

SEX OFFENDER REGISTRATION REVISIONS

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Senate Bill 188 (Substitute S-4)
Sponsor: Sen. Rick Jones

Senate Bill 189 (Substitute S-4)
Senate Bill 206 as introduced
Sponsor: Sen. Phil Pavlov
House Committee: Judiciary
Senate Committee: Judiciary

Complete to 3-17-11

A SUMMARY OF SENATE BILLS 188, 189, AND 206 AS PASSED BY THE SENATE 3-10-11

Together, Senate Bills 188 and 189 would revise the Sex Offenders Registration Act to conform to mandates under the federal Sex Offenders Registration and Notification Act, part of the Adam Walsh Act. Senate Bill 189 would also repeal two obsolete sections of the act. Senate Bill 206 would incorporate in the sentencing guidelines a change in the maximum sentence for failing to update registration information or report as scheduled.

The federal Adam Walsh Child Protection and Safety Act (AWA) was enacted in 2006. One provision of the AWA created the Sex Offender Registration and Notification Act (SORNA), which mandates a national sex offender registry and establishes a set of minimum standards for sex offender registration and notification with which each state must comply. Failure to comply with SORNA will result in a state losing 10 percent of Byrne Justice Grant funding. Numerous provisions of the federal act (SORNA) are different from those in the state Sex Offenders Registration Act; therefore, legislation is needed to revise the statute to conform to the requirements of SORNA.

Currently, a person who is convicted or found responsible for certain listed offenses is required to register with law enforcement and is placed on the sex offenders registry for a minimum of 25 years; serious offenses require registration for life. Recent amendments allowed for certain juvenile offenders to petition to shorten the time they are required to register. The Michigan State Police (MSP) maintains one database for law enforcement purposes and another less comprehensive one that is accessible by the public. Individuals who fail to comply with the registration and reporting requirements of the act are subject to criminal penalties.

Senate Bills 188, 189, and 206

With the exception of one provision in Senate Bill 188, the legislation would take effect July 1, 2011. (That provision would require the Michigan State Police to mail a notice to each individual registered under the current act who is not currently incarcerated in a prison explaining the individual's duties under the act as amended and would take effect

immediately). Senate Bills 188 and 189 are tie-barred to each other and Senate Bill 206 is tie-barred to Senate Bill 189.

Significant changes to the Sex Offenders Registration Act (SORA) by Senate Bills 188 and 189 include the following:

Offenses requiring registration

- Redefine "listed offense" to instead mean a Tier I, Tier II, or Tier III offense, with Tier I being the least serious, and define those terms.
- Require a registration period of 15 years for a Tier I offense, 25 years for a Tier II offense, and life for a Tier III offense.
- Require Tier I offenders to report annually, Tier II offenders to report twice a year, and Tier III offenders to report quarterly.
- Exclude from certain Tier II offenses consensual incidents involving a minor victim who was at least 13 years of age but less than 16 if the actor was not more than 4 years older, and also certain offenses involving a minor victim who was 16 or 17 years of age and who was not under the custodial authority of the actor at the time of the violation. Define "custodial authority".
- Exclude from certain Tier III offenses consensual incidents involving a minor victim who was at least 13 years of age but less than 16 if the actor was not more than 4 years older.
- Define "minor" as a victim of a listed offense who was less than 18 years at the time of the offense.

Registration requirements

- Extend the jurisdictions in which registration is required to include federally recognized Indian tribes.
- Redefine "residence" to include the homeless to make it easier for homeless or individuals without a permanent residence to comply with reporting requirements.
- Extend the registration and reporting requirements to an individual who was previously convicted of a listed offense but who, at that time, was not required to register under the SORA but who is convicted of any other felony on or after July 1, 2011.
- Shorten the time period required for registering or reporting status changes for various scenarios from 14 days or 10 days to "immediately" and define that term to mean 3 business days.
- Require notification of at least 21 days before changing a domicile or residence to another country.
- Specify that the reporting requirements would not apply to enrollment in an online or correspondence program at an institution of higher learning.
- Require a photograph submitted for the SORA to resemble the offender in appearance; if not, require the individual to obtain a current photograph.
- Increase the original registration fee from \$35 to \$50 and allocate \$30 (instead of \$20) to the MSP for deposit in the Sex Offenders Registration Fund and \$20

(instead of \$10) to be retained by the court, local law enforcement agency, sheriff's department or department post. The fee could be waived for 90 days for an individual who was indigent.

- Require additional information and palm prints to be provided when a person registers.
- If an individual did not register or update registration information when required, require the law enforcement agency responsible for registering the individual to, among other things, determine whether the individual has absconded or is otherwise unlocatable, notify the MSP, revise the information in the registry to reflect that the person has absconded, seek an arrest warrant, and enter the individual into the National Crime Information Center Wanted Person File if appropriate.
- Require MSP, when notified of a failure to register or report, to notify the U.S. Marshall's Service and update the National Sex Offender Registry that the individual absconded or is unlocatable.

Law enforcement and public databases

- Require all the revised registration information to be included in the law enforcement database.
- Specify additional information that would have to be included in the public database and specify information that could not be on the public database; for instance, the victim's name or offender's Social Security number.
- Exclude from inclusion on the public database certain registered juvenile offenders, an individual registered solely for being the subject of an order of disposition or other adjudication in a juvenile matter in another state or country, or an individual registered solely because he or she had been convicted of a single Tier I offense.
- Delete a provision under which a person who committed criminal sexual conduct in the first- or third-degree as a juvenile is kept off the public database until he or she turns 18.
- Index the compilation of individuals on the public database alphabetically by village, city, township, and county and geographically as appropriate in addition to zip code.
- If MSP determines that a person completes his or her registration period or is no longer required to register under the act, require MSP to remove the person's registration information from both databases within 7 days of the determination.

Petition to discontinue registration

- Allow an individual to petition, and a court to grant the petition, to discontinue registration under the act if certain criteria have been met, such as completing an approved sex offender treatment program and not being convicted of any felony or listed offense since conviction or release from incarceration. A Tier I offender could petition 10 years or more after conviction or release from prison, whichever was later. Certain Tier III juvenile offenders could petition after 25 or more years

from the date of adjudication or release from confinement, which ever occurred last.

- Allow certain juvenile Tier I, II, or III offenders ("Romeo and Juliet" cases) to petition, and a court to grant the petition, with no waiting period.
- Require a court to deny a petition if the petitioner was determined to be a continuing threat to the public and specify criteria for making that determination.

Penalties

- Delete two misdemeanor offenses and a felony offense pertaining to violations of Section 5a of the act (reporting requirements) and replace them with a misdemeanor offense punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000, or both.

MCL 28.722 et al. (Senate Bill 188)

MCL 28.726 et al. (Senate Bill 189)

Senate Bill 206

The bill would amend the Code of Criminal Procedure (MCL 777.11b) to revise the sentencing guidelines so as to incorporate the change to the felony penalty for a violation of Section 5a of the act proposed by Senate Bill 189. The bill would delete the current reference to a third or subsequent offense and instead indicate a statutory maximum of two years for failing to update a sex offender registration.

FISCAL IMPACT:

As referred to above, failure to comply with the federal SORNA could result in a state losing 10 percent of Byrne Justice Grant funding. A fiscal analysis is in process.

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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.