

HOUSE BILL No. 5629

May 15, 2012, Introduced by Rep. Nesbitt and referred to the Committee on Education.

A bill to amend 1976 PA 451, entitled
"The revised school code,"
by amending sections 1230d, 1535a, and 1539b (MCL 380.1230d,
380.1535a, and 380.1539b), as amended by 2006 PA 680.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1230d. (1) If a person who is employed in any capacity by
2 a school district, intermediate school district, public school
3 academy, or nonpublic school; who has applied for a position with a
4 school district, intermediate school district, public school
5 academy, or nonpublic school and has had an initial criminal
6 history check under section 1230 or criminal records check under
7 section 1230a; or who is regularly and continuously working under
8 contract in a school district, intermediate school district, public
9 school academy, or nonpublic school, is charged with a crime listed

1 in section 1535a(1) or 1539b(1) or a violation of a substantially
2 similar law of another state, a political subdivision of this state
3 or another state, or of the United States, the person shall report
4 to the department and to the school district, intermediate school
5 district, public school academy, or nonpublic school that he or she
6 has been charged with the crime. All of the following apply to this
7 reporting requirement:

8 (a) The person shall make the report on a form prescribed by
9 the department.

10 (b) The person shall submit the report to the department and
11 to the superintendent of the school district or intermediate school
12 district or chief administrator of the public school academy or
13 nonpublic school.

14 (c) The person shall submit the report within 3 business days
15 after being arraigned for the crime.

16 (2) If a person who is employed in any capacity by or is
17 regularly and continuously working under contract in a school
18 district, intermediate school district, public school academy, or
19 nonpublic school enters a plea of guilt or no contest to or is the
20 subject of a finding of guilt by a judge or jury of any crime after
21 having been initially charged with a crime described in section
22 1535a(1) or 1539b(1), then the person immediately shall disclose to
23 the court, on a form prescribed by the state court administrative
24 office, that he or she is employed by or regularly and continuously
25 working under contract in a school district, intermediate school
26 district, public school academy, or nonpublic school. The person
27 shall immediately provide a copy of the form to the prosecuting

1 attorney in charge of the case, to the superintendent of public
2 instruction, and to the superintendent or chief administrator of
3 the school district, intermediate school district, public school
4 academy, or nonpublic school.

5 (3) A person who violates subsection (1) or (2) is guilty of a
6 crime, as follows:

7 (a) If the person violates either subsection (1) or (2) and
8 the crime involved in the violation is a misdemeanor that is a
9 listed offense or is a felony, the person is guilty of a felony
10 punishable by imprisonment for not more than 2 years or a fine of
11 not more than \$2,000.00, or both.

12 (b) If the person violates either subsection (1) or (2) and
13 the crime involved in the violation is a misdemeanor that is not a
14 listed offense, the person is guilty of a misdemeanor punishable by
15 imprisonment for not more than 1 year or a fine of not more than
16 \$1,000.00, or both.

17 (4) A person who violates subsection (1) or (2) may be
18 discharged from his or her employment or have his or her contract
19 terminated. If the board of a school district or intermediate
20 school district or board of directors of a public school academy
21 finds, after providing notice and the opportunity for a hearing,
22 that a person employed by the school district, intermediate school
23 district, or public school academy has violated subsection (1) or
24 (2), the board or board of directors may discharge the person from
25 his or her employment. ~~However, if a collective bargaining~~
26 ~~agreement that applies to the affected person is in effect as of~~
27 ~~January 1, 2006, and if that collective bargaining agreement is not~~

~~in compliance with this subsection, then this subsection does not apply to that school district, intermediate school district, or public school academy until after the expiration of that collective bargaining agreement.~~

(5) If a person submits a report that he or she has been charged with a crime, as required under subsection (1), and the person is subsequently not convicted of any crime after the completion of judicial proceedings resulting from that charge, then the person may request the department and the school district, intermediate school district, public school academy, or nonpublic school to delete the report from its records concerning the person. Upon receipt of the request from the person and of documentation verifying that the person was not convicted of any crime after the completion of judicial proceedings resulting from that charge, the department or a school district, intermediate school district, public school academy, or nonpublic school shall delete the report from its records concerning the person.

(6) If the prosecuting attorney in charge of a case receives a form as provided under subsection (2), the prosecuting attorney shall notify the superintendent of public instruction and the superintendent or chief administrator of any school district, intermediate school district, public school academy, or nonpublic school in which the person is employed by forwarding a copy of the form to each of them not later than 7 days after receiving the form. If the court receives a form as provided under subsection (2), the court shall notify the superintendent of public instruction and the superintendent or chief administrator of any

1 school district, intermediate school district, public school
2 academy, or nonpublic school in which the person is employed by
3 forwarding to each of them a copy of the form and information
4 regarding the sentence imposed on the person not later than 7 days
5 after the date of sentencing, even if the court is maintaining the
6 file as a nonpublic record.

7 ~~—— (7) The department of information technology shall work with~~
8 ~~the department and the department of state police to develop and~~
9 ~~implement an automated program that does a comparison of the~~
10 ~~department's list of registered educational personnel, and of any~~
11 ~~other list maintained by the department of individuals employed or~~
12 ~~regularly and continuously working under contract in a school, with~~
13 ~~the conviction information received by the department of state~~
14 ~~police. This comparison shall only include individuals who are~~
15 ~~actually school employees at the time of the comparison or who are~~
16 ~~regularly and continuously working under contract at the time of~~
17 ~~the comparison. Unless otherwise prohibited by law, this comparison~~
18 ~~shall include convictions contained in a nonpublic record. The~~
19 ~~department and the department of state police shall perform this~~
20 ~~comparison during January and June of each year until July 1, 2008.~~
21 ~~The department of state police shall take all reasonable and~~
22 ~~necessary measures using the available technology to ensure the~~
23 ~~accuracy of this comparison before transmitting the information~~
24 ~~under this subsection to the department. The department shall take~~
25 ~~all reasonable and necessary measures using the available~~
26 ~~technology to ensure the accuracy of this comparison before~~
27 ~~notifying a school district, intermediate school district, public~~

~~school academy, or nonpublic school of a conviction. If a comparison discloses that a person on the department's list of registered educational personnel has been convicted of a crime, or if the department is otherwise notified by the department of state police that such a person has been convicted of a crime, the department shall notify the superintendent or chief administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school in which the person is employed of that conviction.~~

(7) ~~(8)~~—If a school district, intermediate school district, public school academy, or nonpublic school receives a report under this section of a conviction, within 60 days after receiving the report the school district, intermediate school district, public school academy, or nonpublic school shall submit to the department in the form and manner prescribed by the department a report detailing the information received and any action taken as a result by the school district, intermediate school district, public school academy, or nonpublic school. The department shall maintain a copy of this report for at least 6 years.

(8) ~~(9)~~—As used in this section:

(a) "At school" means in a classroom, elsewhere on school property, or on a school bus or other school-related vehicle.

(b) "Felony" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.

(c) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

1 (d) "Regularly and continuously work under contract" means any
2 of the following:

3 (i) To work at school on a more than intermittent or sporadic
4 basis as an owner or employee of an entity that has a contract with
5 a school district, intermediate school district, public school
6 academy, or nonpublic school to provide food, custodial,
7 transportation, counseling, or administrative services, or to
8 provide instructional services to pupils or related and auxiliary
9 services to special education pupils.

10 (ii) To work at school on a more than intermittent or sporadic
11 basis as an individual under a contract with a school district,
12 intermediate school district, public school academy, or nonpublic
13 school to provide food, custodial, transportation, counseling, or
14 administrative services, or to provide instructional services to
15 pupils or related and auxiliary services to special education
16 pupils.

17 (e) "School property" means that term as defined in section 33
18 of the sex offenders registration act, 1994 PA 295, MCL 28.733.

19 Sec. 1535a. (1) Subject to subsection (2), if a person who
20 holds a teaching certificate that is valid in this state has been
21 convicted of a crime described in this subsection, within 10
22 working days after receiving notice of the conviction the
23 superintendent of public instruction shall notify the person in
24 writing that his or her teaching certificate may be suspended
25 because of the conviction and of his or her right to a hearing
26 before the superintendent of public instruction. The hearing shall
27 be conducted as a contested case under the administrative

1 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. If the
2 person does not avail himself or herself of this right to a hearing
3 within 15 working days after receipt of this written notification,
4 the teaching certificate of that person shall be suspended. If a
5 hearing takes place, the superintendent of public instruction shall
6 complete the proceedings and make a final decision and order within
7 120 working days after receiving the request for a hearing. Subject
8 to subsection (2), the superintendent of public instruction may
9 suspend the person's teaching certificate based upon the issues and
10 evidence presented at the hearing. This subsection applies to any
11 of the following crimes:

12 (a) Any felony.

13 (b) Any of the following misdemeanors:

14 (i) Criminal sexual conduct in the fourth degree or an attempt
15 to commit criminal sexual conduct in the fourth degree.

16 (ii) Child abuse in the third or fourth degree or an attempt to
17 commit child abuse in the third or fourth degree.

18 (iii) A misdemeanor involving cruelty, torture, or indecent
19 exposure involving a child.

20 (iv) A misdemeanor violation of section 7410 of the public
21 health code, 1978 PA 368, MCL 333.7410.

22 (v) A violation of section 115, 141a, 335a, or 359 of the
23 Michigan penal code, 1931 PA 328, MCL 750.115, 750.141a, 750.335a,
24 and 750.359, or a misdemeanor violation of section 81, 81a, or 145d
25 of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and
26 750.145d.

27 (vi) A misdemeanor violation of section 701 of the Michigan

1 liquor control code of 1998, 1998 PA 58, MCL 436.1701.

2 (vii) Any misdemeanor that is a listed offense.

3 (c) A violation of a substantially similar law of another
4 state, of a political subdivision of this state or another state,
5 or of the United States.

6 (2) If a person who holds a teaching certificate that is valid
7 in this state has been convicted of a crime described in this
8 subsection, the superintendent of public instruction shall find
9 that the public health, safety, or welfare requires emergency
10 action and shall order summary suspension of the person's teaching
11 certificate under section 92 of the administrative procedures act
12 of 1969, 1969 PA 306, MCL 24.292, and shall subsequently provide an
13 opportunity for a hearing as provided under that section. This
14 subsection does not limit the superintendent of public
15 instruction's ability to order summary suspension of a person's
16 teaching certificate for a reason other than described in this
17 subsection. This subsection applies to conviction of any of the
18 following crimes:

19 (a) Criminal sexual conduct in any degree, assault with intent
20 to commit criminal sexual conduct, or an attempt to commit criminal
21 sexual conduct in any degree.

22 (b) Felonious assault on a child, child abuse in the first
23 degree, or an attempt to commit child abuse in the first degree.

24 (c) Cruelty, torture, or indecent exposure involving a child.

25 (d) A violation of section 7401(2)(a)(i), 7403(2)(a)(i), 7410,
26 or 7416 of the public health code, 1978 PA 368, MCL 333.7401,
27 333.7403, 333.7410, and 333.7416.

1 (e) A violation of section 83, 89, 91, 145a, 145b, 145c, 316,
2 317, 350, 448, 455, or 529 of the Michigan penal code, 1931 PA 328,
3 MCL 750.83, 750.89, 750.91, 750.145a, 750.145b, 750.145c, 750.316,
4 750.317, 750.350, 750.448, 750.455, and 750.529, or a felony
5 violation of section 145d of the Michigan penal code, 1931 PA 328,
6 MCL 750.145d.

7 (f) A violation of section 158 of the Michigan penal code,
8 1931 PA 328, MCL 750.158, if a victim is an individual less than 18
9 years of age.

10 (g) Except for a juvenile disposition or adjudication, a
11 violation of section 338, 338a, or 338b of the Michigan penal code,
12 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, if a victim is an
13 individual less than 18 years of age.

14 (h) A violation of section 349 of the Michigan penal code,
15 1931 PA 328, MCL 750.349, if a victim is an individual less than 18
16 years of age.

17 (i) An offense committed by a person who was, at the time of
18 the offense, a sexually delinquent person as defined in section 10a
19 of the Michigan penal code, 1931 PA 328, MCL 750.10a.

20 (j) Any other crime that is a listed offense.

21 (k) An attempt or conspiracy to commit an offense listed in
22 subdivision (a), (e), (f), (g), (h), (i), or (j).

23 (l) A violation of a substantially similar law of another
24 state, of a political subdivision of this state or another state,
25 or of the United States.

26 (m) Any other crime listed in subsection (1), if the
27 superintendent of public instruction determines the public health,

1 safety, or welfare requires emergency action based on the
2 circumstances underlying the conviction.

3 (3) All of the following apply to any proceedings affecting a
4 person's teaching certificate under this section:

5 (a) The superintendent of public instruction shall appoint a
6 designee to perform the investigatory and prosecutorial functions
7 involved in the proceedings. However, the superintendent of public
8 instruction must approve any settlement, conditional agreement, or
9 other decision not to proceed with charges.

10 (b) Any final action that affects the status of a person's
11 teaching certificate shall be taken by the superintendent of public
12 instruction.

13 (c) The superintendent of public instruction after a hearing
14 shall not take action against a person's teaching certificate under
15 subsection (1) or (2) unless the superintendent of public
16 instruction finds that the conviction is reasonably and adversely
17 related to the person's present fitness to serve in an elementary
18 or secondary school in this state or that the conviction
19 demonstrates that the person is unfit to teach in an elementary or
20 secondary school in this state. Further, the superintendent of
21 public instruction may take action against a person's teaching
22 certificate under subsection (1) or (2) based on a conviction that
23 occurred before April 1, 2004 if the superintendent of public
24 instruction finds that the conviction is reasonably and adversely
25 related to the person's present fitness to serve in an elementary
26 or secondary school in this state or that the conviction
27 demonstrates that the person is unfit to teach in an elementary or

1 secondary school in this state. For the purposes of this section,
2 conviction of a listed offense is reasonably and adversely related
3 to the person's fitness to serve in an elementary or secondary
4 school in this state and demonstrates that the person is unfit to
5 teach in an elementary or secondary school in this state.

6 (4) If a person who has entered a plea of guilt or no contest
7 to or who is the subject of a finding of guilt by a judge or jury
8 of a crime listed in subsection (2) has been suspended from active
9 performance of duty by a public school, school district,
10 intermediate school district, or nonpublic school during the
11 pendency of proceedings under this section, the public school,
12 school district, intermediate school district, or nonpublic school
13 employing the person shall discontinue the person's compensation
14 until the superintendent of public instruction has made a final
15 determination of whether or not to suspend or revoke the person's
16 teaching certificate. If the superintendent of public instruction
17 does not suspend or revoke the person's teaching certificate, the
18 public school, school district, intermediate school district, or
19 nonpublic school shall make the person whole for lost compensation,
20 without interest. ~~However, if a collective bargaining agreement is~~
21 ~~in effect as of January 1, 2006 for employees of a school district,~~
22 ~~intermediate school district, or public school academy, and if the~~
23 ~~terms of that collective bargaining agreement are inconsistent with~~
24 ~~this subsection, then this subsection does not apply to that school~~
25 ~~district, intermediate school district, or public school academy~~
26 ~~until after the expiration of that collective bargaining agreement.~~

27 (5) Except as otherwise provided in this subsection, after the

1 completion of a person's sentence, the person may request a hearing
2 on reinstatement of his or her teaching certificate. Based upon the
3 issues and evidence presented at the hearing, the superintendent of
4 public instruction may reinstate, continue the suspension of, or
5 permanently revoke the person's teaching certificate. The
6 superintendent of public instruction shall not reinstate a person's
7 teaching certificate unless the superintendent of public
8 instruction finds that the person is currently fit to serve in an
9 elementary or secondary school in this state and that reinstatement
10 of the person's teaching certificate will not adversely affect the
11 health, safety, and welfare of pupils. If a person's conviction was
12 for a listed offense, the person is not entitled to request a
13 hearing on reinstatement under this subsection, and the
14 superintendent of public instruction shall not reinstate the
15 person's teaching certificate under this subsection.

16 (6) All of the following apply to a person described in this
17 section whose conviction is reversed upon final appeal:

18 (a) The person's teaching certificate shall be reinstated upon
19 his or her notification to the superintendent of public instruction
20 of the reversal.

21 (b) If the suspension of the person's teaching certificate
22 under this section was the sole cause of his or her discharge from
23 employment, the person shall be reinstated, upon his or her
24 notification to the appropriate local or intermediate school board
25 of the reversal, with full rights and benefits, to the position he
26 or she would have had if he or she had been continuously employed.

27 (c) If the person's compensation was discontinued under

1 subsection (4), the public school, school district, intermediate
2 school district, or nonpublic school shall make the person whole
3 for lost compensation.

4 (7) If the prosecuting attorney in charge of a case receives a
5 form as provided under section 1230d, the prosecuting attorney
6 shall notify the superintendent of public instruction, and any
7 public school, school district, intermediate school district, or
8 nonpublic school in which the person is employed by forwarding a
9 copy of the form to each of them not later than 7 days after
10 receiving the form. If the court receives a form as provided under
11 section 1230d, the court shall notify the superintendent of public
12 instruction and any public school, school district, intermediate
13 school district, or nonpublic school in which the person is
14 employed by forwarding to each of them a copy of the form and
15 information regarding the sentence imposed on the person not later
16 than 7 days after the date of sentencing, even if the court is
17 maintaining the file as a nonpublic record.

18 (8) Not later than 7 days after receiving notification from
19 the prosecuting attorney or the court under subsection (7) or
20 learning through an authoritative source that a person who holds a
21 teaching certificate has been convicted of a crime listed in
22 subsection (1), the superintendent of public instruction shall
23 request the court to provide a certified copy of the judgment of
24 conviction and sentence or other document regarding the disposition
25 of the case to the superintendent of public instruction and shall
26 pay any fees required by the court. The court shall provide this
27 certified copy within 7 days after receiving the request and fees

1 under this section or after entry of the judgment or other
2 document, whichever is later, even if the court is maintaining the
3 judgment or other document as a nonpublic record.

4 (9) If the superintendent of a school district or intermediate
5 school district, the chief administrative officer of a nonpublic
6 school, the president of the board of a school district or
7 intermediate school district, or the president of the governing
8 board of a nonpublic school is notified or learns through an
9 authoritative source that a person who holds a teaching certificate
10 and who is employed by the school district, intermediate school
11 district, or nonpublic school has been convicted of a crime
12 described in subsection (1) or (2), the superintendent, chief
13 administrative officer, or board president shall notify the
14 superintendent of public instruction of that conviction within 15
15 days after learning of the conviction.

16 (10) For the purposes of this section, a certified copy of the
17 judgment of conviction and sentence is conclusive evidence of
18 conviction of a crime described in this section. For the purposes
19 of this section, conviction of a crime described in this section is
20 considered to be reasonably and adversely related to the ability of
21 the person to serve in an elementary or secondary school and is
22 sufficient grounds for suspension or revocation of the person's
23 teaching certificate.

24 (11) For any hearing under subsection (1), if the
25 superintendent of public instruction does not make a final decision
26 and order within 120 working days after receiving the request for
27 the hearing, as required under subsection (1), the superintendent

1 of public instruction shall submit a report detailing the reasons
2 for the delay to the standing committees and appropriations
3 subcommittees of the senate and house of representatives that have
4 jurisdiction over education and education appropriations. The
5 failure of the superintendent of public instruction to make a final
6 decision and order within this 120 working day time limit, or the
7 failure of any other official or agency to meet a time limit
8 prescribed in this section, does not affect the validity of an
9 action taken under this section affecting a person's teaching
10 certificate.

11 (12) Beginning July 1, 2004, the superintendent of public
12 instruction shall submit to the legislature a quarterly report of
13 all final actions he or she has taken under this section affecting
14 a person's teaching certificate during the preceding quarter. The
15 report shall contain at least all of the following with respect to
16 each person whose teaching certificate has been affected:

17 (a) The person's name, as it appears on the teaching
18 certificate.

19 (b) The school district, intermediate school district, public
20 school academy, or nonpublic school in which the person was
21 employed at the time of the conviction, if any.

22 (c) The offense for which the person was convicted and the
23 date of the offense and date of the conviction.

24 (d) Whether the action taken by the superintendent of public
25 instruction was a summary suspension, suspension due to failure to
26 request a hearing, suspension, revocation, or reinstatement of the
27 teaching certificate.

1 (13) This section does not do any of the following:

2 (a) Prohibit a person who holds a teaching certificate from
3 seeking monetary compensation from a school board or intermediate
4 school board if that right is available under a collective
5 bargaining agreement or another statute.

6 (b) Limit the rights and powers granted to a school district
7 or intermediate school district under a collective bargaining
8 agreement, this act, or another statute to discipline or discharge
9 a person who holds a teaching certificate.

10 (14) The superintendent of public instruction may promulgate,
11 as necessary, rules to implement this section pursuant to the
12 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
13 24.328.

14 ~~—— (15) The department of information technology shall work with~~
15 ~~the department and the department of state police to develop and~~
16 ~~implement an automated program that does a comparison of the~~
17 ~~department's list of individuals holding a teaching certificate or~~
18 ~~state board approval, and of any other list maintained by the~~
19 ~~department of individuals employed or regularly and continuously~~
20 ~~working under contract in a school, with the conviction information~~
21 ~~received by the department of state police. This comparison shall~~
22 ~~only include individuals who are actually school employees at the~~
23 ~~time of the comparison or who are regularly and continuously~~
24 ~~working under contract at the time of the comparison. Unless~~
25 ~~otherwise prohibited by law, this comparison shall include~~
26 ~~convictions contained in a nonpublic record. The department and the~~
27 ~~department of state police shall perform this comparison during~~

~~January and June of each year until July 1, 2008. The department of state police shall take all reasonable and necessary measures using the available technology to ensure the accuracy of this comparison before transmitting the information under this subsection to the department. The department shall take all reasonable and necessary measures using the available technology to ensure the accuracy of this comparison before notifying a school district, intermediate school district, public school academy, or nonpublic school of a conviction. If a comparison discloses that a person on the department's list of individuals holding a teaching certificate or state board approval has been convicted of a crime, or if the department is otherwise notified by the department of state police that such a person has been convicted of a crime, the department shall notify the superintendent or chief administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school in which the person is employed of that conviction.~~

~~(15)~~ (16) As used in this section:

(a) "Conviction" means a judgment entered by a court upon a plea of guilty, guilty but mentally ill, or nolo contendere or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill.

(b) "Felony" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.

(c) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

1 (d) "Prosecuting attorney" means the prosecuting attorney for
2 a county, an assistant prosecuting attorney for a county, the
3 attorney general, the deputy attorney general, an assistant
4 attorney general, a special prosecuting attorney, or, in connection
5 with the prosecution of an ordinance violation, an attorney for the
6 political subdivision that enacted the ordinance upon which the
7 violation is based.

8 (e) "Regularly and continuously work under contract" means
9 that term as defined in section 1230d.

10 Sec. 1539b. (1) Subject to subsection (2), if a person who
11 holds state board approval has been convicted of a crime described
12 in this subsection, within 10 working days after receiving notice
13 of the conviction the superintendent of public instruction shall
14 notify the person in writing that his or her state board approval
15 may be suspended because of the conviction and of his or her right
16 to a hearing before the superintendent of public instruction. The
17 hearing shall be conducted as a contested case under the
18 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
19 24.328. If the person does not avail himself or herself of this
20 right to a hearing within 15 working days after receipt of this
21 written notification, the person's state board approval shall be
22 suspended. If a hearing takes place, the superintendent of public
23 instruction shall complete the proceedings and make a final
24 decision and order within 120 working days after receiving the
25 request for a hearing. Subject to subsection (2), the
26 superintendent of public instruction may suspend the person's state
27 board approval, based upon the issues and evidence presented at the

1 hearing. This subsection applies to any of the following crimes:

2 (a) Any felony.

3 (b) Any of the following misdemeanors:

4 (i) Criminal sexual conduct in the fourth degree or an attempt
5 to commit criminal sexual conduct in the fourth degree.

6 (ii) Child abuse in the third or fourth degree or an attempt to
7 commit child abuse in the third or fourth degree.

8 (iii) A misdemeanor involving cruelty, torture, or indecent
9 exposure involving a child.

10 (iv) A misdemeanor violation of section 7410 of the public
11 health code, 1978 PA 368, MCL 333.7410.

12 (v) A violation of section 115, 141a, 335a, or 359 of the
13 Michigan penal code, 1931 PA 328, MCL 750.115, 750.141a, 750.335a,
14 and 750.359, or a misdemeanor violation of section 81, 81a, or 145d
15 of the Michigan penal code, 1931 PA 328, MCL 750.81, 750.81a, and
16 750.145d.

17 (vi) A misdemeanor violation of section 701 of the Michigan
18 liquor control code of 1998, 1998 PA 58, MCL 436.1701.

19 (vii) Any misdemeanor that is a listed offense.

20 (c) A violation of a substantially similar law of another
21 state, of a political subdivision of this state or another state,
22 or of the United States.

23 (2) If a person who holds state board approval has been
24 convicted of a crime described in this subsection, the
25 superintendent of public instruction shall find that the public
26 health, safety, or welfare requires emergency action and shall
27 order summary suspension of the person's state board approval under

1 section 92 of the administrative procedures act of 1969, 1969 PA
2 306, MCL 24.292, and shall subsequently provide an opportunity for
3 a hearing as required under that section. This subsection does not
4 limit the superintendent of public instruction's ability to order
5 summary suspension of a person's state board approval for a reason
6 other than described in this subsection. This subsection applies to
7 conviction of any of the following crimes:

8 (a) Criminal sexual conduct in any degree, assault with intent
9 to commit criminal sexual conduct, or an attempt to commit criminal
10 sexual conduct in any degree.

11 (b) Felonious assault on a child, child abuse in the first
12 degree, or an attempt to commit child abuse in the first degree.

13 (c) Cruelty, torture, or indecent exposure involving a child.

14 (d) A violation of section 7401(2)(a)(i), 7403(2)(a)(i), 7410,
15 or 7416 of the public health code, 1978 PA 368, MCL 333.7401,
16 333.7403, 333.7410, and 333.7416.

17 (e) A violation of section 83, 89, 91, 145a, 145b, 145c, 316,
18 317, 350, 448, 455, or 529 of the Michigan penal code, 1931 PA 328,
19 MCL 750.83, 750.89, 750.91, 750.145a, 750.145b, 750.145c, 750.316,
20 750.317, 750.350, 750.448, 750.455, and 750.529, or a felony
21 violation of section 145d of the Michigan penal code, 1931 PA 328,
22 MCL 750.145d.

23 (f) A violation of section 158 of the Michigan penal code,
24 1931 PA 328, MCL 750.158, if a victim is an individual less than 18
25 years of age.

26 (g) Except for a juvenile disposition or adjudication, a
27 violation of section 338, 338a, or 338b of the Michigan penal code,

1 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, if a victim is an
2 individual less than 18 years of age.

3 (h) A violation of section 349 of the Michigan penal code,
4 1931 PA 328, MCL 750.349, if a victim is an individual less than 18
5 years of age.

6 (i) An offense committed by a person who was, at the time of
7 the offense, a sexually delinquent person as defined in section 10a
8 of the Michigan penal code, 1931 PA 328, MCL 750.10a.

9 (j) Any other crime that is a listed offense.

10 (k) An attempt or conspiracy to commit an offense listed in
11 subdivision (a), (e), (f), (g), (h), (i), or (j).

12 (l) A violation of a substantially similar law of another
13 state, of a political subdivision of this state or another state,
14 or of the United States.

15 (m) Any other crime listed in subsection (1), if the
16 superintendent of public instruction determines the public health,
17 safety, or welfare requires emergency action based on the
18 circumstances underlying the conviction.

19 (3) All of the following apply to any proceedings affecting a
20 person's state board approval under this section:

21 (a) The superintendent of public instruction shall appoint a
22 designee to perform the investigatory and prosecutorial functions
23 involved in the proceedings. However, the superintendent of public
24 instruction must approve any settlement, conditional agreement, or
25 other decision not to proceed with charges.

26 (b) Any final action that affects the status of a person's
27 state board approval shall be taken by the superintendent of public

1 instruction.

2 (c) The superintendent of public instruction after a hearing
3 shall not take action against a person's state board approval under
4 subsection (1) or (2) unless the superintendent of public
5 instruction finds that the conviction is reasonably and adversely
6 related to the person's present fitness to serve in an elementary
7 or secondary school in this state or that the conviction
8 demonstrates that the person is unfit to teach in an elementary or
9 secondary school in this state. Further, the superintendent of
10 public instruction may take action against a person's state board
11 approval under subsection (1) or (2) based on a conviction that
12 occurred before April 1, 2004 if the superintendent of public
13 instruction finds that the conviction is reasonably and adversely
14 related to the person's present fitness to serve in an elementary
15 or secondary school in this state. For the purposes of this
16 section, conviction of a listed offense is reasonably and adversely
17 related to the person's fitness to serve in an elementary or
18 secondary school in this state and demonstrates that the person is
19 unfit to teach in an elementary or secondary school in this state.

20 (4) If a person who has entered a plea of guilt or no contest
21 to or who is the subject of a finding of guilt by a judge or jury
22 of a crime listed in subsection (2) has been suspended from active
23 performance of duty by a public school, school district,
24 intermediate school district, or nonpublic school during the
25 pendency of proceedings under this section, the public school,
26 school district, intermediate school district, or nonpublic school
27 employing the person shall discontinue the person's compensation

1 until the superintendent of public instruction has made a final
2 determination of whether or not to suspend or revoke the person's
3 state board approval. If the superintendent of public instruction
4 does not suspend or revoke the person's state board approval, the
5 public school, school district, intermediate school district, or
6 nonpublic school shall make the person whole for lost compensation,
7 without interest. ~~However, if a collective bargaining agreement is~~
8 ~~in effect as of January 1, 2006 for employees of a school district,~~
9 ~~intermediate school district, or public school academy, and if the~~
10 ~~terms of that collective bargaining agreement are inconsistent with~~
11 ~~this subsection, then this subsection does not apply to that school~~
12 ~~district, intermediate school district, or public school academy~~
13 ~~until after the expiration of that collective bargaining agreement.~~

14 (5) Except as otherwise provided in this subsection, after the
15 completion of the person's sentence, the person may request a
16 hearing on reinstatement of his or her state board approval. Based
17 upon the issues and evidence presented at the hearing, the
18 superintendent of public instruction may reinstate, continue the
19 suspension of, or permanently revoke the person's state board
20 approval. The superintendent of public instruction shall not
21 reinstate a person's state board approval unless the superintendent
22 of public instruction finds that the person is currently fit to
23 serve in an elementary or secondary school in this state and that
24 reinstatement of the person's state board approval will not
25 adversely affect the health, safety, and welfare of pupils. If a
26 person's conviction was for a listed offense, the person is not
27 entitled to request a hearing on reinstatement under this

1 subsection, and the superintendent of public instruction shall not
2 reinstate the person's state board approval under this subsection.

3 (6) All of the following apply to a person described in this
4 section whose conviction is reversed upon final appeal:

5 (a) The person's state board approval shall be reinstated upon
6 his or her notification to the superintendent of public instruction
7 of the reversal.

8 (b) If the suspension of the state board approval was the sole
9 cause of his or her discharge from employment, the person shall be
10 reinstated upon his or her notification to the appropriate local or
11 intermediate school board of the reversal, with full rights and
12 benefits, to the position he or she would have had if he or she had
13 been continuously employed.

14 (c) If the person's compensation was discontinued under
15 subsection (4), the public school, school district, intermediate
16 school district, or nonpublic school shall make the person whole
17 for lost compensation.

18 (7) If the prosecuting attorney in charge of a case receives a
19 form as provided under section 1230d, the prosecuting attorney
20 shall notify the superintendent of public instruction, and any
21 public school, school district, intermediate school district, or
22 nonpublic school in which the person is employed by forwarding a
23 copy of the form to each of them not later than 7 days after
24 receiving the form. If the court receives a form as provided under
25 section 1230d, the court shall notify the superintendent of public
26 instruction and any public school, school district, intermediate
27 school district, or nonpublic school in which the person is

1 employed by forwarding to each of them a copy of the form and
2 information regarding the sentence imposed on the person not later
3 than 7 days after the date of the sentencing, even if the court is
4 maintaining the file as a nonpublic record.

5 (8) Not later than 7 days after receiving notification from
6 the prosecuting attorney or the court under subsection (7) or
7 learning through an authoritative source that a person who holds
8 state board approval has been convicted of a crime listed in
9 subsection (1), the superintendent of public instruction shall
10 request the court to provide a certified copy of the judgment of
11 conviction and sentence or other document regarding the disposition
12 of the case to the superintendent of public instruction and shall
13 pay any fees required by the court. The court shall provide this
14 certified copy within 7 days after receiving the request and fees
15 under this section or after entry of the judgment or other
16 document, whichever is later, even if the court is maintaining the
17 judgment or other document as a nonpublic record.

18 (9) If the superintendent of a school district or intermediate
19 school district, the chief administrative officer of a nonpublic
20 school, the president of the board of a school district or
21 intermediate school district, or the president of the governing
22 board of a nonpublic school is notified or learns through an
23 authoritative source that a person who holds state board approval
24 and who is employed by the school district, intermediate school
25 district, or nonpublic school has been convicted of a crime
26 described in subsection (1) or (2), the superintendent, chief
27 administrative officer, or board president shall notify the

1 superintendent of public instruction of that conviction within 15
2 days after learning of the conviction.

3 (10) For the purposes of this section, a certified copy of the
4 judgment of conviction and sentence is conclusive evidence of
5 conviction of a crime described in this section. For the purposes
6 of this section, conviction of a crime described in this section is
7 considered to be reasonably and adversely related to the ability of
8 the person to serve in an elementary or secondary school and is
9 sufficient grounds for suspension or revocation of the person's
10 state board approval.

11 (11) For any hearing under subsection (1), if the
12 superintendent of public instruction does not make a final decision
13 and order within 120 working days after receiving the request for
14 the hearing, as required under subsection (1), the superintendent
15 of public instruction shall submit a report detailing the reasons
16 for the delay to the standing committees and appropriations
17 subcommittees of the senate and house of representatives that have
18 jurisdiction over education and education appropriations. The
19 failure of the superintendent of public instruction to make a final
20 decision and order within this 120 working day time limit, or the
21 failure of any other official or agency to meet a time limit
22 prescribed in this section, does not affect the validity of an
23 action taken under this section affecting a person's state board
24 approval.

25 (12) Beginning July 1, 2004, the superintendent of public
26 instruction shall submit to the legislature a quarterly report of
27 all final actions he or she has taken under this section affecting

1 a person's state board approval during the preceding quarter. The
2 report shall contain at least all of the following with respect to
3 each person whose state board approval has been affected:

4 (a) The person's name, as it appears on the state board
5 approval.

6 (b) The school district, intermediate school district, public
7 school academy, or nonpublic school in which the person was
8 employed at the time of the conviction, if any.

9 (c) The offense for which the person was convicted and the
10 date of the offense and date of the conviction.

11 (d) Whether the action taken by the superintendent of public
12 instruction was a summary suspension, suspension due to failure to
13 request a hearing, suspension, revocation, or reinstatement of the
14 state board approval.

15 (13) This section does not do any of the following:

16 (a) Prohibit a person who holds state board approval from
17 seeking monetary compensation from a school board or intermediate
18 school board if that right is available under a collective
19 bargaining agreement or another statute.

20 (b) Limit the rights and powers granted to a school district
21 or intermediate school district under a collective bargaining
22 agreement, this act, or another statute to discipline or discharge
23 a person who holds state board approval.

24 (c) Exempt a person who holds state board approval from the
25 operation of section 1535a if the person holds a certificate
26 subject to that section.

27 (d) Limit the ability of a state licensing body to take action

1 against a person's license or registration for the same conviction.

2 (14) The superintendent of public instruction may promulgate,
3 as necessary, rules to implement this section pursuant to the
4 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
5 24.328.

6 ~~—— (15) The department of information technology shall work with~~
7 ~~the department and the department of state police to develop and~~
8 ~~implement an automated program that does a comparison of the~~
9 ~~department's list of individuals holding a teaching certificate or~~
10 ~~state board approval, and of any other list maintained by the~~
11 ~~department of individuals employed or regularly and continuously~~
12 ~~working under contract in a school, with the conviction information~~
13 ~~received by the department of state police. This comparison shall~~
14 ~~only include individuals who are actually school employees at the~~
15 ~~time of the comparison or who are regularly and continuously~~
16 ~~working under contract at the time of the comparison. Unless~~
17 ~~otherwise prohibited by law, this comparison shall include~~
18 ~~convictions contained in a nonpublic record. The department and the~~
19 ~~department of state police shall perform this comparison during~~
20 ~~January and June of each year until July 1, 2008. The department of~~
21 ~~state police shall take all reasonable and necessary measures using~~
22 ~~the available technology to ensure the accuracy of this comparison~~
23 ~~before transmitting the information under this subsection to the~~
24 ~~department. The department shall take all reasonable and necessary~~
25 ~~measures using the available technology to ensure the accuracy of~~
26 ~~this comparison before notifying a school district, intermediate~~
27 ~~school district, public school academy, or nonpublic school of a~~

~~conviction. If a comparison discloses that a person on the department's list of individuals holding a teaching certificate or state board approval has been convicted of a crime, or if the department is otherwise notified by the department of state police that such a person has been convicted of a crime, the department shall notify the superintendent or chief administrator and the board or governing body of the school district, intermediate school district, public school academy, or nonpublic school in which the person is employed of that conviction.~~

(15) ~~(16)~~ As used in this section:

(a) "Conviction" means a judgment entered by a court upon a plea of guilty, guilty but mentally ill, or nolo contendere or upon a jury verdict or court finding that a defendant is guilty or guilty but mentally ill.

(b) "Felony" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 175, MCL 761.1.

(c) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(d) "Prosecuting attorney" means the prosecuting attorney for a county, an assistant prosecuting attorney for a county, the attorney general, the deputy attorney general, an assistant attorney general, a special prosecuting attorney, or, in connection with the prosecution of an ordinance violation, an attorney for the political subdivision that enacted the ordinance upon which the violation is based.

(e) "Regularly and continuously work under contract" means

1 that term as defined in section 1230d.

2 (f) "State board approval" means a license, certificate,
3 approval not requiring a teaching certificate, or other evidence of
4 qualifications to hold a particular position in a school district
5 or intermediate school district or in a nonpublic school, other
6 than a teacher's certificate subject to section 1535a, that is
7 issued to a person by the state board or the superintendent of
8 public instruction under this act or a rule promulgated under this
9 act.