



Report on Public Policy Position

Name of Section:

Family Law Section

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Bill Number:

SB 1283 (Patterson) Family law; parenting time; factors to determine grandparent visitation; revise. Amends sec. 7b of [1970 PA 91](#) (MCL [722.27b](#)).

Date position was adopted:

June 3, 2006

Process used to take the ideological position:

Vote at monthly council meeting

Number of members in the decision-making body:

21

Number who voted in favor and opposed to the position:

14 in favor, one abstention

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:

The Family Law Council opposes SB 1283.

This bill would amend the grandparent visitation statute, MCL 722.27b, to make it easier for grandparents to bring and win motions for visitation.

The impetus for this change was the U.S. Supreme Court's denial of certiorari in March 2006 of the appeal from *Harrold v Collier*. *Harrold v Collier* was an Ohio Supreme Court decision upholding Ohio's grandparent visitation statute, in a case where the facts would have met the DeRose criteria. Proponents of

this bill argue that the denial of cert is a signal that the US Supreme Court approved of the Ohio approach, which provides minimal deference to the decisions of parents, and would reject the Michigan Supreme Court's decision in *DeRose v. DeRose*, 469 Mich. 320, 643 N.W.2d 572 (2003).

The denial of certiorari is a refusal to rule on the merits of a case, and has no precedential value. It is not an approval of Ohio's statute or of the decision in *Harrold v Collier*. No Michigan court could overturn *DeRose* based on a denial of cert. Any statute disregarding *DeRose* would be struck down in Michigan, leading to a repeat of the heartache that deserving grandparents received when their orders were vacated because the previous statute was overturned.

The bill would eliminate (4)(b) and (c) of the statute, which provide the threshold requirement that a grandparent show that a fit parent's decision about grandparent visitation creates a substantial risk of harm to the child's mental, physical or emotional health. A parent's wishes become merely one of the best interest factors (6)(i).

By eliminating the presumption in favor of fit parents, the bill gives grandparents the same status as parents without, of course, any parental responsibilities. It would be hard to imagine any case where a court would not have discretion to overrule the parent to award specific grandparenting time. Even in the absence of the constitutional challenge, this would just be bad policy.

The bill would also change the best interest factors for grandparent visitation as follows;

(6)(c) change "The grandparent's moral fitness" to
"The geographical location of the grandparent's residence and the distance between that residence and the child's residence."

(6)(d) change "The grandparent's mental and physical health" to
"The mental and physical health of all of the parties involved."

(6)(f) change "The effect on the child of hostility between the grandparent and the parent of the child" to
"The child's adjustment to home, school, and community."

(6)(g) change "The willingness of the grandparent, except in the case of abuse or neglect, to encourage a close relationship between the child and the parent or parents of the child" to "The amount of time that will be available for the child to spend with siblings."

(6)(i) change "Whether the parent's decision to deny, or lack of an offer of, grandparenting time is related to the child's well-being or is for some other unrelated reason" to "The wishes and concerns of the child's parents, as expressed by them to the court."

(6)(j) New factor "The age of the child."

(6)(k) New factor "The health and safety of the child."

(6)(l) (previously (6)(j)) change "Any other factor relevant to the physical and psychological well being of the child" to "Any other factor relevant to the best interests of the child."

These changes to the best interest factors would erode the protections the act provided for the child. The grandparent's moral fitness, the effect of hostility between the grandparent and the parent, the grandparent's willingness to encourage a close relationship between the child and the parent, the reasons for a parent's decision on visitation, and the physical and psychological well-being of the child would all be eliminated from

the act by this bill. These provisions focused on the dynamics of parent/grandparent disputes, and were important to a fair evaluation of these disputes.

Michigan's current grandparent visitation statute took effect January 3, 2005. It was the subject of long debate in an area of intense feelings and profoundly differing beliefs. The current statute was a compromise that allowed children access to their grandparents when it was appropriate, yet protected families from unwarranted court intervention. It was also designed to survive constitutional challenges, so that worthy grandparents would not be at risk of finding their orders voided by an overturned statute. The Council felt strongly that the current statute should be preserved.

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/\(yjatf4zyercb2p45hmizl545\)/mileg.aspx?page=getObject&objectName=2006-SB-1283](http://www.legislature.mi.gov/(yjatf4zyercb2p45hmizl545)/mileg.aspx?page=getObject&objectName=2006-SB-1283)