

MAKE CHILD CARE DEATHS DUE TO LICENSING VIOLATIONS 2nd DEGREE CHILD ABUSE

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Senate Bill 746 reported from House committee as H-1
Sponsor: Sen. Tonya Schuitmaker

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 747 reported from House committee as H-2
Sponsor: Sen. Dave Hildebrand
House Committee: Criminal Justice
Senate Committee: Judiciary
Completed to 5-5-16

SUMMARY:

Taken together, the bills would specify that certain persons who are licensed or registered under the Child Care Licensing Act to provide care to children in a private home would be guilty of second degree child abuse if they intentionally violated the licensing rules for family and group child care homes and the violation caused the death of a child.

The bills are tie-barred to each other, meaning that neither can become law unless both are enacted. Both bills would take effect 90 days after enactment.

Senate Bill 746 amends the Child Care Licensing Act, Public Act 116 of 1973 (MCL 722.125). Under the bill, if a person, family child care home, group child care home, agency, or representative or officer of a firm, corporation, association, or organization (hereinafter "person") intentionally violates a licensing rule for family and group child care homes, and if the violation causes the death of a child, the person would be guilty of second degree child abuse. In addition to any other penalty imposed, the person's license or certificate of registration would be permanently revoked.

In general, violations of the act are punishable by a fine of not less than \$100 or more than \$1,000 and/or imprisonment for not more than 90 days.

The licensing rules cited by the bill, R 400.1901-400.1963, entitled "Licensing Rules for Family and Group Child Care Homes," pertain to the family child care home registrant or group child care home licensee who provides direct care, supervision, and protection of children in care. The rules cover caregiver responsibilities, training, capacity (number of children for which the home is registered), infant supervision and sleeping, discipline of children, and various safety requirements, among other things.

The act defines a "family child care home" to mean a private home in which up to six minor children are received for care and supervision for compensation for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. A family child care home includes a home in which care is given to an unrelated minor child for more than four weeks during a calendar year. A family child care home does not include an individual providing

babysitting services for another individual. As used here, "providing babysitting services" means caring for a child on behalf of the child's parent or guardian when the annual compensation for providing those services does not equal or exceed \$600 or an amount that would—according to the federal Internal Revenue Code—obligate the child's parent or guardian to provide a form 1099-MISC to the individual for compensation paid during the calendar year for those services.

"Group child care home" means a private home in which more than six but not more than twelve minor children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Group child care home includes a home in which care is given to an unrelated minor child for more than four weeks during a calendar year.

Senate Bill 747 would amend the Michigan Penal Code (MCL 750.136b). Under the bill, a person, or a licensee as defined under the Child Care Licensing Act, who violates the provisions of Senate Bill 746 would be guilty of child abuse in the second degree. The offense is a felony punishable by imprisonment for not more than 10 years for a first offense and not more than 20 years for a second or subsequent offense.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on the state's correctional system. The fiscal impact would depend on the number of persons convicted under provisions of the bills. New felony convictions would result in increased costs related to state prisons and state probation supervision. The average cost of prison incarceration in a state facility is roughly \$35,200 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,600 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues. Also, the bills would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how provisions of the bills affected caseloads and related administrative costs.

The bills would have no significant impact on the Department of Health and Human Services.

BRIEF DISCUSSION OF THE ISSUES:

The impetus behind the bills is the death of an infant who was being cared for in the home of a registered family child care provider. According to committee testimony from the parents, three-month old Cooper was already buckled up in his car seat with his winter hat on and a blanket over his legs and the car seat cover closed when the father arrived to collect him. After arriving home just a few minutes later, the parents discovered the baby was dead. The autopsy showed that Cooper had died at least two hours before his father had picked him up from the child care provider.

The investigation into the baby's death revealed that the caregiver had 11 violations of the licensing rules for home child care providers. Most significantly, she was caring for four

more children than her registration as a family child care home allowed, including three infants when her registration only allowed for two. In addition, she did not have any cribs in the house and did not follow the required safe sleep practices for infants. The caregiver's registration was revoked for a period of two years. According to the testimony, no criminal charges were brought because the infant's death was officially listed as undetermined.

The bills are needed, say supporters, because parents have no way to verify that caregivers are adhering to the licensing rules. For example, at the time Cooper's parents first looked into the child care provider, the house had cribs and all seemed to be in order. However, since children are picked up at different times, or may be in another room, a parent is unlikely to know if the caregiver is exceeding the licensed or registered capacity. Because infants may be napping in a different room, a parent may not see that the cribs have been removed or that the caregiver is not following safe sleep practices that protect young children from sleep-related death. Instead, parents must rely on the state to conduct regular inspections and approve only caregivers who are complying with the rules.

Though the bills would not increase inspections of home-based child care licensees and registrants, the threat of criminal charges and permanent loss of a license or registration if a child dies as a result of an intentional violation may spur more diligence on the part of caregivers to attend to the details of the rules and regulations and promptly address any situations that arise that could put them out of compliance. Considering that the rules and regulations are in place to keep vulnerable children safe, increasing the penalties for noncompliance are unlikely to be burdensome or unfair to caregivers. Further, the bills are silent regarding civil penalties. Whatever civil remedies exist now for a parent whose child suffers harm at the hand of a licensed or registered caregiver would remain unchanged.

The bills also recognize that accidents happen, and sometimes no amount of preventive care can prevent some tragedies, such as when a child dies suddenly from an unknown condition. Thus, the enhanced penalties apply only to intentional acts.

However, for those who would endanger children by blatantly violating rules put in place to ensure their safety, the bills would provide a measure of justice for the victims and their families, and also make sure dangerous or incompetent caregivers never receive state endorsement to care for other people's children in their homes again.

POSITIONS:

Excellent Schools Detroit indicated support for the bills. (4-19-16)

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■ 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.