

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 26

(Senator Simonaire)

Judicial Proceedings

**Task Force to Study the Commitment of Sexually Violent Predators to Facilities
of the Department of Health and Mental Hygiene**

This bill establishes a Task Force to Study the Commitment of Sexually Violent Predators to Facilities of the Department of Health and Mental Hygiene. The bill provides for the membership and duties of the task force, and authorizes expense reimbursements for members.

The task force must report its findings and recommendations to the Governor and the General Assembly by December 1, 2008. Staffing to the task force will be provided by the Department of Legislative Services, and the task force may request additional assistance and staffing from any other State agency considered appropriate by the members.

This bill takes effect June 1, 2008 and terminates December 31, 2008.

Fiscal Summary

State Effect: Any expense reimbursements for task force members and staffing costs for the Department of Legislative Services (or any other affected agency) are assumed to be minimal and absorbable within existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The task force is required to: (1) review and evaluate other states' programs of civilly committing sexual offenders on completion of a criminal sentence; (2) make recommendations on how Maryland could best implement a program for committing sexually violent predators to facilities of DHMH on completion of a criminal sentence; (3) make recommendations on how to reduce the costs associated with such commitments; and (4) make recommendations, including associated benefits, disadvantages, and cost projections, of options for implementing a limited program, a phased-in program, and a fully implemented program of such commitments.

Current Law/Background: 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. A "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.

There are 20 states with statutes that authorize the confinement and treatment of sexual predators following completion of their criminal sentences: Arizona, California, Florida, Illinois, Iowa, Kansas, Massachusetts, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin. Generally these programs authorize civil confinement of sex offenders identified as "sexually violent predators."

According to a national study by the Washington State Institute for Public Policy (August 2007):

- the number of persons held under civil commitment provisions for sexually violent predators nationwide is 4,534;
- the number of persons discharged or released is 494 (an additional 85 persons died while in custody); and
- the average annual costs for current commitment programs is \$94,000 per person.

Washington opened a new facility for such commitments in 2004, California opened a new 1,500-bed facility in 2005, and Florida is constructing of a new 600-bed facility.

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 with SORNA (including statutory changes) is not entirely clear. Failure to comply with SORNA puts a state at risk to lose 10% of Byrne grants, which all of the states use to pay for such things as drug task forces, anti-gang units, police overtime and other law enforcement activities. But funding for this formula grant program in fiscal 2009 has been cut from its \$520 million fiscal 2008 appropriation level to zero, and replaced with a \$200 competitive grant program. While it is unclear how this change will affect the penalty provisions of SORNA, Maryland could risk the loss of between zero and about \$200,000 for noncompliance.

Title III of the Walsh Act, the Jimmy Ryce Civil Commitment Program, provides for grants to the states for civil commitment programs for sexually dangerous persons. A "civil commitment program" means a program that involves: (1) secure civil confinement, including appropriate control, care, and treatment during such confinement; and (2) appropriate supervision, care, and treatment for individuals released following such confinement. The term "sexually dangerous person" means a person suffering from a serious mental illness, abnormality, or disorder, as a result of which the individual would have serious difficulty in refraining from sexually violent conduct or child molestation. Title III authorized an appropriation of \$10,000,000 for each of fiscal years 2007 through 2010. However, such an appropriation has not been made to date.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Legislative Services

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Analysis by: Guy G. Cherry

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