

December 11, 2012

**MICHIGAN HOUSE OF REPRESENTATIVES  
Judiciary Committee**

**S.B. 694**

**SUPPLEMENTAL TESTIMONY OF DONALD N. DUQUETTE IN OPPOSITION**

Mr. Chairman and members of the Michigan House Judiciary Committee:

Please accept this additional testimony from me in OPPOSITION to SB 694. I was present to offer testimony at the last Judiciary Committee hearing on this bill on Thursday, December 6, 2012. The offered amendments do not cure the underlying serious difficulties with the legislation.

To keep this addition to your record from being too redundant let me say that I have reviewed testimony from the Children's Law Section of the State Bar and from Mary Lovick of the Michigan DHS. I agree with the points they raise in opposition.

In addition I add these few points:

- 1) The Child Protection jurisdiction of the Circuit Court is not intended to be punitive. It is rather meant to protect children when parents are unable or unwilling to do so and to provide for the long-term safety, permanence and well-being of those children. This bill, as demonstrated by the history of its coming before the legislature, seems to have a punitive bent. The children affected are not in present danger and their custodial mother has clearly demonstrated that she is well able to protect them. Her drive to terminate parental rights of the offending father seems driven by an understandable wish to punish him. The criminal laws are meant for that, not the child protection system.
- 2) The bill gives the juvenile/family court jurisdiction even when the child is not in danger. Our law has long required a showing of current danger to a child, including a risk of harm, for court jurisdiction in these matters. This bill would grant the court jurisdiction and involve child protective services even when the children involved are not in any danger. This is unnecessary and unwise.
- 3) Because of Michigan's one-parent doctrine (*In re CR*), this bill exposes an innocent parent to court intervention and government oversight and intrusion on his or her parental rights – without granting due process of law. The mother in this specific case invites the state involvement, but most parents would prefer to handle such matters without the state controlling their family. It is on this point that the legislation is most vulnerable to constitutional challenge. It deprives a parent of constitutionally protected rights to family autonomy without a chance for a hearing on their own fitness. It thus denies the innocent

the basic constitutional protections of due process of law.

- 4) In cases like the Alger case that prompted this legislation, existing legal remedies are available which would protect these children. Child custody remedies and parole conditions are available to keep a bad actor away from the children. An individualized approach is the wisest course. The courts and the judges can make these case by case decisions and they have existing law that could be competently invoked. A broad legislative fix leads to many unintended consequences.
- 5) If a legislative fix is desired, a better approach would be to amend the child custody act to create a clear option to deny custody or visitation to parents guilty of serious child abuse. A child custody act approach would be more targeted to individual cases, with individualized judicial review and without the undesired broadening of child protection jurisdiction.

I respectfully recommend that you not pass this bill.

Thank you.



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