

**Source:** The Paper for Birmingham-Bloomfield

## Sex offenders on the state registry

by Brooke Meier

December 31, 2009

It's been 15 years since Oakland County Sheriff Michael Bouchard helped craft legislation creating the Michigan Sex Offender Registry during his tenure in the state Legislature. Since its implementation, the registry has garnered a comprehensive, searchable database of individuals who have been convicted of sex crimes. Some deem the registry as a great asset to the state's residents, while others argue against its constitutionality.

"When we were drafting the legislation, we knew that sex offenders constitute a group that's extremely prone to recidivism," Bouchard said. "For example, the average pedophile has more than 100 victims in their so-called career. Knowing that, we wanted to create the registry as a law enforcement tool and to inform the public."

Bouchard, along with officials from the Birmingham, Bloomfield Hills and Bloomfield Township police departments agree that the registry has proved to be an asset to their communities.

The law was crafted to serve several purposes, the first of which was to develop a tool for law enforcement officials to use as a preventative and protective instrument in cases where children go missing. Bouchard said there have been cases where, after a child goes missing, the police turn to the registry to compile a list of past offenders living near the missing child's home. In many cases this has led to the child's recovery and safe return.

"Based on certain information in a case, you can determine if the perpetrator has a certain — what we call MO (modus operandi)," he said. "We then check that MO against the registry and see if any of the offenders in the area match. That gives police a place to begin."

The law can also be used as a deterrent. Because they have to register their address periodically, neighbors and local law enforcement officials know where sex offenders live, and this knowledge can help keep a rehabilitating offender on the right track.

"The registry has proven itself," Bouchard said. "It helps people decide where to go, for example, if they were going to take their kids trick-or-treating, or for a woman who likes to jog, which streets to avoid. It gives people knowledge, and knowledge is power."

Despite its good intentions, the law has its flaws — something groups like the American Civil Liberties Union (ACLU) have been trying to correct.

"The issue right now is compliance with the federal Adam Walsh Act," said Shelli Weisberg, legislative director for the ACLU of Michigan.

That act was signed into law in 2006, and is meant to push all states to categorize sex offenders the same way.

“This will significantly change the sex offender registry — it’s kind of a mixed bag (now),” she said. “The state’s registry is so large right now, there has been talks over the years to find a way to make the registry more effective, because it’s so large it’s often hard to measure how effective it might be.”

According to Weisberg, research across the country indicates that such registries aren’t as effective as once thought, especially because offenders aren’t required to register based on risk assessments.

“We are hoping that while we are amending (Michigan’s registry law) for the Adam Walsh Act, we can really look at amending the registry so it can be a more effective and useful tool as opposed to just a compilation that’s misunderstood,” she said.

Even legislators and Bouchard have acknowledged there are some changes that have to be made to the registry in order to promote the original intent of the law — to protect citizens from serious sexual predators.

The court system has also found flaws with the original legislation, stating the registry conflicts with the 14th Amendment, and is therefore unconstitutional.

In 2002, U.S. District Court Judge Victoria Roberts ruled the state’s registry was in violation of the U.S. Constitution and ordered it removed from the Michigan State Police’s web site. That ruling stemmed from a case involving a Royal Oak resident who was a corrections officer at Plymouth’s Scott Correctional Facility and was having consensual sex with a female prison inmate. The officer was dismissed from his job and received two years of probation. On top of that, he was required to register as a convicted sex offender for 25 years.

Roberts’ ruling was overturned by the U.S. Court of Appeals following an appeal filed by then-Michigan Attorney General Jennifer Granholm.

There have been many changes in the Michigan Sex Offender Registry Act since it was first enacted. In 1996, the registry was made open to the public. In 1999, it was made available to the public on the Internet. Three years later, the law was amended to require all registered sex offenders who attend and/or work at an institution of higher learning to report his or her campus status to the local law enforcement agency with jurisdiction over the campus.

Other changes could be in store if a recent Michigan Court of Appeals ruling holds up or legislation pending in the state House is approved.

Offenders remain on the registry for 10 years if they are assigned Youthful Trainee Status and are granted an alternative registration petition by a court, which was part of changes addressing concerns regarding so-called Romeo and Juliet relationships — where, for example, a consenting boy is 17-years-old and a consenting girl is 15-years-old.

On Nov. 3, the Michigan Court of Appeals made a decision in a Romeo-Juliet case involving a 2004 conviction after Robert DiPiazza, then 18-years-old, was adjudicated under the Holmes Youthful Trainee Act (HYTA) for attempted third-degree criminal sexual conduct (CSC).

The charges were brought against DiPiazza after a teacher found a picture of DiPiazza and his then 14-year-old girlfriend in bed together. He was convicted, sentenced to probation, and required to register as a sex offender. According to court documents, DiPiazza successfully completed his probation in 2005, and under the terms of HYTA, his case was dismissed. He now has no conviction on his record. However, he was still required to remain registered as a sex offender.

In 2008, DiPiazza petitioned the trial court asking that his name be removed from the sex offender registry because the requirement to register, as it applied to him, violated the cruel and unusual punishment clause of the Constitution.

While agreeing that his case was one of a Romeo-Juliet scenario, the trial court denied DiPiazza's request, but granted a request to reduce his period of registration under Michigan's Sex Offender Registry Act to 10 years.

As a result, DiPiazza appealed, feeling he had a strong case. Court documents stating the consensual nature of the sexual relationship that sparked the original conviction was never in dispute. In April 2009, DiPiazza and the girl, Nanette Trowbridge, were married. Their first child was expected in June 2009.

The Court of Appeals agreed with DiPiazza.

"Other states are recognizing the need to distinguish between people who truly represent a danger to the public, and those who do not. The penalties imposed for the same Romeo and Juliet offense in some other states are less severe," the Court of Appeals decision states. "The defendant never posed a danger to the public or a danger of re-offending. The defendant is not a sexual predator, nor did the trial court deem him to be. Further, even if the defendant needed rehabilitation, (the Sex Offender Registry Act) labeling him to be a convicted sex offender works at an opposite purpose, preventing the defendant from securing employment and otherwise moving forward with his life plans ... We conclude that requiring the defendant to register as a sex offender for 10 years is cruel and unusual punishment."

This ruling, if not challenged, sets a precedent for future Romeo-Juliet cases. The deadline for the prosecution to appeal to the Michigan Supreme Court was Tuesday, Dec. 29, after press time.

Miriam Aukerman, director of the re-entry law project at Legal Aid of Western Michigan, said that ruling, if it stands, could have implications for other Romeo-Juliet offenders who were either tried as juveniles or didn't have the option of the HYTA diversion program.

"Romeo and Juliet offenders who participated in the diversion program prior to Oct. 1, 2004, are on the registry," Aukerman said. "If they participated in the program after Oct. 1, 2004 they are not on the registry. However, if you are convicted as a juvenile, or if you don't get the benefit of the diversion

program, then ‰

you are on the registry. There are many cases where individuals who are Romeo and Juliet offenders are on the registry. The (DiPiazza) case will certainly apply to the individuals who completed the diversion program prior to Oct. 1, 2004, and it may have implications for other individuals who are Romeo and Juliet offenders, but weren't offered the diversion program for one reason or another."

Another measure that could affect Michigan's sex offender registry was recently introduced in the state Legislature.

House Bill (HB) 5505, which would prohibit registered sex offenders from working or loitering within 1,000 feet of a school bus stop, has been assigned to the House Judiciary Committee for consideration.

State Rep. Marty Knollenberg (R-Troy) introduced the measure, and co-sponsors include Rep. Chuck Moss (R-Birmingham, Bloomfield). State law already prohibits registered sex offenders from coming within 1,000 feet of an elementary, middle, or high school. HB 5505 would revise the definition of a school safety zone to include school bus stops. The only exemption would be if the sex offender were meeting his or her own child at a bus stop.

"I've been hearing from some people who say this bill is going too far because there are so many bus stops — offenders can't live anywhere," Moss said. "I'm willing to take another look at the legislation, but on the other hand, when my kids were little I wanted to be sure that there weren't creeps and predators around, that they weren't in danger."

"I think what we want to do with the sex offender registry is make sure that genuine predators are on there," he said. "We want to make sure when they are on the list it's because they are a dangerous predator, not because they were taking a leak in an ally behind a bar or part of a Romeo-Juliet scenario."

State Sen. John Pappageorge (R-Birmingham, Bloomfield) said he's been contemplating changes in the sex offender registry since he was first elected three years ago.

"We had a discussion on the topic when the director of the State Police was before our group," he said. "We have something like 44,000 registered sex offenders in Michigan. We are kidding our citizens if we believe we have the resources to really keep track of 44,000 people."

Pappageorge said the principal concern for legislators has to be the safety of citizens, and that means differentiating between a true sexual predator and someone who has committed a Romeo-Juliet crime.

"The way we start getting at that is by paying attention to the truly dangerous predators and take those who were in the Romeo-Juliet scenario off the registry," he said. "We need to find something in between the two extremes, categorize the list and focus our greatest efforts on those that are the most dangerous. To me that means we aren't going to have 44,000 offenders on the registry."

Anyone convicted of a listed offense after Oct. 1, 1995, is required to register as a sex offender if they reside, work, or are a student in Michigan on a permanent or temporary basis, defined as being in Michigan for 14 or more consecutive days, or at least 30 days in a calendar year.

Also, anyone convicted of a listed offense on or before Oct. 1, 1995, if on that date he or she was on probation or parole, in jail or prison, or under the jurisdiction of the juvenile division of the probate court or the Department of Social Services for the listable offense, is required to register. Individuals who are transferred to Michigan under those same conditions are also required to register.

Offenses for which an offender can be listed on the registry, according to the Michigan State Police (MSP) web site, are:

- Accosting, enticing or soliciting a child for immoral purposes;
  - Accosting, enticing or soliciting a child for immoral purposes (prior conviction);
  - Child sexually abusive activity or material;
  - Crimes against nature or sodomy, if the victim is less than 18-years-old;
  - Indecent exposure while engaging in a lewd or lascivious act if previously convicted of that act;
  - Three convictions of any combination of disorderly person and indecent exposure;
  - Gross indecency between male persons, or gross indecency between female persons, or gross indecency between male and female persons, if the victim is less than 18-years-old and the offender is not adjudicated as a juvenile;
  - Kidnapping, if the victim is less than 18-years-old;
  - Leading, taking, carrying away, decoying, or enticing away a child under 14-years-old;
  - Soliciting, accosting, or inviting to commit criminal prostitution or an immoral act;
  - Pandering;
  - CSC in the first, second, third, and fourth degrees;
  - Any violation of state law or local ordinance that by its nature constitutes a sexual offense against an individual who is less than 18-years-old;
  - Any offense committed by a person who was, at the time of the offense, a sexually delinquent person;
- and

- Any offense substantially %<sub>00</sub>

similar to a listed offense under a law of the United States, any state, or any country or under tribal or military law.

Sex offenders are required to report any change of address to law enforcement officials within 10 days of moving from the address which is listed on the registry. They must also verify that address, report employment, report attendance or employment — or any change in attendance or employment — at an institution of higher learning.

A one-time \$35 fee is assessed to all offenders. Valid Michigan driver licenses or personal identification cards must be maintained. Offenders must sign all required registration forms, and they can't reside, work, or loiter in a school safety zone.

Aside from the Romeo-Juliet scenario, another issue that proved difficult to resolve was how to make sure the registry is valid and accurate. Bouchard said he wanted to have local police departments check on the status of every offender and provide appropriate state dollars to local law enforcement agencies to reimburse them for the cost of doing so. Under the Headlee Amendment to Michigan's Constitution, the state can't require anything of county or local governments without providing funding to pay for meeting the requirement.

"By law, I couldn't require a local police department to check and verify the status of offenders (without providing funding to do that)," he said. "Having said that, it's a priority for me now that I've shifted roles from being in the Senate to being (Oakland County's) sheriff. Our units actually go out and knock on doors to verify — that's a priority. I don't view that as a burden."

Individuals who are guilty of a listed offense which doesn't require lifetime registration, must register as a sex offender for 25 years. Those offenders who remain on the list for their entire lives are those who have been convicted of any of the following offenses: CSC first-degree; CSC second-degree; kidnapping; leading, taking, carrying away, decoying, or enticing away a child under 14-years-old; and child sexually abusive activity or material.

Offenders must verify their address either quarterly — between the first and 15th day of January, April, July and October of each year — or yearly, depending on whether the crime which they were convicted of was a felony (punishable by imprisonment for more than one year), or a misdemeanor (punishable by imprisonment of less than a year), respectively.

First- and third-degree CSC, both felonies, involve sexual penetration. Second- and fourth-degree CSC — second degree being a felony and fourth degree a misdemeanor — involve sexual contact. Fourth-degree CSC is punishable by up to two years of incarceration.

Various conditions apply to each degree of CSC offense. Therefore, if an offender commits a crime to which more than one of those conditions is applicable, they are referred to as "multiple variable" offenses on the sex offender registry, according to State Police personnel.

Despite ongoing conversations about possible changes to the registry, local law enforcement officials say it's been a successful and useful tool in their communities

Bloomfield Hills Police Chief Richard Mattot said he didn't think there were any sex offenders living in the community.

"We had one, but he moved out about a year ago," he said. "We must not have had any problems with him because nothing came to our awareness."

Despite the rarity of offenders living in Bloomfield Hills, Mattot said the registry has always been a useful tool for the department.

Captain Steve Cook of the Bloomfield Township Police Department said there has been at least one case of a local convicted offender not keeping his information up-to-date with the registry.

"It's the only time I can remember, since I've been here, that we've had someone fail to register," he said. "To rectify that we obtained a warrant and he complied."

Like Bloomfield Hills' Mattot, Cook said the registry has been a useful tool for the department. Police in the township don't go out to ensure the registered offender is, in fact, where they say they are, according to Cook.

"Most of the offenders who register with us are known to us, and we know that they're there," he said. "We don't have to physically check. We know that they are there. We can do this because we have so few of them."

Birmingham police also view the registry as a useful tool for the department and the community.

"You always want to know if you've got a problem in your city," said Birmingham Police Sgt. Terry Kiernan. "That's part of the reason for the registry, anyway — to inform people."

Like the Oakland County Sheriff's Department, police in Birmingham go out and knock on doors to ensure registered sex offenders are accounted for.

"They are required to come in and register with us," Kiernan said. "Usually, if one of the clerks handling the offender thinks something's not right, or someone hasn't come in, we'll go out to the house to check and see if they moved, or verify that they're still there. Every so often you'll get a complaint from somebody, so we'll go out and investigate."

According to Kiernan, there's only been one case when there was a minor problem with an offender, but it was resolved through the department quickly.