

# HOUSE BILL No. 5739

September 9, 2014, Introduced by Reps. Cotter, Zorn and Jenkins and referred to the Committee on Families, Children, and Seniors.

A bill to amend 1970 PA 91, entitled "Child custody act of 1970," by amending sections 7 and 7a (MCL 722.27 and 722.27a), 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. 7. (1) If a child custody dispute has been submitted to  
2 the circuit court as an original action under this act or has  
3 arisen incidentally from another action in the circuit court or an  
4 order or judgment of the circuit court, for the best interests of  
5 the child the court may do 1 or more of the following:

6           (a) Award the custody of the child to 1 or more of the parties  
7 involved or to others and provide for payment of support for the  
8 child, until the child reaches 18 years of age. Subject to section  
9 5b of the support and parenting time enforcement act, 1982 PA 295,

1 MCL 552.605b, the court may also order support as provided in this  
2 section for a child after he or she reaches 18 years of age. The  
3 court may require that support payments shall be made through the  
4 friend of the court, court clerk, or state disbursement unit.

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

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

1 ~~was called to active military duty, except the court may enter a~~  
2 ~~temporary custody order if there is clear and convincing evidence~~  
3 ~~that it is in the best interest of the child.~~ AS PROVIDED IN THE  
4 SERVICEMEMBERS CIVIL RELIEF ACT, 50 USC 501 TO 597B, IF A MOTION  
5 FOR CHANGE OF CUSTODY IS FILED DURING THE TIME A PARENT IS IN  
6 ACTIVE MILITARY DUTY, A PARENT MAY FILE AND THE COURT SHALL  
7 ENTERTAIN AN APPLICATION FOR STAY. THE COURT SHALL NOT ENTER AN  
8 ORDER MODIFYING OR AMENDING A PREVIOUS JUDGMENT OR ORDER, OR ISSUE  
9 A NEW ORDER, THAT CHANGES THE CHILD'S PLACEMENT THAT EXISTED ON THE  
10 DATE THE PARENT WAS CALLED TO ACTIVE MILITARY DUTY, EXCEPT THAT THE  
11 COURT MAY ENTER A TEMPORARY CUSTODY ORDER IF THERE IS CLEAR AND  
12 CONVINCING EVIDENCE THAT IT IS IN THE BEST INTEREST OF THE CHILD.  
13 AT ANY STAGE BEFORE FINAL JUDGMENT IN THE PROCEEDING, THE PARENT  
14 MAY FILE AN APPLICATION FOR STAY OR OTHERWISE REQUEST A STAY OF THE  
15 PROCEEDINGS OR FILE AN APPLICATION FOR AN EXTENSION OF A STAY. THE  
16 PARENT, THE PARENT'S CUSTODIAL DESIGNEE, AND THE CUSTODIAL CHILD  
17 SHALL NOT BE REQUIRED TO BE PRESENT TO CONSIDER THE APPLICATION FOR  
18 STAY OR EXTENSION OF A STAY. THE COURT SHALL CONSIDER THE STAY OR  
19 EXTENSION APPLICATION SUFFICIENT IF IT IS A SIGNED, WRITTEN  
20 STATEMENT, CERTIFIED TO BE TRUE UNDER PENALTY OF PERJURY. THE SAME  
21 CONDITIONS FOR THE INITIAL STAY APPLY TO APPLICATIONS FOR  
22 EXTENSIONS OF A STAY. THE PARENT'S DURATION OF DEPLOYMENT, PRISONER  
23 OF WAR STATUS, OR BEING MISSING IN ACTION BUT NOT DECLARED DEAD BY  
24 A COURT SHALL NOT BE CONSIDERED IN A BEST INTEREST OF THE CHILD  
25 DETERMINATION. THE PARENT SHALL INFORM THE COURT OF THE OFFICIAL  
26 ACTIVE DUTY END DATE BEFORE OR WITHIN 30 DAYS AFTER THAT OFFICIAL  
27 ACTIVE DUTY END DATE, AND THE STAY SHALL BE ADJUSTED TO NOT LESS

1 **THAN 90 DAYS AFTER THE OFFICIAL ACTIVE DUTY END DATE.** Upon a  
2 parent's return from active military duty, the court shall  
3 reinstate the custody order in effect immediately preceding that  
4 period of active military duty. If a motion for change of custody  
5 is filed after a parent returns from active military duty, the  
6 court shall not consider a parent's absence due to that military  
7 duty in a best interest of the child determination. **FUTURE ACTIVE**  
8 **DUTY MILITARY DEPLOYMENTS SHALL NOT BE CONSIDERED IN THE BEST**  
9 **INTEREST OF THE CHILD DETERMINATION.**

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

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

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

19 (2) A judgment or order entered under this act providing for  
20 the support of a child is governed by and is enforceable as  
21 provided in the support and parenting time enforcement act, 1982 PA  
22 295, MCL 552.601 to 552.650. If this act contains a specific  
23 provision regarding the contents or enforcement of a support order  
24 that conflicts with a provision in the support and parenting time  
25 enforcement act, 1982 PA 295, MCL 552.601 to 552.650, this act  
26 controls in regard to that provision.

27 Sec. 7a. (1) Parenting time shall be granted in accordance

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

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

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

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

27 (5) Notwithstanding other provisions of this act, if an

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

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

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

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

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

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

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

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

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

27 (h) The threatened or actual detention of the child with the

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

6 (i) Any other relevant factors.

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

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

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

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

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

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

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

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

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

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

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

1           (9) Except as provided in this subsection, a parenting time  
2 order shall contain a prohibition on exercising parenting time in a  
3 country that is not a party to the Hague convention on the civil  
4 aspects of international child abduction. This subsection does not  
5 apply if both parents provide the court with written consent to  
6 allow a parent to exercise parenting time in a country that is not  
7 a party to the Hague convention on the civil aspects of  
8 international child abduction.

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

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

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

25           (13) If the opposing party files a written objection to the ex  
26 parte interim order, the friend of the court shall attempt to  
27 resolve the dispute within 14 days after receiving it. If the



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

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

13 NOTICE:

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

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

26 (15) **AS PROVIDED IN THE SERVICEMEMBERS CIVIL RELIEF ACT, 50**  
27 **USC 501 TO 597B, IF A MOTION FOR CHANGE OF PARENTING TIME IS FILED**

1 DURING THE TIME A PARENT IS IN ACTIVE MILITARY DUTY, A PARENT MAY  
2 FILE AND THE COURT SHALL ENTERTAIN AN APPLICATION FOR STAY. THE  
3 COURT SHALL NOT ENTER AN ORDER MODIFYING OR AMENDING A PREVIOUS  
4 JUDGMENT OR ORDER, OR ISSUE A NEW ORDER, THAT CHANGES THE PARENTING  
5 TIME THAT EXISTED ON THE DATE THE PARENT WAS CALLED TO ACTIVE  
6 MILITARY DUTY, EXCEPT THAT THE COURT MAY ENTER A TEMPORARY  
7 PARENTING TIME ORDER IF THERE IS CLEAR AND CONVINCING EVIDENCE THAT  
8 IT IS IN THE BEST INTEREST OF THE CHILD. AT ANY STAGE BEFORE FINAL  
9 JUDGMENT IN THE PROCEEDING, THE PARENT MAY FILE AN APPLICATION FOR  
10 STAY OR OTHERWISE REQUEST A STAY OF PROCEEDINGS OR FILE AN  
11 APPLICATION FOR AN EXTENSION OF A STAY. THE PARENT, THE PARENT'S  
12 CUSTODIAL DESIGNEE, AND THE CUSTODIAL CHILD SHALL NOT BE REQUIRED  
13 TO BE PRESENT TO CONSIDER THE APPLICATION FOR STAY OR EXTENSION OF  
14 A STAY. THE COURT SHALL CONSIDER THE STAY OR EXTENSION APPLICATION  
15 SUFFICIENT IF IT IS A SIGNED, WRITTEN STATEMENT, CERTIFIED TO BE  
16 TRUE UNDER PENALTY OF PERJURY. THE SAME CONDITIONS FOR THE INITIAL  
17 STAY APPLY TO APPLICATIONS FOR AN EXTENSION OF A STAY. THE PARENT  
18 SHALL INFORM THE COURT OF THE OFFICIAL ACTIVE DUTY END DATE BEFORE  
19 OR WITHIN 15 DAYS AFTER THAT ACTIVE DUTY END DATE, AND THE STAY  
20 SHALL BE ADJUSTED TO NOT LESS THAN 90 DAYS AFTER THE OFFICIAL  
21 ACTIVE DUTY END DATE. UPON A PARENT'S RETURN FROM ACTIVE MILITARY  
22 DUTY, THE COURT SHALL REINSTATE THE PARENTING TIME ORDER IN EFFECT  
23 IMMEDIATELY PRECEDING THAT PERIOD OF ACTIVE MILITARY DUTY. IF A  
24 MOTION FOR CHANGE OF PARENTING TIME IS FILED AFTER A PARENT RETURNS  
25 FROM ACTIVE MILITARY DUTY, THE COURT SHALL NOT CONSIDER A PARENT'S  
26 ABSENCE DUE TO THAT MILITARY DUTY. FUTURE ACTIVE DUTY MILITARY  
27 DEPLOYMENTS SHALL NOT BE CONSIDERED IN THE BEST INTEREST OF THE

1 CHILD DETERMINATION.