

CHILDREN'S ASSURANCE OF QUALITY FOSTER CARE POLICY

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House Bill 5121 as enacted
Public Act 489 of 2018
Sponsor: Rep. Terry J. Sabo

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5122 as enacted
Public Act 490 of 2018
Sponsor: Rep. Jim Runestad

House Bill 5123 as enacted
Public Act 632 of 2018
Sponsor: Rep. Pamela Hornberger

House Committee: Judiciary
Senate Committee: Families, Seniors and Human Services
Complete to 2-14-19

BRIEF SUMMARY: The bills each add a new section to the Foster Care and Adoption Services Act to create the Children's Assurance of Quality Foster Care Policy. As a whole, the Policy, among other things, ensures that children placed in foster care receive fair, equal, and respectful treatment. House Bills 5121 and 5122 will take effect March 27, 2019, and House Bill 5123 takes effect March 28, 2019.

FISCAL IMPACT: House Bills 5121, 5122, and 5123 would have no significant fiscal impact on the state and minimal fiscal impact on local units of government. According to the Department of Health and Human Services (MDHHS), the provisions of the proposed bills are already included in the department's current practicing policies.

THE APPARENT PROBLEM:

Almost 13,000 children have been placed in foster care in Michigan. Though most will eventually be reunited with a family member and some will be adopted, the time spent in foster care can be difficult and scary, and therefore often negatively impacts children throughout their lives. For example, only 3% of children who were in foster care graduate from college, and foster children are at greater risk for teen pregnancy, homelessness, poverty, incarceration, dropping out of school, and domestic violence (either as victims or perpetrators). However, steps can be taken to mitigate such negative outcomes.

For example, over the past few years, 15 states and Puerto Rico have enacted what are known as Foster Children Bills of Rights. Such laws are designed to inform foster children of their rights within the child welfare system. Many include provisions requiring that the children be informed about why they are in foster care and how the process will proceed, provided access to guardians ad litem and physical and behavioral health care, and, when feasible, require siblings to be placed together and the children to be placed with family.

The MDHHS adopted a new policy in 2015 that incorporated many of these practices. Many advocates for children would like to see the policy codified in law to ensure that these practices would be continued and to give them the full weight of law.

THE CONTENT OF THE BILLS:

House Bill 5121 includes in the act's stated purpose that it is to ensure that the MDHHS develop and maintain the Children's Assurance of Quality Foster Care Policy. The bill also adds Section 8b to require that the MDHHS ensure that the Policy is developed, implemented by the supervising agency, and made available to the public. ("Supervising agency" refers to the entity into whose care the foster child is placed and is either the MDHHS or a child placing agency.) The MDHHS must promote participation of current and former children in foster care in developing the Policy. Further, the Policy must ensure that children placed in foster care are provided with the following:

- Fair, equal, and respectful treatment, which includes treatment that does not violate state and federal law.
- When appropriate, placement with relatives and siblings.
- Age-appropriate transition planning that includes housing, workforce preparation, and financial education.
- Ongoing contact and visits with parents, relatives, and friends if court-permitted.
- For children with disabilities, access to advocacy services.
- Timely enrollment in school with consistent placement in the same school when possible.
- Participation in extracurricular activities as allowed by the supervising agency's resources and accounting for the foster parent's schedule and resources.
- Placement in the least restrictive setting. If discipline is required, and physical restraint is used by a child caring institution, a detailed report of the incident by the institution must be provided to MDHHS.
- Access to and receipt of information and services as soon as practicable after the screening and assessment process identifies a need: this includes necessary medical, emotional, psychological, psychiatric, and educational evaluations and treatment.
- Access to and participation in religious or cultural activities, taking the foster parent's schedule and resources into consideration.
- Adequate food, necessities, and shelter, including special dietary needs, school supplies, clothing, and hygiene products.
- Age-appropriate information regarding proposed placement.
- A permanency plan designed to facilitate the permanent placement or return home in a timely manner.

MDHHS also must maintain a written policy describing, on a form provided by the department, the grievance procedure for a child to address any perceived noncompliance with the items listed above, including how and where to file a grievance and contact information for the Office of the Children's Ombudsman and the department's Office of Family Advocate.

A child in foster care may file a grievance with the supervising agency about the perceived noncompliance with the Policy as outlined in the supervising agency's grievance policy. A supervising agency must respond in writing within 30 days of receiving a grievance as to how the grievance will be addressed. If it does not respond, or if the child does not agree with the

findings in the response, the child may contact the Office of Family Advocate. If the assistance of the Office of Family Advocate does not resolve the grievance, the child may request his or her lawyer-guardian ad litem to petition the court for appropriate relief. Injunctive relief is the sole remedy that may be provided.

MCL 722.953 and MCL 722.958b

House Bill 5122 adds Section 8c to the act to require the MDHHS to draft and maintain an additional specific policy addressing the child's access to the following, as age-appropriate and as mandated by the court:

- Regular contact with all of the child's caseworkers, attorneys, and advocates.
- Relevant information about a change in the child's caseworker or attorney.
- Reasonable notice of hearings.
- At 14 years of age or older, involvement by the child in his or her own case plan development and development of a plan for his or her future and aging out of the foster care system.
- Help with understanding available services and how to access them.
- A permanent plan for placement and the child's participation in developing that plan.
- Protection of the child's privacy and confidentiality about his or her case.

MCL 722.958c

House Bill 5123 adds Section 8d to the act to require the MDHHS to prepare and distribute to each child placed in foster care, as age-appropriate, information describing the Policy and the grievance procedure, including information about the child's caseworker and lawyer-guardian ad litem, the Office of the Children's Ombudsman, the MDHHS Office of Family Advocate, and the Foster Care Review Board.

MCL 722.958d

BACKGROUND INFORMATION:

The bill package is a reintroduction of House Bills 4976, 4977, and 4978 of the 2015-2016 legislative session. Those bills passed the House and were reported without amendment by the Senate Committee on Families, Seniors, and Human Services.

ARGUMENTS:

For:

Taken together, the bills will codify MDHHS's current policy practice regarding children in foster care and ensure that these practices will be continued in future years. The provisions included in the Children's Assurance of Quality Foster Care Policy will not only create statutory protections of the rights of foster children, they will also go a long way in empowering these children and reducing the potential for emotional harm. Knowing that a placement change should not also mean a change in schools (and leaving friendships that may be a source of comfort and support), that an effort will be made to keep sibling groups intact, that the foster parents must support (if feasible) extracurricular activities, and that there is a process by which a foster child could be heard when a grievance needs to be filed builds up a child's sense of

self and worth rather than tearing it down. Having rights clearly spelled out reduces the uncertainty that goes with being a foster child. Advocates for children say that many foster children could be effective advocates for themselves, if only they knew how. The bill package would help give them that knowledge.

House Bill 5122 also incorporates provisions from a new federal law, part of the Preventing Sex Trafficking and Strengthening Families Act of 2014, which requires that foster children 14 and older participate in the development of their own case plan. The bill includes involving the child in plans for aging out of the system, which can be a particularly frightening and challenging stage in a child's life.

Response:

A leading child advocacy organization has highlighted some concerns that the bills do not address. For instance, the Policy's use of the phrase "as soon as practicable" could be clarified to ensure that timely access to essential services such as housing and medical care is afforded. Another concern raised is that the bills place the onus of monitoring the status of a complaint and of moving it forward on the child, rather than on the foster care system. These are children, and they need the support and guidance of caring professionals in being heard and getting their concerns addressed. It has also been recommended that reporting requirements be added regarding complaints and ensuing corrective actions that an independent agency could review for making recommendations for any needed changes.

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