

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1400

(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: The bill's reassignment of responsibilities for the State's extended sexual offender supervision program will be largely handled with existing budgeted resources.

Local Effect: Potential minimal expenditure increases in some jurisdictions. The continued availability of grants through the Sex Offender Compliance and Enforcement in Maryland (SOCEM) Program and federal registration assistance funds will continue to offset operational costs for law enforcement in some jurisdictions. Additional personnel may be eventually necessary for some circuit court operations.

Small Business Effect: The Department of Public Safety and Correctional Services (DPSCS) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

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 DPSCS, 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 list of persons who may be integrated onto a sexual management team, by including 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 reregistration 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 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;
- 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; 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

- 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 Act 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.

Chapter 352 of 2008 required that, in addition to any aliases, the registration statement include the registrant's former names, nicknames, electronic mail addresses, computer log-in or screen names or identities, instant-messaging identities, and electronic chat room identities used by the registrant. In addition, a registration statement must contain a copy of the registrant's valid driver's license or identification card and the license plate number and description of any vehicle owned or regularly operated by the registrant.

Chapters 519 and 601 of 2007 specify 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 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 DHMH.

Background: The federal Sex Offender Registration and Notification Act (SORNA), enacted as Title I of the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248), requires conformity by the states with various aspects of sex offender registration provisions, including registration of specified juvenile offenders, collection of specific information from registrants, verification, duration of registration, access to and sharing of information, and penalties for failure to register. The final guidelines/regulations were issued on July 2, 2008. The deadline for substantial implementation of SORNA's requirements by all jurisdictions is July 27, 2009.

The federal Act requires that the registry contain extensive information for each offender, including palm prints, Internet identifiers and addresses, travel and immigration documents, professional licensing information, vehicle information, and a physical description of the offender. This information is not required to be included in the registry under current Maryland law.

Under SORNA, a sex offender must appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which that sex offender is required to be registered not less frequently than:

- annually for a tier I sex offender;
- every six months for a tier II sex offender, and
- every three months for a tier III sex offender.

Sex offenders must carry out this schedule of personal appearances in all jurisdictions where they reside, are employed, and attend school. As with other SORNA requirements, jurisdictions may require in-person appearances by sex offenders with greater frequency than the minimum required by SORNA.

Failure to fully comply with SORNA puts a state at risk to lose 10% of Byrne Justice Assistance grants, which all states use to pay for drug task forces, anti-gang units, police overtime, and other law enforcement activities. Under the federal American Recovery and Reinvestment Act of 2009, the Byrne formula grants program has been reauthorized from fiscal 2009 through 2011. Maryland will receive an estimated \$24.7 million in fiscal 2010 and \$18.5 million in fiscal 2011. Accordingly, if found in noncompliance – and without issuance of a waiver – the State could lose about \$2.5 million in Byrne funds in fiscal 2010 and \$1.9 million in fiscal 2011.

Because the Walsh 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 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 proposed fiscal 2010 State budget includes \$738,500 in general funds for the SOCEM Grant Program.

In addition, in response to the SMART Office Support for Adam Walsh Act Implementation Grant Program Competitive Grant Announcement, DPSCS requested and received \$299,970 in federal funding to assist in meeting compliance with SORNA by July 2009. DPSCS has provided \$100,000 in State matching funds, so that the total project cost is \$399,970. This money is being used, in part, to provide financial assistance to each of the 24 local law enforcement agencies by reimbursing them \$200 for each sex offender registered on the offender registry. These funds are expected to be exhausted by the end of March 2010.

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 which impacted the Parole Commission, DPP, the Division of Correction, and the Information Technology and Communications Division. This bill transfers some of the responsibilities for extended supervision of sex offenders to the courts and SOAB/ORC.

In fiscal 2008, there were 224 persons committed to a Division of Correction facility for an offense that would require extended supervision upon release. DPP had an intake of 306 qualifying persons during that same period. However, 185 of those intakes were persons who had to serve a portion of their sentence in prison before release to supervision. Because of these split sentences, only 121 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 those who would be convicted of crimes qualifying them for extended supervision with special conditions (the 121 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 2010 estimated cost for supervising an offender for one year is approximately \$1,695. The cost to hire a new agent is approximately \$52,138, which includes 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 risk assessments and the design of extended supervision contracts, the bill's requirements may eventually lead to the need for a separate sexual offender docket for the larger jurisdictions. AOC cannot predict when that need may occur, and is not sure it would be met through normal budgetary processes. A new

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

Local Expenditures: Some new costs, varying by jurisdiction, may arise in connection with the monthly registration requirements for homeless registrants. Harford County advises that the bill's requirements can be handled by hiring a registration verification specialist at an annual cost of \$26,150. Allegany, Montgomery, and Talbot counties advise that the bill's requirements can be handled with existing budgeted resources.

Additional Information: DPSCS, DPP, and the Department of State Police (DSP) are currently developing a Memorandum of Understanding pertaining to polygraph services for sex offenders. Currently, DSP operates as the local law enforcement authority for the registration of sex offenders in Carroll County.

Additional Information

Prior Introductions: HB 1450 of 2008 passed the House and received a hearing before the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Allegany County, Harford County, Montgomery County, Talbot County, Wicomico County, Baltimore City, Commission on Criminal Sentencing Policy, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Criminal Procedure – Sexual Offenders – Homeless Registrants,
Supervision, and Penalties

BILL NUMBER: HB 1400

PREPARED BY: Department of Public Safety and Correctional Services

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.