

INCREASE PENALTIES FOR MANDATED REPORTERS

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Senate Bill 874 (reported from committee as substitute H-1)

Senate Bill 880 (reported from committee as substitute H-1)

Sponsor: Sen. Rick Jones

Analysis available at

<http://www.legislature.mi.gov>

House Committee: Law and Justice

Senate Committee: Judiciary

Complete to 5-24-18

BRIEF SUMMARY:

Senate Bill 874 would amend the Child Protection Law to add enhanced criminal penalties for a second or subsequent failure by a mandatory reporter to report suspected child abuse or child neglect to Children's Protective Services.

Senate Bill 880 would add the new felony penalty for failure to report suspected child abuse or child neglect by a mandatory reporter to the sentencing guidelines chapter of the Code of Criminal Procedure.

The bills are tie-barred to one another, meaning that neither bill could become law unless the other were also enacted. Each bill would take effect 90 days after being enacted.

DETAILED SUMMARY:

Under current law, certain professionals are required under the Child Protection Law to report suspicions of child abuse or neglect to Children's Protective Services (CPS).¹ A mandated reporter must make a verbal report to CPS immediately and provide a written report within 72 hours of the suspicion of abuse or neglect.

Senate Bill 874 would amend Section 13 of the Child Protection Law. Currently under that section, a person who is required to report an instance of suspected child abuse or neglect and who knowingly fails to do so is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500. The penalty is the same whether the person committed one violation or multiple violations over time.

Under the bill, a second offense would also be a misdemeanor, but the maximum term of imprisonment would be increased to up to 1 year, and the maximum fine would be increased to up to \$5,000; a court could impose just a term of imprisonment, just a fine, or

¹ Currently, mandated reporters include the following: physicians, nurses, teachers, clergy, law enforcement officers, social workers, school administrators, school counselors, regulated child care providers, dentists and registered dental hygienists, physician's assistants, licensed emergency medical care providers, audiologists, medical examiners, psychologists, those in the counseling professions, certain employees of the Friend of the Court, and certain employees of the Michigan Department of Health and Human Services.

both. A third or subsequent offense would be a felony punishable by up to 4 years of imprisonment or a fine of up to \$15,000, or both. The bill would also refer to instances of child abuse and child neglect.

If the prosecuting attorney intends to seek an enhanced sentence for a second or subsequent violation, a statement listing the prior conviction or convictions would have to be included on the complaint and information. The court would determine the existence of the defendant's prior conviction or convictions without a jury, either at sentencing or at a separate hearing for that purpose. The existence of a prior conviction could be established by any evidence relevant for that purpose, including, but not limited to, one or more of the following:

- A copy of the judgment of conviction.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

If a sentence is enhanced by one or more convictions, the prior convictions could not be used to further enhance the sentence for the conviction under provisions within the Code of Criminal Procedure pertaining to the use of a conviction to enhance a sentence.

MCL 722.633

Senate Bill 880 would amend the sentencing guidelines portion of the Code of Criminal Procedure to specify that a third and subsequent offense of failure to report child abuse or child neglect would be a Class G felony against a person with a maximum term of imprisonment of 4 years.

MCL 777.15g

FISCAL IMPACT:

Senate Bill 874 would have an indeterminate fiscal impact on the state and on local units of government. Information is not available on the number of paid employees or volunteers who would be convicted under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Increased costs could be offset, to some degree, depending on the amount of additional court-imposed fee revenue generated. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

Senate Bill 880 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of government.

POSITIONS:

Representatives of the following organizations testified in support of the bills:

- Michigan Catholic Conference (5-1-18)
- Diocese of Kalamazoo (5-1-18)

The following organizations indicated support for the bills:

- American Association of University Women (4-25-18)
- Rape, Abuse, & Incest National Network (5-15-18)
- Children's Advocacy Centers of Michigan (4-25-18)

The Michigan Department of Health and Human Services Children's Protective Services Program testified with a neutral position on the bills. (4-25-18)

Representatives of the following organizations indicated opposition to the bills:

- Michigan Coalition to End Domestic and Sexual Violence (4-25-18)
- American Civil Liberties Union of Michigan (4-25-18)
- National Association of Social Workers (5-2-18)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.