

# HOUSE BILL No. 6701

November 19, 2008, Introduced by Reps. Rick Jones, Meadows, Warren, Meisner, Alma Smith, Condino, Young, 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 5a, 8c, and 8d (MCL 28.725a, 28.728c, and 28.728d), section 5a as amended by 2005 PA 322 and sections 8c and 8d as added by 2004 PA 240.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 5a. (1) Not later than December 1, 2004, the department  
2 shall mail a notice to each individual registered under this act  
3 who is not in a state correctional facility explaining the  
4 individual's duties under this section and this act as amended and  
5 the procedure for registration, notification, and verification and  
6 paying the registration fee prescribed under subsection (7) or  
7 section 7(1).

1           (2) Upon the release of an individual registered under this  
2 act who is in a state correctional facility, the department of  
3 corrections shall provide written notice to that individual  
4 explaining his or her duties under this section and this act as  
5 amended and the procedure for registration, notification, and  
6 verification and payment of the registration fee prescribed under  
7 subsection (7) or section 7(1). The individual shall sign and date  
8 the notice. The department of corrections shall maintain a copy of  
9 the signed and dated notice in the individual's file. The  
10 department of corrections shall forward the original notice to the  
11 department within 30 days, regardless of whether the individual  
12 signs it.

13           (3) Not later than January 15, 2000, an individual registered  
14 under this act who is not incarcerated shall report in person to  
15 the local law enforcement agency or sheriff's department having  
16 jurisdiction where he or she is domiciled or resides or to the  
17 department post in or nearest to the county where he or she is  
18 domiciled or resides. The individual shall present proof of  
19 domicile or residence and update any information that changed since  
20 registration, including information that is required to be reported  
21 under section 4a. An individual registered under this act who is  
22 incarcerated on January 15, 2000 shall report under this subsection  
23 not less than 10 days after he or she is released.

24           (4) Except as provided in subsection (5), following initial  
25 verification under subsection (3), or registration under this act  
26 after January 15, 2000, an individual required to be registered  
27 under this act who is not incarcerated shall report in person to

1 the local law enforcement agency or sheriff's department having  
2 jurisdiction where he or she is domiciled or resides or to the  
3 department post in or nearest to the county where he or she is  
4 domiciled or resides for verification of domicile or residence as  
5 follows:

6 (a) If the person is registered only for 1 or more listed  
7 offenses that are misdemeanors, not earlier than January 1 or later  
8 than January 15 of each year after the initial verification or  
9 registration. As used in this subdivision, "misdemeanor" means that  
10 term as defined in section 1 of chapter I of the code of criminal  
11 procedure, 1927 PA 175, MCL 761.1.

12 (b) If the person is registered for 1 or more listed offenses  
13 that are felonies, not earlier than the first day or later than the  
14 fifteenth day of each April, July, October, and January following  
15 initial verification or registration. As used in this subdivision,  
16 "felony" means that term as defined in section 1 of chapter I of  
17 the code of criminal procedure, 1927 PA 175, MCL 761.1.

18 (5) The continued reporting requirements of this section  
19 following initial registration do not apply to an individual  
20 convicted as a juvenile of committing an offense described in  
21 section 8c(15) (a) ~~or (b)~~ committed by the individual when he or she  
22 was less than 17 years of age, except that the individual shall  
23 report a change in his or her residence within this state or to  
24 another state as provided in this section within 10 days after the  
25 change of residence is made. If the ~~individual fails to file a~~  
26 ~~petition under section 8c before he or she becomes 18 years of age,~~  
27 ~~or if his or her INDIVIDUAL'S~~ petition is denied by the court, the

1 individual shall report as otherwise required under this section.

2 (6) When an individual reports under subsection (3) or (4), an  
3 officer or authorized employee of the local law enforcement agency,  
4 sheriff's department, or department post shall verify the  
5 individual's residence or domicile and any information required to  
6 be reported under section 4a. The officer or authorized employee  
7 shall sign and date a verification form. The officer shall give a  
8 copy of the signed form showing the date of verification to the  
9 individual. The officer or employee shall forward verification  
10 information to the department by the law enforcement information  
11 network in the manner the department prescribes. The department  
12 shall revise the databases maintained under section 8 as necessary  
13 and shall indicate verification in the compilation under section  
14 8(2).

15 (7) Except as otherwise provided in section 5b, beginning  
16 October 16, 2004, an individual who reports as prescribed under  
17 subsection (3) or (4) and who has not already paid the fee  
18 prescribed under section 7(1) shall pay a \$35.00 registration fee.  
19 An individual shall only be required to pay a fee once under this  
20 subsection.

21 (8) An individual required to be registered under this act  
22 shall maintain either a valid operator's or chauffeur's license  
23 issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to  
24 257.923, or an official state personal identification card issued  
25 under 1972 PA 222, MCL 28.291 to 28.300, with the individual's  
26 current address. The license or card may be used as proof of  
27 domicile or residence under this section. In addition, the officer

1 or authorized employee may require the individual to produce  
2 another document bearing his or her name and address, including,  
3 but not limited to, voter registration or a utility or other bill.  
4 The department may specify other satisfactory proof of domicile or  
5 residence.

6 (9) Not earlier than January 1, 2000 or later than January 15,  
7 2000, an individual registered under this act who is not  
8 incarcerated shall report in person to a secretary of state office  
9 and have his or her digitized photograph taken. An individual  
10 registered under this act who is incarcerated on January 15, 2000  
11 shall report under this subsection not less than 10 days after he  
12 or she is released. The individual is not required to report under  
13 this subsection if he or she had a digitized photograph taken for  
14 an operator's or chauffeur's license or official state personal  
15 identification card before January 1, 2000, or within 2 years  
16 before he or she is released. The photograph shall be used on the  
17 individual's operator's or chauffeur's license or official state  
18 personal identification card. The individual shall have a new  
19 photograph taken when he or she renews the license or  
20 identification card as provided by law. The secretary of state  
21 shall make the digitized photograph available to the department for  
22 a registration under this act.

23 (10) If an individual does not report under subsection (3) or  
24 (4) or section 4a, the department shall notify the local law  
25 enforcement agency, sheriff's department, or department post. An  
26 appearance ticket may be issued for the individual's failure to  
27 report as provided in sections 9a to 9g of chapter IV of the code

1 of criminal procedure, 1927 PA 175, MCL 764.9a to 764.9g.

2 (11) The department shall prescribe the form for the notices  
3 and verification procedures required under this section.

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

9 (2) An individual described in subsection (15) (a) ~~or (b)~~ who  
10 is convicted on or after October 1, 2004 of a violation described  
11 in that subsection **(15) (A)** may petition the court under this  
12 section for an order allowing him or her to register under this act  
13 as provided in section 8d(1).

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

18 (4) A petition filed under this section shall be filed in the  
19 court in which the individual was convicted of committing the  
20 listed offense. ~~A petition filed under subsection (1) shall be  
21 filed before October 1, 2007 or within 3 years after the individual  
22 is discharged from the jurisdiction of the juvenile court or, if  
23 the individual was assigned to youthful trainee status, within 3  
24 years after he or she has successfully completed youthful trainee  
25 status, whichever is later, and, except as otherwise provided in  
26 this subsection, the court shall not consider a petition filed by  
27 the individual after that date. A petition filed under subsection~~

1 ~~(2) shall not be filed before the individual's seventeenth birthday~~  
2 ~~or after the individual's twentieth birthday.~~ If the individual is  
3 charged in this state or elsewhere with committing, attempting to  
4 commit, or conspiring to commit a felony, other than the felony for  
5 which he or she has filed the petition for registration as provided  
6 under section 8d, or an offense that if committed by an adult would  
7 be a felony, the court may hold the petition in abeyance until the  
8 charges are finally disposed of. ~~If the court holds the petition in~~  
9 ~~abeyance, the 3-year limitation periods described in this~~  
10 ~~subsection begin to run when the period of abeyance has ended.~~ A  
11 petition shall not be filed under this section if a previous  
12 petition was filed under this section and was denied by the court  
13 after a hearing. As used in this subsection, "felony" means a crime  
14 that is specifically designated to be a felony or that is  
15 punishable by imprisonment for more than 1 year.

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

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

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

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

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

27 (6) An individual who knowingly makes a false statement in a

1 petition filed under this section is guilty of perjury as  
2 proscribed under section 423 of the Michigan penal code, 1931 PA  
3 328, MCL 750.423.

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

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

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

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

27 (b) If jurisdiction is continued by the court past the

1 individual's seventeenth birthday, during the period in which  
2 jurisdiction is continued. The court shall notify the department of  
3 the order as required under section 8d.

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

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

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

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

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

19 (c) The nature of the offense.

20 (d) The severity of the offense.

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

22 (f) The individual's likelihood to commit further listed  
23 offenses.

24 (g) Any impact statement submitted by the victim under the  
25 **WILLIAM VAN REGENMORTER** crime victim's rights act, 1985 PA 87, MCL  
26 780.751 to 780.834, or under this section.

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

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

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

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

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

11           (c) The court determines that the offense involved any of the  
12 following:

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

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

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

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

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

1 specifically designated to be a felony or that is punishable by  
2 imprisonment for more than 1 year.

3 (e) The individual was sentenced for the offense as an adult.  
4 This subdivision does not apply to an individual described in  
5 subsection ~~(15)(e)~~ **(15)(B)** who successfully completed his or her  
6 probationary period and was discharged from youthful trainee  
7 status.

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

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

17 ~~—— (i) The individual was under 13 years of age when he or she~~  
18 ~~committed the offense and is not more than 5 years older than the~~  
19 ~~victim.~~

20 ~~—— (ii) The individual was 13 years of age or older but less than~~  
21 ~~17 years of age when he or she committed the offense and is not~~  
22 ~~more than 3 years older than the victim.~~

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

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

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~~ **OF A**  
 9 **LISTED OFFENSE AND WHO WAS** less than 17 years of age when he or she  
 10 committed the offense. ~~and is not more than 3 years older than the~~  
 11 ~~victim.~~

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

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

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

23 (b) For a violation described in section ~~8e(15)(e)~~ **8C(15)(B)**  
 24 and for which the petition is granted, the individual shall  
 25 register under this act for a period of 10 years after the date he  
 26 or she initially registered or, if the individual was in a state  
 27 correctional facility, for 10 years after he or she is released

1 from that facility, whichever is greater, and is subject to the  
2 requirements of section 8(2) during that registration period.

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

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