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BILL ANALYSIS

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Senate Bills 97 and 155 (as reported without amendment)
Sponsor: Senator Bill Hardiman (S.B. 97)
Senator Cameron Brown (S.B. 155)
Committee: Families and Human Services

Date Completed: 2-12-07

RATIONALE

An incident in Grand Rapids has raised questions about the procedures for investigating allegations of improper conduct at day care centers. The *Grand Rapids Press* reported that a home day care center operated by a husband and wife was allowed to retain its license despite repeated accusations that the husband had acted improperly with children at the center between 2002 and 2004 ("Day Care Licensed Despite Child Porn", 12-1-05). The field officer investigating the initial allegations recommended that the day care license be revoked, but that decision was overruled by Department of Human Services (DHS) administrators because of a lack of evidence. While investigating similar complaints in December 2004, the Grand Rapids police discovered pornographic images on a computer in the home. Some of the images later were determined to be child pornography.

Despite the allegations and the presence of pornography on the computer, the DHS renewed the day care center's license in May 2005. According to DHS officials, the complaint investigations had been concluded at that point, and the Department had found no evidence sufficient to revoke the license. Also, the DHS evidently was unaware that the images on the computer were child pornography, and if that information had been known, the Department would have moved to suspend the license.

Amid further allegations in August 2005, the couple voluntarily closed the day care center, and a few months later the husband was charged with sexual assault, whereupon the DHS withdrew the day care center's license, according to the *Grand Rapids Press*. It was later revealed that the couple had purchased a larger day care center, licensed to care for 118 children, while the husband was under investigation.

The Department's handling of the case has raised widespread concern, and some have questioned whether proper systems are in place to ensure that appropriate action is taken in cases of alleged child abuse, sexual misconduct, or neglect. According to a DHS spokesperson, the Department is prohibited under the Child Protection Law from notifying anyone of the details of an ongoing investigation, although the owners are under no such restrictions. To protect the safety of children and the rights of parents without compromising an investigation, it was suggested that child care center owners should be required to notify parents if the centers are the subject of an investigation.

CONTENT

Senate Bill 97 would amend the child care licensing Act to require a child care organization that was the subject of a high-risk special investigation by the Department of Human Services to notify the parents or guardians of all children who were present at the time of the incident being investigated, or who otherwise could come into contact with the individual being investigated. The bill also would establish criminal penalties for making a false report that led to a special investigation requiring this notice.

Senate Bill 155 would amend the Code of Criminal Procedure to include in the sentencing guidelines making a false

report that initiated a special investigation. The offense would be a Class F felony against public order, with a statutory maximum of four years' imprisonment.

Senate Bill 155 is tie-barred to Senate Bill 97. Senate Bill 97 is described in detail below.

Under the bill, if the DHS notified a child care organization that a special investigation classified as high-risk was being conducted, the organization would have to make a good faith effort within 24 hours to give oral notification to each parent or legal guardian of the following:

-- Children who were under the child care organization's care at the site at the time the incident being investigated occurred.
-- If the individual being investigated were still present at the organization at the time of the investigation, children who had or would come into contact with that individual as long as he or she was present.

Within one business day after the initial good faith attempt at oral notification, the child care organization would have to send written notice by mail service, facsimile transmission, or electronic mail.

If the DHS determined that a child care organization was not complying with either of these notification requirements, it could suspend the organization's license under the Act, pending review.

If, upon completion of the special investigation, the DHS determined that there were no substantiated rule violations, it would have to give the child care organization written notice of that determination, which the organization could share with the parents or legal guardians who had received notification of the high-risk investigation. The DHS also would have to make this information available on its website.

Under the bill, "special investigation that the department classifies as high risk" would mean an investigation in which the DHS became aware of the existence of one or more of the conditions specified in Section 8(3)(a) to (c) of the Child Protection Law, i.e., abuse or neglect is the suspected cause of a child's death, the child is the victim of suspected sexual abuse or sexual exploitation, or abuse or neglect resulted in severe physical injury to the child.

The bill would prescribe criminal penalties for a person who made a false report to the DHS regarding a child care organization that caused the DHS to initiate a special investigation for which the child care organization had to send notice. If the incident reported would not constitute a crime or would constitute a misdemeanor if the report were true, the person making the false report would be guilty of a misdemeanor punishable by imprisonment for up to 93 days or a maximum fine of $100, or both.

If the incident reported would constitute a felony if the report were true, the person making the false report would be guilty of a felony punishable by the lesser of the following:

-- The penalty for the incident falsely reported.
-- Imprisonment for up to four years or a maximum fine of $2,000, or both.

The bill would not apply to a child caring institution, child placing agency, foster family home, or foster family group home.

(Under the Act, the term "child care organization" includes organizations commonly described as child care centers, child caring institutions, child placing agencies, children's camps, day care centers, day care homes, foster homes, group homes, nursery schools, and parent cooperative preschools.)

Proposed MCL 722.113f & 722.115h (S.B. 97)
MCL 777.15g (S.B. 155)

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 place their children into the care of child care facilities trusting that they will be looked after and protected. When there are allegations of serious misconduct that could threaten a child's safety or well-being, parents have a right to know about the situation. At the same time, child care centers that face these allegations have the

right to due process and a proper investigation into the facts of the case.

Senate Bill 97 would protect the rights of the parents, the children, and the owners of a facility, by requiring the child care center to give parents notice of a high-risk investigation, but limiting the notice to the parents of children who were present at the time of the incident being investigated, or who could come into contact with the individual being investigated. A good faith effort at oral notification would have to be made within 24 hours. For day care centers, oral notification could be as simple as letting a parent know when he or she came to pick up the child, although the bill would require that each parent of the child be notified. At times, the organization might not necessarily be able to reach all parents. An individual's contact information could be incorrect or outdated, or the parents could be divorced or separated, making notification of each parent problematic. Organizations such as summer camps, which would be included under the bill, could have additional difficulty if the child's parents were on vacation or otherwise unreachable. To ensure that all parents were made aware of the situation, the bill would require the initial oral notification to be followed up in writing within one business day. The written notice could be made by mail, e-mail, or fax, which would limit the expense of contacting large numbers of parents. Many organizations already communicate with parents on a regular basis through e-mail, and may have comprehensive e-mail lists that would make notification a relatively simple matter.

Response: Regarding such a serious matter, a child care organization has an obligation to make every effort to notify every parent. Although it would be more expensive, perhaps the bill should require written notification to be sent by certified mail, with return receipt requested.

Also, the bill should require parents to be notified of the investigation's findings, regardless of the outcome. The current language of the bill would permit a child care organization to share the results of an investigation with parents if no rule violations were found, but would not require the disclosure of those results. There are no provisions for notifying parents if violations were substantiated. Parents deserve to know the outcome of the investigation, whatever the results, so that they can make an informed decision regarding the safety of their children.

In addition, although the bill would require parents to be notified in the case of a high-risk investigation, it does not specify whether that requirement would apply to an investigation of employees only, or of a spouse or other adult living in the home. Many day care centers are operated in homes; adults living in those homes may not be associated with the day care center and may not be in regular contact with children. The current language does not state whether an investigation of such an individual would trigger the notification requirements under the bill. That language should be clarified.

Supporting Argument

The bills would establish penalties for making a false report that triggered an investigation. For organizations such as child care facilities or summer camps, maintaining the trust of the parents is crucial to operating a successful venture. A person who made a false allegation that resulted in an investigation and required notice to dozens, or even hundreds, of parents could do lasting damage to the vitality of the organization. If the story were discovered by the media, the harm could be even greater. Even if the investigation showed that the allegations were false, lingering doubts and the negative publicity could keep many parents away. The proposed criminal penalties would deter an individual from making false accusations.

Response: Given the extent of the potential damage that could be done by such actions, the penalties should be increased to reflect the seriousness of the crime.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

Senate Bill 97 would have an indeterminate fiscal impact on the Department of Human Services. The Department regulates approximately 16,300 licensed child day care centers, and group and family homes that provide out-of-home care for children. The Department's Office of Children and Adult Licensing indicates that 78 facilities in calendar year 2006 received a recommendation for a license revocation or refusal to renew. The Office also reports that 25 facilities were served with a

summary suspension notice, which stopped their ability to provide services during the investigation. It is not known at this time how many facilities would be affected by the bills.

The proposed criminal penalties and sentencing guidelines changes in Senate Bills 97 and 155 would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offense. An offender convicted of the Class F offense would receive a sentencing guidelines minimum sentence range of 0-3 months to 17-30 months. 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 average annual 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.