

**House Bill 5617 (Substitute H-1)
First Analysis (12-2-98)**

**Sponsor: Rep. Lynne Martinez
Committee: Judiciary**

THE APPARENT PROBLEM:

The Michigan Sex Offenders Registration Act, also known as "Megan's Law," took effect on October 1, 1995. The law requires people who have been convicted of first through fourth degree criminal sexual conduct, sex-related offenses specific to children and third and subsequent violations of certain indecency laws to be placed on a list of convicted sex offenders, and to remain on the sex offender registry for 25 years. The law was amended in 1996 to allow public access to the information contained in the registry and compilations of the registry are required to be made available for public inspection at local police or sheriff's departments and at state police department posts.

Since it was enacted, some have suggested that the act's provisions are too broad and that some of the offenders who are required to be listed are not necessarily a threat to society. For example, some argue that fourth degree criminal sexual conduct, which is a misdemeanor, is not the sort of crime that warrants placement on the sex offender list. Rather than requiring that such offenders automatically be placed on the list, it has been suggested that the decision regarding whether a particular fourth degree CSC offender should be listed in the sex offender registration should be left to the discretion of prosecuting attorneys and judges.

THE CONTENT OF THE BILL:

The bill would amend the Sex Offender Registration Act allow the court or a prosecuting attorney to exempt certain individuals from the act's provisions. The exemption would only apply to persons convicted of fourth degree criminal sexual conduct.

An individual who had been convicted of fourth degree CSC or attempted fourth degree CSC would not be required to be registered unless the prosecuting attorney notified both the individual and the court in writing before the sentencing or disposition that the

individual would be required to be registered. Even if the prosecutor had indicated that the individual would be required to be registered, the court could order the individual to be exempted from registration. If the court did so, the individual would not be required to be registered and would not be required to list the violation as a prior offense. The court could order an individual who was convicted of fourth degree CSC to be exempted from the register even if the conviction occurred prior to the effective date of the bill.

MCL 28.723 and 28.727

BACKGROUND INFORMATION:

Fourth degree CSC is a misdemeanor punishable by imprisonment for no more than two years and/or a fine of not more than \$500. Fourth degree CSC involves sexual contact with another person under any of the following circumstances:

- The victim is at least 13 years of age and under 16 years of age and the actor is 5 or more years older than victim.
- Force or coercion is used, including the use of physical force or violence, threats of force or violence or future retaliation, unethical or unacceptable medical treatment or examination, or the use of concealment or surprise.
- The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- The victim is under the jurisdiction of the Department of Corrections and the actor is an employee or a contractual employee of, or a volunteer with, the Department of Corrections who knows that the victim is under the jurisdiction of the department.

- The victim is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county who knows that the victim is under the county's jurisdiction.

- The victim is related to the actor by blood or affinity to the third degree and the activity does not meet the standards for first through third degree CSC. The defendant could offer the affirmative defense in such cases that the other person was in a position of authority over the defendant and used this authority to coerce him or her. Further, a finding of fourth degree CSC would not be warranted where the victim and the defendant are lawfully married to one another at the time of the violation.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Fourth degree CSC is a misdemeanor that involves sexual contact rather than penetration and is the lowest level CSC offense. These offenders are not usually the type of individuals that pose a threat to society and as a result really should not be listed in the sex offender registry. However, the bill allows an offender to be placed on the list if the prosecuting attorney decides that the offender's activity warranted registration even though the offender was only convicted of fourth degree CSC. In addition, courts would have the authority to exempt any individual convicted or found responsible for fourth degree CSC from registration, in spite of the prosecuting attorney's decision. In the name of fairness, the option for a judge to exempt an individual from the list would be retroactive.

Against:

Unfortunately, one particular situation where listing the offender in the sex offender registration seems excessive is not addressed by the bill. The bill would not prevent the listing of persons who were involved in consensual relationships with slightly younger partners who were not of legal age. In other words, if Romeo is 17 and Juliet is 14 and are engaged in consensual sexual activity for which Romeo is arrested and convicted, some would argue that putting Romeo's name on the sex offenders registration list for the next

25 years is a bit extreme. However, this bill would do little to address such a situation. Under the bill, although Romeo would still automatically be required to be listed in the registration, another person who was 20 or older and had engaged in sexual contact with Juliet would not be required to be listed unless the prosecutor required it. It seems unlikely that this is the sort of situation that was intended. Furthermore, fourth degree CSC also includes use of force or coercion, an abuse of authority by an employee of a prison or jail or juvenile facility where the victim is detained, and under certain circumstances where both parties are related to one another to by blood or affinity to the third degree. Surely, these situations are more offensive and more likely warrant listing the offender in the register than situations of consensual sexual activity.

Response:

In situations like that of Romeo and Juliet, where the defendant and the victim were engaged in consensual sexual activity, it is generally the practice of prosecuting attorneys to allow Romeo to plead to fourth degree CSC rather than the felony (third degree CSC), which might more accurately fit the elements of the crime committed. Generally, cases involving consensual activity between teens where one of the partners has not yet reached the age of consent are difficult to prosecute successfully - for example, the victim may be unwilling to cooperate, the jury may be sympathetic towards the defendant, etc. As a result, prosecutors would rather not be forced to attempt to try and convict Romeo (or were their situation reversed, Juliet) for a felony and generally will offer him (or her) the opportunity to plead to the lesser offense of fourth degree CSC.

Rebuttal:

The bill would still unfairly force a teen involved in consensual sexual activity to accept a plea to fourth degree rather than attempt to try his or her case.

Against:

No sex offenders should be removed from the list and there should be no loopholes to prevent people who have been convicted of sex crimes from being listed. The purpose of the sex offender register is to protect the citizens of this state from people who commit sex crimes. There is no such thing as an innocent sex crime: people who are convicted of fourth degree CSC could pose as great a threat to others as those convicted of first degree CSC, and perhaps a greater threat, since those convicted of fourth degree CSC are less likely to be serving lengthy prison terms.

POSITIONS:

The Prosecuting Attorneys Association of Michigan supports the bill. (11-23-98)

The American Civil Liberties Union supports the bill. (11-20-98)

Analyst: W. Flory

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