



Senate Fiscal Agency  
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## BILL ANALYSIS



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Senate Bill 489 (Substitute S-2 as passed by the Senate)  
Senate Bill 490 (Substitute S-1 as passed by the Senate)  
Senate Bill 797 (Substitute S-1 as passed by the Senate)  
Senate Bill 798 (Substitute S-1 as passed by the Senate)

Sponsor: Senator Margaret E. O'Brien (S.B. 489)  
Senator Arlan Meekhof (S.B. 490)  
Senator Vincent Gregory (S.B. 797)  
Senator Peter MacGregor (S.B. 798)

Committee: Oversight

Date Completed: 6-13-18

### **RATIONALE**

Safe Families for Children is a nonprofit, faith-based organization that recruits host families to care for children on a temporary basis, and refers parents to these families when the parents are unable to care for their children. Parents may voluntarily place their children by executing a power of attorney, and may terminate the placement at any time. According to its website, Safe Families for Children operates in 70 cities across the United States, Canada, the United Kingdom, and elsewhere. The program's locations include six cities in Michigan. Although Safe Families for Children has operated in the State since 2011, some people believe that provisions for the program should be enacted in statute, which would formalize the authority of the Department of Health and Human Services and other agencies to make referrals to the organization, as well as codify practices such as criminal history checks and home assessments.

### **CONTENT**

**Senate Bill 798 (S-1)** would enact the "Safe Families for Children Act" to do the following:

- **Permit a parent or guardian of a minor child (an individual less than 18 years old), by a properly executed power of attorney, to temporarily delegate to another person the parent's or guardian's powers regarding care, custody, and property of the child.**
- **Permit a tax-exempt charitable organization to recruit people or families to whom a temporary power of attorney could be executed.**
- **Require a family service agency to request the Michigan Department of State Police to conduct a criminal history check and a criminal records check on each person over 18 years of age residing in a home where a minor child could be temporarily hosted.**
- **Require a family service agency to conduct at various intervals a home safety assessment and inspection for each home where a minor child could be temporarily hosted.**
- **Require a family service agency to provide certain training for people in a home that was hosting a minor child.**
- **Require a family service agency to maintain records for each criminal history records check, home safety assessment, and training for at least seven years after a minor child reached 18 years of age.**
- **Exempt the Department of Health and Human Services from liability for any action arising out of the Act.**

**Senate Bill 489 (S-2) would amend the definitions of "foster family home" and "foster family group home" in Public Act 116 of 1973 (which provides for the licensure of child care organizations) to refer to a private home in which minor children are not hosted as provided in the proposed Safe Families for Children Act.**

**Senate Bill 490 (S-1) would amend the Foster Care and Adoption Services Act to exclude from the definition of "foster care" the delegation of a parent's or guardian's powers regarding care, custody, or property of a child or ward under a properly executed power of attorney under the proposed Safe Families for Children Act.**

**Senate Bill 797 (S-1) would amend Public Act 116 of 1973 to specify that a service provided under the Safe Families for Children Act by an organization licensed under Public Act 116 would not be subject to the Act's licensing requirements.**

Each bill would take effect 90 days after it was enacted. The bills are tie-barred to each other.

A more detailed description of Senate Bill 798 (S-1) follows.

#### Delegation of Parental Powers

By a properly executed power of attorney, a parent or guardian of a minor child could temporarily delegate to another person the parent's or guardian's powers regarding care, custody, or property of the child. The temporary delegation of power could be for up to 180 days. If a parent or guardian were serving in the United States Armed Forces and were deployed to a foreign nation, however, a power of attorney could be effective until the 31<sup>st</sup> day after the end of the deployment. A person to whom the parent or guardian delegated these powers would be required to undergo a criminal history records check, home safety assessment and inspection, and training (described below). A parent or guardian could not delegate his or her power to consent to marriage or adoption of the child, consent to an abortion or inducement of an abortion to be performed on or for the child, or to terminate parental rights to the child.

A parent or guardian executing a power of attorney could revoke or withdraw the power of attorney at any time.

A tax-exempt charitable organization, including a church or faith-based organization, could recruit people or families to whom a temporary power of attorney could be executed. The organization would have to use the services of a family service agency to assist it in obtaining and reviewing criminal history records checks, and conducting home safety assessments and training.

"Family service agency" would mean an agency that assists a tax-exempt charitable organization recruiting people and families with obtaining and reviewing criminal history records checks and conducting home safety assessments and training. A family service agency would have to be licensed as a child placing agency, as defined in Public Act 116 of 1973. (Public Act 116 defines "child placing agency" as a government organization or agency organized under the Nonprofit Corporation Act for the purpose of receiving children for placement in private family homes for foster care or for adoption. The function of a child placing agency may include investigating applicants for adoption and investigating and certifying foster family homes and foster family group homes as provided in Public Act 116. The function of a child placing agency also may include supervising children who are at least 16, but not more than 21 years of age and who are living in unlicensed residences.)

The execution of a power of attorney by a parent or guardian would not, by itself, constitute evidence of abandonment, child abuse or neglect, delinquency, or other maltreatment of a minor child unless the parent or guardian failed to take custody of the child when the power of attorney expired. The proposed Act would not prevent or delay an investigation of child abuse or neglect, abandonment, delinquency, or other mistreatment of a child.

## Criminal History Records Checks

For each person over 18 years of age residing in a home where a minor child could be temporarily hosted according to a power of attorney, a criminal history records check would have to be conducted.

A family service agency would have to request the Michigan Department of State Police (MSP) to conduct both of the following on the person:

- A criminal history check.
- A criminal records check through the Federal Bureau of Investigation.

Each person would have to submit his or her fingerprints to the MSP for the criminal history records check. The MSP would have to store and retain all submitted fingerprints in an automated fingerprint identification system database that searched against latent fingerprints and provided for an automatic notification when a subsequent fingerprint submitted into the system matched a set of fingerprints previously submitted under the proposed Act or when the criminal history of an individual whose fingerprints were retained in the system was updated. Upon receiving such a notification, the MSP immediately would have to notify the family service agency that requested the check.

Information in the database would be confidential, would not be subject to disclosure under the Freedom of Information Act, and could not be disclosed to any person except for purposes of the proposed Act or for law enforcement purposes.

The Department of State Police would have to forward all fingerprints submitted to it under the Act to the FBI to be retained in the FBI automatic notification system that would provide for automatic notification if subsequent criminal history record information matched fingerprints submitted to the FBI under the Act. The retained fingerprints could be searched by future submissions to the FBI automatic notification system, including latent fingerprint searches. These provisions would not apply until the MSP was a participant in the FBI automatic notification system.

A family service agency requesting a criminal history records check would have to notify the MSP within five days after an individual for whom the check was requested was no longer residing in a home where a minor child could be temporarily hosted or the individual's home was no longer hosting or available to host a child. After receiving this notice, the MSP would no longer be required to provide a notice to the agency for that individual.

When a home was hosting or was available to host a minor child according to a power of attorney, each person residing in that home for whom a criminal history records check had been conducted would have to report to a family service agency within three business days after he or she had been arraigned for one or more of the crimes listed in Section 5r of Public Act 116 of 1973, or any disqualifying offense under the National Child Protection Act.

(Under Section 5r of Public Act 116, an individual is ineligible to receive a license, be an adult member of the household (such as a foster family home), or be a child care staff member, if the individual has been convicted of a felony consisting of murder or homicide, child abuse or child neglect, a crime against a minor child, spousal abuse or domestic violence, a crime involving rape or sexual assault, kidnapping, arson, physical assault or battery, or human trafficking or involuntary servitude; has been convicted of a violent misdemeanor against a child; or has been convicted of a misdemeanor involving child pornography. Section 5r also lists other crimes for which an individual is ineligible to receive a license, be an adult member of the household, or be a child care staff member, unless a specific number of years have elapsed since the conviction.

The National Child Protection Act requires states to report child abuse crime information to, or index child abuse crime information in, a national criminal history background check system. A state may have in effect procedures that require qualified entities designated by the state to

contact an authorized state agency to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon an individual's fitness to have responsibility for the safety and well-being of children. The Act defines "child abuse crime" as a crime committed under any state law that involves the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by any person.)

If a person residing in a home in which a minor child was or was proposed to be hosted according to a power of attorney were not of good moral character as that term was defined in Public Act 381 of 1974 (the propensity on the part of a person to serve the public in a licensed area in a fair, honest, and open manner), or had been arraigned for one or more disqualifying offenses under the National Child Protection Act, a minor child could not be hosted in that home.

A family service agency could request the criminal history records checks as allowed under State and Federal law, including being a qualified entity under the National Child Protection Act (a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides child care or child care placement services, including a business or organization that licenses or certifies others to provide child care or child care placement services).

### Home Safety Assessment & Inspection

A family service agency would have to conduct a home safety assessment and inspection for each home where a minor child could be temporarily hosted according to a power of attorney. The assessment would have to include an inspection of the physical dwelling, assessment of the person's or family's financial ability to provide care for the child, and assessment of the person's or family's ability and capacity to provide care for the child. As part of the assessment, the family service agency would have to obtain three current references from people not related to the family.

A family service agency would have to conduct a home safety assessment every two years while a home was hosting or was available to host a minor child according to a power of attorney.

A family service agency would have to conduct periodic inspections of a home that was hosting a minor child to monitor the well-being of the child and any changes affecting the most recent home safety assessment. The agency would have to conduct the inspection within 48 hours after a person or family began hosting a child in a home, one day per week for the first month during which a child was hosted in the home, and one day per month after that for the duration of time that the child was being hosted in the home.

A family service agency's home safety assessment and inspection would have to result in a determination that a home was safe for a minor child before the home could host a child.

### Training

Before a minor child was hosted in a home according to a power of attorney, a family service agency would have to provide training for the people in that home. The training would have to be based on a national model for preparing, developing, training, and supporting resource families for the temporary care of minor children, and would have to include training on identifying child maltreatment, understanding grief and loss, behavior management strategies, environmental safety and universal precautions, and unique child-specific needs-based training.

### Record-Keeping

A family service agency would have to maintain records for each criminal history records check, home safety assessment, and training it conducted for at least seven years after a minor child reached 18 years of age. The family service agency would have to make the records available to any local, State, or Federal authority requesting the records as part of an investigation involving the minor child, parent or guardian, or person in a home in which a child was or had been hosted according to a power of attorney.

## Other Provisions

A person to whom power related to a minor child was delegated according to a power of attorney could not be compensated for serving as a temporary attorney-in-fact. However, this would not prohibit an individual, private organization, or governmental entity from providing funds to a family service agency for providing services under the proposed Act.

Executing a power of attorney would not subject a parent, guardian, or person in a home in which a minor child was hosted to any law, rule, or regulation concerning licensing or regulation of foster care or a child care organization. Providing a service under the proposed Act would not subject a family service agency to regulation by the Department of Health and Human Services (DHHS).

The Department would not be liable for any action arising out of the proposed Act, and could not promulgate rules under the Act.

The Department, a local office of the DHHS, or a law enforcement agency or officer could refer cases or families to a tax-exempt charitable organization that was recruiting people and families to host a minor child.

The services provided under the proposed Act would be community-based services that could be recommended commensurate with the risk to the child under Section 8d(1)(b) and (c) of the Child Protection Law.

(The Law requires certain individuals to report to the DHHS if they suspect child abuse or child neglect. Within 48 hours after receiving a report, the Department must refer the report to a prosecuting attorney and a local law enforcement agency if the report meets certain requirements; or commence an investigation of the child suspected of being abused or neglected. After completing a field investigation and based on its results, the DHHS must determine the category in which to classify the allegation of child abuse or neglect. Under Section 8d(1)(b), if the DHHS determines that there is not a preponderance of evidence of child abuse or neglect, but the structured decision-making tool indicates that there is a future risk of harm to the child, the DHHS must recommend voluntary community service. Under Section 8d(1)(c), the DHHS must require community service, if it determines that there is a preponderance of the evidence of child abuse or neglect, and the structured decision-making tool indicates a low or moderate risk of future harm to the child.)

MCL 722.111 (S.B. 489)  
722.952 (S.B. 490)  
Proposed MCL 722.128c (S.B. 797)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Safe Families for Children allows parents to temporarily place their children with a volunteer host family for a short period of time. This may be necessary when parents are overwhelmed by their circumstances or are in crisis, and recognize their inability to safely or adequately care for their children. The parents can choose to give up custody and care temporarily before the situation gets out of control, leading to abuse or neglect. During the placement, Safe Families volunteers provide support and resources to the parents to identify steps to regain stability and reunite with their children quickly and safely, while ensuring that their children are cared for in a protective environment. Parents may reunite with their children at any time.

The program's website states that the objectives of Safe Families are: 1) to keep children safe during a family crisis such as homelessness, hospitalization, or domestic violence in an effort to prevent child abuse and/or neglect; 2) to support and stabilize families in crisis by surrounding

them with caring, compassionate community; and 3) to reunite families and reduce the number of children entering the child welfare system. Safe Families does not replace foster care, but offers a voluntary, community-based resource that ultimately might prevent the need for State intervention.

According to Senate Oversight Committee testimony, Michigan's Safe Families program has served more than 1,000 children and families since 2011. Although Safe Families for Children already is operating in this State, the proposed Act would give the DHHS statutory authority to make referrals to the program, and would relieve the Department of liability for actions taken under the Act. In addition, the Act would codify the process for a parent to voluntarily delegate care of his or her child by executing a power of attorney, limit the duration of a placement to 180 days (except as provided for a parent in the military), and codify requirements for criminal history checks, home assessments and inspections, and training. The Act also would clarify that the temporary placement of a child with a host family would not be evidence of abandonment, abuse, or neglect, unless the parent failed to take custody of the child when the power of attorney expired. In addition, the package of bills would clarify that a family service agency assisting Safe Families would have to be licensed as a child placing agency, but the homes hosting children would not be foster homes and services provided under the proposed Act would not be subject to licensing requirements.

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

### **Senate Bill 489 (S-2)**

The bill would have no fiscal impact on State or local government.

### **Senate Bill 490 (S-1)**

Under the bill, there could be fiscal savings to State and local government. As proposed by the bill, foster care would exclude temporary care if a caregiver were unable to provide the necessary care and voluntarily allowed his or her child to live with a host family. Since the child would not be a State or court ward who had been placed with a formal foster parent, there would be no board and care costs charged on the basis of 50% to the State and 50% to the county. If the definition under the bill allowed children who currently would be placed in a paid foster care home currently funded by the State Ward Board and Care fund or the County Child Care fund, to be diverted to a volunteer host family, there would be savings to both the State and local government.

### **Senate Bill 797 (S-1)**

The bill would have no fiscal impact on State or local government.

### **Senate Bill 798 (S-1)**

The bill would have a minimal fiscal impact on the Department of State Police. The requirements in the bill regarding the conduct of criminal history background checks and the use of data systems are already assumed and provided for under the Department's existing budget.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.