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SFA**BILL ANALYSIS**

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Senate Bill 1124 (as introduced 5-7-98)
Sponsor: Senator Dale L. Shugars
Committee: Judiciary

Date Completed: 5-12-98

CONTENT

The bill 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. The court could enter certain orders affecting a nonparent adult, including an order requiring the nonparent adult to comply with a case service plan or permanently removing him or her from the home. A nonparent adult would be subject to criminal penalties for violating an order. In addition, a nonparent adult's injury or abuse of a child could be grounds for termination of parental rights.

"Nonparent adult" would mean a person who met all of the following criteria:

- Was at least 18 years old.
- Had substantial and regular contact with a child under the jurisdiction of the family court in an abuse or neglect case.
- Was not that child's parent or someone who acted in loco parentis to a child under the family court's jurisdiction.
- Was not related to the child by blood or affinity to the fourth degree.

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.

The bill would add Section 6b 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 (which gives the court jurisdiction over adults and allows the court to make orders affecting adults as the court believes necessary for the physical, mental, or moral well-being of particular juveniles under the court's jurisdiction.)

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.

MCL 712A.2 et al.

Legislative Analyst: S. Lowe

FISCAL IMPACT

Senate Bill 1124 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 misdemeanor with a maximum sentence of one year in prison or a fine of \$1,000, or both for the first offense and two years in prison or a fine of \$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 people who are 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.

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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.