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By: **Delegates Elliott, Amedori, Brinkley, Getty, Giannetti, K. Kelly, and Mitchell**

Introduced and read first time: February 12, 1999

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Sex Offender Registration - Retroactive Application**

3 FOR the purpose of requiring the registration of certain sex offenders to be applied  
4 retroactively; making the provisions of this Act severable; and generally relating  
5 to sex offender registration.

6 BY repealing and reenacting, with amendments,  
7 Article 27 - Crimes and Punishments  
8 Section 792  
9 Annotated Code of Maryland  
10 (1996 Replacement Volume and 1998 Supplement)

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

13 **Article 27 - Crimes and Punishments**

14 792.

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

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

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

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

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

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

4 (3) "Convicted" includes:

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

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

9 (4) "Department" means the Department of Public Safety and  
10 Correctional Services.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (i) A child sexual offender;

6 (ii) An offender;

7 (iii) A sexually violent offender;

8 (iv) A sexually violent predator;

9 (v) A child sexual offender who, before moving into this State, was  
10 required to register in another state for an offense occurring before October 1, 1995;  
11 or

12 (vi) An offender, a sexually violent offender, or a sexually violent  
13 predator who, before moving into this State, was required to register in another state  
14 for an offense occurring before July 1, 1997.

15 (8) (i) "Release" means any type of release from the custody of a  
16 supervising authority.

17 (ii) "Release" includes release on parole, mandatory supervision,  
18 work release, and any type of temporary leave other than leave that is granted on an  
19 emergency basis.

20 (iii) "Release" does not include an escape.

21 (9) "Sexually violent offense" means:

22 (i) A violation of any of the provisions of § 462, § 463, § 464, § 464A,  
23 § 464B, or § 464F of this article; or

24 (ii) Assault with intent to commit rape in the first or second degree  
25 or a sexual offense in the first or second degree as previously proscribed under former  
26 § 12 of this article.

27 (10) "Sexually violent offender" means a person who:

28 (i) Has been convicted of a sexually violent offense;

29 (ii) Has been convicted of an attempt to commit a sexually violent  
30 offense; or

31 (iii) Has been convicted in another state of an offense that, if  
32 committed in this State, would constitute a sexually violent offense.

33 (11) "Sexually violent predator" means a person who:

- 1 (i) Is convicted of a second or subsequent sexually violent offense;  
2 and
- 3 (ii) Has been determined in accordance with this section to be at  
4 risk of committing a subsequent sexually violent offense.
- 5 (12) "Supervising authority" means:
- 6 (i) If the registrant is in the custody of a facility operated by the  
7 Department of Public Safety and Correctional Services, the Secretary of Public Safety  
8 and Correctional Services;
- 9 (ii) If the registrant is in the custody of a local or regional detention  
10 center, including a registrant who is participating in a home detention program, the  
11 administrator of the facility;
- 12 (iii) Except as provided in item (x) of this paragraph, if the  
13 registrant is granted probation before judgment, probation after judgment, or a  
14 suspended sentence, the court that granted the probation or suspended sentence;
- 15 (iv) If the registrant is in the custody of the Patuxent Institution,  
16 the Director of the Patuxent Institution;
- 17 (v) If the registrant is in the custody of a facility operated by the  
18 Department of Health and Mental Hygiene, the Secretary of Health and Mental  
19 Hygiene;
- 20 (vi) If the registrant's sentence does not include a term of  
21 imprisonment, the court in which the registrant was convicted;
- 22 (vii) If the registrant is in the State under the terms and conditions  
23 of the interstate compact agreements under Article 41, §§ 4-801 and 4-1201 through  
24 4-1211 of the Code, the Secretary of Public Safety and Correctional Services;
- 25 (viii) If the registrant moves to this State and was convicted in  
26 another state of an offense that would require the individual to register if the offense  
27 was committed in this State, the Secretary of Public Safety and Correctional Services;
- 28 (ix) If the registrant moves to this State from another state where  
29 the individual was required to register, the Secretary of Public Safety and  
30 Correctional Services; or
- 31 (x) If the registrant is under the supervision of the Division of  
32 Parole and Probation, the Director of Parole and Probation.
- 33 (b) (1) Subject to paragraphs (3) and (4) of this subsection, if a person is  
34 convicted of a second or subsequent sexually violent offense, the State's Attorney may  
35 request the court to determine before sentencing whether the person is a sexually  
36 violent predator.

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

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

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

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

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

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

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

18           (i)     Is released;

19           (ii)    Is granted probation before judgment;

20           (iii)   Is granted probation after judgment;

21           (iv)    Is granted a suspended sentence; or

22           (v)     Receives a sentence that does not include a term of  
23 imprisonment.

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

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

27                   1.     Is released;

28                   2.     Is granted probation before judgment;

29                   3.     Is granted probation after judgment;

30                   4.     Is granted a suspended sentence; or

31                   5.     Receives a sentence that does not include a term of  
32 imprisonment; or

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

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

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

7                   (ii)     The Department shall maintain a central registry of  
8 registrants.

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

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

16           (5)     The Department shall release registration statements or information  
17 concerning registration statements to the public in accordance with regulations  
18 established by the Department.

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

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

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

27                   (ii)     A request under subparagraph (i) of this paragraph shall  
28 contain:

29                           1.     The name and address of the person submitting the  
30 request; and

31                           2.     The reason for requesting the information.

32                   (iii)    A local law enforcement agency shall keep records of all written  
33 requests received under subparagraph (i) of this paragraph.

34     (e)     (1)     Within 5 days of obtaining a registration statement, the supervising  
35 authority shall send a copy of the registration statement, the registrant's  
36 fingerprints, and a photograph of the registrant to the local law enforcement agency  
37 in the county where the registrant will reside.

1                   (2)    (i)    The supervising authority shall send a copy of a registration  
2 statement to the following persons if such notice has been requested in writing about  
3 a specific registrant:

4                                   1.    The victim of the crime for which the registrant was  
5 convicted or, if the victim is a minor, the parents or legal guardian of the victim;

6                                   2.    Any witness who testified against the registrant in any  
7 court proceedings involving the offense; and

8                                   3.    Any person specified in writing by the State's Attorney.

9                   (ii)    The supervising authority shall send a copy of a registration  
10 statement to a victim of the crime for which the registrant was convicted, if the victim  
11 filed a notification request form under § 770 of this article.

12                   (3)    Information regarding any person who receives notice under  
13 paragraph (2) of this subsection is confidential and may not be disclosed to the  
14 registrant or any other person, agency, or entity.

15                   (4)    If a registrant escapes from a facility, the supervising authority of the  
16 facility shall immediately notify, by the most reasonable and expedient means  
17 available:

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

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

23                   (5)    If the registrant is recaptured, the supervising authority shall send  
24 notice, as soon as possible and in no event later than 2 working days after the  
25 supervising authority learns of the recapture, to:

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

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

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

35                   (7)    If a registrant will reside after release in a municipal corporation  
36 that has a police department, or, in the case where a registrant escapes from a facility  
37 and the registrant resided, before the registrant was committed to the custody of a



1 supervising authority, in a municipal corporation that has a police department, a local  
2 law enforcement agency that receives a notice from a supervising authority under  
3 this subsection shall send a copy of the notice to the police department of the  
4 municipal corporation.

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

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

16 (3) In addition to the notice required under paragraph (1) of this  
17 subsection, the Department and a local law enforcement agency shall provide notice  
18 of a registration statement to any person or organization that the Department or local  
19 law enforcement agency determines may serve to protect the public concerning a  
20 specific registrant if the Department or the agency determines that such notice is  
21 necessary to protect the public.

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

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

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

31 (6) A registration statement provided to a person or organization under  
32 this section shall include a copy of the completed registration form and a copy of a  
33 photograph of the registrant, but need not include the registrant's fingerprints.

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

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

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

3 (i) The last date of release;

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

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

8 (2) Within 5 days after a child sexual offender has completed the  
9 registration requirements of paragraph (1) of this subsection, a local law enforcement  
10 agency shall send notice of the child sexual offender's annual registration to the  
11 Department.

12 (3) In accordance with subsection (i)(1) of this section, an offender and a  
13 sexually violent offender shall register annually with the Department for 10 years  
14 after:

15 (i) The last date of release;

16 (ii) Being granted probation before judgment, probation after  
17 judgment, or a suspended sentence; or

18 (iii) Receiving a sentence that does not include a term of  
19 imprisonment.

20 (4) A sexually violent predator shall register every 90 days in accordance  
21 with subsection (i)(2) of this section until the person is determined not to be a sexually  
22 violent predator under subsection (k) of this section.

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

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

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

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

1 (j) Within 5 days after obtaining a verification form from a sexually violent  
2 predator, a local law enforcement agency shall send a copy of the verification form to  
3 the Department.

4 (k) (1) A sexually violent predator who has been registered under this  
5 section for at least 10 years may file a petition requesting a court to rule that the  
6 person is no longer a sexually violent predator.

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

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

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

13 (i) Dismiss the petition; or

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

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

19 (l) An elected public official, public employee, or public agency shall have the  
20 immunity described in §§ 5-522 and 5-302 of the Courts Article regarding civil  
21 liability for damages arising out of any action relating to the provisions of this section,  
22 unless it is shown that the official, employee, or agency acted with gross negligence or  
23 in bad faith.

24 (m) A registrant who knowingly fails to register or knowingly provides false  
25 information of a material fact as required by this section is guilty of a misdemeanor  
26 and on conviction is subject to imprisonment in the penitentiary for not more than 3  
27 years or a fine of not more than \$5,000 or both.

28 (n) The Secretary of Public Safety and Correctional Services shall adopt  
29 regulations to implement the provisions of this section with advice from the Criminal  
30 Justice Information Advisory Board established under § 744 of this article.

31 (O) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THIS  
32 SECTION SHALL BE APPLIED RETROACTIVELY TO INCLUDE A REGISTRANT  
33 CONVICTED OF AN OFFENSE COMMITTED ON OR BEFORE JULY 1, 1997 AND WHO IS IN  
34 THE CUSTODY OF A SUPERVISING AUTHORITY ON OCTOBER 1, 1999.

35 (2) THIS SECTION SHALL BE APPLIED RETROACTIVELY TO A CHILD  
36 SEXUAL OFFENDER WHO COMMITTED THE SEXUAL OFFENSE BEFORE OCTOBER 1,  
37 1995 AND WHO IS IN THE CUSTODY OF A SUPERVISING AUTHORITY ON OCTOBER 1,  
38 1999.

1 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this  
2 Act or the application thereof to any person or circumstance is held invalid for any  
3 reason in a court of competent jurisdiction, the invalidity does not affect other  
4 provisions or any other application of this Act which can be given effect without the  
5 invalid provision or application, and for this purpose the provisions of this Act are  
6 declared severable.

7 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 October 1, 1999.