

# Legislative Analysis



## **PUBLIC SEX OFFENDER REGISTRY: REMOVE EXCEPTIONS**

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**Senate Bill 44 with committee amendment**

**Sponsor: Sen. Rick Jones**

**House Committee: Criminal Justice**

**Senate Committee: Judiciary**

*(Enacted as Public Act 2 of 2013)*

**First Analysis (2-11-13)**

**BRIEF SUMMARY:** The bill would require offenders with a single Tier I conviction for certain crimes committed against a minor to be included in the public sex offender registry.

**FISCAL IMPACT:** The bill would have no state or local fiscal impact. The Department of State Police estimates that expanding the list of single-offense Tier I offenders listed on the public sex offender registry website (<http://www.mipsor.state.mi.us/>) would add only a few hundred people to the public website. This change would occur within existing budgetary resources.

### **THE APPARENT PROBLEM:**

The Sex Offenders Registration Act (SORA) requires the Department of State Police to maintain a computerized law enforcement database of registrations and notices that is for law enforcement purposes only. The act also requires the Department of State Police to maintain a public Internet website. The public registry contains most, but not all, of the listed offenders and information contained in the law enforcement registry.

Not all registered sex offenders have to be included on the public registry. A few exceptions exist, such as for some youthful offenders adjudicated in juvenile court. Another exception applies to a person who is required to register as a sex offender solely for a single Tier I offense. Tier I offenses include such crimes as fourth-degree criminal sexual conduct (sexual contact) with an adult victim, "peeping Tom" violations, indecent exposure that includes fondling, and knowingly possessing child pornography.

In order to protect children, some feel that parents have a right to know if any sex offenders whose crimes included children are living next door or nearby in the neighborhood. They would like to see all persons whose sex crimes involved children to be listed on the public registry as well as the one used by law enforcement.

### **THE CONTENT OF THE BILL:**

Currently, an individual registered solely because of a conviction for a single Tier I offense is not included on the public Internet website. Senate Bill 44 would amend the Sex Offender Registration Act so that this exclusion would not apply to an individual convicted of a violation of any of the following Tier I offenses:

- Section 145c(4) of the Michigan Penal Code (knowingly possessing any child sexually abusive material).

- Section 335a(2)(b) of the Michigan Penal Code if the victim were a minor (indecent exposure with fondling of the genitals, pubic area, or buttocks, or if a female, the breasts).
- Section 349b of the Michigan Penal Code if the victim were a minor (unlawful imprisonment).
- Section 539j of the Michigan Penal Code if the victim were a minor (surveillance of or distribution, dissemination, or transmission of recording, photograph, or visual image of individual having reasonable expectation of privacy).
- An offense substantially similar to an offense described above under a law of the federal Sex Offender and Registration and Notification Act (SORNA), also known as the Adam Walsh Act; under a law of any state or any country; or under tribal or military law.

(A "Tier I Offense" means one or more of the offenses described above, as well as fourth-degree criminal sexual conduct (CSC) or assault with intent to commit second-degree CSC, if the victim is 18 or older; any other violation of a state law or local ordinance substantially similar to an offense described above, other than a Tier II or Tier III offense, and that by its nature constitutes a sexual offense against a minor; an offense committed by a person who was, at the time of the offense, a sexually delinquent person; or the attempt or conspiracy to commit any of the above.)

MCL 28.728

#### ***HOUSE COMMITTEE ACTION:***

The committee adopted an amendment that removed from placement on the public registry an individual registered solely for a conviction of a Tier I offense involving any other violation of a law of this state or a local ordinance of a municipality that by its nature constitutes a sexual offense against an individual who is a minor. The individual would still be registered on the law enforcement registry.

#### ***BACKGROUND INFORMATION:***

The federal Adam Walsh Child Protection and Safety Act (AWA) was enacted in 2006. One provision of the AWA created the Sex Offender Registration and Notification Act (SORNA), which mandates a national sex offender registry and establishes a set of minimum standards for sex offender registration and notification with which each state must comply. Failure to comply with SORNA results in a state losing 10 percent of Byrne Justice Grant funding used to support law enforcement efforts. Numerous provisions of the federal act (SORNA) were different from those in the state Sex Offenders Registration Act; therefore, legislation was needed to revise the statute to conform to the requirements of SORNA. Though SORNA allows states some latitude, the legislation had to conform substantially to SORNA in order to continue to receive the full grant amount. Public Acts 17 and 18 of 2011 (enrolled Senate Bills 188 and 189) amended the state Sex Offender Registration Act to make the necessary changes.

Some of the major revisions included designating crimes requiring registration as a sex offender by three tiers rather than a long list known as "listed offenses"; changing the time

periods for which registration would be required (Tier I = 15 years, Tier II = 25 years, and Tier III = lifetime); exceptions from being listed on the public registry for certain Tier I offenses; and exclusion from Tier I, II, or III offenses certain "Romeo and Juliet" cases, among other revisions.

## ***ARGUMENTS:***

### ***For:***

Public sex offender registries have been both lauded and condemned regarding their impact and effectiveness on public safety. However, when it comes to protecting children, many believe that every effort to alert parents of potential dangers in their community should be explored. Children do not have the same interpersonal skills, life experiences, or filters to adequately assess if an adult in their community poses a threat to their safety. By their nature and inexperience, children make easy targets for predators. Though Tier I offenses are for lower level sexual offenses that do not include rape or sexual contact, certain behaviors such as child pornography, indecent exposure involving fondling, and peeping sometimes precede more serious and predatory conduct. It could be argued, therefore, that allowing public access to information about even low level, first-time sexual offenders who targeted children could enable parents and community members to exercise a little more caution and oversight regarding interaction between these offenders and children.

### ***Response:***

Part of the reasoning behind creating some exceptions to mandatory inclusion on the public sex offender registry is to acknowledge that sometimes people make poor decisions but that they can change and not repeat past mistakes. Unfortunately, due to misconceptions about the recidivism rate among sex offenders, many offenders listed on the public registry are hounded, harassed, and even stalked to the point of being unable to find or retain employment and/or housing. This interferes with the ability for an offender to rehabilitate and rebuild his or her life.

Several studies over the past decade attest to the low recidivism rates for all categories of sex offenses after release back into the community, ranging from less than 2 percent (1 year post-release) to less than 10 percent (up to 12 years post-release). Several recent studies also appear to suggest that sex offender registration and notification laws have little to no impact on reducing arrests for sex crimes or increasing public safety and may instead be increasing recidivism rates. The latter could be due to the negative impact on the ability of an offender to find housing and/or employment, as unemployment and homelessness are risk factors known to increase the likelihood of committing a new sex crime.

It is hoped, therefore, that adding more convicted sex offenders to the public registry will be seen for what it is - a notification that a person who had made a particular type of bad decision, and who has paid his or her debt to society, is now living in the neighborhood and not viewed as a foregone conclusion that a monster has moved next door.

### ***For:***

The bill as passed by the Senate contained a "catch-all provision" that would have required a person to be included in the public registry if the victim was a minor and the offense by its nature constituted a sexual offense and was a violation of a state or local ordinance similar to the other Tier I offenses for which the exception from mandatory inclusion on the public

registry was being eliminated. That provision was removed by the House Criminal Justice Committee.

A "catch-all provision," as it is referred to, has the effect of capturing a person convicted of a non-sexual offense for which registration as a sex offender is not required and then requiring compliance with the Sex Offenders Registration Act (SORA). Prior to the 2011 revisions to SORA, such catch-all provisions made it difficult for prosecutors to plea-bargain sex crimes. Plea bargains not only save taxpayer money, they also spare victims the pain of having to relive the assault during a trial. And, in those cases in which witness testimony is unreliable or evidence weak, a plea bargain can at least obtain a measure of justice for the victim or victims. Being able to offer a plea to a lesser, non-sex offense crime that will keep the offender off the public registry is an important tool for prosecutors. It is important to remember that an offender convicted of, or who pleads guilty to, this catch-all provision will still be required to be on the nonpublic, law enforcement registry for 15 years. Also, the exception to remain off the public registry does not apply to a person whose offense was a Tier II or Tier III offense.

***POSITIONS:***

The Department of State Police indicated a neutral position. (2-6-13)

The ACLU of Michigan indicated a neutral position on the bill as reported. (2-6-13)

Citizens for a Useful Registry indicated a neutral position on the bill as reported. (2-6-13)

The Criminal Defense Attorneys Association of Michigan (CDAM) indicated a neutral position on the bill as reported. (2-6-13)

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