House
Legislative
Analysis
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DIRECT PLACEMENT ADOPTIONS

House Bills 4200 & 4201
Sponsor: Rep. David M. Gubow

House Bills 4428 & 4429
Sponsor: Rep. Gary L. Randall

Committee: Judiciary

Complete to 5-10-93

A SUMMARY OF HOUSE BILLS 4200, 4201, 4428, AND 4429 AS INTRODUCED

The bills constitute a package of legislation that would authorize direct placement adoptions in which a parent or guardian chooses the adoptive parents, with or without the assistance of an adoption agency, and subject to the approval of the probate court. The bills also would provide for children to be placed temporarily with prospective adoptive parents prior to formal court placement, and for certification of adoption specialists who, like adoption agency employees, could conduct the home studies and preplacement assessments contemplated by current law and the bills. Expenses that could be paid by prospective adoptive parents would be detailed, and greater detail and emphasis would be given to requirements for the compilation and maintenance of nonidentifying information on adoptees. (Note: according to staff, the bills form a package, but amendments to tie-bar provisions would be necessary to effect that aim.)

House Bill 4200 would amend the adoption code (MCL 710.22 et al.) to authorize direct placement adoptions. Prior to formal court-approved placement, parents, guardians, and adoption agencies ("child placement agencies" in the statute) could temporarily place children with prospective adoptive parents under procedures prescribed by the bill. Adoptive parents would be explicitly allowed to pay for various services and expenses connected with the birth of the child and the adoption. A more detailed explanation follows.

Direct placement. In a direct placement, a parent or guardian would personally select a prospective adoptive parent. The selection could not be delegated, but a parent or guardian could obtain assistance in locating or evaluating a prospective adoptive parent, subject to the bill's restrictions on payment of expenses and solicitation of biological parents for adoptive children. The prospective adoptive parent, his or her attorney, or a person assisting the parent or guardian would provide certain information about a prospective adoptive parent before the child was placed with the prospective adoptive parent. That information would have to include the information contained in the preplacement assessment required by the bill, and could include additional information desired by the parent or guardian, but would not have to include identifying information. The parent or guardian and the prospective adoptive parent would decide whether to exchange identifying information and whether to meet.

Temporary placement. Temporary placement would be a transfer of custody of a child to a prospective adoptive parent prior to court-approved formal placement. Generally, if a child was temporarily placed with a prospective adoptive parent under the bill, the prospective adoptive parent could consent to all medical, psychological, educational, and related services for the child; the parties could, however, make alternative arrangements. Temporary placement would only be allowed if the prospective adoptive parent was a Michigan resident who agreed to reside in Michigan with the child at least until a change of residence was approved by the court after formal placement occurred.

That pledge would be part of a written document in which the prospective adoptive parent also attested to understanding that placement was subject to parental consent or release, termination of parental rights, and court approval. Within 30 days of a temporary placement by a parent or guardian, the prospective adoptive parent would have to report to the court that either a petition for adoption had been filed, or the child had been returned to a parent or other person having legal custody. When an agency made a temporary placement, it similarly would have to report to the court.

The parent, guardian, or adoption agency would have to sign a statement documenting the transfer of custody and confirming that the person making the transfer had read a favorable preplacement assessment of the prospective adoptive parent completed or updated within the past year. Even if only one parent was making the placement, the document would have to include the names and addresses of both parents, including the name and address of the putative father, if known, of a child born out of wedlock.

Each document required for temporary placement would have to be witnessed by one of the following: a hospital employee designated by the hospital administrator, an attending practitioner, a probate court register, an attorney, or an employee of an adoption agency.

Within 48 hours after custody was transferred under a temporary placement, the witness would have to report the transfer to the court, providing details and documents as prescribed by the bill. If, 45 days after custody had been transferred, the court had received no report of a petition for adoption being filed or custody being returned to the parent or guardian, the probate register immediately would investigate. If neither disposition had occurred, the register immediately would notify the prosecutor, who immediately would file for a custody hearing in the probate court.

Preplacement assessments. An individual seeking to adopt could request a preplacement assessment at any time; he or she could request more than one preplacement assessment, and could request that an assessment in progress not be completed. Adoption agencies could require a prospective adoptive parent to be assessed by an agency employee, even if the person had already received a favorable assessment from someone else. Only certified adoption specialists (provided for under House Bill 6052) and qualified employees of adoption agencies could make preplacement assessments. At the discretion of the court, a preplacement assessment could be used to meet the statutory requirement for investigation of a prospective adoptive parent who has filed an adoption petition.

Preplacement assessments would have to be based on personal interviews and visits at the homes of prospective adoptive parents, and would have to cover various aspects of the person being evaluated, including the following: age, ethnicity, and religious preference; marital and family status, including the presence of any other children in the household; physical and mental health, including any history of addiction to alcohol or drugs; educational and employment history, and any special skills or interests; financial status; reason for wanting to adopt; any previous requests for assessments or involvements in adoptive placements; whether the person had ever been the subject of a domestic abuse or child neglect proceeding, and the outcome of that proceeding; whether the person had ever been convicted of a crime; whether the person had located a parent interested in placing his or her child with the person, together with a brief description of the parent and the child; and, anything that raised a specific concern about the person's suitability as an adoptive parent, including the quality of the home environment, the functioning of other children in the household, and any aspect of the individual's circumstances that may be relevant to a determination that the person was not suitable. (A "specific concern" in this last context would be one that suggested that placement of any child or a particular child in the home proposed would pose a risk of physical or psychological harm to the child.) A preplacement assessment also would have to include a criminal history check, and a list of sources on which the assessment was based.

An unfavorable assessment or one that differed from the conclusion of an earlier assessment would have to include a justification of its conclusions. A person could ask the court to review an unfavorable assessment, and if the court found by clear and convincing evidence that the assessment's conclusion of unsuitability was not justified, the parent or guardian could place the child with the individual. If the court determined that the unfavorable assessment was justified, it would order that the child not be placed with the individual.

Custody hearings. The bill would provide for custody hearings in the probate court in temporary placement situations where a prospective adoptive parent refused to return a child to the parent, guardian, or adoption agency; where a prospective adoptive parent was either unwilling or unable to proceed with the adoption; where an adoption agency was unable to proceed because the parent or guardian was unavailable or unwilling to execute a release; or, as described above, where the prosecutor became involved because the 45-day deadline for action had not been met.

The court would have a number of alternatives, depending on circumstances: it could order the child returned to the parent, guardian, or adoption agency; it could appoint an attorney to represent the child or refer the matter to the matter to the Department of Social Services (DSS) for proceedings under the neglect provisions of the juvenile code; it could appoint a guardian as requested by a prospective adoptive parent or another individual interested in the welfare of the child; or it could make a temporary disposition under the juvenile code. The court could appoint a guardian ad litem for the child or a minor parent of the child.

Releases and consents. When a child is given up for adoption through an adoption agency or the DSS, the parent or guardian executes a release; a consent is a consent to

adoption by a specific individual. Parents may not at present execute consents except for in-family adoptions; in conjunction with providing for direct consent adoptions, the bill would delete this prohibition.

The probate court would have to hold a release or consent hearing within seven days after it was requested. A release or consent by a parent or guardian would have to be accompanied by a verified statement that confirmed all of the following: that the parent or guardian had received a list of support groups (and, if applicable, other information from the adoption agency); that the parent or guardian understands that he or she may receive psychological counseling and whether he or she has received any; that the parent or guardian has not received or been promised anything of value except for lawful payments itemized on a schedule filed with the court; that the validity and finality of the release or consent is not affected by any separate agreement between the parent or guardian and the agency or prospective adoptive parent; that the parent or guardian understands that it serves the welfare of the child to keep the agency, DSS, or court informed of any health problems that the parent develops which could affect the child, and to keep his or her address current with the agency so that future inquiries on medical or social history could be answered.

Payment of expenses. The law now requires a prospective adoptive parent to notify the court of any consideration paid or thing of value exchanged in connection with the adoption, and the court may approve or disapprove fees and expenses. The bill would instead specify a number of expenses that the adoptive parent could pay, and allow the court to approve payment for other services not listed; the sums would continue to be subject to court approval. A payment authorized by the bill could not be made contingent on a placement, release, or consent to adoption, nor on cooperation in the completion of the adoption. If an anticipated adoption was not completed, the person who had made the payments could not be reimbursed for them. Various documents accounting for and confirming any payments would have to be filed with the court at least seven days before formal court-approved placement of the child, and they would have to be updated at least 21 days before entry of the final order of adoption.

Specifically-allowed expenses would be: agency services; medical expenses incurred in connection with the birth or any illness of the adoptee; counseling for a parent, guardian, or the adoptee; living expenses for the mother before the birth of the child and for up to six weeks after the birth; expenses incurred in compiling required information on an adoptee and his or her biological family; court costs and legal fees, including legal services performed for a biological parent or guardian; travel expenses or other expenses necessitated by the adoption; and preparation of a preplacement assessment and any court-ordered adoption investigation.

A first-time violation of the provisions on payment of expenses would be a misdemeanor punishable by up to 90 days in jail, a fine of up to $100, or both. A subsequent violation would be a felony punishable by imprisonment for up to four years, a fine of up to $2,000, or both. The court could enjoin a violator from further violations.

Placing agencies; disclosures. An adoption agency would have to give any individual who inquired about its services a written statement that described the types of children to

be placed, eligibility requirements for adoptive families, services provided during the adoption process, the procedure for selecting a prospective adoptive parent (including the role of the child's parent or guardian in the process), the extent to which the agency permits or encourages exchange of identifying information or contact between biological and adoptive families, any post-release and post-finalization services provided, and a schedule of any fee(s).

Agency roles. In an agency placement, the adoption agency or the DSS could involve the parent or guardian of the child in the selection of an adoptive parent, and could facilitate the exchange of identifying information or meetings between a birth parent and an adoptive parent (some agencies do this now). In addition an adoption agency could assist a parent or guardian in making a direct placement. A parent or guardian could authorize an adoption agency to make a temporary placement under the bill. The authorization would have to be in writing and witnessed, and if the parent of the child being placed was an unemancipated minor, the document would also have to be signed by the parent or guardian of that minor parent.

Adoption solicitation, placement. Only a prospective adoptive parent or a person authorized to place a child for adoption could solicit parents or guardians of potential adoptees; only a person authorized to place a child for adoption could solicit potential adoptive parents. Only a custodial parent, a guardian, an adoption agency, the DSS, or the court could place a child for adoption. A first-time violation of either of these restrictions would be a misdemeanor punishable by up to 90 days in jail, a fine of up to $100, or both. A subsequent violation would be a felony punishable by imprisonment for up to four years, a fine of up to $2,000, or both. The court could enjoin a violator from further violations.

Representation by an attorney. An attorney or law firm would be prohibited from providing legal services to both a parent or guardian and a prospective adoptive parent.

Tie-bars. House Bill 4200 could not take effect unless House Bill 4201 and two bills that have not yet been introduced also were enacted.

House Bill 4428 would amend the adoption code (MCL 710.27 et al.) to accommodate direct consent adoptions in provisions on obtaining and maintaining identifying and nonidentifying information on adoptions, to expand on the nonidentifying information that must be compiled and maintained on an adoptee, and to provide for the exchange of information (through the DSS central registry) between adult adoptees and adult former siblings (i.e., biological siblings), and to clarify procedures under which information is requested and released through the DSS central registry. (Note: the adoption code distinguishes between identifying and nonidentifying information on the circumstances of an adoption. 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.)

Nonidentifying information; duties. The law at present requires an adoption agency, the DSS, or a court placing an adoptee to maintain certain nonidentifying information, if obtainable. Under the bill, the court would maintain the information on a child adopted under a direct consent adoption, and the biological parent (or guardian) would have to provide the information to the court before termination of parental rights. In addition, before a child was placed for adoption, the parent or guardian, adoption agency, DSS, or placing court would have to compile and provide to the prospective adoptive parent a written document containing all of the specified information reasonably obtainable from the parents, relatives, and guardian of the child, from any person who has had physical custody of the child for at least 30 days, and from any other person who has provided health, psychological, educational, or other services to the child. Required nonidentifying information that was unobtainable before temporary placement would have to be submitted by the time of formal placement if reasonably obtainable.

Required nonidentifying information. The bill would replace the current list of required nonidentifying information with more detailed descriptions of the sort of information desired. For example, "medical history of the adoptee and biological parents" would be replaced with a requirement for an account of the medical and genetic history of the child, including: prenatal care; medical condition at birth; drugs and medication taken by the mother during pregnancy; any medical, psychological, or dental examinations and diagnoses; any abuse suffered by the child; any reports concerning the child prepared by protective services, foster care, or adoption workers; and an immunization record for the child. Also required would be an account of the health and genetic history of the child's biological family as prescribed by the bill.

Newly included would be information on the following: the child's educational performance and needs; a general description of the child's parents, including their ages and the length of time they had been married; an account of the child's past and existing relationship with any person with whom the child had lived or visited on a regular basis, together with the names and addresses of all foster parents, relatives, institutions, and facilities where the child had been placed; details on the child's family, including educational, professional, athletic, or artistic achievement, and any hobbies or special interests; any felony conviction of a parent and the circumstances of any termination of parental rights for abuse or neglect; the length of time between the termination of parental rights and adoptive placement, and whether termination was voluntary or court-ordered; and, any information necessary to determine the child's eligibility for state or federal benefits.

In-family adoptions. Adoption agencies, the courts, and the DSS would no longer have to maintain identifying and nonidentifying information on stepparent and in-family adoptions.

Adult former siblings. The bill would authorize an adult biological sibling who knew an adoptee's birth name to file a statement with the DSS consenting to the release of his or her name and address to the adoptee; the statement could be filed, updated, or revoked at any time. An adult former sibling could file a statement with the DSS that a former parent had died; evidence of the death would have to be attached to the statement. (Under

current law, restrictions on the release of identifying information on a parent are lifted when that parent dies.) An adult former sibling would no longer be entitled to nonidentifying information on an adoptee, although he or she could continue to obtain the identity of the court that confirmed the adoption, and the identity of the agency, court, or department to which the child had been committed.

Adult adoptees; descendants. The bill would specify that all information to which an adult adoptee was entitled would be released to the adoptee's direct descendants, if the adoptee was deceased.

Tie-bars. House Bill 4428 contains no tie-bars. It could take effect irrespective of whether any other bill was enacted.

House Bill 4201 would amend the child care licensing act (MCL 722.124b) to provide for the certification of adoption specialists by the DSS. The application fee for an initial certification would be $150; renewals would cost $100. Certifications would be good for three years. An individual would be prohibited from performing a preplacement assessment under House Bill 4200 unless certified as an adoption specialist or employed by an adoption agency.

Initial certification. To be initially certified, a person would have to provide satisfactory evidence that he or she was registered as a certified social worker or licensed as a psychologist, marriage or family counselor, or professional counselor; had at least two years' experience in performing adoption home studies or preplacement assessments as an adoption agency employee or under the supervision of a certified adoption specialist (and the supervising agency or adoption specialist recommended the individual for certification); and, had no criminal convictions.

Renewals. To renew a certification, a person would have to confirm that he or she still had no criminal convictions, that he or she had met the continuing education requirements of eight credits during the previous three-year period, and that he or she was not the subject of administrative investigations or sanctions.

Administrative actions. The DSS would have to investigate complaints about adoption specialists, and would have to deny or revoke the certification of someone who violated the bill or the adoption code's requirements for preplacement assessments. In addition, if the DSS discovered that someone had conducted a preplacement assessment without being certified, the DSS would notify the appropriate licensing board.

Tie-bars. House Bill 4201 could not take effect unless House Bill 4200 was enacted.

House Bill 4429 would amend the child care licensing act (MCL 722.111) to exempt adoption placements from foster home licensing requirements. The bill could not take effect unless House Bills 4200 and 4427 (which also provide for direct placement adoptions) were enacted.