



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 581 (as introduced 10-27-15)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 11-4-15

CONTENT

The bill would amend the Sex Offenders Registration Act (SORA) to do the following:

- **Revise the prohibition against a sex offender registrant's loitering near a school.**
- **Revise the definitions of "loiter", "student safety zone", and "school property".**
- **Revise the information that a registrant is required to provide, including information that must be reported immediately and in person.**
- **Revise the information that must be included in the law enforcement database of registrations and the publicly available website, which are maintained by the Michigan Department of State Police (MSP).**
- **Revise provisions dealing with a waiver of initial and annual registration fees for a registrant who is indigent.**

The bill would take effect 90 days after its enactment.

Loitering

The Act requires individuals who are convicted of a "listed offense" to register with a local law enforcement agency, sheriff's office, or State Police post (a "registering authority").

Except as otherwise provided, an individual required to be registered under SORA may not work or loiter within a student safety zone. The bill instead would prohibit an individual convicted of a listed offense from doing either of the following:

- Working or residing within a student safety zone.
- Loitering on school property or within 300 feet or less of the property line of school property.

Under the bill, a parent or guardian who was on school property for any of the following purposes would be presumed not to be loitering on school property unless the presumption were rebutted by clear and convincing evidence:

- Transporting his or her child to or from the child's school or to or from an event sanctioned by the school.
- Attending an event sanctioned by his or her child's school.
- Meeting with a school employee regarding his or her child enrolled at that school.

The Act defines "loiter" as 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. Under the bill, "loiter" instead would mean to remain for a period of time, whether or

not in a vehicle, with the intent to engage or solicit another person to engage in an act prohibited by a listed offense involving a minor for which registration is required under the Act.

Currently, "student safety zone" is defined as the area that lies 1,000 feet or less from school property. Under the bill, the term would mean school property and the area that lies 1,000 feet or less from the property line of school property.

"School property" means a building, facility, structure, or real property owned, leased, or otherwise controlled by a school, other than one that is no longer in use on a permanent or continuous basis, that is used to impart educational instruction or is for use by students not more than 19 years of age for sports or other recreational activities. The bill instead would define "school property" as a building, playing field, or other property that is 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.

Registration & Database Information

A Michigan resident who is required to register under SORA must report in person and notify the registering authority having jurisdiction where he or she lives immediately after any of certain occurrences. Under the bill, the following events would no longer require immediate reporting and notification:

- Establishing any e-mail or instant message address, or any other designations used in internet communications or postings.
- Buying or beginning to regularly operate any vehicle, and discontinuing ownership or operation of the vehicle.

Certain information must be obtained or otherwise provided for purposes of registration under SORA. The required information includes all telephone numbers registered to the individual or routinely used by the individual. The bill would delete the reference to telephone numbers routinely used.

The Act requires a registrant to provide all e-mail addresses and instant message addresses assigned to him or her. The bill would require the provision of all e-mail addresses and instant message names and addresses registered to the individual.

The Act also requires the provision of all e-mail addresses and instant message addresses routinely used by the registrant. The bill would refer to instant message names and addresses, and would define "routinely used", for purposes of that requirement, as used not less often than six times per calendar year.

Under SORA, a registrant must provide the license plate number, registration number, and description of any motor vehicle, aircraft, or vessel he or she owns or regularly operates. The bill would delete from that requirement information about a vehicle, aircraft, or vessel that the registrant regularly operates, but would require the information for a vehicle, aircraft, or vessel registered to the address where the registrant resided.

The Act requires the MSP to maintain a computerized law enforcement database of registrations and notices required under SORA. The bill would revise the information required to be kept in the database to reflect the proposed changes in the information a registrant must provide.

The Act also requires the MSP to maintain a public internet website separate from the law enforcement database. The bill would delete a requirement that the website information

include the license plate number or registration number and description of any motor vehicle, aircraft, or vessel regularly operated by the registrant.

Fee Waiver

The Act requires registrants to pay a \$50 registration fee upon initial registration and annually following the year of initial registration. If an individual required to pay a registration fee is indigent, the fee must be waived for 90 days. The bill instead would require the initial fee for an indigent registrant to be waived until the first reporting month in which he or she was no longer indigent. For any year in which an annual registration fee was required, the fee for an indigent registrant would have to be waived permanently.

MCL 28.725 et al.

BACKGROUND

On March 31, 2015, in *John Does #1-5 and Mary Doe v Richard Snyder and Col. Kriste Etue* (Case No. 12-11194), the U.S. District Court for the Eastern District of Michigan held that several provisions of Sex Offenders Registration Act are unconstitutional.

Specifically, the Court declared the following SORA provisions to be unconstitutional and enjoined their enforcement:

- Geographic exclusion zones in Sections 34 and 35 of the Act (which establish the student safety zones and restrictions against loitering in them).
- The requirement to report in person and notify the registering authority immediately after either beginning to regularly operate any vehicle or establishing any e-mail or instant message address or any other designations used in internet communications or postings.
- The requirement to report all telephone numbers routinely used by the individual.
- The requirement to report all e-mail addresses and instant message addresses routinely used by the individual.
- The requirement to report the license plate number, registration number, and description of any motor vehicle, aircraft, or vessel regularly operated by the individual.

The plaintiffs in the case were six Michigan residents who were required by SORA to register as sex offenders and comply with the Act for life. Among other things, the plaintiffs claimed that the Act violated the Due Process Clause because certain provisions are vague, interfere with the registrants' fundamental right to engage in common occupations of life, and infringe on their right to direct the education and upbringing of their children. The plaintiffs also claimed that the Act violated their First Amendment right to free speech. The plaintiffs made additional claims that the Court did not agree with.

Regarding the geographic exclusion (student safety) zones, the Court stated, "SORA does not provide sufficiently definite guidelines for registrants and law enforcement to determine from where to measure the 1,000 foot distance used to determine the exclusion zones, and neither the registrants nor law enforcement have the necessary data to determine the zones even if there were a consensus about how they should be measured. Accordingly, due to SORA's vagueness, registrants are forced to choose between limiting where they reside, work, and loiter to a greater degree than is required by law or risk violating SORA."

The Court also held, "SORA's definition of 'loiter' is sufficiently vague to prevent ordinary people using common sense from being able to determine whether Plaintiffs are, in fact, prohibited from engaging in the conduct from which Plaintiffs have refrained."

The reporting requirements that involve the "regular" operation of a vehicle or the "routine" use of e-mail addresses also were found to be overly vague. The Court stated, "SORA's

vagueness leaves law enforcement without adequate guidance to enforce the law and leaves registrants of ordinary intelligence unable to determine when the reporting requirements are triggered."

In addition, the Court held that the reporting requirements concerning the "routine use" of e-mail and instant message addresses violated the First Amendment. The Court stated, "Ambiguity as to the meaning of 'routinely used' would likely result in both overreporting and under use of permissible speech activities." As to the requirement that registrants report in person immediately whenever establish any electronic mail or instant message address or any other designation used in internet communications, the Court held that the requirement imposes a "substantially greater, and apparently unnecessary, burden on protected First Amendment speech".

Regarding the claim that the Act's student safety zones unconstitutionally interfered with the plaintiffs' right to participate in their children's education and upbringing, the Court concluded that, because of SORA's vagueness, it was unable to determine the extent to which the Act infringed on that right or whether the Act was narrowly tailored to achieve the State's interest in protecting minors from violence and sexual abuse.

The Court ordered that SORA be construed consistently with its opinion.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State and local governments. It could expand the population of individuals prohibited from loitering on school property from just individuals required to be registered to any individual convicted of a listed offense. The bill also would add a rebuttable presumption allowing parents or guardians of students to be on school grounds for specific purposes. In addition, the bill would provide specificity regarding the distance from school property that convicted individuals would have to maintain. It is unknown whether the combination of these provisions would lead to more or fewer arrests and convictions under the Act.

An increase in misdemeanor or felony arrests and convictions could increase resource demands on local court systems, law enforcement, and jails or prisons. For any increase in prison intakes, in the short term, the marginal cost to State government would be approximately \$3,764 per prisoner per year. In the long term, if the increased intake of prisoners increased the total prisoner population enough to require the Department of Corrections to open a housing unit or an entire facility, the marginal cost to State government would be approximately \$34,550 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

Conversely, to the extent that the bill prevented misdemeanor or felony arrests and convictions, costs would be avoided.

The bill would have a minimal fiscal impact on the Department of State Police. The provisions regarding the delay or waiver of the registration fee for indigent registrants would have little impact on fee collections, particularly because very few registrants are ever declared indigent.

Fiscal Analyst: Bruce Baker
Ryan Bergan

S1516\S581sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.