

SCHOOL PERSONNEL CONVICTED OF CRIMES

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House Bill 4402 as passed by the House
Sponsor: Rep. Goeff Hansen

House Bill 4931 as passed by the House
Sponsor: Rep. Tonya Schuitmaker

House Bills 4928 as passed by the House
Sponsor: Rep. Brian Palmer

House Bill 4932 as passed by the House
Sponsor: Rep. Edward Gaffney, Jr.

House Bill 4930 as passed by the House
Sponsor: Rep. Kevin Elsenheimer

House Bill 4933 as passed by the House
Sponsor: Rep. Rick Jones

Committee: Education

Second Analysis (9-7-05)

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; require those charged with any "listed offense" to notify their employing school district officials; require school districts to escrow the pay for those charged with a "listed offense;" set maximum penalties within the sentencing guidelines used by the courts for violations of these proposed laws; and prohibit registered sex offenders whose listed offense is a felony from residing, working, or loitering within 1,000 feet from school property.

FISCAL IMPACT: The additional background checks may result in additional costs to the school districts. The bills having criminal penalties—House Bills 4930, 4931, 4932, and 4933—would have an indeterminate impact on state and local justice systems, depending on how the legislation affected criminal charging decisions and sentencing. To the extent that more offenders were sentenced to misdemeanor probation, or to jail terms, or to longer jail terms, local costs would increase. To the extent that additional penal fine revenue was collected under the bills, they could benefit local libraries, which are the constitutionally-designated recipients of such revenue. (Additional information is found later in the analysis.)

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. The case is scheduled for a June 23 preliminary hearing which will determine if there's enough evidence to send the case to trial.

Legislation has been introduced to prohibit school boards from hiring sex offenders, and among other things, to require school personnel who are charged with a sex offense to notify school officials.

THE CONTENT OF THE BILLS:

The bills would amend various acts to ensure that all school employees who have committed crimes against children will be prohibited from working in schools. Further, the bills require criminal background checks for all school employees, including contractual employees; set penalties for certain crimes; and require school districts to escrow an employee's pay if the employee is charged with such a crime. The bills would take effect October 15, 2005. A more detailed explanation of each bill follows, including those bills tie-barred to each other.

House Bill 4402 (H-3) would amend the Revised School Code (MCL 380.1230 & 380.1230a) to require a background check upon the offer of initial employment, for any individual seeking full-time or part-time employment, or when school officials learn that an individual is being assigned to regularly and continuously work under contract in any of their schools. House Bill 4402 is tie-barred to House Bills 4928, 4929, and 4930 so that it could not become law unless the other bills also were enacted.

Currently under the law, criminal history checks are required when an offer of initial employment is made by the board of a school district, intermediate school district, or the governing body of a public school academy (customarily called a charter school), or by a nonpublic school to a potential teacher, school administrator, or person who would fill another position requiring state board approval. School officials must request that a criminal history check be completed by the Criminal Records Division of the Department of State Police. House Bill 4402 would retain this provision, and extend it to all individuals offered employment, and those who work regularly and continuously under contract.

The bill specifies that if the results of a criminal history check revealed that the applicant had been convicted of a listed offense, then school officials would be prohibited from employing the individual in any capacity. If the report revealed the applicant had been convicted of a felony other than a listed offense, then school officials would be prohibited from employing the individual in any capacity unless the superintendent or chief administrator, and the board or governing body of the school district specifically approved the employment or work assignment.

[Under the bill, "listed offense" mean that term as defined in the Sex Offenders Registration Act. There, the crimes included as "listed offenses" in Section 2 include the following: accosting or soliciting a child for immoral purposes; second or subsequent offenses of soliciting a child for immoral purposes; child sexually abusive activity or material; sodomy if less than 18 years of age; third or subsequent violations of any combination of disorderly person, neglect to support a family, or cohabitation by unmarried men and women; gross indecency between males, between females, and between a male and female if under 18 years of age; kidnaping; kidnaping under age 14; soliciting and accosting; pandering; 1st, 2nd, 3rd and 4th degree criminal sexual assault; assault with intent to commit criminal sexual assault; sexually delinquent persons; the conspiracy to commit any of the above offenses; and any similar ordinances, state laws, and laws of other countries, tribes, and military law.]

Further, if school officials had notice than an individual had been convicted of a listed offense, they would be prohibited from employing that person in any capacity, or allowing that person to regularly and continuously work under contract in any of the schools.

House Bill 4928 (H-1) would amend the Revised School Code (MCL 380.1535a & 380.1539b) to revise the notice procedures for teachers and other state board approved school personnel being convicted of certain offenses, and to provide for escrow of their

salaries during the trial proceedings and forfeiture of their earnings upon conviction. The bill is tie-barred to House Bills 4402, 4929, and 4930 so that it could not become law unless the other bills also were enacted.

Under the bill, a school district that continued to employ a person who entered a plea of guilt or no contest, or who was found guilty by a judge or jury of a crime listed in subsection (2) [* see below], would be prohibited from paying the person wages. Instead, the district would be required to hold the person's wages in escrow until the superintendent of public instruction made a final determination of whether or not to suspend or revoke the person's teaching certificate or state board approval. If the state superintendent suspended or revoked the teaching certificate or state board approval, then the wages held in escrow would be forfeited to the public or nonpublic school. If the certificate was not suspended or revoked, the school would be required to pay the person the wages held in escrow, without interest. However, if a collective bargaining agreement was in effect, and if the terms of that agreement were inconsistent with this subsection, then this subsection would not apply until after the expiration of the agreement.

The bill also specifies that a person convicted of a listed offense under the Sex Offenders Registration Act would not be entitled to request a hearing on reinstatement, and the state superintendent would be prohibited from reinstating the person's teaching certificate or state board approval.

Under the bill, a prosecuting attorney would be required to submit the form filed by a person charged with an offense listed under the Sex Offenders Registration Act (created under House Bill 4930) to the state superintendent, and to any public or nonpublic school in which the person was employed, not later than seven days after receiving the form. Currently under the law, the prosecutor must act no later than 15 days after the date of *conviction*.

If the court received the form filed by a person charged with a listed offense, it would be required to fulfill the same notice provisions not later than the date of sentencing, even if the court was maintaining the file as a nonpublic record. Not later than seven days (currently the timeframe is five working days) after receiving notification from the prosecuting attorney or the court, or learning through an authoritative source that a person who held a teaching certificate or a state board approval had been convicted of a crime, the state superintendent would request a certified copy of the judgment or conviction and sentence, or other document regarding the disposition of the case. The court would be required to provide the certified copy within seven days (currently the time frame is five working days) after receiving the request, or after entry of the judgment or other document, whichever was later, even if the court was maintaining the judgment or other document as a nonpublic record.

Finally, House Bill 4928 specifies that the Department of Information Technology work with the Departments of Education and State Police to develop and implement an automated program that would do a monthly comparison of the Department of Education's list of individuals holding a teaching certificate or state board approval with

the conviction information received by the Department of State Police, including convictions contained in a nonpublic record.

Under the bill, "listed offense" would mean that term as defined in section 2 of the Sex Offenders Registration Act.

[*The crimes listed in Sections 1535a(2) and 1539b(2) include a) criminal sexual conduct in any degree, assault with the intent to commit criminal sexual conduct, or an attempt to commit criminal sexual conduct in any degree; b) felonious assault on a child, child abuse in the first degree, or an attempt to commit child abuse in the first degree; c) cruelty, torture, or indecent exposure involving a child; d) a violation of four sections of the Public Health Code (concerning unlawful manufacture, delivery, or possession of controlled substances or controlled substance analogues; distribution of marihuana to minors near school property; and recruiting or inducing a minor to commit a felony); e) a violation of eight sections of the Michigan Penal Code (including assault with intent to commit murder or to steal while armed; attempt to murder; consumption or possession of alcohol by minors, or controlled substances at social gatherings; first and second degree murder; armed robbery; and using the Internet when committing a crime against a minor); f) any other listed offense; and g) if the state superintendent determines it necessary, any other crime listed in Sections 1535a(1) and 1539b(1).

Crimes listed in Sections 1535a(1) and 1539b(1) include any felony and any of the following misdemeanors: 1) criminal sexual conduct in the fourth degree or an attempt to commit criminal sexual conduct in the fourth degree; 2) child abuse in the third or fourth degree, or any attempt to commit child abuse in the third or fourth degree; 3) a misdemeanor involving cruelty, torture, or indecent exposure involving a child; 4) a misdemeanor violation of Section 7410 of the Public Health Code (which concerns distribution of marihuana to minors near school property); 5) a violation of five sections of the Michigan Penal Code (concerning breaking and entering; consumption or possession of alcohol by minors, or controlled substances at social gatherings; soliciting a child for immoral purposes; indecent exposure; and damage to vacant buildings); or a misdemeanor violation of three sections of the Michigan Penal Code (including assault and battery; domestic assault; assault and infliction of serious injury; and using the Internet to commit a crime against a minor); and 6) a misdemeanor violation of Section 701 of the Michigan Liquor Control Act concerning the prohibition of liquor sales to minors. House Bill 4928 would amend these sections to also include 7) any misdemeanor that is a listed offense, as well as a violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.

For the crimes known as "listed offenses" in section 2 of the Sex Offenders Registration Act, see the description, above, of House Bill 4402.]

House Bill 4929 (H-1) would amend Public Act 4 of 1937 concerning teacher tenure (MCL 38.101) to specify that the rights of a teacher to continuing tenure would be subject to sections 1230d and 1535a of the Revised School Code. [Section 1230d would be

added to the code with the enactment of House Bill 4930, and Section 1535a would be added to the code with the enactment of House Bill 4928.] To the extent that any provision of the amended article concerning teacher tenure was inconsistent with those sections of the Revised School Code, the teacher tenure article would not apply. House Bill 4929 is tie-barred to House Bills 4402, 4928, and 4930 so that it could not become law unless those bills also were enacted.

House Bill 4930 (H-1) would amend the Revised School Code to require a person who was employed in any capacity by a school district, intermediate school district, public school academy, or nonpublic school, or who applied for a position (and had an initial criminal history check), or who regularly worked under a contract in a school district, to report to the Department of Education and the school district in the event of being charged with a crime listed in Section 1535a(1) (see above) or a substantially similar law in another state, a political subdivision of this state or another state, or the United States. The bill is tie-barred to House Bills 4402, 4928, and 4929 so that it could not become law unless the others also were enacted.

Under the bill, all of the following would apply to this reporting requirement: a) the person would be required to make the report on a form prescribed by the Department of Education; b) the person would be required to submit the report to the department and to the superintendent of the school district, or chief administrator of the public school academy or nonpublic school; and, c) the person would have to submit the report within three business days after being charged with the crime.

If the person who was charged, entered a plea of guilt or no contest, or was subject to a finding of guilt by a judge or jury of a crime described in Section 1535a(1) or 1439b(1) after having been initially charged, then that person would be required to immediately disclose to the court (on a form prescribed by the state court administrative office) that he or she was employed by, or working under contract in, a school district. A copy of that form would then have to be provided to the prosecuting attorney in charge of the case, to the state school superintendent, and to the school district.

A person who violated this section of the law would be guilty of a crime, as follows: a) if the person violated either of the requirements listed above, and the violation was a listed offense, then the person would be guilty of a felony punishable by imprisonment for not more than two years, or a fine of not more than \$2,000, or both; b) if the person violated either of the requirements listed above, and the violation was a crime other than a listed offense, then the person would be guilty of a misdemeanor punishable by imprisonment for not more than one year, or a fine of not more than \$1,000, or both.

Finally, a person who violated this section of the code could be subject to discharge from employment, or termination of his or her contract, if the board of a school district found, after providing notice and the opportunity for a hearing, that a person had violated this section. However, if a collective bargaining agreement that applied to the affected person was in effect as of the effective date of this section, and if that collectively bargained

agreement was not in compliance with this subsection, then this subsection would not apply to that school district until after the expiration of the agreement.

If a person submitted a report that he or she had been charged with a crime, and the person was subsequently not convicted, then he or she could request the Department of Education and the school district, public school academy, or nonpublic school to delete the report from its records, and upon receiving documentation, the school organization would be required to do so.

If the prosecuting attorney in charge of a case received a form, he or she would be required to notify the school officials in the district in which the person was employed by forwarding a copy of the form to each of them no later than seven days after receiving the form. If the court received a form, the court would be required to notify school officials, by forwarding each a copy of the form, and information regarding the sentence imposed, not later than seven days after the date of sentencing, even if the court was maintaining the file as a nonpublic record.

Finally, House Bill 4930 specifies that the Department of Information Technology work with the Departments of Education and State Police to develop and implement an automated program that would do a monthly comparison of the Department of Education's list of individuals holding a teaching certificate or state board approval with the conviction information received by the Department of State Police, including convictions contained in a nonpublic record. After implementation of the program, if the monthly comparison disclosed that a person on the department's list of registered educational personnel had been convicted of a crime, then the Department of State Police would be required to notify the school in which the person was employed of that conviction.

As used in this section of the code, "listed offense" would mean that term as it is defined in Section 2 of the Sex Offenders Registration Act (see above).

House Bill 4931 (H-1) would amend the Code of Criminal Procedure (MCL 777.13p) to establish a sentencing guideline for the crime of a school employee failing to report a charge or a conviction of a listed offense (as defined in Section 2 of the Sex Offenders Registration Act). The crime, a felony, would be categorized under the state sentencing guidelines as a violation of public safety (class G) and would carry a maximum prison term of two years. The bill is tie-barred to House Bill 4930 and could not become law unless that bill also were enacted.

House Bill 4932 (H-2) would amend the Sex Offenders Registration Act (MCL 28.721-732) to prohibit convicted sex offenders whose listed offense is a felony from residing, working, or loitering 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. "Work" would be defined to mean continuous and regular employment.

The bill specifies that a person who violated this section of the law would be guilty of a crime as follows: a) for the first violation, the individual would be guilty of a misdemeanor punishable by imprisonment for not more than one year, or a fine of not more than \$1,000, or both; b) for the second or subsequent violation, the individual would be guilty of a felony punishable by imprisonment for not more than two years, or a fine of not more than \$2,000, or both.

The bill also specifies that it would not apply to a) an individual who resided or worked within a student safety zone before the effective date of this act; b) an individual whose residence or place of employment was within a student safety zone solely because a school was relocated or was initially established 1,000 feet or less from the individual's residence or place of employment; c) an individual who resided within a student safety zone because the individual was an inmate or resident of a prison, jail, juvenile facility, or other correctional facility, or was a patient of a mental health facility; d) a minor who resided with his or her parent or guardian; and e) an individual who was a patient in a hospital or hospice.

Under the bill, a person who resided in a student safety zone and who was subsequently required to register under the Sex Offenders Registration Act would be required to change his or her residence to a location outside the student safety zone not more than 90 days after he or she was sentenced for the conviction that gave rise to the registration.

Finally, the bill specifies that these provisions would not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that was committed by that individual while violating this section of the law.

House Bill 4933(H-1) would amend the Code of Criminal Procedure (MCL 777.11b) to establish a sentencing guideline for the crimes of living, working, or loitering in a student safety zone—second or subsequent offense. The crime, a felony, would be categorized under the state sentencing guidelines as a violation of the public trust (class G) and would carry a maximum prison term of two years. The bill is tie-barred to House Bill 4932 so that it could not become law unless that bill also were enacted.

BACKGROUND INFORMATION:

These seven bills reported from the House Education Committee are part of a 15-bill package of legislation known as the School Safety Initiative. The other eight bills are under consideration by the House Judiciary Committee, including Senate Bills 130 and 193, and House Bills 4934 - 4937, as well as House Bills 4957-4958.

FISCAL INFORMATION:

Currently teachers, school administrators, and state board approved positions require criminal background checks. House Bill 4402 adds all full- and part-time personnel, both hired and assigned, as additional groups for whom background checks would be required. This may result in additional costs to the school district for the cost of the background checks.

The bills having criminal penalties—House Bills 4930, 4931, 4932, and 4933—would have an indeterminate impact on state and local justice systems, depending on how the legislation affected criminal charging decisions and sentencing. To the extent that more offenders were sentenced to felony probation, were sentenced to prison, or were sentenced to prison for longer terms, additional costs would be incurred by the state. For FY 2004-05, average costs of felony supervision are \$1,977 per supervised offender per year, and average costs of prison incarceration are about \$29,000 per prisoner per year.

To the extent that more offenders were sentenced to misdemeanor probation, or to jail terms, or to longer jail terms, local costs would increase. Local costs of misdemeanor supervision and jail vary across the state.

To the extent that additional penal fine revenue was collected under the bills, they could benefit local libraries, which are the constitutionally-designated recipients of such revenue

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 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 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.

Against:

The 'early warning' afforded to school officials by these bills would shift the notice requirements from the point an offender is *convicted* of a crime, to the point an accused citizen is *charged* with a crime—that is, before an arraignment in court when the evidence of a case is reviewed to determine whether it warrants a trial. This early warning is too early. It assumes citizens are guilty before their trial and conviction. In matters of intimate personal relations, there are sometimes false charges of abuse or assault. During such times, it is important to uphold the premise of fairness that under-girds any conception of justice—to remember that in the United States, citizens are innocent until proven guilty in a court of law.

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.

Response:

House Bill 4932 was amended on the House floor to mitigate these concerns. First, the bill was amended so that the residency prohibition would apply only to those whose listed offense is a felony. Second, the term "work" was defined to mean continuous and regular employment.

Reply:

While these amendments improve the bill, they do not go far enough. For example, vacant school buildings and school property would trigger the 1,000-foot residency ban. Further, the residency ban should apply only to those whose listed offense involved a minor. Finally, the work prohibition within the 1,000-foot residency ban is still overly broad, and would deny gainful employment to many who are struggling to re-establish a stable livelihood.

POSITIONS:

The Michigan Catholic Conference supports the bills. (6-21-05)

The Ottawa County Prosecutor supports the bills. (6-15-05)

The Citizens Alliance on Prisons and Public Spending (CAPPS) opposes House Bill 4932. (6-21-05)

The American Civil Liberties Association opposes House Bill 4932. (6-21-05)

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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.