

HOUSE BILL No. 6700

November 19, 2008, Introduced by Reps. Warren, Rick Jones, Meisner, Alma Smith,
Garfield, Gaffney, Meadows and Jackson and referred to the Committee on Judiciary.

A bill to amend 1994 PA 295, entitled
"Sex offenders registration act,"
by amending sections 8c and 8d (MCL 28.728c and 28.728d), as added
by 2004 PA 240.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8c. (1) An individual described in subsection (15) who is
2 convicted before October 1, 2004 of a violation described in that
3 subsection may petition the court under this section for an order
4 allowing him or her to register under this act as provided in
5 section 8d(1).

6 (2) An individual described in subsection (15)(a) or (b) who

1 is convicted on or after October 1, 2004 of a violation described
2 in that subsection may petition the court under this section for an
3 order allowing him or her to register under this act as provided in
4 section 8d(1).

5 (3) This section is the sole means by which an individual may
6 obtain judicial review of his or her registration requirements
7 under this act. This subsection does not prohibit an appeal of the
8 conviction or sentence as otherwise provided by law or court rule.

9 (4) A petition filed under this section shall be filed in the
10 court in which the individual was convicted of committing the
11 listed offense. A petition filed under subsection (1) shall be
12 filed before October 1, 2007 or within 3 years after the individual
13 is discharged from the jurisdiction of the juvenile court or, if
14 the individual was assigned to youthful trainee status, within 3
15 years after he or she has successfully completed youthful trainee
16 status, whichever is later, and, except as otherwise provided in
17 this subsection, the court shall not consider a petition filed by
18 the individual after that date. A petition filed under subsection
19 **(2) FOR A VIOLATION DESCRIBED IN SUBSECTION (15) (A) (i) OR (ii) OR**
20 **(B) (i) OR (ii)** shall not be filed before the individual's seventeenth
21 birthday or after the individual's twentieth birthday. **A PETITION**
22 **FILED UNDER SUBSECTION (2) FOR A VIOLATION DESCRIBED IN SUBSECTION**
23 **(15) (A) (iii) OR (B) (iii) SHALL NOT BE FILED BEFORE THE INDIVIDUAL'S**
24 **SEVENTEENTH BIRTHDAY.** If the individual is charged in this state or
25 elsewhere with committing, attempting to commit, or conspiring to
26 commit a felony, other than the felony for which he or she has
27 filed the petition for registration as provided under section 8d,

1 or an offense that if committed by an adult would be a felony, the
2 court may hold the petition in abeyance until the charges are
3 finally disposed of. If the court holds the petition in abeyance,
4 the 3-year limitation periods described in this subsection begin to
5 run when the period of abeyance has ended. A petition shall not be
6 filed under this section if a previous petition was filed under
7 this section and was denied by the court after a hearing. As used
8 in this subsection, "felony" means a crime that is specifically
9 designated to be a felony or that is punishable by imprisonment for
10 more than 1 year.

11 (5) A petition filed under this section shall be made under
12 oath and shall contain all of the following:

13 (a) The name and address of the petitioner.

14 (b) A statement identifying the offense for which registration
15 as provided in section 8d is being requested.

16 (c) A statement of whether the individual was previously
17 convicted of a listed offense for which registration is required
18 under this act.

19 (d) A statement specifically stating that the individual is
20 not disqualified under subsection (14) from filing a petition under
21 this section.

22 (6) An individual who knowingly makes a false statement in a
23 petition filed under this section is guilty of perjury as
24 proscribed under section 423 of the Michigan penal code, 1931 PA
25 328, MCL 750.423.

26 (7) A copy of the petition shall be filed with the office of
27 the prosecuting attorney that prosecuted the case against the

1 individual at least 30 days before a hearing is held on the
2 petition. The prosecuting attorney may appear and participate in
3 all proceedings regarding the petition and may seek appellate
4 review of any decision on the petition.

5 (8) If the name of the victim of the offense is known by the
6 prosecuting attorney, the prosecuting attorney shall provide the
7 victim with written notice that a petition has been filed and shall
8 provide the victim with a copy of the petition. The notice shall be
9 sent by first-class mail to the victim's last known address. The
10 petition shall include a statement of the victim's rights under
11 subsection (11).

12 (9) If an individual petitions the court under subsection (1)
13 or (2) for an offense described in subsection (15)(a) or (b) and
14 the individual is not on the database maintained under section 8(2)
15 at the time the petition is filed, the court may order the
16 department not to place the individual on that database during the
17 period in which the court is considering whether to grant the
18 petition as follows:

19 (a) Except as provided in subdivision (b), for a period of 30
20 days after the date the order is issued or as provided by the
21 court, whichever occurs first.

22 (b) If jurisdiction is continued by the court past the
23 individual's seventeenth birthday, during the period in which
24 jurisdiction is continued. The court shall notify the department of
25 the order as required under section 8d.

26 (10) If an individual properly files a petition with the court
27 under this section, the court shall conduct a hearing on the

1 petition as provided in this section.

2 (11) The victim has the right to attend all proceedings under
3 this section and to make a written or oral statement to the court
4 before any decision regarding the petition is made. A victim shall
5 not be required to appear at any proceeding under this section
6 against his or her will.

7 (12) The court shall consider all of the following in
8 determining whether to allow the individual to register under this
9 act as provided in section 8d:

10 (a) The individual's age and level of maturity at the time of
11 the offense.

12 (b) The victim's age and level of maturity at the time of the
13 offense.

14 (c) The nature of the offense.

15 (d) The severity of the offense.

16 (e) The individual's prior juvenile or criminal history.

17 (f) The individual's likelihood to commit further listed
18 offenses.

19 (g) Any impact statement submitted by the victim under the
20 **WILLIAM VAN REGENMORTER** crime victim's rights act, 1985 PA 87, MCL
21 780.751 to 780.834, or under this section.

22 (h) Any other information considered relevant by the court.

23 (13) If the court determines that the individual meets the
24 criteria for registration under section 8d, the court may order the
25 individual to register under this act as provided in that section.

26 (14) The court shall not grant a petition filed under this
27 section if any of the following apply:

1 (a) The individual was previously convicted of a listed
2 offense for which registration is required under this act.

3 (b) The individual fails to carry the burden of proving by
4 clear and convincing evidence that he or she is not likely to
5 commit further listed offenses.

6 (c) The court determines that the offense involved any of the
7 following:

8 (i) A factor set forth in section 520b(1)(b) to (h) of the
9 Michigan penal code, 1931 PA 328, MCL 750.520b.

10 (ii) A factor set forth in section 520c(1)(b) to (l) of the
11 Michigan penal code, 1931 PA 328, MCL 750.520c.

12 (iii) A factor set forth in section 520d(1)(b) to (e) of the
13 Michigan penal code, 1931 PA 328, MCL 750.520d.

14 (iv) A factor set forth in section 520e(1)(b) to (f) of the
15 Michigan penal code, 1931 PA 328, MCL 750.520e.

16 (d) The individual is charged in this state or elsewhere with
17 committing, attempting to commit, or conspiring to commit a felony,
18 other than the felony for which he or she has filed the petition
19 for registration as provided under section 8d, or an offense that
20 if committed by an adult would be a felony. This subsection does
21 not prohibit the court from holding the petition in abeyance under
22 subsection (4). As used in this subdivision, "felony" means a crime
23 specifically designated to be a felony or that is punishable by
24 imprisonment for more than 1 year.

25 (e) The individual was sentenced for the offense as an adult.
26 This subdivision does not apply to an individual described in
27 subsection ~~(15)(e)~~ **(15)(A)(iii), (B)(iii), OR (C)** who successfully

1 completed his or her probationary period and was discharged from
2 youthful trainee status.

3 **(F) FOR AN INDIVIDUAL DESCRIBED IN SUBSECTION (15) (A) (iii), THE**
4 **OFFENSE INVOLVED MORE THAN 1 VICTIM.**

5 (15) The right to petition under this section applies to all
6 of the following individuals:

7 (a) An individual who is convicted as a juvenile under section
8 520b, 520c, or 520d of the Michigan penal code, 1931 PA 328, MCL
9 750.520b, 750.520c, and 750.520d, of committing, attempting to
10 commit, or conspiring to commit a violation solely described in
11 section 520b(1) (a), 520c(1) (a), or 520d(1) (a) of the Michigan penal
12 code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, if ~~either~~
13 **ANY** of the following ~~applies~~ **APPLY**:

14 (i) The individual was under 13 years of age when he or she
15 committed the offense and is not more than 5 years older than the
16 victim.

17 (ii) The individual was 13 years of age or older but less than
18 17 years of age when he or she committed the offense and is not
19 more than 3 years older than the victim.

20 **(iii) FOR A VIOLATION OF SECTION 520D(1) (A) ONLY, THE INDIVIDUAL**
21 **IS NOT MORE THAN 3 YEARS OLDER THAN THE VICTIM.**

22 (b) An individual who was charged under section 520b, 520c, or
23 520d of the Michigan penal code, 1931 PA 328, MCL 750.520b,
24 750.520c, and 750.520d, with committing, attempting to commit, or
25 conspiring to commit a violation solely described in section
26 520b(1) (a), 520c(1) (a), or 520d(1) (a) of the Michigan penal code,
27 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, and is convicted

1 as a juvenile of violating, attempting to violate, or conspiring to
 2 violate section 520e or 520g of the Michigan penal code, 1931 PA
 3 328, MCL 750.520e and 750.520g, if ~~either~~ **ANY** of the following
 4 ~~applies~~ **APPLY**:

5 (i) The individual was under 13 years of age when he or she
 6 committed the offense and is not more than 5 years older than the
 7 victim.

8 (ii) The individual was 13 years of age or older but less than
 9 17 years of age when he or she committed the offense and is not
 10 more than 3 years older than the victim.

11 **(iii) FOR A VIOLATION OF SECTION 520D(1) (A) ONLY, THE INDIVIDUAL**
 12 **IS NOT MORE THAN 3 YEARS OLDER THAN THE VICTIM.**

13 (c) An individual who has successfully completed his or her
 14 probationary period under sections 11 to 15 of chapter II of the
 15 code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, for
 16 committing a listed offense, and has been discharged from youthful
 17 trainee status.

18 Sec. 8d. (1) An individual who petitions the court under
 19 section 8c to register as provided in this section shall register
 20 under this act as follows:

21 (a) For a violation described in section ~~8c(15)(a) or (b)~~
 22 **8C(15) (A) (i) OR (ii) OR (B) (i) OR (ii)**, the individual shall register
 23 under this act until the petition is granted but is not subject to
 24 the requirements of section 8(2).

25 (b) For a violation described in section ~~8c(15)(c)~~
 26 **8C(15) (A) (iii), (B) (iii), OR (C)** and for which the petition is granted,
 27 the individual shall register under this act for a period of 10

1 years after the date he or she initially registered or, if the
2 individual was in a state correctional facility, for 10 years after
3 he or she is released from that facility, whichever is greater, and
4 is subject to the requirements of section 8(2) during that
5 registration period.

6 (2) If the court under section 8c orders an individual to
7 register under this section pending the court's determination of
8 the petition, the court shall promptly provide a copy of that order
9 to the department and to the individual. If the department is
10 provided with an order under this subsection for an individual
11 described in section ~~8c(15)(a) or (b)~~ **8C(15)(A)(i) OR (ii) OR (B)(i)**
12 **OR (ii)**, the department shall not enter the individual's
13 registration into the database maintained under section 8(2) until
14 ordered by the court to do so or until expiration of the order,
15 whichever occurs first.

16 (3) If the court grants a petition filed under section 8c, the
17 court shall promptly provide a copy of that order to the department
18 and to the individual. If the department is provided with an order
19 under this subsection for a violation described in section
20 ~~8c(15)(a) or (b)~~ **8C(15)(A)(i) OR (ii) OR (B)(i) OR (ii)**, the department
21 shall not enter the individual's registration into the database
22 maintained under section 8(2) or, if the person is already
23 registered, shall promptly remove that registration from the
24 database maintained under section 8(2). The department shall
25 promptly remove an individual's registration from the database
26 maintained under section 8(1) upon expiration of the applicable
27 registration period described in subsection (1) or (2) as provided

1 in those subsections.