

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 441
Judicial Proceedings

(Senator Stone)

Criminal Procedure - Offender Registry - Retroactivity

This bill applies Maryland's sexual offender registry provisions retroactively to include a person convicted on or after October 1, 1995 of one of the following offenses committed before that date: first or second degree rape; first or second degree sexual offense; or sexual abuse of a minor.

Fiscal Summary

State Effect: Minimal. The bill is not expected to have a significant immediate fiscal impact on the resources of the Division of Parole and Probation, the sex offender registry, or State law enforcement units. Over time, depending on how many and how soon prior offenders are located, some of these entities may experience the need for additional resources, including personnel.

Local Effect: None.

Small Business Effect: None.

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.

Sexual offenders are required to register, every three or 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 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.

The State's sex offender registration requirements must be applied retroactively to include a registrant convicted of an offense committed before July 1, 1997, and who is under the custody or supervision of a supervising authority on October 1, 2001. The requirements must be applied retroactively to a child sexual offender who committed the sexual offense on or before October 1, 1995, and who is under the custody or supervision of a supervising authority on October 1, 2001. Pursuant to registration requirements, a supervising authority may be the Secretary of Public Safety and Correctional Services, the Director of the Division of Parole and Probation, the Director of the Patuxent Institution, the administrator of a local correctional facility, the Secretary of Health and Mental Hygiene, or a court, as prescribed.

Background: The federal Sex Offender Registration and Notification Act (SORNA), enacted as Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), requires conformity by the states with various aspects of sex offender registration provisions, including registration of specified juvenile offenders, collection of specific information from registrants, verification, duration of registration, access to and sharing of information, and penalties for failure to register. The final guidelines/regulations were issued on July 2, 2008. July 27, 2009, is the deadline for substantial implementation of SORNA's requirements by all jurisdictions.

SORNA 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 do not have to seek out pre-SORNA convicted sex offenders and re-register them if their previous registrations have expired. If a person re-offends or re-enters the judicial system for any crime, the individual will need to register under SORNA guidelines. 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.

Failure to fully comply with SORNA puts a state at risk to lose 10% of Byrne Justice Assistance grants, which all states use to pay for drug task forces, anti-gang units, police overtime, and other law enforcement activities. Under the federal American Recovery and Reinvestment Act of 2009 (the federal “Stimulus Bill”), the Byrne formula grants program has been reauthorized from fiscal 2009 through 2011. Maryland will receive an estimated \$24.7 million in fiscal 2010 and \$18.5 million in fiscal 2011. Accordingly, if found in non-compliance - and without issuance of a waiver - the State could lose about \$2.5 million in Byrne funds in fiscal 2010 and \$1.9 million in fiscal 2011.

State Fiscal Effect: It is unknown how many persons with a prior qualifying conviction now reside, or may later reside, in Maryland. While it is unclear how an offender who committed a qualifying offense before October 1, 1995, and who is no longer under supervision by the State would be identified and located, the bill is not expected to have an immediate significant impact on the resources of the Division of Parole and Probation (DPP) or the sex offender registry.

DPP is already requiring offenders who are currently serving a sentence for a non-sex related offense, but who also have a past conviction for sex offense, into supervision by sex offender units. In addition, it is assumed that a person who committed a qualifying crime before that date, and who commits a new crime of any type after the effective date of the bill, could be identified and registered.

In any case, DPP advises that increasing future caseloads could eventually lead to the need to hire additional agents to handle such an increase in the overall offender population subject to supervision. Because the sex offenders are placed in “high-risk” specialized caseloads – the low agent to offender supervision ratio needed for enforcement of special conditions such as, residency restrictions, treatment, testing, and computer and electronic monitoring are expensive to maintain. The cost for supervising an offender for one year is approximately \$1,600. The cost for supervising a sexual offender varies based on the number and type of special conditions. The cost to hire a new agent is about \$50,000, including salary, benefits, and equipment.

Local Fiscal Effect: It is assumed that local law enforcement agencies will be asked to assist in identifying, locating, and registering sex offenders affected under the bill.

However, it is assumed that such responsibilities will be carried out within the existing capabilities of those agencies.

Additional Information

Prior Introductions: HB 761 of 2008 passed the House, was referred to the Senate Judicial Proceedings Committee, and had no further action taken on it. SB 629 of 2008 passed the Senate (as amended), was referred to the House Judiciary Committee, and had no further action taken on it.

Cross File: HB 1030 (Delegate Shank, *et al.*) – Judiciary. SB 425 is also identical.

Information Source(s): Department of Public Safety and Correctional Services, Baltimore City, Allegany County, Harford County, Montgomery County, Talbot County, Department of Legislative Services

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