



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 485 (as reported without amendment)
Senate Bill 486 (Substitute S-1 as reported)
Sponsor: Senator Dale Shugars
Committee: Families, Mental Health and Human Services

Date Completed: 10-17-95

RATIONALE

The laws governing child custody disputes, adoption, removal and placement of an abused or neglected child, and termination of parental rights, list specific factors to be considered by a court in deciding those issues. Reportedly, some judges have refused to consider on the record a party's criminal history and evidence of substance abuse in awarding custody, even if those matters are admitted or uncontested, because criminal history and substance abuse are not explicitly stated as factors to be included in arriving at a child custody decision. Some people feel, however, that consideration of a person's criminal history and prior substance abuse is appropriate as well as necessary in cases involving the custody of a child and that, in order to ensure that judges consider those factors, they should be listed specifically in statute.

On the other hand, one factor that some feel should not solely influence a custody decision is whether the custodial parent must place his or her child in day care in order to pursue an education or employment. Concern over the use of this factor in custody cases was prompted by the decision of a Macomb County Circuit Court judge in *Ireland v Smith* (Docket No. 93-385 DS) to award custody of a minor to her father because her mother had to place her in day care with a nonrelative in order to continue her undergraduate studies at the University of Michigan. (See **BACKGROUND** for more information about the case.) Many feel that it is unfair, and a powerful disincentive to better oneself, to deny custody of a minor to a parent who must place the child in day care in order to work to provide for the child's needs or obtain the education necessary to find employment.

CONTENT

Senate Bill 485 would amend the Michigan Adoption Code and the juvenile code, and Senate Bill 486 (S-1) would amend Child Custody Act to require that evidence of a criminal conviction, alcohol abuse, and controlled substance abuse be considered in certain child custody proceedings. Senate Bill 486 (S-1) also would prohibit a court from awarding custody based solely upon a party's need to have a nonfamily caretaker care for a child.

Senate Bill 485 would require all of the following:

- That evidence of a criminal conviction, alcohol abuse, and controlled substance abuse be included when a court considered the moral fitness of the adopting persons, or of the putative father, in determining the best interests of the child for the purpose of deciding whether to give an adoptee permanence.
- That a court consider evidence of a criminal conviction, alcohol abuse, and controlled substance abuse in determining whether to remove a child from his or her home due to abuse or neglect and in determining custody of a child victim of abuse and neglect.
- That a court consider evidence of a criminal conviction, alcohol abuse, and controlled substance abuse in making a finding regarding the termination of parental rights to a child in foster care.

Senate Bill 486 (S-1) provides that in determining the best interests of a child in a custody dispute:

- Evidence of a criminal conviction, alcohol abuse, and controlled substance abuse would have to be included when a court considered the moral fitness of the parties, in determining the best interests of a child in

a domestic child custody dispute.

- The court would be prohibited from awarding custody based solely upon a finding that a party was compelled to have a caretaker other than a family member care for the child if the caretaking arrangement were necessitated by the demands of the party's employment or education.

Under both bills, "alcohol abuse" would mean "the frequent and routine consumption of alcoholic beverages to the point of intoxication", and "controlled substance abuse" would mean "either the frequent and routine consumption of a controlled substance in an amount exceeding the dosage recommended by the prescriber or the recent consumption of a controlled substance for which the user had no prescription or for which no prescription is available".

The bills provide that they would take effect on September 1, 1995.

MCL 710.22 et al. (S.B. 485)
722.23 (S.B. 486)

BACKGROUND

In the case of *Ireland v Smith*, the plaintiff, the unwed mother of the minor, filed suit seeking paternal support. The defendant then petitioned for custody of the child. In its June 27, 1994, opinion, the Macomb County Circuit Court specified that, "...the designation of the custodial parent represents a finding of what is considered by the Court to be in the child's best interest. The Court is governed by the Child Custody Act. (MCLA 722.21)."

The Court stated that the plaintiff had been the custodial parent during the child's entire life. The father had visitation rights from about the time the child was one year old. Further, "...due to the immaturity of the plaintiff, the maternal grandmother and the plaintiff's sister virtually raised the child in its infancy." The Court found that an established custodial environment existed with the mother.

The Court made 12 findings of fact concerning such factors as the emotional ties between the parties involved and the child; the capacity and disposition of the parties involved to provide the child with food, clothing, medical care, and other material needs; the permanence of the existing or proposed custodial home or homes; the moral fitness and mental and physical health of the

parties involved; and evidence of domestic violence. In most instances, the Court found that the factors carried little or no weight or weighed equally in favor of the parties involved. The factor that the Court found to be most important was the permanence of the existing or proposed custodial home. The defendant proposed that the child be raised in the paternal grandparent's home. According to the Court, the plaintiff contemplated living at the University of Michigan and placing the child in day care or school; in off-school times, the plaintiff would return to her mother's home. The Court stated that:

Under the future plans of the mother, the minor child will be in essence raised and supervised a great part of the time by strangers. Under the future plans of the father, the minor child will be raised and supervised by blood relatives. Under the mother's plan, the child will not have a specific residence, being moved periodically between the University of Michigan and the maternal grandmother's home. Under the father's plan, the child will reside in the paternal grandparent's home for an indefinite period. A child gains the feeling of security, a safe place, by virtue of permanency. The child comes to know where she belongs by virtue of the certainty that her place is stable and constant. This is extremely important for the well-being of an infant child...

Based on the conclusions and findings enunciated in the opinion, the Court found by clear and convincing evidence that the best interests of the child dictated that the defendant be designated as the physical custodial parent.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

A person's propensity to engage in criminal activity and/or substance abuse could have a profound effect on the well-being of any child in that person's custody, yet consideration of criminal history and substance abuse is not required of a court in child custody proceedings. Indeed, some would even say that such consideration is precluded by its very omission from the statutory list of factors to be considered. The bills would

protect children by requiring courts throughout the State to weigh these obviously relevant factors when deciding on a child's best interests in custody matters. In addition, local offices of the Friend of the Court routinely do preliminary investigations in these matters and need specificity in the list of criteria in order to ensure statewide consistency in their investigations.

Response: The bills are an overreaction to a few bad decisions. Courts already are required to consider "the moral fitness of the parties involved" in deciding issues of child custody. Surely, criminal history and prior substance abuse must be taken into consideration under any examination of a person's "moral fitness". If courts are failing to consider evidence of criminal history or substance abuse, perhaps those individual judges need better training on the application of child custody laws.

Supporting Argument

The risk of losing custody of one's child is a powerful disincentive for single parents to pursue educational or employment opportunities that might necessitate placing the child in a day-care situation. It would be in the best interests of the child if the custodial parent were allowed to make the career and education decisions that would best prepare him or her to take care of the child's needs even if the child had to spend some time in a day care setting. In this day and age, day care is an unavoidable fact of life for both single- and two-parent households, and there is no apparent evidence that children raised by blood relatives are healthier, better adjusted, happier, or safer than children placed in day care.

Opposing Argument

The bills would provide vague and subjective criteria for determinations on the "best interests of the child", giving broad latitude to trial courts to disrupt parent-child relationships and encouraging custody disputes between parental parties.

Because current civil procedure allows Friend of the Court reports to be read by trial courts without first being sealed and without a stipulation between the parties, unverified, erroneous, and untested information, based on hearsay, can be conveyed to trial courts under the present system. The bills, thus, would allow unsupported, unverified information on allegations about drug abuse and alcoholism to be presented to the court, with the potential for prejudicing the judge against a party who could lose or be denied custody of a child.

Opposing Argument

Senate Bill 486 (S-1) would establish a strong statutory preference for the care of children to be handed over to nonfamily third parties, rather than to noncustodial parents, mostly fathers, who are frequently available to care for children. Further, since the bill would affect visitation disputes as well as custody disputes, giving third parties preference over noncustodial parents could contribute to the alienation of children from noncustodial parents.

Opposing Argument

Senate Bill 486 (S-1) would potentially increase economic burdens in families by substituting paid day care and baby sitters for parents who may be available to care for the children. Under existing child support guidelines, a custodial parent then could assign these costs to the noncustodial parent, despite his or her failure to consent, through the Friend of the Court process and guidelines.

Opposing Argument

Tightening up the moral fitness provisions by specifying that that factor included consideration of criminal history and prior substance abuse could inadvertently exclude other elements of moral fitness that were not expressly listed.

Opposing Argument

Consideration of alcohol abuse, drug abuse, or a criminal activity of a parent is important in a determination of the custody of a child. This type of behavior impairs a parent's ability to care for the child, sets a bad example for the child, and often places him or her in danger. These are more concrete and important reasons for considering these factors than a judgment of "morality". Classifying these behaviors as indicators of moral character actually could minimize their importance in the custody decision.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bills would have no impact on State or local government.

Fiscal Analyst: M. Bain

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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.