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NOTIFY REPORTED CHILD ABUSER

House Bill 4596 (Substitute H-2)
First Analysis (6-30-93)

Sponsor: Rep. Jack Horton
Committee: Human Services & Children

THE APPARENT PROBLEM:

The Child Protection Law requires various people (such as teachers and physicians) to report known or suspected child abuse or neglect to the Department of Social Services (DSS). The DSS investigates a report, and if it finds credible evidence of child abuse or neglect, the report is considered substantiated, and is entered onto the central registry that the state department maintains under the act. (Department policy defines "credible evidence" as facts that are both relevant and accurate and support a conclusion that there is a causal relationship between the perpetrator's behavior and the child's condition or situation.) Information on the central registry is confidential information available only to certain entities, including law enforcement agencies, legal counsel, child placing agencies investigating prospective adoptive or foster parents, and juvenile court staff investigating prospective foster parents.

Although the person named in an abuse or neglect allegation may receive the information (with the identity of the reporting person removed), and may request the DSS to amend or expunge an inaccurate report, the law contains no mechanism to ensure that someone named on the central registry is notified that he or she has been the subject of an allegation of child abuse or neglect.

Many are mistrustful of the accuracy of information on the central registry. Statewide consistency regarding substantiation and entry of information apparently has been lacking. Further, reports are that the department has in the past used the central registry system as a means of extending eligibility for services; many people may have viewed a central registry listing as an acceptable trade-off for receiving services. Although the department evidently has ended this practice, concerns remain. Central registry information can be used to deny an adoption, child care employment, or a foster care license, so it is important to ensure that false or inaccurate reports are not maintained. Proposals to provide central registry information to employers

increases concerns about the accuracy of central registry information and the lack of due process for alleged perpetrators.

On August 1, 1992, the department instituted a policy of notifying people whose names are being placed on the central registry. Upon completion of an investigation that identifies a person as a perpetrator, the identified person is to be given notification of his or her rights, including the right to review the information on file, to know who has access to the information, to request amendment or expunction, and to have an administrative hearing if a request for expunction is denied.

The proportion of substantiated reports (as a percentage of total investigations) has dropped dramatically since the department started notifying alleged perpetrators last August: from about 31 to 33 percent in recent years, to about 20 percent. While the reasons for this drop are not yet clear, many suspect that the figures suggest that notifying alleged perpetrators serves to prevent what would otherwise be erroneous entries onto the central registry.

Legislation has been proposed to require the department to continue to notify alleged perpetrators, and to remove any doubt over the department's authority to do so.

THE CONTENT OF THE BILL:

The bill would amend the Child Protection Law to require the DSS to record substantiated reports of child abuse or neglect in the central registry, and to require the department to notify within 30 days each individual named as a perpetrator. The notice would be in writing and would explain the person's right to request expunction of the record and the right to a hearing if the department refused the request. The notice would not identify the person reporting the suspected abuse or neglect.

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In releasing information under the act (to alleged perpetrators or other entities allowed access to central registry information), the department could not include a police report related to an investigation of suspected child abuse or neglect (this provision, however, would not preclude the department from including reports of convictions of crimes related to child abuse or neglect).

MCL 722.625 et al.

BACKGROUND INFORMATION:

The Governor's Task Force on Children's Justice included the following among its June 1992 recommendations for improving Michigan's response to child abuse and neglect:

"Michigan currently has no due process system for persons placed on the central registry. Michigan should adopt a fair hearing system for persons who are placed on the central child abuse and neglect registry as a result of substantiated child abuse referral . . . Once a fair hearing system is in place, the central child abuse and neglect registry should be available for screening applicants for sensitive jobs in the child care field, including foster care, residential treatment settings, day care centers, nursery schools, summer camps, and the like."

FISCAL IMPLICATIONS:

There is no fiscal information at present. (6-29-93)

ARGUMENTS:

For:

The bill would extend to people alleged to have committed child abuse or neglect a modicum of due process before their names were maintained on the state central registry of suspected child abusers. Central registry information is widely perceived to be inconsistently developed and sometimes unreliable. If someone is to be denied the ability to adopt a child or be employed in child care as the result of a central registry listing, that person should at least be given the opportunity to rebut the secret charges of child abuse or neglect. Such an opportunity becomes imperative if, as some have proposed, access to central registry information is broadened to include prospective employers of people whose duties would bring them into contact with children. Since last August, when the department began notifying alleged perpetrators, the

proportion of substantiated reports has declined, suggesting that longstanding concerns about the accuracy of central registry information were well-founded. By requiring alleged perpetrators to be notified when information is placed on the central registry, the bill would safeguard their rights, improve the accuracy of the central registry, and legalize what the department is doing.

Against:

Neither the act nor the bill contain any standards for expunction of a child abuse record. To ensure children were adequately protected, and to improve the accuracy and consistency of central registry entries, statute should give the department and administrative law judges guidelines to follow.

Against:

While the bill may protect the rights of both the justly and the wrongly accused, it also may reveal to wrongdoers that they are under investigation. Once alerted, someone like a child molester could move or take extra precautions against being caught. The bill could operate to diminish protections for children and interfere with criminal investigations.

Response:

The bill would forbid information on police investigations from being revealed. Further, the bill would simply place in statute what is now department policy. Notifications are being done now.

Against:

As the notification requirement would apply only to new entries, the bill would do nothing to address the no doubt many inaccurate entries already maintained in the central registry.

Response:

Department policy provides for notification of alleged perpetrators named in old entries if a request for information is received concerning the individual. In such situations, policy is respond to the inquiry immediately, but also to have the originating children's protective services unit conduct an administrative review to determine whether the record should be expunged. If the record is not expunged, the unit must notify the alleged perpetrator as is done for new investigations.

POSITIONS:

There are no positions on the bill.