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SFA



BILL ANALYSIS

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Senate Bill 513 (Substitute S-1 as passed by the Senate)
Senate Bill 515 (Substitute S-2 as passed by the Senate)
Senate Bill 516 (Substitute S-1 as passed by the Senate)
Senate Bill 517 (Substitute S-3 as passed by the Senate)
Sponsor: Senator Joel D. Gougeon (Senate Bills 513 & 516)
 Senator Joanne G. Emmons (Senate Bill 515)
 Senator George A. McManus, Jr. (Senate Bill 517)
Committee: Families, Mental Health and Human Services

Date Completed: 6-18-97

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, and the permanent placement of children. The Commission's report, issued in July 1996, contains a number of goals in these areas and identifies barriers to achieving the goals. The Commission found, for example, a need for coordination between agencies, consistent standards for initiating the termination of parental rights, and expeditious adjudication. The Commission's report also makes a number of recommendations to address the issues and overcome the barriers.

Some of the Commission's recommendations pertain, in particular, to the role of the Family Independence Agency (FIA) and other agencies in the investigation of reported child abuse or neglect. Under the Child Protection Law, various professionals (such as educators, health care workers, and child care providers) must report suspected cases of child abuse or neglect to the FIA. The FIA then must begin an investigation or, in certain cases, notify the prosecuting attorney. In some cases, the FIA is required to seek the assistance of law enforcement officials. A report of child abuse or neglect not only triggers an investigation, but also may set in motion the process of removing the child from the home, placing him or her in foster care, and potentially terminating parental rights. Many of the Commission's recommendations concern this process, as well as the central registry of abuse and neglect cases that the FIA must maintain.

CONTENT

Senate Bill 513 (S-1) would amend the Child Protection Law to provide that, if the FIA received a report that a newborn infant had drugs or alcohol in his or her body, the FIA would have to transmit a copy of the written report to the prosecuting attorney of each county in which the child resided or was found. The bill is tie-barred to Senate Bill 491, which would amend the Public Health Code to give priority for substance abuse services to a parent whose child had been removed from the home, or was in danger of being removed, because of the parent's substance abuse.

Senate Bill 515 (S-2) would amend the Child Protection Law to require that the FIA's central registry be a "statewide, electronic" registry; allow the FIA to release identifying information in the registry, without a person's consent, under certain circumstances; require prosecutors to review certain substantiated cases of abuse; and provide that an abused or neglected child could not be interviewed in the presence of the suspected perpetrator.

Senate Bill 516 (S-1) would amend the juvenile code to:

- Require the FIA to file a petition with the juvenile court if abuse of a child or his or her sibling involved certain types of conduct or if the parent's parental rights to another child had been terminated; and require the FIA also to file a petition for the termination of parental rights under those circumstances unless the court

found that a termination petition was not in the child's best interest.

- Require the court to adhere to prescribed time periods; limit the circumstances under which an abuse or neglect case could be adjourned or continued; and set a deadline for the court's decision on a termination petition.
- Require the State Court Administrative Office (SCAO) to publish an annual report evaluating the achievements of the court in obtaining permanency for children.
- Provide for continued legal representation of a child.
- Require the FIA to file a supplemental petition with the court if a child were under the court's jurisdiction and the FIA became aware of abuse or neglect, which was substantiated.
- Provide that grounds for termination of parental rights would include the parent's conviction of a crime whose victim was a child and the nature of which made the parent unfit to associate with children.

Senate Bill 517 (S-3) would amend the foster care review board Act to:

- Require a local board to evaluate the placement of a child in a foster home that would cause the home to be out of compliance with any licensing rules or statutes; and to recommend to the Department of Consumer and Industry Services that the rules or statutes be waived if that placement would be in the child's best interests and would not jeopardize the children in the home.
- Require a local board to select permanent wards for review.
- Require a local board to hear an appeal of a proposed change in foster care placement.
- Delete the requirement that a foster care review board be established in a county that has 100 to 500 children in foster care; provide, instead, for the creation of a review board in each county or multiple counties; and permit the creation of additional boards, at the direction of the SCAO.
- Increase the maximum number of boards in a county from 10 to 15.

A more detailed description of Senate Bills 515 (S-

2), 516 (S-1), and 517 (S-3) follows.

Senate Bill 515 (S-2)

Under the Child Protection Law, the persons to whom information in the central registry currently may be released include a person, agency, or organization engaged in a bona fide research or evaluation project, although information identifying a person named in a report or record may not be released without that person's written consent. The bill also would allow the information to be released if the FIA Director authorized the disclosure, the disclosure contributed to the purposes of the Child Protection Law, and the researcher had appropriate controls to maintain the confidentiality of child specific information.

Currently, upon completing its investigation, a local law enforcement agency or the FIA may inform the person who made the report as to its disposition. The bill, instead, would require a local law enforcement agency or the FIA to inform the person as to the disposition of the report, including whether the case was substantiated or not and the rationale for that decision. The information would have to be in writing if the reporting person were mandated to make a report.

Under the bill, if a substantiated case involved a child's death, serious physical injury or harm to a child, or the suspicion of sexual abuse or exploitation of a child, the prosecuting attorney for the county in which the child was located would have to review the investigation of the case to determine if it complied with the procedure adopted under requirements of the Law.

The bill provides that, during an investigation of suspected child abuse or neglect, the child reported to have been abused or neglected could not be interviewed in the presence of an individual reported to have perpetuated the abuse or neglect.

The bill is tie-barred to Senate Bill 503, which would require the FIA, county child protection officials, prosecuting attorneys, and local law enforcement officials to adopt and implement standard child abuse and neglect investigation and interview protocol, using as a model the protocol developed by the Governor's Task Force on Children's Justice.

Senate Bill 516 (S-1)

Petitions

The bill would require the FIA to file a petition with the juvenile court if a parent were alleged to have abused a child or a sibling of a child and the abuse included one or more of the following:

- Abandonment, and the child or sibling was very young or severely impaired.
- Criminal sexual conduct involving penetration.
- Chronic battering, torture, or other severe physical abuse.
- Loss or serious impairment of an organ or limb.
- Life-threatening injury.
- Murder or attempted murder.

The FIA also would be required to petition if the parent's parental rights to another child had been terminated.

In addition, the FIA would have to petition for termination of parental rights at the same time, unless the court found on the record that it was not in the child's best interest to file a petition for termination. If a petition with the juvenile court were not required, and the FIA were considering petitioning for termination of parental rights at the initial dispositional hearing, the FIA would have to hold a conference between the protective services supervisor, the protective services worker, and the foster care worker, if any, to agree upon the course of action. If an agreement could not be reached at the conference, the FIA Director or the Director's designee would have to resolve the disagreement.

The juvenile code specifies grounds for the termination of parental rights. These would include, under the bill, that the parent was convicted of a crime whose victim was a child and the nature of which made the parent unfit to associate with children.

Time Periods/Adjournment or Continuance

Under the bill, if an abuse or neglect petition were filed, the court would be required to adhere strictly to each time period prescribed by the juvenile code or court rule for management and disposition of the child's case. The State Court Administrative Office would be required specifically to monitor the court for adherence to those time periods. The SCAO also would have to publish an annual report evaluating the achievements of the court in obtaining permanency for children.

The court could adjourn a hearing or grant a continuance regarding an abuse or neglect case only for good cause with factual findings on the record and not solely upon stipulation of counsel or for the convenience of a party. In addition to factual good cause, the court could adjourn a hearing or grant a continuance under either of the following circumstances:

- A party moved for the adjournment or continuance in writing at least 10 days before the hearing.
- Upon the court's own motion, but only if the delay were in the child's best interest and for a period of not more than 30 days.

Under the code, if a child remains in foster care in the temporary care of the court following a review hearing or a permanency planning hearing, or if a child remains in the custody of a guardian, upon petition of various parties the court must hold a hearing to determine if the parental rights to the child should be terminated and, if all parental rights are terminated, the child placed in permanent custody of the court. The bill would require the court to issue an opinion or order regarding a termination petition within 70 days after the commencement of the initial hearing on the petition.

Attorney for the Child

The bill provides that a child's attorney would have to be present at all hearings concerning the child and could not substitute counsel unless the court approved.

The code provides that a court-appointed attorney must serve until discharged by the court. The bill would prohibit the court from discharging the attorney until the child was adopted, had a permanent guardian, or was no longer a State or court ward.

Supplemental Petition

Under the code, if a child remains under the jurisdiction of the court, a cause may be terminated or an order may be amended or supplemented at any time as the court considers necessary and proper. The bill would require the FIA to file a supplemental petition with the court if the FIA became aware of abuse or neglect of a child who was under the court's jurisdiction and that abuse or neglect was substantiated as provided in the Child Protection Law.

Senate Bill 517 (S-3)

Local Foster Care Review Boards

The foster care review board Act provides for the creation of a local foster care review board in each county having at least 100 but not more than 500 children in foster care. An additional board is created for each additional 300 children in a county having more than 500 children in foster care. In addition, a county with fewer than 100 children in foster care may create its own board or create a multicounty board with other counties having fewer than 100 children in foster care under certain conditions. The bill, instead, provides that a local foster care review board would be created in each county or in multiple counties. At the discretion of the State Court Administrative Office, additional boards could be created in each county or in multiple counties. This would be subject to the Act's limit on the number of local boards that a county may have, which the bill would increase from 10 to 15.

The bill also would delete provisions that do the following: exempt a county from establishing a review board if not less than the minimum acceptable percentage of children in foster care in the county achieved a foster care event within six months after admission into foster care; require that a board be terminated if the minimum acceptable percentage of children within the county achieving foster care events within six months after admission is attained and maintained for two consecutive State fiscal years; and, require the creation of one or more review boards in an exempted county upon agreement of the State Court Administrative Office, the judge(s) of the juvenile division of the county's probate court, and the county board of social services. (A "foster care event" is the child's return to the parent from whom the child was removed; the child's placement with the other parent; the child's placement with a relative; the voluntary release of parental rights to the child; or the filing of a petition for the termination of parental rights.)

Currently, a local board must be composed of five members who reside within the jurisdiction of the local board, and who represent to the maximum extent possible the socioeconomic, racial, and ethnic groups residing within that jurisdiction. The bill would add that a local board could have one or more alternative member who would serve when an appointed board member was unavailable.

Foster Care Placement

The bill would add to the activities required of a local board that it hear an appeal of a proposed change in foster care placement, as provided in a section of Senate Bill 490 that would establish procedures for a change in foster care placement. A local board also would have to report to the court as required by those procedures.

As part of the ongoing review process, a local board would have to select permanent wards for review from all of the following categories:

- Wards who were registered with the Michigan Adoption Resource Exchange and had been on hold status for at least 12 months.
- Wards who had not been registered with the Michigan Adoption Resource Exchange, had been permanent wards for at least six months, and did not have a documented permanency plan in place.
- Wards who were under 12 years old and had been listed in the Michigan Adoption Resource Exchange photo listing book for more than eight months and for whom no family had been identified.

A local board would have to compile and maintain statistics and make findings regarding its reviews of permanent wards, including identification of any barriers to placement. The Michigan Adoption Resource Exchange would have to cooperate with the foster care review board program, and submit copies of its file material and registration documentation as requested by the program.

A local board would be required to evaluate the placement of a child in a foster care home under circumstances that would cause the foster home to be out of compliance with one or more licensing rules or statutes. If the local board determined that the placement would be in the best interests of the child and that the lack of compliance with the particular licensing rules or statutes would not jeopardize the health or safety of the children in the foster home, it would have to recommend to the Director of the Department of Consumer and Industry Services that the particular licensing rules or statutes be waived for that foster home to allow the placement of the child.

Annual Report

The Act requires the State Court Administrator to publish an annual report of the State board program created by the Act and make the report available to the public. The bill also would require the State Court Administrator to submit the annual report to the Legislature and the Governor.

MCL 722.623a (S.B. 513)
722.627 et al. (S.B. 515)
712A.13a et al. (S.B. 516)
722.134 et al. (S.B. 517)

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

Among the goals of the Lieutenant Governor's Children's Commission were: ensuring the coordination of investigation between protective services and law enforcement; ensuring an expeditious adjudication to guarantee the safety of mistreated children; ensuring that the FIA establishes protocols for seeking termination at the initial dispositional hearing; ensuring legal representation for the child until his or her adoption or other permanent placement; maintaining uniform judicial timelines for placement decisions; and building a body of knowledge to improve services to children and families.

According to the Commission's report, children sometimes are interviewed in the presence of the alleged perpetrator, resulting in an unsubstantiated case. The Commission also found that current policy and law do not require the FIA to file a probate court petition in specific cases; there is no current mechanism to identify which cases should be considered for termination of parental rights; there is a lack of clear policy on the coordination of protective services and foster care staff regarding permanency planning when termination of parental rights is being considered; foster care workers often do not file a supplemental petition when new allegations of abuse and neglect surface; the court often discontinues appointment of the child's attorney after parental rights have been terminated; and, the court's exercise of broad discretion in termination issues often results in delayed permanency for a child.

The report also pointed out that child welfare policy analysis, program evaluation, and research can be

very helpful in improving services received by Michigan's children and families. While the FIA has limited resources to devote to this work, university workers and children's advocates are willing and able to conduct this analysis. The Child Protection Law's confidentiality restrictions, however, can prevent analysts outside of the FIA from doing meaningful research.

The bills would implement a number of recommendations of the Commission to overcome these barriers and achieve the goals identified by the Commission.

Supporting Argument

Senate Bill 513 (S-1) would enhance changes made to the Child Protection Law by Public Act 581 of 1996. Under that Act, people who are required to report suspected abuse or neglect also must report to the FIA when they know or suspect that a newborn has any alcohol, a controlled substance, or a metabolite of a controlled substance in his or her body. Under the bill, the FIA would have to share these reports with prosecuting attorneys. According to an FIA analysis of the 1996 legislation, the Michigan Resource Center reported that, in 1992, an estimated 8,000 women in Michigan who gave birth used an illicit drug.

Supporting Argument

Local foster care review boards provide much-needed oversight of foster care placements, and educate and involve the community in these matters. Since an informed and vigilant citizenry is critical to the well-being of children, Senate Bill 517 (S-3) would protect the best interests of children by expanding local boards statewide, providing for the appointment of alternative members, and requiring review boards to hear an appeal of a proposed change in foster care placement (as provided under Senate Bill 490). In addition, Senate Bill 517 (S-3) would require a local board to recommend the waiver of a particular licensing rule or statute for a foster care home if that action would be in a child's best interests. This would be consistent with provisions of Senate Bill 492, which would require the Department of Consumer and Industry Services to grant a variance to one or more licensing rules or statutes with respect to a licensed foster home, if placement in that home would cause it to be out of compliance with the licensing requirement and the placement were in the child's best interests.

Legislative Analyst: S. Margules

FISCAL IMPACT

Senate Bill 513 (S-1)

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

Senate Bill 515 (S-2)

State Government. The bill would have an indeterminate fiscal impact on State government. The expansion of the central registry to a Statewide, electronic system could involve some additional cost for the FIA.

Local Government. The bill would have an indeterminate fiscal impact on local government. The requirement for county prosecuting attorneys to determine whether procedures under the Child Protection Law were complied with in certain cases could result in additional administrative costs.

Senate Bill 516 (S-1)

Courts. The provision of the bill that would prohibit the court from discharging an attorney until a child was placed in a home or was no longer a State ward could result in increased cost to local units of government. At this time these costs cannot be determined.

The bill also would result in additional administrative costs to the State Court Administrative Office, which would be required to monitor the probate court for compliance with time periods.

Family Independence Agency. The bill appears to have no fiscal impact on the State or local governments.

Senate Bill 517 (S-3)

The fiscal impact is indeterminate. Assuming that there are no multicounty boards, the provisions of the bill would require at least an additional 68 boards. This would mean an additional 340 volunteer members on the local boards and the necessary staff support by the Foster Care Review Board. Currently there are two field representatives in the State Court Administrative Office-Foster Care Review Board (FCRB) who provide the necessary support to 19 local boards in 15 counties. The additional local boards would require additional staff support and resources by the FCRB.

Based on recommendations of the Children's Commission, local foster care review boards would

be expanding their duties. As such, the Judiciary in its FY 1997-98 budget recommendation has requested additional funds of approximately \$305,000 in order to expand the 19 boards to 33 boards. The 33 boards would provide service to all counties. The Senate has provided additional Federal funds totaling \$118,400 to the Judiciary's budget, and the House Appropriations Committee has provided \$161,000.

Fiscal Analyst: J. Walker (S.B. 513)
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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.