

# SENATE BILL No. 1312

September 25, 2012, Introduced by Senator JONES and referred to the Committee on Judiciary.

A bill to amend 1970 PA 91, entitled "Child custody act of 1970," by amending sections 2, 3, 4, 5, 6a, 7, 7a, and 7b (MCL 722.22, 722.23, 722.24, 722.25, 722.26a, 722.27, 722.27a, and 722.27b), section 2 as amended by 2005 PA 327, sections 3 and 5 as amended by 1993 PA 259, section 4 as amended by 1998 PA 482, section 6a as added by 1980 PA 434, section 7 as amended by 2005 PA 328, section 7a as amended by 1996 PA 19, and section 7b as amended by 2009 PA 237, and by adding sections 3a and 6f.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 2. As used in this act:

2           (A) "ABANDONMENT" MEANS THE PERSON RESPONSIBLE FOR THE CHILD'S  
3 HEALTH AND WELFARE LEAVES THE CHILD WITH AN AGENCY, PERSON, OR  
4 OTHER ENTITY THAT IS UNABLE OR UNWILLING TO ASSUME RESPONSIBILITY

1 FOR THE CHILD. ABANDONMENT INCLUDES WHEN A PARENT, HAVING THE  
2 ABILITY TO VISIT, CONTACT, OR COMMUNICATE WITH THE CHILD, HAS  
3 REGULARLY AND SUBSTANTIALLY FAILED OR NEGLECTED, WITHOUT GOOD  
4 CAUSE, TO DO SO FOR A PERIOD OF 1 YEAR OR MORE BEFORE THE FILING OF  
5 A PETITION UNDER THIS ACT.

6 (B) ~~(a)~~—"Active military duty" means when a reserve unit  
7 member or national guard unit member is called into active military  
8 duty.

9 (C) ~~(b)~~—"Agency" means a legally authorized public or private  
10 organization, or governmental unit or official, whether of this  
11 state or of another state or country, concerned in the welfare of  
12 minor children, including a licensed child placement agency.

13 (D) ~~(e)~~—"Attorney" means, if appointed to represent a child  
14 under this act, an attorney serving as the child's legal advocate  
15 in a traditional attorney-client relationship with the child, as  
16 governed by the Michigan rules of professional conduct. An attorney  
17 defined under this subdivision owes the same duties of undivided  
18 loyalty, confidentiality, and zealous representation of the child's  
19 expressed wishes as the attorney would to an adult client.

20 (E) ~~(d)~~—"Child" means minor child and children. Subject to  
21 section 5b of the support and parenting time enforcement act, 1982  
22 PA 295, MCL 552.605b, for purposes of providing support, child  
23 includes a child and children who have reached 18 years of age.

24 (F) "CHILD ABUSE", "CHILD NEGLECT", AND "SEXUAL ABUSE" MEAN  
25 THOSE TERMS AS DEFINED IN SECTION 2 OF THE CHILD PROTECTION LAW,  
26 1975 PA 238, MCL 722.622.

27 (G) "DOMESTIC VIOLENCE" MEANS THAT TERM AS DEFINED IN SECTION

1 1 OF 1978 PA 389, MCL 400.1501.

2 (H) "EMOTIONAL ABUSE" MEANS AN INJURY TO THE CHILD'S MENTAL  
3 CONDITION OR WELFARE THAT IS NOT NECESSARILY PERMANENT BUT RESULTS  
4 IN SUBSTANTIAL AND PROTRACTED, VISIBLY DEMONSTRABLE MANIFESTATIONS  
5 OF MENTAL DISTRESS.

6 (I) ~~(e)~~—"Grandparent" means a natural or adoptive parent of a  
7 child's natural or adoptive parent.

8 (J) ~~(f)~~—"Guardian ad litem" means an individual whom the court  
9 appoints to assist the court in determining the child's best  
10 interests. A guardian ad litem does not need to be an attorney.

11 (K) ~~(g)~~—"Lawyer-guardian ad litem" means an attorney appointed  
12 under section 4. A lawyer-guardian ad litem represents the child,  
13 and has the powers and duties, as set forth in section 4.

14 (L) "MALTREATMENT" MEANS THE TREATMENT OF A CHILD THAT INVOLVES  
15 CRUELTY OR SUFFERING THAT A REASONABLE PERSON WOULD RECOGNIZE AS  
16 EXCESSIVE.

17 (M) "MEDICAL NEGLECT" MEANS FAILURE TO SEEK, OBTAIN, OR FOLLOW  
18 THROUGH WITH MEDICAL CARE FOR THE CHILD, WITH THE FAILURE RESULTING  
19 IN OR PRESENTING SUBSTANTIAL RISK OF DEATH, DISFIGUREMENT, OR  
20 BODILY HARM OR WITH THE FAILURE RESULTING IN AN OBSERVABLE AND  
21 MATERIAL IMPAIRMENT TO THE GROWTH, DEVELOPMENT, OR FUNCTIONING OF  
22 THE CHILD. MEDICAL NEGLECT INCLUDES FAILURE TO OBTAIN AND MAINTAIN  
23 HEALTH CARE COVERAGE FOR THE CHILD IF ORDERED TO DO SO BY THE  
24 COURT.

25 (N) "MENTAL INJURY" MEANS A PSYCHOLOGICAL CONDITION THAT IS  
26 DIAGNOSED BY A MENTAL HEALTH PROFESSIONAL AND IS CAUSED BY PHYSICAL  
27 OR VERBAL ACTS, OMISSIONS, INCLUDING THE DENIAL OF APPROPRIATE

1 TREATMENT, OR MAINTAINING AN ENVIRONMENT BY THE PERSON RESPONSIBLE  
2 FOR THE CHILD'S HEALTH AND WELFARE THAT RENDERS THE CHILD  
3 CHRONICALLY ANXIOUS, AGITATED, DEPRESSED, SOCIALLY WITHDRAWN, OR  
4 PSYCHOTIC, CAUSES AN UNREASONABLE FEAR THAT THE CHILD'S LIFE OR  
5 SAFETY OR THE LIFE OR SAFETY OF ANOTHER FAMILY MEMBER IS  
6 THREATENED, OR CHRONICALLY INTERFERES WITH THE CHILD'S ABILITY TO  
7 ACCOMPLISH AGE-APPROPRIATE MILESTONES.

8 (O) ~~(h)~~—"Parent" means the natural or adoptive parent of a  
9 child.

10 (P) ~~(i)~~—"State disbursement unit" or "SDU" means the entity  
11 established in section 6 of the office of child support act, 1971  
12 PA 174, MCL 400.236.

13 (Q) ~~(j)~~—"Third person" means an individual other than a  
14 parent.

15 Sec. 3. As used in this act, "best interests of the child"  
16 means the sum total of the following factors to be considered,  
17 evaluated, and determined by the court **IN BOTH CUSTODY AND**  
18 **PARENTING TIME DISPUTES:**

19 (A) **CHILD ABUSE OR CHILD NEGLECT, INCLUDING, BUT NOT LIMITED**  
20 **TO, 1 OR MORE OF THE FOLLOWING:**

21 (i) **PHYSICAL ABUSE. NONACCIDENTAL INJURY TO A CHILD BY THE**  
22 **PERSON RESPONSIBLE FOR THE CHILD'S HEALTH AND WELFARE.**

23 (ii) **SEXUAL ABUSE.**

24 (iii) **MALTREATMENT.**

25 (iv) **MENTAL INJURY.**

26 (v) **ABANDONMENT.**

27 (vi) **EMOTIONAL ABUSE.**

1           (vii) **MEDICAL NEGLECT.**

2           (B) ~~(a)~~—The love, affection, and other emotional ties existing  
3 between the parties involved and the child.

4           (C) ~~(b)~~—The capacity and disposition of the parties involved  
5 to give the child love, affection, and guidance and to continue the  
6 education and raising of the child in his or her religion or creed,  
7 if any.

8           (D) ~~(c)~~—The capacity and disposition of the parties involved  
9 to provide the child with food, clothing, medical care or other  
10 remedial care recognized and permitted under the laws of this state  
11 in place of medical care, and other material needs.

12           (E) ~~(d)~~—The length of time the child has lived in a stable,  
13 satisfactory environment, and the desirability of maintaining  
14 continuity.

15           (F) ~~(e)~~—The permanence, as a family unit, of the existing or  
16 proposed custodial home or homes.

17           (G) ~~(f)~~—The moral fitness of the parties involved.

18           (H) ~~(g)~~—The mental and physical health of the parties  
19 involved.

20           (I) ~~(h)~~—The home, school, and community record of the child.

21           (J) ~~(i)~~—The reasonable preference of the child, if the court  
22 considers the child to be of sufficient age to express preference.

23           (K) ~~(j)~~—The willingness and ability of each of the parties to  
24 facilitate and encourage a close and continuing parent-child  
25 relationship between the child and the other parent or the child  
26 and the parents. **THIS SUBDIVISION DOES NOT APPLY IF DOMESTIC**  
27 **VIOLENCE IS PRESENT.**

1           (l) ~~(k)~~ Domestic violence, regardless of whether the violence  
2 was directed against or witnessed by the child.

3           (M) PATTERNS OF BEHAVIOR, INCLUDING, BUT NOT LIMITED TO,  
4 DOMESTIC VIOLENCE OR CHILD ABUSE.

5           (N) ~~(l)~~ Any other factor considered by the court to be relevant  
6 to a particular child custody dispute.

7           SEC. 3A. (1) IF AN INDIVIDUAL WHO IS 18 OR OVER RESIDES WITH  
8 ANY PARTY TO A CUSTODY ACTION OR PARENTING TIME DISPUTE, THE COURT  
9 SHALL APPLY THE BEST INTEREST OF THE CHILD DETERMINATION TO THAT  
10 INDIVIDUAL AS WELL AS TO THE PARTIES OF THE DISPUTE.

11           (2) IF THE COURT DETERMINES THAT AN INDIVIDUAL DESCRIBED IN  
12 SUBSECTION (1) IS UNFIT IN ACCORDANCE WITH THE BEST INTEREST OF THE  
13 CHILD FACTORS, THAT INDIVIDUAL MUST COMPLY WITH ALL TREATMENT  
14 REQUIRED BY THE COURT AS IF THAT INDIVIDUAL WERE A PARTY TO THE  
15 ACTION. IF THAT INDIVIDUAL REFUSES TO COMPLY, THE COURT SHALL ORDER  
16 SUPERVISED VISITS WHEN THE INDIVIDUAL IS PRESENT.

17           (3) IF THE PARENT WITH WHOM THE INDIVIDUAL DESCRIBED IN  
18 SUBSECTION (1) RESIDES DOES NOT COMPLY WITH A COURT ORDER UNDER  
19 THIS SECTION, THE COURT SHALL ORDER SUPERVISED VISITS FOR THAT  
20 PARENT WITH THE CHILD UNTIL ALL THE CONDITIONS OF AN ORDER UNDER  
21 THIS SECTION ARE MET.

22           Sec. 4. (1) In all actions involving dispute of a minor  
23 child's custody, the court shall declare the child's inherent  
24 rights and establish the rights and duties as to the child's  
25 custody, support, and parenting time in accordance with this act.

26           (2) If, at any time in the proceeding, the court determines  
27 that the child's best interests are inadequately represented, the

1 court ~~may~~**SHALL** appoint a lawyer-guardian ad litem to represent the  
2 child. A lawyer-guardian ad litem represents the child and has  
3 powers and duties in relation to that representation as set forth  
4 in section 17d of chapter XIIIA of 1939 PA 288, MCL 712A.17d. All  
5 provisions of section 17d of chapter XIIIA of 1939 PA 288, MCL  
6 712A.17d, apply to a lawyer-guardian ad litem appointed under this  
7 act.

8 (3) In a proceeding in which a lawyer-guardian ad litem  
9 represents a child, he or she may file a written report and  
10 recommendation. The court may read the report and recommendation.  
11 The court shall not, however, admit the report and recommendation  
12 into evidence unless all parties stipulate the admission. The  
13 parties may make use of the report and recommendation for purposes  
14 of a settlement conference.

15 (4) After a determination of ability to pay, the court may  
16 assess all or part of the costs and reasonable fees of the lawyer-  
17 guardian ad litem against 1 or more of the parties involved in the  
18 proceedings or against the money allocated from marriage license  
19 fees for family counseling services under section 3 of 1887 PA 128,  
20 MCL 551.103. A lawyer-guardian ad litem appointed under this  
21 section shall not be paid a fee unless the court first receives and  
22 approves the fee.

23 Sec. 5. (1) If a child custody dispute is between the parents,  
24 between agencies, or between third persons, the best interests of  
25 the child control. If the child custody dispute is between the  
26 parent or parents and an agency or a third person, the court shall  
27 presume that the best interests of the child are served by awarding

1 custody to the parent or parents, unless the contrary is  
2 established by clear and convincing evidence.

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

17 (3) Notwithstanding other provisions of this act, if an  
18 individual is convicted of criminal sexual conduct ~~as provided in~~  
19 **UNDER** sections 520a to 520e and 520g of ~~Act No. 328 of the Public~~  
20 ~~Acts of 1931~~ **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A TO**  
21 **750.520E AND 750.520G**, and the victim is the individual's child,  
22 the court shall not award custody of ~~that~~ **THE** child or a sibling of  
23 ~~that~~ **THE** child to ~~that~~ **THE** individual, unless both the child's  
24 other parent and, if the court considers the child or sibling to be  
25 of sufficient age to express his or her desires, the child or  
26 sibling consent to the custody.

27 (4) **IN CONSIDERING, EVALUATING, AND DETERMINING THE BEST**



1 INTERESTS OF THE CHILD WHEN MAKING A DECISION REGARDING CUSTODY, IF  
2 THE COURT DETERMINES THAT A PARENT HAS SEXUALLY, PHYSICALLY,  
3 MENTALLY, OR EMOTIONALLY ABUSED THE CHILD, THE COURT SHALL GIVE  
4 ADDITIONAL WEIGHT TO THAT FACT AND TO THE FACTORS UNDER SECTION  
5 3(G), (J), AND (I).

6 Sec. 6a. (1) In custody disputes between parents, the parents  
7 shall be advised of joint custody. At the request of either parent,  
8 the court shall consider an award of joint custody, and shall state  
9 on the record the reasons for granting or denying a request. In  
10 other cases joint custody may be considered by the court. The court  
11 shall determine whether joint custody is in the best interest of  
12 the child by considering the following factors:

13 (a) The factors enumerated in section 3.

14 (b) Whether the parents will be able to cooperate and  
15 generally agree concerning important decisions affecting the  
16 welfare of the child.

17 (C) WHETHER DOMESTIC VIOLENCE HAS OCCURRED.

18 (2) If the parents agree on joint custody, the court shall  
19 award joint custody unless the court determines on the record,  
20 based upon clear and convincing evidence, that joint custody is not  
21 in the best interests of the child. **IF THE COURT DETERMINES THAT**  
22 **DOMESTIC VIOLENCE HAS OCCURRED, THE COURT SHALL MAKE A**  
23 **DETERMINATION THAT IT IS NOT IN THE CHILD'S BEST INTEREST TO AWARD**  
24 **SOLE CUSTODY, JOINT CUSTODY, OR PHYSICAL CUSTODY TO THE PERPETRATOR**  
25 **OF THE DOMESTIC VIOLENCE.**

26 (3) If the court awards joint custody, the court may include  
27 in its award a statement regarding when the child shall reside with

1 each parent, or may provide that physical custody be shared by the  
2 parents in a manner to assure the child continuing contact with  
3 both parents.

4 (4) During the time a child resides with a parent, that parent  
5 shall decide all routine matters concerning the child.

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

8 (6) Joint custody shall not eliminate the responsibility for  
9 child support. Each parent shall be responsible for child support  
10 based on the needs of the child and the actual resources of each  
11 parent. If a parent would otherwise be unable to maintain adequate  
12 housing for the child and the other parent has sufficient  
13 resources, the court may order modified support payments for a  
14 portion of housing expenses even during a period when the child is  
15 not residing in the home of the parent receiving support. An order  
16 of joint custody, in and of itself, shall not constitute grounds  
17 for modifying a support order.

18 (7) As used in this section, "joint custody" means an order of  
19 the court in which 1 or both of the following is specified:

20 (a) That the child shall reside alternately for specific  
21 periods with each of the parents.

22 (b) That the parents shall share decision-making authority as  
23 to the important decisions affecting the welfare of the child.

24 **SEC. 6F. (1) IN A CHILD CUSTODY OR PARENTING TIME DISPUTE, THE**  
25 **COURT MAY INTERVIEW THE CHILD PRIVATELY TO DETERMINE IF THE CHILD**  
26 **IS OF SUFFICIENT AGE TO EXPRESS A PREFERENCE REGARDING CUSTODY OR**  
27 **PARENTING TIME, AND, IF SO, THE REASONABLE PREFERENCE OF THE CHILD.**

1 THE COURT SHALL FOCUS THE INTERVIEW ON THESE DETERMINATIONS, AND  
2 THE INFORMATION RECEIVED SHALL BE APPLIED ONLY TO THE REASONABLE  
3 PREFERENCE FACTOR.

4 (2) IF A COURT IN A CHILD CUSTODY OR PARENTING TIME DISPUTE  
5 ALLOWS THE TESTIMONY OF THE CHILD TO BE TAKEN IN COURT AND THE  
6 CHILD IS UNDER THE AGE OF 16 YEARS OLD, ALL OF THE FOLLOWING  
7 PROCEDURES APPLY:

8 (A) IF PERTINENT, THE WITNESS SHALL BE PERMITTED THE USE OF  
9 DOLLS OR MANNEQUINS, INCLUDING, ANATOMICALLY CORRECT DOLLS OR  
10 MANNEQUINS, TO ASSIST THE WITNESS IN TESTIFYING ON DIRECT AND  
11 CROSS-EXAMINATION.

12 (B) THE WITNESS SHALL BE PERMITTED TO HAVE A NAMED SUPPORT  
13 PERSON SIT WITH, ACCOMPANY, OR BE IN CLOSE PROXIMITY TO THE WITNESS  
14 DURING HIS OR HER TESTIMONY. A NOTICE OF INTENT TO USE A NAMED  
15 SUPPORT PERSON SHALL NAME THE SUPPORT PERSON, IDENTIFY THE  
16 RELATIONSHIP THE SUPPORT PERSON HAS WITH THE WITNESS, AND GIVE  
17 NOTICE TO ALL PARTIES TO THE PROCEEDING THAT THE WITNESS MAY  
18 REQUEST THAT THE NAMED SUPPORT PERSON SIT WITH THE WITNESS WHEN THE  
19 WITNESS IS CALLED UPON TO TESTIFY DURING ANY STAGE OF THE  
20 PROCEEDING. THE NOTICE OF INTENT TO USE A NAMED SUPPORT PERSON  
21 SHALL BE FILED WITH THE COURT AND SHALL BE SERVED UPON ALL PARTIES  
22 TO THE PROCEEDING. THE COURT SHALL RULE ON A MOTION OBJECTING TO  
23 THE USE OF A NAMED SUPPORT PERSON BEFORE THE DATE ON WHICH THE  
24 WITNESS DESIRES TO USE THE NAMED SUPPORT PERSON.

25 (C) IF, ON THE MOTION OF A PARTY MADE BEFORE A HEARING, THE  
26 COURT FINDS ON THE RECORD THAT THE SPECIAL ARRANGEMENTS SPECIFIED  
27 IN SUBDIVISION (D) ARE NECESSARY TO PROTECT THE WELFARE OF THE

1 WITNESS, THE COURT SHALL ORDER THOSE SPECIAL ARRANGEMENTS. IN  
2 DETERMINING WHETHER IT IS NECESSARY TO PROTECT THE WELFARE OF THE  
3 WITNESS, THE COURT SHALL CONSIDER ALL OF THE FOLLOWING:

4 (i) THE AGE OF THE WITNESS.

5 (ii) THE NATURE OF THE CONDUCT THAT WILL BE THE SUBJECT OF THE  
6 TESTIMONY.

7 (iii) THE DESIRE OF THE WITNESS OR THE WITNESS'S PARENT,  
8 GUARDIAN, OR OTHER PARTY TO THE ACTION TO HAVE THE TESTIMONY TAKEN  
9 IN A ROOM CLOSED TO THE PUBLIC.

10 (D) IF THE COURT DETERMINES ON THE RECORD UNDER SUBDIVISION  
11 (C) THAT IT IS NECESSARY TO PROTECT THE WELFARE OF THE WITNESS, THE  
12 COURT MAY ORDER BOTH OF THE FOLLOWING:

13 (i) THAT ALL PERSONS NOT NECESSARY TO THE PROCEEDING BE  
14 EXCLUDED FROM THE COURTROOM DURING THE WITNESS'S TESTIMONY.

15 (ii) TO PROTECT THE WITNESS FROM DIRECTLY VIEWING THE  
16 DEFENDANT, THAT THE COURTROOM BE ARRANGED SO THAT A PARTY IS SEATED  
17 AS FAR FROM THE WITNESS STAND AS IS REASONABLE AND NOT DIRECTLY IN  
18 FRONT OF THE WITNESS STAND. THE PARTY'S POSITION SHALL BE LOCATED  
19 IN A MANNER THAT ALLOWS THE PARTY TO HEAR AND SEE THE WITNESS AND  
20 BE ABLE TO COMMUNICATE WITH HIS OR HER ATTORNEY.

21 (E) IF, ON THE MOTION OF A PARTY OR ON THE COURT'S OWN MOTION,  
22 THE COURT FINDS ON THE RECORD THAT THE WITNESS IS OR WILL BE  
23 PSYCHOLOGICALLY OR EMOTIONALLY UNABLE TO TESTIFY AT A COURT  
24 PROCEEDING EVEN WITH THE BENEFIT OF THE PROTECTIONS AFFORDED THE  
25 WITNESS UNDER SUBDIVISIONS (A) TO (D), THE COURT SHALL ORDER THAT A  
26 DEPOSITION OF THE WITNESS'S TESTIMONY BE TAKEN TO BE ADMITTED INTO  
27 EVIDENCE INSTEAD OF THE WITNESS'S LIVE TESTIMONY. THE COURT MAY

1 IMPOSE RESTRICTIONS ON A DEPOSITION UNDER THIS SUBDIVISION THAT THE  
2 COURT DETERMINES ARE NECESSARY TO PROTECT THE WITNESS.

3 (F) ANY OTHER PROTECTIONS OR PROCEDURES AFFORDED TO THE  
4 WITNESS BY LAW OR COURT RULE.

5 Sec. 7. (1) If a child custody dispute has been submitted to  
6 the circuit court as an original action under this act or has  
7 arisen incidentally from another action in the circuit court or an  
8 order or judgment of the circuit court, for the best interests of  
9 the child the court may do 1 or more of the following:

10 (a) Award the custody of the child to 1 or more of the parties  
11 involved or to others and provide for payment of support for the  
12 child, until the child reaches 18 years of age. Subject to section  
13 5b of the support and parenting time enforcement act, 1982 PA 295,  
14 MCL 552.605b, the court may also order support as provided in this  
15 section for a child after he or she reaches 18 years of age. The  
16 court may require that support payments shall be made through the  
17 friend of the court, court clerk, or state disbursement unit.

18 (b) Provide for reasonable parenting time of the child by the  
19 parties involved, by the maternal or paternal grandparents, or by  
20 others, by general or specific terms and conditions. Parenting time  
21 of the child by the parents is governed by section 7a.

22 (c) Modify or amend its previous judgments or orders for  
23 proper cause shown or because of change of circumstances until the  
24 child reaches 18 years of age and, subject to section 5b of the  
25 support and parenting time enforcement act, 1982 PA 295, MCL  
26 552.605b, until the child reaches 19 years and 6 months of age.

27 BEFORE THE COURT MODIFIES OR AMENDS A PREVIOUS JUDGMENT OR ORDER,

1 **THE MOVING PARTY MUST PROVE THAT A CHANGE OF CIRCUMSTANCE HAS**  
2 **OCCURRED.** The court shall not modify or amend its previous  
3 judgments or orders or issue a new order so as to change the  
4 established custodial environment of a child unless there is  
5 presented clear and convincing evidence that it is in the best  
6 interest of the child. The custodial environment of a child is  
7 established if over an appreciable time the child naturally looks  
8 to the custodian in that environment for guidance, discipline, the  
9 necessities of life, and parental comfort. The age of the child,  
10 the physical environment, and the inclination of the custodian and  
11 the child as to permanency of the relationship shall also be  
12 considered. If a motion for change of custody is filed during the  
13 time a parent is in active military duty, the court shall not enter  
14 an order modifying or amending a previous judgment or order, or  
15 issue a new order, that changes the child's placement that existed  
16 on the date the parent was called to active military duty, except  
17 the court may enter a temporary custody order if there is clear and  
18 convincing evidence that it is in the best interest of the child.  
19 Upon a parent's return from active military duty, the court shall  
20 reinstate the custody order in effect immediately preceding that  
21 period of active military duty. If a motion for change of custody  
22 is filed after a parent returns from active military duty, the  
23 court shall not consider a parent's absence due to that military  
24 duty in a best interest of the child determination.

25 (d) Utilize a guardian ad litem or the community resources in  
26 behavioral sciences and other professions in the investigation and  
27 study of custody disputes and consider their recommendations for

1 the resolution of the disputes.

2 (e) Take any other action considered to be necessary in a  
3 particular child custody dispute.

4 (f) Upon petition consider the reasonable grandparenting time  
5 of maternal or paternal grandparents as provided in section 7b and,  
6 if denied, make a record of the denial.

7 (2) A judgment or order entered under this act providing for  
8 the support of a child is governed by and is enforceable as  
9 provided in the support and parenting time enforcement act, 1982 PA  
10 295, MCL 552.601 to 552.650. If this act contains a specific  
11 provision regarding the contents or enforcement of a support order  
12 that conflicts with a provision in the support and parenting time  
13 enforcement act, 1982 PA 295, MCL 552.601 to 552.650, this act  
14 controls in regard to that provision.

15 Sec. 7a. (1) Parenting time shall be granted in accordance  
16 with the best interests of the child. It is presumed to be in the  
17 best interests of a child for the child to have a strong  
18 relationship with both of his or her parents **ABSENT ANY FORM OF**  
19 **ABUSE OR DANGER TO THE CHILD. IF THE COURT DETERMINES THAT THERE IS**  
20 **ABUSE OR DANGER TO THE CHILD, THERE IS A PRESUMPTION THAT THE**  
21 **CHILD'S SAFETY IS THE BEST INTEREST OF THE CHILD.** Except as  
22 otherwise provided in this section, parenting time shall be granted  
23 to a parent in a frequency, duration, and type reasonably  
24 calculated to promote a strong relationship between the child and  
25 the parent granted parenting time.

26 (2) If the parents of a child agree on parenting time terms,  
27 the court shall order the parenting time terms unless the court

1 determines on the record by clear and convincing evidence that the  
2 parenting time terms are not in the best interests of the child.

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

6 (4) Notwithstanding other provisions of this act, if a  
7 proceeding regarding parenting time involves a child who is  
8 conceived as the result of acts for which 1 of the child's  
9 biological parents is convicted of criminal sexual conduct as  
10 provided in sections 520a to 520e and 520g of the Michigan penal  
11 code, ~~Act No. 328 of the Public Acts of 1931, being sections~~  
12 ~~750.520a to 750.520e and 750.520g of the Michigan Compiled Laws~~  
13 **1931 PA 328, MCL 750.520 TO 750.520E AND 750.520G**, the court shall  
14 not grant parenting time to the convicted biological parent. This  
15 subsection does not apply to a conviction under section 520d(1)(a)  
16 of ~~Act No. 328 of the Public Acts of 1931, being section 750.520d~~  
17 ~~of the Michigan Compiled Laws~~ **THE MICHIGAN PENAL CODE, 1931 PA 328,**  
18 **MCL 750.520D**. This subsection does not apply if, after the date of  
19 the conviction, the biological parents cohabit and establish a  
20 mutual custodial environment for the child.

21 (5) Notwithstanding other provisions of this act, if an  
22 individual is convicted of criminal sexual conduct as provided in  
23 sections 520a to 520e and 520g of ~~Act No. 328 of the Public Acts of~~  
24 ~~1931~~ **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520A TO 750.520E**  
25 **AND 750.520G**, and the victim is the individual's child, the court  
26 shall not grant parenting time with ~~that~~ **THE** child or a sibling of  
27 ~~that~~ **THE** child to ~~that~~ **THE** individual, unless both the child's



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

4 (6) IN CONSIDERING, EVALUATING, AND DETERMINING THE BEST  
5 INTERESTS OF THE CHILD AND CONSIDERING THE FACTORS UNDER SUBSECTION  
6 (7) WHEN MAKING A DECISION REGARDING PARENTING TIME, IF THE COURT  
7 DETERMINES THAT A PARENT HAS SEXUALLY, PHYSICALLY, MENTALLY, OR  
8 EMOTIONALLY ABUSED THE CHILD, THE COURT SHALL GIVE ADDITIONAL  
9 WEIGHT TO THAT FACT AND TO THE FACTORS UNDER SECTION 3(G), (J), AND  
10 (I) AND SUBSECTION (7)(C) AND (D).

11 (7) ~~(6)~~—The court may consider the following factors when  
12 determining the frequency, duration, and type of parenting time to  
13 be granted:

14 (a) The existence of any special circumstances or needs of the  
15 child.

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

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

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

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

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

27 (g) Whether a parent has frequently failed to exercise

1 reasonable parenting time.

2 (h) The threatened or actual detention of the child with the  
3 intent to retain or conceal the child from the other parent or from  
4 a third person who has legal custody. A custodial parent's  
5 temporary residence with the child in a domestic violence shelter  
6 shall not be construed as evidence of the custodial parent's intent  
7 to retain or conceal the child from the other parent.

8 (i) Any other relevant factors.

9 (8) ~~(7)~~—Parenting time shall be granted in specific terms if  
10 requested by either party at any time.

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

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

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

17 (c) Restrictions on the presence of third persons during  
18 parenting time.

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

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

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

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

27 (h) Requirements of reasonable notice when parenting time will

1 not occur.

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

4 (10) ~~(9)~~—During the time a child is with a parent to whom  
5 parenting time has been awarded, that parent shall decide all  
6 routine matters concerning the child.

7 (11) **IF A PARENT HAS BEEN AWARDED SOLE CUSTODY UNDER A COURT**  
8 **ORDER THAT DOES NOT ARISE FROM AN AGREEMENT OF THE PARENTS, THE**  
9 **CUSTODIAL PARENT MAY DEVIATE FROM THE FRIEND OF THE COURT'S**  
10 **SUGGESTED PARENTING TIME SCHEDULE FOR ANY PERIOD THAT LASTS 1 WEEK**  
11 **OR LONGER.**

12 (12) ~~(10)~~—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) ~~(11)~~—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) ~~(12)~~—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) ~~(13)~~—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 Sec. 7b. (1) A child's grandparent may seek a grandparenting  
27 time order under 1 or more of the following circumstances:

1 (a) An action for divorce, separate maintenance, or annulment  
2 involving the child's parents is pending before the court.

3 (b) The child's parents are divorced, separated under a  
4 judgment of separate maintenance, or have had their marriage  
5 annulled.

6 (c) The child's parent who is a child of the grandparents is  
7 deceased.

8 (d) The child's parents have never been married, ~~they~~ **AND** are  
9 not residing in the same household, ~~and~~ paternity has been  
10 established by the completion of an acknowledgment of parentage  
11 under the acknowledgment of parentage act, 1996 PA 305, MCL  
12 722.1001 to 722.1013, by an order of filiation entered under the  
13 paternity act, 1956 PA 205, MCL 722.711 to 722.730, or by a  
14 determination by a court of competent jurisdiction that the  
15 individual is the father of the child.

16 (e) Except as otherwise provided in subsection ~~(13)~~, **(14)**,  
17 legal custody of the child has been given to a person other than  
18 the child's parent, or the child is placed outside of and does not  
19 reside in the home of a parent.

20 (f) In the year preceding the commencement of an action under  
21 subsection (3), ~~for grandparenting time,~~ the grandparent provided  
22 an established custodial environment for the child as described in  
23 section 7, whether or not the grandparent had custody under a court  
24 order.

25 (2) A court shall not permit a parent of a father who has  
26 never been married to the child's mother to seek an order for  
27 grandparenting time under this section unless the father has

1 completed an acknowledgment of parentage under the acknowledgment  
2 of parentage act, 1996 PA 305, MCL 722.1001 to 722.1013, an order  
3 of filiation has been entered under the paternity act, 1956 PA 205,  
4 MCL 722.711 to 722.730, or the father has been determined to be the  
5 father by a court of competent jurisdiction. The court shall not  
6 permit the parent of a putative father to seek an order for  
7 grandparenting time unless the putative father has provided  
8 substantial and regular support or care in accordance with the  
9 putative father's ability to provide the support or care.

10 (3) A grandparent seeking a grandparenting time order shall  
11 commence an action for grandparenting time, as follows:

12 (a) If the circuit court has continuing jurisdiction over the  
13 child, ~~the child's grandparent shall seek a grandparenting time~~  
14 ~~order~~ by filing a motion with the circuit court in the county where  
15 the court has continuing jurisdiction.

16 (b) If the circuit court does not have continuing jurisdiction  
17 over the child, ~~the child's grandparent shall seek a grandparenting~~  
18 ~~time order~~ by filing a complaint in the circuit court for the  
19 county where the child resides.

20 (4) All of the following apply to an action ~~for grandparenting~~  
21 ~~time~~ under subsection (3):

22 (a) The complaint or motion for grandparenting time ~~filed~~  
23 ~~under subsection (3)~~ shall be accompanied by an affidavit setting  
24 forth facts supporting the requested order. The grandparent shall  
25 give notice of the filing to each person who has legal custody of,  
26 or an order for parenting time with, the child. A party having  
27 legal custody may file an opposing affidavit. A hearing shall be

1 held by the court on its own motion or if a party requests a  
2 hearing. At the hearing, parties submitting affidavits shall be  
3 allowed an opportunity to be heard.

4 (b) ~~In order to~~ **TO** give deference to the decisions of fit  
5 parents, ~~it is presumed in a proceeding under this subsection~~ **THERE**  
6 **IS A PRESUMPTION** that a fit parent's decision to deny  
7 grandparenting time does not create a substantial risk of harm to  
8 the child's mental, physical, or emotional health. To rebut the  
9 presumption created in this subdivision, a grandparent ~~filing a~~  
10 ~~complaint or motion under this section~~ must prove by a  
11 preponderance of the evidence that the parent's decision to deny  
12 grandparenting time creates a substantial risk of harm to the  
13 child's mental, physical, or emotional health. If the grandparent  
14 does not overcome the presumption, the court shall dismiss the  
15 complaint or deny the motion.

16 (c) If a court of appellate jurisdiction determines in a final  
17 and nonappealable judgment that the burden of proof described in  
18 subdivision (b) is unconstitutional, a grandparent ~~filing a~~  
19 ~~complaint or motion under this section~~ must prove by clear and  
20 convincing evidence that the parent's decision to deny  
21 grandparenting time creates a substantial risk of harm to the  
22 child's mental, physical, or emotional health to rebut the  
23 presumption created in subdivision (b).

24 (5) If 2 fit parents sign an affidavit stating that they both  
25 oppose an order for grandparenting time, the court shall dismiss a  
26 complaint or motion seeking an order for grandparenting time filed  
27 under subsection (3). This subsection does not apply if 1 of the

1 fit parents is a stepparent who adopted a child under the Michigan  
2 adoption code, chapter X of the probate code of 1939, 1939 PA 288,  
3 MCL 710.21 to 710.70, and the grandparent seeking the order is the  
4 natural or adoptive parent of a parent of the child who is deceased  
5 or whose parental rights have been terminated.

6 (6) If the court finds that a grandparent has met the standard  
7 for rebutting the presumption described in subsection (4), the  
8 court shall consider whether it is in the best interests of the  
9 child to enter an order for grandparenting time. If the court finds  
10 by a preponderance of the evidence that it is in the best interests  
11 of the child to enter a grandparenting time order, the court shall  
12 enter an order providing for reasonable grandparenting time of the  
13 child by the grandparent by general or specific terms and  
14 conditions. In determining the best interests of the child under  
15 this subsection, the court shall consider all of the following:

16 (a) The love, affection, and other emotional ties existing  
17 between the grandparent and the child.

18 (b) The length and quality of the prior relationship between  
19 the child and the grandparent, the role performed by the  
20 grandparent, and the existing emotional ties of the child to the  
21 grandparent.

22 (c) The grandparent's moral fitness.

23 (d) The grandparent's mental and physical health.

24 (e) The child's reasonable preference, if the court considers  
25 the child to be of sufficient age to express a preference.

26 (f) The effect on the child of hostility between the  
27 grandparent and the parent of the child.



1 (g) The willingness of the grandparent, except in the case of  
2 abuse or neglect, to encourage a close relationship between the  
3 child and the parent or parents of the child.

4 (h) Any history of physical, emotional, or sexual abuse or  
5 neglect of any child by the grandparent.

6 (i) Whether the parent's decision to deny, or lack of an offer  
7 of, grandparenting time is related to the child's well-being or is  
8 for some other unrelated reason.

9 (j) Any other factor relevant to the physical and  
10 psychological well-being of the child.

11 **(7) IN CONSIDERING THE BEST INTERESTS OF THE CHILD UNDER THIS**  
12 **SECTION, IF THE COURT DETERMINES THAT A GRANDPARENT HAS SEXUALLY,**  
13 **PHYSICALLY, MENTALLY, OR EMOTIONALLY ABUSED THE CHILD, THE COURT**  
14 **SHALL GIVE ADDITIONAL WEIGHT TO THAT FACT AND TO THE FACTORS UNDER**  
15 **SUBSECTION (6) (C), (E), AND (H).**

16 **(8) ~~(7)~~**—If the court has determined that a grandparent has met  
17 the standard for rebutting the presumption described in subsection  
18 (4), the court may refer that grandparent's complaint or motion for  
19 grandparenting time ~~filed under subsection (3)~~ to alternative  
20 dispute resolution as provided by supreme court rule. If the  
21 complaint or motion is referred to the friend of the court for  
22 alternative dispute resolution and no settlement is reached through  
23 friend of the court alternative dispute resolution within a  
24 reasonable time after the date of referral, the complaint or motion  
25 shall be heard by the court as provided in this section.

26 **(9) ~~(8)~~** **A ABSENT A SHOWING OF GOOD CAUSE, A** grandparent ~~may~~  
27 **SHALL** not file **A COMPLAINT OR MOTION UNDER SUBSECTION (3)** more than

1 once every 2 years. ~~, absent a showing of good cause, a complaint~~  
2 ~~or motion under subsection (3) seeking a grandparenting time order.~~

3 If the court finds there is good cause to allow a grandparent to  
4 file more than 1 complaint or motion under ~~this section~~ **SUBSECTION**  
5 **(3)** in a 2-year period, the court shall allow the filing and shall  
6 consider the complaint or motion. Upon motion of a person, the  
7 court may order reasonable attorney fees to the prevailing party.

8 **(10)** ~~(9)~~—The court shall not enter an order prohibiting an  
9 individual who has legal custody of a child from changing the  
10 domicile of the child if the prohibition is primarily for the  
11 purpose of allowing a grandparent to exercise the rights conferred  
12 in a grandparenting time order entered under this section.

13 **(11)** ~~(10)~~—A grandparenting time order entered under this  
14 section does not create parental rights in ~~the~~ **AN** individual ~~or~~  
15 ~~individuals~~ to whom grandparenting time rights are granted. The  
16 entry of a grandparenting time order does not prevent a court of  
17 competent jurisdiction from acting upon the custody of the child,  
18 the parental rights of the child, or the adoption of the child.

19 **(12)** ~~(11)~~—A court shall not modify or terminate a  
20 grandparenting time order entered under this section unless it  
21 finds by a preponderance of the evidence, on the basis of facts  
22 that have arisen since entry of the grandparenting time order or  
23 were unknown to the court at the time it entered ~~that~~ **THE** order,  
24 that a change has occurred in the circumstances of the child or his  
25 or her custodian and that a modification or termination of the  
26 existing order is necessary to avoid creating a substantial risk of  
27 harm to the mental, physical, or emotional health of the child. A

1 court modifying or terminating a grandparenting time order under  
2 this subsection shall include specific findings of fact in its  
3 order in support of its decision.

4 (13) ~~(12)~~—A court shall make a record of its analysis and  
5 findings under subsections (4), (6), ~~(8)~~, and ~~(11)~~, **(9), AND (12)**,  
6 including the reasons for granting or denying a ~~THE~~ requested  
7 grandparenting time order.

8 (14) ~~(13)~~—Except as otherwise provided in this subsection,  
9 adoption of a child or placement of a child for adoption under the  
10 Michigan adoption code, chapter X of the probate code of 1939, 1939  
11 PA 288, MCL 710.21 to 710.70, terminates the right of a grandparent  
12 to commence an action for grandparenting time with ~~that~~ **THE** child.  
13 Adoption of a child by a stepparent under the Michigan adoption  
14 code, chapter X of the probate code of 1939, 1939 PA 288, MCL  
15 710.21 to 710.70, does not terminate the right of the parent of a  
16 deceased parent of the child to commence an action for  
17 grandparenting time with ~~that~~ **THE** child.

18 Enacting section 1. This amendatory act may be referred to as  
19 "Sean's Law".