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ADOPTION: CHANGE FBI CRIMINAL RECORD CHECK

House Bill 4611 (Substitute H-2)
First Analysis (5-9-95)

Sponsor: Rep. David M. Gubow
Committee: Judiciary and Civil Rights

THE APPARENT PROBLEM:

Public Act 222 of 1994 (enrolled Senate Bill 721), one of a series of adoption bills that made sweeping changes to Michigan adoption law, amended the adoption code to provide for direct placement adoptions and took effect on January 1, 1995. Among the requirements for direct placement adoptions, as added by the 1994 act, is a requirement for a criminal record check of prospective adoptive parents as part of their preplacement assessment (or "home study"). The newly revised code requires adoption agencies ("child placing agencies") to request prospective adoptive parents to furnish a document from both the Michigan State Police and the Federal Bureau of Investigation (FBI) which either describes the prospective adoptive parent's criminal record (in the form of criminal convictions contained in the state police or FBI files) or says (based on those state police and FBI records) that he or she hasn't been convicted of a crime. The statute also allows prospective adoptive parents to obtain copies of their criminal records through the adoption agency. However, because the FBI does not release criminal records to private entities (whether individuals or, in this case, private adoption agencies), legislation is required that would change the existing adoption code to implement a workable procedure for requiring state police and FBI criminal record checks for prospective adoptive parents.

THE CONTENT OF THE BILL:

The bill would amend the adoption code (Chapter 10 of the Revised Probate Code) to rewrite the procedure for requiring a state police and FBI criminal records check on prospective adoptive parents.

More specifically, a prospective adoptive parent undergoing a preplacement assessment would be required to get two sets of fingerprints from a law enforcement agency (on forms furnished by the

Michigan Department of State Police and the FBI) and to submit these forms to the state police, along with the appropriate state and federal fees. (Law enforcement agencies would be required to respond to such requests, and the person making the request would be responsible for any fees charged by the agency for this service.) The state police would use the state form to compare the fingerprints with state records and forward the FBI fingerprint for to the FBI for comparison with its records.

The state police would be required to send the adoption agency both the state record comparison and a statement (based both on the FBI comparison and on whether or not the prospective adoptive parent had a state or federal criminal record) saying that the individual might or might not be suitable to be an adoptive parent.

If the prospective adoptive parent did have a state or federal criminal record (and therefore the statement submitted by the state police to the adoption agency said that he or she might not be suitable to be an adoptive parent), the adoption agency would be required to notify the prospective adoptive parent that he or she had the right (a) to get a copy of his or her federal criminal history from the FBI and (b) to challenge that record's accuracy.

The bill also would make several technical amendments clarifying language regarding at-risk placements in direct placement adoptions.

MCL 710.23d et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would cost the state an indeterminate additional amount, depending on whether additional staff would be required. Under the bill, the Department

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of State Police would be required to compare the fingerprints of prospective adoptive parents with state records and then submit another set of fingerprints to the FBI for comparison. The individual requesting the fingerprinting services would be responsible for the fees, which are \$15 for the state police and \$24 for the FBI. Currently the Department of State Police has one fingerprint technician for every 20,000 sets of fingerprints. Additional technicians may be needed, depending on the caseload size and the number of requests for fingerprint services. (3-22-95)

ARGUMENTS:

For:

Currently, the preplacement criminal records check of prospective adoptive parents basically requires them to obtain criminal records checks from the Michigan State Police and the Federal Bureau of Investigation, and then to send the adoption agency a document that either (a) says that the prospective adoptive parent has no criminal record or (b) describes all of his or her criminal convictions in state and federal records. However, since the FBI only turns records over only to law enforcement agencies, and not to private individuals or entities (such as private adoption agencies), the requirements currently in law make it impossible for individuals or private adoption agencies to get criminal record checks from the FBI (whose records include not only federal convictions but convictions in other states). (Individuals apparently can get, through the Michigan State Police, statements from the FBI concerning their criminal records, but not the records themselves.) The bill would rectify this situation by requiring the prospective adoptive parents submit state and federal fingerprint forms to the state police, who then would forward the federal form to the FBI, who, in turn, would send the results of their check back to the state police.

POSITIONS:

The Department of State Police supports the bill.
(5-3-95)