

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1332
Judiciary

(Delegate Dumais)

Criminal Procedure - Offender Registry - Minors

This bill requires a person who has been adjudicated delinquent for specified acts to register with a supervising authority at age 18 for inclusion on the State's sex offender registry if the juvenile was at least age 13 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 and other supervising authorities for purposes of including a person in the State's sex offender registry.

Fiscal Summary

State Effect: Assuming that the bill's requirements relating to the actual registration of juvenile offenders (fingerprints, photographs, etc.) would be handled by local law enforcement units, the bill's requirements could be accommodated by the Department of Juvenile Services (DJS), DPSCS, and the Judiciary with existing budgeted resources. However, over time, these resources may be taxed beyond current capacities due to significant growth in registrations resulting from this bill.

Local Effect: Additional registrations by local law enforcement units would be handled with existing budgeted resources. However, over time, these resources may be taxed beyond current capacities due to significant annual growth in registrations resulting from this bill. 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.

“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 age 12; and • 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 age 16 , 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 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 age 21 unless terminated sooner. The juvenile court does not have jurisdiction over children at least age 16 who are alleged to have committed a violent crime, children at least age 14 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 age 21 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 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 age 21. 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 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 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: 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 the following modifications to current State law, among others, would be needed to meet the new federal standards.

Length of Registration

The federal law divides the classes of sex offenders into a three-tiered system. Under that system, registration is for 15 years, 25 years, or life depending on whether the offense is classified as Tier I, Tier II, or Tier III, respectively. Under current State law, Maryland classifies its sexual offenders into four classifications, and registration is for 10 years or life, depending on the offense. Additionally, under current Maryland law, most registrants are required to reregister every six months, while Tier I offenders in the federal system must reregister quarterly. It may be necessary to completely revamp Maryland's classification system to align it more closely with the federal requirements, including provisions relating to:

Registration Deadlines

The federal Act requires the offender to appear in person in at least one required jurisdiction not later than three business days after each change of (1) name; (2) residence; (3) employment; or (4) student status and inform the jurisdiction of all changes in information required in the registry. Current Maryland law allows written notice within five days after the change occurs. The federal law also requires that initial registration must occur before release, while Maryland law allows registration "on or before" the date of release.

Application of Registration Requirement to Juvenile Offenders

The federal law applies to juvenile offenders adjudicated delinquent if the offender is age 14 or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse or was an attempt or conspiracy to commit such an offense. Under current State law, registration requirements only apply to juvenile offenders who have been tried as adults.

Registry Information

The federal Act requires that the registry contain extensive information for each offender, including palm prints, Internet identifiers and addresses, travel and immigration documents, professional licensing information, vehicle information, and physical description of the offender. This information is not required to be included in the registry under current Maryland law.

Homeless Persons

Because the Act defines the term "resides" to mean "the location of the individual's home or other place where the individual habitually lives," the residency registration

requirements are extended to circumstances where the offender is homeless, living on the street, or moving from shelter to shelter, or when the place of residence itself moves from place to place, such as a mobile home, trailer, or houseboat. Accordingly, sex offenders must register (1) in any jurisdiction in which they have a home; and (2) in any jurisdiction in which they habitually live (even if they have no home or fixed address in the jurisdiction, or no home anywhere). Maryland law does not currently account for the homeless offender population.

Retroactivity

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 jurisdiction's 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.

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

State Fiscal Effect: There are about 7,600 juveniles adjudicated delinquent each year for all offenses. The Administrative Office of the Courts advises that slightly more than 400 juveniles are adjudicated delinquent statewide each year for the covered offenses. Under this bill, a juvenile adjudicated delinquent for a covered act would be ordered by the juvenile court to register with the State's sexual offender registry. Although DJS is not currently a supervising authority under Maryland's sex offender provisions, DJS is given supervisory responsibilities for juveniles adjudicated delinquent.

Accordingly, Legislative Services advises that, under the bill, DJS would be given, by the juvenile court, the responsibility to see that a juvenile registers in the sex offender registry. This would be an additional supervisory responsibility for DJS of juvenile offenders already under DJS supervision. Actual registration, including required fingerprinting and a photograph, could be done at the appropriate local law enforcement location already handling registrations in each jurisdiction. This bill would add considerably to the growth of the registry (400 additional registrants annually) to the extent that current resources of DJS and the juvenile court could eventually become strained. It is unclear how soon this may occur.

Legislative Services notes that when a juvenile entered in the registry reaches age 21, because DJS is not listed as a supervising authority under current sex offender provisions and the juvenile courts cease supervisory functions at that time, juveniles required to continue to register would no longer have a supervising authority of record.

Local Fiscal Effect: This bill would add to the growth of the registry (400 additional registrants annually) to the extent that current resources of local law enforcement units responsible for actual registrations could eventually become strained. It is unclear how soon this may occur and would tend to vary by jurisdiction.

Additional Comments: According to a 2005 task force report on sex offenders published by DJS, in 2004 the department had 195 juvenile sex offenders in residential placements, and 275 were living at home and being treated in the community.

Additional Information

Prior Introductions: SB 738 of 2007 passed the Senate, received a hearing before the House Judiciary Committee, and had no further action taken on it.

Cross File: SB 441 (Senator Frosh, *et al.*) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Juvenile Services, State's Attorneys Association, Department of Legislative Services

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