

This revised analysis replaces the analysis dated 5-27-99.



**House
Legislative
Analysis
Section**

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SEX OFFENDER REGISTRATION REVISIONS

**Senate Bill 566 with House committee
amendments**

Sponsor: Sen. Bev Hammerstrom

Senate Bill 567 as passed by the Senate

Sponsor: Sen. Mike Rogers

Senate Bill 568 as passed by the Senate

Sponsor: Sen. Mike Goschka

Senate Bill 569 as passed by the Senate

Sponsor: Sen. Shirley Johnson

Senate Bill 570 as passed by the Senate

Sponsor: Sen. Joel D. Gougeon

Senate Bill 571 as passed by the Senate

Sponsor: Sen. David Jaye

Revised First Analysis (5-27-99)

**House Committee: Criminal Law and
Corrections**

**Senate Committee: Families, Mental
Health and Human Services**

Senate Bills 566-570 (5-27-99)

THE APPARENT PROBLEM:

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Wetterling Act) (42 U.S.C. 14071), enacted as part of President Clinton's 1994 Crime Act, provides a financial incentive for states to establish specific requirements for registration systems for convicted child molesters and other sexually violent offenders. States that fail to comply with the act's provisions within the specified time period will be subject to a mandatory 10 percent reduction of Byrne Formula Grant funding, and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. The reallocated funds will be distributed among complying states in proportion to their populations.

Each state will be required to submit certification to the Bureau of Justice Assistance (BJA) to demonstrate that the state's has met the requirements of the Wetterling Act. In order to comply with the act, states will also be required to submit information in subsequent program years concerning any changes in sex offender registration systems that may affect compliance with the act. In order to continue to receive its full share of the federal grant money distributed under the Byrne Formula Grant, the state of Michigan must submit information showing that the state has complied with the requirements of the federal guidelines by July 12, 1999. Legislation has been introduced to bring Michigan's laws regarding sex offender registration into compliance with the federal guidelines.

THE CONTENT OF THE BILLS:

Senate Bill 566 would amend the Sex Offenders Registration Act (MCL 28.722 et al.) to do the following:

-- Expand the act's listed offenses to include: any offense committed by a person who was defined as sexually delinquent under the Michigan Penal Code and any of the following crimes, if the victim was less than 18 years old: violation of the "crime against nature or sodomy" statute; gross indecency between males, between females, and between males and females; kidnaping and kidnaping a person under the age of 14; soliciting or accosting to commit prostitution or any other lewd or immoral act; and any other violation of a law or local ordinance that by its nature constitutes a sexual offense.

-- Include students and people working in this state in the registration requirements.

-- Require the Department of State Police, by September 1, 1999, to notify each person registered under the act who was not in a state correctional facility of his or her registration, notification, and verification duties under the act.

-- Require the Department of Corrections (DOC) to give a registered person who was in a state correctional facility a written notice explaining the procedure for registration, notification, and verification.

-- Exempt persons from registration for an offense that was added on September 1, 1999 to the definition of "listed offense" unless one of the following applied:

- The individual was convicted of the offense on or after September 1, 1999.

- On September 1, 1999, the person was on probation or parole, committed to jail, placed under or committed to the jurisdiction of the Department of Corrections, the family division of the circuit court or the Family Independence Agency (FIA) for such an offense, or was placed in any of the above situations for such an offense on or after September 1, 1999.

- On September 1, 1999 the person was on probation or parole for that offense which had been transferred to the this state or the individual's probation or parole for that offense in transferred to this state after September 1, 1999.

-- Require a person to comply for life with the act's reporting requirements if he or she had been convicted of certain criminal sexual conduct offenses or kidnaping.

-- Require a registered person who was not incarcerated to report in person to a law enforcement agency for registration and verification by January 15, 2000; and then to report yearly if he or she had been convicted of a misdemeanor listed offense, or quarterly if convicted of a felony.

-- Require a registered person to maintain a valid driver's license or official state personal identification card.

-- Require, between January 1, 2000, and January 15, 2000, a registered person who was not incarcerated to have a digitized photograph taken by the secretary of state.

-- Require, rather than allow, the Department of State Police to make the compilations of the sex offender registry available by electronic, computerized, or other similar means and to make that system available to the public. The system also would have to provide for searches by both name and zip code.

-- Require the Department of State Police to conduct a study to determine the feasibility of providing for a search by alias, and of providing mapping technology to show an address, on the electronic, computerized, or other similar compilation. The study would have to consider costs, programming issues, or other similar issues, and would have to be forwarded to the legislature by September 1, 2000.

-- Require the Department of State Police to conduct a study of the feasibility of compiling a list of living people who were convicted of a listed offense before September 1, 1999, but who were not required to be registered, and the feasibility of including that list, known addresses, and summary information in the publicly available compilation of the sex offender registry. The study would have to include available records, costs, required employee hours, programming issues, time frame, and other similar issues, and would have to be forwarded to the legislature by September 1, 2000.

-- Provide that the exclusion from publicly available compilation for those who must register because of a

juvenile disposition would not apply to a disposition for first- or second-degree CSC, after the juvenile became 18 years of age.

The bill also would establish new felony penalties for persons who were required to be registered and who willfully violated the act. Currently, a violation of the registration requirement is a felony, punishable by up to four years' imprisonment and/or a maximum fine of \$2,000. Under the bill, a first offense would be punishable by from one to four years imprisonment; a second offense would be punishable by from two to seven years imprisonment; and a third or subsequent offense would be punishable by from five to ten years imprisonment. Offenders would not be eligible for probation or a suspended sentence.

In addition, the bill would establish misdemeanor penalties for persons who failed to comply with the bill's reporting and verification requirements.

The bill would take effect on September 1, 1999.

Senate Bill 567 would amend the juvenile code (MCL 712A.18) to make revisions consistent with Senate Bill 566. The bill would take effect on September 1, 1999, and is tie-barred to Senate Bill 566.

The bill would include reference to fingerprinting requirements of the Sex Offenders Registration Act in a provision of the juvenile code that prohibits the family division of circuit court (family court) from ordering a juvenile disposition or issuing a judgment of sentence for a conviction of a juvenile tried as an adult, until the court has determined that the juvenile's fingerprints have been taken and forwarded to the Department of State Police. The bill also provides that, if a juvenile were under the jurisdiction of the family court for an offense other than one specifically listed in the Sex Offenders Registration Act, the court would have to determine if the offense was a violation that, by its nature, constituted a sexual offense against a person under 18 years of age. If so, the order of disposition would be considered to be for a listed offense under the Sex Offenders Registration Act. The court would have to include the basis for that determination on the record and include the determination in the order of disposition.

Senate Bill 568 would amend the Code of Criminal Procedure (MCL 769.1 and 769.16a) to make revisions consistent with Senate Bill 566. The bill would take effect on September 1, 1999, and is tie-barred to Senate Bill 566.

The bill provides that, if a defendant were sentenced for an offense other than one specifically listed in the Sex Offenders Registration Act, the court would have to determine if the offense was a violation that, by its nature, constituted a sexual offense against a person under 18 years of age. If so, the conviction would be considered to be for a listed offense under the Sex Offenders Registration Act. The court would have to include the basis for that determination on the record and include the determination in the judgment of sentence.

As part of the sentence for a conviction of a listed offense under the Sex Offenders Registration Act, the court would have to order that the person's fingerprints be taken and forwarded to the Department of State Police, as provided in that act, if that had not already been done.

Senate Bill 569 would amend the Michigan Vehicle Code (MCL 257.307) to make revisions consistent with Senate Bill 566. The bill would take effect on September 1, 1999, and is tie-barred to Senate Bill 566.

The bill would require that an applicant for a driver's license have his or her image captured or reproduced when an application for a driver's license was made, if the applicant were required to maintain a valid driver's license or official state personal identification card under the Sex Offenders Registration Act.

The Department of State Police would have to provide to the secretary of state updated lists of persons required to be registered under the Sex Offenders Registration Act, and required to maintain a valid driver's license or official state personal identification card. The secretary of state would have to make the images of those persons available to the Department of State Police as provided in the Sex Offenders Registration Act.

The bill also would prohibit driver's license renewal by mail if the renewing licensee were a person required to maintain a valid driver's license or official state personal identification card under the Sex Offenders Registration Act.

Senate Bill 570 would amend Public Act 222 of 1972 (MCL 28.292), which provides for an official state personal identification card, to make revisions consistent with Senate Bill 566. The bill would take effect on September 1, 1999, and is tie-barred to Senate Bill 566.

The bill would require that the Department of State Police provide to the secretary of state updated lists of persons required, under the Sex Offenders Registration Act, to maintain a valid driver's license or an official state personal identification card. The secretary of state would have to make images of those people available to the Department of State Police as provided in Senate Bill 566.

The bill also specifies that the secretary of state would have to require in-person renewal by a person required, under Senate Bill 566, to maintain a valid driver's license or official state personal identification card.

Senate Bill 571 would include the felonies proposed by Senate Bill 566 for a second, third, or subsequent offense of failure to register as a sex offender in the Code of Criminal Procedure's sentencing guidelines provisions (MCL 771.11), and revise the sentencing guidelines provision for a first offense. Currently, failure to register as a sex offender is categorized as a Class G felony against the public order, with a statutory maximum sentence of four years imprisonment. Under the bill, a first offense of failure to register would be reclassified as a Class F felony against the public order, with a statutory maximum of four years. A second offense of failure to register would be a Class D felony against the public order, with a statutory maximum sentence of seven years imprisonment as proposed by Senate Bill 566. A third or subsequent offense of failure to register would be a Class D felony against the public order, with a statutory maximum sentence of 10 years imprisonment, as proposed by Senate Bill 566.

HOUSE COMMITTEE ACTION:

The House Committee on Criminal Law and Corrections amended Senate Bill 566 to do all of the following:

- Provide that a juvenile disposition or adjudication for gross indecency would not be considered a "listed offense".
- Include orders of disposition or other adjudications in a juvenile matter in another state or country in the definition of "convicted".
- Include a definition of "residence" for the purpose of registration and voting purposes, meaning the place where the individual habitually sleeps, keeps his or her

personal effects, and has a regular place of lodging. If an individual has more than one residence, or two spouses have separate residences, the place where the person resides the greater part of the time would be considered his or her residence for the purposes of the act. However, the bill specifies that the definition is not intended to affect existing judicial interpretation of the term residence.

-- Add to the list of exceptions under which a person would be required to be register for having committed a crime that becomes a listed offense on September 1, 1999. If, as of that date, the individual was on parole or probation, committed to jail, placed under or committed to the jurisdiction of the Department of Corrections or similar state agency, or a court that handles matters similar to those handled by the family division of the circuit court or an agency with the same authority as the FIA in another state or country for such an offense, he or she would be required to register.

-- Clarify and ensure that individuals who have registered under the current provisions of the act will continue to be registered and those convicted of newly added offenses will be registered, after the bills take effect, through the registration process.

BACKGROUND INFORMATION:

The Sex Offenders Registration Act applies to individuals convicted of a listed offense, persons placed on youthful trainee status for a listed offense and juveniles for whom the 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 requirement for 25 years after the initial registration, and someone convicted of a second or subsequent offense must register for the remainder of his or her life.

Within ten days after moving to a new residence, being paroled, or being released from the jurisdiction of the DOC, a person who is required to register under the act must notify local law enforcement, the state police, or the sheriff's department of his or her new address. The entity that registers an individual or receives a change-of-address notice must forward the registration or notice to the Department of State Police.

"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, fourth degree Criminal Sexual Conduct (CSC)

-- Assault with intent to commit CSC.

-- 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 data base of registered offenders, and the information compiled from the data base is to be made available to the public. The data base is indexed by zip code area and contains the name, aliases, address, physical description, birth date, and listed offenses for each offender residing in the zip code area.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, Senate Bill 566 would have an indeterminate fiscal impact on state and local government for the costs of incarceration. In 1997, there were 16 dispositions involving failure to register as a sex offender with nine offenders given a prison sentence. There are no data available to indicate how many more people could be convicted of this offense as a result of the proposed changes. To the extent that conviction for this crime would not prohibit conviction for another crime from the same transaction, length of sentence for certain offenders could increase. As a result of the inclusion of graduated sanctions for failing to register and a new misdemeanor for other violations of conditions of registration, costs or fine revenues for the state or local units of government would increase.

The Department of State Police would incur additional costs to provide feasibility studies and reports required under the bill.

Senate Bills 567 through 570 would have a minimal fiscal impact on state departments and local law enforcement agencies. The bills would require some minor additional costs for departments and agencies that already assume similar duties under the Sex Offenders Registration Act. These costs would include clerical and information programming costs.

Senate Bills 566 through 570 also feature requirements that are mandated by the federal Jacob Wetterling Act, that, if not placed in state law, could result in a 10 percent reduction to the state of federal grant funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program. Failure to enact the federal mandates in the bill could result in a loss of \$1.6 million in federal funds to state and local agencies. (5-17-98)

ARGUMENTS:

For:

Registration systems, like Michigan's Sex Offenders Registration Act, help law enforcement investigate sex crimes by informing the authorities of the identities and whereabouts of convicted sex offenders. In addition, these systems also may inhibit offenders -- who know that the authorities know who they are and where they are -- from committing additional crimes. Community notification enables communities to take common sense measures to protect themselves and their families, such as ensuring that their children do not associate or visit with known child molesters. For these reasons alone, it makes sense to make certain that Michigan's sex offender registry is as complete as possible. However, Michigan also stands to lose approximately 1.6 million dollars in Byrne Grant funding if it is not in compliance with the federal guidelines by July 12, 1999. Last year the funds from this grant were used to pay for community policing and school liaison officer programs; drug abuse resistance education (DARE); zero tolerance drug offender testing; and criminal justice record improvement. Additionally, money went towards fully or partially funding positions and vehicles for 18 multi-jurisdictional drug teams, one money laundering team, the statewide information system (STATIS) and training and coordinating effort for the narcotics schools (TRACE). Finally, some of the money was awarded to prosecutors and was likely used to pay for training, equipment, and full- or part-time personnel reimbursement.

Obviously, the loss of part of this money would impact the state's ability to fully fund these very

important projects and it is a loss that can easily be avoided by bringing the state's laws into compliance.

Against:

While bringing the laws into compliance makes sense, some of the amendments in the package of bills go way beyond what is necessary to comply with the federal requirements. The original intent of sex offender registration was to provide a means of warning the public about certain sex offenders -- basically those who had engaged in violent crimes or crimes against children. It seems that the law is rapidly increasing in its coverage and no longer includes just those offenders who, because of recidivism rates, pose a potential threat to the public.

Some of the crimes that are included by Senate Bill 566 are potentially consensual -- gross indecency and sodomy, for example. In fact, in cases where elements of gross indecency or sodomy crimes have been met and the actions were non-consensual, the crime would most likely be charged under the CSC statute. It is traveling a bit far afield from the intent of the Wetterling Act to attempt to use its requirements to include individuals who have engaged in consensual behavior between persons over the age of consent in this state (16 years of age) as sex offenders in the registry.

In fact, according to the Department of Justice, the Attorney General's Order No. 2095-97 -- Final Guidelines for Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, dated July 17, 1997 -- "The Act's definitions of covered offense categories are tailored to its general purpose of protecting the public from persons who molest or sexually exploit children and from other sexually violent offenders. Hence, these definitions do not include all offenses that involve a sexual element. For example, offenses consisting of consensual acts between adults are not among the offenses for which registration is required under the Act."

Response:

People convicted of the crimes of sodomy and gross indecency are only required to be listed on the sex offender registry when the victim of the crime was under the age of 18. This is the age limit that the Wetterling Act uses to define minors -- and the provisions of the act, although they do not recommend listing offenses between consenting adults, generally require that sexual offenses involving victims under the age of 18 be included in the registry.

Against:

It is bad enough to make the sex offender registry information available to the public, but to expand it to include photos of offenders is frightening. There are already flaws in the registry; for example, sometimes victims have been listed instead of, or along with, the offender. The sex offender registry should be used as a law enforcement tool, not as a mechanism to brand or ostracize particular members of the community. The more details about the persons included in the registry, the more the act becomes a modern form of the stocks -- more about harassing and continuing to punish the offender even after he or she has successfully completed a term of probation or parole and paid his or her debt to society.

Further, the provisions that could potentially lead to the inclusion of photos and maps on websites listing sex offenders could have tragic consequences. Vigilante attacks on the homes of registered offenders are not unlikely under the current system -- adding photos and maps to their homes will simply make it easier for those who would engage in such behavior. This is particularly problematic given the consensual nature of some of the crimes that could lead to inclusion in the registry. In addition, it should be noted that the place where some offenders reside is often not only the offender's home but may also be the home of the offenders parents, spouse, siblings, or other family members. The more information that is provided to the public in the registry, the more vulnerable those listed, and their families, will be to attack from those who feel that a prison term isn't sufficient punishment and desire to take justice into their own hands.

POSITIONS:

The Department of State Police supports the bills. (5-25-99)

The Triangle Foundation opposes the provisions of the bills allowing for the use of photo identifications and the inclusion of the crimes of gross indecency and sodomy in the registry. (5-25-99)

The American Civil Liberties Union opposes the bills. (5-25-99)

Analyst: W. Flory

■ 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.