

# Legislative Analysis



## SCHOOL PERSONNEL: CRIMINAL BACKGROUND CHECKS & TENURE RESTRICTIONS

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**Senate Bill 129 (Substitute H-2)**  
**Sponsor: Sen. Alan Sanborn**

**Senate Bill 609 (Substitute H-1)**  
**Sponsor: Sen. Wayne Kuipers**

**Senate Bill 601 (Substitute H-1)**  
**Sponsor: Sen. Gerald Van Woerkom**

**Senate Bill 611 (Substitute H-1)**  
**Sponsor: Sen. Jason E. Allen**

**House Committee: Education**  
**Senate Committee: Education**

### First Analysis (8-30-05)

**BRIEF SUMMARY:** The bills would amend various acts to require criminal history checks for all full-time and part-time employees hired or assigned by the schools; prohibit public and nonpublic schools from hiring or assigning people whose criminal record checks indicate they have been convicted of "listed offenses" under the Sex Offenders Registration Act; allow the court to set at least a five-year probationary period during which an offender would be prohibited from living or working within 1,000 feet of a school; and set maximum penalties within the sentencing guidelines used by the courts for violations of these proposed laws.

**FISCAL IMPACT:** To the extent Senate Bill 129 increased probationary periods, it could increase state or local costs of probation supervision. State costs of felony probation supervision are about \$2,000 per offender per year; local costs of probation supervision for misdemeanor offenders vary across the state.

Senate Bill 601 would have no state impact. Local school districts would incur additional costs associated with criminal history checks on all newly hired school personnel. Currently only teachers and administrators are required to have criminal checks. The Michigan State Police charge \$54 for each criminal background check.

The legislation also requires schools to get a name-based criminal history check on each employee and person who works regularly in the schools. Currently the Michigan State Police charges \$10 for a name-based check to for-profit businesses and non-profits are exempt. Under the Executive, House, and Senate budget proposals, non-profits would be charged \$3 for a name-based history check starting in FY 2005-06.

Senate Bill 609 would have no fiscal impact to the state or local school districts.

Senate Bill 611 would provide for sentencing guidelines for the failure of a school employee to report a charge or conviction, a felony offense that would be delineated under Senate Bill 612. Senate Bill 611 would have no direct fiscal impact.

## ***THE APPARENT PROBLEM:***

A recent state audit showed there were 222 school employees with criminal records working in schools, yet the official files of only 44 of those employees contained information from their background checks, or a description of their criminal charges and convictions. The official files of the remaining 178 school employees with criminal records were incomplete, so the Department of Education did not know about them. Five of those with criminal records were sex offenders, while the others were guilty of robbery, assault, shoplifting, or alcohol-related offenses. However, other reports indicate the number of sex offenders working in schools is higher.

In April 2005, the *Detroit News* published a series of articles as a special report entitled "Betrayal of Trust," to reveal how repeat sex offenders were allowed access to children in Michigan schools. According to those reports, at least 35 Michigan school employees or those recently employed by schools had been charged or convicted of sexual misconduct involving nearly 50 minors in the 15 months before the series of reports was published. Thirty of those convicted were men, while five were women. Most all were fired, and most but not all had their professional credentials revoked; however, a few continued to work in schools if school officials were unaware of their convictions. That happens because county prosecutors do not notify school officials until after convictions, and in the case of plea bargains, sometimes not at all.

For example, in mid-May 2005, a Holt Junior High School science teacher was charged with first and second degree criminal sexual conduct and home invasion. The alleged incident happened after a social outing and involved an adult female acquaintance. The alleged rape was in no way associated with the school—involving neither its students nor its staff nor its property.

The second-year teacher who was charged with the crime did not tell school officials about the charge, nor is he required to do so by law. Instead, school officials learned of the charge shortly before the May 24 arraignment in Mason District Court, when the Ingham County prosecutor notified the school superintendent. The prosecutor's notice, while customary, was actually a courtesy, since Michigan law does not require either the courts or prosecutors to notify school officials unless there has been a conviction of a crime, or unless a person charged with a crime is viewed by the prosecutor as a threat to students, or the crime is committed on school grounds. When the school district superintendent learned of the charge, the teacher was immediately suspended, with pay, from his teaching duties pending resolution of the case.

To address this public problem, legislation has been recommended by the House Education Committee and passed by the House of Representatives (House Bills 4402, 4928, 4930, 4931, 4932, 4033, and 4991) earlier in the legislation session. Those bills would prohibit school boards from hiring sex offenders, and among other things, require school personnel who are charged with a sex offense to notify school officials. The four Senate bills analyzed here are similar to their House counterparts, and will take their place in a comprehensive 15-bill package of legislation known as the School Safety

Initiative. [The remaining eight bills have been considered by the House Judiciary Committee, including Senate Bills 130 and 193, and House Bills 4934 - 4937, as well as House Bills 4957-4958.]

### ***THE CONTENT OF THE BILLS:***

The bills would amend the Code of Criminal Procedure, the Revised School Code, and the Teacher Tenure Act to revise criminal background check requirements for school personnel and to set penalties for failure to report certain offenses.

In addition, Senate Bill 129 would allow a court to place a person on probation for five years if convicted of a "listed offense" under the Sex Offenders Registration Act, and with certain exceptions, would allow the court to order such a probationer not to live, work, or loiter within a "student safety zone." Under the bill, a "student safety zone" would be defined to mean the area that lies 1,000 feet or less from school property. If enacted into law, the bills would take effect January 1, 2006.

The Senate Bills 601, 609, and Senate Bill 611 are tie-barred to each other, as well as to House Bills 4402, 4928, 4930, and 4991 so that they could not become law unless those bills also were enacted.

The following is a more detailed description of the bills.

Senate Bill 129 (H-2) would amend the Code of Criminal Procedure (MCL 760.1 et al) to allow a sentencing court to place an individual convicted of a listed sex-related offense on probation for a minimum of five years, and to require the court to order such an individual not to reside, work, or loiter within a student safety zone.

The requirement that a probationer be prohibited from living within a student safety zone would not apply to an individual who was a patient in a hospital or hospice located within the zone (however, this exception would not apply to an individual who initiated or maintained contact with a minor inside the zone); an individual who was not more than 19 years old and attending school and living with a parent or guardian (however, an individual would have to be ordered not to initiate or maintain contact with a minor within the zone, unless a fellow student); or an individual living within the zone on the bill's effective date. In the case of an individual who was living within the zone on the bill's effective date, the court would have to order him or her not to initiate or maintain contact with any minors (individuals under 16) within the zone, although the court could allow contact with any minors named in the probation order for good cause shown and as specified in the order.

The court could not prohibit a probationer from working within a student safety zone if he or she were working within the zone on the bill's effective date or if the individual only intermittently or sporadically entered a zone for work purposes. The court would have to order the individual not to initiate or maintain contact with any minors in the course of employment within the zone, although the court could allow contact with any minors named in the probation order for good cause shown and as specified in the order.

Under the bill, the court could exempt an individual from probation under subsection (5) if any of the following applied:

-- The individual was under 13 years of age when he or she committed the offense, and was not more than five years older than the victim;

--The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense, and was not more than three years older than the victim.

-- The individual was charged with committing, attempting to commit, or conspiring to commit first- or second-degree CSC against a victim who was under 13 or third-degree CSC against a victim who was at least 13 but under 16, but was convicted as a juvenile of fourth-degree CSC or assault with intent to commit CSC, if the individual were under 13 when he or she committed the offense and not more than five years older than the victim or the individual were at least 13 but under 17 when he or she committed the offense and not more than three years older than the victim.

-- The individual had successfully completed the probationary period under the Holmes Youthful Trainee Act for committing a listed offense and had been discharged from youthful trainee status.

-- The individual was convicted of committing or attempting to commit fourth-degree CSC against a victim who was at least 13 but under 16 and five or more years younger than the offender, if, at the time of the violation, the individual were at least 17 but less than 21 and not more than five years older than the victim.

Under the bill, "student safety zone" would mean the area that lies 1,000 feet or less from school property. "School property" would mean a building, facility, structure, or real property owned, leased, or otherwise controlled by a school other than a building, facility, structure, or real property that is no longer in use on a permanent or continuous basis, to which either of the following applies: 1) it is used to impart educational instruction; 2) it is for use by students not more than 19 years of age for sports or other recreational activities. "School" would mean a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12, and would not include a home school.

"Minor" means an individual less than 18 years of age. "Loiter" would mean to remain for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors.

"Listed offense" would mean that term as defined in the Sex Offenders Registration Act (MCL 28.722), including any of the following:

- A first or subsequent conviction of accosting, enticing, or soliciting a child for immoral purposes (MCL 750.145a & 750.145b).

- Involvement in child sexually abusive activity or material (MCL 750.145c).
- Sodomy, if a victim is under 18 (MCL 750.158).
- A third or subsequent offense of engaging in indecent or obscene conduct in a public place or indecent exposure (MCL 750.167(1)(f) or 750.335a).
  - Except for a juvenile disposition or adjudication, gross indecency, if a victim is under 18 (MCL 750.338, 750.338a, or 750.338b).
  - Kidnapping, if a victim is under 18 (MCL 750.349).
  - Kidnapping a child under 14 (MCL 750.350).
  - Soliciting, accosting, or inviting another person to commit prostitution or an immoral act, if a victim is under 18 (MCL 750.448).
  - Pandering for purposes of prostitution (MCL 750.455).
  - First-, second-, third-, or fourth-degree CSC or assault with intent to commit CSC (MCL 750.520b-750.520e & 750.520g).
  - Any other violation of a state or local law that, by its nature, constitutes a sexual offense against an individual under 18.
  - An offense committed by a person who was, at the time of the offense, a "sexually delinquent person" as defined in the Michigan Penal Code (i.e., any person whose sexual behavior is characterized by repetitive or compulsive acts that indicate a disregard of consequences or the recognized rights of others, or by the use of force upon another person in attempting sexual relations or by the commission of sexual aggressions against children under 16) (MCL 750.10a).
  - An attempt or conspiracy to commit an offense listed above.
  - An offense substantially similar to an offense listed above, under a law of the United States, any state, or any country, or under tribal or military law.

Senate Bill 601 (H-1) would amend the Revised School Code (MCL 380.1230a et al). Under the Revised School Code, when a school district, local act school district, or intermediate school district, or the governing body of a public school academy (charter school) or nonpublic school makes an offer of initial employment to an individual for a position as a teacher or school administrator, or for a position requiring State Board of Education approval, the district, PSA, or nonpublic school must request a criminal history check on the individual from the criminal records division of the Department of State Police. Before employing the individual as a regular employee, the district, PSA, or nonpublic school must have received the MSP report. In addition, the board of a school district, local act school district, or ISD, or the governing body of a PSA or nonpublic school must request the MSP to conduct a criminal records check through the Federal Bureau of Investigation (FBI) on an applicant for, or an individual who is hired for, a position as a teacher or school administrator, or a position requiring state board approval.

Under the bill, these requirements would apply when a school board or governing body made an offer of any full-time or part-time employment or when school officials learned that an individual was being assigned to work regularly and continuously under contract in any of its schools.

In addition, under the bill, if the report from the state criminal history or FBI criminal records check disclosed that an individual had been convicted of a listed offense under

SORA, the school district, ISD, PSA, or nonpublic school could not employ the person in any capacity or allow him or her to work regularly and continuously under contract in any of its schools. If the report disclosed that an individual had been convicted of a felony other than a SORA listed offense, the district or school could not employ the person or allow him or her to work regularly and continuously under contract in any of its schools unless the superintendent or chief administrator, and also the board or governing body each specifically approved the employment or work assignment in writing.

In addition, the board of a school district, ISD, PSA, or nonpublic school would have to ensure that a name-based criminal history check was performed on each employee and each person who was assigned to work regularly and continuously in any of its schools. The criminal history background check would have to use the criminal history database maintained by the MSP, as accessed through the MSP's Internet Criminal History Access Tool (ICHAT) or a successor tool made available on the Internet by the MSP. The background check would have to be conducted on each affected person within one year after the bill's effective date. A board would not have to conduct a name-based background check on a person; however, if the board had documentation that an FBI criminal records check was conducted on the person at the time he or she was initially employed by the board or assigned to work in any of its schools.

Senate Bill 609 (H-1) would amend the Teachers' Tenure Act (MCL 38.74 and 38.103). Under Article IV (Discharge, Demotion or Retirement) of the Teachers' Tenure Act, discharge or demotion of a teacher on continuing tenure may be made only for reasonable and just cause and only as provided under the act. The bill specifies, however, that the rights of a teacher on continuing tenure under Article IV would be subject to Section 1230d of the Revised School Code [proposed by House Bill 4929 which concerns reporting requirements for teachers who commit certain crimes] and Section 1535a of the Code [which House Bill 4928 would amend, and which requires the escrow of employees' salaries when convicted of certain offenses]. To the extent that any provision of Article IV was inconsistent with those sections of law, Article IV would not apply to the teacher.

For the purposes of Article IV, a conviction for a violation of Section 1230d or for a violation of one of the crimes listed in Section 1535a(1) or (2) would be considered to be reasonably and adversely related to the person's ability to serve in an elementary or secondary school and would be sufficient grounds to support the discharge or demotion of a teacher on continuing tenure.

In addition, under the act, if a teacher is suspended, his or her salary must continue during the suspension. If the teacher is convicted of a felony, however, the controlling board may discontinue the teacher's salary effective upon the date of conviction. Under the bill, the controlling board would be required to discontinue the teacher's salary upon conviction of a felony that is a SORA listed offense.

The bill also would amend the definition of the term "demote" which is found in Article I of the act. Currently the word "demote" means to reduce compensation for a particular school year by more than an amount equivalent to three days' compensation, or to transfer

to a position carrying a lower salary. Under the bill, this definition would be retained; however, the bill specifies that "demote" would not include discontinuance of salary pursuant to section 3 of Article IV of the act, described above.

Senate Bill 611 (H-1) would amend the Code of Criminal Procedure (MCL 777.13p). The bill would include in the sentencing guidelines failure by a school employee to report a charge or conviction [as House Bill 4928 would require]. The offense would be a Class G felony against the public safety, with a statutory maximum sentence of two years' imprisonment.

The bill also updates a citation to the Revised School Code concerning another violation of law called "making false statement or concealing material information to obtain qualification of school bond issue or improperly using proceeds of school bonds."

### ***HOUSE COMMITTEE ACTION:***

The members of the House Education Committee substituted each of the four bills. The differences from the Senate-passed version of each bill are noted below.

Overall, the members of the House Education Committee made six changes to Senate Bill 129.

*First*, the committee members changed the section describing the five- (or more) year probationary period that a court could establish for individuals convicted of a listed offense under the Sex Offenders Registry Act. Under certain circumstances the probation would allow offenders to live within the school safety zone. Under Substitute H-2, an offender living within the zone would be prohibited from initiating or maintaining contact with a minor within that student safety zone, unless the contact was in conjunction with school attendance.

*Second*, the Senate-passed version of the bill specifies that the court order establishing probation could not prohibit an offender from being a patient in a hospital or hospice that is located in the safety zone. Substitute H-2 would retain this provision, but specify that this exception would not apply to an individual who initiated or maintained contact with a minor within the safety zone.

*Third*, the Senate-passed version of the bill prohibited a probationary period for some juvenile offenders. Substitute H-2 specifies, instead, that the court may exempt an individual from probation, leaving the decision to the discretion of the court.

*Fourth*, the Senate-passed version of the bill defined "minor" to mean an individual less than 16 years of age. In contrast, Substitute H-2 defines a minor to mean a person less than 18 years of age.

*Fifth*, the Senate-passed version of the bill defined "school property" to mean a building, facility, structure, or real property owned, leased, or otherwise controlled by a school to which either of the following applies: i) it is used to impart educational instruction; or ii)

it is for use by students not more than 19 years of age for sports or other recreational activities. Substitute H-2 would retain this definition but modify it to specify that school property would not include "a building, facility, structure, or real property that is no longer in use on a permanent or continuous basis."

*Sixth*, the Senate-passed version of the bill would have gone into effect October 15, 2005. Substitute H-2 sets the effective date as January 1, 2006.

The House Education Committee made three changes to Senate Bill 601. *First*, the Senate-passed version of the bill would have required a school superintendent or chief administrator to approve, in writing, the employment or work assignment of an individual who had been convicted of a felony other than a listed offense. Under Substitute H-1, both the administrator and the school board or governing body of a school district would have to provide written authorization. *Second*, Substitute H-1 specifies an effective date of January 1, 2006, instead of October 15, 2005. *Third*, Substitute H-1 specifies that the bill is tie-barred to Senate Bills 609 and 611, as well as to House Bills 4402, 4928, 4930, and 4991.

The House Education Committee members made two changes to Senate Bill 609. *First*, Substitute H-1 would limit the meaning of the term "demotion" to ensure that it would not include discontinuance of salary, in the event a school teacher was charged with a listed offense under the Sex Offenders Registration Act and his or her salary were placed in escrow. *Second*, Substitute H-1 specifies that the bill is tie-barred to Senate Bills 601 and 611, as well as to House Bills 4402, 4928, 4930, and 4991.

Finally, the House Education Committee members made two changes to Senate Bill 611. *First*, In an amendment unrelated to the School Safety Initiative, Substitute H-1 revises the citation in the Revised School Code for the violation of making false statements or concealing material information in order to obtain qualification of a school bond issue, or improperly using the proceeds of school bonds. *Second*, Substitute H-1 specifies that the bill is tie-barred to Senate Bill 601, as well as to House Bills 4402, 4928, 4930, and 4991.

Some of the information in this analysis, including in the Arguments section, is derived from the Senate Fiscal Agency analysis of the package dated 8-9-05.

## ***ARGUMENTS:***

### ***For:***

In recent years, the legislature has enacted laws to ensure children's safety: adding a requirement that the Department of Education review the certification status of teachers convicted of a felony or a serious misdemeanor immediately after conviction (rather than waiting until after a teacher served his or her sentence); making it a crime for a teacher or administrator to have sex with a student (even if the student is older than 16, the age of consent in Michigan); and imposing the requirement that school districts share personnel records with each other to check out potential hires with previous employers. In addition, all teachers, administrators, and those employees needing state board of education



approval (guidance counselors, nurses, social workers, school psychologists, and bus drivers) must pass criminal history record checks before being employed.

Despite these efforts, a *Detroit News* investigation published in late April 2005, found that inadequate tracking of teachers, incomplete criminal background checks, and poor communication among school, courts and law enforcement agencies have allowed potentially abusive teachers and other school personnel to avoid detection within the school community. Overall, the report found that 39 percent of the 641 teachers whose licenses have been reviewed for revocation since 1986 were accused of sexual misconduct—more than any other crime. Incidents included child molestation, possessing child pornography, and sex with students.

According to the investigators, at least 35 Michigan school employees or those recently employed by schools had been charged or convicted of sexual misconduct involving nearly 50 minors in the 15 months before the series of reports was published. Thirty of those convicted were men, while five were women. Most all were fired, and most but not all had their professional credentials revoked, however a few continued to work in schools if school officials were unaware of their convictions.

These bills constituting the School Safety Initiative would ensure that schools are given early notice of alleged sex offenders when they are charged with an offense. They would require any school employee so charged to notify school officials, and require those officials to suspend the employee, while escrowing his or her pay until the charges had been proved or determined to be false or unproven. Further, the bills also prohibit those on the Sex Offenders Registry who are given probation by the court from living or working within 1000 feet of school property, establishing a predator-free zone near the places children work and play. Finally, the bills establish maximum sentencing guidelines for violations of the new laws, ensuring that felons will be imprisoned, and no longer able to jeopardize the safety of school children.

***For:***

Children are among the most vulnerable members of society, and the state must do all it can to protect them from harm, especially in the places they gather for educational and recreational purposes, such as schools, child care centers, and parks, and from predatory adults who work and volunteer in, or live or work near, those types of child-oriented settings. Child victims of sex crimes can suffer ill effects for years. According to the *Detroit News*, they may lose trust in authority figures, experience compromised physical health, and perform poorly in school; later in life, the victims are more likely to abuse alcohol and drugs and may have difficulty forming intimate relationships ("Schools, Granholm pledge to curb abuse by teachers", 4-25-05). Also, parents deserve the assurance that their children's caregivers, teachers, and coaches are not dangerous criminals.

Those with abusive tendencies toward children may seek employment and volunteer opportunities at locations frequented by children, or live or work near schools, because it can afford them easy access to potential victims. In addition, child care workers, teachers, and coaches often are admired by the children they serve and are trusted by parents,

allowing them ample opportunity to victimize children without scrutiny. This makes it imperative that employees and volunteers are thoroughly screened and that known sex offenders are kept a safe distance from schools. According to the *Detroit News*, some states bar sex offenders from living near schools or other places where children gather and at least two cities (Miami Beach, Florida, and Binghamton, New York) have enacted restrictions that essentially prohibit sex offenders from moving in at all. Such a law is needed in Michigan. *The Detroit News* examined the publicly available compilation of Michigan's sex offender registry and found that approximately 1,900 of Michigan's registered sex offenders, or about one in 10 listed on the compilation, live in close proximity to a school ("State's sex abusers live near schools", 5-26-05).

By banning certain sex offenders from living, working, or loitering near schools, prohibiting those required to register under SORA from working or volunteering for schools, child care centers, playgrounds, or youth leagues or organizations, prohibiting youth leagues or organizations from hiring employees or using volunteers who were registered under SORA, and requiring youth leagues and organizations to run SORA background checks on their employees, volunteers, and applicants, Senate Bills 129 and 130 propose a comprehensive system to help protect children, who cannot defend themselves against people who abuse their positions of authority. The bills also would add to parents' peace of mind.

***Response:***

In her May 3rd letter to the legislative leaders, the Governor recommended that all registered sex offenders be banned from living or working within 1,000 feet of a school, but Senate Bill 129 would place that restriction only on people sentenced to probation under that bill. It likely would apply only to a small number of registered sex offenders.

***For:***

Recent widely publicized incidents around the country have emphasized the need to protect children from convicted sex offenders. In Florida, John Couey, a registered sex offender with a long criminal history, is accused of kidnapping and murdering a nine-year-old girl in February. Police in San Jose, California, discovered that convicted sex offender Dean Schwartzmiller had kept handwritten lists of more than 36,000 suspected sex acts with boys. He has been arrested on child molestation charges in several states and, according an article on the KOMO-TV website, Schwartzmiller was characterized as a repeat offender by an Idaho court as early as 1978 ("Chilling List Could Lead To Biggest Molest Case Ever", 6-17-05). He reportedly frequented areas where young boys congregate, befriended them, used drugs and alcohol to lower their inhibitions, and then committed sex acts upon them. In Idaho, in July, Joseph Edward Duncan III, a 42-year-old with a history of sex offenses against minors, was arrested and charged with kidnapping and sexually assaulting an eight-year-old girl, kidnapping and murdering her nine-year-old brother, and murdering the children's older brother and mother, and the mother's boyfriend.

These cases and others like them highlight the need for Michigan to take action to ensure the safety of the state's children from known sex offenders. Establishing student safety zones around schools and more thoroughly screening adults who seek to work or

volunteer in child-related settings would help to protect Michigan's youths by insulating them from known predators.

**Response:**

The bills are an excessive reaction to media coverage of extreme cases. Each of those offenders violated sex offender registry requirements anyway, so adding more severe penalties for failing to meet registration requirements and restricting offenders' residential and employment opportunities would do little or nothing to deter child predators like them. Also, in the Florida and Idaho incidents, the children were taken from their homes, so a student safety zone would have been irrelevant. In the California case, though media reports suggest the man frequented areas where young boys gathered, such as schools, it is unreasonable to believe that a student safety zone would have kept someone like him from preying on children.

**Against:**

Limitations on where sex offenders live and work are ineffective in preventing new crimes and could even lead to repeat offenses. According to the May 26, 2005, *Detroit News* article, experts on the issue of sex offenders "are increasingly worried fear is driving limits that do little to protect the public-and could make the situation worse." That article reports that the director of the Center for Treatment of Problem Sexual Behavior in Connecticut "fears that pushing offenders out of their neighborhoods, and isolating them, may increase the risk that they may commit another crime." The article also cites a study prepared for the Minnesota legislature in 2003 that "suggested putting limits on school neighborhoods would force more offenders to move to suburban and rural areas," which simply could shift the perceived dangers of sexual offenders in the community from densely populated areas to more lightly populated areas.

According to an Associated Press (AP) article that appeared in the *Detroit News*, a co-author of a Florida study published earlier this year said that "psychological stresses" have been linked to criminals' committing repeat offenses, and experts cited in the article expressed a concern that the recent tightening of restrictions on sex offenders could add to their stress. Even without statutory restrictions on where a sex offender may live or work, these stresses can thwart sex offenders' attempts to reintegrate into the community. The AP article reported that 27 percent of 183 sex offenders surveyed in Florida said they lost work because a supervisor or co-worker discovered their past crime, 20 percent had to move because a landlord found out, 15 percent had to leave after neighbors complained, and 33 percent were threatened or harassed by neighbors ("Experts question wisdom of sex offender restrictions", 6-21-05).

In addition, there apparently is no evidence that limiting sex offenders' home and work locations by establishing protection zones is effective in preventing new crimes. In the May 26 *Detroit News* article, a University of Missouri-Kansas City law professor who has studied attempts to treat and control sex offenders characterizes such legal limits as "...futile, costly and ineffective gestures to falsely assure the community that they're going to be safe'." Also, the Minnesota study reportedly warned that state's lawmakers that there is no proof that residential limits would prevent new sex crimes.

***Against:***

Imposing limits on where a sex offender can live or work, in addition to criminal penalties already in law and the minimum, discretionary five-year probation proposed by Senate Bill 129 would move from making a community safer to exacting retribution. Prohibiting an offender from living or working within 1,000 feet of a school could require that person to move away from his or her existing residence or to sever current employment (unless the person was living or working in the zone on the bill's effective date). This would be unfair punishment not only to the offender, but also to his or her family, including the offender's own children, if he or she were forced to move to a new location and/or leave a steady job. The offender either would have to live separately from his or her family, or move everyone to a location that was not within a student safety zone. An offender required to leave a job could be forced to seek unemployment insurance or welfare assistance, depriving his or her family of adequate financial support and increasing the burden on the state's unemployment compensation system or social welfare programs.

Also, while the bill contains exceptions to the student safety zone restrictions, the exceptions are too narrow. Allowing offenders under 19 to continue to live within a zone would accommodate high school students, but most college students who were offenders could not continue to live with their parents or, presumably, even visit on weekends or during the summer. In addition, while the exemption for employees who entered a zone only intermittently or sporadically likely would allow employees such as pizza delivery or utility repair workers to enter and work in a zone, it probably would not cover employees like construction workers assigned to long-term projects at or near a school or landscapers with contracts to perform yard work in a zone on a regular basis.

Moreover, the bill does not recognize that large employers could be negatively affected by the working restrictions. For instance, in Lansing, until it recently closed, General Motors had a major facility that sat between a high school and an elementary school; Sparrow Hospital is directly across the street from a high school and a middle school; and a developer is constructing a major residential neighborhood on property that lies between a public high school and a parochial high school. These employers apparently would have to cull from their employment rolls any sex offender who would be prohibited from working in a student safety zone, and it is unclear whether employers would be exposed to any criminal or civil liability if they failed to do so.

***Response:***

The limitations would apply only if a sentencing court chose to place a person convicted of a listed offense on probation for five years or more.

***Against:***

Efforts to protect children at school and other places where they congregate should not rely on sex offender registry information. Much of the information in Michigan's sex offender registry may be misleading, especially if the goal of the registry is to protect the public—particularly children—from sexual predators. Many of the people required to register are not, and never have been, a danger to the public. Senate committees have heard testimony from relatives of men and boys who are required to be registered because

they had sex with willing partners who were too young to consent legally to sexual relations. Since they pose no danger to school children, these registrants should not be prohibited from living or working near schools. Indeed, a *Detroit News* editorial called the effectiveness of the registry into question, saying it "amounts to ongoing punishment of people who have served their sentence and supposedly paid their debt to society." The editorial urged the State "to revisit the whole idea of stigmatizing some offenders well past their prison terms" ("Sex Offender Registry Is Vindictive Punishment", 2-2-05).

Also, the registry covers a broad range of offenders, many of whom did not commit acts against children, but the bills would not be limited to those offenders who may be a danger to kids. The May 26 *Detroit News* article reported on a man who lives within 1,000 feet of a school in Pontiac who was convicted in 1996 of second-degree CSC for an incident involving an adult female acquaintance. The man apparently has no history of child molestation and said that he baby-sits for his grandchildren and nephews. Prohibiting such an offender from living or working near a school would serve no useful purpose in protecting children. As a *Detroit Free Press* editorial pointed out, "the bills do not take into account that not every convicted sex offender...is a predator or pedophile" ("Child Safety", 6-29-05).

In addition, the sex offender registry should not be relied upon to provide accurate information. According to a July 2005 Auditor General's report on a performance audit of the Department of State Police's sex offender registries, the department did not always ensure the accuracy and completeness of data within the sex offender registries and did not verify registrants' names and addresses entered by local law enforcement agencies. The report's findings also state that incomplete and inaccurate information could give the public a false sense of security. Unreliable registry information should not be used to determine residential and employment restrictions placed upon offenders.

***Response:***

Senate Bill 129 would not rely on information in the sex offender registry and the residential and employment restrictions in the bill would not apply to all SORA registrants. The bill would affect only those offenders who were convicted of a SORA listed offense and sentenced to a minimum probationary period of five years as allowed under the bill. Also, since the restrictions would be a condition of probation, they would apply only during the offender's probationary period, not during the entire time he or she was required to register under SORA.

***Against:***

According to a *Detroit News* editorial (5-29-05), about 1,900 of the state's 19,000 registered sex offenders, or one in 10, lives near a school. Nonetheless, the editorial board of the newspaper raises the question whether a rule barring all offenders from living within 1,000 feet of a school can really be an effective form of protection for the state's children. Citing a professor from the University of Missouri-Kansas City who has studied attempts to treat and control sex offenders, they report that such proposals as the school zone can be futile, costly, and ineffective gestures to falsely assure the community that they're going to be safe.

***Against:***

House Bill 4932, the bill to create a 1,000 foot predator-free zone around schools, is overly broad. First, it would apply to everyone who has registered under the Sex Offenders Registry Act—more than 19,000 people. It assumes that all sex offenders are pedophiles who prey on children. In fact, few are. Indeed, many people whose names and pictures appear on the sex offenders' registry are minors who have committed the crime of having sex with underage partners a few years younger than themselves. Some have no criminal records, because their crimes have been expunged under the Holmes Youthful Trainee Act, nonetheless they must register. Realistically, few if any of these sex offenders pose a threat to youngsters at school. Second, the 1,000-foot "no residence" requirement will make it extremely difficult for people who appear on the registry, especially in urban areas, to find places to live. Third, the provision that prohibits working in a school zone has extreme consequences, since two categories of jobs would be affected: those that take place within the 1,000 perimeter of the school zone, and also those in which the worker passes through the zone delivering mail, stringing telephone line, making deliveries, removing snow, hauling waste, building a home, landscaping, roofing, remodeling, electrical or machine repair, or maintaining the roads. Furthermore, the breadth and coverage of the overlapping zones expand when one considers that public and private schools often own "school property" in addition to their school sites.

The residence and work prohibitions in this bill will further humiliate and impoverish some former criminals who have paid the price for their mistakes, making their recovery and re-entrance into society more difficult.

***POSITIONS:***

The Michigan Catholic Conference supports the bills. (8-24-05)

The Michigan Department of Corrections is neutral on House Bills 129 and 611. (8-24-05)

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