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SFA



BILL ANALYSIS

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Senate Bill 72 (Substitute S-1 as passed by the Senate)
Senate Bill 73 (Substitute S-1 as passed by the Senate)
Senate Bill 74 (Substitute S-1 as passed by the Senate)
Senate Bill 75 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Bev Hammerstrom (Senate Bills 72 and 74)
 Senator Joel Gougeon (Senate Bills 73 and 75)
Committee: Families, Mental Health and Human Services (Senate Bills 72 and 73)
 Judiciary (Senate Bills 74 and 75)

Date Completed: 2-21-01

RATIONALE

The safety of Family Independence Agency (FIA) staff has been a concern since the murder of an FIA worker several years ago. On May 28, 1998, Lisa Putman, a Macomb County FIA child protective services worker, was murdered while conducting a field investigation. The investigation should have been a routine inspection of a home from which two children had been removed because of its unsanitary condition. The FIA worker was inspecting the home to determine whether living conditions had been improved sufficiently to allow the children to be returned. It was not the first time that Putman had visited the home, and she had not had any previous trouble with the children's mother or her sister. During this home visit, however, the two women murdered the FIA social worker. This incident has served to highlight the dangers faced by many FIA employees in performing their duties. Some people feel that, in order to reduce the likelihood of further criminal activity against FIA staff, enhanced penalties should be enacted for threatening, harming, or impersonating an FIA worker.

CONTENT

Senate Bills 72 (S-1) and 74 (S-1) would amend the Michigan Penal Code and the Code of Criminal Procedure, respectively, to provide criminal penalties for threatening or harming an employee of the Family Independence Agency while the individual was performing his or her duties as an FIA employee or because of the individual's status as an FIA employee, and include the felony offenses of harming an FIA employee in the sentencing guidelines.

Senate Bills 73 (S-1) and 75 (S-1) would amend the Michigan Penal Code and the Code of Criminal Procedure, respectively, to specify a felony penalty for impersonating an FIA employee

and to include that offense in the sentencing guidelines.

The bills would take effect on June 1, 2001. Senate Bills 72 (S-1) and 73 (S-1) are tie-barred to each other and to House Bill 4099, which would require the FIA to implement a training program for FIA employees required to perform a field investigation or home visit. Senate Bill 74 (S-1) is tie-barred to Senate Bill 72, and Senate Bill 75 (S-1) is tie-barred to Senate Bill 73.

Senate Bill 72 (S-1)

Under the bill, it would be a misdemeanor, punishable by up to one year's imprisonment, a maximum fine of \$1,000, or both, for a person to communicate to any other person a threat that he or she would physically harm an individual who was an FIA employee because of his or her status as an FIA employee. It would be a felony, punishable by up to two years' imprisonment, a maximum fine of \$1,000, or both, for a person to assault or assault and batter an individual and cause any physical injury while that individual was performing his or her duties as an FIA employee or because of his or her status as an FIA employee. If the assault or assault and battery caused the FIA employee "serious impairment of body function", the crime would be a felony punishable by up to five years' imprisonment and/or a fine of not less than \$1,000 or more than \$5,000. A conviction or sentence imposed for a violation of the bill would not preclude a conviction or sentence for a violation of any other applicable law.

"Serious impairment of body function" would mean that phrase as used in the Michigan Vehicle Code's drunk driving provisions. Under the Vehicle Code, "serious impairment of a body function" includes, but is not limited to, one or more of the following: loss of

a limb or use of a limb; loss of a hand, foot, finger, or thumb or use of a hand, foot, finger, or thumb; loss of an eye or ear or use of an eye or ear; loss or substantial impairment of a bodily function; serious visible disfigurement; a comatose state that lasts for more than three days; measurable brain damage or mental impairment; a skull fracture or other serious bone fracture; or subdural hemorrhage or subdural hematoma (MCL 257.625(5)).

Senate Bill 73 (S-1)

The bill would prohibit a person who was not employed by the FIA from informing another person, or representing to another person by identification or any other means, that he or she was an FIA employee with the intent to do any of the following:

- Gain entry to a residence, building, structure, facility, or other property.
- Remain in or upon a residence, building, structure, facility, or other property.
- Gain access to financial account information.
- Commit a crime.
- Obtain information to which the person was not entitled under Section 7 of the Child Protection Law. (That section requires the FIA to maintain a statewide, electronic registry pertaining to child abuse and neglect allegations and investigations, and restricts who may have access to confidential information in the registry.)
- Gain access to a person under the age of 18 or a "vulnerable adult". ("Vulnerable adult" would mean an individual 18 or older who, because of age, developmental disability, mental illness, or disability lacked the cognitive skills required to manage his or her property, whether or not determined by a court to be an incapacitated person in need of protection.)

A violation of the bill would be a felony, punishable by up to two years' imprisonment, a maximum fine of \$1,000, or both.

Senate Bill 74 (S-1)

Under the bill, assault and battery of an FIA employee would be categorized in the sentencing guidelines as a Class G felony against a person, with a statutory maximum penalty of two years' imprisonment, and assault and battery of an FIA employee that caused serious impairment would be categorized as a Class E felony against a person, with a statutory maximum penalty of five years' imprisonment, as proposed by Senate Bill 72 (S-1).

Senate Bill 75 (S-1)

Under the bill, impersonating an FIA employee would be categorized in the sentencing guidelines as a Class G felony against the public order, with a

statutory maximum sentence of two years' imprisonment, as proposed by Senate Bill 73 (S-1).

Proposed MCL 750.81c (S.B. 72)
Proposed MCL 750.217e (S.B. 73)
MCL 777.16d (S.B. 74)
MCL 777.16l (S.B. 75)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The tragic murder of FIA child protective services worker Lisa Putman in 1998 shed new light on the potentially dangerous conditions that FIA field workers often may face in the course of performing the duties of their job and spurred public discourse about what could be done to mitigate that danger.

Senate Bills 72 (S-1) and 74 (S-1) would offer a degree of protection to FIA workers because the bills should deter threats or harm committed against FIA employees. By establishing severe penalties for threatening or assaulting a person while he or she was performing his or her duties as an FIA employee or because of his or her status as an FIA employee, the bills should discourage the type of activity that led to Lisa Putman's death. In addition, the proposed penalties would exact appropriate punishment on offenders who threatened or harmed FIA workers in the course of their employment or because of their FIA employment.

In addition, impersonating a public official who has the authority to investigate home situations should be taken very seriously. While perhaps not a widespread practice, impersonating an FIA employee for the purpose of gaining entry to a residence, obtaining access to financial or other information, or otherwise committing a crime should be dealt with harshly in Michigan's criminal laws. Just as impersonating a peace officer or a utility meter reader carries specific penalties under the law, impersonating an FIA worker for nefarious purposes should be subject to strong penalties.

Response: While enacting criminal penalties for threatening, harming, or impersonating an FIA employee may be warranted, the bills do not address a basic underlying problem: FIA social workers are overworked. The caseloads are too heavy and the workers too few. The best way to protect FIA employees would be to hire enough social workers to give them more manageable caseloads.

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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.

Supporting Argument

It has been reported that many FIA employees who are expected to perform field investigations and home visits have had little training regarding their personal safety. These workers deserve proper safety training and should have the option of working with a partner if the situation warrants it. Senate Bills 72 (S-1) and 73 (S-1) are tie-barred to House Bill 4099, which would require training for FIA caseworkers on defusing threatening behavior and instruction on how to recognize potentially dangerous situations and perform safe home visits and investigations. House Bill 4099 also would require that an FIA employee complete a field investigation with another FIA employee trained under the bill or a law enforcement officer if the employee had documented a risk that led to a reasonable apprehension regarding the safety of performing a field investigation or home visit.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many people could be convicted of assault and battery of an FIA employee, which would be incorporated into the sentencing guidelines as a Class G felony with a maximum sentence of two years; or causing serious impairment to an FIA employee, which would be a Class E felony with a maximum sentence of five years. The sentencing guidelines minimum sentence range for Class G felonies is from 0-3 months to 7-23 months, and for Class E felonies is from 0-3 months to 24-38 months. The minimum sentence cannot exceed two-thirds of the maximum sentence. If 10 offenders a year were convicted of causing serious impairment and served the longest allowable minimum sentence, given that the annual cost of incarceration is \$22,000, costs of incarceration for this crime would be \$1.1 million. Offenders convicted of assault and battery of an FIA employee would not receive a prison sentence because the longest allowable minimum sentence would not exceed 18 months.

There also are no data available to indicate how many offenders would be convicted of impersonating an FIA employee. This offense would be incorporated into the sentencing guidelines as a Class H felony with a minimum sentencing guideline range from 0-1 month to 5-17 months. Offenders convicted of this offense would not receive a prison sentence because the longest allowable minimum sentence would not exceed 18 months.

If an offender's longest allowable minimum sentence would not exceed 18 months, he or she could be

sentenced to incarceration in jail, a community corrections program, and/or probation. Local units of government would be responsible for the costs of incarceration or community corrections programs, which vary by county, while the State would incur costs of \$4.38 a day for felony probation.

Fiscal Analyst: K. Firestone