

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 96
Judiciary

(Delegate Stifler)

Judicial Proceedings

Public Safety - Offender Registry - Frequency of Photograph

This bill alters the time requirement for an updated photograph to be included in the registration of sexual offenders in the Crimes Against Children and Sexual Offender Registry. Specifically, the bill requires that the photograph of a child sexual offender, an offender, a sexually violent offender, and a sexually violent predator must be updated every six months. The current requirement for photograph updating for all categories of sexual offenders is at least once each year.

Under provisions relating to the sexual offender notification requirements of local law enforcement units, every three months a law enforcement unit must send a child sexual offender's and sexually violent predator's updated photograph to the Department of Public Safety and Correctional Services (DPSCS). The bill also clarifies that all requirements for photographs under sexual offender registration provisions means updated versions.

Fiscal Summary

State Effect: None. The bill's requirements can be handled with existing budgeted resources of DPSCS. This bill alone does not impact State compliance with the requirements of the federal Sex Offender Registration and Notification Act (SORNA).

Local Effect: None. Because the bill's requirement for updating photographs tracks the timeline for the re-registration of all categories of covered offenders, the requirements can be handled with existing budgeted resources of local law enforcement units.

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.

“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;
- an attempt to commit any of these offenses; or
- 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 age 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.

“Sexually violent offense” is defined as first or second degree rape; first, second, or third degree sexual offense; attempted rape or sexual offense; or assault with intent to commit first or second degree rape or first or second degree sexual offense as prohibited under Maryland’s criminal code on or before September 30, 1996. Also included under this definition are certain crimes that were committed in another state or in a federal, military, or Native American tribal jurisdiction.

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.

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.

Under SORNA, a sex offender must appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which that sex offender is required to be registered not less frequently than:

- annually for a tier I sex offender;
- every six months for a tier II sex offender, and
- every three months for a tier III sex offender.

Sex offenders must carry out this schedule of personal appearances in all jurisdictions where they reside, are employed, and attend school. As with other SORNA requirements, jurisdictions may require in-person appearances by sex offenders with greater frequency than the minimum required by SORNA.

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. The Byrne formula grants program has been reauthorized from fiscal 2009 through 2012 at fiscal 2006 funding levels (\$1.095 billion annually). Although the fiscal 2009 Byrne funding to the states has been reduced by 67% of anticipated funding levels, this program (including formula grants) has been reauthorized by Congress through fiscal 2012 at fiscal 2006 funding levels.

Additional Information: In response to the SMART Office Support for Adam Walsh Act Implementation Grant Program Competitive Grant Announcement, DPSCS requested and received \$299,970 in federal funding to assist in meeting compliance with SORNA by July 2009. DPSCS has provided \$100,000 in State matching funds, so that the total project cost is \$399,970. This money is being used, in part, to provide financial assistance to each of the 24 local law enforcement agencies by reimbursing them \$200 for each sex offender registered on the offender registry. These grant funds are expected to be exhausted by the end of March 2010.

Additional Information

Prior Introductions: HB 381 of 2008 passed the House, received a hearing before the Senate Judicial Proceedings Committee, and had no further action taken on it. HB 267 of 2007 received a hearing before the House Judiciary Committee and had no further action taken on it.

Cross File: None.

Information Source(s): Montgomery County, Department of Public Safety and Correctional Services, Department of Legislative Services

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