

Legislative Analysis



CHILD ABUSE INVESTIGATIONS: DEFINITION OF SEVERE PHYSICAL INJURY

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House Bill 4420 Substitute (H-4)
Sponsor: Rep. Fulton Sheen
Committee: Family and Children Services

Revised First Analysis (10-14-05)

BRIEF SUMMARY: The bill would amend the Child Protection Law to modify the circumstances under which the Department of Human Services must involve the courts and law enforcement officials when children suffer severe physical injuries.

FISCAL IMPACT: The bill could reduce state costs and local court costs to the extent that the new exceptions included in section 17(2) of the bill reduce the number of petitions actually filed with courts in instances where a child is determined to be injured or abused but the parent or legal guardian is not found to be at fault as outlined under section 17(2). Under current law, the department is required to submit a petition regardless of whether the parent is suspected of being at fault. There is insufficient information available to determine the amount of any cost reduction.

THE APPARENT PROBLEM:

The Child Protection Law requires that in the course of an investigation of an allegation of child abuse or neglect, a child protective services (CPS) investigator must seek the assistance of and cooperate with law enforcement officials within 24 hours after becoming aware that certain specified conditions exist. One of those conditions is when "abuse or neglect resulting in *severe physical injury* to the child requires medical treatment or hospitalization." The definition of *severe physical injury* includes a list of injuries and also includes "any other physical injury that seriously impairs the health or physical well being of a child."

The Act also requires that within 24 hours after the Department of Human Services determines that a child was severely physically injured (as described above) or sexually abused, the department must submit a "petition for authorization" with the court under Section 2(b) of Chapter XIIA of the Probate Code (which, among other things, is concerned with juveniles under 18 when the person legally responsible for them neglects or refuses to provide proper care).

Some people believe that the law needs to grant the department more discretion when dealing with some cases of child injury. For example, in one incident as described during committee testimony, two minor children were playfully scuffling over the right to sit on a breakfast stool. When the stool gave way one child fell over it onto a portion of the table, which resulted in a bruise on the child's body. When the non-custodial parent picked up the child for visitation, he noticed the bruise. Shortly thereafter, he took the

child in for medical observation, alleged child abuse, and an investigation ensued. Because of the "24-hour" rule in Act, the department was required, by law, to investigate the injury and remove the child from the home. Although the medical report confirmed the "injury" was not the result of an abusive action, the custodial parent suffered mental anguish and endured emotional distress during the course of the investigation.

Legislation has been introduced to give the department and the court flexibility in determining when to conduct a full-scale investigation. The bill would allow the department to use its discretion, which would help to eliminate redundancy and unnecessary court petitions.

THE CONTENT OF THE BILL:

The Child Protection Law requires that in the course of an investigation of an allegation of child abuse or neglect, a child protective services (CPS) investigator must seek the assistance of and cooperate with law enforcement officials within 24 hours after becoming aware that certain specified conditions exist.

One of those conditions is when "abuse or neglect resulting in *severe physical injury* to the child requires medical treatment or hospitalization." The definition of *severe physical injury* includes a list of injuries and also includes "any other physical injury that seriously impairs the health or physical well being of a child." House Bill 4420 would strike the list of injuries and the current general description, and replace it with "an injury to the child that requires medical treatment or hospitalization and seriously impairs the child's health or physical well-being." (The underlined portions are the new language.)

[The list of injuries removed by the bill refers to brain damage, skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, and severe cuts.]

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Under the bill, the department would not be required to file a petition for authorization by the court within 24 hours if it determines that the parent or legal guardian is not a suspected perpetrator of the abuse and the department determines all of the following apply: a) the parent or legal guardian did not neglect or fail to protect the child, b) the parent or legal guardian does not have a historical record that shows a documented pattern of neglect or failing to protect the child, and c) the child is safe in the parent's or legal guardian's care.

MCL 722.628 and 637

ARGUMENTS:

For:

Supporters say the bill gives the DHS flexibility to decide when to conduct a "full-blown" investigation. Because the bill is tied to the mandatory petition section of the Act, it eliminates redundancy and the filing of unnecessary court petitions, and it removes the need for department staff to take time off for court appearances unnecessarily. It provides criteria that would allow the department to make a judgment about when to involve the courts and law enforcement in the lives of children seriously injured.

Response:

Critics could question why it should be solely the purview of the department to declare when an injury warrants action. Law enforcement should have the authority to investigate injuries so that it is not left up to the "word" of the department's untrained caseworkers to make such and important determination.

POSITIONS:

Department of Human Services supports the bill as reported from committee (10-5-05)

Angel House supports the bill as reported from committee. (10-5-05)

Child & Family Services, Capital Area, supports the bill as reported from committee (10-5-05)

Michigan Federation for Children and Families supports the bill as reported from committee (10-5-05)

Children's Law Section of the State Bar of Michigan opposed the bill as introduced but will review Substitute H-4. (10-13-05)

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■ 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.