

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE

House Bill 241
 Judiciary

(Delegate Minnick, *et al.*)

Criminal Procedure - Sex Offenders - Electronic Tracking Bracelets

This bill requires that a person required to register as a sex offender for life must also register for electronic tracking with DPSCS and wear the electronic device provided by DPSCS at all times.

Fiscal Summary

State Effect: General fund expenditure increase of \$20.4 million and revenue increase of nearly \$4 million in FY 2007. Out-years reflect annualization, inflation, and an increase in offenders subject to tracking of about 300 per year. The criminal penalty provisions of this bill are not expected to significantly affect State finances or operations.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
GF Revenue	\$3,973,900	\$4,463,000	\$4,952,100	\$5,441,200	\$5,930,300
GF Expenditure	20,423,000	23,863,400	25,921,900	28,024,700	30,175,700
Net Effect	(\$16,449,100)	(\$19,400,400)	(\$20,969,800)	(\$22,583,500)	(\$24,245,400)

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

Local Effect: Any responsibilities for local law enforcement units should be able to be addressed via contracts with DPSCS.

Small Business Effect: Potential meaningful for any global positioning systems (GPS) equipment contractor successful in providing hardware and related services.

Analysis

Bill Summary: DPSCS is required to establish and maintain a real time electronic tracking program for sex offenders, and report to the appropriate court or law

enforcement agency if a “trackee” is present in a prohibited geographical area. DPSCS must also: (1) develop procedures to determine, investigate, and report on a trackee’s noncompliance; (2) immediately investigate a report of noncompliance; and (3) contract with local law enforcement agencies for the apprehension of trackees in noncompliance. DPSCS must establish a reasonable fee, which may be waived in whole or in part if not affordable by the trackee, for the cost of electronic tracking.

The bill prohibits a trackee from knowingly failing to register; failing to wear the device; or altering, tampering with, damaging, or destroying a device. A violator is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a fine of \$10,000.

Current Law: Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment, is required to register with the State sex offender registry upon release from prison or release from court if the person did not receive a prison sentence. Offenders who are required to register in other states and who come to Maryland are required to register upon entering Maryland. Offenders from other states who may not be required to register in the home state are required to register in Maryland if the crime would have required registration in Maryland if committed in Maryland. Juveniles who are adjudicated as adults and convicted for crimes that require registration are included in the registry. Juveniles who are adjudicated delinquent for these crimes through the juvenile court system are not included in the registry.

Maryland has four categories of persons convicted of sexual offenses: (1) a child sexual offender; (2) an offender; (3) a sexually violent offender; and (4) a sexually violent predator.

“Sexually violent predator” means a person who: (1) is convicted of a sexually violent offense; and (2) has been determined to be at risk of committing another sexually violent offense. Also included under this definition are persons who are or were required to register every 90 days for life under the laws of another state or a federal, military, or Native American tribal jurisdiction.

Sexually violent offender means a person who: (1) has been convicted of a sexually violent offense; (2) has been convicted of an attempt to commit a sexually violent offense; or (3) has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in this State, would constitute a sexually violent offense.

“Sexually violent offense” is defined as first or second degree rape; first, second, or third degree sexual offense; attempted rape or sexual offense; or assault with intent to commit

first or second degree rape or first or second degree sexual offense as prohibited under Maryland's criminal code on or before September 30, 1996. Also included under this definition are certain crimes that were committed in another state or in a federal, military, or Native American tribal jurisdiction.

Sexual offenders are required to register with the Crimes Against Children and Sexual Offender Registry for a term of either 10 years or life depending on the offense. The registry is operated by the Sexual Offender Registry unit of DPSCS. An offender, a child sexual offender, and a sexually violent offender must register annually. A sexually violent predator must register every 90 days. Under the State's sexual offender registration laws, a State's Attorney may request that a sexual offender be designated a sexually violent predator. Lifetime registration is required for: (1) sexually violent predators; (2) persons convicted of a sexually violent offense; (3) persons convicted of child abuse for commission of a sexual act involving penetration of a child under 12 years old; and (4) recidivist sexual offenders.

During the 2005 session, several bills were passed that affected these provisions:

- Chapter 236 added, under sex offender registration provisions, the court as the "supervising authority" when a sentence for the qualifying offense is modified to time served.
- Chapter 577: (1) required annual photographing of child sexual offenders and sexually violent predators; and (2) replaced the quarterly mail-in registration process for sexually violent predators with an in-person registration process. Under this enactment, a child sexual offender, an offender, and a sexually violent offender are required to register on or before January 1 annually and a sexually violent predator is required to register every 90 days on or before January 1, April 1, July 1, and October 1 annually.
- Chapter 578 made several substantive changes to these provisions, including: (1) providing for a graduated reentry release for registrants under the jurisdiction of the Department of Health and Mental Hygiene; (2) providing for a "transient" status of registrant; (3) adding "placement in home detention" to the definition of release; and (4) requiring notice of the location of employment for inmates placed on work release.

Background: Across the country, cases in which registered sex offenders have failed to update their addresses and have gone on to commit heinous sexual crimes have prompted lawmakers in several states to examine the ways of accounting for these offenders. In 2005, there were two notorious cases of child abduction, molestation, and murder by previously convicted child sex offenders – one in Idaho and the other in Florida. The

Florida case, involving a nine-year-old girl named Jessica Lunsford, has led that state to enact new legislation that:

- mandates a 25-year minimum mandatory term of imprisonment followed by lifetime supervision with electronic monitoring for persons convicted of lewd and lascivious molestation of a child under the age of 12 (there had been no lifetime supervision mandate);
- expands from 20 to 30 years the period of time before someone can petition to have the sexual predator designation removed;
- creates a new aggravating circumstance to qualify a sexual predator who commits a murder for a death sentence;
- retroactively requires the court to electronically monitor registered sex offenders and sexual predators whose victims were 15 years of age or younger and who violate their probation or community control and the court imposes a subsequent term of probation and community control; and
- prospectively mandates the court to order electronic monitoring for persons placed on probation or community control who are convicted or previously convicted of various unlawful sex acts against a child 15 years of age or younger or are registered sexual predators.

This bill is similar to certain GPS provisions of Florida's Lunsford Act (SB 1216). The Florida law authorized lifetime electronic monitoring as a condition of probation. Expenditures authorized in the Act include \$4 million for 1,200 new GPS units in Florida. The Department of Corrections projected a fiscal impact of \$2.5 million in fiscal 2006 for 328 offenders, \$7 million in fiscal 2007 for 911 offenders, and \$13 million in fiscal 2008 for 1,783 offenders. This includes costs for the hiring of 49 new correctional probation officers by fiscal 2008.

The U. S. Congress will consider the Children's Safety Act of 2005 (HR 3132) during 2006. This federal legislation would, in part:

- require the U.S. Attorney General to (1) maintain a national sex offender registry at the Federal Bureau of Investigation; (2) establish a sex offender management assistance program; and (3) authorize sex offender apprehension grants;
- amend (1) the DNA Identification Act of 1994 to expand the scope of DNA samples to be included in the Combined DNA Index System; and (2) the DNA Analysis Backlog Elimination Act of 2000 to authorize the Attorney General to collect DNA samples from individuals who are arrested or detained under U. S. authority;

- increase penalties for violent crimes against persons under age 18, including death or life imprisonment, if the crime results in the death of a person under that age, and increase penalties for sexual offenses against children;
- require background checks and checks of national crime information databases and state child abuse registries before approval of foster or adoptive placements; and
- establish (1) procedures for the civil commitment of sexually dangerous persons; and (2) mandatory minimum penalties for child sex trafficking.

Maryland first enacted sexual offender registration legislation under the federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program during the 1995 session. State sex offender registration laws have been amended and updated several times to remain in compliance with federal regulations and guidelines.

According to DPSCS, 4,335 offenders are currently included in the Maryland sex offender registry. About 500 to 600 new offenders are added on an annual basis. The majority of offenders in the registry are required to continue registering for life.

Over the summer of 2005, the Governor ordered a police check across the State on more than 400 sex offenders who reportedly had moved to Maryland but had not registered. The Associated Press reported that, under this Sex Offenders Compliance and Enforcement initiative, of the 403 sought, 69 sex offenders were found and ordered to register immediately; 130 were determined to be living outside Maryland; 104 were incarcerated in federal or state prisons; 5 were dead; 7 remained under investigation; and for another 88, there was no information to show they had moved to Maryland.

The Governor has proposed strengthening penalties and increasing oversight of offenders, including the use of GPS systems (SB 237/HB 304). Maryland's Attorney General has also unveiled a plan for extended parole supervision for sexual offenders, including the possible use of GPS systems (SB 1/HB 4).

In addition, during the 2004 session, a task force was established to study the use of GPS and investigate the feasibility of outfitting sex offenders and other violent criminals with global positioning anklets, which would keep track of their whereabouts at all times. The final report by the task force (submitted on December 31, 2005) recommended that:

- GPS technology be utilized on persons that are a high risk to public safety and when location is of a primary concern;
- a pilot program and study, funded by State general funds and focused on the sex offender population, be conducted by DPSCS to determine the strengths and weaknesses of the emerging technology in this geographically diverse State, and to

test recent risk assessment instruments used to determine which offenders should be selected, and to determine overall outcomes such as recidivism;

- collaborative and cooperative procedures giving law enforcement access to GPS data and allowing input from law enforcement in GPS's use for particular individuals be a fundamental consideration in the design of any GPS monitoring strategy;
- GPS tracking should be prescribed by the Division of Parole and Probation (DPP) when it is determined that it would be beneficial as part of a supervision modality using standardized risk assessment instruments; and
- DPSCS monitor the Children's Safety Act of 2005 in the U.S. Congress.

The task force also recommends that the State institutionalize the task force to:

- monitor a pilot program;
- recommend other populations for GPS deployment;
- advise DPP on the pilot program;
- study promising and emerging practices;
- study GPS use with other populations, including domestic violence populations; and
- monitor the availability of federal funding.

In 2002, DPP was awarded a two-year grant from the Office of Justice Programs to assist the agency to develop a comprehensive strategy to manage and supervise the sex offender population in the Baltimore Metropolitan area. The project's goals were to improve the transition, treatment, and supervision of sex offenders in the community following release from prison, and develop a case management model of supervision. A total of 57 offenders were selected for the project.

Polygraph examinations were used to assist in the preparation of treatment plans, identify red flags, and respond to at-risk behavior. GPS technology was used to monitor the movement of the offenders. However, the selected GPS system appeared to DPP to be unreliable and lacked credible vendor support.

State Fiscal Effect: Because the Sex Offender Registry currently has 3,250 lifetime registrants, this bill would have a significant policy and fiscal impact on DPSCS. Assuming the responsibilities under this bill would be assigned to DPP, it would require DPP to constantly monitor approximately 3,250 individuals in fiscal 2007. It is estimated that approximately 1,700 of the individuals would already be under the supervision of DPP, though not necessarily due to the offense requiring sex offender

registration. The number of persons required to register for GPS tracking may grow by about 300 persons per year.

DPP would need to create a new unit specifically devoted to this bill's requirements. The GPS electronic monitoring unit would require three shifts of employees to meet the 24-hour requirements; an administrator; adequate office space; sufficient equipment, and specialized training regarding the management and tracking of sexual offenders. DPP has advised that eight satellite offices would be necessary to perform these functions, statewide. In addition, some of the personnel at each office would need to have arrest powers so as to effectuate an apprehension of a violator when unable to be handled by a local or State law enforcement unit.

Accordingly, general fund expenditures could increase by an estimated \$20,423,036 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring 80 police communication operators, 120 correctional officers, one program manager, and one program executive director to operate and maintain eight GPS satellite offices around the clock, with three correctional officers and two communication operators working each of three daily eight hour shifts at each location, to actively monitor and track 3,250 sexual offenders in "real time." It includes salaries, fringe benefits, one-time start-up costs, a \$10 per day GPS equipment cost, and ongoing operating expenses.

Salaries and Fringe Benefits	\$7,016,721
GPS Equipment costs	11,862,500
Operating Expenses	<u>1,543,815</u>
Total FY 2007 State Expenditures	\$20,423,036

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

It is assumed that the bill's requirement to contract with local law enforcement agencies for the apprehension of trackees in noncompliance would be handled via memoranda of understanding with all 170 law enforcement units in the State for collaborative operations.

The fees that must be established to off-set the cost of electronic tracking would likely be limited to an amount to cover the actual per diem rate of the equipment, and adjustments (or waivers) would be allowed based on the ability of the trackee to pay. According to DPP, this would mimic tracking programs in other states. The average rate per "trackee"

per day for active (real time) monitoring is approximately \$10 per day, for a total of \$11,862,500 in fiscal 2007 based on 3,250 trackees.

DPP currently collects supervision fees at a rate of 33.5% per offender and Drinking Driver Monitoring fees at a rate of 63.9%. Assuming that similar collection rates would apply to the provisions of this bill, DPP would expect to collect between \$3,973,938 and \$7,580,138 in fiscal 2007. DPP believes that, since the bill does not include a means through which payment can be enforced or nonpayment penalized, and it is not clear if uncollected fees can be referred to the Central Collection Unit (Department of Budget and Management), the lower collection rate would likely apply to fees required under this bill. By 2011, fee revenue is expected to increase to \$5,930,338.

The Department of Legislative Services (DLS) notes that DPP believes that this bill would involve considerable numbers of field investigations, pursuits, apprehensions of persons in violation of geographic restrictions and, thereby, increasing the personnel need to a total of 426 positions, including 336 correctional officers and 80 police communication operators. This would increase program costs in fiscal 2007 to \$34.3 million, and to \$45.8 million by fiscal 2011. However, DLS believes that, though considerable, DPP's responsibilities under this bill do not primarily concern the pursuit and apprehension of violators. The bill accords those responsibilities to local law enforcement units via "contracts" with the department.

Additional Comments: According to a 2000 study for the Bureau of Justice statistics, sexual offenses are seldom committed by strangers. For all female victims, only 15% of attacks were by a stranger (25% were by a family member and 60% were by an acquaintance). For juvenile female victims, 7.5% were by a stranger. For all male victims, only 7.3% of attacks were by a stranger. For juvenile male victims, the percentage of sex offenses by strangers is 5%.

The following sections of the federal Children's Safety Act now being considered by the U.S. Senate, if passed, could have cost abatement implications for this bill:

- Section 130. Demonstration Project for Use of Electronic Monitoring Devices – authorizes the Attorney General to make grants to a maximum of 10 jurisdictions to institute programs to electronically monitor sex offenders. This demonstration project is slated for fiscal years 2007, 2008 and 2009 and targets a variety of approaches to monitoring to ensure an assessment of effectiveness. Additionally, an assessment component is designed to address the cost effectiveness of electronic monitoring to reduce sex offenses compared to other alternatives.

- Section 131. Bonus Payments to States that Implement Electronic Monitoring – allows the Attorney General to make bonus payments to states that have enacted electronic monitoring laws and policies regarding sex offenders whose victims were under the age of 18. For eligibility, the states must have active monitoring of the individual for life if the victim was under 12 years of age or if the person has a prior sex conviction as federally defined in *18 USC 3559(e)*. For all other offenders, the electronic monitoring period must be for the period of supervision. The states must still demonstrate that their laws and policies ensure that sex offenders subject to electronic monitoring continue to be frequently monitored.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Harford County, Montgomery County, Queen Anne’s County, St. Mary’s County, Department of Public Safety and Correctional Services, Florida Office of Public Policy and Government Analysis, Department of Legislative Services

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