

Legislative Analysis



SEX OFFENDER REGISTRY: PHOTOS

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House Bill 5195 as enrolled
Public Act 238 of 2004
Sponsor: Rep. Matt Milosch
House Committee: Criminal Justice
Senate Committee: Families and Human Services

Second Analysis (4-5-05)

BRIEF SUMMARY: The bill would include photographs on the public sex offenders registry.

FISCAL IMPACT: The bill is not expected to have a fiscal impact.

THE APPARENT PROBLEM:

The Department of State Police is required under the Sex Offenders Registration Act to maintain a computerized database of registrations of sex offenders. This database is accessible only by law enforcement officers and officials. The department also has to maintain a separate computerized database accessible by the general public. This database consists of a compilation of individuals registered under the act but excludes some juvenile dispositions. The compilation has to be indexed numerically by zip code area. Within each zip code area, the compilation has to include the name and aliases, address, physical description, and birth date of each registered individual in that zip code along with any listed offense the individual had been convicted of. The compilation must also include the name and campus location of each institution of higher education to which the individual is required to report.

Several states include photographs on the public sex offender registry. Proponents of the use of photographs in Michigan believe that it would increase public safety by enabling residents to identify a potentially dangerous sex offender in situations where a name may not come up, such as when striking up a conversation in a park or other public place. Also, it is argued, including a photograph may also ensure that an innocent person with the same or similar name will not be confused with a registered sex offender.

THE CONTENT OF THE BILL:

The bill would amend the Sex Offenders Registration Act to require that the public compilation of registrations of convicted sex offenders also include the photograph of each individual registered under the act. The Department of State Police would have to obtain driver license or state identification card photographs from the secretary of state for the purpose of implementing the bill. The bill would take effect May 1, 2005.

MCL 28.728

BACKGROUND INFORMATION:

The Sex Offenders Registration Act, created by Public Act 295 of 1994, applies to individuals convicted of a listed offense, persons placed on youthful trainee status for a listed offense, and juveniles for whom a court has entered a disposition for a listed offense for which the record is open to the general public. Offenders must comply with the registration and subsequent reporting requirement for 25 years after the initial registration or, if an individual is in a state correctional facility, for 10 years after release – whichever is longer. (For example, if a person were imprisoned for 20 years, then released, he or she would still have to report for 10 years longer, for a total of 30 years.)

Persons convicted of certain felony listed offenses, such as first-degree criminal sexual conduct, or a second or subsequent conviction of any of the listed offenses committed after October 1, 1995, must register for the remainder of their lives.

If the violation of a listed offense is categorized as a misdemeanor listed offense, the person must register at the time of conviction, prior to sentencing, and report to verify his or her address at least each January. If the person is registered for committing one or more felony listed offenses, he or she must report to verify his or her address at least four times a year. (Offenders also must report within 10 days of moving or if visiting in an area longer than a specified number of days.) Depending upon the person's status, he or she must register or report with a parole officer, probation officer, sheriff, local law enforcement agency, or juvenile court, the state police, the Department of Corrections, or the Family Independence Agency. The registration must then be forwarded to the Department of State Police. Only those persons convicted of a listed offense on or after October 1, 1995, or those convicted prior to that date but still incarcerated or on parole or probation on that date must be registered.

"Listed offense" means any of the following:

- Accosting, enticing or soliciting a child for immoral purposes.
- Involvement in child sexually abusive activity or material.
- A third or subsequent violation of any combination of engaging in obscene or indecent conduct in public, indecent exposure, or a local ordinance substantially corresponding to either offense.
- First, second, third, or fourth degree Criminal Sexual Conduct (CSC).
- Assault with intent to commit CSC.
- If the victim is less than 18 years of age, the crime of gross indecency (except for a juvenile disposition or adjudication), kidnapping, sodomy, or soliciting another for prostitution.
- Leading, enticing, or carrying away a child under 14 years of age.
- Pandering.
- Any other violation of a state law or local ordinance constituting a sexual offense against an individual less than 18 years of age.
- An offense committed by a sexually delinquent person.
- An attempt or conspiracy to commit one of the offenses listed above.

- Any offense under the laws of the United States, any other state, or any other country, that is substantially similar to a listed offense.

The Department of State Police is required to maintain a computerized database of registered offenders. In 1996, Public Act 494 was enacted to require the DSP to compile the information from the database and create a second database indexed by zip code area and containing the name, aliases, address, physical description, birth date, and listed offenses for each offender residing in the zip code area. The information in each of these zip code blocks is provided to the appropriate local law enforcement agency for access by the public. The DSP also maintains the complete public sex offenders registry (PSOR) on its web site.

Currently, the public database does not include any individual registered solely because he or she had one or more dispositions for a listed offense entered under provisions of the Probate Code (MCL 712A.18) for a case that was not designated as a case in which the individual was to be tried as an adult. This exclusion for juvenile dispositions does not apply to a disposition for first- or second-degree criminal sexual conduct (CSC).

ARGUMENTS:

For:

The main impetus behind House Bill 5195 is to make it easier to identify people in the community that pose a risk to others. Even though the public sex offenders registry (PSOR) can be accessible by zip code, and though the sex offender's address and general description is included in the registry, there are situations where it may not be easy to make the connection between a name on the registry and the person chatting with you or your child at the park, on a bus, or while strolling through the neighborhood. Most people remember faces more easily than names, and will therefore know when to exercise caution.

Also, since there may be more than one person in the community with the same name, a photograph could absolve an innocent neighbor of perceived guilt. Since sex crimes are often crimes of repetition, the bill would be an important addition to the public registry and would enable people to protect themselves and their families from possible harm. Further, since sex offenders are required to keep current driver's licenses and state identification cards, the secretary of state will always have fairly recent pictures to supply to the DSP at a minimal cost.

Against:

House Bill 5195 would do little in reality to increase public safety but much to increase vigilantism and harassment against registrants, which could cause some dangerous offenders to go underground (and thus increase the chances of reoffending) and subject many non-predators to undue hostility and discrimination. The bill as introduced targeted pedophiles, but the bill as enrolled would apply to every registered sex offender, many of whom pose no further risk of reoffending and probably shouldn't be on the list to begin

with. Adding their pictures would do little more than subject them to increased humiliation and punishment.

In addition, many people on the PSOR have a difficult time arranging appropriate housing and obtaining employment. Placing their pictures on the Internet may do little more than doom them to homelessness and unemployment – two factors known to greatly increase the likelihood of reoffending. Even if an employer felt that a registrant posed little to no threat to customers or other employees, he or she may be forced to fire the registrant if customers who recognized the person from the Internet site boycotted the business or employees threatened to quit.

Further, the registry contains over 33,000 names, most of which do not represent sexual predators. However, even though Public Acts 240 and 239 (enrolled House Bills 4920 and 5240, respectively) will remove some juveniles and youthful trainee offenders, the process will take time. This is unlikely to occur before the May 1, 2005 effective date. Once the registry is cleaned up, this proposal may make sense. Until then, it could do more harm than good.

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