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BILL ANALYSIS



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House Bill 4893 (Substitute H-2 as passed by the House)
Sponsor: Representative Margaret E. O'Brien
House Committee: Families, Children, and Seniors
Senate Committee: Families, Seniors and Human Services

Date Completed: 12-3-13

CONTENT

The bill would amend the Child Protection Law to do all of the following:

- **Specify how the Department of Human Services (DHS) would have to send notices regarding suspected child abuse or neglect report to named perpetrators.**
- **Allow a person who was the subject of a report or record to request the DHS to expunge a report or record by requesting a hearing within 180 days of receiving notice of the report or record.**
- **Require information identifying the subject of a report to be expunged from the central registry if an investigation did not show child abuse or child neglect by a preponderance of the evidence.**
- **Require information identifying the subject of a report to be expunged from the central registry if a court dismissed a petition based on the merits of the petition under the juvenile code because the petitioner failed to establish that the child was within the court's jurisdiction.**
- **Limit to 10 years the length of time that the DHS must maintain information in the central registry for certain perpetrators.**
- **Provide that confidential records entered under the Law would be available to a court for the purposes of determining the suitability of a person as a guardian of a minor.**
- **Include a "court-operated facility" as approved under Section 14 of the Social Welfare Act within the definition of "person responsible for child's health or welfare".**

The bill would take effect 180 days after it was enacted.

Notice Requirements; Hearing Request

The Child Protection Law requires the DHS to maintain a statewide, electronic central registry of all reports filed with the Department in which relevant and accurate evidence of child abuse or neglect is found to exist. If the DHS classifies a report of suspected child abuse or child neglect as a central registry case, it must give written notice within 30 days to each person who is named in the record as a perpetrator. The notice must include the person's right to request expunction of the record and the right to a hearing. If the DHS refuses a request for amendment or expunction, or fails to act within 30 days of receiving the request, it must hold a hearing.

Under the bill, the notice would have to be sent by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Within 180 of the date of service of the notice, a person who was the subject of a report could request the DHS to hold a hearing for amendment or expunction. If the hearing request were made within the 180-day period, the DHS would have to hold a hearing. If the DHS determined that the request was made within 60 days after the 180-day period expired, it could, for good cause, hold a hearing.

Investigation Results & the Central Registry

If an investigation of a report fails to disclose evidence of abuse or neglect, the information identifying the subject of the report must be expunged from the central registry. If evidence of abuse or neglect exists, the DHS must maintain the information in the central registry until it receives reliable information that the perpetrator identified in the report is dead.

Under the bill, if an investigation of a report did not show child abuse or child neglect by a preponderance of the evidence, or if a court dismissed a petition based on the merits of the petition filed under Section 2(b) of the juvenile code because the petitioner failed to establish that the court had jurisdiction of the child, the information identifying the subject of the report would have to be expunged from the central registry. (Section 2(b) of the juvenile code generally establishes jurisdiction of the Family Division of Circuit Court in cases involving child neglect or abandonment.)

If a preponderance of evidence of abuse or neglect existed, or if a court had taken jurisdiction of the child under Section 2(b) of the juvenile code, the DHS would have to maintain the information in the central registry according to the following provisions.

For a person listed as a perpetrator in category I or II under Section 8d, either as a result of an investigation or as a result of reclassification, the DHS would have to maintain the information in the central registry for 10 years. If any of the circumstances listed in Section 17(1) or 18(1) were involved, however, the DHS would have to maintain the information until it received reliable information that the perpetrator was dead. ("Reliable information" would include, but not be limited to, information obtained using the U.S. Social Security Death Index Database.)

Except as provided below, for a person who was listed as a perpetrator in category I or II either as a result of an investigation or reclassification, if the report or record were made before the effective date of the bill, the DHS could remove the information after 10 years without a request for amendment or expunction.

For a person listed as a perpetrator in category I or II under Section 8d that involved any of the circumstances listed in Section 17(1) or 18(1), the DHS would have to maintain the information in the central registry until it received reliable information that the perpetrator was dead.

(Under Section 8d, a category I classification occurs when the DHS determines that there is evidence of child abuse or neglect, and one or more of the following are true: 1) a court petition is required under another provision of the Law; 2) the child is not safe and a petition for removal is necessary; 3) the DHS previously classified the case as a category II and the child's family does not voluntarily participate in services; or 4) there is a violation, involving the child, of child abuse in the first or second degree, or of a crime listed in Section 8a(1)(b), (c), or (d). These crimes include assault with intent to commit criminal sexual conduct, a felonious attempt or a felonious conspiracy to commit criminal sexual conduct, a felonious assault on a child, and involvement in child sexually abusive material or child sexually abusive activity.)

A category II classification occurs when the DHS determines that there is evidence of child abuse or neglect, and there is a high or intensive risk of future harm to the child.

Section 17(1) applies to children who were severely physically injured, sexually abused, or allowed to be exposed to or have contact with methamphetamine production. Section 18(1) applies to children who were abused through abandonment, criminal sexual conduct involving penetration, severe physical abuse, life-threatening injury, murder, or attempted murder. Section 18(1) also applies to situations in which a child is at risk of harm and either the parent's rights were terminated, or the parent's rights in another child were voluntarily terminated pursuant to a proceeding that generally involved child abuse.)

Confidentiality of Records

Currently, unless made public, any written report, document, or photograph filed with the DHS under the Law is available only to certain parties under specific conditions. The bill would allow the information to be available to a court for the purposes of determining the suitability of a person as a guardian of a minor.

Court-Operated Facility

The Child Protection Law defines the term "person responsible for the child's health or welfare". This term generally includes a parent or legal guardian, or an owner, operator, volunteer, or employee of a licensed or registered child care organization or an adult foster care family home or adult foster care small group home.

The bill would include within this term an owner, operator, volunteer, or employee of a court-operated facility as approved under Section 14 of the Social Welfare Act.

MCL 722.622 et al.

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State and no impact on local units of government. Due to the creation of a 10-year limit on the retention of some information in child abuse and neglect registry, the State would incur some additional expenses for information technology updates. A request to the Department for an estimate of these potential costs is pending. Additionally, the bill could result in some increased costs if the number of administrative hearings increased, or if the number of notifications sent via certified mail increased.

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.