

# Legislative Analysis

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## ADOPTION LAW CHANGES

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### House Bills 6008 and 6009

Sponsor: Rep. Lauren Hager

### House Bill 6010

Sponsor: Artina Tinsley Hardman

Committee: Family and Children Services

Complete to 6-21-04

## A SUMMARY OF HOUSE BILL 6008 AS INTRODUCED 6-9-04

### House Bill 6008 (MCL 710.45)

The Michigan Adoption Code (Chapter X of the Probate Code of 1939) generally requires the consent of, among others, the representative of the Family Independence Agency (i.e., the superintendent of the Michigan Children's Institute) or the child placing agency or the court having permanent custody of a child, before an adoption order can be finalized. However, if the prospective adoptive parent is unable to obtain consent from the MCI superintendent, the child placing agency, or the court, he or she can file a motion with the court alleging that the decision to withhold consent to the adoption is "arbitrary and capricious." (This is often referred to as a Section 45 hearing). The bill would, instead, permit a prospective adoptive parent to file a motion in court for a determination as to whether the decision to withhold consent was proper and is in the child's best interest. In making a decision on the motion, the court would make a determination about the child's best interest. [However, the bill does not delete other language about the court finding or not finding the decision to withhold consent to be arbitrary and capricious.]

In addition, the bill would add that upon entry of a final order of adoption, the court would not conduct a Section 45 hearing if an appeal from the order of adoption, a motion or order of adoption, or any other motion relating to the adoption or consent is not filed in a timely manner.

Further, upon the filing of a motion for a Section 45 hearing, the court would be required to issue a subpoena requiring the attendance of the adoptive parents, the foster parent, the child's custodian, the child's attorney or guardian ad litem, the MCI superintendent, and any other individual who filed a petition for adoption. The petitioner, FIA, and supervising state agency would be required to provide the court with the names and addresses of those parties required to be subpoenaed.

During the hearing, all interested parties would be provided a "fair hearing" and permitted to provide testimony and other documentation regarding their position on the withholding consent motion or on the adoption of the child.

If a motion or petition for a Section 45 hearing is incomplete, the court would notify the petitioner of the deficiency, and the petitioner would have 21 days from the time of the notice to correct the deficiency. If the 21-day period expires, the motion or petition would be dismissed. The court could penalize the department or supervising agency, the petitioner, or a court employee for the failure to provide appropriate notice or the contact information of the individuals to be subpoenaed.

#### **House Bill 6009 (MCL 400.202)**

The bill would amend Public Act 220 of 1935 to transfer the Michigan Children's Institute (MCI) from the Family Independence Agency to the Department of Management and Budget. In addition, under the bill, the MCI superintendent would be appointed by the governor, rather than the director of the FIA.

#### **House Bill 6010 (MCL 710.21a et al.)**

The bill would make numerous changes to the Adoption Code.

*General Purpose* - The act includes a listing of three general purposes of the code. The bill would add that the purpose of the code also to achieve permanency and stability for adoptive children as quickly as possible, and to support the permanency of a finalized adoption by allowing all interested parties to participate in proceeding regarding the adoptive child.

*Attendance by children* - The bill would add that the court could permit a child who is at least 11 years of age to attend his or her adoption hearing.

*Court jurisdiction* - The bill would add that the petition to revoke a temporary placement, a petition for adoption, and petition for a Section 45 hearing would be filed in the court of the county where the parent's parental rights were terminated. If both parents' parental rights were terminated at different times and in different counties, the petition would be filed in the court where the parental rights were first terminated. In addition, the court could transfer jurisdiction to another court in another county. [It should be noted, however, that the act does not delete language in current law relating to where such petitions shall be filed.]

The act permits the parent or guardian of a child placed in a temporary placement to regain custody of the child by filing a petition that the temporary placement be revoked and that the child be returned to the parent. In addition, if the prospective adoptive parent who receives a child through a temporary placement is no longer willing or able to proceed with the adoption, he or she can file a petition to determine custody of the child. Finally, if a child placing agency that places a child in a temporary placement cannot proceed with the adoption, the agency can file a petition to determine custody of the child. In all cases, the petition is filed in the court that receives notice of the temporary placement. This court is the court of the county where child's parent or guardian resides,

where the prospective parent resides, or the where the child is found. [Again, the bill retains current language regarding the court in which a petition is to be filed.]

Petitions for adoptions and Section 45 hearings are filed in the court for the county in which the petitioner (prospective adoptive parent) resides or where the child was found. [Again, the bill retains current language regarding the court in which a petition is to be filed.]

In addition, the bill specifies that adoption petitions would be filed in the county where the case of child abuse or neglect was decided, if the court obtained jurisdiction over the child because of the child's parent's parental rights were terminated due to child abuse or neglect.

*Interested parties* - The act includes a list of interested parties in a petition for adoption. The bill would remove the age restriction (14 years) for adoptees. In addition, the bill would add that the adoptive parents, current foster parents, or any other individual who has file a petition for adoption for the same child, and the MCI superintendent or an authorized agency representative would also be considered "interested parties" in a petition for adoption.

The act also includes a list of interested parties in a petition for a hearing to identify the father or an adoptee and to determine or terminate his parental rights. The bill would add to this list, the guardian or guardian ad litem of an interested person.

*Status of adoptive parent/children* - The bill would specify that after the entry of an adoption order, the adoptive parent has equal standing as a natural parent, and the adoptive child has equal status as natural progeny.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.