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BILL ANALYSIS

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House Bill 6008 (Substitute H-1 as passed by the House)  
House Bill 6009 (Substitute H-1 as passed by the House)  
House Bill 6010 (Substitute H-1 as passed by the House)  
Sponsor: Representative Lauren Hager (H.B. 6008 & 6009)  
Representative Artina Tinsley-Hardman (H.B. 6010)  
House Committee: Family and Children Services  
Senate Committee: Judiciary

Date Completed: 9-28-04

### **CONTENT**

**House Bills 6008 (H-1) and 6010 (H-1) would amend the Michigan Adoption Code and House Bill 6009 (H-1) would amend Public Act 220 of 1935, which provides for family home care for children committed to the State and governs the Michigan Children's Institute, to do all of the following:**

- **Establish requirements for notice and a hearing concerning a motion alleging an arbitrary and capricious decision by the Family Independence Agency (FIA) or a child placing agency to withhold consent to adoption; require the court to determine the best interests of the child; and provide that the court could not enter an adoption order before an appeal was decided or the right to appeal expired.**
- **Delete a provision for commitment to the Michigan Children's Institute (MCI) by observation order.**
- **Authorize the MCI superintendent to make decisions on behalf of a child committed to the MCI without direction from the FIA or FIA Director.**
- **Require the FIA to discontinue its MCI preliminary consent denial review process.**
- **Add to the Adoption Code's "general purposes".**
- **Authorize a court to allow a child to attend his or her adoption hearing.**
- **Require that various petitions concerning adoption be filed in the court of the county where parental rights were terminated or pending termination.**
- **Expand the Adoption Code's list of "interested parties" in various adoption-related petitions and hearings.**

### **House Bill 6008 (H-1)**

Under the Adoption Code, a court may not allow the filing of a petition to adopt a child if the consent of a representative of the FIA or child placing agency or court is required, unless the petition is accompanied by the required consent or a motion alleging that the decision to withhold consent was arbitrary and capricious. If consent has been given to another petitioner and if the child has been placed with that other petitioner, a motion alleging an arbitrary and capricious decision to withhold consent may not be brought after 56 days following the entry of the order placing the child or after entry of an order of adoption.

The bill would require the court to provide notice of a motion alleging an arbitrary and capricious decision to withhold consent to all persons with an interest in the proceedings, including all of the following:

- The prospective adoptive parents.
- The child's attorney or guardian ad litem appointed by the court to represent the interests of the adoptee.
- Any other agency, department, or individual with a legitimate interest in the outcome of the motion.

In making a decision on a motion alleging an arbitrary and capricious decision to withhold consent, the court would have to make a written determination regarding the best interests of the child. The court also would have to give all interested parties the opportunity for a fair hearing. All interested parties would have to be allowed to offer testimony and documentation regarding their position on the motion or on the child's adoption.

If a motion or petition did not meet all of the Code's filing requirements, the court would have to notify the petitioner of the deficiencies in the motion or petition and allow 21 days for the petitioner to correct them. If, after 21 days, the petitioner had not corrected the deficiencies, the court would have to dismiss the motion or petition.

In a matter in which a motion alleging an arbitrary and capricious decision to withhold consent was brought, the court could not enter an order of adoption until one of the following occurred:

- The motion was heard and decided, and the time within which to file an appeal as of right expired without an appeal being filed.
- The motion was heard and decided, an appeal as of right was filed, the Court of Appeals issued an opinion, and the time within which to file an application for leave to appeal to the Supreme Court expired without an application being filed.
- The Supreme Court denied an application for leave to appeal or, if an application for leave to appeal were granted, the Supreme Court issued an opinion.

### **House Bill 6009 (H-1)**

Under Public Act 220 of 1935, a child under 17 years old whose support and education have been provided under FIA regulations may be admitted to the Michigan Children's Institute either by commitment to the FIA or by observation order.

The bill would delete the option of commitment by observation order. Under that option, if a child is a ward of the court and it appears to the court that, because of the circumstances of the case or because the child's condition might be benefited, the court may make a temporary commitment to the FIA and direct the child to be taken to an MCI facility for up to 90 days for observation. If the MCI superintendent reports to the court that the observation order should be extended or that the child is in need of treatment for emotional disturbance, the court may extend the temporary commitment and continue the observation order or establish a treatment period to any date before the child's 19<sup>th</sup> birthday.

The bill would retain admission to the MCI by commitment. Under that option, the MCI superintendent must represent the State as guardian of each child committed beginning with the day the child is admitted and continuing until he or she is 19, unless the superintendent or FIA discharges the child sooner, as provided under the Act. The bill specifies that the MCI superintendent would have the power to make decisions on behalf of a child committed to the Institute without direction from the FIA or the FIA Director. The Attorney General or his or her representative would have the represent the MCI superintendent in any court proceeding in which the superintendent considered representation necessary to carry out his or her duties under the Act.

In addition, the Act authorizes the superintendent to consent to the adoption, marriage, or emancipation of any child who has been committed to the MCI. Upon adoption, marriage, or emancipation, the child ceases to be a ward of the State. The bill specifies that, beginning on its effective date, the FIA would have to discontinue the MCI preliminary consent denial review process and the MCI superintendent would be authorized to provide the consent to adoption, marriage, or emancipation without receiving approval from the FIA.

### **House Bill 6010 (H-1)**

#### General Purposes of the Code

The Adoption Code provides that its general purposes are:

- To provide that each adoptee in Michigan who needs adoption services receives those services.
- To provide procedures and services that will safeguard and promote the best interest of each adoptee in need of adoption and that will protect the rights of all parties concerned. (The Code specifies that if conflicts arise between the rights of the adoptee and the rights of another, the rights of the adoptee are paramount.)
- To provide prompt legal proceedings to assure that the adoptee is free for adoptive placement at the earliest possible time.

The bill would add the following to that list:

- To achieve permanency and stability for adoptive children as quickly as possible.
- To support the permanency of a finalized adoption by allowing all interested parties to participate in proceedings regarding the adoptive child.

#### Petitions

Temporary Placement. The Adoption Code provides for temporary placement of a child before an adoption petition is filed. The adoption attorney or child placing agency that assists in a temporary placement must report to the court within 30 days after the temporary placement regarding whether a petition for adoption was filed and whether the child was returned to the agency, to a parent, or to another person having legal custody. If the court has not received the report within 45 days, it must investigate and determine whether a petition has been filed or the child has been returned to a parent or other legal custodian. If neither disposition has occurred, the court must report to the prosecutor, who must petition the court for a hearing to determine the custody of the child.

The temporary placement provisions allow a parent or guardian who wishes to regain custody to file a petition with the court requesting that the temporary placement be revoked and that the child be returned. Also, if a prospective adoptive parent with whom a child has been temporarily placed is unwilling or unable to proceed with the adoption, he or she may file a petition for other disposition of the child. In addition, if a child placing agency that temporarily placed a child is unable to proceed with an adoption because of the unavailability of a parent or guardian to execute a release, or if an agency with legal custody of a child decides not to proceed with the adoption and the prospective adoptive parent refuses to return the child, the agency must file a petition with the court for disposition of the child.

The bill specifies that a petition filed under the temporary placement provisions would have to be filed with the court of the county where the parent's parental rights were terminated or were pending termination. If both parents' parental rights were terminated at different times and in different courts, a petition would have to be filed in the court of the county where parental rights first were terminated. That court, at its discretion, could transfer jurisdiction to another court in another county.

Adoption. Under the Code, if a person desires to adopt a child or an adult and bestow upon the adoptee his or her family name, or to adopt an adult without a name change, with the intent to make the adoptee his or her heir, that person together with his wife or her husband, if married, must file a petition with the court of the county in which the petitioner resides or where the adoptee is found. The bill would require instead that the adoption petition be filed with the court of the county where the parent's parental rights were terminated or were pending termination. If both parents' parental rights were terminated at different times and in different courts, a petition would have to be filed in the court of the county where parental rights first were terminated. That court, at its discretion, could transfer jurisdiction to another court in another county.

### Interested Parties

The Code identifies who are "interested parties" in a petition for adoption, in a petition for a hearing to identify the father of an adoptee and to determine or terminate his rights, and in a hearing related to temporary placement.

The bill would add the prospective adoptive parents to the list of interested parties in an adoption petition.

Also, under the bill, the guardian or guardian ad litem of an interested person, if one had been appointed, would be included among the interested parties in a petition for a hearing to identify a father and to determine or terminate his rights.

Under the Code, interested parties in a hearing related to temporary placement include the guardian ad litem, if one has been appointed. The bill would refer to the guardian ad litem of any interested party.

MCL 710.45 (H.B. 6008)  
400.203 & 400.209 (H.B. 6009)  
710.21a (H.B. 6010)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

#### **House Bills 6008 (H-1) & 6010 (H-1)**

No information is available from the State Court Administrative Office regarding the impact on the court system from these bills.

#### **House Bill 6009 (H-1)**

The bill would have no fiscal impact on the Family Independence Agency.

Fiscal Analyst: Bill Bowerman  
Constance Cole

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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.