

Legislative Analysis



YOUTH SAFETY LEGISLATION

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House Bill 4934 (Substitute H-1)
Sponsor: Rep. Richard Ball

House Bill 4935 (Substitute H-1)
Sponsor: Rep. Tory Rocca

House Bill 4936 (Substitute H-2)
Sponsor: Rep. Rick Baxter

House Bill 4937 (Substitute H-1)
Sponsor: Rep. [David Law

House Bill 4957 (Substitute H-1)
Sponsor: Rep. Shelley Goodman Taub

House Bill 4958 (Substitute H-1)
Sponsor: Rep. Bill Caul

Senate Bill 130 (Substitute H-2)
Sponsor: Sen. Alan Sanborn

Senate Committee: Judiciary
House Committee: Judiciary

First Analysis (06-29-05)

BRIEF SUMMARY: The bills would amend various acts to do the following:

- Require a criminal history check and criminal records check on child care center and day care center licensees.
- Require a background check on employees and contract workers of child care centers and day care centers.
- Revise the penalties for violating certain reporting duties imposed on a registered sex offender.
- Allow evidence of prior sex crimes against a minor to be admissible as evidence in criminal cases alleging another sex crime against a minor.
- Make it a felony for a registered sex offender to accept or maintain employment with or serve as a volunteer with a child care center, a school, a playground, or a youth league or youth organization.
- Prohibit youth leagues and youth organizations to hire or let volunteer for certain positions individuals registered as sex offenders.
- Require youth leagues and youth organizations to check the Public Sex Offenders Registry before hiring anyone or letting them volunteer.
- Provide penalties for violations.
- Place the maximum term of imprisonment for felony violations in the corresponding sections of the sentencing guidelines.

FISCAL IMPACT: The bills pertaining to sentencing guidelines would not have any fiscal implications. The other bills could result in indeterminate correctional costs for the state and local governments.

THE APPARENT PROBLEM:

Fueled by tragic events in Florida this spring involving the murder of two young girls by convicted sex offenders and a series of stories by the Detroit News exploring the number of convicted sex offenders working in the state's schools, Governor Granholm, as well as members of the legislature, called on the legislature to enact strong, meaningful laws to deny convicted sex offenders access to children in the state. In response, both chambers of the legislature have introduced bills to address some of the problems identified, such as requiring background checks of people working in child care centers (currently, only the person licensed to operate the center is required to undergo a background check; it is voluntary for a center to screen employees) and to make it a crime for a person to accept work or volunteer in some settings frequented by children.

THE CONTENT OF THE BILLS:

The bills are part of a multi-package, bi-cameral initiative amending various laws to protect children from persons convicted of certain crimes. The bills would take effect October 15, 2005.

House Bill 4934 would amend the Sex Offenders Registration Act (MCL 28.725 and 28.729) to revise the penalties for violating certain duties imposed on an offender.

Under the act, a person convicted of a listed offense (a crime that requires registration as a sex offender) must adhere to the act's reporting and registration requirements. Section 5a requires a sex offender convicted of a misdemeanor offense to report in person to the local law enforcement agency once a year and an offender convicted of a felony four times a year. It also requires an offender to maintain a current state driver's license or state identification card, to pay certain fees, and to have a digital photo taken (which is available for use by the Department of State Police) at a Secretary of State office. Currently, it is a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$1,000 to violate Section 5a of the act.

The bill would instead specify that a violation of Section 5a, other than failure to pay the fee, would be a crime punishable as follows:

- For no prior convictions (1st offense) for a violation of the act, a misdemeanor punishable by up to 93 days imprisonment and/or a fine of not more than \$1,000.
- For one prior conviction (2nd offense) for a violation of the act, a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not more than \$2,000.
- For two or more prior convictions (3rd or subsequent offense) for a violation of the act, a felony punishable by imprisonment for not more than four years and/or a fine of not more than \$2,500.

In addition, the act requires an individual required to be registered to notify the local law enforcement agency within 10 days of being paroled; final release from prison; or changing his or her place of residence, domicile, or place of work or education. The bill would also require a notification if the individual vacated the residence, domicile, or place of work or education.

House Bill 4935 would amend the sentencing guidelines portion of the Code of Criminal Procedure (MCL 777.11b) to specify that failure to update sex offender registration information – third or subsequent offense – would be a Class F felony against the public order with a maximum term of imprisonment of four years. The bill is tie-barred to House Bill 4934.

House Bill 4936 would add several new sections to Public Act 116 of 1973 (MCL 722.115 et al.), which pertains to the regulation of child care organizations, to require background checks on those licensed to operate a child care or day care center and on employees and contract workers. In general, the act defines a "child care center" and "day care center" to mean a facility, other than a private residence, that receives more than one preschool or school-age children for care for periods of less than 24 hours a day, and where the parents are not readily immediately available to the child.

Licensees. The bill would prohibit the Department of Human Services (DHS) from issuing or renewing a child care center or day care center license unless the department requested a criminal history check and criminal records check. When an application for a license or renewal is submitted to the DHS, the department would have to request the Michigan State Police (MSP) to conduct a criminal history check on the applicant and conduct a criminal records check through the Federal Bureau of Investigation (FBI). The background check would have to be performed on the person or each partner, officer, or manager of the center.

Applicants would have to give written consent, at the time of the application, for the MSP to conduct the background checks and would have to submit their fingerprints to that department. The DHS would have to request the background checks on a form and in a manner prescribed by the MSP. The MSP could charge a fee for the criminal history check or criminal records check that did not exceed the actual and reasonable cost of conducting the check.

If the criminal history check or criminal records check revealed a conviction of a listed offense, the department would have to:

- Deny a license to a license applicant.
- Deny a renewal to an applicant for a license renewal.
- Revoke the license of a current licensee.

Employees and contract workers. Before an offer of employment or before allowing a person to regularly and continuously work under contract at the center, the center must perform a background check on the person using the MSP's Internet Criminal History

Access Tool (ICHAT). [ICHAT allows any person to search the state police's Criminal History Record Database, which contains Michigan conviction information on misdemeanor and felony convictions. It does not contain federal arrests or criminal records from other states. Each search is \$10.00.]

Not later than one year after the bill's effective date, the center would have to conduct a criminal history check on all current employees. The cost of searching the ICHAT database could be passed on to the employee or applicant on whom the search is being performed.

If the ICHAT search revealed a conviction for a listed offense (a crime that requires registration as a sex offender), the center would be prohibited from 1) offering employment to that person or allowing the person to work under contract; or 2) continuing to employ or contract with a person.

Self-reporting requirement. In addition, a licensee would have to report to the DHS and an employee would have to report to the center within a reasonable time after he or she had been charged with a crime listed in Section 1535a of the Revised School Code (crimes for which a teaching certificate could be or would have to be suspended).

Failure to report a crime for which a person was charged would result in one of the following penalties: 1) if the crime was a listed offense, a felony punishable by imprisonment for not more than two years or a fine of not more than \$2,000; 2) if the crime was one listed in Section 1535a of the school code, but was other than a listed offense, a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$1,000.

Record expungement. Upon receiving the following documentation, the DHS would have to delete from a licensee's records and a day care or child care center would have to delete from an employee's records all information relating to a charge required to be reported:

- The licensee or employee has been acquitted of a charge he or she was required to report.
- The charge required to be reported has been dismissed.

House Bill 4958 would amend the sentencing guidelines portion of the Code of Criminal Procedure (MCL 777.15g) to specify that failure to report criminal charges to an employer would be a Class G felony against the public safety with a maximum term of imprisonment of two years. The bill is tie-barred to House Bill 4936.

House Bill 4937. In general, in a trial of a criminal case, references are not allowed to be made to the fact that the defendant has committed other offenses. However, there are a limited number of statutory and judicial exceptions to this rule. Under Michigan law, for example, evidence of a defendant's other bad acts may be admissible in a criminal trial if

it shows the defendant's 1) motive; 2) intent; 3) the absence of a mistake or accident; or 4) a scheme, plan, or system in doing an act.

The bill would add a new section to the Code of Criminal Procedure (MCL 768.27a) to add another exception. Notwithstanding the exception detailed above, the bill would allow, in a criminal case in which the defendant was accused of committing a listed offense (crimes which require registration as a sex offender), evidence that the defendant had previously committed another listed offense against a minor to be admissible and to be considered for its bearing on any matter to which it was relevant.

"Minor" would be defined as a person less than 18 years of age. "Listed offense" would mean that term as defined in Section 2 of the Sex Offenders Registration Act.

Senate Bill 130 would amend the Penal Code (750.411u and 750.411v) to prohibit registered sex offenders from working or volunteering at child care organizations, prohibit youth leagues and organizations from employing or allowing to volunteer persons on the sex offender registry, require youth leagues and organizations to check the sex offenders registry before employing or allowing a person to volunteer, and provide penalties for violations.

A person required to register as a sex offender could not accept or maintain employment with or serve as a volunteer with any of the following:

- A child care center as defined in the child care organization act, MCL 722.111. The definition includes day care centers.
- A school, defined as a public or private institution for grades K-12. It would not include a home school attended solely by children of the registered sex offender.
- A playground, defined as an entity having playground equipment for public use by children under 18 years of age. Playground equipment would include, but not be limited to, slides, swings, jungle gym, monkey bars, teeter-totters, or merry-go-rounds.
- A youth league or youth organization, defined as a public or private entity providing recreational, religious, or educational services to children.

Volunteering would mean working without remuneration for any of the above entities if any of the following apply: 1) the person worked or would work 20 hours or more within a calendar year; the person would have unsupervised contact with children; and 3) the person served or would serve as a chaperone for children on any overnight activity.

A registered sex offender who accepted employment or who volunteered at the prohibited entities 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. If the sex offender gave a false name or misrepresented his or her identity on an application for employment or for a volunteer position with one or more of the prohibited entities, or falsely stated that he or she was not required to be registered under the Sex Offenders Registration Act, the person would

be guilty of a felony punishable by imprisonment for not more than four years and/or a fine of not more than \$4,000.

A youth league or youth organization could not knowingly either employ a person or allow a person to work as a volunteer who was registered under the Sex Offender Registration Act if the work or volunteer position took place at a location where, and at a time when, children were present.

Furthermore, before a youth league or youth organization hired or accepted a person as a volunteer for any position in which the person would be present at a location where and a time when children were present, the entity would first have to (and then annually thereafter) check the state Public Sex Offender Registry to determine whether the individual was registered as a sex offender. Failure to do so would be a misdemeanor offense punishable by a fine of not more than \$500.

House Bill 4957 would amend the sentencing guidelines portion of the Code of Criminal Procedure (MCL 777.16t) to specify that the crime of a registered sex offender accepting employment or a volunteer position with a child services organization would be a Class G felony against the public order with a two-year maximum term of imprisonment. Accepting employment or a volunteer position with a child services organization by concealing the status as a registered sex offender would be a Class F felony against the public order with a maximum term of imprisonment of four years. House Bill 4957 is tie-barred to Senate Bill 130.

FISCAL INFORMATION:

House Bill 4934: By providing for felony penalties and one-year misdemeanor penalties, the bills could increase correctional costs for the state and local units of government. Felony incarceration and felony probation supervision are the responsibility of the state, which could experience increased costs of prison incarceration (which averages about \$29,000 per prisoner per year) or probation supervision (which averages \$1,977 per supervised offender per year). Costs of incarcerating felony or misdemeanor offenders in jails would fall to counties; costs vary by county. Local units of government also could incur increased costs if the numbers of offenders under misdemeanor probation supervision increased. Increases in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of such revenue.

House Bill 4937: The bill would have no direct fiscal impact on the judiciary or on state or local correctional systems. However, if increased numbers of felony or misdemeanor convictions were obtained as a result of the bill, state or local correctional costs could increase accordingly.

Senate Bill 130: Depending on how the bill affected the numbers of convictions for misdemeanors and felonies, it could increase state and local correctional costs. Costs of any misdemeanor sanctions would be borne by local units of government. Convicted felons may be sentenced to state prison, probation supervision, the county jail, or a

combination of jail and probation. Prison and probation costs are borne by the state, and average about \$29,000 per offender per year for prison incarceration and \$1,977 per offender per year for probation supervision. Costs of jailing would be borne by the county, and vary from county to county. Penal fine revenues would go to local libraries, which are the constitutionally-designated recipients of those revenues.

ARGUMENTS:

For:

The bills would add many new protections to state law to increase the safety of children. All new hires and contract workers and eventually, even current employees, of child care centers will be subject to a criminal background check. Youth organizations and youth leagues would have to screen new hires and volunteer workers against the public sex offender registry. Registered sex offenders would be prohibited from accepting employment or volunteering at certain places frequented by children and would face stiff penalties for doing so. Failing to disclose one's status as a sex offender would also be a felony.

Sex offenders who did not comply with reporting requirements under the Sex Offender Registration Act would also face new criminal charges. This should help reduce the numbers of offenders who fail to report address changes or to verify their addresses (currently about 44 percent of those required to report).

And House Bill 4937 would allow prior convictions for listed sex offenses committed against a minor to be admissible as evidence in a current criminal case involving a charge of a listed offense committed against a minor. This is not new, but actually a clarification and codification of current legal practice and would not deprive a defendant of any due process protections.

The bills may not protect every child in every situation, but represent an important first step in keeping known offenders away from children.

Against:

The bill package, as well as a package reported by the Education committee earlier, seeks to make children safer by excluding registered sex offenders from various work and volunteer positions that would bring them into contact with children. Unfortunately, this legislative initiative is built on a foundation of sand. The Sex Offenders Registration Act is fraught with problems and long overdue for a serious look at how to make it more effective. Currently, the registry is bogged down by people who pose no threat to children and who pose no threat to anyone! Most of the people listed on the registry show no predatory behavior, many were convicted as youths after engaging in sexual activities with boyfriends or girlfriends, and many youthful offenders (and adult, too) have been successfully rehabilitated and pose no further risk of reoffending. And, the state police are woefully behind in enforcing compliance with reporting address changes or verifying their addresses; at present, approximately 44 percent of offenders are not in compliance.

The bills would seriously impact the almost 37,000 people registered; fathers couldn't volunteer with their children's or grandchildren's sports teams 20, 30, 40, or more years after their convictions or work in child care centers, or schools that would put them into contact with children, even though their crime did not involve children. Simply put, the bills are ineffective in truly increasing the safety of children because they implicate people who pose no threat (which then draws attention away from those who do). They would punish people who have already paid their debt to society and could actually increase the risk of recidivism by denying many types of employment or meaningful volunteer work to people on the registry.

Unless the registry statute is overhauled to weed out those who do not pose a threat to society, unless the state police are aware of the residences of persons required to be on the registry, and unless the bills are amended to exclude those on the registry who did not commit a crime against children, the bills will give a false sense of security to the public and overly burden many who have worked hard to turn their lives around.

Against:

House Bill 4936 is problematic for several reasons:

- Only licensees would be fingerprinted, even though a licensee may never or only occasionally be onsite. The employees and contract workers (janitors, lawn care workers, etc.), who are the ones with the most contact with the children and the most opportunities to be alone with children would only receive a name check through ICHAT. Name checks are only as good as the name the worker gives; in some studies, close to 20 percent of people gave aliases. Also, a person who committed a sex offense in another state would not be in the ICHAT database. Only a fingerprint check of the national criminal database can accurately inform an employer to a person's status as a sex offender.
- Employees, since they are not school employees, may not know all the crimes they are expected to report if charged with a listed offense or certain crimes under the Revised School Code. Who would bear responsibility for informing them? If the employee is to bear responsibility, they could face misdemeanor or felony charges for not reporting something they didn't know they were required to report.
- Licensees and employees of centers are required to report if they are charged with certain crimes, but not contract workers. Shouldn't they also be required to report to those entities that they contract with?

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports House Bill 4937. (6-28-05)

A representative of the Michigan State Police indicated support for House Bills 4934 and 4937. (6-22-05)

A representative of the Michigan Catholic Conference indicated support for House Bill 4934-4937, 4957, and 4958. (6-22-05)

A representative of the Department of Human Services indicated a position of neutrality on House Bill 4936. (6-28-05)

A representative of the Michigan Department of Community Health indicated a position of neutrality on House Bills 4957, 4958, and 4935. (6-22-05)

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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.