

# Legislative Analysis



## INCLUDE LOITERING NEAR CHILD CARE CENTER IN SEX OFFENDER REGISTRATION ACT RESTRICTIONS

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**Senate Bill 76 (Substitute H-1)**  
**Senate Bill 77 without amendment**  
**Sponsor: Sen. Darwin L. Booher**

**House Committee: Criminal Justice**  
**Senate Committee: Judiciary**

### First Analysis (12-16-13)

**BRIEF SUMMARY:** Senate Bill 76 would prohibit certain registered sex offenders from loitering within 1,000 feet of a child care center or day care center, subject violators to the same penalties as for loitering in a student safety zone, and provide exemptions to the prohibitions. Senate Bill 77 would revise the sentencing guidelines to reflect the new prohibition.

**FISCAL IMPACT:** The bills would have an indeterminate fiscal impact on state and local governments. Senate Bill 76 would expand the student safety zones established in the Sex Offenders Registration Act. The prohibition against loitering would also apply within 1,000 feet of a child care or day care center. To the extent that the bill results in a greater number of convictions, it could increase costs on state and local correctional systems. Information is not available on the number of persons that might be convicted under these provisions. Felony convictions could result in increased costs related to state prisons, county jails, and/or state probation supervision. Misdemeanor convictions could increase costs related to county jails and/or local misdemeanor probation supervision. The average cost of prison incarceration in a state facility is roughly \$35,500 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. State costs for parole and felony probation supervision average about \$3,000 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

### **THE APPARENT PROBLEM:**

According to committee testimony, the bills were crafted in response to a constituent's concern that a neighbor, a convicted sex offender, was peering in the windows of the home in which the constituent operated a day care center. Reportedly, the constituent lost some business as a result.

Currently, it is a crime if a registered sex offender loiters in a student safety zone (1,000 feet or less from school property). Some feel that it should also be a crime for a registered sex offender to loiter within 1,000 of a licensed child care or day care center.

## ***THE CONTENT OF THE BILLS:***

Senate Bill 76 would amend the Sex Offender Registration Act (SORA), MCL 28.734. Currently, a registered sex offender is prohibited from working or loitering within a student safety zone. "Loiter" is defined in the act to mean remaining for a period of time and under circumstances that a reasonable person determines is for the primary purpose of observing or contacting minors. A first offense is a one-year misdemeanor and a repeat violation is a two-year felony. Criminal fines may also be assessed.

The bill would also prohibit a registered sex offender who had been convicted of committing a listed offense against a minor from loitering within 1,000 feet of a child care center or day care center during its regular hours of operation. "Child care center" and "day care center" mean those terms as defined in Section 1 and licensed under Section 5 of Public Act 116 of 1973.

The prohibition on working within a student safety zone or loitering within a student safety zone or within 1,000 feet of a child care center or day care center would not apply to any of the following:

- An individual within a student safety zone, or within 1,000 feet of a child care center or day care center, while transporting his or her child to or from school or child care or to or from an event sanctioned by that school or child care.
- An individual within a student safety zone, or within 1,000 feet of a child care center or day care center, for the purpose of meeting with an employee of the school regarding his or her child enrolled at that school or child care.

Senate Bill 77 would amend the Code of Criminal Procedure (MCL 777.11b) to specify that a violation involving work or loitering in a student safety zone, child care center, or day care center—subsequent offense—would be a Class G felony against the Public Trust with a two-year maximum term of imprisonment.

Senate Bill 76 would take effect April 1, 2014 and Senate Bill 77 would take effect February 1, 2014.

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

The H-1 substitute limited the application of Senate Bill 76 to registered sex offenders whose offense involved a minor and also limited application to loitering during a center's regular hours of operation. The substitute also changed the effective date of Senate Bill 76 to April 1, 2014. (Senate Bill 77 was not amended and so the February 1, 2014 effective date remains unchanged.)

## ***ARGUMENTS:***

### ***For:***

Parents need to feel that their children will be safe when they drop them off at a child care center or day care center. Child care and day care centers often care for very young children (e.g., babies, toddlers, and preschoolers). Currently, it is against the law for a convicted sex offender to loiter within 1,000 feet of a school, but there is no such prohibition for a child care or day care center. Reportedly, a Cadillac-based day care center experienced a problem with a neighbor, who was a convicted sex offender, peering in the windows of the center. It upset the parents and some stopped using the business. According to a recent article in the [Cadillacnews.com](http://Cadillacnews.com), the owner complained that there was nothing that could be done to stop him.

The bills would address this situation by extending a similar ban of loitering near a school to loitering near a day care center or child care center. The bills would only apply to convicted sex offenders whose crimes were against minors, and then only for loitering near a licensed business (not a home-based one) during the business' regular operating hours. Primarily, the bills would provide a deterrent effect, as a violation could result in another criminal conviction. However, the bills should also help encourage law enforcement to respond to calls about suspicious people around a child care or day care center and therefore increase public safety.

Additionally, Senate Bill 76 would clarify that the ban on sex offenders working or loitering near schools would not apply to a registered sex offender who was simply dropping off or picking up his or her child at school (or child care or day care center) or for such meetings as parent-teacher conferences. This provision should resolve confusion regarding conduct that is acceptable and also protect registered sex offenders from undeserved harassment.

### ***Against:***

Opponents of Senate Bill 76 say it is wrong on many levels. First, there are thousands of licensed child care and day care centers in the state that the bill would apply to. Many of these are in or near residential areas, close to other businesses, or near public bus stops. Many are not well-marked as to whether they are licensed, and few have posted operating hours. Thus, it would be nearly impossible for registered sex offenders to avoid being within 1,000 feet of such an entity. Even though the prohibited behavior is "loitering," it is reasonable to assume that given the stigma of being on the registry, and the perception of some that all registrants should be driven from society, that unwarranted accusations would be made which would in turn trigger investigations by law enforcement. Police would then have to try to determine if the elements of the crime had been met, which would include that the loitering was for the purpose of making contact with a child.

Part of the problem with the bill is the problem with the sex offender registry requirements themselves. Most of the tens of thousands of registered sex offenders pose no risk of reoffending. Even if the registry lists that a person's crime was against a minor, there is a big difference between an offense in which the victim was a toddler and one

who was a few months shy of 16 that involved consent. The bill does not differentiate between a registrant who was an adult and one who was a juvenile at the time of the commission of the crime, even though juveniles show a high success rate for rehabilitation. Most alarmingly, the bill continues to feed into the public perception that all sex offenders are incurable deviates who have no place in society even though solid, evidence-based research shows that sex offenders as a category have one of the lowest recidivism rates.

Lastly, no need for this bill has been demonstrated. According to the Cadillac News article referred to above, only seven cases statewide involving violation of the school zone prohibition were successfully prosecuted in 2011, only two of which involved repeat offenders. Other than the one constituent in the story (who would not be helped by the bill because that person runs a home-based child care business), there has been no demonstrated problem necessitating a bill that may tax already over-burdened law enforcement agencies and that could be applied so arbitrarily.

### ***POSITIONS:***

The Department of State Police indicated a neutral position on the bills.

A representative of ACLU of Michigan testified in opposition to the bills. (12-4-13)

A representative of the Coalition for A Useful Registry testified in opposition to the bills. (10-16-13)

The Criminal Defense Attorneys of Michigan (CDAM) indicated opposition to the bills. (10-16-13)

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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.