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

**SFA****BILL ANALYSIS**

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

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Senate Bill 516 (as introduced 5-21-97)

Sponsor: Senator Joel D. Gougeon

Committee: Families, Mental Health and Human Services

Date Completed: 5-21-97

### **CONTENT**

The bill would amend the juvenile code to:

- Provide that, if a petition for termination of parental rights had been filed, the court could order parenting time only if no parenting time were not in the child's best interest; and require psychological evaluation or ongoing counseling if parenting time could cause significant harm to a child.
- Prohibit the Family Independence Agency (FIA) from attempting to rectify home conditions or to reunite a family if that action were not in a child's best interest.
- Require the FIA to petition for termination of parental rights if abuse of a child or his or her sibling involved certain types of conduct or if other conditions were met.
- Require each county to establish a team to review petitions for termination of parental rights, and require a team to review the case service plan in certain cases of substantiated abuse or neglect.
- Require the court to adhere to prescribed time periods; limit the circumstances under which an abuse or neglect case could be adjourned or continued; and set a deadline for the court's decision on a termination petition.
- Provide for the representation of an abused or neglected child.

#### **Parenting Time**

Under the code, unless parenting time, even if supervised, would be harmful to an abused or neglected child for whom a juvenile court petition has been filed, the child's parents must be permitted to have parenting time frequently with him or her. The bill specifies, however, that if a petition were filed for termination of a parent's parental rights, the court could order parenting time between the parent and child only if the court found that no parenting time was not in the child's best interest. Further, if facts that parenting time could cause significant harm to a child were brought to the court's attention, the court would have to order psychological evaluation or ongoing counseling to determine the appropriateness and conditions for parenting time.

#### **Family Reunification**

Under the bill, in an abuse or neglect proceeding, the FIA or an agency could not attempt to rectify conditions that caused the child's removal from his or her home or to reunify the child with his or her parent or parents if that action were not in the child's best interest. If the FIA or agency were not attempting to rectify the conditions or reunify the family, it would have to find a permanent home for the child. (The code defines "agency" as a public or private organization, institution, or facility

responsible under court order or contractual arrangement for the care and supervision of a juvenile.)

If anyone filed a petition for termination of parental rights, the FIA could not provide services intended to reunify the parent and child unless the court determined that parental rights would not be terminated.

### Termination of Parental Rights

Except as provided below, the FIA would have to petition for termination of a parent's parental rights to a child if the parent were alleged to have abused the child or a sibling of the child and the abuse included one or more of the following:

- Abandonment, and the child or sibling was very young or severely impaired.
- Criminal sexual conduct involving penetration.
- Chronic battering, torture, or other severe physical abuse.
- Loss or serious impairment of an organ or limb.
- Life-threatening injury.
- Murder or attempted murder.

The FIA also would be required to petition for termination if:

- The parent's parental rights to another child had been terminated.
- There had been previous failed attempts to rectify abuse in the family.
- The parent had chronically used a controlled substance or alcohol, that use had not abated even with treatment, and that use had resulted in abuse of the child or a sibling of the child.

The FIA would have to petition for termination of parental rights immediately upon discovering that a circumstance described above existed, either at the initial dispositional hearing or after a petition had been filed. If a petition for termination had not been filed and the FIA were considering petitioning for termination of parental rights at the initial dispositional hearing, the FIA would have to hold a conference between the protective services supervisor, the protective services worker, and the foster care worker, if any, to agree upon the course of action. If an agreement could not be reached at the conference, the FIA Director or the Director's designee would have to resolve the disagreement.

The requirement that the FIA petition for termination of parental rights would not apply if the FIA established on the record, and the court determined, that it was not in the child's best interest to file a petition for termination.

The code specifies grounds for the termination of parental rights. These would include, under the bill, that the parent was convicted of a crime whose victim was a child and the nature of which made the parent unfit to associate with children.

Under the bill, if the FIA or an agency had information that a pregnant woman who was in a hospital had had her parental rights to a child terminated, the FIA or agency would have to transmit that information to the hospital.

### Review Teams

Each county would be required to establish a team to review petitions for termination of parental rights. The team would have to include at least the prosecuting attorney for the county and appropriate specialists. If the team decided that a case was appropriate for termination, the team would have to focus on accumulating sufficient evidence to sustain the clear and convincing evidence burden for that termination.

If abuse or neglect of a child were substantiated, a review team would have to review the case service plan (prepared by an agency prior to the court's disposition) to ensure that the services provided by the plan addressed the child's needs given the problem presented. This requirement would apply only if the child's home were the site of documented criminal violence or if the abuse or neglect were, or resulted in, one or more of the following:

- Failure to thrive.
- Munchausen syndrome by proxy.
- Shaken baby syndrome.
- A bone fracture that a medical professional presumed to be a result of abuse or neglect.
- Placement of the child in foster care after one or more previous foster care placements.
- A medically fragile, multiply impaired, or severely mentally impaired child.
- Sexual abuse.
- Drug exposure.

If a review were required under these provisions, and the child were placed outside of his or her home, the review team would have to review the child's case before he or she was placed back in the home.

#### Time Periods/Adjournment or Continuance

Under the bill, if an abuse or neglect petition were filed, the court would be required to adhere strictly to each time period prescribed by the juvenile code or court rule for management and disposition of the child's case. The State Court Administrative Office would be required specifically to monitor the juvenile court for adherence to those time periods.

The court could adjourn a hearing or grant a continuance regarding an abuse or neglect case only for good cause with factual findings on the record and not solely upon stipulation of counsel or for the convenience of a party. In addition to factual good cause, the court could adjourn a hearing or grant a continuance under either of the following circumstances:

- A party moved for the adjournment or continuance in writing at least 10 days before the hearing.
- Upon the court's own motion, but only if the delay were in the child's best interest and for a period of not more than 30 days.

Under the code, if a child remains in foster care in the temporary care of the court following a review hearing or a permanency planning hearing, or if a child remains in the custody of a guardian, upon petition of various parties the court must hold a hearing to determine if the parental rights to the child should be terminated and, if all parental rights are terminated, the child placed in permanent custody of the court. The bill would require the court to issue a decision regarding a termination petition within 70 days after the commencement of the initial hearing on the petition.

#### Guardian Ad Litem/Attorney for the Child

The bill provides that, if the court did not appoint an attorney for a child in an abuse or neglect proceeding, the court would have to appoint a guardian ad litem or other person to represent the child during the entire period that the child was under the court's jurisdiction.

A child's attorney would have to be present at all hearings concerning the child and could not substitute counsel unless the court approved.

The code provides that a court-appointed attorney must serve until discharged by the court. The bill would prohibit the court from discharging the attorney until the child was adopted, had a permanent

guardian, or was no longer a State ward.

#### Supplemental Petition

Under the code, if a child remains under the jurisdiction of the court, a cause may be terminated or an order may be amended or supplemented at any time as the court considers necessary and proper. The bill would require the FIA to file a supplemental petition with the court if the FIA became aware of an occurrence of abuse or neglect of a child who was under the court's jurisdiction and an investigation confirmed that the occurrence had a basis in fact.

MCL 712A.13a et al.

Legislative Analyst: S. Margules

#### **FISCAL IMPACT**

##### Courts

The provision of the bill that would prohibit the court from discharging an attorney until a child was placed in a home or was no longer a State ward could result in increased cost to local units of government. At this time these costs cannot be determined.

The bill would also result in additional administrative costs to the State Court Administrative Office, which would be required to monitor the probate court for compliance with time periods.

##### Family Independence Agency

Fiscal information about the bill's impact on the FIA is not available at this time.

Fiscal Analyst: M. Ortiz  
J. Walker

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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.