

SUBSTITUTE FOR
HOUSE BILL NO. 6403

(As amended September 20, 2006)

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding section 2976.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 SEC. 2976. (1) EXCEPT AS PROVIDED IN SUBSECTION (21), A
2 SCHOOL, AFTER APPROVAL BY THE [SUPERINTENDENT OR HIS OR HER DESIGNEE,]
 MAY COMMENCE AN
3 ACTION IN THE CIRCUIT COURT REQUESTING THE ISSUANCE OF A STUDENT
4 BODY PROTECTION ORDER TO RESTRAIN OR ENJOIN AN INDIVIDUAL FROM
5 ENTERING ON OR COMING WITHIN 1,000 FEET OF SCHOOL PROPERTY.
6 (2) [WITHIN 7 DAYS OF THE COMMENCEMENT OF THE ACTION,] A COURT
 SHALL ISSUE A STUDENT BODY PROTECTION ORDER UNDER
7 THIS SECTION IF THE COURT DETERMINES BY CLEAR AND CONVINCING
8 EVIDENCE, AFTER NOTICE AND A HEARING, THAT THE RESPONDENT HAS, ON
9 OR WITHIN 1,000 FEET OF SCHOOL PROPERTY, COMMITTED AN ACT DESCRIBED

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 1 IN SECTION 2 OF THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295,

2 MCL 28.722[, OR IF THE INDIVIDUAL IS NOT A STUDENT OF THE DISTRICT
 SEEKING THE STUDENT BODY PROTECTION ORDER, ANY OF THE FOLLOWING:

(A) SECTION 7401 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
 333.7401 (MANUFACTURING, CREATING, DELIVERING, OR POSSESSING WITH INTENT
 TO MANUFACTURE, CREATE, OR DELIVER A CONTROLLED SUBSTANCE, PRESCRIPTION
 FORM).

(B) SECTION 7401A OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
 333.7401A (DELIVERY OF CONTROLLED SUBSTANCE).

(C) SECTION 7401B OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
 333.7401B (MANUFACTURE, DELIVERY, OR POSSESSION OF GHB).

(D) SECTION 7401C OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
 333.7401C (MANUFACTURE OF CONTROLLED SUBSTANCE - OPERATING A DRUG LAB).

(E) SECTION 7402 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
 333.7402 (CREATING, MANUFACTURING, DELIVERING, OR POSSESSING WITH INTENT
 TO DELIVER COUNTERFEIT SUBSTANCE OR CONTROLLED SUBSTANCE ANALOGUE).

(F) SECTION 7410A OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
 333.7410A (DELIVERY OR INTENT TO DELIVER CONTROLLED SUBSTANCE IN OR
 WITHIN PUBLIC OR PRIVATE PARK).

(G) SECTION 7416 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
 333.7416 (RECRUITING, INDUCING, SOLICITING, OR COERCING MINOR TO COMMIT
 FELONY INVOLVING DRUGS)].

3 (3) A COURT SHALL NOT DENY A REQUEST FOR A STUDENT BODY
 4 PROTECTION ORDER UNDER THIS SECTION SOLELY BECAUSE THE RESPONDENT
 5 HAS NOT BEEN CHARGED WITH OR CONVICTED OF AN OFFENSE FOR THE
 6 CONDUCT ALLEGED IN THE COMPLAINT OR BECAUSE THERE IS NO POLICE
 7 REPORT RELATED TO THE CONDUCT ALLEGED IN THE COMPLAINT.

8 (4) IF A COURT DETERMINES, AFTER NOTICE AND A HEARING, THAT A
 9 STUDENT BODY PROTECTION ORDER IS WARRANTED UNDER THIS SECTION AND
 10 THAT 1 OR MORE OF THE FOLLOWING CONDITIONS APPLY, THE COURT MAY, IN
 11 ITS DISCRETION, TAILOR THE STUDENT BODY PROTECTION ORDER AS
 12 NECESSARY TO BALANCE THE RIGHTS OF THE RESPONDENT AND THE SAFETY
 13 AND WELFARE OF THE SCHOOL'S STUDENTS:

14 (A) THE RESPONDENT IS A STUDENT OF THE SCHOOL.

15 (B) THE RESPONDENT IS A PARENT OF A STUDENT OF THE SCHOOL.

16 (C) THE RESPONDENT IS A REGISTERED VOTER IN THIS STATE AND HIS
 17 OR HER POLLING PLACE IS LOCATED ON SCHOOL PROPERTY.

18 (5) IF A COURT DENIES A REQUEST FOR A STUDENT BODY PROTECTION

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19 ORDER UNDER THIS SECTION, IT SHALL IMMEDIATELY STATE IN WRITING THE
20 SPECIFIC REASONS FOR THE DENIAL. IF THE DENIAL IS MADE AT THE
21 HEARING, THE COURT SHALL ALSO IMMEDIATELY STATE ON THE RECORD THE
22 SPECIFIC REASONS FOR ITS DENIAL.

23 (6) A STUDENT BODY PROTECTION ORDER IS EFFECTIVE AND
24 IMMEDIATELY ENFORCEABLE WHEN SIGNED BY A JUDGE.

25 (7) THE COURT SHALL DESIGNATE A LAW ENFORCEMENT AGENCY TO BE
26 RESPONSIBLE FOR ENTERING THE STUDENT BODY PROTECTION ORDER INTO THE
27 LAW ENFORCEMENT INFORMATION NETWORK AS PROVIDED BY THE C.J.I.S.

POLICY COUNCIL ACT, 1974 PA 163, MCL 28.211 TO 28.215.

(8) A STUDENT BODY PROTECTION ORDER ISSUED UNDER THIS SECTION SHALL INCLUDE ALL OF THE FOLLOWING, TO THE EXTENT PRACTICABLE IN A SINGLE DOCUMENT:

(A) A STATEMENT THAT THE STUDENT BODY PROTECTION ORDER HAS BEEN ENTERED TO RESTRAIN OR ENJOIN CONDUCT LISTED IN THE ORDER AND THAT VIOLATION OF THE STUDENT BODY PROTECTION ORDER WILL SUBJECT THE RESPONDENT TO 1 OF THE FOLLOWING:

(i) IF THE RESPONDENT IS 17 YEARS OF AGE OR OLDER, IMMEDIATE ARREST AND THE CIVIL AND CRIMINAL CONTEMPT POWERS OF THE COURT, AND, IF FOUND GUILTY OF CRIMINAL CONTEMPT, IMPRISONMENT FOR NOT MORE THAN 93 DAYS AND A FINE OF NOT MORE THAN \$500.00.

(ii) IF THE RESPONDENT IS LESS THAN 17 YEARS OF AGE, IMMEDIATE APPREHENSION OR BEING TAKEN INTO CUSTODY AND THE DISPOSITIONAL ALTERNATIVES LISTED IN SECTION 18 OF CHAPTER XIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.18.

(B) A STATEMENT THAT THE STUDENT BODY PROTECTION ORDER IS EFFECTIVE AND IMMEDIATELY ENFORCEABLE WHEN SIGNED BY A JUDGE.

(C) A STATEMENT OF THE CONDUCT ENJOINED.

(D) A CLEARLY STATED EXPIRATION DATE.

(E) A STATEMENT THAT THE STUDENT BODY PROTECTION ORDER IS ENFORCEABLE BY ANY APPROPRIATE LAW ENFORCEMENT AGENCY.

(F) THE LAW ENFORCEMENT AGENCY DESIGNATED BY THE COURT TO ENTER THE STUDENT BODY PROTECTION ORDER INTO THE LAW ENFORCEMENT INFORMATION NETWORK.

(9) THE CLERK OF A COURT THAT ISSUES A STUDENT BODY PROTECTION ORDER UNDER THIS SECTION SHALL DO BOTH OF THE FOLLOWING IMMEDIATELY

1 ON ISSUANCE AND WITHOUT REQUIRING PROOF OF SERVICE ON THE
2 RESPONDENT:

3 (A) FILE A TRUE COPY OF THE STUDENT BODY PROTECTION ORDER WITH
4 THE LAW ENFORCEMENT AGENCY DESIGNATED IN THE ORDER.

5 (B) PROVIDE THE PETITIONER WITH 2 OR MORE TRUE COPIES OF THE
6 STUDENT BODY PROTECTION ORDER.

7 (10) THE CLERK OF A COURT THAT ISSUES A STUDENT BODY
8 PROTECTION ORDER UNDER THIS SECTION SHALL INFORM THE PETITIONER
9 THAT HE OR SHE MAY TAKE A TRUE COPY OF THE STUDENT BODY PROTECTION
10 ORDER TO THE LAW ENFORCEMENT AGENCY DESIGNATED IN THE STUDENT BODY
11 PROTECTION ORDER FOR IMMEDIATE ENTRY INTO THE LAW ENFORCEMENT
12 INFORMATION NETWORK.

13 (11) A LAW ENFORCEMENT AGENCY THAT RECEIVES A TRUE COPY OF A
14 STUDENT BODY PROTECTION ORDER UNDER SUBSECTION (9) OR (10) SHALL
15 IMMEDIATELY AND WITHOUT REQUIRING PROOF OF SERVICE ENTER THE
16 STUDENT BODY PROTECTION ORDER INTO THE LAW ENFORCEMENT INFORMATION
17 NETWORK AS PROVIDED BY THE C.J.I.S. POLICY COUNCIL ACT, 1974 PA
18 163, MCL 28.211 TO 28.215.

19 (12) A STUDENT BODY PROTECTION ORDER ISSUED UNDER THIS SECTION
20 SHALL BE SERVED PERSONALLY; BY REGISTERED OR CERTIFIED MAIL, RETURN
21 RECEIPT REQUESTED, DELIVERY RESTRICTED TO THE ADDRESSEE AT THE LAST
22 KNOWN ADDRESS OR ADDRESSES OF THE RESPONDENT; OR BY ANY OTHER
23 METHOD ALLOWED BY THE MICHIGAN COURT RULES. IF THE RESPONDENT HAS
24 NOT BEEN SERVED, A LAW ENFORCEMENT OFFICER OR CLERK OF THE COURT
25 WHO KNOWS THAT A STUDENT BODY PROTECTION ORDER EXISTS MAY, AT ANY
26 TIME, SERVE THE RESPONDENT WITH A TRUE COPY OF THE STUDENT BODY
27 PROTECTION ORDER OR ADVISE THE RESPONDENT ABOUT THE EXISTENCE OF

1 THE STUDENT BODY PROTECTION ORDER, THE SPECIFIC CONDUCT ENJOINED,
2 THE PENALTIES FOR VIOLATING THE STUDENT BODY PROTECTION ORDER, AND
3 WHERE THE RESPONDENT MAY OBTAIN A COPY OF THE STUDENT BODY
4 PROTECTION ORDER. IF THE RESPONDENT IS LESS THAN 18 YEARS OF AGE,
5 THE PARENT, GUARDIAN, OR CUSTODIAN OF THE RESPONDENT SHALL ALSO BE
6 SERVED PERSONALLY; BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT
7 REQUESTED, DELIVERY RESTRICTED TO THE ADDRESSEE AT THE LAST KNOWN
8 ADDRESS OR ADDRESSES OF THE PARENT, GUARDIAN, OR CUSTODIAN; OR BY
9 ANY OTHER METHOD ALLOWED BY THE MICHIGAN COURT RULES. A PROOF OF
10 SERVICE OR PROOF OF ORAL NOTICE SHALL BE FILED WITH THE CLERK OF
11 THE COURT THAT ISSUED THE STUDENT BODY PROTECTION ORDER. THIS
12 SUBSECTION DOES NOT PROHIBIT THE IMMEDIATE EFFECTIVENESS OF A
13 STUDENT BODY PROTECTION ORDER OR ITS IMMEDIATE ENFORCEMENT UNDER
14 SUBSECTIONS (15) AND (16).

15 (13) THE CLERK OF A COURT THAT ISSUED A STUDENT BODY
16 PROTECTION ORDER UNDER THIS SECTION SHALL IMMEDIATELY NOTIFY THE
17 LAW ENFORCEMENT AGENCY THAT RECEIVED THE STUDENT BODY PROTECTION
18 ORDER UNDER SUBSECTION (9) OR (10) IF EITHER OF THE FOLLOWING
19 OCCURS:

20 (A) THE CLERK RECEIVES PROOF THAT THE RESPONDENT HAS BEEN
21 SERVED.

22 (B) THE STUDENT BODY PROTECTION ORDER IS RESCINDED, MODIFIED,
23 OR EXTENDED BY COURT ORDER.

24 (14) A LAW ENFORCEMENT AGENCY THAT RECEIVES INFORMATION UNDER
25 SUBSECTION (13) SHALL ENTER THE INFORMATION OR CAUSE THE
26 INFORMATION TO BE ENTERED INTO THE LAW ENFORCEMENT INFORMATION
27 NETWORK AS PROVIDED BY THE C.J.I.S. POLICY COUNCIL ACT, 1974 PA

1 163, MCL 28.211 TO 28.215.

2 (15) SUBJECT TO SUBSECTION (16), A STUDENT BODY PROTECTION
3 ORDER IS IMMEDIATELY ENFORCEABLE BY ANY LAW ENFORCEMENT AGENCY THAT
4 HAS RECEIVED A TRUE COPY OF THE STUDENT BODY PROTECTION ORDER, IS
5 SHOWN A COPY OF IT, OR HAS VERIFIED ITS EXISTENCE ON THE LAW
6 ENFORCEMENT INFORMATION NETWORK AS PROVIDED BY THE C.J.I.S. POLICY
7 COUNCIL ACT, 1974 PA 163, MCL 28.211 TO 28.215.

8 (16) IF THE RESPONDENT HAS NOT BEEN SERVED, A LAW ENFORCEMENT
9 AGENCY OR OFFICER WHO RESPONDS TO A CALL ALLEGING A VIOLATION OF A
10 STUDENT BODY PROTECTION ORDER ISSUED UNDER THIS SECTION SHALL SERVE
11 THE RESPONDENT WITH A TRUE COPY OF THE STUDENT BODY PROTECTION
12 ORDER OR ADVISE THE RESPONDENT ABOUT THE EXISTENCE OF THE STUDENT
13 BODY PROTECTION ORDER, THE SPECIFIC CONDUCT ENJOINED, THE PENALTIES
14 FOR VIOLATING THE STUDENT BODY PROTECTION ORDER, AND WHERE THE
15 RESPONDENT MAY OBTAIN A COPY OF THE STUDENT BODY PROTECTION ORDER.
16 THE LAW ENFORCEMENT OFFICER SHALL ENFORCE THE STUDENT BODY
17 PROTECTION ORDER AND IMMEDIATELY ENTER OR HAVE ENTERED INTO THE LAW
18 ENFORCEMENT INFORMATION NETWORK THAT THE RESPONDENT HAS ACTUAL
19 NOTICE OF THE STUDENT BODY PROTECTION ORDER. THE LAW ENFORCEMENT
20 OFFICER ALSO SHALL FILE A PROOF OF SERVICE OR PROOF OF ORAL NOTICE
21 WITH THE CLERK OF THE COURT THAT ISSUED THE STUDENT BODY PROTECTION
22 ORDER. IF THE RESPONDENT HAS NOT RECEIVED NOTICE OF THE STUDENT
23 BODY PROTECTION ORDER, THE RESPONDENT SHALL BE GIVEN AN OPPORTUNITY
24 TO COMPLY WITH THE STUDENT BODY PROTECTION ORDER BEFORE THE LAW
25 ENFORCEMENT OFFICER MAKES A CUSTODIAL ARREST FOR VIOLATION OF THE
26 STUDENT BODY PROTECTION ORDER. FAILURE TO IMMEDIATELY COMPLY WITH
27 THE STUDENT BODY PROTECTION ORDER IS GROUNDS FOR AN IMMEDIATE

1 CUSTODIAL ARREST. THIS SUBSECTION DOES NOT PRECLUDE AN ARREST UNDER
2 SECTION 15 OR 15A OF CHAPTER IV OF THE CODE OF CRIMINAL PROCEDURE,
3 1927 PA 175, MCL 764.15 AND 764.15A, OR A PROCEEDING UNDER SECTION
4 14 OF CHAPTER XIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL
5 712A.14.

6 (17) AN INDIVIDUAL WHO IS 17 YEARS OF AGE OR OLDER AND WHO
7 REFUSES OR FAILS TO COMPLY WITH A STUDENT BODY PROTECTION ORDER
8 ISSUED UNDER THIS SECTION IS SUBJECT TO THE CRIMINAL CONTEMPT
9 POWERS OF THE COURT AND, IF FOUND GUILTY, SHALL BE IMPRISONED FOR
10 NOT MORE THAN 93 DAYS AND MAY BE FINED NOT MORE THAN \$500.00. AN
11 INDIVIDUAL WHO IS LESS THAN 17 YEARS OF AGE AND WHO REFUSES OR
12 FAILS TO COMPLY WITH A STUDENT BODY PROTECTION ORDER ISSUED UNDER
13 THIS SECTION IS SUBJECT TO THE DISPOSITIONAL ALTERNATIVES LISTED IN
14 SECTION 18 OF CHAPTER XIIA OF THE PROBATE CODE OF 1939, 1939 PA
15 288, MCL 712A.18. A CRIMINAL PENALTY MAY BE IMPOSED UNDER THIS
16 SECTION IN ADDITION TO ANY PENALTY THAT MAY BE IMPOSED FOR ANOTHER
17 CRIMINAL OFFENSE ARISING FROM THE SAME CONDUCT.

18 (18) AN INDIVIDUAL WHO KNOWINGLY AND INTENTIONALLY MAKES A
19 FALSE STATEMENT TO A COURT IN SUPPORT OF HIS OR HER PETITION FOR A
20 STUDENT BODY PROTECTION ORDER IS SUBJECT TO THE CONTEMPT POWERS OF
21 THE COURT.

22 (19) A STUDENT BODY PROTECTION ORDER ISSUED UNDER THIS SECTION
23 IS ALSO ENFORCEABLE UNDER CHAPTER XIIA OF THE PROBATE CODE OF 1939,
24 1939 PA 288, MCL 712A.1 TO 712A.32, AND SECTION 15B OF CHAPTER IV
25 OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL 764.15B.

26 (20) A STUDENT BODY PROTECTION ORDER ISSUED UNDER THIS SECTION
27 IS ALSO ENFORCEABLE UNDER CHAPTER 17.

1 (21) A COURT SHALL NOT ISSUE A STUDENT BODY PROTECTION ORDER
2 UNDER THIS SECTION IF THE RESPONDENT IS LESS THAN 10 YEARS OF AGE.

3 (22) IF THE RESPONDENT IS LESS THAN 18 YEARS OF AGE, ISSUANCE
4 OF A STUDENT BODY PROTECTION ORDER UNDER THIS SECTION IS SUBJECT TO
5 CHAPTER XIIIA OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.1
6 TO 712A.32.

7 (23) AS USED IN THIS SECTION, "SCHOOL" AND "SCHOOL PROPERTY"
8 MEAN THOSE TERMS AS DEFINED IN SECTION 33 OF THE SEX OFFENDERS
9 REGISTRATION ACT, 1994 PA 295, MCL 28.733.

10 Enacting section 1. This amendatory act takes effect 90 days
11 after the date it is enacted.

12 Enacting section 2. This amendatory act does not take effect
13 unless all of the following bills of the 93rd Legislature are
14 enacted into law:

15 (a) House Bill No. 6404.

16 (b) House Bill No. 6405.

17 (c) House Bill No. 6406.