

# SENATE BILL 218

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By: **Senators Frosh, Brochin, Forehand, Garagiola, Jacobs, Mooney, Raskin,  
and ~~Stone~~ Stone, Muse, and Simonaire**

Introduced and read first time: January 23, 2009

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 25, 2009

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## 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; 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

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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.



offender registry; requiring that a certain person is required to register with a certain local law enforcement unit after a certain jurisdiction of the juvenile court is terminated; establishing that, for a certain person, a term of registration on a certain offender registry is computed from the time a certain jurisdiction of the juvenile court is terminated; defining a certain term; and generally relating to the inclusion of minors on the offender registry.

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

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

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

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

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

### **Article – Courts and Judicial Proceedings**

3–8A–27.

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

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

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

#### Article – Criminal Procedure

11-701.

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

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

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

(3) has been convicted of violating the fourth degree sexual offense statute under § 3-308 of the Criminal Law Article for a crime involving a child under the age of 15 years and has been ordered by the court to register under this subtitle; [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 the crimes listed in items (1) and (2) of this subsection; OR

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

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

(j) “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; OR

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

1                               **(II) MEETS THE REQUIREMENTS FOR REGISTRATION UNDER**  
2   **§ 11-704(C) OF THIS SUBTITLE.**

3           (k)    “Sexually violent offense” means:

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

6                   (2)    assault with intent to commit rape in the first or second degree or  
7   a sexual offense in the first or second degree as prohibited on or before September 30,  
8   1996, under former Article 27, § 12 of the Code; or

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

12          (m)    “Supervising authority” means:

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

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

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

21                   (4)    the Director of the Patuxent Institution, if the registrant is in the  
22   custody of the Patuxent Institution;

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

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

28                   (7)    the Secretary, if the registrant is in the State under terms and  
29   conditions of the Interstate Compact for Adult Offender Supervision, set forth in Title  
30   6, Subtitle 2 of the Correctional Services Article, or the Interstate Corrections  
31   Compact, set forth in Title 8, Subtitle 6 of the Correctional Services Article;

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

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

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

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

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

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

11-704.

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

(1) a child sexual offender;

(2) an offender;

(3) a sexually violent offender;

(4) a sexually violent predator;

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

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

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

1 (i) to carry on employment;

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

5 (iii) as a transient.

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

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

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

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

14 (I) THE PERSON WAS A MINOR WHO WAS AT LEAST 13  
15 YEARS OLD AT THE TIME THE DELINQUENT ACT WAS COMMITTED;

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

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

22 (2) IF THE PERSON HAS COMMITTED A DELINQUENT ACT THAT  
23 WOULD CAUSE THE COURT TO MAKE A DETERMINATION REGARDING  
24 REGISTRATION UNDER PARAGRAPH (1) OF THIS SUBSECTION:

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

29 (II) THE DEPARTMENT OF JUVENILE SERVICES SHALL:

30 1. PROVIDE THE COURT WITH ANY INFORMATION  
31 NECESSARY TO MAKE THE DETERMINATION; AND

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

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

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

11-705.

(a) In this section, “resident” means a person who lives in this State when the person:

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

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

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

- (1) if the registrant is a resident, on or before the date that the registrant:
- (i) is released;
  - (ii) is granted probation before judgment;
  - (iii) is granted probation after judgment;
  - (iv) is granted a suspended sentence; or

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

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

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

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

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

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

(i) begins employment in the State;

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

(iii) enters the State as a transient.

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

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

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

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

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

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



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

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

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

11-707.

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

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

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

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

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

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

(4) The term of registration is:

(i) 10 years; or

(ii) life, if:

1. the registrant is a sexually violent predator;
2. the registrant has been convicted of a sexually violent offense;

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

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

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

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

(1) the last date of release;

(2) the date granted probation; [or]

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

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.