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BILL ANALYSIS

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Senate Bills 601 and 609 through 612 (as introduced 6-16-05)

Sponsor: Senator Gerald Van Woerkom (S.B. 601)
Senator Wayne Kuipers (S.B. 609 & 610)
Senator Jason E. Allen (S.B. 611)
Senator Shirley Johnson (S.B. 612)

Committee: Education

Date Completed: 6-22-05

CONTENT

The bills would amend various statutes to do all of the following:

- Extend a requirement that certain applicants for school employment undergo criminal background checks to any applicant for school employment and individuals being assigned to work under contract in a school.
- Prohibit a school district, intermediate school district (ISD), public school academy (PSA), or nonpublic school from employing a person who had been convicted of a "listed offense" under the Sex Offenders Registration Act (SORA) (described in BACKGROUND, below).
- Provide that a teacher's tenure rights would be subject to requirements pertaining to license suspension for certain convictions and notification of those convictions.
- Include SORA listed offenses in the crimes for which the Superintendent of Public Instruction must summarily suspend a person's teaching certificate or State Board of Education approval.
- Provide for the suspension of wages of a person who continued to work under a teaching certificate or State Board approval pending administrative proceedings after a conviction for certain crimes, and the forfeiture of those wages if the person's certificate or approval were suspended or revoked.
- Prohibit the reinstatement of a person's teaching certificate or State Board approval if he or she were convicted of a SORA listed offense.
- Revise the notification requirements that apply when a person holding a teaching certificate or State Board approval is convicted of certain crimes.
- Require the Department of Information Technology to develop a monthly automated comparison of individuals holding teaching certificates or State Board approval with criminal convictions.
- Require a person employed by, or working under contract in, a school district, ISD, PSA, or nonpublic school to report if he or she were charged with or convicted of certain crimes and prescribe criminal penalties for failing to report.

Senate Bills 601, 609, 610, and 612 are tie-barred to each other. Senate Bill 611 is tie-barred to Senate Bill 612.

Senate Bills 601, 610, and 612 would amend the Revised School Code; Senate Bill 609 would amend the teachers' tenure Act; and Senate Bill 611 would amend the Code of Criminal Procedure.

Senate Bill 601

Under the Revised School Code, when a school district, local act school district, or ISD, or the governing body of a PSA 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 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 State Police 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 State Police 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 received by a school district, ISD, PSA, or nonpublic school 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 the board or governing body of the school district, ISD, PSA, or nonpublic school each specifically approved the employment or work assignment.

The bill specifies that, if a school official of a school district, ISD, PSA, or nonpublic school had notice that an individual had been convicted of a SORA listed offense, the board of the district, ISD, PSA, or nonpublic

school could not employ that person 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.

Senate Bill 609

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) and Section 1535a of the Code (which Senate Bill 610 would amend). To the extent that any provision of Article IV was inconsistent with those sections of law, Article IV would not apply to the teacher.

Senate Bill 610

Suspension of Certificate or State Board Approval

Sections 1535a(1) and 1539b(1) of the Revised School Code require the Superintendent of Public Instruction to notify a person that his or her teaching certificate or State Board approval of employment may be suspended if he or she has been convicted of any felony or any of the following misdemeanors:

- Fourth-degree criminal sexual conduct (CSC) or an attempt to commit that offense.
- Third- or fourth-degree child abuse or an attempt to commit that offense.
- A misdemeanor involving cruelty, torture, or indecent exposure involving a child.
- A misdemeanor violation of Section 7410 of the Public Health Code (which prohibits the delivery of a Schedule 1 or 2 controlled substance that is a narcotic or cocaine, by a person who is 18 or older to a person who is under 18 and at least three years younger than the offender, or delivery on or within 1,000 feet of school property).
- Breaking and entering.

- Allowing a minor to possess or consume alcohol at a social gathering on premises under the offender's control.
- Accosting, soliciting, or enticing a child for immoral purposes.
- Indecent exposure.
- Larceny from a vacant building.
- Selling or furnishing alcohol to a minor.

Sections 1535a(2) and 1539b(2) provide for the summary suspension of the teaching certificate or State Board approval of a person who has been convicted of a crime listed below, if the Superintendent finds that the public health, safety, or welfare requires emergency action:

- Criminal sexual conduct in any degree, assault with intent to commit CSC, or an attempt to commit CSC in any degree.
- Felonious assault on a child, first-degree child abuse, or an attempt to commit first-degree child abuse.
- Cruelty, torture, or indecent exposure involving a child.
- Manufacture, delivery, or possession with intent to manufacture or deliver, of at least 1,000 grams of a Schedule 1 or 2 controlled substance that is narcotic or cocaine.
- Intentional or knowing possession of a Schedule 1 or 2 narcotic or cocaine.
- Delivery of a Schedule 1 or 2 narcotic or cocaine to a minor.
- A violation of Section 7410 of the Public Health Code (described above).
- Recruiting, inducing, or coercing a minor to commit a controlled substance felony.
- Assault with intent to commit murder.
- Armed assault with intent to steal.
- Attempted murder.
- Accosting, soliciting, or enticing a child for immoral purposes.
- First- or second-degree murder.
- Armed robbery.

The bill would include any other listed offense under SORA among the crimes for which summary suspension is required.

Under the Code, after a hearing, the Superintendent may not take action against the teaching certificate or State Board approval of a person convicted of a crime listed in Section 1535a or 1539b unless the Superintendent finds that the conviction is reasonably and adversely related to the person's present fitness to serve in an elementary or secondary school in Michigan.

Suspension/Forfeiture of Wages

The bill specifies that, if a person who entered a plea of guilty or no contest to, or who was found guilty of, a crime listed in Section 1535a or 1539b remained employed by a public school, school district, ISD, or nonpublic school during the pendency of the administrative proceedings against him or her, the school or district employing the person could not pay the person his or her wages, but would have to hold the wages in escrow in its own accounts until the Superintendent made a final determination of whether to suspend or revoke the person's teaching certificate or State Board approval. If the Superintendent suspended or revoked the certificate or approval, the wages held in escrow would have to be forfeited to the public school, school district, ISD, or nonpublic school. If the Superintendent did not suspend or revoke the certificate or approval, the school or district would have to pay the person the wages held in escrow, without interest. If a collective bargaining agreement for employees of a school district, ISD, or PSA were in effect as of the bill's effective date, and if the terms of that agreement were inconsistent with this provision of the bill, the provision would not apply to that school district, ISD, or PSA until after the agreement expired.

Reinstatement

Under the Code, after a person completes his or her sentence, he or she may request a hearing before the Superintendent on reinstatement of his or her teaching certificate or State Board approval. Based on the issues and evidence presented at the hearing, the Superintendent may reinstate, continue the suspension of, or permanently revoke the person's teaching certificate or State Board approval. The Superintendent may not reinstate a person's certificate or approval unless he or she finds that the person is currently fit to serve in an elementary or secondary school in Michigan and that reinstatement will not adversely affect the health, safety, and welfare of pupils. Under the bill, however, if a person's conviction were for a SORA listed offense, the person would not be entitled to request a reinstatement hearing, and the Superintendent could not reinstate the person's teaching certificate or State Board approval.

The Code provides that, if a person's conviction is reversed upon final appeal, his or her teaching certificate must be reinstated when he or she notifies the Superintendent of the reversal. Also, if the suspension of the person's teaching certificate was the sole cause of his or her discharge from employment, the person must be reinstated, when he or she notifies the appropriate school board of the reversal, with full rights and benefits, to the position the person would have had if he or she had been continuously employed. The bill also provides that, if any wages owed to the person had been forfeited, the public school, school district, ISD, or nonpublic school to which the wages were forfeited would have to repay the wages to the person.

Notification of Conviction

The Code requires the court and the prosecuting attorney in charge of a case in which a person who holds a teaching certificate or State Board approval is convicted of a crime listed in Section 1535a or 1539b, to notify the Superintendent and any public school, school district, ISD, or nonpublic school in which the person is employed within 15 days after the date of the conviction. The bill specifies instead that if the prosecuting attorney in charge of a case received a form as provided under Section 1230d (proposed by Senate Bill 612), the prosecuting attorney would have to notify the Superintendent and any public school, school district, ISD, or nonpublic school in which the person was employed by forwarding a copy of the form to each within seven days after receiving it. If the court received a form under Section 1230d, the court would have to notify the Superintendent and the school or district by forwarding a copy of the form and information regarding the sentence imposed on the person within seven days after the date of sentencing, even if the court were maintaining the file as a nonpublic record. The bill would delete a requirement that a prosecuting attorney and court inquire whether a person convicted under Section 1535a or 1539b holds a teaching certificate or State Board approval.

Under the Code, within five working days after receiving notification of a person's conviction from the prosecuting attorney or the court, the Superintendent must request the court to provide a certified copy of the

judgment of conviction and sentence and pay any fees required by the court. The court must provide the certified copy within five working days after receiving the request and fees. The bill would change the deadlines from five working days to seven days and would require the Superintendent to request the information after receiving notice from the prosecutor or court or learning through an authoritative source that a person who held a teaching certificate or State Board approval had been convicted of a crime listed in Section 1535a(1) or 1539b(1). The bill also would allow the court to provide the information within seven days after receiving the request and fees or after entry of the judgment or other document, whichever was later, even if the court were maintaining the judgment or other document as a nonpublic record.

Automated Comparison

The bill would require the Department of Information Technology to work with the Department of Education and the Department of State Police to develop and implement an automated program that conducted a monthly comparison of the list of individuals holding a teaching certificate or State Board approval with conviction information received by the Department of State Police, including convictions contained in a nonpublic record.

Senate Bill 611

The bill would amend the Code of Criminal Procedure to include in the sentencing guidelines failure by a school employee to report a conviction of a SORA listed offense (as Senate Bill 612 would require). The offense would be a Class G felony against the public safety, with a statutory maximum sentence of two years' imprisonment.

Senate Bill 612

Under the bill, if a person who was employed in any capacity by, or who regularly and continuously worked under contract in, a school district, ISD, PSA, or nonpublic school were charged with a crime listed in Section 1535a(1) of the Revised School Code or a substantially similar crime in another jurisdiction, he or she would have to report to the Department of Education and to the school district, ISD, PSA, or

nonpublic school that he or she had been charged with the crime.

If a person who was employed by, or regularly and continuously worked under contract in, a school district, ISD, PSA, or nonpublic school as a teacher or in a position requiring State Board approval entered a plea of guilty or no contest to, or were found guilty of, a crime listed in Section 1535a(1) or 1539b(1) of the Code, the person immediately would have to disclose to the court, on a form prescribed by the State Court Administrative Office, that he or she was so employed. The person immediately would have to provide a copy of that form to the prosecuting attorney in charge of the case, the Superintendent of Public Instruction, and the school district, ISD, PSA, or nonpublic school.

A violation of the bill would be a felony punishable by imprisonment for up to two years and/or a maximum fine of \$2,000, if the crime involved were a listed offense under SORA. If the crime involved were not a listed offense under SORA, a violation would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000.

A person who violated the bill also would be subject to discharge from his or her employment. If, after providing notice and the opportunity for a hearing, the board of a school district, ISD, or PSA, found that a person employed by the district, ISD, or PSA had violated the bill, the board could discharge the person from employment. If a collective bargaining agreement were in effect as of the bill's effective date, however, and if that agreement did not comply with this provision of the bill, the provision would not apply to that district, ISD, or PSA until after the collective bargaining agreement expired.

MCL 380.1230 et al. (S.B. 601)
38.101 et al. (S.B. 609)
380.1535a & 380.1539b (S.B. 610)
777.13p (S.B. 611)
Proposed MCL 380.1230d (S.B. 612)

- 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 criminal sexual conduct 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.

Legislative Analyst: Patrick Affholter

BACKGROUND

Under the Sex Offenders Registration Act (MCL 28.722), "listed offense" means any of the following:

FISCAL IMPACT

Senate Bill 601

The bill would have no fiscal impact on the State.

School districts would incur the additional costs associated with a criminal background check on all newly hired personnel. This would be an additional cost because currently only teachers and administrators are required to have criminal background checks.

Senate Bill 609

The bill would have no fiscal impact on State or local government.

Senate Bill 610

There could be a cost to the State's Department of Information Technology associated with developing and implementing an automated program that did a monthly comparison of those with teaching certificates and criminal convictions. The amount, however, is indeterminate.

The bill would have no fiscal impact on local government.

Senate Bills 611 & 612

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many individuals would be convicted of failing to report a criminal charge or conviction. Local units of government incur the costs of misdemeanor probation and incarceration in local facilities, both of which vary by county. The State incurs the cost of felony probation at an average annual cost of \$2,000 and the cost of incarceration in a State facility at an average annual cost of \$28,000.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.