



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

BILL ANALYSIS



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

Senate Bill 320 (as introduced 4-12-11)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 5-24-11

CONTENT

The bill would amend the juvenile code to do the following:

- **Authorize an officer to take a child into protective custody if the child were suffering from serious harm or in surroundings that presented an imminent risk of harm.**
- **Require the officer or the Department of Human Services (DHS) immediately to seek a court order for placement of the child pending a preliminary hearing, if he or she were not released immediately.**
- **Allow a judge or referee to issue an ex parte order authorizing the DHS to take a child into protective custody and place the child pending a preliminary hearing, if the court made certain findings.**
- **List conditions under which a court could order the placement of an abused child in foster care.**

Current Provisions

The juvenile code allows a local police officer, sheriff or deputy sheriff, State Police officer, county agent, or probation officer of any court, without a court order, to take immediate custody of a child under certain circumstances. The officer or agent is required to attempt to notify the child's parent, guardian, or custodian, and release the child to that person. A child under 17 may not be held in any detention facility before his or her parent, guardian, or custodian arrives, unless the child is completely isolated from contact with any adult prisoner. Unless the child requires immediate detention as provided in the code, the officer must accept the parent's, guardian's, or custodian's promise to bring the child to court at a fixed time.

These provisions apply to a child whose surroundings endanger his or her health, morals, or welfare, a child found violating any law or ordinance, and a child believed to be violating a personal protection order. Under the bill, the current provisions would not apply to a child whose surroundings endanger his or her health, morals, or welfare.

Protective Custody; Placement Order

The bill would allow an officer, without a court order, immediately to take a child into protective custody if there were reasonable cause to believe that the child was suffering from serious harm or was in surroundings that presented an imminent risk of harm and the child's immediate removal from those surroundings were necessary to protect the child's health or safety. The officer immediately would have to notify the DHS. While awaiting the Department's arrival, the child could not be held in a detention facility.

If the child were not released, the officer or the DHS immediately would have to contact the designated judge or referee to seek a court order for placement of the child pending a preliminary hearing.

The chief judge of the circuit court would have to designate a judge or referee who could be contacted when a placement order was sought for a child in protective custody. If the court were closed, the designated judge or referee could order placement if the order were immediately communicated, electronically or otherwise, to the appropriate county DHS office and filed with the court the next business day. When a placement order was issued by a designated referee, it would take effect as an interim order pending a preliminary hearing.

A placement order would have to indicate that continuation in the home was contrary to the child's welfare, and state the basis for that determination. The order would have to be served on the parties before the preliminary hearing.

(The bill would define "officer" as a local police officer, sheriff or deputy sheriff, State Police officer, or county agent or probation officer of a court of record.)

Ex Parte Order

The bill would allow a judge or referee to issue an ex parte order authorizing the DHS immediately to take a child into protective custody and place the child pending a preliminary hearing, if the court found all of the following:

- There was reasonable cause to believe that the child was suffering from serious harm or was in surroundings that presented an imminent risk of harm, and the child's immediate removal from those surrounding was necessary to protect the child's health and safety.
- The circumstances warranted issuing an ex parte order pending the preliminary hearing.
- Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.
- No remedy other than protective custody was reasonably available to protect the child.
- Continuing to reside in the home was contrary to the child's welfare.

The order would have to be supported by written findings of fact.

(An "ex parte" order is an order issued without notice to or appearance of the opposing party.)

Foster Care Placement of Abused Child

The juvenile code establishes procedures that apply when a child is under the jurisdiction of the family court due to alleged abuse or neglect. The court may release the child to the custody of either parent or to his or her guardian or custodian under conditions necessary for the child's physical health and mental well-being. The court also may order a parent, guardian, custodian, nonparent adult, or other person living in the child's home to leave the home and not return if the court finds probable cause to believe that that person committed the abuse.

The bill also would authorize the court to order placement of the child in foster care if the court found all of the following:

- Custody of the child presented a substantial risk of harm to the child's life, physical health, or mental well-being.
- No provision of service or other arrangement except removal of the child was reasonably available to safeguard the child adequately from that risk.

- Continuing the child's residence in the home was contrary to the child's welfare.
- Consistent with the circumstances, reasonable efforts were made to prevent or eliminate the need for removal of the child.
- Conditions of child custody away from the parent were adequate to safeguard the child's health and welfare.

MCL 712A.10 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would clarify existing law enforcement policy regarding the threshold for the emergency removal of a child from his or her parents' custody. The change would address unusual circumstances in which a child might be unnecessarily placed in an emergency foster care facility until a court hearing takes place. The State does not expect to realize any savings, but some savings could be possible due to the placement of children in the family home or other relative's home rather than in emergency foster care, which the State pays for in part.

The local governments are not expected to realize any savings due to the policy changes, but some minimal savings could be possible in certain cases. The counties must share equally the costs of foster care placements with the State if a child is not eligible for Federal funding.

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.