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SFA



BILL ANALYSIS

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Senate Bill 1152 (as enrolled)
Sponsor: Senator Joel D. Gougeon
Senate Committee: Families, Mental Health and Human Services
House Committee: Judiciary

PUBLIC ACT 479 of 1998

Date Completed: 1-22-99

RATIONALE

Executive Order 1995-12 created the Lieutenant Governor's Children's Commission to review laws and programs concerning the removal of children from abusive households, the placement of children in foster care, the reunification of families, and the permanent placement of children. In July 1996, the Commission issued a report that contains specific goals as well as recommendations for addressing these issues. Many of the recommendations were enacted into law by Public Acts 163 through 172 of 1997.

One of the Commission's recommendations that had not been enacted pertained to the use of medical personnel during investigations of abuse cases in which medical intervention is necessary. Another recommendation concerned the termination of parental rights if a parent is convicted of a crime against a child that makes him or her unfit to associate with children. It was suggested that these recommendations also should be enacted.

CONTENT

The bill amended the juvenile code to do all of the following:

- **Require the Family Independence Agency (FIA) to review a child's case with the child's physician under certain circumstances.**
- **Specifically authorize the family division of circuit court (family court) to terminate a person's parental rights if the parent is convicted of certain crimes.**
- **Revise provisions concerning the automatic suspension of parenting time when a termination petition has been filed.**
- **Revise the schedule of hearings to review the foster care placement after the termination of parental rights.**

The bill will take effect on March 1, 1999.

Physician Review

The bill provides that, to ensure that a case service plan addresses a child's medical needs in relation to abuse and neglect, the FIA must review a child's case with either his or her attending physician of record during a hospitalization or his or her primary care physician, but only if a physician has diagnosed the child's abuse or neglect as involving one or more of the following:

- Failure to thrive.
- Munchausen syndrome by proxy.
- Shaken baby syndrome.
- A bone fracture that is diagnosed as being the result of abuse or neglect.
- Drug exposure.

If a child is placed outside of his or her home and the FIA is required under the bill to review the child's case with a physician, then, in a judicial proceeding to determine if the child should be returned to the home, the court must allow the physician to testify regarding the case service plan. The court must notify each physician of a hearing's time and place.

Termination of Parental Rights

The juvenile code allows the family court to terminate a parent's parental rights to a child if it finds, by clear and convincing evidence, that certain factors exist. Among those factors are desertion of the child; physical or sexual abuse of the child or a sibling at the hands of the parent or with the parent's complicity; failure of the parent, without regard to intent, to provide proper care or custody for the child; imprisonment under certain circumstances; previous termination of rights; and a reasonable likelihood, based on the parent's

conduct or capacity, that the child will be harmed.

Under the bill, parental rights also may be terminated if the parent is convicted of any of the following and the court determines that termination is in the child's best interests because continuing the parent-child relationship with the parent would be harmful to the child:

- First- or second-degree murder (MCL 750.316 & 750.317).
- First-, second-, third-, or fourth-degree criminal sexual conduct (CSC) (MCL 750.520b-750.520e).
- Assault with intent to commit CSC (MCL 750.520g).
- A violation of a criminal statute, an element of which is the use or threat of force, and that subjects the parent to habitual offender sentence enhancements under the Code of Criminal Procedure (MCL 769.10, 769.11, & 769.12).
- A Federal law or law of another state with provisions substantially similar to a crime or procedure listed above.

Suspension of Parenting Time

The code provides that, at the time of the initial hearing held to consider termination of parental rights, parenting time is automatically suspended unless the parent establishes and the court determines that the exercise of parenting time will not harm the child. If the court adjourns or continues the termination hearing beyond the original scheduled date for any reason, the court must suspend parenting time in the interim, unless the court determines that the exercise of parenting time will not harm the child.

The bill deletes those requirements and provides, instead, that if a petition to terminate parental rights to a child is filed, parenting time for a parent who is a subject of the petition is automatically suspended and remains suspended at least until a decision is issued on the termination petition. If the parent establishes and the court determines, however, that parenting time will not harm the child, the court may order parenting time in the amount and under the conditions the court determines appropriate.

Foster Care Review Hearing

The juvenile code provides that, if a child remains in foster care following the termination of parental rights to the child, the court must conduct a hearing not more than 182 days after the termination of

parental rights and at least every 182 days after that hearing in order to review the child's placement in foster care and the progress being made toward the child's adoption or other permanent placement. The bill changes that review hearing schedule to 91 days after the termination of rights and at least every 91 days after that hearing. The bill states that this provision applies as long as the child is subject to the jurisdiction, control, or supervision of the court or the Michigan Children's Institute or other agency.

MCL 712A.18f et al.

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 requiring the FIA to review specific types of abuse cases with a physician, the bill will ensure that a child's case service plan effectively addresses his or her medical needs. The input of a child's attending physician or primary care physician may be extremely helpful to protective services workers who do not have medical training. The bill also will assist judges in deciding whether these abused children should be returned home, by requiring the court to permit a child's physician to testify in a judicial proceeding on that issue.

Supporting Argument

An individual who has been convicted of any of the crimes described in the bill presumably is unfit to be a parent. By specifying that parental rights may be terminated because of such a conviction, the bill will expedite the permanent placement of children whose parents have been proven to be dangerous.

Supporting Argument

The bill's requirement for a review hearing every 91 days is consistent with another provision of the code that requires review hearings every 91 days for children in foster care. The bill applies to children remaining in foster care after the termination of parental rights.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on State government. In FY 1996-97 the Family Independence Agency substantiated 11,577 out of 59,829 child abuse and neglect complaints. It is

unknown if the physician or the hospital will charge a consultation fee for a joint review of a child's case. If so, then there will be an increase in expenditures based on the number of substantiated complaints involved. The department might have additional children eligible for adoption as a result in the increased number of causes for rights termination, therefore increasing the expenditures for the administration of and payments for adoption cases. The department might spend additional funds due to an increase in the number of review hearings mandated by the bill.

It appears that the bill will have no fiscal impact on local governments.

Fiscal Analyst: C. Cole

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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.