

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

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House Bill 4902 (as reported without amendment)  
Sponsor: Representative David M. Gubow  
House Committee: Mental Health  
Senate Committee: Education and Mental Health

Date Completed: 2-26-90

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**RATIONALE**

Public Act 123 of 1989 amended the Mental Health Code to create a requirement commonly known as the "duty to warn". If a patient being treated by a psychiatrist, a psychologist, or a psychiatric social worker communicates to that practitioner a threat of physical violence against a reasonably identifiable third party, and if the patient has the apparent intent and ability to carry out that threat in the foreseeable future, the practitioner has a duty to take one or more of the following actions: hospitalize the patient or initiate proceedings to hospitalize the patient; make a reasonable attempt to tell the threatened person and tell the threatened person's or the patient's local police department or county sheriff, or the State Police, or; if the practitioner has reason to believe that the threatened person is a minor or is incompetent, make a reasonable attempt to tell the minor or incompetent person as well as the specified law enforcement agency, the child's custodial or noncustodial parent or guardian, and the Department of Social Services (DSS).

Some people have pointed out that simply notifying the DSS of a threat to a child by a patient does not guarantee that the DSS will investigate the threat, even though the Child Protection Law requires the DSS to respond to reports of abuse or neglect. It has been suggested that the Child Protection Law be amended to require specific action by the DSS, or by law enforcement agencies, if a threat to a child is reported under the duty to warn requirement.

**CONTENT**

The bill would amend the Child Protection Law to require the Department of Social Services to take certain actions if the Department received notification, under provisions of the Mental Health Code concerning the threat of physical violence against a third person, that a threat, as described in the Code, had been made against a child.

Under the bill, the DSS would be required to do one of the following:

- Immediately refer the information to the prosecuting attorney as required in the Act, if the person who made the threat was not responsible for the health and welfare of the child.
- Conduct an investigation according to the Act to determine whether the child was abused or neglected, if the person who made the threat was responsible for the health and welfare of the child. If the DSS determined that there was reasonable cause to believe that the child was abused or neglected, the Department would be required to take appropriate action under the Act.

The bill is tie-barred to House Bill 5060, which would amend the Child Protection Act to require certain licensed health care professionals, social workers and therapists, law enforcement officials, and child care providers

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who had reasonable cause to suspect a child had been born with fetal alcohol syndrome or drug dependency to report this information to the Department of Social Services.

Proposed MCL 722.628a

### FISCAL IMPACT

The bill would have an indeterminate fiscal impact. Sound data on the number of "duty to warn" scenarios appear scarce. However, any such occurrences would require investigation, under this bill, and therefore result in increased costs to either the DSS or the county prosecuting attorney.

### ARGUMENTS

#### Supporting Argument

Currently, under the Child Protection Law, the DSS is required to respond within 24 hours to a report of abuse or neglect of a child, by commencing an investigation or referring the report to the prosecuting attorney. It has been the practice of the Department, however, to respond to threats of abuse on a case-by-case basis: in other words, someone decides whether or not a threat is idle or warrants an investigation. The bill specifically would require that the DSS respond to a report by a mental health practitioner of a threat under the duty to warn requirement. Thus, the bill would ensure that such threats were investigated by the DSS or turned over to the local prosecuting attorney.

#### Opposing Argument

Even though the bill proposes that the DSS take action upon receiving a report, under the duty to warn requirement, of a threat to a child, there would still be no guarantee that any action would be taken. In fact, it appears that because of staffing shortages 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 enacting this bill would mean that duty to warn threats actually were investigated.

**Response:** While it may be true that the Protective Services Division of DSS is understaffed or overworked in relation to its

mandated responsibilities, that is a funding question and not a policy question. The bill, by providing that threats would demand a response from the Department, would place the proper policy in statute.

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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.*