



**House
Legislative
Analysis
Section**

Manufacturer's Bank Building, 12th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

TERMINATION OF PARENTAL RIGHTS

House Bill 6202 as introduced
First Analysis (11-27-90)

Sponsor: Rep. Perry Bullard
Committee: Judiciary

THE APPARENT PROBLEM:

Under the Revised Judicature Act, when the probate court orders the termination of parental rights, a party to the proceeding can appeal directly to the court of appeals as a matter of right. However, when the court denies a request to terminate parental rights, any appeal must first be to the circuit court. At least two problems have been identified with this state of affairs. First, as appeals on termination would generally be brought by parents, while appeals on denial would be brought by (or on behalf of) children, the law raises questions of whether children are receiving equal protection. A second likely effect is both more sweeping and more subtle: as circuit court decisions are not published, by filtering certain kinds of appeals through the circuit court, the current system skews development of the case law that affects future cases. As one advocate for change put it, "unwarranted terminations will become part of our appellate law while unwarranted denials of termination will often remain at the circuit court level and thus unreported." To remedy this situation, it has been suggested that orders denying termination of parental rights be appealable directly to the court of appeals.

THE CONTENT OF THE BILL:

The Revised Judicature Act specifies a number of situations under which a party to a proceeding in the probate court may appeal an order to the court of appeals as a matter of right. Among these situations is appeal from an order terminating parental rights. The bill would in addition include appeals from orders denying termination of parental rights.

MCL 600.861

FISCAL IMPLICATIONS:

Fiscal information is not available. (11-26-90)

ARGUMENTS:

For:

The bill would allow children and others to appeal a probate court's decision to maintain parental rights in the same way that parents may now appeal a decision to terminate parental rights. In doing so, the bill would help to assure children of abusive or neglectful parents equal protection under the law. This also would balance the development of appellate case law, so that issues presented by denials of termination of parental rights would tend to receive the same degree of attention as issues raised by terminations.

Against:

The court of appeals is woefully overburdened now, and the bill would only worsen the situation. Although as passed by the House, House Bill 5501 would enlarge the court from 24 to 27 judges, even that number is well below the 33 originally recommended by the State Court Administrative Office and

considered necessary for the court to adequately deal with its caseload. With caseloads increasing under the current appeals process, to allow more appeals by right would exacerbate the docket problem and risk serious delays in hearing and deciding cases.

POSITIONS:

The Child Advocacy Law Clinic supports the bill. (11-16-90)

The Michigan Council on Crime and Delinquency supports the bill. (11-15-90)

The Michigan Judges Association supports the bill. (11-20-90)

The Michigan Court of Appeals opposes the bill. (11-21-90)