

**SUBSTITUTE FOR
HOUSE BILL NO. 4481**

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending sections 5 and 7a (MCL 722.25 and 722.27a), section 5
as amended by 1993 PA 259 and section 7a as amended by 2015 PA 50.

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

8 (2) Notwithstanding other provisions of this act, if a child

1 custody dispute involves a child who is conceived as the result of
2 acts for which 1 of the child's biological parents is convicted of
3 criminal sexual conduct as provided in sections 520a to 520e and
4 520g of the Michigan penal code, ~~Act No. 328 of the Public Acts of~~
5 ~~1931, being sections 750.520a to 750.520e and 750.520g of the~~
6 ~~Michigan Compiled Laws, 1931 PA 328, MCL 750.520A TO 750.520E AND~~
7 ~~750.520G, OR A SUBSTANTIALLY SIMILAR STATUTE OF ANOTHER STATE OR~~
8 ~~THE FEDERAL GOVERNMENT, OR IS FOUND BY CLEAR AND CONVINCING~~
9 ~~EVIDENCE IN A FACT-FINDING HEARING TO HAVE COMMITTED ACTS OF~~
10 ~~NONCONSENSUAL SEXUAL PENETRATION,~~ the court shall not award custody
11 to ~~the convicted~~ **THAT** biological parent. This subsection does not
12 apply to a conviction under section 520d(1)(a) of the Michigan
13 penal code, ~~Act No. 328 of the Public Acts of 1931, being section~~
14 ~~750.520d of the Michigan Compiled Laws. 1931 PA 328, MCL 750.520D.~~
15 This subsection does not apply if, after the date of the
16 conviction, the biological parents cohabit and establish a mutual
17 custodial environment for the child.

18 (3) AN OFFENDING PARENT IS NOT ENTITLED TO CUSTODY OF A CHILD
19 DESCRIBED IN SUBSECTION (2) WITHOUT THE CONSENT OF THAT CHILD'S
20 OTHER PARENT OR GUARDIAN.

21 (4) NOTWITHSTANDING OTHER PROVISIONS OF THIS ACT, SUBSECTION
22 (2) DOES NOT RELIEVE AN OFFENDING PARENT OF ANY SUPPORT OR
23 MAINTENANCE OBLIGATION TO THE CHILD. THE OTHER PARENT OR THE
24 GUARDIAN OF THE CHILD MAY DECLINE SUPPORT OR MAINTENANCE FROM THE
25 OFFENDING PARENT.

26 (5) A PARENT MAY ASSERT AN AFFIRMATIVE DEFENSE OF THE
27 PROVISIONS OF SUBSECTION (2) IN A PROCEEDING BROUGHT BY THE

1 OFFENDING PARENT REGARDING A CHILD DESCRIBED IN SUBSECTION (2).

2 (6) ~~(3)~~ Notwithstanding other provisions of this act, if an
3 individual is convicted of criminal sexual conduct as provided in
4 sections 520a to 520e and 520g of ~~Act No. 328 of the Public Acts of~~
5 ~~1931~~ **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A TO 750.520E**
6 **AND 750.520G**, and the victim is the individual's child, the court
7 shall not award custody of that child or a sibling of that child to
8 that individual, unless both the child's other parent and, if the
9 court considers the child or sibling to be of sufficient age to
10 express his or her desires, the child or sibling consent to the
11 custody.

12 (7) AS USED IN THIS SECTION:

13 (A) "FACT-FINDING HEARING" INCLUDES A BENCH TRIAL OR, IF
14 REQUESTED BY THE ACCUSED, A JURY TRIAL.

15 (B) "OFFENDING PARENT" MEANS A PARENT WHO HAS BEEN CONVICTED
16 OF CRIMINAL SEXUAL CONDUCT AS DESCRIBED IN SUBSECTION (2) OR WHO
17 HAS BEEN FOUND BY CLEAR AND CONVINCING EVIDENCE IN A FACT-FINDING
18 HEARING TO HAVE COMMITTED ACTS OF NONCONSENSUAL SEXUAL PENETRATION
19 AS DESCRIBED IN SUBSECTION (2).

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

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

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

8 (4) Notwithstanding other provisions of this act, if a
9 proceeding regarding parenting time involves a child who is
10 conceived as the result of acts for which 1 of the child's
11 biological parents is convicted of criminal sexual conduct as
12 provided in sections 520a to 520e and 520g of the Michigan penal
13 code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, **OR A**
14 **SUBSTANTIALLY SIMILAR STATUTE OF ANOTHER STATE OR THE FEDERAL**
15 **GOVERNMENT, OR IS FOUND BY CLEAR AND CONVINCING EVIDENCE IN A FACT-**
16 **FINDING HEARING TO HAVE COMMITTED ACTS OF NONCONSENSUAL SEXUAL**
17 **PENETRATION,** the court shall not grant parenting time to ~~the~~
18 ~~convicted~~**THAT** biological parent. This subsection does not apply to
19 a conviction under section 520d(1)(a) of the Michigan penal code,
20 1931 PA 328, MCL 750.520d. This subsection does not apply if, after
21 the date of the conviction, the biological parents cohabit and
22 establish a mutual custodial environment for the child.

23 **(5) A PARENT MAY ASSERT AN AFFIRMATIVE DEFENSE OF THE**
24 **PROVISIONS OF SUBSECTION (4) IN A PROCEEDING BROUGHT BY THE**
25 **OFFENDING PARENT REGARDING A CHILD DESCRIBED IN SUBSECTION (4).**

26 (6) ~~(5)~~ Notwithstanding other provisions of this act, if an
27 individual is convicted of criminal sexual conduct as provided in

1 sections 520a to 520e and 520g of the Michigan penal code, 1931 PA
2 328, MCL 750.520a to 750.520e and 750.520g, and the victim is the
3 individual's child, the court shall not grant parenting time with
4 that child or a sibling of that child to that individual, unless
5 both the child's other parent and, if the court considers the child
6 or sibling to be of sufficient age to express his or her desires,
7 the child or sibling consent to the parenting time.

8 (7) ~~(6)~~—The court may consider the following factors when
9 determining the frequency, duration, and type of parenting time to
10 be granted:

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

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

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

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

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

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

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

26 (h) The threatened or actual detention of the child with the
27 intent to retain or conceal the child from the other parent or from

1 a third person who has legal custody. A custodial parent's
2 temporary residence with the child in a domestic violence shelter
3 shall not be construed as evidence of the custodial parent's intent
4 to retain or conceal the child from the other parent.

5 (i) Any other relevant factors.

6 (8) ~~(7)~~—Parenting time shall be granted in specific terms if
7 requested by either party at any time.

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

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

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

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

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

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

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

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

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

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

1 (10) ~~(9)~~—Except as provided in this subsection, a parenting
2 time order shall contain a prohibition on exercising parenting time
3 in a country that is not a party to the Hague Convention on the
4 Civil Aspects of International Child Abduction. This subsection
5 does not apply if both parents provide the court with written
6 consent to allow a parent to exercise parenting time in a country
7 that is not a party to the Hague Convention on the Civil Aspects of
8 International Child Abduction.

9 (11) ~~(10)~~—During the time a child is with a parent to whom
10 parenting time has been awarded, that parent shall decide all
11 routine matters concerning the child.

12 (12) ~~(11)~~—Prior to entry of a temporary order, a parent may
13 seek an ex parte interim order concerning parenting time. If the
14 court enters an ex parte interim order concerning parenting time,
15 the party on whose motion the ex parte interim order is entered
16 shall have a true copy of the order served on the friend of the
17 court and the opposing party.

18 (13) ~~(12)~~—If the opposing party objects to the ex parte
19 interim order, he or she shall file with the clerk of the court
20 within 14 days after receiving notice of the order a written
21 objection to, or a motion to modify or rescind, the ex parte
22 interim order. The opposing party shall have a true copy of the
23 written objection or motion served on the friend of the court and
24 the party who obtained the ex parte interim order.

25 (14) ~~(13)~~—If the opposing party files a written objection to
26 the ex parte interim order, the friend of the court shall attempt
27 to resolve the dispute within 14 days after receiving it. If the

1 matter cannot be resolved, the friend of the court shall provide
2 the opposing party with a form motion and order with written
3 instructions for their use in modifying or rescinding the ex parte
4 order without assistance of counsel. If the opposing party wishes
5 to proceed without assistance of counsel, the friend of the court
6 shall schedule a hearing with the court that shall be held within
7 21 days after the filing of the motion. If the opposing party files
8 a motion to modify or rescind the ex parte interim order and
9 requests a hearing, the court shall resolve the dispute within 28
10 days after the hearing is requested.

11 (15) ~~(14)~~—An ex parte interim order issued under this section
12 shall contain the following notice:

13 NOTICE:

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

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

26 (16) ~~(15)~~—As provided in the servicemembers civil relief act,
27 50 USC 501 to 597b, if a motion for change of parenting time is

1 filed during the time a parent is on deployment, a parent may file
2 and the court shall entertain an application for stay. The court
3 shall presume that the best interests of the child are served by
4 not entering an order modifying or amending a previous judgment or
5 order, or issuing a new order, that changes the parenting time that
6 existed on the date the parent was called to deployment, unless the
7 contrary is established by clear and convincing evidence, at which
8 time the court may enter a temporary parenting time order. When a
9 temporary parenting time order is issued under this subsection, the
10 court may include a limit on the period of time that the temporary
11 parenting time order remains in effect. At any stage before final
12 judgment in the proceeding, the parent may file an application for
13 stay or otherwise request a stay of proceedings or file an
14 application for an extension of a stay. The parent and the
15 custodial child are not required to be present to consider the
16 application for stay or extension of a stay. The application for
17 stay or extension of a stay is sufficient if it is a signed,
18 written statement, certified to be true under penalty of perjury.
19 The same conditions for the initial stay apply to applications for
20 an extension of a stay.

21 (17) ~~(16)~~—The parent shall inform the court of the deployment
22 end date before or within 30 days after that deployment end date.
23 Upon notification of a parent's deployment end date, the court
24 shall reinstate the parenting time order in effect immediately
25 preceding that period of deployment. If a motion for change of
26 parenting time is filed after a parent returns from deployment, the
27 court shall not consider a parent's absence due to that deployment

1 in making a determination regarding change of parenting time.
2 Future deployments shall not be considered in making a best
3 interest of the child determination.

4 (18) ~~(17)~~—If the deploying parent and the other parent share
5 custody, the deploying parent must notify the other parent of an
6 upcoming deployment within a reasonable period of time.

7 (19) AS USED IN THIS SECTION:

8 (A) "FACT-FINDING HEARING" INCLUDES A BENCH TRIAL OR, IF
9 REQUESTED BY THE ACCUSED, A JURY TRIAL.

10 (B) "OFFENDING PARENT" MEANS A PARENT WHO HAS BEEN CONVICTED
11 OF CRIMINAL SEXUAL CONDUCT AS DESCRIBED IN SUBSECTION (4) OR WHO
12 HAS BEEN FOUND BY CLEAR AND CONVINCING EVIDENCE IN A FACT-FINDING
13 HEARING TO HAVE COMMITTED ACTS OF NONCONSENSUAL SEXUAL PENETRATION
14 AS DESCRIBED IN SUBSECTION (4).

15 Enacting section 1. This amendatory act takes effect 90 days
16 after the date it is enacted into law.