

BACKGROUND CHECKS ON LICENSEES AND EMPLOYEES OF CHILD CARE OR DAY CARE CENTERS

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House Bill 4936

Sponsor: Rep. Rick Baxter

House Bill 4958

Sponsor: Bill Caul

Committee: Judiciary

Complete to 6-21-05

A SUMMARY OF HOUSE BILL 4936 AS INTRODUCED 6-14-05 AND HOUSE BILL 4958 AS INTRODUCED 6-16-05

The bills would require a criminal history check and criminal records check on child care center and day care center licensees; require a background check on employees and contract workers; provide penalties for violations; and place the maximum term of imprisonment for felony violations in the corresponding section of the sentencing guidelines. The bills are summarized in more detail below.

House Bill 4936 would add several new sections to Public Act 116 of 1973 (MCL 722.115 et al.), which pertains to the regulation of child care organizations, to require background checks on those licensed to operate a child care or day care center and on employees and contract workers.

Licensees. The bill would prohibit the Department of Human Services (DHS) from issuing or renewing a child care center or day care center license unless the department requested a criminal history check and criminal records check. When an application for a license or renewal 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). 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 that did not exceed the actual and reasonable cost of conducting the check.

Employees and contract workers. Before an offer of employment or before allowing a person to regularly and continuously work under contract at the center, the center must perform a background check on the person using 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 center would be prohibited from offering employment to that person or allowing the person to work under contract.

In addition, an employee would have to report to the center within a reasonable time 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).

Failure to report a crime for which a person was charged would result in one of the following penalties: 1) if the crime was a listed offense, a felony punishable by imprisonment for not more than two years or a fine of not more than \$2,000; 2) if the crime was one listed in Section 1535a of the school code, but was other than a listed offense, a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$1,000.

Miscellaneous. Criminal history record information or the results of a criminal records check could only be used by a 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 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.

House Bill 4958 would amend the sentencing guidelines portion of the Code of Criminal Procedure (MCL 777.15g) to specify that failure to report criminal charges to an employer would be a Class G felony against the public safety with a maximum term of imprisonment of two years.

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