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BILL ANALYSIS

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Senate Bill 271 (as reported without amendment)
Sponsor: Senator Gerald Van Woerkom
Committee: Families and Human Services

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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. The current licensing requirements for foster care providers, however, do not include a review of an applicant's criminal history. Some are concerned that individuals who have been convicted of child abuse, neglect, or other offenses may pose a potential risk to children in the foster care system, and should not be licensed as foster care providers. It also has been pointed out that Federal law requires states, as a condition of funding, to conduct criminal history checks on prospective foster parents (as described below in **BACKGROUND**). To address this issue, it has been suggested that the child care licensing Act should require all applicants for a foster care license, and all current licensees, to submit to 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 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 adult residents of a foster care home or a foster care group home to undergo an ICHAT check.**
- **Provide that a person applying to renew a license to operate a foster family home or foster family group home would not be required to undergo a criminal history or criminal background check if he or she previously had undergone the required checks and had remained continuously licensed since that time.**
- **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.**)

Criminal History & Records Checks

Under the bill, when a person applied for a license or a license renewal 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 Department 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 any felony or for 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 home licensee. (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

Listed Offense

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.

Federal Adam Walsh Child Safety and Security Act

Section 152 of the Adam Walsh Act amended Title IV-E of the Social Security Act (which provides for payments for foster care and adoption assistance) to require states that receive payments under the Act to conduct specific criminal background checks for prospective foster care providers and adoptive parents. Previously, in order to qualify for Federal funding under Title IV-E, a state had to conduct criminal background checks on prospective foster or adoptive parents before final approval of a child's placement could be made, if foster care maintenance payments or adoption assistance payments were being made on the child's behalf. Section 152 of the Adam Walsh Act requires a state to conduct the following criminal background checks on prospective foster or adoptive parents, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child:

- A fingerprint-based check through the national crime information databases.
- A check of any child abuse and neglect registry maintained by the state.
- A check of any similar registry in any other state in which the applicant has resided in the previous five years.

If an applicant is found to have committed a specified crime, he or she may not be approved as an adoptive or foster parent.

Section 152 also removed a provision permitting the governor or legislature of a state to choose to opt out of the requirement to conduct criminal background checks.

Under Section 152, the deadline for compliance was October 1, 2006, although a state may request a delay if legislation is necessary to implement the requirements. According to a spokesperson for the DHS, the Department has requested an extension. If given the extension as expected, the State will have to comply with the above requirements by January 1, 2008, to continue to be eligible for Federal funding under Title IV-E of the Social Security Act.

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 in the care of those who have been convicted of child abuse, neglect, criminal sexual conduct, or similar crimes. The bill would require the same criminal background checks as are mandated for other individuals who work with children on a regular basis, and would prohibit those with a record of certain offenses from obtaining a license to operate a foster care home. The bill also would require that all individuals over the age of 18 living in a foster care home undergo an ICHAT check, an electronic check through a database maintained by the Department of State Police. The ICHAT check is a quick and relatively inexpensive way to determine if an individual has a criminal history without going through the more time-intensive criminal history checks.

In addition, all current licensees would have to undergo criminal checks within one year of the bill's effective date, to ensure that all individuals caring for foster children in the State were checked. Since the cost of the criminal background checks would be borne by the State rather than by the individual, the requirement would not create an obstacle that could discourage individuals from becoming foster care providers.

The bill also would require a licensee to notify the DHS if he or she or an adult living in the home were arraigned for certain offenses. This provision would ensure that the DHS was aware of an ongoing criminal investigation, so that the Department could investigate and take appropriate action.

Response: The bill also should require the State Police to notify the DHS if an individual were arraigned for a crime described in the bill, to ensure that the Department was aware of the criminal proceedings even if the individual failed to meet the reporting requirements.

Opposing Argument

The bill should be expanded to include prospective adoptive parents, as well as foster care providers, to allow the State to comply with new Federal regulations. Section 152 of the Federal Adam Walsh Child Protection and Safety Act of 2006 requires states to conduct criminal background checks on prospective adoptive parents and foster care providers, in order to qualify for Federal funding for adoption and foster care assistance (as described in **BACKGROUND**.) As written, however, the bill would apply only to foster care providers.

Extending the bill to adoptive parents would help to protect more of the State's children from being placed in homes where they could come to harm. Criminal background checks are a reasonable measure that helps to prevent adoptions by abusive or otherwise unsuitable parents. To minimize the burden on those seeking to adopt wards of the State, the State should cover the cost of conducting their background checks, although individuals applying through private adoption agencies could be required to pay the cost of their criminal background checks.

Response: Although the Governor's budget proposal includes increased funding for background checks, it is doubtful that the

proposed funding would cover the cost of conducting checks on adoptive parents as well as all foster care providers. Also, adoptive parents play a different role from foster care providers; they have legal custody over their adopted children and do not have a license that can simply be revoked. Provisions that included background checks for adoptive parents would have to take into account their legal rights once the adoption was finalized. These difficulties lie outside the scope of the bill, and perhaps should be addressed separately.

Opposing Argument

The criminal background checks for current licensees should be incorporated into the licensing renewal process. The child care licensing Act requires each foster care provider to renew his or her license every two years, and the background check would be a logical part of that process. As written, the bill would require each current licensee to undergo criminal checks within one year of the bill's effective date, but the large number of licensees seeking to comply with the requirement could place a strain on the Department of State Police, which would have to perform the checks. Adding the requirement to the renewal process for current licensees would spread the checks out over two years, making the workload more manageable for the State Police, and also would provide a way of verifying that all current licensees complied with the bill.

Response: Extending the time frame for conducting background checks from one year to two years could expose some children to unnecessary risk during that time. It is important to conduct the required checks on those within the system as quickly as possible.

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 (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 actual number of people residing in the homes is not known, but OCAL estimates that approximately 11,000 checks would be required under the bill. The estimated cost of the checks is \$70 per person for an estimated cost of \$770,000.

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.