

HOUSE BILL NO. 5309

December 02, 2025, Introduced by Reps. VanderWall, Miller, Bierlein, Schmaltz, Greene, Wilson, Thompson, Xiong, Paiz, Longjohn, Neyer, Mentzer, Prestin, B. Carter, Wozniak, Roth, Slagh, Robinson and Wortz and referred to Committee on Judiciary.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5. (1) If a child custody dispute is between the parents,
2 between agencies, or between third persons, the best interests of
3 the child control ~~. If~~ **and all of the following apply:**

4 **(a) Except as provided in subdivision (b),** if the child
5 custody dispute is between the parent or parents and an agency or a
6 third person, the court shall presume that the best interests of

1 the child are served by awarding custody to the parent or parents,
2 unless the contrary is established by ~~clear and convincing a~~
3 **preponderance of the** evidence. **For the purpose of the presumption**
4 **in this subdivision, a parent who fails to have contact with the**
5 **child for the 3 years immediately preceding the date that the**
6 **action for custody of the child was filed is considered a third**
7 **person and is not considered a parent, unless the parent's failure**
8 **is a result of 1 or more of the following:**

9 (i) The parent's active duty or deployment.

10 (ii) The parent's incarceration.

11 (iii) The parent's medical condition.

12 (b) If the child custody dispute is between the parent or
13 parents and a third person that is the custodian of the child's
14 established custodial environment under section 7, the court shall
15 not presume any of the following:

16 (i) That the best interests of the child are served by awarding
17 custody to the parent or parents.

18 (ii) That the best interests of the child are served by
19 awarding custody to the third person.

20 (c) If the child custody dispute is between third persons and
21 only 1 of the third persons has ever been appointed guardian for
22 the child, the court shall presume that the best interests of the
23 child are served by awarding custody to that third person, unless
24 the contrary is established by clear and convincing evidence.

25 (2) Notwithstanding ~~any other provisions~~ **provision** of this
26 act, if a child custody dispute involves a child who is conceived
27 as the result of acts for which 1 of the child's biological parents
28 is convicted of criminal sexual conduct as provided in sections
29 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL

1 750.520a to 750.520e and 750.520g, or a substantially similar
2 statute of another state or the federal government, or is found by
3 clear and convincing evidence in a fact-finding hearing to have
4 committed acts of nonconsensual sexual penetration, the court shall
5 not award custody to that biological parent. This subsection does
6 not apply to a conviction under section 520d(1)(a) of the Michigan
7 penal code, 1931 PA 328, MCL 750.520d. This subsection does not
8 apply if, after the date of the conviction, or the date of the
9 finding in a fact-finding hearing described in this subsection, the
10 biological parents cohabit and establish a mutual custodial
11 environment for the child.

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

15 (4) Notwithstanding **any** other ~~provisions~~**provision** of this
16 act, subsection (2) does not relieve an offending parent of any
17 support or maintenance obligation to the child. The other parent or
18 the guardian of the child may decline support or maintenance from
19 the offending parent.

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

23 (6) Notwithstanding **any** other ~~provisions~~**provision** of this
24 act, if an individual is convicted of criminal sexual conduct as
25 provided in sections 520a to 520e and 520g of the Michigan penal
26 code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, and the
27 victim is the individual's child, the court shall not award custody
28 of that child or a sibling of that child to that individual, unless
29 both the child's other parent and, if the court considers the child

1 or sibling to be of sufficient age to express ~~his or her~~ **the**
2 **child's or sibling's** desires, the child or sibling consent to the
3 custody.

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