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BILL



ANALYSIS

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Senate Bill 419 (Substitute S-1 as reported)
Senate Bills 420 and 421 (as reported without amendment)
Sponsor: Senator Judy K. Emmons (S.B. 419)
Senator Phil Pavlov (S.B. 420)
Senator Rick Jones (S.B. 421)
Committee: Families, Seniors and Human Services

Date Completed: 6-23-17

RATIONALE

Provisions in Michigan law require or authorize certain actions to be taken if a child is suspected or found to be the subject of parental neglect. These actions include reporting to the Department of Health and Human Services (DHHS), removal of the child from his or her home, and termination of parental rights. Generally, neglect occurs when a parent fails to provide adequate food, clothing, shelter, or medical care, but the statutes do not contain a standard definition of "neglect". In addition, under some provisions, neglect depends on whether a parent has the financial resources to provide for the child, but this criterion is not uniform and it does not include consideration of whether the parent was offered financial or other assistance. This issue was the subject of a recent Michigan Supreme Court decision, *In re Hicks/Brown*, in which Court found that the termination of parental rights was premature when there was not a determination of whether the DHHS had provided adequate services to an intellectually disabled mother.

The statutory grounds for termination of parental rights also were the subject of a 2016 appellate court decision. In the case of *In re Gach*, the Michigan Court of Appeals found that one of the grounds for termination failed to provide due process protections. Specifically, the juvenile code allows a court to terminate parental rights to a child if the parent's rights to another child were terminated due to abuse or neglect, without a requirement to find that the parent failed to address the abuse or neglect that led to the prior termination.

In light of these decisions, and concerns about potential subjectivity on the part of caseworkers, it has been suggested that children, parents, and those who provide social services to families would benefit from a clearer definition of "neglect" and an alignment of that definition in the juvenile code, the Child Protection Law, and the Child Abuse and Neglect Prevention Act.

It also has been suggested that decisions to remove children from their parents, return children to their parents, or terminate parental rights, should be based on a parent's current ability to care for the child, and whether a parent has corrected the conditions that led to the child's removal or the termination of rights to other children.

CONTENT

Senate Bill 419 (S-1) would amend the juvenile code to do the following:

- Define "neglect" in provisions giving the family court jurisdiction over a juvenile.
- Require a juvenile to be returned to his or her parent under certain circumstances if doing so would not cause a substantial risk of harm to the juvenile or society.
- Require the court to make additional or different findings in order to terminate parental rights in certain cases.
- Require biometric data of a juvenile to be collected before the court could enter an order of disposition for a juvenile offense, or a judgment of sentence for a conviction.

Senate Bill 420 would amend the Child Protection Law to modify the following:

- **The definition of "child neglect" in regard to negligent treatment.**
- **The circumstances under which the Department of Health and Human Services must submit a petition to the family court concerning a child, in situations in which parental rights to another child have been terminated.**

Senate Bill 421 would amend the Child Abuse and Neglect Prevention Act to revise the definition of "neglect".

Each bill would take effect 90 days after enactment.

Senate Bill 419 (S-1)

Family Court Jurisdiction

The juvenile code establishes the jurisdiction of the Family Division of Circuit Court (family court). Under the Section 2(b) of the code, the family court has jurisdiction in proceedings concerning a juvenile under 18 years of age found within the county under any of the following circumstances, among others:

- The parent or other person legally responsible for the care and maintenance of the juvenile, when able to do so, neglects, or refuses to provide proper or necessary support, education, medical, surgical, or other care necessary for his or her health or morals, who is subject to a substantial risk of harm to his or her mental well-being, who is abandoned by his or her parents, guardian, or other custodian, or who is without proper custody or guardianship.
- The juvenile's home or environment, by reason of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian, is an unfit place for the juvenile to live in.
- The juvenile has a guardian under the Estates and Protected Individuals Code and the parent, having the ability to support or assist in supporting the juvenile, has failed or neglected, without good cause, to provide regular and substantial support for the juvenile for two years or more before the filing of the petition or, if a support order has been entered, has failed to substantially comply with the order for two years or more before the filing of the petition; and the parent, having the ability to visit, contact, or communicate with the juvenile, has regularly and substantially failed or neglected, without good cause, to do so for two years or more before the filing of the petition.

Under the bill, as used in these provisions, "neglect" would be defined as it is in the Child Abuse and Neglect Prevention Act, i.e., 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. (As discussed below, however, Senate Bill 420 would amend this definition.)

Return of Child to Parent

If a petition concerning a juvenile is filed with the family court and the court finds that he or she is not subject to the jurisdiction of the court, the court is required to enter an order dismissing the petition. If the court finds that a juvenile is subject to its jurisdiction, the court may enter an order of disposition that is appropriate for the welfare of the juvenile and society in view of the facts proven and ascertained.

The bill provides that, if the court found that a juvenile was subject to its jurisdiction, the court would have to order the juvenile returned to his or her parent if the return of the juvenile to his or her parent would not cause a substantial risk of harm to the juvenile or society. The court also could enter an order of disposition as currently provided.

Under the code, the court is required to hold a review hearing within 182 days after each of the following, and then at regular intervals specified in the code:

- A petition is filed to give the court jurisdiction and the child remains in his or her home.
- A child is removed from his or her home in a proceeding under Section 2(b).
- A child is under the care and supervision of the agency and either is placed with a relative and the placement is intended to be permanent or is in a permanent foster family agreement.

At a review hearing, the court is required to determine the continuing necessity and appropriateness of the child's placement and order the return of the child to the custody of the parent, continue the dispositional order, modify the dispositional order, or enter a new dispositional order.

The bill would require the court to order the child returned to the custody of his or her parent if the return of the child to his or her parent would not cause a substantial risk of harm to the child.

Termination of Parental Rights

Under certain conditions, the family court is authorized to terminate a parent's parental rights to a child. The bill would modify several of the grounds for termination, as described below.

The court may terminate parental rights if it finds, by clear and convincing evidence, that the parent, without regard to intent, has failed 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. Under the bill, this would apply if the parent had failed to provide proper care and custody for the child although financially and otherwise able to do so (rather than without regard to intent).

The court also is authorized to terminate a parent's rights to a child if it finds, by clear and convincing evidence, that 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 that prior attempts to rehabilitate the parent have been unsuccessful.

Under the bill, instead, the court would be authorized to terminate a parent's rights to a child if the court found, by clear and convincing evidence, that parental rights to one or more siblings of the child had been terminated due to serious and chronic neglect or physical or sexual abuse, and the parent had failed to rectify the conditions that led to the prior termination of parental rights.

The court is authorized to terminate a parent's rights to a child if the court finds, by clear and convincing evidence, that the parent has abused the child or a sibling of the child, 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 and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter.
- Engaging in sexual contact or sexual penetration with a child.

The bill would authorize the court to terminate a parent's rights under these circumstances if the court also found that there was a reasonable likelihood that the child would be harmed if returned to the care of the parent.

The court also is authorized to terminate a parent's rights to a child if the court finds, by clear and convincing evidence, that the parent's rights to another child were voluntarily terminated following

the initiation of proceedings under Section 2(b) or a similar law of another state, and the proceeding involved abuse that included one or more of the factors listed above.

The bill would authorize the court to terminate a parent's rights under these circumstances if the court also found that the parent had failed to rectify the conditions that led to the prior termination of parental rights.

In addition, the code authorizes the court to terminate a parent's rights to a child if the court finds, by clear and convincing evidence, that the parent's rights to another child were terminated as a result of proceedings under Section 2(b) or a similar law of another state. The bill would delete this provision.

Under the code, if a child remains in foster care and parental rights to the child have not been terminated, the court is required to conduct a permanency planning hearing each year during the continuation of the foster care. At each meeting, reasonable efforts to reunify the child and family must be made unless certain conditions apply. One condition is that the parent has had rights to the child's siblings involuntarily terminated.

The bill would require reasonable efforts to reunify the child and family to be made unless the parent has had rights to the child's siblings involuntarily terminated and the parent had failed to rectify the conditions that led to the prior termination of parental rights.

Juvenile Fingerprints & Biometric Data

Under the code, before the court can enter an order of disposition for a juvenile offense, or a judgment of sentence for a conviction, the court must examine the court file and determine that the juvenile's fingerprints have been taken and forwarded as required by the fingerprinting law and as required by the Sex Offenders Registration Act. If a juvenile has not had his or her fingerprints taken, the court must do either of the following:

- Order the juvenile to submit himself or herself to the police agency that arrested or obtained the warrant for the juvenile's arrest so the juvenile's fingerprints can be taken and forwarded.
- Order the juvenile committed to the sheriff's custody for taking and forwarding the juvenile's fingerprints.

The bill also would require the collection of the juvenile's biometric data. Specifically, the bill would require the court to determine that the juvenile's biometric data had been collected and forwarded as required by the fingerprinting law and the juvenile's fingerprints had been taken and forwarded as required by the Sex Offenders Registration Act. If a juvenile's biometric data had not been collected or a juvenile had not had his or her fingerprints taken, the court would be required to do either of the following:

- Order the juvenile to submit himself or herself to the police agency that arrested or obtained the warrant for the juvenile's arrest so the juvenile's biometric data could be collected and forwarded and his or her fingerprints could be taken and forwarded.
- Order the juvenile committed to the sheriff's custody for collecting and forwarding the juvenile's biometric data and taking and forwarding the juvenile's fingerprints.

Senate Bill 420

Child Neglect

The Child Protection Law requires certain professionals to report to the DHHS if they have reasonable cause to suspect child abuse or child neglect, and imposes various investigative, reporting, record-keeping, and other responsibilities on the Department.

The Law defines "child neglect" as 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 either of the following:

- Negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.
- Placing a child at an unreasonable risk to his or her welfare by failure of the parent, legal guardian, or other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

Under the bill, negligent treatment would constitute child neglect if the parent, legal guardian, or other person responsible for the child's health or welfare failed to provide adequate food, clothing, shelter, or medical care though he or she was financially able to do so or was offered financial or other reasonable means to do so.

Petition for Authorization

The DHHS is required to submit a petition for authorization by the family court under Section 2(b) of the juvenile code if the Department determines that there is risk of harm to the child and the parent's rights to another child were terminated as a result of proceedings under Section 2(b) or a similar law of another state.

The DHHS also is required to submit a petition for authorization under Section 2(b) if the Department determines that there is risk of harm to the child and the parent's rights to another child were voluntarily terminated following the initiation of proceedings under Section 2(b) of the juvenile code or a similar law of another state and the proceeding involved abuse that 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 and abetting, attempting to commit, conspiring to commit, or soliciting murder or voluntary manslaughter.

Under the bill, in either of the situations above, the Department would be required to submit a petition if the parent had failed to rectify the conditions that led to the prior termination of parental rights.

Senate Bill 421

The Child Abuse and Neglect Prevention Act provides for the establishment of the State Child Abuse and Neglect Prevention Board, which is currently located in the Department of Health and Human Services. The Board's responsibilities include providing for the coordination and exchange of information on the establishment and maintenance of prevention programs (systems that provide direct child abuse and neglect prevention services to children, parents, and guardians); and providing statewide public seminars for the purpose developing awareness regarding the prevention of child abuse and neglect. The Board may authorize the disbursement of available money in the Children's Trust Fund, upon appropriation, to fund organizations in the development or operation of prevention programs; to fund local councils (organizations whose primary purpose is the development and facilitation of a collaborative community prevention program); and to fund the Board's operating expenses.

The Act defines "neglect" as 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.

Under the bill, neglect would occur if the person responsible for a child's health or welfare failed to provide adequate food, clothing, shelter, or medical care though financially able to do so or when offered financial or other reasonable means to do so.

MCL 712A.2 et al. (S.B. 419)

MCL 722.022 & 722.638 (S.B. 420)

MCL 722.602 (S.B. 421)

BACKGROUND

In re Hicks/Brown (No. 153786), decided by the Michigan Supreme Court on May 8, 2017, involved the termination of parental rights of an intellectually disabled mother. In 2013, the family court took jurisdiction over an infant daughter and a newborn son of the respondent, Brown, and instituted a case service plan. Evidently, Brown participated in the services inconsistently but her attorney later argued that they did not meet her needs, and, before the termination hearing, repeatedly inquired about efforts of the Department of Health and Human Services to ensure that Brown receive services through a community mental health agency. In 2015, the DHHS filed a petition to terminate the Brown's parental rights to both children. The court terminated her parental rights on two grounds: 1) the conditions leading to adjudication continued to exist and there was no likelihood that they would be rectified within a reasonable time; and 2) the respondent failed to provide proper care or custody for the children and there was no reasonable expectation that she would be able to do so within a reasonable time. On appeal to the Michigan Court of Appeals, Brown claimed that the Department's reunification efforts, required under Michigan law, had failed to accommodate her intellectual disability as required by the Americans with Disabilities Act (ADA). The Court of Appeals panel agreed (*In re Hicks/Brown*, 315 Mich App 251).

The decision then was appealed to the Michigan Supreme Court, which vacated the termination of parental rights. The Court pointed out, "Under Michigan's Probate Code [juvenile code], the Department has an affirmative duty to make reasonable efforts to reunify a family before seeking termination of parental rights... The Department also has obligations under the ADA that dovetail with its obligations under the Probate Code." The Court concluded that "efforts at reunification cannot be reasonable under the Probate Code if the Department has failed to modify its standard procedures in ways that are reasonably necessary to accommodate a disability under the ADA". The Court returned the case to the family court for it to consider whether the DHHS reasonably accommodated Brown's disability as part of its reunification efforts, in light of the fact that she never received court-ordered services through a community mental health agency.

In re Gach (315 Mich App 83) involved the termination of parental rights of a mother whose parental rights to three other children had been terminated. The Michigan Court of Appeals held that the trial court erred in finding that the termination of parental rights was warranted on grounds involving neglect or abuse, or the likelihood of harm if the child were returned to the parent. The additional ground for termination in this case was that the parent's rights to another child had been previously terminated. According to the Court, this provision, taken together with other provisions of the juvenile code concerning parental rights termination, "operates to create a presumption of a respondent's unfitness when that respondent has been subjected to a prior termination". The Court found that this violated a parent's fundamental liberty interest in the companionship, care, custody, and management of his or her child, which is subject to due process protections.

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

According to a Professor of Law at the Child Advocacy Law Clinic at the University of Michigan Law School, "[E]ach year, the state removes thousands of children from their parents, mostly poor, and places them in foster care. The state takes these children primarily due to allegations of neglect, which are often rooted in a family's poverty, and may hinge on a particular caseworker's perspective or bias".¹ The decision to terminate parent rights should not be linked to poverty or disability. "The unnecessary removal of a child can inflict permanent harm on a child and can lead to a turbulent experience in the foster care system, which often includes living in multiple homes, attending a new school and being separated from siblings. Kids raised by the foster care system experience high rates of homelessness, incarceration and unemployment."²

Currently, a previous experience of giving up a child or termination of parental rights automatically triggers a petition with Child Protective Services and a request for termination of parental rights to another child even when no evidence of neglect or endangerment exists in the family's current situation. The bills would require the family court and the Department to demonstrate some connection between what happened in the past and the current situation before the court could terminate rights. The DHHS would still be responsible for investigating parents under suspicion of neglect, and cases with an extensive history of abuse would still go to court. The bills, however, would prevent the past from defining a parent's present ability to provide for a child's health and welfare.

In *In re Gach*, the Michigan Court of Appeals ruled that terminating the parent's rights to a child because the parent's rights to another child were terminated creates a presumption that violates the due process protections of the U.S. and State Constitutions. Parents have a significant interest in the companionship, care, custody, and management of their children. This interest has been characterized as an element of liberty to be protected by due process (*In re Brock*, 442 Mich 101). According to the Court, termination of the parent's rights to a child because the parent's rights to another child were terminated fails to comport with due process in light of the fundamental liberty interest at stake. These bills would protect parents' right to due process and thus bring the juvenile code in line with the U.S. Constitution.

In addition, the goal of the Department is to keep a child with his or her parent when it is able to do so. The bills would help the DHHS meet this goal by allowing families to avoid the court system when it is unnecessary and to engage the services available to help families remain intact. The current system is designed to move toward termination in cases that involve a prior termination of a parent's rights without giving the Department the time to investigate whether the situation that caused the termination is still in effect. The bills would give the Department a better opportunity to work with families instead of seeking termination right away. Following the course of due process, the Department would have more time to determine whether a parent who qualifies for drug treatment services, parenting classes, counseling, or other services has received these services as reasonably necessary to accommodate the parent's situation.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

Senate Bill 419 (S-1)

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

¹ Sankaran, Vivek, "Fix Legal Aid for Families Facing Foster Care", *Lansing State Journal*, 7-27-15.

² n. 1.

Senate Bill 420

The bill could have a slight fiscal cost to the Department of Health and Human Services if the proposed change in the definition of "child neglect" resulted in more child protective service investigations. No clear data exist showing how many parents currently do not provide adequate food, clothing, shelter, or medical care though they are financially able to do so or offered financial or other means to do so. If the proposed change in the definition caused an increase in out-of-home placements or in-home programs, there could be a cost to the Department and county governments depending on the type of wardship determined for the child. There could be an increase in costs to local government for a share in the costs of care and for any increase in the number of proceedings in the family court.

Senate Bill 421

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

Fiscal Analyst: Ryan Bergan
John Maxwell

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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.