



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



BILL ANALYSIS

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

House Bill 4936 (Substitute H-2 as passed by the House)  
House Bill 4958 (Substitute H-1 as passed by the House)  
Sponsor: Representative Rick Baxter (H.B. 4936)  
Representative Bill Caul (H.B. 4958)  
House Committee: Judiciary  
Senate Committee: Families and Human Services

Date Completed: 8-30-05

## **CONTENT**

**House Bill 4936 (H-2)** 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.
- Prohibit the center from making an offer of employment to, and require the termination of the employment of, a person whom a criminal history check revealed had been convicted of a listed offense.
- Require a center employee to report to the center within a reasonable time after he or she was charged with a listed crime.
- Prescribe criminal penalties for a person who did not report to a center as required.
- Require the Department of Human Services (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.
- Prohibit the DHS from issuing a license to or renewing the license of

a center without requesting the required checks.

- Prohibit the DHS from issuing a license or renewal license, and require the DHS to revoke a license, if the required checks revealed that the applicant or licensee had been convicted of a listed offense.
- Require a licensee to report to the DHS within a reasonable time after he or she was charged with specific crimes.

**House Bill 4958 (H-1)** 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 House Bill 4936 (H-2) would require).

House Bill 4958 (H-1) is tie-barred to House Bill 4936. The bills would take effect October 15, 2005. They are described below in further detail.

### **House Bill 4936 (H-2)**

#### Employee Background Checks

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 the bill, "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. If the ICHAT search revealed that a current employee or a person who worked regularly and continuously under contract had been convicted of a listed offense, the center could not continue to employ that person or allow him or her to work under contract.

A child care or day care center could pass along the actual cost of the ICHAT search to the employee or applicant.

A child care or day care center employee would have to report to the center within a reasonable time 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 listed offense, 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 any crime required to be reported other than a listed offense, the person would be guilty of a misdemeanor punishable by imprisonment for up to one year or a maximum fine of \$1,000.

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.)

#### Licensee Background Checks

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.

Each person applying for a license to operate a center 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.

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. The DHS could pass along to the licensee or applicant the actual cost or fee.

If a criminal history or criminal records check revealed that an applicant for a license or license renewal had been convicted of a listed offense, the DHS could not issue or renew the license. If the criminal history or criminal records check revealed that a current licensee had been convicted of a listed offense, the DHS would have to revoke the license.

A licensee would have to report to the DHS within a reasonable time that he or she had been charged with a crime listed in Section 1535a of the Revised School Code.

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

(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.)

### **House Bill 4958 (H-1)**

The bill would add to the sentencing guidelines failure to report felony charges to an employer, as House Bill 4936 (H-2) would require. The offense would be a Class G felony against public safety punishable by up to two years' imprisonment.

MCL 722.115 et al. (H.B. 4936)  
777.15g (H.B. 4958)

### **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.

Legislative Analyst: Julie Koval

### **FISCAL IMPACT**

House Bill 4936 (H-2) 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 actually take effect depends upon the final resolution of the State's FY 2005-06 budget, which has not yet occurred.

The bill also would require child or day care license 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 bills would have an indeterminate fiscal impact on State and local government. There are no available data to indicate how many offenders would be convicted of the proposed offenses. Local units incur the costs of misdemeanor probation and incarceration in a local facility, both of which vary by county. The State incurs the cost of felony probation at an average annual cost of \$2,000 as well as the cost of incarceration in a State facility at an average annual cost of \$28,000. Libraries would benefit from any additional penal fine revenue.

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

Fiscal Analyst: Bruce Baker  
Constance Cole  
Bethany Wicksall

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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.