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BILL



ANALYSIS

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Senate Bill 989 (as introduced 2-29-12)
Sponsor: Senator Hoon-Yung Hopgood
Committee: Judiciary

Date Completed: 8-14-12

CONTENT

The bill would amend the Child Custody Act to prohibit a court from granting child custody or parenting time to a person required to register under the Sex Offenders Registration Act (SORA) for an offense that would make custody or parenting time contrary to the child's best interests or an offense in which the victim was a child, or if the person had been convicted of a specific offense listed in the bill. The bill also would:

- **Prohibit a person from being granted custody of or parenting time with a child if anyone in the person's household were required to register under SORA for a felony in which the victim was a child or an offense that would make custody or parenting time contrary to the child's best interests.**
- **Allow a court to grant custody or parenting time despite these prohibitions if there would be no significant risk to the child, and if the other parent and the child (if old enough) consented.**
- **Create a rebuttable presumption that there would be a significant risk to the child from unsupervised contact with an individual who was required to register under SORA for a felony in which the victim was a child.**
- **Require the court to determine if the child's other parent was a fit parent and was making the custody or parenting time decision in the best interests of the child.**

Specifically, notwithstanding other provisions of the Act, a court could not grant custody of or parenting time with a child to an individual who was required to register under SORA for an offense that would make custody or parenting time contrary to the best interests of the child's health, safety, or protection or for an offense in which the victim was a child or if the individual had been convicted of any of the following:

- Accosting, enticing, or soliciting a child for an immoral purpose.
- Using the internet or a computer to communicate with a person for the purpose of committing, attempting or conspiring to commit, or soliciting another person to commit a specified crime.
- Criminal sexual conduct (CSC) in any degree.
- Assault with intent to commit CSC.

In addition, no individual could be granted custody of or parenting time with a child if anyone living in the individual's household were required to register under SORA as a result of a felony conviction in which the victim was a child or for an offense that would make custody or parenting time contrary to the best interests of the child's health, safety, or protection.

Despite these prohibitions, the court could grant custody or parenting time if it found that there was no significant risk to the child and stated its reasons in writing or on the record, and both the child's other parent and the child (if the court considered the child old enough to express his or her desires) consented to the custody or parenting time.

The fact that a child was permitted unsupervised contact with an individual who was required to register under SORA for a felony in which the victim was a child, would be prima facie evidence that the child was at significant risk. (Prima facie evidence is evidence sufficient to establish a given fact or raise a presumption unless disproved or rebutted.) When the court was making a determination regarding significant risk to a child, the prima facie evidence would constitute a presumption affecting the burden of producing evidence. The individual required to register under SORA would have the burden of rebutting the presumption. The presumption would not apply if there were factors mitigating against its application, including whether the other party seeking custody or parenting time also was required to register under SORA for a felony in which the victim was a child.

Before determining whether to grant custody to or parenting time with a child, as provided in the bill, the court would have to determine if the child's parent who was not required to register under SORA was a fit parent and if he or she was making the decision on custody or parenting time in the best interests of the child's health, safety, or protection. If the court determined that that parent was fit and was making the decision in the child's best interests, the court could allow that parent to exercise his or her ability to deny custody or parenting time. Otherwise, the court would have to state in writing why it did not consider that parent fit, why the court determined that he or she was not acting in the child's best interests, or why the court had determined that the child would not be at significant risk if it granted custody or parenting time to the parent required to register under SORA.

MCL 722.22 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The provisions of the bill would lead to a greater number of hearings and determinations on custody and parenting time, thus leading to a minor increase in court costs.

Fiscal Analyst: Steve Angelotti

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.