

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 381
Judiciary

(Delegate Stifler, *et al.*)

Judicial Proceedings

Public Safety - Offender Registry - Frequency of Photograph

This bill alters the time requirement for an updated photograph to be included in the registration of sexual offenders in the Crimes Against Children and Sexual Offender Registry. Specifically, the bill requires that the photograph of all sexual offenders must be updated every six months. The current requirement for photograph updating for all categories of sexual offenders is at least once each year.

Under provisions relating to the sexual offender notification requirements of local law enforcement units, every six months a law enforcement unit must send a child sexual offender's and sexually violent predator's updated photograph to the Department of Public Safety and Correctional Services. The bill also clarifies that all requirements for photographs under sexual offender registration provisions means updated versions.

Fiscal Summary

State Effect: None. The bill's requirements could be handled with the existing budgeted resources of DPSCS.

Local Effect: None. Because the bill's requirement for updating photographs tracks the timeline for the re-registration of all categories of covered offenders, the requirements should be able to be handled with the existing budgeted resources of local law enforcement units.

Small Business Effect: None.

Analysis

Current Law: Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment, 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. Juveniles who are adjudicated as adults and convicted for crimes that require registration are included in the registry. Juveniles who are adjudicated delinquent for these crimes through the juvenile court system are not included in the registry.

Maryland has four categories of persons convicted of sexual offenses: (1) a child sexual offender; (2) an offender; (3) a sexually violent offender; and (4) a sexually violent predator.

“Offender” means a person who is ordered by a court to register and who • has been convicted of child kidnapping; • kidnapping; • fourth degree sexual offense, if the victim is under 18; • false imprisonment, if the victim is under 18 and the person is not the victim’s parent; • a crime that involves soliciting a person under 18 to engage in sexual conduct; • production or distribution of child pornography; • prostitution or related criminal prohibitions if the intended prostitute or victim is under 18; • any crime that involves conduct that by its nature is a sexual offense against a person under 18; • an attempt to commit any of these offenses; or • has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in Maryland, would constitute one of these crimes.

“Child sexual offender” means a person who • has been convicted of sexual abuse of a minor; • has been convicted of first or second degree rape or first, second, or third degree sexual offense involving a child under age 15; • has been convicted of fourth degree sexual offense involving such a child and has been ordered by the court to register under these provisions; or • has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in this State, would constitute one of these crimes.

“Sexually violent predator” means a person who • is convicted of a sexually violent offense; and • has been determined to be at risk of committing another sexually violent offense. Also included under this definition are persons who are or were required to

register every 90 days for life under the laws of another state or a federal, military, or Native American tribal jurisdiction.

“Sexually violent offender” means a person who • has been convicted of a sexually violent offense; or • has been convicted of an attempt to commit a sexually violent offense.

Sexual offenders are required to register, every three or six months, with the Crimes Against Children and Sexual Offender Registry for a term of either 10 years or life depending on the offense. Registration must include a photograph, which must be updated at least annually. The registry is operated by the Sexual Offender Registry unit of the Department of Public Safety and Correctional Services. Under the State’s sexual offender registration laws, a State’s Attorney may request that a sexual offender be designated a sexually violent predator. Lifetime registration is required for • sexually violent predators; • persons convicted of a sexually violent offense; • persons convicted of child abuse for commission of a sexual act involving penetration of a child under age 12; and • recidivist sexual offenders.

Background: Following several high-profile sexual assault cases, far-reaching State and federal legislation has been enacted to more strongly punish and more closely monitor sex offenders. The federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 248-109), calls for conformity by the states with various aspects of sex offender registration provisions, including registration by specified juvenile offenders, specific information to be collected from registrants, verification, duration of registration, access to and sharing of information, and penalties for failure to register. The U.S. Attorney General is required by the Act to issue guidelines and regulations to interpret and implement the legislation. Proposed guidelines were published on May 30, 2007. The period for public comment on the proposed guidelines ended on August 1, 2007. Final guidelines have not yet been published. Under SORNA, July 27, 2009 is the deadline for substantial implementation of SORNA’s requirements for all registration jurisdictions.

Until the final guidelines/regulations are issued, definitive State action necessary for compliance (including statutory changes) is not entirely clear. However, under the proposed guidelines, it appears that several modifications to current State law would be needed to meet the new federal standards.

Under SORNA, sex offenders will be required to provide the following information to the sex offender registry:

- names, including all aliases used by the sex offender;

- date of birth, including both actual date of birth and any false date(s) of birth used by the sex offender;
- all Internet identifiers and addresses, *e.g.*, e-mail and instant messaging addresses;
- all telephone numbers including both land lines and cell phone numbers;
- Social Security Numbers, including both valid governmentally assigned SSNs and any other SSNs used by the sex offender;
- residence address;
- other residence information (*i.e.*, where the sex offender has a home or habitually lives) in relation to sex offenders who lack a residence address for any reason (*e.g.*, homelessness, or living in a house in a rural or tribal area that has no street address);
- temporary lodging information about any place in which the sex offender is staying for seven or more days, including identifying the place and the period of time the sex offender is staying there;
- passport and immigration document information;
- employer's name and address;
- other employment information concerning the places where the sex offender works, if the sex offender has no fixed place of employment, such as information about normal travel routes or the general area(s) in which the sex offender works;
- professional licenses;
- school name and address;
- vehicle information including description and license plate or registration number;
- physical description of the sex offender;
- text of the registration offense or offenses;
- criminal history and other criminal justice information;
- current photograph;
- fingerprints and palm prints;
- DNA information; and
- driver's license or identification card.

SORNA requires that a sex offender appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which that offender is required to be registered not less frequently than:

- annually for a tier I sex offender;
- every six months for a tier II sex offender, and

- every three months for a tier III sex offender.

Sex offenders must carry out this schedule of personal appearances in all jurisdictions where they reside, are employed or attend school. As with other SORNA requirements, jurisdictions may require in person appearances by sex offenders with greater frequency than the minimum required by SORNA.

The SORNA provisions were made retroactive. The Act applies to all sexual offenders, including those offenders convicted prior to the enactment of SORNA (July 27, 2006) or prior to a particular jurisdictions' implementation of the SORNA requirements. Jurisdictions are required to register pre-SORNA convicted sex offenders in conformity with the SORNA standard if they are currently registering, under supervision or incarcerated or if the sex offender reenters the system because of a new conviction (whether or not the new crime is a sex offense).

According to the National Conference of State Legislatures (NCSL), in 2007, at least six states – Delaware, Florida, Louisiana, Mississippi, Nevada, and Ohio – revised sex offender laws in an effort to comply with the Walsh Act. The Justice Department rejected Louisiana's efforts as not enough, and has yet to rule on the other states' laws, many of which went into effect Jan. 1. Justice Department, noted that states can apply for a pair of one-year extensions under the act if they fail to comply by next year's deadline.

Until the final guidelines/regulations are issued, definitive State action necessary for compliance with SORNA (including statutory changes) is not entirely clear. Failure to comply with SORNA puts a state at risk to lose 10% of Byrne grants, which all of the states use to pay for such things as drug task forces, anti-gang units, police overtime, and other law enforcement activities. But funding for this formula grant program in fiscal 2009 has been cut from its \$520 million fiscal 2008 appropriation level to zero and replaced with a \$200 competitive grant program. While it is unclear how this change will affect the penalty provisions of SORNA, Maryland could risk the loss of between zero and about \$200,000 for noncompliance.

NCSL recently released a policy statement – approved unanimously by more than 7,000 state lawmakers – seeking congressional amendments to revise the Walsh Act. NCSL has also requested the return to full (\$520 million) funding levels for the Byrne grant program.

The sex offender registry has had a total growth rate of 400-600 new registrants per year.

Additional Information

Prior Introductions: HB 267 of 2007 had a hearing before the House Judiciary Committee and had no further action taken on it.

Cross File: None.

Information Source(s): Prince George's County, Garrett County, Anne Arundel County, Department of Public Safety and Correctional Services, Department of Legislative Services

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