

RELEASE OF CHILD PROTECTION CASE INFORMATION

House Bill 4587 as introduced
First Analysis (10-29-03)

Sponsor: Rep. Brenda J. Clack
Committee: Family and Children
Services

THE APPARENT PROBLEM:

Sections 7c through 7i of the Child Protection Law set the ground rules by which the director of the Family Independence Agency may release certain “specified information” about child abuse and neglect from a child protective services record. (See Background Information.) The act specifies that the director may release specified information upon his or her own initiative or upon receipt of a written request. If the department receives a written request, the director has 14 days from the receipt of the request to make a preliminary determination as to *whether* the information should be released. However, the director may extend the decision-making period for an additional 14 days if he or she notifies the person filing the request. Apparently, there have been some problems with people receiving proper notice within the required time.

THE CONTENT OF THE BILL:

The bill would amend the Child Protection Law to specify that within 28 days of receiving a written request for “specified information” about child abuse and neglect, the director of the Family Independence Agency would have to notify a person who files a request of the reason for any delay in making a determination as to whether the requested information should be released, and the date by which a decision will be made.

MCL 722.627d

BACKGROUND INFORMATION:

Specified information. Under the Child Protection Law, “specified information” is defined to mean information in a central registry case record that relates specifically to referrals or reports of child abuse or neglect. It does not include personal identification information for any individual identified in a child protective services record, except that does include identification information for an

alleged perpetrator of child abuse or neglect that is identified as being a central registry case. Specified information also does not include any information in a law enforcement report related to an ongoing investigation of suspected child abuse or neglect, nor does it include any other information that is specifically designated by law as being confidential.

Public Disclosure. The release of information under sections 7c to 7i of the Child Protection Law relates to the *public disclosure* of such information. Other sections in the CPL govern the release of information to others in limited circumstances. Section 7 of the CPL provides that, unless made public as specified information, a written report, document or photograph of the FIA is a confidential record and may only be disclosed to child protection agencies, law enforcement agencies, physicians, a person named in a report or record as a perpetrator, juvenile court staff, child fatality review teams, the Office of Children’s Ombudsman, and standing or select committees of the legislature, among others.

The release of “specified information” in accordance with sections 7c to 7i of the Child Protection Law does not subject a report or record that is confidential under the act to disclosure under the Freedom of Information Act. In general, the director may release specified information (1) if the release of any specified information is in the best interest of the child to whom the information relates, or (2) the release of information does not conflict with the child’s best interest and is in the best interest of a family member or other person who resides with the child and one of the following is true: (a) it clarifies actions taken by the department, (b) the record concerns a child who has died or a member of that child’s family, (c) all or part of the report containing specified information is publicly disclosed pursuant to a judicial proceeding, (d) a complaint or investigation of child abuse or neglect to which the record containing the specified information has been

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part of the subject matter of a published broadcast media story, or (e) the record containing specified information concerns a substantiated report of sexual abuse, serious injury, or life threatening harm involving the child or a sibling identified in the request. (MCL 722.627c and 722.627d)

The director of the FIA is prohibited from releasing from any specified information if (1) the request does not include sufficient information in order to properly identify the specific case subject to the request, (2) an investigation of the report of child abuse or neglect is in progress and the report has not been substantiated nor unsubstantiated, (3) there is an ongoing criminal investigation and the release of any specified information would interfere with that investigation, (4) the individual requesting the release of specified information is incarcerated in a state, county, or federal correctional facility, or (5) the child to whom the record relates is now at least 18 years of age. In addition, the director is specifically prohibited from denying a request based on the desire to shield a lack of, or an inappropriate, performance by the department. (MCL 722.627e)

If the specified information is released, the department is required to notify (1) each individual named in the report as a perpetrator or alleged perpetrator of child abuse or neglect, (2) each parent or legal guardian of the child, (3) each attorney representing the child, a parent or legal guardian, or actual or alleged perpetrator, and (4) the child's guardian ad litem. A person that is required to be notified is permitted to appeal the decision of the director to release the specified information. (MCL 722.627g and 722.627h)

FIA policy. According to FIA policy (CFP 717-4), all requests for CPS information under sections 7c to 7i of the CPL, from whatever source and wherever received, must be in writing and be sent to the FIA's Office of Family Advocate (OFA), which will coordinate all activities in responding to the request.

If a request is received at a local office or elsewhere, it should be immediately forwarded to the OFA. If the local office is questioned about where to submit requests for information, the questioner is advised that the request should be sent to the FIA at the central office address.

Once the request is received by the OFA, it screens the request to assure its appropriateness and either denies the request or forwards it to the appropriate local FIA office. Once the request is received by the local office, it is processed and returned to the OFA

within the required time. If there are identified obstacles in releasing the requested information, the response of the local office will be determined after it consults with the OFA. Once the requested information is returned to the OFA, it is then forwarded to the office of the director with the OFA's recommendation as to whether the requested information should be released.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, there is no fiscal impact on the FIA. (HFA analysis dated 10-16-03)

ARGUMENTS:

For:

The bill would require the Family Independence Agency to notify a person who requests certain specified information about child abuse and neglect in writing within 28 days of the reasons for any delay in deciding whether to release the information and the date by which the decision will be made. Under current law, the notice for an extension does not provide the requestor with such information, and is only required to be sent after the expiration of the initial 14 day review period. It seems reasonable that the department let people requesting information know what is happening to that request in a timely manner.

Response:

It is not quite clear as to how the bill will improve the current situation. First, the statute appears to provide that if a determination on whether to release the requested information - this is not a deadline to release such information - cannot be made within an initial two-week period, the department is required to notify the person who files the request of the extension and has another two-week period in which to make a determination. The department is already required to notify the person making the request of the delay in decision making. If this requirement is being ignored or is incomplete, shouldn't that be addressed more directly, rather than adding another notification requirement? Also, the act appears to require the decision as to whether or not to release the requested information to be made no later than 28 days after the request, so why allow the department 28 days to explain the nature of the delay? Shouldn't such notification be made earlier?

POSITIONS:

The Family Independence Agency has no position on the bill. (10-23-03)

Analyst: M. Wolf

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