

Senate Bill 220 (as enacted)
House Bill 4381 (as enacted)
House Bill 4382 (as enacted)
Sponsor: Senator Judy K. Emmons (S.B. 220)
Representative Kenneth Kurtz (H.B. 4381)
Representative Bruce Rendon (H.B. 4382)
Senate Committee: Families, Seniors, and Human Services
House Committee: Families, Children, and Seniors

PUBLIC ACT 31 of 2011
PUBLIC ACT 32 of 2011
PUBLIC ACT 30 of 2011

Date Completed: 6-27-11

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. In recent years, concerns were raised about the length of time it could take to obtain consent, since only one person had 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 220 amended 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.

House Bill 4381 amended 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.

House Bill 4382 amended 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.

The bills took effect on May 24, 2011.

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. Previously, the court could not appoint a guardian without the MCI superintendent's written consent. Under the bill, the court may 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 applies to the superintendent's designee.

House Bill 4381

Under the Michigan Adoption Code, consent to the adoption of a child 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 must be given by the authorized representative of the DHS or his or her designee (or an authorized representative of a child placing agency).

House Bill 4382

Public Act 220 of 1935 authorizes the MCI superintendent 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 has the same authority. In addition, the bill authorizes the superintendent or his or her designee 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 amended).

The bill specifies that a child for whom a guardian is appointed under those provisions ceases to be a ward of the State.

MCL 712A.19c (S.B. 220)
710.43 (H.B. 4381)
400.209 (H.B. 4382)

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 address situations in which parental rights to children have been terminated and adoptive homes are available for them. The MCI 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 should expedite the process and ensure that children join adoptive families as soon as possible. Delegating the authority to consent also will enable the superintendent to focus on contested cases.

Response: To ensure that the superintendent's designee is 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. House Bill 4381 corrects that oversight.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

It is possible that the bills will have the effect of reducing the State and county foster care payments. If the backlog at the MCI has been causing children to remain in foster care for additional time, elimination of the backlog may 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.

The local governments must pay 50% of the costs of foster care placements supported by the Child Care Fund—for those children who are not eligible for Title IV-E funding. The

local governments are not required, however, to pay 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 State or local savings from a reduced backlog.

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.