



**House
Legislative
Analysis
Section**

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SEX OFFENDERS REGISTRY

**Senate Bills 193 and 194 (Substitutes H-1)
Sponsor: Sen. Michael J. Bouchard**

**Senate Bill 397 (Substitute H-2)
Senate Bill 400 (Substitute H-1)
Sponsor: Sen. Lana Pollack**

First Analysis (6-21-94)

**Senate Committee: Judiciary
House Committee: Judiciary**

THE APPARENT PROBLEM:

In recent years, the problem and prevalence of sex-related crimes have gained greater public visibility as these offenses have been reported in greater numbers. State legislatures have examined sexual conduct laws to find ways to enhance community protection efforts and improve investigative techniques. In an attempt to strengthen their laws, at least 32 states have adopted measures requiring sex offenders to register with law enforcement or state agencies. Supporters of sex offender registries claim that these requirements contribute to public safety by assisting police investigations and deterring sex offenders from committing new offenses. Some people believe that Michigan also should adopt registration requirements for convicted sex offenders.

THE CONTENT OF THE BILLS:

The bills constitute a package of legislation that would require convicted sex offenders, including juveniles, to register with their local law enforcement agencies for at least 25 years after conviction. The bills would take effect January 1, 1995, but none of the bills could take effect unless all, plus House Bill 4601, were enacted. (House Bill 4601, scheduled for consideration by the House Judiciary committee on June 21, 1994, has been proposed as a vehicle bill to effect necessary changes to the juvenile code.) A more detailed explanation follows.

Senate Bill 397 would create the Sex Offenders Registration Act, requiring people convicted of certain sex offenses to register with their local law enforcement agencies. The registration requirement

would apply for 25 years following conviction, except that if the person had been convicted for the second or subsequent time of a "listed offense," the registration requirement would be for life.

Listed offenses. The "listed offenses" to which the bill would apply would be: soliciting a child for immoral purposes; involvement with child pornography; first-, second-, third-, or fourth-degree criminal sexual conduct or the attempt thereof; a second or subsequent violation for any combination of indecent exposure or "indecent or obscene conduct in a public place", or a corresponding local ordinance; any attempt or conspiracy to commit any of these offenses; and an offense substantially similar to a listed offense that was committed under a law of another state, the United States, or any country.

Registration requirement. Someone who resided in Michigan for 14 days or more would be subject to the registration requirement. Registration would be required not only of people convicted after the bills took effect, but also people with earlier convictions who were jailed, imprisoned, paroled, placed on probation, committed to the Department of Corrections or the Department of Social Services, or placed under the jurisdiction of the juvenile court before or after the bills took effect. Registration also would be required of probationers and parolees convicted under another state's or country's laws who were transferred to Michigan before or after the bills took effect.

Registration procedures. Someone convicted, placed on youthful trainee status, or adjudicated by the juvenile court prior to the bills' effective date

Senate Bills 193, 194, 397, and 400 (6-21-94)

would have to register by March 31, 1995. The person would register with his or her probation officer if on probation, with his or her parole officer if on parole, with the sheriff if jailed, with the Department of Corrections if imprisoned, or with the juvenile court or Department of Social Services if an adjudicated juvenile.

Someone convicted prior to the bills' effective date but who was sentenced or moved to Michigan after that date would register with the probation or parole officer, the juvenile court, or the Department of Social Services, depending on circumstances.

Someone convicted in Michigan after the bills took effect would register before sentencing, entry of the order of disposition, or assignment to youthful trainee status. The probation officer or the juvenile court would give the individual a registration form after conviction, would explain procedures, and would accept the completed form for processing.

Someone convicted in another state or country after the bills took effect would have to register with the local law enforcement agency (or sheriff's department, if there was no municipal agency) within 14 days after coming to Michigan.

The officer, court, or agency registering a person or receiving a registration or change of address notification would forward the registration or notification to the state police within seven days, and would have to provide the person with a copy of the applicable registration or notification document.

Registration or change of address notification would be on a form provided by the Department of State Police and containing information, including a recent photograph, prescribed by the bill. A person would be prohibited from knowingly providing false or misleading information concerning a registration or notification.

Change of address. Within ten days after moving, being paroled, or being discharged from the jurisdiction of the corrections department, a person would have to notify his or her local law enforcement agency (or, if there were none, his or her local sheriff's department) of his or her new address.

The Department of Corrections would have to notify the local law enforcement agency within ten

days after transferring a sex offender prisoner to a community residential program, or a minimum custody facility of any kind (including a camp).

Duration of registration requirement. A person would have to comply with the registration requirement for at least 25 years. The registration requirement would last for life for a person convicted of a second or subsequent listed offense after the bills took effect, regardless of when the first listed offense was committed.

Violations. Failure to register or other violation by a person required to register would be a felony punishable by up to four years in prison, a fine of up to \$2,000, or both. In addition, the court would revoke any probation or youthful trainee status, and the parole board would revoke any parole.

Confidentiality. A registration would be confidential and exempt from disclosure under the Freedom of Information Act. It could be open for inspection only for law enforcement purposes. Someone who violated the confidentiality restriction would be guilty of a misdemeanor punishable by up to 90 days in jail, a fine of up to \$500, or both.

Senate Bill 400 would amend the expungement law (MCL 780.622 and 780.623) to specify that a sex offender whose conviction was set aside under the act would still be considered convicted for the purposes of sex offender registration. Records of expunged convictions would be available to various law enforcement and judicial entities for use in prosecuting violations of the Sex Offenders Registration Act and in determining whether someone required to register had violated that act.

Senate Bill 193 would amend the Code of Criminal Procedure (MCL 762.12 et al.) to require sex offenders and local law enforcement agencies and probation officers to comply with registration procedures, and to mandate revocation of youthful trainee status or probation for failure to register as required by Senate Bill 397. The bill also would lower the cap on the probation supervision fee for youthful trainees. That cap currently is set at \$30 per month for 60 months; the bill would lower it to \$30 per month for 36 months.

Senate Bill 194 would amend Public Act 232 of 1953 (MCL 791.236 et al.) to require the parole board to rescind parole for a sex offender who violated Senate Bill 397, to require parole officers to register

parolees as required by that bill, and to require orders of parole for sex offenders to include conditions requiring compliance with Senate Bill 397.

HOUSE COMMITTEE ACTION:

The House Judiciary Committee adopted substitute bills that differed from Senate-passed versions in, among other things, extending the legislation to apply to juvenile dispositions.

FISCAL IMPLICATIONS:

With regard to the Senate-passed versions of the bills, the Senate Fiscal Agency (SFA) said that the bills would cost the Department of State Police a minimum of \$170,000 the first full year following the bills' effective date and somewhat less in subsequent years, depending upon the level of registration activity generated. Under the bills, the department would require the following: a detective sergeant position, costing \$75,300, to design and oversee registration operations; a clerical position, costing \$42,300, to provide clerical services and make data entries; approximately \$3,000 in one-time costs to upgrade existing computer memory; and approximately \$50,000 to develop and produce required registration forms.

The SFA said that the Senate Bill 397 has the potential to increase state and local correctional costs. The term of imprisonment imposed for individuals who failed to register would increase costs for certain local jails or the Department of Corrections, depending on the type and length of disposition. The bill also would increase costs for the Department of Corrections for parole violators who could be returned to prison for failure to register. There is no reliable way to predict how many individuals would fail to register.

The SFA also said that there would be costs to local courts, depending on the number of individuals who violated the proposed act. The courts would have to revoke youthful trainee status of those with that status. Local courts that are combined with probation offices would have minimal costs associated with probation officers' registering individuals required to participate under this act. (6-9-94)

ARGUMENTS:

For:

To require convicted sex offenders to be registered would be to assist investigations of sex crimes by giving law enforcement agencies a resource for identifying known sex offenders in the general area. The registry would become a tool that police could use to solve -- or even prevent -- crimes. When a sex offense was committed, the registry could be used to identify potential suspects who lived in the area or who had a pattern of similar crimes.

It is widely believed that at least certain kinds of sex offenders are not responsive to therapy programs and may have a particular deviant orientation that cannot be easily changed or suppressed. Indeed, according to a review of sex offender registration laws conducted in 1992 by the Washington State Institute for Public Policy (WSIPP), in California, which was the first state to require registration of sex offenders, a 15-year follow-up study of sex offenders first arrested in 1973 revealed that nearly half of the group was rearrested for some type of offense and 20 percent were rearrested for a subsequent sex-related offense, and that those whose first offense was rape by force or threat had the highest recidivism rate. The California study also reportedly found that a large proportion of criminal justice investigators believe that the registration system was effective in locating sex offenders and apprehending suspects.

In addition to aiding law enforcement investigations, to require sex offenders to register could have an effect on the offenders' behavior. Once registered, an offender would know that he or she was being monitored and this knowledge could discourage the offender from committing further crimes. A long-term registration requirement, along with other criminal penalties specified in law, could even discourage a potential offender from committing an assault. The California study reportedly found that about one-half of the 420 criminal justice agencies responding believed that registration deterred offenders from committing new sex crimes.

Response:

The bills would not go far enough. If sex offenders truly are predisposed to committing these types of crimes, registration should be required for life, not just some term of years. Also, in some states, the requirement applies to people found to have committed sex offenses, rather than just to those convicted, thereby extending registration

requirements to people found not guilty by reason of insanity. In addition, other types of offenders also may be predisposed to repeating their criminal activity, and perhaps registration requirements should be extended to cover those crime categories. For example, according to the WSIPP review, California and Montana register arsonists and California registers narcotics offenders.

Against:

The bills would constitute an infringement upon civil liberties. Requiring registration would impose additional sanctions on those who had already served the penalties for their crimes. Sex offenders who have been discharged from prison or who have successfully completed a term of probation or parole have paid their debts to society and should not be subject to additional punishment.

Response:

According to the WSIPP review of state sex offender registration laws, these requirements have been subject to legal challenges in at least four states. Generally, courts have found that registration is not a form of punishment. And, when registration has been examined as a form of punishment, it has not been found to be cruel and unusual. In addition, challenges on the basis of due process and equal protection have failed and registration requirements have been found not to infringe unreasonably on a person's right to travel or right to privacy.

Against:

The bills' restrictions on access to registry information would be too tight. Information in the registries should be available, at least, to school districts and employers. School administrators should be aware of known sex offenders in their communities so that administrators and teachers can provide better safety and security in and around schools. Employers, particularly those whose workers interact with children, should be given access in order to check the backgrounds of employees or potential hires. In addition, in some states' law enforcement authorities are permitted to release "relevant information" upon request. A victim, for instance, may want to know the whereabouts of his or her attacker upon that person's release into the community. Some states even classify their registries as public information subject to freedom of information provisions. Widespread access to the registry could be used for the general protection of the citizenry. Parents, for instance, may want to know whether someone had

a history of sex offenses so that children could be warned against a particular neighbor.

Response:

A sex offender registry should be used as a law enforcement tool, not as a mechanism to brand or ostracize particular members of the community.

Against:

The bills go too far to apply registration requirements to juveniles. In the first place, such an approach runs counter to one of the basic premises of the juvenile justice system, which is that a reformed adult should not have to bear a continuing stigma for youthful offenses. Further, there is evidence that treatment of juvenile sex offenders can be successful in preventing further similar crimes. A 1991 WSIPP follow-up study of 197 male juvenile sex offenders who participated in offense-specific treatment since 1984 found that sexual recidivism was rare. Only 10.2 percent of the study's subjects were convicted of new sex offenses during the follow-up period.

Response:

Testimony before the Senate Judiciary committee suggested that the numbers of juvenile sex offenders are on the rise and that youths are committing sex offenses at younger ages than seen previously. To extend registration to juvenile offenders would be to expand the concept's public protections and deterrent effects to apply to this segment of the problem.

Against:

The bills would present various problems of implementation. By having offenders register with a wide variety of local agencies, they would engender inefficiencies and the potential for reporting problems. It might be better to provide for more centralized registration and have offenders simply register with their local sheriffs or the state police. To encourage compliance, there should at least be the option of registering anywhere in the state with the state police, which will be the repository for registration information anyway.

Against:

Rather than spending limited public funds on creating and maintaining a list of sex offenders, the state should direct resources toward other, more effective, alternatives. Funds might be better used for treatment and counseling of incarcerated sex offenders, or for intensive supervision of the most serious offenders. Such measures could do more to prevent recidivism than mere registration.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bills. (6-20-94)

The Michigan Council on Crime and Delinquency supports the concept of the bills. (6-17-94)

The Department of State Police supports the package, but urges that people be allowed to register at state police posts. (6-20-94)

The Michigan Court Administrators Association does not oppose the bills, but has concerns regarding the data collection process, its accuracy, and its impact on the courts. (6-14-94)

The American Civil Liberties Union of Michigan opposes the bills. (6-20-94)