

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 738

(Senators Frosh and Garagiola)

Judicial Proceedings

Judiciary

Criminal Procedure - Offender Registry - Minors

This bill requires a juvenile to register with a supervising authority at the age of 18 for inclusion on the State's sex offender registry if the juvenile was at least 13 years of age at the time the qualifying delinquent act was committed and is determined by the court after a hearing (at the time a juvenile court jurisdiction is terminated) to be at significant risk of committing another sexually violent offense or child sexual offense. The bill further establishes that a police or court record pertaining to a child may be accessed and used by the Department of Public Safety and Correctional Services (DPSCS) and other supervising authorities for purposes of including a person in the State's sex offender registry.

Fiscal Summary

State Effect: The bill's requirements could be accommodated by the Department of Juvenile Services (DJS), DPSCS, and the Judiciary with existing budgeted resources.

Local Effect: New notification and hearing requirements for State's Attorneys could be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill alters the definitions of "child sexual offender" and "sexually violent offender" for purposes of the sexual offender registry to include persons who have been adjudicated delinquent for acts that would constitute first or second degree

rape or sexual offense if committed by an adult. The bill alters the definition of “supervising authority” for purposes of the registry to include a juvenile court.

The bill requires DJS to provide the court with any information necessary to make a determination regarding registration and conduct any required follow-up. A State’s Attorney must serve written notice to the person or the person’s counsel at least 30 days before a hearing to determine if the person is required to register in the sex offender registry.

The bill makes conforming changes under provisions relating to deadlines for registration by establishing that a juvenile is required to register with a supervising authority, or the local law enforcement unit in the county of residence if a child sexual offender, within seven days after the jurisdiction of the juvenile court terminates. The bill establishes, for a qualifying juvenile, a term of registration on the registry that is computed from the time the jurisdiction of the juvenile court terminates.

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: (1) has been convicted of 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.

“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 the Department of Public Safety and Correctional Services. 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.

Chapter 578 of 2005 provided for a graduated reentry release for registrants under the jurisdiction of DHMH.

A conviction for first degree rape or first degree sexual offense generally carries a maximum penalty of life imprisonment. A conviction for child kidnapping along with first degree rape or first degree sexual offense, where the victim is a child under the age of 16 years, carries a maximum penalty of life imprisonment without the possibility of parole.

Chapter 4 of the 2006 special session, enacted on June 22, 2006, increased the State’s oversight of and penalties against sex offenders. Among its many provisions, the Act:

- subjects specified offenders to extended parole supervision for at least three years to a maximum of life, with the ability to petition for discharge after the minimum period;

- requires the Parole Commission to enter into agreements with offenders that set specific conditions of parole supervision, which may include global positioning system monitoring, geographic restrictions on residence or presence, restrictions on employment or other activities, participation in sex offender treatment, a prohibition from using illicit drugs or abusing alcohol, an authorization for a parole agent to access the offender's personal computer, a consent to take polygraph exams, and a prohibition against contacting specific individuals or categories of individuals;
- creates a Sexual Offender Advisory Board, with specified reporting requirements, to review technology for tracking offenders, review this State's and other jurisdictions' laws, review the way in which the Parole Commission and the DPP supervise and monitor offenders, review developments in the treatment and assessment of offenders, and develop standards for conditions of extended parole supervision;
- imposes stricter requirements for registration as a sex offender;
- provides for more comprehensive community notifications;
- prohibits, with specified exceptions, a registrant from knowingly entering on real property used for elementary or secondary education or on which a registered family day care home or a licensed child care home or institution is located; and
- requires, when the victim is under age 13, a mandatory minimum, nonsuspendable 25-year sentence for a person at least 18 years old convicted of first degree rape or first degree sexual offense. A similar five-year minimum sentence is required under the same circumstances for a second degree rape or second degree sexual offense.

Juveniles are not now required to register with the Sexual Offender Registry for delinquent acts that, if committed by an adult, would require registration.

In general, the juvenile court has jurisdiction over a child alleged to be delinquent. If the juvenile court obtains jurisdiction, that jurisdiction continues until that person reaches 21 years of age unless terminated sooner. The juvenile court does not have jurisdiction over children at least 16 years old who are alleged to have committed a violent crime, children 14 years and older charged with a capital crime, and children who have previously been convicted as an adult of a felony and are subsequently alleged to have committed an act that would be a felony if committed by an adult.

The juvenile court has exclusive original jurisdiction, but only for the purpose of waiving it, over a person 21 years of age or older who is alleged to have committed a delinquent act while a child.

A police record concerning a child is confidential and must be maintained separate from those of adults. Its contents may not be divulged, by subpoena or otherwise, except by court order upon a showing of good cause or as otherwise provided under provisions of the Education Article relating to arrests for reportable offenses. This does not prohibit access to and confidential use of the record by DJS or in the investigation and prosecution of the child by any law enforcement agency. This also does not prohibit a law enforcement agency, DJS, or the Criminal Justice Information System (CJIS) from including in the Law Enforcement Computer Information System information about an outstanding juvenile court ordered writ of attachment, for the sole purpose of apprehending a child named in the writ.

A court record pertaining to a child is confidential and its contents may not be divulged, by subpoena or otherwise, except by court order upon a showing of good cause or as otherwise provided under provisions of the Education Article relating to arrests for reportable offenses. This does not prohibit access to and the use of the court record or fingerprints of a child under provisions governing CJIS in a proceeding involving the child, by personnel of the court, the State's Attorney, counsel for the child, a court appointed special advocate for the child, or authorized personnel of DJS. This does not generally prohibit access to and confidential use of the court record or fingerprints of a child under the applicable CJIS provisions or in an investigation and prosecution by a law enforcement agency.

The court record or fingerprints of a child may not be disclosed to a federal criminal justice agency or information center or any law enforcement agency other than a law enforcement agency of the State or a political subdivision of the State. Under specified circumstances, this does not prohibit access to and use of a court record by a judicial officer who is authorized under the Maryland Rules to determine a defendant's eligibility for pretrial release, counsel for the defendant, or the State's Attorney if the individual is being charged as an adult.

The court, on its own motion or on petition, and for good cause, may order the court records of a child sealed, and, upon petition or on its own motion, must order them sealed after the child has reached 21 years old. If sealed, the records may not be opened, for any purpose, except by order of the court upon a showing of good cause.

These provisions do not prohibit access to or use of any juvenile record by the Division of Parole and Probation (DPP) or the Maryland Parole Commission when DPP or the commission is carrying out any statutory duties either at the direction of a court of

competent jurisdiction, or when the commission is carrying out any of its statutory duties, if the record concerns a charge or adjudication of delinquency.

These provisions do not prohibit access to and use of any juvenile record by the Division of Correction (DOC) when it is carrying out any of its statutory duties if the individual is committed to the custody of DOC and the record concerns an adjudication of delinquency.

These provisions do not prohibit access to or use of any juvenile record for criminal justice research purposes. A record used under this subsection may not contain the name of the individual to whom the record pertains, or any other identifying information which could reveal the individual's name.

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 substantially implement the federal standards.

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

Additional Information

Prior Introductions: None.

Cross File: HB 1099 (Delegate Dumais) – Judiciary.

Information Source(s): Department of Juvenile Services, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of Legislative Services

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