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FOSTER PARENTS IN COURT

Senate Bill 725 (Substitute H-1)
First Analysis (5-18-94)

Sponsor: Sen. Jack Welborn
Senate Committee: Family Law, Criminal
Law, and Corrections
House Committee: Judiciary

THE APPARENT PROBLEM:

In late 1982, Justice Mary S. Coleman assembled a commission to identify barriers in the juvenile justice and child welfare systems that led to abused and neglected children "drifting" in the system rather than being placed in permanent and loving homes. The commission's 1985 report focused on the need for "permanency planning," which is the need for courts, case workers, and others to coordinate and strengthen efforts to find permanent family placement for children, and to keep families together whenever possible. Many of the commission's recommendations led to statutory amendments (Public Acts 223 through 225 of 1988) that, among other things, required agencies responsible for abused and neglected children to develop for each child a case service plan aimed at keeping the family together if possible; required the probate court to consider case service plans and hold regular hearings on specified matters; and revised the standards under which parental rights may be terminated.

Despite the improvements made by the 1988 laws, which took effect April 1, 1989, reports continue to surface of cases where the system seems to have failed children. Children still sometimes remain in foster care too long; the reasons vary nearly as much as the children themselves. Criticisms commonly arise from the current focus on family reunification; many assert that prolonged efforts to reunite families rather than terminate parental rights and obtain adoptive families have sometimes operated to the detriment of the children involved. Sometimes, the result is simply that children must too long suffer the uncertainties of foster care, which is supposed to be a temporary situation. Other times, children are returned to their parents with disastrous consequences, as sad headlines all too often bear out.

Foster parents charge that the system is inadequately responsive to what they have to offer. Sometimes, a foster parent has relevant information or perspectives that are not being brought out in court hearings. Sometimes the attorney assigned to represent a child has never even met the child. Sometimes, children are routinely moved from one foster home to another, causing unnecessary disruption and trauma in lives already marred by abuse or neglect. And, sometimes, when foster parents want to adopt their wards, more complex issues are raised: if parents are unwilling to terminate parental rights, controversial and emotional cases can arise where longstanding foster parents fight to prevent a child from being returned to what they regard as a dangerous situation, or where apparently reformed parents fight to regain a child that they believe is being turned against them by possessive foster parents.

Legislation has been proposed to at least partly address such concerns and better protect children by requiring the Department of Social Services (DSS) to consult with foster parents, requiring the probate court to consider foster parent opinions and testimony, and by making a number of related changes to the juvenile code.

THE CONTENT OF THE BILL:

The bill would amend the juvenile code (MCL 712A.17c et al.) to require the DSS to consult with foster parents in updating and revising case service plans, require attorneys appointed to represent children to meet with their clients, require courts to consider foster parent testimony in abuse/neglect proceedings and subsequent case reviews, authorize termination of parental rights upon a court finding of reasonable likelihood that a child would be harmed by returning to the parent's home, and generally require the probate court to terminate

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parental rights if it finds that grounds for termination exist.

The bill would take effect six months after enactment, but could not take effect unless Senate Bills 299 and 721-724 (which deal with various matters of adoption) also were enacted. A more detailed explanation follows.

Attorney representation. The probate court is required to appoint an attorney to represent the child in an abuse/neglect proceeding. The bill would require the appointed attorney to observe, and, depending on the child's age and capability, interview the child. If the child was placed in foster care, the attorney would, before representing the child in each subsequent proceeding or hearing, review the agency case file and consult with the foster parents and the caseworker.

Dispositional hearings. The probate court, in issuing an order of disposition regarding a child in abuse/neglect proceedings, would have to consider any written or oral information concerning the child from the child's parent, guardian, foster parent, child caring institution, or relative with whom the child had been placed.

Foster parents: case plans. If, following a dispositional hearing on an abuse/neglect case, the child continues in outside-the-home placement, the agency developing a child's case service plan has to update and revise that plan at 90-day intervals. The bill would require the agency to consult with foster parents when updating and revising a plan. A statement summarizing information received from foster parents would have to be attached to the plan. Written reports (other than portions made confidential by law), case service plans, and court orders, including all updates and revisions, would have to be available to foster parents, child caring institutions, and relatives with whom children had been placed.

Review hearings. When a child in an abuse/neglect case is placed and remains in foster care, the probate court must hold a review hearing within 91 days after entry of the order of disposition and at regular periods (as prescribed by statute) thereafter. In addition to matters now considered, the court would have to consider the extent to which the parent complied with each provision of the case service plan, prior court orders, and any agreement between the parent and the agency. Following a

review hearing, in deciding on any changes in placement or any modifications of the dispositional order, the court would have to consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, or relative with whom the child had been placed.

Permanency planning hearings. Permanency planning hearings are held at least once a year, with the purpose of reviewing progress toward returning the child to his or her home or to show why the child should not be placed in the permanent custody of the court. If the court determines that the child's return would not pose a substantial physical or mental risk to him or her, the court must order the child returned to his or her parent. A parent's failure to comply with the case service plan is to be viewed as evidence that a substantial risk was involved. Under the bill, in addition to considering the conduct of the parent, the court would have to consider any condition or circumstance of the child that could be evidence that a return could pose a substantial risk to the child. In making permanency planning determinations, the court would consider any written or oral information concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, or relative with whom the child had been placed.

Termination of parental rights. The probate court may terminate parental rights if it finds by clear and convincing evidence that any of several circumstances are true; the bill would add to this list to allow termination upon a finding that there was a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child would be harmed if he or she was returned to the parent's home. If the court found grounds to terminate parental rights, it generally would have to do so and order that additional efforts for reunification of the child with the parent not be made; however, if the court found that termination of parental rights would be clearly not in the child's best interests, the court would not have to terminate parental rights. The bill would require the court to state on the record or in writing its findings of fact and conclusions of law with respect to whether parental rights should be terminated. Various parties, including the prosecutor, can petition for termination of parental rights; the bill would specify that the prosecutor could file a petition whether or not he or she was representing or acting as a legal consultant to the agency or any other party.

Notices. Notices of review hearings and permanency planning hearings, which now must go to the attorney for the child, in addition to various other interested parties, also would have to go to the attorneys for each party, and the prosecuting attorney if the prosecutor had appeared in the case.

Notices of permanency planning hearings would have to point out that the hearing could result in further proceedings to terminate parental rights. Notices of termination proceedings would have to go to the attorneys for all parties, in addition to the people currently specified.

Reimbursement to court. The probate court's order of disposition placing a child outside of his or her own home and under state or court supervision must contain a provision for the child, his or her parent, or custodian to reimburse the court for the cost of care and service. Under the bill, if the child was receiving an adoption support subsidy, the reimbursement amount could not exceed the amount of the support subsidy.

HOUSE COMMITTEE ACTION:

Unlike the House committee substitute, the Senate-passed version of the bill would have given standing to petition for termination of parental rights to foster parents and employees of child caring institutions, relatives with whom children had been placed, and the children's ombudsman as proposed under Senate Bill 723. The Senate version also differed in standards for termination of parental rights.

FISCAL IMPLICATIONS:

There is no fiscal information at present.

ARGUMENTS:

For:

The bill would do much to improve the protections offered to children by procedures set forth in the juvenile code. It would ensure that the opinions of foster parents were considered throughout the process, helping to prevent uninformed misjudgments regarding placement of abused and neglected children and reunification of families. It would strengthen language for termination of parental rights, requiring rights to be terminated

under various circumstances, unless the best interests of the child clearly dictated otherwise. It would require the attorneys assigned to represent abused and neglected children to meet with their clients, so as to better represent their interests. The important role played by foster parents and others in the child welfare system would be acknowledged and their expertise utilized to the benefit of the children involved; misguided reunification efforts would be less likely to occur, and, with the additional perspective that foster parents sometimes can provide on a child, reunification efforts that go forward can have a greater chance of success.

Against:

The bill does not adequately provide for foster parent participation in abuse/neglect proceedings. There should be requirements that foster parents be allowed to provide testimony in open court; as the bill stands, the court can demand that an interested foster parent simply write a letter for judicial consideration, which can be insufficient for bringing out the complete picture necessary for good decision-making. Further, to allow written testimony to be provided can put judicial impartiality at risk; it may not be a good idea to have various people privately writing to probate judges about specific child welfare cases. More importantly, the bill should extend to foster parents limited standing to intervene in dispositional hearings and to petition for termination of parental rights. Foster parents are vitally important and uniquely knowledgeable participants in the child welfare system; they should be equal partners with the child care agencies in matters of court proceedings.

Response:

To extend standing to foster parents as has been proposed would be to open up complicated questions of third-party standing with regard to care and custody of children. To allow foster parents to petition for termination of parental rights would be to risk the use of abuse and neglect procedures to avoid the protections and procedures of the adoption code. Third-party custody issues raise enormously complex issues of the rights to children, the rights of children, and the relevant jurisdictions of the probate and circuit courts. Those matters have been considered by the legislature in the past, and may need to be further considered in the future, but are too far-reaching to be appropriate for this bill.

POSITIONS:

The Michigan County Social Services Association supports the bill. (5-13-94)

The Michigan Federation of Private Child and Family Agencies supports the concept of the bill, but is still reviewing the substitute. (5-13-94)

The Michigan Foster and Adoptive Parent Association opposes the bill as substituted by the House Judiciary Committee. (5-13-94)