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BILL ANALYSIS

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Senate Bill 1253 (as passed by the House)
Sponsor: Senator Bill Hardiman
Senate Committee: Families and Human Services
House Committee: Family and Children Services

Date Completed: 12-19-06

RATIONALE

An incident in Grand Rapids has raised questions about the procedures for approving day care licenses and investigating allegations of improper conduct at day care centers. The *Grand Rapids Press* reported that a home day care center operated by a husband and wife was allowed to retain its license despite repeated accusations that the husband had acted improperly with children at the center between 2002 and 2004 ("Day Care Licensed Despite Child Porn", 12-1-05). The field officer investigating the initial allegations recommended that the day care license be revoked, but that decision was overruled by Department of Human Services (DHS) administrators because of a lack of evidence. While investigating similar complaints in December 2004, the Grand Rapids police discovered pornographic images on a computer in the home. Some of the images later were determined to be child pornography.

Despite the allegations and the presence of pornography on the computer, the DHS renewed the day care center's license in May 2005. According to DHS officials, the complaint investigations had been concluded at that point, and found no evidence sufficient to revoke the license. Also, the DHS evidently was unaware that the images on the computer were child pornography, and if that information had been known, the Department would have moved to suspend the license.

Amid further allegations in August 2005, the couple voluntarily closed the day care center, and a few months later the husband was charged with sexual assault, whereupon

the DHS withdrew the day care center's license, according to the *Grand Rapids Press*. It was later revealed that the couple had purchased a larger day care center, licensed to care for 118 children, while the husband was under investigation.

The Department's handling of the case has raised widespread concern, and some have questioned whether proper systems are in place to ensure that appropriate action is taken in cases of alleged child abuse, sexual misconduct, or neglect. According to a DHS spokesperson, the Department is prohibited under the Child Protection Law from notifying anyone of the details of an ongoing investigation, although the owners are under no such restrictions. To protect the safety of children and the rights of parents without compromising an investigation, it was suggested that child care center owners should be required to notify parents if the centers are the subject of an investigation.

CONTENT

The bill would amend the child care licensing Act to require a child care organization that was the subject of a high-risk special investigation by the Department of Human Services to notify the parents or guardians of all children who were present at the time of the incident being investigated, or who otherwise could come into contact with the individual being investigated. The bill also would establish criminal penalties for making a false report that led to a special investigation requiring this notice.

Notification of Investigation

Within 24 hours after a child care organization was notified by the DHS that a special investigation that the DHS classified as high-risk was being conducted, the organization would have to make a good faith effort to make oral notification to each parent or guardian of the following:

- Children who were under the organization's care at the site when the incident being investigated occurred.
- If the individual being investigated were still present at the organization during the investigation, children who had or would come into contact with the individual being investigated as long as he or she was present at the organization.

The bill would not apply to a child caring institution, child placing agency, foster family home, or foster family group home.

Within one business day after the good faith effort at oral notification, the organization would have to send written notification by one of the following: mail service, facsimile transmission, or electronic mail.

If the DHS determined that a child care organization was not complying with either notification requirement, the Department could suspend the organization's license, pending review.

If, upon completion of the special investigation, the DHS determined that there were no substantiated rule violations, it would have to give the organization written notice of that determination, which the organization could share with the parents or legal guardians of the children in its care who previously had received notice of the investigation. The DHS also would have to make the determination publicly available on its website.

For purposes of the bill, "special investigation that the department classifies as high risk" would mean an investigation in which the DHS becomes aware that one or more of the conditions listed in Section 8(3)(a) to (c) of the Child Protection Law exist. (Those conditions are:

- Abuse or neglect is the suspected cause of a child's death.

- The child is the victim of suspected sexual assault or sexual exploitation.
- Abuse or neglect resulting in severe physical injury to the child requires medical treatment or hospitalization.

"Severe physical injury" means brain damage, skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health or physical well-being of a child.)

Penalty for False Report

The bill would prescribe criminal penalties for a person who made a false report to the DHS regarding a child care organization that caused the DHS to initiate a special investigation for which a child care organization had to send notice. If the incident reported would not constitute a crime or would constitute a misdemeanor if the report were true, the person making the false report would be guilty of a misdemeanor punishable by imprisonment for up to 93 days or a maximum fine of \$100, or both.

If the incident reported would constitute a felony if the report were true, the person making the false report would be guilty of a felony punishable by the lesser of the following:

- The penalty for the incident falsely reported.
- Imprisonment for up to four years or a maximum fine of \$2,000, or both.

MCL 722.113f & 722.115g

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 place their children into the care of child care facilities trusting that they will be looked after and protected. When there are allegations of serious misconduct that could threaten a child's safety or well-being, parents have a right to know about the situation. At the same time, child care centers that face these allegations have the right to due process and a proper

investigation into the facts of the case. The bill would protect the rights of the parents, the children, and the owners of a facility, by requiring the child care center to notify only the parents of those children who were present at the time of the incident being investigated, or who could come into contact with the individual being investigated. A good faith effort at oral notification would have to be made within 24 hours. For day care centers, oral notification could be as simple as letting a parent know when he or she came to pick up the child. At times, however, the organization would not necessarily be able to reach all parents. An individual's contact information could be incorrect or outdated, or parents could be divorced or separated, making notification of each parent problematic. Organizations such as summer camps, which would be included under the bill, could have additional difficulty contacting parents if they were on vacation or otherwise unreachable. To ensure that all parents were made aware of the situation, the bill would require the initial oral notification to be followed up in writing within one business day. The written notice could be made by mail, e-mail, or fax, which would limit the expense of contacting large numbers of parents. Many organizations already communicate with parents on a regular basis through e-mail, and may have comprehensive e-mail lists that would make notification a relatively simple matter.

Response: Regarding such a serious matter, a child care organization has an obligation to make every effort to notify every parent. Although it would be more expensive, perhaps the bill should require written notification to be sent by certified mail, with return receipt requested.

Also, the bill should require parents to be notified of the investigation's findings. Although a child care organization could share the results of an investigation with parents if the Department determined that there were not substantiated rule violations, the organization would not be required to do so. The bill would make no provision for notifying parents if violations were discovered. The organization should be required to distribute the results of the investigation to parents, regardless of the outcome.

In addition, although the bill would require parents to be notified in the case of a high-risk investigation, it does not specify whether that requirement would apply to an investigation of employees only, or of a

spouse or other adult living in the home. That language should be clarified.

Supporting Argument

The bill would establish penalties for making a false report that triggered an investigation. For organizations such as child care facilities or summer camps, maintaining the trust of the parents is crucial to operating a successful venture. A person who made a false allegation that resulted in an investigation and required notice to hundreds, or even dozens, of parents could do lasting damage to the vitality of the organization. If the story were discovered by the media, the harm could be even greater. Even if the investigation showed that the allegations were false, lingering doubts and the negative publicity could keep many parents away. The penalties under the bill would deter an individual from making false accusations.

Response: Given the extent of the potential damage that could be done by such actions, the penalties should be increased to reflect the seriousness of the crime.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. The DHS Office of Children and Adult Licensing could incur additional administrative costs to notify child care organizations of its determinations and engage in license suspensions. It is unknown how many organizations would be affected.

There are no data to indicate how many offenders would be convicted of the proposed offense. 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 average annual 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.

Fiscal Analyst: Constance Cole
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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.