

HOUSE BILL No. 4120

January 29, 2013, Introduced by Reps. Rogers, Johnson, Genetski, Denby, Pettalia,
MacMaster, Franz, Kurtz and Goike and referred to the Committee on Judiciary.

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending sections 5 and 6a (MCL 722.25 and 722.26a), section 5
as amended by 1993 PA 259 and section 6a as added by 1980 PA 434.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. (1) If a child custody dispute is between the parents,
2 between agencies, or between third persons, the best interests of
3 the child control, **SUBJECT TO THE PRESUMPTION OF JOINT CUSTODY**
4 **UNDER SECTION 6A.** If the child custody dispute is between the
5 parent or parents and an agency or a third person, the court shall
6 presume that the best interests of the child are served by awarding
7 custody to the parent or parents, unless the contrary is
8 established by clear and convincing evidence.

9 (2) Notwithstanding other provisions of this act, if a child
10 custody dispute involves a child who is conceived as the result of
11 acts for which 1 of the child's biological parents is convicted of

1 criminal sexual conduct as provided in sections 520a to 520e and
2 520g of the Michigan penal code, ~~Act No. 328 of the Public Acts of~~
3 ~~1931, being sections~~ **1931 PA 328, MCL 750.520a to 750.520e and**
4 **750.520g,** ~~of the Michigan Compiled Laws,~~ the court shall not award
5 custody to the convicted biological parent. This subsection does
6 not apply to a conviction under section 520d(1)(a) of the Michigan
7 penal code, ~~Act No. 328 of the Public Acts of 1931, being section~~
8 **1931 PA 328, MCL 750.520d.** ~~of the Michigan Compiled Laws.~~ This
9 subsection does not apply if, after the date of the conviction, the
10 biological parents cohabit and establish a mutual custodial
11 environment for the child.

12 (3) Notwithstanding other provisions of this act, if an
13 individual is convicted of criminal sexual conduct as provided in
14 sections 520a to 520e and 520g of ~~Act No. 328 of the Public Acts of~~
15 ~~1931~~ **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A TO 750.520E**
16 **AND 750.520G,** and the victim is the individual's child, the court
17 shall not award custody of ~~that~~ **THE** child or a sibling of ~~that~~ **THE**
18 child to ~~that~~ **THE** individual, unless both the child's other parent
19 and, if the court considers the child or sibling to be of
20 sufficient age to express his or her desires, the child or sibling
21 consent to the custody.

22 Sec. 6a. ~~(1) In custody disputes between parents, the parents~~
23 ~~shall be advised of joint custody. At the request of either parent,~~
24 ~~the court shall consider an award of joint custody, and shall state~~
25 ~~on the record the reasons for granting or denying a request. In~~
26 ~~other cases joint custody may be considered by the court. The court~~
27 ~~shall determine whether joint custody is in the best interest of~~

1 ~~the child by considering the following factors:~~

2 ~~—— (a) The factors enumerated in section 3.~~

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

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

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

15 (1) IN A CUSTODY OR PARENTING TIME DISPUTE BETWEEN PARENTS,
 16 THE COURT SHALL ORDER JOINT CUSTODY UNLESS THE COURT DETERMINES BY
 17 CLEAR AND CONVINCING EVIDENCE THAT A PARENT IS UNFIT, UNWILLING, OR
 18 UNABLE TO CARE FOR THE CHILD. A PARENT MAY ONLY BE DETERMINED TO BE
 19 UNFIT UNDER THIS SECTION IF THE PARENT'S PARENTAL RIGHTS ARE
 20 SUBJECT TO TERMINATION UNDER SECTION 19B OF CHAPTER XIIA OF THE
 21 PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.19B.

22 (2) IN A CUSTODY DISPUTE BETWEEN PARENTS, THE COURT SHALL
 23 STATE ON THE RECORD THE REASONS FOR NOT AWARDING JOINT CUSTODY.

24 (3) IF THE PARENTS AGREE IN WRITING TO A CUSTODY ARRANGEMENT,
 25 THE COURT SHALL GRANT THAT CUSTODY ARRANGEMENT UNLESS 1 PARENT IS
 26 FOUND BY CLEAR AND CONVINCING EVIDENCE TO BE UNFIT.

27 (4) IF THE COURT AWARDS JOINT CUSTODY, THE COURT SHALL ISSUE A

1 **SPECIFIC PARENTING TIME SCHEDULE FOR EACH PARENT AND SHALL PROVIDE**
 2 **THAT PHYSICAL CUSTODY IS SHARED BY THE PARENTS FOR SPECIFIC AND**
 3 **SUBSTANTIALLY EQUAL PERIODS OF TIME.**

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

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

9 (7) ~~(6)~~—Joint custody ~~shall~~ **DOES** not eliminate the
 10 responsibility for child support. Each parent ~~shall be~~ **IS**
 11 responsible for child support based on the needs of the child and
 12 the actual resources of each parent. If a parent would otherwise be
 13 unable to maintain adequate housing for the child and the other
 14 parent has sufficient resources, the court may order modified
 15 support payments for a portion of housing expenses even during a
 16 period when the child is not residing in the home of the parent
 17 receiving support. An order of joint custody, in and of itself,
 18 ~~shall~~ **DOES** not constitute grounds for modifying a support order.

19 (8) ~~(7)~~—As used in this section, "joint custody" means an
 20 order of the court in which ~~1 or~~ both of the following ~~is~~ **ARE**
 21 specified:

22 (a) That the child ~~shall reside~~ **RESIDES** alternately for
 23 specific **AND SUBSTANTIALLY EQUAL** periods **OF TIME** with each ~~of the~~
 24 ~~parents~~ **PARENT**.

25 (b) That the parents ~~shall~~ share decision-making authority as
 26 to **ALL OF** the important decisions affecting the welfare of the
 27 child, **INCLUDING, BUT NOT LIMITED TO, THE CHILD'S EDUCATION,**

1 RELIGIOUS TRAINING, AND MEDICAL TREATMENT.