

Department of Legislative Services  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**

Senate Bill 272

(Senator Stone, *et al.*)

Judicial Proceedings

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**Criminal Procedure - Sexually Violent Predators - Sentencing**

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This bill requires that a person who is determined by a court to be a sexually violent predator must be sentenced to life imprisonment without the possibility of parole. The bill's provisions are applied prospectively only.

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**Fiscal Summary**

**State Effect:** Potential significant general fund expenditure increase for the Office of the Public Defender. Additional imprisonment costs for the Division of Correction (DOC) associated with lengthier incarcerations would not be incurred until future years.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A sexually violent predator is a person who is convicted of a sexually violent offense and who has been determined by the court to be at risk of committing another sexually violent offense or a person who is or was required to register every 90 days for life under the laws of another state or a federal, military, or Native American tribal jurisdiction. A sexually violent offense is defined as: first or second degree rape; first, second, or third degree sexual offense; attempted first or second degree rape or sexual offense; assault with intent to commit first or second degree rape or sexual offense, as prohibited prior to October 1, 1996; or a comparable crime committed in another state or in a federal, military, or Native American tribal jurisdiction.

Before or during sentencing of a person convicted of a sexually violent offense, a judge is required to determine, if requested by the State's Attorney, whether a defendant convicted of a sexually violent offense is a sexually violent predator. In determining if a defendant is a sexually violent predator, the court must consider: (1) evidence that the court considers appropriate, including the presentencing investigation and the sexually violent offender's inmate record; (2) evidence introduced by the convicted person; and (3) at the request of the State's Attorney, evidence presented by the victim of the offense.

In order to request that a determination be made as to a defendant's sexually violent offender status, the State's Attorney must serve the defendant or the defendant's counsel with notice at least 30 days before trial.

The sentences for the crimes that predicate a finding that a person is a sexually violent offender range from life imprisonment without the possibility of parole to a term of imprisonment not exceeding 20 years. A determination of "predator" status is only used for purposes of establishing sex offender registration requirements (length, frequency, and contents of registration reporting). It is not currently used as a sentence enhancement, nor is it itself a crime.

Chapter 266 of 2002 provided that if a person who has a prior conviction from another incident of first or second degree rape or sex offense is convicted of a subsequent offense of second degree rape or sexual offense, third degree sexual offense, or attempted second degree rape or sexual offense, the person is subject to imprisonment not exceeding life.

The Act's provisions were applied prospectively only. The prior offense, however, may have occurred before the Act's effective date, October 1, 2004.

**Background:** Maryland first enacted its version of sexual offender registration provisions (*Megan's Law*) during the 1995 session (Chapter 142 of 1995). To date, there are two sexual predators in the sexual offender registry. DOC has 25 inmates categorized as a sexual predator at intake serving a variety of terms as multiple offenders.

**State Expenditures:** General fund expenditures could eventually increase as a result of the bill's incarceration penalty due to more people being committed to DOC facilities for longer periods of time. The number of people that would be convicted under this bill's provisions is unknown. Under current law sentencing practices, a person sentenced to life without the possibility of parole may earn diminution credits and is expected to serve a term of about 540 months (45 years).

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 per month. Because the bill only applies to offenses committed after the bill's October 1, 2004 effective date, any expenditure increase would not be felt until future years.

In addition, litigation of cases involving a penalty of life without parole are lengthy because few defendants will plead guilty to an offense carrying such a penalty and because sentencing proceedings frequently include defenses involving lay and expert testimony and other evidence that might mitigate against such a sentence. The Public Defender estimates the cost of a fully litigated life without parole case at about \$25,000, including the costs of experts, records, and investigation.

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### **Additional Information**

**Prior Introductions:** In 2001, a similar bill, SB 540, received an unfavorable report from the Senate Judicial Proceedings Committee.

**Cross File:** None.

**Information Source(s):** State's Attorneys' Association, Office of the Public Defender, Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - March 12, 2004  
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