House
Legislative
Analysis
Section

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MINORS: NAME CHANGE

House Bill 4030 with committee amendments
First Analysis (2-5-87)

Sponsor: Rep. Thomas Hickner
Committee: Judiciary

THE APPARENT PROBLEM:

In order to legally change the name of a minor, a petition must be filed in the probate court. If the petitioner is the child himself or herself, then the petition must be signed by both parents if both are still alive and the child is not in custody of a legal guardian. When a parent petitions to have the name of a child changed, the consent of the other parent must be obtained before the change can be approved. These requirements effectively make name-changing impossible for children in single-parent homes whose other parent has lost touch with the family. For example, a mother whose husband had abandoned the family years ago might want to use her maiden name and have her children share it, but unless the missing father can be located and his consent obtained, the names of the children cannot be changed until the children reach the age of majority.

The predicament of children essentially abandoned by one parent has been taken into account in the Adoption Code. The stepparent adoption procedures in that code provide that when a parent who could have and should have been contributing to support, or at least making contact with the children, fails to do so for two years his or her parental rights can be terminated without consent. Thus, incongruously, it is easier for such a child to be adopted by a stepparent than to change his or her name. Some people think that the procedures used in the stepparent adoption law should be applied to the changing of names as well.

In a related matter, current law states that changing the name of a minor over the age of 16 years requires the written consent of that minor. Some people think that the age should be lowered to 12 to allow younger minors to have more control over their names. Similarly, while children under the age of 12 may or may not have strong feelings about their names, some people think that even younger children should at least be consulted before such action is considered.

THE CONTENT OF THE BILL:

The bill would amend the Probate Code to permit the changing of the name of a minor with the consent of the custodial parent if the noncustodial parent could not be located and had neither contributed toward the support of the child nor been in contact with the child for a period of two years (this latter criterion would apply only if the noncustodial parent had the ability to communicate with the child during the two-year period). The noncustodial parent's ability to support the child during this period would be assumed unless that parent demonstrated an inability to support or assist in supporting the child, or to comply with the support order.

The bill would also require that written consent be obtained from minors twelve years of age or older, instead of from those minors over the age of 16. For a minor under the age of 12 years, the minor would have to be consulted with regard to a change in his or her name. The court would be required to consider the child's wishes.

Finally, the bill would allow a minor's parent to sign a petition to change that minor's name, if there was not another legal parent to give consent (MCL 711.1).

FISCAL IMPLICATIONS:

There are no fiscal implications to the state.

ARGUMENTS:

For:

The bill would make possible sensible name changes in circumstances under which the law now makes such changes virtually impossible. The typical case addressed by the proposed amendment is that of a family abandoned by the children's father. Often in such cases the mother will use her maiden name and naturally wants her children to share the same name rather than that of their absent father. It is precisely the father's dereliction of his parental duty that makes the name change impossible. A father who maintains even minimal contact with his children will be able to prevent the name change, if he so desires, by withholding consent.

Response:

It is unclear how a noncustodial parent who has not abandoned his or her child would know of a proposed name change so that he or she may object to it. One parent sometimes hides a child from the other. How will it be determined whether a parent cannot be located and has failed to support or communicate with the child?

Against:

The bill may make it too difficult for a custodial parent to change a child's name. Any contact from the noncustodial parent over a two-year period would be sufficient to block the name change. Should a single postcard or telephone call from an irresponsible parent be enough to prevent a change of name desired by both the custodial parent and the child?

Against:

The bill contains a logical inconsistency. The nonpayment of support criterion does not apply if the noncustodial parent demonstrates an inability to provide support. However, this provision has little meaning, because the criterion only matters when the parent cannot be located. A parent who cannot be located is not going to be demonstrating an inability to provide support.

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