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ADOPTION INFORMATION

Senate Bill 299 (Substitute H-1)
First Analysis (5-12-94)

Sponsor: Sen. Michael J. Bouchard
Senate Committee: Family Law, Mental
Health, and Corrections
House Committee: Judiciary

THE APPARENT PROBLEM:

The adoption code requires the Department of Social Services (DSS), a child placing agency, or the court that places an adoptee to maintain certain identifying and nonidentifying information on the parties to an adoption. "Identifying" information includes the child's birth name and the names of biological parents and siblings; "nonidentifying" information includes the date, time, and place of the adoptee's birth, whether the termination of parental rights was voluntary or court-ordered, and information on the ethnic and religious background of the biological parents. Nonidentifying information is relatively freely available to affected parties, while various restrictions apply to the release of identifying information. Those restrictions vary according to the time the adoption occurred; a major revision of the adoption code occurred in 1980, and the law carries a presumption in favor of release of information on adoptions occurring after that time. (For simplicity, this analysis generally refers to when an adoption happened, but it should be noted that the various provisions on release of information depend on the date parental rights were terminated.)

Nonidentifying information is available upon request to an adoptive parent, adult adoptee, biological parent, or adult biological sibling. Identifying information is available to a biological parent or adult biological sibling if an adult adoptee has filed written consent with the DSS. Identifying information on adoptions made before 1980 is available to an adult adoptee if the DSS has on file written consent from the affected biological parent(s); identifying information also is available when the biological parent(s) are deceased. Identifying information on a post-1980 adoption is available to an adult adoptee if there is no denial on file from the affected biological parent(s).

Irrespective of these limits on providing information, medically important information can be exchanged through an intermediary in the form of the adoption agency, court, or DSS.

The problem with the current situation, say many, is that it wrongly restricts an adult adoptee's ability to obtain information about himself or herself. Adoptees are sometimes haunted by being unable to fully know their identity and where they came from. Things that non-adopted people take for granted--ethnic background, family resemblances, inherited talents--are often out of reach for adoptees. The result can be a feeling of incompleteness that persists throughout life, even for otherwise happy adoptees who were raised in loving homes.

Although adult adoptees can in theory obtain identifying information and locate their birth families if the birth parent does not object, in practice the system does not work. For information to be available on pre-1980 adoptions, the birth parent must have filed a consent for the release of that information; unfortunately, it appears that relatively few birth parents know of the need to do so, for few have filed the necessary consent. Reports of adoptee-birth parent reunions are overwhelmingly positive, even if there is no continuing relationship that develops as a result. Many birth mothers had assumed that they could never see the child again, even though they always wondered what became of the child, and even birth mothers who thought they had no interest in a reunion commonly report that the reunion experience was a profoundly satisfying one. Many believe that the interests of adoptees and the high proportion of positive reunions justify a change in the law to make it easier for adoptees to gain access to their birth records.

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THE CONTENT OF THE BILL:

The bill would amend the adoption code (MCL 710.39 et al.) to establish a procedure in which a court-appointed "confidential intermediary" searches for and "discreetly and confidentially" contacts a biological family member being sought by an adult adoptee, adoptive parent of a minor adoptee, or adult child of a deceased adoptee; an intermediary also could search on behalf of a biological family member who was looking for an adult adoptee or adult child or a deceased adoptee. The bill would extend to pre-1945 adoptees the ability to obtain identifying information if the birth parent has not filed a denial with the central adoption registry (this is the structure that currently applies to post-1980 adoptions). The bill also would amend provisions dealing with termination of parental rights of putative fathers to bar custody for and terminate the rights of a putative father of a child conceived as a result of the father's criminal sexual conduct.

The bill would take effect six months after enactment, but it could not take effect unless Senate Bills 721-725 (which address various matters of adoption and foster care) also were enacted. Further details follow.

Court Appointment. A person described above who wanted to have a search conducted would petition the probate court to have a confidential intermediary appointed. Upon receiving a petition, the court would first contact the central adoption registry to determine whether a denial of release of identifying information was currently on file. If there was no such denial, the court would appoint as intermediary someone who was approved by the court after receiving training (the bill does not specify the nature of this training or who is to provide it). The court would provide the intermediary with a certified copy of the order of appointment. The court could dismiss an intermediary who engaged in conduct that violated "professional or ethical standards."

Oath of confidentiality. Before serving, an intermediary would have to sign and file with the court an oath of confidentiality as prescribed by the bill. In the oath, an intermediary would promise to conduct a reasonable search and make a discreet and confidential inquiry as to whether the individual being sought consented to the release of information to the petitioner; to act in accordance

with the wishes of the petitioner and the person being sought if both parties had consented in writing to meet or communicate with each other; and, not to charge fees in excess of actual expenses (or as authorized by the court). The oath also would include a statement recognizing that violation of the oath would be subject to contempt sanctions.

Duties of intermediary. A confidential intermediary would have to make a reasonable search for an individual whose identity is sought by a petitioner under the bill. The intermediary would first search court records. If it was necessary to obtain information from an agency or the DSS, the intermediary would provide a certified copy of the order of appointment to the agency or department. If the intermediary located the person being sought, the intermediary would discreetly and confidentially ascertain whether the individual was willing to release information to the petitioner or to meet or communicate with the petitioner. Upon mutual written consent of the parties, an intermediary could facilitate a meeting or other communication between the petitioner and the individual being sought. If the individual being sought refused contact or was dead, the intermediary would report this to the petitioner and the court.

Fees. A confidential intermediary could accept only a reasonable fee approved by the court and reimbursement for actual expenses incurred in performing services; he or she could not request or accept any other thing of value for serving as a confidential intermediary.

Failure to contact. If a confidential intermediary had failed to contact a biological family member within six months after his or her appointment, an adult adoptee could petition the court for the release of identifying and nonidentifying information maintained under existing law, along with any additional information obtained by the intermediary. Before any hearing on the matter, the intermediary would submit a written report to the court describing all efforts made to locate the biological family member. Following the hearing, the court would do one of three things:

--order the intermediary to search for an additional six months;

--appoint a new intermediary to search for a six-month period;

--release to the adult adoptee identifying information and any other information that the court considered appropriate, if the court found that a diligent search had been made and that there was good cause to release the information. The court's finding would be made on the record.

Intermediary's access to records. The bill would extend to confidential intermediaries access to adoption records (including both identifying and nonidentifying information) maintained by the state's central adoption registry and by adopting agencies and the courts. However, at the option of an agency or the DSS, the information could be released to the court for subsequent release to the intermediary.

Birth certificates. If there was no parental denial of the release of identifying information on file in the DSS central adoption registry, an adult adoptee could use a central registry clearance to obtain an original birth certificate under House Bill 4638. This ability would apply only to post-1980 adoptions.

Death of adoptee, biological parent. The bill would allow the direct descendants of an adult adoptee to obtain all information that an adult adoptee would be entitled to receive under the section dealing with the release of identifying and nonidentifying information. The bill also would specify that for the purposes of release of identifying information on post-1980 and pre-1945 adoptions, a parental denial would not be effective after the death of that biological parent. (Existing law already allows adults adopted before 1980 to obtain information on a deceased biological parent.)

HOUSE COMMITTEE ACTION:

The House Judiciary Committee adopted a substitute bill that differed from the Senate-passed version in details of confidential intermediary procedures.

FISCAL IMPLICATIONS:

With regard to the Senate version of the bill, the Senate Fiscal Agency said that the bill would have no fiscal impact on state or local government. (3-15-94)

ARGUMENTS:

For:

The bills would grant adult adoptees the opportunity to obtain information about their biological families, and with it the opportunity to answer persistent questions about their backgrounds, the circumstances of being given up for adoption, and their family medical history. Adoptees who search for their birth parents are often able to find them despite the obstacles raised by the law, but only after considerable time and expense. The reunions resulting from such searches are almost always positive, ranging from a pleasant telephone conversation to the development of a continuing relationship with the birth family. Many adoptees are not searching with the idea of having a fairy tale relationship with the birth mother, but rather are searching to complete their sense of identity, and sometimes to answer important medical questions. Although confidential intermediaries have been used with success in some courts, others are reluctant to use the process absent specific statutory authority to do so. By providing that authority and lifting statutory impediments to obtaining one's own birth certificate, the bills would recognize the needs and rights of adoptees, and the high rate of positive outcomes when adoptees do manage to find their birth parents. Well over a dozen states have authorized the use of intermediaries in adoption searches; it is time that Michigan did so as well.

Against:

The bills would greatly aid misguided search efforts with the potential to disrupt the lives of unsuspecting birth mothers. The biological parents who have put a child's birth behind them and closed a chapter of their lives are the biological parents one does not generally hear from in public forums. The bills would destroy the confidentiality that was pledged to these people when they gave a child up for adoption years ago. Birth mothers may have kept the circumstances of birth and adoption a secret from family members; to have a stranger show up saying he or she is representing one's child could throw an entire family into emotional turmoil. Although most reunions appear to be positive, there is the occasional report of an unpleasant reunion, where contact with the adoptee created great anxiety for the birth mother, where an adoptee

persisted in unwanted attentions, or where an adoptee sought money from the birth mother. Of particular concern is the way the bill would authorize the release of previously confidential information if an intermediary had not contacted a biological family member within a specified period of time; under the bill, indentifying information given by authorities to a "confidential intermediary" would no longer be confidential.

Response:

Many birth mothers have testified that confidentiality and secrecy in the adoption process was not a matter of their choosing, but rather it was forced upon them by adoption agencies. The idea, apparently, was that by severing all ties with the biological family, the adoptee could be better integrated into the adoptive family. Time has changed this assumption so that most professionals now believe that some degree of openness in an adoption is preferable, allowing the adoption to occur in a more emotionally healthy manner. While there may be rare occasions when reunions would be ill-advised, the balance of interests in this matter tips in favor of opening records: the rights of the adoptees should take precedence.

For:

Since a statute closing adoption records was not enacted until 1945, the bill would offer access to records established prior to that time. Such records would be subject to the same procedures and safeguards that apply to post-1980 adoptions.

Response:

Although confidentiality may have been first established by statute in 1945, it may have been promised by individual courts and agencies prior to that time.

Against:

The use of an intermediary may be unacceptable to many who would prefer to have adoption records opened up. Using an intermediary would add an unnecessary layer of bureaucratic involvement, increasing costs and delaying results. Further, it would involve a stranger in what many feel is a private and personal matter.

Against:

The bill lacks gender-neutral language in its provision denying parental rights and custody of a child born as a result of criminal sexual conduct to the person who committed that sexual assault. Cases do occasionally arise of children born as a result of a criminal sexual act committed by a

female: the House Judiciary committee heard testimony describing such an incident, in which a young female babysitter had sex with her charge. The bill should be amended to ensure that it does not contain language tainted by gender bias.

POSITIONS:

The Adoption Reform Movement of Michigan supports the bill. (5-11-94)

The American Adoption Congress supports the bill. (5-11-94)

A representative of the Department of Social Services testified in support of the bill. (5-11-94)