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House Bill 5604 (Substitute S-1 as reported)

Sponsor: Representative Perry Bullard

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 12-5-88

RATIONALE

Michigan's restrictions on access to adoption records, which were last revised in 1980, continue to generate objections from advocates of open adoption records. Adoptees and others argue that to know one's heritage is a right and that denial of access to such information is a violation of that right. Conversely, birth parents sometimes yearn to know what became of the child born to them, but not reared by them. Various impediments to obtaining that knowledge remain in the law, however. For instance, one birth parent can override access to information about the other birth parent, even when the other parent consents to access. Also, the Probate Court, which can 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, the 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. Many people feel that adoptees, birth parents, and biological siblings currently are deprived of information to which they have a right.

CONTENT

The bill would amend the Michigan Adoption Code to revise the rules and procedures for maintaining and releasing information pertaining to adoptions. The bill would do the following:

- Eliminate the ability that one biological parent has to forbid access to information on the other biological parent.
- Allow adult adoptees access to the name of the hospital where they were born.
- Establish procedures under which biological parents and siblings could obtain the name and address of an adult adoptee.
- Establish various deadlines and duties to respond to requests for information.
- Increase the allowable fee for identifying information from \$10 to \$60.
- Require the DSS to publish an information pamphlet explaining the procedures for release of adoption information.

Maintaining Records

The Code requires a child placing agency, the DSS, or a court that places an adoptee to maintain certain identifying and nonidentifying information. The bill would add to the

list of nonidentifying information the time of birth and the name of the hospital and city where a child was born. The bill also would add to the list of identifying information the most recent names of the biological parents.

The Code requires the court to inform biological parents of their right to file a denial of release of the identifying information required to be maintained, and permit the denial to be revoked at any time. The bill would require the court also to inform biological parents of their right to keep current their name and address by filing a statement with the DSS. The bill also would require that a statement made by a biological parent or adult biological sibling consenting to the release of identifying information include the current name and address of the person consenting to that release. (The Code currently allows such a statement to include that information, but does not require it.)

Releasing Information

The bill would require a court to grant or deny a petition to inspect or copy records of proceedings in adoption cases within 63 days after the petition was filed. For good cause, however, the court could delay action on the petition beyond the 63-day period, but would have to grant or deny the petition no later than 182 days after it was filed.

The bill would require that all of the nonidentifying information required by the Code be made available in writing to the adoptive parents within 63 days after a request for that information was received. Currently, the Code requires that information to be made available upon request, but assigns no deadline to the delivery. Similarly, the bill would require the disclosure of nonidentifying information to a biological parent or adult biological sibling within 63 days after a request for such information was received.

Within 63 days after a request for identifying information was received, a child placing agency, a court, or the DSS would have to provide to the biological parent or adult biological sibling the adult adoptee's most recent name and address and the identifying information required to be maintained under the Code, if the adult adoptee had given written consent to the release of such information. If the DSS or a child placing agency received a request for adoption record information in its possession from an adult adoptee, biological parent, or adult biological sibling, it would have to tell the requester, within 28 days, which court confirmed the adoption. If a court received such a request, it would have to provide the identity of the agency.

H.B. 5604 (12-5-88)

The Code allows information pertaining to one of the biological parents to be released to an adult adoptee only if that parent has filed a consent to release information or is deceased and the other biological parent has not filed a statement currently in effect denying consent. The bill would eliminate the latter condition. If both biological parents are deceased, the Code allows the release of information on them only if their death were the reason for the adoption. The bill also would eliminate that condition.

If an adult adoptee requested identifying information, the child placing agency, court, or DSS must request that information from the DSS. Upon receipt of a response from the DSS file, the child placing agency, court, or DSS is required to notify the adoptee in writing within 30 days of the information or why it cannot be released. The bill would change this deadline to 28 days. The bill also would delete a requirement that the agency, court, or DSS notify each biological parent who has consented to release of identifying information of the reason why information cannot be released.

The Code specifies that the requirements pertaining to the maintenance and release of identifying and nonidentifying information do not apply "to a stepparent adoption or to the adoption of a child related to the petitioner within the third degree of affinity or consanguinity". The bill specifies, instead, that those provisions would apply to stepparent adoptions and adoptions of children related within the fourth degree of affinity or consanguinity.

The Code allows an agency, a court, and the DSS to charge a \$10 fee for identifying information. The bill would allow a fee of \$60 or the actual cost of supplying the information, whichever was less.

The bill would require the DSS to develop and publish an informational pamphlet that explained the release of adoption information under the Code. If the DSS, a child placing agency, or a court were contacted by a birth parent, adoptive parent, or adoptee, it would have to provide that person with a copy of the pamphlet.

MCL 710.27, 710.67, and 710.68

SENATE COMMITTEE ACTION

The Senate Judiciary Committee adopted a substitute (S-1) to the bill which differs from the House-passed version in that it would retain an adoptee's name prior to adoption as identifying information that is unavailable to an adoptee. The House-passed version would remove the pre-adoption name from the list of unavailable identifying information and specify that the DSS, a child placing agency, or a court that placed an adoptee, upon request would have to provide an adult adoptee with his or her birth name and any other name of the adult adoptee. The Senate substitute does not contain those provisions.

In addition, the Senate substitute would require the DSS to develop and publish an information pamphlet that explained the Act's provisions for the release of information from adoption records. Copies of the pamphlet would have to be provided to adoptees, birth parents, and adoptive parents by the DSS, a child placing agency, or the court, within 14 days after contact by one of those persons. The pamphlet also would have to be provided at the time other information requested by the adoptee, birth parent, or adoptive parent was provided.

FISCAL IMPACT

The Department of Social Services estimates that the fiscal impact would reflect the addition of 1 full-time equated (FTE) position at an estimated annual cost of \$32,000.

There are currently no staff positions assigned, on a regular basis, for this task in the Department of Social Services.

The costs to local courts could be offset by the increase in the fee from \$10 to \$60.

ARGUMENTS

Supporting Argument

The bill would be a first step toward recognizing adoptees' rights to their heritage. Adoptees desire a better sense of their own identity and access to updated information on their medical history. (Currently, adoptees can gain access to their birth parents' medical records at the time of the adoptee's birth, but know nothing of their biological parents' medical history after that time.) Secrecy in the adoption process has been the root of all the major problems with adoption that have arisen over the years. While secrecy originally was meant to overcome the stigma of illegitimacy, many feel that it now stands as a barrier to overcoming that stigma. In addition, until the 1980 revisions to the Code, birth parents were not even allowed the option of consenting to the release of information. Secrecy simply was a mandatory aspect of the adoption process. Further, children given up for adoption, those most profoundly affected by an adoption contract, have no say in the future control of information pertaining to their birth. The bill would at least allow them access to some of that information upon reaching adulthood. Though it would not open adoption records completely, the bill would do much to recognize that adoptees have a right to their own identity.

Supporting Argument

The bill would correct some procedural problems pertaining to the access of adoption information. The current practice of allowing one biological parent to override the other's consent to release of information would be abolished and access to information about an adult adoptee would be easier for a birth parent or adult biological sibling to obtain. Finally, the bill would force courts, the DSS, and child placing agencies to address requests for information by specific deadlines.

Opposing Argument

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.

Opposing Argument

The bill does not go far enough: many other states reportedly have opened access to adoption records completely with little or no negative repercussions. The DSS reportedly receives over 200 inquiries per year, yet cannot

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supply open access to these people who wish to alleviate their genealogical bewilderment. Since 1980, when the right of a birth parent to file a consent or denial to information was enacted, only about 3,000 of approximately 24,000 birth parents have filed such documents, and only 17% of those were denials. (Failing to file is considered an implied consent.) The low numbers of denials to access being filed in this State suggests that complete access to adoption records should be granted.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.