



**House
Legislative
Analysis
Section**

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CHILDREN: PERMANENCY PLANNING

House Bills 4641-4643 as enrolled RECEIVED
Second Analysis (8-8-88)

Sponsor: Rep. Debbie Stabenow
House Committee: Judiciary
Senate Committee: Criminal Justice, Urban Affairs,
and Economic Development

THE APPARENT PROBLEM:

In late 1982, Justice Mary S. Coleman assembled a commission to identify the barriers in the juvenile justice and child welfare system that lead to abused and neglected children "drifting" in the system rather than being placed in permanent and loving homes. The commission, composed of legal and child care experts, took as its premise that "it is every child's inalienable right to belong in a family." At the time the commission issued its report in 1985, there were nearly 10,000 abused and neglected children in out-of-home placements supervised by the Department of Social Services (DSS), with almost another 2,000 under the supervision of the juvenile courts. Economic costs of foster and institutionalized care were conservatively estimated to be \$75 million per year, but social costs were reckoned to be even worse. As the commission noted, to be emotionally healthy, children need to be raised in families.

The commission focused on the need for "permanency planning", that is, the need for courts, case workers, and others to coordinate and strengthen efforts to find permanent family placement for children, and to keep families together whenever possible. The commission identified ten barriers to permanency and linked them to 38 recommendations, many of which necessitate statutory change. Among those recommendations were establishing a single service delivery system by providing all abuse and neglect services through the DSS, either directly or by contract, and phasing out court-provided services. Proposed amendments to the juvenile code included extending the court's jurisdiction to include abused and neglected seventeen-year-olds, requiring permanency planning hearings, and revising provisions for the termination of parental rights. Also proposed was a clarification of the role of the prosecutor in abuse and neglect proceedings. House Bills 4641 through 4643 represent the statutory proposals to implement the Coleman Commission recommendations.

THE CONTENT OF THE BILLS:

House Bills 4641 through 4643 constitute a package to establish uniform statewide statutory procedures for dealing with abused and neglected children. House Bill 4642 would amend the Juvenile Code (Chapter XIIA of the Probate Code) to: extend the juvenile court's jurisdiction over abused and neglected children to include all children under age 18 (the current limit is age 17); require the agency responsible for a child who was the victim of abuse or neglect to develop for each child a case service plan aimed at keeping the family together if possible; require the court to consider case service plans and hold regular hearings on specified matters while an abused or neglected child was under the authority of the court; allow the Department of Social Services (DSS) to hire an attorney

if the prosecutor refused to appear on behalf of the department (the prosecutor would, however, have to serve as legal consultant); and, revise the standards under which parental rights may be terminated.

House Bills 4641 and 4643 would make complementary changes to the Social Welfare Act and Public Act 220 of 1935, respectively.

The bills would take effect April 1, 1989, provided all were enacted. A more detailed explanation follows.

House Bill 4642

Jurisdiction

The bill would extend the juvenile court's jurisdiction over abused and neglected children to include all children under age 18, rather than the current age 17. Among the things that constitute neglect is the failure to provide proper custody or guardianship. The bill would clarify that this would not include a situation where a parent has placed a child with another person who is legally responsible for the child's care and maintenance and who can and does provide that care and maintenance.

Removal From Home

If, at the conclusion of the preliminary hearing or inquiry, the juvenile court found that there was probable cause to believe that abuse or neglect had occurred, the court could order that the child be placed outside the home, or release the child into the custody of a parent, guardian or custodian under reasonable terms and conditions necessary for the physical health or mental well-being of the child. The child could be removed from home only if there were no reasonable at-home arrangement that would adequately protect the child from a danger presented by the parent, guardian or custodian, and if custody away from the parent, guardian, or custodian would adequately safeguard the child's health and welfare.

In determining placement of a child pending trial, the court would have to order the child placed in the most family-like setting available that was consistent with the child's needs. If the court ordered placement outside the home, it would have to inform the parties that the agency must prepare an initial services plan within 30 days of placement (and describe the general elements of an initial services plan), and that without a court order participation in an initial services plan is voluntary. Parents would be permitted to visit frequently, unless even supervised visits would be harmful to the child. Upon the motion of any party, the court would review and could modify custody and placement orders and initial services plans at any time.

H.B. 4641-4643 (8-8-88)

Court-Provided Services

Except for counties with populations over 650,000, courts could no longer be providers of foster care services to abused and neglected children as of January 1, 1990. For those larger counties, the deadline would be January 1, 1992.

Role of Prosecutor; Legal Counsel

Upon the request of the DSS or its contracted agent, the prosecutor would have to serve as legal consultant at all stages of an abuse or neglect proceeding. If the prosecutor did not appear on behalf of the department or its agent, the department could contract with an attorney of its choice for legal representation.

Case Service Plan

If the agency responsible for the child's care and supervision advised against leaving the child at home, it would have to give the court a written explanation, as prescribed by the bill, of why the child should not be placed at home and what efforts were made to keep the child at home or correct the unacceptable conditions there.

The agency would have to prepare a case service plan which would aim to keep the child in the most family-like setting available and as near to the parents' home as was advisable. At a minimum, the case plan would have to include placement recommendations and the reasons for them; the efforts to be made by parent and agency to enable the child to return home; services to be provided parent, child, and any foster parent to facilitate either a return home or permanent placement in a new home; and, a schedule for at least weekly visitation between parent and child, unless it would be harmful to the child. The court would have to consider the case service plan before entering an order of disposition, and could order compliance with all or any part of the plan. The court would have to state whether reasonable efforts had been made to keep the child at home or rectify conditions at home. If a child continued in placement outside the home, the case service plan would have to be updated and revised at 90 day intervals.

Review & Permanency Planning Hearings

At present, when the court places a child in foster care, it must rehear the case within six months, and must conduct additional hearings within one year after the initial decision and at least annually thereafter for as long as the child remains in foster care without being placed in the permanent custody of the court. The bill would mandate that for all children in foster care, hearings be held at least every 182 days at which the court would review the performance of the child, the child's parent, guardian or custodian, the juvenile worker, and other persons providing assistance to the child and his or her family.

For children placed in foster care following charges of abuse or neglect, the bill would specify two types of hearings: review hearings, and permanency planning hearings, which could be combined. A review hearing would have to be held at least every 91 days during the first year of foster care and at least every 182 days thereafter. A permanency planning hearing would have to be held at least once a year. At a review hearing, the court would review compliance with the case service plan, determine the progress made toward alleviating the unacceptable conditions at home, modify the case service plan as appropriate, and decide whether to return the child home or maintain foster care. At a permanency planning hearing, the court would review the status of the child and the progress being made toward the child's return home, and decide whether the child should return home.

At a permanency planning hearing, the court would have to order the child returned to his or her parent if return would not substantially risk the physical health or emotional well-being of the child, as long as parental rights had not been terminated. A parent's failure to substantially comply with the case service plan would be evidence that the child's return would put him or her at risk.

If the court determined at a permanency planning hearing that the child should not be returned to his or her parent, the agency would within 42 days initiate proceedings to terminate parental rights, unless the agency demonstrated to the court that termination clearly would not be in the child's best interests. Upon such a demonstration, the court would have to either (1) keep the child in foster care for a stated limited period, if other permanent placement was not possible, or (2) continue foster care on a long-term basis, if that was in the child's best interests.

Termination of Parental Rights

If a child remained in temporary custody of the court following either a review hearing or a permanency planning hearing, the court would hold a hearing on whether parental rights should be terminated if such a hearing was requested by the prosecuting attorney, the child, or the agency. The court could terminate the parental rights of one or both parents upon clear and convincing evidence that any of various circumstances were true.

The circumstances under which parental rights may be terminated would be revised, primarily by being more specific, updating archaic or vague terms, and giving greater emphasis to standards of "reasonableness." The bill would allow termination of parental rights when:

- a parent had deserted a child for either 28 or 91 days, depending on circumstances, rather than the currently-required six months;
- a parent either had committed physical or sexual abuse or had failed to prevent such abuse, providing there was a reasonable likelihood that the abuse would recur if the child returned home;
- 182 days had elapsed since the initial disposition of a case and a parent had failed to rectify the conditions which led to adjudication or to the child coming under the court's jurisdiction, providing there was no reasonable likelihood that the situation would be corrected within a reasonable period of time, given the age of the child;
- a parent failed to provide proper care or custody and there was no reasonable expectation that he or she would be able to do so within a reasonable time, given the age of the child;
- a parent was imprisoned for a period that meant that the child would be deprived of a normal home for over two years, the parent had failed to provide for proper care and custody, and there was no reasonable expectation that the parent would do so;
- parental rights to one or more of the child's siblings had been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents had been unsuccessful.

If a petition to terminate parental rights were filed, the court could terminate the rights at the initial dispositional hearing, providing the bill's standards for terminating parental rights were met.

Post-Termination Hearing

If a child remained in foster care following termination of parental rights, the court would have to hold a hearing within 182 days and at least every 182 days thereafter. The hearing would be to review the child's placement in

foster care and the progress being made toward the child's adoption or other permanent placement.

MCL 712A.1 et al.

House Bill 4641

The bill would amend the Social Welfare Act to allow money in a county's child care fund to be used by a designated agency providing juvenile justice services. That designation would be made by the county board of commissioners or the Wayne County executive.

MCL 400.117c

House Bill 4643

The bill would amend Public Act 220 of 1935, the act providing for the commitment of children to the Michigan's children's institute, to provide for the review of those commitments by the juvenile court.

MCL 400.203

BACKGROUND INFORMATION:

The Coleman Commission Report on Permanency Planning lists the following barriers to permanent family placement for abused and neglected children:

1. There is a lack of services which prevent child abuse or which prevent unnecessary removal of children from their families.
2. Criteria for removing children from their families is [sic] unclear.
3. There is a serious shortage of foster homes. Parents' visits to children in foster care are too infrequent.
4. Case plans are unclear.
5. Case review is inadequate.
6. Termination of parental rights takes too long.
7. Time limits exist but are not followed.
8. Services are fragmented.
9. Professionals lack specialized training and skills.
10. Children are waiting to be adopted.

FISCAL IMPLICATIONS:

In its analysis dated October 27, 1987, the Department of Social Services estimates the cost of providing the foster care and case aid staffing to effect the juvenile code changes called for by the Coleman Commission and the bills to be in excess of \$15 million. In its June 2, 1988 analysis, the Senate Fiscal Agency noted that the DSS estimates state costs exceeding \$15 million and that the bills would have an indeterminate fiscal impact on local units of government.

ARGUMENTS:

For:

In implementing the Coleman Commission's recommendations, the bills would do much to ensure that abused or neglected children spend as little time as possible in institutions or foster care. An individualized case plan would have to be developed and kept current for each child, and courts would have to consider these case plans in making placement decisions. Strong emphasis would be placed on keeping a child at home whenever possible, and on returning a child to home as soon as

possible, in conjunction with improving home conditions. Regular and frequent family contact would be strongly encouraged for children removed from their homes. Courts would have to frequently review foster care placements under prescribed criteria, again with the emphasis on doing whatever necessary to safely return a child home. For children at risk of remaining in foster care indefinitely, such as those still in foster care after one year, the social service agency would bring action to terminate parental rights so that permanent adoption may be arranged. New criteria for termination of parental rights would ensure that termination was done under appropriate circumstances and not impaired by vague or archaic terms or delayed by time frames that were unrealistically long for small children.

For:

The bills would minimize the fragmentation of services and conflicts of interest that can arise when juvenile courts provide foster care services to abused and neglected children. Under the bills, services would be provided through the DSS and its contractual agents, and the court would be the evaluator of those services, not both evaluator and provider. As there are a number of juvenile courts which at present have foster care programs, the bills offer reasonable phase-in periods before the new prohibitions against court-provided services take effect.

For:

Progress in abuse and neglect cases has sometimes been impeded by lack of legal expertise on the part of a social worker pursuing the action, combined with a lack of interest or outright refusal of assistance from a local prosecutor. House Bill 4642 would require that prosecutors at least be available for consultation and would enable the DSS to hire an attorney when a prosecutor refused to appear for the department or its agent.

Against:

House Bill 4642 should provide a check against ill-advised or unnecessary abuse and neglect actions being brought by social service agencies or case workers. If petitions had to be approved by the prosecutor, there would be an independent review by a disinterested expert on the sufficiency of a case, and a family could be spared the embarrassment and anguish of dealing with wrongheaded charges of abuse or neglect.