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ADOPTION "CLEANUP" BILL

House Bill 4200 as enrolled
Public Act 373 of 1994
Sponsor: Rep. David M. Gubow

Second Analysis (2-3-95)
House Committee: Judiciary
Senate Committee: Family Law, Mental
Health, and Corrections

THE APPARENT PROBLEM:

In 1992, a series of adoption bills were enacted that made sweeping changes to Michigan adoption law. Among those acts was Public Act 222 of 1994 (enrolled Senate Bill 721), which amended the adoption code to provide for direct placement adoptions. Under Public Act 222, which took effect January 1, 1995, a parent or guardian may choose adoptive parents, subject to approval of the probate court. Prior to formal court-approved placement, a parent, guardian, or adoption agency may temporarily place a child with prospective adoptive parents following a favorable preplacement assessment by an adoption agency. A parent or guardian placing a child in a direct placement adoption must be assisted either by an "adoption attorney" (someone who meets continuing education and registration requirements) or an adoption agency.

Also enacted was Public Act 204 (enrolled Senate Bill 723), which created the Children's Ombudsman Act. The children's ombudsman is to serve as "a means of monitoring and ensuring compliance with relevant statutes, rules, and policies pertaining to children's protective services and the placement, supervision, and treatment of children in foster care and adoptive homes." The ombudsman is to investigate complaints about "administrative acts," including actions, omissions, decisions, and practices of the Department of Social Services (DSS), an adoption attorney, or a child placing agency concerning a particular child in relation to adoption, foster care, or protective services.

The changes made by Public Act 222 to the adoption code were not only sweeping but numerous. Prior to its effective date, a need to make various clarifications and technical corrections became evident. In addition, the adoption code fails to accommodate needs that the children's

ombudsman may have to review confidential adoption records. Legislation to address these matters has been developed.

THE CONTENT OF THE BILL:

The bill would amend the adoption code to do the following (among other things):

**** Permit the children's ombudsman to inspect adoption records, including closed records, in the possession of the court, adoption agency, or DSS. The ombudsman would be prohibited from disclosing information in the records. If he or she required further information from someone whose identity was protected in adoption records, he or she would contact the person "discreetly and confidentially." The ombudsman would inform the individual that participation in the investigation would be confidential, strictly voluntary, and would not alter or constitute a challenge to the adoption. The ombudsman would have to honor the individual's request not to be contacted further.**

**** Clarify venue for various adoption-related filings. When a prosecutor filed a petition for disposition of a child whose physical custody had been transferred but for whom no adoption petition had been filed, the prosecutor's petition would be filed in the same court that received the statutorily-required report on the temporary placement (this report is to be filed in the adoptive parent's county of residence). This also would be the court for a biological parent's or a guardian's petition to regain custody of a child who had been placed temporarily, and for the filing of the petition for adoption.**

**** Clarify that direct placement procedures would not apply to stepparent adoptions.**

**** Require the probate register to complete the required public information form if the primary adoption facilitator (who is supposed to file the form) indicated that he or she did not have access to certain information.**

**** Allow adoption attorneys or agencies two working days (rather than 48 hours) after temporarily placing a child in a direct placement adoption to report on that placement to the probate court.**

**** Include in the custody transfer statement (which is signed by the parent, guardian, or adoption agency) language echoing a statutory provision that unless the parent or guardian and the prospective adoptive parent agree otherwise, the prospective adoptive parent has the authority to consent to all medical and educational services for the child.**

**** Require a child placing agency conducting a preplacement assessment to find that an individual was suited to be an adoptive parent, as long as the assessment did not raise a "specific concern" suggesting a risk of harm to the physical or psychological well-being of the child.**

**** Provide for a prospective adoptive parent to seek probate court review of an unfavorable preplacement assessment.**

The bill would take effect January 1, 1995.

MCL 710.22 et al.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency reported that the bill would have no fiscal impact on state or local government. (11-30-94)

ARGUMENTS:

For:

The bill would clarify the sweeping changes made to adoption law by various public acts in 1994; it would remedy oversights, resolve internal inconsistencies, and correct technical errors. Although the would make no substantive policy changes, failure to enact it could lead to confusion regarding venue, agency authority, or other matters.

Against:

Some who continue to be uncomfortable about opening adoption records may also be uncomfortable about allowing the children's ombudsman access to adoption records. The bill, like some of the legislation of 1994, may serve to create unnecessary anxiety or disruption in the lives of women who gave up children for adoption under assurances of confidentiality.