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Senate Bills 289 through 291 (as introduced 4-30-2019)

Sponsor: Senator Curtis Hertel, Jr. (S.B. 289)

Senator Peter J. Lucido (S.B. 290)

Senator John Bizon, M.D. (S.B. 291)

Committee: Judiciary and Public Safety

Date Completed: 9-1-20

CONTENT

Senate Bill 289 would create the "Child Abuse Offenders Registry Act" (also named "Wyatt's Law") to do the following:

- Require the Michigan Department of State Police (MSP) to maintain a computerized law enforcement database of registrations and notices under the Child Abuse Offenders Registration Act (proposed by Senate Bill 290).
- Specify the information to be included in the database, including the registrant's name, address, and Social Security number.
- 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.
- Specify the actions to be taken by a local law enforcement agency, sheriff's office, or MSP post if a person failed to register or to update his or her registration information.
- Specify that a registration or report would be confidential and information from it would not be open for inspection except for law enforcement purposes.
- Provide that a person other than the registrant 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.

Senate Bill 290 would create the "Child Abuse Offenders Registration Act" to do the following:

- Require individuals to register under the Act if they were convicted of a child abuse offense after January 1, 2020; or were required to register as a child abuse offender under another state's comparable statute.
- Specify the entity responsible for registering a person.
- Require a nonresident required to be registered to report his or her status in person to the appropriate registering authority if he or she were registered or present at an institution of higher education in the State.

- **Require a resident required to be registered to report to the appropriate registering authority certain changes in circumstances, including a change in residence, place of employment, or name.**
- **Require a registrant to comply with the Act's reporting requirements for 10 years, or, for a person convicted of fourth-degree child abuse, five years.**
- **Require the MSP to mail a notice to each registrant not in a State correctional facility explaining his or her duties under the Act.**
- **Specify that a person required to be registered who was not incarcerated would have to report in person to the appropriate registering authority for verification quarterly, if convicted of a felony child abuse offense, or annually, if convicted of a misdemeanor child abuse offense.**
- **Create the "Child Abuse Offenders Registration Fund".**
- **Require a person who reported as prescribed to pay a \$50 registration fee upon initial registration, and then annually.**
- **Specify that a person required to be registered would have to maintain either a valid driver license or an official State personal identification card with his or her current address.**
- **Specify the information to be included in a registration.**
- **Prescribe penalties for violations of the proposed Act.**

Senate Bill 291 would amend the Code of Criminal Procedure to add the felonies proposed by Senate Bill 290 to the sentencing guidelines.

Each bill would take effect 90 days after its enactment. Senate Bills 289 and 290 are tie-barred, and Senate Bill 291 is tie-barred to Senate Bill 290.

Senate Bill 289

Definitions

"Child abuse offense" would mean any violation of Section 136b 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.

"Registering authority" would mean the local law enforcement agency or sheriff's office having jurisdiction over the person's residence, place of employment, or institution of higher learning, or the nearest MSP post designated to receive or enter child abuse offender registration information within a registration jurisdiction.

"Residence" would mean the place where a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. For a person with more than one residence, or a

residence separate from his or her spouse, "residence" would mean the place where the person resides the greater part of the time. If a person were homeless or otherwise lacked a fixed or temporary residence, residence would mean the village, city, or township where the person spends the majority of his or her time. This could not be construed to affect existing judicial interpretation of the term "residence".

Law Enforcement Database

The Department of State Police would have to maintain a computerized law enforcement database of registrations and notices under the proposed Child Abuse Offenders Registration Act. The law enforcement database would have to include the following information for each person registered:

- The person's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the person was or had been known.
- His or her Social Security number and any Social Security numbers or alleged Social Security numbers previously used by the person.
- His or her date of birth and any alleged dates of birth previously used by the person.
- The address where the person resided or would reside, or if the person did not have a residential address or were homeless, the location or area used by the person or the village, city, or township where the person spent or would spend the majority of his or her time.
- The name and address of any place of temporary lodging used or to be used by the person during any time in which the person expected to be away from his or her residence for more than seven days, and the dates the lodging would be used.
- The name and address of each of the person's employers, including a contractor and any person who had agreed to hire or contract with the person for his or her services.
- The name and address of any school the person was attending, or that had accepted the person and he or she planned to attend.
- All telephone numbers registered to, or routinely used by, the person.
- All electronic mail addresses and instant message addresses assigned to or routinely used by the person.
- A digital copy of the person's passport and other immigration documents.
- The person's occupational and professional licensing information, including any license that authorized the person to engage in any occupation, profession, trade, or business.
- A brief summary of the person's convictions for child abuse offenses, including where the offense occurred and the original charge if the conviction were for a lesser offense.
- A complete physical description of the person.
- The photograph required under the Child Abuse Offender Registration Act.
- The person's fingerprints and palm prints.
- An electronic copy of the person's Michigan driver license or Michigan personal identification card, including the photograph required under the Child Abuse Offenders Registration Act.
- The text of the provision of law that defined the child abuse offense for which the person was registered.
- Any outstanding arrest warrant information.
- The person's registration status.
- An identifier that indicated whether a DNA sample had been collected and any resulting DNA profile had been entered into the Federal Combined DNA Index System (CODIS).
- The person's complete criminal history record, including the dates of all arrests and convictions.
- The person's Michigan Department of Corrections (MDOC) number and the status of his or her parole, probation, or release.
- The person's Federal Bureau of Investigation (FBI) number.

The MSP also would have to maintain a public internet website separate from the law enforcement database. The website would have to include all of the following information for each person registered under the Child Abuse Offenders Registration Act:

- The person's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the person was or had been known.
- His or her date of birth.
- The address where the person resided, or if the person did not have a residential address, the village, city, or township used by the person instead of a residence.
- The address of each of the person's employers, including a contractor and other any person who had agreed to hire or contract with the person for his or her services.
- The address of any school the person was attending, and any school that had accepted the person and that he or she planned to attend.
- A brief summary of the person's convictions for child abuse offenses regardless of when the conviction occurred.
- A complete physical description of the person.
- The photograph required under the Child Abuse Offender Registration Act, or if no photograph were available, the arrest photograph or MDOC photograph until the required photograph became available.
- The text of the provision of law that defined the criminal offense for which the person was registered.
- The person's registration status.

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

- The identity of any victim of the offense.
- The person'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 or routinely used by the person.
- The person's driver license number or State personal identification card number.

The compilation of people 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 registrations, deletions, 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 the name and campus location of an institution of higher education.

("Institution of higher education" would mean one or more of the following: a public or private community college, college, university; or a public or private trade, vocational, or occupational school.)

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 a registrant 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 a person had completed his or her registration period or that he or she otherwise was no longer required to register, the Department would have to remove his or her registration information from both the law enforcement database and the public internet website within seven days of that determination.

Failure to Register

If a person failed to register or to update his or her registration information, the local law enforcement agency, sheriff's office, or MSP post responsible for registering the person or for verifying and updating his or her information would have to do all of the following immediately after the date the person was required to register or to update his or her information:

- Determine whether the person had absconded or was otherwise unlocatable.
- If the registering authority were notified by a registration jurisdiction that the person was to appear in or to register or update his or her information in the authority's jurisdiction, notify the Department that the person failed to appear as required.
- Revise the information in the registry to reflect that the person had absconded or was otherwise unlocatable.
- Seek a warrant for the person's arrest if the legal requirements for obtaining the warrant were satisfied.
- Enter the person into the National Crime Information Center wanted person file if the requirements for entering information into that file were met.

In addition, after being notified by a registering authority that a person failed to register or update his or her information, the Department would have to notify the other registration jurisdiction and the US Marshal's Service. ("Registration jurisdiction" would mean each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the United States Virgin Islands, American Samoa, and the Indian tribes within the US that elect to function as a registration jurisdiction.)

Confidentiality, Public Accessibility

Except as otherwise provided, a registration or report would be confidential and information from that registration or report would not be open for inspection except for law enforcement purposes. The registration or report and all included information would be exempt from disclosure under the Freedom of Information Act.

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 a person who was the subject of the public website initially registered, or changed his or her registration, to a location within an area or geographic radius designated by the subscriber.

Except as otherwise provided, a person other than the registrant who knew of a registration or report under the Child Abuse Offenders Registration Act and who divulged, used, or published nonpublic information concerning the registration or report in violation of the Child Abuse Offenders Registry Act would be guilty of a misdemeanor punishable by imprisonment for up to 93 days, a fine of up to \$1,000, or both. A person whose registration or report 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.

Senate Bill 290

Definitions

The bill would include the same terms and definitions as in Senate Bill 289.

Individuals Required to Register

The following people who were domiciled or temporarily resided in the State or who worked with or without compensation or were students in the State, or who were domiciled, resided, or worked with or without compensation or were students in the State for 30 or more total days in a calendar year, would have to register under the Child Abuse Offenders Registration Act:

- A person who was convicted of a child abuse offense after January 1, 2020.
- A person from another state who was required to register or otherwise be identified as a child abuse offender of a comparable statute of that state.

A person not described above who was a nonresident and who was convicted in Michigan on or after January 1, 2020, of committing a child abuse offense would have to register. However, the continued reporting requirements described below would not apply to that person while he or she remained a nonresident and was not otherwise required to report under the Act, but the person would be required to have his or her photograph taken as described below.

Registration Process

All of the following would have to register with the local law enforcement agency, sheriff's department, or the Department immediately after becoming domiciled or temporarily residing, working, or being a student in Michigan:

- Subject to the above provision, a person convicted of a child abuse offense in another state or country after January 1, 2020.
- A person required to be registered as a child abuse offender in another state or country regardless of when the conviction was entered.

If a prosecution were pending on January 1, 2020, whether the defendant in a criminal case was required to register under the act would have to be determined on the basis of the law in effect on January 1, 2020.

Status Report for a Student

A nonresident required to be registered under the proposed Act would have to report his or her status in person to the registering authority having jurisdiction over a campus of an institution of higher education if either of the following occurred: a) the person was enrolled as a student with that institution of higher education or he or she discontinued that enrollment; or b) as part of his or her course of studies at an institution of higher education in the State, the person was present at any other location in Michigan, another state, or a territory or possession of the United States, or the person discontinued his or her studies at that location.

A resident required to be registered would have to report his or her status in person to the registering authority having jurisdiction where his or her new residence or domicile was located under the same circumstances.

The status report required of a resident or nonresident would have to be made immediately after the person enrolled or discontinued his or her enrollment as a student on that campus including study in Michigan or another state, a territory or possession of the United States, or another country. The reports also would have to be made in the time periods specified for annual or quarterly reports.

The local law enforcement agency, sheriff's department, or Department post to which a person reported would have to require the person to pay a \$50 registration fee and to present written documentation of employment status, contractual relationship, volunteer status, or student status. Written documentation could include any of the following:

- A W-2 form, pay stub, or written statement by an employer.
- A contract.
- A student identification card or student transcript.
- The above requirements would not apply to a person whose enrollment and participation at an institution of higher education was solely through the mail or the internet from a remote location.

("Student" would mean a person enrolled on a full- or part-time basis in a public or private educational institution, including a secondary school, trade school, professional institution, or institution of higher education.)

Report of Status Change

A person required to be registered who was a resident of the State would have to report in person and notify the registering authority having jurisdiction where his or her residence or domicile was located immediately after any of the following occurred:

- The person changed or vacated his or her residence or domicile.
- The person changed his or her place of employment, or employment was discontinued.
- The person enrolled as a student with an institution of higher education, or enrollment was discontinued.
- The person changed his or her name.
- The person intended to reside temporarily at any place other than his or her residence for more than seven days.
- The person established any electronic mail or instant message address, or any other designations used in internet communications or postings.
- Any other change required to be reported under the Act.

A nonresident required to be registered who had his or her place of employment in the State would have to report in person and notify the registering authority having jurisdiction where his or her place of employment, was located, or the Department post of the person's place of employment, immediately after the person changed his or her place of employment or employment was discontinued.

If a person who was incarcerated in a State correctional facility and was required to be registered were granted parole or were due to be released after completion of his or her maximum sentence, the Department of Corrections, before releasing the person, would have to provide notice of the location of his or her proposed place of residence or domicile to the MSP. The sheriff's department would have to provide similar notice for a person incarcerated in a county jail who was required to register and was due to be released.

Immediately after either of the following occurred, the Department of Corrections would have to notify the local law enforcement agency or sheriff's department having jurisdiction over the area to which the person was transferred or the MSP post of the transferred residence or domicile of a person required to be registered: a) the person was transferred to a community residential program, or b) the person was transferred into a level one correctional facility of any kind, including a correctional camp or work camp.

A resident of the State who was required to be registered would have to report in person and notify the registering authority having jurisdiction where his or her residence or domicile was located immediately before he or she changed his or her domicile or residence to another state. He or she would have to indicate the new state and, if known, the new address. The MSP would have to update the registration and compilation databases and promptly notify the appropriate law enforcement agency and any applicable registration authority in the new state.

A resident who was required to register would have to report in person and notify the registering authority having jurisdiction where his or her residence or domicile was located at least 21 days before he or she changed it to another country or traveled to another country for more than seven days. The person would have to state the new country of residence or travel and the address of his or her new domicile, residence, or place of stay, if known. The MSP would have to update the registration and compilation databases created and maintained under the child abuse offenders registry and promptly notify the appropriate law enforcement agency and any applicable child abuse offender registration authority.

If the probation or parole of a person required to be registered were transferred to another state or from a State correctional facility to any correctional facility or probation or parole in another state, the Department of Corrections would have to notify the MSP and the appropriate law enforcement agency and any applicable registration authority in the new state. The MSP would have to update the registration and compilation databases.

The Department would have to prescribe the form for the notifications describe above and the format for forwarding those notification.

Registration Period

A person required to register under the Act would have to comply with the reporting requirements for 10 years, except that a person convicted of fourth-degree child abuse would have to comply for five years. The registration periods would exclude any period of incarceration for committing a crime and any period of civil commitment.

Notice

The MSP would have to mail a notice to each registered person who was not in a State correctional facility, explaining the person's duties under the proposed Act.

When a registered person who was in a State correctional facility was released, the Department of Corrections would have to notify the person in writing of his or her duties under the Act and the procedure for registration, notification, and verification and payment of the \$50 registration fee. The person would have to sign and date the notice. The MDOC would have to maintain a copy of the notice in his or her file, and forward the original notice to the MSP immediately, regardless of whether the person signed it.

The form used for notification of duties would have to contain a written statement that explained the duty of the person being registered to provide notice of changes in his or her registration information, the procedures for providing that notice, and the verification procedures. The person would have to sign a registration and notice. However, the registration and notice would have to be forwarded to the MSP regardless of whether the person signed it or paid the registration fee. The officer, court, or an employee of the agency that registered the person or received or accepted a registration would have to sign it.

Annual or Quarterly In-Person Report

A person required to be registered who was not incarcerated would have to report in person to the registering authority where the person was domiciled or resided for verification of domicile or residence. If the person were convicted of a misdemeanor child abuse offense, he or she would have to report once each year during his or her birth month. If the person were convicted of a child abuse offense that was a felony, he or she would have to report four times a year, beginning in his or her birth month and then every third month.

The report would have to be made not earlier than the first day or later than the last day of the month in which the person was required to report. However, if the registration period for a person expired during the month in which he or she was required to report, the person would have to report during that month on or before the date his or her registration period expired.

When a person reported, he or she would have to review all registration information for accuracy.

Verification

When a person reported in person, an officer or authorized employee of the registering authority would have to verify the person's residence or domicile and any information required to be reported. The officer or employee also would have to determine whether the person's photograph matched his or her appearance sufficiently to properly identify the person. If not, the officer or employee would have to require the person to obtain a current photograph. When all of the verification information had been provided, the officer or employee would have to review that information and make any corrections, additions, or deletions he or she determined were necessary. The officer or employee would have to sign and date a verification receipt, and give a copy to the person. The officer or employee would have to forward verification information to the MSP in the manner prescribed. The Department would have to revise the law enforcement database and public internet website maintained under the Child Abuse Offenders Registry Act as necessary.

The MSP would have to prescribe the form for the notices and verification procedures required under either proposed Act.

If a person failed to report as required, the Department would have to notify all registering authorities as provided in the Child Abuse Offenders Registry Act and initiate enforcement action.

Child Abuse Offenders Registration Fund & Registration Fee

The Child Abuse Offenders Registration Fund would be created as a separate fund in the Department of Treasury. The State Treasurer would have to credit the money received from the payment of registration fees to the Fund. Money in the Fund would have to be used only by the MSP for training concerning, and the maintenance and automation of, the law enforcement database, public internet website, and information required under the Child Abuse Offenders Registry Act, or notification and offender registration duties. Money in the Fund at the close of the fiscal year would have to remain in the Fund and would not lapse to the General Fund.

A person who reported as prescribed would have to pay a \$50 registration fee upon initial registration, and then annually. The payment would have to be made when the person reported in his or her first reporting month for each year in which the fee applied, unless the person elected to prepay an annual registration fee for any future year for which an annual registration fee was required. Prepayment would not change the person's reporting requirements. The registration fee could not be prorated on grounds that the person would complete his or her registration after the month in which the fee was due. The sum of the amounts required to be paid initially and annually could not exceed \$385.

Of the money collected by a court, local law enforcement agency, sheriff's department, or MSP post from each registration, \$35 would have to be forwarded to the Department, which would have to deposit the money in the Child Abuse Offenders Registration Fund, and \$15 would have to be retained by the court, local law enforcement agency, sheriff's department, or MSP post. The Department of Corrections could not collect any fee prescribed under the Child Abuse Offenders Registration Act.

If a person required to pay a registration fee were indigent, the registration fee would have to be waived for 90 days. The burden would be on the person claiming indigence to prove that fact to the satisfaction of the local law enforcement agency, sheriff's department, or MSP post where the person was reporting.

Payment of the registration fee would have to be made in the form and by means prescribed by the MSP. Upon payment, the officer or employee would have to forward verification of the payment to the Department in the manner it prescribed. The MSP would have to revise the law enforcement database and public internet website maintained under the Child Abuse Offenders Registry Act as necessary and would have to indicate verification of payment.

Requirement to Obtain Identification

A person required to be registered would have to maintain either a valid operator's or chauffeur's license or an official State personal identification card with his or her current address. The license or card could be used as proof of domicile or residence. In addition, the officer or authorized employee could require the person to produce another document bearing his or her name and address, including voter registration or a utility or other bill. The MSP could specify other satisfactory proof of domicile or residence.

A registrant who was incarcerated would have to report to the Secretary of State immediately after he or she was released to have his or her digitalized photograph taken. The registrant would not have to report if the person had a digitized photograph taken for an operator's or chauffeur's license or official State personal ID card before January 1, 2020, or within two years before he or she was released unless his or her appearance had changed. Unless the registrant was a nonresident, the photograph would have to be used on his or her license or personal ID card. A new photograph would have to be taken when the person renewed the license or ID card, or as otherwise provided in the Child Abuse Offenders Registration Act. The Secretary of State would have to make the digitized photograph available to the MSP for a registration.

The officer, court, or agency that registered a person or received or accepted a registration or received notice would have to give the person a copy of the registration or notice at the time of the registration or notice.

Registration Information

Registration information obtained under the proposed Act would have to be forwarded to the MSP in the format it prescribed. Except as otherwise provided, a \$50 registration fee would have to be included with registration. The registration would have to include the person's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the person was or had been known. A person who was in a witness protection and relocation program would have to use only the name and identifying information reflecting his or her new identity in a registration, and the registration and compilation databases could not contain any information identifying the person's prior identity or locale.

The following information pertaining to the person registered would have to be obtained or otherwise provided:

- His or her Social Security number and any Social Security numbers or alleged Social Security numbers previously used by the person.
- His or her date of birth and any alleged dates of birth previously used by the person.
- The address where the person resided or would reside, or if the person did not have a residential address, the location or area he or she used.
- The name and address of any place of temporary lodging used or to be used by the person during any period in which the person expected to be away from his or her residence for more than seven days.
- The name and address of each of the person's employers, including a contractor and any person who had agreed to hire or contract with the person for his or her services.
- The name and address of any school the person was attending, or that had accepted the person and he or she planned to attend.
- All telephone numbers registered to, or routinely used by, the person.
- The person's driver license number or State personal ID card number.
- A digital copy of the person's passport or other immigration documents.
- The person's occupational and professional licensing information, including any license that authorized the person to engage in any occupation, profession, trade, or business.
- A brief summary of the person's conviction for child abuse offenses, including where the offense occurred and the original charge if the conviction were for a lesser offense.
- A complete physical description of the person.
- The required photograph.
- Information required to be reported for the registration of a student.

In addition, the person's fingerprints, if not already on file with the MSP, and palm prints would have to be obtained or provided. A person required to be registered would have to have

his or her fingerprints or palm prints or both taken by September 1, 2020, if his or her fingerprints or palm prints were not already on file with the Department. The MSP would have to forward a copy of the person's fingerprints and palm prints to the FBI if they were not already on file.

The registration would have to contain all of the following:

- An electronic copy of the person's Michigan driver license or Michigan personal ID card, including the required photograph.
- The text of the provision of law that defined the child abuse offense for which the person was registered.
- Any outstanding arrest warrant information.
- An identifier that indicated whether a DNA sample had been collected and any resulting DNA profile had been entered into CODIS.
- The person's complete criminal history record, including the dates of all arrests and convictions.
- The person's Michigan Department of Corrections number and status of parole, probation, or supervised release.
- The person's FBI number.

The MSP would have to provide registration, notice, and verification information promptly to the FBI and to local law enforcement agencies, sheriff's departments, MSP posts, and other registering jurisdictions, as provided by law.

Violations & Penalties; Confidentiality

A person could not knowingly provide false or misleading information concerning a registration, notice, or verification.

Except as otherwise provided, a person required to be registered who willfully violated the proposed Act would be guilty of a felony punishable as follows:

- If the person had no prior convictions for a violation of the Act: imprisonment for up to four years, a maximum fine \$2,000, or both.
- If the person had one prior conviction: imprisonment for up to seven years, a maximum fine of \$5,000, or both.
- If the person had two or more prior convictions: imprisonment for up to 10 years, a maximum fine of \$10,000, or both.

A registrant who failed to comply with requirements concerning in-person reporting maintaining identification, and obtaining a photograph, would be guilty of a misdemeanor punishable by imprisonment for up to two years, a maximum fine of \$2,000, or both.

A person who willfully failed to sign a registration and notice would be guilty of a misdemeanor punishable by up to 93 days' imprisonment, a maximum fine of \$1,000, or both.

A person who willfully refused or failed to pay the required registration fee within 90 days of the date he or she reported would be guilty of a misdemeanor punishable by imprisonment for up to 90 days.

A court would have to revoke the probation of a person placed on probation who willfully violated the Act. The parole board would have to rescind the parole of a person released on parole who willfully violated the Act.

A person who failed to register or report a status change as required could be prosecuted in the judicial district of any of the following: a) the person's last registered address or residence, b) the person's actual address or residence, or c) where the person was arrested for the violation.

Except as otherwise provided, a registration or report under the proposed Act would be confidential and information from that registration or report would not be open to inspection except for law enforcement purposes. The registration or report and all included materials and information would be exempt from disclosure under the Freedom of Information Act.

Except as otherwise provided, a person other than the registrant who knew of a registration or report and who divulged, used, or published nonpublic information concerning the registration or report in violation of the proposed Act would be guilty of a misdemeanor punishable by imprisonment for up to 93 days, a maximum fine of \$1,000, or both. A person whose registration or report was revealed in violation of the Act would have a civil cause of action against the responsible party for treble damages.

Senate Bill 291

The bill would include the felonies proposed by Senate Bill 290 in the sentencing guidelines.

Violation	Category	Class	Stat Max
Failure to Register as Child Abuse Offender	Public Order	F	4
Failure to Register as Child Abuse Offender, 2nd Offense	Public Order	D	7
Failure to Register as Child Abuse Offender, 3rd/+ Offense	Public Order	D	10
Failure to Update Child Abuse Offender Registration Info.	Public Order	F	2

MCL 777.11b (S.B. 291)

BACKGROUND

Under Section 136b of the Michigan Penal Code, 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.

A person is guilty of child abuse in the second degree if any of the following apply:

- The person's omission or reckless act causes serious physical harm or serious mental harm to a child.
- The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child, regardless of whether harm results.
- The person knowingly or intentionally commits an act that is cruel to a child, regardless of whether harm results.
- The person or a licensee under Public Act 116 of 1973 (i.e., a person licensed to operate a child care organization) violates Section 15(2) of that Act.

(Under Section 15(2) of Public Act 116, a person is guilty of second-degree child abuse if he or she intentionally violates a licensing rule for family and group child care homes and the violation causes the death 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

A person is guilty of child abuse in the third degree if he or she knowingly or intentionally causes physical harm to a child; or knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, and the act results in 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.

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; or he or she knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, regardless of whether physical harm results. 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

Senate Bills 289 & 290

Senate Bill 289 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 registry, in its design and procedural elements, mirrors closely the existing Sex Offenders Registry (SOR), 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 SOR does, both a law enforcement database and a publicly accessible website database.

Senate Bill 290 would help mitigate the registry costs, providing for \$35 out of a required \$50 registration fee from those convicted of a child abuse offense and required to register, to be sent to the MSP for deposit in the proposed Child Abuse Offenders Registration Fund, with \$15 being retained by a court, local law enforcement agency, sheriff's department, or MSP post. The MSP projects that first-year revenue, based upon 10,000 potential registrants, would be approximately \$500,000, leaving \$350,000 to be sent to the Fund, an amount far short of what would be needed to cover the estimated costs of building or buying a separate information technology system to properly operate the registry and staff it with MSP personnel. To fully fund the provisions of the legislation, additional funds from another source or sources, such as General Fund/General Purpose revenue, would have to be identified.

Senate Bill 290 also would have a minimal fiscal impact on the Department of Treasury to administer the Child Abuse Offenders Registration Fund. The administrative costs likely would be minimal and within current appropriations for the Department.

In addition, the bills' criminal penalties could have a negative fiscal impact on the State and local government. Violations of the proposed Acts would be punishable as misdemeanors and felonies of different severity. The probation or parole of any individuals who violated the Registration Act also would have to be revoked. More misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony

probation supervision is approximately \$3,100 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$5,400 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

Senate Bill 291

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

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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.