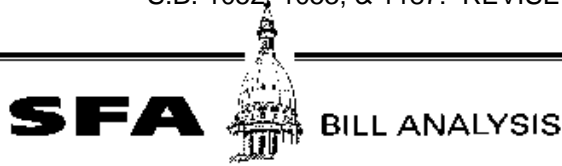

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Senate Bills 1052 and 1053 (as introduced 3-1-00)
Senate Bill 1187 (as introduced 3-29-00)
Sponsor: Senator Shirley Johnson (Senate Bill 1052)
 Senator Joanne G. Emmons (Senate Bill 1053)
 Senator Bev Hammerstrom (Senate Bill 1187)
Committee: Judiciary

Date Completed: 5-16-00

CONTENT

Senate Bill 1052 would amend the juvenile code to require that an “emergency service provider” (a fire department, hospital, or police station) take possession of a child voluntarily delivered to it by the child’s parent and notify the Family Independence Agency (FIA), which would have to assume care, control, and custody of the child. A court then could terminate the parent’s parental rights. **Senate Bill 1053** would amend the Michigan Penal Code to specify that delivery of a child to an emergency service provider pursuant to Senate Bill 1052 would be an affirmative defense to a child abandonment charge. The bills would not apply to causes of action arising before their effective dates.

Senate Bill 1187 would amend the Child Protection Law (CPL) to prohibit the FIA, a prosecuting attorney, or a local law enforcement agency from attempting, in conducting a child abuse or neglect investigation under the CPL, to determine the identity of the mother of a newborn who was left with an emergency service provider under Senate Bill 1052, if the person who left the newborn with the emergency service provider did so in compliance with the elements for an affirmative defense set forth under Senate Bill 1053.

A more detailed explanation of Senate Bills 1052 and 1053 follows.

Senate Bill 1052

Abandonment of Child to Emergency Service Provider

The bill would require that, without court order, an emergency service provider take possession of a child who was voluntarily delivered to the emergency service provider by the child’s parent who did not express an intent to return for the child. The emergency service provider would have to perform any act necessary to protect the physical health and safety of the child.

By the close of the first business day after the date on which the emergency service provider took possession of the child, the provider would have to notify the FIA that it had taken possession of the child. The FIA would have to assume the care, control, and custody of the child immediately upon receiving the notice.

The child would have to be treated as a child taken into possession without a court order under Section 14 of the juvenile code, and the FIA would have to take action required under that section with regard to that child. Section 14 allows a local police officer, sheriff or deputy, State police officer, county agent, or probation officer of any court of record to take into custody, immediately and without a court order, any child whose surroundings endanger his or her health, morals, or welfare, or who is found violating any law or ordinance, or is violating or has violated a personal protection order. The bill would add an FIA officer to the list of persons who may take a child into his or her possession under these circumstances.

(Section 14 of the juvenile code also provides that, if a child is taken into the possession of an agent or officer, the agent or officer must immediately attempt to notify the child's parent, guardian, or custodian. Unless the child requires immediate detention, the officer or agent must accept the written promise of the parent, guardian, or custodian to bring the child to the court at a fixed time and then release the child to the custody of the parent, guardian, or custodian. If a child is not released, the child and his or her parent, guardian, or custodian, if they can be located, must be immediately brought before the family division of circuit court (family court) for a preliminary hearing on the child's status, and the judge or referee must either sign an order authorizing the filing of a complaint or release the child to his or her parent, guardian, or custodian.)

Termination of Parental Rights

The juvenile code provides that the family court may terminate a parent's parental rights to a child if it finds, by clear and convincing evidence, that the child has been deserted under either of the following circumstances:

- The parent is unidentifiable, has deserted the child for 28 or more days, and has not sought custody of the child during that period.
- The parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

The bill would add to the list that the child's parent had voluntarily delivered the child to an emergency service provider without expressing an intent to return for the child.

Senate Bill 1053

Under the Penal Code, it is a felony punishable by up to 10 years' imprisonment, for a father or mother of a child under six years old, or any other person, to expose a child in any street, field, house, or other place with the intent to injure or wholly abandon the child. The bill specifies that it would be an affirmative defense to a prosecution for that charge that the person voluntarily delivered the child to an emergency service provider under Senate Bill 1052.

(According to Black's Law Dictionary, Fifth Edition, "affirmative defense" means a "...matter which, assuming the complaint to be true, constitutes a defense to it".)

MCL 712A.14 et al. (S.B. 1052)
750.135 (S.B. 1053)

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 1052

The bill would have an indeterminate fiscal impact on the Family Independence Agency. Currently, legal personnel and court time are budgeted for abandonment child protective cases. It is not certain if the bill would require additional hearings or other case administration resulting in increased FIA costs.

The bill also would have a minimal fiscal impact on State and local law enforcement agencies.

Senate Bill 1053

Senate Bill 1053 would have an indeterminate fiscal impact on State and local government.

In 1998, there were no convictions for child exposure. In 1997, however, two people were convicted of child exposure with intent to injure or abandon. One offender was given probation and the other was sentenced to jail. A local unit of government would have incurred the expense of incarceration and the State would have provided supervision for probation with an average annualized per diem of \$4.38 in FY 1998-99. There are no data to indicate if the inclusion of a permissible defense would have affected the outcome of these cases.

Senate Bill 1187

It appears that the bill would have no significant fiscal impact on the FIA because the FIA has administration procedures in place that would accommodate the provisions of the bill.

The bill would have no fiscal impact on the Department of State Police.

Fiscal Analyst: C. Cole
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K. Firestone