



**House
Legislative
Analysis
Section**

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FOSTER CARE: IMMUNITY FROM SUITS

House Bill 4078 as introduced
First Analysis (10-8-87)

RECEIVED

OCT 22 1987

Sponsor: Rep. Teola P. Hunter
Committee: Judiciary

Mich. State Law Library

THE APPARENT PROBLEM:

In 1972, the Michigan Supreme Court held that children could sue their parents for negligence, but placed certain limits on that parental liability (Plumley v. Klein, 388 Mich. 1). In 1977, the Court of Appeals said that a person who stood in loco parentis (in that case, a grandmother who had raised a grandchild) had the same limited immunity to tort liability accorded natural parents (Hush v. Devilbiss Co., 77 Mich. App. 639).

In 1985, the Michigan Supreme Court reversed the lower court's ruling in a case involving whether foster parents may receive the same protection under the law that others who assume a parental role receive (Mayberry v. Pryor, 422 Mich. 579). The supreme court held that foster parents are not entitled to the immunity accorded natural parents.

Vulnerability to lawsuits makes many people reluctant to become or remain foster parents, and thus contributes to the general difficulty in finding enough good foster homes to meet the need. Many believe that foster parents, who have a unique role to nurture and care for their charges in the same way that natural parents are supposed to, should at least be accorded the same limited immunity to liability that others who raise a child have.

THE CONTENT OF THE BILL:

The bill would amend Public Act 33 of 1980 to state that a foster child may maintain an action against his or her licensed foster parent for injuries suffered as a result of negligence except in either of the following instances:

- the alleged negligent act involved an exercise of reasonable parental authority over the child; or
- the alleged negligent act involved an exercise of reasonable parental discretion with respect to the provision of food, clothing, housing, medical and dental services, and other care.

MCL 722.163

FISCAL IMPLICATIONS:

Fiscal information is not available. (10-7-87)

ARGUMENTS:

For:

Foster parents provide the same day-to-day care and are faced with the same daily decisions as natural parents. They are entitled to the same protection under the law that others who raise children have, and the bill would provide them with this. Foster parents provide a public service and deserve public protection for the parental role that has been assigned them.

Against:

The supreme court held that foster parents "assume a contractual duty to provide supervisory care and should be held responsible for any failure to use reasonable care."

Further, as the court noted, the usual arguments for parental immunity, among them the preservation of the family unit, do not exist in the foster care relationship. The court held that "on balance, the interests of the child outweigh those of the foster parents" and that parental immunity should not be extended to foster parents.

POSITIONS:

The Michigan Foster and Adoptive Parent Association supports the bill. (10-7-87)

H.B. 4078 (10-8-87)