

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 484
Judiciary

(Delegate Stifler)

Criminal Procedure - Sex Offender Registry - Juveniles

This bill requires lifetime registration for a juvenile adjudicated delinquent for an act that, if committed by an adult, would constitute a first or second degree rape, a first or second degree sexual offense, or a specified second degree sexual offense. The bill provides the circumstances under which a lifetime juvenile registration requirement may be reduced to 25 years. Lifetime registration requires information and digital photograph updates every three months.

The bill takes effect June 1, 2011.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources. The bill may prevent the loss of \$540,000 in federal Byrne Justice Assistance Grant (BJAG) funds beginning in FY 2013.

Local Effect: The bill's requirements can be handled with the existing budgeted resources of local law enforcement agencies responsible for the registration of sex offenders. To the extent that local jurisdictions benefit from BJAG funding, federal fund losses of varying amounts may be averted.

Small Business Effect: None.

Analysis

Bill Summary: Under the bill, if the applicable juvenile act would constitute a prohibited fourth degree sexual offense where the juvenile engaged in nonconsensual

“sexual contact” involving digital penetration with the other person, the term of registration terminates when the juvenile court’s jurisdiction over the juvenile terminates. Such a juvenile registrant must appear in person annually to update and verify with the Department of Public Safety and Correctional Services (DPSCS) to update and verify information included in the registry and allow the taking of a digital image. DPSCS, in conjunction with the Department of Juvenile Services (DJS), must adopt implementary regulations.

Current Law and Background: A police record concerning a child is confidential and must be maintained separately from those of adults. Unless certain exemptions apply, the contents may not be divulged, except by court order upon a showing of good cause. However, a person who has been adjudicated delinquent for an act that would constitute first or second degree rape or first or second degree sexual assault if committed by an adult must register with a supervising authority at the time the juvenile court’s jurisdiction terminates (usually at age 21), for inclusion on the State’s sex offender registry if (1) the person was at least 13 years old at the time the qualifying delinquent act was committed; (2) the State’s Attorney or DJS 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 the juvenile court’s 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 18 years old.

The federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994 required all states to register sex offenders, sexually violent predators, and offenders who commit certain crimes against children. These laws have become popularly known as either “Megan’s Law” or “Jessica’s Law” in memory of children who have been sexually assaulted and murdered by convicted sex offenders.

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), conditioned receipt of federal grant assistance on 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.

In 2010, Maryland’s sex offender registration laws were substantially revised in an effort to comply with SORNA and increase penalties for certain sex offenses committed against minors. Among the enacted provisions, sexual offenders are now sorted into three separate tiers, replacing the four former categories of sexual offenders. A Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every

three months for life. In addition, a listing of juvenile sex offenders was required to be maintained by DPSCS, which is accessible only by law enforcement personnel for law enforcement purposes.

State Fiscal Effect: In January 2011, the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) announced that Delaware, Florida, Ohio, South Dakota, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes and Bands of the Yakama Nation, and the United States Territory of Guam were the only jurisdictions thus far to have been designated as having substantially implemented SORNA.

On January 6, 2011, the SMART Office informed the State that while it has made some progress with implementing various provisions of SORNA, Maryland is not substantially compliant with the Act because it has failed to enact legislation requiring lifetime registration of juveniles who are adjudicated delinquent for the most serious sexual assault crimes. Failure to comply with SORNA puts a state at risk to lose 10% of BJAG funding, which is used to pay for such things as drug task forces, anti gang units, police overtime, and other law enforcement activities. According to the Governor's Office of Crime Control and Prevention (GOCCP), if the State remains noncompliant after July 2011, Maryland could lose a portion of its BJAG funding beginning in fiscal 2013. Given that the State receives approximately \$5.4 million annually in BJAG funding, it is estimated that the 10% penalty would total approximately \$540,000 for each annual direct BJAG award.

According to GOCCP, this bill would bring Maryland into substantial compliance with SORNA before the federal deadline of July 2011.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Governor's Office of Crime Control and Prevention, Carroll and Harford counties, Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

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