



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

FBI CHECKS BY SCHOOLS

**House Bill 4872 with committee
amendments
First Analysis (3-9-94)**

**Sponsor: Rep. Deborah Whyman
Committee: Education**

THE APPARENT PROBLEM:

Public Act 99 of 1992 (enrolled House Bill 4569) amended the School Code to require school districts and nonpublic schools to get a criminal history report from the state police before hiring someone for a position that requires state board certification or approval. Although the state police reportedly use fingerprints to do these criminal history checks, the actual language of the act does not explicitly mention fingerprinting. Instead, the act requires criminal history checks to be made "on a form and in a manner prescribed by the criminal records division of the Department of State Police." However, reportedly the Federal Bureau of Investigation will not run a fingerprint check unless the law specifically requires fingerprinting. Legislation has been introduced that would meet the FBI's requirements.

THE CONTENT OF THE BILL:

The bill would amend the School Code's provision on detecting the criminal histories of teachers and administrators to allow local or intermediate school boards or the governing bodies of nonpublic schools to request, in addition to the required criminal history check, that the state police conduct a criminal records check through the Federal Bureau of Investigation on applicants for (or someone who had been hired for) a teaching, administrative, or other position requiring state board approval. Requests for FBI criminal checks could be made only of people who had taught out of state, gone to college or university out of state, or had lived outside of Michigan any time after turning 18. Boards or governing bodies requesting FBI criminal checks would require the person in question to submit his or her fingerprints to the state police, who could charge a fee for conducting the criminal records check.

MCL 380.1230a

FISCAL IMPLICATIONS:

The Department of Education says that the bill would have no fiscal implications. (8-2-94)

ARGUMENTS:

For:

Last session, the legislature amended the School Code to require local school boards to have the state police do a criminal history check before hiring anyone for a position that requires state board certification or approval. The actual language in the amendment requires such requests to be "on a form and in a manner" prescribed by the state police, thereby, presumably, allowing the state police to use alternative methods of doing such checks should they choose to do so and should new technology allow them to do so. For example, the language would allow the state police to use voiceprints, if that became a viable way of checking criminal histories. Since, moreover, fingerprinting currently is used by the state police to conduct criminal history checks, the language of the act amending the School Code presumably approved the use of fingerprinting. However, the FBI apparently will not cooperate in such criminal history checks unless state statute specifically indicates the use of fingerprinting, so the bill would allow the original intent of last session's act to be carried out. The bill doesn't require a criminal history check, but is permissive only, and it would apply only to people who had lived, taught, or attended college or university out of state.

Against:

If criminal history checks are going to be required by the state, they should be completed before someone is employed. In fact, criminal background checks should be a part of the certification process, so that no one would be placed in a classroom without such a check and so that potential employees would have the right to a hearing if their certification was denied or revoked.

This is the approach used in some other professions (such as law) and some other states. Reportedly, prospective lawyers need to pass a criminal history check before being admitted to the bar, and California, for example, reportedly requires criminal history checks and fingerprinting as part of the teacher certification process rather than as part of the job application process. Until a certificate of clearance is issued, candidates for teaching certification are not considered to have the credentials necessary to teach within the state.

Decisions as to whether someone has the minimum qualifications to teach, including character and fitness, should be made by the agency that issues teaching certificates.

POSITIONS:

The Michigan Education Association supports the bill. (3-9-94)

The Michigan Association of School Boards supports the bill. (4-8-94)