

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

Senate Bill 354 (Senator Pugh, *et al.*)
 Judicial Proceedings

Criminal Procedure - State Vulnerable-Adult Abuser Registry

This bill requires a person convicted of vulnerable-adult abuse or neglect, including financial exploitation, to annually register with a new State Vulnerable-Adult Abuser Registry, modeled after the State Sex Offender Registry.

Fiscal Summary

State Effect: General fund expenditures increase by \$466,300 in FY 2014 for the Department of Public Safety and Correctional Services (DPSCS) and the Judiciary to implement the bill, including one-time computer programming costs in that year. Out-year costs, which reflect ongoing DPSCS costs, reflect annualization and inflation. Revenues are not affected.

| (in dollars) | FY 2014 | FY 2015 | FY 2016 | FY 2017 | FY 2018 |
|----------------|-------------|-------------|-------------|-------------|-------------|
| Revenues | \$0 | \$0 | \$0 | \$0 | \$0 |
| GF Expenditure | 466,300 | 132,500 | 138,500 | 144,900 | 151,500 |
| Net Effect | (\$466,300) | (\$132,500) | (\$138,500) | (\$144,900) | (\$151,500) |

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

Local Effect: Because of the small number of offenders subjected to registration annually, local expenditures associated with registry responsibilities are expected to be relatively low and offset to some degree by State grants. However, local expenditures increase to the extent additional staff need to be hired. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: The registry created under the bill must be established, operated, and maintained by DPSCS, which is the agency that operates and maintains the State's Sex Offender Registry.

A person required to register with the State Vulnerable-Adult Abuser Registry must register with a "supervising authority" prior to being released from a prison sentence or within three days of being granted probation before judgment, probation after judgment, a suspended sentence, or any other sentence that does not include a term of imprisonment. Registrants are required to notify the supervising authority of the new registry in writing within three days after a change in residency and/or a legal name. Registrants are required to provide the supervising authority of the registry with their full name, former name(s), aliases, address, Social Security number, date of birth, description of crime, date of conviction, the jurisdiction and name of court where convicted, copy of valid driver's license or identification card, criminal history with dates of all arrests and convictions, status of all supervised and unsupervised releases, and any record of outstanding arrest warrants, along with the registrant's dated signature. After initial registration, registrants are required to register in person with a local law enforcement unit every year and to provide an updated digital image at least once a year. The term of registration is 10 years or life, as specified. The term of registration begins on the last date of release from incarceration, or the date probation or a suspended sentence was granted.

The supervising authority, upon a registrant's registration, is required to explain and provide written notice to the registrant of the requirements of registration; obtain a signed statement from the registrant acknowledging that the supervising authority explained the requirements and provided them with written notification of the requirements; and obtain and forward an updated digital image of the registrant to DPSCS.

DPSCS is required to post on the Internet a current listing of each registrant's name, address, date of birth, most recent digital image, and the description of the crime that is the basis for the registration. DPSCS must reimburse local law enforcement units for any cost incurred processing registration statements and taking digital images.

The bill provides immunity to elected public officials, public employees, or public units from civil liability for damages arising out of any action relating to these provisions, unless it is proven that the official, employee, or unit acted with gross negligence or in bad faith.

The bill prohibits an individual from knowingly failing to register or knowingly providing false information of a material fact. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$5,000. A

second or subsequent offense is a felony that subjects the violator to maximum penalties of imprisonment for five years and/or a fine of \$10,000.

Current Law: A caregiver, a parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable adult that results in death, causes serious physical injury, or involves sexual abuse. The same prohibition applies to a household member or family member.

A violator is guilty of the felony of abuse or neglect of a vulnerable adult in the first degree and subject to maximum penalties of 10 years imprisonment and/or a fine of \$10,000. A sentence imposed under this section must be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical.

Under the second degree prohibition, a caregiver, a parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable adult. A household member or family member may not cause abuse or neglect of a vulnerable adult. A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a \$5,000 fine. A sentence imposed under this section must be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical. The second degree prohibition does not apply to sexual abuse of a vulnerable adult.

Under the State's prohibition against financial exploitation of a vulnerable adult, a person may not knowingly and willfully obtain by deception, intimidation, or undue influence the property of an individual that the person knows or reasonably should know is a vulnerable adult with intent to deprive the vulnerable adult of the individual's property. In addition, a person may not knowingly and willfully obtain by deception, intimidation, or undue influence the property of an individual that the person knows or reasonably should know is at least 68 years old, with intent to deprive the individual of the individual's property.

When the value of the property is \$500 or more, a violator is guilty of a felony and subject to maximum penalties of imprisonment for 15 years and/or a fine of \$10,000, and must restore the property taken or its value to the owner, or, if the owner is deceased, restore the property or its value to the owner's estate.

When the value of the property is less than \$500, a violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for 18 months and/or a fine of \$500, and must similarly restore the property taken or its value.

A sentence imposed for financial exploitation may be separate from and consecutive to or concurrent with a sentence for any crime based on the act or acts establishing the violation. If a defendant fails to restore fully the property taken or its value as ordered, the defendant is disqualified, to the extent of the defendant's failure to restore the property or its value, from inheriting, taking, enjoying, receiving, or otherwise benefiting from the estate, insurance proceeds, or property of the victim of the offense, whether by operation of law or pursuant to a legal document executed or entered into by the victim before the defendant had been convicted of the financial exploitation.

This financial exploitation prohibition may not be construed to impose criminal liability on a person who, at the request of the victim of the offense, the victim's family, or the court appointed guardian of the victim, has made a good faith effort to assist the victim in the management of or transfer of the victim's property.

Background: Two failed bills from the 2012 session addressed the subject of a vulnerable-adult abuser registry. HB 382 would have required the Secretary of Health and Mental Hygiene to establish an in-agency registry that included the name and Social Security number of any employee terminated for abusing or neglecting a person in a health care facility. The bill would have also prohibited a health care facility from employing an individual who is listed in the registry and required each health care facility to adopt an employee grievance procedure.

SB 316 of 2012 would have required the Department of Health and Mental Hygiene (DHMH) to convene a workgroup to examine issues relating to the creation of a health care facility abuser registry, and report its findings and recommendations to specified committees of the General Assembly by December 1, 2012. While this bill also failed, the Office of Health Care Quality (OHCQ) convened an Abuser Registry Workgroup comprised of representatives from OHCQ, the Office of the Attorney General, law enforcement agencies, health care providers, and the advocate community. Its concerns and conclusions were expressed on January 14, 2013.

Among its findings and concerns, the workgroup established that there is no clear national model and there was no consensus among the many members of the workgroup on access issues and due process. The workgroup found that a comprehensive registry would be costly and it could conflict with the role of licensing boards. The workgroup also raised several possibilities of alternatives to a registry. This bill is a not a recommendation of the workgroup.

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) reports that, in fiscal 2012, there were 7 convictions in the circuit courts for first degree vulnerable-adult abuse or neglect; 7 convictions for the second degree offense; and 11 convictions for financial exploitation of a vulnerable adult.

State Expenditures: Discernible general fund expenditure increases total an estimated \$466,342 in fiscal 2014. The following is a summary of impacts by State agency.

Department of Public Safety and Correctional Services

General fund expenditures for DPSCS increase by \$356,942 in fiscal 2014, which accounts for the bill's October 1, 2013 effective date. This estimate reflects the cost of hiring one additional field agent and one additional staff person for the Information Technology Division to perform the field functions and registry entries for the agency under the bill. It includes salaries, fringe benefits, one-time start-up costs (including significant computer programming costs), and ongoing operating expenses.

| | |
|-----------------------------------|------------------|
| Positions | 2 |
| Salaries and Fringe Benefits | \$ 90,824 |
| Registry Programming Costs | 255,500 |
| Other Operating Expenses | <u>10,618</u> |
| FY 2014 DPSCS Expenditures | \$356,942 |

Future year expenditures for DPSCS reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. If other legislation is passed requiring computer reprogramming changes, economies of scale could be realized, thereby reducing the costs associated with this bill and other legislation affecting DPSCS.

Judiciary

The Administrative Office of the Courts and the Maryland District Court estimate that the bill will result in computer re-programming costs of an estimated \$109,400 in fiscal 2014 for system changes to automate the registration requirements in the event the court is the supervising authority and to generate any necessary forms.

In addition, the Judiciary advises that the bill may result in an increase in caseload due to the new charges and as a result, a corresponding increase in commissioner initial appearance hearings, bail reviews, and preliminary hearings held in the District Court. The circuit courts will likely see an increase in the number of felony charges to be adjudicated. However, though any increase in the court's caseload will result in additional clerical and court time necessary for the processing and trial of those cases, such an impact cannot be reliably quantified. Because there were only 25 charges relating to vulnerable-adult abuse heard in the circuit courts in fiscal 2012, it is assumed that any such increase can be handled with existing budget resources of the courts.

Department of Health and Mental Hygiene

The bill's requirements do not directly affect the operations or finances of DHMH.

Office of the Attorney General

Assuming that the number of persons subject to registration annually remains low, the Office of the Attorney General can handle any related requirements with existing budgeted resources.

Office of the Public Defender

While the Office of the Public Defender reports that this bill affects caseload levels for some assistant public defenders, the agency is unable to quantify such an impact at this time. In any event, it is assumed that such an impact can be handled with existing budgeted resources.

Maryland State Commission on Criminal Sentencing Policy

MSCCSP advises that the bill's requirements relating to the review of new offenses, and the adoption of seriousness categories for those offenses within the sentencing guidelines, are among the routine activities for the commission and can be handled with existing budgeted resources.

Local Fiscal Effect: Because of the small number of offenders subjected to registration annually, local expenditures associated with registry responsibilities are expected to be relatively low and offset to some degree by State grants. The current reimbursement rate paid by DPSCS to local governments for sex offender registrations is \$200 per registrant. It is assumed that the same rate will be applied to the registrations required under this bill.

Harford County reports that the bill results in a minimal increase in workload for the county detention facility as a supervising authority. Such a workload increase is not sufficient to affect personnel needs or overtime. Montgomery County reports no fiscal impact under the bill.

Talbot County reports that the bill requires the hiring of one additional deputy sheriff with attendant costs in fiscal 2014 of about \$120,000 (including a new vehicle). Out-year costs are estimated at \$95,000 annually. Talbot County also advises that current reimbursements for the responsibilities relating to the sex offender registry do not cover costs.

Baltimore City advises that, because the number of offenders to be included in the registry for each jurisdiction is unknown, any new costs under the bill for Baltimore City cannot be reliably estimated. In a worst case scenario, the Baltimore City Police Department advises that the unit that now handles sex offender registration requirements would need two additional, experienced detectives at a salary cost of about \$116,000 annually. The Department of Legislative Services believes that such a scenario is highly unlikely given the current number of annual convictions for the covered offenses statewide.

Additional Information

Prior Introductions: None.

Cross File: HB 54 (Delegate B. Robinson) - Health and Government Operations and Judiciary.

Information Source(s): Harford, Montgomery, and Talbot counties; Baltimore City; Maryland State Commission on Criminal Sentencing Policy; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Office of the Attorney General; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Department of Legislative Services

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mc/lgc

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