



## **Testimony for the Senate Judicial Proceedings Committee**

### **SB 18 – Vehicle Laws – Registered Sex Offenders – Drivers’ Licenses and Identification Cards**

**March 15, 2011**

#### **OPPOSE**

The ACLU of Maryland opposes SB 18, which mandates the compulsory publication of sex offender status on the license plates and drivers licenses of legally released sex offenders. Such a law is unconstitutional, it is not required by the federal Adam Walsh Act, and would not serve any public safety function. It deserves an unfavorable report.

SB 18 requires Tier II and Tier III registered sex offenders to have a driver’s license or identification cards with a notation indicating that the individual is on the sex offender registry. These special identifications are in addition to the current notification regulations for sex offenders, and would apply retroactively to all individuals who are currently required to register as Tier II or Tier III offenders.

This provision is problematic in that it is punitive in nature, thus violating the constitutional prohibitions against Double Jeopardy and Ex Post Facto laws. In discussing whether a law is punitive, the U.S. Supreme Court held, in Doe v. Smith, 538 U.S. 84 (2003), that Alaska’s community notification law does not resemble historical shaming punishments because it involves the mere dissemination of information to those who sought it and does not stage “a direct confrontation between the offender and the public.” The Court noted that “[e]ven punishments that lacked the corporal component, such as public shaming, humiliation, and banishment, involved more than the dissemination of information. They either held the person up before his fellow citizens for face-to-face shaming or expelled him from the community.”

The provisions of SB 18 requiring the branding of offender’s driver’s licenses and identification cards does stage a direct confrontation between the offender and the public and is intended to hold the offender up before his fellow citizens for a face-to-face shaming. Actions such as this, which inappropriately punish and ostracize these individuals from society, could serve to destabilize them and make our communities less safe, not more safe. Even if the mark does not clearly state, “sex offender” and is meant only for the police, it is likely that the symbol used for sex offenders will not remain a secret to the public so this is not a tenable solution. While we are less opposed to a mark that would not be visible to the naked eye, such as one that could be placed on the

magnetic strip of the license, we still feel this represents a slippery slope down the route of the destruction of personal privacy. It would be too easy in subsequent years to begin placing all kinds of personal information onto the driver's license in this way.

The fundamental purpose of any law dealing with sexual predators should be to make the citizens of our state more safe and secure. This bill will undermine any attempts at treatment or rehabilitation that the state may be undertaking with these offenders. Thus, such a law would be contrary to our public safety.

As we oppose placing a "scarlet letter" on the driver's licenses of sex offenders, we urge an unfavorable report on SB 18.