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BILL ANALYSIS

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Senate Bills 1418 and 1419 (as reported without amendment)
Senate Bill 1420 (Substitute S-1 as reported)
Senate Bill 1421 (as reported without amendment)
Sponsor: Senator Mark C. Jansen (S.B. 1418)
Senator Bill Hardiman (S.B. 1419)
Senator Alan L. Cropsey (S.B. 1420)
Senator Roger Kahn, M.D. (S.B. 1421)
Committee: Families and Human Services

Date Completed: 8-29-08

RATIONALE

Michigan law contains various provisions designed to protect children from abuse and neglect. The Child Protection Law requires certain professionals, such as physicians, social workers, and teachers, to report to the Department of Human Services (DHS) if they have reasonable cause to suspect child abuse or neglect. When a report is made, Children's Protective Services (CPS) workers are responsible for determining whether to investigate and, if various criteria are met, conducting an investigation or reporting to a law enforcement agency. Although the DHS does not have the authority to seek a change of custody, the Department is required to petition the family court for it to take jurisdiction of a child under certain circumstances. At the same time, in domestic relations cases, the Friend of the Court (FOC) may conduct a custody or parenting time investigation when ordered to do so by the court, and may request access to CPS records. In some situations, these processes may be going on simultaneously. Rather than receiving greater protection, however, a child might be endangered if the agencies fail to communicate or follow protocols.

This evidently is what occurred in the case of a nine-year-old boy, Nicholas Braman, who was killed in 2007 by his father in Montcalm County, after his mother had sought custody in Saginaw County and CPS in both counties had received complaints of abuse. (Please see **BACKGROUND**, below, for more information about this case.) An investigation by the Office of Children's Ombudsman found that both counties' CPS had made errors, including noncompliance with existing law or policy. The Children's Ombudsman recommended various changes in DHS practices, and the Department agreed to implement most of them. The DHS also worked with the State Court Administrative Office, FOC Division, to develop a joint protocol for coordination between the Department and the FOC.

In addition to these measures, some people believe that statutory changes should be made to ensure that the agencies communicate about open cases, and that CPS workers comply with State law and DHS policy when conducting investigations.

CONTENT

Senate Bill 1418 would amend the Child Protection Law to do the following:

-- **Require the Department of Human Services to notify the local Friend of the Court office of an investigation into suspected abuse or neglect of a child, if there were an open FOC case regarding the child.**
-- **Require the DHS to notify the local FOC office when there was a change in the child's placement, if the**

Department were aware of an open FOC case involving the child.

-- Remove current restrictions on the availability of central registry information to a local FOC office.

<u>Senate Bill 1419</u> would amend the Friend of the Court Act to require an FOC office, upon being notified by the DHS of an investigation into alleged abuse or neglect of a child, to notify the DHS of any procedural developments in an open FOC case regarding that child while the case was pending.

<u>Senate Bill 1420 (S-1)</u> would amend the Friend of the Court Act to include FOC employees among the individuals who are required to report suspected child abuse or neglect.

<u>Senate Bill 1421</u> would amend the Child Protection Law to require the DHS to develop a checklist to be used in each investigation of suspected abuse and neglect; and prohibit an investigation from being closed until the checklist had been completed and reviewed.

Senate Bills 1418 and 1421 would take effect on October 1, 2008. Senate Bill 1419 is tie-barred to Senate Bill 1418. All of the bills are described in more detail below.

<u>Senate Bill 1418</u>

<u>Notice Requirements</u>

Under the bill, when the DHS received a report of suspected child abuse or neglect, the Department would have to determine whether there was an open FOC case regarding a child who was suspected of being abused or neglected. If the DHS determined that there was an open FOC case, it would have to notify the FOC office in the county in which the case was open that an investigation was being conducted under the Child Protection Law regarding the child.

In addition, if the DHS were aware of an open FOC case involving a child who was suspected of being abused or neglected, it would have to report to the local FOC office when there was a change in the child's placement.

The DHS also would have to notify parents of a child who was suspected of being abused or neglected of their option to request a change in the child's placement.

<u>Central Registry</u>

The Child Protection Law requires the DHS to maintain a central registry of all reports of alleged child abuse or neglect. A written report, document, or photograph in the central registry is considered a confidential record, available only to certain individuals and entities.

Central registry information is available to a local FOC office if there is a compelling need for Children's Protective Services records or information to determine custody or parenting time issues regarding a child, subject to certain provisions. A local FOC office investigator, caseworker, or administrator directly involved in the investigation must notify the appropriate Department or CPS local or central office that a child custody or parenting time investigation has been initiated involving a family and request CPS records and information that are relevant to that investigation.

Within 14 days after receiving the request, the CPS office must release the pertinent records and information to the investigator, caseworker, or administrator directly involved in the child custody or parenting time investigation.

The bill would remove those provisions, and instead permit information in the central registry to be made available to a local FOC office.

<u>Senate Bill 1419</u>

Under the bill, if a Friend of the Court office received notice from the DHS under the Child Protection Law (as Senate Bill 1418 would require) regarding a child for whom the establishment or modification of custody or parenting time was pending in an open FOC case, the office would have to notify the DHS of procedural developments in the case until a final order regarding the pending custody or parenting time dispute was entered.

Senate Bill 1420 (S-1)

The mandatory reporting requirements of the Child Protection Law apply to physicians, nurses, psychologists, social workers, teachers, members of the clergy, regulated child care providers, and others. Under the bill, this list also would include an employee of any Friend of the Court office.

Senate Bill 1421

The bill would require the Department of Human Services to develop an investigation checklist to be used in each investigation of suspected abuse and neglect.

The DHS would have to require the checklist to be used in investigations of abuse and neglect handled by the Department across the State. An investigation could not be closed until the checklist was completed, subject to the following provisions.

The bill would require a supervisor to review the completed checklist. If the supervisor determined that the investigation complied with State law and DHS policy, the investigation could be closed.

If the supervisor determined that the investigation did not comply with either State law or DHS policy, he or she would have to determine the reason that the law or policy was not followed. The investigation could not be closed until after the local office director had reviewed it.

MCL 722.627 & 722.628 (S.B. 1418)
522.520 (S.B. 1419)
722.623 (S.B. 1420)
Proposed MCL 722.628e (S.B. 1421)

BACKGROUND

The following information was obtained from reports of the Office of Children's Ombudsman and the Department of Human Services.

In 2004, Children's Protective Services in Saginaw County substantiated an allegation of child abuse against the father of Nicholas Braman and his two older brothers. At the time, the children were living with their mother in that county, and she was pursuing full custody of the children. Believing that the mother would obtain legal custody, the Saginaw County CPS closed or did not pursue the investigation. At some point, however, the children were returned to their father's residence.

In June 2006, CPS in Montcalm County, where the Braman children were living with their father, received and investigated a new allegation of abuse. Based on interviews with the children, Montcalm County CPS did not substantiate the complaint.

In August 2007, Saginaw County CPS received and investigated an allegation that Mr. Braman was disciplining the two older children with a cattle prod. With the assistance of Montcalm CPS and law enforcement, Saginaw County CPS completed the investigation. Subsequently, Mr. Braman pleaded guilty to attempted second-degree child abuse.

Although the two older children remained with their mother in Saginaw County, Nicholas continued to live with his father and stepmother in Montcalm County, and the case was transferred to Montcalm County CPS. During the time that Nicholas and his father were participating in counseling to prepare Nicholas for the father's incarceration, Mr. Braman killed Nicholas, the stepmother, and himself.

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 providing for enhanced communication between CPS and FOC offices, as well as compliance by CPS workers with State law and policy, the bills would help to prevent another tragedy like the death of Nicholas Braman. The investigation of this case by the Office of Children's Ombudsman revealed a number of deficiencies—including the exercise of poor judgment, failure to comply with law and policy, and poor communication—in CPS's response to complaints of abuse. To some extent, these factors evidently have been and are being addressed on an administrative level. At the same time, the proposed changes in statute would strengthen Michigan's protections against child abuse and neglect, ultimately preventing injury or death.

In particular, the notice requirements in Senate Bills 1418, 1419, and 1420 (S-1) would help ensure that the DHS and the FOC each knew about the other agency's cases when they involved abuse or neglect, and were aware of the placement of children. Also, under Senate Bill 1418, FOC offices would have access to records in the central registry without having to show a compelling need. Senate Bill 1421 would establish a system under which an abuse or neglect investigation could not be closed unless a checklist was completed by a CPS worker and reviewed by a supervisor, and then reviewed by a local office director if State law or DHS policy had not been followed.

There is no way to know whether Nicholas Braman would still be alive if these measures had already been in the law. It is possible, however, that the outcome would have been different if the DHS and FOC had exchanged information about the Braman children, if Saginaw County CPS had kept open the 2004 complaint to ensure that the children's mother had successfully obtained custody of the children, if Montcalm County CPS had investigated the 2006 complaint in accordance with policy requirements, or if either county had filed a petition to remove the children from their father's home. Since no legislation can change the past, it is essential that the State move forward to minimize the risk to other vulnerable children.

Response: The DHS and others have raised several concerns about the bills. Since the Department receives over 130,000 complaints of abuse or neglect each year, it would be burdensome for the DHS to determine whether there was an open FOC case for every complaint, as Senate Bill 1418 would require. Instead, this requirement should apply only under specific circumstances, such as the emergency removal of a child from the home, or the removal of a child's siblings. The Department also has suggested that it would be appropriate for the FOC or a prosecutor, rather than the DHS, to notify parents of their option to request a change in a child's placement. In addition, the bill would move existing language allowing Children's Protective Services to report to a local FOC office whenever a parent, more than three times in one year or on five cumulative reports over several years, made unfounded reports to CPS of alleged abuse or neglect. The current language is subject another section of the Child Protection Law providing for the confidentiality of a reporting person's identity, but the bill would conflict with this provision.

It also has been suggested that not all Friend of the Court employees should be made mandatory reporters under the Child Protection Law, which imposes civil and criminal liability for failure to report as required. Under Senate Bill 1420 (S-1), any FOC employee would be subject to the reporting requirement regardless of the person's role and responsibilities. A secretary or receptionist, however, probably would not have the training and experience to recognize signs of abuse or neglect.

In addition, the DHS already has developed an investigation checklist, which is scheduled to go on-line for all CPS workers on October 1. Rather than requiring the Department to develop a new checklist, Senate Bill 1421 could require the DHS to implement the existing list, with requirements for a supervisor to sign it and provide reasons if law or policy had not been followed.

Opposing Argument

In addition to being overly broad, the reporting requirement in Senate Bill 1420 (S-1) could create a conflict of interest if an FOC employee reporting suspected abuse or neglect also were a witness in the case. Moreover, if the FOC employee were an attorney, reporting potentially could violate the attorney-client privilege, which the Child Protection Law specifically recognizes. Although some FOC employees already might be mandatory reporters, the requirement should not be extended to additional FOC staff.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 1418

The Department of Human Services could experience a moderate increase in administrative costs associated with integrating a check of open Friend of the Court cases into investigations of suspected abuse and neglect.

Senate Bill 1419

The bill would have no fiscal impact on the Department of Human Services. The bill could result in minor administrative costs for local Friend of the Court offices.

Senate Bill 1420 (S-1)

The bill would have no fiscal impact on State or local government.

Senate Bill 1421

The bill could create a minor administrative cost to the Department associated with creating and implementing the use of a standard checklist for the investigation of suspected abuse and neglect.

Fiscal Analyst: David Fosdick
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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.