

Legislative Analysis



MICHIGAN SHARED PARENTING ACT

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House Bill 4141 (Proposed Substitute H-1)
Sponsor: Rep. Jim Runestad
Committee: Families, Children, and Seniors
Complete to 9-21-16

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

Under the Child Custody Act of 1970 (MCL 722.21 et al.), currently 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 factors specified in the Act.

House Bill 4141 (proposed H-1 substitute) would change the name of the Child Custody Act of 1970 as the "Michigan Shared Parenting Act." An explanation of the contents of the bill follows.

Established Custodial Environment Defined

A parent is presumed to have created an established custodial environment with a child if the following condition are substantially met:

- Strong love, affection, and other emotional ties exist between the parent and child.
- The parent supported the child's educational endeavors, attended to the child's health care needs, or assisted in religious instruction, if applicable.
- The parent helped provide food, clothing, and other necessities of daily life.
- The parent helped maintain regular and ongoing contact with the child and the lack of that contact would likely have an adverse impact.

Severed Separation

If any of the conditions listed above were severed as a result of separation, the parent would be given 180 days from the date of legal separation (or the date of separation if the parents were not married) to notify the court that the parent intends to preserve the established custodial environment. After that notification, the court must presume that the parent has maintained the established custodial environment for the purpose of determining custody and parenting time arrangements.

However, if the conditions described were unable to be met because the party was unaware of the parentage at the time of birth, the parent would have to be given 180 days from the legal recognition of parentage to notify the court that he or she is establishing their custodial environment. After that notification, the court shall presume that the parent has created an established custodial environment for the purposes of determining custody and parenting

time, if it finds that the parent's involvement is likely to enhance the life or livelihood of the child.

Custody and Parenting Time when Custodial Environment Established

If a parent has created an established custodial environment, the court shall presume that it is in the best interest of the child to grant the parents joint physical custody and substantially equal parenting time and attempt to maximize the parenting time the child has with both parents, unless, (a) the parents mutually consent to another agreement or (b) the court believes a child's health, safety, or well-being would likely be materially compromised by granting custody to a parent.

The court could grant sole physical custody to one parent if it determines by clear and convincing evidence that one or more of the following factors exists:

- Food, clothing, medical care, or other remedial care would likely be significantly diminished during a parent's time with child.
- A child would likely be subjected to child abuse or child neglect that threatens the child's health and safety.
- A parent is unable to provide for the basic needs of the child.
- A child's academic progress would be significantly harmed.
- A parent has a mental condition that threatens the stability of the home.
- There is a history of substantiated domestic violence against the other parent or child and an ongoing threat of the same.
- A parent is engaged in criminal activity or substance abuse use disorder that threatens the stability of the home.
- The relationship between the child and the other parent is materially harmed during the child's time with the parent due to actions that attempt to frustrate the relationship or alienate the child from the other parent.
- Any other relevant fact that the court considers to be a real and significant threat to the overall well-being of the child.

Custody and Parenting Time when Custodial Environment Not Established

If a parent has not created an established environment for a child, a court would order custody and reasonable parenting time for a parent, on the parent's request, to the extent that the parent's involvement is likely to enhance the life or livelihood of the child. A court would grant sole custody to one parent if one or more of the following apply:

- A parent voluntarily chooses to forego joint custody or substantially equal parenting time.
- A parent intentionally makes false or misleading allegations regarding child abuse, child neglect, or domestic violence.
- There is strong, genuine, and reasonable preference of the child for one parent (if the court considers the child to be of sufficient age to express preference and that preference is not caused as a result of parental alienation). Predominant weight would be given to a child's preference after his or her fourteenth birthday.

Currently, in custody disputes between parents, the parents must be advised of joint custody. The bill would say the parents would have to be advised of "the option of" joint custody. Also, the bill would strike language that says the court shall determine whether joint custody is in the best interest of the child based on certain specified factors. This would be replaced by the provisions described earlier.

Currently the Act says that an order of joint custody, in and of itself, shall not constitute grounds for modifying a support order. The bill removes this language and says instead that a change in custody is sufficient grounds for the court to recalculate child support if a request to do so is made by one of the parties.

FISCAL IMPACT:

The bill would have no significant fiscal impact on the Department of Health and Human Services or on the state judiciary or local court funding systems.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.