JOHN DOE,	*	IN THE
Petitioner	*	COURT OF APPEALS
v.	*	OF MARYLAND
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES,	*	September Term, 2011
	*	No. 125
Respondent		

* * * * * * * * * * * * *

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of April, 2012, three copies of the Brief of *Amici Curiae* and Appendix in the captioned case were served via first class mail, postage prepaid, upon

Stuart M. Nathan
Assistant Attorney General
115 Sudbrook Lane, Suite A
Pikesville, MD 21208

Nancy S. Forster
925 Metfield Road
Towson, MD 21286

_____
Brian M. Saccenti

IN THE COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 2011

NO. 125

JOHN DOE,

Petitioner

v.

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES,

Respondent

ON WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND

BRIEF OF *AMICI CURIAE* AND APPENDIX

BRIAN M. SACCENTI
BRIAN L. ZAVIN
Assistant Public Defenders
6 Saint Paul Street, Suite 1302
Baltimore, MD 21202
Phone: (410) 767-8553
Fax: (410) 333-8801
bsaccenti@opd.state.md.us
bzavin@opd.state.md.us

Counsel for the Office of the Public Defender

MICHAEL P. LYTLE, ESQ
Law Office of Michael P. Lytle, Esq.
4157 Mountain Road, #219
Pasadena, MD 21122
Phone: (410) 255-7088
mike.lytle@mplytlelaw.com

Counsel for the Maryland Criminal Defense Attorney's Association

JAMES M. NICHOLS, ESQ.
Warnken LLC
300 East Joppa Road, Suite 303
Towson, MD 21286
Phone: (443) 921-1100
james.nichols@warnkenlaw.com

Counsel for Families Advocating Intelligent Registries, Inc.

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BRIEF OF *AMICI CURIAE*

STATEMENT OF THE CASE

Amici curiae the Maryland Office of the Public Defender (OPD), the Maryland Criminal Defense Attorneys Association (MCDAA), and Families Advocating Intelligent Registries, Inc. (FAIR) will adopt petitioner's statement of the case.

QUESTIONS PRESENTED

1. Given the highly punitive and restrictive nature of Maryland's newly enacted sex offender registration laws, does their retroactive application violate the federal constitutional ban on *ex post facto* laws and both clauses of Article 17 of the Maryland Declaration of Rights prohibiting *ex post facto* laws and *ex post facto* restrictions?

2. Given that the plea agreement entered into by Mr. Doe did not, and indeed could not have, contemplate registering as a sex offender, is he entitled to specific performance of the plea agreement?

STATEMENT OF FACTS

The *amici curiae* will adopt petitioner's statement of facts.

ARGUMENT

I. MARYLAND'S SEX OFFENDER REGISTRY LAWS HAVE BECOME INCREASINGLY ONEROUS AND RETROSPECTIVE IN RECENT YEARS.

Pursuant to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program of 1994, 103 P.L. 322, Maryland enacted its first sex offender registration scheme in 1995. *See Young v. State*, 370 Md. 686, 692 n.3 (2002); *Graves v. State*, 364 Md. 329, 336-37 (2001). Contained within a single section in former Article 27 of the Code, the law only made registration a consequence for a handful of offenses. Importantly, the law also had no retroactive effect; by its own terms it applied only to offenses committed on or after the effective date of the law, October 1, 1995. 1995 Md. Laws ch. 142.

Under former Article 27, § 692B, only child sex offenders, a class defined by statute, were required to register. *Id.* Registration involved filing a statement with an offender's local law enforcement agency within seven days of a qualifying event, such as release from prison. *Id.* The registration statement consisted of a signed statement indicating the offender's name, address, and place of employment, a description of the crime committed, the date of conviction, the jurisdiction of conviction, a list of any aliases used by the offender, and the offender's Social Security number. *Id.* In addition, the offender's local law enforcement agency was required to obtain a photograph and fingerprints of the offender for inclusion in the registration statement. *Id.* Registration was to occur annually for a period of 10 years. *Id.* Changes of address had to be reported within seven days. *Id.* Failing to register was made a misdemeanor, punishable by up to three years imprisonment and a $5,000 fine. *Id.*

Once an offender registered, the burden shifted to the local jurisdiction to send notice of the registration to the county superintendent. *Id.* The local law enforcement agency was also authorized to provide notice to community organizations, religious organizations, and any other organizations "that relate[] to children or youth." *Id.* Although the Department of Public Safety and Correctional Services ("DPSCS") was authorized to create and maintain a central registry of offenders, *id.*, the Legislature did not make provision for the posting of registry information on the Internet.

Significant changes to the law came as early as 1997. That year, the Legislature added three categories of individuals required to register, offenders, sexually violent offenders, and sexually violent predators. 1997 Md. Laws ch. 754. Unlike persons falling into the other categories, sexually violent predators were defined not simply by their offense but also by their prior record and whether they had been determined by a court to be at risk of recidivism. *Id.* The frequency and duration of registration depended on the category into which an offender fell: annually for 10 years for child sex offenders, offenders, and sexually violent offenders, and every 90 days for sexually violent predators until a court determined that they no longer fit into that category. *Id.* Child sex offenders were given the additional burden of having to register in person. *Id.* As with the 1995 version of the law, the 1997 amendments applied only to offenses committed on or after the effective date of the law. *Id.*

If the primary effect of the 1997 amendments was to broaden the scope of the law, changes to the statute in 1999 substantially increased the burden on registrants. Depending on their offense, child sex offenders and sexually violent offenders would have to register annually for 10 years or for the remainder of their lives. 1999 Md. Laws ch. 317. Sexually violent predators would have to register every 90 days for life. *Id.* The content of registration statements also expanded; an offender now had to include information about any school enrollment and, if he or she met the definition of a sexually violent predator, information about identifying

factors, including a physical description, any anticipated future residence, if known, offense history, and any treatment received for a mental abnormality or personality disorder. *Id.* The notification provisions of the law were also expanded to include, *inter alia*, authority for DPSCS to post offender information on the Internet. 1999 Md. Laws ch. 402.

In 2001, the registration and notification provisions were transferred from Article 27 to the Criminal Procedure Article, § 11-701, *et seq*. Although much of the law remained unchanged, the Legislature took the first step toward making it apply retroactively to individuals who committed their offenses prior to the enactment of the statute in 1995. In particular, child sex offenders who committed their offenses on or before October 1, 1995, were required to register if they were under custody or supervision on October 1, 2001. 2001 Md. Laws ch. 221. Registration for other types of sex offenders was mandated if the offenses were committed on or before July 1, 1997, and the offenders were under custody or supervision on October 1, 2001. *Id.*

The next major changes to the law came in 2006. That year, the Legislature increased the frequency of registration to every six months for child sex offenders, offenders, and sexually violent offenders. 2006 Md. Laws Sp. Ses. ch. 4. In addition, all registrants, and not just child sex offenders, were required to register in person. *Id.* The Legislature also altered the penalty for failing to register, making a subsequent conviction for the offense a felony punishable by up to five years in prison and a $10,000 fine and made it a crime, subject to limited exceptions, for a registered sex offender to enter onto real property that is used for elementary or secondary education or child day care. *Id.*

At least two additional changes to the law in 2006 are also significant. First, the Legislature required offenders to provide DNA samples at the time of registration unless they had already done so. *Id.* Second, the Legislature created a new category of individuals, "extended parole supervision offenders," who, in addition to registering, must serve a term of "extended sexual offender parole

supervision" lasting from three years to life. *Id.* Among the conditions extended parole supervision may include are monitoring via global positioning satellite tracking technology, restricting where a registrant may live and work, requiring participation in a sexual offender treatment program, prohibiting the use of drugs and alcohol, and requiring regular polygraph examinations. *Id.*

In 2008, the Legislature again increased the burden on registrants. In addition to the information a registrant was already required to give, he or she now had to provide any former names, e-mail addresses, computer log-in or screen names or identities, instant messaging identities, electronic chat room identities, a copy of his or her driver's license or identification card, and the license plate number and description of any vehicle he or she regularly operated. 2008 Md. Laws ch. 352.

The next year brought with it two major changes. For the first time, juvenile sex offenders were required to register, albeit for a more limited period of time, five years. 2009 Md. Laws ch. 524. Second, the Legislature made sweeping changes to the retroactivity provision, bringing within the reach of the law sexually violent offenders and sexually violent predators convicted on or after July 1, 1997, of offenses committed before July 1, 1997, and child sex offenders convicted on or after October 1, 1995, of offenses committed before October 1, 1995. 2009 Md. Laws ch. 541.

Bigger changes were still to come. In 2010, the Legislature, in accordance with the Adam Walsh Child Protection and Safety Act of 2006, 109 P.L. 248, reclassified offenders into tiers. Tier I offenders have to register in person every six months for 15 years with the possibility of a reduced term of registration. 2010 Md. Laws chs. 174, 175. Tier II offenders have to register in person every six months for 25 years. *Id.* Tier III offenders, including Mr. Doe, have to register in person every three months for life. *Id.* Unlike Tier I offenders, Tier II and Tier III offenders cannot petition for a reduction in the term of registration.

The Legislature made registration more burdensome in other respects as

well. Whereas offenders previously had seven days to register and seven days to report a change of address, they now have only three days. *Id.* In addition, offenders have to inform the authorities in writing including an itinerary prior to any absence from their homes for more than seven days. *Id.* All registrants, and not just sexually violent predators, also have to provide more information, including a physical description, a copy of any passport or immigration papers, information regarding professional licenses, cell phone and landline numbers, finger- and palm prints, and information about past criminal history. *Id.*

The Legislature also made another change to the retroactivity provision. Pursuant to legislation passed in 2010, the law now applies to any person who qualifies as a Tier I, II, or III offender and was under the custody or supervision of a supervising authority on October 1, 2010 or was already subject to registration on September 30, 2010, as well as to any person convicted of any "crime" on or after October 1, 2010, who has a prior conviction for an offense for which registration as a sex offender is required. *Id.*[1]

While recent amendments may have increased the burden on sexual offender registration, they do not, by any stretch of the imagination, mark the end of the line. Among the bills considered by the General Assembly during the 2012 session include proposals to: (1) prohibit registered sex offenders from going to schools to vote in elections, HB 495 (2012); (2) prohibit registered sex offenders from entering onto real property that is owned or operated by community–based organizations which provide recreational activities for children, HB 591 (2012); (3) prohibit registered sex offenders from participating in any Halloween activity that involves children including trick–or–treating, distributing candy to children, attending a school function, and attending a community festival, HB 1351 (2012);

[1] In 2011, the Legislature substituted the word "felony" for "crime" and added a provision applying the law to persons "convicted on or after October 1, 2010, of a violation of § 3-324 of the Criminal Law Article, regardless of whether the victim was a minor." 2011 Md. Laws ch. 374.

(4) creating a registry for individuals convicted of non-sexual child abuse, SB 370 (2012); and (5) creating a registry for individuals convicted of animal abuse, HB 1020 (2012). It may be argued that these are merely examples of proposed legislation and that the Legislature would never actually pass anything so extreme. However, that argument ignores the dramatic changes that have been made to the sex offender registration scheme since it was first put into place in 1995.

II. IN PRACTICE, MARYLAND'S SEX OFFENDER REGISTRATION AND NOTIFICATION PROVISIONS IMPOSE SEVERE BURDENS ON REGISTRANTS AND THEIR FAMILIES AND DEPRIVE THEM OF IMPORTANT LIBERTY INTERESTS.

As mentioned *supra*, Maryland law now requires more people convicted of a broader variety of crimes to register more frequently, to provide more personal information to law enforcement, and to do so for longer periods of time. It also provides for expanded community notification. As discussed below, the registration and notification requirements place a substantial burden on the registrant and deprive him or her of important liberty interests.

Reporting Requirements

Maryland law requires that registrants register "in person" with their supervising authority and the local law enforcement unit of each county where they reside. Md. Code, Crim. Proc. Art. § 11-705(b)&(c) (2008 Repl. Vol., 2010 Supp.). The frequency with which a registrant must register and the duration of registration depend on how he or she is classified: a Tier I offender must register every six months for 15 years, a Tier II offender every six months for 25 years, and a Tier III offender every three months for the rest of his or her life. Md. Code, Crim. Proc. Art. § 11-707(a) (2008 Repl. Vol., 2010 Supp.). A person designated as a "sexually violent predator" must register every three months for the term applicable to whatever tier he or she is in.

Compelled Disclosure of Private Information

Registration involves the offender going to an office designated by the

supervising authority and providing a registration statement, which must include: (1) the registrant's name and all addresses and places where the registrant resides or "habitually lives;"[2] (2) the name and address of the registrant's employers and a description of each location where the registrant performs employment duties if different from the address of the employer; (3) the name and address of the registrant's educational institution or place of school enrollment; (4) a description of the registrant's crime; (5) the date that the registrant was convicted; (6) the jurisdiction and court in which the registrant was convicted; (7) a list of any aliases, former names, electronic mail addresses, computer log-in or screen names or identities, instant-messaging identities, and electronic chat room identities that the registrant has used; (8) the registrant's Social Security number, date of birth, and place of birth; (9) all identifying factors, including a physical description; (10) a copy of the registrant's passport or immigration papers; (11) information regarding professional licenses the registrant holds; (12) the license plate number, registration number, and description of any vehicle owned or regularly operated by the registrant; (13) the permanent or frequent addresses where the vehicles are kept; (14) landline and cellular telephone; (15) a copy of the registrant's driver's license or identification card; (16) the registrant's fingerprints and palm prints; (17) the registrant's criminal history; and (18) the registrant's signature and the date signed. Md. Code, Crim. Proc. Art. § 11-706(a) (2008 Repl. Vol., 2010 Supp.). For a registrant designated as a "sexually violent predator," the statement must also include his or her anticipated future residence, if known, and documentation of any treatment received for a mental abnormality or personality disorder. *Id.* § 11-706(b). All registrants must pose for a digital photograph every six months. *Id.* § 11-707(a). Finally, a local law enforcement unit can require a

[2] "Habitually lives" is defined very broadly to include places the registrant regularly visits. *See* Md. Code, Crim. Proc. Art. § 11-701(d) (2008 Repl. Vol., 2011 Supp.) (defining term to include "any place where a person visits for longer than 5 hours per visit more than 5 times within a 30-day period").

registrant to provide additional information. *See id.* § 11-705(c)(2).

A registrant must also notify all applicable local law enforcement units within three days of any change in "(1) residence; (2) the county in which the registrant habitually lives; (3) vehicle or license plate information; (4) electronic mail or Internet identifiers; (5) home or cell phone numbers; . . . (6) employment;" (7) enrollment as a student at an institution of higher education, or (8) a legal name change. *Id*. § 11-705(e), (f) & (g). In addition to notifying local law enforcement, a registrant must notify the State registry within three days of any "new electronic mail address, computer log-in or screen name or identity, instant-message identity, or electronic chat room identity." *Id*. § 11-705(j).

Travel Restrictions

The statute also requires the registrant to provide information as a condition for traveling to allow the government to monitor his or her travel. Before a registrant "obtains a temporary residence or alters the location where the registrant resides or habitually lives for more than 5 days or when the registrant will be absent from the registrant's residence or location where the registrant resides or habitually lives for more than 7 days," he or she must provide a travel itinerary to each local law enforcement unit where he or she resides or habitually lives. *Id*. § 11-705(i). Registrants are also required to "notify each local law enforcement unit where the registrant resides or habitually lives at least 3 days prior to leaving the United States to commence residence or employment or attend school in a foreign country." *Id*. § 11-705(h). These restrictions make it difficult or impossible for registrants to work in jobs that require frequent travel, to travel when there is an emergency, or to go on any trip where the itinerary is not precisely known in advance. (App. 1-4, 12, 14, 16, 19, 22-24, 26).[3]

[3] FAIR's membership includes many registrants and their family members. Rather than simply state conclusively the experiences of FAIR's members, *amici curiae* have appended hereto several affidavits from FAIR members.

Restrictions on Entry onto School Property or Child Care Facility

Registrants are prohibited from entering onto property that is used for elementary or secondary education or on which a child care facility is located, unless (1) the registrant is a student or the registrant's child is a student or receives child care, the resident has been given permission to do so by a specified person, and the registrant promptly notifies an agent or employee of the school, home, or institution of the registrant's presence and purpose of visit; or (2) the registrant entered the property for the purpose of voting at a school on an election day. Md. Code, Crim. Proc. Art. § 11-722(a)-(b) (2008 Repl. Vol.). Some of FAIR's members report that churches they had attended for years have asked them to leave because a school or daycare used the church property during the week and the law arguably prevents registrants from coming onto the church's property. (App. 8).

Widespread Dissemination of Sex Offender Status, Location, and Other Personal or Private Information Via the Internet and Community Notification

As directed by the General Assembly, *see* Md. Code, Crim. Proc. Art. § 11-717 (2008 Repl. Vol., 2010 Supp.), the DPSCS has made extensive information from offenders' registration statements available on the Internet. The data available includes a color photograph of the registrant and his or her name, aliases, home address, temporary residence, employment address, and school address; qualifying convictions; whether the registrant is compliant with the registration requirements; the registrant's tier (I, II, or III), supervising authority, and most recent registration date; the registrant's sex, date of birth, current age, height, weight, race, skin tone, eye color, and hair color; and the make, color, and license plate number for each of the registrant's vehicles.

Other government agencies publicize and direct people to the DPSCS sex offender registry website. The main website for the Maryland government, on its "Welcome to Maryland" homepage, contains a link to the "Sex Offender Registry

(SOR)." *See* http://www.maryland.gov/Pages/default.aspx (visited 4/7/2012). A number of local jurisdictions' webpages offer links to the registry. *See, e.g.*, Talbot County Sheriff's Webpage (http://www.talbotcountymd.gov/index.php?page=Sheriff (visited 4/9/2012)); Wicomico County State's Attorney Website (http://www.wicomicocounty.org/statesattorney (visited 4/9/2012)).

Once people get to the DPSCS website, there are several sophisticated search functions available. One can search by name or zip code, or one can search an Interactive Map of Registered Sex Offenders that allows a user to search for registrants near an address the user enters or near one of a great many schools, libraries, colleges, shopping centers, churches and recreation areas that the user selects. (http://www.dpscs.state.md.us/sorSearch/search.do?searchType=byZip&anchor=offlist&zip=&category=ALL (visited 4/9/2012)). A visitor to the DPSCS website can also sign up for email or telephone notifications of sex offender movement in a certain area. (http://www.dpscs.state.md.us/onlineservs/socem/portal.shtml (visited 4/9/2012)). The DPSCS' website publicizes a "toll-free Sex Offender Alert Line" where "you can sign up for telephone notification any time a registered sex offender moves in your area." *See* http://www.socem.info (visited 4/7/2012). The website explains that "[t]he Alert Line is designed to contact individual homes, schools, daycare centers, recreational centers and churches registered by zip code when a sex offender moves into the neighborhood or if there is a change in the offender's compliance status." *Id.*

The General Assembly also authorized law enforcement to notify individuals and organizations of information in a registrant's registration statement. *See* Md. Code, Crim. Proc. Art. §§ 11-709 (2008 Repl. Vol., 2011 Supp.) & 11-718 (2010 Supp.). Possibly pursuant to this authority, local jurisdictions have taken to directly notifying people in a registrant's neighborhood that the registrant is a sex offender and is living at a certain address in their community. For example, a brochure issued by the Montgomery County Police Department states that when a sex offender moves into the community,

notification to the community is made by "door-to-door distribution of informational flyers," "public access to sex offender registry Internet sites," "school notification," "monthly multi-agency notification," and "community meetings." (http://www.montgomerycountymd.gov/content/POL/districts/ISB/familycrimes/pdfs/SexOffenderRegistryBrochure.pdf (visited 4/11/12)). Meanwhile, the Harford County Sheriff's Office has a "Megan's Law Unit" which, among other things, conducts "unannounced home visits" and "periodic observation" of registered sex offenders. (http://www.harfordsheriff.org/bureaus/investigative/criminal/megans_law_unit) (visited 4/11/12)).

The Legislature has also expressly delegated authority to other bodies or agencies to promulgate rules and regulations. For example, local law enforcement units are permitted to require offenders to provide information not specified by statute. Md. Code, Crim. Proc. Art. § 11-705(c)(2) (2008 Repl. Vol., 2010 Supp.). Likewise, the Legislature has authorized DPSCS to adopt regulations relating to the registration and supervision of sex offenders. Md. Code, Crim. Proc. Art. § 11-726 (2008 Repl. Vol., 2010 Supp.). Pursuant to its legislative-derived authority, DPSCS, through the Division of Parole and Probation, began directing sex offenders in 2005 to place signs on their doors on Halloween to discourage trick-or-treating at their residences. (http://www.wbaltv.com/news/17721033/detail.html) (visited 4/11/12)).

Effects on Employment

DPSCS's individual webpages on registrants include the registrant's employer's address, information which makes it very difficult for offenders to find long-term stable employment. An employer who hires a registrant will see its address published on the sex offender registry, which is quite possibly the worst marketing decision any business could ever make. A recent report on sex offender registries confirms the difficulty registrants face finding and keeping a job:

> Being publicly identified through online registries as a sex offender restricts employment in several ways. With some

> employers mandated to check the sex offender registry, and many others implementing the checks as part of their private business policy, many sex offenders are finding themselves unable to secure and maintain a job. Our research shows that private employers are reluctant to hire sex offenders even if their offense has no bearing on the nature of the job. Offenders who tell prospective employers they are registered sex offenders are usually denied employment; those who fail to tell are eventually fired when employers find out – often through fellow employees who found the information through searching online sex offender registries.

Human Rights Watch, *No Easy Answers: Sex Offender Laws in the U.S.*, at 81-82 (Sept. 2007). Even if an employer does not itself object to employing registered sex offenders, "[m]embers of the community can also react so strongly to the presence of a registered offender on the job that employers will end up firing them." *Id*. at 82. Even parole officers – no strangers to the challenges of finding work for ex-offenders – "testify to the difficulty registrants have in finding work." *Id*. at 83. Members of FAIR have reported that they have lost jobs and/or have had difficulty finding work because they were on the registry. (App. 8, 14, 16-17, 19, 25-26.)

Effects on Housing

The community notification provisions also make it difficult for registrants to find and keep housing. (App. 8, 10-12.) Family and friends are sometimes unwilling to allow a registrant to reside with them because it would mean that their address would appear on the Internet, that their neighbors would receive flyers saying a sex offender lived there, that children would be warned away from their home at Halloween, and that they would be subject to the same kind of community ostracism, threats, and intimidation that registrants experience. Private landlords do not want to rent to registrants, and federal law prohibits anyone subject to lifetime registration on a state registry from living in public housing. HRW, *supra*, at 93 & 95 (citing 42 U.S.C. § 13663 (2004)). Flyers incorporating information from the Internet registry and distributed by local law enforcement or

neighborhood associations generate such hostility and cause such humiliation that in turn put enormous pressure on the registrant and his family to leave the community. *Id*. at 93-95. (App. 15, 17.) With such limited housing options, many registrants face the prospect of becoming homeless. Indeed, in *Twine v. State*, 395 Md. 539 (2006), the statement of facts on which the case was decided included a proffer by defense counsel (to which the State did not object) that the Montgomery County police had distributed 48 flyers in Twine's neighborhood on July 28, 2004, stating that a registered sex offender was living there, and that as a result, he was evicted the next month and became homeless. *See id*. at 545. Ironically, once a person has become homeless as a result of the notification provisions, the registration provisions become even more onerous; a homeless registrant is required to register in person with the local law enforcement unit in each county where they habitually live within three days after entering and remaining in a county and to re-register in person once a week. *See* Md. Code, Crim. Proc. Art. § 11-705(d) (2008 Repl. Vol., 2010 Supp.).

Violence and Intimidation

As a result of having detailed information about their appearance, whereabouts and crimes made indiscriminately available on the Internet, registrants face harassment, intimidation and physical violence. HRW, *supra*, at 86; *see also Smith v. Doe*, 538 U.S. 84, 109 (2003) (Souter, J., concurring in judgment) & 112 (Stevens, J., dissenting). Registered sex offenders have been murdered because they were on the registry. *Id*.; *see also* Glenn Adams, *Maine Killings Raise Questions About Sex Offender Registries*, BEAUFORT GAZETTE, 4A (Apr. 18, 2006). Registrants justifiably worry about such violence: in one study, 77% of registrants surveyed reported "threats/harassment." U.S. Department of Justice, National Institute of Justice, *Sex Offender Community Notification: Assessing the Impact in Wisconsin*, at 10 (Dec. 2000). In another study, 16% of registrants reported being physically assaulted. HRW, *supra*, at 79 (citing Levenson & Cotter, *The Effects of Megan's Law on Sex Offender Reintegration*,

Journal of Contemporary Criminal Justice, vol. 21, no. 3 (2005), at pp. 49-66). The Human Rights Watch report chronicles some examples of violence and intimidation experienced by registrants:

> For a case challenging community notification laws, New Jersey public defenders collected over a hundred affidavits from people convicted of sex offenses who experienced vigilante violence soon after their whereabouts were made available to the public, either through the internet registry or some other community notification scheme. Registrants speak of having glass bottles thrown through their windows; being "jumped from behind" and physically assaulted while the assailants yelled "You like little children, right?"; having garbage thrown on the lawn; people repeatedly ringing the doorbell and pounding on the sides of the house late at night; being struck from behind by a crowbar after being yelled at by the assailant that "People like you who are under Megan's Law should be kept in jail. They should never let you out. People like you should die. When you leave tonight, I am gonna kill you."

HRW, *supra*, at 87-88 (internal footnote omitted). (For a Maryland example, see App. 5.) As one registrant observed, community notification can be "a far worse punishment than jail ever was." *Id*. at 88 (footnote omitted).

Impairment of Relationships and Negative Effects on Family Members

The registration and notification requirements damage the registrant's relationships. A registrant is required to register every address where he or she "habitually lives," a term of art that is broadly defined to mean "any place where a person lives, sleeps, or visits with any regularity, including where a homeless person is stationed during the day or sleeps at night," and to include "any place where a person visits for longer than 5 hours per visit more than 5 times within a 30-day period." Md. Code, Crim. Proc. Art. § 11-701(d) (2008 Repl. Vol., 2011 Supp.). That means that if a registrant visits a family member, friend, or significant other "for longer than 5 hours per visit more than 5 times within a 30-day period," that person's address will be identified on the Internet as the residence of a sex offender, flyers may be distributed to the person's neighbors

and local "faith institutions," phone and email alerts will be sent out to anyone who has requested one, and the local police and any schools within a mile of the person's home will be notified that a sex offender lives there. *See id*. § 11-706. This is, to say the least, a strong disincentive for anyone to begin or maintain a relationship with a registrant, and it isolates them socially.

The spouses and children of registrants also suffer. One Maryland registrant reported that a private school rejected his five year old daughter because he was on the registry. (App. 4.) A spouse of a registrant reported experiencing fear and anxiety because authorities have listed her vehicle on her husband's webpage, and because of their unannounced visits to their home. (App. 21, 23.) Parents cannot participate in their children's school activities. (App. 4.) Children of registrants are ostracized and bullied by classmates, and other family members experience isolation, anxiety and fear. (App. 6.)

Severe Emotional Distress

Registrants experience profound depression and anxiety as a result of the widespread and long-term publicizing of what may be the worst thing they ever did, society's labeling of them as sex offenders, the barriers to housing and employment, the intimidation, hostility and threats from others, and the damage all this does to their relationships. "A number of the sex offenders and their family members with whom Human Rights Watch spoke talked of ending the ordeal of sex offender laws and the consequences that flow from it by taking their own lives." HRW, *supra*, at 97. In light of the severe emotional distress experienced by victims, some might say that sex offenders deserve these consequences. Without addressing the merit (or lack thereof) of this view, it suffices here to point out that the infliction of such emotional distress could only possibly be justified as a form of punishment; it serves no non-punitive purpose. In nature and degree, the depression and anxiety experienced by registered offenders exceeds that normally experienced by a parolee or probationer, and is closer to that suffered by the prisoner.

III. THE RETROACTIVE APPLICATION OF THE SEX OFFENDER REGISTRATION REQUIREMENTS VIOLATES ARTICLE 17 OF THE MARYLAND DECLARATION OF RIGHTS.

A. Article 17 of the Declaration of Rights Prohibits Both *Ex Post Facto* Laws, Including Laws Retroactively Increasing the Punishment for an Offense, and Retroactive Restrictions on Liberty that Do Not Amount To Punishment.

Article 17 of the Maryland Declaration of Rights presently states "[t]hat retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty; wherefore, no ex post facto Law ought to be made; nor any retrospective oath or restriction be imposed, or required." MD. DECL. RTS. Art. 17. The last phrase – "nor any retrospective oath or restriction be imposed, or required" – was added in 1867; the rest is substantially identical to the language first adopted in 1776.[4] *See* Dan Friedman, *The History, Development, and Interpretation of the Maryland Declaration of Rights*, 71 TEMP. L. REV. 637, 656 (1998).[5] As its history makes clear, the original language prohibits *ex post facto* laws, and whether retroactive application of the Maryland's sex offender registration scheme violates this part depends on whether the law imposes a punishment. The last phrase, however, more broadly prohibits the imposition of new restrictions based on conduct that preceded the enactment of the restriction.

The first part of Article 17, which provides "[t]hat retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty; wherefore, no ex post facto Law ought to be made," has been construed as a ban on *ex post*

[4] Aside from changes in punctuation and capitalization, the only difference was that the 1776 language referred to "facts committed" while the 1851 and subsequent versions referred to "acts committed."

[5] This article is available in its entirety at http://www.aomol.net/megafile/msa/speccol/sc2900/sc2908/pdf/friedman_article.pdf.

facto laws, and its reach has been limited accordingly to criminal or penal laws. In 1850, this Court construed the pre-1867 language (then Article 15) as forbidding only retrospective criminal laws and, in its omission of any reference to civil cases, as "a recognition of the right in the legislature to pass retrospective laws, so far as they relate to civil cases and contracts." *See Grinder v. Nelson*, 9 Gill 299, 306 (1850).

The amendment of Article 17 was the result of events that began during the Civil War. In 1864, the General Assembly, then dominated by members of the Unionist party, called a constitutional convention, and incorporated into that new constitution provisions placing restrictions on former supporters of the South. Article I, § 4, of the new constitution prohibited a person who had supported the South in any way from voting in any election held in the State or holding any office "of honor, profit or trust" under the laws of the State. A person could regain these rights only by entering the military or by an Act of the General Assembly passed by two-thirds of each house. MD. CONST. art I § 4 (1864). As an enforcement mechanism, the new constitution also required people to swear or affirm before voting, registering to vote, or holding office that they had never supported "those in armed hostility to" or "in rebellion against" the United States. *See id*. art. I §§ 4 & 7. The 1864 constitution also mandated that "[t]he General Assembly shall pass laws requiring the President, Directors, Trustees or Agents of corporations, created or authorized by the laws of this State; Teachers or Superintendents of the Public Schools, Colleges or other institutions of learning; Attorneys-at-Law, Jurors and such other persons as the General Assembly shall, from time to time prescribe, to take the oath of allegiance to the United States set forth in the first article of this Constitution." MD. CONST. art. III § 47 (1864). *See, generally*, Robert J. Brugger, MARYLAND, A MIDDLE TEMPERAMENT: 1634-1980, at 302-304 (1988); William Starr Myers, THE SELF-RECONSTRUCTION OF MARYLAND, 1864-1867, at 10-12 (1909).

In March 1865, the General Assembly passed a bill to provide for the

registration of voters in accordance with the new constitution. The bill directed the Governor to appoint three registrars for each ward or election district, who would then compile lists of those eligible to vote. A person could not vote unless he was on the list. The officers of registration were also empowered to exclude all disloyal persons, even if a person took the oath of allegiance, and to summon witnesses for the purpose of ascertaining the qualifications or disqualifications of those registered. *See* Myers, *supra*, at 18-19. In August 1865, a state convention of officers of registration convened. This convention adopted a series of questions designed to elicit information regarding an applicant's present or past disloyalty to the federal government, and further decided that the names of all white men residing in, or temporarily absent from, the district should be placed in the registration books, so that all those not applying would be forever disqualified from voting. *Id*. at 31-32. One historian opined that these policies disenfranchised at least half of the voters, most of whom were from the Democratic party. *Id*. at 33. The legislation that imposed these disabilities on alleged former supporters of the South was known as the "registry law" or the "registration law." *Id*. at 29-32.[6]

The Democrats' first serious challenge to the registry law came in the summer and fall of 1865 with two cases that ended up in this Court: *Hardesty v. Taft*, 23 Md. 512 (1865), and *Anderson v. Baker*, 23 Md. 531 (1865). *See* Myers, *supra*, at 33-35. The plaintiffs in these cases alleged, *inter alia*, that the registry law violated the prohibition on *ex post facto* laws in the federal constitution. The

[6] Nor was this the only initiative designed to marginalize former supporters of the South. In April 1865, the first branch of the City Council of Baltimore passed resolutions asking an Army general to close certain "disloyal churches" and thereby "save our city from this degradation and shame by removing these cesspools, the miasma arising from which taints the moral atmosphere with treason." Myers, *supra*, at 25 (footnote omitted). It also unanimously passed other resolutions protesting against allowing "Rebels" to return to the city. *See id*. at 25-26. That same month, the mayor of Cumberland presided over a meeting of citizens that resolved that "those persons who voluntarily left their homes in this county and have taken up arms against the Federal Government, or otherwise aided the rebellion, shall not be permitted to return again amongst us." *Id*. at 26.

Court in *Hardesty* adopted its reasoning in *Anderson* as to the *ex post facto* issue. *See Hardesty*, 23 Md. at 524. In *Anderson*, the Court began its analysis of the *ex post facto* issue by quoting the following definition of *ex post facto* laws:

> *Ex post facto* laws are technical expressions, which include every law which renders an act punishable in a manner in which it was not punishable when committed. They relate to penal and criminal proceedings which impose punishments and forfeitures, and not to civil proceedings which effect private rights retrospectively. Retrospective laws, divesting vested rights, unless '*ex post facto*,' do not fall within the prohibition contained in the Constitution of the United States, however repugnant they may be to the principles of sound legislation.

23 Md. at 624 (quoting 1 Kent's Coms., sec. 19, pp. 409, 410). The Court then explained that, in its view, the challenged constitutional provisions and related legislation were not *ex post facto* laws as they only imposed a "civil disability." *Id.* at 625. Of importance to the issue presently before the Court, its predecessor recognized that the challenged provisions had a legitimate, non-punitive purpose, namely "to render the Union indissoluble, by excluding from the polls and offices of the State, all who had actively participated in promoting the rebellion, or giving them aid and comfort." *Id*. at 617.

The Court may have held that the registry act was not an *ex post facto* law, but the Democrats were not persuaded. In early 1866, Maryland's Democratic leaders called a convention of all those opposed to the registry law. *See* Myers, *supra*, at 43. The convention resolved that "the provisions of the Fourth Section of the First Article of the Constitution which prescribe conditions to the elective franchise, before unknown to the people of Maryland, [are] retrospective, partaking of the nature of an *ex post facto* law, and repugnant to the terms of the Declaration of Rights, as well as the Constitution of the United States." Myers, *supra*, at 45 (quoting resolution).

And then a remarkable, possibly unprecedented, thing happened: the pariahs came to power. The governor appointed new election officials and directed

them to liberally construe the registry law in favor of allowing people to vote. *See* Myers, *supra*, at 64. The result was that the Democratic-Conservative party took control of the legislature and, in early 1867, as one of its first actions, passed legislation restoring full citizenship and the rights to vote and hold office to all those persons disenfranchised by Article I, § 4, of the 1864 Constitution. *See id*. at 83-84; 3 John Thomas Scharf, HISTORY OF MARYLAND: FROM THE EARLIEST PERIOD TO THE PRESENT DAY, at 690 (1879). "It was the almost unanimous opinion of the Democratic and Conservative forces," however, "that the permanency of the reforms made could not be guaranteed . . . unless an entirely new constitution was drafted." Myers, *supra*, at 94.

From this desire for lasting reform, the Constitution of 1867 was born. Not a single Republican attended the new constitutional convention. *See* Brugger, *supra*, at 306. The new 1867 Constitution omitted the provisions of the 1864 Constitution that disenfranchised former supporters of the South and otherwise prevented them from meaningful participation in public life. *See, generally*, Edward Otis Hinkley, THE CONSTITUTION OF THE STATE OF MARYLAND (1867). To protect against future retrospective oaths and restrictions, the framers of the new constitution added to the end of Article 17 of the Declaration of Rights the following language: "nor any retrospective oath or restriction be imposed, or required." *See id*. at 122; Friedman, *supra*, at 642 & 656 & n.284. "The Convention delegates, all members of the Democratic party, understood the purpose of this amendment and adopted it without recorded debate." *Id.* at n.284.

The 1867 addition to Article 17 undeniably expanded the scope of the protections the article provides. The authors, having been on the receiving end of retrospective restrictions only a couple years earlier, added language to prevent the imposition of retrospective restrictions in the future. They had learned from this Court's opinions in *Anderson* and *Hardesty*, less than two years earlier, that the original language of the Article was insufficient to protect them from such restrictions. To construe the 1867 amendment as contributing nothing to the

meaning of Article 17 would be inconsistent with the well-established canon of statutory construction that rejects constructions that would render part of a provision surplusage. More importantly, such a construction would be irreconcilable with the evident intent of the framers of the 1867 Constitution.

Nor can this language reasonably be construed as limited only to the precise problems that led to its adoption. If the framers of the 1867 Convention had intended to prohibit only retrospective restrictions based on previous support of the South or relating only to voting or holding office, they certainly could have used more specific language; indeed, for an example of such specific language in a constitutional provision, the convention only had to look at the language of the very provisions of the 1864 Constitution that they objected to.

And yet, the 1867 amendment to Article 17 was ignored. Only five years later, in 1872, the Court explained:

> There is no provision in the Declaration of Rights or Constitution of this State, or of the United States, prohibiting the passage of retrospective laws affecting civil causes. . . . The . . . provision in our Declaration of Rights is by its terms confined to retrospective criminal or ex post facto laws, and this has been regarded as a recognition of the right of the Legislature to pass retrospective laws so far as they relate to civil cases and contracts.

City of Hagerstown v. Sehner, 37 Md. 180, 198 (1872). For this proposition, the Court relied entirely on one case: the 1850 case of *Grinder v. Nelson*, 9 Gill 299 (referred to as *Baugher v. Nelson*). The Court did not then, or in subsequent cases, address the impact of the 1867 amendment on the meaning or scope of Article 17. *See, e.g.*, *Braverman v. Bar Ass'n of Baltimore City*, 209 Md. 328, 348 (1956); *Diamond Match Co. v. State Tax Comm'n*, 175 Md. 234, 241 (1938).

B. The Retroactive Application of Maryland's Sex Offender Registration Requirements Violates Article 17's Prohibition on the Imposition or Requirement of Retrospective Restrictions.

The meaning of the words "retrospective . . . restriction" in Article 17 is plain. The word "restriction" had the same broad meaning in 1867 as it does today: "confinement, limitation." JOHNSON'S DICTIONARY, IMPROVED BY TODD 288 (1828). "Retrospective" was defined as "looking backwards," *id*. at 289, the same meaning it holds today. The framers of the 1867 Constitution added the prohibition on retrospective oaths and restrictions after having themselves suffered deprivations of rights and privileges based on retrospective laws. They could have used much more specific language limiting the new prohibition on retrospective oaths and restrictions to the type of required oaths and restrictions that had been used against them. They did not. They could have limited the new prohibition to retrospective oaths and restrictions based on support for the South. They did not. That they instead chose to use the very broad language they did indicates that they intended this prohibition to apply broadly to any restrictions (or oaths) required based on behavior occurring prior to the legislation that limit a person's rights or privileges. The framer's use of this broad language is consistent with the role of a bill of rights to protect individuals from certain types of government action for years to come, even in circumstances that the framers could not have foreseen.

Coincidentally, one of the laws the framers objected to most (and one which they certainly meant the addition to Article 17 to prohibit) was analogous to the laws Mr. Doe is challenging. This was the so-called "registration law" that required people to register with election officials or be denied the right to vote. If a would-be voter did not register with election officials, the 1865 registration law deprived him of the privilege of voting. If a sex offender does not register with a supervising authority, Maryland's sex offender registration laws authorize his imprisonment and thereby deprive him of his liberty.

More generally, Maryland's sex offender laws restrict a registrant's rights and privileges in several ways. They restrict a registrant's abilities to enter school property, where many community functions take place, or child care facilities, and they prevent a registrant from working in those locations. They restrict a

registrant's ability to travel by requiring the registrant to provide prior notice to government authorities. They prevent a registrant from exercising the right to privacy as to personal matters such as travel, residences, and intimate relationships (because the registrant is forced to disclose places he or she "habitually lives"). They intrude upon a registrant's constitutionally protected privacy and liberty interests by the government-sponsored widespread distribution of highly stigmatizing characterizations and information. *See, generally*, *Young v. State*, 370 Md. 686, 718 n.13 (2002). They are undoubtedly "restrictions" as that term is used in Article 17, and they are retrospective. Accordingly, they violate Article 17.

C. The Retroactive Application of Maryland's Sex Offender Registration Requirements Violates Article 17's Prohibition on *Ex Post Facto* Laws and the *Ex Post Facto* Clause of the Federal Constitution.

Even a cursory examination of the history of sex offender registration in Maryland reveals that the registration scheme that exists today is more complex and imposes a far more onerous burden on persons required to register than the scheme set up by the General Assembly in 1995, or even in 2000. For one thing, the law can no longer be considered a tool for keeping track of a select group of offenders deemed to be at high risk of recidivism. Registration is now a consequence faced by most sex offenders, regardless of their age, when they committed their offenses, or their prior record (or lack thereof).

At the same time, the similarities between registration, on the one hand, and other unquestionably penal consequences like parole and probation have increased over time. Indeed, if anything, registration is the more severe consequence of a conviction. An individual who commits a qualifying offense must meet with authorities on a regular and frequent basis, in most cases for the rest of his or her life. (App.8).[7] The list of information that must be provided as part of the

[7] As of April 14, 2012, 7881 registrants were listed on Maryland's state website. Of that total, 6,544 (83.03%) are Tier III, 499 (6.33%) are Tier II, and

registration process is immense and is designed to permit monitoring of nearly all aspects of an offender's life, from where he or she lives to where he or she works and takes vacations to whom he or she interacts with. Coupled with the extensive notification permitted by the law (and occurring in practice), such close supervision is itself a way for the State to exercise control over the lives of offenders. That the registrant risks incarceration for failing to comply with specific terms of the law and for engaging in behavior that for the rest of society would not be prohibited only increases the coercive effect of the law. Of course, registrants placed on extended parole supervision lead even more restricted lives.

In light of the changes to Maryland's sex offender registration scheme, the Court should follow the lead of other jurisdictions which have held that the law is punitive and thus may not be applied retroactively to individuals whose offenses predate the law. Although the *Ex Post Facto* Clause of Article I, § 10 of the United States Constitution provides grounds for the Court to declare the retroactivity provision of the law unconstitutional, the Court has available to it an equal, if not superior, option: holding that the retroactivity provision violates the original language of Article 17, which provides "[t]hat retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal are oppressive, unjust and incompatible with liberty; wherefore, no ex post facto Law ought to be made . . . ." MD. DECL. RTS. art. 17.

While this provision is similar to the *Ex Post Facto* Clause in the United States Constitution, and thus has generally been read *in pari materia* with Article I, § 10 of the Constitution,[8] *see Khalifa v. State*, 382 Md. 400, 425 (2004), that does not foreclose the possibility that, in an appropriate situation, Article 17 may be interpreted or applied in a different manner than its federal counterpart. In

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838 (10.63%) are Tier I. (http://www.dpscs.state.md.us/sorSearch/tier (visited 4/14/12)).

[8] Article I, § 10 states, in pertinent part, that "[n]o State shall … pass any … ex post facto law[.]" U.S. CONST., Art. I, § 10, cl. 1.

Marshall v. State, 415 Md. 248, 259 n.4 (2010), the Court explained:

> The Latin phrase "in pari materia," or "in the same matter," simply means "[o]n the same subject" or "relating to the same matter." Black's Law Dictionary (8th ed. 2004) at 807. As this Court has pointed out on numerous occasions, "simply because a Maryland constitutional provision [or statute or common law principle] is *in pari materia* with a federal one or has a federal counterpart, does not mean that the provision will always be interpreted or applied in the same manner as its federal counterpart. Furthermore, cases interpreting and applying a federal constitutional provision are only persuasive authority with respect to the similar Maryland provision." (Emphasis in original). *Dua v. Comcast Cable*, 370 Md. 604, 621, 805 A.2d 1061, 1071 (2002).

Notwithstanding that the first clause of Article 17 of the Declaration of Rights may offer greater protection than Article I, § 10 of the United States Constitution, both provisions "relate[] only to criminal or penal laws or the consequences of an offense." *Anderson v. Department of Health & Mental Hygiene*, 310 Md. 217, 223 (1987), *cert. denied*, 485 U.S. 913 (1988). A law is considered punitive if it "'changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed.'" *Raines v. State*, 383 Md. 1, 27 (2004) (quoting *Stogner v. California*, 539 U.S. 607, 611 (2003), in turn quoting *Calder v. Bull*, 3 U.S. 386, 391 (1798)). It bears noting, however, that for purposes of *ex post facto* analysis "the concept of punishment is broader than a prison sentence or a fine." *Anderson*, 310 Md. at 227. An *ex post facto* violation is established where there is "a law passed after the commission of a criminal act, affecting substantial rights, and changing the consequences of having committed the criminal act in a way that is disadvantageous to the defendant[.]" *Id*. at 227; *see also id*. at 224 ("The Supreme Court has also pointed to 'the liberal construction which this court . . . [has given] to the words *ex post facto* law, -- a construction in manifest accord with the purpose of the constitutional convention to protect the individual rights of life and liberty against hostile retrospective legislation.'") (quoting *Kring v. Missouri*, 107 U.S. 221, 229

(1883)).

That the original language of Article 17 and the *Ex Post Facto* Clause of the federal constitution have both been construed as barring retrospective punishments in criminal cases does not mean that this Court should automatically follow whichever approach the majority of Supreme Court justices has used to decide whether a deprivation constitutes punishment. "Historically, state constitutions predated the federal constitution, and in accordance with the federalist scheme, state charters were the original protectors of individual liberties against government action, serving as 'the immediate and visible guardian[s] of life and property.'" Lisa D. Munyon, Comment, *"It's a Sorry Frog Who Won't Holler in His Own Pond": The Louisiana Supreme Court's Response to the Challenges of New Federalism*, 42 LOY. L. REV. 313, 315 (Summer 1996). Maryland's Declaration of Rights predated the United States Constitution, and it was, for more than a decade, the only protection Marylanders had from *ex post facto* laws. *See Anderson*, 310 Md. at 223 n.4 (1987) (noting that "the Maryland Declaration of Rights, in 1776, was the first bill of rights to contain a constitutional prohibition against *ex post facto laws*"). The movement among state courts to interpret provisions of their state constitutions to provide different or greater protections that the federal constitution is known as "new federalism." One state supreme court justice has explained:

> [N]ew federalism describes a growing awareness in the state courts of the importance of state law, especially state constitutional law, as the basis for the protection of individual rights against state government. New federalism describes the willingness of state courts to assert themselves as the final arbiters in questions of their citizens' individual rights by relying on their own law, especially the state constitutions. New federalism is based on the premise that the federal Constitution establishes minimum, rather than maximum, guarantees of individual rights and that, in appropriate cases, state courts should independently determine, according to their own law (generally their own state constitutions), the degree to

> which individual rights will be protected within the state jurisdiction. Independent interpretation of the state's own constitution is part of the double security of having both federal and state bills of rights.

Shirley S. Abrahamson, *Reincarnation of State Courts*, 36 SW. L.J. 951, 952 (1982). The construction of the federal constitution's *Ex Post Facto* Clause by Supreme Court justices is not entitled to deference when this Court construes Maryland constitutional provisions, therefore, and the value of their opinions depends on the strength of their reasoning.

On the question of whether retroactive application of sex offender registry requirements constitutes an *ex post facto* law, the justices have reached different conclusions based on different approaches. In *Smith v. Doe*, the Court considered whether Alaska's retroactive application of its registration requirements constituted an *ex post facto* law. Six justices held it was not; three held it was. Most of the Court applied the so-called "intent-effects" test. Justice Stevens, however, took a different approach.

1. The approach taken by Justice Stevens in *Smith v. Doe* and by this Court in *Anderson* is preferable to the "intent-effects" test and compels the conclusion that Maryland's sex offender registration and notification provisions constitute punishment.

Justice Stevens took a different, simpler and vastly better approach to the problem. Rather than sift tea leaves and guess at the intent of the legislature, as the intent-effects test requires, Justice Stevens looked at the application and effect of the Act. He held that it was "clear beyond peradventure that these unique consequences of conviction of a sex offense are punitive" because "[t]hey share three characteristics, which in the aggregate are not present in any civil sanction," namely, they "(1) constitute a severe deprivation of the offender's liberty, (2) are imposed on everyone who is convicted of a relevant criminal offense, and (3) are imposed only on those criminals." *Smith*, 538 U.S. at 112. He distinguished other cases in which the Supreme Court had rejected an *ex post facto* challenge on the

ground that "[u]nlike any of th[ose] cases, . . . a criminal conviction under these statutes provides both a sufficient and a necessary condition for the sanction." *Id*.

Although *amici* agree with Justices Ginsburg's and Breyer's analysis and conclusion regarding the clear punitive effects of sex offender registration and notification laws, the approach taken by Justice Stevens is simpler for courts to apply and less vulnerable to manipulation by legislators seeking to immunize restrospective laws from an *ex post facto* challenge. The problem with relying on the purpose of the legislature is that virtually every sanction imposed on an offender as a result of a conviction could arguably both punish the offender and protect the public in some way, shape, or form. By now, legislators (and certainly the lawyers who advise them) know that the Supreme Court majority largely defers to expressions of intent by the legislature regarding whether or not the purpose of a new retrospective statute is punitive. Any legislature wishing to insulate such a law from an *ex post facto* challenge need only assert somewhere that the legislation is intended to protect the public, not to punish the offender. Under the Supreme Court majority's approach, a legislature could insulate the most dire retrospective penalties – life in prison or a death sentence – from an *ex post facto* challenge by asserting that their purpose was to protect the public by incapacitating the offender, not to punish. Justice Stevens' test provides a simpler, alternative way to determine that a sanction constitutes punishment.

This Court took the same approach in *Anderson* as Justice Stevens advocated in *Smith*. At issue in *Anderson* was whether the *ex post facto* prohibition was implicated by a change in legislation which shifted the burden to the defendant to prove at an administrative release hearing that he or she no longer met the standards for commitment following a verdict of not criminally responsible. Rejecting the State's argument that commitment at a mental hospital did not constitute punishment, the Court pointed out that "Anderson's confinement in a state mental institution is a direct consequence of adjudications at his criminal trial that he was guilty of committing a crime but insane at the time of the crime."

310 Md. at 224. According to the Court, "the fact that a particular proceeding or matter is labeled 'civil' rather than 'criminal' does not necessarily remove it from the ambit of the *ex post facto* prohibition." *Id*. at 225. The Court also found unpersuasive the fact that "the purposes of the commitment are treatment and the protection of society against dangerous individuals," noting that "these same considerations are included among the purposes for which convicted persons are sentenced to correctional institutions." *Id*. at 228. The Court in *Anderson* did not mention or rely on the intent of the legislature; rather, the Court reasoned that confinement in a state hospital based on an NCR finding was punishment because it was a direct consequence of the adjudication in the criminal case and it affected the defendant's substantial rights to his detriment. *Id*. at 227.

Under Justice Stevens' approach, Maryland's registration and notification scheme clearly constitutes punishment. As described *supra*, it amounts to a serious deprivation of the registrant's liberty. Unlike other retrospective provisions such as bans on firearm possession (which can be triggered by circumstances other than a conviction), *see, e.g.*, Md. Code, Pub. Safety Art. § 5-133 (2003, 2011 Supp.), the sex offender registration and notification requirements apply to a person only if he or she has been convicted of a qualifying offense. And unlike other legislation that allows a court to impose restraints similar to traditional punishment after a separate hearing that comports with due process, *e.g.*, statutes providing for civil commitment of sex offenders, Maryland's sex offender requirements are an automatic consequence of a qualifying criminal conviction; there is no individualized hearing where the State is required to prove a need for registration or where the offender can challenge whether it is proper as applied to him.

As the Court stated in *Anderson*, 310 Md. at 227, "a law passed after the commission of a criminal act, affecting substantial rights, and changing the consequences of having committed the criminal act in a way that is disadvantageous to the defendant, falls within the *ex post facto* prohibition." Mr. Doe committed his crime over a decade before passage of the law in 1995 and

entered his guilty plea three years before the 2009 retroactivity provision went into effect. Although he has long since completed service of the sentence he agreed to serve, he now must register in person every three months for the rest of his life by supplying a lengthy list of information to local law enforcement officials. Although he does not present a risk of offending again, he cannot petition to get off the registry. Instead, information about where he lives and works is posted on the Internet for, literally, the whole world to see. He also risks prosecution if he fails to comply with the complex and ever-changing list of registration requirements or steps foot onto real property used for education or child daycare purposes. To say that the consequences of Mr. Doe's criminal conduct have changed in a way that is disadvantageous to him is a gross understatement.

2. Maryland's registration and notification provisions also constitute punishment under the intent-effects test.

In *Young*, *supra*, 370 Md. 686, the Court addressed the related, though not identical, question of whether sex offender registration constitutes punishment for purposes of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), which held that, as a requirement of due process of law, "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Id.* at 490. For the petitioner in *Young*, registration was an annual requirement that he provide a signed statement that included his name, address, place of employment, Social Security number, and a description and location of the offense which qualified him for registration. *Young*, 370 Md. at 693-94. The Court noted that "[i]n the time period since the case *sub judice* was argued before this Court, the Department has begun to post registry information on the Internet." *Id*. at 694.

To determine whether sex offender registration constituted punishment, the Court applied the two-part "intent-effects" test gleaned from the Supreme Court's opinions in *United States v. Ursery*, 518 U.S. 267 (1996), and *Kansas v.*

Hendricks, 521 U.S. 346 (1997). The first prong of the test involved an examination of legislative intent – did the Legislature intend to punish sex offenders when it enacted the registration law? Although the law had been part of Article 27 and was later re-codified as part of the Criminal Procedure Article, the Court did not consider that fact dispositive of the Legislature's intent. *Id*. at 712. Instead, the Court concluded that "the plain language and overall design of [former] § 792 clearly indicate that it was not intended as punishment, but rather was intended as a regulatory requirement aimed at protection of the public." *Id*. The Court reasoned that the law only "require[d] registrants to supply basic information to apprise law enforcement officials about an offender residing or working in the area." *Id*.

The Court next turned to the second prong of the test: "whether there is 'clearest proof' that the statute is so punitive, in either purpose or effect, that it overrides the Legislature's remedial purpose." *Id*. at 713. To conduct this inquiry, the Court looked to the factors laid out by the Supreme Court in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963), namely

> (1) whether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment--retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether it lacks an alternative purpose to which it rationally may be connected; and (7), if such alternative does exist, whether the statute appears excessive in relation to it.

Id. at 698.

The Court acknowledged that registration was a consequence of past criminal behavior, that registration served a deterrent purpose, and that "[b]eing labeled as a sexual offender within the community can be highly stigmatizing and can carry the potential for social ostracism." *Id*. at 713-15. On the other hand, in the view of the Court, "an examination of the remaining *Mendoza-Martinez*

factors" established "that § 792 is not so punitive a statute in its effect that its application defeats the Legislature's remedial intent." *Id*. at 714. In particular, registration was not traditionally regarded as punishment and did not operate to restrict offenders' movements and activities, the requirement that certain basic information be included in the registration statement was not "unreasonably burdensome," and all offenders convicted of an enumerated offense had to register without regard to their state of mind at the time of the offense. *Id*. at 713-15.

The year after the Court decided *Young*, the Supreme Court conducted a similar analysis, and reached a similar conclusion, in *Smith*, *supra*. In that case, the Court rejected an *ex post facto* challenge under the United States Constitution to Alaska's sex offender registration scheme. With the exception of Justice Stevens, the justices all applied some version of the "intent-effects" test, but with varying results. Justice Kennedy, for a majority that also included Chief Justice Rehnquist and Justices O'Connor, Scalia and Thomas, held that the Alaska Act did not impose punishment because the legislature intended to create a civil, nonpunitive regime and the respondents had not shown by "the clearest proof" that the statutory scheme was so punitive either in purpose or effect as to negate the State's intention to deem it civil. *See Smith*, 538 U.S. at 92-105. Justice Souter concurred in the judgment only and disagreed with the majority's reasoning. He found that it was not clear that the legislature intended the statutory scheme to be civil in nature and therefore rejected the view that those challenging the law must establish by "the clearest proof" that it was punitive. For Justice Souter, whether the act was punitive or civil was a very close call, and the balance was tipped in favor of upholding the statute by "the presumption of constitutionality normally accorded a State's law," *id*. at 110 (Souter, J., concurring in the judgment), a presumption that is weaker when a state supreme court reviews its own state laws than when a federal court reviews a state law because federalism concerns are absent in the former situation. Justice Ginsburg, joined by Justice Breyer, applied the same test as Justice Souter, but found that the Alaska scheme was ambiguous in intent and

punitive in effect, and therefore dissented. "What ultimately tip[ped] the balance" for Justices Ginsburg and Breyer was "the Act's excessiveness in relation to its nonpunitive purpose." *Id*. at 116 (Ginsburg, J., joined by Breyer, J., dissenting).

Maryland's present sex offender registration and notification provisions are much more onerous and punitive that the earlier version this Court considered in *Young*, or the Alaska Act that the Supreme Court considered in *Smith*. Among the differences between Maryland's law and the law at issue in *Smith* is that Alaska's statute did not require in-person registration, an important factor in the Court's determination that registration was not unreasonably burdensome. *Id*. at 101. And in the version of Maryland's law reviewed in *Young*, offenders had to register annually in person for a term of either 10 years or life by providing a registration statement that included "basic information" such as their name, address, place of employment, Social Security number, and a description and location of their offense. Md. Code, Art. 27, § 792(d) (1996 Repl. Vol., 2000 Supp.); *Young*, 370 Md. at 693-94, 712. Any change of address needed to be reported in writing within seven days. Md. Code, Art. 27, § 792(c)(3) (1996 Repl. Vol., 2000 Supp.). Failing to comply with registration requirements was a misdemeanor punishable by not more than three years and/or a fine of not more than $5,000. *Id.* § 792(l).

Today, offenders are classified by tier according to the offense of which they were convicted. Md. Code, Crim. Proc. Art. § 11-701(o)-(q) (2008 Repl. Vol., 2011 Supp.). As a Tier III offender, *id.* § 11-701(q)(2), Mr. Doe must register in person every three months for the rest of his life. *Id*. § 11-707(a)(2)(i) & (a)(4)(iii). The registration statement he must fill out is lengthy; in addition to his name, address, place of employment, and a description of his offense, Mr. Doe must provide vehicle and license plate information, home and cell phone numbers, a physical description and any identifying features, information about any professional licenses he holds, his criminal history, a list of any aliases, his e-mail addresses, computer log-in or screen names or identities, instant messaging identities, and electronic chat room identities, and any other information requested

by the local law enforcement agency where he is filing the statement. *Id*. §§ 11-705(c)(2) & 11-706(a). Much of this information, together with his photograph, is posted online in a searchable database maintained by DPSCS as well as in a national database. Mr. Doe also risks prosecution if he fails to comply with registration requirements, *id*. § 11-721, or enters onto school or child care property without permission, *id*. § 11-722.

Courts in other jurisdictions are increasingly taking note of the punitive nature of sex offender registration as the requirements and consequences of registration become more severe. Some of these courts have held that retroactive application of registration and notification requirements violates the *ex post facto* clauses in their state constitutions. *See, e.g.*, *Doe v. State*, 189 P.3d 999, 1019 (Alaska 2008) ("Because ASORA compels (under threat of conviction) intrusive affirmative conduct, because this conduct is equivalent to that required by criminal judgments, because ASORA makes the disclosed information public and requires its broad dissemination without limitation, because ASORA applies only to those convicted of crime, and because ASORA neither meaningfully distinguishes between classes of sex offenses on the basis of risk nor gives offenders any opportunity to demonstrate their lack of risk, ASORA's effects are punitive. We therefore conclude that the statute violates Alaska's *ex post facto* clause."); *Wallace v. State*, 905 N.E.2d 371, 375-84 (Ind. 2009) (holding that registration amounts to retroactive punishment for purposes of Indiana Constitution in light of legislative amendments increasing term of registration and penalties for noncompliance and expanding notification and dissemination of offender information); *State v. Williams*, 952 N.E.2d 1108, 1112-13 (Ohio 2011) (holding that retroactive application of amendments to registration scheme violates Ohio Constitution by making registration automatic consequence of conviction without regard to future dangerousness of offender, increasing term of registration from 10 to 25 years, and requiring registration to be in person).

Other states have anchored their holdings in both state and federal

constitutional provisions. *See, e.g.*, *Commonwealth v. Baker*, 295 S.W.3d 437, 447 (Ky. 2009) (holding that retroactive application of residency restrictions in sex offender registration statute violates *ex post facto* clauses of United States and Kentucky constitutions); *State v. Letalien*, 985 A.2d 4, 26 (Me. 2009) ("The retroactive application of the lifetime registration requirement and quarterly in-person verification procedures of SORNA of 1999 to offenders originally sentenced subject to SORA of 1991 and SORNA of 1995, without, at a minimum, affording those offenders any opportunity to ever be relieved of the duty as was permitted under those laws, is, by the clearest proof, punitive, and violates the Maine and United States Constitutions' prohibitions against *ex post facto* laws.").

This Court should follow the lead of the above jurisdictions and hold that retroactive application of Maryland's law violates the *ex post facto* prohibitions in the federal constitution and the Maryland Declaration of Rights. Regardless of whether the registration and notification provisions imposed a punishment under the law as it existed in 2000, more recent changes clearly demonstrate the law's punitive nature. Application of the two-part test utilized in *Young* compels this conclusion. At best, the law is ambiguous as to the Legislature's intent. As the Court observed in *Young*, 370 Md. at 712, the law contains no express statement of the Legislature's purpose. At the same time, the law is contained within the Criminal Procedure Article and sets up a number of new crimes with attendant penalties including failing to register, entering onto school or child daycare property, and failing to comply with the conditions of lifetime supervision.

However, even assuming the Legislature did not intend to increase the punishment of persons required to register, the question still arises whether the law is punitive in effect. Because it is not clear that the legislature intended the law to be civil in nature, however, it is not appropriate to impose upon petitioner the heightened burden of showing by "the clearest proof" that the law is punitive. *See Smith*, 538 U.S. at 107-08 & 110 (Souter, J., concurring in judgment) & 115 (Ginsburg, joined by Breyer, dissenting). With that in mind, the *Mendoza-*

Martinez factors must be analyzed. These factors overwhelmingly weigh in favor of a finding that the law is punitive.

The Law Creates an Affirmative Disability or Restraint.

In *Young*, 370 Md. at 713, the Court stated:

> We agree with the State that the physical restraints placed by the statute upon offenders are minimal. Petitioner's movements and activities are not restricted in any way. The focus of § 792 is not on circumscribing the movement of offenders, but on keeping law enforcement and school officials informed of their location. A registrant need only notify the supervising authority of any change of address upon moving. Furthermore, the information required to be divulged in registering is not unreasonably burdensome – a registrant must provide name, address, local place of employment and/or educational enrollment, description of the crime, date of conviction, aliases, and Social Security number. *See* § 792(e).
>
> Nonetheless, sexual offender registration imposes other affirmative disabilities on registrants, particularly in light of the community notification provisions of § 792. Being labeled as a sexual offender within the community can be highly stigmatizing and can carry the potential for social ostracism. In the case of sexually violent predators, the registration statements may include documentation of highly personal, confidential, and ordinarily nonpublic information such as treatment received for a mental abnormality or personality disorder. *See* § 792(e)(2)(iv). Therefore, § 792 does impose an affirmative burden or restraint on registrants…

The burdens of registration have become much more onerous since *Young* was decided. The frequency and duration of registration have increased, and registrants need to provide a great deal more information. Registration must be in person for all offenders. Moreover, persons required to register are now restricted in the places they may travel to. As the Supreme Court of Maine declared in *Letalien*, 985 A.2d at 18, "quarterly, in-person verification of identity and location of home, school, and employment at a local police station, including fingerprinting and the submission of a photograph, for the remainder of one's life, is undoubtedly a form of significant supervision by the state."

At the same time, the dissemination of offender information has expanded exponentially with the rise of the Internet and the exercise of legislatively-derived authority by local jurisdictions seeking to notify residents of the identity and location of sex offenders living in their communities. The "potential for social ostracism" of which this Court spoke in *Young* is now very real. As the Indiana Supreme Court stated in *Wallace*, 905 N.E.2d at 379, "[t]he short answer is that the Act imposes significant affirmative obligations and a severe stigma on every person to whom it applies."

Registration and Notification Are Similar to Historical Forms of Punishment.

Courts in other jurisdictions have picked up on two aspects of sex offender registration laws that make them similar to other penal laws. First, "the dissemination provision at least resembles the punishment of shaming[.]" *Doe*, 189 P.3d at 1012; *see also Wallace*, 905 N.E.2d at 380. In an article that predates the advent of registration laws, one scholar wrote about "[t]he forced wearing of signs or letters that listed one's offense," a punishment in use "throughout the colonies" including "[i]n early Maryland, [where] offenders were compelled to stand in the pillory wearing a sign listing their crimes." Toni M. Massaro, *Shame, Culture, and American Criminal Law*, 89 MICH. L. REV. 1880, 1913 (June 1991). More permanent forms of labeling, like branding and maiming, were utilized where, as with sex offender registration and notification, the goal was not merely to cause shame to the offender but also to "to prevent the offender from committing future similar acts, either by warning future victims of their criminal propensities or by disabling the offender." *Id*. Professor Massaro also points out that, in the past, "[i]dentifying signs have … been part of sentences imposed on sex offenders," for example in one case where "a repeat offender was required, as a condition of probation, to post signs with letters at least three inches high on his residence and vehicle doors that read: DANGEROUS SEX OFFENDER -- NO CHILDREN ALLOWED." *Id*. at 1887-88.

The *Smith v. Doe* majority's effort to distinguish the sex offender

notification regimen from these early punishments is deeply flawed. It distinguished punishments such as "whipping, pillory, and branding" on the ground that they "inflicted physical pain and staged a direct confrontation between the offender and the public." 538 U.S. at 98. It distinguished "punishments that lacked the corporal component, such as public shaming, humiliation, and banishment," on the ground that these "involved more than the dissemination of information" in that they "either held the person up before his fellow citizens for face-to-face shaming or expelled him from the community." *Id.* Although the pain involved in branding (or tattooing) and the pillory was not insignificant, it was temporary and incidental to what the majority concedes was the main purpose of such punishments – the infliction of "permanent stigmas, which in effect cast the person out of the community." *Id*. (citation omitted). In any event, as the majority acknowledges, other ostracizing punishments lacked any corporal component. *Id*. The other distinction made by the majority – that these early punishments differed from the SORNA notification regimen because they staged direct face-to-face shaming or expelled the offender from the community – utterly disregards the nature and real world effects of the notice requirement. Neither the early punishments nor the registry compelled the public to participate in the shaming and ostracizing of the offender. Members of the public were not forced to come to the pillory or the stocks to hurl verbal abuse and tangible filth at the offender, nor were they required to shun or harass a person wearing a sign or a brand. They did not need to be. Everyone – certainly the legislature and the courts – knew that members of the public would willingly and enthusiastically do so. Likewise, after more than a decade of this unfortunate experiment with sex offender registration, no court or legislature can credibly claim that registrants do not experience similar hostility, ostracization, and abuse when the government labels them sex offenders and publicizes their addresses, workplaces, schools, and crimes.

Second, "the registration and disclosure provisions 'are comparable to conditions of supervised release or parole.'" *Doe*, 189 P.3d at 1012; *see also*

Wallace, 905 N.E.2d at 380-81. As with probationers and parolees, registrants are closely monitored, and their missteps can result in incarceration. If anything, registration and notification are much more burdensome in that they may last for the duration of the offender's life, while probation in most cases lasts no more than five years, *see* Md. Code, Crim. Proc. Art. § 6-222(a) (2008 Repl. Vol., 2009 Supp.). They are certainly much more burdensome than unsupervised probation, which is nonetheless considered punishment. Over a century ago, the Supreme Court, addressing an Eighth Amendment cruel and unusual punishment challenge to a sentence which included lifetime surveillance of the defendant, described the sentence in terms that can just as easily be applied to the situation Mr. Doe and others like him find themselves in:

> He is forever kept under the shadow of his crime forever kept within voice and view of the criminal magistrate, not being able to change his domicil without giving notice to the "authority immediately in charge of his surveillance," and without permission in writing. He may not seek, even in other scenes and among other people, to retrieve his fall from rectitude. Even that hope is taken from him and he is subject to tormenting regulations that, if not so tangible as iron bars and stone walls, oppress as much by their continuity, and deprive of essential liberty.

Weems v. United States, 217 U.S. 349, 366 (1910).

The Law Requires a Finding of Scienter for Most Qualifying Offenses.

As the Court noted in *Young*, 370 Md. at 715, the registration law has no scienter requirement. It "applies to individuals convicted of any of the enumerated offenses, without regard to the offender's state of mind," and "not all of the predicate crimes have a scienter requirement." *Id*. On the other hand, only some of the qualifying offenses are strict liability crimes, so this factor is not dispositive. *See Doe*, 189 P.3d at 1012-13 ("But even though ASORA applies to a few strict liability offenses, it overwhelmingly applies to offenses that require a finding of scienter for conviction. The few exceptions do not imply a non-punitive effect, given the assumption of scienter for those exceptions and the fact that a

reasonable-mistake-of-age defense is allowed in a charge of statutory rape.") (footnote omitted); *Wallace*, 905 N.E.2d at 381 ("We acknowledge that the Act applies to a few strict liability offenses. However, it overwhelmingly applies to offenses that require a finding of scienter for there to be a conviction. The few exceptions do not imply a non-punitive effect.") (footnote omitted).

The Law Promotes Traditional Aims of Punishment Including Deterrence, Retribution, and Incapacitation.

The Court in *Young* acknowledged that the law "promotes deterrence" but held that this "does not make the law punitive, in as much as deterrence can serve both civil and criminal goals." *Young*, 370 Md. at 715. However, as the number of crimes for which registration is required increases, the argument that the law does not serve a punitive purpose becomes less plausible. As the court in *Doe* stated,

> But ASORA's application to a broad spectrum of crimes regardless of their inherent or comparative seriousness refutes the state's argument and suggests that such retributive and deterrent effects are not merely incidental to the statute's regulatory purpose. Every person convicted of a sex offense must provide the same information, and the state publishes that information in the same manner, whether the person was convicted of a class A misdemeanor or an unclassified felony. ASORA's only differentiation is in the frequency and duration of a person's duty to register and disclose. But at any given moment the registration list does not distinguish those individuals the state considers to pose a high risk to society from those it views as posing a low risk. ASORA determines who must register based not on a particularized determination of the risk the person poses to society but rather on the criminal statute the person was convicted of violating.

Doe, 189 P.3d at 1013-14 (footnotes omitted); *see also Wallace*, 905 N.E.2d at 382 ("Nonetheless it strains credulity to suppose that the Act's deterrent effect is not substantial, or that the Act does not promote 'community condemnation of the offender,' both of which are included in the traditional aims of punishment.") (internal citation omitted).

The deterring function of the law is both symbolic and literal. It is symbolic

in that it serves to warn potential offenders of the severe consequences of committing certain crimes. But, as with other shaming punishments, it also has a more practical effect:

> Public apologies, confessions, or signs may well be incapacitative, in that they might make future criminal acts more difficult for the offender to perform. Publicizing the offender's identity may alert community members of her criminal past and cause them to isolate her socially or professionally. People might, for example, refuse a convicted embezzler a position that gives her access to funds. A known child molester may be denied contact with children. And a convicted drunk driver may be refused alcohol or a job that involves use of a vehicle. As such, the shaming sanctions may have a disabling effect on the offenders, and thus may claim to serve incapacitation-type ends.

Massaro, *supra*, at 1899-1900.

The Law Applies Only to Behavior Which Is Already Criminal.

This Court recognized in *Young* that the law "clearly applies to past criminal conduct." *Young*, 370 Md. at 714. The significance of this lies in the fact that registration is a consequence for all individuals found guilty of committing a criminal act, and not simply those who are likely to offend in the future. *See Doe*, 189 P.3d at 1015 ("It is therefore the determination of guilt of a sex offense beyond a reasonable doubt (or per a knowing plea), not merely the fact of the conduct and potential for recidivism, that triggers the registration requirement."); *Letalien*, 985 A.2d at 22 ("Because registration under SORNA of 1999 only applies to offenders who were convicted of specified crimes, does not arise based on individualized assessment of an offender's risk of recidivism, and cannot be waived based on proof that an offender poses little or no risk, SORNA of 1999 applies exclusively to behavior that is already a crime."). Importantly, the list of qualifying crimes has also grown – by a factor of five since the General Assembly passed the first sex offender registration law in 1995 and including a number of offenses added after the Court decided *Young*.

A Purpose of the Law Is To Protect the Public Safety.

As the Court in Young concluded, and as other courts to address the issue have determined, registration and notification provisions undoubtedly serve a legitimate purpose in seeking to protect the public safety. *See Young*, 370 Md. at 715; *Wallace*, 905 N.E.2d at 383; *Letalien*, 985 A.2d at 22. That does not, however, necessarily make the law less punitive. As one article points out,

> Every criminal law is aimed at protecting public safety. Offenders are meant to be deterred from acting criminally. If they do violate the law, they are punished. If the rational connection to a non-punitive purpose factor is read so broadly, then it is difficult to imagine any statute that would not survive an Ex Post Facto Clause claim.

Corey Rayburn Yung, *One of These Laws Is Not Like The Others: Why The Federal Sex Offender Registration and Notification Act Raises New Constitutional Questions*, 46 HARV. J. ON LEGIS. 369, 399 (Summer 2009).

The Law is Excessive in Relation To the Goal of Protecting Public Safety.

In *Young*, 370 Md. at 715, the Court relied heavily on its determination that "[t]he provisions of § 792 are tailored narrowly to effectuate the goal of protection of the public from sex offenders." Regardless of whether that was true when *Young* was decided, it does not hold true today.

As discussed above, the law today is over-inclusive as it applies to a broad group of offenders even though many of them do not present a risk of recidivism. In the words of one commentator,

> The distinction between Tier 1, Tier 2, and Tier 3 is obsolete, since all sex offenders, violent or not, likely to be recidivist or not, now find their names and home addresses plastered on the Web for everyone to see. Gone are the days when notification was limited to those who "needed to know" about the potential dangers lurking in their immediate neighborhood. Now someone living in Minsk, Belarus, can look up a photograph and home and work address for a convicted sex offender in Missouri. Displaying a criminal's record for the world to see serves no purpose other than extended punishment and public shaming, even if the original intent of the registries was to

> notify people in the immediate community to take precautions against a potentially violent sex offender living next door.

Jocelyn Ho, *Incest and Sex Offender Registration: Who Is Registration Helping and Who Is It Hurting?*, 14 CARDOZO J.L. & GENDER 429, 441 (Spring 2008). Furthermore, with the exception of the less than 11 percent designated as Tier I, offenders cannot petition to have their terms of registration reduced no matter how much they comport themselves with the law during the time after their offenses. *See Wallace*, 905 N.E.2d at 384 ("Indeed we think it significant for this excessiveness inquiry that the Act provides no mechanism by which a registered sex offender can petition the court for relief from the obligation of continued registration and disclosure. Offenders cannot shorten their registration or notification period, even on the clearest proof of rehabilitation.").

The observations of Justices Ginsburg and Breyer about the Alaska law apply with equal force to Maryland's law:

> [T]he Act has a legitimate civil purpose: to promote public safety by alerting the public to potentially recidivist sex offenders in the community. But its scope notably exceeds this purpose. The Act applies to all convicted sex offenders, without regard to their future dangerousness. And the duration of the reporting requirement is keyed not to any determination of a particular offender's risk of reoffending, but to whether the offense of conviction qualified as aggravated. The reporting requirements themselves are exorbitant: The Act requires aggravated offenders to engage in perpetual quarterly reporting, even if their personal information has not changed. And meriting heaviest weight in my judgment, the Act makes no provision whatever for the possibility of rehabilitation: Offenders cannot shorten their registration or notification period, even on the clearest demonstration of rehabilitation or conclusive proof of physical incapacitation. However plain it may be that a former sex offender currently poses no threat of recidivism, he will remain subject to long-term monitoring and inescapable humiliation.

Smith, 538 U.S. at 116-17 (internal citations and footnote omitted).

The imbalance between the excessiveness of the law in relation to the

regulatory goal is only heightened by research that concludes such laws do not accomplish their goal of reducing recidivism by sex offenders. Contrary to the prevailing mythology that helped drive the adoption of registration and notification laws, sex offender recidivism rates are lower than those for offenders generally. *See* Kelsie Tregilgas, *Sex Offender Treatment in the United States: The Current Climate and an Unexpected Opportunity for Change*, 84 TUL. L. REV. 729, 746-47 (2010). Moreover, research has repeatedly shown that sex offender registration and notification laws do not reduce recidivism by sex offenders. *See* Elizabeth J. Letourneau, *et al.*, *Evaluating the Effectiveness of Sex Offender Registration and Notification Policies for Reducing Sexual Violence against Women* (Sept. 2010) (available at https://www.ncjrs.gov/pdffiles1/nij/grants/231989.pdf); Kristen Zgoba, *et al.*, *Megan's Law: Assessing the Practical and Monetary Efficacy* (Dec. 2008) (available at https://www.ncjrs.gov/pdffiles1/nij/grants/225370.pdf); Jeffrey C. Sandler, *et al.*, *Does a Watched Pot Boil? A Time-Series Analysis of New York State's Sex Offender Registration and Notification Law*, Psychology, Public Policy, and Law (Nov. 2008); Donna D. Schram & Cheryl Darling Milloy, *Community Notification: A Study of Offender Characteristics and Recidivism*, Wash. State Inst. for Pub. Policy, at 3 (1995) (available at http://www.wsipp.wa.gov/rptfiles/chrrec.pdf).

In short, to call Maryland's registration and notification law, particularly as it exists today, a mere civil regulatory scheme is to perpetuate an obvious legal fiction. As any defendant weighing whether to plead guilty to a sex offense, and any lawyer considering how to advise a client charged with a sex offense, can attest, registration is a, and oftentimes the, critical consequence of a conviction. Application of the *Mendoza-Martinez* factors demonstrates beyond any shadow of a doubt that the law has become divorced from whatever non-punitive purpose it was intended to fulfill. More than ever, the law as it exists today is punitive.

The Court should put an end to the charade once and for all. Like any other punishment meted out by law for an offense, sex offender registration should be

subject to the *ex post facto* clauses in Article I, § 10 of the United States Constitution and Article 17 the Maryland Declaration of Rights. Retroactive application must be prohibited.

IV. THE RETROACTIVE APPLICATION OF THE LAW VIOLATES THE NOTIONS OF FAIR PLAY AND DUE PROCESS UNDERLYING THE PLEA BARGAINING PROCESS.

However this Court chooses to characterize sex offender registration and notification for purposes of the *Ex Post Facto* Clause of the U.S. Constitution and Article 17 of the Declaration of Rights, it is plain that retroactive application of the law has wreaked havoc on plea negotiations in Maryland. Given its duration, requirements, and consequences, registration is often the most significant consequence of a conviction. It is thus reasonable for defendants to want to know whether and how long they will have to register if they plead guilty and reasonable to expect defense counsel to be the source of this information. This Court recognized the importance of providing accurate information about registration in the plea process when it amended current Rule 4-242(e) to state that "[b]efore the court accepts a plea of guilty or nolo contendere, the court, the State's Attorney, the attorney for the defendant, or any combination thereof shall advise the defendant … that by entering a plea to the offenses set out in Code, Criminal Procedure Article, § 11-701, the defendant shall have to register with the defendant's supervising authority as defined in Code, Criminal Procedure Article, § 11-701(p)[.]" Md. Rule 4-242(e) (2011). *See also* ABA Standards for Criminal Justice, Pleas of Guilty 14-3.2(f) cmt., at 126 (3d ed.1999) (listing sex offender registration as among those consequences of conviction which defense counsel must advise clients contemplating pleading guilty).

The retroactivity provisions that went into effect in 2009 and 2010 made a mockery of the numerous pleas that had been entered into on condition, express or implied, that registration would not be a consequence or that it would be limited in duration. Defendants willingly, and on advice from their attorneys, signed away

their rights to trial and confrontation, among others, in the false expectation that they would not be required to join the list of registered sex offenders or that they would only have to register for a lesser term of years. (*See*, *e.g.*, App. 1-2, 8, 10, 23.) The State, although a party to these agreements, was often a proponent of the very legislative changes which made registration retroactive, thereby undermining the value of the agreements to the defendants.[9]

There is no analogy that can be made to other situations in which defendants have learned, post-plea, of non-punitive consequences of their convictions. The onerous nature of registration requirements and the breadth of notification make it an especially severe consequence, on par perhaps only with deportation and civil commitment. But what makes it unique is that it is a consequence directly tied to a finding of guilt for a particular offense and imposed by the same legislature which determines the punishment for the offense.

The unfairness resulting from retroactive application of the law is apparent in the present case. In 2006, Mr. Doe entered into a 3-party binding plea agreement between the State, the Court and the defense. In exchange for Mr. Doe's plea of guilty to one count of custodial sexual child abuse, in violation of Article 27, Section 35A (as the law existed when Mr. Doe's crimes were allegedly committed in 1984) the State agreed to drop the remaining charges and the Court agreed to a five-year "cap" of any incarceration. It is undeniable that registration as a sexual offender was not a part of the plea agreement. Nevertheless, as explained *infra*, due to a change in the law, Mr. Doe was later required to register.

The utter lack of discussion on the record during the plea proceeding can only be taken to mean that a term of the agreement was that Mr. Doe was not, as part of the plea agreement, required to register as an offender. To find otherwise would create a dangerous precedent allowing the State to add additional terms to a

[9] Indeed, from a defendant's perspective, it is the State, understood broadly, which prosecuted him, agreed that he would not have to register or would have to register for less time, and then changed the terms of the deal after the fact.

plea agreement at its whim anytime there was no specific mention of those terms made during the plea agreement. This is precisely why this Court has previously interpreted Maryland Rule 4-243 to mean that *all* terms of a plea agreement must be on the record. *See Cuffley v. State*, 416 Md. 568, 581-82 (2010) ("The principal purpose of Rule 4-243 is to eliminate the possibility that the defendant may not fully comprehend the nature of the agreement before pleading guilty. Any less would offend notions of due process.").

To permit what happened in this case to occur also creates a strong disincentive for defendants to plead guilty. Defendants must have some reasonable assurance that the benefit they expect to derive from a plea agreement will not be withdrawn in the future, particularly at the hands of the State. Without such assurance, they will choose to go to trial instead, the effects of which will be felt by the criminal justice system as a whole. *See Missouri v. Frye*, __ U.S. __, __ (2012) (noting that "[n]inety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas" and stating, as a result, that "'plea bargaining is …not some adjunct to the criminal justice system; it is the criminal justice system'") (quoting Scott & Stuntz, Plea Bargaining as Contract, 101 Yale L. J. 1909, 1912 (1992)); *State v. Parker*, 334 Md. 576, 597 (1994) (discussing the "strong public policy reasons supporting the rapid disposition of criminal charges through plea bargaining").

Because in this case "the record of the plea proceeding clearly discloses what the defendant reasonably understood to be the terms of the agreement," Mr. Doe is entitled to the benefit of the bargain, which, at Mr. Doe's option, is either specific enforcement of the agreement or withdrawal of the plea. *Cuffley*, 416 Md. at 583; *Solorzano v. State*, 397 Md. 661, 667-68 (2007). However, even if the record of the plea proceeding did not clearly disclose what Mr. Doe reasonably understood to be the terms of the agreement because the record was ambiguous, he would still be entitled to an election of remedies because any ambiguity is to be resolved in his favor. *Cuffley*, 416 Md. at 583.

> In considering whether a plea agreement has been violated, several courts have noted that the terms of the plea agreement are to be construed according to what a defendant reasonably understood when the plea was entered. When a guilty plea is predicated upon an agreement, the agreement must be fulfilled. Plea bargains have been likened to contracts, which cannot normally be unilaterally broken with impunity or without consequence.

Tweedy v. State, 380 Md. 475, 482 (2004). In order to determine what a defendant "reasonably understood the agreement to mean," the Court employs an objective test which depends "not on what the defendant actually understood the agreement to mean, but rather, on what a reasonable lay person in the defendant's position and unaware of the niceties of sentencing law would have understood the agreement to mean, based on the record developed at the plea proceeding." *Cuffley*, 416 Md. at 582.

In this case, because there was absolutely no mention of sexual offender registration on the record during the plea proceeding, any "reasonable lay person in the defendant's position" would have believed that a term of the agreement was that he or she would not have to register as a sexual offender.

To the extent that the State could even argue that specific performance of the plea agreement is inapplicable because the terms of the agreement are unenforceable as a result of the Maryland General Assembly mandate that Mr. Doe is required to register as a sexual offender, *State v. Parker*, *supra*, is instructive. In *Parker*, the term of the plea agreement at issue purported to require that the defendant serve his incarceration in a federal jurisdiction. This Court explained that specific performance was not appropriate because "[w]e simply cannot order federal authorities to keep Parker in prison so that he may serve his state sentence after the federal Parole Commission has decided to parole Parker from his federal sentence." *Parker*, 334 Md. at 602. The Court thus distinguished the case before it from cases where, "for example, the promise in question is unfulfillable because it violates a statutory sentencing provision or exceeds the

authority of the prosecutor." *Id.* at 600. "[T]here is ample authority supporting the election of specific performance of unfulfillable plea bargains" in those cases. *Id.* at 600-01 (citing cases from other jurisdictions). Such cases are analytically indistinct from Mr. Doe's situation. Accordingly, this Court has the authority, and the responsibility, to order specific performance of the plea agreement in this case by ordering that Mr. Doe is not required to register as a sex offender.

CONCLUSION

For the foregoing reasons, *amici curiae* respectfully request that this Court reverse the judgment of the Court of Special Appeals.

Respectfully submitted,

Brian M. Saccenti
Brian L. Zavin
Counsel for the OPD

Michael P. Lytle
Counsel for the MCDAA

James Nichols
Counsel for FAIR

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PERTINENT AUTHORITY

United States Constitution, Article I, Section 10, Clause 1:

> No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

U.S. Const., art. I, § 10, cl. 1.

Maryland Declaration of Rights, Article 17:

> Article 17. Ex post facto laws; retrospective oaths or restrictions
>
> That retrospective Laws, punishing acts committed before the existence of such Laws, and by them only declared criminal, are oppressive, unjust and incompatible with liberty; wherefore, no ex post facto Law ought to be made; nor any retrospective oath or restriction be imposed, or required.

Md. Decl. Rts. art. 17.

Maryland Constitution of 1864, Article I, Section 4:

> No person who has at any time been in armed hostility to the United States or the lawful authorities thereof, or who has been in any manner in the service of the so-called "Confederate States of America," and no person who has voluntarily left this State and gone within the military lines of the so-called Confederate States or armies with the purpose of adhering to said States or armies, and no person who has given any aid, comfort, countenance or support to those engaged in armed hostility to the United States or in any manner adhered to the enemies of the United States, either by contributing to the enemies of the United States, or unlawfully sending within the lines of such enemies, money or goods, or letters, or information, or who has disloyally held communication with

the enemies of the United States, or who has advised any person to enter the service of the said enemies, or aided any person so to enter, or who has by any open deed or word declared his adhesion to the cause of the enemies of the United States, or his desire for the triumph of said enemies over the arms of the United States, shall ever be entitled to vote at any election to be held in this State, or to hold any office of honor, profit or trust under the laws of this State, unless since such unlawful acts he shall have voluntarily entered into military service of the United States, and been honorably discharged therefrom, or be on the day of election actually and voluntarily in such service, or unless he shall be restored to his full rights of citizenship by an act of the General Assembly passed by a vote of two thirds of all the members elected to each House; and it shall be the duty of all officers of Registration and Judges of election carefully to exclude from voting or being registered all persons so as above disqualified; and the Judges of election at the first election held under this Constitution shall and at any subsequent election may administer to any person offering to vote the following oath or affirmation: I do swear or affirm that I am a citizen of the United States, that I have never given any aid, countenance or support to those in armed hostility to the United States, that I have never expressed a desire for the triumph of said enemies over the arms of the United States, and that I will bear true faith and allegiance to the United States and support the Constitution and laws thereof as the supreme law of the land any law or ordinance of any State to the contrary notwithstanding, that I will in all respects demean myself as a loyal citizen of the United States, and I make this oath or affirmation without any reservation or evasion; and believe it to be binding on me, and any person declining to take such oath shall not be allowed to vote, but the taking of such oath shall not be deemed conclusive evidence of the right of such person to vote; and any person swearing or affirming falsely shall be liable to penalties of perjury; and it shall be the duty of the proper officers of Registration to allow no person to be registered until he shall have taken the oath or affirmation above set out, and it shall be the duty of the Judges of election in all their returns of the first election held under this Constitution, to state in their said returns that every person who has voted has taken such oath or affirmation. But the provisions of this section, in relation to acts against the United States, shall not apply to any

person not a citizen of the United States, who shall have committed such acts while in the service of some foreign country, at war against the United States, and who has, since such acts, been naturalized or may be naturalized under the Laws of the United States, and the oath above set forth shall be taken in the case of such persons in such sense.

Md. Const. art. I § 4 (1864).

Maryland Constitution of 1864, Article I, Section 7:

Every person elected or appointed to any office of trust or profit under this Constitution, or under the laws made pursuant thereto, before he shall enter upon the duties of such office, shall take and subscribe the following oath, or affirmation: I ———— do swear, (or affirm, as the case may be,) that I will, to the best of my skill and judgment, diligently and faithfully, without partiality or prejudice, execute the office of ———— according to the Constitution and Laws of this State, and that since the fourth day of July, in the year eighteen hundred and fifty-one, I have not in any manner violated the provisions of the present, or of the late Constitution, in relation to the bribery of voters, or preventing legal votes, or procuring illegal votes to be given, (and if a Governor, Senator, Member of the House of Delegates, or Judge,) that I will not directly or indirectly receive the profits or any part of the profits of any other office during the term of my acting as ————; I do further swear or affirm that I will bear true allegiance to the State of Maryland, and support the Constitution and Laws thereof, and that I will bear true allegiance to the United States, and support, protect and defend the Constitution, Laws and Government thereof, as the supreme law of the land, any law or ordinance of this or any State to the contrary notwithstanding; that I have never directly or indirectly by word, act or deed, given any aid, comfort or encouragement to those in rebellion against the United States or the lawful authorities thereof, but that I have been truly, and loyally on the side of the United States against those in armed rebellion against the United States; and I do further swear or affirm, that I will, to the best of my abilities, protect and defend the Union of the United States, and not allow the same to be broken up and dissolved, or the Government thereof to be destroyed under any

> circumstances, if in my power to prevent it and that I will at all times discountenance and oppose all political combinations having for their object such dissolution or destruction.

Md. Const. art. I § 7 (1864).

Maryland Constitution of 1864, Article III, Section 47:

> The General Assembly shall pass laws requiring the President, Directors, Trustees or Agents of corporations, created or authorized by the laws of this State; Teachers or Superintendents of the Public Schools, Colleges or other institutions of learning; Attorneys-at-Law, Jurors and such other persons as the General Assembly shall, from time to time prescribe, to take the oath of allegiance to the United States set forth in the first article of this Constitution.

Md. Const. art. III § 47 (1864).

Maryland Code, Article 27, Section 792:

> § 792. Registration of sexual offenders
>
> (a) Definitions. --
>
> (1) In this section the following words have the meanings indicated.
>
> (2) "Child sexual offender" means an individual who:
>
> (i) Has been convicted of violating § 35C of this article for an offense involving sexual abuse;
>
> (ii) Has been convicted of violating any of the provisions of §§ 462 through 464B of this article for an offense involving an individual under the age of 15 years;
>
> (iii) Has been convicted of violating § 464C of this article for an offense involving an individual under the age of 15 years and has been ordered by the court to register under this section; or

(iv) Has been convicted in another state, or in a federal, military, or Native American tribal court, of an offense that, if committed in this State, would constitute one of the offenses listed in items (i) and (ii) of this paragraph.

(3) "Convicted" includes:

(i) A probation before judgment after a finding of guilt for an offense if the court, as a condition of probation orders compliance with the requirements of this section; and

(ii) A finding of not criminally responsible for an offense.

(4) "Department" means the Department of Public Safety and Correctional Services.

(5) "Local law enforcement agency" means the law enforcement agency in a county that has been designated by resolution of the county governing body as the primary law enforcement unit in the county.

(6) "Offender" means an individual who is ordered by the court to register under this section and who:

(i) Has been convicted of violating § 1, § 2, or § 338 of this article;

(ii) Has been convicted of violating § 337 of this article if the victim is under the age of 18 years;

(iii) Has been convicted of the common law crime of false imprisonment if the victim is under the age of 18 years and the offender is not the victim's parent;

(iv) Has been convicted of violating § 464C of this article if the victim is under the age of 18 years;

(v) Has been convicted of soliciting a minor to engage in sexual conduct;

(vi) Has been convicted of violating § 419A of this article;

(vii) Has been convicted of violating § 15 of this article or any of the provisions of §§ 426 through 433 of this article if the intended prostitute is under the age of 18 years;

(viii) Has been convicted of a crime that involves conduct that by its nature is a sexual offense against an individual under the age of 18 years;

(ix) Has been convicted of an attempt to commit a crime listed in items (i) through (viii) of this paragraph; or

(x) Has been convicted in another state, or in a federal, military, or Native American tribal court, of an offense that, if committed in this State, would constitute one of the offenses listed in items (i) through (ix) of this paragraph.

(7) "Registrant" means an individual who is:

(i) A child sexual offender;

(ii) An offender;

(iii) A sexually violent offender;

(iv) A sexually violent predator;

(v) A child sexual offender who, before moving into this State, was required to register in another state or by a federal, military, or Native American tribal court for an offense occurring before October 1, 1995;

(vi) An offender, a sexually violent offender, or a sexually violent predator who, before moving into this State, was required to register in another state or by a federal, military, or Native American tribal court for an offense occurring before July 1, 1997; or

(vii) A child sexual offender, offender, sexually violent offender, or sexually violent predator who is required to register in another state, who is not a resident of this State, and who enters this State for the purpose of:

1. Employment, or to carry on a vocation, that is full time or part time for a period of the time exceeding 14

days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit; or

2. Attending any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education, as a student on a full-time or part-time basis.

(8) (i) "Release" means any type of release from the custody of a supervising authority.

(ii) "Release" includes release on parole, mandatory supervision, work release, and any type of temporary leave other than leave that is granted on an emergency basis.

(iii) "Release" does not include an escape.

(9) "Resident" means an individual who lives in this State at the time the individual:

(i) Is released;

(ii) Is granted probation before judgment;

(iii) Is granted probation after judgment;

(iv) Is granted a suspended sentence; or

(v) Receives a sentence that does not include a term of imprisonment.

(10) "Sexually violent offender" means an individual who:

(i) Has been convicted of a sexually violent offense;

(ii) Has been convicted of an attempt to commit a sexually violent offense; or

(iii) Has been convicted in another state, or in a federal, military, or Native American tribal court, of an offense that, if committed in this State, would constitute a sexually violent offense.

(11) "Sexually violent offense" means:

(i) A violation of any of the provisions of § 462, § 463, § 464, § 464A, § 464B, or § 464F of this article; or

(ii) Assault with intent to commit rape in the first or second degree or a sexual offense in the first or second degree as previously proscribed under former § 12 of this article.

(12) "Sexually violent predator" means an individual who:

(i) Is convicted of a second or subsequent sexually violent offense; and

(ii) Has been determined in accordance with this section to be at risk of committing a subsequent sexually violent offense.

(13) "Supervising authority" means:

(i) If the registrant is in the custody of a facility operated by the Department of Public Safety and Correctional Services, the Secretary of Public Safety and Correctional Services;

(ii) If the registrant is in the custody of a local or regional detention center, including a registrant who is participating in a home detention program, the administrator of the facility;

(iii) Except as provided in item (xi) of this paragraph, if the registrant is granted probation before judgment, probation after judgment, or a suspended sentence, the court that granted the probation or suspended sentence;

(iv) If the registrant is in the custody of the Patuxent Institution, the Director of the Patuxent Institution;

(v) If the registrant is in the custody of a facility operated by the Department of Health and Mental Hygiene, the Secretary of Health and Mental Hygiene;

(vi) If the registrant's sentence does not include a term of imprisonment, the court in which the registrant was convicted;

(vii) If the registrant is in the State under the terms and conditions of the Uniform Act for Out-of-State Parolee Supervision, set forth in Title 6, Subtitle 2 of the Correctional Services Article, or the Interstate Corrections Compact, set forth in Title 8, Subtitle 6 of the Correctional Services Article, the Secretary of Public Safety and Correctional Services;

(viii) If the registrant moves to this State and was convicted in another state of an offense that would require the individual to register if the offense was committed in this State, the Secretary of Public Safety and Correctional Services;

(ix) If the registrant moves to this State from another state where the individual was required to register, the Secretary of Public Safety and Correctional Services;

(x) If the registrant is not a resident of this State, the Secretary of Public Safety and Correctional Services; or

(xi) If the registrant is under the supervision of the Division of Parole and Probation, the Director of Parole and Probation.

(b) Determination; procedure. --

(1) Subject to paragraphs (3) and (4) of this subsection, if an individual is convicted of a second or subsequent sexually violent offense, the State's Attorney may request the court to determine before sentencing whether the individual is a sexually violent predator.

(2) If the State's Attorney makes a request under paragraph (1) of this subsection, the court shall determine before or at sentencing whether the individual is a sexually violent predator.

(3) In making a determination under paragraph (1) of this subsection, the court shall consider:

(i) Any evidence that the court considers appropriate to the determination of whether the individual is a sexually violent predator, including the presentencing investigation and sexually violent offender's inmate record;

(ii) Any evidence introduced by the individual convicted; and

(iii) At the request of the State's Attorney, any evidence presented by a victim of the sexually violent offense.

(4) The State's Attorney may not request a court to determine if an individual is a sexually violent predator under this subsection unless the State's Attorney serves written notice of intent to make the request on the defendant or the defendant's lawyer at least 30 days before trial.

(c) Registration. --

(1) A registrant shall register with the registrant's supervising authority:

(i) If the registrant is a resident, on or before the date that the registrant:

1. Is released;

2. Is granted probation before judgment;

3. Is granted probation after judgment;

4. Is granted a suspended sentence; or

5. Receives a sentence that does not include a term of imprisonment; or

(ii) If the registrant moves into this State, within 7 days after the earlier of the date that the registrant:

1. Establishes a temporary or permanent residence in this State; or

2. Applies for a driver's license in this State; or

(iii) If the registrant is not a resident of this State, within 14 days of the date that the registrant:

1. Begins employment in this State; or

2. Registers as a student in this State.

(2) (i) A child sexual offender shall also register in person with the local law enforcement agency of the county where the child sexual offender will reside:

1. Within 7 days of release, if the child sexual offender is a resident of this State; or

2. Within 7 days of registering with the supervising authority, if the registrant is moving into this State.

(ii) Within 7 days of registering with the supervising authority, a child sexual offender who is not a resident of this State and who works or attends school in this State shall also register in person with the local law enforcement agency of the county where the child sexual offender will work or attend school.

(iii) A child sexual offender may be required to provide information to the local law enforcement agency besides the information required under subsection (e) of this section.

(3) If a registrant changes residences, the registrant shall send written notice of the change to the Department within 7 days after the change occurs.

(d) Term of registration; annual registration; registration by sexually violent predators. --

(1) A term of registration described in this subsection shall be calculated from:

(i) The last date of release;

(ii) The date granted probation before judgment, probation after judgment, or a suspended sentence; or

(iii) The date of receiving a sentence that does not include a term of imprisonment.

(2) A child sexual offender shall register annually in person with a local law enforcement agency for the term provided under paragraph (5) of this subsection.

(3) An offender and a sexually violent offender shall register annually with the Department in accordance with the procedures described in subsection (h) (3) of this section and for the term provided under paragraph (5) of this subsection.

(4) A sexually violent predator shall register every 90 days in accordance with the procedures described in subsection (g) (3) of this section and for the term provided under paragraph (5) (ii) of this subsection.

(5) The term of registration is:

(i) 10 years; or

(ii) Life if:

1. The registrant has been determined to be a sexually violent predator in accordance with the procedures described in subsection (b) of this section;

2. The registrant has been convicted of a violation of any of the provisions of §§ 462 through 464B of this article; or

3. The registrant has been previously required to register and has been convicted of a subsequent violation of any offense listed in subsection (a) (2), (6), or (11) of this section.

(6) A registrant who is not a resident of this State shall register for the period of time specified in this subsection or until the registrant's employment or student enrollment in this State ceases.

(e) Contents of registration statement. --

(1) Subject to paragraph (2) of this subsection, registration shall consist of a statement signed and dated by a registrant which includes:

(i) The registrant's name, address, and:

1. For an individual who qualifies as a registrant under subsection (a) (7) (vii) 1 of this section, place of employment; or

2. For an individual who qualifies as a registrant under subsection (a) (7) (vii) 2 of this section, place of educational institution or school enrollment;

(ii) A description of the crime for which the registrant was convicted, granted probation before judgment, or found not criminally responsible;

(iii) The date that the registrant was convicted, granted probation before judgment, or found not criminally responsible;

(iv) The jurisdiction in which the registrant was convicted, granted probation before judgment, or found not criminally responsible;

(v) A list of any aliases that have been used by the registrant; and

(vi) The registrant's Social Security number.

(2) If the registrant is a sexually violent predator, the registration statement shall also include:

(i) Identifying factors, including physical description;

(ii) Anticipated future residence, if known at the time of registration;

(iii) Offense history; and

(iv) Documentation of treatment received for a mental abnormality or personality disorder.

(f) Duty of supervising authority. --

(1) When a registrant registers, the supervising authority shall:

(i) Explain the requirements of this section to the registrant, including:

1. The duties of a registrant when the registrant changes residence address in this State;

2. The requirement for a child sexual offender to register, in person with the local law enforcement agency of the county where the child sexual offender will reside or where the child sexual offender who is not a resident of this State will work or attend school; and

3. The requirement that if the registrant changes residence address, employment, or school enrollment to another state that has a registration requirement, the registrant shall register with the designated law enforcement agency of that state within 7 days of the change;

(ii) Give written notice to the registrant of the requirements of this section; and

(iii) Obtain a statement signed by the registrant acknowledging that the supervising authority explained the requirements of this section and provided written notice to the registrant.

(2) The supervising authority shall obtain a photograph and fingerprints of the registrant and attach the photograph and fingerprints to the registration statement.

(3) Within 5 days of obtaining a registration statement, the supervising authority shall send a copy of the registration statement, the registrant's fingerprints, and a photograph of the registrant to the local law enforcement agency in the county where the registrant will reside, or where a registrant who is not a resident will work or attend school.

(4) As soon as possible and in no event later than 5 working days after registration is completed, if the supervising authority is not a unit of the Department, the supervising authority shall send the registration statement to the Department.

(g) Notice of registration statement. --

(1) (i) Within 5 days after a child sexual offender has completed the registration requirements of subsection (d) (2) of this section, a local law enforcement agency shall send notice

of the child sexual offender's annual registration to the Department.

(ii) As soon as possible and in no event later than 5 working days after receiving a registration statement of a child sexual offender, a local law enforcement agency shall send written notice of the registration statement to the county superintendent, as defined in § 1-101 of the Education Article, in the county where the child sexual offender will reside, or where a child sexual offender who is not a resident of this State will work or attend school.

(2) As soon as possible and in no event later than 5 working days after receiving notice from the local law enforcement agency under paragraph (1) (ii) of this subsection, a county superintendent shall send written notice of the registration statement to those principals of the schools within the supervision of the superintendent that the superintendent considers necessary to protect the students of a school from a child sexual offender.

(3) (i) Every 90 days, the local law enforcement agency shall mail a verification form, which may not be forwarded, to the last reported address of a sexually violent predator.

(ii) Within 10 days after receiving the verification form, the sexually violent predator shall sign the form and mail it to the local law enforcement agency.

(iii) Within 5 days after obtaining a verification form from a sexually violent predator, a local law enforcement agency shall send a copy of the verification form to the Department.

(4) If a registrant will reside after release in a municipal corporation that has a police department, or, in the case where a registrant escapes from a facility and the registrant resided, before the registrant was committed to the custody of a supervising authority, in a municipal corporation that has a police department, a local law enforcement agency that receives a notice from a supervising authority under this section shall send a copy of the notice to the police department of the municipal corporation.

(h) Duty of Department. --

(1) The Department shall:

(i) Maintain a central registry of registrants;

(ii) As soon as possible and in no event later than 5 working days after receiving the conviction data and fingerprints of a registrant, transmit the data and fingerprints to the Federal Bureau of Investigation if the Bureau does not have that information; and

(iii) Reimburse supervising authorities for the cost of processing the registration statements of registrants, including the taking of fingerprints and photographs.

(2) As soon as possible and in no event later than 5 working days after receipt of a registrant's change of address notice, the Department shall give notice of the change to:

(i) The local law enforcement agency in whose county the new residence is located;

(ii) If the new residence is in a different state that has a registration requirement, the designated law enforcement agency in whose state the new residence is located; and

(iii) If the registration is premised on a conviction under federal, military, or Native American tribal law, the designated federal agency.

(3) (i) The Department shall mail annually a verification form, which may not be forwarded, to the last reported address of each offender and sexually violent offender.

(ii) Within 10 days after receiving the verification form, the offender or sexually violent offender shall sign the verification form and mail it to the Department.

(i) Notice of registrant's escape. --

(1) If a registrant escapes from a facility, the supervising authority of the facility shall immediately notify, by the most reasonable and expedient means available:

(i) The local law enforcement agency in the jurisdiction in which the registrant resided before the registrant was committed to the custody of the supervising authority; and

(ii) Any individual who is entitled to receive notice under subsection (j) (3) of this section.

(2) If the registrant is recaptured, the supervising authority shall send notice, as soon as possible and in no event later than 2 working days after the supervising authority learns of the recapture, to:

(i) The local law enforcement agency in the jurisdiction in which the registrant resided before the registrant was committed to the custody of the supervising authority; and

(ii) Any individual who is entitled to receive notice under subsection (j) (3) of this section.

(j) Copies; confidentiality. --

(1) A registration statement provided to a person under this section shall include a copy of the completed registration form and a copy of a photograph of the registrant, but need not include the registrant's fingerprints.

(2) Information regarding any individual who receives notice under paragraph (3) of this subsection is confidential and may not be disclosed to the registrant or any other person.

(3) (i) The supervising authority shall send a copy of a registration statement to the following individuals if such notice has been requested in writing about a specific registrant:

1. The victim of the crime for which the registrant was convicted or, if the victim is a minor, the parents or legal guardian of the victim;

2. Any witness who testified against the registrant in any court proceedings involving the offense; and

3. Any individual specified in writing by the State's Attorney.

(ii) The supervising authority shall send a copy of a registration statement to a victim of the crime for which the registrant was convicted, if the victim filed a notification request form under § 770 of this article.

(4) A supervising authority shall send any notice required under paragraph (3) of this subsection and subsection (i) (1) (ii) and (2) (ii) of this section to the last address provided to the supervising authority.

(5) (i) Subject to subparagraph (ii) of this paragraph, upon written request to a local law enforcement agency, the agency:

1. Shall send to the individual who submitted the request one copy of the registration statement of each child sexual offender and each sexually violent predator on record with the agency; and

2. May send to the individual who submitted the request one copy of the registration statement of any registrant not described in item 1 of this subparagraph on record with the agency.

(ii) A request under subparagraph (i) of this paragraph shall contain:

1. The name and address of the individual submitting the request; and

2. The reason for requesting the information.

(iii) A local law enforcement agency shall keep records of all written requests received under subparagraph (i) of this paragraph.

(6) The Department shall release registration statements or information concerning registration statements to the public and may post on the Internet a current listing of each registrant's name, offense, and other identifying information, in accordance with regulations established by the Department.

(7) (i) In addition to the notice required under subsection (g) (1) (ii) of this section, the Department and a local law enforcement agency shall provide notice of a registration statement to any person that the Department or local law

enforcement agency determines may serve to protect the public concerning a specific registrant if the Department or the agency determines that such notice is necessary to protect the public.

(ii) The Department and local law enforcement agencies shall establish procedures for carrying out the notification requirements of subparagraph (i) of this paragraph, including the circumstances under and manner in which notification shall be provided.

(iii) The Department and a local law enforcement agency may not release the identity of a victim of an offense that requires registration under this section.

(8) A disclosure under this subsection may not be construed to limit or prohibit any other disclosure permitted or required under law.

(k) Immunity for public officials. -- An elected public official, public employee, or public agency shall have the immunity described in §§ 5-302 and 5-522 of the Courts Article regarding civil liability for damages arising out of any action relating to the provisions of this section, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith.

(l) Penalty for failure to register. -- A registrant who knowingly fails to register or knowingly provides false information of a material fact as required by this section is guilty of a misdemeanor and on conviction is subject to imprisonment in the penitentiary for not more than 3 years or a fine of not more than $5,000 or both.

(m) Regulations. -- The Secretary of Public Safety and Correctional Services shall adopt regulations to implement the provisions of this section with advice from the Criminal Justice Information Advisory Board established under § 744 of this article.

Md. Code, Art. 27, § 792 (1996 Repl. Vol., 2000 Supp.).

Maryland Code, Criminal Procedure Article, Section 6-222:

§ 6-222. Limits on probation after judgment; extension for restitution

(a) Limits on probation after judgment. -- A circuit court or the District Court may:

(1) impose a sentence for a specified time and provide that a lesser time be served in confinement;

(2) suspend the remainder of the sentence; and

(3) (i) order probation for a time longer than the sentence but, subject to subsections (b) and (c) of this section, not longer than:

1. 5 years if the probation is ordered by a circuit court; or

2. 3 years if the probation is ordered by the District Court; or

(ii) if a defendant convicted of sexual abuse of a minor under § 3-602 of the Criminal Law Article or a crime involving a minor under § 3-303, § 3-304, § 3-305, § 3-306, or § 3-307 of the Criminal Law Article, consents in writing, order probation for a time longer than the sentence that was imposed on the defendant, but not longer than:

1. 10 years if the probation is ordered by a circuit court; or

2. 6 years if the probation is ordered by the District Court.

(b) Extension for restitution -- Time allowed in subsection (a). --

(1) For the purpose of making restitution, the court may extend the probation beyond the time allowed under subsection (a)(3)(i) of this section for:

(i) an additional 5 years if the probation is ordered by a circuit court; or

(ii) an additional 3 years if the probation is ordered by the District Court.

(2) An extension of probation under this subsection may be unsupervised or supervised by the Division of Parole and Probation.

(c) Extension for restitution -- Time allowed in subsection (b). -- The court may extend the probation beyond the time allowed under subsection (b) of this section if:

(1) the defendant consents in writing; and

(2) the extension is only for making restitution.

(d) Extension of probation. --

(1) For the purpose of a commitment to the Department of Health and Mental Hygiene for treatment under § 8-507 of the Health - General Article, the court may extend the probation for 1 year beyond the time allowed under subsection (a)(3)(i) of this section.

(2) An extension of probation under this subsection shall be supervised by the Division of Parole and Probation.

(e) Conditions for extension of probation. -- The court may extend the probation beyond the time allowed under subsection (d) of this section only if:

(1) the defendant consents in writing; and

(2) the extension is only for a commitment to the Department of Health and Mental Hygiene for treatment under § 8-507 of the Health - General Article.

Md. Code Ann., Crim. Proc. Art. § 6-222 (2008 Repl. Vol., 2009 Supp.).

Maryland Code, Criminal Procedure Article, Section 11-701:

§ 11-701. Definitions

(a) In general. -- In this subtitle the following words have the meanings indicated.

(b) Board. -- "Board" means the Sexual Offender Advisory Board.

(c) Employment. -- "Employment" means an occupation, job, or vocation that is full time or part time for a period exceeding 14 days or for an aggregate period exceeding 30 days during a calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

(d) Habitually lives. --

(1) "Habitually lives" means any place where a person lives, sleeps, or visits with any regularity, including where a homeless person is stationed during the day or sleeps at night.

(2) "Habitually lives" includes any place where a person visits for longer than 5 hours per visit more than 5 times within a 30-day period.

(e) Homeless. -- "Homeless" means having no fixed residence.

(f) Imprisonment. -- "Imprisonment" means incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence.

(g) Jurisdiction. -- "Jurisdiction" means a state or a Native American tribe that elects to function as a registration jurisdiction under federal law.

(h) Local law enforcement unit. -- "Local law enforcement unit" means the law enforcement unit in a county that has been designated by resolution of the county governing body as the primary law enforcement unit in the county.

(i) Release. --

(1) Except as otherwise provided in this subsection, "release" means any type of release from the custody of a supervising authority.

(2) "Release" means:

(i) release on parole;

(ii) mandatory supervision release;

(iii) release from a correctional facility with no required period of supervision;

(iv) work release;

(v) placement on home detention; and

(vi) the first instance of entry into the community that is part of a supervising authority's graduated release program.

(3) "Release" does not include:

(i) an escape; or

(ii) leave that is granted on an emergency basis.

(j) Sexually violent offense. -- "Sexually violent offense" means:

(1) a violation of §§ 3-303 through 3-307 or §§ 3-309 through 3-312 of the Criminal Law Article;

(2) assault with intent to commit rape in the first or second degree or a sexual offense in the first or second degree as prohibited on or before September 30, 1996, under former Article 27, § 12 of the Code; or

(3) a crime committed in another jurisdiction, federal or military court, or foreign country that, if committed in this State, would constitute one of the crimes listed in item (1) or (2) of this subsection.

(k) Sexually violent predator. -- "Sexually violent predator" means a person who:

(1) is convicted of a sexually violent offense; and

(2) has been determined in accordance with this subtitle to be at risk of committing another sexually violent offense.

(l) Sex offender. -- "Sex offender" means a person who has been convicted of:

(1) an offense that would require the person to be classified as a tier I sex offender, tier II sex offender, or tier III sex offender;

(2) an offense committed in another state or in a federal, military, or tribal jurisdiction that, if committed in this State, would require the person to be classified as a tier I sex offender, tier II sex offender, or tier III sex offender; or

(3) an offense in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country when the United States Department of State has determined in its Country Reports on Human Rights Practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if committed in this State, would require the person to be classified as a tier I sex offender, tier II sex offender, or tier III sex offender.

(m) Student. -- "Student" means an individual who is enrolled in or attends an education institution, including a public or private secondary school, trade or professional school, or an institution of higher education.

(n) Supervising authority. -- "Supervising authority" means an agency or person that is responsible for collecting the information for the initial registration of a sex offender and is:

(1) the Secretary, if the registrant is in the custody of a correctional facility operated by the Department;

(2) the administrator of a local correctional facility, if the registrant, including a participant in a home detention program, is in the custody of the local correctional facility;

(3) the court that granted the probation or suspended sentence, except as provided in item (9) of this subsection, if the registrant is granted probation before judgment, probation after judgment, or a suspended sentence;

(4) the Director of the Patuxent Institution, if the registrant is in the custody of the Patuxent Institution;

(5) the Secretary of Health and Mental Hygiene, if the registrant is in the custody of a facility operated by the Department of Health and Mental Hygiene;

(6) the court in which the registrant was convicted, if the registrant's sentence does not include a term of imprisonment or if the sentence is modified to time served;

(7) the Secretary, if the registrant is in the State under terms and conditions of the Interstate Compact for Adult Offender Supervision, set forth in Title 6, Subtitle 2 of the Correctional Services Article, or the Interstate Corrections Compact, set forth in Title 8, Subtitle 6 of the Correctional Services Article;

(8) the local law enforcement unit where the sex offender is a resident, is a transient, or habitually lives on moving from another jurisdiction or foreign country that requires registration if the sex offender is not under the supervision, custody, or control of another supervising authority;

(9) the Director of Parole and Probation, if the registrant is under the supervision of the Division of Parole and Probation; or

(10) the Secretary of Juvenile Services, if the registrant was a minor at the time the act was committed for which registration is required.

(o) Tier I sex offender. -- "Tier I sex offender" means a person who has been convicted of:

(1) conspiring to commit, attempting to commit, or committing a violation of § 3-308 of the Criminal Law Article;

(2) conspiring to commit, attempting to commit, or committing a violation of § 3-902 or § 11-208 of the Criminal Law Article, if the victim is a minor;

(3) a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in item (1) or (2) of this subsection;

(4) any of the following federal offenses:

(i) misleading domain names on the Internet under 18 U.S.C. § 2252B;

(ii) misleading words or digital images on the Internet under 18 U.S.C. § 2252C;

(iii) engaging in illicit conduct in foreign places under 18 U.S.C. § 2423(c);

(iv) failure to file a factual statement about an alien individual under 18 U.S.C. § 2424;

(v) transmitting information about a minor to further criminal sexual conduct under 18 U.S.C. § 2425;

(vi) sex trafficking by force, fraud, or coercion under 18 U.S.C. § 1591; or

(vii) travel with intent to engage in illicit conduct under 18 U.S.C. § 2423(b);

(5) any military offense specified by the Secretary of Defense under Section 115(A)(8)(C)(i) of Public Law 105-119 (codified at 10 U.S.C. § 951 Note) that is similar to those offenses listed in item (4) of this subsection; or

(6) a crime in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country where the United States Department of State has determined in its Country Reports on Human Rights Practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if the crime were committed in this State, would constitute one of the crimes listed in items (1) through (5) of this subsection.

(p) Tier II sex offender. -- "Tier II sex offender" means a person who has been convicted of:

(1) conspiring to commit, attempting to commit, or committing a violation of § 3-307(a)(4) or (5), § 3-324, § 11-207, or § 11-209 of the Criminal Law Article;

(2) conspiring to commit, attempting to commit, or committing a violation of § 11-303, § 11-305, or § 11-306 of the Criminal Law Article, if the intended prostitute or victim is a minor;

(3) conspiring to commit, attempting to commit, or committing a violation of § 3-314 or § 3-603 of the Criminal Law Article, if the victim is a minor who is at least 14 years old;

(4) conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I sex offender after the person was already registered as a tier I sex offender;

(5) a crime that was committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection; or

(6) a crime in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country where the United States Department of State has determined in its Country Reports on Human Rights Practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if the crime were committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection.

(q) Tier III sex offender. -- "Tier III sex offender" means a person who has been convicted of:

(1) conspiring to commit, attempting to commit, or committing a violation of:

(i) § 2-201(a)(4)(viii), (x), or (xi) of the Criminal Law Article;

(ii) § 3-303, § 3-304, § 3-305, § 3-306, § 3-307(a)(1) or (2), § 3-309, § 3-310, § 3-311, § 3-312, § 3-315, § 3-323, § 3-502, or § 3-602 of the Criminal Law Article; or

(iii) the common law offense of sodomy or § 3-322 of the Criminal Law Article if the offense was committed with force or threat of force;

(2) conspiring to commit, attempting to commit, or committing a violation of § 3-307(a)(3), § 3-314, § 3-503, or § 3-603 of the Criminal Law Article, if the victim is under the age of 14 years;

(3) conspiring to commit, attempting to commit, or committing the common law offense of false imprisonment, if the victim is a minor;

(4) conspiring to commit, attempting to commit, or committing an offense that would require the person to register as a tier I or tier II sex offender after the person was already registered as a tier II sex offender;

(5) a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection; or

(6) a crime in a court of Canada, Great Britain, Australia, New Zealand, or any other foreign country where the United States Department of State has determined in its Country Reports on Human Rights Practices that an independent judiciary generally or vigorously enforced the right to a fair trial during the year in which the conviction occurred that, if the crime were committed in this State, would constitute one of the crimes listed in items (1) through (3) of this subsection.

(r) Transient. -- "Transient" means a nonresident registrant who enters a county of this State with the intent to be in the State or is in the State for a period exceeding 14 days or for an aggregate period exceeding 30 days during a calendar year for a purpose other than employment or to attend an educational institution.

Md. Code Ann., Crim. Proc. Art. § 11-701 (2008 Repl. Vol., 2011 Supp.).

Maryland Code, Criminal Procedure Article, Section 11-705:

§ 11-705. Deadline for registration

(a) "Resident" defined. -- In this section, "resident" means a person who has a home or other place where the person habitually lives located in this State when the person:

(1) is released;

(2) is granted probation;

(3) is granted a suspended sentence;

(4) receives a sentence that does not include a term of imprisonment; or

(5) is released from the juvenile court's jurisdiction under § 3-8A-07 of the Courts Article, if the person was a minor who lived in the State at the time the act was committed for which registration is required.

(b) Registration with supervising authority. -- A registrant shall register with the appropriate supervising authority in the State:

(1) if the registrant was sentenced to a term of imprisonment before the date that the registrant is released; or

(2) within 3 days of the date that the registrant:

(i) is granted probation before judgment;

(ii) is granted probation after judgment;

(iii) is granted a suspended sentence; or

(iv) receives a sentence that does not include a term of imprisonment;

(3) if the registrant was a resident who was a minor at the time the act was committed for which registration is required, within 3 days after the juvenile court's jurisdiction over the person terminates under § 3-8A-07 of the Courts Article;

(4) if the registrant moves into the State, within 3 days after the earlier of the date that the registrant:

(i) establishes a temporary or permanent residence in the State;

(ii) begins to habitually live in the State; or

(iii) applies for a driver's license in the State; or

(5) if the registrant is not a resident, within 3 days after the registrant:

(i) begins employment in the State;

(ii) registers as a student in the State; or

(iii) enters the State as a transient.

(c) Additional registration. --

(1) A sex offender shall also register in person with the local law enforcement unit of each county where the sex offender resides within 3 days of:

(i) release from any period of imprisonment or arrest; or

(ii) registering with the supervising authority, if the registrant is moving into this State and the local law enforcement unit is not the supervising authority.

(2) A sex offender may be required to give to the local law enforcement unit more information than required under § 11-706 of this subtitle.

(d) Homeless registrant. --

(1) A homeless registrant also shall register in person with the local law enforcement unit in each county where the registrant habitually lives:

(i) within 3 days after the earlier of the date of release or after registering with the supervising authority; and

(ii) within 3 days after entering and remaining in a county.

(2) After initially registering with a local law enforcement unit under this subsection, a homeless registrant shall register once a week in person during the time the homeless registrant habitually lives in the county.

(3) The registration requirements under this subsection are in addition to any other requirements the homeless registrant is subject to according to the registrant's classification as a tier I sex offender, tier II sex offender, tier III sex offender, or sexually violent predator.

(4) If a registrant who was homeless obtains a fixed address, the registrant shall register with the appropriate

supervising authority and local law enforcement unit within 3 days after obtaining a fixed address.

(e) Commencement or termination of enrollment or employment. -- Within 3 days of any change, a registrant shall notify the local law enforcement unit where the registrant most recently registered and each local law enforcement unit where the registrant will reside or habitually live of changes in:

(1) residence;

(2) the county in which the registrant habitually lives;

(3) vehicle or license plate information;

(4) electronic mail or Internet identifiers;

(5) home or cell phone numbers; or

(6) employment.

(f) Change of name. --

(1) A registrant who commences or terminates enrollment as a full-time or part-time student at an institution of higher education in the State shall provide notice in person to the local law enforcement unit where the institution of higher education is located within 3 days after the commencement or termination of enrollment.

(2) A registrant who commences or terminates carrying on employment at an institution of higher education in the State shall provide notice in person to the local law enforcement unit where the institution of higher education is located within 3 days after the commencement or termination of employment.

(g) Change of name. -- A registrant who is granted a legal change of name by a court shall send written notice of the change to each local law enforcement unit where the registrant resides or habitually lives within 3 days after the change is granted.

(h) Notification of leaving country. -- A registrant shall notify each local law enforcement unit where the registrant resides or habitually lives at least 3 days prior to leaving the United

States to commence residence or employment or attend school in a foreign country.

(i) Notification of temporary residence or during period of absence. --

(1) A registrant shall notify each local law enforcement unit where the registrant resides or habitually lives when the registrant obtains a temporary residence or alters the location where the registrant resides or habitually lives for more than 5 days or when the registrant will be absent from the registrant's residence or location where the registrant resides or habitually lives for more than 7 days.

(2) Notification under this subsection shall:

(i) be made in writing or in person prior to obtaining a temporary residence, commencing the period of absence, or temporarily altering a location where the registrant resides or habitually lives;

(ii) include the temporary address or detailed description of the temporary location where the registrant will reside or habitually live; and

(iii) contain the anticipated dates that the temporary residence or location will be used by the registrant and the anticipated dates that the registrant will be absent from the registrant's permanent residence or locations where the registrant regularly resides or habitually lives.

(j) Notification of new electronic media address or identity. -- A registrant who establishes a new electronic mail address, computer log-in or screen name or identity, instant-message identity, or electronic chat room identity shall send written notice of the new information to the State registry within 3 days after the electronic mail address, computer log-in or screen name or identity, instant-message identity, or electronic chat room identity is established.

Md. Code, Crim. Proc. Art. § 11-705 (2008 Repl. Vol., 2010 Supp.)

Maryland Code, Criminal Procedure Article, Section 11-706:

§ 11-706. Registration statements

(a) Contents generally. -- For all sex offenders in the State, a registration statement shall include:

(1) the registrant's full name, including any suffix, and all addresses and places where the registrant resides or habitually lives;

(2) the name and address of each of the registrant's employers and a description of each location where the registrant performs employment duties, if that location differs from the address of the employer;

(3) the name of the registrant's educational institution or place of school enrollment and the registrant's educational institution or school address;

(4) a description of the crime for which the registrant was convicted;

(5) the date that the registrant was convicted;

(6) the jurisdiction and the name of the court in which the registrant was convicted;

(7) a list of any aliases, former names, names by which the registrant legally has been known, traditional names given by family or clan under ethnic or tribal tradition, electronic mail addresses, computer log-in or screen names or identities, instant-messaging identities, and electronic chat room identities that the registrant has used;

(8) the registrant's Social Security number and any purported Social Security numbers, the registrant's date of birth, purported dates of birth, and place of birth;

(9) all identifying factors, including a physical description;

(10) a copy of the registrant's passport or immigration papers;

(11) information regarding any professional licenses the registrant holds;

(12) the license plate number, registration number, and description of any vehicle, including all motor vehicles, boats, and aircraft, owned or regularly operated by the registrant;

(13) the permanent or frequent addresses or locations where all vehicles are kept;

(14) all landline and cellular telephone numbers and any other designations used by the sex offender for the purposes of routing or self-identification in telephonic communications;

(15) a copy of the registrant's valid driver's license or identification card;

(16) the registrant's fingerprints and palm prints;

(17) the criminal history of the sex offender, including the dates of all arrests and convictions, the status of parole, probation, or supervised release, and the existence of any outstanding arrest warrants; and

(18) the registrant's signature and date signed.

(b) Further contents for predators. -- If the registrant is determined to be a sexually violent predator, the registration statement shall also include:

(1) anticipated future residence, if known at the time of registration; and

(2) documentation of treatment received for a mental abnormality or personality disorder.

Md. Code, Crim. Proc. Art. § 11-706 (2008 Repl. Vol., 2010 Supp.).

Maryland Code, Criminal Procedure Article, Section 11-707:

§ 11-707. Term of registration

(a) In general. --

(1) (i) A tier I sex offender and a tier II sex offender shall register in person every 6 months with a local law enforcement unit for the term provided under paragraph (4) of this subsection.

(ii) Registration shall include a digital image that shall be updated every 6 months.

(2) (i) A tier III sex offender shall register in person every 3 months with a local law enforcement unit for the term provided under paragraph (4) of this subsection.

(ii) Registration shall include a digital image that shall be updated every 6 months.

(3) (i) A sexually violent predator shall register in person every 3 months with a local law enforcement unit for the term provided under paragraph (4) of this subsection.

(ii) Registration shall include a digital image that shall be updated every 6 months.

(4) Subject to subsection (c) of this section, the term of registration is:

(i) 15 years, if the registrant is a tier I sex offender;

(ii) 25 years, if the registrant is a tier II sex offender;

(iii) the life of the registrant, if the registrant is a tier III sex offender; or

(iv) up to 5 years, if the registrant is a person described under § 11-704(c)(1) of this subtitle, subject to reduction by the juvenile court on the filing of a petition by the registrant for a reduction in the term of registration.

(5) A registrant who is not a resident of the State shall register for the appropriate time specified in this subsection or until the registrant's employment, student enrollment, or transient status in the State ends.

(b) Computation of terms. -- A term of registration described in this section shall be computed from:

(1) the last date of release;

(2) the date granted probation;

(3) the date granted a suspended sentence; or

(4) the date the juvenile court's jurisdiction over the registrant terminates under § 3-8A-07 of the Courts Article if the registrant was a minor who lived in the State at the time the act was committed for which registration is required.

(c) Reduction of terms. -- The term of registration for a tier I sex offender shall be reduced to 10 years if, in the 10 years following the date on which the registrant was required to register, the registrant:

(1) is not convicted of any offense for which a term of imprisonment of more than 1 year may be imposed;

(2) is not convicted of any sex offense;

(3) successfully completes, without revocation, any period of supervised release, parole, or probation; and

(4) successfully completes an appropriate sex offender treatment program.

Md. Code, Crim. Proc. Art. § 11-707 (2008 Repl. Vol., 2010 Supp.).

Maryland Code, Criminal Procedure Article, Section 11-709:

§ 11-709. Notification requirements of local law enforcement unit

(a) Notice to Department; updated photograph. --

(1) (i) Within 3 days after a tier III sex offender or a sexually violent predator completes the registration requirements of § 11-707(a) of this subtitle, a local law enforcement unit shall send notice of the tier III sex offender's or sexually violent predator's quarterly registration to the Department.

(ii) Every 6 months within 3 days after a tier I sex offender or a tier II sex offender completes the registration requirements of § 11-707(a) of this subtitle, a local law enforcement unit

shall send notice of the tier I sex offender's or tier II sex offender's biannual registration to the Department.

(2) Every 6 months, a local law enforcement unit shall send a tier III sex offender's and sexually violent predator's updated digital image to the Department within 6 days after the digital image is submitted.

(b) Notice to superintendents and principals. --

(1) As soon as possible but not later than 3 working days after receiving a registration statement of a sex offender, notice of a change of address of a sex offender, or change in a county in which a homeless sex offender habitually lives, a local law enforcement unit shall send written notice of the registration statement, change of address, or change of county to the county superintendent, as defined in § 1-101 of the Education Article, and all nonpublic primary and secondary schools in the county within 1 mile of where the sex offender is to reside or habitually live or where a sex offender who is not a resident of the State is a transient or will work or attend school.

(2) As soon as possible but not later than 10 working days after receiving notice from the local law enforcement unit under paragraph (1) of this subsection, the county superintendent shall send written notice of the registration statement to principals of the schools under the superintendent's supervision that the superintendent considers necessary to protect the students of a school from a sex offender.

(c) Notice after registrant's release, escape, or change of address. -- A local law enforcement unit that receives a notice from a supervising authority under this subtitle shall send a copy of the notice to the police department, if any, of a municipal corporation if the registrant:

(1) is to reside or habitually live in the municipal corporation after release;

(2) escapes from a facility but resided or habitually lived in the municipal corporation before being committed to the custody of a supervising authority; or

(3) is to change addresses to another place of residence within the municipal corporation.

(d) Forwarding of notice to local precinct or district. -- As soon as possible but not later than 3 working days after receiving notice from a local law enforcement unit under this section, a police department of a municipal corporation shall send a copy of the notice to the commander of each local police precinct or district in which the sex offender is to reside or habitually live or where a sex offender who is not a resident of the State will work or attend school.

(e) Duties of local law enforcement units on receiving notice. -- As soon as possible but not later than 3 working days after receiving a notice from a supervising authority under this subtitle, a local law enforcement unit shall send a copy of the notice to the commander of the law enforcement unit in each district or area in which the sex offender is to reside or habitually live or where a sex offender who is not a resident of the State will work or attend school.

(f) Certain additional notifications by local law enforcement units. -- A local law enforcement unit may notify the following entities that are located within the community in which a sex offender is to reside or habitually live or where a sex offender who is not a resident of the State will work or attend school of the filing of a registration statement or notice of change of address or county where the registrant will habitually live by the sex offender:

(1) family child care homes or child care centers registered, licensed, or issued a letter of compliance under Title 5, Subtitle 5 of the Family Law Article;

(2) child recreation facilities;

(3) faith institutions; and

(4) other organizations that serve children and other individuals vulnerable to sex offenders who victimize children.

(g) Notification of change of residence or county. -- As soon as possible, but not later than 3 working days after receipt of a registrant's change of residence or change in the county in

which the registrant habitually lives, the local law enforcement unit shall notify the Department of the change.

(h) Notification of intent to change residence, county, vehicle information, etc. -- As soon as possible, but not later than 3 working days after receipt of notice under § 11-705(e) of this subtitle, the local law enforcement unit shall give notice to the Department of the registrant's intent to change residence, a county in which the registrant habitually lives, vehicle or license plate information, electronic mail or Internet identifiers, or landline or cellular phone numbers.

(i) Notification of change of name. -- As soon as possible, but not later than 3 working days after receipt of notice under § 11-705(g) of this subtitle, the local law enforcement unit shall give notice to the Department of the change of name.

(j) Notification of intent to leave the country. -- As soon as possible, but not later than 3 working days after receipt of notice under § 11-705(h) of this subtitle, the local law enforcement unit shall give notice to the Department of the registrant's intent to leave the United States.

(k) Notification of intent to obtain temporary residence or to be absent. -- As soon as possible, but not later than 3 working days after receipt of notice under § 11-705(i) of this subtitle, the local law enforcement unit shall give notice to the Department of the registrant's intent to obtain temporary lodging or to be absent from the registrant's permanent residence or locations where the registrant habitually lives.

Md. Code Ann., Crim. Proc. Art. § 11-709 (2008 Repl. Vol., 2011 Supp.).

Maryland Code, Criminal Procedure Article, Section 11-717:

§ 11-717. Registration statements to be made available to public; posting on Internet

(a) Department to make available registration statements; excluded information. --

(1) The Department shall make available to the public registration statements or information about registration statements.

(2) Information about registration statements shall include, in plain language that can be understood without special knowledge of the criminal laws of the State, a factual description of the crime of the offender that is the basis for the registration, excluding details that would identify the victim.

(3) Registration information provided to the public may not include a sex offender's Social Security number, driver's license number, medical or therapeutic treatment, travel and immigration document numbers, and arrests not resulting in conviction.

(b) Posting on Internet. -- The Department shall post on the Internet:

(1) a current listing of each registrant's name and other identifying information; and

(2) in plain language that can be understood without special knowledge of the criminal laws of the State, a factual description of the crime of the offender that is the basis for the registration, excluding details that would identify the victim.

(c) Internet access by public for forwarding information. -- The Department, through an Internet posting of current registrants, shall:

(1) allow the public to electronically transmit information the public may have about a registrant to the Department, a parole agent of a registrant, and each local law enforcement unit where a registrant resides or habitually lives or where a registrant who is not a resident of the State will work or attend school; and

(2) provide information regarding the out-of-state registration status for each registrant who is also registered in another state as available through a national sex offender public registry website .

(d) E-mail notification on request. -- The Department shall allow members of the public who live in a county in which a

registrant is to reside or habitually live or where the registrant, if not a resident of the State, will work or attend school, by request, to receive electronic mail notification of the release from incarceration of the registered offender and the registration information of the offender.

(e) Regulations. -- The Department shall establish regulations to carry out this section.

Md. Code Ann., Crim. Proc. Art. § 11-717 (2008 Repl. Vol., 2010 Supp.).

Maryland Code, Criminal Procedure Article, Section 11-718:

§ 11-718. Notice to protect public

(a) In general. --

(1) If the Department or a local law enforcement unit finds that, to protect the public from a specific registrant, it is necessary to give notice of a registration statement, a change of address of the registrant, or a change in a county in which the registrant habitually lives to a particular person not otherwise identified under § 11-709 of this subtitle, then the Department or a local law enforcement unit shall give notice of the registration statement to that person.

(2) This notice is in addition to the notice required under § 11-709(b)(1) of this subtitle.

(b) Notification procedures. --

(1) The Department and local law enforcement units shall establish procedures to carry out the notification requirements of this section, including the circumstances under and manner in which notification shall be provided.

(2) Appropriate notification procedures include those identified in § 11-709 of this subtitle.

(c) Release of identity of victim prohibited. -- A local law enforcement unit and the Department may not release the identity of a victim of a crime that requires registration under this subtitle.

(d) Effect of section. -- A disclosure under this section does not limit or prohibit any other disclosure allowed or required under law.

Md. Code Ann., Crim. Proc. Art. § 11-718 (2008 Repl. Vol., 2010 Supp.).

Maryland Code, Criminal Procedure Article, Section 11-721:

§ 11-721. Prohibited act; penalty

(a) Prohibited act. -- A registrant may not knowingly fail to register, knowingly fail to provide the notice required under § 11-705 of this subtitle, knowingly fail to provide any information required to be included in a registration statement described in § 11-706 of this subtitle, or knowingly provide false information of a material fact as required by this subtitle.

(b) Penalty. -- A person who violates this section:

(1) for a first offense, is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 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 5 years or a fine not exceeding $ 10,000 or both.

(c) Statute of limitations and in banc review. -- A person who violates this section is subject to § 5-106(b) of the Courts Article.

Md. Code, Crim. Proc. Art. § 11-721 (2008 Repl. Vol., 2010 Supp.).

Maryland Code, Criminal Procedure Article, Section 11-722:

§ 11-722. Entry onto school or day care property prohibited.

(a) Scope. -- This section does not apply to a registrant who enters real property:

(1) where the registrant is a student or the registrant's child is a student or receives child care, if:

(i) within the past year the registrant has been given the specific written permission of the Superintendent of Schools, the local school board, the principal of the school, or the owner or operator of the registered family child care home, licensed child care home, or licensed child care institution, as applicable; and

(ii) the registrant promptly notifies an agent or employee of the school, home, or institution of the registrant's presence and purpose of visit; or

(2) for the purpose of voting at a school on an election day in the State if the registrant is properly registered to vote and the registrant's polling place is at the school.

(b) In general. -- A registrant may not knowingly enter onto real property:

(1) that is used for public or nonpublic elementary or secondary education; or

(2) on which is located:

(i) a family child care home registered under Title 5, Subtitle 5 of the Family Law Article; or

(ii) a child care home or a child care institution licensed under Title 5, Subtitle 5 of the Family Law Article.

(c) Employment of registrants at schools prohibited. -- A person who enters into a contract with a county board of education or a nonpublic school may not knowingly employ an individual to work at a school if the individual is a registrant.

(d) Violations; penalty. -- A person who violates this section 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.

Md. Code, Crim. Proc. Art. § 11-722 (2008 Repl. Vol.).

Maryland Code, Criminal Procedure Article, Section 11-726:

> § 11-726. Regulations.
>
> The Department of Public Safety and Correctional Services shall adopt regulations necessary to carry out the duties of the Department relating to lifetime sexual offender supervision under this subtitle.

Md. Code Ann., Crim. Proc. Art. § 11-726 (2008 Repl. Vol., 2010 Supp.).

Maryland Code, Public Safety Article, Section 5-133:

> § 5-133. Restrictions on possession of regulated firearms
>
> (a) Preemption by State. -- This section supersedes any restriction that a local jurisdiction in the State imposes on the possession by a private party of a regulated firearm, and the State preempts the right of any local jurisdiction to regulate the possession of a regulated firearm.
>
> (b) Possession of regulated firearm prohibited. -- A person may not possess a regulated firearm if the person:
>
> (1) has been convicted of a disqualifying crime;
>
> (2) has been convicted of a violation classified as a common law crime and received a term of imprisonment of more than 2 years;
>
> (3) is a fugitive from justice;
>
> (4) is a habitual drunkard;
>
> (5) is addicted to a controlled dangerous substance or is a habitual user;
>
> (6) suffers from a mental disorder as defined in § 10-101(f)(2) of the Health - General Article and has a history of violent behavior against the person or another, unless the person has a physician's certificate that the person is capable of possessing a regulated firearm without undue danger to the person or to another;

(7) has been confined for more than 30 consecutive days to a facility as defined in § 10-101 of the Health - General Article, unless the person has a physician's certificate that the person is capable of possessing a regulated firearm without undue danger to the person or to another;

(8) except as provided in subsection (e) of this section, is a respondent against whom a current non ex parte civil protective order has been entered under § 4-506 of the Family Law Article; or

(9) if under the age of 30 years at the time of possession, has been adjudicated delinquent by a juvenile court for an act that would be a disqualifying crime if committed by an adult.

(c) Penalty for possession by person convicted of crime of violence. --

(1) A person may not possess a regulated firearm if the person was previously convicted of:

(i) a crime of violence; or

(ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-612, § 5-613, or § 5-614 of the Criminal Law Article.

(2) (i) Subject to paragraph (3) of this subsection, a person who violates this subsection is guilty of a felony and on conviction is subject to imprisonment for not less than 5 years and not exceeding 15 years.

(ii) The court may not suspend any part of the mandatory minimum sentence of 5 years.

(iii) Except as otherwise provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole during the mandatory minimum sentence.

(3) At the time of the commission of the offense, if a period of more than 5 years has elapsed since the person completed serving the sentence for the most recent conviction under paragraph (1)(i) or (ii) of this subsection, including all imprisonment, mandatory supervision, probation, and parole:

(i) the imposition of the mandatory minimum sentence is within the discretion of the court; and

(ii) the mandatory minimum sentence may not be imposed unless the State's Attorney notifies the person in writing at least 30 days before trial of the State's intention to seek the mandatory minimum sentence.

(4) Each violation of this subsection is a separate crime.

(d) Possession by person under age of 21 years prohibited; exceptions. --

(1) Except as provided in paragraph (2) of this subsection, a person who is under the age of 21 years may not possess a regulated firearm.

(2) Unless a person is otherwise prohibited from possessing a regulated firearm, this subsection does not apply to:

(i) the temporary transfer or possession of a regulated firearm if the person is:

1. under the supervision of another who is at least 21 years old and who is not prohibited by State or federal law from possessing a firearm; and

2. acting with the permission of the parent or legal guardian of the transferee or person in possession;

(ii) the transfer by inheritance of title, and not of possession, of a regulated firearm;

(iii) a member of the armed forces of the United States or the National Guard while performing official duties;

(iv) the temporary transfer or possession of a regulated firearm if the person is:

1. participating in marksmanship training of a recognized organization; and

2. under the supervision of a qualified instructor;

(v) a person who is required to possess a regulated firearm for employment and who holds a permit under Subtitle 3 of this title; or

(vi) the possession of a firearm for self-defense or the defense of others against a trespasser into the residence of the person in possession or into a residence in which the person in possession is an invited guest.

(e) Exception if carrying civil protective order. -- This section does not apply to a respondent transporting a regulated firearm if the respondent is carrying a civil protective order requiring the surrender of the regulated firearm and:

(1) the regulated firearm is unloaded;

(2) the respondent has notified the law enforcement unit, barracks, or station that the regulated firearm is being transported in accordance with the civil protective order; and

(3) the respondent transports the regulated firearm directly to the law enforcement unit, barracks, or station.

Md. Code Ann., Pub. Safety Art. § 5-133 (2003, 2011 Supp.).

Maryland Rule 4-242:

Rule 4-242. Pleas

(a) Permitted pleas. A defendant may plead not guilty, guilty, or, with the consent of the court, nolo contendere. In addition to any of these pleas, the defendant may enter a plea of not criminally responsible by reason of insanity.

(b) Method of pleading.

(1) Manner. A defendant may plead not guilty personally or by counsel on the record in open court or in writing. A defendant may plead guilty or nolo contendere personally on the record in open court, except that a corporate defendant may plead guilty or nolo contendere by counsel or a corporate officer. A defendant may enter a plea of not criminally responsible by reason of insanity personally or by counsel and the plea shall be in writing.

(2) Time in the District Court. In District Court the defendant shall initially plead at or before the time the action is called for trial.

(3) Time in circuit court. In circuit court the defendant shall initially plead within 15 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213 (c). If a motion, demand for particulars, or other paper is filed that requires a ruling by the court or compliance by a party before the defendant pleads, the time for pleading shall be extended, without special order, to 15 days after the ruling by the court or the compliance by a party. A plea of not criminally responsible by reason of insanity shall be entered at the time the defendant initially pleads, unless good cause is shown.

(4) Failure or refusal to plead. If the defendant fails or refuses to plead as required by this section, the clerk or the court shall enter a plea of not guilty.

(c) Plea of guilty. The court may not accept a plea of guilty until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that (1) the defendant is pleading voluntarily, with understanding of the nature of the charge and the consequences of the plea; and (2) there is a factual basis for the plea. In addition, before accepting the plea, the court shall comply with section (e) of this Rule. The court may accept the plea of guilty even though the defendant does not admit guilt. Upon refusal to accept a plea of guilty, the court shall enter a plea of not guilty.

(d) Plea of nolo contendere. A defendant may plead nolo contendere only with the consent of court. The court may require the defendant or counsel to provide information it deems necessary to enable it to determine whether or not it will consent. The court may not accept the plea until after an examination of the defendant on the record in open court conducted by the court, the State's Attorney, the attorney for the defendant, or any combination thereof, the court determines and announces on the record that the defendant is pleading voluntarily with understanding of the nature of the charge and the consequences of the plea. In addition, before accepting the

plea, the court shall comply with section (e) of this Rule. Following the acceptance of a plea of nolo contendere, the court shall proceed to disposition as on a plea of guilty, but without finding a verdict of guilty. If the court refuses to accept a plea of nolo contendere, it shall call upon the defendant to plead anew.

(e) Collateral consequences of a plea of guilty or nolo contendere. Before the court accepts a plea of guilty or nolo contendere, the court, the State's Attorney, the attorney for the defendant, or any combination thereof shall advise the defendant (1) that by entering the plea, if the defendant is not a United States citizen, the defendant may face additional consequences of deportation, detention, or ineligibility for citizenship, (2) that by entering a plea to the offenses set out in Code, Criminal Procedure Article, § 11-701, the defendant shall have to register with the defendant's supervising authority as defined in Code, Criminal Procedure Article, § 11-701 (p), and (3) that the defendant should consult with defense counsel if the defendant is represented and needs additional information concerning the potential consequences of the plea. The omission of advice concerning the collateral consequences of a plea does not itself mandate that the plea be declared invalid.

(f) Plea to a degree. A defendant may plead not guilty to one degree and plead guilty to another degree of an offense which, by law, may be divided into degrees.

(g) Withdrawal of plea. At any time before sentencing, the court may permit a defendant to withdraw a plea of guilty or nolo contendere when the withdrawal serves the interest of justice. After the imposition of sentence, on motion of a defendant filed within ten days, the court may set aside the judgment and permit the defendant to withdraw a plea of guilty or nolo contendere if the defendant establishes that the provisions of section (c) or (d) of this Rule were not complied with or there was a violation of a plea agreement entered into pursuant to Rule 4-243. The court shall hold a hearing on any timely motion to withdraw a plea of guilty or nolo contendere.

Md. Rule 4-242 (2011).

Md. Rule 4-243:

Rule 4-243. Plea agreements

(a) Conditions for agreement.

(1) Terms. The defendant may enter into an agreement with the State's Attorney for a plea of guilty or nolo contendere on any proper condition, including one or more of the following:

(A) That the State's Attorney will amend the charging document to charge a specified offense or add a specified offense, or will file a new charging document;

(B) That the State's Attorney will enter a nolle prosequi pursuant to Rule 4-247 (a) or move to mark certain charges against the defendant stet on the docket pursuant to Rule 4-248 (a);

(C) That the State's Attorney will agree to the entry of a judgment of acquittal on certain charges pending against the defendant;

(D) That the State will not charge the defendant with the commission of certain other offenses;

(E) That the State's Attorney will recommend, not oppose, or make no comment to the court with respect to a particular sentence, disposition, or other judicial action;

(F) That the parties will submit a plea agreement proposing a particular sentence, disposition, or other judicial action to a judge for consideration pursuant to section (c) of this Rule.

(2) Notice to victims. The State's Attorney shall give prior notice, if practicable, of the terms of a plea agreement to each victim or victim's representative who has filed a Crime Victim Notification Request form or submitted a request to the State's Attorney pursuant to Code, Criminal Procedure Article, § 11-104.

(b) Recommendations of State's Attorney on sentencing. The recommendation of the State's Attorney with respect to a particular sentence, disposition, or other judicial action made

pursuant to subsection (a) (1) (E) of this Rule is not binding on the court. The court shall advise the defendant at or before the time the State's Attorney makes a recommendation that the court is not bound by the recommendation, that it may impose the maximum penalties provided by law for the offense to which the defendant pleads guilty, and that imposition of a penalty more severe than the one recommended by the State's Attorney will not be grounds for withdrawal of the plea.

(c) Agreements of sentence, disposition, or other judicial action.

(1) Presentation to the court. If a plea agreement has been reached pursuant to subsection (a) (1) (F) of this Rule for a plea of guilty or nolo contendere which contemplates a particular sentence, disposition, or other judicial action, the defense counsel and the State's Attorney shall advise the judge of the terms of the agreement when the defendant pleads. The judge may then accept or reject the plea and, if accepted, may approve the agreement or defer decision as to its approval or rejection until after such pre-sentence proceedings and investigation as the judge directs.

(2) Not binding on the court. The agreement of the State's Attorney relating to a particular sentence, disposition, or other judicial action is not binding on the court unless the judge to whom the agreement is presented approves it.

(3) Approval of plea agreement. If the plea agreement is approved, the judge shall embody in the judgment the agreed sentence, disposition, or other judicial action encompassed in the agreement or, with the consent of the parties, a disposition more favorable to the defendant than that provided for in the agreement.

(4) Rejection of plea agreement. If the plea agreement is rejected, the judge shall inform the parties of this fact and advise the defendant (A) that the court is not bound by the plea agreement; (B) that the defendant may withdraw the plea; and (C) that if the defendant persists in the plea of guilty or nolo contendere, the sentence or other disposition of the action may be less favorable than the plea agreement. If the defendant persists in the plea, the court may accept the plea of guilty only

pursuant to Rule 4-242 (c) and the plea of nolo contendere only pursuant to Rule 4-242 (d).

(5) Withdrawal of plea. If the defendant withdraws the plea and pleads not guilty, then upon the objection of the defendant or the State made at that time, the judge to whom the agreement was presented may not preside at a subsequent court trial of the defendant on any charges involved in the rejected plea agreement.

(d) Record of proceedings. All proceedings pursuant to this Rule, including the defendant's pleading, advice by the court, and inquiry into the voluntariness of the plea or a plea agreement shall be on the record. If the parties stipulate to the court that disclosure of the plea agreement or any of its terms would cause a substantial risk to any person of physical harm, intimidation, bribery, economic reprisal, or unnecessary annoyance or embarrassment, the court may order that the record be sealed subject to terms it deems appropriate.

Md. Rule 4-243 (2011).

APPENDIX