

STEWARD & SHERIDAN, P.L.C.

ATTORNEYS AT LAW

205 SOUTH MAIN STREET

ISHPEMING, MICHIGAN 49849

906-485-6311

FAX: 906-485-6315

JAMES B. STEWARD
BRIAN D. SHERIDAN

www.stewardsheridan.com
jsteward@stewardsheridan.com

ROBBIE L. POWELSON
ANGELA M. HENTKOWSKI
DANIELLE DeROSIA FACCIO
JACOB P. SPEAR

October 19, 2016

Senate Committee: Families, Seniors and Human Services
c/o Heather Dorbeck, Committee Clerk

In Re: SB 923 & 926

Dear Committee:

I am the current Chair of the Probate & Estate Planning Section of the Michigan State Bar Association and also a member of the Council of the Elder Law and Disability Rights Section of the State Bar Association. However, I am not writing to you on behalf of those organizations, but rather as a Michigan attorney who has practiced estate planning, as well as probate and trust administration for more than 40 years.

I am very concerned about SB 926 which proposes to change Section 5103 of Michigan's Estates and Protected Individuals Code (MCL 700.5103) to criminalize the use of a parental power of attorney for "longer than 180 days". I realize that the proposal references section 136C(3) of the Michigan penal code and includes the statement "for the purpose of permanently transferring custody of the child . . .", but I do not agree that making use of parental powers of attorney into a criminal act is appropriate, even with the reference to the penal code. In general, the statutory provisions for when such use is or is not a criminal act should be in the penal code, such as appears in SB 923, not in the Estates and Protected Individuals Code ("EPIC").

Also, please note the following questions which come to mind when reviewing the wording of these bills:

- What does "permanently transferring custody" mean? That concept is not defined in SB 926 or SB 923.
- Are the 180 days mentioned in the Bill intended to be consecutive or cumulative?
- Who does the term "relative" in SB 923 include? Relatives by blood only, or are relatives

by marriage included? What if the marriage that created the "relative" relationship has ended by divorce or death?

Also, it would appear that the proscription of SB 926 could be avoided by specifically stating in the parental power of attorney that its duration is not more than 180 days, and then signing a new one when the prior power of attorney has ended. It would be those who are not "savvy" to these nuances who could be trapped.

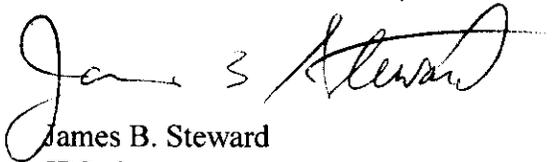
Another concern I have with the SB 926 proposal is the change for the permitted duration of such powers of attorney from 6 months to 180 days. There is no need to make such a change, unless the intent is to perhaps make it easier to prosecute someone who goes over the 180 day limit. The change from 6 months to 180 days, will makes it more difficult to figure out when the particular parental power of attorney expires, because then you must count up the number of days in each month following the date the document was signed. The way these are often used, is when a child is staying with another relative or friends, such as for summer vacation, or when the parents are going out of town. So the parents sign a parental power of attorney so the "custodian" will be able to handle school or medical issues that might come up while they are gone, and the usual forms include a 6 months statement. Then, when the parents go out of town again, within that same 6 months period, a new parental power of attorney is not needed, because the "old" one has not yet expired. Changing the statute to 180 days, means that you must exactly and accurately add up all the days in the intervening months from the date it is signed, rather than just counting the months. Therefore, I object to the change from 6 months to 180 days, since that will negatively affect every use of such powers of attorney, whether intended to be improper or not..

In general, I ask that you be very careful when proposing changes to EPIC. The provisions of EPIC are often inter-connected with each other, such that a small change to one provision necessitates a change to one or more other provisions.

In summary, I oppose making any change to EPIC Section 5103 (MCL 700.5103). Basically, criminalizing the parental power of attorney provision is not the way to address the perceived problems which SB 923 is trying to cover.

Very truly yours,

STEWART & SHERIDAN, P.L.C.

A handwritten signature in black ink, appearing to read "James B. Steward". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the right.

James B. Steward
JBS:slr