

NOTE: As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used for other purposes.

The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Papen DATE TYPED: 3/4/03 HB _____
 SHORT TITLE: Children's Code Implementation Problems SB 624 / a SJC
 ANALYST: Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			Minimal		

Relationship to HB 507.

SOURCES OF INFORMATION

Responses Received From
 Office of the Attorney General
 Department of Corrections
 Juvenile Parole Board
 Department of Health
 Administrative Offices of the Courts

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amended SB 624 as follows:

1. Corrections for greater accuracy were made to the Title.
2. Strikes a majority of the bill (more than 30 pages) and focuses in on one element of the original bill: the Termination Procedure whereby parental rights may be terminated for abuse and/or neglect.

With regard to the Termination Procedure, the amended bill provides:

- a. A motion to terminate parental rights may be filed at any stage of the abuse or neglect proceeding;

- b. Proceedings may be initiated by the department, a licensed child placement agency, or any other person having a legitimate interest in the matter, including the child's guardian, petitioner for adoption or foster parent;
- c. The required contents of a motion to terminate, including a statement as to whether the federal Indian Child Welfare Act is applicable and any specific efforts made to comply with the placement preferences set forth in that Act;
- d. The required naming of both parents in the termination action, even if one has not previously been a party to the proceeding, unless the court determines that the missing parent has not established a protected liberty interest in his/her relationship with the child;
- e. The required notice / service of process;
- f. The appointment of counsel for any parent requesting representation and who is not able to obtain his/her own due to financial reasons, or when the court determines the appointment of counsel is in the interest of justice;
- g. An assurance from the court that a guardian ad litem will represent the child in all proceedings for termination;
- h. The hearing process and timeframes;
- i. An allowance that the department may choose to litigate a motion for termination that was actually initiated by another party, and also the ability for the department to file a motion seeking to stop the termination initiated by another party because the proceeding is premature;
- j. The requirement that if a child has been in foster care 15 months out of the past 22 months, the department shall file a motion for termination, unless
 - The parent has made substantial progress and it is likely the child may be returned home, and it is believed that returning home is in the child's best interests;
 - The child has a close and positive relationship with a parent and a permanent plan that does not include termination will provide the most secure and appropriate placement for the child;
 - The child is 13 years old, or older, and firmly opposes the termination;
 - The parent is terminally ill, but the illness is in remission, and the parent does not want his/her rights terminated, provided the parent has designated a guardian for the child;
 - The child is not capable of functioning in a family setting;

- Grounds do not exist to support the termination;
 - The matter involves international legal issues or compelling foreign policy issues; or
 - Adoption is not an appropriate plan for the child.
- k. An express means of calculating when a child entered the foster care system;
- l. The standard of proof for a termination proceeding shall be “by clear and convincing” evidence, unless it is a matter to be handled under the federal Indian Child Welfare Act, in which case the standard of proof shall be “beyond a reasonable doubt”;
- m. Once the termination is ruled, the court shall provide for the custody and support of the child; and
- n. A judgment terminating parental rights divests the parent of all legal rights and privileges, however it does not affect the child’s right to inheritance from or through the biological parents.

Synopsis of Original Bill

Senate Bill 624 makes several amendments to the current Children’s Code, including:

Guardianship Issues:

1. The bill establishes who qualifies as a suitable guardian for the permanent placement of a child.

Delinquency Issues:

2. The bill proposes an additional purpose for the Delinquency Act, stating that it exists to “strengthen families to effectively participate in, contribute to and assume accountability for the deterrence of delinquency and the successful reintegration of children into homes and the community”.
3. It redefines “youthful offender”. A youthful offender is defined as a delinquent, age 14 years to 18 years, who is adjudicated for “*only one*” of several *specifically enumerated offenses*. Please see significant issues provision below.

Children’s Code Process and Procedure:

4. The bill states that the children’s court attorney must review the preliminary inquiry and recommendations made by probation services, and make a decision as to whether a delinquency petition is to be filed, *within 30 days* of receipt of the preliminary inquiry.

Currently, there exists no such deadline for the children's court attorneys in making this determination and filing the petition.

5. The bill provides that the circumstances of a child taken into custody shall be reviewed by CYFD, or a non-department designee at the detention facility, to determine whether detention or release is warranted. (This determination is made in accordance with specific detention criteria set forth in the statute.) If release is appropriate, the bill provides that the department may release the child within a one-hour period.
6. The bill also reworks the specific criteria for determining whether detention or release is appropriate when a child has been taken into custody. Please see significant issues below.
7. The bill requires that the individual taking the child into custody, or the person in charge of the detention facility where the child is brought, shall make a good faith effort to contact the child's parent, guardian or custodian immediately.
8. The bill adds a new requirement for the "showing of probable cause" to detain a child pending disposition of a possible delinquency petition. The bill states that a sworn, signed statement by a law officer is required to establish the basis of probable cause.
9. The bill also provides that in the event the probable cause petition is not filed within 48 hours of the time at which the child was taken into custody, the child shall be released upon the written authority of the children's court attorney.
10. The bill proposes to require a referral to probation services for a determination of whether a child should be detained.

Currently, the law requires a law enforcement officer who has probable cause to believe a child possessed a firearm on school premises to take a child into custody and deliver the child to a detention facility *without a determination by probation services that detention is warranted*.

Foster Care Issues:

11. The bill proposes to add a new subsection establishing the date on which a child should be considered to have entered foster care.

Adoption Issues:

12. The bill expands the definitions included in the Adoption Act to include:
 - "accrediting entity"
 - "adoption service"

- “providing” (with respect to an adoption service)
 - “conventional adoption”
 - “convention country”
13. The bill makes the criminal record / background check for potential adoptive parents more defined and enhanced. The bill requires the collection of fingerprints, and criminal history data shall be sought and obtained from both the Department of Public Safety and the FBI.
 14. The bill attempts to protect information obtained as part of a criminal record / background check, providing that any person unlawfully disclosing the information regarding these criminal records check would be guilty of a misdemeanor.
 15. Finally, the bill touches on international adoptions. It states that in making a petition for adoption, the petition shall include a statement that the adoption is a “convention adoption” and that the requirements of the Inter-country Adoption Act of 2000 have been fully satisfied.
 16. The bill also adds language stating that a final adoption, achieved in a foreign convention country and that is certified by the US Secretary of State, shall be recognized as a final and fully valid adoption.

Child Care Facilities:

17. The bill proposes to require criminal records / background checks and fingerprinting of all operators, staff and employees of child care facilities.

Significant Issues

1. 32A-2-3(I) (establishing the definition of a youthful offender). The change proposed by this bill would leave this Subsection reading as follows: "youthful offender means a delinquent child subject to adult or juvenile sanctions who is: (1) fourteen to eighteen years of age at the time of the offense and who is adjudicated for only one of the following specific offenses: (a) through (l) listing the specific offenses.

The Office of the Attorney General notes “this sounds as if a child adjudicated of more than one listed offense would not be a youthful offender. That would make no sense because it would result in a more lenient disposition for juveniles who commit more than one serious or violent offense than the disposition authorized for juveniles who commit only one such offense.”

2. 32A-2-7(D) and (E) (procedures for determining whether a delinquency petition should be filed). The proposed changes to these Subsections require the children's court attorney to make a *determination* as to whether to file a delinquency petition within thirty days of receiving the report of probation services inquiry.
 - a. This change would apply to every case, regardless of the complexity of the case and could hamper the children court's attorney's ability to make a thorough examination

of the case before making a decision.

- b. Does the bill intend that there be a distinction between making a *determination regarding filing a petition* within 30 days and *actually filing* a petition? Should the amendment read that the children's court attorney will review the probation services inquiry and recommendations and *file* a petition, if determined appropriate, within 30 days of receipt of the inquiry and recommendation?
- c. Currently, the children's code provides that the probation services and children's court attorneys shall issue their inquiry and recommendations, and thereafter file the petition, within the *time limits established in the Children's Courts Rules*. SB 624 makes statutory the time limit for the children's court attorney, but leaves the probation services inquiry and recommendations to the time limits set forth in the Children's Courts Rules. Should both time limits be established in statute?
- d. With regard to where this bill's addition of this provision-- See page 14, Lines 7 – 11. Is this placement within the current statute accurate?

Is the intent that this provision apply only to children who have been referred for three or more prior misdemeanors within two years of the instance offense? See lines 3 – 7 immediately preceding the added language.

Or, is the intent that this 30-day time limit for the children's court attorneys apply to *all* children arrested and detained?

- e. When a child is in detention or custody and the children's court attorney does not file a petition within the time limits authorized by the Children's Court Rules, the child shall be released immediately.
- 3. Section 32A-2-10(B) (procedure regarding continued detention after arrest). This proposed amendment would allow release of a child within one hour of the child's arrest, if the child's circumstances merit release under the criteria for detention. It is not clear why the one-hour release provision is necessary. If the statute is not changed, release could still occur within one hour if the determination that the child does not meet the criteria for detention is made within one hour. On the other hand, it seems that including the change in the statute would encourage hasty decisions regarding detention.
 - 4. Section 32A-2-11 (establishes criteria for detention of children pending disposition of a delinquency petition). Currently, the criteria for detention are that (1) detention is necessary to protect the community, (2) the child will be unavailable for proceedings unless detained, (3) the child will injure others if not detained, or (4) the child is may injure himself, or be subject to injury by others if not detained. This bill proposes to replace those criteria with the following criteria: (A) if not detained, the child will injure himself, others, or the property of others, (B) the child has no parent, guardian, custodian or other person able to provide adequate supervision and care, (C) the child will be unavailable for proceedings, or (D) detention is otherwise authorized by the Children's Code.

Proposed Subsections (A) and (C) are substantially the same as the current criteria – they are based on potential injury to the child, another person, or property. Proposed Subsection (B)

is completely new. Addition of this new subsection is sound. Even if there is not probable cause to believe the child would cause or suffer injury, it would be irresponsible for the state to fail to detain a child, knowing the child has no place to go, no home or caregivers when released.

Proposed Subsection (D) provides for detention if it is "otherwise authorized" by the statute. The Attorney General's Office notes that it is unaware of any such provision that would authorize detention without meeting the criteria for detention. However, such provisions could be added (such as detention for treatment or competency) and, therefore, this Subsection would be useful in avoiding conflicts among provisions of the Code to come.

FISCAL IMPLICATIONS

There are no direct fiscal implications for the state with regard to SB 624. However, secondary costs will be unavoidable for such offices as the children's courts, correctional / detention institutes established for juveniles, and the children, youth and families department.

Any secondary impact will seemingly be minimal, both fiscally and administratively. The proposed amendments within SB 624 focus more on changes in existing definitions and established processes than on the addition of new processes for which additional FTE and budget resources may often be needed.

RELATIONSHIP

The changes to Section 32A-1-4(P)(2) proposed by this bill are similar to the changes proposed by HB 507.

1. HB 507 differs from this bill in that it proposes to define "permanency plan" to include a determination that the child may be placed with a "fit and willing person". This bill proposes to require the placement be with a "fit and willing relative."
2. Also, both this bill and HB 507 propose to change Section 32A-2-33(A). Both bills propose changes to Subsection (B). This bill proposes to require referral to the department for a determination of the need for detention before a child accused of possessing a firearm on school premises may be detained. HB 507 proposes to change the Subsection to allow, but not require, immediate detention of a child accused of possessing a firearm on school premises.

SJM/lj/njw