Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 694 (Substitute S-1 as reported) *(as passed by the Senate)*
Senate Bill 1303 (Substitute S-1 as reported) *(as passed by the Senate)*
Sponsor: Senator Tom Casperson
Committee: Judiciary

Date Completed: 11-2-12

RATIONALE

Michigan's juvenile code gives the family division of circuit court (family court) jurisdiction over minors under specific circumstances, including situations in which a juvenile's home is "unfit" due to particular factors, such as neglect, cruelty, or criminality on the part of a parent or another adult in the home. When a child protective action is begun in the family court, the court first determines whether it has jurisdiction over the child, and then determines what action, if any, will be taken on behalf of the child, according to procedures set forth in the juvenile code and Michigan court rules. After a series of proceedings, including review hearings and permanency planning hearings, a petition for termination of parental rights may be filed. If at least one statutory basis for termination is proven, and termination is in the child's best interests, the court may terminate the parental rights of one or both parents. While these procedures are designed to protect children from a home environment that is unsafe, some people believe that the law does not adequately address situations in which a parent has abused another person's child or is incarcerated, or both. Specifically, if a perpetrator victimized someone else's child but not his or her own, some courts might not find that the element of "criminality" exists. Also, in some cases, an abusive parent is imprisoned but is scheduled to be released and is expected to return to the child's home. In other cases, an incarcerated parent's contact with a child through mail, phone calls, or visits might be harmful to the child.

Under the circumstances described above, although there might be grounds for termination of parental rights, if the home is not presently unfit, the family court cannot proceed because it does not jurisdiction over the child (assuming other grounds for jurisdiction are not established). Some people believe that a child's home should be considered unfit if the child's parent or another adult resident victimizes any child, and that the court should have jurisdiction over a child whose home either is or will become unfit.

A related issue involves efforts of the Department of Human Services (DHS) to reunify a child with his or her family when the child is in foster care and parental rights have not been terminated. The juvenile code requires reasonable reunification efforts to be made under these circumstances, and the Michigan Supreme Court has required the DHS to involve an incarcerated parent in the reunification process (*In re Mason*). It has been suggested that, unless directed by the court, reunification should not be required if a parent is imprisoned for two years or longer.

CONTENT

Senate Bill 694 (S-1) would amend the juvenile code to revise a provision granting the family court jurisdiction over a juvenile whose home or environment is an unfit place for the juvenile to live in, to do the following:

-- **Refer to a home or environment that "is or will be" unfit.**
-- **Define criminality, and include violations that do not result in a conviction.**
-- **Add abuse and substance abuse to the factors that make a home unfit.**
-- **Require the court to consider allegations against an absent parent.**
-- **Provide that, in a consideration of whether offenses against children rendered the home unfit, it would not matter if the child victim was related to the parent, guardian, nonparent adult, or other custodian.**

Senate Bill 1303 (S-1) would amend the juvenile code to provide that the Department of Human Services would be permitted, but not required, to provide services to reunify a child with his or her parent, and the court could order the DHS to provide those services, in situations involving a parent who "is or will be imprisoned for 2 or more years".

The bills are tie-barred.

Senate Bill 694 (S-1)

Under Section 2(b) of the juvenile code, the family court has jurisdiction in proceedings concerning a juvenile under 18 years of age whose home or environment is an unfit place for the juvenile to live in, due to neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, nonparent adult, or other custodian. Under the bill, the court would have jurisdiction over a juvenile whose home or environment "is or will be an unfit place" for the juvenile to live in. Also, the bill would refer to abuse and substance abuse, and delete the reference to drunkenness.

For purposes of that provision, the bill would define "criminality" as a violation of State or Federal law by a parent, guardian, nonparent adult, or other custodian, that by its nature or effect renders the home unfit whether or not the violation results in a conviction.

In determining whether a home "is or will be" an unfit place for the juvenile to live in, the court would have to consider allegations against a parent who was currently absent from the home or had no current contact with the juvenile.

In a consideration of whether offenses committed against children rendered the home unfit, it would not matter whether the child victim was related to the parent, guardian, nonparent adult, or other custodian.

Senate Bill 1303 (S-1)

The code sets forth the procedures that the family court and the DHS must follow if a juvenile allegedly falls within the provisions of Section 2(b). After a preliminary hearing or inquiry, the court may authorize a petition to be filed and may release the juvenile to his or her parents, guardian, or custodian, and order a parent, guardian, custodian, nonparent adult, or other person living in the child's home to leave the home. If a petition alleges abuse by such a person, the court may not leave the child in or return the child to his or her home unless the court finds that the conditions are adequate to protect the child from the risk of harm.

If the court finds that a parent is required by court order to register under the Sex Offenders Registration Act, the DHS is permitted but not required to make reasonable efforts to reunify the child with the parent, and the court may order the Department to make reasonable efforts. Under the bill, these provisions also would apply if the court found that a parent currently was or would be imprisoned for two or more years.

Before the court enters an order of disposition in a proceeding under Section 2(b), the agency responsible for the child's care must prepare a case service plan. The plan must provide for placing the child in the most family-like setting available and in as close proximity to his or her parents' home as is consistent with the child's best interests and special needs.

The bill specifies that, if a court found that a parent was or would be imprisoned for two or more years in a State prison, an out-of-State prison, or a Federal prison, the DHS could, but would not be required to, provide services under the case service plan in an

effort to reunify the child with the parent. The court could order the Department to provide reunification services.

The code requires the court to conduct a permanency planning hearing if a child remains in foster care and parental rights have not been terminated. The hearing must be conducted within 12 months after the child was removed from his or her home, and then at least every 12 months while foster care continues. If there is a judicial determination that reasonable efforts to reunify the child and family are not required, however, the court must conduct a permanency planning hearing within 30 days of that determination.

Reasonable efforts to reunify the child and family must be made in all cases unless any of the circumstances specified in the code apply. Under the bill, in addition to these circumstances, reunification would not be required if the parent were or would be imprisoned for two or more years.

MCL 712A.2 (S.B. 694)
712A.13a et al. (S.B. 1303)

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

Testimony submitted to the Senate Judiciary Committee by the Alger County Prosecuting Attorney described a situation in which a man was convicted in Alger County of first-degree criminal sexual conduct (CSC) for sexual penetration of his 14-year-old niece, who was living in the man's home along with his wife and two small children. The defendant's wife immediately filed for divorce, moved to Marquette County, and began pursuing termination of the defendant's parental rights. Evidently, the court in Marquette County conceded that there were grounds for termination but found no grounds for the court to take jurisdiction over the children because, according to the court, "criminality" means conduct aimed at the parent's own child, so the home was not unfit. The Alger County prosecutor filed a brief pointing out that this interpretation was inconsistent with the statutory scheme as well as standard civil jury instructions defining "criminality". The prosecutor also pointed out that the court's interpretation was inconsistent with a 2004 Court of Appeals decision that allowed evidence of a man's involvement in the murder of his wife to be admitted in order to show criminality in child protective proceedings involving their minor children, even though the man had not been convicted at the time the termination petition was filed (*In re MU*, 264 Mich App 270).

The prosecuting attorney also claimed that the Marquette County court avoided taking a case in which the children were not in any immediate physical danger due to the fact and length of the father's incarceration. According to the prosecutor, however, "the father's pursuit of contact with the children…had been relentless and the threat of his release from prison with his parental rights intact is likewise real, imminent, and a source of tremendous anxiety for the children". The prosecutor cited a 1998 Court of Appeals decision that concerned proceedings to terminate the parental rights of a man who was sentenced to three to eight years' imprisonment for second-degree child abuse involving his daughter (*In re SR*, 229 Mich App 310). The petition was dismissed at the trial court level because the children were not presently at risk, but the Court of Appeals reversed. Although jurisdiction in that case was based on substantial risk of harm to the child's mental well-being, rather than criminality, the Court held, "The fact that respondent [the father] was serving a prison sentence when the petition to terminate his parental rights was filed does not eliminate the mental and emotional effect on the child of his violent conduct."

Senate Bill 694 (S-1) would address similar situations and help ensure that the family court did not dismiss a child protective petition because a parent or other perpetrator victimized a child who was unrelated to the offender, or because the parent was incarcerated. The court would have jurisdiction if a child's home were unfit at the time the petition was filed or would become unfit. The court also would be required to consider allegations against a parent who was absent or had no contact with the child. The definition of "criminality" would encompass violations that, by their

nature or effect, rendered a home unfit, regardless of whether the offender was convicted. In addition, if a parent, guardian, nonparent adult, or other custodian committed an offense against a child, it would not matter whether the child was or was not related to the perpetrator.

Supporting Argument

In 2010, the Michigan Supreme Court reversed a decision terminating the parental rights of a man who had been incarcerated during child protective proceedings (*In re Mason*, 486 Mich 142). The Court found, among other things, that the DHS had failed to comply with its statutory duties to involve the father in the reunification process and to provide services necessary for him to be reunified with his children. As the Court pointed out, at the permanency planning stage, the law requires the DHS to make reasonable efforts to reunify the child and family in *all* cases, unless a specific exception applies. Senate Bill 1303 (S-1) would make an additional exception in the case of a parent who was sentenced to at least two years' imprisonment. Also, when a petition was filed under Section 2(b) and a case service plan was prepared in a Section 2(b) case, the bill would make it clear that the DHS would not have to attempt reunification if a parent were imprisoned for two years or longer. The Department still would have the discretion to do so, however, and the court still could order the DHS to involve an incarcerated parent in the reunification process.

Response: The DHS has suggested that the bill should refer to imprisonment "from the date of initial disposition". The Department also believes that the minimum period of imprisonment should be three years, rather than two. In addition, the DHS does not believe that this bill should be tie-barred to Senate Bill 694.

Opposing Argument

Senate Bill 691 (S-1) is overbroad and would radically change the current system for the family court to establish jurisdiction over a child. The bill would allow the court to intervene in a currently safe home environment based on the possibility that a bad parent or caretaker could reappear and harm a child. The proposed definition of "criminality" also is overbroad and vague. It is not clear what a "violation…that by its nature or effect renders the home unfit" would be, and allowing a court to find criminality without a conviction would be particularly excessive. Essentially, the bill would authorize a court to establish jurisdiction and remove a child from his or her home based on *anticipated* conduct. In addition to a potential threat from an incarcerated parent, this could include, for example, the possibility that a parent who had previously abused drugs would relapse, a recovering alcoholic would fall off the wagon, or someone who had committed a crime and served his or her sentence would reoffend. Allowing the court to intervene based only on allegations could be especially problematic in situations involving the after-hours removal of a child, considering the potential for inaccurate information. It simply would be unwise, and could be unconstitutional, to allow government intervention based on allegations and speculation.

Opposing Argument

Senate Bill 694 (S-1) is misdirected and could penalize innocent parents, especially in situations involving domestic violence. When the court has jurisdiction over a child, it also has jurisdiction over both parents and other adults. If one parent is the perpetrator of domestic violence and the other parent does not leave the home or the relationship for fear of escalating the violence, the home might be considered unfit because of that parent's failure to protect the child from the abusive parent. As a result, *both* parents' access to the child could be curtailed, and potentially both could lose their parental rights. This can occur due to Michigan's "one parent doctrine", which allows the State to take jurisdiction over abused or neglected children on the basis of the actions of only one parent. The Court of Appeals articulated the doctrine in 2002 (*In re CR*, 250 Mich App 185) and the Michigan Supreme Court recognized its constitutionally as "jurisprudentially significant" in 2012 (*In re Mays,* 490 Mich 993). (In a footnote, the Court said that it would undoubtedly be required to address the doctrine soon, given its widespread application.)

In situations involving domestic violence, the focus of the intervention should be on the threatening parent, not the one who is threatened. Declaring the protective parent's home unfit is not the best way to

keep the abusive parent away. As long as the "one parent doctrine" is in effect, perhaps the child custody and parenting time system would be better suited to address situations like the one described by the Alger County prosecutor. It is also possible that current law simply is not adequate to address these situations, and a different legislative remedy would not have the far-reaching and undesirable consequences of this bill.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 694 (S-1)

The bill could increase costs to the State and the counties. To the extent that the courts used the revised provision and also the extent that it would affect the courts' placement decisions, the State could realize some additional costs. It is not clear whether the provision would affect the courts' placement decisions in any significant way, however. If more out-of-home placements were required due to the potential unfitness of a home, the per diem costs of certain cases could increase from approximately $60 per day for an in-home placement to approximately $202 per day for placement in a private, residential facility.

The counties split the costs of juvenile justice placements 50-50 with the State through the Child Care Fund. Therefore, the county share would increase as the State's share increased.

Senate Bill 1303 (S-1)

To the extent that parents face new prison sentences just before the reunification process, it is possible that the bill could have a slight yet indeterminate fiscal impact on the State foster care caseload or adoption subsidy payments, the costs of which are primarily paid with Federal funding. The bill would not affect reunification funding, which is a Federal capped funding source. The DHS strives to find a permanent placement for a child who is in foster care within one year. The Department's policy manual also includes checks and provisions for parents with a criminal record.

The Children's Foster Care Policy Manual requires the Department to do a criminal history and background check through the Law Enforcement Information Network (LEIN) system on all adult household members and nonparent adults for all cases in which a return home is being considered. Through an agreement with the Michigan State Police, the LEIN system gives the Department access to information such as State of Michigan criminal history information; Internet Criminal History Access Tool (ICHAT); Sex Offender Registry; prison and parole information; personal protection orders; and National Crime Information Center - wants/warrants only from all states.

The reunification assessment has three steps: (1) assessment of compliance with the parenting time plan; (2) assessment of barrier and risk reduction; and (3) determination of the child's safety. According to Department policy, a child's safety is the primary factor in determining reunification, and "the existence or nonexistence of an arrest or criminal record is only one factor in assessing risk. The nonexistence of an arrest or criminal record is not necessarily an indication of low or no risk."

Fiscal Analyst: Frances Carley

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