



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 615 (as enrolled)
House Bills 4936 and 4958 (as enrolled)
Sponsor: Senator Bill Hardiman (S.B. 615)
Representative Rick Baxter (H.B. 4936)
Representative Bill Caul (H.B. 4958)
Senate Committee: Families and Human Services
House Committee: Judiciary

PUBLIC ACT 128 of 2005
PUBLIC ACTS 133 & 134 of 2005

Date Completed: 5-17-07

RATIONALE

In April and May 2005, *The Detroit News* published a series of articles detailing the employment of sex offenders and other criminals by Michigan schools, day care centers, and other institutions in which employees have frequent contact with children. According to one article, the newspaper found that at least 35 Michigan school employees or recent hires had been charged with or convicted of sexual misconduct in the previous 15 months and had victimized approximately 50 children during that time ("State fails to stop teacher sex abuse", 4-24-05).

Also in May 2005, the Auditor General released a report of a performance audit of the Office of Children and Adult Licensing (OCAL), the entity within the Department of Human Services (DHS) responsible for licensing and regulating child care organizations, including day care centers and homes. The report included a finding that OCAL did not always perform criminal history background checks on certain child day care center employees and adults living in group day care homes, and never obtained periodic updates on the criminal histories of licensees and adult household members, as required by the Child Day Care Licensing Manual.

The Auditor General recommended, and OCAL began implementing systems to ensure, better criminal background screening of child care licensees, administrators, directors, and adult

household members of day care homes. In addition to these measures, it was suggested that child care and day care centers and homes should be required to perform background checks on all current and prospective employees, that child care center employees should be required to notify centers when they are arraigned for certain crimes, that group and family day care home registrants should be required to notify the DHS when they are arraigned for certain crimes, and that the DHS should be prohibited from issuing a license to or renewing the license of a center or home without obtaining a background check of the licensee.

CONTENT

Senate Bill 615 amended the child care licensing Act to do the following:

- **Require the DHS to request the Michigan Department of State Police (MSP) to conduct a criminal history check and criminal records check on an applicant for a certificate of registration to operate a family day care home or a license to operate a group day care home.**
- **Require the DHS to perform a criminal history check and criminal records check on all current registrants and licensees by January 1, 2007.**
- **Require a person to whom a license or certificate of registration has been**

issued to report to the DHS within three business days after being arraigned for specific crimes.

- Prescribe criminal penalties for a person who fails to report as required.
- Require the DHS to notify licensees and registrants of the bill's reporting requirements and the penalties for a violation.
- Require the DHS to perform a background check on everyone older than 18 residing in a family day care or group day care home when an application for licensure or registration is made.
- Require the DHS, by January 1, 2007, to perform a background check on everyone older than 18 residing in a home that currently is registered or licensed as a day care home.
- Prohibit the DHS from issuing a certificate of registration or a license, as applicable, if the check reveals that anyone has been convicted of a listed offense.

House Bill 4936 amended the Act to do the following:

- Require the DHS to request the MSP to perform a criminal history and criminal records check on an applicant for child care center or day care center licensure or licensure renewal.
- Prohibit the DHS from issuing a license to or renewing the license of a center, or the certificate of registration for a family day care home or license for a group day care home, without requesting the required checks.
- Prohibit the DHS from issuing a license or renewal license, and require the DHS to revoke a license, if the required checks reveal that the applicant or licensee has been convicted of a listed offense.
- Require a child care center or day care center to perform a background check on a person before making an offer of employment.
- Require a center to perform a criminal history check on all current employees by January 1, 2007.
- Prohibit a center from making an offer of employment if a person's background check reveals that he or

she has been convicted of a listed offense, and require a center to terminate a current employee whom a check reveals has been convicted of a listed offense.

- Require a center licensee to report to the DHS and a center employee to report to the center within three business days after being arraigned for specific crimes.
- Prescribe criminal penalties for a center or person who does not report as required.
- Require centers to notify employees of the bill's reporting requirements and the penalties for a violation.

House Bill 4958 amended the Code of Criminal Procedure to include in the sentencing guidelines certain violations of the reporting requirements under **Senate Bill 615** and **House Bill 4936**.

The bills took effect on January 1, 2006. House Bill 4958 was tie-barred to Senate Bill 615 and House Bill 4936. Those two bills were tie-barred to each other. They are described below in further detail.

Senate Bill 615

Under the bill, when a person applies for, or applies to renew, a certificate of registration to operate a family day care home or a license to operate a group day care home, the DHS must request the MSP to conduct a criminal history check, as well as a criminal records check through the Federal Bureau of Investigation (FBI), on the person.

Each person applying for a certificate of registration or license to operate a group home must give written consent at the time of the application for the MSP to conduct the criminal history check and criminal records check. The DHS must require the person to submit his or her fingerprints to the MSP for the criminal history and records checks.

The DHS must request a criminal history check and criminal records check on a form and in the manner prescribed by the MSP. Within a reasonable time after receiving a complete request for a criminal history check on a person, the MSP must conduct the check and provide a report of the results to the DHS. The report must contain any criminal history record information on the person that the MSP maintains.

The MSP must initiate a criminal records check within a reasonable time after receiving a proper request. After receiving the results 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 required criminal history check or a criminal records check that does not exceed the actual and reasonable cost of conducting the check. The DHS may pass along to the registrant, licensee, or applicant the actual cost or fee charged by the MSP.

By January 1, 2007, the DHS had to conduct a criminal history check and criminal records check on all current registrants and licensees.

When a person applies for a certificate of registration to operate a family day care home or a license to operate a group day care home, the DHS must perform a criminal history check using the MSP's Internet Criminal History Access Tool (ICHAT) on all people over 18 years old residing in the home in which the day care is operated. Additionally, by January 1, 2007, the DHS had to perform an ICHAT check on all people over 18 living in the home in which a family or group day care home currently was operated.

If the ICHAT search reveals that a person has been convicted of a listed offense, the DHS may not issue a certificate or license to the applicant, may not renew a certificate or license to an applicant applying for renewal, and must revoke a current registrant's certificate or a current licensee's license. The ICHAT search requirement does not apply to a person residing in the home for a period of 14 days or less.

A person to whom a certificate of registration or license has been issued must report to the DHS within three days after he or she has been arraigned for any of the following crimes and within three days after he or she knows or reasonably should know that an employee or a person over the age of 18 who lives in the home has been arraigned for any of the following crimes:

- Any felony.
- Fourth-degree criminal sexual conduct (CSC) or an attempt to commit fourth-degree CSC.

- Third- or fourth-degree child abuse or an attempt to commit third- or fourth-degree child abuse.
- A misdemeanor involving cruelty, torture, or indecent exposure involving a child.
- A misdemeanor violation of Section 7410 of the Public Health Code (described below).
- A violation of Section 115 (breaking and entering, or entering without breaking), 141a (allowing a minor to possess or consume alcohol or a controlled substance), 145a (accosting, enticing, or soliciting a child for immoral purposes), 335a (indecent exposure), or 359 (larceny from a vacant dwelling) of the Michigan Penal Code.
- A misdemeanor violation of Section 81 (assault and battery), 81a (assault), or 145d (described below) of the Penal Code.
- A misdemeanor violation of Section 701 of the Michigan Liquor Control Code (selling or furnishing alcohol to a minor).
- Any misdemeanor that is a listed offense.

(Section 7410 of the Public Health Code prescribes penalties for a person at least 18 years old who delivers certain controlled substances to someone who is under 18 and at least three years younger than the offender, or who possesses, delivers, or possesses with intent to deliver certain controlled substances on or within 1,000 feet of school property. Section 145d of the Penal Code prohibits the use of the internet or a computer to communicate with someone for the purpose of committing specific offenses. The term "listed offense" is defined below, under **BACKGROUND**.)

If a person required to report to the DHS does not report as required, he or she is guilty as follows:

- If the crime that is not reported is a misdemeanor that is a listed offense or a felony, the registrant is guilty of a felony punishable by imprisonment for up to two years and/or a maximum fine of \$2,000.
- If the unreported crime is a misdemeanor that is not a listed offense, the person is guilty of a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$1,000.

The DHS must delete from a registrant's or licensee's records all information relating to an arraignment required to be reported if it

receives documentation that the person subsequently is not convicted of any crime after the completion of judicial proceedings resulting from the arraignment.

By January 31, 2006, the DHS had to inform all current registrants and licensees and all applicants for a certificate of registration or a license of the bill's reporting requirements and penalties. Additionally, at the time the DHS issues a certificate of registration to operate a family day care home or a license to operate a group day care home, it must notify the registrant or licensee of the reporting requirements and penalties.

(Under the Act, "family day care home" means a private home in which one to six minor children are received for care and supervision for periods of less than 24 hours per day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. The term includes a home in which care is given to an unrelated minor child for more than four weeks during a calendar year. "Group day care home" has a similar definition, except that such a facility receives seven to 11 minor children for care.)

House Bill 4936

Employee Background Checks

Under the bill, before a child care center or day care center makes an offer of employment to a person or allows a person to work regularly and continuously under contract at the center, the child care or day care center must perform a background check on that person using ICHAT. If the ICHAT search reveals that the person has been convicted of a listed offense, the center may not make an offer of employment to that person, or allow him or her to work regularly and continuously under contract at the center. (Under the bill, "listed offense" means that term as defined in the Sex Offenders Registration Act, described under **BACKGROUND.**)

Additionally, by January 1, 2007, the center had to conduct a criminal history check on all current employees using ICHAT. If the ICHAT search revealed that a current employee or a person who worked regularly and continuously under contract had been convicted of a listed offense, the center

could not continue to employ that person or allow him or her to work under contract.

A child care or day care center may pass along the actual cost of the ICHAT search to the employee or applicant.

A child care or day care center employee must report to the center within three business days after he or she has been arraigned for any of the crimes specified in the bill (which are the same as those that must be reported under Senate Bill 615), or a violation of a substantially similar law of another state, a political subdivision of this State, or the United States.

If a person does not report to the center as required, he or she is subject to criminal penalties (which are the same as those prescribed by Senate Bill 615).

If a center receives documentation that an employee subsequently is not convicted of any crime after the completion of judicial proceedings, the center must delete all information relating to the arraignment from the employee's records.

By January 31, 2006, a child care or day care center had to inform all current employees and all people working regularly and continuously under contract at the center of the bill's reporting requirements and the penalty for not reporting as required. Additionally, at the time a center makes an offer of employment to a person or allows a person to work under contract regularly and continuously at the center, the center must notify the person of the reporting requirements and penalties.

(Under the Act, "child care center" or "day care center" means a facility, other than a private residence, that receives at least one preschool or school-age child for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child. The term includes a facility that provides care for at least two consecutive weeks, regardless of the number of hours of care per day. A facility generally is described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, or drop-in center.)

Licensee Background Checks

Under the bill, when a person, partnership, firm, corporation, association, or nongovernmental organization applies for, or applies to renew, a license for a child care center or day care center, the DHS must request the MSP to conduct a criminal history check, as well as a criminal records check through the FBI, on the person or each partner, officer, or manager of the center applying for the license.

Each person applying for a license to operate a center must give written consent at the time of the application for the MSP to conduct the criminal history check and criminal records check. The DHS must require the person to submit his or her fingerprints to the MSP for the criminal history and records checks.

The DHS must request a criminal history check and criminal records check on a form and in the manner prescribed by the MSP. The MSP must conduct a criminal history check within a reasonable time after receiving a complete request and provide a report of the results to the DHS. The report must contain any criminal history record information the MSP maintains on the person. Additionally, the MSP must initiate a criminal records check within a reasonable time after receiving a complete request. After receiving the results 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 required criminal history check or a criminal records check that does not exceed the actual and reasonable cost of conducting the check. The DHS may pass along to the licensee or applicant the actual cost or fee.

If a criminal history or criminal records check reveals that an applicant for a license or license renewal has been convicted of a listed offense, the DHS may not issue or renew the license. If the criminal history or criminal records check reveals that a current licensee has been convicted of a listed offense, the DHS must revoke the license.

A licensee must report to the DHS within three business days after he or she has been arraigned for a specified crime (as required under Senate Bill 615), or a violation of a substantially similar law of another state, a

political subdivision of this State, or the United States.

If a licensee does not report to the DHS as required, he or she is subject to the penalties prescribed for an employee who does not report as required.

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

By January 31, 2006, the DHS had to inform all licensees and license applicants of the bill's reporting requirements and the penalty for not reporting as required.

(Under the bill, "criminal history record information" means that term as defined in the fingerprinting law (MCL 28.241a), i.e., name; date of birth; fingerprints; photographs, if available; personal descriptions, including identifying marks, scars, amputations, and tattoos; aliases and prior names; Social Security number, driver license number, and other identifying numbers; and information on misdemeanor and felony arrests and convictions.)

House Bill 4958

The bill added the following crimes to the sentencing guidelines as Class G public safety offenses subject to a statutory maximum of two years' imprisonment:

- A child care or day care center licensee's or employee's failure to report an arraignment for a felony or a listed offense that is a misdemeanor (as required by House Bill 4936).
- A family day care home registrant's or group day care home licensee's failure to report an arraignment for a felony (as required by Senate Bill 615)

Additionally, the bill changed the statutory maximum from four years to "variable" for intentionally making a false report of child abuse that would be a felony if the report were true.

MCL 722.115f & 722.115g (S.B. 615)
722.115 et al. (H.B. 4936)
777.15g (H.B. 4958)

BACKGROUND

Listed Offense

Section 2 of the Sex Offenders Registration Act defines "listed offense" as 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 years of age.
- Gross indecency involving a victim under 18, except for a juvenile disposition or adjudication.
- First-, second-, third-, or fourth-degree CSC.
- 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

Parents deserve the assurance that their children's caregivers are not dangerous criminals. Child victims of sex crimes can suffer ill effects for years. According to *The Detroit News*, they may lose trust in authority figures, experience compromised physical health, and perform poorly in school

("Schools, Granholm pledge to curb abuse by teachers", 4-25-05). Later in life, the victims are more likely to abuse alcohol and drugs and may have difficulty forming intimate relationships.

Those with abusive tendencies toward children may be drawn to seek employment at child care facilities because of the easy access it affords them. Child care workers often are admired by the children they watch and are trusted by parents, allowing the workers ample opportunity to victimize children without scrutiny. The bills' requirements to conduct background, criminal history, and criminal record checks on all prospective and current center licensees and employees, and day care home registrants and employees, as well as background checks on all adults present in day care homes, will add to parents' peace of mind and help protect children, who cannot defend themselves against people who abuse their positions of authority.

Opposing Argument

The bills require people to report to their employers or the DHS, as applicable, after they are *arraigned* for a crime. Sometimes, even if a person later is found not guilty, he or she might still be under a cloud of suspicion, and an employer might decide to terminate his or her employment. Under the bills, a person who does not disclose an arraignment as required, and subsequently is acquitted, still may be jailed or fined for not reporting to his or her employer or the DHS.

Response: The bills' requirements to report certain charges within three days and the corresponding penalties for failing to do so will help to close a gap in the system. State Police and FBI checks reveal only convictions. When a person works closely with children, it is imperative that employers and the DHS know about pending charges in addition to previous convictions, in order to avoid potentially exposing children to harm. Furthermore, the bills require that information related to an arraignment for which the person subsequently is not convicted be deleted from the person's records.

Legislative Analyst: Julie Koval

FISCAL IMPACT

Senate Bill 615

The bill requires child or day care licensee applicants and family day care home or group day care home registration applicants to submit fingerprints to the Department of State Police for a criminal records check, a service that requires a payment of \$54 to the Department. The bill also requires each person over 18 years of age residing in a family day care home or group day care home to undergo a name criminal history check through the Department. The cost of a name check is \$10 if a center is a for-profit business, and there is no charge for a center that has nonprofit or governmental status.

The bill required the DHS, by January 1, 2006, to inform all current registrants and licensees, and all applicants for a certificate of registration or a license, of the requirements to report criminal charges and the penalties for a violation. By January 1, 2007, the DHS had to perform a criminal history check and criminal records check on all current registrants and licensees. At the end of FY 2005-06, there were approximately 16,700 child care facilities, and approximately 70 licensing consultants responsible for notifying providers and conducting the records checks. There was an indeterminate increase in administrative costs for these new functions.

There are no data to indicate how many offenders will be convicted of the new offenses. Local units will incur the costs of misdemeanor probation and incarceration in a local facility, both of which vary by county. The State will incur the cost of felony probation at an average annual cost of \$2,000 per offender, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000. Public libraries will benefit from any additional penal fine revenue.

House Bills 4936 and 4958

House Bill 4936 requires each applicant at a child care or day care center to undergo a name criminal history check through the Department of State Police. The cost of a name check is \$10 if a center is a for-profit business, and there is no charge for a center that has nonprofit or governmental status.

The bill also requires child or day care license applicants to submit fingerprints to the Department of State Police for a criminal records check, a service that requires a payment of \$54 to the Department.

The bills' criminal penalties will have an indeterminate fiscal impact on State and local government. There are no available data to indicate how many offenders will be convicted of the new offenses. An offender convicted of the Class G offenses under the bills will receive a sentencing guidelines minimum sentence range of 0-3 months to 7-23 months. Local units incur the costs of misdemeanor probation and incarceration in a local facility, both of which vary by county. The State incurs 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 \$30,000. Libraries benefit from any additional penal fine revenue.

The bills will have no fiscal impact on the Department of Human Services.

Fiscal Analyst: Bruce Baker
Constance Cole
Lindsay Hollander

A0506\s615ea

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.