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BILL ANALYSIS

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Senate Bills 1440, 1441, and 1444 (as enrolled)  
House Bill 6310 (as enrolled)  
Sponsor: Senator Michael D. Bishop (S.B. 1440)  
Senator Virg Bernero (S.B. 1441)  
Senator Alan L. Cropsey (S.B. 1444)  
Representative Jim Howell (H.B. 6310)  
Senate Committee: Judiciary  
House Committee: Judiciary

Date Completed: 12-21-04

### **RATIONALE**

The Federal Adoption and Safe Families Act (ASFA) was enacted in 1997 to promote children's safety, reunify families when appropriate, and promote permanent placements for children in foster care. Michigan law evidently has more stringent timelines regarding foster care review and permanency planning hearings than those in ASFA, but uses different events to trigger those timelines. As a result, Federal child and family services reviews found that Michigan courts were not consistently meeting the foster review and permanency planning timeline requirements. Federal authorities apparently have approved a program improvement plan to correct these shortcomings, and Michigan must comply or face losing \$2.5 million in Federal aid. Also, a 15% error rate was found in another Federal audit regarding the foster care timelines. This review involved Federal funding under Title IV-E of the Social Security Act for children in foster care. Although the State evidently has appealed the findings of this audit, the Chief Justice of the Michigan Supreme Court has suggested that the State revise its timelines to ensure that Michigan does not fail a follow-up audit and lose Federal funding.

Also, under the juvenile code, a lawyer-guardian ad litem (LGAL) appointed to represent a child must meet with and observe the child before each proceeding or hearing. This requirement reportedly can be quite burdensome, especially if an LGAL has several child-clients, hearings occur frequently, or the child lives a significant

distance from the attorney. Some believe that the code should identify specific proceedings before which an LGAL must meet with his or her juvenile client, and should allow forms of communication besides a face-to-face meeting to comply with that requirement.

In addition, when a foster parent appeals a change ordered in foster placement, the juvenile code gives the appropriate foster care review board three days to investigate and report its findings and recommendations. Some contend that three days is not long enough for a review board to perform this task.

Further, provisions of State law specifying who constitutes a relative of a child for purposes of placing the child with a related adult are narrower than under Federal law. Also, although allowed under Federal law, Michigan law does not specifically allow placement with the parents of a child's putative father (a man who is alleged to be, or claims to be, the father of the child). It has been suggested that Michigan law be revised to conform to these Federal standards.

### **CONTENT**

**The bills would amend the juvenile code to do all of the following:**

- **Revise the schedule for foster care review hearings in the first year.**
- **Require a foster care review hearing at least every 182 days after the child's first year in foster care.**
- **Require a permanency planning hearing within 12 months after a child was removed from the home and within 12 months after the preceding hearing.**
- **Prohibit the cancellation or delay of a foster care review hearing or permanency planning hearing, regardless of whether a petition to terminate parental rights or another matter was pending.**
- **Require a lawyer-guardian ad litem to review an "agency case file" before a hearing for termination of parental rights.**
- **Specify the instances in which a lawyer-guardian ad litem would have to meet with and observe a child.**
- **Revise the time frame for a foster care review board to investigate and report on a change in foster care placement after the foster care parents appealed the change.**
- **Expand the definition of "related" in a provision allowing placement of a juvenile with a related adult.**
- **Allow a juvenile to be placed with the parent of a man whom the court had probable cause to believe was the juvenile's putative father.**

### Senate Bill 1440

#### General Foster Care Placement

Under the code, except as otherwise provided in cases of abuse or neglect or for permanent placement with a relative or in foster care, if a child is placed in foster care, the cause must be reheard within 182 days after entry of the order of disposition. If the child remains in foster care under the temporary custody of the family division of circuit court (family court), the cause must be reheard again within 182 days after the previous rehearing. In conducting a review hearing, the family court must review the performance of the child; the child's parent, guardian, or custodian; the juvenile worker; and others providing assistance to the child and his or her family.

The bill provides instead that, except for cases of abuse or neglect or for a permanent

placement, if a child subject to the jurisdiction of the family court remained in his or her home, a review hearing would have to be held within 182 days from the date a petition was filed to give the court jurisdiction over the child, and not later than every 91 days after that, for the first year that the child was subject to the court's jurisdiction. After the first year, a review hearing would have to be held not later than 182 days from the immediately preceding review hearing before the end of that first year and not later than every 182 days from each preceding review hearing, until the case was dismissed.

A review hearing could not be canceled or delayed beyond the number of required days, regardless of whether a petition to terminate parental rights or another matter was pending. Upon motion by any party or in the court's discretion, a review hearing could be accelerated to review any element of the case service plan prepared as required under the code.

#### Abuse & Neglect Cases

Currently, except as otherwise provided for a child in permanent placement, when a child is under the jurisdiction of the family court in a proceeding under Section 2(b) of the code, and the child is placed and remains in foster care (except in a permanent foster family agreement or a permanent placement with a relative), a review hearing must be held within 91 days after the order of disposition is entered and every 91 days after that as long as the child is subject to the jurisdiction, control, and supervision of the family court or of the Michigan Children's Institute (MCI) or another agency.

The bill provides instead that, except for a child in permanent placement, if, in a proceeding under Section 2(b), a child is subject to the jurisdiction of the family court and removed from his or her home, a review hearing would have to be held within 182 days after the child's removal and not later than every 91 days after that, for the first year that the child was subject to the court's jurisdiction. After the first year, a review hearing would have to be held not more than 182 days from the immediately preceding review hearing before the end of that first year and not later than every 182

days from each preceding review hearing until the case was dismissed.

A review hearing could not be canceled or delayed beyond the required number of days, regardless of whether a petition to terminate parental rights or another matter was pending.

(Section 2(b) of the juvenile code provides that the family court has jurisdiction in proceedings concerning a juvenile under 18 years old who has been neglected or abandoned by his or her parents or guardian, whose home or environment is an unfit place for the juvenile to live, or whose parent has substantially failed, without good cause, to comply with either a limited guardianship placement plan or a court-structured guardianship plan under the Estates and Protected Individuals Code.)

#### Permanent Placement

Under the code, if a child is in a permanent foster family agreement or is placed with a relative and the placement is intended to be permanent, the family court must hold a review hearing within 182 days after a permanency planning hearing held pursuant to the code and every 182 days after that, as long as the child is subject to the jurisdiction, control, or supervision of the court, the MCI, or another agency.

The bill provides instead that, if a child were under the care and supervision of an agency and were either placed with a relative and the placement was intended to be permanent or were in a permanent foster family agreement, the court would have to hold a review hearing within 182 days after the child had been removed from his or her home and not later than every 182 days after that, as long as the child was subject to the jurisdiction of the court, the MCI, or another agency.

A review hearing could not be canceled or delayed beyond the required number of days, regardless of whether a petition to terminate parental rights or another matter was pending.

#### **Senate Bill 1441**

Under the code, if a child remains in foster care after parental rights have been terminated (except in a permanent foster

family agreement or a permanent placement with a relative), the family court must conduct a hearing within 91 days after the termination of parental rights and at least every 91 days after that hearing. The bill would retain that schedule for the first year following termination of parental rights. If the child remained in foster care for more than one year after parental rights were terminated, the court would have to conduct a review hearing not later than 182 days from the immediately preceding review hearing before the end of the first year and not later than every 182 days from each preceding review hearing until the case was dismissed.

A review hearing could not be canceled or delayed beyond the required number of days, regardless of whether any other matters were pending. Upon motion by any party or in the court's discretion, a review hearing could be accelerated to review any element of the case.

In addition, the bill would require the family court to conduct the first permanency planning hearing within 12 months after the date the child originally was removed from his or her home. The court would have to hold subsequent permanency planning hearings within 12 months after the preceding hearing.

If proper notice for a permanency planning hearing were provided, the bill also would allow a permanency planning hearing to be combined with a review hearing for a child who was subject to the jurisdiction of the family court and either remained in his or her home or was removed from his or her home, or was under the care and supervision of an agency and was in permanent placement with a relative or in a permanent foster family agreement.

A permanency planning hearing could not be canceled or delayed beyond the required number of months, regardless of whether any other matters were pending.

#### **Senate Bill 1444**

##### Lawyer-Guardian Ad Litem

The juvenile code defines "lawyer-guardian ad litem" as an attorney appointed under Section 17c, which requires the family court to appoint an LGAL to represent a child in a

case involving neglect or abandonment, or in a divorce action in which the circuit court has waived jurisdiction to the family court. The code provides that an LGAL's duty is to the child, not the court, and specifies the powers and duties of a lawyer-guardian ad litem. These provisions also apply to an LGAL appointed for a child under the Estates and Protected Individuals Code, the Child Custody Act, or the Child Protection Law.

Among his or her responsibilities, an LGAL has the power and duty to determine the facts of the case by conducting an independent investigation, including interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information. An LGAL also is responsible for reviewing the "agency case file" before each proceeding or hearing. The bill specifies that the agency case file would have to be reviewed before disposition and before a hearing for termination of parental rights. Updated materials would have to be reviewed as provided to the court and parties. At least five business days before the scheduled hearing, the supervising agency would have to provide documentation of progress relating to all aspects of the last court-ordered treatment plan, including copies of evaluations and therapy reports and verification of parenting time. "Agency case file" would mean the current file from the agency providing direct services to the child, which could include the child protective services file, if the child had not been removed from the home, or the Family Independence Agency (FIA) or contract agency foster care file.

In addition, before each proceeding or hearing, an LGAL presently has the power and duty to meet with and observe the child, assess the child's needs and wishes with regard to the representation and the issues in the case, review the agency case file, and, consistent with the rules of professional responsibility, consult with the child's parents, foster care providers, guardians, and caseworkers. The bill specifies instead that an LGAL would have the power and duty to meet with and observe the child and assess his or her needs and wishes with regard to the representation and the issues in the case in the following instances:

-- Before the pretrial hearing.

- Before the initial disposition, if held more than 91 days after the petition had been authorized.
- Before a dispositional review hearing.
- Before a permanency planning hearing.
- Before a posttermination review hearing.
- At least once during the pendency of a supplemental petition.
- At other times as ordered by the court.

Adjourned or continued hearings would not require additional visits unless directed by the court.

The bill also specifies that the court could allow alternative means of contact with the child, if good cause were shown on the record.

In addition, the code provides that, consistent with the rules of professional responsibility, an LGAL has the power and duty to identify common interests among the parties and, to the extent possible, to promote a cooperative resolution of the matter. Under the bill, this could be accomplished through consultation with the child's parent, foster care provider, guardian, and caseworker.

#### Foster Care Review Board Investigation

Under the code, before a change in foster care placement takes effect, the foster parents may appeal the change within three days to the foster care review board with jurisdiction over the child. The foster care review board then must investigate the change in placement and report its findings and recommendations within three days to the court or the superintendent of the Michigan Children's Institute, the foster care parents, the parents, and the agency. Under the bill, the foster care review board would have to investigate the change in placement within seven days and report its findings and recommendations within three days after completion of the investigation.

#### Placement

Related Adult. The code allows the family court to enter certain orders of disposition concerning a child who falls under the code. These include placing a juvenile in the home of an adult who is related to the juvenile. "Related" means being a parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt by

marriage, blood, or adoption. Under the bill, instead, "related" would mean an individual at least 18 years old who was related to the child by blood, marriage, or adoption, as grandparent; great-grandparent; great-great-grandparent; aunt or uncle; great-aunt or great uncle; great-great-aunt or great-great-uncle; sibling; stepsibling; nephew or niece; first cousin or first cousin once removed; and the spouse of any of those relatives, even after the marriage had ended by death or divorce.

Parents of Putative Father. The bill would allow the family court to place a juvenile with the parent of a man whom the court had found probable cause to believe was the putative father, if there were no man with legally established rights to the child. The bill specifies that this would be for placement purposes only and could not be construed as a finding of paternity or to confer legal standing.

### **House Bill 6310**

Under the code, except in certain abuse cases, if a child remains in foster care and parental rights to the child have not been terminated, the family court must conduct a permanency planning hearing within one year after an original petition is filed. Under the bill, the court would have to hold the hearing within 12 months after the child was removed from his or her home. Subsequent permanency planning hearings would have to be held at least every 12 months after each preceding hearing while foster care continued.

In addition, the code requires the family court to conduct a permanency planning hearing within 28 days after a petition is adjudicated and the parent is found to have abused the child or a sibling of the child and the abuse included one or more of the following:

- Abandonment of a young child.
- Criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate.
- Battering, torture, or other severe physical abuse.
- Loss or serious impairment of an organ or limb.
- Life-threatening injury.
- Murder or attempted murder.
- Voluntary manslaughter.

- Aiding, abetting, attempting, conspiring, or soliciting the commission of murder or voluntary manslaughter.

The bill, instead, would require the family court to conduct a permanency planning hearing within 30 days after a judicial determination that reasonable efforts to reunite the child and family were not required. Reasonable efforts to reunify the child and family would have to be made in all cases, unless any of the following applied:

- There was a judicial determination under Section 8 of the Child Protection Law that the parent had subjected the child to aggravated circumstances.
- The parent had been convicted of murder or voluntary manslaughter of another child of the parent; aiding or abetting in the murder, voluntary manslaughter, attempted murder, or conspiracy or solicitation to commit the murder of another child of the parent; or a felony assault that resulted in serious bodily injury to the child or another child of the parent.
- The parent's rights to the child's sibling had been terminated involuntarily.

(Section 8 of the Child Protection Law requires the FIA to submit a petition to the family court under the juvenile code for court jurisdiction of a child if the FIA determines that the child has been subject to abuse involving certain factors or that the parent's rights to another child were terminated due to neglect. The abuse factors are the same as those listed above regarding a permanency planning hearing, except the factors involving voluntary manslaughter or aiding, abetting, attempting, conspiring, or soliciting the commission of murder or voluntary manslaughter.)

A permanency planning hearing could not be canceled or delayed beyond the months or days required in the bill, regardless of whether a petition to terminate parental rights was pending.

Under the juvenile code, if the court determines at a permanency planning hearing that the child should not be returned to his or her parent, the court must order the agency responsible for the juvenile's care to initiate proceedings to terminate

parental rights to the child. If the agency demonstrates that initiating the proceedings is clearly not in the child's best interests, the court must order one of the following:

- The continuation of foster care placement for a limited period, if other permanent placement is not possible.
- The continuation of foster care placement on a long-term basis, if the court determines that this is in the child's best interests.

Under the bill, the court's determination that long-term continuation was in the child's best interests would have to be based upon compelling reasons.

MCL 712A.19 (S.B. 1440)  
712A.19c (S.B. 1441)  
712A.13a et al. (S.B. 1444)  
712A.19a (H.B. 6310)

## **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**

Federal audits found that Michigan is not meeting Federal standards for holding review hearings and permanency planning hearings for children in foster care. Failure to meet these requirements in the future could result in Michigan's losing a substantial amount of Federal aid for foster care services. Although this State's hearing requirements apparently are at least as stringent as the Federal requirements, Michigan uses different events to trigger the timelines. As a result, even if a court meets every hearing requirement specified in State law, it might not comply with Federal requirements. For instance, ASFA requires a first review hearing to be held within 182 days after a child's removal from his or her home. Under Michigan law, the family court must hold a review hearing within 91 days after the court enters an order of disposition, but the court has 98 days to enter the order. Thus, the family court can take up to 189 days to hold its first review hearing.

Under Senate Bill 1440, the court would have to hold a review hearing within 182 days after the child's removal and at least every 91 days after that for the first year

that the child was under the court's jurisdiction. Senate Bill 1441 and House Bill 6310 also would revise foster care review and permanency planning hearing requirements to ensure that the time frames for holding those hearings complied with Federal law. The bills would allow Michigan to avert the possibility of losing Federal funding for foster care services. The bills also would step up the State's effort to provide permanent placements for foster children by returning them to their homes, placing them with a relative or in another permanent foster care setting, or assigning an adoption caseworker.

### **Supporting Argument**

The role of a lawyer-guardian ad litem is critical to the protection of a child's rights as the child passes through the foster care system. To be effective, an LGAL must have access to complete and timely information regarding the child's needs, history, and wishes. While the juvenile code gives LGALs the power and duty to review the "agency case file", that term is not defined and there reportedly has been confusion as to what information is to be made available to the LGAL for review. Under Senate Bill 1444, it would be clear that the agency case file could include the child protective services file and the FIA or contract agency foster care file. The bill also would require an LGAL to review the agency case file before disposition and before a hearing for termination of parental rights, and to review updated materials as provided to the court and the parties. In addition, the supervising agency would have to provide documentation of progress relating to all aspects of the most recent court-ordered treatment plan at least five business days before the scheduled hearing. These revisions would help to improve the quality of legal representation for children in the foster care system.

In addition, the juvenile code specifies that an LGAL has the power and duty to meet with and observe the child before each proceeding or hearing. Senate Bill 1444 identifies the specific proceedings before which an LGAL would have to meet with the child, and would authorize the family court to allow alternative means of contact with the child. For example, the court could allow an LGAL to telephone the child in order to comply with the requirement for a meeting. This would accommodate LGALs,

who often take on large caseloads at low rates, when they had many children to represent or when a juvenile client was in a distant location. Also, many of the children represented by LGALs are of an age that a telephone conversation would be appropriate and sufficient.

**Response:** While the bill would help clarify the duties of LGALs and ease some of their burdens, other LGAL issues need to be addressed as well. According to testimony before the Senate Judiciary Committee by Chief Justice Corrigan, Michigan needs to compensate LGALs better, as the State ranks 48<sup>th</sup> in terms of pay for LGALs. In addition, Justice Weaver told the Committee that the State needs to provide better training for LGALs.

### **Supporting Argument**

A foster care review board's responsibilities include providing panels of volunteers to hear foster parents' appeals of an agency's decision to remove a child from his or her foster home. Under the juvenile code, the foster parents may appeal the agency's decision within three days. The review board then has three days to investigate the change in placement and report its findings and recommendations to the court, the superintendent of the Michigan Children's Institute, the foster parents, the parents, and the agency. This three-day limit can prevent the review board from conducting a thorough investigation. In addition, the FIA lacks adequate time to conduct a license investigation of the new foster parents and to complete a child protective services investigation. By giving the foster care review board seven days after an appeal was filed to conduct an investigation and three days beyond that to report its findings and recommendations, Senate Bill 1444 would ensure that the review board had enough time to do a thorough investigation of the proposed change in foster care placement. This, in turn, would further safeguard the child in question.

### **Supporting Argument**

The juvenile code allows the family court to place a juvenile with a "related" adult. Senate Bill 1444 would revise the code's definition of who is considered "related" to a child in foster care, to make it consistent with the broader Federal definition. Allowing placement with a wider range of relatives would further the goal of keeping families intact.

In addition, Federal law allows placement with the parent of a putative father, if the child does not have a legal father. The bill would enact a consistent provision in State law under which the family court could place a juvenile with the parent of a man the court had probable cause to believe was the putative father, if no other man had legally established rights to the child. This would be consistent with the definition used by the Federal Temporary Assistance to Needy Families (TANF) program, making the grandparent eligible to receive aid if he or she were caring for and living with the child. Such a placement, however, would not be a finding of paternity or confer legal standing.

### **Opposing Argument**

Michigan and other states are appealing Federal audit results. The State's foster care system is not flawed and Michigan should not have to change its well-established practices merely to meet Federal standards that emphasize form over substance. In imposing those standards, the Federal government is encroaching on states' power.

**Response:** Although State officials do not necessarily agree with the need for all of the proposed changes, Michigan will not be in compliance with Federal law without them. While the findings of the Federal audits are being appealed, it would be wise to shield the State from the potential loss of Federal funding. If Michigan were penalized, the money would be taken from the \$248 million that the State receives in Social Security Act Title IV-E money for foster care, which would force the State either to eliminate certain services or to pass the costs to the local government level. Either option would be detrimental to the almost 20,000 children in the foster care system in Michigan.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

#### **Senate Bill 1440**

The bill would have an indeterminate fiscal impact on State and local government. By lengthening the period within which the court must hold an initial foster care review hearing from 91 to 182 days and lengthening the periods between subsequent hearings after the first year the child is in

foster care from every 91 to 182 days, and therefore decreasing the number of hearings held, the bill could reduce local court costs. Decreasing the number of foster care review hearings held also could reduce Family Independence Agency caseload costs, the amount of which cannot be determined at this time.

#### **Senate Bill 1441**

The bill would have an indeterminate fiscal impact on State and local government. To the extent that it would change the number of hearings held by lengthening the period between required foster care review hearings, requiring additional permanency planning hearings, or allowing the two types of hearings to be combined, the bill could have an indeterminate fiscal impact on local court costs and Family Independence Agency caseload costs.

#### **Senate Bill 1444**

The bill would have no significant fiscal impact on State or local government.

#### **House Bill 6310**

The bill would have an indeterminate fiscal impact on the State. The foster care review and permanency planning hearings affect the State's compliance with the Title IV-E Eligibility Review provisions. The bill is directly tied to a penalty of approximately \$2.5 million from a Federal child and family services review, and a \$283,200 Title IV-E disallowance for errors determined in a Federal review of foster care and permanency planning hearings. The disallowed funds must be repaid to the Federal government and a Performance Improvement Plan (PIP) implemented. A second Title IV-E Review will be conducted after the PIP has been completed. Any cases determined to be in error will reduce Title IV-E funding from the point the cases became ineligible, and could cost as much as all of the cases' expenditures. The amount of the disallowance cannot be determined at this time.

To the extent that it would change the number of hearings held, the bill could have an indeterminate fiscal impact on local court costs and Family Independence Agency caseload costs.

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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.