

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 936
 Judiciary

(The Speaker, *et al.*) (By Request - Administration)

Judicial Proceedings

Crimes - Sex Offenders - Notification, Registration, and Penalties

This Administration bill makes changes to notification and registration provisions of Maryland’s sexual offender laws to conform to the federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006.

Fiscal Summary

State Effect: General fund expenditures increase by \$237,300 in FY 2011. Future years reflect annualization and inflation. The federal Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office) would make the final determination as to whether this bill brings Maryland into substantial compliance with SORNA. The bill’s increased maximum and minimum penalty provisions applicable to certain child sexual offenders are not expected to significantly increase State correctional costs.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	237,300	322,300	338,500	355,500	373,500
Net Effect	(\$237,300)	(\$322,300)	(\$338,500)	(\$355,500)	(\$373,500)

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

Local Effect: Potential expenditure increases in some jurisdictions. The continued availability of grants through the Sex Offender Compliance and Enforcement in Maryland (SOCEM) program and federal registration assistance funds will continue to partly offset operational costs for law enforcement in some jurisdictions. The criminal penalty provisions of the bill are not expected to significantly affect local finances or operations. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: The Administration 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 replaces reference to the four existing categories of sexual offenders with the three tiers of categorization under SORNA. The bill includes the following provisions:

A Tier I sex offender means a person who:

- has been convicted of conspiring to commit, attempting to commit, or committing fourth degree sexual offense;
- has been convicted of conspiring to commit, attempting to commit, or committing visual surveillance with prurient intent, or possession of child pornography, if the victim is a minor;
- has been convicted of a crime committed in a federal, military, tribal, or other jurisdiction that would constitute any of the above cited offenses;
- has been convicted of any of enumerated federal offenses;
- has been convicted of any similar military offense specified by the Secretary of Defense; or
- has been convicted of a crime in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country where the U.S. State Department has determined in its country reports on human rights practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if the crime were committed in this State, would constitute one of these crimes.

A Tier II sex offender means a person who:

- has been convicted of conspiring to commit, attempting to commit, or committing specified third degree sexual offenses, sexual solicitation of a minor, production of child pornography, or hiring a minor for a prohibited purpose, if the victim is a minor;
- has been convicted of conspiring to commit, attempting to commit, or committing human trafficking, abduction of a child under 16, or operating a house of prostitution, if the intended prostitute or victim is a minor;
- has been convicted of conspiring to commit, attempting to commit, or committing sexual misconduct by a correctional officer or employee of the Department of Juvenile Services, or sale of a minor, if the victim is a minor who is at least 14;

- has been convicted of conspiring to commit, attempting to commit, or committing an offense that would require the person to register a tier I sex offender after the person was already registered as a tier I sex offender;
- has been convicted of a crime committed in a federal, military, tribal, or other jurisdiction that would constitute any of the above cited offenses; or
- has been convicted of a crime committed in another jurisdiction, including a foreign jurisdiction, as described above.

A Tier III sex offender means a person who:

- has been convicted of conspiring to commit, attempting to commit, or committing first degree murder while committing rape, or sexual offense in the first or second degree;
- has been convicted of the common law offense of sodomy or a violation of the State’s prohibition against an unnatural or perverted sexual practice if the offense was committed with force or threat of force;
- has been convicted of conspiring to commit, attempting to commit, or committing first or second degree rape, first or second degree sexual offense, a certain third degree sexual offense, continuing course of conduct with a child, incest, kidnapping, or sexual abuse of a minor;
- has been convicted of conspiring to commit, attempting to commit, or committing a certain third degree sexual offense, sexual conduct between a correctional or juvenile justice employee and an inmate or confined child, child kidnapping, or sale of a minor if the victim is under 14;
- has been convicted of conspiring to commit, attempting to commit, or committing the common law offense of false imprisonment, if the victim is a minor;
- has been convicted of conspiring to commit, attempting to commit or committing an offense that would require the person to register as a tier I or tier II sex offender after the person was already registered as a tier II sex offender;
- has been convicted of a crime committed in a federal, military, tribal, or other jurisdiction that would constitute any of the above cited offenses; or
- has been convicted of a crime committed in another jurisdiction, including a foreign jurisdiction, as described above.

The bill adds “an agency or person responsible for collecting the information for the initial registration of a sex offender” to the definition of “supervising authority” and specifies that the supervising authority for a registrant who moves to Maryland from another jurisdiction is the local law enforcement unit in which the registrant is a resident or habitually lives, instead of the Secretary of Public Safety and Correctional Services.

Adult Registration and Homeless Registrants

The bill includes the following provisions:

- provides for the registration of sexual offenders who are homeless with no fixed address;
- requires a homeless person to register in person, within a specified timeframe, with the local law enforcement unit in the county where the registrant “habitually lives;”
- requires re-registration of homeless registrants weekly while habitually living in the county;
- provides that, if a homeless registrant obtains a fixed address, the registrant must register with the appropriate supervising authority and local law enforcement unit within three days;
- requires local law enforcement notifications for any registrant when a change of residence occurs, as specified;
- requires new in-person reporting requirements relating to institutions of higher education;
- requires new notifications (and/or timeframes) relating to a change of name, leaving the United States for residence or work in a foreign country, or a temporary residency and requires new notifications by a local law enforcement unit to the Department of Public Safety and Correctional Services (DPSCS) of such changes;
- changes all references to the provision of a photograph for registration purposes to provision of a digital image and adds a requirement for palm prints;
- specifies that a Tier I sex offender must register every six months for 15 years. A Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life;
- provides the circumstances under which the registration term of a Tier I sex offender are reduced;
- specifies that a sexually violent predator’s quarterly registration requirement be made to a local law enforcement unit;
- generally narrows all registration, changes of information, and notification deadlines to three days;
- requires a sexual offender who is sentenced to a term of incarceration to register prior to release from incarceration; and
- adds information that must be included in a registration statement, such as a copy of the registrant’s passport or immigration papers, Social Security number (and purported Social Security numbers), locations where all vehicles are kept, and landline and cell telephone numbers.

Juvenile Registration

The bill provides that a person who has been adjudicated delinquent for an act that, if committed by an adult, would constitute first or second degree rape, first or second degree sexual offense, or nonconsensual third or fourth degree sexual offense involving “digital penetration” must register if:

- the person was a minor who was at least 13 years old at the time the delinquent act was committed;
- the State’s Attorney or the Department of Juvenile Services requests that the person be required to register;
- 90 days prior to the time the juvenile court’s jurisdiction over the person terminates under § 3-8A-07 of the Courts Article, the court, after a hearing, determines under a clear and convincing evidence standard that the person is at significant risk of committing a sexually violent offense or an offense for which registration as a tier II or tier III offender is required; and
- the person is at least 18 years old.

Listing of Juvenile Sex Offenders

The bill requires a person to be included in a listing of juvenile sex offenders that is maintained by the DPSCS separately from the sex offender registry if:

- the person has been adjudicated delinquent for an act that, if committed by an adult, would constitute first or second degree rape, first or second degree sexual offense, or nonconsensual third or fourth degree sexual offense involving “digital penetration”; and
- the person was a minor who was at least 13 years old at the time the delinquent act was committed.

The listing of juvenile sex offenders must be accessible only by law enforcement personnel for law enforcement purposes. When the juvenile court’s jurisdiction over a person who is included in the listing of juvenile sex offenders terminates, the person must be removed from the listing. DPSCS must adopt regulations to implement the juvenile registry, including a definition of “law enforcement personnel,” by December 31, 2010.

Registration Waiver

If a person is under the protection of a federal or comparable witness protection program, sex offender registration requirements are waived upon a written request from the agency

operating the program. The waiver is terminated if the exempted offender is subsequently convicted of an offense requiring registration.

Public Information

The bill prohibits registration information provided to the public by DPSCS from including a sex offender's Social Security number, driver's license number, medical or therapeutic treatment, travel and immigration document numbers, and arrests not resulting in conviction. DPSCS must post on the Internet: (1) a current listing of each registrant's other than a minor registrant's name and other identifying information; and (2) in plain language that can be understood without special knowledge of the criminal laws of the State, a factual description of the crime of the offender that is the basis for the registration, excluding details that would identify the victim. DPSCS, through its Internet posting of registrants, must provide information regarding the out-of-state registration status of each registrant who is also registered in another state as available through a national sex offender public registry web site.

The bill requires a registrant who establishes a new electronic mail address or other online identity to provide written notice of the new online identity to the sexual offender registry.

Retroactivity

The bill requires that the provisions of this subtitle must be applied retroactively to a person who is under the custody and supervision of a supervising authority on October 1, 2010; was subject to registration on September 30, 2010; or is convicted of any crime on or after October 1, 2010, and has a prior conviction for an offense for which sex offender registration is required. The term of retroactive registration for a Tier I or II sex offender must be calculated from the date of release.

Penalties

The bill increases the maximum and mandatory minimum penalties for a person convicted of rape in the second degree of a child under the age of 13 years, or sexual offense in the second degree against a child under the age of 13 years, to life imprisonment and 15 years, respectively.

The bill's provisions are made severable.

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.

“Offender” means a person who is ordered by a court to register and who has been convicted of (1) 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) production or distribution of 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.

“Child sexual offender” means a person who has been convicted of (1) sexual abuse of a minor; (2) first or second degree rape or first, second, or third degree sexual offense involving a child under 15 years of age; (3) fourth degree sexual offense involving such a child and has been ordered by the court to register under these provisions; or (4) a crime in another state or in a federal, military, or Native American tribal court that, if committed in this State, 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.

Sexual offenders are required to register, every three months or every six 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.

Background: Following several high-profile murder and sexual assault cases involving child victims, far-reaching State and federal legislation has been enacted to more strongly punish and more closely monitor sex offenders. SORNA, enacted as Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), requires conformity by the states with various aspects of sex offender registration provisions, including registration of specified juvenile offenders, collection of specific information from registrants, verification, duration of registration, access to and sharing of information, and penalties for failure to register. The final guidelines/regulations were issued on July 2, 2008. Although July 27, 2009, was originally established as the deadline for substantial implementation of SORNA's requirements by all jurisdictions, a one-year extension was granted on May 26, 2009, to all jurisdictions required to comply with the provisions of SORNA.

Jurisdictions now have until July 27, 2010, to substantially implement specific requirements for registering and monitoring sex offenders under the SORNA provisions of the Adam Walsh Act. In addition to this extension, jurisdictions may request another one-year extension. Currently, only Ohio has been deemed substantially compliant under the Act.

In addition, in September 2008, Congress passed the Keeping the Internet Devoid of Sexual Predators Act of 2008 (P.L. 100-400), which expands upon SORNA's requirements relating to online identifiers used by sex offenders. Guidelines and regulations for this Act have not yet been developed.

Federal Requirements

Under SORNA's final guidelines/regulations, it appears that the following modifications to current State law, among others, would be needed to comply with SORNA.

Length of Registration

The federal law divides the classes of sex offenders into a three-tiered system. Under that system, registration is for 15 years, 25 years, or life, depending on whether the offense is classified as Tier I, Tier II, or Tier III, respectively. Under current State law, Maryland classifies its sexual offenders into four classifications, and registration is for 10 years or life, depending on the offense. Additionally, under current Maryland law, most registrants are required to reregister every six months, while Tier I offenders in the federal system must reregister quarterly. Although states are not required to mirror the federal tiers, it may be necessary to significantly revamp Maryland's classification system to meet the minimum federal requirements.

Registration Deadlines

SORNA requires an offender to appear in person not later than three business days after each change of name, residence, employment, or student status and inform the jurisdiction in which the person is required to register of all changes in information required in the registry. Current Maryland law allows written notice within five days after the change occurs. The federal law also requires that initial registration must occur before release, while Maryland law allows registration “on or before” the date of release.

Application of Registration Requirement to Juvenile Offenders

The federal law applies to a juvenile offender adjudicated delinquent if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than 18 U.S.C. § 2241 (Aggravated Sexual Abuse) or an attempt or conspiracy to commit such an offense. Under current State law, registration requirements only apply to juvenile offenders who have been tried as adults and certain other juvenile offenders whose offenses were of the most serious variety and who have been determined to be at significant risk of reoffending, after reaching the age of 18.

Registry Information

Some of the information that the federal Act requires a registry to contain for each offender, including palm prints, travel and immigration documents, professional licensing information, and a physical description of the offender is not required to be included in the registry under current Maryland law.

Homeless Persons

Because SORNA defines the term “resides” to mean “the location of the individual’s home or other place where the individual habitually lives,” the residency registration requirements are extended to circumstances where the offender is homeless, living on the street, or moving from shelter to shelter, or when the place of residence itself moves from place to place, such as a mobile home, trailer, or houseboat. Accordingly, sex offenders must register (1) in any jurisdiction in which they have a home; and (2) in any jurisdiction in which they habitually live (even if they have no home or fixed address in the jurisdiction). Maryland law does not currently account for the homeless offender population.

Retroactivity

The Act applies to all sexual offenders, including those offenders convicted prior to the enactment of SORNA (July 27, 2006) or prior to a particular jurisdiction’s implementation of the SORNA requirements. Jurisdictions do not have to seek out pre-SORNA convicted

sex offenders and reregister them if their previous registrations have expired. If a person reoffends or reenters the judicial system for any crime, the individual will need to register under SORNA guidelines. Generally, a Maryland offender need not register if he or she was convicted of a qualifying offense and served the associated sentence prior to October 1, 1995.

Compliance Issues

Failure to comply with SORNA puts a state at risk to lose 10% of Byrne Justice Assistance grants, which all states use to pay for such things as drug task forces, anti-gang units, police overtime, and other law enforcement activities. Under the federal American Recovery and Reinvestment Act of 2009 (the federal “Stimulus Bill”), the Byrne formula grants program has been reauthorized from fiscal 2009 through 2011. Maryland will receive an estimated \$26.6 million in fiscal 2010 and \$18.5 million in fiscal 2011. However, because one-year extensions on compliance have been granted to all states, Indian tribes, territories, and the District of Columbia, no Byrne funds are at risk in fiscal 2010. Unless a second one-year extension is sought and granted, Maryland could be at risk to lose about \$1.9 million in Byrne funding in fiscal 2011. Maryland’s federal Byrne grant funding levels are shown in **Exhibit 1** for recent State budget years.

Exhibit 1
Byrne Justice Assistance Grants
(\$ in Millions)

<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>
\$5.7	\$6.5	\$2.4	\$26.6	\$18.5

Source: Governor’s Office of Crime Control and Prevention; Department of Legislative Services

During the 2008 session, a departmental bill (House Bill 1538) was introduced at the request of DPSCS to conform State sexual offender notification and registration provisions to SORNA. The provisions of the bill were also submitted to the federal SMART Office as a proposed compliance submission should the bill pass. The bill did not pass, and the SMART Office found that, while Maryland’s proposed changes and efforts were commendable, they would not bring the State into substantial compliance under the Act.

State Fiscal Effect: DPSCS reports that this bill would affect the agency in the following ways:

- *Information Technology and Communications Division:* A federal grant to DPSCS covers the costs to make any software modifications necessary for SORNA implementation.
- *Parole Commission:* It is assumed that requests to reduce supervision terms would be made to the commission. The commission believes that this responsibility could be handled with existing budgeted resources.
- *Division of Parole and Probation:* The bills changes could be accommodated with existing budgeted resources.
- *Division of Correction:* The bills changes could generally be accommodated with existing budgeted resources.
- *Patuxent Institution:* The bills changes could generally be accommodated with existing budgeted resources.

However, general fund expenditures increase by \$237,300 for the Department of Juvenile Services in fiscal 2011, which accounts for the bill’s October 1, 2010 effective date. This estimate reflects the cost of hiring six case management specialists to track and report on juvenile sex offenders now required to be in the State registry. It includes salaries, fringe benefits, and minimal supplies.

Salaries and Fringe Benefits	\$236,316
Supplies	<u>945</u>
Total FY 2011 State Expenditures	\$237,261

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover; and 1% annual increases in ongoing operating supplies.

Although the Office of the Public Defender (OPD) advises that this bill would require the hiring of 1.4 additional assistant public defenders to prepare misdemeanor trial work in the District Court and the circuit courts for cases of persons failing to register under the bill’s retroactivity provisions. However, OPD bases those needs on an assumed immediate increase of 28,400 new persons required to register. The Department of Legislative Services advises that the actual number of new registrants under the bill cannot be reliably predicted and that, in any case, OPD’s estimate is far beyond any reasonable expectations of growth in the registry.

Local Fiscal Effect: The monitoring of sex offenders in the State is primarily a local law enforcement function. However in Carroll County, local sex offender monitoring responsibilities are handled by the Department of State Police. Some new costs, varying by jurisdiction, may arise in connection with the bill’s residency restrictions.

For a similar bill, Montgomery County believes that sex offender registrations in the county may grow from 600 to 2,000 annually and require the hiring of two additional county police officers. However, the county did not provide a basis for that growth estimate. Also for a similar bill, Howard County reported a need for an additional half-time detective at an annual cost of about \$81,300. Caroline County is concerned that current State assistance is not adequate to cover increased sex offender monitoring responsibilities.

Organized through the Governor's Office of Crime Control and Prevention (GOCCP), the SOCEM program provides resources to all 24 designated State law enforcement agencies responsible for the registration and re-registration of sex offenders in the offender registry. Current grant funding through GOCCP assists State and local law enforcement agencies in the enforcement of registration and compliance requirements. The proposed fiscal 2011 State budget includes \$728,916 in general funds for the SOCEM grant program.

Additional Information

Prior Introductions: None.

Cross File: SB 854 (The President, *et al.*) (By Request - Administration) - Rules.

Information Source(s): Anne Arundel, Charles, Frederick, Montgomery, and Somerset counties; City of Annapolis; City of Takoma Park; Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Department of Legislative Services

Fiscal Note History: First Reader - February 22, 2010
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Criminal Procedure - Sex Offenders - Notification and Registration

BILL NUMBER: HB 936

PREPARED BY: Public Safety and Correctional Services

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.