

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 423 (Chairman, Judiciary Committee)
(By Request – Departmental – Public Safety and Correctional Services)

Judiciary

Criminal Procedure - Sex Offender Registration

This departmental bill: (1) corrects inconsistencies in current statutory registration requirements applicable to instances when an individual is in some form of temporary status; (2) requires annual photographing of child sexual offenders and sexually violent predators; (3) transfers the annual re-registration by offenders and sexually violent offenders from the Department of Public Safety and Correctional Services (DPSCS) to designated local law enforcement units; (4) replaces the quarterly mail-in registration process for sexually violent predators with an in-person registration process; and (5) corrects a statutory cross-reference error.

Fiscal Summary

State Effect: One-time general fund expenditure increase of \$12,500 in FY 2004 for DPSCS and annual general fund savings for DPSCS of about \$2,100 beginning in FY 2004 due to reduced mailing responsibilities. Revenues would not be affected.

Table with 6 columns: (in dollars), FY 2004, FY 2005, FY 2006, FY 2007, FY 2008. Rows include Revenues, GF Expenditure, and Net Effect.

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Minimal. Transferring the annual re-registration by offenders and sexually violent offenders from DPSCS to designated local law enforcement units would require that local governments would have to absorb total mailing costs of about \$2,060 annually, in varying amounts by county.

Small Business Effect: DPSCS has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: The bill's substantive changes include:

Correction of Registration Requirement Inconsistencies

- For registrants under its jurisdiction, the Department of Health and Mental Hygiene has a lengthy graduated release program that begins with a brief release into the community, which does not provide sufficient time to complete registration requirements. This bill provides for such a graduated re-entry release.
- Because current law does not provide for registration of nonresident individuals who are in Maryland for purposes other than employment or school enrollment, the bill provides for a “transient” status of registrant.
- A registrant in a local home detention program is not now required to register. The bill adds “placement in home detention” to the definition of release.
- Qualifying inmates must register when placed on work release, but their “home address” is recorded as the correctional institution placing them in the work release program, with no requirement to provide their employment address. The bill requires notice of the location of employment for such inmates.

Annual Photographing of Child Sex Offenders and Sexually Violent Offenders

The bill requires annual photographing of child sexual offenders and sexually violent offenders. There is no current statutory requirement for updating photographic data.

Transfer of Annual Re-Registration by Offenders and Sexually Violent Offenders from DPSCS to Designated Local Law Enforcement Units

These categories of registrants are currently required to periodically register by mail or with the DPSCS sexual offender registration (SOR) unit. Child sexual offenders and sexually violent predators periodically register with designated local law enforcement units. The bill consolidates all periodic registrations with local law enforcement, rather than with the SOR unit.

Replacement of Quarterly Mail-In Registration for Sexually Violent Predators with an In-Person Registration Process

This change is a public safety issue, made to guard against someone other than the registrant mailing in registration statements.

The bill also redefines release to include “release from a correctional facility with no required period of supervision,” and specifies a court’s responsibility as a supervising authority if the court modifies a registrant’s sentence to “time served.”

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 sexually violent offense; and (2) has been determined to be at risk of committing another sexually violent offense. Also included under this definition are 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.

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. Also included under this definition are certain crimes that were committed in another state or in a federal, military, or Native American tribal jurisdiction.

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 sexual offender be designated a sexually violent predator.

Lifetime registration is required for: (1) sexually violent predators; (2) persons convicted of a sexually violent offense; (3) persons convicted of child abuse for commission of a

sexual act involving penetration of a child under 12 years old; and (4) recidivist sexual offenders.

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, or 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;
- 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.

A registrant may not knowingly: (1) fail to register; (2) fail to provide a written notice relating to changes of residence, school enrollment, or employment; or (3) provide false information of material fact. Violators are subject to maximum misdemeanor penalties of incarceration for three years and/or a fine of \$5,000. The State may institute a prosecution for this misdemeanor at any time.

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), 1998 (Chapters 473 and 521), 1999 (Chapter 317), and 2002 (Chapters 112, 194, and 266) to bring Maryland in compliance with Wetterling guidelines.

State Fiscal Effect: The fiscal impact of this bill on DPSCS is as follows:

- Correcting of Registration Requirement Inconsistencies: Little or no fiscal impact, with some operational efficiencies for the SOR unit.
- Annual Photographing of Child Sex Offenders and Sexually Violent Offenders: DPSCS purchase of 25 digital cameras at \$500 for distribution to each local jurisdiction. These purchases are expected to improve the quality of pictures posted on the SOR website, and will facilitate the planning for an electronic registration process at some time in the future.
- Transferring of Annual Re-Registration by Offenders and Sexually Violent Offenders from DPSCS to Designated Local Law Enforcement Units: Provides an estimated decrease in DPSCS mailing costs of about \$2,060, annually.
- Replacing Quarterly Mail-In Registration for Sexually Violent Predators with an In-Person Registration Process: There are currently no sexually violent predators registered in Maryland. The persons for which this designation may apply are still serving lengthy sentences in Division of Correction facilities. Any costs or

savings that may eventually accrue from this change is not expected to affect State finances.

Additional Comments: Although Florida's Jimmy Ryce Act – allowing the state to detain a sexual predator after completion of the criminal sentence – has been upheld (as recently as October 2002), on January 15, 2003, a Miami appeals court ruled that the law violates the constitution by stigmatizing defendants without due process. In *Espindola v. State*, a three-judge panel of the 3rd District Court of Appeal unanimously decided that felons convicted of sexual crimes should be granted a hearing before being classified as sexual predators. Other states that have reached a similar conclusion include New York, Connecticut, Massachusetts, Michigan, Alabama, and Hawaii.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County, Department of Public Safety and Correctional Services, Department of Legislative Services

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