

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 496  
Judiciary

(Delegate Kach, *et al.*)

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Criminal Procedure - Sexual Offenders - Supervision, Notifications, and  
Penalties

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This bill requires the inclusion of specified additional information in a registration statement for the sexual offender registry and requires a supervising authority to verify a registrant's address.

The bill also prohibits a person from knowingly assisting a registrant in eluding a law enforcement agency or a supervising authority that is attempting to question or arrest the registrant for failing to comply with registration requirements by • withholding information as to the whereabouts of the registrant when questioned; or • providing false information about the registrant's whereabouts. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for six months and/or a fine of \$5,000.

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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 expenditures due to the bill's incarceration penalty provisions.

**Small Business Effect:** None.

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## 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 age 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.

**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. In any case, under SORNA, sex offenders will be required to provide the following information to the sex offender registry:

- names, including all aliases used by the sex offender;
- date of birth, including both actual date of birth and any false date(s) of birth used by the sex offender;
- all Internet identifiers and addresses, *e.g.*, e-mail and instant messaging addresses;

- all telephone numbers including both land lines and cell phone numbers;
- Social Security numbers, including both valid governmentally assigned SSNs and any other SSNs used by the sex offender;
- residence address;
- other residence information (*i.e.*, where the sex offender has a home or habitually lives) in relation to sex offenders who lack a residence address for any reason (*e.g.*, homelessness or living in a house in a rural or tribal area that has no street address);
- temporary lodging information about any place in which the sex offender is staying for seven or more days, including identifying the place and the period of time the sex offender is staying there;
- passport and immigration document information;
- employer's name and address;
- other employment information concerning the places where the sex offender works, if the sex offender has no fixed place of employment, such as information about normal travel routes or the general area(s) in which the sex offender works;
- professional licenses;
- school name and address;
- vehicle information including description and license plate or registration number;
- physical description of the sex offender;
- text of the registration offense or offenses;
- criminal history and other criminal justice information;
- current photograph;
- fingerprints and palm prints;
- DNA information; and
- driver's license or identification card.

The SORNA provisions were made retroactive. The Act 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).

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

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

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. 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 2009 are estimated to range from \$19 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$2,600 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 \$526 per month. Excluding medical care, the average variable costs total \$148 per month.

**Local Expenditures:** Expenditures could increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration 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 \$40 to \$129 per inmate in fiscal 2009.

### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Allegany County, Montgomery County, Prince George's County, Judiciary (Maryland District Court), Baltimore City, Department of Public Safety and Correctional Services, Department of Legislative Services

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Analysis by: Guy G. Cherry

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510