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**TESTIMONY OF THE ADOPTION COMMITTEE OF THE FAMILY LAW SECTION
OF THE STATE BAR OF MICHIGAN IN SUPPORT OF HB 5148 & 5149
BEFORE THE HOUSE COMMITTEE ON FAMILIES, CHILDREN & SENIORS
WEDNESDAY, JANUARY 15, 2020, 9:00 AM**

Good morning, Madame Chairperson, esteemed members of the Committee, my name is Dion Roddy, I am an attorney in private practice in Troy practicing nearly exclusively in adoption law and a current chair of the Adoption Committee of the Family Law Section of the State Bar of Michigan. In an effort to improve upon bills passed in 2016, specifically 2016 HB 5626 and 5628, the Adoption Committee drafted the bills before the Committee today, HB 5148 and 5149. We are asking the members of the Committee to support passage of these bills into Michigan law.

First, a brief overview of the 2016 bills. 2016 HB 5626 and 5628 were passed to address the issue of unregulated custody transfers of children across state lines in which no court oversight is provided, otherwise known as “rehoming”, In these situations, parents advertise children on social medial or the internet rather than go through a court supervised adoption process. The result is that the children involved in these placements are at high risk of being subject to abusive or neglectful environments. Some may be transferred or sold to human traffickers and end up in the commercial sex trade or in the custody of a child molester. 2016 HB 5626 updated a provision in the Michigan Adoption Code regarding who can solicit another party for the purpose of adoption by allowing advertising and recruiting. 2016 HB 5628 criminalized certain conduct regarding the permanent transfer of a child; a violation is 20 year felony. I have included the December 8, 2016 Legislative Analysis of the bills in my handout.

We on the Adoption Committee wholeheartedly support measures to prevent rehoming adoptions and to punish those involved in order to protect our children. We believe the 2016

bills were laws that needed to be passed. However, we, as regular legal practitioners in the area of adoption, believe that there were unintentional oversights in the drafting of the language of the bills that have resulted in exposing those traditionally involved in facilitating safe and legal adoptions, particularly attorneys, to potential criminal liability. The proposed amendments before you today are meant to remedy this problem so that adoption those attorneys can continue to do what they have always done in the past: facilitate legal, court-supervised adoptions that are in the best interest of the children involved.

2016 HB 5626 amended Section 55 of the Michigan Adoption Code. Under the current version of the Code, only a prospective adoptive parent may advertise for biological parents or guardians of potential adoptees for the purposes of adoption. In addition, it allows a biological parent or guardian, the court, the Department of Health and Human Services, or a child placing agency to advertise for potential adoptive parents only to fulfill the purposes of a court-supervised adoption of that child. Finally, the Code currently specifies that no other person or entity may advertise for the purpose of facilitating the transfer, adoption, or other permanent placement of a child.

Unfortunately, the current law leaves out a very important party often involved in adoption proceedings: attorneys. While attorneys do not advertise for the purpose of matching adoptive parents and biological parents for the purpose of adoption, they do advertise their services in connection with adoption matters such as representing adoptive parents in filing adoption petitions and finalizing adoptions; representing biological parents in and out of court in executing consents and releases for adoption; and representing adoptive parents, biological parents, child placing agencies, and adoptees themselves in adoption related litigation related to contesting birth parents and multiple petitions to adopt the same child. Under the current version

of the law, adoption attorneys who advertise for their services, as permitted under the Michigan Rules of Professional Conduct, potentially expose themselves to fines and jail time for doing so.

It is vitally important for adoption attorneys to be able to advertise for the services that they offer in connection with legal, court supervised adoption actions. Adoption attorneys provide a valuable service to those involved in adoptions. If adoption attorneys are not allowed to advertise, this hurts those involved in adoptions that are in need of the services that only an attorney can provide. It is an unfair burden to place on those seeking an adoption attorney to have to seek out quality counsel without the benefit that advertising provides.

HB 5148, attached to your handout, proposes an amendment to subsection 3 of section 55 of the Code, adding language excluding from the definition of advertising under the Code the, “Dissemination of an attorneys legal services, including an advertisement or website as allowed under the Michigan rules of professional conduct.” The Adoption Committee asks that this bill be passed so that adoption attorneys can continue to publicize the services they provide in adoption matters so that they may continue to serve those in need of those services without the looming threat fines and jail for doing so.

The second bill before the Committee today, HB 5149, also attached to your handout, proposes amendments to Section 136c of the Michigan Penal Code. The current version of the law, amended by 2016 HB 5628, prohibits the transfer or attempt to transfer custody of a child with the intent to permanently divest a parent of his or her responsibility. In addition, it further prohibits arranging for or assisting in the transfer, adoption, adoptive placement, or any other permanent physical placement of a child. The statute currently provides exceptions for the placement activities of a child placing agency, DHHS, in accordance with the Interstate Compact on the Placement of Children, or placement with a relative, or certain non-permanent placements.

Violation of the statute constitutes a felony punishable by imprisonment for up to 20 years and/or a fine of up to \$100,000.00.

Again, the current version of the law inadvertently fails to take into account the legitimate activities of attorneys in adoption proceedings. While arguably the current law would protect attorneys involved in relative, agency, foster, and interstate adoptions involving ICPC, it fails to provide protection for attorneys involved in adoptions that fall outside these types such as in-state direct placement adoptions and stepparent adoptions. In these particular types of adoptions, attorneys play crucial roles in ensuring that the adoptions are properly adjudicated and finalized by the courts. Often, in-state and stepparent adoptions only involve biological and prospective adoptive parents with no other professional entities to guide them through the process except attorneys. Without attorney involvement in these adoptions, it is very easy for parties to make mistakes that could run them afoul of other provisions of the Code, disrupt the adoption, and ultimately jeopardize the welfare of the child.

HB 5149 provides necessary language to ensure that attorneys can continue to do what they have always done in Michigan for years: assist parties in legal, court-supervised adoption actions with the ultimate goal of serving the best interest of each adoptee involved.

Neither bill before the Committee today adds any additional powers or privileges for attorneys other than what they have enjoyed in the past up to the passage of the 2016 bills. The Adoption Committee is of the opinion that the 2016 bills were not intended to prohibit attorneys from providing their services in legal, court-supervised adoptions, but unintentionally failed to take into consideration the valuable and essential work that attorneys do in adoption matters. The purpose of the bills before the Committee today is to shore up the language of the current

laws to focus on the target of the 2016 bills: stopping illegal, unsupervised adoptions and custody transfers by parties seeking to skirt the legal process set forth in the Code.

The bills before the Committee today enjoy the support of the Family Law Section of the State Bar of Michigan.

For the reasons set forth in my testimony today, I respectfully request passage of House Bills 5148 and 5149.

Respectfully submitted,

/s/ Dion E. Roddy
Dion E. Roddy, Chair
Adoption Committee
Family Law Section
State Bar of Michigan

January 14, 2020

Legislative Analysis



SOLICITING FOR ADOPTIONS: REVISE

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5626 as reported by committee
Sponsor: Rep. Thomas B. Hooker

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

House Bill 5628 as reported by committee
Sponsor: Rep. Hank Vaupel

House Bill 5629 reported by committee
Sponsor: Rep. Michael D. McCready

Senate Bill 924 as passed by the Senate
Sponsor: Sen. Rick Jones

(Enacted as Public Acts 481, 482, 483, and 484 of 2016)

House Committee: Judiciary
Senate Committee: Judiciary (SB 924)
Complete to 12-8-16

BRIEF SUMMARY:

House Bill 5626 updates a provision that allows a prospective adoptive parent to solicit biological parents or guardians of potential adoptees for the purposes of adoptions and that allows a biological parent, guardian, the DHHS, or an adoption agency to solicit adoptive parents by also allowing advertising and recruiting. The bill also revises the definition of "solicit."

Senate Bill 924 revises the sentencing guidelines to conform to the changes by House Bill 5626.

House Bill 5628 will prohibit certain conduct regarding the permanent transfer of a child, whether or not for money or other consideration; a violation would be a 20-year felony.

House Bill 5629 prohibits a parent from delegating parental powers for a child to another in violation of the provisions of House Bill 5628.

With the exception of House Bill 5629, the bills take effect 90 days after enactment.

DETAILED SUMMARY:

House Bill 5626 and Senate Bill 924

House Bill 5626 amends the Michigan Adoption Code (MCL 710.55). Under the Code, only a prospective adoptive parent may solicit biological parents or guardians of potential adoptees for the purposes of adoption. The bill will allow a prospective adoptive parent to

also *advertise for* or *recruit*, in addition to *solicit*, a biological parent or guardian of a potential adoptee for the purposes of a *court-supervised* adoption.

The code also allows only the following to *solicit* potential adoptive parents for adoption of a child: a biological parent or guardian, the court, Department of Health and Human Services, or a child placing agency with authority to place the child. The bill allows each of these persons or entities to also *advertise* or *recruit* potential adoptive parents *only to fulfill the purposes of a court-supervised* adoption of that child.

Further, the bill specifies that no other person or entity may *advertise for*, *solicit*, or *recruit* prospective parents for the purpose of facilitating the transfer, adoption, or other permanent placement of a child.

The term "*advertise for, solicit, or recruit*" (instead of "*solicit*") will mean to communicate in person, in writing, or via any medium, public or private, for the purpose of locating a previously unknown person or entity with whom to temporarily or permanently place a child. (Currently, "*solicit*" means contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient. *Solicit* does not currently include public communication that is not directed to specific individuals.)

Senate Bill 924 amends the Code of Criminal Procedure (MCL777.15f). A second or subsequent violation of MCL 710.55(1), a non-authorized person *soliciting* for adoption, is a felony with a maximum term of imprisonment of four years. The bill revises the description of MCL 710.55(1) to conform to the changes to Section 55 by House Bill 5526 by including *advertising for, soliciting, or recruiting* for adoption.

House Bill 5626 and Senate Bill 924 are tie-barred to each other, meaning that both must be enacted in order for either to become law.

House Bills 5628-5629

House Bill 5628 will amend the Michigan Penal Code (MCL 750.136c). Current law makes it a crime to transfer or attempt to transfer legal or physical custody of an individual to another, or to acquire or attempt to acquire the legal or physical custody of another, for money or valuable consideration, except as otherwise permitted by law. A violation is a felony punishable by imprisonment for not more than 20 years and/or a fine of not more than \$100,000.

The bill adds new prohibitions. With some listed exceptions, a person could not do any of the following whether or not he or she received money or other valuable consideration:

- Except by order of a court, transfer or attempt to transfer the legal or physical custody of a child with the intent to permanently divest a parent of parental responsibility.
- Arrange for or assist in the permanent transfer, adoption, adoptive placement, or any other permanent physical placement of a child, except for the performance of adoption activities under Public Act 116 of 1973, which regulates child care organizations (e.g., a child placing agency).

- Assist, aid, abet, or conspire in the commission of an act described above.

A violation would be punishable by the same penalty currently in place for unlawful transfers of legal or physical custody of an individual to another for money or valuable consideration.

Exceptions: The prohibitions described above would not apply to the placement of a child under one or more of the following conditions:

- ❖ With a relative, a child placing agency, or the Department of Health and Human Services (DHHS).
- ❖ By a child placing agency or the DHHS.
- ❖ In accordance with the Interstate Compact on Placement of Children, Public Act 114 of 1984.
- ❖ Instances where the child will be returned in less than 180 days.
- ❖ With the specific intent that the child will be returned, that the placement benefits the child, and that it is based on the temporary needs of the family, including but not limited to, one more of the following:
 - Respite for the child and family.
 - A vacation or school-sponsored activity or function.
 - A temporary inability of the parent or legal guardian to provide care for the child due to incarceration, military service, medical treatment, or other incapacity of the parent or legal guardian.

House Bill 5629 amends a section of the Estates and Protected Individuals Code pertaining to the delegation of powers by a parent or guardian (MCL 700.5103). Under the bill, a parent would be prohibited from knowingly and intentionally delegating powers regarding the care and custody of his or her minor child for longer than 180 days for the purpose of permanently transferring custody of the child in violation of the new provisions proposed by House Bill 5628, to which the bill is tie-barred. (This means that House Bill 5629 cannot become law unless House Bill 5628 is also enacted.)

Further, the act currently allows a parent or guardian of a legally incapacitated individual to delegate to another person any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward (except the power to consent to marriage or adoption or to release a minor ward to adoption). The duration of the power of attorney is limited to *six months*; the bill instead limits the power of attorney to *180 days*.

BRIEF DISCUSSION OF THE ISSUES:

The bills address the issue regarding unregulated custody transfers across state lines in which no court oversight is provided. Known as "rehoming," parents and guardians advertise children on social media and the Internet. Though prohibited under the Interstate Compact on the Placement of Children (ICPC), a compact by which all 50 states adhere, reportedly, the compact has no teeth to enforce the prohibition on such custody transfers. Sometimes a child is advertised because the parent feels the child is out of control and cannot be managed. Or adoptive parents may feel the adopted child is not a good fit with their family and want out, or feel overwhelmed because the child has behavioral issues. Regardless of the reasons why a parent or guardian may seek to "rehome" a child in his or

her care, the result is that these children often end up in abusive or neglectful environments. Even worse, the child may be transferred or sold to human traffickers and end up in the commercial sex trade or transferred to a child molester.

The bill package addresses the issue by tightening provisions so that more custody transfers will come under court oversight and to provide criminal penalties for violations.

FISCAL IMPACT:

House Bill 5626 would have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact would depend on the number of convictions for violations and whether violations were first-time violations or second and subsequent violations. For first time violations, misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction.

For second and subsequent violations, felony convictions would result in increased costs related to state prisons and state probation supervision. The average cost of prison incarceration in a state facility is roughly \$34,900 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,400 per supervised offender per year. The fiscal impact on local court funding units would depend on how the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

House Bill 5627 amends sentencing guidelines and does not have a direct fiscal impact on the state or on local units of government.

POSITIONS:

Michigan Department of Health and Human Services indicated support for the bills.
(9-20-16)

Michigan Judges Association indicated support for the House Bills 5626, 5628, and 5629.
(12-6-16)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ 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.

