

HOUSE BILL No. 4481

April 21, 2015, Introduced by Reps. Lyons, Faris, Brinks, Hughes, Garcia, Crawford, Price, Hooker, Glenn, Cox, Heise, Webber, Guerra, Pscholka, Chatfield, LaVoy, Kelly, Love, Schor, Driskell, Pagan, Glardon, Santana and Franz and referred to the Committee on Criminal Justice.

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 2012 PA 600.

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
9 custody dispute involves a child who is conceived as the result of

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

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

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

25 (5) A PARENT MAY ASSERT AN AFFIRMATIVE DEFENSE OF THE
26 PROVISIONS OF SUBSECTION (2) IN A PROCEEDING BROUGHT BY THE
27 OFFENDING PARENT REGARDING A CHILD DESCRIBED IN SUBSECTION (2).

1 (6) ~~(3)~~ Notwithstanding other provisions of this act, if an
2 individual is convicted of criminal sexual conduct as provided in
3 sections 520a to 520e and 520g of ~~Act No. 328 of the Public Acts of~~
4 ~~1931~~ **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A TO 750.520E**
5 **AND 750.520G**, and the victim is the individual's child, the court
6 shall not award custody of that child or a sibling of that child to
7 that individual, unless both the child's other parent and, if the
8 court considers the child or sibling to be of sufficient age to
9 express his or her desires, the child or sibling consent to the
10 custody.

11 (7) **AS USED IN THIS SECTION, "OFFENDING PARENT" MEANS A PARENT**
12 **WHO HAS BEEN CONVICTED OF CRIMINAL SEXUAL CONDUCT AS DESCRIBED IN**
13 **SUBSECTION (2) OR WHO HAS BEEN FOUND BY CLEAR AND CONVINCING**
14 **EVIDENCE IN A FACT-FINDING HEARING TO HAVE COMMITTED ACTS OF**
15 **NONCONSENSUAL SEXUAL PENETRATION AS DESCRIBED IN SUBSECTION (2).**

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

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

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

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

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

22 (6) ~~(5)~~Notwithstanding other provisions of this act, if an
23 individual is convicted of criminal sexual conduct as provided in
24 sections 520a to 520e and 520g of the Michigan penal code, 1931 PA
25 328, MCL 750.520a to 750.520e and 750.520g, and the victim is the
26 individual's child, the court shall not grant parenting time with
27 that child or a sibling of that child to that individual, unless

1 both the child's other parent and, if the court considers the child
2 or sibling to be of sufficient age to express his or her desires,
3 the child or sibling consent to the parenting time.

4 (7) ~~(6)~~—The court may consider the following factors when
5 determining the frequency, duration, and type of parenting time to
6 be granted:

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

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

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

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

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

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

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

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

1 (i) Any other relevant factors.

2 (8) ~~(7)~~—Parenting time shall be granted in specific terms if
3 requested by either party at any time.

4 (9) ~~(8)~~—A parenting time order may contain any reasonable
5 terms or conditions that facilitate the orderly and meaningful
6 exercise of parenting time by a parent, including 1 or more of the
7 following:

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

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

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

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

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

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

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

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

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

24 (10) ~~(9)~~—Except as provided in this subsection, a parenting
25 time order shall contain a prohibition on exercising parenting time
26 in a country that is not a party to the Hague convention on the
27 civil aspects of international child abduction. This subsection

1 does not apply if both parents provide the court with written
2 consent to allow a parent to exercise parenting time in a country
3 that is not a party to the Hague convention on the civil aspects of
4 international child abduction.

5 (11) ~~(10)~~—During the time a child is with a parent to whom
6 parenting time has been awarded, that parent shall decide all
7 routine matters concerning the child.

8 (12) ~~(11)~~—Prior to entry of a temporary order, a parent may
9 seek an ex parte interim order concerning parenting time. If the
10 court enters an ex parte interim order concerning parenting time,
11 the party on whose motion the ex parte interim order is entered
12 shall have a true copy of the order served on the friend of the
13 court and the opposing party.

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

21 (14) ~~(13)~~—If the opposing party files a written objection to
22 the ex parte interim order, the friend of the court shall attempt
23 to resolve the dispute within 14 days after receiving it. If the
24 matter cannot be resolved, the friend of the court shall provide
25 the opposing party with a form motion and order with written
26 instructions for their use in modifying or rescinding the ex parte
27 order without assistance of counsel. If the opposing party wishes

1 to proceed without assistance of counsel, the friend of the court
2 shall schedule a hearing with the court that shall be held within
3 21 days after the filing of the motion. If the opposing party files
4 a motion to modify or rescind the ex parte interim order and
5 requests a hearing, the court shall resolve the dispute within 28
6 days after the hearing is requested.

7 (15) ~~(14)~~—An ex parte interim order issued under this section
8 shall contain the following notice:

9 NOTICE:

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

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

22 (16) AS USED IN THIS SECTION, "OFFENDING PARENT" MEANS A
23 PARENT WHO HAS BEEN CONVICTED OF CRIMINAL SEXUAL CONDUCT AS
24 DESCRIBED IN SUBSECTION (4) OR WHO HAS BEEN FOUND BY CLEAR AND
25 CONVINCING EVIDENCE IN A FACT-FINDING HEARING TO HAVE COMMITTED
26 ACTS OF NONCONSENSUAL SEXUAL PENETRATION AS DESCRIBED IN SUBSECTION
27 (4).

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