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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 858 (as passed by the Senate)

Sponsor: Senator Jack Welborn

Committee: Criminal Justice and Urban Affairs

Date Completed: 8-17-90

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RATIONALE

The Michigan Penal Code outlines four degrees of the crime of child abuse. First- and second-degree child abuse are felonies, while third- and fourth-degree child abuse are misdemeanors. A law enforcement officer generally has the authority to make a warrantless arrest on a felony charge, if the officer has probable cause to believe that the arrestee committed the felony. Except for certain offenses (such as domestic assault) for which warrantless arrests are expressly authorized in statute, an officer can make an arrest on a misdemeanor charge only if he or she either witnesses the offense or obtains an arrest warrant. Due to the seriousness and sensitive nature of the child abuse offenses, some people feel that law enforcement officers should be permitted to make warrantless arrests for a commission of any of the degrees of child abuse, or a suspicion that such a crime was imminent.

CONTENT

The bill would amend the Code of Criminal Procedure to allow a peace officer to make a warrantless arrest if he or she had reasonable cause to believe that child abuse in the first, second, third, or fourth degree had been, or was about to be, committed regardless of whether the violation was committed in the officer's presence.

Proposed MCL 764.15e

BACKGROUND

Public Act 251 of 1988 repealed sections of the Penal Code that outlined the felonies of child cruelty and child torture, and replaced them

with the current four degrees of child abuse. First-degree child abuse is the knowing or intentional causing of serious physical or serious mental harm to a child; second-degree child abuse occurs if a person's omission causes serious physical or serious mental harm to a child or if a person's reckless act causes serious physical harm to a child; third-degree child abuse is the knowing or intentional causing of physical harm to a child; and fourth-degree child abuse occurs if a person's omission or reckless act causes physical harm to a child.

The former child torture and child cruelty provisions were viewed by many as antiquated and inadequate because they contained undefined phrases and unusual offenses. Both child cruelty and child torture, though, were felonies, which allowed law enforcement officers to make arrests on those charges based on probable cause.

FISCAL IMPACT

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

ARGUMENTS**Supporting Argument**

The seriousness of an alleged offense of child abuse and the relative defenselessness of a victim of child abuse justify the special circumstance of allowing a law enforcement officer to make an arrest without a warrant. Prior to the 1988 revision of the Penal Code's child cruelty and torture provisions, express authority to make a warrantless arrest was unnecessary, since both those crimes were

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felonies. Since two of the degrees of child abuse are misdemeanors, however, specific statutory authority to make such arrests is necessary.

Response: It is unnecessary to authorize warrantless arrests for first- and second-degree child abuse, since those offenses are felonies. The bill should grant warrantless arrest powers only for third- and fourth-degree child abuse, which are misdemeanors.

Opposing Argument

The phrase "reasonable cause" in the bill is unclear. In order for an officer to make an arrest on a felony charge or secure an arrest warrant on a misdemeanor charge, he or she must have "probable cause" to believe that a particular suspect committed a particular crime. The bill's standard for a warrantless arrest should be "probable cause", which has an established meaning in the field of law enforcement, rather than "reasonable cause", which could be interpreted as a lesser standard.

Response: The "reasonable cause" language also is found elsewhere in the statutes, such as in the laws that permit warrantless arrests for domestic assault (MCL 764.15a) or for controlled substances violations (333.7501). In fact, the terms sometimes appear to be used interchangeably; and, in Black's Law Dictionary, the definition of each term contains references to the other.

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