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BILL



ANALYSIS

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Senate Bill 94 (Substitute S-5 as passed by the Senate)
 Sponsor: Senator Michael J. Bouchard
 Committee: Families, Mental Health and Human Services

Date Completed: 2-28-96

RATIONALE

In recent years, the State has enacted a number of laws designed to keep convicted criminals out of classrooms. These efforts began with Public Act 61 of 1987, requiring county prosecutors to notify the State Board of Education whenever a teacher was convicted of a sex-related offense or child abuse, and establishing a procedure for the State Board to follow, including suspending a teaching certificate, when a teacher had been convicted of such an offense. Public Act 99 of 1992 then amended the School Code to require school boards to obtain a criminal history check from the State Police before offering a person employment as a teacher or school administrator, and to add certain drug-related violations to those offenses that can result in suspension of an offender's certificate. The list of offenses was further expanded by Public Act 144 of 1994 to include various assaultive crimes. Most recently, Public Act 83 of 1995 extended the list to *any* felony and certain misdemeanors, and requires schools to request the State Police to conduct a criminal records check through the Federal Bureau of Investigation on an applicant or an individual hired for a teaching or administrative post or a position requiring State Board approval. While these measures go a long way toward protecting children while they are in school, it has been pointed out that children frequently come into contact with potential abusers in many other settings, such as licensed day care homes and child care centers. It has been suggested that individuals who care for children in this type of regulated facility also should be subject to a criminal history check.

CONTENT

The bill would create the "Child-Related Employment Criminal History Check Act", effective August 1, 1996, to do all of the following:

- Require "employers" and "limited employers" to obtain from each job applicant, employee, and volunteer a signed statement of whether that person had ever been convicted of certain criminal offenses.
- Require an applicant, employee, and volunteer of an employer to consent to a criminal history check; and provide that an employer would have to refuse to hire an applicant, and could dismiss an employee or volunteer, who did not give consent.
- Require the Department of State Police to conduct criminal history checks, but only if sufficient funds were appropriated.
- Permit limited employers to conduct a limited criminal history check on an applicant, employee, or volunteer.
- Require the State Police to conduct limited criminal history checks upon request, and provide that the Department could charge no more than \$10 for a limited check.
- Allow an employer or limited employer to request a criminal history check or limited criminal history check of a parent or guardian who would care for or supervise the child of another person.
- Set forth a schedule by which employers could conduct the required checks.
- Extend limited immunity from liability to the Department of State Police and a law enforcement agency that disclosed a person's criminal history under the bill.

The bill would define "employer" as a business, organization, or association that was a governmental entity or licensed by a governmental entity, that employed or used the services of an

employee or volunteer, and that had the care of, or supervisory or disciplinary powers over, one or more children. "Employer" would not include an entity required to be licensed under Part 205, 208, 210, 213, 214, 215, or 217 of the Public Health Code (which govern, respectively, clinical and other laboratories, freestanding surgical outpatient facilities, health maintenance organizations, homes for the aged, hospices, hospitals, and nursing homes). A "limited employer" would be a similar business, organization, or association that was not a governmental entity or licensed by a governmental entity, and would include but not be limited to providers of educational, recreational, or similar activities.

"Employee" would mean an employer's or limited employer's paid full-time, part-time, or temporary employee who was 17 or older and who had unsupervised contact with one or more children as a result of that employment. "Unsupervised contact" would mean contact with one or more children by the employee or volunteer alone or in the presence of only one or more other adults who were related to the employee or volunteer; it would not include contact by an employee or volunteer with one or more children in the presence of one or more adults who were unrelated to the employee or volunteer. "Volunteer" would mean a person who was 17 or older providing regular (more than once a year) voluntary services to an employer or limited employer and who had unsupervised contact with one or more children as a result of providing those services; it would not include a parent or guardian whose child was participating in or attending services or activities offered by that employer or limited employer unless the parent or guardian had direct supervision or control of another child as part of the volunteer activity.

Disclosure of Conviction/Applicable Offenses

The bill would require that an employer or limited employer obtain a signed statement from each employee, applicant, or volunteer indicating whether he or she had ever been convicted of any of the felonies or misdemeanors described below (including a substantially similar law of another state, of the United States, or, in the case of misdemeanors, of a political subdivision of this State). The statement also would have to indicate whether the person had ever been convicted of an attempt or conspiracy to commit, or aiding or abetting, a specified offense.

Knowingly or intentionally making a false

statement on, or withholding information from, the signed statement would be a misdemeanor punishable by up to six months' imprisonment, a maximum fine of \$1,000, or both. An employee or volunteer also would be subject to immediate disciplinary action, including discharge.

The felonies would include a violation of any of the following:

- Part 74 of the Public Health Code, which governs controlled substances.
- The Youth Employment Standards Act, involving the employment of a minor.
- Section 33 of the Michigan Liquor Control Act, which prohibits selling alcohol to a minor.
- Section 5 of Public Act 343 of 1984 (first-degree obscenity).

The felonies also would include a violation of the Michigan Penal Code that involved any of the following: burning a dwelling house, other real property, personal property, or insured property; simple assault; assault with intent to commit murder; aggravated assault; assault with intent to main, to commit burglary or another felony, or to rob and steal; sexual intercourse under the pretext of medical treatment; attempted murder; breaking and entering; home invasion; entering without breaking; burglary with explosives; exposing a child with intent to injure or abandon; child abuse; accosting or soliciting a child for an immoral purpose; child sexually abusive activity; vulnerable adult abuse; soliciting another to commit murder; inducing a minor to commit a felony; child abandonment; deserting a spouse to escape prosecution; sending explosives with intent to injure; sending a device with intent to terrorize; placing explosives with intent to destroy; placing offensive substances with intent to injure; possessing a bomb with unlawful intent; extortion; unlawful sale of a firearm to a minor; unlawful manufacture, sale, or possession of weapons; offenses involving a portable weapon emitting an electrical current, a short-barreled shotgun or rifle, or armor-piercing ammunition; unlawfully carrying a firearm or dangerous weapon; carrying a concealed weapon; committing a violent act wearing body armor; discharging a firearm from a motor vehicle, at a dwelling or occupied structure, or at a law enforcement vehicle; first- or second-degree murder; manslaughter; placement of explosives with intent to destroy; kidnapping; taking another prisoner hostage; mayhem; placing a harmful substance in food; aggravated stalking; poisoning; various prostitution offenses; first-

second-, or third-degree criminal sexual conduct (CSC); assault with intent to commit CSC; armed or unarmed robbery; carjacking; or bank robbery.

The applicable misdemeanors would include violations of the following:

- The Public Health Code's prohibition against selling drug paraphernalia to a minor.
- The Youth Employment Standards Act involving the employment of a minor.
- The Liquor Control Act's prohibitions against selling alcoholic liquor to minors.
- The Liquor Control Act's prohibitions against furnishing fraudulent identification to a minor and using fraudulent identification as a minor to purchase alcoholic liquor.
- The Child Care Licensing Act.
- Public Act 296 of 1968, which prohibits a person from knowingly and willfully aiding or abetting a minor to violate a juvenile court order or concealing or harboring juvenile runaways.
- Provisions of the child protection law that require the reporting of instances of suspected child abuse or neglect.
- Provisions of the Youth Tobacco Act that prohibit the sale of tobacco products to minors.
- Provisions of Public Act 33 of 1978 that prohibit the display or distribution of obscene material to minors and false representation of the minor's age or person's status as a parent or guardian of a minor.
- Provisions in Public Act 41 of 1960 that prohibit aiding minors under the age of 16 to violate curfew hours.
- Provisions in the Michigan Penal Code pertaining to assault, assault and battery, and infliction of serious injury, involving an assault against a minor.
- Provisions in Public Act 343 of 1984 pertaining to first-degree obscenity.

The misdemeanors also would include violations of provisions in the Michigan Penal Code pertaining to providing minors with cereal beverages with alcohol; committing child abuse; purchasing goods from minors as junk shop dealers, peddlers, or second-hand dealers, without parental consent; interfering with legal custody arrangements; allowing minors in bars; exhibiting or employing minors in certain occupations such as wire walking, riding, or dancing or for any obscene, indecent or immoral purpose; allowing a minor to consume or possess alcohol or a

controlled substance at a social gathering; furnishing minors with obscene books; exhibiting obscene material to minors; maintaining an unlicensed boarding home for children; contributing to the neglect or delinquency of a minor; soliciting a minor for immoral purposes; possessing child sexually abusive material; refusing or neglecting to support one's family; prostitution; window peeping; indecent or obscene conduct; loitering at a place of prostitution or lewdness; selling firearms of over 30 inches long to minors; selling or furnishing to a minor without parental consent any bulk gunpowder, dynamite, blasting caps or nitroglycerine; indecent exposure or sexual delinquency; soliciting or accosting a person to commit prostitution, lewdness, or other immoral acts; admitting a person to a place of prostitution, lewdness, or assignation; engaging or offering to engage the services of a female for prostitution, lewdness, or assignation; leasing houses for prostitution; employing or detaining female minors in houses of prostitution; and committing fourth-degree CSC.

Criminal History Check

An applicant, employee, or volunteer of an employer would have to give written consent for the employer to conduct a criminal history check. ("Criminal history check" would mean a determination, through fingerprints and use of the State repository of criminal history record information and the records of the Federal Bureau of Investigation, of whether a person had been convicted of a crime.) The person also would have to give the Department of State Police any information necessary for the check, including two sets of fingerprints and date of birth. An employer would be prohibited from hiring an applicant, and could dismiss an employee or volunteer, who did not give comply with these provisions.

An applicant, employee, or volunteer would have to provide the two sets of fingerprints to the Department through a law enforcement agency (i.e., a sheriff's department or the police department of a city, village, or township). The law enforcement agency would have to comply with Public Act 120 of 1935 and any applicable procedures established by the Department for those checks. (Public Act 120 regulates the processing of fingerprints, and specifies a maximum fee of \$15 for processing fingerprints and conducting criminal record checks.)

An employer would have to request the Department to conduct a criminal history check on

an applicant, employee, or volunteer who had given written consent. The Department would have to conduct the check upon a request, and determine the existence of any criminal history in this State through the use of the State repository of criminal history record information. The Department also would have to forward fingerprints to the FBI and request that the Bureau make a determination of the existence of any national criminal history. The Department would have to conduct criminal history checks under the bill, however, only if sufficient funds to do so beyond those collected by fee were appropriated by the Legislature through the appropriations process.

The Department would have to complete a criminal history check and provide the results of its determination and that of the FBI to the employer and the applicant, employee, or volunteer within 21 days after the request was made. The Department could not provide the results of the FBI determination to an employer that was not a governmental entity, however, but would have to notify the employer whether the determination disclosed any criminal history for the individual in addition to that disclosed by the Department's determination. The Department would have to prescribe the form for requests and information necessary to conduct the checks, and the form for providing the results.

The bill specifies that these provisions would not apply to an individual required to undergo a criminal records check under the School Code, if the results of those checks were available to the employer.

Limited Criminal History Check

A limited employer could conduct a limited criminal history check on an applicant, employee, or volunteer. ("Limited criminal history check" would mean a determination, through use of the State repository of criminal history records information and without the use of fingerprints, of whether a person had been convicted of a crime in this State.) If a limited employer chose to conduct such a check, the applicant, employee, or volunteer would have to give written consent and provide the Department with any information necessary, including date of birth, Social Security number, and any other names or aliases used.

A limited employer could request the Department to conduct a limited criminal history check on an applicant, employee, or volunteer who had given

written consent. The Department would have to conduct the check upon a request, and determine any criminal history in this State through the use of the State repository of criminal history record information. The Department could charge no more than \$10 for a limited check. The Department would have to complete the check and provide the result of its determination to the employer and to the applicant, employee, or volunteer within 21 days after the request was made. The Department would have to prescribe the form of the request and necessary information for a limited criminal history check, as well as the form for providing the results.

Criminal History Checks of Parents

An employer or limited employer could request a criminal history check or limited criminal history check, as applicable, of a parent or guardian who otherwise met the definition of volunteer, but whose child was participating in or attending services or activities offered by that employer or limited employer, if the parent or guardian had or would have care of, or supervisory or disciplinary powers over, another minor. The parent or guardian would have to consent to the criminal history check if requested by the employer, and the local law enforcement agency or the Department would have to conduct the check upon the same terms as it would for an employer or limited employer described above.

Schedule for Required Checks

An employer could conduct the criminal history checks required under the bill according to the following schedule. For the calendar year in which the bill took effect, the employer could conduct checks of pending applicants who applied in that year, employees and volunteers who began in that year, and employees and volunteers who began in the two preceding calendar years. For each subsequent calendar year, the employer could conduct checks of applicants who applied in that year, employees and volunteers who began in that year, and employees and volunteers who began in the two calendar years preceding the earliest calendar year for which criminal history checks were conducted in the preceding calendar year. The bill specifies, "Thus, if this act takes effect August 1, 1996, the employer may conduct in 1996 criminal history checks of pending applicants who applied in 1996, employees who began in 1996, and employees and volunteers who began in 1994 and 1995. For 1997, the employer may conduct criminal history checks of applicants who applied

in 1997, employees and volunteers who began in 1997, and employees and volunteers who began in 1992 and 1993.”

Other Provisions

An employer could employ or use the services of an applicant required to undergo a criminal history check before completion of the check. If a criminal history check or limited criminal history check revealed a conviction for a crime described in the bill, the employer could not hire the applicant or could dismiss the employee or volunteer who had the conviction. If an employer retained an employee or volunteer whose criminal history check or limited check revealed a conviction for a crime specified in the bill, the employer would have to notify the parent or guardian of each minor who used the employer's services of the conviction and its nature.

If a parent or guardian of a minor hired or intended to hire an individual who had or would have care of, or supervisory or disciplinary powers over, a child in the parent's or guardian's custody, the parent or guardian could request the Department or the local law enforcement agency to conduct a criminal history check under the same terms as checks would be conducted for employers.

The Department, a law enforcement agency, and the employees of either, would have no liability in connection with a criminal history check or limited criminal history check conducted under the bill, except for a knowing or intentional release of false information.

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

The bill would continue recent legislative efforts to protect the State's children from sexual predators and other known offenders. While the law now includes a system to ensure that schools do not hire convicts, schoolchildren and preschoolers encounter potential abusers in many other environments. In fact, a nonschool setting may be inherently more dangerous to children since deviants could more easily obtain employment there without an advanced degree or experience. Like the regulations recently enacted for school personnel, the bill would require individuals to disclose certain prior convictions if they wanted to perform work or volunteer service involving

unsupervised contact with children. Individuals who worked or volunteered for governmental entities or licensed employers also would be subject to a criminal history check, including fingerprinting. While unlicensed employers would not be required to have their applicants, employees, and volunteers undergo a criminal history check, they could choose to conduct a limited criminal history check, without fingerprinting. Reportedly, since teachers have been subject to background checks, about 1,000 have been discovered to have a criminal history. The bill should be at least as effective in screening out offenders in nonschool settings.

Response: The bill's extensive list of crimes includes some arguably minor transgressions, and could weaken efforts to check for more serious offenses.

Opposing Argument

The bill could be expensive to employers in terms of both the cost of criminal history checks and the potential loss of volunteers. Even someone without a criminal record might prefer not to be subjected to a background check, especially if it involved going to the time and trouble of being fingerprinted. Many organizations already take steps to protect children, such as requiring training programs, checking references, and organizing supervisors in pairs of two unrelated adults (like the Boy Scouts' "two-deep" concept). In addition, organizations that were not mandated to request criminal history checks could still feel pressured to do so because of liability fears.

Response: The substitute bill is designed to address these concerns by making criminal history checks strictly permissive for nongovernmental or unlicensed employers and making a limited check available to those employers. If fears about potential liability were more than speculative for a particular limited employer, then background checks probably would be in the best interests of that employer and the children in the employer's care.

Opposing Argument

All children who are cared for or supervised by adults are entitled to protection, regardless of whether they are in a public or private facility. The limited employer concept suggests that some children are due greater protection than others.

Opposing Argument

The bill would establish immunity for the State Police and law enforcement agencies that conducted criminal history checks under the bill, except for the intentional or knowing release of false information, but this protection would not be extended to employers. Employers also should be

exempt from liability in connection with erroneous information that essentially was passed on to them by the State Police.

Legislative Analyst: S. Margules

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Department of State Police. The bill would require the Department to conduct a full criminal history check on an applicant, employee, or volunteer who had given written permission to his or her employer to do so. A full criminal history check with both State and Federal fingerprint checks costs the Department \$39. The number of possible full criminal history checks that would be requested cannot be determined. In addition, the bill provides that the Department "shall only conduct criminal history checks...if sufficient funds...are appropriated" for this specific purpose through the appropriations process. The bill also would permit a limited employee to request that the Department conduct a limited criminal history check on an applicant, employee, or volunteer who had given written permission to his or her employer to do so. The bill would permit the Department to charge no more than \$10 for the limited criminal history check, though the Department charge for this service is only \$5, and it is unclear who would be required to pay it. The number of possible limited criminal history checks that would be requested under the bill cannot be determined.

The potential fiscal impact on the Department of Social Services General Fund costs could be considerable due to the number and scope of the programs that the Department administers and licenses. From foster care placements, adoption, day care, protective and delinquency services, these programs have thousands of State workers and volunteers who would be covered under the bill because of their contact with recipients of State services. A Department specialist is reviewing the potential fiscal impact, and the Senate Fiscal Agency will provide the Agency's analysis as soon as possible.

Fiscal Analyst: B. Baker
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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.