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BILL ANALYSIS

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Senate Bill 1411 (Substitute S-1 as passed by the Senate)

Sponsor: Senator Gerald Van Woerkom

Committee: Families and Human Services

Date Completed: 10-5-06

RATIONALE

Michigan law requires many professionals who work with children, including child care center employees, elementary and secondary school personnel, and driver education instructors, to undergo criminal background checks. Although foster care providers must be licensed under the child care licensing Act, the current licensing requirements do not include criminal background checks. Some are concerned that individuals who have been convicted of certain crimes may pose a potential risk to children in the foster care system, and should not be permitted to be licensed as foster care providers. Consequently, it has been suggested that the foster care licensing requirements under the Act should include a criminal background check, and that all current licensees should undergo criminal background checks.

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 foster care group home in the State 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 who had been convicted of certain offenses from receiving a license under the Act.**
- **Require a licensee under the Act to report to the Department of Human Services (DHS) within three days after an employee of a foster care**

home or foster care group home or an adult residing in the home was arraigned for certain criminal offenses.

- **Prescribe criminal penalties for an individual who did not report an arraignment as required.**
- **Require all current licensees of foster care homes or foster care group homes in the State to undergo criminal background checks within one year of the bill's effective date.**
- **Specify that beginning July 1, 2007, a person applying to renew a license to operate a foster family home or foster family group home, who previously had undergone the required criminal history check and criminal records check and had remained continuously licensed since that time, would not be required to undergo another criminal history or criminal records check.**

The bill would take effect July 1, 2007.

Criminal History & FBI Check

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

At the time of applying for a license to operate a foster family group home or a foster family home, the applicant would have to give written consent to the Department of State Police to conduct the

criminal history and background checks. The DHS would have to require the person to submit his or her fingerprints to the MSP for those checks.

The DHS would have to request the criminal history and background checks on a form and in the manner prescribed by the State Police. Within a reasonable time after receiving a request for a criminal background check, the MSP would have to conduct the check and provide a report of the results to the DHS. The report would have to contain any criminal history record information on the person that was maintained by the MSP.

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

The Department of State Police could charge the DHS a fee for a criminal history or criminal records checks that did not exceed the actual and reasonable cost of conducting the check.

ICHAT Check

When a person applied for a license to operate a foster family home or foster family group home, the DHS would have to perform a criminal history check using the Department of State Police's internet criminal history access tool 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 a period of 14 days or less.

If a search of ICHAT revealed that a resident over 18 had been convicted of a listed offense, the DHS could not issue a license to that applicant, could not renew a license for a licensee applying for renewal, or would have to revoke a current licensee's license.

(A listed offense is any offense for which registration is required under the Sex Offenders Registration Act. For more information, please see **BACKGROUND** below.)

Check for Applicants, Licensees

Under the bill, the DHS could not issue or renew a license to a foster family home or foster family group home without requesting a criminal history check, a criminal records check, and an ICHAT check. Beginning July 1, 2007, however, 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 that time, he or she would not be required to undergo another criminal history check or criminal records check upon license renewal.

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

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

Report of Arraignment

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 had been arraigned for one or more of the following crimes, and within three business days after he or she knew or should reasonably know that an employee or a person over 18 residing in his or her home had been arraigned for one or more of the following crimes: any felony; a misdemeanor that is a listed offense; or any of the following misdemeanors or misdemeanor violations of the following:

- Criminal sexual conduct or an attempt to commit criminal sexual conduct 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).

The offenses also would include a violation of a substantially similar law of another state, a subdivision of this or another state, or the United States.

(This reporting requirement currently applies to a child care center or day care center. The bill would extend it to a foster family home or a foster family group home.)

If the person violated the reporting requirement and the crime involved were either a misdemeanor that was a listed offense or a felony, 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 and/or a fine of up to \$1,000.

If the DHS received documentation that the person arraigned for one of these crimes was not convicted of any crime after the completion of judicial proceedings resulting from the arraignment, the Department would have to delete from the licensee's records all information relating to the arraignment.

Within 30 days after the bill's effective date, the DHS would have to inform all current licensees and all applicants for a license of the requirement to report the arraignments described above, and the penalty for not reporting. Also, at the time the DHS issued a license to operate a foster family home or a foster family group home, it would have to notify the licensee of that requirement and penalty.

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 (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.

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

Children in the foster care system are among the State's most vulnerable, and should not be placed into the care of individuals who have been convicted of child abuse, neglect, criminal sexual conduct, or various other crimes. The bill would require the same type of criminal background checks as those currently required for other individuals who work with children on a regular basis, and would prohibit individuals with a record of certain offenses from obtaining a license to operate a foster care home. The bill would include all current licensees, as well as applicants for new licenses, to ensure that all individuals caring for foster children in the State were checked. In addition, the bill would require a licensee to notify the DHS if he or she or an individual living in the home were arraigned for certain offenses. These provisions would improve the State's ability to ensure that foster children are not exposed to individuals who could pose a threat to their safety and well-being.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on the Department of Human Services. The costs associated with criminal history checks could be passed along to the license applicant in the form of fee increases. The Office of Children and Adult Licensing could incur additional administrative costs for notification.

A complete criminal history and criminal background check would cost \$54, payable to the Department of State Police. The ICHAT check is offered at no cost by the Department of State Police to government and nonprofit agencies, and at a cost of \$10 for all others.

Fiscal Analyst: Bruce Baker
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.