

HS HCS HB 679 & 396 -- FOSTER CARE (Hanaway)

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

#### CHILD ABUSE AND NEGLECT HOTLINE

Currently, all reports to the child abuse and neglect hotline may be made anonymously. The substitute eliminates the ability of mandated reporters to make reports of child abuse and neglect anonymously.

The Division of Family Services is required to establish a protocol for handling child abuse and neglect hotline calls. The division must use the structured decision-making model to classify all reports, giving priority to ensuring the well-being and safety of the child. All reports must be initiated within 24 hours and be classified based on the level of reported risk and injury to the child. The substitute specifies the factors the division must consider in classifying reports and creates three levels of priority.

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.

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.

The substitute makes procedural changes to the Child Abuse and Neglect Review Board process and to the process by which an aggrieved alleged perpetrator can seek de novo judicial review of decisions of the board.

#### BACKGROUND CHECKS

The substitute designates specified sections as the "Dominic James Memorial Foster Care Act of 2003."

Beginning January 1, 2004, the substitute requires new employees of school districts and individuals employed by a school district for two years or less who have a negative history in their personnel files to complete a criminal background check before

having any unsupervised contact with a student. All individuals required to submit to the background check must submit to the Federal Bureau of Investigation background investigation, but may register with the Family Care Safety Registry in lieu of completing the State Highway Patrol's background check.

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.

The Sexual Offender Registry is added to the list of registries that are part of the Family Care Safety Registry. The expiration date of the Family Care Safety Registry is extended from January 1, 2004, to January 1, 2010.

#### DIVISION OF FAMILY SERVICES' EMPLOYEES

It is grounds for dismissal for Division of Family Services' employees involved with child protective services to 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 if the violation results in serious physical injury or death. This includes 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 effort to follow the policy, rule, or law is a mitigating factor in determining whether the employee is dismissed. Individuals who violate policy are also subject to criminal liability for endangering the welfare of a child.

#### CHILDREN'S SERVICES

The Division of Family Services is required to contract for the provision of children's services through private children's services providers and community agencies whenever available and appropriate. The state will continue to be the sole provider of child abuse and neglect hotline services, initial child abuse and neglect investigation, and initial family assessment. The state will also be responsible for the representation in court of children in the division's custody but may contract for these services.

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 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, 2006.

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. Individuals may not be required to sign a confidentiality agreement before providing information or testimony at a meeting or hearing, but the individual may be excluded from all portions of the meeting at which he or she is not providing information if he or she does not agree to maintain confidentiality. The substitute allows these meetings to be recorded and requires the division to maintain copies of the recordings for six months after the case is closed. This information is considered confidential, unless a court issues an order authorizing public disclosure of the records.

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.

## 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 whether the child can be immediately returned to his or her home. A protective custody hearing may be requested at the status hearing and, if requested, 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.

Foster parents must 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 Department of Social Services is required to place a child with relatives if the court has determined that relative placement is not contrary to the best interests of the child.

Currently, the general public is excluded from most juvenile court proceedings. The substitute allows all juvenile court proceedings relating to children in need of care and treatment and to termination of parental rights to be open to the general public. Adoption cases are not open to the public. The court can close the proceedings on its own motion to protect the

welfare and best interests of a child and for exceptional circumstances. Any victim and any party except the state may also make a motion to close the proceedings. The public is excluded from all proceedings during the testimony of a victim or child. 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.

Pleadings and orders of the juvenile court are open to the public, unless they are otherwise ordered closed by the court. The identity of the victim and references to the identity of the victim must be redacted from the record prior to public disclosure. The provisions relating to the opening of juvenile courts and juvenile court records apply to cases initiated on or after August 28, 2003.

#### MENTAL HEALTH SERVICES 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. The substitute also waives the means test for children in need of mental health services to avoid the transfer of custody of the child to the Division of Family Services.

#### MISCELLANEOUS PROVISIONS

The substitute requires the Division of Family Support to operate a full-time office in each county of the state.

Medical assistance is extended to foster children beyond their eighteenth birthday when the child is enrolled in a secondary or post-secondary school.

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 its duties. The task force must also complete an annual report summarizing its 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.

Parents may 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. Parents are allowed 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 of Social Services, in conjunction with the Department of Mental Health, to seek Title IV-E waivers from the U. S. Department of Health and Human 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 \$18,535,825 in FY 2004, Unknown greater than \$40,865,901 in FY 2005, and Unknown greater than \$41,852,248. Estimated Net Cost to Health Initiative Fund of \$7,311 in FY 2004, FY 2005, and FY 2006. Estimated Net Income to Criminal Record Systems Fund of \$314,745 in FY 2004, \$215,840 in FY 2005,

and \$211,734 in FY 2006. Estimated Net Effect on Urban and Teacher Education Revolving Fund of \$0 in FY 2004, FY 2005, and FY 2006.