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BILL ANALYSIS

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House Bill 4920 (Substitute H-3 as passed by the House)
House Bill 5240 (Substitute H-1 as passed by the House)
Sponsor: Representative Larry Julian
House Committee: Criminal Justice
Senate Committee: Families and Human Services

Date Completed: 1-20-04

CONTENT

House Bills 4920 (H-3) and 5240 (H-1) would amend the Sex Offenders Registration Act and the Code of Criminal Procedure, respectively, to do the following:

- **Exempt juveniles convicted of particular certain sex crimes after 2003 from having to register as sex offenders.**
- **Reduce from 25 years to 10 years the length of time that juveniles convicted of certain sex crimes after 2003 must register.**
- **Allow a court to order certain juvenile offenders exempt from registration.**
- **Allow a person convicted as a juvenile before 2004 to petition a court for a registration exemption order.**
- **Expand the circumstances under which a juvenile may not be assigned to youthful trainee status.**

The bills are tie-barred to each other. They are described below in further detail.

(Under the Act, people convicted of or placed on youthful trainee status for certain crimes ("listed offenses"), and juveniles adjudicated in the family court for certain actions that would be crimes if committed by an adult, must register information about their identity, address, and conviction with a law enforcement agency. This information is included in the sex offender registry maintained by the Michigan Department of State Police, which is accessible only for law enforcement purposes. In addition, the Department must compile certain information from the registry and make the compilation available to the public.

House Bill 4920 (H-3)

Juveniles Required to Register

Under the Act, an individual required to be registered must notify the local law enforcement agency or sheriff's department having jurisdiction where his or her new residence is located or the Michigan State Police (MSP) post of the individual's new residence, within 10 days after any of the following occurs:

- The individual changes his or her residence, domicile, or place of work or education.
- The individual is paroled.
- The individual is released finally from the jurisdiction of the Michigan Department of Corrections (MDOC).

An individual must comply with the Act for 25 years after the date of initially registering, or if he or she is in a State correctional facility, for 10 years after release, whichever is longer.

Under the bill, an individual who was convicted as a juvenile on or after January 1, 2004, of violating, attempting to violate, or conspiring to violate Section 520b(1)(a) or 520c(1)(a) of the Michigan Penal Code, and who was under age 13 at the time of the violation would have to register for 10, rather than 25, years.

(Under Section 520b(1)(a) of the Penal Code, a person is guilty of first-degree criminal sexual conduct (CSC) if he or she engages in sexual penetration with another person who is under 13 years of age. Under Section 520c(1)(a), a person is guilty of second-degree CSC if he or she engages in sexual contact with another person who is younger than 13.)

An individual convicted under Section 520g as a juvenile on or after January 1, 2004, of committing, attempting to commit, or conspiring to commit assault with intent to commit CSC in violation of Section 520b(1)(a) or 520c(1)(a) also would have to register for 10 years.

The Act provides that an individual convicted of a second or subsequent listed offense after October 1, 1995, regardless of when any earlier offense was committed, must register for life. The bill provides that, for purposes of determining whether a violation was a second or subsequent listed offense, "convicted" would include being assigned before January 1, 2004, to youthful trainee status.

The bill also would exclude these individuals from the publicly available compilation of registered offenders.

Exemption from Registration

Under the bill, an individual convicted as a juvenile on or after January 1, 2004, of violating, attempting to violate, or conspiring to violate Section 520d(1)(a) or 520e(1)(a) of the Michigan Penal Code would not have to register as a sex offender.

(Under Section 520d(1)(a), a person is guilty of third-degree CSC if he or she engages in sexual penetration with another person who is at least 13 years old and less than 16 years old. Under Section 520e(1)(a), a person is guilty of fourth-degree CSC if he or she engages in sexual contact with another person who is at least 13 and less than 16.)

A person convicted as a juvenile on or after January 1, 2004, of committing, attempting to commit, or conspiring to commit assault with intent to commit third-degree CSC with a person aged 13 to 15 would not have to register, either.

The bill also provides that an individual convicted of a listed offense on or after January 1, 2004, and assigned to youthful trainee status under the Code of Criminal Procedure would not be required to register.

Registration Exemption Order

The bill would allow a court to order an individual exempt from registering if he or she were convicted as a juvenile for certain violations committed while under the age of 13.

If an individual were convicted as a juvenile on or after January 1, 2004, of violating, attempting to violate, or conspiring to violate Section 520b(1)(a) or 520c(1)(a), or Section 520g as described above, and the individual were under 13 at the time of the violation, the court could order the juvenile exempt, with the prosecuting attorney's consent. If a person were convicted as a juvenile of any of those crimes and were not more than three years older than

the victim at the time of the violation, the court also could order that individual exempt, with the prosecuting attorney's consent.

In determining whether to order an individual exempt from registering, the court would have to consider all of the following:

- The individual's age and level of maturity at the time of the offense.
- The victim's age and level of maturity at the time of the offense.
- The nature and severity of the offense, including whether the victim consented to the sexual conduct.
- The individual's prior juvenile history.
- The individual's likelihood to engage in further criminal sexual acts.
- Any written impact statement the victim submitted under the Crime Victim's Rights Act.
- Any other information the court considered relevant.

The court could not order an individual exempt from registration if he or she were previously convicted of a listed offense for which registration was required or if the court determined he or she was likely to engage in further criminal sexual acts.

The court could order the MSP not to place an individual on the public registry while the court considered whether to exempt the person from registering. This order would expire 30 days after the date it was issued or as provided by the court, whichever occurred first.

Petition for Exemption

If an individual were convicted before January 1, 2004, of an offense described above or an offense for which he or she was assigned to youthful trainee status, he or she could petition the court for a registration exemption order. The person would have to provide a copy of the petition to the prosecuting attorney at least 30 days before a hearing was held on the petition. In making its determination, the court would have to consider all of the factors noted above for ordering an individual exempt.

In response to a petition, a court could not order an individual exempt if he or she were convicted of a listed offense for which registration was required during or after the period in which he or she was assigned to youthful trainee status, or if the court determined that the person was likely to engage in further criminal sexual acts.

If an individual properly petitioned the court and the court determined that he or she met the bill's requirements, the court could, with the prosecuting attorney's consent, issue an order exempting the individual from further registration and ordering the MSP to remove his or her registration information from the law enforcement registry and the public registry.

An individual could not file more than three petitions for exemption, and could not file more than one exemption petition within a two-year period.

MSP Compliance

If the court ordered an individual exempt from registration or ordered registration stayed pending its determination, the court promptly would have to provide a copy of the order to the MSP and the individual. If the MSP were provided with an order staying registration, the Department could not enter the individual's registration in the database until ordered to do so by the court or until the order expired. If the MSP were provided with an exemption order, it could not enter the individual's registration information in the database or, if the person were registered, the Department promptly would have to remove the registration information.

House Bill 5240 (H-1)

The bill would amend the Code of Criminal Procedure to expand the offenses for which a person may not be assigned to youthful trainee status.

Currently, if an individual pleads guilty to a criminal offense committed on or after his or her 17th birthday but before his or her 21st birthday, the court may, without entering a judgment of conviction and with the individual's consent, consider and assign that individual to youthful trainee status. The court may not assign a person to youthful trainee status for a felony for which the maximum punishment is life imprisonment, a major controlled substance offense, or a traffic offense. The bill also would exclude a person convicted of either of the following:

- Committing, attempting to commit, or conspiracy to commit second- or third-degree CSC, other than second-degree CSC with a person under age 13 or third-degree CSC with a person at least 13 years old but less than 16.
- Committing, attempting to commit, or conspiracy to commit assault with intent to commit first-, second-, or third-degree CSC, other than second-degree CSC with a person under age 13 or third-degree CSC with a person at least 13 years old but younger than 16.

MCL 28.722 et al. (H.B. 4920)
762.11 et al. (H.B. 5240)

Legislative Analyst: Julie Koval

FISCAL IMPACT

House Bill 4920 (H-3)

The bill would have a minimal fiscal impact on the Department of State Police. Although the bill would make adjustments to the Sex Offenders Registration Act, the Department already has the organization and resources to handle the changes.

To the extent that it would allow petitions for removal from the database, the bill could increase local court costs.

House Bill 5240 (H-1)

The bill would have an indeterminate fiscal impact on State and local government.

By adding certain criminal sexual conduct offenses to the list of offenses that preclude an offender from being considered a youthful detainee, the bill could increase the number of offenders convicted as adults and sentenced to prison. As the maximum sentence for the applicable offenses is 15 years, much longer than the maximum imprisonment of three years allowed for a youthful detainee, the bill potentially could result in increased sentences for this pool of offenders. The State would incur the additional cost of incarceration in a State facility, for which the average annual cost is \$27,000.

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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.