

Legislative Analysis



LEAVING CHILDREN UNATTENDED IN CAR: PROHIBIT & PENALIZE

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4872 as enrolled
Public Act 519 of 2008
Sponsor: Rep. Mark Meadows

House Bill 4873 as enrolled
Public Act 520 of 2008
Sponsor: Rep. Fran Amos
House Committee: Judiciary
Senate Committee: Judiciary (Discharged)

First Analysis (2-3-09)

BRIEF SUMMARY: The bills would prohibit a person from leaving a young child unattended in a vehicle for a period of time that posed an unreasonable risk of harm or injury; create a tiered-penalty structure for violations; and place the maximum terms of imprisonment for felony violations within the sentencing guidelines.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on state and local units of government. A detailed discussion of the implications follows later in the analysis.

THE APPARENT PROBLEM:

Each year, at least one case of a young child dying alone in a locked car makes the national headlines. In 2002, one such case involved a Michigan mother who left her baby and toddler alone in a locked vehicle for over three hours on a hot summer day while she had a massage and her hair done in a nearby salon. Both children died of heat stroke and the mother later pled guilty on two counts of second-degree murder. Based on the elements of the case, the prosecutor wanted to charge the mother with felony murder, but could not do so because he could not prove she intentionally killed her children.

Despite such high profile cases that bring attention to the dangers children face when left alone in a vehicle, parents and caregivers continue to endanger young children by leaving them unattended. Besides the threat of heat stroke posed by high temperatures, children can freeze to death in winter, be strangled by seat belts, have their throats crushed or lose fingers from power windows, be abducted, and face injury or death to themselves and others if they accidentally put the vehicle in gear. By late October of 2008, a study published in *Pediatrics* reported that 42 children in the U.S. had already died that year from hyperthermia (heat stroke).

According to that study, an examination of the 361 vehicular hyperthermia deaths for a ten-year period (1998-2007) showed that 51 percent of the deaths were due to the parent or caregiver forgetting that the child was in the vehicle; 30 percent involved children

playing in an unattended vehicle; one percent had unknown circumstances; and 18 percent of the deaths were to children intentionally left in the vehicle by an adult. These statistics do not include the number of deaths and injuries to children other than hyperthermia, nor do they reflect the number of close calls – those times when an observant passerby saw the child or children and called 9-1-1 before harm was done.

It is on those incidents – in which an intentionally abandoned child is discovered before suffering harm – that this legislation focuses. Adults can be charged under various criminal and child abuse statutes when the child suffers physical harm. Not so, according to some prosecutors, if the child comes close to dying (such as when rescued from a hot car minutes before the temperature reaches a dangerous level) or could have been injured or abducted (but wasn't) when left unattended for hours in a parking lot, as one couple did while they watched a Harry Potter movie at a theater.

According to prosecutors, because Michigan does not have a reckless endangerment statute, it is difficult to appropriately prosecute those adults who intentionally leave a young child alone in a vehicle, but who did not intend for the child to suffer harm – especially if the child was not physically harmed. The legislation therefore would plug a gap in current law.

THE CONTENT OF THE BILLS:

The bills have an effective date of April 1, 2009.

House Bill 4872 would add a new section to the Michigan Penal Code (MCL 750.135a). The bill would prohibit a person who was responsible for the care or welfare of a child from leaving that child unattended in a vehicle for a period of time that posed an unreasonable risk of harm or injury to the child or under circumstances that posed an unreasonable risk of harm or injury to the child. The bills would apply to leaving unattended a child less than six years of age. "Unattended" would mean alone or without the supervision of an individual 13 years of age or older who was not legally incapacitated.

The penalty for a violation would be as follows:

- 1) A misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500, or both.
- 2) If the violation resulted in physical harm other than serious physical harm to the child, a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not more than \$1,000.
- 3) A violation resulting in serious physical harm to the child would be a felony punishable by imprisonment for up to 10 years and/or a fine of not more than \$5,000.

4) A violation resulting in the death of the child would be a felony punishable by imprisonment for not more than 15 years and/or a fine of not more than \$10,000.

The terms "physical harm" and "serious physical harm" would mean those terms as defined in Section 136b of the code. (Under Section 136b, "physical harm" means any injury to a child's physical condition. "Serious physical harm" means any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.)

House Bill 4873 would amend the Code of Criminal Procedure (777.16g) to specify that leaving a child unattended in a vehicle resulting in serious physical harm would be a Class D felony against a person with a maximum term of imprisonment of 10 years. Leaving a child unattended in a vehicle resulting in death would be Class B felony against a person with a 15-year maximum term of imprisonment. The bill is tie-barred to House Bill 4872.

BACKGROUND INFORMATION:

Similar bills were introduced in the 2003-2004 and 2005-2006 legislative sessions. House Bills 5914 and 5915 (2005-2006) passed the House, but did not see Senate action.

Information on the dangers of leaving children unattended in locked vehicles and measures to protect children from that happening can be found on various websites, including www.ggweather.com/heat/com. For instance, the internal temperature in a vehicle can rise approximately 19 degrees in just 10 minutes; thus, on a moderate 80 degree day, a child would be exposed to temperatures inside the car of about 100 degrees. Cracking the windows has little effect. The risk of death due to heatstroke is not the only danger, however. Many children are injured or killed each year by dangerous objects left in the vehicle with them, accidents involving power windows, and children accidentally putting a car into gear when left in an idling vehicle. In one such tragedy, young children left in an idling van engaged the gear shift, striking and killing a young boy and seriously injuring his mother when the vehicle rolled down an incline at a riverside park. Therefore, safety experts warn that children should never be left unattended in a vehicle, not even for a minute.

Deaths due to hyperthermia have increased since the advent of front seat air bags because young children and car seats now should be placed in rear seats. Children in rear seats apparently are easier to forget about. One way to remember a child is in the back seat, say some safety experts is to keep a stuffed animal in the car seat, booster seat, or child harness when not in use and move the stuffed animal to the front passenger seat when a child is strapped in.

FISCAL INFORMATION:

Any fiscal impact on the state and local units of government would depend on how the bills affected prosecutions and sentencing. If there were an increase in the number of misdemeanor convictions or the severity of misdemeanor sentences, local costs of incarceration and misdemeanor probation supervision, both of which vary by jurisdiction, could increase. If there were an increase in the number of felony convictions or the severity of felony sentences, state or local costs of prison or jail incarceration and state costs of felony probation supervision could increase. Local costs of jail incarceration vary by county; appropriated state costs of prison incarceration average about \$32,000 per offender per year, a figure that includes various fixed administrative and operational costs. Costs of felony probation and parole supervision average about \$2,000 per supervised offender per year. Any increase in penal fine revenues would benefit local libraries, which are the constitutionally-designated recipients of such revenues.

ARGUMENTS:

For:

The bills address an apparent gap in law that will enable prosecutors to charge adults who endanger young children by leaving them unattended in vehicles even if no harm to the child was intended or incurred. The penalties would be triggered if a child was left unattended for a period of time that posed an unreasonable risk of harm or injury to the child (e.g., leaving a baby in the parking lot while watching a movie) or under circumstances that pose an unreasonable risk of harm or injury (such as a very hot or very cold day, in a vehicle with the motor running, in a vehicle with harmful or dangerous objects or substances, etc.).

According to testimony, the bills are not intended to target a parent who leaves a child in a locked vehicle while he or she steps inside a gas station for a moment to pay the bill, or other similar situation. While safety experts point out that it is never safe to leave a child unattended in a vehicle even for a moment (accidents, carjackings, and so forth can happen in seconds), the scope of the bill was not to target bad parenting, but dangerous acts that threaten the safety and well-being of vulnerable children.

The bills, therefore, are proactive. Adults are less likely to leave children in potentially dangerous situations if they are aware that criminal charges can be brought even if the child is not harmed. Thus, these bills may save many children from injury or death in the years to come.

Against:

Though the bills are an improvement from legislation in previous years, they still could lead "good Samaritans" to misconstrue the parameters of the legislation and call the police on parents when they are acting unwisely, but not dangerously; for example, when leaving a child unattended for a moment while they make a quick stop. In the past, concerns have been raised that legislation of this kind would lead to an increase of calls to child protection agencies and the unnecessary and unwarranted investigations into

alleged child abuse. For example, would a mother be chargeable under these bills if she made multiple trips from the driveway to the kitchen to unload groceries while the baby slept in the car seat?

Furthermore, what about those busy parents who, when overwhelmed, forget that their child is in the car? House Bill 4872 doesn't restrict the application of the penalties to those cases in which the parent knowingly and intentionally left the child unattended in the vehicle. According to statistics, "forgetting" the child is in the vehicle accounted for over half of the heatstroke deaths. Would justice be served by criminalizing a tragic accident?

Response:

The bills would require that the conduct on the part of the adult meet a level of posing "unreasonable risk of harm or injury." The addition of this element should suffice in distinguishing between unwise actions from those that are harmful or potentially harmful. Regarding those incidents that truly are accidental, prosecutors would have discretion whether the parents or caregivers should be charged. In committee testimony, it was stated that the desire was not to go after the unintentional cases, but that the bills were sought to target those adults who were putting children at risk of harm and who could not be prosecuted under current laws.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marilyn Peterson

■ 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.