

Department of Legislative Services  
 Maryland General Assembly  
 2002 Session

**FISCAL NOTE**

Senate Bill 280 (Senator Stone, *et al.*)  
 Judicial Proceedings

**Sexually Violent Predators**

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

**Fiscal Summary**

**State Effect:** General fund expenditures could increase by at least \$6.86 million in FY 2003 and by \$53.3 million by FY 2007, excluding possible capital costs, for the Department of Health and Mental Hygiene, the Office of the Attorney General, and the Office of the Public Defender. Out-year costs reflect inflation and 60 new patients annually. Revenues would not be affected.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	6,857,900	17,799,700	28,970,200	40,796,400	53,307,600
Net Effect	(\$6,857,900)	(\$17,799,700)	(\$28,970,200)	(\$40,796,400)	(\$53,307,600)

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

**Local Effect:** Minimal. 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:** Potential meaningful 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.

## Analysis

**Bill Summary:** This bill establishes civil commitment procedures in which a “sexually violent predator” may be placed in the custody of the Department of Health and Mental Hygiene until the person is safe to be released at large in the population. 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 a person who has been convicted of a sexually violent offense or a person charged with such an offense who has been determined to be incompetent to stand trial or not criminally responsible. 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 (DHMH) and the Department of Public Safety and Correctional Services (DPSCS). If the defendant is indigent, the bill requires representation by the Office of the Public Defender.

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 of beyond a reasonable doubt. A person found to be a sexually violent predator must be placed in the custody of 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 under Chapter 754 of 1997.

**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). A sexually violent offense is first or second degree rape, first, second, or third degree sexual offense, attempted first degree rape or sexual offense, or assault with intent to commit rape or sexual offense in the first or second degree.

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:** 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."

Operations under the Kansas statute had been 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. The civil commitment statute for sexual predators in Washington State, which predates the Kansas law, has also withstood constitutionality tests. In 2001, the U.S. Supreme Court found, in essence, that a state's failure to provide treatment required by law does not turn a sex-predator's lawful confinement into unlawful punishment.

However, later that same year, in *Kansas v. Crane*, the court held that a state must prove convicted sex offenders cannot control themselves if they are to be kept confined after their prison terms expire. Although the ruling did not ban such civil commitments, sexual offenders must be treated the same as other people singled out for involuntary commitment.

As of March 1, 2002, there are 67 people civilly committed as sexual predators and housed at the Larned Correctional Mental Health Facility in Kansas and an additional 12 persons are awaiting trial. Three persons have been released.

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 approximately two additional commitments per month. The estimated cost for treatment and confinement per sexual predator offender in Kansas is \$80,000 annually.

Maryland has twice the population of Kansas, and three times the number of prisoners serving sentences of more than one year. There are currently 16 states with statutes that authorize the confinement and treatment of sexual predators following completion of their criminal sentences (Arizona, California, Florida, Illinois, Iowa, Kansas, Minnesota, Missouri, New Jersey, North Dakota, Rhode Island, South Carolina, Texas, Virginia, Washington, and Wisconsin).

Some states are trying other innovative approaches to the problem of how to handle sexually predatory behavior. In Florida, certain sexual offenders are tracked after incarceration via the use of electronic devices worn by the offender and the use of a global positioning system.

**State Fiscal Effect:** 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.

Cost projections under the provisions of this bill are based on two assumptions: (1) approximately 300 persons per year due to be released by DOC (based on 2001 intake and release data) would trigger the Office of the Attorney General to seek sexual predator determinations; and (2) 60 persons per year (20% of the 300 due for release) would be subject to actual commitment. In addition, it is assumed that the same professional expertise for multidisciplinary teams would be needed for annual status reviews of

committed persons. A more complete list of DOC intakes and releases can be found in **Exhibit 1**.

<b>Summary of Quantifiable FY 2003 State Costs</b>	
DHMH	\$5.6 million in hospitalization and other related costs (increasing to \$51.5 million by FY 2007, not including significant eventual capital costs)
Attorney General	\$241,500 (excluding expert witnesses, and increasing to \$337,650 by FY 2007)
Public Defender	\$1.0 million (including expert witnesses, and increasing to \$1.4 million by FY 2007)
<b>FY 2003 Total</b>	<b>\$6.85 million</b>

*Department of Health and Mental Hygiene*

It is assumed 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 2002, including overhead, based on a census of 210 patients, is \$166,892. It is also assumed that such maximum security costs for the “control, care, or treatment” of sexual predators would grow at a rate of 3% per year.

Accordingly, general fund expenditures for DHMH could increase by an estimated \$5,588,571 in fiscal 2003, which reflects the bill’s October 1, 2002 effective date, as well as a pro-rated patient population adjustment to reflect the gradual nature of annual commitments. This estimate reflects the cost of ten new positions (three physicians/psychiatrists, three psychologists, three 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:

- 300 persons annually for whom sexual predator determinations will be sought by the Attorney General;
- 60 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	\$ 513,146
Hospitalization Costs	5,006,760
Additional Equipment	46,175
Other Operating Expenses	<u>22,490</u>
<b>DHMH FY 2003 Total</b>	<b>\$5,588,571</b>

Future year expenditures reflect: (1) full salaries with 3.5% annual increases and 3% employee turnover; (2) 1% annual increases in ongoing operating expenses; and (3) a growth rate of cases of 60 new cases per year. By fiscal 2007 total personnel and operating costs for DHMH are estimated to be \$51,532,878 which includes the care, control, and treatment of 300 patients under the bill.

In addition, only a limited number of new maximum security patients could be immediately absorbed at a currently operating DHMH facility. Recent average daily capacity data from the Perkins Hospital Center shows that monthly the hospital is very near 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 Perkins' wing incurred costs of \$12.4 million from fiscal 1994 to 1996.

*Office of the Attorney General*

It is also anticipated that this bill would require additional costs for the Attorney General, including personnel costs. It is estimated that two additional attorneys would be required by the Attorney General. These positions 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 in subsequent status review proceedings. General fund expenditures could increase by an estimated \$241,494 in fiscal 2003, which accounts for the bill's October 1, 2002 effective date. This estimate reflects the costs of four new positions (two assistant attorneys general, one paralegal, and one legal secretary) to handle the sexual commitment hearing caseload. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$189,920
Other Operating Expenses	<u>51,974</u>
<b>OAG FY 2003 Total</b>	<b>\$241,494</b>

Future year expenditures reflect: (1) full salaries with 3.5% annual increases and 3% employee turnover; (2) 1% annual increases in ongoing operating expenses; and (3) a growth rate of cases of 60 new cases per year. In addition, it is assumed that the Attorney General 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 significant.

*Office of the Public Defender*

The Office of the Public Defender advises that, based on recent experience in other states, initial trials could be from two to six weeks in duration. In addition, each person is entitled to representation at all annual status review hearings. Assuming that there would be nearly 60 new trials per year, it is estimated that an additional six attorneys, handling eight to ten cases each, would be needed. The Public Defender also reports that since extensive use would be made of expert witness testimony at the various proceedings, significant additional costs for such witnesses (including travel expenses) would accrue.

Accordingly, general fund expenditures could increase by an estimated \$1,027,873 in fiscal 2003, which accounts for the bill's October 1, 2002 effective date. This estimate reflects the cost of nine new positions (six assistant public defenders, two investigators, and one office secretary) to handle the new caseload of sexual predator trials and hearings, including background investigations and trial preparation. It includes salaries, fringe benefits, one-time start-up costs, travel, and ongoing operating expenses.

Salaries and Fringe Benefits	\$372,945
Expert Witness Fees	575,925
Travel	30,000
Other Operating Expenses	<u>49,003</u>
<b>OPD FY 2003 Total</b>	<b>\$1,027,873</b>

Future year expenditures reflect: (1) full salaries with 3.5% annual increases and 3% employee turnover; (2) 1% annual increases in ongoing operating expenses; and (3) a growth rate of cases of 60 new cases per year.

The Public Defender also believes that the bill's provisions may increase the likelihood of a jury trial for the defendant's underlying offense since the bill creates the possibility of a lifetime confinement after a prison sentence is served regardless of the original sentence. For this reason, the agency believes that an additional 12 attorneys (one per district) and two office secretaries may be needed. While the need for these attorneys is less clear and may only arise over time with actual experience under the bill, the cost to the State of this additional personnel would be an additional \$840,000.

*Department of Public Safety and Correctional Services*

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 bill would have no fiscal impact on the Division of Parole and Probation.

**Small Business Effect:** Both the Office of the Attorney General and the Office of 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 as a result of the enactment of this legislation.

While it is difficult to predict the extent of such opportunities, assuming 60 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.

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## **Additional Information**

**Prior Introductions:** Similar bills were introduced during the 1998, 1999, 2000, and 2001 sessions. In 1998, SB 186 received an unfavorable report from the Senate Judicial Proceedings Committee; SB 117 passed the Senate and received an unfavorable report from the House Judiciary Committee. In 1999, SB 4 received an unfavorable report from the Senate Judicial Proceedings Committee. In 2000, SB 337 received an unfavorable report from the Senate Judicial Proceedings Committee. In 2001, SB 134 received an unfavorable report from the Senate Judicial Proceedings Committee.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene (Mental Hygiene Administration), Office of the Public Defender, Office of the Attorney General, Department of Public Safety and Correctional Services (Division of Correction), Center for Sex Offender Management, Larned State Hospital (Larned, Kansas), Department of Legislative Services

**Fiscal Note History:** First Reader - March 5, 2002  
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## Exhibit 1

### Violent Sexual Offenders FY 2001 DOC Data\*

<u>Offense</u>	<u>Intakes</u>	<u>Releases</u>	<u>Probation Intakes</u>
1st Degree Rape	20	41	13
2nd Degree Rape	73	80	70
Attempted Rape	9	10	6
1st Degree Sex Offense	10	7	11
2nd Degree Sex Offense	48	39	59
3rd Degree Sex Offense	74	78	191
Subtotal	234	255	350
Child [Sex] Abuse**	<u>49</u>	<u>54</u>	<u>233</u>
<b>Total</b>	<b>283</b>	<b>309</b>	<b>583</b>

\*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. Child sexual abuse could also be involved within the major offenses of 4th degree sexual offense, statutory rape, sodomy, sexual molestation, and perverted practices.