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BILL ANALYSIS

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Senate Bills 668 through 672 (as introduced 8-1-07)

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)

Committee: Families and Human Services

Date Completed: 9-11-07

### **CONTENT**

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

#### **Senate Bill 668** would do the following:

- Permit a judge to suspend parenting time if a petition to terminate parental rights were filed, and delete provisions for the automatic suspension of parenting time.
- Require the family court, before ordering the termination of parental rights, to determine that termination would be in accordance with a court-approved permanency plan for the child and that termination was in the child's best interests.

#### **Senate Bill 669** would do the following:

- Require the family court, at a permanency planning hearing for a child, to consult with the child regarding the permanency plan.
- Permit, rather than require, the court to order the termination of parental rights if it determined that a child should not be returned to his or her parents.
- Require the court to order the termination of parental rights if a child had been in foster care for 15 of the most recent 22 months, except under certain circumstances.
- Permit the court to appoint a guardian for a child as an alternative placement plan, if termination of parental rights were not initiated.

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

**Senate Bill 671** would permit efforts to finalize an alternate permanency plan for a child to be made concurrently with efforts to reunify the child with his or her family.

**Senate Bill 672** would permit the court to appoint a guardian for a child who remained in placement after parental rights had been terminated.

Senate Bills 669 and 672 are tie-barred to Senate Bill 671. The bills are described in detail below.

#### **Senate Bill 668**

Under the juvenile code, if a petition to terminate parental rights to a child is filed in the Family Division of Circuit Court (family court), parenting time for a parent subject to the petition is automatically suspended at least until a decision is issued on the termination petition. If the parent establishes that parenting time will not harm the child, the court may order parenting time in the amount and under conditions that the court determines appropriate.

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

Currently, if the court finds that there are grounds for termination of parental rights, it must order termination of those rights and order that additional efforts for reunification of the child with the parent not be made, unless the court finds that termination of parental rights clearly is not in the child's best interests.

Under the bill, the court would have to order termination of parental rights, and order that additional efforts for reunification not be made, if it found the following:

- There were grounds for termination of parental rights.
- Termination of parental rights was in the child's best interests.
- Termination of parental rights was in accordance with a court-approved permanency plan.

### **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. The hearing must be conducted 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 would require the court, at the permanency planning hearing, to consult with the child in an age-appropriate manner regarding the child's permanency plan.

The code also requires the court, if it determines at a permanency planning hearing that a child should not be returned to his or her parent, to order the termination of parental rights within 42 days after the hearing, unless the court finds that initiating the termination of parental rights clearly is not in the child's best interests. The bill would permit, rather than require, the court to terminate parental rights, and would remove the time limit.

Under the bill, if the child had been in foster care under the responsibility of the State for 15 of the most recent 22 months, the court would have to order the child placing agency

to initiate proceedings to terminate parental rights, unless any of the following applied:

- The child was being cared for by relatives.
- The State had 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 were required.
- The case service plan documented a compelling reason for determining that filing a petition to terminate parental rights would not be in the best interests of the child.

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

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

(45 CFR 400.11 authorizes the Federal Office of Refugee Resettlement to 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 bill would require the court to order one or more alternative placement plans if the agency demonstrated that initiating termination of parental rights was not in the child's best interests, or if the court did not order the agency to initiate termination of parental rights. Currently, the court must order either of the following alternative placement plans if the agency demonstrates that initiating termination is not in the child's best interests:

- 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 would include the appointment of a guardian for the child, if the court determined that this was in the child's best interests. The guardianship could continue until the child was emancipated.

A guardian appointed under that provision would have 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.)

The court would have to review a guardianship for a child within 365 days after the guardian was appointed, and could review a guardianship any time the court considered necessary. For a review, the court could order the Department of Human Services (DHS) or a court employee or agent to conduct an investigation and file a written report of the investigation.

### **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 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 would require 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 would not affect the DHS's placement discretion. The notice would have to include all the following information:

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

The bill would permit any of the required notices to be given by ordinary mail or by electronic means as agreed by the DHS and the court with jurisdiction over the child.

### **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 could be made concurrently with reasonable efforts to reunify the child with the family.

### **Senate Bill 672**

The bill would permit the court to appoint a guardian for a child who remained in placement following the termination of parental rights to the child, if the court determined that such an appointment was in the best interests of the child. The court could not appoint a guardian without the written consent of the Michigan Children's Institute (MCI) superintendent.

If a person believed that a decision to withhold consent was arbitrary or capricious, the person could file a motion with the court. The motion would have to contain the specific steps the person took to obtain the required consent, and the results, if any, as well as the specific reasons for believing that the decision to withhold consent was arbitrary or capricious.

The court would have to set a hearing date and notify the MCI superintendent, the foster parents, the prospective guardian, the child, and each interested party. If the court found by clear and convincing evidence that the decision to withhold

consent was arbitrary or capricious, the court could approve the guardianship without the consent of the MCI superintendent.

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

The court would have to review a guardianship within 365 days after the guardian was appointed, and could review a guardianship at any time the court considered necessary. In addition, the court could order the DHS or a court employee or agent to conduct an investigation and file a written report of the investigation for a review.

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, & 671**

The bills address court procedure and would have no fiscal impact on the judiciary.

#### **Senate Bill 670**

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

#### **Senate Bill 672**

The bill could require the Department of Human Services to spend additional funds for contractual services, supplies, and materials but otherwise would not have a fiscal impact on the Department.

Fiscal Analyst: Constance Cole  
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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.