

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 6724
BILL NUMBER: SB 207

DATE PREPARED: Feb 22, 2002
BILL AMENDED: Feb 21, 2002

SUBJECT: School Employees and Children.

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FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

(A) Allows supervised group living facilities and community mental retardation and other developmental disabilities centers that have been in existence for at least 10 years to obtain limited criminal history records without charge.

(B) Enables the Professional Standards Board to suspend a teacher's license for certain noncriminal behaviors.

(C) Requires certain officials to report when a teacher is convicted of certain crimes.

(D) Provides uniformity in the grounds for which licenses may be revoked and the contracts of permanent and semipermanent teachers may be canceled concerning sexual misconduct with a minor.

(E) Changes the law concerning seduction of a child at least 16 years of age to add behaviors that constitute the offense and to expand coverage to all employees of a child's school.

(F) Requires governmental entities to pay civil judgments on behalf of employees who are sued because of actions taken within the scope of their employment.

Effective Date: July 1, 2002.

Explanation of State Expenditures: (Revised) (A) *Background Checks for Certain School Contract Employees:* The Indiana State Police may experience an increase in expenditures for processing of additional criminal background checks. The impact would be dependent on local action. School corporations are required to adopt a policy concerning background checks for all certified and non-certified school

corporation employees and applicants.

(B) The Indiana Professional Standards Board (the Board) could experience an increase in expenditures such as printing and mailing notices for a hearing. After a complaint against a license holder is filed by the Department of Education, an administrative law judge presides over an adjudication proceeding where the individual with the license may present their case. Once the judge has ruled, the Board would hold a meeting to determine if the ruling of the judge will be upheld. If additional revocation hearings occur due to the bill, the Board could include the hearing during the course of business of a scheduled meeting. In CY 2001 the Board met for either one or two days a month in 7 out of 12 months of the year. In CY 2000 the Board met 6 out 12 months of the year.

(E) If more convictions of child seduction (Class D felony) occur due to this provision, the state would incur an increase in expenditure to house convicted individuals sentenced to a prison term. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$22,131 in FY 2000. Individual facility expenditures ranged from \$16,442 to \$40,312. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

(F) The provisions of this bill would allow a governmental entity to be liable for punitive damages awarded in a judgment from a claim or suit in tort. This bill has the potential of impacting the Attorney General's Office and other state agencies if it causes these affected agencies to spend time and resources defending a tort claim or suit. If a judgement is placed against the state, a claimant may be paid monetary damages, reasonable costs, and attorney fees.

The Office of the Attorney General reports the amount of damages paid as a result of tort claims submitted and tort claim lawsuits filed against the State and by plaintiffs in tort and civil rights litigation between CY 1995 and CY 2000 as follows:

| CY | Damages Paid |
|------|--------------|
| 1996 | \$ 5,742,977 |
| 1997 | \$ 3,438,230 |
| 1998 | \$ 2,935,075 |
| 1999 | \$ 5,052,346 |
| 2000 | \$ 9,362,912 |

The amount paid includes tort claims paid at the time of claim submission, settlements upon the filing of lawsuits, and as a result of a court order. It also includes cases in both federal and state court.

Explanation of State Revenues: (Revised) (A) Under the bill, community mental retardation disability centers and supervised group living facilities would not be required to pay the fees associated for a release of a limited criminal history background check, if the facility described has been in existence for at least ten

years. State revenue would be reduced by the number of requests made by facilities that meet this description multiplied by the cost of the background check. The fee for a limited criminal history check is \$7. As an example, if 200 requests for a limited criminal history were made the revenue lost would be (200 X \$7 = \$1,400). The impact would depend on the amount of requests made per year.

Background Checks: Under the bill, certain individuals employed by an entity that is involved with securing a contract with a school corporation may be required to consent to background checks. If additional requests for background checks occur as a result of this provision, revenue to the state would increase. The Indiana State Police reports the following fees for background checks:

| Type of Check | Fee |
|--|---|
| View Record on File | \$3 |
| Limited Criminal History | \$7 |
| Full Statewide (includes fingerprints) | \$10 |
| National Volunteer Check (42 U.S.C. 5119a & IC 5-2-5-15) | \$28 (\$10 to State of Indiana, \$18 to Federal Government) |
| National Employment Check | \$34 (\$10 to State of Indiana, \$24 to Federal Government) |

In CY 1999, 215,426 total background checks were processed by the Indiana State Police. In CY 2000, the total number was 262,661. There is currently no data available specifically relating to the number of teacher applicants or school volunteers that were processed for a background check.

With respect to limited criminal history checks, the Indiana State Police collected \$1.6 M in revenue in FY 2000. Revenue generated from limited criminal history checks are deposited into the state General Fund.

(B) *Background:* Current law allows for the permanent revocation of a teacher license for the following offenses (IC 20-6.1-3-7(c)):

| Offense | Classification |
|--------------------------------|---|
| Rape | Class B felony (Class A if with deadly force/weapon) |
| Criminal deviate conduct | Class B felony (Class A if with deadly force/weapon) |
| Child molesting | Class C felony (Class A if with deadly force/weapon) |
| Child exploitation | Class D felony (Class C if it is committed by using a computer network) |
| Vicarious sexual gratification | Class D felony (Class C if child involved in the offense is under the age of 14; Class B if with deadly force/weapon or use of drugs to induce) |
| Child solicitation | Class D felony (Class C if it is committed by using a computer network) |
| Child seduction | Class D felony (Class C if deadly force/weapon or use of drugs to induce) |
| Sexual misconduct with a minor | Class C felony (Class B if offender is 21 years or older; Class A if with deadly force/weapon or use of drugs to induce) |
| Incest | Class C felony. (Class B if victim is less than 16 years of age.) |

If more revocations of teacher licenses are carried out as a result of the bill, fewer license renewal fees would be collected. It is believed impact to revenue would be minimal. Current teacher license fees are at a maximum of \$5. In FY 2000 the Indiana Professional Standards Board (the Board) collected \$105,323 in teacher license revenue. All fees from teacher licenses are deposited into the state General Fund.

Revocation Data: In 1999, seven teacher licenses were revoked or surrendered for violations under IC 20-6.1-3-7. Two of these revocations were for at least one of the offenses listed above (IC 20-6.1-3-7(c)). Two other revocations were due to immorality as listed in current law under (IC 20-6.1-3-7(a)).

In 2000, six revocations of a teacher license occurred under IC 20-6.1-3-7. Five of the revocations were for sexual misconduct with a minor (section 7(c) violation listed above). The remaining revocation was for a section 7(a) violation: immorality, misconduct in office, incompetency, or willful neglect of duty.

(E) If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

(F) *Court Fee Revenue:* If additional civil actions occur, revenue to the state General Fund may increase if court fees are collected. A civil filing fee of \$100 would be assessed when a civil case is filed. 70% of the filing fee would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

Explanation of Local Expenditures: (Revised) (C) Under the bill, formal notification of a conviction would be required to be made in writing. The prosecuting attorney would experience a slight increase in expenditure

for postage and printing of notice.

(D) Under the bill, the governing body of a school corporation could hold additional hearings if more permanent or semipermanent teachers are placed under consideration for dismissal by school corporations. Under current law, notified teachers may request to present their case at a hearing. If additional semipermanent or permanent teachers were to have their contract terminated under this provision, the school board would not have to pay the remaining amount on the terminated teacher's contract. Depending on the reason and the date of dismissal, the money earmarked for the payment of a dismissed teacher's contract would be retained in the school corporation's general fund. The school corporation could use these funds for the hiring of a replacement teacher.

(E) If more convictions for child seduction occur as a result of this provision and if more defendants as a result are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

(F) This bill could have an administrative impact on the caseloads of trial or city and town courts if additional civil actions are filed. The operating expenses of the trial courts are paid by the county general fund. The expenses of the city and town courts are paid by the general fund of the city or town in which the court is located. Local governmental entities would be required to cover monetary damages, reasonable costs, and attorney fees to be paid to a claimant if judgement in a tort claim is in favor of a claimant.

Explanation of Local Revenues: (Revised) (E) With respect to additional arrests for child seduction, if additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

(F) *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund.

State Agencies Affected: Indiana Department of Education, Professional Standards Board, Department of Correction.

Local Agencies Affected: School corporations, trial courts, local law enforcement agencies.

Information Sources: Indiana Professional Standards Board, (317) 232-9010; Indiana Professional Standards Board website: <http://www.in.gov/psb/meetings> ; Kevin McDowell, Department of Education, (317) 232-6647; Major Karen Butt, Indiana State Police, 232-8266; Rod Elseler, Indiana State Teacher's Association, (317) 263-3400; Office of the Auditor of State, Budget Revenue Trial Balance, June 30, 2000, Department of Correction, Indiana Sheriffs Association; Office of the Attorney General.