



# MICHIGAN STATE POLICE LEGAL UPDATE

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## SEX OFFENDERS REGISTRATION ACT

### Homeless offenders permitted to use emergency overnight shelters in student safety zones under certain conditions

On December 27, 2011, the United States District Court, Western District of Michigan, Southern Division, issued an opinion in the case of *Poe v. Snyder*. This case was brought by five homeless registered sex offenders and two charitable organizations that operate homeless shelters.

The case involves challenges to the [Student Safety Zones](#) chapter of the [Sex Offenders Registration Act](#) (SORA), specifically [MCL 28.735](#). Subject to certain exceptions, [MCL 28.735\(1\)](#) prohibits a registered offender from residing within a student safety zone defined in [MCL 28.733](#) as meaning the area that lies 1,000 feet or less from school property.

The homeless shelters involved in this case are located within a student safety zone in Grand Rapids, Michigan and both shelters generally denied admission to known registered sex offenders. The homeless offenders feared prosecution for violating [MCL 28.735](#) for staying in the shelters and they also feared having no place to stay if the homeless shelters would not allow them to stay.

The Court examined the ordinary meaning of "reside" and ruled that a registered sex offender does not violate [MCL 28.735\(1\)](#) by using an emergency overnight shelter under the following conditions: (1) users are admitted to the shelter in the evening and required to leave in the morning; and (2) users have no expectation of obtaining a place in the shelter on any given night.

The Court concluded, "[R]egistrants may sleep overnight in homeless shelters or drop-in centers located within 1,000 feet of a school, and may spend multiple nights in such shelters, so long as the foregoing conditions apply."

## COMMERCIAL MOTOR VEHICLES

### Use of hand-held mobile telephone while driving

Effective January 3, 2012, the Federal Motor Carrier Safety Administration amended 49 CFR 392.82 to prohibit a driver from using a hand-held mobile telephone while **driving** a commercial motor vehicle (CMV). Additionally, the rule prohibits a motor carrier from allowing or requiring its drivers to use a hand-held mobile telephone while **driving** a CMV. The rule contains an exception for drivers when necessary to communicate with law enforcement officials or other emergency services.

The rule defines "driving" as meaning operating a CMV on a highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. "Driving" does not include operating a CMV when the driver has moved the vehicle to the side of, or off, a highway and has stopped in a location where the vehicle can safely remain stationary.

The rule defines "use a hand-held mobile telephone" as meaning any of the following: (1) using at least one hand to hold a mobile telephone to conduct a voice communication; (2) dialing or answering a mobile telephone by pressing more than a single button, or (3) reaching for a mobile telephone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position, restrained by a properly installed and adjusted seatbelt.

Michigan has adopted 49 CFR 392.82 pursuant to [MCL 480.11a](#). Police officers who observe a violation of this rule may issue a citation under [MCL 480.11a](#). Violation is a state civil infraction.

The text of the amendments can be accessed [here](#). Frequently asked questions about this rule can be reviewed [here](#).

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