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SFA BILL ANALYSIS

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Senate Bill 490 (Substitute S-1 as passed by the Senate)
Senate Bill 491 (Substitute S-1 as passed by the Senate)
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Sponsor: Senator Joel D. Gougeon (Senate Bill 490)
Senator Robert Geake (Senate Bill 491)
Senator Michael J. Bouchard (Senate Bill 492)
Committee: Families, Mental Health and Human Services

Date Completed: 6-17-97

RATIONALE

Executive Order 1995-12 created the Lieutenant Governor's Children's Commission to review laws and programs concerning the removal of children from abusive households, the placement of children in foster care, the reunification of families, and the permanent placement of children. The Commission held a number of hearings throughout the State, and issued a report in July 1996. As the Commission's report pointed out, the Federal government in 1980 enacted The Adoption Assistance and Child Welfare Act, which provides fiscal incentives to states that facilitate permanency planning. The law requires states to make "reasonable efforts" to prevent the unnecessary separation of children from their parents and to facilitate the reunification of foster children with their birth parents. According to the report, while the law "...was designed to eliminate 'foster care drift,' its implementation has not been without consequences. Child protection officials are under the dual mandate to make reasonable efforts to keep families together and to protect the best interest of the child. This mandate sometimes creates conflict. In almost all cases, the only permanency plan pursued when a child is removed from his/her home is reunification with the family. In many cases, attempts at reunification can span as many as two to three years or longer." Among other things, the report found that the State needs to "provide an aggressive assessment up front to determine the child's needs, the severity of the abuse, and the parent's ability to change"; "follow through with a well-developed array of services that match the level and type of intervention needed for each family and child"; and "continually evaluate the services provided to ensure that the best interest of each child is served".

The Commission's report contains a number of goals for early intervention, permanency planning, placement, and post-termination. Concerning permanency planning, the report states that when the permanency plan is reunification of the children with their parents, "efforts to rehabilitate the family [should] result in changed behavior, not superficial compliance with service plans"; and that timely alternative permanency plans should be made when reunification efforts have not been successful within a reasonable time. The Commission's placement goals include ensuring that the first and paramount consideration is that the placement meets the needs of the child; ensuring that a child's needs and safety are paramount to the rights of visitation by the parent; ensuring that children will not be arbitrarily removed from placement; and defining success as having children safe, secure, and stable in a placement, whether it is in their own home, with a relative, out of home, or long term. The Commission's report also includes specific recommendations to implement its goals.

CONTENT

Senate Bill 490 (S-1) would amend the juvenile code to do the following:

- **Prohibit a court from ordering the placement of a child in his or her home, without ordering the alleged perpetrator to leave the home, if the court had reasonable cause to believe that a parent or other adult in the home had sexually abused or severely physically abused the child.**
- **Require a psychological evaluation**

and/or counseling to determine the appropriateness of parenting time, if parenting time could be harmful to a juvenile.

- **-- Require the court to order a home study if an abused or neglected child were placed in the home of a relative.**
- **-- Require the court to consider the appropriateness of parenting time before entering an order of disposition, and at foster care review hearings and permanency planning hearings.**
- **-- Establish procedures for a change in foster care placement, including hearings and an investigation by a foster care review board.**
- **-- Require parenting time to be suspended at the time of a hearing to terminate parental rights.**
- **-- Specify that written reports, case service plans, and court orders would have to be provided (rather than available) to the foster parent, child caring institution, or relative with whom a child was placed.**
- **-- Require foster care review hearings and permanency planning hearings to be held every 91 days.**

Senate Bill 491 (S-1) would amend the Public Health Code to give priority for substance abuse services to a parent whose child had been removed from the home under the State's child protection laws, or was in danger of being removed, because of the parent's substance abuse. If a licensee under Part 62 of the Code, which deals with substance abuse services, maintained a waiting list for services, the licensee would have to place the parent in a priority position on the waiting list. If a licensee received Federal substance abuse prevention and treatment block grant funds, the parent's priority position would come after a priority position on the waiting list granted under the conditions of the Federal block grant. If the parent qualified for priority status on the waiting list under the block grant conditions, however, the licensee would have to place the parent in that priority position on the waiting list.

Senate Bill 492 (S-1) would amend the child care licensing Act to specify that, upon the recommendation of a local foster care review board or a child placing agency, the Department of Consumer and Industry Services (DCIS) could grant a variance to one or more licensing rules or statutes with respect to a licensed foster family home or foster family group home, if the placement of a particular child in that home would cause the home to be out of compliance with one or more licensing requirements and the placement were in the child's best interests. A variance could be granted under the bill only if the DCIS determined that violation of the particular licensing rule or statute would not jeopardize the health or safety of the children residing in the home.

A more detailed description of Senate Bill 490 (S-1) follows.

Placement of Child/Parenting Time

Under the bill, if the juvenile division of probate court found that there was reasonable cause to believe that a child had been sexually abused or severely physically abused by a parent, guardian, custodian, or other person who was 18 years of age or older and who resided for any length of time in the child's home, the court could not order the placement of the child in his or her home unless the court had entered an order requiring the alleged perpetrator to leave the home. The bill would include this language in provisions concerning juveniles who were allegedly abused or neglected, juveniles placed under supervision in their own home, and juveniles placed in foster care. (Under the Code, if a petition alleging abuse or neglect by a parent, guardian, custodian, or other person residing in a juvenile's home is authorized and the court finds probable cause to believe that the parent, guardian, custodian, or other person committed the abuse, the court may order that person to leave the home and not subsequently return to it.)

Currently, a juvenile's parent must be permitted to have parenting frequently with the juvenile unless parenting time, even if supervised, would be harmful to the juvenile. The bill provides, instead, that a juvenile's parent would have to be permitted to have parenting time frequently with the juvenile. If parenting time, even if supervised, could be harmful to the child, however, the court would have to order a psychological evaluation and/or counseling to determine the appropriateness and conditions of parenting time.

The bill also provides that, if the child were placed in the home of a relative, the court would have to

order a home study to be performed and a copy of the home study to be submitted to the court within 30 days after the placement. The bill specifies that, "Before placing a child in the home of a relative, a criminal record check and central registry clearance shall be performed by the department." (Neither the bill nor the juvenile code, however, defines "department" or "central registry".)

If a child were placed in foster care, the court would have to provide the foster parents with copies of all reports related to the child that were filed with the court, including reports that were filed before the child was placed with those foster parents. If the parent, guardian, or custodian of a child placed in foster care refused to sign a consent to the release of the child's medical records, the court would have to enter an order for the release of those records upon request of the agency or the child's guardian ad litem. (The code defines "agency" as a public or private organization, institution, or facility responsible under court order or contractual agreement for the care and supervision of a child.)

Under the code, the agency must prepare a case service plan before the court enters an order of disposition in a child abuse or neglect case. The case service plan must include, among other things, a parenting time schedule unless parenting time would be harmful to the child. The bill would add that, at the time of an initial termination hearing, parenting time would have to be suspended unless the court determined that the exercise of parenting time was in the child's best interests. If the court adjourned or continued the hearing beyond the original scheduled date for any reason, the court would have to suspend parenting time in the interim, unless the court determined that the exercise of parenting time was in the child's best interests.

Change in Foster Care Placement

Under the bill, if an abused or neglected child were placed in foster care and the foster care parent objected to a proposed change in placement, the agency could not change the placement unless the change were in accordance with the following provisions, unless the court had ordered the child returned home or placement were with a relative within 90 days after initial removal.

At least 10 days before a proposed change in foster care placement was to take effect, the agency would have to notify the State Court Administrative Office of the proposed change, and notify the foster parents of the intended change as well as inform them that if they disagreed with the decision, they could appeal within 72 hours to a local foster care review board. The agency also would have to give the foster parents the address and telephone number of the local foster care review board with jurisdiction over the child.

Upon receiving an appeal from foster parents, the foster care review board would have to investigate the change in placement and report its findings and recommendations within three business days to the court and the agency. If the board determined that the change was in the child's best interests, the agency could move the child.

If the board determined that the move was not in the child's best interests, the board would have to request and set a date for a hearing, and the court would have to give notice of the hearing to the foster parents and all interested parties. The hearing could not be earlier than seven days after the court received notice of the request from the board not later than the date the proposed change was intended to take effect.

After hearing testimony from the agency and any other interested party, and considering any other evidence bearing upon the proposed change in placement, the court would have to order the continuation of the placement unless it found by clear and convincing evidence that the change was in the child's best interests.

An agency could change a child's placement without complying with these provisions, however, if the agency had reasonable cause to believe that the child had been physically or sexually harmed and it believed that the child was in immediate danger of additional physical or sexual harm. The agency would have to include in the child's file documentation of its justification for action under this provision. If a foster parent objected to the removal of the child, the foster care parent could request a hearing of the local foster care review board within three business days of the child's removal.

Review Hearings

Currently, if an abused or neglected child is placed and remains in foster care, the court must hold a review hearing within 91 days after entry of the order of disposition, and every 91 days thereafter for the first year following entry of the order. After the first year, a review hearing must be held within 182 days after a permanency planning hearing (described below). Under the bill, a review hearing

would have to be held within 91 days after entry of the order and every 91 days thereafter as long as the child was under the jurisdiction of the court.

If a child were in a permanent foster family agreement, or placed with a relative where placement was intended to be permanent, or where the court had ordered guardianship, a review hearing would have to be held within 182 days after a permanency planning hearing and every 182 days after that as long as the child was under the court's jurisdiction. Upon the motion of any party or at the court's discretion, a review hearing could be accelerated to review any element of the case service plan prepared by the agency.

Permanency Planning Hearings

Currently, if a child remains in foster care and parental rights to the child have not been terminated, the court must conduct a permanency planning hearing within 364 days after entry of the order of disposition and every 364 days thereafter during the continuation of the child's foster care placement. Under the bill, the court would have to conduct a permanency planning hearing within 364 days after an original petition had been filed. The court would have to conduct an additional permanency planning hearing within 91 days after the original permanency planning hearing and every 91 days after that as long as the child remained under the court's jurisdiction.

Under the Code, if the court determines at a permanency planning hearing that the child should not be returned to his or her parent, the court must order the agency to initiate proceedings to terminate parental rights to the child within 42 days after the hearing, unless the agency demonstrates to the court that initiating the termination of parental rights is clearly not in the child's best interests. Under the bill, this requirement would apply unless the court found that initiating the termination of parental rights was clearly not in the child's best interests.

Currently, in making determinations pursuant to a permanency planning hearing (e.g., whether the child should be returned to his or her parent), the court must consider any written or oral information concerning the child from his or her parent, guardian, custodian, foster parent, child caring institution, or relative with whom the child is placed, in addition to any other evidence offered at the hearing. Under the bill, the court also would have to consider information from the child's guardian ad litem, and would have to consider the appropriateness of parenting time.

MCL 712A.13a et al. (S.B. 490)
Proposed MCL 333.6232 (S.B. 491)
Proposed MCL 722.118b (S.B. 492)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

By implementing various recommendations of the Lieutenant Governor's Children's Commission, the bills would help to protect abused children from further violence, and ensure their placement in an appropriate home environment as soon as possible. Although family reunification may be appropriate in some situations, it clearly is not desirable when children are subject to sexual abuse or severe physical abuse by a member of the household who remains in the home. In some cases, the temporary removal of a child might be in his or her best interests, while permanent placement might be the best alternative for another child. Senate Bill 490 (S-1) would take a number of steps to ensure that the goal of family reunification did not take precedence over a child's safety and ultimate well-being, and would recognize that a child may be better off in a stable and secure foster home than with his or her biological family. The bill also would protect the interests of foster parents by establishing notice requirements and appeal procedures for a change in foster care placement, and requiring that reports, records, case service plans, and court orders be given to foster parents. In addition, the bill could reduce the time children spent in foster care by mandating more judicial oversight. Senate Bill 492 (S-1) would give the FIA Director discretion to overrule statutory and administrative regulations concerning foster homes, if doing so would be in the best interests a particular child and would not jeopardize other children in a home.

Response: Senate Bill 490 (S-1) should require permanency planning hearings every six months, rather than every three months, if a child were in a permanent foster family agreement, if placement with a relative were intended to be permanent, or if the court had ordered guardianship. According to the FIA, these placements generally are intended to be permanent and do not require the judicial oversight that temporary placements warrant. Also, the termination of parental rights is not planned for the children in these placements. Since the purpose of

permanency planning hearings is to terminate parental rights if the child is not returned home, according to the FIA, requiring hearings every three months in these cases would add to the court system's workload unnecessarily.

Supporting Argument

When reunification is in the best interests of a child, efforts should be made to rehabilitate the family. According to the report of the Lieutenant Governor's Children's Commission, one barrier to achieving this goal is the lack of services that address substance abuse by women with children. According to testimony before the Senate Committee on Families, Mental Health and Human Services, substance abuse is a factor in perhaps as much as 80% of the cases in which children are removed from their home. Senate Bill 491 (S-1) would address this situation by giving priority for substance abuse services to parents whose children had been or could be removed due to the parents' substance abuse. At the same time, the bill would protect Federal funding by recognizing the priority that must be given pursuant to Federal block grant regulations.

Legislative Analyst: S. Margules

FISCAL IMPACT

Senate Bill 490 (S-1)

State Government

Family Independence Agency. The bill would have an indeterminate fiscal impact on State government. The psychological evaluations, which would be required when a parent was removed from the home and there was a concern regarding the effect of parenting time, would increase in number. Psychological assessments currently are ordered at the FIA worker's discretion. Therefore, the bill would possibly increase the number of assessments ordered. The maximum cost of a general assessment for parents is $300. The maximum cost of a general psychological assessment for a child is $200. A more specialized (sexual assault) assessment could cost more. Home studies prior to placements with relatives are not done now before a child becomes a ward of the court; however, the FIA staff indicate that a change in this policy is being considered. Child abuse and neglect cases do have home studies done because the problem is seen as a family problem. The cost of a home study includes staff time, transportation, and materials costs. Providing foster parents with copies of reports related to the child placed with them would result in a minimal increase in costs for copying and distribution of the reports. The bill would increase the required number of permanency planning hearings. The cost of a hearing includes staff time, transportation, court costs, and reimbursement of costs for the foster parents.

State Court Administrative Office - Foster Care Review Board. Requiring a foster care review board to investigate a proposed change in foster care placement and report findings and recommendations in three days would require additional resources. Currently 19 boards made up of volunteer members in 15 counties review selected cases. In addition, this legislation would require the local community boards to investigate and make recommendations when a foster parent filed an appeal of an agency decision. The July 1996 report of the Binsfeld Children's Commission made a similar recommendation for foster parents to be given an opportunity to appeal decisions. This would mean possible expansion of the current community boards that review cases as well as additional resources for the foster care review board office, whose staff are responsible for attending the hearings that are held one day a month. In addition, office staff are also responsible for compiling and presenting the recommendations of the local community boards to the courts, agency, and other interested parties. It is not know how many foster parents would potentially appeal decisions to a foster care review board, but in order to address any of these potential cases in a timely fashion as well as conduct normal business, the foster care review board could be required to increase its field representatives, which consist of two persons.

Local Government

The section of the bill that would require a home study to be done might be interpreted as a State mandate to local government. If there were no court orders for the children for whom home studies would be required, these children would be between systems; they would be awaiting a trial and would not be court or State wards yet. This means that the locals could be required to bear the costs of the studies.

Senate Bill 491 (S-1)

The bill would have no fiscal impact on State or local government.

Senate Bill 492 (S-2)

According to the Department of Consumer and Industry Services, this bill would put in statute and expand a procedure that has been promulgated as a rule by the Department which allows the DCIS to waive administrative requirements. The bill also would expand the provisions of that rule by allowing the Department to grant a variance to statutory requirements. The bill therefore would have no fiscal impact on State or local government.

Fiscal Analyst: C. Cole (S.B. 490)
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