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Senate Bill 401 (as introduced 4-19-01)  
Sponsor: Senator Bill Bullard, Jr.  
Committee: Families, Mental Health and Human Services

Date Completed: 5-23-01

## **CONTENT**

**The bill would amend the Child Custody Act to revise provisions pertaining to grandparenting time. The bill would do all of the following:**

- Delete the requirement that a child custody dispute be pending (or a child's natural parent be deceased) in order for a person to seek a grandparenting time order, and expand the circumstances under which a grandparenting time order may be sought.**
- Revise provisions regarding court jurisdiction and procedures.**
- Specify that entry of a judgment of divorce, separate maintenance, or annulment would not dismiss a motion for grandparenting time.**
- Allow the court to refer a grandparenting time complaint or motion to the Friend of the Court (FOC) mediation service.**
- Specify that, except in the case of adoption by a stepparent or relative, adoption of a child or placement of a child for adoption would terminate the right of a grandparent to seek grandparenting time.**

The bill is tie-barred to Senate Bill 423, which would amend the Michigan Adoption Code to delete a provision allowing a parent of a natural parent to seek a grandparenting time order during the pendency of a stepparent adoption.

### **Circumstances for Seeking Grandparenting Time Order**

The Child Custody Act provides that a grandparent of a child may seek an order for grandparenting time, as allowed under the Act, only if a child custody dispute with respect to that child is pending before the court. If a natural parent of an unmarried child is deceased, a parent of that deceased person may commence an action for grandparenting time. Adoption of a child by a stepparent under the Michigan Adoption Code does not terminate the right of a parent of the deceased person to commence an action for grandparenting time.

The bill would delete those provisions and specifies, instead, that a child's grandparent could seek a grandparenting time order under one or more of the following circumstances:

- An action for divorce, separate maintenance, or annulment involving the grandchild's parents was pending before the court.
- The grandchild's parents were divorced, separated under a judgment of separate maintenance, or had their marriage annulled.
- The grandchild's parent who was a child of the grandparents was deceased.
- Except as otherwise provided in the bill in the case of adoption of the child, legal custody of the grandchild had been given to a person other than the grandchild's parent, or the grandchild was placed outside of and did not reside in the home of a parent.

- At any time during the grandchild's life, the grandparent had provided an established custodial environment for the grandchild, regardless of whether the grandparent had custody under a court order.
- The grandchild's parent had withheld from the grandparent opportunities to visit with the grandchild in order to retaliate against the grandparent for reporting child abuse or neglect to the Family Independence Agency or a law enforcement agency, if the grandparent had reasonable cause to suspect abuse or neglect.
- The grandchild's parent lived separately and away from the other parent and grandchild for more than one year.
- Except as otherwise provided in the bill, the grandchild's parents had never been married and were not residing in the same household.

#### Jurisdiction and Procedure

Under the Act, a grandparent seeking a grandparenting time order may commence an action for grandparenting time, by complaint or complaint and motion for an order to show cause, in the circuit court in the county in which the grandchild lives. If a child custody dispute is pending, the order must be sought by motion for an order to show cause.

The bill provides, instead, that a grandparent seeking a grandparenting time order would have to commence an action for grandparenting time as follows:

- If the circuit court had continuing jurisdiction over the grandchild, the child's grandparent would have to seek an order by filing a motion with the circuit court in the county where the court had continuing jurisdiction.
- If the circuit court did not have continuing jurisdiction over the grandchild, the grandparent would have to seek an order by filing a complaint in the circuit court for the county where the child lived.

Currently, a complaint or motion must be accompanied by an affidavit setting forth facts supporting the requested order. The grandparent must give notice of the filing to each party who has legal custody of the grandchild. The bill would require that the notice also be given to each person who had an order for parenting time with the grandchild.

The bill would delete provisions under which a party having legal custody may file an opposing affidavit; a hearing may be held by the court on its own motion or if a party requests one; and, if a hearing is not held, the court may enter an order only upon a finding that the grandparenting time is in the child's best interests.

The Act requires that the court make a record of the reasons for denial of a request for a grandparenting time order. Under the bill, the court would have to make a record of the reasons for granting or denying a request for grandparenting time.

The bill specifies that if a grandparent sought a grandparenting time order by filing a motion in a pending divorce, separate maintenance, or annulment action, entry of a judgment in the action would not dismiss the grandparent's motion for grandparenting time.

#### Friend of the Court Mediation

The bill would allow the court to refer a complaint or motion for grandparenting time to the FOC mediation service. If the complaint or motion were referred to mediation and no settlement were reached within a reasonable time after the referral, the court would have to hear the complaint or motion.

## Adoption

Under the bill, adoption of a child, or placement of a child for adoption, under the Michigan Adoption Code would terminate the right of a grandparent to commence an action for grandparenting time with that child. Adoption of a child, or placement of a child for adoption, by a stepparent or by a person who was related to the child within the fifth degree by marriage, blood, or adoption, however, would not terminate the right of a grandparent to commence an action for grandparenting time with that child.

## Other Provisions

Under the Act, the court may not enter an order "restricting the movement of the grandchild if the restriction" is solely for the purpose of allowing a grandparent to exercise the rights conferred in a grandparenting time order. The bill would revise that provision to prohibit the court from entering an order "prohibiting a person who has legal custody of a child from changing the domicile of the child" if that prohibition were solely for the purpose of allowing a grandparent to exercise rights conferred in a grandparenting time order.

The Act allows the court to enter an order modifying or terminating a grandparenting time order whenever a modification or termination is in the child's best interests. Under the bill, the court could enter such an order only after a hearing and when there was a change of circumstances.

MCL 722.22 & 722.27b

Legislative Analyst: P. Affholter

## **FISCAL IMPACT**

The bill would have an indeterminate impact on the number of court proceedings involving grandparenting time.

There appears to be no potential impact on the Family Independence Agency.

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.