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SEX OFFENDER REGISTRATION REVISIONS: JUVENILES

House Bill 4920 (Substitute H-2)
Sponsor: Rep. Larry Julian

House Bill 5195 (Substitute H-1)
Sponsor: Rep. Matt Milosch

House Bill 5240 as introduced
Sponsor: Rep. Leon Drolet

Committee: Criminal Justice

First Analysis (11-12-03)

THE APPARENT PROBLEM:

Public Act 295 of 1994, the Sex Offenders Registration Act, requires the registration of persons convicted of, or placed on youthful trainee status for, and juveniles for whom the juvenile court has entered an order of disposition for, a "listed offense." The definition of "listed offense" refers to specific sex crimes (or the attempt or conspiracy to commit such crimes) and includes offenses committed in other states. (See *Background Information*.) Depending on whether an individual was convicted of a misdemeanor listed offense or felony listed offense, he or she must register and be subject to required reporting requirements for a period of at least 25 years or life, respectively.

In addition to the sex offenders registry database maintained by the Department of State Police (DSP) and accessible only for law enforcement purposes, the DSP also is required to compile certain information from that database for a database accessible by the public. Currently, the act requires the DSP to forward the information, based on the zip code of the offender's place of residence, to the appropriate law enforcement agencies and allows the DSP to post the public registry on the Internet.

Under the Sex Offenders Registration Act, a juvenile tried as an adult and convicted of a listed offense, or a person assigned to youthful trainee status for a listed offense (generally a 17- or 18-year-old), is automatically placed on the public registry. A juvenile adjudicated for a listed offense under the Probate Code is not placed on the public registry unless he or she received a disposition for first- or second-degree criminal sexual conduct (CSC). However, even for those offenses, the juvenile's

information is placed on the public registry when he or she turns 18 years of age.

A concern has been raised that the reporting requirements are needlessly capturing individuals who do not pose a danger to the public, and who do not pose a danger of reoffending. According to those who work in the juvenile or family divisions of circuit court, children as young as 10 years of age who were engaging in games of "doctor", or young teens engaging in consensual sex, have been captured under the CSC laws. Under the provisions of the Sex Offenders Registration Act, some of these children are now required to be registered not only with the police, but also must be placed on the public registry once they reach 18 years of age - the same as any adult offender.

Some believe that the courts should be given discretion to decide if a juvenile convicted of a first- or second-degree CSC should be placed on the public registry. For cases of youthful incest or sexual experimentation, treatment and rehabilitation programs have proven highly successful and recidivism rates are low. For these and other reasons, some feel that the law should be changed to give courts more discretion in deciding whether juvenile offenders convicted of certain first-, second-, or third-degree offenses should be placed on the public sex offenders registry when they reach 18 years of age.

In a related matter, youths aged 17-20 charged with certain crimes who are considered to be low risk for reoffending can be diverted to youthful trainee status under the Holmes Youthful Trainee Act (HYTA). A trainee may actually serve time in a county jail or in prison, but typically are placed on probation.

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Successful completion of sentence-like conditions results in dismissal of the charges and the person is deemed as having no conviction. However, under the Sex Offenders Registry Act, trainee status is defined as a “conviction,” and trainees are required to register like other sex offenders and remain on the public list for 25 years. Many feel that the requirement to be registered as a sex offender works against the philosophy of HYTA, which is to give a break to first-time offenders who are likely to be successfully rehabilitated. In the case of many convictions involving youthful offenders, offenses often involve consensual sex between young teen lovers. Since these youths hardly fit the definition of “sexual predator”, and since successful completion of trainee status results in no conviction, advocates for youthful offenders have long desired the laws to be amended to exclude non-predatory youths convicted of sex crimes to be exempted from mandatory registration with the sex offenders registry.

In yet another matter, several states include photographs on the public sex offender registry. It has been suggested that Michigan do the same. Proponents of the plan believe that it would increase public safety by enabling residents to identify a potentially dangerous sex offender in situations where a name may not come up, such as when striking up a conversation in a park or other public place. Also, it is argued, including a photograph may also ensure that an innocent person with the same or similar name will not be confused with a registered sex offender. Legislation is being offered to address these concerns.

THE CONTENT OF THE BILLS:

The bills would revise the reporting requirements for juvenile sex offenders, require photographs of all registered offenders to be included on the public registry, and revise the Holmes Youthful Trainee Act to exclude those on trainee status from registering as sex offenders. Specifically, the bills would do the following:

House Bill 4920 would amend the Sex Offenders Registration Act (MCL 28.722 et al.) to revise registration requirements for juveniles convicted of sex offenses on or after January 1, 2004. The Sex Offenders Registration Act requires the registration of persons convicted of certain sex crimes (or, in the case of juveniles, a person placed on youthful trainee status or a person for whom the juvenile court has entered an order of disposition). Depending on whether an individual was convicted of a misdemeanor-listed offense or felony-listed offense,

he or she must register and be subject to required reporting requirements for a period of at least 25 years or life, respectively.

Offenders under 13. A person convicted as a juvenile on or after January 1, 2004 for violating Section 520b(1)(a) or 520c(1)(a) of the penal code or convicted of assaulting an individual with the intent to commit criminal CSC prohibited under 520b(1)(a) or 520c(1)(a) would have to register as a sex offender for 10 years (but would not be placed on the public registry) unless the court, with consent of the prosecuting attorney, ordered the individual exempt from the registration requirements. The bill specifies that a juvenile registered under this provision would not be subject to the act’s annual reporting requirements, but does not specify how verification is to be done other than the initial verification that is done before entry of the order of disposition is to be handled.

Offenders not more than three years older than the victim. A person convicted as a juvenile on or after January 1, 2004 for violating Section 520b (1)(a) or 520c(1)(a) of the penal code or convicted of assaulting an individual with the intent to commit criminal CSC prohibited under 520b(1)(a) or 520c(1)(a) would have to register as a sex offender unless the court, with consent of the prosecuting attorney, ordered the individual exempt from the registration requirements.

Other juvenile offenders. A person convicted as a juvenile on or after January 1, 2004 of violating Section 520d(1)(a) or 520e(1)(a) of the penal code or convicted of assaulting an individual with the intent to commit criminal CSC prohibited under 520d(1)(a) or 520e(1)(a) would not have to register as a sex offender. [Note: Section 520e(1)(a) is CSC in the fourth-degree involving a victim at least 13 years of age with the actor being five or more years older than the victim. Therefore, to be prosecuted under this provision, a person would have to be at least 18 years old, too old to be prosecuted as a juvenile.]

Youthful trainee status. The bill would amend the definition of “convicted” to remove a person assigned to youthful trainee status under the Holmes Youthful Trainee Act (HYTA). A person convicted of a listed offense on or after January 1, 2004 and assigned to youthful trainee status would not have to register as a sex offender. However, the bill would include being assigned to youthful trainee status as being “convicted” in a provision requiring an offender convicted of first-degree CSC or a violation of Section 520b(1)(a) to register for life. Further, the

act currently allows a court to revoke the status of a trainee who willfully violates the act. The bill would specify that this provision would pertain to those assigned before January 1, 2004. [Note: A person convicted of first-degree CSC is currently excluded from assignment to youthful trainee status and House Bill 5240 would exclude persons convicted under Section 520b(1)(a) from HYTA eligibility.]

Criteria for exemption from registration. In determining whether to order an individual exempt from registering under the act, the court would have to consider all of the following:

- Both the offender's and victim's age and level of maturity at the time of the offense.
- The nature and severity of the offense, including whether the victim consented to the sexual conduct.
- The individual's prior juvenile history.
- The individual's likelihood to engage in further criminal sexual acts.
- Any other information considered relevant by the court.

A court could not order an individual exempt from registration if he or she had previously been convicted of a listed offense for which registration is required or if the court determined that he or she would be likely to engage in further criminal sexual acts.

The court could order the Department of State Police not to place an individual on the public registry while it was considering whether to order an exemption from registration. An order would expire 30 days after it was issued or as provided by the court, whichever occurred first.

Individuals convicted of an offense before January 1, 2004. The bill would allow an individual convicted of certain offenses for which the bill would create an exemption from registration on the sex offenders list to petition the court for an order exempting him or her from further registration. The person would have to provide a copy of the petition to the prosecuting attorney not less than 30 days before a hearing was held on the petition.

This provision would apply to those juveniles under 13 at the time of the offense or within three years of age of the victim as discussed earlier and to those assigned to youthful trainee status under HYTA.

In making a determination whether to order the individual from further registration requirements, the court would have to consider all of the factors discussed above for exemption. The court could not order an individual exempt from registering under the act if he or she had been convicted of a listed offense for which registration is required during or after the period in which he or she had been assigned to youthful trainee status, or if the court determined the person would be likely to engage in further criminal sexual acts.

If an individual properly petitioned the court and the court determined that he or she met the bill's requirements, the court could (with the consent of the prosecuting attorney) issue an order exempting the individual from registering under the act for the violation. Also, the order would have to require the Department of State Police to remove the individual's registration information from the registration and compilation databases. Only one petition for exemption could be filed under the bill.

If the court ordered an individual exempt from registration or stayed registration while considering whether to order an exemption, the court would have to promptly provide a copy of the order to the DSP. The DSP could not enter an individual's registration in the database if that person had been exempted and would have to remove the registration information if already registered. If the court issued a stay, the DSP could not enter the individual's registration information until ordered to do so by the court or until the order expired.

House Bill 5195. The Department of State Police is required under the Sex Offenders Registration Act to maintain a computerized database of registrations of sex offenders and notices required under the act. This database is accessible only by law enforcement officers and officials. The department also has to maintain a separate computerized database that is accessible by the general public. This database consists of a compilation of individuals registered under the act but excludes some juvenile dispositions; a juvenile found responsible for first- or third-degree criminal sexual conduct (CSC) is excluded, but only until he or she reaches the age of 18. The compilation has to be indexed numerically by zip code area. Within each zip code area, the compilation has to include the name and aliases, address, physical description, and birth date of each registered individual in that zip code along with any listed offense he or she had been convicted of. The compilation must also include the name and campus location of each institution of higher education to which the individual is required to report.

The bill would amend the Sex Offenders Registration Act (MCL 28.728) to require that the compilation also include the photograph of each individual registered under the act. The Department of State Police would have to obtain the photographs submitted under the bill from the secretary of state for the purpose of implementing the bill.

The bill would take effect May 1, 2005

House Bill 5240 would amend provisions of the Code of Criminal Procedure (MCL 762.11 et al.) known as the Holmes Youthful Trainee Act (HYTA). The bill is a companion to House Bill 4920, and is tie-barred to that bill. One of the changes proposed by House Bill 4920 is to remove youths assigned to the status of youthful trainee under HYTA from the definition of "conviction", thus eliminating them from the mandatory reporting requirements of the Sex Offenders Registration Act.

House Bill 5240 would, however, exclude persons charged with second-degree or third-degree criminal sexual conduct, with two exceptions, from eligibility under HYTA. Those charged under Section 520c(1)(b) of the penal code – 2nd degree CSC involving sexual contact with a person at least 13 but younger than 16 years of age under certain criteria – and persons charged under 520d(1)(a) – 3rd degree CSC involving penetration with a person at least 13 but less than 16 years of age – would still be eligible for youthful trainee status and would therefore be exempted from having to register as a sex offender. All individuals assigned to youthful trainee status before January 1, 2004 would still be subject to the reporting and registration requirements of the Sex Offenders Registration Act.

The bill would take effect January 1, 2004.

BACKGROUND INFORMATION:

House Bills 5163 and 5891 introduced in the 2001-2002 legislative session would have made similar changes to the Sex Offenders Registry Act. The bills were reported from the House Criminal Justice Committee but died on the House floor.

The Sex Offenders Registration Act, created by Public Act 295 of 1994, applies to individuals convicted of a listed offense, persons placed on youthful trainee status for a listed offense, and juveniles for whom a court has entered a disposition for a listed offense for which the record is open to the general public. Offenders must comply with the registration and subsequent reporting requirement for

25 years after the initial registration or, if an individual is in a state correctional facility, for 10 years after release – whichever is longer. (For example, if a person were imprisoned for 20 years, then released, he or she would still have to report for 10 years longer, for a total of 30 years.) Someone convicted of a felony listed offense, such as first-degree criminal sexual conduct, or a second or subsequent offense committed after October 1, 1995, must register for the remainder of his or her life. If the violation of a listed offense is categorized as a misdemeanor listed offense, the person must register at the time of conviction, prior to sentencing, and report to verify his or her address at least each January and if the person is registered for committing one or more felony listed offenses, he or she must report to verify his or her address at least four times a year. (Offenders also must report within 10 days of moving or if visiting in an area longer than a specified number of days.) Depending upon the person's status, he or she must register or report with a parole officer, probation officer, sheriff, local law enforcement agency, or juvenile court, the state police, the Department of Corrections, or the Family Independence Agency. The registration must then be forwarded to the Department of State Police. Only those persons convicted of a listed offense on or after October 1, 1995, or those convicted prior to that date but still incarcerated or on parole or probation on that date must be registered.

"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.
- 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, that is substantially similar to a listed offense.

The Department of State Police is required to maintain a computerized database of registered offenders. In 1996, Public Act 494 was enacted to require the DSP to compile the information from the database and create a second database indexed by zip code area and containing the name, aliases, address, physical description, birth date, and listed offenses for each offender residing in the zip code area. The information in each of these zip code blocks is provided to the appropriate local law enforcement agency for access by the public. The DSP also maintains the complete public sex offenders registry (PSOR) on its web site.

Currently, the public database does not include any individual registered solely because he or she had one or more dispositions for a listed offense entered under provisions of the Probate Code (MCL 712A.18) for a case that was not designated as a case in which the individual was to be tried as an adult. This exclusion for juvenile dispositions does not apply to a disposition for first- or second-degree criminal sexual conduct (CSC).

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bill 4920 would have no apparent material impact on state or local costs or revenues. House Bill 5195 is also not expected to have a fiscal impact. Fiscal information on House Bill 5240 is not available. (11-5-03)

ARGUMENTS:

For:

The public registry of sex offenders does not give the date of the conviction, nor the age at the time the offense was committed. Therefore, a ten-year-old playing “doctor” convicted of second-degree CSC

and a young teenager engaging in consensual sex convicted of first-degree CSC appears on the public registry alongside pedophiles and serial rapists. This does not reflect the intent of the original “Megan’s Law”, on which Michigan’s Sex Offender Registration Act and the public sex offenders registry, was based. Megan, a New Jersey child, was raped and murdered by a man living in her neighborhood who had prior convictions for sexual offenses. The belief behind Megan’s Law was that if people had access to information regarding sex offenders living in their neighborhoods, they could then better protect their children or themselves from possible attacks. For example, women may be more diligent to lock doors and windows at night or when away, and parents may be more attentive to the whereabouts of their children and provide warnings about sexual encounters by adults, if they knew that a convicted sex offender was living next door or down the block.

However, many of the children being captured by the CSC laws and placed not only on the police registry, but also on the public sex offenders registry, do not pose continuing dangers to the public as do their adult counterparts. Children’s behavior often changes as they mature, and treatment programs for child sex offenders are highly successful; current research shows a recidivism rate at eight percent or lower. According to many advocates for youthful sex offenders, House Bill 4920 recognizes that some actions of youth, while rising to the level of criminal conduct, can occur without thought or premeditation, and often are the only incident and do not represent a pattern of behavior and therefore do not pose a threat to the community.

Against:

House Bill 4920 seems to contain several provisions that are contradictory and should be clarified. Some youthful offenders will indeed be spared registration as a sex offender under the act, but it is not clear if all youths that should be helped by the bill would be. For instance, the one element of a fourth-degree CSC that would be exempted from registry wouldn’t apply to a juvenile. So, a juvenile could be convicted of CSC in the fourth degree, which involves contact only and is a misdemeanor offense, for threatening to use force and have to register for 25 years and yet juveniles who actually engage in intercourse may not have to register at all. If the intent is to weed out juveniles who do not pose a threat, perhaps some of the provisions should be rewritten to more effectively accomplish the stated goal.

Against:

It isn't just juveniles that should judges should have discretion to exempt from registering as a sex offender, but many adult offenders should not be included on the registry either. Some states reserve sex offender registration for those individuals who truly represent a danger to the public and have a high risk for reoffending. Instead, Michigan requires registration for a wide range of offenses. In fact, over 31,000 people are currently on the sex offenders registry. In addition, a teenager of 17 and older, and some even younger, would still have to register if they were tried and convicted in adult court even though the facts of their cases may be similar to individuals just a year or two younger who were convicted as juveniles. Not every deserving youth is assigned to youthful trainee status, either. In a nutshell, the entire philosophy and approach to sex offender registration needs to be revisited and a system adopted that will provide the level of public safety that a registry should.

For:

The main impetus behind House Bill 5195 is to make it easier to identify people in the community that pose a risk to others. Even though the public Sex Offenders Registry can be accessible by zip code, and though the sex offender's address and general description is included in the registry, there are situations where it may not be easy to make the connection between a name on the registry and the person chatting with you or your child at the park, on a bus, or while strolling through the neighborhood. Most people remember faces more easily than names, and will therefore know when to exercise caution.

Also, since there may be more than one person in the community with the same name, a photograph could absolve an innocent neighbor of perceived guilt. Since sex crimes are often crimes of repetition, the bill would be an important addition to the public registry and would enable people to protect themselves and their families from possible harm. Further, since sex offenders are required to keep current driver's licenses and state identification cards, the secretary of state will always have fairly recent pictures to supply to the DSP at a minimal cost.

Against:

House Bill 5195 would do little in reality to increase public safety but much to increase vigilantism, harassment against registrants that could cause some dangerous offenders to go underground (and thus increase the chances of reoffending), and subject many non-predators to undue hostility and discrimination. The bill as introduced targeted

pedophiles, but the committee substitute would apply to every registered sex offender, many of whom pose no further risk of reoffending and probably shouldn't be on the list to begin with. Adding their pictures would do little more than subject them to increased humiliation and punishment.

In addition, many people on the Sex Offender Registry have a difficult time arranging appropriate housing and finding jobs. Placing their pictures on the Internet may do little more than doom them to homelessness and unemployment – two factors known to greatly increase the likelihood of reoffending. Even if an employer felt that a registrant posed little to no threat to his or her customers or other employees, he or she may be forced to fire the registrant if customers who recognized the person from the Internet site boycotted the business or employees threatened to quit.

Further, the registry contains over 31,000 names, most of which do not represent sexual predators. However, even though House Bills 4920 and 5240 will remove some juveniles and youthful trainee offenders, the process will take time. This is unlikely to occur before the May 1, 2005 effective date. Once the registry is cleaned up, the proposal may make sense. Until then, it could do more harm than good.

For:

The purpose of the Holmes Youthful Trainee Act (HYTA) was to divert youthful offenders considered to be a low risk for reoffending into a program whereby successful completion of the program – which could include probation as well as jail or prison time – would lead to a clean record. However, for those assigned to youthful trainee status for sex crimes other than a conviction for first degree CSC, which excludes a person from assignment as a youthful trainee because it carries a maximum sentence of life imprisonment, it seems incongruous to be a convicted sex offender under one act and yet have that conviction erased under another. Also, those assigned youthful trainee status are often young adults who had consensual sex with an underage lover who was close to the age of consent. Others involve acts of incest or sex acts with other youngsters living in the same household. Whether reported to the police by angry parents or by persons who have a duty to report such incidents (such as teachers, social workers, etc.), these persons are not predatory, respond well to rehabilitation (in those cases involving incest), and deserve to have a chance to change. Unfortunately, under current law, they

must still comply with requirements under the Sex Offenders Registration Act and be listed on the public registry for 25 years. The bill would be an important first step in removing some non-predatory persons from the registry.

Against:

Unfortunately, as written, the bill would exclude the majority of second- and third-degree CSC offenses from eligibility under HYTA, even though these individuals are currently eligible. The exclusion would force these individuals to be adjudicated in adult court, have criminal records for life, and still have to register as a sex offender. The result would be that individuals considered to have a high rate of turning their lives around would instead be excluded from military careers and a wide range of other professions. Since judges do not assign offenders likely to reoffend or who pose a danger to others to HYTA, the exclusion should remain only for first-degree CSC.

Response:

The main intent of the legislation is to weed out very young offenders who have a good chance of being rehabilitated and also weed out teenage lovers, which the bill package would do. It wouldn't be prudent to make the exemption too broad. Perhaps these changes should be reviewed to see if the target goal is being addressed and if necessary, the act can be amended at a later time to increase HYTA eligibility.

POSITIONS:

The Michigan Collaborative for Juvenile Justice Reform submitted testimony in support of House Bill 4920. (10-15-03)

Representatives from Citizens for Second Chances indicated support for House Bill 4920 with some changes. (11-5-03)

Representatives from Citizens for Second Chances indicated opposition to House Bill 5195. (11-5-03)

Analyst: S. Stutzky

■ 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.