

SUBSTITUTE FOR
SENATE BILL NO. 9

A bill to amend 1970 PA 91, entitled
"Child custody act of 1970,"
by amending sections 2, 7, and 7a (MCL 722.22, 722.27, and
722.27a), section 2 as amended by 2005 PA 327, section 7 as amended
by 2005 PA 328, and section 7a as amended by 2012 PA 600.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "~~Active military duty~~" means ~~when a reserve unit member or~~
3 ~~national guard unit member is called into active military duty.~~ **THAT**
4 **TERM AS DEFINED IN SECTION 101 OF THE SERVICEMEMBERS CIVIL RELIEF**
5 **ACT, 50 USC 511, EXCEPT THAT "ACTIVE DUTY" INCLUDES FULL-TIME**
6 **NATIONAL GUARD DUTY.**

7 (b) "Agency" means a legally authorized public or private

1 organization, or governmental unit or official, whether of this
2 state or of another state or country, concerned in the welfare of
3 minor children, including a licensed child placement agency.

4 (c) "Attorney" means, if appointed to represent a child under
5 this act, an attorney serving as the child's legal advocate in a
6 traditional attorney-client relationship with the child, as
7 governed by the Michigan rules of professional conduct. An attorney
8 defined under this subdivision owes the same duties of undivided
9 loyalty, confidentiality, and zealous representation of the child's
10 expressed wishes as the attorney would to an adult client.

11 (d) "Child" means minor child and children. Subject to section
12 5b of the support and parenting time enforcement act, 1982 PA 295,
13 MCL 552.605b, for purposes of providing support, child includes a
14 child and children who have reached 18 years of age.

15 **(E) "DEPLOYMENT" MEANS THE MOVEMENT OR MOBILIZATION OF A**
16 **SERVICEMEMBER TO A LOCATION FOR A PERIOD OF LONGER THAN 60 DAYS AND**
17 **NOT LONGER THAN 540 DAYS UNDER TEMPORARY OR PERMANENT OFFICIAL**
18 **ORDERS AS FOLLOWS:**

19 **(i) THAT ARE DESIGNATED AS UNACCOMPANIED.**

20 **(ii) FOR WHICH DEPENDENT TRAVEL IS NOT AUTHORIZED.**

21 **(iii) THAT OTHERWISE DO NOT PERMIT THE MOVEMENT OF FAMILY**
22 **MEMBERS TO THAT LOCATION.**

23 **(iv) THE SERVICEMEMBER IS RESTRICTED FROM TRAVEL.**

24 **(F) ~~(e)~~**"Grandparent" means a natural or adoptive parent of a
25 child's natural or adoptive parent.

26 **(G) ~~(f)~~**"Guardian ad litem" means an individual whom the court
27 appoints to assist the court in determining the child's best

1 interests. A guardian ad litem does not need to be an attorney.

2 (H) ~~(g)~~—"Lawyer-guardian ad litem" means an attorney appointed
3 under section 4. A lawyer-guardian ad litem represents the child,
4 and has the powers and duties, as set forth in section 4.

5 (I) ~~(h)~~—"Parent" means the natural or adoptive parent of a
6 child.

7 (J) ~~(i)~~—"State disbursement unit" or "SDU" means the entity
8 established in section 6 of the office of child support act, 1971
9 PA 174, MCL 400.236.

10 (K) ~~(j)~~—"Third person" means an individual other than a
11 parent.

12 Sec. 7. (1) If a child custody dispute has been submitted to
13 the circuit court as an original action under this act or has
14 arisen incidentally from another action in the circuit court or an
15 order or judgment of the circuit court, for the best interests of
16 the child the court may do 1 or more of the following:

17 (a) Award the custody of the child to 1 or more of the parties
18 involved or to others and provide for payment of support for the
19 child, until the child reaches 18 years of age. Subject to section
20 5b of the support and parenting time enforcement act, 1982 PA 295,
21 MCL 552.605b, the court may also order support as provided in this
22 section for a child after he or she reaches 18 years of age. The
23 court may require that support payments shall be made through the
24 friend of the court, court clerk, or state disbursement unit.

25 (b) Provide for reasonable parenting time of the child by the
26 parties involved, by the maternal or paternal grandparents, or by
27 others, by general or specific terms and conditions. Parenting time

1 of the child by the parents is governed by section 7a.

2 (c) ~~Modify~~ **SUBJECT TO SUBSECTION (3), MODIFY** or amend its
3 previous judgments or orders for proper cause shown or because of
4 change of circumstances until the child reaches 18 years of age
5 and, subject to section 5b of the support and parenting time
6 enforcement act, 1982 PA 295, MCL 552.605b, until the child reaches
7 19 years and 6 months of age. The court shall not modify or amend
8 its previous judgments or orders or issue a new order so as to
9 change the established custodial environment of a child unless
10 there is presented clear and convincing evidence that it is in the
11 best interest of the child. The custodial environment of a child is
12 established if over an appreciable time the child naturally looks
13 to the custodian in that environment for guidance, discipline, the
14 necessities of life, and parental comfort. The age of the child,
15 the physical environment, and the inclination of the custodian and
16 the child as to permanency of the relationship shall also be
17 considered. If a motion for change of custody is filed ~~during the~~
18 ~~time~~ **WHILE** a parent is ~~in active military duty~~, the court shall not
19 ~~enter an order modifying or amending a previous judgment or order,~~
20 ~~or issue a new order, that changes the child's placement that~~
21 ~~existed on the date the parent was called to active military duty,~~
22 ~~except the court may enter a temporary custody order if there is~~
23 ~~clear and convincing evidence that it is in the best interest of~~
24 ~~the child. Upon a parent's return from active military duty, the~~
25 ~~court shall reinstate the custody order in effect immediately~~
26 ~~preceding that period of active military duty. If a motion for~~
27 ~~change of custody is filed after a parent returns from active~~

1 ~~military duty, the court shall not~~ consider a parent's absence due
2 to that ~~military~~ **ACTIVE** duty **STATUS** in a best interest of the child
3 determination.

4 (d) Utilize a guardian ad litem or the community resources in
5 behavioral sciences and other professions in the investigation and
6 study of custody disputes and consider their recommendations for
7 the resolution of the disputes.

8 (e) Take any other action considered to be necessary in a
9 particular child custody dispute.

10 (f) Upon petition consider the reasonable grandparenting time
11 of maternal or paternal grandparents as provided in section 7b and,
12 if denied, make a record of the denial.

13 (2) A judgment or order entered under this act providing for
14 the support of a child is governed by and is enforceable as
15 provided in the support and parenting time enforcement act, 1982 PA
16 295, MCL 552.601 to 552.650. If this act contains a specific
17 provision regarding the contents or enforcement of a support order
18 that conflicts with a provision in the support and parenting time
19 enforcement act, 1982 PA 295, MCL 552.601 to 552.650, this act
20 controls in regard to that provision.

21 (3) **AS PROVIDED IN THE SERVICEMEMBERS CIVIL RELIEF ACT, 50 USC**
22 **501 TO 597B, IF A MOTION FOR CHANGE OF CUSTODY IS FILED DURING THE**
23 **TIME A PARENT IS ON DEPLOYMENT, A PARENT MAY FILE AND THE COURT**
24 **SHALL ENTERTAIN AN APPLICATION FOR STAY. THE COURT SHALL NOT ENTER**
25 **AN ORDER MODIFYING OR AMENDING A PREVIOUS JUDGMENT OR ORDER, OR**
26 **ISSUE A NEW ORDER, THAT CHANGES THE CHILD'S PLACEMENT THAT EXISTED**
27 **ON THE DATE THE PARENT WAS CALLED TO DEPLOYMENT, EXCEPT THAT THE**

1 COURT MAY ENTER A TEMPORARY CUSTODY ORDER IF THERE IS CLEAR AND
2 CONVINCING EVIDENCE THAT IT IS IN THE BEST INTERESTS OF THE CHILD.
3 WHEN A TEMPORARY CUSTODY ORDER IS ISSUED UNDER THIS SUBSECTION, THE
4 COURT MAY INCLUDE A LIMIT ON THE PERIOD OF TIME THAT THE TEMPORARY
5 CUSTODY ORDER REMAINS IN EFFECT. AT ANY STAGE BEFORE FINAL JUDGMENT
6 IN THE PROCEEDING, THE PARENT MAY FILE AN APPLICATION FOR STAY OR
7 OTHERWISE REQUEST A STAY OF THE PROCEEDINGS OR FILE AN APPLICATION
8 FOR AN EXTENSION OF A STAY. THE PARENT AND THE CUSTODIAL CHILD ARE
9 NOT REQUIRED TO BE PRESENT TO CONSIDER THE APPLICATION FOR STAY OR
10 EXTENSION OF A STAY. THE APPLICATION FOR STAY OR EXTENSION OF A
11 STAY IS SUFFICIENT IF IT IS A SIGNED, WRITTEN STATEMENT, CERTIFIED
12 TO BE TRUE UNDER PENALTY OF PERJURY. THE SAME CONDITIONS FOR THE
13 INITIAL STAY APPLY TO AN APPLICATION FOR AN EXTENSION OF A STAY.
14 THE PARENT'S DURATION OF DEPLOYMENT SHALL NOT BE CONSIDERED IN
15 MAKING A BEST INTEREST OF THE CHILD DETERMINATION.

16 (4) THE PARENT SHALL INFORM THE COURT OF THE DEPLOYMENT END
17 DATE BEFORE OR WITHIN 30 DAYS AFTER THAT DEPLOYMENT END DATE. UPON
18 NOTIFICATION OF A PARENT'S DEPLOYMENT END DATE, THE COURT SHALL
19 REINSTATE THE CUSTODY ORDER IN EFFECT IMMEDIATELY PRECEDING THAT
20 PERIOD OF DEPLOYMENT. IF A MOTION FOR CHANGE OF CUSTODY IS FILED
21 AFTER A PARENT RETURNS FROM DEPLOYMENT, THE COURT SHALL NOT
22 CONSIDER A PARENT'S ABSENCE DUE TO THAT DEPLOYMENT IN MAKING A BEST
23 INTEREST OF THE CHILD DETERMINATION. FUTURE DEPLOYMENTS SHALL NOT
24 BE CONSIDERED IN MAKING A BEST INTEREST OF THE CHILD DETERMINATION.

25 (5) IF THE DEPLOYING PARENT AND THE OTHER PARENT SHARE
26 CUSTODY, THE DEPLOYING PARENT MUST NOTIFY THE OTHER PARENT OF AN
27 UPCOMING DEPLOYMENT WITHIN A REASONABLE PERIOD OF TIME.

1 Sec. 7a. (1) Parenting time shall be granted in accordance
2 with the best interests of the child. It is presumed to be in the
3 best interests of a child for the child to have a strong
4 relationship with both of his or her parents. Except as otherwise
5 provided in this section, parenting time shall be granted to a
6 parent in a frequency, duration, and type reasonably calculated to
7 promote a strong relationship between the child and the parent
8 granted parenting time.

9 (2) If the parents of a child agree on parenting time terms,
10 the court shall order the parenting time terms unless the court
11 determines on the record by clear and convincing evidence that the
12 parenting time terms are not in the best interests of the child.

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

16 (4) Notwithstanding other provisions of this act, if a
17 proceeding regarding parenting time involves a child who is
18 conceived as the result of acts for which 1 of the child's
19 biological parents is convicted of criminal sexual conduct as
20 provided in sections 520a to 520e and 520g of the Michigan penal
21 code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, the court
22 shall not grant parenting time to the convicted biological parent.
23 This subsection does not apply to a conviction under section
24 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520d.
25 This subsection does not apply if, after the date of the
26 conviction, the biological parents cohabit and establish a mutual
27 custodial environment for the child.

1 (5) Notwithstanding other provisions of this act, if an
2 individual is convicted of criminal sexual conduct as provided in
3 sections 520a to 520e and 520g of the Michigan penal code, 1931 PA
4 328, MCL 750.520a to 750.520e and 750.520g, and the victim is the
5 individual's child, the court shall not grant parenting time with
6 that child or a sibling of that child to that individual, unless
7 both the child's other parent and, if the court considers the child
8 or sibling to be of sufficient age to express his or her desires,
9 the child or sibling consent to the parenting time.

10 (6) The court may consider the following factors when
11 determining the frequency, duration, and type of parenting time to
12 be granted:

13 (a) The existence of any special circumstances or needs of the
14 child.

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

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

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

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

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

26 (g) Whether a parent has frequently failed to exercise
27 reasonable parenting time.

1 (h) The threatened or actual detention of the child with the
2 intent to retain or conceal the child from the other parent or from
3 a third person who has legal custody. A custodial parent's
4 temporary residence with the child in a domestic violence shelter
5 shall not be construed as evidence of the custodial parent's intent
6 to retain or conceal the child from the other parent.

7 (i) Any other relevant factors.

8 (7) Parenting time shall be granted in specific terms if
9 requested by either party at any time.

10 (8) A parenting time order may contain any reasonable terms or
11 conditions that facilitate the orderly and meaningful exercise of
12 parenting time by a parent, including 1 or more of the following:

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

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

15 (c) Restrictions on the presence of third persons during
16 parenting time.

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

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

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

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

25 (h) Requirements of reasonable notice when parenting time will
26 not occur.

27 (i) Any other reasonable condition determined to be

1 appropriate in the particular case.

2 (9) Except as provided in this subsection, a parenting time
3 order shall contain a prohibition on exercising parenting time in a
4 country that is not a party to the Hague Convention on the Civil
5 Aspects of International Child Abduction. This subsection does not
6 apply if both parents provide the court with written consent to
7 allow a parent to exercise parenting time in a country that is not
8 a party to the Hague Convention on the Civil Aspects of
9 International Child Abduction.

10 (10) During the time a child is with a parent to whom
11 parenting time has been awarded, that parent shall decide all
12 routine matters concerning the child.

13 (11) Prior to entry of a temporary order, a parent may seek an
14 ex parte interim order concerning parenting time. If the court
15 enters an ex parte interim order concerning parenting time, the
16 party on whose motion the ex parte interim order is entered shall
17 have a true copy of the order served on the friend of the court and
18 the opposing party.

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

26 (13) If the opposing party files a written objection to the ex
27 parte interim order, the friend of the court shall attempt to

1 resolve the dispute within 14 days after receiving it. If the
2 matter cannot be resolved, the friend of the court shall provide
3 the opposing party with a form motion and order with written
4 instructions for their use in modifying or rescinding the ex parte
5 order without assistance of counsel. If the opposing party wishes
6 to proceed without assistance of counsel, the friend of the court
7 shall schedule a hearing with the court that shall be held within
8 21 days after the filing of the motion. If the opposing party files
9 a motion to modify or rescind the ex parte interim order and
10 requests a hearing, the court shall resolve the dispute within 28
11 days after the hearing is requested.

12 (14) An ex parte interim order issued under this section shall
13 contain the following notice:

14 NOTICE:

15 1. You may file a written objection to this order or a motion
16 to modify or rescind this order. You must file the written
17 objection or motion with the clerk of the court within 14 days
18 after you were served with this order. You must serve a true copy
19 of the objection or motion on the friend of the court and the party
20 who obtained the order.

21 2. If you file a written objection, the friend of the court
22 must try to resolve the dispute. If the friend of the court cannot
23 resolve the dispute and if you wish to bring the matter before the
24 court without the assistance of counsel, the friend of the court
25 must provide you with form pleadings and written instructions and
26 must schedule a hearing with the court.

27 (15) AS PROVIDED IN THE SERVICEMEMBERS CIVIL RELIEF ACT, 50

1 USC 501 TO 597B, IF A MOTION FOR CHANGE OF PARENTING TIME IS FILED
2 DURING THE TIME A PARENT IS ON DEPLOYMENT, A PARENT MAY FILE AND
3 THE COURT SHALL ENTERTAIN AN APPLICATION FOR STAY. THE COURT SHALL
4 PRESUME THAT THE BEST INTERESTS OF THE CHILD ARE SERVED BY NOT
5 ENTERING AN ORDER MODIFYING OR AMENDING A PREVIOUS JUDGMENT OR
6 ORDER, OR ISSUING A NEW ORDER, THAT CHANGES THE PARENTING TIME THAT
7 EXISTED ON THE DATE THE PARENT WAS CALLED TO DEPLOYMENT, UNLESS THE
8 CONTRARY IS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE, AT WHICH
9 TIME THE COURT MAY ENTER A TEMPORARY PARENTING TIME ORDER. WHEN A
10 TEMPORARY PARENTING TIME ORDER IS ISSUED UNDER THIS SUBSECTION, THE
11 COURT MAY INCLUDE A LIMIT ON THE PERIOD OF TIME THAT THE TEMPORARY
12 PARENTING TIME ORDER REMAINS IN EFFECT. AT ANY STAGE BEFORE FINAL
13 JUDGMENT IN THE PROCEEDING, THE PARENT MAY FILE AN APPLICATION FOR
14 STAY OR OTHERWISE REQUEST A STAY OF PROCEEDINGS OR FILE AN
15 APPLICATION FOR AN EXTENSION OF A STAY. THE PARENT AND THE
16 CUSTODIAL CHILD ARE NOT REQUIRED TO BE PRESENT TO CONSIDER THE
17 APPLICATION FOR STAY OR EXTENSION OF A STAY. THE APPLICATION FOR
18 STAY OR EXTENSION OF A STAY IS SUFFICIENT IF IT IS A SIGNED,
19 WRITTEN STATEMENT, CERTIFIED TO BE TRUE UNDER PENALTY OF PERJURY.
20 THE SAME CONDITIONS FOR THE INITIAL STAY APPLY TO APPLICATIONS FOR
21 AN EXTENSION OF A STAY.

22 (16) THE PARENT SHALL INFORM THE COURT OF THE DEPLOYMENT END
23 DATE BEFORE OR WITHIN 30 DAYS AFTER THAT DEPLOYMENT END DATE. UPON
24 NOTIFICATION OF A PARENT'S DEPLOYMENT END DATE, THE COURT SHALL
25 REINSTATE THE PARENTING TIME ORDER IN EFFECT IMMEDIATELY PRECEDING
26 THAT PERIOD OF DEPLOYMENT. IF A MOTION FOR CHANGE OF PARENTING TIME
27 IS FILED AFTER A PARENT RETURNS FROM DEPLOYMENT, THE COURT SHALL

1 NOT CONSIDER A PARENT'S ABSENCE DUE TO THAT DEPLOYMENT IN MAKING A
2 DETERMINATION REGARDING CHANGE OF PARENTING TIME. FUTURE
3 DEPLOYMENTS SHALL NOT BE CONSIDERED IN MAKING A BEST INTEREST OF
4 THE CHILD DETERMINATION.

5 (17) IF THE DEPLOYING PARENT AND THE OTHER PARENT SHARE
6 CUSTODY, THE DEPLOYING PARENT MUST NOTIFY THE OTHER PARENT OF AN
7 UPCOMING DEPLOYMENT WITHIN A REASONABLE PERIOD OF TIME.

8 Enacting section 1. This amendatory act takes effect 90 days
9 after the date it is enacted into law.