

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE

Senate Bill 186 (Senator Bromwell)

Judicial Proceedings

Sexually Violent Predator Act of 1998

This bill creates a procedure for the civil commitment of “sexually violent predators”.

Fiscal Summary

State Effect: Indeterminate significant expenditure increases, including possible capital costs, for the Department of Health and Mental Hygiene, the Department of Public Safety and Correctional Services, the Office of the Attorney General, and the Public Defender. Revenues would not be affected.

Local Effect: None. While this bill would generate an indeterminate number of additional trials in the circuit courts. The total number is assumed to be minimal for any individual circuit and is not anticipated to have a measurable effect on the expenditures of the Judiciary.

Small Business Effect: Indeterminate minimal increase in business opportunities for psychiatrists and psychologists who are likely to be called by the State or the defense in trials and review hearings relating to the civil commitment of sexual offenders.

Fiscal Analysis

Bill Summary: This bill pertains to persons convicted of a sexually violent offense or persons who have been charged with such an offense but were determined to be incompetent to stand trial or not criminally responsible. The bill requires the Attorney General to make determinations as to whether such persons meet a statutory definition of sexually violent predators prior to their release from custody.

Specifically, the bill provides that the Attorney General must be notified by the Division of Correction (DOC) of the anticipated release of such a person. The Attorney General must then make a determination as to whether the person meets the definition of a sexually violent predator. The Attorney General is required to receive recommendations upon which to base such a determination from: (1) a prosecutor’s review committee (appointed by the Attorney

General); and (2) a multidisciplinary team consisting of representatives of the Department of Health and Mental Hygiene and the Department of Public Safety and Correctional Services (DPSCS).

The bill defines a sexually violent predator as a person who: (1) has been convicted of a sexually violent offense; and (2) suffers from a mental abnormality or personality disorder that makes the person likely to engage in a predatory act involving a sexually violent offense.

The bill substantially protects all persons involved in the determination process from civil liability for acts performed in good faith under the provisions of the bill.

The bill authorizes the Attorney General to petition a circuit court that there is probable cause to believe that the person named in the petition meets the statutory definition of sexually violent predator. If probable cause is found, the court must direct the person to be taken into custody and conduct a trial within 60 days.

The bill provides for the manner in which such a trial may proceed. The defendant, the Attorney General, or the judge may ask for a jury trial. The State has the burden of proof beyond a reasonable doubt. A person found to be a sexually violent predator must be placed in the custody of the Department of Health and Mental Hygiene (DHMH) for “control, care, and treatment at a State facility until the defendant’s mental abnormality or personality disorder has so changed that the defendant is safe to be at large.” The bill provides for specified annual mental examinations, court reviews, notifications, and reports.

A committed person must be annually notified of the right to petition for release. The committed person is entitled to an attorney, but is not entitled to be present at annual review hearings. The bill also provides for release hearings, and the criteria upon which a person must be released. Victims (or designated family members) are entitled to be notified of: (1) probable cause hearings or trials to determine whether a person is a predator; (2) status review or release hearings; or (3) the release of a committed person.

Finally, the bill eliminates current law provisions relating to court determinations of sexually violent predators at the request of State’s Attorneys after a second or subsequent sexually violent offense. These provisions were added during the 1997 Session.

Background: This bill is modeled after an existing statute in Kansas. Kansas' Sexually Violent Predator Act established procedures for the civil commitment of persons who, due to a "mental abnormality" or a "personality disorder," are likely to engage in "predatory acts of sexual violence."

Kansas reports that, after three years experience, there are 15 people civilly committed under this statute and housed at one state hospital facility. Operations under the Kansas statute were temporarily placed on hold while a challenge to the law wound its way to the U.S.

Supreme Court. The high court sustained the constitutionality of the Kansas statute, in general, finding the statute civil in nature and, as such, nonpunitive.

Kansas also reports that there are approximately 1,250 sex offender inmates eligible for parole or release over the next five years. It is estimated that 10% (120) could meet the sexual predator criteria involving a mental abnormality or personality disorder. Accordingly, Kansas anticipates that approximately 24 such inmates would be subject to sexual predator determination proceedings annually. The successful commitment rate is currently 50%, or one additional commitment per month. Kansas also believes that actual commitments could climb to two per month in the near future.

Maryland has twice the population of Kansas, and three times the number of prisoners serving sentences of more than one year.

State Expenditures: Since this bill is modeled after a statute in one state with dissimilar demographics and limited experience, it is difficult to reliably predict -- without any actual experience here -- what Maryland's costs would be under a civil commitment statute for sexual predators. In addition, it is unclear as to when, on average, a sexually violent offender committed as a sexual predator to the "control, care, or treatment" of DHMH might successfully petition for release. There is insufficient data to predict when, if ever, a sexual predator might be considered cured of the mental abnormality or personality disorder which led to commitment.

In any event, what follows is a somewhat broad discussion of the potential costs that could arise from this bill.

DHMH bases its cost projections on two assumptions: (1) that approximately 250 persons per year due to be released by the Division of Correction (based on 1997 intake and release data) would trigger the Office of the Attorney General to seek sexual predator determinations; and (2) that 50 persons per year (20% of the 250 due for release) would be subject to actual commitment. In addition, the Mental Health Administration assumes that the same professional expertise for multidisciplinary teams would be needed for annual status reviews of committed persons. However, more recent data for fiscal 1997 has been provided by DOC, as follows:

**Violent Sexual Offenders
FY 97 DOC Data***

<u>Offense</u>		<u>Intakes</u>		<u>Releases</u>		<u>Probation Intakes</u>
1st Deg. Rape		23		23		13
2nd Deg. Rape	84		65		81	
Att. Rape		10		6		8
1st Deg Sex Off.		7		7		7
2nd Deg. Sex Off.		46		33		58
<u>3rd Degree Sex Off.</u>		<u>62</u>		<u>44</u>		<u>198</u>
Subtotal		232		178		365
<u>Child [Sex] Abuse**</u>		<u>51</u>		<u>50</u>		<u>281</u>
TOTAL		283		228		646

**DOC records this data by a “most serious offense” data collection methodology. That is, the numbers presented here represent intakes and releases where the cited offense was the most serious offense for that person’s incarceration. Many offenders are charged and convicted of multiple offenses, but only the most serious of those convictions is entered into the DOC data base. For instance, if a person is convicted of 1st degree rape as well as other “lesser” offenses, only the intake or release for the 1st degree rape charge would be recorded. If a person is convicted of murder and rape only the murder conviction intake or release would be entered. Such a murderer would not appear amongst intake or release data retrievals for sex offenders.*

*** In Maryland, “child sexual abuse” data is contained within the retrievable data for “child abuse, but is not available as a separate category. Accordingly, the numbers presented here represent all recorded “child abuse” cases within which it can be assumed there are some indeterminate number of “child sex abuse” cases.*

The fiscal 1997 data shown below, as provided by the Division of Correction, seems to indicate that the DHMH release projections are too high. Legislative Services finds the DHMH assumptions are, nevertheless, reasonable. The inherent difficulties with the DOC data collection methodology cited above allows for increases of release estimates above those shown in the table. In addition, even a minor reduction in probation intakes shown below would have a corresponding increase in DOC intakes and lead to increases in DOC releases. Accordingly, for the purposes of providing a guide for determining potential State commitment costs under this bill, the assumption by DHMH of 50 potential commitments annually is used as a basis for corresponding cost estimates herein.

DHMH assumes that persons committed under this bill would be maintained in a maximum security hospital setting such as the Clifton T. Perkins Hospital Center. The per patient budgeted cost for fiscal 1998, based on a census of 200 patients, is \$114,966. It is assumed that such maximum security costs for the “control, care, or treatment” of sexual predators would grow at a marginal rate of 1% per year.

Accordingly, general fund expenditures for DHMH could increase by an estimated \$2,639,196 in fiscal 1999, which reflects the bill’s October 1, 1998 effective date, as well as a 50% of full capacity adjustment to reflect the gradual nature of annual commitments. This estimate reflects the cost of hiring 3.5 physicians/psychiatrists, 2.5 psychologists, 2.5 social workers, and one office secretary to participate in evaluations required of the multidisciplinary teams convened by the Attorney General and other duties related to hearings and trials statewide. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, especially the maximum security costs of hospitalization. The information and assumptions used in calculating the estimate are stated below:

- 250 persons annually for whom sexual predator determinations will be sought by the Attorney General;
- 50 cases annually for which commitment proceedings will be successful; and
- Sexual predators will tend not to be successful in achieving release from civil commitment.

Salaries and Fringe Benefits	\$ 421,833
Hospitalization Costs	2,155,613
Additional Equipment	53,635
Other Operating Expenses	<u>8,115</u>
Total FY 1999 State Expenditures	\$2,639,196

Future year expenditures reflect (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses. By fiscal 2003 total personnel and operating costs for DHMH are estimated to be \$27,556,792, which includes the care, control, and treatment of 250 patients under the Sexually Violent Predator Act of 1998.

In addition, DHMH advises that only a limited number of new maximum security patients could be immediately absorbed at a currently operating facility. Recent average daily

capacity data from the Perkins Hospital Center shows that monthly the hospital is within 20 patients of capacity. While some additional space might be created by moving some current patients to other sites (such as Crownsville), this bill would eventually, perhaps shortly, give rise to a need for additional maximum security beds at Perkins or elsewhere. Accordingly, the bill could result in the need for a significant amount of additional capital expenditures. Design, planning, and construction of the new Perkin's wing incurred costs of \$12.4 million from fiscal 1994 to 1996.

Both the Attorney General and the Public Defender believe that this bill would require additional costs, including personnel costs. The Attorney General estimates that the bill would require at least one additional attorney. That position would be responsible for convening prosecutor's review committees as well as multidisciplinary teams for making recommendations for formal determinations to seek probable cause in circuit court. These responsibilities would go on to include actual trial work or oversight and participation subsequent status review proceedings. While the Attorney General has provided no actual cost estimates attached to these additional responsibilities, Legislative Services estimates the costs associated with an additional Assistant Attorney General to be about \$75,000 annually.

The Public Defender estimates that this bill could increase annual costs by approximately \$200,000 which would include the costs of an additional attorney, one additional investigator, additional secretarial assistance, and the possible use of a panel attorney. It is assumed that both the Attorney General and the Public Defender will make use of expert witness testimony at the various proceedings arising from this bill. The cost of such expert testimony is indeterminate, but is assumed to be meaningful.

The Department of Public Safety and Correctional Services (DPSCS) advises that the requirements of this bill would not have any significant effect on the Division of Correction's operations or funding. The division's current operations include procedures for assessing sex offenders' risk to public safety, suitability for release, and registration. This would include procedures for coordinating preparation for trials and hearings involving inmates and the Office of the Attorney General. The Division of Parole and Probation estimates that this bill would have no fiscal impact on that division.

The elimination of provisions relating to predator determinations by courts stemming from requests by State's Attorneys would have little or no State or local government fiscal impact. These provisions were enacted as Chapter 754 of 1997, which included uncodified language authorizing the Court of Appeals to adopt rules governing court determinations of sexually violent predators. Since the Court of Appeals has declined to adopt such rules, it is assumed that these provisions would not be invoked during fiscal 1998.

Small Business Effect: Both the Office of the Attorney General and the Public Defender anticipate that this bill would generate a need for expert witnesses in the trials to determine if

a sexually violent offender meets the criteria for sexual predator, and in annual status review hearings for those persons actually committed to the custody and care of the Department of Health and Mental Hygiene. It is expected that experts on the subjects of “mental abnormality”, “personality disorders”, and any related behavioral sciences would be called by either side during the proceedings and in preparation for trial. It is assumed that these witnesses will primarily be psychologists and psychiatrists in private practice. Accordingly, such businesses would have additional opportunities provided for them as a result of the enactment of this legislation.

While it is difficult to predict the extent of such opportunities, assuming 50 initial cases each year and a growing number of status review cases in subsequent years, this bill could result in meaningful opportunities for medical and clinical experts in related fields.

Information Source(s): Department of Health and Mental Hygiene (Mental Health Administration); Department of Public Safety and Correctional Services (Division of Correction and Division of Parole and Probation); Office of the Attorney General; The Public Defender; Kansas Legislative Research Department; Kansas Social Rehabilitation Service (Sexual Predator Treatment Program); Department of Legislative Services

Fiscal Note History: First Reader - February 2, 1998

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