House
Legislative
Analysis
Section

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BACKGROUND CHECKS ON CHILD CARE WORKERS

House Bill 6202 (Substitute H-2)
Sponsor: Rep. Sue Tabor

House Bill 6204 (Substitute H-1)
Sponsor: Rep. Gary Woronchak

House Bill 6205 as introduced
Sponsor: Rep. Belda Garza

First Analysis (6-18-02)
Committee: Family and Children Services

THE APPARENT PROBLEM:

The child care licensing act (Public Act 116 of 1973) requires that child care organizations be licensed. Child care programs in the state are regulated and licensed by the Division of Child Day Care Licensing, Bureau of Regulatory Services, Department of Consumer and Industry Services. According to the department, there are approximately 4,857 child care centers; 3,286 group day care homes; and 11,475 family day care homes licensed in the state. The DCIS sets different licensure requirements for family day care, group day care homes, and child care, which are designed to ensure the safety and protection of children while in the care of child care organizations.

Current law and administrative rules only require criminal background checks to be conducted on the person applying to operate the child care organization. Background checks are not required for staff and volunteers of the child care organization. Under the child care licensing act, before a licensed is initially issued or renewed, the DCIS is required to investigate the applicant's activities and proposed standards of care and make an on-site visit to the facility (MCL 722.115).

Under the administrative rules a licensee is required to demonstrate that he or she is of 'good moral character' - as that term is defined under Public Act 381 of 1974. In addition, a licensee is required to submit to a Michigan State Police criminal history check and a Family Independence Agency (FIA) check for a history of substantiated child abuse and neglect. The rules also require the licensee to develop and implement a written screening policy for all staff and volunteers, including parents, who have contact with children (R 400.5102).

While staff members of child care organizations are not explicitly required to undergo a criminal background check, the rules do require staff to be of "responsible character and suitable to meet the needs of children" (R 400.5104). In addition, each staff member is required to sign a written statement at the time of hiring indicating that the individual is aware that child abuse and neglect is against the law, has been informed of the organization's polices regarding child abuse and neglect, and knows that caregivers are mandated by law to report abuse and neglect.

In recent years, there has been a push to require all applicants and employees in a child care organization to undergo a criminal background check as a condition of employment. However, none of these efforts have been enacted into law. Legislation has been introduced that would encourage the use of background checks for employment in a child care center.

THE CONTENT OF THE BILLS:

House Bill 6202 would amend the child care licensing act (Public Act 116 of 1973, MCL 722.119) to place into statute an existing administrative rule (R 400.5104a) regarding child day care licensing. Specifically, the bill would prohibit a staff member of a child care organization from being present in a child care facility if that person has been convicted of child abuse or neglect, or a felony involving the harm or threatened harm to another individual within the

10 years preceding the date of hire. The bill would also prohibit a volunteer who is not a parent, grandparent, or legal guardian of a child receiving care in that child care center from having contact with children in the care of a child care organization if he or she has been convicted of child abuse or neglect, or a felony involving harm or threatened harm to an individual within the 10 years preceding the date of the offer to volunteer.

Under the bill, a staff member or volunteer who is not a parent, grandparent, or legal guardian of a child receiving care in that child care center to have contact with a child in the care of a child care center only if the staff member or volunteer provided the child care organization with documentation from the Family Independence Agency (FIA) that he or she has not been named as a perpetrator in a central registry for child abuse or neglect.

In addition, the bill would require each child care center to establish and maintain a policy regarding the supervision of volunteers, including parents who volunteer.

House Bill 6204 would amend the Child Protection Law (Public Act 238 of 1975, MCL 722.627j) to permit the Family Independence Agency (FIA) to provide to an individual, upon his or her written request, documentation stating that the individual is not listed as a perpetrator in a central registry case. The written request would have to include a statement by the individual stating that he or she is applying for employment or seeking to volunteer in a child care center. The bill would permit an individual to share the document with the owner of the child care center or a person authorized by the center.

In addition, the FIA would be permitted to develop an automated system that would allow an individual applying for employment or seeking to volunteer in a child care center to be listed in the automated system if a screening of the individual finds that he or she has not been named in a central registry case as a perpetrator. The automated system would provide for public access to the list of individuals who have been screened. The system would be required to have adequate safeguards to ensure that information that is confidential under the Child Protection Law or any other state or federal law is not accessible or disclosed through the system.

Furthermore, the bill specifies that a case investigated prior to July 1, 1999 and entered into the central registry would be considered to be a central registry case if that case meets the criteria of a central registry case classified as categories 1 or 2.

House Bill 6205 would amend the child care licensing act (Public Act 116 of 1973, MCL 722.113d) to require a child care center operator to post on the premises a notice stating whether or not the center requires a criminal history check on its employees or volunteers. The Department of Consumer and Industry Services would promulgate rules to implement the bill.

BACKGROUND INFORMATION:

Central Registry. The Child Protection Law (Public Act 238 of 1975) requires the state to establish and maintain a central registry to keep a record of all reports filed with the FIA regarding of child abuse and neglect cases, in which relevant and accurate evidence is found to exist. The registry lists perpetrators and provides for the ability to look up any previous allegations of child abuse or neglect. The registry is required to list cases in which a non-household perpetrator has caused serious harm. In these instances, the abuse or neglect is the suspected cause of death, the child is the victim of suspected sexual abuse or exploitation, or the abuse or neglect leads to serious physical injuries, which require medical treatment or hospitalization. In addition, the FIA classifies child protective services (CPS) investigations into five categories. Those incidents that are listed as category 1 or 2 are also listed in the central registry. For category 2 cases, the FIA is required to provide child protective services. For category 2 cases, the FIA determines that there exists evidence of child abuse and there appears to be a high or intensive risk of future harm to the child. For category 1 cases, there exists evidence of child abuse or neglect and one or more of the following: the Child Protection Law or FIA policy requires a petition for court action; the child is not safe and petition for removal is needed; the cases was previously classified as category 2 and the family does not voluntarily participate in services; or the incident involves assault with the intent to commit criminal sexual conduct (CSC), a felonious attempt or conspiracy to commit CSC, an assault on a child that is punishable by a felony, or first or second degree child abuse. For those CPS cases that were investigated prior to July 1, 1999, a central registry case means an allegation of child abuse or neglect that the FIA substantiated.

Under the Child Protection Law, the information contained in the central registry is confidential, unless otherwise made public by the director of the

FIA. However, with certain conditions, a confidential record may be disclosed to any of the following: a police or law enforcement agency; a physician; a person authorized to place a child in protective custody; a perpetrator or alleged perpetrator; a victim who is an adult at the time of the request; a person authorized to care for a child subject to a report; a court; a grand jury; a person engaged in research; a lawyer-guardian ad-litem; a child placing agency; juvenile court staff; a standing or select committee, or appropriations subcommittee of the legislature having jurisdiction child protective services matters; the children's ombudsman; a child fatality review team; a county medical examiner; or a citizens review panel.

Related Legislation. During the current legislative session, there have been several bills introduced that would require criminal background checks to be performed on child care workers. House Bill 4058, introduced by Representative Bob Brown, would amend the child care licensing act to require criminal background checks be conducted on all job applicants and employees. House Bill 6107, introduced by Representative William Callahan, would prohibit the FIA from issuing a payment to a child care provider unless the department performed a central registry search and requested a criminal history check on the child care provider. In addition, the bill would require that criminal background fingerprint checks be conducted on any child care provider applicants. During the previous legislative session, the House passed House Bill 5741, introduced by Representative Gary Woronchak, which would have created the Child-Related Employment Background Check Act. The bill would have required that background checks be conducted as a condition of licensure or registration as a child care provider or for those seeking employment as child care workers.

In addition, the House recently passed House Bill 5372, introduced by Representative Mary Ann Middaugh, which would amend the Child Protection Law to require that the child care regulatory agency (which is currently the Department of Consumer and Industry Services) be notified if an individual accused of child abuse or neglect is a child care provider.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

In most instances, when parents place their children in a child care center, the child's health, safety, and well-being is the paramount concern. While there are several facets of the child care center that are considered when parents determine where to place their children, including the facilities and activities, ultimately the choice is dependant upon the perceived safety of the children. Parents should have the right to know their children are being placed in a center with a caregiver with a 'good moral character'. Absent state-mandated criminal background checks on all child care workers, several steps should be taken to encourage the use of criminal background checks at the behest of the employer and to notify parents as to the true extent of the use of criminal background checks in the hiring process. The package of bills will accomplish both of these purposes.

House Bill 6202 would place into statute a current administrative rule that prohibits staff and volunteers of a child care center from coming into contact with children if they have a central registry case. This provision appears to implicitly require that background checks be performed on child care workers. While this does not require a full-blown fingerprint and criminal records checks through the Federal Bureau of Investigation and the Department of State Police, this is a first step toward that goal. The bill would prohibit an individual from being present in a child care center or having contact with children in a center if he or she has been convicted of child abuse or neglect, or a felony involving the harm or threatened harm to another individual. The only way to adequately ensure against this would be to conduct a criminal background check on staff members and volunteers. To ensure that a staff member or volunteer is suitable and of good moral character to serve as a child care worker, the bill would require an individual to provide the child care center with documentation stating the he or she has not been named as a perpetrator in a central registry case.

While the bill would require an individual to obtain, from the FIA, documentation stating that he or she is not named as a perpetrator in a central registry case, it is believed that the FIA does not have the explicit authority to do so. House Bill 6204 would provide the FIA with the authority to provide documentation. The Child Protection Law clearly states who may obtain information in a central registry case. The act

permits, among several others, an individual who is the subject of a report or record to obtain information about that record. However, the act is silent in situations when an individual seeks to obtain information when he or she is *not* listed as an alleged perpetrator in a central registry case. Practically speaking, this makes sense. If a person is not listed in the registry, there is not any information that can be provided to that person and an employing child care center. However, the provisions of House Bill 6202 facilitate the need for establishing the clear authority of the FIA to provide documentation when there does not exist a central registry case.

For:

House Bill 6205 requires child care centers to post whether or not they require background checks on employees and volunteers. Often, parents wrongly assume that background checks are conducted on employees and volunteers as a condition of employment. This assumption could potentially be fatal or adversely impact the child. While most child care centers attempt to thoroughly screen potential employees, there still exists the possibility that a perpetrator could "fall through cracks", without a background check. The bill would provide parents with the added security of knowing whether or not a criminal background check has been conducted, which better enables them to properly make a determination regarding their choice for a child care center and the protection of the child's health, safety, and well-being.

Against:

There appears to be several inconsistencies in House Bill 6202. The bill would prohibit a staff member from being present in a child care center if he or she has been convicted of child abuse or neglect, or a felony involving the harm or threatened harm against another individual. Yet, if a volunteer has the same convictions, he or she would be prohibited from coming in contact with children in the center. If an individual has been convicted of child abuse, should it really matter if he is a paid staff member or a volunteer?

Prohibiting staff from being present in the center appears to segregate the children and staff, which is a legitimate concern when employing an individual with a conviction of child abuse or neglect. This segregation appears to limit staff members to non-caregiving roles such as maintenance or office work. However, prohibiting staff members from being present in a child care center takes that segregation too far. If an employee is prohibited from being present in the child care center, what could his or her duties really entail? It appears that his or her duties would appear to be limited to outdoor related maintenance such as mowing the lawn. However, upon further examination, it appears that the staff member could serve as a playground attendant or a bus driver, which would still provide that individual with access to children. Also, prohibiting volunteers from coming in contact with children in the center does not appear, on the surface, to be very practical. How does one go about avoiding all contact with children in a *child* day care center? What could the responsibilities of a volunteer be to ensure that he or she does not come in contact with a child in the center? Furthermore, the bill does not specify any penalty if a person violates the provisions of the bill.

In addition, the provision permitting a staff member or volunteer to have contact with children in the center, only if he or she provides documentation that he or she is not named as a perpetrator in a central registry case, also does not appear to be consistent. First, nothing in the bill explicitly prohibits a staff member from having contact with children in the center. While staff members would be prohibited from being present in a center, it appears that they would still be permitted to have contact with children outside of the center. In that instance, it does not appear that staff members would be required to provide documentation regarding the non-existence of a central registry case.

Secondly, under the bill, a volunteer is prohibited from having contact with children in the center if he or she is *convicted* of child abuse or neglect, or a felony involving harm or threatened harm to another individual. The volunteer may, however, be permitted to have contact with children if he or she provides documentation that he or she has not been named as a perpetrator in a central registry case.

However, a central registry case only concerns itself with cases of child abuse or neglect, and not cases involving harm or threatened harm to another individual. Furthermore, a central registry only requires substantial evidence of child abuse or neglect, and not an actual conviction. It appears that a person with a conviction involving the harm or threatened harm to another individual then would only have to demonstrate that he or she does not have a central registry case in order to be able to have contact with children in the center.

Against:

The bill would prohibit contact with children in the child care center if there has been a conviction of

child abuse or neglect, or a felony involving harm or threatened harm to another individual. However, the bill fails to define what contact means. Would the bill only prohibit direct physical contact? Would the bill prohibit a volunteer and a child from being within a certain distance from each other? Would the volunteer be prohibited from being in the same room as a child? Would the volunteer and child be permitted to interact with each other?

Against:

The bill falls short at protecting children in child day care centers. The bill implicitly requires a background check on a staff member or volunteer to ensure that he or she does not have a conviction. However, such a background check at the behest of the employer would only include a name check conducted through the Department of State Police. However, the results of name-based background checks would not be accurate if a person were to give a false name. A more thorough fingerprint check, conducted through the Federal Bureau of Investigation, which is the only true method to accurately identify a person and establish his or her criminal history, would not be conducted. Fingerprint checks are only conducted if such a search is required pursuant to a state or federal statute, an executive order, or by an administrative rule.

POSITIONS:

The Family Independence Agency supports House Bill 6204. (6-18-02)

The Department of Consumer and Industry Services supports all of the bills. (6-18-02)

Analyst: M. Wolf

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.