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BILL ANALYSIS

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Senate Bill 668 (Substitute S-1 as passed by the Senate)
Senate Bill 669 (Substitute S-1 as passed by the Senate)
Senate Bill 670 (Substitute S-1 as passed by the Senate)
Senate Bill 671 (as passed by the Senate)
Senate Bill 672 (Substitute S-1 as passed by the Senate)
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: 11-27-07

RATIONALE

Legislation enacted in 1997 revised the laws governing foster care in Michigan, in part to give the State government greater authority to remove children from homes where they are abused or neglected. Although the measures were designed to protect the well-being of children, they also have had the effect of increasing the number of children entering the foster care system, because of statutory requirements that the family court terminate parental rights under certain conditions. Some are concerned that the current requirements do not give judges enough latitude to make decisions based on the particulars of individual cases. In addition, many believe that the process of finding a permanent placement is too long and inefficient, causing children to spend an unnecessarily long time in foster care or other temporary placements. To provide more options and to help children move more quickly to permanent placements, it has been suggested that relatives or other individuals could be named as guardians for foster children, allowing them to maintain ties with their parents while being raised by others. Other suggestions include concurrent planning, which would allow the Department of Human Services (DHS) to explore multiple placement options for a child simultaneously.

CONTENT

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

Senate Bill 668 (S-1) 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 was in the child's best interests.

Senate Bill 669 (S-1) would do the following:

-- Require the family court, at a permanency planning hearing for a child, to obtain a child's views regarding the permanency plan.
-- Permit, rather than require, the court to terminate parental rights if it determined that a child should not be returned to his or her parents.
-- Require the court to order the initiation of proceedings to terminate 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 (S-1) 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 (S-1) would permit the court to appoint a guardian for a child who remained in placement after parental rights had been terminated.

The bills are described in detail below.

Senate Bill 668 (S-1)

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 that parental rights be terminated and that additional efforts for reunification not be made if it found that there were grounds for termination of parental rights and that termination of parental rights was in the child's best interests.

Senate Bill 669 (S-1)

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 to obtain the child's views regarding the permanency plan in a manner that was appropriate to the child's age.

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 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.

(Under 45 CFR 400.11, the Federal Office of Refugee Resettlement may 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.)

If a child were placed in a guardian's or a proposed guardian's home under the bill, the court could order the DHS to perform an investigation and file a written report of the investigation for a review as described below. The court would have to order the DHS to perform a criminal record check and a central registry clearance within seven days. The court also would have to order the DHS to perform a home study and file a copy of the study with the court within 30 days, unless a home study had been performed within the previous 365 days under Section 13a(9) of the code. (That section requires a home study to be performed if a child under the court's jurisdiction is placed in the home of a relative.) If a home study had been performed within that time, a copy of the study would have to be submitted to the court.

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.

On its own motion or upon petition from the DHS or the child's lawyer guardian ad litem, the court could hold a hearing to determine whether a guardianship would be revoked.

A guardian could petition the court for permission to terminate the guardianship. A petition could include a request for appointment of a successor guardian.

After notice and hearing on a petition for revocation or permission to terminate a guardianship, if the court found by a preponderance of evidence that continuation of the guardianship was not in the child's best interests, the court would have to revoke or terminate the guardianship and appoint a successor guardian or restore temporary legal custody to the DHS.

Senate Bill 670 (S-1)

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

(SCAO) 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 lawyer 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 notice to the court and to the State Court Administrative Office under these provisions could be given by ordinary mail or by electronic means as agreed by the DHS and the court with jurisdiction over the child or the SCAO, respectively.

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 (S-1)

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. The MCI superintendent would have to consult with the child's lawyer guardian ad litem when considering whether to grant written consent.

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 information about 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.

If a motion were filed under those provisions, the court would have to set a hearing date and notify the MCI superintendent, the foster parents, the prospective guardian, the child, and the child's lawyer guardian ad litem. 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.

If a child were placed in a guardian's or a proposed guardian's home under the bill, the court could order the DHS to conduct an investigation and file a written report of the investigation for a review. The court would have to order the DHS to perform a criminal record check and a central registry clearance within seven days. The court also would have to order the DHS to perform a home study and file a copy of the study with the court within 30 days, unless a home study had been performed within the previous 365 days under Section 13a(9) of the code. If a home study had been performed within that time, a copy of the study would have to be submitted to the court.

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.

On its own motion or upon petition from the DHS or the child's lawyer guardian ad litem, the court could hold a hearing to determine

whether a guardianship appointed under the bill would be revoked.

A guardian could petition the court for permission to terminate the guardianship. A petition could include a request for appointment of a successor guardian.

After notice and hearing on a petition for revocation or permission to terminate a guardianship, if the court found by a preponderance of evidence that continuation of the guardianship was not in the child's best interests, the court would have to revoke or terminate the guardianship and appoint a successor guardian or restore temporary legal custody to the DHS.

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)

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

Although the DHS has a stated policy of moving children under its jurisdiction into permanent placements as quickly as possible, in practice many children remain in the foster care system for extended periods of time, and some children reach the age of 18 without ever having a permanent placement. The current process requires the court to terminate parental rights unless it determines that termination would not be in the child's best interests. That provision places the burden on the parent to prove that he or she should be allowed to retain custody of the child. Senate Bill 668 (S-1) would reverse the burden of proof, requiring the court to find that termination was in the child's best interests before terminating parental rights. That shift would bring Michigan's child protection laws into line with those of almost every other state, and could reduce the number of children who are placed in the foster care system.

The current process also leads to an undue number of terminations in situations in which it might be in the child's best interests to remain in the home. For example, terminating the parental rights of a child over the age of 11 can mean consigning that child to a series of foster care placements or other temporary placements until he or she turns 18, since older children are significantly less likely to be adopted. In that situation, it might be better to keep the family together, with additional services offered by the DHS to ensure that no harm came to the child.

Another option could be to place the child with a temporary guardian while the parent took steps to demonstrate that he or she was ready to regain custody. Senate Bill 669 (S-1) would permit the designation of a guardian for the child if parental rights had not been revoked. The parent still could be permitted to visit the child, promoting a sense of continuity and retaining familial bonds that otherwise would be broken if parental rights were terminated.

In some cases, it is necessary to terminate parental rights, in order to protect the best interests of a child. In those situations, Senate Bill 672 (S-1) would allow the appointment of a permanent legal guardian. A child's grandparents or other family members often are willing to take on that responsibility to ensure that the child remains in a familiar setting, raised by people he or she knows and trusts. The appointment of a guardian would be beneficial for the child, by providing a more stable environment than a series of foster care homes or foster care group homes. It also would provide a positive parental figure for a child in need of strong adult role models. A permanent guardian with a family connection or other connection to the child would be more likely to maintain a supportive role even after the child reached the age of 18, helping him or her to make the difficult transition to adulthood. In addition, a guardianship would be inexpensive for the State, which otherwise would have to pay the cost of providing foster care for the child, perhaps until he or she aged out of the system.

The bills also would provide measures to protect the safety and well-being of a child. To verify that a guardianship was appropriate and the home was a suitable environment for the child, the bills would require the DHS to perform a home study and request a criminal background check of a potential guardian. These measures are similar to those required for foster care

providers and adoptive parents, and could prevent a child from being placed in a potentially harmful situation.

Response: Many believe that, in order for a placement to be successful, the guardian should have a prior relationship with the child, so that the child would feel comfortable and have a sense of continuity. The bills do not include any criteria or guidelines for selecting a guardian, however. In addition, the bills do not include sufficient measures to encourage a permanent commitment from a guardian. The bills also should clarify the role of the DHS after a child had been placed with a permanent guardian. Ideally, the DHS should be able to close that case and allow the guardian to assume full responsibility for the child.

Supporting Argument

Under current law, many people are involved in developing a permanency plan for a child, but there is no requirement that the child's wishes be considered during that process. While it would not always be possible to accommodate the child's preferences, consideration of the child's input along with other factors would be appropriate and could help ensure the best possible placement. Thus, Senate Bill 669 (S-1) would require the court to obtain the child's views regarding placement. This provision reflects recent changes to Title IV-E of the Social Security Act, under the Child and Family Services Improvement Act of 2006, which requires the court to consult with the child, in an age-appropriate manner, regarding the proposed permanency or transition plan. The exact nature of the required consultation may be clarified in Federal regulations.

Supporting Argument

The decision to change a child's placement should only be made after consultation with all interested parties. In practice, though, children reportedly are moved without the knowledge of the court or the guardian ad litem, who is charged with protecting the child's interest. Being moved repeatedly can be emotionally stressful for the child, who may experience a diminished sense of security and permanency. Also, multiple placements may be an indication of other difficulties that are not being addressed. For example, if a child is seen as being difficult and foster care providers are unable to handle him or her, it might be important to determine the source of the behavior and help the child to resolve his or her issues. While the role of a guardian ad litem is to advocate for the child in these situations, he or she needs to be fully informed in order to fulfill that role. To help ensure that the interests of the child were fully considered when a change of placement was made, Senate Bill 670 (S-1) would require a child placing agency to give advance notice to the child's lawyer guardian ad litem and the court.

Supporting Argument

The first permanency option considered for a child is the reunification with the parent. Currently, while reunification efforts are made, other potential options, such as adoption, are put on hold. Senate Bill 671 would permit the DHS to explore multiple possible placements concurrently while trying to resolve the parent's issues and achieve reunification. Then, if reunification failed, another option could be readily available, minimizing the amount of time the child spent in the foster care system.

Opposing Argument

Although grandparents and other relatives often are more than willing to care for a child, the bills do not provide any financial assistance for those guardians. The responsibility of raising and caring for a child is a significant financial undertaking, which many potential guardians simply would not be able to afford without some assistance. If a child were placed in foster care, the State would have to pay the foster care provider to care for the child. It would be reasonable to provide similar assistance to a temporary or permanent guardian. Even with such assistance, a guardianship would cost the State less than the cost of placing the child in the foster care system, and likely would result in better outcomes for the child.

Opposing Argument

Children should not be forced to come before the court to express their preferences regarding potential placements. Many of the children under the jurisdiction of the court have been abused or neglected, and are in a fragile state emotionally. Some may be confused about the nature of the proceedings, and having to tell the court their wishes could be an additional emotional trauma. A child's guardian ad litem is charged with representing the child's wishes, and it would be more appropriate if

he or she spoke with the child privately and relayed that information to the court.

Response: Although the bill originally would have required the court to "consult with the child" about a permanency plan, Senate Bill 669 (S-1) would require the court to "obtain the child's views". When judges do speak directly with children, however, they are accustomed to doing so in age-appropriate ways, and have been trained in dealing with abused or neglected children. Hearing directly from a child, rather than through his or her guardian ad litem, can help ensure that the child's views are accurately represented. If the child speaks directly with the judge and feels that his or her wishes have been considered, he or she may be more likely to accept the eventual placement, rather than resisting it by acting out or running away.

Opposing Argument

Senate Bill 672 (S-1) would give the MCI superintendent an excessive degree of power over the appointment of a guardian. The court could not appoint a guardian without the superintendent's consent, unless the decision to withhold consent were determined to be "arbitrary or capricious". That would be an extremely difficult standard to meet, and in practice would give the MCI superintendent the final say over whether to grant a guardianship. The bill should establish specific and concrete grounds for overturning the superintendent's decision.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

Senate Bills 668 (S-1), 669 (S-1), and 671

The bills address court procedure and would have no fiscal impact on the judiciary. A provision in Senate Bill 669 (S-1) for criminal record checks would require the DHS to pay the Department of State Police $70 per nationwide criminal record check. At this time, the caseload assumption for the guardianship program cannot be determined.

Senate Bill 670 (S-1)

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

Senate Bill 672 (S-1)

The bill could require the DHS to spend additional funds for criminal record checks, which would require a $70 payment per record check, as well as contractual services, supplies, and materials, but otherwise would not have a fiscal impact on the Department.

Fiscal Analyst: Constance Cole
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