

Juvenile Changes to HB5679 - 3 Parts

Part 1 – Remove language in MSORA that exceeds federal guidelines for juvenile offenders.

Special Note: In 2016 Rep. Pagel created draft, 06496'16 Draft 2 to do this. It addressed the legislature's erroneous over-inclusion of juveniles at the time the MSORA changes occurred in April 2011. The draft was put on hold in 2016 when the 6th Circuit COA decision came down with the idea this correction would be folded into the changes for the court. In 2011 the legislature openly indicated when legislating MSORA changes that they would not exceed the federal guidelines for juvenile offenders. Michigan did however, erroneously include offense statutes that if committed by juveniles required registration—which was not intended. I error was identified and acknowledged at the time SB 188 and SB 189 were being legislated. In an effort to meet a federal deadline, the House Judiciary passed the legislation and committed to correcting this mistake in the near future. Chris Hawkins, MSP Legislative Liaison, acknowledged this error at that time and the MSP indicated they would not oppose this correction. For 9 years now we have exceeded the guidelines of the federal Adam Walsh Act (SORNA, Title 1 or the Adam Walsh Act) regarding juvenile offenders. **This is in direct opposition to PA 602 enacted in 2018 stating the legislature will not exceed a federal guideline unless there is clear and convincing evidence to do so. This threshold has not been met, and in fact, the research supports the exclusion of ALL juvenile offenders from sex offender registration.** The Adam Walsh Act excludes juveniles whose offense does not include penetration using force, threat of violence, rendering unconscious, or drugging.

Change Needed: MCL 27.722, Sec. 2

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

- (i) A tier II offender subsequently convicted of a tier I, or II offense.
- (ii) Except as otherwise provided in this subparagraph, an individual convicted of a tier III offense. Tier III offender does not include an individual described in subdivision (B)(iii) or (iv) if the individual was convicted of 1 or more of the following:**
 - (A) A violation of section 338, 338A, or 338B of the Michigan Penal Code, 1931 PA 328, MCL 750.338, 750.338A, and 750.338B.**
 - (B) A violation of section of 349 of the Michigan Penal Code, 1931 PA 328, MCL 750.349.**
 - (C) A violation of section 350 of the Michigan Penal Code, 1931 PA 328, MCL 750.350.**

- (D) A violation of section 520B(1)(A) or (B)(i) or (ii) of the Michigan Penal Code, 1931 PA 328, MCL 750.520.B**
- (E) A violation of section 520C of the Michigan Penal Code, 1931, PA 1931 328, MCL 750.520C.**
- (F) A violation of section 520D(1)(A) of the Michigan Penal Code, 1931 PA 328, MCL 750.520D.**
- (G) A violation of section 520G(2) of the Michigan Penal Code, 1931 PA 328, MCL 750.520G.**

(v) “Tier III offense” mean 1 or more of the following:

Part 2 – Discontinue juvenile offender registration at age 25 for those that are required to register if they are registering solely for a juvenile offense.

This allows juvenile offenders where the court may not have ordered sex offender treatment to still be removed based on non-offending behavior over time (the courts typically do order sex offender treatment, but years ago they may not have). Age 25 is well out of the time period in which research tells us that if a juvenile offender does reoffend they are most likely to do it within 3 years of initial adjudication—a time when they are most likely to still be developmentally immature. Tennessee has been approved as having substantially implemented the Adam Walsh Act (SORNA), and their SOR law allows this.

Change Needed: MCL 28.725, Sec. 5

(18) An individual registered solely because he or she had 1 or more dispositions for a listed offense entered under section 18 of chapter XIA 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 XIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d, or because he or she was the subject of an order of disposition or other adjudication in a juvenile matter in another state or country, shall comply with this section until the age of 25.

Part 3 – Provide opportunity for juvenile offender registrants that are required to register to have their duty to register discontinued if the court determines the individual has successfully completed sex offender treatment.

This change allows new juvenile offenders, that would otherwise be required to register, and existing juvenile offender registrants, to petition for removal if they’ve completed sex offender treatment. These changes place focus on methods of sexual abuse prevention that have been proven to be effective--sex offender treatment. Maryland has been

approved as having substantially implemented the Adam Walsh Act (SORNA), and they register no juveniles after they have successfully complete probation.

Change Needed: MCL 28.728c, Sec. 8c

(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.~~ (Moved to Subsection 12 (f).)

(12) (f) A petitioner has not previously filed a petition under this section that was denied by the court after a hearing

(15) The court shall grant a petition properly filed by an individual under subsection (3) if ~~either~~ **any** 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.

(c) Both of the following:

(i) The petitioner is 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, or because he or she was the subject of an order of disposition or other adjudication in a juvenile matter in another state or country.

(ii) The court determines that the petitioner successfully completed a sex offender treatment program certified by the United States attorney general under 423 USC 16915(b)(1), or another appropriate sex offender treatment program.