

# Legislative Analysis



## STUDENT BODY PROTECTION ORDERS

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**House Bill 6403 as passed by the House**  
**Sponsor: Rep. Tom Casperson**

**House Bill 6405 as passed by the House**  
**Sponsor: Rep. Rick Baxter**

**House Bill 6404 as passed by the House**  
**Sponsor: Rep. Tim Moore**

**House Bill 6406 as passed by the House**  
**Sponsor: Rep. David Farhat**

**Committee: Judiciary**  
**First Analysis (11-1-06)**

**BRIEF SUMMARY:** House Bill 6403 would allow a school to obtain a student body protection order against a person who, within a school zone, committed certain sexual offenses or drug offenses, require certain information to be included in an order, require an order to be entered into LEIN, and establish penalties for criminal contempt of an order. House Bill 6404 would grant authority to the state police to serve and enforce student body protection orders. House Bills 6405 and 6406 would amend different acts to include a student body protection order within the definition of "personal protection order" contained in those acts.

**FISCAL IMPACT:** The bills would have an indeterminate fiscal impact on state and local governments. See [Fiscal Information](#) below for a more detailed fiscal analysis.

### **THE APPARENT PROBLEM:**

Earlier this year, a superintendent of a school in the Upper Peninsula filed a petition to request a personal protection order (PPO) against an individual who had previously been convicted of lewd behavior within a school zone and who was now parking his car near school property, allegedly for the purpose of engaging in another lewd act of some kind. In signing the petition, the superintendent alleged he was acting *in loco parentis* (Latin for "in place of the parent") for the students in the school district.

Generally speaking, a personal protection order is sought by one person to protect himself or herself from the actions of another; for instance, from a stalker or, in cases of domestic violence, the batterer. Only the person intended to be protected by the order can initiate the action, though a parent can initiate an action for a minor child and a legal guardian or custodian can initiate an action on behalf of a ward.

Therefore, according to the judge assigned to review the petition, he "was hesitant to interpret the law in such manner as to expand or modify the law by judicial edict." Because the judge became convinced "that the protection sought was within the protection afforded to the class of individuals to be protected by the existing statutes," he did eventually sign the PPO, which prohibited the individual from engaging in certain acts within a defined school zone.

However, there remains the question as to whether or not the judge had the legal ability to issue the PPO under current law. To address this issue, legislation has been proposed to create a "student body protection order" and to establish parameters for its use.

## ***THE CONTENT OF THE BILLS:***

As a package, the bills would establish a procedure by which a school could obtain a student body protection order (an institutional version of a personal protection order) against individuals who, in a school zone (on or within 1,000 feet of school property), committed certain sexual offenses or who committed certain drug offenses. House Bills 6404-6406 are tie-barred to House Bill 6403, and House Bill 6403 is tie-barred to each of the other bills. The bills would take effect 90 days after enactment. More specifically, the bills would do the following:

### House Bill 6403

The bill would add a new section to the Revised Judicature Act (MCL 600.2976) to allow a school, after approval by the superintendent or a designee, to commence an action in circuit court requesting a student body protection order (order) to restrain or enjoin an individual from entering on or coming within 1,000 feet of school property.

Criteria for an order. Within seven days of the commencement of an action, a student body protection order would have to be issued if a court determined by clear and convincing evidence – after notice and a hearing – that the respondent had, within a school zone, committed:

1) An act described in Section 2 of the Sex Offenders Registration Act (See Background Information); or

2) Any of the following drug-related offenses:

- A violation of Section 7401 (manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver a controlled substance or prescription form).
- Section 7410a of the Public Health Code (delivery of controlled substances).
- Section 7401b (manufacture, delivery, or possession of GHB).
- Section 7401c (manufacture of controlled substance – operating a drug lab).
- Section 7402 (creating, manufacturing, delivering, or possession with intent to deliver counterfeit substance or controlled substance analogue).
- Section 7410a (delivery or intent to deliver controlled substance in or within public or private park).
- Section 7416 (recruiting, inducing, soliciting, or coercing minor to commit felony involving drugs).

The court would have the discretion to modify an order to tailor the student body protection order as necessary to balance the rights of the respondent and the safety and welfare of the school's students if the respondent were a student of the school, a parent of a student of the school, or a registered voter in the state and his or her polling place was located on school property.

A request could not be denied solely because the respondent had not been charged with or convicted of an offense for the conduct alleged in the complaint or because there was no police report related to the alleged conduct.

Though the bill does require a copy to be served on the respondent, proof of service to be filed with the clerk of the court, and a true copy of the order to be given to the law enforcement agency named in the order (the agency must then immediately and without waiting for proof of service enter the order into LEIN), the order would be effective and enforceable immediately upon being signed by a judge.

Enforcement of an order. An order would be enforceable by any law enforcement agency that had received a true copy of the order, was shown a copy of the order, or had verified its existence on the Law Enforcement Information Network (LEIN). A law enforcement agency or officer responding to a call alleging a violation of the order would have to, among other things, serve the respondent with a true copy of the order or advise him or her of its existence, the specific conduct enjoined, and so forth, if the respondent had not previously been served. Failure to comply with the order would be grounds for an immediate custodial arrest.

Penalties. An individual 17 years of age or older who refused or failed to comply with a student body protection order would be subject to the criminal contempt powers of the court and, if found guilty, would have to be imprisoned for not more than 93 days and could be fined not more than \$500. An individual less than 17 years of age would be subject to the dispositional alternatives listed in Section 18 of Chapter XIIA of the Probate Code. In addition, a criminal penalty could be imposed in addition to any penalty that may be imposed for another criminal offense arising from the same conduct.

A person who knowingly and intentionally made a false statement to a court in support of his or her petition for an order would also be subject to the contempt powers of the court.

Miscellaneous provisions. Among numerous provisions, the bill would add the following:

- Define "school" and "school property" as defined in the Sex Offenders Registration Act.
- Prohibit a court from issuing an order under the bill if the respondent was less than 10 years old. Issuance of an order for a respondent under 18 years of age would be subject to Chapter XIIA of the Probate Code.
- Require the court to state in writing the reasons for a denial of an order request.
- Require the court to designate a law enforcement agency to be responsible for entering the order into LEIN.
- Require specific information to be included on an order, including the conduct enjoined.
- Require an order to be served personally, by registered or certified mail, or by any other method allowed by the Michigan Court Rules. A law enforcement officer or court clerk who knew about the order could, at any time, serve the respondent with a true copy of the order or advise the respondent about its existence, the conduct enjoined, the penalties for violating the order, and where a copy of the order could be obtained. The parent, guardian, or custodian of a respondent under 18 years of age would also have to be served with a copy of the order.
- Assign certain duties to a clerk of the court regarding filing true copies and making specified notifications to the petitioner and law enforcement agencies.

- Specify that an order issued under the bill would also be enforceable under Chapter XIA of the Probate Code, Section 15b of Chapter IV of the Code of Criminal Procedure, and under Chapter 17 of the RJA.

House Bill 6404 would amend Public Act 59 of 1935 (MCL 28.6), which governs the Michigan State Police, to grant authority to the commissioner and all officers of the department to serve a personal protection order or arrest an individual who is violating or has violated a student body protection order issued under House Bill 6403.

House Bill 6405 would amend the Probate Code (MCL 712A.1 et al.) to do the following:

- Include a student body protection order issued under provisions of House Bill 6403 in the definition of "personal protection order."
- Include a proceeding under the provisions of House Bill 6403 in the list of what a court has authority and jurisdiction over.
- Allow specified law enforcement officers and court officers to take into custody a juvenile who violated a student body protection order issued under the provisions of House Bill 6403.
- Delete an obsolete provision pertaining to foster care home services.

House Bill 6406 would amend the Code of Criminal Procedure (MCL 764.15b) to include a student body protection order issued under the provisions of House Bill 6403 in the definition of "personal protection order."

### ***BACKGROUND INFORMATION:***

Section 2 of the Sex Offenders Registration Act defines various terms, including the term "listed offense." Individuals convicted of a listed offense must register as a sex offender. Under the act, "listed offense" means any of the following:

- Accosting, enticing, or soliciting a child for immoral purposes.
- Involvement in child sexually abusive activity or material.
- A third or subsequent violation of any combination of engaging in obscene or indecent conduct in public, indecent exposure, or a local ordinance substantially corresponding to either offense.
- Engaging in indecent exposure with a lewd act if that individual had been previously convicted of indecent exposure or indecent exposure with a lewd act.
- First, second, third, or fourth degree Criminal Sexual Conduct (CSC).
- Assault with intent to commit CSC.
- If the victim is less than 18 years of age, the crime of gross indecency (except for a juvenile disposition or adjudication), kidnapping, sodomy, or soliciting another for prostitution.
- Leading, enticing, or carrying away a child under 14 years of age.
- Pandering.
- Any other violation of a state law or local ordinance constituting a sexual offense against an individual less than 18 years of age.
- An offense committed by a sexually delinquent person.

- An attempt or conspiracy to commit one of the offenses listed above.
- Any offense under the laws of the United States, any other state, or any other country or tribal or military law, that is substantially similar to a listed offense.

### ***FISCAL INFORMATION:***

House Bill 6403 would have no fiscal impact on the Department of Corrections and an indeterminate fiscal impact on local corrections systems. To the extent that individuals were jailed for criminal contempt of court, the bill could increase local jail costs; those costs vary by county. Any fiscal impact on the judicial system from the bill's provisions would depend upon the bill's impact on the number of additional student body protection orders requested. The bill stipulates that a fine of up to \$500 may be assessed for contempt of court charges for violating student body protection orders. Contempt of court fines go to local libraries which could benefit from any increase in revenues arising from the collection of additional fines.

House Bill 6404 would have an indeterminate fiscal impact on state and local governments.

House Bill 6405 may have an indeterminate fiscal impact on state and local governments. State and local police agencies may incur additional costs from enforcing these student body protection orders. Any fiscal impact on the judicial system from the bill's provisions would depend upon the bill's impact on the number of additional student body protection orders issued against persons less than 17 years of age, the number of contempt of court charges charged for violation of those personal protection orders, and the dispositional alternatives ordered by the judge in those instances.

House Bill 6406 may have an indeterminate fiscal impact on state and local governments. State and local police agencies may incur additional costs from enforcing these student body protection orders.

### ***ARGUMENTS:***

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

The bill package would give school administrators, state and local law enforcement officers, and prosecutors an additional tool in keeping children safe when on or near school property. Current laws already make it illegal for individuals to engage in drug-related activities in a school zone and for registered sex offenders to loiter in school zones. In addition, parents can take out a personal protection order (PPO) against an individual who poses a risk of harm to their minor children. The bill package would add to this another layer of protection for school children. Under the bills, a school superintendent or person he or she designates (i.e., a building principal) could petition a court to obtain a student body protection order – an institutional version of a personal protection order, so to speak, that would keep potentially dangerous individuals away from the entire student population.

Under the bills, a person who had committed certain acts within a school zone could be enjoined (prohibited) from entering upon or near school property, even if he or she had not been previously convicted of committing any of those acts. A student body protection order would be useful in several situations where current law is inadequate or impractical. For example, an individual may be seen engaging in the prohibited conduct, but there may be

insufficient evidence to support an arrest warrant or a criminal conviction, and it would be impractical to have every parent of every child in the school petition for a PPO to keep the subject of the orders away from the children. Or, a drug dealer previously convicted of drug trafficking in a school zone may be in a school zone to set up a drug sale or delivery but not actually be selling or delivering drugs. Further, some sex crimes, such as indecent exposure, do not require registration as a sex offender until the third conviction.

However, the bill package does contain important due process protections. For instance, though House Bill 6403 would not require a previous conviction of any of the specified offenses on the part of the subject, or require a police report to have been previously filed alleging the conduct specified in the complaint, a student body protection order could only be granted if there were clear and convincing evidence that the subject of the order had committed – within the school zone – acts described in the Sex Offenders Registration Act (though the person would not have to be a registered sex offender) or specified drug-related offenses. In addition, a hearing would have to be held before a student body protection order could be issued, and the subject of the order would have to be personally served with the order. If for any reason the subject was not served with the order, and the subject was in a school zone after the order had been signed by a judge, the subject would have to be immediately notified of the order by the responding law enforcement personnel and be given an opportunity to comply with the order before being arrested for violating it.

Supporters of the legislation believe that the necessary level of proof that must be met, along with the penalty for making false statements in order to obtain an order, should ensure that a student body protection order will only be sought in those rare occasions in which the subject was seen to be engaging in the specified conduct, but for which a criminal case can't be made.

#### ***POSITIONS:***

A representative of the Iron Mountain School Board testified in support of the bills. (9-20-06)

The Dickinson County Prosecutor submitted testimony in support of the bills. (9-20-06)

The Michigan Sheriffs Association indicated support for the bills. (9-20-06)

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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.