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APPOINTMENT OF GUARDIAN

Senate Bill 1210 (Substitute H-1) First Analysis (12-9-98)

Sponsor: Sen. Glenn Steil
House Committee: Judiciary
**Senate Committee: Families, Mental
Health and Human Services**

THE APPARENT PROBLEM:

The Lieutenant Governor's Children's Commission was established under Executive Order Number 1995-12 in May, 1995. The commission's explicit charge was to "review current laws, programs, procedures, policies, and training procedures that affect children, and create recommendations to help improve the quality of life for Michigan's children," and its conclusions were issued in July, 1996, in the report, "In Our Hands." As described in the report, the commission created five subcommittees to address early intervention, placement, permanency planning, post-termination, and confidentiality issues.

Legislation has been introduced based upon the recommendations of the Commission on Children report. Specifically, one recommendation addresses a problem with the law regarding when a court may appoint a guardian for a minor. Many courts have interpreted a provision of the law allowing for appointment of a guardian when a child has been left with a third party without that person having been given legal authority over the child as only applying while the child is in the custody of the third party. In some cases, this results in the court refusing to consider appointment of a guardian if the parent or parents retrieved the child before the hearing on the petition could be held, even if the same situation has occurred previously. It has been suggested that the law should be changed to make it clear that a court may continue a proceeding to appoint a guardian even after the parents have retrieved the child.

THE CONTENT OF THE BILL:

The bill would amend the Revised Probate Code to allow a court to appoint a guardian for an unmarried minor if the appointment were necessary for the minor's immediate physical, mental, or emotional well-being. If a guardian were appointed under these circumstances, the court would have to refer the child

to the state department responsible for children's protective services.

Under the code, a person who is interested in the welfare of a minor, or a minor who is at least 14 years old, may petition for the appointment of a guardian for the minor. The court may order the Family Independence Agency or an employee or agent of the court to conduct an investigation of the proposed guardianship. The court may appoint a guardian for an unmarried minor if one or more of the following circumstances exist:

-- The parental rights of both parents or of the surviving parent have been terminated or suspended by prior court order, judgment of divorce or separate maintenance, death, judicial determination of mental incompetency, disappearance, or confinement in a place of detention.

-- The parent or parents have permitted the minor to reside with another person and have not provided that person with legal authority for the care and maintenance of the minor.

-- The minor's biological parents have never been married to each other; the minor's custodial parent dies or is missing and the other parent has not been granted legal custody under court order; and the proposed guardian is related to the minor within the fifth degree by marriage, blood, or adoption.

MCL 700.424

HOUSE COMMITTEE ACTION:

Current law provides three circumstances under which a court may appoint a guardian for a minor: when the parental rights of the parents have been terminated, by death or court order; when the parents have permitted

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the minor to reside with another person without providing the other person with legal authority for the care and maintenance of the minor; or when the minor's parents were never married and a relative petitions the court for guardianship upon the death of the minor's custodial parent.

The H-1 substitute for the bill proposed by the House Judiciary Committee would amend the Revised Probate Code to expand when a court could appoint a guardian for a minor child. Specifically, the bill would provide that a court could appoint a guardian where the parent or parents had permitted the minor to reside with another party without providing that person with legal authority for the care and maintenance of the minor, even if the parents had taken the child back after the petition had been filed.

The bill would have an effective date of March 1, 1999.

MCL 700.424

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

According to the FIA, there have been a number of cases where the child spends a great deal of time with a third party, but because the parent retrieves the child before a petition can be heard, the courts have refused to appoint a guardian for the child. Sometimes this situation can occur over and over again, while the court is unable to appoint a guardian as long as the parent or parents retrieve the child. This is clearly not the law's intent, and the current situation limits the law's effectiveness in protecting children. In fact, the law has the opposite effect, because it encourages instability in the lives of certain children by encouraging the parents to abandon, retrieve and the abandon the child repeatedly.

POSITIONS:

There are no positions on the bill.

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.