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FISCAL IMPACT STATEMENT

LS 7325

BILL NUMBER: HB 1268

NOTE PREPARED: Feb 5, 2004

BILL AMENDED: Feb 4, 2004

SUBJECT: Child Advocacy, Child Fatality Review, and CHINS.

FIRST AUTHOR: Rep. Orentlicher

BILL STATUS: As Passed House

FIRST SPONSOR:

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill establishes the Child Advocate Bureau, which shall investigate complaints concerning agencies that provide services to children and shall evaluate services for children. The bill provides that the child advocate and a person who provides records to the child advocate is immune from civil liability. It makes certain actions that impede the child advocate's investigation a Class D felony.

It also establishes the Statewide Child Fatality Review Committee to review the deaths of children who die suddenly or unexpectedly. The bill makes the testimony of a committee member inadmissible in certain proceedings. The bill also requires a juvenile court to order a child and the child's parent into counseling if the child is found to have committed a delinquent act that would be one of certain types of sex crimes if committed by an adult. It provides that records of state agencies regarding the death of a child who died as a result of abuse, abandonment, or neglect are not confidential.

The bill provides that a child living in a household with an adult who committed a sex crime against another child living in the household is a child in need of services under certain circumstances. It establishes a rebuttable presumption that a child is a CHINS under certain circumstances. It also provides the presumption may not be the reason for taking the child into custody or emergency custody unless a court finds cause following a hearing. The bill provides that a state employee who falsifies child abuse or neglect information and the child suffers bodily injury as a result of the offense commits a Class D felony.

Effective Date: July 1, 2004.

Explanation of State Expenditures: (Revised) *Summary:* This bill would impact state expenditures and revenues in several possible ways. They are as follows: (1) creating a Child Advocate Bureau; (2) creating

a Statewide Child Fatality Review Committee; (3) amending the definition of a Child in Need of Services (CHINS); (4) requiring the court to order a child convicted of a sex offense and the child's parent or guardian to receive psychological counseling; (5) allowing the court to charge a person who interferes with the investigation of a Child Advocate with a Class D felony; and (6) allowing the court to charge an individual who knowingly falsifies child abuse or neglect information or records, if the individual is a state employee and the victim suffers serious bodily injury as a result of the offense, with a Class D felony.

(1) The bill would establish a bureau, the Child Advocate Bureau, within the Indiana Department of Administration. The source of funds and resources for the Bureau will ultimately depend upon legislative and administrative actions. However, a somewhat comparable office and position exists, the Department of Correction Ombudsman Bureau. The position was appropriated \$150,000 in FY 2004.

(2) The bill would establish a Statewide Child Fatality Review Committee. The bill does not specify reimbursement rates for Committee members, however, the expenses of the Committee shall be paid from funds appropriated to the Division of Families and Children. Ultimately, funds and resources required to satisfy this provision will depend upon legislative and administrative actions.

(3) The bill amends the definition of a CHINS. To the extent that the bill adds a new circumstance under which a CHINS, the bill would increase the number of children who may be declared by a court to be a CHINS. However, the number would be subject to the judgement and actions of the court and the Family and Social Services Administration (FSSA). This provision may increase expenditures for the state. The number of youth that this bill would affect is indeterminable, however, it is likely small. This provision may also result in the caseloads of the county Offices of Family and Children, courts with juvenile jurisdiction, and county prosecutors increasing.

(4) The bill would require the court to order a child, and the child's parent or guardian, to receive psychological counseling if the child is a delinquent child who has committed an act that would be considered a sexual offense if it were committed by an adult. The bill could potentially increase expenditures for the state. Any increases, however, are dependent on (1) the number of juveniles adjudicated as sexual offenders annually, that would not have been ordered to receive psychological counseling under current statute, and (2) the number of parents or guardians that are ordered to undergo counseling.

(5) and (6) The bill also allows the court to charge a person who (1) intentionally interferes with or prevents the completion of the work of a child advocate; (2) knowingly offers compensation to a child advocate in an effort to affect the outcome of an investigation or a potential investigation; (3) knowingly or intentionally retaliates against an individual who provides information to the child advocate; or (4) knowingly or intentionally makes threats against: (a) the child advocate; (b) an individual who has filed a complaint; or (c) an individual who provides information to the child advocate; because of an investigation or a potential investigation; with a Class D felony.

The bill also allows the court to charge an individual who knowingly falsifies child abuse or neglect information or records, if the individual is a state employee and the victim suffers serious bodily injury as a result of the offense, with a Class D felony.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony

offenders is approximately ten months.

Background Information -

Child Advocate Bureau: The bill would establish a separate bureau, the Child Advocate Bureau, within the Indiana Department of Administration. The responsibilities of the Child Advocate Bureau are to receive, investigate, and attempt to resolve complaints that any state agency: (1) violated a specific law, rule, or department written policy concerning services to a child; or (2) failed to provide any services to a child that the agency is required to provide.

The Department of Administration shall provide and maintain office space for the Bureau. The Governor would appoint a Director for the Bureau. In addition, the Director may employ staff. The bill does not specify the number of staff or what the salaries for the Director and staff would be. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. However, a somewhat comparable office and position exists, the Department of Correction Ombudsman Bureau. The Department of Correction Ombudsman Bureau was appropriated \$150,000 in FY 2004.

Statewide Child Fatality Review Committee: The bill would establish the 13-member Statewide Child Fatality Review Committee consisting of state employees and lay members. The Committee is established to: (1) review a child's death that is (a) sudden; (b) unexpected; or (c) unexplained; if the county where the child died does not have a local child fatality review team or if the local child family review team requests a review of the child's death by the statewide committee; and (2) review the death of a child or a near fatality of a child upon request by an individual.

The Division of Family and Children shall provide training to the Committee. Furthermore, the Division shall develop a data collection form for the Committee. The bill does not specify reimbursement rates for Committee members, however, the expenses of the Committee shall be paid from funds appropriated to the Division.

The funds required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions. Total reversions for the Family and Social Services Administration were \$95.3 M in FY 2003.

Children in Need of Services (CHINS): To the extent that the bill adds a new circumstance under which a child is a child in need of services (CHINS), the bill could increase the number of children who may be declared by a court to be a CHINS. However, the number would be subject to the judgement and actions of the court and the Family and Social Services Administration (FSSA).

This provision of the bill would affect children living in the same household as another child who is the victim of a sex offense. The provision would allow for the child to be determined to be a CHINS provided the following conditions are met:

(1) the child lives in the same household as the adult who committed the sex crime and the sex crime resulted in a conviction or a judgment;

(2) the child is determined to need care, treatment, or rehabilitation that the child is not currently receiving or is unlikely to be provided or accepted without the coercive intervention of the court; and

(3) a caseworker has determined that a program of informal adjustment or other family and or rehabilitative services is inappropriate for the child.

According to FSSA, there were 972 children who lived in the home of a victim of a substantiated allegation of sexual abuse in FY 2003. Of these 972 children, 125 were made CHINS and 273 had cases opened, leaving 574 for whom services were not provided.

The ultimate determination of a child becoming a CHINS would be based on either (1) the perpetrator's being convicted of sexual abuse of the victim, or (2) a judgement of the court, and (3) administrative action taken by the FSSA. It is likely that the number of children that this provision of the bill would affect is small. While the potential population is 574, this population is reduced greatly by the conditions of the bill. The FSSA reports that it is rare for a victim and a perpetrator to remain in the home after abuse has been substantiated. This reduces the population greatly. The population is also reduced by the third provision where the caseworker must have determined that a program of informal adjustment or other family and or rehabilitative services is inappropriate for the child. The number of youth that this bill would affect is indeterminable, however, it is likely to be small.

Currently, when a local office receives a report of allegations of abuse or neglect, they conduct an investigation. If the findings indicate by a preponderance of the evidence that the abuse or neglect did occur, the findings of the investigation will be substantiated. Case services range from offering services to removing a child to substitute care. The current annual cost of a CHINS case is approximately \$14,451 per child which includes the investigations performed as well as services provided. A portion of the costs can also be reimbursed from federal funds in the IV-E program and TANF EA (Emergency Assistance) program if children are eligible.

Psychological Services: The bill would require the court to order a child, and the child's parent or guardian, to receive psychological counseling if the child is a delinquent child who has committed an act that would be considered a sexual offense if it were committed by an adult. The bill does not specify whether or not the juvenile and parent or guardian should receive counseling together, separately, or both together and separately.

Current statute allows the court to order a delinquent child to receive psychological treatment. In FY 2002, 74 youths were adjudicated as sexual offenders, and 81 were adjudicated in FY 2003. The number of these offenders that were ordered to receive psychological counseling is unknown. The bill could potentially increase expenditures for the state. Any increases, however, are dependent on (1) the number of juveniles adjudicated as sexual offenders annually that would not have been ordered to receive psychological counseling under current statute, and (2) the number of parents or guardians that are ordered to undergo counseling.

Interference and Falsifying Information: The bill would allow the court to charge a person who (1) intentionally interferes with or prevents the completion of the work of a child advocate; (2) knowingly offers compensation to a child advocate in an effort to affect the outcome of an investigation or a potential investigation; (3) knowingly or intentionally retaliates against an individual who provides information to the child advocate; or (4) knowingly or intentionally makes threats against: (a) the child advocate; (b) an individual who has filed a complaint; or (c) an individual who provides information to the child advocate; because of an investigation or a potential investigation; with a Class D Felony.

Current statute allows the court to charge an individual who (1) knowingly requests, obtains, or seeks to obtain child abuse or neglect information under false pretenses; or (2) knowingly falsifies child abuse or neglect information or records, with a Class B misdemeanor. The bill allows the court to charge an individual who knowingly falsifies child abuse or neglect information or records, if the individual is a state employee and the victim suffers serious bodily injury as a result of the offense, with a Class D Felony.

A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. Assuming offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. However, any additional expenditures are likely to be small. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Explanation of State Revenues: (Revised) *Penalty Provisions:* If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class D felony is \$10,000. However, any additional revenue would likely be small.

See Explanation of State Expenditures.

Explanation of Local Expenditures:

(Revised) *County Office of Family and Children, Court with Juvenile Jurisdiction, and County Prosecutor:* The caseloads of the county Offices of Family and Children, courts with juvenile jurisdiction, and county prosecutors may increase. This increase in caseload and associated costs is unknown and contingent upon judicial action. The estimated average cost of providing services for a CHINS for CY 2002 is approximately \$14,451 per year. Out-of-home placements and services to CHINS are primarily funded by the local county Family and Children's Fund. Certain out-of-home placements may be matched with federal IV-E funds, and CHINS are eligible for Medicaid services. (See *Explanation of State Expenditures: Child in Need of Services.*)

Penalty Provisions: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small.

See Explanation of State Expenditures.

Explanation of Local Revenues: (Revised) *Penalty Provision:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small. (See *Explanation of State Revenues.*)

See Explanation of State Expenditures.

State Agencies Affected: Family and Social Services Administration; Department of Administration; Department of Correction.

Local Agencies Affected: Trial courts; local law enforcement agencies; County Offices of Family and Children; County Prosecuting Attorneys; Courts with Juvenile Jurisdiction.

Information Sources: Jane Bisbee, Family and Social Services Administration; Department of Correction.

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