

Multiple Documents

Part	Description
1	29 pages
2	Index of Exhibits A-F
3	Exhibit A - Order, People of the State of MI v. Betts, Jr., MI Sup Crt No. 14898
4	Exhibit B - Second Mot to Extend Time to File Brief, People of the State of MI v
5	Exhibit C - Opinion and Order, Cain v. Snyder, et al., USDC-ED No. 19-10243
6	Exhibit D - House Fiscal Legislative Analysis
7	Exhibit E - Brief for the U.S. as Amicus Curiae, Snyder, et al. v. John Does
8	Exhibit F - Redlined Sex Offenders Registration Act 195 of 1994

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOES #1-6, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

RICHARD SNYDER, Governor of the
State of Michigan, and COL. KRISTE
ETUE, Director of the Michigan State
Police, in their official capacities,

Defendants.

File No. 2:16-cv-13137

Hon. Robert H. Cleland

Mag. J. David R. Grand

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Dana Nessel
Attorney General

Joseph T. Froehlich
Assistant Attorney General
Attorney for Defendants
State Operations Division
P. O. Box 30754
Lansing, MI 48909
517.335.7573
froehlichj1@michigan.gov
P71887

Dated: October 22, 2019

CONCISE STATEMENT OF ISSUES PRESENTED

1. This Court should certify the severability question to the Michigan Supreme Court.
2. Contrary to Plaintiffs' position, unconstitutional portions of SORA's 2006 and 2011 amendments may be severed and the remaining constitutional portions of the statute may be applied retroactively consistent with SORNA, Mich. Comp. Laws § 8.5 and the holding of *Does #1-5*.
3. Plaintiffs are not entitled to interim injunctive relief because they cannot demonstrate a likelihood of success on the merits of their claims.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

USDC ED MI LR 83.40

Mich. Comp. Laws § 8.5

Does #1-5 v. Snyder, 834 F.3d 696 (6th Cir. 2016)

INTRODUCTION

The question at the heart of this case regards a Michigan state law – whether unconstitutional portions of Michigan’s Sex Offenders Registration Act (SORA) can be severed from the rest of the Act, and the consequences to SORA of severance or non-severance going forward. But the same severability issue at the heart of this case is already pending before the Michigan Supreme Court on a full merits grant. In *People v. Betts*, Michigan Supreme Court No. 148981, the Court is considering a number of questions, including the very questions posed by the Plaintiffs in their motion in this case. (Ex. A, order granting leave to appeal, *People v. Betts*, Michigan Supreme Court No. 148981).

There can be no dispute that the Michigan Supreme Court is the final arbiter on the constitutionality of SORA. Because the Michigan Supreme Court is already considering the questions posed in Plaintiffs’ motion, certification will avoid any possibility of inconsistent results. Furthermore, the ultimate decision of the Michigan Supreme Court is likely to be outcome determinative in this case and will not unduly delay or prejudice the plaintiffs. The standard for certification is easily met here.

Thus, there is no reason for this Court to reach the merits of the severability question. But even if this Court were to reach the issue, Plaintiffs' position fails because a fundamental flaw informs the entirety of Plaintiffs' analysis – that every piece of SORA that was added in 2011 is necessarily unconstitutional and must be excised from the Act. Contrary to Plaintiffs' position, unconstitutional portions of SORA's 2006 and 2011 amendments may be severed and the remaining constitutional portions of the statute may be applied retroactively consistent with the federal SORNA, Michigan's statutory law providing for severance (Mich. Comp. Laws § 8.5), and the holding of *Does #1-5*.

ARGUMENT

I. This Court should certify the severability question to the Michigan Supreme Court.

The district court local rules, Eastern District LR 83.40, provide the standard for certification. That Rule states:

LR 83.40 - Certification of Issues to State Courts

(a) Upon motion or after a hearing ordered by the Judge sua sponte, the Judge may certify an issue for decision to the highest Court of the State whose law governs its disposition. An order of certification shall be accompanied by written findings that:

- (1) the issue certified is an unsettled issue of State law, and
- (2) the issue certified will likely control the outcome of the federal suit, and
- (3) certification of the issue will not cause undue delay or prejudice.

Such order shall also include citation to precedent, statutory or court rule authority authorizing the State Court involved to resolve certified questions.

(b) In all such cases, the order of certification shall stay federal proceedings for a fixed time which shall be subsequently enlarged only upon a showing that such additional time is required to obtain a State Court decision and is not the result of dilatory actions on the part of the litigants.

(c) In cases certified to the Michigan Supreme Court, in addition to the findings required by this Rule, the United States District Court shall approve an agreed statement of facts which shall be subsequently transmitted to the Michigan Supreme Court by the parties as an appendix to briefs filed therein.

In *People v. Betts*, the Michigan Supreme Court will consider five questions, the latter ones being the same as those raised by Plaintiffs:

(1) whether the requirements of the Sex Offenders Registration Act (SORA), MCL 28.721 et seq., taken as a whole, amount to “punishment” for purposes of the Ex Post Facto Clauses of the Michigan and United States Constitutions, US Const, art I, § 10; Const 1963, art 1, § 10; see *People v Earl*, 495 Mich 33 (2014), see also *Does #1-5 v Snyder*, 834 F3d 696, 703-706 (CA 6, 2016), cert den sub nom *Snyder v John Does #1-5*, 138 S Ct 55 (Oct 2, 2017);

(2) if SORA, as a whole, constitutes punishment, whether it became punitive only upon the enactment of a certain provision or group of provisions added after the initial version of SORA was enacted;

(3) if SORA only became punitive after a particular enactment, whether a resulting ex post facto violation would be remedied by applying the version of SORA in effect before it transformed into a punishment or whether a different remedy applies, see *Weaver v Graham*, 450 US 24, 36 n 22 (1981) (“the proper relief . . . is to remand to permit the state court to apply, if possible, the law in place when his crime occurred.”);

(4) if one or more discrete provisions of SORA, or groups of provisions, are found to be ex post facto punishments, whether the remaining provisions can be given effect retroactively without applying the ex post facto provisions, see MCL 8.5; [and]

(5) what consequences would arise if the remaining provisions could not be given retroactive effect[.] [Ex A.]

Given the already pending Michigan Supreme Court matter, and the identity of issues between that case and this one, certification of the severability question is both necessary and appropriate.

A. The severability issue presents an unsettled issue of state law.

The primary question raised by Plaintiffs in their motion is whether the 2011 Amendments to SORA can be severed from the rest of

the Act, and what the consequences of severance or nonseverance will be going forward. It is obvious that the law is unsettled in this area when one considers that the issue currently pending before the Michigan Supreme Court. Indeed, the issue before that court and the issue before this Court in Plaintiffs' motion are identical. Neither Court has yet issued a substantive ruling on the merits.

Under these circumstances, the timing is appropriate for certification of the severability question. Certification to a state supreme court "is most appropriate when the question is new and state law is unsettled." *In re Amazon.com, Inc.*, 852 F.3d 601, 607 (6th Cir. 2017) (internal quotes and citation omitted). Further, the appropriate time to request certification of a state-law issue "is before, not after, the district court has resolved [it]." *State Auto Property and Cas. Ins. Co. v. Hargis*, 785 F.3d 189, 194 (6th Cir. 2015). "[O]therwise, the initial federal court decision will be nothing but a gamble with certification sought only after an adverse decision." *Id.*

Here, this Court has not resolved the issue of severability, and the severability question is already pending before the Michigan Supreme Court. This is not a situation where the Defendants are "seeking

refuge” in state court only after an unfavorable ruling in federal court.

Hotels.com, 639 F.3d at 654 (citation and alterations omitted).

To the contrary, there is a risk of inconsistent results if this Court does not certify the question and decides the issue now. There is potential that this Court could reach one conclusion on the severability question, only to have the Michigan Supreme Court reach a different conclusion in *Betts*. Certification of the question will avoid the potential for inconsistent results all together, as the Michigan Supreme Court will be the only Court to decide the issue.

B. The severability issue to be decided by the Michigan Supreme Court controls the outcome of this action.

Again, the very severability question presented in this case is already pending before the Michigan Supreme Court on a full merits grant. And all of Plaintiffs’ claims are likely to be affected by the decision in *Betts* – not just the Ex Post Facto claim. It is clear from the plain language of the Michigan Supreme Court order granting the application for leave to appeal that the Court will be considering SORA’s viability as a whole. The scope and breadth of the Court’s decision is likely to go directly to the entirety of the statutory scheme.

There is a high likelihood that the decision in *Betts* will reach all the provisions challenged by Plaintiffs in this action.

Moreover, the question of severability and the resultant consequences are ultimately questions of state law. There is no question that the highest court of the state is the final arbiter of such state law issues. Thus, “[w]hen it has spoken, its pronouncement is to be accepted by federal courts as defining state law.” *West v. American Telephone & Telegraph Co.*, 311 U.S. 223, 236 (1940). It is appropriate that the Michigan Supreme Court be permitted to resolve the severability question, particularly where the issue is already pending before the Court and its decision will determine the outcome in this case.

C. Certification to the Michigan Supreme Court will not cause undue delay or prejudice.

Again, the Michigan Supreme Court has already granted the application for leave and the severability question is pending before the Court on a full merits grant. The Court will soon schedule a hearing on the case, and decision will likely be issued in this term. And the decision of the Court will resolve the severability question once and for all, to be accepted by the federal courts as defining *state* law.

Indeed, the Defendant in *Betts* has recently recognized the identify of issues in that case and this case. In specific, he sought to extend his deadline to correspond with the briefing schedule here “given the overlap in issues and the possible certification of questions to this Court from the federal district Court.” (Ex. B, 2d motion to extend, *People v. Betts*, Mich. S. Ct. No. 148981, dated Sept. 11, 2019).

Certification of the severability issue will promote judicial efficiency and is appropriate where, as here, the question of “state law is unsettled.” *Transamerica Ins. Co. v. Duro Bag Mfg. Co.*, 50 F.3d 370, 372 (6th Cir.1995), citing *Lehman Bros. v. Schein*, 416 U.S. 386, 390–91 (1974). Certification will avoid any possibility of inconsistent results, likely be outcome determinative in this case, and will not unduly delay or prejudice the plaintiffs. This Court should therefore certify the severability question under ED MI LR 83.40.¹

¹ The other option would be to hold this case in abeyance pending the resolution of *Betts* so that this Court may follow the resolution of the severance issue by the state’s highest court.

II. Unconstitutional portions of SORA’s 2006 and 2011 amendments may be severed, and the remaining constitutional portions of the statute may be applied retroactively consistent with SORNA, Mich. Comp. Laws § 8.5, and the holding of *Does #1-5*.

Plaintiffs’ entire severability argument is based upon an incorrect premise: that every piece of SORA that was added in 2011 is necessarily unconstitutional and must be excised from the Act. This flawed assumption is presumably based upon an overly broad reading of the Sixth Circuit’s opinion in *Does #1-5*. But this Court has previously rejected the same incorrect reasoning in a different individual challenge to SORA. In *Derrick Cain v. People of the State of Michigan, et al*, Case No. 3:19-cv-10243, this Court stated that *Does #1-5* only addressed “portions” of the 2006 and 2011 amendments:

Plaintiff relies on *Does #1-5 v. Snyder*, 834 F.3d 696 (6th Cir. 2016) for his assertion that all post-1997 SORA amendments are unconstitutional; however, *Does #1-5 addressed only **portions** of the 2006 and 2011 amendments to SORA*—it did not broadly invalidate all post-1997 amendments as Plaintiff suggests. [Ex. C, *Derrick Cain v. People of the State of Michigan, et al*, Case No. 3:19-cv-10243, opinion and order dated 6-5-19) (emphasis added).]

Contrary to Plaintiffs’ position, *Does #1-5* does not require the conclusion that every part of SORA passed in 2011 is unconstitutional. Instead, those specific portions of SORA’s 2006 and 2011 amendments

identified as unconstitutional by the Sixth Circuit in *Does #1-5* may be severed and the remaining constitutional portions of the statute may be applied retroactively consistent with the federal Sex Offenders Registration and Notification Act (SORNA), Mich. Comp. Laws § 8.5, and the holding of *Does #1-5*.

A. The Michigan SORA extends beyond the federal SORNA in three distinct respects.

A review of the Michigan law discloses the particular ways in which it extends beyond the federal SORNA, and the legislative intent for the 2011 amendments was to bring SORA into compliance with federal SORNA. The Legislature provided that SORA extends beyond the requirements of SORNA, which may be digested into three distinct categories, which may be severed without compromising Michigan's compliance with SORNA. The remainder of Michigan may be given effect, which is constitutional as it would then parallel the requirements of the federal SORNA.

1. The enactment of SORA and the 2006 SORA amendments

Michigan's SORA first went into effect on October 1, 1995. 1994 P.A. 295. It has since been amended 20 times.² The sex offender registry as it first existed in 1995 was not public and was accessible only by law enforcement. *People v. Dipiazza*, 778 N.W.2d 264, 267 (Mich. Ct. App. 2009). In 1999, the registry became available to the public through the Internet. Mich. Comp. Laws § 28.728(2), as amended by 1999 P.A. 85; *Dipiazza*, 778 N.W.2d at 267. Later amendments have added offenses requiring registration, changed the duration of required registration, and imposed additional registration requirements.

In 2005, SORA was amended by the Legislature to create “student safety zones.” A student safety zone was defined as “the area that lies 1,000 feet or less from school property.” Mich. Comp. Laws § 28.733(f), as added by 2005 P.A. 121. Offenders were generally precluded from residing within student safety zones. § 28.735(1).

² See 2014 P.A. 328, 2013 P.A. 2, 2013 P.A. 149, 2011 P.A. 17, 2011 P.A. 18, 2006 P.A. 46; 2006 P.A. 402, 2005 P.A. 121, 2005 P.A. 123, 2005 P.A. 127, 2005 P.A. 132, 2005 P.A. 301; 2005 P.A. 322, 2004 P.A. 237, 2004 P.A. 238, 2004 P.A. 240, 2002 P.A. 542, 1999 P.A. 85; 1996 P.A. 494, 1995 P.A. 10.

Another amendment in 2005 precluded offenders from working or loitering within student safety zones. Mich. Comp. Laws § 28.734, as added by 2005 P.A. 127. These amendments became effective in 2006 and are commonly referred to as the 2006 SORA amendments.

2. The enactment of SORNA and SORNA's Constitutional status

On the federal side, in 2006, the United States Congress moved toward a comprehensive set of federal standards to govern state sex offender registration and notification programs by enacting SORNA, as part of the Adam Walsh Child Protection and Safety Act. Pub. L. No. 109-248, §§ 102-155, 120 Stat. 587 (codified in part as amended at 34 U.S.C. §§ 20901 *et seq.*). The goals of SORNA include making the federal and state:

systems more uniform and effective by repealing several earlier federal laws that also (but less effectively) sought uniformity; by setting forth comprehensive registration-system standards; by making federal funding contingent on States' bringing their systems into compliance with those standards; by requiring both state and federal sex offenders to register with relevant jurisdictions (and to keep registration information current); and by creating federal criminal sanctions applicable to those who violate the Act's registration requirements.

Reynolds v. United States, 556 U.S. 432, 435 (2012).

As Spending Clause legislation, SORNA conditions full grant funding on a state's substantial implementation of certain requirements. 34 U.S.C. § 20927(a). State registries must collect specific information, such as names, residence, work, and school addresses, physical descriptions, automobile descriptions and license plate numbers, criminal history information, information on intended international travel plans, and photographs. *Id.* § 20914(a), (b). SORNA also classifies offenders into tiers and sets minimum periods of registration based on the nature and seriousness of the sex offense and the offender's history of recidivism. *Id.* §§ 20911(2)-(4), 20915. SORNA requires that a state notify certain federal agencies regarding its registrants. *Id.* § 20923. SORNA also provides for public dissemination of certain information on Internet sites. *Id.* § 20920.

SORNA requires sex offenders to “register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student” by, “not later than 3 business days after each change of name, residence, employment, or student status, appear[ing] in person in at least 1 jurisdiction involved . . . and inform[ing] that jurisdiction of all

changes in the information required for that offender in the sex offender registry.” 34 U.S.C. § 20913(a), (c). The SORNA, however, does not prohibit registrants from living or working in any particular location.

The Sixth Circuit has held that “[SORNA] does not increase the punishment for the past conviction” and therefore its retroactive application does not violate the Ex Post Facto Clause. *United States v. Felts*, 674 F.3d 599, 606 (6th Cir. 2012); *see also United States v. Shannon*, 511 F. App’x 487, 492 (6th Cir. 2013) (applying reasoning of *Smith* and *Felts* to hold that SORNA’s juvenile registration requirements also did not present an ex post facto violation). In fact, this is the “unanimous consensus among the circuits.” *Felts*, 674 F.3d 605–06.³

In 2011, Michigan’s SORA underwent significant changes to bring the law into compliance with the federal SORNA. It was the manifest intention of the Michigan Legislature.⁴

³ *See also Am. Civil Liberties Union of Nevada v. Mastro*, 670 F.3d 1046, 1053 (9th Cir. 2012) (“Many of our sister circuits, however, have considered this issue. Unanimously they have concluded that retroactive imposition of SORNA requirements is constitutional.”).

⁴ *See Ex. D, House Fiscal Agency Legislative Analysis of Senate Bills 188, 189 and 206*, recognizing that amendments to SORA “would revise the Sex Offenders Registration Act to conform to mandates under the federal Sex Offenders Registration and Notification Act[.]”

Under the 2011 amendments to SORA, sex offenders were classified into three tiers according to the offenses of which they were convicted. Mich. Comp. Laws § 28.722(r) to (w), as added by 2011 P.A. 17 (taking effect on April 12, 2011). Tier I offenders were required to register for 15 years, Tier II offenders for 25 years, and Tier III offenders for life. § 28.725(10) to (12), as amended by 2011 P.A. 17. Offenders were also required to report in person when they changed residences, changed places of employment, discontinued employment, enrolled as a student with institutions of higher education, discontinued such enrollment, changed their names, temporarily resided at any place other than their residence for more than seven days, established an e-mail or instant message address or “any other [internet] designations,” purchased or began regularly operating a vehicle, or discontinued such ownership or operation. § 28.725 (1), as amended by 2011 P.A. 17.

3. Differences between SORNA and SORA and the holding of *Does #1-5*

Michigan’s SORA goes beyond the baseline requirements of SORNA in three significant ways that are particularly germane to the Sixth Circuit’s ruling in *Does #1-5*.

First, although SORNA (through its implementation guidelines, 73 Fed. Reg. at 38,059 (July 2, 2008)) requires a jurisdiction to make public the sex offense for which an offender is registered, SORNA does not require a State to make the tier classification viewable on the public website as is provided in SORA. Mich. Comp. Laws § 28.728(2)(l).

Second, SORA goes beyond SORNA's in-person reporting requirements. SORNA requires jurisdictions to require periodic in-person appearances to verify registration information and take a photograph, and also specifies that such in-person appearances occur at least annually to low-tier offenders and quarterly for higher-tier offenders. 42 U.S.C. § 16916. SORNA further requires an offender to appear in person to update a registration within three business days after any change of name, residence, employment, or student status. 42 U.S.C. § 16913(c). SORA, in contrast, requires an offender to appear in person to update when the offender intends to temporarily reside at any place other than his or her residence for more than seven days, when the offender establishes any electronic mail or instant message address, or any other designations used in internet communications or postings, and when the offender purchases or begins to regularly operate any

vehicle, and when ownership or operation of the vehicle is discontinued.

Compare Mich. Comp. Laws § 28.725(1)(e)-(g) with 42 U.S.C.

§ 16914(a), 16915a(a).

Third, and finally, SORNA does not require a jurisdiction to create any geographic exclusions or “student safety zones.” Michigan, on the other hand, has done exactly that by enactment its statutory scheme, *see* Mich. Comp. Laws §§ 28.734 to 28.736.

The specific areas where SORA has gone further than SORNA was the focus of the Sixth Circuit’s decision in *Does #1-5*. Indeed, the Sixth Circuit explained that SORA is punitive because of the *aggregate effect* of these aspects of the law – all of which are the areas identified above where SORA differs from SORNA. Specifically, the Court reviewed these three statutory features that rendered the statute punitive: (1) the student safety zones where an offender is not permitted to live, work or loiter; (2) the public classification of a offenders into tiers without an individualized assessment; and (3) the requirements on offenders to appear in person to report even minor changes to certain information. *See Does #1-5*, 834 F.3d at 702, 702–03, 705. The Court summed up this point based on these three attributes:

A regulatory regime [1] that severely restricts where people can live, work, and “loiter,” [2] that categorizes them into tiers ostensibly corresponding to present dangerousness without any individualized assessment thereof, and [3] that requires time-consuming and cumbersome in-person reporting, all supported by—at best—scant evidence that such restrictions serve the professed purpose of keeping Michigan communities safe, is something altogether different from and more troubling than Alaska’s first-generation registry law.

* * *

We conclude that Michigan’s SORA imposes punishment. *Id.* at 705 (brackets added).

While *Does #1-5* explained that “the retroactive application of SORA’s 2006 and 2011 amendments to Plaintiffs is unconstitutional, and it must therefore cease,” 834 F.3d at 706, it was the cumulative effect of these three specific provisions that compelled the Sixth Circuit’s determination that the current SORA has “much in common with banishment and public shaming,” “and has a number of similarities to parole/probation.” *Id.* at 701, 703.⁵ If these three problematic provisions of SORA may be severed, it would leave a constitutionally valid Act that does not run afoul of Ex Post Facto.

⁵ For additional discussion regarding the differences between SORA and SORNA, and how the provisions of SORA went beyond SORNA violated the Ex Post Facto clause, see Ex E, Brief for United States as Amicus Curiae, *Snyder v. Does #1-5*, U.S. S. Ct. No. 16-768, pp. 14–20.

B. The provisions of SORA that differ from SORNA and were identified as problematic by the Sixth Circuit may be severed, and the remaining constitutional portions may be applied retroactively.

Federal law favors severability. *See INS v. Chadha*, 462 U.S. 919, 934 (1983). It is also well settled under Michigan law that, although a statute may be invalid or unconstitutional in part, the part that is valid will be sustained where it can be separated from that part which is void. *Mathias v. Cramer*, 40 N.W. 926, 927 (Mich. 1888). The statute enforced after the invalid portion of the act is severed must, however, be reasonable in light of the act as originally drafted. *Caterpillar, Inc. v. Dep't of Treasury*, 470 N.W.2d 80, 85 (Mich. Ct. App. 1991) *rev'd on other grounds*, 488 N.W. 182 (Mich. 1991).

The Michigan Legislature has provided a general severability clause that applies to all its enactments. The clause provides:

In the construction of the statutes of this state the following rules shall be observed unless such construction would be inconsistent with the manifest intent of the legislature, that is to say: If any portion of an act or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the act which can be given effect without the invalid portion or application . . . , and to this end acts are declared to be severable.

Mich. Comp. Laws § 8.5.

At the outset, the Defendants concede that Sixth's Circuits ruling in *Does #1-5* precludes the retroactive application of the 2006 amendments, Mich. Comp. Laws §§ 28.734 through 28.736, which are SORA's "student safety zone" provisions. These statutory provisions are not required by SORNA. The remaining provisions of SORA can be given effect without the 2006 amendments. The 2006 amendments are separate provisions that operate independently from the rest of SORA.

The remaining question, accordingly, is whether the bulk of the 2011 amendments to SORA may be enforced without reference to the problematic provisions identified by the Sixth Circuit in *Does #1-5*. Applying the principles of severability as stated above, the answer is yes, relying on the Legislature's clear intent to make Michigan's law SORNA compliant. Like the 2006 amendments, the problematic 2011 provisions can be severed from the rest of SORA.

To begin, the requirement of Michigan law, Mich. Comp. Laws § 28.728(l), that an offender's tier classification be made public can be severed from the Act without compromising the effectiveness of the law. Offenders will still be classified into tiers, but the tiers will not be made public. SORNA does not require this information to be public.

Further, SORA's in-person reporting requirements, § 28.725(1)(e)-(g), mandating that an offender appear in person to update certain information may also be severed without compromising the Act:

when the offender intends to temporarily reside at any place other than his or her residence for more than seven days;

when the offender establishes any electronic mail or instant message address, or any other designations used in internet communications or postings; and

when the offender purchases or begins to regularly operate any vehicle, and when ownership or operation of the vehicle is discontinued.

SORNA does not require this in-person reporting. Offenders would still be required to appear in person to update a registration within three business days after any change of name, residence, employment, or student status. Mich. Comp. Laws § 28.725(1)(a)-(d). The reporting requirements of Mich. Comp. Laws § 28.725(1)(e)-(g) are not “so essential, and [] so interwoven with others, that it cannot be presumed that the legislature intended the statute to operate otherwise than as a whole.” *Moore v. Fowinkle*, 512 F.2d 629, 632 (6th Cir. 1975).

Severing the problematic provisions of SORA will not require this Court to “re-write” the statute. The fact that they are not in separate sections is not significant. *Mich. State AFL-CIO v. Mich. Emp. Rel.*

Com’n, 538 N.W.2d 433, 447 (Mich. Ct. App. 1995). Indeed, the provisions to be excised are discrete and easily removed, and line drawing is not inherently complex. (See Ex. F, redlined version of SORA excising problematic provisions identified by Court in *Does #1-5* for offenders committed their offenses on or before April 12, 2011).

Here, SORA remains a constitutionally valid and enforceable law, even retroactively, when the problematic provisions of the 2006 and 2011 amendments are severed, which gives effect to the clear legislative intent to make Michigan law SORNA compliant. This approach is consistent with the requirements Michigan law, Mich. Comp. Laws § 8.5, and the holding of *Does #1-5*.⁶

⁶ It should also be noted that Plaintiffs’ position regarding revival of previous SORA versions is incorrect if somehow the entirety of the 2011 SORA amendments was found unconstitutional. Under Michigan law, it has long been held that where a court has held a law invalid, it leaves all preceding laws on that subject in force. *McClellan v Recorder’s Court*, 201 N.W. 209, 212 (Mich. 1924). See also 1A Singer, Sutherland Statutory Construction (6th ed), § 23:25, p 544 (“An unconstitutional statute which purports to repeal a prior statute by specific provision does not do so where, under standard rules governing separability, a hiatus in the law would result from the impossibility of substituting the invalid provisions for the legislation that was to be repealed ...”). And Mich. Comp. Laws § 8.4 has no application here because the 2011 amendments to SORA were not repealed. This means that if the entirety of the 2011 amendments of SORA were struck, prior versions of SORA remain in force so long as they are not held unconstitutional.

III. Plaintiffs are not entitled to interim injunctive relief because they cannot demonstrate a likelihood of success on the merits of their claims.

Plaintiffs’ remaining claim asking for interim relief is based upon the same flawed assumption as their severability analysis. Contrary to Plaintiffs’ position, not every piece of SORA that was added in 2011 is necessarily unconstitutional and must be excised from the Act. Thus, Plaintiffs are not entitled to interim relief.

In determining whether to grant a preliminary injunction, the following four factors are considered:

- whether the movant has demonstrated a strong likelihood of success on the merits;
- whether he would suffer irreparable injury without the injunction;
- whether the injunction would cause substantial harm to others; and
- whether issuing the injunction would serve the public interest.

Doe v. Univ. of Cincinnati, 872 F.3d 393, 399 (6th Cir. 2017).

Although the four factors “are factors to be balanced” and “not prerequisites to be met,” a preliminary injunction cannot issue where “there is simply no likelihood of success on the merits....” *Id.* (internal quotation marks omitted). “When a party seeks a preliminary injunction on the basis of a potential constitutional violation, the

likelihood of success on the merits often will be the determinative factor.” *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012).

Importantly, “[t]he party seeking the preliminary injunction bears the burden of justifying such relief, including showing irreparable harm and likelihood of success,” and he faces a “much more stringent [standard] than the proof required to survive a summary judgment motion” because a preliminary injunction is “an extraordinary remedy.” *McNeilly v. Land*, 684 F.3d 611, 615 (6th Cir. 2012). It is “reserved only for cases where it is necessary to preserve the status quo until trial.” *Hall v. Edgewood Partners*, 878 F.3d 524, 526 (6th Cir. 2017).

Here, Plaintiffs are not entitled to broad injunctive relief because they cannot demonstrate a likelihood of success on the merits of their claims. For the reasons stated in Section II, the retroactive application of portions of SORA’s 2011 amendments is constitutional.

Indeed, continued retroactive enforcement of portions of the 2011 amendments is consistent with the requirements of the federal SORNA, and federal courts have consistently and universally held that SORNA passes constitutional muster. The unconstitutional portions of SORA’s 2006 and 2011 amendments that are inconsistent with SORNA may be

severed from the rest of the Act, and the remaining constitutional portions may be applied retroactively.⁷ Under these circumstances, Plaintiffs are not entitled to interim relief.

CONCLUSION AND RELIEF SOUGHT

Defendants respectfully request that this Court certify the severability question to the Michigan Supreme Court, or, alternatively, Defendants request that this Court hold that unconstitutional portions of SORA's 2011 amendments that are inconsistent with SORNA may be severed from the rest of the Act, and the remaining constitutional portions may be applied retroactively.

⁷ Plaintiffs provide no authority for their contention that Defendants, and not Plaintiffs, should bear the burden of providing notice to class members. Further, Plaintiffs have not established that "all prosecutors and all Michigan law enforcement personnel who have responsibility for enforcing SORA" are those "in active concert or participation" with the Defendants such that Defendants are required to provide notice to them under Fed. R. Civ. P. 65.

Respectfully submitted,

Dana Nessel
Attorney General

s/ Joseph T. Froehlich
Joseph T. Froehlich
Assistant Attorney General
Attorney for Defendants
State Operations Division
P. O. Box 30754
Lansing, MI 48909
517.335.7573
froehlichj1@michigan.gov
P71887

Dated: October 22, 2019

CERTIFICATE OF SERVICE (E-FILE)

I hereby certify that on October 22, 2019, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

s/ Joseph T. Froehlich
Joseph T. Froehlich
Assistant Attorney General
Attorney for Defendants
State Operations Division
P. O. Box 30754
Lansing, MI 48909
517.335.7573
froehlichj1@michigan.gov
P71887

John Does #1-6 v. Richard Snyder, et al.
USDC-ED No: 2:16-cv-13137
Honorable Robert H. Cleland
Magistrate Judge David R. Grand

INDEX OF EXHIBITS

Exhibit A.....	Order, <i>People of the State of Michigan v. Betts, Jr.</i> MI Supreme Court No. 148981
Exhibit B.....	Second Motion to Extend Time to File Brief, <i>People of the State of Michigan v. Betts, Jr.</i> MI Supreme Court No. 148981
Exhibit C.....	Opinion and Order <i>Cain v. Snyder, et al.</i> , USDC-ED No. 19-10243
Exhibit D	House Fiscal Legislative Analysis
Exhibit E.....	Brief for the United States as Amicus Curiae <i>Snyder, et al. v. John Does #1-5, et al.</i> U.S. Supreme Court No. 16-768
Exhibit F.....	Redlined Sex Offenders Registration Act 295 of 1994

John Does #1-6 v. Richard Snyder, et al.

USDC-ED No: 2:16-cv-13137

Honorable Robert H. Cleland

Magistrate Judge David R. Grand

EXHIBIT A

Order

People of the State of Michigan v Betts, Jr.

MI Supreme Court No. 148981

Order

Michigan Supreme Court
Lansing, Michigan

June 19, 2019

Bridget M. McCormack,
Chief Justice

148981

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 148981
COA: 319642
Muskegon CC: 12-062665-FH

PAUL J. BETTS, JR.,
Defendant-Appellant.

On March 6, 2019, the Court heard oral argument on the application for leave to appeal the February 27, 2014 order of the Court of Appeals. On order of the Court, the application is again considered, and it is GRANTED. The parties shall include among the issues to be briefed: (1) whether the requirements of the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq.*, taken as a whole, amount to “punishment” for purposes of the Ex Post Facto Clauses of the Michigan and United States Constitutions, US Const, art I, § 10; Const 1963, art 1, § 10; see *People v Earl*, 495 Mich 33 (2014), see also *Does #1-5 v Snyder*, 834 F3d 696, 703-706 (CA 6, 2016), cert den sub nom *Snyder v John Does #1-5*, 138 S Ct 55 (Oct 2, 2017); (2) if SORA, as a whole, constitutes punishment, whether it became punitive only upon the enactment of a certain provision or group of provisions added after the initial version of SORA was enacted; (3) if SORA only became punitive after a particular enactment, whether a resulting ex post facto violation would be remedied by applying the version of SORA in effect before it transformed into a punishment or whether a different remedy applies, see *Weaver v Graham*, 450 US 24, 36 n 22 (1981) (“the proper relief . . . is to remand to permit the state court to apply, if possible, the law in place when his crime occurred.”); (4) if one or more discrete provisions of SORA, or groups of provisions, are found to be ex post facto punishments, whether the remaining provisions can be given effect retroactively without applying the ex post facto provisions, see MCL 8.5; (5) what consequences would arise if the remaining provisions could not be given retroactive effect; and (6) whether the

answers to these questions require the reversal of the defendant's conviction pursuant to MCL 28.729 for failure to register under SORA.

The Attorney General, the Criminal Defense Attorneys of Michigan, the Prosecuting Attorneys Association of Michigan, and the American Civil Liberties Union of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



t0612

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 19, 2019

A handwritten signature in black ink, appearing to read "Larry S. Royster", is written over a horizontal line.

Clerk

John Does #1-6 v. Richard Snyder, et al.
USDC-ED No: 2:16-cv-13137
Honorable Robert H. Cleland
Magistrate Judge David R. Grand

EXHIBIT B

Second Motion to Extend Time to File Brief,
People of the State of Michigan v. Betts, Jr.
MI Supreme Court No. 148981

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

-vs-

PAUL J. BETTS, JR.

Defendant-Appellant.

Supreme Court No. 148981

Court of Appeals No. 319642

Circuit Court No. 12-62665-FH

MUSKEGON COUNTY PROSECUTOR

Attorney for Plaintiff-Appellee

STATE APPELLATE DEFENDER OFFICE

Attorney for Defendant-Appellant

SECOND MOTION TO EXTEND TIME TO FILE BRIEF

NOW COMES PAUL J. BETTS, JR., through his counsel, the STATE APPELLATE DEFENDER OFFICE, by Jessica Zimbelman, and moves this Honorable Court to grant an extension of time for filing his brief to December 12, 2019 and states the following:

1. On June 19, 2019, this Court granted Mr. Betts' application for leave to appeal. In the order granting the application, this Court asked the parties and amici to address six different questions. [MSC order, 6/19/19].

2. This Court previously granted an extension to September 25, 2019, based on the following reasons: Counsel filed a supplemental authority with this Court on May 24, 2019, which was a declaratory judgment entered in *Does #1-6 v Snyder* (“*Does II*”), Eastern District of Michigan Docket No. 2:16-cv-13137 (Cleland, J.) that the Sex Offender Registration Act is punishment “and that the ex post facto application of the 2006 and 2011 amendments is unconstitutional.” The court deferred for 90 days the question of whether the declaratory judgment applied to Mr. Betts and others with open criminal appeals or civil cases. The court also deferred any ruling on injunctive relief for 90 days, giving the Legislature time to amend the statute. The 90-day deadline for the Legislature to act expired on August 21, 2019.

3. The Legislature did not act within the window provided by the federal district court. On August 27, 2019, Judge Cleland issued an order setting a briefing schedule. *Order*, attached. The issues the parties will be addressing are similar to some of the questions presented by this Court in its June order.

4. By counsel’s calculations, all briefing will be submitted by November 12, 2019. Therefore, counsel now seeks an extension until December 12, 2019 to file the brief, given the overlap in issues and the possible certification of questions to this Court from the federal district court.

RECEIVED by MSC 9/11/2019 11:59:12 AM

WHEREFORE, for the reasons stated above, Mr. Betts asks that this Court grant this request to extend the time for filing his supplemental brief to December 12, 2019.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

/s/ Jessica Zimbelman

BY: _____

JESSICA ZIMBELMAN (P72042)
MAACS Litigation Support Counsel and
Special Assistant Defender
200 North Washington
Suite 250
Lansing, MI 48913
(517) 334-6069

Date: September 11, 2019

John Does #1-6 v. Richard Snyder, et al.

USDC-ED No: 2:16-cv-13137

Honorable Robert H. Cleland

Magistrate Judge David R. Grand

EXHIBIT C

Opinion and Order

***Cain v. Snyder, et al.*, USDC-ED No. 19-10243**

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DERRICK CAIN,

Plaintiff,

v.

Case No. 19-10243

SNYDER et al.,

Defendants.

**OPINION AND ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY INJUNCTION**

This pro se case was recently transferred to the undersigned as a companion to *Does v. Snyder*, No. 16-cv-13137 (“*Does II*”), which is a class action certified under Federal Rule of Civil Procedure 23(b)(2). Both this case and *Does II* challenge the constitutionality of portions of Michigan’s Sex Offender Registration Act (“SORA”). Presently before the court is Plaintiff’s Motion for Preliminary Injunction in which Plaintiff requests that Defendants be permanently enjoined from enforcing against him all post-1997 amendments to SORA. (ECF No. 18, PageID 85.) The court will deny this motion.

Plaintiff fails to demonstrate the likely success of his claims. Plaintiff relies on *Does #1-5 v. Snyder*, 834 F.3d 696 (6th Cir. 2016) for his assertion that all post-1997 SORA amendments are unconstitutional; however, *Does #1-5* addressed only portions of the 2006 and 2011 amendments to SORA—it did not broadly invalidate all post-1997 amendments as Plaintiff suggests. Additionally, the type of injunctive relief Plaintiff requests is the same type of relief currently being litigated in *Does II*. Plaintiff is a member of the certified Rule 23(b)(2) class in *Does II* and as such, he cannot opt out of

the class or separately litigate his claims. The Supreme Court has explained that “[t]he key to the (b)(2) class is ‘the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.’” *Walmart-Stores, Inc. v. Dukes*, 564 U.S. 338, 361 (2011) (quoting Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009)). The court has stayed *Does II* while the parties attempt to reach a legislative resolution to the case. The court will not award relief to any individual plaintiff while the overarching *Does II* case is stayed. Accordingly,

IT IS ORDERED that Plaintiff’s Motion for Preliminary Injunction (ECF No. 18) is DENIED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 5, 2019

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 5, 2019, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(810) 292-6522

John Does #1-6 v. Richard Snyder, et al.

USDC-ED No: 2:16-cv-13137

Honorable Robert H. Cleland

Magistrate Judge David R. Grand

EXHIBIT D

House Fiscal Legislative Analysis

Legislative Analysis



Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

SEX OFFENDER REGISTRATION REVISIONS

Senate Bill 188 with House committee amendments
Senate Bill 189 with House committee amendments
Senate Bill 206 as introduced
Sponsor: Sen. Phil Pavlov
House Committee: Judiciary
Senate Committee: Judiciary

First Analysis (3-22-11)

BRIEF SUMMARY: Together, Senate Bills 188 and 189 would revise the Sex Offenders Registration Act to conform to mandates under the federal Sex Offenders Registration and Notification Act, part of the Adam Walsh Act. Senate Bill 189 would also repeal two obsolete sections of the act. Senate Bill 206 would incorporate in the sentencing guidelines a change in the maximum sentence for failing to update registration information or report as scheduled.

FISCAL IMPACT: Senate Bills 188 and 189 would have an indeterminate fiscal impact on state and local governments, and Senate Bill 206 would have no fiscal impact on either as discussed later in the analysis. As noted later, in *Fiscal Information*, if these bills do not become law, the state may lose up to 10% in Federal Byrne Grant funds.

THE APPARENT PROBLEM:

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 will result in a state losing 10 percent of Byrne Justice Grant funding used to support law enforcement efforts. Numerous provisions of the federal act (SORNA) are different from those in the state Sex Offenders Registration Act; therefore, legislation is needed to revise the statute to conform to the requirements of SORNA. Though SORNA allows states some latitude, the legislation must conform substantially to SORNA in order to continue to receive the full grant amount.

THE CONTENT OF THE BILLS:

Currently, a person who is convicted or found responsible for certain listed offenses is required to register with law enforcement and is placed on the sex offenders registry for a minimum of 25 years; serious offenses require registration for life. Recent amendments allowed for certain juvenile offenders to petition to shorten the time they are required to register. The Michigan State Police (MSP) maintains one database for law enforcement purposes and another less comprehensive one that is accessible to the public. Individuals

SORA Legislative History
238a

RECEIVED by MSC 10/23/2018 3:20:45 PM

who fail to comply with the registration and reporting requirements of the act are subject to criminal penalties.

Senate Bills 188, 189, and 206

With the exception of one provision in Senate Bill 188, the legislation would take effect July 1, 2011. (That exception is a provision that would require the Michigan State Police to mail a notice to each individual registered under the current act who is not currently incarcerated in a prison explaining the individual's duties under the act as amended, and it would take effect immediately). Senate Bills 188 and 189 are tie-barred to each other and Senate Bill 206 is tie-barred to Senate Bill 189.

The bills are intended to apply to currently registered sex offenders, offenses for which the prosecution is pending or has not yet begun as of the legislation's effective date, and offenses committed after the effective date. However, as currently worded, the bills would be prospective in nature, applying only to offenses committed after the effective date or committed before that date but for which the prosecution is pending or has not yet begun.

Significant changes to the Sex Offenders Registration Act (SORA) by Senate Bills 188 and 189 include the following:

Offenses requiring registration

- Revise the definition of "convicted" to include offenders assigned to youthful trainee status before October 1, 2004, if they are convicted of any other felonies after July 1, 2011; exclude offenders assigned to youthful trainee status whose petition under current law to reduce the time required to register as a sex offender has been granted; and include offenders adjudicated as juveniles only if they were at least 14 years of age at the time of the offense and the order of disposition was for a Tier III offense.
- Redefine "listed offense" to instead mean a Tier I, Tier II, or Tier III offense, with Tier I being the least serious, and define those terms. (See *Background Information*)
- Require a registration period of 15 years for a Tier I offense, 25 years for a Tier II offense, and life for a Tier III offense.
- Require Tier I offenders to report annually, Tier II offenders to report twice a year, and Tier III offenders to report quarterly.
- Exclude from certain Tier II offenses consensual incidents involving a minor victim who was at least 13 years of age but less than 16 if the actor was not more than 4 years older, and also certain offenses involving a minor victim who was 16 or 17 years of age and who was not under the custodial authority of the actor at the time of the violation. Define "custodial authority."
- Exclude from certain Tier III offenses consensual incidents involving a minor victim who was at least 13 years of age but less than 16 if the actor was not more than 4 years older.
- Define "minor" as a victim of a listed offense who was less than 18 years at the time of the offense.

SORA Legislative History
239a

RECEIVED by MSC 10/23/2018 3:20:45 PM

- Exclude from registration those offenses that involve a consensual relationship between parolees or probationers with Department of Corrections' employees or employees of a county sheriff's office if no position of authority over the victim was used to coerce or otherwise encourage the victim to engage in sexual conduct.

Registration requirements

- Extend the jurisdictions in which registration is required so as to include federally recognized Indian tribes that elect to function as a registration jurisdiction.
- Redefine "residence" to mean the village, city, or township where a homeless person spends the majority of time to make it easier for the homeless or individuals without a permanent residence to comply with reporting requirements.
- Extend the registration and reporting requirements to an individual who was previously convicted of a listed offense but who, at that time, was not required to register under the SORA but who is convicted of any other felony on or after July 1, 2011.
- Shorten the time period required for registering or reporting status changes for various scenarios from 14 days or 10 days to "immediately" and define that term to mean 3 business days.
- Require a nonresident convicted of a listed offense in Michigan on or after July 1, 2011, to register under the act; the reporting requirements would not apply as long as the person remains a nonresident. The nonresident would have to have a photograph taken as required under the act.
- Require notification of at least 21 days before changing a domicile or residence to another country or travels to another country for more than seven days.
- Specify that the reporting requirements would not apply to enrollment in an online or correspondence program at an institution of higher learning.
- If the photograph submitted for the SORA did not resemble the offender in appearance, require the officer or authorized employee of the registering authority to require the individual to obtain a current photograph.
- Increase the original registration fee from \$35 to \$50 and allocate \$30 (instead of \$20) to the MSP for deposit in the Sex Offenders Registration Fund and \$20 (instead of \$10) to be retained by the court, local law enforcement agency, sheriff's department or department post. The fee could be waived for 90 days for an individual who was indigent.
- Require additional information and palm prints to be provided when a person registers. This includes aliases, nicknames, and ethnic or Tribal names; name and address of each employer; name and address of any school attended; all telephone numbers registered or routinely used; all electronic mail addresses, instant message addresses, and login names or other identifiers used by the individual when signing in to those systems; vehicle information, including license plate, registration number, and description of any motor vehicle, aircraft, or vessel owned or regularly operated by the individual, as well as locations where the vehicles or vessels are habitually kept or stored; driver license number; digital copy of passport or immigration documents, and occupational and professional licensing information.

SORA Legislative History
240a

RECEIVED by MSC 10/23/2018 3:20:45 PM

- Require a registration to also include an electronic copy of the offender's driver license or state ID, including the photograph required under the act; the text of the provision of law defining the criminal offense for which the offender is registered; any outstanding arrest warrant information; the individual's tier classification; an identifier indicating whether a DNA sample had been collected and any DNA profile entered into the federal Combined DNA Index System (CODIS); the complete criminal history record; the DOC number and status of parole, probation, or supervised release; and the FBI number.
- If an individual did not register or update registration information when required, require the law enforcement agency responsible for registering the individual to, among other things, determine whether the individual has absconded or is otherwise unlocatable, notify the MSP, revise the information in the registry to reflect that the person has absconded, seek an arrest warrant, and enter the individual into the National Crime Information Center Wanted Person File if appropriate.
- Require MSP, when notified of a failure to register or report, to notify the U.S. Marshall's Service and update the National Sex Offender Registry that the individual absconded or is unlocatable.

Reporting requirements

A resident who is required to be registered under the act must report in person and notify the registering authority having jurisdiction where his or her residence or domicile is located immediately (defined to mean three business days) after any of the following occur:

- Changes or vacates his or her residence or domicile.
- Changes his or her place of employment, or employment is discontinued.
- Enrolls as a student with an institution of higher learning, or enrollment is discontinued.
- Changes his or her name.
- Intends to temporarily reside at any place other than his or her residence for more than seven days.
- Establishes any electronic mail or instant message address, or any other designations used in Internet communications or postings.
- Purchases or begins to regularly operate any vehicle, and when ownership or operation of the vehicle is discontinued.

A nonresident required to register under the act who works in Michigan must report in person and notify the registering authority immediately of a change in place of employment or if employment is discontinued.

A sheriff's department must notify the MSP and provide notice of the location of the individual's proposed place of residence or domicile before releasing an individual from a county jail who is required to register. A similar provision for individuals facing release from prison already is in the act.

SORA Legislative History
241a

RECEIVED by MSC 10/23/2018 3:20:45 PM

Law enforcement and public databases

- Require all the revised registration information to be included in the law enforcement database.
- Specify additional information that would have to be included in the public database and specify information that could not be on the public database; for instance, the victim's name or offender's Social Security number.
- Exclude from inclusion on the public database certain registered juvenile offenders, an individual registered solely for being the subject of an order of disposition or other adjudication in a juvenile matter in another state or country, or an individual registered solely because he or she had been convicted of a single Tier I offense.
- Delete a provision under which a person who committed criminal sexual conduct in the first- or third-degree as a juvenile is kept off the public database until he or she turns 18.
- Index the compilation of individuals on the public database alphabetically by village, city, township, and county and geographically as appropriate in addition to zip code.
- If MSP determines that a person completes his or her registration period or is no longer required to register under the act, require MSP to remove the person's registration information from both databases within 7 days of the determination.

Petition to discontinue registration

- Allow an individual to petition, and a court to grant the petition, to discontinue registration under the act if certain criteria have been met, such as completing an approved sex offender treatment program and not being convicted of any felony or listed offense since conviction or release from incarceration. A Tier I offender could petition 10 years or more after conviction or release from prison, whichever was later. Certain Tier III juvenile offenders could petition after 25 or more years from the date of adjudication or release from confinement, whichever occurred last.
- Allow certain juvenile Tier I, II, or III offenders ("Romeo and Juliet" cases) to petition, and a court to grant the petition, with no waiting period.
- Require a court to deny a petition if the petitioner was determined to be a continuing threat to the public and specify criteria for making that determination.
- Allow a presentence hearing for certain Tier II and III juvenile offenders who pled guilty or were found to be guilty to determine if they are eligible for exclusion from the registry. The court's decision would be appealable as a matter of right by either the prosecuting attorney or defendant. Except for what is known as the "rape shield," the rules of evidence would not apply. The victim would have to be given notice of the hearing and could, among other things, submit a written statement to the court.

Penalties

- Delete two misdemeanor offenses and a felony offense pertaining to violations of Section 5a of the act (reporting requirements) and replace them with a

SORA Legislative History
242a

RECEIVED by MSC 10/23/2018 3:20:45 PM

misdemeanor offense punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000, or both.

MCL 28.722 et al. (Senate Bill 188)

MCL 28.726 et al. (Senate Bill 189)

Senate Bill 206

The bill would amend the Code of Criminal Procedure (MCL 777.11b) to revise the sentencing guidelines so as to incorporate the change to the felony penalty for a violation of Section 5a of the act proposed by Senate Bill 189. The bill would delete the current reference to a third or subsequent offense and instead indicate a statutory maximum of two years for failing to update a sex offender registration.

HOUSE COMMITTEE ACTION:

The House Committee adopted a series of amendments to Senate Bill 188 that were primarily technical in nature; the more substantive amendments would do the following:

- Revise the definition of the term "custodial authority" to exclude as an offense requiring registration, incidents involving consensual relationships between a corrections officer or county sheriff's deputy with a person who was under the jurisdiction of the Department of Corrections or a county, respectively, if the officer did not use his or her position of authority to coerce the sexual conduct.
- Allow a presentence hearing for certain Tier II and III juvenile offenders tried as adults to determine if they are eligible for exclusion from the registry. The court's decision would be appealable as a matter of right by either the prosecuting attorney or defendant. Except for what is known as the "rape shield," the rules of evidence would not apply. The victim would have to be given notice of the hearing and could, among other things, submit a written statement to the court.

Amendments to Senate Bill 189 were largely technical in nature.

In addition, amendments were adopted to both Senate Bills 188 and 189 to apply the provisions to "pipeline" cases – meaning cases in which the offense was committed before the bills' effective date but for which the prosecution was still pending or had not yet been commenced by the bills' effective date. However, as worded, the amendments instead apply the bills' provisions only to pipeline cases and to offenses committed after the bills' effective date of July 1, 2011. (It is anticipated that this will be corrected.)

BACKGROUND INFORMATION:

Tier I Offense

A Tier I offense would mean one or more of the following:

- Knowingly possessing child sexually abusive activity or material.
- Indecent exposure with fondling of self, if victim is a minor.

SORA Legislative History
243a

RECEIVED by MSC 10/23/2018 3:20:45 PM

- o Unlawful imprisonment (restraining the person), if victim is a minor.
- o Criminal sexual conduct (CSC) IV (contact) or assault with intent to commit CSC II (contact) if victim is 18 years or older.
- o Surveillance of or distribution of recording, photograph, or visual image of individual with reasonable expectation of privacy if victim is a minor.
- o Any other violation of a state law or local ordinance, other than a Tier II or Tier III offense, that by its nature constitutes a sexual offense against a minor.
- o An offense committed by a person who was, at the time of the offense, a sexually delinquent person (defined in Section 10a of the penal code as any person whose sexual behavior is characterized by repetitive or compulsive acts which indicate a disregard of consequences or the recognized rights of others, or by the use of force upon another person in attempting sex relations, or by the commission of sexual aggressions against children under the age of 16.
- o An attempt or conspiracy to commit an offense described above.
- o An offense substantially similar to an offense described above under a law of the U.S., any other state or country, or under Tribal or military law.

Tier II Offender and Tier II Offenses

A Tier II offender would mean either a Tier I offender who is subsequently convicted of another Tier I offense or an individual convicted of a Tier II offense who is not a Tier III offender.

A Tier II offense would mean one or more of the following:

- o Accosting, enticing or soliciting a child less than 16 years of age for immoral purpose.
- o Persuading, inducing, enticing, coercing, causing, or knowingly allowing a child to engage in a child sexually abusive activity for the purpose of producing any child sexually abusive material, or distributing or financing the distribution of child sexually abusive material.
- o Using the Internet or a computer to commit child sexually abusive activity or CSC offenses.
- o Sodomy against a minor unless: (1) the victim consented, the victim was at least 13 years of age but less than 16 at the time of the violation, and the individual was not more than four years older than the victim; or, (2) the victim consented, the victim was 16 or 17 years of age at the time of the violation, and the victim was not under the custodial authority of the individual at the time of the violation.
- o Gross indecency between males, females, or males and females if victim was 13 years of age or older but less than 18 unless: (1) the victim consented, the victim was at least 13 years of age but less than 16 at the time of the violation, and the individual was not more than four years older than the victim; or, (2) the victim consented, the victim was 16 or 17 years of age at the time of the violation, and the victim was not under the custodial authority of the individual at the time of the violation.
- o Soliciting to commit prostitution if victim is a minor.
- o Pandering.

SORA Legislative History
244a

RECEIVED by MSC 10/23/2018 3:20:45 PM

- o CSC II, CSC IV, or assault with intent to commit CSC II unless the victim consented, the victim was at least 13 years of age but less than 16 at the time of the violation, and the individual was not more than four years older than the victim.
- o CSC II if the victim is 18 years of age or older.
- o An attempt or conspiracy to commit any of the above.
- o An offense substantially similar to an offense described above under a law of the U.S., any other state or country, or under Tribal or military law.

Tier III Offender and Tier III Offense

A Tier III offender would mean a Tier II offender subsequently convicted of a Tier I or Tier II offense or an individual convicted of a Tier III offense. A Tier III offense would mean one or more of the following:

- o Gross indecency with victim less than 13 years of age.
- o Kidnapping if victim a minor.
- o Taking or enticing child less than 14 years of age with intent to conceal child from parents.
- o CSC I, CSC III, or assault with intent to commit CSC with sexual penetration unless the victim consented, the victim was at least 13 years of age but less than 16 at the time of the violation, and the individual was not more than four years older than the victim.
- o CSC II or attempt to commit CSC II if victim less than 13 years of age.
- o An attempt or conspiracy to commit any of the above.
- o An offense substantially similar to an offense described above under a law of the U.S., any other state or country, or under Tribal or military law.

FISCAL INFORMATION:

Senate Bills 188 and 189 would have an indeterminate fiscal impact on state and local government and SB 206 would have no fiscal impact on state and local government.

Senate Bills 188 and 189 are required in order for the state to be in compliance with changes to the Federal Sex Offender Registration and Notification Act (SORNA). If these bills do not become law, the state may lose up to 10% in Federal Byrne Grant funds. These funds are primarily used for multijurisdictional drug enforcement teams made up of troopers and local law enforcement officers. Additionally, the State Police budget contains \$1.8 million in Byrne funds as an interdepartmental grant to the Judiciary for the drug treatment court program.

Under SB 188, the sex offender registration fee would increase from \$35 to \$50, where the State Police would receive an additional \$5 and local law enforcement agencies would receive an additional \$10. The \$5 increase for the State Police would be used for information systems upgrades and program enhancements to be in compliance with the federal laws. The \$10 received by local agencies would likely cover some administrative costs incurred by these agencies.

ARGUMENTS:**For:**

Critics of the Michigan Sex Offenders Registry have long maintained that the registry includes so many names of people that do not pose any danger of reoffending or pose any risk of predatory behaviors as to weaken the registry to the point of being useless. Under the SORNA amendments, some offenses that currently require registration will no longer be counted as a listed offense. In addition, many juvenile offenders will no longer have to register as sex offenders and many adults and juveniles who still have to register will no longer be on the public website. Only the most serious crimes, such as forcible rapes, will require lifetime registration and reporting.

To comply with SORNA, more stringent registration and reporting requirements must be adopted. In addition to palm prints, much more information will be collected when a person registers. Some of this information will be posted on the public website. The public website will also enable people to search by city or township rather than just by zip code. Registered offenders will be required to report in person whenever important changes occur, such as buying or selling a car (important since the commission of many sex crimes involve vehicles) or changing employment.

A House committee amendment would resolve an issue addressed in legislation in previous sessions that failed to be enacted. Specifically, the bills would exempt corrections officers and county law enforcement officials from registering as sex offenders when in dating relationships with parolees or probations when the relationship did not involve the abuse of custodial authority. These amendments address situations such as the sheriff's deputy who ended up on the registry because of having sex with his live-in girlfriend after she was arrested for a misdemeanor offense, and the corrections officer who was placed on the registry after having a consensual affair with a man she had first met when he was incarcerated and then later ran into after he was paroled.

The bills are not perfect and do not address or resolve all inequities in registering or reporting, but they represent a vast improvement over the current registry. The bills remove many persons who pose little risk of reoffending or who are not predators, provide better tracking of registered offenders through increased reporting requirements — all of which should improve the usefulness of the registry and increase public safety.

Against:

When consent is disputed in certain cases, despite a conviction, Senate Bill 188 would require a trial court to conduct a hearing before sentencing to determine whether the defendant meets exemption criteria. However, the bill puts the burden of proof on the defendant to prove the sex or sexual contact was consensual rather than on the prosecutor to prove force or coercion. According to defense attorneys, proving a "negative" (meaning no coercion) is nearly impossible. Instead, the bill should require the prosecutor to prove coercion if he or she believes the facts support such a contention.

The bills still require persons whose convictions were set aside or dismissed to register. This creates a situation where persons lawfully put "no prior convictions" on job applications only to be fired later or needlessly scrutinized when employers realize that they are on the public registry. Other states have exempted from the public registry offenses that have been expunged, set aside, or dismissed and Michigan should follow their example.

The elements of an offense for which juveniles would still have to register, even if adjudicated as a juvenile, would still leave many juveniles on the registry. This is unnecessary as the focus of juvenile court is rehabilitation, and juveniles are very receptive to rehabilitation as evidenced by a recidivism rate for juvenile sex offenders of just 5 percent. The legislation is much harsher than what SORNA requires and should be amended to fit the facts of juvenile sex offenses.

The bills require much more personal information to be included on the public website. Some offenders fear that the bills will therefore increase their risks for identity theft. It is hard enough for these people to obtain housing and employment with good credit; if jobs or housing are lost due to being targeted by information posted on the public registry, it could increase the risk that those individuals would reoffend as housing and employment are proven as playing a major role in reducing recidivism rates.

Response:

Unfortunately, the state is up against a federally-imposed deadline that is fast approaching. In addition, it is not clear at this time what types of variations can be adopted by a state and still be considered to be in "substantial compliance" with SORNA. It is better to enact the legislation in time to continue to receive the full Byrne Grant and then to tackle some of the issues raised by defense attorneys, court personnel, advocates, and those on the registry. Once the framework is approved by federal regulators, it may be easier to determine where the registry can be tweaked to address the concerns raised.

POSITIONS:

The Michigan State Police supports the bills. (3-17-11)

The Michigan Probate Judges Association testified in support of the bills. (3-17-11)

The Prosecuting Attorneys Association of Michigan indicated support for the bills. (3-17-11)

The 17th Judicial Circuit Court-Family Division indicated support for the bill if amendments were adopted to, among other things, not mandate registration for juveniles aged 14-17 for CSC crimes or gross indecency when the victim was younger than 13; eliminate gross indecency from the list of offenses for which juveniles must register; eliminate CSC 2nd and CSC 4th as offenses for which juveniles must register; eliminate the requirement that a juvenile be required to be placed back on the registry following a non-sexual offense adjudication or conviction; and allow Tier III juvenile offenders to petition sooner and more frequently than adults for removal from the registry.

SORA Legislative History
247a

The Michigan Coalition Against Domestic and Sexual Violence indicated a position of neutrality on the bills. (3-17-11)

The Coalition for a Useful Registry testified that it is neutral on the bills. (3-17-11)

The ACLU of Michigan indicated a position of neutrality on the bills. (3-17-11)

The Criminal Defense Attorneys of Michigan indicated opposition to the Senate-passed version of the bill. Amendments adopted in committee did not fully address their concerns. (3-17-11)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Jan Wisniewski

■ 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.

John Does #1-6 v. Richard Snyder, et al.

USDC-ED No: 2:16-cv-13137

Honorable Robert H. Cleland

Magistrate Judge David R. Grand

EXHIBIT E

Brief for the United States as Amicus Curiae

Snyder, et al. v. John Does #1-5, et al.

U.S. Supreme Court No. 16-768

No. 16-768

In the Supreme Court of the United States

RICHARD SNYDER, GOVERNOR OF
MICHIGAN, ET AL., PETITIONERS

v.

JOHN DOES, #1-5, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

JEFFREY B. WALL
*Acting Solicitor General
Counsel of Record*
KENNETH A. BLANCO
*Acting Assistant Attorney
General*
MICHAEL R. DREEBEN
Deputy Solicitor General
SARAH E. HARRINGTON
*Assistant to the Solicitor
General*
JAMES I. PEARCE
Attorney
*Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

QUESTION PRESENTED

Whether the retroactive application of the Michigan Sex Offenders Registration Act to respondents violates the Ex Post Facto Clause, U.S. Const. Art. I, § 9, Cl. 3.

TABLE OF CONTENTS

	Page
Statement	1
Discussion	9
Conclusion	21

TABLE OF AUTHORITIES

Cases:

<i>Hudson v. United States</i> , 522 U.S. 93 (1997).....	11
<i>Kansas v. Hendricks</i> , 521 U.S. 346 (1997).....	11
<i>Kennedy v. Mendoza-Martinez</i> , 372 U.S. 144 (1963).....	5, 6, 11, 12
<i>McKune v. Lile</i> , 536 U.S. 24 (2002)	1
<i>Reynolds v. United States</i> , 565 U.S. 432 (2012).....	2
<i>Shaw v. Patton</i> , 823 F.3d 556 (10th Cir. 2016)	16
<i>Smith v. Doe</i> , 538 U.S. 84 (2003).....	<i>passim</i>
<i>United States v. Kebodeaux</i> , 133 S. Ct. 2496 (2013).....	1
<i>Weaver v. Graham</i> , 450 U.S. 24 (1981).....	11

Constitution and statutes:

U.S. Const. Art. I, § 9, Cl. 3 (Ex Post Facto Clause)	5, 9
Department of Justice Appropriations Act, 1998, Pub. L. No. 105-119, Tit. I, § 115(a)(2)(F) and (6)(c), 111 Stat. 2463-2464 (42 U.S.C. 14071(b)(7), 14072(i) (Supp. III 1997))	2
Department of Justice Appropriations Act, 1999, Pub. L. No. 105-277, Div. A, § 101(b) [Tit. I, § 123(3)], 112 Stat. 2681-73 (42 U.S.C. 14072(i)(3) and (4) (Supp. IV 1998))	2

IV

Statutes—Continued:	Page
Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, § 170101, 108 Stat. 2038.....	1
Megan’s Law, Pub. L. No. 104-145, § 2, 110 Stat. 1345 (42 U.S.C. 14071(e) (Supp. II 1996))	2
Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197	3
Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, § 2, 110 Stat. 3093 (42 U.S.C. 14072 (Supp. II 1996)).....	2
Sex Offender Registration and Notification Act, Pub. L. No. 109-248, Tit. I, 120 Stat. 590 (42 U.S.C. 16901 <i>et seq.</i>)	2
42 U.S.C. 16911(2)-(4)	19
42 U.S.C. 16911(10)	2
42 U.S.C. 16912(a)	3
42 U.S.C. 16912(b)	3
42 U.S.C. 16913	3, 14
42 U.S.C. 16913(c)	14, 19
42 U.S.C. 16913(e)	3
42 U.S.C. 16914(a)	15
42 U.S.C. 16914(b)	3
42 U.S.C. 16915-16916.....	3, 14
42 U.S.C. 16915a(a)	15
42 U.S.C. 16916.....	14
42 U.S.C. 16918(a)	3, 14
42 U.S.C. 16925(a)	3, 20
42 U.S.C. 16925(c)	20
42 U.S.C. 16945.....	3

V

Statutes—Continued:	Page
Mich. Comp. Laws Ann. (West 2012):	
§ 28.722	4
§ 28.722(g)	4
§ 28.725	4, 19
§ 28.725(1)(e)-(g)	15
§ 28.728(2)(l)	4, 14
§ 28.733(f)	15
§ 28.734	15
§§ 28.734-28.735	4
Sex Offenders Registration Act:	
1994 Mich. Pub. Acts 1522-1527	3
1996 Mich. Pub. Acts 2283-2285	4
Miscellaneous:	
Center for Sex Offender Mgmt., <i>Fifty State Survey of Adult Sex Offender Registration Requirements</i> , http://www.csom.org/pubs/50%20state%20survey%20adult%20registries.pdf (last visited July 6, 2017)	15
Office of Justice Programs, Dep't of Justice, <i>Byrne JAG Grant Reductions under SORNA</i> , https://www.smart.gov/byrneJAG_grant_reductions.htm (last visited July 6, 2017)	20
<i>The National Guidelines for Sex Offender Registration and Notification</i> , 73 Fed. Reg. 38,030 (July 2, 2008)	3
p. 38,046	18
pp. 38,054-38,058	15
p. 38,059	14
p. 38,066	15

In the Supreme Court of the United States

No. 16-768

RICHARD SNYDER, GOVERNOR OF
MICHIGAN, ET AL., PETITIONERS

v.

JOHN DOES, #1-5, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's order inviting the Acting Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

STATEMENT

1. "Sex offenders are a serious threat in this Nation," *McKune v. Lile*, 536 U.S. 24, 32 (2002) (opinion of Kennedy, J.), and pose significant "public safety concerns," *United States v. Kebodeaux*, 133 S. Ct. 2496, 2503 (2013). Congress has enacted multiple laws to encourage and assist States in tracking where sex offenders live, work, and study, and in making that information available to the public. *Smith v. Doe*, 538 U.S. 84, 99 (2003).

a. In 1994, Congress enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Of-

fender Registration Act (Wetterling Act), Pub. L. No. 103-322, § 170101, 108 Stat. 2038. The Wetterling Act encouraged States, as a condition of receiving federal funds, to enact sex-offender-registration laws meeting certain minimum standards. See *Smith*, 538 U.S. at 89-90. By 1996, every State and the District of Columbia had enacted a sex-offender-registration law. *Id.* at 90. Congress then amended the federal scheme to create a national sex-offender registry, to require certain offenders to register, and to impose criminal penalties for failure to register.¹

In 2006, Congress enacted the Sex Offender Registration and Notification Act (SORNA), Pub. L. No. 109-248, Tit. I, 120 Stat. 590 (42 U.S.C. 16901 *et seq.*), to bring uniformity to the “patchwork” of existing federal and state sex-offender-registration laws, *Reynolds v. United States*, 565 U.S. 432, 435 (2012). SORNA establishes “comprehensive registration-system standards” and requires state and federal sex offenders “to register with relevant jurisdictions (and to keep registration information current).” *Ibid.* In particular, SORNA instructs each covered jurisdiction (including all 50 States, 42 U.S.C. 16911(10)) to “maintain a jurisdiction-wide sex offender registry” that includes certain offender-specific information and to

¹ See Megan’s Law, Pub. L. No. 104-145, § 2, 110 Stat. 1345 (42 U.S.C. 14071(e) (Supp. II 1996)); Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, § 2, 110 Stat. 3093 (42 U.S.C. 14072 (Supp. II 1996)); Department of Justice Appropriations Act, 1998, Pub. L. No. 105-119, Tit. I, § 115(a)(2)(F) and (6)(C), 111 Stat. 2463-2464 (42 U.S.C. 14071(b)(7), 14072(i) (Supp. III 1997)); Department of Justice Appropriations Act, 1999, Pub. L. No. 105-277, Div. A, § 101(b) [Tit. I, § 123(3)], 112 Stat. 2681-73 (42 U.S.C. 14072(i)(3) and (4) (Supp. IV 1998)).

make registration information available on the internet. 42 U.S.C. 16912(a), 16914(b), 16918(a). SORNA then requires sex offenders to register and to keep their registrations current in jurisdictions where they live, work, and study. 42 U.S.C. 16913. The length of time an offender must remain registered and the frequency with which the offender must appear and verify registry information depends on the offender's "tier," which is based on the nature and severity of the offender's offenses. 42 U.S.C. 16915-16916. SORNA requires covered jurisdictions to criminally penalize the failure to register. 42 U.S.C. 16913(e).

Congress directed the Attorney General to "issue guidelines and regulations to interpret and implement" SORNA's provisions. 42 U.S.C. 16912(b). In 2008, the Attorney General promulgated final guidelines to assist covered jurisdictions in complying with SORNA's requirements. See *The National Guidelines for Sex Offender Registration and Notification*, 73 Fed. Reg. 38,030 (July 2, 2008) (*Guidelines*).

A SORNA jurisdiction that fails to "substantially implement" SORNA's requirements risks losing ten percent of the funds otherwise available under the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197. See 42 U.S.C. 16925(a). Congress established the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), which is under the jurisdiction of the Attorney General, to "administer the standards" that SORNA established and to provide technical assistance to covered jurisdictions. See 42 U.S.C. 16945.

b. In 1994, Michigan enacted the Sex Offenders Registration Act (SORA), 1994 Mich. Pub. Acts 1522-

1527. SORA created a non-public registry maintained solely for law-enforcement use. Pet. App. 10a. SORA was amended in 1996 to require law-enforcement agencies to make certain offender information available to the public, 1996 Mich. Pub. Acts 2283-2285; in 1999 to require sex offenders to register in person at regular intervals, Pet. App. 10a; and in 2006 to establish school-safety zones by prohibiting sex offenders from living, working, or loitering within 1000 feet of a school, see *id.* at 10a-11a. A first violation of those provisions is a misdemeanor and a second violation is a felony punishable by up to two years in prison. See Mich. Comp. Laws Ann. §§ 28.734-28.735 (West 2012).

In 2011 (after SORNA was enacted), Michigan amended SORA in four important ways. First, offenders are classified into three tiers based on the nature and severity of their registration offenses and any prior sex-offense convictions. Mich. Comp. Laws Ann. § 28.722 (West 2012). Second, offenders must report in person any change in name, residence, employment, student status, vehicle use or ownership, temporary residence lasting more than seven days, e-mail address, instant message address, or “any other designations used in internet communications or postings” within three business days of the change. *Id.* § 28.725; see *id.* § 28.722(g). Third, certain information about a sex offender, including the offender’s tier classification, is posted on the internet. *Id.* § 28.728(2)(l). Fourth, the most serious (tier-III) sex offenders are subject to a lifetime-registration requirement. *Id.* § 28.725.

2. Respondents are six individuals who qualify as tier-III sex offenders under SORA and therefore must register for life. Pet. App. 144a-146a. They filed this

action to challenge SORA on numerous constitutional grounds. As relevant here, they contend that retroactive application of SORA's 2006 and 2011 amendments violates the Ex Post Facto Clause, U.S. Const. Art. I, § 9, Cl. 3. Pet. App. 142a.

The United States District Court for the Eastern District of Michigan dismissed respondents' ex post facto claims. Pet. App. 148a-158a. The court analyzed those claims using the two-part test set out in *Smith v. Doe, supra*, where this Court rejected an ex post facto challenge to Alaska's sex-offender-registration system, 538 U.S. at 92. Pet. App. 148a-158a. Under that two-part test, a court asks first whether the legislature meant the statute to punish or to establish a civil, non-punitive scheme. *Smith*, 538 U.S. at 92. If the legislature intended punishment, "that ends the inquiry." *Ibid.* If the legislature intended a civil scheme, the court then assesses, using factors identified in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963), whether the scheme is "so punitive either in purpose or effect" that it should be deemed punishment despite the State's intention. *Smith*, 538 U.S. at 92.

In this case, the district court first concluded that the Michigan legislature had no punitive intent in enacting SORA. Pet. App. 149a-151a. After examining SORA's text, structure, and "manner of codification," the court concluded that SORA is "a civil statute." *Id.* at 151a.

The district court then assessed whether the effects of SORA are "so punitive as to qualify as ex post facto punishment." Pet. App. 149a (citing *Smith*, 538 U.S. at 92). The court applied the seven *Kennedy* factors: (1) whether the sanction imposed by SORA

“involves an affirmative disability or restraint”; (2) “whether the statute imposes sanctions that have historically been considered punishment”; (3) “whether application of the statute requires a finding of scienter”; (4) “whether SORA serves any traditional aims of punishment” such as retribution and deterrence; (5) “whether the statute applies to behavior that is already a crime”; (6) “whether the statute is rationally connected to a nonpunitive purpose”; and (7) whether SORA “is excessive in relation to its nonpunitive interests.” Pet. App. 151a-158a; see *Kennedy*, 372 U.S. at 168-169. The court concluded that, although the third and fifth factors weigh in favor of respondents, neither had significant weight, and the other five factors establish “that SORA, as amended in 2011, is a regulatory, not criminal statute.” *Id.* at 155a-156a, 158a.

In particular, the district court rejected respondents’ arguments that SORA’s in-person reporting requirements and school-safety zones impose a disability or restraint, explaining that SORA does not impose “any physical restraint” and that respondents are not precluded from changing jobs, moving, or traveling. Pet. App. 152a-153a. The court also noted that any disability or restraint resulting from the school-safety zones is “minor and indirect” because SORA exempts persons who were already living within those zones when they were created. *Ibid.* The court concluded that SORA does not resemble historical punishments such as banishment and shaming because it does not “expel offenders from the community in any real sense.” *Id.* at 154a-155a. The court also determined that SORA’s use of “broad, offense-based categories” (rather than individualized assess-

ments) for classifying offenders is not retributive, *id.* at 155a, and that any incidental deterrent effects are insufficient to establish a punitive purpose, *id.* at 156a. Finally, the court concluded that SORA's non-punitive "public safety and community notification" purpose is "clear and obvious," *ibid.*, and that the lifetime reporting requirements reasonably further that non-punitive purpose, *id.* at 157a.

3. The court of appeals reversed. Pet. App. 10a-28a. It agreed with the district court that the legislature's intent in enacting SORA was non-punitive, *id.* at 17a, but concluded that the aggregate effect of SORA's provisions is so punitive that it qualifies as *ex post facto* punishment, *id.* at 18a-26a.

Focusing on five of the seven factors identified in *Kennedy*, the court of appeals first concluded that SORA resembles several traditional forms of punishment. Pet. App. 18a-21a. The court acknowledged that SORA does not formally banish offenders, but stated that the school-safety zones are "very burdensome" for offenders who are trying to find a place to live or work. *Id.* at 18a-20a. The court also characterized SORA as imposing a shaming penalty because it "ascribes and publishes tier classifications corresponding to the state's estimation of present dangerousness" without "any individualized assessment" and because in some cases it "discloses otherwise non-public information" such as sealed juvenile records. *Id.* at 20a. The court also analogized SORA's requirements to parole or probation because they restrict where offenders can live and work and require in-person reporting. *Id.* at 21a.

Second, the court determined that SORA imposes "direct restraints on personal conduct." Pet. App.

22a. In reaching that conclusion, the court relied most heavily on SORA's "regulation of where registrants may live, work, and 'loiter,'" *id.* at 21a, and the in-person reporting requirements, *id.* at 22a.

Third, the court held that, although SORA promotes some traditional aims of punishment (such as incapacitation, retribution, and deterrence), "many of th[o]se goals can also rightly be described as civil and regulatory." Pet. App. 23a. The court therefore accorded "little weight" to that factor. *Ibid.*

Fourth, the court concluded that what it considered the most significant factor—whether SORA bears a rational connection to a non-punitive purpose—favors respondents. Pet. App. 23a. The court acknowledged that recidivism rates of sex offenders are "frightening and high" and that the information-sharing and school-zone provisions in SORA are designed to "prevent[] some of the most disturbing and destructive criminal activity" and "keep sex offenders away from the most vulnerable." *Id.* at 24a. But the court found only "scant support" in the record to support "the proposition that SORA in fact accomplishes its professed goals." *Ibid.* The court found evidence supporting the view that "offense-based public registration has, at best, no impact on recidivism" and found nothing in the record to "suggest[] that the residential restrictions have any beneficial effect on recidivism rates." *Id.* at 24a-25a.

Finally, the court determined that SORA's punitive effects "far exceed even a generous assessment of their salutary effects." Pet. App. 25a. The court again emphasized the school-safety zones and the "frequent, in-person appearances." *Ibid.*

Taking all of the factors together, the court of appeals ultimately concluded that SORA, unlike the Alaska sex-offender-registration system at issue in *Smith*, has a punitive effect. Pet. App. 26a-28a. The court relied primarily on the cumulative effect of three features of SORA—(1) the school-safety zones, which “severely restrict[] where people can live, work, and ‘loiter’”; (2) the tier-classification and disclosure system that purports to assess dangerousness but is not based on an individualized assessment; and (3) the “time-consuming and cumbersome in-person reporting” requirements—combined with what the court viewed as the “scant evidence” that those restrictions are “keeping Michigan communities safe.” *Id.* at 26a. The court therefore held that retroactive application of the 2006 and 2011 SORA amendments to respondents violates the Ex Post Facto Clause. *Id.* at 27a.

DISCUSSION

Michigan’s sex-offender-registration scheme contains a variety of features that go beyond the baseline requirements set forth in federal law and differ from those of most other States. After applying the multi-factor framework set out in *Smith v. Doe*, 538 U.S. 84 (2003), the court of appeals concluded that the cumulative effect of SORA’s challenged provisions is punitive for ex post facto purposes. While lower courts have reached different conclusions in analyzing particular features of various state sex-offender-registration schemes, the court of appeals’ analysis of the distinctive features of Michigan’s law does not conflict with any of those decisions, nor does it conflict with this Court’s holding in *Smith*. Every court of appeals that has considered an ex post facto challenge to a sex-offender-registry statutory scheme has applied the

same *Smith* framework to determine whether the aggregate effects of the challenged aspects of that scheme are punitive. And although most state sex-offender-registry schemes share similar features, they vary widely in their form and combination of those features. Accordingly, to the extent the courts of appeals have reached different outcomes in state sex-offender-registry cases, those outcomes reflect differences in the statutory schemes rather than any divergence in the legal framework. Finally, petitioners' concern (Pet. 26-29) that the court of appeals' decision will prevent the State from receiving some federal funding does not warrant review. That concern is premature, as it may well be the case that Michigan can continue to receive federal funds notwithstanding this decision. And the decision does not prevent the State from implementing a sex-offender-registration scheme that is consistent with federal law. Further review is therefore not warranted.

1. The court of appeals applied the correct legal framework to assess respondents' challenge to SORA. The court recognized that this Court has a "well established" ex post facto framework, which the Court used to evaluate the Alaska sex-offender-registration scheme at issue in *Smith*. Pet. App. 15a-17a. Under that framework, a court must first determine whether a legislature intended a statutory scheme with retroactive application to be punitive, or instead intended the statute to function as "a regulatory scheme that is civil and nonpunitive." *Smith*, 538 U.S. at 92; see Pet. App. 16a. If the legislature intended the scheme to be non-punitive, a court must then assess "whether the statutory scheme is 'so punitive either in purpose or effect as to negate [the State's] intention to deem it

civil.’” *Smith*, 538 U.S. at 92 (brackets in original; internal quotation marks omitted) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997)).

The court of appeals applied the *Smith* framework in this case. The court first determined that the Michigan legislature did not intend SORA to be punitive. Pet. App. 16a-17a. The court then “consider[ed] whether SORA’s actual effects are punitive.” *Id.* at 17a. The court of appeals correctly focused on the cumulative effects of the challenged aspects of SORA to decide if it is punitive, just as this Court had done in *Smith*. *Id.* at 17a-25a; see *Smith*, 538 U.S. at 97-106.² Also consistent with *Smith*, the court of appeals recognized the importance of respecting state policy judgments; the court acknowledged that “states are free to pass retroactive sex-offender registry laws” and that persons “challenging an ostensibly non-

² Relying on *Hudson v. United States*, 522 U.S. 93, 103-105 (1997), and *Weaver v. Graham*, 450 U.S. 24, 36 n.22 (1981), petitioners contend (Pet. Reply Br. 2-3) that lower courts should separately evaluate each individual component of a statutory scheme to determine whether each component is punitive. Petitioners are incorrect. In *Hudson*, the Court concluded that neither of the challenged statutory requirements indicated that the scheme had a punitive effect under *any* of the relevant factors identified in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169 (1963). *Hudson*, 522 U.S. at 103-105. The *Hudson* Court therefore had no need to consider the cumulative effect of such factors. In *Weaver*, when the Court analyzed changes to a state law governing the accrual of prison good-time credits, it expressly considered the aspects of the new law that reduced the availability of good-time credits *in conjunction with* other aspects of the law that expanded opportunities to obtain a reduction in sentence through means other than good behavior. 450 U.S. at 26-28, 34-36. Thus, the *Weaver* Court considered the cumulative effects of the new statutory scheme, just as the court of appeals did here.

punitive civil law” will have a “difficult” time “show[ing] by the ‘clearest proof’ that the statute in fact inflicts punishment.” Pet. App. 26a (quoting *Smith*, 538 U.S. at 105).

To assess whether SORA’s effects are punitive, the court used the “guideposts” that this Court set out in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169 (1963), and applied in *Smith*, 538 U.S. at 97. The court identified which of the seven factors were relevant to determining whether the challenged aspects of SORA are punitive, Pet. App. 17a-18a, and then applied them to this case, *id.* at 18a-27a. The court of appeals examined whether the challenged aspects of SORA resemble traditional punishment, impose affirmative disabilities or restraints, promote traditional aims of punishment, have a rational connection to a non-punitive purpose, or are excessive with respect to that purpose. *Id.* at 18a-26a; see *Smith*, 538 U.S. at 97. The court’s assessment of those factors turned on record-specific evidence of the actual and aggregate effects of the challenged aspects of SORA. See, e.g., Pet. App. 19a (citing map of Grand Rapids, Michigan, to illustrate effect of school-safety zones); *id.* at 24a (noting record evidence supporting respondents’ contentions that “offense-based public registration” does not reduce recidivism).

The court of appeals thus applied the correct legal standard to assess respondents’ ex post facto challenges. The court’s application of that correct legal standard does not warrant this Court’s review. Although the court’s decision does limit the reach of certain provisions that Michigan deemed appropriate to address the serious problem of sex-offender recidivism, its holding does not prevent the State from

implementing a scheme that is consistent with baseline federal standards or call into question other States' laws. In particular, because the court of appeals' holding is limited to "[t]he retroactive application of SORA's 2006 and 2011 amendments," Pet. App. 27a, Michigan remains free to enforce the pre-2006 version of SORA retroactively and to enforce the current version of SORA prospectively. Michigan may also be able to reenact in modified form a subset of the requirements in the 2006 and 2011 amendments. The court of appeals did not categorically bar the retroactive enforcement of exclusion zones or in-person registration requirements. Because the *Smith* analysis focuses on the cumulative effect of the statutory scheme, Michigan may be able to retroactively enforce amended versions of those requirements that are less onerous or far-reaching. Under those circumstances, the novel application of settled ex post facto standards to a single State's law does not warrant further review.

2. Petitioners err in contending (Pet. 16-24) that this Court's review is necessary to resolve conflicts between the court of appeals' decision and decisions of other courts of appeals and state courts of last resort. Petitioners are correct that courts have reached different conclusions about whether particular aspects of different sex-offender-registration laws have a punitive effect. But none of those decisions conflicts with the court of appeals' decision in this case about whether the cumulative effects of Michigan's SORA are punitive.

Petitioners are correct (Pet. Reply Br. 8) that "a handful of elements of modern" sex-offender-registration laws "span numerous jurisdictions." That

is due at least in part to the influence of SORNA and accompanying federal *Guidelines*, which establish a floor of requirements to qualify for federal funding. Those standards include that sex offenders maintain a current registration in jurisdictions where they live, work, and study and that they periodically appear in person to update their registration. 42 U.S.C. 16913, 16915-16916. SORNA also directs complying jurisdictions to make publicly available certain information about registered sex offenders. 42 U.S.C. 16918(a).

But as petitioners acknowledge (Pet. Reply Br. 8-9), those common elements can and do vary in form and character from jurisdiction to jurisdiction—because SORNA does not establish a federal ceiling for the form and character of those elements. For example, although SORNA (through the implementing *Guidelines*) requires a jurisdiction to make public the sex offense for which an offender is registered, 73 Fed. Reg. at 38,059, it does not require a State to make public the tier classification assigned to a registrant, as Michigan has chosen to do, Mich. Comp. Laws Ann. § 28.728(2)(l) (West 2012). Similarly, SORA goes beyond SORNA's in-person reporting requirements. SORNA directs jurisdictions to require periodic in-person appearances to verify registration information and take a photograph, and SORNA specifies that such in-person appearances must occur at least annually for the lowest-tier offenders and at least quarterly for the highest-tier offenders. 42 U.S.C. 16916. SORNA also requires that a sex offender appear in person to update a registration within three business days after any change of name, residence, employment, or student status. 42 U.S.C. 16913(c). In contrast to Michigan's SORA, however, SORNA does not require a regis-

trant to appear in person to update a registration after changes in, *inter alia*, motor vehicle information and internet identifiers. Compare Mich. Comp. Laws Ann. § 28.725(1)(e)-(g) (West 2012) with 42 U.S.C. 16914(a), 16915a(a); *Guidelines*, 73 Fed. Reg. at 38,054-38,058, 38,066. And SORNA does not require a jurisdiction to create any exclusion or school-safety zones, as Michigan has chosen to do. Mich. Comp. Laws Ann. § 28.734 (West 2012); see *id.* § 28.733(f). The sex-offender-registration laws of other jurisdictions similarly vary in their manner of implementing SORNA's core features and in their adoption of additional features not required by SORNA. See, e.g., Center for Sex Offender Mgmt., *Fifty State Survey of Adult Sex Offender Registration Requirements*, <http://www.csom.org/pubs/50%20state%20survey%20adult%20registries.pdf> (last visited July 6, 2017).

In light of the variation among jurisdictions' sex-offender-registration laws, courts may reach different ex post facto results without creating conflicts over legal principles. That is true even when the two laws share common features when described at a relatively high level of generality. The details matter. The State's discussion of assertedly conflicting cases bears out that conclusion. Although noting disparate results, petitioners do not clearly identify any decisions that reach opposite conclusions about statutory provisions that are materially identical to each other or that are accompanied by other materially identical requirements.

For example, petitioners contend (Pet. 17-19) that a Tenth Circuit decision upholding as non-punitive a requirement that *transient* sex offenders make weekly in-person verification visits conflicts with the decision

below holding that Michigan's requirement that *every* sex offender appear in person within three business days to report any change in certain information, including vehicle use and internet identifiers. Compare *Shaw v. Patton*, 823 F.3d 556, 564-566 (2016), with Pet. App. 26a. Because those statutory provisions differ in significant ways, judicial decisions reaching different conclusions about their punitive effect do not conflict. The practical concerns about monitoring and verifying the identity of transient individuals are obviously quite different from such concerns with respect to individuals with a stable address. Petitioners similarly elide (Pet. 19-21) material differences among statutory provisions establishing school-safety zones, suggesting that Michigan's ban on living, working, or loitering within 1000 feet of a school has the same effect as state laws that ban only living within a similar distance from a school.

To the extent any tension exists among appellate courts about whether certain common features (described at a relatively high level of generality) of sex-offender-registration laws are punitive, this case would not be a suitable vehicle for resolving any such feature-by-feature tension because the court of appeals' decision here is directed at the *aggregate* effect of the challenged aspects of Michigan's law. See Pet. App. 26a (finding SORA punitive based on the school-safety zones, the public classification of offenders without an individualized risk assessment, and the "time-consuming and cumbersome in-person reporting" requirement). Petitioners do not identify any decision that upholds a statutory scheme that includes features comparable to those the court of appeals found in the aggregate to be objectionable here. Be-

cause the lower courts already apply the correct legal standard to the unique set of circumstances presented by each challenged law, further review in this case is not necessary to provide additional guidance to lower courts considering ex post facto challenges to sex-offender-registration laws.

3. Petitioners' contention (Pet. 24-26) that the court of appeals' decision conflicts with this Court's decision in *Smith* lacks merit. Petitioners do not dispute that the court of appeals applied the framework set out in *Smith*. Rather, petitioners argue that the decision below conflicts with *Smith* because *Smith* upheld a state registration law that included some (but not all) of the same features (though in different form) that are included in Michigan's law. No conflict exists between the decision in *Smith*, which considered the aggregate effects of a law containing a different combination of features, and the decision below. The court of appeals acknowledged some overlap between the two statutory schemes, but explained that it found Michigan's law to be "altogether different from and more troubling than Alaska's first-generation registry law." Pet. App. 26a. Unlike SORA, Alaska's law did not establish school-safety zones, did not publish a sex offender's tier classification, and did not require in-person appearances to update information such as temporary residence and e-mail address. See *Smith*, 538 U.S. at 90-91.

4. Finally, petitioners' contention (Pet. 26-29) that the court of appeals' decision jeopardizes Michigan's eligibility for certain federal funding by rendering the State out of compliance with SORNA is speculative and premature and may well be incorrect.

The court of appeals explained that SORA is punitive because of the cumulative effect of three statutory features: the school-safety zones in which a sex offender is not permitted to live, work, or loiter; the requirement that an offender be categorized into a tier based on his underlying offense without an individualized assessment and that his assigned tier be made public; and the requirement that sex offenders appear in person “to report even minor changes to their information.” Pet. App. 26a; see *id.* at 18a-26a.³ The court thus held that those features of SORA—*i.e.*, “SORA’s 2006 and 2011 amendments”—may not be applied retroactively. *Id.* at 27a; see *id.* at 11a (describing amendments). Because SORNA does not require States to enact statutory provisions paralleling those the court of appeals identified as problematic, it is doubtful that complying with the court of appeals’ decision will imperil Michigan’s eligibility for SORNA-related funds—particularly if the legislature amends the relevant provisions of SORA to address the court of appeals’ concerns while satisfying the floor imposed by SORNA. See *Guidelines*, 73 Fed. Reg. at 38,046 (explaining that SORNA creates “a floor, not a ceiling”).

In particular, SORNA does not require jurisdictions to adopt residential restrictions or school-safety zones at all. Michigan’s inability to retroactively en-

³ The court of appeals also noted that certain SORA provisions, including the in-person reporting requirements, apply to tier-III offenders for life. Pet. App. 22a. But the court’s ultimate conclusion that the cumulative effects of SORA are punitive did not depend on that aspect of SORA. *Id.* at 26a (noting that the cumulative effects of aspects of SORA are punitive when they apply for “years” or for “a lifetime”).

force those provisions of SORA will therefore have no effect on the State's substantial compliance with SORNA. Although SORNA does require jurisdictions to subject offenders to different requirements based on each offender's offense tier (as defined under SORNA), 42 U.S.C. 16911(2)-(4), it does not require jurisdictions to make an offender's tier classification public—an aspect of SORA that the court of appeals found to “resemble traditional shaming punishments.” Pet. App. 20a. Finally, although SORNA does mandate that jurisdictions require in-person appearances within three business days of a change to a registrant's name, residence, employment, or student status, 42 U.S.C. 16913(e), SORNA does not mandate that Michigan impose that requirement with respect to what the court of appeals viewed (Pet. App. 26a) as “even minor changes to their information,” *i.e.*, changes to a registrant's vehicle use or ownership, temporary residence for more than seven days, e-mail address, instant message address, or “any other designations used in internet communications or postings,” Mich. Comp. Laws Ann. § 28.725 (West 2012).

Petitioners assert (Pet. 27) that the State cannot substantially comply with SORNA if the court of appeals' decision stands. But the State's inability to enforce retroactively the school-safety zones, the publication of offenders' tier classification, and the in-person reporting requirement for changes to vehicle ownership, temporary residence, e-mail address, and other online designations would have no effect on its SORNA compliance. And those changes alone may be sufficient to eliminate the court of appeals' concerns about the *ex post facto* application of SORA. And even if the State chooses not to reinstate (through new

legislation) the retroactive application of the few relevant features in SORA that are required by SORNA, the State would not necessarily lose any federal justice-assistance funding. Under 42 U.S.C. 16925(a), the Attorney General has discretion to determine that a jurisdiction has “substantially implement[ed]” the requirements of SORNA notwithstanding some degree of deviation from SORNA’s requirements. In light of that discretion, the Attorney General’s decision whether to reduce funding for Michigan would ultimately turn on any modifications the State might make to SORA as well as the nature and rationale behind any deviations from SORNA. Whether the State might lose some portion of its federal funds therefore depends at least in part on decisions within the State’s control.

Even if the Attorney General determines that the court of appeals’ decision prevents the State from substantially implementing SORNA at least until amending legislation is enacted, SORNA gives the State the option of applying for reallocation of any funds lost due to lack of substantial implementation if those funds will be used for the purpose of implementing SORNA. See 42 U.S.C. 16925(c). The SMART office within the Department of Justice has provided guidance to SORNA jurisdictions about how to request such reallocation. See Office of Justice Programs, Dep’t of Justice, *Byrne JAG Grant Reductions under SORNA*, https://www.smart.gov/byrneJAG_grant_reductions.htm (last visited July 6, 2017). Petitioners’ claimed practical effects of the decision below therefore are speculative and may never occur. Accordingly, review is not warranted on that basis.

21

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

JEFFREY B. WALL
Acting Solicitor General
KENNETH A. BLANCO
*Acting Assistant Attorney
General*
MICHAEL R. DREEBEN
Deputy Solicitor General
SARAH E. HARRINGTON
*Assistant to the Solicitor
General*
JAMES I. PEARCE
Attorney

JULY 2017

John Does #1-6 v. Richard Snyder, et al.

USDC-ED No: 2:16-cv-13137

Honorable Robert H. Cleland

Magistrate Judge David R. Grand

EXHIBIT F

Redlined Sex Offenders Registration Act 295 of 1994

SEX OFFENDERS REGISTRATION ACT
Act 295 of 1994

AN ACT to require persons convicted of certain offenses to register; to prohibit certain individuals from engaging in certain activities within a student safety zone; to prescribe the powers and duties of certain departments and agencies in connection with that registration; and to prescribe fees, penalties, and sanctions.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 2004, Act 237, Eff. Oct. 16, 2004;—Am. 2005, Act 121, Eff. Jan. 1, 2006;—Am. 2005, Act 127, Eff. Jan. 1, 2006.

The People of the State of Michigan enact:

I
GENERAL

28.721 Short title.

Sec. 1. This act shall be known and may be cited as the “sex offenders registration act”.

History: 1994, Act 295, Eff. Oct. 1, 1995.

28.721a Legislative declarations; determination; intent.

Sec. 1a. The legislature declares that the sex offenders registration act was enacted pursuant to the legislature's exercise of the police power of the state with the intent to better assist law enforcement officers and the people of this state in preventing and protecting against the commission of future criminal sexual acts by convicted sex offenders. The legislature has determined that a person who has been convicted of committing an offense covered by this act poses a potential serious menace and danger to the health, safety, morals, and welfare of the people, and particularly the children, of this state. The registration requirements of this act are intended to provide law enforcement and the people of this state with an appropriate, comprehensive, and effective means to monitor those persons who pose such a potential danger.

History: Add. 2002, Act 542, Eff. Oct. 1, 2002.

28.722 Definitions.

Sec. 2. As used in this act:

(a) "Aircraft" means that term as defined in section 2 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.2.

(b) "Convicted" means 1 of the following:

(i) Having a judgment of conviction or a probation order entered in any court having jurisdiction over criminal offenses, including, but not limited to, a tribal court or a military court, and including a conviction subsequently set aside under 1965 PA 213, MCL 780.621 to 780.624.

(ii) Either of the following:

(A) Being assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, before October 1, 2004. This sub-subparagraph does not apply if a petition was granted under section 8c at any time allowing the individual to discontinue registration under this act, including a reduced registration period that extends to or past July 1, 2011, regardless of the tier designation that would apply on and after that date.

(B) Being assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, before October 1, 2004 if the individual is convicted of any other felony on or after July 1, 2011.

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

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

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

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

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

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

(c) "Custodial authority" means 1 or more of the following apply:

(i) The actor was a member of the same household as the victim.
 (ii) The actor was related to the victim by blood or affinity to the fourth degree.
 (iii) The actor was in a position of authority over the victim and used this authority to coerce the victim to submit.

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

(v) The actor was an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person was enrolled, or was a volunteer who was not a student in any public school or nonpublic school, or was an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor used his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(vi) That other person was under the jurisdiction of the department of corrections and the actor was an employee or a contractual employee of, or a volunteer with, the department of corrections who knew that the other person was under the jurisdiction of the department of corrections and used his or her position of authority over the victim to gain access to or to coerce or otherwise encourage the victim to engage in sexual contact.

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

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

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

(d) "Department" means the department of state police.

(e) "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 is financially compensated.

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

(g) "Immediately" means within 3 business days.

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

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

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

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

(i) "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.

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

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

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

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

(n) "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.

(o) "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.

(p) "Residence", as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her 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 time. This section shall not be construed to affect existing judicial interpretation of the term residence for purposes other than the purposes of this act.

(q) "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.

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

(s) "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 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).

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

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

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

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

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

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

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

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

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

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

(A) All of the following:

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

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

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

(B) All of the following:

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

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

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

(vi) 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 13 years of age or older but less than 18 years of age. This subparagraph does not apply if the court determines that either of the following applies:

(A) All of the following:

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

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

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

(B) All of the following:

- (I) The victim consented to the conduct constituting the violation.
- (II) The victim was 16 or 17 years of age at the time of the violation.
- (III) The victim was not under the custodial authority of the individual at the time of the violation.
- (vii) A violation of section 462e(a) of the Michigan penal 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, under a law of any state or any country, or under tribal or military law.
- (v) "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.
- (w) "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.
 - (iv) A violation of section 520b, 520d, or 520g(1) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520d, and 750.520g. This subparagraph does not apply if the court determines that the victim consented to the conduct constituting the violation, that the victim was at least 13 years of age but less than 16 years of age at the time of the offense, and that the individual is not more than 4 years older than the victim.
 - (v) A violation of section 520c or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520c and 750.520g, committed against an individual less than 13 years of age.
 - (vi) A violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e, committed by an individual 17 years of age or older against an individual less than 13 years of age.
 - (vii) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (vi).
 - (viii) An offense substantially similar to an offense described in subparagraphs (i) to (vii) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.
 - (x) "Vehicle" means that term as defined in section 79 of the Michigan vehicle code, 1949 PA 300, MCL 257.79.
 - (y) "Vessel" means that term as defined in section 44501 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.44501.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2005, Act 301, Eff. Feb. 1, 2006;—Am. 2011, Act 17, Eff. July 1, 2011;—Am. 2014, Act 328, Eff. Jan. 14, 2015.

II

SEX OFFENDER REGISTRATION

28.723 Individuals required to be registered.

Sec. 3. (1) Subject to subsection (2), the following individuals who are domiciled or temporarily reside in this state or who work with or without compensation or are students in this state are required to be registered under this act:

- (a) An individual who is convicted of a listed offense after October 1, 1995.
- (b) An individual convicted of a listed offense on or before October 1, 1995 if on October 1, 1995 he or she is on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, or under the jurisdiction of the juvenile division of the probate court or the department of human services for that offense or is placed on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, placed under the jurisdiction of the juvenile division of the probate court or family division of circuit court, or committed to the department of human services after October 1, 1995 for that

offense.

(c) An individual convicted on or before October 1, 1995 of an offense described in section 2(d)(vi) as added by 1994 PA 295 if on October 1, 1995 he or she is on probation or parole that has been transferred to this state for that offense or his or her probation or parole is transferred to this state after October 1, 1995 for that offense.

(d) An individual from another state who is required to register or otherwise be identified as a sex or child offender or predator under a comparable statute of that state.

(e) An individual who was previously convicted of a listed offense for which he or she was not required to register under this act, but who is convicted of any other felony on or after July 1, 2011.

(2) An individual convicted of an offense added on September 1, 1999 to the definition of listed offense is not required to be registered solely because of that listed offense unless 1 of the following applies:

(a) The individual is convicted of that listed offense on or after September 1, 1999.

(b) On September 1, 1999, the individual is on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, under the jurisdiction of the family division of circuit court, or committed to the department of human services for that offense or the individual is placed on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, placed under the jurisdiction of the family division of circuit court, or committed to the department of human services on or after September 1, 1999 for that offense.

(c) On September 1, 1999, the individual is on probation or parole for that offense which has been transferred to this state or the individual's probation or parole for that offense is transferred to this state after September 1, 1999.

(d) On September 1, 1999, in another state or country the individual is on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections or a similar type of state agency, under the jurisdiction of a court that handles matters similar to those handled by the family division of circuit court in this state, or committed to an agency with the same authority as the department of human services for that offense.

(3) A nonresident who is convicted in this state on or after July 1, 2011 of committing a listed offense who is not otherwise described in subsection (1) shall nevertheless register under this act. However, the continued reporting requirements of this act do not apply to the individual while he or she remains a nonresident and is not otherwise required to report under this act. The individual shall have his or her photograph taken under section 5a.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1995, Act 10, Eff. Oct. 1, 1995;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2011, Act 17, Eff. July 1, 2011.

28.723a Hearing to determine if individual exempt from registration.

Sec. 3a. (1) If an individual pleads guilty to or is found guilty of a listed offense or is adjudicated as a juvenile as being responsible for a listed offense but alleges that he or she is not required to register under this act because section 2(u)(v) or (vi) applies or section 2(w)(iv) applies, and the prosecuting attorney disputes that allegation, the court shall conduct a hearing on the matter before sentencing or disposition to determine whether the individual is required to register under this act.

(2) The individual has the burden of proving by a preponderance of the evidence in a hearing under this section that his or her conduct falls within the exceptions described in subsection (1) and that he or she is therefore not required to register under this act.

(3) The rules of evidence, except for those pertaining to privileges and protections set forth in section 520j of the Michigan penal code, 1931 PA 328, MCL 750.520j, do not apply to a hearing under this section.

(4) The prosecuting attorney shall give the victim notice of the date, time, and place of the hearing.

(5) The victim of the offense has the following rights in a hearing under this section:

(a) To submit a written statement to the court.

(b) To attend the hearing and to make a written or oral statement to the court.

(c) To refuse to attend the hearing.

(d) To attend the hearing but refuse to testify or make a statement at the hearing.

(6) The court's decision excusing or requiring the individual to register is a final order of the court and may be appealed by the prosecuting attorney or the individual as a matter of right.

(7) This section applies to criminal and juvenile cases pending on July 1, 2011 and to criminal and juvenile cases brought on and after that date.

History: Add. 2011, Act 17, Imd. Eff. Apr. 12, 2011.

28.724 Registration; procedures.

Sec. 4. (1) Registration of an individual under this act shall proceed as provided in this section.

(2) For an individual convicted of a listed offense on or before October 1, 1995 who on or before October 1, 1995 is sentenced for that offense, has a disposition entered for that offense, or is assigned to youthful trainee status for that offense, the following shall register the individual by December 31, 1995:

- (a) If the individual is on probation for the listed offense, the individual's probation agent.
- (b) If the individual is committed to jail for the listed offense, the sheriff or his or her designee.
- (c) If the individual is under the jurisdiction of the department of corrections for the listed offense, the department of corrections.
- (d) If the individual is on parole for the listed offense, the individual's parole agent.
- (e) If the individual is within the jurisdiction of the juvenile division of the probate court or the department of social services under an order of disposition for the listed offense, the juvenile division of the probate court or the department of social services.

(3) Except as provided in subsection (4), for an individual convicted of a listed offense on or before October 1, 1995:

(a) If the individual is sentenced for that offense after October 1, 1995 or assigned to youthful trainee status after October 1, 1995, the probation agent shall register the individual before sentencing or assignment.

(b) If the individual's probation or parole is transferred to this state after October 1, 1995, the probation or parole agent shall register the individual immediately after the transfer.

(c) If the individual is placed within the jurisdiction of the juvenile division of the probate court or family division of circuit court or committed to the department of social services or family independence agency under an order of disposition entered after October 1, 1995, the juvenile division of the probate court or family division of circuit court shall register the individual before the order of disposition is entered.

(4) For an individual convicted on or before September 1, 1999 of an offense that was added on September 1, 1999 to the definition of listed offense, the following shall register the individual:

(a) If the individual is on probation or parole on September 1, 1999 for the listed offense, the individual's probation or parole agent not later than September 12, 1999.

(b) If the individual is committed to jail on September 1, 1999 for the listed offense, the sheriff or his or her designee not later than September 12, 1999.

(c) If the individual is under the jurisdiction of the department of corrections on September 1, 1999 for the listed offense, the department of corrections not later than November 30, 1999.

(d) If the individual is within the jurisdiction of the family division of circuit court or committed to the family independence agency or county juvenile agency on September 1, 1999 under an order of disposition for the listed offense, the family division of circuit court, the family independence agency, or the county juvenile agency not later than November 30, 1999.

(e) If the individual is sentenced or assigned to youthful trainee status for that offense after September 1, 1999, the probation agent shall register the individual before sentencing or assignment.

(f) If the individual's probation or parole for the listed offense is transferred to this state after September 1, 1999, the probation or parole agent shall register the individual within 14 days after the transfer.

(g) If the individual is placed within the jurisdiction of the family division of circuit court or committed to the family independence agency for the listed offense after September 1, 1999, the family division of circuit court shall register the individual before the order of disposition is entered.

(5) Subject to section 3, an individual convicted of a listed offense in this state after October 1, 1995 and an individual who was previously convicted of a listed offense for which he or she was not required to register under this act, but who is convicted of any other felony on or after July 1, 2011, shall register before sentencing, entry of the order of disposition, or assignment to youthful trainee status for that listed offense or that other felony. The probation agent or the family division of circuit court shall give the individual the registration form after the individual is convicted, explain the duty to register and accept the completed registration for processing under section 6. The court shall not impose sentence, enter the order of disposition, or assign the individual to youthful trainee status, until it determines that the individual's registration was forwarded to the department as required under section 6.

(6) All of the following shall register with the local law enforcement agency, sheriff's department, or the department immediately after becoming domiciled or temporarily residing, working, or being a student in this state:

(a) Subject to section 3(1), an individual convicted in another state or country on or after October 1, 1995 of a listed offense as defined before September 1, 1999.

(b) Subject to section 3(2), an individual convicted in another state or country of an offense added on September 1, 1999 to the definition of listed offenses.

(c) Subject to section 3(1), an individual convicted in another state or country of a listed offense before

October 1, 1995 and, subject to section 3(2), an individual convicted in another state or country of an offense added on September 1, 1999 to the definition of listed offenses, who is convicted of any other felony on or after July 1, 2011.

(d) An individual required to be registered as a sex offender in another state or country regardless of when the conviction was entered.

(7) If a prosecution or juvenile proceeding is pending on July 1, 2011, whether the defendant in a criminal case or the minor in a juvenile proceeding is required to register under this act shall be determined on the basis of the law in effect on July 1, 2011.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2004, Act 237, Eff. Oct. 16, 2004;—Am. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2011, Act 17, Eff. July 1, 2011.

28.724a Status report to registering authority; requirements; reports; written documentation; exception.

Sec. 4a. (1) An individual required to be registered under this act who is not a resident of this state shall report his or her status in person to the registering authority having jurisdiction over a campus of an institution of higher education if either of the following occurs:

(a) The individual is or enrolls as a student with that institution of higher education or the individual discontinues that enrollment.

(b) As part of his or her course of studies at an institution of higher education in this state, the individual is present at any other location in this state, another state, a territory or possession of the United States, or the individual discontinues his or her studies at that location.

(2) An individual required to be registered under this act who is a resident of this state shall report his or her status in person to the registering authority having jurisdiction where his or her new residence or domicile is located if any of the events described under subsection (1) occur.

(3) The report required under subsections (1) and (2) shall be made as follows:

(a) For an individual registered under this act before October 1, 2002 who is required to make his or her first report under subsections (1) and (2), not later than January 15, 2003.

(b) Immediately after he or she enrolls or discontinues his or her enrollment as a student on that campus including study in this state or another state, a territory or possession of the United States, or another country.

(4) The additional registration reports required under this section shall be made in the time periods described in section 5a(2)(a) to (c) for reports under that section.

(5) The local law enforcement agency, sheriff's department, or department post to which an individual reports under this section shall require the individual to pay the registration fee required under section 5a or section 7(1) and to present written documentation of employment status, contractual relationship, volunteer status, or student status. Written documentation under this subsection may include, but need not be limited to, any of the following:

(a) A W-2 form, pay stub, or written statement by an employer.

(b) A contract.

(c) A student identification card or student transcript.

(6) This section does not apply to an individual whose enrollment and participation at an institution of higher education is solely through the mail or the internet from a remote location.

History: Add. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 237, Eff. Oct. 16, 2004;—Am. 2011, Act 17, Eff. July 1, 2011.

28.725 Conditions requiring individual to report in person and provide notice to registering authority; release of incarcerated individual; notice; compliance.

Sec. 5. (1) An individual required to be registered under this act who is a resident of this state shall report in person and notify the registering authority having jurisdiction where his or her residence or domicile is located immediately after any of the following occur:

(a) The individual changes or vacates his or her residence or domicile.

(b) The individual changes his or her place of employment, or employment is discontinued.

(c) The individual enrolls as a student with an institution of higher education, or enrollment is discontinued.

(d) The individual changes his or her name.

~~(e) The individual intends to temporarily reside at any place other than his or her residence for more than 7 days.~~

~~(f) The individual establishes any electronic mail or instant message address, or any other designations used in internet communications or postings.~~

~~(g) The individual purchases or begins to regularly operate any vehicle, and when ownership or operation~~

~~of the vehicle is discontinued.~~

(h) Any change required to be reported under section 4a.

(2) An individual required to be registered under this act who is not a resident of this state but has his or her place of employment in this state shall report in person and notify the registering authority having jurisdiction where his or her place of employment is located or the department post of the individual's place of employment immediately after the individual changes his or her place of employment or employment is discontinued.

(3) If an individual who is incarcerated in a state correctional facility and is required to be registered under this act is granted parole or is due to be released upon completion of his or her maximum sentence, the department of corrections, before releasing the individual, shall provide notice of the location of the individual's proposed place of residence or domicile to the department of state police.

(4) If an individual who is incarcerated in a county jail and is required to be registered under this act is due to be released from custody, the sheriff's department, before releasing the individual, shall provide notice of the location of the individual's proposed place of residence or domicile to the department of state police.

(5) Immediately after either of the following occurs, the department of corrections shall notify the local law enforcement agency or sheriff's department having jurisdiction over the area to which the individual is transferred or the department post of the transferred residence or domicile of an individual required to be registered under this act:

(a) The individual is transferred to a community residential program.

(b) The individual is transferred into a level 1 correctional facility of any kind, including a correctional camp or work camp.

(6) An individual required to be registered under this act who is a resident of this state shall report in person and notify the registering authority having jurisdiction where his or her residence or domicile is located immediately before he or she changes his or her domicile or residence to another state. The individual shall indicate the new state and, if known, the new address. The department shall update the registration and compilation databases and promptly notify the appropriate law enforcement agency and any applicable sex or child offender registration authority in the new state.

(7) An individual required to be registered under this act who is a resident of this state shall report in person and notify the registering authority having jurisdiction where his or her residence or domicile is located not later than 21 days before he or she changes his or her domicile or residence to another country or travels to another country for more than 7 days. The individual shall state the new country of residence or country of travel and the address of his or her new domicile or residence or place of stay, if known. The department shall update the registration and compilation databases and promptly notify the appropriate law enforcement agency and any applicable sex or child offender registration authority.

(8) If the probation or parole of an individual required to be registered under this act is transferred to another state or an individual required to be registered under this act is transferred from a state correctional facility to any correctional facility or probation or parole in another state, the department of corrections shall promptly notify the department and the appropriate law enforcement agency and any applicable sex or child offender registration authority in the new state. The department shall update the registration and compilation databases.

(9) An individual registered under this act shall comply with the verification procedures and proof of residence procedures prescribed in sections 4a and 5a.

(10) Except as otherwise provided in this section and section 8c, a tier I offender shall comply with this section for 15 years.

(11) Except as otherwise provided in this section and section 8c, a tier II offender shall comply with this section for 25 years.

(12) Except as otherwise provided in this section and section 8c, a tier III offender shall comply with this section for life.

(13) The registration periods under this section exclude any period of incarceration for committing a crime and any period of civil commitment.

(14) For an individual who was previously convicted of a listed offense for which he or she was not required to register under this act but who is convicted of any felony on or after July 1, 2011, any period of time that he or she was not incarcerated for that listed offense or that other felony and was not civilly committed counts toward satisfying the registration period for that listed offense as described in this section. If those periods equal or exceed the registration period described in this section, the individual has satisfied his or her registration period for the listed offense and is not required to register under this act. If those periods are less than the registration period described in this section for that listed offense, the individual shall comply with this section for the period of time remaining.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2005, Act 123, Eff. Jan. 1, 2006;—Am. 2005, Act 132, Eff. Jan. 1, 2006;—Am. 2006, Act 402, Eff. Dec. 1, 2006;—Am. 2011, Act 17, Eff. July 1, 2011.

28.725a Notice to registered individual; explanation of duties; reporting requirements.

Sec. 5a. (1) The department shall mail a notice to each individual registered under this act who is not in a state correctional facility explaining the individual's duties under this act as amended.

(2) Upon the release of an individual registered under this act who is in a state correctional facility, the department of corrections shall provide written notice to that individual explaining his or her duties under this section and this act as amended and the procedure for registration, notification, and verification and payment of the registration fee prescribed under subsection (6) or section 7(1). The individual shall sign and date the notice. The department of corrections shall maintain a copy of the signed and dated notice in the individual's file. The department of corrections shall forward the original notice to the department immediately, regardless of whether the individual signs it.

(3) Subject to subsection (4), an individual required to be registered under this act who is not incarcerated shall report in person to the registering authority where he or she is domiciled or resides for verification of domicile or residence as follows:

(a) If the individual is a tier I offender, the individual shall report once each year during the individual's month of birth.

(b) If the individual is a tier II offender, the individual shall report twice each year according to the following schedule:

<u>Birth Month</u>	<u>Reporting Months</u>
January	January and July
February	February and August
March	March and September
April	April and October
May	May and November
June	June and December
July	January and July
August	February and August
September	March and September
October	April and October
November	May and November
December	June and December

(c) If the individual is a tier III offender, the individual shall report 4 times each year according to the following schedule:

<u>Birth Month</u>	<u>Reporting Months</u>
January	January, April, July, and October
February	February, May, August, and November
March	March, June, September, and December
April	April, July, October, and January
May	May, August, November, and February
June	June, September, December, and March
July	July, October, January, and April
August	August, November, February, and May
September	September, December, March, and June
October	October, January, April, and July
November	November, February, May, and August
December	December, March, June, and September

(4) A report under subsection (3) shall be made no earlier than the first day or later than the last day of the month in which the individual is required to report. However, if the registration period for that individual expires during the month in which he or she is required to report under this section, the individual shall report during that month on or before the date his or her registration period expires. When an individual reports under subsection (3), the individual shall review all registration information for accuracy.

(5) When an individual reports under subsection (3), an officer or authorized employee of the registering authority shall verify the individual's residence or domicile and any information required to be reported under section 4a. The officer or authorized employee shall also determine whether the individual's photograph required under this act matches the appearance of the individual sufficiently to properly identify him or her from that photograph. If not, the officer or authorized employee shall require the individual to immediately

obtain a current photograph under this section. When all of the verification information has been provided, the officer or authorized employee shall review that information with the individual and make any corrections, additions, or deletions the officer or authorized employee determines are necessary based on the review. The officer or authorized employee shall sign and date a verification receipt. The officer or authorized employee shall give a copy of the signed receipt showing the date of verification to the individual. The officer or authorized employee shall forward verification information to the department in the manner the department prescribes. The department shall revise the law enforcement database and public internet website maintained under section 8 as necessary and shall indicate verification in the public internet website maintained under section 8(2).

(6) Except as otherwise provided in section 5b, an individual who reports as prescribed under subsection (3) shall pay a \$50.00 registration fee as follows:

(a) Upon initial registration.

(b) Annually following the year of initial registration. The payment of the registration fee under this subdivision shall be made at the time the individual reports in the first reporting month for that individual as set forth in subsection (3) of each year in which the fee applies, unless an individual elects to prepay an annual registration fee for any future year for which an annual registration fee is required. Prepaying any annual registration fee shall not change or alter the requirement of an individual to report as set forth in subsection (3). The payment of the registration fee under this subdivision is not required to be made for any registration year that has expired before January 1, 2014 or to be made by any individual initially required to register under this act after January 1, 2019. The registration fee required to be paid under this subdivision shall not be prorated on grounds that the individual will complete his or her registration period after the month in which the fee is due.

(c) The sum of the amounts required to be paid under subdivisions (a) and (b) shall not exceed \$550.00.

(7) An individual required to be registered under this act shall maintain either a valid operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, with the individual's current address. The license or card may be used as proof of domicile or residence under this section. In addition, the officer or authorized employee may require the individual to produce another document bearing his or her name and address, including, but not limited to, voter registration or a utility or other bill. The department may specify other satisfactory proof of domicile or residence.

(8) An individual registered under this act who is incarcerated shall report to the secretary of state under this subsection immediately after he or she is released to have his or her digitalized photograph taken. The individual is not required to report under this subsection if he or she had a digitized photograph taken for an operator's or chauffeur's license or official state personal identification card before January 1, 2000, or within 2 years before he or she is released unless his or her appearance has changed from the date of that photograph. Unless the person is a nonresident, the photograph shall be used on the individual's operator's or chauffeur's license or official state personal identification card. The individual shall have a new photograph taken when he or she renews the license or identification card as provided by law, or as otherwise provided in this act. The secretary of state shall make the digitized photograph available to the department for a registration under this act.

(9) If an individual does not report under this section or under section 4a, the department shall notify all registering authorities as provided in section 8a and initiate enforcement action as set forth in that section.

(10) The department shall prescribe the form for the notices and verification procedures required under this section.

History: Add. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 237, Eff. Oct. 16, 2004;—Am. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2005, Act 322, Eff. Jan. 1, 2006;—Am. 2011, Act 17, Imd. Eff. Apr. 12, 2011;—Am. 2013, Act 149, Eff. Apr. 1, 2014.

28.725b Sex offenders registration fund; creation; disposition of money; use; lapse; claim of indigence; waiver of fee; payments.

Sec. 5b. (1) Of the money collected by a court, local law enforcement agency, sheriff's department, or department post from each registration fee prescribed under this act, \$30.00 shall be forwarded to the department, which shall deposit the money in the sex offenders registration fund created under subsection (2), and \$20.00 shall be retained by the court, local law enforcement agency, sheriff's department, or department post.

(2) The sex offenders registration fund is created as a separate fund in the department of treasury. The state treasurer shall credit the money received from the payment of the registration fee prescribed under this act to the sex offenders registration fund. Money credited to the fund shall only be used by the department for

training concerning, and the maintenance and automation of, the law enforcement database, public internet website, information required under section 8, or notification and offender registration duties under section 4a. Money in the sex offenders registration fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(3) If an individual required to pay a registration fee under this act is indigent, the registration fee shall be waived for a period of 90 days. The burden is on the individual claiming indigence to prove the fact of indigence to the satisfaction of the local law enforcement agency, sheriff's department, or department post where the individual is reporting.

(4) Payment of the registration fee prescribed under this act shall be made in the form and by means prescribed by the department. Upon payment of the registration fee prescribed under this act, the officer or employee shall forward verification of the payment to the department in the manner the department prescribes. The department shall revise the law enforcement database and public internet website maintained under section 8 as necessary and shall indicate verification of payment in the law enforcement database under section 8(1).

History: Add. 2004, Act 237, Eff. Oct. 16, 2004;—Am. 2011, Act 17, Eff. July 1, 2011.

28.725c Fee collected by department of corrections; prohibition.

Sec. 5c. The department of corrections shall not collect any fee prescribed under this act.

History: Add. 2004, Act 237, Eff. Oct. 16, 2004.

28.726 Providing or forwarding copy of registration or notification.

Sec. 6. (1) The officer, court, or agency registering an individual or receiving or accepting a registration under section 4 or receiving notice under section 5(1) shall provide the individual with a copy of the registration or notification at the time of registration or notice.

(2) The officer, court, or agency registering an individual or receiving or accepting a registration under section 4 or notified of an address change under section 5(1) shall forward the registration or notification to the department in a manner prescribed by the department immediately after registration or notification.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1996, Act 494, Eff. Apr. 1, 1997;—Am. 2011, Act 18, Eff. July 1, 2011.

28.727 Registration information; format; fee; requirements; forwarding registration, notice, and verification information to federal bureau of investigation, local agencies, and other registering jurisdictions.

Sec. 7. (1) Registration information obtained under this act shall be forwarded to the department in the format the department prescribes. Except as provided in section 5b(3), a \$50.00 registration fee shall accompany each original registration. All of the following information shall be obtained or otherwise provided for registration purposes:

(a) The individual's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual is or has been known. An individual who is in a witness protection and relocation program is only required to use the name and identifying information reflecting his or her new identity in a registration under this act. The registration and compilation databases shall not contain any information identifying the individual's prior identity or locale.

(b) The individual's social security number and any social security numbers or alleged social security numbers previously used by the individual.

(c) The individual's date of birth and any alleged dates of birth previously used by the individual.

(d) The address where the individual resides or will reside. If the individual does not have a residential address, information under this subsection shall identify the location or area used or to be used by the individual in lieu of a residence or, if the individual is homeless, the village, city, or township where the person spends or will spend the majority of his or her time.

(e) The name and address of any place of temporary lodging used or to be used by the individual during any period in which the individual is away, or is expected to be away, from his or her residence for more than 7 days. Information under this subdivision shall include the dates the lodging is used or to be used.

(f) The name and address of each of the individual's employers. For purposes of this subdivision, "employer" includes a contractor and any individual who has agreed to hire or contract with the individual for his or her services. Information under this subsection shall include the address or location of employment if different from the address of the employer. If the individual lacks a fixed employment location, the information obtained under this subdivision shall include the general areas where the individual works and the normal travel routes taken by the individual in the course of his or her employment.

(g) The name and address of any school being attended by the individual and any school that has accepted

the individual as a student that he or she plans to attend. For purposes of this subdivision, "school" means a public or private postsecondary school or school of higher education, including a trade school.

(h) All telephone numbers registered to the individual or routinely used by the individual.

(i) All electronic mail addresses and instant message addresses assigned to the individual or routinely used by the individual and all login names or other identifiers used by the individual when using any electronic mail address or instant messaging system.

(j) The license plate number, registration number, and description of any motor vehicle, aircraft, or vessel owned or regularly operated by the individual and the location at which the motor vehicle, aircraft, or vessel is habitually stored or kept.

(k) The individual's driver license number or state personal identification card number.

(l) A digital copy of the individual's passport and other immigration documents.

(m) The individual's occupational and professional licensing information, including any license that authorizes the individual to engage in any occupation, profession, trade, or business.

(n) A brief summary of the individual's convictions for listed offenses regardless of when the conviction occurred, including where the offense occurred and the original charge if the conviction was for a lesser offense.

(o) A complete physical description of the individual.

(p) The photograph required under section 5a.

(q) The individual's fingerprints if not already on file with the department and the individual's palm prints. An individual required to be registered under this act shall have his or her fingerprints or palm prints or both taken not later than September 12, 2011 if his or her fingerprints or palm prints are not already on file with the department. The department shall forward a copy of the individual's fingerprints and palm prints to the federal bureau of investigation if not already on file with that bureau.

(r) Information that is required to be reported under section 4a.

(2) A registration shall contain all of the following:

(a) An electronic copy of the offender's Michigan driver license or Michigan personal identification card, including the photograph required under this act.

(b) The text of the provision of law that defines the criminal offense for which the sex offender is registered.

(c) Any outstanding arrest warrant information.

(d) The individual's tier classification.

(e) An identifier that indicates whether a DNA sample has been collected and any resulting DNA profile has been entered into the federal combined DNA index system (CODIS).

(f) The individual's complete criminal history record, including the dates of all arrests and convictions.

(g) The individual's Michigan department of corrections number and status of parole, probation, or supervised release.

(h) The individual's federal bureau of investigation number.

(3) The form used for notification of duties under this act shall contain a written statement that explains the duty of the individual being registered to provide notice of changes in his or her registration information, the procedures for providing that notice, and the verification procedures under section 5a.

(4) The individual shall sign a registration and notice. However, the registration and notice shall be forwarded to the department regardless of whether the individual signs it or pays the registration fee required under subsection (1).

(5) The officer, court, or an employee of the agency registering the individual or receiving or accepting a registration under section 4 shall sign the registration form.

(6) An individual shall not knowingly provide false or misleading information concerning a registration, notice, or verification.

(7) The department shall prescribe the form for a notification required under section 5 and the format for forwarding the notification to the department.

(8) The department shall promptly provide registration, notice, and verification information to the federal bureau of investigation and to local law enforcement agencies, sheriff's departments, department posts, and other registering jurisdictions, as provided by law.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1996, Act 494, Eff. Apr. 1, 1997;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 237, Eff. Oct. 16, 2004;—Am. 2011, Act 18, Eff. July 1, 2011.

28.728 Law enforcement database; information to be contained for each registered individual; public internet website; compilation; availability; removal; note.

Sec. 8. (1) The department shall maintain a computerized law enforcement database of registrations and

notices required under this act. The law enforcement database shall contain all of the following information for each individual registered under this act:

(a) The individual's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual is or has been known.

(b) The individual's social security number and any social security numbers or alleged social security numbers previously used by the individual.

(c) The individual's date of birth and any alleged dates of birth previously used by the individual.

(d) The address where the individual resides or will reside. If the individual does not have a residential address, information under this subsection shall identify the location or area used or to be used by the individual in lieu of a residence or, if the individual is homeless, the village, city, or township where the individual spends or will spend the majority of his or her time.

(e) The name and address of any place of temporary lodging used or to be used by the individual during any period in which the individual is away, or is expected to be away, from his or her residence for more than 7 days. Information under this subdivision shall include the dates the lodging is used or to be used.

(f) The name and address of each of the individual's employers. For purposes of this subdivision, "employer" includes a contractor and any individual who has agreed to hire or contract with the individual for his or her services. Information under this subsection shall include the address or location of employment if different from the address of the employer.

(g) The name and address of any school being attended by the individual and any school that has accepted the individual as a student that he or she plans to attend. For purposes of this subdivision, "school" means a public or private postsecondary school or school of higher education, including a trade school.

(h) All telephone numbers registered to the individual or routinely used by the individual.

(i) All electronic mail addresses and instant message addresses assigned to the individual or routinely used by the individual and all login names or other identifiers used by the individual when using any electronic mail address or instant messaging system.

(j) The license plate number or registration number and description of any motor vehicle, aircraft, or vessel owned or regularly operated by the individual and the location at which the motor vehicle, aircraft, or vessel is habitually stored or kept.

(k) The individual's driver license number or state personal identification card number.

(l) A digital copy of the individual's passport and other immigration documents.

(m) The individual's occupational and professional licensing information, including any license that authorizes the individual to engage in any occupation, profession, trade, or business.

(n) A brief summary of the individual's convictions for listed offenses regardless of when the conviction occurred, including where the offense occurred and the original charge if the conviction was for a lesser offense.

(o) A complete physical description of the individual.

(p) The photograph required under section 5a.

(q) The individual's fingerprints and palm prints.

(r) An electronic copy of the offender's Michigan driver license or Michigan personal identification card, including the photograph required under this act.

(s) The text of the provision of law that defines the criminal offense for which the sex offender is registered.

(t) Any outstanding arrest warrant information.

(u) The individual's tier classification and registration status.

(v) An identifier that indicates whether a DNA sample has been collected and any resulting DNA profile has been entered into the federal combined DNA index system (CODIS).

(w) The individual's complete criminal history record, including the dates of all arrests and convictions.

(x) The individual's Michigan department of corrections number and the status of his or her parole, probation, or release.

(y) The individual's federal bureau of investigation number.

(2) The department shall maintain a public internet website separate from the law enforcement database described in subsection (1) to implement section 10(2) and (3). Except as provided in subsection (4), the public internet website shall contain all of the following information for each individual registered under this act:

(a) The individual's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual is or has been known.

(b) The individual's date of birth.

(c) The address where the individual resides. If the individual does not have a residential address,

information under this subsection shall identify the village, city, or township used by the individual in lieu of a residence.

(d) The address of each of the individual's employers. For purposes of this subdivision, "employer" includes a contractor and any individual who has agreed to hire or contract with the individual for his or her services. Information under this subsection shall include the address or location of employment if different from the address of the employer.

(e) The address of any school being attended by the individual and any school that has accepted the individual as a student that he or she plans to attend. For purposes of this subdivision, "school" means a public or private postsecondary school or school of higher education, including a trade school.

(f) The license plate number or registration number and description of any motor vehicle, aircraft, or vessel owned or regularly operated by the individual.

(g) A brief summary of the individual's convictions for listed offenses regardless of when the conviction occurred.

(h) A complete physical description of the individual.

(i) The photograph required under this act. If no photograph is available, the department shall use an arrest photograph or Michigan department of corrections photograph until a photograph as prescribed in section 5a becomes available.

(j) The text of the provision of law that defines the criminal offense for which the sex offender is registered.

(k) The individual's registration status.

~~(l) The individual's tier classification.~~

(3) The following information shall not be made available on the public internet website described in subsection (2):

(a) The identity of any victim of the offense.

(b) The individual's social security number.

(c) Any arrests not resulting in a conviction.

(d) Any travel or immigration document numbers.

(e) Any electronic mail addresses and instant message addresses assigned to the individual or routinely used by the individual and any login names or other identifiers used by the individual when using any electronic mail address or instant messaging system.

(f) The individual's driver license number or state personal identification card number.

(4) The public internet website described in subsection (2) shall not include the following individuals:

(a) An individual registered solely because he or she had 1 or more dispositions for a listed offense entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, in a case that was not designated as a case in which the individual was to be tried in the same manner as an adult under section 2d of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d.

(b) An individual registered solely because he or she was the subject of an order of disposition or other adjudication in a juvenile matter in another state or country.

(c) An individual registered solely because he or she was convicted of a single tier I offense, other than an individual who was convicted of a violation of any of the following:

(i) 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) Section 349b of the Michigan penal code, 1931 PA 328, MCL 750.349b, if the victim is a minor.

(iv) Section 539j of the Michigan penal code, 1931 PA 328, MCL 750.539j, if a victim is a minor.

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

(5) The compilation of individuals shall be indexed alphabetically by village, city, township, and county, numerically by zip code area, and geographically as determined appropriate by the department.

(6) The department shall update the public internet website with new registrations, deletions from registrations, and address changes at the same time those changes are made to the law enforcement database described in subsection (1). The department shall make the law enforcement database available to each department post, local law enforcement agency, and sheriff's department by the law enforcement information network. Upon request by a department post, local law enforcement agency, or sheriff's department, the department shall provide to that post, agency, or sheriff's department the information from the law enforcement database in printed form for the designated areas located in whole or in part within the post's, agency's, or sheriff's department's jurisdiction. The department shall provide the ability to conduct a

computerized search of the law enforcement database and the public internet website based upon the name and campus location of an institution of higher education.

(7) The department shall make the law enforcement database available to a department post, local law enforcement agency, or sheriff's department by electronic, computerized, or other similar means accessible to the post, agency, or sheriff's department. The department shall make the public internet website available to the public by electronic, computerized, or other similar means accessible to the public. The electronic, computerized, or other similar means shall provide for a search by name, village, city, township, and county designation, zip code, and geographical area.

(8) If a court determines that the public availability under section 10 of any information concerning individuals registered under this act violates the constitution of the United States or this state, the department shall revise the public internet website described in subsection (2) so that it does not contain that information.

(9) If the department determines that an individual has completed his or her registration period, including a registration period reduced by law under 2011 PA 18, or that he or she otherwise is no longer required to register under this act, the department shall remove the individual's registration information from both the law enforcement database and the public internet website within 7 days after making that determination.

(10) If the individual provides the department with documentation showing that he or she is required to register under this act for a violation that has been set aside under 1965 PA 213, MCL 780.621 to 780.624, or that has been otherwise expunged, the department shall note on the public internet website that the violation has been set aside or expunged.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1996, Act 494, Eff. Apr. 1, 1997;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 238, Eff. May 1, 2005;—Am. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2011, Act 18, Eff. July 1, 2011;—Am. 2013, Act 2, Eff. June 1, 2013.

28.728a Failure to register or update registration information; duties registering authority; duties of department.

Sec. 8a. (1) If an individual fails to register or to update his or her registration information as required under this act, the local law enforcement agency, sheriff's office, or department post responsible for registering the individual or for verifying and updating his or her registration information shall do all of the following immediately after the date the individual was required to register or to update his or her registration information:

(a) Determine whether the individual has absconded or is otherwise unlocatable.

(b) If the registering authority was notified by a registration jurisdiction that the individual was to appear in order to register or update his or her registration information in the jurisdiction of the registering authority, notify the department in a manner prescribed by the department that the individual failed to appear as required.

(c) Revise the information in the registry to reflect that the individual has absconded or is otherwise unlocatable.

(d) Seek a warrant for the individual's arrest if the legal requirements for obtaining a warrant are satisfied.

(e) Enter the individual into the national crime information center wanted person file if the requirements for entering information into that file are met.

(2) If an individual fails to register or to update his or her registration information as required under this act, the department shall do all of the following immediately after being notified by the registering authority that the individual failed to appear as required:

(a) Notify that other registration jurisdiction that the individual failed to appear as required.

(b) Notify the United States marshal's service in the manner required by the United States marshal's service of the individual's failure to appear as required.

(c) Update the national sex offender registry to reflect the individual's status as an absconder or as unlocatable.

History: Add. 2011, Act 18, Eff. July 1, 2011.

Compiler's note: Former MCL 28.728a, which pertained to feasibility studies for providing search by alias and mapping to show address was repealed by Act 240 of 2004, Eff. Oct. 1, 2004.

28.728b Repealed. 2004, Act 240, Eff. Oct. 1, 2004.

Compiler's note: The repealed section pertained to compilation of individuals not requiring registration.

28.728c Petition to discontinue registration; jurisdiction; limitations; oath; contents; false statement; filing copy with office of prosecuting attorney; notice; hearing; rights of victim; factors in court determination; granting of petition.

Sec. 8c. (1) An individual classified as a tier I offender who meets the requirements of subsection (12) may petition the court under that subsection for an order allowing him or her to discontinue registration under this act.

(2) An individual classified as a tier III offender who meets the requirements of subsection (13) may petition the court under that subsection for an order allowing him or her to discontinue registration under this act.

(3) An individual classified as a tier I, tier II, or tier III offender who meets the requirements of subsection (14) or (15) may petition the court under that subsection for an order allowing him or her to discontinue registration under this act.

(4) This section is the sole means by which an individual may obtain judicial review of his or her registration requirements under this act. This subsection does not prohibit an appeal of the conviction or sentence as otherwise provided by law or court rule. A petition filed under this section shall be filed in the court in which the individual was convicted of committing the listed offense. However, if the conviction occurred in another state or country and the individual is a resident of this state, the individual may file a petition in the circuit court in the county of his or her residence for an order allowing him or her to discontinue registration under this act only. A petition shall not be filed under this section if a previous petition was filed under this section and was denied by the court after a hearing.

(5) A petition filed under this section shall be made under oath and shall contain all of the following:

(a) The name and address of the petitioner.

(b) A statement identifying the offense for which discontinuation from registration is being requested.

(c) A statement of whether the individual was previously convicted of a listed offense for which registration is required under this act.

(6) An individual who knowingly makes a false statement in a petition filed under this section is guilty of perjury as proscribed under section 423 of the Michigan penal code, 1931 PA 328, MCL 750.423.

(7) A copy of the petition shall be filed with the office of the prosecuting attorney that prosecuted the case against the individual or, for a conviction that occurred in another state or country, the prosecuting attorney for the county of his or her residence, at least 30 days before a hearing is held on the petition. The prosecuting attorney may appear and participate in all proceedings regarding the petition and may seek appellate review of any decision on the petition.

(8) If the name of the victim of the offense is known by the prosecuting attorney, the prosecuting attorney shall provide the victim with written notice that a petition has been filed and shall provide the victim with a copy of the petition. The notice shall be sent by first-class mail to the victim's last known address. The petition shall include a statement of the victim's rights under subsection (10).

(9) If an individual properly files a petition with the court under this section, the court shall conduct a hearing on the petition as provided in this section.

(10) The victim has the right to attend all proceedings under this section and to make a written or oral statement to the court before any decision regarding the petition is made. A victim shall not be required to appear at any proceeding under this section against his or her will.

(11) The court shall consider all of the following in determining whether to allow the individual to discontinue registration under subsection (12) or (13) but shall not grant the petition if the court determines that the individual is a continuing threat to the public:

(a) The individual's age and level of maturity at the time of the offense.

(b) The victim's age and level of maturity at the time of the offense.

(c) The nature of the offense.

(d) The severity of the offense.

(e) The individual's prior juvenile or criminal history.

(f) The individual's likelihood to commit further listed offenses.

(g) Any impact statement submitted by the victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or under this section.

(h) Any other information considered relevant by the court.

(12) The court may grant a petition properly filed by an individual under subsection (1) if all of the following apply:

(a) Ten or more years have elapsed since the date of his or her conviction for the listed offense or from his or her release from any period of confinement for that offense, whichever occurred last.

(b) The petitioner has not been convicted of any felony since the date described in subdivision (a).

(c) The petitioner has not been convicted of any listed offense since the date described in subdivision (a).

(d) The petitioner successfully completed his or her assigned periods of supervised release, probation, or parole without revocation at any time of that supervised release, probation, or parole.

(e) The petitioner successfully completed a sex offender treatment program certified by the United States attorney general under 42 USC 16915(b)(1), or another appropriate sex offender treatment program. The court may waive the requirements of this subdivision if successfully completing a sex offender treatment program was not a condition of the petitioner's confinement, release, probation, or parole.

(13) The court may grant a petition properly filed by an individual under subsection (2) if all of the following apply:

(a) The petitioner is required to register based on an order of disposition entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, that is open to the general public under section 28 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.28.

(b) Twenty-five or more years have elapsed since the date of his or her adjudication for the listed offense or from his or her release from any period of confinement for that offense, whichever occurred last.

(c) The petitioner has not been convicted of any felony since the date described in subdivision (b).

(d) The petitioner has not been convicted of any listed offense since the date described in subdivision (b).

(e) The petitioner successfully completed his or her assigned periods of supervised release, probation, or parole without revocation at any time of that supervised release, probation, or parole.

(f) The court determines that the petitioner successfully completed a sex offender treatment program certified by the United States attorney general under 42 USC 16915(b)(1), or another appropriate sex offender treatment program. The court may waive the requirements of this subdivision if successfully completing a sex offender treatment program was not a condition of the petitioner's confinement, release, probation, or parole.

(14) The court shall grant a petition properly filed by an individual under subsection (3) if the court determines that the conviction for the listed offense was the result of a consensual sexual act between the petitioner and the victim and any of the following apply:

(a) All of the following:

(i) The victim was 13 years of age or older but less than 16 years of age at the time of the offense.

(ii) The petitioner is not more than 4 years older than the victim.

(b) All of the following:

(i) The individual was convicted of a violation of section 158, 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.158, 750.338, 750.338a, and 750.338b.

(ii) The victim was 13 years of age or older but less than 16 years of age at the time of the violation.

(iii) The individual is not more than 4 years older than the victim.

(c) All of the following:

(i) The individual was convicted of a violation of section 158, 338, 338a, 338b, or 520c(1)(i) of the Michigan penal code, 1931 PA 328, MCL 750.158, 750.338, 750.338a, 750.338b, and 750.520c.

(ii) The victim was 16 years of age or older at the time of the violation.

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

(15) The court shall grant a petition properly filed by an individual under subsection (3) if either of the following applies:

(a) Both of the following:

(i) The petitioner was adjudicated as a juvenile.

(ii) The petitioner was less than 14 years of age at the time of the offense.

(b) The individual was registered under this act before July 1, 2011 for an offense that required registration but for which registration is not required on or after July 1, 2011.

History: Add. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2011, Act 18, Eff. July 1, 2011.

28.728d Providing copy of court order granting petition to department and individual.

Sec. 8d. If the court grants a petition filed under section 8c, the court shall promptly provide a copy of that order to the department and to the individual. The department shall promptly remove an individual's registration from the database maintained under section 8(1).

History: Add. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2011, Act 18, Eff. July 1, 2011.

28.729 Registration required; violations; penalties.

Sec. 9. (1) Except as provided in subsections (2), (3), and (4), an individual required to be registered under this act who willfully violates this act is guilty of a felony punishable as follows:

(a) If the individual has no prior convictions for a violation of this act, by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(b) If the individual has 1 prior conviction for a violation of this act, by imprisonment for not more than 7 years or a fine of not more than \$5,000.00, or both.

(c) If the individual has 2 or more prior convictions for violations of this act, by imprisonment for not more

than 10 years or a fine of not more than \$10,000.00, or both.

(2) An individual who fails to comply with section 5a, other than payment of the fee required under section 5a(6), is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(3) An individual who willfully fails to sign a registration and notice as provided in section 7(4) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.

(4) An individual who willfully refuses or fails to pay the registration fee prescribed in section 5a(6) or section 7(1) within 90 days of the date the individual reports under section 4a or 5a is guilty of a misdemeanor punishable by imprisonment for not more than 90 days.

(5) The court shall revoke the probation of an individual placed on probation who willfully violates this act.

(6) The court shall revoke the youthful trainee status of an individual assigned to youthful trainee status who willfully violates this act.

(7) The parole board shall rescind the parole of an individual released on parole who willfully violates this act.

(8) An individual's failure to register as required by this act or a violation of section 5 may be prosecuted in the judicial district of any of the following:

- (a) The individual's last registered address or residence.
- (b) The individual's actual address or residence.
- (c) Where the individual was arrested for the violation.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 237, Eff. Oct. 16, 2004;—Am. 2005, Act 132, Eff. Jan. 1, 2006;—Am. 2011, Act 18, Eff. July 1, 2011.

Compiler's note: For transfer of powers and duties of Michigan parole and commutation board to Michigan parole board within department of corrections, and abolishment of Michigan parole and commutation board, see E.R.O. No. 2011-3, compiled at MCL 791.305.

28.730 Confidentiality; exemption from disclosure; availability of information on public internet website; violation as misdemeanor; penalty; civil cause of action; applicability of subsections (4) and (5) to public internet website.

Sec. 10. (1) Except as provided in this act, a registration or report is confidential and information from that registration or report shall not be open to inspection except for law enforcement purposes. The registration or report and all included materials and information are exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243.

(2) A department post, local law enforcement agency, or sheriff's department shall make information from the public internet website described in section 8(2) for the designated areas located in whole or in part within the post's, agency's, or sheriff's department's jurisdiction available for public inspection during regular business hours. A department post, local law enforcement agency, or sheriff's department is not required to make a copy of the information for a member of the public.

(3) The department may make information from the public internet website described in section 8(2) available to the public through electronic, computerized, or other accessible means. The department shall provide for notification by electronic or computerized means to any member of the public who has subscribed in a manner required by the department when an individual who is the subject of the public internet website described in section 8(2) initially registers under this act, or changes his or her registration under this act, to a location that is in a designated area or geographic radius designated by the subscribing member of the public.

(4) Except as provided in this act, an individual other than the registrant who knows of a registration or report under this act and who divulges, uses, or publishes nonpublic information concerning the registration or report in violation of this act is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.

(5) An individual whose registration or report is revealed in violation of this act has a civil cause of action against the responsible party for treble damages.

(6) Subsections (4) and (5) do not apply to the public internet website described in section 8(2) or information from that public internet website that is provided or made available under section 8(2) or under subsection (2) or (3).

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1996, Act 494, Eff. Apr. 1, 1997;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2006, Act 46, Eff. Jan. 1, 2007;—Am. 2011, Act 18, Eff. July 1, 2011.

28.731, 28.732 Repealed. 2011, Act 18, Eff. July 1, 2011

Compiler's note: The repealed sections pertained to effective date and conditional effective date of act.

III STUDENT SAFETY ZONES

~~28.733 Definitions.~~

~~Sec. 33. As used in this article:~~

~~(a) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.~~

~~(b) "Loiter" means 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.~~

~~(c) "Minor" means an individual less than 18 years of age.~~

~~(d) "School" means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12. School does not include a home school.~~

~~(e) "School property" 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:~~

~~(i) It is used to impart educational instruction.~~

~~(ii) It is for use by students not more than 19 years of age for sports or other recreational activities.~~

~~(f) "Student safety zone" means the area that lies 1,000 feet or less from school property.~~

History: Add. 2005, Act 121, Eff. Jan. 1, 2006;—Add. 2005, Act 127, Eff. Jan. 1, 2006.

Compiler's note: MCL 28.733 was added by 2005 PA 121 and 2005 PA 127. 2005 PA 127, being substantively the same as the 2005 PA 121, supersedes and becomes the only version on its effective date.

~~28.734 Prohibited conduct; violation; penalty; exceptions; other violations; right to vote.~~

~~Sec. 34. (1) Except as provided in this section and section 36, an individual required to be registered under article II shall not do 1 or more of the following:~~

~~(a) Work within a student safety zone.~~

~~(b) Loiter within a student safety zone.~~

~~(2) An individual who violates this section is guilty of a crime as follows:~~

~~(a) For the first violation, the individual is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.~~

~~(b) An individual who violates this section and has 1 or more prior convictions under this section is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.~~

~~(3) Subsection (1)(a) does not apply to any of the following:~~

~~(a) An individual who was working within a student safety zone on January 1, 2006. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone.~~

~~(b) An individual whose place of employment is within a student safety zone solely because a school is relocated or is initially established 1,000 feet or less from the individual's place of employment. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone.~~

~~(c) An individual who only intermittently or sporadically enters a student safety zone for the purpose of work. However, this exception does not apply to an individual who initiates or maintains contact with a minor within a student safety zone.~~

~~(4) This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.~~

~~(5) Nothing in this section shall be construed to prohibit an individual from exercising his or her right to vote.~~

History: Add. 2005, Act 127, Eff. Jan. 1, 2006;—Am. 2005, Act 322, Eff. Jan. 1, 2006.

~~28.735 Registered individual residing in student safety zone; prohibited conduct; violation; penalties; exceptions.~~

~~Sec. 35. (1) Except as otherwise provided in this section and section 36, an individual required to be registered under article II shall not reside within a student safety zone.~~

~~(2) An individual who violates subsection (1) is guilty of a crime as follows:~~

~~(a) For the first violation, the individual is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.~~

~~(b) An individual who violates this section and has 1 or more prior convictions under this section is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.~~

~~(3) This section does not apply to any of the following:~~

~~(a) An individual who is not more than 19 years of age and attends secondary school or postsecondary school, and resides with his or her parent or guardian. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone. However, the individual may initiate or maintain contact with a minor with whom he or she attends secondary school or postsecondary school in conjunction with that school attendance.~~

~~(b) An individual who is not more than 26 years of age and attends a special education program, and resides with his or her parent or guardian or resides in a group home or assisted living facility. However, an individual described in this subdivision shall not initiate or maintain contact with a minor within that student safety zone. The individual shall be permitted to initiate or maintain contact with a minor with whom he or she attends a special education program in conjunction with that attendance.~~

~~(c) An individual who was residing within that student safety zone on January 1, 2006. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone.~~

~~(d) An individual who is a patient in a hospital or hospice that is located within a student safety zone. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone.~~

~~(e) An individual who resides within a student safety zone because the individual is an inmate or resident of a prison, jail, juvenile facility, or other correctional facility or is a patient of a mental health facility under an order of commitment. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone.~~

~~(4) An individual who resides within a student safety zone and who is subsequently required to register under article II shall change his or her residence to a location outside the student safety zone not more than 90 days after he or she is sentenced for the conviction that gives rise to the obligation to register under article II. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone during the 90-day period described in this subsection.~~

~~(5) This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.~~

History: Add. 2005, Act 121, Eff. Jan. 1, 2006;—Am. 2005, Act 322, Eff. Jan. 1, 2006.

28.736 Exemptions.

~~Sec. 36. (1) Subject to subsection (2), sections 34 and 35 do not apply to any of the following:~~

~~(a) An individual who is convicted as a juvenile under section 520b, 520c, or 520d of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, of committing, attempting to commit, or conspiring to commit a violation solely described in section 520b(1)(a), 520c(1)(a), or 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, if either of the following applies:~~

~~(i) The individual was under 13 years of age when he or she committed the offense and is not more than 5 years older than the victim.~~

~~(ii) The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than 3 years older than the victim.~~

~~(b) An individual who was charged under section 520b, 520c, or 520d of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, with committing, attempting to commit, or conspiring to commit a violation solely described in section 520b(1)(a), 520c(1)(a), or 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, and is convicted as a juvenile of violating, attempting to violate, or conspiring to violate section 520c or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520c and 750.520g, if either of the following applies:~~

~~(i) The individual was under 13 years of age when he or she committed the offense and is not more than 5 years older than the victim.~~

~~(ii) The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than 3 years older than the victim.~~

~~(c) An individual who has successfully completed his or her probationary period under sections 11 to 15 of chapter II for committing a listed offense and has been discharged from youthful trainee status.~~

~~(d) An individual convicted of committing or attempting to commit a violation solely described in section 520e(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520e, who at the time of the violation was 17 years of age or older but less than 21 years of age and who is not more than 5 years older than the victim.~~

~~(2) An individual who is convicted of more than 1 offense described in subsection (1) is ineligible for exemption under this section.~~

History: Add. 2005, Act 121, Eff. Jan. 1, 2006.