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House Bill 6403 (Substitute H-1 as passed by the House)
House Bill 6404 (Substitute H-1 as passed by the House)
House Bill 6405 (Substitute H-1 as passed by the House)
House Bill 6406 (Substitute H-1 as passed by the House)
Sponsor: Representative Tom Casperson (H.B. 6403)
Representative Tim Moore (H.B. 6404)
Representative Rick Baxter (H.B. 6405)
Representative David Farhat (H.B. 6406)

House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 12-5-06

CONTENT

The bills would amend various statutes to do all of the following:

- Allow a school, with the approval of the Superintendent of Public Instruction, to seek a student body protection order to restrain or enjoin an individual from coming within 1,000 feet of school property.
- Require a court to issue a student body protection order, within seven days, if the respondent had committed certain drug or sex offenses within 1,000 feet of school property.
- Prohibit a court from denying a request for an order solely because the respondent had not been charged with or convicted of an offense for the conduct alleged in the complaint.
- Provide that a student body protection order would be effective and immediately enforceable when signed by a judge.
- Describe information to be included in an order.
- Specify responsibilities of the court clerk upon the issuance of an order.
- Provide for the enforcement of an order.
- Establish penalties for the violation of an order.
- Authorize State Police officers to serve a student body protection

order and arrest a person who violated an order.

- Give the family division of circuit court (family court) jurisdiction over a student body protection order in which the respondent was under 18.
- Authorize a peace officer to arrest a person, without a warrant, if there were reasonable cause to believe the person had violated a student body protection order.

The bills would take effect 90 days after their enactment. House Bill 6403 (H-1) is tie-barred to House Bills 6404, 6405, and 6406. Those bills are tie-barred to House Bill 6403.

House Bill 6403 (H-1) would amend the Revised Judicature Act (RJA); House Bill 6404 (H-1) would amend Public Act 59 of 1935, which provides for the creation and organization of the State Police; House Bill 6405 (H-1) would amend the juvenile code; and House Bill 6406 (H-1) would amend the Code of Criminal Procedure.

House Bill 6403 (H-1)

Student Body Protection Order

The bill would allow a school, after approval by the Superintendent of Public Instruction or his or her designee, to commence an

action in the circuit court requesting the issuance of a student body protection order to restrain or enjoin an individual from entering on or coming within 1,000 feet of school property.

Within seven days of the commencement of an action, a court would have to issue a student body protection order if it determined by clear and convincing evidence, after notice and a hearing, that the respondent had, on or within 1,000 feet of school property, committed either an act described in Section 2 of the Sex Offenders Registration Act (SORA) or, if the individual were not a student of the district seeking the protection order, any of the following:

- Manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver a controlled substance, a prescription form, or a counterfeit prescription form (MCL 333.7401).
- Delivery of gamma-butyrolactone (GHB) to commit or attempt to commit first-, second-, third, or fourth-degree criminal sexual conduct (CSC) or assault with intent to commit CSC (MCL 333.7401a).
- Manufacturing, delivering, or possessing GHB (MCL 333.7401b).
- Operating a drug lab (MCL 333.7401c).
- Creating, manufacturing, delivering or possessing with intent to deliver a counterfeit substance or controlled substance analogue (MCL 333.7402).
- Delivering or possessing with intent to deliver a controlled substance in or within a public or private park (MCL 333.7410a).
- Recruiting, inducing, soliciting, or coercing a minor to commit a controlled substance felony (MCL 333.7416).

(Please See **BACKGROUND** for more information on Section 2 of SORA.)

A court could not issue a student body protection order if the respondent were under 10 years of age. If the respondent were under 18, issuance of a student body protection order would be subject to the juvenile code.

A court could not deny a request for a student body protection order 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. If a court denied a request for a student body protection order, it immediately would have to state in writing the specific reasons for the denial and, if the denial were made at the hearing, state the specific reasons on the record.

If a court determined, after notice and a hearing, that a student body protection order was warranted and that one or more of the following conditions applied, the court could tailor the order as necessary to balance the rights of the respondent and the safety and welfare of the school's students:

- The respondent was a student of the school.
- The respondent was a parent of a student of the school.
- The respondent was a registered voter in Michigan and his or her polling place was located on school property.

A student body protection order would be effective and immediately enforceable when signed by a judge. The court would have to designate a law enforcement agency to be responsible for entering the order into the Law Enforcement Information Network (LEIN) as provided by the C.J.I.S. Policy Council Act.

A student body protection order would have to include a statement that the order had been entered to restrain or enjoin conduct listed in the order and that violation of the order would subject the respondent to immediate arrest and the civil and criminal contempt powers of the court and up to 93 days' imprisonment and/or a maximum fine of \$500, if the respondent were 17 years of age or older, or immediate apprehension or being taken into custody and the dispositional alternatives authorized under Section 18 of the juvenile code (MCL 712A.18), if the respondent were under 17. The student body protection order also would have to include all of the following, to the extent practicable, in a single document:

- A statement that the order was effective and immediately enforceable when signed by a judge.
- A statement of the conduct enjoined.
- A clearly stated expiration date.
- A statement that the order was enforceable by any appropriate law enforcement agency.

- The law enforcement agency designated by the court to enter the order into LEIN.

Court Clerk Responsibilities

The clerk of a court that issued a student body protection order would have to do both of the following immediately on issuance and without requiring proof of service on the respondent:

- File a true copy of the order with the law enforcement agency designated in the order.
- Give the petitioner two or more true copies of the order.

The clerk also would have to inform the petitioner that he or she could take a true copy of the order to the designated law enforcement agency for immediate entry into LEIN. A law enforcement agency that received a true copy of the order immediately and without requiring proof of service would have to enter the order into LEIN.

Service of Order

A student body protection order would have to be served personally; by registered or certified mail, return receipt requested, delivery restricted to the addressee at the respondent's last known address or addresses; or by any other method allowed by Michigan Court Rules. If the respondent had not been served, a law enforcement officer or clerk of the court who knew that an order existed could, at any time, serve the respondent with a true copy of the order or advise the respondent about the existence of the order, the specific conduct enjoined, the penalties for violating the order, and where the respondent could obtain a copy of the order. If the respondent were under 18, his or her parent, guardian, or custodian also would have to be served in the same manner. A proof of service or proof of oral notice would have to be filed with the clerk of the court that issued the order.

The clerk of a court that issued a student body protection order immediately would have to notify the law enforcement agency that received the order, if the clerk received proof that the respondent had been served or the order was rescinded, modified, or extended by court order. A law enforcement

agency that received that information would have to enter it, or cause it to be entered, into LEIN.

Enforcement & Penalties

A student body protection order would be immediately enforceable by any law enforcement agency that had received a true copy of the order, was shown a copy of it, or had verified its existence on LEIN. If the respondent had not been served, a law enforcement agency or officer who responded to a call alleging a violation of a student body protection order would have to serve the respondent with a true copy of the order or advise him or her about its existence, the specific conduct enjoined, the penalties for violating the order, and where he or she could obtain a copy of the order. The officer would have to enforce the order and immediately enter or have entered into LEIN that the respondent had actual notice of the order. The officer also would have to file a proof of service or proof of oral notice with the clerk of the court that issued the order. If the respondent had not received notice of the order, he or she would have to be given an opportunity to comply with it before the officer made a custodial arrest for violation of the order. Failure to comply with the order immediately would be grounds for an immediate custodial arrest.

An individual who was at least 17 and who refused or failed to comply with a student body protection order would be subject to the court's criminal contempt powers and, if found guilty, would have to be imprisoned for up to 93 days and could be fined up to \$500. An individual under 17 who refused or failed to comply would be subject to dispositional alternatives specified in the juvenile code. A criminal penalty could be imposed under the bill in addition to any penalty that could be imposed for another criminal offense arising from the same conduct.

An individual who knowingly and intentionally made a false statement to a court in support of his or her petition for a student body protection order would be subject to the court's contempt powers.

An order issued under the bill also would be enforceable under the juvenile code (as amended by House Bill 6405 (H-1)), Section 15b of Chapter IV of the Code of Criminal

Procedure (as amended by House Bill 6406 (H-1)), and Chapter 17 (Contempts) of the RJA.

House Bill 6404 (H-1)

Public Act 59 of 1935 grants all officers of the Michigan State Police the authority to serve a personal protection order (PPO) or arrest an individual who is violating or has violated a PPO issued under the RJA. The bill would include in that authorization serving a student body protection order issued under House Bill 6403 (H-1) and arresting an individual who was violating or had violated such an order.

House Bill 6405 (H-1)

Under the juvenile code, the family court has jurisdiction over a proceeding under the RJA regarding personal protection orders in which a minor under 18 is the respondent, or a proceeding to enforce a valid foreign protection order issued against a respondent who is under 18. The bill also would give the family court jurisdiction over a student body protection order issued under House Bill 6403 (H-1) in which a minor under 18 was the respondent.

The code also authorizes any local police officer, sheriff or deputy sheriff, State Police officer, county agent, or probation officer of any court of record immediately to take into custody any child as to whom there is reasonable cause to believe that he or she is violating or has violated a PPO issued under the RJA. The bill would include in that authorization a child as to whom there was reasonable cause to believe that he or she was violating or had violated a student body protection order issued under House Bill 6403 (H-1).

House Bill 6406 (H-1)

Under the Code of Criminal Procedure, a peace officer, without a warrant, may arrest and take into custody an individual when the officer has reasonable cause, or received positive information that another peace officer has reasonable cause, to believe that a personal protection order has been issued; the individual named in the PPO is violating or has violated the order; and, the PPO states on its face that a violation of its terms subjects the individual to immediate arrest and either criminal contempt of court

penalties, if the individual is at least 17, or juvenile dispositional alternatives, if the individual is under 17. The bill would include in that provision a student body protection order issued under House Bill 6403 (H-1).

Proposed MCL 600.2976 (H.B. 6403)

MCL 28.6 (H.B. 6404)

712A.1 et al. (H.B. 6405)

764.15b (H.B. 6406)

BACKGROUND

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

- A first or subsequent conviction of accosting, enticing, or soliciting a child for immoral purposes (MCL 750.145a & 750.145b).
- Involvement in child sexually abusive activity or material (MCL 750.145c).
- Sodomy, if a victim is under 18 (MCL 750.158).
- A third or subsequent offense of engaging in indecent or obscene conduct in a public place or indecent exposure (MCL 750.167(1)(f) or 750.335a).
- Except for a juvenile disposition or adjudication, gross indecency, if a victim is under 18 (MCL 750.338, 750.338a, or 750.338b).
- Kidnapping, if a victim is under 18 (MCL 750.349).
- Kidnapping a child under 14 (MCL 750.350).
- Soliciting, accosting, or inviting another person to commit prostitution or an immoral act, if a victim is under 18 (MCL 750.448).
- Pandering for purposes of prostitution (MCL 750.455).
- First-, second-, third-, or fourth-degree CSC or assault with intent to commit CSC (MCL 750.520b-750.520e & 750.520g).
- Any other violation of a State or local law that, by its nature, constitutes a sexual offense against an individual under 18.
- An offense committed by a person who was, at the time of the offense, a "sexually delinquent person" as defined in the Michigan Penal Code (MCL 750.10a).
- An attempt or conspiracy to commit an offense listed above.

- An offense substantially similar to an offense listed above, under a law of the United States, any state, or any country, or under tribal or military law.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many student body protection orders would be issued or how many offenders would be convicted of the proposed offense. To the extent that the bills would result in the issuance of increased protection orders, courts would incur additional administrative costs. To the extent that the bills would increase convictions or incarceration time, local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.