

Maryland Sexual Offender Advisory Board

2014 Report to the Maryland General Assembly



Report required by Public Safety Article § 1-401(h)

(MSAR # 8425)

The Honorable Martin O'Malley
Governor of Maryland
100 State Circle
Annapolis, Maryland 21401

Governor O'Malley:

This year the Maryland Sexual Offender Advisory Board again emphasizes the need for changes to Maryland law in the area of Lifetime Supervision for Convicted Sexual Offenders. Over the last several years, the Board reviewed and developed draft statutory language for the consideration of the Maryland General Assembly members and for your legislative team. These essential changes are needed so that the allied agencies within the criminal justice system and the treatment community may begin to properly administer the processes associated with Lifetime Supervision policy.

The Board determined that there are three specific areas in which current statutory language needs to be amended in order for the criminal justice system to adequately resolve all of the issues related to the Lifetime Supervision of Sexual Offenders. The first area of concern is that current law lacks a lawful mechanism for charging and adjudicating violations of Lifetime Supervision. This problem is of serious concern to the Board as the offenders who are currently being supervised under a Lifetime Supervision court order cannot be properly charged or adjudicated for violations of supervision.

The second area of concern is that existing law regarding the Petition for Discharge from Lifetime Supervision clouds the true purpose of the review process and is in need of clarification. The purpose of allowing an offender to petition for discharge is so that all parties to the crime, as well as those responsible for the offender's supervision, have an opportunity to demonstrate the offender's risk level to the court. Existing law does not allow for crime victims to participate in the discharge process and does not allow sufficient time for the offender to

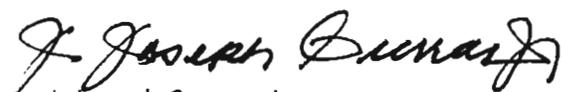
progress after a denial of discharge. Additionally, there are concerns that existing language does not give the Courts guidance in how to determine if an offender has become sufficiently “less dangerous” to be discharged from supervision.

Thirdly, existing law does not now define the steps to be taken by various criminal justice agencies in responding to a Petition for Discharge from Lifetime Sexual Offender Supervision. This could lead to confusion about various agencies responsibilities and prevent the appropriate flow of information from one agency to another.

The Sexual Offender Advisory Board has also been following the case law developments surrounding the registration of sexual offenders in Maryland. This year’s annual report provides a written summary of the Maryland Court of Appeals decisions affecting sex offender registration as well as information about who has and will be removed from the registry in the coming year.

The Sexual Offender Advisory Board will continue to meet during the year ahead to respond to requests to investigate evidence-based practices, to propose necessary modifications to existing practice, and to continue monitoring the effectiveness of our ongoing efforts to protect our communities from the destructive effects of sexual abuse.

Sincerely,



J. Joseph Curran, Jr.

J. Joseph Curran, Jr.
Sexual Offender Advisory Board, Chair

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Executive Summary

In 2014 The Maryland Sexual Offender Advisory Board met to hear reports by the board and subcommittees members, discuss the topics presented, and determine which subjects to explore in this report.

The Maryland Sex Offender Registry has been a topic of much discussion in light of the most recent Court of Appeals rulings regarding the retroactive registration and removal of convicted sexual offenders from the State and National Sex Offender Registries. The Board felt that the inclusion of a report regarding the state of the Sex Offender Registry would be important this year. This report summarizes the Court of Appeals rulings and impact of those rulings on the Sex Offender Registry.

The Board in previous years has updated the General Assembly on the need to correct aspects of the Criminal Procedure Article as it relates to the lifetime supervision of convicted sexual offenders. Unfortunately, Maryland's Lifetime Supervision laws have yet to be modified to ensure that sexual offenders can be properly managed while in the community; and so the Board has re-printed its previous report on this subject.

Activities and Accomplishments

2009

- The SOAB was fully implemented in 2009 after submitting legislation in the three previous years to modify the laws governing the Board and enhance the knowledge and skills of its membership.
- Reviewed and documented for the General Assembly the state of Sexual Offender Management and Supervision within the Division of Parole and Probation
- Reviewed and documented for the General Assembly the state of Sex Offender Registration in Maryland
- Reviewed and documented services for Victims of Sexual Assault and child Sexual Abuse

2010

- Made recommendations to the General Assembly regarding the Collaborative Containment Model of supervising sexual offenders on parole and probation
- Reviewed and began documenting various models of specialized sexual offender treatment provider certifications and guidelines
- Recommended to the General Assembly that Special Civil Commitment of Sexual Offenders not be implemented in Maryland due to lack of efficacy and cost

2011

- The Maryland Sex Offender Registry and the Department of Juvenile Services (DJS) completed training for DJS case managers in all counties on the process of registering juveniles in the public and non-public registry.
- Made recommendations to the General Assembly regarding the creation of an “Approved Provider” listing for recommending specialized sexual offender treatment providers
- Made recommendations to the General Assembly regarding a revision of the Criminal Law Article to create a non-public registry for individuals convicted of “Age-based” non-violent and non-coercive sexual offenses
- Made recommendations to the General Assembly regarding enhancing the laws and policies for convicted sexual offenders living in Nursing Homes
- The SOAB provide written testimony to the General Assembly in support of HB 1020 entitled Criminal Procedure – Sex Offender Registry
- The SOAB provided written testimony to the General Assembly in opposition to SB 533 entitled Criminal Procedure – Sexually Violent Offender in Need of Commitment

2012

- Submitted legislation to the Maryland General Assembly – Senate Bill 799/ House Bill 776 entitled Criminal Law – Sex Offenders – Statutory Sex Offense. The bill passed the Senate on the Third Reading but did not progress through House Judiciary.
- Re-recommended “approved provider” criteria for providing specialized sex offender treatment
- Made recommendations and provided draft statutory language for correcting problems with the existing Lifetime Sexual Offender Supervision laws.

2013

- Chairman Curran, on behalf of the SOAB, testified in favor of House Bill 1267 entitled Nursing Homes and Assisted Living Facilities – Sex Offenders.
- Reviewed and documented for the General Assembly the state of Sex Offender Registration in Maryland
- Reviewed and documented for the General Assembly the state of Sex Offender Supervision in Maryland
- Re-recommended and provided draft statutory language for correcting problems with the existing Lifetime Sexual Offender Supervision laws.

SEXUAL OFFENDER REGISTRATION IN MARYLAND

I. SEXUAL OFFENDER REGISTRATION - OVERVIEW

The Maryland Sexual Offender Registry Website was designed to allow members of the public to review pertinent information about those individuals with qualifying sexual offenses who reside in the areas where the user lives, works or attends school. It is one of a number of tools which community members, especially parents, can use to keep informed about individuals who may pose a threat, and thus better protect themselves and their families from victimization.

All crimes requiring registration are enumerated in the Criminal Procedure Article, §§ 11-701 through 11-722, Annotated Code of Maryland. The State has three registration tiers: Tier I offenders register for 15 years, Tier II offenders 25 years, and Tier III offenders

The screenshot shows the Maryland Department of Public Safety & Correctional Services website. The main heading is "Welcome to Maryland's Comprehensive Registered Sex Offender Website". Below this, there is a paragraph explaining the website's purpose: "The Maryland Sex Offender Registry Website is one of many important tools that families can use to protect themselves, their children, and those they care for from individuals with criminal sexual behaviors. On this site you will be able to find registered sex offenders living and working near you, be notified of registrants' movements, and explore resources that will help you to prevent and get treatment for sexual abuse." There is also a section titled "Sexual Abuse Treatment and Prevention Resources" with logos for "mcasa" and "Stop It Now!". On the right side, there is a search bar and a section titled "Registry Resources" with a list of links including "Sex Offender Registration FAQ", "Downloadable Registry Listings", and "Sex Offender Registration Category by Conviction Table".

register for life. Tier I and II offenders register twice a year and Tier III offender register four times a year with local law enforcement. Tier I offenders may have their registration term reduced to 10 years if they successfully complete parole and probation supervision, successfully complete specialized sex offender treatment, are convicted of no new sex offense crimes and are convicted of no new felonies. All registrants must provide a DNA sample to the Maryland State Police Crime Lab at the time of initial registration. Registrants must also provide fingerprints and palmprints, a list of all aliases, and vehicle information. Registrants are photographed a minimum of twice a year or when there is a change in his or her appearance. All registrants are required to register within 3 days of being released from any period of incarceration or arrest, or upon moving to the state of Maryland.

Failure register as a sexual offender is a misdemeanor under the Criminal Procedure Article, § 11-721, and is punishable by up to 3 years imprisonment and/or a \$5000 fine for a first offense. Second and subsequent offenses are felonies and are punishable by up to 5 years in prison and/or a \$10,000 fine.

In 2013, the entire sex offender registry website was redesigned. A new landing page was created, the search capabilities enhanced, and the offender information profiles were reformatted to include individual mapping capabilities. As part of the redesigned website the department added the required victim education and awareness links and resources to the website.

The screenshot shows the Maryland SOR Search website interface. The header includes the Maryland Department of Public Safety & Correctional Services logo and navigation tabs for HOME, ABOUT DPSCS, REORGANIZATION, INITIATIVES, CORRECTIONS, COMMUNITY SUPERVISION, and PRETRIAL DETENTION. A search bar is visible in the top right. The main content area displays the profile for a registrant named JONES, WILLIE STEVEN JR. A mugshot of the registrant is shown on the right. The profile includes sections for Aliases, Address Information, Conviction Information, Custody/Supervision Information, Registration Information, Demographic Information, and Vehicle Information.

Maryland SOR Search

Selected Registrant
JONES, WILLIE STEVEN JR

Aliases:
 Jones, Willie • Jones, Willie Steven J • Jones, Willie S

Address Information
 Primary Residence : 2914 W Cold Spring Ln, Baltimore MD 21215
 Date of Last Change of Address : 12/28/2013
 Temporary Residence: NA
 Employment Address: NA
 School Address: NA

Conviction Information
 Conviction Date: 09/13/2012 Location: Baltimore, MD
 Registration Authority: Maryland Law
 Charges:
 • Sexual Solicitation Of A Minor - CI § 3-324
 This offense involved electronic communication (e.g. chat rooms, email, phone) to entice or persuade a child to engage in an unlawful sexual contact. The registrant was a stranger to the victim. When the offense occurred the victim was a middle school aged child. The offender was 30 years of age. Court records for this case indicate that the registrant's sexually abusive behavior occurred more than once on different days.

Custody/Supervision Information
 Under Community Supervision
 Agency: Special Offender Unit

Registration Information
 Registration Status: COMPLIANT
 Tier: Tier II Registrant
 Information Contact: SORU
 Current Registration Date: 12/17/2013

Demographic Information
 Sex: Male
 Date of Birth: 09/23/1981
 Current Age: 32
 Height: 5'11"
 Weight: 235 lbs
 Race: Black
 Skin Tone: Dark
 Eye Color: Brown
 Hair Color: Black

Vehicle Information
 No Vehicle Information.

Registry Resources

- [Sex Offender Registration FAQ](#)
- [Downloadable Registry Listings](#)
- [Sex Offender Registration Category by Conviction Table](#)
- [Maryland Sexual Crimes Laws](#)
- [Maryland Sex Offender Registration Law — Criminal Procedure Article, § 11-701](#)
- [Local Maryland Registration Units](#)
- [National Sex Offender Registry Website](#)
- [MD Sex Offender Advisory Board](#)

Notification Resources

- **VineLink** - Be notified and obtain information about a specific registrant by phone or email.
- **Alert Express** - Be notified of changes in locations of all registrants in your area by e-mail.
- **Sex Offender Alert Line - 1-866-559-8017** Be notified of changes in locations of all registrants in your area by phone.
- **Amber Alert** - Opt in to receive free text messages when a child has been abducted.

The Maryland Online Sexual Offender Registry (MOSOR) Database

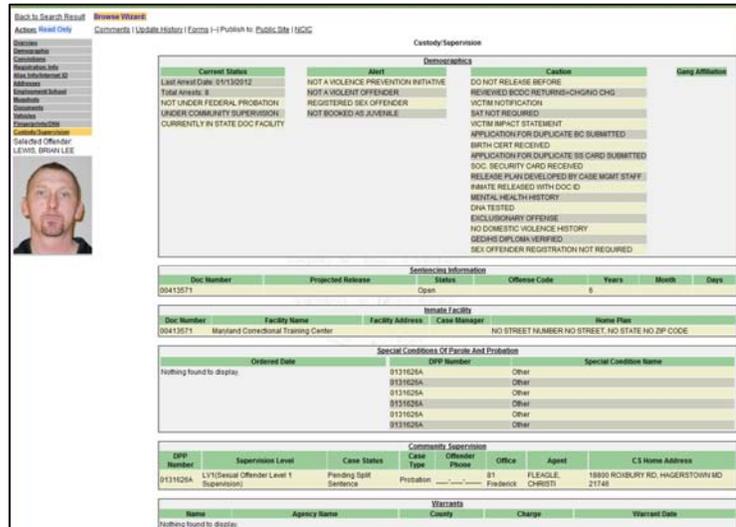
MOSOR is a web-based program used by all local law enforcement agencies, some



local detention centers, secure mental health facilities, parole and probation agents and DPSCS correctional case managers to review and record sexual offender registration information. Local law enforcement and correctional services agencies enter all initial registration and re-registration data which is then forwarded

within the secure MOSOR system to the State Centralized Sexual Offender Registry for review, approval and posting to the State's Sexual Offender Registry Website.

In 2007, MOSOR replaced an antiquated legacy database system that communicated only with the Federal Bureau of Investigation's National Sexual Offender Registry file (NSOR). The new system automatically updates not only NSOR, but also the National Public Sexual Offender Registry Website (NSORP); APPRIS, and Victim Information Notification Everyday, The MOSOR database, as a result of the



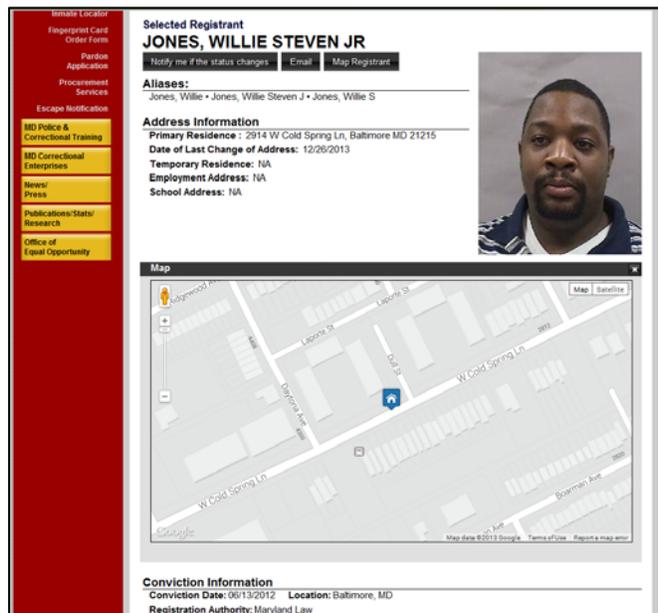
2008 and 2011 federal grants received to implement SORNA, has experienced rapid re-design growth as a result of the collection of the additional registrant information required under state and federal law. Over the past four years the sex offender registry database expanded many linkages with other databases. MOSOR has been linked with the statewide DNA database administered by Maryland State Police Crime Laboratory; the centralized

Maryland Image Repository System (MIRS); as well as the new databases used by DPSCS corrections and parole and probation supervision. Finally, the amount of data sent by MOSOR to the Federal Bureau of Investigation’s NSOR has significantly increased to include all of the information required under the AWA.

Mapping the Registry

In 2012 the Maryland Sex Offender Registry entered into an Interagency Agreement with Towson University’s Center for Geographic Information Services (CGIS). Under this

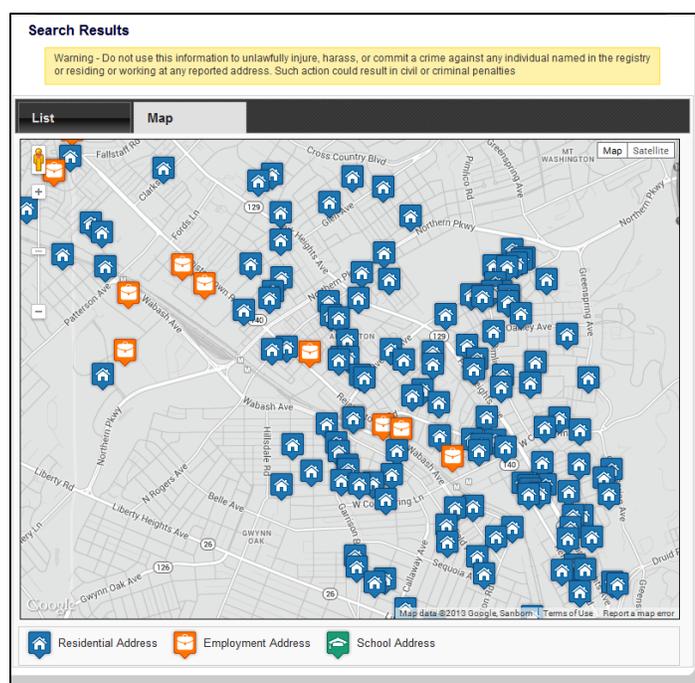
agreement, CGIS redesigned the outdated maps on the Sexual Offender Registry website (WebSOR). Through the creation and full integration of publicly accessible, map-enabled website profile interfaces users can now easily search for and visualize the location of registered sexual offenders in the context of their home or neighborhood. In 2013, a more sophisticated geographical mapping system enabled



the public to type in an address and see all of the registered sexual offenders within a one, five, or ten mile radius of that address.

Community Notification

Whenever a convicted registered sexual offender begins living, working or attending school in a Maryland community, it is the primary



local law enforcement agency for that county who is responsible for conducting in-person sex offender registration in that jurisdiction.

Since early 2007, through the use of the Victim Information and Notification Everyday (VINE) system, the Sexual Offender Registry has made it possible for victims and other members of the public to receive automatic notification – by telephone or e-mail – when a specified registered sexual offender is released from incarceration or changes his or her address. Another automated system provided to the DPSCS by the Governor’s Office of Crime Control and Prevention is the Alert Express System, which was implemented in March 2007, and enables members of the public to receive automatic notification by telephone or e-mail whenever a registered sexual offender moves into the registered zip code (or any other zip code of interest). The number to use to register for that Alert Express is 1-866-559-8017.

Reimbursement and Assistance to Local Law Enforcement

The DPSCS reimburses the local law enforcement agencies \$ 200 per offender per year for conducting sex offender registration and community notification programs in their jurisdictions. When a sex offender begins living, working or going to school in a Maryland county or Baltimore city it is the primary law enforcement agency for that county that is responsible for conducting an in person sex offender registration and who provides written notification of the presence of a registered sexual offender in the community to: (1) the Superintendent of the county school system, who must then, within ten days, provide similar notification to the principals of each of the schools in that county; (2) all non-public primary and secondary schools within a one-mile radius of the sexual offender’s residence; (3) and to all other local law enforcement agencies serving the municipalities in that county. Local law enforcement officers may also notify family day care homes or child care centers, child recreation centers, and faith-based institutions of a sexual offender’s residence in the community.

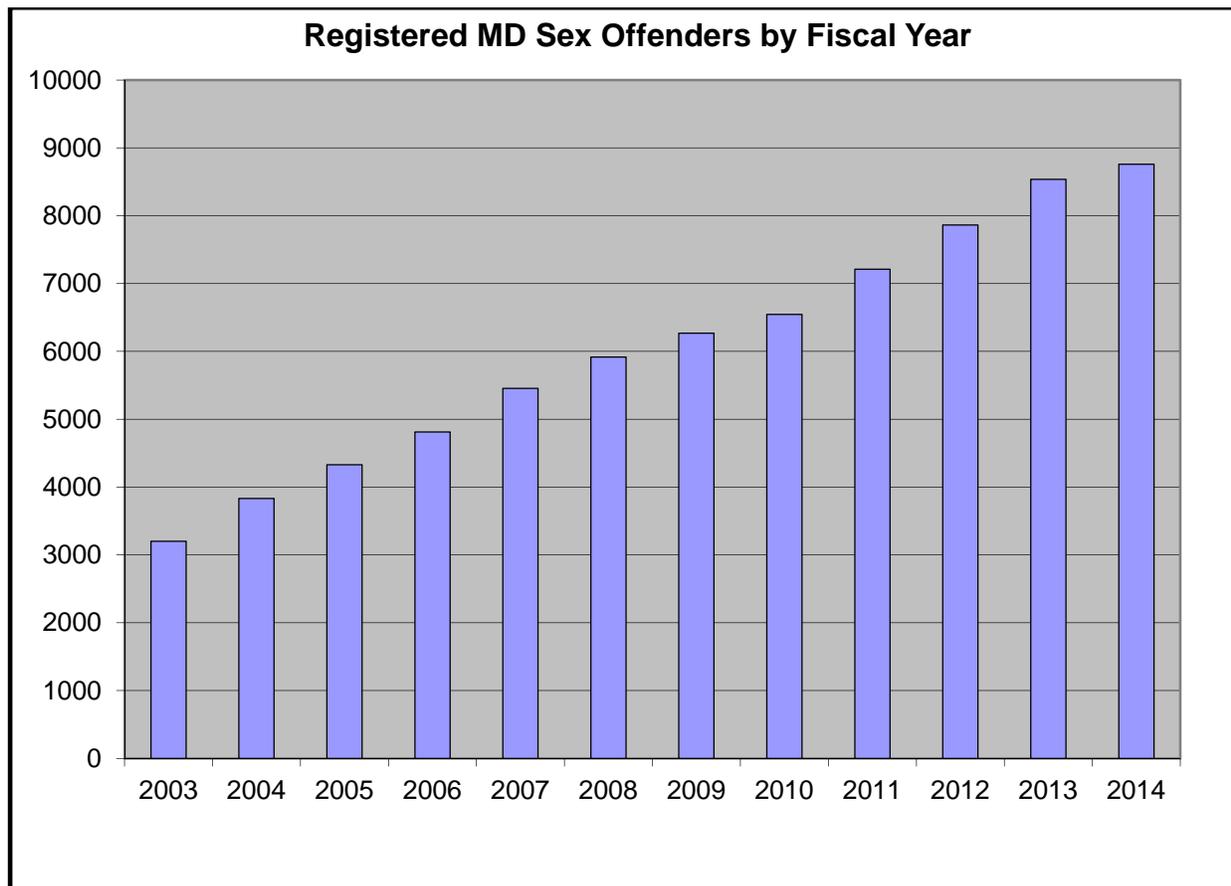
The DPSCS also provides assistance to local law enforcement’s efforts by maintaining the State Sex Offender Registry Unit (SORU) within the Criminal Justice Information System – Central Repository. The seven person unit is responsible for

managing the incoming and outgoing registration records for 23 counties and Baltimore City, 34 correctional facilities, 3 state mental hospitals, as well as all non-resident registrations received from offenders who work or go to school outside of Maryland.

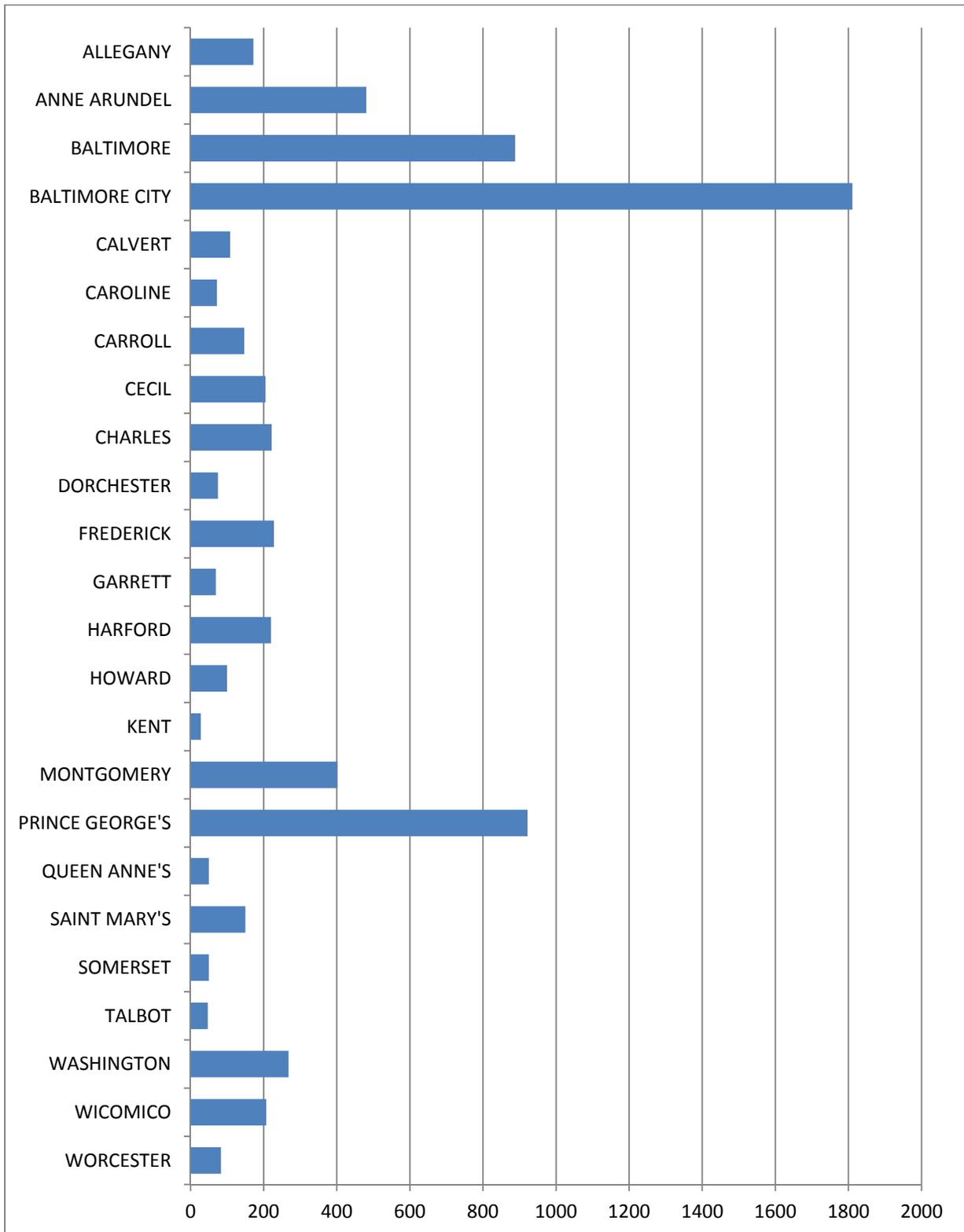
The SORU is responsible for transferring registration records to other jurisdictions when an offender moves out of Maryland and for evaluating the registrations from

other states when a sexual offender from another state is moving to Maryland. The SORU also works with the U.S. Marshals Service and Interpol to ensure that convicted sexual offenders register in all jurisdictions where they live, work or travel.

DPSCS Registration Reimbursements to Maryland Counties and Baltimore City	
Fiscal Year 2008	\$ 969,000
Fiscal Year 2009	\$ 988,800
Fiscal Year 2010	\$ 1,059,800
Fiscal Year 2011	\$ 1,177,200
Fiscal Year 2012	\$1,266,400
Fiscal Year 2013	\$ 1,348,600
Fiscal Year 2014	\$ 1,400,400



Registered Sexual Offenders by County for Fiscal Year 2014



II. A Short History in of Sexual Offender Registration in Maryland

Chapter 142 of the Acts of the General Assembly of 1995

On October 1, 1995, Maryland established its first version of the Sex Offender Registry, titled the “Crimes Against Children Registry”. In the year preceding, Maryland and all of the other States were directed by the U.S. Congress to create registries in compliance with the *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act* by Congress in 1994. The Maryland Department of Public Safety and Correctional Services (DPSCS) was legally designated as the administrator and repository for the Registry.

- Registration was required for individuals whose crimes were committed on or after October 1, 1995, against a victim who was 14 years old or younger at the time of the offense.
- The only registration category was Child Sexual Offender (CSO).
- CSOs registered annually for 10 years with local law enforcement.
- Victim notification was required.

1996 Changes to the law in 1996 allowed members of the public to request a copy of a registration statement.

Chapter 754 of the Acts of the General Assembly of 1997

On July 1, 1997, Maryland expanded the Registry to comply with the federal *Pam Lynchner Sex Offender Tracking and Identification Act* of 1996 and the *Jacob Wetterling Improvements Act* of 1997. The registration categories of “Offender” (OFF), “Sexually Violent Offender” (SVO) and “Sexually Violent Predator” (SVP) were created to include offenders whose crimes were committed against individuals who were 15 years or older.

- Registration for the criminal sex offenses included in these new categories was required for individuals whose crimes were committed on or after July 1, 1997.
- Registrants in the OFF and SVO categories registered annually by mail with DPSCS.
- The registration term was not stipulated in law but the general consensus is that it was for 10 years.

Chapters 473 and 521 of the Acts of the General Assembly of 1998

On October 1, 1998, Maryland amended the definition of “registrant” to include individuals who committed sex offenses in other states prior to 1995 or 1997.

The OFF and SVO registration categories were officially assigned a 10 year registration term.

Chapter 317 of the Acts of the General Assembly of 1999

On October 1, 1999, individuals convicted of an offense defined as a “Sexually Violent Offense” or who were convicted of a subsequent sex offense were required to register for life.

Additionally, Maryland bifurcated the registration term for all individuals convicted of Article 27, § 35C entitled Causing Abuse to a Child (recodified in 2002 as Sexual Abuse of a Minor). If an offender was convicted of sexually abusing a child 12 years or older under Art. 27, 25C the registration term was automatically 10 years. If an offender was convicted a sexually abusing a child under 12 years and “penetrated” the victim orally, anally, or vaginally or cause the child to “penetrate” the abuser the registration term was changed to life.

Chapter 402 of the Acts of the General Assembly of 1999

On October 1, 1999 the Department of Public Safety and Correctional Services was authorized to post on the Internet a current listing of each person who was registered as a sexual offender.

Chapter 10 of the Acts of the General Assembly of 2001

In 2001 the General Assembly recodified former Article 27, § 792 as the Criminal Procedure Article, § 11-701 et. seq. This language was derived without substantive change.

Chapter 221 of the Acts of the General Assembly of 2001

Changes to Maryland law mandate retroactive registration for offenders who committed a sexual offense (all categories – OFF, CSO, SVO, SVP) prior to the creation of the Maryland Registry in 1995 and its expansion in 1997, and who were in the custody or supervision of a “Supervising Authority” for the qualifying sex offense on October 1, 2001.

2002 Maryland, having completed the development of the Public Sex Offender Registry Website, began posting all registrants and their identifying information on the DPSCS website.

2006 On October 1, 2006, all registrants categorized as “Sexually Violent Offenders” and “Offenders” (who previously registered by mail) were now required to register in person twice a year with local law enforcement.

Chapter 541 of the Acts of the General Assembly of 2009

Changes to Maryland law mandated registration for offenders who committed their sexual offense prior to the creation of the Maryland Registry in 1995 and its expansion in

1997, but who were not convicted of these offenses until after October 1, 1995 or July 1, 1997.

Chapters 174 and 175 of the Acts of the General Assembly of 2010

As a as a result of the 2006 *Adam Walsh Child Protection and Safety Act*, Maryland enacted changes to its laws that modified the registration terms, increased retroactive registration for offenders who returned to the criminal justice system, increased the number of reporting periods for Tier III offenders, required registrants and law enforcement to provided certain notifications, and required that additional information be collected from registrants.

Chapter 374 of the Acts of the General Assembly of 2011

Maryland enacted changes to its laws to allow for the registration of individuals convicted of “Sexual Solicitation of a Minor” if the minor was, in actuality, an undercover law enforcement officer.

Doe v. Department of Public Safety and Correctional Services, 430 Md. 535 (2013)

In 2013, in the case of *Doe v. Department of Public Safety* (“*Doe I*”) Maryland’s highest court, the Court of Appeals, ruled that retroactive application of the sex offender registration law to an individual whose crime occurred years before the law’s enactment violated Maryland’s Declaration of Rights. In *Doe I*, the Court of Appeals concluded that the 2009 and 2010 amendments to Maryland’s sex offender registration law had changed the law from one of civil regulation to punishment, thus implicating the *ex post facto* prohibition contained in Article 17 of the Maryland Declaration of Rights.

Hershberger v. Roe, No. 103, Sept. Term. 2013 (Md. June 30, 2014)

This year, the Court of Appeals revisited sex offender registration in two cases, *Doe v. Department of Public Safety* (“*Doe II*”) and *Department of Public Safety v. Roe*. In *Doe II*, the Court declined the State’s request to revisit its earlier holding in *Doe I*, instead affirming the principle of *Doe I* that retroactive application of the law to individuals whose crimes predated its enactment was unconstitutional. In *Roe* the Court considered the impact of federal law, and ruled that regardless of the fact that federal law imposes a separate and independent obligation on those convicted of sex offenses to register in their state of residence, the State cannot legally accept a sex offender’s involuntary registration when that person’s registration is unconstitutional under Maryland law.

III. Removal of Registrants from the Sex Offender Registry

In August of 2014, upon receiving advice from the Maryland Attorney General's Office, the Department of Public Safety and Correctional Services (DPSCS) began removing convicted sexual offenders, with offenses that occurred prior to October 1, 1995, from the Maryland Sex Offender Registry in accordance with the Court of Appeals opinions in *Doe I*, *Doe II*, and *Roe* (see summaries of those rulings on the previous page). In the months that followed the DPSCS was given additional advice to remove other categories of convicted sexual offenders from the registry if they too were retroactively required to register as a result of changes to Maryland's laws.

In the early stages of removing convicted sexual offenders from the registry it was estimated that approximately 1,400 individuals with offense dates occurring prior to October 1, 1995 would need to have their cases reviewed for possible removal under the Court of Appeals decision. As the definition of "retroactive registration" expanded based on new case law so too did the number of offenders who qualified for a review of their case and possible removal from the registry.

Currently, the DPSCS estimates that nearly 4,000 convicted sexual offenders must be reviewed in order to determine if they should be removed from the registry or have their registration term reduced as a result of the decisions in *Doe I*, *Doe II*, and *Roe*.

DPSCS has divided the registration scheme into six retroactive categories:

Category 1 - Offenses that occurred prior to the creation of the Maryland registry on October 1, 1995 for individuals who victimized a child 14 years or younger; and July 1, 1997 for individuals who victimized a person 15 years or older.

Category 2 - Offenses that occurred on or between October 1, 1995 and September 30, 1999.

Category 3 - Offenses that occurred on or between October 1, 1999 and September 30, 2010.

Category 4 - Out-of-State offenses that occurred prior to the creation of the registry on October 1, 1995

Category 5 - Out-of-State Offenses that occurred on or between October 1, 1995 and September 30, 1999

Category 6 - Out-of-State Offenses that occurred on or between October 1, 1999 and September 30, 2010

Each category of retroactivity is based upon a certain set of facts that includes the offense dates of the criminal offense(s), the age of the victim at the time of the offense(s), and the release date(s) to the community of the offender.

For convicted sexual offenders that fall into Category 1 or 4 the date of the offense is the sole source of evaluation for removal unless the individual has been convicted of a new qualifying sex offense.

For convicted sexual offenders that fall into Category 2 or 5 the crime must have occurred on or between October 1, 1995 and September 30, 1999. During this time frame all qualifying convictions required, by operation of law, a 10 year term of registration. Registration terms have always been calculated from the last date of release to the community on parole, probation, or other type of discharge.

For convicted sexual offenders that fall into Category 3 or 6 their crime must have occurred between October 1, 1999 and September 30, 2010. This category of offense requires the registry to determine the age of the victim at the time of the offense, whether or not the individual was ordered by the court to register as a result of a conviction where the court had discretion, and in many cases determine if the victim had been penetrated orally, vaginally, or anally by the offender during the course of the crime in order to determine if removal from the registry is warranted.

Estimated number of Removals based on Current Case Law

	Total Number	Number Removed	Term Reduced	Number Retained	Review Pending
Category 1	1403	1277		126	0
Category 2	783	17	20		746
Category 3	917	62			855
Category 4	433	7			426
Category 5	206	3			203
Category 6	289	5			284
Total	4031	1371	20	126	2533

The Sex Offender Registry Unit completed the review of category 1 registrations in December 2014. Of the original 1,400 cases to be reviewed, the State removed 1,277 registrants from the registry. The State retained 126 offenders due to subsequent qualifying sex convictions or, as a result of a determination based on available court records, that the conviction included offense dates both before and after October 1, 1995 because the offense was a continuing course of conduct.

Process for Removing Registrants Who Fall Under the Court of Appeals Decision

1. Identify offenders by offense date located in the Maryland sex offender registry database (MSOR).
2. Assign cases to team members who will review each offender's DPSCS records (DOC and DPP), CJIS and NCIC criminal history, and judiciary case search to:
 - a. Verify that the registered sex offense conviction and disposition appear correctly on the offender's criminal history record
 - b. Identify any new qualifying sex offense convictions,
 - c. Validate offense date and look for later offense dates
 - d. Make recommendation for removal from the registry or continued registration
3. If the conviction or disposition is not properly recorded on the criminal history record the SORU manager will forward the correct information to the CJIS data integrity unit with any available documentation so that it may be added to the criminal history record prior to removal. This process may include:
 - a. Retrieving the Court's original Commitment Order sent to the DOC
 - b. Requesting the Administrative Office of the Courts to resend the information to CJIS
 - c. Sending the case number and disposition information to the Maryland State Archives for copies of original conviction documents.
4. If the conviction and disposition information are properly recorded the SORU will:
 - a. Update the registry records to reflect any new qualifying sex offense convictions
 - b. Update the registry to include later offense dates and check the new indicator in the database that identifies the offense as a "continuing course of conduct"
 - c. Create a list of offenders based on a conviction date occurring after 10-1-1995 by conviction jurisdiction that includes the court case number and offense dates that is sent to the local registration law enforcement agency and/or the state's attorney's office (SAO) to be verified.

5. Upon receipt of the response from law enforcement or the SAO the registry is updated with any new information and any offense dates that disqualify the offender from removal are noted in the Master Spreadsheet.
6. Lists of offenders who qualify to be removed from the registry are sent to:
 - a. Local registering law enforcement agency for confirmation that the offender qualifies for removal from the registry
 - b. The state's attorney's victim witness coordinator in the convicting jurisdiction for victim notification purposes
 - c. DPSCS victim services unit for identification of filed "request for notification" from qualifying victims and witnesses.
7. Once the SORU manager has received confirmation from every reviewer that the offender's profile is correct and warrants removal the registration record is cancelled in the MSOR database, which sends a notice to National Criminal Information Center (NCIC) to remove the offender from the FBI's National Sex Offender Registry File and the MD SOR Public Website database. Removal from the Maryland Public website automatically results in removal from the National Sex Offender Registry website.
8. All cancellations are reviewed by a second party within the unit prior to being completed.
9. The letters are created and mailed to the offender notifying him that he has been removed from the registry. CC's are sent to the parole and probation agent (if applicable), the local registering agency, the convicting jurisdiction's State's Attorney's Office, and the offender's attorney (if known).
10. For cases where the criminal history record had to be corrected or updated the same review process will apply prior to removal.

The Sex Offender Registry Unit has finished reviewing and removing offenders who fall within Category 1 and will begin removing Category 2 offenders in January 2015. The Sex Offender Registry Unit estimates that the review and removal of all qualifying convicted sexual offenders will be complete in October 2015.

Lifetime Supervision of Convicted Sexual Offenders

Some of the problematic elements of Lifetime Sexual Offender Supervision – as it was created in the original 2006 sexual offender management legislation – were resolved in subsequent legislation. Others, however, were not. The Sexual Offender Advisory Board reviewed this matter in depth during the past year and developed draft legislation to address the most immediate of the remaining concerns.

Violation of Lifetime Sexual Offender Supervision

One issue to be addressed was the lack of any mechanism in the current law for charging and adjudicating violations of Lifetime Sexual Offender Supervision. It is important to note that Lifetime Sexual Offender Supervision was created to exist independently of the more traditional supervision models, such as mandatory release supervision, parole supervision, and probation supervision. In this respect, Maryland is different from some other states, as Lifetime Sexual Offender Supervision here does not commence until the terms of all other types of supervision have ended. Thus, conditions imposed as part of Lifetime Sexual Offender Supervision also do not take effect until those other forms of supervision have concluded (unless the court chooses to structure the cases otherwise).

Furthermore, violations of Lifetime Sexual Offender Supervision are unlike violations of the types of supervision with which we have become familiar. Violations of Lifetime Sexual Offender Supervision are considered to be *new offenses*. An initial instance of violation of Lifetime Sexual Offender Supervision is a misdemeanor, subject to a period of imprisonment not to exceed five years, or a fine not to exceed \$5,000.00, or both. Subsequent violations of Lifetime Sexual Offender Supervision are felonies, subject to a period of imprisonment not to exceed ten years, or a fine not to exceed \$10,000.00, or both.

In addition, upon release from a sentence imposed for violation of Lifetime Sexual Offender supervision, the offender *resumes* Lifetime Sexual Offender Supervision. This differs from the outcome in mandatory release supervision, parole supervision, and probation supervision cases where, if supervision is revoked on the basis of a violation of the terms of supervision, the case is closed and no further supervision occurs in the case.

Violations of mandatory release supervision and parole supervision are reported to the Maryland Parole Commission. Violations of probation supervision are reported to the sentencing judge. Hearings relative to those violations are conducted by the appropriate sentencing authority. In regard to Lifetime Sexual Offender Supervision, however, the law does not address the charging or adjudicating process. In that such a violation is to be treated as a new offense, the charge could be filed in the jurisdiction where the case is being supervised, which will often be different from the jurisdiction in which the sentence

was imposed. Or, the charge could be filed in the jurisdiction where the specific offense occurred which, in the case of a new criminal charge, for example, might not be the same jurisdiction in which the case is being supervised *or* in which the offender was originally sentenced.

In its consideration of this issue, the Sexual Offender Advisory Board concluded that an overriding value of Lifetime Sexual Offender Supervision – beyond its ability to continue supervision, treatment, and other measures for an indefinite period of time for the highest risk sexual offenders – was the potential for a continuity of review and response by a single authority. The Board further concluded that the logical authority would be that entity with the greatest familiarity with the details of the case as well as the greatest interest in the offender’s progress (or lack of progress) while under supervision. It was thus the recommendation of the Sexual Offender Advisory Board that charges of violating the terms of Lifetime Sexual Offender Supervision should be filed with the Office of the State’s Attorney for the jurisdiction in which the offender was originally sentenced and heard by the judge who imposed the sentence of Lifetime Sexual Offender Supervision. This recommendation was incorporated into the draft legislation prepared by the Sexual Offender Advisory Board on page 24 of this report.

Petition for Discharge from Lifetime Sexual Offender Supervision

It was the determination of the Sexual Offender Advisory Board that there were also several aspects of the Petition for Discharge from Lifetime Sexual Offender Supervision portion of the law which could benefit from clarification and/or modification.

The first of these was the provision that allows a sexual offender to file a Petition for Discharge from Lifetime Supervision after serving at least five (5) years of such supervision and, if the petition is denied, to renew the petition after a minimum of one (1) year. It was the opinion of the subcommittee which reviewed this issue – which included representatives of both the treatment and supervision components, among others – that one year of further supervision would generally be insufficient to establish that the concerns that could lead to the denial of such a petition had been adequately addressed over a reasonably sustained time period. The draft legislation, therefore, recommends that a sexual offender not be eligible to renew a Petition for Discharge from Lifetime Sexual Offender Supervision for a minimum of two (2) years after an initial petition is denied.

In the interests of openness and an ongoing focus on the rights and safety of the victims of sexual offenses, the Sexual Offender Advisory Board also recommends that the notification process for a victim or victim’s representative who has requested notification under § 11-104, should be extended to include notice of the filing of a Petition for Discharge from Lifetime Supervision and of the final decision of the judge in granting or denying such a petition.

There were several concerns about the process for handling a Petition for Discharge from Lifetime Sexual Offender Supervision once it had been filed. First, it was felt that the passage in the law which indicated that “A petition for discharge shall include a risk assessment of the person conducted by a sexual offender treatment provider within three months before the date of the filing of the petition” was unclear as it stood and lacked sufficiently detailed guidance.

More importantly, it was suggested that neither treatment providers, in preparing their evaluations, or judges, in entering their findings on the record, would be comfortable with the phrase “the petitioner is no longer a danger to others,” as the current law requires.

To address these concerns, the Sexual Offender Advisory Board, in its proposed draft legislation, offers language relative to the information which must be provided as part of the process of responding to a Petition for Discharge from Lifetime Supervision. “A report from the sexual offender management team which includes a risk assessment of the person by a sexual offender treatment provider and a recommendation from the sexual offender management team regarding the discharge of the person from Lifetime Sexual Offender Supervision,” must be included. Any additional information requested by the court, “at the court’s discretion and upon a showing of good cause” may also be included.

In regard to the language establishing a standard for eligibility for discharge from Lifetime Sexual Offender Supervision, the Sexual Offender Advisory Board proposes the following: “The court may not grant a Petition for Discharge from Lifetime Sexual Offender Supervision unless the court makes a finding on the record that the petitioner’s risk for sexual re-offense has been determined by assessment to be within a range sufficient to reasonably justify terminating further supervision.”

Responding to Petition for Discharge from Lifetime Sexual Offender Supervision

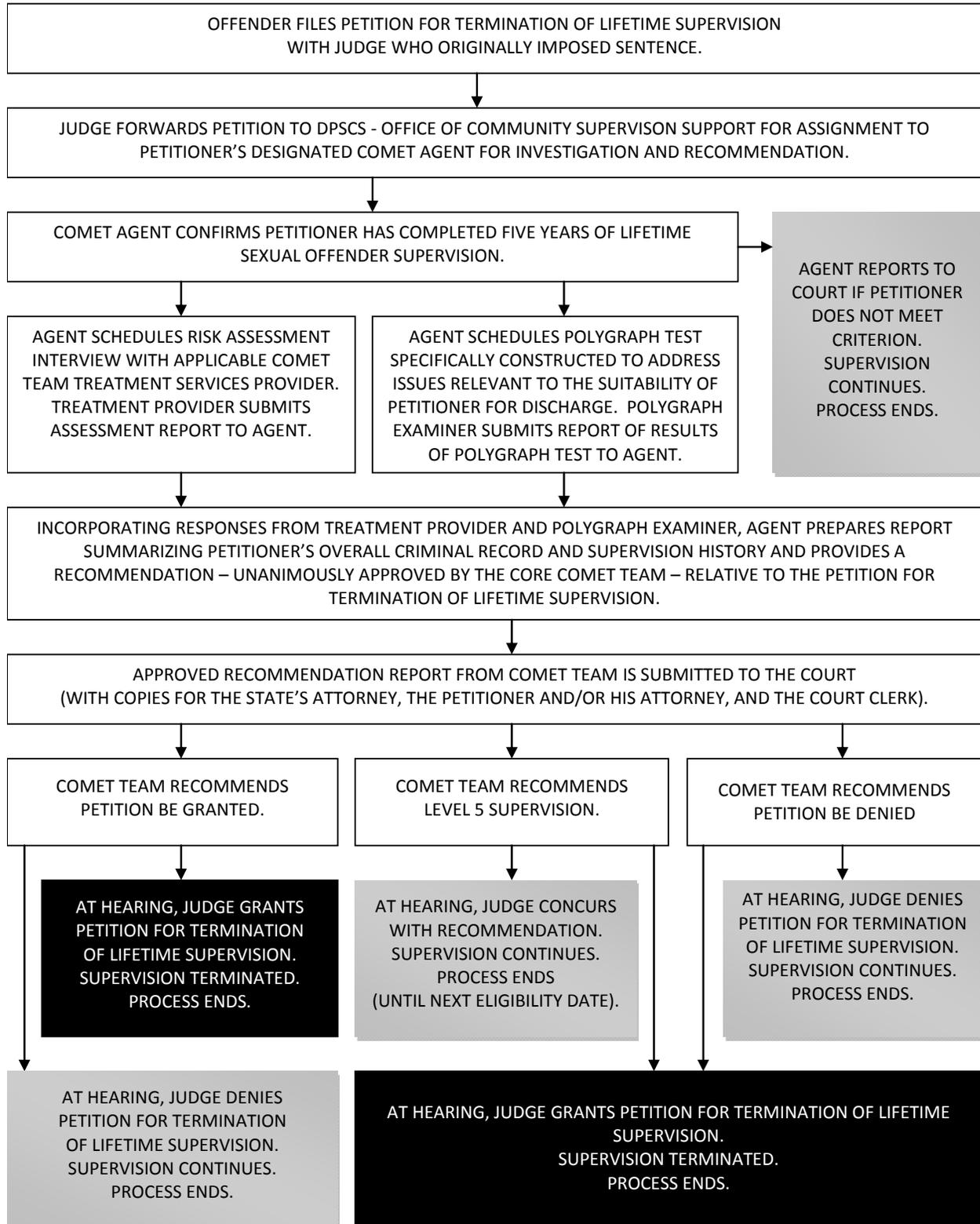
Finally, the Sexual Offender Advisory Board noted that the existing Lifetime Sexual Offender Supervision legislation does not delineate the steps to be taken in responding to a Petition for Discharge from Lifetime Sexual Offender Supervision. While it concluded that it was not essential that that process be addressed in legislation, it was nevertheless considered important to establish such a process.

A flow chart, shown on page 23, was therefore developed by the subcommittee and adopted by the Sexual Offender Advisory Board which outlined a sequence of events and actions – from the filing of a Petition for Discharge from Lifetime Sexual Offender Supervision to the decision of the sentencing judge to grant or deny the petition – which must be completed in response to a Petition for Discharge from Lifetime Sexual Offender Supervision.

Briefly, the process requires the court to forward the petition to the Division of Parole and Probation for assignment to the designated COMET (Collaborative Offender Management / Enforced Treatment) containment team. The assigned COMET agent, after confirming the eligibility of the offender for consideration for discharge, schedules a risk assessment interview with a sexual offender treatment provider. The agent also schedules a polygraph examination specifically constructed to address issues relevant to the suitability of the offender for discharge. Upon receipt of the reports from the treatment provider and the polygraph examiner, the COMET agent incorporates their responses into a report summarizing the offender's overall criminal record and supervision history and provides a recommendation relative to the petition. The report is then reviewed by the COMET team and, following unanimous approval by the team, forwarded to the court.

The COMET team report can make one of three recommendations, which the judge is free to implement or override. A recommendation can be made to grant the petition and, if the judge concurs, Lifetime Sexual Offender Supervision will be terminated. A recommendation can be made to deny the petition and, if the judge concurs, the review process ends and Lifetime Sexual Offender Supervision continues. The COMET team can also recommend that the sexual offender be continued on "Level Five" Lifetime Sexual Offender Supervision. If the judge concurs, Lifetime Sexual Offender Supervision – at the least restrictive level – will continue for at least two years, after which a final determination can be made. This option would allow a sexual offender to demonstrate to the COMET team and to the court his or her ability to ameliorate any lingering concerns and/or satisfy any incomplete requirements with only minimal supervision. It also serves to distinguish those sexual offenders for whom – on the basis of history, performance, and/or assessment – a firm denial of a Petition for Discharge from Lifetime Sexual Offender Supervision is appropriate, from those for whom a somewhat briefer period of continued observation and assessment can be justified.

Proposed Process For Termination Of Lifetime Sexual Offender Supervision



Suggested Language for Changes to the Lifetime Supervision Law

Md. CRIMINAL PROCEDURE Code Ann. § 11-724(2012)

§ 11-724. Lifetime sexual offender supervision – Violations

(a) Knowing or willful violation prohibited. -- A person subject to lifetime sexual offender supervision may not knowingly or willfully violate the conditions of the lifetime sexual offender supervision imposed under § 11-723 of this subtitle.

(1) A VIOLATION OF A CONDITION OF LIFETIME SEXUAL OFFENDER SUPERVISION SHALL BE REPORTED BY THE SEXUAL OFFENDER MANAGEMENT TEAM TO THE OFFICE OF THE STATE'S ATTORNEY FOR THE JURISDICTION IN WHICH THE SENTENCE OF LIFETIME SEXUAL OFFENDER SUPERVISION WAS IMPOSED.

(2) (i) THE JUDGE WHO ORIGINALLY IMPOSED THE LIFETIME SEXUAL OFFENDER SUPERVISION SHALL CONDUCT ANY HEARING INTO THE VIOLATION OF THAT SUPERVISION.

(ii) IF THE JUDGE HAS BEEN REMOVED FROM OFFICE, HAS DIED OR RESIGNED, OR IS OTHERWISE INCAPACITATED, ANOTHER JUDGE MAY ACT IN THE MATTER.

(b) Penalty. -- A person who violates any conditions imposed under § 11-723 of this subtitle:

(1) for a first offense, is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$ 5,000 or both; and

(2) for a second or subsequent offense, is guilty of a felony and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$ 10,000 or both.

(c) Imprisonment for violation not subject to diminution credits. -- Imprisonment for a lifetime sexual offender supervision violation is not subject to diminution credits.

(d) Discharge from supervision. --

(1) A violation of subsection (a) of this section does not discharge a person from lifetime sexual offender supervision.

(2) On release from a sentence imposed under subsection (b) of this section, a person remains on lifetime sexual offender supervision, subject to the original terms of supervision, until discharged under subsection (f) of this section.

(e) Powers of court during period of supervision. -- During the period of lifetime sexual offender supervision, the court may:

(1) remand the person to a correctional facility or release the person with or without bail

pending the hearing or determination of a charge of violation of a condition of lifetime sexual offender supervision; and

(2) if the court finds that the person committed a violation of a condition of supervision, impose a sentence as prescribed in subsection (b) of this section.

(f) Petition for discharge. –

(1) The sentencing court shall ~~hear and~~ adjudicate a petition for discharge from lifetime sexual offender supervision.

(2) A person may file a petition for discharge after serving at least 5 years of ~~extended~~ LIFETIME sexual offender supervision.

(3) If a petition for discharge is denied, a person may not renew the petition for a minimum of ~~1 year.~~ 2 YEARS.

(4) A VICTIM OR VICTIM'S REPRESENTATIVE WHO HAS REQUESTED NOTICE UNDER § 11-104 OF THIS ARTICLE SHALL BE NOTIFIED OF SUCH A FILING AND OF THE FINAL DECISION OF THE JUDGE IN GRANTING OR DENYING THE PETITION FOR TERMINATION.

(5) (i) A petition for discharge shall include ~~a risk assessment of the person conducted by a sexual offender treatment provider within 3 months before the date of the filing of the petition; and~~ A REPORT FROM THE SEXUAL OFFENDER MANAGEMENT TEAM WHICH INCLUDES A RISK ASSESSMENT OF THE PERSON BY A SEXUAL OFFENDER TREATMENT PROVIDER AND A RECOMMENDATION FROM THE SEXUAL OFFENDER MANAGEMENT TEAM REGARDING THE DISCHARGE OF THE PERSON FROM LIFETIME SEXUAL OFFENDER SUPERVISION.

(6) (i) The sentencing court may not deny a petition for discharge without a hearing.

(ii) IF, BASED ON A REVIEW OF THE PETITION FOR DISCHARGE AND ANY ACCOMPANYING DOCUMENTS, AND WITHOUT HEARING THE MATTER, THE COURT DETERMINES THAT THE PETITIONER QUALIFIES FOR DISCHARGE FROM LIFETIME SEXUAL OFFENDER SUPERVISION, THE COURT SHALL NOTIFY THE STATE'S ATTORNEY, UPON WHOSE REQUEST THE COURT SHALL HOLD A HEARING ON THE MATTER.

~~(ii)~~ (iii) The court may not ~~discharge a person from lifetime supervision unless the court makes a finding on the record that the petitioner is no longer a danger to others.~~ GRANT A PETITION FOR DISCHARGE FROM LIFETIME SEXUAL OFFENDER SUPERVISION UNLESS THE COURT MAKES A FINDING ON THE RECORD THAT THE PETITIONER'S RISK FOR SEXUAL RE-OFFENSE HAS BEEN DETERMINED BY ASSESSMENT TO BE WITHIN A RANGE SUFFICIENT TO REASONABLY JUSTIFY TERMINATING FURTHER SUPERVISION;

(7) (i) The judge who originally imposed the lifetime sexual offender supervision shall ~~hear~~ ADJUDICATE a petition for discharge.

(ii) If the judge has been removed from office, has died or resigned, or is otherwise incapacitated, another judge may act in the matter.