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BILL ANALYSIS

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House Bill 5280 (Substitute H-2 as passed by the House)
Sponsor: Representative Gene DeRossett
House Committee: Criminal Justice
Senate Committee: Families, Mental Health and Human Services

Date Completed: 12-3-01

CONTENT

The bill would amend the domestic violence prevention and treatment Act to do all of the following:

- Allow the State or a county to establish an interagency domestic violence fatality review team, and allow two or more counties to establish a single fatality review team for those counties.**
- Provide for the confidentiality of all information and records acquired or created by a fatality review team, and require team meetings to be closed to the public if the team were reviewing individual cases.**
- Require fatality review teams to submit an annual report to the Domestic Violence Prevention and Treatment Board.**
- Provide that there would be no monetary liability on the part of, or cause of action for damages against, fatality review team members or people appearing before the teams except under certain circumstances.**
- Specify activities that the Domestic Violence Prevention and Treatment Board could undertake with regard to fatality review teams, subject to available funding.**

The bill would take effect on April 1, 2002.

Domestic Violence Fatality Review Teams

According to the bill, the purpose of the fatality review teams would be to learn how to prevent domestic violence homicides and suicides by improving the response of individuals and agencies to domestic violence. Fatality review teams could review fatal and near-fatal incidents of domestic violence, including suicides. Reviews could include a review of events leading up to a domestic violence incident, available community resources, current laws and policies, actions taken by the agencies and individuals related to the incident and the parties, and any information considered relevant by a team.

Subject to the bill's requirements, each team could determine its structure and specific activities. A team could determine the number and type of incidents it wished to review and would have to make policy and other recommendations regarding how incidents of domestic violence could be prevented. Fatality review teams and their members convened pursuant, and in compliance with the bill, would be entitled to the protections granted under the bill.

A fatality review team would have to include at least the following:

- An individual with training in forensic pathology.
- A health care professional with training and experience in responding to domestic violence.
- A medical examiner.
- A prosecuting attorney or a designated assistant prosecuting attorney.
- A representative of a domestic violence shelter that received funding from the Michigan Domestic Violence Prevention and Treatment Board.
- A law enforcement officer.

If a State fatality review team were convened, it would have to be convened by the Domestic Violence Prevention and Treatment Board.

Confidentiality of Records

All information and records acquired or created by a fatality review team would be confidential and not subject to the Freedom of Information Act, subpoena, discovery, or introduction into evidence in any civil or criminal proceedings. Information, documents, and records that were otherwise available from other sources, however, would not be immune from subpoena, discovery, or introduction into evidence from those other sources solely because they were presented to or reviewed by a fatality review team.

Except as necessary to carry out a fatality review team's duties and purposes, team members and people attending a team meeting could not disclose information and records acquired or created by the team, or what transpired at a nonpublic meeting, nor could they disclose any information if the disclosure otherwise were prohibited under the bill. Team members, people attending a team meeting, and people who presented information to a team could not be questioned in any civil or criminal proceedings regarding information presented in, or opinions formed as a result of, a team meeting. This provision could not be construed to prevent a person from testifying about information obtained independently of the team or about information that was public information.

Fatality review team meetings would be closed to the public and would not be subject to the Open Meetings Act, if the team were reviewing individual cases. All other team meetings would be open to the public. Information identifying a victim of domestic violence whose case was being reviewed, or that person's family members, or an alleged or suspected perpetrator of abuse upon a victim, or regarding the involvement of any agency with a victim or that person's family could not be disclosed during a public meeting or in any report that was available to the public.

A violation of the bill's confidentiality provisions would be a misdemeanor.

Annual Report

Fatality review teams would have to prepare an annual report of aggregate findings, recommendations, and steps taken to implement recommendations. The report could not contain information identifying any victim of domestic violence, or that person's family members, or an alleged or suspected perpetrator of abuse upon a victim, or regarding the involvement of any agency with a victim or that person's family. The report would have to cover each calendar year or portion of a calendar year during which a team was convened and would have to be provided to the Domestic Violence Prevention and Treatment Board by March 1 of the following year. If the Board developed a form for use by fatality review teams to report annual aggregate findings and recommendations, the teams would have to use that form.

Immunity from Liability

There could not be any monetary liability on the part of, and a cause of action for damages could not arise against, any member of a domestic violence fatality review team or any person acting as a witness to, incident reporter to, or investigator for a team for any act or proceeding undertaken or performed within the scope of the functions of the team, unless that person acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of civil rights, safety, or property.

Domestic Violence Board Activities

Subject to available funding, the Domestic Violence Prevention and Treatment Board could do all of the following:

- Develop a protocol for use by State, county, and multicounty fatality review teams.
- Develop a form for use by fatality review teams to report annual aggregate findings and recommendations.
- Develop and provide training concerning fatality review teams.
- Prepare a report to the Governor, the Senate, and the House of Representatives summarizing the aggregate findings and recommendations of fatality review teams and making recommendations to reduce and eradicate the incidence of domestic violence.

Proposed MCL 400.1511

Legislative Analyst: P. Affholter

FISCAL IMPACT

As the language regarding the establishment of these review teams is permissive, the State and counties would not experience any costs unless they established teams. If they did, then most of the costs would be associated team expenses, such as per diem or per meeting stipends. (For example, in the Department of Community Health budget, members of the community health advising council are limited to a \$50 per diem.) Other costs could include regular office supplies and the printing of forms and reports. While the amount of these costs is unknown, the costs associated with a similar concept, the Fetal Infant Mortality Review teams, were \$56,000 for FY 2000-01. A total of 1,100 infant deaths occurred during 2000, though only a subset of these deaths is reviewed. The estimated total number of deaths for the age cohort of women who might be victims of domestic violence was 132. About 30% or 40 women may have died at the hand of their spouse or ex-spouse.

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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.