



**House  
Legislative  
Analysis  
Section**

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**SEX OFFENDER REGISTRATION  
REVISIONS: JUVENILES**

**House Bill 5163 (Substitute H-2)  
Sponsor: Rep. Bill McConico**

**House Bill 5891 (Substitute H-2)  
Sponsor: Rep. Larry Julian**

**Committee: Criminal Justice  
First Analysis (5-28-02)**

***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 (DPS) and accessible only for law enforcement purposes, the DSP also is required to compile certain information from that database for a data base 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 not placed on the public registry until after 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, nor who 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. If found responsible in juvenile court for a first- or second-degree CSC offense (which involves only sexual contact), the child must be required to be on both the police registry and the public registry 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.

***THE CONTENT OF THE BILLS:***

House Bills 5163 and 5891, which are nearly identical, would amend the Sex Offenders Registration Act (MCL 28.728) to allow a court to exempt certain juveniles from being placed on the public sex offenders registry (PSOR) for a CSC offense that currently requires registration, and to add to the list of offenses for which sex offender registration is required. The bills are tie-barred to each other and would take effect October 1, 2002.

House Bills 5163 and 5891 (5-28-02)

After the bills' effective date, a court would have discretion in determining whether an individual should be placed on the public registry if he or she were convicted of first- or second-degree criminal sexual conduct (CSC) with a person under 13 or third-degree CSC with a person between the ages of 13 and 16 and the individual was within two years of age of the victim. (The act defines "convicted" to mean: 1) having a judgment of conviction or a probation order entered in a criminal court, including a tribal or military court; 2) being assigned to youthful trainee status; and 3) having an order of disposition entered under the Probate Code that is open to the general public. Therefore, it would include juveniles tried as adults.) The court would have to place its determination on the abstract of conviction or on the order of disposition. The Department of State Police (DPS) could not place an individual on the public registry if the abstract of conviction or the order of disposition stated that the individual was exempt from registration.

In making a determination to exempt an individual under the bill's provisions, the court would have to consider all of the following:

The individual's age and level of maturity at the time the offense was committed and at the time of sentencing or disposition.

The individual's prior juvenile history.

The nature and severity of the offense.

The individual's likelihood to engage in further criminal acts.

Whether any aggravating factor, including any factor specified in the first-, second-, or third degree CSC statutes, Section 520b (1)(b) to (h), 520c(1)(b) to (l), or 520d(1)(b) to (d) of the Michigan Penal Code, applied to the violation.

Any other information considered relevant by the court.

However, the court could not exempt an individual from being placed on the public registry if the person had been previously convicted of or found responsible as a juvenile for a first-, second-, third, or fourth-degree CSC offense or assault with intent to commit a CSC.

In addition to the foregoing provisions, House Bill 5163 would also specify that if an individual had been convicted of a first- or second-degree CSC with a person under 13 years of age or third-degree CSC

with a person between the ages of 13 and 16 (and the person was within two years of the age of the victim) before the bills' effective dates, the individual could petition the court for an order exempting him or her from being listed on the public registry. The determination regarding exemption would have to be made by the court in the same manner and using the same criteria as previously listed. If the DSP were ordered to exempt an individual from registration under this provision, the DSP would have to promptly remove all information regarding the individual from the public registry as ordered by the court.

Both bills would add two new offenses to the list of offenses for which registration and subsequent reporting as a sex offender is required. A person would have to register if convicted of using a computer or the Internet to solicit (or attempt or conspire to do the same) another person to commit an offense that by its nature constituted a sexual offense against an individual less than 18 years of age or who was believed by the offender to have been less than 18 years of age. (Depending on the underlying crime, a violation of this provision would be specified as either a misdemeanor listed offense or a felony listed offense, meaning that the offender would have to register at least each January for 25 years or four times a year for life, respectively.)

The second offense that would be added to the list of "listed offenses" would be a violation of Section 5 of the Michigan Penal Code pertaining to obscenity. (Under Section 5 of the penal code, a person is guilty of obscenity when, knowing the content and character of the material, the person disseminates, or possesses with intent to disseminate, any obscene material. The offense is a misdemeanor. "Obscenity" is defined in the penal code as any material that meets all of the following criteria: 1) the average individual, applying contemporary community standards, would find the material, taken as a whole, appeals to the prurient interest; 2) the reasonable person would find the material, taken as whole, lacks serious literary, artistic, political, or scientific value); and 3) the material depicts or describes sexual conduct in a patently offensive way.)

Further, the bills would specify that a conviction for a violation of Section 145a of the Michigan Penal Code (enticing or soliciting a child under 16 years of age to commit an immoral act, sexual intercourse, or gross indecency) before June 1, 2002 is a misdemeanor listed offense and a conviction for an offense committed on or after that date would be a felony

listed offense. (Public Act 45 of 2002, which takes effect on June 1, 2002, increases the penalty for a violation of Section 145a from a misdemeanor to a felony.)

**BACKGROUND INFORMATION:**

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 data base and create a second data base 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 data base 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, the bills could result in additional administrative costs for the Department of State Police. In addition, House Bill 5163 would allow an individual previously convicted of the above mentioned offenses to petition the court for an order exempting him or her from being listed on the public registry; to the extent that this happened, the bill could result in an indeterminate increase in administrative costs for local courts. House Bill 5163 could also result in additional administrative costs for the Department of State Police, which would have to remove the information from the registry under such a court order. (5-23-02)

**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, that 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. Since there is little danger that a juvenile sex offender will reoffend, being placed on the public

registry serves only to stigmatize the person for a lifetime.

The judicial discretion that would be given by the bills would only apply to juveniles whether convicted as adults, adjudicated under provisions of the Probate Code, or placed on youthful trainee status for crimes committed after the bills’ effective dates, and then only for a first- or second-degree criminal sexual conduct (CSC) offense involving a victim under 13 years of age, or a third-degree CSC offense involving a victim between 13 and 16 years of age, and only if the offender were within two years of age of the victim. This is, therefore, a very narrow expansion of the exemption that currently keeps all juveniles found responsible for listed sexual offenses (except for first- and second-degree CSC) off the public sex offenders registry. Those juveniles who would fit within this narrow expansion would still have to register with the appropriate law enforcement agency, court, or state government agency for at least 25 years or life, whichever applied. In this way, the bills would spare the most youthful of offenders the additional hardship of having their names appear on the public registry long after they matured – yet, at the same time, allowing the local law enforcers to keep a watchful eye and protect the public.

**For:**

The bills would add two new crimes to the list of offenses for which a person would have to register for the sex offenders registry. One crime being added is that of using a computer or the Internet to entice a child under 18 years of age to engage in sexual intercourse or engage in an immoral act. This is important as more and pedophiles are using Internet chat rooms to lure underage girls and boys into face-to-face meetings for the purpose of having sex. Unfortunately, some also kill their prey, as recently happened to a 13-year-old girl who met a man in an Internet chat room and arranged to meet him at a nearby mall. The police were able to quickly apprehend the man who killed her by examining her computer. By specifying that this provision also pertains to enticing an individual believed to be less than 18, the bills would allow for “sting” operations where police officers pose as young girls or boys on the Internet and arrange for meetings.

In addition, the bills would allow for persons convicted of disseminating obscene materials, such as pornographic photos and photos of children engaging

in sex acts. Though viewing pornographic materials does not automatically make one a rapist, most serial rapists and pedophiles have reported having an addiction to porn. Again, the point of the Sex Offenders Registration Act is not to stigmatize people, but to give police an important enforcement tool and to provide the public with information they can use to protect themselves from potential harm.

**For:**

House Bill 5163 would allow a person to petition a court to have his or her name removed from the public registry if he or she had been previously convicted of an offense that fits the two bills' new exemption for juveniles to being on the public registry. He or she would still be responsible to comply with the reporting requirements for the private, police registry.

**Against:**

According to testimony offered during the House Criminal Justice committee hearing, it would appear that the proponents of change to the Sex Offenders Registration Act were not requesting such a narrow exemption to placement on the public registry, but for judicial discretion for all juveniles (even those tried as adults) convicted of any of the listed offenses from being placed on the police registry. Under the bills, a 12- to 14-year-old who had consensual sex with a 12-year-old, or the 10-year-old playing doctor with another 10-year-old as mentioned above, may escape being placed on the public sex offender registry, but both would still have to register and report quarterly to verify their addresses for the rest of their lives! And, under the bills, a 14-year-old engaging in heavy petting with another 14-year-old would still be placed on the public registry, but could be exempt from the public registry if they had had intercourse instead.

For these and the following reasons, courts should be given the discretion to require – or not require – registration for the sex offenders registry (the police data base), as well as discretion as to placement on the public sex offenders registry, for all juveniles convicted of a listed offense:

-The purpose and intent of sex offender registry laws were to identify serial sex offenders and pedophiles to police and to the public. Polluting the list with people who do not pose a danger to society waters down the effectiveness of the list, unnecessarily exposes persons on the list to vigilante actions and harassment by neighbors, increases police costs associated with maintaining the list, and results in emotional hardship to persons who have been

rehabilitated but still must report yearly or quarterly, or more often if they move or go for an extended vacation, for 25 years to life.

-There is no minimum age requirement for mandatory registration. At least one eight-year-old in Michigan has been required to register as a sex offender and adhere to the act's reporting requirements.

-When a sexual offense involves incest, families must weigh reporting the incident with the emotional cost of having one of their children be placed on the sex offender registry for life.

-The emphasis of the law for juveniles and those prosecuted under the Holmes Youthful Trainee Act is rehabilitation. However, juveniles tried as adults, those on youthful trainee status, or juveniles found responsible under the Probate Code for a first- or second-degree CSC are automatically required to register for the sex offender registry. Such mandatory registration works against the mission of rehabilitation. Treatment for sexual disorders or inappropriate sexual behaviors for youth are extremely successful. Research shows approximately 92 percent of youth convicted or found responsible for sex offenses never reoffend. Yet placement on the registry, both the private police registry and the public one, subjects them to the reporting requirements for a significant part, if not all of, their lives.

-Under the Holmes Youthful Trainee Act, individuals between the ages of 17 and 21 may have their records expunged after completing all elements of their punishment and training. However, under a 2001 Michigan Court of Appeals ruling, these individuals must still be listed on the sex offender registry and on the public registry as well. In effect, they are placed on the private and public sex offender list even though they officially have not been convicted of a crime! Those whose records have been expunged should not have to be on the sex offender registry.

-The current mandatory reporting requirements do not make allowances for reform during or after a person's term of imprisonment, or later in life. Whether for only juveniles, or for both juveniles and adults, the law should be amended to include some type of individualized risk assessment either before an offender's name is required to be registered, or at least before he or she is included on the public registry. The cost of the assessment could be charged to the individual, and the law could be written to provide appropriate safeguards. There is precedent in law for risk assessment, as under the Mental Health

Code, a person committed to psychiatric care against his or her will must be released from that care when mental health professionals deem that he or she no longer poses a threat to others or self. If an individualized risk assessment shows little to no risk of reoffending, the court should have discretion to not order registration, or at the very least, to exempt the person from being on the public registry.

-Mandatory registration is lengthening the time between the date of offense and the date of adjudication for juvenile cases. Apparently, this results from efforts by parents and attorneys to keep a juvenile off the registry. These delays unfortunately also delay the beginning of appropriate treatment for those who need it. This is important for juveniles, as treatment rates appear to be more successful in the prepuberty years.

-Reportedly, in the case of juveniles being adjudicated under the Probate Code, plea agreements can be prolonged as parents and attorneys try to plead the child's offense down to one that doesn't require listing on the public registry. Giving the court discretion over reporting requirements for all juvenile offenses – both for the police registry and the public registry – could result in more pleas to the original charges.

***Response:***

It should be noted that prosecutors have discretion whether or not to pursue charges, so in cases involving two juveniles who are both under the age of consent, quite possibly no charge would be brought, depending upon circumstances.

***POSITIONS:***

The Prosecuting Attorneys Association of Michigan supports the bills. (5-24-02)

The American Civil Liberties Union supports the bills. (5-24-02)

The Michigan Federation of Private Child and Family Agencies supports the bills. (5-24-02)

The Department of State Police is neutral on the bills. (5-21-02)

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■ 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.