

SFA

BILL ANALYSIS

Senate Fiscal Agency

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House Bill 5131 (as reported without amendment)

Sponsor: Representative John D. Pridnia

House Committee: Public Health

Senate Committee: Health Policy

Date Completed: 12-6-89

RATIONALE

Public Act 488 of 1988 made it unlawful to discuss or report the fact that someone had a communicable disease, unless the individual--or, in the case of a minor, the child's parent--gave permission. If the individual (or the parent) refused permission, disclosure could be sought by petitioning for a court order. Public Act 174 of 1989 subsequently amended Public Act 488 to narrow the scope of these confidentiality provisions by applying them only to human immunodeficiency virus (HIV), Acquired Immunodeficiency Syndrome (AIDS), and AIDS Related Complex (ARC). (Public Act 174 also provided for a different level of confidentiality for other communicable diseases.) Thus, without prior parental permission or a court order, it is unlawful to discuss or report the fact that a child has tested positive for HIV or has AIDS or ARC, even to foster parents, residential facilities, or day-care providers. Some people believe that foster parents and certain child care organizations should be allowed to find out when a child placed with them tested positive for HIV or has AIDS or ARC, without the State or a placing agency first having to obtain parental consent or a court order.

CONTENT

The bill would amend the Public Health Code to exempt from the Code's confidentiality requirements information pertaining to a person who was HIV-infected or had been diagnosed as having

AIDS or ARC if the information were disclosed by the Department of Social Services, the Department of Mental Health, the probate court, or a "child placing agency" in order to care for a minor and to place the minor with a "child care organization" licensed under the child care licensing Act. The information could be disclosed only to the director of the child care organization or, if the child care organization were a private home, to the individual who held the license for the organization. The person to whom the information was disclosed would be subject to the Code's confidentiality requirements and penalties for violations.

"Child care organization" and "child placing agency" would mean those terms as defined in the child care licensing Act. Under that Act, "child care organization" means a governmental or nongovernmental organization that receives minor children for care, maintenance, training, and supervision, notwithstanding that educational instruction may be given. Such organizations include child caring institutions, child placing agencies, children's camps, child care centers, day care centers, nursery schools, parent cooperative preschools, foster homes, group homes, and day care homes. "Child placing agency" means an agency organized for receiving children for their placement in private family homes for foster care or for adoption. Such an agency may investigate and certify

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foster family homes and foster family group homes, and supervise children who are 16 or 17 years of age and living in unlicensed residences as provided in the Act.

MCL 333.5131

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

The bill is necessary for the protection both of HIV-infected children and of the foster families caring for such children. The immune systems of children with HIV infection are weakened so that otherwise normal childhood diseases and infections can be fatal. Since a person who tests positive for HIV does not necessarily show any symptoms of being sick, it is possible to care for an HIV-infected child without being aware of the child's infection. Foster parents responsible for the medical care of these children need to know about the children's HIV infection in order to provide the children with appropriate health supervision and medical care. Caring for children, and for young children in particular, means that the care provider is more likely to be exposed to bodily fluids than if he or she were caring for adults. Furthermore, when children must be placed outside their families, the parents involved often are unavailable (as in cases of abandonment) or are uncooperative. In the case of children infected with HIV, the courts, upon petition, have ordered that the child's HIV status be disclosed. Such court-ordered disclosure, however, has not always been timely. In addition, many children must be placed in foster care in the evening or on weekends, when courts are not readily available. Thus, the bill addresses the best interests of foster parents who need to know the health and medical status of children placed in their care, and of the HIV, AIDS, or ARC child whose medical needs otherwise may not be well-served.

Supporting Argument

There already is a shortage of qualified foster families and, as the incidence of infants born with HIV infection rises, the need for families

to care for such children will only increase. Reportedly, some foster care parents are deciding that the risks to their family and to the foster child are too great to accept a foster child with HIV, AIDS, or ARC unless the family can be told of the child's positive status prior to placement. Without the bill, not only will some families withdraw from the foster care system, but it also will become increasingly difficult to recruit new families because of concerns that they will not be given necessary medical information about children to be placed with them.

Opposing Argument

An exception to the high level of confidentiality required under the law could expose more children and youths to embarrassment, emotional stress, and ostracism.

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