



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 709 (as enrolled)
Senate Bills 717 and 718 (as enrolled)
Senate Bill 1122 (as enrolled)
House Bills 5421 and 5422 (as enrolled)
House Bills 5531 and 5532 (as enrolled)
Sponsor: Senator Tony Stamas (S.B. 709)
Senator Laura M. Toy (S.B. 717)
Senator Jud Gilbert, II (S.B. 718)
Senator Alan Sanborn (S.B. 1122)
Representative Phil Pavlov (H.B. 5421 & 5422)
Representative David Law (H.B. 5531 & 5532)

Senate Committee: Judiciary
House Committee: Judiciary

Date Completed: 11-13-06

RATIONALE

Under the Michigan Penal Code, criminal sexual conduct (CSC) in the first-degree is punishable by imprisonment for life or any term of years. Until recently, however, there was no provision in Michigan law for a minimum sentence for first-degree CSC committed against young children or mandatory life imprisonment for repeat offenders. There also was no direct method of tracking first- and second-degree CSC offenders when they were released from prison or any mechanism to supervise them after their parole period or maximum sentence had expired. The abduction and murder of nine-year-old Jessica Lunsford in Florida in 2005 has spurred nationwide efforts to increase penalties and postincarceration supervision of sex offenders who victimize children. In order to protect children better, it was suggested that Michigan adopt a "Jessica's Law" imposing a minimum prison term on adult offenders who commit CSC violations against children under 13 years of age; requiring that repeat offenders against children be sentenced to life without parole; creating a system of electronic monitoring to be used for certain CSC offenders; and allowing parole to be granted only for life for certain CSC offenders. (Please see

PUBLIC ACT 165 of 2006
PUBLIC ACTS 166 and 167 of 2006
PUBLIC ACT 168 of 2006
PUBLIC ACTS 169 and 170 of 2006
PUBLIC ACTS 171 and 172 of 2006

BACKGROUND for more information on the Jessica Lunsford case.)

CONTENT

The bills amended the Michigan Penal Code, the Code of Criminal Procedure, and the Corrections Code to do all of the following:

- **Establish a mandatory minimum penalty of 25 years' imprisonment for first-degree CSC involving a victim under 13 years of age and an offender who is 17 or older.**
- **Require a sentence of imprisonment for life, without the possibility of parole, for first-degree CSC described above, if the offender has a previous CSC conviction involving a victim under 13.**
- **Allow a court to order consecutive sentences for first-degree CSC and any other crime arising from the same transaction.**
- **Allow parole only for life for a prisoner sentenced to at least 25 years' imprisonment for first-degree CSC involving a victim under 13 and an offender who is at least 17.**

- **Require the court to sentence a first-degree CSC offender to lifetime electronic monitoring, in addition to any other sentence.**
- **Require the court impose a sentence of lifetime electronic monitoring, in addition to any other sentence, for second-degree CSC involving a victim under 13 and an offender who is at least 17.**
- **Establish the lifetime electronic monitoring program in the Department of Corrections (DOC) and prescribe a felony penalty for violations of that program.**
- **Require an individual sentenced to lifetime electronic monitoring to wear or carry a monitoring device and reimburse the DOC or its agent for the cost of monitoring.**
- **Allow the parole board to require electronic monitoring during the term of parole for a person convicted of first- or second-degree CSC, other than someone for whom lifetime electronic monitoring is required.**
- **Exclude from the sentencing guidelines classification for first-degree CSC those subject to a 25-year mandatory minimum or life imprisonment without parole, and include a lifetime electronic monitoring violation in the guidelines.**

Senate Bill 709 and House Bills 5421 and 5531 amended the Michigan Penal Code; Senate Bill 717 amended the Code of Criminal Procedure; and Senate Bills 718 and 1122 and House Bills 5422 and 5532 amended the Corrections Code.

The bills were tie-barred and took effect on August 28, 2006.

Senate Bill 709 and House Bill 5421

Under the Penal Code, first-degree CSC is a felony punishable by imprisonment for life or any term of years. Senate Bill 709 and House Bill 5421 created exceptions to this sentence.

Under House Bill 5421, first-degree CSC committed by an individual who is at least 17 years old against an individual under 13 is punishable by imprisonment for life or any term of years, but not less than 25 years.

Under both bills, the penalty is imprisonment for life without the possibility of parole for a violation committed by an individual who is at least 17 against an individual under 13, if the offender previously was convicted of first-, second-, third-, or fourth-degree CSC, or assault with intent to commit CSC, against a person under 13.

In addition, House Bill 5421 requires the court to sentence a first-degree CSC offender, other than one subject to imprisonment for life without parole, to lifetime electronic monitoring, in addition to any other penalty. The bill also allows the court to order a term of imprisonment imposed for first-degree CSC to be served consecutively to any term of imprisonment for any other criminal offense arising from the same transaction.

(Under the Penal Code, a person is guilty of first-degree CSC if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

- The other person is under 13 years of age.
- The other person is at least 13, but less than 16, and any of the following apply: the offender is a member of the same household as the victim; the offender is related to the victim by blood or affinity to the fourth degree; the offender is in a position of authority over the victim and used that authority to coerce the victim to submit; or the offender is a teacher, substitute teacher, or administrator of the public or nonpublic school in which the victim is enrolled.
- Sexual penetration occurs under circumstances involving the commission of any other felony.
- The offender is aided or abetted by one or more other people and either of the following circumstances exists: the offender knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless; or the offender uses force or coercion to accomplish the sexual penetration.
- The offender is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon.

- The offender causes personal injury to the victim and force or coercion is used to accomplish sexual penetration.
- The offender causes personal injury to the victim, and knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- The victim is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless and the offender is related to the victim by blood or affinity to the fourth degree; or the offender is in a position of authority over the victim and used that authority to coerce the victim to submit.)

Senate Bill 717

Under the sentencing guidelines, first-degree CSC is a Class A felony against a person with a statutory maximum sentence of imprisonment for life. Under the bill, that applies except in the case of a violation punishable by life imprisonment without possibility of parole under Senate Bill 709 and House Bill 5421 and a violation punishable by at least 25 years' imprisonment under House Bill 5421. (Offenses for which the penalty is life in prison without possibility of parole, or that have a mandatory minimum penalty, are not included in the sentencing guidelines.)

In addition, Senate Bill 717 added a sentencing guidelines classification for an electronic monitoring device violation of House Bill 5531. That offense is a Class G public safety felony with a statutory maximum sentence of two years' imprisonment.

Senate Bill 718

Under the Corrections Code, a prisoner sentenced to life imprisonment is subject to the jurisdiction of the parole board after a certain number of years. Generally, a prisoner is subject to the board's jurisdiction after he or she has served 10 calendar years of a life sentence, in the case of a prisoner sentenced for a crime committed before October 1, 1992, or 15 calendar years of the sentence, in the case of a prisoner sentenced for a crime committed on or after that date. (Longer periods apply to prisoners sentenced for manufacturing, creating, delivering, or possessing with intent to deliver large amounts of any

mixture containing a Schedule 1 or 2 narcotic or cocaine.)

The provision for parole board jurisdiction, however, previously excluded a prisoner sentenced for life for any of the following (each of which is punishable by life imprisonment without parole):

- First-degree murder (MCL 750.316).
- Knowingly or recklessly adulterating, misbranding, removing, or substituting a drug or medicine, or being involved with the sale of such a drug or medicine, if the violation results in death (MCL 750.16(5)).
- Knowingly or recklessly mixing, coloring, staining, or powdering a drug or medicine with an ingredient or material, injuriously affecting the quality or potency of the drug or medicine, or being involved with the sale of such a drug or medicine, if the violation results in death (MCL 750.18(7)).
- Violating Chapter 33 (Explosives, Bombs, and Harmful Devices) of the Michigan Penal Code (MCL 750.200-750.212a), if the violation results in death.
- Knowingly or recklessly adulterating, misbranding, removing, or substituting a drug or device knowing or intending that it be used, or being involved with the sale of such a drug or device, with the intent to kill or cause serious impairment to two or more individuals, if the violation results in death (MCL 333.17764(7)).

In addition, parole could not be granted in the case of a prisoner who was otherwise prohibited by law from parole consideration. In such a case, the interview procedure in Section 44 of the Corrections Code (described below) had to be followed.

The bill deleted language excluding the offenders described above from the provision placing prisoners sentenced for life under the parole board's jurisdiction. The bill, instead, states that a prisoner sentenced to imprisonment for life for any of those offenses, for first-degree CSC punishable by life imprisonment without parole (as provided under House Bill 5421), or for any other violation for which parole eligibility is expressly denied under State law, is not eligible for parole and is subject to Section 44.

(Under Section 44, subject to the constitutional authority of the Governor to grant reprieves, commutations, and pardons, one member of the parole board must interview a prisoner serving a sentence for first-degree murder, or any sentence of life imprisonment without parole, after 10 calendar years and subsequently as determined appropriate by the parole board. This provision applies until the prisoner is granted a reprieve, commutation, or pardon by the Governor, or is deceased. Section 44 also specifies a schedule for the parole board to review a prisoner's case upon its own initiation of, or upon receiving any application for, a reprieve, commutation, or pardon.)

Senate Bill 1122

The bill specifies that, if a parolee convicted of first- or second-degree CSC, other than a parolee subject to lifetime electronic monitoring under Section 85 of the Code (added by House Bill 5532), is placed on parole, the parole board may require that the parolee be subject to electronic monitoring.

The electronic monitoring must be conducted in the same manner, and be subject to the same requirements, as described in Section 85 and in Section 520n of the Michigan Penal Code (added by House Bill 5531), except as follows:

- The electronic monitoring may continue only for the duration of the term of parole.
- A violation by the parolee of any of the requirements specified in Section 520n is a violation of a condition of parole, not a felony violation.

House Bill 5422

Under the bill, parole may be granted only for life for a prisoner sentenced to a 25-year mandatory minimum sentence for first-degree CSC in which the offender is at least 17 and the victim is under 13 (the sentence prescribed by House Bill 5421).

House Bill 5531

Under the Penal Code, second-degree CSC (which involves sexual contact) is a felony punishable by up to 15 years' imprisonment. Under the bill, in addition to that penalty,

the court must sentence the defendant to lifetime electronic monitoring if the victim is under 13 and the offender is at least 17.

The bill also requires that a person convicted of first- or second-degree CSC be sentenced to lifetime electronic monitoring if the victim is under 13 and the offender is at least 17.

A person sentenced to lifetime electronic monitoring who does any of the following is guilty of a felony punishable by up to two years' imprisonment, a maximum fine of \$2,000, or both:

- Intentionally removes, defaces, alters, destroys, or fails to maintain the electronic monitoring device in working order.
- Fails to notify the DOC that the device is damaged.
- Fails to reimburse the DOC or its agent for the cost of the monitoring.

The bill specifies that this lifetime electronic monitoring provision does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law committed by that individual while violating that provision. A term of imprisonment imposed for an electronic monitoring violation described above may run consecutively to any term of imprisonment imposed for another violation arising from the same transaction.

House Bill 5532

The bill established the lifetime electronic monitoring program within the DOC. The program must implement a system of monitoring individuals released from parole, prison, or both parole and prison, who are sentenced by the court to lifetime electronic monitoring. The program must accomplish both of the following:

- By electronic means, track the movement and location of each individual from the time he or she is released on parole or from prison until the time of his or her death.
- Develop methods by which the individual's movement and location may be determined, both in real time and recorded, and recorded information retrieved upon request by the court or a law enforcement agency.

An individual who is sentenced to lifetime electronic monitoring must wear or otherwise carry an electronic monitoring device as determined by the DOC under the program, in the manner prescribed by that program. The individual also must reimburse the DOC or its agent for the actual cost of electronically monitoring him or her.

The DOC Director may promulgate rules providing for the creation and operation of the program.

MCL 750.520b (S.B. 709)
777.16y (S.B. 717)
791.234 (S.B. 718)
791.236 (S.B. 1122)
750.520b (H.B. 5421)
791.242 (H.B. 5422)
750.520a et al. (H.B. 5531)
791.204 et al. (H.B. 5532)

BACKGROUND

According to widespread news media reports, nine-year-old Jessica Lunsford was kidnapped from her bedroom in February 2005. Her body was found more than three weeks later, buried behind a home across the street from where Jessica lived with her father and grandparents. There was evidence that she had been sexually assaulted.

John Evander Couey, a convicted sex offender who had been staying at the house where Jessica's body was discovered, has been charged in the case. Couey apparently confessed to investigating law enforcement officers that he had abducted and killed Jessica and buried her body in the yard of his half-sister's house. A Florida judge ruled the confession inadmissible as evidence in court, however, because Couey had asked to consult a lawyer but was not given the opportunity to do so. In July 2006, the presiding judge in the case ruled that an unbiased jury could not be found in the judicial circuit where the crime occurred. In September, Couey's trial was moved to Miami-Dade County and is expected to begin in February 2007.

Soon after Jessica Lunsford's kidnapping and murder, Florida lawmakers passed the Jessica Lunsford Act, which was signed into law in May 2005. Under the Act, an offender aged 18 or older who commits "lewd and

lascivious molestation" against a person under the age of 12 is subject to a penalty of either life imprisonment or imprisonment for 25 years to life plus probation or community control for the remainder of the offender's life. The probation or community control must include a condition that the offender be electronically monitored for the rest of his or her life. (Under the Florida law, a person commits lewd and lascivious molestation if he or she intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person under 16 years of age, or forces or entices a person under 16 to touch the perpetrator in that manner.)

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 bills will safeguard children by enacting appropriate penalties for predators against them. While the maximum penalty for first-degree CSC under the Penal Code is life in prison, the Code previously contained no minimum sentence, even for the rape of a young child by an adult, and no enhanced penalty for a repeat offender. By requiring a minimum sentence of 25 years' imprisonment for first-degree CSC committed by a person who is at least 17 against a child under the age of 13, allowing courts to order consecutive sentencing for first-degree CSC and other crimes arising from the same criminal transaction, and enacting a mandatory sentence of life in prison without parole for an adult who commits CSC against a child under 13 after a prior CSC conviction, the bills establish an appropriately harsh penalty for those egregious crimes. The bills also send a clear message to individuals who would sexually prey on children that they will be severely punished in Michigan.

In addition, while parolees are supervised in the community and must comply with certain conditions while on parole, there previously was no direct tracking of first-degree CSC offenders who were on parole and no supervision of them after their period of parole or maximum sentence of imprisonment was completed. The bills provide for the necessary tracking and

supervision of sex offenders by providing that a person sentenced to the 25-year mandatory minimum for first-degree CSC against a child under 13 may be paroled only for life; requiring the court to sentence first-degree CSC offenders (other than those sentenced to life without parole) and second-degree CSC offenders whose victim is under 13 to lifetime electronic monitoring, in addition to any other penalty; and allowing the parole board to require electronic monitoring for other first- or second-degree CSC offenders during their parole period. These measures will help to keep children safe because the sex offenders will be under the watchful eye of authorities even after they have served their maximum prison sentence or parole.

Response: The increased penalties are unnecessary. The maximum sentence for first-degree CSC already was imprisonment for life, and a child rapist with a prior CSC conviction likely would have received a life sentence. Prisoners serving life sentences in Michigan are almost never granted parole, so the without-parole aspect of the new mandatory sentence may be superfluous. As for those who receive a term of imprisonment less than life, according to a representative of the Criminal Defense Attorneys of Michigan, regardless of the minimum sentence imposed, sex offenders serve significantly longer terms because the DOC paroles only a small percentage of CSC inmates each year. Michigan's indeterminate sentencing system, using statutory sentencing guidelines, and the life-maximum sentence for first-degree CSC provided sufficient public protection without the bills' addition of a mandatory minimum sentence for a first conviction and mandatory life for a repeat offense.

Supporting Argument

The Jessica Lunsford kidnapping, rape, and murder in Florida highlighted a nationwide need for a crackdown on child predators. Florida quickly passed the Jessica Lunsford Act, enhancing penalties for child molesters and providing for electronic monitoring of them after they are released from prison. Michigan needed a version of "Jessica's Law" in order to protect children from predators. Advocates of these measures, including Jessica's father, have been promoting similar laws in other states, including Michigan, and at the Federal level. Indeed, Mark Lunsford testified in favor of the bills before the Senate Judiciary Committee,

stating that the accused, John Couey, had been arrested 24 times, including twice for child molestation, but had served less than 10 years in prison. Lunsford also told the Committee that, at the time of Jessica's murder, Couey was an absconder from probation in Florida for failure to register as a sex offender. Apparently, Couey was subject to electronic monitoring for part of his probationary period and stayed out of trouble during that time but, when the device was removed, he moved and failed to register. By requiring an offender such as Couey to submit to electronic monitoring, the bills can prevent a situation in Michigan similar to the Jessica Lunsford incident because law enforcement officials will be able to track the location and movement of predators.

Response: Unlike Florida, Michigan was not in need of a "Jessica's Law". According to a *Detroit Free Press* editorial, sex offenders in Michigan serve an average of 21.6 years in prison ("Court Discretion: Leave tough sentencing of molesters to judges", 3-16-06). Although Florida adopted a 25-year mandatory minimum, that state requires offenders to serve only 85% of their sentence, or 21.3 years in this case.

Opposing Argument

Michigan imposes mandatory life without parole for first-degree murder and a few other offenses, all of which involve the taking of a life. Such a sentence commonly is believed to be the appropriate punishment for those fatal actions. With child sexual abuse, however, at least part of the reason for harsh punishment is prevention—locking people up to avoid any future occurrence of predatory activity. This rationale for extending life-without-parole to those who molest children is troubling for a couple of reasons.

First, according to testimony before the Senate Judiciary Committee from the Citizens Alliance on Prisons and Public Spending (CAPPS), recidivism rates for sex offenders, including those who victimize children, actually are quite low. The CAPPS executive director cited a 2003 study by the U.S. Justice Department showing that, among child molesters with victims under 16, only 5.1% were rearrested for any new sex crime within three years of their release from prison and even fewer were rearrested for sex crimes involving children. Also, a

representative of the Criminal Defense Attorneys of Michigan cited the DOC's own statistical report for 2003, which shows that 513 CSC offenders received parole in 1999 and only 14 had returned to prison in the intervening years, a rate of 2.7%, compared with 14.2% for all parolees. Of those 14 new offenders, only eight returned to prison for CSC offenses, a 1.6% rate. Thus, there may be good reason to believe that many of the people who will be incarcerated under the bills for at least 25 years, or for life without parole, actually would not pose a continuing threat to children.

Second, mandatory life sentences preclude consideration of any future advances in research as to why people sexually abuse children and what treatments may become effective. The bills tie the hands of the criminal justice system by preventing the release of people who possibly could be treated using therapies that have yet to be developed.

In addition, Michigan has a broadly applied sex offender registry requirement, allowing law enforcement to keep tabs on sex offenders in the community.

Response: Requiring sex offenders to be registered does not necessarily protect children. According to the "Sex Offender Registry Background" on the Department of State Police website, as of November 3, 2006, almost 39,945 offenders were in Michigan's registry, but it has a compliance rate of only 64%. The offenders not in compliance failed either to change their address or to verify it, as required by the Sex Offenders Registration Act. Obviously, registration alone does not provide adequate oversight of sex offenders in the community. The bills will protect children better by requiring the electronic monitoring of sex offenders who have victimized young children.

Opposing Argument

By imposing a 25-year mandatory minimum sentence for a first-time, first-degree CSC offender who victimizes a child under 13, and a mandatory life-without-parole sentence for such an offender who has a prior CSC conviction, the bills unnecessarily limit judicial discretion. A life-maximum sentence already was available as an option to judges sentencing first-degree CSC violators, and the ages of the offender and the victim and prior convictions, as well as

other factors, are considered when a sentence is determined. If offenders were not receiving harsh-enough sentences, legislation could have amended the sentencing guidelines to give greater weight to certain factors, rather than restricting judicial discretion by mandating minimum sentences. Moreover, by preventing sentences from being shaped to fit the offense and the offender, statutory mandatory minimum sentences cause some people to serve more time than is necessary to protect Michigan's citizens.

Opposing Argument

The bills' mandatory minimum and life-without-parole sentences may have significant consequences for prison growth and public spending. Future generations of Michigan taxpayers will be saddled with the high costs of housing and providing medical care for prisoners late into their lives. As the *Free Press* editorial cited above pointed out, "One-size-fits-all sentencing serves neither justice nor the taxpayer. That's why Michigan legislators sensibly repealed the state's drug lifer law in 1998."

Response: The cost of imprisoning dangerous repeat offenders should not be a consideration when the goal is to provide for the safety and security of children.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bills 709 and 718 & House Bills 5421 and 5422

The bills will have an indeterminate fiscal impact on State government. There are no data to indicate how many offenders will be convicted of first-degree criminal sexual conduct involving the factors described in the bills. Table 1 shows the number of dispositions in 2003 for offenders convicted of first-degree CSC involving those factors. Table 2 shows the number of offenders with active sentences convicted of first-degree CSC involving the same factors. There are no data regarding the number of offenders with active sentences convicted of first-degree CSC who had previously been convicted of first-, second-, third-, or fourth-degree CSC, or assault with intent to commit CSC, against a person under 13. To the extent that fewer offenders are paroled or serve less than a life term under Senate Bill 709 and House Bill 5421, and to the extent

that offenders serve increased incarceration time prior to parole under House Bill 5421, the State will incur increased incarceration costs at an average annual cost of \$31,000. Depending on the age at incarceration, and assuming a life expectancy of 78 years, the total cost of incarceration for each offender sentenced to life without parole under House Bill 5421 and Senate Bill 709 could reach \$1.86 million. The total cost of lifetime parole for each paroled offender convicted of CSC involving the factors described in House Bill 5421 could reach \$70,000. Previously, if paroled, an offender convicted of first-degree CSC served a parole term of at least two years, unless the time remaining to be served on the maximum sentence was less than two years.

The Department of Corrections will incur the cost of implementing the lifetime electronic monitoring program, the cost of the global positioning device or other device, and personnel costs, which are described below.

Senate Bills 717 and 1122 & House Bills 5531 and 5532

The bills will have an indeterminate fiscal impact on State and local government. The Department of Corrections will incur the cost of implementing the electronic monitoring program, the cost of the global positioning device or other device, and personnel costs. The device and personnel costs will be approximately \$19 per diem, assuming a caseload of 20 parolees per officer and more than 50 participants. The cost of one parole officer, including salary, insurance, retirement, operating, and information technology costs is approximately \$80,000 per year. Not including the cost of implementing the monitoring program, these cost estimates suggest that in order for daily operations to be cost neutral, each offender in the monitoring program will have to reimburse the Department of Corrections approximately \$7,000 annually.

In the case of an offender convicted of second-degree CSC and sentenced to a term of probation, it is unclear whether the lifetime electronic monitoring sentence will run concurrently with the term of probation, or consecutively to the term of probation. The minimum probation term for an offender convicted of second-degree CSC is five years. If the lifetime electronic monitoring sentence runs after imprisonment and

probation sentences, the DOC will not incur the cost of operating the monitoring program until the first offender convicted after the effective date of the bills is released from imprisonment or probation, or until the first time the parole board requires electronic monitoring for an offender's parole term. The sentencing guidelines minimum sentence range for second-degree CSC is 0-11 months to 62-114 months. The sentencing guidelines minimum sentence range for first-degree CSC is 21-35 months to 270 months-life. House Bill 5421 includes a minimum sentence of 25 years for first-degree CSC involving the factors described in House Bill 5531. In the future, the cost of the program may change due to both inflation and cost decreases via diffusion of the electronic monitoring technology.

It is unclear how much offenders will be required to reimburse the DOC for participation in the electronic monitoring program. Offenders on the existing electronic monitoring system, which does not use a global positioning system (GPS), are required to reimburse the DOC at a rate determined by the Deputy Director of Field Operations Administration. Offenders are required to pay a maximum of 50% of their income and unemployed offenders must perform community service as an alternative to payment. In 2004, the reimbursement charge was \$4.53 per diem, \$1,653.45 annually, and an average of 2,284 offenders were in the program during the course of the year. The DOC collected \$2,485,892 that year and spent \$1,290,180 above its reimbursements. If each offender had reimbursed the DOC in full, the collections would have nearly matched the cost of the program. To the extent that offenders do not violate the requirement to reimburse the DOC for the cost of the electronic monitoring, the DOC will be reimbursed for the costs of operating the program.

There are no data to indicate how many offenders will be convicted of violating the electronic monitoring provisions of House Bill 5531. For felony convictions, local governments will incur the costs of incarceration in local facilities, which vary by county. The State will incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$31,000. Additional penal fine revenue will benefit public libraries. To

the extent that electronic monitoring as outlined in House Bill 5532 results in

increased violations of parole conditions, the DOC will incur increased corrections costs.

Table 1

| Dispositions – 2004* | Convicted | Convicted of Attempting |
|---|-----------|-------------------------|
| Total, 1st Degree Criminal Sexual Conduct | 488 | 24 |
| Victim under 13 | 260 | 14 |
| Multiple Variables (could include victim under 13) | 70 | 2 |
| Total, 2 nd Degree Criminal Sexual Conduct | 822 | 115 |
| Victim under 13 | 534 | 63 |
| Multiple Variables (could include victim under 13) | 138 | 22 |

Table 2

| Active Sentence as of August 2005* | Prison | Parole |
|---|--------|--------|
| Total, 1st Degree Criminal Sexual Conduct | 6,508 | 297 |
| Victim under 13 | 2,489 | 111 |
| Multiple Variables (could include victim under 13) | 2,484 | 106 |
| Total, 2 nd Degree Criminal Sexual Conduct | 4,315 | 443 |
| Victim under 13 | 2,706 | 253 |
| Multiple Variables (could include victim under 13) | 904 | 97 |

*may include offenders younger than 17 years old

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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.