House
Legislative
Analysis
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CHILD CUSTODY

House Bill 4064 as enrolled
Second Analysis (1-24-94)

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

THE APPARENT PROBLEM:

Under the Child Custody Act, the overriding factor that judges are supposed to employ in deciding issues of custody and visitation is the best interests of the child. The act defines that term to incorporate many factors, each of which must be considered, although not necessarily given equal weight. One factor that the definition does not specifically address is whether there had been domestic violence in the home. Reports abound, however, of judges who, in deciding on custody and visitation of children, fail to give weight to evidence of spousal abuse, or who even refuse to hear such evidence at all. Numerous studies suggest that a child exposed to domestic violence is at a substantial risk of physical and psychological harm. Therefore, it has been proposed that the act's definition of "best interests of the child" be amended to include a consideration of whether there had been domestic violence in the home.

Child custody issues are by no means confined to considerations of how "best interests of the child" should be defined, however. Michigan was in large part the setting for a child custody dispute that received widespread national and international attention: the struggle between Dan and Cara Schmidt of Iowa and Jan and Roberta DeBoer of Michigan for custody of the child who was the prospective adoptive child of the DeBoers and the biological child of the Schmidts, called Jessica by the DeBoers, Anna by the Schmidts, and "Baby Girl Clausen" (Cara's maiden name) by the courts. After a protracted legal battle in which the high courts of both states ruled in favor of the Schmidts, the two-year-old child, who had been with the DeBoers since birth, was returned to the Schmidts in August, 1993.

Although attorneys for the DeBoers fought to have the case decided on a "best interests" determination, under the facts of the case no such determination was required under Iowa law, and the decision of the Michigan Supreme Court was that it could not consider the best interests of the child, because the federal Parental Kidnapping Prevention Act required that the custody decision be made by Iowa courts. (For more information on the DeBoer case, see Background Information.) Even though the decision ultimately rested on an interpretation of federal law regarding jurisdiction, many have pointed to the case as illustrative of the problems regarding third-party custody, namely, that third parties (that is, people who are not biological or adoptive parents) have at best limited standing to sue for custody of a child.

Such was the decision of the Michigan Supreme Court in Bowie v. Arder (441 Mich 23 [1992]). In that case, which figured in the DeBoer decisions of both the Michigan Court of Appeals and the Michigan Supreme Court, the supreme court said "neither the Child Custody Act nor any other authority . . . gives a third party a right to legal custody of a child because the child resides with third party," and that "a third party cannot create a custody dispute by simply filing a complaint in circuit court alleging that giving legal custody to the third party is in the best interests of the child." The court in Bowie held that "a third party does not have standing to create a custody dispute not incidental to divorce or separate maintenance proceedings unless that party is a guardian of a child or has a substantive right of entitlement to the custody of the child."

The Bowie opinion further quoted from a 1984 decision on Ruppel v. Lesner (421 Mich 559) in which the court held that "where a child is living with its parents, and divorce or separate maintenance proceedings have not been instituted, and there has been no finding of parental unfitness in an appropriate proceeding, the circuit court lacks the authority to enter an order giving custody to a

third party over the parents' objection." (A footnote in Ruppel noted that if parents abuse, neglect, or abandon a child, proceedings may be brought under the juvenile code to bring the child within the probate court's jurisdiction, allowing appropriate orders regarding custody.) Subsequent to the decision in Ruppel, statutory amendments to the child custody act explicitly gave guardians standing to seek custody. Thus, according to some legal experts, under Michigan law, third parties have a right to petition for custody only if a divorce or separate maintenance action has been filed or completed, or if there has been a finding of parental unfitness, or if the petitioning third party had previously been appointed guardian (or, under certain circumstances, limited guardian).

Many find it troubling that a child who is living with family members or prospective adoptive parents may under Michigan law have to be returned to biological parents who are strangers to the child. One such case recently arose in Macomb County, where a young mother disappeared and was declared dead based on the amount of blood in her car, her mother and stepfather took in her young daughter, and the prime suspect in the murder case claimed paternity and sought custody of the child. In such situations, some have argued, those who are raising the child should have standing to seek formal custody. To this end, amendments to broaden the rights of third parties to seek custody under the Child Custody Act have been proposed.

In another matter relating to child custody, there reportedly have been a few cases nationally in which convicted rapists have sought custody or visitation of a child who was conceived as a result of the crime. Although it appears that such efforts have thus far been unsuccessful, apparently these individuals have standing to pursue custody disputes by reason of biological paternity. Although no such cases are known to have arisen in Michigan, many believe that Michigan law should prevent the problem from occurring by prohibiting custody or visitation from being awarded to the biological father of a child conceived as a result of criminal sexual assault.

THE CONTENT OF THE BILL:

The bill would amend the Child Custody Act to do the following:

** include "domestic violence, regardless of whether the violence was directed against or witnessed by the child" among the factors to be evaluated by the court in determining the best interests of the child.

** extend to certain prospective adoptive parents and biological family members standing to seek custody of a child. For a prospective adoptive parent to have standing, the child would have to have been placed with the parent under the adoption laws of this or another state, the placement order would have to still be in effect at the time the custody action was filed, and the child would have to have resided with the prospective adoptive parent for at least six months after placement. For a biological family member to have standing, the child's biological parents would have to have been unmarried, the custodial biological parent would have to have died or be missing, and the other biological parent could not already have been granted legal custody under court order.

** generally prohibit a court from awarding custody or visitation of a child conceived by sexual assault if the biological parent seeking custody had been convicted of that assault. However, this prohibition would not apply if after the conviction, the biological parents cohabited and established a mutual custodial environment for the child.

** generally prohibit a court from awarding custody or visitation of a child to a biological parent who had been convicted of criminal sexual conduct involving that child or his or her sibling. However, custody of the child victim or his or her sibling could be awarded to the offender with the agreement of both the child's parent and the child or sibling (providing the court considered the child or sibling old enough).

MCL 722.23 et al.

BACKGROUND INFORMATION:

On July 2, 1993, the Michigan Supreme Court issued its decision on In re Clausen (DeBoer v. Schmidt) (442 Mich 648), ordering Jan and Roberta DeBoer to return their prospective adoptive daughter to her biological parents, Dan and Cara Schmidt. The two-and-a-half-year-old girl had been with the DeBoers since she was a few days old.

Jessica DeBoer (as she was generally called in media accounts, although the Schmidts called her Anna) was born to Cara Clausen on February 8, 1991. Although Iowa law provided for a 72-hour

waiting period, Clausen signed a release-of-custody form relinquishing parental rights and naming the wrong man as father approximately 48 hours after the baby was born, on February 10. The man she named executed a release of custody form on February 14, 1991. On February 25, Michigan residents Jan and Roberta DeBoer filed a petition for adoption of the child in Iowa juvenile court. At a hearing held the same day, the parental rights of Cara Clausen and the man she named as the baby's father were terminated, and the DeBoers were granted custody.

During the following month, Clausen filed a request to revoke her release of custody and named Daniel Schmidt as the child's true biological father, and he filed an affidavit of paternity. Iowa's juvenile court dismissed Clausen's request on the ground that juvenile court lacked subject matter jurisdiction because the adoption petition had already been filed, and dismissed Schmidt's attempt to claim custody. On March 27, 1991, Schmidt filed a petition in the district court of Iowa seeking to intervene in the DeBoers' adoption proceedings, asserting that he had not consented to the adoption. Almost six months later, Schmidt's paternity was established to a 99.9 percent probability.

On September 24, 1991, the DeBoers filed a petition in Iowa district court to terminate Schmidt's parental rights, saying that Schmidt was an unfit parent because he had abandoned Baby Girl Clausen and two previous children. The Iowa district court held a bench trial on the issues of paternity, termination of parental rights, and the DeBoers' adoption, and on December 27, concluded that the parental termination proceeding was void and that the DeBoers' adoption petition must be denied. The court ordered the DeBoers to return the child to Schmidt by January 12, 1992, and retained jurisdiction in order to protect the child's interests. Not long after this, in April 1992, Cara Clausen and Daniel Schmidt were married.

In the meantime, the Iowa Court of Appeals also had reversed the termination of Cara Clausen's parental rights and remanded the case to Iowa's juvenile court. The Iowa Supreme Court granted further review of that decision. The DeBoers appealed the district court's order to the Iowa Supreme Court, which stayed the order changing physical custody of the child. The Iowa Supreme Court consolidated the review of the two issues, and affirmed both decisions on September 23, 1992. The supreme court rejected the DeBoers' contention that best interests analysis governed the issue of termination in an adoption case, and ruled that since termination of parental rights was governed by statute, statutory ground for termination must be established before reaching a determination of the child's best interests. The DeBoers' motion for reconsideration was denied and the case was remanded to district court.

On December 3, 1992, the Iowa district court entered an order terminating the DeBoers' rights as temporary guardians and custodians and appointing Daniel Schmidt as temporary guardian and custodian. On the same date, in Michigan, the DeBoers filed a petition in Washtenaw County Circuit Court seeking modification of the Iowa order under the Uniform Child Custody Jurisdiction Act (UCCJA). They argued that Michigan had jurisdiction under the UCCJA because the child had lived in Michigan for all but approximately three weeks of her life and Michigan was her home state. The Michigan circuit court entered an ex parte preliminary injunction prohibiting Schmidt from removing the child from Washtenaw County.

On December 11, 1992, Schmidt filed a motion in the Michigan court for summary disposition, to dissolve the preliminary injunction, and to recognize and enforce the Iowa judgment. At the circuit court's hearing on that motion, Schmidt contended that, according to Bowie v. Arder, the DeBoers lacked standing under the Child Custody Act to initiate a custody dispute. The DeBoers argued that Michigan had jurisdiction under the UCCJA and that the court should consider the child's best interests before making a decision. Since the DeBoers filed their petition under the UCCJA, they contended, they did not have to meet the standing requirement of the Child Custody Act and Bowie did not preclude consideration of their petition.

On January 11, 1993, the Washtenaw County Circuit Court denied Schmidt's motion for summary disposition, finding that it had jurisdiction to determine the child's best interests, and ordered that the child remain with the DeBoers. The court rendered a decision on February 12, 1993, that it was in the best interests of the child to remain with the DeBoers.

Upon Schmidt's appeal of the Washtenaw circuit court's decision, the Michigan Court of Appeals held that the circuit court had lacked jurisdiction to

intervene. The court held that Michigan is precluded under the UCCJA from taking jurisdiction concerning custody if that issue is pending in another state at the time the petition to modify is filed in Michigan. The DeBoers filed their petition in Michigan on the same day they were to appear in Iowa district court, and further proceedings were scheduled in Iowa in the case. The Washtenaw circuit court, then, was "obligated to recognize and enforce the Iowa order."

The Michigan Court of Appeals also found that the DeBoers lacked standing to initiate a custody action. The actions of the Iowa courts had made the DeBoers third parties who therefore "no longer had a basis on which to claim a substantive right to custody." According to Bowie, the court said, "neither the Child Custody Act nor 'any other authority' gives a third party who does not possess a substantive right to custody or is not a guardian, standing to create a custody dispute. A right to legal custody cannot be based on the fact that a child resides or has resided with the third party." The court interpreted Bowie's reference to "any other authority" to include the UCCJA. The court also pointed out that Bowie specifically states that "a third party could not gain standing simply by filing a complaint and asserting that a change in custody would be in the best interest of the child."

Following their loss in the Michigan Court of Appeals, the DeBoers appealed to the Michigan Supreme Court, which issued its decision on July 2, 1993. In that decision, the supreme court held that the UCCJA and the federal Parental Kidnapping Prevention Act (PKPA) deprived Michigan courts of jurisdiction over the custody dispute and required enforcement of the orders of the Iowa courts directing that the Schmidts have custody of the child. In addition, the court said, the DeBoers lacked standing under Bowie v Arder. The court further said that enforcement of the decision was required by the PKPA, which was intended to deal with inconsistent and conflicting laws and practices by which state courts determine jurisdiction to decide custody disputes. The fact that the Iowa courts did not conduct a hearing regarding the best interests of the child did not justify a refusal to enforce the Iowa judgments, as the UCCJA and PKPA are procedural statutes only, meant to assure that the state that is in the best position to make a proper determination be the one in which an action is brought, and that other states will follow the decision.

The Michigan Supreme Court also said that with regard to the DeBoers' standing to bring a custody action, it was not enough that a person assert status as a contestant or claim a right to custody of a child. Bowie requires the existence of some substantive right to custody of a child, noted the court; the court reiterated Bowie's holding that third parties do not obtain such a right by virtue of the child's having resided with them. In this case, when the temporary Iowa custody order was rescinded, the DeBoers became third parties with respect to the child and no longer had a basis on which to claim a substantive right of custody.

The court further found that the Child Custody Act cannot be read to authorize a child to petition for a best interests hearing, since the act clearly distinguished between the "parties" and the "child." (One of the actions before the court was brought on behalf of the child herself.) With regard to an assertion that the child was being denied equal protection, the court rejected the view that children residing with their parents are similarly situated to those residing with nonparents. The court said that "the relationship between natural parents and their children is fundamentally different than that between a child and nonparent custodians."

In the final lines of its decision, the Michigan Supreme Court said, "clearly applicable legal principles require that the Iowa judgment be enforced and that the child be placed in the custody of her natural parents. It is now time for the adults to move beyond saying that their only concern is the welfare of the child and to put those words into action by assuring that the transfer of custody is accomplished promptly with minimum disruption of the life of the child."

The United States Supreme Court refused to stay the transfer, and on August 1, 1993, the two-and-one-half-year-old girl was returned to Daniel and Cara Schmidt.

FISCAL IMPLICATIONS:

With regard to a similar version of the bill proposed by the Senate Committee on Family Law, Criminal Law and Corrections, the Senate Fiscal Agency said that the bill would have no fiscal impact on state or local government. (6-9-93)

ARGUMENTS:

For:

The bill would explicitly require a judge deciding on custody of a child to consider and evaluate the existence of any domestic violence in the home of the prospective custodial parent. To fail to do so, as unfortunately many judges have done, is to endanger the child's physical and psychological well-being. Not surprisingly, someone who uses violence in adult relationships appears to be likely to use violence against children in the household, especially as the children get older; various studies have estimated the percentage of wife beaters who also abuse children in the home to be from 45 to 70 percent. In contrast, only about 20 percent of batterers are violent to individuals outside the home; many a batterer may appear quite respectable to the casual judicial observer. Although the myth that wife beating does not happen among the educated and affluent classes has been debunked, there continue to be stories of judges who refuse to believe that a well-educated and seemingly pleasant person could be an abusive spouse.

The risk to a child in an abusive household goes beyond the risk of being hit, however. In large measure, children learn how to behave from their parents, and it has been established for some time that children who observe their fathers beating, belittling, or berating their mothers are likely to be greatly affected by the experience. As one writer put it, "even where children do not directly witness the attacks, they are deeply affected by the climate of violence in their home," for they cannot help but be aware of it. Young children suffer from psychosomatic illnesses, phobias, insomnia, temper tantrums, and guilt. School-age boys tend to behave aggressively and disruptively, while school-age girls may have problems concentrating on their studies. By the time they reach adolescence, daughters are likely to be more passive than their peers, while sons are more likely to use violence to resolve conflict. High school boys who grew up in violent homes are 50 percent more likely to have used violence against their girlfriends; they are 70 percent more likely to be a batterer in later life. The single greatest risk factor in determining whether a man will abuse his wife is whether he himself came from an abusive home. In fact, it appears that witnessing violence between one's parents may be a more powerful factor in the development of later violent behavior than is being the target of the abuse.

Abusive behaviors not only can be transferred from generation to generation, but they also can survive from one relationship to the next; a person who is a batterer in one relationship often will also be abusive to other partners. Thus, the end of an abusive marriage is of itself no guarantee that a child placed with the former abuser will not witness further abuse. In contrast, only about ten percent of women who leave an abusive relationship go on to another abusive relationship. Thus, it would be fallacious to argue, as some do, that somehow the victim shares the blame for the abuse and is a less fit parent on account of it.

Obviously, there is a wealth of evidence to suggest that a child might be harmed if a parent who has engaged in domestic violence is granted custody. However, there is anecdotal evidence that judges do not always sufficiently consider whether a prospective custodial parent has engaged in abusive behavior. The bill would rectify that omission. Further, the bill is necessary to ensure that the law as it now stands is not detrimental to the victim of domestic violence. Since the determination of the best interests of the child includes a consideration of a parent's willingness to encourage a close relationship with the other parent, and since a battered woman has good reason to fear continued contact with the former spouse, there is a need to balance the formula with a consideration of domestic violence. With the bill, judges will have to confront and evaluate these issues. At least 28 states have incorporated domestic violence as a factor to be considered in custody decisions; it is time that Michigan did so as well.

Against:

Domestic violence is a very complex subject, but the bill offers little guidance to judges in how to evaluate and act on allegations of domestic violence. There are no indications of how the judge should weigh the relative contributions of the parties to the violent atmosphere. Those who provoke or accept abuse may be no more fit as parents than those who allegedly perpetrate it; both may offer poor role models for a child. On the other hand, a person is not necessarily a bad parent just because he or she may have abused a spouse. A more constructive approach would be to require some sort of monitoring or counseling where there has been domestic violence.

Moreover, the bill's proponents assume that it is the husband who is most often the abuser, but when the

matter is one of emotional and psychological abuse, one should not leap to conclusions. The issue of which parent will provide a more stable and loving home is not determined by gender. Finally, it should be remembered that false charges of abuse are relatively common in bitter divorce and custody battles. The bill could further cloud the issues without significantly adding to the protections for the child, especially as a significant history of domestic violence is one of the factors a court would consider anyway in making a custody decision.

Against:

The term "domestic violence" is a vague one; it can mean many things to many people. The bill should define the term so that the legislature, the courts, and litigants can be in agreement on what the bill is addressing. To fail to define it is to guarantee a costly and lengthy process of defining the term through appellate case law.

Response:

To define the term would be to unnecessarily limit it. Society's understanding of domestic abuse and its many forms is still growing, and the bill seeks to avoid inadvertently excluding some relevant manifestation of the phenomenon of domestic violence. Moreover, other terms employed in the determination of the best interests of the child, such as "moral fitness" are not defined; there is no need to single out "domestic violence" for definition.

Against:

The hazards of an abusive home are such that the bill should do as an earlier version proposed and create a presumption against placing a child with a parent who has exhibited a history of domestic violence. Such concerns have been echoed in the laws of several states and in Congress, which passed House Concurrent Resolution 172 in the fall of 1990. That resolution states that "it is the sense of the Congress that, for purposes of determining child custody, credible evidence of physical abuse of a spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive spouse."

Response:

Whether there had been domestic violence in the home certainly should be a factor in the custody decision, but it should not necessarily be the overriding factor. The bill is best as it is, requiring the judge to examine issues of domestic violence, while allowing for the possible existence of mitigating circumstances or other issues that might be more important in an individual case.

Against:

The bill should be limited to situations where the child either witnessed or was the subject of domestic violence. Otherwise, the bill would venture into situations where any harm to the child was debatable and any reflection on a person's fitness as a parent questionable.

Response:

Even in those rare cases where children do not witness the abuse one parent heaps upon another, they are affected by the atmosphere of fear and depression that pervades a home where domestic violence occurs.

For:

Although there is merit in not allowing just anyone to sue for custody of a child, the law at present excludes too many with a legitimate interest from being able to seek custody. Unless a nonparent had been appointed guardian or unless a divorce action had been initiated, a nonparent may lack standing under the Child Custody Act to seek custody of the child that he or she may have reared. As a result, a biological parent who may have been a stranger to the child may successfully press for custody, despite consequences of emotional trauma and the loss of a good home for the child. Although the "best interests of the child" is supposed to govern a custody decision, it can do so only if the parties in question both have standing to seek custody under the law. The bill would provide such standing to prospective adoptive parents who have had a child for at least six months, and to biological family members who wish to raise a child despite the claims of a noncustodial parent. In doing so, the bill would prevent children from being uprooted from their homes and would help to ensure that the best interests of the child were considered in a meaningful way.

Response:

The bill would have done nothing to help the DeBoers, whose case turned on an interpretation of federal law, and who had not yet had the child for six months at the time the biological father first claimed paternity and sought custody. Nor would it help Jenny Yang, the twelve-year-old Grand Rapids girl (born December 30, 1981) who had been seeking to remain with the couple who had raised her since infancy. In that case, the girl's biological parents (the Huongs) informally placed her with the

Yangs when Jenny was a baby; the Yangs and Huongs disagree on whether the placement was supposed to be permanent. Although it is not clear when Jenny's biological parents first sought to regain custody, they first petitioned for a change in custody on September 14, 1984, and the matter remained within the Kent County Circuit Court for a number of years. By the time the supreme court ruled on the matter, Jenny was ten years old.

Jenny's case was a companion case to Bowie v. Arder, and in it the supreme court said that the Kent County Circuit Court had acted improperly in giving custody to the Yangs, because the Yangs did not have standing to seek custody under the Child Custody Act. Last fall, Jenny won a subsequent round in the Kent County Circuit Court, where she brought an action based on claims that her biological parents were unfit. (In its DeBoer decision, the supreme court cited a number of precedents and said that the mutual rights of parent and child come into conflict only when there is a showing of parental unfitness. Absent such a showing, a biological parent's right to custody is not to be disturbed, sometimes despite the preferences of the child.) The Huongs apparently have decided not to appeal. Nonetheless, the facts of the Yang case would not fit either of the ways in which a third party could seek custody under the bill.

Against:

The bill could further muddy the already murky area of third party custody. Legal experts disagree on the answers to many fundamental questions regarding custody rights. Exactly who has standing to seek custody? Who has a "substantive right" to custody? Can any third party seek custody once a dispute has arisen between the parents? Or does the dispute have to arise in the context of a divorce? What is the standing of third parties if only one parent raises a custody matter in court?

Ironically, by explicitly giving certain third-parties standing to seek custody, the bill could be construed to mean that the legislature intentionally excluded other third-parties; rather than being read as an expansion of third party rights, the bill could lead to a constriction of them. (Indeed the Bowie court employed such reasoning at one point, noting that the legislature's grant of standing to guardians under Public Act 315 of 1990 suggests that the legislature intended that other third parties not have standing.)

Finally, the bill does nothing to resolve questions over which court--probate or circuit--should determine parental fitness and how a third party should pursue a custody action alleging parental unfitness. The bill misses the opportunity to clearly state who is and is not to have standing to bring a custody action, leaving the answer to that question to a reading of statutory law in combination with complex and evolving case law. The result will be continuing controversy over the meaning of the law, lack of uniformity in its application, and unnecessary hardship and legal expenses for many children and the adults who love them.

Against:

While most would agree that a child's best interests should be considered in a legitimate custody dispute, there is considerable debate over when this question should be triggered. If a parent has not been determined to be unfit, he or she should not have to be open to custody challenges from people simply because they believe they would be better parents.

Response:

This is not what the bill would do. It is narrowly drafted to extend third party custody rights to only two additional types of situations, one involving adoptive placement and the other involving placement with members of an unmarried parent's family.

Against:

Many may consider the bill to be too narrowly drafted, because it would exclude many situations--the DeBoer case and the Jenny Yang case, for example--where by any objective measure the best interests of the child would lie in remaining with a third party with whom the child had been residing, and with whom the child had formed a parent-child bond.

Response:

There are hazards in opening up third party custody rights. While many wish to prevent unnecessary psychological trauma to children, the law should not be so broad as to allow custody actions by virtually anyone who can claim superior parenting skills and resources. The bill's approach is a reasonably cautious one.

Against:

Some may find the bill overbroad, because it does not limit third-party custody rights to situations where the child had been residing with the third

party and thus had developed a parent-child relationship with the third party.

Against:

Some might argue that the bill seeks to answer the wrong question. Instead of trying to answer the question of who should have the right to seek and obtain custody of a child, the legislature should be considering the question of what are the rights of the child. Policymakers should be formulating policy and drafting language that focuses on the rights of children, rather than the rights of those who might claim "ownership" of children.

For:

Reportedly, there have been instances in other states in which a man who fathered a child as a result of sexual assault was granted standing to commence an action seeking custody or visitation, simply because the man had established paternity. Granting parental rights to such a criminal would constitute a further victimization of the woman who was raped and the child who was conceived as a result of that rape. Even to put a mother in a position where she had to fight a rapist for custody would be unconscionable. Although the situation evidently has not yet arisen in Michigan, statute should ensure that it cannot. The bill would provide such assurances.

Against:

The bill would provide for retroactive application, something that could be unconstitutional, and at least would be of questionable wisdom; many cases now settled could be opened up, with concomitant disruption for children and those who love them.

Response:

Testimony before the Senate committee indicated that statutes may be applied retrospectively if the legislature clearly manifests its intent to do so and if the application would not impair a vested right; the bill's proponents point out that the bill would impair no vested rights, but rather merely would allow various people to have their day in court. In addition, a statute that is remedial or procedural in nature--and the bill is both--constitutes an exception to the general rule that statutes operate prospectively.