

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1023 (Delegate Kipke, *et al.*)
 Judiciary

Criminal Procedure - Maryland Violent Offender Registry

This bill requires the Department of Public Safety and Correctional Services (DPSCS) to establish and maintain a central computerized Violent Offender Registry of persons convicted of specified violent offenses. Each registrant must pay an annual registration fee of \$50 for 10 years. The bill also establishes a Maryland Violent Offender Registry Fund. The fund may be used only for funding the administration of registry laws by county sheriffs and DPSCS.

Fiscal Summary

State Effect: Special fund revenues from registration fees increase by \$14,900 in FY 2020; future years reflect annualization and additional registrants. Special fund expenditures increase correspondingly and offset some portion of DPSCS’s costs (shown as GF/SF expenditures below) and/or are distributed to counties (not reflected below). Future year DPSCS expenditures reflect ongoing costs. General fund expenditures for the Judiciary increase by \$19,200 in FY 2020 only. General fund revenues increase minimally.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
GF Revenue	-	-	-	-	\$0
SF Revenue	\$14,900	\$34,700	\$54,500	\$74,300	\$94,100
GF Expenditure	\$19,200	\$0	\$0	\$0	\$0
GF/SF Exp.	\$227,200	\$86,400	\$88,800	\$91,400	\$94,100
Net Effect	(\$231,500)	(\$51,800)	(\$34,400)	(\$17,200)	\$0

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

Local Effect: Minimal increase in local government expenditures and revenues. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary:

Registration Requirements: The bill requires an individual to register on an annual basis with the Violent Offender Registry from the earliest of the date that the registrant is released, is granted probation, is granted a suspended sentence, or receives a sentence that does not include a term of imprisonment until 10 years after the registrant satisfies the sentence for the most recent offense for which the violent offender was convicted for which registration is required, including parole, probation, mandatory supervision, and restitution.

A person is convicted for purposes of the bill when the person (1) is found guilty by a jury or judicial officer; (2) enters a plea of guilty or *nolo contendere*; (3) is granted probation before judgment after a finding of guilt for a crime if the court, as a condition of probation, orders compliance with the bill's requirements; or (4) is found not criminally responsible for a crime.

A violent offender who resides in the State must register with the county sheriff for the county in which the person resides within 3 days after the date that the person is released, granted probation, granted a suspended sentence, or receives a sentence that does not include a term of imprisonment. A violent offender that moves into the State must register within 3 days after establishing temporary or permanent residence, beginning to habitually live in the State, or applying for a State driver's license, whichever is earlier. Unless otherwise subject to registration under the bill's provisions, a violent offender who is employed, registered as a student, or is a transient in the State must register with the county sheriff, as specified, within 3 days after the date the person begins employment, registers as a student, or enters as a transient in the State. The registrant must update registry information annually. Any address change must be updated within 10 days of the change.

A person is no longer subject to registration if (1) the underlying conviction is reversed, vacated, set aside, or expunged; (2) the person is pardoned for the underlying conviction; (3) the person is subject to registration under the State's Sexual Offender Registry; or (4) 10 years have passed since the person satisfied the sentence for the most recent violent offense for which the person has been convicted, as specified.

The Registry: The violent offender registry must be updated based on information made available to DPSCS. For each registrant, the registry must include the registrant's name, date of birth, race, gender, residential address, the date and a description of the crime for which registration is required, and a digital image of the registrant, as specified.

The county sheriff must forward all registration information to DPSCS. In addition to any fine, fee, or penalty levied or imposed, each registrant must pay an annual registration fee

of \$50. The county sheriff must remit the annual registration fees collected to the State Treasurer for deposit into the Maryland Violent Offender Registry Fund established by the bill.

The Maryland Violent Offender Registry Fund: The Maryland Violent Offender Registry Fund is a special, nonlapsing fund that consists of annual registration fees collected from registrants and any money made available from other sources. Investment earnings are paid into the general fund. The fund may be used only for funding the administration of the bill's provisions by county sheriffs and DPSCS. The fund is subject to audit by the Office of Legislative Audits (OLA).

Accessibility of Registry Information: DPSCS must make information regarding a violent offender contained in the registry available to the public, through the Internet, by telephone, by written access, and in person, as specified.

Prohibited Activity: The bill prohibits a person subject to registration from knowingly (1) failing to register with the county sheriff or (2) failing to provide accurate information when registering. A first time violator is guilty of a misdemeanor and subject to a maximum fine of \$5,000 and/or three years imprisonment. A second or subsequent violator is guilty of a felony and subject to a maximum fine of \$10,000 and/or five years imprisonment.

Definition: "Violent Offender" means a person who has been convicted of conspiring to commit, attempting to commit, or committing murder, a second or subsequent violent offense, or a crime committed in a federal, military, tribal, or other jurisdiction that, if committed in the State, would constitute murder or a second or subsequent violent offense.

Current Law:

Crimes of Violence

Section 5-101 of the Public Safety Article and § 14-101 of the Criminal Law Article have independent definitions of a "crime of violence." Designation of an offense under one of these definitions may subject a person to varying consequences.

Section 5-101 of the Public Safety Article

Section 5-101 defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) assault in the first or second degree; (4) burglary in the first, second, or third degree; (5) carjacking and armed carjacking; (6) escape in the first degree; (7) kidnapping; (8) voluntary manslaughter; (9) maiming; (10) mayhem; (11) murder in the first or second degree; (12) rape in the first or second degree; (13) robbery; (14) robbery with a dangerous weapon; (15) sexual offense in the first, second, or third degree; (16) home

invasion; (17) an attempt to commit offenses (1) through (16); or (18) assault with the intent to commit offenses (1) through (16) or a crime punishable by imprisonment for more than one year.

This definition is cross-referenced in statutes pertaining to reckless endangerment, committing a crime in the presence of a minor, use of a handgun or antique firearm in the commission of a crime, use of an assault weapon or magazine in the commission of a felony or a crime of violence, and possession of a rifle or shotgun by a person previously convicted of specified offenses.

Section 14-101 of the Criminal Law Article

Individuals convicted of a crime of violence under § 14-101 of the Criminal Law Article are eligible for various additional criminal penalties and earn diminution credits at a lower rate than other offenders.

Section 14-101(a) of the Criminal Law Article specifies offenses classified as crimes of violence. Section 14-101(b) through (d) impose mandatory sentences for individuals who have prior convictions for these offenses and meet other specified criteria.

Section 14-101(a) of the Criminal Law Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of certain sexual conduct with a child; (18) assault in the first degree; and (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Mandatory Sentences for Crimes of Violence

Subsequent offenders sentenced for a crime of violence under § 14-101 of the Criminal Law Article are generally subject to mandatory sentences. For a second conviction of a crime of violence committed on or after October 1, 2018, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 10 years, if the person has been convicted on a prior occasion of a crime of violence, including a conviction for a crime committed before October 1, 2018, and served a term of confinement in a correctional facility for that conviction.

For a third conviction, a person must be sentenced to a mandatory minimum, nonsuspendable and nonparolable term of 25 years, if the person has been convicted on two prior separate occasions of a crime of violence, in which the second or succeeding crime is committed after there has been a charging document filed for the preceding occasion and for which the convictions do not arise from a single incident, and has served at least one term of confinement in a correctional facility as a result of a conviction of a crime of violence.

For a fourth conviction, a person who has served three separate terms of confinement in a correctional facility as a result of three separate convictions of any crime of violence must be sentenced to life imprisonment without the possibility of parole.

State Revenues: Although the bill does not specify a meaning for “violent offense,” according to the Judiciary, there were 2,637 guilty dispositions for crimes of violence under § 14-101 during fiscal 2018. DPSCS advises that it conducted intake on 1,508 inmates for crimes of violence in fiscal 2018. Of these inmates, 34 are serving life sentences; the remaining 1,474 inmates have an average offense sentence of 9.47 years and total years of confinement average of 14.18 years. The Judiciary and DPSCS did not provide data on the percentage of these violations that were a second or subsequent offense; however, the number of offenders that are required to register under the bill due to convictions for these offenses is expected to be a relatively small portion of the total number of violations covered under the bill.

Under the bill, an individual must register annually and pay a \$50 registration fee for 10 years. The exact number of those that could be subject to registration is unknown; however, assuming that 15% of the 2,637 violations (using fiscal 2018 data) meet the bill’s requirements, 396 individuals are required to register annually. Based on that assumption, special fund revenues that are remitted to the Maryland Violent Offender Registry Fund from registration fees increase by \$14,850 in fiscal 2020, which accounts for the bill’s October 1, 2019 effective date. Future year revenues, which increase to \$94,050 by fiscal 2024, are annualized and reflect an additional 396 registrants each year.

General fund revenues may increase minimally from investment earnings of the new fund. It is assumed that the bill’s new misdemeanor and felony penalty provisions do not materially affect State revenues.

State Expenditures:

Administrative Costs for the Department of Public Safety and Correctional Services

General/special fund expenditures for DPSCS increase by \$227,198 in fiscal 2020, which accounts for the bill’s October 1, 2019 effective date. This estimate reflects the cost of establishing the registry within DPSCS, which includes a one-time expenditure of \$168,000 in computer programming expenses and the cost of hiring one administrative officer to maintain the registry. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$53,839
Computer Programming Expenses	168,000
Other Operating Expenses/Equipment	<u>5,359</u>
FY 2020 DPSCS Administrative Expenditures	\$227,198

Future year expenditures reflect a full salary with annual increases and employee turnover and ongoing operating expenses.

Some portion of DPSCS’s costs are presumably covered with special funds from the Maryland Violent Offender Registry Fund. However, based on the estimated fee revenue deposited into the fund and the fact that the fund is authorized to cover the administrative costs incurred by both DPSCS *and* county sheriffs, it is likely that a significant portion of DPSCS’s administrative costs will need to be funded with general funds, especially in the first few years. For example, from fiscal 2020 through 2024, even if DPSCS were to receive 100% of available special funds (which assumes that county sheriffs do not receive any funding), the special funds are only anticipated to cover about 46% of DPSCS’s costs over that same time period.

Special Funds for County Sheriffs

To the extent not all of the available special funds in any given year are used to cover DPSCS costs, any remaining special funds are presumably distributed to county sheriffs.

Other Agencies

Administrative Office of the Courts: General fund expenditures for the Administrative Office of the Courts (AOC) increase by \$19,162 in fiscal 2020 only for programming changes to the Judiciary’s case management systems. In addition, AOC reports that the bill may increase caseloads due to the new charges connected with registry-related violations and, as a result, a corresponding increase in initial appearance hearings, bail reviews, and

preliminary hearings held in the District Court, which could lead to an increase in the number of felony charges to be adjudicated in the circuit courts. Any such increases in caseloads can be handled with the existing budgeted resources of the courts.

Office of Legislative Audits: Assuming that OLA audits the new special fund as part of its regular audit of DPSCS, it is anticipated that OLA can implement the bill with existing resources.

Office of the Public Defender: The Office of the Public Defender advises that the bill likely increases the number of the cases handled by the agency; however, it is too speculative to determine the fiscal and/or operational impact on the agency.

Local Fiscal Effect: Local government expenditures likely increase minimally to accommodate the additional workload for county sheriffs. While the bill states that the Maryland Violent Offender Registry Fund may be used to cover the administrative costs incurred by county sheriffs, it is unclear how much money will be available to county sheriffs from the fund and what portion of local costs will be offset. Overall, however, the bill is not expected to significantly affect local government finances.

It is assumed that the bill's penalty provisions do not materially affect local government operations or finances.

Additional Comments: The bill specifies that the Maryland Violent Offender Registry Fund may be used only for the administration of the bill's provisions by county sheriffs and DPSCS. However, the bill does not specify how the money in the fund is distributed between DPSCS and county sheriffs. The bill also does not specify who is responsible for administering the fund.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery and Prince George's counties; Maryland Association of Counties; Maryland State Commission on Criminal Sentencing Policy; 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 – Office of Legislative Audits

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