

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 761
Judiciary

(Delegate Shank, *et al.*)

Judicial Proceedings

Criminal Procedure - Offender Registry - Retroactivity

This bill applies Maryland's sexual offender registry provisions retroactively to include a person convicted on or after October 1, 1995 of an offense committed before that date for which registration for that offense is now required.

Fiscal Summary

State Effect: Minimal. The bill is not expected to have a significant immediate fiscal impact on the resources of the Division of Parole and Probation, the sex offender registry, or State law enforcement units. Over time, depending on how many and how soon prior offenders are located, some of these entities may experience the need for additional resources, including personnel.

Local Effect: Minimal.

Small Business Effect: None.

Analysis

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.

“Offender” means a person who is ordered by a court to register and who • has been convicted of child kidnapping; • kidnapping; • fourth degree sexual offense, if the victim is under 18; • false imprisonment, if the victim is under 18 and the person is not the victim’s parent; • a crime that involves soliciting a person under 18 to engage in sexual conduct; • production or distribution of child pornography; • prostitution or related criminal prohibitions if the intended prostitute or victim is under 18; • any crime that involves conduct that by its nature is a sexual offense against a person under 18; • an attempt to commit any of these offenses; or • 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.

“Child sexual offender” means a person who • has been convicted of sexual abuse of a minor; • has been convicted of first or second degree rape or first, second, or third degree sexual offense involving a child under 15; • 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 • 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 • is convicted of a sexually violent offense; and • 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 • has been convicted of a sexually violent offense; or • has been convicted of an attempt to commit a sexually violent offense.

Sexual offenders are required to register, every 3 or 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 • sexually violent predators; • persons convicted of a sexually violent offense; • persons convicted of child abuse for commission of a sexual act involving penetration of a child under 12; and • recidivist sexual offenders.

Background: Following several high-profile sexual assault cases, far-reaching State and federal legislation has been enacted to more strongly punish and more closely monitor sex offenders. The federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 248-109), calls for conformity by the states with various aspects of sex offender registration provisions, including registration by specified juvenile offenders, specific information to be collected from registrants, verification, duration of registration, 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 guidelines were published on May 30, 2007. The period for public comment on the proposed guidelines ended on August 1, 2007. Final guidelines have not yet been published. Under SORNA, July 27, 2009 is the deadline for substantial implementation of SORNA's requirements for all registration jurisdictions.

Until the final guidelines/regulations are issued, definitive State action necessary for compliance (including statutory changes) is not entirely clear. However, under the proposed guidelines, it appears that several modifications to current State law would be needed to meet the new federal standards, including retroactivity of application.

The Act's provisions were made retroactive. It applies to all sexual offenders, including those offenders convicted prior to the enactment of SORNA (July 27, 2006) or prior to a particular jurisdictions' implementation of the SORNA requirements. Jurisdictions are required to register pre-SORNA convicted sex offenders in conformity with the SORNA standard if they are currently registering, under supervision or incarcerated, or if the sex offender reenters the system because of a new conviction (whether or not the new crime is a sex offense). Generally, Maryland offenders need not register if their offense occurred prior to October 1, 1995. Exceptions are made for individuals who were under the supervision of the criminal justice system on October 1, 2001, or have out-of-state registration responsibilities.

According to the National Conference of State Legislatures (NCSL), in 2007, at least six states – Delaware, Florida, Louisiana, Mississippi, Nevada, and Ohio – revised sex offender laws in an effort to comply with the Walsh Act. The Justice Department rejected Louisiana's efforts as not enough, and has yet to rule on the other states' laws, many of which went into effect January 1. Justice Department, noted that states can

apply for a pair of one-year extensions under the act if they fail to comply by next year's deadline.

All the states use Byrne grants to pay for drug task forces, anti-gang units, police overtime, and other law enforcement activities. But funding for the grant program itself was slashed by 67% – from \$520 million last fiscal year to \$170 million this year – in the \$555 billion appropriations bill signed by President Bush in December 2007.

NCSL recently released a policy statement – approved unanimously by more than 7,000 state lawmakers – seeking congressional amendments to revise the Walsh Act.

State Fiscal Effect: It is unknown how many persons with a prior qualifying conviction now reside, or may later reside, in Maryland. While it is unclear how an offender who committed a qualifying offense before October 1, 1995, and who is no longer under supervision by the State would be identified and located, the bill is not expected to have an immediate significant impact on the resources of the Division of Parole and Probation or the sex offender registry.

The division is already requiring offenders who are currently serving a sentence for a nonsex related offense, but who also have a past conviction for sex offense, into supervision by sex offender units. In addition, it is assumed that a person who committed a qualifying crime before that date, and who commits a new crime of any type after the effective date of the bill, could be identified and registered.

In any case, the division advises that increasing future caseloads could eventually lead to the need to hire additional agents to handle such an increase in the overall offender population subject to supervision. Because the sex offenders are placed in “high-risk” specialized caseloads – the low agent to offender supervision ratio needed for enforcement of special conditions such as, residency restrictions, treatment, testing, and computer and electronic monitoring are expensive to maintain. The cost for supervising an offender for one year is approximately, \$1,595. The cost for supervising a sexual offender varies based on the number and type of special conditions. The cost to hire a new agent is about \$50,000, including salary, benefits, and equipment.

Local Fiscal Effect: It is assumed that local law enforcement units will be asked to assist in identifying, locating, and registering sex offenders affected under the bill. However, it is assumed that such responsibilities would be carried out within the existing capabilities of those units.

Additional Information

Prior Introductions: None.

Cross File: SB 629 (Senator Jacobs) – Judicial Proceedings.

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

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