

Maryland Sexual Offender Advisory Board

2013 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's work emphasized the need for changes to Maryland law in the area of Lifetime Supervision for Convicted Sexual Offenders. The Board reviewed this matter in depth during the past year 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.

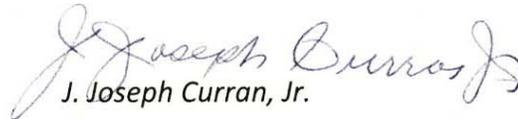
The second area of concern is that existing law regarding the Petition for Discharge from Lifetime Supervision clouds the true purpose of the review process and is in need of clarification. The purpose of allowing an offender to petition for discharge is so that all parties to the crime, as well as those 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 enough guidance in how to determine if an offender has become sufficiently “less dangerous” to be discharged from supervision.

Thirdly, existing law does not 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 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.

Sexual Offender Advisory Board, Chair

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Catherine Meyers, Executive Director, Center for Children, Inc.
Child Advocacy Center Representative

Executive Summary

Over the course of 2013 The Maryland Sexual Offender Advisory Board met two times to listen to reports by the subcommittees, discuss the topics presented, and voted on the subjects presented in this report. This year the Board discussed the topics presented, and voted on three areas of interest. These subcommittees were tasked with presenting recommendations to the Board on: (1) the need for legislative changes in order to fully implement lifetime supervision for certain sexual offenders; (2) ongoing implementation of the Office of Professional Services within the Department of Public Safety, and (3) the formation of a new subcommittee to identify any existing resources which could be allocated to providing treatment to sexual offenders while they are incarcerated and to determine if any other resources could be allocated to providing treatment to convicted sexual offenders. Additionally the Board received updates regarding the ramifications of the Doe vs. DPSCS.

Subcommittee Activity

The subcommittee to oversee the implementation of the Office of Professional Services has met once and will continue to work over the next year to fully implement the agency who will oversee the creation and implementation of an Approved Provider List for sexual offender treatment.

The subcommittee investigating the feasibility of sexual offender treatment for incarcerated sexual offenders also met once and will be providing an initial report to the Board at the upcoming May meeting.

Future Activities

The Board will continue its work in 2014 by focusing on: DPSCS's full creation and implementation of the Office of Professional Services (OPS) which will oversee the creation and maintenance of the Sexual Offender Treatment Approved Provider List; creating an Office of Professional Services to maintain the list and develop training appropriate for

specialized treatment providers; establishing a process for termination of Lifetime Supervision for violent sex offenders; reviewing the implementation of the new sex offender registration laws; and investigating emerging techniques to improve how sexual offenders are managed in Maryland.

I. SEXUAL OFFENDER REGISTRATION

Sex Offender Registry Website - WebSOR

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.

In 2008 and 2011 the Department of Public Safety and Correctional Services received a



grant from the Office of Justice Programs to begin the implementation of Title I of the federal Adam Walsh Child Protection and Safety Act of 2006 (AWA), more commonly known as SORNA (Sexual Offender Registration and Notification Act). SORNA requires that all states and federal jurisdictions adopt a standardized set of registration laws that will not only enhance communication between jurisdictions when a sexual offender moves, but can also help to prevent sexual offenders from “state shopping” for the most lenient registration laws. SORNA also requires the state to collect more offender information and to post more of that information on the website than in the past.

DPSCS is collecting all of the data that the federal government requires under AWA and has begun posting the required information on the website including an offender's employment address and any temporary addresses. In the 2011 the registry also made available to the public an offender's vehicle information as well as a "plain language" description of the crime for which the offender was required to register (though the Sexual Offender Registry is prohibited by law from disclosing any identifying victim information). In 2013, the entire sex offender registry website was redesigned in terms of the landing page and the formatting of the offender information profiles. As part of the redesigned website the department added the required victim education and awareness links and resources to the website.

The screenshot displays the Maryland Department of Public Safety & Correctional Services' Sex Offender Registry search results. The page is titled "Maryland SOR Search" and features a search bar at the top right. A navigation menu includes links for Home, About DPSCS, Reorganization, Initiatives, Corrections, Community Supervision, and Pretrial Detention. The left sidebar contains various online tools such as "Public Stakeholder Services", "Find a Service", "Find a DPSC Unit", "Online Tools", "Sex Offender Registry", "Inmate Locator", "Fingerprint Card Order Form", "Pardon Application", "Program and Services", "Escape Notification", "MD Police & Correctional Training", "MD Correctional Enterprises", "News/Press", "Publications/Stats/Research", and "Office of Equal Opportunity".

The main content area shows the profile for a selected registrant, **JONES, WILLIE STEVEN JR**. A warning message states: "Warning - Do not use this information to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address. Such action could result in civil or criminal penalties." Below the name are buttons for "Notify me if the status changes", "Email", and "Map Registrant". A mugshot of the registrant is shown to the right.

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: 12/26/2013
 Temporary Residence: NA
 Employment Address: NA
 School Address: NA

Conviction Information
 Conviction Date: 06/13/2012 Location: Baltimore, MD
 Registration Authority: Maryland Law
 Charges:
 • Sexual Solicitation Of A Minor - CJ § 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: 06/23/1981
 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.

The Maryland Online Sexual Offender Registry (MOSOR) Database

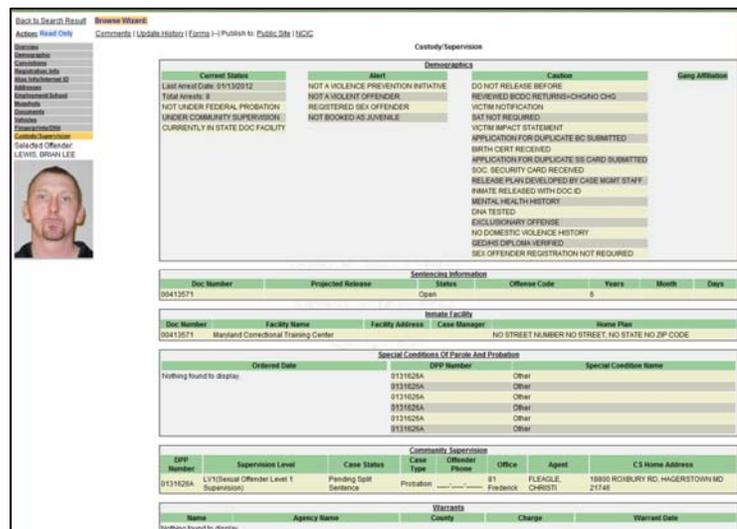
MOSOR is a web-based program used by all local law enforcement agencies, some local



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 it 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 community 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.

Community Notification

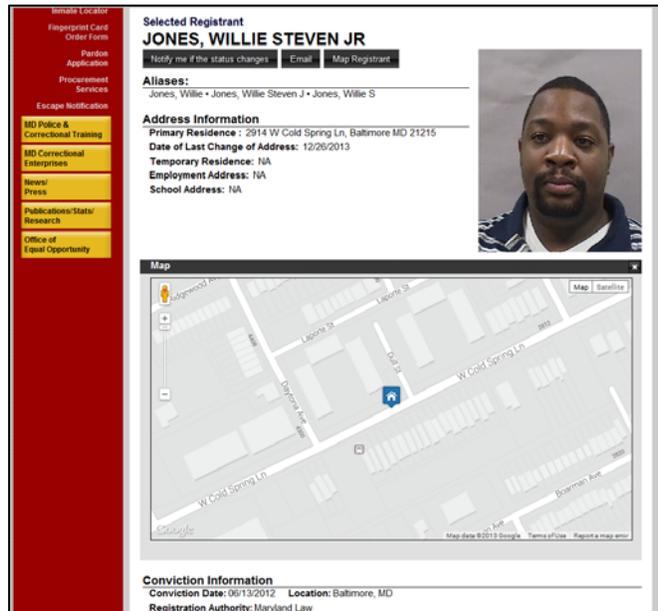
Whenever a registered sexual offender begins living, working or attending school in Maryland, it is the local law enforcement unit responsible for conducting in-person sex offender registration in that jurisdiction who is also responsible for providing notification to schools and other law enforcement agencies. The DPSCS provides reimbursement to these law enforcement units (at the rate of \$200 per offender) for the costs incurred in conducting these activities in their jurisdictions.

Written notification of the presence of a registered sexual offender in the community is provided by the local law enforcement unit to: (1) the Superintendent of the county school system, who must then – within ten days – provide such 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.

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 – the APRISS Alert Express System – which was implemented in March 2007, enables members of the public to receive automatic notification – by telephone or e-mail – whenever a registered sexual offender moves into their zip code (or any other zip code of interest). The number to use to register for that service is 1-866-559-8017.

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

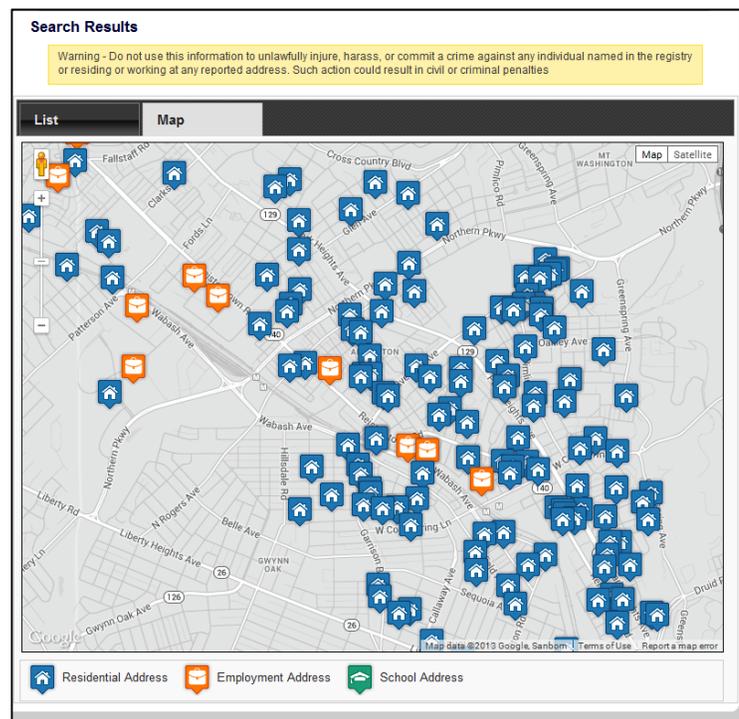


agreement, CGIS redesigned the outdated maps on the Sexual Offender Registry website (WebSOR). Through the creation and full intergration of publicly accessible, map-enabled website profile interfaces users can now easily search for and visualize the location of registered sexual offenders in the context 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.

Reimbursement and Assistance to Local Law Enforcement

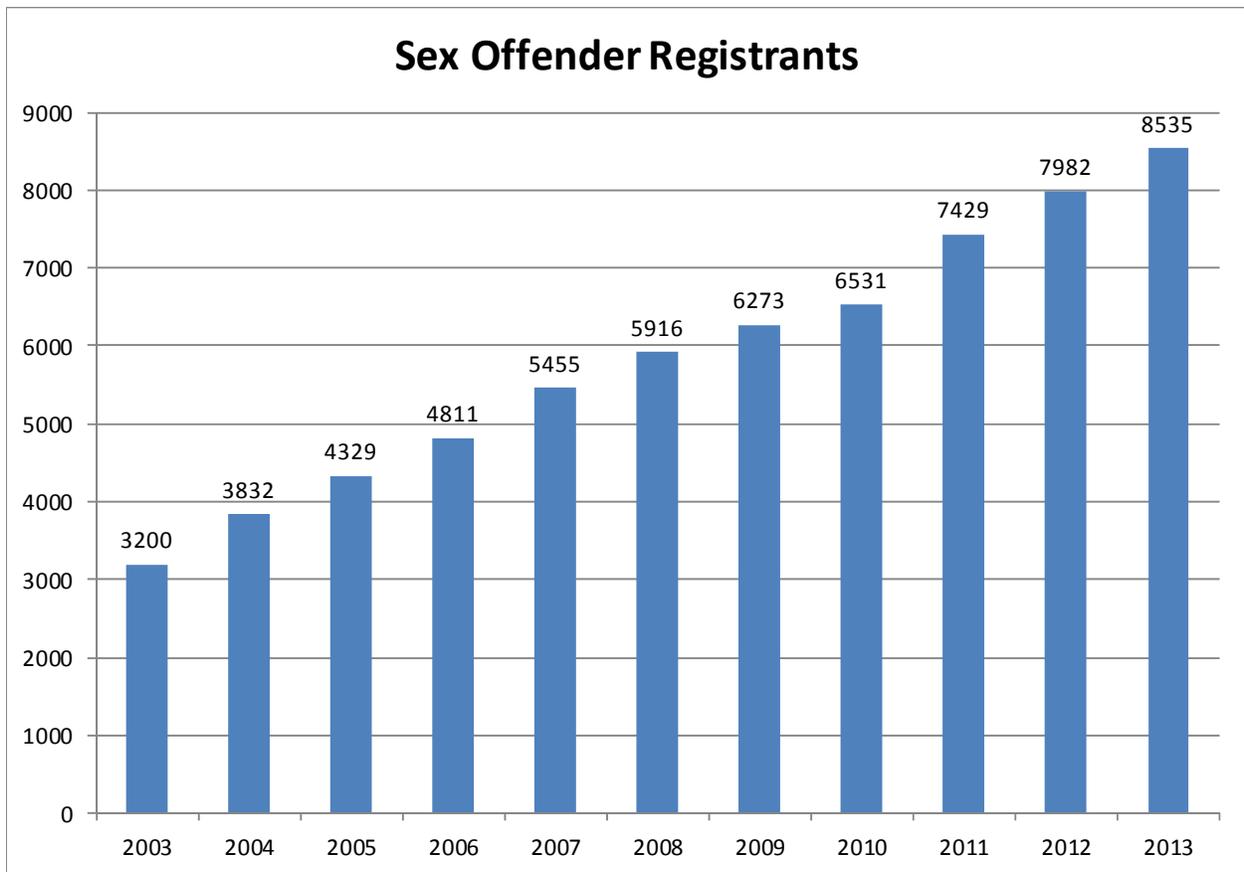
The DPSCS reimburses local law enforcement agencies (LLEUs) \$ 200 per offender for conducting sex offender registration and community notification programs in their jurisdictions. When a sex offender begins living, working or going to school in Maryland it is the LLEU's responsible for conducting in person sex offender registration in that



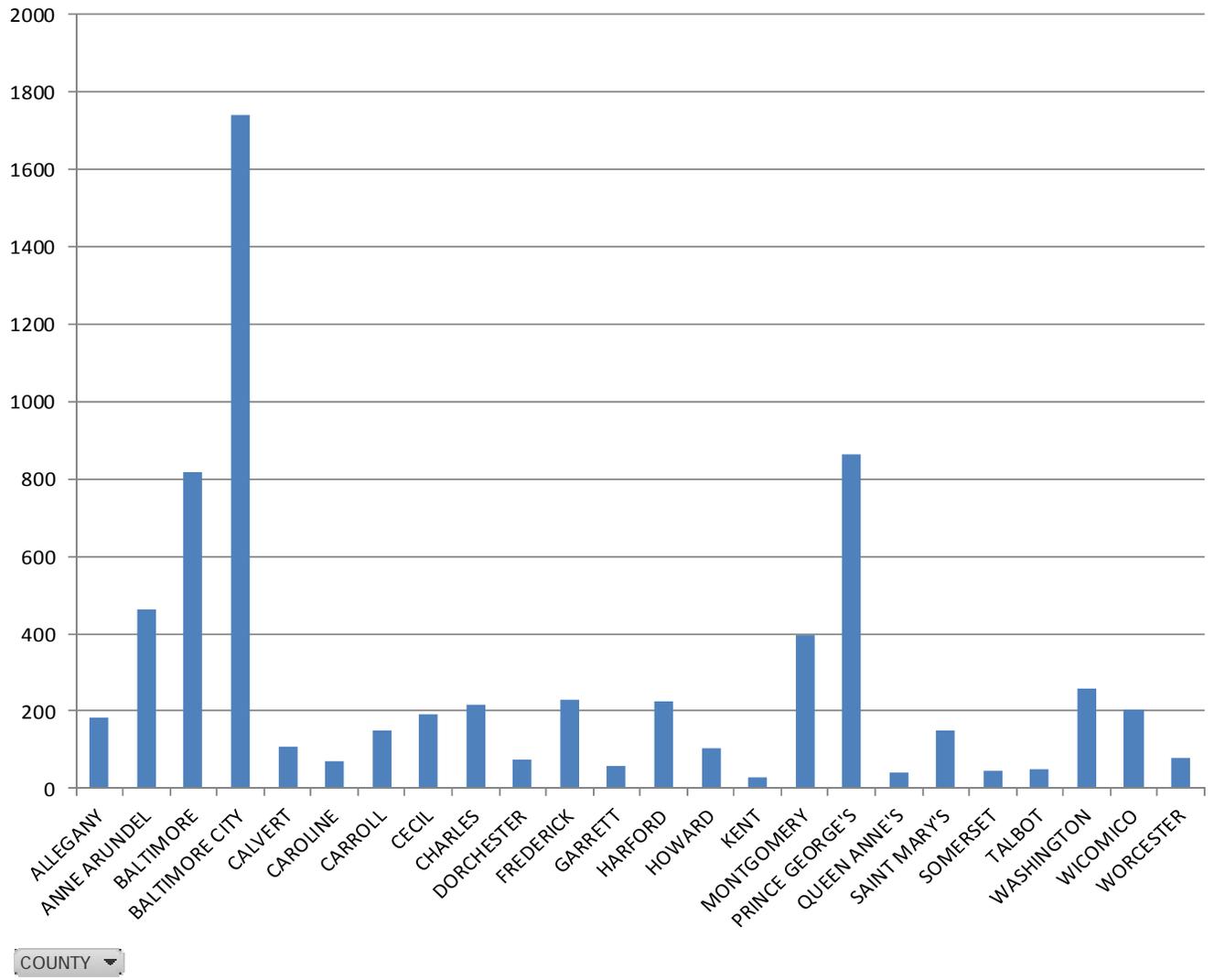
jurisdiction who provides written notification to:

- The Superintendent of county schools;
- All non-public primary and secondary schools in a one-mile radius of the residence; and
- All other local law enforcement agencies the Municipalities in that county.

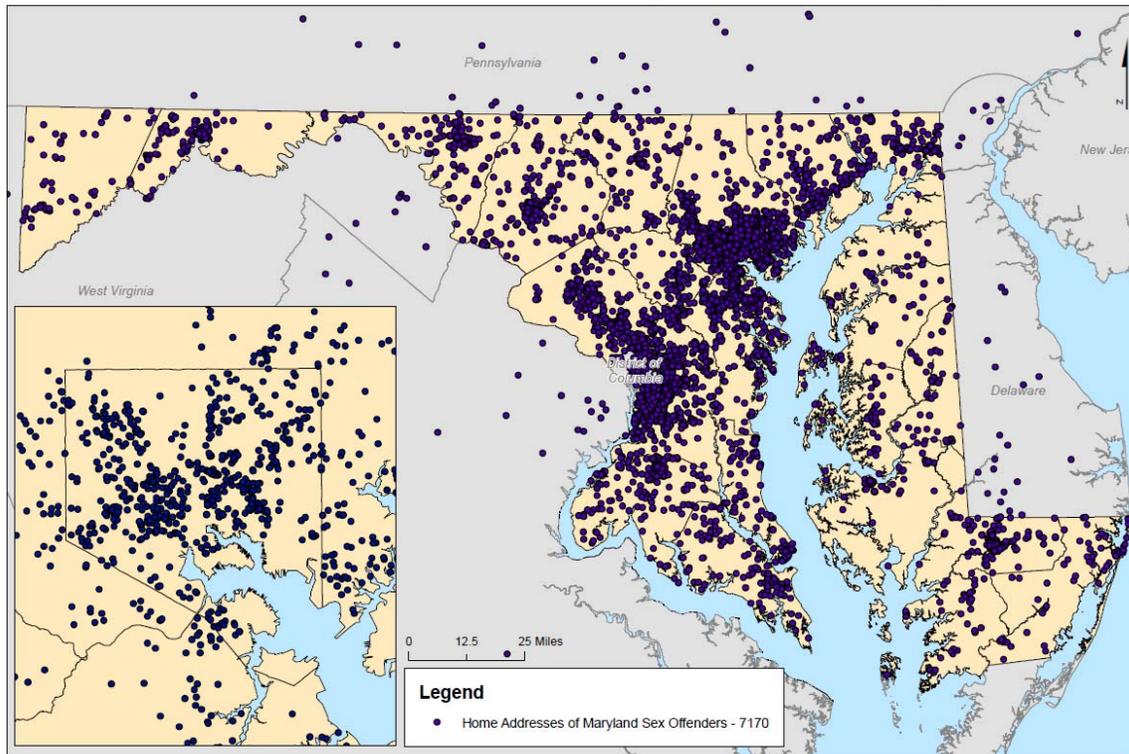
| DPSCS Registration Reimbursements to Maryland Counties and Baltimore City | |
|--|--------------|
| Fiscal Year 2008 | \$ 969,000 |
| Fiscal Year 2009 | \$ 988,800 |
| Fiscal Year 2010 | \$ 1,059,800 |
| Fiscal Year 2011 | \$ 1,177,200 |
| Fiscal Year 2012 | \$1,266,400 |
| Fiscal Year 2013 | \$ 1,348,600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



FY 2013 Year End Totals



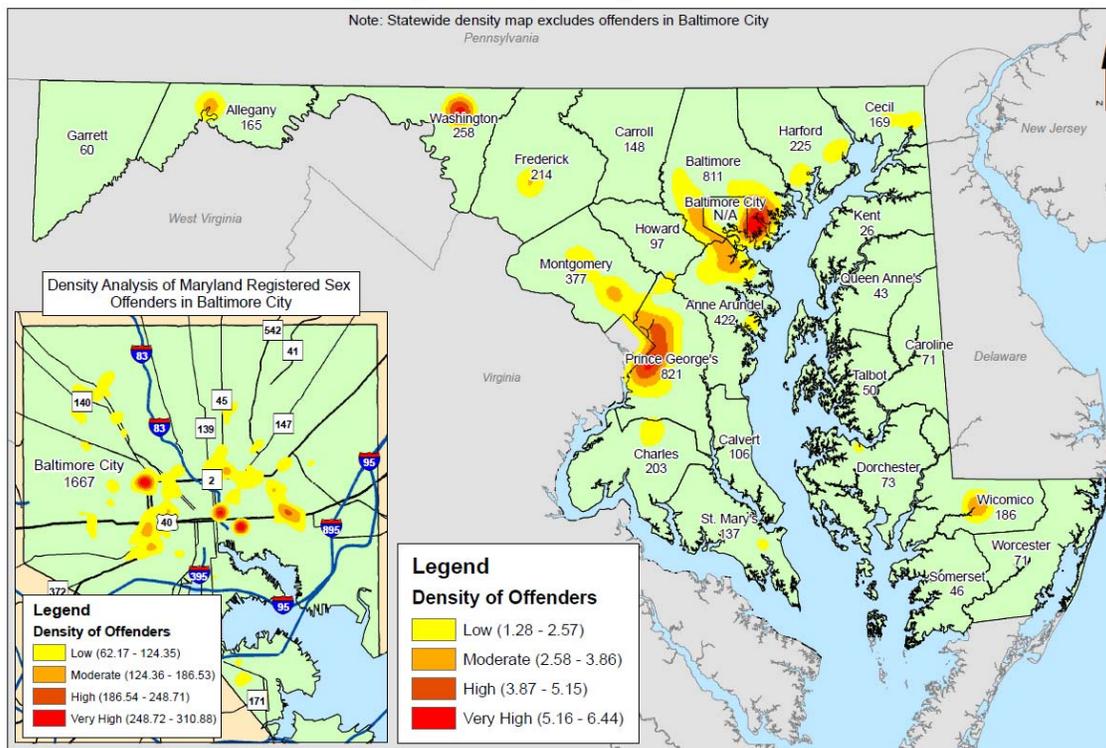
Home Addresses of Individuals on the Maryland Sex Offender Registry



Map Created: 1/6/2014
 Data Source: Maryland Community Supervision
 Data Extraction Date: 12/30/2013



Density Analysis of Maryland Registered Sex Offenders



Map Created: 1/6/2014
 Data Source: Maryland Community Supervision
 Data Extraction Date: 12/30/2013

0 12.5 25 Miles



SORNA Implementation

In 2010 the Maryland General Assembly passed House Bills 174 and 175 which restructured the sex offender registration scheme, allowed for the collection of additional information from registrants, expanded the retroactive registration of individuals convicted of qualifying sexual offenses, and generally made Maryland compliant with Title 1 of the federal Adam Walsh Child Protection Act of 2006.

| PRE-SORNA SEX OFFENDER REGISTRATION | | | | | | |
|-------------------------------------|---------------------------|--------------------|---------------------------|----------------------|-------|-------------------|
| | Lifetime Registration | | | 10 Year Registration | | Change percentage |
| | Sexually Violent Predator | Child Sex Offender | Sexually Violent Offender | Offender | Total | |
| Fiscal Year 2006 | 5 | 3415 | 1169 | 227 | 4811 | 11% |
| Fiscal Year 2007 | 12 | 3675 | 1464 | 316 | 5455 | 13% |
| Fiscal Year 2008 | 8 | 3947 | 1579 | 390 | 5916 | 8% |
| Fiscal Year 2009 | 12 | 4099 | 1734 | 440 | 6273 | 6% |
| Fiscal Year 2010 | 14 | 4244 | 1814 | 473 | 6531 | 4% |

| POST-SORNA SEX OFFENDER REGISTRATION | | | | | | |
|--------------------------------------|---------------------------|----------|----------------------|---|-------|-------------------|
| | Lifetime Registration | | 25 Year Registration | 15 Year Registration w/ possible 5 year term reduction | Total | Change percentage |
| | Sexually Violent Predator | Tier III | Tier II | Tier I | | |
| Fiscal Year 2011 | 9 | 6332 | 412 | 685 | 7429 | 14% |
| Fiscal Year 2012 | 12 | 6598 | 524 | 860 | 7982 | 7% |
| Fiscal Year 2013 | 3 | 6919 | 632 | 984 | 8535 | 7% |

While there is an increase in the total number of registrants at the end of Fiscal Year 2011 due to expanded retroactivity in the first year of implementation; 2012 and 2013 did not see any abnormal or statistically significant increases in registrant numbers when compared to the increases in registration number between 2003 and 2010.

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

In *Doe v. Department of Public Safety and Correctional Services, 430 Md. 535 (2013)*, Maryland's highest court examined the ex post facto implications of applying the 2009 and 2010 amendments to Maryland's sex offender registration law to an individual whose

crime was committed not only prior to those amendments, but prior to the creation of the sex offender registry itself. Thus, it is the opinion of the Attorney General's Office that the *Doe* holding is confined to individuals who have been retroactively required to register as a sexual offender under Maryland law as a result of amendments enacted in 2009 and 2010, and whose crime(s) occurred prior to the creation of the registry in 1995.

In the coming year the Board hopes to review and consider more information related to the registration of sexual offenders in Maryland.

II. MARYLAND DPSCS COMMUNITY SUPERVISION OF SENTENCED SEX OFFENDERS

COLLABORATIVE OFFENDER MANAGEMENT / ENFORCED TREATMENT (COMET)

As of January 1, 2014, there were 4,718 sexual offense cases assigned to DPSCS – Community Supervision. The supervision status of these cases is noted in the table below (it should be noted that all numbers in this document refer to *cases* and not *offenders*, as a significant number of offenders have multiple supervision cases).

| CASE TYPE | |
|---------------------------------|-------------|
| ACTIVE | 2106 |
| DELINQUENT | 276 |
| PENDING SPLIT SENTENCE | 1217 |
| NONACTIVE - DUPLICATE | 415 |
| NONACTIVE - UNAVAILABLE | 549 |
| OTHER NONACTIVE CLASSIFICATIONS | 155 |
| Total | 4718 |

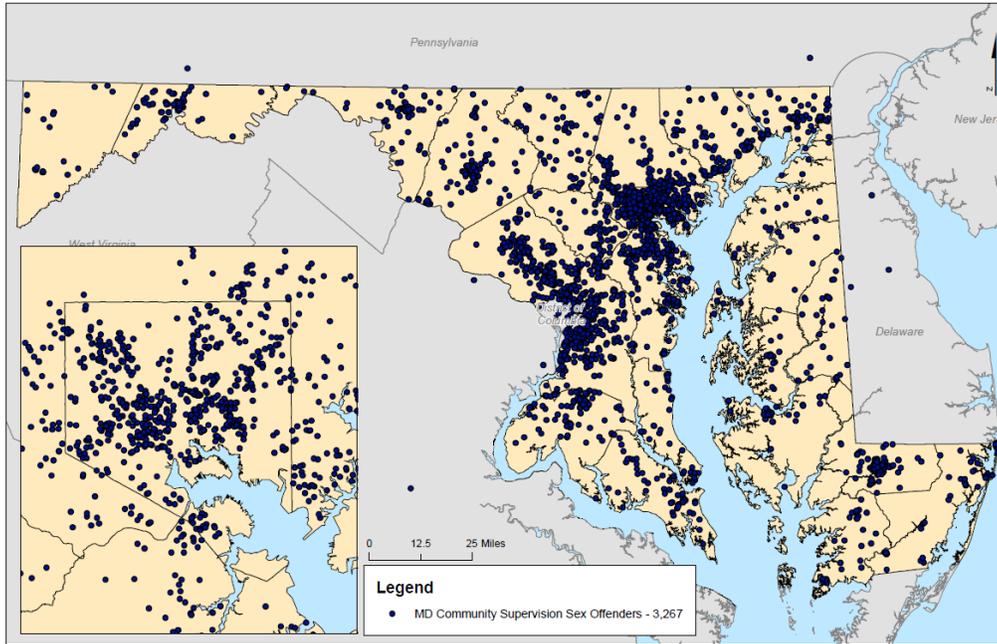
The 2,106 sexual offenses cases currently under active supervision by statewide COMET teams are assigned to one of four supervision levels. Level 1 provides the highest levels of contact, verification, and restriction, and is the level to which the majority of sexual offense cases are initially assigned. Movement to lower levels of supervision is based on full compliance with supervision requirements over specified time periods and regular empirical reassessment. The number of cases in each supervision level at the beginning of 2104 is presented in the table below.

| SUPERVISION LEVEL FOR COMET CASES | |
|--|-------------|
| LEVEL 1 | 641 |
| LEVEL 2 | 239 |
| LEVEL 3 | 319 |
| LEVEL 4 | 907 |
| Total | 2106 |

The following table shows the geographic assignment of all open sexual offense cases (whether currently active or not) throughout Maryland.

| | |
|------------------------------|-------------|
| CENTRAL REGION TOTAL | 1169 |
| BALTIMORE CITY | 817 |
| BALTIMORE COUNTY | 352 |
| NORTHERN REGION TOTAL | 1327 |
| ALLEGANY COUNTY | 81 |
| CARROLL COUNTY | 110 |
| FREDERICK COUNTY | 199 |
| GARRETT COUNTY | 19 |
| HARFORD COUNTY | 162 |
| HOWARD COUNTY | 85 |
| MONTGOMERY COUNTY | 513 |
| WASHINGTON COUNTY | 158 |
| SOUTHERN REGION TOTAL | 1684 |
| ANNE ARUNDEL COUNTY | 309 |
| CALVERT COUNTY | 60 |
| CAROLINE COUNTY | 57 |
| CECIL COUNTY | 100 |
| CHARLES COUNTY | 159 |
| DORCHESTER COUNTY | 88 |
| KENT COUNTY | 13 |
| PRINCE GEORGE'S COUNTY | 491 |
| QUEEN ANNE'S COUNTY | 29 |
| ST. MARY'S COUNTY | 90 |
| SOMERSET COUNTY | 37 |
| TALBOT COUNTY | 30 |
| WICOMICO COUNTY | 166 |
| WORCESTER COUNTY | 55 |
| HEADQUARTERS TOTAL | 538 |
| TOTAL CASES | 4718 |

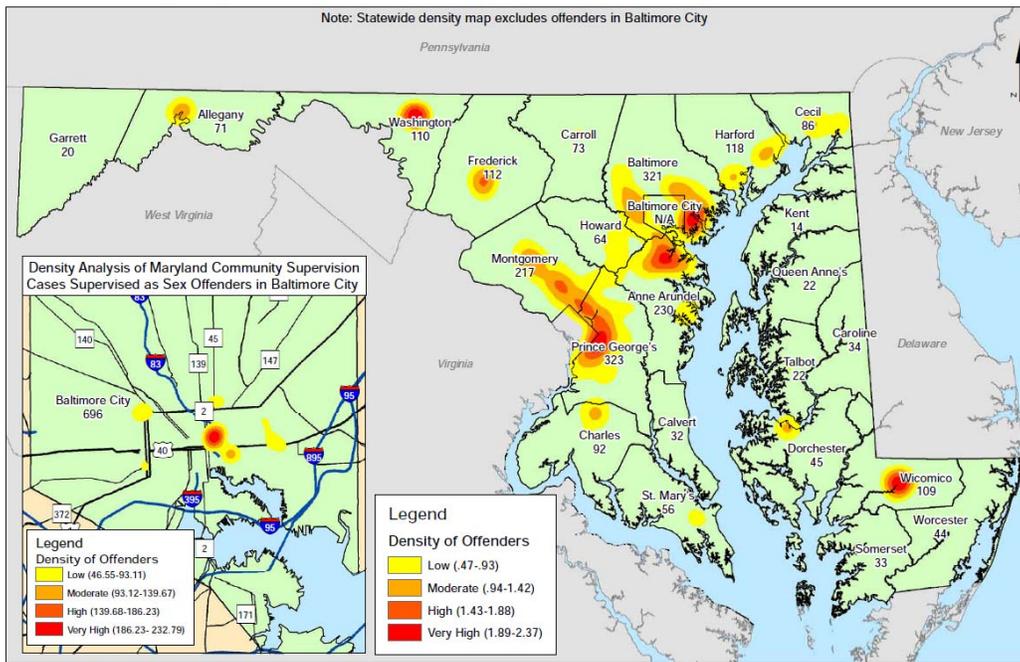
Maryland Community Supervision Cases Supervised as Sex Offenders



Map Created: 1/2/2014
 Data Source: Maryland Community Supervision
 Data Extraction Date: 12/30/2013
 Note: Offenders with multiple cases residing at the same address have been removed. Offenders with a case status of Pending Split Sentence and Non-Active Unavailable have been removed



Density Analysis of Maryland Community Supervision Cases Supervised as Sex Offenders



Map Created: 1/2/2014
 Data Source: Maryland Community Supervision
 Data Extraction Date: 12/30/2013
 Note: Offenders with multiple cases residing at the same address have been removed. Offenders with a case status of Pending Split Sentence and Non-Active Unavailable have been removed.



III. LIFETIME SUPERVISION FOR 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 statutory language prepared by the Sexual Offender Advisory Board (page 24).

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 recommended 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 draft legislation, offered 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 proposed 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 (page 27) 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 Community Supervision 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 one year, 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 Language for the Amendment of the Lifetime Supervision Statute

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 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.

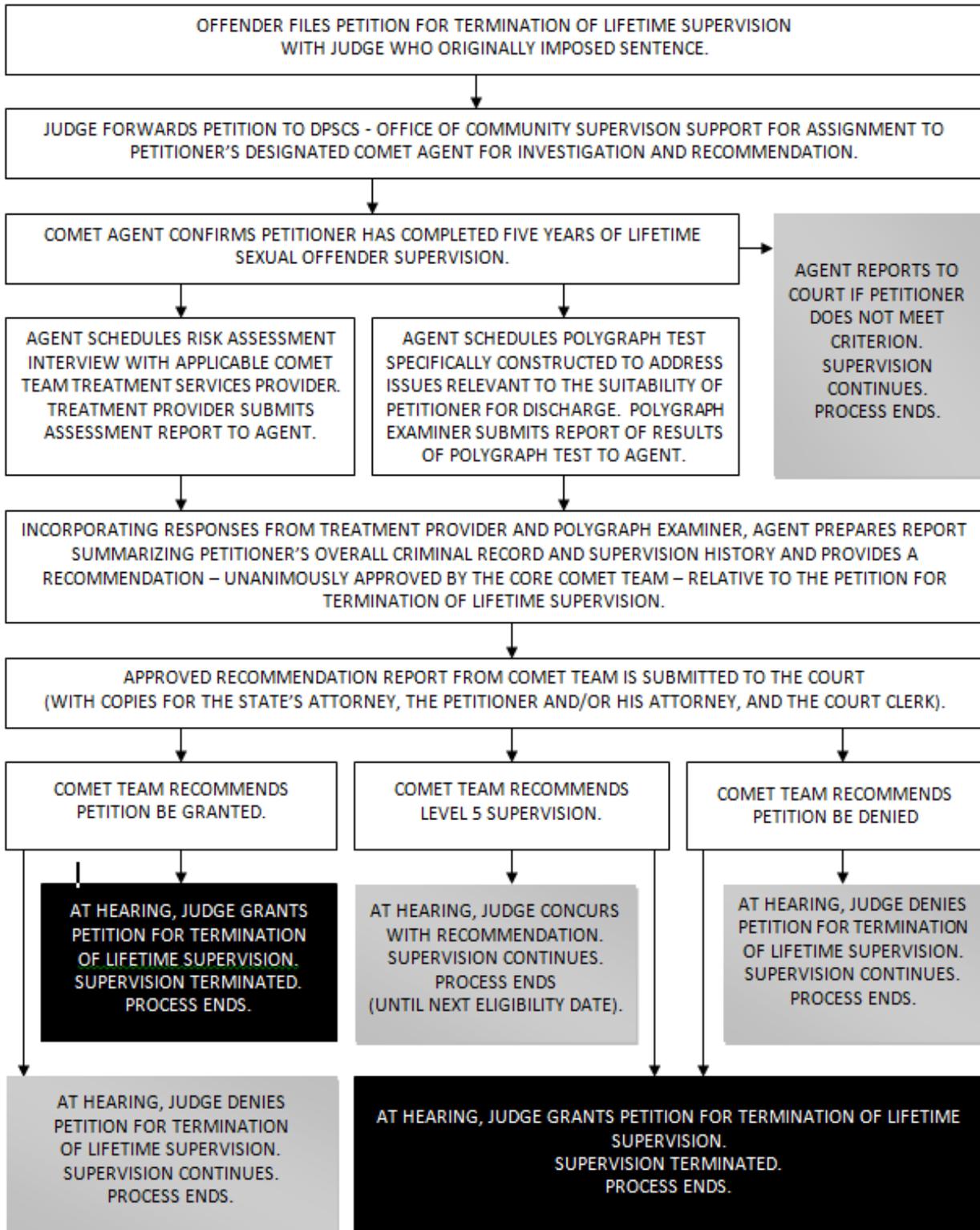
(ii) The court may not [discharge a person from lifetime supervision unless the court makes a finding on the record that the petitioner is no longer a danger to others.] GRANT A PETITION FOR DISCHARGE FROM LIFETIME SEXUAL OFFENDER SUPERVISION UNLESS THE COURT MAKES A FINDING ON THE RECORD THAT THE PETITIONER'S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

(iii) 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.

(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.

PROPOSED PROCESS FOR TERMINATION OF LIFETIME SEXUAL OFFENDER SUPERVISION



IV. A COMPARATIVE REVIEW OF THE MD SEX OFFENDER ADVISORY BOARD'S RECOMMENDATIONS TO THE GENERAL ASSEMBLY AND HOUSE BILL 1267 (2013)

SOAB Recommendation 1

“Language could be included in the Criminal Procedure Article, Section 11-705, Maryland Annotated Code to require a registrant to notify a nursing home or assisted living facility during the admission process that he or she is a registered sex offender in Maryland or in any other jurisdiction. The Board suggests that admission to a healthcare facility should not be denied solely on the basis of registration status.

Additionally, if at the time of admission a registrant is so incapacitated that he cannot notify the facility that he is a registered sex offender, 1) this could be considered a reasonable defense for non-compliance with the law; and 2) if he becomes physically and/or mentally able to notify the healthcare facility, then he should be required to do so.”

HB 1267 – includes language that requires the registrant to notify the nursing home or assisted living facility that he is a registrant and if possible to notify them prior to admission. This section of the bill is in line with the recommendations of the Board.

However, HB1267 specifically includes language that states that a nursing home or assisted living facility *may* decline the admission of an identified registrant. This is contrary to the Board’s recommendation which states that a nursing home or assisted living facility should *not* deny a person admission solely on the basis of his registration status. The Board recommends that the language of “identified registrant” on page 6 line 13 removed or modified to something more general such as a “sexual offender with supervision needs or medical requirements that cannot be met the facility”. We recommend this for a number of reasons: 1) It is unethical to deny medical services to a person in medical need based solely on one facet of their character, and 2) allowing nursing homes or assisted living facilities to do so could create an inequitable system that will foster discrimination based on a specific

class of people and could become a constitutional issue. The registry was created to be a non-punitive civil system for tracking individuals convicted of committing sex offenses and as a mechanism for community notification; it was not created as a mechanism for denial of resources, services, or treatment.

SOAB Recommendation 2

“Language could also be included in the Criminal Procedure Article, Section 11-708, Maryland Annotated Code to require the supervising authority to notify a nursing home or assisted living facility that a registered sex offender is habitually residing in the healthcare facility. The Boards suggests that the supervising authority be required to notify the healthcare facility within three calendar days of becoming aware of the registrant's address change. These notifications could include:

- Notification by the Department of Public Safety and Correctional Services to the nursing home or assisted living facility that an inmate who is a registered sex offender is being transferred or released to a facility;
- Notification by DPSCS to the nursing home or assisted living facility that a registered sex offender under community supervision is planning to move into, or has moved into, a facility;
- Notification by the Department of Health and Mental Hygiene to the nursing home or assisted living facility that a registered sex offender is being transferred or released to a facility; or
- If the registrant is not in the custody or under the supervision of the DPSCS or the DHMH, the local law enforcement unit or Court responsible for registering the sex offender shall notify the nursing home or assisted living

facility that the registrant is planning to move into, or has moved into, a facility.”

HB 1267 – Includes language that would require a supervising authority to notify a nursing home or assisted living facility of a registrant’s residence in that facility.

SOAB Recommendation 3

“Language could be included in the Criminal Procedure Article, Section 11-718, Maryland Annotated Code that would require nursing homes and assisted living facilities to provide a general notification to all individuals and families admitted to a healthcare facility that registered sex offenders are not prohibited by law from receiving treatment and care in nursing homes and assisted living facilities. The general notice could include information regarding how the incoming resident and the resident's family members can access the Maryland Sex Offender Registry Website for additional information and can sign up for automated notifications through VINELink.”

HB 1267 – Does include language that would require a nursing home or assisted living facility to provide general notification to patients or their caretakers during admission to the facility.

SOAB - Recommendation 4

“Currently the Sexual Offender Registration and Supervision statute is advised by the Criminal Justice Advisory Board (CJAB). The CJAB is not the recognized Board responsible for determining what are the most effective practices for managing sexual offenders. The MDSOAB recommends the following changes to Criminal Procedure Article, Section 11-720, Maryland Annotated Code:

With advice from the [Criminal Justice Information Advisory Board] SEXUAL OFFENDER ADVISORY BOARD established under [§ 10-207 of this article] SECTION 1-401 OF THE PUBLIC SAFETY ARTICLE, the Secretary of the Department of Public Safety and Correctional Services shall adopt regulations to carry out this subtitle.”

HB 1267 - Does not include any language that specifically changes who advises the Secretary of the Department of Public Safety and Correctional Services. While this omission is unimportant in the context of the registered sex offenders living in in nursing homes or assisted living facilities, it does however, impact how regulations will be created.

SOAB Recommendation 5

“The Board suggests that a temporary taskforce be considered within the Public Safety Article, §1-401 to develop regulations to assist nursing homes and assisted living facilities with the safe and effective management of sex offenders in their care. The Secretary of the Department of Health and Mental Hygiene shall adopt regulations to ensure effective management of sex offenders in nursing homes and assisted living facilities. This specifically mandated taskforce is being suggested by the Board in order to devote resources to address these complex issues that are compounded by the intricacies of providing good and affordable healthcare management. Such a taskforce and the Secretary of DHMH should be advised by the Sexual Offender Advisory Board and comprised of representatives from the Board, Department of Health and Mental Hygiene, Offices of Health Care Quality and Long Term Care; the Department of Public Safety and Correctional Services Sex Offender Registry Unit; the Department of Disabilities; the Department of Aging; the State Board of Victim Services; and organizations representing nursing homes and assisted living facilities, as well as other advocacy organizations such as the Alzheimer’s Association and the Maryland Coalitional Against Sexual Assault.

The regulations could focus on: 1) general notification to residents and families that Maryland does not prohibit the admission of registered sex offenders to long-term healthcare facilities; 2) specific notification to employees working in a nursing homes and assisted living facilities of a registrant’s admission; 3) creation of an appropriate framework for healthcare facility managers to determine if a prospective patient is a registered sex offender; and 4) a requirement that a registrant who is a

patient has specific risk reducing precautions addressed in his or her care plan.

The taskforce might also be given the job of developing a framework for training long-term care facility staff on the how to recognize sexual abuse, how to reduce the risk of sexual abuse in their facilities, and ensuring that mandatory reporting laws are understood and followed. The taskforce could also determine the fiscal impact of these potential regulations. “

HB 1267 - Does not include any language that suggests a temporary workgroup/ taskforce be created to develop regulations and or policy to assist nursing homes and assisted living facilities with the safe and effective management of sex offenders in their care. The Board feels that a more comprehensive workgroup/taskforce is needed due to the extreme complexity of the issues involved. Such a workgroup/task force could be advised by the Board, or the Board could simply be a member of the group.

House Bill 1267 includes a few items that were not included in the Sex Offender Advisory Board’s 2011 Annual report.

1. The bill would require that the name of the nursing home or assisted living facility be information that the registrant is required to disclose on a registration statement. The Board does not oppose the addition to the registration statement.
2. The bill creates definitions within the Health General Article to aid in the process of identifying registered sex offenders. The Board does not oppose the included definitions.
3. The bill indicates that a facility may not knowingly employ an “identified registrant”.

The Board does not oppose this idea in general; however, more discussion is needed to determine if all of the appropriate criminal justice background checks are being

completed in addition to a registration check. Many individuals may have adjudicated sexual crimes in their history, but not appear on the registry.

4. The bill requires facilities to check the DPSCS Sex Offender Registry website during the admission process.

The Board does not oppose this language but suggests that facilities check both the DPSCS Sex Offender Registry website and the National Sex Offender Registry Public Website in order to do a more in-depth review of potential patients. It seems very possible that a person who is a resident of a near-by state may seek care in a Maryland facility and that person may or may not appear on the DPSCS Sex Offender Registry Website.

5. The bill requires that certain special accommodations be paid for by either the patient or, if appropriate, by the medical assistance program.

The Board does not oppose this language and understands that special accommodations related to the patient's risk for re-offense may be required and could be cost prohibitive for a facility.