House Legislative Analysis Section

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GRANDPARENT VISITATION

House Bill 4071 as introduced
Sponsor: Rep. David Honigman

House Bill 4153 as introduced
Sponsor: Rep. David M. Gubow
First Analysis (3-22-89)
Committee: Judiciary

THE APPARENT PROBLEM:

While Michigan law allows grandparents to seek court-ordered visitation with their grandchildren, it limits the ability to seek visitation to basically two situations: (1) when a child custody dispute has arisen either through divorce, annulment, or separation, or through the legal placement of a child outside the parent's home, and (2) when the grandparent's child who was the natural parent of the grandchild has died, whether or not the child had been adopted by a stepparent. Grandparents, drawing upon their own experiences, cite many examples of what they believe were situations where they and their grandchildren were unfairly barred from seeing each other, but had no legal recourse because their circumstances did not fit into the narrowly-constructed limitations of the law. For example, a grandparent who raised a child and developed strong mutual bonds with him or her does not necessarily have standing to seek visitation, should the parent decide to reclaim the child. Another example is where a parent denies a grandparent contact because of the grandparent's concerns regarding abuse or neglect of the grandchild. Since a healthy relationship with a grandparent is widely believed to be of great emotional importance to a child, as well as to the grandparent, it has been suggested that grandparents be allowed to seek visitation under a broader range of circumstances than the law now permits.

THE CONTENT OF THE BILLS:

House Bill 4153 would amend the Child Custody Act to allow a grandparent, whether natural or adoptive, to seek a grandchild visitation order under any of the following circumstances:

- action for divorce, separate maintenance, or annulment involving the parent was pending;
- the parents were divorced or legally separated, or their marriage had been annulled;
- the grandparent's child who was the parent of the grandchild had died;
- legal custody had been given to a person other than the grandchild's parent or the grandchild had been placed outside the parent's home;
- the grandparent had provided an established custodial environment for the grandchild at any time during the grandchild's life;
- a parent had denied visitation as retaliation for the grandparent reporting child abuse or neglect, when the grandparent had reasonable cause to suspect abuse or neglect;
- a parent was living separate and away from the other parent and grandchild for more than one year;
- the parents had never been married and were not residing in the same household (however, as with current law, a parent of a putative father could not seek court-ordered visitation unless the father had acknowledged paternity in writing, had been determined to be the father in court, or had contributed regularly to the support of the child).

As with current law, a grandchild visitation would be ordered if it was in the best interests of the grandchild; the bill would specify that it would be up to the grandparent to show that visitation would be in the grandchild's best interests. The law at present requires the court to state the reasons for a denial on the record; the bill would also require the reasons for granting visitation to be recorded. The court could refer a grandchild visitation request to the friend of the court mediation service, but if no settlement was reached within 30 days, the request would be heard by the court.

If, upon the motion of a party, the court found that a party had asserted an unfounded or harassing claim or defense, the court could award court costs and reasonable attorney fees to the prevailing party.

Both present law and the bill would limit grandparent filings, absent a showing of good cause, to once every two years.

Grandparent visitation provisions would not apply when a grandchild had been or was being adopted by someone other than a stepparent. Adoption of a child by a stepparent would not terminate the right of a grandparent, whether adoptive or natural, to commence an action for visitation.

MCL 722.27b

House Bill 4071 would amend the adoption code to delete language which is inconsistent with House Bill 4153 and that says that a parent of a natural parent may, during the pendency of a stepparent adoption proceeding, seek grandchild visitation. Language acknowledging grandchild visitation under the Child Custody Act would be retained.

MCL 710.60

Neither bill could take effect unless both were enacted.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bills would have no fiscal implications. (3-21-89)

ARGUMENTS:

For:

A healthy relationship with grandparents, especially grandparents with whom strong bonds have been formed, is important for the emotional well-being of a child. In situations where an abused or neglected grandchild confides in a grandparent, the relationship can also be crucial for the physical well-being of the child. However, many grandparents and grandchildren have been cruelly

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prevented from seeing each other, sometimes through the intervention of a new adult living in the grandchild's household, sometimes the result of spite and vindictiveness on the part of the grandparent's child or former child-in-law.

Although the law at present allows a grandparent to seek visitation under certain circumstances, it unfairly fails to include a grandparent who has reared a grandchild, who reported child abuse, or whose circumstances would have qualified the grandparent to seek visitation except that the person was a grandparent by virtue of adoption. The bill would remedy these failings and in addition clarify a matter on which different panels of the Court of Appeals have evidently disagreed: that is, whether a grandparent can seek visitation after a divorce, separation, or annulment has been granted. Under the bill, a grandparent clearly could seek visitation after a divorce or related action had been finalized, and irrespective of whether a custody dispute was pending.

Despite the acknowledged benefits of a grandparent-grandchild relationship, parents have a right and a duty to supervise the upbringing of their children and not all grandparents constitute a healthy influence on their grandchildren. The mediation of a court or friend of the court should ensure that the best interests of the child would rule. Thus, House Bill 4153 would not give grandparents an absolute right to visitation, but rather would ensure that in carefully limited circumstances grandparents will have a claim on the attention of the court.

Against:

The bills, especially House Bill 4153, would unacceptably interfere in private family matters and the rights of parents to bring up their children as they see fit. Many parents, estranged from their own parents, have good reason to minimize contact between their children and the children's grandparents. The bill would subject parents to answering in court a grandparent's claims on a child, and would make a parent who had the audacity to defend himself or herself against a grandparent's claims liable for court costs and the grandparent's attorney fees. Further, although the bill is presented in terms of what is in the best interests of a child, it is unclear how a child might benefit from a divisive court battle between parent and grandparent. There are, no doubt, many bitter and bigoted grandparents who in court are able to come across as kind and caring people, wrongfully denied contact with their grandchildren. The bill would allow a court, following its own biases, to force a parent to allow a child to associate with someone of whom the parent disapproves. The bill represents an attempt to legislate an expression of a grandparent's right to see a grandchild, when contact with a grandchild is not a right, but a privilege extended by the person responsible for that child, the parent.

For:

House Bill 4153 refrains from an undue interference in parental decision-making by generally confining its scope to situations where the family was no longer intact. Where parents were living together and unified in barring contact between grandchild and grandparent, a grandparent would not have standing in court unless the grandparent had reported abuse or neglect or had at some point reared the child. The bill specifies a reasonable and limited set of circumstances that adequately encompass most situations where contact was wrongfully denied, and that focus on those situations where contact with extended family such as grandparents may be especially important.

Against:

The bills discriminate against single parents. Is a divorced or widowed parent less capable of making child-rearing decisions than a married parent?

Against:

The bills are unfair to grandparents who are wrongfully denied contact with their grandchildren but who do not fit into any of the circumstances described by the bills. If healthy relationships between grandchildren and their grandparents are something in which the state has a legitimate interest and wishes to foster, then the bills are unnecessarily restrictive and arbitrary.

Against:

House Bill 4153 specifies procedural matters to an unacceptable degree. Procedural details are best left to court rule, which the supreme court has held to govern over statute where matters of procedure are concerned.

POSITIONS:

Grandparents'-Children's Rights, Inc., supports the bills. (3-21-89)

The Office of Children and Youth Services supports the bills. (3-21-89)

The State Bar of Michigan has no position on the bills, but it has authorized the Family Law Section to support the bills. (3-21-89)

The Michigan Judges Association supports the concept of the bills and strongly supports grandparents' rights; however, the association has some questions regarding potential conflicts between House Bill 4153 and court rules. (3-21-89)

The Michigan Women's Commission opposes the bills. (3-21-89)