



## Report on Public Policy Position

**Name of Section:**

Family Law Section

**Contact Person:**

Kent Weichmann

**Email:**

weichmann@earthlink.net

**Bill Number:**

**SB 60** (Cherry) Family law; child custody; custody action by third person; add incapacitated parent as basis for action. Amends sec. 6c of 1970 PA 91 (MCL 722.26c).

**Date position was adopted:**

March 5, 2005

**Process used to take the ideological position:**

Voted on by Family Law Council at their monthly meeting on March 5, 2005

**Number of members in the decision-making body:**

21

**Number who voted in favor and opposed to the position:**

Voice vote

**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 60, sponsored by Sens. Cherry, Jacobs, Switalski, Goschka and Olshove and referred to Judiciary, would expand the third party standing found in MCL 722.26c. Currently, if a child's parents were never married and the custodial dies or is missing and the other parent does not have legal custody, a third person related to the child within the fifth degree has standing to ask for custody. This bill would allow such standing if the custodial parent became incapacitated. The proposed definition of "incapacitated" includes mental illness, chronic use of drugs, and chronic intoxication. The committee felt that this itemization would shift the focus from the parent's incapacity to a judgment about the parent's lifestyle. On the other hand, we thought it was appropriate to allow a concerned relative to step in to care for a child if the custodial parent were, for example, in a coma. See *Lee v Robinson*, 261 Mich App. 406 (2004)

We suggested striking language in the definition of incapacitated so that it would read; "As used in this section, 'incapacitated' means impaired to the extent of lacking sufficient understanding or capacity to make or communicate informed decisions." This would keep the focus on the incapacity, and avoid getting into moral judgments about a parent's lifestyle.

**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-0060>