

Legislative Analysis



REASONABLE MEASURES TO ENSURE ACCURATE CONVICTION REPORTS

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House Bill 5675 as enrolled
Public Act 84 of 2006
Sponsor: Rep. Rick Baxter
House Committee: Education
1st Senate Committee: Education
2nd Senate Committee: Judiciary

Second Analysis (1-29-07)

BRIEF SUMMARY: The bill calls for reasonable efforts to ensure the accuracy of school employees' conviction reports when they are issued by the Michigan Department of Education; revises disclosure requirements for conviction reports under the Freedom of Information Act; and defines the term "regularly and continuously work under contract in a school."

FISCAL IMPACT: The bill would have no fiscal impact on the state or on local districts.

THE APPARENT PROBLEM:

Earlier in this session, the legislature enacted eight bills addressing the issue of school personnel who are convicted of crimes. (See [Background Information](#).)

The new laws were passed because 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 indicated the number of sex offenders working in schools was 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 happened because county prosecutors did not notify school officials until after convictions, and in the case of plea bargains, sometimes not at all.

On May 3, 2005, Governor Jennifer Granholm sent a letter to legislative leaders of both parties urging them to pass legislation that would deny convicted sex offenders access to children in this state. Among other things, she encouraged the legislature to enact laws requiring entities such as schools and child care centers to complete background checks on all employees and prohibit anyone registered under the Sex Offenders Registration Act (SORA) from working for such entities.

Laws have since been enacted to prohibit school boards from hiring sex offenders and to remove them from schools when their offenses are known. Schools are now required to perform background checks on all current and prospective employees and contractors. Further, school employees and contractors are required to report to the Department of Education and the school if they are charged with certain crimes, and also to disclose their employment to the prosecuting attorney and the court if they plead guilty or 'no contest' or are found guilty. Courts and prosecutors are then required to notify the department and school officials when employees are charged with or convicted of certain offenses, and the compensation of a school employee or contractor who pleads guilty or "no contest," or who is found guilty of certain crimes is withheld until the state superintendent makes a final determination to suspend or revoke the person's teaching certificate or other state board-approved credentials.

To implement the new laws, school personnel were given 18-months (until July 1, 2008) to record their fingerprints so that those fingerprint records could be compared with the fingerprint records of convicted criminals kept by the Department of State Police. In the interim period, the names of all school personnel were to be cross-checked with the criminal history records maintained by the Department of State Police twice each year, in January and June. When names matched, school officials were required to remove the school personnel from their positions, in order to ensure the safety of school children.

In January 2006 when the initial comparison of records was undertaken, the resulting list reportedly contained many errors. School employees were identified as possible criminals because their names matched the names of known criminals, causing them public humiliation, and requiring them to clear their names with police and school officials. In at least one instance, an employee was fired before given an opportunity to clear her name, according to the *Detroit News*. ("Criminal Lists to Be Recalled: Judge Rules That Checks of School Workers' Pasts Should Not Be Released Because of Inaccuracies." 2-15-06) As a result, and at the urging of the American Federation of Teachers, U. S. District Court Judge Paul V. Gadola ruled that lists of school employees' criminal histories, which union officials said were plagued with errors, had to be recalled by the state because the information could falsely accuse employees of crimes.

In addition, the new law required contractors who work in schools but seldom come into contact with school children—for example, auditors, architects, and construction workers—to establish fingerprint records and be checked for past criminal history.

Legislation has now been introduced to ensure more accuracy in the cross-check of the school personnel and criminal databases. Further, unless the crimes committed by school

personnel are felonies or sex related offenses, they would not be subject to the Freedom of Information Act. Finally, the group of contractors who would be required to undergo fingerprint checks would be narrowed to those who have continual contact with students—those providing food, custodial, transportation, instructional, counseling, or administrative services.

THE CONTENT OF THE BILL:

House Bill 5675 would amend the Revised School Code to better ensure the accuracy of school employees' conviction reports issued by the Michigan Department of Education; revise disclosure requirements of conviction reports under the Freedom of Information Act; and define the term "regularly and continuously work under contract in a school."

A law passed earlier in this legislative session directs the Michigan Department of Information Technology to work with the Departments of Education and State Police to develop and implement an automated program that does a comparison of the education department's list of registered educational personnel with the conviction information received by the State Police. This comparison must include convictions contained in a nonpublic record, and the departments must perform the comparison during January and June of each year until July 1, 2008. If a comparison discloses that a person on the personnel list has been convicted of a crime, the department must notify the superintendent or chief administrator, and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school in which the person is employed, and the school officials then take action to ensure the safety of school children.

House Bill 5675 would retain these provisions, and require that the Department of State Police to take all reasonable and necessary measures using the available technology to ensure the accuracy of the comparison before transmitting the information to the Department of Education. The Department of Education would have to take the same measures before notifying a district or school of a conviction.

In addition, House Bill 5675 specifies that certain records prepared by the Departments of Education, State Police, and Information Technology (or another state agency) would be exempt from disclosure under the Freedom of Information Act, including those prepared under Sections 1230 to 1230g, 1535a, and 1539b of the Revised School Code, all of which concern criminal records checks and list the many misdemeanor and felony crimes that, if committed, result in school personnel losing their positions of employment.

However, the bill also specifies that a record that concerned any felony conviction or concerned a misdemeanor conviction involving sexual or physical abuse would only be exempt for 15 business days after the date the record was received by a school district, intermediate school district, public school academy, or nonpublic school. After that time period, the records concerning sexual or physical abuse, and any felony conviction would be subject to disclosure under the Freedom of Information Act.

The bill also specifies that a criminal history check through the FBI need not be undertaken if a person being employed is 19 years of age or younger and is enrolled as a student in the district or charter school, or if the individual is 26 years of age or younger and is enrolled in special education programs or services in the district or charter school. However, the school would be required to perform a criminal history check on these individuals using the Department of State Police's Internet criminal history access tool (ICHAT). If a search reveals a conviction of a listed offense, then the individual could not be hired.

Finally, the bill defines the term "regularly and continuously work under contract in a school." Currently the law requires criminal history and fingerprint checks for all school personnel who regularly and continuously work under contract in a school. Under House Bill 5675 that term would mean either of the following: (1) to work at school on a more than intermittent or sporadic basis *as an owner or employee of an entity that has a contract* with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling, or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils; or (2) to work at school on a more than intermittent or sporadic basis *as an individual under a contract* with a school district, intermediate school district, public school academy, or nonpublic school to provide food, custodial, transportation, counseling or administrative services, or to provide instructional services to pupils or related and auxiliary services to special education pupils. The bill specifies that "school property" would be defined as it is in Section 33 of the Sex Offenders Registration Act.

BACKGROUND INFORMATION:

For further information about the eight bills that concern school personnel convicted of crimes, visit the legislature's website—<http://www.legislature.mi.gov>—and search for any of the following bills. Then click on the "Analysis as Enrolled" under HFA-Legislative Analysis: House Bill 4402 (Public Act 129 of 2005); House Bill 4928 (Public Act 130 of 2005); House Bill 4930 (Public Act 131 of 2005); House Bill 4932 (Public Act 127 of 2005); House Bill 4991 (Public Act 136 of 2005); Senate Bill 609 (Public Act 124 of 2005); Senate Bill 611 (Public Act 125 of 2005); and Senate Bill 616 (Public Act 139 of 2005).

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.

In 2005, the legislature enacted an additional eight bills as a result of a state audit, reports in the press, and a call by the governor to establish predator-free zones around schools.

For example, 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.

The laws enacted in 2005 helped to ensure that schools are given early notice of alleged sex offenders when they are *charged* with an offense. They also require any school employee so charged to notify school officials, and require those officials to suspend the employee, and withhold his or her compensation, until the state superintendent determines whether to revoke the person's teaching certificate or other credentials. Further, the laws also prohibit those on the Sex Offenders Registry from working or loitering within 1000 feet of school property, establishing a predator-free zone near the places children work and play. Finally, the laws 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.

When the laws were implemented in January 2006, two problems became apparent: a required comparison of the state school personnel database with the known criminal database yielded a number of false-positives; and contractors who seldom come into contact with school children—such as auditors, architects, and construction workers—were required to undergo fingerprint checks at their own expense.

This bill would ensure more accuracy in the comparison of the databases that list registered school personnel and known criminals. In addition, only felony and sex-related crimes would be made public. Finally, the bill would narrow the list of contractors subject to fingerprint checks to those who have continual contact with students, offering services such as food, custodial, transportation, instructional, counseling, or administrative services.

Against:

This is a good bill but some people believe it should be amended to create a task force, appointed by the governor, to examine the issue of false positive results that occur as a result of the comparison of databases listing school personnel and known criminals. That task force should consist of representatives of the Departments of Education, State Police, and Information Technology, as well as two members representing teachers or school support personnel. The task force should facilitate the compensation of teachers or other school personnel who have suffered harm as a result of false positive results, and also provide recommendations to the legislature on how to improve the criminal history checking process.

Response:

This amendment was offered in the House Education Committee but was not adopted.

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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.