



**House  
Legislative  
Analysis  
Section**

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**ADOPTION: AGENCY CONSENT**

House Bill 4063 as enrolled  
Second Analysis (8-8-94)

**Sponsor: Rep. David M. Gubow**  
**House Committee: Judiciary**  
**Senate Committee: Family Law, Mental  
Health, and Corrections**

***THE APPARENT PROBLEM:***

The adoption code (Chapter X of the Revised Probate Code) governs adoption proceedings and assigns the responsibility for formalizing an adoption to the probate court. The law requires that when the juvenile court has permanently committed a child to the Department of Social Services (DSS) or a child placing agency, consent to an adoption must be obtained from the department or agency. It occasionally happens that a person who wishes to adopt a child is unable to obtain the necessary consent or that more than one family petitions to adopt the same child (such as when a family recommended by the DSS seeks to adopt a child also wanted by the child's foster family). When a family from whom consent was withheld challenges the adoption, the dispute goes before the court. The court is to determine whether consent had been "arbitrarily and capriciously" withheld; if the court finds that to be the case, it may terminate the rights of the agency and enter a final order of adoption. The provisions have been criticized for vagueness and for failing to ensure a speedy resolution to such disputes. Amendments have been developed to meet those criticisms.

***THE CONTENT OF THE BILL:***

Under the adoption code, if the DSS or a child placing agency whose consent is required for an adoption has not executed a consent within a reasonable period of time, a person who has filed a petition to adopt may seek to have the probate court determine whether the withholding of consent was arbitrary and capricious. If the court finds clear and convincing evidence that consent was being arbitrarily and capriciously withheld, the court may terminate the agency's rights and enter a final order of adoption.

The bill would replace this language with provisions barring the filing of an adoption petition unless the

petition was accompanied either by the required agency consent or a motion alleging that the decision to withhold consent was arbitrary and capricious. If the latter was alleged, the petitioner would have to explain the specific steps that he or she had taken to obtain the required consent, any results of those efforts, and the specific reasons why the petitioner believed the decision was arbitrary and capricious. If the child had already been placed with someone who had already received consent, the petitioner would have to file the motion within 56 days after the child placement order was issued, and before the entry of the adoption order.

The court would have 91 days to rule on the motion, unless good cause was shown for delay. The court would have to deny the motion unless the petitioner showed by clear and convincing evidence that the decision regarding consent had been arbitrary and capricious; if the motion was denied, the court would also dismiss the petition to adopt. If the court found in favor of the petitioner, it could terminate the rights of the appropriate court or agency and could enter further orders as it considered appropriate. In addition, the court could order the petitioner reimbursed for his or her legal costs in the matter.

The bill would apply to all adoptions in which the petition to adopt was filed after the bill took effect. (The bill was given immediate effect.)

MCL 710.26 and 710.45

***FISCAL IMPLICATIONS:***

According to the Senate Fiscal Agency, the bill would have an indeterminate fiscal impact on the courts. Approximately 5,400 adoptions were commenced in calendar year 1991. The motions to the court provided for in this bill would increase

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court costs. The number of cases in which motions would be filed is not known, however. The bill would have no fiscal impact on the Department of Social Services. (3-15-94)

child placing agencies with care of children and investigations of those who seek to adopt them. Procedures for appealing an agency's withholding of adoption consent should retain a presumption that the agency acted properly.

### ***ARGUMENTS:***

#### ***For:***

The bill would correct a number of flaws in the statutory procedures that apply when a person seeking adoption of a child has been denied consent by DSS or the agency to whom the child was committed. At present, the process can drag on because the law lacks deadlines and guidance for the court. By requiring any challenge to the withholding of consent to be made within 56 days after the child was placed, the bill would ensure that the matter was brought up promptly. By requiring the court to decide within 91 days, the bill would ensure that resolution was speedy. By requiring a petitioner's motion to include

specifics on an agency's withholding of consent, the bill would ensure that pertinent information was provided to the court in a timely manner, and discourage frivolous challenges.

Current procedures are faulted not only for their lack of speediness, however. If the court finds that the agency arbitrarily and capriciously withheld consent, the next step is to proceed to the final order of adoption. Many consider this to be an extreme resolution to the matter, when it could be that the child would be better off in alternative placement. The bill thus would allow the court to enter further orders under the adoption code or the juvenile code that it considered appropriate.

#### ***Against:***

It may be that current law and the bill give too much power to the DSS and the child placing agencies. If there are two qualified and loving families willing to adopt a child living under the authority of the DSS or a private agency, and one obtains the necessary consent, the other must show that the agency acted "arbitrarily and capriciously" in order to have any chance to adopt the child. It could be that the best interests of the child would demand a more even-handed weighing of the alternatives provided by competing families.

#### ***Response:***

To have the court decide between competing families would be to shift the consent authority away from the appropriate party and to risk unduly burdening the court. The law entrusts the DSS and