

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 390
 Judiciary

(Delegate Simmons, *et al.*)

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 is required to register on the State sex offender registry for the crime of sexual abuse of a minor, 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 at least \$212,000 in FY 2008. 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 2008	FY 2009	FY 2010	FY 2011	FY 2012
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	212,000	234,100	240,300	246,900	254,000
Net Effect	(\$212,000)	(\$234,100)	(\$240,300)	(\$246,900)	(\$254,000)

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) and the Office of the Public Defender (OPD). The extent of this workload increase and the resulting effect on local government finances cannot be reliably estimated at this time, but is assumed to be relatively minimal.

Small Business Effect: Minimal.

Analysis

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.

“Child sexual offender” means a person who (1) has been convicted of sexual abuse of a minor; (2) has been convicted of first or second degree rape or first, second, or third degree sexual offense involving a child under 15 years of age; (3) has been convicted of fourth degree sexual offense involving such a child and has been ordered by the court to register under these provisions; or (4) 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 one of these crimes.

“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; or (2) has been convicted of an attempt to commit 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, every 3 months or every 6 months, with the Crimes Against Children and Sexual Offender Registry for a term of either 10 years or life depending on the offense. Registration must include a photograph, which must be updated at least annually. The registry is operated by the Sexual Offender Registry unit of the Department of Public Safety and Correctional Services. 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.

Chapter 578 of 2005 provided for a graduated reentry release for registrants under the jurisdiction of DHMH.

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.

Chapter 4 of the 2006 special session, enacted on June 22, 2006, increased the State's oversight of and penalties against sex offenders. Among its many provisions, the Act:

- subjects specified offenders to extended parole supervision for at least three years to a maximum of life, with the ability to petition for discharge after the minimum period;
- requires the Parole Commission to enter into agreements with offenders that set specific conditions of parole supervision, which may include global positioning system monitoring, geographic restrictions on residence or presence, restrictions on employment or other activities, participation in sex offender treatment, a prohibition from using illicit drugs or abusing alcohol, an authorization for a parole agent to access the offender's personal computer, a consent to take polygraph exams, and a prohibition against contacting specific individuals or categories of individuals;

- creates a Sexual Offender Advisory Board, with specified reporting requirements, to review technology for tracking offenders, review this State's and other jurisdictions' laws, review the way in which the Parole Commission and the DPP supervise and monitor offenders, review developments in the treatment and assessment of offenders, and develop standards for conditions of extended parole supervision;
- imposes stricter requirements for registration as a sex offender;
- provides for more comprehensive community notifications;
- prohibits, with specified exceptions, a registrant from knowingly entering on real property used for elementary or secondary education or on which a registered family day care home or a licensed child care home or institution is located; and
- requires, when the victim is under age 13, a mandatory minimum, nonsuspendable 25-year sentence for a person at least 18 years old convicted of first degree rape or first degree sexual offense. A similar five-year minimum sentence is required under the same circumstances for a second degree rape or second degree sexual offense.

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: On July 27, 2006, President George W. Bush signed the Adam Walsh Child Protection and Safety Act of 2006 to protect the public, in particular children, from violent sex offenders through a more comprehensive, nationalized system for registration of sex offenders. The Act calls for conformity by the states with various aspects of sex offender registration, including registration by specified juvenile offenders, information that must be collected from registrants, duration of registration, verification of registry information, access to and sharing of information, and penalties for failure to register. The U.S. Attorney General is required by the Act to issue guidelines and regulations to interpret and implement the legislation. Proposed regulations are due to be released by February 2007, followed by a period of two to three months for public comments.

The failure of a state to substantially implement the federal requirements within three years (July 2009) and one year from the development by the federal government of software for uniform offender registries and web sites could result in a 10% reduction in the Byrne law enforcement assistance grant to that state. (Total fiscal 2007 Byrne fund

revenue for Maryland is \$7.25 million.) The U.S. Attorney General may authorize up to two one-year extensions of the deadline. The Act also provides a funding bonus of 10% or 5% to a state complying within one year or two years, respectively. A number of new grant programs are authorized under the Act to assist states in improving sex offender registration and related requirements of the Act.

Until the final regulations are issued by the U.S. Attorney General, a definitive determination of what administrative and legislative changes may be necessary to comply with the new federal law is not entirely clear. However, it appears that among the current State statutory provisions concerning the registration of sex offenders, the following provisions may require modification to meet the new federal standards:

- deadline for registration;
- length of registration for specific offenders;
- frequency of re-registration;
- application of registration requirement to specific juvenile offenders; and
- penalties for failure to register.

Due to the complexities of the Act and the many issues it involves, a collaborative approach involving public safety, public health, law enforcement, victims' rights, and judiciary representatives will likely be necessary to substantially implement the federal standards.

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

State Fiscal Effect: In fiscal 2006, there were 44 persons convicted of sexual abuse of a minor. Of that total, 23 received probation and 21 were sentenced to imprisonment. In 21 instances, a court ordered a presentence investigation by DPP. Accordingly, this bill is expected to increase presentence investigations by DPP by about 23 cases per year, which could be handled with existing budgeted resources.

The bill would result in identifiable additional costs of \$211,976 for MHA and OPD combined in fiscal 2008.

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 \$156,976 in fiscal 2008, which accounts for the bill's October 1, 2007 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 about 44 cases per year. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Administrative Salaries and Fringe Benefits	\$84,036
Mental Health Evaluations	55,000
Operating Expenses	<u>17,940</u>
MHA FY 2008 Expenditures	\$156,976

Future year expenditures reflect (1) full salaries with 4.5% 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 four to eight 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 \$19,800-\$39,600 in contractual services costs per year, beginning in fiscal 2008.

Office of the Public Defender

OPD advises that this bill would necessitate additional and independent contractual mental health evaluations on behalf of the defense. Legislative Services advises that these costs would be similar in cost to the contractual evaluations required for MHA and estimated at \$55,000 annually, beginning in fiscal 2008. In addition, as was noted above for MHA's contractual assessment costs, an additional \$19,800-\$39,600 in contractual

services costs per year for OPD, beginning in fiscal 2008, may be necessary for cases appealed.

Additional Information

Prior Introductions: HB 1572 of 2006 passed the House, received a hearing before the Senate Judicial Proceedings Committee, and had no further action taken on it.

Cross File: Although not identified as a cross file, SB 83 is identical to this bill.

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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