

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE
Revised

House Bill 77

(Delegate Dembrow)

Judiciary

Judicial Proceedings

Criminal Procedure - Sexually Violent Offenders - Registration

This bill alters provisions applicable to sexually violent offenses and the registration of persons with the Crimes Against Children and Sexual Offender Registry in the Department of Public Safety and Correctional Services.

The bill is effective September 30, 2002.

Fiscal Summary

State Effect: This bill would prevent the loss of expected federal fund revenue (in the form of grants from the Edward J. Byrne Memorial State and Local Law Enforcement Assistance Fund) of about \$900,000 annually beginning in FY 2003. It is unclear as to whether the \$900,000 in expected grant funds for FY 2002 will be affected. Although an expanded list of required registrations may eventually lead to a need for additional resources, for the foreseeable future the provisions of this bill could be handled with the existing budgeted resources of the Department of Public Safety and Correctional Services.

Local Effect: Although an expanded list of required registrations may eventually lead to a need for additional local resources, for the foreseeable future the provisions of this bill could be handled with the existing budgeted resources of local government agencies serving as supervising authorities.

Small Business Effect: None.

Analysis

Bill Summary: This bill includes under the definition of “sexually violent offense” certain crimes that were committed in another state or in a federal, military, or Native American tribal jurisdiction. Among other actions, the bill:

- expands the definition of “sexually violent predator” by eliminating the need for the offense to have been a subsequent offense and including 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;
- makes the Secretary of Public Safety and Correctional Services the “supervising authority” if a registrant is either a resident or a nonresident convicted in a federal, military, or Native American tribal court and is not under supervision of another supervising authority;
- expands lifetime registration requirements by requiring such registration for all sexually violent offenders and persons convicted of child abuse for commission of a sexual act involving penetration of a child under 12 years old;
- requires all persons with a prior conviction for a sexual offense, a child sexual offense, or a sexual violent offense to register for life without regard to whether there was a previous requirement to register;
- requires registrants who commence or terminate employment or enrollment at an institution of higher education to either note the enrollment or employment on their registration statement or notify their supervising authority;
- requires the supervising authority to notify campus police or local law enforcement when registrants commence or terminate employment or enrollment at an institution of higher education; and
- makes it a misdemeanor for registrants to knowingly fail to provide certain notices of a change in status.

Current Law: “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.

“Sexually violent predator” means a person who: (1) is convicted of a subsequent sexually violent offense; and (2) has been determined to be at risk of committing another sexually violent offense.

Sexual offenders are required to register with the Crimes Against Children and Sexual Offender Registry for a term of either ten years or life, depending on the offense. Under the State’s sexual offender registration laws, a State’s Attorney may request that a repeat sexual offender be designated a sexually violent predator.

Lifetime registration is required for: (1) persons determined to be sexually violent predators; (2) persons convicted of first or second degree rape or first, second, or third degree sexual offense; and (3) recidivist offenders previously required to register.

Background: Maryland first enacted sexual offender registration legislation under the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program during the 1995 session (Chapter 142 of 1995). Because the federal statute has been amended and because there have been updates and changes to federal regulations, State laws underwent revisions in 1997 (Chapter 754) and 1998 (Chapters 473 and 521). In 1999, legislation was enacted (Chapter 317) to bring Maryland in compliance with Wetterling guidelines by extending lifetime registration to individuals convicted of aggravated or subsequent offenses.

States that receive federal grants from the Edward J. Byrne Memorial State and Local Law Enforcement Assistance Fund have for a number of years been required to register all sexual offenders for life or risk the loss of 10% of their annual grants. In June, Maryland was among 14 states advised by the U.S. Bureau of Justice Assistance that the 10% cuts would be made beginning with fiscal 2002 starting October 1. The State has asked the U.S. Department of Justice to delay imposing such penalties until after this legislative session in order to clarify its standards. Byrne grants to the State total approximately \$9 million, so about \$900,000 of grant funds are at risk.

Differing from federal guidelines is not necessarily a bar to compliance. For instance, Maryland differs from the federal guidelines in the second criteria for predator status in that Maryland defines a sexual predator as “a person who has been determined in accordance with this subtitle to be at risk of committing another sexually violent offense.” The federal law imparts potential predator status to a person who “suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.” Mental abnormality is a defined term. Although Maryland’s law differs from the federal law in this regard, its broader application should comply with federal law, which allows a state to adopt broader standards.

In any case, Maryland is believed not to be in compliance with federal guidelines relating to Byrne funding in three areas:

1. Sexually violent predators - Under the federal guidelines, any individual who commits a sexually violent offense (even a first offender) is subject to sexually violent predator status. An additional area of potential noncompliance in the sexual predator guidelines relates to the procedure for making the sexually violent predator determination. Maryland allows a court to make the determination, while the federal law calls for a board of experts to be created.
2. Aggravated sexual offenses - The federal law requires all persons convicted of an aggravated sexual offense to register annually for life. Aggravated sexual offenses under federal law essentially encompass: (1) engaging or attempting to engage in sexual acts involving penetration with victims of any age through the use of force or threat of serious violence; and (2) engaging or attempting to engage in sexual acts involving penetration with victims under the age of 12. Maryland law requires lifetime registration for persons convicted of: first degree rape; second degree rape; first degree sexual offense; second degree sexual offense; and third degree sexual offense.

There are two areas of aggravated sexual offense that Maryland's law omits from lifetime registration. In order to be in compliance with the federal law, Maryland must include offenses under the State's criminal code that involve a sexual act involving penetration with a victim under the age of 12, and include attempted rape in the first and second degree and attempted sexual offense in the first and second degree as offenses requiring lifetime registration.

3. Subsequent/recidivist offenders - Maryland requires lifetime registration for subsequent offenders but does not explicitly require this registration if the prior crime occurred before Maryland's registration requirement took effect or the crime occurred in another state. In addition, Maryland law requires lifetime registration for a registrant who has been previously required to register and has been convicted of a subsequent crime as a child sexual offender or a sexual offender or has been convicted of a subsequent sexually violent offense. The federal guidelines require lifetime registration of a subsequent offender regardless of whether the first offense was committed after registration statutes were enacted and regardless of whether the offense was committed in the same state in which the registrant committed the latest offense.

Maryland law falls short of the federal requirements for three reasons. First, the current law regarding registration of subsequent offenders only applies when the previous

offense is one for which the offender was required to register, meaning it only applies to offenses that occurred after the registration statute was enacted. Second, because of the way sexually violent offense is defined, not all offenses committed outside of the State can be considered as prior offenses. Third, sexually violent predator status does not apply to first offenders that otherwise fit the criteria.

In addition, the Maryland Court of Appeals held in *Graves v. State*, 364 Md. 329 (2001) that the statutory definition of a “sexually violent predator” does not encompass persons who have been convicted of criminal acts committed in another jurisdiction that would constitute a sexually violent offense in Maryland.

Additional Information

Prior Introductions: None.

Cross File: Although not identified as a cross file, this bill is identical to SB 577 (Senator Jacobs, *et al.*) – Judicial Proceedings.

Information Source(s): Montgomery County, Prince George’s County, Garrett County, Dorchester County, Department of Public Safety and Correctional Services, Department of Legislative Services

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