

Department of Legislative Services  
Maryland General Assembly  
2007 Session

FISCAL AND POLICY NOTE

House Bill 938  
Judiciary

(Delegate Kach, *et al.*)

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Criminal Procedure - Sexual Offenders - Supervision, Notifications, and Penalties

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This bill makes several additions and changes to provisions relating to the registration and supervision procedures applicable to sexual offenders in the State.

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Fiscal Summary

**State Effect:** Minimal. The bill's requirements should not significantly impact the finances or operations of State agencies and could be handled with existing budgeted resources. The criminal penalty provisions of this bill are also not expected to significantly affect State finances or operations.

**Local Effect:** Minimal. The bill's requirements should not significantly impact the finances or operations of local government agencies and could be handled with existing budgeted resources. The criminal penalty provisions of this bill are also not expected to significantly affect local finances or operations.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** This bill requires the inclusion of the following additional information by a registrant in a registration statement for the State's sexual offender registry:

- enrollment status if the registrant is enrolled in school;
- identifying factors, including a physical description;

- a copy of the registrant's valid driver's license or identification card; and
- the license plate number and description of any vehicle owned or operated by the registrant.

If the registrant's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, the statement must also include the vehicle identification and registration numbers, as well as a description of the vehicle.

When a registrant registers, a supervising authority must verify the registrant's address.

The bill shortens, as specified, the time frame within which a supervising authority or a local law enforcement unit must forward a registration statement or specified notifications related to the registrant. The bill allows a certain notification to "day care homes" rather than "family day care homes" by a local law enforcement unit.

Under penalty provisions applicable to a registrant who knowingly fails to register, provide a certain written notice, or provide false information of a material fact, the bill subjects all such violators to the current law felony penalties (regardless of whether it was a first offense).

The bill prohibits a person from knowingly assisting a registrant in eluding a law enforcement agency or a supervising authority that is attempting to question or arrest the registrant for failing to comply with registration requirements by withholding information as to the whereabouts of the registrant when questioned, or providing false information about the registrant's whereabouts. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a fine of \$5,000.

**Current Law:** Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment, is required to register with the State sex offender registry upon release from prison or release from court if the person did not receive a prison sentence. Offenders who are required to register in other states and who come to Maryland are required to register upon entering Maryland. Offenders from other states who may not be required to register in the home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland. Juveniles who are adjudicated as adults and convicted for crimes that require registration are included in the registry. Juveniles who are adjudicated delinquent for these crimes through the juvenile court system are not included in the registry.

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.

“Child sexual offender” means a person who has been convicted of (1) sexual abuse of a minor; (2) has been convicted of first or second degree rape or first, second, or third degree sexual offense involving a child under 15 years of age; (3) has been convicted of fourth degree sexual offense involving such a child and has been ordered by the court to register under these provisions; or (4) 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 one of these crimes.

“Offender” means a person who is ordered by a court to register and who (1) has been convicted of child kidnapping; (2) kidnapping; (3) fourth degree sexual offense, if the victim is under 18; (4) false imprisonment, if the victim is under 18 and the person is not the victim’s parent; (5) a crime that involves soliciting a person under 18 to engage in sexual conduct; (6) child pornography; (7) prostitution or related criminal prohibitions if the intended prostitute or victim is under 18; (8) any crime that involves conduct that by its nature is a sexual offense against a person under 18; (9) an attempt to commit any of these offenses; or (10) has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in Maryland, would constitute one of these crimes.

“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; or (2) has been convicted of an attempt to commit 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, every 3 months or every 6 months, with the Crimes Against Children and Sexual Offender Registry for a term of either 10 years or life depending on the offense. Registration must include a photograph, which must be updated at least annually. The registry is operated by the Sexual Offender Registry unit of DPSCS. 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.

Under Title 5, Subtitle 5 of the Family Law Article, the term "family day care home" means a residence in which family day care is provided. The term "day care home" is not specifically defined.

**Background:** On July 27, 2006, President George W. Bush signed the Adam Walsh Child Protection and Safety Act of 2006 to protect the public, in particular children, from violent sex offenders through a more comprehensive, nationalized system for registration of sex offenders. The Act calls for conformity by the states with various aspects of sex offender registration, including registration by specified juvenile offenders, information that must be collected from registrants, duration of registration, verification of registry information, access to and sharing of information, and penalties for failure to register. The U.S. Attorney General is required by the Act to issue guidelines and regulations to interpret and implement the legislation. Proposed regulations are due to be released by February 2007, followed by a period of two to three months for public comments.

The failure of a state to substantially implement the federal requirements within three years (July 2009) and one year from the development by the federal government of software for uniform offender registries and web sites could result in a 10% reduction in the Byrne law enforcement assistance grant to that state. (Total fiscal 2007 Byrne fund revenue for Maryland is \$7.25 million.) The U.S. Attorney General may authorize up to two one-year extensions of the deadline. The Act also provides a funding bonus of 10% or 5% to a state complying within one year or two years, respectively. A number of new grant programs are authorized under the Act to assist states in improving sex offender registration and related requirements of the Act.

Until the final regulations are issued by the U.S. Attorney General, a definitive determination of what administrative and legislative changes may be necessary to comply with the new federal law is not entirely clear. However, it appears that among the current State statutory provisions concerning the registration of sex offenders, the following provisions may require modification to meet the new federal standards:

- deadline for registration;
- length of registration for specific offenders;
- frequency of re-registration;
- application of registration requirement to specific juvenile offenders; and
- penalties for failure to register.

Due to the complexities of the Act and the many issues it involves, a collaborative approach involving public safety, public health, law enforcement, victims' rights, and judiciary representatives will likely be necessary to implement the federal standards.

The sex offender registry has had a total growth rate of 400-600 new registrants per year.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), City of College Park, Allegany County, Montgomery County, Prince George's County, Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

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