

Legislative Analysis



ALLOW A DESIGNEE TO ASSUME SOME POWERS OF MCI SUPERINTENDENT

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Senate Bill 891 (Substitute H-3)
Sponsor: Sen. Mark C. Jansen

Senate Bill 892 (Substitute H-1)
Sponsor: Sen. Bill Hardiman

Senate Bill 893 (Substitute H-1)
Sponsor: Sen. Jim Barcia

House Committee: Families and Children's Services
Senate Committee: Families and Human Services

First Analysis (3-3-10)

BRIEF SUMMARY: Each of the bills deals with the role of the superintendent of the Michigan Children's Institute in situations where the parental rights of children have been terminated. Each of the bills would allow a designee of the superintendent to carry out certain powers currently granted only to the superintendent.

FISCAL IMPACT: These bills could generate a small amount of administrative savings for the state. These bills will help address delays in the Michigan Children's Institute review process for adoption and permanent guardianship requests by allowing the MCI superintendent to appoint a designee on his or her behalf to consent to the adoption or guardianship of a child committed to the MCI.

These bills could generate savings for local units of governments. Local governments are required to provide 50% of the cost of foster care for foster youth that are either not eligible for federal IV-E funds or funded 100% with state funds. When a foster youth is moved to a permanent placement through adoption or subsidized guardianship, that local unit of government is no longer required to meet a proportion of the cost of care. So if the process of placing a foster child into one of those permanent placements can be expedited, then the local government will see fiscal savings.

THE APPARENT PROBLEM:

According to the Department of Human Services website:

The Michigan Children's Institute was created to assure the proper care of children needing services from the state. The law established the MCI superintendent as the legal guardian for children committed to MCI when parental rights have been terminated. In 1935, the Michigan Legislature established the MCI Superintendent as the legal guardian for these children. The Superintendent is authorized to consent to adoption,

emancipation, and marriage of MCI wards. Children who have been committed to MCI, whose permanency plan is other than adoption, usually remain under the MCI supervision until age 19. (Note: While the Institute was once a physical place, it is now a division within the Department of Human Services.)

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 the child can be adopted or a guardian can be appointed for the child, the MCI superintendent must give his or her consent.

In 2008, Supreme Court Justice Maura Corrigan and DHS Director Ismael Ahmed invited the 13 counties with the largest adoption dockets to participate in a forum to identify barriers to adoption and suggest solutions. Representatives of those counties 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. (Some of the information in this analysis is derived from the Senate Fiscal Agency analysis dated 11-30-09.)

THE CONTENT OF THE BILL:

Each of the bills deals with the role of the superintendent of the Michigan Children's Institute in situations where the parental rights of children have been terminated. Each of the bills would allow a designee of the superintendent to carry out certain powers currently granted only to the superintendent.

Senate Bill 891 would amend Public Act 220 of 1935 (which deals with the Michigan Children's Institute) to authorize a **designee** of the superintendent of the Michigan Children's Institute (MCI), in addition the superintendent, to consent to the guardianship of a child committed to the MCI. 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 designee would have the same authority. In addition, the superintendent or a 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 superintendent could only designate authority to consent to adoption or guardianship of uncontested case to a designee within the department's state-level central office who has education and employment credentials equal to or superior than to the credentials the superintendent is required to possess by the Civil Service Commission. A child for

whom a guardian was appointed under those provisions would cease to be a ward of the state.

Note: Section 19c of the Juvenile Code deals with placement planning for a child following the termination of parental rights. Among other placement options, if the family court determines it is in the child's best interest, the court may appoint a guardian for the child, although it may not do so without the MCI superintendent's written consent. The superintendent must consult with the child's lawyer guardian ad litem when considering whether to grant consent.

Senate Bill 892 would amend the Michigan Adoption Code (MCL 710.43) to permit the **MCI superintendent or the authorized designee** of the Department of Human Services to consent to the adoption of a child.

Currently under the Code, each parent is required to give consent to the adoption of a child unless the rights of the parent has been terminated, the child has been released for adoption to a child placing agency or the department, if other circumstances exist. Consent must also 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 MCI superintendent or the authorized designee of the department.

Senate Bill 893 would amend the Juvenile Code (MCL 712A.19c) to authorize the **authorized designee** of the DHS (in addition to the MCI superintendent) to grant consent to the appointment of a guardian for a child.

Under the 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 a 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.

ARGUMENTS:

For:

Supporters of the legislation testified that its intent is "to promote the timeliness of decision making leading to a permanent home for a child whose parental rights have been involuntarily terminated." Delay is currently a problem in the system. Allowing a designee to make decisions now made only by the MCI Superintendent will reduce the backlog of cases. Proponents also note, however, that approval for placement whether, through the Superintendent's consent to adopt or by approval for appointment of a

guardianship, must be done with a careful and competent review by someone who has knowledge, experience, and background to assess and ensure that the placement is in the child's best interest. Substitute H-3 to Senate Bill 891 addresses this concern as it clarifies that the Superintendent's designee must have educational, experience and any other employment qualifications equal to or exceeding that required of the MCI Superintendent. Such a requirement maintains the quality and integrity of the process. Proponents say that the requirement that the designee be an employee of the department's Central Office maintains the objectivity and expertise of the review and consent process. They say this requirement maintains the "check and balance" that currently exists because it makes sure that a local county DHS office employee--who may have been directly involved with the case--cannot also be the designee.

Against:

Critics believe that the education and experience requirements are limiting because they narrow the selection ability of the MCI Superintendent. This would also likely increase the backlog of cases if an "educated" and "experienced" designee could not be appointed. The requirements in the bills run counter to the intent of the legislation.

POSITIONS:

Department of Human Services supports the bills (2-24-10)

Children's Law Section - State Bar testified in support of the bills (2-24-10)

Michigan County Social Services supports Senate Bill 891 with amendments. (2-24-10)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.