House Legislative Analysis Section

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone: 517/373-6466

INCR. REQ'MT. TO REPORT CHILD ABUSE

House Bill 4157 as passed by the House
Second Analysis (8-23-88)

Sponsor: Rep. Richard Bandstra
Committee: Social Services & Youth

THE APPARENT PROBLEM:

Current law requires certain professionals (including school administrators) to report suspected child abuse and neglect when a suspected abuser is responsible for the child's health and welfare. However, a 1986 circuit court ruling said that school administrators are not required to carry out the intent of the law when abuse occurs between teacher and pupil. The Ottawa County Circuit Court held that the school administrator was not required to report a suspected child abuser who was a teacher because the court did not believe that the legislature intended the limited relationship between teacher and pupil to include teachers in the definition of a "person responsible for the child's health or welfare." To address this situation and other potential gaps in the reporting requirements, it has been suggested that reporting requirements be broadened to ensure that a report was made whenever there was suspected abuse.

THE CONTENT OF THE BILL:

The bill would broaden several definitions in the Child Protection Law. Currently, "child abuse" refers to harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare which occurred through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment. Under the bill, child abuse would mean harm or threatened harm to a child by any person. The bill would also broaden the definition of "person responsible for a child's welfare" to mean a parent, legal guardian, or a person eighteen years or older who resided for any length of time in the same home in which the child resided, or a person who cared for the child in a licensed or unlicensed day care facility. The law defines the term "child neglect" to mean harm to a child's health or welfare by a person responsible for the child's health or welfare which occurred through negligent treatment. Under the bill, child neglect would mean harm to a child's health or welfare by a parent, legal guardian, or person who had custodial care of the child, which occurred through negligent treatment or the placing of a child at unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or person who had custodial care of the child to intervene to eliminate that risk when that person was able to do so and had knowledge of the risk. The bill would also amend the definitions of "sexual abuse" and "sexual exploitation" to mean acts which could involve any person and not just those responsible for the child's health or welfare.

Under the law, certain professionals are required to report suspected child abuse or neglect. The bill would amend the law to include family counselors among the group of professionals required to report. Further, a written report of suspected child abuse or neglect must contain certain information. The bill would include the identity of the person suspected of being responsible for the abuse or neglect as one of the items to be included in the report. The Department of Social Services (DSS) would be required to transmit a copy of the written report to the prosecuting attorney of the county in which the child resided or was found if a report indicated that one of the four degrees of child abuse had occurred, a person had violated criminal sexual conduct laws, or the suspected abuse was not committed by a person responsible for the child's health or welfare, and the department believed that the report had basis in fact. If a local law enforcement agency received a written report of suspected child abuse or neglect indicating that the abuse or neglect was committed by a person responsible for the child's health or welfare, or if a subsequent investigation indicated the same, whether the report was from the reporting person or the department, the local law enforcement agency would provide copies of the report and results of any investigation to the county department of social services of the county in which the abused or neglected child was found as long as the local enforcement agency believed that the report had basis in fact. Nothing in the bill could be construed to relieve the department of its responsibility to investigate reports of suspected child abuse or neglect under the act. Involvement of law enforcement officials in investigations would not relieve or prevent the Department of Social Services from proceeding with its investigation or treatment if there was reasonable cause to suspect that the child abuse or neglect was committed by a person responsible for the child's health or welfare.

Under the bill, the department would be required to refer a report to the prosecuting attorney within 24 hours if the report indicated a violation of the child abuse law or the criminal sexual conduct provisions of the penal code. Within 24 hours after receiving a report from the reporting person or the department in reference to child abuse or criminal sexual conduct, the local law enforcement agency would have two choices. It would refer the report to the department if the report indicated that the abuse or neglect was committed by a person responsible for the child's health or welfare, or the agency would commence an investigation. Local law enforcement agencies or the department would be required to inform the child's parents or legal guardian of the investigation as soon as the person's identity was discovered if the child suspected of being abused was not in the physical custody of the parent or legal guardian and informing that person would not endanger the child's health or welfare.

Currently, the person responsible for the child's health or welfare is notified of the Department of Social Services' contact with the child as soon as possible and no child is subjected to a search at school which requires the child to expose their breasts, buttocks or genitalia unless the department obtains an order from a court of competent jurisdiction permitting such a search. Under the bill, if a search of a child by the department required the child to expose his or her breasts, buttocks, or genitalia, the child's assent would be required and the search would have to be conducted by a person of the same sex as the child in the presence of another adult of the same sex as the child.

The law prohibits staff members of hospitals, agencies or schools from being dismissed or penalized for making a child abuse report. The bill would also prohibit penalizing or dismissing staff members who cooperated in an investigation. A person acting in good faith who cooperated in an investigation would be immune from civil

OVER

or criminal liability which could otherwise be incurred. The bill would not preclude or hinder a hospital, school, or other agency from investigating reported claims of child abuse or neglect by its employees or from taking disciplinary action based upon that investigation against its employees.

The bill would clarify DSS responsibilities. Under the law, the department is required to prepare a biennial report to the legislature regarding child abuse and neglect, assure a continuing education program for departmental, court and private agency personnel regarding child abuse and neglect, and provide for the dissemination of information to the general public with respect to the problem of child abuse and neglect. The bill would require the department to perform these duties in regard to child abuse and neglect committed by persons responsible for the child's health or welfare.

MCL 722.622 et al.

FISCAL IMPLICATIONS:

According to the Department of Social Services, the bill would have negligible fiscal implications for the state. (8-23-88)

ARGUMENTS:

For:

Under current law, there is some confusion as to when a report of suspected child abuse should be made and which agency or department should investigate the report. The bill will provide additional protection for children who could be victims of child abuse or criminal sexual conduct by broadening reporting requirements to ensure that a report was made whenever child abuse or criminal sexual conduct was suspected. The bill will also clarify which agency is to receive reports of suspected child abuse and in which cases the department or the local law enforcement would investigate the reports, by differentiating between cases of abuse by people responsible for a child's health and welfare (parents, guardians, adults living in the same home, child care workers) and other persons, such as teachers. Further, the bill will encourage a system in which investigating agencies will be more informed of other investigations being conducted, and assure that all participating agencies will not be precluded from carrying out their full responsibilities.

Against:

The bill will delete safety measures incorporated into current law to ensure that body searches of children are conducted under controlled conditions and that children's rights are protected. In addition, the bill will not address the issue of confidentiality between mental health professionals and their patients. Under current law mental health professionals are required to report patients if they suspect that the patient may have committed child abuse or neglect. Many patients are now reluctant to totally communicate with their doctors or other mental health professionals because of this reporting requirement. The bill should exempt mental health professionals from the reporting requirements, just as priests and lawyers are exempt.

Response: Recently an Oakland County circuit court found that several provisions of the Child Protection Law, including provisions requiring mental health care professionals to report suspected child abuse and neglect, were unconstitutional and vague. However, the case is being appealed. If the circuit court's decision is upheld, then the law could be amended to address the issue; it would be premature to address this issue before the appeal is decided. In addition, the bill was not intended to address the confidentiality issue; if there is a need to consider exempting mental health professionals from reporting requirements, advocates of the issue should seek separate legislation which could stand on its own merits.

Rebuttal: By waiting for the appellate court to address the confidentiality issue, the legislature is shirking its responsibilities and allowing the courts to dictate the intent of legislation. Further, while the legislature stalls to wait for a court decision on the issue, children are being abused by people who want to get help but are afraid of being turned in by the only person (normally a health care professional) in whom they feel comfortable enough to confide. Lawyers, priests and ministers are exempt from the reporting requirements of the law simply because the law would infringe on their client's rights. Lawyers do not even provide mental health treatment for their clients. Since the nature of mental health professionals' relationships with their clients is confidential and since the professionals do treat their clients for behavioral problems, mental health professionals should be exempt from the reporting provision.

POSITIONS:

The Department of Social Services supports the bill. (8-23-88)

The Michigan Psychological Association supports the concept of mandatory reporting for the purposes of identifying incidents of child abuse and neglect. However, the association also supports the concept of confidentiality in cases where knowledge of child abuse or neglect is gained in psychotherapy treatment situations when the child is in no forseeable danger of being further abused or neglected. (8-23-88)