

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bills 566 through 570 (as introduced 5-4-99)

Sponsor: Senator Bev Hammerstrom (S.B. 566)

Senator Mike Rogers (S.B. 567)

Senator Mike Goschka (S.B. 568)

Senator Shirley Johnson (S.B. 569)

Senator Joel D. Gougeon (S.B. 570)

Committee: Families, Mental Health and Human Services

Date Completed: 5-5-99

CONTENT

Senate Bill 566 would amend the Sex Offenders Registration Act to do the following:

- Expand the Act's listed offenses to include gross indecency, kidnapping, and soliciting and accosting, if the victim were under 18 years of age.
- 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.
- Require registration of a person convicted on or before September 1, 1999, of an offense that was added on that date to the definition of "listed offense".
- 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 kidnapping.
- Require by January 15, 2000, a registered person who was not incarcerated to report yearly in person to a law enforcement agency for registration and verification.
- 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.
- Establish felony penalties for persons who were required to be registered and who willfully violated the Act.

- Establish misdemeanor penalties for persons who failed to comply with the bill's reporting requirements.

Senate Bills 567 through 570 would amend, respectively, the juvenile code, the Code of Criminal Procedure, the Michigan Vehicle Code, and Public Act 222 of 1972, which provides for an official State personal identification card, to make revisions complementary to Senate Bill 566.

The bills would take effect on September 1, 1999. Senate Bills 567 through 570 are all tie-barred to Senate Bill 566. A more detailed description of the bills follows.

Senate Bill 566

Persons Required to Register

The Act requires persons who have been convicted of certain offenses and are domiciled or temporarily reside in the State for at least 14 days to be registered. The bill would require persons to register if they were domiciled or temporarily resided in the State for at least 14 consecutive days, who worked with or without compensation or were students in the State for at least 14 consecutive days, or who were domiciled, resided, or worked with or without compensation or were students in the State for at least 30 day in a calendar year. The bill would add to the list of persons who must register a person from another state who was required to register or otherwise be identified as a sex or child offender or predator under a comparable statute of that state.

("Student" would mean a person enrolled on a full- or part-time basis in a public or private educational institution, including but not limited to a secondary school, trade school, professional institution, or institution of higher education. The Act currently defines "convicted" as, among other things, having a judgment of conviction or a probation order entered

in a court having jurisdiction over criminal offenses including an expunged conviction. Under the bill, "convicted" would mean having a judgment of conviction or a probation order entered in a court having jurisdiction over criminal offenses, including but not limited to a trial court or a military court.)

An person convicted of an offense added by the bill on September 1, 1999, to the definition of "listed offense" would not be required to be registered solely because of that listed offense unless one of the following applied:

- The person was convicted of that offense after September 1, 1999.
- On September 1, 1999, the person was on probation or parole, committed to jail, committed to the jurisdiction of the DOC, under the jurisdiction of the family division of the circuit court (family court), or committed to the Family Independence Agency (FIA) for that offense, or the person was subject to any of the above actions after September 1, 1999, for that offense.
- On September 1, 1999, the person was on probation or parole for that offense which had been transferred to the State or the person's probation or parole for that offense was transferred to the State after September 1, 1999.

The bill would add to the definition of "listed offense" sodomy (MCL 750.158), if the victim were under 18 years old; gross indecency between males, females, or males and females (MCL 750.338, 750.338a, or 750.338b), if the victim were under 18 years old; kidnapping (MCL 750.349), if the victim were under 18 years old; kidnapping a child under 14 years of age (MCL 750.350); and, soliciting and accosting (MCL 750.448), if the victim were under 18.

Notification of Registration

By September 1, 1999, Department of State Police would be required to mail a notice to each person registered under the Act who was not in a State correctional facility explaining the person's duties under the Act and the procedure for registration, notification, and verification.

Upon release of a person registered under the Act who was in a State correctional facility, the DOC would have to provide to that person written notice explaining his or her duties under the Act and the procedure for registration, notification, and verification. The person would have to sign and date the notice, and the DOC would have to maintain a copy of the signed and dated notice in the person's file. The DOC would have to forward the original notice to the State Police within 30 days, regardless of whether the person signed it.

The Department of State Police would be required to prescribe the form for the notices and verification procedures required under the bill.

Under the Act, a person's registration must contain his or her name, Social Security number, date of birth, and address or expected address; a brief description of the person's convictions for listed offenses, including where an offense occurred and the original charge if the conviction were for a lesser offense; and a complete physical description of the person. The bill would add that a person who was in a witness protection and relocation program would be required only to use the name and identifying information reflecting his or her new identity in a registration. The registration and compilation databases could not contain any information identifying the person's prior identity or locale. The Department would be required to request each person to provide his or her birth date if it were not included in the registration, and that person would have to comply within 10 days. In addition, the bill specifies that the brief summary of a person's convictions would have to be included, regardless of when the conviction occurred, and that the registration would have to include a digitized photograph, and the person's fingerprints if not already on file with the Department. A person required to be registered on September 1, 1999, would have to have his or her fingerprints taken by September 12, 1999, if not already on file with the Department. The Department would be required to forward a copy of the person's fingerprints to the Federal Bureau of Investigation (FBI), if not already on file with the FBI.

Currently, the registration form must contain a statement explaining the duty of a person being registered to provide notice of a change of address and the procedures for providing that notice. The bill would require that a verification form also include this information as well as the bill's verification procedures. The Act permits a person to sign a registration or notice. Under the bill, a person would be required to sign a registration and notice as well as a verification. The registration, notice, or verification, however, would have to be forwarded to the State Police regardless of whether the person signed it. The Act prohibits a person from knowingly providing false or misleading information concerning a registration or notice. The bill would add that a person could not knowingly provide false or misleading information on a verification.

Registration Procedure

The Act specifies a registration procedure for persons who were convicted of a listed offense on or before October 1, 1995. The bill would add that for a person convicted on or before September 1, 1999, of an offense that was added on that date to the

definition of "listed offense", the following would have to register that person:

- The person's probation officer or parole office by September 12, 1999, if the person were on probation or parole on September 1, 1999, for the listed offense.
- The sheriff or his or her designee by September 12, if the person were committed to jail on September 1, 1999, for the listed offense.
- The Department of Corrections by November 30, 1999, if the person were under the jurisdiction of the DOC on September 1, 1999.
- The family court, the FIA, or the county juvenile agency by November 30, 1999, if the person were within the jurisdiction of the family court or committed to the FIA, or the county juvenile agency on September 1, 1999.
- A probation officer, before sentencing or assignment, if the person were sentenced or assigned to youthful trainee status for that offense after September 1, 1999.
- A probation or parole officer, within 14 days after a transfer, if a person's probation or parole for the listed offense had been transferred to the State after September 1, 1999.
- The family court, before the disposition order was entered, if the person were placed within the court's jurisdiction or committed to the FIA for the listed offense after September 1, 1999.

Under the Act, a person convicted of a listed offense after October 1, 1995, must register before sentencing, entry of the disposition order, or assignment to youthful trainee status. A probation officer or the juvenile division of the probate court must give the person the registration form after the person is convicted, explain the duty to register, and accept the completed registration for processing. The bill would require the family court to provide the registration form, and would add that the person's address would have to be verified and notice of address changes would have to be provided. The bill also would prohibit the court from imposing sentence, entering the disposition order, or assigning the person to youthful trainee status until it determined that the person's registration had been forwarded to the Department as required under the Act.

The Act requires a person convicted of a listed offense in another state or country after October 1, 1995, to register with the local law enforcement agency, the State Police, or the sheriff's department within 14 working days after becoming domiciled or temporarily residing in the State. The bill would add that a person required to be registered as a sex offender or a predator in another state would have to register under the Act within 14 days of working or being a student for the periods specified in the bill.

Notification of Residence or Domicile

Under the Act, a person who is required to be registered must notify the local law enforcement agency in which his or her new address is located, or the State Police or sheriff's department of the person's new address, within 10 days of changing an address, being paroled, or being released from the jurisdiction of the DOC; or being transferred to a community residential program or into a minimum custody correctional facility of any kind. The bill would refer to "residence or domicile" instead of "address". In addition, a person would be required to notify a local law enforcement agency or sheriff's department if he or she changed a place of work or education.

Under the bill, a person required to be registered under the Act would have to notify the Department on a form prescribed by it not later than 10 days before he or she changed his or her domicile or residence to another state. The person would have to indicate the new state and, if known, the new address. The Department would be required to update the registration and compilation databases and promptly notify the appropriate law enforcement agency and any applicable sex or child offender registration authority in the new state. If the person's probation or parole were transferred to another state or were transferred from a State correctional facility to any correctional facility or probation or parole in another state, the DOC promptly would have to notify the State Police and the appropriate law enforcement agency and any applicable sex or child offender registration authority in the new state. The State Police would have to update the registration and compilation databases.

A person registered under the Act would have to comply with the verification procedures and proof of residence procedures prescribed in the bill. Except as otherwise provided, a person must comply with the Act's notification requirements for 25 years after the date of initially registering. Under the bill, if the person were in a State correctional facility, he or she would have to comply with the notification requirements for either 10 years after release from the correctional facility, or for 25 years, whichever was longer.

Currently, a person must comply with the notification requirements for life if he or she was convicted of a second or subsequent listed offense after October 1, 1995, regardless of when the first offense occurred. The bill also would require a person to comply with the reporting requirements for life if he or she were convicted of any of the following or a substantially similar offense under a law of the United States, any state, or any country or under tribal or military law: first-degree criminal sexual conduct (CSC) (MCL 750.520b), second-degree CSC (MCL 750.520c),

kidnapping (MCL 750.349), or kidnapping a child under 14 years of age (MCL 750.350); or an attempt or conspiracy to commit one of these offenses. The bill also provides that a person who committed a second or subsequent offense after October 1, 1995, would not be required to comply with the life reporting requirements if his or her first or second listed offense were for a conviction on or before September 1, 1999, for an offense that had been added on that date to the definition of "listed offense", unless he or she had been convicted of a subsequent listed offense after September 1, 1999.

Reporting by Registered Persons

By January 15, 2000, a person registered under the Act who was not incarcerated would have to report in person to the local law enforcement agency or sheriff's department having jurisdiction where he or she was domiciled or resided, or to the State Police post in or nearest to the county where he or she was domiciled or resided. The person would have to present proof of domicile or residence and update any information that changed since registration. A person registered under the Act who was incarcerated on January 15, 2000, would have to report at least 10 days after he or she was released.

Following initial verification, or registration after January 15, 2000, a person required to be registered who was not incarcerated would have to report in person to the local law enforcement agency or sheriff's department having jurisdiction where he or she was domiciled or resided or to the State Police post in or nearest to the county where he or she was domiciled or resided for verification of domicile or residence as described below.

If the person were registered only for one or more misdemeanor listed offenses, he or she would have to report not earlier than January 1 or later than January 15 of each year after the initial verification or registration. "Misdemeanor listed offense" would mean a listed offense that was any of the following:

- Accosting, enticing or soliciting a child for immoral purposes (MCL 750.145a); knowingly possessing any child sexually abusive material (MCL 750.145c(4)); engaging in indecent or obscene conduct in a public place (MCL 750.167(1)(f)); or soliciting and accosting (MCL 750.448).
- Indecent exposure (MCL 750.335a), other than a violation committed by a person who was, at the time of the offense, a sexually delinquent person as defined in the Penal Code. ("Sexually delinquent person" means any person whose sexual behavior is characterized by repetitive or compulsive acts that indicate a disregard of consequences or the recognized rights of others, or by the use of force upon another person in attempting sex

relations of a heterosexual or homosexual nature, or by the commission of sexual aggressions against children under 16.)

- A violation of a municipality's local ordinance that substantially corresponded to the above provisions.
- A violation of a State law or a local ordinance that by its nature constituted a sexual offense against an individual who was under 18 if the violation were not specifically designated a felony and were punishable by imprisonment for up to one year.
- An attempt or conspiracy to commit an offense described above.
- An offense substantially similar to an offense described above under a law of the United States, any state, or any country, or under tribal or military law.

If the person were registered for one or more felony listed offenses, he or she would have to register not before the first day or later than the 15th day of each April, July, October, and January following initial verification or registration. "Felony listed offense" would mean a listed offense that was any of the following:

- A second offense for accosting, enticing, or soliciting a child for immoral purposes (MCL 750.145b); persuading, inducing, enticing, coercing, causing, or knowingly allowing a child to engage in a child sexually abusive activity for producing any child sexually abusive material (MCL 750.145c(2)) or distributing or promoting, or financing for distribution or promotion of, or receiving to distribute or promote any child sexually abusive material or activity (MCL 750.145c(3)); kidnapping (MCL 750.349); kidnapping a child under 14 (MCL 750.350); pandering (MCL 750.455); committing first-, second-, third- or fourth-degree CSC (MCL 750.520b - 750.520e); or, committing an assault with intent to commit CSC (MCL 750.520g).
- Indecent exposure (MCL 750.335a), committed by a person who had been, at the time of the offense, a sexually delinquent person.
- A violation of a State law that by its nature constituted a sexual offense against a person who was under 18, if the violation were specifically designated a felony or were punishable by imprisonment for more than one year.
- An attempt or conspiracy to commit an offense described above.
- An offense substantially similar to an offense described above under a law of the United States, any state, or any country, or under tribal or military law.

When a person reported under the bill, an officer or an authorized employee of the law enforcement agency, sheriff's department, or State Police post, would have to verify the person's residence or domicile. The officer or employee would have to sign and date a verification form, and give the person a copy of the signed form showing the verification date. The officer or employee would have to forward the verification information to the State Police by the Law Enforcement Information Network (LEIN) in the manner prescribed by the State Police. The State Police would have to revise the databases maintained under the Act.

Maintaining Valid Identification

A person required to be registered would have to maintain either a valid operator's or chauffeur's license issued under the Michigan Vehicle Code, or an official State personal identification card issued under Public Act 222 of 1972, with the person's current address. The license or card could be used as proof of domicile or residence under the bill. In addition, the law enforcement officer or authorized employee could require the person to produce another document bearing his or her name and

address, including but not limited to voter registration or a utility or other bill. The Department could specify other satisfactory proof of domicile or residence.

Digitized Photograph

Not before January 1, 2000, or after January 15, 2000, a person registered under the Act who was not incarcerated would have to report in person to a Secretary of State office and have his or her digitized photograph taken. A registered person who was incarcerated on January 15, 2000, would have to report not less than 10 days after he or she was released. The person would not be required to report if he or she had a digitized photograph taken for an operator's or chauffeur's license or official State personal identification card before January 1, 2000, or within two years before he or she was released. The photograph would have to be used on the person's operator's or chauffeur's license or official State personal identification card. The person would have to have a new photograph taken when he or she renewed the license or identification card as provided by law. The Secretary of State would have to make the digitized photograph available to the Department for registration under the Act.

Failure to Report or Register

If a person did not report under the bill, the Department would have to notify the local law enforcement agency. An appearance ticket could be issued for the person's failure to report as provided in Chapter 9 (Arrests) of the Code of Criminal Procedure (MCL 764.9a-764.9g).

Under the Act, a person who is required to be registered who willfully violates the Act is guilty of a felony punishable by imprisonment for up to four years and/or a fine of up to \$2,000. Under the bill, a person who willfully violated the Act would be guilty of a felony punishable as follows:

- Imprisonment for up to four years and/or a fine of up to \$2,000, if the person had no prior convictions for a violation of the Act, other than a failure to comply with the bill's reporting requirements.
- Imprisonment for up to seven years and/or a fine of up to \$5,000, if the person had one prior conviction for a violation of the Act, other than a failure to comply with the bill's reporting requirements.
- Imprisonment for up to 10 years and/or a fine of up to \$10,000 if the person had two or more prior convictions for violations of the Act, other than a failure to comply with the bill's reporting requirements.

A person who failed to comply with the bill's reporting requirements would be guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$500. A person who willfully failed to sign a registration, notice, or verification as provided in the bill would be guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of up to \$500.

A person's failure to register or a violation of the bill's provisions on change of residence or domicile, or transfer to another correctional facility, could be prosecuted in any of the following jurisdictions: the person's last registered address or residence, the person's actual address or residence, or where the person had been arrested for the violation.

Senate Bill 567

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 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.

Senate Bill 568

The bill specifies 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

The Vehicle Code allows an applicant for a driver's license to have his or her image captured or reproduced when applying. 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, as it would be amended by Senate Bill 566.

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. The Secretary of State would have to make the images of those persons available to the Department of State Police as provided in that Act.

The Vehicle Code allows the Secretary of State to issue a renewal of a driver's license by mail for one additional four-year period, unless the renewing licensee has a driving record with a conviction or civil infraction determination obtained in the 48 months preceding renewal. The bill also would prohibit 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, pursuant to Senate Bill 566.

The Department of State Police would have to provide to the Secretary of State updated lists of person required, under Senate Bill 566, to maintain a valid driver's license or official State personal identification card.

Senate Bill 570

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 pursuant to Senate Bill 566, 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.

Public Act 222 of 1972 allows a person to apply for a renewal of an official State identification card by mail or other methods prescribed by the Secretary of State. The bill 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.

MCL 28.722 et al. (S.B. 566)
712A.18 (S.B. 567)
769.1 & 769.16a (S.B. 568)
257.307 (S.B. 569)
28.292 (S.B. 570)

Legislative Analyst: L. Arasim
P. Affholter

FISCAL IMPACT

Senate Bill 566

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 does not prohibit conviction for another crime from the same transaction, length of sentence for certain offenders could increase. The bill would create graduated sanctions for the felony of failing to register and a new misdemeanor for other violations of conditions of registration. As a result, costs or fine revenues for the State or local units of government would increase.

Senate Bills 566 through 570

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.

Fiscal Analyst: K. Firestone
B. 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.