

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE

House Bill 1413

(Eastern Shore Delegation)

Judiciary

Sexual Offenders Omnibus Act of 2010

This bill: (1) makes substantive and organizational changes to provisions governing the extended supervision of some sexual offenders; (2) creates a procedure for the civil commitment of certain sexually violent offenders; (3) prohibits the earning of diminution credits to reduce the term of confinement of an inmate who is serving a sentence for a sexual offense against a minor and eliminates parole eligibility for such offenders; (4) requires a notation of sex offender registration on a Maryland driver’s license; (5) prohibits a District Court Commissioner from authorizing the pretrial release of a registrant; and (6) prohibits certain post-arrest releases without an examination of circumstances by a circuit court judge.

Fiscal Summary

State Effect: General fund expenditures increase by \$8.7 million in FY 2011 and by \$48.2 million by FY 2015, reflecting annualization, inflation, additional personnel associated with lifetime supervision, and 45 new civil commitment patients annually. Likely capital construction costs for civil commitments and potential additional future costs for the Judiciary are not included. General fund revenues are not affected.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
SF Revenue	\$145,000	\$14,500	\$14,500	\$14,500	\$14,500
GF Expenditure	\$8,747,700	\$18,867,000	\$28,637,700	\$38,481,500	\$48,160,800
SF Expenditure	\$145,000	\$14,500	\$14,500	\$14,500	\$14,500
Net Effect	(\$8,747,700)	(\$18,867,000)	(\$28,637,700)	(\$38,481,500)	(\$48,160,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Minimal. While the bill would generate an indeterminate number of additional trials in the circuit courts, the total number is assumed to be minimal for any individual circuit and is not anticipated to have a measurable effect on the expenditures of the Judiciary.

Small Business Effect: Potential meaningful increase in business opportunities for psychiatrists and psychologists who are likely to be called by the State or the defense in trials and review hearings relating to the civil commitment of sexual offenders.

Analysis

Bill Summary: This bill specifies statutory changes relating to sex offenders in the following manner:

Extended Parole Supervision

The bill requires the lifetime supervision of the following sexual offenders for a crime committed on or after August 1, 2006:

- a sexually violent predator;
- a person convicted of first or second degree rape, first degree sexual offense, or certain circumstances of second or third degree sexual offense;
- a person convicted of attempted first or second degree rape, first degree sexual offense, or the same form of second degree sexual offense cited above;
- sexual abuse of a minor if the violation involved penetration of a child under 12; or
- a person convicted more than once of a crime as a child sexual offender, an offender, or a sexually violent offender.

The bill eliminates the role of the Maryland Parole Commission to administer or enter agreements for extended parole supervision of sexual offenders and deletes reference to an “extended parole supervision offender.” The bill also eliminates extended supervision for a period less than life.

The bill prohibits a person subject to such lifetime supervision from knowingly or willfully violating the conditions of the supervision, with the following penalties:

- for a first offense, the person is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 5 years and/or a fine of \$5,000;
- for a second or subsequent offense, the person is guilty of a felony and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$10,000.

A person imprisoned for a violation of lifetime supervision is not entitled to diminution credits and continues to be subject to lifetime supervision upon release until discharge from supervision, as specified. A court may issue warrants to appear before the court to

answer a charge of violation and to be present for the setting of a hearing date on that charge. A court may also remand the person to a correctional facility pending the hearing or a determination on the charge. The judge who originally imposed the lifetime supervision must hear any charge of violation of the conditions of supervision. Another judge may act if that judge is no longer on the bench or incapacitated.

Unless incapacitated or no longer on the bench, the judge who originally imposed the lifetime supervision must hear any petition for discharge and may deny a discharge petition without cause.

The sentencing court must impose special conditions of lifetime sexual offender supervision at the time of sentencing and advise the person of the length, conditions, and consecutive nature of that supervision. Before imposing the special conditions, the court must order a presentence investigation. The bill delineates allowable special conditions, including global positioning satellite (GPS) tracking or equivalent technology and required participation in a certified sexual offender treatment program. The sentencing court may adjust the special conditions of such lifetime supervision in consultation with the person's sexual offender management team.

The bill expands and alters the list of persons who may be integrated onto a sexual management team, by including a appropriate victim service providers, a polygraph examiner with related experience, a law enforcement officer, an assistant State's Attorney, an assistant public defender, and a foreign or sign language interpreter. The bill requires the Department of Public Safety and Correctional Services (DPSCS) to adopt regulations necessary to carry out the duties of DPSCS relating to lifetime offender supervision.

Civil Commitments

The bill provides civil commitment procedures by which some persons convicted of a sexually violent offense may be placed in the custody of the Department of Health and Mental Hygiene (DHMH), in a facility owned and operated by DHMH, until the person is not likely to engage in a predatory sexual act if released. The bill requires the Attorney General to make determinations as to whether such persons meet a statutory definition of a sexually violent offender in need of commitment prior to their release from the custody of the Division of Correction (DOC). The actual commitment of such a person must be made via a circuit court finding, as specified.

The bill defines a sexually violent offender in need of commitment as a person who (1) has been convicted of a sexually violent offense; and (2) suffers from a mental abnormality or personality disorder that makes the person likely to engage in a predatory act involving a sexually violent offense.

Specifically, the bill provides that the Attorney General must be notified in writing by DOC within 90 days of the anticipated release of a person who has been convicted of a sexually violent offense. The Attorney General must then make the determination as to whether the person meets the criteria of a sexually violent offender in need of commitment. The Attorney General is required to receive recommendations upon which to base such a determination from (1) a review committee of prosecutors appointed by the Attorney General; and (2) a multidisciplinary team consisting of representatives of DHMH and DPSCS. Within 75 days of receiving written notice of the prospective release of a person convicted of a sexually violent offense, the Attorney General may petition a circuit court to determine if probable cause exists to believe that the person is a sexually violent offender in need of commitment. If probable cause is found, the court must direct the person to be taken into custody and conduct a trial within 60 days. A person subject to such a proceeding is entitled to counsel and, if indigent, the court is required to appoint counsel.

The bill substantially protects all persons involved in the determination process from civil liability for acts performed in good faith under the provisions of the bill.

The bill provides for the manner in which such a trial may proceed. The defendant, the Attorney General, or the judge may ask for a jury trial. The State has the burden of proof of beyond a reasonable doubt. A person found to be a sexually violent offender in need of commitment must be placed in the custody of DHMH for “control, care, and treatment at a State facility until the defendant’s mental abnormality or personality disorder of the person has so changed that the person is not likely to engage in a predatory act involving a sexually violent offense if released.” The bill provides for specified annual mental examinations, court reviews, notifications, and reports. The bill also provides for release hearings and the criteria upon which a person must be released.

Diminution Credits and Parole Eligibility

The bill prohibits the earning of diminution credits to reduce the term of confinement of an inmate who is serving a sentence for a sexual offense against a minor in a DOC facility, and eliminates parole eligibility for sexual offenders who are serving terms of confinement in a DOC facility for such offenses against minors committed on or after October 1, 2010. The bill does not restrict the authority of the Governor to pardon or remit a sentence.

Maryland Drivers’ License Notations

The bill requires DPSCS to send a copy of a sex offender’s registration statement to the Motor Vehicle Administration (MVA) within five days after receiving the statement for the purpose of noting the sex offender registration on the registrant’s driver’s license or

identification card. Upon notice from DPSCS, the MVA must issue or reissue a driver's license or identification card to a registrant with a notation that the individual is a registered sex offender. The notation may only be removed upon a written notice from DPSCS that the notation is no longer required.

Post-arrest Detention

The bill requires that, if a registrant is arrested on suspicion of any violation of Maryland's Annotated Code, the registrant may not be released from custody and charges against the person may not be dismissed until the registrant is brought before a circuit court judge in the county in which the arrest was made for an examination of the circumstances surrounding the alleged violation.

Current Law: Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment, is required to register with the State sex offender registry upon release from prison or release from court if the person did not receive a prison sentence. Offenders who are required to register in other states and who come to Maryland are required to register upon entering Maryland. Offenders from other states who may not be required to register in the home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland.

Juveniles who are adjudicated delinquent for an act that would constitute first or second degree rape or first or second degree sexual assault if committed by an adult are required to register at the time the juvenile court's jurisdiction terminates for inclusion on the State's sex offender registry if (1) the person was at least 13 years old at the time the qualifying delinquent act was committed; (2) the State's Attorney or the Department of Juvenile Services requests that the person be required to register; (3) the court determines by clear and convincing evidence after a hearing (90 days prior to the time the juvenile court's jurisdiction is terminated) that the person is at significant risk of committing a sexually violent offense or an offense for which registration as a child sexual offender is required; and (4) the person is at least 18 years old. Juveniles who are adjudicated delinquent through the juvenile court system for an act that does not constitute first or second degree rape or first or second degree sexual assault if committed by an adult are not included in the registry.

Maryland has four categories of persons convicted of sexual offenses: (1) a child sexual offender; (2) an offender; (3) a sexually violent offender; and (4) a sexually violent predator.

"Offender" means a person who is ordered by a court to register and who has been convicted of (1) child kidnapping; (2) kidnapping; (3) fourth degree sexual offense, if the

victim is under 18; (4) false imprisonment, if the victim is under 18 and the person is not the victim's parent; (5) a crime that involves soliciting a person under 18 to engage in sexual conduct; (6) production or distribution of child pornography; (7) prostitution or related criminal prohibitions if the intended prostitute or victim is under 18; (8) any crime that involves conduct that by its nature is a sexual offense against a person under 18; (9) an attempt to commit any of these offenses; or (10) a crime in another state or in a federal, military, or Native American tribal court that, if committed in Maryland, would constitute one of these crimes.

“Child sexual offender” means a person who has been convicted of (1) sexual abuse of a minor; (2) first or second degree rape or first, second, or third degree sexual offense involving a child under 15 years of age; (3) fourth degree sexual offense involving such a child and has been ordered by the court to register under these provisions; or (4) a crime in another state or in a federal, military, or Native American tribal court that, if committed in this State, would constitute one of these crimes.

“Sexually violent predator” means a person who (1) is convicted of a sexually violent offense; and (2) has been determined to be at risk of committing another sexually violent offense. Also included under this definition are persons who are or were required to register every 90 days for life under the laws of another state or a federal, military, or Native American tribal jurisdiction.

“Sexually violent offender” means a person who (1) has been convicted of a sexually violent offense; or (2) has been convicted of an attempt to commit a sexually violent offense. “Sexually violent offense” means:

- first or second degree rape; first, second, or third degree sexual offense;
- attempted first or second degree rape or sexual offense;
- assault with intent to commit first or second degree rape or sexual offense; or
- a crime committed in another state or in a federal, military, or Native American tribal jurisdiction that, if committed in Maryland, would constitute one of these offenses.

Sexual offenders are required to register, every three months or every six months, with the Crimes Against Children and Sexual Offender Registry for a term of either 10 years or life depending on the offense. Registration must include a photograph, which must be updated at least annually. The registry is operated by the Sexual Offender Registry unit of DPSCS. Under the State's sexual offender registration laws, a State's Attorney may request that a sexual offender be designated a sexually violent predator. Lifetime registration is required for (1) sexually violent predators; (2) persons convicted of a sexually violent offense; (3) persons convicted of child abuse for commission of a sexual

act involving penetration of a child under 12 years old; and (4) recidivist sexual offenders.

Chapter 352 of 2008 required that, in addition to any aliases, the registration statement include the registrant's former names, nicknames, electronic mail addresses, computer log-in or screen names or identities, instant-messaging identities, and electronic chat room identities used by the registrant. In addition, a registration statement must contain a copy of the registrant's valid driver's license or identification card and the license plate number and description of any vehicle owned or regularly operated by the registrant.

Extended Parole Supervision

Chapter 4 of the 2006 special session provided for extended supervision of sexual offenders by creating an extended sexual offender parole scheme that requires specified sexual offenders to have a term of extended sexual offender parole supervision for a minimum of three years to a maximum of life, with the ability to petition for discharge after that minimum period. Chapter 4 also provided for the following:

- specifies an offender subject to the extended sexual offender parole scheme as a person who is a sexually violent predator; has been convicted of first or second degree rape, first degree sexual offense, or (with certain exceptions) second or third degree sexual offense; has been convicted of attempted first or second degree rape, attempted first degree sexual offense, or (with certain exceptions) attempted second degree rape; has been convicted of sexual abuse of a minor for commission of a sexual act involving penetration of a child under the age of 12 years; or has been convicted more than once of a crime as a child sexual offender, an offender, or a sexually violent offender;
- requires that a term of extended sexual offender parole supervision apply to such a defendant sentenced on or after August 1, 2006;
- requires the Parole Commission to enter into agreements with defendants that set out specific conditions of supervision, which may include GPS monitoring; geographic restrictions on residence or presence; restrictions on employment or participation in activities; requirement to participate in sex offender treatment; a prohibition from using illicit drugs or abusing alcohol; the authorization of parole agents to access an offender's personal computer; a requirement to take polygraph exams; and a prohibition from contacting specific individuals or categories of individuals;
- requires sexual offender management teams, consisting of at least a specially trained parole agent and a sex offender treatment provider, to conduct the extended parole supervision and submit progress reports to the Parole Commission;

- creates a Sexual Offender Advisory Board, with specified reporting requirements, to review technology for the tracking of offenders; review the effectiveness of the State's laws concerning sex offenders; review the laws of other jurisdictions regarding sex offenders; review practices and procedures of the Parole Commission and the Division of Parole and Probation (DPP) regarding supervision and monitoring of sex offenders; review developments in the treatment and assessment of sex offenders; and develop standards for conditions of extended sex offender parole supervision based on current and evolving best practices in the field of sex offender management; and
- requires the advisory board to be staffed by DPSCS and DHMH.

Diminution Credits and Parole Eligibility

Penalties for a first offense of the covered offenses relating to the bill's prohibition against diminution credit earnings range from a maximum penalty of imprisonment for one year and/or a fine of \$1,000 for fourth degree sexual offense to a term of life without the possibility of parole for first degree rape.

When the victim is under age 13, a mandatory minimum, nonsuspendable and nonparoleable 25-year sentence applies to a person at least age 18 convicted of first degree rape or first degree sexual offense. A similar five-year minimum sentence is required under the same circumstances for second degree rape or second degree sexual offense.

For DOC inmates whose terms of confinement include consecutive or concurrent sentences for a crime of violence or a crime involving a controlled dangerous substance, the deduction in the sentence for good conduct is calculated at 5 days per calendar month, which are awarded in advance. For all other inmates, the deduction is calculated at 10 days per calendar month. An inmate may also receive deductions calculated at 5 days per calendar month for work tasks and education and 10 days per calendar month for special projects. These credits are awarded as they are earned. However, the total deduction may not exceed 20 days per calendar month.

When an inmate's total number of diminution credits is equal to the remainder of sentence, including consideration for any losses of credits, the inmate is eligible for release on mandatory supervision.

A deduction may not be allowed for a period during which an inmate does not receive credit for service of the inmate's term of confinement, including a period (1) during which the inmate's sentence is stayed; (2) during which the inmate is not in DOC custody

because of escape; or (3) for which the Maryland Parole Commission has declined to grant credit after revocation of parole or mandatory supervision.

A person sentenced to a term of incarceration of six months or more is entitled to a parole hearing after having served one-fourth of the term or consecutive terms. A person sentenced to more than one term, including a term during which the person is eligible for parole and a term during which the person is not eligible for parole, cannot be considered for parole unless the person has served the greater of one-fourth of the aggregate term or a period equal to the term during which the inmate is not eligible for parole.

A person convicted of a violent crime is not eligible for parole until that person has served the greater of one-half of the inmate's aggregate sentence for violent crimes or one-fourth of the inmate's aggregate total sentence. A person serving a term of imprisonment for a violent crime must receive an administrative review after that person has served the greater of one-fourth of the inmate's aggregate sentence or a period equal to any term in which the inmate is not eligible for parole. Further, a person sentenced to life imprisonment is not eligible for parole consideration until that person has served 15 years. A person sentenced to life imprisonment for first degree murder is not eligible for parole consideration until that person has served 25 years.

If a parole order is revoked, the inmate must serve the remainder of the sentence originally imposed unless, at the parole commissioner's discretion, the inmate is granted credit for time between the parole release and revocation. An inmate may not receive such credit if: (1) the inmate was serving a sentence for a violent crime when the parole was revoked; and (2) the revocation was due to a finding that the inmate committed a violent crime while on parole.

Background: Several different areas of background information pertain to the provisions of the bill.

Lifetime Supervision

DPSCS advises that the bill's lifetime supervision provisions address unintentional operational difficulties that occurred with the enactment of Chapter 4 of the 2006 special session. These changes transfer most of the responsibilities for extended, now lifetime, supervision of sex offenders to the courts.

As of January 2010, 71 dedicated sex offender supervision agents, along with 12 mixed containment agents supervise approximately 2,300 individuals designated by agency policy as sexual offenders. This population includes not only those individuals currently being supervised for sexual offenses, but also those under supervision for nonsexual offenses, who are registered sexual offenders on the basis of past convictions.

The risk level of every sexual offender is determined through the use of the Static-99, a specialized risk assessment instrument, and offenders are reassessed at 90-day intervals using the Acute-2000, another specialized instrument. All sexual offenders are initially supervised at the highest level – which includes weekly face-to-face contacts, daily telephone contact, mandatory risk-based treatment referrals, and at least monthly verification of residence, treatment, and supervision condition compliance, as well as compliance with registration requirements. Offenders are moved to lower supervision levels only on the basis of consistent successful compliance with all requirements and satisfactory risk assessment scores.

Based on fiscal 2009 data, the following chart shows the number of persons who would be subject to imposition of lifetime supervision. The probation, parole, or mandatory supervision periods for these persons will expire in the fiscal years noted, but the cases will remain under DPP’s jurisdiction for lifetime supervision under the bill. Unless the offenders are discharged by the court from lifetime supervision, the cumulative effect will significantly increase DPP’s offender population over time.

<u>Cases</u>	<u>FY</u> <u>2012</u>	<u>FY</u> <u>2013</u>	<u>FY</u> <u>2014</u>	<u>FY</u> <u>2015</u>	<u>FY</u> <u>2016</u>	<u>FY</u> <u>2017</u>	<u>FY</u> <u>2018</u>	<u>Total</u>
Probation	5	19	37	8	44	14	6	133
Parole/Mandatory Release	11	23	30	38	38	20	20	180
Total	16	42	67	46	82	34	26	313

Computer monitoring is used for any sexual offender whose criminal history includes an offense involving child pornography, or behavior in which access to the victim was accomplished through the use of the Internet. Sexual offenders with special conditions mandating computer monitoring who deny having access to a computer are referred for periodic polygraph examination to confirm their compliance with the imposed restrictions. DPP has already incurred one-time start-up costs for the hardware and software required for computer monitoring. The cost to monitor such an offender per year is \$472, or about \$40 per month.

Civil Commitments

These changes are modeled after an existing statute in Kansas, the Sexually Violent Predator Act, that established procedures for the civil commitment of persons who, due to a “mental abnormality” or a “personality disorder,” are likely to engage in “predatory acts of sexual violence.”

To date, the constitutionality of the civil commitment provisions in Kansas (and other states) has been upheld. The U.S. Supreme Court sustained the constitutionality of the Kansas statute, in general, finding the statute civil in nature and, as such, nonpunitive.

The civil commitment statute for sexual predators in Washington State, which predates the Kansas law, has also withstood constitutionality tests. In 2001, the U.S. Supreme Court found, in essence, that a state's failure to provide treatment required by law does not turn a sex predator's lawful confinement into unlawful punishment.

However, also in 2001, in *Kansas v. Crane*, the court held that a state must prove convicted sex offenders cannot control themselves if they are to be kept confined after their prison terms expire. Although the ruling did not ban such civil commitments, sexual offenders must be treated the same as other people singled out for involuntary commitment.

The Kansas Legislative Post Audit Committee reviewed the growth of the state program in a performance audit released in April 2005. According to the report, as of March 2005, the Kansas Department of Corrections had 2,423 sex offenders in custody. Since 1998, the number of residents in the civil commitment program increased from 16 to 136. Few offenders are leaving the program. Most have been diagnosed as pedophiles.

Persons civilly committed as sexual predators in Kansas are sent to the Larned State Hospital, a state-owned facility (under the Division of Social and Rehabilitation Services), with a capacity to serve over 450 patients daily. It is the largest psychiatric facility in the state.

According to the 2005 audit report, the percentage of eligible offenders committed to the Kansas program increased from 3% in fiscal 2000 to a peak of 11% in 2003. In fiscal 2000, an average of 1.3 offenders entered the program each month. During the first seven months of fiscal 2005, that average was 2.7.

Since fiscal 2001, annual program costs have increased about 478% (\$1.2 million to \$6.9 million). During that same period, staffing levels increased by 342%, and the number of residents in the program increased by 144%. The program's 2006 budget request was \$7.8 million. With the increased number of residents, the estimated annual cost for treatment and confinement per sexual predator offender in Kansas has decreased from about \$75,000 to \$50,700. In a survey of six other state programs, Kansas found its costs to be the lowest.

The audit report drew the following conclusion: "If current trends continue, Program census and costs will be much greater in the years to come. It appears Kansas will either have to change its policies so that it commits fewer sex offenders to the Program or allows those in the Program to be released sooner, or it will have to reconcile itself to supporting a new class of institutionalized individuals." The Larned State Hospital continues to house the state's sexual offender civil commitments.

Civil Commitment Programs in Other States

A study by the Washington State Institute for Public Policy (March 2005) found it difficult to directly compare reported costs for state programs because the service delivery models vary so much among the states with programs. Frequently, budget figures are spread across multiple parts of state government and not pro-rated to capture the sexually violent offender program portions. In any case, the cost of operating secure facilities for such commitments in the United States is at least \$224 million annually. States with small numbers of program residents will naturally have higher costs per resident.

According to the Sex Offender Civil Commitment Programs Network (SOCCPN), in addition to the federal government, there are currently 20 states with statutes that authorize the confinement and treatment of sexually violent offenders: Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, North Dakota, Nebraska, New Hampshire, New Jersey, New York, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin. Washington opened a new facility for such commitments in 2004 and California opened a new 1,500 bed facility in 2005, based on a commitment percentage of about 15% of eligible persons over an eight-year period. Florida completed construction on a new Civil Commitment Center in April 2009, at a cost of \$62 million. The Florida facility, which has a maximum capacity of 720, currently houses approximately 675 individuals.

Recent U.S. Supreme Court Case Concerning Civil Commitments

In January 2010, the U.S. Supreme Court heard arguments in *United States v. Comstock* (08-1224) as to whether Congress had the constitutional authority to enact 18 U.S.C. 4248 authorizing court-ordered civil commitment by the federal government of: (1) “sexually dangerous” persons who are already in the custody of the Bureau of Prisons, but who are coming to the end of their federal prison sentences, and (2) “sexually dangerous” persons who are in the custody of the Attorney General because they have been found mentally incompetent to stand trial.

Treatment Facility in Maryland

Maryland’s Clifton T. Perkins Hospital Center was established in 1960. The hospital serves as the State’s sole maximum security psychiatric hospital. In the 2006 capital budget, funding was provided to complete design and construction on a new 48-bed maximum security wing to create additional capacity and allow the consolidation of the more difficult forensic mental health clients at Perkins. The services at Perkins include comprehensive treatment for violent offenders of correctional institutions and detention centers who meet the criteria for involuntary commitments and psychiatric treatment for

those patients whose mental illness manifests itself in such aggressive and violent behavior as to render it impossible for them to be treated within the regional State psychiatric hospitals. The new wing is anticipated to open sometime during fiscal 2010, and Perkins will continue to operate at 100% capacity with a total of 262 beds.

Federal Funding for Civil Commitment Programs

Title III of the federal Adam Walsh Act, the Jimmy Ryce Civil Commitment Program, provides for grants to the states for civil commitment programs for sexually dangerous persons. A “civil commitment program” means a program that involves (1) secure civil confinement, including appropriate control, care, and treatment during such confinement; and (2) appropriate supervision, care, and treatment for individuals released following such confinement. The term “sexually dangerous person” means a person suffering from a serious mental illness, abnormality, or disorder, as a result of which the individual would have serious difficulty in refraining from sexually violent conduct or child molestation. Title III authorized an appropriation of \$10 million for each of fiscal 2007 through 2010. However, such an appropriation has not been made to date.

State Fiscal Effect: This discussion is organized by affected agencies, rather than tracking the bill’s separate and unrelated provisions.

Administrative Office of the Courts

The Administrative Office of the Courts (AOC) advises that, because the bill transfers considerable responsibilities to the courts relating to extended sexual offender supervisions, including the use of risk assessments, the bill’s lifetime supervision requirements may eventually lead to the need for a separate sexual offender docket for the larger jurisdictions. AOC cannot predict when that need may occur, and is not sure it would be met through normal budgetary processes. A new dedicated docket will likely include additional judgeships, clerks, and support personnel, which cannot be reliably estimated at this time; however, these additional costs would be significant.

In addition, the bill will lead to some indeterminate number of instances of post arrest detention whereby a registrant arrested on suspicion of any violation of Maryland’s laws may not be released from custody and charges against the person may not be dismissed until the registrant is brought before a circuit court judge in the county in which the arrest was made for an examination of the circumstances surrounding the alleged violation. A reliable estimate of the effect of this requirement on the operations of the circuit courts cannot be made at this time.

Division of Parole and Probation

DPP reports that the courts already order similar presentence investigations for most sexual offender cases heard annually. It is assumed that those who would be convicted of crimes qualifying them for extended lifetime supervision with special conditions are already subject to presentence investigations. Under the bill, presentence investigations for those same persons must now include the use of specialized risk assessment instruments already in use by DPP.

DPP also indicates that the bill's requirement for lifetime extended supervision for all qualifying sexual offenders may eventually significantly impact overall division caseloads and create the need for additional positions. This is because these offenders are placed in "high-risk" specialized caseloads with a low agent-to-supervisee ratio (1:30) so as to enforce special conditions such as residency restrictions, treatment, testing, computer, and electronic and GPS monitoring. An increase in specialized caseloads may also lead to increases in the number of offenders in generalized caseloads. Any significant rise in general supervision caseloads requires DPP to hire additional agents to maintain manageable caseloads for all employees of the division.

The bill requires offenders to participate in a sexual offender treatment program. The average cost of private treatment is \$4,000 per year, per offender. This includes an initial evaluation and 45 treatment sessions – 15% individual (which may be used for the assessment) and 85% group. These costs are included under contractual services. Offenders normally participate in treatment for a 12-month period; however, it may be extended on a case-by-case basis.

DPP advises that an agent to supervisee ratio for persons with extended sex offender supervision would need to be 1:25. This is due to the need to establish and operate sexual offender management teams, with possible use of polygraph examinations, GPS tracking, and sex offender treatment costs. Polygraph examinations cost about \$300 per exam; GPS tracking has basic costs of \$5.50 per day per offender; and treatment costs are estimated at about \$4,500 per year per offender.

In summary, general fund expenditures for DPP increase by an estimated \$99,500 in fiscal 2012 and by \$372,800 in fiscal 2013. By fiscal 2015, expenditures increase by \$884,200. This estimate reflects the cost of hiring two additional field agents in fiscal 2013. By fiscal 2015, DPP will need to hire a total of six field agents, one supervisory field agent, one senior agent, and one office secretary to provide lifetime sex offender supervision for the identified field of sex offenders; supervise sexual offender management teams; and (when necessary) administer polygraph exams, direct offenders to treatment, and track offenders with GPS technology. The number of

additional positions required in each fiscal year and the associated costs are shown in the table below.

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Positions	0	2	3	4
Salaries and Fringe Benefits	\$0	\$112,400	\$307,100	\$579,600
Contractual Services	86,300	226,600	361,500	248,200
Operating Expenses	13,200	33,800	45,000	56,400
Total Expenditures	\$99,500	\$372,800	\$713,600	\$884,200

Future year expenditures reflect (1) full salaries with 4.4% annual increases and 3% employee turnover; (2) additional agents; and (3) 1% annual increases in ongoing operating expenses.

Department of Health and Mental Hygiene

While it is difficult to reliably predict what Maryland’s costs would be under a civil commitment statute for violent sexual offenders, it is known that program costs and growth rates in Kansas and other states have far exceeded earlier estimates. In addition, it is unclear as to when, on average, a sexually violent offender committed as a sexual predator to the “control, care, or treatment” of DHMH might successfully petition for release. In existing programs in other states, very few individuals have been thus far released. In any event, what follows is a broad discussion of the potential costs that could arise from this bill.

General fund expenditures may increase by at least \$8.2 million in fiscal 2011 and by \$46.4 million in fiscal 2015. This estimate is based on the following three assumptions: (1) approximately 350 persons per year are due to be released by DOC based on recent intake and release data (**Exhibit 1**) which would trigger the Office of the Attorney General to seek sexual predator determinations; (2) 45 persons per year (13% of the 350 due for release, based on California’s experience) would be subject to actual commitment; and (3) a staff to patient ratio of 1:5 must be maintained for hospital accreditation purposes as established by the Joint Commission on Accreditation of Healthcare Organizations. In addition, it is assumed that the same professional expertise for multidisciplinary teams would be needed for annual status reviews of committed persons.

Exhibit 1
DOC Releases by Qualifying Sex Offense
As of June 30, 2009

Rape – 1 st Degree	39
Rape – 2 nd Degree	107
Attempted Rape	11
Sex Offense – 1 st Degree	17
Sex Offense – 2 nd Degree	51
Sex Offense – 3 rd Degree	108
Assault with Intent to Rape	13
Assault to Rape	2
Total	348

It is assumed that persons committed under this bill would be maintained in a maximum security hospital setting such as the Clifton T. Perkins Hospital Center. The per-patient budgeted cost for fiscal 2011, including overhead, based on a census of 238 patients, is \$208,600. It is also assumed that such maximum security costs for the “control, care, or treatment” of sexual predators would grow at a rate of 3% per year.

Accordingly, general fund expenditures for DHMH increase by an estimated \$8.0 million in fiscal 2011 for 34 commitments, which reflects the bill’s October 1, 2010 effective date, as well as a pro-rated patient population adjustment to reflect the gradual nature of annual commitments. This estimate reflects the cost of 18 new positions (2 physician/psychiatrists, 2 psychologists, 4 social workers, 2 registered nurses, 2 licensed practical nurse (LPN), 4 LPN-security attendants, 1 assistant Attorney General, and 1 office secretary) to participate in evaluations required of the multidisciplinary teams convened by the Attorney General and other duties related to hearings and trials statewide. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, especially the maximum security costs of hospitalization. The information and assumptions used in calculating the estimate are stated below:

- 350 persons annually for whom sexual predator determinations will be sought by the Attorney General;
- 34 cases in fiscal 2011 and 45 additional cases annually thereafter for which commitment proceedings will be successful; and
- sexual predators will tend not to be successful in achieving release from civil commitment.

Salaries and Fringe Benefits	\$ 938,637
Medical Treatment Costs	7,041,566
Other Operating Expenses	<u>58,026</u>
DHMH FY 2011 Total	\$8,038,229

Future year expenditures reflect (1) full salaries with 4.4% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses. By fiscal 2015, total personnel and operating costs for DHMH are estimated to be \$46.2 million which includes the care, control, and treatment of 214 patients under the bill, reflecting an annual growth rate of 45 new commitments.

In addition, only a limited number of new maximum security patients could be immediately absorbed at a currently operating DHMH facility. While some additional space might be created by moving some current patients to other sites, this bill would eventually, perhaps shortly, give rise to a need for additional maximum security beds at Perkins or elsewhere. Accordingly, the bill could result in the need for a significant amount of additional capital expenditures. Total capital expenditures for design, planning, and construction of the new Perkins' 48-bed high security wing were authorized at about \$11.6 million.

Assuming the need for a new facility to house and treat offenders civilly committed to the care of DHMH under the bill, eventual additional staffing costs would arise. The number of necessary additional staff, including security personnel, would depend on the size and capacity of the new facility and the actual growth rate of the program.

Office of the Public Defender

General fund expenditures increase by \$709,500 for OPD in fiscal 2011. This estimate reflects the cost of hiring 11 assistant public defenders (APDs) to handle an expected significantly increased trial caseload for an anticipated 11,100 hours of additional attorney time for the affected accused sex offenders. It includes salaries, fringe benefits, and office supplies. The three major provisions of the bill that will impact OPD are: (1) the elimination of diminution credits and parole for certain classes of sex offenders; (2) lifetime supervision, including violations by persons subject to such supervision; and (3) civil commitments. This does not include possible representation during post-arrest detentions. The information and assumptions used in calculating the estimate are stated below:

- 1,194 affected cases involving representation for sex offenders;
- 20 hours of trial preparation per case; and

- each APD works 212 days, or 1,378 hours, per year.

Salaries and Fringe Benefits	\$706,628
Supplies	<u>2,865</u>
Total FY 2011 Expenditures	\$709,493

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover; and 1% annual increases in ongoing operating supplies.

Department of Public Safety and Correctional Services

General fund expenditures could also increase minimally as a result of the bill's limitation on diminution credit earnings by a limited number of inmates due to people staying in a DOC facility for longer periods of time and increased payments to counties for reimbursement of inmate costs.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,750 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is \$371 per month. Excluding all medical care, the average variable costs total \$182 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

The civil commitment requirements of the bill will not have any significant effect on DOC's operations or funding. The division's current operations include procedures for assessing sex offenders' risk to public safety, suitability for release, and registration.

This should include procedures for coordinating preparation for trials and hearings. In addition, these provisions will have no fiscal impact on DPP.

However, the bill's provisions relating to parole and diminution credits could also minimally decrease the demand for parole hearings and the supervision caseload of the Division of Parole and Probation.

Office of the Attorney General

Costs for the Office of the Attorney General, are included under the costs associated with DHMH's as cited above, for the hiring of a new assistant Attorney General assigned to DHMH. This does not include potential costs for expert witnesses.

Motor Vehicle Administration

The bill's provisions relating to sex offender notations being included on Maryland drivers' licenses and identification cards can be handled with the existing budgeted resources of MVA and charges delineated below for these offenders. MVA will charge \$30 for each of an estimated 5,000 corrected existing driver's licenses and \$20 for each of an estimated 500 corrected identification cards. Accordingly, MVA special fund revenue is expected to increase by about \$145,000 in fiscal 2011. Assuming 500 new registrants requiring special notation licenses and ID cards each year thereafter, special fund revenue is anticipated to be about \$14,500 annually beginning in fiscal 2012. These charges are estimated to provide full cost recovery for this program.

It is noted that some sex offenders still incarcerated will be entitled to an ID card at no cost as a part of the Released Inmates Identification (RIID) program. This program is a partnership between MVA and DPSCS to provide ID cards at no charge to inmates after release from incarceration. The number of sex offender inmates released each year who would be entitled to the free ID card will likely vary from year to year and is not a part of this estimate.

Additional Information

Prior Introductions: None.

Cross File: SB 1065 (Senator Colburn, *et al.*) - Judicial Proceedings.

Information Source(s): Department of Health and Mental Hygiene, Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, Maryland Department of Transportation, Department of Legislative Services

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