

HOUSE BILL No. 5241

January 22, 2014, Introduced by Reps. Kivela, Hovey-Wright, Brown, Brinks, Darany, Haugh, Banks, Roberts, Slavens, Tlaib, Cavanagh, Lamonte, Dillon, LaVoy, Heise, Lauwers, Daley, Haveman, Lyons, Haines, Rogers, McCready, Jenkins, Price, Kowall, O'Brien, Singh, Greimel and Knezek and referred to the Committee on Criminal Justice.

A bill to amend 1994 PA 295, entitled
"Sex offenders registration act,"
by amending section 2 (MCL 28.722), as amended by 2011 PA 17.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

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

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

5 (i) Having a judgment of conviction or a probation order
6 entered in any court having jurisdiction over criminal offenses,
7 including, but not limited to, a tribal court or a military court,
8 and including a conviction subsequently set aside under 1965 PA
9 213, MCL 780.621 to 780.624.

1 (ii) Either of the following:

2 (A) Being assigned to youthful trainee status under sections
3 11 to 15 of chapter II of the code of criminal procedure, 1927 PA
4 175, MCL 762.11 to 762.15, before October 1, 2004. This sub-
5 subparagraph does not apply if a petition was granted under section
6 8c at any time allowing the individual to discontinue registration
7 under this act, including a reduced registration period that
8 extends to or past July 1, 2011, regardless of the tier designation
9 that would apply on and after that date.

10 (B) Being assigned to youthful trainee status under sections
11 11 to 15 of chapter II of the code of criminal procedure, 1927 PA
12 175, MCL 762.11 to 762.15, before October 1, 2004 if the individual
13 is convicted of any other felony on or after July 1, 2011.

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

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

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

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

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

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

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

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

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

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

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

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

26 (vi) That other person was under the jurisdiction of the
27 department of corrections and the actor was an employee or a

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

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

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

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

1 facility in which the victim was detained or to which the victim
2 was committed.

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

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

8 (f) "Felony" means that term as defined in section 1 of
9 chapter I of the code of criminal procedure, 1927 PA 174, MCL
10 761.1.

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

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

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

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

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

20 (i) "Institution of higher education" means 1 or more of the
21 following:

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

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

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

1 (J) ~~(k)~~—"Listed offense" means a tier I, tier II, or tier III
2 offense.

3 (K) "LOCAL LAW ENFORCEMENT AGENCY" MEANS THE POLICE DEPARTMENT
4 OF A MUNICIPALITY.

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

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

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

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

20 (p) "Residence", as used in this act, for registration and
21 voting purposes means that place at which a person habitually
22 sleeps, keeps his or her personal effects, and has a regular place
23 of lodging. If a person has more than 1 residence, or if a wife has
24 a residence separate from that of the husband, that place at which
25 the person resides the greater part of the time shall be his or her
26 official residence for the purposes of this act. If a person is
27 homeless or otherwise lacks a fixed or temporary residence,

1 residence means the village, city, or township where the person
2 spends a majority of his or her time. This section shall not be
3 construed to affect existing judicial interpretation of the term
4 residence for purposes other than the purposes of this act.

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

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

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

12 (i) A violation of section 145c(4) of the Michigan penal code,
13 1931 PA 328, MCL 750.145c.

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

16 (iii) A violation of section 349b of the Michigan penal code,
17 1931 PA 328, MCL 750.349b, if the victim is a minor.

18 **(iv) A VIOLATION OF SECTION 449A(2) OF THE MICHIGAN PENAL CODE,**
19 **1931 PA 328, MCL 750.449A.**

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

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

25 **(vii)** ~~(vi)~~—Any other violation of a law of this state or a local
26 ordinance of a municipality, other than a tier II or tier III
27 offense, that by its nature constitutes a sexual offense against an

1 individual who is a minor.

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

5 **(ix)** ~~(viii)~~—An attempt or conspiracy to commit an offense
6 described in subparagraphs (i) to ~~(vii)~~ **(viii)** .

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

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

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

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

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

18 (i) A violation of section 145a of the Michigan penal code,
19 1931 PA 328, MCL 750.145a.

20 (ii) A violation of section 145b of the Michigan penal code,
21 1931 PA 328, MCL 750.145b.

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

24 (iv) A violation of section 145d(1)(a) of the Michigan penal
25 code, 1931 PA 328, MCL 750.145d, except for a violation arising out
26 of a violation of section 157c of the Michigan penal code, 1931 PA
27 328, MCL 750.157c.

1 (v) A violation of section 158 of the Michigan penal code,
2 1931 PA 328, MCL 750.158, committed against a minor unless either
3 of the following applies:

4 (A) All of the following:

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

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

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

11 (B) All of the following:

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

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

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

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

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

3 (B) All of the following:

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

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

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

10 **(vii) A VIOLATION OF SECTION 462G OF THE MICHIGAN PENAL CODE,**
11 **1931 PA 328, MCL 750.462G.**

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

14 **(ix)** ~~(viii)~~—A violation of section 455 of the Michigan penal
15 code, 1931 PA 328, MCL 750.455.

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

20 **(xi)** ~~(x)~~—A violation of section 520c committed against an
21 individual 18 years of age or older.

22 **(xii)** ~~(xi)~~—An attempt or conspiracy to commit an offense
23 described in subparagraphs (i) to ~~(x)~~ **(xi)** .

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

- 1 (v) "Tier III offender" means either of the following:
- 2 (i) A tier II offender subsequently convicted of a tier I or II
- 3 offense.
- 4 (ii) An individual convicted of a tier III offense.
- 5 (w) "Tier III offense" means 1 or more of the following:
- 6 (i) A violation of section 338, 338a, or 338b of the Michigan
- 7 penal code, 1931 PA 328, MCL 750.338, 750.338a, and 750.338b,
- 8 committed against an individual less than 13 years of age.
- 9 (ii) A violation of section 349 of the Michigan penal code,
- 10 1931 PA 328, MCL 750.349, committed against a minor.
- 11 (iii) A violation of section 350 of the Michigan penal code,
- 12 1931 PA 328, MCL 750.350.
- 13 (iv) A violation of section 520b, 520d, or 520g(1) of the
- 14 Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520d, and
- 15 750.520g. This subparagraph does not apply if the court determines
- 16 that the victim consented to the conduct constituting the
- 17 violation, that the victim was at least 13 years of age but less
- 18 than 16 years of age at the time of the offense, and that the
- 19 individual is not more than 4 years older than the victim.
- 20 (v) A violation of section 520c or 520g(2) of the Michigan
- 21 penal code, 1931 PA 328, MCL 750.520c and 750.520g, committed
- 22 against an individual less than 13 years of age.
- 23 (vi) A violation of section 520e of the Michigan penal code,
- 24 1931 PA 328, MCL 750.520e, committed by an individual 17 years of
- 25 age or older against an individual less than 13 years of age.
- 26 (vii) An attempt or conspiracy to commit an offense described
- 27 in subparagraphs (i) to (vi).

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

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

7 (y) "Vessel" means that term as defined in section 44501 of
8 the natural resources and environmental protection act, 1994 PA
9 451, MCL 324.44501.

10 Enacting section 1. This amendatory act does not take effect
11 unless House Bill No. 4209 of the 97th Legislature is enacted into
12 law.