SFA BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

Senate Bill 550 (Substitute S-1 as passed by the Senate)
Senate Bill 551 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Jack Welborn
Committee: Family Law, Criminal Law, and Corrections

Date Completed: 1-21-92

RATIONALE

The laws governing child custody disputes, adoption, removal and placement of an abused or neglected child, and the termination of parental rights, list specific factors to be considered by a court in deciding those issues. Reportedly, some judges have refused to consider on the record a party's criminal history and evidence of substance abuse in awarding custody, even if those matters are admitted or uncontested, because criminal history and substance abuse are not explicitly stated as factors to be included in arriving at a child custody decision. Some people feel, however, that consideration of a person's criminal history and prior substance abuse is appropriate as well as necessary in cases involving the custody of a child and that, in order to ensure that judges consider those factors, they should be listed specifically in statute.

CONTENT

Senate Bills 550 (S-1) and 551 (S-1) would amend the Child Custody Act and the juvenile code, respectively, to require that evidence of a criminal record and substance abuse be considered in certain child custody proceedings.

Senate Bill 550 (S-1) would require that evidence of a criminal record and substance abuse be included when a court considered the moral fitness of the parties, in determining the best interests of a child in a domestic child custody dispute.

Senate Bill 551 (S-1) would require all of the following:

-- That evidence of a criminal record and substance abuse be included when a court considered the moral fitness of the adopting persons, or of the putative father, in determining whether to give an adoptee permanence.
-- That a court consider evidence of a criminal record and substance abuse in determining whether to remove a child from his or her home due to abuse or neglect and in determining custody of a child victim of abuse and neglect.
-- That a court consider evidence of a criminal record and substance abuse in making a finding regarding the termination of parental rights.

MCL 722.23 (S.B. 550)
710.22 et al. (S.B. 551)

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

A person's propensity to engage in criminal activity and/or substance abuse could have a profound effect on the well-being of any child in that person's custody, yet consideration of criminal history and substance abuse is not required of a court in child custody proceedings. Indeed, some would even say that such consideration is precluded by its very omission from the statutory list of factors to be considered. The bills would protect children by

requiring courts throughout the State to weigh these obviously relevant factors when deciding on a child's best interests in custody matters. In addition, local offices of the Friend of the Court routinely do preliminary investigations in these matters and need specificity in the list of criteria in order to ensure statewide consistency in their investigations.

Response: The bills are an overreaction to a few bad decisions. Courts already are required to consider "the moral fitness of the parties involved" in deciding issues of child custody. Surely, criminal history and prior substance abuse must be taken into consideration under any examination of a person's "moral fitness". If courts are failing to consider evidence of criminal history or substance abuse, perhaps those individual judges need better training on the application of child custody laws.

Opposing Argument

Tightening up the moral fitness provisions by specifying that that factor included consideration of criminal history and prior substance abuse could inadvertently exclude other elements of moral fitness that were not expressly listed.

Legislative Analyst: P. Affholter
Fiscal Analyst: F. Sánchez

A9192\S550A