



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



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

Senate Bill 539 (as introduced 10-2-19)
Sponsor: Senator John Bizon, M.D.
Committee: Families, Seniors and Veterans

Date Completed: 10-2-19

CONTENT

The bill would amend the child care licensing Act to do the following:

- Require a child care organization to perform a criminal history background check on a person using the Department of State Police's (MSP) internet criminal history access tool (ICHAT) or equivalent check before making an offer of conditional employment.**
- Prohibit a child caring institution subject to Federal law from permitting a child care institution staff member to begin working unless certain requirements pertaining to a criminal history check were met.**
- Specify that a staff member of a child caring institution who had previously undergone a criminal history check and had remained continuously employed with the institution would not have to submit to another criminal history check if the institution was applying to renew its license.**

The bill is tie-barred to Senate Bills 466-469, which together would govern "qualified residential treatment programs" in the State.

Child Care Organization

Under the Act, before a child care organization makes an offer of employment to a person, or allows a person to regularly and continuously work under contract at the organization, it must perform a criminal history background check on that person using MSP's ICHAT or equivalent check on that person from the state or province of residence. Instead, under the bill, before a child care organization made a *conditional* offer of employment to a person, the child care organization would have to perform a criminal history background check as described. ("Child care organization" means a governmental or nongovernmental organization having as its principal function receiving minor children for care, maintenance, training, and supervision, notwithstanding that educational instruction may be given.)

The Act also specifies that if a search of the MSP's ICHAT or equivalent check on the person from the state or province of residence reveals that the person has been convicted of a listed offense, the organization cannot make an offer of employment to that person or allow him or her to regularly and continuously work under contract at the child care organization. The bill would delete the language pertaining to allowing a person to regularly and continuously work under contract at the child care organization.

Child Caring Institution

Under the bill, a child caring institution subject to Section 671 of Title IV-E of the Social Security Act could not permit a child caring institution staff member to begin working unless all of the following had been completed:

- The Department of Health and Human Services (DHHS) received consent from the child caring institution staff member to conduct a criminal history check.
- The child caring institution received the results of the criminal history check from the DHHS.
- If the employee had a criminal conviction, the institution would have to complete a written evaluation that addressed the nature of the conviction, the length of time since the conviction was entered, and the relationship between the conviction and regulated activity in the child caring institution for the purpose of determining suitability for employment in the institution.

The DHHS would have to require the person to submit his or her fingerprints to the MSP and the FBI for the criminal history check.

(Generally, Section 671 of Title IV-E of the Social Security Act governs State plans for foster care and adoption assistance.)

In addition, if a child caring institution were applying to renew its license, a staff member, who had previously undergone a criminal history check and had remained continuously employed with the institution that was seeking renewal, would not have to submit to another criminal history check after renewal of the institution's license.

("Child caring institution" means a child care facility that is organized for the purpose of receiving minor children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the child caring institution for that purpose, and operates throughout the year.)

Storage of Fingerprints

Currently, the MSP must store and retain all fingerprints submitted under this Act in an automated fingerprint identification system database that provides for an automatic notification at the time a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with the Act. After receiving that notification, the MSP must immediately notify the DHHS and the DHHS must immediately contact the respective child care organization with which that individual is associated.

Additionally, when the MSP can participate with the FBI's automatic notification system similar to the system administered by the MSP, all fingerprints submitted to the FBI can be stored and retained. When a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints for an individual retained in accordance with this Act, the MSP must immediately notify the DHHS. The DHHS must immediately contact the child care organization with which the individual is associated if a conviction results from the arrest.

The Act specifies that except for child placing agencies, the criminal history record information must be released only to the individual to whom the criminal history record information pertains. Under the bill, this exception would apply to a child caring organization as well.

MCL 722.115d & 722.115k

Legislative Analyst: Tyler VanHuyse

FISCAL IMPACT

To the extent that there was an increase in the number of criminal history checks collected and processed, the bill could lead to increases in administrative cost in the Department of Health and Human Services. The increase would be associated with process changes to ensure that child care institutions complied with the background check standard, and with processing increased requests for checks with the Department of State Police and the Federal Bureau of Investigation. There would be no fiscal impact on local government.

Fiscal Analyst: John Maxwell

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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.