

SEX OFFENDER REGISTRATION ACT REVISIONS

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Senate Bill 581 (reported from House committee as H-2)

Sponsor: Sen. Rick Jones

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 7-22-16

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: Senate Bill 581 makes several changes to the Sex Offender Registration Act; in brief, it would:

- ✓ Remove the prohibition on loitering within a student safety zone, and instead prohibit *intentionally entering and remaining* on school property, except as allowed.
- ✓ Revise the definitions of "school property" and "student safety zone."
- ✓ Eliminate the requirement for registrants to immediately report in person a new email or instant message address or when purchasing or beginning to regularly operate a vehicle.
- ✓ Waive the \$50 initial registration fee for an indigent registrant and the annual \$50 fee for any year the person is indigent.
- ✓ Require the reporting of all email and instant message names and addresses a registrant routinely uses, and define "routinely used."
- ✓ Require a registrant to report the license plate number, registration number, and description of any motor vehicle, aircraft, or vessel registered to the address where the registrant lives and the location where the vehicle, aircraft, or vessel is stored.
- ✓ Eliminate the requirement to report any vehicle, vessel, or aircraft regularly operated by a registrant.

FISCAL IMPACT: SB 581 would have an indeterminate fiscal impact on the state and local units of government. Any additional costs or losses of revenue resulting from this bill would depend upon the number of fee waivers granted to indigent registrants as well as any change in the number of prosecutions resulting from a possible increase or decrease in arrests. Any increase in misdemeanor or felony convictions would increase costs on state and local correctional systems.

New felony convictions would result in increased costs related to state prisons and state probation supervision. The average annual cost of prison incarceration in a state facility was roughly \$35,200 per prisoner in fiscal year 2015, a figure that includes various fixed administrative and operational costs. Annual state costs for parole and felony probation supervision averaged about \$3,600 per supervised offender during that same time period. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction.

Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues. Also, the bill would increase

costs on the judiciary and local court funding units, with the fiscal impact depending on how the provisions of the bill affected caseloads and related administrative costs.

THE APPARENT PROBLEM:

A person who is convicted of certain sex-related offenses is designated as a Tier I, Tier II, or Tier III offender and required to register as a sex offender under provisions of the Sex Offender Registration Act (SORA) for a period of 15 years, 25 years, or for life, respectively. In 2015, a federal district court struck down certain provisions of SORA as being unconstitutional. (See ***Background Information.***) The court said the provisions being struck are sufficiently vague that neither the registrants nor law enforcement can be clear as to what is required or what conduct constitutes a violation of SORA's requirements.

In particular, the court found that SORA's prohibition on a registrant living, working, or "loitering" within 1,000 feet of school property is unconstitutional as it is virtually impossible for either registrants or law enforcement to know exactly where these geographic exclusion zones are. The prohibition on "loitering" was deemed so vague as to make it difficult for a registrant to know what conduct constituted loitering. Several other provisions were struck down as well due to lack of clarity and the ensuing burden placed on registrants in attempting to comply with SORA. Though many of the judge's rulings affect only the plaintiffs in the case, some do have a broader impact.

Legislation has been offered to address concerns raised by the federal court as well as address other issues with certain reporting requirements.

THE CONTENT OF THE BILL:

The Sex Offenders Registration Act (SORA) requires individuals convicted of certain sex-related offenses to register for a period of 15 years, 25 years, or for life depending on the seriousness of the crime. Registrants must report in person to verify residency and update some information immediately and other information annually (Tier I), semi-annually (Tier II), or quarterly (Tier III). In addition, all registrants must pay a fee of \$50 when initially registering and some are required to pay an annual registration fee, as well. Certain activities for a registrant are prohibited, such as living, working, or loitering within 1,000 feet of a school.

Senate Bill 581 revises the Sex Offenders Registration Act (SORA) to do the following:

Living or loitering within student safety zone/school property

- ❖ Currently, Section 34 of the act prohibits a registrant from working (with some exceptions) or loitering within a student safety zone. "Loiter" is currently defined to mean to remain for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors. The bill deletes references to "loitering", and eliminates the definition of "loiter," and instead prohibits a registrant from *intentionally entering and remaining on school property, except for the following activities:*

- If the parent or legal guardian, while transporting a child to or from the child's school or to or from an event sanctioned by the child's school.
 - If the parent or legal guardian, while attending an event sanctioned by the child's school, if the registrant's child is participating in that event.
 - If the parent or legal guardian, while meeting with an employee of the school where the child is enrolled regarding the child.
 - Intermittently or sporadically entering a student safety zone for the purpose of work, unless the individual initiates or maintains contact with a minor (this applies to any registrant, not just a parent or guardian with a child attending the school).
- ❖ In addition to the prohibition on working within a school safety zone, Section 34 would be amended to specify that a registrant shall not reside within a student safety zone. (Note: Section 35 of the SORA already prohibits a registrant from living within a student safety zone but provides for several exceptions, such as exempting a registrant under the age of 19 who is attending high school or college and living with a parent. As worded, the amendment to Section 34 appears to create a blanket prohibition on a registrant living within a student safety zone that conflicts with the provisions in Section 35.)
- ❖ "School property" would be redefined to mean a building, playing field, or other property used for school purposes to impart instruction to children, or used for functions and events sponsored by a school, designated by the school or school district as being school property, and clearly marked and identified as being school property.

Currently, the term means a building, facility, structure, or real property owned, leased, or otherwise controlled by a school, other than a building, facility, structure, or real property that is no longer in use on a permanent or continuous basis, to which either of the following applies: it is used to impart educational instruction or it is for use by students not more than 19 years of age for sports or other recreational activities.

- ❖ "Student safety zone" would be redefined to mean school property and the area that lies 1,000 feet or less from the property line of school property. The distance between a dwelling or a place of work and a school safety zone would have to be measured from the property line of a residence or place of work and the property line of school property. (The language added by the bill refers to a *school* safety zone rather than a *student* safety zone. Moreover, the bill does not specify if the measurement is made according to how people travel, e.g., by street or sidewalk, or measured according to how the "crow flies.")

Currently, the term means the area that lies 1,000 feet or less from school property.

Revisions to information currently required to be reported immediately

The bill would eliminate provisions that currently require a registrant to report in person and notify the registering authority immediately in the following instances:

- ❖ After establishing any electronic mail or instant message address, or any other designations used in Internet communications or postings.
- ❖ After purchasing or beginning to regularly operate any vehicle, and when ownership or operation of the vehicle is discontinued.

Revisions to information required when initially registering on the SOR or updating during a reporting month

After the initial registration, the SORA requires registrants to report in person to a law enforcement agency either annually, semiannually, or quarterly depending on the assigned tier level to update the information provided during the initial registration.

The bill revises the requirements for the information that must be obtained or provided when registering initially or during the required reporting times as follows:

- ❖ Deletes the requirement that telephone numbers routinely used by the individual provided. Registrants would still have to provide all telephone numbers registered to them.
- ❖ Requires all electronic mail addresses and instant message names and addresses *routinely used* by the individual to be provided. "Routinely used" would mean used not less often than six times per calendar year. This will be in addition to the current requirement that all login names or other identifiers used by the individual when using any email address or instant messaging system be provided.
- ❖ Deletes the requirement for the license plate number, registration number, and description of any motor vehicle, aircraft, or vessel *regularly operated* by the individual be provided, and instead requires the license plate number, registration number, and description of the listed vehicles owned by the registrant to be provided *and also for any of the listed vehicles registered to the address where the individual resides*.

The new information required under the bill would have to be provided the first time the individual is required to register after the bill's effective date.

Further, when a registrant reports in person annually, semiannually, or quarterly, the law enforcement agency must at that time verify the registrant's residence or domicile and any information required to be reported under Section 4a of the act. The bill instead would require information required to be reported under Section 7 to be verified. (Note: Section 4a pertains to the enrollment or disenrollment at an institution of higher learning. Section 7 lists all the information that must be obtained from or provided by the registrant and forwarded to the Department of State Police.)

Revisions to Information Included in the MSP Database (nonpublic)

Currently, all telephone numbers registered to a registrant and all email addresses and instant message addresses assigned to the registrant, as well as ones *routinely used*, must be included in a nonpublic database maintained by the Department of State Police (MSP). The bill will eliminate the reference to ones "routinely used" by the registrant.

Similarly, the license plate number or registration number and description of any motor vehicle, aircraft, or vessel owned *or regularly operated* by the registrant, as well as the location at which the vehicle, aircraft, or vessel is habitually stored or kept, must be contained in the MSP database. The bill will eliminate the reference to ones "regularly operated."

However, the bill will require that the license plate or registration number and description of any motor vehicle, aircraft, or vessel *that is registered to the address where the individual resides* must also be included in the information maintained in the MSP database. The location at which the vehicle, aircraft, or vessel is habitually stored or kept must be reported, as well. (This information would not be included in the Public Registry.)

Revisions to Public Registry

Currently, the registry accessible by the public must contain the license plate number or registration number and description of any motor vehicle, aircraft, or vessel owned *or regularly operated* by the registrant, as well as any email addresses and instant message addresses assigned to the registrant *or routinely used* by the registrant. The bill would eliminate the requirement to include those vehicles "regularly operated" by the registrant and email and instant message addresses "routinely used" by the registrant.

Registration fee for an indigent registrant

The SOR requires an individual to pay a \$50 fee when registering as a sex offender for the first time. After that, a registrant must pay an annual fee of \$50; this is paid at the time the registrant reports in the first reporting month for his or her Tier level. The total fees that may be collected from a registrant is capped at \$550 (this amount equals the initial fee plus 10 years of paying an annual \$50 fee). The annual \$50 fee does not apply to individuals initially required to register as sex offenders after January 1, 2019.

Currently, if the person is indigent, the registration fee (initial and annual) may be waived for a period of 90 days.

Under the bill, the \$50 initial registration fee would be waived for an indigent registrant until the first reporting month in which he or she is no longer indigent. For any year in which an annual registration is required, the fee for an indigent registrant would be permanently waived.

The bill would take effect 90 days after enactment.

MCL 28.725 et al.

HOUSE COMMITTEE ACTION:

The H-2 substitute made the following changes from the Senate-passed version:

- Eliminated a provision requiring changes or updates to required information to be provided within seven calendar days after the required information changed or was updated.
- Required the information pertaining to electronic mail addresses and instant message names and addresses routinely used, and vehicle information for vehicles

registered to a registrant's residence, to be provided the first time a registrant must register after the bill takes effect.

- Eliminated a revised definition for "loiter."
- Revised the definition of "school safety zone."
- Eliminated a provision prohibiting loitering on school property or within 300 feet or less of the school property line and instead prohibiting a registrant from intentionally entering and remaining on school property, except for allowed activities.
- Eliminated a rebuttable presumption that a parent would not be in violation of loitering on school property for certain listed activities and instead specifies that registrants who are parents or legal guardians would not be in violation of entering and remaining on school property for the listed activities.
- Applied the exemption for attending an event sanctioned by a child's school only to a registrant whose child is participating in that event.
- Added an exemption for a registrant who only intermittently or sporadically enters a student safety zone for the purpose of work, unless the registrant initiates or maintains contact with a minor.

BACKGROUND INFORMATION:

In March of 2015, a federal district court, in a lawsuit filed by the American Civil Liberties Union that involved several plaintiffs, struck down several portions of Michigan's Sex Offender Registration Act as being unconstitutional. *Does et al v Snyder et al*, No. 2:2012cv11194 - Document 103 (E.D. Mich. 2015)

More detailed information regarding the impact of the *Does* decision on sex offenders subject to the requirements of SORA can be found on the ACLU website at:

<http://www.aclumich.org/media?combine=SORA&issue=All&tid=All&=Go>

ARGUMENTS:

For:

The 2015 federal district court case, *Does v Snyder*, struck down several provisions of the Sex Offender Registration Act (SORA). Some of the provisions were struck down only as they apply to the specific plaintiffs in the case, but others apply to all registrants. It is now necessary to revise the affected provisions, whether declared unconstitutional for some (e.g., the plaintiffs) or for all registrants, in order to clarify what is expected of registrants and to satisfy the state's interest in protecting children.

For:

Some of the amendments to SORA offered by Senate Bill 581 are to address concerns raised by the federal district court decision in *Does* regarding what is known as "geographic exclusion zones." According to the *Does* court, ambiguities in the exclusion zone language "leave registrants of ordinary intelligence unable to determine what behavior is prohibited by SORA."

SORA prohibits a registrant from living, working, or loitering within a student safety zone, currently defined to mean an area lying 1,000 feet or less from school property. However, understanding exactly what is and isn't school property under the current definition in the

act, and uncertainty how to measure the distance from a residence or work site to a nearby school is complicated to the point that neither registrants nor law enforcement know exactly where the zones begin or end. For instance, SORA doesn't give guidance whether the distance is to be measured from building to building, or property line to property line. Similarly, the current definition of "loitering" makes deciding what conduct constitutes a violation of SORA difficult as it requires a determination whether the registrant remained in a student safety zone primarily for observing or contacting a minor or for some other purpose (waiting for a bus, visiting with friends or family, attending worship services, etc.).

The bill attempts to address such issues by: (1) clarifying that a registrant could not live or work in an area within 1,000 feet of a school as measured from the property line of the registrant's home or business to the school's property line; (2) revising the definition of "school property" and adding a requirement that the property be clearly marked as such; (3) creating clear exceptions for when a parent registrant or registrant who only intermittently works in a student safety zone (e.g., a repair or delivery person) may enter and remain on school property without fear of violating SORA; and (4) eliminating the prohibition on loitering in a student safety zone and instead simply prohibiting a registrant from entering or remaining on school property except for the allowed circumstances.

Many software programs and mobile applications can be used by registrants to determine where schools are located, and requiring school property to be clearly marked should increase awareness of exactly which properties would be off limits and make it easier to determine boundaries of the 1,000 foot student safety zones.

Response:

The bill in its present form leaves some questions unanswered. For example, the bill isn't clear whether the 1,000 foot distance between the property lines would be measured as the crow flies or as people actually travel. This is a significant point as buildings and trees can obstruct sightlines, leaving a registrant unable to see a school—or measure the distance—and thus be unaware that he or she may be within a student safety zone. Moreover, parcels of property, including school property, are often irregular, making a student safety zone boundary more likely to be a zigzag in any direction rather than a smooth-edged geometric shape, which also makes determining the exact boundaries of a student safety zone difficult.

As to a registrant using mobile apps to identify a school and a student safety zone, many registrants—especially while on probation, parole, or supervised release (federal offenders)—are prohibited from using computers, even smart phones. For them, Google maps is not an option. Some, including the author of the *Does* decision, maintain that the technology does not yet exist that would enable either registrants or law enforcement to use computer programs to determine the exact boundary of a particular student safety zone.

Perhaps a better approach is to use the standard of how people actually travel. A registrant, whether residing in or visiting a locality, can find out the approximate length of sidewalks in any given town or city and so determine, by the route a driver or walker would take, how many blocks in each direction surrounding a school a student safety zone would extend. Maps of local areas can be purchased at many book stores or gas stations or available at hotels, libraries, or convention centers. Since a map may not be drawn to scale, trying to estimate distances as the crow flies with any accuracy is extremely difficult, whereas counting the blocks between locations a person would drive or walk and multiplying it by

that locale's average length of sidewalk would provide more useful guidance. For example, if the average length of a sidewalk in a city was 200 feet, the student safety zone would likely extend at least five blocks in each direction.

Additionally, the revised definition of "school property," by applying the definition to property used to impart instruction or for school-sponsored functions and events, appears to still leave parking lots for staff and visitors and outbuildings such as a bus garage or tool shed in a grey area and subject to interpretation whether they would, or wouldn't be, included as school property.

For:

The bill eliminates SORA's prohibition on loitering in light of the federal court's ruling that the provision is unconstitutional because it is so vague that an ordinary person using common sense can't determine what it means. The bill prohibits *entering and remaining on school property* instead of prohibiting loitering; this is a significant change that not only serves a clear notice where a registrant cannot go, but will enable registrants to travel more efficient routes from home to work, obtain medical care, or engage in activities such as shopping or visiting with friends and relatives who may live within a student safety zone without fear of being prosecuted for a SORA violation.

Some observers say it is important to note that many registrants have already paid their debt to society by completing terms of incarceration, probation and/or parole and that sex offenders have some of the lowest recidivism rates across all crime categories. The U.S. Department of Justice does not even recommend geographic exclusion zones, and some studies show that proximity to schools and places where children frequent (e.g., playgrounds) have little relation to where offenders met their victims. Conversely, connection with the community involving social interaction, employment, and housing are factors proven to lower the risk of reoffending. Therefore, this change to SORA should not put children in harm's way.

For:

Currently, if a registrant cannot pay the \$50 initial registration fee or the annual registration fees and can prove indigence, the fee is only temporarily waived and must be paid within 90 days. Though SORA does not assign a criminal penalty for failure to pay the initial or annual registration fee within the prescribed time period, the law enforcement entity to which the registrant reports may designate the person as "noncompliant." Besides the difficulty of paying a fee one cannot afford, being publicly identified as not complying with registry requirements, without an explanation, can severely impact a registrant's ability to secure employment and housing, among other negative impacts.

The bill addresses this concern by waiving the initial \$50 registration fee until the registrant is no longer indigent. The initial fee would have to be paid at the first annual, semi-annual, or quarterly reporting month in which the registrant no longer meets the criteria for being indigent. The annual registration fee of \$50 would be permanently waived for any year in which the registrant can prove indigence. Under SORA, it is up to the local law enforcement agency, sheriff's department, or MSP post where the registrant reports to decide what "proofs" will satisfy a claim of indigence.

For:

Several reporting requirements were also ruled as being unconstitutional and thus need to be clarified, eliminated, or revised legislatively. Under the bill, a registrant will no longer need to immediately report a new email address or instant message account, or when purchasing or beginning to regularly operate a vehicle. However, this information will be required to be updated during the annual, semi-annual, or quarterly reports. Changes to other types of information currently required to be reported immediately are not changed or affected by the *Does* decision. For instance, changes in living arrangements, employment, name, college enrollment, and staying temporarily at another place for more than seven days (e.g., vacation, hospital stay, work assignment, etc.) must still be reported within three business days.

Email addresses and instant message names and addresses used by a registrant "routinely" will still have to be reported, but the bill adds a definition for "routinely used"—used not less than six times per calendar year. For example, a registrant who occasionally pays a bill or sends a family photo using a spouse's email address or instant message account will not run afoul of SORA for not reporting the address or account unless using it six times or more in a calendar year.

Registrants also will no longer have to report the license plate number, registration number, and description of vehicles, aircraft, and sportscraft that they regularly operate. This requirement has proved problematic for registrants whose jobs include driving company trucks or vehicles. Since it may not be known which vehicle on any given day the registrant may have to operate, a registrant currently has to provide information on the employer's entire fleet. However, under the bill, a registrant will have to provide the license plate number, registration number, and description of vehicles, aircraft, and sportscraft that are registered to the address where he or she resides, as well as the location where it is usually stored or kept; this information would not be part of the public registry.

Response:

Though information relating to vehicles and sportscraft registered to a registrant's residence but not operated by the registrant would not be included on the registry viewed by the public, critics say this is problematic for several reasons. First, SORA protects the privacy of most Tier I and certain juvenile registrants by not placing them on the public registry. Yet, if living in a fraternity or renting a room in a house, for example, the registrant would have to disclose sex offender status and ask for information such as the vehicle's registration number that some would find too private to provide.

Second, it is already difficult for sex offenders to find places willing to rent to them. Rather than subject other residents to such privacy intrusions, landlords and property managers may just ban sex offenders altogether, increasing the number of registrants who are homeless. Reportedly, homelessness increases the risk of reoffending, and thus finding appropriate housing should be made easier, not harder. Some advocates who have reviewed this provision have already raised concerns about the potential for negative impacts on registrants.

Others claim it is unfair and unenforceable for the government to require people not subject to SORA to provide a registrant with registration and location information of their vehicles and sportscraft. For instance, renting to or sharing a home with a registered sex offender is not the same as providing that person with information considered to be personal that

can be used to commit identity theft (a concern even with leaving a vehicle registration in a glove box), or giving the person the location of that remote cabin where a snowmobile or pontoon boat is stored. It is likely that many would simply refuse to provide the information or deny having any other vehicles or sportscraft registered to the residence.

On that note, it is unclear what would happen to a registrant who is unable to obtain the required information. Could a housemate or landlord's refusal to provide the vehicle information doom a registrant to penalties under SORA? Failure to comply with registration requirements can result in revocation of probation, parole, or youthful trainee status under the Holmes Youthful Trainee Act, and may constitute a new felony offense punishable by incarceration for up to four years for a first violation of SORA, even longer for subsequent violations. Would a registrant have to move out immediately or face being charged with noncompliance of the reporting requirements? How could a willful violation be proved? Or an unintended violation be defended against?

POSITIONS:

The Department of State Police support the bill. (6-8-16)

Oakland Schools supports the bill. (6-24-16)

Michigan Association of School Boards supports the bill. (6-29-16)

The Criminal Defense Attorneys of Michigan indicated a neutral position on the bill. (3-22-16)

The ACLU of Michigan indicated a neutral position on the bill. (3-22-16)

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■ 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.