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Senate Bill 188 (Substitute S-3 as reported)
Senate Bill 189 (Substitute S-3 as reported)
Senate Bill 206 (as reported without amendment)
Sponsor: Senator Rick Jones (S.B. 188)
 Senator Phil Pavlov (S.B. 189 & 206)
Committee: Judiciary

CONTENT

Senate Bill 188 (S-3) would amend the Sex Offender Registration Act to do the following:

- Categorize offenses subject to the Act's registration and reporting requirements as Tier I, Tier II, and Tier III.
- For individuals subject to an order of disposition under the juvenile code, limit the application of the Act to those aged 14 or older who committed a Tier III offense.
- Require the registration of a person who was convicted of a listed offense before July 1, 2011, but was not required to register, and who committed any felony on or after that date.
- Require Tier I offenders to comply with the Act for 15 years and report annually.
- Require Tier II offenders to comply for 25 years and report biannually.
- Require Tier III offenders to comply for life and report quarterly.
- Require an individual to report to a law enforcement agency when he or she moved, bought a vehicle, established an e-mail address, changed employment, enrolled at a college or university, or intended to change his or her residence temporarily for more than seven days.
- Increase from \$25 to \$30 the portion of the registration fee (which Senate Bill 189 (S-3) would increase) allocated to the Michigan State Police (MSP), and increase from \$10 to \$20 the portion allocated to the court, local law enforcement agency, sheriff's department, or State Police post.
- Allow the Sex Offender Registration Fund to be used for notification and offender registration duties, in addition to offender database and compilation purposes.

The Act requires individuals who are convicted of a listed offense to register with the Department of State Police. The bill would amend the definition of "listed offense", and categorize offenses as Tier I, Tier II, and Tier III offenses. "Tier I offender" would mean an individual convicted of a Tier I offense who is not a Tier II or Tier III offender. "Tier II offender" would mean either a Tier I offender convicted subsequently of another Tier I offense, or an individual convicted of a Tier II offense who is not a Tier III offender. "Tier III offender" would mean either a Tier II offender convicted subsequently of another Tier I or Tier II offense, or an individual convicted of a Tier III offense.

Certain violations involving sodomy, gross indecency, or criminal sexual conduct (CSC) with a minor would not be considered listed offenses if the court determined that the victim consented to the conduct constituting the violation, that the victim was at least 13 years old but younger than 16 at the time of the offense, and that the violator was not more than four years older than the victim. In addition, the sodomy and gross indecency violations would not be considered listed offenses if the victim consented, the victim were 16 or 17 years old at the time of the offense, and the victim were not under the violator's custodial authority at the time of the violation.

Senate Bill 189 (S-3) would amend the Act to do the following:

- Increase the registration fee from \$35 to \$50.
- Require additional information and palm prints to be provided when a person registers, and require all of the registration information to be included in the law enforcement database.
- Specify additional information that would have to be included in the public database.
- Establish responsibilities of law enforcement agencies and the MSP when a person failed to comply with the registration requirements.
- Revise the provisions under which an offender may petition the court to discontinue his or her obligation to register.
- Revise the misdemeanor penalties for failure to comply with reporting requirements.

Public Database. The Act requires the MSP to maintain a computerized database of registrations and notices required under the Act. The MSP also must maintain a separate computerized database that consists of a compilation of registered individuals, indexed by zip code, that is available to the public. The public database excludes certain registered juvenile offenders. Under the bill, the public database also would exclude an individual registered solely because he or she had been convicted of a single Tier I offense.

The bill also would delete a provision under which a person who committed first- or second-degree CSC as a juvenile may be included in the public database when he turns 18.

Petition to Discontinue Registration. The Act allows an individual to petition the court to discontinue registration if the individual is convicted as a juvenile of a particular CSC offense and he or she was under 13 years of age at the time and not more than five years older than the victim; or he or she was 13 or older but under 17 at the time and was not more than three years older than the victim. An individual also may petition to discontinue registration if he or she has successfully completed his or her probationary period for committing a listed offense and has been discharged from youthful trainee status.

The bill, instead, would allow a Tier I offender to petition for discontinuing registration, and would allow a court to grant a petition, if the following conditions were met:

- At least 10 years had elapsed since the date of the individual's conviction or from his or her release from any period of confinement for the offense, whichever occurred later.
- The individual had not been convicted of any felony or any listed offense since that date.
- The individual successfully completed his or her assigned periods of supervised release, probation, or parole without revocation.
- The individual successfully completed an appropriate sex offender treatment program.

In addition, a Tier III offender could petition for discontinuing registration, and a court could grant the petition, if all of the following applied:

- The individual was required to register based on an order of disposition entered under the juvenile code that was open to the general public.
- At least 25 years had elapsed since the date of adjudication or release, whichever was later.
- The individual met the other criteria applicable to a Tier I offender.

An individual classified under any tier could petition the court, and the court could grant the petition, if the individual were registered before July 1, 2011, for an offense that required registration but for which registration was not required after that date. Also, a person could petition the court, and the court could grant the petition, if the victim were a minor who consented to the conduct constituting the violation, and other conditions were met.

Criminal Penalties. The Act prescribes penalties for a violation of Section 5a (which contains the annual and quarterly reporting requirements; requires a person to pay a registration fee upon reporting if he or she has not already paid one; and requires an individual to report to the Secretary of State to have a digitized photograph taken). That offense, other than failure to pay the fee, is a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$1,000 for someone with no prior convictions; one year and/or \$2,000 for someone with one prior conviction; or four years and/or \$2,500 for someone with two or more prior convictions. Under the bill, regardless of the number of convictions, failure to comply with Section 5a, other than payment of the fee, would be a misdemeanor punishable by imprisonment for up to two years and/or a maximum fine of \$2,000.

Senate Bill 206 would amend the Code of Criminal Procedure to revise the sentencing guidelines designation for failure to update sex offender registration information. Currently, a third or subsequent offense is a Class F public order felony, with a statutory maximum sentence of four years' imprisonment. The bill would delete the reference to a third or subsequent offense and would indicate a statutory maximum of two years'.

Senate Bills 188 (S-3) and 189 (S-3) are tie-barred to each other, and Senate Bill 206 is tie-barred to Senate Bill 189. All of the bills would take effect on July 1, 2011.

MCL 28.722 et al. (S.B. 188)
28.726 et al. (S.B. 189)
777.11b (S.B. 206)

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

Senate Bills 188 (S-3) and 189 (S-3) would likely have no fiscal impact on the Department of State Police and a minimal impact on local law enforcement agencies. The provisions in the bills reflect changes in the sex offender registry system as mandated by the Federal Sex Offender Registration and Notification Act (SORNA). To accomplish these mandates, the Department has received over \$2.3 million in Federal grants and reports that necessary changes to the State's sex offender registry system have been made and are up and ready to become operational, should the bills become law. It is possible that some additional programming costs of \$400,000 to \$500,000 could still be needed, depending on the final provisions of the bills, but the Department reports that there are likely sufficient unused Federal grants funds and sex offender registration fees to cover these costs. Should the proposed procedural changes become law, the Department also reports that it does not anticipate any additional ongoing costs after implementation of the Adam Walsh registry, and that existing staff should be able to administer the new system without a need to add personnel.

Another possible fiscal impact involves what would result if the changes mandated by the Federal government--and contained in the bills--were *not* put into place. The Federal government has stated that should a state not comply with SORNA by April 27, 2011, there would be a 10% reduction to that state's Byrne JAG formula grant funds starting with FY 2012 Federal awards, a reduction amount likely to be a minimum of \$1.0 million.

In addition, Senate Bill 188 (S-3) would increase the initial required registration fee for registry candidates from \$35 to \$50 and would allocate \$30 of each fee paid to the State Police (up from \$25 under current law) and \$20 to the local agency (up from \$10 under current law). The increased fees would amount to additional annual revenue of approximately \$20,000 to locals and \$10,000 to the State Police based upon the 2,042 new registrants enrolled in calendar year 2010.

Senate Bill 189 (S-3) also would require those who are listed in the sex offender registry to submit a palm print, which would be added to their record. It is not clear from the bill who

would assume the cost, though likely minimal, of obtaining these prints, particularly in regard to those in the registry who are not presently incarcerated. To this end, however, the State has obtained through Federal grants 50 palm print scanners and has distributed them to sheriff's offices. Another 10 scanners are also to be distributed.

Senate Bill 206 would have no fiscal impact on State or local government.

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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.