

HOUSE BILL NO. 5853

June 25, 2024, Introduced by Reps. Pohutsky, Breen, Brenda Carter, Hope, Rheingans, Weiss, Koleszar, Glanville, Hill, Xiong, Mentzer, Steckloff, Fitzgerald, Byrnes, Rogers, McFall, Witwer and Coffia and referred to the Committee on Judiciary.

A bill to amend 1994 PA 295, entitled
"Sex offenders registration act,"
by amending section 2 (MCL 28.722), as amended by 2020 PA 295.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 2. As used in this act:
- 2 (a) "Convicted" means 1 of the following:
- 3 (i) Having a judgment of conviction or a probation order
- 4 entered in any court having jurisdiction over criminal offenses,
- 5 including, but not limited to, a tribal court or a military court.
- 6 Convicted does not include a conviction that was subsequently set

1 aside under 1965 PA 213, MCL 780.621 to 780.624, or otherwise
2 expunged.

3 (ii) Except as otherwise provided in this subparagraph, being
4 assigned to youthful trainee status under sections 11 to 15 of
5 chapter II of the code of criminal procedure, 1927 PA 175, MCL
6 762.11 to 762.15, before October 1, 2004. An individual who is
7 assigned to and successfully completes a term of supervision under
8 sections 11 to 15 of chapter II of the code of criminal procedure,
9 1927 PA 175, MCL 762.11 to 762.15, is not convicted for purposes of
10 this act. This subparagraph does not apply if a petition was
11 granted under section 8c at any time allowing the individual to
12 discontinue registration under this act, including a reduced
13 registration period that extends to or past July 1, 2011,
14 regardless of the tier designation that would apply on and after
15 that date.

16 (iii) Having an order of disposition entered under section 18 of
17 chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18,
18 that is open to the general public under section 28 of chapter XIIA
19 of the probate code of 1939, 1939 PA 288, MCL 712A.28, if both of
20 the following apply:

21 (A) The individual was 14 years of age or older at the time of
22 the offense.

23 (B) The order of disposition is for the commission of an
24 offense that would classify the individual as a tier III offender.

25 (iv) Having an order of disposition or other adjudication in a
26 juvenile matter in another state or country if both of the
27 following apply:

28 (A) The individual is 14 years of age or older at the time of
29 the offense.

1 (B) The order of disposition or other adjudication is for the
2 commission of an offense that would classify the individual as a
3 tier III offender.

4 (b) "Custodial authority" means 1 or more of the following
5 apply:

6 (i) The actor was a member of the same household as the victim.

7 (ii) The actor was related to the victim by blood or affinity
8 to the fourth degree.

9 (iii) The actor was in a position of authority over the victim
10 and used this authority to coerce the victim to submit.

11 (iv) The actor was a teacher, substitute teacher, or
12 administrator of the public school, nonpublic school, school
13 district, or intermediate school district in which that other
14 person was enrolled.

15 (v) The actor was an employee or a contractual service
16 provider of the public school, nonpublic school, school district,
17 or intermediate school district in which that other person was
18 enrolled, or was a volunteer who was not a student in any public
19 school or nonpublic school, or was an employee of this state or of
20 a local unit of government of this state or of the United States
21 assigned to provide any service to that public school, nonpublic
22 school, school district, or intermediate school district, and the
23 actor used ~~his or her~~ **the actor's** employee, contractual, or
24 volunteer status to gain access to, or to establish a relationship
25 with, that other person.

26 (vi) That other person was under the jurisdiction of the
27 department of corrections and the actor was an employee or a
28 contractual employee of, or a volunteer with, the department of
29 corrections who knew that the other person was under the

1 jurisdiction of the department of corrections and used ~~his or her~~
2 **the person's** position of authority over the victim to gain access
3 to or to coerce or otherwise encourage the victim to engage in
4 sexual contact.

5 (vii) That other person was under the jurisdiction of the
6 department of corrections and the actor was an employee or a
7 contractual employee of, or a volunteer with, a private vendor that
8 operated a youth correctional facility under section 20g of the
9 corrections code of 1953, 1953 PA 232, MCL 791.220g, who knew that
10 the other person was under the jurisdiction of the department of
11 corrections.

12 (viii) That other person was a prisoner or probationer under the
13 jurisdiction of a county for purposes of imprisonment or a work
14 program or other probationary program and the actor was an employee
15 or a contractual employee of, or a volunteer with, the county or
16 the department of corrections who knew that the other person was
17 under the county's jurisdiction and used ~~his or her~~ **the person's**
18 position of authority over the victim to gain access to or to
19 coerce or otherwise encourage the victim to engage in sexual
20 contact.

21 (ix) The actor knew or had reason to know that a court had
22 detained the victim in a facility while the victim was awaiting a
23 trial or hearing, or committed the victim to a facility as a result
24 of the victim having been found responsible for committing an act
25 that would be a crime if committed by an adult, and the actor was
26 an employee or contractual employee of, or a volunteer with, the
27 facility in which the victim was detained or to which the victim
28 was committed.

29 (c) "Department" means the department of state police.

(d) "Employee" means an individual who is self-employed or works for any other entity as a full-time or part-time employee, contractual provider, or volunteer, regardless of whether ~~he or she~~ **the individual** is financially compensated.

(e) "Felony" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA ~~174~~, **175**, MCL 761.1.

(f) "Indigent" means an individual to whom 1 or more of the following apply:

(i) ~~He or she~~ **The individual** has been found by a court to be indigent within the last 6 months.

(ii) ~~He or she~~ **The individual** qualifies for and receives assistance from the department of health and human services food assistance program.

(iii) ~~He or she~~ **The individual** demonstrates an annual income below the current federal poverty guidelines.

(g) "Internet identifier" means all designations used for self-identification or routing in internet communications or posting.

(h) "Institution of higher education" means 1 or more of the following:

(i) A public or private community college, college, or university.

(ii) A public or private trade, vocational, or occupational school.

(i) "Listed offense" means a tier I, tier II, or tier III offense.

(j) "Local law enforcement agency" means the police department of a municipality.

(k) "Minor" means a victim of a listed offense who was less than 18 years of age at the time the offense was committed.

(l) "Municipality" means a city, village, or township of this state.

(m) "Registering authority" means the local law enforcement agency or sheriff's office having jurisdiction over the individual's residence, place of employment, or institution of higher learning, or the nearest department post designated to receive or enter sex offender registration information within a registration jurisdiction.

(n) "Registration jurisdiction" means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the United States Virgin Islands, American Samoa, and the Indian tribes within the United States that elect to function as a registration jurisdiction.

(o) "Residence", as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps ~~his or her~~ **the person's** personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a person has a residence separate from that of ~~his or her~~ **the person's spouse**, that place at which the person resides the greater part of the time must be ~~his or her~~ **the person's** official residence for the purposes of this act. If a person is homeless or otherwise lacks a fixed or temporary residence, residence means the village, city, or township where the person spends a majority of ~~his or her~~ **the person's** time. This section ~~shall~~ **must** not be construed to affect existing judicial interpretation of the term residence for purposes other than the purposes of this act.

(p) "Student" means an individual enrolled on a full- or part-time basis in a public or private educational institution, including, but not limited to, a secondary school, trade school, professional institution, or institution of higher education.

(q) "Tier I offender" means an individual convicted of a tier I offense who is not a tier II or tier III offender.

(r) "Tier I offense" means 1 or more of the following:

(i) A violation of section 145c(4) of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(ii) A violation of section 335a(2)(b) of the Michigan penal code, 1931 PA 328, MCL 750.335a, if a victim is a minor.

(iii) A violation of section 349b of the Michigan penal code, 1931 PA 328, MCL 750.349b, if the victim is a minor.

(iv) A violation of **former** section 449a(2) of the Michigan penal code, 1931 PA 328. ~~/, MCL 750.449a.~~

(v) A violation of section 520e or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g, if the victim is 18 years or older.

(vi) A violation of section 539j of the Michigan penal code, 1931 PA 328, MCL 750.539j, if a victim is a minor.

(vii) Any other violation of a law of this state or a local ordinance of a municipality, other than a tier II or tier III offense, that by its nature constitutes a sexual offense against an individual who is a minor.

(viii) An offense committed by a person who was, at the time of the offense, a sexually delinquent person as defined in section 10a of the Michigan penal code, 1931 PA 328, MCL 750.10a.

(ix) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (viii).

1 (x) An offense substantially similar to an offense described
2 in subparagraphs (i) to (ix) under a law of the United States that is
3 specifically enumerated in ~~42 USC 16911~~, **34 USC 20911**, under a law
4 of any state or any country, or under tribal or military law.

5 (s) "Tier II offender" means either of the following:

6 (i) A tier I offender who is subsequently convicted of another
7 offense that is a tier I offense.

8 (ii) An individual convicted of a tier II offense who is not a
9 tier III offender.

10 (t) "Tier II offense" means 1 or more of the following:

11 (i) A violation of section 145a of the Michigan penal code,
12 1931 PA 328, MCL 750.145a.

13 (ii) A violation of section 145b of the Michigan penal code,
14 1931 PA 328, MCL 750.145b.

15 (iii) A violation of section 145c(2) or (3) of the Michigan
16 penal code, 1931 PA 328, MCL 750.145c.

17 (iv) A violation of section 145d(1)(a) of the Michigan penal
18 code, 1931 PA 328, MCL 750.145d, except for a violation arising out
19 of a violation of section 157c of the Michigan penal code, 1931 PA
20 328, MCL 750.157c.

21 (v) A violation of section 158 of the Michigan penal code,
22 1931 PA 328, MCL 750.158, committed against a minor unless either
23 of the following applies:

24 (A) All of the following:

25 (I) The victim consented to the conduct constituting the
26 violation.

27 (II) The victim was at least 13 years of age but less than 16
28 years of age at the time of the violation.

29 (III) The individual is not more than 4 years older than the

1 victim.

2 (B) All of the following:

3 (I) The victim consented to the conduct constituting the
4 violation.

5 (II) The victim was 16 or 17 years of age at the time of the
6 violation.

7 (III) The victim was not under the custodial authority of the
8 individual at the time of the violation.

9 (vi) A violation of section 338, 338a, or 338b of the Michigan
10 penal code, 1931 PA 328, MCL 750.338, 750.338a, and 750.338b,
11 committed against an individual 13 years of age or older but less
12 than 18 years of age. This subparagraph does not apply if the court
13 determines that either of the following applies:

14 (A) All of the following:

15 (I) The victim consented to the conduct constituting the
16 violation.

17 (II) The victim was at least 13 years of age but less than 16
18 years of age at the time of the violation.

19 (III) The individual is not more than 4 years older than the
20 victim.

21 (B) All of the following:

22 (I) The victim consented to the conduct constituting the
23 violation.

24 (II) The victim was 16 or 17 years of age at the time of the
25 violation.

26 (III) The victim was not under the custodial authority of the
27 individual at the time of the violation.

28 (vii) A violation of section 462e(a) of the Michigan penal
29 code, 1931 PA 328, MCL 750.462e.

(viii) A violation of section 448 of the Michigan penal code, 1931 PA 328, MCL 750.448, if the victim is a minor.

(ix) A violation of section 455 of the Michigan penal code, 1931 PA 328, MCL 750.455.

(x) A violation of section 520c, 520e, or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520c, 750.520e, and 750.520g, committed against an individual 13 years of age or older but less than 18 years of age.

(xi) A violation of section 520c committed against an individual 18 years of age or older.

(xii) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (xi).

(xiii) An offense substantially similar to an offense described in subparagraphs (i) to (xii) under a law of the United States that is specifically enumerated in ~~42 USC 16911~~, **34 USC 20911**, under a law of any state or any country, or under tribal or military law.

(u) "Tier III offender" means either of the following:

(i) A tier II offender subsequently convicted of a tier I or II offense.

(ii) An individual convicted of a tier III offense.

(v) "Tier III offense" means 1 or more of the following:

(i) A violation of section 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, committed against an individual less than 13 years of age.

(ii) A violation of section 349 of the Michigan penal code, 1931 PA 328, MCL 750.349, committed against a minor.

(iii) A violation of section 350 of the Michigan penal code, 1931 PA 328, MCL 750.350.

1 (iv) A violation of section 520b, 520d, or 520g(1) of the
2 Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520d, and
3 750.520g. This subparagraph does not apply if the court determines
4 that the victim consented to the conduct constituting the
5 violation, that the victim was at least 13 years of age but less
6 than 16 years of age at the time of the offense, and that the
7 individual is not more than 4 years older than the victim.

8 (v) A violation of section 520c or 520g(2) of the Michigan
9 penal code, 1931 PA 328, MCL 750.520c and 750.520g, committed
10 against an individual less than 13 years of age.

11 (vi) A violation of section 520e of the Michigan penal code,
12 1931 PA 328, MCL 750.520e, committed by an individual 17 years of
13 age or older against an individual less than 13 years of age.

14 (vii) An attempt or conspiracy to commit an offense described
15 in subparagraphs (i) to (vi).

16 (viii) An offense substantially similar to an offense described
17 in subparagraphs (i) to (vii) under a law of the United States that
18 is specifically enumerated in ~~42 USC 16911~~, **34 USC 20911**, under a
19 law of any state or any country, or under tribal or military law.

20 (w) "Vehicle" means that term as defined in section 79 of the
21 Michigan vehicle code, 1949 PA 300, MCL 257.79.

22 Enacting section 1. This amendatory act takes effect 90 days
23 after the date it is enacted into law.

24 Enacting section 2. This amendatory act does not take effect
25 unless Senate Bill No. ____ or House Bill No. 5841 (request no.
26 04081'23) of the 102nd Legislature is enacted into law.