

Legislative Analysis



SEX OFFENDERS REGISTRATION ACT

Phone: (517) 373-8080
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House Bill 5679 as introduced
Sponsor: Rep. James A. Lower
Committee: Judiciary
Complete to 5-6-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5679 would amend the Sex Offenders Registration Act (SORA) to do all of the following:

- Designate a person convicted of an offense for which he or she was required to register as a sex offender before July 1, 2011, as a *listed offender*.
- Exempt listed offenders from the offense tier classification system and, if not required to be on the public website before July 1, 2011, from inclusion on the public website.
- For the purpose of various reporting requirements, require the report of an event or change in information within seven days (or within 10 days if a listed offender), instead of within three business days.
- Remove, for certain individuals assigned to youthful trainee status and individuals convicted of a listed offense but who were not previously required to register, the requirement to register if they commit any felony after July 1, 2011.
- Allow a parent or legal guardian who is a registrant to enter a student safety zone under certain circumstances.
- Apply certain penalties for noncompliance only if the noncompliance was done knowingly.
- Revise, eliminate, and add definitions.

SORA identifies certain offenses for which registration on the state sex offenders registry is required, establishes the length of time an individual must register as an offender based on a three-tier classification system, requires certain information to be reported and prescribes time requirements for reporting that information and changes to that information, delineates which information can be maintained only in a nonpublic law enforcement database and which information is required to be posted on a public website, and prescribes penalties for noncompliance with registry requirements.

Revisions to Definitions

The term *immediately*, which is currently defined in the act to mean within three business days (i.e., excluding weekends and holidays), would be deleted throughout the act and replaced with specific time frames within which a required action is to be completed. Generally speaking, *immediately* would be replaced by *not more than seven days* or, for a listed offender, *not more than 10 days*, although in some instances the time frames are the same for both categories of registrants. Actions requiring reporting to the registering authority (e.g., a local law enforcement agency) include such things as changing a residence, going on vacation for more than a week, starting or ending a job, enrolling and beginning classes at an institution of higher education, and obtaining a new email or instant message address.

The definition of *loiter* would be eliminated.

School property would be revised to mean a building, playing field, or other property that is used for school purposes to impart instruction to children or used for functions and events sponsored by a school, designated by the school or school district as being school property.

School safety zone would be revised to mean school property and the area that lies 1,000 or less from the property line of school property (underlining denotes the revision). The bill would also add that the distance between a dwelling place or a place of work and a student safety zone would have to be measured from the property line of a residence or place of work and the property line of school property.

Being assigned to youthful trainee status under the Holmes Youthful Trainee Act (HYTA) before October 1, 2004, if the individual is also convicted of any other felony after July 1, 2011, would be no longer be included in the definition of *convicted* for purposes of being required to register under the act.

The terms *aircraft* and *vessel* would no longer be defined in the act. References to either term in other provisions would also be eliminated.

Listed offender

The bill would define *listed offender* to mean an individual convicted of an offense for which he or she was required to register under the act before July 1, 2011. The public website could not include a listed offender who was not required to be included on the public website before July 1, 2011.

Under the bill, the offense tier classification system would not apply to a listed offender. The system, which classifies certain offenses into three tiers and establishes registration periods of 15 years, of 25 years, or for life, was added by 2011 PA 17. The Department of State Police (MSP) would have to remove the tier classification of a listed offender from his or her registration information and from both the nonpublic law enforcement registry and the public registry not more than 60 days after the bill's effective date. (The bill would not change the current periods for registration as a Tier I, II, or III offender.)

For most offenses, a listed offender would have to comply with the registration and reporting requirements for 25 years after the date of initially registering or, if in a state correctional facility, for 10 years after release from the facility, whichever is longer. However, a listed offender would have to comply for life if he or she were convicted of any of the following offenses or a similar offense under a law of the United States, any state, or any country or under tribal or military law:

- First-degree criminal sexual conduct.
- Second-degree criminal sexual conduct if the victim is under 13 years of age.
- Kidnapping, if the victim is under 18 years of age.
- An attempt or conspiracy to commit an offense described above.
- Maliciously, forcibly, or fraudulently lead, take, carry away, decoy, or entice away any child under the age of 14 years with the intent to detain or conceal the child from the child's parent or legal guardian.
- Production or distribution of child pornography.

- A second or subsequent listed offense after October 1, 1995, regardless of when any earlier listed offense was committed. Registration for life would not be required of a listed offender if his or her first or second listed offense is for a conviction on or before September 1, 1999, for an offense that was added on that date to the definition of listed offense. However, a listed offender would be required to register for life if he or she were convicted of a subsequent listed offense after September 1, 1999.

All individuals who are required to be registered must report in person to the registering authority where he or she lives on an annual, biannual, or quarterly basis, depending on tier classification, to verify their place of domicile or residence. Under the bill, a listed offender who is not incarcerated would have to report in person for verification of domicile or residence as follows:

- If registered only for one or more listed offenses that are misdemeanors—January 1 to January 15 of each year after the initial verification or registration.
- If registered for one or more listed offenses that are felonies—not earlier than the first day or later than the fifteenth day of each April, July, October, and January after the initial registration and verification.

When reporting as required above, the listed offender would have to review all registration information for accuracy. (The bill would not amend the reporting schedule currently in place for registrants not designated as listed offenders. By comparison, where listed offenders would have a two-week window for reporting in person in the designated month or months, registrants who are not listed offenders will continue to report any day within the month or months designated to do so.) A listed offender would also be subject to the annual \$50 registration fee. (Under the act, the sum of the registration fees may not exceed \$550, and the registration fee requirement does not apply to a person initially required to register after January 1, 2023.)

The bill would delete provisions pertaining to the registration of certain individuals convicted in this state or in another state or country who were not previously required to register but are currently required to register if convicted of any other felony on or after July 1, 2011.

A listed offender would have to notify the registering authority where his or her new residence or domicile is located within 10 days after changing or vacating his or her residence, domicile, or place of work or education. In addition, he or she would have to notify MSP on a form prescribed by the department not later than 10 days before changing his or her domicile or residence to another state. The individual would have to indicate the new state and, if known, the new address. MSP would have to update the registration and compilation databases and promptly notify the appropriate law enforcement agency and any applicable sex or child offender registration authority in the new state.

Driver license/state ID requirement

Currently, each registrant is required to maintain a valid operator's or chauffeur's license or valid official state identification card with his or her current address. The bill would exempt a registrant who is homeless (who lacks a fixed or temporary address) from this requirement.

The bill would revise the time frame for when an incarcerated registrant after release must report to the secretary of state (SOS) to have a digitalized photograph taken from *immediately*

to *not more than seven days* after release. A listed offender would have to report to the SOS not less than 10 days after release to have the photograph taken.

Registration information

Certain information must be obtained when an individual registers and forwarded to the MSP. The bill would make the following revisions to some of the information that must be provided:

- Regarding all telephone numbers registered to, or routinely used by, the individual—the bill would define *routinely used* to refer to a primary phone number from which an individual makes and receives calls and text messages.
- Regarding all email addresses assigned to, or routinely used by, the individual and all login names or other identifiers when using email or instant messaging systems—*routinely used* would refer to a primary email address or instant message address an individual uses for sending and receiving electronic mail or instant messages. This provision would not apply to a listed offender.
- Regarding the license plate number, registration number, and description of any motor vehicle *regularly operated* by the individual and the location where that vehicle is habitually stored or kept—*regularly operated* would mean to use as a primary vehicle on 10 or more days a month. Information regarding a vessel or aircraft would no longer be required to be reported.

Revisions identical to those described above would be made to information required to be included in the nonpublic law enforcement database and the public internet website regarding the meaning of *routinely used* and *routinely operated*.

Prohibitions

The prohibition on a registrant working within a student safety zone would be amended to specifically include a prohibition on *residing* within a student safety zone.

The prohibition on *loitering* within a student safety zone would be deleted and replaced with a prohibition on intentionally entering and remaining on school property, except that the following individuals would not be considered to be in violation of the prohibition:

- A parent or legal guardian who is on school property while transporting his or her child to or from the child's school or to or from an event sanctioned by the child's school.
- A parent or legal guardian on school property attending an event sanctioned by his or her child's school, if the child is participating in that event.
- A parent or legal guardian on school property for the purpose of meeting with an employee of the school regarding his or her child enrolled at the school.
- An individual who only intermittently or sporadically enters a student safety zone for the purpose of work, unless the individual initiates or maintains contact with a minor.

Currently, an individual who violates the prohibitions regarding a school safety zone is subject to a misdemeanor penalty for a first offense and a felony for a second or subsequent offense. The bill would require that the individual must have knowingly violated the prohibition.

Miscellaneous

An individual who was previously convicted of a listed offense but who was not required to register unless he or she was convicted of a subsequent felony on or after July 1, 2011, would no longer be required to register under the act.

Currently, failure to comply with the requirement to report to the SOS after release from incarceration to obtain a digitalized photograph for a driver's license or state ID card is a misdemeanor. The bill would apply the penalty only if the noncompliance was *willful*.

MCL 28.722 et al.

BACKGROUND INFORMATION:

Listed offense

As defined in SORA, "listed offense" means a Tier I, II, or III offense. A conviction for a Tier I offense requires registration under the SORA for 15 years, Tier II requires registration for 25 years, and Tier III requires lifetime registration.

Tier I offenses include possession of child pornography, indecent exposure while fondling genitalia (if the victim is a minor), unlawful imprisonment (if the victim is a minor), prostitution with a minor, criminal sexual conduct in the fourth degree (if the victim is an adult), certain crimes associated with surveilling another when the person has the expectation of privacy (if the victim is a minor), and any other violations of law that constitute a sexual offense (if the victim is a minor).

Tier II offenses include accosting, enticing, or soliciting a child for immoral purpose; producing or distributing child pornography; committing or attempting to commit, or soliciting another to commit, various sexual offenses in which the victim or intended victim is or is believed to be a minor; with some exceptions based on age of victim and perpetrator, sodomy or gross indecency (if the victim is a minor); human trafficking of a minor for the commercial sex trade; accosting or soliciting a minor to commit prostitution; inducing another to become a prostitute; second or fourth degree criminal sexual conduct (if the victim is 13 to 18 years of age); second degree criminal sexual conduct (if the victim is at least 18 years of age); or attempting or conspiring to commit any of the above.

Tier III offenses include gross indecency (if the victim is 12 years of age or younger); kidnapping (if the victim is a minor); taking or enticing away a child under 14 years of age; first and third degree criminal sexual conduct (with some exceptions for consensual acts based on the age of the victim and the perpetrator); second degree criminal sexual conduct (if the victim is 12 years of age or younger); fourth degree criminal sexual conduct (if the victim is 12 years of age or younger and the perpetrator is at least 17 years of age); or attempting or conspiring to commit any of the above.

Brief description of related court cases and orders

Michigan's sex offender registry was created by 1994 PA 295. The registry has been amended numerous times since, most notably in 2006 (addition of geographic exclusion zones restricting where registrants could live, work, or visit) and 2011 (establishment of tier classification system, increased registration periods). In 2015, in what is referred to as *Does I*, a federal district court held that certain provisions of SORA were unconstitutional and therefore unenforceable (e.g., the exclusion zones). The state appealed, and in 2016 the federal Sixth Circuit Court ruled that the 2006 and 2011 amendments were punishment and could not be applied retroactively, meaning that the amendments made to SORA by that legislation only

applied to those placed on the registry after the statutory changes took effect.¹ An appeal by the state to the U.S. Supreme Court was denied.

Does II, a class action civil suit brought on behalf of all current registrants and individuals who will be required to register to ensure that the *Does I* decision is applied to all registrants, was subsequently filed.²

On May 23, 2019, a federal district court for the Eastern District issued an order setting a 90-day deadline (August 21, 2019) for the registry law to be revised in line with the previous court decisions. Under the declaratory judgment, the court could enter an injunction that would bar (or prohibit) enforcement of parts or all of SORA against many of the current registrants until such time as the legislature revises or replaces the act to address the issues raised by the court.

Further, on April 6, 2020, an interim order was issued by Judge Cleland of the federal district court of the Eastern District.³ The order stops law enforcement from enforcing registration, verification, and school zone and fee violations connected with Michigan's sex offender registry law from February 14, 2020, through the end of the COVID-19 crisis. The order does not prohibit maintenance of, or voluntary compliance with, the registry.⁴

FISCAL IMPACT:

House Bill 5679 would likely increase costs for MSP and other law enforcement agencies by an indeterminate amount. The bill would effectively create two pools of offenders who would be subject to different registration requirements. This will necessitate the implementation of different information technology (IT) processes, different reporting documentation, and will require significant staff hours to implement. The department indicated that a cost estimate is currently indeterminate, but that costs would be incurred by MSP.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

¹ #1-5 *Does v Snyder*, 834 F3rd 696 (6th Cir 2016)

² *Does # I-6 v Snyder*, No. 16-cv-13137 E.D. Mich.

³ https://www.michigan.gov/documents/msp/SORA_Does_II-4-6-2020_Interim_Order_and_Preliminary_Injunction_686125_7.pdf

⁴ See <https://www.michigan.gov/msp/0,4643,7-123--524592--,00.html>