

Legislative Analysis



CONDITIONS FOR TERMINATION OF PARENTAL RIGHTS: REVISE IN CERTAIN CIRCUMSTANCES

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House Bill 4535 (Substitute H-1)

House Bill 4820 as introduced

Sponsor: Rep. Pam Byrnes

Committee: Judiciary

First Analysis (4-27-09)

BRIEF SUMMARY: The bills would amend the juvenile code (within the Probate Code) to narrow those instances in which a court could terminate a parent's parental rights, and the Child Protection Law to narrow those instances in which the Department of Human Services must petition a court to have a parent's parental rights terminated, in cases where that parent had previously voluntarily given up parental rights to another child.

FISCAL IMPACT: The bills would have an indeterminate, but likely negligible, fiscal impact on the judiciary. House Bill 4820 could reduce the number of cases for which the Department of Human Services must file for a termination of parental rights, and thus could also reduce the number of resulting out-of-home placements. This could reduce costs to the Department of Human Services. The amount of any cost reduction is indeterminate.

THE APPARENT PROBLEM:

According to child advocates, there are unintended consequences attached to current laws that put a parent in jeopardy of losing parental rights to a present child because rights to a sibling had previously been given up voluntarily in the face of abuse and neglect charges. Currently, the family division of circuit court may terminate a parent's parental rights to a present child if the court finds by clear and convincing evidence that previously, the parent or parents had voluntarily given up a child after neglect and abuse charges had been filed. In addition, child protective services workers are required to file a petition to terminate a parent's parental rights if the worker determines a child is at risk of harm and the child's parent or parents had previously voluntarily relinquished their rights to another child after abuse and neglect charges had been filed.

Child advocates maintain that the law, as it is practiced, discourages parents from agreeing to voluntarily give up their rights to a child and so forces more cases into contested case hearings, which can be inefficient, lengthy, and difficult. A parent who realizes he or she may be too immature or presently incapable of caring well for a child is less likely to voluntarily agree to give up the child if by so doing, the state would have grounds to terminate rights to future children and, should there be substantiation of abuse of a future child, it would lead automatically to the Department of Human Services petitioning for termination of parental rights.

For instance, a teenager may be investigated for abuse and neglect and a petition filed to terminate the parent's parental rights because the teen is too immature to care properly for a young child or has little means of supporting the child and so may, in the child's best interest, voluntarily relinquish the child to another relative or to the DHS. If that person had more children in the future, the DHS would be required to petition to terminate the parental rights to those children if any type of abuse or neglect could be substantiated – even if it were something like a cold apartment because of being unable to pay the gas bill or if an adult in the home or the other parent committed an abusive act.

Advocates have requested the law be changed to apply only in situations in which the voluntary termination involved abuse that was more serious, such as physical injury, murder, sexual assault, or abandonment. In this way, the focus could be on the conduct of the parent in the previous situation, and not on situations that may have since resolved, such as substance abuse, immaturity, or underemployment.

THE CONTENT OF THE BILL:

The bills would amend the juvenile code (within the Probate Code) to narrow those instances in which a court could terminate a parent's parental rights, and the Child Protection Law to narrow those instances in which the Department of Human Services must petition a court to have a parent's parental rights terminated, in cases where that parent had previously voluntarily given up parental rights to another child. House Bills 4535 and 4820 are tie-barred, meaning that neither bill could take effect unless both were enacted into law. The bills would take effect 180 days after the bills were enacted.

House Bill 4535

Currently, Section 19b of the juvenile code allows a court to terminate a parent's parental rights if it finds, by clear and convincing evidence, that one or more statutory conditions has been met. In addition to factors such as desertion, physical injury to or sexual abuse of the child, or incarceration of the parent, a court may also terminate a parent's parental rights if it finds the parent's parental rights to another child had been voluntarily terminated following the initiation of proceedings under Section 2(b) of the code (abuse and neglect) or a similar law of another state.

House Bill 4535 would amend Section 19b of the juvenile code (MCL 712A.19b). Under the bill, a previous voluntary termination of parental rights after a Section 2(b) proceeding had been initiated would constitute grounds for a subsequent termination only if that previous proceeding involved abuse that included one or more of the following:

- Abandonment of a young child.
- Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
- Battering, torture, or other severe physical abuse.
- Loss or serious impairment of an organ or limb.
- Life-threatening injury.
- Murder or attempted murder.
- Voluntary manslaughter.

- Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter.

(Section 2(b) of the juvenile code grants jurisdiction to the family division of circuit court over a juvenile under 18 years of age whose parent neglects or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for the child's health or morals; who has been abandoned or is without proper custody or guardianship; whose home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, or non-parent adult, is an unfit place for the juvenile to live; whose parent has substantially failed, without good cause, to comply with a limited guardianship placement plan or a court-structured plan described in the Estates and Protected Individuals Code (EPIC); or, if the juvenile has a guardian under EPIC, the parent failed or neglected – for at least two years before the petition to terminate was filed – to provide regular and substantial support or failed or neglected to visit, contact, or communicate with the juvenile. The initiation of a Section 2(b) proceeding is a first step to termination of parental rights.)

House Bill 4820

The bill would amend the Child Protection Law (MCL 722.638) to similarly revise a provision that requires DHS to file a petition for termination of parental rights if the department determines that there is risk of harm to a child and the parent's rights to another child had been voluntarily terminated following the initiation of proceedings under Section 2(b) of the juvenile code or a similar law of another state. Under the bill, DHS would only be required to file the petition if the Section 2(b) proceeding had involved abuse that included one or more of the following:

- Abandonment of a young child.
- Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
- Battering, torture, or other severe physical abuse.
- Loss or serious impairment of an organ or limb.
- Life-threatening injury.
- Murder or attempted murder.
- Voluntary manslaughter.
- Aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter.

ARGUMENTS:

For:

The bills are widely supported by child advocates and DHS. Together, the bills would shift the focus off whether the parent or parents had previously voluntarily agreed to the termination of their parental rights after initiation of a Section 2(b) proceeding and onto the conduct of the parent or parents that led to that voluntary termination. The grounds for termination under Section 2(b) of the juvenile code are extensive and include serious actions on the part of the parent as well as the cleanliness of the home, failure to provide medical care, and a parent's alcoholism. Many of these can be overcome by maturity,

counseling, mental health care, and substance abuse treatment. If a parent has changed, and is caring for his or her present children, the fact that a previous child was voluntarily given up should not be the sole factor in DHS petitioning for termination or a court granting termination if the abuse that brought the family before DHS or the court was perpetrated by another or if the abuse is the result of something that could again be corrected, such as the parent returning to substance abuse treatment.

The bills would give the DHS and the courts more flexibility as to determining which cases are worthy of moving forward to termination and which may be able to be resolved and the family restored.

For:

The bills would not endanger children by keeping them with parents having a past history of abuse. Several other provisions within the juvenile code and Child Protection Law address instances no longer covered by the amended provisions. In addition, according to the Child Advocacy Law Clinic, the Michigan law doctrine of "anticipatory neglect" would provide another layer of protection for children. Under that doctrine, how a person treated other children is admissible on the question of neglect of a subsequent child. Therefore, it would not be necessary to have an adjudication of earlier abuse in order for the facts of the prior abuse to be admitted in a current proceeding.

POSITIONS:

The Department of Human Services testified in support of the bills. (4-22-09)

A representative of the Governor's Task Force on Children's Justice testified in support of House Bill 4535. (4-22-09)

The Children's Law Section, State Bar of Michigan, indicated support for House Bill 4535. (4-22-09)

The director of the Child Advocacy Law Clinic, University of Michigan Law School, submitted testimony supporting House Bill 4535. (4-20-09)

Michigan Citizen Action indicated support for the bills. (4-22-09)

Citizens for Parental Rights indicated support for House Bills 4535 and 4820. (4-22-09)

The Michigan County Social Service Association supports the bills. (4-27-09)

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■ 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.