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BILL ANALYSIS

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Senate Bill 129 (as enrolled)
Senate Bills 606 and 607 (as enrolled)
Senate Bill 616 (as enrolled)
Senate Bill 617 (as enrolled)
House Bill 4932 (as enrolled)
House Bill 4934 (as enrolled)
Sponsor: Senator Alan Sanborn (S.B. 129)
Senator Michael D. Bishop (S.B. 606)
Senator Bruce Patterson (S.B. 607)
Senator Nancy Cassis (S.B. 616)
Senator Laura M. Toy (S.B. 617)
Representative Edward Gaffney, Jr. (H.B. 4932)
Representative Richard Ball (H.B. 4934)
Senate Committee: Judiciary (S.B. 129, 606, & 607 and H.B. 4934)
Education (S.B. 616 & 617 and H.B. 4932)
House Committee: Judiciary (S.B. 606 & 607 and H.B. 4934)
Education (S.B. 129, 616, & 617 and H.B. 4932)

PUBLIC ACT 126 of 2005
PUBLIC ACTS 122 & 123 of 2005
PUBLIC ACT 139 of 2005
PUBLIC ACT 121 of 2005
PUBLIC ACT 127 of 2005
PUBLIC ACT 132 of 2005

Date Completed: 4-13-06

RATIONALE

In 2004 and 2005, the *Detroit News* published several articles detailing the employment of sex offenders and other criminals as employees and volunteers with Michigan schools. According to one article, the newspaper found that at least 35 Michigan school employees or recent hires had been charged with or convicted of sexual misconduct in the previous 15 months and had victimized approximately 50 children during that time ("State fails to stop teacher sex abuse", 4-24-05).

Also, in August 2004, the Auditor General released a report of a performance audit of the Office of Professional Preparation Services (OPPS), the entity within the Michigan Department of Education (MDE) responsible for ensuring that those employed in elementary or secondary schools with instructional responsibilities have valid credentials for their positions. The OPPS audit report found that the Office was not effective in ensuring that school employees complied with certification requirements, and recommended that it be more proactive in helping to ensure that licensed school personnel with criminal

convictions are reported to the MDE as required by law.

In addition, widely publicized incidents in Florida, Idaho, and California involved the kidnapping, molestation, and murder of children by known sex offenders. 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. She encouraged the Legislature to enact laws establishing predator-free zones around schools; requiring schools to complete background checks on all employees and volunteers; and prohibiting anyone registered under the Sex Offenders Registration Act (SORA) from working or volunteering for schools. Many agreed that legislation should address those issues.

CONTENT

The bills amended the Code of Criminal Procedure and the Sex Offenders Registration Act to do all of the following:

- **Allow a court to place a person convicted of a "listed offense" on probation for at least five years and, with certain exceptions, require the court to order such a probationer not to live, work, or loiter within a "student safety zone".**
- **Prohibit a person required to be registered under SORA from living, working, or loitering within a student safety zone.**
- **Specify exceptions to the prohibition against living or working in a student safety zone.**
- **Prescribe penalties for a second, third, or subsequent offense of failure to comply with SORA's reporting requirements, and include a third or subsequent offense in the sentencing guidelines.**

The bills took effect on January 1, 2006.

Senate Bills 129, 606, and 616 amended the Code of Criminal Procedure; Senate Bills 607 and 617 and House Bills 4932 and 4934 amended the Sex Offenders Registration Act.

Senate Bill 129 and House Bill 4932 define terms used in the bills. "Student safety zone" means the area that lies 1,000 feet or less from school property. "School property" means a building, facility, structure, or real property owned, leased, or otherwise controlled by a school, that 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; the term does not include a building, facility, structure, or real property that is no longer in use on a permanent or continuous basis. "School" means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12, and does not include a home school.

"Loiter" means 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" means that term as defined in the Sex Offenders Registration Act (MCL 28.722), i.e., 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).
- Aggravated indecent exposure, if the offender previously was convicted of indecent exposure or aggravated indecent exposure (MCL 750.335a(2)(b)).
- 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(2)(a)).
- 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 (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 129

The bill allows a sentencing court to place an individual convicted of a listed offense on probation for a minimum of five years, and requires 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 in a student safety zone does not prohibit a person from being a patient in a hospital or hospice located within the zone. This exception, however, does not apply to a person who initiates or maintains contact with a minor within that zone.

The court may not prohibit a probationer from living in a student safety zone if he or she either is not more than 19 years of age and attends secondary or postsecondary school and lives with his or her parent or guardian, or is not older than 26 and attends a special education program and lives with his or her parent or guardian or in a group home or assisted living facility. Such an individual must be ordered not to initiate or maintain contact with a minor within the zone, but may be permitted to initiate or maintain contact with a minor with whom he or she attends secondary or postsecondary school, or a special education program in conjunction with that attendance.

The court also may not prohibit a probationer from living within a student safety zone if he or she lived within the zone on the bill's effective date. The court must order the individual not to initiate or maintain contact with any minors within the zone but, for good shown as specified in the probation order, may allow contact with any minors named in the order.

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

The court may exempt an individual from the five-year minimum period of probation and student safety zone restrictions, if either of the following applies:

- The individual has successfully completed his or her probationary period under the

Holmes Youthful Trainee Act for committing a listed offense and has 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 was at least 17 but less than 21 and not more than five years older than the victim.

Senate Bill 606

The bill includes in the sentencing guidelines a third or subsequent offense of failure to update sex offender registration information. The offense is a Class F felony against the public order, with a statutory maximum sentence of four years' imprisonment.

The bill was tie-barred to Senate Bill 607 and House Bill 4934.

Senate Bill 607 & House Bill 4934

Under SORA, registrants are required to report in person to a law enforcement agency, either annually or quarterly depending on their offense, for verification of domicile or residence. Failure to comply with those requirements is a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$1,000. Under House Bill 4934, repeat violations are punishable as shown in Table 1.

Table 1

Prior SORA Convictions	Level	Maximum Penalty
One	Misdemeanor	1 year and/or \$2,000
Two or More	Felony	4 years and/or \$2,500

In addition, a person required to be registered under SORA must notify law enforcement officials within 10 days after the person changes his or her residence, domicile, or place of work or education. Under both bills, that provision also applies to vacating a residence, domicile, or place of work or education.

Senate Bill 607 was tie-barred to House Bill 4934.

Senate Bill 616

The bill includes felony violations of Senate Bill 617 and House Bill 4932 in the sentencing guidelines, as shown in Table 2.

Table 2

Violation	Felony Class & Categories	Stat. Max. Penalty
Failure to update sex offender registration info - 3rd or subsequent offense	F - Public Order	4 years
Student safety zone violation involving work or loitering - 2nd or subsequent offense	G - Public Trust	2 years
Student safety zone violation involving residency - 2nd or subsequent offense	G - Public Trust	2 years

Senate Bill 616 was tie-barred to Senate Bill 617 and House Bill 4932.

Senate Bill 617 & House Bill 4932

Senate Bill 617 prohibits an individual required to be registered under SORA from living within a student safety zone and House Bill 4932 prohibits such a person from working or loitering within a student safety zone. Under both bills, a first violation is a misdemeanor punishable by up to one year’s imprisonment, a maximum fine of \$1,000, or both; a second or subsequent violation is a felony punishable by up to two years’ imprisonment and/or a maximum fine of \$2,000.

Under Senate Bill 617, the prohibition against living in a student safety zone does not apply to an individual who is a patient in a hospital or hospice located within a zone or an individual who resides within a zone because he or she is an inmate or resident of a prison, jail, juvenile facility, or other correctional facility or who is a patient of a mental health facility under an order of commitment. These exceptions, however, do not apply to a person who initiates or maintains contact with a minor within that student safety zone.

The prohibition against living in a student safety zone does not apply to an individual who is not older than 19 and attends secondary or postsecondary school and resides with his or her parent or guardian, or an individual who is not over 26 and attends a special education program and resides with his or her parent or guardian or in a group home or assisted living facility. These exceptions do not apply to an individual who initiates or maintains contact with a minor within the student safety zone. Such an individual, however, may initiate or maintain contact with a minor with whom he or she attends secondary or postsecondary school, or a special education program, in conjunction with that attendance.

The prohibition against living in a student safety zone also does not apply to an individual who was living within that zone on the bill’s effective date. This exception does not apply to a person who initiates or maintains contact with a minor within the zone.

An individual who lives within a student safety zone and who is subsequently required to register under SORA must change his or her residence to a location outside the zone within 90 days after he or she is sentenced for the conviction that obligates him or her to register. This exception does not apply to an individual who initiates or maintains contact with a minor within the zone during the 90-day period.

The prohibition against working in a student safety zone does not apply to any of the following:

- An individual who was working within a student safety zone on the bill’s effective date.
- An individual whose place of employment is within a zone solely because a school is relocated or is initially established 1,000 feet or less from the individual’s place of employment.
- An individual who only intermittently or sporadically enters a zone for the purpose of work.

Those exceptions do not apply to an individual who initiates or maintains contact with a minor within that student safety zone.

The prohibitions against living, working, and loitering do not apply to any of the following,

unless an individual is convicted of more than one of the offenses described below:

28.733 et al. (S.B. 617)
28.733 et al. (H.B. 4932)
28.725 & 28.729 (H.B. 4934)

- An individual convicted as a juvenile of first-, second-, or third-degree 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 was at least 13 but under 16, if the individual was under 13 when he or she committed the offense and not more than five years older than the victim, or if the individual was 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 was under 13 when he or she committed the offense and not more than five years older than the victim or the individual was 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 has successfully completed his or her probationary period under the Holmes Youthful Trainee Act for committing a listed offense and has 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 was at least 17 but less than 21 and not more than five years older than the victim.

Senate Bill 617 and House Bill 4932 both specify that they do not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed while violating the prohibitions against living, working, or loitering in a student safety zone.

MCL 771.2a (S.B. 129)
777.11b (S.B. 606)
28.725 (S.B. 607)
777.11b (S.B. 616)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

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 on a regular basis, such as schools, and from predatory adults who work and volunteer in schools, or live or work near school property. 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 are not in danger from known sex offenders when they are at or near schools.

People with abusive tendencies toward children may seek employment and volunteer opportunities at schools, or live or work near them, because it can afford these individuals easy access to potential victims. This makes it imperative 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 has long been 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, lived in close proximity to a school ("State's sex abusers live near schools", 5-26-05).

By banning sex offenders from living, working, or loitering near schools, the bills help to protect children and add to parents' peace of mind.

Supporting Argument

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, was accused of kidnapping and murdering a nine-year-old girl in February 2005. 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 had 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 congregated, befriended them, used drugs and alcohol to lower their inhibitions, and then committed sex acts upon them. In Idaho, in July 2005, 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 highlighted 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 will help to insulate Michigan's youths 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 suggested 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.

Supporting Argument

The sex offender registry and the publicly available compilation of information from the registry are important tools for the investigation of sex crimes and for parents and other informed citizens to protect children from harm. It is imperative that information in the registry and compilation is up-to-date and accurate in order for them to be effective. By prescribing enhanced penalties for repeat offenses of failing to comply with SORA's reporting requirements, House Bill 4934 will increase the incentive for registered sex offenders to check-in with law enforcement as required by law and may serve as a deterrent to registrants' being lax about reporting. This will increase the reliability of the information in the registry and compilation and enhance their effectiveness as a law enforcement and child protection mechanism.

Opposing Argument

Limitations on where sex offenders live and work are ineffective in preventing new crimes and may 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 reported that the director of the Center for Treatment of Problem Sexual Behavior in Connecticut feared that "pushing offenders out of their neighborhoods, and isolating them, may increase the risk that they may commit another crime". The article also cited 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 in 2005 said that "psychological stresses" had 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% of 183 sex offenders surveyed in Florida said they lost work because a supervisor or co-worker discovered their past crime, 20% had to move because a landlord found out, 15% had to leave after neighbors complained, and 33% 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 studied attempts to treat and control sex offenders characterized 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 was no proof that residential limits would prevent new sex crimes.

Opposing Argument

Imposing limits on where a sex offender may live or work, in addition to criminal penalties already in law and the minimum five-year probation allowed by Senate Bill 129, moves from making a community safer to exacting retribution. Prohibiting an offender from living or working within 1,000 feet of a school may 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 is an unfair punishment not only to the offender, but also to his or her family, including the offender's own children. The offender must either live separately from his or her family, or move everyone to a location that is not within a student safety zone. An offender required to leave a job may be forced to seek unemployment insurance or public 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 bills contain exceptions to the student safety zone restrictions, the exceptions are too narrow. Allowing student offenders not older than 19 or special education offenders up to 26 years old to continue to live within a zone will accommodate high school and special

education students, but most college students who are offenders will not be allowed to continue living with their parents if they live within a zone or, presumably, even visit on weekends or during the summer. In addition, while the exemption for employees who enter a zone only intermittently or sporadically likely will allow employees such as pizza delivery or utility repair workers to enter and work in a zone, it probably does 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 bills do not recognize that large employers may 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 will have to cull from their employment rolls any sex offender who is prohibited from working in a student safety zone, and it is unclear whether employers will be exposed to any criminal or civil liability if they fail to do so.

Opposing Argument

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 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 schoolchildren, 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 are not limited to those offenders who may be a danger to students. The May 26 *Detroit News* article reported on a man who lived 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 had no history of child molestation and said that he baby-sat for his grandchildren and nephews. Prohibiting such an offender from living or working near a school serves 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 stated 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.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 129

To the extent that the bill increases the average lengths of probationary periods ordered, it will increase corrections costs. Local units of government incur the costs of misdemeanor probation, which vary by county. The State incurs the cost of felony probation at an average annual cost of \$2,000. By creating additional conditions of probation, the bill also may make it more difficult for an offender to complete a probationary period without violations, thereby potentially increasing contacts with

the criminal justice system and increasing related costs.

Senate Bills 606 & 607 and House Bill 4934

The bills will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders will receive increased penalties for subsequent convictions of failure to report under SORA. An offender convicted of the Class F offense under the bills will receive a sentencing guidelines minimum sentence range of 0-3 months to 17-30 months. Local governments incur the costs misdemeanor probation and incarceration in a local facility, which vary by county. The State incurs the costs of felony probation at an average annual cost of \$2,000, as well as the costs of incarceration in a State facility at an average annual cost of \$30,000. Additional penal fine revenue benefits public libraries.

Senate Bills 616 & 617 and House Bill 4932

The bills will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders will be convicted of violating the student safety zone prohibitions. An offender convicted of the Class F offense under the bills will receive a sentencing guidelines minimum sentence range of 0-3 months to 17-30 months. Offenders convicted of the Class G offenses will receive a sentencing guidelines minimum sentence range of 0-3 months to 7-23 months.

Fiscal Analyst: Lindsay Hollander

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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.