

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 1428 (Delegate Dembrow, *et al.*)
Judiciary

**Criminal Procedure - Sexually Violent Predators - Chemical or Physical
Treatment**

This bill authorizes a court to reduce the sentence of a defendant determined to be a certain category of “sexually violent predator” if the defendant elects to either be given a specified chemical treatment or undergo physical castration as a condition of supervised release.

Fiscal Summary

State Effect: Any additional workload or costs for the Department of Public Safety and Correctional Services (DPSCS) would be minimal. General fund expenditures for DPSCS could increase by as much as \$6,000 annually for each person who elects chemical treatment.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: This bill applies to persons determined by a court to be sexually violent predators, as defined under current law, and suffering from a mental abnormality that can be abated by chemical treatment or physical castration. The bill allows a court to reduce the sentence of such a defendant if the defendant elects, as a condition of supervised release, to be treated by medroxyprogesterone acetate (MPA) or its chemical equivalent or to undergo physical castration. The bill requires a court to consider specified

evaluations or evidence when making a determination whether a defendant is suffering from a mental abnormality that can be abated by chemical treatment or physical castration.

A treatment with MPA must be administered by DPSCS, or under the department's supervision. DPSCS is required to adopt regulations governing the administration and supervision of a chemical treatment program leading to supervised release.

A person electing to undergo physical castration must arrange and pay for the procedure, and provide DPSCS with documentation from a medical professional that the procedure has been performed. A supervised release subsequent to a physical castration may not begin until that documentation has been received by DPSCS.

A person electing one of these procedures must acknowledge knowing and voluntary consent to the court in writing. A person who violates a condition of release under these provisions may not participate in supervised release and must be incarcerated for the remainder of the person's sentence or any other time period determined appropriate by the court.

Current Law: Under Maryland's Crimes Against Children and Sexual Offender Registration Law, a "sexually violent predator" is defined as a person who has been convicted of a subsequent sexually violent offense and designated by the sentencing court as a sexually violent predator (at risk of committing a subsequent sexually violent offense). After release from incarceration for the underlying offense, sexually violent predators are required to register with their supervising authority every 90 days for life.

Background: Chemical castration refers to the use of medications to inhibit the production of hormones in the sex glands. MPA is a synthetic progesterone manufactured under the trade name Depo-Provera. A progesterone is a class of female hormones. Treatments of Depo-Provera must generally be administered weekly by injection, at a cost of about \$40 per treatment. Depo-Provera is also covered as a contraceptive under the State Employee Health Benefits Plan.

In 1996 California became the first state to pass a measure known as a "chemical castration" law. California's law requires chemical castration of any person guilty of a second conviction of specified sex offenses, in addition to any other prescribed punishment. Florida, Georgia, Louisiana, and Montana passed similar measures in 1997.

The MPA treatments, long used in sex offender treatment, may be ordered for Florida defendants convicted of sexual battery, and are mandatory for subsequent convictions. In Georgia, child molesters placed on probation or released from confinement must undergo

psychiatric evaluation and may be ordered to receive chemical treatments. Louisiana offenders convicted more than once of sex crimes against a victim younger than 12 years of age are required to undergo mental health evaluation and development of a treatment plan, which may include the chemical treatments. The Montana law requires that the chemical treatments begin prior to a sex offender's release from confinement and continue indefinitely.

A Wisconsin law passed in 1998 allows voluntary participation in a corrections program via use of an antiandrogen. The statute also provides that participation in the program cannot be used by the parole board as a determinant for parole, and requires a report in three years by the corrections department to the legislature on the effectiveness of the treatment.

A Texas law allows repeat sex offenders to elect for surgical castration under certain conditions. An Oregon statute directs the Department of Corrections to establish a chemical castration pilot program for selected sex offenders who are eligible for parole or post-prison supervision, and to require their participation as a condition of release.

State Expenditures: The cost for a weekly Depo-Provera injection is about \$40, or about \$2,100 per year. Other somewhat equivalent drugs could be given on a monthly rather than weekly basis, and would cost about \$500 per treatment, or \$6,000 per year. Such treatment also would involve additional medications and counseling as follow-up or after-care. Under this bill, those costs would be borne by DPSCS, and could continue for the life of the individual being treated.

In Wisconsin, to date, actual treatments have not begun, but are expected in the near future. Policies and procedures for chemical castrations are now in the final draft stage. Wisconsin experienced difficulty in finding a medical doctor to respond to a request for proposals for castration services. The Wisconsin corrections department has recently begun to identify inmates who are statutorily eligible, and a staff person has interviewed a number of these eligible inmates to see who would be interested in volunteering for this process. Injections would begin 30 days prior to release. Medical treatment would then continue in the community, but there has been difficulty locating community providers who wish to be involved with this procedure.

Wisconsin's statute gives the corrections department authority to use chemical castration on a nonvoluntary inmate, but research has indicated it is much more effective with a voluntary client. The department also reports that using it on unwilling participants was less defensible in court and raised numerous administrative concerns, such as providing hearings, witnesses, and advocates to ensure due process.

In Florida, since 1997, only one offender has asked for the chemical treatment and was denied that treatment by the judge in the case. In California, a court challenge involving qualifying subsequent offenses has delayed implementation of the program. To date, no person has received this treatment in California, and the earliest expected release date of a qualifying person (after resolution of the legal issues) is 2078.

Any additional hearings to determine whether a defendant is suffering from an appropriate medical abnormality to elect to undergo such a procedure could be handled with the existing budgeted resources of the Judiciary.

Additional Information

Prior Introductions: In 1997, a similar bill applicable to certain child sexual offenders was introduced as SB 518. After a hearing before the Judicial Proceedings Committee, that bill was withdrawn.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services (Division of Correction, Division of Parole and Probation), National Conference of State Legislatures, California Legislative Analyst's Office, California Department of Corrections, Florida Office of Program Policy Analysis and Government Accountability, Wisconsin Department of Corrections, Center for Sex Offender Management, Johns Hopkins University (Department of Psychiatry and Behavioral Sciences), Department of Legislative Services

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