

Department of Legislative Services  
 Maryland General Assembly  
 2006 Special Session

**FISCAL AND POLICY NOTE**

House Bill 12  
 Judiciary

(Delegate Smigiel, *et al.*)

**Sexual Offenders - Supervision, Notifications, and Penalties**

This bill provides for extended parole supervision for certain sexual offenders and makes other related changes to provisions applicable to sexual offenders.

**Fiscal Summary**

**State Effect:** Costs for FY 2007 reflect the hiring of one training officer by the Division of Parole and Probation and one-time costs for the Sexual Offender Advisory Board. General fund expenditure increase of \$5.04 million in FY 2009, not including potentially significant costs for the Division of Correction and the Office of the Public Defender. Future year costs reflect inflation and program growth (estimated at 300 offenders per year). Requirements for the State Board of Education could be handled with existing budgeted resources. 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	60,000	61,600	5,044,500	9,960,200	14,844,300
Net Effect	(\$60,000)	(\$61,600)	(\$5,044,500)	(\$9,960,200)	(\$14,844,300)

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

**Local Effect:** Additional costs related to new registration and notification requirements, which may vary by jurisdiction. **This bill may impose a mandate on a unit of local government.**

**Small Business Effect:** Any potential new opportunities for firms offering polygraph, global positioning system (GPS), or sex offender treatment services cannot be readily identified or quantified. Under the bill, such opportunities could be significant.

## Analysis

### Bill Summary:

#### *Extended Parole Supervision*

- creates an extended sexual offender parole scheme that requires specified offenders to have a term of extended sexual offender parole supervision for a minimum of three years to a maximum of a term of life, with the ability to petition for discharge after that minimum period;
- requires the Parole Commission to enter into agreements with defendants that set out specific conditions of supervision, which may include GPS monitoring; geographic restrictions on residence or presence; restrictions on employment or participation in activities; requirement to participate in sex offender treatment; a prohibition from using illicit drugs or abusing alcohol; the authorization of parole agents to access an offender's personal computer; and a requirement to take polygraph exams;
- requires sexual offender management teams, consisting of at least a specially trained parole agent and a sex offender treatment provider, to conduct the extended parole supervision and submit progress reports to Parole Commission;
- creates a Sexual Offender Advisory Board, with specified reporting requirements, to review technology for the tracking of offenders; review the effectiveness of the State's laws concerning sex offenders; review the laws of other jurisdictions regarding sex offenders; review practices and procedures of Parole Commission and DPP regarding supervision and monitoring of sex offenders; review developments in the treatment and assessment of sex offenders; and develop standards for conditions of extended sex offender parole supervision based on current and evolving best practices in the field of sex offender management; and
- requires the advisory board to be staffed by DPSCS and DHMH.

#### *Registration*

- requires the sentence for a defendant who would be required to register as a sexual offender for life to include a term of extended sexual offender parole supervision;
- makes the initial registration of a person on the sex offender registry a reportable event for the Criminal Justice Information System (CJIS);
- requires each category of sexual offender to register in person every three months and provide an updated photograph at least once each year;

- requires a sex offender registrant to send written notice of a change of employment, change of address, or legal change of name to the State sex offender registry within DPSCS;
- requires registrants on the sex offender registry to provide a DNA sample, unless the sole conviction for which they are required to register is a misdemeanor; and
- requires information about registration statements to include a plain language description of the offender's crime excluding detail that would identify the victim.

### *Community Notification*

- makes various changes to current law community notification provisions including: (1) requiring that notice be given of the change of address of a child sexual offender; (2) requiring that notice be given to private schools in addition to public schools; and (3) specifically authorizing local law enforcement agencies to provide notice to child care and recreation facilities, faith institutions, and other organizations that serve children and other individuals vulnerable to child sexual offenders;
- requires DPSCS to allow the public to electronically transmit information about sexual offenders; and
- requires DPSCS to allow the public to request email notification of the release from incarceration of a registered offender and the registration information of the offender.

### *Penalties/Restrictions*

- creates a new crime of prohibiting a sexual offender registrant from entering the property of a school or day care center unless the registrant meets certain conditions and gets specified permission. A violation is a misdemeanor punishable by imprisonment for five years and/or \$5,000 fine;
- elevates, for a second or subsequent conviction, the crime of failing to register from a misdemeanor to a felony and increases maximum penalties from incarceration for three years and/or a fine of \$5,000 to incarceration for five years and/or a fine of \$10,000;
- requires the State Board of Education to adopt regulations that prohibit a county board from contracting to repair, maintain, improve, or build school property with a person who is required to register as a specified sexual offender or employs a person who is required to register; and
- specifically prohibits a person 18 years of age or older from committing first degree rape against a child 12 years of age or younger. A violator is subject to a

mandatory minimum nonsuspendable sentence of 25 years in prison and a maximum sentence of life without the possibility of parole.

**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 (SOR) unit of DPSCS. An 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 enacted 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.

A conviction for first degree rape or first degree sexual offense generally carries a maximum penalty of life imprisonment. A conviction for child kidnapping along with first degree rape or first degree sexual offense, where the victim is a child under the age of 16 years, carries a maximum penalty of life imprisonment without the possibility of parole.

**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.

The U. S. Congress is in the process of considering the Children’s Safety Act of 2005 (HR 3132). The bill has been passed by the House of Representatives and the Senate has passed a similar bill (S 1086). The 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, in January 2006, 4,335 offenders were 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.

During the 2004 session, a task force was established to study the use of global positioning systems 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 when it is determined that it would be beneficial as part of a supervision modality using standardized risk assessment instruments;
- 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 the Division of Parole and Probation 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.

**State Expenditures:** There are some inherent difficulties in assessing the fiscal impact of this bill: (1) the extended supervision applies only to persons sentenced for the underlying violation on or after October 1, 2006; and (2) the number of persons who would receive a discharge from extended supervision from the Parole Commission after three years cannot be reliably predicted. The offenders identified for extended supervision under this bill are generally those who are subject to lifetime registration under current law.

In any case, it is known that the number of persons in the sex offender registry with a requirement to register for life has, in recent years, grown by about 300 persons annually. Based on this, several State agencies would experience significant needs for additional resources.

### *Sex Offender Registry*

According to the Department of Public Safety and Correctional Services (DPSCS), most registrations are now done by mail. The bill's in-person requirement may provide some operational difficulties for DPSCS and local law enforcement agencies both immediately and over time. It is assumed that such future difficulties, if any discernable costs are attached, could be addressed by DPSCS via normal operating budget processes beginning in fiscal 2008.

Since current law already requires a DNA sample from all persons with felony convictions, it is not anticipated that the provisions requiring some additional DNA collections by supervising authorities will have a significant impact on a supervision authority. However, according to the Administrative Office of the Courts, the most significant impact of this change would affect the courts (which continue to be the supervising authority for some persons) and which do not now have any operational experience with collecting DNA samples.



*Maryland Parole Commission*

Under the bill, the Parole Commission must: (1) enter into and sign extended sex offender supervision agreements that set out specific conditions of supervision; (2) hear and adjudicate cases of violation; and (3) impose sanctions for violations, including additional restrictive conditions (with an ineligibility for diminution credits).

After a minimum of three years of supervision, the offender may petition for discharge. If denied by the commission, the offender may renew the request on an annual basis. The request must include: (1) a risk assessment conducted by a certified sexual offender treatment provider, and (2) a recommendation as to discharge from a SOMT. As a result, the Parole Commission, beginning in fiscal 2009, would likely begin to enter agreements for extended sex offender supervision.

Accordingly, general fund expenditures could increase by an estimated \$311,437 in fiscal 2009. This estimate reflects the cost of hiring one Parole Commissioner, one administrator, one hearing officer, and one office secretary to initiate extended sex offender supervision agreements for about 300 offenders per year, hear and adjudicate cases of violation, and impose sanctions. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	4
Salaries and Fringe Benefits	\$282,366
Travel	12,000
Other Operating Expenses	<u>17,071</u>
<b>Parole Commission FY 2009 Expenditures</b>	<b>\$311,437</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.

Any expense reimbursements for members of the Sexual Offender Advisory Board and related staffing costs for the Parole Commission are assumed to be minimal and absorbable within existing budgeted resources. The promulgation of new regulations by the commission should be able to be handled with existing budgeted resources.

*Division of Parole and Probation*

DPP advises that an agent to supervisee ratio for persons with extended sex offender supervision would need to be 1:25. This is due to the need to establish and operate sexual

offender management teams, with possible use of polygraph examinations, GPS tracking, and sex offender treatment costs.

It is estimated that the number of sex offenders who will be subject to extended supervision for a minimum of three years could be as many as 300 in fiscal 2009 and grow by about 300 each year. Accordingly, DPP would need to add 12 new field agents, plus adequate supervisory agents, per year beginning in 2009. Polygraph examinations would cost about \$300 per exam; GPS tracking has basic costs of about \$10 per day per offender; and treatment costs are estimated at about \$4,500 per year per offender.

Requiring DPP to provide training for sex offender management teams will require the hiring of a training officer in fiscal 2007 at a cost, including salary and fringe benefits, of about \$45,000, which reflects the October 1, 2006 effective date of the bill. This cost (as annualized) would increase to about \$73,000 by fiscal 2011.

General fund expenditures for DPP could also increase by an estimated \$4,667,905 in fiscal 2009. This estimate reflects the cost of hiring 12 field agents, 2 supervisory field agents, and 3 office secretaries to provide extended sex offender supervision for about 300 additional offenders; supervise sexual offender management teams; and (when necessary) administer polygraph exams, direct offenders to treatment, and track offenders with GPS technology. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	17
Salaries and Fringe Benefits	\$878,649
Testing, Treatment, and Tracking Costs	3,620,000
Other Operating Expenses	<u>169,256</u>
<b>DPP FY 2009 Expenditures</b>	<b>\$4,667,905</b>

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

In addition, DPP notes that the representative of a certified sex offender treatment provider is the only member of a sex offender management team from the private sector. It is assumed that this participation would give rise to additional costs, but it is difficult to quantify those costs without knowing the certification processes for treatment programs, and standards, that must be developed by the Sex Offender Advisory Board. Such costs could be billed by a private provider at \$150 per hour or more.

### *Division of Correction*

The following provisions would tend to increase incarceration costs over time for the Division of Correction:

- creating a new crime of prohibiting sexual offender registrants from entering the property of a school or day care center unless they meet certain conditions and get certain permission. A violation is a misdemeanor punishable by imprisonment for five years and/or \$5,000 fine;
- elevating, for a second or subsequent conviction, the crime of failing to register from a misdemeanor to a felony and increases maximum penalties from incarceration for three years and/or a fine of \$5,000 to incarceration for five years and/or a fine of \$10,000;
- requiring, when the victim is under age 12, a mandatory minimum, nonsuspendable 25 year sentence for a person convicted of first degree rape; and
- changing diminution credit earning potential and parole and probation revocation provisions.

Changing crimes from misdemeanors to felonies means: (1) that such cases will likely be filed in the circuit courts rather than the District Court; and (2) some persons could eventually serve longer incarcerations due to enhanced penalty provisions, applicable to some offenses, for prior felony convictions. It is not known whether, under this bill's provisions, the prospect of a jury trial might spur more plea bargains and affect actual sentencing practices for this offense. In any case, this bill would shift some unknown number of cases from the District Court to the circuit courts.

In any event, although these costs cannot be readily estimated without any actual experience under the bill, 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 \$1,974 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 \$341 per month. Excluding medical care, the average variable costs total \$134 per month.

### *Information Technology and Communications Division*

The Criminal Justice Information System (CJIS) is operated under the management of this division (ITCD). ITCD advises that:

- The bill's provisions requiring registrations in person every three months would pose some operational, policy, and fiscal implications for CJIS. According to

ITCD, it equates to approximately 5,000 in-person registrations per year, and it is unclear as to where the re-registrations would occur and how investigations of noncompliance would be done. However, the agency was unable to quantify the cost of this impact;

- ITCD advises that there could be additional costs associated with gathering and providing on the current website a description of the defender's crime that is the basis of the sexual offender registration. Currently the offenders are grouped into the four categories and placed on the web site;
- The bill's requirement allowing the public to electronically transmit information to DPSCS, a DPP agent, and a local law enforcement unit is currently being done, and has no additional costs; and
- ITCD is already implementing a procedure whereby members of the public who live in the county in which the registrant is to reside or where the registrant, if not a resident of the state, is a transient or will work or attend school, will be allowed by request to receive electronic mail notification of the release from incarceration of a registered offender. (The first year costs including set up and annual fee is \$161,000, with annual maintenance fee of \$98,500 annually.)

#### *Sexual Offender Advisory Board*

It is assumed that the board would have to contract with consultants with expertise in the area of sexual offender treatment to develop the bill's required standards. The Mental Health Administration estimates that such a contract would involve a one-time cost of \$10,000 – \$20,000 in fiscal 2007 only.

#### *Office of the Public Defender*

Although it can be expected that this bill will lead to additional costs and responsibilities for the Public Defender primarily related to revocation hearings, those costs cannot be readily estimated at this time, but could be significant.

**Local Fiscal Effect:** The increased frequency of the registrations, as well as the bill's in-person requirement, may provide some operational difficulties for local law enforcement agencies both immediately and over time. Attendant costs for local law enforcement units may vary by location and addressed to differing degrees. Although allowing rather than requiring local law enforcement units to notify certain entities would tend to allow the local unit to control some notification costs, the bill would likely result in some discernable new costs for units of local government.

Any additional incarceration costs for any jurisdiction would reflect the fact that counties pay the full cost of incarceration for people in their facilities for the first 90 days of the

sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2006.

**Additional Comments:** It should be noted that cost estimates provided to the Department of Legislative Services (DLS) by the Parole Commission, DPP, and DOC were all predicated on two assumptions not accepted by DLS: (1) that significant responsibilities for State agencies affected under the bill would begin in fiscal 2007; and (2) that the number of persons requiring extended supervision would grow by about 1,000 per year.

Based primarily on those two assumptions: (1) the Parole Commission estimated additional expenditures of \$172,000 in fiscal 2007 and growing to \$766,000 by fiscal 2011, reflecting the hiring of 9 additional persons over that period (including 3 new Parole Commissioners); (2) DPP estimated additional expenditures of \$4.7 million in fiscal 2007 and growing to \$26.4 million by fiscal 2011, reflecting the hiring of 247 persons (including 206 field agents and supervising field agents); and (3) DOC estimated a new bed need of between 60 and 1,000 new beds by fiscal 2011.

Any actual increase in the number of people subject to lifetime registration could affect all of the cost estimates shown above.

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### **Additional Information**

**Prior Introductions:** This bill is identical to the conference committee report on SB 1 from the 2006 regular session.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General, Department of Public Safety and Correctional Services (Parole Commission, Division of Parole and Probation, Division of Correction), Office of the Public Defender, Department of State Police, Prince George's County, Montgomery County, Harford County, Maryland Municipal League, National Conference of State Legislatures, Florida Office of Public Policy and Government Analysis, Department of Legislative Services

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