House Legislative Analysis Section

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MINORS: NAME CHANGE

House Bill 4030 as enrolled
Second Analysis (1-12-89)

Sponsor: Rep. Thomas Hickner
House Committee: Judiciary
Senate 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 14 to allow younger minors to have more control over their names. Similarly, while children under the age of 14 may or may not have strong feelings about their names, some people think that even some 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 all of the following applied: notice under supreme court rule and hearing had been provided to the noncustodial parent; that parent, having the ability to support or assist in supporting the child, had not contributed toward the support of the child for a period of two years; and, the parent, having the ability to communicate with the child, had not done so for two years.

The bill would also require that written consent be obtained from minors fourteen years of age or older, instead of from those minors over the age of 16. For a minor under the age of 14 years, the minor would have to be consulted with regard to a change in his or her name, if the court considered the child to be of sufficient age to express a preference. 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:

According to the Senate Fiscal Agency, the bill would have no fiscal impact on state or local government. (11-23-88)

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. However, it is precisely the father's dereliction of his parental duty that makes the name change impossible. While the bill would correct this situation, it also would respect the parental rights of the noncustodial parent: a noncustodial parent who maintained even minimal contact with the child would be able to prevent the name change by withholding consent.

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?