

SUBSTITUTE FOR
HOUSE BILL NO. 5471

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending sections 4 and 7a (MCL 722.24 and 722.27a), section 4
as amended by 1998 PA 482 and section 7a as amended by 1996 PA
19.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4. (1) In ~~all actions~~ **an action** involving dispute of
2 a minor child's custody, the court shall declare the child's
3 inherent rights and establish the rights and duties as to the
4 child's custody, support, and parenting time **under court order or**
5 **a court-approved parenting plan** in accordance with this act.

6 (2) **When the parents of a child establish a parenting plan**
7 **under section 7a, the court shall declare that plan as the**
8 **child's inherent rights under subsection (1).**

9 (3) ~~(2)~~ If, at any time in the proceeding, the court

1 determines that the child's best interests are inadequately
2 represented, the court may appoint a lawyer-guardian ad litem to
3 represent the child. A lawyer-guardian ad litem represents the
4 child and has powers and duties in relation to that
5 representation as set forth in section 17d of chapter XIIIA of **the**
6 **probate code of 1939**, 1939 PA 288, MCL 712A.17d. All provisions
7 of section 17d of chapter XIIIA of **the probate code of 1939**, 1939
8 PA 288, MCL 712A.17d, apply to a lawyer-guardian ad litem
9 appointed under this act.

10 (4) ~~(3)~~ In a proceeding in which a lawyer-guardian ad litem
11 represents a child, he or she may file a written report and
12 recommendation. The court may read the report and
13 recommendation. The court shall not, however, admit the report
14 and recommendation into evidence unless all parties stipulate the
15 admission. The parties may make use of the report and
16 recommendation for purposes of a settlement conference.

17 (5) ~~(4)~~ After a determination of ability to pay, the court
18 may assess all or part of the costs and reasonable fees of the
19 lawyer-guardian ad litem against 1 or more of the parties
20 involved in the proceedings or against the money allocated from
21 marriage license fees for family counseling services under
22 section 3 of 1887 PA 128, MCL 551.103. A lawyer-guardian ad
23 litem appointed under this section shall not be paid a fee unless
24 the court first receives and approves the fee.

25 Sec. 7a. (1) Parenting time shall be granted in accordance
26 with the **child's** best interests. ~~of the child.~~ It is presumed
27 to be in the **child's** best interests ~~of a child~~ for the child to

1 have a strong relationship with both of his or her parents.
2 Except as otherwise provided in this section, parenting time
3 shall be granted to a parent in a frequency, duration, and type
4 reasonably calculated to promote a strong relationship between
5 the child and the parent granted parenting time.

6 (2) With the approval and at the direction of the supreme
7 court, the state court administrative office shall develop and
8 make available a form for use by a parent in completing a
9 parenting plan. The form shall be made available by the court [to the
10 parents of the minor child.] The form shall indicate
11 the subject matter to be addressed in a parenting plan and shall
12 contain a sworn statement signed by each parent that the proposed
13 parenting plan is proposed in good faith. A form developed under
14 this subsection shall contain notice that either party may obtain
15 legal counsel.

16 (3) If the parents create a parenting plan as provided in
17 subsection (2), the parenting plan shall be filed with the court
18 before a hearing on or determination of issues regarding a child[.
19]

20 (4) ~~(2)~~ If the **child's** parents ~~of a child~~ agree on
21 parenting time terms, the court shall order the parenting time
22 terms unless the court determines on the record by clear and
23 convincing evidence that the parenting time terms **provided in**
24 **subsections (2) and (3)** are not in the **child's** best interests.
25 ~~of the child.~~ ~~(3)~~ A child has a right to parenting time with a
26 parent unless it is shown on the record by clear and convincing
27 evidence that it would endanger the child's physical, mental, or

1 emotional health.

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

18 **(6) —(5)—** Notwithstanding other provisions of this act, if an
19 individual is convicted of criminal sexual conduct as provided in
20 sections 520a to 520e and 520g of ~~Act No. 328 of the Public Acts~~
21 ~~of 1931~~ **the Michigan penal code, 1931 PA 328, MCL 750.520a to**
22 **750.520e and 750.520g**, and the victim is the individual's child,
23 the court shall not grant parenting time with that child or a
24 sibling of that child to that individual, unless both the child's
25 other parent and, if the court considers the child or sibling to
26 be of sufficient age to express his or her desires, the child or
27 sibling consent to the parenting time.

1 (7) ~~-(6)-~~ The court may consider the following factors when
2 determining the frequency, duration, and type of parenting time
3 to be granted:

4 (a) The existence of ~~any~~ special circumstances or needs of
5 the child.

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

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

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

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

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

17 (g) Whether a parent has frequently failed to exercise
18 reasonable parenting time.

19 (h) The threatened or actual detention of the child with the
20 intent to retain or conceal the child from the other parent or
21 from a third person who has legal custody. A custodial parent's
22 temporary residence with the child in a domestic violence shelter
23 ~~shall~~ **is** not ~~be construed as~~ evidence of the custodial
24 parent's intent to retain or conceal the child from the other
25 parent.

26 (i) Any other relevant factors.

27 (8) ~~-(7)-~~ Parenting time shall be granted in specific terms

1 if requested by either party at any time.

2 (9) ~~-(8)-~~ A parenting time order may contain any reasonable
3 terms or conditions that facilitate the orderly and meaningful
4 exercise of parenting time by a parent, including 1 or more of
5 the following:

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

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

8 (c) Restrictions on the presence of third persons during
9 parenting time.

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

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

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

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

18 (h) Requirements of reasonable notice when parenting time
19 will not occur.

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

22 (10) ~~-(9)-~~ During the time a child is with a parent to whom
23 parenting time has been awarded, that parent shall decide all
24 routine matters concerning the child.

25 (11) ~~-(10)-~~ ~~Prior to~~ **Before** entry of a temporary order, a
26 parent may seek an ex parte interim order concerning parenting
27 time. If the court enters an ex parte interim order concerning

1 1. You may file a written objection to this order or a
2 motion to modify or rescind this order. You must file the
3 written objection or motion with the clerk of the court within 14
4 days after you were served with this order. You must serve a
5 true copy of the objection or motion on the friend of the court
6 and the party who obtained the order.

7 2. If you file a written objection, the friend of the court
8 must try to resolve the dispute. If the friend of the court
9 cannot resolve the dispute and if you wish to bring the matter
10 before the court without the assistance of counsel, the friend of
11 the court must provide you with form pleadings and written
12 instructions and must schedule a hearing with the court.