

Legislative Analysis



CHILD PROTECTION LAW AMENDMENTS

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<http://www.house.mi.gov/hfa>

House Bill 5274 (proposed substitute H-1)
Sponsor: Rep. Luke Meerman

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

House Bill 5275 (proposed substitute H-1)
Sponsor: Rep. David LaGrand

House Bill 5279 (proposed substitute H-1)
Sponsor: Rep. Darrin Camilleri

House Bill 5276 (proposed substitute H-1)
Sponsor: Rep. Kevin Hertel

House Bill 5280 (proposed substitute H-1)
Sponsor: Rep. Andrew Fink

House Bill 5277 (proposed substitute H-1)
Sponsor: Rep. Michelle Hoitenga

House Bill 5534 (proposed substitute H-1)
Sponsor: Rep. Steven Johnson

House Bill 5278 as introduced
Sponsor: Rep. Brenda Carter

House Bill 5594 (proposed substitute H-1)
Sponsor: Rep. Pamela Hornberger

Committee: Families, Children and Seniors
Complete to 12-6-21

SUMMARY:

House Bill 5274 would amend the Child Protection Law to require the Department of Health and Human Services (DHHS) to enter each report made under the act that is the result of a field investigation into an *electronic case management system* (and not a CPSI system).

Electronic case management system means the child protective service information system that is an internal data system maintained within and by DHHS.

Currently under the act, after completing a field investigation, DHHS must determine in which single category to classify the allegation. Under the bill, DHHS also would have to determine whether the child abuse or neglect could be classified as a central registry case.

A person who is the subject of a report or record made where the violation does not result in being placed on the central registry, but is categorized as a category I, II, or III case under section 8d of the act could request DHHS to amend or expunge an inaccurate report or record from the local office file. Within 30 days after the classification of a confirmed case that does not result in being placed on the central registry, DHHS would have to notify in writing each person named in the report or record as a perpetrator of confirmed serious abuse or neglect. All of the following would apply to the notice:

- It must be sent by first-class mail to the identified perpetrator.
- It must set forth the person's right to request expunction of the record and the right to an administrative review conducted by DHHS.
- It must state that the record may be released under section 7d of the act.
- It must not identify the person reporting the suspected child abuse or child neglect.

The request would have to be made within 180 days after the date of service of notice of a confirmed serious abuse or neglect. DHHS could, for good cause, extend the time frame if it

determines that the person who is the subject of the report or record submitted the request for a hearing within 60 days after the 180-day notice period expired. DHHS would have to create an administrative process to determine whether the report or record should be amended or expunged.

The bill also would amend a provision requiring DHHS to seek law enforcement within 24 hours after becoming aware in the course of an investigation of child abuse or child neglect resulting in *severe physical injury* the child. The bill would retain this provision but instead use the term *serious physical harm* (as defined in HB 5275, below).

MCL 722.628

House Bill 5275 would amend the Child Protection Law to require DHHS to maintain a statewide *electronic case management system* (defined as above) to carry out the intent of the act. DHHS could enter into vendor contracts to implement, review, and update the system and would have to solicit proposals from entities to provide the services necessary to do so.

DHHS would have to classify a *confirmed case of methamphetamine production, confirmed serious abuse or neglect, confirmed sexual abuse, or confirmed sexual exploitation* as a *central registry case*.

Confirmed case would mean that DHHS has determined, by a preponderance of evidence, that child abuse or child neglect occurred by a person responsible for the child's health, welfare, or care.

Central registry case would mean that DHHS confirmed that a person responsible for the child's health or welfare committed serious abuse or neglect, sexual abuse, or sexual exploitation of a child or allowed a child to be exposed to or have contact with methamphetamine production.

Central registry would mean a repository of names of individuals who are identified as perpetrators related to a central registry case in DHHS's statewide electronic case management system.

Confirmed case of methamphetamine production would mean a confirmed case that involved a child's exposure or contact with methamphetamine production

Confirmed serious abuse or neglect would mean a confirmed case of mental injury or physical injury or neglect to a child that involves any of the following:

- Battering, torture, or other *serious physical harm*.
- Loss or serious impairment of an organ or limb.
- Life-threatening injury.
- Murder or attempted murder.
- *Serious mental harm*.

Confirmed sexual abuse would mean a confirmed case that involves sexual penetration, sexual contact, attempted sexual penetration, or assault with intent to penetrate as those terms are defined in section 520a of the Michigan Penal Code.¹

¹ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-750-520a.pdf>

Confirmed sexual exploitation would mean a confirmed case that involves allowing, permitting, or encouraging a child to engage in prostitution or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as that term is defined in section 145c of the Michigan Penal Code.²

Serious physical harm would mean (as defined in section 136b of the Michigan Penal Code)³ 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.

Serious mental harm would mean (as defined in section 136b of the Michigan Penal Code) an injury to a child's mental condition or welfare that is not necessarily permanent but results in visibly demonstrable manifestations of a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

Upon request from a law enforcement agency in Michigan, DHHS would have to classify the following as a central registry case:

- A felony conviction for a violation of section 136b of the Michigan Penal Code (child abuse).
- A conviction for a violation of Chapter LXXVI of the Michigan Penal Code (criminal sexual conduct) involving a minor victim.
- A conviction for a violation of section 145c of the Michigan Penal Code (child sexually abusive activity or material).
- Any conviction involving the death of a child.

Within 30 days after the classification of a central registry case, DHHS would have to notify in writing each person who is named in the record as a perpetrator of the confirmed serious abuse or neglect, confirmed sexual abuse, confirmed sexual exploitation, or confirmed case of methamphetamine production. All of the following would apply to the notice:

- It must be sent by registered or certified mail, return receipt requested, and delivery restricted to the addressee.
- It must set forth the person's right to request expunction of the record and the right to a hearing if DHHS refuses that request.
- It must state that the record may be released under section 7d of the act.
- It must not identify the person reporting the suspected child abuse or child neglect.

A person who is the subject of a report or record made as described above could request DHHS to amend or expunge an inaccurate report or record from the central registry and local office file. If the department denies this request, the person could, within 180 days from the date of notice of the right to a hearing, request DHHS to hold a hearing to review it. DHHS would have to hold a hearing to determine by a preponderance of the evidence whether the report or record in whole or in part meets the statutory requirement of confirmed serious abuse or neglect, confirmed sexual abuse, confirmed sexual exploitation, or confirmed case of

² <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-750-145c.pdf>

³ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-750-136b.pdf>

methamphetamine production and whether it should be amended or expunged from the central registry. The hearing would have to be held before an administrative law judge and be conducted as prescribed by the Administrative Procedures Act. DHHS also could, for good cause, hold a hearing if it determines that the person who is the subject of the report or record submitted the request for a hearing within 60 days after the 180-day notice period expired.

If the investigation of a report does not show serious child abuse or child neglect, sexual abuse, sexual exploitation, or methamphetamine production by a preponderance of the evidence, or if a court dismisses a petition based on the merits of the petition filed under the Probate Code because the petitioner has failed to establish, or a court has failed to find, that the child comes within the jurisdiction of the court following an adjudication hearing, the information identifying the subject of the report would have to be expunged from the central registry after a party has exhausted all appellate remedies and an appellate review does not find that the child is within the jurisdiction of the court.

If a preponderance of evidence of child abuse or child neglect exists, or if a court takes jurisdiction of the child under the Probate Code, DHHS would have to maintain the information and must maintain the perpetrator's information in the central registry if the case is determined to be a confirmed case of methamphetamine production, confirmed serious abuse or neglect, confirmed sexual abuse, or confirmed sexual exploitation.

Except as otherwise provided, DHHS would have to maintain the information in the central registry until receiving reliable information (such as information obtained using the United States Social Security Death Index database) that the perpetrator is dead.

Not more than once every 10 years, after an individual has been listed on the registry, he or she could request a hearing regarding removal from the registry. Except for confirmed sexual abuse or confirmed sexual exploitation, DHHS would have to hold a hearing to determine whether the information should be maintained on the central registry. The hearing would have to be held before an administrative law judge and conducted as prescribed by the Administrative Procedures Act.

In the hearing, the individual would be presumed to be a risk to children, and the burden of proof would be on the individual. If the individual demonstrates by a preponderance of the evidence that the presumption is unreasonable, the information would have to be expunged from the central registry.

The facts and circumstances as determined by DHHS or an administrative law judge on review of the department's decision that resulted in the individual's originally being placed on the central registry would not be subject to review. The administrative law judge would have to take into account the facts and circumstances in the years since the individual was listed on the central registry that bear on the assessment of his or her risk to children in the future.

Currently, the act allows DHHS, upon written request, to provide to an individual or whoever is appropriate documentation stating that the individual is *not* named in a central registry case as the perpetrator of child abuse or child neglect. The bill would amend this to instead provide that, upon written request, DHHS may provide *confirmation* of central registry placement to an individual, office, or agency authorized to receive it. The bill would similarly amend a provision that now allows certain employers or similar entities to receive central registry *clearance* information, to instead allow them to receive *confirmation* of central registry placement.

In addition, the bill would provide that a parent or other person responsible for a child who has reason to believe that another caregiver could place that child at risk could, with appropriate authorization and identification, receive confirmation of central registry placement of that parent, person responsible, or caregiver.

The act now authorizes DHHS to develop an automated system that allows an individual applying for child-related employment or seeking to volunteer in a capacity that allows unsupervised access to a child whose health or welfare the individual is not responsible for to be listed in that system if it is found that the person has not been listed in a central registry case as a perpetrator of child abuse or neglect. The bill would amend this provision to apply it to a person who has not been named in a central registry case as the perpetrator of a confirmed case of methamphetamine production, confirmed serious based or neglect, confirmed sexual abuse, or confirmed sexual exploitation.

The bill would require DHHS to search Children's Protective Services records, in addition to the central registry clearance, to determine whether an applicant or licensee, relative, adult member of the household, licensee designee, chief administrator, staff member, or unsupervised volunteer would have a Children's Protective Services history before making a licensing or placement determination, or provide clearance for staff employment or a volunteer in a child caring organization.

The bill also would provide that an action taken to exclude an individual from licensure to provide foster care, child care, or camp services by the Department of Licensing and Regulatory Affairs (LARA) or the Division of Child Welfare Licensing in DHHS, or a predecessor agency, in effect before the bill's effective date, must remain in effect according to its terms, except if an individual is successful in an administrative review or appeal of the exclusionary status in accordance with section 9 of the child care licensing act.

MCL 722.627j

House Bill 5276 would amend the Child Protection Law to amend certain responses DHHS must make to certain categories of cases after field investigation under the act. Currently, for a case in which Child Protective Services is determined to be required, DHHS must list the perpetrator of child abuse or child neglect, based on a field investigation, on the central registry, either by name or as "unknown" if not identified. The bill would remove this requirement.

Similarly, for a case in which a court petition is determined to be required because the child is not safe and a petition for removal is needed, DHHS now must list the perpetrator of child abuse or child neglect, based on a field investigation, on the central registry, either by name or as "unknown" if not identified. The bill would remove this requirement.

Currently, DHHS is not required to use the structured decision-making tool under certain circumstances involving a nonparent adult who resides outside the child's home or an owner, operator, volunteer, or employee of certain entities under the child care licensing act. If DHHS determines after a field investigation that there is a preponderance of evidence that such an individual is a perpetrator of child abuse or child neglect, DHHS must list the perpetrator in the central registry. The bill would remove the provisions described in this paragraph.

As described above, the bill would amend certain provisions to change references to "substantiated" or "unsubstantiated" reports of child abuse or neglect to reports that are

“confirmed” or “not confirmed,” and references to “serious physical injury” of a child would be amended to refer instead to “serious physical harm” (see definition, above).

Finally, the bill would provide that section 7g of the act, which concerns the release of specified information under certain circumstances, is to be known and may be cited as “Wyatt’s Law.”

MCL 722.625 et seq.

House Bill 5277 would amend the Child Protection Law to amend and add definitions for terms used in the act. These terms and their definitions are generally provided in context throughout this summary in the discussion of the other bills in this package. Of further note, HB 5277 would amend the definition of the term *person responsible for the child’s health or welfare* to include an owner, operator, volunteer, or employee of a program involving youth, such as youth clubs, youth sports teams, and driver training schools. In addition, the bill would amend the definitions of the terms *substantiated* and *unsubstantiated* to mean, respectively, a confirmed case or a case that is not confirmed.

MCL 722.622

House Bill 5278 would amend the Child Protection Law to add a child caring institution licensed under the child care licensing act to a list of entities to which a confidential written report, document, or photograph filed with DHHS under the act may be made available. However, the institution’s access to the confidential records would have to be for the purposes of investigating an applicant for employment or an employee of a child caring institution to determine suitability of an applicant or employee for initial or continued employment. The institution would have to disclose the information to the applicant or employee.

The bill also would remove several provisions that now pertain to the maintenance or records, reports, and other information in the central registry or the local office file, or both.

MCL 722.111

House Bill 5279 would amend the child care licensing act to update a citation to the Child Protection Law to reflect the renumbering of provisions that would be made by House Bill 5278.

MCL 722.120

House Bill 5280 would amend the child care licensing act to define *severe physical injury*, for purposes of the act, to mean *serious physical harm* as defined in section 136b of the Michigan Penal Code. (This is the same definition the bills would provide for the term *serious physical harm* in the Child Protection Law. See definition, above.)

MCL 722.111

House Bill 5534 would amend the child care licensing act to allow a former applicant or former licensee to request an administrative review by the department responsible for licensure under the act (DHHS or LARA)⁴ if the both of following are true:

- The license for a child care organization was denied, revoked, or refused renewal due to the person's placement on the statewide electronic central registry originally maintained before the effective date of the bill creating the statewide electronic case management system under the Child Protection Law.
- The person's placement on the original central registry was subsequently expunged from the case management system as a central registry case after the effective date of the bill creating the statewide electronic case management system under the Child Protection Law.

The request for administrative review would have to be submitted in writing addressed to the director of the applicable department or his or her designee within 60 days of receipt of written notification under the Child Protection Law and the *local office file* from DHHS that the person is no longer listed on central registry or named in a central registry case. (As defined in section 2 of the Child Protection Law, *local office file* means the system used to keep a record of a written report, document, or photograph filed with and maintained by a county or a regionally based office of DHHS.)

The administrative review would be limited to determining whether the department will enforce the five-year prohibition under the act against licensure or being directly or indirectly connected with a licensee.⁵

Within 90 days after the later of receiving the request for an administrative review or receiving written notification under the Child Protection Law and the local office file from DHHS of the removal of the person listed on the central registry, the director of the applicable department or his or her designee would have to complete the review and notify the person in writing of the final decision.

If the department's final decision is to enforce the five-year prohibition, the person could appeal the decision as provided in the Administrative Procedures Act. If the department's decision is to waive the five-year prohibition, the former applicant or former licensee could apply for a new license with the department as provided under the act.

⁴ Under the child care licensing act, LARA is responsible for licensing and regulatory matters for child care centers, group child care homes, family child care homes, children's camps, and children's campsites, and DHHS is responsible for licensing and regulatory matters for child caring institutions, child placing agencies, children's therapeutic group homes, foster family homes, and foster family group homes. These facilities are generally defined as *child care organizations* under the act as well as being separately described and defined.

⁵ Under section 15(4) of the child care licensing act, which provides: "A person, child care organization, agency, or representative or officer of a firm, a corporation, an association, or an organization who has a license or certificate of registration revoked, application denied, renewal refused, or, before the effective date of the 2017 amendatory act that amended this subsection, certificate of registration revoked or refused renewal or application denied may be refused a license, or be prohibited from being connected, directly or indirectly, with a licensee for a period of not less than 5 years after the revocation, denial, or refusal to renew. The department, in its discretion, is not required to accept an application from a person, child care organization, agency, or representative or officer of a firm, a corporation, an association, or an organization described in this subsection. The department may reject the application on its face without taking further action after notifying the applicant of the rejection and the reason for the rejection."

In addition, the bill would provide that a child care staff member, adult member of the household, or a person who was determined ineligible by LARA under section 5q of the act,⁶ and who is no longer listed on the central registry or named in a central registry case, may be eligible to be a child care staff member or adult member of the household as an employee or volunteer if he or she complies with the criminal history check as required under the act and submits documentation to the department from DHHS demonstrating that he or she is no longer listed on the central registry or named in a central registry case.

MCL 722.119

House Bill 5594 would amend the Child Protection Law to allow an individual listed on the central registry before the effective date of the bill to submit a request to DHHS for an administrative review for the expungement of his or her name from the statewide electronic case management system. Within 90 days after receiving the request, DHHS would have to complete the review and notify the individual, in writing, of the final decision to expunge him or her from the registry or to classify the individual's case as a confirmed case of any of the following and keep him or her on the central registry:

- Methamphetamine production.
- Serious abuse or serious neglect.
- Sexual abuse.
- Sexual exploitation.

If, after review, the final decision is to expunge the individual from the central registry, DHHS would have to forward its local office file to the director, or designee of the director, of the department responsible for licensure of that individual within 45 days of the decision.

Proposed MCL 722.627I

Enacting provisions

Each bill would take effect 180 days after its enactment. However, a bill cannot take effect unless every other bill to which it is tie-barred is also enacted. The bills are subject to the following tie-bars:

- House Bills 5274 to 5278 are all tie-barred to each other.
- House Bill 5275 is additionally tie-barred to House Bill 5534.
- House Bill 5279 is tie-barred to House Bill 5278.
- House Bill 5280 is tie-barred to House Bill 5274.
- House Bill 5534 is tie-barred to House Bills 5275 and 5594.
- House Bill 5594 is tie-barred to House Bills 5275 and 5534.

FISCAL IMPACT:

House Bill 5274 would increase expenditures for DHHS by a likely minimal amount. Any additional costs to DHHS would be dependent upon the one-time cost of the creation of an administrative process to determine the expunction or amendment of inaccurate reports or records for category I, II, or III violations that do not result in an individual being placed on the Child Abuse or Neglect Central Registry. Costs are likely minimal as DHHS has a current policy and administrative process for the amendment or expunction of an individual's name

⁶ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-722-115q.pdf>

from the Child Abuse or Neglect Central Registry. The bill would not have a significant fiscal impact on local units of government.

House Bill 5275 would increase expenditures for DHHS and would have no significant fiscal impact on local units of government. Any additional costs to DHHS would be dependent upon the cost of updates to the Automated Child Welfare Information System (MiSACWIS) or the Comprehensive Child Welfare Information System (CCWIS). Additional costs may also come from possible contract changes with the University of Michigan, which assists with expunging names of individuals who no longer meet criteria to be on the Child Abuse and Neglect Central Registry. MiSACWIS is in the process of being replaced by CCWIS via a phase-out approach. Use of either the MiSACWIS or CCWIS systems will be dependent on the system development process. According to the department, system updates, including any required expungement work and technical changes to the system of record, would cost approximately \$700,000.

House Bill 5276 would not have a significant fiscal impact on DHHS or local units of government.

House Bill 5277 would increase expenditures for DHHS. Any additional costs to DHHS would be dependent upon the cost of updates to MiSACWIS and CCWIS. As mentioned in the fiscal analysis for House Bill 5275, DHHS estimates that system updates, including any required expungement work and technical changes to the system of record, would cost approximately \$700,000. The bill would not have a significant fiscal impact on local units of government.

House Bills 5278, 5279, and 5280 would not have a significant fiscal impact on DHHS or local units of government.

House Bill 5534 would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs. It is unclear whether the administrative reviews required under the act would be sufficiently offset by existing departmental resources or whether additional resources would be needed, as such a determination would be dependent upon the volume of administrative reviews, which is presently indeterminate.

House Bill 5594 would increase expenditures to DHHS by a likely minimal amount. Any additional costs to DHHS would be dependent upon the one-time administration cost of reviewing requests for expungement for individuals who are listed on the statewide electronic case management system prior to the effective date of the amendatory act that allows individuals to request expungement. The bill would have no significant fiscal impact on local units of government.

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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.