

Legislative Analysis



TERMINATION OF PARENTAL RIGHTS: REVISE

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<http://www.house.mi.gov/hfa>

Senate Bill 419 reported as Substitute H-1

Sponsor: Sen. Judy K. Emmons

Analysis available at

<http://www.legislature.mi.gov>

Senate Bill 420 reported as Substitute H-1

Sponsor: Sen. Phil Pavlov

Senate Bill 421 reported as Substitute H-1

Sponsor: Sen. Rick Jones

House Committee: Judiciary

Senate Committee: Families, Seniors and Human Services

Complete to 2-15-18

SUMMARY:

Taken together, the bills would amend various acts to do the following:

- Align the definitions of what constitutes “neglect” among the juvenile code, the Child Abuse and Neglect Prevention Act, and the Child Protection Law.
- Revise the definitions of neglect among the acts to include whether the parent or responsible person who failed to provide adequate care was financially able to do so or failed to seek financial or other reasonable means to do so.
- Revise several of the conditions under which a court may terminate a parent’s parental rights to a child.
- In several instances, require a court to return a child to his or her parent if doing so would not cause a substantial risk of harm to the child.
- If a parent had previously had his or her parental rights to a child terminated, require that the parent must have failed to rectify the conditions leading to the termination before the Department of Health and Human Services could petition for court authority to remove another child for neglect.
- Not require reunification efforts when a parent who had had rights to a child’s siblings terminated failed to rectify the conditions leading to that termination of parental rights.
- Require biometric data, not just fingerprints, to be collected by an arresting law enforcement agency and forwarded to the Michigan State Police.

Each bill would take effect 90 days after being enacted.

Senate Bill 419 would amend Chapter XIIA of the Probate Code, which is known as the juvenile code. The juvenile code, among other things, grants jurisdiction to the Family Division of Circuit Court over matters related to removing a juvenile (a child under 18 years of age) from his or her home and terminating a parent’s rights to that child. Briefly, the bill would make the following revisions:

- Define “neglect” in numerous provisions to mean that term as defined in the Child Abuse and Neglect Prevention Act (as amended by **SB 421**; see below).

- For a juvenile under the Circuit Court’s jurisdiction, require the court to order the juvenile returned to his or her parent if doing so would not cause a substantial risk of harm to the juvenile or society.
- At a review hearing to determine the continuing necessity and appropriateness of an out-of-home placement, require a court to order the child returned to the custody of his or her parent if doing so would not cause a substantial risk of harm to the child.
- Specify that reasonable efforts to reunify the child and family would not be required if the parent has had rights to the child’s siblings involuntarily terminated *and the parent has failed to rectify the conditions that led to that termination of parental rights*.
- Revise several conditions under which a court may terminate a parent’s parental rights upon a finding by clear and convincing evidence, including when (italics denote changes):
 - The parent, *although, in the court’s discretion, financially able to do so*, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.
 - Parental rights to one or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and *the parent has failed to rectify the conditions that led to the prior termination of parental rights*. (The bill would delete the phrase “and prior attempts to rehabilitate the parents have been unsuccessful.”)
 - The parent abused the child or the child’s sibling, the abuse included 1 or more of several listed actions,* *and there is a reasonable likelihood that the child will be harmed if returned to the care of the parent*.
 - The parent’s rights to another child were voluntarily terminated for certain actions involving abuse or a similar law of another state, the proceeding involved abuse that included one or more of several listed actions,* *and the parent failed to rectify the conditions that led to the prior termination of parental rights*.
- Delete as an exemption for required reunification efforts if the parent’s rights to another child were terminated as a result of proceedings under Section 2(b) of the juvenile code or a similar law of another state.
- Revise provisions requiring the collection by an arresting law enforcement agency and forwarding to the Michigan State Police of a juvenile’s fingerprints to also include the collection and forwarding of *biometric data*. (***Biometric data*** includes fingerprint and palm print images; digital images that include left and right profiles, tattoos, and scars; and descriptive data associated with identifying marks.)

MCL 712A.2 et al.

Senate Bill 420 would amend the Child Protection Law (CPL) to revise the definition of the term “child neglect.” Under the CPL, child neglect includes harm or threatened harm to a child’s health or welfare by a parent, legal guardian, or any other person responsible for the child’s health or welfare that occurs through negligent treatment, including the failure to

* Abandonment of a young child; criminal sexual conduct involving penetration or the attempt or intent to do so; battering, torture, or severe physical abuse; loss or serious impairment of an organ or limb; life-threatening injury; murder or voluntary manslaughter or aiding and abetting, attempting or conspiring to commit, or soliciting murder or voluntary manslaughter; or sexual abuse as defined in the Child Protection Law (MCL 722.622).

provide adequate food, clothing, shelter, or medical care, to which the bill would add: *though financially able to do so or the failure to seek financial or other reasonable means to do so.*

The CPL requires the Department of Health and Human Services to petition a court for written authorization allowing the removal of a child from his or her home if the department determines that there is a risk of *harm* to the child and that the child's parent or parents had had their rights to another child terminated under the juvenile code for certain actions involving abuse or a similar law of another state, whether involuntarily, or voluntarily following the initiation of a judicial proceeding under the juvenile code. The bill would also require the department to petition the court if it determined the child was at risk of *abuse or neglect*.

Further, under the bill, the department could not petition the court for authorization to remove the child under this provision unless *the parent has failed to rectify the conditions that led to the prior termination of parental rights*.

MCL 722.622 and 722.638

Senate Bill 421 would amend the Child Abuse and Neglect Prevention Act to revise the definition of the term "neglect." Currently, "neglect" means harm to a child's health or welfare by a person responsible for the child's health or welfare that occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care. To the end of this definition, the bill would add the phrase *though financially able to do so or the failure to seek financial or other reasonable means to do so*.

Presumably, under the bill, the inadequate provision of food, clothing, shelter, or medical care would not automatically constitute neglect. Rather, a court would have discretion to consider whether the responsible person had had the financial ability, or could have sought such resources, to provide for the child but failed to do so.

MCL 722.602

BACKGROUND INFORMATION:

The statutory grounds for termination of parental rights have been the subject of two recent appellate court decisions. In one case, *In re Hicks/Brown*,¹ the Michigan Supreme Court determined that termination of a mother's parental rights had been premature because, when concluding that reasonable efforts at reunification had been made (and thus termination could go forward), it had not been determined whether the Michigan Department of Health and Human Services had provided court-ordered services to accommodate the mother's intellectual disability.

In the other case, *In re Gach*,² the Michigan Court of Appeals concluded that terminating a parent's parental rights to a child because the parent had previously had his or her rights to another child terminated, without determining whether the parent had remedied, or had failed

¹ In re *Hicks/Brown, Minors*, 500 Mich 79 (2017)
http://publicdocs.courts.mi.gov:81/opinions/final/sct/153786_109_01.pdf

² In re *D. Gach, Minor*, 315 Mich App 83 (2016)
[http://publicdocs.courts.mi.gov:81/opinions/final/coa/20160419_c328714\(41\)_rptr_48o-328714-final.pdf](http://publicdocs.courts.mi.gov:81/opinions/final/coa/20160419_c328714(41)_rptr_48o-328714-final.pdf)

to remedy, the actions leading to the previous termination, was a violation of the parent's due process rights.

Senate Bills 419, 420, and 421 address several issues raised by the courts' decisions.

FISCAL IMPACT:

Senate Bills 419, 420, and 421 would have an indeterminate fiscal impact on local court funding units. Increased costs could be incurred depending on how the provisions of the bills affected caseloads in the courts and related administrative costs.

The bills could increase costs to the state of Michigan and possibly to local units of government. To the extent that the revised definition of "neglect" or "child neglect" in the bills might increase the number of Child Protective Services investigations and caseloads, the bills could increase costs to the state. Any additional out-of-home placements or in-home family services that are ordered as a result of possible increased case investigations might also increase costs to the state and counties as well.

POSITIONS:

A representative of the Michigan Department of Health and Human Services testified in support of the bills. (1-30-18)

A representative of Citizens for Parental Rights testified in support of the bills. (2-6-18)

Michigan's Children indicated support for the bills. (2-6-18)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.