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BILL ANALYSIS

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Senate Bills 188 and 189 (as introduced 2-22-11)

Sponsor: Senator Rick Jones (S.B. 188)  
Senator Phil Pavlov (S.B. 189)

Committee: Judiciary

Date Completed: 2-23-11

## **CONTENT**

**Senate Bill 188** 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 I, 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, or those ordered by a court to register.
- 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.
- 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 Michigan State Police 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.
- Allow the Sex Offender Registration Fund to be used for notification and offender registration duties, and community education, in addition to purposes concerning the offender databases and compilation.

The bills are tie-barred to each other. They would take effect on July 1, 2011.

### **Senate Bill 188**

#### **Listed Offenses – Tiers I, II, & III**

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, as shown in Table 1.

Like the current definition of "listed offense", each tier would include an attempt or conspiracy to commit an offense designated in that category, and an offense substantially similar to a designated offense under a law of the United States that is specifically enumerated in 42 USC 16911 (which defines terms used in the Federal Sex Offender Registration and Notification law), under a law of any state or any country, or under tribal or military law. The

bill also would refer to a law specifically enumerated in 42 USC 16911 in the definition of "listed offense".

"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.

Table 1

Listed Offense Penal Code Section	Tier		
	1	2	3
145a - accosting/soliciting child for immoral purpose		X	
145b - accosting/soliciting with 1 or more prior convictions		X	
145c - child sexually abusive activity/material	X		
145c(4) - possession of child sexually abusive material	X		
145c(2) - causing or allowing child to engage in child sexually abusive activity or material		X	
145c(3) - distribution or promotion of child sexually abusive activity or material		X	
158 - sodomy if victim is a minor			X*
335a(2)(b) - indecent exposure involving fondling - repeat offense <sup>1)</sup>	X <sup>5)</sup>		
167(1)(f) - indecent or obscene conduct in public - 3rd or subsequent <sup>2)</sup>			
335a(2)(a) - indecent exposure - 3rd or subsequent <sup>2)</sup>			
338, 338a, 338b - gross indecency if victim is a minor		X <sup>3)*</sup>	X <sup>4)</sup>
349 - kidnapping if victim is a minor			X
350 - enticing a child under 14 from his or her parents			X
448 - soliciting a person to commit prostitution or immoral conduct if victim is a minor		X	
455 - pandering (enticing a person to become a prostitute)		X	
520b - criminal sexual conduct (CSC) 1st degree			X*
520c - CSC 2nd degree	X <sup>6)</sup>	X <sup>3)*</sup>	X <sup>4)</sup>
520d - CSC 3rd degree			X*
520e - CSC 4th degree	X <sup>6)</sup>	X <sup>3)*</sup>	
520g(1) - assault with intent to commit CSC- sexual penetration			X <sup>5)*</sup>
520g(2) - assault with intent to commit CSC- 2 <sup>nd</sup> degree	X <sup>6)</sup>	X <sup>3)</sup>	X <sup>4)</sup>
<b>Proposed Listed Offense</b>			
145d - use of the internet to commit 145a, 145c, 157c, 349, 350, 520b, 520c, 520e, 520g, or 722.675 - if victim is a minor		X	
349b - unlawful imprisonment if victim is a minor	X		
539j - surveillance or photography of unclothed person in violation of his/her privacy - if victim is a minor	X		
<sup>1)</sup> Would be a listed offense if the victim were a minor; would apply to 1st violation. <sup>2)</sup> Would no longer be a listed offense under the bill. <sup>3)</sup> Against a minor aged 13 or older. <sup>4)</sup> Against a minor under 13. <sup>5)</sup> Against a minor. <sup>6)</sup> Against a person aged 18 or older			

The offenses denoted with an asterisk 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 individual was not more than four years older than the victim. In addition, the violations of Sections 338, 338a, 338b, and 158 would not be considered listed offenses if the victim consented, the victim were at least 17 years old at the time of the offense, and the victim were not under the individual's custodial authority at the time of the violation.

### Juvenile Offenders

The Act's definition of "convicted" includes having an order of disposition entered under Section 18 of the juvenile code that is open to the general public under that code. Under the bill, that would apply if either of the following were met:

- The individual was 14 years old or older at the time of the offense, and the order of disposition was for the commission of an offense that would classify the individual as a Tier III offender.
- The order of disposition was for an offense that would classify the individual, other than a person who was 14 or older at the time of the offense, as a Tier I, Tier II, or Tier III offender and the individual was ordered by a court to register under the Act.

"Convicted" also includes having an order of disposition or other adjudication in a juvenile matter in another state or country. Under the bill, that would apply if either of the following were met:

- The individual was 14 years or older at the time of the offense, and the order of disposition or other adjudication was for the commission of an offense that would classify the individual as a Tier III offender.
- The order of disposition or other adjudication was for an offense that would classify the individual, other than a person who was 14 or older at the time of the offense, as a Tier I, Tier II, or Tier III offender; and the court in the other state or country ordered the individual to register as a sex offender.

### Individuals Required to Register

Currently, individuals who are convicted of a listed offense must register if they are domiciled or temporarily reside in the State for 14 or more consecutive days, or who are domiciled, reside, or work with or without compensation or are students in this State for 30 or more total days in a calendar year. Under the bill, any individual who was convicted of a listed offense would have to register if he or she were domiciled, temporarily resided, worked, or were a student in the State (regardless of the period of time).

The bill also would require registration by an individual who was convicted previously of a listed offense for which he or she was not required to register, but was convicted of any other felony on or after July 1, 2011. ("Felony" would mean that term as defined in Section 1 of Chapter 1 of the Code of Criminal Procedure, i.e., a violation punishable by imprisonment for more than one year or a violation designated as a felony).

The bill specifies that a nonresident convicted of a listed offense in Michigan on or after July 1, 2011, nevertheless would be required to be registered. The Act's continued reporting requirements, however, would not apply to the person while he or she remained a nonresident and was not otherwise required to report.

Under the bill, notwithstanding anything else to the contrary in the Act, the court could order any individual younger than 17 who was convicted of a Tier I, Tier II, or Tier III offense to register if it determined that the person could be a continuing threat to the public. In making its determination, the court would have to consider all of the following factors and place its findings on the record:

- The individual's age and maturity level at the time of the offense.
- The victim's age and maturity level at the time of the offense.
- The nature and severity of the offense.
- The individual's prior juvenile or criminal history.
- The individual's likelihood to commit further listed offenses.

- Any impact statement submitted by the victim under the Crime Victim's Rights Act.
- Any other information considered relevant by the court.

The bill also identifies which person or agency would be responsible for registering an individual who was previously convicted of a listed offense for which he or she was not required to register, but who was convicted of any other felony on or after July 1, 2011. Depending on the offender's status on July 1, 2011, the responsible person or agency would be the individual's probation agent or parole officer, the sheriff or his or her designee, the Department of Corrections, the family court, the Department of Human Services, or the county juvenile agency.

Currently, various individuals must register with a local law enforcement agency, sheriff's department, or State Police within 14 days after becoming domiciled or temporarily residing, working, or being a student in this State, or report to a local law enforcement agency, sheriff's department, or State Police post within 10 days after becoming an employee, contractual provider, or volunteer of an institution of higher education in the State, or within 10 days after enrolling or discontinuing enrollment. The bill would require these individuals to register or report "immediately", which would mean within three business days. The bill also would delete the number of days a person must be on campus before the reporting requirement is triggered.

#### Notification of Changes

Currently, an individual required to be registered must notify the local law enforcement agency or sheriff's department or State Police post of his or her new residence or domicile within 10 days after the individual changes or vacates his or her residence or domicile or place of work or education.

The bill, instead, would require a resident subject to registration to notify the local law enforcement agency, sheriff's department, or State Police post of his or her residence or domicile immediately after any of the following occurred:

- The individual changed his or her place of employment, or employment was discontinued.
- The individual enrolled as a student with an institution of higher education, or enrollment was discontinued.
- The individual changed his or her name.
- The individual intended to reside temporarily at any place other than his or her residence for more than seven days.
- The individual established any electronic mail or instant message address, or any other designation used in internet communications or postings.
- The individual purchased or began regulating operating any vehicle, or discontinued ownership or operation of a vehicle.

A nonresident who was required to be registered would have to notify the local law enforcement agency, sheriff's department, or State Police post of his or her place of employment immediately after changing his or her place of employment or discontinuing employment.

Also, the bill would refer to a "registering authority", rather than the local law enforcement agency or sheriff's department, or, if the individual were on probation or parole supervision, to his or her probation or parole agent. ("Registering authority" would mean the local law enforcement agency or sheriff's office having jurisdiction over the individual's residence, place of employment, or institution of higher learning, or the nearest Department post designated to receive or enter sex offender registration information within a registration jurisdiction.)

Under the bill, the notification requirements would not apply to an individual whose enrollment and participation at an institution of higher education were solely through the mail or the internet from a remote location.

If an individual who was incarcerated in a county jail and was required to be registered were due to be released from custody, before releasing the person, the sheriff's department would have to notify the State Police of the location of the individual's proposed place of residence or domicile.

A resident required to be registered would have to report in person and notify the

appropriate registering authority or, if applicable, his or her probation or parole agent at least 21 days before he or she changed his or her domicile or residence to another country. The individual would have to state the new country and, if known, the new address. The State Police would have to update the registration and compilation databases and promptly notify the appropriate law enforcement agency and any applicable sex or child offender registration authority.

#### Duration of Registration

Except as otherwise provided, the Act requires an individual to comply with the notification requirements for 25 years after the date of initial registration or, if the individual is in a State correctional facility, for 10 years after release, whichever is longer. An individual must comply with the notification requirements for life if he or she is convicted of first-degree CSC, second-degree CSC involving a victim under 13, kidnapping a minor, enticing a child under 14 from his or her parents, causing or allowing a child to engage in child sexually activity, distributing or promoting child sexually abusive activity or material, or attempting or conspiring to commit one of those offenses.

The bill, instead, would require a Tier I offender to comply for 15 years. A Tier II offender would have to comply for 25 years. A Tier III offender would have to comply for life.

The registration periods would exclude any period of incarceration or civil commitment.

For an individual convicted previously of a listed offense for which he or she was not required to register, but was convicted of any felony on or after July 1, 2011, any period of time that he or she was not incarcerated for the listed offense or that other felony and was not civilly committed could count toward satisfying the registration period for that listed offense. If those periods equaled or exceeded the prescribed registration period, the individual would not have to register. If those periods were less than the prescribed registration period, the individual would have to comply for the time remaining.

#### Annual or Semiannual Reporting

The Act requires an individual required to be registered who is not incarcerated to report in person to the local law enforcement agency, sheriff's department, or State Police post for verification of domicile or residence as follows:

- Between January 1 and January 15 each year, if the individual is registered only for one or more listed offenses that are misdemeanors.
- Between the first and the 15<sup>th</sup> of the month each April, July, October, and January if the individual is registered for one or more listed offenses that are felonies.

Under the bill, the annual reporting requirement would apply to Tier I offenders, and the quarterly reporting requirement would apply to Tier III offenders. A Tier II offender would have to report between the first and 15<sup>th</sup> of each January and July.

The bill would require an individual to review all registration information for accuracy when he or she reported.

Currently, when an individual reports, an officer or authorized employee of the local law enforcement agency, sheriff's department, or State Police post must verify the individual's residence or domicile and any other information required to be reported. Under the bill, the officer or employee also would have to determine whether the individual's photograph required under the Act sufficiently matched his or her appearance. If it did not, the officer or employee would have to require the individual immediately to obtain a current photograph. When all of the verification information had been provided, the officer or employee would have to review it with the individual and make any necessary corrections, additions, or deletions.

#### **Senate Bill 189**

#### Registration Information; Databases

The Act requires a registration to contain the individual's name, Social Security number, date of birth, and address or expected address; a brief summary of the individual's convictions for listed offenses; a complete physical description of the individual; a

photograph; and fingerprints, if not already on file with the State Police.

Under the bill, in addition to that information, all of the following would have to be obtained or provided:

- Any aliases, nicknames, ethnic or tribal names, or other names by which the individual was known.
- Any Social Security numbers or alleged Social Security numbers the individual previously used.
- Any alleged dates of birth previously used.
- The individual's village, city, or county of birth and state of birth.
- The individual's palm prints.
- The location or area used or to be used by the individual in lieu of a residence, or, if he or she were homeless, the village, city, or township where the person spent the majority of his or her time.
- The name and address of any place of temporary lodging used or to be used during any period the individual was away, or expected to be away, from his or her residence for more than seven days, including the dates.
- The name and address of any school attended by the individual and any school that had accepted him or her as a student that he or she planned to attend.
- All telephone numbers registered to the individual or routinely used by him or her.
- All e-mail addresses and instant message addresses assigned to the individual or routinely used by him or her, and all login names or other identifiers used by the individual when using any e-mail address or instant messaging system.
- The license plate number, registration number, and description of any motor vehicle, aircraft, or vessel owned or regularly operated by the individual and its location.
- The individual's driver license or State personal ID number.
- A digital copy of the individual's passport and other immigration documents.
- The individual's occupational and professional licensing information.
- The name and address of each of the individual's employers, including a contractor and anyone who had agreed

to hire or contract with the individual for services.

If the individual lacked a fixed employment location, the information would have to include the general areas where he or she worked and the normal travel routes he or she took in the course of his or her employment.

In addition, a registration would have to contain the following:

- An electronic copy of the individual's Michigan driver license or personal ID card.
- The text of the provision of law defining the criminal offense for which the individual was registered.
- Any outstanding arrest warrant information.
- The individual's tier classification.
- An identifier that indicated whether a DNA sample had been collected and any resulting DNA profile was entered into the Federal Combined DNA Index System (CODIS).
- The individual's complete criminal history record, including the dates of all arrests and convictions.
- The individual's Michigan Department of Corrections number and status of parole, probation, or supervised release.
- The individual's FBI number.

The Act requires the State Police to maintain a computerized database of registrations and notices required under the Act. Under the bill, this law enforcement database would have to contain all of the information that a registration would have to include.

The Act also requires the State Police to maintain a separate computerized database that consists of a compilation of registered individuals, indexed by zip code, that is available to the public. The compilation must contain the name and aliases, address, physical description, and birth date of each registered individual who lives in that zip code and any listed offenses of which he or she has been convicted; the name and campus location of each higher education institution to which the individual is required to report; and a photograph of each registered individual.

Under the bill, the public database would have to contain the same information

included in the law enforcement database, *except* the individual's Social Security number; place of birth; the name and address of temporary lodging; telephone numbers; e-mail and instant message addresses; driver license or State ID number; a copy of the individual's passport and immigration documents; fingerprints and palm prints; a copy of the individual's driver license or State ID card; outstanding arrest warrant information; a DNA sample identifier; criminal history; and Department of Corrections and FBI numbers.

The compilation would have to be indexed alphabetically by village, city, township, and county, numerically by zip code, and geographically as determined appropriate by the State Police.

#### Failure to Register or Update Info

Under the bill, if an individual failed to register or update his or her registration information as required, the local law enforcement agency, sheriff's office, or State Police post responsible for registering the individual or for verifying and updating his or her registration information would have to do all of the following immediately after the date the individual was required to register or update registration information:

- Determine whether the individual had absconded or was otherwise unlocatable.
- Notify the State Police that the individual had failed to appear, if the registering authority were notified by a registration jurisdiction that the individual was to appear in order to register or update his or her information.
- Revise the information in the registry to reflect that the individual had absconded or was not locatable.
- Seek a warrant for the individual's arrest if the legal requirements for obtaining a warrant were satisfied.
- Enter the individual into the National Crime Information Center wanted person file if the requirements for entry were met.

The State Police also would have notify the U.S. Marshal's Service and update the National Sex Offender Registry.

#### 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 certain CSC offenses 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 both of the following applied:

- The individual was required to register based on an order of disposition entered under Section 18 of 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 any of the following applied:

- The court determined that the conviction for the listed offense was the result of a consensual sexual act between the petitioner and the victim, the victim was at least 13 years old but younger than 16 at the time of the offense, and the petitioner was not more than four years older than the victim.
- The petitioner was adjudicated as a juvenile, and was younger than 14 at the time of the offense.
- The individual was registered before July 1, 2011, for an offense that required registration but for which registration was not required after that date.

In addition, the court could grant the petition if all of the following applied:

- The individual was convicted of sodomy, gross indecency, or second-degree CSC with a member of the same household.
- The victim consented to the conduct constituting the violation.
- The victim was at least 17 years old at the time of the violation.
- The victim was not under the individual's custodial authority at the time of the violation.

The Act requires a petition to be filed in the court in which the individual was convicted of committing the listed offense. Under the bill, however, if the conviction occurred in another state or country and the individual were a Michigan resident, he or she could file the petition in the circuit court in the county of his or her residence. The Act requires a copy of the petition to be filed with the prosecuting attorney who prosecuted the case against the individual. Under the bill, for a conviction that occurred in another state or country, the copy would have to be filed with the prosecuting attorney for the county of the individual's residence.

Under the bill, the court could not grant a petition if it determined that the individual could be a continuing threat to the public. In making its determination, the court would have to consider all of the factors (prescribed by Senate Bill 188) for determining whether a person younger than 17 was a continuing public threat and should be required to register. The court would have to place its findings on the record.

### Criminal Penalties

Except as otherwise provided, a person who willfully violates the Act is guilty of a felony and subject to penalties that range from up to four years' imprisonment and/or a maximum fine of \$2,000 for someone with no prior convictions, to up to 10 years and/or \$5,000 for someone with two or more prior convictions.

These penalties do not apply to 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.

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

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bill 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 bill reflect changes in the sex offender registry system as mandated by the Federal Sex Offender Registration and Notification Act (SORNA). To accomplish these Federal mandates, the Department has received over \$2.3 million in Federal grants and reports that necessary changes to the State's sex offenders' registry system have been made and are up and ready to become operational, should the bill's provisions 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 bill, but the Department reports that there are likely sufficient unused Federal grants funds



and sex offender registration fees to cover these costs. Should proposed changes to current procedures 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 surrounding the bill involves what would result if those changes in the operation of the State sex offender registry as mandated by the Federal government--and contained in the bill--were *not* put into place. The Federal government has stated that should a state not be in compliance 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.

The bill 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.

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.