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BILL ANALYSIS

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Senate Bills 1349 & 1350 (as introduced 5-28-08)  
Sponsor: Senator Wayne Kuipers (S.B. 1349)  
Senator Gretchen Whitmer (S.B. 1350)  
Committee: Education

Date Completed: 6-11-08

### **CONTENT**

**Senate Bill 1350** would create a new statute to do the following:

- Require the Michigan Schools for the Deaf and Blind ("the school") to request a criminal history check, an FBI criminal records check, and an internet criminal history access tool (ICHAT) check for an applicant for employment, a newly hired employee, or a contract worker assigned to work regularly and continuously at the school.
- Permit the school, under certain circumstances, to employ an individual while the criminal history and criminal records checks were being processed.
- Require the school, by July 1, 2008, to request a criminal history check and a criminal records check for all current employees and contract workers working regularly and continuously at the school.
- Permit the school to share the results of an individual's criminal history or criminal records check with another district or school, with the individual's written permission.
- Specify that if the criminal history and criminal records checks had been completed for an individual, then another check would not be required for that individual as long as he or she remained employed or working regularly and continuously under contract for any school employer in the State.
- Require an individual to provide fingerprints for the criminal records

check, and permit the State Police to charge a fee for that check.

- Require the Michigan Department of Education (MDE), by July 1, 2008, to include in its list of registered educational personnel all individuals who were employed by the school and contract workers working regularly and continuously at the school.
- Require an applicant, employee, or contract worker working at the school to report to the MDE and the school within three days if he or she were charged with any of certain crimes specified in the Revised School Code.
- Require an employee or contract worker working at the school who was found guilty of or pleaded no contest to a specified crime to disclose to the court that he or she was employed by or working under contract at the school.
- Prescribe criminal penalties for a violation of those reporting requirements, punishable by imprisonment and/or a fine.
- Provide that an MDE or school official or employee who disclosed information contained in a criminal history record obtained under the bill to any unauthorized person would be guilty of a misdemeanor punishable by a fine of up to \$10,000.

**Senate Bill 1349** would amend the Code of Criminal Procedure to include within the sentencing guidelines the failure by an employee of Michigan Schools for

**the Deaf and Blind to report a charge or conviction. The offense would be a class G felony against the public safety, with a statutory maximum of two years' imprisonment.**

Senate Bill 1349 is tie-barred to Senate Bill 1350, which is described in detail below.

#### Criminal Checks upon Employment

When an offer of initial employment was made by the school to an individual for any full-time or part-time employment or when officials learned that an individual was being assigned to work regularly and continuously under contract at the school, the school would have to request from the criminal records division of the Department of Michigan State Police (MSP) a criminal history check on the individual and, before employing him or her as a regular employee or allowing him or her to work regularly and continuously under contract at the school, would have to have received from the MSP the report of the results of the required criminal check.

("School" would mean the Michigan Schools for the Deaf and the Blind. "At the school" would mean in a classroom at the school, elsewhere on school property, or on a school bus or other school-related vehicle under the school's control. To work "regularly and continuously under contract" would mean to work at the school on more than intermittent or sporadic basis as an individual under a contract or as an owner or employee of an entity that has a contract with the 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.)

In addition to the criminal history check, the school would have to request the MSP to conduct a criminal records check through the Federal Bureau of Investigation (FBI) on an applicant for, or an individual who was hired for, any full-time or part-time employment or who was assigned to work regularly and continuously under contract at the school.

Except as provided below, the school could not employ an individual or allow an individual to work regularly and continuously under contract at the school until after

the school received the results of the criminal records check. When requesting a criminal records check under these provisions, the school would have to require the individual to submit his or her fingerprints to the MSP for that purpose. The MSP could charge a fee for conducting the criminal records check.

The school could require an individual to submit his or her fingerprints for the purposes of conducting a criminal records check only when the individual initially applied for employment with the school or initially was employed by the school or initially was assigned to work regularly and continuously under contract at the school.

If the school administrator determined it necessary to hire an individual or to allow an individual to work regularly and continuously under contract for a particular school year during that school year or within 30 days before the beginning of that school year, the school could employ the individual as a conditional employee or conditionally allow the individual to work regularly and continuously under contract without first receiving a report from the MSP if all of the following applied:

- The school requested the required criminal history check and criminal records check before conditionally employing the individual or conditionally allowing the individual to work regularly and continuously under contract at the school.
- The individual signed a statement identifying all crimes for which he or she had been convicted, if any, and agreeing that, if the report of the criminal history check were not the same as the individual's statement or if the results of the criminal records check revealed information that was inconsistent with the individual's statement, his or her employment contract would be voidable at the school's option.

The school would have to use the model form developed by the Department of Education under Section 1230 of the Revised School Code for the purposes of those provisions. (That section of the Code requires the MDE to develop and distribute to nonpublic schools and school districts a model form to be used by an individual to

identify all crimes for which he or she has been convicted.)

If an individual were employed as a conditional employee under that provision and the report were not the same as the individual's statement or the results of the criminal records check revealed information that was inconsistent with the individual's statement, the school could void the individual's employment contract. If an employment contract were voided, the individual's employment would be terminated, a collective bargaining agreement that otherwise would apply to the individual's employment would not apply to the termination, and the school or the State would not be liable for the termination.

For an applicant for a position as a substitute teacher, or for an individual who worked regularly and continuously under contract at more than one school employer, if the applicant or individual agreed in writing to allow another school employer that had received a report of the results of a criminal history check or a criminal records check conducted on the applicant or individual under the Revised School Code to share the results of that criminal history or criminal records check with the school, then the school could use a report received by another school employer or maintained by the MDE to confirm that the applicant or individual did not have any criminal history. If that confirmation were not available, the applicant or individual would be subject to the provisions described above.

("School employer" would mean the school or a school district, intermediate school district, public school academy, or nonpublic school, as those terms are defined in the Revised School Code.)

If an applicant were being considered for employment by more than one school employer and he or she agreed in writing to allow a school employer to share the report of a criminal history check or the results of a criminal background check with another school employer, the school could satisfy the requirements to conduct a criminal history check or request a criminal records check by obtaining a copy of the criminal history report or the results of the

criminal records check from another school employer.

An applicant for employment would have to give written consent at the time of application for the criminal records division of the MSP to conduct the criminal history check and criminal records check. The school would have to make a request to the criminal records division for a criminal history check and a criminal records check on a form and in a manner prescribed by the criminal records division.

Within 30 days after receiving a proper request by the school for a criminal history check, the criminal records division of the MSP would have to conduct the criminal history check and, after conducting the check and within that time period, provide a report of the results to the school. The report would have to contain any criminal history record information on the individual maintained by the criminal records division. The school would have to retain that report in the individual's employment records.

("Criminal history record information" would mean that term as defined in Section 1a of the fingerprinting law, i.e., the individual's name; date of birth; fingerprints; photographs, if available; personal descriptions including identifying marks, scars, amputations, and tattoos; aliases and prior names; Social Security number, driver license number, and other identifying numbers; and information on misdemeanor arrests and convictions and felony arrests and convictions.)

Within 30 days after receiving a proper request by the school for a criminal records check on an individual, the criminal records division would have to initiate the criminal records check through the FBI. After conducting the criminal records check for the school, the criminal records division would have to provide the results of the criminal records check to the school. The school would have to retain those results in the individual's employment records.

If the criminal history check or criminal records check had been completed for a particular individual and the results reported to the school as provided, then another criminal history check or criminal records check would not be required for that individual as long as he or she

remained employed with no separation from service by any school employer in the State or remained working regularly and continuously under contract with no separation from service for the same employer at any school employer in the State.

An employee would not be considered to have a separation from service in either of the following circumstances:

- The employee was laid off or placed on a leave of absence by his or her employer and returned to active employment with the same employer within one year after being laid off or placed on the leave of absence.
- The employee transferred to another school employer and remained continuously employed by any school employer in the State.

If an individual for whom a criminal records check or criminal history check had been completed were an applicant for employment by a school employer other than the one that originally received the results of the criminal history check or criminal records check or that currently was in possession of the results of the criminal history check or criminal records check, or were being assigned to work regularly and continuously under contract at a school employer different than the one that originally received those results or that currently was in possession of them, then all of the following would apply:

- If the results of the individual's criminal history or criminal records check had not already been forwarded to the new school employer, the new school employer would have to request the school employer that had the results to forward them to the new school employer.
- Upon receiving such a request, a school employer that had the results would have to forward them to the requesting school employer.
- If the new school employer did not receive the results of the individual's criminal history or criminal records check, then the provisions of the bill would apply to the individual to the same extent as if he or she had a separation from service.

### ICHAT Check

If a new school employer received the results of an individual's criminal history check or criminal records check, the employer would have to perform a criminal history check on that individual using the MSP's internet criminal history access tool (ICHAT), ensuring that the criminal history check was based on the personal identifying information, including at least the individual's name, sex, and date of birth, that was associated with the results received from the previous school employer.

If the ICHAT search revealed that the individual had been convicted of a listed offense, then the school employer would have to take steps to verify that information using public records and, if the information were verified using public records, could not employ the individual in any capacity and could not allow the individual to work regularly and continuously under contract at any of its schools.

("Listed offense" would mean that term as defined in the Sex Offenders Registration Act. Under that Act, "listed offense" means any of the following:

- Accosting, enticing, or soliciting a child for immoral purposes.
- Involvement in child sexually abusive activity or material.
- A third or subsequent violation of any combination of the following: engaging in indecent or obscene conduct in a public place, indecent exposure, or a local ordinance substantially corresponding to either of those offenses.
- Sodomy, kidnapping, enticing away, or soliciting and accosting, if the victim is under 18.
- Gross indecency involving a victim under 18, except for a juvenile disposition or adjudication.
- Criminal sexual conduct (CSC) in the first, second, third, or fourth degree.
- Assault with intent to commit CSC involving penetration.
- Any other violation of a State law or local ordinance that by its nature constitutes a sexual offense against an individual who is under 18.
- An offense committed by a person who, at the time of the offense, was a sexually

delinquent person, as defined in the Michigan Penal Code.

- An attempt or conspiracy to commit an offense enumerated above.

"Listed offense" also includes an offense substantially similar to an offense described above under a law of the United States, any state, or any country, or under tribal or military law.)

If an ICHAT search revealed that the individual had been convicted of a felony other than a listed offense, then the school employer would have to take steps to verify that information using public records and, if the information were verified using public records, could not employ the individual in any capacity or allow the individual to work regularly and continuously under contract at any of its schools unless the superintendent or chief administrator and the board or governing body, if any, of the school employer each specifically approved the employment or work assignment in writing.

The requirement to conduct a criminal history check and criminal records check on an individual would not apply to an individual who was being employed by or assigned to work regularly and continuously under contract at the school if the individual were not more than 26 years of age and were enrolled in special education programs or services at the school. However, before employing the individual or assigning him or her to work regularly and continuously under contract at the school, the school would have to perform a criminal history check on that person using ICHAT.

If an ICHAT search revealed that the individual had been convicted of a listed offense, then the school administrator of the school would have to take steps to verify that information using public records and, if the information were verified, the school could not employ the individual in any capacity and could not allow him or her to work regularly and continuously under contract at the school.

If an ICHAT search revealed that the individual had been convicted of a felony other than a listed offense, then the school would have to take steps to verify that information using public records and, if the information were verified, the school

could not employ the individual in any capacity or allow him or her to work regularly and continuously under contract at the school unless the school administrator of the school and the Superintendent of Public Instruction each specifically approved the employment or work assignment in writing.

For the purposes of those provisions, the MDE would have to provide to the school information on how to verify a conviction using public records.

#### Checks for Current Employees

By July 1, 2008, the school would have to do both of the following for each individual who, as of March 1, 2008, was either a full-time or part-time employee of the school or was assigned to work regularly and continuously under contract at the school and who either was still a full-time or part-time employee of the school on the date that the criminal history and criminal records checks under the bill were initiated or was still assigned to work regularly and continuously under contract at the school on the date that the criminal history and criminal records checks were initiated:

- Request from the criminal records division of the MSP a criminal history check on the individual.
- Request the MSP to conduct a criminal records check on the individual through the FBI.

The school would have to require the individual to submit his or her fingerprints to the MSP for the purposes of that requirement. The MSP could charge a fee for conducting the criminal records check.

For an individual employed or working regularly and continuously under contract as a substitute teacher at the school, or for an individual who worked regularly and continuously under contract at more than one school employer, if the individual agreed in writing to allow another school employer to share with the school the results of a criminal history check or criminal records check conducted on the individual, then, instead of requesting a criminal history check and criminal records check, the school could use results received by another school employer to confirm that the individual did not have any criminal history. Alternatively, the school could use

results maintained by the MDE to confirm that the individual did not have any criminal history. If confirmation were not available from any of these sources, the requirement to conduct the criminal history and criminal records checks would apply to the individual.

If an individual described above were employed by or working regularly and continuously under contract at more than one school employer and he or she agreed in writing to allow a school employer to share the results of the criminal history and criminal records checks with another school employer, then the school could satisfy the requirements of the bill by obtaining a copy of the results of the criminal history and criminal records checks from another school employer.

An individual would have to give written consent for the criminal records division of the MSP to conduct the criminal history check and criminal records check and would have to submit his or her fingerprints to the MSP for the purposes of the criminal records check. If an individual did not comply with that requirement or otherwise failed to cooperate with the school as it was seeking to comply with the requirements described above concerning the individual, then the school could not employ the individual in any capacity and could not allow the individual to work regularly and continuously under contract at the school.

The school would have to make a request to the MSP for the criminal history check and criminal records check on a form and in a manner prescribed by the MSP.

Within 30 days after receiving a proper request by the school for a criminal history check and criminal records check on an individual, the criminal records division would have to conduct the criminal history check and, after conducting the criminal history check and within that time period, provide a report of the results of the criminal history check to the school. The report would have to contain any criminal history record information on the individual that was maintained by the criminal records division. The school would have to retain that report in the individual's employment records.

Also, within 30 days after receiving a proper request, the criminal records division would

have to initiate the criminal records check through the FBI. After conducting the criminal records check for the school, the criminal records division would have to provide the results of that check to the school. The school would have to retain those results in the individual's employment records.

If the criminal history and criminal records checks had been completed for a particular individual and the results reported to the school as provided, then another criminal history check or criminal records check would not be required for that individual as long as he or she remained employed with no separation from service by any school employer in the State or remained working regularly and continuously under contract with no separation from service at any school employer in the State.

The criminal history check and criminal records check requirements would not apply to an individual who was being employed by or assigned to work regularly and continuously under contract at the school if the individual were not more than 26 years of age and were enrolled in special education programs or services at the school. Before employing the individual or assigning him or her to work regularly and continuously under contract at the school, however, the school would have to perform a criminal history check on that person using ICHAT.

If an ICHAT search revealed that the individual had been convicted of a listed offense, then the school would have to take steps to verify that information using public records and, if the information were verified, the school could not employ the individual in any capacity, and could not allow him or her to work regularly and continuously under contract at the school.

If an ICHAT search revealed that the individual had been convicted of a felony other than a listed offense, then the school would have to take steps to verify that information using public records and, if the information were verified, the school could not employ the individual in any capacity or allow him or her to work regularly and continuously under contract at the school unless the school administrator and the Superintendent of Public Instruction

each specifically approved the employment or work assignment in writing.

### Report of Criminal Record

If a report received by the school identifying an individual's previous convictions disclosed that the individual had been convicted of a listed offense, then the school would have to take steps to verify that information using public records and, if the information were verified, the school could not employ the individual in any capacity and could not allow the individual to work regularly and continuously under contract at the school. If a report received by the school disclosed that an individual had been convicted of a felony other than a listed offense, then the school would have to take steps to verify that information using public records and, if the information were verified, the school could not employ the individual in any capacity or allow him or her to work regularly and continuously under contract at any of its schools unless the school administrator and the Superintendent of Public Instruction each specifically approved the employment or work assignment in writing.

If the school received results described above, within 60 days after receiving those results the school would have to submit to the MDE in the form and manner prescribed by the Department a report detailing the information and any action taken as a result by the school. The MDE would have to maintain a copy of that report for at least six years.

### Confidentiality of Records

The school could use criminal history record information received from the criminal records division of the MSP or results of a criminal records check only for the purpose of evaluating an individual's qualifications for employment or assignment in the position for which he or she had applied or been assigned. Except as otherwise provided, an employee or official of the school or of the MDE could not disclose the report or its contents, except a misdemeanor conviction involving sexual or physical abuse or any felony conviction, to any person who was not directly involved in evaluating the individual's qualifications for employment or assignment. However, a person could provide a copy of the results

received under the bill concerning the individual to an appropriate representative of another school employer.

For an individual who was working regularly and continuously under contract, if he or she agreed in writing, the school could provide a copy of the results concerning the individual to an appropriate representative of his or her employer. A representative who received a copy of a report or received the results of a report from another source as authorized could not disclose the report or its contents to any person outside of the employer's business or to any of the employer's personnel who were not directly involved in evaluating the individual's qualifications for employment or assignment.

A person who violated those provisions would be guilty of a misdemeanor punishable by a maximum fine of \$10,000.

### Reporting Requirements

If a person who was employed in any capacity by the school, who had applied for a position with the school and had an initial criminal history check or criminal records check under the bill, or who was working regularly and continuously under contract at the school, were charged with a crime listed in Section 1535a(1) or 1539b(1) of the Revised School Code or a violation of a substantially similar law of another state, a political subdivision of this State or another state, or of the United States, the person would have to report to the MDE and to the school that he or she had been charged with the crime.

All of the following would apply to that reporting requirement:

- The person would have to make the report on a form prescribed by the MDE.
- The person would have to submit the report to the MDE and to the school administrator.
- The person would have to submit the report within three business days after being arraigned for the crime.

If a person who was employed in any capacity by or was working regularly and continuously under contract at the school entered a plea of guilty or no contest to or were the subject of a finding of guilt by

a judge or jury of any crime after having been initially charged with a crime described in Section 1535a(1) or 1539b(1) of the Revised School Code, then the person would have to disclose immediately to the court, on a form prescribed by the State Court Administrative Office, that he or she was employed by or working regularly and continuously under contract at the school. The person would have to provide a copy of the form immediately to the prosecuting attorney in charge of the case, to the Superintendent of Public Instruction, and to the school administrator.

(Under Section 1535a and 1539b of the Code, if a person who holds a teaching certificate or State Board of Education approval is convicted of certain crimes, his or her teaching certificate or approval may be suspended. The crimes specified include, among others, any felony and certain misdemeanors involving criminal sexual conduct; child abuse; and cruelty, torture, or indecent exposure involving a child.)

A person who violated those reporting requirements would be guilty of a crime, as follows:

- If the crime involved in the violation were a misdemeanor that was a listed offense or were a felony, the person would be guilty of a felony punishable by imprisonment for up to two years or a fine of up to \$2,000, or both.
- If the crime involved in the violation were a misdemeanor that was not a listed offense, the person would be guilty of a misdemeanor punishable by imprisonment for up to one year or a maximum fine of \$1,000, or both.

A person who violated either of the reporting requirements could be discharged from his or her employment or have his or her contract terminated. If the school administrator found, after providing notice and the opportunity for a hearing, that a person employed by the school had violated either provision, the school could discharge the person from his or her employment. However, if a collective bargaining agreement that applied to the affected person were in effect as of May 1, 2008, and if that collective bargaining agreement were not in compliance with the those provisions, then the provision regarding the discharge of a person from employment would not

apply until after that collective bargaining agreement expired.

If a person submitted a report that he or she had been charged with a crime, as required, and he or she subsequently were not convicted of any crime after the completion of judicial proceedings resulting from that charge, then the person could request the MDE and the school to delete the report from its records concerning the person. Upon receiving the request and documentation verifying that the person was not convicted of any crime after the completion of judicial proceedings resulting from that charge, the MDE or the school would have to delete the report from its records concerning the person.

If the prosecuting attorney in charge of a case received a form disclosing that a person employed or working regularly and continuously under contract at a school had entered a plea of guilty or no contest or was the subject of a finding of guilt of any crime after having been charged with any of certain crimes specified in the Revised School Code, the prosecuting attorney would have to notify the Superintendent of Public Instruction and the school administrator by forwarding a copy of the form to each of them within seven days after receiving the form. If the court received such a form, it would have to notify the Superintendent of Public Instruction and the school administrator by forwarding to each of them 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.

If the school received a report of a conviction under that provision, within 60 days after receiving the report the school would have to submit to the MDE in the form and manner it prescribed a report detailing the information received and any action taken as a result by the school. The MDE would have to maintain a copy of that report for at least six years.

#### Disclosure of Records

A record prepared by a State agency under the bill would be exempt from disclosure under the Freedom of Information Act. Subject to the provisions described below, however, such a record would be exempt



from disclosure only until the expiration of 15 business days after the date the school received the report.

If information were determined during the 15-business-day exemption period to be inaccurate, then that information would be exempt from disclosure.

After the 15-business-day exemption period, both of the following would apply:

- A State agency would have to disclose information in a record described above if the information concerned a conviction of the type that could be disclosed to the public under the bill (i.e., a misdemeanor conviction involving sexual or physical abuse or any felony conviction).
- If the information concerned any other type of conviction, the information would be exempt from disclosure.

A State agency would have to disclose the information to the public upon request, however, but would have to ensure that it did not include any personal identifying information.

Those provisions would not affect any other rights, duties, or exemptions under the Freedom of Information Act or under any other law.

#### Other Provisions

By July 1, 2008, the MDE would have to include in its list of registered educational personnel all individuals who were employed by the school and all individuals who were assigned to work regularly and continuously under contract at the school.

The Department of Information Technology (DIT) would have to work with the MSP to establish a system for the MSP to save and maintain in its automated fingerprint identification system (AFIS) database all fingerprints that were submitted to the MSP under the bill. If a criminal arrest fingerprint card subsequently were submitted to the MSP and matched against a fingerprint that was submitted under the bill and stored in the AFIS database, the MSP would have to notify the MDE.

MCL 777.13p (S.B. 1349)

Legislative Analyst: Curtis Walker

#### **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offenses. An offender convicted of the Class G offense under the bills would receive a sentencing guidelines minimum sentence range of 0-3 months to 7-23 months. Local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$33,000. Additional penal fine revenue would benefit public libraries.

Each complete fingerprint background check under Senate Bill 1350 would require a fee of \$49.25 to the Department of State Police, representing its actual cost (and the included Federal cost) for the analysis. The name check process, made through the State Police's internet criminal history access tool (ICHAT), has no cost, when used by a nonprofit organization, a school, or government agency. It is unclear how many individuals would be subject to either of these background checks, or who would be responsible for the costs that may be associated with them.

Senate Bill 1350 would have a minimal administrative fiscal impact on the Department of Education or the Schools for the Deaf and Blind.

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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.