

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

House Bill 772 (Chairman, Judiciary Committee)
(By Request – Departmental – Public Safety and Correctional Services)

Judiciary

Judicial Proceedings

**Criminal Procedure - Child Sexual Offender and Sexually Violent Predator
Registration - Photographs**

This departmental bill: (1) requires annual photographing of child sexual offenders and sexually violent predators; and (2) replaces the quarterly mail-in registration process for sexually violent predators with an in-person registration process. The bill also requires a child sexual offender, an offender, and a sexually violent offender to register on or before January 1 annually and requires a sexually violent predator to register every 90 days on or before January 1, April 1, July 1, and October 1 annually.

Fiscal Summary

State Effect: None. The bill's requirements could be handled with existing resources.

Local Effect: Minimal. According to the Department of Public Safety and Correctional Services (DPSCS), child sexual offenders are already routinely rephotographed at their annual reregistration by local law enforcement units.

Small Business Effect: DPSCS 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

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 10 years or life depending on the offense. The registry is operated by the Sexual Offender Registry (SOR) unit of DPSCS. 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.

Arising from a case filed in Alaska, the U.S. Supreme Court ruled, in March 2003, that states may put pictures of convicted sex offenders on the Internet without constitutional concerns relating to double jeopardy. In a separate ruling made at the same time, the court reversed a challenge from offenders in Connecticut who argued they deserved a chance to prove they are not dangerous to avoid having their picture and address put on the Internet. [Alaska: *Delbert W. Smith and Bruce M. Botelho, Petitioners v. John Doe I, et al.*; Connecticut: *Connecticut Department of Public Safety, et al. v. Doe*, individually and on behalf of all others similarly situated].

State Effect: DPSCS intends to purchase 25 digital cameras at \$500 each, one for each local jurisdiction. These purchases are expected to improve the quality of pictures posted on the SOR web site, and will facilitate the planning for an electronic registration process at some time in the future. Legislative Services advises that these purchases are not required under the bill.

There are currently no sexually violent predators registered in Maryland. The persons for whom this designation may apply are still serving lengthy sentences in Division of Correction facilities. Any costs or savings that may eventually accrue from replacing quarterly mail-in registration for sexually violent predators with an in-person registration process is not expected to affect State finances.

Additional Information

Prior Introductions: The provisions of this bill were included as a part of two prior year introductions. HB 150 of 2004 passed the House, had a hearing before the Judicial

Proceedings Committee, and had no further action taken on it. HB 423 of 2003 received an unfavorable report from the Judiciary Committee.

Cross File: None.

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

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