

Department of Legislative Services  
 Maryland General Assembly  
 2006 Session

FISCAL AND POLICY NOTE  
 Revised

House Bill 1572 (Delegate Zirkin, *et al.*)

Judiciary

Judicial Proceedings

**Sexual Offenders - Evaluation Before Sentencing**

This bill provides that, unless waived by the State’s Attorney and defense counsel, before sentencing a defendant who has been convicted of a crime for which the defendant is required to register on the State sex offender registry, the court must order the defendant to submit to: (1) a presentence investigation conducted by the Division of Parole and Probation (DPP); and (2) a mental health assessment, including whether the defendant is a danger to self or others, conducted by a qualified mental health professional employed or engaged by the Department of Health and Mental Hygiene (DHMH).

**Fiscal Summary**

**State Effect:** General fund expenditures could increase by \$920,200 in FY 2007. Out-year costs reflect annualization and inflation. These costs do not reflect potential costs that may attach to criminal appeals. Revenues would not be affected.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	920,200	1,208,700	1,246,800	1,287,300	1,330,400
Net Effect	(\$920,200)	(\$1,208,700)	(\$1,246,800)	(\$1,287,300)	(\$1,330,400)

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

**Local Effect:** The bill would result in an increase in workload for the circuit courts because of the additional investigation reports by DPP and mental health evaluations by the Mental Health Administration (MHA). The extent of this workload increase and the resulting effect on local government finances cannot be reliably estimated at this time.

**Small Business Effect:** Minimal.

## Analysis

**Current Law:** Under Maryland's Crimes Against Children and Sexual Offender Registration Law, a "sexually violent predator" is defined as a person who: (1) is convicted of a sexually violent offense; (2) has been determined to be at risk of committing another sexually violent offense; and (3) a person who is or was required to register every 90 days for life in another state or a federal, military, or Native American jurisdiction. If a person has been convicted of a sexually violent offense, a State's Attorney may request the sentencing court to make a determination as to whether the convicted person is a sexually violent predator.

A "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.

After release from incarceration for the underlying offense, sexually violent predators are required to register with their supervising authority every 90 days for life.

Under the Maryland Rules (Rule 4-341), a judge must order a presentence investigation when required by law and may order such an investigation in other cases. DPP conducts such investigations for the courts.

**Background:** It is possible that the U. S. Congress will pass 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.

The sex offender registry has had a total growth rate of 400 - 600 new registrants per year.

**State Fiscal Effect:** This bill would result in identifiable additional costs of \$920,159 for DPP and MHA combined.

*Division of Parole and Probation*

Although presentence investigations are now performed by DPP, they are not required for all the cases covered under the bill. Currently, each DPP investigative agent completes an average of about eight presentence investigations per month. Assuming that this bill would require an additional 500 presentence investigations annually by DPP, general fund expenditures for DPP could increase by an estimated \$346,967 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring five investigative agents, two supervisors, and one office secretary to conduct the anticipated 500 additional investigations per year. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	8
Salaries and Fringe Benefits	\$297,651
Operating Expenses	<u>49,316</u>
<b>DDP FY 2007 Expenditures</b>	<b>\$346,967</b>

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.

*Mental Health Administration*

According to DHMH, assuming a contractual cost by a mental health professional of \$150 per hour, the mental health assessments required under the bill are estimated at \$1,250 per case. Accordingly, general fund expenditures for MHA could increase by an estimated \$573,192 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring one psychologist and one secretary to administer the evaluation/assessment program and contract with qualified mental health professionals to handle 500 cases per year. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Administrative Salaries and Fringe Benefits	\$81,787
Mental Health Evaluations	468,750
Operating Expenses	<u>22,655</u>
<b>MHA FY 2007 Expenditures</b>	<b>\$573,192</b>

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.

MHA also believes that 75% of the individuals convicted of a sexual offense will file an appeal, requiring additional court appearances for the mental health professionals who have conducted the assessments. Although this estimate is likely too high, depending on actual preparation and court appearance/testimony time, court appearances by mental health professionals in appeals could significantly add to costs at the same rate of \$150 per hour. *For purposes of illustration only*, if each additional court appearance (including preparation time) takes 4 - 8 hours, each such case could cost \$600 - \$1,200. If half of each year's cases result in an additional appearance on appeal, this could cost the agency an additional \$150,000 - \$300,000 per year, beginning in fiscal 2008.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

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