

# HOUSE BILL No. 4664

April 24, 2001, Introduced by Reps. Raczkowski and Vear and referred to the Committee on Civil Law and the Judiciary.

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

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 6a. (1) In A custody ~~disputes~~ DISPUTE between par-  
2   ents, ~~the parents shall be advised of joint custody. At the~~  
3   request of either parent, the court shall consider an award of  
4   joint custody, and shall state on the record the reasons for  
5   granting or denying a request. ~~In other cases joint custody may~~  
6   be considered by the court. THERE IS A PRESUMPTION THAT IT IS IN  
7   THE CHILD'S BEST INTERESTS FOR THE PARENTS TO BE AWARDED BOTH  
8   JOINT LEGAL AND JOINT PHYSICAL CUSTODY. THIS PRESUMPTION MAY BE  
9   REBUTTED ONLY AS PROVIDED IN SUBSECTION (3). IF THE COURT FINDS  
10   THAT THE PRESUMPTION HAS BEEN REBUTTED AS PROVIDED IN  
11   SUBSECTION (3) AND DOES NOT AWARD A CHILD'S PARENTS BOTH JOINT

1 LEGAL AND JOINT PHYSICAL CUSTODY, THE COURT SHALL STATE ON THE  
2 RECORD THE REASONS THE COURT DID NOT AWARD EITHER JOINT LEGAL OR  
3 JOINT PHYSICAL CUSTODY.

4 (2) IN A CUSTODY DISPUTE BETWEEN A PARENT AND 1 OR MORE  
5 THIRD PERSONS, OR BETWEEN THIRD PERSONS, THE COURT SHALL CONSIDER  
6 AWARDING JOINT LEGAL AND JOINT PHYSICAL CUSTODY.

7 (3) The court shall determine whether joint LEGAL AND JOINT  
8 PHYSICAL custody is in the best ~~interest~~ INTERESTS of the child  
9 by considering the following factors:

10 (a) The factors enumerated in section 3. IF A PARENT  
11 ATTEMPTS TO REBUT THE PRESUMPTION OF JOINT LEGAL AND JOINT PHYSI-  
12 CAL CUSTODY UNDER SUBSECTION (1), THE COURT SHALL PRESUME EACH  
13 FACTOR WEIGHS EVENLY FOR BOTH PARENTS UNLESS PROVEN OTHERWISE BY  
14 CLEAR AND CONVINCING EVIDENCE.

15 (b) Whether the parents, AND THIRD PERSONS, IF ANY, will be  
16 able to cooperate and generally agree concerning important deci-  
17 sions affecting the welfare of the child. IF 1 PARTY IS UNWILL-  
18 ING TO COOPERATE WITH THE OTHER PARTY OR PARTIES IN TERMS OF PAR-  
19 ENTING DECISIONS AND MATERIAL ISSUES AFFECTING THE CHILD'S WEL-  
20 FARE, FOR NO OR LITTLE MERITORIOUS REASON, THEN THE COURT SHALL  
21 CONSIDER AWARDING SOLE LEGAL AND PHYSICAL CUSTODY TO THE PARTY  
22 WHO IS MORE INCLINED TO BE WILLING TO COOPERATE.

23 (4) ~~(2)~~ If ~~the~~ A CHILD'S parents agree on joint custody,  
24 the court shall award joint LEGAL AND JOINT PHYSICAL custody  
25 unless the court determines on the record, based upon clear and  
26 convincing evidence, that joint LEGAL AND JOINT PHYSICAL custody  
27 is not in the best interests of the child.

1       (5) ~~-(3)-~~ If the court awards joint LEGAL AND JOINT PHYSICAL  
2 custody, the court ~~may~~ SHALL include in its award a statement  
3 regarding when the child shall reside with each parent, ~~or may~~  
4 ~~provide that physical custody be shared by the parents in a~~  
5 ~~manner to assure the child continuing contact with both parents~~  
6 AND WITH EACH THIRD PERSON, IF ANY. THE STATEMENT REGARDING THE  
7 CHILD'S RESIDENTIAL SCHEDULE SHALL CONFORM TO THE DEFINITION OF  
8 JOINT PHYSICAL CUSTODY.

9       (6) ~~-(4)-~~ During the time a child resides with a parent,  
10 that parent shall decide all routine matters concerning the  
11 child.

12       (7) ~~-(5)-~~ If there is a dispute regarding residency, the  
13 court shall state the basis for a residency award on the record  
14 or in writing.

15       (8) ~~-(6)-~~ Joint LEGAL AND JOINT PHYSICAL custody ~~shall~~  
16 DOES not eliminate the responsibility for child support. Each  
17 parent ~~shall be~~ IS responsible for child support based on the  
18 needs of the child and the actual resources of each parent. If a  
19 parent would otherwise be unable to maintain adequate housing for  
20 the child and the other parent has sufficient resources, the  
21 court may order modified support payments for a portion of hous-  
22 ing expenses even during a period when the child is not residing  
23 in the home of the parent receiving support. HOWEVER, THE COURT  
24 SHALL NOT MODIFY SUPPORT PAYMENTS BASED ON HOUSING EXPENSES  
25 UNLESS THE PARENT RECEIVING THE SUPPORT PROVES BY CLEAR AND CON-  
26 VINCING EVIDENCE THAT HE OR SHE IS INITIATING AGGRESSIVE MEANS TO  
27 ALLEVIATE THE FINANCIALLY UNEQUAL STATUS. An order of joint LEGAL

1 AND JOINT PHYSICAL custody, in and of itself, ~~shall~~ DOES not  
2 constitute grounds for modifying a support order.

3 (9) ~~(7)~~ As used in this section: ~~—, "joint~~

4 (A) "JOINT LEGAL custody" means an order of the court in  
5 which ~~1 or both of the following is specified: (a) That the~~  
6 ~~child shall reside alternately for specific periods with each of~~  
7 ~~the parents. (b) That~~ THE COURT SPECIFIES THAT the parents, AND  
8 THIRD PERSONS, IF ANY, shall share decision-making authority as  
9 to the important decisions affecting the welfare of the child.

10 (B) "JOINT PHYSICAL CUSTODY" MEANS AN ORDER OF THE COURT IN  
11 WHICH THE COURT SPECIFIES THAT THE CHILD SHALL RESIDE ALTERNATELY  
12 FOR SPECIFIC AND SUBSTANTIALLY EQUAL PERIODS OF TIME WITH EACH  
13 PARENT, AND WITH EACH THIRD PERSON, IF ANY.

14 (10) THIS SECTION SHALL BE STRICTLY INTERPRETED.