

PUBLIC DISCLOSURE OF SEX OFFENDERS EXCEPTION

House Bill 4499 (Substitute H-3) First Analysis (4-8-97)

**Sponsor: Rep. Kirk Profit
Committee: Judiciary**

THE APPARENT PROBLEM:

Public Act 494 of 1996, which amends Michigan's Sex Offenders Registration Act, took effect on April 1, 1997. The Sex Offender Registration Act requires a person who has been convicted of certain sexual offenses to register information about his or her identity, address, and conviction. The act requires the Department of State Police to maintain a computerized data base of individuals registered under the Sex Offenders Registration Act, which will then be made available to state police posts, local law enforcement agencies, and sheriff's departments, which will in turn make that information available for public inspection. (For more information see BACKGROUND INFORMATION.)

The intent of Public Act 494 is to inform the public about the whereabouts of sex offenders. This is based on the belief that sex offenders present a relatively higher risk of recidivism. However, a potential unintended consequence of publicizing the names and crimes of sex offenders could be that the victim's name could also easily be deduced in some cases, causing further pain for the victim of the offense. For example, where the offender's crime was incest, there is obviously a limited field of persons who could have been the victim. As a result, legislation has been offered to provide certain victims with an opportunity to petition the court for permission bar the public disclosure of their particular offender's name.

THE CONTENT OF THE BILL:

The Sex Offenders Registration Act (Public Act 295 of 1994) requires certain convicted sex offenders to register with certain local law enforcement agencies when they are on probation or parole, or for 25 years after their final release from the jurisdiction of the Department of Corrections. As of April 1, 1997, the act also requires public disclosure of the names and other information regarding registered sex offenders.

The bill would amend the act to allow certain sex crime victims or, if the victim were a minor or legally incapacitated, the victim's parent or guardian to petition

the circuit court to prohibit or discontinue public disclosure of the sex offender's registration. In cases involving a minor or a legally incapacitated person, the court would be required to appoint a guardian ad litem. A petition for exempting a sex offender from public disclosure could only occur where the sex offender had committed a listed offense (see BACKGROUND INFORMATION) against an immediate family member who had been residing in the same household with the offender at the time of the crime. The bill would define "immediate family member" to mean the offender's parent, child, or sibling.

Petitions for court orders to prohibit or discontinue convicted sex offenders' registrations could be on a form prescribed by the State Court Administrative Office. In deciding whether to grant a petition, the court would have to consider (a) the likelihood that disclosure of the registration would identify the victim or an immediate family member; (b) the effects that disclosure might have on the victim or an immediate family member; (c) any recommendations made by the offender's probation or parole officer, and by a mental health practitioner appointed by the court or retained by the victim or family; (d) whether the request had been made freely and voluntarily; and (e) the likelihood that the offender would commit another listed offense. All proceedings and records for an exemption from disclosure under the bill would be required to be closed to the public.

The court would have to grant a petition if it determined that the offender had not committed any other listed offenses against persons other than the victim and the damage to the victim or immediate family members outweighed the advantage of public disclosure. The court would be allowed to require periodic review of an order issued under the bill, as it considered appropriate.

If a court issued an order under the bill, it would have to provide the Department of State Police and the offender with a copy of the order within five days after the court entered the order. The copy for the offender could be mailed to his or her last known address. The

department would then be prohibited from putting the offender's name and other information into the compilation of registered offenders that would be available to the public, or, if the offender had already been included in the compilation, the department would have to remove it from compilation within seven days after receiving the court's order. The bill also would prohibit a person from disclosing to the public any information the court ordered not to be compiled or removed from compilation.

The bill would take effect on April 1, 1997.

MCL 28.728a

BACKGROUND INFORMATION:

On May 17, 1996, President Clinton signed a national "Megan's Law" (so named for a child who was killed by a convicted sex offender who lived nearby) requiring all states to adopt laws requiring community notification regarding sex offenders. If a state fails to comply with the federal law within three years, it risks losing ten percent of the federal funding it would otherwise receive under section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3765). To meet the federal requirements, the laws adopted by the states must provide for sex offenders to be registered and the information kept private, with three exceptions: information may be provided to law enforcement agencies, information may be released to certain state agencies for the purpose of completing background checks, and relevant information regarding a particular individual may be released where necessary to protect the public.

The Sex Offenders Registration Act applies to individuals convicted of a listed offense, juveniles for whom the juvenile court enters a disposition for the listed offense, and persons placed on youthful trainee status for a listed offense. 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 life. Within 10 days after moving, being paroled, or being released from the jurisdiction of the Department of Corrections, a person required to register must notify the local law enforcement agency, 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 the following: engaging in indecent or obscene conduct in a public place, indecent exposure, or a local ordinance substantially similar to either of those offenses.

-- Criminal sexual conduct (CSC) in the first, second, third, or fourth degree.

-- Assault with intent to commit CSC.

-- An attempt or conspiracy to commit an offense listed above.

-- An offense substantially similar to a listed offense under the laws of the United States, any other state, or any country.

Public Act 494 of 1996 requires that the Department of State Police to maintain a computer data base indexing offenders by zip code area. The data base information will contain the name and aliases, address, physical description, and birth date of each registered individual in the zip code area and any listed offenses for which the individual has been convicted. Information from this data base will be made available to local law enforcement agencies, sheriff's departments, and police posts, which will in turn have to make the information available for public inspection during regular business hours. The state police are not required to make copies of the information for the public, but may make the information available to the public through electronic, computerized, or other accessible means.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on the state, and would result in an indeterminate impact on local governments. Costs and revenues to the courts would depend on the number of petitions filed. (4-3-97)

ARGUMENTS:

For:

The bill will improve the law passed last session that will require publication of sex offenders names, addresses and other information. That law failed to take into account the fact that the privacy rights of some of the victims of these crimes are at least as important the community's right to know about the whereabouts of sex offenders. The passage of the community notification legislation last session did not take into account the

privacy rights of victims of incest or the potential effect that public disclosure of the crime could have on a family that is trying to get past a tragic incident, to rebuild and keep the family together. Since most sex offenses occur within the family, public notice of these crimes places the government in a position of promoting public scrutiny and rumor-mongering, which in some cases will be tantamount to publishing the names of the victims of these crimes. The bill helps to alleviate that risk by allowing victims to have the names of their offenders removed from the public list.

Against:

The interest of society in preventing further attacks by a sex offender far outweighs the privacy interests of the victim. Many argue that the risk that a sex offender may commit further crimes after release is unusually high, and as a result the community where such an offender resides should be informed of the offender's propensities, even if that information might prove embarrassing to the victim. It is, in the long run, far better to risk the embarrassment of one victim than to risk the creation of yet another.

Against:

The bill unfairly places the burden of protecting the victim's privacy upon the victim and the victim's family, when it should be the state's responsibility to seek the permission of the victim or the victim's family before disclosing personal information about the offender, particularly when such a disclosure may lead inevitably to the disclosure of the victim's name. Furthermore, the bill will require victims to petition the court and go through a court proceeding in order to prohibit the disclosure of an offender's name; this procedure, in and of itself, risks public disclosure which would defeat the purpose of the bill. Further, such a proceeding will force the victim and his or her family to go through another painful court proceeding.

Response:

The risk that the proceedings required under the bill could lead to disclosure of the victim's name would be minimized by the fact that these proceedings would be closed to the public, as would any records of such proceedings.

Against:

Unfortunately, the bill allows those victims who are most likely to be susceptible to the influence of their offender to seek the court's permission to have the offender's name removed from the list of sex offenders. If any group should not have this authority it is children who have suffered incest; there is far too great a risk that the offender could influence the victim's decision to seek to have the offender exempted from the list. Even with the protection of a guardian ad litem, there is a grave risk

that undue pressure could be placed upon a victim of incest, by the offender or the offender's spouse, to prevent the name of the offender from being publicized.

POSITIONS:

The American Civil Liberties Union supports the bill. (3-19-97)

The Michigan Psychological Association supports the concept of the bill. (3-19-97)

The Department of State Police has no position on the bill. (3-24-97)

The Prosecuting Attorneys Association of Michigan has no position on the bill. (3-24-97)

Analyst: W. Flory/S. Ekstrom

■ 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.