

Legislative Analysis



GUARDIAN AD LITEM, FOSTER CARE REVIEW HEARINGS, AND PERMANENCY PLANNING HEARINGS

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House Bill 6310

Sponsor: Rep. Jim Howell

Committee: Judiciary

Complete to 11-8-04

A SUMMARY OF HOUSE BILL 6310 AS INTRODUCED 11-4-04

The bill would amend the Juvenile Code to require a lawyer-guardian ad litem to review an "agency case file" before a hearing for termination of parental rights; specify the instances in which a lawyer-guardian ad litem would have to meet with and observe a child; revise the time frame for a foster care review board to investigate a change in foster care placement after the foster care parents appealed the change; double the time between foster care review hearings held after the initial hearing following termination of parental rights; require the family court to conduct a permanency planning hearing within 12 months after a child was removed from his or her home, and once every 12 months after that; and revise the time frame for the family court to hold a permanency planning hearing in abuse cases

Lawyer-guardian ad litem. The code defines "lawyer-guardian ad litem" as an attorney appointed under Section 17c, which requires the family court to appoint a lawyer-guardian ad litem to represent a child in a case involving neglect or abandonment, or in a divorce action in which the circuit court has waived jurisdiction to the family court. The code provides that a lawyer-guardian ad litem's duty is to the child, not the court, and specifies the powers and duties of a lawyer-guardian ad litem. These provisions also apply to a lawyer-guardian ad litem appointed for a child under the Estates and Protected Individuals Code, the Child Custody Act, or the Child Protection Law.

Among his or her responsibilities, a lawyer-guardian ad litem has the power and duty to determine the facts of the case by conducting an independent investigation, including interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information.

House Bill 6310 specifies that the "agency case file" would have to be reviewed before disposition and before a hearing for termination of parental rights. Updated materials would have to be reviewed as provided to the court and parties. At least five business days before the scheduled hearing, the supervising agency would have to provide documentation of progress relating to all aspects of the last court-ordered treatment plan, including copies of evaluations and therapy reports and verification of parenting time. ("Agency case file" would mean the current file from the agency providing direct services to the child, which could include the child protective services file, if the child had not

been removed from the home, or the Family Independence Agency or contract agency foster care file.)

In addition, before each proceeding or hearing, a lawyer-guardian ad litem presently has the powers and duty to meet with and observe the child, assess the child's needs and wishes with regard to the representation and the issues in the case, review the agency case file, and, consistent with the rules of professional responsibility, consult with the child's parents, foster care providers, guardians, and caseworkers. The bill specifies instead that a lawyer-guardian ad litem would have the power and duty to meet with and observe the child and assess his or her needs and wishes with regard to the representation and the issues in the case in the following instances:

- Before the pretrial hearing.
- Before the initial disposition, if held more than 91 days after the petition had been authorized.
- Before a dispositional review hearing.
- Before a permanency planning hearing.
- Before a posttermination review hearing.
- At least once during the pendency of a supplemental petition.
- At other times as ordered by the court. Adjourned or continued hearings would not require additional visits unless directed by the court.

The bill also specifies that the court could allow alternative means of contact with the child, if good cause were shown on the record. Further, the code includes in the duties and powers of a lawyer-guardian ad litem to identify common interests among the parties and, to the extent possible, promote a cooperative resolution of the matter. The bill would include that the guardian ad-litem could also consult with the child's parent, foster care provider, guardian, and caseworker.

Foster care review board. Under the code, before a change in foster care placement takes effect, the foster parents may appeal the change within three days to the foster care review board with jurisdiction over the child. The foster care review board then must investigate the change in placement and report its findings and recommendations within three days to the court or the superintendent of the Michigan Children's Institute, the foster care parents, the parents, and the agency. Under the bill, the foster care review board would have to investigate the change in placement within seven days and report its findings and recommendations within three days.

Foster care review hearing. Currently, when a child is under the jurisdiction of the family court in a proceeding under Section 2(b) of the code (a case involving neglect or abandonment), and the child is placed and remains in foster care (other than in a permanent foster family agreement or a permanent placement with a relative), a review hearing must be held within 91 days after the order of disposition is entered and every 91 days after that as long as the child is subject to the jurisdiction, control, and supervision of the family court or of the Michigan Children's Institute or other agency. Under the

bill, the family court would have to hold a review hearing within 91 days after the child was removed from his or her home and every 91 days after that.

(Section 2(b) of the Juvenile Code provides that the family court has jurisdiction in proceedings concerning a juvenile under 18 years old who has been neglected or abandoned by his or her parents or guardians, whose home or environment is an unfit place for the juvenile to live, or whose parent has substantially failed, without good cause, to comply with either a limited guardianship placement plan or a court-structured guardianship plan under the Estates and Protected Individuals Code.)

Permanency planning hearings. Under the code, except in certain abuse cases, if a child remains in foster care and parental rights to the child have not been terminated, the family court must conduct a permanency planning hearing within one year after an original petition is filed. Under the bill, the family court would have to hold the permanency planning hearing 12 months after the child was removed from his or her home. As currently required, subsequent permanency planning hearings would have to be held at least every 12 months during the continuation of foster care. The bill also specifies that a permanency planning hearing could not be canceled or delayed even if a petition for permanent custody were pending.

In addition, the code requires the family court to conduct a permanency planning hearing within 28 days after a petition is adjudicated and the parent is found to have abused the child or his or her sibling and the abuse included one or more of the following:

- Abandonment of a young child.
- 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.
- Aiding, abetting, attempting, conspiring, or soliciting murder or voluntary manslaughter.

The bill would require the family court to conduct a permanency planning hearing within 30 days, instead of 28, under those circumstances.

Termination of parental rights. Under the code, if a child remains in foster care following the termination of parental rights (other than in a permanent foster family agreement or a permanent placement with a relative), the family division of circuit court (family court) must conduct a hearing within 91 days after the termination of parental rights and at least every 91 days after that hearing. Under the bill, the family court still would have to conduct the first hearing within 91 days after termination, but would have to hold subsequent hearings at least every 182 days after the first hearing (increased from 91 days).

In addition, the bill would require the family court to conduct the first permanency planning hearing within 12 months after the date the child originally was removed from his or her home. The court would have to hold subsequent permanency planning hearings within 12 months after the preceding hearing.

MCL 712A.13a, et al.

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on the judiciary, depending on the bill's affect on the number of court hearings.

The bill would have an indeterminate impact on the state; to the extent it increased the number of hearings held per case, it could increase foster care caseload costs for the Family Independence Agency.

The bill's provisions are also related to recent federal reviews of the state's foster care system. A recent federal Child and Family Services review resulted in a penalty of roughly \$2.5 million, while the state's initial primary Title IV-E Eligibility Review revealed disallowed costs of roughly \$283,000 for errors related to foster care and permanency planning hearings. The FIA has implemented a Performance Improvement Plan to address findings within the reviews. A follow-up Title IV-E review will be conducted, with further disallowances possible if the State is found to be in non-compliance at that time.

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■ 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.