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Senate Bill 289 (Substitute S-5 as passed by the Senate)
Sponsor: Senator Curtis Hertel, Jr.
Committee: Judiciary and Public Safety

Date Completed: 12-16-20

CONTENT

The bill would create the "Child Abuse Offenders Database Act" (also named "Wyatt's Law") to do the following:

- **Require the Michigan Department of State Police (MSP) to maintain a computerized database of individuals convicted of child abuse offenses in the State.**
- **Specify the information to be included in the database, including the individual's name, the municipality in which he or she resided, and his or her date of birth.**
- **Require the MSP to maintain a public website, and specify the information to be included on the website.**
- **Require the MSP to update the public website with new information at the time changes were made to the law enforcement database.**
- **Require the MSP to make the law enforcement database available to a Department post, local law enforcement agency, or sheriff's department, and make the public website available to the public, by electronic, computerized, or other similar means.**
- **Require the MSP to make information from the public website available to the public through electronic, computerized, or other accessible means.**
- **Provide that a person other than the individual included on the database and who knew of a registration or report and who divulged or used nonpublic information concerning the registration or report would be guilty of a misdemeanor.**
- **Create the Child Abuse Offenders Database Citizen's Advisory Panel within the MSP, and prescribe its members, duties, and responsibilities.**

The bill would take effect 90 days after its enactment.

Definitions

"Child abuse offense" would mean any violation of Sections 136b(2), (3)(a), (5)(a), or (7)(a) of the Michigan Penal Code, or a substantially similar offense under a law of the United States, any state, or any country or under tribal or military law, that is committed by an adult or by a minor who is tried in the same manner as an adult. (Section 136b of the Penal Code defines the crimes of child abuse in the first, second, third, and fourth degree, and prescribes the penalties for each crime. The **BACKGROUND** section below contains more information about those offenses.)

"Convicted" would mean any of the following: a) having a judgment of conviction or a probation order entered in any court having jurisdiction over criminal offenses, including a trial court or a military court, other than a conviction set aside under Public Act 213 of 1965; b) being assigned to youthful trainee status under Chapter 2 of the Code of Criminal Procedure (the Holmes Youthful Trainee Act), regardless of whether the individual's status of youthful trainee is revoked and an adjudication of guilt is entered; or c) having an order of disposition entered under the juvenile code that is open to the general public.

Law Enforcement Database

The Department of State Police would have to maintain a computerized database of individuals convicted of child abuse offenses in the State. The database would have to include the following information for each individual required to be in the database:

- The individual's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual was or had been known.
- The individual's date of birth.
- The municipality in which the individual resided.
- A brief summary of the individual's convictions for child abuse offenses, including where the offense occurred and the original charge if the conviction were for a lesser offense.
- The text of the provision of law that defined the criminal offense resulting in the individual's inclusion in the database.

The MSP also would have to maintain a public internet website that would have to include all of the following information for each individual required to be included in the database:

- The individual's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual was or had been known.
- His or her date of birth.
- The municipality in which the individual resided.
- A brief summary of the individual's convictions for child abuse offenses regardless of when the conviction occurred.
- The text of the provision of law that defined the criminal offense resulting in the individual's inclusion in the database.

The following information could not be made available on the public website:

- The identity of any victim of the offense.
- The individual's Social Security number.
- Any arrests not resulting in a conviction.
- Any travel or immigration document numbers.
- Any electronic mail addresses and instant message addresses assigned to the individual or routinely used by the individual and any login names or other identifiers the individual used when using any electronic mail address or instant message system.
- The individual's driver license number or State personal identification card number.

The compilation of individuals in the database and on the public internet website would have to be indexed alphabetically by village, city, township, and county, numerically by zip code area, and geographically as determined appropriate by the MSP.

Updates to Database or Website, Availability of Information

The Department would have to update the public website with new inclusions to the database, deletions from the database, and address changes at the time those changes were made to

the law enforcement database. The MSP also would have to make the database available to each Department post, local law enforcement agency, and sheriff's department by the Law Enforcement Information Network. Upon request of a Department post, local law enforcement agency, or sheriff's department, the MSP would have to give the requesting entity the information from the database in printed or electronic form for the designated areas located in whole or in part within the entity's jurisdiction. The Department would have to make the database and the public website searchable based on an individual's name.

The MSP would have to make the law enforcement database available to a Department post, local law enforcement agency, or sheriff's department, and the public website available to the public, by electronic, computerized, or other similar means. Those means would have to be searchable by name, village, city, township, and county designation, zip code, and geographical area.

If a court determined that the public availability of any information concerning individuals included in the database violated the United States Constitution or the Michigan Constitution, the Department would have to revise the public website to remove that information.

If the MSP determined that an individual was no longer required to be included in the database, the MSP would have to remove the individual's information from both the database and the public internet website within seven days of that determination.

An individual required to be included in the database would have to remain on it and the public internet website as follows:

- For ten years, for a violation of Section 136b(2), 3(a), or 5(a) of the Michigan Penal Code or a substantially similar offense under a law of the United States, any state, or any country or under tribal or military law.
- For five years, for a violation of Section 136b(7)(a) of the Penal Code or a substantially similar offense under a law of the United States, any state, or any country or under tribal or military law.

Confidentiality, Public Accessibility

A Department post, local law enforcement agency, or sheriff's department would have to make information from the public website for the designated areas located within its jurisdiction available for public inspection during regular business hours, but would not have to make a copy of the information for a member of the public.

The MSP would have to make information from the public website available to the public through electronic, computerized, or other accessible means. The Department also would have to provide for notification by electronic or computerized means to any member of the public who had subscribed as required by the Department when an individual who was the subject of the public website initially included in the database, or changed his or her information in the database, to a location within an area or geographic radius designated by the subscriber.

Except as otherwise provided, a person other than the individual included in the database who knew of the individual's inclusion in the database and who divulged, used, or published nonpublic information concerning the registration or report in violation of the Child Abuse Offenders Database Act would be guilty of a misdemeanor punishable by imprisonment for up to 93 days, a fine of up to \$1,000, or both. An individual whose inclusion in the database was revealed in violation of the Act would have a civil cause of action against the responsible party for treble damages.

These prohibitions and penalties would not apply to the public website or information from that website.

Advisory Panel

The Child Abuse Offenders Database Citizen's Advisory Panel would be created within the MSP. The Advisory Panel's mission would be to ensure that the public internet website that displayed information from the child abuse offenders database functioned to its maximum effectiveness. The Advisory Panel would have to provide to the MSP recommendations on ease of use, layout, and clarity of the information displayed on the public internet website. The Advisory Panel also would have to include recommendations to the MSP for improving the website.

The Panel would consist of the following five members:

- One member appointed by the Senate Majority Leader.
- One member appointed by the Senate Minority Leader.
- One member appointed by the Speaker of the House of Representatives.
- One member appointed by the Minority Leader of the House of Representatives.
- One member appointed by the Governor.

The members of the Advisory Panel would have to be appointed within 90 days after the bill's effective date. Members would serve for four-year terms. If a vacancy occurred on the Advisory Panel, the individual who made the original appointment would have to make an appointment for the unexpired term in the same manner as the original appointment. A member could be removed for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

Members would have to serve without compensation. However, members could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

A majority of the members would constitute a quorum for the transaction of business at a meeting of the panel. A quorum of the members present and serving would be required for official action of the Advisory Panel. The Advisory Panel would be subject to the Open Meetings Act and the Freedom of Information Act.

The Advisory Panel would have to do all of the following:

- Test the database for ease of use by citizens.
- Provide feedback to the MSP regarding the layout and the legibility of the database.
- Provide an opinion to the MSP on the efficacy of the database.

The Advisory Panel could do one or both of the following:

- Provide feedback and recommendations to the MSP on ways to improve the user experience.
- Provide other general feedback and recommendations to the MSP regarding the database.

BACKGROUND

Generally, Section 136b of the Michigan Penal Code codifies various child abuse offenses, and prescribes penalties for violations. Under Section 136b(2), a person is guilty of child abuse in the first degree if he or she knowingly or intentionally causes serious physical or serious mental harm to a child (a person who is less than 18 years old and is not emancipated by

operation of law). First-degree child abuse is a felony punishable by imprisonment for life or any term of years. ("Serious physical harm" means any physical injury to a child that seriously impairs the child's health or physical well-being, including brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut. "Serious mental harm" means an injury to a child's mental condition or welfare that is not necessarily permanent but results in visibly demonstrable manifestations of a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.)

Under Section 136b(3)(a), a person is guilty of second-degree child abuse if his or her omission or reckless act causes serious physical harm or serious mental harm to a child. ("Omission" means a willful failure to provide food, clothing, or shelter necessary for a child's welfare or willful abandonment of a child.) Second-degree child abuse is a felony punishable by imprisonment for up to 10 years for a first offense, or up to 20 years for an offense following a prior conviction.

Section 136b(5)(a) specifies that a person is guilty of child abuse in the third degree if he or she knowingly or intentionally causes physical harm to a child. Third-degree child abuse is a felony punishable by imprisonment for up to two years for a first offense, or up to five years for an offense following a prior conviction. ("Physical harm" means any injury to a child's physical condition.)

Under Section 136b(7)(a), a person is guilty of child abuse in the fourth degree if his or her omission or reckless act causes physical harm to a child. Fourth-degree child abuse is a crime punishable as follows:

- For a first offense, a misdemeanor punishable by imprisonment for up to one year.
- For an offense following a prior conviction, a felony punishable by imprisonment for up to two years.

"Prior conviction" means a violation of Section 136b or a violation of a law of another state substantially corresponding to Section 136b.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have a significant fiscal impact on the Michigan Department of State Police and would require local law enforcement agencies to engage in additional duties to enforce the bill's provisions. According to the MSP, the proposed child abuse offenders database, in its design and procedural elements, mirrors closely the existing Sex Offenders Registry, run by the Department. The MSP's Criminal Justice Information Center projects a budget of \$2.5 million or more to operate the proposed database, which would feature, as the SOR does, both a law enforcement database and a publicly accessible website database. The MSP also would incur moderate additional costs to provide staff support and other costs related to the creation and continuing operation of a Child Abuse Offenders Database Citizen's Advisory Panel, as proposed under the bill.

The bill also could have a negative fiscal impact on the State and local government. Violations of the proposed Act would be punishable as misdemeanors. New misdemeanor arrests and convictions under the bill could increase resource demands on law enforcement, court systems, community supervision, and jails. However, it is unknown how many people would

be prosecuted under the bill's provisions. Any additional revenue from imposed fines would go to local libraries.

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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.