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BILL ANALYSIS

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Senate Bill 271 (as enacted)
Sponsor: Senator Gerald Van Woerkom
Senate Committee: Families and Human Services
House Committee: Families and Children's Services

PUBLIC ACT 218 of 2007

Date Completed: 1-26-09

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 previous licensing requirements for foster care providers, however, did not include a review of an applicant's criminal history. Some were concerned that individuals who had been convicted of child abuse, neglect, or other offenses could pose a potential risk to children in the foster care system, and should not be licensed as foster care providers. It also was 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 was 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 amended 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 and an FBI records check by the Michigan Department of State Police (MSP).
- Prohibit individuals convicted of a listed offense from receiving a

- license to operate a foster care home or a foster care group home.
- Require the Department of Human Services (DHS), by January 1, 2009, to perform a criminal history check with the MSP on all adult residents of a foster care home or a foster care group home.
- Require the DHS to notify all current licensees that they will be required to submit fingerprints and undergo criminal background checks before their licenses will be renewed.
- Exempt a licensee applying for a license renewal from the required criminal background and criminal history checks if he or she previously has undergone the required checks and since that time has continuously maintained a license to operate a foster family home or a foster family group home.
- Require a licensee to report to the DHS within three days after the licensee, an employee, or an adult residing in the home has been arraigned for a felony or a misdemeanor described in the bill.
- Prescribe penalties for an individual who fails to report an arraignment as required.
- Require the DHS to give licensees and applicants information about the reporting requirement and the penalty.
- Require the MSP to maintain all fingerprints submitted under the Act in a database that provides automatic notification if a criminal

arrest fingerprint card matches a set of fingerprints in the database.

- Require the MSP to notify the DHS in the case of a match, and require the DHS, upon notification by the MSP, immediately to contact the facility with which the individual is associated.**

The bill took effect on January 1, 2008.

Criminal History & Records Checks

Under the bill, when a person applies for a license or renewal of a license to operate a foster family home or a foster family group home, the DHS must request the 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 must give written consent at the time of application for the MSP to conduct the required checks. Also, the DHS must require the person to submit his or her fingerprints to the MSP for the required checks.

The DHS must request the criminal history check and criminal records check on a form and in a manner prescribed by the MSP.

Within a reasonable time after receiving a complete request by the DHS for a criminal history check on a person, the MSP must conduct the check and give the Department a report of the results that contains 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 must initiate that check. After receiving the results of the criminal records check from the FBI, the MSP must provide a report of the results to the DHS.

The MSP may charge the DHS a fee for a criminal history or criminal records check that does not exceed the actual and reasonable cost of conducting the check.

License Issuance; Revocation

The bill prohibits the DHS from issuing or renewing a license to operate a foster family home or a foster family group home without

requesting the required criminal history check and criminal records check.

If one of the required checks or a notification from the MSP reveals that an applicant for a license or renewal of a license, or a person over 18 years of age residing in that applicant's home, has been convicted of a listed offense, the DHS may not issue a license to the applicant. If a check or information obtained from a notification from the MSP reveals 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 has been convicted of a listed offense, the DHS must revoke that license.

(Under the Act, "listed offense" means that term as defined in the Sex Offenders Registration Act, described in **BACKGROUND.**)

Renewals

Beginning on January 1, 2008, if a person applying to renew a license to operate a foster family home or foster family group home previously has undergone a criminal history check and criminal background check and has maintained the license continuously since those checks were performed, that person is not required to submit to another criminal history and criminal background check upon renewal of his or her license.

The DHS must provide written notice to all current licensees and all applicants applying for a license to operate a foster family home or foster family group home, that upon renewal all licensees will be required to submit fingerprints and undergo a criminal history check and criminal background check before their licenses will be renewed. The notice must include information that the licensee may submit his or her fingerprints before the time his or her license is up for renewal.

Report of Arraignment

Under the bill, a person to whom a license to operate a foster family home or foster family group home had been issued must report to the DHS within three business days after he or she has been arraigned for, or knows or reasonably should know that an employee or a person over 18 residing in the home has

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 violates this reporting requirement and the crime involved in the violation is a felony or a misdemeanor that is a listed offense, the person is 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 is a misdemeanor that is not a listed offense, the person is guilty of a misdemeanor punishable by imprisonment for up to one year or a maximum fine of \$1,000, or both.

The DHS must notify a licensee of the reporting requirement and the penalty at the time the Department issues a license to operate a foster family home or foster family group home. The bill also required the DHS, by January 1, 2008, to inform all those currently issued a license and all applicants for a license of the requirement to report arraignments, and the penalty for failing to report.

The DHS must delete from a licensee's records all information relating to an arraignment required to be reported, if the Department receives documentation that the person arraigned for the crime subsequently is not convicted of any crime after the completion of judicial proceedings resulting from the arraignment.

Fingerprint Database

The bill requires the MSP to store and maintain all fingerprints submitted under the Act in an automated fingerprint identification system database that provides for an automatic notification when a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted under the Act. Upon such notification, the MSP must notify the DHS immediately, and the DHS immediately must contact the respective child care center, day care center, family child care home, group child care home, licensed child placing agency or approved governmental unit, foster family home, or foster family group home with which that individual is associated. Information in the database is confidential, is not subject to disclosure under the Freedom of Information Act, and may not be disclosed to any person except for purposes of the child care licensing Act or for law enforcement purposes.

Child Care Homes

The bill replaces references to "group day care homes" and "family day care homes" with "group child care homes" and "family child care homes" throughout the Act.

The Act prohibits the DHS from issuing or renewing a license of a child care center or day care center without requesting a criminal history check and criminal records check on each partner, officer, or manager of the center. If any of the required checks reveals that an applicant for a license or a

license renewal has been convicted of a listed offense, the DHS may not issue a license to that applicant or renew the applicant's license. If one of the required checks reveals that a current licensee has been convicted of a listed offense, the DHS must revoke the license of that licensee.

Under the bill, the DHS also must take those actions based on information obtained as a result of notification from the MSP as required by the bill.

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 Michigan was granted an extension to comply with the 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 requires the same criminal background checks as are mandated for other individuals who work with children on a regular basis, and prohibits those with a record of certain offenses from obtaining a license to operate a foster care home. In addition, a licensee must undergo criminal checks when renewing his or her license, to ensure that all individuals caring for foster children in the State are checked. The bill also requires that all individuals over the age of 18 living in a foster care home undergo a criminal history check with the Department of State Police, to verify that those individuals have not been convicted of certain offenses.

Since the cost of the criminal background checks will be borne by the State rather than by the individual, the requirement will not create an obstacle that could discourage individuals from becoming foster care providers. The bill prevents unnecessary and redundant criminal checks by waiving the requirement if a licensee already has undergone the required checks and has maintained a license continuously since that time.

The bill also requires a licensee to notify the DHS if he or she or an adult living in the home has been arraigned for certain offenses, to ensure that the DHS is aware of an ongoing criminal investigation and can investigate and take appropriate action.

In addition, the MSP must notify the DHS if any licensee under the Act is arrested, using a database that automatically compares the fingerprints of those arrested to a database of licensees under the Act, which include child care and daycare centers as well as foster care homes. These procedures will help improve communication between the MSP and the DHS, to prevent any individual case from slipping through the cracks.

Response: The law 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 Adam Walsh Child Protection and Safety Act 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 applies only to foster care providers.

Extending the law 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.

Since adoptive parents 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 could take into account their legal rights once an adoption was finalized.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill will have indeterminate fiscal impact on State and local government. The DHS Office of Children and Adult Licensing (OCAL) will incur additional cost for an increased number of criminal history and background checks. There are 6,394 licensed Foster Family/Group Homes in the State as of January 2009, and about 5,100 of these homes have a license older than one year. The OCAL paid for the fingerprinting of nearly 13,500 individuals in the previous fiscal year. The Department of Human Services has assumed that about 2,500 currently licensed homes have not completed a fingerprint check. Based on an assumption that there will be 2,000 additional licensed homes in fiscal year 2008-09, the cost for providing fingerprint checks for the remainder of FY 2008-09 will be about \$750,000.

There are no data to indicate how many offenders will be convicted of failing to report arraignments offenses. Local governments will incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. The State will 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 will 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.