

HOUSE BILL No. 4020

January 8, 1997, Introduced by Rep. McNutt and referred to the Committee on Judiciary.

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending sections 4, 5, and 7a (MCL 722.24, 722.25, and
722.27a), sections 4 and 7a as amended by 1996 PA 19 and section
5 as amended by 1993 PA 259.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. In all actions ~~now pending or hereafter~~ filed in
2 ~~a~~ circuit court involving dispute of custody of a minor child,
3 the court shall declare the inherent rights of the child and
4 establish the rights and duties as to custody, support, and par-
5 enting time of the child in accordance with this act AND SECTION
6 7C OF THE PATERNITY ACT, 1956 PA 205, MCL 722.717C.

7 Sec. 5. (1) If a child custody dispute is between the
8 parents, between agencies, or between third persons, the best
9 interests of the child control. If the child custody dispute is

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

5 HOWEVER, IN THE CIRCUMSTANCES DESCRIBED IN SECTION 7C OF THE
6 PATERNITY ACT, 1956 PA 205, MCL 722.717C, THAT SECTION APPLIES.

7 (2) Notwithstanding other provisions of this act, if a child
8 custody dispute involves a child who is conceived as the result
9 of acts for which 1 of the child's biological parents is con-
10 victed of criminal sexual conduct as provided in sections 520a to
11 ~~520e and~~ 520g of the Michigan penal code, ~~Act No. 328 of the~~
12 ~~Public Acts of 1931, being sections 750.520a to 750.520e and~~
13 ~~750.520g of the Michigan Compiled Laws~~ 1931 PA 328, MCL 750.520A
14 TO 750.520G, the court shall not award custody to the convicted
15 biological parent. This subsection does not apply to a convic-
16 tion under section 520d(1)(a) of the Michigan penal code, ~~Act~~
17 ~~No. 328 of the Public Acts of 1931, being section 750.520d of the~~
18 ~~Michigan Compiled Laws~~ 1931 PA 328, MCL 750.520D. This subsec-
19 tion does not apply if, after the date of the conviction, the
20 biological parents cohabit and establish a mutual custodial envi-
21 ronment for the child.

22 (3) 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 ~~Act No. 328 of the Public~~
25 ~~Acts of 1931~~ THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A
26 TO 750.520G, and the victim is the individual's child, the court
27 shall not award custody of that child or a sibling of that child

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

5 Sec. 7a. (1) Parenting time shall be granted in accordance
6 with the best interests of the child. It is presumed to be in
7 the best interests of a child for the child to have a strong
8 relationship with both of his or her parents. Except as other-
9 wise provided in this section, parenting time shall be granted to
10 a parent in a frequency, duration, and type reasonably calculated
11 to promote a strong relationship between the child and the parent
12 granted parenting time. IN THE CIRCUMSTANCES DESCRIBED IN SEC-
13 TION 7C OF THE PATERNITY ACT, 1956 PA 205, MCL 722.717C, THAT
14 SECTION APPLIES.

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

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

24 (4) Notwithstanding other provisions of this act, if a pro-
25 ceeding regarding parenting time involves a child who is con-
26 ceived as the result of acts for which 1 of the child's
27 biological parents is convicted of criminal sexual conduct as

1 provided in sections 520a to ~~520e and~~ 520g of the Michigan
2 penal code, ~~Act No. 328 of the Public Acts of 1931, being~~
3 ~~sections 750.520a to 750.520e and 750.520g of the Michigan~~
4 ~~Compiled Laws~~ 1931 PA 328, MCL 750.520A TO 750.520G, the court
5 shall not grant parenting time to the convicted biological
6 parent. This subsection does not apply to a conviction under
7 section 520d(1)(a) of ~~Act No. 328 of the Public Acts of 1931,~~
8 ~~being section 750.520d of the Michigan Compiled Laws~~ THE
9 MICHIGAN PENAL CODE, MCL 750.520A TO 750.520G. This subsection
10 does not apply if, after the date of the conviction, the biologi-
11 cal parents cohabit and establish a mutual custodial environment
12 for the child.

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

23 (6) The court may consider the following factors when deter-
24 mining the frequency, duration, and type of parenting time to be
25 granted:

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

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

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

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

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

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

12 (g) Whether a parent has frequently failed to exercise rea-
13 sonable parenting time.

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

20 (i) Any other relevant factors.

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

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

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

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

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

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

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

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

11 (g) Requirements that a party post a bond to assure compli-
12 ance with a parenting time order.

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

15 (i) Any other reasonable condition determined to be appro-
16 priate in the particular case.

17 (9) During the time a child is with a parent to whom parent-
18 ing time has been awarded, that parent shall decide all routine
19 matters concerning the child.

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

26 (11) If the opposing party objects to the ex parte interim
27 order, he or she shall file with the clerk of the court within 14

1 days after receiving notice of the order a written objection to,
2 or a motion to modify or rescind, the ex parte interim order.
3 The opposing party shall have a true copy of the written objec-
4 tion or motion served on the friend of the court and the party
5 who obtained the ex parte interim order.

6 (12) If the opposing party files a written objection to the
7 ex parte interim order, the friend of the court shall attempt to
8 resolve the dispute within 14 days after receiving it. If the
9 matter cannot be resolved, the friend of the court shall provide
10 the opposing party with a form motion and order with written
11 instructions for their use in modifying or rescinding the ex
12 parte order without assistance of counsel. If the opposing party
13 wishes to proceed without assistance of counsel, the friend of
14 the court shall schedule a hearing with the court that shall be
15 held within 21 days after the filing of the motion. If the
16 opposing party files a motion to modify or rescind the ex parte
17 interim order and requests a hearing, the court shall resolve the
18 dispute within 28 days after the hearing is requested.

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

21 NOTICE:

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

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

7 Enacting section 1. This amendatory act does not take
8 effect unless Senate Bill No. _____ or House Bill No. _____
9 (request no. 00080'97) of the 89th Legislature is enacted into
10 law.