

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 638
Judiciary

(Delegates Grammer and Arikan)

Juveniles - Sexual Offenses - Registration and Reporting Requirements

This bill expands the offenses that require an individual adjudicated delinquent to register with the State sex offender registry or juvenile sex offender registry to include *any* act prohibited under § 3-307 of the Criminal Law Article (third-degree sexual offense). The bill also requires a juvenile sex offender registrant to remain on the registry until the registrant reaches age 21 if the juvenile court’s jurisdiction over the registrant terminates before that time. Finally, the bill includes a violation of § 3-307 of the Criminal Law Article as a reportable offense.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: Potential increase in local expenditures *if* local school systems cannot provide out-of-school instruction for juvenile registrants for longer amounts of time with existing budgeted resources. Revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Current Law:

State Sex Offender Registry

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 the Department of Public Safety and Correctional Services (DPSCS).

Statute also requires a person to register with State sex offender registry for an act committed as a minor if certain conditions are met. Specifically, a person who has been adjudicated delinquent for specified sexual offenses (*including a violation of § 3-307(a)(1) or (2) of the Criminal Law Article*) must register with their supervising authority if (1) the person was a minor who was at least age 13 at the time the delinquent act was committed; (2) the State's Attorney or the Department of Juvenile Services (DJS) requests that the person be required to register; (3) 90 days prior to the time the juvenile court's jurisdiction over the person terminates, the court, after a hearing, determines under a clear and convincing evidence standard that the person is at significant risk of committing a sexually violent offense or an offense for which registration as a tier II or tier III sex offender is required; and (4) the person is at least age 18.

"Supervising authority" means an agency or person that is responsible for collecting the information for the initial registration of a sex offender and includes, among others, the Secretary of DJS, if the registrant was a minor at the time the act was committed for which registration is required, and the local law enforcement unit where the sex offender is a resident if the sex offender is not under the supervision, custody, or control of another supervising authority.

Registry of Juvenile Sex Offenders

The State maintains a registry of juvenile sex offenders that is accessible only by law enforcement personnel for law enforcement purposes. A person must be included in the registry of juvenile sex offenders if (1) the person has been adjudicated delinquent for an act that, if committed by an adult, would constitute a violation of specified sexual offenses in the Criminal Law Article and (2) the person was a minor who was at least age 14 at the time the delinquent act was committed. When the juvenile court's jurisdiction over the juvenile registrant terminates, the juvenile registrant must be removed from the registry.

The qualifying offenses for inclusion in the juvenile sex offender registry are:

- § 3-303 (first-degree rape), § 3-304 (second-degree rape), or § 3-307(a)(1) or (2)(specified third-degree sexual offenses); or

- § 3-305 (first-degree sexual offense) or § 3-306 (second-degree sexual offense) of the Criminal Law Article as those sections existed before October 1, 2017.

Criminal Law Article § 3-307 – Third-degree Sexual Offense

Pursuant to § 3-307(a)(1) of the Criminal Law Article, a person may not engage in sexual contact with another without the consent of the other and (1) employ or display a dangerous weapon or a physical object the victim reasonably believes is a dangerous weapon; (2) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime; (3) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; or (4) commit the crime while aided and abetted by another.

Under § 3-307(a)(2) of the Criminal Law Article, a person may not engage in sexual contact with another if the victim is, and the person performing the act knows or reasonably should know the victim is, a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual.

Pursuant to § 3-307(a)(3) of the Criminal Law Article, a person may not engage in sexual contact with another if the victim is younger than age 14, and the person performing the sexual act is at least 4 years older than the victim. Section 3-307(a)(4) prohibits a person from engaging in a sexual act with another if the victim is age 14 or 15 and the person performing the act is at least age 21. Under § 3-307(a)(5), a person may not engage in vaginal intercourse with another if the victim is age 14 or 15 and the person performing the act is age 21. Third-degree sexual offense is a felony punishable by imprisonment for up to 10 years.

Education of Registered Sex Offenders

Subject to limited exceptions, § 11-722 of the Criminal Procedure Article prohibits a sex offender registrant or juvenile registrant from knowingly entering onto real property that is used for public or nonpublic elementary or secondary education or on which is located certain child care homes or a licensed child care institution, as specified by law. As a result, each local school board must develop and adopt a policy that enables a registered sex offender who is a student to receive an education. The State Board of Education (SBE) must develop and adopt guidelines and a model policy to assist local school boards with the development of their respective policies.

Registered sex offenders who are students may receive an education in any of the following locations:

- a location other than a public or nonpublic elementary or secondary school by participating in (1) a Home and Hospital Teaching Program for Students or (2) a program approved by the local school board, as specified;
- a Regional Institute for Children and Adolescents; or
- a nonpublic educational program, as specified.

Home and Hospital Instruction

Under State regulations, local school systems must make instructional services available to students who are unable to participate in their school due to a physical or emotional condition, including but not limited to kidney failure, cancer, asthma, cystic fibrosis, sickle cell anemia, depression, and bipolar disorder. Instructional services must be available to all students during convalescence or treatment time in a medical institution or therapeutic treatment center and at the student's place of residence. Each local school system must determine the manner in which instructional services are delivered, develop safety procedures, and develop a review process to resolve any disagreement that arises. Instructional services must be delivered by an individual with at least a bachelor's degree. Regulations further specify options for the delivery of instruction and requirements for the duration of instruction.

Virtual Schools

Chapter 804 of 2023 defines a virtual school as a public school established by a local board or multiple local boards that uses one or more technologies to deliver instruction to its students entirely or primarily online and in which students and instructors participate remotely from separate locations. It authorizes local school systems, subject to the approval of the Maryland State Department of Education (MSDE), to establish one virtual school for the elementary, middle, and high school grade bands. Chapter 804 includes additional requirements for teachers employed by virtual schools, students enrolled in virtual schools, and for curricula and services provided by virtual schools. MSDE can revoke approval of a virtual school under specified conditions.

Reportable Offenses

When a student is arrested for a "reportable offense" or an offense related to the student's membership in a criminal organization, the law enforcement agency making the arrest *must* notify (1) the local superintendent; (2) the school principal; and (3) if appropriate, the school security officer. The law enforcement agency may also notify the State's Attorney. The State's Attorney must notify either the local superintendent or the school principal of the disposition of the reportable offense.

A reportable offense is an offense that (1) occurred off school premises; (2) did not occur at an event sponsored by the school; and (3) includes a crime of violence, as specified in current law, and numerous other specified weapons-, drug-, assault-, and theft-related offenses. If a student is removed or excluded from the student's regular school for a reportable offense, the student's attorney (if applicable) must be invited to participate in a conference between the student or the student's parent or guardian and the principal or county superintendent.

Except by order of a juvenile court with good cause shown, information about a student's arrest is confidential and may not be redisclosed, except as specified, and may not be part of the student's permanent educational record. A superintendent may share the information as part of a confidential file with another superintendent or a nonpublic school in the State in which the student has enrolled. The information shared must include information regarding any educational programming and related services provided to the student. SBE is required to adopt regulations to ensure that information obtained by local superintendents, principals, or school security officers is used only for specified educational purposes and is destroyed when the student graduates, otherwise permanently leaves school, or turns 22 years old, whichever comes first.

Under State regulations, if a student in a public school is arrested for a reportable offense involving rape or a sexual offense that involves another student who attends the same school or rides the same school bus, the local superintendent and school principal must consider prohibiting the arrested student from attending the same school or riding the same school bus. In determining whether to separate the student, the superintendent and principal must consider whether the prohibition is necessary or appropriate to protect the physical or psychological well-being of the alleged victim. If the student is later convicted or adjudicated delinquent for the rape or sexual offense, the student may not attend the same school or ride on the same school bus as the victim.

Local Expenditures: Under current law, an individual is removed from the juvenile sex offender registry when the juvenile court's jurisdiction terminates. In some instances, this may be while the individual is still a student in an elementary or secondary school. The bill requires juvenile registrants to remain on the registry until age 21, meaning that these students will have to receive out-of-school instruction for longer amounts of time. Local expenditures may increase *if* local school systems cannot accommodate this instruction with existing resources. Any such impact varies by jurisdiction and depends on the number of registrants in the school system, the additional time during which those students must receive out-of-school instruction, and existing resources.

Virtual learning, currently allowed under State law, may address compliance with out-of-school instruction. There are 24 local education agencies in the State. For context, MSDE reported there were 10 elementary, 15 middle school, 18 high school, 11 all school

levels, and 19 any school level virtual programs offered by local education agencies in the State during the 2023-2024 school year.

According to news reports, DPSCS which maintains the registry, reported that 112 individuals appeared on the juvenile sex offender registry statewide as of December 15, 2024.

Additional Comments: The bill removes a requirement that specified violations require registration as an adult sex offender if the violation involved conduct described in § 3-301(e)(2) of the Criminal Law Article. That provision appears to be an attempt to repeal an incorrect cross reference, since § 3-301(e)(2) currently states that “[s]exual contact” does not include: (i) a common expression of familial or friendly affection; or (ii) an act for an accepted medical purpose.”

Also, while the bill adds violations of § 3-307(a)(3) through (a)(5) to the offenses for which *juvenile* sex offender registration is required, § 3-307(a)(4) and (5) require that the alleged perpetrator be *at least age 21*.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Harford, Montgomery, and Talbot counties; Judiciary (Administrative Office of the Courts); Department of Juvenile Services; Department of Public Safety and Correctional Services; Maryland State Department of Education; Fox 45 News; Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2025
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