

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 5372 (Substitute S-1 as reported)
Sponsor: Representative Mary Ann Middaugh
House Committee: Family and Children Services
Senate Committee: Families, Mental Health and Human Services

Date Completed: 10-28-02

RATIONALE

Under the Child Protection Law (CPL), an individual mandated to report suspected child abuse or neglect must make both an oral report and a written report of that suspicion to the Family Independence Agency (FIA). The FIA may provide copies of the written report to the prosecuting attorney and the probate court and, under certain circumstances, the county FIA office must notify the prosecuting attorney. In some cases, if a local law enforcement agency receives a report of suspected child abuse or neglect, the agency must notify the county FIA office.

Since 1996, the Department of Consumer and Industry Services (DCIS) has been responsible for licensing and regulating child care organizations and adult foster homes, some of which are authorized to care for children. (Previously, the Department of Social Services, the predecessor to the FIA, had this responsibility.) Although the CPL reporting requirements provide for the sharing of information between county FIA offices and law enforcement officials, the Law does not address notifying the DCIS when suspected abuse or neglect is reported, even if the suspected abuse or neglect is committed by a child care provider at a facility regulated by the DCIS. Some people believe that the CPL should require the FIA or a law enforcement agency to notify the DCIS under these circumstances.

CONTENT

The bill would amend the Child Protection Law to do all of the following:

-- Require that the DCIS be notified when suspected child abuse or child neglect

was committed by a child care provider and when a child care provider was bound over to circuit court for certain crimes.

-- Include the DCIS in the list of entities to which confidential records in the central registry may be made available.

The bill also specifies that FIA would not have to use the "structured decision-making tool" for a nonparent adult who resided outside the home of a child who was a victim or alleged victim of abuse or neglect or for an owner, operator, volunteer, or employee of a child care organization or an adult foster care family home or small group home. If there were a preponderance of evidence that such a person was the perpetrator of child abuse or neglect, however, the FIA would have to list him or her in the central registry. ("Structured decision-making tool" refers to an FIA document used to measure the risk of future harm to a child who is the subject of a child protective services investigation and to evaluate the level of services that the child's family may need.)

DCIS Notification

The CPL requires that certain professionals (such as physicians, dentists, psychologists, social workers, teachers, law enforcement officers, and regulated child care providers) who have reasonable cause to suspect child abuse or neglect, immediately make an oral report of the suspected abuse or neglect to the FIA. Within 72 hours after making an oral

report, the reporting person must file a written report. Certain FIA employees who have a reasonable cause to suspect child abuse or neglect also must report that suspicion.

The Law also requires the FIA to transmit to the prosecuting attorney a report of suspected child abuse or neglect that indicates an occurrence of first-, second-, third-, or fourth-degree child abuse, involvement in child sexually abusive activity, or first-, second-, third-, or fourth-degree criminal sexual conduct (CSC) or assault with intent to commit CSC, or that indicates that the suspected child abuse or neglect was not committed by someone who is a "person responsible for the child's health or welfare". The CPL similarly requires a local law enforcement agency to refer an allegation or provide a copy of a written report and the results of an investigation to the county FIA, if the local law enforcement agency receives a report of suspected child abuse or neglect that indicates abuse or neglect committed by a person who is responsible for the child's health or welfare. ("Person responsible for the child's health or welfare" means a parent, legal guardian, person 18 years of age or older who resides in the same house as the child; or an owner, operator, volunteer, or employee of a child care organization, adult foster care family home, or adult foster care small group home.)

The bill would add to those provisions that, if a written report or subsequent investigation indicated that the individual who committed the suspected abuse or neglect was a child care provider and the FIA or law enforcement agency believed that the report had basis in fact, the FIA or law enforcement agency would have to transmit a copy of the written report or the results of the investigation to the child care regulatory agency with authority over the provider's child care organization or adult foster care location authorized to care for a child.

In addition, under the CPL, the prosecuting attorney must give notice to certain people if an individual is bound over to circuit court for first-, second-, third-, or fourth degree CSC, assault with intent to commit CSC, a felonious attempt or conspiracy to commit CSC, an assault on a child that is punishable as a felony, first-, second-, or third-degree child abuse, or involvement in child sexually abusive material or activity. If the individual

is an employee of a child care organization, the prosecuting attorney must notify the FIA and the owner or operator of that child care organization. The bill specifies, instead, that if the individual were a child care provider, the prosecuting attorney would have to notify the FIA, the owner or operator of the provider's child care organization or adult foster care location authorized to care for a child, and the child care regulatory agency with authority over that child care organization or adult foster care location.

"Child care provider" would mean an owner, operator, employee, or volunteer of a child care organization or of an adult foster care location authorized to care for a child. "Child care regulatory agency" would mean the Department of Consumer and Industry Services or a successor State department that was responsible for the licensing or registration of child care organizations or the licensing of adult foster care locations authorized to care for a child. "Child care organization" would mean that term as defined in the child care licensing Act, i.e., a governmental or nongovernmental organization having as its principal function the receiving of minor children for care, maintenance, training, and supervision, but not an organization that provides care to emancipated minors. "Adult foster care location authorized to care for a child" would mean an adult foster care family home or adult foster care small group home in which a child was placed in accordance with the child care licensing Act.

Central Registry

The CPL requires that the FIA maintain a statewide electronic central registry to carry out the intent of the Law. ("Central registry" is defined as the system maintained by the FIA that is used to keep a record of all reports filed with the FIA in which relevant and accurate evidence of child abuse or neglect is found to exist.) Unless made public as specified information allowed to be released under the CPL, a written report, document, or photograph filed with the FIA under the CPL is a confidential record and is available only to individuals and organizations listed in the Law. The bill would add a child care regulatory agency to that list.

Use of Structured Decision-Making Tool

The bill specifies that the FIA would not be required to use the structured decision-making tool for either a nonparent adult who resided outside the home of a child who was the victim or alleged victim of child abuse or neglect, or an owner, operator, volunteer or employee of a licensed or registered child care organization or a licensed or unlicensed adult foster care family home or small group home. Following a filed investigation, however, if the FIA determined that there was a preponderance of evidence that such a person was the perpetrator of child abuse or neglect, the FIA would have to list the perpetrator on the central registry.

MCL 722.622 et al.

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

The bill would address a concern that arose after the responsibility for licensing child care organizations and adult foster care homes was transferred from the former Department of Social Services (now the FIA) to the DCIS. Since the Department of Social Services was both the entity responsible for regulating those facilities and the recipient of mandated reports of suspected child abuse and neglect, the exchange of information regarding those reports was necessary only between that department and law enforcement officials. Consequently, the Child Protection Law does not refer to the DCIS in the CPL's provisions for sharing reports of suspected child abuse or neglect, even though the DCIS now is responsible for regulating child care facilities.

Department of Consumer and Industry Services policy reportedly states that when an allegation of child abuse or neglect involves a licensed facility, it is presumed that the licensing requirements have been violated. Since the CPL does not require that the DCIS be notified of a report of suspected child abuse or neglect, the DCIS cannot effectively protect the health and welfare of children when they are in the care of child care facilities under the Department's regulatory jurisdiction. The bill would ensure that the DCIS was notified when a child care provider was suspected of child abuse or neglect.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State. The Family Independence Agency would incur additional administrative costs associated with more investigations and reports.

The bill would have no fiscal impact on local government.

Fiscal Analyst: Maria Tyszkiewicz
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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.