

CHILD CARE BACKGROUND CHECKS

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Senate Bill 615

Sponsor: Sen. Bill Hardiman

House Committee: Judiciary

Senate Committee: Families and Human Services

Complete to 8-23-05

A SUMMARY OF SENATE BILL 615 AS PASSED BY THE SENATE 6-30-05

The bill would add several new sections to Public Act 116 of 1973 (MCL 722.115 et al.) to require criminal history checks and criminal records checks on those applying for licenses or seeking to renew licenses to operate a child care or day care center or applying for or renewing certificates of registration for family day care homes or group day care homes.

Background checks would also be required for all persons over 16 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.

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 with certificates of registration to operate family day care homes and group day care homes (not only applicants) and on all persons over 16 years of age living in those private homes.

[In general, the act defines a "child care center" and "day care center" to mean a facility, other than a private residence, that receives more than one preschool or school-age child for care for periods of less than 24 hours a day, and where the parents are not readily immediately available to the child. A "family day care home" is 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 child care center or day care center license (or a certificate of registration for a family day care home or 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). For a child care center or day care center, the background check would have to be performed on the person or each partner, officer, or manager of the center.

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 30 days of receiving the request. Within seven days 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 a fee for the criminal history check or criminal records check not to exceed the actual and reasonable cost of conducting the check.

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 group day care home.

Use of information. Criminal history record information or the results of a criminal records check could only be used by a day care center or child care center for the purpose of evaluating an applicant's qualifications for employment in the position for which he or she applied or whether to retain an employee. (This information is defined as name; date of birth; fingerprints; photographs; personal descriptions including identifying marks, scars, amputations, and tattoos; aliases and prior names; social security number, driver's license number and other identifying numbers; and information on misdemeanor and felony arrests and convictions) A licensee or its officers, agents, or employees of a center could not disclose the report or its contents except a felony or misdemeanor conviction involving sexual or physical abuse to a person not directly involved in evaluating the applicant's qualifications for either employment or the issue of the employee's continued employment.

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 group day care home, the DHS would have to perform a background check on any person over the age of 16 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.

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 16 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. In addition, a person to whom a certificate of registration had been issued to operate a family or group day care center would have to report to the DHS within seven days after he or she had been charged with a crime listed in Section 1535a of the Revised School Code (crimes for which a teaching certificate could be or would have to be suspended). A registrant would also have to report, within seven days, if he or she knew or should reasonably have known that a person living in the home in which the day care operated had been charged with a crime listed in Section 1535a of the school code.

Failure to report as required would result in one of the following penalties: 1) if the crime that was not reported was a felony, 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, 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 all applicants for a certificate of registration of the reporting requirement and the penalties for failure to report those charges. The DHS would also have to notify the registrant at the time it issues a certificate of registration of the requirement to report certain charges and the penalties for failure to report those charges.

Record expungement. Upon receiving the following documentation, the DHS would have to delete from a registrant's records all information relating to a charge required to be reported:

- The person has been acquitted of a charge he or she was required to report.
- The charge required to be reported has been dismissed.

FISCAL IMPACT:

The bill would require applicants for an original or renewal license for a child or day care center and applicants for an original registration or registration 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 16 years of age residing in day care and group homes applying for a registration and registration renewal. Finally, for those homes already registered, 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 16 years of age residing in those homes.

The bill does not make clear whether the costs of the required background checks would be met by DHS or whether DHS would pass these costs along to licensees and registrants. 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 4,600 centers and 13,900 homes and processed just under 8,500 original and renewal licenses. If the DHS were required to absorb the costs of the required checks, state costs would likely increase by over \$500,000 annually due to the fingerprint check requirement. Furthermore, if the DHS were required to absorb the costs of the ICHAT checks for residents within family or group homes at the new proposed rate of \$3 per check, state costs could increase by another \$40,000 annually, with additional upfront costs for the one-time check of all relevant residents in currently registered homes.

Finally, the DHS would be responsible for tracking the results of the required checks and notifying licensees and registrants of these new requirements. This would increase administrative costs to the department by an indeterminate amount.

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

In addition, correctional costs to the state and local units of government could increase, depending on how many felony and misdemeanor convictions were obtained for violations of the bill. Felony incarceration and felony probation supervision are the responsibility of the state; costs of incarceration in a state correctional facility currently average about \$29,000 per prisoner per year, and those of parole and probation supervision average about \$1,977 per offender per year. Local units of government could incur costs of jailing misdemeanor offenders or misdemeanor probation supervision; costs vary by county. Increases in penal fine revenues would benefit local libraries, which are the constitutionally-designated recipients of such revenues.

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