

**Department of Legislative Services**  
Maryland General Assembly  
2007 Session

**FISCAL AND POLICY NOTE**

House Bill 684  
Judiciary

(Delegate McComas, *et al.*)

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**Criminal Procedure - Registered Offenders - Substantial Change in Appearance**

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This bill alters the requirement for an updated photograph to be included in the registration of sexual offenders in the Crimes Against Children and Sexual Offender Registry. Specifically, the bill requires that the photograph of a registrant must be updated within 72 hours after a “substantial change in appearance” of the registrant as well as at least once each year.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund revenues and expenditures due to the bill’s penalty provisions.

**Local Effect:** Minimal increase in local revenues and expenditures due to the bill’s penalty provisions.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** A local law enforcement unit must send such an updated photograph to the Department of Public Safety and Correctional Services (DPSCS) within six days after the photograph is submitted by the registrant. A registrant who knowingly fails to provide an updated photograph due to a substantial change in appearance has committed a criminal violation. For a first offense, a violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$5,000. For a

subsequent offense, a violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a fine of \$10,000.

**Current Law:** Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment, is required to register with the State sex offender registry upon release from prison or release from court if the person did not receive a prison sentence. Offenders who are required to register in other states and who come to Maryland are required to register upon entering Maryland. Offenders from other states who may not be required to register in the home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland. Juveniles who are adjudicated as adults and convicted for crimes that require registration are included in the registry. Juveniles who are adjudicated delinquent for these crimes through the juvenile court system are not included in the registry.

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.

“Child sexual offender” means a person who has been convicted of (1) sexual abuse of a minor; (2) has been convicted of first or second degree rape or first, second, or third degree sexual offense involving a child under 15 years of age; (3) has been convicted of fourth degree sexual offense involving such a child and has been ordered by the court to register under these provisions; or (4) 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 one of these crimes.

“Offender” means a person who is ordered by a court to register and who (1) has been convicted of child kidnapping; (2) kidnapping; (3) fourth degree sexual offense, if the victim is under 18; (4) false imprisonment, if the victim is under 18 and the person is not the victim’s parent; (5) a crime that involves soliciting a person under 18 to engage in sexual conduct; (6) child pornography; (7) prostitution or related criminal prohibitions if the intended prostitute or victim is under 18; (8) any crime that involves conduct that by its nature is a sexual offense against a person under 18; (9) an attempt to commit any of these offenses; or (10) has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in Maryland, would constitute one of these crimes.

“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; or (2) has been convicted of an attempt to commit 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, every 3 months or every 6 months, with the Crimes Against Children and Sexual Offender Registry for a term of either 10 years or life depending on the offense. Registration must include a photograph, which must be updated at least annually. The registry is operated by the Sexual Offender Registry unit of DPSCS. 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.

**Background:** On July 27, 2006, President George W. Bush signed the Adam Walsh Child Protection and Safety Act of 2006 to protect the public, in particular children, from violent sex offenders through a more comprehensive, nationalized system for registration of sex offenders. The Act calls for conformity by the states with various aspects of sex offender registration, including registration by specified juvenile offenders, information that must be collected from registrants, duration of registration, verification of registry information, access to and sharing of information, and penalties for failure to register. The U.S. Attorney General is required by the Act to issue guidelines and regulations to interpret and implement the legislation. Proposed regulations are due to be released by February 2007, followed by a period of two to three months for public comments.

The failure of a state to substantially implement the federal requirements within three years (July 2009) and one year from the development by the federal government of software for uniform offender registries and web sites could result in a 10% reduction in the Byrne law enforcement assistance grant to that state. (Total fiscal 2007 Byrne fund revenue for Maryland is \$7.25 million.) The U.S. Attorney General may authorize up to

two one-year extensions of the deadline. The Act also provides a funding bonus of 10% or 5% to a state complying within one year or two years, respectively. A number of new grant programs are authorized under the Act to assist states in improving sex offender registration and related requirements of the Act.

Until the final regulations are issued by the U.S. Attorney General, a definitive determination of what administrative and legislative changes may be necessary to comply with the new federal law is not entirely clear. However, it appears that among the current State statutory provisions concerning the registration of sex offenders, the following provisions may require modification to meet the new federal standards:

- deadline for registration;
- length of registration for specific offenders;
- frequency of re-registration;
- application of registration requirement to specific juvenile offenders; and
- penalties for failure to register.

Due to the complexities of the Act and the many issues it involves, a collaborative approach involving public safety, public health, law enforcement, victims' rights, and judiciary representatives will likely be necessary to implement the federal standards.

The sex offender registry has had a total growth rate of 400-600 new registrants per year.

**State Revenues:** General fund revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

**State Expenditures:** General fund expenditures could increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,300 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new

DOC inmate (including medical care and variable costs) is \$465 per month. Excluding medical care, the average variable costs total \$134 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2008 are estimated to range from \$21 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Revenues:** Revenues could increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

**Local Expenditures:** Expenditures could increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$42 to \$120 per inmate in fiscal 2008.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** City of Laurel, Montgomery County, Prince George's County, Garrett County, Department of Public Safety and Correctional Services, Department of Legislative Services

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