



**House
Legislative
Analysis
Section**

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ALLOW OPEN ADOPTIONS

**House Bills 4417 and 4418
Sponsor: Rep. Gary L. Randall
Committee: Judiciary**

Complete to 4-16-91

A SUMMARY OF HOUSE BILLS 4417 AND 4418 AS INTRODUCED 2-28-91

The bills would provide for open adoptions in which biological parents could select prospective adoptive parents; the procedures would be available for expected children as well as children already born. House Bill 4418 (MCL 710.22 et al.) would amend the adoption code to specifically authorize such adoptions and establish procedures under which biological parents and prospective adoptive parents could meet and exchange information, prospective adoptive parents in open adoptions would be investigated, and children could be placed with the prospective adoptive parents pending the entry of the final order of adoption. House Bill 4417 (MCL 722.111) would amend the child care licensing act to exempt placements made under House Bill 4418 from foster home licensing requirements. Neither bill could take effect unless both were enacted. A more detailed explanation of House Bill 4418 follows.

Petition for adoption. The bill would establish a separate section governing open adoptions--that is, adoptions where the prospective adoptive parent(s) has been personally selected by one or both biological parents. Procedures would parallel existing adoption procedures. The prospective adoptive parent would file a petition for adoption with the probate court in the county where that person or the mother of an expected child resided, or where the child was found. The petition would have to contain the information now required with other adoptions, along with the expected birth date of the child, if the petition was for an expected child. The petition would have to be accompanied by a verified written statement indicating support for the proposed adoption from each parent who still had parental rights.

Abuse and neglect cases. The bill would not apply to children available for adoption who were under the jurisdiction of the court due to abuse and neglect and were not in the custody of their parents.

Meetings and exchange of information. A biological parent who wished to participate in an open adoption could contact the probate court, a child placing agency, or the Department of Social Services (DSS) and authorize the court or agency to provide identifying information to a prospective adoptive parent. A prospective adoptive parent could do the same with regard to biological parents. The court or agency could arrange for the parties to meet each other and, if authorized by the person making the request, discuss placing the child in the home of the prospective adoptive parent, among other things. An authorization to provide identifying information and arrange meetings could be revoked at any time. The bill's procedures for contacting biological or prospective adoptive parents would not prohibit biological or prospective adoptive parents from meeting and exchanging

information before a child placing agency, court, or the department began to handle a proceeding to place the child in the home of the prospective adoptive parent for the purpose of adoption.

Placements with prospective adoptive parents. Once a petition for adoption had been filed under the bill, a custodial parent could place a child in the home of the petitioner if a child placing agency had investigated the petitioner and either the agency or the court had approved the placement (the parent and the petitioner could seek approval from the court if the child placing agency denied the placement request). When evaluating a requested placement, the agency or the court would consider various factors prescribed by the bill, including the motivation for the adoption, the parenting ability and emotional stability of the petitioner, compatibility of the petitioner and the adoptee, the prospective adoptive family's attitudes toward accepting an adoptive child, and all criminal convictions of the petitioner. Also considered would be whether the prospective adoptive family would best serve the needs of the adoptee, given the adoptee's age, sex, and other characteristics.

Once placement occurred, the parent and the petitioner would seek to confirm the placement with the court, unless it was the court that had approved the placement. If the court refused to confirm the placement, it would return the child to the parent, if the parent was willing; if the parent was unwilling, the department would file a petition of dependency or neglect under the juvenile code. Pending disposition of the neglect petition, the court could authorize temporary care of the child.

When a child was placed in the home of a prospective adoptive parent, the court or agency would warn that person that an adoption would not be ordered until parental rights had been terminated and certain opportunities to appeal the termination had been exhausted.

Medical history. Before placing a child with a prospective adoptive parent, a biological parent would have to compile a written medical history on the child and give it to the prospective adoptive parent. This history also would be filed with the court as part of the documentation required in adoption proceedings. The medical history would be on a form prescribed by the DSS.

Investigations. When a petition for adoption was filed under the bill, the court would direct a full investigation of the petitioner by a child placing agency. As with other adoptions, the investigation would consider the best interests of the adoptee, the adoptee's family background, and the reasons for the adoptee's placement away from his or her parent(s). For petitions filed under the bill, the investigation would in addition have to include a criminal record check and the taking of the petitioner's fingerprints; fingerprints would be sent to the state police and the Federal Bureau of Investigation.

Consent to adoption. Under a "consent" to adoption, parental rights are relinquished to the court so that a child may be adopted by someone who has filed a petition to adopt the child. At present, a parent may execute a consent only if the petitioner is related to the child within the fifth degree of consanguinity. The bill would allow a parent to execute a consent for an open adoption under the bill.

Termination of parental rights. For the most part, existing procedures on termination of parental rights would apply to terminations under the bill. Within 14 days after receiving the investigation report, or, if the report was filed before the birth of the child, within 14 days after the birth of the child, the court would terminate parental rights if there was parental consent and the court was satisfied that the consent was genuine and that the best interests of the child would be served by the adoption (these are the standards contained in current law).

Payments. Except for court-approved fees, payments in connection with adoptions are generally forbidden. For all adoptions, not just open adoptions, the bill would require each attorney involved to file with the court a sworn statement describing any consideration paid or agreed to be paid to any party in the adoption proceeding, including anyone consenting to the adoption, a prospective adoptive parent, a relative of a party or of the adoptee, a physician, attorney, social worker or member of the clergy, or any other entity (a virtually identical statement is now required of the petitioner).

For open adoptions, the bill would allow a prospective adoptive parent to pay the biological mother's attorney fees, medical expenses of pregnancy and birth, and expenses of certain psychological counseling for the mother. Payment would have to be approved by the court and made directly to the service provider.

Adoption denials. If the court denied a petition for adoption under the bill, it would, after notice and hearing, return the child to the parent(s) who had custody at the time of the adoptive placement and restore parental rights to that parent or parents. However, if a formerly custodial parent did not want to have parental rights restored, the court could return the child to a parent who had not had custody, or make an appropriate disposition under the juvenile code.