

Government of the District of Columbia
Office of the Chief Financial Officer



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Kwame R. Brown
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi 
Chief Financial Officer

DATE: July 1, 2011

SUBJECT: Fiscal Impact Statement – “Sex Offender Emergency Registration Act of 2011”

REFERENCE: Bill 19-253, As Introduced

Conclusion

Funds are not sufficient in FY 2011 and in the proposed FY 2012 through FY 2015 budget and financial plan to implement the provisions of the proposed legislation. Implementing the proposed legislation is estimated to cost \$74,000 in FY 2011 and an additional \$936,000 over the proposed FY 2012 through FY 2015 financial plan period.

Background

The proposed legislation would amend the Sex Offender Registration Act of 1999,¹ which established the framework for the current sex offender registration program in the District, to bring the District of Columbia into compliance with the federal Sex Offender Registration and Notification Act (SORNA).² Failure to substantially implement the SORNA requirements by July 27, 2011 will result in a ten percent reduction in the District’s Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) Program funding.³

¹ Effective July 11, 2000 (D.C. Official Code § 4-4001, *et seq.*).

² This is title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248).

³ The federal government required all states to implement SORNA by May 27, 2010 in order to avoid this 10 percent penalty; however, states could request a one-year extension. While states have enacted over 250 bills related to SORNA since 2007, as of May 12, 2011, only seven states have substantially complied: Delaware, Florida, Michigan, Nevada, Ohio, South Dakota and Wyoming. Many states have chosen not to comply due to high implementation costs. See <http://www.ncsl.org/?tabid=19499> and http://www.justicepolicy.org/images/upload/08-08_FAC_SORNACosts_JL.pdf.

Current Responsibilities and Procedures

Before discussing the provisions of the proposed legislation, it is important to understand the roles and responsibilities of the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA), and the Metropolitan Police Department (MPD) in the current registration process.

CSOSA

- Is a federal agency created by Congress in 1997 to perform the offender supervision function for D.C. Code offenders;
- Identifies sex offenders under its supervision who are required to register;
- Informs sex offenders of their duty to register and the penalties for noncompliance;
- Registers all sex offenders who were convicted in the adult criminal justice system ("adult sex offenders") and collects their personal details (e.g., name, date of birth, height, weight, etc.), as well as their photograph and fingerprints;⁴
- Maintains a database containing the sex offender registry information;
- Electronically transmits information regarding active registrants to MPD on a daily basis;
- Receives notifications of changes in a sex offender's information;
- Conducts periodic registration updates with all sex offenders; and
- Reports all cases of noncompliance with the registry requirements to MPD.

MPD

- Receives information from CSOSA, blocks information that should not be posted on their Sex Offender Registry website,⁵ such as information on lower tier offenders, and then transmits the revised information to the Office of the Chief Technology Officer (OCTO) for posting on the website;
- Maintains and routinely updates hard copies of the registry in each of the seven police Districts, as well as three other MPD locations;
- Daily verifies addresses and other information for all registrants whose files CSOSA opened or updated during the previous 24 hours (i.e., offenders who are new registrants and those coming in for verification and updates).⁶ This is mainly done by cross referencing the information with MPD records;
- Makes field visits to verify addresses that cannot be confirmed by their records;
- Follows-up with offenders who are not in compliance with the registration procedures and tries to get them to report to CSOSA; and
- Issues warrants for arrest for those noncompliant offenders who refuse to report to CSOSA or whom MPD cannot find.⁷

⁴ According to CSOSA's website, they collect the following information on sex offenders: 1) full name and aliases; 2) date of birth; 3) sex and race; 4) height, weight, eye and hair color; 5) any identifying marks or characteristics; 6) home, employment and school addresses; 7) photograph and fingerprints; and 8) offenses requiring registration, date of conviction, jurisdiction of conviction and any other registration offense. (See http://www.csosa.gov/supervision/accountability/sex_offender_registry.aspx). In FY 2010, there were 928 sex offenders on the registry.

⁵ See <http://sexoffender.dc.gov/>.

⁶ On average, this includes 100 files each day.

⁷ In FY 2010, MPD issued 65 warrants.

Expanded Responsibilities and Procedures under the Proposed Legislation

The proposed legislation would not change the current procedures, but rather would add to them. Specifically, the proposed legislation would:

- 1) Require a three-tiered sex offender registration system. Sex offenders would have to register for 15 years, 25 years, or a lifetime, depending on their offense. Currently, the District uses a two-tiered system: 10 years and lifetime registration. In order for the District to transition to this new system, the proposed legislation would:
 - a. Extend the registration period from 10 to 15 years for those offenses already detailed under law;
 - b. Add a new 25-year tier and specify the relevant offenses, all of which are felonies involving or committed against a minor. These include offenses under the D.C. Official Code, such as human trafficking, obscenity, and prostitution, as well as federal offenses, such as transporting a minor to engage in illicit conduct, sex trafficking of children, sexual abuse of a minor, and selling or buying of children; and
 - c. Modify the victim's age for current offenses and add new offenses to the lifetime tier. Specifically, it would change the age of a victim of first degree child sexual abuse, statutory rape and sodomy, which are all currently lifetime offenses, from under 12 to under 13. It also would make second degree sexual abuse committed against a person under the age of 13 years, non-parental kidnapping of a minor, aggravated sexual abuse, abusive sexual contact and any comparable military offenses lifetime offenses.⁸ In addition, lifetime registration would be given to a person who previously committed a registerable sex offense and whose current sex offense conviction was punishable by more than one year in prison.
- 2) Require lifetime registration for persons adjudicated delinquent of certain types of sexual abuse. Under current law, no registration requirement exists for persons adjudicated as juveniles for sex offenses. Under the proposed rules, not just juvenile sex offenders would have to register with MPD, but also adults who were adjudicated delinquent as juveniles of these sex offenses would need to register and update their information throughout their lifetimes. Specifically, the proposed rules would require individuals to register with MPD if they were 14 years of age or older when adjudicated delinquent of first degree sexual abuse, or were 15 years of age or older when adjudicated delinquent of first degree child sex abuse when the victim was five or more years younger than the sex offender.
- 3) Require MPD to register persons adjudicated delinquent for a sex offense. MPD would have the new responsibility for registering certain sex offenders (those who committed the offense as a juvenile) and for keeping this information in a non-public database. Under current law, MPD does not register any sex offenders.
- 4) Allow CSOSA (for adult sex offenders) and MPD (for juvenile sex offenders) to reduce the registration period. CSOSA could reduce the 15-year period to 10 years and CSOSA and MPD could reduce the lifetime to 25 years for offenders who met certain requirements. Sex offenders also would be able to seek a review by the D.C. Superior Court of the denial of a reduction in their registration period.

⁸Specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. § 951 note).

- 5) Greatly expand the information and documentation collected on all sex offenders. While registering sex offenders, CSOSA and MPD now would be required to collect information not currently collected, including nicknames, purported dates of birth, the address of any temporary lodging, telephone numbers, email and instant messaging addresses, day labor and temporary employment information, details concerning all licensing that allows the sex offender to engage in an occupation or carry out a trade, and license plate and registration numbers for all vehicles owned or operated by the sex offender. In addition, CSOSA and MPD would be required to obtain palm prints, which they would then send to the FBI Central Database within three days of their receipt, as well as photocopies of the sex offender's valid driver's license and passport. Lastly, CSOSA would have the authority to require a sex offender to wear a GPS device if the sex offender didn't provide an address or MPD was unable to verify the address provided.
- 6) Require notifications be made within three days. CSOSA and MPD would be required within three business days to notify authorities in any other jurisdiction to which a sex offender moves, has temporary lodging or in which a sex offender works or attends school. They also would have the authority to notify the U.S. Marshals Service of changes in addresses or changes in other information required for registration within three business days of receipt of this information.
- 7) Require the sex offender to report additional information. The sex offender would need to report to CSOSA or MPD his or her temporary lodging information when absent for seven days or more from where he or she lives and any intended international travel at least 21 days in advance of the proposed departure date.
- 8) Increase penalty for noncompliance. The minimum length of imprisonment for sex offenders who knowingly violate any reporting requirements would increase from 180 days to two years.
- 9) Require the Department of Youth Rehabilitative Services (DYRS) to provide notification of the release of sex offenders. Immediately before the release into the community of a sex offender in its custody or under its supervision, DYRS would be required to notify CSOSA or MPD of the sex offender's proposed release, and provide them with any relevant information. DYRS also would need to inform the sex offender of his or her duty to register. Currently, only the Department of Corrections must make such notifications, as only adult sex offenders need to register.

In addition, the proposed legislation would amend the DNA Sample Collection Act of 2001⁹ to authorize DNA samples to be taken from persons convicted of first degree sexual abuse or second degree sexual abuse.

Penalties for Failure to Substantially Implement the SORNA Requirements

States, including the District of Columbia, that do not comply with the federal SORNA requirements by July 27, 2010 (or July 27, 2011 if granted a one-year extension, as was the District) will face a 10 percent reduction in their future Byrne JAG Program funding, which is the main source of federal justice funding to state and local jurisdictions. Such funding can be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and information systems for criminal justice, as well as research and evaluation activities that will improve or enhance law enforcement programs related to criminal justice. In the District, the funds

⁹ Effective November 3, 2001 (D.C. Law 14-52; D.C. Official Code § 22-4151).

go to the Justice Grants Administration (JGA). JGA then uses the money to provide grants to District agencies and community based organizations that engage in programs and provide services that address adult and juvenile crime and crime prevention.

Each fiscal year a lump sum four-year award is allocated to each state. Since FY 2005, the District has received an average of \$2.3 million in Byrne JAG funding each year. The funding depends on Congressional appropriations, and has ranged from a low of \$872,000 to a high of \$3 million (See table below). The penalty would reduce the entire lump sum payment by 10 percent, i.e. it would have reduced the FY 2011 award by \$218,000.

Allocations of Byrne JAG Program Funding to the District (FY 2005-FY 2011)			
Fiscal Year	Start Date	End Date	Allocation
2005	10/1/2004	9/30/2009	\$3,039,470
2006	10/1/2005	9/30/2009	\$1,804,991
2007	10/1/2006	9/30/2010	\$2,647,465
2008	10/1/2007	9/30/2011	\$872,084
2009	10/1/2008	9/30/2012	\$2,856,443
2010	10/1/2009	9/30/2013	\$2,709,606
2011	10/1/2010	9/30/2014	\$2,181,670

Note: Does not include FY 2008 supplemental funding or additional FY 2009 funding from the American Recovery and Reinvestment Act of 2009.

If the District is not compliant by July 27, 2011, the FY 2012 and all future awards would face the 10 percent penalty.

Financial Plan Impact

Funds are not sufficient in FY 2011 and in the proposed FY 2012 through FY 2015 budget and financial plan to implement the provisions of the proposed legislation. Implementing the proposed legislation is estimated to cost \$74,000 in FY 2011 and an additional \$936,000 over the proposed FY 2012 through FY 2015 financial plan period. The costs represent the expenditures MPD would need to incur to implement the changes in the sex offender registry process. Any implementation costs for CSOSA would be borne by the federal government and thus would not affect the District's budget and financial plan.¹⁰

All of the costs are information technology (IT) expenditures. First, MPD would need to update their database system and website for adult sex offenders to take into account the new three-tiered system, as well as the additional information that would be collected on the sex offenders. Second, they would need to create a separate database to house all of the information they would collect on persons adjudicated delinquent for sex offenses.¹¹ Lastly, they would have to maintain the updated and new systems.

¹⁰ According to MPD, CSOSA has almost completed all of the necessary changes to their database. They started making these changes over a year ago to comply with SORNA.

¹¹ MPD will update their adult database system and will base their new juvenile database system using database information provided by CSOSA.

If enacted, the legislation would be effective on an emergency basis, and thus its implementation would start in FY 2011. Specifically, the fiscal impact analysis assumes that MPD would begin implementing the provisions and incurring costs in August 2011. The estimated share of the implementation costs for FY 2011 is \$74,000. The estimated costs for FY 2012 through FY 2015 budget and financial plan are outlined in the following table.

Estimated Fiscal Impact – B19-253 "Sex Offender Emergency Registration Act of 2011"					
FY 2012 – FY 2015					
	FY 2012	FY 2013	FY 2014	FY 2015	Four-Year Total
IT Costs for Expanded Adult Information and Website ¹	\$282,000	\$39,000	\$39,000	\$39,000	\$399,000
IT Costs for New Non-Public Juvenile Database ²	\$420,000	\$39,000	\$39,000	\$39,000	\$537,000
Negative Fiscal Impact	\$702,000	\$78,000	\$78,000	\$78,000	\$936,000

¹ Assumes implementation starts in August 2011. Includes costs for consultants, software, and additional servers. Starting in FY 2013, the only cost is for maintenance.

² Assumes implementation starts in FY 2012. Includes costs for consultants, software, and additional servers. Starting in FY 2013, the only cost is for maintenance.

This estimate does not include any costs for additional personnel or DNA testing. MPD believes that it could initially handle the increase in workload—verifying additional information for adult sex offenders, registering juvenile sex offenders, and verifying and updating information for juvenile offenders¹²—using existing personnel. However, in the future, MPD would likely need additional personnel, as this workload is expected to increase substantially. First, every person adjudicated as a juvenile must register for a lifetime. Thus, every year MPD would not only be responsible for registering new cases, but also would have to recertify the growing population of current offenders.¹³ Second, MPD would have to register all persons adjudicated as juveniles that come into the District to live or work, as well as recertify them if they choose to stay. At this time, it is not possible to estimate the number of such persons.

The costs for DNA testing are expected to be minimal in the first few years and thus could be absorbed within MPD's existing budget. However, MPD might need additional resources in the future if there is a significant number of people adjudicated as juveniles for first degree sexual abuse in other jurisdictions that come into the District to work or live.¹⁴

Finally, this fiscal impact statement does not include the effect of the proposed legislation on the Byrne JAG Program funding because the FY 2011 budget and the proposed FY 2012 through FY 2015 budget and financial plan already assume that current and future Byrne JAG Program funding will continue in full, and will not incur the 10 percent penalty for noncompliance. Nevertheless, failure to enact the legislation would reduce this grant by 10 percent or by an estimated \$230,000 annually.

¹² Based on the cases adjudicated in the District in FY 2010, MPD estimates that only seven to eight juveniles would have had to register with MPD had this proposed legislation been in effect.

¹³ For example, assume MPD registers eight new cases a year beginning in FY 2012. By the end of FY 2015, MPD would be responsible for recertifying 32 individuals.

¹⁴ DNA testing only occurs during the initial registration.