Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bills 218, 219, and 220 (as reported without amendment) *(as passed by the Senate)*
Sponsor: Senator Judy K. Emmons (S.B. 218 & 220)
Senator Mark C. Jansen (S.B. 219)
Committee: Families, Seniors, and Human Services

Date Completed: 3-29-11

RATIONALE

Under Michigan law, when parental rights to a child are involuntarily terminated by the court, or voluntarily relinquished by the parents after child protective proceedings have been initiated, the child becomes a ward of the State and is committed to the Department of Human Services (DHS). At the same time, the superintendent of the Michigan Children's Institute (MCI), within the DHS, becomes the child's legal guardian. The MCI oversees the child's care, custody, and placement, and the MCI superintendent has the authority to make decisions on behalf of the child. Before he or she can be adopted or a guardian can be appointed for the child, the MCI superintendent must give his or her consent. Concerns have been raised about the length of time it can take to obtain consent, since only one person has the authority to give it.

In 2008, then-DHS Director Ismael Ahmed and then-Supreme Court Justice Maura Corrigan (now the DHS Director) invited the 13 counties with the largest adoption dockets to participate in a forum to identify barriers to adoption and suggest solutions. As teams representing these counties met, they identified delay in the MCI superintendent's consent as a common obstacle to adoption. This issue was referred to a Permanency Options Workgroup, which suggested that allowing the superintendent to delegate the authority to consent to other MCI staff, would reduce the backlog and expedite the process, according to the "Adoption Forum I Final Report" of May 2009.

CONTENT

Senate Bill 218 would amend the Michigan Adoption Code to permit the designee of an authorized representative of the Department of Human Services to consent to the adoption of a child.

Senate Bill 219 would amend Public Act 220 of 1935 (which deals with the Michigan Children's Institute) to authorize the MCI superintendent or his or her designee to consent to the guardianship of a child committed to the MCI.

Senate Bill 220 would amend the juvenile code to authorize a designee of the Michigan Children's Institute superintendent to consent to the appointment of a guardian for a child.

The bills are described in detail below

Senate Bill 218

Generally, the Michigan Adoption Code requires each parent to give consent to the adoption of a child, unless the rights of the parent have been terminated, the child has been released for the purpose of adoption to a child placing agency or the DHS, or other circumstances exist.

Consent also must be given by the authorized representative of the DHS or of a child placing agency to whom the child has been released or permanently committed by an order of the family court.

Under the bill, consent could be given by the authorized representative of the DHS *or* his or her designee.

Senate Bill 219

Currently, the MCI superintendent is authorized to consent to the adoption, marriage, or emancipation of any child who may have been committed to the MCI, according to applicable law. Under the bill, the superintendent's designee would have the same authority. In addition, the superintendent or his or her designee would be authorized to consent to the guardianship of any child who may have been committed to the MCI, as provided in Section 19c of the juvenile code (the section that Senate Bill 220 would amend).

A child for whom a guardian was appointed under those provisions would cease to be a ward of the State.

Senate Bill 220

Under the juvenile code, if a child remains in placement following the termination of parental rights to the child, the family court must conduct review hearings and permanency planning hearings. The court may appoint a guardian for the child, if it determines that doing so is in the child's best interest. The court may not appoint a guardian without the MCI superintendent's written consent. Under the bill, the court could not appoint a guardian without the written consent of the superintendent or his or her designee.

The code requires the MCI superintendent to consult with the child's lawyer guardian ad litem when considering whether to grant consent. Under the bill, that requirement also would apply to the superintendent's designee.

MCL 710.43 (S.B. 218)
400.209 (S.B. 219)
712A.19c (S.B. 220)

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

The bills would address situations in which parental rights to children have been terminated and adoptive homes are available for them. The MCI presently has a caseload of about 2,800, and each file must be reviewed individually. Because of the complexity of the adoption process, there are many opportunities for delay before the MCI superintendent even receives an adoption request form, and a backlog in requests can further postpone the finalization of the adoption. Authorizing the superintendent to appoint a designee to give consent could expedite the process and ensure that children joined adoptive families as soon as possible. Delegating the authority to consent also would enable the superintendent to focus on contested cases.

Response: To ensure that the superintendent's designee was as effective as the superintendent, the designee should be required to meet the same job qualifications.

Supporting Argument

As part of a package of legislation addressing foster care issues, Public Act 203 of 2008 amended the juvenile code to allow the family court to appoint a guardian for a child who remains in placement after parental rights have been terminated. In some situations, a relative is willing to be a permanent legal guardian, providing a stable and familiar home for the child. Although the juvenile code requires the MCI superintendent to consent to the appointment of a guardian in these cases, the law governing the MCI was not amended. Senate Bill 219 would correct that oversight.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

It is possible that the bills would have the effect of reducing State and county foster care payments. If the backlog at the MCI is causing children to remain in foster care for additional time, elimination of the backlog could result in some savings in foster care payments. These potential savings could be offset, in part, by increased payments for guardianship assistance and adoption subsidies. Because the Department of Human Services does not have readily available data on the number of backlogged cases or the amount of corresponding and

potentially avoidable foster care payments made each year, it is not possible to provide an estimate of savings.

Fiscal Analyst: Frances Carley

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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.