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BILL ANALYSIS

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Senate Bills 668, 669, 670, 671, and 672 (as enacted)

**PUBLIC ACTS 199-203 of 2008**

Sponsor: Senator Bill Hardiman (S.B. 668)  
Senator Mark C. Jansen (S.B. 669 & 672)  
Senator Gilda Z. Jacobs (S.B. 670)  
Senator Roger Kahn, M.D. (S.B. 671)

Senate Committee: Families and Human Services  
House Committee: Families and Children's Services

Date Completed: 7-13-09

**CONTENT**

The bills amended the juvenile code to revise provisions concerning the placement of children in foster care.

-- Permits the court to appoint a guardian for a child as an alternative placement plan, if termination of parental rights is not initiated.

**Senate Bill 668** does the following:

- Permits a judge to suspend parenting time if a petition to terminate parental rights is filed, rather than requiring the automatic suspension of parenting time.
- Requires the family court, before ordering the termination of parental rights, to determine that termination is in the child's best interests.

**Senate Bill 670** requires a child placing agency to notify the court and the guardian ad litem for a child before a change in the child's placement takes effect.

**Senate Bill 671** permits efforts to finalize an alternate permanency plan for a child, or efforts to place a child for adoption or with a legal guardian, to be made concurrently with efforts to reunify the child with his or her family.

**Senate Bill 669** does the following:

- Requires the family court, at a permanency planning hearing for a child, to obtain the child's views regarding the permanency plan and, if the child is not returned home, to consider in-State and out-of-State placement options.
- Permits, rather than requires, the court to order the termination of parental rights if it determines that a child should not be returned to his or her parents.
- Requires the court to order the termination of parental rights if a child has been in foster care for 15 of the most recent 22 months, except under certain circumstances.

**Senate Bill 672** allows the court to appoint a guardian for a child who remains in placement after parental rights have been terminated.

The bills took effect on July 11, 2008, and are described in detail below.

**Senate Bill 668**

Previously, if a petition to terminate parental rights to a child was filed in the Family Division of Circuit Court (family court), parenting time for a parent subject to the petition was automatically suspended at least until a decision was issued on the petition. If the parent established that parenting time would not harm the child, the

court could order parenting time in the amount and under conditions that the court determined appropriate.

The bill removed those provisions, instead allowing the court to suspend parenting time for a parent who is the subject of a petition to terminate parental rights.

Previously, if the court found that there were grounds for termination of parental rights, it had to order termination of those rights and order that additional efforts for reunification of the child with the parent not be made, unless the court found that termination of parental rights clearly was not in the child's best interests.

The bill, instead, requires the court to order termination of parental rights and order that additional efforts for reunification not be made if it finds that there are grounds for termination of parental rights and that termination is in the child's best interests.

### **Senate Bill 669**

Under the juvenile code, 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 for the child within 12 months after the child is removed from his or her home, to review the status of the child 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.

The bill requires the court, at the permanency planning hearing, to obtain the child's views regarding the permanency plan in an age-appropriate manner. If the child will not be returned home, the court must consider in-State and out-of-State placement options. If the child is placed out-of-State, the court must determine whether that placement continues to be appropriate and in the child's best interests.

The bill also requires the court to ensure that the child placing agency is providing appropriate services to assist a child who will move from foster care to independent living.

Previously, if the court determined at a permanency planning hearing that a child should not be returned to his or her parent,

it was required to order the agency to initiate proceedings to terminate parental rights within 42 days after the hearing, unless the court found that initiating the termination of parental rights clearly was not in the child's best interests.

The bill, instead, permits the court to order the agency to initiate termination proceedings if the court determines at a permanency planning hearing that a child should not be returned to his or her parent.

Under the bill, if a child has been in foster care under the responsibility of the State for 15 of the most recent 22 months, the court must order the child placing agency to initiate proceedings to terminate parental rights, unless any of the following apply:

- The child is being cared for by relatives.
- The State has not provided the child's family, consistent with the time period in the State case service plan, with the services considered necessary for the child's safe return to his or her home, if reasonable efforts are required.
- The case service plan documents a compelling reason for determining that filing a petition to terminate parental rights is not in the best interests of the child.

Compelling reasons for not filing a petition to terminate parental rights include all of the following:

- Adoption is not the appropriate permanency goal for the child.
- No grounds to file a petition to terminate parental rights exist.
- There are international legal obligations or compelling foreign policy reasons that preclude terminating parental rights.
- The child is an unaccompanied refugee minor as defined in 45 CFR 400.11.

(Under 45 CFR 400.11, the Federal Office of Refugee Resettlement may make grants to states for certain purposes, including foster care maintenance under Title IV-E of the Social Security Act, and assistance and services to an unaccompanied minor, i.e., a refugee child who is unaccompanied by a parent or other close adult relative.)

The juvenile code requires the court to order one or more alternative placement plans if the agency demonstrates that initiating

termination of parental rights is not in the child's best interests. Under the bill, the court also must order an alternative placement if it does not order the agency to initiate termination of parental rights.

The code provides for the following alternative placements:

- The child's placement in foster care must continue for a limited time as stated by the court, if it determines that other permanent placement is not possible.
- The child's placement in foster care may continue on a long-term basis, if the court determines that this is in the child's best interests based upon compelling reasons.

Under the bill, the alternative placement plans also may include the appointment of a guardian for the child, if the court determines that it is in the child's best interests. The guardianship may continue until the child is emancipated. A guardian appointed under this provision has all the powers and duties described under the Section 15 of the Estates and Protected Individuals Code (MCL 700.5215). (That section provides that a minor's guardian has the powers and responsibilities of a parent who is not deprived of custody of the parent's minor and unemancipated child, except a guardian is not legally obligated to provide for the ward from the guardian's own money, and is not liable to third persons for the ward's acts.)

If a child is placed in a guardian's or a proposed guardian's home under the bill, the court must order the Department of Human Services (DHS) to do all of the following:

- Perform an investigation and file a written report of that investigation for a review of the guardianship.
- Perform a criminal record check and central registry clearance within seven days.

The court also must order the DHS to perform a home study and file a copy of the study with the court within 30 days, unless a home study has been performed within the preceding 365 days under Section 13A(9) of the code. In that case, a copy of the home study must be submitted to the court. (Section 13A(9) requires the DHS to order a

home study to be performed before a child is placed in a relative's home.)

Under the bill, the court's jurisdiction over a juvenile under Section 2(b) of the Code must be terminated after the court appoints a guardian as described above and conducts a review hearing under Section 19, unless the child is released sooner by the court. (Section 2(b) pertains to children who are abused, neglected, or abandoned.)

(Section 19 requires the court to conduct a periodic review hearing for each child under its jurisdiction, to determine whether the parent, guardian, custodian, or nonparent adult has complied with the service plan, and to determine the likely harm to the child if he or she continues to be separated from his or her parent, guardian, or custodian, as well as the likely harm if the child is returned to the parent, guardian, or custodian.)

The court's jurisdiction over a guardianship created under the bill must continue until released by court order. The court must review a guardianship annually and may conduct additional reviews as it considers necessary. The court may order the DHS or a court employee to conduct an investigation and file a written report of the investigation.

The bill permits the court, on its own motion or upon petition from the DHS or the child's guardian ad litem, to hold a hearing to determine whether a guardianship appointed under the bill must be revoked. Also, a guardian may petition the court for permission to terminate the guardianship. A petition may include a request for appointment of a successor guardian.

After notice and hearing on a petition for revocation or permission to terminate the guardianship, if the court finds by a preponderance of evidence that continuation of the guardianship is not in the child's best interests, the court must revoke or terminate the guardianship and appoint a successor guardian, or restore temporary legal custody to the DHS.

### **Senate Bill 670**

Under the juvenile code, if a child is in foster care, a child placing agency may change the child's placement only under certain circumstances. As a rule, before a change in

placement takes effect, the agency must notify the State Court Administrative Office (SCAO) of the proposed change, and notify the foster parents of the intended change in placement and inform them that, if they disagree with the decision, they may appeal within three days to a foster care review board.

The bill also requires the child placing agency to notify the court with jurisdiction over the child and the child's guardian ad litem of the change in placement. The bill specifies that the notice does not affect the Department's placement discretion. The notice must include all the following information:

- The reason for the change in placement.
- The number of times the child's placement has been changed.
- Whether or not the child will be required to change schools.
- Whether or not the change will separate or reunite siblings or affect sibling visitation.

The bill permits any of the required notices to be given by ordinary mail or by electronic means as agreed by the DHS and the SCAO.

### **Senate Bill 671**

The juvenile code requires the court to hold periodic review hearings for a child under the court's jurisdiction. Among other things, the court must determine the extent of progress toward mitigating the conditions that caused the child to be placed or to remain in foster care, and determine the continuing necessity and appropriateness of the child's placement.

The bill specifies that reasonable efforts to finalize an alternate permanency plan may be made concurrently with reasonable efforts to reunify the child with the family, and that reasonable efforts to place a child for adoption or with a legal guardian, including identifying appropriate in-State or out-of-State options, may be made concurrently with reasonable efforts to reunite the child and family.

### **Senate Bill 672**

The bill permits the family court to appoint a guardian for a child who remains in placement following the termination of

parental rights to the child, if the court determines that such an appointment is in the best interests of the child. The court may not appoint a guardian without the written consent of the Michigan Children's Institute (MCI) superintendent. The MCI superintendent must consult with the child's lawyer guardian ad litem when considering whether to grant consent.

If a person believes that a decision to withhold consent was arbitrary or capricious, the person may file a motion with the court. The motion must contain information about the specific steps the person took to obtain the required consent, and the results, if any, as well as the person's specific reasons for believing that the decision to withhold consent was arbitrary or capricious.

The court must set a hearing date and notify the MCI superintendent, the foster parents, the prospective guardian, the child, and the child's lawyer guardian ad litem. If the court finds by clear and convincing evidence that the decision to withhold consent was arbitrary or capricious, the court may approve the guardianship without the consent of the MCI superintendent.

A guardian appointed under these provisions has all the powers and duties set forth under Section 15 of the Estates and Protected Individuals Code.

If a child is placed in a guardian's or a proposed guardian's home under the bill, the court must order the Department of Human Services to do all of the following:

- Perform an investigation and file a written report of that investigation for a required annual review of the guardianship.
- Perform a criminal record check and central registry clearance within seven days.

The court also must order the DHS to perform a home study and file a copy of the study with the court within 30 days, unless a home study has been performed within the preceding 365 days under Section 13A(9). In that case, a copy of the home study must be submitted to the court.

Under the bill, the court's jurisdiction over a juvenile under Section 2(b) of the code and the MCI's jurisdiction under Section 3 of

Public Act 220 of 1935 must be terminated after the court appoints a guardian as described above and conducts a review hearing under Section 19, unless the child is released sooner by the court. (Public Act 220 of 1935 governs the Michigan Children's Institute. Under Section 3, if the DHS has provided for the support and education of a child under 17, the DHS may commit the child to the MCI.)

The court's jurisdiction must continue until released by court order. The court must review a guardianship over a guardianship created under the bill annually and may conduct additional reviews as it considers necessary. The court may order the DHS or a court employee to conduct an investigation and file a written report of the investigation.

The bill permits the court, on its own motion or upon petition from the DHS or the child's lawyer guardian ad litem, to hold a hearing to determine whether a guardianship appointed under the bill must be revoked. A guardian also may petition the court for permission to terminate the guardianship. A petition may include a request for appointment of a successor guardian.

After notice and hearing on a petition for revocation or permission to terminate the guardianship, if the court finds by a preponderance of evidence that continuation of the guardianship is not in the child's best interests, the court must revoke or terminate the guardianship and appoint a successor guardian or commit the child to the MCI.

MCL 712A.19b (S.B. 668)  
712A.19a (S.B. 669)  
712A.13b (S.B. 670)  
712A.19 (S.B. 671)  
712A.19c (S.B. 672)

Legislative Analyst: Curtis Walker

## **FISCAL IMPACT**

### **Senate Bills 668, 669, and 671**

The bills address court procedure and will have no fiscal impact on the judiciary. A provision in Senate Bill 669 for criminal record checks will require the DHS to pay the Department of State Police \$70 per nationwide criminal record check. At this

time, the caseload assumption for the guardianship program cannot be determined.

### **Senate Bill 670**

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

### **Senate Bill 672**

The bill may require the DHS to spend additional funds for criminal record checks, which will require a \$70 payment per record check, as well as contractual services, supplies, and materials, but otherwise will not have a fiscal impact on the Department.

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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.