

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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Senate Bill 1124 (Substitute S-1 as passed by the Senate)
Senate Bill 1125 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Dale L. Shugars
Committee: Judiciary

Date Completed: 8-26-98

RATIONALE

Public Act 204 of 1994 established the office of the Children's Ombudsman and authorized it to investigate complaints about protective services, foster care, and adoption agencies. The individuals who may file a complaint include biological, foster, and adoptive parents, guardians, legislators, and relatives. The Act also allows the Ombudsman to investigate a matter on its own initiative. According to its 1996-97 Annual Report, the Ombudsman typically initiates complaints on behalf of persons who are not eligible under the Act to bring a complaint, but who are mandated to report suspected cases of child abuse or neglect under the Child Protection Law (e.g., educators, health care workers, and child care providers).

The Children's Ombudsman also is charged with making recommendations for changes in child welfare laws, rules, and policies. Both the 1995-96 and the 1996-97 Annual Reports of the Children's Ombudsman contained findings and/or recommendations pertaining to "live-together-partners" (LTPs). According to the 1995-96 report, service plans (developed by the Family Independence Agency in abuse or neglect cases) currently do not require participation by or the inclusion of LTPs, because the Agency does not have jurisdiction over them. In its 1996-97 report, the Ombudsman stated that, in 80% of its investigations involving LTPs ("typically boyfriends"), the LTP was not subject to a court order, parent/agency agreement, or treatment plan involving the birth parent and the child.

The Ombudsman has recommended that State law be amended to require LTPs to participate in parent/agency agreements. The Ombudsman also recommended that the law be changed to allow the termination of parental rights when a parent or LTP has physically or sexually abused a child under that person's care or living in the same household.

CONTENT

Senate Bill 1124 (S-1) would amend the juvenile code to provide for jurisdiction of the family division of circuit court (family court) over nonparent adults in child abuse and neglect cases; and to specify that a nonparent adult's injury or abuse of a child could be grounds for termination of parental rights. The bill would take effect 60 days after its enactment.

Senate Bill 1125 (S-1) would amend the Child Protection Law to include a nonparent adult as a person responsible for a child's health or welfare.

The bills would define "nonparent adult" as a person who was at least 18 years old and who, regardless of his or her domicile, met all of the following criteria in relation to a child over whom the family court took jurisdiction in an abuse or neglect case:

- Had substantial and regular contact with the child.
- Had a close personal relationship with the child's parent or with a person responsible for the child's health or welfare.
- Was not the child's parent or a person otherwise related to the child by blood or affinity to the third degree.

Senate Bill 1124 (S-1)

Jurisdiction/Court Order

Currently, the family court's jurisdiction includes proceedings concerning any juvenile under 18 years old whose home or environment is an unfit place for the juvenile to live in, because of neglect, cruelty, drunkenness, criminality, or depravity on the part of a parent, guardian, or other custodian. The bill would include a nonparent adult among those persons.

Currently, Section 6 of the juvenile code states, "The court has jurisdiction over adults as provided in this chapter and may make orders affecting adults as...necessary for the physical, mental, or moral well-being of a particular juvenile or juveniles under its jurisdiction. However, those orders shall be incidental to the jurisdiction of the court over the juvenile or juveniles." The bill would add Section 6b to the code to specify that the court could issue an order affecting a nonparent adult that did one or more of the following:

- Required the nonparent adult to participate in the development of a case service plan.
- Required the nonparent adult to comply with a case service plan.
- Permanently removed the nonparent adult from the child's home.
- Permanently restrained the nonparent adult from coming into contact with or within close proximity of the child.

If the nonparent adult violated the order, he or she would be guilty of a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$1,000. If the person had one or more prior convictions for violating an order, however, he or she would be guilty of a felony punishable by imprisonment for up to two years and/or a maximum fine of \$2,000.

The bill specifies that Section 6b would not prohibit the nonparent adult from being charged with, convicted of, or punished for any other violation of law he or she committed while violating the order. Section 6b also would not prohibit the court from exercising its criminal or civil contempt powers for a violation of the order. The bill further states that Section 6b would not in any manner affect the authority or jurisdiction of the court as provided in Section 6.

The bill would define "case service plan" as the plan developed by an agency and prepared pursuant to Section 18f of the code that included services to be provided by and responsibilities and obligations of the agency and activities, responsibilities, and obligations of the parent. The case service plan could be referred to by different names, such as a parent/agency agreement or a parent/agency treatment plan and service agreement. (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. Section 18f provides that an agency must prepare a case service plan before the court enters

an order of disposition in an abuse or neglect proceeding.)

Order to Leave Home

Currently, the court may order a parent, guardian, custodian, or other person residing in a child's home to leave the home and, except as the court orders, not subsequently return to it if all of the following take place:

- The court authorizes a petition alleging abuse of the child by the parent, guardian, custodian, or other person.
- The court after a hearing finds probable cause to believe that the parent, guardian, custodian, or other person committed the abuse.
- The court finds on the record that the presence in the home of the alleged abuser presents a substantial risk of harm to the child's life, physical health, or mental well-being.

The bill would refer to a parent, guardian, custodian, nonparent adult, or other person in these provisions.

Review Hearings

Under the code, the court must conduct a review hearing at various stages if a child is placed in foster care, or if a child is in a permanent foster family agreement or is placed with a relative and the placement is intended to be permanent. Written notice of a review hearing must be served upon the agency and specific individuals. The bill would require that notice of a review hearing also be served upon a nonparent adult if he or she were required to comply with the case service plan.

At a review hearing, the court must review compliance with the case service plan with respect to services provided or offered to the child and the child's parent, guardian, or custodian and whether that person has complied with and benefited from the services. The bill would include in this provision a nonparent adult if he or she were required to comply with the case service plan.

After reviewing the case service plan, the court must determine the extent of progress made and may modify any part of the plan, including prescribing additional actions to be taken by the parent, guardian, or custodian to rectify the conditions that caused the child to be placed or remain in foster care. Under the bill, the court also

could prescribe additional actions to be taken by the nonparent adult.

Termination of Parental Rights

Under the code, if a child remains in foster care following a review hearing or a permanency planning hearing, or if a child remains in the custody of a guardian or limited guardian, the court must hold a hearing to determine if the parental rights to the child should be terminated, upon petition of the prosecuting attorney, child, guardian, custodian, concerned person, agency, or Children's Ombudsman. Written notice of the hearing must be served upon the agency and specific individuals. The bill also would require service upon a nonparent adult.

Grounds for termination of parental rights include a finding, by clear and convincing evidence, that the child or a sibling of the child has suffered physical injury or physical or sexual abuse under either of the following circumstances:

- The parent's act caused the injury or abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse in the foreseeable future if placed in the parent's home.
- The parent who had the opportunity to prevent the injury or abuse failed to do so and the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

The bill also would allow termination of parental rights if the child or a sibling had suffered physical injury or physical or sexual abuse and a nonparent adult's act caused the injury or abuse and the court found that there was a reasonable likelihood that the child would suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent's home.

Senate Bill 1125 (S-1)

The Child Protection Law requires various professionals to report suspected cases of child abuse or neglect to the Family Independence Agency (FIA). In addition, any person who has reasonable cause to suspect child abuse or neglect may report to the FIA or a law enforcement agency. Upon receiving a report, the FIA must conduct an investigation or refer the report to the prosecuting attorney, and must keep a central registry of reported child abuse or neglect. The Law's definitions of "child abuse" and "child neglect" refer

to harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare. "Person responsible for the child's health or welfare" means a parent, a legal guardian, a person 18 years of age or older who resides for any length of time in the same home in which the child resides, or an owner, operator, volunteer, or employee of a child care organization or adult foster care home.

The bill would include a nonparent adult in the definition of "person responsible for the child's health or welfare".

MCL 712A.2 et al. (S.B. 1124)
722.622 (S.B. 1125)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Any adult who has substantial and regular contact with a child, and a close personal relationship with the child's parent, can have a significant impact on the child, either positively or negatively. The bills would recognize that nonparent adults are frequently the perpetrators of child abuse, and would take steps to protect children from abusive adults. Senate Bill 1124 (S-1) would give the family court jurisdiction over nonparent adults in child abuse or neglect cases, and nonparent adults would be subject to criminal penalties for violating a court order. The court could require a nonparent adult to participate in the development of a case service plan and to comply with the plan. A nonparent adult also could be ordered to leave the child's home and to refrain from contact with the child. Further, by providing that parental rights could be terminated on the basis of abuse by a nonparent adult, the bill would make parents accountable for the actions of LTPs or other adults with whom the parents had a close personal relationship. Under Senate Bill 1125 (S-1), suspected cases of abuse by nonparent adults would have to be reported to the Family Independence Agency by individuals who are subject to mandatory reporting. The FIA then would have to conduct an investigation, and the child could be protected from future harm.

Legislative Analyst: S. Lowe

FISCAL IMPACT

Senate Bill 1124 (S-1)

The bill would have an indeterminate fiscal impact on State and local government. The bill would increase the number of cases opened by the Family Independence Agency, including the development of a case service plan and provision of those services for each case. The number of cases is not known at this time. However, an estimate of costs would include the staff time for services. Each protective services worker responsible for case services handles an average of 24 cases at any one time. The annual average staff person cost, including benefits and associated support staff, could range from \$75,000 to \$77,000.

Given that the bill would create a new crime with a maximum sentence of one year in prison or a fine of \$1,000, or both, for the first offense and two years or \$2,000, or both, for second or subsequent offenses, costs of incarceration and/or fine revenues for the local government could increase. There are no data available to indicate how many nonparent adults would violate an order of the family court. Conviction for this crime would not prohibit conviction for another crime resulting from the same transaction, which could increase the length of sentence in State or local facilities for certain offenders. Given that local incarceration costs vary by county, if one assumed five annual convictions each receiving a one-year jail sentence, that each offender would serve all of the term in jail, and that local incarceration costs are \$11,000 a year, costs for local government would increase by \$55,000 annually.

Senate Bill 1125 (S-1)

The bill would have an indeterminate impact on State government. Currently, the Family Independence Agency investigates allegations of abuse or neglect against parents, legal guardians, or other adults living in the household. To add adults who do not fall under those definitions would increase the reportable child abuse and neglect incidents that the department must investigate. The number of these cases is not known at this time. However, an estimate of costs would include staff time for investigation and services. Each protective services staff person responsible for case investigations usually handles an average of 12 cases at any one time. Each staff person responsible for case services handles an average of 24 cases at any one time. The average annual cost of a staff person, including associated benefits and support services and staff costs, is \$75,000 to \$77,000.

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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.