



Legislative Fiscal Bureau

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October 28, 2009

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 331 and Assembly Bill 462: Prohibiting Child Care Providers from Being Licensed, Certified, Contracted, Employed, or Paid Under Wisconsin Shares Under Certain Circumstances

Senate Bill 331 and Assembly Bill 462 would increase background check requirements, including a check against the sex offender registry, for child care providers, caregivers employed, contracted for, or used by child care providers, and nonclient residents of the child care providers; establish additional serious crimes that would bar child care providers; and prohibit the ability to show rehabilitation from certain crimes in order to provide child care again. In addition, these bills would prohibit licensure, certification, contracts, or employment for child care, and would require revocation or suspension of a license, certification, contract, or payment if a person has been convicted or adjudicated delinquent of a serious crime.

SB 331 was introduced on October 2, 2009, and referred to the Committee on Children and Families and Workforce Development. On October 14, 2009, Senate Amendment 1 to SB 331 and Senate Amendment 2 to SB 331 were adopted by a vote of 5-0, and passage as amended was recommended by a vote of 5-0. AB 462 was introduced on October 2, 2009, and referred to the Committee on Children and Families. On October 20, 2009, Assembly Amendment 1 to AB 462 and Assembly Amendment 2 to AB 462 were adopted by a vote of 8-0, and passage as amended was recommended by a vote of 8-0.

BACKGROUND

Allowable Child Care Providers. Under the Wisconsin Shares program, an eligible parent may choose a child care provider from four types: (a) a licensed day care center; (b) a Level I certified day care provider; (c) a Level II certified day care provider; or (d) a day care program provided or contracted for by a school board.

A day care center that provides care for four or more children under the age of seven must be licensed by the Department of Children and Families (DCF). Licensed child care is further broken down into family day care centers that provide care for four to eight children and group day care centers that provide care for nine or more children.

Day care providers that are not required to be licensed by the state or established by a school board, but are reimbursed under Wisconsin Shares, must be certified by a county department of social or human services, a similar tribal body, or an agency that contracts with DCF to administer Wisconsin Shares at the local level. County certifications are broken down into two categories: Level I (regular) day care and Level II (provisional) day care. Regularly certified day care providers must complete two credits of early childhood training or non-credit Department-approved training. Prior to being issued a certification, an applicant may be required to graduate from high school or obtain a high school equivalency diploma or a general equivalency diploma. Up to five hours of annual training may also be required. Provisionally certified providers are not subject to the two-credit training requirement. Both regularly and provisionally certified providers, and all employees, substitutes, and volunteers of those providers, must have training in the most current, medically accepted methods of preventing sudden infant death syndrome and shaken baby syndrome.

Local Administration Prior to 2009 Wisconsin Act 28. Wisconsin Works (W-2) agencies determine whether an individual is eligible for a child care subsidy. Once an individual has been determined eligible for the child care subsidy program, the W-2 agency must refer the individual to a county department or similar tribal body for child care assistance. In many counties, the W-2 agency and the county department are the same entity.

These county departments and tribes administer the program and do all of the following: (a) determine a parent's copayment; (b) provide a voucher to individuals for the payment of child care services or otherwise reimburse child care providers; (c) set maximum reimbursement rates for day care providers; (d) certify day care providers that are not licensed by the state; and (e) assist eligible individuals to identify and select appropriate child care. The need for services and eligibility must be redetermined at least every six months.

DCF is responsible for licensing day care centers that provide care for four or more children under the age of seven. County departments and tribes certify child care providers that are not licensed by the state and receive Wisconsin Shares subsidies.

Local Administration Under Act 28. Act 28 authorized DCF to contract with W-2 agencies, child care resource and referral agencies, or other agencies to certify child care providers, determine eligibility for child care subsidies, and administer Wisconsin Shares. County departments would be required to do so in a particular geographic region or a particular tribal unit where DCF has not contracted for those services. Although background checks are a part of the administration of Wisconsin Shares at the local level, Act 28 did not give these contracted agencies the authority to perform background checks as DCF, county departments, and school boards are required to do.

DCF indicates that, through calendar year 2010, W-2 agencies will continue to determine eligibility for child care subsidies.

CURRENT LAW

Required Information for Background Checks for Child Care. Current law requires DCF, county departments, or school boards to obtain certain information on persons who have or seek a license, certification, or contract to operate a child care facility, other caregivers of a provider between the ages of 12 and 18, and any adult who resides at the site (nonclient residents). The required information includes: (a) a criminal history search from the Department of Justice (DOJ); (b) information from the registry of nurses aids maintained by the Department of Health Services (DHS); (c) information maintained by the Department of Regulation and Licensing (DRL) regarding the status of the person's credentials, if applicable; (d) information maintained by DCF on substantiated reports of child abuse or neglect against the person; and (e) information regarding the denial of a license to operate a child care facility, a foster home, a child welfare agency, or other similar entity for the reasons noted below under "Failure to Pass Background Checks." A child care provider must obtain the same information for its caregivers over the age of 18.

Frequency of Background Checks. A county department, DCF, or a school board must request the same information, including a background information form provided by DCF, on every provider at least every four years, or at any time within that period if considered appropriate. The same information must be requested from each caregiver and nonclient resident at least every four years, or at any time within that period if considered appropriate.

Use of Prior Background Check. If a child care provider employs or contracts with a caregiver, and the caregiver had a background check conducted by another entity within the last four years, the child care provider may obtain the background check from the other entity.

Failure to Pass Background Checks. DCF, a county department, or a school board may not issue, continue, or renew a license, certification, or contract to a provider if: (a) the provider has been convicted of a serious crime or adjudicated delinquent for committing a serious crime on or after his or her 12th birthday; (b) the provider is found to have abused or neglected children or any client or misappropriated the property of a client; or (c) the person who holds the position must be credentialed by DRL and the person's credentials are not current or are too limited so as to restrict their ability to provide adequate care to a client. The attachment contains a list of crimes that are considered serious crimes under current law.

A provider is also prohibited from employing or contracting with a person who will have access to children under these same conditions.

In addition, DCF, a county department, an agency that contracts with DCF to administer Wisconsin Shares at the local level, or a school board may refuse to license, certify, or contract with a child care provider, and a child care provider may refuse to employ or contract with a caregiver or

permit a nonclient resident to reside with the provider if the person has been convicted or adjudicated delinquent on or after his or her 12th birthday for an offense that is not a serious crime, but that is determined to be substantially related to the care of a client.

Rehabilitation after Failing to Pass Background Check. A provider who has failed a background check may still receive a license, certification, or contract if they demonstrate by clear and convincing evidence that they have been rehabilitated. Similarly, caregivers and nonclient residents who have failed a background check may still provide child care or live at the premises if they demonstrate that they have been rehabilitated.

Refusal to Pay Subsidies under Wisconsin Shares. DCF and the county departments may refuse to pay a child care provider an authorized subsidy if it is determined that the provider, an employee, or any other person living on the premises where the child care is provided: (a) has been convicted of a felony or misdemeanor that substantially relates to the care of children; (b) is the subject of a pending criminal charge that substantially relates to the care of children; (c) has been determined to have abused or neglected a child; (d) has been convicted of a felony or misdemeanor that DCF or local administering entity determines substantially relates to the operation of a business; or (e) has violated any provision under the Wisconsin Shares program or any rule related to the program, if DCF or the local administering agency reasonably suspects the violation has occurred.

Licensing and Support Services Appropriation. Under current law, the DHS licensing and support services appropriation allows as one of its purposes background checks on child care providers, caregivers, and nonclient residents. However, similar language should have been part of the DCF licensing appropriations to show that DCF passes on the costs for background checks to child care providers and other child care entities.

SUMMARY OF BILLS

Agencies Contracted to Administer Wisconsin Shares at the Local Level. SB 331 and AB 462 would require agencies that contract with DCF to administer Wisconsin Shares, as well as DCF and county departments, to conduct background checks on child care providers, caregivers, and nonclient residents as part of administering Wisconsin Shares. The bills would subject these contracted agencies to the same authority and requirements that DCF and county departments are subjected to in conducting background checks on child care providers, caregivers, and nonclient residents.

Required Information for Background Checks. SB 331 and AB 462 would expand the required information obtained from a background check for child care providers, caregivers, and nonclient residents to include information that is contained in the sex offender registry regarding whether the person has committed a sex offense that is a serious crime.

Frequency of Background Checks. SB 331 and AB 462 would require DCF, a county department, an agency that contracts with DCF to administer Wisconsin Shares, or a school board to request the required information for background checks from providers who are licensed to operate a day care center, certified as a day care provider, or contracted to operate a day care center every three months or at any time within that period that is considered appropriate.

In addition, SB 331 and AB 462 would require DCF to submit annual reports, beginning January 1, 2011, to the appropriate legislative standing committees that describe any information collected regarding these background checks that must be performed at least every three months, including information that indicates a child care provider is ineligible to be licensed to operate a day care center, to be certified as a child care provider, or to contract to operate a day care center, and describe any action taken in response to the receipt of information that such a provider is ineligible.

SB 331 and AB 462 would require DCF, a county department, a contracted agency, or a school board to request background information for all persons who are nonclient residents of a child care provider and for all persons under 18 years of age, but not under 12 years of age, who are also caregivers used by the child care provider every year or at any time within that period that is considered appropriate.

Finally, SB 331 and AB 462 would also require a licensed day care center, a contracted day care center, or a certified day care provider to request background information at least once every year, or at any time within that period that is considered appropriate, for all persons who are caregivers for the day care provider and are 18 years of age or over. In addition, they would have to require all of their caregivers and nonclient residents to complete a background information form every year that is provided by DCF.

Use of Prior Background Check. The current law provision that allows an entity to obtain background information from another entity that has already done a background check on a specific caregiver if that background check was done within the prior four years would be modified to allow this only if the background check was done within the prior year, rather than the prior four years.

Failure to Pass Background Checks. SB 331 and AB 462 would make several changes to the consequences of failing to pass background checks. First, DCF, a county department, or a contracted agency could not issue, continue, or renew a license, certification, or contract to a child care provider if that provider is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday. In addition, a licensed day care center, certified day care provider, or school board could not employ or contract with a caregiver or permit a nonclient resident if that caregiver or resident is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday.

Second, DCF, a county department, or a contracted agency would be required to revoke the certification or the license of a day care provider immediately upon providing written notice of

revocation, the grounds for revocation, and an explanation of the process for appealing the revocation, if the provider, caregiver, or nonclient resident is convicted or adjudicated delinquent for committing a serious crime on or after his or her 12th birthday. Similarly, a school board would be required to rescind a contract for child care services immediately upon providing written notice of the rescission, the grounds for the rescission, and an explanation of the process for appealing the rescission, if a person who has contracted for a day care program, a caregiver, or a nonclient resident is convicted or adjudicated delinquent for committing a serious crime on or after his or her 12th birthday.

Third, DCF, a county department, or a contracted agency would be required to immediately suspend the certification or the license of a day care provider if the provider, caregiver, or nonclient resident is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday until information regarding the final disposition of the charge or delinquency petition indicating that the person is not ineligible to be certified or licensed is obtained. Similarly, a school board would be required to immediately suspend a contract for child care services if a person who has contracted for a day care program, a caregiver, or a nonclient resident is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday until the final disposition of the charge or delinquency petition indicating that the person is not ineligible to provide a day care program is obtained.

Finally, if not already included in the attachment, the list of crimes for which a child care provider may not be rehabilitated, described below, would also be included in the definition of "serious crime."

Rehabilitation after Failing to Pass Background Check. SB 331 and AB 462 would specify that for purposes of licensing a person to operate a day care center, certifying a day care provider, contracting to operate a day care center, or permitting a person to reside with or be a caregiver of a day care provider, no one who has been convicted or adjudicated delinquent on or after his or her 12th birthday of the following or who is the subject of a pending criminal charge or delinquency petition alleging that the person has committed any of the following offenses on or after his or her 12th birthday may be permitted to demonstrate that he or she has been rehabilitated:

- Any felony crime against children, except for failure to pay child support and hazing.
- Substantial or aggravated battery to a spouse.
- Battery by prisoners, if the victim is a spouse.
- Battery to a spouse when subject to certain injunctions.
- First degree intentional homicide.

- First degree reckless homicide.
- Felony murder.
- Second degree intentional homicide.
- Second degree reckless homicide.
- Mayhem.
- First degree sexual assault.
- Second degree sexual assault.
- Third degree sexual assault.
- Reckless injury.
- Taking hostages.
- Kidnapping.
- Endangering safety by use of a dangerous weapon (intentionally discharging a firearm into a vehicle or building, setting a spring gun, or discharging a firearm from a vehicle).
- Disarming a peace officer.
- Burglary with use of a dangerous weapon or with battery.
- Robbery with use of a dangerous weapon.
- Providing false information to DCF, a county department, a contracted agency, a school board, or other entity during the background check process.
- An offense involving fraudulent activity as a participant in the Wisconsin Works (W-2) program, including as a recipient of a child care subsidy, aid to families with dependent children, medical assistance, food stamps benefits, supplemental security income payments, payments for the support of children of supplemental security income recipients, or health care benefits under the BadgerCare health care program.
- Injury or death by providing alcoholic beverages to a minor, if committed during the previous five years.

- Falsification of proof of age for money or other consideration, if committed during the previous five years.
- Impersonating an officer to commit, or abet the commission of, a crime, if committed during the previous five years.
- Manufacturing or rectifying intoxicating liquor, or selling of this liquor, without a permit, if committed during the previous five years.
- Recovering, using, selling, concealing, or disposing of alcohol or alcoholic liquid derived from denatured alcohol, if committed during the previous five years.
- Homicide by intoxicated use of vehicle or firearm, if committed during the previous five years.
- Substantial or aggravated battery, if committed during the previous five years.
- Battery under special circumstances, if committed during the previous five years.
- Battery or threat to a judge, if committed during the previous five years.
- Battery or threat to a Department of Revenue employee, if committed during the previous five years.
- Battery or threat to a Department of Commerce or Department of Workforce Development employee, if committed during the previous five years.
- Injury by intoxicated use of a vehicle, if committed during the previous five years.
- Operating a vehicle without the owner's consent while possessing a dangerous weapon, if committed during the previous five years.
- Felony hazing, if committed during the previous five years.
- Felony operating a vehicle under the influence of an intoxicant or other drug, if committed during the previous five years.
- Felony violation of the uniform controlled substances act, if committed during the previous five years.
- Felony failure to pay child support, if committed during the previous five years, unless the person has paid all arrearages due and is meeting current support obligations.

Refusal to Pay Subsidies under Wisconsin Shares. SB 331 and AB 462 would specify when DCF or a county department would be required to refuse or suspend payment to a child care provider and when DCF or a county department would be permitted to refuse or suspend payment to a child care provider. If a child care provider is convicted of a serious crime or a caregiver or nonclient resident is convicted or adjudicated delinquent for committing a serious crime on or after his or her 12th birthday, DCF or a county department would be required to refuse to pay the child care provider under Wisconsin Shares beginning on the date of the conviction or delinquency adjudication.

If a child care provider, caregiver, or nonclient resident is the subject of a pending criminal charge or delinquency petition alleging that the person has committed a serious crime on or after his or her 12th birthday, DCF or a county department would be required to immediately suspend payment to the child care provider under Wisconsin Shares until information regarding the final disposition of the charge or delinquency petition indicating that the person is not ineligible to receive such a payment is obtained.

However, DCF or a county department would be allowed to, but not required to, refuse to pay a child care provider under Wisconsin Shares if the child care provider, caregiver, or nonclient resident: (a) has been convicted of or adjudicated delinquent on or after his or her 12th birthday for committing an offense that is not a serious crime but is determined to substantially relate to the care of children or the operation of a business; (b) is the subject of a pending criminal charge that substantially relates to the care of children; (c) has abused or neglected a child; or (d) has violated any provision under Wisconsin Shares or any rule promulgated under Wisconsin Shares.

Initial Applicability and Effective Dates. These bills would take effect on the first day of the sixth month beginning after publication and would first apply to a decision to deny, suspend, revoke, rescind, or refuse to renew a license, certification, or contract, or to refuse to pay a child care provider made on that date, notwithstanding that the conviction, adjudication, or charge on which the decision is based was obtained or filed before that date.

Appropriation Change. SB 331 and AB 462 would modify the licensing and support services appropriation in DHS to allow expenditures for background checks every three months for child care providers and for checks against the sex offender registry for child care providers, caregivers, and nonclient residents.

SUMMARY OF AMENDMENTS

Senate Amendment 1 and Assembly Amendment 1. Senate Amendment 1 to SB 331 and Assembly Amendment 1 to AB 462 are identical amendments that would make two changes. First, SA 1 to SB 331 and AA 1 to AB 462 would require DCF, a county department, or a licensed child welfare agency under contract with DCF to provide information about a person who has been determined to have abused or neglected a child to the DCF bureau that conducts background checks of child care providers, caregivers, nonclient residents, and other child service entities if it has been

determined that a specific person has abused or neglected a child within 15 days of that determination.

Second, SA 1 to SB 331 and AA 1 to AB 462 would change the effective date and the initial applicability date to the first day of the third month beginning after publication, rather than the sixth month.

Senate Amendment 2. Senate Amendment 2 to SB 331 would make several additional changes. First, SA 2 to SB 331 would correct the DCF licensing appropriations with respect to background checks. SA 2 would eliminate references to background checks for providers, caregivers, or nonclient residents for child care providers, child welfare agencies, foster homes, foster treatment homes, group homes, or shelter care facilities from the DHS licensing and support services appropriation. SA 2 would add language to the DCF licensing activities appropriation to allow the appropriation to receive fees from child services entities, other than day care centers or day care providers, and to use these fees for background checks with respect to these entities. SA 2 would also add language to the DCF child care licensing and certification activities appropriation to allow the appropriation to receive fees from day care centers and day care providers to be used for background checks with respect to day care centers and day care providers.

Second, SA 2 would add to the definition of "serious crime" the following crime: felony representations depicting nudity. Also, the additional crimes listed below for which a child care provider could not be rehabilitated would be included in the definition of "serious crime."

Third, for the crimes under SB 331 for which a child care provider cannot be rehabilitated if committed within the previous five years (see the list above), SA 2 would instead prohibit rehabilitation if the person completed his or her sentence, including any probation, parole, or extended supervision, or was discharged by the Department of Corrections, within the previous five years. SA 2 would also apply this restriction to foster parents. For the crimes for which foster parents cannot be rehabilitated if committed within the previous five years, SA 2 would require that the entire sentence be completed more than five years before rehabilitation is sought.

Fourth, SA 2 to SB 331 would add the following additional crimes for which a child care provider could not be rehabilitated:

- Unauthorized use of an individual's personal identifying information or documents.
- Unauthorized use of an entity's identifying information or documents.
- Felony forgery.
- Felony receiving stolen property.
- Felony fraudulent insurance and employee benefit program claims.

- Felony receiving a stolen financial transaction card.
- Felony forgery of a financial transaction card.
- Felony fraudulent use of a financial transaction card.
- Felony fraudulent use of a financial transaction card by other persons.
- Felony factoring prohibited (e.g. prohibiting a person from receiving payment from the issuer of a buyer's financial transaction card if that person did not, or did not agree to, furnish the money goods, services, or anything else of value represented to be furnished by the transaction record).
- Felony theft of telecommunications service.
- Felony theft of commercial mobile service.
- Felony theft of video service.
- Felony theft of satellite cable programming.
- Felony retail theft.
- Felony offense against computer data and programs.
- Felony causing interruption in computer services.
- Felony offense against computers, computer equipment, or supplies.
- Felony crime against a financial institution.

Fifth, SA 2 would modify the crime, for which a child care provider could not be rehabilitated, of "providing false information to DCF, a county department, a contracted agency, a school board, or other entity during the background check process" to also include "intentionally withholding information."

Finally, SA 2 would permit employees of DCF, DHS, a county department, or a tribal governing body to report suspected fraud in public assistance programs and would provide certain protections for employees who report suspected fraud.

SA 2 would authorize such an employee to report the facts and circumstances contributing to the suspicion of fraud to any management employee of DCF, DHS, a county department, or a tribal governing body. If suspected fraud is reported, then all of the following would apply: (a) any person participating in good faith in the making of a report or in initiating, participating in, or

testifying in, any action or proceeding in which fraudulent activity is alleged would have immunity from any civil or criminal liability that results in the action, and good faith would be presumed; (b) DCF, DHS, a county department, a tribal governing body, or any of their employees would not be able to take disciplinary action against, or threaten to take disciplinary action against, any person because the person in good faith, or is believed in good faith to have, reported suspected fraud, or initiated, participated in, or testified in, any action or proceeding in which fraudulent activity was alleged; and (c) any employee subjected to disciplinary action, or who is threatened with disciplinary action, would be allowed to file an equal rights complaint or a fair employment claim with the Department of Workforce Development (DWD), and if a violation was found, DWD would be authorized to take appropriate action. SA 2 would make this discrimination against an employee actionable under an equal rights claim and a fair employment claim.

Assembly Amendment 2. AA 2 to AB 462 would make changes identical to the changes made in SA 2 to SB 331 with one exception. AA 2 to AB 462 would not apply the restriction that would prohibit rehabilitation for certain crimes if the sentence were completed during the previous five years (rather than committed during the previous five years) to foster parents. As a result, this restriction would only apply to child care providers, caregivers, and nonclient residents.

FISCAL EFFECT

Department of Children and Families

In a fiscal note to the bills, DCF indicates it would need one-time funding of \$166,200 and 2.0 LTE positions. DCF also indicates ongoing costs of \$250,400 annually with 3.0 FTE positions.

One-time costs consist of 2.0 LTE positions, and the associated costs of \$51,200, to process providers who had previously shown rehabilitation, revoke the licenses and certifications of providers who could no longer be rehabilitated, and to find new placement for children receiving services from those providers. DCF estimates this process to take six months. In addition, DCF indicates that the Department would need to develop a database system that would match child care provider addresses with other databases to search for incidents of violations. One-time costs for development of this database are estimated at \$115,000 (approximately \$77 per hour for 1,500 hours of programming).

Ongoing costs would consist of 3.0 FTE positions, and the associated costs of \$219,600 annually, to comply with the proposed mandates of follow-up on all cases suspected to violate the provisions in the bill, including contacting the appropriate agencies, court systems, and agencies in other states. In addition, DCF would coordinate compliance with counties, school districts, and other oversight agencies. DCF estimates an additional 3.0 FTE positions would be needed for these activities. In addition, on-going costs of \$30,800 annually would include costs to maintain and support the database system described above.

The bills would not appropriate any funding or provide additional staff to DCF to implement the new provisions. Therefore, DCF would have to reallocate existing resources in order to implement the bills, or seek additional funding in future legislation.

It should also be noted that other additional costs would be passed on to child care providers. DCF estimates that there are 8,500 licensed and certified child care providers and assumes that each provider needs two additional background checks for caregivers and nonclient residents. Costs for these background checks are passed along to the child care providers. Under current law, background checks must be completed at least every four years. Under the bills, background checks for licensed, certified, or contracted child care providers would be conducted every three months. Background checks for caregivers and nonclient residents would be conducted every year. DCF, county departments, and school boards must do background checks on nonclient residents and caregivers under the age of 18. DCF estimates that under current law, background checks are conducted annually for 6,375 child care providers, caregivers, and nonclient residents. DCF indicates that under the bills, the number of background checks would increase to 51,000 each year, an increase of 700%.

DCF indicates that fees charged by the DOJ and DHS for these background checks are currently \$10 for DCF or a county department and \$21 for a child care provider to run a check on a caregiver or nonclient resident.

As a result, DCF states that fees paid by child care providers to reimburse DCF for background checks would be \$510,000, or \$60 per provider. This would be an increase of \$446,300 annually, or \$52 per provider. This increase would amount to a 650% increase in the fees paid by child care providers.

In addition, child care providers conduct their own background checks on caregivers over the age of 18 (employees or potential employees). DCF assumes that each provider averages two and one-half employees. Under current law, background checks are estimated to total 5,313 annually, at a total cost of \$111,600. Under these bills, the number of background checks would total 21,250, an increase of 300%. The costs for these background checks would total \$446,300. The average annual cost for each provider would increase from \$13 to \$53.

Combined with the costs passed on to child care providers noted above, the total annual average cost for background checks for each provider would increase from \$21 to \$113, an increase of 438%. Total costs would increase from \$175,300 per year to \$956,300 per year, also an increase of 438%.

Department of Health Services

All caregiver background checks include a license and registry check from DHS and a professional credential check from the Wisconsin Department of Regulation and Licensing. DHS processes all background checks using an automated database system maintained by the

Department. The automated database system checks the provider or employee information against all records maintained by DHS to determine whether the individual is appropriately licensed.

DHS currently charges \$2.75 for each search processed by the background check system. Checks performed for state agencies are exempt from the DHS fee. Revenue generated from the background check fee is used to support the cost of maintaining the DHS database system and to cover all other related costs, such as postage and mailing fees, incurred by the Department in performing the background checks.

DHS indicates that under current law, background checks requested by county departments are conducted annually for 1,950 child care providers, caregivers, and nonclient residents. DHS states that, under the bills, the number of these background checks would increase to 15,600 each year, an increase of 13,650 each year. In addition, as noted above under DCF's fiscal effect, the number of background checks requested by child care providers for their caregivers over the age of 18 would increase from 5,313 to 21,250 per year, an increase of 15,937 each year.

As a result, DHS expects to process an additional 29,587 background checks each year. DHS estimates that the increased number of background checks performed by the automated background check system will generate additional revenue of approximately \$81,400 annually ($\$2.75 \times 29,587$). The Department indicates that any additional costs incurred from the increased number of background checks required by this bill would be minimal.

Department of Justice

Under the bill, DCF and other oversight agencies would now be required to conduct more frequent criminal history searches of persons who have or seek a license, certification, or contract to operate a child care facility, the employees, prospective employees or other caregivers of a provider, and any adult who resides at the site (nonclient resident). In addition, the bill would now require a licensed day care center, a contracted day care center, or a certified day care provider to request background information at least once every year, or at any time within that period that is considered appropriate, for all persons who are caregivers for the day care provider and are 18 years of age or over.

Criminal history background checks are conducted by DOJ. The cost of daycare provider background checks is borne by the agency or day care provider requesting the check. The cost of the criminal history background checks vary based on the type of entity requesting the check, and whether the check is requested on the Internet, or by mail or fax.

Under s. 165.83(2)(a) of the statutes, DOJ is directed to obtain and file fingerprints, descriptions, photographs and any other available identifying data on persons who have been arrested or taken into custody in Wisconsin for a variety of offenses. Within 24 hours of an arrest, the arresting agency must generally forward to DOJ all of the following for inclusion in the criminal history database: (a) fingerprints in duplicate; (b) full face, profile and full length photographs; and (c) other available identifying data. Photographs are forwarded at the discretion of the arresting

agency; however, any such photographs retained locally must be available to be forwarded to DOJ if requested by the Department. The majority of this information is submitted electronically.

Pursuant to s. 165.83(2)(h) of the statutes, DOJ must collect and maintain all of this submitted data and establish a state system of criminal identification. As a part of this criminal history database, the Department is required to collect information on the legal action taken in connection with offenses committed in Wisconsin from the inception of the complaint to the final discharge of the defendant, as well as any other useful information in the study of crime and the administration of justice. The database receives information on prosecution, court findings and sentences through an interface with the state court system's consolidated court automation program.

The criminal history database is typically searched by name or by fingerprint. Law enforcement agencies may access the database or may have it searched by Department personnel, at no cost if the search is completed for criminal justice purposes. Governmental agencies, non-profit organizations and any other requester may also have the Department search the criminal history database for non-criminal justice purposes. These types of requests are generally made in connection with an employment or professional licensing application.

Assuming that most day care provider oversight agencies (including county departments and school boards) as well as child care providers currently have accounts with DOJ to conduct criminal history record checks, Department officials indicate that the increased volume of background checks should not impose additional staffing demands on the agency. However, if the requestors do not have existing accounts (therefore requiring more initial processing), or if the searches require a significant increase in staff review time, additional staffing may be needed. Given that funding for criminal history background checks is provided through program revenue, any increased expenditure or position authority could be provided under a 14-day passive review process.

Prepared by: Kim Swissdorf
Attachment

ATTACHMENT

Serious Crimes Under Current Law

- First degree intentional homicide
- First degree reckless homicide
- Felony murder
- Second degree intentional homicide
- Assisting suicide
- Substantial or aggravated battery
- Sexual exploitation by a therapist
- Duty to report sexual exploitation by another therapist
- First degree sexual assault
- Second degree sexual assault
- Third degree sexual assault
- Abuse of individuals at risk
- Abuse of residents of penal facilities
- Abuse and neglect of patients and residents
- First degree sexual assault of a child
- Second degree sexual assault of a child
- Engaging in repeated acts of sexual assault of the same child
- Intentional physical abuse of a child
- Sexual exploitation of a child
- Trafficking of a child
- Causing a child to view or listen to sexual activity
- Incest with a child
- Child enticement
- Soliciting a child for prostitution
- Sexual assault of a child placed in substitute care
- Exposing a child to harmful material or harmful descriptions or narrations
- Possession of child pornography
- Child sex offender working with children
- Child neglect
- Abduction of another's child
- Child unattended in a child care vehicle
- Human trafficking for the purposes of a commercial sex act
- Any comparable violation under federal law or law of another state