

# HOUSE BILL No. 6019

September 13, 1990, Introduced by Reps. Ciaramitaro, Gubow, Stabenow, Berman, Kosteva, Trim and Fitzgerald and referred to the Committee on Judiciary.

A bill to amend sections 4, 6, 7, and 8 of Act No. 91 of the Public Acts of 1970, entitled "Child custody act of 1970," section 7 as amended by Act No. 275 of the Public Acts of 1989, being sections 722.24, 722.26, 722.27, and 722.28 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 4, 6, 7, and 8 of Act No. 91 of the  
2 Public Acts of 1970, section 7 as amended by Act No. 275 of the  
3 Public Acts of 1989, being sections 722.24, 722.26, 722.27, and  
4 722.28 of the Michigan Compiled Laws, are amended to read as  
5 follows:

6       Sec. 4. (1) In all actions now pending or hereafter filed  
7 in a circuit court involving dispute of custody of a minor child,  
8 the court shall declare the inherent rights of the child and

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

3 (2) IN ALL ACTIONS FILED IN THE PROBATE COURT AFTER THE  
4 EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION  
5 INVOLVING A DISPUTE OF CUSTODY OF A MINOR CHILD PURSUANT TO  
6 SECTION 402 OF THE REVISED PROBATE CODE, ACT NO. 642 OF THE  
7 PUBLIC ACTS OF 1978, BEING SECTION 700.402 OF THE MICHIGAN  
8 COMPILED LAWS, THE PROBATE COURT SHALL DECLARE THE INHERENT  
9 RIGHTS OF THE CHILD AND ESTABLISH THE RIGHTS AND DUTIES AS TO THE  
10 CUSTODY, SUPPORT, AND VISITATION OF THE CHILD IN ACCORDANCE WITH  
11 THIS ACT.

12 Sec. 6. The provisions of this act, being equitable in  
13 nature, shall be liberally construed and applied to establish  
14 promptly the rights of the child and the rights and duties of the  
15 parties involved. This act shall apply to all circuit court  
16 child custody disputes and actions, whether original or inciden-  
17 tal to other actions. THIS ACT SHALL APPLY TO ALL PROBATE COURT  
18 CHILD CUSTODY DISPUTES AND ACTIONS BROUGHT PURSUANT TO  
19 SECTION 402 OF THE REVISED PROBATE CODE, ACT NO. 642 OF THE  
20 PUBLIC ACTS OF 1978, BEING SECTION 700.402 OF THE MICHIGAN  
21 COMPILED LAWS. Such disputes and actions shall have precedence  
22 for hearing and assignment for trial over other civil actions.  
23 ~~When~~ EXCEPT AS OTHERWISE PROVIDED IN SECTION 402 OF ACT NO. 642  
24 OF THE PUBLIC ACTS OF 1978, WHEN there is no other action or pro-  
25 ceeding pending for the resolution of the dispute, it shall be  
26 submitted to the circuit court of the county where the child  
27 resides or may be found by complaint or complaint and motion for

1 order to show cause. An application for a writ of habeas corpus  
2 or for a warrant in its place to obtain custody of a child shall  
3 not be granted unless it appears that this act is inadequate and  
4 ineffective to resolve the particular child custody dispute.

5       Sec. 7. (1) If a child custody dispute has been submitted  
6 to the circuit court as an original action under this act OR HAS  
7 BEEN SUBMITTED TO THE PROBATE COURT AS AN ORIGINAL ACTION UNDER  
8 SECTION 402 OF THE REVISED PROBATE CODE, ACT NO. 642 OF THE  
9 PUBLIC ACTS OF 1978, BEING SECTION 700.402 OF THE MICHIGAN  
10 COMPILED LAWS, or has arisen incidentally from another action in  
11 the circuit court OR PROBATE COURT or an order or judgment of the  
12 circuit court OR PROBATE COURT, for the best interests of the  
13 child the court may:

14       (a) Award the custody of the child to 1 or more of the par-  
15 ties involved or to others and provide for payment of support for  
16 the child, until the child reaches 18 years of age. The court  
17 may require that support payments shall be made through the  
18 friend of the court or clerk of the court.

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

23       (c) Modify or amend its previous judgments or orders for  
24 proper cause shown or because of change of circumstances until  
25 the child reaches 18 years of age. The court shall not modify or  
26 amend its previous judgments or orders or issue a new order so as  
27 to change the established custodial environment of a child unless

1 there is presented clear and convincing evidence that it is in  
2 the best interest of the child. The custodial environment of a  
3 child is established if over an appreciable time the child natu-  
4 rally looks to the custodian in that environment for guidance,  
5 discipline, the necessities of life, and parental comfort. The  
6 age of the child, the physical environment, and the inclination  
7 of the custodian and the child as to permanency of the relation-  
8 ship shall also be considered.

9 (d) Utilize the community resources in behavioral sciences  
10 and other professions in the investigation and study of custody  
11 disputes and consider their recommendations for the resolution of  
12 the disputes.

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

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

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

21 (2) The court shall order support in an amount determined by  
22 application of the child support formula developed by the state  
23 friend of the court bureau, except that the court may enter an  
24 order that deviates from the formula under either of the follow-  
25 ing circumstances:

26 (a) If the court determines from the facts of the case that  
27 application of the child support formula would be unjust or

1 inappropriate and sets forth in writing or on the record all of  
2 the following:

3       (i) The support amount determined by application of the  
4 child support formula.

5       (ii) How the support order deviates from the child support  
6 formula.

7       (iii) The value of property or other support awarded in lieu  
8 of the payment of child support, if applicable.

9       (iv) The court's reasons for its determination.

10       (b) If the parties agree to a different amount, provided  
11 that the party receiving child support is not a recipient of  
12 public assistance.

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

24       (4) A judgment or order entered under this act providing for  
25 the support of a child is enforceable as provided in the support  
26 and visitation enforcement act, Act No. 295 of the Public Acts of

1 1982, being sections 552.601 to 552.650 of the Michigan Compiled  
2 Laws.

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

9       Section 2. This amendatory act shall not take effect unless  
10 all of the following bills of the 85th Legislature are enacted  
11 into law:

12       (a) Senate Bill No. 1039.

13       (b) Senate Bill No. \_\_\_\_ or House Bill No. \_\_\_\_ (request  
14 no. 06023'90).