

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1020
Judiciary

(Delegate Valderrama, *et al.*)

Judicial Proceedings

Criminal Procedure - Sex Offender Registry

This bill alters provisions relating to the registration of sex offenders, including juvenile sex offenders.

The bill takes effect June 1, 2011.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources. The bill may prevent the loss of \$540,000 in federal Byrne Justice Assistance Grant (BJAG) funds beginning in FY 2013.

Local Effect: The bill's requirements can be handled with the existing budgeted resources of local law enforcement agencies responsible for the registration of sex offenders. To the extent that local jurisdictions benefit from BJAG funding, federal fund losses of varying amounts may be averted.

Small Business Effect: None.

Analysis

Bill Summary: The bill clarifies that a person convicted of sexual solicitation of a minor, under circumstances where the solicitation was directed at a law enforcement officer posing as a minor, must register with the State's sex offender registry.

The bill makes the retroactive application of sex offender registration requirements apply to a person who is convicted of a felony, rather than any crime, on or after October 1, 2010,

and who has a prior conviction for an offense for which sex offender registration is required as well as a person convicted on or after October 1, 2010, of sexual solicitation of a minor, regardless of whether the victim was a minor.

The bill also increases, from 13 to 14 years of age, the age for inclusion on the registry of juvenile sex offenders, and limits the delinquent acts for which juvenile registration is required to acts, if committed by an adult would constitute:

- a second degree sexual offense if a person had engaged in a sexual act with another by force, or the threat of force without consent or if the victim is a mentally defective, mentally incapacitated, or physically helpless individual (rather than any second degree sexual offense); or
- a third degree sexual offense involving the nonconsensual sexual contact with another and (1) employing or displaying a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon; (2) suffocating, strangling, disfiguring, or inflicting serious physical injury on the victim or another in the course of committing the crime; (3) threatening, or placing the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; (4) being aided and abetted by another; or (5) with a victim that is a mentally defective, mentally incapacitated, or physically helpless individual (rather than the third and fourth degree violations currently enumerated).

In addition, the bill requires the Department of Public Safety and Correctional Services (DPSCS) to maintain the registry. A juvenile registrant must appear in person at a location designated by the Department of Juvenile Services (DJS) every three months to (1) update and verify the information included in the registry; and (2) allow DJS to take a digital image of the juvenile registrant.

Current Law/Background: A police record concerning a child is confidential and must be maintained separately from those of adults. Unless certain exemptions apply, the contents may not be divulged, except by court order upon a showing of good cause. However, a person who has been adjudicated delinquent for an act that would constitute first or second degree rape or first or second degree sexual assault if committed by an adult must register with a supervising authority at the time the juvenile court's jurisdiction terminates (usually at age 21), for inclusion on the State's sex offender registry if (1) the person was at least 13 years old at the time the qualifying delinquent act was committed; (2) the State's Attorney or DJS requests that the person be required to register; (3) the court determines by clear and convincing evidence after a hearing (90 days prior to the time the juvenile court's jurisdiction is terminated) that the person is

at significant risk of committing a sexually violent offense or an offense for which registration as a child sexual offender is required; and (4) the person is at least 18 years old.

The federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994 required all states to register sex offenders, sexually violent predators, and offenders who commit certain crimes against children. These laws have become popularly known as either “Megan’s Law” or “Jessica’s Law” in memory of children who have been sexually assaulted and murdered by convicted sex offenders.

The federal Sex Offender Registration and Notification Act (SORNA), enacted as Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), conditioned receipt of federal grant assistance on 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.

In 2010, Maryland’s sex offender registration laws were substantially revised in an effort to comply with SORNA and increase penalties for certain sex offenses committed against minors. Among the enacted provisions, sexual offenders are now sorted into three separate tiers, replacing the four former categories of sexual offenders. 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. In addition, a listing of juvenile sex offenders was required to be maintained by DPSCS, which is accessible only by law enforcement personnel for law enforcement purposes.

According to DJS, there are currently 53 juveniles adjudicated delinquent who may have to register as a juvenile sex offender under the bill.

State Fiscal Effect: In January 2011, the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) announced that Delaware, Florida, Ohio, South Dakota, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes and Bands of the Yakama Nation, and the United States Territory of Guam were the only jurisdictions thus far to have been designated as having substantially implemented SORNA.

On January 6, 2011, the SMART Office informed the State that while it has made some progress with implementing various provisions of SORNA, Maryland is not substantially compliant with the Act because it has failed to enact legislation requiring lifetime registration of juveniles who are adjudicated delinquent for the most serious sexual assault crimes. Failure to comply with SORNA puts a state at risk to lose 10% of BJAG funding, which is used to pay for such things as drug task forces, anti gang units, police

overtime, and other law enforcement activities. According to GOCCP, if the State remains noncompliant after July 2011, Maryland could lose a portion of its BJAG funding beginning in fiscal 2013. Given that the State receives approximately \$5.4 million annually in BJAG funding, it is estimated that the 10% penalty would total approximately \$540,000 for each annual direct BJAG award.

Sex offender registration provisions are 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.

The bill's changes, including retroactive application of sex offender registration requirements to a person convicted of a felony, rather than any crime, comports with current SORNA guidelines and may allow Maryland to be found to be substantially compliant with the guidelines – eliminating the risk of losing any BJAG funding.

Additional Comments: AOC advises that it is not clear from the bill how the status of someone who is now on the registry, because of the commission of a misdemeanor, will be adjusted and, in particular, whether court hearings will be necessary to make the adjustment.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City, Harford County, Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Department of State Police, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 28, 2011
ncs/hlb Revised - House Third Reader - March 29, 2011
Revised - Enrolled Bill - May 3, 2011

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