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April 29, 2010

The Honorable Martin O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

RE: *Senate Bills 280 and 854 and House Bills 473 and 936*

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency, Senate Bill 280 and House Bill 473, identical bills entitled "Criminal Procedure - Sexual Offenders - Lifetime Supervision," and Senate Bill 854 and House Bill 936, identical bills entitled "Crimes - Sex Offenders - Notification, Registration, and Penalties." We write to discuss a conflict between the two bills that may be addressed by signing Senate Bill 280 and House Bill 473 *after* Senate Bill 854 and House Bill 936. We also discuss an interpretive issue in Senate Bill 854 and House Bill 936, and discuss typos in each bill.

Senate Bill 280 and House Bill 473 eliminate extended parole supervision imposed by the Parole Commission for sex offenders and replace it with lifetime supervision, which will be imposed by a court, and administered by the Department of Public Safety and Correctional Services ("the Department"). To accomplish this aim, the bills delete the current definition of "extended parole supervision offender" and replace it with a list of persons subject to lifetime sexual offender supervision in PS § 11-723(a). The new list in PS § 11-723(a) mirrors the list that had been in the definition of "extended parole supervision offender." Senate Bill 854 and House Bill 936 expand and reorganize the offenses that require registration as a sex offender, and classify them by tiers (Tier I, Tier II, and Tier III) rather than by the terms "child sexual offender," "sexual offender," and "sexually violent offender." As discussed below, the term "sexually violent predator" is retained. To effect this change, Senate Bill 854 and House Bill 936 amend the definition of "extended parole supervision offender" that is repealed by Senate Bill 280 and House Bill 473 to reflect the new classification system. The change in terminology is not substantive. Because Senate Bill 280 and House Bill 473 use language that is consistent with the new system in Senate Bill 854 and House Bill 936,

and achieve the same result, it is our view that Senate Bill 280 and House Bill 473 should be signed after Senate Bill 854 and House Bill 936, thus giving effect to the substantive change in Senate Bill 280 and House Bill 473.

The amendments to Senate Bill 854 and House Bill 936 make numerous changes to the sexual offender registration requirements, including who must register, how often they register, and the information that must be provided. As mentioned above, these changes involve a reorganization of the categories of registrants. Under the current law, the classes of registrants are child sexual offender, offender, sexually violent offender, and sexually violent predator. The bills instead use the terms Tier I, Tier II, and Tier III.¹ The bills do not eliminate the category of sexually violent predator, but the continued meaning of the term is unclear. The definition and meaning of the term is retained, but it is not included with Tier I, Tier II, and Tier III offenders in the list of categories of those who must register. It is also not included in the list of those in the definition of the term "sex offender," which is used in provisions throughout the subtitle as amended. They are included in the provisions on registration of the homeless as a fourth category, and § 11-707(a)(3) says that they are to register every three months with the local law enforcement agency for the time period set in § 11-707(a)(4). The term has, however, been amended out of § 11-707(a)(4). They are also included in § 11-709(a), which relates to information that the local law enforcement units are to send on to the Department, and § 11-706 includes certain additional information that must be provided by sexually violent offenders.

It is our view that, under the new bill, sexually violent predator is not a separate category of registrants, but a subcategory of Tier III offenders. All of the "sexually violent offenses" that can lead to sexually violent offender status are Tier III offenses. Thus, the sexually violent offenders are subject to all of the provisions of the subtitle applicable to Tier III offenders, plus those that specifically apply to sexually violent predators.

¹ These categories are not comparable to the old ones. The Fiscal and Policy Note on the bills reflect that the new categories are designed to bring the registration provisions into compliance with the federal Sex Offender Registration and Notification Act ("SORNA," also known as the "Adam Walsh Act"). The Fiscal and Policy Note further states that "The federal Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office) would make the final determination as to whether this bill brings Maryland into substantial compliance with SORNA."

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On page 4, line 19 in Senate Bill 280 and page 4, line 24 in House Bill 473, there is a reference to the "office of the Attorney General" in the source law. "Office" should be capitalized. This can be corrected in next year's corrective bill.

On page 15, line 26 in Senate Bill 854 and page 12, line 19 of House Bill 936, there is a reference to "misleading domain names on the Internet under 18 U.S.C. § 2252C." The correct section is 18 U.S.C. § 2252B. This also can be changed in next year's corrective bill.

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable Michael E. Busch
The Honorable John P. McDonough
Joseph Bryce
Karl Aro