

Legislative Analysis



SCHOOL PERSONNEL: CRIMINAL BACKGROUND CHECKS & TENURE RESTRICTIONS

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Senate Bill 129
Sponsor: Sen. Alan Sanborn

Senate Bill 609
Sponsor: Sen. Wayne Kuipers

Senate Bill 601
Sponsor: Sen. Gerald Van Woerkom

Senate Bill 611
Sponsor: Sen. Jason E. Allen

House Committee: Education
Senate Committee: Education

Complete to 8-23-05

A SUMMARY OF SENATE BILLS 129, 601, 609 AND 611 AS PASSED BY THE SENATE 6-30-05

The bills would amend various statutes 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 require 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 October 15, 2005.

Senate Bills 601 and 609 are tie-barred to each other so that neither could become law unless both were enacted. Senate Bill 611 is tie-barred to Senate Bill 612, which deals with reporting requirements for public and nonpublic school personnel convicted of certain crimes.

The following is a more detailed description of the bills.

Senate Bill 129 (S-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; an individual who was not more than 19 years old and attending school and living with a parent or guardian; 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.

The five-year minimum period of probation, and student safety zone restrictions, would not apply to any of the following:

-- An individual convicted as a juvenile of first-, second-, or third-degree criminal sexual conduct (CSC), or of committing, attempting to commit, or conspiring to commit first- or second-degree CSC against a victim who was under 13 years old or third-degree CSC against a victim who was at least 13 but under 16, if the individual were under 13 when he or she committed the offense and not more than five years older than the victim, or if 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.

-- An individual who 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.

-- An individual who 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.

-- An individual 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 if the building, facility, structure, or real property is used to impart educational instruction or 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.

"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 (S-3) would amend the Revised School Code (MCL 380.1230 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 specifically approved the employment or work assignment in writing.

The bill specifies that, if a school official of a school district, ISD, PSA, or nonpublic school had notice from a report from a state criminal history or FBI criminal records check that an individual had been convicted of a SORA listed offense, the board of the district, ISD, PSA, or nonpublic school could not hire that person for employment in any capacity or allow him or her to work regularly and continuously under contract in any of its schools.

The bill also would delete references to a local act school district in the current provisions.

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 (S-2) would amend the Teachers' Tenure Act (MCL 38.101 et al). 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 Senate Bill 612 (S-2) which concern reporting requirements for teachers who commit certain crimes] and Section 1535a of the Code [which Senate Bill 610 (S-2) 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 have to discontinue the teacher's salary upon conviction of a felony that is a SORA listed offense.

Senate Bill 611 (S-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 Senate Bill 612 (S-2) would require]. The offense would be a Class G felony against the public safety, with a statutory maximum sentence of two years' imprisonment.

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 charges \$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.

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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.