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BILL ANALYSIS

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Senate Bill 129 (Substitute S-2 as passed by the Senate)  
Senate Bill 130 (Substitute H-2 as passed by the House)  
Senate Bill 605 (as passed by the Senate)  
Senate Bill 606 (Substitute S-1 as passed by the Senate)  
Senate Bill 607 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator Alan Sanborn (S.B. 129 & 130)  
Senator Jud Gilbert, II (S.B. 605)  
Senator Michael D. Bishop (S.B. 606)  
Senator Bruce Patterson (S.B. 607)

Senate Committee: Judiciary  
House Committee: Judiciary (S.B. 130)

Date Completed: 8-9-05

### **RATIONALE**

In 2004 and 2005, the *Detroit News* published several articles detailing the employment of sex offenders and other criminals as coaches for youth athletic teams and as employees and volunteers with Michigan schools, day care centers, and other institutions in which employees have frequent contact with children. According to one article, the newspaper found that at least 35 Michigan school employees or recent hires had been charged with or convicted of sexual misconduct in the previous 15 months and had victimized approximately 50 children during that time ("State fails to stop teacher sex abuse", 4-24-05). Another report highlighted 13 coaches who had been arrested, indicted, or convicted of various crimes or faced civil liability as a result of physical abuse of young athletes ("Coaches in trouble", 3-14-04).

Also, in August 2004, the Auditor General released a report of a performance audit of the Office of Professional Preparation Services (OPPS), the entity within the Michigan Department of Education (MDE) responsible for ensuring that those employed in elementary or secondary schools with instructional responsibilities have valid credentials for their positions. In May 2005, the Auditor General released a report of a performance audit of the Office

of Children and Adult Licensing (OCAL), the entity within the Department of Human Services responsible for licensing and regulating child care organizations. The OPPS audit report found that the Office was not effective in ensuring that school employees complied with certification requirements, and recommended that it be more proactive in helping to ensure that licensed school personnel with criminal convictions are reported to the MDE as required by law. The OCAL audit report included a finding that OCAL did not always perform criminal history background checks on certain child day care center employees and adults living in group day care homes and never obtained periodic updates on the criminal histories of licensees as required by the Child Day Care Licensing Manual. The report recommended that OCAL ensure better criminal background screening of child care licensees, administrators, directors, and adult household members of day care homes.

In addition, recent widely publicized incidents in Florida, Idaho, and California involved the kidnapping, molestation, and murder of children by known sex offenders. On May 3, 2005, Governor Jennifer Granholm sent a letter to legislative leaders of both parties urging them to pass legislation that would deny convicted sex

offenders access to children in this State. She encouraged the Legislature to enact laws establishing predator-free zones around schools; requiring entities such as schools and child care centers to complete background checks on all employees and volunteers; and prohibiting anyone registered under the Sex Offenders Registration Act (SORA) from working or volunteering for such entities as schools, child care centers, playgrounds, and youth leagues or organizations. Many agree that legislation should address those issues.

## **CONTENT**

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

- Allow a court to place a person convicted of a "listed offense" on probation for at least five years and, with certain exceptions, require the court to order such a probationer not to live, work, or loiter within a "student safety zone".**
- Prohibit a person required to be registered under the Sex Offenders Registration Act from accepting employment or serving as a volunteer with certain child-oriented facilities or organizations, and prescribe penalties for violations of that prohibition.**
- Prohibit a youth league or youth organization from knowingly employing or using a volunteer at a place where, and a time when, children were present, and prescribe penalties for violations of that prohibition.**
- Prescribe penalties for a second, third, or subsequent offense of failure to comply with SORA's reporting requirements, and include a third or subsequent offense in the sentencing guidelines.**

With the exception of Senate Bill 605, the bills would take effect October 15, 2005.

Senate Bills 129 (S-2), 605, and 606 (S-1) would amend the Code of Criminal Procedure; Senate Bill 130 (H-2) would amend the Michigan Penal Code; and Senate Bill 607 (S-1) would amend the Sex Offenders Registration Act.

## **Senate Bill 129 (S-2)**

The bill would allow a sentencing court to place an individual convicted of a listed offense on probation for a minimum of five years, and require the court to order such an individual not to reside, work, or loiter within a student safety zone.

The requirement that a probationer be prohibited from living within a student safety zone would not apply to an individual who was a patient in a hospital or hospice located within the zone; an individual who was not more than 19 years old and was attending school and living with his or her parent or guardian; or an individual who was living within the zone on the bill's effective date. In the case of an individual who was living with the zone on the bill's effective date, the court would have to order him or her not to initiate or maintain contact with any minors (individuals under 16) within the zone, although the court could allow contact with any minors named in the probation order for good cause shown and as specified in the order.

The court could not prohibit a probationer from working within a student safety zone if he or she were working within the zone on the bill's effective date or if he or she only intermittently or sporadically entered a zone for purposes of work. The court would have to order the individual not to initiate or maintain contact with any minors in the course of his or her employment within the zone, although the court could allow contact with any minors named in the probation order for good cause shown and as specified in the order.

The five-year minimum period of probation, and student safety zone restrictions, would not apply to any of the following:

- An individual convicted as a juvenile of first-, second-, or third-degree criminal sexual conduct (CSC), or of committing, attempting to commit, or conspiring to commit first- or second-degree CSC against a victim who was under 13 years old or third-degree CSC against a victim who was at least 13 but under 16, if the individual were under 13 when he or she committed the offense and not more than five years older than the victim, or if the individual were at least 13 but under 17 when he or she committed the offense

- and not more than three years older than the victim.
- An individual who was charged with committing, attempting to commit, or conspiring to commit first- or second-degree CSC against a victim who was under 13 or third-degree CSC against a victim who was at least 13 but under 16, but was convicted as a juvenile of fourth-degree CSC or assault with intent to commit CSC, if the individual were under 13 when he or she committed the offense and not more than five years older than the victim or the individual were at least 13 but under 17 when he or she committed the offense and not more than three years older than the victim.
  - An individual who had successfully completed his or her probationary period under the Holmes Youthful Trainee Act for committing a listed offense and had been discharged from youthful trainee status.
  - An individual convicted of committing or attempting to commit fourth-degree CSC against a victim who was at least 13 but under 16 and five or more years younger than the offender, if, at the time of the violation, the individual were at least 17 but less than 21 and not more than five years older than the victim.

Under the bill, "student safety zone" would mean the area that lies 1,000 feet or less from school property. "School property" would mean a building, facility, structure, or real property owned, leased, or otherwise controlled by a school if the building, facility, structure, or real property is used to impart educational instruction or is for use by students not more than 19 years of age for sports or other recreational activities. "School" would mean a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12, and would not include a home school.

"Loiter" would mean to remain for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors.

"Listed offense" would mean that term as defined in the Sex Offenders Registration Act (MCL 28.722), i.e., 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 (i.e., any person whose sexual behavior is characterized by repetitive or compulsive acts that indicate a disregard of consequences or the recognized rights of others, or by the use of force upon another person in attempting sexual relations or by the commission of sexual aggressions against children under 16) (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.

### **Senate Bill 130 (H-2)**

The bill would prohibit an individual who was required to be registered under SORA from accepting or maintaining employment, or serving as a volunteer, with a child care center, school, playground, youth league, or youth organization. A violation would be a felony, punishable by up to two years' imprisonment and/or a maximum fine of \$2,000. If the individual gave a false name

or otherwise misrepresented his or her identity on an application for employment or for a volunteer position or falsely stated on the application that he or she was not required to be registered under SORA, the felony would be punishable by up to four years' imprisonment and/or a maximum fine of \$4,000. The prohibition would not apply if the position of employment or the volunteer position did not take place at a location where, or at a time when, children were present.

The bill also would prohibit a youth league or youth organization from knowingly doing either of the following:

- Employing an individual who was registered under SORA, if the position of employment took place at a location where, and a time when, children (individuals under 18) were present.
- Allowing an individual who was registered under SORA to work as a volunteer for the youth league or youth organization, if the volunteer position took place at a location where, and at a time when, children were present.

Before a youth league or youth organization hired or accepted an individual as a volunteer for any position in which he or she would be present where and when children were present, and annually thereafter, the league or organization would have to check the Michigan sex offender registry to determine whether the individual was registered as a sex offender. A youth league or youth organization that violated this provision would be guilty of a misdemeanor punishable by a maximum fine of \$500.

"Youth league or youth organization" would mean a public or private entity that provides recreational, religious, or educational services to children.

"Volunteer" would mean an individual who works without remuneration for a child care center, school, playground, or youth league or youth organization if he or she works or is to work for that entity 20 or more hours within a calendar year and has or is to have unsupervised contact with children. Under the provision prohibiting a person required to be registered from volunteering at a child care center, school, playground, or youth league or youth organization, "volunteer" also would include an individual who works without remuneration for one of those

entities if he or she serves or is to serve as a chaperone for children on any overnight activity.

"School" would mean a public or private institution imparting instruction to children in any grade kindergarten through 12, but would not include a home school attended solely by children of the individual required to be registered under SORA.

"Playground" would mean an entity that had playground equipment for public use by children. "Playground equipment" would mean a device or structure that is designed for the recreational use of children, including a slide, swing, jungle gym, monkey bars, teeter-totter, or merry-go-round.

"Child care center" would mean that term as defined in the child care licensing Act (MCL 722.111). That Act defines "child care center" as a facility, other than a private residence, receiving one or more preschool or school-age children for care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child. Child care center includes a facility that provides care for not less than two consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, or drop-in center. Child care center does not include any of the following:

- A Sunday school, a vacation bible school, or a religious instructional class that is conducted by a religious organization where children are attending for not more than three hours per day for an indefinite period or for not more than eight hours per day for a period not to exceed four weeks during a 12-month period.
- A facility operated by a religious organization where children are cared for not more than three hours while people responsible for the children are attending religious services.
- A facility or program for school-age children that is operated at a school by a public school or by a person or entity with whom a public school contracts for services, in accordance with the Revised School Code, if that facility or program has been granted an exemption under the child care licensing Act.

**Senate Bill 605**

The bill would include felonies proposed by Senate Bill 130 in the sentencing guidelines, as shown in Table 1.

Table 1

Violation	Felony Class & Category	Maximum Sentence
Registered sex offender accepting employment or volunteer position with child services organization	G - Public Safety	2 years
Registered sex offender accepting employment or volunteer position with child services organization by concealing status as a registered sex offender	F - Public Safety	4 years

The bill is tie-barred to Senate Bill 130.

**Senate Bill 606 (S-1)**

The bill would include in the sentencing guidelines a felony offense of failure to update sex offender registration information, as proposed by Senate Bill 607 (S-1). A third or subsequent offense of failure to update sex offender registration information would be a Class F felony against the public order, with a statutory maximum sentence of four years' imprisonment.

The bill is tie-barred to Senate Bill 607.

**Senate Bill 607 (S-1)**

Under SORA, registrants are required to report in person to a law enforcement agency, either annually or quarterly depending on their offense, for verification of domicile or residence. Failure to comply with those requirements is a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$1,000. Under the bill, a violation would be punishable as shown in Table 2.

Table 2

Prior SORA Convictions	Level	Maximum Penalty
None	Misdemeanor	93 days' and/or \$1,000
One	Misdemeanor	1 year and/or \$2,000
Two or More	Felony	4 years and/or \$2,500

In addition, a person required to be registered under SORA must notify law enforcement officials within 10 days after the person changes his or her residence, domicile, or place of work or education. Under the bill, that provision would apply to changing or vacating a residence, domicile, or place of work or education.

MCL 771.2a (S.B. 129)  
 Proposed MCL 750.411u & 750.411v (S.B. 130)  
 MCL 777.16t (S.B. 605)  
 777.11b (S.B. 606)  
 28.725 & 28.729 (S.B. 607)

**ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

**Supporting Argument**

Children are among the most vulnerable members of society, and the State must do all it can to protect them from harm, especially in the places they gather for educational and recreational purposes, such as schools, child care centers, and parks, and from predatory adults who work and volunteer in, or live or work near, those types of child-oriented settings. Child victims of sex crimes can suffer ill effects for years. According to the *Detroit News*, they may lose trust in authority figures, experience compromised physical health, and perform poorly in school; later in life, the victims are more likely to abuse alcohol and drugs and may have difficulty forming intimate relationships ("Schools, Granholm pledge to curb abuse by teachers", 4-25-05). Also, parents deserve the assurance that their children's caregivers, teachers, and coaches are not dangerous criminals.

Those with abusive tendencies toward children may seek employment and volunteer opportunities at locations frequented by children, or live or work near

schools, because it can afford them easy access to potential victims. In addition, child care workers, teachers, and coaches often are admired by the children they serve and are trusted by parents, allowing them ample opportunity to victimize children without scrutiny. This makes it imperative that employees and volunteers are thoroughly screened and that known sex offenders are kept a safe distance from schools. According to the *Detroit News*, some states bar sex offenders from living near schools or other places where children gather and at least two cities (Miami Beach, Florida, and Binghamton, New York) have enacted restrictions that essentially prohibit sex offenders from moving in at all. Such a law is needed in Michigan. The *Detroit News* examined the publicly available compilation of Michigan's sex offender registry and found that approximately 1,900 of Michigan's registered sex offenders, or about one in 10 listed on the compilation, live in close proximity to a school ("State's sex abusers live near schools", 5-26-05).

By banning certain sex offenders from living, working, or loitering near schools, prohibiting those required to register under SORA from working or volunteering for schools, child care centers, playgrounds, or youth leagues or organizations, prohibiting youth leagues or organizations from hiring employees or using volunteers who were registered under SORA, and requiring youth leagues and organizations to run SORA background checks on their employees, volunteers, and applicants, Senate Bills 129 (S-2) and 130 (H-2) propose a comprehensive system to help protect children, who cannot defend themselves against people who abuse their positions of authority. The bills also would add to parents' peace of mind.

**Response:** In her May 3<sup>rd</sup> letter to the legislative leaders, the Governor recommended that all registered sex offenders be banned from living or working within 1,000 feet of a school, but Senate Bill 129 (S-2) would place that restriction only on people sentenced to probation under that bill. It likely would apply only to a small number of registered sex offenders.

### **Supporting Argument**

Children participating in youth athletic programs need to be protected from adults with a history of sex offenses who get close to children by becoming coaches in such programs. The March 2004 *Detroit News*

series "Danger on the Sidelines" reported that about 25% of the youth sports coaches who supervise almost 600,000 children in Michigan are checked through the State's public sex offender registry maintained by the Department of State Police and about 5% of the coaches undergo no background check at all. Various sports leagues have different standards, or no standards at all, for checking on coaches' criminal history. By requiring that youth leagues and organizations check potential employees and volunteers against the State's sex offender registry, Senate Bill 130 (H-2) would offer at least a basic level of protection to Michigan children by keeping registered sex offenders out of coaching and other leadership positions with youth sports leagues and other organizations.

**Response:** Simply running a check against the sex offender registry would not be sufficient to protect kids from dangerous coaches. The *Detroit News* series highlighted not only sex offenders who managed to coach youth athletics but also coaches who have been physically abusive to children. The articles pointed out several deficiencies in the sex offender registry and the Department of State Police's online Internet Criminal History Access Tool (ICHAT). The newspaper's investigation found coaches with criminal convictions whose names did not appear in either database. The report concluded that the most thorough criminal background check is a fingerprint comparison run by the FBI and that fewer than 11,000 of the approximately 83,000 coaches in Michigan are run through the nationwide FBI database. Also, the version of Senate Bill 130 that was passed by the Senate would have required coaches with a record of drunk driving to report that to the youth sports league. Proponents of that earlier version said that the information was needed because coaches often drive young athletes to and from practices and games.

### **Supporting Argument**

Recent widely publicized incidents around the country have emphasized the need to protect children from convicted sex offenders. In Florida, John Couey, a registered sex offender with a long criminal history, is accused of kidnapping and murdering a nine-year-old girl in February. Police in San Jose, California, discovered that convicted sex offender Dean Schwartzmiller had kept handwritten lists of more than 36,000 suspected sex acts with

boys. He has been arrested on child molestation charges in several states and, according an article on the KOMO-TV website, Schwartzmiller was characterized as a repeat offender by an Idaho court as early as 1978 ("Chilling List Could Lead To Biggest Molest Case Ever", 6-17-05). He reportedly frequented areas where young boys congregate, befriended them, used drugs and alcohol to lower their inhibitions, and then committed sex acts upon them. In Idaho, in July, Joseph Edward Duncan III, a 42-year-old with a history of sex offenses against minors, was arrested and charged with kidnapping and sexually assaulting an eight-year-old girl, kidnapping and murdering her nine-year-old brother, and murdering the children's older brother and mother, and the mother's boyfriend.

These cases and others like them highlight the need for Michigan to take action to ensure the safety of the State's children from known sex offenders. Establishing student safety zones around schools and more thoroughly screening adults who seek to work or volunteer in child-related settings would help to protect Michigan's youths by insulating them from known predators.

**Response:** The bills are an excessive reaction to media coverage of extreme cases. Each of those offenders violated sex offender registry requirements anyway, so adding more severe penalties for failing to meet registration requirements and restricting offenders' residential and employment opportunities would do little or nothing to deter child predators like them. Also, in the Florida and Idaho incidents, the children were taken from their homes, so a student safety zone would have been irrelevant. In the California case, though media reports suggest the man frequented areas where young boys gathered, such as schools, it is unreasonable to believe that a student safety zone would have kept someone like him from preying on children.

### **Supporting Argument**

The sex offender registry and the publicly available compilation of information from the registry are important tools for the investigation of sex crimes and for parents and other informed citizens to protect children from harm. It is imperative that information in the registry and compilation is up-to-date and accurate in order for them to be effective. By prescribing enhanced penalties for repeat offenses of failing to comply with SORA's reporting requirements,

Senate Bill 607 (S-1) would increase the incentive for registered sex offenders to check-in with law enforcement as required by law and could serve as a deterrent to registrants' being lax about reporting. This would increase the reliability of the information in the registry and compilation and enhance their effectiveness as a law enforcement and child protection mechanism.

### **Opposing Argument**

Limitations on where sex offenders live and work are ineffective in preventing new crimes and could even lead to repeat offenses. According to the May 26, 2005, *Detroit News* article, experts on the issue of sex offenders "are increasingly worried fear is driving limits that do little to protect the public—and could make the situation worse". That article reports that the director of the Center for Treatment of Problem Sexual Behavior in Connecticut "fears that pushing offenders out of their neighborhoods, and isolating them, may increase the risk that they may commit another crime". The article also cites a study prepared for the Minnesota legislature in 2003 that "suggested putting limits on school neighborhoods would force more offenders to move to suburban and rural areas", which simply could shift the perceived dangers of sexual offenders in the community from densely populated areas to more lightly populated areas.

According to an Associated Press (AP) article that appeared in the *Detroit News*, a co-author of a Florida study published earlier this year said that "psychological stresses" have been linked to criminals' committing repeat offenses, and experts cited in the article expressed a concern that the recent tightening of restrictions on sex offenders could add to their stress. Even without statutory restrictions on where a sex offender may live or work, these stresses can thwart sex offenders' attempts to reintegrate into the community. The AP article reported that 27% of 183 sex offenders surveyed in Florida said they lost work because a supervisor or co-worker discovered their past crime, 20% had to move because a landlord found out, 15% had to leave after neighbors complained, and 33% were threatened or harassed by neighbors ("Experts question wisdom of sex offender restrictions", 6-21-05).

In addition, there apparently is no evidence that limiting sex offenders' home and work locations by establishing protection zones is effective in preventing new crimes. In the May 26 *Detroit News* article, a University of Missouri-Kansas City law professor who has studied attempts to treat and control sex offenders characterizes such legal limits as "...futile, costly and ineffective gestures to falsely assure the community that they're going to be safe". Also, the Minnesota study reportedly warned that state's lawmakers that there is no proof that residential limits would prevent new sex crimes.

### **Opposing Argument**

Imposing limits on where a sex offender can live or work, in addition to criminal penalties already in law and the minimum five-year probation proposed by Senate Bill 129 (S-2), would move from making a community safer to exacting retribution. Prohibiting an offender from living or working within 1,000 feet of a school could require that person to move away from his or her existing residence or to sever current employment (unless the person was living or working in the zone on the bill's effective date). This would be unfair punishment not only to the offender, but also to his or her family, including the offender's own children, if he or she were forced to move to a new location and/or leave a steady job. The offender either would have to live separately from his or her family, or move everyone to a location that was not within a student safety zone. An offender required to leave a job could be forced to seek unemployment insurance or welfare assistance, depriving his or her family of adequate financial support and increasing the burden on the State's unemployment compensation system or social welfare programs.

Also, while the bill contains exceptions to the student safety zone restrictions, the exceptions are too narrow. Allowing offenders under 19 to continue to live within a zone would accommodate high school students, but most college students who were offenders could not continue to live with their parents or, presumably, even visit on weekends or during the summer. In addition, while the exemption for employees who entered a zone only intermittently or sporadically likely would allow employees such as pizza delivery or utility repair workers to enter and work in a zone, it probably would not cover employees like

construction workers assigned to long-term projects at or near a school or landscapers with contracts to perform yard work in a zone on a regular basis.

Moreover, the bill does not recognize that large employers could be negatively affected by the working restrictions. For instance, in Lansing, until it recently closed, General Motors had a major facility that sat between a high school and an elementary school; Sparrow Hospital is directly across the street from a high school and a middle school; and a developer is constructing a major residential neighborhood on property that lies between a public high school and a parochial high school. These employers apparently would have to cull from their employment rolls any sex offender who would be prohibited from working in a student safety zone, and it is unclear whether employers would be exposed to any criminal or civil liability if they failed to do so.

**Response:** The limitations would apply only if a sentencing court chose to place a person convicted of a listed offense on probation for five years or more.

### **Opposing Argument**

Efforts to protect children at school and other places where they congregate should not rely on sex offender registry information. Much of the information in Michigan's sex offender registry may be misleading, especially if the goal of the registry is to protect the public—particularly children—from sexual predators. Many of the people required to register are not, and never have been, a danger to the public. Senate committees have heard testimony from relatives of men and boys who are required to be registered because they had sex with willing partners who were too young to consent legally to sexual relations. Since they pose no danger to school children, these registrants should not be prohibited from living or working near schools. Indeed, a *Detroit News* editorial called the effectiveness of the registry into question, saying it "amounts to ongoing punishment of people who have served their sentence and supposedly paid their debt to society". The editorial urged the State "to revisit the whole idea of stigmatizing some offenders well past their prison terms" ("*Sex Offender Registry Is Vindictive Punishment*", 2-2-05).



Also, the registry covers a broad range of offenders, many of whom did not commit acts against children, but the bills would not be limited to those offenders who may be a danger to kids. The May 26 *Detroit News* article reported on a man who lives within 1,000 feet of a school in Pontiac who was convicted in 1996 of second-degree CSC for an incident involving an adult female acquaintance. The man apparently has no history of child molestation and said that he baby-sits for his grandchildren and nephews. Prohibiting such an offender from living or working near a school would serve no useful purpose in protecting children. As a *Detroit Free Press* editorial pointed out, "the bills do not take into account that not every convicted sex offender...is a predator or pedophile" ("Child Safety", 6-29-05).

In addition, the sex offender registry should not be relied upon to provide accurate information. According to a July 2005 Auditor General's report on a performance audit of the Department of State Police's sex offender registries, the Department did not always ensure the accuracy and completeness of data within the sex offender registries and did not verify registrants' names and addresses entered by local law enforcement agencies. The report's findings also state that incomplete and inaccurate information could give the public a false sense of security. Unreliable registry information should not be used to determine residential and employment restrictions placed upon offenders.

**Response:** Senate Bill 129 (S-2) would not rely on information in the sex offender registry and the residential and employment restrictions in the bill would not apply to all SORA registrants. The bill would affect only those offenders who were convicted of a SORA listed offense and sentenced to a minimum probationary period of five years as allowed under the bill. Also, since the restrictions would be a condition of probation, they would apply only during the offender's probationary period, not during the entire time he or she was required to register under SORA.

While Senate Bill 130 (H-2) would rely on registry information by requiring youth leagues and organizations to determine whether prospective employees or volunteers were registered sex offenders, those entities still would be free to use other methods to conduct criminal background

checks, such as the State Police ICHAT system or an FBI fingerprint check.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

### **Senate Bill 129 (S-2)**

To the extent that the bill could increase the average lengths of probationary periods ordered, it would increase corrections costs. Local units of government incur the costs of misdemeanor probation, which vary by county. The State incurs the cost of felony probation at an average annual cost of \$2,000. By creating additional conditions of probation, the bill also could make it more difficult for an offender to complete a probationary period without violations, thereby potentially increasing contacts with the criminal justice system and increasing related costs.

### **Senate Bills 130 (H-2) & 605 (S-1)**

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed crimes. Offenders convicted of the Class G offense would be eligible to receive a sentencing guidelines minimum sentence range from 0-3 months to 7-23 months. Offenders convicted of the Class F offense would be eligible to receive a sentencing guidelines minimum sentence range from 0-3 months to 17-30 months. Local units would incur the costs of incarceration in a local facility, which vary by county. The State would incur the costs of felony probation at an average annual cost of \$2,000, as well as the costs of incarceration in a State facility at an average annual cost of \$28,000. Public libraries would benefit from any additional penal fine revenue.

### **Senate Bills 606 (S-1) & 607 (S-1)**

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would receive increased penalties for subsequent convictions. Local units would incur the costs misdemeanor probation and incarceration in a local facility, which vary by county. The State would incur the costs of felony probation at an

average annual cost of \$2,000, as well as the costs of incarceration in a State facility at an average annual cost of \$28,000.

Fiscal Analyst: Bethany Wicksall

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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.