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Senate Bill 994 (as introduced 6-12-14)  
Sponsor: Senator Rick Jones  
Committee: Families, Seniors and Human Services

*(Senate-passed version)*

Date Completed: 9-24-14

## **CONTENT**

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

- **Allow a court to issue an order to reinstate parental rights if the court determined that adoption or guardianship was not a permanency goal, and if certain conditions were met.**
- **Allow the Department of Human Services (DHS), the Michigan Children's Institute (MCI), or a child's lawyer-guardian ad litem to file a petition requesting reinstatement of a parent's parental rights.**
- **Require a court to hold a hearing if it appeared from a petition that the child's former parent could be fit to have his or her parental rights restored, and prescribe factors to be considered during the hearing.**
- **Require a parent's parental rights to be reinstated if a court found by clear and convincing evidence that reinstatement was in the child's best interests.**
- **Allow a court to order a trial period of reinstatement of parental rights if the court found that a trial period was in the child's best interests.**

### Requirements & Filing a Petition for Reinstatement

The bill would allow a court to issue an order reinstating parental rights if the court determined that adoption or guardianship was no longer the child's permanency goal, if three years or more had passed from the date of the termination of parental rights, and if one or more of the following were true: a) the child was at least 14 years of age, or b) the child was the younger sibling of a child who was at least 14 years of age for whom reinstatement of parental rights was being sought.

("Sibling" would mean one of two or more individuals having in common one or both biological or adoptive parents, where a court has previously terminated parental rights of one or both of those parents.)

The DHS, the MCI, or the child's lawyer-guardian ad litem could file a petition requesting reinstatement of parental rights. The court could request the agency to investigate whether reinstatement was in the child's best interests, and could order parenting time according to Section 13a of the code pending a hearing on the petition.

("Agency" would be defined as that term is defined in Section 13a of the Code: a public or private organization, institution, or facility that is performing the functions under Part D of Title IV of the Social Security Act, or that is responsible under court order or contractual arrangement for a juvenile's care and supervision. Section 13a establishes procedures that

apply when a child is under the jurisdiction of the family court due to alleged abuse or neglect.)

If it appeared from the petition that the child's former parent could be fit to have his or her parental rights reinstated and the child's best interests could be promoted by reinstatement of parental rights, the court would have to hold a hearing. Written notice of the hearing and the petition would have to be served on all of the following: a) the DHS, b) the MCI superintendent, c) the child, d) the child's lawyer-guardian ad litem, e) the child's foster parent or relative caregiver, f) the child's former parent whose parental rights could be reinstated, g) if the child were an Indian child as defined in Section 3 of the Michigan Indian Family Preservation Act, all the people required to be notified under that Act, and h) any other person the court directed.

(Under Section 3, "Indian child" means an unmarried person who is under the age of 18 and is either a member of an Indian tribe, or is eligible for membership in an Indian tribe as determined by that tribe.)

### Hearing

Before a hearing on a petition for the reinstatement of parental rights, the agency would have to complete a criminal background check and perform a central registry clearance check. The information obtained through these checks would have to be submitted to the court before the hearing concerning the establishment of a trial period for reinstatement of parental rights.

If the child were committed to the MCI, it would have to provide a recommendation to the court as to whether reinstatement of parental rights was in the child's best interests.

In a hearing on the petition to reinstate parental rights, the court would have to consider at least all of the following:

- Whether the parent was fit and had remedied the grounds that supported termination of his or her parental rights, as provided in the record of the termination proceedings and the termination order.
- The age and maturity of the child and the child's preference with regard to reinstatement of parental rights.
- Whether reinstatement would present a risk to the child's health, welfare, or safety.
- Information found as part of the agency criminal background check.
- Other material changes in circumstances, if any, that could have occurred since the date of the order terminating parental rights.

### Reinstatement & Trial Period of Reinstatement

If the court found by clear and convincing evidence that reinstatement of parental rights was in the child's best interests, the court would have to remove the child from the commitment of the MCI and reinstate the parent's parental rights. If the court issued an order reinstating parental rights, the DHS would have to ensure that transition services were provided for the family as appropriate.

If the court found that a trial period of reinstatement of parental rights was in the child's best interests, the court could order a trial period of reinstatement of parental rights that would not exceed 180 days. If the court issued such an order, the child would have to be conditionally placed in the physical care of the parent for a period not more than 180 days.

During the trial period, the MCI would have to do all of the following: a) retain legal custody of the child, permitting the DHS to visit the child in the parent's home, at school, in a

facility, or in any other setting the DHS considered necessary and appropriate, b) develop a permanent plan for reunification and ensure that transition services were provided to the family, as appropriate, c) at the MCI superintendent's discretion, remove the child from placement with the former parent at any time if the superintendent considered that the child's health, welfare, or safety was at risk or that it was no longer in the child's best interests for the child to remain with the former parent, and d) notify the court within three days if the child was removed from placement with the parent without a court order. If a child were removed from the placement without a court order, the court would have to order a hearing on the physical custody of the child within seven days of the removal.

The bill would require the court to review the trial reinstatement period at least once every 90 days throughout the trial period. The agency would have to assess the trial reinstatement and submit a report to the court and all parties before each review hearing. The court could terminate the trial reinstatement if the court found during the trial period that permanent reinstatement was not in the child's best interests.

Following the trial period, if the court determined by clear and convincing evidence that permanent reinstatement was in the child's best interests, the court would have to remove the child from the commitment of the MCI and reinstate the parent's parental rights.

The bill specifies that a final or trial reinstatement order would not modify, vacate, or set aside the order terminating parental rights. An order reinstating parental rights following successful completion of the trial period would restore all rights, powers, privileges, immunities, duties, and obligations of the parent regarding the child, including those related to custody, control, and support of the child.

Proposed MCL 712A.21a

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bill could have an indeterminate fiscal impact on the State and county governments. Any potential savings would depend on the number of cases that fit the criteria for reinstatement of parental rights and also the fund sources for each case.

If a child were removed from foster care and returned to a parent, the State, and in some cases the county where the child resided, would no longer pay for foster care services for the child. In FY 2013-14, the projected average annual cost of care for a foster care child is \$26,978. The actual cost of care would depend on the type of placement, which could include residential care or a foster family home, among others, and also the foster care subsidy payment. If a child is eligible for Federal Title IV-E funding, the costs of care are matched with State General Fund/General Purpose revenue. For State wards who do not qualify for Federal funding, the payment comes from the State Ward Board and Care Fund, which is a 50-50 cost share between the State and the county where the child resides.

Data on the experiences of other states that allow for the reinstatement of parental rights are not readily available, but there are some indications that few cases would meet the criteria. In a nearly two-year period in Oklahoma, there were approximately eight cases in

which parental rights had been reinstated.<sup>1</sup> In Minnesota in 2013, lawmakers estimated that there were 35 children whose circumstances could have fit the proposed criteria.<sup>2</sup>

The bill could have an impact on county governments, if any cases in which parental rights were reinstated were paid through the State Ward Board and Care Fund.

Fiscal Analyst: Frances Carley

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<sup>1</sup> Judge Fransein, D., Hampton, R., Lynn, K., White, A. (November 29, 2011). *Reinstatement of Parental Rights: The Oklahoma Experience* [PowerPoint slides]. Retrieved from [http://www.hunter.cuny.edu/socwork/nrcfcpp/info\\_services/download/Disproportionality%20bibliography.pdf](http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/download/Disproportionality%20bibliography.pdf)

<sup>2</sup> Aslanian, S. (2013, Feb. 26). Family Reunification Act could restore parental rights in some lost custody cases. MPR News. Retrieved from <http://www.mprnews.org/story/2013/02/26/social-issue/family-reunification-act>

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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.