

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 842 (Chair, Judiciary Committee)(By Request - Departmental
 - Public Safety and Correctional Services)

Judiciary

**Criminal Procedure - Lifetime Sexual Offender Supervision - Violations and
 Petitions for Discharge**

This departmental bill alters the process by which the Division of Parole and Probation (DPP) within the Department of Public Safety and Correctional Services (DPSCS) may charge a person subject to lifetime sexual offender supervision for a violation of a condition of the lifetime supervision. In addition, the bill alters the process by which a person subject to lifetime sexual offender supervision may petition for discharge from lifetime supervision and requires victim notification regarding the petition.

Fiscal Summary

State Effect: General fund expenditures increase by \$33,000 in FY 2020 only. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	33,000	0	0	0	0
Net Effect	(\$33,000)	\$0	\$0	\$0	\$0

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

Local Effect: The bill is not expected to materially affect local finances.

Small Business Effect: DPSCS has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary: The bill requires that if a person violates a condition of lifetime sexual offender supervision, the sexual offender management team must report the violation to the office of the State's Attorney for the jurisdiction in which the term of lifetime sexual offender supervision was imposed. The judge who originally imposed the lifetime sexual offender supervision must conduct a hearing for the violation of a condition of the supervision, unless the judge has been removed from office, has died or resigned, or is otherwise incapacitated, in which case, another judge may act in the matter.

A petition for discharge must include a report from the sexual offender management team that includes a risk assessment of the person conducted by a sexual offender treatment provider and a recommendation from the sexual offender management team regarding the discharge of the person from lifetime sexual offender supervision.

If, based on a review of the petition for discharge and any accompanying documents, and without a hearing, the court determines that the petitioner qualifies for discharge from lifetime sexual offender supervision, the court must notify the State's Attorney. If, after a notification from the court, the State's Attorney requests a hearing on the matter, the court must hold a hearing. The judge who originally imposed the lifetime sexual offender supervision must adjudicate a petition for discharge. If the judge has been removed from office, has died or resigned, or is otherwise incapacitated, another judge may act in the matter.

A victim or victim's representative who has requested notice must be notified of the petition for discharge and of the final decision of the judge in granting or denying the petition. If a petition for discharge is denied, a person may not renew the petition for a minimum of two years.

Current Law:

Lifetime Supervision Procedures: Except where a term of natural life without the possibility of parole is imposed, a sentence must include a term of lifetime sexual offender supervision for the following:

- a sexually violent predator;
- a person convicted of first- or second-degree rape, or first- or (certain circumstances of) second-degree sexual offense as the offenses existed before October 1, 2017;
- a person convicted of attempted first- or second-degree rape, or attempted first- or (certain circumstances of) second-degree sexual offense as the offenses existed before October 1, 2017;

- sexual abuse of a minor if the violation involved a child younger than age 12;
- a person required to register with the person's supervising authority because the person was at least age 13 but not older than age 18 at the time of the act; and
- a person convicted more than once arising out of separate incidents of a crime that requires registration.

For a person who is required to register because the person was at least age 13 but not older than age 18 at the time of the act, the term of lifetime sexual offender supervision begins when the person's obligation to register begins and expires when the person's obligation to register expires, unless the juvenile court finds after a hearing that there is a compelling reason for the supervision to continue and orders the supervision to continue for a specified period of time.

A court is also authorized to sentence a person convicted of third-degree sex offense, as specified, to lifetime supervision and require a risk assessment before that sentence is imposed.

The sentencing court or juvenile court must impose special conditions of lifetime sexual offender supervision at the time of sentencing or imposition of the registration requirement in juvenile court and advise the person of the length, conditions, and consecutive nature of that supervision. Special conditions may include global positioning satellite tracking or equivalent technology and participation in a sexual offender treatment program. Before imposing the special conditions, the court must order a presentence investigation. The sentencing court may adjust the special conditions of such lifetime supervision in consultation with the person's sexual offender management team.

A person subject to lifetime supervision is prohibited 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; and
- 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 remand the person to a correctional facility pending the hearing or a determination on a charge of violation of a condition of lifetime sexual offender supervision.

A person may petition for discharge from lifetime sexual offender supervision after serving at least five years of the extended sexual offender supervision. The sentencing court must

hear and adjudicate a petition for discharge from lifetime sexual offender supervision. The court may not deny a petition for discharge without a hearing. Further, the court may not discharge a person unless the court makes a finding on the record that the petitioner is no longer a danger to others. The judge who originally imposed the lifetime sexual offender supervision must hear the petition. If the judge has been removed from office, has died or resigned, or is otherwise incapacitated, another judge may act in the matter.

If a petition for discharge is denied, the person is prohibited from renewing the petition for a minimum of one year.

Under the supervision of DPP, a sexual offender management team must conduct lifetime sexual offender supervision and the supervision of probation, parole, or mandatory release of a person subject to lifetime sexual offender supervision. A sexual offender management team must submit a progress report on each person under supervision to the sentencing court or juvenile court once every six months. Unless disclosure of a report would be in violation of laws regarding confidentiality of treatment records, a sexual offender management team must also provide copies of each progress report to local law enforcement units of the county in which the offender resides.

DPSCS is required to adopt regulations necessary to carry out the duties of the department relating to lifetime offender supervision.

The Sexual Offender Advisory Board: The Sexual Offender Advisory Board must:

- in collaboration with DPP, develop criteria for measuring a person's risk of reoffending to assist the court in determining whether a person may be appropriately released from lifetime sexual offender supervision;
- review the effectiveness of the State's laws and practices concerning sexual offenders, as specified;
- review developments and make recommendations for the treatment, management, and assessment of sexual offenders, as specified;
- develop standards for the certification of sexual offender treatment providers based on current and evolving evidence-based practices and make recommendations for a statewide certification process;
- make recommendations to DPP for training sexual offender management teams; and
- consider ways to increase cooperation among states with regard to sexual offender registration and monitoring.

Annually, by December 31, the board must report its findings and recommendations to the Governor and the General Assembly.

Background: In its [2014 report](#) (the latest available) to the General Assembly, the board noted several concerns regarding lifetime sexual offender supervision, including the lack of a mechanism in statute for a violation of lifetime sexual offender supervision to be charged and adjudicated, and the lack of a delineated process for response to a petition for discharge from lifetime sexual offender supervision.

The board specifically noted that the petition for discharge process requires the court to forward the petition to DPP for assignment to the designated Collaborative Offender Management/Enforced Treatment (COMET) team. The assigned COMET agent, after confirming the eligibility of the offender for consideration for discharge, schedules a risk assessment interview with a sexual offender treatment provider. The agent also schedules a polygraph examination specifically constructed to address issues relevant to the suitability of the offender for discharge. On receipt of the reports from the treatment provider and the polygraph examiner, the COMET agent incorporates the responses into a report summarizing the offender's overall criminal record and supervision history and provides a recommendation regarding the petition. The COMET team reviews the report and, following unanimous approval by the team, forwards the recommendation to the court.

The COMET team can make one of three recommendations, which the judge can implement or override. A recommendation can be made to grant the petition and, if the judge concurs, lifetime sexual offender supervision is terminated. A recommendation can be made to deny the petition and, if the judge concurs, the review process ends and lifetime sexual offender supervision continues. The COMET team can also recommend that the sexual offender be continued on "level five" lifetime sexual offender supervision. If the judge concurs, lifetime sexual offender supervision – at the least restrictive level – continues for a minimum of two years, after which a final determination can be made. This option would allow a sexual offender to demonstrate to the COMET team and to the court the offender's ability to ameliorate any lingering concerns and/or satisfy any incomplete requirements with minimal supervision.

In the 2014 report, the board recommended draft statutory language to address its concerns.

The Judiciary advises that, in fiscal 2018, there were 10 violations and 1 guilty disposition in the District Court for a violation of a condition of lifetime sexual offender supervision.

State Expenditures: General fund expenditures increase by \$33,034 in fiscal 2020 for computer programming upgrades necessary for the Judiciary to implement the bill. The estimate is based on approximately 305 additional work hours for analysis, programming, and testing.

Additional Information

Prior Introductions: SB 1268 of 2018 was referred to the Senate Rules Committee, but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - March 4, 2019
an/kdm

Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Criminal Procedure - Lifetime Sexual Offender Supervision -
Violations and Petitions for Discharge

BILL NUMBER: HB842

PREPARED BY: Rachel Sessa, Director of Government and Legislative Affairs

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL
BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS