

Department of Legislative Services  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**

House Bill 568  
Judiciary

(Delegate Kramer, *et al.*)

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**Nursing Facility Resident Protection Act**

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This bill prohibits a registrant with the Crimes Against Children and Sexual Offender Registry from knowingly entering onto real property on which is located a regulated health care facility with an assisted living program or a “related institution” unless a waiver has been granted by the facility or the related institution. A violator is subject to current law misdemeanor maximum penalties of five years imprisonment and/or a \$5,000 fine.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in general fund revenues and expenditures due to the bill’s penalty provisions. It is assumed that the few State-operated nursing homes would not be inundated with applications for waivers and could handle applications for waiver with existing budgeted resources.

**Local Effect:** Potential minimal increase in local revenues and expenditures due to the bill’s penalty provisions. It is assumed that the few locally operated facilities would not be inundated with applications for waivers and could handle applications for waiver with existing budgeted resources.

**Small Business Effect:** Minimal. Assuming that waivers from the bill’s prohibition would be sought relatively infrequently for any one privately operated facility, the bill requirements could be handled with existing staff and resources.

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## Analysis

**Bill Summary:** A registrant may seek a waiver from the prohibition for purposes of residence, treatment, or visitation. In deciding whether to grant a waiver, the following issues must be considered:

- the nature and circumstances of the crime committed by the registrant;
- the effect of a waiver on the staff, residents, and visitors of the facility or related institution;
- the sentence given to the registrant;
- any antisocial behavior of the registrant;
- the subsequent rehabilitation of the registrant;
- the age and health of the registrant;
- the reason the waiver is needed; and
- any other factor considered necessary by the facility or related institution.

If a facility or related institution grants a waiver for purposes of treatment or residence, it must provide written notice to each resident, resident's guardian, and facility employee of the presence of the registrant; and display notice to visitors of the presence of the registrant in a prominent manner at the entrance of the facility.

If a facility or related institution grants a waiver for purposes of visitation, the facility or related institution must promptly notify an agent or employee, as designated by the facility or related institution, of the arrival and departure of the registrant. A waiver granted for purposes of visitation expires one year from the date on which the waiver was granted.

A waiver may be withdrawn if the facility or related institution considers the withdrawal to be in the best interest of the residents, staff, and visitors.

**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.

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 (DPSCS).

Chapter 4 of the 2006 special session prohibits a registrant from knowingly entering on real property used for elementary or secondary education or on which a registered family day care home or a licensed child care home or institution is located. This prohibition does not apply to a registrant who enters real property where the registrant is a student or the registrant's child is a student or receives child care, if within the past year the registrant has been given the specific written permission to do so and the registrant promptly notifies an agent or employee of the covered property. It also does not apply for the purpose of voting at a school on an election day in the State if the registrant is properly registered to vote and the registrant's polling place is at the school.

An "assisted living program" means a residential or facility-based program that provides housing and supportive services, supervision, personalized assistance, health-related services, or a combination thereof that meets the needs of individuals who are unable to perform or who need assistance in performing the activities of daily living or instrumental activities of daily living in a way that promotes optimum dignity and independence for the individuals. The term does not include a nursing home, a State mental health facility, or a licensed mental health program, a regulated hospice care program, services provided by family members, services provided in an individual's own home, or a program certified by the Department of Human Resources as an Adult Residential Environment Program.

The term "related institution" commonly refers to a nursing home and statutorily means an organized institution, environment, or home that:

- maintains conditions or facilities and equipment to provide domiciliary, personal, or nursing care for two or more unrelated individuals who are dependent on the administrator, operator, or proprietor for nursing care or the subsistence of daily living in a safe, sanitary, and healthful environment; and
- admits or retains the individuals for overnight care.

The term does not include a nursing facility or visiting nurse service that is conducted only by or for adherents of a bona fide church or religious organization, in accordance

with tenets and practices that include reliance on treatment by spiritual means alone for healing.

**Background:** There are over 2,100 licensed health care facilities in the State, including 1,416 assisted living facilities, 233 nursing homes, and 4 intermediate care facilities for the mentally retarded/State residential centers. The State does not operate any assisted living facilities and few related facilities (nursing homes).

There are approximately 6,100 persons currently in the State's sexual offender registry. A total of 13 already reside in a nursing home or assisted living facility. Of that group, 3 are required to register for 10 years and the remainder for life. They range in age from 29 to 82, with an average age of 61. The name, address, charge, status, and photograph of each offender, which may be searched geographically, are electronically posted to the Internet and can be accessed via the DPSCS web site.

**State Revenues:** General fund revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

**State Expenditures:** General fund expenditures may increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of these proposed crimes is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2010 are estimated to range from \$23 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Revenues:** Revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

**Local Expenditures:** Expenditures may increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$46 to \$141 per inmate in fiscal 2010.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

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ncs/hlb

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