

ADOPTION REVISIONS

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House Bill 4911 (Substitute H-1)
Sponsor: Rep. Kathy Crawford
Committee: Judiciary
Complete to 2-24-16

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: The bill would do the following:

- In an adoption involving a child born out of wedlock, allow a court to accept an affidavit or verified written declaration of evidence of the identity and whereabouts of a child's father in lieu of the mother's live testimony.
- Allow a court to waive the three-month supervisory period of an infant after formal placement.
- Refer to a woman's *spouse*, rather than *husband*, in a provision regarding a step-parent adoption.

FISCAL IMPACT: House Bill 4911 would have no significant impact on the Department of Health and Human Services.

THE APPARENT PROBLEM:

Before a child may be placed for adoption, the parental rights of both parents must be terminated. This may be done either voluntarily by a parent or by a court if certain statutory requirements have been met (for instance, the parent abused the child or failed to show interest in or care for the child). This is also true of a child born out of wedlock. The Michigan Adoption Code establishes requirements for hearings to determine the identity of the father or that the identity cannot be determined. As part of the hearing process, evidence must be presented to the court regarding the father's identity.

Recent revisions to the Adoption Code allowed a parent to execute an "out-of-court" consent or release which voluntarily terminates the parent's parental rights and acts either to consent to a direct placement of the child with an adoptive family or release the child to a child placing agency for placement of the child.

Some feel that if a mother executes an out-of-court consent or release for a child born out of wedlock, that she should not be compelled to travel to a court for a hearing regarding the identity of the father. This can be particularly burdensome to a mother living out of state.

In a different matter, recent legislation shortened the supervisory period after formal placement of an infant to three months from the standard six-month period but failed to provide for the ability of the adoptive parent or parents to petition to waive all or part of the supervisory period. Currently, such a waiver exists for placements of older children. Seen as an oversight, it has been suggested that adoptive parents of infants be given the

same ability to ask a court to speed up the adoptive process that other adoptive parents enjoy.

THE CONTENT OF THE BILL:

The bill amends the Adoption Code, Chapter X of the Probate Code. Currently, in adoptions involving a child claimed to have been born out of wedlock, a court must hold a hearing to determine whether the child was born out of wedlock, to determine the identity of the father, and to determine or terminate the rights of the father. The court must receive evidence as to the identity of the father of the child. Based upon the evidence received, the court either enters a finding identifying the father or declares that the father's identity cannot be determined.

The bill would revise the provision to allow the court, in lieu of hearing the mother's live testimony, to receive an affidavit or a verified written declaration from the mother as evidence of the identity and whereabouts of the child's father. If the court determined that the affidavit or verified written declaration was insufficient, the court would have to allow the affidavit or verified written declaration amended.

Further, after the parental rights of the parents have been terminated, a court may approve a formal placement of the child with the adoptive parents. There follows a supervisory period of at least six months, after which the court may enter an order of adoption unless it determines that circumstances have arisen that make adoption undesirable. If the child was less than a year old at the time the petition for adoption was filed, the supervisory period is only three months.

The bill will allow a court to waive the three-month supervisory period for these young adoptees, or any portion of that period, if the adoptive parents file a motion to waive it and the court decides the waiver is in the adoptive child's best interests.

Lastly, in a step-parent adoption of a child born out of wedlock, the Adoption Code allows the mother to join in a petition for adoption of the child filed by her *husband*. The bill would refer instead to the mother's *spouse*.

The bill will take effect 90 days after enactment.

MCL 710.36 and 710.56

ARGUMENTS:

For:

Recent revisions to the Adoption Code allow a parent to execute a consent or release for adoption without having to appear in court at a hearing. This is particularly helpful if the parent lives out of state but the child will be placed with a Michigan couple. If the child is born out of wedlock, however, the mother must appear in court to present evidence regarding the father's identity and whereabouts. For those living out of state or who live

some distance from the court, the ability to present the evidence by means of an affidavit or verified written declaration would spare a mother the burden of traveling to the court to say, "I don't know who or where he is" or to present the information she does have. This should not interfere with the father's rights of parentage or to be notified of the adoption proceedings. The court would still have to follow provisions of the Adoption Code to notify the father and to determine if the father should retain parental rights or have them terminated and the child placed for adoption. Further, since the provision is permissive, the court would retain the option to require the mother to appear in person.

For:

Legislation enacted in 2014 shortened the supervisory period for infants after placement with the adoptive family. Reportedly, this was in acknowledgement that babies bond more quickly than older children with their new parents and thus shortening the supervisory period allowed the new family unit to move forward more seamlessly. Moreover, many adoptions involving babies are direct placement adoptions, meaning that the mother and/or father chose the adoptive parents. The child may also have been placed with close relatives. However, though adoptive parents may petition the court to waive the supervisory period in adoptions involving children older than one year, no similar provision was provided for the younger adoptees. Some believe the omission was an oversight and not an intended action. The bill would simply add parity to parents adopting a baby. The court would still retain oversight and could deny the petition and require the full three-month supervisory period if it deemed that to be in the child's best interest.

For:

The recent U.S. Supreme Court ruling on same sex marriages make some references to "husband" or "wife" obsolete. The bill makes a technical revision to change such a reference to the more general "spouse."

POSITIONS:

There were no positions offered on the bill.

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