

Department of Legislative Services
 Maryland General Assembly
 2021 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 264

(Chair, Judicial Proceedings Committee)(By Request -
 Departmental - Public Safety and Correctional Services)

Judicial Proceedings

**Criminal Procedure – Lifetime Sexual Offender Supervision – Conditions,
 Violations, and Petitions for Discharge**

This departmental bill makes numerous changes to statutory language regarding lifetime sexual offender supervision, including (1) altering the required conditions of lifetime sexual offender supervision; (2) altering 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 for a violation of a condition of the lifetime supervision; and (3) altering the process by which a person subject to lifetime sexual offender supervision may petition for discharge from lifetime supervision.

Fiscal Summary

State Effect: General fund expenditures increase by \$32,700 in FY 2021 only for programming costs for the Judiciary. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	32,700	0	0	0	0
Net Effect	(\$32,700)	\$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/Current Law: Under current law, 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.

The bill expands the persons for whom a sentence is required to include a term of lifetime sexual offender supervision by clarifying that a person who meets *any* of the factors set forth above is subject to lifetime sexual offender supervision.

Under current law, 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. Among others, special conditions may include global positioning satellite tracking or equivalent technology and participation in a sexual offender treatment program. The sentencing court may adjust the special conditions of such lifetime supervision in consultation with the person's sexual offender management team.

The bill requires conditions of lifetime sexual offender supervision to include all standard and special conditions of supervision imposed by (1) the sentencing court at the time of sentencing and (2) the Maryland Parole Commission (MPC) at the time of release from custody.

A person subject to lifetime supervision is prohibited from knowingly or willfully violating the conditions of the supervision and subject to penalties as specified in statute. Such penalties are unchanged by the bill, but the bill also establishes 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 otherwise unavailable, as specified.

Under current law, a person may petition for discharge from lifetime sexual offender supervision after serving at least five years of the extended sexual offender supervision. A petition for discharge must include a risk assessment of the person conducted by a sexual offender treatment provider within three months before the date of the filing of the petition and a recommendation regarding the discharge of the person from the sexual offender management team. The bill alters these provisions to instead require a petition for discharge to include a report from the sexual offender management team that includes (1) a risk assessment of the person conducted by a sexual offender treatment provider approved by DPSCS; (2) a polygraph examination of the person conducted by a polygraph examiner approved by DPSCS; and (3) a recommendation from the sexual offender management team regarding the discharge of the person from lifetime sexual offender supervision.

Under current law, 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 a petition for discharge, as specified. The bill further establishes that 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. If a petition for discharge is denied, current law prohibits a person from renewing the petition for a minimum of one year. The bill alters this to a minimum of two years.

Finally, the bill establishes that 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.

Sexual Offender Management Teams

Under current law, 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: Under current law, 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 the laws and practices of other states and jurisdictions concerning sexual offenders;
- review practices of MPC and DPP concerning supervision and monitoring of sexual offenders;
- 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 [2019 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, the ability for a sexual offender to renew a petition for discharge after only one year, and the lack of a delineated process for response to a petition for discharge from lifetime sexual offender supervision.

While the board concluded that the specific process regarding a petition for discharge was not necessary to comprehensively include in statute, it considered it crucial to establish such a process. Therefore, under current practice, the court forwards 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 approval by core members of 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 one year, 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.

Additional Information

Prior Introductions: HB 842 of 2019, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. SB 1268 of 2018, a similar bill, was referred to the Senate Rules Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Department of Legislative Services

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rh/jkb

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Criminal Procedure – Lifetime Sexual Offender Supervision –
Conditions, Violations, and Petitions for Discharge

BILL NUMBER: SB 264

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