

Department of Legislative Services
 Maryland General Assembly
 2009 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 593
 Judiciary

(Delegate Dumais, *et al.*)

Rules

Criminal Procedure - Offender Registry - Minors

This bill requires a person who has been adjudicated delinquent for specified acts to register with a supervising authority at the time the juvenile court’s jurisdiction terminates (generally age 21), for inclusion on the State’s sex offender registry if (1) the juvenile was at least age 13 at the time the qualifying delinquent act was committed; (2) the State’s Attorney or the Department of Juvenile Services requests that the person be required to register; (3) the court determines by clear and convincing evidence after a hearing (90 days prior to the time a juvenile court jurisdiction is terminated) that the person is at significant risk of committing a sexually violent offense or an offense for which registration as a child sexual offender is required; and (4) the person is at least age 18 years.

Fiscal Summary

State Effect: General fund expenditures increase by approximately \$80,000 annually beginning in FY 2010 due to reimbursements to local law enforcement agencies. The Department of Juvenile Services (DJS) and the Judiciary can handle the requirements with existing budgeted resources. Revenues are not affected.

| (in dollars) | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 |
|----------------|------------|------------|------------|------------|------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 80,000 | 80,000 | 80,000 | 80,000 | 80,000 |
| Net Effect | (\$80,000) | (\$80,000) | (\$80,000) | (\$80,000) | (\$80,000) |

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local law enforcement agencies receive approximately \$80,000 annually from the Department of Public Safety and Correctional Services (DPSCS) for expense reimbursements related to additional registrations. Local law enforcement agencies and the circuit courts can handle the additional registrations and hearings with existing budgeted resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill alters the definitions of “child sexual offender” and “sexually violent offender” for purposes of the sexual offender registry to include persons who have been adjudicated delinquent for acts that would constitute first or second degree rape or sexual offense if committed by an adult involving a victim younger than age 15 in the case of a child sexual offender, and involving a victim 15 years of age or older in the case of a sexually violent offender. The bill alters the definition of “supervising authority” for purposes of the registry to include the Secretary of Juvenile Services.

The bill requires DJS to provide the court with any information necessary to make a determination regarding registration and conduct any required follow up. A State’s Attorney must serve written notice to the person or the person’s counsel at least 30 days before a hearing to determine if the person is required to register with the sex offender registry. The court is authorized to order an evaluation of a juvenile when making a determination regarding placement on the registry.

The bill makes conforming changes under provisions relating to deadlines for registration by establishing that a juvenile is required to register with a supervising authority, or the local law enforcement unit in the county of residence if the juvenile is a child sexual offender, within seven days after the jurisdiction of the juvenile court terminates. The term of registration for juveniles required to register under these provisions is up to five years, subject to reduction by the juvenile court on the filing of a petition by the registrant for a reduction in the term of registration. The bill establishes, for a qualifying juvenile, a term of registration that is computed from the time the jurisdiction of the juvenile court terminates.

The bill further establishes that a police or court record pertaining to a child may be accessed and used by DPSCS and other supervising authorities for purposes of including a person in the State’s sex offender registry.

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 has been convicted of:

- child kidnapping;
- kidnapping;
- fourth degree sexual offense, if the victim is under 18;
- false imprisonment, if the victim is under 18 and the person is not the victim’s parent;
- a crime that involves soliciting a person under 18 to engage in sexual conduct;
- production or distribution of child pornography;
- prostitution or related criminal prohibitions if the intended prostitute or victim is under 18;
- any crime that involves conduct that by its nature is a sexual offense against a person under 18; or
- an attempt to commit any of these offenses.

An “offender” also includes a person who is ordered by a court to register who 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:

- has been convicted of sexual abuse of a minor;
- has been convicted of first or second degree rape or first, second, or third degree sexual offense involving a child under 15;
- 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
- 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 is convicted of a sexually violent offense and who 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 has been convicted of a sexually violent offense or who has been convicted of an attempt to commit a sexually violent offense.

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.

In general, the juvenile court has jurisdiction over a child alleged to be delinquent. If the juvenile court obtains jurisdiction, that jurisdiction continues until that person reaches age 21 unless terminated sooner. The juvenile court does not have jurisdiction over children at least age 16 who are alleged to have committed a violent crime, children at least age 14 charged with a capital crime, and children who have previously been convicted as an adult of a felony and are subsequently alleged to have committed an act that would be a felony if committed by an adult. The juvenile court has exclusive original jurisdiction, but only for the purpose of waiving it, over a person age 21 or older who is alleged to have committed a delinquent act while a child.

A police record concerning a child is confidential and must be maintained separate from those of adults. Its contents may not be divulged, by subpoena or otherwise, except by court order upon a showing of good cause or as otherwise provided under provisions of the Education Article relating to arrests for reportable offenses. This does not prohibit access to and confidential use of the record by DJS or in the investigation and prosecution of the child by any law enforcement agency. This also does not prohibit a law enforcement agency, DJS, or the Criminal Justice Information System (CJIS) from including in the Law Enforcement Computer Information System information about an outstanding juvenile court ordered writ of attachment, for the sole purpose of apprehending a child named in the writ.

A court record pertaining to a child is confidential and its contents may not be divulged, by subpoena or otherwise, except by court order upon a showing of good cause or as otherwise provided under provisions of the Education Article relating to arrests for reportable offenses. This does not prohibit access to and the use of the court record or fingerprints of a child under provisions governing CJIS in a proceeding involving the child, by personnel of the court, the State's Attorney, counsel for the child, a court appointed special advocate for the child, or authorized personnel of DJS. This does not generally prohibit access to and confidential use of the court record or fingerprints of a child under the applicable CJIS provisions or in an investigation and prosecution by a law enforcement agency.

The court record or fingerprints of a child may not be disclosed to a federal criminal justice agency or information center or any law enforcement agency other than a law enforcement agency of the State or a political subdivision of the State. Under specified circumstances, this does not prohibit access to and use of a court record by a judicial officer who is authorized under the Maryland Rules to determine a defendant's eligibility for pretrial release, by counsel for the defendant, or the State's Attorney if the individual is being charged as an adult.

The court, on its own motion or on petition, and for good cause, may order the court records of a child sealed, and, upon petition or on its own motion, must order them sealed after the child has reached age 21. If sealed, the records may not be opened, for any purpose, except by court order upon a showing of good cause.

These provisions do not prohibit access to or use of any juvenile record by the Division of Parole and Probation (DPP) or the Maryland Parole Commission when DPP or the commission is carrying out any statutory duties either at the direction of a court of competent jurisdiction, or when the commission is carrying out any of its statutory duties, if the record concerns a charge or adjudication of delinquency.

These provisions do not prohibit access to and use of any juvenile record by the Division of Correction (DOC) when it is carrying out any of its statutory duties if the individual is committed to the custody of DOC and the record concerns an adjudication of delinquency.

These provisions do not prohibit access to or use of any juvenile record for criminal justice research purposes. A record used under this subsection may not contain the name of the individual to whom the record pertains, or any other identifying information which may reveal the individual's name.

Background: 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. July 27, 2009 is the deadline for substantial implementation of SORNA's requirements by all registration jurisdictions.

The federal law applies to juvenile offenders adjudicated delinquent if the offender is age 14 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.

Failure to 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 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 noncompliance – 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). SORNA requires other provisions that this bill does not appear to address, therefore, this bill alone may not put Maryland in compliance with SORNA.

State and Local Fiscal Effect: There are about 7,600 juveniles adjudicated delinquent each year for all offenses. The Administrative Office of the Courts advises that slightly more than 400 juveniles are adjudicated delinquent statewide each year for the covered offenses. Under this bill, a juvenile adjudicated delinquent for a covered act is ordered by the juvenile court to register with the State's sexual offender registry.

Accordingly, DJS is given the responsibility to see that a juvenile registers in the sex offender registry. For DJS, this is an additional supervisory responsibility for juvenile offenders already under DJS supervision. Actual registration, including required fingerprinting and a photograph, can be done at the appropriate local law enforcement location already handling registrations in each jurisdiction. Since the bill adds considerably to the growth of the registry (400 additional registrants annually), current resources of DJS and the juvenile court may eventually become strained. It is unclear how soon this may occur in each jurisdiction.

DPSCS currently reimburses local law enforcement agencies \$200 for each registrant. If local law enforcement agencies register an additional 400 individuals annually as a result of this bill's provisions, State general fund expenditures increase by \$80,000.

New notification and hearing requirements for State's Attorneys and hearing requirements for the Office of the Public Defender can be handled with existing resources.

Additional Comments: According to a 2005 task force report on sex offenders published by DJS, in 2004 the department had 195 juvenile sex offenders in residential placements, and 275 were living at home and being treated in the community.

DLS notes that when a juvenile entered in the registry reaches age 21, because DJS is not listed as a supervising authority under current sex offender provisions and the juvenile courts cease supervisory functions at that time, juveniles required to continue to register no longer have a supervising authority of record.

Additional Information

Prior Introductions: SB 441 of 2008 passed the Senate as amended but received an unfavorable report from the House Judiciary Committee. Its cross file, HB 1332, received a hearing in the House Judiciary Committee but was withdrawn. SB 738 of 2007 passed the Senate and received a hearing in the House Judiciary Committee but no further action was taken. Its cross file, HB 1099, received a hearing in the House Judiciary Committee but no further action was taken.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Garrett County, Howard County, Montgomery County, Department of Legislative Services

Fiscal Note History: First Reader - March 8, 2009
ncs/kdm Revised - House Third Reader - April 29, 2009

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