

Department of Legislative Services

Maryland General Assembly

2002 Session

FISCAL NOTE

Revised

House Bill 1189

(Chairman, Judiciary Committee)

(Departmental – Public Safety and Correctional Services)

Judiciary

Judicial Proceedings

Criminal Procedure - Sex Offender Registration

This departmental bill makes several changes to State law requiring the registration of sexual offenders.

Fiscal Summary

State Effect: The requirements of this bill could be handled with the existing budgeted resources of the Department of Public Safety and Correctional Services (DPSCS).

Local Effect: The requirements of this bill could be handled with existing budgeted resources.

Small Business Effect: The Department of Public Safety and Correctional Services 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: This bill:

- alters the definition of “sexually violent predator,” under provisions requiring registration of sex offenders, so that the term means a “sexually violent offender” rather than a “person” who is convicted of a sexually violent offense and has been determined to be at risk of committing another sexually violent offense;

- alters the definition of “sexually violent predator” to include first time offenders and people determined to be sexually violent predators in another state or jurisdiction;
- includes out-of-state convictions as a part of the prior conviction record in a court’s determination that an individual is a sexually violent predator, and clarifies the registration requirements of persons who move into the State;
- provides that registrants who are employed, carry on a vocation, or are enrolled at an institution of higher education in the State must include this information on their registration statements and report changes to that information;
- defines “employment” to conform to federal law;
- makes the Secretary of Public Safety and Correctional Services the “supervising authority” if a registrant is convicted in a federal, military, or Native American tribal court and is not under supervision of another supervising authority requiring specified registrants to include specified information on the registration statement;
- makes the Secretary of Public Safety and Correctional Services the “supervising authority” if a nonresident registrant is convicted in a federal, military, or Native American tribal court;
- clarifies that DPSCS must give notice when a registrant commences or terminates enrollment or employment at an institution of higher education;
- requires certain notices regarding a registrant’s employment or enrollment at an institution of higher education. (At the time of registration a registrant must provide the name and address of an institution of higher education where the registrant is employed or enrolled. If a registrant commences or terminates employment or enrollment at an institution of higher education the registrant must notify DPSCS. The supervising authority must notify campus police or the law enforcement agency having jurisdiction for the campus if a registrant is enrolled at or employed at, or commences or terminates enrollment or employment at an institution of higher education.); and
- clarifies that the term of registration is calculated from either: (1) the last date of release; (2) the date probation was granted; or (3) the date a suspended sentence was granted.

Current Law: 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.

“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.

Sexually violent offender means a person who: (1) has been convicted of a sexually violent offense; (2) has been convicted of an attempt to commit a sexually violent offense; or (3) has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in this State, would constitute a sexually violent offense.

“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.

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. An offender and a sexually violent offender must register annually. A sexually violent predator must register every 90 days. 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.

The “supervising authority” for a sexual offender who must register means:

- the Secretary of Public Safety and Correctional Services, if the registrant is in the custody of a correctional facility operated by DPSCS;
- the administrator of a local correctional facility, if the registrant, including a participant in a home detention program, is in the custody of the local correctional facility;
- with an exception of circumstances involving the Division of Parole and Probation, the court that granted the probation or suspended sentence if the registrant is granted probation before judgment, probation after judgment, or a suspended sentence;
- the Director of the Patuxent Institution, if the registrant is in the custody of the Patuxent Institution;
- the Secretary of Health and Mental Hygiene, if the registrant is in the custody of a facility operated by that department;
- the court in which the registrant was convicted, if the registrant’s sentence does not include a term of imprisonment;

- the Secretary of Public Safety and Correctional Services, if the registrant is in the State under terms and conditions of the applicable interstate compact governing out-of-state supervision;
- the Secretary of Public Safety and Correctional Services, if the registrant moves to Maryland and was convicted in another state of a crime that would require the registrant to register if the crime was committed in this State;
- the Secretary of Public Safety and Correctional Services, if the registrant moves to Maryland from another state where the registrant was required to register;
- the Secretary of Public Safety and Correctional Services, if the registrant is not a resident of this State; or
- the Director of Parole and Probation, if the registrant is under the supervision of the division.

A registration statement is required to include: (1) the registrant's name and address; (2) for certain registrants from another state, the registrant's place of employment; or for certain out-of-state registrants, the registrant's place of educational institution or school enrollment; (3) a description of the crime for which the registrant was convicted; (4) the date that the registrant was convicted; (5) the jurisdiction in which the registrant was convicted; (6) a list of any aliases that the registrant has used; (7) the registrant's Social Security number; and (8) the registrant's signature and date signed. If the registrant is a sexually violent predator, the registration statement must also include: (1) identifying factors including a physical description; (2) anticipated future residence if known at the time of registration; (3) offense history; and (4) documentation of treatment received for a mental abnormality or personality disorder.

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 must comply with federal guidelines or risk losing 10% of those grants. Byrne grants to the State total approximately \$9 million, so about \$900,000 of grant funds are at risk for noncompliance. 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 for issues unrelated to the compliance issue raised in this bill. The State has challenged the current finding of noncompliance and has

asked the U.S. Department of Justice to delay imposing penalties until after this legislative session in order to clarify its standards.

This bill is aimed at addressing three issues: (1) a new federal compliance mandate under the Campus Sex Crimes Prevention Act (Title VI of the Victims of Trafficking and Violence Protection Act of 2000) which must be in place by October 28, 2002; (2) the Graves decision (cited below); and (3) two issues identified by the Criminal Procedure Article Review Committee.

Individuals employed by or attending institutions of higher education in Maryland are already registered with the State if they otherwise fall under the State's registration requirement. Under the Campus Sex Crimes Prevention Act, the new federal guidelines require that such registrants include the school at which they are enrolled or employed on the registration statement, and report any change of status. There are two collateral features of this requirement: (1) the sex offender registry must promptly notify the law enforcement agency responsible for registrations in the jurisdiction where the school is located that the registration has occurred (and of any subsequent changes of status); and (2) higher education institutions currently required to disclose campus security policy and campus crime statistical data must also advise the campus community where information regarding registrants may be obtained.

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.

The Criminal Procedure Article Review Committee noted two areas of concern in the Article relating to sexual offender registration:

- Under provisions defining supervising authorities, the following provisions may conflict: (1) if the registrant is not a State resident, the Secretary of Public Safety and Correctional Services is the supervising authority; and (2) if a Maryland court was the venue in which the registrant was convicted, the court is the supervising authority.
- Under provisions relating to certain computations of terms of registration, it "is unclear as to the starting date of the term of registration: the date granted probation or the date granted a suspended sentence."

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of Health and Mental Hygiene, Montgomery County, Caroline County, Calvert County, Howard County, Prince George's County, Baltimore City, Department of Legislative Services

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Analysis by: Guy G. Cherry

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510