

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 1275 (as enrolled)
Sponsor: Senator Bev Hammerstrom
Senate Committee: Families, Mental Health and Human Services
House Committee: Criminal Justice

PUBLIC ACT 542 of 2002

Date Completed: 7-29-02

RATIONALE

The Campus Sex Crimes Prevention Act, a Federal law enacted on October 28, 2000, requires convicted sex offenders enrolled at or employed by an institution of higher education to report the name of that college or university to the police. The Act further requires that this information be made available to the police agency with jurisdiction over the campus, and that each institution of higher education issue a statement advising the campus community where the information concerning registered sex offenders can be found. Reportedly, the Act was aimed at many states' laws that require sex offenders to register with the police agency near their permanent residence, but do not require students and employees who live or work on campus part of the year to report to the campus police or the local law enforcement agency. Without such a reporting requirement, the campus or local police are unaware that a registered sex offender is on campus.

States that fail to comply with the Federal requirements under the Campus Sex Crimes Prevention Act are subject to a mandatory 10% reduction of the formula grant funding available under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program, which is administered by the U.S. Bureau of Justice. In order to protect this revenue source, it was suggested that Michigan's Sex Offender Registration Act be amended to reflect these Federal requirements.

CONTENT

The bill amends the Sex Offenders Registration Act (SORA) to require certain sexual offenders who are

employed by or students at institutions of higher education to report their sexual offense status to the law enforcement agency with jurisdiction over the campus. The bill will take effect on October 1, 2002.

The bill defines "institution of higher education" to mean either a public or private community college, college, or university; or a public or private trade, vocational, or occupational school; or both.

Reporting Requirement

Under SORA, individuals convicted of a sexual offense listed in the Act must register information about their identities, addresses, and convictions with their local law enforcement agencies, sheriff's departments, or State Police. As a rule, someone who was convicted of a listed offense in another state or country and moves into the State, or becomes a student in Michigan, has 14 days to register. The bill further requires an out-of-State resident to report his or her status to the law enforcement agency or sheriff's department having jurisdiction over a campus of an institution of higher education, or the nearest State Police post, when any of the following occur:

- The individual is or becomes a full- or part-time employee, contractual provider, employee of a contractual provider, or volunteer with an institution of higher education, and his or her position requires that the person be present on campus for 14 or more consecutive days or 30 or more total days in a calendar year, regardless of whether he or she is financially compensated or receives any governmental or educational benefit.

- His or her status as an employee, contractual provider, or volunteer, as described above, is discontinued.
- The individual changes the campus on which he or she is an employee, a contractual provider, an employee of a contractual provider, or a volunteer.
- The individual enrolls as a student at an institution of higher education, or discontinues that enrollment.
- As part of the person's course of studies at an institution of higher education in the State, he or she is present at any other location in Michigan, another state, a territory or possession of the United States, or another country for 14 or more consecutive days or 30 or more total days in a calendar year, or the person discontinues his or her studies at that location.

The bill provides that a resident of Michigan required to be registered under SORA must report his or her status in person to the local law enforcement agency or sheriff's department, having jurisdiction where his or her new residence or domicile is located, or the nearest State Police post, if any of the events described above occur.

Deadlines for Filing Registration Report

The bill requires employees, contractual providers, employees of contractual providers, volunteers, and students at an institution of higher education who are registered under the Act *before* the bill's effective date, to file their first reports with a law enforcement agency no later than January 15, 2003.

Individuals who are employees, contractual providers, employees of contractual providers, or volunteers on the bill's effective date, and who subsequently are required to register under the Act, must file their first reports with a law enforcement agency on the date they are required to register. (Section 4 of SORA specifies that individuals convicted of a listed offense after October 1, 1995, must register before sentencing, entry of the order of disposition, or assignment to youthful trainee status.)

The bill requires all other registrants under the Act to report within 10 days after becoming an employee, contractual provider, employee of a contractual provider, volunteer, or student at an institution of higher education,

discontinuing that status, or changing location.

The bill also states that the additional registration reports required by the bill must be made according to time lines established under the Act for registered individuals to report to the police.

Documentation

Under the bill, the law enforcement agency to which an individual reports must require the individual to present written documentation of employment status, contractual relationship, volunteer status, or student status. Written documentation may include, but is not limited to, a W-2 form, pay stub, or written statement by an employer; a contract; and/or a student identification card or student transcript.

Additional Reporting Requirements

The Act requires that individuals registered under SORA who change residences, places of work, or places of education notify the law enforcement agency or sheriff's department having jurisdiction over their new residence, or the State Police, within 10 days. The bill further requires those individuals to notify the police of any change required to be reported under the bill.

The Act requires registered individuals who are not incarcerated to report periodically in person to their local law enforcement agency, sheriff's department, or State Police post to present proof of residence and update any information that has changed since registration. The bill also requires those individuals to comply with verification and proof-of-residence procedures prescribed by the bill.

Under SORA, an officer or authorized employee of the law enforcement agency, sheriff's department, or State Police post to which an individual reports must verify his or her residence. The bill requires that the officer also verify any information required to be reported under the bill.

Under the Act, if an individual does not report as required, the State Police must notify the local law enforcement agency. The bill further requires the State Police to notify a local law enforcement agency when a person fails to report as required by the bill.

Duties of the State Police

The Act requires that listed sex offenders register on a form provided by the State Police. The registration must contain the individual's name, Social Security number, date of birth, and address, a summary of the individual's convictions for listed sex offenses, a complete physical description, a photograph, and the individual's fingerprints. Under the bill, the registration also must contain information that is required to be reported under the bill.

The Act further requires the State Police to maintain a computerized data base of registrations. The data base compilation must be indexed numerically by zip code area. Within each zip code area, the data must contain each registrant's name, address, physical description, and birth date. The bill further requires the data base to include the name and campus location of each institution of higher education to which an individual is required to report.

Under the Act, the State Police must make the compiled data available to each State Police post, local law enforcement agency, and sheriff's department by the Law Enforcement Information Network. The bill also requires the State Police to provide the ability to conduct a computerized search of the compilation based on the name and campus location of an institution of higher education described above.

Other Provisions

Penalties. The Act provides that a person who fails to comply with the registration requirements is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$500. The bill increases the maximum penalties to 93 days and \$1,000. Further, SORA provides that an individual who willfully fails to sign a registration, notice, or verification is guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of up to \$500. The bill increases the maximum fine to \$1,000.

Declaration of Intent. The bill states that the Sex Offender's Registration Act was enacted "pursuant to the legislature's exercise of the police power of the State with the intent to

better assist law enforcement officers and the people of this state in preventing and protecting against the commission of future criminal sexual acts by convicted sex offenders. The legislature has determined that a person who has been convicted of committing an offense covered by this act poses a potential serious menace and danger to the health, safety, morals, and welfare of the people, and particularly the children, of this state. The registration requirements of this act are intended to provide law enforcement and the people of this state with an appropriate, comprehensive, and effective means to monitor those persons who pose such a potential danger."

Child Solicitation. The Act requires a person to register as a sex offender when he or she is found guilty of a sexual offense listed in the Act. The listed offenses are categorized into misdemeanor offenses and felony offenses. One such offense, a violation of Section 145a of the Michigan Penal Code (accosting, enticing, or soliciting a child with the intent to induce that child to commit an immoral act) was considered a misdemeanor. Public Act 45 of 2002, however, changed the status of this violation to a felony as of June 1, 2002. Under the bill, then, a violation of Section 145a before June 1, 2002, is considered a misdemeanor offense, which requires annual registration, while a violation of the section on or after June 1, 2002, is considered a felony offense, which requires quarterly registration.

Confidentiality. Under SORA, a registration is confidential and must not be open to inspection except for law enforcement purposes. The bill adds to this confidentiality provision the reports that are required under the bill.

MCL 28.722 et al.

BACKGROUND

Recently, the constitutionality of Michigan's Sex Offense Registration Act was challenged in court. On June 3, 2002, the Federal District Court ruled SORA unconstitutional; the Court, however, modified its ruling on June 25, reinstating part of the Act and reiterating its earlier findings in part. The State has filed an appeal of both decisions in the United States Court of Appeals for the Sixth Circuit.

On June 4, in a different case, the Michigan Court of Appeals upheld SORA's constitutionality (*People v Wentworth*, Docket No. 225148). This Court concluded that, "the requirements of SORA are not an unconstitutional infringement of...protected liberty, property, or privacy interests...". Although this decision constitutes precedent for Michigan courts, the State is subject to the rulings in *Fullmer*.

Fullmer v Michigan Department of State Police

This case was brought by an individual convicted of an offense that requires registration under SORA. The defendants are the Michigan Department of State Police and the Department Director. The plaintiff alleged that SORA violated constitutionally protected procedural due process. On June 3, 2002, the U.S. District Court for the Eastern District of Michigan issued a declaratory judgment that the Act was unconstitutional under the Fourteenth Amendment to the U.S. Constitution. The Court noted that SORA "does not provide any means by which individuals required to register can contest the listing" of information in the sex offender registry, and struck down the Act "as an unconstitutional denial of due process" because it "does not provide notice to registrants or an opportunity to be heard".

In reaching her conclusion, the judge applied what has become known as the "stigma plus" test. Under that concept, reputation alone is not a constitutionally protected liberty or property interest, but procedural due process is triggered when the damage to reputation is coupled with another interest. So, the stigma of being listed on a public registry, in itself, is not an infringement on due process rights but, together with a "plus" factor that deprives a registrant of a previously held right, registration could be a violation of due process. The Court found compelling the plaintiff's argument "that obligations of registration and attendant penalties for non-compliance with the SORA alter his legal status", which supplied the necessary "plus" factor. The Court enjoined the State from further enforcement of the Act until it provided sex offenders "adequate procedural safeguards for their constitutionally protected interests".

Fullmer Modified

On June 25, the same Federal District Court modified its original ruling, pointing out that SORA actually creates two separate registries: one registry that is maintained for law enforcement purposes (which is confidential and not subject to the Freedom of Information Act) and a second compilation of information primarily for the public. The Court held that its earlier due process analysis would not apply to a registry that could not be disclosed to the public. Further, the Court agreed with the State's contention that, under the earlier ruling, police no longer had access to information in the law enforcement registry and were unable to track convicted sex offenders. In addition, the June 3rd ruling put the State at risk of losing millions of dollars in Federal funding because the injunction prohibited it from complying with requirements for those grants. The Court upheld, however, its earlier judgment that the public availability of the sex offender list is unconstitutional because sex registrants "have no opportunity to demonstrate they should not be on a public sex offender registry which implies they are persons from whom the public must be protected."

For those reasons, the Court ruled that the State still is enjoined from enforcing the public disclosure sections of SORA, but may require sex offender registration, and information in the registry may be used for law enforcement purposes.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Campus communities should be protected from sex offenders to the same degree that the general public is protected. Currently, the sexual offender list maintained by the Michigan State Police is searchable by zip code. According to the State Police, once the bill takes effect, the list also will be searchable by campus name. This will provide accurate, clear information to campus communities about the sex offenders who frequent or live in university or college communities.

Further, the bill is necessary to ensure compliance with Federal law and to maintain formula grant funding. Also, under the Federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, funds not allocated to noncompliant states are redistributed to compliant states. It is possible that Michigan will see an increase in Federal funding by enacting the bill.

Legislative Analyst: Claire Layman

FISCAL IMPACT

The bill will have a minimal fiscal impact on local and State law enforcement agencies. Both agencies will encounter additional record-keeping responsibilities and the State will incur some programming costs related to changes required in data base design.

There are no statewide data currently available to indicate how many offenders are convicted of a misdemeanor for failing to comply with registration requirements or for divulging information from a confidential registration or report. Under the bill an offender will receive up to 93 rather than 90 days' incarceration in a local facility. Local units will incur the additional cost, which varies by county from \$27 to \$65 per day. Libraries will benefit from any additional revenue generated by increasing the maximum fine from \$500 to \$1,000.

Fiscal Analyst: Bruce Baker
Bethany Wicksall

A0102\1275ea

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.