

HOUSE BILL NO. 5197

July 01, 2021, Introduced by Rep. Rabhi and referred to the Committee on Government Operations.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 Convicted does not include a conviction that was subsequently set
2 aside under 1965 PA 213, MCL 780.621 to 780.624, or otherwise
3 expunged.

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

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

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

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

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

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

1 the offense.

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

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

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

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

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

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

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

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

1 corrections who knew that the other person was under the
2 jurisdiction of the department of corrections and used his or her
3 position of authority over the victim to gain access to or to
4 coerce or otherwise encourage the victim to engage in sexual
5 contact.

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

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

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

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

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

5 (e) "Felony" means that term as defined in section 1 of
6 chapter I of the code of criminal procedure, 1927 PA 174, MCL
7 761.1.

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

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

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

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

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

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

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

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

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

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

29 (k) "Minor" means a victim of a listed offense who was less

1 than 18 years of age at the time the offense was committed.

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

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

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

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

28 (p) "Student" means an individual enrolled on a full- or part-
29 time basis in a public or private educational institution,

1 including, but not limited to, a secondary school, trade school,
2 professional institution, or institution of higher education.

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

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

6 (i) A violation of section 145c(4) of the Michigan penal code,
7 1931 PA 328, MCL 750.145c.

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

10 (iii) A violation of section 349b of the Michigan penal code,
11 1931 PA 328, MCL 750.349b, if the victim is a minor.

12 (iv) A violation of section 449a(2) of the Michigan penal code,
13 1931 PA 328, MCL 750.449a.

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

17 (vi) A violation of section 539j of the Michigan penal code,
18 1931 PA 328, MCL 750.539j, if a victim is a minor.

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

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

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

28 (x) An offense substantially similar to an offense described

1 in subparagraphs (i) to (ix) under a law of the United States that is
2 specifically enumerated in 42 USC 16911, under a law of any state
3 or any country, or under tribal or military law.

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

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

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

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

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

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

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

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

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

23 (A) All of the following:

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

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

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

1 (B) All of the following:

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

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

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

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

13 (A) All of the following:

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

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

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

20 (B) All of the following:

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

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

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

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

29 (viii) A violation of section 448 of the Michigan penal code,

1 1931 PA 328, MCL 750.448, if the victim is a minor.

2 (ix) A violation of section 455 of the Michigan penal code,
3 1931 PA 328, MCL 750.455.

4 (x) A violation of section 520c, 520e, or 520g(2) of the
5 Michigan penal code, 1931 PA 328, MCL 750.520c, 750.520e, and
6 750.520g, committed against an individual 13 years of age or older
7 but less than 18 years of age.

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

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

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

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

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

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

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

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

24 (ii) A violation of section 349 of the Michigan penal code,
25 1931 PA 328, MCL 750.349, committed against a minor.

26 (iii) A violation of section 350 of the Michigan penal code,
27 1931 PA 328, MCL 750.350.

28 (iv) A violation of section 520b, 520d, or 520g(1) of the

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

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

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

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

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

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

21 Enacting section 1. This amendatory act does not take effect
22 unless Senate Joint Resolution ____ or House Joint Resolution ____
23 (request no. 02344'21) of the 101st Legislature becomes a part of
24 the state constitution of 1963 as provided in section 1 of article
25 XII of the state constitution of 1963.