

HOUSE BILL 398

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1998 Regular Session
(8lr6051)

ENROLLED BILL
-- Judiciary/Judicial Proceedings --

Introduced by **Chairman, Judiciary Committee (Departmental - Public Safety
and Correctional Services)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Convictions for Certain Crimes Against Children, Sexually Violent Offenses,**
3 **or Other Sexual Offenses - Registration Procedures**

4 FOR the purpose of correcting certain errors, omissions, and inconsistencies in the
5 registration procedures for certain individuals convicted of certain crimes
6 against children, sexually violent offenses, or other sexual offenses; clarifying
7 the related duties assigned to supervising authorities, designated local law
8 enforcement agencies, and the Department of Public Safety and Correctional
9 Services; ~~and~~ providing certain immunity for elected public officials, public
10 employees, and public agencies; eliminating a requirement that the Department
11 provide certain information to certain municipal law enforcement agencies;
12 prohibiting a certain person from knowingly providing certain false information;
13 and generally relating to registration for certain crimes against children,
14 sexually violent offenses, and other sexual offenses.

15 BY repealing and reenacting, with amendments,

1 Article 27 - Crimes and Punishments
2 Section 792
3 Annotated Code of Maryland
4 (1996 Replacement Volume and 1997 Supplement)

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

7 **Article 27 - Crimes and Punishments**

8 792.

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

10 (2) "Child sexual offender" means a person who:

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

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

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

19 (iv) Has been convicted in another state of an offense that, if
20 committed in this State, would constitute one of the offenses listed in items (i) and (ii)
21 of this paragraph.

22 (3) "Convicted" includes:

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

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

27 (4) "Department" means the Department of Public Safety and
28 Correctional Services.

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

32 (6) "Offender" means a person who is ordered by the court to register
33 under this section and who:

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

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

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

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

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

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

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

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

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

18 (x) Has been convicted in another state of an offense that, if
19 committed in this State, would constitute one of the offenses listed in items (i)
20 through (ix) of this paragraph.

21 (7) "Registrant" means a person who is:

22 (i) A child sexual offender;

23 (ii) An offender;

24 (iii) A sexually violent offender; or

25 (iv) A sexually violent predator.

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) "Sexually violent offense" means:

- 1 (i) A violation of any of the provisions of § 462, § 463, § 464, § 464A,
2 § 464B, or § 464F of this article; or
- 3 (ii) Assault with intent to commit rape in the first or second degree
4 or a sexual offense in the first or second degree as previously proscribed under former
5 § 12 of this article.
- 6 (10) "Sexually violent offender" means a person who:
- 7 (i) Has been convicted of a sexually violent offense;
- 8 (ii) Has been convicted of an attempt to commit a sexually violent
9 offense; or
- 10 (iii) Has been convicted in another state of an offense that, if
11 committed in this State, would constitute a sexually violent offense.
- 12 (11) "Sexually violent predator" means a person who:
- 13 (i) Is convicted of a second or subsequent sexually violent offense;
14 and
- 15 (ii) Has been determined in accordance with this section to be at
16 risk of committing a subsequent sexually violent offense.
- 17 (12) "Supervising authority" means:
- 18 (i) If the registrant is in the custody of a facility operated by the
19 Department of Public Safety and Correctional Services, the Secretary of Public Safety
20 and Correctional Services;
- 21 (ii) If the registrant is in the custody of a local or regional detention
22 center, including [an offender] A REGISTRANT who is participating in a home
23 detention program, the administrator of the facility;
- 24 (iii) Except as provided in item (viii) of this paragraph, if the
25 registrant is granted probation before judgment, probation after judgment, or a
26 suspended sentence, the court that granted the probation or suspended sentence;
- 27 (iv) If the registrant is in the custody of the Patuxent Institution,
28 the Director of the Patuxent Institution;
- 29 (v) If the registrant is in the custody of a facility operated by the
30 Department of Health and Mental Hygiene, the Secretary of Health and Mental
31 Hygiene;
- 32 (vi) If the registrant's sentence does not include a term of
33 imprisonment, the court in which the [offender] REGISTRANT was convicted;
- 34 (vii) If the [offender] REGISTRANT is in the State under the terms
35 and conditions of the interstate compact agreements under Article 41, §§ 4-801 and

1 4-1201 through 4-1211 of the Code, the Secretary of Public Safety and Correctional
2 Services; or

3 (viii) If the registrant is under the supervision of the Division of
4 Parole and Probation, the Director of Parole and Probation.

5 (b) (1) Subject to paragraphs (3) and (4) of this subsection, if a person is
6 convicted of a second or subsequent sexually violent offense, the State's Attorney may
7 request the court to determine before sentencing whether the person is a sexually
8 violent predator.

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

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

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

17 (ii) Any evidence introduced by the person convicted; and

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

20 (4) The State's Attorney may not request a court to determine if a person
21 is a sexually violent predator under this subsection unless the State's Attorney serves
22 written notice of intent to make the request on the defendant or the defendant's
23 lawyer at least 30 days before trial.

24 (c) (1) In this subsection, "resident" means a person who lives in this State
25 at the time the person:

26 (i) Is released;

27 (ii) Is granted probation before judgment;

28 (iii) Is granted probation after judgment;

29 (iv) Is granted a suspended sentence; or

30 (v) Receives a sentence that does not include a term of
31 imprisonment.

32 (2) A registrant shall register with the supervising authority:

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

- 1 1. Is released;
 - 2 2. Is granted probation before judgment;
 - 3 3. Is granted probation after judgment;
 - 4 4. Is granted a suspended sentence; or
 - 5 5. Receives a sentence that does not include a term of
6 imprisonment; or
- 7 (ii) If the registrant is not a resident, within 7 days after the earlier
8 of the date that the registrant:
- 9 1. Establishes a temporary or permanent residence in this
10 State; or
 - 11 2. Applies for a driver's license in this State.
- 12 (3) (i) Within 7 days after release, a child sexual offender shall also
13 register in person with the local law enforcement agency of the county where the
14 CHILD SEXUAL offender will reside.
- 15 (ii) A local law enforcement agency may require a child sexual
16 offender to provide additional information in the registration besides the information
17 required under subsection (d) of this section.
- 18 (4) When a registrant registers, the supervising authority shall:
- 19 (i) Inform the registrant that if the registrant changes residence
20 address to another state that has a registration requirement, the registrant shall
21 register the new address with the designated law enforcement agency of that state
22 within 7 days after establishing the new residence;
 - 23 (ii) Explain the requirements of this section to the registrant,
24 including the duties of a registrant when the registrant changes residence address;
 - 25 (iii) Give written notice to the registrant of the requirements of this
26 section; and
 - 27 (iv) Obtain a statement signed by the registrant acknowledging that
28 the supervising authority explained the requirements of this section and provided
29 written notice to the registrant.
- 30 (d) (1) Registration shall consist of a statement signed by a registrant which
31 shall include:
- 32 (i) The registrant's name, address, and place of employment;
 - 33 (ii) A description of the crime for which the registrant was
34 convicted, granted probation before judgment, or found not criminally responsible;

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

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

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

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

7 (2) The supervising authority shall obtain a photograph and fingerprints
8 of the registrant and include the photograph and fingerprints in the registration
9 statement.

10 (3) (i) As soon as possible and in no event later than 5 working days
11 after registration is completed, if the supervising authority is not the Department,
12 the supervising authority shall send the registration statement to the Department.

13 (ii) The Department shall maintain a central registry of
14 registrants.

15 (iii) The Department shall reimburse supervising authorities for the
16 cost of processing the registration statements of registrants, including the taking of
17 fingerprints and photographs.

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

22 (5) The Department shall release registration statements or information
23 concerning registration statements to the public in accordance with regulations
24 established by the Department.

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

27 1. Shall send to the person who submitted the request one
28 copy of the registration statement of each child sexual offender and each sexually
29 violent predator on record with the agency; and

30 2. May send to the person who submitted the request one
31 copy of the registration statement of any registrant not described in item 1 of this
32 subparagraph on record with the agency.

33 (ii) A request under subparagraph (i) of this paragraph shall
34 contain:

35 1. The name and address of the person submitting the
36 request; and

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

4 (ii) Any person who is entitled to receive notice under paragraph (2)
5 of this subsection.

6 (6) A supervising authority shall send any notice required under
7 paragraphs (2), (4)(ii), and (5)(ii) of this subsection to the last address provided to the
8 supervising authority for a person who is entitled to notice under paragraph (2) of this
9 subsection.

10 (7) 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 subsection shall send a copy of the notice to the police department of the
16 municipal corporation.

17 (f) (1) Subject to paragraph (3) of this subsection, as soon as possible and in
18 no event later than 5 working days after receiving a registration statement of a child
19 sexual offender, a local law enforcement agency shall send written notice of the
20 registration statement to the county superintendent, as defined in § 1-101 of the
21 Education Article, in the county where the child sexual offender will reside.

22 (2) As soon as possible and in no event later than 5 working days after
23 receiving notice from the local law enforcement agency under paragraph (1) of this
24 subsection, a county superintendent shall send written notice of the registration
25 statement to those principals of the schools within the supervision of the
26 superintendent that the superintendent considers necessary to protect the students of
27 a school from a child sexual offender.

28 (3) In addition to the notice required under paragraph (1) of this
29 subsection, the Department and a local law enforcement agency shall provide notice
30 of a registration statement to any person or organization that the Department or local
31 law enforcement agency determines may serve to protect the public concerning a
32 specific registrant if the Department or the agency determines that such notice is
33 necessary to protect the public.

34 (4) (i) The Department and local law enforcement agencies shall
35 establish procedures for carrying out the notification requirements of paragraph (3) of
36 this subsection, including the circumstances under and manner in which notification
37 shall be provided.

38 (ii) A local law enforcement agency and the Department of Public
39 Safety and Correctional Services may not release the identity of a victim of an offense
40 that requires registration under this section.

1 (5) A disclosure under this subsection may not be construed to limit or
2 prohibit any other disclosure permitted or required under law.

3 (6) [(i) Except for a registration statement provided to a law
4 enforcement agency, a] A registration statement provided to a person or organization
5 under this section shall include A COPY OF the completed registration form and a copy
6 of a photograph of the registrant, but need not include the registrant's fingerprints.

7 [(ii) The Department of Public Safety and Correctional Services
8 shall provide a local law enforcement agency with the completed registration form,
9 the registrant's fingerprints, and an actual photograph of the registrant.]

10 [(7) An elected public official, public employee, or public agency is
11 immune from civil liability for damages arising out of any action relating to the
12 provisions of this subsection, unless it is shown that the official, employee, or agency
13 acted with gross negligence or in bad faith.]

14 (g) (1) If a registrant changes residences, the registrant shall send written
15 notice of the change within 7 days after the change occurs to the Department.

16 (2) As soon as possible and in no event later than 5 working days after
17 receipt of the notice, the Department shall give notice of the change to the local law
18 enforcement agency in whose county the new residence is located, and if the new
19 residence is in a different state that has a registration requirement, to the designated
20 law enforcement agency in whose state the new residence is located.

21 (h) (1) A child sexual offender shall register in person with a local law
22 enforcement agency annually for 10 years after:

23 (i) The last date of release;

24 (ii) The child sexual offender is granted probation before judgment,
25 probation after judgment, or a suspended sentence; or

26 (iii) The child sexual offender receives a sentence that does not
27 include a term of imprisonment.

28 (2) WITHIN 5 DAYS AFTER A CHILD SEXUAL OFFENDER HAS COMPLETED
29 THE REGISTRATION REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION, A
30 LOCAL LAW ENFORCEMENT AGENCY SHALL SEND NOTICE OF THE CHILD SEXUAL
31 OFFENDER'S ANNUAL REGISTRATION TO THE DEPARTMENT.

32 (3) [An] IN ACCORDANCE WITH SUBSECTION (1)(1) OF THIS SECTION, AN
33 offender and a sexually violent offender shall register annually with the Department
34 FOR 10 YEARS AFTER:

35 (I) THE LAST DATE OF RELEASE;

36 (II) BEING GRANTED PROBATION BEFORE JUDGMENT, PROBATION
37 AFTER JUDGMENT, OR A SUSPENDED SENTENCE; OR

1 (III) RECEIVING A SENTENCE THAT DOES NOT INCLUDE A TERM OF
2 IMPRISONMENT.

3 [(3)] (4) A sexually violent predator shall register every 90 days in
4 accordance with subsection (i)(2) of this section until the person is determined not to
5 be a sexually violent predator under subsection [(1)] (K) of this section.

6 (i) (1) (i) The Department shall mail a verification form, which may not
7 be forwarded, annually to the last reported address of each offender and sexually
8 violent offender.

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

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

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

18 (j) Within 5 days after obtaining a verification form from [a child sexual
19 offender and] a sexually violent predator, a local law enforcement agency shall send a
20 copy of the verification form to the Department.

21 (k) [If a registrant will reside after release in a municipal corporation that
22 has a police department, or, in the case where a registrant escapes from a facility and
23 the offender resided, before the offender was committed to the custody of a
24 supervising authority, in a municipal corporation that has a police department, the
25 Department shall send a copy of the registration statement or change in registration
26 to the police department of the municipal corporation.

27 [(1)] (1) A sexually violent predator who has been registered under this
28 section for at least 10 years may file a petition requesting a court to rule that the
29 person is no longer a sexually violent predator.

30 (2) A petition under this subsection shall be filed in the circuit court for
31 the county where the sexually violent predator was convicted or has a residence.

32 (3) On the filing of a petition under this subsection, the court shall
33 consider any evidence that the court considers appropriate.

34 (4) Within 30 days after the filing of a petition under this subsection, the
35 court shall:

36 (i) Dismiss the petition; or

1 (ii) Issue an order stating that the registrant is no longer
2 considered a sexually violent predator.

3 (5) If a petition is dismissed under paragraph (4)(i) of this subsection, the
4 sexually violent predator may file a subsequent petition subject to the same
5 procedures after each 5-year period after the dismissal.

6 (L) AN ELECTED PUBLIC OFFICIAL, PUBLIC EMPLOYEE, OR PUBLIC AGENCY ~~IS~~
7 ~~IMMUNE FROM~~ SHALL HAVE THE IMMUNITY DESCRIBED IN §§ 5-522 AND 5-302 OF
8 THE COURTS ARTICLE REGARDING CIVIL LIABILITY FOR DAMAGES ARISING OUT OF
9 ANY ACTION RELATING TO THE PROVISIONS OF THIS SECTION, UNLESS IT IS SHOWN
10 THAT THE OFFICIAL, EMPLOYEE, OR AGENCY ACTED WITH GROSS NEGLIGENCE OR
11 IN BAD FAITH.

12 (m) A registrant who knowingly fails to register OR KNOWINGLY PROVIDES
13 FALSE INFORMATION OF A MATERIAL FACT as required by this section is guilty of a
14 misdemeanor and on conviction is subject to imprisonment in the penitentiary for not
15 more than 3 years or a fine of not more than \$5,000 or both.

16 (n) The Secretary of Public Safety and Correctional Services shall adopt
17 regulations to implement the provisions of this section WITH ADVICE FROM THE
18 CRIMINAL JUSTICE INFORMATION ADVISORY BOARD ESTABLISHED UNDER § 744 OF
19 THIS ARTICLE.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
21 effect October 1, 1998.