

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

House Bill 1538

(Chair, Judiciary Committee) (By Request –  
Departmental – Public Safety and Correctional Services)

Judiciary

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**Criminal Procedure - Sex Offenders - Notification and Registration**

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This departmental bill makes changes to notification and registration provisions of Maryland's sexual offender laws to conform to the federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006.

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**Fiscal Summary**

**State Effect:** The bill's requirements, including retroactive registrations, could generally be handled with the existing budgeted resources of the Department of Public Safety and Correctional Services. There would be one-time costs (\$200,000) in FY 2009 for DPSCS to reprogram current data systems used for sex offender registrations. Potential costs for palm print technology/equipment cannot be readily quantified, but may be necessary for Patuxent Institution and some Division of Correction facilities. Any potential effect on federal Byrne grant funding levels resulting from the implementation of these provisions is not expected to be significant.

**Local Effect:** Potential significant increase in workloads and personnel costs for local law enforcement units charged with registration responsibilities resulting from new in-person registration requirements, palm print requirements, retroactive registration provisions, and the weekly reregistrations of homeless registrants. These increases in workloads and costs would tend to vary by jurisdiction and cannot be reliably estimated.

**This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** The Department of Public Safety and Correctional Services has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

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## **Analysis**

**Bill Summary:** The bill replaces reference to the four existing categories of sexual offenders with the three tiers of categorization under SORNA (see **Exhibit 1**). The bill includes the following provisions:

A Tier I sex offender (currently a child sex offender) means a person who:

- has been convicted of fourth degree sexual offense, if the victim is an adult;
- has been convicted of indecent exposure, if the victim is a minor; or
- has been convicted of a crime committed in another state or in a federal, military, or Native American tribal jurisdiction that, if committed here, would constitute fourth degree sexual offense or indecent exposure; or has been convicted of a crime in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country where the U.S. Department of State has determined in its country reports on human rights practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if the crime were committed in this State, would constitute one of these crimes.

A Tier II sex offender (currently an offender) means a person who:

- has been convicted of sexual solicitation of a minor, child pornography, or possession of a visual representation of a child under age 16 engaged in sexual acts;
- has been convicted of fourth degree sexual offense against a minor age 14 or older or sexual abuse of a minor student by a person in a position of authority, sexual misconduct by a correctional officer or employee of the Department of Juvenile Services, sodomy, an unnatural or perverted sexual practice, incest, or sexual abuse of a minor at least age 14;
- has been convicted of pandering, receiving earnings as a prostitute, abduction of a child under age 16, or operating a house of prostitution, if the victim is a minor; or
- has been convicted of a crime committed in another jurisdiction, including a foreign jurisdiction, as described above.

A Tier III sex offender (currently a sexually violent offender) means a person who:

- has been convicted of first or second degree rape; first second, or third degree sexual offense; fourth degree sexual offense if the victim was age 15 or younger; attempted first or second degree rape or attempted first or third degree sexual offense; continued course of conduct with a child; or kidnapping;
- has been convicted of fourth degree sexual offense if the victim was under age 13 or sexual abuse of a minor student by a person in a position of authority; sexual misconduct by a correctional officer or DJS employee, sodomy, an unnatural or perverted sexual practice, incest, or sexual abuse of a minor if the victim is under age 14;
- has been convicted of violating the common-law offense of false imprisonment, if the victim is a minor; or
- has been convicted of a crime committed in another jurisdiction, including a foreign jurisdiction, as described above.

The bill provides that a supervising authority also means the agency or person responsible for collecting the information for the initial registration of a sex offender and, instead of the Secretary of Public Safety and Correctional Services, is the local law enforcement unit in which the registrant is a resident or habitually lives.

#### *Adult Registration and Homeless Registrants*

- provides for the registration of sexual offenders who are homeless with no fixed address;
- requires a homeless person to register in person, within a specified timeframe, with the local law enforcement unit in the county where the registrant “habitually lives;”
- requires reregistration of homeless registrants weekly while habitually living in the county;
- specifies the information a homeless registrant must provide, including that the local law enforcement unit may require additional information from a homeless registrant;
- provides that, if a homeless registrant obtains a fixed address, the registrant must register with the appropriate supervising authority and local law enforcement unit within five days;
- requires local law enforcement notifications for any registrant when a change of residence occurs, as specified;

- requires new in-person reporting requirements relating to institutions of higher education;
- requires new notifications (and/or timeframes) relating to a change of name, leaving the United States for residence or work in a foreign country, or a temporary residency and requires new notifications by a local law enforcement unit to DPSCS of such changes;
- changes all references to the provision of a photograph for registration purposes to provision of a digital image and adds a requirement for palm prints;
- specifies that a Tier I sex offender must register every six months for 15 years. A Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life;
- provides the circumstances under which the registration term of a Tier I sex offender or a Tier III juvenile sex offender are reduced;
- specifies that a sexually violent predator's quarterly registration requirement be made to a local law enforcement unit.

### *Juvenile Registration*

The bill provides that a person under age 18 at the time of a qualifying offense must register if:

- jurisdiction has been waived to an adult court and the person has been convicted;
- the person is at least age 14 and has been adjudicated delinquent for first or second degree rape or first or second degree sexual offense; or
- the person is at least age 14 and has been convicted of third degree sexual offense and the victim was under age 12.

### *Registration Waiver*

If a person is under the protection of a federal or comparable witness protection program, sex offender registration requirements are waived upon a written request from the agency operating the program. The waiver is terminated if the exempted offender is subsequently convicted of an offense requiring registration.

### *Retroactivity*

The bill requires that the provisions of this subtitle must be applied retroactively to a Tier I sex offender released after October 1, 1993, a Tier II sex offender released after October 1, 1983, and all Tier III sex offenders. The term of retroactive registration for a Tier I or II sex offender must be calculated from the date of release.

**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 (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) production or distribution of 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.

“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.

Sexual offenders are required to register, every three months or every six 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.

**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.

### *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 14 years of age 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 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.

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 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).

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.

Until the final guidelines/regulations are issued, definitive State action necessary for compliance with SORNA (including statutory changes) is not entirely clear. Failure to comply with SORNA puts a state a risk to lose 10% of Byrne grants, which all states use to pay for such things as drug task forces, anti-gang units, police overtime, and other law enforcement activities. However, funding for this formula grant program in fiscal 2009 has been cut from its \$520 million fiscal 2008 appropriation level to zero, and replaced with a \$200 million competitive grant program. While it is unclear how this change will affect the penalty provisions of SORNA, Maryland could risk the loss of between zero and about \$200,000 for noncompliance.



NCSL recently released a policy statement — approved unanimously by more than 7,000 state lawmakers — seeking congressional amendments to revise the Walsh Act. NCSL has also requested the return to full (\$520 million) funding levels for the Byrne grant program.

This bill's provisions are based on the proposed federal regulations as first published. DPSCS has sent the provisions of this bill to the SMART Office for a ruling as to compliance with SORNA. Thus far there has been no response from that office.

Although palm prints are sometimes lifted from crime scenes and cataloged, palm print technologies are relatively recent. Because it is an evolving technology, the costs of providing equipment to take and read palm prints was not readily available. The City of Denver, Colorado purchased a digital imaging workstation and one automated fingerprint and palm print identification system in fiscal 2005 with a \$57,305 grant from the National Institute of Justice. It is assumed DPSCS and local law enforcement units charged with sex offender registration responsibilities would need to be equipped with similar technologies.

**State Fiscal Effect:** DPSCS reports that this bill would affect the agency in the following ways:

*Information Technology and Communications Division:* One-time database reprogramming changes (reflecting the new SORNA tiers) estimated at about \$200,000 in fiscal 2009 only.

*Parole Commission:* It is assumed that requests to reduce sex supervision terms would be made to the commission. The commission believes that this responsibility could be handled with existing budgeted resources.

*Division of Parole and Probation:* The bills changes could be accommodated with existing budgeted resources.

*Division of Correction:* The bills changes could generally be accommodated with existing budgeted resources. However, DOC would likely need to purchase palm print equipment.

*Patuxent Institution:* The bills changes could generally be accommodated with existing budgeted resources. However, Patuxent Institution would likely need to purchase palm print equipment.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Caroline County; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services (Division of Correction, Information Technology and Commutations Division, Division of Parole and Probation, Patuxent Institution, Maryland Parole Commission); Department of Legislative Services

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**Exhibit 1**  
**Sexual Offenses – SORNA Tiers**

<b>Criminal Law</b>			<b>Court</b>						<b>SORNA</b>
<u>Violation</u>	<u>Offense</u>	<u>Age of Victim</u>	<u>Order</u>	<u>Misdemeanor/</u>	<u>Maximum</u>	<u>Current</u>	<u>Registration</u>	<u>SORNA</u>	<u>Tier</u>
			<u>Required</u>	<u>Felony</u>	<u>Penalty</u>	<u>Classification</u>	<u>Term</u>		
3-303	1st Degree Rape	under 15	No	Felony	Life	CSO	Life		III
		15+	No	Felony	Life	SVO	Life		III
3-304	2nd Degree Rape	under 15	No	Felony	20 years	CSO	Life		III
		15+	No	Felony	20 years	SVO	Life		III
3-305	1st Degree Sexual Offense	under 15	No	Felony	Life	CSO	Life		III
		15+	No	Felony	Life	SVO	Life		III
3-306	2nd Degree Sexual Offense	under 15	No	Felony	20 years	CSO	Life		III
		15+	No	Felony	20 years	SVO	Life		III
3-307 (1) or (2)	3rd Degree Sexual Offense	under 13	No	Felony	10 years	CSO	Life		III
		13-14	No	Felony	10 years	CSO	Life		II
		15-17	No	Felony	10 years	SVO	Life		II
		18+	No	Felony	10 years	SVO	Life		I
3-307 (3)	3rd Degree Sexual Offense	under 13	No	Felony	10 years	CSO	Life		III
		13	No	Felony	10 years	CSO	Life		II
3-307 (4) or (5)	3rd Degree Sexual Offense	14	No	Felony	10 years	CSO	Life		III
		15	No	Felony	10 years	SVO	Life		III
3-308 (b)(1)	4th Degree Sexual Offense	under 13	Yes	Misdemeanor	1 year	CSO	10 years		III
		14	Yes	Misdemeanor	1 year	CSO	10 years		II
		15-17	Yes	Misdemeanor	1 year	Offender	10 years		II
		18+	N/A	Misdemeanor	1 year	N/A	N/A		I
3-308 (b)(2)	4th Degree Sexual Offense	14-15	Yes	Misdemeanor	1 year	Offender	10 years		III
3-308 (b)(3)	4th Degree Sexual Offense	14-15	Yes	Misdemeanor	1 year	Offender	10 years		III
3-308 (c)	4 <sup>th</sup> Degree Sexual Offense	Under 18	Yes	Misdemeanor	1 year	Offender	10 Years		II
3-309	Attempted 1st Degree Rape	All	No	Felony	Life	SVO	Life		III
3-310	Attempted 2nd Degree Rape	All	No	Felony	20 years	SVO	Life		III
3-311	Attempted 1st Degree Sexual Off.	All	No	Felony	Life	SVO	Life		III
3-312	Attempted 2nd Degree Sexual Off.	All	No	Felony	20 years	SVO	Life		III

<b>Criminal Law</b>			<b>Court</b>						<b>SORNA</b>
<b><u>Violation</u></b>	<b><u>Offense</u></b>	<b><u>Age of Victim</u></b>	<b><u>Required</u></b>	<b><u>Misdemeanor/ Felony</u></b>	<b><u>Maximum Penalty</u></b>	<b><u>Current Classification</u></b>	<b><u>Registration Term</u></b>	<b><u>Tier</u></b>	
3-314	Sexual conduct – correctional or DJS employee with inmate or confined child	under 13	Yes	Misdemeanor	3 years	Offender	10 years	III	
		14-17	Yes	Misdemeanor	3 years	Offender	10 years	II	
3-315	Continued course of conduct with child	under 14	Yes	Felony	30 years	Offender	10 years	III	
3-321	Sodomy	under 12	Yes	Felony	10 years	Offender	10 years	III	
		under 18	Yes	Felony	10 years	Offender	10 years	II	
3-322	Unnatural/perverted sexual practice	under 12	Yes	Misdemeanor	10 years	Offender	10 years	III	
		under 18	Yes	Misdemeanor	10 years	Offender	10 years	II	
3-323	Incest	under 12	Yes	Felony	10 years	Offender	10 years	III	
		13-17	Yes	Felony	10 years	Offender	10 years	II	
3-324	Sexual solicitation of a minor	under 18	Yes	Felony	10 years	Offender	10 years	II	
3-502	Kidnapping	under 18	Yes	Felony	30 years	Offender	10 years	III	
3-503	Child kidnapping	under 12	Yes	Felony	30 years	Offender	10 years	III	
3-602	Sexual abuse of a minor	under 12	No	Felony	25 years	CSO	Life, if penetration	III	
		12-14	No	Felony	25 years	CSO	10 years	III	
		14-17	No	Felony	25 years	CSO	10 years	III	
11-107	Indecent exposure	under 18	Yes	Misdemeanor	3 years	Offender	10 years	I	
11-207	Child pornography	under 18	Yes	Felony	10 years	Offender	10 years	II	
11-208	Possession of a visual representation of a child under 16 engaged in certain sexual acts	under 16	Yes	Misdemeanor	1 year	Offender	10 years	II	
11-209	Hiring minor for prohibited purpose	under 18	Yes	Misdemeanor	1 year	Offender	10 years	II	
11-303	Pandering	under 18	Yes	Misdemeanor	10 years	Offender	10 years	II	
11-304	Receiving earnings of a prostitute	under 18	Yes	Misdemeanor	10 years	Offender	10 years	II	
11-305	Abduction of a child under 16	under 16	Yes	Misdemeanor	10 years	Offender	10 years	II	
11-306	House of prostitution	under 18	Yes	Misdemeanor	1 year	Offender	10 years	II	
Common Law	False imprisonment	under 18	Yes	Misdemeanor	None	Offender	10 years	III	

Source: Department of Public Safety and Correctional Services; Department of Legislative Services

