



**House
Legislative
Analysis
Section**

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ACT ON THREATS TO CHILDREN

House Bill 4902 with committee amendments
First Analysis (9-28-89)

RECEIVED

Sponsor: Rep. David M. Gubow
Committee: Mental Health

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THE APPARENT PROBLEM:

The "duty to warn" legislation (Public Act 123 of 1989) passed earlier this year requires mental health practitioners to warn threatened third parties (and the appropriate law enforcement agency) under certain circumstances. When the threatened individual is a child, the mental health practitioner also must notify the child's parent or guardian and the Department of Social Services in the child's county of residence. However, when the duty to warn legislation was being debated, some people worried that simply notifying the Department of Social Services of a threat to a child by a psychotherapeutic client would not guarantee that the department would investigate the threat, even though the Child Protection Law (Public Act 238 of 1975) requires that the DSS respond to all complaints. Legislation has been introduced that would specifically require action by the DSS (or by law enforcement agencies) if a threat to a child is reported to them under the duty to warn act.

THE CONTENT OF THE BILL:

Under the Child Protection Law (Public Act 238 of 1975), if someone reports to the Department of Social Services (DSS) a case of suspected child abuse or neglect, an investigation is required within 24 hours of the report. If the individual alleged to be responsible for the abuse or neglect is someone "who is responsible for the child's health or welfare" (i.e., an adult member of the child's household), the DSS conducts the investigation; otherwise, the prosecuting attorney does the investigation.

The bill would amend the law to require that the department or the appropriate prosecuting attorney investigate for child abuse or neglect upon receiving notification of a threat to a child under the "duty to warn" law (Public Act 123 of 1989, House Bill 4237), which requires mental health practitioners to take certain steps if a patient threatened physical violence against a third person. If there were reasonable cause to believe that the child was abused or neglected, the bill would require that "appropriate action" under the Child Protection Law be taken.

MCL 722.628

FISCAL IMPLICATIONS:

Fiscal information is not available. (9-27-89)

ARGUMENTS:

For:

Although the "duty to warn" legislation requires that the Department of Social Services be notified in cases where a psychotherapeutic patient threatens a child, the department is not legally required to take any action when such threats are reported to it. The bill would rectify this oversight by specifically requiring that the department (or the local prosecuting attorney, depending on who made the threat) investigate within 24 hours of receiving such threats.

Response: The bill is redundant, since the Child Protection Law already requires that the Department of Social Services or a prosecuting attorney investigate reports of suspected abuse or neglect, and the law defines "abuse" to mean "harm or threatened harm by a person to a child's health or welfare which occurs through nonaccidental physical or mental injury; sexual abuse; sexual exploitation; or maltreatment."

Against:

Even though the bill proposes that the Department of Social Services (or a prosecuting attorney) take action upon receiving a report, under the "duty to warn" law, of a threat to a child, there is no guarantee that any action will be taken. In fact, in light of testimony given in committee, it appears that because of staffing shortages and "burnout," the department presently does not (and cannot) follow up on all of its requirements to investigate under the Child Protection Law, so there is little reason to believe that adding this bill will mean that "duty to warn" threats will actually be investigated.

Response: Unfortunately, it is true that the Protective Services Division of DSS is understaffed and overworked and that staff does not get the kind of support, both financially and professionally, that they need to do their mandated jobs well. However, this is not the staff's fault so much as it is a matter of underfunding and the politicization of the DSS budget. If people are serious about protecting children from abuse and neglect, then one of their priorities should be to ensure that adequate funding exists to enable protective services workers to perform their job.

POSITIONS:

The Department of Social Services supports the bill. (9-27-89)

The Association for Retarded Citizens — Michigan supports the bill. (9-27-89)

H.B. 4902 (9-28-89)