

**Department of Legislative Services**  
Maryland General Assembly  
2010 Session

**FISCAL AND POLICY NOTE**

Senate Bill 473 (Senator Stone)  
Judicial Proceedings

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**Criminal Procedure - Indecent Exposure - Offender Registration**

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This bill expands the definition of “offender” for purposes of the Crimes Against Children and Sexual Offender Registry to include a person who is ordered by a court to register and who has been convicted of the common law offense of indecent exposure, if the offense occurred in the presence of an individual under 18 years of age.

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**Fiscal Summary**

**State Effect:** None. The bill’s requirements can be handled with existing budgeted resources of the State’s sex offender registry.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Indecent exposure is a common law offense. The meaning accorded to the offense is judicially determined and based on case law. It is regarded as a general intent crime that includes within its scope an innumerable variety of offenses, including acts that are reckless or negligent. It is not necessarily sexual in nature.

A person convicted of indecent exposure is guilty of a misdemeanor and is subject to maximum penalties of imprisonment for three years and/or a fine of \$1,000.

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 with the State’s sexual offender registry 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
- a crime in another state or in a federal, military, or Native American tribal court 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;
- first or second degree rape or first, second, or third degree sexual offense involving a child under age 15;
- fourth degree sexual offense involving such a child and has been ordered by the court to register under these provisions; or
- a crime in another state or in a federal, military, or Native American tribal court 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.

**Background:** In *State v. Duran*, 407 Md. 532 (2009), the Court of Appeals held that a defendant who pled guilty to indecent exposure based upon three separate incidents in which he exposed himself to various girls of middle school age could not be required to register as a sex offender, because indecent exposure is not a statutorily enumerated crime requiring registration and is not a crime “that by its nature is a sexual offense” under Section 11-701(d)(7) of the Criminal Procedure Article.

A review of the Maryland Sentencing Guidelines database indicates that 17 offenders were convicted of indecent exposure in the circuit courts in fiscal 2009.

**Additional Comments:** The Office of the Public Defender (OPD) advises that there were 279 cases charging indecent exposure in fiscal 2009, statewide. Many, if not a majority, were resolved summarily with a dismissal, a “stet docket,” or a plea agreement for a probation before judgment. Often the charge is in conjunction with another “nuisance” charge similarly resolved. However, OPD advises that this bill will pose an obstacle to summary resolutions of these cases to the point that many defendants will seek to go to trial. OPD further advises that, assuming that trial would be sought in half of the charged cases (or 140 instances), the bill would create the need for one-quarter of an assistant public defender, at a cost of about \$23,000 annually.

Legislative Services advises that such a need would only occur if that number of additional trials were actually realized and that charging practices, as well as plea agreement practices, remain unchanged in light of the possibility that a defendant would be subject to sex offender registration. Accordingly, Legislative Services believes that any additional misdemeanor trial caseload under the bill could likely be handled with the existing budgeted resources of OPD.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Anne Arundel, Frederick, Montgomery, and Somerset counties, Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Department of Legislative Services

**Fiscal Note History:** First Reader - March 15, 2010  
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Analysis by: Guy G. Cherry

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510