



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

SENATE BILL NO. 1183

PRINTERS NO. 1850

PRIME SPONSOR: Orie

COST / (SAVINGS)

FUND	FY 2011/12	FY 2012/13
General Fund	See "Fiscal Impact" Section Below	

SUMMARY: Senate Bill 1183 makes numerous changes to the Crimes Code, Prisons and Parole Code, Domestic Relations, Law and Justice, and Judicial Code to substantially comply with the federal Adam Walsh Child Protection and Safety Act of 2006 and to close the loopholes in Megan's Law regarding homeless offenders and out-of-state offenders who must register for a lifetime in their home states.

ANALYSIS:

Changes to Comply with the federal Adam Walsh Child Protection and Safety Act of 2006

The legislation makes the following changes to Pennsylvania's Megan's Law:

- (1) groups offenders into multiple classifications, depending on the severity of the offense;
- (2) increases the amount of information collected from each offender;
- (3) extends the registration requirement to juvenile offenders who commit rape, involuntary deviate sexual intercourse, aggravated indecent assault, or an attempt or conspiracy to commit these offenses;
- (4) expands the list of sexually violent offenses subject to the law;
- (5) recaptures back into Megan's Law offenders with prior convictions for sexual offenses but not currently subject to registration, if the offender re-enters the criminal justice system because of a felony;
- (6) requires notification to the federal government if the offender intends to travel abroad;
- (7) increases the frequency with which an offender is required to verify his registration information;
- (8) requires that Pennsylvania include more information about offenders on its Internet website;
- (9) mandates that the Pennsylvania State Police communicate registration information with federal, state and local police departments more quickly than its currently required; and
- (10) requires transient sexual offenders to register and update their registration information, which will also solve the problem identified in Commonwealth v. Wilgus, 975 A.2d 1183 (Pa. 2009).

Homeless and Out of State Sex Offenders

Enactment of this legislation would add homeless sex offenders to those facing a minimum sentence for failing to register under Megan's Law. If a homeless sex offender fails to register,

fails to provide all required information, or provides false information, the minimum sentence will be 2 years. The minimum for a subsequent offense would be 5 years.

There are also criminal penalties established for sexual offenders who are required to register in another state who move into Pennsylvania and fail to register in the Commonwealth. Failure to do so will be considered a second degree felony. Any subsequent failure to register, or failure to provide accurate information will be considered a first degree felony.

Institutional Sexual Assault

This legislation makes it a third degree felony for an employee, volunteer, or any other person who has direct contact with a student at a school to engage in sexual intercourse, deviate sexual intercourse, or indecent contact with a student of the school, regardless of the age of the student. It also makes it a third degree felony for a volunteer or employee of a center for children to engage in sexual intercourse, deviate sexual intercourse, or indecent contact with a child receiving services at the center. The bill also adds definitions.

Other Provisions

This legislation also makes other technical changes concerning incest, counseling for sexual offenders, prostitution of a minor, and the depiction of minors in obscene material.

FISCAL IMPACT:

Changes to Comply with the federal Adam Walsh Child Protection and Safety Act of 2006

42 U.S.C. § 16925(a) sets forth a penalty for jurisdictions that fail to substantially implement Title I of the Adam Walsh Child Protection and Safety Act of 2006, also known as the Sex Offender Registration and Notification Act (SORNA):

“For any fiscal year after the end of the period for implementation, a jurisdiction that fails, as determined by the Attorney General, to substantially implement this title shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.)”

Thus, a registration jurisdiction that fails to substantially implement SORNA will realize a 10% reduction in its Byrne JAG formula funds.

Pennsylvania currently qualifies for annual awards under the Byrne JAG formula for an estimated \$11.4 million. Therefore, the Commonwealth will be subject to the reduction of Byrne JAG funds in an estimated amount of \$1.1 million if it fails to substantially implement the requirements of SORNA.

According to the Pennsylvania State Police (PSP), the implementation of this legislation would require the PSP to incur approximately \$3.7 million in costs for significant upgrades to equipment and server infrastructures, staffing, training and software development. Approximately \$3.2 million of these costs would be non-recurring and would be offset by \$2 million in Federal grants. This would allow the PSP to establish two “full registration/ verification” sites and one “verification only” site within each county across the Commonwealth (except for the two counties which do not have a PSP installation).

Homeless and Out of State Sex Offenders

The enactment of this legislation may increase costs to the Commonwealth to the extent that homeless individuals and sexual offenders from other states receive sentences for failing to register under Megan's Law. There is no reliable data on how many of these offenders will fail to register, be caught and subsequently sentenced. However, the Department of Corrections does not believe the number would be large enough to have a significant impact on prison costs.

Institutional Sexual Assault

The fiscal impact of the changes concerning institutional sexual assault arise from treating as a felony behavior that under current law may be only a misdemeanor or even non-criminal if it involves a student who is 16, 17, or 18 years of age. Much depends on the circumstances of each individual case.

According to the Department of Education, in 2010, 63 disciplinary actions were taken against educators involving sexual misconduct with students. Of those, 34 involved criminal charges or convictions and 29 were non-criminal. Presumably, these 29 cases would have been criminal under this legislation.

According to the Pennsylvania Commission on Sentencing, under current statute, which is limited to correctional, public welfare, and public health facilities, there were 7 instances of institutional sexual assault in 2008, 9 in 2009, and 4 in 2010.

Reliable data do not exist to predict how many additional offenders will be convicted and sentenced with enactment of this legislation. However, given the relatively small number of disciplinary actions and current offenders under the amended section, the overall fiscal impact on the state is expected to be minimal. The current average cost of incarcerating an offender in state prison is \$33,000 per year and the average cost for state parole supervision is \$3,000 per year.

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Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.