

HCS HB 679 & 396 -- FOSTER CARE

SPONSOR: Phillips (Hanaway)

COMMITTEE ACTION: Voted "do pass" by the Committee on Children and Families by a vote of 14 to 0.

This substitute makes numerous revisions to laws relating to foster care and protective services for children.

MENTAL HEALTH FOR CHILDREN

The substitute requires the Department of Mental Health to develop, implement, and administer a comprehensive children's mental health service system. It requires the Department of Social Services to look at the children in its custody and determine which children are in the system solely because of a need for mental health services. These children may be returned to the family's custody by the judge, and the Department of Mental Health is obligated to provide the necessary services for these children in the least restrictive appropriate environment. The departments of Mental Health and Social Services must prepare a plan to address the need for mental health services for children who are in the custody of the state because of their need for mental health services and for children and persons age 17 who are determined by the court to need mental health services. The substitute specifies what the plan must include and requires that it be completed by January 1, 2004. The plan must be submitted to the Governor, the President Pro Tem of the Senate, and the Speaker of the House of Representatives.

CHILD ABUSE AND NEGLECT HOTLINE

The substitute requires the Division of Family Services to establish a protocol for handling hotline calls. It allows for the establishment of a child well-being hotline to receive reports that do not rise to the level of abuse and neglect, but that could be referred for follow-up services and other assistance. The division must classify a report of child abuse or neglect that is received by the child abuse and neglect hotline immediately into one of three categories: those that indicate a need for an emergency preliminary investigation (Class I); those that warrant a central registry investigation (Class II); and those for which closure is appropriate (Class III). The division must use the Structured Decision-Making Model (SDM) for child protective services in all reports that require an investigation. Court personnel, guardians ad litem, court-appointed special advocates, and judges must be trained on the SDM model.

The substitute specifies procedures for responding to Class I and Class II reports. For Class I reports, the local office must begin an emergency preliminary investigation immediately, which must include direct observation of the child within 24 hours of receipt of the report. If the division determines during an emergency preliminary investigation that there is no probable cause that a child is in danger of death, sexual abuse, or serious physical harm, the emergency preliminary investigation will be terminated. The division may determine at any time during the intake assessment, preliminary investigation, central registry investigation, or during the provision of family assessment and services that summary case closure is appropriate. If the division so decides, its reasons must be clearly documented in writing. When an incident report is referred for a central registry investigation or for family assessment services, the division must communicate the report to the local office, along with Class I information included in the information system. Central registry investigations and family assessments must be initiated within 48 hours of receipt.

Currently, the division must retain identifying information from reports of child abuse and neglect made by a mandated reporter for a period of 10 years when there is insufficient evidence of abuse or neglect. The substitute reduces the length of time that the record must be kept to five years and specifies that if no evidence of abuse or neglect is found, the division may not retain any identifying information. The division may not keep any identifying information for reports for which summary closure is appropriate (Class III).

Currently, the division must prove that there is probable cause to believe that an individual has committed child abuse or neglect. The substitute changes the standard to require the division to prove abuse or neglect by a preponderance of the evidence.

Currently, an alleged perpetrator who is aggrieved by the division's decision concerning a report of child abuse or neglect may appeal the decision to the Child Abuse and Neglect Review Board, but the alleged perpetrator's presence is not required for the review to take place. The substitute requires an alleged perpetrator to be given the opportunity to appear and present evidence before the board and requires that Missouri Rules of Civil Procedure and Missouri Rules of Evidence apply to proceedings of the board. Current law also allows an alleged perpetrator who is aggrieved by the board's decision to seek de novo judicial review within 60 days of notification of the decision. The substitute allows the alleged perpetrator to demand that the division initiate de novo circuit court proceedings. The demand must be made within 60 days of the

notification of the board's decision, and the proceedings are to be initiated in Cole County. The alleged perpetrator may seek a change of venue to the county in which the alleged perpetrator resides. The division is the petitioner in the proceeding and must prove by a preponderance of the evidence that the alleged perpetrator abused or neglected a child. The Rules of Civil Procedure and the Rules of Evidence apply to this proceeding.

COURT PROCEEDINGS

Currently, the parents of a child under the age of 17 who is alleged to be in need of care and treatment and who is taken into custody must be notified of the right to a protective custody hearing, and any party may request that the hearing be held within three days of the request, but a hearing is not mandatory.

The substitute requires a status conference to be held within three days of a child being taken into custody and requires the court to make reasonable efforts to notify specified individuals, including biological parents and foster parents, of the status conference. The substitute specifies issues that must be addressed at the status conference, including the appointment of a guardian ad litem for the child and appointment of legal counsel. A protective custody hearing may be requested at the status hearing. The hearing must be held within 14 days of the request. An adjudication must be held 60 days after the child has been taken into custody. If at that time the court determines there is sufficient cause for the child to remain in the state's custody, the court must conduct a dispositional review 90 days after the child has been taken into custody. The court must then conduct review hearings every 90 to 120 days during the first year and at least every six months after the first year.

The substitute requires foster parents to be notified of all court hearings. The court cannot grant continuances in juvenile proceedings unless there are compelling extenuating circumstances. The court must make written findings on the record about the specific reasons for granting a continuance.

The substitute requires the guardian ad litem or court-appointed special advocate volunteer to be informed of and have the right to attend all meetings involving the child upon appointment by the court. Judges have the authority to examine the general and criminal background of individuals appointed as guardians ad litem and court-appointed special advocates to ensure the safety and welfare of the children they are appointed to represent. The guardian ad litem has the duty to advocate for timely court hearings to achieve permanency for the child as soon as possible.

The substitute requires the Department of Social Services to place a child with relatives if the court has determined that relative placement is not contrary to the best interests of the child.

The substitute requires that any interrogation or interview of a child taken into custody by the juvenile officer or a law enforcement official be recorded by audiotape or videotape or be conducted in the presence of a third party who can testify about the interrogation or interview in an administrative or court proceeding. Failure to comply with this section makes statements by the child inadmissible in future proceedings.

Currently, the general public is excluded from juvenile court proceedings, except in some cases in which a child is accused of an offense that would be considered a felony if committed by an adult. The substitute allows all juvenile court proceedings to be open to the general public. The court can close the proceedings on its own motion to protect the welfare of a child. Any party except the state and the victim may also make a motion to close the proceedings. The substitute requires all records to be closed until the 72-hour status hearing is held, but after the status hearing, all records are open unless they are specifically closed. Evidentiary hearings must be held on motions to close the record, and the court must set forth reasons for closing the record in a docket entry.

CHILDREN'S SERVICES

The substitute requires the Division of Family Services to contract for the provision of children's services through private children's services providers and community agencies whenever available and appropriate.

The substitute requires the division to implement a two-year pilot project beginning on or before July 1, 2004. This pilot project will be located in Greene County, the City of St. Louis, and a rural county in the state selected by the division. In the pilot project locations, all direct services for children that are currently provided by the division will be provided by public and private children's service providers that have contracted with the division through a competitive bid process, except for hotline, initial investigation, and family assessment services. The substitute specifies the criteria for the pilot project and the terms of children's services contracts entered into by the division for purposes of the pilot project. It requires cities and counties participating in the pilot project to submit a plan for implementation of the pilot project by February 1, 2004; specifies what must be included in the plan; and the composition of the committee that develops the plan. The division must

submit a report to the General Assembly beginning July 15, 2005, and continuing each year that the pilot project is in operation. The report must include specified details about the pilot project, recommendations concerning the continuation or expansion of the project, and information relating to the provision of direct services for children and their families. The pilot project provisions expire December 31, 2005.

The substitute requires that all information at meetings or hearings regarding the removal of a child from the child's home are confidential. A parent or party can waive confidentiality for himself or herself. The substitute requires biological parents and their legal counsel, foster parents, guardians ad litem, and court-appointed special advocates to be provided notice and allowed to attend all family assessment team meetings. Biological parents, their legal counsel, and foster parents may request that other individuals attend the team meetings, and other individuals who are invited to attend must also receive all subsequent hearing notices.

The substitute requires monthly meetings between the departments of Social Services, Mental Health, and Elementary and Secondary Education to address and review action taken by agencies regarding the provision of services to children.

BACKGROUND CHECKS

Beginning January 1, 2004, the substitute requires any person employed by a school to have a criminal background check completed before having any unsupervised contact with a student.

The substitute requires a name-based criminal history check when an emergency placement of a child must be made. After the initial name-based search, all persons in the home age 18 and over must submit two sets of fingerprints for a more extensive criminal background check. If placement of a child is denied because of the name-based search and the denial is contested, the members of the household age 18 and over must submit fingerprints for a background check. An "emergency placement" is when a child is placed in a private home because of the sudden unavailability of the child's parent or caretaker.

The substitute requires the Division of Family Services to conduct a search for full orders of protection for anyone seeking a foster parent license or any adult in the applicant's household. The applicant and any adult in the applicant's household must also submit two sets of fingerprints for a criminal background check.

DIVISION OF FAMILY SERVICES' EMPLOYEES

The substitute specifies that it is grounds for dismissal for Division of Family Services' employees who purposely or knowingly violate policy of the division, rules of the division, or state laws directly relating to the child abuse and neglect activities of the division. It is also grounds for dismissal for a supervisor who knew or should have known of the violation. If the violation results in serious physical injury or death, the employee or supervisor who knew or should have known will be immediately dismissed from employment with the division. This section applies to merit and non-merit employees and is considered grounds for a for-cause dismissal. If an employee is responsible for assignments that exceed specified caseload standards and the employee fails to follow policy, rules, or state laws related to the child abuse and neglect activities of the division, the employee's good faith efforts to follow the policy, rule, or law is a mitigating factor in determining whether the employee is dismissed.

MISCELLANEOUS PROVISIONS

Certain provisions of the substitute are to be known as the Dominic James Memorial Foster Care Act of 2003.

The substitute requires the Children's Juvenile Justice Task Force established in accordance with federal law to conduct an independent review of the policies and procedures of state and local child protective services agencies and to conduct reviews of specific cases, when appropriate, to evaluate the extent to which agencies are effectively discharging their responsibilities. The task force is prohibited from disclosing information about specific cases or making other information public, unless otherwise authorized. The task force may have access to information concerning cases it is asked to review and may receive assistance from the Department of Social Services in carrying out their duties. The task force must also complete an annual report summarizing their activities.

The department is required to submit an annual statistical report regarding the number of children receiving child protective services to the Governor and the General Assembly, beginning February 1, 2005. The substitute specifies what the report must contain.

The substitute allows parents to temporarily place a child in a family home; church, athletic, academic, or charitable camp; babysitting; military academy; child care facility, foster home, or residential care facility; or with a licensure-exempt foster home with the state. It also allows parents to use a power of attorney to delegate their powers regarding care or custody of a minor child to a child care facility, foster home, residential

care facility, or child placing agency whether licensed or license-exempt for a period of up to one year.

The substitute requires the department to seek Title IV-E waivers from the Department of Health and Senior Services.

The substitute requires the Division of Family Services to conduct a diligent search for the natural parents of a child who is in the custody of the division when the parents' identity or location is unknown. The definition of "diligent search" includes efforts to locate or identify the natural parents of a child, initiated as soon as the division is made aware of the existence of the parent, with progress reports at each court hearing until the parent is identified and located or the court excuses further search.

FISCAL NOTE: Estimated Net Cost to General Revenue Fund of Unknown Greater Than \$4,309,409 in FY 2004, Unknown Greater Than \$22,486,473 in FY 2005, and Unknown Greater Than \$24,262,775 in FY 2006. Estimated Net Income to Criminal Records Systems Fund of \$1,601,702 in FY 2004, \$215,961 in FY 2005, and \$211,855 in FY 2006. Estimated Net Effect on Urban and Teacher Education Revolving Fund of \$0 in FY 2004, FY 2005, and FY 2006.

PROPOSERS: Supporters of House Bill 679 say that the bill makes changes to the child welfare system throughout the process, from hotlines to court proceedings. It requires background checks for foster parents and requires the court to hold a hearing within three days of a child being taken into custody. It also privatizes all aspects of care for abused and neglected children that can be privatized in a pilot project. The bill attempts to address the goals of protection of children and reunification of families. It outlines the responsibilities of guardians ad litem in representing children in court proceedings. Supporters suggested limiting privatization contracts to not-for-profit agencies and that caseworkers undergo an annual performance appraisal that includes direct observation of the worker's interaction with clients. This suggestion is based on complaints and concerns about incompetent or insensitive workers. They support strengthening of the Family Support Team and a periodic review of the team's plan.

Supporters of House Bill 396 say they would like to see the Division of Family Services' employees held accountable for compliance with policy and state laws, would like legislative oversight of the division's policymaking, and removing anonymity from hotline calls allowing individuals to be prosecuted for making false calls.

Testifying for House Bill 679 were Speaker Hanaway; Citizens for Missouri's Children; Midwest Foster Care and Adoption Association; Sara Barwinsky; Department of Social Services; Foster and Adoptive Care Coalition; and Whose Children Are They. Also providing written testimony on House Bill 679 were Family Resource Center; Missouri Coalition of Children's Agencies; Boys and Girls Town of Missouri; Catholic Charities of Kansas City-St. Joseph, Inc.; and Missouri Alliance for Children and Families.

Testifying for House Bill 396 were Representative Wright; Sidney James; Missouri Council for Children at Risk; Ronnie S. Dean; Dr. Robert Olson; Shari Finnell; Cathy Jo Loy; Heartland Ministries/CNS International Ministries; Susan Stone; Carolyn McLaren; and Fred Tedrow. Also providing written testimony on House Bill 396 were Malissa Winchel; Jan Eagleburger; Thomas Eagleburger; Jennifer Cookson; Becky A. Douty; Reja Martin; Roni LeAnne Ford; Bill Barham; John C. Kranse, Sr.; Mary E. Kranse; Ricky L. Thompson; Catrina L. Hernandez; Cathy Rhodes; Rebecca Kay Foster; Bernard Burkey; Orville Stone; Ruth Burkey; Shelly Loux; Verla Henson; Sue Kiefer; Rebecca S. Thompson; Cletus W. Kiefer; Kenya Kimbrough; Jerry and Sue Hearne; and Missouri Family Network.

OPPONENTS: Those who oppose House Bill 396 say that social workers are underpaid and understaffed and many would not take a job with the Division of Family Services if there was a possibility that they could be subject to civil and criminal liability. The ability to make a hotline report anonymously should be retained because it would be better to be investigated for a false report than to have a child harmed because a report was not made. Hotline anonymity creates an unnecessary risk for children by discouraging non-mandated reporters from making reports. The recording of all hearings is impracticable and too broad. These provisions are not in the substitute.

Testifying against House Bill 396 were Midwest Foster and Adoption Association; Prevent Child Abuse Missouri; and Lori Burns Bucklew. Also providing written testimony in opposition to House Bill 396 were Citizens for Missouri's Children; and Missouri State Workers Union.

Others testifying on House Bill 679 was Missouri Council for Children at Risk.

Amy Woods, Legislative Analyst