

SENATE BILL No. 428

April 26, 2001, Introduced by Senators HAMMERSTROM, JOHNSON, MC MANUS, GARCIA and SCOTT and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1970 PA 91, entitled "Child custody act of 1970," by amending sections 2 and 5 (MCL 722.22 and 722.25), section 2 as amended by 1999 PA 156 and section 5 as amended by 1993 PA 259.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Agency" means a legally authorized public or private
3 organization, or governmental unit or official, whether of this
4 state or of another state or country, concerned in the welfare of
5 minor children, including a licensed child placement agency.

6 (b) "Attorney" means, if appointed to represent a child
7 under this act, an attorney serving as the child's legal advocate
8 in a traditional attorney-client relationship with the child, as
9 governed by the Michigan rules of professional conduct. An

1 attorney defined under this subdivision owes the same duties of
2 undivided loyalty, confidentiality, and zealous representation of
3 the child's expressed wishes as the attorney would to an adult
4 client.

5 (c) "Child" means minor child and children. Subject to
6 section 4a, for purposes of providing support, child includes a
7 child and children who have reached 18 years of age.

8 (D) "DOMESTIC VIOLENCE" MEANS THAT TERM AS DEFINED IN SEC-
9 TION 1 OF 1978 PA 389, MCL 400.1501.

10 (E) ~~(d)~~ "Guardian ad litem" means an individual whom the
11 court appoints to assist the court in determining the child's
12 best interests. A guardian ad litem does not need to be an
13 attorney.

14 (F) ~~(e)~~ "Lawyer-guardian ad litem" means an attorney
15 appointed under section 4. A lawyer-guardian ad litem represents
16 the child, and has the powers and duties, as set forth in section
17 4.

18 (G) ~~(f)~~ "State disbursement unit" or "SDU" means the
19 entity established in section 6 of the office of child support
20 act, 1971 PA 174, MCL 400.236.

21 (H) ~~(g)~~ "Third person" means ~~any~~ AN individual other
22 than a parent.

23 Sec. 5. (1) If a child custody dispute is between the par-
24 ents, between agencies, or between third persons, the best inter-
25 ests of the child control. If the child custody dispute is
26 between the parent or parents and an agency or a third person,
27 the court shall presume that the best interests of the child are

1 served by awarding custody to the parent or parents, unless the
2 contrary is established by clear and convincing evidence.

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

18 (3) 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 award custody of that child or a sibling of
24 that child to that individual, unless both the child's other
25 parent and, if the court considers the child or sibling to be of
26 sufficient age to express his or her desires, the child or
27 sibling consent to the custody.

1 (4) NOTWITHSTANDING OTHER PROVISIONS OF THIS ACT, IF THE
2 COURT DETERMINES THAT A PARTY TO A CHILD CUSTODY ACTION HAS A
3 HISTORY OF DOMESTIC VIOLENCE AGAINST THE OTHER PARTY, A REBUTTA-
4 BLE PRESUMPTION ARISES THAT IT IS DETRIMENTAL TO THE CHILD AND
5 NOT IN THE CHILD'S BEST INTERESTS FOR THE DOMESTIC VIOLENCE PER-
6 PETRATOR TO BE AWARDED SOLE CUSTODY, JOINT LEGAL CUSTODY, OR
7 JOINT PHYSICAL CUSTODY OF THE CHILD. THE COURT MAY FIND A HIS-
8 TORY OF DOMESTIC VIOLENCE IF THE COURT FINDS THAT A SINGLE INCI-
9 DENT OF DOMESTIC VIOLENCE RESULTED IN SERIOUS BODILY INJURY OR
10 INVOLVED THE USE OF A WEAPON, OR THAT THERE HAS BEEN MORE THAN 1
11 INCIDENT OF DOMESTIC VIOLENCE. IF THE COURT DETERMINES THAT EACH
12 PARTY HAS A HISTORY OF DOMESTIC VIOLENCE AGAINST THE OTHER PARTY,
13 THE COURT SHALL APPLY THE PRESUMPTION IN FAVOR OF THE PARTY
14 DETERMINED TO BE LESS LIKELY TO CONTINUE TO PERPETRATE DOMESTIC
15 VIOLENCE.

16 (5) A PRESUMPTION THAT ARISES UNDER SUBSECTION (4) IS
17 REBUTTED IF IT IS DEMONSTRATED THAT AN AWARD OF SOLE CUSTODY,
18 JOINT LEGAL CUSTODY, OR JOINT PHYSICAL CUSTODY TO THE PERPETRATOR
19 IS IN THE BEST INTERESTS OF THE CHILD AND THAT THERE EXISTS NO
20 SIGNIFICANT RISK OF FUTURE DOMESTIC VIOLENCE AGAINST A CHILD OR
21 ADULT LIVING IN THE HOME OR AGAINST ANOTHER FAMILY MEMBER,
22 INCLUDING ANOTHER PARTY TO THE CASE.