

HOUSE BILL 601

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HB 720/99 - JUD

2000 Regular Session
0lr0214

By: **Delegates Elliott, Amedori, Brinkley, Giannetti, Mitchell, and Stull**
Introduced and read first time: February 9, 2000
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Sex Offender Registration - Retroactive Application**

3 FOR the purpose of requiring the registration of certain sex offenders and other
4 offenders subject to registration requirements to be applied retroactively under
5 certain circumstances; making the provisions of this Act severable; and
6 generally relating to registration of sex offenders and other offenders.

7 BY repealing and reenacting, with amendments,
8 Article 27 - Crimes and Punishments
9 Section 792
10 Annotated Code of Maryland
11 (1996 Replacement Volume and 1999 Supplement)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
13 MARYLAND, That the Laws of Maryland read as follows:

14 **Article 27 - Crimes and Punishments**

15 792.

16 (a) (1) In this section the following words have the meanings indicated.

17 (2) "Child sexual offender" means an individual who:

18 (i) Has been convicted of violating § 35C of this article for an
19 offense involving sexual abuse;

20 (ii) Has been convicted of violating any of the provisions of §§ 462
21 through 464B of this article for an offense involving an individual under the age of 15
22 years;

23 (iii) Has been convicted of violating § 464C of this article for an
24 offense involving an individual under the age of 15 years and has been ordered by the
25 court to register under this section; or

1 (iv) Has been convicted in another state, or in a federal, military, or
2 Native American tribal court, of an offense that, if committed in this State, would
3 constitute one of the offenses listed in items (i) and (ii) of this paragraph.

4 (3) "Convicted" includes:

5 (i) A probation before judgment after a finding of guilt for an
6 offense if the court, as a condition of probation orders compliance with the
7 requirements of this section; and

8 (ii) A finding of not criminally responsible for an offense.

9 (4) "Department" means the Department of Public Safety and
10 Correctional Services.

11 (5) "Local law enforcement agency" means the law enforcement agency
12 in a county that has been designated by resolution of the county governing body as
13 the primary law enforcement unit in the county.

14 (6) "Offender" means an individual who is ordered by the court to
15 register under this section and who:

16 (i) Has been convicted of violating § 1, § 2, or § 338 of this article;

17 (ii) Has been convicted of violating § 337 of this article if the victim
18 is under the age of 18 years;

19 (iii) Has been convicted of the common law crime of false
20 imprisonment if the victim is under the age of 18 years and the offender is not the
21 victim's parent;

22 (iv) Has been convicted of violating § 464C of this article if the
23 victim is under the age of 18 years;

24 (v) Has been convicted of soliciting a minor to engage in sexual
25 conduct;

26 (vi) Has been convicted of violating § 419A of this article;

27 (vii) Has been convicted of violating § 15 of this article or any of the
28 provisions of §§ 426 through 433 of this article if the intended prostitute is under the
29 age of 18 years;

30 (viii) Has been convicted of a crime that involves conduct that by its
31 nature is a sexual offense against an individual under the age of 18 years;

32 (ix) Has been convicted of an attempt to commit a crime listed in
33 items (i) through (viii) of this paragraph; or

1 (x) Has been convicted in another state, or in a federal, military, or
2 Native American tribal court, of an offense that, if committed in this State, would
3 constitute one of the offenses listed in items (i) through (ix) of this paragraph.

4 (7) "Registrant" means an individual who is:

5 (i) A child sexual offender;

6 (ii) An offender;

7 (iii) A sexually violent offender;

8 (iv) A sexually violent predator;

9 (v) A child sexual offender who, before moving into this State, was
10 required to register in another state or by a federal, military, or Native American
11 tribal court for an offense occurring before October 1, 1995;

12 (vi) An offender, a sexually violent offender, or a sexually violent
13 predator who, before moving into this State, was required to register in another state
14 or by a federal, military, or Native American tribal court for an offense occurring
15 before July 1, 1997; or

16 (vii) A child sexual offender, offender, sexually violent offender, or
17 sexually violent predator who is required to register in another state, who is not a
18 resident of this State, and who enters this State for the purpose of:

19 1. Employment, or to carry on a vocation, that is full time or
20 part time for a period of the time exceeding 14 days or for an aggregate period of time
21 exceeding 30 days during any calendar year, whether financially compensated,
22 volunteered, or for the purpose of government or educational benefit; or

23 2. Attending any public or private educational institution,
24 including any secondary school, trade, or professional institution, or institution of
25 higher education, as a student on a full-time or part-time basis.

26 (8) (i) "Release" means any type of release from the custody of a
27 supervising authority.

28 (ii) "Release" includes release on parole, mandatory supervision,
29 work release, and any type of temporary leave other than leave that is granted on an
30 emergency basis.

31 (iii) "Release" does not include an escape.

32 (9) "Resident" means an individual who lives in this State at the time the
33 individual:

34 (i) Is released;

35 (ii) Is granted probation before judgment;

- 1 (iii) Is granted probation after judgment;
- 2 (iv) Is granted a suspended sentence; or
- 3 (v) Receives a sentence that does not include a term of
4 imprisonment.
- 5 (10) "Sexually violent offender" means an individual who:
- 6 (i) Has been convicted of a sexually violent offense;
- 7 (ii) Has been convicted of an attempt to commit a sexually violent
8 offense; or
- 9 (iii) Has been convicted in another state, or in a federal, military, or
10 Native American tribal court, of an offense that, if committed in this State, would
11 constitute a sexually violent offense.
- 12 (11) "Sexually violent offense" means:
- 13 (i) A violation of any of the provisions of § 462, § 463, § 464, § 464A,
14 § 464B, or § 464F of this article; or
- 15 (ii) Assault with intent to commit rape in the first or second degree
16 or a sexual offense in the first or second degree as previously proscribed under former
17 § 12 of this article.
- 18 (12) "Sexually violent predator" means an individual who:
- 19 (i) Is convicted of a second or subsequent sexually violent offense;
20 and
- 21 (ii) Has been determined in accordance with this section to be at
22 risk of committing a subsequent sexually violent offense.
- 23 (13) "Supervising authority" means:
- 24 (i) If the registrant is in the custody of a facility operated by the
25 Department of Public Safety and Correctional Services, the Secretary of Public Safety
26 and Correctional Services;
- 27 (ii) If the registrant is in the custody of a local or regional detention
28 center, including a registrant who is participating in a home detention program, the
29 administrator of the facility;
- 30 (iii) Except as provided in item (xi) of this paragraph, if the
31 registrant is granted probation before judgment, probation after judgment, or a
32 suspended sentence, the court that granted the probation or suspended sentence;
- 33 (iv) If the registrant is in the custody of the Patuxent Institution,
34 the Director of the Patuxent Institution;

1 (v) If the registrant is in the custody of a facility operated by the
2 Department of Health and Mental Hygiene, the Secretary of Health and Mental
3 Hygiene;

4 (vi) If the registrant's sentence does not include a term of
5 imprisonment, the court in which the registrant was convicted;

6 (vii) If the registrant is in the State under the terms and conditions
7 of the Uniform Act for Out-of-State Parolee Supervision, set forth in Title 6, Subtitle
8 2 of the Correctional Services Article, or the Interstate Corrections Compact, set forth
9 in Title 8, Subtitle 6 of the Correctional Services Article, the Secretary of Public
10 Safety and Correctional Services;

11 (viii) If the registrant moves to this State and was convicted in
12 another state of an offense that would require the individual to register if the offense
13 was committed in this State, the Secretary of Public Safety and Correctional Services;

14 (ix) If the registrant moves to this State from another state where
15 the individual was required to register, the Secretary of Public Safety and
16 Correctional Services;

17 (x) If the registrant is not a resident of this State, the Secretary of
18 Public Safety and Correctional Services; or

19 (xi) If the registrant is under the supervision of the Division of
20 Parole and Probation, the Director of Parole and Probation.

21 (b) (1) Subject to paragraphs (3) and (4) of this subsection, if an individual is
22 convicted of a second or subsequent sexually violent offense, the State's Attorney may
23 request the court to determine before sentencing whether the individual is a sexually
24 violent predator.

25 (2) If the State's Attorney makes a request under paragraph (1) of this
26 subsection, the court shall determine before or at sentencing whether the individual
27 is a sexually violent predator.

28 (3) In making a determination under paragraph (1) of this subsection,
29 the court shall consider:

30 (i) Any evidence that the court considers appropriate to the
31 determination of whether the individual is a sexually violent predator, including the
32 presentencing investigation and sexually violent offender's inmate record;

33 (ii) Any evidence introduced by the individual convicted; and

34 (iii) At the request of the State's Attorney, any evidence presented
35 by a victim of the sexually violent offense.

36 (4) The State's Attorney may not request a court to determine if an
37 individual is a sexually violent predator under this subsection unless the State's

1 Attorney serves written notice of intent to make the request on the defendant or the
2 defendant's lawyer at least 30 days before trial.

3 (c) (1) A registrant shall register with the registrant's supervising
4 authority:

5 (i) If the registrant is a resident, on or before the date that the
6 registrant:

- 7 1. Is released;
- 8 2. Is granted probation before judgment;
- 9 3. Is granted probation after judgment;
- 10 4. Is granted a suspended sentence; or
- 11 5. Receives a sentence that does not include a term of
12 imprisonment; or

13 (ii) If the registrant moves into this State, within 7 days after the
14 earlier of the date that the registrant:

- 15 1. Establishes a temporary or permanent residence in this
16 State; or
- 17 2. Applies for a driver's license in this State; or

18 (iii) If the registrant is not a resident of this State, within 14 days of
19 the date that the registrant:

- 20 1. Begins employment in this State; or
- 21 2. Registers as a student in this State.

22 (2) (i) A child sexual offender shall also register in person with the
23 local law enforcement agency of the county where the child sexual offender will
24 reside:

- 25 1. Within 7 days of release, if the child sexual offender is a
26 resident of this State; or
- 27 2. Within 7 days of registering with the supervising
28 authority, if the registrant is moving into this State.

29 (ii) Within 7 days of registering with the supervising authority, a
30 child sexual offender who is not a resident of this State and who works or attends
31 school in this State shall also register in person with the local law enforcement agency
32 of the county where the child sexual offender will work or attend school.

1 (iii) A child sexual offender may be required to provide information
2 to the local law enforcement agency besides the information required under
3 subsection (e) of this section.

4 (3) If a registrant changes residences, the registrant shall send written
5 notice of the change to the Department within 7 days after the change occurs.

6 (d) (1) A term of registration described in this subsection shall be calculated
7 from:

8 (i) The last date of release;

9 (ii) The date granted probation before judgment, probation after
10 judgment, or a suspended sentence; or

11 (iii) The date of receiving a sentence that does not include a term of
12 imprisonment.

13 (2) A child sexual offender shall register annually in person with a local
14 law enforcement agency:

15 (i) For 10 years; or

16 (ii) For life, if convicted of:

17 1. A violation of any of the provisions of §§ 462 through 464B
18 of this article; or

19 2. A second violation as a child sexual offender.

20 (3) An offender shall register annually with the Department in
21 accordance with the procedures described in subsection (h)(3) of this section for 10
22 years.

23 (4) A sexually violent offender shall register annually with the
24 Department in accordance with the procedures described in subsection (h)(3) of this
25 section:

26 (i) For 10 years; or

27 (ii) For life, if convicted of:

28 1. A violation of any of the provisions of §§ 462 through 464B
29 of this article; or

30 2. A second violation as a sexually violent offender.

31 (5) A sexually violent predator shall register every 90 days throughout
32 the individual's life, in accordance with the procedures described in subsection (g)(3)
33 of this section.

1 (6) A registrant who is not a resident of this State shall register for the
2 period of time specified in this subsection or until the registrant's employment or
3 student enrollment in this State ceases.

4 (e) (1) Subject to paragraph (2) of this subsection, registration shall consist
5 of a statement signed and dated by a registrant which includes:

6 (i) The registrant's name, address, and:

7 1. For an individual who qualifies as a registrant under
8 subsection (a)(7)(vii)1 of this section, place of employment; or

9 2. For an individual who qualifies as a registrant under
10 subsection (a)(7)(vii)2 of this section, place of educational institution or school
11 enrollment;

12 (ii) A description of the crime for which the registrant was
13 convicted, granted probation before judgment, or found not criminally responsible;

14 (iii) The date that the registrant was convicted, granted probation
15 before judgment, or found not criminally responsible;

16 (iv) The jurisdiction in which the registrant was convicted, granted
17 probation before judgment, or found not criminally responsible;

18 (v) A list of any aliases that have been used by the registrant; and

19 (vi) The registrant's Social Security number.

20 (2) If the registrant is a sexually violent predator, the registration
21 statement shall also include:

22 (i) Identifying factors, including physical description;

23 (ii) Anticipated future residence, if known at the time of
24 registration;

25 (iii) Offense history; and

26 (iv) Documentation of treatment received for a mental abnormality
27 or personality disorder.

28 (f) (1) When a registrant registers, the supervising authority shall:

29 (i) Explain the requirements of this section to the registrant,
30 including:

31 1. The duties of a registrant when the registrant changes
32 residence address in this State;

1 (3) (i) Every 90 days, the local law enforcement agency shall mail a
2 verification form, which may not be forwarded, to the last reported address of a
3 sexually violent predator.

4 (ii) Within 10 days after receiving the verification form, the
5 sexually violent predator shall sign the form and mail it to the local law enforcement
6 agency.

7 (iii) Within 5 days after obtaining a verification form from a
8 sexually violent predator, a local law enforcement agency shall send a copy of the
9 verification form to the Department.

10 (4) If a registrant will reside after release in a municipal corporation
11 that has a police department, or, in the case where a registrant escapes from a facility
12 and the registrant resided, before the registrant was committed to the custody of a
13 supervising authority, in a municipal corporation that has a police department, a local
14 law enforcement agency that receives a notice from a supervising authority under
15 this section shall send a copy of the notice to the police department of the municipal
16 corporation.

17 (h) (1) The Department shall:

18 (i) Maintain a central registry of registrants;

19 (ii) As soon as possible and in no event later than 5 working days
20 after receiving the conviction data and fingerprints of a registrant, transmit the data
21 and fingerprints to the Federal Bureau of Investigation if the Bureau does not have
22 that information; and

23 (iii) Reimburse supervising authorities for the cost of processing the
24 registration statements of registrants, including the taking of fingerprints and
25 photographs.

26 (2) As soon as possible and in no event later than 5 working days after
27 receipt of a registrant's change of address notice, the Department shall give notice of
28 the change to:

29 (i) The local law enforcement agency in whose county the new
30 residence is located;

31 (ii) If the new residence is in a different state that has a
32 registration requirement, the designated law enforcement agency in whose state the
33 new residence is located; and

34 (iii) If the registration is premised on a conviction under federal,
35 military, or Native American tribal law, the designated federal agency.

36 (3) (i) The Department shall mail annually a verification form, which
37 may not be forwarded, to the last reported address of each offender and sexually
38 violent offender.

1 (ii) Within 10 days after receiving the verification form, the
2 offender or sexually violent offender shall sign the verification form and mail it to the
3 Department.

4 (i) (1) If a registrant escapes from a facility, the supervising authority of the
5 facility shall immediately notify, by the most reasonable and expedient means
6 available:

7 (i) The local law enforcement agency in the jurisdiction in which
8 the registrant resided before the registrant was committed to the custody of the
9 supervising authority; and

10 (ii) Any individual who is entitled to receive notice under
11 subsection (j)(3) of this section.

12 (2) If the registrant is recaptured, the supervising authority shall send
13 notice, as soon as possible and in no event later than 2 working days after the
14 supervising authority learns of the recapture, to:

15 (i) The local law enforcement agency in the jurisdiction in which
16 the registrant resided before the registrant was committed to the custody of the
17 supervising authority; and

18 (ii) Any individual who is entitled to receive notice under
19 subsection (j)(3) of this section.

20 (j) (1) A registration statement provided to a person under this section shall
21 include a copy of the completed registration form and a copy of a photograph of the
22 registrant, but need not include the registrant's fingerprints.

23 (2) Information regarding any individual who receives notice under
24 paragraph (3) of this subsection is confidential and may not be disclosed to the
25 registrant or any other person.

26 (3) (i) The supervising authority shall send a copy of a registration
27 statement to the following individuals if such notice has been requested in writing
28 about a specific registrant:

29 1. The victim of the crime for which the registrant was
30 convicted or, if the victim is a minor, the parents or legal guardian of the victim;

31 2. Any witness who testified against the registrant in any
32 court proceedings involving the offense; and

33 3. Any individual specified in writing by the State's Attorney.

34 (ii) The supervising authority shall send a copy of a registration
35 statement to a victim of the crime for which the registrant was convicted, if the victim
36 filed a notification request form under § 770 of this article.

1 (4) A supervising authority shall send any notice required under
2 paragraph (3) of this subsection and subsection (i)(1)(ii) and (2)(ii) of this section to
3 the last address provided to the supervising authority.

4 (5) (i) Subject to subparagraph (ii) of this paragraph, upon written
5 request to a local law enforcement agency, the agency:

6 1. Shall send to the individual who submitted the request
7 one copy of the registration statement of each child sexual offender and each sexually
8 violent predator on record with the agency; and

9 2. May send to the individual who submitted the request one
10 copy of the registration statement of any registrant not described in item 1 of this
11 subparagraph on record with the agency.

12 (ii) A request under subparagraph (i) of this paragraph shall
13 contain:

14 1. The name and address of the individual submitting the
15 request; and

16 2. The reason for requesting the information.

17 (iii) A local law enforcement agency shall keep records of all written
18 requests received under subparagraph (i) of this paragraph.

19 (6) The Department shall release registration statements or information
20 concerning registration statements to the public and may post on the Internet a
21 current listing of each registrant's name, offense, and other identifying information,
22 in accordance with regulations established by the Department.

23 (7) (i) In addition to the notice required under subsection (g)(1)(ii) of
24 this section, the Department and a local law enforcement agency shall provide notice
25 of a registration statement to any person that the Department or local law
26 enforcement agency determines may serve to protect the public concerning a specific
27 registrant if the Department or the agency determines that such notice is necessary to
28 protect the public.

29 (ii) The Department and local law enforcement agencies shall
30 establish procedures for carrying out the notification requirements of subparagraph
31 (i) of this paragraph, including the circumstances under and manner in which
32 notification shall be provided.

33 (iii) The Department and a local law enforcement agency may not
34 release the identity of a victim of an offense that requires registration under this
35 section.

36 (8) A disclosure under this subsection may not be construed to limit or
37 prohibit any other disclosure permitted or required under law.

1 (K) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THIS
2 SECTION SHALL BE APPLIED RETROACTIVELY TO INCLUDE A REGISTRANT
3 CONVICTED OF AN OFFENSE COMMITTED ON OR BEFORE JULY 1, 1997, AND WHO IS
4 UNDER THE CUSTODY OR SUPERVISION OF A SUPERVISING AUTHORITY ON OCTOBER
5 1, 2000.

6 (2) THIS SECTION SHALL BE APPLIED RETROACTIVELY TO A CHILD
7 SEXUAL OFFENDER WHO COMMITTED THE SEXUAL OFFENSE BEFORE OCTOBER 1,
8 1995, AND WHO IS UNDER THE CUSTODY OR SUPERVISION OF A SUPERVISING
9 AUTHORITY ON OCTOBER 1, 2000.

10 [(k)] (L) An elected public official, public employee, or public agency shall
11 have the immunity described in §§ 5-302 and 5-522 of the Courts Article regarding
12 civil liability for damages arising out of any action relating to the provisions of this
13 section, unless it is shown that the official, employee, or agency acted with gross
14 negligence or in bad faith.

15 [(l)] (M) A registrant who knowingly fails to register or knowingly provides
16 false information of a material fact as required by this section is guilty of a
17 misdemeanor and on conviction is subject to imprisonment in the penitentiary for not
18 more than 3 years or a fine of not more than \$5,000 or both.

19 [(m)] (N) The Secretary of Public Safety and Correctional Services shall adopt
20 regulations to implement the provisions of this section with advice from the Criminal
21 Justice Information Advisory Board established under § 744 of this article.

22 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
23 Act or the application thereof to any person or circumstance is held invalid for any
24 reason in a court of competent jurisdiction, the invalidity does not affect other
25 provisions or any other application of this Act which can be given effect without the
26 invalid provision or application, and for this purpose the provisions of this Act are
27 declared severable.

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2000.