

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1450

(Chair, Judiciary Committee) (By Request –
Departmental – Public Safety and Correctional Services)

Judiciary

Judicial Proceedings

Criminal Procedure - Sexual Offenders - Homeless Registrants and Supervision

This departmental bill makes substantive and organizational changes to provisions governing the extended supervision of some sexual offenders and provides for the registration of homeless sexual offenders.

Fiscal Summary

State Effect: Minimal. The bill's reassignment of responsibilities for the State's extended sexual offender supervision program would be largely handled with existing budgeted resources. Any expense reimbursements for the members of the Offender Review Committee are assumed to be minimal and absorbable within existing budgeted resources. Additional personnel may eventually be necessary for some circuit courts.

Local Effect: Potential significant expenditure increases in some jurisdictions, including costs for additional law enforcement personnel. In some jurisdictions, the continued availability of grants through the Sex Offender Compliance and Enforcement in Maryland (SOCEM) Program would continue to offset operational costs for law enforcement. In others, the bill's registration requirements could be met with existing budgeted resources. Additional personnel may also be eventually necessary for some circuit court operations.

Small Business Effect: The Department of Public Safety and Correctional Services has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary:

Extended Supervision

- requires the Sexual Offender Advisory Board (SOAB) to create a five-member Offender Review Committee (ORC) consisting of specified members and expertise;
- requires a court, rather than the Parole Commission, to enter into extended sexual offender supervision agreements with defendants that set out specific conditions of supervision;
- provides that the sentencing court must require a presentence investigation of a qualifying sexual offender in a specified manner, including a recidivism risk assessment, and to impose special conditions of extended supervision based on the investigation;
- transfers post-agreement operational responsibilities for the State's extended sexual offender supervision program from the Parole Commission to ORC;
- expands and alters the membership of SOAB, including the addition of the Secretary of Health and Mental Hygiene, the Secretary of Juvenile Services, the Director of the Maryland Criminal Justice Information System Central Repository, and a licensed forensic psychiatrist with expertise in pharmacological treatment;
- requires the staggered terms of the appointments to SOAB to be connected to the effective date of this bill;
- requires the Secretary of Public Safety and Correctional Services and the Secretary of Health and Mental Hygiene to co-chair SOAB, rather than the chair being selected by the Governor;
- requires SOAB, in collaboration with the Department of Public Safety and Correctional Services, the Judiciary, and the Parole Commission, to develop criteria for measuring a sexual offender's progress in treatment in order to assist in making determinations of release from supervision and to review information relating to the need for housing of transient and displaced sexual offenders;
- expands and alters the membership of a sexual management team, including the addition of a law enforcement officer, an assistant State's Attorney, an assistant public defender, and a foreign or sign language interpreter;
- allows a sentencing court to adjust special conditions based on progress reports and upon a recommendation of ORC, as specified, and requires the court to take certain actions when imposing extended supervision;

- applies requirements for extended sexual offender supervision to persons sentenced for a crime committed on or after August 1, 2006, rather than those whose sentence was imposed after that date, without regard to the date of the offense;
- makes all terms of extended sexual offender supervision a term of life, rather than for a minimum of three years to life; and
- specifies that the conditions of extended supervision must commence on release of the offender from incarceration or on imposition of probation.

Registration

- provides for the registration of sexual offenders who are homeless with no fixed address;
- requires a homeless person to register in person, within a specified timeframe, with the local law enforcement unit in the county where the registrant “habitually lives;”
- requires re-registration monthly while habitually living in the county;
- specifies the information a homeless registrant must provide;
- provides that, if a homeless registrant obtains a fixed address or moves to another county, the registrant must register with the appropriate supervising authority and local law enforcement unit within five days;
- changes all references to the provision of a photograph for registration purposes to provision of a digital image; and
- specifies that a sexually violent predator’s quarterly registration requirement be made to a local law enforcement unit.

Current Law: Chapter 4 of the 2006 special session provided for extended supervision of sexual offenders by creating an extended sexual offender parole scheme that requires specified sexual 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. Chapter 4 also provided for the following:

Extended Parole Supervision

- specifies an offender subject to the extended sexual offender parole scheme as a person who is a sexually violent predator; has been convicted of first or second degree rape, first degree sexual offense, or (with certain exceptions) second or third degree sexual offense; has been convicted of attempted first or second degree rape, attempted first degree sexual offense, or (with certain exceptions) attempted

second degree rape; has been convicted of sexual abuse of a minor for commission of a sexual act involving penetration of a child under the age of 12 years; or has been convicted more than once of a crime as a child sexual offender, an offender, or a sexually violent offender;

- requires that a term of extended sexual offender parole supervision apply to such a defendant sentenced on or after August 1, 2006;
- 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; a requirement to take polygraph exams; and a prohibition from contacting specific individuals or categories of individuals;
- 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 the 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 the Parole Commission and the Division of Parole and Probation (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 the Department of Public Safety and Correctional Services (DPSCS) and the Department of Health and Mental Hygiene (DHMH).

Registration

- requires all categories of offenders to register with local authorities rather than with DPSCS;
- makes the initial registration of a person on the sex offender registry a reportable event for the Criminal Justice Information System (CJIS);
- requires sexually violent offenders, child sex offenders, and offenders to register in person every six months and provide an updated photograph at least once each year (sexually violent predators continue to re-register every three months);

- 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;
- requires information about registration statements to include a plain language description of the offender's crime excluding detail that would identify the victim; and
- requires DPSCS to reimburse local law enforcement units for costs associated with processing registration statements and for the reasonable costs of implementing community notification procedures.

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

- 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. The bill also prohibits a person who contracts with a county board of education or nonpublic school to knowingly employ a person who is a registrant. A violator of either offense is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a fine of \$5,000;
- 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; 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 second degree rape or second degree sexual offense. The State is required to provide at least 30 days notice when seeking such a mandatory minimum sentence for any of these offenses.

Chapters 519 and 601 provide 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).

Background: Following several high-profile sexual assault cases, far-reaching State and federal legislation has been enacted to more strongly punish and more closely monitor sex offenders. The federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 248-109), calls for conformity by the states with various aspects of sex offender registration provisions, including registration by specified juvenile offenders, specific information to be collected from registrants, verification, duration of registration, 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 guidelines were published on May 30, 2007. The period for public comment on the proposed guidelines ended on August 1, 2007. Final guidelines have not yet been published. Under SORNA, July 27, 2009 is the deadline for substantial implementation of SORNA's requirements for all registration jurisdictions.

Until the final guidelines/regulations are issued, definitive State action necessary for compliance (including statutory changes) is not entirely clear. In any event, under the proposed guidelines, homeless persons are addressed.

Because the Act defines the term "resides" to mean "the location of the individual's home or other place where the individual habitually lives," the residency registration requirements are extended to circumstances where the offender is homeless, living on the street, or moving from shelter to shelter, or when the place of residence itself moves from place to place, such as a mobile home, trailer, or houseboat. Accordingly, sex offenders must register (1) in any jurisdiction in which they have a home; and (2) in any jurisdiction in which they habitually live (even if they have no home or fixed address in

the jurisdiction, or no home anywhere). Maryland law does not currently account for the homeless offender population.

Organized through the Governor's Office of Crime Control and Prevention (GOCCP), the Sex Offender Compliance and Enforcement in Maryland (SOCEM) program provides resources to all 24 designated State law enforcement agencies responsible for the registration and re-registration of sex offenders in the offender registry. Current grant funding through GOCCP assists State and local law enforcement agencies in the enforcement of registration and compliance requirements. The Governor's fiscal 2009 budget includes \$850,000 in general funds for the SOCEM Grant Program. This is the same amount that was allocated in fiscal 2007 and 2008.

The SOCEM web page lists the following SOCEM partners:

- GOCCP;
- Department of State Police;
- DPSCS;
- Division of Parole and Probation;
- the Sex Offender Registry;
- Maryland Department of Transportation, Motor Vehicle Administration;
- Department of Human Resources;
- Department of Budget and Management;
- Maryland Municipal League;
- Maryland Association of Counties;
- Maryland Sheriff's Association;
- Maryland Chiefs of Police Association;
- local law enforcement agencies;
- CTIA – The Wireless Association;
- Towson University; and
- Maryland Children's Alliance, Inc.

The number of homeless persons who are subject to registration requirements annually is unknown.

State Expenditures: DPSCS advises that this bill addresses unintentional operational difficulties that occurred with the enactment of Chapter 4 of the 2006 special session impacting the Parole Commission, the Division of Parole and Probation, the Division of Correction, and the Information Technology and Communications Division.

The Fiscal and Policy Note for Chapter 4 reflected additional fiscal 2009 costs for the Parole Commission to hire one parole commissioner, one administrator, one hearing officer, and one office secretary to initiate extended sex offender supervision agreements for about 475 offenders per year, hear and adjudicate cases of violation, and impose sanctions. Those fiscal 2009 costs were estimated at \$311,437. These positions are not included in the proposed fiscal 2008 State budget. This bill transfers those responsibilities to the courts and SOAB/ORC.

In fiscal 2007, there were 217 persons committed to a Division of Correction facility for an offense that would require extended supervision upon release. DPP had an intake of 274 qualifying persons during that same period. However, 173 of those intakes were persons who had to serve a portion of their sentence in prison before release to supervision. Because of these split-sentence persons, only 101 of these sex offenders received a sentence involving immediate probation.

DPP reports that the courts already order similar presentence investigations for 1,000 of all 1,200 sexual offender cases heard annually. It is assumed that the persons who would be convicted of crimes qualifying them for extended supervision with special conditions (the 101 persons cited above) are already subject to presentence investigations. Under the bill, presentence investigations for those same persons must now include the use of specialized risk assessment instruments already available to DPP.

However, DPP also advises that the bill's requirement for lifetime extended supervision for all qualifying sexual offenders could eventually significantly impact overall division caseloads and create the need for additional positions. This is because these offenders are placed in "high-risk" specialized caseloads with a low agent-to-supervisee ratio (1:25) so as to enforce special conditions such as residency restrictions, treatment, testing, computer, and electronic and GPS monitoring. An increase in specialized caseloads could also lead to increases in the number of offenders in generalized caseloads. Any significant rise in general supervision caseloads requires DPP to hire additional agents to maintain manageable caseloads for all employees of the division. The fiscal 2009 estimated cost for supervising an offender for one year is approximately \$1,595. The cost to hire a new agent is approximately \$50,000, which includes a salary, benefits, and equipment.

The Administrative Office of the Courts (AOC) advises that, because the bill transfers considerable responsibilities to the courts relating to extended sexual offender supervisions, including the use of risk assessments and the design of extended supervision contracts, the bill's requirements could eventually lead to the need for a separate sexual offender docket for the larger jurisdictions. AOC cannot predict when that need may occur, but assumes that it would be met through normal budgetary

processes. A new dedicated docket would likely include additional judgeships, clerks, and support personnel, which cannot be reliably estimated at this time.

Local Expenditures: Although Baltimore City reports that this bill would require its Sex Offender Registry Unit (SORU) to triple its current personnel strength, it is the only jurisdiction reporting such needs. Currently, the city's SORU is staffed with one sergeant, five detectives, and three civilian contract specialists. SORU receives about \$200,000 annually from SOCEM grants, which primarily covers the overtime costs (\$150,000) for the unit. Most of these new costs are reported to be in connection with the monthly registration requirements for homeless registrants.

Prince George's County reports that the bill would likely increase overtime costs by about \$43,000 annually. Harford County advises that the bill's requirements could be handled by hiring a part-time investigator at an annual cost of \$12,137. Montgomery and Carroll counties advise that the bill's requirements could be handled with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Montgomery County, Prince George's County, Harford County, Judiciary (Administrative Office of the Courts), Baltimore City, Carroll County, Department of Public Safety and Correctional Services, Department of Legislative Services

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Analysis by: Guy G. Cherry

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