

HOUSE BILL No. 4570

April 10, 1989, Introduced by Reps. Terrell, Clack, DeMars, Hunter, Stallworth, Honigman, Bennane, Harrison, Leland, Joe Young, Sr., Kilpatrick, Power, Sikkema, Martin and Bandstra and referred to the Committee on Judiciary.

A bill to amend sections 4, 6, 7, 7a, and 8 of Act No. 91 of the Public Acts of 1970, entitled

"Child custody act of 1970,"

section 7 as amended and section 7a as added by Act No. 377 of the Public Acts of 1988, being sections 722.24, 722.26, 722.27, 722.27a, and 722.28 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 4, 6, 7, 7a, and 8 of Act No. 91 of the
2 Public Acts of 1970, section 7 as amended and section 7a as added
3 by Act No. 377 of the Public Acts of 1988, being sections 722.24,
4 722.26, 722.27, 722.27a, and 722.28 of the Michigan Compiled
5 Laws, are amended to read as follows:

6 Sec. 4. In ~~all actions now pending or hereafter~~ AN ACTION
7 filed in ~~a circuit~~ THE DOMESTIC RELATIONS court involving A
8 dispute of custody of a minor child, the court shall declare the

1 inherent rights of the child and establish the rights and duties
2 as to custody, support, and visitation of the child in accordance
3 with this act.

4 Sec. 6. The provisions of this act, being equitable in
5 nature, shall be liberally construed and applied to establish
6 promptly the rights of the child and the rights and duties of the
7 parties involved. This act ~~shall apply~~ APPLIES to all
8 ~~circuit~~ DOMESTIC RELATIONS court child custody disputes and
9 actions, whether original or incidental to other actions. ~~Such~~
10 THESE disputes and actions shall have precedence for hearing and
11 assignment for trial over other civil actions. When there is no
12 other action or proceeding pending for the resolution of the
13 CHILD CUSTODY dispute, it shall be submitted to the ~~circuit~~
14 DOMESTIC RELATIONS court ~~of~~ FOR the county where the child
15 resides or THE DISPUTE may be found by complaint or complaint and
16 motion for order to show cause. An application for a writ of
17 habeas corpus or for a warrant in its place to obtain custody of
18 a child shall not be granted unless it appears that this act is
19 inadequate and ineffective to resolve the particular child cus-
20 tody dispute.

21 Sec. 7. (1) If a child custody dispute has been submitted
22 to the ~~circuit~~ DOMESTIC RELATIONS court as an original action
23 under this act or has arisen incidentally from another action in
24 the ~~circuit~~ DOMESTIC RELATIONS court or an order or judgment of
25 the ~~circuit~~ DOMESTIC RELATIONS court, for the best interests of
26 the child the court may:

1 (a) Award the custody of the child to 1 or more of the
2 parties involved or to others and provide for payment of support
3 for the child, until the child reaches 18 years of age. The
4 court may require that support payments shall be made through the
5 friend of the court or clerk of the court.

6 (b) Provide for reasonable visitation of the child by the
7 parties involved, the maternal or paternal grandparents, or by
8 others, by general or specific terms and conditions. Visitation
9 of the child by the parents shall be governed by section 7a.

10 (c) Modify or amend its previous judgments or orders for
11 proper cause shown or because of change of circumstances until
12 the child reaches 18 years of age. The court shall not modify or
13 amend its previous judgments or orders or issue a new order so as
14 to change the established custodial environment of a child unless
15 there is presented clear and convincing evidence that it is in
16 the best interest of the child. The custodial environment of a
17 child is established if over an appreciable time the child natu-
18 rally looks to the custodian in that environment for guidance,
19 discipline, the necessities of life, and parental comfort. The
20 age of the child, the physical environment, and the inclination
21 of the custodian and the child as to permanency of the relation-
22 ship shall also be considered.

23 (d) Utilize the community resources in behavioral sciences
24 and other professions in the investigation and study of custody
25 disputes and consider their recommendations for the resolution of
26 the disputes.

1 (e) Appoint a guardian ad litem or counsel for the child and
2 assess the costs and reasonable fees against 1 or more parties
3 involved, totally or partially.

4 (f) Take any other action considered to be necessary in a
5 particular child custody dispute.

6 (g) Upon petition consider the reasonable visitation of
7 maternal or paternal grandparents and, if denied, make a record
8 of such denial.

9 (2) For the purposes of this act, "support" may include pay-
10 ment of the expenses of medical, dental, and other health care,
11 child care expenses, and educational expenses. The court shall
12 require that 1 or both parents of a child who is the subject of a
13 petition under this section shall obtain or maintain any health
14 care coverage that is available to them at a reasonable cost, as
15 a benefit of employment, for the benefit of the child. If a
16 parent is self-employed and maintains health care coverage, the
17 court shall require the parent to obtain or maintain dependent
18 coverage for the benefit of the child, if available at a reason-
19 able cost.

20 (3) A judgment or order entered under this act providing for
21 the support of a child is enforceable as provided in the support
22 and visitation enforcement act, Act No. 295 of the Public Acts of
23 1982, being sections 552.601 to 552.650 of the Michigan Compiled
24 Laws.

25 Sec. 7a. (1) Visitation shall be granted in accordance with
26 the best interests of the child. It is presumed to be in the
27 best interests of a child for the child to have a strong

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

6 (2) If the parents of a child agree on visitation terms, the
7 court shall order the visitation terms unless the DOMESTIC
8 RELATIONS court determines on the record by clear and convincing
9 evidence that the visitation terms are not in the best interests
10 of the child.

11 (3) A child shall have a right to visitation with a parent
12 unless it is shown on the record by clear and convincing evidence
13 that it would endanger the child's physical, mental, or emotional
14 health.

15 (4) The DOMESTIC RELATIONS court may consider the following
16 factors when determining the frequency, duration, and type of
17 visitation to be granted:

18 (a) The existence of any special circumstances or needs of
19 the child.

20 (b) Whether the child is a nursing child less than 6 months
21 of age, or less than 1 year of age if the child receives substan-
22 tial nutrition through nursing.

23 (c) The reasonable likelihood of abuse or neglect of the
24 child during visitation.

25 (d) The reasonable likelihood of abuse of a parent resulting
26 from the exercise of visitation.

1 (e) The inconvenience to, and burdensome impact or effect
2 on, the child of traveling to and from the visitation time.

3 (f) Whether the visiting parent can reasonably be expected
4 to exercise visitation in accordance with the court order.

5 (g) Whether the visiting parent has frequently failed to
6 exercise reasonable visitation.

7 (h) The threatened or actual detention of the child with the
8 intent to retain or conceal the child from the other parent. A
9 custodial parent's temporary residence with the child in a domes-
10 tic violence shelter shall not be construed as evidence of the
11 custodial parent's intent to retain or conceal the child from the
12 other parent.

13 (i) Any other relevant factors.

14 (5) Visitation shall be granted in specific terms if
15 requested by either party at any time.

16 (6) A visitation order may contain any reasonable terms or
17 conditions that facilitate the orderly and meaningful exercise of
18 visitation by a parent, including 1 or more of the following:

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

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

21 (c) Restrictions on the presence of third persons during
22 visitation.

23 (d) Requirements that the child be ready for visitation at a
24 specific time.

25 (e) Requirements that the parent arrive for visitation and
26 return the child from visitation at specific times.

1 (f) Requirements that visitation occur in the presence of a
2 third person or agency.

3 (g) Requirements that a party post a bond to assure compli-
4 ance with a visitation order.

5 (h) Requirements of reasonable notice when visitation will
6 not occur.

7 (i) Any other reasonable condition determined to be appro-
8 priate in the particular case.

9 (7) During the time a child is with a parent to whom visita-
10 tion has been awarded, that parent shall decide all routine mat-
11 ters concerning the child.

12 (8) Prior to entry of a temporary order, a parent may seek
13 an ex parte interim order concerning visitation. If the DOMESTIC
14 RELATIONS court enters an ex parte interim order concerning visi-
15 tation, the party on whose motion the ex parte interim order is
16 entered shall have a true copy of the order served on the friend
17 of the court and the opposing party.

18 (9) If the opposing party objects to the ex parte interim
19 order, he or she shall file with the clerk of the DOMESTIC
20 RELATIONS court within 14 days after receiving notice of the
21 order a written objection to, or a motion to modify or rescind,
22 the ex parte interim order. The opposing party shall have a true
23 copy of the written objection or motion served on the friend of
24 the court and the party who obtained the ex parte interim order.

25 (10) If the opposing party files a written objection to the
26 ex parte interim order, the friend of the court shall attempt to
27 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
4 parte order without assistance of counsel. If the opposing party
5 wishes to proceed without assistance of counsel, the friend of
6 the court shall schedule a hearing with the DOMESTIC RELATIONS
7 court that shall be held within 21 days after the filing of the
8 motion.

9 (11) If the opposing party files a motion to modify or
10 rescind the ex parte interim order and requests a hearing, the
11 DOMESTIC RELATIONS court shall resolve the dispute within 28 days
12 after the hearing is requested.

13 (12) An ex parte interim order issued pursuant to this sec-
14 tion shall contain the following notice:

15 NOTICE:

16 1. You may file a written objection to the order or a
17 motion to modify or rescind the order.

18 2. The written objection or motion must be filed with the
19 clerk of the DOMESTIC RELATIONS court within 14 days after you
20 were served with the order. A true copy of the objection or
21 motion shall be served on the friend of the court and the party
22 who obtained the order.

23 3. If you file a written objection, the friend of the court
24 shall try to resolve the dispute. If the friend of the court
25 cannot resolve the dispute and if you wish to bring the matter
26 before the DOMESTIC RELATIONS court without the assistance of

1 counsel, the friend of the court shall provide you with form
2 pleadings and written instructions and schedule a hearing with
3 the court.

4 Sec. 8. To expedite the resolution of a child custody dis-
5 pute by prompt and final adjudication, ~~all~~ THE orders and judg-
6 ments of the ~~circuit~~ DOMESTIC RELATIONS court shall be affirmed
7 on appeal unless the trial judge made findings of fact against
8 the great weight of evidence or committed a palpable abuse of
9 discretion or a clear legal error on a major issue.

10 Section 2. This amendatory act shall take effect
11 January 1, 1990.

12 Section 3. This amendatory act shall not take effect unless
13 Senate Bill No. _____ or House Bill No. 4567 (request
14 no. 01659'89) of the 85th Legislature is enacted into law.