

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1263 (Senators Waugh and Miller)

Judicial Proceedings and Education, Health,
and Environmental Affairs

**Public Safety – School Mental Health Services and Mental Disorder Weapon
Restraining Order**
(School Safety Act of 2018: Anticipation)

This bill (1) expands prohibitions on making a threat of mass violence; (2) requires local school systems to establish threat assessment teams and mental health counselor services; and (3) establishes procedures for the issuance of mental health disorder weapon restraining orders.

Fiscal Summary

State Effect: General fund expenditures for the Maryland State Department of Education (MSDE) increase significantly (potentially by more than \$125 million annually) beginning in FY 2020. General fund expenditures for the Judiciary increase by a minimum of \$222,400 in FY 2019 only for programming costs. Minimal increase in general fund revenues and expenditures due to the bill's penalty provisions.

Local Effect: Significant increase in local revenues and expenditures. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Threat of Mass Violence

The bill alters the existing prohibition on making a threat of mass violence by prohibiting a person from knowingly threatening to commit or threatening to cause to be committed a crime of violence, as defined in § 14-101 of the Criminal Law Article, that would place five or more people at substantial risk of death or serious physical injury, as defined under § 3-201 of the Criminal Law Article, if the threat were carried out. Violators are guilty of a misdemeanor, punishable by existing penalties of imprisonment for up to 10 years and/or a \$10,000 maximum fine.

The bill also prohibits a person from knowingly threatening to commit or threatening to cause to be committed a crime of violence that would place five or more minors at substantial risk of death or serious physical injury if the threat were carried out. Violators are guilty of a felony, punishable by imprisonment for up to 20 years and/or a \$10,000 maximum fine.

School Threat Assessment Teams

By January 1, 2019, MSDE must develop a model policy for the establishment of a threat assessment team. The model policy must include (1) policies on student behavior assessment and intervention for behavior that poses a threat to school safety and (2) procedures for referring students to a local law enforcement agency or health care providers for evaluation and treatment, if appropriate.

Beginning in the 2019-2020 school year, each local school system must establish a threat assessment team, with specified membership and based on MSDE's model policy, at each public school in the local school system. A team must:

- provide guidance to students, faculty, and staff on recognizing and reporting threatening or aberrant behavior that may present a threat;
- identify members of the school community to whom a student may report threatening behavior;
- meet during the school year, as specified, to review potential threats to school safety; and
- implement policies adopted by the local school system based on MSDE's model policy.

Upon a preliminary determination that a student poses a threat, the team may obtain the student's health records in accordance with specified provisions of law. If the team determines that a student poses a threat, the team must immediately report its determination to the county superintendent and may also report its determination to the local law enforcement agency. Upon receiving a report, the county superintendent must immediately attempt to notify the student's parent or legal guardian of the determination.

Each county superintendent may establish a threat assessment team oversight committee, with specified membership, to oversee the teams in the county.

The bill also alters existing provisions of law so as to (1) authorize a health care provider to disclose medical records to a threat assessment team without the authorization of the person in interest; (2) require a law enforcement agency and State's Attorney to notify a threat assessment team of an arrest or disposition, respectively, of a student for a "reportable offense" or an offense related to the student's membership in a criminal gang; and (3) incorporate information that is obtained from a threat assessment team into State Board of Education regulations regarding reportable offenses.

Memoranda of Understanding

By January 1, 2019, each county superintendent must enter into a memorandum of understanding with specified entities to foster coordination of mental health intervention and behavioral health services.

Mental Health Counselor Services Program

The bill establishes the Mental Health Counselor Services Program within MSDE to provide grants to public schools to hire mental health counselors. MSDE must develop and administer the program. A local school system that receives a grant must distribute the grant to schools within the county and must give priority to schools that demonstrate a greater financial need.

For fiscal 2020 and each fiscal year thereafter, the Governor must include funding for such grants in the annual budget submission.

By January 1, 2019, MSDE must develop a model policy for the establishment of mental health counselor services. The policy must include specified information, including policies and procedures for assessments and referrals for treatment.

Beginning in the 2019-2020 school year, each local school system must establish mental health counselor services at each public school in the local school system based on MSDE's model policy.

A school mental health counselor may not hold another position of employment at the school. Among other specified responsibilities, each school mental health counselor must meet with each student at the school once each school year and must also provide crisis intervention and crisis management services.

Involuntary Commitments – Firearms

The bill repeals the requirement that a hearing officer, before ordering an individual who has been involuntarily committed to surrender any firearms, to first determine that the individual cannot safely possess a firearm based on credible evidence of dangerousness to others.

Mental Disorder Weapon Restraining Orders – Types

The bill establishes procedures for the issuance of mental disorder weapon restraining orders (MDWROs). There are three types of MDWROs – interim MDWROs, temporary MDWROs, and final MDWROs.

A petitioner may seek an MDWRO by filing a petition with the District Court alleging that the respondent, due to a mental disorder, is a danger to self or to the person or property of another. A petitioner may file a petition with a District Court commissioner if the Office of the District Court Clerk is not open for business.

An interim MDWRO is an order issued by a District Court commissioner pending a hearing by a judge on a petition. A temporary MDWRO is an MDWRO issued by a District Court judge. A final MDWRO is an MDWRO issued by a District Court judge, typically after a temporary MDWRO has already been served on a respondent.

Contents of Petition

The petition must include all information known to the petitioner of (1) the nature and extent of the respondent's behavior that makes the respondent dangerous and for which the MDWRO is sought, including previous specified behavior of the respondent that is the result of a mental disorder; (2) each previous and pending action between the parties in any court; (3) the whereabouts of the respondent; (4) the relationship between the petitioner and the respondent; (5) whether the respondent is or has previously been admitted to a facility or a Veterans' Administration hospital due to a mental disorder; and (6) the respondent's mental health history. The petition must be filed under oath. An individual who knowingly provides false information in a filed petition for an MDWRO is guilty of a misdemeanor, punishable by imprisonment for up to 90 days and/or a \$1,000 maximum fine.

Interim MDWRO

If the petitioner files a petition with a District Court commissioner, the commissioner may issue an interim MDWRO if the commissioner finds that there are reasonable grounds to believe that the respondent is a danger to self or the person or property of others due to a mental disorder. An interim MDWRO must order the respondent to (1) immediately surrender all firearms and dangerous weapons in the possession of or available to the respondent and (2) refrain from possessing any firearms or dangerous weapons for the duration of the interim MDWRO.

The interim MDWRO must include specified information, including (1) the date, time, and location of the temporary MDWRO hearing and similar tentative information for a final MDWRO hearing; (2) a statement of all possible forms and duration of weapon prohibition that may be contained in a temporary or final MDWRO; and (3) a warning to the respondent that violation of an interim MDWRO is a crime and that a law enforcement officer must arrest the respondent, with or without a warrant, if the officer has probable cause to believe the respondent has violated the interim MDWRO.

Upon receipt of a petition and an interim MDWRO, a law enforcement officer must immediately serve the petition and order on the respondent, take possession of any firearms and dangerous weapons in the possession of or available to the respondent, and seek and execute a search warrant to search the respondent's person and property to ensure that the respondent does not have possession of or access to a firearm or a dangerous weapon.

In general, an interim MDWRO is effective until the temporary MDWRO hearing or the end of the second business day the Office of the District Court Clerk is open following the issuance of the interim MDWRO, whichever is earlier. In general, a temporary MDWRO hearing must be held on the first or second day on which a District Court judge is sitting after the interim MDWRO was issued.

Temporary MDWRO

A judge may order a temporary MDWRO if, following a hearing on a petition (ex parte or otherwise), the judge finds that there are reasonable grounds to believe that the respondent is a danger to self or the person or property of another. The temporary MDWRO must (1) order the respondent to immediately surrender to law enforcement authorities any firearms and dangerous weapons in the respondent's possession or available to the respondent and (2) order the respondent not to possess any firearms or dangerous weapons.

If the respondent was served with an interim MDWRO, the respondent must be served with a temporary MDWRO in open court or by first-class mail if the respondent was not present at the hearing. Otherwise, as with an interim MDWRO, a law enforcement officer must

serve a petition and temporary MDWRO on a respondent and search for and take possession of firearms and weapons from the respondent. In general, a temporary MDWRO is valid for no more than 7 days after service. The judge may extend the order as needed for up to 30 days to effectuate service of the order, for protection, or for other good cause.

The judge may proceed with a final MDWRO hearing instead of a temporary MDWRO hearing if (1) the respondent appears at the hearing, the respondent has been served with an interim MDWRO, or the court otherwise has personal jurisdiction over the respondent and (2) the petitioner and the respondent expressly consent to waive the temporary MDWRO hearing. Otherwise, a final MDWRO hearing must generally occur within seven days after the respondent is served with a temporary MDWRO.

Final MDWRO

The court may issue a final MDWRO if the judge finds by a preponderance of the evidence that the respondent, because of a mental disorder, is a danger to self or the person or property, or if the respondent consents to the entry of the MDWRO. The final MDWRO must order the respondent to (1) immediately surrender to law enforcement authorities any firearms or dangerous weapons in the respondent's possession or available to the respondent and (2) not possess any firearms or dangerous weapons for the duration of the order. The bill also contains provisions regarding service on the respondent of a petition and final MDWRO and confiscation of the respondent's firearms and dangerous weapons by law enforcement authorities. All weapon prohibition orders in a final MDWRO are valid for the time period stated in the order, but may not exceed six months. A judge may modify, rescind, or extend the term of a final MDWRO for up to an additional six months, in accordance with specified procedural requirements.

Appeals of Weapon Prohibitions

If a District Court grants or denies a weapon prohibition under a petition, a respondent or petitioner may appeal the District Court's decision to the appropriate circuit court, where the appeal must be heard *de novo*. A District Court's judgment must remain in effect during an appeal until it is superseded by a judgment of the circuit court. Unless the circuit court orders otherwise, modification or enforcement of the District Court order must be by the District Court.

Retaking Possession of Surrendered Firearms or Weapons

A respondent may not retake possession of a surrendered firearm or dangerous weapon at the expiration of an MDWRO if the respondent is not otherwise legally entitled to own or possess the firearm or dangerous weapon. A respondent may retake possession of a

surrendered firearm or dangerous weapon at the expiration of an interim, temporary, or final MDWRO unless (1) the respondent is ordered to surrender the firearm or dangerous weapon under a temporary or final MDWRO or (2) with respect to a final MDWRO, the protective order is extended.

Criminal Penalties

An individual who fails to comply with the weapon prohibition of an MDWRO is guilty of a misdemeanor, punishable by (1) imprisonment for up to 90 days and/or a \$1,000 maximum fine for a first offense and (2) imprisonment for up to one year and/or a \$2,500 maximum fine for a subsequent offense. If a law enforcement officer has probable cause to believe that an individual is in violation of an MDWRO, the officer must arrest the individual (with or without a warrant) and take the individual into custody.

Rules and Forms

The Court of Appeals may adopt rules and forms to implement the bill's provisions and must adopt a form for an MDWRO petition.

Current Law:

Threat of Mass Violence

A person may not knowingly threaten to commit a crime of violence or threaten to cause such a crime to be committed, that would place others at a substantial risk of death or serious physical injury if as a result of the threat, regardless of whether the threat is carried out, five or more people are (1) placed in reasonable fear that the crime will be committed; (2) evacuated from a dwelling, storehouse, or public place; (3) required to move to a designated area within a dwelling, storehouse, or public place; or (4) required to remain in a designated safe area within a dwelling, storehouse, or public place. The prohibition applies to a threat made by oral or written communication or electronic mail.

Violators are guilty of a misdemeanor, punishable by imprisonment for up to 10 years and/or a maximum fine of \$10,000. In addition to these penalties, a court must order a person convicted of this offense to reimburse the appropriate unit of government or other person for expenses and losses incurred in responding to the unlawful threat unless the court states on the record why reimbursement would be inappropriate. Violators may be indicted, prosecuted, tried, and convicted in any county where (1) the threat was received; (2) the threat was made; or (3) the consequences of the threat occurred.

School Safety Plans

State regulations require each local school system to develop an emergency plan for all public schools that (1) deals with contingencies of man-made, technological, and natural hazards and (2) aligns with the Emergency Planning Guidelines for Local School Systems and Schools developed by MSDE. A school emergency plan must address mitigation, prevention, preparation, response, and recovery to an emergency including responding to violent or traumatic events on school grounds, among other events. By September 30 of each year, each local superintendent must (1) certify to the State Superintendent that it is in compliance with emergency planning requirements and (2) send a copy of a specified plan to the State Superintendent.

MSDE's Emergency Planning Guidelines for Local School Systems and Schools was updated in October 2017.

School Resource Officers

A school resource officer (SRO) is a law enforcement officer who has been assigned to a school in accordance with a memorandum of understanding between the chief of a law enforcement agency and the local school system. Although some local school systems indicate that they provide additional training to SROs to reflect the unique circumstances of being assigned to a school, such training is not required. Based on data provided by the Maryland Association of School Resource Officers and the Maryland Center on School Safety (MCSS), the Department of Legislative Services (DLS) estimates that there are between 300 and 400 SROs throughout the State, not including supervisors.

Maryland Center on School Safety

Chapter 372 of 2013 established MCSS as an independent unit within State government with a mandated appropriation of \$500,000. The center is currently housed at the Maryland Coordination and Analysis Center, the State's Fusion Center under the Department of State Police.

School Mental Health Services

Under the Code of Maryland Regulations 13A.05.05, each local school system must provide a coordinated program of pupil services for all students, which must include school counseling, pupil personnel services, school psychology, and health services. The pupil services program must focus on the health, personal, interpersonal, academic, and career development of students.

MSDE has historically advised that pupil personnel service providers regularly participate in professional development to remain current in social and emotional issues that create barriers to learning for children and adolescents. The determination of whether or not a student needs a mental, behavioral, or medical assessment occurs through coordination of pupil services and the student support team process. The student support team also provides referrals for students to trained specialists, depending on the student's area of need. School psychologists are trained to determine whether students need a behavioral health assessment. School nurses are trained to identify student physical health, behavioral health, and evaluation needs. Behavioral health staff may provide on-site behavioral health assessments and supports. Space for community partnered school-based health care providers is, when practical and available, provided in the school building.

Chapter 583 of 2017 requires the Maryland Department of Health (MDH), in conjunction with MSDE, to recommend best practices for local school systems to provide to students (1) behavioral needs assessments and (2) individualized or group behavioral health counseling services with a health care provider through a school-based health center or community-partnered school-based behavioral health services. "Behavioral health counseling services" means prevention, intervention, and treatment services for the social-emotional, psychological, behavioral, and physical health of students, including mental health and substance abuse disorders.

Chapter 585 of 2017 requires MDH and MSDE to conduct a needs assessment for student school-based behavioral health services that includes data concerning all public school jurisdictions in the State. Additionally, Chapter 335 of 2017 required the State Board of Education, by July 1, 2018, to require all certificated personnel (*e.g.*, teachers, counselors, psychological personnel) who have direct contact with students on a regular basis to complete training by December 1 each year in the skills required to (1) understand and respond to youth suicide risk and (2) identify professional resources to help students in crisis.

Reportable Offenses of Students

Statutory provisions set forth requirements relating to the sharing of information regarding juveniles who have been arrested for "reportable offenses." Reportable offenses include specified violent crimes and various gang-, weapons-, drug-, theft-, and intimidation-related charges; malicious destruction of property; second-degree assault; and auto theft.

If a student is arrested for a reportable offense or an offense related to the student's membership in a criminal gang, the law enforcement agency making the arrest must notify, within 24 hours of an arrest or as soon as practicable, the local superintendent and the school principal. A school security officer must also be notified, for a school with such an

officer. The State's Attorney must promptly notify either the local superintendent or the school principal of the disposition of such offenses.

The State Board of Education must adopt regulations to ensure that the information obtained is (1) used to provide appropriate educational programming and related services to the student and to maintain a safe and secure school environment and (2) transmitted only to school personnel of the school in which the student is enrolled as necessary to carry out this purpose. Regulations must also ensure that the information is destroyed when the student graduates or otherwise permanently leaves school or reaches age 22, whichever occurs first.

Disclosure of Medical Records

Generally, a health care provider may not disclose medical records without the authorization of the person in interest. However, a health care provider must disclose a medical record without the authorization of the person in interest under specified circumstances, including to a local drug overdose fatality review team. Chapters 165 and 166 of 2017 require disclosure to a guardian *ad litem* appointed by a court to protect the best interest of a minor or a disabled or elderly individual who is a victim of a crime or a delinquency act under specified circumstances.

Chapters 700 and 701 of 2017 alter the circumstances under which a health care provider may disclose directory information and medical records without the authorization of the person in interest, including information that was developed primarily in connection with mental health services. Unless the patient has restricted or prohibited the disclosure of directory information, a health care provider may disclose directory information to an individual who has asked for the patient by name. Additionally, a health care provider may disclose a medical record without the authorization of a person in interest to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if the disclosure is limited to information that is directly relevant to the individual's involvement in the patient's health care and other conditions are met.

In addition to restrictions in State law, federal law and regulations restrict the ability of a health care provider to disclose a medical record (also referred to as protected health information) without the authorization of the person in interest. Generally, federal law and regulations preempt state law with respect to protected health information confidentiality. However, the federal Health Insurance Portability and Accountability Act (HIPAA) and its standards do not preempt state law if the state provision (1) relates to the privacy of individually identifiable health information and (2) is "more stringent" than HIPAA's requirements.

Under HIPAA regulations, a health care provider is authorized, under exigent circumstances, to use or disclose protected health information if the health care provider believes in good faith that the use or disclosure is “necessary to prevent or lessen a serious or imminent threat to the health or safety of a person or the public” and the disclosure is made to a person “reasonably able to prevent or lessen the threat.”

Involuntary Commitments – Firearms

Under the Health-General Article, an application for involuntary admission of an individual to a facility or Veterans’ Administration hospital may be made by any person who has a legitimate interest in the welfare of the individual. A facility or Veterans’ Administration hospital may not admit an individual under involuntary admission unless (1) the individual has a mental disorder; (2) the individual needs inpatient care or treatment; (3) the individual presents a danger to the life or safety of the individual or of others; (4) the individual is unable or unwilling to be admitted voluntarily; and (5) there is no available, less restrictive form of intervention that is consistent with the welfare and safety of the individual.

Specified health professionals and other interested parties may petition for an emergency evaluation of an individual, which may result in the involuntary admission of the individual to a mental disorder treatment facility, if the petitioner has reason to believe that the individual (1) has a mental disorder and (2) presents a danger to the life or safety of the individual or of others.

Under Chapter 427 of 2013, a person may not possess a regulated firearm, rifle, or shotgun if the person:

- suffers from a mental disorder as defined in § 10-101(i)(2) of the Health-General Article and has a history of violent behavior against the person or another;
- has been found incompetent to stand trial or not criminally responsible in a criminal case; has been voluntarily admitted for more than 30 consecutive days to a facility as defined in § 10-101 of the Health-General Article;
- has been involuntarily committed to a facility as defined in § 10-101 of the Health-General Article; or
- is under the protection of a court-appointed guardian of the property or guardian of the person, except for cases in which the appointment of a guardian is solely a result of a physical disability.

If a hearing officer enters an order for involuntary commitment to a facility and the hearing officer determines that the individual cannot safely possess a firearm based on credible evidence of dangerousness to others, the hearing officer must order the individual who is

subject to the involuntary commitment to surrender to law enforcement authorities any firearms in the individual's possession and refrain from possessing a firearm unless the individual is granted relief from firearms disqualification in accordance with § 5-133.3 of the Public Safety Article.

A court is required to promptly report to the National Instant Criminal Background Check System (NICS), through a secure portal approved by the Department of Public Safety and Correctional Services (DPSCS), the date of the court determination or finding, and the name and identifying information of a person:

- determined to be not criminally responsible;
- found to be incompetent to stand trial; or
- found to be in need of the protection of a guardian under specified provisions of the Estates and Trusts Article relating to the protection of minors and disabled persons, except for cases in which the appointment of a guardian is solely a result of a physical disability.

A mental health care facility must similarly report to NICS the name and identifying information of a person admitted or committed to the facility, the date of admission or commitment, and the name of the facility to which the person was voluntarily admitted, if the person has been admitted to a facility for 30 consecutive days or more, or if the person has been involuntarily committed.

A person seeking relief from firearms disqualification may file an application with MDH. An application for relief from a firearms disqualification must include, along with any other information required by MDH, (1) a statement explaining why the applicant is prohibited from possessing a regulated firearm, rifle, or shotgun; (2) a statement why the applicant should be relieved from that prohibition; (3) a signed authorization allowing MDH to access specified health and criminal records; (4) three statements related to the applicant's reputation and character; and (5) if the applicant is prohibited from possessing a firearm for certain mental health reasons, a certificate issued within 30 days of the submission of the application on a form signed by an individual licensed in the State as a physician who is board certified in psychiatry or as a psychologist stating:

- the length of time that the applicant has not had symptoms that cause the applicant to be a danger to self or others;
- the length of time that the applicant has been compliant with the treatment plan for the applicant's mental illness; and
- an opinion as to whether the applicant, because of mental illness, would be a danger to the applicant or to another person if allowed to possess a firearm.

Additional information is required to be included in the application for individuals who are prohibited on the basis of guardianship orders.

MDH may not approve an application if a determination is made that (1) the applicant supplied incomplete or false information; (2) the application is not properly completed; or (3) the applicant has not shown by a preponderance of the evidence that the applicant will be unlikely to act in a manner dangerous to self or public safety and that granting a permit to possess a regulated firearm or authorizing the possession of a rifle or shotgun would be contrary to the public interest.

Within 60 days from the receipt of a completed application, MDH must provide the applicant with a certificate affirming the applicant's mental competence to possess a regulated firearm or a written statement that the applicant is not mentally competent to possess a firearm. An aggrieved applicant may request a hearing in accordance with the Administrative Procedure Act, and judicial review may be sought.

A physician or psychologist who acts in good faith and with reasonable grounds in providing the statements and opinions required by the restoration process may not be held civilly or criminally liable for those actions.

Mental Disorder Weapon Restraining Orders

There is no MDWRO in the State. The bill is modeled on statutory provisions that set forth a process by which an individual may seek relief from abuse by filing a petition for a domestic violence protective order. Pursuant to that process, an individual may seek relief from abuse by filing a petition for a domestic violence protective order. Among other provisions, a temporary protective order may order a respondent to surrender to law enforcement authorities any firearm in the respondent's possession, and to refrain from possession of any firearm, for the duration of the temporary protective order if the abuse consisted of (1) the use of a firearm by the respondent against a person eligible for relief; (2) a threat by the respondent to use a firearm against a person eligible for relief; (3) serious bodily harm to a person eligible for relief caused by the respondent; or (4) a threat by the respondent to cause serious bodily harm to a person eligible for relief.

If a final protective order is issued, such order must require the respondent to surrender to law enforcement authorities any firearm in the respondent's possession, and to refrain from possession of any firearm, for the duration of the protective order.

Background:

Threat of Mass Violence

According to the Judiciary, during fiscal 2017, 21 violations were filed in the District Court and 17 violations were filed in the circuit courts for making a threat of mass violence. According to the Maryland State Sentencing Guidelines Database, no individuals were sentenced in the State's circuit courts during fiscal 2017 for making a threat of mass violence. DPSCS advises that during fiscal 2017, no inmates were assigned to a State correctional facility for making a threat of mass violence. According to the Division of Parole and Probation, the division did not conduct any intakes during fiscal 2017 for a person sentenced to probation for making a threat of mass violence.

Mental Disorder Weapon Restraining Orders

According to the New York County District Attorney's Office, as of April 2017 (the latest information readily available), extreme risk protection orders, which focus on individuals who are exhibiting dangerous behavior, have been enacted in various forms in four states. Proponents argue that they may serve as a method of temporarily preventing people in crisis from having access to guns, by allowing family members and loved ones to petition for intervention.

In 2014, California became the first state to enact a law empowering family members as well as law enforcement to request that a judge issue an order based on evidence that a person is at risk of harming himself or herself, or others. In 2016, Washington State enacted a similar measure through ballot initiative. Similar authority for law enforcement officers to seek a court order has been available for years in Indiana and Connecticut.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures for MSDE increase significantly beginning in fiscal 2020. General fund expenditures for the Judiciary increase by a minimum of \$222,410 in fiscal 2019 only for necessary computer reprogramming costs. General fund expenditures for DPSCS increase minimally due to the bill's incarceration penalties.

Maryland State Department of Education

The bill requires the Governor to include funding for grants under the Mental Health Counselor Services Program in the annual budget submission for fiscal 2020 and in each fiscal year thereafter. However, the bill does not mandate a specific funding level per year.

DLS advises that general fund expenditures for MSDE increase significantly beginning in fiscal 2020 for the grant program. A reliable estimate of the amount of annual funding needed to support a viable grant program cannot be made at this time. However, *for illustrative purposes only*, if the approximately 1,400 public schools in the State each hire one mental health counselor at a cost of \$90,000 annually (the average salary of a school psychologist in Maryland in 2017), grants to cover those costs would need to total more than \$125 million annually. Costs could vary depending on the specific needs of each school, as discussed below under the Local Fiscal Effect section of this fiscal and policy note.

MSDE must establish and administer the grant program. In addition, the bill requires MSDE to develop model policies for the establishment of mental health counselor services and threat assessment teams in each school. DLS advises that MSDE can likely handle these requirements with existing budgeted resources, as these responsibilities fall within MSDE's scope of work. Staff may need to be temporarily diverted from other tasks in order to provide support for the grant program and to develop the appropriate policies.

Judiciary

General fund expenditures for the Judiciary increase by \$222,410 in fiscal 2019 only for necessary computer reprogramming costs due to the bill's restraining order provisions. General fund expenditures for the Judiciary *may* minimally increase further in the first year for costs associated with creating necessary forms and implementing the new process for MDWROs in the courts. Although the bill will result in additional hearings, which must be held in an expedited manner, it is nevertheless anticipated that hearings can be accommodated without materially impacting the workload or finances of the Judiciary.

DPSCS

General fund expenditures increase minimally as a result of the bill's incarceration penalty provisions due to more people being committed to State correctional facilities and people being committed for longer periods of time. The number of people convicted of crimes as a result of the bill's provisions is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,800 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 a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates

confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from 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 State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Local Fiscal Effect: Local revenues and expenditures increase significantly due to the distribution of grant funds to local school systems and the requirement that each school hire mental health counselors who must provide specified services. Local revenues and expenditures increase minimally as a result of the bill's monetary and incarceration penalty provisions. Depending on existing staffing levels and additional workloads, local law enforcement expenditures may increase to comply with procedural requirements for MDWROs issued by courts.

Mental Health Counselors and Threat Assessment Teams

Revenues and expenditures increase significantly due to the distribution of grant funds to local school systems and the requirement that each school hire mental health counselors who must provide specified services.

DLS notes that the purpose of the grant program is to provide grants to public schools to *hire* mental health counselors. The bill additionally requires *each school* to provide mental health counselor services in accordance with MSDE's model policy. Mental health counselors must also meet exclusively with *each student once per year* and may not hold another position of employment at the school. However, the bill does not define "mental health counselor."

Montgomery County Public Schools (MCPS) advises that mental health counselors need graduate-level training. MCPS advises that school psychologists may serve as the most appropriate professionals to fill these roles. Further, as the bill requires exclusive meetings with each student during the 180-day school year, the bill likely requires at least one mental health counselor per 1,000 students. Therefore, MCPS advises that it must hire at least 162 mental health counselors, at a cost of approximately \$16 million annually. MCPS also advises that school psychologists receive training on crisis intervention support; mental health counselors would require similar training, at an additional cost. Further, schools may need to utilize mental health assessment tools, at an additional cost. Anne Arundel County Public Schools advises that it needs to hire an additional 118 counselors at a cost of \$11.3 million in fiscal 2020.

DLS notes that costs for each local school system (and each school) to comply with the bill's requirements for mental health counselor services depend on several factors, including (1) whether schools must hire new personnel to serve as "mental health counselors;" (2) whether existing personnel may be reclassified as "mental health counselors," which may result in additional personnel needs and changes; (3) whether schools may contract with outside entities to provide such services; (4) total student enrollment at each school; and (5) the specifics of MSDE's model policy. Thus, costs likely vary significantly among local school systems.

Although the costs associated with hiring school mental health counselors may be offset by the receipt of grant revenues, the extent of any offset depends on funding appropriated in the State budget and how grant funds are distributed to each local school system (and subsequently, to each school) in any given year.

Expenditures may increase further to the extent that local school systems do not already have threat assessment teams. However, because all school systems are required to have emergency management plans that, based on State guidelines, should include a crisis management team and a threat response plan, it is assumed that most, if not all, school systems and schools already comply with these requirements or can come into compliance with existing resources. To the extent schools do not already comply, expenditures may increase for required training and possible fees for counseling services.

For example, MCPS advises that, based on information from MCSS, behavioral threat assessment training for 100 staff members costs \$9,000. Further, as the bill requires monthly team meetings, substitute teachers may be required to cover classrooms so that teachers may participate in meetings. MCPS also advises that each school must have a counselor available to assist the team, and that schools may also need to hire SROs. (DLS notes that the bill does not specifically require SRO participation, and that schools may be able to coordinate with other law enforcement personnel to serve on threat assessment teams).

Criminal Penalties and MDWROs

Local revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts. Local expenditures increase minimally due to the bill's incarceration penalties and expanded application of existing incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

The bill's procedural requirements for MDWROs likely increase expenditures of local law enforcement units, including requirements pertaining to service of orders, confiscation of

weapons, and storage of weapons. The extent of this impact cannot be reliably determined at this time, and depends on existing staffing levels and the number of orders courts issue.

For instance, Anne Arundel County advises that it needs to conduct further analysis to determine the number of additional officers/staff and additional space needed to manage firearms surrendered in accordance with MDWROs. The county notes that the current volume of firearms submitted to its police department is beginning to exceed storage capacity and staffing levels.

The bill is not anticipated to materially impact the workload of the circuit courts and State's Attorneys.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Calvert, Charles, and Montgomery counties; Maryland Association of Counties; Maryland Association of School Resource Officers; Maryland Center on School Safety; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State Department of Education; Maryland Department of Health; Department of Juvenile Services; Department of State Police; Department of Public Safety and Correctional Services; Department of Legislative Services

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