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FISCAL IMPACT STATEMENT

LS 6547

BILL NUMBER: SB 140

NOTE PREPARED: Feb 17, 2010

BILL AMENDED: Feb 16, 2010

SUBJECT: Adoption Matters.

FIRST AUTHOR: Sen. Zakas

FIRST SPONSOR: Rep. L. Lawson

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill provides that a man who is barred from establishing paternity under the adoption statutes is prohibited from establishing paternity by filing a paternity action as next friend of the child or requesting a prosecuting attorney to file a paternity action. It prohibits a person who has executed a written consent to the adoption of a child by a certain person from executing a second or subsequent written consent to the adoption of the child by another person, unless certain conditions apply.

This bill also removes a provision that allows a father who receives a notice of adoption after the birth of the child to contest the adoption by filing a paternity action. The bill removes a provision under which the consent of a putative father to the adoption of a child is irrevocably implied if the putative father, after receiving a notice of adoption after the birth of the child, fails to file a paternity action.

The bill provides that the putative father registry provisions do not apply if, on or before the date the child's mother executes a consent to the child's adoption, the child's mother discloses the name and address of the putative father to the attorney or agency that is arranging the child's adoption.

This bill provides that a putative father's motion to contest an adoption must be filed in the court in which the adoption is pending. The bill also prohibits a court from granting an adoption if a petitioner for adoption has been convicted of an attempt or conspiracy to commit certain felonies. The bill provides that a court may not grant an adoption if the petitioner is a sexually violent predator.

This bill authorizes a child placing agency and an attorney to advertise certain adoption information only if licensed under Indiana law. It provides that the crime of unauthorized adoption facilitation does not apply to child placing agencies licensed under Indiana law or attorneys licensed to practice law in Indiana. (Current

law provides that the crime of unauthorized adoption facilitation does not apply to child placing agencies licensed under any state's law or attorneys licensed to practice law in any state.)

Effective Date: July 1, 2010.

Explanation of State Expenditures: (Revised) *Individuals Ineligible for Adoption:* The bill adds felony or misdemeanor convictions for *attempts or conspiracy* to commit certain crimes to the list of convictions which are considered detrimental to the health and safety of a child, thereby disqualifying the individual from adopting a child. Additionally, the bill specifies the following individuals are not eligible to adopt; (1) individuals who are found to be guilty of a substantially equivalent felony (listed in statute) in another jurisdiction or military court and (2) individuals who are considered sexually violent predators. This may decrease the number of adoptions in the state, which may increase the number of children in foster care. The Department of Child Services (DCS) funds foster care and, for the current biennium, has been appropriated \$52.2 M per year for this service.

Background Information: DCS reports that some state expenses for foster care are reimbursed through the federal IV-B or IV-E program. Reimbursement amounts depend on qualifying state expenditures.

Explanation of State Revenues: *Regulation of Attorneys and Child Placing Agencies that Provide and Advertise Adoption Services:* The bill changes existing law so that only an attorney licensed to practice law in Indiana or a child placing agency that is licensed in Indiana can (1) publish an advertisement on an individual's behalf that (a) a child is offered or wanted for adoption and (b) the person is able to place, locate, or receive a child for adoption and (2) provide adoption services. Previously, the law in both of these situations applied to attorneys and child placing agencies that were licensed to provide adoption services in Indiana *as well as other states.*

The current penalties for violating these provisions of the law are both Class A misdemeanors. To the extent child placing agencies who are licensed in other states and attorneys who are licensed to practice law in other states advertise or provide adoption services in Indiana, this may increase the number of Class A misdemeanor convictions in the state.

Penalty Provision: If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000. However, any additional revenue would likely be small.

Court Fee Revenue: Additionally, if this bill results in a reduction of paternity actions with the intent to challenge an adoption, revenue to the state General Fund may decrease. A civil costs fee of \$100 is assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees are collected at the discretion of the judge and depending upon the particular type of case. Reductions in revenue are expected to be minimal.

Explanation of Local Expenditures: This bill provides guidelines regarding (1) how putative fathers contest adoptions and (2) what steps are necessary to do so. It is expected that by providing more concise guidelines on when an adoption can and cannot be contested court caseload will decrease. However, decreases in court

workload due to changes in procedures in contesting an adoption are expected to be minimal.

Court caseload may increase to the extent there are additional cases involving attorneys and child placing agencies that violate the provisions of the bill regarding providing and advertising adoption services. Increases in court workload are indeterminable.

Penalty Provision: A Class A misdemeanor is punishable by up to one year in jail.

Explanation of Local Revenues: *Court Fee Revenue:* If this bill results in a reduction of adoption challenges, local governments would receive less revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Penalty Provision: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: DCS.

Local Agencies Affected: Trial courts, local law enforcement agencies, county correctional facilities.

Information Sources: Ellen Holland, DCS.

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