

Department of Legislative Services
 Maryland General Assembly
 2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 150 (Chairman, Judiciary Committee)
 (By Request – Departmental – Public Safety and Correctional Services)

Judiciary

Judicial Proceedings

Criminal Procedure - Sex Offender Registration

This departmental bill: (1) corrects inconsistencies in current statutory registration requirements applicable to instances when an individual is in some form of temporary status; (2) requires annual photographing of child sexual offenders and sexually violent predators; (3) requires an annual, in-person re-registration of most registrants by January 1; (4) replaces the quarterly mail-in registration process for sexually violent predators with an in-person registration process; and (5) corrects a statutory cross-reference error.

Fiscal Summary

State Effect: One-time general fund expenditure increase of \$12,500 in FY 2005 for the purchase of digital cameras. This does not include any potential costs associated with the prospect of having to have all re-registrations occur during a restricted time frame near the close of each calendar year. Revenues would not be affected.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	12,500	0	0	0	0
Net Effect	(\$12,500)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: The Department of Public Safety and Correctional Services (DPSCS) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill's substantive changes include:

Correction of Registration Requirement Inconsistencies

- For registrants under its jurisdiction, the Department of Health and Mental Hygiene has a lengthy graduated release program that begins with a brief release into the community, which does not provide sufficient time to complete registration requirements. This bill provides for such a graduated re-entry release.
- Because current law does not provide for registration of nonresident individuals who are in Maryland for purposes other than employment or school enrollment, the bill provides for a “transient” status of registrant.
- A registrant in a local home detention program is not now required to register. The bill adds “placement in home detention” to the definition of release.
- Qualifying inmates must register when placed on work release, but their “home address” is recorded as the correctional institution placing them in the work release program, with no requirement to provide their employment address. The bill requires notice of the location of employment for such inmates.

Annual Photographing of Child Sex Offenders and Sexually Violent Offenders

The bill requires annual photographing of child sexual offenders and sexually violent offenders. There is no current statutory requirement for updating photographic data.

Registration Times

Currently, registrants register at varying times depending on when they are released into the community. The bill requires all registrants to register initially at the time of release and for child sexual offenders, offenders, and sexually violent offenders, on or before January 1 annually thereafter. Sexually violent predators must re-register annually on or before January 1, April 1, July 1, and October 1.

Replacement of Quarterly Mail-in Registration for Sexually Violent Predators with an In-person Registration Process

This change is a public safety issue, made to guard against someone other than the registrant mailing in registration statements.

The bill also redefines release to include “release from a correctional facility with no required period of supervision,” and specifies a court’s responsibility as a supervising authority if the court modifies a registrant’s sentence to “time served.”

Current Law: Maryland has four categories of persons convicted of sexual offenses: (1) a child sexual offender; (2) an offender; (3) a sexually violent offender; and (4) a sexually violent predator.

“Sexually violent predator” means a person who: (1) is convicted of a sexually violent offense; and (2) has been determined to be at risk of committing another sexually violent offense. Also included under this definition are persons who are or were required to register every 90 days for life under the laws of another state or a federal, military, or Native American tribal jurisdiction.

Sexually violent offender means a person who: (1) has been convicted of a sexually violent offense; (2) has been convicted of an attempt to commit a sexually violent offense; or (3) has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in this State, would constitute a sexually violent offense.

“Sexually violent offense” is defined as first or second degree rape; first, second, or third degree sexual offense; attempted rape or sexual offense; or assault with intent to commit first or second degree rape or first or second degree sexual offense as prohibited under Maryland’s criminal code on or before September 30, 1996. Also included under this definition are certain crimes that were committed in another state or in a federal, military, or Native American tribal jurisdiction.

Sexual offenders are required to register with the Crimes Against Children and Sexual Offender Registry for a term of either 10 years or life depending on the offense. The registry is operated by the Sexual Offender Registry (SOR) unit of DPSCS. An offender and a sexually violent offender must register annually. A sexually violent predator must register every 90 days. Under the State’s sexual offender registration laws, a State’s Attorney may request that a sexual offender be designated a sexually violent predator.

Lifetime registration is required for: (1) sexually violent predators; (2) persons convicted of a sexually violent offense; (3) persons convicted of child abuse for commission of a sexual act involving penetration of a child under 12 years old; and (4) recidivist sexual offenders.

The “supervising authority” for a sexual offender who must register means:

- the Secretary of Public Safety and Correctional Services, if the registrant is in the custody of a correctional facility operated by DPSCS, or if a registrant is either a resident or a nonresident convicted in a federal, military, or Native American tribal court and is not under supervision of another supervising authority;
- the administrator of a local correctional facility, if the registrant, including a participant in a home detention program, is in the custody of the local correctional facility;
- with an exception of circumstances involving the Division of Parole and Probation, the court that granted the probation or suspended sentence if the registrant is granted probation before judgment, probation after judgment, or a suspended sentence;
- the Director of the Patuxent Institution, if the registrant is in the custody of the Patuxent Institution;
- the Secretary of Health and Mental Hygiene, if the registrant is in the custody of a facility operated by that department;
- the court in which the registrant was convicted, if the registrant's sentence does not include a term of imprisonment;
- the Secretary of Public Safety and Correctional Services, if the registrant is in the State under terms and conditions of the applicable interstate compact governing out-of-state supervision;
- the Secretary of Public Safety and Correctional Services, if the registrant moves to Maryland and was convicted in another state of a crime that would require the registrant to register if the crime was committed in this State;
- the Secretary of Public Safety and Correctional Services, if the registrant moves to Maryland from another state where the registrant was required to register;
- the Secretary of Public Safety and Correctional Services, if the registrant is not a resident of this State; or
- the Director of Parole and Probation, if the registrant is under the supervision of the division.

A registration statement is required to include: (1) the registrant's name and address; (2) for certain registrants from another state, the registrant's place of employment; or for certain out-of-state registrants, the registrant's place of educational institution or school enrollment; (3) a description of the crime for which the registrant was convicted; (4) the date that the registrant was convicted; (5) the jurisdiction in which the registrant was convicted; (6) a list of any aliases that the registrant has used; (7) the registrant's Social Security number; and (8) the registrant's signature and date signed. If the registrant is a sexually violent predator, the registration statement must also include: (1) identifying factors including a physical description; (2) anticipated future residence if known at the

time of registration; (3) offense history; and (4) documentation of treatment received for a mental abnormality or personality disorder.

A registrant may not knowingly: (1) fail to register; (2) fail to provide a written notice relating to changes of residence, school enrollment, or employment; or (3) provide false information of material fact. Violators are subject to maximum misdemeanor penalties of incarceration for three years and/or a fine of \$5,000. The State may institute a prosecution for this misdemeanor at any time.

Background: Maryland first enacted sexual offender registration legislation under the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program during the 1995 session (Chapter 142 of 1995). Because the federal statute has been amended and because there have been updates and changes to federal regulations, State laws underwent revisions in 1997 (Chapter 754), 1998 (Chapters 473 and 521), 1999 (Chapter 317), and 2002 (Chapters 112, 194, and 266) to bring Maryland in compliance with Wetterling guidelines.

Arising from a case filed in Alaska, the U.S. Supreme Court ruled, in March 2003, that states may put pictures of convicted sex offenders on the Internet without constitutional concerns relating to double jeopardy. In a separate ruling made at the same time, the court reversed a challenge from offenders in Connecticut who argued they deserved a chance to prove they aren't dangerous to avoid having their picture and address put on the Internet. [Alaska: DELBERT W. SMITH and BRUCE M. BOTELHO, PETITIONERS v. JOHN DOE I et al.; Connecticut: CONNECTICUT DEPARTMENT OF PUBLIC SAFETY et al. v. DOE, individually and on behalf of all others similarly situated]

State Fiscal Effect: The fiscal impact of this bill on DPSCS is as follows:

- Correcting of Registration Requirement Inconsistencies: Little or no fiscal impact, with some operational efficiencies for the SOR unit.
- Annual Photographing of Child Sex Offenders and Sexually Violent Offenders: DPSCS purchase of 25 digital cameras at \$500 for distribution to each local jurisdiction. These purchases are expected to improve the quality of pictures posted on the SOR web site, and will facilitate the planning for an electronic registration process at some time in the future.
- Annual Registration Times: Assuming that the re-registration of sexual offenders (excluding sexually violent predators) “on or before January 1” means that a re-registration occurring anytime during the prior 12 months, would meet the bill’s

requirement, this provision would have no fiscal impact. However, if re-registration would have to occur for all registrants at a fixed time at or near each January 1, the SOR unit would need additional temporary resources, each year, including contractual clerical services and computer upgrades.

It is noted that, since there are now more than 1,000 registrants who re-register annually with the SOR unit by mail, under the bill these persons would have to renew their registration in person with an agency or operation of DPSCS having digital camera capabilities, including the SOR unit. The SOR unit advises that it does not currently have the physical capability of handling in-person registrations in such numbers.

- Replacing Quarterly Mail-in Registration for Sexually Violent Predators with an In-person Registration Process: There are currently no sexually violent predators registered in Maryland. The persons for which this designation may apply are still serving lengthy sentences in Division of Correction facilities. Any costs or savings that may eventually accrue from this change is not expected to affect State finances.

Additional Comments: Although Florida's Jimmy Ryce Act – allowing the state to detain a sexual predator via civil commitment after completion of the criminal sentence – has been upheld (as recently as January 2004), a West Palm Beach appeals court has asked the Florida Supreme Court to review its most recent decision upholding the Act. Also in Florida, in *Espindola v. State*, a three-judge panel of the 3rd District Court of Appeal unanimously decided that felons convicted of sexual crimes should be granted a hearing before being classified as sexual predators. Other states that have reached a similar conclusion include New York, Connecticut, Massachusetts, Michigan, Alabama, and Hawaii.

Additional Information

Prior Introductions: In 2003, an identical bill, HB 423, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services, Montgomery County, Charles County, Department of Legislative Services

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