

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ADAM PETER RAHILLY,

Defendant-Appellee.

FOR PUBLICATION

July 31, 2001

9:05 a.m.

No. 227682

Ingham Circuit Court

LC No. 97-071504-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DANIEL HARNS,

Defendant-Appellee.

No. 229762

Washtenaw Circuit Court

LC No. 95-004608-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TIMOTHY MICHAEL STANLEY,

Defendant-Appellee.

No. 229829

Macomb Circuit Court

LC No. 99-000304-FH

Updated Copy

October 12, 2001

Before: Holbrook, Jr., P.J., and Hood and Griffin, JJ.

HOOD, J.

In these consolidated appeals, the prosecution appeals by leave granted from the trial courts' orders removing or exempting defendants from the registration provisions of the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq.* We reverse and remand.

In Docket No. 227682, defendant Adam Peter Rahilly pleaded guilty to a charge of fourth-degree criminal sexual conduct, MCL 750.520e (contact). The complainant and defendant were college students. Defendant asked the complainant if he could kiss her, and she said no. Defendant touched the complainant's breast. The complainant fell asleep with defendant behind her. When she woke up, defendant was on top of the complainant and digitally penetrated her. Defendant stated that he had been drinking and did not recall the incident. Defendant was sentenced as a youthful trainee to twenty-four months' probation pursuant to the Youthful Trainee Act (YTA), MCL 762.11 *et seq.* Defendant registered in accordance with the provisions of the SORA. After he successfully completed the terms of his probation, defendant filed a motion to have his name removed from the SORA registry. The trial court granted the motion.

In Docket No. 239762, defendant Daniel Harns pleaded guilty to a charge of fourth-degree criminal sexual conduct, MCL 750.520e, and indecent exposure, MCL 750.335a. Defendant exposed himself to several girls under the age of six years old at his parents' home where his mother ran a baby-sitting service. Additionally, defendant removed the clothing of a 4-1/2-year-old girl and touched her vagina. Following the completion of ten months on an electronic tether and three years on probation while assigned to the status of youthful trainee pursuant to the YTA, defendant moved for an exemption from registration under the SORA, and the trial court granted the motion.

In Docket No. 229829, defendant Timothy Michael Stanley pleaded guilty to a charge of fourth-degree criminal sexual conduct, MCL 750.520e and aggravated assault, MCL 750.81a. Defendant grabbed the complainant's hand and forced it onto his genitals, then assaulted the complainant's boyfriend. Defendant was sentenced to six months' probation and assigned to the status of youthful trainee pursuant to the YTA. The trial court granted defendant's motion to exempt him from registration under the SORA. We granted the prosecution's applications for leave to appeal in each case and consolidated the appeals.

The prosecution argues that there is no provision for removal from the SORA registry on the basis of participation in and completion of the requirements of the YTA. We agree. Statutory interpretation presents a question of law that we review *de novo*. *People v Nimeth*, 236 Mich App 616, 620; 601 NW2d 393 (1999). When resolving disputed interpretations of statutory language, it is the function of the reviewing court to effectuate the legislative intent. *People v Valentin*, 457 Mich 1, 5; 577 NW2d 73 (1998). When the language of the statute is clear, the Legislature intended the meaning plainly expressed, and the statute must be enforced as written. *Id.* We presume that every word has some meaning, and we must avoid any construction that would render any part of the statute surplusage or nugatory. *People v Borchard-Ruhland*, 460 Mich 278, 285; 597 NW2d 1 (1999). The Legislature is presumed to be aware of and legislate in harmony with existing laws when enacting new laws. *Walen v Dep't of Corrections*, 443 Mich 240, 248; 505 NW2d 519 (1993). The omission of a provision from one part of a statute that is included in another part of a statute must be construed as intentional. That is, we "cannot assume

that the Legislature inadvertently omitted from one statute the language that it placed in another statute, and then, on the basis of that assumption, apply what is not there." *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76 (1993). Two statutes that relate to the same subject or share a common purpose are in pari materia and must be read together. *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998). The goal of the in pari materia rule is to give effect to the legislative purpose found in the harmonious statutes. *Id.* When two statutes lend themselves to a construction that avoids conflict, that construction should control. *Id.*

The YTA provides a mechanism for individuals who commit certain crimes between the time of their seventeenth and twenty-first birthdays to be excused from having a criminal record. *People v Bobek* 217 Mich App 524, 529; 553 NW2d 18 (1996), citing *People v Dolgorukov*, 191 Mich App 38, 39; 477 NW2d 118 (1991). Pursuant to MCL 762.11, an individual within the restricted age range may plead guilty of a specified offense, and the court having jurisdiction may assign the individual to the status of youthful trainee. Once having assigned the individual to the status of youthful trainee, the court may commit the individual to custodial supervision for not more than three years in a specially designated Department of Corrections facility, place the individual on probation for not more than three years, or commit the individual to the county jail for not more than one year. MCL 762.13. Thus, the individual assigned to youthful trainee status is nonetheless punished for the crime committed. The individual assigned to youthful trainee status derives a benefit from the status if he successfully completes the punishment imposed. MCL 762.14 provides in relevant part:

(1) If consideration of an individual as a youthful trainee is not terminated and the status of youthful trainee is not revoked as provided in section 12 of this chapter [MCL 762.12], upon final release of the individual from the status as youthful trainee, the court shall discharge the individual and dismiss the proceedings.

(2) An assignment of an individual to the status of youthful trainee as provided in this chapter is not a conviction for a crime and, except as provided in subsection (3), the individual assigned to the status of youthful trainee shall not suffer a civil disability or loss of right or privilege following his or her release from that status because of his or her assignment as a youthful trainee.

* * *

(4) Unless the court enters a judgment of conviction against the individual for the criminal offense under section 12 of this chapter, all proceedings regarding the disposition of the criminal charge and the individual's assignment as youthful trainee shall be closed to public inspection, but shall be open to the courts of this state, the department of corrections, the department of social services, and law enforcement personnel for use only in the performance of their duties.

In 1994, our Legislature enacted the SORA that required convicted sex offenders to register with local law enforcement agencies. *People v Pennington*, 240 Mich App 188, 191; 610

NW2d 608 (2000). In 1999, the SORA was amended. It continued to provide a database for law enforcement officers to track the whereabouts of sexual offenders. However, it expanded the notification provisions to allow public access to information regarding sex offenders. *Id.*; MCL 28.728(2). Specifically, the public could either utilize the SORA database to identify registered sex offenders by zip code, which search reveals the name of the offender, and the offender's address, physical description, and the offense involved, or search the SORA database by name of the offender. *Id.*

The Legislature amended the YTA to account for the creation of the SORA. Specifically, MCL 762.14(3) provides:

An individual assigned to youthful trainee status for a listed offense enumerated in section 2 of the sex offenders registration act is required to comply with the requirements of that act.

Additionally, while MCL 762.14(2) provides that the assignment of an individual to youthful trainee status does not result in a conviction, for purposes of the SORA, assignment to youthful trainee status, in fact, constitutes a conviction. MCL 28.722(a)(ii) defines convicted as "[b]eing assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.12 to 762.15." In fact, MCL 28.724(5) provides that the sentencing court may not enter an order of disposition or assign an individual to youthful trainee status *until* it determines that the individual is registered with the local law enforcement or sheriff's department, or the Department of State Police. Once registered, the individual must comply with the SORA for a period of twenty-five years following the person's date of the initial registration or for ten years following the person's release from a state correctional facility, whichever is longer. MCL 28.725(6).

In accordance with the cited rules regarding statutory construction, we presume that the Legislature was aware of the YTA when it enacted the SORA. *Walen, supra*. In this case, the presumption is buttressed by the fact that each statutory act references the other. Despite the plainly expressed language of the statutes requiring registration by individuals with YTA status, the trial courts ordered the removal or exempted defendants' names from the SORA registry. The trial courts concluded that compliance with the SORA led to absurd results and deprived defendants of the "second chance" offered by the YTA. While *some* case law provides that statutes should be construed to prevent absurd results, injustice, or prejudice to the public interest, *People v Stephan*, 241 Mich App 482, 497; 616 NW2d 188 (2000), citing *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998); cf. *People v McIntire*, 461 Mich 147, 155-160; 599 NW2d 102 (1999) (rejecting the "absurd result" mode of statutory construction), a sex offender's compliance with both the SORA and the YTA does not lead to absurd results. If an individual successfully completes YTA status, the court shall discharge the individual and dismiss the proceedings. MCL 762.14(1). Despite having committed a crime, the individual is not deemed as having been convicted of a crime for purposes of the Code of Criminal Procedure. MCL 762.14(2). Thus, the individual derives a benefit from YTA status. For example, the individual, for purposes of providing a history in applying for employment, need not list the offense as a conviction. However, the Legislature has concluded that law

enforcement agencies and the public should, nonetheless, continue to be apprised of the individual's whereabouts for purposes of tracking the offender and for the safety of the public. Thus, the individual is still provided a benefit by having YTA status, but is not excused from the registration procedures of the SORA. This interpretation, in accordance with the plain, expressed language of the two statutes, does not lead to absurd results, but rather indicates that the public interest is paramount to full suppression of the information surrounding the individual's offense and his current location. *Webb, supra*.

Defendants argue that registration in the SORA registry should be limited to the time necessary to complete the terms of the sentence imposed until the youth is discharged from youthful trainee status. This construction is contrary to the plain language of the statutes. MCL 762.14(3) provides that registration shall occur in accordance with the procedures set forth in the SORA. The SORA provides that the term of the registration shall occur for twenty-five years from the time of registration or ten years following the person's release from a state correctional facility, whichever is longer. MCL 28.725(6). There is no exception to this time frame for youthful trainee status. We cannot assume that this was an inadvertent omission by the Legislature. *Farrington, supra*. Accordingly, defendants' argument is without merit.

Reversed and remanded. We do not retain jurisdiction.

Griffin, J., concurred.

/s/ Harold Hood

/s/ Richard Allen Griffin