.

Sec. 6.

(1) This act is equitable in nature and shall be liberally construed and applied to establish promptly the rights of the child and the rights and duties of the parties involved. This act applies to all circuit court child custody disputes and actions, whether original or incidental to other actions. Those disputes and actions shall have precedence for hearing and assignment for trial over other civil actions.

(2) Except as otherwise provided in section 6b or 6e, if the circuit court of this state does not have prior continuing jurisdiction over a child, the action shall be submitted to the circuit court of the county where the child resides or may be found by complaint or complaint and motion for order to show cause. An application for a writ of habeas corpus or for a warrant in its place to obtain custody of a child shall not be granted unless it appears that this act is inadequate and ineffective to resolve the particular child custody dispute.

History: 1970, Act 91, Eff. Apr. 1, 1971 ;-- Am. 1990, Act 315, Imd. Eff. Dec. 20, 1990 ;-- Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993

722.26a Joint custody.

Sec. 6a.

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

(a) The factors enumerated in section 3.

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

(2) If the parents agree on joint custody, the court shall award joint custody unless the court determines on the record, based upon clear and convincing evidence, that joint custody is not in the best interests of the child.

(3) If the court awards joint custody, the court may include in its award a statement regarding when the child shall reside with each parent, or may provide that physical custody be shared by the parents in a manner to assure the child continuing contact with both parents.

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

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

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

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

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

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

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History: Add. 1980, Act 434, Imd. Eff. Jan. 14, 1981

722.26b Standing of guardian or limited guardian of child to bring action for custody of child; filing of action; stay of proceedings; continuation of order in force; copy of judgment or order of disposition; assignment of judge.

Sec. 6b.

(1) Except as otherwise provided in subsection (2), a guardian or limited guardian of a child has standing to bring an action for custody of the child as provided in this act.

(2) A limited guardian of a child does not have standing to bring an action for custody of the child if the parent or parents of the child have substantially complied with a limited guardianship placement plan regarding the child entered into as required by section 5205 of the estates and protected individuals code, 1998 PA 386, MCL 700.5205, or section 424a of former 1978 PA 642.

(3) If the circuit court does not have prior continuing jurisdiction over the child, a child custody action brought by a guardian or limited guardian of the child shall be filed in the circuit court in the county in which the probate court appointed the guardian.

(4) Upon the filing of a child custody action brought by a child's guardian or limited guardian, guardianship proceedings concerning that child in the probate court are stayed until disposition of the child custody action. A probate court order concerning the guardianship of the child continues in force until superseded by a circuit court order. If the circuit court awards custody of the child, it shall send a copy of the judgment or order of disposition to the probate court in the county that appointed the child's guardian or limited guardian.

(5) If a child's guardian or limited guardian brings a child custody action, the circuit court shall request the supreme court in accordance with section 225 of the revised judicature act of 1961, 1961 PA 236, MCL 600.225, to assign the probate court judge who appointed that guardian or limited guardian to serve as the circuit court judge and hear the child custody action.

History: Add. 1990, Act 315, Imd. Eff. Dec. 20, 1990 ;-- Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993 ;-- Am. 2000, Act 60, Eff. Apr. 1, 2000

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722.26c Custody action by third person; conditions.

Sec. 6c.

(1) A third person may bring an action for custody of a child if the court finds either of the following:

(a) Both of the following:

(i) The child was placed for adoption with the third person under the adoption laws of this or another state, and the placement order is still in effect at the time the action is filed.

(ii) After the placement, the child has resided with the third person for a minimum of 6 months.

(b) All of the following:

(i) The child's biological parents have never been married to one another.

(ii) The child's parent who has custody of the child dies or is missing and the other parent has not been granted legal custody under court order.

(iii) The third person is related to the child within the fifth degree by marriage, blood, or adoption.

(2) A third person shall include with an action filed under this section both of the following:

(a) An affidavit setting forth facts relative to the existence of the prerequisites required by subsection (1)(a) or (b).

(b) Notice that a defense or objection to a third person's right to bring an action for custody may be raised as an affirmative defense or by a motion for summary disposition based on lack of standing as provided in the Michigan court rules.

History: Add. 1993, Act 259, Imd. Eff. Nov. 29, 1993
Compiler's Notes: Section 2 of Act No. 259 of the Public Acts of 1993 provided:"Sections 6c to 6e as added by this amendatory act are remedial in nature and apply retroactively."

722.26d Custody action by third person; jurisdiction.

Sec. 6d.

A third person filing an action under section 6c shall proceed as follows:

(a) If the circuit court has continuing jurisdiction over the child, the action shall be filed in the circuit court that has continuing jurisdiction over the child.

(b) If the circuit court does not have continuing jurisdiction over the child, the action shall be filed in the circuit court in the county where the child has resided for the 6 months immediately preceding the filing of the action or, if the child has not resided in any county for the 6 months immediately preceding the filing of the action, the action shall be filed in the circuit court in the county having the most significant connection with the child.

History: Add. 1993, Act 259, Imd. Eff. Nov. 29, 1993
Compiler's Notes: Section 2 of Act No. 259 of the Public Acts of 1993 provided:"Sections 6c to 6e as added by this amendatory act are remedial in nature and apply retroactively."

722.26e Custody action by third person; notice; powers of court.

Sec. 6e.

(1) A third person filing an action under section 6c shall send notice of the action to each party who has legal custody of the child and to each parent whose parental rights have not been terminated.

(2) In addition to other powers of the court, in an action under section 6c, the court may do any of the following:

(a) Appoint an attorney for a parent.

(b) Order that a necessary and reasonable amount of money be paid to the court for reimbursement of a party's attorney. A party may request an order under this subdivision. The moving party shall allege facts showing that the party is otherwise unable to bear the expense of the action. The court shall require the disclosure of attorney fees or other expenses paid.

(c) The court may award costs and fees as provided in section 2591 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.2591 of the Michigan Compiled Laws.

History: Add. 1993, Act 259, Imd. Eff. Nov. 29, 1993
Compiler's Notes: Section 2 of Act No. 259 of the Public Acts of 1993 provided:"Sections 6c to 6e as added by this amendatory act are remedial in nature and apply retroactively."

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722.27 Child custody disputes; powers of court; support order; enforcement of judgment or order; child custody while parent on deployment.

Sec. 7.

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

(a) Award the custody of the child to 1 or more of the parties involved or to others and provide for payment of support for the child, until the child reaches 18 years of age. Subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, the court may also order support as provided in this section for a child after he or she reaches 18 years of age. The court may require that support payments shall be made through the friend of the court, court clerk, or state disbursement unit.

(b) Provide for reasonable parenting time of the child by the parties involved, by the maternal or paternal grandparents, or by others, by general or specific terms and conditions. Parenting time of the child by the parents is governed by section 7a.

(c) Subject to subsection (3), modify or amend its previous judgments or orders for proper cause shown or because of change of circumstances until the child reaches 18 years of age and, subject to section 5b of the support and parenting time enforcement act, 1982 PA 295, MCL 552.605b, until the child reaches 19 years and 6 months of age. The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to permanency of the relationship shall also be considered. If a motion for change of custody is filed while a parent is active duty, the court shall not consider a parent's absence due to that active duty status in a best interest of the child determination.

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

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

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

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

(3) As provided in the servicemembers civil relief act, 50 USC 501 to 597b, if a motion for change of custody is filed during the time a parent is on deployment, a parent may file and the court shall entertain an application for stay. The court shall not enter an order modifying or amending a previous judgment or order, or issue a new order, that changes the child's placement that existed on the date the parent was called to deployment, except that the court may enter a temporary custody order if there is clear and convincing evidence that it is in the best interests of the child. When a temporary custody order is issued under this subsection, the court may include a limit on the period of time that the temporary custody order remains in effect. At any stage before final judgment in the proceeding, the parent may file an application for stay or otherwise request a stay of the proceedings or file an application for an extension of a stay. The parent and the custodial child are not required to be present to consider the application for stay or extension of a stay. The application for stay or extension of a stay is sufficient if it is a signed, written statement, certified to be true under penalty of perjury. The same conditions for the initial stay apply to an application for an extension of a stay. The parent's duration of deployment shall not be considered in making a best interest of the child determination.

(4) The parent shall inform the court of the deployment end date before or within 30 days after that deployment end date. Upon notification of a parent's deployment end date, the court shall reinstate the custody order in effect immediately preceding that period of deployment. If a motion for change of custody is filed after a parent returns from deployment, the court shall not consider a parent's absence due to that deployment in making a best interest of the child determination. Future deployments shall not be considered in making a best interest of the child determination.

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(5) If the deploying parent and the other parent share custody, the deploying parent must notify the other parent of an upcoming deployment within a reasonable period of time.

History: 1970, Act 91, Eff. Apr. 1, 1971 ;-- Am. 1980, Act 161, Imd. Eff. June 18, 1980 ;-- Am. 1985, Act 215, Eff. Mar. 1, 1986 ;-- Am. 1988, Act 377, Eff. Mar. 30, 1989 ;-- Am. 1989, Act 275, Imd. Eff. Dec. 26, 1989 ;-- Am. 1990, Act 245, Imd. Eff. Oct. 10, 1990 ;-- Am. 1990, Act 293, Imd. Eff. Dec. 14, 1990 ;-- Am. 1996, Act 19, Eff. June 1, 1996 ;-- Am. 1998, Act 482, Eff. Mar. 1, 1999 ;-- Am. 1999, Act 156, Imd. Eff. Nov. 3, 1999 ;-- Am. 2001, Act 108, Eff. Sept. 30, 2001 ;-- Am. 2005, Act 328, Imd. Eff. Dec. 28, 2005 ;-- Am. 2015, Act 52, Eff. Sept. 7, 2015

722.27a Parenting time.

Sec. 7a.

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

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

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

(4) Notwithstanding other provisions of this act, if a proceeding regarding parenting time involves a child who is conceived as the result of acts for which 1 of the child's biological parents is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, or a substantially similar statute of another state or the federal government, or is found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration, the court shall not grant parenting time to that biological parent. This subsection does not apply to a conviction under section 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d. This subsection does not apply if, after the date of the conviction, or the date of the finding in a fact-finding hearing described in this subsection, the biological parents cohabit and establish a mutual custodial environment for the child.

(5) A parent may assert an affirmative defense of the provisions of subsection (4) in a proceeding brought by the offending parent regarding a child described in subsection (4).

(6) Notwithstanding other provisions of this act, if an individual is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, and the victim is the individual's child, the court shall not grant parenting time with that child or a sibling of that child to that individual, unless both the child's other parent and, if the court considers the child or sibling to be of sufficient age to express his or her desires, the child or sibling consent to the parenting time.

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

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

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

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

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

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

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

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

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

(i) Any other relevant factors.

(8) Parenting time shall be granted in specific terms if requested by either party at any time.

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

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

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

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

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

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

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

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

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

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

(10) Except as provided in this subsection, a parenting time order shall contain a prohibition on exercising parenting time in a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction. This subsection does not apply if both parents provide the court with written consent to allow a parent to exercise parenting time in a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction.

(11) During the time a child is with a parent to whom parenting time has been awarded, that parent shall decide all routine matters concerning the child.

(12) Prior to entry of a temporary order, a parent may seek an ex parte interim order concerning parenting time. If the court enters an ex parte interim order concerning parenting time, the party on whose motion the ex parte interim order is entered shall have a true copy of the order served on the friend of the court and the opposing party.

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

(14) If the opposing party files a written objection to the ex parte interim order, the friend of the court shall attempt to resolve the dispute within 14 days after receiving it. If the matter cannot be resolved, the friend of the court shall provide the opposing party with a form motion and order with written instructions for their use in modifying or rescinding the ex parte order

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without assistance of counsel. If the opposing party wishes to proceed without assistance of counsel, the friend of the court shall schedule a hearing with the court that shall be held within 21 days after the filing of the motion. If the opposing party files a motion to modify or rescind the ex parte interim order and requests a hearing, the court shall resolve the dispute within 28 days after the hearing is requested.

(15) An ex parte interim order issued under this section shall contain the following notice:

NOTICE:

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

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

(16) As provided in the servicemembers civil relief act, 50 USC 501 to 597b, if a motion for change of parenting time is filed during the time a parent is on deployment, a parent may file and the court shall entertain an application for stay. The court shall presume that the best interests of the child are served by not entering an order modifying or amending a previous judgment or order, or issuing a new order, that changes the parenting time that existed on the date the parent was called to deployment, unless the contrary is established by clear and convincing evidence, at which time the court may enter a temporary parenting time order. When a temporary parenting time order is issued under this subsection, the court may include a limit on the period of time that the temporary parenting time order remains in effect. At any stage before final judgment in the proceeding, the parent may file an application for stay or otherwise request a stay of proceedings or file an application for an extension of a stay. The parent and the custodial child are not required to be present to consider the application for stay or extension of a stay. The application for stay or extension of a stay is sufficient if it is a signed, written statement, certified to be true under penalty of perjury. The same conditions for the initial stay apply to applications for an extension of a stay.

(17) The parent shall inform the court of the deployment end date before or within 30 days after that deployment end date. Upon notification of a parent's deployment end date, the court shall reinstate the parenting time order in effect immediately preceding that period of deployment. If a motion for change of parenting time is filed after a parent returns from deployment, the court shall not consider a parent's absence due to that deployment in making a determination regarding change of parenting time. Future deployments shall not be considered in making a best interest of the child determination.

(18) If the deploying parent and the other parent share custody, the deploying parent must notify the other parent of an upcoming deployment within a reasonable period of time.

(19) As used in this section, "offending parent" means a parent who has been convicted of criminal sexual conduct as described in subsection (4) or who has been found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration as described in subsection (4).

History: Add. 1988, Act 377, Eff. Mar. 30, 1989 ;-- Am. 1993, Act 259, Imd. Eff. Nov. 29, 1993 ;-- Am. 1996, Act 19, Eff. June 1, 1996 ;-- Am. 2012, Act 600, Imd. Eff. Jan. 9, 2013 ;-- Am. 2015, Act 50, Eff. Sept. 7, 2015 ;-- Am. 2016, Act 96, Eff. Aug. 1, 2016

Compiler's Notes: Former MCL 722.27a, which pertained to action by parent of deceased father or mother for visitation of unmarried minor child, was repealed by Act 161 of 1980, Imd. Eff. June 18, 1980.

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722.27b Order for grandparenting time; circumstances; acknowledgment of parentage; commencement of action; procedures; affidavit; basis for entry of order; best interests of child; alternative dispute resolution; frequency of filing complaint or motion seeking order; attorney fees; order prohibiting change of domicile of child; effect of entry of order; modifying or terminating order; record; termination of grandparent's right to commence action.

Sec. 7b.

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

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

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

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

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

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

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

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

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

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

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

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

(a) The complaint or motion for grandparenting time filed under subsection (3) shall be accompanied by an affidavit setting forth facts supporting the requested order. The

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grandparent shall give notice of the filing to each person who has legal custody of, or an order for parenting time with, the child. A party having legal custody may file an opposing affidavit. A hearing shall be held by the court on its own motion or if a party requests a hearing. At the hearing, parties submitting affidavits shall be allowed an opportunity to be heard.

(b) In order to give deference to the decisions of fit parents, it is presumed in a proceeding under this subsection that a fit parent's decision to deny grandparenting time does not create a substantial risk of harm to the child's mental, physical, or emotional health. To rebut the presumption created in this subdivision, a grandparent filing a complaint or motion under this section must prove by a preponderance of the evidence that the parent's decision to deny grandparenting time creates a substantial risk of harm to the child's mental, physical, or emotional health. If the grandparent does not overcome the presumption, the court shall dismiss the complaint or deny the motion.

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

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

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

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

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

(c) The grandparent's moral fitness.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

History: Add. 1982, Act 340, Imd. Eff. Dec. 17, 1982 ;-- Am. 1996, Act 19, Eff. June 1, 1996 ;-- Am. 2004, Act 542, Imd. Eff. Jan. 3, 2005 ;-- Am. 2006, Act 353, Imd. Eff. Sept. 18, 2006 ;-- Am. 2009, Act 237, Imd. Eff. Jan. 8, 2010

Constitutionality: The Michigan Court of Appeals in DeRose v DeRose, 249 Mich App 388; 643 NW2d 259 (2002) held that section 7b of the child custody act of 1970, 1970 PA 91, MCL 722.27b, is unconstitutional. The Michigan Supreme Court affirmed. [DeRose v DeRose, 469 Mich 320; 666 NW2d 636 (2003)] The Michigan Supreme Court held that it was bound by the decision in US Supreme Court in Troxel v Granville, 530 US 57; 120 S Ct 2054; 147 L Ed 2d 49 (2000). The US Supreme Court established in that decision that parents have a fundamental right to raise their children, and on that basis, “the parents have the right to make decisions for children, and such decisions must be accorded deference or weight.”

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The Michigan Supreme Court held that MCL 722.27b failed to "require that a trial court accord deference to the decisions of fit parents regarding grandparent visitation" and is therefore constitutionally invalid.

722.27c Parenting coordinator.

Sec. 7c.

(1) A parenting coordinator is a person appointed by the court for a specified term to help implement the parenting time orders of the court and to help resolve parenting disputes that fall within the scope of the parenting coordinator's appointment.

(2) The court may enter an order appointing a parenting coordinator if the parties and the parenting coordinator agree to the appointment and its scope. Before appointing a parenting coordinator, the court shall consider any history of a coercive or violent relationship between the parties. The court shall ensure that the order appointing the parenting coordinator provides adequate protection to the victim of a coercive or violent relationship.

(3) The order appointing a parenting coordinator shall include all of the following:

(a) An acknowledgment that each party has had the opportunity to consult with an attorney and a domestic violence counselor.

(b) An acknowledgment that the parenting coordinator is neutral; that the parenting coordinator may have ex parte communications with the parties, their attorneys, and third parties; that, except as provided in subsection (9), communications with the parenting coordinator are not privileged or confidential; and that by agreeing to the order, the parties are giving the parenting coordinator authority to make recommendations regarding disputes.

(c) A specific duration of the appointment. The order shall provide that the parenting coordinator may resign at any time due to nonpayment of his or her fee. The order may include a provision for extension of the parenting coordinator's term by consent of the parties for specific periods of time.

(d) An explanation of the costs of the parenting coordinator, and each party's responsibility for those costs, including any required retainer and fees for any required court appearances. The order may include a provision allowing the parenting coordinator to allocate specific costs to 1 party for cause.

(e) The scope of the parenting coordinator's duties in resolving disputes between the parties. These may include any of the following:

(i) Transportation and transfers of the child between parents.

(ii) Vacation and holiday schedules and implementation.

(iii) Daily routines.

(iv) Activities and recreation.

(v) Discipline.

(vi) Health care management, including determining and recommending appropriate medical and mental health evaluation and treatment, including psychotherapy, substance use disorder and batterer intervention treatment or counseling, and parenting classes, for the child and the parents. The parenting coordinator shall designate whether any recommended counseling is or is not confidential. The parenting coordinator can recommend how any health care provider is chosen.

(vii) School-related issues.

(viii) Alterations in the parenting schedule, as long as the basic time-sharing arrangement is not changed by more than a specified number of days per month.

(ix) Phase in provision of court orders.

(x) Participation of other persons in parenting time.

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(xi) Child care and babysitting issues.

(xii) Any other matters submitted to the parenting coordinator jointly by the parties before his or her appointment expires.

(f) Authorization for the parenting coordinator to have access that may include all of the following:

(i) Reasonable access to the child.

(ii) Notice of all proceedings, including requests for examinations affecting the child.

(iii) Access to a specific therapist of any of the parties or the child, provided that a proper release is executed.

(iv) Access to school, medical, and activity records.

(v) Copies of specific evaluations and psychological test results performed on any child or any parent, custodian, guardian, or other person living in the parent's households, including, but not limited to, friend of the court reports and psychological evaluations.

(vi) Access to the child's principal, teachers, and teachers' aides.

(vii) The right to interview the parties, attorneys, or the child in any combination, and to exclude any party or attorney from an interview.

(viii) The right to interview or communicate with any other person the parenting coordinator considers relevant to resolve an issue or to provide information and counsel to promote the best interests of the child.

(g) The dispute resolution process that will be used by the parenting coordinator, explaining how the parenting coordinator will make recommendations on issues and the effect to be given to those recommendations. The process must ensure that both parties have an opportunity to be heard on issues under consideration by the parenting coordinator and an opportunity to respond to relevant allegations against them before a recommendation is made. The parties may agree that on specific types of issues they must follow a parenting coordinator's recommendations until modified by the court.

(4) The court may terminate the appointment of the parenting coordinator if the court finds that the appointment is no longer helpful to the court in resolving parenting disputes or if the process is no longer safe for a party or a child.

(5) The parenting coordinator may resign at any time, with notice to the parties and to the court. If the court finds that a party has refused to pay its share of the parenting coordination costs as a means to force the parenting coordinator to resign, the court may use contempt sanctions to enforce payment of the parenting coordinator's fee.

(6) The parenting coordinator is immune from civil liability for an injury to a person or damage to property if he or she is acting within the scope of his or her authority as parenting coordinator.

(7) The parenting coordinator shall make reasonable inquiry whether either party has a history of a coercive or violent relationship with the other party. A reasonable inquiry includes the use of the domestic violence screening protocol for mediation provided by the state court administrative office.

(8) If the parenting coordinator determines that there is a history of a coercive or violent relationship between the parties, the parenting coordinator shall not bring the parties within proximity of each other unless the party at risk from violence or coercion requests it and the parenting coordinator determines with that party what reasonable steps, if any, can be taken to address concerns regarding coercion or violence.

(9) The parenting coordinator is not required to disclose information if disclosure will compromise the safety of a party or a child.

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(10) The parenting coordinator shall make his or her recommendations in writing and provide copies of the recommendation to the parties in the manner specified in the parenting coordination order. If a party attaches the recommendation to a motion or other filing, the court may read and consider the recommendation, but the recommendation is not evidence unless the parties stipulate that it is.

(11) The parenting coordinator shall not recommend relief that is less protective than any other order related to the parties.

(12) Subject to the Michigan rules of evidence, the court may allow the testimony of the parenting coordinator if the court finds the testimony useful to the resolution of a pending dispute. The parenting coordinator shall not testify regarding statements received from a child involved in the parenting coordination if the parenting coordinator believes the disclosure would be damaging to the child.

(13) A parenting coordinator who has reasonable cause to suspect child abuse or neglect shall immediately make oral and written reports, or cause oral and written reports to be made, to the department of human services as provided in section 3 of the child protection law, 1975 PA 238, MCL 722.623.

(14) As directed by the supreme court, the state court administrative office shall develop standards for the qualifications and training of parenting coordinators, including training regarding violent and coercive domestic relationships. Parenting coordinators must complete the training within 2 years of the promulgation of the standards described in this subsection.

History: Add. 2014, Act 526, Imd. Eff. Jan. 14, 2015

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722.28 Child custody disputes; appeal, grounds.

Sec. 8.

To expedite the resolution of a child custody dispute by prompt and final adjudication, all orders and judgments of the circuit court shall be affirmed on appeal unless the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue.

History: 1970, Act 91, Eff. Apr. 1, 1971

722.29 Transition to centralized receipt and disbursement of support and fees.

Sec. 9.

The department, the SDU, and each office of the friend of the court shall cooperate in the transition to the centralized receipt and disbursement of support and fees. An office of the friend of the court shall continue to receive and disburse support and fees through the transition, based on the schedule developed as required by section 6 of the office of child support act, 1971 PA 174, MCL 400.236, and modifications to that schedule as the department considers necessary.

History: 1970, Act 91, Eff. Apr. 1, 1971 ;-- Am. 1999, Act 156, Imd. Eff. Nov. 3, 1999

722.30 Access to records or information by noncustodial parent.

Sec. 10.

Notwithstanding any other provision of law, a parent shall not be denied access to records or information concerning his or her child because the parent is not the child's custodial parent, unless the parent is prohibited from having access to the records or information by a protective order. As used in this section, "records or information" includes, but is not limited to, medical, dental, and school records, day care provider's records, and notification of meetings regarding the child's education.

History: Add. 1996, Act 304, Eff. Jan. 1, 1997

722.31 Legal residence change of child whose parental custody governed by court order.

Sec. 11.

(1) A child whose parental custody is governed by court order has, for the purposes of this section, a legal residence with each parent. Except as otherwise provided in this section, a parent of a child whose custody is governed by court order shall not change a legal residence of the child to a location that is more than 100 miles from the child's legal residence at the time of the commencement of the action in which the order is issued.

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

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

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

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

(b) The degree to which each parent has complied with, and utilized his or her time under, a court order governing parenting time with the child, and whether the parent's plan to change the child's legal residence is inspired by that parent's desire to defeat or frustrate the parenting time schedule.

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

(d) The extent to which the parent opposing the legal residence change is motivated by a desire to secure a financial advantage with respect to a support obligation.

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

(5) Each order determining or modifying custody or parenting time of a child shall include a provision stating the parent's agreement as to how a change in either of the child's legal residences will be handled. If such a provision is included in the order and a child's legal residence change is done in compliance with that provision, this section does not apply. If the parents do not agree on such a provision, the court shall include in the order the following provision: "A parent whose custody or parenting time of a child is governed by this order shall

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not change the legal residence of the child except in compliance with section 11 of the "Child Custody Act of 1970", 1970 PA 91, MCL 722.31.".

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

History: Add. 2000, Act 422, Imd. Eff. Jan. 9, 2001

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