

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE

House Bill 658 (Delegates Menes and Vallario)
 Judiciary

Criminal Procedure - Criminal Justice Information System - Criminal Justice Unit

This bill expands the definition of the term “criminal justice unit,” under provisions governing the State’s Criminal Justice Information System (CJIS) by including a government unit that allocates a substantial part of its annual budget to evaluation, placement, or treatment of persons charged or convicted of a crime and committed to the Department of Health and Mental Hygiene (DHMH) under provisions of the Health-General Article governing court ordered evaluations of criminal defendants, commitments for evaluation, and considerations and findings prior to a revocation of probation. Being designated a criminal justice unit would entitle a qualifying DHMH unit to direct access to CJIS data.

Fiscal Summary

State Effect: General fund expenditures would increase for DHMH, by at least \$47,200 in FY 2007. Future year costs reflect annualization and inflation. There would also be some additional annual general fund expenditures for DHMH and corresponding special fund revenues for CJIS reflecting actual instances of accessing the CJIS database. Such amounts cannot be reliably predicted, but are assumed to be relatively small.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
SF Revenue	-	-	-	-	-
GF Expenditure	47,200	57,600	60,900	64,500	68,300
Net Effect	(\$47,200)	(\$57,600)	(\$60,900)	(\$64,500)	(\$68,300)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The CJIS Central Repository is established within the Department of Public Safety and Correctional Services (DPSCS) to collect, manage, and disseminate Maryland criminal history record information for criminal justice and noncriminal justice (*e.g.*, employment and licensing) purposes. CJIS is a fingerprint-supported system for positive identification. CJIS is the database containing the criminal history record information reflecting the official fingerprint-supported criminal record of each offender charged and adjudicated in Maryland. The CJIS Central Repository is administratively managed by DPSCS and is designated by the FBI as Maryland's State identification bureau for the exchange of criminal history records.

Only a "criminal justice unit," as defined in statute, may have direct access to information maintained by CJIS. Protocols currently exist for indirect access to the information through a request and response process on a case-by-case basis.

Background: There is currently an interagency workgroup seeking expansion of voluntary protocols to address the issues addressed by this bill. The workgroup consists of representatives of the Judiciary, the Governor's Office, the Alcohol and Drug Abuse Administration (ADAA), DPSCS, the State's Attorneys, and the Office of the Public Defender.

During the 2005 interim, the House Special Committee on Drug and Alcohol Abuse heard testimony from Maryland judges concerned that the residential treatment program for defendants with an alcohol or drug dependency established under § 8-507 of the Health-General Article was not working because the length of time it takes for a defendant to be placed in treatment. Also at issue was the lack of direct access to CJIS information by ADAA, which was perceived by the judges to greatly slow the processes leading to required commitments under these provisions.

There is no unit of DHMH that now meets the definition of a criminal justice unit under the CJIS provisions, including ADAA. According to a recent memorandum on the issue by the Office of the Attorney General (DHMH), "[a]lthough ADAA does interact with and supports other units of State government responsible for performing criminal justice activities, these particular functions are not included in the agency's enabling statute."

The fiscal 2007 allowance for evaluation and treatment of alcohol and/or drug abuse is about \$108 million. It funds several initiatives, including program expansion as

determined by locally determined priorities, new long-term residential slots, as well as a provider cost-of-living adjustment. After considerable discussion, ADAA has recently awarded contracts for the delivery of residential services for patients in the criminal justice system and to pregnant and postpartum women with children. It is also in the process of issuing a contract for the delivery of services to patients with co-occurring disorders. Each contract contains incentives if certain performance measures are attained.

State Expenditures: Allowing ADAA direct access to CJIS information would permit ADAA to increase its functions in relation to provisions governing court ordered evaluations of criminal defendants, commitments for evaluation, and considerations and findings prior to a revocation of probation.

Taking advantage of this new direct access would increase general fund expenditures by at least \$47,236 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring one special programs coordinator to increase the agency's efforts in connection with evaluations and commitments of criminal justice defendants. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salary and Fringe Benefits	\$40,533
Other Operating Expenses	<u>6,703</u>
FY 2007 Personnel Expenditures	\$47,236

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

In addition, CJIS charges all criminal justice units \$7 for each direct access to its information database. This would mean that general fund expenditures for DHMH and special fund revenues for CJIS would also increase by equal, but unknown, amounts annually. *For purposes of illustration only*, use of this direct access by ADAA 500 times in a given year would increase DHMH general fund expenditures by \$3,500 for that year and would increase CJIS special fund revenues by a corresponding amount.

Additional Information: Maryland CJIS does not believe that this bill would meet the federal CJIS definition of a criminal justice unit and that the provisions of this bill may subject the State to federal funding penalties, and the agency to civil monetary penalties, if enacted. Compatibility with the federal provisions would likely hinge on an interpretation as to whether the bill's language that "evaluation, placement, or treatment

of persons charged or convicted of a crime and committed” to DHMH constitutes, under federal law, “a substantial part of [ADAA’s] annual budget.”

In addition, the Attorney General has also raised the question as to whether current State and federal confidentiality restrictions that apply to drug and alcohol abuse information may have applicability to this issue.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2006
mll/jr

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510