

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**

Senate Bill 134 (Senator Stone)  
Judicial Proceedings

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**Criminal Procedure - Indecent Exposure - Sex Offender Registry**

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This bill expands the definition of a “Tier I sex offender” for purposes of the sex offender registry to include a person who has been convicted of the common law offense of indecent exposure if the victim was a minor and the act was committed for the purpose of sexual gratification.

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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. The number of persons added to the sex offender registry as a result of this bill is expected to be few.

**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.

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. Failure to comply with SORNA puts a state at risk of losing 10% of Byrne Justice Assistance grants, which all states use to pay for crime fighting efforts including drug task forces, anti-gang units, police overtime, and other law enforcement activities.

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. A sex offender is required to register in each county where the offender habitually lives. The term “habitually lives” includes any place where a person visits for longer than five hours per visit more than five times within a 30-day period. A sex offender who is homeless is required to register in person within a specified period of time with the local law enforcement unit in the county where the registrant habitually lives and to reregister weekly while habitually living in the county.

Sex offender registration provisions are applied retroactively to a person who is under the custody and supervision of a supervising authority on October 1, 2010; was subject to registration on September 30, 2010; or is convicted of any crime on or after October 1, 2010, and has a prior conviction for an offense for which sex offender registration is required. The term of retroactive registration for a Tier I or II sex offender must be calculated from the date of release.

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. However, this bill does not affect compliance issues.

**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 applicable provisions of the Criminal Procedure Article.

A review of the Maryland Sentencing Guidelines database indicates that seven offenders were convicted of indecent exposure in the circuit courts in fiscal 2010. In fiscal 2009, that number was 17.

The Office of the Public Defender (OPD) has advised in previous years that indecent exposure cases are typically 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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Anne Arundel, Baltimore, Garrett, and Montgomery counties; Commission on Criminal Sentencing Policy; Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

**Fiscal Note History:** First Reader - March 10, 2011  
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