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BILL ANALYSIS



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House Bill 4920 (Substitute S-1 as reported)
House Bill 5240 (Substitute H-1 as reported with amendment)
Sponsor: Representative Larry Julian
House Committee: Criminal Justice
Senate Committee: Families and Human Services

Date Completed: 3-22-04

RATIONALE

Under the Sex Offenders Registration Act, people convicted of or placed on youthful trainee status for certain crimes ("listed offenses", defined in BACKGROUND, below), and juveniles adjudicated in the family court for actions that would be those crimes if committed by an adult, must register information about their identity, address, and conviction with a law enforcement agency, and notify a law enforcement agency when they move. This information is included in the sex offender registry maintained by the Michigan Department of State Police (MSP), which is accessible only for law enforcement purposes. In addition, the MSP must compile certain information from the registry and make the compilation available to the public. An individual must comply with the Act for 25 years after the date of initially registering, or, if he or she is in a State correctional facility, for 10 years after release, whichever is longer.

Some people have raised concerns that juveniles who do not pose a danger to the public are required to register as sex offenders unnecessarily. Under the Act, teens engaging in consensual sex and even younger children engaging in sexual contact out of curiosity who are found guilty of or responsible for criminal sexual conduct (CSC), must register on the law enforcement registry, and, once they reach the age of majority, on the public registry, just like adult offenders.

In addition, youths between the ages of 17 and 21 charged with certain crimes who are considered to be low risk for becoming repeat offenders can be diverted to youthful trainee status under the Holmes Youth Training Act (HYTA). Successful completion

of specified conditions results in dismissal of the charges. Under the Act, however, being assigned to youthful trainee status constitutes being "convicted", so a trainee must register like other sex offenders and remain on the public registry for 25 years.

Some people believe that the courts should be given discretion to decide if juveniles convicted of CSC should be placed on the public registry, and allow certain juveniles to register for less than 25 years.

CONTENT

House Bill 4920 (S-1) would amend the Sex Offenders Registration Act to do the following:

- Provide that juveniles charged with particular sex offenses on or after October 1, 2004, would have to register on the sex offender registry maintained for law enforcement purposes until their 18th birthday, rather than the 25 years currently required, and would not be subject to the public registry.**
- Allow juveniles convicted of particular sex offenses to petition the court for exemption from registration on the public sex offender registry, and for 10-year registration on the law enforcement registry, if they were charged before October 1, 2004.**
- Provide that an individual convicted of a listed offense before October 1, 2004, and assigned to youthful trainee status would have three years after that date to petition the court for the 10-year registration**

- period on the law enforcement registry and exemption from the public registry.
- Prohibit the court from granting an exemption if certain factors, such as the individual's use of force or a weapon in committing the crime, existed.

House Bill 5240 (H-1) would amend the Holmes Youthful Trainee Act to prevent juveniles charged with certain sex offenses from being assigned to youthful trainee status; and exempt certain individuals assigned to youthful trainee status before October 1, 2004, from having to comply with the requirements of the Sex Offenders Registration Act.

The bills are tie-barred to each other and would take effect on October 1, 2004. They are described below in further detail.

House Bill 4920 (S-1)

Definition of "Convicted"

Currently, under the Sex Offenders Registration Act, the term "convicted" includes being assigned to youthful trainee status under the HYTA. Under the bill, this would apply except as otherwise provided by the Act.

The Act requires an individual to register for life if he or she is convicted of a second or subsequent listed offense after October 1, 1995, regardless of when any earlier listed offense was committed. The bill specifies that, for purposes of determining whether a violation was a second or subsequent listed offense, "convicted" would include being assigned to youthful trainee status before October 1, 2004.

Petition Process

The bill would add Section 8e (described below) to allow the court, subject to a properly filed petition, to order juveniles charged with specified sex offenses on or after October 1, 2004, or convicted of specified sex offenses before that date, to register as provided in that section, instead of as currently required by the Act.

An individual would have to file a petition in the court having jurisdiction of the offense.

The petition specifically would have to state that the individual was not disqualified under certain factors, which are listed below. An individual could not file a petition if he or she had previously filed one that had been denied by the court.

A copy of the petition would have to be filed with the prosecuting attorney who prosecuted the case against the juvenile at least 30 days before the hearing on the petition. The prosecuting attorney could appear and participate in all proceedings regarding the petition and could seek appellate review of any decision.

If the prosecuting attorney knew the victim's name, he or she would have to send written notice of the petition and forward a copy of it to the victim's last known address via first-class mail. The victim would have the right to appear at any proceeding, but would not be required to do so, and could make a written or oral statement to the court.

In determining whether to grant a petition, the court would have to consider all of the following:

- The individual's age and maturity level at the time of the offense.
- The nature of the offense.
- The severity of the offense.
- The individual's prior juvenile history.
- The individual's likelihood to engage in further criminal sexual acts.
- Any impact statement submitted by the victim under the Crime Victim's Rights Act.
- Any other information the court considered relevant.

Disqualifying Factors

The court could not grant a petition for registration under Section 8e if the individual previously had been convicted of a listed offense for which registration is required under the Act; the individual failed to carry the burden of proving by clear and convincing evidence that he or she was not likely to engage in further criminal sexual acts; or the individual was charged in any state with committing, attempting to commit, or conspiring to commit a felony, or a violation that would be a felony if committed by an adult, other than the felony for which he or she was charged. (The bill specifies that "felony" would mean

a crime specifically designated to be a felony or punishable by imprisonment for more than one year.)

The court could not grant a petition if it determined that the offense involved any of the following factors set forth in sections of the Michigan Penal Code proscribing CSC:

- The other person was between the ages of 13 and 16 and the actor was a member of the victim's household, related to the victim by blood or affinity to the fourth degree, in a position of authority over the victim and used that position to coerce the victim to submit, or a teacher or administrator of the victim's school (first- or second-degree CSC).
- Sexual penetration occurred under circumstances involving the commission of any other felony (first- or second-degree CSC).
- The actor was aided or abetted by at least one other person and either knew or had reason to know that the victim was mentally incapable, mentally incapacitated, or physically helpless, or used force or coercion to accomplish sexual penetration (first- or second-degree CSC).
- The actor was armed with a weapon (first-degree).
- The actor caused personal injury to the victim and force or coercion was used to accomplish sexual penetration (first- or second-degree).
- The victim was mentally incapable, mentally disabled, mentally incapacitated, or physically helpless; and the actor was related to the victim by blood or affinity to the fourth degree, or was in a position of authority over the victim and used that authority to coerce the victim to submit (second-degree).
- The victim was under the jurisdiction of the Department of Corrections (DOC) and the actor was an employee of or volunteer with a private vendor that operated a youth correctional facility, who knew that the victim was under the DOC's jurisdiction (second degree).
- The victim was a prisoner or probationer under a county's jurisdiction and the actor was an employee of or volunteer with the county or the DOC and knew that the victim was under the county's jurisdiction (second-degree).

- The actor knew or had reason to know that a court had detained the victim in a facility while he or she was awaiting a trial or hearing, or committed the victim to a facility as a result of the victim's being found responsible for committing an act that would be a crime if committed by an adult, and the actor was an employee of or volunteer with the facility (second-degree).
- The actor used force or coercion to accomplish sexual penetration (third-degree).
- The actor knew or had reason to know that the victim was mentally incapable, mentally incapacitated, or physically helpless (third- or fourth-degree).
- The victim was related to the actor by blood or affinity to the third degree and the sexual penetration occurred under circumstances that were not otherwise prohibited by the Penal Code (third-degree).
- The victim was older than 16 but younger than 18 and the actor was a teacher or administrator of the victim's school (third- or fourth-degree).
- The actor used force or coercion to accomplish the sexual contact (fourth-degree)
- The victim was related to the actor by blood or affinity to the third degree and the sexual contact occurred under circumstances that were not otherwise prohibited by the Penal Code (fourth-degree).
- The actor was a mental health professional and the sexual contact occurred during or within two years after the period in which the victim was the actor's client or patient (fourth-degree).

In addition, the court could not grant the petition if the offense involved assault with intent to commit CSC involving sexual penetration and a factor listed above.

Registration under Proposed Section 8e

Crimes Charged on or after 10-1-04.

Subject to a properly filed petition, the court could order an individual to register subject to the requirements of Section 8e, if all of the following applied:

- The individual was charged as a juvenile on or after October 1, 2004, with committing, attempting to commit, or conspiring to commit first- or second-

degree CSC with a person under 13, or assault with intent to commit first- or second-degree CSC with a person under 13.

- The individual was convicted as a juvenile of committing, attempting to commit, or conspiring to commit that crime or fourth-degree CSC.
- The individual either was under 13 at the time of the violation or was not more than three years older than the victim.

In addition, subject to a properly filed petition, the court could order an individual to register under Section 8e if he or she were convicted of a listed offense on or after October 1, 2004, and assigned to youthful trainee status, unless his or her youthful trainee status was revoked and an adjudication of guilt was entered, in which case the individual would have to register as currently provided in the Act.

Under Section 8e, these individuals would have to register on the law enforcement sex offender registry until their 18th birthdays, but would not be subject to the public sex offender registry.

An individual could not file a petition before his or her 17th birthday.

While the court considered whether to grant a petition, it could order the MSP not to place the individual on the public sex offender registry as follows:

- For a period of 30 days after the order was issued or as provided by the court, whichever occurred first.
- If jurisdiction were continued by the court past the individual's 17th birthday, during the period in which jurisdiction was continued.

Convictions before 10-1-04. An individual who was convicted of a specific offense before October 1, 2004, could petition the court for an order allowing him or her to register under Section 8e, if all of the following were met:

- The individual was charged as a juvenile before October 1, 2004, with committing, attempting to commit, or conspiring to commit first- or second-degree CSC with a person under 13, or assault with intent to commit first- or second-degree CSC with a person under 13.

- The individual was convicted as a juvenile of committing, attempting to commit, or conspiring that crime or fourth-degree CSC.
- The individual either was under 13 at the time of the violation or was not more than three years older than the victim.

An individual also could petition for an order allowing him or her to register under Section 8e if any of the following applied:

- The individual was convicted as a juvenile before October 1, 2004, of committing, attempting, or conspiring to commit third- or fourth-degree CSC involving a person who was at least 13 but under 16 years old.
- The individual was convicted as a juvenile before October 1, 2004, of committing, attempting, or conspiring to commit assault with intent to commit third- or fourth-degree CSC involving a person who was at least 13 but under 16 years old.
- The individual was convicted of a listed offense before October 1, 2004, and assigned to youthful trainee status, unless his or her youthful trainee status was revoked and an adjudication of guilt was entered, in which case he or she would have to register as currently required under the Act.

If an individual properly petitioned the court and the court determined that he or she met the bill's requirements, it could order the individual to register under Section 8e and order the MSP to remove the individual's registration information from both the law enforcement sex offender registry and the public sex offender registry. If the court ordered the individual to register, he or she would have to register for 10 years but would not be subject to the public sex offender registry.

An individual convicted of an offense described above before October 1, 2004, would have three years after that date to petition the court for exemption. The court could not consider a petition filed after that date.

Court Orders under Section 8e

If the court ordered any individual to register pending its determination of a petition, the court promptly would have to

provide a copy of the order to the MSP and the individual. The MSP then could not enter the individual's registration into the public sex offender registry until ordered by the court to do so or until the order expired.

If the court granted a petition, it promptly would have to give a copy of the order to the MSP and to the individual. The MSP then could not enter the individual's registration into the public sex offender registry or, if the person were already registered, the MSP promptly would have to remove that registration from both the public registry and the law enforcement registry upon expiration of the applicable registration period.

House Bill 5240 (H-1)

Eligibility for Youthful Trainee Status

Under the Holmes Youthful Trainee Act, if an individual pleads guilty to a criminal offense committed on or after his or her 17th birthday but before his or her 21st birthday, the court may, without entering a judgment of conviction and with the individual's consent, consider and assign that individual to youthful trainee status. The court may not assign a person to youthful trainee status for a felony for which the maximum punishment is life imprisonment, a major controlled substance offense, or a traffic offense. The bill also would exclude a person convicted of committing, attempting to commit, or conspiracy to commit second- or third-degree CSC, or assault with intent to commit first-, second-, or third-degree CSC, other than second-degree CSC with a person under age 13 or third-degree CSC with a person at least 13 but less than 16.

Sex Offenders Registration

Under the HYTA, if an individual is assigned to youthful trainee status for a listed offense enumerated in Section 2 of the Sex Offenders Registration Act, the DOC, the sheriff or his or her designee, or the individual's probation officer must register the individual or accept his or her registration. An individual assigned to youthful trainee status for any of the same listed offenses is required to comply with the requirements of that Act. Under the bill, these provisions would apply only to individuals assigned to youthful trainee status before October 1, 2004.

MCL 28.722 et al. (H.B. 4920)
762.11 et al. (H.B. 5240)

BACKGROUND

Section 2 of the Sex Offenders Registration Act defines "listed offense" as 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 the following: engaging in indecent or obscene conduct in a public place, indecent exposure, or a local ordinance substantially corresponding to either of those offenses.
- Sodomy, kidnapping, enticing away, or soliciting and accosting, if the victim is under 18 years of age.
- Gross indecency involving a victim under 18, except for a juvenile disposition or adjudication.
- CSC in the first-, second-, third-, or fourth-degree.
- Assault with intent to commit CSC involving penetration.
- Any other violation of a State law or local ordinance that by its nature constitutes a sexual offense against an individual who is under 18.
- An offense committed by a person who, at the time of the offense, was a sexually delinquent person, as defined in the Michigan Penal Code.
- An attempt or conspiracy to commit an offense enumerated above.

"Listed offense" also includes an offense substantially similar to an offense described above under a law of the United States, any state, or any country, or under tribal or military law.

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

The "one-size-fits-all" registration approach used in Michigan can ruin reputations, jeopardize juveniles' futures, and weaken the registry's effectiveness in protecting the public. Under the Sex Offenders Registration Act, hundreds of people who

pose no threat to their communities must live with the stigma of being labeled sexual predators for 25 years--long after they have served their sentences and completed probation. Young people who commit nonviolent sexual indiscretions should not be required to register as sex offenders. Under the current law, however, juvenile sex offenders have no mechanism to contest their placement on the registry.

The ramifications of registration are grave and lifelong. High school students who engaged in consensual sex with their underage girlfriends have been prohibited from participating on school sports teams and have been viewed negatively by their teachers and fellow students. Sex offender registration may jeopardize a person's acceptance to a college or university and interfere with his or her ability to serve in the military. The registration severely limits a person's employment opportunities and, therefore, his or her ability to support a family. A convicted sex offender cannot become a police officer, teacher, or coach, or work with children. Even if a CSC conviction does not disqualify a person from a particular position, it may be extremely difficult to find an employer who feels comfortable hiring him or her. If a registered person does manage to obtain employment, the registration information is readily available to his or her co-workers, who most likely associate "sex offender" with "rapist" or "pedophile". In her testimony before the Senate Committee on Families and Human Services, one woman described the difficulty her son, who was registered as a result of having consensual sex with an underage girl, had in finding a job with an understanding employer. One of the other employees then found her son's registration on the internet and faxed a copy of it to the place of employment, where everyone else could see it.

People convicted of CSC are not allowed to adopt children, regardless of the circumstances of the conviction. A registered person cannot be involved in his or her children's school or extracurricular activities. When a registered person moves to a new neighborhood, he or she may face suspicion or hostility from neighbors.

The humiliation and devastating life consequences that accompany registration on the public sex offender registry constitute

a punishment that does not fit the crime for hundreds of young people. In fact, some of the men on the registry now are married to the women involved in the acts that led to the registration. Children who engage in sexual contact out of curiosity, or teen-agers who engage in consensual sex, should not have to pay the heavy price of being labeled dangerous sexual deviants. If the purpose of the public registry is to protect residents and communities, it must make a distinction between harmless children and those who truly pose a threat. Furthermore, there is a double standard in the way the law is applied. In the case of consensual sex between two teen-agers, the older male often is considered the actor and is prosecuted.

The current registration requirements also are unfair to people who have been assigned to and successfully completed the terms of youthful trainee status. These people have had their convictions wiped from their records, yet they still have to register for 25 years. The registration requirement is contrary to the purpose of assigning someone to youthful trainee status, which is to give a young, first-time offender who is likely to be rehabilitated another chance.

In addition, the sex offender registry unfairly punishes juveniles who were convicted before the law went into effect. Some might have pleaded guilty to a lesser charge in order to avoid being channeled into the juvenile corrections system, to minimize the impact on their families, or for numerous other reasons. Public registration for 25 years was not part of the plea bargain.

Michigan has the third largest sex offender registry in the nation. In 2001, the registry contained approximately 26,850 people. Since then, the registry has grown to about 33,000. Every year, nearly 2,800 new registrations are added--11 per working day. The registry's growth might falsely indicate to people outside of the State that Michigan is teeming with child molesters and rapists, and could discourage people from coming to Michigan, either temporarily as tourists or permanently to raise their families. Some other states employ a more nuanced approach to sex offender registration. In some states, the judge decides if a person should register based on his or her criminal history and likelihood to commit further criminal sexual acts. In other states, only

violent or repeat offenders must register. Some states do not require juveniles under a certain age to register, and others do not require that juveniles register at all. Michigan needs to replace its blanket approach with one that more appropriately serves the registry's public safety purposes.

When working with juvenile sex offenders, the focus should be on rehabilitation to help them stop their abusive behaviors. Adolescence is often a difficult time for many young people; publicly labeling them as dangerous criminals can have devastating effects as they try to develop their identities. More people reportedly are experimenting with sex at a younger age; the current law will continue to harm more children if changes are not made. The law should give judges the discretion to make a distinction between young people who make mistakes or use poor judgment and those whom the public should fear.

Response: Although the bills would correct a very serious flaw in the current law, there are several problematic issues. House Bill 4920 (S-1) would require a person who successfully completed the terms of youthful trainee status to petition the court. This provision would present an unnecessary complication. If a person successfully completes youthful trainee status, his or her record is wiped clean. He or she should not have to go through a petition and hearing process for exemption from the current registration requirements; the exemption should be automatic.

Also, a person's eligibility to register under Section 8e would be based on the offense with which he or she was *charged*. This would be a violation of the juvenile's due process rights and contrary to the fundamental principle that a person is innocent until proven guilty. It would be inappropriate to treat someone differently based upon a charge for an offense of which he or she was not convicted. Sometimes, a jury might decide that a lesser offense is appropriate because the evidence is insufficient to support the initial charge. The fact that a person was charged with a specific crime does not mean that he or she is guilty of that crime.

Furthermore, the bills do not address individuals whose convictions are set aside by a judge. The bills should include an expungement provision for an instance in

which a court has considered the case and determined the juvenile was not a threat.

Legislative Analyst: Julie Koval

FISCAL IMPACT

House Bill 4920 (S-1)

The bill would have a minimal fiscal impact on the Department of State Police. Although the bill would make adjustments to the Sex Offenders Registration Act, the Department already has the organization and resources to handle the changes.

To the extent that it would allow petitions for removal from the database, the bill could increase local court costs.

House Bill 5240 (H-1)

The bill would have an indeterminate fiscal impact on State and local government.

By adding certain criminal sexual conduct offenses to the list of offenses that preclude an offender from being considered a youthful trainee, the bill could increase the number of offenders convicted as adults and sentenced to prison. As the maximum sentence for the applicable offenses is 15 years, much longer than the maximum imprisonment of three years allowed for a youthful trainee, the bill potentially could result in increased sentences for this pool of offenders. The State would incur the additional cost of incarceration in a State facility, for which the average annual cost is \$27,000.

Fiscal Analyst: Bruce Baker
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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.