



**House
Legislative
Analysis
Section**

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

**REVISE CONFIDENTIALITY
PROVISION RE: DV FATALITY
REVIEW TEAMS**

**Senate Bill 719 (Substitute H-1)
First Analysis (12-11-02)**

**Sponsor: Sen. Thaddeus G. McCotter
House Committee: Criminal Justice
Senate Committee: Families, Mental
Health and Human Services**

THE APPARENT PROBLEM:

Public Act 192 of 2001 amended the domestic violence act to allow the state or a county to establish an interagency domestic violence fatality review team. The teams review fatal and near-fatal incidents of domestic violence (including suicide), events leading up to the incident, available community resources, current laws and policies, actions taken by the agencies and individuals related to the incident and the parties, and any other relevant information.

According to a representative of the Michigan Domestic Violence Prevention and Treatment Board (MDVPTB), as these teams have begun to be assembled and have begun to fulfill their purpose under the act, it has become apparent that some language added by PA 192 needs to be clarified and improved upon. Legislation has been offered to address the concerns raised by the board.

THE CONTENT OF THE BILL:

The bill would amend the domestic violence prevention and treatment act to revise provisions pertaining to confidentiality of information under review by the Michigan Domestic Violence Prevention and Treatment Board (MDVPTB) and civil immunity. First of all, the bill would remove an individual trained in forensic pathology from the list of persons required to be on a fatality review team. Also, the bill would include documents or information obtained or created for a fatality review team in addition to those obtained or created by the team.

Information obtained or created by or for a fatality review team would be confidential and not subject to discovery (the bill would remove the reference to "civil" discovery) or the Freedom of Information Act. Individuals and the organizations represented by individuals who participate as members of a fatality

review team would have to sign a confidentiality agreement acknowledging the confidentiality provisions of Section 11 of the act. An individual who provided information to (changed from who "appears before or participates in") a fatality review team would have to sign a notice (instead of an agreement) acknowledging that any information he or she provided to a fatality review team would be kept confidential by the fatality review team (instead of specifying that the information was confidential). Findings that are required to be included in various reports required under the act would not have to be given in the aggregate.

The current provision in the act addressing the issue of immunity from civil liability would be deleted and would be replaced by a provision specify that a fatality review team, any member of a team, any individual providing information to a team, or any other person or agency acting within the scope of Section 11 of the act would be immune from all civil liability resulting from an act or omission arising out of and in the course of the team's, member's, individual's, person's, or agency's performance of that activity, unless the act or omission had been the result of gross negligence or willful misconduct. This provision could not be construed to limit the immunity conferred by the governmental immunity act (MCL 691.1401 to 691.1419) or any other immunity provided by statute or common law.

MCL 400.1511

BACKGROUND INFORMATION:

The bill as introduced was virtually identical to House Bill 5280, which became Public Act 192 of 2001. Both bills were part of a multi-bill, bi-partisan package of legislation to reform various domestic violence related laws.

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FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:***For:***

The bill would clarify confidentiality provisions regarding information provided to domestic violence fatality review teams. The bill would clarify that it is the team who must keep all information provided to it confidential, except as provided in the act, rather than requiring the person coming to testify before or provide information to a review team to keep the information confidential. Additionally, the bill would revise the provision pertaining to civil liability to clarify that civil liability would be enjoyed by specified persons when engaging in the performance of activities within the scope of this section of the domestic violence act. Further, though a forensic pathologist would no longer have to be on a domestic violence fatality review team, nothing would prohibit the inclusion of one.

POSITIONS:

The Michigan Domestic Violence Prevention and Treatment Board (MDVPTB) supports the bill. (12-10-02)

Analyst: S. Stutzky

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