

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 415 (as enrolled)
Sponsor: Senator Michael J. Bouchard
Senate Committee: Families, Mental Health and Human Services
House Committee: Judiciary

PUBLIC ACT 94 of 1998

Date Completed: 8-26-98

RATIONALE

Under the Michigan Adoption Code, if a child is claimed to be born out of wedlock and the mother executes or proposes to execute a release or consent relinquishing her rights to the child or joins in a petition for adoption filed by her husband, and the release or consent of the natural father cannot be obtained, the judge must hold a hearing to determine whether the child was born out of wedlock, and to determine or terminate the rights of the father. Notice of the hearing must be served on a putative father. If the putative father appears at the hearing and requests custody of the child, the court must determine whether granting custody to him will serve the child's best interests. The court must terminate the putative father's parental rights if it determines that granting custody to him would not be in the child's best interests.

If, however, the putative father has established a custodial relationship with the child or has provided support or care for the mother during pregnancy or for the mother or the child after the child's birth during the 90 days before notice of the hearing was served on the putative father, his parental rights cannot be terminated except by proceedings under a section of the Adoption Code providing for a termination hearing, or a section of the juvenile code providing for the jurisdiction of the family court. Some people believe that the standard of providing "support or care" is too low for a putative father to receive a hearing on the termination of his parental rights because even a minimal amount of support or care could be used to justify not having parental rights terminated without a hearing. They contend that, to earn the right to a hearing on his parental rights, a putative father should have to provide "regular and substantial" support or care for the mother during pregnancy or for the mother or the child after the birth.

CONTENT

The bill amended the Michigan Adoption Code to revise the conditions under which a court may terminate the parental rights of a putative father without additional proceedings under the Adoption Code or the juvenile code.

The bill will take effect on September 1, 1998.

The bill retained the provisions concerning the termination of a putative father's parental rights and prohibiting termination without a hearing, but requires the proceedings under the Adoption Code or the juvenile code only if the putative father has established a custodial relationship with the child or has provided "substantial and regular" support or care in accordance with his ability to provide support or care for the mother or child (as described above in **RATIONALE**).

In addition, the Adoption Code specifies that if the mother's parental rights are terminated and if the court awards custody of a child born out of wedlock to the putative father, the court must enter an order granting custody and legitimating the child. The judge must record the legitimation in accordance with a section of the Revised Probate Code. The bill deleted the requirement concerning recording legitimation and requires instead, that upon entry of an order granting custody and legitimating the child, the court clerk collect a fee of \$35 from the father. The clerk must retain \$9 and remit the balance to the Director of the Department of Community Health, along with a written report of the order. The report must be on a form prescribed by or be in a manner approved by the Director and be transmitted regardless of whether the fee is collected.

MCL 710.39

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Binsfeld Children's Commission, which was established by a 1995 Executive Order and issued its report in July 1996, recommended adding "substantial and regular" to the provision prohibiting termination of a putative father's parental rights without a termination hearing. Under the current language, any amount of care and support, no matter how minimal, might be sufficient to block termination of a putative father's parental rights. This might endanger the child while adoption proceedings are impeded and delayed. The words "regular" and "substantial" are very significant modifiers for this provision, and adding them will go a long way toward facilitating an adoption that is in a child's best interests.

Response: The Binsfeld Children's Commission's recommendation also included a provision that court-ordered child support imposed on a putative father as a result of action taken by the Family Independence Agency (FIA) to obtain an order of filiation and support would not solely constitute "substantial and regular" support. This should be included in the bill. The Commission's report stated that limiting the definition of support in this way would address the situation in which a putative father fails to admit paternity and fails to pay support until the FIA asks for an acknowledgment of paternity or arranges for a blood test to establish paternity. In this situation, child support begins with an order of income withholding pursuant to an order of filiation and support after a blood test establishes paternity. A putative father should not be allowed to move termination proceedings to a parental rights hearing, which requires clear and convincing evidence that termination is warranted, when his payment of support is not voluntary, but rather results from the establishment of paternity through a blood test and a court order of filiation and support.

Opposing Argument

While the bill's objective may be laudable, it raises concerns about the elimination of the due process rights of a person who made little or no effort to exercise his responsibility of support. The parental rights of such a person may be automatically terminated under the bill because a mother has decided to terminate her parental rights. Sometimes, a father may not know in advance of a

birth that he is about to become a parent.

Response: A putative father's parental rights currently may be terminated without a hearing under the Adoption Code. If he has provided care or support, however, those rights may be terminated only after a hearing. The bill merely raises the standard a putative father must meet to have the right to a termination hearing.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: B. Bowerman
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.