

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 1371 (as passed by the Senate)
Senate Bill 1372 (as passed by the Senate)
Senate Bill 1373 (as passed by the Senate)
Senate Bill 1374 (as passed by the Senate)
House Bill 4456 (Substitute S-3 as reported)
Sponsor: Senator Joel D. Gougeon (S.B. 1371 & 1372)
Senator Bev Hammerstrom (S.B. 1373 & 1374)
Representative Alan Sanborn (H.B. 4456)
Senate Committee: Families, Mental Health and Human Services (S.B. 1371 & 1373 and H.B. 4456)
Judiciary (S.B. 1372 & 1374)
House Committee: Family and Civil Law (H.B. 4456)

Date Completed: 11-8-00

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 (CPS) 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 and that special training to diffuse tense or dangerous situations should be available to FIA employees who conduct field investigations or home visits.

CONTENT

Senate Bills 1371 and 1372 (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 provisions.

Senate Bills 1373 and 1374 (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 FIA 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 provisions.

House Bill 4456 (S-3) would amend the Social Welfare Act to require that the FIA develop, implement, and provide a training program for all FIA employees required to perform field investigations or home visits.

Senate Bills 1371, 1373, and House Bill 4456 (S-3) are all tie-barred to one another. Senate Bill 1372 (S-1) is tie-barred to Senate Bill 1371. Senate Bill 1374 (S-1) is tie-barred to Senate Bill 1373.

Senate Bill 1371

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 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; or gain access to a person under the age of 18 or a "vulnerable adult". (Section 7 of the Child Protection Law 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. "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 1372 (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 1371.

Senate Bill 1373

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 1374 (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 1373.

House Bill 4456 (S-3)

The training program required under the bill would have to 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 was required to perform a field investigation or home visit had documented a risk that led to a reasonable apprehension regarding the safety of performing a field investigation or home visit, the employee would have to complete the field investigation or home visit either with another FIA employee who had been trained under the program proposed by the bill or with a law enforcement officer.

Proposed MCL 750.217e (S.B. 1371)

MCL 777.16l (S.B. 1372)

Proposed MCL 750.81c (S.B. 1373)

MCL 777.16d (S.B. 1374)

Proposed MCL 400.115p

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 4456 (S-3) would ensure that FIA field workers had the knowledge and skills to protect themselves while performing their tasks. Evidently, some new FIA employees already receive this kind of training; the bill would extend that training to all FIA employees required to perform field investigations or home visits.

In addition, under House Bill 4456 (S-3), an FIA field worker would have additional protection by being accompanied by a partner or a law enforcement officer, if there were 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 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 House Bill 4456 (H-3) proposes could 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 1373 and 1374 (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.

Supporting Argument

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.

Opposing Argument

House Bill 4456 (S-3) would not go far enough to ensure that FIA workers received the proper training and protection. Immediately after Lisa Putman's death, there were newspaper reports that legislation would be proposed to allow CPS field workers to be armed while in the course of their duties. As introduced, this bill would have required that the FIA, in conjunction with the State Police, provide workers with a self-defense training program. The introduced version also 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 bill included a voluntary personal protection component in the proposed training regimen. The bill never did address the arming of CPS workers and the Senate substitute does not even mention any self-defense or personal protection training. At the very least, the legislation should include a self-defense training component and perhaps allow 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. It would be more effective for the training to focus on defusing threatening behavior and recognizing potentially dangerous situations, rather than self-defense. The FIA's field investigators' task after all is case management, not law enforcement.

Opposing Argument

House Bill 4456 (S-3) 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 would lead to a "reasonable apprehension" about the worker's safety is an unclear and elusive 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 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 include some reassurance that there would be no professional backlash against a field worker who requested 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

Rather than provide for more training and allow for assistance in some situations, House Bill 4456 (S-3) should make a more fundamental change 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 should be conducted by officials whose training is more suited to dealing with criminal allegations. This arrangement would serve to protect 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 1371 & 1372 (S-1)

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of impersonating an FIA employee. The felony would be a Class G offense which carries a sentencing guidelines recommendation ranging from 0-3 months to 7-23 months. To the extent that the highest sentencing guideline recommendation for this offense would be less than 18 months, the cost of incarceration would be incurred by local units of government. Costs of incarceration vary among the counties.

Senate Bills 1373 & 1374 (S-1)

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

There are no data to indicate how many offenders would be convicted of assaulting an individual performing his or her duties as an FIA employee, nor are there data to indicate how many offenders would be convicted of assaulting an FIA employee and causing serious impairment of body function. Respectively, the felonies would be a Class G

offense which carries a sentencing guidelines recommendation ranging from 0-3 months to 7-23 months, and a Class E offense which carries a sentencing guidelines recommendation ranging from 0-3 months to 24-38 months.

According to the Department of Corrections statistical report, in 1998, there were 1,739 people convicted of felonious assault (MCL 750.82) and 438 or 25% received a prison sentence. This crime is a Class F felony and carries a maximum sentence of four years, which is more than the proposed two-year maximum sentence for assault of an FIA employee and less than the proposed five-year maximum for assaulting an FIA employee causing serious impairment of body function. However, if one assumed that 10 of these offenders assaulted FIA employees, that two of the assaults resulted in serious impairment of body function, and that the offenders received sentences equal to two-thirds of the maximum sentence, given an average annual cost of incarceration of \$22,000, the cost of incarceration to the State would be \$146,640 per year. Local units of government would incur the cost of incarceration for the eight offenders convicted of assaulting an FIA employee and for offenders sentenced at the lower end of the sentencing guidelines recommendation.

Also, there are no data to indicate how many people would be convicted of threatening to assault an FIA employee. This would be a misdemeanor and local units of government would receive the fine revenue or incur the cost of incarceration.

House Bill 4456 (S-3)

The bill would 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 hours in required training for State child welfare workers and private child caring agency workers.

Fiscal Analyst: K. Firestone
C. Cole

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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.