

HCS SB 850 -- RECORDS RETENTION CHILD ABUSE

SPONSOR: Wallingford (Franklin)

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Children and Families by a vote of 9 to 0. Voted "Do Pass" by the Standing Committee on Rules- Legislative Oversight by a vote of 10 to 0.

This bill modifies several provisions relating to records involving children, including:

- (1) Vital records;
- (2) Child abuse and neglect;
- (3) Adoption and foster care records; and
- (4) Post adoption contact agreements.

VITAL RECORDS

Under this bill, no fee shall be required or collected for a birth, death, or marriage certificate if the request is made by the Children's Division or Division of Youth Services on behalf of a child under the jurisdiction of the juvenile court (Section 193.265, RSMo).

This provision is the same as SB 827 and HB 1470 (2018).

CHILD ABUSE AND NEGLECT REPORTS

Under this bill, the Children's Division may accept a report for a child abuse or neglect investigation or family assessment if the child or alleged perpetrator resides in Missouri, may be found in Missouri, or if the incident occurred in Missouri. If the division receives a report that does not meet these criteria, the division will communicate it to the appropriate agency in the state where the child is believed to be located.

The division shall be permitted to co-investigate a report of child abuse or neglect, as well as share records and information with state or local child welfare agencies upon reasonable belief that the information is needed to protect a child from abuse or neglect. Any unsubstantiated documents may only be shared if the receiving agency is prohibited by law or enters into a memorandum of understanding, agreeing to refrain from sharing such materials.

Currently, the division may permit specified persons to have access to certain records for which the division has received a report of child abuse or neglect and for which the division has determined that there is insufficient evidence. This bill removes the requirement that the division make a determination that there is insufficient evidence prior to allowing specified individuals access to the records (Sections 210.145 and 210.150).

These provisions are similar to provisions in SCS SB 858 and HB 1862 (2018).

INVESTIGATIONS OF CHILD ABUSE AND NEGLECT

This bill permits the Children's Division, a juvenile officer, or a prosecuting or circuit attorney to petition the circuit court for an order directing a parent or guardian of a child who is the subject of a child abuse or neglect investigation to present the child at a designated time and place to a Children's Division worker for a visual assessment of the child's health and safety. No child shall be required to answer questions without the consent of the parent or guardian.

The court shall enter an order under this bill if the court determines that there is probable cause to believe the interview or examination is reasonably necessary for the completion of an investigation or the collection of evidence and if doing so would be in the best interests of the child. The bill specifies the procedure for any person served with an order, under this bill, to file a motion for a protective order or other relief. Any person who knowingly violates an order shall be guilty of a class A misdemeanor.

Finally, this bill permits the tolling of statutory timelines for the Children's Division regarding investigations from the date the division files a petition for an order until the information is produced in full, the subpoena is withdrawn, or a court quashes the subpoena (Sections 210.151 and 210.152).

These provisions are similar to provisions in SCS SB 890 (2018).

Currently, the Children's Division is required to retain or remove identifying information contained in a child abuse or neglect investigation report according to specified time lines depending on the type of report. This bill requires the division to retain or remove all information in a report, including identifying information, and modifies the retention time lines. Investigation reports where the division finds insufficient evidence of abuse or neglect shall be retained for 10 years following the end of the investigation. Reports where the division is unable to locate the

child alleged to have been abused or neglected shall be maintained for 18 years from the date of the report.

ADOPTION AND FOSTER CARE RECORDS

Under this bill, records relating to foster home or kinship placements of children in foster care shall be considered closed records under state law. Such records may be disclosed as provided for in this bill. A parent or legal guardian of a child in foster care may have access to investigation records kept by the Children's Division regarding the denial, suspension, or revocation of the license of a foster home in which the child was placed. The division's response to a request for the release of such information shall not include financial, medical, or other personal information relating to the foster home provider and the foster home provider's family, unless the division determines that the information is directly relevant to the disposition of the investigation and report.

The division may disclose or utilize information and records relating to foster homes in its discretion and as needed for the administration of the foster care program. The Director of the Department of Social Services shall authorize the disclosure of such information in cases of child fatalities or near-fatalities to courts, juvenile officers, law enforcement agencies, and prosecuting and circuit attorneys upon written request and as related to their duties under law. Finally, the division may disclose such information and records to specified individuals that have a need for the information to conduct their lawful duties.

This bill also provides that all papers, records, and information known to or in the possession of an adoptive parent or adoptive child that pertain to an adoption may be disclosed by the adoptive parent or adoptive child. Nothing in this bill shall be construed to create a right to have access to information not otherwise allowed under existing state law concerning information in adoption records (Sections 210.498, 453.121, and 610.021).

These provisions are similar to SCS SB 715 and HB 1966 (2018).

POST ADOPTION CONTACT AGREEMENTS

Currently, written consent to an adoption shall be required from:

- (1) The mother of the child; and
- (2) The presumptive or putative father; or
- (3) The child's current adoptive parents or other legally

recognized mother and father.

This bill requires written consent from all three categories of individuals. Additionally, a birth father or the current adoptive parents of a child may execute a written consent to adoption before or after the birth of the child and before or after the commencement of adoption proceedings. Properly executed consent to adoption under this provision is irrevocable. The consent shall be executed before a judge or before a notary public, which requires the signature to be in the presence of two adult witnesses. The court shall receive and acknowledge a properly executed consent to adoption when such consent is in the best interests of the child.

This bill permits out-of-state adoptive petitioners to appear by their attorney or by telephone or video conference rather than in person.

This bill removes a requirement that a court consider whether the adoption would be in compliance with the Uniform Child Custody Jurisdiction Act.

Finally, this bill permits adoptive parents and the birth parents of a child to enter into a written post adoption contact agreement to allow contact, communication, and the exchange of photographs after the finalization of the adoption between the parties. Any agreement shall be voluntary, contain provisions specified in the bill, be in writing, signed by the parties to the agreement, and approved by the court. The court shall enforce an agreement unless doing so would not be in the best interest of the child (Sections 453.015, 453.030, and 453.080).

These provisions are similar to provisions in SB 992 and HB 2462 (2018).

PROPONENTS: Supporters say that this bill will allow Children's Division to more fully investigate instances of child abuse and neglect and work together with other states to help prevent child abuse and neglect.

Testifying for the bill were Senator Wallingford; Missouri Kids First; Missouri Coalition of Children's Agencies; Missouri Department of Social Services; and Foster Adopt Connect.

OPPONENTS: Those who oppose the bill say that some of the language intrudes on constitutional rights to be free from search without a warrant and should be changed. Additionally, the language should make sure that other state agencies cannot release unsubstantiated information.

Testifying against the bill were the Cozad Company, LLC and CNS Corporation.

OTHERS: Others testifying on the bill say that there are concerns with some of the language in the bill that would require the child to undergo a SAFE care exam, which should only be used in very limited situations when it is necessary to collect evidence.

Testifying on the bill were the Missouri Juvenile Justice Association and the Office of Child Advocate.