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BILL



ANALYSIS

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Senate Bill 458 (as enacted)
Sponsor: Senator Tonya Schuitmaker
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 143 of 2016

Date Completed: 2-10-17

CONTENT

The bill amended the Michigan Adoption Code to do the following:

- **Allow a court to terminate a parent's parental rights if the parents of the child are divorced or are unmarried, and the parent who has custody of the child according to a court order remarries and his or her spouse petitions to adopt the child, and if the other parent has failed to provide support or visit the child.**
- **Specify that, for this purpose, a child support order stating that support is \$0.00 or is reserved must be treated as if no support order has been entered.**

The bill took effect on September 5, 2016

Under the Code, as amended by the bill, if the parents of a child are divorced, or are unmarried but the father has acknowledged paternity or is a putative father, and if a parent having custody of the child according to a court order subsequently marries and that parent's spouse petitions to adopt the child, the court upon notice and hearing may issue an order terminating the rights of the other parent if he or she: a) having the ability to support the child, has failed or neglected to provide regular and substantial support for the child, or has failed to comply with a support order, for a period of at least two years, and b) having the ability to visit, contact, or communicate with the child, has regularly failed or neglected to do so for two years or more. Previously, this provision applied if "the parent having legal custody" (rather than a parent having custody according to a court order) subsequently remarried, and the other criteria were met.

Concerning a parent's failure to provide support, the bill specifies that a support order stating that support is \$0.00 or that support is reserved must be treated in the same manner as if no support order has been entered.

MCL 710.51

BACKGROUND

In 2014, the Michigan Supreme Court held that a parent's parental rights to a child could not be involuntarily terminated if he or she had joint legal custody of the child. The case, *In re AJR* (496 Mich 346), involved a divorced couple with a child born in the marriage. The divorce judgment awarded joint legal custody of the child to both parents, with physical custody awarded to the mother. The judgment also imposed certain support obligations on the father. The mother subsequently remarried, and the mother, stepfather, and child lived together as a family. Approximately three years after the divorce, the mother and stepfather petitioned

to terminate the father's parental rights, in order to allow the stepfather to adopt the child. The petition alleged that the father failed to provide support or comply with the support order, and failed to visit the child for at least two years. After an evidentiary hearing, the circuit court granted the petition to terminate the father's parental rights. The circuit court's order was reversed by the Michigan Court of Appeals.

The Michigan Supreme Court affirmed the judgment of the Court of Appeals, because the stepparent adoption language under MCL 750.51(6) (the provision amended by the bill) referred to "the parent having legal custody". Accordingly, the relief allowed under that provision was available only to the spouse of a parent with sole legal custody, and did not apply to situations in which the child's parents shared joint legal custody.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

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

Fiscal Analyst: John Maxwell