

Legislative Analysis



BACKGROUND CHECKS/ SEX OFFENDER REPORTING

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Senate Bill 606 (Substitute S-1 with committee amendment)
Sponsor: Sen. Michael Bishop

Senate Bill 607 (Substitute S-1 with committee amendment)
Sponsor: Sen. Bruce Patterson

Senate Bill 615 (Substitute H-2)
Sponsor: Sen. Bill Hardiman
House Committee: Judiciary
Senate Committee: Judiciary (SB 606 & 607)
Families and Human Services (SB 615)
First Analysis (8-30-05)

BRIEF SUMMARY: The bills would amend various acts to do the following:

- Require a criminal history check and criminal records check on family day care home registrants and group day care home licensees.
- Require a background check on persons 18 years of age and older who reside in those day care homes.
- Revise the penalties for violating certain reporting duties imposed on a registered sex offender.
- Place the maximum term of imprisonment for a felony violation of the reporting requirements in the corresponding section of the sentencing guidelines.

FISCAL IMPACT: By providing for felony penalties and one-year misdemeanor penalties, Senate Bills 606 and 607 could increase correctional costs for the state and local units of government.

As Senate Bill 615 pertains to the Michigan State Police, there would be minimal administrative costs to the MSP with processing the criminal and ICHAT checks.

For the Department of Human Services, the bills could result in an increase in administrative costs, although some costs could be passed on to licensees and registrants.

For more detailed information, see Fiscal Information later in the analysis.

THE APPARENT PROBLEM:

Fueled by tragic events in Florida this spring involving the murder of two young girls by convicted sex offenders and a series of stories by the Detroit News exploring the number of convicted sex offenders working in the state's schools, Governor Granholm and members of the legislature advocated strong, meaningful laws to deny convicted sex offenders access to children in the state. In response, both chambers of the legislature

have introduced bills to address some of the problems identified, such as requiring background checks of people working in child care centers (currently, only the person licensed to operate the center is required to undergo a background check; it is voluntary for a center to screen employees) and to make it a crime for a person to accept work or volunteer in some settings frequented by children.

In addition to child care centers, approximately 13,900 people are registered or licensed to provide day care for children in their homes. Though applicants for a certificate of registration to operate a family day care home or for a license to operate a group day care home are screened by the Department of Human Services and must meet the good moral character standards outlined in R 400.1152 of the Michigan Administrative Code, the regulatory statute does not specifically require criminal history checks. Some people believe that greater protection could be afforded to children if all operators of home-based day care were required to undergo a criminal background check using the state and FBI criminal data bases and if the adult residents of those homes were at least checked through the state's Law Enforcement Information Network (LEIN).

In a related matter, persons convicted of sexual offenses are required to adhere to reporting requirements that include reporting in person to a local law enforcement agency once a year (misdemeanor) or four times a year (felony), maintaining a driver's license or state ID, and reporting within 10 days of a change of residence or place of work. At the end of the April verification period for this year, the Michigan State Police reported a compliance rate for address verification of 66 percent, with over 8,100 offenders failing to comply with the Sex Offender Registry Act requirements. Currently, failing to adhere to the reporting requirements is a 93-day misdemeanor with a fine of up to \$1,000; this penalty is the same regardless of the number of times an offender fails to comply. It is believed that the penalty for violating the reporting requirements should be harsher, both to encourage offenders to report as required and to more appropriately punish those who don't.

THE CONTENT OF THE BILLS:

The bills are part of a multi-package, bi-cameral initiative amending various laws to protect children from persons convicted of certain crimes. The bills would take effect January 1, 2006.

Senate Bill 607

Senate Bill 607 would amend the Sex Offenders Registration Act (MCL 28.725 and 28.729) to revise the penalties for violating certain duties imposed on an offender.

Under the act, a person convicted of a listed offense (a crime that requires registration as a sex offender) must adhere to the act's reporting and registration requirements. Section 5a requires a sex offender convicted of a misdemeanor offense to report in person to the local law enforcement agency once a year and an offender convicted of a felony four times a year. It also requires an offender to maintain a current state driver's license or

state identification card, to pay certain fees, and to have a digital photo taken (which is available for use by the Department of State Police) at a Secretary of State office. Currently, it is a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$1,000 to violate Section 5a of the act.

Senate Bill 607 would instead specify that a violation of Section 5a, other than failure to pay the fee, would be a crime punishable as follows:

- For no prior convictions (1st offense) for a violation of the act, a misdemeanor punishable by up to 93 days imprisonment and/or a fine of not more than \$1,000.
- For one prior conviction (2nd offense) for a violation of the act, a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not more than \$2,000.
- For two or more prior convictions (3rd offense) for a violation of the act, a felony punishable by imprisonment for not more than four years and/or a fine of not more than \$2,500.

In addition, the act requires an individual required to be registered to notify the local law enforcement agency within 10 days of being paroled; final release from prison; or changing his or her place of residence, domicile, or place of work or education. The bill would also require a notification if the individual vacated the residence, domicile, or place of work or education.

Senate Bill 606

Senate Bill 606 would amend the sentencing guidelines portion of the Code of Criminal Procedure (MCL 777.11b) to specify that failure to update sex offender registration information – third or subsequent offense – would be a Class F felony against the public order with a maximum term of imprisonment of four years. The bill is tie-barred to Senate Bill 607.

Senate Bill 615

The bill would add two new sections to Public Act 116 of 1973 (MCL 722.115f and 722.115g) to require criminal history checks and criminal records checks on those applying for or renewing certificates of registration for family day care homes or licenses for group day care homes.

Background checks would also be required for all persons over 18 years of age residing in a private home that serves as a family day care home or group day care home when that home applied for a certificate of registration or license.

Not later than one year after the effective date of the bill, criminal history checks and criminal record checks would have to be conducted on all persons currently operating

family day care homes and group day care homes and on all persons over 18 years of age living in those private homes.

[The act defines a "family day care home" as a private home in which one to six children are received for care; a "group day care home" is a private home that can receive seven to eleven children for care.]

Licensees and registrants. The bill would prohibit the Department of Human Services (DHS) from issuing or renewing a certificate of registration for a family day care home or license for a group day care home unless the department requested a criminal history check and criminal records check. When an application for a license or registration or renewal for either is submitted to the DHS, the department would have to request the Michigan State Police (MSP) to conduct a criminal history check on the applicant and conduct a criminal records check through the Federal Bureau of Investigation (FBI).

Applicants would have to give written consent, at the time of the application, for the MSP to conduct the background checks and would have to submit their fingerprints to that department. The DHS would have to request the background checks on a form and in a manner prescribed by the MSP. The MSP would have to conduct a criminal history check and provide a report of the results to the DHS within a reasonable time of receiving the request. Within a reasonable time of receiving a request by DHS to perform a criminal records check, the MSP would have to initiate the criminal records check. Results would have to be provided to the DHS after the MSP received the results from the FBI. The MSP could charge the DHS a fee for the criminal history check or criminal records check not to exceed the actual and reasonable cost of conducting the check. However, the DHS could pass along this cost of the criminal history or criminal records check to the applicant, registrant, or licensee.

Not later than one year after the bill's effective date, the DHS would have to conduct a criminal history check and criminal records check on all persons currently issued a certificate of registration to operate a family day care home or a license to operate a group day care home.

Persons residing in a family day care home or group day care home. Under the bill, when a person applied for a certificate of registration to operate a family day care home or a license to operate a group day care home, the DHS would have to perform a background check on any person over the age of 18 residing in the home in which the day care will be provided. The background check would use the MSP's Internet Criminal History Access Tool (ICHAT). [ICHAT allows any person to search the state police's Criminal History Record Database, which contains Michigan conviction information on misdemeanor and felony convictions. It does not contain federal arrests or criminal records from other states. Each search is \$10.00.] If the ICHAT search revealed a conviction for a listed offense (a crime that requires registration as a sex offender), the DHS could not issue a certificate of registration to the applicant, could not renew a certificate of registration or license, and would have to revoke a current certificate of registration or license.

Not later than one year after the bill's effective date, the DHS would have to conduct a criminal history check on all persons over 18 of age residing in a home in which a family day care home or group day care home currently operates.

(The background check requirement would not apply to a person residing in a family or group day care home for 14 days or less.)

Self-reporting requirement. Licensees and registrants would be required to report to the DHS within three business days after being arraigned for any of the crimes listed below. They would also be required to report, within the same time frame, if they knew or should have reasonably known that a person over 18 years of age that lived in the home had been arraigned for one or more of these crimes. This applies to the following crimes:

--Any felony.

-- Any of the following misdemeanors:

- criminal sexual conduct (CSC) in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree;
- child abuse (or any attempt) in the third or fourth degree;
- a misdemeanor involving cruelty, torture, or indecent exposure involving a child;
- a misdemeanor violation of Section 7410 of the Public Health Code (which concerns distribution of marijuana to minors near school property);
- a violation of five sections of the Michigan Penal Code (concerning breaking and entering; consumption or possession of alcohol by minors, or controlled substances by anyone, at social gatherings; soliciting a child for immoral purposes; indecent exposure; and damage to or larceny from vacant buildings under construction or having been built);
- a misdemeanor violation of three sections of the Michigan Penal Code (including assault and battery and domestic assault; aggravated assault; and using the Internet to commit crime including CSC against a minor, stalking, and making bomb threats);
- a misdemeanor violation of Section 701 of the Michigan Liquor Control Act concerning the prohibition of liquor sales to minors;
- any misdemeanor that is a listed offense (a crime that requires registration as a sex offender – see Background Information for a complete list); and,
- a violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

Failure to report as required would result in one of the following penalties: 1) if the crime that was not reported was a felony or a misdemeanor that is a listed offense, the person would be guilty of a felony punishable by imprisonment for not more than two years or a fine of not more than \$2,000; 2) if the crime that was not reported was a misdemeanor that was not a listed offense, the person would be guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$1,000.

Not later than 30 days after the bill's effective date, the DHS would have to inform all current registrants and licensees and all applicants for a certificate of registration or a license of the reporting requirement and the penalties for failure to report the arraignments. The DHS would also have to notify the registrant or licensee at the time it issues a certificate of registration or license of the requirement to report an arraignment for certain crimes and the penalties for failure to report those arraignments.

Record expungement. The DHS would have to delete from a registrant's or licensee's record all information relating to an arraignment required to be reported if the department received documentation that the person subsequently was not convicted of any crime after the completion of judicial proceedings resulting from the arraignment.

The bill is tie-barred to House Bill 4936, which would require criminal history checks and criminal records checks of commercial child care and day care center licensees and their employees.

HOUSE COMMITTEE ACTION:

The effective dates for Senate Bills 606 and 607 were changed from October 15, 2005 to January 1, 2006.

Changes to Senate Bill 615 were more substantive. The House substitute added a tie-bar and an effective date; focused only on providers of home-based day care and residents of their homes; required a background check of residents of family day care and group day care homes who are over 18 years of age (instead of 16); allowed MSP to charge the DHS a fee for the state and federal criminal background checks but also allowed the DHS to pass those costs onto applicants for licensure and registration; changed the time frames given to the MSP to initiate the criminal background checks and to provide the results to the DHS to a "reasonable time"; required the DHS to deny a renewal or application for a license or registration and revoke the license or registration of a current operator of a family or group day care home if the ICHAT check of the adult residents of the home revealed a conviction of a listed offense; required licensees and registrants to self-report within three business days of an "arraignment" for a crime listed in the bill instead of within seven days after being "charged" with a crime; and changed the crimes that would trigger the self-reporting requirement.

BACKGROUND INFORMATION:

"Listed offense" means any of the following:

- Accosting, enticing, or soliciting a child for immoral purposes.
- Involvement in child sexually abusive activity or material.
- A third or subsequent violation of any combination of engaging in obscene or indecent conduct in public, indecent exposure, or a local ordinance substantially corresponding to either offense.
- First, second, third, or fourth degree Criminal Sexual Conduct (CSC).

- Assault with intent to commit CSC.
- If the victim is less than 18 years of age, the crime of gross indecency (except for a juvenile disposition or adjudication), kidnapping, sodomy, or soliciting another for prostitution.
- Leading, enticing, or carrying away a child under 14 years of age.
- Pandering.
- Any other violation of a state law or local ordinance constituting a sexual offense against an individual less than 18 years of age.
- An offense committed by a sexually delinquent person.
- An attempt or conspiracy to commit one of the offenses listed above.
- Any offense under the laws of the United States, any other state, or any other country or tribal or military law, that is substantially similar to a listed offense.

FISCAL INFORMATION:

By providing for felony penalties and one-year misdemeanor penalties, Senate Bills 606 and 607 could increase correctional costs for the state and local units of government.

In general, felony incarceration and felony probation supervision are the responsibility of the state, which could experience increased costs of prison incarceration (which averages about \$29,000 per prisoner per year) or probation supervision (which averages \$1,977 per supervised offender per year). Costs of incarcerating felony or misdemeanor offenders in jails would fall to counties; costs vary by county. Local units of government also could incur increased costs if the numbers of offenders under misdemeanor probation supervision increased. Increases in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of such revenue.

As Senate Bill 615 pertains to the Michigan State Police, there would be minimal administrative costs to the MSP with processing the criminal and ICHAT checks.

Senate Bill 615 would require applicants for an original registration/license or registration/license renewal for a family day care home or group day care home to submit fingerprints to the Department of State Police (DSP) for a criminal records check. It also requires the DHS to perform an Internet-based background check using the DSP's ICHAT system for all persons over 18 years of age residing in day care and group homes applying for a registration or license. Finally, for those homes already registered or licensed, the DHS would be responsible within one year of the effective date of the bill for ensuring that ICHAT checks are conducted for all persons over 18 years of age residing in those homes.

The current costs of a fingerprint check is \$54, while the cost of an ICHAT check is \$10 for for-profit entities, with no charge to non-profits or governmental entities. However, it should be noted the Executive budget recommendation for FY 2006 proposed a new \$3 charge for ICHAT checks for non-profit and governmental entities.

During FY 2004, the DHS had oversight over about 13,900 homes and processed just under 6,200 original and renewal licenses for these homes. The annual costs of conducting the required fingerprint checks would be roughly \$335,000. The costs of the ICHAT checks would be around \$50,000 annually (assuming most applicants are subject to the current \$10 fee), with additional upfront costs for the one-time check of all relevant residents in currently registered homes. The bill allows the Department to pass these costs along to the person applying for licensure or registration. If the Department exercises its authority to pass these costs along to the applicant, state costs would not be directly affected by the required checks.

However, the DHS would still be responsible for tracking the results of the required checks, taking licensing actions when necessary, and notifying licensees and registrants of these new requirements. This would increase administrative costs to the department by an indeterminate amount.

ARGUMENTS:

For:

Sex offenders who did not comply with reporting requirements under the Sex Offender Registration Act would face new criminal charges under Senate Bill 607. This should help reduce the numbers of offenders who fail to report address changes or to verify their addresses (currently about 44 percent of those required to report). Violating the reporting requirements just three times would result in a felony that could send a sex offender back to prison for up to four years.

For:

Many people rely on home-based child care service providers to care for their children while they are at work. Though a person must be registered with or licensed by the state, many do not know that a criminal background check using a fingerprint search of the national crime data bases is not done on applicants. Also, no screening is done on the adults, such as adult children, spouses, boyfriends or girlfriends, relatives, or friends that live in the home where the day care is provided. Senate Bill 615 would address this concern. Within a year of taking effect, every new applicant for a certificate of registration or license and all current registrants and licensees, along with the adults who live in their homes, will be screened for past criminal activities that would make the home unsuitable for providing day care services for children.

Response:

The bill would require the Department of Human Services to deny an applicant a certificate of registration to operate a family day care home or a license to operate a group day care home, and to revoke a registration or license of a current registrant or licensee, if a resident of the home was found to have been convicted of a sexual offense requiring inclusion on the sex offender registry. However, the bill does not automatically apply these sanctions to an applicant, registrant, or licensee. Shouldn't licensees and registrants be held to the same, if not a higher, standard as a resident in the home? And what if the licensee or registrant has the resident move out and ensures that the person will not be on the premises when the children are present? Would their license or certificate of registration be restored?

Against:

Considering that one of the girls killed earlier this year in Florida was murdered by a sex offender who had failed to report his current address, increasing the penalty for reporting violations as Senate Bill 607 proposes to do would do nothing to deter truly sociopathic, predatory individuals. The legislature should be looking at initiatives that would protect society, not just give an illusion of protection. Those individuals who have demonstrated predatory behavior, especially in attacks on children, should be required to be tethered for as long as they are required to be on the sex offenders registry. Even tethering is not foolproof, but it will make it harder for dangerous individuals to slip away unnoticed.

Against:

The bill package, as well as a package reported by the Education committee, seeks to make children safer by excluding registered sex offenders from various work and volunteer positions that would bring them into contact with children. However, the sex offenders registry is fraught with problems and long overdue for a serious look at how to make it more effective. Currently, the registry is bogged down by people who pose no threat to either children or adults.

Therefore, before this bill package is signed into law, the Sex Offenders Registration Act needs to be overhauled to weed out those who do not pose a threat to society. Without such action and unless the state police are aware of the residences of persons required to be on the registry, and unless the bills are amended to exclude those on the registry who did not commit a crime against a children, the bills will give a false sense of security to the public and overly burden many who have worked hard to turn their lives around.

POSITIONS:

A representative of the Michigan Catholic Conference indicated support for the bills. (8-24-05)

The Michigan State Police (MSP) supports Senate Bill 607. (8-24-05)

The Department of Health and Human Services supports the goals and concepts of Senate Bill 615. (8-24-05)

A representative of the Michigan Coalition Against Domestic and Sexual Violence indicated support for Senate Bill 607. (8-24-05)

A representative of the Department of Corrections indicated a position of neutrality on Senate Bills 606 and 607. (8-24-05)

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