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BILL ANALYSIS



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Senate Bill 419 (as introduced 5-31-17)
Sponsor: Senator Judy K. Emmons
Committee: Families, Seniors and Human Services

Date Completed: 6-7-17

CONTENT

The bill 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.**

The bill would take effect 90 days after it was enacted.

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.

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.

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.

MCL 712A.2 et al.

Legislative Analyst: Nathan Leaman

FISCAL IMPACT

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

Fiscal Analyst: Ryan Bergan

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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.