

HOUSE BILL NO. 5460

October 21, 2021, Introduced by Reps. VanSingel and Garza 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 6a and 7a (MCL 722.26a and 722.27a), section
6a as added by 1980 PA 434 and section 7a as amended by 2016 PA 96.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6a. (1) In custody disputes between parents, the parents
2 ~~shall~~ **must** be advised **by the court** of joint custody **and the**
3 **presumption of equal or approximately equal parenting time.** ~~At the~~
4 ~~request of either parent, the court shall consider an award of~~

~~joint custody, and shall state on the record the reasons for granting or denying a request. In other cases joint custody may be considered by the court. The court shall determine whether joint custody is in the best interest of the child by considering the following factors:~~

~~(a) The factors enumerated in section 3.~~

~~(b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.~~ **At the time of initiating a paternity,**

custody, divorce with a minor child, or support action in the family division of circuit court, the court must issue a notice that must be served on all parties with the pleadings. The notice under this section must contain the following:

NOTICE:

1. An action within the jurisdiction of the family division of circuit court involving a child to which you are the parent or guardian has been filed.

2. According to the Child Custody Act of 1970, 1970 PA 91, MCL 722.21 to 722.31, you have a right to joint custody and equal or approximately equal parenting time.

3. "Joint custody" means an order of the court in which the parents or third parties share decision-making authority as to the important decisions affecting the health, safety, education, religion, and welfare of the child.

4. In a dispute between the parents, the court must presume that the best interests of the child are served by awarding the parents equal or approximately equal parenting time as set forth in section 5 of the Child Custody Act of 1970, 1970 PA 91, MCL 722.25, unless the contrary is established based on an analysis of the 12

1 **best interest factors listed in section 3 of the Child Custody Act**
 2 **of 1970 PA 91, MCL 722.23.**

3 (2) If the parents agree on joint custody, the court ~~shall~~
 4 **must** award joint custody unless the court determines on the record,
 5 based upon clear and convincing evidence, that joint custody is not
 6 in the best interests of the child.

7 (3) If the court awards joint custody, the court may include
 8 in its award a statement regarding when the child shall reside with
 9 each parent, or may provide that physical custody be shared by the
 10 parents in a manner to ~~assure~~**ensure** the child continuing contact
 11 with both parents.

12 (4) During the time a child resides with a parent, that parent
 13 ~~shall decide~~**decides** all routine matters concerning the child.

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

16 (6) Joint custody ~~shall~~**does** not eliminate the responsibility
 17 for child support. Each parent ~~shall be~~**is** responsible for child
 18 support based on the needs of the child and the actual resources of
 19 each parent. If a parent would otherwise be unable to maintain
 20 adequate housing for the child and the other parent has sufficient
 21 resources, the court may order modified support payments for a
 22 portion of housing expenses even during a period when the child is
 23 not residing in the home of the parent receiving support. An order
 24 of joint custody, in and of itself, ~~shall is~~ not ~~constitute~~ grounds
 25 for modifying a support order.

26 (7) As used in this section, "joint custody" means an order of
 27 the court in which ~~1 or~~ both of the following ~~is~~**are** specified:

28 (a) That the child shall reside ~~alternately for specific~~**equal**
 29 **or approximately equal** periods with each of the parents.

1 (b) That the parents ~~shall~~ share decision-making authority as
2 to the important decisions affecting the **child's** welfare. ~~of the~~
3 ~~child.~~

4 Sec. 7a. (1) Parenting time ~~shall~~**must** be granted in
5 accordance with the best interests of the child. It is presumed to
6 be in the best interests of a child for the child to have a strong
7 relationship with both of his or her parents. Except as otherwise
8 provided in this section, parenting time ~~shall~~**must** be granted to a
9 parent in a frequency, duration, and type reasonably calculated to
10 promote a strong relationship between the child and the parent
11 granted parenting time.

12 (2) If the parents of a child agree on parenting time terms,
13 the court ~~shall~~**must** order the parenting time terms unless the
14 court determines on the record by clear and convincing evidence
15 that the parenting time terms are not in the best interests of the
16 child.

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

20 (4) Notwithstanding other provisions of this act, if a
21 proceeding regarding parenting time involves a child who is
22 conceived as the result of acts for which 1 of the child's
23 biological parents is convicted of criminal sexual conduct as
24 provided in sections 520a to 520e and 520g of the Michigan penal
25 code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, or a
26 substantially similar statute of another state or the federal
27 government, or is found by clear and convincing evidence in a fact-
28 finding hearing to have committed acts of nonconsensual sexual
29 penetration, the court shall not grant parenting time to that

1 biological parent. This subsection does not apply to a conviction
2 under section 520d(1) (a) of the Michigan penal code, 1931 PA 328,
3 MCL 750.520d. This subsection does not apply if, after the date of
4 the conviction, or the date of the finding in a fact-finding
5 hearing described in this subsection, the biological parents
6 cohabit and establish a mutual custodial environment for the child.

7 (5) A parent may assert an affirmative defense of the
8 provisions of subsection (4) in a proceeding brought by the
9 offending parent regarding a child described in subsection (4).

10 (6) Notwithstanding other provisions of this act, if an
11 individual is convicted of criminal sexual conduct as provided in
12 sections 520a to 520e and 520g of the Michigan penal code, 1931 PA
13 328, MCL 750.520a to 750.520e and 750.520g, and the victim is the
14 individual's child, the court shall not grant parenting time with
15 that child or a sibling of that child to that individual, unless
16 both the child's other parent and, if the court considers the child
17 or sibling to be of sufficient age to express his or her desires,
18 the child or sibling consent to the parenting time.

19 (7) The court ~~may~~**must** consider the following factors when
20 determining the ~~frequency, duration, and type of parenting time to~~
21 ~~be granted:~~**means and schedule in which parenting time must be**
22 **exercised:**

23 (a) The existence of any special circumstances or needs of the
24 child.

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

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

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

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

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

7 (g) Whether a parent has frequently failed to exercise
8 reasonable parenting time.

9 (h) The threatened or actual detention of the child with the
10 intent to retain or conceal the child from the other parent or from
11 a third person who has legal custody. A custodial parent's
12 temporary residence with the child in a domestic violence shelter
13 ~~shall is~~ not be construed as evidence of the custodial parent's
14 intent to retain or conceal the child from the other parent.

15 (i) Any other relevant factors.

16 (8) Parenting time ~~shall~~**must** be granted in specific terms if
17 requested by either party at any time.

18 (9) A parenting time order may contain any reasonable terms or
19 conditions that facilitate the orderly and meaningful exercise of
20 parenting time by a parent, including 1 or more of the following:

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

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

23 (c) Restrictions on the presence of third persons during
24 parenting time.

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

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

29 (f) Requirements that parenting time occur in the presence of

1 a third person or agency.

2 (g) Requirements that a party post a bond to ~~assure~~**ensure**
3 compliance with a parenting time order.

4 (h) Requirements of reasonable notice when parenting time will
5 not occur.

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

8 (10) Except as provided in this subsection, a parenting time
9 order ~~shall~~**must** contain a prohibition on exercising parenting time
10 in a country that is not a party to the Hague Convention on the
11 Civil Aspects of International Child Abduction. This subsection
12 does not apply if both parents provide the court with written
13 consent to allow a parent to exercise parenting time in a country
14 that is not a party to the Hague Convention on the Civil Aspects of
15 International Child Abduction.

16 (11) During the time a child is with a parent to whom
17 parenting time has been awarded, that parent ~~shall decide~~**decides**
18 all routine matters concerning the child.

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

25 (13) If the opposing party objects to the ex parte interim
26 order, he or she ~~shall~~**must** file with the clerk of the court within
27 14 days after receiving notice of the order a written objection to,
28 or a motion to modify or rescind, the ex parte interim order. The
29 opposing party shall have a true copy of the written objection or

1 motion served on the friend of the court and the party who obtained
2 the ex parte interim order.

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

16 (15) An ex parte interim order issued under this section ~~shall~~
17 **must** contain the following notice:

18 NOTICE:

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

25 2. If you file a written objection, the friend of the court
26 must try to resolve the dispute. If the friend of the court cannot
27 resolve the dispute and if you wish to bring the matter before the
28 court without the assistance of counsel, the friend of the court
29 must provide you with form pleadings and written instructions and

1 must schedule a hearing with the court.

2 (16) As provided in the servicemembers civil relief act, 50
3 USC ~~501 to 597b~~, **3901 to 4043**, if a motion for change of parenting
4 time is filed during the time a parent is on deployment, a parent
5 may file and the court shall entertain an application for stay. The
6 court shall presume that the best interests of the child are served
7 by not entering an order modifying or amending a previous judgment
8 or order, or issuing a new order, that changes the parenting time
9 that existed on the date the parent was called to deployment,
10 unless the contrary is established by clear and convincing
11 evidence, at which time the court may enter a temporary parenting
12 time order. When a temporary parenting time order is issued under
13 this subsection, the court may include a limit on the period of
14 time that the temporary parenting time order remains in effect. At
15 any stage before final judgment in the proceeding, the parent may
16 file an application for stay or otherwise request a stay of
17 proceedings or file an application for an extension of a stay. The
18 parent and the custodial child are not required to be present to
19 consider the application for stay or extension of a stay. The
20 application for stay or extension of a stay is sufficient if it is
21 a signed, written statement, certified to be true under penalty of
22 perjury. The same conditions for the initial stay apply to
23 applications for an extension of a stay.

24 (17) The parent ~~shall~~**must** inform the court of the deployment
25 end date before or within 30 days after that deployment end date.
26 Upon notification of a parent's deployment end date, the court
27 shall reinstate the parenting time order in effect immediately
28 preceding that period of deployment. If a motion for change of
29 parenting time is filed after a parent returns from deployment, the

1 court shall not consider a parent's absence due to that deployment
2 in making a determination regarding change of parenting time.
3 Future deployments shall not be considered in making a best
4 interest of the child determination.

5 (18) If the deploying parent and the other parent share
6 custody, the deploying parent must notify the other parent of an
7 upcoming deployment within a reasonable period of time.

8 (19) As used in this section, "offending parent" means a
9 parent who has been convicted of criminal sexual conduct as
10 described in subsection (4) or who has been found by clear and
11 convincing evidence in a fact-finding hearing to have committed
12 acts of nonconsensual sexual penetration as described in subsection
13 (4).