

Legislative Analysis



PROTECTIVE CUSTODY OF A CHILD PROVISIONS: REVISE

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Senate Bill 320 (Substitute H-1)

Sponsor: Sen. Rick Jones

House Committee: Judiciary

Senate Committee: Judiciary

First Analysis (5-15-12)

BRIEF SUMMARY: The bill would revise the conditions under which a court could order a child placed into foster care and revise provisions regarding the emergency removal of a child and placement into protective custody.

FISCAL IMPACT: Senate Bill 320 would have a minimal to no fiscal impact on state and local government.

THE APPARENT PROBLEM:

Critics say that an incident at a Tiger's game revealed a glaring need for changes in state law regarding how children are removed from the custody of their parents. In spring of 2008, an Ann Arbor man took his seven-year-old son to Comerica Park. As they headed to their seats, the dad saw a sign for Mike's Lemonade and purchased a bottle for his son. The dad was not familiar with the product and the vendor's display did not indicate that the drink contained alcohol. When a security guard saw the child drinking from the bottle, the child was taken first to the park's medical clinic, and then transported to a hospital for further evaluation.

Even though it was clear that the father did not intend to supply his young son with alcohol, and a blood test was negative for the presence of alcohol, Child Protective Services (CPS) was contacted. The result was that the boy was removed from the home and placed into foster care for a couple days. He was only released to his mother when his father moved out of the home.

A subsequent review of the case revealed shortcomings in Michigan law governing the emergency removal of children. Reportedly, the law failed to meet minimal U.S. Constitutional standards. In December of 2008, a work group of stakeholders was formed to examine the issues. This group included representatives of DHS, judges and referees, court administrators, law enforcement personnel, law professors, and representatives of child advocacy groups.

Legislation to adopt the recommendations of the workgroup has been offered.

THE CONTENT OF THE BILL:

The bill would amend the juvenile code within the Probate Code to do the following:

- Allow a law enforcement officer to take a child into protective custody without a court order if there were reasonable cause to believe the child is at substantial risk of harm or is in surroundings that present an imminent risk of harm. DHS would have to be immediately notified.
- Require a judge or referee to be designated as the contact when a placement order is sought and require the designated judge or referee to be contacted regarding a court order for placement if the child were not released from protective custody.
- Allow a judge or referee, if the court is closed, to receive a petition or affidavit of facts by electronic means, and to issue a written ex parte order for DHS to take the child into protective custody by electronic means under certain conditions.
- List conditions under which a court could order the placement of an abused child in foster care.

HOUSE COMMITTEE ACTION:

The H-1 floor substitute conforms to changes previously made to statute by Public Act 115 of 2012, but does make any substantive changes to the language proposed by the bill as passed by the Senate.

BACKGROUND INFORMATION:

For a more detailed discussion of the current laws regarding the protective custody of a child and the proposed revisions, see the Senate Fiscal Agency analysis of the bill dated 1-12-12.

ARGUMENTS:

For:

The bill mainly adopts recommendations by the workgroup tasked to examine the state's current laws regarding the emergency removal of a child into protective custody and the conditions under which a judge can issue an order placing an abused child into foster care. The recommendations will bring the state's threshold for emergency removal in line with federal constitutional standards. Hopefully, it will lay a saner groundwork for law enforcement, court personnel, and CPS workers to make decisions as to the appropriateness of removing a child from his or her home.

POSITIONS:

Representatives of the Department of Human Services testified in support of the bill. (4-26-12)

The Michigan Probate Judges Association indicated support for the bill. (4-26-12)

The ACLU of Michigan indicated support for the bill. (4-26-12)

The Michigan Domestic Violence & Sexual Assault Prevention and Treatment Board indicated support for the bill. (4-26-12)

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