

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 532 (Substitute S-1 as reported)
Sponsor: Senator Michael J. Bouchard
Committee: Families, Mental Health and Human Services

Date Completed: 6-5-97

RATIONALE

In recent years, the State has enacted a number of laws designed to keep convicted criminals out of classrooms. These efforts began with Public Act 61 of 1987, requiring county prosecutors to notify the State Board of Education whenever a teacher was convicted of a sex-related offense or child abuse, and establishing a procedure for the State Board to follow, including suspending a teaching certificate, when a teacher had been convicted of such an offense. Public Act 99 of 1992 then amended the School Code to require school boards to obtain a criminal history check from the State Police before offering a person employment as a teacher or school administrator, and to add certain drug-related violations to those offenses that can result in suspension of an offender's certificate. The list of offenses was further expanded by Public Act 144 of 1994 to include various assaultive crimes. Most recently, Public Act 83 of 1995 extended the list to *any* felony and certain misdemeanors, and requires schools to request the State Police to conduct a criminal records check through the Federal Bureau of Investigation on an applicant or an individual hired for a teaching or administrative post or a position requiring State Board approval. While these measures go a long way toward protecting children while they are in school, it has been pointed out that children frequently come into contact with potential abusers in many other settings, such as licensed day care homes and child care centers. Some people believe that individuals who operate child care organizations and who care for children in this type of facility also should be subject to a criminal history check.

CONTENT

The bill would amend the child care licensing Act to prohibit the Department of Consumer and Industry Services (DCIS) from issuing or

renewing a license or certificate of registration under the Act without requesting the criminal history checks and criminal records checks required under the bill. The bill also would do all of the following:

- **Require the DCIS to request that the Department of State Police conduct a criminal history check and a criminal records check through the Federal Bureau of Investigation (FBI) on an application for, or renewal of, a license or certificate of registration for a "child care organization" under the Act.**
- **Prohibit the granting of an application for licensure or registration, if the applicant had a "listed conviction".**
- **Require a child care organization to request that the Department of State Police conduct a criminal history check and an FBI criminal records check on certain job applicants and employees. An applicant who had a listed conviction could not be hired, and an employee who had a listed conviction would have to be dismissed.**
- **Allow a parent or guardian to request that the Department of State Police conduct a criminal history check or criminal records check, or both, of a person whom the parent or guardian hired or intended to hire to a child care position.**

"Child care organization" means a governmental or nongovernmental organization having as its principal function the receiving of minor children for care, maintenance, training, and supervision. Child care organizations include 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 care organizations do not include governmental or nongovernmental organizations that provide care exclusively to emancipated minors or to persons at least 18 years of age and emancipated minors.

Under the bill, "listed conviction" would mean a conviction for any of the following:

- A felony violation of Part 74 of the Public Health Code, which governs controlled substances.
- A violation of the Youth Employment Standards Act, involving the employment of a minor.
- A violation of Section 33 of the Michigan Liquor Control Act, which prohibits selling or furnishing alcohol to a minor, or Section 33b of that Act, which involves furnishing fraudulent identification.
- A violation of the child care licensing Act.
- Aiding and abetting a child to violate a court order or concealing or harboring a runaway.
- Failure to report suspected child abuse or neglect, by a person required by law to do so.
- False reporting of child abuse or neglect.
- A felony violation for burning of personal property.
- A felony violation for abuse of a vulnerable adult.
- Simple assault or aggravated assault against a minor.
- A violation of Section 5 of Public Act 343 of 1984 (first-degree obscenity).

"Listed conviction" also would include a violation of the Michigan Penal Code that involved any of the following: furnishing a minor with a cereal beverage with alcoholic content; burning a dwelling house, other real property, or insured property; felonious assault; assault with intent to commit murder; assault with intent to do great bodily harm; assault with intent to maim, to commit burglary or another felony, or to rob and steal; sexual intercourse under the pretext of medical treatment; attempted murder; breaking and entering; home invasion; entering without breaking; burglary with explosives; exposing a child with intent to injure or abandon; child abuse; purchase from a minor without parental consent; interfering with the legal custody of dependent, neglected, and delinquent children; exhibition, use, or employment of children for certain purposes; permitting a child in certain establishments; consumption or possession of alcohol by a minor at social gatherings; furnishing obscene books to a minor; exhibition of obscene matter in view of children; unlicensed maintenance

of a boarding home for children; contributing to the neglect or delinquency of children; accosting or soliciting a child for an immoral purpose; child sexually abusive activity; unlicensed operation of an adult foster care home that is the proximate cause of the death of a vulnerable adult; soliciting another to commit murder; inducing a minor to commit a felony; child abandonment; deserting a spouse to escape prosecution; refusing or neglecting to support one's family when the person has sufficient ability; prostitution; window peeping; engaging in indecent or obscene conduct in a public place; loitering in a house of ill fame or prostitution or place where prostitution or lewdness is practiced, encouraged, or allowed; sending explosives with intent to injure; sending a device with intent to terrorize; placing explosives with intent to destroy; placing offensive substances with intent to injure; possessing a bomb with unlawful intent; extortion; unlawful sale of a firearm to a minor; unlawful manufacture, sale, or possession of weapons; offenses involving a portable weapon emitting an electrical current, a short-barreled shotgun or rifle, or armor-piercing ammunition; unlawfully carrying a firearm or dangerous weapon; carrying a concealed weapon; committing a violent act wearing body armor; discharging a firearm from a motor vehicle, at a dwelling or occupied structure, or at a law enforcement vehicle; first- or second-degree murder; manslaughter; sale to a minor of bulk gunpowder, dynamite, blasting caps, or nitroglycerine; placement of explosives with intent to destroy; indecent exposure; kidnaping; taking another prisoner hostage; mayhem; placing a harmful substance in food; stalking; aggravated stalking; poisoning; various prostitution offenses; first-, second-, third-, or fourth-degree criminal sexual conduct (CSC); assault with intent to commit CSC; armed or unarmed robbery; carjacking; or bank robbery.

In addition, "listed conviction" would include:

- A violation of a former Michigan law or an ordinance or former ordinance of a political subdivision of the State substantially corresponding to a law included in "listed conviction".
- A violation of a law or former law of the United States or another state or an ordinance or former ordinance of a political subdivision of another state substantially corresponding to a law included in the definition of "listed conviction".
- An attempt or conspiracy to commit an offense included in "listed conviction".

Licensure/Registration as a Child Care Organization

Under the bill, when a person, partnership, firm, corporation, association, or nongovernmental organization applied for or to renew a license or certificate of registration for a child care organization, the DCIS would have to request that the Department of State Police do both of the following for the person or each partner, officer, or manager of the child care organization:

- Conduct a criminal history check on the individual.
- Conduct a criminal records check through the FBI. The DCIS would have to require that the individual submit his or her fingerprints to the Department of State Police for the FBI check. The Department of State Police could charge a fee that did not exceed the actual cost of conducting the criminal records check.

If any facility of a child care organization were a private residence, the DCIS would have to request that the State Police conduct a criminal history check and an FBI criminal records check of each person who was 17 years of age or older and resided or planned to reside in the residence.

Each individual would have to give written consent, at the time of the application, for the Department of State Police to conduct the criminal history check and criminal records check. The DCIS would have to make the request of the State Police on a form and in a manner prescribed by the Department of State Police.

Within 30 days after receiving a proper request by the DCIS for a criminal history check, the Department of State Police would have to conduct the criminal history check and provide a report of the results to the DCIS. The report would have to contain any "criminal history record information" on the person that was maintained by the State Police. Also, within 30 days after receiving a proper request by the DCIS for a criminal records check, the State Police would have to initiate the criminal records check. After conducting the check, the State Police would have to provide the results to the DCIS.

The DCIS could not issue or renew a license or certificate of registration until it received the reports.

"Criminal history record information" would mean that term as it is defined in Public Act 289 of 1925. Under that Act, "criminal history record information" means name; date of birth; fingerprints; photographs, if available; personal descriptions,

including aliases and prior names; Social Security and driver's license numbers and other identifying numbers; and information on misdemeanor convictions and felony arrests and convictions.

License/Certificate Restrictions

If a criminal history check or criminal records check performed under the bill for a child care organization applicant revealed that the applicant or a partner, officer, or manager had a criminal conviction, and the conviction were not a listed conviction, the DCIS could consider the information in determining whether to issue or renew the license or registration.

If a conviction revealed by a check were a listed conviction, and the application were for renewal of a license or registration originally issued before the bill's effective date, the DCIS could consider the information in determining whether to renew the license or registration. Upon renewal, the child care organization would have to notify the parent or guardian of each child who used the organization's services of the fact and nature of the listed conviction.

If a conviction revealed by a check were a listed conviction, and the application were for an original license or registration, the DCIS would have to deny the application.

Job Applicants and Employees

Job Applicants. When a child care organization made an offer of initial employment to an individual who was 16 years of age or older for a position involving the care, custody, or supervision of children, the organization would have to request that the Department of State Police do both of the following:

- Conduct a criminal history check on the person.
- Conduct a criminal records check on the person through the FBI. The child care organization would have to require that the individual submit his or her fingerprints to the Department of State Police for the FBI check. The Department of State Police could charge a fee that did not exceed the actual cost of conducting the criminal records check.

An individual would have to give written consent, at the time of his or her employment application, for the State Police to conduct a criminal history check and criminal records check required for an

applicant. A child care organization would have to request the criminal history check and criminal records check on a form and in a manner prescribed by the State Police.

Within 30 days after receiving a proper request by a child care organization for a criminal history check, the Department of State Police would have to conduct the criminal history check and provide a report of the results to the child care organization. The report would have to contain any criminal history record information on the person that was maintained by the State Police. Also, within 30 days after receiving a proper request by a child care organization for a criminal records check, the Department of State Police would have to initiate the criminal records check. After conducting a criminal records check for a child care organization that was a governmental organization, the State Police would have to provide the results to the child care organization. After conducting a criminal records check for a nongovernmental child care organization, the State Police would have to notify the organization whether the criminal records check disclosed any criminal history that was not disclosed in the criminal history check.

A child care organization could not employ a job applicant until it received the reports.

Current Employees. A child care organization would have to request, and the Department of State Police would have to conduct, criminal history checks and criminal records checks of all existing employees who were 16 years of age or older in the same manner as for applicants. For the calendar year in which the bill took effect, the child care organization would have to request criminal history checks and criminal records checks of employees who began working for the organization in that calendar year and the two preceding years.

For each subsequent calendar year, a child care organization would have to request criminal history checks and criminal records checks of employees who began in the two calendar years preceding the earliest calendar year for which criminal history checks and criminal records checks were conducted in the preceding calendar year.

Use of Criminal History Record Information. If a criminal history check or criminal records check revealed a listed conviction for an applicant or employee, the child care organization would have to refuse to hire that applicant or dismiss that employee.

A child care organization could use criminal history

record information or the results of a criminal records check only for the purpose of evaluating an applicant's qualifications for employment in the position for which he or she had applied or whether to retain an employee. A licensee or registrant or its officers, agents, or employees could not disclose the report or its contents, except for a felony or misdemeanor conviction involving sexual or physical abuse, to any person not directly involved in evaluating an applicant's qualifications for employment or the issue of an employee's continued employment. A violation of this prohibition would be a misdemeanor, punishable by a maximum fine of \$10,000.

Parent or Guardian Request

If a parent or guardian hired or intended to hire an individual who was 16 years of age or older and who was not required to be a licensee or registrant or who was not employed by a licensee or registrant but whose position involved or would involve the care, custody, or supervision of a child in the parent's or guardian's custody, the parent or guardian could request the Department of State Police to conduct a criminal history check or criminal records check, or both, of that individual. Upon request, and after receiving the person's consent and fingerprints, if required, the State Police could conduct the checks for the parent or guardian on the same terms as it would for a nongovernmental child care organization.

MCL 722.115 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would continue recent legislative efforts to protect the State's children from sexual predators and other known offenders. While the law now includes a system to ensure that schools do not hire convicts, schoolchildren and preschoolers encounter potential abusers in many other environments. In fact, a nonschool setting may be inherently more dangerous to children since deviants could more easily obtain employment there without an advanced degree or experience. Like the regulations enacted for school personnel in recent years, the bill would ensure that individuals with certain prior convictions could not perform work involving contact with children in child care organizations, because individuals who worked for these entities would be subject to a criminal history check, including fingerprinting.

Reportedly, since teachers became subject to background checks, about 1,000 had been discovered to have a criminal history as of early 1996. The bill should be at least as effective in screening out offenders in nonschool settings.

Response: The bill's extensive list of crimes includes some arguably minor transgressions, and could weaken efforts to check for more serious offenses.

Opposing Argument

The bill is unclear as to who would be responsible for the cost of the background checks. While it would allow the State Police to charge a fee, the bill does not specify whether the child care organization or the individual being checked would have to pay the fee. In addition, while the bill would allow the Department of State Police to pass on the cost of a background check, which reportedly is \$39, a similar bill passed by the Senate in the 1995-96 legislative session, Senate Bill 94 (S-5), specified that the State Police would have to comply with Public Act 120 of 1935 in conducting criminal background checks. (That Act regulates the processing of fingerprints, and specifies a maximum fee of \$15 for processing fingerprints and conducting criminal record checks.) Moreover, Senate Bill 94 (S-5) included a provision requiring the State Police to conduct criminal history checks only if sufficient funds to do so beyond those collected by fee were appropriated by the Legislature through the appropriations process. If similar provisions were included in Senate Bill 113 (S-1), they could reduce the potential expense to child care organizations and their employees and applicants.

Opposing Argument

The bill would be unworkable for many child care organizations and would disrupt the operation of their businesses. For instance, summer camps routinely hire college students for summer counselor positions within days before the camps open. If these camps were prohibited from hiring applicants until after a 30-day period during which the State Police would conduct a criminal background check, the camps would be well into their seasonal operation before being able to fill crucial positions. Senate Bill 94 (S-5) of 1995-96 would have required that the background checks be conducted within 21 days, rather than 30 days, and would have allowed an employer to employ or use the services of an applicant required to undergo a criminal history check before completion of the check. Under that bill, if an applicant's background check revealed a conviction for a crime included in the bill, the employer could not hire the applicant. Further, for a current employee

whose background check revealed a conviction, Senate Bill 94 (S-5) would have allowed, but not required, the employee's dismissal. If an employer retained an employee under that provision, the employer would have had to notify the parent or guardian of each minor who used the employer's services of the conviction and its nature. Perhaps Senate Bill 113 (S-1) should include similar provisions that would make it more usable to child care organizations.

Response: The bill's requirements could cause some employers to have to adjust their hiring practices to ensure that applicants would be approved by the time they were needed to fill positions. Any burden added by that necessity, however, would be balanced by the degree of protection afforded to children from ensuring that employees of child care organizations had not been convicted of a crime listed in the bill. In addition, according to the State Police, a 30-day turnaround time is needed to compare a person's fingerprints with those in the data base.

Opposing Argument

The bill could be very expensive to employers not only in terms of the cost of criminal checks, but also in the potential loss of job applicants. Even someone without a criminal record might prefer not to be subjected to a background check, especially one that involved going to the time and trouble of being fingerprinted. Many organizations already take steps to protect children, such as requiring training programs, checking references, and organizing supervisors in pairs of two unrelated adults. In addition, other types of organizations involved with children that were not mandated by the bill to request criminal history checks could still feel pressured to do so because of liability fears.

Response: If fears about potential liability were more than speculative for a particular organization, then background checks probably would be in the best interest of that employer and the children in the employer's care.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Department of State Police. The bill would require the Department to conduct a full criminal history check on an applicant or employee who had given written permission to his or her employer to do so, as well as on child care licensees at the request of the DCIS. The bill would allow the Department to charge for the criminal history check, though it is unclear who would be required to pay it. The Department of State Police fee for a

full criminal history check with both State and Federal fingerprint checks is \$39. The number of possible criminal history checks that would be requested under the bill cannot be determined.

Fiscal Analyst: B. Baker
M. Tyszkiewicz
J. Walker

This bill would have a fiscal impact on the Department of Consumer and Industry Services as it currently licenses 51,000 of these organizations and would be required to maintain criminal record checks on all the administrative staffs which includes the partners, officers and managers working for these organizations as well as any individual 17 years of age or older residing in or intending to reside in a child care facility that is a private residence. According to the Department there is no way to estimate what the actual cost of meeting this requirement would be, but the additional administrative responsibility of compiling and maintaining these additional records would increase the costs for the Department.

Moreover, the adoption of this bill would generate significant costs to a myriad of child caring entities. The bill would directly affect them and most likely would indirectly affect at least one State department, the Family Independence Agency (FIA). As an example, in the latest month for which data are available, the Agency made day care payments for 61,100 children. Assuming a staff per child ratio of one to six would result in criminal record checks on almost 10,200 persons. Using an estimate of \$40 per record check, this cost would be \$408,000. While this is a cost that would be incurred only once every two years for each continuing staff person, this would become a "new" cost for each employee turnover. If the annual turnover in staff were 50%, the costs would increase another \$204,000 per year. Likewise, the FIA also covers over 10,000 children per month in a variety of foster care placements. If it is assumed that these placements average only two adults, foster care providers would incur costs of \$800,000 every two years. As FIA day care costs are market price-related, as are eventually foster care payments, these costs would eventually be passed through to the department and thus be borne by Federal and State taxpayers.

While these are costs that can be reasonably estimated for the FIA, they are only a portion of the total economic costs of this bill. With over 1.7 million children under the age of 13 (the ages eligible for Federal child care tax credits), the preponderance of single- and two-person working families, and over 51,000 child caring entities being affected by this legislation, the total costs would be in the millions of dollars.

A9798\S532A

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.