

HOUSE BILL No. 5471

February 5, 2004, Introduced by Reps. Moolenaar, Voorhees, Hoogendyk, Nitz, Hager, Hummel, Kooiman, DeRossett, Vander Veen, Huizenga, Sheen and Taub and referred to the Committee on Judiciary.

A bill to amend 1970 PA 91, entitled "Child custody act of 1970," by amending the title and sections 1, 2, 3, 4, 5, 6, 6a, 7, 7a, 7b, and 11 (MCL 722.21, 722.22, 722.23, 722.24, 722.25, 722.26, 722.26a, 722.27, 722.27a, 722.27b, and 722.31), the title and sections 7a and 7b as amended by 1996 PA 19, section 2 as amended by 2002 PA 9, sections 3, 5, and 6 as amended by 1993 PA 259, section 4 as amended by 1998 PA 482, section 7 as amended by 2001 PA 108, section 6a as added by 1980 PA 434, and section 11 as added by 2000 PA 422, and by adding sections 12, 13, 14, 15, 16, 17, 18, and 19.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to declare ~~the~~ **certain** inherent rights of ~~minor~~ children; ~~to establish~~ **a child in relation to his or her parents**

1 after divorce; to encourage postdivorce parental cooperation by
2 requiring a process to establish a parenting plan; to prescribe
3 the contents of and procedures for modifying a parenting plan; to
4 prescribe procedures to determine rights and duties ~~to their~~
5 regarding a child's custody, support, ~~and~~ or parenting time ~~in~~
6 ~~disputed actions~~ if the issue is in dispute; to establish rights
7 and duties to provide support for a child after the child reaches
8 the age of majority under certain circumstances; to provide for
9 certain procedure and appeals; and to repeal ~~certain~~ acts and
10 parts of acts.

11 Sec. 1. This act shall be known and may be cited as the
12 "child **parenting plan or custody dispute** act". ~~of 1970~~.

13 Sec. 2. As used in this act:

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

18 (b) "Attorney" means, if appointed to represent a child under
19 this act, an attorney serving as the child's legal advocate in a
20 traditional attorney-client relationship with the child, as
21 governed by the Michigan rules of professional conduct. An
22 attorney defined under this subdivision owes the same duties of
23 undivided loyalty, confidentiality, and zealous representation of
24 the child's expressed wishes as the attorney would to an adult
25 client.

26 (c) "Child" means minor child and children. Subject to
27 section 5b of the support and parenting time enforcement act,

1 1982 PA 295, MCL 552.605b, for purposes of providing support,
2 child includes a child and children who have reached 18 years of
3 age.

4 (d) "Domestic violence" means an act of physical, sexual, or
5 serious emotional abuse by an individual against his or her
6 spouse, or former spouse, or against another individual with whom
7 the individual has a child in common or with whom the individual
8 has resided.

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

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

17 (g) "Personal protection order" means an order issued under
18 section 2950 of the revised judicature act of 1961, 1961 PA 236,
19 MCL 600.2950.

20 (h) "Serious emotional abuse" means abuse that would cause a
21 reasonable person to feel terrorized, intimidated, or threatened.

22 (i) ~~(f)~~ "State disbursement unit" or "SDU" means the entity
23 established in section 6 of the office of child support act, 1971
24 PA 174, MCL 400.236.

25 (j) ~~(g)~~ "Third person" means an individual other than a
26 parent.

27 Sec. 3. As used in this act, "**child's** best interests" ~~of~~

1 ~~the child~~ means the sum total of the following factors to be
2 considered, evaluated, and determined by the court:

3 (a) The love, affection, and other emotional ties existing
4 between the parties involved and the child.

5 (b) The capacity and disposition of the parties involved to
6 give the child love, affection, and guidance and to continue the
7 education and raising of the child in his or her religion or
8 creed, if any.

9 (c) The capacity and disposition of the parties involved to
10 provide the child with food, clothing, medical care or other
11 remedial care recognized and permitted under the laws of this
12 state in place of medical care, and other material needs.

13 (d) The length of time the child has lived in a stable,
14 satisfactory environment, and the desirability of maintaining
15 continuity.

16 (e) The permanence, as a family unit, of the existing or
17 proposed custodial home or homes.

18 (f) The moral fitness of the parties involved.

19 (g) The mental and physical health of the parties involved.

20 (h) The home, school, and community record of the child.

21 (i) The reasonable preference of the child, if the court
22 considers the child to be of sufficient age to express
23 preference.

24 (j) The willingness and ability of each of the parties to
25 facilitate and encourage a close and continuing parent-child
26 relationship between the child and the other parent or the child
27 and the parents.

1 (k) Domestic violence, regardless of whether the violence was
2 directed against or witnessed by the child.

3 (l) Any other factor considered by the court to be relevant
4 to a particular child custody dispute.

5 Sec. 4. (1) In ~~all actions~~ **an action** involving dispute of
6 a minor child's custody, the court shall declare the child's
7 inherent rights and establish the rights and duties as to the
8 child's custody, support, and parenting time **under court order or**
9 **a court-approved parenting plan** in accordance with this act.

10 (2) If, at any time in the proceeding, the court determines
11 that the child's best interests are inadequately represented, the
12 court may appoint a lawyer-guardian ad litem to represent the
13 child. A lawyer-guardian ad litem represents the child and has
14 powers and duties in relation to that representation as set forth
15 in section 17d of chapter XIIIA of **the probate code of 1939**, 1939
16 PA 288, MCL 712A.17d. All provisions of section 17d of
17 chapter XIIIA of **the probate code of 1939**, 1939 PA 288,
18 MCL 712A.17d, apply to a lawyer-guardian ad litem appointed under
19 this act.

20 (3) In a proceeding in which a lawyer-guardian ad litem
21 represents a child, he or she may file a written report and
22 recommendation. The court may read the report and
23 recommendation. The court shall not, however, admit the report
24 and recommendation into evidence unless all parties stipulate the
25 admission. The parties may make use of the report and
26 recommendation for purposes of a settlement conference.

27 (4) After a determination of ability to pay, the court may

1 assess all or part of the costs and reasonable fees of the
2 lawyer-guardian ad litem against 1 or more of the parties
3 involved in the proceedings or against the money allocated from
4 marriage license fees for family counseling services under
5 section 3 of 1887 PA 128, MCL 551.103. A lawyer-guardian ad
6 litem appointed under this section shall not be paid a fee unless
7 the court first receives and approves the fee.

8 Sec. 5. (1) If a child custody dispute is between the
9 parents, between agencies, or between third persons, the **child's**
10 best interests ~~of the child~~ control. If the child custody
11 dispute is between the parent or parents and an agency or a third
12 person, the court shall presume that the **child's** best interests
13 ~~of the child~~ are served by awarding custody to the parent or
14 parents, unless the contrary is established by clear and
15 convincing evidence. **A child's custody is not in dispute if the**
16 **issue is resolved in a court-approved parenting plan as provided**
17 **in section 12.**

18 (2) Notwithstanding other provisions of this act, if a child
19 custody dispute involves a child who is conceived as the result
20 of acts for which 1 of the child's biological parents is
21 convicted of criminal sexual conduct as provided in sections 520a
22 to 520e and 520g of the Michigan penal code, ~~Act No. 328 of the~~
23 ~~Public Acts of 1931, being sections 750.520a to 750.520e and~~
24 ~~750.520g of the Michigan Compiled Laws~~ **1931 PA 328, MCL 750.520a**
25 **to 750.520e and 750.520g**, the court shall not award custody to
26 the convicted biological parent. This subsection does not apply
27 to a conviction under section 520d(1)(a) of the Michigan penal

1 code, ~~Act No. 328 of the Public Acts of 1931, being~~
2 ~~section 750.520d of the Michigan Compiled Laws~~ **1931 PA 328,**
3 **MCL 750.520d.** This subsection does not apply if, after the date
4 of the conviction, the biological parents cohabit and establish a
5 mutual custodial environment for the child.

6 (3) Notwithstanding other provisions of this act, if an
7 individual is convicted of criminal sexual conduct as provided in
8 sections 520a to 520e and 520g of ~~Act No. 328 of the Public Acts~~
9 ~~of 1931~~ **the Michigan penal code, 1931 PA 328, MCL 750.520a to**
10 **750.520e and 750.520g,** and the victim is the individual's child,
11 the court shall not award custody of that child or a sibling of
12 that child to that individual, unless both the child's other
13 parent and, if the court considers the child or sibling to be of
14 sufficient age to express his or her desires, the child or
15 sibling consent to the custody.

16 Sec. 6. (1) This act is equitable in nature and shall be
17 liberally construed and applied to establish promptly the rights
18 of the child and the rights and duties of the parties involved.
19 This act applies to all circuit court child custody disputes and
20 actions, whether original or incidental to other actions. Those
21 disputes and actions shall have precedence for hearing and
22 assignment for trial over other civil actions.

23 (2) **If a child is the subject of a court-approved parenting**
24 **plan as provided in section 12, the court may order the child's**
25 **parents to be governed by the parenting plan without designating**
26 **either parent as the legal or physical custodian of the child,**
27 **unless a designation is made under section 19.**

1 (3) ~~-(2)-~~ Except as otherwise provided in section 6b or ~~-6e~~
2 **6d**, if the circuit court of this state does not have prior
3 continuing jurisdiction over a child, the action shall be
4 submitted to the circuit court of the county where the child
5 resides or may be found by complaint or complaint and motion for
6 order to show cause. An application for a writ of habeas corpus
7 or for a warrant in its place to obtain custody of a child shall
8 not be granted unless it appears that this act is inadequate and
9 ineffective to resolve the particular child custody dispute.

10 Sec. 6a. **(1) This section does not apply if a child's**
11 **custody is not in dispute because the issue is resolved in a**
12 **court-approved parenting plan as provided in section 12.**

13 (2) ~~-(1)-~~ In custody disputes between parents, the parents
14 shall be advised of joint custody. At the request of either
15 parent, the court shall consider an award of joint custody, and
16 shall state on the record the reasons for granting or denying a
17 request. In other cases, joint custody may be considered by the
18 court. The court shall determine whether joint custody is in the
19 **child's best ~~interest of the child~~ interests** by considering the
20 following factors:

21 (a) The factors enumerated in section 3.

22 (b) Whether the parents will be able to cooperate and
23 generally agree concerning important decisions affecting the
24 welfare of the child.

25 (3) ~~-(2)-~~ If the parents agree on joint custody, the court
26 shall award joint custody unless the court determines on the
27 record, based upon clear and convincing evidence, that joint

1 custody is not in the **child's** best interests. ~~of the child.~~

2 (4) ~~(3)~~ If the court awards joint custody, the court may
3 include in its award a statement regarding when the child shall
4 reside with each parent, or may provide that physical custody be
5 shared by the parents in a manner to assure the child continuing
6 contact with both parents. ~~(4)~~ During the time a child resides
7 with a parent, that parent shall decide all routine matters
8 concerning the child.

9 (5) If there is a dispute regarding residency, the court
10 shall state the basis for a residency award on the record or in
11 writing.

12 (6) Joint custody ~~shall~~ **does** not eliminate the
13 responsibility for child support. Each parent ~~shall be~~ **is**
14 responsible for child support based on the needs of the child and
15 the actual resources of each parent. If a parent would otherwise
16 be unable to maintain adequate housing for the child and the
17 other parent has sufficient resources, the court may order
18 modified support payments for a portion of housing expenses even
19 during a period when the child is not residing in the home of the
20 parent receiving support. An order of joint custody, in and of
21 itself, ~~shall~~ **does** not constitute grounds for modifying a
22 support order.

23 (7) As used in this section, "joint custody" means an order
24 of the court in which 1 or both of the following is specified:

25 (a) That the child ~~shall reside~~ **resides** alternately for
26 specific periods with each of the parents.

27 (b) That the parents ~~shall~~ share decision-making authority

1 as to the important decisions affecting the welfare of the
2 child.

3 Sec. 7. (1) If a child custody dispute has been submitted
4 to the circuit court as an original action under this act or has
5 arisen incidentally from another action in the circuit court or
6 an order or judgment of the circuit court, for the **child's** best
7 interests ~~of the child~~ the court may do 1 or more of the
8 following:

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

18 (b) Provide for reasonable parenting time of the child by the
19 parties involved, by the maternal or paternal grandparents, or by
20 others, by general or specific terms and conditions. Parenting
21 time of the child by the parents is governed by section 7a.

22 (c) Modify or amend its previous judgments or orders for
23 proper cause shown or because of change of circumstances until
24 the child reaches 18 years of age. ~~and, subject to section 5b of~~
25 ~~the support and parenting time enforcement act, 1982 PA 295, MCL~~
26 ~~552.605b, until the child reaches 19 years and 6 months of age.~~
27 The court shall not modify or amend its previous judgments or

1 orders or issue a new order so as to change the **child's**
2 established custodial environment ~~of a child~~ unless there is
3 presented clear and convincing evidence that it is in the **child's**
4 best ~~interest of the child~~ **interests**. The **child's** custodial
5 environment ~~of a child~~ is established if over an appreciable
6 time the child naturally looks to the custodian in that
7 environment for guidance, discipline, the necessities of life,
8 and parental comfort. The **child's** age, ~~of the child,~~ the
9 physical environment, and the inclination of the custodian and
10 the child as to permanency of the relationship shall also be
11 considered.

12 (d) Utilize a guardian ad litem or the community resources in
13 behavioral sciences and other professions in the investigation
14 and study of custody disputes and consider their recommendations
15 for the resolution of the disputes.

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

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

21 (2) If a child custody dispute is submitted as provided in
22 subsection (1) or a parenting plan is filed for approval as
23 provided in section 12, in addition to determining the child's
24 custody or approving a parenting plan, for the child's best
25 interests, the court may do the following:

26 (a) Provide for payment of support for the child until the
27 child reaches 18 years of age. Subject to section 5b of the

1 support and parenting time enforcement act, 1982 PA 295, MCL
2 552.605b, the court may also order support as provided in this
3 section for a child after the child reaches 18 years of age. The
4 court may require support payments to be made through the friend
5 of the court, court clerk, or state disbursement unit.

6 (b) Modify or amend a previous support order for proper cause
7 or because of a change of circumstances until the child reaches
8 18 years of age and, subject to section 5b of the support and
9 parenting time enforcement act, 1982 PA 295, MCL 552.6058, until
10 the child reaches 19 years and 6 months of age.

11 (3) ~~(2)~~ A judgment or order entered under this act
12 providing for the support of a child is governed by and is
13 enforceable as provided in the support and parenting time
14 enforcement act, 1982 PA 295, MCL 552.601 to 552.650. If this
15 act contains a specific provision regarding the contents or
16 enforcement of a support order that conflicts with a provision in
17 the support and parenting time enforcement act, 1982 PA 295, MCL
18 552.601 to 552.650, this act controls in regard to that
19 provision.

20 Sec. 7a. (1) **This section does not apply if a child's**
21 **custody is not in dispute because the issue is resolved in a**
22 **court-approved parenting plan as provided in section 12.**

23 (2) ~~(1)~~ Parenting time shall be granted in accordance with
24 the **child's** best interests. ~~of the child.~~ It is presumed to be
25 in the **child's** best interests ~~of a child~~ for the child to have
26 a strong relationship with both of his or her parents. Except as
27 otherwise provided in this section, parenting time shall be

1 granted to a parent in a frequency, duration, and type reasonably
2 calculated to promote a strong relationship between the child and
3 the parent granted parenting time.

4 (3) ~~(2)~~ If the **child's** parents ~~of a child~~ agree on
5 parenting time terms, the court shall order the parenting time
6 terms unless the court determines on the record by clear and
7 convincing evidence that the parenting time terms are not in the
8 **child's** best interests. ~~of the child.~~ ~~(3)~~ A child has a right
9 to parenting time with a parent unless it is shown on the record
10 by clear and convincing evidence that it would endanger the
11 child's physical, mental, or emotional health.

12 (4) Notwithstanding other provisions of this act, if a
13 proceeding regarding parenting time involves a child who is
14 conceived as the result of acts for which 1 of the child's
15 biological parents is convicted of criminal sexual conduct as
16 provided in sections 520a to 520e and 520g of the Michigan penal
17 code, ~~Act No. 328 of the Public Acts of 1931, being~~
18 ~~sections 750.520a to 750.520e and 750.520g of the Michigan~~
19 ~~Compiled Laws~~ **1931 PA 328, MCL 750.520a to 750.520e and**
20 **750.520g**, the court shall not grant parenting time to the
21 convicted biological parent. This subsection does not apply to a
22 conviction under section 520d(1)(a) of ~~Act No. 328 of the Public~~
23 ~~Acts of 1931, being section 750.520d of the Michigan Compiled~~
24 ~~Laws~~ **the Michigan penal code, 1931 PA 328, MCL 750.520d**. This
25 subsection does not apply if, after the date of the conviction,
26 the biological parents cohabit and establish a mutual custodial
27 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 ~~Act No. 328 of the Public Acts~~
4 ~~of 1931~~ **the Michigan penal code, 1931 PA 328, MCL 750.520a to**
5 **750.520e and 750.520g**, and the victim is the individual's child,
6 the court shall not grant parenting time with that child or a
7 sibling of that child to that individual, unless both the child's
8 other parent and, if the court considers the child or sibling to
9 be of sufficient age to express his or her desires, the child or
10 sibling consent to the parenting time.

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

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

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

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

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

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

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

27 (g) Whether a parent has frequently failed to exercise

1 reasonable parenting time.

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

8 (i) Any other relevant factors.

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

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

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

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

17 (c) Restrictions on the presence of third persons during
18 parenting time.

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

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

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

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

27 (h) Requirements of reasonable notice when parenting time

1 will not occur.

2 (i) Any other reasonable condition determined to be
3 appropriate in the particular case.

4 (9) During the time a child is with a parent to whom
5 parenting time has been awarded, that parent shall decide all
6 routine matters concerning the child.

7 (10) ~~Prior to~~ **Before** entry of a temporary order, a parent
8 may seek an ex parte interim order concerning parenting time. If
9 the court enters an ex parte interim order concerning parenting
10 time, the party on whose motion the ex parte interim order is
11 entered shall have a true copy of the order served on the friend
12 of the court and the opposing party.

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

20 (12) If the opposing party files a written objection to the
21 ex parte interim order, the friend of the court shall attempt to
22 resolve the dispute within 14 days after receiving it. If the
23 matter cannot be resolved, the friend of the court shall provide
24 the opposing party with a form motion and order with written
25 instructions for their use in modifying or rescinding the ex
26 parte order without assistance of counsel. If the opposing party
27 wishes to proceed without assistance of counsel, the friend of

1 the court shall schedule a hearing with the court that shall be
2 held within 21 days after the filing of the motion. If the
3 opposing party files a motion to modify or rescind the ex parte
4 interim order and requests a hearing, the court shall resolve the
5 dispute within 28 days after the hearing is requested.

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

8 NOTICE:

9 1. You may file a written objection to this order or a
10 motion to modify or rescind this order. You must file the
11 written objection or motion with the clerk of the court within
12 14 days after you were served with this order. You must serve a
13 true copy of the objection or motion on the friend of the court
14 and the party who obtained the order.

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

21 Sec. 7b. (1) Except as provided in this subsection, a
22 grandparent of the child may seek an order for grandparenting
23 time in the manner set forth in this section only if a child
24 custody dispute with respect to that child is pending before the
25 court **or the child is the subject of a court-approved parenting**
26 **plan.** If a natural parent of an unmarried child is deceased, a
27 parent of the deceased person may commence an action for

1 grandparenting time. Adoption of the child by a stepparent under
2 chapter X of ~~Act No. 288 of the Public Acts of 1939, being~~
3 ~~sections 710.21 to 710.70 of the Michigan Compiled Laws~~ **the**
4 **probate code of 1939, 1939 PA 288, MCL 710.21 to 710.70**, does not
5 terminate the right of a parent of the deceased person to
6 commence an action for grandparenting time.

7 (2) As used in this section, "child custody dispute" includes
8 a proceeding in which any of the following occurs:

9 (a) The marriage of the child's parents is declared invalid
10 or is dissolved by the court, or a court enters a decree of legal
11 separation with regard to the marriage.

12 (b) Legal custody of the child is given to a party other than
13 the child's parent, or the child is placed outside of and does
14 not reside in the home of a parent, excluding any child who has
15 been placed for adoption with other than a stepparent, or whose
16 adoption by other than a stepparent has been legally finalized.

17 (3) A grandparent seeking a grandparenting time order may
18 commence an action for grandparenting time, by complaint or
19 complaint and motion for an order to show cause, in the circuit
20 court in the county in which the grandchild resides. If a child
21 custody dispute **or parenting plan** is pending, the order shall be
22 sought by motion for an order to show cause. The complaint or
23 motion shall be accompanied by an affidavit setting forth facts
24 supporting the requested order. The grandparent shall give
25 notice of the filing to each party who has legal custody of the
26 grandchild. A party having legal custody may file an opposing
27 affidavit. A hearing shall be held by the court on its own

1 motion or if a party so requests. At the hearing, parties
2 submitting affidavits shall be allowed an opportunity to be
3 heard. At the conclusion of the hearing, if the court finds that
4 it is in the **child's** best interests ~~of the child~~ to enter a
5 grandparenting time order, the court shall enter an order
6 providing for reasonable grandparenting time of the child by the
7 grandparent by general or specific terms and conditions. If a
8 hearing is not held, the court shall enter a grandparenting time
9 order only upon a finding that grandparenting time is in the
10 **child's** best interests. ~~of the child.~~ A grandparenting time
11 order shall not be entered for the parents of a putative father
12 unless the father has acknowledged paternity in writing, has been
13 adjudicated to be the father by a court of competent
14 jurisdiction, or has contributed regularly to the support of the
15 child or children. The court shall make a record of the reasons
16 for a denial of a requested grandparenting time order.

17 (4) A grandparent may not file more than once every 2 years,
18 absent a showing of good cause, a complaint or motion seeking a
19 grandparenting time order. If the court finds there is good
20 cause to allow a grandparent to file more than 1 complaint or
21 motion under this section in a 2-year period, the court shall
22 allow the filing and shall consider the complaint or motion. The
23 court may order reasonable attorney fees to the prevailing
24 party.

25 (5) The court shall not enter an order restricting the
26 movement of the grandchild if the restriction is solely for the
27 purpose of allowing the grandparent to exercise the rights

1 conferred in a grandparenting time order.

2 (6) A grandparenting time order entered in accordance with
3 this section shall not be considered to have created parental
4 rights in the person or persons to whom grandparenting time
5 rights are granted. The entry of a grandparenting time order
6 ~~shall~~ **does** not prevent a court of competent jurisdiction from
7 acting upon **a parenting plan for the child**, the custody of the
8 child, the parental rights of the child, or the adoption of the
9 child.

10 (7) The court may enter an order modifying or terminating a
11 grandparenting time order whenever such a modification or
12 termination is in the **child's** best interests. ~~of the child.~~

13 Sec. 11. (1) A child whose parental custody is governed by
14 court order **or who is the subject of a court-approved parenting**
15 **plan** has, for the purposes of this section, a legal residence
16 with each parent. Except as otherwise provided in this section,
17 a parent of a child whose custody is governed by court order
18 shall not change a legal residence of the child to a location
19 that is more than 100 miles from the child's legal residence at
20 the time of the commencement of the action in which the order is
21 issued.

22 (2) A parent's change of a child's legal residence is not
23 restricted by subsection (1) if the other parent consents to, or
24 if the court, after complying with subsection (4), permits, the
25 residence change. This section does not apply if the order
26 governing the child's custody grants sole legal custody to 1 of
27 the child's parents.

1 (3) This section does not apply if, at the time of the
2 commencement of the action in which the custody order is issued,
3 the child's 2 residences were more than 100 miles apart. This
4 section does not apply if the legal residence change results in
5 the child's 2 legal residences being closer to each other than
6 before the change.

7 (4) Before permitting a legal residence change otherwise
8 restricted by subsection (1), the court shall consider each of
9 the following factors, with the child as the primary focus in the
10 court's deliberations:

11 (a) Whether the legal residence change has the capacity to
12 improve the quality of life for both the child and the relocating
13 parent.

14 (b) The degree to which each parent has complied with, and
15 utilized his or her time under, a court order governing parenting
16 time with the child **or a parenting plan**, and whether the parent's
17 plan to change the child's legal residence is inspired by that
18 parent's desire to defeat or frustrate the parenting time
19 schedule **or the parenting plan**.

20 (c) The degree to which the court is satisfied that, if the
21 court permits the legal residence change, it is possible to order
22 a modification of the parenting time schedule **or parenting plan**
23 and other arrangements governing the child's schedule in a manner
24 that can provide an adequate basis for preserving and fostering
25 the parental relationship between the child and each parent; and
26 whether each parent is likely to comply with the modification.

27 (d) The extent to which the parent opposing the legal

1 residence change is motivated by a desire to secure a financial
2 advantage with respect to a support obligation.

3 (e) Domestic violence, regardless of whether the violence was
4 directed against or witnessed by the child.

5 (5) Each order determining or modifying custody or parenting
6 time of a child **or a parenting plan** shall include a provision
7 stating the parent's agreement as to how a change in either of
8 the child's legal residences will be handled. If such a
9 provision is included in the order **or parenting plan** and a
10 child's legal residence change is done in compliance with that
11 provision, this section does not apply. If the parents do not
12 agree on such a provision, the court shall include in the order
13 the following provision: "A parent whose custody or parenting
14 time of a child is governed by this ~~order~~ **order/parenting plan**
15 shall not change the legal residence of the child except in
16 compliance with section 11 of the "Child **Parenting Plan or**
17 Custody ~~Act of 1970~~ **Dispute Act**", 1970 PA 91, MCL 722.31.".

18 (6) If this section applies to a change of a child's legal
19 residence and the parent seeking to change that legal residence
20 needs to seek a safe location from the threat of domestic
21 violence, the parent may move to such a location with the child
22 until the court makes a determination under this section.

23 **Sec. 12. (1) Before entering a decree of divorce, separate**
24 **maintenance, or annulment, the court shall approve a parenting**
25 **plan for a child of the marriage that is in the child's best**
26 **interests. A parenting plan shall have the following**
27 **objectives:**

1 (a) To have the child reared by both the child's father and
2 the child's mother unless it is not in the child's best
3 interests.

4 (b) To provide for the child's care, including the
5 specification of responsibility for health care expenses and
6 health care coverage.

7 (c) To set forth the authority and responsibilities of each
8 parent with respect to the child, consistent with the criteria in
9 sections 15 to 17.

10 (d) To encourage the parents, where appropriate under
11 sections 15 to 17, to meet their responsibilities to their
12 children through agreements in the parenting plan, rather than by
13 relying on judicial intervention.

14 (2) A parenting plan established under this act does not
15 affect the right of an individual who is not a parent governed by
16 that parenting plan to pursue and establish parenting or
17 grandparenting time with a child as authorized under other law of
18 this state. If a court-approved parenting plan does not resolve
19 the issue of a child's custody, the court shall determine the
20 child's custody as provided in section 5.

21 (3) The state court administrative office shall develop and
22 make available a form for use by a parent in completing a
23 parenting plan, which form shall indicate the subject matter that
24 must be addressed in a parenting plan as required by this act. A
25 form developed under this subsection shall contain notice that
26 either party may obtain legal counsel.

27 Sec. 13. (1) Except as otherwise provided in this act, in a

1 divorce, separate maintenance, or annulment action involving a
2 child's parents, the parents shall file with the court a proposed
3 parenting plan that is agreed on by the parents and that conforms
4 to the requirements of this act. The parents shall file the
5 parenting plan required by this subsection before a hearing on or
6 determination of issues regarding a child of the marriage.

7 (2) If there is evidence that either parent has committed
8 domestic violence or the parents do not agree on a parenting
9 plan, each parent shall file with the court and serve on the
10 other parent a proposed parenting plan on or before the earlier
11 of the following dates:

12 (a) Twenty-eight days after either parent files and serves a
13 notice requesting a pretrial conference.

14 (b) Twenty-six weeks after commencement of the action. The
15 parents may extend this period by stipulation.

16 (3) A parent who files a proposed parenting plan in
17 compliance with subsection (2) may move the court for an order of
18 default adopting that parent's parenting plan if the other parent
19 fails to file a proposed parenting plan as required in
20 subsection (2).

21 Sec. 14. (1) A parent submitting a proposed parenting plan
22 shall attach a sworn statement that the plan is proposed by that
23 parent in good faith. Either parent may file and serve an
24 amended proposed parenting plan according to the rules for
25 amending pleadings.

26 (2) If each parent files a parenting plan or the parenting
27 plan is otherwise in dispute, the parents shall attempt to arrive

1 at a mutually agreed upon parenting plan by an alternative
2 dispute resolution process either through the friend of the court
3 mediation services or through another agency or an individual
4 that both parties agree upon. This subsection does not apply if
5 there is evidence that either parent has committed domestic
6 violence.

7 (3) If an alternative dispute resolution process is
8 unsuccessful or inapplicable, and a mandatory settlement
9 conference is provided by court rule, the parents shall attend a
10 mandatory settlement conference. A judge or a friend of the
11 court referee shall preside over the mandatory settlement
12 conference and shall apply the criteria in sections 15 to 17.
13 The parents shall review in good faith the proposed terms of the
14 parenting plans and other issues relevant to the action with the
15 judge or referee. A fact or legal issue that is not in dispute
16 at the time of the settlement conference shall be entered as
17 stipulated for purposes of final hearing or trial in the matter.

18 (4) The court shall not issue an order implementing a
19 disputed parenting plan until the court holds a hearing on the
20 proposed plan or plans. An action involving a child governed by
21 this act has precedence for hearing and assignment for trial over
22 other civil actions.

23 Sec. 15. (1) The parenting plan shall contain provisions
24 governing resolution of future disputes between the parents.

25 (2) Unless precluded or limited by this section or section 16
26 or 17, the court shall provide alternatives to court action for
27 resolving disputes regarding the establishment or modification of

1 a parenting plan, which may include counseling, mediation, or
2 arbitration by a specified individual or agency, including the
3 friend of the court. If the court finds that a parent uses or
4 frustrates the use of an alternative dispute resolution process
5 without good cause, the court shall award attorney fees and
6 financial sanctions to the other parent. The court shall set
7 forth the requirements of this subsection in the order approving
8 the parenting plan.

9 (3) The court shall not order an alternative dispute
10 resolution process if the court finds that a limiting factor
11 under this section or section 16 or 17 applies or that either
12 parent is unable to afford the cost of the proposed dispute
13 resolution process. If a dispute resolution process is not
14 precluded or limited, then, in designating the process, the court
15 shall consider all relevant factors, including, but not limited
16 to, all of the following:

17 (a) Differences between the parents that would substantially
18 inhibit their effective participation in a designated process.

19 (b) The parents' wishes or agreements and, if the parents
20 have entered into agreements, whether the agreements were made
21 knowingly and voluntarily.

22 (c) Differences in the parents' financial circumstances that
23 may affect their ability to participate fully in a given dispute
24 resolution process.

25 (4) A parenting plan shall not require mutual decision making
26 or designation of an alternative dispute resolution process if
27 the court finds that a parent has engaged in any of the following

1 conduct:

2 (a) Willful abandonment that continues for an extended period
3 of time or substantial refusal to perform parenting functions.

4 (b) Physical, sexual, or a pattern of emotional abuse of a
5 child.

6 (c) A history of acts of domestic violence or an assault or
7 sexual assault that causes grievous bodily harm or the fear of
8 that harm.

9 Sec. 16. (1) Subject to subsection (3), the court shall
10 limit a parent's parenting time with his or her child if the
11 court finds that the parent has engaged in any of the following
12 conduct:

13 (a) Willful abandonment that continues for an extended period
14 of time or substantial refusal to perform parenting functions.

15 (b) Physical, sexual, or a pattern of emotional abuse of a
16 child.

17 (c) A history of acts of domestic violence or an assault or
18 sexual assault that causes grievous bodily harm or the fear of
19 that harm.

20 (2) Subject to subsection (3), a parent's parenting time with
21 his or her child shall be limited if it is found that the parent
22 resides with an individual who has engaged in any of the
23 following conduct:

24 (a) Physical, sexual, or a pattern of emotional abuse of a
25 child.

26 (b) A history of acts of domestic violence or an assault or
27 sexual assault that causes grievous bodily harm or the fear of

1 that harm.

2 (3) If a parent is convicted as an adult of criminal sexual
3 conduct as provided in sections 520b to 520g of the Michigan
4 penal code, 1931 PA 328, MCL 750.520b to 750.520g, the court
5 shall restrain the parent from contact with a child that would
6 otherwise be allowed under this act. If a parent resides with an
7 adult who has been convicted of, or with a juvenile who has been
8 adjudicated to have committed, criminal sexual conduct as
9 provided in sections 520b to 520g of the Michigan penal code,
10 1931 PA 328, MCL 750.520b to 750.520g, the court shall restrain
11 the parent from contact with the parent's child except contact
12 that occurs outside that adult's or juvenile's presence. If the
13 court finds that the individual described in this subsection who
14 resides with the parent is the parent's child or ward, and finds
15 that the safety and welfare of the child subject to the parenting
16 plan will be adequately protected, the court may permit contact
17 with that parent in that individual's presence.

18 (4) In limiting parenting time based on conduct found under
19 subsection (1), the court shall consider the amount of time that
20 has passed since the conduct occurred or the last occurrence of
21 the conduct upon which the limitation is being based.

22 (5) The limitations imposed by the court under subsection (1)
23 or (2) shall be reasonably calculated to protect the child from
24 physical, sexual, or emotional abuse or harm that could result if
25 the child has contact with the parent requesting parenting time.
26 If the court expressly finds, based on the evidence and on the
27 record, that limitation on the parenting time with the child does

1 not adequately protect the child from the harm or abuse that
2 could result if the child has contact with the parent requesting
3 parenting time, the court shall restrain the parent requesting
4 parenting time from all contact with the child for a
5 court-determined period of time.

6 (6) The court shall not enter an order under subsection (5)
7 allowing a parent to have contact with a child if the parent is
8 found by clear and convincing evidence in a civil action or by a
9 preponderance of the evidence in an action under chapter XIIIA of
10 the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, to
11 have sexually abused the child. The court shall not enter an
12 order allowing a parent to have contact with the child if the
13 parent resides with an individual who is found by clear and
14 convincing evidence in a civil action or by a preponderance of
15 the evidence in an action under the chapter XIIIA of the probate
16 code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, to have
17 sexually abused a child. If the court finds that the individual
18 described in this subsection who resides with the parent is the
19 parent's child or ward, and finds that the safety and welfare of
20 the child subject to the parenting plan will be adequately
21 protected, the court may permit contact with that parent.

22 (7) If the court limits parenting time under subsection (1)
23 or (2) by requiring supervised contact between the child and the
24 parent, the court shall not approve of a supervisor who has
25 engaged in physical, sexual, or a pattern of emotional abuse of a
26 child. The court shall not approve of a supervisor unless the
27 supervisor accepts that the harmful conduct under subsection (1)

1 or (2) occurred and is willing to and capable of protecting the
2 child from harm. The court shall revoke court approval of the
3 supervisor upon finding, based on the evidence and on the record,
4 that the supervisor has failed to protect the child or is no
5 longer willing to or capable of protecting the child.

6 (8) If the court expressly finds, based on the evidence and
7 on the record, that contact between the parent and the child will
8 not cause physical, sexual, or emotional abuse or harm to the
9 child and that the probability that the parent's or another
10 individual's harmful or abusive conduct will recur is so remote
11 that it would not be in the child's best interests to apply a
12 limitation prescribed by this section, then the court need not
13 apply those limitations. This subsection does not apply if
14 subsection (5) applies.

15 Sec. 17. (1) The court may preclude or limit the parenting
16 plan if a parent's involvement or conduct could have an adverse
17 effect on the child's best interests as evidenced by the
18 existence of 1 or more of the following factors:

19 (a) A parent's neglect or substantial nonperformance of
20 parenting functions.

21 (b) A long-term impairment resulting from drug, alcohol, or
22 other substance abuse that interferes with the performance of
23 parenting functions.

24 (c) The absence or substantial impairment of emotional ties
25 between the parent and the child.

26 (d) The abusive use of conflict by the parent that creates
27 the danger of serious damage to the child's psychological

1 development.

2 (e) A parent's withholding of access to the child from the
3 other parent for a protracted period without good cause.

4 (f) Other factors the court expressly finds adverse to the
5 child's best interests.

6 (2) In determining whether conduct described in this section
7 has occurred, the court shall apply the civil rules of evidence,
8 proof, and procedure.

9 Sec. 18. (1) If a parent fails to comply with the parenting
10 plan or a child support order, the other parent's obligations
11 under the parenting plan or the child support order are not
12 affected. The court may hold a parent who fails to comply with a
13 parenting plan in contempt of court.

14 (2) A parent seeking modification of a parenting plan shall
15 submit, together with his or her petition, a sworn statement
16 setting forth facts supporting the requested modification and
17 shall give notice, together with a copy of his or her sworn
18 statement, to other parties to the proceedings, who may file
19 opposing sworn statements. The court shall deny the petition
20 unless it finds that proper cause for hearing the motion is
21 established by the sworn statements, in which case it shall set a
22 date for hearing on an order to show cause why the requested
23 modification should not be ordered. A parent may file a petition
24 for modification of a parenting plan only in the county of the
25 court that has jurisdiction over the case.

26 (3) Except as otherwise provided in section 15, the court
27 shall not modify a parenting plan unless the moving party shows

1 proper cause for a modification or a change of circumstances
2 since entry of the order approving the parenting plan order. If
3 the moving party makes the showing required by this subsection
4 and if the court finds that the modification is in the child's
5 best interests, the court shall modify the parenting plan.

6 (4) If the court finds that a petition to modify an earlier
7 parenting plan is brought, or a refusal to agree to a
8 modification is made, in bad faith, the court shall assess
9 attorney fees and court costs of the nonmoving parent against the
10 moving party.

11 Sec. 19. Solely for the purposes of other state or federal
12 statutes or other legal requirements that require a designation
13 or determination of legal or physical custody for purposes such
14 as, by way of example and not limitation, tax exemptions or
15 health care benefits, the court may designate in the parenting
16 plan or by separate order a child's legal or physical custodian
17 or custodians. This designation does not affect either parent's
18 rights and responsibilities under the parenting plan or another
19 provision of this act. In the absence of a designation allowed
20 under this section, the parent with whom the child is scheduled
21 to reside the majority of the time shall be considered the
22 child's custodian for those purposes.

23 Enacting section 1. This amendatory act takes effect
24 January 1, 2004.