

# Legislative Analysis



## STEPPARENT ADOPTION: TERMINATION OF BIOLOGICAL PARENT'S PARENTAL RIGHTS

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**Senate Bill 458 (reported by committee as S-1)**

**Sponsor: Sen. Tonya Schuitmaker**

**House Committee: Judiciary**

**Senate Committee: Judiciary**

**Complete to 4-19-16**

Analysis available at  
<http://www.legislature.mi.gov>

*(Enacted as Public Act 143 of 2016)*

### SUMMARY:

The bill would allow a court to terminate a biological parent's parental rights in a stepparent adoption proceeding even if the biological parent had joint legal custody, if certain conditions apply.

Currently, if the parents of a child are divorced, or are unmarried but the father has acknowledged paternity or is a putative father, a stepparent may petition to adopt the child of a spouse if the spouse has legal custody. Before the stepparent adoption can go forward, however, the other parent must either voluntarily agree to terminate his or her parental rights or the person's parental rights must be terminated by a court. A court may terminate the other parent's rights under provisions of the Adoption Code if, for a period of two or more years before the stepparent filed the petition to adopt the stepchild, the other parent failed to comply with a child support order or failed or neglected to provide regular and substantial support for the child **and** regularly and substantially failed or neglected to visit, contact, or communicate with the child [Section 51(6)(a) and (b) of the Adoption Code, MCL 710.51].

**Senate Bill 458** would amend Section 51(6) of the Adoption Code to specify that if *a parent having custody of a child according to a court order* subsequently marries and that parent's spouse petitions to adopt the child, the court may, upon notice and hearing, issue an order terminating the rights of the other parent under Section 51(6)(a) and (b) as described above.

Further, regarding determining compliance with a child support order, the bill would add that a child support order stating that support is \$0.00 or that support is reserved shall be treated in the same manner as if no support order has been entered.

The bill would take effect 90 days after enactment.

### BRIEF DISCUSSION OF THE ISSUES:

A 2014 state Supreme Court case, *In re AJR*, held that a court could only terminate the other parent's rights in a stepparent adoption under Section 51(6)(a) and (b) of the Adoption Code if "the" parent with physical custody had *sole legal custody*. In other words, if a parent has sole legal custody, the other parent's rights may be terminated if that parent fails to provide support and have contact with the child for at least two years. According to the

court, if the biological parents share joint legal custody, the rights of the other parent may not be terminated under Section 51(6)(a) and (b). For the stepparent adoption to go forward, the parent with physical custody would first have to seek modification of the custody arrangement so to be the parent with sole legal custody.

#### Argument in support

Some say that the *In re* AJR decision has effectively ended stepparent adoptions as most judges in custody proceedings award joint custody so that both parents may share in the decisions impacting their children such as where to go to school, extracurricular activities, and so on. But when one of the parents fails, for at least two years, to exercise parental responsibilities regarding providing financial support and staying in contact with their child, that parent has in essence abandoned the child. If the custodial parent has remarried, and the spouse is willing and able to assume the responsibilities of being parent to the child, the stepparent adoption should not be barred simply because a judge at one time granted shared custody. Even though the custodial parent can try and have the custody order modified to "sole custody," it is reported that many judges are reluctant to do so and one adoption attorney testified that none of his clients have come back with a changed custody order so as to move forward. Even if a custodial parent was able to modify the custody order, that parent could be forced to wait an additional two years before the stepparent could file another petition for adoption.

Proponents of the bill say the extra trial created by AJR to obtain sole custody is burdensome, time-consuming, and expensive. Further, sufficient due process protections are already in place for the other parent. Even sporadic contact and financial support may be sufficient to survive the "substantially failing to provide support and contact for two years" threshold needed to terminate that parent's parental rights. In addition, the other parent must receive a copy of the stepparent adoption petition and a notice of the court hearing, thus the noncustodial parent has an opportunity to contest the termination of parental rights. For instance, if that parent offers a record of attempts to visit or provide financial support that were blocked through the years by the custodial parent, a judge is unlikely to allow the stepparent adoption to go forward.

The negative impact of impediments to stepparent adoptions on children was highlighted in testimony offered by Eric, a young man whose attempts to be adopted by a loving stepdad have been delayed, if not thwarted, by the wording of the custody agreement and inability to locate the biological father in order to move forward with terminating the man's parental rights. According to Eric, the birth father "doesn't help, call, pay support, or even remember" his birthday. But the new dad does, he says.

Lastly, the bill would provide that a child support order stating support is \$0.00 or that support is reserved would be treated in the same manner as if no support order has been entered. This change is necessary because there are circumstances—unemployment, illness, or incarceration—when a parent is unable to pay support and so the court puts the amount of support ordered at zero. But once reemployed, health is recovered, or released from jail or prison, the parent is supposed to contact the court for a new determination of support. However, if the parent didn't go back to the court, and if the support order still stands at

zero, even in cases in which the parent has abandoned the child, one prong of the two-part abandonment test cannot be met. That is, a parent must be in noncompliance with a support order. But when the order is set at nothing, and the parent paid nothing, it can be argued that the parent has complied with the order. Thus, the stepparent adoption cannot go forward. The bill provides a legislative fix for this conundrum.

#### Arguments in opposition

Some concern was voiced whether sufficient protections are in place for cases in which the custodial parent actively blocks the involvement of the noncustodial parent and if the extra court hearing to modify the custody order to sole custody should be retained to maintain a check and balance system. Also, a concern was raised regarding the inability to comply fully with a child support order. Some judges, it was said, still require the same level of financial support even if the parent is ill or unemployed or underemployed. This can set a parent up to fail and is unfair that this could lead to termination of parental rights-which would mean the end of visits with the child.

#### Rebuttal

Termination of the other parent's rights in a stepparent adoption requires a two-prong test. Failure to comply with a support order is only one prong. If the parent continued to make regular contact, even in the form of phone calls or mail, the stepparent adoption could not go forward. Moreover, as stated earlier, the court hearing affords the noncustodial parent opportunity to offer evidence that the custodial parent interfered in his or her relationship with the child. Such evidence likely would block the stepparent adoption.

### **FISCAL IMPACT:**

The bill would have no fiscal impact on the state or on local units of government.

### **POSITIONS:**

A representative of the Michigan Judges Association testified in support of the bill. (3-15-16)

A representative of the American Academy of Adoption Attorneys testified in support of the bill. (3-15-16)

The Michigan Probate Judges Association indicated support for the bill. 4-12-16)

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