



Report on Public Policy Position

Name of Section:

Family Law Section

Contact Person:

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Bill Number:

SB 436 (McManus) Family law; paternity; definition of "child born out of wedlock"; revise. Amends secs. 1, 4, 6, 7 & 10 of 1956 PA 205 (MCL 722.711 et seq.).

Date position was adopted:

May 7, 2005

Process used to take the ideological position:

Vote at Family Law Council meeting

Number of members in the decision-making body:

21

Number who voted in favor and opposed to the position:

8-7 in favor of position on section 1

15-0 in favor of position on section 2

15-0 in favor of position on section 3

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

SB 436 introduced by Senators McManus, Basham and Goschka and referred to the Committee on Families and Human Services, would expand standing for a purported father to challenge paternity of a child born or conceived during a marriage. This would legislatively modify the holdings of the *Girard v Wagenmaker*, 437 Mich. 231 (1991) line of cases, which prohibit such challenges. The Council deferred consideration of the major drafting issues with the bill, pending resolution of the substantive issues.

SB 436 would allow a purported biological father to challenge paternity of a child born or conceived during marriage in three situations. The Council voted separately on each section.

1) The mother and the purported father mutually and openly acknowledge that the man is the child's biological father, and the man files the action within a year of the child's birth. The majority of the Council felt that there

was more value in officially acknowledging the child's biological parent than in trying to prevent outside intervention in the family. The Council voted to support this section by an 8-7 vote.

2) The child was conceived prior to the marriage, and the challenge was filed within one year of the child's birth. The Council was generally supportive of this idea, feeling that a mother should not be able to foreclose a known father's participation by marrying someone else before the birth of the child. The time limits for the challenge were important to allow a child to have some stability in their life. The Council voted unanimously to support this provision.

3) The husband fails to support the child for at least two years or, for a child under two years of age, is living separate and apart from the child. The Council did not support this section. The first part of this section could apply no matter how old the contested child is. A paternity action for a 16 year old child is unlikely to benefit that child, who has developed parent-child bonds with the presumed father.

The second part of the section would apply to any husband serving overseas, or working away from the family. This does not necessarily imply abandonment, and should not be a basis for challenging paternity. The Council voted unanimously to oppose both parts of this section.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-SB-0436>