



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 6184 (Substitute H-2 as passed by the House)
Sponsor: Representative Jack Horton
House Committee: Human Services
Senate Committee: Families, Mental Health and Human Services

Date Completed: 12-5-96

CONTENT

The bill would amend the Child Protection Law to prescribe procedures for the release of specified information from reports of suspected child abuse and neglect (child protective service records) that the Family Independence Agency (FIA) is required to maintain in a central registry. The bill states that it could not be construed to subject a record that was confidential under the Act to disclosure under the Freedom of Information Act. "Specified information" would mean the information in a child protective service record that related specifically to all referrals or reports of alleged or substantiated report of child abuse or neglect. It would not include any of the following:

- Personal identification information for an individual identified in the record except for the perpetrator of the child abuse or neglect, including identification of a reporting person. Personal identification information for an individual alleged to have perpetrated child abuse or neglect, however, could not be released if the allegation had not been substantiated.
- Information in a law enforcement report.
- Any other information that was specifically designated as confidential under other law.

Currently, the Law requires the FIA to maintain a record of substantiated reports of suspected child abuse or neglect in a central registry and, within 30 days after substantiation, to notify in writing each individual who is named in the record as a perpetrator of the child abuse or neglect. The notice must set forth the individual's right to request expunction of the record and his or her right to a hearing if the FIA refuses the request. Reports, documents, or photographs filed with the FIA under the Law are confidential records available only to persons and organizations specified in the Law.

The bill would add to the list of persons and organizations to whom the records are available, the parent of a child who was the subject of the report of child abuse or neglect.

The bill also would allow the Director of the FIA, on his or her own initiative or upon written request, to release specified information. (If the Director designated another person to act on his or her behalf, all references to Director in the bill would apply to the Director's designee.) If a written request for specified information were submitted to the FIA, the Director would have to make a preliminary decision to release or to deny release of the specified information within 14 days after

receipt of the request. After notifying the requester, the Director could extend that period for an additional 14 days, if the additional time were necessary to research and compile the requested specified information.

The Director could release specified information under these provisions if, in his or her judgment, the release of the information either were in, or were not in conflict with, the best interests of the child to whom the information related and one or more of the following were true:

- The release was in the best interest of a member of the child's family or of an individual who resided in the same home in which the child resided. The child's family would include the child's parents, legal guardians, grandparents, and siblings.
- The release clarified actions taken by the FIA on a specific case.
- The record containing the specified information concerned a child who had died or that child's family.
- All or part of the record containing the specified information was publicly disclosed in a judicial proceeding.
- A child abuse or neglect complaint or investigation to which the record containing the specified information related had been part of the subject matter of a published or broadcast media story.
- The record containing the specified information concerned a substantiated report of sexual abuse, serious injury, or life threatening harm involving the child, or a sibling of the child, identified in the request.

A determination of the best interests of a child would have to be based on protection of the child's safety, preservation of the child's physical, mental, and emotional health, and consideration of the child's likelihood of establishing a successful and timely permanent family and community relationship.

The Director could not deny a request for specified information based on a desire to shield a lack of, or an inappropriate, performance by the FIA.

Even if the Director determined that specified information could be released, he or she could not release it if any of the following were true:

- The request for release did not include information sufficient to identify the specific case to which the request related.
- An investigation of the report of child abuse or neglect to which the specified information related was in progress and the report had been neither substantiated nor unsubstantiated, unless, in the Director's judgement, the release of the specified information did not interfere with the investigation. These provisions would not apply if more than 60 days had elapsed since the investigation was begun unless the Director stated the reasons that the investigation had not been concluded.
- A hearing to determine whether a record should be amended or expunged was pending.
- The individual who submitted the request was serving a sentence of imprisonment in a State, county, or Federal correctional facility in this or another state.
- The child to whom the record related was 18 years of age or older.

Not less than 14 days before specified information was released or within 14 days after making a decision to deny a request for release of specified information, the Director would have to give written notice of a preliminary decision to release or to deny a request to release specified

information. The notice would have to include the basis on which the specified information was being released or on which the request was being denied and would have to specify that the decision would become final unless information that could be the basis for a different decision was submitted to the Director in writing within 14 days after the notice was given, and that there was a right to appeal a final decision. The notice would have to include information regarding where to file the appeal and describing appellate procedures.

If, within 14 days after giving notice, the Director did not receive information in writing that could be the basis for a different decision, the decision would be final. If the Director did receive the other information, he or she would have to make a final decision to release or deny a request to release the specified information within seven days after receiving the information. The Director would have to give written notice of the final decision to each individual required to be notified under the bill, including notice of the right to appeal a final decision.

If the Director decided to release specified information, the FIA would have to give each notice required by the bill to all of the following:

- Each individual named in the report as a perpetrator or an alleged perpetrator of the child's abuse or neglect, unless a court had found the individual to be the perpetrator of the abuse or neglect.
- Each parent or legal guardian of the child.
- Each attorney representing the child who was the subject of the case, or representing a perpetrator, alleged perpetrator, or parent or legal guardian of the child, if the FIA had notice of that representation.
- The child's guardian ad litem.

If the Director denied a request for release of information, the FIA would have to notify only the requesting person.

If an individual who was required to be notified that he or she was named in the report as a perpetrator or alleged perpetrator were named as such in a report that contained specified information requested to be released, and that individual were not previously notified, the FIA would have to notify that individual not less than 14 days before the specified information was released. If an individual required to be notified requested expunction of the record within 14 days after the notice was given, the specified information could not be released until the procedures governing expunction were completed. If the individual did not request expunction within 14 days, the procedures for release of specified information would have to be followed, and the individual would not have a right to appeal the decision to release.

Before the actual release of specified information, an individual required to be notified could appeal the Director's decision to the circuit court. If an appeal were filed, and the FIA were notified before the actual release, the specified information could not be released until the decision to release was upheld by the circuit court. If the Director denied a request to release specified information, the person whose request was denied, within 30 days after notice of the denial, could file an appeal of the denial with the circuit court. The court would have to uphold a decision to release or to deny release of specified information unless it found that the Director's decision was not reasonable based on the criteria for releasing or not releasing specified information.

Proceedings on an appeal filed under these provisions would be confidential, and none of the records of the proceedings could be made public unless the court upheld a decision to release

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

If the court reversed the Director's decision to release or to deny release of specified information in an appeal under these provisions, the court could order the FIA to pay the appellant's costs and reasonable attorney fees that were related to the appeal.

The FIA could charge a fee for a copy of specified information released in the same manner as a public body is authorized to charge a fee under the Freedom of Information Act.

MCL 722.627 et al.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bill would have a indeterminate fiscal impact on the Family Independence Agency. Increasing the categories of individuals or organizations to whom confidential material may be released could increase the number of personnel hours needed to fill such requests. However, the bill also would permit the FIA to charge a copying service fee, which could offset some of the additional cost.

Fiscal Analyst: C. Cole

S9596\S6184SA

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.