



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 257 (Substitute S-2 as passed by the Senate)
Senate Bill 258 (Substitute S-2 as passed by the Senate)
Senate Bill 259 (as passed by the Senate)
Senate Bill 260 (Substitute S-1 as passed by the Senate)
Senate Bill 261 (Substitute S-1 as passed by the Senate)

Sponsor: Senator Mark C. Jansen (S.B. 257)
Senator Bill Hardiman (S.B. 258)
Senator Randy Richardville (S.B. 259)
Senator Roger Kahn, M.D. (S.B. 260)
Senator Alan L. Cropsey (S.B. 261)

Committee: Families and Human Services

Date Completed: 4-9-09

RATIONALE

Over the past few years, several children have died while in the foster care system or the subject of an investigation by the Office of Child Protective Services (CPS) in the Department of Human Services. The deaths have raised concerns about the lack of adequate protections for those children. In one instance that drew a lot of media attention, Ariana Swinson was killed by her parents in 2000 at the age of two. She had been allowed to remain with her parents despite repeated calls to Macomb County CPS and allegations by family members and others that the child was being abused. An investigation into the causes of Arianna's death led to statutory changes as well as policy revisions within the Department of Human Services (DHS) designed to prevent the recurrence of such incidents, but several more recent deaths suggest that those efforts were insufficient.

In another high-profile case, in which CPS in Jackson and Ingham Counties had been contacted at various times, Ricky Holland was adopted by his foster parents and, in 2005, killed at the age of seven by his adoptive mother. In the Nicholas Braman case, CPS in Montcalm and Saginaw Counties had received complaints of abuse by Nicholas's father, who subsequently was convicted of abusing Nicholas's older brothers. Nevertheless, Nicholas remained

in the custody of his father, who killed Nicholas, his stepmother, and himself, in 2007.

To some, these cases suggest a pattern of failure to follow existing procedures or a lack of adequate systemic safeguards within the DHS. The Office of Children's Ombudsman reported that it investigated the deaths of 29 children in fiscal year 2006-07 (the last year for which an annual report is available). In many of those cases, it was found that the DHS lacked the proper procedures or that there was a failure to follow existing statutory requirements or internal procedures. In 2008, legislation was enacted to enhance abuse and neglect reporting requirements, and ensure compliance by CPS workers with State laws and DHS policies. These incidents also have led some to suggest the need for systemic changes in the procedures for responding to the death of a child.

CONTENT

Senate Bill 257 (S-2) would amend the Child Protection Law (CPL) to require the Department of Human Services to establish and maintain a publicly accessible registry of statistical information regarding children's deaths.

Senate Bill 258 (S-2) would amend the CPL to require the DHS, if a child died while under the court's jurisdiction in a suspected child abuse or neglect case, to notify the court with jurisdiction over the child, the State legislators representing the district in which the court was located, and the Children's Ombudsman. The bill also would require the DHS to notify the Ombudsman within one business day when a child died during an active Child Protective Services investigation or an open CPS case, if there had been previous complaints about the child's caretaker, or if the death could have resulted from child abuse or neglect.

Senate Bill 259 (S-1) would create the "Legislative Child Fatality Review Act" to establish the Office of the Legislative Child Fatality Examiner for the purpose of identifying specific causes and systemic problems that contribute to the deaths of children in foster care.

Senate Bill 260 (S-1) would amend the CPL to make certain information available to a court that had jurisdiction over a child in a suspected child abuse or neglect case, in the event of the child's death.

Senate Bill 261 (S-1) would amend the CPL to do the following:

- Require a child fatality review team and the advisory committee created under the Law to include a representative of a State or local court.
- Require the citizen review panel to review each child fatality involving allegations of abuse or neglect for each child who, at the time of death or within the prior year, was under the family court's jurisdiction in an abuse or neglect case.
- Require the advisory committee to transmit its annual report of child fatalities to the DHS, and publish the report between 60 and 90 days after transmitting it to the DHS.

Senate Bill 259 (S-1) is tie-barred to Senate Bill 257. All of the bills are described in detail below.

Senate Bill 257 (S-2)

Under the bill, the DHS would have to establish and maintain a registry of statistical information regarding children's deaths that was accessible to the public.

The registry could not disclose any identifying information regarding a child or adult involved in the investigation or incident and could only include statistical information covering all of the following:

- The number of children who died while in foster care.
- The number of children who died while under court jurisdiction for child abuse or neglect.
- The number of children who died after having involvement with CPS.
- The total number of children who died under the above conditions in the preceding year.
- A narrative of the manner and cause of death.
- The number and type of child abuse or neglect complaints against parents before the child's death and, if there were more than one complaint in the two years preceding the child's death, the CPS category given to each investigated complaint.

The narrative included in the registry could not disclose or contain any confidential information.

The proposed registry would have to be separate from the central registry of reports of alleged child abuse or neglect created under the Law.

Senate Bill 258 (S-2)

Under the bill, if a child who was under the family court's jurisdiction under Section 2(b) of the juvenile code died, the DHS would have to give written notice within one business day to the court that had jurisdiction over the child at the time of his or her death, the State Senator and State Representative representing the district in which the court was located, and the Children's Ombudsman. (Section 2(b) of the juvenile code grants the family division of circuit court custody of a child in cases of suspected child abuse or neglect. Please see **BACKGROUND** for a more detailed description of that section.)

In addition, the DHS would have to notify the Ombudsman within one business day when a child died and any of the following applied:

- The child died during an active CPS investigation or an open CPS case.
- The DHS had received a prior CPS complaint concerning the child's caretaker.
- The death could have resulted from child abuse or neglect.

Senate Bill 259 (S-1)

The bill would create the Office of the Legislative Child Fatality Examiner within the Legislative Council.

At the request of both the Senate Majority Leader and the Speaker of the House of Representatives, the Legislative Council would have to contract for the services of a child fatality examiner to carry out the provisions of the proposed Legislative Child Fatality Review Act, or appoint a designee to serve as the child fatality examiner, who would serve at the pleasure of the Legislative Council.

The principal purpose of the examiner would be to identify specific causes and systemic problems that contribute to the mortality of children in foster care.

The office of the examiner would have to request, and the examiner would have to review, the reports published by the Children's Ombudsman and the State advisory committee, information from the public registry, and any other source of information on the death of a child while he or she was under a Michigan court's jurisdiction. Upon completing the review, the examiner would have to report to the standing committees of the Legislature with jurisdiction over matters pertaining to child protection. (As described under Senate Bill 261 (S-1), the CPL provides for a State advisory committee to recommend policy and statutory changes regarding child fatalities. As described above, Senate Bill 257 (S-2) would require the DHS to maintain a public registry of child deaths.)

Senate Bill 260 (S-1)

A written report, document, or photograph filed with the DHS under the CPL is a confidential record available only to certain government agencies, law enforcement officials, and other specified entities, including a court that determines the information is necessary to decide an issue before the court.

The bill also would make the information available to a court that had jurisdiction over a child under Section 2(b) of the juvenile code, in the event of the child's death.

Senate Bill 261 (S-1)

The CPL requires each county to have a standing child fatality review team, although two or more counties may appoint a single review team for those counties.

The Law also requires the DHS to establish a multi-agency, multidisciplinary advisory committee to identify and make recommendations on policy and statutory changes pertaining to child fatalities and to guide statewide prevention, education, and training efforts.

The bill would require a review team and the advisory committee to include a representative of the local court.

The CPL requires the advisory committee to publish an annual report on child fatalities, using an annual compilation of child fatalities reported by the State Registrar under the Public Health Code and data received from the child fatality review teams. The report must include information specified in the Law, and the DHS must transmit it to the Governor and the legislative committees with jurisdiction over child protection matters. The bill would require the advisory committee to transmit the report to the DHS, and publish the report not less than 60 or more than 90 days after transmitting it to the DHS.

In addition, the bill would require the citizen review panel to review each child fatality involving allegations of child abuse or neglect for each child who, at the time of death or within the preceding 12 months, was under the jurisdiction of the family court in an abuse or neglect case.

(The CPL defines "citizen review panel" (CRP) as a panel established as required by the Federal Child Abuse Prevention and Treatment Act. Pursuant to Federal law, Michigan has a Child Death CRP, a Prevention CRP, and a Child Protective Services, Foster Care, and Adoption CRP.)

MCL 722.627b (S.B. 257)
Proposed MCL 722.627k (S.B. 258)
MCL 72.627 (S.B. 260)
722.627b (S.B. 261)

BACKGROUND

Section 2(b) of the juvenile code grants the family division of circuit court jurisdiction in proceedings involving a juvenile under the age of 18 whose parent or legal guardian neglects to provide proper or necessary support, education, medical, surgical or other necessary care; who is subject to a substantial risk of harm to his or her mental well-being; who is abandoned by his or her parents or guardian; or who is without proper custody or guardianship. The court also has jurisdiction over a juvenile whose home or environment is an unfit place to live in because of a parent's or guardian's neglect, cruelty, drunkenness, criminality, or depravity; or whose parent has substantially failed, without good cause, to comply with a limited guardianship plan or a court structured plan.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills would revise the procedures for investigating the death of a child, which could improve communication, add accountability, and enable public officials to identify systemic problems that may be contributing factors in those deaths. When a child is under the jurisdiction of the family court in a suspected child abuse or neglect case, the State has an obligation to act in the child's best interest and protect him or her from harm, and the death of a child represents a failure of the State to meet that obligation. For those reasons, it is necessary to implement additional measures to determine the causes of such deaths.

One persistent problem has been that, because many different governmental agencies must report or respond to the death of a child, the data and circumstances surrounding the death often are spread across multiple offices. The data collected by those different agencies are not widely available to all and may be inconsistent, because the respective entities might use differing methodologies or have access to varying sets of information. To help resolve those issues, Senate Bill 257 (S-2) would require the DHS to create a publicly accessible database of information on children's deaths, where information could be aggregated. The child fatality review teams, the Children's Ombudsman, the Office of the Family Advocate, and others could contribute to and make use of the registry, helping to improve coordination between those offices. The availability of one central registry could help to break down institutional barriers between the different agencies involved, reducing the tendency for "stovepiping", or the isolation of information within the various entities.

The information in the registry also would be available to the public, enabling those with an interest in child safety to conduct research and identify trends, warning signs, or ways that the system could be improved to prevent future deaths. In the past, there have been complaints that it has been difficult for the public to obtain information regarding the deaths of children in high-profile cases. The bill would help to alleviate those complaints, while protecting the privacy of children by prohibiting the registry from disclosing any personally identifiable information.

Supporting Argument

A number of deaths of children have received significant media attention over the past several years. In those cases, some legislators reportedly have been surprised by media questions about deaths in their districts because they had not been made aware of those incidents by the DHS. In a matter as serious as the death of a child, the DHS should notify the State Senator and Representative representing the district where the death occurred. Senate Bill 258 (S-2) would require the DHS to do that, and also would require the DHS to notify the court with jurisdiction over the child and the Children's Ombudsman, to facilitate investigations into the death.

Response: There is no need to place those requirements into statute; the required notifications could be implemented through policy changes within the DHS. Although the DHS would be willing to notify legislators in the event of a death, the Department could provide only the most general information. The DHS could not disclose any details of the case, to protect the privacy of the child.

Supporting Argument

Senate Bill 260 (S-1) would make information available to a court that had jurisdiction over a child in a suspected child abuse or neglect case, in the event of the child's death. Current law permits the court to obtain information regarding a child if a case involving the child is before the court. Upon the death of the child, the case is no longer before the court, which means that the court does not have authority to obtain information to determine what happened, despite having an interest in the matter. The bill would address this situation.

Supporting Argument

Child fatality review teams include representatives from a number of fields with an interest in protecting the interests of children, but the courts lack any representation on review teams. Similarly, the advisory committee created under the CPL to make recommendations regarding potential policy and statutory changes pertaining to child fatalities lacks a court representative. Senate Bill 261 (S-1) would add a representative of a State or local court to the child fatality review teams and the advisory committee, bringing a judicial perspective to those bodies. The courts have an interest in protecting the welfare of children, particularly in cases in which a child is under the jurisdiction of the family court due to suspected abuse or neglect. A representative of the court could offer insight into the judicial process and the handling of the case, opening up communication between the judicial branch and the State agencies involved, and potentially leading to more comprehensive and effective reforms.

Supporting Argument

Despite several statutory amendments and changes to DHS policy in recent years, many are concerned that children who are wards of the State are not adequately protected. A report by the Office of Children's

Ombudsman found that in the majority of child death investigations, the failure to follow established policy or statutory requirements was a contributing factor in the death of the child. To help address those continuing problems, Senate Bill 259 (S-1) would create the Office of the Legislative Child Fatality Examiner, who would have to identify causes and systemic problems that contribute to the deaths of children in foster care. The office would be independent of the DHS, answering to the Legislature, and could bring a different perspective to the examination. Since the office would be within the Legislative Council, the cost would be borne by the Legislature, posing no additional budgetary strain on the DHS.

Opposing Argument

Senate Bill 259 (S-1) would duplicate the efforts of the Children's Ombudsman, which already conducts independent investigations of the deaths of children in the State. Given the current budgetary difficulties, the creation of a redundant office would not be fiscally sound and could divert money from other important priorities.

Response: Unlike the Office of Children's Ombudsman, the proposed Child Fatality Examiner's office would answer to the Legislature, providing a different perspective and an additional layer of accountability. The examiner also would help to synthesize the results of different investigations by the Ombudsman, child fatality review teams, and the Office of the Family Advocate.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

Senate Bill 257 (S-1)

The Department of Human Services has noted that data that would be used in the central registry mandated by the bill are already collected by the child fatality review teams and made available to the Legislature. The bill would likely lead to a small, indeterminate increase in administrative cost to the Department associated with modifying available information for use in a central registry and modifying the Department's internet home page to meet the requirements of the bill.

Senate Bill 258 (S-2)

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

Senate Bill 259

Depending on the number of employees hired, the cost to maintain the proposed Office of the Legislative Child Fatality Examiner could likely run between \$500,000 and \$1.0 million annually. Most recently the Office of the Legislative Corrections Ombudsman was created within the Legislative Council at a cost of nearly \$400,000.

Senate Bills 260 (S-1) and 261 (S-1)

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

Fiscal Analyst: David Fosdick
Joe Carrasco

A0910\s257a

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.