

CHILDREN'S LAW SECTION

Respectfully submits the following position on:

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HB 4583 & HB 4584

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The Children's Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Children's Law Section only and is not the position of the State Bar of Michigan.

The State Bar's position on this matter is support.

The total membership of the Children's Law Section is 492.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 19. The number who voted in favor to this position was 10. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Children's Law Section

Contact person:

Robin Eagleson

E-Mail:

RobinEsq@gmail.com

Bill Number:

[HB 4583](#) (Johnson) Children; parental rights; immediate termination of parental rights and visitation rights for parent or legal guardian upon sentencing for criminal sexual conduct or other sex crimes; allow. Amends sec. 19b, ch. XIA of [1939 PA 288](#) (MCL 712A.19b).

[HB 4584](#) (Johnson) Family law; parenting time; immediate termination of a grandparenting time order upon sentencing for certain criminal sexual conduct; allow. Amends sec. 7b of [1970 PA 91](#) (MCL [722.27b](#)).

Date position was adopted:

May 9, 2013

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

19

Number who voted in favor and opposed to the position:

10 Voted for position

0 Voted against position

0 Abstained from vote

9 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

House Bill 4583 amends MCL 712A.19b to allow a sentencing criminal court to terminate parental rights once a person is convicted of criminal sexual conduct if the sentencing court finds that there are grounds for termination and that it is in the best interests of the minor child without requiring a separate hearing on termination of parental rights and requires the sentencing court to order termination of parental rights and order that additional efforts for reunification not be made. The Children's Law Section opposes House Bill 4583.

House Bill 4584 provides that the parent of the convicted criminal sexual conduct offender (the minor child's grandparent) shall be denied access to the minor child due to the criminal sexual conduct conviction of their child (the minor child's parent). The Children's Law Section opposes House Bill 4584.

Regarding House Bill 4583:

- 1) HB 4583 violates ARTICLE VI Section 15 of the Michigan Constitution of 1963 which gives the probate court exclusive jurisdiction over dependent and neglected children. A criminal court would not have jurisdiction to terminate parental rights.
- 2) The criminal court lacks subject matter jurisdiction.
- 3) The amendment violates CAPTA (Child Abuse Prevention and Treatment Act) which requires that a Lawyer-Guardian Ad Litem be appointed to represent the child for all provisions and procedures in every case involving an abused or neglected child which results in a judicial proceeding.
- 4) This amendment does not comply with Title IV-E requirements.
- 5) Only the family division of the circuit court is empowered to terminate parental rights under the probate code governing child protective proceedings. The criminal court is not provided the authority to terminate parental rights under the probate code.
- 6) If a sentencing court is provided the authority to terminate parental rights, the sentencing court will be required to notify the offender as to the risk of their parental rights when entering a plea, which will lessen the likelihood of offenders entering pleas slowing the court process.
- 7) All parents are entitled to an adjudication and all procedural and due process rights, which will not be afforded them if the sentencing court has the ability to terminate parental rights at the time of sentencing.
- 8) The criminal sentencing court does not have the experience in child protective proceedings which is a specialized field requiring a number of findings when determining adjudication and termination of parental rights.

Regarding House Bill 4584:

- 1) The Court and the Department of Human Services is required to look at all relatives when determining placement for a minor child in a child protective proceeding. By effectively cutting off access to any grandparent whose child had been convicted of criminal sexual conduct, the Court and the Department of Human Services would be in violation of federal law which is found under Title IV-E.
- 2) Further, the grandparent was not convicted of the criminal sexual conduct offense and should not be punished for their child's (the parent of the minor child) actions.
- 3) The grandparent is normally an essential person in a child's life especially in a child protective proceeding and by essentially cutting that access off, it detrimentally affects the minor child's emotional well-being and could even require that the child even be placed in a stranger foster care.

4) Further, the grandparent may have the ability to request parenting time through the Friend of the Court under MCL 722.27b.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2013-HB-4583>

<http://legislature.mi.gov/doc.aspx?2013-HB-4584>