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BILL ANALYSIS

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Senate Bill 271 (as introduced 2-22-07)
Sponsor: Senator Gerald Van Woerkom
Committee: Families and Human Services

Date Completed: 2-27-07

CONTENT

The bill would amend the child care licensing Act to do the following:

- **Require an applicant for a license or a renewal of a license to operate a foster care home or a foster care group home to undergo a criminal history check, an FBI records check, and an ICHAT (internet criminal history access tool) check by the Department of State Police.**
- **Prohibit individuals convicted of a listed offense from receiving a license to operate a foster care home or a foster care group home.**
- **Require all current licensees of foster care homes or foster care group homes to undergo criminal background checks within one year after the bill's effective date.**
- **Require all residents of a home who were over 18 to undergo an ICHAT check.**
- **Specify that, beginning October 1, 2007, a person applying to renew a license to operate foster family home or foster family group home, who previously had undergone the required criminal history and criminal records checks and had remained continuously licensed since that time, would not be required to undergo another check.**
- **Require a licensee under the Act to report to the Department of Human Services (DHS) within three days after an employee or an adult residing in the home was arraigned for a felony or a misdemeanor described in the bill.**
- **Prescribe penalties for an individual who did not report an arraignment as required.**
- **Require the DHS to give licensees and applicants information about the reporting requirement and the penalty.**

The bill would take effect on October 1, 2007.

License Issuance; Revocation

The bill would prohibit the DHS from issuing or renewing a license to a foster family home or a foster family group home without requesting a criminal history check, a criminal records check, and a Department of State Police ICHAT check, as provided in the bill.

If one of the required checks revealed that an applicant for a license or a renewal of a license, or a person over 18 years of age residing in that applicant's home had been convicted of a listed offense, the DHS could not issue a license to the applicant. If a check revealed that a licensee of a foster family home or a foster family group home currently licensed under the Act or a person over 18 years of age residing in that home had been convicted of a listed offense, the DHS would have to revoke that license.

(Under the Act, "listed offense" means that term as defined in the Sex Offenders Registration Act, described in **BACKGROUND**, below.)

Criminal History & Records Checks

Under the bill, when a person applied for or to renew a license to operate a foster family home or a foster family group home, the DHS would have to request the Michigan Department of State Police (MSP) to conduct a criminal history check and a criminal records check through the Federal Bureau of Investigation on that person.

Each person applying for a license to operate a foster family home or a foster family group home would have to give written consent at the time of application for the MSP to conduct the required checks. Also, the DHS would have to require the person to submit his or her fingerprints to the MSP for the required checks.

The DHS would have to request the criminal history check and criminal records check on a form and in a manner prescribed by the Department of State Police.

Within a reasonable time after receiving a complete request by the DHS for a criminal history check on a person, the MSP would have to conduct the check and give the DHS a report of the results that contained any criminal history record information on the person maintained by the MSP.

Within a reasonable time after receiving a proper request by the DHS for a criminal records check, the MSP would have to initiate that check. After receiving the results of the criminal records check from the FBI, the MSP would have to provide a report of the results to the DHS.

The MSP could charge the DHS a fee for a criminal history or criminal records check under the bill that did not exceed the actual and reasonable cost of conducting the check.

Within one year after the bill's effective date, the DHS would have to conduct a criminal history check and criminal records check on all individuals currently issued a license to operate a foster family home or a foster family group home under the Act.

Beginning on October 1, 2007, if a person applying to renew a license to operate a foster family home or foster family group home previously had undergone a criminal history check and criminal background check and had remained licensed continuously since those checks were performed, that person would not be required to submit to another criminal history and criminal background check upon renewal of his or her license.

ICHAT Check

Under the bill, when a person applied for a license to operate a foster family home or a foster family group home, the DHS would have to perform a criminal history check using the Department of State Police's ICHAT on all individuals over the age of 18 residing in the home in which the foster family home or foster family group home was operated. This provision would not apply to a person residing in the home for 14 days or less.

Within one year after the bill's effective date, the DHS would have to perform an ICHAT check on all individuals over the age of 18 residing in the home in which a foster family home or foster family group home currently was operated.

If a search of ICHAT revealed that a person over 18 residing in a foster family home or a foster family group home had been convicted of a listed offense, the DHS could not issue or renew a license to the applicant, or would have to revoke a current licensee's license.

Report of Arraignment

The Act requires a child care center or day care center licensee to report to the DHS within three business days after he or she has been arraigned for a felony or certain misdemeanors involving criminal sexual conduct, child abuse, or other similar violations. Under the bill, that requirement also would apply to a foster family home or foster family group license home. (The crimes in question are the same as those subject to a new reporting requirement under the bill, as described below.)

In addition, a person to whom a license had been issued under the Act would have to report to the DHS within three business days after he or she knew or reasonably should have known that an employee or a person over 18 residing in the home had been arraigned for any felony or any of the following misdemeanors:

- Criminal sexual conduct (CSC) or an attempt to commit CSC in the fourth degree.
- Child abuse or an attempt to commit child abuse in the third or fourth degree.
- Cruelty, torture, or indecent exposure involving a child.
- A violation of Section 7410 of the Public Health Code (which establishes penalties for delivering, distributing or possessing with intent to deliver certain controlled substances on or within 1,000 feet of school property, or to an individual under 18 who is at least three years younger than the deliverer).
- Breaking and entering or entering without breaking.
- Allowing a minor to possess or consume alcohol or a controlled substance at a social gathering within one's premises, residence, or other real property.
- Accosting, enticing, or soliciting a child under 16 with the intent to induce or force that child to commit an immoral act or to submit to sexual intercourse or other acts.
- Open or indecent exposure.
- Stealing fixtures, attachments, or other property from a vacant structure or building.
- Assault and battery.
- Assaulting an individual without a weapon and inflicting serious or aggravated injury.
- Using a computer or the internet to commit or attempt to commit certain acts involving a minor or a person believed to be a minor.
- A violation of Section 701 of the Michigan Liquor Control Code (which prohibits selling or furnishing alcoholic liquor to a person under 21).
- Any misdemeanor that is a listed offense.

If a person violated this reporting requirement and the crime involved in the violation were a felony or a misdemeanor that is 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, or both. If the crime involved were a misdemeanor that was not 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, or both.

Within 30 days after the bill's effective date, the DHS would have to inform all those currently issued a license and all applicants for a license of the requirement to report certain arraignments under the bill, and the penalty for failing to report.

The DHS also would have to notify a licensee of the reporting requirement and the penalty at the time the Department issued a license to operate a foster family home or foster family group home.

The DHS would have to delete from a licensee's records all information relating to an arraignment required to be reported under the bill, if the Department received documentation that the person arraigned for the crime subsequently was not convicted of any crime after the completion of judicial proceedings resulting from the arraignment.

MCL 722.115 et al.

BACKGROUND

Under the Sex Offenders Registration Act, "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 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.
- Gross indecency involving a victim under 18, except for a juvenile disposition or adjudication.
- Criminal sexual conduct 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.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Department of Human Services. The DHS Office of Children and Adult Licensing (OCAL) could incur additional cost for an increased number of criminal history and background checks. There were 7,292 licensed Foster Family/Group Homes as of December 2006. The OCAL estimates that 600 additional homes are licensed per year. These homes currently are inspected prior to the issuance of an original provisional license. The bill would mandate that the applicant and individuals over 18 years of age residing in the home be subject to the checks. The actual number of people residing in the homes is not known, but OCAL estimates that approximately 11,000 checks would be required. The estimated cost of the checks is \$70 per person for an estimated cost of \$770,000.

The bill's penalty provisions would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$31,000. Additional penal fine revenue would benefit public libraries.

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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.