



SENATE BILL No. 191

January 26, 1993, Introduced by Senators BOUCHARD and WELBORN and referred to the Committee on Family Law, Criminal Law, and Corrections.

A bill to amend sections 5 and 7a of Act No. 91 of the Public Acts of 1970, entitled as amended "Child custody act of 1970," section 7a as added by Act No. 377 of the Public Acts of 1988, being sections 722.25 and 722.27a of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5 and 7a of Act No. 91 of the Public
2 Acts of 1970, section 7a as added by Act No. 377 of the Public
3 Acts of 1988, being sections 722.25 and 722.27a of the Michigan
4 Compiled Laws, are amended to read as follows:

5 Sec. 5. (1) ~~When the~~ IF A CHILD CUSTODY dispute is
6 between the parents, between agencies, or between third persons,
7 the best interests of the child ~~shall~~ control. ~~When the~~ IF
8 THE CHILD CUSTODY dispute is between the parent or parents and an
9 agency or a third person, ~~it is presumed~~ THE COURT SHALL

1 PRESUME that the best interests of the child are served by
2 awarding custody to the parent or parents, unless the contrary is
3 established by clear and convincing evidence.

4 (2) NOTWITHSTANDING OTHER PROVISIONS OF THIS ACT, IF A CHILD
5 CUSTODY DISPUTE INVOLVES A CHILD WHO IS CONCEIVED AS THE RESULT
6 OF ACTS FOR WHICH THE CHILD'S BIOLOGICAL FATHER IS CONVICTED OF
7 CRIMINAL SEXUAL CONDUCT AS PROVIDED IN SECTIONS 520A TO 520M OF
8 THE MICHIGAN PENAL CODE, ACT NO. 328 OF THE PUBLIC ACTS OF 1931,
9 BEING SECTIONS 750.520A TO 750.520M OF THE MICHIGAN COMPILED
10 LAWS, THE COURT SHALL NOT AWARD CUSTODY TO THE BIOLOGICAL FATHER.

11 Sec. 7a. (1) Visitation shall be granted in accordance with
12 the best interests of the child. It is presumed to be in the
13 best interests of a child for the child to have a strong rela-
14 tionship with both of his or her parents. Except as otherwise
15 provided in this section, visitation shall be granted to a parent
16 in a frequency, duration, and type reasonably calculated to pro-
17 mote a strong relationship between the child and the parent
18 granted visitation.

19 (2) If the parents of a child agree on visitation terms, the
20 court shall order the visitation terms unless the court deter-
21 mines on the record by clear and convincing evidence that the
22 visitation terms are not in the best interests of the child.

23 ~~(3)~~ A child ~~shall have~~ HAS a right to visitation with a
24 parent unless it is shown on the record by clear and convincing
25 evidence that it would endanger the child's physical, mental, or
26 emotional health. NOTWITHSTANDING OTHER PROVISIONS OF THIS ACT,
27 IF A PROCEEDING REGARDING VISITATION INVOLVES A CHILD WHO IS

1 CONCEIVED AS THE RESULT OF ACTS FOR WHICH THE CHILD'S BIOLOGICAL
2 FATHER IS CONVICTED OF CRIMINAL SEXUAL CONDUCT AS PROVIDED IN
3 SECTIONS 520A TO 520M OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF
4 THE PUBLIC ACTS OF 1931, BEING SECTIONS 750.520A TO 750.520M OF
5 THE MICHIGAN COMPILED LAWS, THE COURT SHALL NOT GRANT VISITATION
6 TO THE BIOLOGICAL FATHER.

7 (3) ~~(4)~~ The court may consider the following factors when
8 determining the frequency, duration, and type of visitation to be
9 granted:

10 (a) The existence of any special circumstances or needs of
11 the child.

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

15 (c) The reasonable likelihood of abuse or neglect of the
16 child during visitation.

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

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

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

23 (g) Whether the visiting parent has frequently failed to
24 exercise reasonable visitation.

25 (h) The threatened or actual detention of the child with the
26 intent to retain or conceal the child from the other parent. A
27 custodial parent's temporary residence with the child in a

1 domestic violence shelter shall not be construed as evidence of
2 the custodial parent's intent to retain or conceal the child from
3 the other parent.

4 (i) Any other relevant factors.

5 (4) ~~—(5)—~~ Visitation shall be granted in specific terms if
6 requested by either party at any time. ~~—(6)—~~ A visitation order
7 may contain any reasonable terms or conditions that facilitate
8 the orderly and meaningful exercise of visitation by a parent,
9 including 1 or more of the following:

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

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

12 (c) Restrictions on the presence of third persons during
13 visitation.

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

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

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

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

22 (h) Requirements of reasonable notice when visitation will
23 not occur.

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

1 (5) ~~—(7)—~~ During the time a child is with a parent to whom
2 visitation has been awarded, that parent shall decide all routine
3 matters concerning the child.

4 (6) ~~—(8)—~~ Prior to entry of a temporary order, a parent may
5 seek an ex parte interim order concerning visitation. If the
6 court enters an ex parte interim order concerning visitation, the
7 party on whose motion the ex parte interim order is entered shall
8 have a true copy of the order served on the friend of the court
9 and the opposing party.

10 (7) ~~—(9)—~~ If the opposing party objects to the ex parte
11 interim order, he or she shall file with the clerk of the court
12 within 14 days after receiving notice of the order a written
13 objection to, or a motion to modify or rescind, the ex parte
14 interim order. The opposing party shall have a true copy of the
15 written objection or motion served on the friend of the court and
16 the party who obtained the ex parte interim order.

17 (8) ~~—(10)—~~ If the opposing party files a written objection
18 to the ex parte interim order, the friend of the court shall
19 attempt to resolve the dispute within 14 days after receiving
20 it. If the matter cannot be resolved, the friend of the court
21 shall provide the opposing party with a form motion and order
22 with written instructions for their use in modifying or rescind-
23 ing the ex parte order without assistance of counsel. If the
24 opposing party wishes to proceed without assistance of counsel,
25 the friend of the court shall schedule a hearing with the court
26 that shall be held within 21 days after the filing of the
27 motion. ~~—(11)—~~ If the opposing party files a motion to modify or

1 rescind the ex parte interim order and requests a hearing, the
2 court shall resolve the dispute within 28 days after the hearing
3 is requested.

4 (9) ~~(12)~~ An ex parte interim order issued pursuant to this
5 section shall contain the following notice:

6 NOTICE:

7 1. You may file a written objection to ~~the~~ THIS order or
8 a motion to modify or rescind ~~the~~ THIS order. ~~2. The~~ YOU
9 MUST FILE THE written objection or motion ~~must be filed~~ with
10 the clerk of the court within 14 days after you were served with
11 ~~the~~ THIS order. ~~A~~ YOU MUST SERVE A true copy of the objec-
12 tion or motion ~~shall be served~~ on the friend of the court and
13 the party who obtained the order.

14 2. ~~3.~~ If you file a written objection, the friend of the
15 court ~~shall~~ MUST try to resolve the dispute. If the friend of
16 the court cannot resolve the dispute and if you wish to bring the
17 matter before the court without the assistance of counsel, the
18 friend of the court ~~shall~~ MUST provide you with form pleadings
19 and written instructions and MUST schedule a hearing with the
20 court.