

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 277
 Judiciary

(Delegate Morales, *et al.*)

**Criminal Law and Procedure - Sex Offenders and Possession of Child
 Pornography - Penalties and Registration Requirements**

This bill requires a registrant on the State sex offender registry to regularly participate in and pay for specified psychological counseling services and provide specified information regarding the services in a required registration statement. The existing penalties for failing to register on the sex offender registry are applied to knowingly failing to participate in the required psychological counseling services.

The bill also repeals the misdemeanor penalties for possession of a visual representation of a child younger than age 16 who is engaged in specified sexual acts. Under the bill, a first-time offender of this crime commits a felony with a maximum imprisonment penalty of 10 years and/or a fine of \$10,000.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$295,700 in FY 2018 for the Department of Public Safety and Correctional Services (DPSCS) to update the Sex Offender Registry and hire staff to establish and maintain minimum standards for psychological counseling services. Future years reflect annualization. Other affected State entities can implement the bill with existing resources. Potential minimal increase in general fund revenues due to increased fines from the expansion of the misdemeanor failure to register offense.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	295,700	200,200	178,100	186,100	194,500
Net Effect	(\$295,700)	(\$200,200)	(\$178,100)	(\$186,100)	(\$194,500)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential significant increase in expenditures for some jurisdictions to handle the additional responsibilities related to registrations. Potential minimal increase in local incarceration expenditures. Potential minimal increase in local revenues from fines for those cases heard in the circuit courts. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary: A sex offender registrant must regularly participate in and pay for specified psychological counseling services that meet the minimum standards established by DPSCS. A registrant must (1) begin participation in the required psychological counseling services within 30 days of the registrant's first in-person registration with local law enforcement and (2) continue regular participation in those services until the registrant has completed the required term of registration. DPSCS must adopt regulations establishing minimum standards for (1) the type of required psychological counseling services and (2) the frequency at which a registrant must attend the required psychological counseling services.

Unless it is the registrant's first registration statement, the registrant's registration statement must include the name, address, and telephone number of the individual or individuals from whom the registrant has received psychological counseling services since the registrant's last registration.

Current Law: A person may not knowingly possess and intentionally retain a film, videotape, photograph, or other visual representation showing an actual child younger than age 16 (1) engaged as a subject of sadomasochistic abuse; (2) engaged in sexual conduct; or (3) in a state of sexual excitement. A violator is guilty of a misdemeanor and subject to maximum penalties of a fine of \$2,500 and/or five years imprisonment for a first violation. Second and subsequent violations are classified as felonies and are subject to maximum penalties of a fine of \$10,000 and/or 10 years imprisonment.

It is an affirmative defense to prosecution if the person promptly and in good faith took reasonable steps to destroy each visual representation or reported the matter to a law enforcement agency.

Sex Offender Registration: Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment under specified circumstances, 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. The registry is maintained by DPSCS.

The federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994 incentivized all states to register sex offenders, sexually violent predators, and offenders who commit certain crimes against children. The federal government conditioned continued receipt of federal public safety monies upon compliance. 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), also made federal funds contingent upon additional enactments by the states.

In 2010, Maryland's sex offender registration laws were substantially revised to comply with SORNA and to 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. If a Tier I sex offender meets specified requirements, the registration term may be reduced to 10 years.

A listing of juvenile sex offenders must also be maintained by DPSCS, which is accessible only by law enforcement personnel for law enforcement purposes.

For all sex offender registrants in the State, a registration statement must include numerous items of identifying information related to the registrant, as well as information about the intended residence, vehicles owned or used, fingerprints, and other elements, as specified.

If the registrant is determined to be a sexually violent predator, the registration statement must also include the anticipated future residence, if known at the time of registration, and documentation of treatment received for a mental abnormality or personality disorder.

Within three days after obtaining a sex offender registration statement, the supervising authority must send a copy of the registration statement with the attached fingerprints, palm prints, and updated digital image of the registrant to the local law enforcement unit in each county where the registrant will reside or habitually live or where a registrant who is not a resident is a transient or will work or attend school.

A local law enforcement unit that receives a notice from a supervising authority must send a copy of the notice to the police department, if any, of a municipal corporation if the

registrant (1) is to reside or habitually live in the municipal corporation after release; (2) escapes from a facility but resided or habitually lived in the municipal corporation before being committed to the custody of a supervising authority; or (3) is to change addresses to another place of residence within the municipal corporation.

Additional residency notification requirements include the following:

- As soon as possible, but not later than three working days after receipt of a registrant's change of residence or change in the county in which the registrant habitually lives, the local law enforcement unit must notify DPSCS of the change.
- As soon as possible, but not later than three working days after receipt of such a notice, the local law enforcement unit must give notice to DPSCS of the registrant's intent to change residence, a county in which the registrant habitually lives, vehicle or license plate information, electronic mail or Internet identifiers, or landline or cellular phone numbers.

A registrant may not knowingly fail to register, knowingly provide false information of a material fact required for the registry, knowingly fail to provide any information required to be included in a registration statement, or knowingly fail to provide written notice regarding change of residence, vehicle, legal change of name, or change in employment or enrollment at a higher education institution. A first offense is a misdemeanor subject to maximum penalties of three years imprisonment and/or a \$5,000 fine. A second or subsequent offense is a felony subject to maximum penalties of five years imprisonment and/or a \$10,000 fine.

Background: In fiscal 2016, the Division of Correction had an intake of 23 persons with at least one conviction for the specific offense of child pornography. There were 106 probation intakes for the offense in fiscal 2016.

As of January 2017, there are currently approximately 7,000 registrants on the sex offender registry as shown in **Exhibit 1**. Of the 7,000 registrants, approximately 2,300 are under community supervision.

Exhibit 1
Registrants on Sex Offender Registry

Lifetime	4,762
25 years	751
15 years	798
10 years	565

Source: Department of Public Safety and Correctional Services

State Expenditures:

Department of Public Safety and Correctional Services: General fund expenditures increase by at least \$295,664 in fiscal 2018 for DPSCS, which accounts for the bill’s October 1, 2017 effective date. This estimate reflects the cost of hiring one contractual licensed forensic psychologist to develop minimum standards for the psychological counseling services required by the bill, as well as one full-time clinical evaluation and credentialing administrator and one full-time clinical evaluator-correctional psychologist to evaluate the individuals from whom a registrant has received psychological counseling services to ensure that the individuals meet the minimum standards set by DPSCS. It includes salaries, fringe benefits, one-time start-up costs (including computer programming costs), and ongoing operating expenses. The information and assumptions used in calculating the estimate are stated below.

- To implement the bill’s provisions requiring the adoption of regulations establishing minimum standards for the type of psychological counseling services that a registrant must receive and the frequency at which a registrant must attend those services, DPSCS advises that one full-time forensic psychologist specializing in sex offender treatment is needed. However, given that standards for the type of psychological counseling services do not require continuous updating, the Department of Legislative Services assumes that the bill’s requirements can likely be implemented with one contractual forensic psychologist.
- Because a registrant is required to register every three to six months, (depending on the tier in which the individual is registered) in order for DPSCS to be able to conduct the required evaluations as specified in the bill, one clinical evaluation and credentialing administrator and one clinical evaluator-correctional psychologist are necessary.
- To implement the bill’s additional requirements for a registration statement of a registrant, DPSCS must also make changes to the sex offender registry at a one-time cost of approximately \$61,250.

Regular Positions	2
Contractual Positions	1
Salaries and Fringe Benefits	\$124,791
Contractual Salary and Fringe Benefits	94,297
Computer Programming	61,250
Operating Expenses	<u>15,326</u>
FY 2018 Minimum DPSCS Expenditures	\$295,664

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

General fund expenditures may also increase for the Division of Parole and Probation (DPP) to hire additional agents for increased caseloads as a result of the bill's requirements. By eliminating the misdemeanor penalty provisions for possession of child pornography, individuals convicted of the offense may be subject to longer sentences and longer periods of supervision in the community on parole or mandatory release supervision. In addition, the lack of waiver of the requirements for psychological counseling services for indigent registrants may result in additional parole violations by registrants unable to pay for such services and increased caseloads for DPP. The current annual cost of a new parole or probation agent (including salary, fringe benefits, and operating expenses) is approximately \$78,522. The estimated cost for supervising an offender for one year is approximately \$2,129.

In addition, general fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities for longer periods of time. The number of people subjected to longer incarceration periods due to felony convictions for child pornography or expansion of the failure to register offense is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,600 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 State inmate (including variable health care costs) is about \$800 per month. Excluding all health care, the average variable costs total \$210 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 a State correctional facility. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person had served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility; beginning October 1, 2017, counties may receive the additional \$45 per day grant for inmates sentenced to the custody of the State who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Judiciary: Altering the application of a crime from a misdemeanor to a felony may mean that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

The Judiciary advises that there may be an increase in jury trials and appeals due to the elimination of the misdemeanor penalty provisions for possession of child pornography. There may also be an increase in violation of probation and subsequent hearings due to the possibility that a registrant is not able to afford the required psychological services and would be entitled to a hearing for the violation. While the number of additional cases filed as a result of the bill is unknown, the bill is not expected to have a significant impact on the Judiciary's caseload. Further, changes are necessary to the Judiciary's Notice of Registration for Court Supervised Registrants form as a result of the bill's requirements; however, any form changes can be handled with existing resources.

Office of the Public Defender: The Office of the Public Defender (OPD) advises that the bill's provisions may lead to additional litigation and increased workloads; however, the degree of any increase depends on the number of additional cases as a result of the bill's provisions. It is assumed that OPD can handle any increase with existing resources.

Maryland State Commission on Criminal Sentencing Policy: The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) advises that updates to the Maryland Sentencing Guidelines may be necessary as a result of the bill's new offense and penalty structure change. However, any impacts on MSCCSP related to revising the guidelines are anticipated to be minimal and absorbable within existing resources, as this is a routine function for MSCCSP.

Local Expenditures: St. Mary's County advises that the bill's requirements require an additional employee. Although several other local jurisdictions that were contacted advise that the bill's requirements are not likely to have a fiscal or operational impact, it is the local law enforcement unit where the sex offender is a registrant or transient, or habitually lives, that is responsible for collecting and transmitting the information from the initial registration of a sex offender. In addition, a registrant must register in person every three to six months, depending on the tier in which the individual is registered, with a local law

enforcement unit for the duration of the term of registration. Any new information required to be entered for a required registration statement is the responsibility of the local law enforcement unit. Thus, local expenditures may increase, potentially significantly, in some jurisdictions to hire staff to handle the additional workload.

Expenditures may increase minimally as a result of the expansion of the existing incarceration penalties for the offenses affected by the bill. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in a local facility; beginning October 1, 2017, counties may receive the additional \$45 per day grant for inmates sentenced to the custody of the State who receive reentry or other prerelease programming and services from a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: SB 223 (Senator Lee, *et al.*) - Judicial Proceedings.

Information Source(s): Montgomery and St. Mary's counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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