

HOUSE BILL NO. 5459

October 21, 2021, Introduced by Reps. Garza and VanSingel and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending sections 3 and 5 (MCL 722.23 and 722.25), section 3 as
amended by 2016 PA 95 and section 5 as amended by 2016 PA 96.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 3. **(1)** As used in this act, "best interests of the child"
2 means the sum total of the following factors to be considered,
3 evaluated, and determined by the court:
4 (a) The love, affection, and other emotional ties existing

1 between the parties involved and the child.

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

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

10 (d) The length of time the child has lived in a stable,
11 satisfactory environment, and the desirability of maintaining
12 continuity.

13 (e) The permanence, as a family unit, of the existing or
14 proposed custodial home or homes.

15 (f) The moral fitness of the parties involved.

16 (g) The mental and physical health of the parties involved.

17 (h) The home, school, and community record of the child.

18 (i) The reasonable preference of the child, if the court
19 considers the child to be of sufficient age to express preference.

20 (j) The willingness and ability of each of the parties to
21 facilitate and encourage a close and continuing parent-child
22 relationship between the child and the other parent or the child
23 and the parents. A court may not consider negatively for the
24 purposes of this factor any reasonable action taken by a parent to
25 protect a child or that parent from sexual assault or domestic
26 violence by the child's other parent.

27 (k) Domestic violence, regardless of whether the violence was
28 directed against or witnessed by the child.

29 (l) Any other factor considered by the court to be relevant to

1 a particular child custody dispute.

2 (2) When making a determination of the best interests of the
3 child, the court must make findings and conclusions of law in
4 writing.

5 Sec. 5. (1) If a child custody dispute is between the parents,
6 there is a presumption that it is in the best interests of the
7 child to award equal or approximately equal parenting time to each
8 parent. The presumption may be rebutted only by clear and
9 convincing evidence placed on the record that equal or
10 approximately equal parenting time is not in the best interests of
11 the child. If a child custody dispute is between a parent and
12 ~~between~~ agencies, or between third persons, the best interests of
13 the child control. If the child custody dispute is between the
14 parent or parents and an agency or a third person, the court shall
15 presume that the best interests of the child are served by awarding
16 custody to the parent or parents, unless the contrary is
17 established by clear and convincing evidence.

18 (2) Notwithstanding other provisions of this act, if a child
19 custody dispute involves a child who is conceived as the result of
20 acts for which 1 of the child's biological parents is convicted of
21 criminal sexual conduct as provided in sections 520a to 520e and
22 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to
23 750.520e and 750.520g, or a substantially similar statute of
24 another state or the federal government, or is found by clear and
25 convincing evidence in a fact-finding hearing to have committed
26 acts of nonconsensual sexual penetration, the court shall not award
27 custody to that biological parent. This subsection does not apply
28 to a conviction under section 520d(1)(a) of the Michigan penal
29 code, 1931 PA 328, MCL 750.520d. This subsection does not apply if,

1 after the date of the conviction, or the date of the finding in a
2 fact-finding hearing described in this subsection, the biological
3 parents cohabit and establish a mutual custodial environment for
4 the child.

5 (3) An offending parent is not entitled to custody of a child
6 described in subsection (2) without the consent of that child's
7 other parent or guardian.

8 (4) Notwithstanding other provisions of this act, subsection
9 (2) does not relieve an offending parent of any support or
10 maintenance obligation to the child. The other parent or the
11 guardian of the child may decline support or maintenance from the
12 offending parent.

13 (5) A parent may assert an affirmative defense of the
14 provisions of subsection (2) in a proceeding brought by the
15 offending parent regarding a child described in subsection (2).

16 (6) Notwithstanding other provisions of this act, if an
17 individual is convicted of criminal sexual conduct as provided in
18 sections 520a to 520e and 520g of the Michigan penal code, 1931 PA
19 328, MCL 750.520a to 750.520e and 750.520g, and the victim is the
20 individual's child, the court shall not award custody of that child
21 or a sibling of that child to that individual, unless both the
22 child's other parent and, if the court considers the child or
23 sibling to be of sufficient age to express his or her desires, the
24 child or sibling consent to the custody.

25 (7) As used in this section, "offending parent" means a parent
26 who has been convicted of criminal sexual conduct as described in
27 subsection (2) or who has been found by clear and convincing
28 evidence in a fact-finding hearing to have committed acts of
29 nonconsensual sexual penetration as described in subsection (2).