

MICHIGAN'S CHANGING SEX OFFENDER REGISTRY LAW

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The short history of Michigan's Sex Offenders Registration Act represents an evolving system of tracking certain convicted criminals, keeping the public informed as to the offenders' whereabouts, and funneling Federal dollars to the State. Since its enactment in 1994, the Act has undergone two major legislative revisions. Over the five years or so of its existence, the Act's function has expanded from being strictly a tool for law enforcement officials to providing a resource for public information, to serving as a conduit for Federal funding for various law enforcement programs.

At its inception in 1994, the Sex Offenders Registration Act was designed solely to be a law enforcement resource. The Act saw substantive revisions in 1996, requiring the Department of State Police to make certain information in the registry available to the public. More recently, Public Act 85 of 1999 made significant changes to the law, primarily to bring it into compliance with Federal regulations regarding funding issues.

This article reviews the enactment of Michigan's Sex Offenders Registration Act and the subsequent changes made to it over the past five years.

Origins of the Act

Public Act 295 of 1994 created the Sex Offenders Registration Act to require a person convicted of a "listed offense" to register information about his or her identity, address, and conviction. A registrant is required to comply with the Act for 25 years after the date of initial registration; if the individual has a second or subsequent conviction for a listed offense after October 1, 1995 (the effective date of the Act), however, he or she must comply with the registration requirements for life, regardless of when the first listed offense was committed. The Act's registration requirements apply to all of the following:

- A person who was convicted of, or juvenile found responsible for, a listed offense after October 1, 1995.
- A person convicted of, or a juvenile found responsible for, a listed offense on or before October 1, 1995, who, on or after that date, was on probation or parole, was committed to jail, was committed to the jurisdiction of the Department of Corrections, or was under the jurisdiction of the juvenile court or the Department of Social Services (now the Family Independence Agency) for that offense.
- A person convicted of, or a juvenile found responsible for, an attempt or conspiracy to commit a listed offense whose probation or parole was transferred to Michigan after October 1, 1995.

Under the original Act, a registration was considered confidential and was not open to inspection, except for law enforcement purposes. The registration and all included material were exempt from disclosure under the Freedom of Information Act. An individual whose registration was revealed in violation of the Sex Offenders Registration Act had a civil cause of action against the responsible party for treble damages.

"Listed offense" originally included any of the following:

- Accosting, enticing, or soliciting a child for immoral purposes.
- Involvement in child sexually abusive activity or material.
- A third or subsequent violation of any combination of the following: engaging in indecent or obscene conduct in a public place, indecent exposure, or a local ordinance substantially corresponding to either of those offenses.
- Criminal sexual conduct (CSC) in the first, second, third, or fourth degree.
- Assault with intent to commit CSC.
- An attempt or conspiracy to commit an offense enumerated above.

- An offense substantially similar to a listed offense under the laws of the United States, any other state, or any country.

Public Act 10 of 1995 amended the law to specify that a person who is domiciled or temporarily resides in Michigan for 14 days or more, also must register if he or she has been convicted under a law of the United States, any state, or any country of an offense that is substantially similar to a listed offense.

Publicly Available Compilation

Despite the fact that the Sex Offenders Registration Act, as enacted in 1994, explicitly stated that it was to be used solely for law enforcement purposes, Public Act 494 of 1996 expanded the law to require the development of a compilation of registered individuals for public availability. Proponents of this change suggested that community safety would be enhanced if members of the public had access to a list of registered offenders.

The 1996 legislation requires that the Department of State Police maintain a computerized data base of registered individuals and that a compilation of the registry be indexed by zip codes and contain the name, aliases, address, physical description, birth date, and listed offenses of each registered individual residing within a zip code area. Public Act 494 also requires the Department to make the compilation available to State Police posts, local law enforcement agencies, and sheriff's departments; those entities then must make the information from the compilation available for public inspection.

The 1996 revisions also authorize the State Police to make information from the compilation available to the public through electronic, computerized, or other accessible means. Consequently, the Department has developed a web site at which anyone with Internet access may view the compilation for any particular zip code area (<http://www.mipsor.state.mi.us/>).

Federal Funding Eligibility

Public Act 85 of 1999, which was signed into law on June 28 and took effect on September 1, 1999, amended the Sex Offenders Registration Act to do all of the following (among other things):

- Expand the Act's listed offenses to include the felonies of sodomy, gross indecency, and kidnapping or enticing away, and the misdemeanor of soliciting and accosting, if the victim of any of those violations is under 18 years of age.
- Include out-of-state students and people working in Michigan in the registration requirements.
- Require registration for life if an offender is convicted of certain criminal sexual conduct offenses or kidnapping.
- Require that a registered person who is not incarcerated report yearly in person to a law enforcement agency for registration and verification of information provided in a registration.
- Require a registrant to maintain a valid driver's license or State personal identification card and, between January 1 and January 15, 2000, have a digitized photograph taken by the Secretary of State.
- Establish new and graduated penalties for failure to comply with the Sex Offenders Registration Act.

These changes apparently were necessary to avoid a significant reduction in Federal funding under the Byrne Formula Grant program (42 USC 3756). The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Wetterling Act), enacted as part of the 1994 Federal Crime Act, provides a financial incentive for states to establish specific requirements for registration systems for convicted child molesters and other sexually violent offenders. Failure to comply with these Federal guidelines within the specified time period will result in a mandatory 10% reduction of Byrne Formula Grant funding, and any funds not allocated to noncomplying states are to be reallocated to those states that are in compliance.

Under the Wetterling Act, states are to submit to the Bureau of Justice Assistance (BJA) certification to demonstrate that the states' offense coverage provisions comply with the Federal requirements. This certification

is considered part of each state's overall submission to the BJA of its sex offender registration and community notification provisions, which should demonstrate compliance with the Wetterling Act. In order to continue receiving its full share of Byrne Formula Grant funding after September 12, 1999, Michigan needed to submit to the BJA information demonstrating compliance with the Wetterling Act's requirements by July 12, 1999.

In 1999, Michigan was awarded approximately \$16 million in Byrne Grant funding. In the past, this funding has been used to help sustain various programs, including community policing and school liaison officers; Drug Abuse Resistance Education (D.A.R.E.); zero-tolerance drug offender testing; and criminal justice record improvement. Byrne Grant money also contributed to funding personnel and vehicles for multijurisdictional drug teams, a money-laundering investigative team, the Statewide Information System (STATIS), and Training and Coordinating Effort (TRACE) for narcotics investigation training. In addition, Byrne Grant funding was awarded to county prosecutors for training, equipment, and personnel costs.

By enacting the Sex Offenders Registration Act amendments included in Public Act 85 of 1999, Michigan met the Federal requirements to ensure continued Byrne Formula Grant funding under the Wetterling Act. In subsequent program years, the State will be required to certify that it remains in compliance with the Federal regulations.

Functional Changes

As the information above indicates, Michigan's Sex Offenders Registration Act has been amended to ensure continued Federal funding for various criminal justice programs, regardless of whether those programs are related to sexual conduct offenses. This represents a significant diversion from the original, statutorily expressed purpose of the Act.

As explicitly stated in the original 1994 enacting legislation, the Act was to be used strictly as a law enforcement resource tracking the identity and location of convicted sex offenders. This purpose was expanded in 1996 to provide the public with a window to information in the sex offender registry, if not the registration roll itself. In 1999, in light of Federal funding incentives and broad, nationwide use of sex offender registration requirements on both the Federal and state levels, the Act became an avenue for supporting various law enforcement efforts in Michigan.

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