



## POSITION ON PROPOSED LEGISLATION

**BILL:** SB 333- Criminal Procedure – Sexual Offenders – Lifetime Supervision

**POSITION:** Unfavorable

**DATE:** February 2, 2021

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 333.

Sex offender registries not only fail to promote public safety, but also come at an extreme cost both to individual registrants and to the community. SB 333 is not only ineffective but also ill-advised from both a public safety and a public policy standpoint.

Those convicted or accused of sexual offenses are some of the least likely to recidivate, yet face the most severe restrictions on their liberty following the completion of their sentences because of the registration requirements. This comes at great cost to both individual registrants (who face a lifetime of punishment on the sex offender registry) and the community, which must bear the costs of increased unemployment, homelessness, and other issues that come with the unnecessary, permanent social ostracization of this group. A 2019 Bureau of Justice Statistics report confirms that, within 9 years of release, less than 67% of people convicted of sexual assault were rearrested for any offense, making rearrest **20% less likely** for this group than all other offense categories combined (84%).<sup>1</sup> The same study also found that those convicted of rape or sexual assault were drastically less likely than other former offenders to commit the same crime again following release (7.7% as compared to 24% for property crimes, 18.5% for drug-related crimes, and 59% for “public order” crimes). Studies also show that juveniles convicted of sexual offenses do not have an elevated risk of committing new sex crimes as compared with other juvenile offenders (a 2007 study revealed that just 17 sex offenders were charged with a new sex offense as compared with 101 non-sex offenders).<sup>2</sup>

The restrictions and requirements of sex offender registration come at immense cost to individual registrants, law enforcement, and the community with minimal return. Many of those convicted of sex offenses are barred from accessing public benefits, jobs, housing, services, and even many shelters, and thus are funneled into low-income neighborhoods or outright homelessness. Sex offender registries must also be monitored and maintained

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<sup>1</sup> Wendy Sawyer, *BJS Fuels Myths About Sex Offense Recidivism, Contradicting Its Own New Data*, PRISON POLICY GROUP, June 6, 2019, available at <https://www.prisonpolicy.org/blog/2019/06/06/sexoffenses/>.

<sup>2</sup> *Id.*

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at great cost to the state and to law enforcement. Registration requires in-person check-ins, oversight of social media, electronic mail, home visits and verifications, vehicle registration and monitoring, electronic database maintenance, facilitation of public access to certain records, and much more. A 2009 study estimated that the cost to Maryland for first-year implementation and compliance with the Sex Offender Registration and Notification Act, a federal law setting baseline requirements for statewide registry systems, was \$9.1 million.<sup>3</sup> The registry does little (if anything) to prevent or treat the underlying causes of interpersonal violence, sexual abuse, and sexual assault. It comes at exorbitant cost to both law enforcement and the community. Sex offender registries are thus ineffective and ill-advised, from both a public safety and public policy standpoint.

These registries are sold as a preventive tool; however, most sex offenses are committed by first-time offenders who are not on the registry. Obviously, the existence of the registry does nothing to prevent those crimes. A 2018 study examining the effect of Megan's Law in New Jersey concluded that legislation imposing registration “does not have a demonstrable effect on future offending.”<sup>4</sup> A New York study similarly found no evidence that registration and notification laws were effective at reducing future sex crimes.<sup>5</sup> A South Carolina study funded by the Department of Justice came to the same conclusion.<sup>6</sup> Registration laws can actually make communities *less* safe in a variety of ways. Sex offender notification laws have been shown to increase recidivism among some sex offenders.<sup>7</sup> Even for the vast majority of registrants who never commit another sex offense, the onerous restrictions described above impede stability, rehabilitation, and full reintegration into society, making them more likely to commit offenses related to survival. Finally, registration and notification laws put registrants at severe risk of becoming victims of vigilante violence and even murder.<sup>8</sup>

In addition to the general harms of sex offender registries, this legislation would also unnecessarily expand the punitive scope of lifetime registration to categories of convictions that were intentionally excluded. Lifetime registration is already required for those convicted of first and second degree rape, and for sexual abuse of a minor when the victim is under 12 years old. The proposed legislation would require lifetime registration for someone convicted of sexual abuse of a minor regardless of that minor's age. This would expand the universe of people required to register for life to include a 19 ½ year old who engaged in a sexual act with a 15 year old if the two resided in the same

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<sup>3</sup> Justice Policy Institute, available at [http://www.justicepolicy.org/images/upload/08-08\\_fac\\_sornacosts\\_jj.pdf](http://www.justicepolicy.org/images/upload/08-08_fac_sornacosts_jj.pdf).

<sup>4</sup> Kristen M. Zgoba, Wesley G. Jennings & Laura M. Salerno, *Megan's Law 20 Years Later: An Empirical Analysis and Policy Review*, 45 CRIM. JUST. & BEHAV. 1028, 1044 (2018).

<sup>5</sup> See Jeffrey C. Sandler, Naomi J. Freeman & Kelly M. Socia, *Does a Watched Pot Boil?: A Time-Series Analysis of New York State's Sex Offender Registration and Notification Law*, 14 PSYCH. PUB. POL'Y & L. 284, 284 (2008).

<sup>6</sup> Elizabeth J. Letourneau et al., *Evaluating the Effectiveness of Sex Offender Registration and Notification Policies for Reducing Sexual Violence against Women*, Med. U. S.C., at 3-4 (Sept. 2010).

<sup>7</sup> J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J.L. & Econ. 161, 192 (2011).

<sup>8</sup> Rob Csernyik, *How Sex Offender Registries Can Result in Vigilante Murder*, VICE, March 28, 2018, available at <https://www.vice.com/en/article/ne9ew7/how-sex-offender-registries-can-result-in-vigilante-murder>.

household. The proposed legislation would also require lifetime registration for what is colloquially referred to as statutory rape. Prior to being repealed and incorporated into Criminal Law 3-304 in 2017, Criminal Law 3-306(a)(3) prohibited a person from engaging in a sexual act with someone below the age of 14 if there was an age difference greater than 4 years. In a situation where, for example, a 13 year old performed fellatio on a 17 ½ year old, once convicted that 17 ½ year old would be required to remain on the sex offender registry for the remainder of his life if this bill became law – even if the 13 year old led him to believe she was 15 or 16 years old prior to engaging in the sexual act.

As public defenders, we have witnessed the lasting harms of the sex offender registry. Our office represented a man who had consensual sexual intercourse with a 13 year old when he was still a young adult. He pled guilty to 3<sup>rd</sup> degree sex offense and although he served a relatively short sentence, he was required to register as a sex offender for life. Once convicted, he could no longer reside with his family and struggled to find permanent housing. His status on the registry prevented him from working in his chosen field, even though that field required no contact with children. It also prohibited him from seeing his two children perform in the school play. More than a decade after he finished serving his sentence, he died alone in a motel of a heroin overdose.

Maryland's registration statute also criminalizes and punishes what should otherwise be considered reform-minded and productive behavior in society. Take, for example, the case of William.<sup>9</sup> William pled and was convicted of a third degree sexual offense which, unbeknownst to him at the time, resulted in lifetime registry as a Tier III offender. William completed a lengthy prison sentence, successfully completed a five-year term of sex offender probation (which included polygraph examinations, a year-long treatment course, and very stringent reporting requirements), and started a new life. He got a job, started a family, and got a house. He did all of the things that society would strive and demand someone achieve after satisfying the punitive aspect of a sentence.

He also started registering as a sex offender. He would check in with the police every six months, as mandated by law. Over the course of 15 years, he never missed a date: never failed to report a new car, an email address, a social media account--all of the myriad requirements that are demanded of this group. Then, one day, he got a call from his children's school, asking if he would attend a meeting regarding his daughter's academic progress. His daughter had been struggling, but of late was earning straight A's, and the teaching staff wanted to take the moment to commend her achievement while also planning for the future. William was proud, and excited to attend. On the day of the meeting, he arrived early, showed and scanned his ID at the front door, and was welcomed into the meeting. Then, within a few minutes, a man came in and told him he needed to leave. "There are certain laws," the man said, that prevented his participation in the meeting, despite his invitation to the same. William made one mistake--one mistake in 15 years--and because of that, he was charged, prosecuted, and faced a three-year maximum penalty for violating Maryland's registration laws: for doing everything we would

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<sup>9</sup> All names and other identifying information have been changed to protect the parties' privacy.

want a good parent to do. Suddenly, everything was at risk again, his job, his home, and access to his family.

We mention William's case, not because it is an anomaly, but because it is the norm. The registration statute is overbroad, overpunitive, and overreaching. This is why we oppose SB 333 and any effort to expand it, because people like William deserve to be good parents to their children, and to be productive members of society.

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For these reasons, the Maryland Office of the Public Defender respectfully urges an unfavorable report on Senate Bill 333.