

SEX OFFENDER REGISTRATION ACT REVISIONS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5679 (proposed substitute H-2)

Sponsor: Rep. James A. Lower

Committee: Judiciary

Complete to 12-1-20

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:

- Decrease the time period, from *within three business days* to *not more than three days*, for which registrants must register or report status changes in person with a local law enforcement agency.
- Apply the requirement to report all email addresses or internet identifiers (defined in the bill) only to those required to register after July 1, 2011.
- Repeal provisions prohibiting a registrant from living, working, or loitering in a student safety zone.
- Remove successful completion of a term of supervision under the Holmes Youthful Trainee Act (HYTA) from the definition of “conviction,” thereby relieving that youthful trainee from registration requirements.
- Require all telephone numbers and internet identifiers used by the registrant, as well as all information regarding all vehicles operated by the registrant, to be reported, instead of only those routinely used or operated by the registrant.
- Apply the penalty for failure to comply with the requirements of section 5a (e.g., the annual, biannual, or quarterly reporting by tier classification) only if the violation was willful.
- No longer require a registrant’s tier classification to be included on the public website.
- No longer prohibit email addresses or instant message addresses assigned to or used by a registrant, or login names or other identifiers used by the registrant, from inclusion on the public website. (The bill would not specifically require or preclude the inclusion of internet identifiers on the public website).

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 must be posted on a public website, and prescribes penalties for noncompliance with registry requirements. Many current provisions, including tier designations and offenses for which a conviction would mandate registration, would not be impacted by HB 5679.

Addition and Revisions to Definitions

The bill would define the term “internet identifier” to mean all designations used for self-identification or routing in internet communications or posting.

The term “immediately,” which is currently defined 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 for registrants by *not more than three days* (i.e., weekends and holidays would be counted), or, for an action required by a nonregistrant or entity (e.g., the Department of Corrections (DOC) or a probation officer), *immediately* would be replaced by *not more than seven days*. Actions that require a registrant to report 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 address or password.

Being assigned to youthful trainee status under the 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. In addition, an assignee who successfully completes a term of supervision under HYTA would not be considered as “convicted” and therefore would not be required to register. (An order of disposition entered under section 18 of the juvenile code or in a juvenile matter in another state or country for certain offenses would still be included in the definition of “convicted.”)

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

Registration of individuals and reporting status changes

SORA requires individuals convicted of certain offenses to register and to report changes in their status (e.g., employment, where living, or change in phone number or email) within specific time periods. Currently, all reporting must be done in person. The bill appears to allow the Department of State Police (MSP) to establish another manner in which certain registrants could report certain changes, as described below. Further, the bill would decrease, from *within three business days* to *not more than three days*, the time period in which the following individuals would have to register or report in person with the local law enforcement agency, sheriff’s department, or MSP when registering or after a change occurred:

- After becoming domiciled or temporarily residing, working (or after a change in place of employment), or being a student in Michigan if convicted in another state or country:
 - An individual convicted on or after October 1, 1995, of a listed offense as defined before September 1, 1999.
 - An individual convicted of an offense added on September 1, 1999, to the definition of *listed offenses*.
 - Either of the above who is convicted of any other felony on or after July 1, 2011. (Note: This includes felonies that are not listed offenses.)
 - An individual required to be registered as a sex offender regardless of when the conviction was entered.
- A college student (in-state and out-of-state students), after enrolling or discontinuing enrollment in the institution of higher learning.
- A Michigan resident before changing a domicile or residence to another state. (MSP is required under the act to update its databases and promptly notify the appropriate law enforcement agency and applicable sex or child offender registration authority in that new state.)
- For Michigan residents, when doing any of the following (the bill would allow the following to also be reported in a manner other than in person as allowed by the MSP):
 - Changing or vacating a residence or domicile.

- Changing or discontinuing employment.
- Changing his or her name.
- Making a change in enrollment at an institution of higher learning.
- For Michigan residents, to report any of the following to the registering authority having jurisdiction where the registrant's residence or domicile is located and in the manner prescribed by the MSP:
 - Intention to temporarily reside at any place other than his or her residence for more than seven days.
 - Except as otherwise provided in the bill, any change in vehicle information, electronic mail addresses, internet identifiers (all designations used for self-identification or routing in internet communications or posting), or telephone numbers registered to or used by the individual. (This revision would replace the current requirement to immediately report the establishment of any email or instant message address or any other designations used in internet communications or postings and also would replace the requirement to report a purchase or the regular operation of any vehicle and when ownership or operation of the vehicle is discontinued.) However, only those required to register after July 1, 2011, would have to report a change in an email address and internet identifiers.

Certain nonregistrants and entities are also required to register an individual or make certain notifications to other entities within specified time frames. The bill would make the following changes:

- If the individual's probation is transferred to Michigan after October 1, 1995, the probation or parole agent would have up to seven days (increased from *within three business days*) after the transfer to register the individual. This applies to an individual convicted of a listed offense on or before October 1, 1995.
- DOC would have up to seven days (increased from *within three business days*) to notify the local law enforcement or sheriff's department with jurisdiction over the area to which an individual is transferred or to the MSP post of the transferred residence or domicile when the individual is:
 - Transferred to a community residential program.
 - Transferred into a level 1 correctional facility of any kind, including a correctional camp or work camp.
- DOC would have to forward an individual's signed or unsigned notification of his or her duties as a registrant to MSP within seven days (instead of *within three business days*).
- If at the required annual, biannual, or quarterly in-person report the individual's appearance does not sufficiently match the photograph on file, the registering authority would have to require the registrant obtain a current photograph within seven days (increased from *three business days*).

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 increase the time frame for when an incarcerated registrant must report to the secretary of state for a digitalized photograph to be taken from *immediately* (meaning within three business days) to *not more than seven days* after release.

Registration information

Certain information must be obtained for registration purposes and must be forwarded to MSP to be included in the department's computerized law enforcement database of registrants. The bill would make the following revisions to some of the information that must be provided:

- Instead of requiring all telephone numbers registered to, or routinely used by, the individual to be provided, the bill would require all telephone numbers registered to or used by the individual, including residential, work, and mobile telephone numbers.
- Instead of requiring all email addresses and instant message addresses assigned to, or routinely used by, the individual and all login names or other identifiers when using email or instant messaging systems to be provided, the bill would require all email addresses and internet identifiers registered to or used by the individual. This requirement would apply only to an individual required to be registered after July 1, 2011.
- The bill would require the license plate number and description of any vehicle owned or operated by the individual, not just those regularly operated. The registration number and the location where the vehicle is habitually stored or kept, and information regarding a vessel or aircraft, would no longer have to be provided.

Public registry

Most, but not all, of the information contained in the nonpublic law enforcement database of registrants is also available to the public on an internet website. The bill would require the license plate number and description of any vehicle owned or operated by the individual, not just those regularly operated as is the current requirement, to be included on the public website. The registration number and the location where the vehicle is habitually stored or kept, and information regarding a vessel or aircraft, would no longer be required to be provided.

A registrant's tier classification would no longer have to be posted on the public registry, and the bill would specifically list a tier classification as information that could not be included in the public internet website.

Further, the act currently prohibits any electronic mail addresses and instant message addresses assigned to or routinely used by the registrant to be included on the public website. The bill would delete the prohibition, but does not specifically add them to the list of what must be included on the public website.

Penalty

Currently, failure to comply with the requirements of section 5a is a misdemeanor punishable by imprisonment for up to two years or a fine of up to \$2,000, or both. The bill would apply the penalty only if the noncompliance was *willful*. (Among other things, section 5a requires a registrant to report to the registering authority each year based on tier classification and to maintain a state driver license or state personal ID.)

Repealers

The bill would repeal sections 33 to 36 of the act, which pertain to student safety zones.

Section 33 defines terms including "loiter," "school," and "school property."

Section 34 prohibits a registrant from working or loitering within a student safety zone, provides exceptions, and prescribes penalties for a violation.

Section 35 prohibits, with some exceptions, a registrant from living within a student safety zone and provides penalties for a violation.

Section 36 provides exemptions from the prohibitions of sections 34 and 35 for individuals convicted of certain offenses as juveniles or who were discharged from youthful trainee status.

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.

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 who were 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 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 could result in cost increases for MSP and other law enforcement agencies. The magnitude of these costs would depend on the amount of changes necessary to implement the provisions of the bill and is presently indeterminate.

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 # 1-6 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>