



**House
Legislative
Analysis
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ACCESS TO ADOPTION INFO

House Bill 5604 as enrolled
Second Analysis (1-10-89)

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Sponsor: Rep. Perry Bullard

House Committee: Judiciary

Senate Committee: Judiciary

Mich. State Law Library

THE APPARENT PROBLEM:

Michigan law's restrictions on access to adoption records, last changed in 1980, continue to generate objections from advocates of the benefits of more open adoption records. Adoptees and others argue that to know where one came from is one's right and that denial of access to such information is a violation of rights. Conversely, birth parents sometimes yearn to know what became of the child born, but not reared. Various impediments remain in the law, however. One birth parent can override access to information on the other birth parent, even when that other parent consents to access. The probate court, which may open adoption records for good cause shown, is not required to rule on a petition to open records. The law also lacks deadlines for action by the court, Department of Social Services (DSS), and child placing agencies from which information is requested. There are no explicit procedures under which biological parents or siblings can obtain information on an adoptee, even if the adoptee is an adult who consents to the release of information. Amendments have been proposed to meet these and other criticisms of the law governing access to adoption information.

THE CONTENT OF THE BILL:

The bill would amend the adoption code to eliminate the ability that one biological parent has to forbid access to information on the other birth parent, to allow adult adoptees to obtain the names of the hospitals where they were born, to establish procedures under which biological parents and siblings can obtain the name and address of an adult adoptee, and to establish various deadlines and duties to respond to requests for information. A more detailed description follows.

Nonidentifying/identifying information. The code requires the DSS, a child placing agency, or the court that places an adoptee to maintain certain identifying and nonidentifying information. Nonidentifying information is available upon request to an adoptive parent or adult adoptee who requests it. Identifying information on adoptions made before 1980 is available to an adult adoptee if the DSS has on file written consent from biological parents or siblings, depending on circumstances. Identifying information on a post-1980 adoption is available to an adult adoptee if there is no denial on file from a biological parent.

The bill would include in "identifying information" the most recent names of biological parents (this in addition to the already-required names at the time parental rights were terminated), and the names of biological siblings at the time parental rights were terminated. The bill would include among the nonidentifying information available upon request the time of birth and the hospital and city where born (date, county and state are and would continue to be available).

At the time parental rights are terminated, the court informs the biological parent of the ability to deny or consent to the release of identifying information once the child turns 18 and requests the information. The bill would require the court to inform a biological parent of the right to keep current his or her name and address by filing a statement with the DSS. In addition, consent statements, which now may include names and addresses, would have to do so.

Identification of court, agency. If the DSS or a child placing agency received a request for adoption information from an adult adoptee, a biological parent, or an adult biological sibling, it would have to provide that person with the identity of the court that confirmed the adoption. If a court received such a request, it would have to identify the child placing agency that handled the adoption. Identification would have to be provided within 28 days.

Release of information on biological parent (pre-1980 adoptions). The bill would delete language that allows one biological parent to prohibit the release of information on the other. Under the bill, information on one parent would be released to an adult adoptee if that parent consented.

The bill also would delete language that limits release of information on deceased biological parents, where both parents have died without filing consent statements, to situations where the death of the biological parents was the reason for adoption. Under the bill, all information on both parents would be released to an adult adoptee if both biological parents had died.

At present, information on one biological parent may be released absent a consent statement if that parent is deceased, an adult child of that parent has consented to release, and there is no denial from the other parent in effect. Under the bill, the information would be released if the parent was deceased or if the adult sibling had filed a consent regarding a deceased parent.

Release of identifying information (post-1980 adoptions). Someone adopted after 1980 is able to obtain identifying information upon turning 18, providing neither biological parent has filed a denial with the DSS. Under the bill, the limit on obtaining identifying information would apply only to information on a particular biological parent when that parent had forbidden its release.

Stepparent/relative adoptions. The act at present excludes stepparent and relative adoptions from provisions regarding supplying and maintaining information. The bill would extend these provisions to such adoptions.

Requests from biological parents or siblings. At present, a biological parent or adult biological sibling may not receive identifying information from a child placing agency, the DSS, or a court unless the adoptee as an adult has given written consent to the release of the information. The bill would explicitly require all of the nonidentifying information to be provided, whether or not there was a consent on

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file. Identifying information, along with the adoptee's most recent name and address, would be provided if an adult adoptee had given written consent as provided by the code.

Petition to open adoption records. The probate court that ordered adoption may open adoption records upon good cause shown. The bill would require the court to grant or deny a petition in writing within 63 days after a petition to open records was filed, except that for good cause the court could grant or deny after the 63-day period but not later than 182 days after filing.

Deadlines to provide information. The DSS, a child placing agency, or the court would have to provide nonidentifying information within 63 days after receiving a request from adoptive parents or an adult adoptee. Identifying information, if allowable, also would be provided within 63 days of a request.

Fees. At present, a child placing agency, the DSS, or a court may require a fee of \$10 to accompany a request for identifying information; there is no fee provision for nonidentifying information. For both sorts of information, the bill would authorize a fee of \$60 or the actual cost of supplying requested information, whichever was less. As it may do now, the agency, department, or court could waive all or part of the fee in case of indigency or hardship.

Information pamphlet. The DSS would develop and publish a pamphlet explaining the release of information from adoption records under the code. If the department, a child placing agency, or the court were contacted by an adoptee, a birth parent, or an adoptive parent, it would have to provide that person with a copy of the pamphlet.

MCL 710.27 et al.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency (SFA) notes that the DSS estimates that the fiscal impact of the bill would reflect the addition of one full-time equated position at an estimated annual cost of \$32,000. There are at present no staff positions regularly assigned to this task in the department. The SFA further notes that costs to local courts could be offset by the increase in the fee from \$10 to \$60. (12-5-88)

ARGUMENTS:

For:

The bill would remove various obstacles that the law places on access to adoption information. It would eliminate provisions enabling one biological parent's denial to release identifying information to override the other's consent; mutually-desired reunions now thwarted could occur. Courts, now free by the law's silence to ignore a petition to open adoption records, would be required to rule within a reasonable amount of time. Similarly, courts and agencies involved in adoptions can take inordinate periods of time to respond to legitimate and lawful requests for information; the bill would set deadlines and require responses. Balance would be achieved by allowing them to charge fees to meet their costs, especially with regard to the more time-consuming compliance with requests for non-identifying information. Recordkeeping and information-release provisions would be extended to people adopted by stepparents or relatives; it is faulty to assume that such adoptees have no need for this information. Adoptees' searches for identity would be aided by being provided with the names of the hospital

where born and of the court and agency handling the adoption.

Adoptees and biological parents are sometimes tormented by being unable to close the circle and discover what happened to the biological family members. Even when the feelings are not so strong, there often is a restlessness and unsettledness that comes from not knowing. The vast majority of adoptees and biological parents would prefer greater access to adoption records: according to the bill's proponents, research presented at a 1986 meeting of the American Sociological Association indicated that 95 percent of birth parents and 94 percent of adoptees want open records. The bill does not go so far as open records, but it does incorporate provisions recognizing the beliefs prevalent today that adoption should be a more open process, less shrouded in secrecy, and thus emotionally healthier. Its recognition of current trends is also a recognition of an adoptee's human rights, which are not — or at least should not be — abridged simply because one was adopted. Everyone has the right to identity.

Against:

The law should be kept intact. Releasing the location of an adoptee's birth, including the city and the hospital, would compromise the confidentiality of the adoption contract. If a birth parent wishes to remain unknown to the child given up for adoption, that wish should be respected. The decision to release a child for adoption can be very emotional, involving events and feelings that the birth parent may wish to forget. When an adoptee searches for and finds that parent, years later, it may be a very unpleasant experience. The current system of allowing biological parents to file a consent to the release of information is sufficient.

Against:

The bill is too restrained. The benefits of more open records are such that the bill continues to restrict the flow of information to and from adoptees, adoptive parents, and biological family members to an unacceptable degree.