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BILL ANALYSIS



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Senate Bill 613 (as passed by the Senate)
Senate Bill 614 (Substitute S-1 as passed by the Senate)
Senate Bill 615 (as passed by the Senate)
Sponsor: Senator Cameron S. Brown (S.B. 613)
Senator Bev Hammerstrom (S.B. 614)
Senator Bill Hardiman (S.B. 615)
Committee: Families and Human Services

Date Completed: 7-19-05

RATIONALE

In April and May 2005, *The Detroit News* published a series of articles detailing the employment of sex offenders and other criminals by Michigan schools, day care centers, and other institutions in which employees have frequent contact with children. According to one article, the newspaper found that at least 35 Michigan school employees or recent hires had been charged with or convicted of sexual misconduct in the previous 15 months and had victimized approximately 50 children during that time ("State fails to stop teacher sex abuse", 4-24-05).

Also in May, the Auditor General released a report of a performance audit of the Office of Children and Adult Licensing (OCAL), the entity within the Department of Human Services (DHS) responsible for licensing and regulating child care organizations, including day care centers and homes. The report included a finding that OCAL did not always perform criminal history background checks on certain child day care center employees and adults living in group day care homes, and never obtained periodic updates on the criminal histories of licensees and adult household members, as required by the Child Day Care Licensing Manual.

The Auditor General recommended, and OCAL is in the process of implementing systems to ensure, better criminal background screening of child care licensees, administrators, directors, and adult household members of day care

homes. In addition to these measures, it has been suggested that child care and day care centers should be required to perform background checks on all current and prospective employees, that child care center employees should be required to notify centers when they are charged with certain crimes, that group and family day care home registrants should be required to notify the DHS when they are charged with certain crimes, and that the DHS should be prohibited from issuing a license to or renewing the license of a center without obtaining a background check of the licensee.

CONTENT

Senate Bill 614 (S-1) would amend the child care licensing Act to do the following:

- **Require a child care center or day care center to perform a background check on a person before making an offer of employment.**
- **Prohibit the center from making an offer of employment if the background check revealed that the person had been convicted of a listed offense.**
- **Require a center to perform a criminal history check on all current employees within one year after the bill took effect.**
- **Require a center employee to report to the center within seven days after**

he or she was charged with a listed crime.

- Prescribe criminal penalties for a person who did not report as required.
- Require a center to notify all current and prospective employees of the bill's reporting requirements and the penalties for a violation.

Senate Bill 615 would amend the Act to do the following:

- Require the DHS to request the Michigan State Police (MSP) to conduct a criminal history check and criminal records check on an applicant for child care or day care center licensure or licensure renewal, or for a certificate of registration to operate a family day care or group day care home.
- Require the DHS to perform a background check on everyone older than 16 residing in a family day care or group day care home, and prohibit the DHS from issuing a certificate of registration if the check revealed that anyone had been convicted of a listed offense.
- Prohibit the DHS from issuing a license to or renewing the license of a center, or the certificate of a family day care or group day care home, without requesting the required checks.
- Require a person to whom a certificate of registration had been issued to report to the DHS within seven days after he or she was charged with specific crimes.
- Prescribe criminal penalties for a person who failed to report as required.
- Require the DHS to notify registrants of the bill's reporting requirements and the penalties for a violation.

Senate Bill 613 would amend the Code of Criminal Procedure to include in the sentencing guidelines a child care or day care center employee's failure to report felony charges to his or her employer (as Senate Bill 614 (S-1) would require) and a family day care or group day care home registrant's failure to report felony charges to the DHS (as Senate Bill 615 would require).

Senate Bill 613 is tie-barred to Senate Bill 614, which is tie-barred to Senate Bill 615. The bills are described below in further detail.

Senate Bill 614 (S-1)

Under the bill, before a child care center or day care center made an offer of employment to a person or allowed a person to work regularly and continuously under contract at the center, the child care or day care center would have to perform a background check on that person using the MSP's Internet Criminal History Access Tool (ICHAT). If the ICHAT search revealed that the person had been convicted of a listed offense, the center could not make an offer of employment to that person, or allow him or her to work regularly and continuously under contract at the center. (Under Senate Bill 615, "listed offense" would mean that term as defined in the Sex Offenders Registration Act, described below, under **BACKGROUND**.)

Additionally, within one year after the bill's effective date, the center would have to conduct a criminal history check on all current employees using ICHAT.

A child care or day care center employee would have to report to the center within seven days after he or she was charged with a crime listed under Section 1535a of the Revised School Code (described in **BACKGROUND**). If a person did not report to the center as required, he or she would be guilty as follows:

- If the crime were a felony, the person would be guilty of a felony punishable by imprisonment for up to two years or a maximum fine of \$2,000.
- If the crime were a misdemeanor, the person would be guilty of a misdemeanor punishable by imprisonment for up to one year or a maximum fine of \$1,000.

Within 30 days after the bill took effect, a center would have to notify all current employees and all people who worked regularly and continuously under contract with the center of the bill's reporting requirements, as well as the penalties for not reporting the charges as required. The center also would have to notify a person of the reporting requirements and penalties at the time it made an offer of employment or

allowed a person to work regularly and continuously under contract.

If a center received documentation that an employee had been acquitted of a charge he or she was required to report, or that a charge reported by an employee had been dismissed, the center would have to delete all information relating to the charge from the employee's records.

(Under the Act, "child care center" or "day care center" means a facility, other than a private residence, that receives at least one preschool or school-age child for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child. The term includes a facility that provides care for at least two consecutive weeks, regardless of the number of hours of care per day. A facility generally is described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, or drop-in center.)

Senate Bill 615

Under the bill, when a person, partnership, firm, corporation, association, or nongovernmental organization applied for, or applied to renew, a license for a child care center or day care center, the DHS would have to request the MSP to conduct a criminal history check, as well as a criminal records check through the Federal Bureau of Investigation (FBI), on the person or each partner, officer, or manager of the center applying for the license. The DHS also would have to request the MSP to conduct the checks on a person who applied for a certificate of registration to operate a family day care home or group day care home.

Each person applying for a license to operate a center, or a certificate of registration to operate a day care home, would have to give written consent at the time of the application for the MSP to conduct the criminal history check and criminal records check. The DHS would have to require the person to submit his or her fingerprints to the MSP for the criminal history and records checks.

The DHS would have to request a criminal history check and criminal records check on a form and in the manner prescribed by the MSP. Within 30 days after receiving a

complete request for a criminal history check on a person, the MSP would have to conduct the check and provide a report of the results to the DHS. The report would have to contain any criminal history record information on the person that the MSP maintained.

(Under the bill, "criminal history record information" would mean that term as defined in the fingerprinting law (MCL 28.241a), i.e., name; date of birth; fingerprints; photographs, if available; 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.)

The MSP would have to initiate a criminal records check within seven days after receiving a proper request. After receiving the results from the FBI, the MSP would have to provide a report of the results to the DHS. The MSP could charge a fee for a required criminal history check or a criminal records check that did not exceed the actual and reasonable cost of conducting the check.

A child care center or day care center 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 evaluating whether to retain an employee. A licensee or its officers, agents, or employees could not disclose the report or its contents, except a felony conviction or a misdemeanor conviction involving sexual or physical abuse, to a person not directly involved in evaluating the applicant's qualifications for employment or the issue of the employee's continued employment.

When a person applied for a certificate of registration to operate a family or group day care home, the DHS would have to perform a background check using the MSP's ICHAT on all people over 16 years old residing in the home in which the day care was operated. If the ICHAT search revealed that a person had been convicted of a listed offense, the DHS could not issue a certificate to the applicant.

Additionally, within one year after the bill's effective date, the DHS would have to perform an ICHAT check on all people over 16 living in the home in which a family or group day care home currently was operated.

A person to whom a certificate of registration had been issued 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, or within seven days after he or she knew or reasonably should have known that a person over the age of 16 who lived in the home in which the family or group day care home was operated had been charged with a crime listed in that section.

Neither the provision regarding the ICHAT background check, nor the reporting requirement, would apply to a person residing in a home for not more than 14 days.

If a person required to report to the DHS did not report as required, he or she would be guilty as follows:

- If the crime that was not reported were a felony, the registrant would be guilty of a felony punishable by imprisonment for up to two years or a maximum fine of \$2,000.
- If the crime were a misdemeanor, the registrant would be guilty of a misdemeanor punishable by imprisonment for up to one year or a maximum fine of \$1,000.

The DHS would have to delete from a registrant's records all information relating to a charge required to be reported if it received documentation either that the person had been acquitted, or that the charge had been dismissed.

Within 30 days after the bill took effect, the DHS would have to inform all current family and group day care home registrants of the bill's reporting requirements and penalties.

(Under the Act, "family day care home" means a private home in which one to six minor children are received for care and supervision for periods of less than 24 hours per day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or

adoption. The term includes a home in which care is given to an unrelated minor child for more than four weeks during a calendar year. "Group day care home" has a similar definition, except that such a facility receives seven to 11 minor children for care.)

Senate Bill 613

The bill would add to the sentencing guidelines failure to report felony charges to an employer, as Senate Bill 614 (S-1) would require, and failure to report to the DHS, as Senate Bill 615 would require. The offenses would be Class G felonies against public safety punishable by up to two years' imprisonment.

MCL 777.15g (S.B. 613)

Proposed MCL 722.115d & 772.115e (S.B. 614)

MCL 722.115 et al. (S.B. 615)

BACKGROUND

Listed Offense

Section 2 of the Sex Offenders Registration Act defines "listed offense" as 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 the following: engaging in indecent or obscene conduct in a public place, indecent exposure, or a local ordinance substantially corresponding to either of those offenses.
- Sodomy, kidnapping, enticing away, or soliciting and accosting, if the victim is under 18 years of age.
- Gross indecency involving a victim under 18, except for a juvenile disposition or adjudication.
- Criminal sexual conduct (CSC) in the first-, second-, third-, or fourth-degree.
- Assault with intent to commit CSC involving penetration.
- Any other violation of a State law or local ordinance that by its nature constitutes a sexual offense against an individual who is under 18.
- An offense committed by a person who, at the time of the offense, was a sexually

delinquent person, as defined in the Michigan Penal Code.

- An attempt or conspiracy to commit an offense enumerated above.

"Listed offense" also includes an offense substantially similar to an offense described above under a law of the United States, any state, or any country, or under tribal or military law.

Section 1535a of the Revised School Code

Section 1535a requires the Superintendent of Public Instruction to notify a person that his or her teaching certificate may be suspended if he or she has been convicted of any felony or any of the following misdemeanors:

- Fourth-degree CSC or an attempt to commit that offense.
- Third- or fourth-degree child abuse or an attempt to commit that offense.
- A misdemeanor involving cruelty, torture, or indecent exposure involving a child.
- A misdemeanor violation of Section 7410 of the Public Health Code (which prohibits the delivery of a Schedule 1 or 2 controlled substance that is a narcotic or cocaine, by a person who is 18 or older to a person who is under 18 and at least three years younger than the offender, or delivery on or within 1,000 feet of school property).
- Breaking and entering.
- Allowing a minor to possess or consume alcohol at a social gathering on premises under the offender's control.
- Accosting, soliciting, or enticing a child for immoral purposes.
- Indecent exposure.
- Larceny from a vacant building.
- Selling or furnishing alcohol to a minor.

Section 1535a also provides for the summary suspension of the teaching certificate of a person who has been convicted of a crime listed below, if the Superintendent finds that the public health, safety, or welfare requires emergency action:

- Criminal sexual conduct in any degree, assault with intent to commit CSC, or an attempt to commit CSC in any degree.
- Felonious assault on a child, first-degree child abuse, or an attempt to commit first-degree child abuse.

- Cruelty, torture, or indecent exposure involving a child.
- Manufacture, delivery, or possession with intent to manufacture or deliver, of at least 1,000 grams of a Schedule 1 or 2 controlled substance that is a narcotic or cocaine.
- Intentional or knowing possession of a Schedule 1 or 2 narcotic or cocaine.
- Delivery of a Schedule 1 or 2 narcotic or cocaine to a minor.
- A violation of Section 7410 of the Public Health Code (described above).
- Recruiting, inducing, or coercing a minor to commit a controlled substance felony.
- Assault with intent to commit murder.
- Armed assault with intent to steal.
- Attempted murder.
- Accosting, soliciting, or enticing a child for immoral purposes.
- First- or second-degree murder.
- Armed robbery.

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

Parents deserve the assurance that their children's caregivers are not dangerous criminals. Child victims of sex crimes can suffer ill effects for years. According to *The Detroit News*, they may lose trust in authority figures, experience compromised physical health, and perform poorly in school ("Schools, Granholm pledge to curb abuse by teachers", 4-25-05). Later in life, the victims are more likely to abuse alcohol and drugs and may have difficulty forming intimate relationships.

Those with abusive tendencies toward children may be drawn to seek employment at child care facilities because of the easy access it affords them. Child care workers often are admired by the children they watch and are trusted by parents, allowing them ample opportunity to victimize children without scrutiny. The bills' requirements to conduct background, criminal history, and criminal record checks on all prospective and current center employees and day care home registrants, and background checks on all adults present in day care homes, would add to parents' peace of mind and help protect children, who cannot defend

themselves against people who abuse their positions of authority.

Response: Although the State should implement every possible measure to prevent unsuitable adults from coming into contact with children at day care centers and homes, the bills do not contain a mechanism to fund the required background and criminal records checks. Enacting new regulations without sufficient funding to implement them could lead to a false sense of security. Moreover, the ratio of caseloads to child care regulators in Michigan already far exceeds the desired standard. It is important to ensure that new requirements do not further burden the system and create new problems.

In another matter, the bills do not specify what a child care center or the DHS would have to do after an employee or registrant reported that he or she had been charged with one of the specified crimes.

Opposing Argument

The bills would require people to report to their employers or the DHS, as applicable, after they were *charged* with a crime. Sometimes, even if a person later is found not guilty, he or she might still be under a cloud of suspicion, and an employer might decide to terminate his or her employment. Under the bills, a person who did not disclose a charge as required, and subsequently was acquitted, still could be jailed or fined for not reporting to his or her employer or the DHS.

Response: The bills' requirements to report certain charges within seven days and the corresponding penalties for failing to do so would help to close a gap in the current system. State Police and FBI checks reveal only convictions. When a person works closely with children, it is imperative that employers and the DHS know about pending charges in addition to previous convictions, in order to avoid potentially exposing children to harm. Furthermore, the bills would require that information related to a charge that later was dropped, or of which the person was acquitted, be deleted from the person's records.

Legislative Analyst: Julie Koval

FISCAL IMPACT

Senate Bills 613 and 614 (S-1)

The bills would require each applicant at a child care or day care center to undergo a name criminal history check through the Department of State Police. The cost of a name check would be \$10 if a center is a for-profit business, and there would be no charge for a center that has nonprofit or governmental status. It should be noted that the Governor has proposed, for FY 2005-06, beginning in October, that nonprofit and governmental agencies be charged \$3 for each criminal history name check. Whether this proposed charge will take effect depends upon the final resolution of the State's FY 2005-06 budget, which has not yet occurred.

There are no data to indicate how many offenders would be convicted of the proposed offenses. Local units would incur the costs of misdemeanor probation and incarceration in a local facility, both of which vary by county. The State would incur the cost of felony probation at an average annual cost of \$2,000 per offender, as well as the cost of incarceration in a State facility at an average annual cost of \$28,000. Public libraries would benefit from any additional penal fine revenue.

The bills would have no fiscal impact on the Department of Human Services.

Senate Bill 615

The bill would require child or day care licensee applicants and family day care home or group day home registration applicants to submit to the Department of State Police for a fingerprint criminal records check, a service that requires a payment of \$54 to the Department. The bill also would require each person over 16 years of age residing in a family day care home or group day care home to undergo a name criminal history check through the Department. The cost of a name check would be \$10 if a center is a for-profit business, and there would be no charge for a center that has nonprofit or governmental status. It should be noted that the Governor has proposed, for FY 2005-06, beginning in October, that nonprofit and governmental agencies be charged \$3 for each criminal history name check. Whether this proposed charge will

actually take effect depends upon the final resolution of the State's FY 2005-06 budget, which has not yet occurred.

The bill would require the Department of Human Services to inform currently registered providers and all applicants for certification to report criminal charges and to conduct a review of criminal history and records checks for the current 18,324 child care facilities. There are approximately 61 licensing consultants responsible for notification of providers and the conduct of the records checks. There would be an indeterminate increase in administrative costs for these new functions.

There are no data to indicate how many offenders would be convicted of the proposed offenses. Local units would incur the costs of misdemeanor probation and incarceration in a local facility, both of which vary by county. The State would incur the cost of felony probation at an average annual cost of \$2,000 per offender, as well as the cost of incarceration in a State facility at an average annual cost of \$28,000. Public libraries would benefit from any additional penal fine revenue.

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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.