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Senate Bills 1418 through 1421 (as enacted)
Sponsor: Senator Mark C. Jansen (S.B. 1418)
Senator Bill Hardiman (S.B. 1419)
Senator Alan L. Cropsey (S.B. 1420)
Senator Roger Kahn, M.D. (S.B. 1421)
Senate Committee: Families and Human Services
House Committee: Families and Children's Services

PUBLIC ACTS 300, 405, 510 & 511 of 2008

Date Completed: 2-11-09

RATIONALE

Michigan law contains various provisions designed to protect children from abuse and neglect. The Child Protection Law requires certain professionals, such as physicians, social workers, and teachers, to report to the Department of Human Services (DHS) if they have reasonable cause to suspect child abuse or neglect. When a report is made, Child Protective Services (CPS) workers are responsible for determining whether to investigate and, if various criteria are met, conducting an investigation or reporting to a law enforcement agency. Although the DHS does not have the authority to seek a change of custody, the Department is required to petition the family court for it to take jurisdiction of a child under certain circumstances. At the same time, in domestic relations cases, the Friend of the Court (FOC) may conduct a custody or parenting time investigation when ordered to do so by the court, and may request access to CPS records. In some situations, these processes may be going on simultaneously. Rather than receiving greater protection, however, a child might be endangered if the agencies fail to communicate or follow protocols.

This evidently is what occurred in the case of a nine-year-old boy, Nicholas Braman, who was killed in 2007 by his father in Montcalm County, after his mother had sought custody in Saginaw County and CPS in both counties had received complaints of

abuse. (Please see **BACKGROUND**, below, for more information about this case.) An investigation by the Office of Children's Ombudsman found that both counties' CPS had made errors, including noncompliance with existing law or policy. The Children's Ombudsman recommended various changes in DHS practices, and the Department agreed to implement most of them. The DHS also worked with the State Court Administrative Office, FOC Division, to develop a joint protocol for coordination between the Department and the FOC.

In addition to these measures, some people believed that statutory changes should be made to ensure that the agencies communicate about open cases, and that CPS workers comply with State law and DHS policy when conducting investigations.

CONTENT

Senate Bill 1418 amended the Child Protection Law to do the following:

-- Require the Department of Human Services to notify the local Friend of the Court office of an investigation into suspected abuse or neglect of a child, and a change in the child's placement, if there is an open FOC case regarding the child and a CPS investigation results in a specific disposition.

- Remove restrictions on the availability of central registry information to local FOC offices.
- Include professional FOC employees among those required to report.
- Extend the reporting requirements to employees of an organization who would be prohibited from reporting due to Federal law in the absence of a State mandate or court order.

Senate Bill 1419 amended the Friend of the Court Act to require an FOC office, upon being notified by the DHS of an investigation into alleged abuse or neglect of a child, to notify the DHS of any procedural developments in an open FOC case regarding that child while the case is pending.

Senate Bill 1420 amended the Child Protection Law to include FOC employees among the individuals who are required to report suspected child abuse or neglect.

Senate Bill 1421 amends the Child Protection Law to do the following:

- Require the DHS to implement a checklist to be used in each investigation of suspected abuse and neglect
- Require the completed checklist to be reviewed by a supervisor.
- Allow the investigation to be closed if it complies with the checklist and specified State laws and DHS policy.
- Require a local office director to review a noncomplying investigation.

Senate Bill 1418 took effect on October 1, 2008. Senate Bill 1419 took effect on January 6, 2009, and was tie-barred to Senate Bill 1418. Senate Bill 1420 took effect on January 13, 2009. Senate Bill 1421 will take effect on April 1, 2009.

Senate Bill 1418

Mandatory Reporting

The mandatory reporting requirements of the Child Protection Law apply to physicians, nurses, psychologists, social workers, teachers, members of the clergy, regulated child care providers, and others. Under the bill, this list also includes a person employed

in a professional capacity in any Friend of the Court office.

In addition, the bill extends the reporting requirements to any employee of an organization or entity who, as a result of Federal funding statutes, regulations, or contracts, would be prohibited from reporting in the absence of a State mandate or court order. A person required to report under this provision must report in the same manner as required for others mandated to report suspected child abuse or neglect.

Open FOC Case

Under the bill, when the DHS receives a report of suspected child abuse or neglect, the Department must determine whether there is an open FOC case regarding a child who is suspected of being abused or neglected if a Child Protective Services investigation of abuse and neglect allegations results in any of the following dispositions:

- There is a finding that a preponderance of evidence indicates that there has been child abuse and neglect.
- There is emergency removal of the child for child abuse and neglect before the investigation is completed.
- The family court takes jurisdiction on a petition and a child is maintained in his or her own home under DHS supervision.
- One or more children residing in the home are removed and one or more remain in the home.
- The DHS determines that any other circumstances apply and are related to child safety.

If the DHS determines that there is an open FOC case and the provisions described above apply, the Department must notify the FOC office in the county in which the case is open that an investigation is being conducted under the Child Protection Law regarding the child. The DHS also must report to the local FOC office when there is a change in that child's placement.

In addition, if it determines that there is an open FOC case, the Department must provide noncustodial parents of a child who is suspected of being abused or neglected with the DHS form that has information on how to change a custody or parenting time court order.

Central Registry

The Child Protection Law requires the DHS to maintain a central registry of all reports of alleged child abuse or neglect. A written report, document, or photograph in the central registry is considered a confidential record, available only to certain individuals and entities.

Previously, central registry information was available to a local FOC office if there was a compelling need for Child Protective Services records or information to determine custody or parenting time issues regarding a child, subject to certain provisions. A local FOC office investigator, caseworker, or administrator directly involved in the investigation had to notify the appropriate Department or CPS local or central office that a child custody or parenting time investigation involving a family had been initiated and request relevant CPS records and information. Within 14 days after receiving the request, the CPS office had to release the pertinent records and information to the investigator, caseworker, or administrator directly involved in the investigation.

The bill deleted those provisions, and instead permits information in the central registry to be made available to a local FOC office.

Senate Bill 1419

Under the bill, if a Friend of the Court office receives notice from the DHS under the Child Protection Law (as Senate Bill 1418 requires) regarding a child for whom the establishment or modification of custody or parenting time is pending in an open FOC case, the office must notify the DHS of procedural developments in the case until a final order regarding the pending custody or parenting time dispute is entered.

Senate Bill 1420

The bill extends the Child Protection Law's reporting requirements to professional FOC employees and employees of an entity who would be prohibited from reporting by Federal law absent a State mandate or court order (as provided under Senate Bill 1418).

Senate Bill 1421

The bill requires the Department of Human Services to implement an investigation checklist to be used in each investigation of suspected abuse and neglect. An investigation may not be closed until the checklist is completed, subject to the following provisions.

The bill requires a supervisor to review the completed checklist. The investigation may be closed if the supervisor determines that the investigation complies with the checklist and with the following State laws and DHS policy:

- Face-to-face contact was made with all alleged child victims.
- A petition was filed as required by Sections 8d(1)(e), 17, and 18 (described below).
- A petition was filed when court intervention was needed to ensure child safety.
- Any other items that affect child safety and well-being that are specifically outlined in DHS policy require the approvals outlined below.

If the supervisor determines that the investigation does not comply with the investigation checklist and those State laws and DHS policy, he or she must determine the reason that the checklist and State law or policy were not followed. The investigation may not be closed until after the local office director has reviewed it.

(Section 8d(1)(e) describes a "category I" case, in which the DHS must file a court petition if it determines that there is evidence of child abuse or neglect and one or more of the following apply: a petition is required under another provision of the Child Protection Law; the child is not safe and a petition for removal is needed; the DHS previously classified the case as "category II" (in which CPS services are required) and the child's family does not voluntarily participate in services; or there is a violation involving the child of assault with intent to commit criminal sexual conduct (CSC), felonious attempt or conspiracy to commit CSC, assault on a child that is punishable as a felony, involvement in child sexually abusive material or activity, or first- or second-degree child abuse.

Section 17 requires the DHS to file a petition within 24 hours after determining that a child was severely physically injured, sexually abused, or allowed to be exposed to methamphetamine production, unless the parent or legal guardian is not a suspected perpetrator and the Department makes specified determinations.

Under Section 18, the DHS must submit a petition if it determines that a parent, guardian, or custodian, or a resident of the child's home who is 18 or older, 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; CSC involving penetration, attempted penetration, or assault with intent to penetrate; battery, torture, or other severe physical abuse; loss or serious impairment of an organ or limb; life-threatening injury; or murder or attempted murder. The DHS also must file a petition if it determines that there is risk of harm to the child and the parent's rights to another child were terminated.)

MCL 722.623 et al. (S.B. 1418)
552.520 (S.B. 1419)
722.623 (S.B. 1420)
722.628e (S.B. 1421)

BACKGROUND

The following information was obtained from reports of the Office of Children's Ombudsman and the Department of Human Services.

In 2004, Child Protective Services in Saginaw County substantiated an allegation of child abuse against the father of Nicholas Braman for using a cattle prod on Nicholas and his two older brothers. At the time, the children were living with their mother in that county, and she was pursuing full custody of the children. Believing that the mother would obtain legal custody, the Saginaw County CPS closed or did not pursue the investigation. At some point, however, the children were returned to their father's residence.

In June 2006, CPS in Montcalm County, where the Braman children were living with their father, received and investigated a new allegation of abuse. Based on interviews with the children, Montcalm County CPS did not substantiate the complaint.

In August 2007, Saginaw County CPS received and investigated an allegation that Mr. Braman was disciplining the two older children with a cattle prod. With the assistance of Montcalm CPS and law enforcement, Saginaw County CPS completed the investigation. Subsequently, Mr. Braman pleaded guilty to attempted second-degree child abuse.

Although the two older children remained with their mother in Saginaw County, Nicholas continued to live with his father and stepmother in Montcalm County, and the case was transferred to Montcalm County CPS. During the time that Nicholas and his father were participating in counseling to prepare Nicholas for the father's incarceration, Mr. Braman killed Nicholas, the stepmother, and himself.

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

By providing for enhanced communication between CPS and FOC offices, as well as compliance by CPS workers with State laws and DHS policy, the bills will help to prevent another tragedy like the death of Nicholas Braman. The investigation of this case by the Office of Children's Ombudsman revealed a number of deficiencies—including the exercise of poor judgment, failure to comply with law and policy, and poor communication—in CPS's response to complaints of abuse. To some extent, these factors evidently have been addressed on an administrative level. At the same time, the changes in statute will strengthen Michigan's protections against child abuse and neglect, ultimately preventing injury or death.

In particular, the notice requirements in Senate Bills 1418, 1419, and 1420 will help ensure that the DHS and the FOC each knows about the other agency's cases when they involve abuse or neglect, and are aware of the placement of children. Also, under Senate Bill 1418, FOC offices will have access to records in the central registry without having to show a compelling need. Senate Bill 1421 establishes a system under which an abuse or neglect investigation may not be closed unless a checklist is completed

by a CPS worker and reviewed by a supervisor, and then reviewed by a local office director if the investigation does not comply with the checklist and State laws or DHS policy.

There is no way to know whether Nicholas Braman would still be alive if these measures had already been in the law. It is possible, however, that the outcome would have been different if the DHS and FOC had exchanged information about the Braman children, if Saginaw County CPS had kept open the 2004 complaint to ensure that the children's mother had successfully obtained custody of the children, if Montcalm County CPS had investigated the 2006 complaint in accordance with policy requirements, or if either county had filed a petition to remove the children from their father's home. Since no legislation can change the past, it is essential that the State minimize the risk to other vulnerable children.

Opposing Argument

The reporting requirement in Senate Bill 1420 might create a conflict of interest if an FOC employee reporting suspected abuse or neglect also is a witness in the case. In addition, if the FOC employee is an attorney, reporting potentially could violate the attorney-client privilege, which the Child Protection Law specifically recognizes.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 1418

The Department of Human Services might experience a moderate increase in administrative costs associated with integrating a check of open Friend of the Court cases into investigations of suspected abuse and neglect, and providing information to noncustodial parents about changing a custody or parenting time court order.

Senate Bill 1419

The bill will have no fiscal impact on the Department of Human Services. The bill might result in minor administrative costs for local Friend of the Court offices.

Senate Bill 1420

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

Senate Bill 1421

The bill may create a minor administrative cost to the Department associated with implementing the use of a standard checklist for the investigation of suspected abuse and neglect.

Fiscal Analyst: David Fosdick
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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.