

HOUSE BILL No. 6702

November 19, 2008, Introduced by Reps. Alma Smith, Meadows, Warren, Meisner, Condino, Jackson, Garfield and Gaffney 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
7 is convicted on or after October 1, 2004 of a violation described

1 in that subsection may petition the court under this section for an
2 order allowing him or her to register under this act as provided in
3 section 8d(1).

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

8 (4) A petition filed under this section shall be filed in the
9 court in which the individual was convicted of committing the
10 listed offense. A petition filed under subsection (1) shall be
11 filed before October 1, 2007 or within 3 years after the individual
12 is discharged from the jurisdiction of the juvenile court or, if
13 the individual was assigned to youthful trainee status, within 3
14 years after he or she has successfully completed youthful trainee
15 status, whichever is later, and, except as otherwise provided in
16 this subsection, the court shall not consider a petition filed by
17 the individual after that date. A petition filed under subsection
18 (2) shall not be filed before the individual's seventeenth birthday
19 or after the individual's twentieth birthday. If the individual is
20 charged in this state or elsewhere with committing, attempting to
21 commit, or conspiring to commit a felony, other than the felony for
22 which he or she has filed the petition for registration as provided
23 under section 8d, or an offense that if committed by an adult would
24 be a felony, the court may hold the petition in abeyance until the
25 charges are finally disposed of. If the court holds the petition in
26 abeyance, the 3-year limitation periods described in this
27 subsection begin to run when the period of abeyance has ended. A

1 petition shall not be filed under this section if a previous
2 petition was filed under this section and was denied by the court
3 after a hearing. As used in this subsection, "felony" means a crime
4 that is specifically designated to be a felony or that is
5 punishable by imprisonment for more than 1 year.

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

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

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

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

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

17 (6) An individual who knowingly makes a false statement in a
18 petition filed under this section is guilty of perjury as
19 proscribed under section 423 of the Michigan penal code, 1931 PA
20 328, MCL 750.423.

21 (7) A copy of the petition shall be filed with the office of
22 the prosecuting attorney that prosecuted the case against the
23 individual at least 30 days before a hearing is held on the
24 petition. The prosecuting attorney may appear and participate in
25 all proceedings regarding the petition and may seek appellate
26 review of any decision on the petition.

27 (8) If the name of the victim of the offense is known by the

1 prosecuting attorney, the prosecuting attorney shall provide the
2 victim with written notice that a petition has been filed and shall
3 provide the victim with a copy of the petition. The notice shall be
4 sent by first-class mail to the victim's last known address. The
5 petition shall include a statement of the victim's rights under
6 subsection (11).

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

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

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

21 (10) If an individual properly files a petition with the court
22 under this section, the court shall conduct a hearing on the
23 petition as provided in this section.

24 (11) The victim has the right to attend all proceedings under
25 this section and to make a written or oral statement to the court
26 before any decision regarding the petition is made. A victim shall
27 not be required to appear at any proceeding under this section

1 against his or her will.

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

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

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

9 (c) The nature of the offense.

10 (d) The severity of the offense.

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

12 (f) The individual's likelihood to commit further listed
13 offenses.

14 (g) Any impact statement submitted by the victim under the
15 **WILLIAM VAN REGENMORTER** crime victim's rights act, 1985 PA 87, MCL
16 780.751 to 780.834, or under this section.

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

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

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

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

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

1 (c) The court determines that the offense involved any of the
2 following:

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

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

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

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

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

20 (e) The individual was sentenced for the offense as an adult.
21 This subdivision does not apply to an individual described in
22 subsection (15)(c) who successfully completed his or her
23 probationary period and was discharged from youthful trainee
24 status.

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

27 (a) An individual who is convicted as a juvenile under section

1 520b, 520c, or 520d of the Michigan penal code, 1931 PA 328, MCL
2 750.520b, 750.520c, and 750.520d, of committing, attempting to
3 commit, or conspiring to commit a violation solely described in
4 section 520b(1)(a), 520c(1)(a), or 520d(1)(a) of the Michigan penal
5 code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, if either
6 of the following applies:

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

10 (ii) The individual was 13 years of age or older but less than
11 17 years of age when he or she committed the offense and is not
12 more than 3 years older than the victim.

13 (b) An individual who was charged under section 520b, 520c, or
14 520d of the Michigan penal code, 1931 PA 328, MCL 750.520b,
15 750.520c, and 750.520d, with committing, attempting to commit, or
16 conspiring to commit a violation solely described in section
17 520b(1)(a), 520c(1)(a), or 520d(1)(a) of the Michigan penal code,
18 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, and is convicted
19 as a juvenile of violating, attempting to violate, or conspiring to
20 violate section 520e or 520g of the Michigan penal code, 1931 PA
21 328, MCL 750.520e and 750.520g, if either of the following applies:

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

25 (ii) The individual was 13 years of age or older but less than
26 17 years of age when he or she committed the offense and is not
27 more than 3 years older than the victim.

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

6 (D) AN INDIVIDUAL WHO WAS CONVICTED OF A LISTED OFFENSE FOR
7 WHICH A TERM OF NOT MORE THAN 2 YEARS' IMPRISONMENT MAY BE IMPOSED
8 AND WHO HAS BEEN REGISTERED UNDER THIS ACT FOR NOT LESS THAN 10
9 YEARS.

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

13 (a) For a violation described in section 8c(15)(a), ~~or~~(b), OR
14 (D), the individual shall register under this act until the
15 petition is granted but is not subject to the requirements of
16 section 8(2).

17 (b) For a violation described in section 8c(15)(c) and for
18 which the petition is granted, the individual shall register under
19 this act for a period of 10 years after the date he or she
20 initially registered or, if the individual was in a state
21 correctional facility, for 10 years after he or she is released
22 from that facility, whichever is greater, and is subject to the
23 requirements of section 8(2) during that registration period.

24 (2) If the court under section 8c orders an individual to
25 register under this section pending the court's determination of
26 the petition, the court shall promptly provide a copy of that order
27 to the department and to the individual. If the department is

1 provided with an order under this subsection for an individual
2 described in section 8c(15)(a) or (b), the department shall not
3 enter the individual's registration into the database maintained
4 under section 8(2) until ordered by the court to do so or until
5 expiration of the order, whichever occurs first.

6 (3) If the court grants a petition filed under section 8c, the
7 court shall promptly provide a copy of that order to the department
8 and to the individual. If the department is provided with an order
9 under this subsection for a violation described in section
10 8c(15)(a), ~~or~~(b), **OR (D)**, the department shall not enter the
11 individual's registration into the database maintained under
12 section 8(2) or, if the person is already registered, shall
13 promptly remove that registration from the database maintained
14 under section 8(2). The department shall promptly remove an
15 individual's registration from the database maintained under
16 section 8(1) upon expiration of the applicable registration period
17 described in subsection (1) or (2) as provided in those
18 subsections.