

# Legislative Analysis

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## SCHOOL PERSONNEL CONVICTED OF CRIMES

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### House Bills 4928 and 4929

Sponsor: Rep. Brian Palmer

### House Bill 4930

Sponsor: Rep. Kevin Elsenheimer

### House Bill 4932

Sponsor: Rep. Edward Gaffney, Jr.

### House Bill 4931

Sponsor: Rep. Tonya Schuitmaker

### House Bill 4933

Sponsor: Rep. Rick Jones

Committee: Education

Complete to 6-14-05

## A SUMMARY OF HOUSE BILLS 4928-4933 AS INTRODUCED 6-14-05

The bills would amend various acts to ensure that school personnel and teachers who have committed crimes against children will be prohibited from working in schools. Further, the bills set penalties for certain crimes, and allow school districts to escrow an employee's pay if charged with such a crime. A more detailed explanation of each bill follows.

House Bill 4928 would amend the Revised School Code (MCL 380.1535a and 380.1539b) to revise the notice procedures for teachers and other state board approved school personnel being convicted of certain offenses, and to provide for escrow of their salaries during the trial proceedings and forfeiture of their earnings upon conviction.

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

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

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

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

Finally, House Bill 4928 specifies that the Department of Information Technology work with the Departments of Education and State Police to develop and implement an automated program that would do a monthly comparison of the Department of Education's list of individuals holding a teaching certificate or state board approval with the conviction information received by the Department of State Police, including convictions contained in a nonpublic record. After the automated program had been developed and implemented, the Department of Education would be required to notify the attorney general and the state court administrative office that it was in operation.

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

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

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

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

House Bill 4929 would amend Public Act 4 of 1937 concerning teacher tenure (MCL 38.101) to specify that the rights of a teacher to continuing tenure would be subject to sections 1230d and 1535a of the Revised School Code. [Section 1230d would be added to the code with the enactment of House Bill 4930, and Section 1535a would be added to the code with the enactment of House Bill 4928.] To the extent that any provision of the amended article concerning teacher tenure was inconsistent with those sections of the Revised School Code, the teacher tenure article would not apply.

House Bill 4930 would amend the Revised School Code to require a person who was employed in any capacity by a school district, intermediate school district, public school academy, or nonpublic school (or who regularly worked under a contract in a school district) to report to the Department of Education and the school district in the event of being charged with a crime listed in Section 1535a(1) (see above) or a substantially similar crime in another jurisdiction.

If the person who was charged, entered a plea of guilt or no contest, or was subject to a finding of guilt by a judge or jury of a crime described in Section 1535a(1) or 1439b(1), then that person would be required to immediately disclose to the court (on a form prescribed by the state court administrative office) that he or she was employed by a

school district as a teacher or in a position requiring state board approval. A copy of that form would then have to be provided to the prosecuting attorney in charge of the case, to the state school superintendent, and to the school district.

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

Finally, a person who violated this section of the code could be subject to discharge from employment if the board of a school district found, after providing notice and the opportunity for a hearing, that a person had violated this section. However, if a collective bargaining agreement was in effect as of the effective date of this section, and if that collectively bargained agreement was not in compliance with this subsection, then this subsection would not apply to that school district until after the expiration of the agreement.

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

House Bill 4931 would amend the Code of Criminal Procedure (MCL 777.13p) to establish a sentencing guideline for the crime of a school employee failing to report the conviction of a listed offense (as defined in Section 2 of the Sex Offenders Registration Act). The crime, a felony, would be categorized under the state sentencing guidelines as a violation of public safety (class G) and would carry a maximum prison term of two years.

House Bill 4932 would amend the Sex Offenders Registration Act (MCL 28.721 to 28.732) to prohibit convicted sex offenders from residing, working, or loitering within a student safety zone. Under the bill, a "student safety zone" would be defined to mean the area that lies 1,000 feet or less from school property.

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

The bill also specifies that it would not apply to a) an individual who resided or worked within a student safety zone before the effective date of this act; b) an individual whose residence or place of employment was within a student safety zone solely because a school was relocated or was initially established 1,000 feet or less from the individual's

residence; c) an individual who resided within a student safety zone because the individual was an inmate or resident of a prison, jail, juvenile facility, or other correctional facility, or was a patient of a mental health facility; d) a minor who resided with his or her parent or guardian; and e) an individual who was a patient in a hospital or hospice.

House Bill 4933 would amend the Code of Criminal Procedure (MCL 777.11b) to establish a sentencing guideline for the crimes of living, working, or loitering in a student safety zone—second or subsequent offense. The crime, a felony, would be categorized under the state sentencing guidelines as a violation of the public trust (class G) and would carry a maximum prison term of two years.

### **FISCAL IMPACT:**

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

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

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

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.