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CHILD PROTECTIVE SERVICES RECORDS

House Bill 6184
Sponsor: Rep. Jack Horton
Committee: Human Services

Complete to 11-13-96

A SUMMARY OF HOUSE BILL 6184 AS INTRODUCED

Under the Child Protection Law, the Family Independence Agency (FIA) is required to maintain a central registry, which contains confidential records on the agency's clients. The bill would amend the act to grant the agency director the discretion of releasing some records under certain circumstances. Under the bill, the director would be required to make a decision whether or not to release information within 30 days after receiving a request. The director could also designate another individual to act in his or her place, and a reference to the director would apply to an individual so designated.

Release of Confidential Information. Under the bill, information could be released after consideration of the following factors; that the release would be in the best interests of the child to whom the information was related, and of the family of the child to whom the information was related; that the release of the information would promote the integrity of the child protection system; and the length of time since the case had been closed. The director could not release information unless one or more of the following were true: an individual had been criminally charged with a crime involving the family of a child who was the subject of the report; all or part of the record had been publicly disclosed in a judicial proceeding or in the media; and the record concerned a child who had died or that child's family. However, even if all of the above provisions of the bill were satisfied, the director could not release information if the request for release did not include a name, address, or other information to identify the case; if an investigation for a report of child abuse or neglect to which the information related was in progress and the report had not been substantiated; if a hearing to determine the preponderance of the evidence was pending; if the individual submitting the request was serving a prison sentence; or if the request had been submitted by a parent of the child reported to be abused or neglected or by the person reported to be the perpetrator of the abuse or neglect.

Information released under the provisions of the bill could not include:

- Information that was considered confidential under another law, including identification of a reporting person whose identity had been deemed confidential, or information in a law enforcement or medical record that was specifically designated as confidential under the act or under another law.

- Personal identification information about a specific individual, including, but not limited to, an individual's name, address, telephone number, and social security number.

Notification Requirements. Should the director decide to release information under the provisions of the bill, the department would be required to give notice of the decision within 10 days, as follows:

- If the release contained information about an unsubstantiated case, notice would have to be given to each person reported as an unsubstantiated perpetrator, to each parent or legal guardian of the child, to an attorney representing the child or suspected perpetrator, and to the child's guardian ad litem.

- If the release contained information about a substantiated case, notice would have to be given to each parent or legal guardian not reported in the information as a substantiated perpetrator of the child abuse or neglect, to an attorney representing the child who was the subject of the case or an individual listed as a substantiated perpetrator of the child abuse or neglect, if the department had notice of that representation, and to the child's guardian ad litem.

In addition, the notice would have to include at least notification of the right to appeal the director's decision to release or not to release the information, and, if the director denied a request for release of information, then the director would be required to notify the requesting person, giving the reason for that denial.

Appeals. An individual who had the right to be notified under the above provisions could appeal the decision to release the information to the circuit court before the actual release. If an appeal were filed before the actual release, then the information could not be released until the circuit court's decision was upheld. In addition, if the director denied a request to release information, the person whose request was denied could file an appeal with the circuit court within 30 days after notice of the denial. The court would have to uphold a decision to release or deny release of information unless it determined that the decision was arbitrary and capricious, considering the circumstances related to the request presented by the department and the requesting individual.

Proceedings on an appeal that had been filed under the provisions of the bill would be considered confidential, and none of the records of these proceedings could be made public unless the court upheld a decision to release information or overturned the denial of a request for release.

The court would have to conduct its review so that a person whose request for information was denied did not have access to that information during the appeal proceedings.

Fees. The department could charge a fee for a copy of information released under the provisions of the bill in the same manner as a public body was authorized to charge a fee under the Freedom of Information Act (FOIA).

Other. The provisions of the bill could not be construed to subject a record that was deemed confidential under the act to disclosure under the FOIA.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.