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CITIZEN REVIEW PANELS

House Bill 5144 (Substitute H-1)

Sponsor: Rep. Ruth Johnson

House Bill 5145 (Substitute H-1)

Sponsor: Rep. Joanne Voorhees

First Analysis (2-3-00)

Committee: Family and Children Services

THE APPARENT PROBLEM:

In order to receive federal funds for certain child welfare programs, states must comply with provisions of the federal Child Abuse Prevention and Treatment Act (CAPTA). For example, states may receive grants to improve their child protective services systems. However, the act specifies that each state receiving a grant must establish at least three citizen review panels composed of volunteer members who are representative of the community, including members with expertise in the prevention and treatment of child abuse and neglect. (A state receiving a minimum \$175,000 allotment, however, need only establish one panel.)

According to the Family Independence Agency (FIA) most of the requirements of the federal act were implemented under the provisions of Public Acts 163-172 of 1997, following recommendations put forward by the Lieutenant Governor's Children's Commission to reform Michigan's laws concerning the removal of children from abusive homes. However, there are some provisions that have not been met. For example, according to the FIA, citizen review panels *have* been established across the state. However, confidential information in the FIA's central registry, which contains reports of child abuse and neglect cases, cannot be made available to members of the panels under current law.

Additionally, errors in current laws have resulted in inefficiencies: as written, the Child Protection Law specifies that the department must notify certain entities when there are changes in a child's foster care placement. The provision doesn't apply if the department determines that the child has suffered sexual or other abuse, or is at risk of harm. However, according to the FIA, it was originally intended that the exception to the notification requirement would also apply in other circumstances. For example, notices

wouldn't have to be sent to foster parents who had requested the change.

According to the FIA, the state's child welfare laws contain other errors. For example, the Child Protection Law currently specifies that its provisions apply only to a "nonparent adult" -- a person other than a family member who has a close relationship with a child -- if the court has jurisdiction over that child. Instead, it was intended that the department would have jurisdiction over nonparent adults. The deadline for compliance with the federal act was extended once, from October 1, 1998, to January 1, 1999, and that deadline has now passed. While the federal government could have applied sanctions against state funds as a penalty for noncompliance, it has abstained from doing so and has, instead, accepted assurances that certain provisions will be implemented as soon as possible. Consequently, legislation has been proposed that would amend current law to allow the state to comply with federal requirements.

THE CONTENT OF THE BILLS:

House Bill 5144 would amend the Child Protection Law (MCL 722.622 et al.) to provide for citizen review panels with expertise in the prevention and treatment of child abuse and neglect. House Bill 5145 would amend the Probate Code (MCL 712A.1 et al.) to modify the requirements for foster care review hearings, and to include the Michigan Children's Institute as an entity that, in addition to the family division of the circuit court, could have jurisdiction over children who are placed in foster care by the FIA.

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Citizen Review Panel. Under the federal Child Abuse Prevention and Treatment Act (42 USC 5106a), grants

are provided to states to improve their child protective services systems. The act specifies that each state receiving a grant must establish at least three citizen review panels composed of volunteer members who are representative of the community, including members with expertise in the prevention and treatment of child abuse and neglect. House Bill 5144 would amend the Child Protection Law to add the following provisions regarding a citizen review panel established by the Family Independence Agency (FIA):

- A panel would have access to information maintained in the FIA's electronic central child protection registry on abuse and neglect cases, subject to the provision that a panel member or staff member could not disclose identifying information about a child protection case to an individual, partnership, corporation, association, governmental entity, or other legal entity.
- A panel member or staff member would be considered a member of a board, council, commission, or a statutorily created governmental agency granted immunity from tort liability under the provisions of Public Act 170 of 1964, the governmental immunity act.
- Information obtained by a citizen review panel would not be subject to the provisions of the Freedom of Information Act (FOIA).

Central Registry. Currently, the act prohibits the FIA from releasing confidential information from the central registry that includes a report compiled by a police agency or other law enforcement agency that relates to an investigation of suspected child abuse or neglect. House Bill 5144 would restate this provision to specify only that the release of information that included a report compiled by a police or other law enforcement agency would be prohibited.

Perpetrators of Child Abuse. Under current law, identifying information must be maintained in the central registry until the FIA receives information that the individual alleged to have perpetrated the abuse or neglect has died. House Bill 5144 would delete the term "alleged" from this provision.

Under the act, each abuse or neglect report on a child that is the subject of a field investigation must be entered into the child protective services information (CPSI) system (an internal data system within the FIA). The report must be maintained until the child is 18 years old, or for ten years after the investigation is begun, whichever is later. House Bill 5144 would add

that, if the case were classified as a central registry case, the report would have to be maintained until the department received reliable information that the perpetrator of the child abuse or neglect was dead.

Child Abuse Response Categories. Under current law, a report of an allegation of child abuse or neglect must be entered into one of five categories. Each category determines the FIA's response to the situation. The categories and responses are determined according to the FIA's "structured decision-making tool," which is the FIA document that measures the risk of future harm to a child. For example, "Category V - Services not needed," currently specifies that the FIA has determined that the allegation does not amount to child abuse or neglect, that the structured decision-making tool indicates there is no future risk of harm to the child, and that the act does not require a further response by the department. Under House Bill 5144, the responses for Category V, Category IV, and Category III would be amended to read as follows:

"Category V - services not needed. Following a field investigation, the department determines that there is no evidence of child abuse or neglect."

"Category IV - community services recommended. Following a field investigation, the department determines that there is not a preponderance of evidence of child abuse or neglect, but the structured decision-making tool indicates that there is future risk of harm to the child. The department shall assist the child's family in voluntarily participating in community-based services commensurate with the risk to the child."

"Category III - community services needed. The department determines that there is a preponderance of evidence of child abuse or neglect, and the structured decision-making tool indicates a low or moderate risk of future harm to the child. The department shall assist the child's family in receiving community-based services commensurate with the risk to the child. If the family does not voluntarily participate in services, or the family voluntarily participates in services, but does not progress toward alleviating the child's risk level, the department shall consider reclassifying the case as category II."

Report to Legislature on Category III. Under current law, the FIA must identify all the families classified in Category III during the period between October 1, 1999, and October 1, 2000, and provide a statistical report concerning these families to the appropriate

legislative standing committees, and House and Senate appropriations subcommittees for the department. House Bill 5144 would amend the code to require that the report would have be for the period October 1, 1999, to September 30, 2000, and that reports would also have to be submitted for the periods October 1, 2000 to September 30, 2001 and October 1, 2001 to September 30, 2002. In addition to current provisions, the reports would have to include information on the total number of families classified in Category III during the time period covered by each report.

Circuit Court Jurisdiction. Under the juvenile code (MCL 712A.2[b]), the family division of the circuit court has exclusive jurisdiction over a juvenile under 17 years of age who has violated certain provisions of the Penal Code. House Bill 5144 would amend the Child Protection Law to delete current language specifying that, in situations involving a “nonparent adult” who is defined under the Child Protection Law as a person of at least 18 years of age who is not a child’s parent, or a person otherwise related to the child, but who has substantial and regular contact with the child, and has a close personal relationship with the child’s parent or other person responsible for the child’s health or welfare, the court need not have jurisdiction over the juvenile. In other words, the provisions of the Child Protection Law would apply, whether or not the court had taken jurisdiction of the juvenile under the provisions of the Juvenile Code.

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Review Hearings. Currently, under the Probate Code, if a child who is under the court’s jurisdiction remains in foster care and parental rights to the child have not been terminated, the act specifies that the court must conduct a permanency planning hearing within 364 days after an original petition has been filed to review the child’s status and the progress being made toward the child’s return home, or to show why the child should not be placed in the permanent custody of the court. House Bill 5145 would restate this provision to specify that a permanency hearing would have to be conducted within one year after an original petition had been filed. However, the bill would specify that a permanency planning hearing would have to be conducted by the court within 28 days after a petition had been adjudicated and it was found that a parent had abused the child or the child’s sibling, and the abuse included one or more of the following: abandonment; criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate; battering, torture, or other severe

physical abuse; loss or serious impairment of an organ or limb; life threatening injury; murder or attempted murder; voluntary manslaughter; and aiding, abetting, attempting, conspiring, or soliciting the commission of murder or voluntary manslaughter.

The bill would also specify that, in both cases, the court would be required to conduct a permanency planning hearing within one year after an initial hearing, and within one year after each subsequent hearing, if a child remained in foster care and parental rights had not been terminated.

Termination of Parental Rights. Under the code, grounds for termination of parental rights include a finding that the parent has abused the child, or the child’s sibling, and the abuse included one or more of certain actions. The bill would extend the list of specific actions to include voluntary manslaughter, and aiding and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter. The bill would also amend the code to update references to the Estates and Protected Individuals Code, in situations where a parent had placed a child in a limited guardianship and had substantially failed to comply with the limited guardianship placement plan; or in situations where a child had a guardian and the parent failed to comply with a court-structured plan regarding the child, to the extent, in each case, that the noncompliance resulted in a disruption of the parent-child relationship. (The Estates and Protected Individuals Code [Public Act 386 of 1998], which takes effect April 1, 2000, repealed and replaced the Revised Probate Code.)

Currently, the code specifies that, except in cases where a child is in a permanent foster family agreement or is placed with a relative, if a child remains in foster care following the termination of parental rights, then the court must conduct a review hearing within 91 days after the termination to review the placement and the progress being made toward the child’s adoption or other permanent placement. House Bill 5145 would restate this provision to require that the court review the following information at the review hearing:

- The appropriateness of the permanency planning goal, and of the child’s placement in foster care.
- The reasonable efforts being made to place the child for adoption or in other permanent placement in a timely manner.

The bill would also specify that these provisions would apply only in a case in which parental rights had either been terminated as the result of a proceeding concerning certain juvenile violations of the vehicle code or a similar law of another state, or had been terminated voluntarily following the initiation of a proceeding under such a law.

Notification of Change in Foster Care Placement.

Under the Probate Code, when an abused or neglected child who is under the court's jurisdiction is placed in foster care, certain rules govern any changes regarding the placement. For example, the agency responsible for the child's care may not change the foster care placement unless the foster care provider requests or agrees to the change, or, if the provider objects, certain circumstances apply that, under the provisions of the act, allow the change to occur. Before a change in foster care placement takes effect, the agency must notify the State Court Administrative Office (SCAO) and the foster parents of the intended change. However, the code currently specifies that the agency can change a child's placement without notifying the SCAO or the foster parents if it has reasonable cause to believe that the child has suffered sexual abuse or nonaccidental physical injury, or is at risk of harm. House Bill 5145 would amend the code to specify that the agency could also change a child's placement without complying with the notification provisions in situations where the foster care provider requested or agreed to the change, or, if the provider objected, in circumstances where the court had ordered the child returned home, the change in placement was less than 30 days after the child's initial removal from home, the change was less than 90 days after the initial removal from the home and the new placement was with a relative, or the change was in accordance with other provisions of the act.

Michigan Children's Institute. The MCI was established under Public Act 220 of 1935 to provide family home care for children committed to the state's care. The bill would amend the Probate Code to include the MCI as an entity that, in addition to the family division of the circuit court, would have jurisdiction, control, or supervision over a child who had been placed in the institution. Consequently, the superintendent of the MCI would receive notification if changes in the placement of a child under its jurisdiction was considered, and would be notified if the foster care review board determines that a proposed move was not in a child's best interest. The bill would also specify that, within 14 days after receiving this notification, the MCI superintendent would be required

to make a decision regarding a child's placement and to inform each interested party of this decision.

FISCAL IMPLICATIONS:

According to the Family Independence Agency (FIA), provisions of House Bill 5145 that would permit the department to change a child's foster care placement, under certain circumstances, without having to notify certain entities would result in a savings to the department and in greater administrative efficiency. In addition, the FIA asserts that state funds would also be subject to sanctions from the federal government if certain provisions of the bills are not implemented. (2-2-00)

ARGUMENTS:

For:

According to testimony presented to the House Family and Children Services Committee by the Family Independence Agency (FIA), the federal government could impose sanctions against anticipated state grants of \$205 million unless legislation is enacted forthwith to ensure that state laws comply with certain federal laws. Some of the provisions proposed under the bills were omitted from previous amendments to the state's child abuse laws. Some are simply the result of drafting errors in Public Acts 163-172 of 1997, which reformed Michigan's laws concerning the removal of children from abusive homes. Others are required due to amendments that have been made to the federal Child Abuse Prevention and Treatment Act (CAPTA) since the enactment of Public Acts 163-172. Still others have resulted from joint discussions between the FIA and representatives from the federal government, the Michigan Children's Ombudsman, or other state agencies, or between the House committee and representatives of private child and family agencies. The following are some of the provisions that are required in order to comply with federal law:

- Under the provisions of House Bill 5144, citizen review panels -- composed of volunteer members who were representative of the community, including members with expertise in the prevention and treatment of child abuse and neglect -- would be given access to confidential information in the FIA's central registry, which identifies parents who have been named in a report as the perpetrators of child abuse or neglect. Under the bill, a member of a citizen review panel would be prohibited from disclosing identifying information about a specific child protection case to

anyone. To ensure additional confidentiality, information obtained by a panel member would be exempt from the provisions of the Freedom of Information Act (FOIA).

- Under the provisions of House Bill 5145, the family division of the circuit court would have to hold a permanency planning hearing within 28 days after a petition had been adjudicated and it was found that a parent was guilty of one the most serious instances of child abuse -- such as abandonment; criminal sexual conduct; loss of an organ or limb; murder; or manslaughter -- and every year thereafter during a child's stay in foster care.

The following provision has been proposed to correct a drafting error in the current law:

- House Bill 5144 would delete the current requirement that the court must have jurisdiction over a child in cases involving a "nonparent adult," or person other than a family member who has a close relationship with a child. (The FIA contends that this provision, as written, prevents child protective services' employees from working with nonparent adults.)

The following provision has been proposed as a result of discussions between the House committee and representatives of private child and family agencies:

- House Bill 5144 would extend the current requirement that the FIA report to the appropriate legislative committees and appropriations subcommittees information on families classified under Category III -- one of the classifications that determines the department's response to child abuse reports -- over a three-year, rather than a one-year, period, where there has been evidence of abuse or neglect.

The following provision has been proposed as a result of discussions between the House committee and representatives of the federal government:

- House Bill 5145 would clarify current provisions concerning review hearings for children in cases where parental rights had been terminated, and would include cases in which parental rights had been terminated, either by the court or voluntarily, as the result of a proceeding concerning certain juvenile violations of the vehicle code or a similar law of another state.

Response:

While the FIA maintains that the federal government could impose sanctions against anticipated state grants unless the proposed legislation is enacted as soon as

possible, some people worry that such assertions amount to undue pressure from the department, and claim that they are put forward too often by state agencies.

Concern has also been expressed over the provision in House Bill 5144 to allow the members of citizen review panels access to confidential information in the state's central registry of abusive and neglectful parents. Some fear that such information might inadvertently be leaked if revealed to panel members who live in the same community as those whose names are listed. This could have devastating consequences, especially in smaller communities, since, under the bill, information wouldn't be deleted from the registry until the accused perpetrators were dead.

It has also been pointed out that the proposed amendments to Category III -- one of five categories that determine the FIA's response to allegations of child abuse or neglect -- illustrate a weakness in current policy. For example, the amendment retains language allowing the FIA to "consider" reclassifying a case as a Category II case if the family doesn't voluntarily participate in community-based services suggested by the department. It is suggested that, since Category III cases are those in which the FIA has determined there is a "preponderance of evidence of child abuse or neglect," the FIA should, instead, be required to reclassify them when families refuse to participate.

POSITIONS:

The Family Independence Agency (FIA) supports the bills. (2-1-00)

The Children's Ombudsman supports the provisions of House Bill 5144. (2-1-00)

The Michigan Federation of Private Child and Family Agencies supports the bills. (2-2-00)

Analyst: R. Young

■ 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.