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BILL ANALYSIS

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House Bill 6173 (Substitute S-1 as reported)
House Bill 6174 (Substitute H-1 as reported without amendment)
Sponsor: Representative Shelley Goodman Tubb (H.B. 6173)
Representative Tonya Shuitmaker (H.B. 6174)
House Committee: Education
Senate Committee: Education

Date Completed: 11-8-06

RATIONALE

In 2005, in response to high-profile news stories identifying convicted sex offenders employed in Michigan schools, legislation amended the Revised School Code to require all school employees and contract workers in the State to undergo criminal background checks, including a criminal history check with the Federal Bureau of Investigation (FBI). Previously, schools were required to request these checks only for teachers, administrators, and certain other employees. The legislation extended the requirement to substitute teachers and others such as maintenance workers or food service personnel who are employed by a school or are contract workers on school property. To allow schools to comply with the requirement, all school employees and contract workers must submit to being fingerprinted for the purpose of the FBI criminal history check. Those individuals convicted of a listed offense may not be employed by a school or work under contract at a school. (A listed offense is any offense for which registration is required under the Sex Offenders Registration Act, as described in **BACKGROUND**, below.)

Similar requirements were enacted for child care organizations in response to the news stories about school employees, as well as an Auditor General report that the Office of Children and Adult Licensing did not always perform criminal history checks on certain child day care center employees and adults living in group day care homes, and had not obtained periodic updates on the criminal history of licensees and adult household

members, as required by the Child Day Care Licensing Manual. In some cases, child care or day centers are operated by school districts, although the criminal history requirements apply to all child care organizations.

The Code permits school districts to share the results of employees' criminal background checks, but the Code makes no similar provision for contract workers, and the provisions are inconsistent regarding substitute teachers, who frequently work in more than one school district. Consequently, there have been reports of individuals who have had to be fingerprinted multiple times, or have undergone successive criminal background checks, as each hiring district complied with the Code. There also have been other difficulties, including the improper identification of teachers and school personnel on lists of convicted felons. It has been suggested that these issues should be addressed to allow schools to identify those with a criminal background and protect schoolchildren without unduly burdening school employees or contract workers.

CONTENT

House Bill 6173 (S-1) would amend the Revised School Code to do the following:

-- Extend to contract workers current provisions that allow a school district, intermediate school district

(ISD), public school academy (PSA), or nonpublic school under certain circumstances to employ individuals conditionally while criminal history and criminal records checks are being processed, and to share the results of a criminal history or criminal records check with another district or school, with the individual's written permission.

- Allow a school district, ISD, PSA, or nonpublic school to use results maintained by the Department of Education (DOE) to confirm that an individual did not have any criminal history.
- Require a school district, ISD, PSA, or nonpublic school to verify a report of certain convictions or the results of a criminal history check or criminal records check using public records before taking any action based on those reports.
- Require the DOE to provide information on how to verify a conviction using public records.
- Require a school district, ISD, PSA, or nonpublic school, if it received a report of certain convictions by an employee or contract worker, to report the information and any action taken to the Department of Education within 30 days.
- 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 the same employer.
- Expand a current requirement for an automated program that compares registered educational personnel and others with conviction information from the State Police, to include any other DOE list of individuals employed by or working regularly and continuously under contract in a school.
- Prohibit a school district, ISD, PSA, or nonpublic school from employing an individual who did not comply with a requirement to provide fingerprints for a criminal records check or to give written consent for a criminal history check.
- Provide that a conviction of a listed offense would demonstrate that an

individual was unfit to teach elementary or secondary school in the State, and would be sufficient to warrant the suspension or revocation of his or her teaching certificate or State Board of Education approval.

House Bill 6174 (H-1) would amend the child care licensing Act to do the following:

- Provide that if a child care center or day care center that was operated by a school district, ISD, PSA, or nonpublic school applied for or renewed a license under the Act, the required criminal history and criminal records checks would have to comply with the Revised School Code.
- Provide that a person or entity applying to renew a license to operate a child care center, day care center, or group day care home, or a certificate of registration to operate a family day care home, would not have to undergo criminal history and criminal records checks if the person or entity had remained licensed continuously after an initial criminal history and criminal records check.

The bills are described in detail below.

House Bill 6173 (S-1)

Criminal Checks upon Employment

Under the Code, with certain exceptions, a school district, intermediate school district, public school academy, or nonpublic school in the State must request the Department of State Police to conduct a criminal history check and conduct a criminal records check through the FBI for an individual upon an offer of initial employment, or when school officials learn that the individual is being assigned to work regularly and continuously under contract in any of its schools.

If the board of a school district or ISD or the governing body of a PSA or nonpublic school determines it necessary to hire an individual for a particular school year during that school year or within 30 days before the beginning of the school year, the board or governing body may employ the individual as a conditional employee without first receiving the criminal history or criminal

records report if the board or governing body requests those checks before conditionally employing the individual. The individual must sign a statement identifying any and all crimes for which he or she has been convicted, and agree that if the report from the criminal history check or the criminal records check is not the same as that statement, his or her employment contract is voidable at the option of the board or governing body.

The bill also would permit an individual to work regularly and continuously work under contract under the same conditions.

Under the Code, if an applicant for a position as a substitute teacher agrees in writing, the district, ISD, PSA, or nonpublic school may use a report received by another district, ISD, PSA, or nonpublic school, or maintained by the Department of Education, to confirm that the individual does not have any criminal history, rather than requesting a criminal history check and an FBI criminal records check for the applicant.

The bill would include under that provision an individual who regularly and continuously worked under contract in one or more school districts, ISDs, PSAs, or nonpublic schools, if the applicant or individual agreed in writing.

The Code provides that if the report from the criminal history check or the FBI criminal records check received by a school district, ISD, PSA, or nonpublic school discloses that an individual has been convicted of a listed offense, then that entity may not employ the individual in any capacity, and may not allow the individual to work regularly and continuously under contract in any of its schools.

If the report discloses that the individual has been convicted of a felony other than a listed offense, then the district, ISD, PSA, or nonpublic school may not employ the individual in any capacity or allow him or her to work regularly and continuously under contract in any of its schools unless the superintendent or chief administrator and the board or governing body of the district or school specifically approve the employment or work assignment in writing.

Under the bill, the district, PSA, or nonpublic school would have to take steps to verify the information in the criminal history report or

the criminal records report using public records. If the information were verified, then the prohibition against employment or the requirement for approval would apply.

The DOE would have to make available to school districts, ISDs, PSAs, and nonpublic schools information on how to verify a conviction using public records.

In addition, the bill provides that if a school district, ISD, PSA, or nonpublic school received results indicating a felony conviction or a conviction for a listed offense, within 30 days after receiving those results, the district or school would have to submit to the DOE a report detailing the information and any action it had taken as a result. The report would have to be in the form and manner prescribed by the DOE.

The bill specifies that if the criminal history check or the FBI criminal records check required under the Code had been completed for a particular individual and the results reported to a school district, ISD, PSA, or nonpublic school, then another criminal history check or criminal records check would not be required under the Code for that individual as long as he or she remained employed with no separation from service or working regularly and continuously in any school district, ISD, PSA, or nonpublic school in the State.

Under the Code, a school district, ISD, PSA, or nonpublic school is not required to conduct a criminal history check or an FBI criminal records check for an individual who is being employed by or assigned to work regularly and continuously under contract in a school if the individual is not more than 19 years of age and is enrolled as a general education pupil of the district or school, or is not more than 26 and is enrolled in special education programs or services in the district or school. Before employing the individual or assigning him or her to work continuously and regularly under contract in a school, however, the employer must perform a criminal history check on the person using the Department of State Police's internet criminal history access tool (ICHAT). If an ICHAT search reveals that the individual has been convicted of a listed offense, then the district, ISD, PSA, or nonpublic school may not employ the individual in any capacity, and may not allow the individual to work regularly and

continuously under contract in any of its schools.

Under the bill, these provisions would apply to a person enrolled in any school district, ISD, PSA, or nonpublic school, rather than only the employing entity. In addition, the district or school would have to take steps to verify the results of an ICHAT search using public records, and if the information were verified, then the individual could not be employed or allowed to work continuously and regularly under contract.

Under the bill, "felony" would mean that term as defined in the Code of Criminal Procedure, i.e., a violation of a penal law of the State for which the offender, upon conviction, may be punished by death or by imprisonment for more than one year, or an offense expressly designated by law to be a felony.

Listed Offenses or Other Convictions

Under the Code, if a school official of a school district, ISD, PSA, or nonpublic school receives notice from an authoritative source that an individual has been convicted of a listed offense, the board of the school district, ISD, PSA, or nonpublic school must take steps to verify the information using public records, and if the information is verified, may not employ that individual in any capacity or allow the person to work regularly and continuously under contract in any of its schools.

In addition, if a person who is employed in any capacity by a school district, ISD, PSA, or nonpublic school, who has applied for a position with one of those entities and has had an initial criminal history check or criminal records check, or who is working regularly and continuously under contract in one of those entities, is charged with a crime described in Section 1535a(1) or 1539b(1) (which provide for suspension of a teaching certificate or State board approval), the person must report that information to the DOE and to the district, ISD, PSA, or nonpublic school. (The crimes described in those sections include, among others, any felony and certain misdemeanors involving criminal sexual conduct; child abuse; and cruelty, torture, or indecent exposure involving a child.)

Under the bill, if a school district, ISD, PSA, or nonpublic school received a report of a conviction under these provisions, within 30 days after receiving the report, the district or school would have to submit to the DOE in the form and manner prescribed by the Department a report detailing the information received and any action it had taken as a result.

Automated Program

The Code requires the Department of Information Technology to work with the DOE and the Department of State Police to develop and implement an automated program that compares the DOE's list of registered educational personnel, and of individuals holding a teaching certificate or State Board of Education approval, with the conviction information received by the Department of State Police. The comparison must include only individuals who are actually school employees or are working regularly and continuously under contract at the time of comparison.

Under the bill, the automated program also would have to compare the conviction information with any other list maintained by the DOE of individuals employed or working regularly and continuously under contract in a school.

The bill also would require the DOE, by January 1, 2007, to include in its list of registered educational personnel all individuals who were employed by a school district, ISD, PSA, or nonpublic school and all individuals who were assigned to work regularly and continuously under contract in a school operated by a school district, ISD, PSA, or nonpublic school.

As used in these provisions, "regularly and continuously work under contract" would mean to work at school on a more than intermittent or sporadic basis as an individual under a contract with, or as an owner or employee of an entity that had a contract with a school district, ISD, PSA, or nonpublic 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. "At school" would mean in a classroom, elsewhere on school property, or on a school bus or other school-related vehicle. "School property" would

mean that term as defined in Section 33 of the Sex Offenders Registration Act, i.e., a building, facility, structure, or real property owned, leased, or otherwise controlled by a school, other than a building, facility, structure, or real property that is no longer in use on a permanent or continuous basis, that is either used to impart educational instruction, or is for use by students not more than 19 years of age for sports or other recreational activities.

Checks on Current Employees, Contract Workers

Under the Code, by July 1, 2008, the board of a school district, PSA, ISD, or nonpublic school must request the Department of State Police to perform a criminal history check and to conduct a criminal records check through the FBI for each individual who, as of January 1, 2006, was either a full-time or part-time employee of the district or school, or assigned to work regularly and continuously under contract in any of its schools. The bill would apply this provision to each individual who was an employee or under contract as of December 1, 2005, and who was either still employed by the district, ISD, PSA, or nonpublic school, or still working regularly and continuously under contract in any of its schools on the date that the criminal history and criminal records checks were initiated.

The Code requires individuals described above to give written consent for the Department of State Police to conduct the criminal history check and criminal records check, and to submit their fingerprints to the State Police for the criminal records check.

Under the bill, a school district, ISD, PSA, or nonpublic school could not employ an individual in any capacity or allow him or her to work regularly and continuously under contract in any of its schools if he or she did not comply with these requirements or otherwise failed to cooperate with a school district, ISD, PSA, or nonpublic school that was seeking to comply with these provisions.

Sharing of History with Other Employers

Under the Code, a member of the board of a school district, ISD, PSA, or nonpublic school may not disclose the results of a criminal history check or criminal records check

(except a misdemeanor conviction involving sexual or physical abuse or any felony conviction) to any person not directly involved in evaluating the individual's qualifications for employment or assignment. The Code provides exceptions to this provision for the purpose of sharing the results of the criminal history check and criminal records check for substitute teachers and other individuals being considered for employment by more than one school district, ISD, PSA, or nonpublic school.

The bill would allow a board member or an employee of a district or school to provide a copy of the results concerning an individual who was working regularly and continuously under contract, to an appropriate representative of the individual's employer, if the individual agreed in writing. A representative of any employer who received a copy of or the results of a report from another source under these provisions could not disclose the report or its contents or the results of the report to any person who was not directly involved in evaluating the individual's qualifications for employment or placement.

Report to Nonpublic Schools

Under the Code, within 30 days after receiving a proper request by a school district, ISD, PSA, or nonpublic school for a criminal history check and criminal records check on an individual considered to be registered educational personnel, the criminal records division of the Department of State Police must conduct the criminal history check and provide a report of the results to the district, public school academy, or nonpublic school.

The criminal records division also must initiate the criminal records check through the FBI, and if the requestor is a school district, ISD, or PSA, the division must provide the results of the criminal records check to that entity. If the requestor is a nonpublic school, the criminal records division must notify that school whether or not the criminal records check disclosed any criminal history that was not disclosed in the criminal history check report.

The bill would require the results of both reports to be provided to a nonpublic school, as well as a school district, ISD, or PSA.

Under the Code, if a person who holds a valid teaching certificate or State Board approval has been convicted of a specified crime, his or her teaching certificate or State Board approval may be suspended after a hearing. For certain offenses, if the public health, safety, or welfare requires emergency action, the Superintendent of Public Instruction must order summary suspension of that person's teaching certificate or State Board approval, and then must provide an opportunity for a hearing. The bill would include any crime that is a listed offense under the provisions requiring summary suspension.

Under the bill, the Superintendent would have to appoint a designee to perform the investigatory and prosecutorial functions involved in any proceedings affecting a person's teaching certificate or State Board approval under these provisions. The Superintendent would have to approve any settlement, conditional agreement, or other decision not to proceed with charges. Any final action that affected the status of a person's teaching certificate would have to be taken by the Superintendent.

The Code prohibits the Superintendent from taking action against a person's teaching certificate or State Board approval under these provisions unless he or she finds that the conviction is reasonably and adversely related to the person's present fitness to serve in an elementary or secondary school in the State or that the conviction demonstrates that the person is unfit to teach in an elementary or secondary school in the State. Under the bill, conviction of a listed offense would meet those standards for taking action against a person's teaching certificate or State Board approval.

Under the Code, if the Superintendent does not complete the hearing procedures and make a final decision and order within 120 working days after receiving a request for a hearing, he or she must submit a report detailing the reasons for the delay to the standing committees and Appropriations subcommittees of the Senate and House of Representatives having jurisdiction over education and education appropriations. The bill would remove the reference to completing the hearing procedures.

The child care licensing Act prohibits a person or entity from establishing or maintaining a child care organization unless licensed or registered by the Department of Human Services (DHS). When a person, partnership, firm, corporation, association, or nongovernmental organization applies for or to renew a license for a child care center or day care center, the DHS must request the Department of State Police to perform a criminal history check, and to request a criminal records check from the FBI, for each partner, officer, or manager of the child care center or day care center.

Under the bill, if the child care center or day care center were established and operated by an intermediate school board, the board of a local school district, or the board or governing body of a State-approved nonpublic school, the criminal history check and criminal records check would have to be performed in compliance with Sections 1230 to 1230h of the Revised School Code (the sections requiring criminal history and criminal records checks for school personnel). Before issuing or renewing a license for the child care center or day care center, the DHS would have to verify that the board of the district, ISD, or nonpublic school had obtained the required criminal history checks and criminal records checks.

If a person, partnership, firm, corporation, association, or nongovernmental organization applying to renew a license to operate a child care center or day care center previously had undergone the required checks and had remained licensed continuously after the checks had been performed, then that person or entity would not be required to submit to another criminal history or criminal records check upon renewal of the license.

Also, if a person applying to renew a certificate of registration to operate a family day care home or a license to operate a group day care home had previously undergone a criminal history check and a criminal records check as required under the Act, and continuously had maintained a certificate of registration to operate a family day care home or license to operate a group day care home after the checks had been performed, that person would not be

required to submit to another criminal history check or criminal records check upon renewal of the certificate of registration or license.

MCL 380.1230 et al. (H.B. 6173)
722.115 et al. (H.B. 6174)

BACKGROUND

Under Section 2 of the Sex Offenders Registration 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.

ARGUMENTS

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

Supporting Argument

The legislation enacted in 2005, sometimes called the Student Safety Initiative, has increased the security of Michigan's schoolchildren by making it more difficult for individuals who may pose a risk to students to gain employment at schools, but there have been some unforeseen consequences in the implementation of the requirements. While maintaining and improving the higher level of security, the bills would allow greater sharing of information between schools and from the Department of Education to eliminate duplicate and wasteful background checks. Under House Bill 6173 (S-1), once an employee's criminal record was on file with a school district or the Department of Education, that information could be shared with another district seeking to hire the individual, eliminating the need for multiple background checks. Although schools currently are permitted to provide copies of reports regarding employees, they are not authorized to do so for contract workers or substitute teachers, who frequently work in more than one district. The bill would correct that problem.

In addition, House Bill 6173 (S-1) would allow nonpublic schools to have access to the results of criminal background checks. Currently, the State Police may share the contents of criminal history checks with public schools only. If a nonpublic school requests a criminal history, the Department may only indicate whether the history contained certain convictions, without disclosing the actual results. There is no reason that officials at nonpublic schools should be unable to view the same information provided to their counterparts at public schools. Eliminating those restrictions would enable all schools to share reports from criminal history checks, helping streamline the criminal background check process and ensuring that individuals with a known history for certain offenses are not allowed to work in schools in proximity to children.

House Bill 6173 (S-1) also would allow contract workers to be hired provisionally while the criminal checks were being completed. The Code currently permits such provisional hiring of employees; the bill would simply extend those provisions to include contract workers as well.

In addition, the bill would protect individuals from being falsely identified as criminals. In early 2006, there were some errors contained on a list of school employees with criminal backgrounds. In some cases, school employees were mistakenly identified as convicted criminals, either because they shared a name with a criminal or because the record showed a minor offense such as a traffic violation. Questioning a person's background and character without first verifying the information could permanently undermine the individual's status in the community, and affect his or her ability to build trusting relationships with students and parents. Because of these concerns, House Bill 6173 (S-1) would require school districts to verify any information regarding an individual's criminal history before taking action based on that information. If the information were verified, the school would have to report its findings to the Department of Education, which would make the information available to all other schools within the State, to prevent the individual from being hired by another school. These provisions would protect individuals from wrongful identification while enhancing greater communication between schools and the Department to keep potentially dangerous criminals out of schools.

Supporting Argument

Some schools in Michigan operate day care or child care centers. While employees of those facilities are required to undergo criminal background checks under the child care licensing Act, those requirements are different from the provisions of the Revised School Code that cover school employees and contract workers at schools. To avoid any potential confusion, House Bill 6174 (H-1) specifies that those child and day care centers would have to comply with the Revised School Code.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

House Bill 6173 (S-1)

State: State costs likely would increase under this bill for two reasons: 1) By requiring the Department of Education to include in its list of registered educational personnel all individuals employed and all individuals assigned to work regularly and continuously under contract, the bill would

result in increased costs for the Center for Educational Performance and Information; and 2) by including any lists maintained by the Department of Education of individuals employed or regularly and continuously working under contract in a school in an automated program that compares the Department's list of registered educational personnel with conviction information, the bill would result in increased costs for the Department of Information Technology. Finally, the Department of Education could see a slight increase in costs associated with the requirement to make available to school districts, intermediate school districts, public school academies, and nonpublic schools information on how to verify a conviction using public records.

Local: School districts, intermediate school districts, and public school academies likely would see some increased costs when using public records to verify that an individual had been convicted of a listed offense, as required by this legislation. Also, increased costs are likely because these entities would be required to submit to the Department of Education a report detailing individuals' convictions of listed offenses and any action taken as a result. For schools paying the cost of criminal history and background checks, the legislation could provide relief from some costs by allowing, with permission from the individual, the sharing of results of criminal history checks among districts for individuals regularly and continuously working under contract in more than one school.

House Bill 6174 (H-1)

The bill would have no fiscal impact on the Department of Human Services.

Fiscal Analyst: Constance Cole
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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.