



**House  
Legislative  
Analysis  
Section**

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

**EDUCATORS: CRIMINAL RECORDS**

**House Bills 4531-4533 as enrolled  
Public Acts 96, 83, and 97 of 1995  
Second Analysis (7-27-95)**

**Sponsor: Rep. Terry London  
House Committee: Education  
Senate 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 requires 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 robber, 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). Some people also advocate that a summary suspension be imposed for certain serious crimes rather than only permitting a suspension after a hearing.

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 credentials 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:***

Suspension of Credentials. House Bill 4533 would amend the School Code (MCL 380.1535a et al.) in two ways:

- 1) The list of crimes that trigger the notification/hearing/possible suspension process would be expanded to include any felony and certain specified 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.
- 2) Further, the crimes that currently trigger the notification/hearing/possible suspension process

House Bills 4531-4533 (7-27-95)

would, under the bill, instead lead to a summary suspension under Section 92 of the Administrative Procedures Act. (The crimes are listed later.) The bill provides that when a person holding a certificate or state board approval is convicted of one the specified crimes, the state board of education would find that the public health, safety, or welfare requires emergency action and would order the summary suspension. The bill would say that conviction of a crime of this sort would be considered to be reasonably and adversely related to the ability of the person to serve in an elementary or secondary school and would be sufficient grounds for suspension or revocation of the person's credential. If the convicted person was incarcerated in a state correctional facility, the board could delay ordering the summary suspension until 10 work days after the person's release. The state would request the Department of Corrections to provide notification at least 30 work days before the person was released from secure confinement. (The bill specifies that it would not limit the board's ability to order a summary suspension for other reasons.)

(The crimes that would lead to summary suspension include criminal sexual conduct in any degree, assault with intent to commit criminal sexual conduct, or an attempt to commit criminal sexual conduct; felonious assault on a child, child abuse in any degree, or an attempt to commit child abuse in any degree; cruelty, torture, or indecent exposure involving a child; the manufacture, delivery, or possession with intent to manufacture or deliver, or possession of 650 grams or more of a schedule 1 or 2 narcotic or cocaine; assault with intent to commit murder, attempted murder, and first and second degree murder; assault with intent to commit armed robbery, armed robbery, and aggravated assault; recruiting, inducing, soliciting, or coercing a minor under 17 years of age to commit or attempt to commit a felony involving a violation of the controlled substances act in the Public Health Code; delivering or distributing a controlled substance to a minor; possession with intent to deliver a schedule 1 or 2 narcotic or cocaine on or near school property; and possession of a controlled substance on school property.)

The bill also would specify that a certified copy of the court record is conclusive evidence of a conviction of a crime.

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 or state board approval; (2) knowingly used (or attempted to use) as his or her own the valid certificate or approval of another person to obtain employment; (3) remained employed in a position requiring a certificate or approval knowing that he or she did not hold a valid certificate or approval; 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 approval.

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 August 1, 1995.

FBI Criminal Records Check. House Bill 4532 would amend the School Code (MCL 380.1230a) to require the board of a school district, public school academy, intermediate school district, or nonpublic school 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. (This would be in addition to the criminal history check already required.) 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 this 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 and provisions to permit school districts to use information available from other districts or the state when hiring substitute teachers.

### ***FISCAL IMPLICATIONS:***

The Senate Fiscal Agency has described the fiscal impact of these bills as minimal or not significant. (Floor Analyses dated 5-23-95) The \$24 cost of each FBI check would be added to the current \$15 state police check; the cost is expected to be passed along to job applicants.

### ***ARGUMENTS:***

#### ***For:***

These bills aim at further protecting the state's students from teachers and other school personnel who should not be employed in the schools because of their criminal backgrounds. One bill strengthens the current records check requirement by requiring school districts to request the state police to conduct a search through the FBI on new hires, which will turn up criminal records from other states and violations of federal laws. These are missed now. A second bill will allow for summary suspensions of school personnel convicted of certain serious crimes and 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, with summary suspension prior to a hearing in some cases. 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.

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 enhanced the protection of schoolchildren. The proposed legislation will only strengthen current laws.

#### ***Response:***

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