

CHILD PROTECTION LAW AMENDMENTS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5274 as introduced
Sponsor: Rep. Luke Meerman

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5275 as introduced
Sponsor: Rep. David LaGrand

House Bill 5278 as introduced
Sponsor: Rep. Brenda Carter

House Bill 5276 as introduced
Sponsor: Rep. Kevin Hertel

House Bill 5279 as introduced
Sponsor: Rep. Darrin Camilleri

House Bill 5277 as introduced
Sponsor: Rep. Michele Hoytenga

House Bill 5280 as introduced
Sponsor: Rep. Andrew Fink

Committee: Families, Children and Seniors
Complete to 11-2-21

SUMMARY:

House Bills 5274 to 5278 would amend the Child Protection Law, and House Bills 5279 and 5280 would make related amendments to 1973 PA 116, known as the child care licensing act.

House Bill 5274 would require DHHS to enter each report made under the act that is the result of a field investigation into an *electronic case management system* (and not a CPSI system).

Electronic case management system means the child protective service information system that is an internal data system maintained within and by DHHS.

Currently under the act, after completing a field investigation, DHHS must determine in which single category to classify the allegation. Under the bill, DHHS also would have to determine whether the child abuse or neglect could be classified as a central registry case.

A person who is the subject of a report or record made where the violation does not result in being placed on the central registry, but is categorized as a category I, II, or III case under section 8d of the act could request DHHS to amend or expunge an inaccurate report or record from the local office file. Within 30 days after the classification of a substantiated case that does not result in being placed on the central registry, DHHS would have to notify in writing each person named in the report or record as a perpetrator of confirmed serious abuse or neglect. All of the following would apply to the notice:

- It must be sent by first-class mail to the identified perpetrator.
- It must set forth the person's right to request expunction of the record and the right to an administrative review conducted by DHHS.
- It must state that the record may be released under section 7d of the act.
- It must not identify the person reporting the suspected child abuse or child neglect.

The request would have to be made within 180 days after the date of service of notice of a confirmed case of serious abuse or neglect. DHHS could, for good cause, extend the time frame if it determines that the person who is the subject of the report or record submitted the request

for a hearing within 60 days after the 180-day notice period expired. DHHS would have to create an administrative process to determine whether the report or record should be amended or expunged.

The bill also would delete the definition of “severe physical injury” from a provision requiring DHHS to seek law enforcement assistance within 24 hours after becoming aware of child abuse or child neglect resulting in severe physical injury to the child.

MCL 722.628

House Bill 5275 would require the Department of Health and Human Services (DHHS) to maintain a statewide *electronic case management system* to carry out the intent of the act. DHHS could enter into vendor contracts to implement, review, and update the system and would have to solicit proposals from entities to provide the services necessary to do so.

DHHS would have to classify a *confirmed case of methamphetamine production, confirmed serious abuse or serious neglect, confirmed sexual abuse, or confirmed sexual exploitation* as a *central registry case*.

Confirmed case would mean that DHHS has determined, by a preponderance of evidence, that child abuse or child neglect occurred by a person responsible for the child's health, welfare, or care.

Central registry case would mean that DHHS confirmed that a person responsible for the child's health or welfare committed serious abuse, serious neglect, sexual abuse, or sexual exploitation of a child or allowed a child to be exposed to or have contact with methamphetamine production.

Central registry would mean a repository of names of individuals who are identified as perpetrators related to a *central registry case* in DHHS's statewide electronic case management system.

Confirmed case of methamphetamine production would mean a confirmed case that involved a child's exposure or contact with methamphetamine production.

Confirmed serious abuse or neglect would mean a confirmed case of mental or physical injury or neglect to a child that involves the following:

- Battering, torture, or other severe physical abuse.
- Loss or serious impairment of an organ or limb.
- Life-threatening injury.
- Murder or attempted murder.
- Neglect that seriously impairs a child's physical or mental health or well-being.

Confirmed sexual abuse would mean a confirmed case that involves penetration, attempted penetration, or assault with intent to penetrate as that term is defined in section 520a of the Michigan Penal Code.

Confirmed sexual exploitation would mean a confirmed case that involves allowing, permitting, or encouraging a child to engage in prostitution or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in a listed sexual act as that term is defined in section 145c of the Michigan Penal Code.

Within 30 days after the classification of a central registry case, DHHS would have to notify in writing each person who is named in the record as a perpetrator of the confirmed serious abuse or neglect, confirmed sexual abuse, confirmed sexual exploitation, or confirmed case of methamphetamine production. All of the following would apply to the notice:

- It must be sent by registered or certified mail, return receipt requested, and delivery restricted to the addressee.
- It must set forth the person's right to request expunction of the record and the right to a hearing if DHHS refuses that request.
- It must state that the record may be released under section 7d of the act.
- It must not identify the person reporting the suspected child abuse or child neglect.

A person who is the subject of a report or record made as described above could request DHHS to amend or expunge an inaccurate report or record from the central registry and local office file. If the department denies this request, the person could, within 180 days from the date of notice of the right to a hearing, request DHHS to hold a hearing to review it. DHHS would have to hold a hearing to determine by a preponderance of the evidence whether the report or record in whole or in part meets the statutory requirement of confirmed serious abuse or neglect, confirmed sexual abuse, confirmed sexual exploitation, or confirmed case of methamphetamine production and whether it should be amended or expunged from the central registry. The hearing would have to be held before an administrative law judge and be conducted as prescribed by the Administrative Procedures Act. DHHS also could, for good cause, hold a hearing if it determines that the person who is the subject of the report or record submitted the request for a hearing within 60 days after the 180-day notice period expired.

If the investigation of a report does not show serious child abuse or child neglect, sexual abuse, sexual exploitation, or methamphetamine production by a preponderance of the evidence, or if a court dismisses a petition based on the merits of the petition filed under the Probate Code because the petitioner has failed to establish that the child comes within the jurisdiction of the court, the information identifying the subject of the report would have to be expunged from the central registry.

If a preponderance of evidence of child abuse or child neglect exists, or if a court takes jurisdiction of the child under the Probate Code, DHHS would have to maintain the information and must maintain the perpetrator's information in the central registry if the case is determined to be a confirmed case of methamphetamine production, confirmed serious abuse or neglect, confirmed sexual abuse, or confirmed sexual exploitation.

Except as otherwise provided, DHHS would have to maintain the information in the central registry until receiving *reliable information* that the perpetrator of the child abuse or child neglect is dead. (*Reliable information* would include information obtained using the United States Social Security Death Index database.)

After an individual has been on the registry for 10 years, he or she would have the right to a hearing regarding removal from the registry. DHHS would have to hold a hearing to determine by a preponderance of the evidence whether the person should be continued to be listed on the central registry. The hearing would have to be held before an administrative law judge and conducted as prescribed by the Administrative Procedures Act. The burden of proof at this hearing would be on the petitioner attempting to have a listed perpetrator removed from the registry. The petitioner would have to demonstrate that the perpetrator cannot reasonably be

presumed to continue to be a risk to children in the future. The court would have to take into account the facts and circumstances that resulted in the individual's originally being placed on the central registry, as well as facts and circumstances in the 10 following years that bear on the assessment of the individual's risk to children in the future.

Upon written request, DHHS could provide confirmation of central registry placement to an individual, office, or agency authorized to receive it.

A parent or other person responsible for a child who has reason to believe that another caregiver could place that child at risk could, with appropriate authorization and identification, receive confirmation of central registry placement of that parent, person responsible, or caregiver.

The act now authorizes DHHS to develop an automated system that allows an individual applying for child-related employment or seeking to volunteer in a capacity that allows unsupervised access to a child whose health or welfare the individual is not responsible for to be listed in that system if it is found that the person has *not* been listed in a central registry case as a perpetrator of child abuse or neglect. The bill would amend this provision to apply it to a person who has *not* been named in a central registry case as the perpetrator of a confirmed case of methamphetamine production, confirmed serious based or neglect, confirmed sexual abuse, or confirmed sexual exploitation.

The bill would require DHHS to search Children's Protective Services records, in addition to the central registry clearance, to determine whether an applicant or licensee, relative, adult member of the household, licensee designee, chief administrator, staff member, or unsupervised volunteer would have a Children's Protective Services history before making a licensing or placement determination, or provide clearance for staff employment or a volunteer in a child caring organization.

The bill also would provide that an action taken to exclude an individual from licensure to provide foster care, child care, or camp services by the Child Care Licensing Division of the Department of Licensing and Regulatory Affairs (LARA) or the Division of Child Welfare Licensing in DHHS, or a predecessor agency, in effect before the bill's effective date, must remain in effect according to its terms, except if an individual is successful in an administrative review or appeal of the exclusionary status in accordance with section 9 of the child care licensing act.

MCL 722,627j

House Bill 5276 would amend certain responses DHHS must make to certain categories of cases after field investigation under the act. Currently, for a case in which Child Protective Services is determined to be required, DHHS must list the perpetrator of child abuse or child neglect, based on a field investigation, on the central registry, either by name or as "unknown" if not identified. The bill would remove this requirement.

Similarly, for a case in which a court petition is determined to be required because the child is not safe and a petition for removal is needed, DHHS now must list the perpetrator of child abuse or child neglect, based on a field investigation, on the central registry, either by name or as "unknown" if not identified. The bill would remove this requirement.

Currently, DHHS is not required to use the structured decision-making tool under certain circumstances involving a nonparent adult who resides outside the child's home or an owner, operator, volunteer, or employee of certain entities under the child care licensing act. If DHHS determines after a field investigation that there is a preponderance of evidence that such an individual is a perpetrator of child abuse or child neglect, DHHS must list the perpetrator in the central registry. The bill would remove the provisions described in this paragraph.

Finally, the bill would provide that section 7g of the act, which concerns the release of specified information under certain circumstances, is to be known and may be cited as "Wyatt's Law."

MCL 722.625 et seq.

House Bill 5277 would amend and add definitions for terms used in the Child Protection Law. These terms and their definitions are generally provided in context throughout this summary in the discussion of the other bills in this package. Of further note, the bill would delete the definitions of the terms "substantiated" and "unsubstantiated." The other bills would change "substantiated" and "unsubstantiated" to "confirmed" and "not confirmed."

MCL 722.622

House Bill 5278 would add a child caring institution licensed under the child care licensing act to a list of entities to which a confidential written report, document, or photograph filed with DHHS under the act may be made available. However, the institution's access to the confidential records would have to be for the purposes of investigating an applicant for employment or an employee of a child caring institution to determine suitability of an applicant or employee for initial or continued employment. The institution would have to disclose the information to the applicant or employee.

The bill also would remove several provisions that now pertain to the maintenance or records, reports, and other information in the central registry or the local office file, or both.

MCL 722.111

House Bill 5279 would amend the child care licensing act to update a citation to the Child Protection Law to reflect the renumbering of provisions that would be made by HB 5278.

MCL 722.120

House Bill 5280 would amend the child care licensing act to define "severe physical injury," for purposes of the act, to mean an injury to a child that requires medical treatment or hospitalization and that seriously impairs the child's health or physical well-being.

Currently, "severe physical injury" means that term as defined in section 8 of the Child Protection Law. However, HB 5274 would remove that definition from section 8. The language that HB 5280 would add to the child care licensing act is identical to the currently referenced language.

MCL 722.111

Enacting provisions

House Bills 5274 to 5278 each would take effect 180 days after enactment.

House Bills 5274 to 5278 are all tie-barred to one another, which means that none of them could take effect unless all of them were enacted. House Bill 5280 is tie-barred to HB 5274, which means that it could not take effect unless HB 5274 were enacted. House Bill 5279 is tie-barred to HB 5278, which means that it could not take effect unless HB 5278 were enacted.

FISCAL IMPACT:

House Bill 5274 would increase expenditures for DHHS by a likely minimal amount. Any additional costs to DHHS would be dependent upon the one-time cost of the creation of an administrative process to determine the expunction or amendment of inaccurate reports or records for category I, II, or III violations that do not result in an individual being placed on the Child Abuse or Neglect Central Registry. Costs are likely minimal as DHHS has a current policy and administrative process for the amendment or expunction of an individual's name from the Child Abuse or Neglect Central Registry. The bill would not have a significant fiscal impact on local units of government.

House Bill 5275 would increase expenditures for DHHS and would have no significant fiscal impact on local units of government. Any additional costs to DHHS would be dependent upon the cost of updates to the Automated Child Welfare Information System (MiSACWIS) or the Comprehensive Child Welfare Information System (CCWIS). Additional costs may also come from possible contract changes with the University of Michigan, which assists with expunging names of individuals who no longer meet criteria to be on the Child Abuse and Neglect Central Registry. MiSACWIS is in the process of being replaced by CCWIS via a phase-out approach. Use of either the MiSACWIS or CCWIS systems will be dependent on the system development process. According to the department, system updates, including any required expungement work and technical changes to the system of record, would cost approximately \$700,000.

House Bill 5276 would not have a significant fiscal impact on DHHS or local units of government.

House Bill 5277 would increase expenditures for DHHS. Any additional costs to DHHS would be dependent upon the cost of updates to MiSACWIS and CCWIS. As mentioned in the fiscal analysis for House Bill 5275, DHHS estimates that system updates, including any required expungement work and technical changes to the system of record, would cost approximately \$700,000. The bill would not have a significant fiscal impact on local units of government.

House Bills 5278, 5279, and 5280 would not have a significant fiscal impact on DHHS or local units of government.

Legislative Analyst: E. Best
Fiscal Analyst: Sydney Brown

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.