

Report on Public Policy Position

Name of section:

Family Law Section

Contact person:

Kent Weichmann

E-mail:

weichmann@earthlink.net

Bill Number:

[SB 1418](#) (Jansen) Children; protection; coordination between friend of the court and department of human services; require. Amends secs. 7 & 8 of [1975 PA 238](#) (MCL [722.627](#) & [722.628](#)).

[SB 1419](#) (Hardiman) Family law; friend of the court; coordination between friend of the court and department of human services; require. Amends sec. 20 of [1982 PA 294](#) (MCL [552.520](#)).

Date position was adopted:

October 4, 2008

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

21

Number who voted in favor and opposed to the position:

14 Voted for position

0 Voted against position

0 Abstained from vote

7 Did not vote

Position:

Oppose and Amend

Explanation of the position, including any recommended amendments:

SB 1418 is tie barred to SB 1419. These two bills seek to improve communication between Children's Protective Services and the Friend of the Court, partially in response to the murder of a nine-year boy by his father while in the father's custody. SB 1418 requires CPS to determine whether a child who is found to be the victim of abuse or neglect, or is in a household where other children have been removed, is involved in a FOC case. If so, CPS must notify the FOC of the investigation and of any change in the child's placement. CPS must also report to the FOC if

a parent makes more than three unfounded reports within a year. Current law requires the FOC employee to request information from CPS based on a compelling need, MCL 722.627(2)(t).

The bill also includes FOC professional employees as mandatory reporters under the act. SB 1418 has passed both House and Senate. SB 1419 amends MCL 552.520 of the FOC act to require the FOC to keep CPS informed of procedural developments in a case where CPS has informed the FOC of a CPS investigation. SB 1419 has passed the Senate and House and is awaiting signature by the Governor.

These bills are generally benign and the Family Law Section would support them with one critical amendment. We do not think that FOC professional staff should be mandatory reporters of abuse. Currently FOC employees report abuse if they have direct evidence of it, i.e., they witness it or the child reveals it during an interview. In a large percentage of cases, one party or the other will make allegations of abuse only to support their case or malign the other party. If the FOC professional staff ("professional capacity" is not defined in the bill) must report abuse, they will have to report every allegation. See *Diehl v Danuloff*, 242 Mich App 120, 618 NW2d 83 (2000). Parties will be encouraged to make allegations to the FOC because the FOC report may lend a veneer of credibility to marginal complaints, and the party need not take responsibility for the unfounded report. A large number of unfounded reports will clog CPS and distract them from the investigations that have merit.

In addition, an evaluator or referee who makes such a report would be taking an active role in opposition to a party, and would have to give evidence against the party. That employee would have to recuse themselves from a case that they reported. This would make it easy for a party to disqualify a referee or evaluator who has not given them the results they want.

The Family Law Section opposes SB 1419 in order to defeat SB 1418, which is tie-barred to it, and recommends that the bills be amended to remove the mandatory reporting requirement for Friend of the Court employees.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2008-SB-1418>

<http://legislature.mi.gov/doc.aspx?2008-SB-1419>