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EDUCATORS: CRIMINAL RECORDS

House Bill 4531 (Substitute H-1)
House Bill 4532 (Substitute H-2)
House Bill 4533 (Substitute H-1)
First Analysis (3-29-95)

Sponsor: Rep. Terry London
Committee: Education

THE APPARENT PROBLEM:

In recent years, a number of laws have been enacted aimed at keeping individuals with criminal records out of the state's classrooms. Public Act 61 of 1987 required prosecutors to notify the state board of education whenever a teacher is convicted of a sex-related offense or child abuse. The state board must then suspend the teacher's teaching certificate, unless the teacher requests a hearing. If a hearing is requested, the board can suspend the certificate based on the evidence presented. Public Act 35 of 1990 extended the same provisions to individuals holding an administrator's certificate, and a 1992 amendment included individuals whose jobs require state board approval rather than certification. The list of relevant offenses has been expanded by Public Act 99 of 1992 and Public Act 144 of 1994 to include certain drug-related offenses and assaultive crimes, such as murder, attempted murder, assault with intent to commit murder, armed robbery, assault with intent to commit armed robbery, and aggravated assault. However, the list still omits a number of serious offenses, such as kidnapping, child pornography, embezzlement, possession of a concealed weapon, and gross indecency. Legislation has been introduced that would make the current process operate in the case of all felonies and selected relevant misdemeanors. This means prosecutors would notify the state board of education when a teacher was convicted of any felony (and certain misdemeanors). The state board could only suspend a certificate after a hearing based on the evidence (and would not be required to suspend the certificate).

Since the beginning of the 1993-94 school year, school districts and nonpublic schools have been required to get a criminal history report from the state police before making an offer of initial employment for a position as a teacher or administrator and for certain other posts. (There is an exception that permits a district to hire someone

as a conditional employee before receiving the report when hiring during the school year or within 30 days of the beginning of the school year.) These checks, while useful, do not reveal a person's criminal record in another state, nor do they reveal any record of violations of federal law. This information can be obtained, however, by requesting the state police to conduct a criminal records check through the Federal Bureau of Investigation. Legislation has been introduced to permit schools to request the FBI check.

Currently, there are no penalties for using someone else's teacher's or administrator's certificate as one's own or for using fraudulently obtained, altered, or forged credentials. Legislation has been introduced to address this so as to provide another safeguard against unsavory individuals finding their way into the state's classrooms.

THE CONTENT OF THE BILL:

Fraudulent Use of Credentials. House Bill 4531 would amend the School Code (MCL 380.1809) to establish penalties for a person who (1) knowingly used (or attempted to use) a surrendered, suspended, revoked, nullified, fraudulently obtained, altered, or forged teaching or administrative certificate; (2) knowingly used (or attempted to use) as his or her own a valid teaching or administrative certificate of another person to obtain employment in a position requiring a certificate; (3) remained employed in a position requiring a certificate knowing that he or she did not hold a valid certificate; or (4) used or attempted to use a college or university transcript or a certificate or other credential that he or she knew was fraudulently obtained, altered, or forged, or used or attempted to use a transcript or credential of another as his or her own, to obtain a teaching certificate, administrator's certificate, or state board

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approval. (The first three provisions also would apply to positions requiring state board approval instead of a certificate.) The offenses would be misdemeanors, with a first offense punishable by imprisonment for not more than 93 days or a fine of \$500, or both, and a second or subsequent offense punishable by imprisonment for not less than 93 days or more than 6 months, or a fine of not less than \$500 or more than \$1,000, or both. The bill specifies that these would be in addition to any other penalty provided by law. Further, the state board of education could refuse to issue or renew a certificate or state board approval, or to refuse to issue an endorsement for a teaching or administrator's certificate, to a person convicted of one of the offenses. The bill's provisions would take effect September 1, 1995.

FBI Criminal Records Check. House Bill 4532 would amend the School Code (MCL 380.1230a) to permit the board of a school district, public school academy, intermediate school district, or nonpublic school, in addition to the required criminal history check, to request the state police to conduct a criminal records check through the Federal Bureau of Investigation on an applicant for, or an individual hired for, a teaching or administrative post or a position requiring state board approval. The applicant or individual would be required to submit his or her fingerprints to the state police for that purpose. The state police could charge a fee for conducting the criminal records check. A school board could require an individual to submit fingerprints for the criminal records check only at the time the individual initially applied for employment or was initially employed.

The bill contains essentially the same provisions regarding the FBI criminal record check that apply now to the state police criminal history check, including provisions to permit the conditional hiring of individuals while awaiting the results of the check if the hiring takes place during the school year or within 30 days before the beginning of the school year.

Crimes Triggering Suspension Process. House Bill 4533 would amend the School Code (MCL 380.1535a et al.) so that the existing notification/hearing/possible suspension process would be triggered whenever a teacher or administrator was convicted of any felony. (The specific list of felonies would be deleted.) The bill would also cite as triggering offenses a number of

misdemeanors. These include criminal sexual conduct in the fourth degree (or an attempt); child abuse in the third or fourth degree (or an attempt); cruelty, torture, or indecent exposure involving a child; the delivery or distribution of drugs near school property; assault and battery and assault with infliction of serious injury; child pornography; and furnishing alcohol to a minor.

FISCAL IMPLICATIONS:

According to the Department of Education, House Bills 4531 and 4532 would have no fiscal implications to the state or local units. (The \$24 cost of the FBI check is expected to be borne by job applicants, along with the current \$15 state police check.) House Bill 4533 would increase the certificate revocation/suspension caseload, the department says, and would "have implications for funding additional positions" within the Office of Teacher/Administrator Preparation and Certification. (Department draft analyses dated 3-20-95 and 3-27-95)

ARGUMENTS:

For:

These bills all have in common the aim of protecting the state's students from teachers who, because of their criminal backgrounds, should not be in the classroom. One bill strengthens the current records check requirement by allowing school districts to request the state police to conduct a search through the FBI, which will turn up criminal records from other states and violations of federal laws. These are missed now. It is anticipated this will become standard procedure once permitted. A second bill will expand the list of crimes that trigger the reporting of convictions by prosecutors to the state board. Under the bill, all felony convictions would be reported, as well as selected misdemeanors. Certificates could then be suspended following a hearing if the evidence warranted that action. Education officials say that currently about 25 new cases of teacher or administrator convictions are reported each year (as a result of record checks and reports by prosecutors). Prior to the passage of the original reporting legislation, very few cases ever reached the state board's attention. And the existence of the record check and reporting laws may have deterred some people with criminal records from seeking positions in the schools. Taken together, these laws have strengthened the protection of schoolchildren.

The proposed legislation will only strengthen current laws. The third bill puts into the School Code penalties for using credentials in a fraudulent or deceptive way to get or keep a position in the schools.

Response:

If schools choose to use the FBI fingerprint check to evaluate applicants for teaching positions, it seems only fair that they pay the cost rather than the applicant or new teacher.

Against:

It seems absurd that the state cannot automatically revoke or suspend a person's certificate when they are convicted of a horrible crime. In a recent case, a teacher is in prison after having been convicted of shooting a school superintendent, and yet the school district reportedly cannot act against the certificate without a lengthy and expensive hearing process. The law needs to address this situation.

Response:

Legislation is being planned to address this and similar situations and is expected to be before the legislature soon. It is, however, not as straightforward an area of law as it might appear because of the property rights of those who hold certificates. In the meantime, these bills can stand alone as significant improvements to current law.

POSITIONS:

A representative of the Michigan Department of Education testified in support of the bills. (3-28-95)

A representative of the Michigan State Police testified in support of House Bill 4532. (3-28-95)

The Michigan Association of School Boards supports the bills. (3-28-95)