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# REPORT



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## Student Safety Zone Legislation

Effective Date: January 1, 2006

(Except for Public Act 125, Which Became Effective on 9/29/05)

### School Employee Criminal History and Records Checks

#### Senate Bill 601 (Public Act 138, 2005) and House Bill 4402 (Public Act 129, 2005)

- The school must request a criminal history check from the Michigan State Police (MSP) and a criminal records check through the FBI **on an applicant or an individual that is hired for any full-time or part-time employment** or who is assigned to regularly and continuously work under contract in any of its schools.
- The school shall require an individual to **submit his or her fingerprints** for the purposes of this criminal records check at the time the individual initially applies for employment with the school or is initially employed by the school or is initially assigned to work under contract in any of its schools. The State Police may charge a fee for conducting the criminal records check.
- If the report from the criminal history, criminal records check, or an authoritative source discloses that an individual has been **convicted of a SORA listed offense, the school cannot employ the person in any capacity** or allow him or her to work regularly and continuously under contract in any of its schools.
- If the report discloses that an individual has been **convicted of a felony other than a SORA listed offense, the school cannot employ the person** 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 school each specifically approved the employment or work assignment in writing.
- A school may **use results received by another school or maintained by the MDE** to confirm that the individual employed or working under contract as a substitute teacher does not have any criminal history.

## **Discharge, Demotion, and Discontinuance or Forfeiture of Salary**

### **House Bill 4928 (Public Act 130, 2005)**

- No later than July 1, 2008, the school shall request a criminal history check from the State Police and a criminal records check through FBI for each individual who, as of January 1, 2006, is a full-time or part-time employee, or is assigned to regularly and continuously work under contract in any of its schools.
- Within 10 working days after receiving notice that person holding a teaching certificate or state board approval has been convicted of a crime described listed in **Sections 1535a(1) or 1539b(1) of the Revised School Code**, the Superintendent of Public Instruction, shall notify the person in writing that his or her teaching certificate or state board approval **may be suspended because of the conviction** and of his or her right to a hearing before the Superintendent of Public Instruction.
- The hearing shall be conducted as a contested case under the Administrative Procedures Act of 1969. If the person does not avail himself or herself of this right to a hearing within 15 working days after receipt of this written notification, the teaching certificate or state board approval of that person shall be suspended. If a hearing takes place, the Superintendent of Public Instruction shall complete the proceedings and make a final decision and order within 120 working days after receiving the request for a hearing.
- If a person who holds a teaching certificate or state board approval has been convicted of a crime described in **Sections 1535a(2) or 1539b(2) of the Revised School Code**, the Superintendent of Public Instruction shall find that the public health, safety, or welfare requires emergency action and shall order summary suspension of the person's teaching certificate or state board approval, and shall subsequently provide an opportunity for a hearing. This does not limit the Superintendent of Public Instruction's ability to order summary suspension of a person's teaching certificate or state board approval for a reason other than described in this act.
- The Superintendent of Public Instruction, after a hearing, shall not take action against a person's teaching certificate or state board approval unless it is found that the conviction is reasonably and adversely related to the person's present fitness to serve in an elementary or secondary school in this state or that the conviction demonstrates that the person is unfit to teach in an elementary or secondary school in this state.
- The Superintendent of Public Instruction may take action against a person's teaching certificate or state board approval **based on a conviction that occurred before the effective date of this Act**, if it is found that the conviction is reasonably and adversely related to the person's present fitness to serve in an elementary or secondary school in this state or that the conviction demonstrates that the person is unfit to teach in an elementary or secondary school in this state.

- A school that continues to employ a person who enters a plea of guilt or no contest, or who is found guilty by a judge or jury of a SORA listed crime, is prohibited from paying the person wages. However, if a **collective bargaining agreement** is in effect as of the effective date of this law, and if the terms of that collective bargaining agreement are inconsistent with this provision, this provision does not apply to that school until after the expiration of that collective bargaining agreement.
- The school is required to hold the person's wages until the Superintendent of Public Instruction makes a final determination of whether or not to suspend or revoke the person's teaching certificate or state board approval. However, if a **collective bargaining agreement** is in effect as of the effective date of this law, and if the terms of that collective bargaining agreement are inconsistent with this provision, this provision does not apply to that school until after the expiration of that collective bargaining agreement.
- If the State Superintendent suspends or revokes the teaching certificate or state board approval, the held wages will be forfeited to the school.
- If the teaching certificate or state board approval is not suspended or revoked, the school is required to pay the person the held wages, without interest.
- A person convicted of a SORA listed offense is not entitled to request a hearing on reinstatement, and the State Superintendent is prohibited from reinstating the person's teaching certificate or state board approval.
- A prosecuting attorney is required to submit the form filed by a person charged with a SORA listed offense to the State Superintendent, and to any school in which the person is employed, not later than seven days after receiving the form.
- If the court receives the form filed by a person charged with a SORA listed offense, it is required to fulfill the same notice provisions not later than the date of sentencing, even if the court is maintaining the file as a nonpublic record.
- Not later than seven days after receiving notification from the prosecuting attorney or the court, or learning through an authoritative source that a person who holds a teaching certificate or a state board approval has been convicted of a SORA listed crime, the State Superintendent must request a certified copy of the judgment or conviction and sentence, or other document regarding the disposition of the case.
- The court is required to provide the certified copy within seven days after receiving the request, or after entry of the judgment or other document, whichever is later, even if the court is maintaining the judgment or other document as a nonpublic record.
- Conviction of a SORA listed crime is considered to be reasonably and adversely related to the ability of the person to serve in an elementary or secondary school and is sufficient grounds for suspension or revocation of the person's teaching certificate or state board approval.

- The Department of Information Technology shall work with the MDE and the State Police to develop and implement an automated program that does a comparison of the MDE's list of individuals holding a teaching certificate or state board approval with the conviction information received by the State Police. This comparison shall be performed during January and June of each year until July 1, 2008.
- If a comparison discloses that a person on the MDE's list of individuals holding a teaching certificate or state board approval has been convicted of a crime, the MDE shall notify the superintendent or chief administrator and the board or governing body of the school in which the person is employed of that conviction.

#### **Senate Bill 609 (Public Act 124, 2005) and House Bill 4991 (Public Act 136, 2005)**

- A conviction of a SORA listed crime is considered to be reasonably and adversely related to the ability of the person to serve in an elementary or secondary school and is sufficient grounds to support the discharge or demotion of a teacher on continuing tenure.
- If a teacher is suspended, the **teacher's salary shall continue during the suspension.**
- If the teacher is convicted of a **felony that is not a SORA listed offense** or of a **misdemeanor that is a SORA listed offense**, the controlling board may discontinue the teacher's salary effective upon the date of the conviction.
- If the teacher is convicted of a felony that **is a SORA listed offense**, the controlling board shall discontinue the teacher's salary effective upon the date of conviction.
- If the Tenure Commission reverses the preliminary decision and order discharging a teacher by the Administrative Law Judge, **the Tenure Commission may order back pay.**

#### **Reporting Requirements and Violations**

##### **House Bill 4930 (Public Act 131, 2005)**

- A person who is employed in any capacity by a school or who applies for a position, or who regularly works under a contract in a school district, **must report to the MDE and the school if** they are charged with a SORA listed crime **within three business days** after being arraigned.
- If the person who is charged with a SORA listed crime enters a plea of guilt or no contest, or is subject to a finding of guilt by a judge or jury of a crime, that person **is required to immediately disclose** to the court that he or she is employed by, or working under contract in a school. A copy of that form must be provided to the prosecuting attorney in charge of the case, to the state school superintendent, and to the school not later than seven days after the date of sentencing.

- Prescribes penalties for violation of this law.
- A person who violated this provision may be subject to **discharge from employment, or termination of his or her contract**, if the board of the school finds, after providing notice and the opportunity for a hearing, that the person has violated this law.
- If a **collective bargaining** agreement that applies to the affected person is in effect as of the effective date of this law, and if that collective bargaining agreement is not in compliance with this law, then this law does not apply to that school until after the expiration of that collective bargaining agreement.
- If a person submits a report that he or she had been charged with a crime, and the person is subsequently **not convicted**, he or she can request the MDE and the school to delete the report from its records, and upon receiving documentation, the school will be required to do so.

**Senate Bill 607 (Public Act 123, 2005) and House Bill 4934 (Public Act 132, 2005)**

- A person required to be registered under SORA must notify law enforcement officials within 10 days after the person changes or vacates a residence, domicile, or place of work or education.

**Senate Bill 606 (Public Act 122, 2005)**

- Failure to update Sex Offender Registration Information for a third or subsequent time is a Class F felony.

**Senate Bill 611 (Public Act 125, 2005)**

- Provides for sentencing guidelines for the “failure of a school employee to report a charge or conviction,” as a Class G felony, with a maximum sentence of two years’ imprisonment.
- Provide for sentencing guidelines for “making false statement or concealing material information to obtain qualification of school bond issue or improperly using proceeds of school bonds” as a Class F felony with a maximum sentence of four years’ imprisonment.

**House Bill 4937 (Public Act 135, 2005)**

- In a criminal case in which a defendant is accused of committing a SORA listed offense against a minor (an individual under 18 years old), evidence that the defendant committed another such offense against a minor is admissible and can be considered for its bearing on any matter to which it is relevant.

**Student Safety Zones**

**Senate Bill 617 (Public Act 121, 2005)**

- A person required to be registered under the Sex Offenders Registration Act cannot reside, work, or loiter within a “**student safety zone**,” defined as 1,000 feet or less from school property.

- **“School property”** is defined as 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 used to impart educational instruction by students not more than 19 years of age for sports or other recreational activities.
- **This does not apply to an individual who:** (a) is 19 years old or less and attends secondary school and resides with guardian; (b) is under 26 years old who attends a special education program and resides with a guardian or resides in a group home; (c) was residing within that student safety zone at the time law was enacted; (d) is a patient in a hospital or hospice; (e) is an inmate of a correctional facility or is a patient of a mental health facility.
- An individual who resides within a student safety zone and who is required to register under SORA shall change his or her residence to a location outside the student safety zone not more than 90 days after he or she is sentenced for the conviction.

**Senate Bill 616 (Public Act 139, 2005)**

- Establishes sentencing guidelines for crimes of living, working, or loitering within a student safety zone.

**Senate Bill 129 (Public Act 126, 2005)**

- The court may place an individual convicted of a SORA listed offense on probation for any term of years but not less than five years and shall order the individual not to reside, work, or loiter within a student safety zone.
- The court shall not impose these conditions of probation if the individual: (a) is 19 years old or less, attends school and resides with guardian; (b) is under 26 years old, attends a special education program and resides with a guardian or resides in a group home; (c) was residing within that student safety zone at the time law was enacted; (d) is a patient in a hospital or hospice; (e) was working in the student safety zone prior to the enactment of this act; or (f) sporadically works within a student safety zone.

**House Bill 4932 (Public Act 127, 2005)**

- An individual required to register under SORA shall not work or loiter within a student safety zone.
- **This does not apply to an individual:** (a) who was working within a student safety zone at the time this law is enacted; (b) whose place of employment is within a student safety zone solely because a school is relocated; (c) who only intermittently or sporadically enters a student safety zone for the purpose of work.

## **.Child Care Centers**

### **House Bill 4936 (Public Act 133, 2005), House Bill 4958 (Public Act 134, 2005) and Senate Bill 615, (Public Act 128, 2005)**

- Before a child care center or day care center makes an offer of employment to a person or allows a person to regularly and continuously work under contract at the child care center or day care center, the child care center or day care center shall perform a criminal history check on that person using the State Police's ICHAT.
- If a search of the State Police's ICHAT reveals that the person has been convicted of a SORA listed offense, the child care center or day care center shall not make an offer of employment to that person or allow that person to regularly and continuously work under contract at the child care center or day care center.
- Not later than one year after the effective date of this Act, the child care center or day care center shall **conduct a criminal history check on all current employees** using the department of state police's ICHAT.
- If a search of the State Police's ICHAT reveals that a **current employee** has been convicted of a SORA listed offense, the child care center or day care center shall not continue to employ that person.
- A child care center or day care center **may pass along the actual cost of a search** of the State Police's ICHAT to the employee or applicant on whom the search is being performed.
- A child care center or day care center licensee shall report to the department and **an employee of a child care center or day care center shall report to that child care center or day care center within three business days after he or she has been arraigned for certain crimes listed in Public Acts 124 and 128, 2005.**
- Prescribes criminal penalties for a person who does not report to a center as required.
- Adds to the sentencing guidelines failure to report felony charges to an employer, as a Class G felony punishable by up to two years' imprisonment.

**Sex Offenders Registration Act**  
**Listed offense**

§ 750.145a. Accosting, enticing or soliciting child for immoral purpose.

§ 750.145b. Accosting, enticing or soliciting child for immoral purpose; prior conviction; penalty.

§ 750.145c Child sexually abusive activity or material

§ 750.158. Crime against nature or sodomy; penalty. (It is a violation of section 158 of MI penal code if a victim is an individual less than 18 years of age.)

(A **third or subsequent** violation of any combination of the following section 167 and section 335a of MI penal code.)

§ 750.167(1)(f). A person who is engaged in indecent or obscene conduct in a public place

§ 750.335a. Indecent exposure.

(Except for a juvenile disposition or adjudication, a violation of section 338, 338a, or 338b of MI penal code if a victim is an individual less than 18 years of age.)

§ 750.338. Gross indecency; between male persons.

§ 750.338a. Gross indecency; female persons.

§ 750.338b. Gross indecency; between male and female persons.

(A violation of section 349 of MI penal code if a victim is an individual less than 18 years of age.)

§ 750.349. Kidnapping.

§ 750.350. Leading, taking, carrying away, decoying, or enticing away child under 14; intent; violation as felony; penalty; adoptive or natural parent.

(A violation of section 448 of MI penal code if a victim is and individual less than 18 years of age.)

§ 750.448. Soliciting, accosting, or inviting to commit prostitution or immoral act; crime.

§ 750.455. Pandering; felony.

§ 750.520b. Criminal sexual conduct in the first degree; felony.

§ 750.520c. Criminal sexual conduct in the second degree; felony.

§ 750.520d. Criminal sexual conduct in the third degree; felony.

§ 750.520e. Criminal sexual conduct in the fourth degree; misdemeanor.

§ 750.520g. Assault with intent to commit criminal sexual conduct; felony.

(Any other violation of a law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual who is less than 18 years of age.)

§ 750.10a. Sexually delinquent persons; definition.

(An attempt or conspiracy to commit an offense described above.)

**The crimes listed in Sections 1535a(2) and 1539b(2) of the Revised School Code 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 marihuana 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) of the Revised School Code 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 marihuana 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. House Bill 4928 would amend these sections to also include 7) any misdemeanor that is a listed offense, as well as a violation of a substantially similar law of another state, of a political subdivision of this state or another state, or of the United States.