

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 839

(Delegate Haynes, *et al.*)

Judiciary

Judicial Proceedings

Division of Parole and Probation - Central Home Detention Unit - Powers

This bill establishes a Central Home Detention Unit (CHDU) within the Department of Public Safety and Correctional Services' (DPSCS) Division of Parole and Probation (DPP). The bill grants employees of the unit who are authorized to make arrests the powers of police and peace officers and classifies them as police officers and law enforcement officers (1) subject to the Law Enforcement Officers' Bill of Rights (LEOBR) and (2) eligible for certification by the Maryland Police Training and Standards Commission (MPTSC).

Fiscal Summary

State Effect: Significant increase in general fund expenditures for DPSCS, as discussed below. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The Director of DPP may authorize DPP employees of CHDU to:

- execute warrants for the retaking of participants;
- execute warrants for the arrest of participants for whom a warrant is issued for an alleged violation of probation or parole;

- obtain and execute search warrants as authorized under § 6-109 of the Correctional Services Article; and
- arrest participants as authorized under § 2-207 of the Criminal Procedure Article.

A parole and probation employee who is authorized to make arrests must meet the minimum qualifications required by MPTSC and complete satisfactorily the training prescribed by MPTSC.

“Participant” means an individual on parole, on probation, in pretrial custody, or serving a sentence of incarceration who is participating in a home detention program.

Current Law:

DPP:

- supervises parolees;
- supervises individuals under mandatory supervision;
- regularly informs the Maryland Parole Commission of the activities of offenders it supervises;
- issues warrants for the retaking of an offender charged with a violation of parole or mandatory supervision; and
- administers the Drinking Driver Monitor Program.

With the Secretary of Public Safety and Correctional Services’ approval, DPP’s director may establish a home detention program under which an offender may live in a private dwelling that the director approves. The program is designed as an alternative to incarceration for a parolee who:

- is charged with a violation of a condition of parole by the issuance of a summons or retake warrant;
- is found guilty of violating a condition of parole that is technical in nature;
- is alleged to have violated a condition of parole by being charged with committing a new, nonviolent crime or has been convicted of a new, nonviolent crime which resulted in a sentence of probation, fine, or short-term incarceration; or
- is in imminent danger of having parole revoked after a retake warrant or summons has been issued.

An offender in the program must be supervised by electronic devices and direct contact by DPP employees. An offender is not eligible for the program if a violation of a condition of parole or mandatory supervision is based on the commission of a crime of violence.

While in the program, an offender must remain in the offender's approved dwelling, with specified exceptions, and the offender is responsible for all of the offender's living expenses.

Benefits for Police and Law Enforcement Officers

LEOBR was enacted in 1974 to guarantee police officers specified procedural safeguards in any investigation that could lead to disciplinary action. It extends to police officers of 26 specified State and local agencies but does not extend to any correctional officers in the State. LEOBR extends uniform protections to officers in two major components of the disciplinary process: (1) the conduct of internal investigations of complaints that may lead to a recommendation of disciplinary action against a police officer; and (2) procedures that must be followed once an investigation results in a recommendation that an officer be disciplined. LEOBR requirements are much more restrictive and time consuming than general State personnel requirements under Title 11 of the State Personnel and Pensions Article. Specifically, LEOBR delineates who can do the investigation, what management must disclose to the employee, and when and where the meeting can take place; it also limits the duration of the meeting.

Workers' Compensation and Public Safety Employees

If an employee covered under workers' compensation insurance has suffered an accidental personal injury, compensable hernia, or occupational disease, the employee is entitled to compensation benefits paid by the employer, its insurer, the Subsequent Injury Fund, or the Uninsured Employers' Fund, as appropriate. Workers' compensation benefits include wage replacement, medical treatment, death and funeral costs, and vocational rehabilitation expenses.

Related to wage replacement benefits, an employee who receives worker's compensation benefits for a permanent partial disability for a period of less than 75 weeks (which is the most common type of injury and length of award) is eligible to receive weekly benefits of one-third of his or her average weekly wage, but that amount may not exceed 16.7% of the State average weekly wage. However, a "public safety employee," as defined in statute, is eligible for enhanced workers' compensation benefits if awarded compensation for this same injury. Police officers employed by the State are considered public safety employees for purposes of these enhanced benefits. In such a case, the employer is eligible to receive approximately double the weekly benefits – two-thirds of his or her average weekly wage, but that amount may not exceed one-third of the State average weekly wage. The State average weekly wage for 2019 is \$1,116.

Maryland Police Training and Standards Commission

Chapter 519 of 2016 reconstituted the former Police Training Commission as MPTSC, an independent commission within DPSCS. MPTSC operates approved police training schools and prescribes standards for and certifies schools that offer police and security training. In consultation and cooperation with various entities, it also sets minimum qualifications for instructors and certifies qualified instructors for approved training schools.

MPTSC certifies persons as police officers who have met commission standards, including submission to a criminal history records check and a specified psychological evaluation. An individual who is not satisfactorily trained in the 12-month probationary period may not be employed as a police officer, and a police officer may not serve after certification has been revoked, suspended, or allowed to lapse.

Background: DPSCS already has already established a CHDU. DPSCS advises that CHDU has 36 enforcement officers who are responsible for monitoring 154 inmates and 16 pretrial release detainees.

State Expenditures: General fund expenditures for DPSCS increase significantly as a result of enforcement officers within CHDU becoming classified as police officers and law enforcement officers. The increase in costs relates to training, equipment, and additional workers' compensation benefits.

Each officer must meet MPTSC minimum qualifications and satisfactorily complete the training prescribed by MPTSC (a full police academy program with higher training standards). In addition, each officer requires additional equipment and a law enforcement vehicle. DPSCS estimates the cost of a law enforcement vehicle at \$39,500; thus, if DPSCS must purchase 36 additional vehicles, the total cost for those vehicles is \$1,422,000.

In addition, the bill redefines the enforcement officers to be police officers employed by the State, and these officers are entitled to enhanced workers' compensation benefits for one of the most common types of workplace injury (a permanent partial disability that lasts less than 75 weeks). While the number of affected claims made subject to enhancement in any given year cannot be reliably estimated, any expenditure increase due to this designation is likely to be minimal because the bill only applies to 36 employees, but could be significant if multiple employees receive this type of injury and benefit in any given year.

For illustrative purposes only, a public safety employee who receives benefits for such an injury in 2019 would be entitled to a maximum weekly benefit of \$372 (for a maximum of 74 weeks, for a total of \$27,528); whereas any other employee would be entitled to a

maximum weekly benefit of \$186 (for a maximum of 74 weeks, for a total of \$13,764) under the same circumstances.

As the bill does not add the enforcement officers to the Law Enforcement Officers' Pension System (LEOPS), pension benefits remain the same. Salaries of the affected employees also remain the same.

Additional Comments: LEOPS provides various pension and death benefits. Membership in LEOPS is a condition of employment for State law enforcement employees in 22 specified groups, including the Warrant Apprehension Unit within DPP. The bill does not explicitly add employees of CHDU to LEOPS; so those employees remain members of the Employees' Pension System.

Additional Information

Prior Introductions: None.

Cross File: SB 779 (Senator Waldstreicher) - Judicial Proceedings.

Information Source(s): Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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