

CHANGES TO MICHIGAN'S SEX OFFENDER REGISTRY
2011 PA 17-19
Effective July 1, 2011

2011 PA 17-19 amended Michigan's Sex Offender Registration Act (SORA) to comply with the requirements of the Federal Sex Offender Registration and Notification Act (SORNA). Information regarding SORNA is available on-line at: <http://www.ojp.usdoj.gov/smart/guidelines.htm>

This memo addresses the major changes in a Frequently Asked Questions (FAQ) format.

A. WHAT IS A CONVICTION?

1. A judgment of conviction in a criminal court, including tribal or military courts. MCL 28.722(b)(i).
2. A conviction that has been set aside under MCL 780.621 to 624. MCL 28.722(b)(i).
3. Being assigned to youthful trainee status:
 - a. Before October 1, 2004 if the person did not successfully petition for removal from the registry before July 1, 2011. MCL 28.722(b)(ii)(a).
 - b. Before October 1, 2004 if the person is convicted of a felony after July 1, 2011. MCL 28.722(b)(ii)(b).
4. A juvenile disposition if the juvenile was age 14 or older and was adjudicated for a tier 3 offense. MCL 28.722(b)(iii).

B. WHO IS REQUIRED TO REGISTER?

Registration offenses are divided into three tiers.

1. TIER 1

- a. Tier 1 offenders will only be on the law enforcement registry. MCL 28.728(4)(c).
- b. Tier 1 offenders will register for 15 years. MCL 28.725(10).
- c. Tier 1 offenses are:
 1. MCL 750.145c(4) - Knowing possession of child sexually abusive material. MCL 28.722(s)(i).
 2. MCL 750.335a(2)(b) - Indecent exposure with fondling if the victim is a minor. A minor is a person under 18 years of age. MCL 28.722(s)(ii).
 3. MCL 750.349b - Unlawful imprisonment if the victim is a minor. MCL 28.722(s)(iii).
 4. MCL 750.520e - 4th degree CSC if the victim is 18 or older. MCL 28.722(s)(iv).

5. MCL 750.520g(2) - Assault with intent to commit CSC (sexual contact) if the victim is 18 or older. MCL 28.722(s)(iv).
6. MCL 750.539j - Video voyeurism if the victim is a minor. MCL 28.722(s)(v).
7. Any other violation that by its nature constitutes a sexual offense against a minor. MCL 28.722(s)(vi).
8. An offense committed by a sexually delinquent person. MCL 28.722(s)(vii).
9. An attempt or conspiracy to commit a tier 1 offense. MCL 28.722(s)(viii).
10. An offense substantially similar to a tier 1 offense under the law of the United States, another state or country, or tribal or military law. MCL 28.722(s)(ix).

2. TIER 2

- a. Tier 2 offenders will be on the public registry. MCL 28.728(4).
- b. Tier 2 offenders will register for 25 years. MCL 28.725(11).
- c. Tier 2 offenses are:
 1. A tier 1 offender subsequently convicted of another tier 1 offense. MCL 28.722(t)(i).
 2. MCL 750.145a - Soliciting a person under the age of 16 for an immoral purpose. MCL 28.722(u)(i).
 3. MCL 750.145b - Soliciting a person under the age of 16 for an immoral purpose; second offense. MCL 28.722(u)(ii).
 3. MCL 750.145c(2) or (3) - Creation or distribution of child sexually abusive material. MCL 28.722(u)(iii).
 4. MCL 750.145d(1)(a) - Using the Internet to commit various crimes against a minor. MCL 28.722(u)(iv).
 5. MCL 750.158 - Sodomy against a minor. MCL 28.722(u)(v).
 - a. Unless the victim was between 13-16, and
 - b. The defendant was not more than 4 years older than the victim, and
 - c. The victim consented to the violation, or
 - d. The victim was 16 or 17 and was not under the custodial authority of the defendant at the time of the violation, and
 - e. The victim consented to the violation.

6. MCL 750.338, 338a or 338b - Gross indecency against a minor. MCL 28.722(u)(vi).
 - a. Unless the victim was between 13-16, and
 - b. The defendant was not more than 4 years-older than the victim, and
 - c. The victim consented to the conduct, or
 - d. The victim was 16 or 17 and was not under the custodial authority of the defendant at the time of the violation, and
 - e. The victim consented to the conduct.
 7. MCL 750.448 - Soliciting a minor to become a prostitute. MCL 28.722(u)(vii).
 8. MCL 750.455 - Pandering. MCL 28.722(u)(viii).
 9. MCL 750.520c - 2nd degree CSC committed against a victim 13 year of age or older. MCL 28.722(u)(ix & x).
 10. MCL 750.520e - 4th degree CSC committed against a victim between 13 and 18 years of age. MCL 28.722(u)(ix).
 11. MCL 750.520g(2) - Assault with intent to commit sexual contact committed against a victim between 13 and 18 years of age. MCL 28.722(u)(ix).
 12. An attempt or conspiracy to commit a tier 2 offense. MCL 28.722(u)(xi).
 13. An offense substantially similar to a tier 2 offense under the law of the United States, another state or country, or tribal or military law. MCL 28.722(u)(xii).
- 3. TIER 3**
- a. Tier 3 offenders will be on the public registry. MCL 28.728(4).
 - b. Tier 3 offenders will register for life. MCL 28.725(12).
 - c. Tier 3 offenses are:
 1. A tier 2 offender subsequently convicted of another tier 1 or tier 2 offense. MCL 28.722(v)(i).
 2. MCL 750.338, 750.338a, 750.338b - Gross indecency committed against a victim under age 13. MCL 28.722(w)(i).
 3. MCL 750.349 - Kidnaping if the victim is a minor. MCL 28.722(w)(ii).
 4. MCL 750.350 - Enticing a child under age 14. MCL 28.722(w)(iii).

5. MCL 750.520b, 750.520d and 750.520g(1) - 1st degree CSC, 3rd degree CSC and Assault with intent to commit sexual penetration. MCL 28.722(w)(iv).
 - a. Unless the victim was between 13-16, and
 - b. The defendant was not more than 4 years older than the victim, and
 - c. The victim consented to the conduct.
6. MCL 750.520c or 750.520g(2) - 2nd degree CSC or Assault with intent to commit sexual contact committed against a victim under 13. MCL 28.722(w)(v).
7. MCL 750.520e - 4th degree CSC if the defendant is over 17 and the victim is under 13. MCL 28.722(w)(vi).
8. An attempt or conspiracy to commit a tier 3 offense. MCL 28.722(w)(vii).
9. An offense substantially similar to a tier 3 offense under the law of the United States, another state or country, or tribal or military law. MCL 28.722(w)(viii).

C. WHAT ABOUT JUVENILE OFFENDERS?

1. Only juvenile offenders who are 14 or older at the time of the offense are required to register, and only for a tier 3 adjudication. MCL 28.722(b)(iii).
2. Juvenile offenders are only on the law enforcement registry. MCL 28.728(4)(b).
3. Juveniles convicted as an adult in circuit court are subject to adult registration rules. MCL 28.722(b)(i) & 28.722(b)(iii).
4. Juveniles convicted in a designated proceeding in juvenile court are subject to adult registration rules. MCL 28.728(4)(a).

D. HOW DO WE DETERMINE ROMEO AND JULIET STATUS?

1. If there is a dispute between the prosecution and defense regarding whether the defendant or juvenile is required to register because the defense claims the conduct falls within the Romeo and Juliet exception:
 - a. The court holds a post-conviction, pre-sentencing hearing or a post-adjudication, pre-disposition hearing. MCL 28.723a(1).
 - b. The defendant or juvenile must prove by a preponderance of the evidence that:
 1. The victim was between the ages of 13 to 16.
 2. The defendant or juvenile was not more than 4 years older than the victim.
 3. The sexual conduct was consensual.

4. The victim was 16 or 17 and was not under the custodial authority of the defendant at the time of the violation, and
5. The victim consented to the conduct. MCL 28.723a(2).
- c. The rules of evidence, except those relating to privileges and the rape shield law, do not apply. MCL 28.723a(3).
- d. The victim has the right to attend and be heard, attend and be silent, or to refuse to attend. MCL 28.723a(5).
- e. The Court's decision is a final order, appealable by right to the Court of Appeals. MCL 28.723a(6).

E. WHAT IF MY CASE IS PENDING ON JULY 1, 2011 WHEN THIS LAW TAKES EFFECT?

1. If a prosecution or juvenile proceeding is pending on July 1, the registration determination is made under Acts 17-19, and not the law in effect at the time of the offense. MCL 28.724(7).

F. WHEN AND HOW OFTEN DOES AN OFFENDER HAVE TO CHECK IN?

1. A tier 1 offender must report once a year between January 1-15. MCL 28.725a(3)(a).
2. A tier 2 offender must report twice a year between January 1-15 and July 1-15. MCL 28.725a(3)(b).
3. A tier 3 offender must report quarterly between January 1-15, April 1-15, July 1-15 and October 1-15. MCL 28.725a(3)(c).
4. When the person reports they must review and confirm or change their registration information. If their appearance has changed, they must obtain an updated photo. MCL 28.725a(4) & (5).

G. WHAT IS THE REGISTRATION FEE?

1. The fee is increased from \$35 to \$50. MCL 28.725a(6).
2. \$30 must be forwarded to the MSP for deposit in the sex offenders registration fund. \$20 is retained by the collecting agency. MCL 28.725b(1).
3. The fee can be waived for 90 days if the offender is indigent. MCL 28.725b(3).
4. An offender is indigent if he or she:
 - a. Was found indigent by a court within the last 6 months, or
 - b. Receives assistance under the DHS food assistance program, or
 - c. Has an annual income below the current federal poverty guidelines. MCL 28.722(h).

H. WHERE DOES A HOMELESS PERSON REGISTER?

1. A homeless person registers in the city, village or township where the person spends the majority of his or her time. MCL 28.722(p).

I. WHEN DOES A NONRESIDENT HAVE TO REGISTER?

1. A nonresident who works or attends post secondary school in this state has to register and comply with all reporting and change of work or school address requirements. MCL 28.723(1), MCL 28.724a & MCL 28.725(2).
2. A non resident who commits a Tier 1-3 offense in this state must initially register, but he or she is not required to comply with continuing SORA reporting requirements. MCL 28.723(3).

J. WHAT INFORMATION IS ON THE REGISTRY?

1. The Acts create two registries. A registry with information that is available only to law enforcement, and a public registry that can be accessed on-line with less information. The following information will all be on the law enforcement registry. *Information on the public registry is in italics.*
 - a. *Offender's legal name, any aliases, nicknames, ethnic or tribal names or any other names by which the individual is or has been known.* MCL 28.728(1)(a). *MCL 28.728(2)(a).*
 - b. Social security number and any alleged SSNs previously used by the offender. MCL 28.728(1)(b).
 - c. *Date of birth* and any alleged dates previously used by the offender. MCL 28.728(1)(c). *MCL 28.728(2)(b).*
 - d. *The address where the offender resides* or will reside. MCL 28.728(1)(d). *MCL 28.728(2)(c).*
 - e. Name and address of any temporary lodging that will be used for more than 7 days. MCL 28.728(1)(e).
 - f. Name and *address of the offender's employer.* MCL 28.728(1)(f). *MCL 28.728(2)(d).*
 - g. Name and *address of any postsecondary school the offender is attending.* MCL 28.728(1)(g). *MCL 28.728(2)(e).*
 - h. All phone numbers registered to the offender or routinely used by the offender. MCL 28.728(1)(h).
 - i. All email or instant message addresses assigned to or routinely used by the offender, including all login names or other identifiers. MCL 28.728(1)(i).
 - j. *The license plate number, registration number and description of any motor vehicle, aircraft or vessel owned or regularly operated by the offender,* including the location at which the item is habitually stored or kept. MCL 28.728(1)(j). *MCL 28.728(2)(f).*
 - k. Driver license or state personal ID card number. MCL 28.728(1)(k).

- l. A digital copy of the offenders passport and other immigration documents. MCL 28.728(1)(l).
- m. Any occupational or professional licensing information. MCL 28.728(1)(m).
- n. *A brief summary of the conviction*, including where it occurred and the original charge if the conviction was for a lesser offense. MCL 28.728(1)(n). *MCL 28.728(2)(g)*.
- o. *A complete physical description of the offender*. MCL 28.728(1)(o). *MCL 28.728(2)(h)*.
- p. *A photograph*. MCL 28.728(1)(p). *MCL 28.728(2)(i)*.
- q. Fingerprints and palm prints. MCL 28.728(1)(q).
- r. An electronic copy of the offender's driver license or state ID card, including a photograph. MCL 28.728(1)(r).
- s. *The law text for the offender's registration offense*. MCL 28.728(1)(s). *MCL 28.728(2)(j)*.
- t. Any outstanding arrest warrant information. MCL 28.728(1)(t).
- u. *Offender's tier classification and registration status*. MCL 28.728(1)(u). *MCL 28.728(2)(k) & (l)*.
- v. An indicator whether a DNA profile has been entered in CODIS. MCL 28.728(1)(v).
- w. Offender's complete criminal history, including dates of all arrests and convictions. MCL 28.728(1)(w).
- x. Offender's MDOC number, and the status of his or her parole, probation or release. MCL 28.728(1)(x).
- y. Offender's FBI number. MCL 28.728(1)(y).
- z. *Whether the offender's conviction has been set aside*. MCL 28.728(10).

K. WHEN DOES AN OFFENDER HAVE TO UPDATE HIS OR HER REGISTRATION INFORMATION?

- l. An offender must immediately report the following changes in person to the registering authority.
 - a. A change of residence. MCL 28.725(1)(a).
 - b. A change in place of employment, or discontinuance of employment. MCL 28.725(1)(b).
 - c. Enrolls in an institution of higher education, or discontinues enrollment. MCL 28.725(1)(c).
 - d. A name change. MCL 28.725(1)(d).
 - e. Temporarily reside at a place other than his or her residence for more than 7 days. MCL 28.725(1)(e).

- f. Establishing an email address. MCL 28.725(1)(f).
 - g. Purchases or begins to regularly operate a vehicle, or discontinues ownership or operation. MCL 28.725(1)(g).
 - h. When he or she plans to change residence to another state. MCL 28.725(6).
2. Immediately is defined as within 3 business days. MCL 28.722(g).
 3. The registering authority is the law enforcement agency or sheriff's office having jurisdiction over the offender's residence, place of employment or institution of higher learning, or the nearest MSP post. MCL 28.722(o).
 4. If an offender is moving out of the country, or will be traveling to another country for more than 7 days, he or she must notify the registering authority within 21 days before moving or traveling. MCL 28.725(7).

L. HOW IS A CURRENT REGISTRANT NOTIFIED OF ANY NEW REPORTING REQUIREMENTS?

1. The MSP must mail a notice to every registrant before July 1, 2011. MCL 28.725a(1).

M. ARE THE REGISTRATION PROVISIONS RETROACTIVE?

1. If a person was previously convicted of an offense for which registration would now be required, the person is not required to register, unless he or she is convicted of a felony after July 1, 2011. MCL 28.724(5).

N. WHAT DOES LAW ENFORCEMENT HAVE TO DO IF AN OFFENDER DOES NOT REGISTER OR UPDATE REGISTRATION INFORMATION?

1. The registering agency must do all of the following:
 - a. Determine whether the offender has absconded or is otherwise unavailable. MCL 28.728a(1)(a).
 - b. If notified by another state, US territory, or Indian tribe that an offender was supposed to appear and register or update registration information, and the offender does not appear, the registering agency must notify the MSP. MCL 28.728a(1)(b).
 - c. Revise the information in the law enforcement registry that the offender has absconded or is otherwise unlocatable. MCL 28.728a(1)(c).
 - d. Seek an arrest warrant if the legal requirements for obtaining a warrant are satisfied. MCL 28.728a(1)(d).
 - e. Enter the offender into the National Crime Information Center. MCL 28.728a(1)(e).
2. After receiving notification from the registering agency, the MSP must do all of the following:
 - a. Notify the state, territory or Indian tribe that the offender failed to register. MCL 28.728a(2)(a).

- b. Notify the US Marshall's service. MCL 28.728a(2)(a).
- c. Update the National Sex Offender Registry of the offender's status as an absconder or as unlocatable. MCL 28.728a(2)(c).

O. WHAT ARE THE PENALTIES FOR VIOLATIONS?

- 1. A willful violation of the act is a felony punishable by imprisonment for up to 4 years and/or a fine of up to \$2,000. MCL 28.729(1)(a). It is an F felony under the guidelines. MCL 777.11b.
 - a. A second offense is a felony punishable by imprisonment for up to 7 years and/or a fine of up to \$5,000. MCL 28.729(1)(b). It is a D felony under the guidelines. MCL 777.11b.
 - b. A third offense is a felony punishable by imprisonment for up to 10 years and/or a fine of up to \$10,000. MCL 28.729(1)(b). It is a D felony under the guidelines. MCL 777.11b.
- 2. A failure to register is a misdemeanor punishable by imprisonment for up to 2 years and/or a fine of up to \$2,000. MCL 28.729(2). It is an F felony under the guidelines. MCL 777.11b.
- 3. A willful failure to sign a registration and notice is a misdemeanor, punishable by imprisonment for up to 93 days and/or a fine of up to \$1,000. MCL 28.729(3).
- 4. A willful refusal or failure to pay the registration fee is a misdemeanor punishable by imprisonment for up to 90 days. MCL 28.729(4).
- 5. Divulging, using or publishing non-public SORA information is a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of up to \$1,000. MCL 28.730.

P. HOW DO WE COUNT THE REGISTRATION PERIOD?

- 1. The registration periods for tier 1, 2 or 3 offenses exclude any periods of incarceration or civil commitment. MCL 28.725(13).
- 2. If a person is required to register after July 1, 2011 for a conviction that occurred prior to July 1, any time from the date of that conviction to the date of registration, less time spent incarcerated, will count toward the applicable registration period. MCL 28.275(14).

Q. MY REGISTRATION PERIOD EXPIRED. DO I NEED TO DO ANYTHING TO BE REMOVED FROM THE REGISTRY?

- 1. If the MSP determines a person's registration period has expired, or that the offender is no longer required to register, the MSP must remove the offender within 7 days after making that determination. MCL 28.728(9).

R. WHEN CAN A PERSON PETITION FOR REMOVAL FROM THE REGISTRY?

- 1. A tier 1 offender with a clean record can petition for after 10 years. MCL 28.728c(1) & (12).
- 2. A tier 3 offender with a clear record, who is on the registry for a juvenile adjudication, can petition after 25 years. MCL 28.728c(2) & (13).

3. An offender who is on the registry under any of the following circumstances can petition immediately for removal from the registry. The court shall grant the petition if the offender proves any of the following. MCL 28.728c(3) & (14-15).
 - a. That he or she meets the "Romeo and Juliet" exception. MCL 728.8c(14)(a) & (b).
 - b. That he or she was convicted of gross indecency or 2nd degree CSC by a department of corrections employee, the victim was 16 or older, the act was consensual, and the victim was not under the offender's custodial authority. MCL 28.728c(14)(c).
 - c. That he or she was under 14 at the time of the offense, and was adjudicated as a juvenile. MCL 28.728c(15)(a).
 - d. That he or she is on the registry for an offense that no longer requires registration. MCL 28.728c(15)(b).
 1. Those offenses would be indecent exposure and juveniles adjudicated for an offense that is not on tier 3.
4. The petition is filed in the county of conviction, or if the offender was convicted in another state or territory, in the county of the offender's residence. MCL 28.728c(4) & (7).
5. The prosecuting attorney must be served with the petition. MCL 28.728c(7).
5. A false statement in a petition is perjury. MCL 28.728c(6).
6. If the victim is known, the prosecuting attorney must notify the victim. MCL 28.728c(8).
 - a. The victim has the right to attend any hearing and make a statement. A victim cannot be required to attend a hearing against his or her will. MCL 28.728c(10).
7. The court may reduce the registration period to 10 years for a tier 1 offender or to 25 years for a juvenile offender if the court finds the following:
 - a. The appropriate time period has elapsed. MCL 728.8c(12)(a) & (13)(a).
 - b. The offender has not been convicted of a felony. MCL 728.8c(12)(b) & (13)(b).
 - c. The offender has not been convicted of a listed offense. MCL 728.8c(12)(c) & (13)(c).
 - d. The offender has successfully completed probation, parole or supervised release without any revocation. MCL 728.8c(12)(d) & (13)(d).
 - e. The offender successfully completed a sex offender treatment program. This requirement may be waived if such programming was not a condition of probation, parole or supervised release. MCL 728.8c(12)(e) & (13)(e).
 - f. The petition shall not be granted if the court determines the offender is a continuing threat to the public. MCL 28.728c(11).