

HOUSE BILL 593

E3
SB 441/08 – JPR

9lr1051

By: **Delegates Dumais, Bronrott, Feldman, Frick, Lee, and Rice**

Introduced and read first time: February 6, 2009

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 1, 2009

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Offender Registry – Minors**

3 FOR the purpose of establishing that a certain part of a police or court record
4 pertaining to a child may be accessed and used by the Department of Public
5 Safety and Correctional Services and certain supervising authorities for certain
6 purposes relating to a certain offender registry; altering the definitions of “child
7 sexual offender” and “sexually violent offender” for purposes of a certain
8 offender registry to include certain persons who have been adjudicated
9 delinquent for acts that would constitute certain offenses if committed by an
10 adult; altering the definition of “supervising authority” for purposes of a certain
11 offender registry to include the ~~court in which certain persons are adjudicated~~
12 ~~delinquent~~ Secretary of Juvenile Services; requiring a certain person to register
13 with a supervising authority for inclusion on a certain offender registry if the
14 person was at least a certain age at the time a certain act was committed, the
15 State’s Attorney or the Department of Juvenile Services requests that the
16 person be required to register, the court determines at a certain time and under
17 a certain standard that the person is at risk for committing certain offenses,
18 and the person is at least a certain age; requiring the State’s Attorney to serve a
19 certain written notice within a certain period; requiring the Department of
20 Juvenile Services to provide the court with certain information and conduct
21 certain follow-up; requiring that the form of certain petitions and pleadings and
22 the procedures to be followed by a court under certain circumstances be
23 specified in the Maryland Rules; authorizing a certain court to order an
24 evaluation of a certain person in making a certain determination; establishing
25 that a certain person is required to register with a supervising authority within
26 a certain time after a certain jurisdiction of the juvenile court terminates;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 altering the definition of “resident” for purposes of a certain offender registry;
 2 requiring that a certain person is required to register with a certain local law
 3 enforcement unit after a certain jurisdiction of the juvenile court is terminated;
 4 establishing the term of registration for a certain person; establishing that, for a
 5 certain person, a term of registration on a certain offender registry is computed
 6 from the time a certain jurisdiction of the juvenile court is terminated; defining
 7 a certain term; and generally relating to the inclusion of minors on the offender
 8 registry.

9 BY repealing and reenacting, without amendments,
 10 Article – Courts and Judicial Proceedings
 11 Section 3–8A–27(a)(1) and (b)(1)
 12 Annotated Code of Maryland
 13 (2006 Replacement Volume and 2008 Supplement)

14 BY adding to
 15 Article – Courts and Judicial Proceedings
 16 Section 3–8A–27(h)
 17 Annotated Code of Maryland
 18 (2006 Replacement Volume and 2008 Supplement)

19 BY repealing and reenacting, with amendments,
 20 Article – Criminal Procedure
 21 Section 11–701(c), (j), and (m), 11–704, 11–705, and 11–707
 22 Annotated Code of Maryland
 23 (2008 Replacement Volume)

24 BY repealing and reenacting, without amendments,
 25 Article – Criminal Procedure
 26 Section 11–701(k)
 27 Annotated Code of Maryland
 28 (2008 Replacement Volume)

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 30 MARYLAND, That the Laws of Maryland read as follows:

31 **Article – Courts and Judicial Proceedings**

32 3–8A–27.

33 (a) (1) A police record concerning a child is confidential and shall be
 34 maintained separate from those of adults. Its contents may not be divulged, by
 35 subpoena or otherwise, except by order of the court upon good cause shown or as
 36 otherwise provided in § 7–303 of the Education Article.

37 (b) (1) A court record pertaining to a child is confidential and its contents
 38 may not be divulged, by subpoena or otherwise, except by order of the court upon good
 39 cause shown or as provided in § 7–303 of the Education Article.

1 (H) THIS SECTION DOES NOT PROHIBIT THE DEPARTMENT OF PUBLIC
2 SAFETY AND CORRECTIONAL SERVICES OR A SUPERVISING AUTHORITY, AS
3 DEFINED IN § 11-701 OF THE CRIMINAL PROCEDURE ARTICLE, FROM
4 ACCESSING OR USING THE PART OF A JUVENILE RECORD THAT IDENTIFIES AN
5 OFFENSE COMMITTED BY A JUVENILE FOR PURPOSES OF COMPLYING WITH
6 TITLE 11, SUBTITLE 7 OF THE CRIMINAL PROCEDURE ARTICLE.

7 Article - Criminal Procedure

8 11-701.

9 (c) “Child sexual offender” means a person who:

10 (1) has been convicted of violating § 3-602 of the Criminal Law
11 Article;

12 (2) has been convicted of violating any of the provisions of the rape or
13 sexual offense statutes under §§ 3-303 through 3-307 of the Criminal Law Article for
14 a crime involving a child under the age of 15 years;

15 (3) has been convicted of violating the fourth degree sexual offense
16 statute under § 3-308 of the Criminal Law Article for a crime involving a child under
17 the age of 15 years and has been ordered by the court to register under this subtitle;
18 [or]

19 (4) has been convicted in another state or in a federal, military, or
20 Native American tribal court of a crime that, if committed in this State, would
21 constitute one of the crimes listed in items (1) and (2) of this subsection; OR

22 (5) (I) HAS BEEN ADJUDICATED DELINQUENT FOR AN ACT
23 INVOLVING A VICTIM UNDER THE AGE OF 15 YEARS THAT WOULD CONSTITUTE A
24 VIOLATION OF ~~§§ 3-303 THROUGH 3-306~~ § 3-303, § 3-304, § 3-305, OR § 3-306
25 OF THE CRIMINAL LAW ARTICLE IF COMMITTED BY AN ADULT; AND

26 (II) MEETS THE REQUIREMENTS FOR REGISTRATION UNDER
27 § 11-704(C) OF THIS SUBTITLE.

28 (j) “Sexually violent offender” means a person who:

29 (1) has been convicted of a sexually violent offense; [or]

30 (2) has been convicted of an attempt to commit a sexually violent
31 offense; OR

1 (3) (I) HAS BEEN ADJUDICATED DELINQUENT FOR AN ACT
2 INVOLVING A VICTIM 15 YEARS OF AGE OR OLDER THAT WOULD CONSTITUTE A
3 VIOLATION OF ~~§§ 3-303 THROUGH 3-306~~ § 3-303, § 3-304, § 3-305, OR § 3-306
4 OF THE CRIMINAL LAW ARTICLE IF COMMITTED BY AN ADULT; AND

5 (II) MEETS THE REQUIREMENTS FOR REGISTRATION UNDER
6 § 11-704(C) OF THIS SUBTITLE.

7 (k) “Sexually violent offense” means:

8 (1) a violation of §§ 3-303 through 3-307 or §§ 3-309 through 3-312 of
9 the Criminal Law Article;

10 (2) assault with intent to commit rape in the first or second degree or
11 a sexual offense in the first or second degree as prohibited on or before September 30,
12 1996, under former Article 27, § 12 of the Code; or

13 (3) a crime committed in another state or in a federal, military, or
14 Native American tribal jurisdiction that, if committed in this State, would constitute
15 one of the crimes listed in item (1) or (2) of this subsection.

16 (m) “Supervising authority” means:

17 (1) the Secretary, if the registrant is in the custody of a correctional
18 facility operated by the Department;

19 (2) the administrator of a local correctional facility, if the registrant,
20 including a participant in a home detention program, is in the custody of the local
21 correctional facility;

22 (3) the court that granted the probation or suspended sentence, except
23 as provided in item (12) of this subsection, if the registrant is granted probation before
24 judgment, probation after judgment, or a suspended sentence;

25 (4) the Director of the Patuxent Institution, if the registrant is in the
26 custody of the Patuxent Institution;

27 (5) the Secretary of Health and Mental Hygiene, if the registrant is in
28 the custody of a facility operated by the Department of Health and Mental Hygiene;

29 (6) the court in which the registrant was convicted, if the registrant’s
30 sentence does not include a term of imprisonment or if the sentence is modified to time
31 served;

32 (7) the Secretary, if the registrant is in the State under terms and
33 conditions of the Interstate Compact for Adult Offender Supervision, set forth in Title

1 6, Subtitle 2 of the Correctional Services Article, or the Interstate Corrections
2 Compact, set forth in Title 8, Subtitle 6 of the Correctional Services Article;

3 (8) the Secretary, if the registrant moves to this State and was
4 convicted in another state of a crime that would require the registrant to register if the
5 crime was committed in this State;

6 (9) the Secretary, if the registrant moves to this State from another
7 state where the registrant was required to register;

8 (10) the Secretary, if the registrant is convicted in a federal, military, or
9 Native American tribal court and is not under supervision by another supervising
10 authority;

11 (11) the Secretary, if the registrant is not a resident of this State and
12 has been convicted in another state or by a federal, military, or Native American tribal
13 court; [or]

14 (12) the Director of Parole and Probation, if the registrant is under the
15 supervision of the Division of Parole and Probation; **OR**

16 **(13) ~~THE COURT IN WHICH THE REGISTRANT WAS ADJUDICATED~~**
17 **~~DELINQUENT~~ SECRETARY OF JUVENILE SERVICES, IF THE REGISTRANT WAS A**
18 **MINOR AT THE TIME THE ACT WAS COMMITTED FOR WHICH REGISTRATION IS**
19 **REQUIRED.**

20 11-704.

21 (a) **[A] SUBJECT TO SUBSECTION (C) OF THIS SECTION, A** person shall
22 register with the person's supervising authority if the person is:

23 (1) a child sexual offender;

24 (2) an offender;

25 (3) a sexually violent offender;

26 (4) a sexually violent predator;

27 (5) a child sexual offender who, before moving into this State, was
28 required to register in another state or by a federal, military, or Native American
29 tribal court for a crime that occurred before October 1, 1995;

30 (6) an offender, sexually violent offender, or sexually violent predator
31 who, before moving into this State, was required to register in another state or by a
32 federal, military, or Native American tribal court for a crime that occurred before July
33 1, 1997; or

1 (7) a child sexual offender, offender, sexually violent offender, or
2 sexually violent predator who is required to register in another state, who is not a
3 resident of this State, and who enters this State:

4 (i) to carry on employment;

5 (ii) to attend a public or private educational institution,
6 including a secondary school, trade or professional institution, or institution of higher
7 education, as a full-time or part-time student; or

8 (iii) as a transient.

9 (b) Notwithstanding any other provision of law, a person is no longer subject
10 to registration under this subtitle if:

11 (1) the underlying conviction requiring registration is reversed,
12 vacated, or set aside; or

13 (2) the registrant is pardoned for the underlying conviction.

14 (c) (1) **A PERSON DESCRIBED UNDER § 11-701(C)(5)(I) OF THIS**
15 **SUBTITLE OR A PERSON DESCRIBED UNDER § 11-701(J)(3)(I) OF THIS**
16 **SUBTITLE, SHALL REGISTER WITH THE PERSON'S SUPERVISING AUTHORITY IF:**

17 (I) **THE PERSON WAS A MINOR WHO WAS AT LEAST 13**
18 **YEARS OLD AT THE TIME THE DELINQUENT ACT WAS COMMITTED;**

19 (II) **THE STATE'S ATTORNEY OR THE DEPARTMENT OF**
20 **JUVENILE SERVICES REQUESTS THAT THE PERSON BE REQUIRED TO REGISTER;**

21 (III) **90 DAYS PRIOR TO THE TIME THE JUVENILE COURT'S**
22 **JURISDICTION OVER THE PERSON TERMINATES UNDER § 3-8A-07 OF THE**
23 **COURTS ARTICLE, THE COURT, AFTER A HEARING, DETERMINES UNDER A**
24 **CLEAR AND CONVINCING EVIDENCE STANDARD THAT THE PERSON IS AT**
25 **SIGNIFICANT RISK OF COMMITTING ~~ANOTHER~~ A SEXUALLY VIOLENT OFFENSE**
26 **OR AN OFFENSE FOR WHICH REGISTRATION AS A CHILD SEXUAL OFFENDER IS**
27 **REQUIRED; AND**

28 (IV) **THE PERSON IS AT LEAST 18 YEARS OLD.**

29 (2) **IF THE PERSON HAS COMMITTED A DELINQUENT ACT THAT**
30 **WOULD CAUSE THE COURT TO MAKE A DETERMINATION REGARDING**
31 **REGISTRATION UNDER PARAGRAPH (1) OF THIS SUBSECTION:**

1 (I) THE STATE'S ATTORNEY SHALL SERVE WRITTEN
2 NOTICE TO THE PERSON OR THE PERSON'S COUNSEL AT LEAST 30 DAYS BEFORE
3 A HEARING TO DETERMINE IF THE PERSON IS REQUIRED TO REGISTER UNDER
4 THIS SECTION; AND

5 (II) THE DEPARTMENT OF JUVENILE SERVICES SHALL:

6 1. PROVIDE THE COURT WITH ANY INFORMATION
7 NECESSARY TO MAKE THE DETERMINATION; AND

8 2. CONDUCT ANY FOLLOW-UP THE COURT
9 REQUIRES.

10 (3) THE FORM OF PETITIONS AND ALL OTHER PLEADINGS UNDER
11 THIS SUBSECTION AND, EXCEPT AS OTHERWISE PROVIDED UNDER TITLE 3 OF
12 THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE, THE PROCEDURES TO BE
13 FOLLOWED BY THE COURT UNDER THIS SUBSECTION SHALL BE SPECIFIED IN
14 THE MARYLAND RULES.

15 (4) THE COURT MAY ORDER AN EVALUATION OF THE PERSON IN
16 MAKING THE DETERMINATION UNDER PARAGRAPH (1) OF THIS SUBSECTION.

17 11-705.

18 (a) In this section, "resident" means a person who lives in this State when
19 the person:

20 (1) is released;

21 (2) is granted probation;

22 (3) is granted a suspended sentence; [or]

23 (4) receives a sentence that does not include a term of imprisonment;

24 **OR**

25 (5) IS RELEASED FROM THE JUVENILE COURT'S JURISDICTION
26 UNDER § 3-8A-07 OF THE COURTS ARTICLE, IF THE PERSON WAS A MINOR WHO
27 LIVED IN THE STATE AT THE TIME THE ACT WAS COMMITTED FOR WHICH
28 REGISTRATION IS REQUIRED.

29 (b) A registrant shall register with the supervising authority:

30 (1) if the registrant is a resident, on or before the date that the
31 registrant:

- 1 (i) is released;
- 2 (ii) is granted probation before judgment;
- 3 (iii) is granted probation after judgment;
- 4 (iv) is granted a suspended sentence; or
- 5 (v) receives a sentence that does not include a term of
6 imprisonment;

7 **(2) IF THE REGISTRANT WAS A RESIDENT WHO WAS A MINOR AT**
8 **THE TIME THE ACT WAS COMMITTED FOR WHICH REGISTRATION IS REQUIRED,**
9 **WITHIN 7 DAYS AFTER THE JUVENILE COURT'S JURISDICTION OVER THE**
10 **PERSON TERMINATES UNDER § 3-8A-07 OF THE COURTS ARTICLE;**

11 [(2)] (3) if the registrant moves into the State, within 7 days after
12 the earlier of the date that the registrant:

- 13 (i) establishes a temporary or permanent residence in the
14 State; or
- 15 (ii) applies for a driver's license in the State; or

16 [(3)] (4) if the registrant is not a resident, within 14 days after the
17 registrant:

- 18 (i) begins employment in the State;
- 19 (ii) registers as a student in the State; or
- 20 (iii) enters the State as a transient.

21 (c) (1) A child sexual offender shall also register in person with the local
22 law enforcement unit of the county where the child sexual offender will reside:

23 (i) within 7 days after release, **OR WITHIN 7 DAYS AFTER THE**
24 **JUVENILE COURT'S JURISDICTION OVER THE PERSON TERMINATES UNDER §**
25 **3-8A-07 OF THE COURTS ARTICLE**, if the child sexual offender is a resident; or

26 (ii) within 7 days after registering with the supervising
27 authority, if the registrant is moving into this State.

28 (2) Within 7 days after registering with the supervising authority, a
29 child sexual offender who is not a resident and has entered the State under §
30 11-704(a)(7) of this subtitle shall also register in person with the local law

1 enforcement unit of the county where the child sexual offender is a transient or will
2 work or attend school.

3 (3) A child sexual offender may be required to give to the local law
4 enforcement unit more information than required under § 11–706 of this subtitle.

5 (d) A registrant who changes residences shall send written notice of the
6 change to the State registry within 5 days after the change occurs.

7 (e) (1) A registrant who commences or terminates enrollment as a
8 full–time or part–time student at an institution of higher education in the State shall
9 send written notice to the State registry within 5 days after the commencement or
10 termination of enrollment.

11 (2) A registrant who commences or terminates carrying on
12 employment at an institution of higher education in the State shall send written notice
13 to the State registry within 5 days after the commencement or termination of
14 employment.

15 (f) A registrant who is granted a legal change of name by a court shall send
16 written notice of the change to the State registry within 5 days after the change is
17 granted.

18 11–707.

19 (a) (1) (i) A child sexual offender shall register in person every 6
20 months with a local law enforcement unit for the term provided under paragraph (4) of
21 this subsection.

22 (ii) Registration shall include a photograph that shall be
23 updated at least once each year.

24 (2) (i) An offender and a sexually violent offender shall register in
25 person every 6 months with a local law enforcement unit for the term provided under
26 paragraph (4) of this subsection.

27 (ii) Registration shall include a photograph that shall be
28 updated at least once each year.

29 (3) (i) A sexually violent predator shall register in person every 3
30 months for the term provided under paragraph (4)(ii) of this subsection.

31 (ii) Registration shall include a photograph that shall be
32 updated at least once each year.

33 (4) The term of registration is:

1 (i) EXCEPT AS PROVIDED IN ITEMS (II) AND (III) OF THIS
2 PARAGRAPH, 10 years; [or]

3 (ii) EXCEPT AS PROVIDED IN ITEM (III) OF THIS
4 PARAGRAPH, THE life OF THE REGISTRANT, if:

5 1. the registrant is a sexually violent predator;

6 2. the registrant has been convicted of a sexually violent
7 offense;

8 3. the registrant has been convicted of a violation of
9 § 3-602 of the Criminal Law Article for commission of a sexual act involving
10 penetration of a child under the age of 12 years; or

11 4. the registrant has been convicted of a prior crime as a
12 child sexual offender, an offender, or a sexually violent offender; OR

13 (iii) ~~UNTIL THE REGISTRANT REACHES 26 YEARS OF AGE UP~~
14 TO 5 YEARS, IF THE REGISTRANT IS A PERSON DESCRIBED UNDER §
15 11-701(C)(5)(I) OF THIS SUBTITLE OR A PERSON DESCRIBED UNDER §
16 ~~11-701(J)(5)(I)~~ 11-701(J)(3)(I) OF THIS SUBTITLE, SUBJECT TO REDUCTION BY
17 THE JUVENILE COURT ON THE FILING OF A PETITION BY THE REGISTRANT FOR
18 A REDUCTION IN THE TERM OF REGISTRATION.

19 (5) A registrant who is not a resident of the State shall register for the
20 appropriate time specified in this subsection or until the registrant's employment,
21 student enrollment, or transient status in the State ends.

22 (b) A term of registration described in this section shall be computed from:

23 (1) the last date of release;

24 (2) the date granted probation; [or]

25 (3) the date granted a suspended sentence; OR

26 (4) THE DATE THE JUVENILE COURT'S JURISDICTION OVER THE
27 REGISTRANT TERMINATES UNDER § 3-8A-07 OF THE COURTS ARTICLE IF THE
28 REGISTRANT WAS A MINOR WHO LIVED IN THE STATE AT THE TIME THE ACT WAS
29 COMMITTED FOR WHICH REGISTRATION IS REQUIRED.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2009.