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BILL ANALYSIS

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**House Bill 4157 (Substitute S-1 as reported)****Sponsor: Representative Richard Bandstra****House Committee: Social Services and Youth****Senate Committee: Human Resources and Senior Citizens****Date Completed: 12-5-88****RATIONALE**

The Child Protection Law requires certain professionals, including school administrators, to report suspected cases of child abuse and neglect committed "by a person responsible for the child's health or welfare". Reportedly, a circuit court in 1986 interpreted this language to mean that a school administrator was not required to report a suspected child abuser who was a teacher, because a teacher would not be considered 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 the law be broadened to ensure that a report was made whenever there was suspected abuse.

**CONTENT**

The bill would amend the Child Protection Law to:

- Extend the Act's reporting requirements to include abuse or neglect committed by any person, rather than just by a person responsible for a child's health or welfare.
- Include criminal sexual conduct offenses and criminal child abuse offenses in provisions under which a copy of a report must be sent to the prosecuting attorney.
- Require local law enforcement agencies to send reports to county social services departments if the person who committed the suspected abuse or neglect were responsible for the child's health or welfare, and to begin an investigation or report to the DSS if criminal sexual conduct or child abusive commercial activity were suspected.
- Provide that the Act would not preclude or hinder a hospital, school, or other agency from investigating reported abuse or neglect by its employees or disciplining its employees.

The bill would amend the definitions of "child abuse", "child neglect", "sexual abuse", and "sexual exploitation", to remove references to a "person responsible for the child's health or welfare". "Child neglect" would be redefined as harm to a child's health or welfare by a parent, legal guardian, or person who has custodial care of the child which occurs either through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care, or by "placing a child at an unreasonable risk to the child's health or welfare by failure of the parent, legal guardian, or person who has custodial care of the child to intervene to eliminate that risk when that person is able to do so and has knowledge of the risk".

Under the Act, "person responsible for the child's health or welfare" includes but is not limited to a parent, legal

guardian, stepparent, or any other individual to whom a parent or legal guardian delegates the care of the child. The bill would redefine the term to mean a parent, legal guardian, person 18 years of age or older who resides for any length of time in the same home as the child, or a person who cares for the child in a licensed or unlicensed day care center, group day care home, or family day care home.

Under the Act, a member of the staff of a hospital, agency, or school may not be dismissed or penalized, and is immune from civil and criminal liability, for making a report. The bill would extend these protections to staff members who cooperate in an investigation.

Under the Act, if the report indicates an offense concerning child abusive commercial activity, and the DSS believes that the report is based in fact, the DSS must send a copy of the report to the prosecuting attorney of the counties where the child resides and is found. The bill would extend this requirement to criminal sexual conduct offenses and criminal child abuse offenses, and would apply the requirement if a subsequent investigation indicated one of the offenses in question. The bill also would apply this requirement if the report or subsequent violation indicated that the suspected abuse was not committed by a person responsible for the child's health or welfare. In addition, the results of any investigation would have to be sent along with the report.

Under the bill, if a local law enforcement agency received a written report of suspected child abuse or neglect, whether from the reporting person or the DSS, the report or subsequent investigation indicated that the abuse or neglect was committed by a person responsible for the child's health or welfare, and the agency believed that the report was based in fact, the agency would have to give a copy of the report and investigation results to the county department of social services of the county in which the child was found. The bill specifies that nothing in these provisions could be construed to relieve the DSS of its responsibility to investigate reports of suspected abuse or neglect under the Act.

The Act requires the DSS, within 24 hours after receiving a report under the Act, to begin an investigation of the child. The bill also would require the DSS, within 24 hours, to refer the report to the prosecuting attorney if child abusive commercial activity, criminal sexual conduct, or criminal child abuse were suspected. Within 24 hours after receiving a report indicating such an offense, the local law enforcement agency would have to refer the report to the DSS if the report indicated that the abuse or neglect was committed by a person responsible for the child's health

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or welfare, or begin an investigation of the child. If the child were not in the physical custody of the parent or legal guardian and informing the parent or guardian would not endanger the child, the agency or department would have to inform the parent or guardian of the investigation as soon as the agency or department discovered that person's identity.

The Act provides that involvement of law enforcement officials under these provisions does not relieve or prevent the DSS from proceeding with its investigation or treatment. The bill would add, "if there is reasonable cause to suspect that the child abuse or neglect was committed by a person responsible for the child's health or welfare".

The Act requires that, if there is suspected abuse or neglect of a child in the care of or under the control of a public or private agency, institution, or facility, that entity be investigated by an administratively independent agency. If the investigation produces evidence of child abusive commercial activity, the investigating agency must send a copy of its results to the prosecuting attorney. The bill would extend this requirement to cases of suspected criminal sexual conduct.

The Act requires the DSS to report to the Legislature biennially, to assure a continuing education program for Department, probate court, and private agency personnel, and to disseminate information to the general public concerning child abuse and neglect. The bill would limit these requirements to child abuse and neglect committed by persons responsible for the child's health or welfare.

The bill specifies that the Act 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 against its employees based upon that investigation.

MCL 722.622 et al.

## ***SENATE COMMITTEE ACTION***

The Senate Committee adopted a substitute that does not contain provisions, included in the House-passed version, that would include family counselors among the persons who are required to report; require that a report contain information that could establish the identity of the person suspected of the abuse or neglect; and, provide that a search of a child would have to be conducted by a person of the same sex if the search would expose the child's buttocks or genitalia or her breasts. The House-passed version also would delete current provisions allowing access to a child without parental consent if necessary, but requiring notice to the parent, and providing that a child cannot be subjected to a search at school that would require the child to expose himself or herself, without a court order.

## ***FISCAL IMPACT***

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

## ***ARGUMENTS***

### ***Supporting Argument***

Under current law, there is some ambiguity as to when a report of suspected child abuse or neglect must be made, and which agency or department should investigate the report. The bill would provide additional protection for children who may be victims of abuse or criminal sexual

conduct, by broadening the reporting requirements to require a report whenever child abuse or criminal sexual conduct against a child was suspected. The bill also would make it clear which agency is to receive reports of suspected abuse and in which cases the DSS or local law enforcement agency is to 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 by others, such as teachers. Further, the bill would encourage a system in which investigating agencies were better informed of other investigations being conducted, and would assure that all participating agencies were not precluded from carrying out their full responsibilities.

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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.