

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 72 (as enrolled)
Senate Bill 73 (as enrolled)
Senate Bill 74 (as enrolled)
Senate Bill 75 (as enrolled)
House Bill 4099 (as enrolled)

PUBLIC ACT 22 of 2001
PUBLIC ACT 21 of 2001
PUBLIC ACT 20 of 2001
PUBLIC ACT 19 of 2001
PUBLIC ACT 14 of 2001

Sponsor: Senator Bev Hammerstrom (S.B. 72 & 74)
Senator Joel Gougeon (S.B. 73 & 75)
Representative Alan Sanborn (H.B. 4099)

Senate Committee: Families, Mental Health and Human Services (S.B. 72 & 73 and H.B. 4099)
Judiciary (S.B. 74 & 75)

House Committee: Criminal Justice (S.B. 72, 73, 74, & 75)
Family and Children Services (H.B. 4099)

Date Completed: 7-11-01

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 apply to threatening, harming, or impersonating an FIA worker, and that special training to diffuse tense or dangerous situations should be available to FIA employees who conduct field investigations or home visits.

Criminal Procedure, respectively, to provide criminal penalties for threatening or harming an employee of the Family Independence Agency while the individual is performing his or her duties as an FIA employee or because of the individual's status as an FIA employee, and to include the felony offenses of harming an FIA employee in the sentencing guidelines.

Senate Bills 73 and 75 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.

House Bill 4099 amends the Social Welfare Act to require that the FIA develop, implement, and provide a training program for each FIA employee required to perform a field investigation or home visit.

The bills will take effect on September 1, 2001. Senate Bills 72 and 73 were tie-barred to each other and to House Bill 4099. Senate Bill 74 was tie-barred to Senate Bill 72. Senate Bill 75 was tie-barred to Senate Bill 73. House Bill 4099 was tie-barred to Senate Bills 72 and 73.

CONTENT

Senate Bills 72 and 74 amend the Michigan Penal Code and the Code of

Senate Bill 72

Under the bill, it is 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 will physically harm an individual who is an FIA employee because of his or her status as an FIA employee. The bill makes it 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 is 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 causes the FIA employee "serious impairment of body function", the felony is punishable by up to five years' imprisonment and/or a fine of not less than \$1,000 or more than \$5,000. The bill specifies that a conviction or sentence imposed for a violation of the bill does not preclude a conviction or sentence for a violation of any other applicable law.

The bill defines "serious impairment of body function" as that phrase is defined 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

The bill prohibits a person who is not employed by the FIA from informing another person, or representing to another person by identification or any other means, that he or she is 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 is 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". (The bill defines "vulnerable adult" as an individual 18 or older who, because of age, developmental disability, mental illness, or disability lacks 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 is a felony, punishable by up to two years' imprisonment, a maximum fine of \$1,000, or both.

Senate Bill 74

Under the bill, assault and battery of an FIA employee is 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 causes serious impairment is categorized as a Class E felony against a person, with a statutory maximum penalty of five years' imprisonment, as provided in Senate Bill 72.

Senate Bill 75

Under the bill, impersonating an FIA employee is categorized in the sentencing guidelines as a Class G felony against the public order, with a statutory maximum sentence of two years' imprisonment, as provided in Senate Bill 73.

House Bill 4099

The training program required under the bill must include mandatory training on defusing threatening behavior and on how to perform safe investigations and home visits and recognize potentially dangerous situations.

In addition, if an FIA employee who is required to perform a field investigation or

home visit has documented a risk that leads to a reasonable apprehension regarding the safety of performing a field investigation or home visit, the employee must complete the field investigation or home visit either with another FIA employee who has been trained under the program outlined in the bill or with a law enforcement officer.

MCL 750.81c (S.B. 72)
750.217e (S.B. 73)
777.16d (S.B. 74)
777.16l (S.B. 75)
400.115q (H.B. 4099)

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.

Reportedly, many FIA employees who are expected to perform field investigations and home visits have had little training regarding their personal safety, yet they are expected on a daily basis to enter situations that could be dangerous. These workers deserve proper safety training and should have the option of working with a partner if the situation warrants it. By providing for mandatory training on defusing threatening behavior and instruction on how to recognize potentially dangerous situations and perform safe home visits and investigations, House Bill 4099 will ensure that FIA field workers have the knowledge and skills to protect themselves while performing their tasks. Evidently, some new FIA employees already receive this kind of training; the bill extends it to all FIA employees required to perform field investigations or home visits.

In addition, under House Bill 4099, an FIA field worker will have additional protection by being accompanied by a partner or a law enforcement officer, if there is a documented risk leading to a reasonable apprehension regarding the safety of performing a field

investigation or visit. Combined with efforts the FIA undertook after Putman's murder to hire more child protective services (CPS) workers and equip them with cell phones and personal alarms, the bill's requirements should provide FIA field investigators with the resources they need to perform their duties safely and effectively.

Response: While the training that the bill mandates might very well prove useful to most FIA field workers, the bill does not address the basic underlying problem: FIA social workers are overworked. The caseloads are too heavy and the workers too few.

Supporting Argument

Senate Bills 72 and 74 should deter threats or harm committed against FIA employees and therefore offer a degree of protection to FIA workers. By establishing severe penalties for threatening or assaulting a person while he or she is 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. The new penalties also will enable sentencing judges to impose appropriate punishment on offenders who threaten or harm 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: The bills do not go far enough in protecting social workers because the violations apply only to conduct against employees of the FIA. Other public entities, such as community mental health (CMH) agencies, employ social workers who perform field investigations and home visits. Those tasks may involve working in high-crime areas or interacting with clients who have a history of violent behavior. In addition, the FIA sometimes contracts with private agencies to

manage child welfare cases. The bills, however, do not cover threatening, assaulting, or impersonating contractual or CMH employees. Although their clients should not be considered inherently dangerous, these social workers nevertheless should benefit from the same degree of protection afforded FIA employees under the bills.

Opposing Argument

House Bill 4099 does not go far enough to ensure that FIA workers receive the proper training and protection. Legislation introduced in the previous session (House Bill 4456 of 1999-2000) would have required that the FIA, in conjunction with the State Police, provide workers with a self-defense training program, and would have mandated that the FIA require all CPS workers to complete field investigations and home visits in groups of at least two caseworkers. Later versions of the 1999-2000 bill included a voluntary personal protection component in the proposed training regimen. Neither that proposal nor the current bill, however, has addressed the arming of CPS workers and the current bill does not even mention any self-defense or personal protection training. At the very least, the legislation should have included a self-defense training component and perhaps allowed case workers to carry mace.

Response: Arming social workers would be ill-advised because they receive no training in weapons' use or law enforcement techniques, and allowing them to carry weapons could possibly just contribute to a dangerous situation. It will be more effective for the training to focus on defusing threatening behavior and recognizing potentially dangerous situations. The FIA's field investigators' task after all is case management, not law enforcement.

Opposing Argument

House Bill 4099 includes an ambiguous standard for requiring the completion of an investigation with a partner or a police officer. Requiring an FIA worker to have a "documented risk" that leads to a "reasonable apprehension" about the worker's safety is an unclear criterion. Some workers might even feel that the FIA hierarchy would frown upon their requesting assistance to complete an investigation.

Partnering should be routine in FIA field investigations and home visits. Lisa Putman

had previously visited the home where she was murdered. She had no documented risk of potential danger and apparently had no apprehension about going there again, yet she was viciously attacked from behind. The presence of another case worker may have prevented the attack. The bill should have included some reassurance that there will be no professional backlash against a field worker who requests backup or police accompaniment on an investigation or home visit.

Response: Routinely working in pairs on home visits and field investigations would spread the workforce too thin and could be intimidating to FIA clients and families being assisted by FIA programs.

Opposing Argument

House Bill 4099 addresses the problem too late in the process. According to testimony before the Senate Committee on Families, Mental Health and Human Services by someone who has had dealings with FIA and Friend of the Court social workers, situations in which the potential for violence arises may be a result of previous actions by social workers themselves that serve to alienate the very people they are supposed to serve. Rather than the training regimen outlined in the bill, these public employees need training in how to stop problem situations before they start, and how to avoid inciting a volatile situation in the first place.

Response: The situations with which FIA social workers must deal usually are quite unstable long before any intervention by the FIA. Public servants who are required to step into volatile households should be trained to recognize and assess the situation and be prepared to act accordingly.

Opposing Argument

Rather than provide for more training and allow for assistance in some situations, a more fundamental change is necessary in the way child abuse and neglect cases are handled in Michigan. The best way to ensure the safety of FIA social workers would be to get them out of the business of investigating child abuse. These case workers sometimes risk their lives walking into filthy homes and drug dens that armed police officers might fear to enter. Investigations into the crime of child abuse and neglect should be handled by criminal investigators, not social workers. This is a job for law enforcement officers. The FIA's CPS case workers could still handle issues such as

the housing, medical, educational, financial, and psychological needs of children and families. Investigation of the physical, mental, and sexual abuse of children, however, should be conducted by officials whose training is more suited to dealing with criminal allegations. This arrangement would safeguard both CPS workers and the children they are charged with protecting, because trained law enforcement officers could better handle the evidence-gathering aspect of child abuse investigations.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bills 72 through 75

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

There are no data available to indicate how many people might be convicted of assault and battery of an FIA employee, which will 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 will 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 are convicted of causing serious impairment and serve the longest allowable minimum sentence, given that the annual cost of incarceration is \$22,000, costs of incarceration for this crime will be \$1.1 million. Offenders convicted of assault and battery of an FIA employee will not receive a prison sentence because the longest allowable minimum sentence does not exceed 18 months.

There also are no data available to indicate how many offenders will be convicted of impersonating an FIA employee. This offense will 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 will not receive a prison sentence because the longest allowable minimum sentence does not exceed 18 months.

If an offender's longest allowable minimum sentence does not exceed 18 months, he or she may be sentenced to incarceration in jail, a community corrections program, and/or probation. Local units of government are responsible for the costs of incarceration or community corrections programs, which vary by county, while the State incurs costs of \$4.38 a day for felony probation.

House Bill 4099

The bill will have an indeterminate fiscal impact on State government. Currently, the FIA spends funds on and provides training to employees for worker safety issues. Employees currently perform home visits in pairs when they determine that it is required.

The FY 2000-01 appropriation includes \$780,000 Gross, \$234,000 GF/GP for expanding Child Welfare Institute classes for about 4,000 additional house in required training for State child welfare workers and private child caring agency workers. It is anticipated that those funds also will be included in the FIA budget for FY 2001-02.

Fiscal Analyst: K. Firestone
C. Cole

A0102\572ea

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.