

HOUSE BILL 1577

E3

9lr3497
CF SB 218

By: **Delegate Conway**

Rules suspended

Introduced and read first time: April 2, 2009

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

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; requiring a certain person to register with a supervising authority
13 for inclusion on a certain offender registry if the person was at least a certain
14 age at the time a certain act was committed, is determined by the court at the
15 time a certain court jurisdiction is terminated to be at risk of committing
16 certain offenses, and is at least a certain age; requiring the State’s Attorney to
17 serve a certain written notice within a certain period; requiring the Department
18 of Juvenile Services to provide the court with certain information and conduct
19 certain follow-up; requiring that the form of certain petitions and pleadings and
20 the procedures to be followed by a court under certain circumstances be
21 specified in the Maryland Rules; requiring that certain allegations be proven by
22 clear and convincing evidence before a certain determination is made;
23 establishing that a certain person is required to register with a supervising
24 authority within a certain time after a certain jurisdiction of the juvenile court
25 terminates; altering the definition of “resident” for purposes of a certain
26 offender registry; requiring that a certain person is required to register with a
27 certain local law enforcement unit after a certain jurisdiction of the juvenile
28 court is terminated; establishing that, for a certain person, a term of
29 registration on a certain offender registry is computed from the time a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 jurisdiction of the juvenile court is terminated; defining a certain term; and
2 generally relating to the inclusion of minors on the offender registry.

3 BY repealing and reenacting, without amendments,
4 Article – Courts and Judicial Proceedings
5 Section 3–8A–27(a)(1) and (b)(1)
6 Annotated Code of Maryland
7 (2006 Replacement Volume and 2008 Supplement)

8 BY adding to
9 Article – Courts and Judicial Proceedings
10 Section 3–8A–27(h)
11 Annotated Code of Maryland
12 (2006 Replacement Volume and 2008 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article – Criminal Procedure
15 Section 11–701(c), (j), and (m), 11–704, 11–705, and 11–707
16 Annotated Code of Maryland
17 (2008 Replacement Volume)

18 BY repealing and reenacting, without amendments,
19 Article – Criminal Procedure
20 Section 11–701(k)
21 Annotated Code of Maryland
22 (2008 Replacement Volume)

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

25 **Article – Courts and Judicial Proceedings**

26 3–8A–27.

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

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

34 (H) **THIS SECTION DOES NOT PROHIBIT THE DEPARTMENT OF PUBLIC**
35 **SAFETY AND CORRECTIONAL SERVICES OR A SUPERVISING AUTHORITY, AS**
36 **DEFINED IN § 11–701 OF THE CRIMINAL PROCEDURE ARTICLE, FROM**
37 **ACCESSING OR USING THE PART OF A JUVENILE RECORD THAT IDENTIFIES AN**

1 **OFFENSE COMMITTED BY A JUVENILE FOR PURPOSES OF COMPLYING WITH**
2 **TITLE 11, SUBTITLE 7 OF THE CRIMINAL PROCEDURE ARTICLE.**

3 **Article – Criminal Procedure**

4 11–701.

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

6 (1) has been convicted of violating § 3–602 of the Criminal Law
7 Article;

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

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

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

18 (5) (I) **HAS BEEN ADJUDICATED DELINQUENT FOR AN ACT**
19 **THAT WOULD CONSTITUTE A VIOLATION OF §§ 3–303 THROUGH 3–306 OF THE**
20 **CRIMINAL LAW ARTICLE IF COMMITTED BY AN ADULT; AND**

21 (II) **MEETS THE REQUIREMENTS FOR REGISTRATION UNDER**
22 **§ 11–704(C) OF THIS SUBTITLE.**

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

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

25 (2) has been convicted of an attempt to commit a sexually violent
26 offense; **OR**

27 (3) (I) **HAS BEEN ADJUDICATED DELINQUENT FOR AN ACT**
28 **THAT WOULD CONSTITUTE A VIOLATION OF §§ 3–303 THROUGH 3–306 OF THE**
29 **CRIMINAL LAW ARTICLE IF COMMITTED BY AN ADULT; AND**

30 (II) **MEETS THE REQUIREMENTS FOR REGISTRATION UNDER**
31 **§ 11–704(C) OF THIS SUBTITLE.**

1 (k) “Sexually violent offense” means:

2 (1) a violation of §§ 3–303 through 3–307 or §§ 3–309 through 3–312 of
3 the Criminal Law Article;

4 (2) assault with intent to commit rape in the first or second degree or
5 a sexual offense in the first or second degree as prohibited on or before September 30,
6 1996, under former Article 27, § 12 of the Code; or

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

10 (m) “Supervising authority” means:

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

13 (2) the administrator of a local correctional facility, if the registrant,
14 including a participant in a home detention program, is in the custody of the local
15 correctional facility;

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

19 (4) the Director of the Patuxent Institution, if the registrant is in the
20 custody of the Patuxent Institution;

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

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

26 (7) the Secretary, if the registrant is in the State under terms and
27 conditions of the Interstate Compact for Adult Offender Supervision, set forth in Title
28 6, Subtitle 2 of the Correctional Services Article, or the Interstate Corrections
29 Compact, set forth in Title 8, Subtitle 6 of the Correctional Services Article;

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

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

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

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

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

9 **(13) THE COURT IN WHICH THE REGISTRANT WAS ADJUDICATED**
10 **DELINQUENT IF THE REGISTRANT WAS A MINOR AT THE TIME THE ACT WAS**
11 **COMMITTED FOR WHICH REGISTRATION IS REQUIRED.**

12 11-704.

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

15 (1) a child sexual offender;

16 (2) an offender;

17 (3) a sexually violent offender;

18 (4) a sexually violent predator;

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

22 (6) an offender, sexually violent offender, or sexually violent predator
23 who, before moving into this State, was required to register in another state or by a
24 federal, military, or Native American tribal court for a crime that occurred before July
25 1, 1997; or

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

29 (i) to carry on employment;

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

1 (iii) as a transient.

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

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

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

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

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

12 (II) **AT THE TIME THE JUVENILE COURT'S JURISDICTION**
13 **OVER THE PERSON TERMINATES UNDER § 3-8A-07 OF THE COURTS ARTICLE,**
14 **THE COURT, AFTER A HEARING, DETERMINES THAT THE PERSON IS AT**
15 **SIGNIFICANT RISK OF COMMITTING ANOTHER SEXUALLY VIOLENT OFFENSE OR**
16 **CHILD SEXUAL OFFENSE; AND**

17 (III) **THE PERSON IS AT LEAST 18 YEARS OLD.**

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

21 (I) **THE STATE'S ATTORNEY SHALL SERVE WRITTEN**
22 **NOTICE TO THE PERSON OR THE PERSON'S COUNSEL AT LEAST 30 DAYS BEFORE**
23 **A HEARING TO DETERMINE IF THE PERSON IS REQUIRED TO REGISTER UNDER**
24 **THIS SECTION; AND**

25 (II) **THE DEPARTMENT OF JUVENILE SERVICES SHALL:**

26 1. **PROVIDE THE COURT WITH ANY INFORMATION**
27 **NECESSARY TO MAKE THE DETERMINATION; AND**

28 2. **CONDUCT ANY FOLLOW-UP THE COURT**
29 **REQUIRES.**

30 (3) **THE FORM OF PETITIONS AND ALL OTHER PLEADINGS UNDER**
31 **THIS SUBSECTION AND, EXCEPT AS OTHERWISE PROVIDED UNDER TITLE 3 OF**
32 **THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE, THE PROCEDURES TO BE**

1 FOLLOWED BY THE COURT UNDER THIS SUBSECTION SHALL BE SPECIFIED IN
2 THE MARYLAND RULES.

3 (4) BEFORE A DETERMINATION IS MADE UNDER PARAGRAPH
4 (1)(II) OF THIS SUBSECTION, THE ALLEGATIONS REGARDING RISK OF
5 COMMITTING A FUTURE SEXUAL OFFENSE SHALL BE PROVED BY CLEAR AND
6 CONVINCING EVIDENCE.

7 11-705.

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

- 10 (1) is released;
- 11 (2) is granted probation;
- 12 (3) is granted a suspended sentence; [or]
- 13 (4) receives a sentence that does not include a term of imprisonment;

14 **OR**

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

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

- 20 (1) if the registrant is a resident, on or before the date that the
21 registrant:
- 22 (i) is released;
- 23 (ii) is granted probation before judgment;
- 24 (iii) is granted probation after judgment;
- 25 (iv) is granted a suspended sentence; or
- 26 (v) receives a sentence that does not include a term of
27 imprisonment;

28 (2) IF THE REGISTRANT WAS A RESIDENT WHO WAS A MINOR AT
29 THE TIME THE ACT WAS COMMITTED FOR WHICH REGISTRATION IS REQUIRED,

1 **WITHIN 7 DAYS AFTER THE JUVENILE COURT'S JURISDICTION OVER THE**
2 **PERSON TERMINATES UNDER § 3-8A-07 OF THE COURTS ARTICLE;**

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

5 (i) establishes a temporary or permanent residence in the
6 State; or

7 (ii) applies for a driver's license in the State; or

8 [(3)] (4) if the registrant is not a resident, within 14 days after the
9 registrant:

10 (i) begins employment in the State;

11 (ii) registers as a student in the State; or

12 (iii) enters the State as a transient.

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

15 (i) within 7 days after release, **OR WITHIN 7 DAYS AFTER THE**
16 **JUVENILE COURT'S JURISDICTION OVER THE PERSON TERMINATES UNDER §**
17 **3-8A-07 OF THE COURTS ARTICLE**, if the child sexual offender is a resident; or

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

20 (2) Within 7 days after registering with the supervising authority, a
21 child sexual offender who is not a resident and has entered the State under §
22 11-704(a)(7) of this subtitle shall also register in person with the local law
23 enforcement unit of the county where the child sexual offender is a transient or will
24 work or attend school.

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

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

29 (e) (1) A registrant who commences or terminates enrollment as a
30 full-time or part-time student at an institution of higher education in the State shall
31 send written notice to the State registry within 5 days after the commencement or
32 termination of enrollment.

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

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

8 11-707.

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

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

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

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

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

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

23 (4) The term of registration is:

24 (i) 10 years; or

25 (ii) life, if:

26 1. the registrant is a sexually violent predator;

27 2. the registrant has been convicted of a sexually violent
28 offense;

29 3. the registrant has been convicted of a violation of
30 § 3-602 of the Criminal Law Article for commission of a sexual act involving
31 penetration of a child under the age of 12 years; or

32 4. the registrant has been convicted of a prior crime as a
33 child sexual offender, an offender, or a sexually violent offender.

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

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

5 (1) the last date of release;

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

7 (3) the date granted a suspended sentence; **OR**

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

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