



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 1206 (Substitute S-1 as reported)
Senate Bill 1207 (Substitute S-3 as reported)
Senate Bill 1208 (Substitute S-3 as reported)
Senate Bill 1241 (Substitute S-1 as reported)
Sponsor: Senator Roger Kahn, M.D. (S.B. 1206)
 Senator Bill Hardiman (S.B. 1207)
 Senator Randy Richardville (S.B. 1208)
 Senator Wayne Kuipers (S.B. 1241)
Committee: Judiciary

Date Completed: 4-15-10

RATIONALE

The Sex Offenders Registration Act requires individuals who are convicted of a listed offense to register with the Department of State Police. If registered individuals are not incarcerated, they must report to the local law enforcement agency, sheriff's department, or State Police post for verification of their residence or domicile. When they move, registered offenders must notify the local law enforcement agency, sheriff's department, or State Police post of their new residence or domicile. Recently, the Michigan Court of Appeals decided that a homeless individual cannot be prosecuted for failing to comply with these requirements, because such an individual has neither a residence nor a domicile (*People v Dowdy*, discussed below). To address this, many believe that the statute should include specific reporting requirements for the homeless.

CONTENT

The bills would amend the Sex Offenders Registration Act to establish reporting and notification requirements for homeless individuals subject to registration under the Act.

Senate Bill 1206 (S-1) would define "homeless".

Senate Bill 1207 (S-3) would require the State Police's compilation of

registered individuals to include the location of a homeless individual.

Senate Bill 1208 (S-3) would require a homeless individual to report periodically to the local law enforcement agency, sheriff's department, or State Police post, and would require a law enforcement officer or employee to verify the individual's location.

Senate Bill 1241 (S-1) would require a homeless individual to give the address of a temporary shelter, or the location where he or she habitually slept, to the local law enforcement agency, sheriff's department, or State Police post, and to report within 10 days when that location changed by more than a half-mile.

All of the bills are tie-barred to each other.

Senate Bill 1206 (S-1)

The Act defines "residence" as that place where a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging.

The bill would define "homeless" as either of the following:

-- Lacking a fixed and regular residence.

- Having a primary residence that is a supervised public or private shelter designed to provide temporary living accommodations or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Senate Bill 1207 (S-3)

The Act requires the Department of State Police to maintain a computerized database of registrations and notices. The Department also must maintain a separate computerized database to allow public access to a compilation of registered individuals.

The compilation must be indexed by zip code. Within each zip code, it must contain information listed in the Act, including the address of each registered individual who is included in the compilation and who resides in that zip code. The bill would require the compilation to include the address or location, as applicable, of each registered individual who resided or was present in that zip code.

A homeless individual registered under the Act would have to be indexed within the zip code area of the two cross streets closest to where he or she habitually slept. The term "homeless" and the two cross streets would have to be reflected in the compilation for that individual.

Senate Bill 1208 (S-3)

The Act requires a registered individual who is not incarcerated to report in person to the local law enforcement agency, sheriff's department, or State Police post for verification of domicile or residence. An individual must report every January if he or she is registered only for one or more listed offenses that are misdemeanors. If an individual is registered for one or more listed offenses that are felonies, he or she must report each January, April, July, and October.

Under the bill, a homeless individual who was required to be registered would have to report as described above to the local law enforcement agency, sheriff's department, or nearest State Police post having jurisdiction of the location where he or she habitually slept.

When an individual reports as required, an officer or authorized employee of the local law enforcement agency, sheriff's department, or State Police post must verify the individual's residence or domicile. Under the bill, an officer or authorized employee would have to verify the individual's residence or domicile, or the location where he or she habitually slept, as applicable.

If an individual does not report, the Department of State Police must notify the local law enforcement agency, sheriff's department, or State Police post. Under the bill, this also would apply if a homeless individual did not report as required.

Senate Bill 1241 (S-1)

The Act requires a registered individual, within 10 days after changing or vacating his or her residence, domicile, or place of work or education, to notify the local law enforcement agency, sheriff's department, or State Police post. Under the bill, this would apply except as otherwise provided.

A homeless individual who was required to be registered would have to give the following information, as applicable, to the law enforcement agency, sheriff's department, or nearest State Police post having jurisdiction:

- The address of any dwelling that was providing the individual temporary shelter.
- If the first provision did not apply, the location where the individual habitually slept, including the two cross streets of the city, county, or State and zip code closest to that location.

If the location where a homeless registered individual habitually slept changed by more than a half-mile, he or she would have to report within 10 days to the local law enforcement agency, sheriff's department, or nearest State Police post.

MCL 28.722 (S.B. 1206)
28.728 (S.B. 1207)
28.725a (S.B. 1208)
28.725 (S.B. 1241)

BACKGROUND

On February 2, 2010, the Michigan Court of Appeals upheld the dismissal of charges against a homeless person for failure to comply with the Sex Offenders Registration Act (SORA), in *People v Dowdy* (No. 287689). The Court pointed out that the Act provides for registering and reporting by individuals where they have either a "domicile" or a "residence". The Court stated that domicile was not an issue in the case because a homeless person has no "true, fixed, principal, and permanent home" (as "domicile" is defined in *Black's Law Dictionary*).

The Court then examined the Act's definition of "residence", which refers to a place where an individual has a regular place of lodging. The Court found that the provisional location where an individual happens to spend the night does not fall within dictionary definitions of "lodging".

The Court concluded, "In sum, in SORA, the Legislature provided for maintaining information on the location of convicted sexual offenders in order to provide for the public safety... But, in so doing, the Legislature chose to focus those reporting requirements on persons who have a domicile or residence, as defined by the act. The Legislature is free, indeed, empowered, to make this choice, as it is to include a provision addressing reporting requirements for the homeless."

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Court's decision in *People v Dowdy* creates a potentially dangerous situation by making it virtually impossible to track the whereabouts of convicted sex offenders who are homeless. The Sex Offenders Registration Act provides both a law enforcement tool and a resource for members of the public. These functions are defeated if registered individuals do not report their location to the police, either periodically or when they move. Although registered offenders can be prosecuted for violating the Act, the penalties for failure to report do not apply if reporting is not

required. Evidently, before the Court of Appeals issued its decision, homeless offenders generally reported as required by the Act, informing a law enforcement agency of the shelter where they stayed or the location where they slept most of the time. As the Court of Appeals pointed out, however, the statutory reporting requirements hinge on the terms "residence" and "domicile"; therefore, according to the Court, an offender who has no residence or domicile is not subject to those requirements. The Court also pointed out that it is within the purview of the Legislature to rectify this, which is what these bills propose to do.

Response: The half-mile trigger for notifying a law enforcement agency when a homeless offender moved could be overly burdensome for some individuals. The homeless are a highly transient population and those who stay in shelters are transferred frequently. Reportedly, for example, homeless shelters in Detroit give people bus passes to a shelter in Pontiac because they can stay at a shelter for only a few days. Although it is necessary to fill the void left by the *Dowdy* decision, and clearly make the homeless subject to the Act, it would be preferable not to have a separate reporting scheme for them.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Bruce 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.