

HCS HB 1453 -- FOSTER CARE

SPONSOR: Phillips (Hanaway)

COMMITTEE ACTION: Voted "do pass" by the Committee on Children and Families by a vote of 11 to 3.

This substitute makes changes to the laws regarding protective services for children and foster care.

CHILD ABUSE AND NEGLECT REPORTS

The substitute:

- (1) Changes the standard for including an individual on the child abuse and neglect central registry from probable cause to believe the individual committed child abuse or neglect to a finding by the Children's Division within the Department of Social Services that there is a preponderance of evidence that the individual committed child abuse or neglect;
- (2) Prohibits mandated reporters from making reports of child abuse and neglect anonymously, except for school personnel, who are only required to disclose their classification as a mandatory reporter. All other reporters may remain anonymous;
- (3) Requires the division to use a structured decision-making model to classify all reports made to the child abuse and neglect hotline, giving priority to ensuring the well-being and safety of the child;
- (4) Requires the names of individuals placed on the central registry before August 28, 2003, to remain on the registry for the duration of the time required in Section 210.152, RSMo;
- (5) Prohibits the division from meeting with a child at any school or child care facility building where abuse of the child is alleged to have occurred;
- (6) Reduces from 10 to five years the amount of time the division must keep an unsubstantiated report of child abuse made by a mandated reporter;
- (7) Requires biological parents, foster parents, guardians ad litem, and court-appointed special advocates to be notified of all family assessment team meetings;
- (8) Specifies that disclosure of information about reports of abuse and neglect is to be made after the alleged perpetrator has received sufficient due process; and

(9) Requires reviews of the division's determination about an allegation of child abuse or neglect to be conducted by the Administrative Hearing Commission. Currently, the Child Abuse and Neglect Review Board conducts the reviews. Any review conducted by the board will be in addition to a review conducted by the commission.

COURT PROCEEDINGS

The substitute:

(1) Requires the guardian ad litem and 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. The guardian ad litem is required to advocate for timely court hearings to achieve permanency for the child as soon as possible;

(2) Requires that the questioning of a child who is in custody because of a delinquency or a criminal violation cease if the child wishes to have a parent, guardian, or attorney present during the questioning. All video or audio recordings of meetings, interviews, or interrogations conducted in relation to a child in the state's custody are presumed admissible as evidence in proceedings involving the child. The recordings are inadmissible only upon a showing by clear and convincing evidence that the recording lacks sufficient indicia of reliability;

(3) Requires the court to grant a change of judge upon the motion of a child or the child's parent;

(4) Requires a status conference to be held within three days of a child being taken into custody. If requested at the status hearing, a protective custody hearing must be held within 14 days of the request. An adjudication must be held no later than 60 days after the child has been taken into custody; and if at that time the court determines there is sufficient cause for the child to remain in the state's custody, the court will conduct a dispositional review no later than 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; and

(5) Requires the Supreme Court to establish a pilot project in five judicial circuits before July 1, 2005. Juvenile court proceedings for children who are in need of care and treatment and termination of parental rights cases, except for adoption cases, will be open to the public in the pilot project circuits. The proceedings will be allowed to be closed in certain situations. The general public is excluded during the testimony of a child or a victim.

BACKGROUND CHECKS AND FINGERPRINTING

The substitute:

- (1) Allows the Division of Family Services or juvenile office to request a name-based criminal history check when an emergency placement of a child must be made and requires the division or juvenile office to determine whether any person age 17 or over living in the household is listed on the child abuse and neglect central registry;
- (2) Requires the division to conduct a search for full orders of protection for anyone seeking a foster parent license. The applicant and any adult in the applicant's household must also submit two sets of fingerprints for a criminal background check;
- (3) Requires persons employed by a school after January 1, 2005, and those employed for less than two years with negative history in their personnel file to have a criminal background check before having any unsupervised contact with a child. All individuals who must submit to the criminal background check must submit to a Federal Bureau of Investigation background check and register with the Family Care Safety Registry;
- (4) Requires the Department of Social Services to determine whether an applicant for a license to operate a school bus is listed on the child abuse and neglect central registry. The applicant is required to submit fingerprints to search state and federal criminal history repositories and to pay the fees for the criminal history checks;
- (5) Requires the court that certifies a juvenile offender as an adult to order the law enforcement agency to fingerprint the individual immediately; and
- (6) Requires qualified entities to obtain two sets of fingerprints from the individual if a national criminal record review is requested.

FOSTER CARE AND PLACEMENT OF CHILDREN

The substitute:

- (1) Requires the Division of Family Services to provide standards and training for prospective foster parents, as well as performance-based criteria for licensed foster parents;
- (2) Requires the division to notify parents when their child is placed in foster care, except when harm or danger to the child is imminent;

(3) Prohibits the removal of children from school for placement in foster care without a court order;

(4) Requires the division to hold a team meeting immediately after the 72-hour status conference and additional meetings prior to taking any action relating to the placement of a child in its custody;

(5) Requires the division to place a child with relatives if the court has determined that the placement is not contrary to the best interests of the child. The court must make specific findings on the record detailing why placement with a relative is not in the best interests of the child;

(6) Specifies that the age of a relative may not be the only consideration in determining whether to place the child with that relative. The substitute also requires the division to comply with the Federal Indian Child Welfare Act in placing Native American children;

(7) Allows parents to temporarily place a child with another person, while retaining the right to supervise the care of the child and resume custody, and allows a parent to use a power of attorney to delegate his or her powers regarding care or custody of a minor child to another person for a period of up to one year;

(8) Requires that all information provided at a meeting or hearing relating to the removal of a child from the child's home be confidential, except that a party or parent may waive confidentiality for himself or herself, and that no one may be required to sign a confidentiality agreement prior to testifying or providing information at the meeting; and

(9) Requires the Department of Social Services to seek Title IV-E waivers from the Department of Health and Senior Services and requires the department to take the necessary steps to qualify the state for any federal block grant money available for foster care and adoption assistance.

PRIVATIZATION OF SERVICES FOR CHILDREN

The substitute:

(1) Requires the Children's Division to implement a two-year pilot project beginning on or before July 1, 2005, subject to appropriations. This pilot project will be located in Greene County, St. Louis County, 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;

(2) Requires providers to have a proven record of providing child welfare services in the state or the ability to provide a range of services. Providers and agencies that currently contract with the state may also participate in the competitive bid process. All contracts entered into by the division must be in accordance with federal law and must not result in a loss of federal funding;

(3) Requires the cities and counties participating in the pilot project to submit a plan for implementation by February 1, 2005, and specifies what must be included in the plan; and

(4) Requires the division to submit a report to the General Assembly beginning July 15, 2006, and continuing each year that the pilot project is in operation. The substitute specifies the information that must be included in the report. The pilot project provisions expire June 30, 2007.

MENTAL HEALTH SERVICES

The substitute:

(1) Requires the Department of Mental Health to develop, implement, and administer a comprehensive children's mental health service system;

(2) Adds child-serving agencies with the comprehensive children's mental health service system to the definition of "mental health services" as it applies to services for the Medicaid Program. The substitute requires the department, in collaboration with the Department of Social Services, to establish the definition and criteria for the designation of a community-based service;

(3) Requires the Department of Social Services to look at children in its custody and determine which are there solely because of a mental health issue. These children may be returned to their families, and the Department of Mental Health must provide necessary services. The Department of Social Services is to be billed for the cost of care by the Department of Mental Health;

(4) Requires the departments of Mental Health and Social Services to 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;

(5) Allows the means test of the Department of Mental Health to be waived for a child in need of mental health services in order to avoid transfer of custody to the Division of Family Services;

(6) Requires the Department of Social Services, in conjunction with the Department of Mental Health, to apply to the United States Department of Health and Human Services for waivers to provide services for children, including community-based services; and

(7) Makes revisions to the employee disqualification list of the Department of Mental Health.

REPORTS

The substitute:

(1) Requires the Task Force on Children's Justice established by the Children's Service Commission 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 how effectively agencies are discharging their responsibilities;

(2) Requires the Department of Social Services 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, 2006; and

(3) Requires the Division of Family Services to identify all children in its custody who are receiving foster care services by January 1, 2005, and report to the General Assembly the type of foster care being provided and the status of all children.

MISCELLANEOUS PROVISIONS

The substitute:

(1) Establishes the Office of Child Advocate for Children's Protection and Services within the Office of Administration;

(2) Designates specified provisions as the "Dominic James Memorial Foster Care Act of 2004";

(3) Requires the Family Support Division and the Children's Division to jointly operate and maintain an office in each

county;

(4) Requires employees of the Children's Division who are involved with child protective services and who purposely, knowingly, and willingly violate a policy, rule, or state law that is related to the child abuse and neglect activities of the division to be dismissed if the violation results in serious physical injury or death;

(5) Allows children with special health care needs that if not treated would result in death or serious physical injury to participate in the MC+ for Kids Program without meeting the six-month uninsured requirement;

(6) Prohibits employees of the Division of Family Services and employees of public and charter schools from performing a strip search on students without the written permission of a parent or guardian;

(7) 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.

(8) Requires an action to recover damages for injury or illness that resulted from child sexual abuse to be commenced within 12 years of the date the plaintiff reached the age of 18 or within three years of the date the plaintiff discovered or reasonably should have discovered that the illness or injury resulted from child sexual abuse, whichever date is later;

(9) Revises the Special Needs Child Adoption Tax Credit. For individuals, the amount of the credit that is in excess of the individual's tax liability is refundable for the year in which the credit is claimed. The credit is not refundable for businesses claiming the credit on behalf of an employee, and there is a \$2 million annual cumulative cap on credits claimed by businesses;

(10) Requires all hospitals and health care facilities providing obstetrical services to require new mothers to watch a video on shaken baby syndrome before being discharged from the facility;

(11) Requires the Department of Health and Senior Services and the Department of Social Services to collaborate with non-profit organizations, health maintenance organizations, and the Missouri Consolidated Health Care Plan to formulate an educational strategy to increase the number of children who are tested for lead poisoning under the Medicaid Program, with a goal of having 75% of the children who receive Medicaid being tested; and

(12) Revises provisions regarding to the Missouri Family Trust.

The substitute contains an emergency clause.

FISCAL NOTE: Estimated Cost on General Revenue Fund of More than \$5,320,927 in FY 2005, More than \$6,817,210 in FY 2006, and More than \$9,291,210 in FY 2007. Part of General Revenue is subject to appropriations; does not include income of unknown, but greater than \$100,000. Estimated Effect on Other State Funds of an income of \$30,995 in FY 2005, an income of \$11,526 in FY 2006, and a cost of \$941 in FY 2007.

PROPONENTS: Supporters say that many revisions have been made to the bill from the version that was truly agreed to and finally passed in 2003. Accreditation will reduce caseloads and result in accountability for the Department of Social Services. They support the provisions dealing with structured decision making. The department should be encouraged to seek placement of children with relatives whenever possible.

Testifying for the bill were Speaker Hanaway; Catholic Charities of Kansas City and St. Joseph; Catholic Charities of St. Louis; Missouri Council for Children at Risk; Kansas City Child Abuse Advocacy Roundtable; Mary Kay O'Malley; Midwest Foster Care and Adoption Association; Citizens for Missouri's Children; Missouri Coalition of Children's Agencies; and Partnership for Children.

OPPONENTS: Those who oppose the bill say that parents should not be required to cooperate with court-appointed special advocate volunteers. Biological parents should be able to tape record meetings with the department, and court proceedings should also be open to the public.

Testifying against the bill were Fred Tedrow; Ronnie Dean; and Missouri National Education Association.

OTHERS: Others testifying on the bill say the department is already working to make the child welfare system in Missouri more open and accountable to the public and the media. The bill is an important step in the right direction.

Others testifying on the bill was Department of Social Services.

Amy Woods, Legislative Analyst