

Legislative Analysis



PROHIBIT UNREGULATED CUSTODY TRANSFER OF CHILD

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5628 as introduced
Sponsor: Rep. Hank Vaupel

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

House Bill 5629 as introduced
Sponsor: Rep. Michael D. McCready

Committee: Judiciary
Complete to 9-19-16

SUMMARY:

House Bill 5628 will prohibit certain conduct regarding the permanent transfer of a child, whether or not for money or other consideration; a violation would be a 20-year felony.

House Bill 5629 prohibits a parent from delegating parental powers for a child to another in violation of the provisions of House Bill 5628.

Specifically, House Bill 5628 will amend the Michigan Penal Code (MCL 750.136c). Current law makes it a crime to transfer or attempt to transfer legal or physical custody of an individual to another, or to acquire or attempt to acquire the legal or physical custody of another, for money or valuable consideration, except as otherwise permitted by law. A violation is a felony punishable by imprisonment for not more than 20 years and/or a fine of not more than \$100,000.

The bill adds a new prohibition. With some listed exceptions, a person could not do any of the following whether or not he or she received money or other valuable consideration:

- Except by order of a court, transfer or attempt to transfer the legal or physical custody of a child with the intent to permanently divest a parent of parental responsibility.
- Arrange for or assist in the permanent transfer, adoption, adoptive placement, or any other permanent physical placement of a child, except for the performance of adoption activities under Public Act 116 of 1973, which regulates child care organizations (e.g., a child placing agency).
- Assist, aid, abet, or conspire in the commission of an act described above.

A violation would be punishable by the same penalty currently in place for unlawful transfers of legal or physical custody of an individual to another for money or valuable consideration.

Exceptions: The prohibitions described above would not apply to the placement of a child under one or more of the following conditions:

- ❖ With a relative, a child placing agency, or the Department of Health and Human Services (DHHS).
- ❖ By a child placing agency or the DHHS.
- ❖ In accordance with the Interstate Compact on Placement of Children, Public Act 114 of 1984.
- ❖ Instances where the child will be returned in less than 180 days.
- ❖ With the specific intent that the child will be returned, that the placement benefits the child, and that it is based on the temporary needs of the family, including but not limited to, one more of the following:
 - Respite for the child and family.
 - A vacation or school-sponsored activity or function.
 - A temporary inability of the parent or legal guardian to provide care for the child due to incarceration, military service, medical treatment, or other incapacity of the parent or legal guardian.

The bill will take effect 90 days after enactment.

House Bill 5629 amends a section of the Estates and Protected Individuals Code pertaining to the delegation of powers by a parent or guardian (MCL 700.5103). Under the bill, a parent would be prohibited from knowingly and intentionally delegating powers regarding the care and custody of his or her minor child for longer than 180 days for the purpose of permanently transferring custody of the child in violation of the new provisions proposed by House Bill 5628, to which the bill is tie-barred. (This means that House Bill 5629 cannot become law unless House Bill 5629 is also enacted.)

Further, the act currently allows a parent or guardian of a legally incapacitated individual to delegate to another person any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward (except the power to consent to marriage or adoption or to release a minor ward to adoption). The duration of the power of attorney is limited to *six months*; the bill instead limits the power of attorney to *180 days*.

FISCAL IMPACT:

House Bill 5628 and House Bill 5629 would have an indeterminate fiscal impact on the state's correctional system and on local units of government depending on the number of convictions. Felony convictions would result in increased costs related to state prisons and state probation supervision. The average cost of prison incarceration in a state facility is roughly \$34,900 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,400 per supervised offender per year. The fiscal impact on local court funding units would depend on how the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

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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.