

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 473
Judiciary

(The Speaker, *et al.*) (By Request - Administration)

Judicial Proceedings

Criminal Procedure - Sexual Offenders - Lifetime Supervision

This Administration bill makes substantive and organizational changes to provisions governing the extended supervision of some sexual offenders.

Fiscal Summary

State Effect: General fund expenditures increase by \$318,400 in FY 2011 for the Public Defender. Future year costs reflect annualization and inflation for those costs and additional expenditures, including personnel, for the Division of Parole and Probation. Potential additional future costs for the Judiciary are not included. Revenues are not affected.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	318,400	530,900	824,900	1,187,500	1,380,900
Net Effect	(\$318,400)	(\$530,900)	(\$824,900)	(\$1,187,500)	(\$1,380,900)

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

Local Effect: None.

Small Business Effect: The Administration 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: This bill requires the lifetime supervision of the following sexual offenders for a crime committed on or after October 1, 2010:

- a sexually violent predator;
- a person convicted of first or second degree rape, first degree sexual offense, or certain circumstances of second degree sexual offense;
- a person convicted of attempted first or second degree rape, first degree sexual offense, or the same form of second degree sexual offense cited above;
- sexual abuse of a minor if the violation involved a child under the age of 12;
- a person required to register with the person's supervising authority because the person was at least 13 years old but not more than 18 years old at the time of the act; or
- a person convicted more than once arising out of separate incidents of a crime that requires registration.

For a person who is required to register because the person was at least 13 years old but not more than 18 years old at the time of the act, the term of lifetime sexual offender supervision begins when the person's obligation to register begins and expires when the person's obligation to register expires, unless the juvenile court finds after a hearing that there is a compelling reason for the supervision to continue and orders the supervision to continue for a specified time.

The bill authorizes a court to sentence a person convicted of a certain third degree sex offense to lifetime supervision and require a risk assessment before that sentence is imposed. The bill also eliminates the role of the Maryland Parole Commission to administer or enter agreements for extended parole supervision of sexual offenders and deletes reference to an "extended parole supervision offender." Also eliminated is extended supervision for a period less than life.

The bill prohibits a person subject to lifetime supervision from knowingly or willfully violating the conditions of the supervision, with the following penalties:

- for a first offense, the person is guilty of a misdemeanor and subject to maximum penalties of imprisonment for five years and/or a fine of \$5,000; for a second or subsequent offense, the person is guilty of a felony and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$10,000;
- a person imprisoned for a violation of lifetime supervision is not entitled to diminution credits and continues to be subject to lifetime supervision upon release until discharge from supervision, as specified. A court may remand the person to a correctional facility pending the hearing or a determination on a charge of violation of a condition of lifetime sexual offender supervision.

The sentencing court must hear and adjudicate a petition for discharge from lifetime sexual offender supervision. The court may not deny a petition for discharge without a hearing. Further, the court may not discharge a person unless the court makes a finding on the record that the petitioner is no longer a danger to others. The judge who originally imposed the lifetime sexual offender supervision must hear the petition. If the judge has been removed from office, has died or resigned, or is otherwise incapacitated, another judge may act in the matter.

The sentencing court or juvenile court must impose special conditions of lifetime sexual offender supervision at the time of sentencing or imposition of the registration requirement in juvenile court and advise the person of the length, conditions, and consecutive nature of that supervision. Before imposing the special conditions, the court must order a presentence investigation. The bill delineates allowable special conditions, including global positioning satellite (GPS) tracking or equivalent technology and required participation in a sexual offender treatment program. The sentencing court may adjust the special conditions of such lifetime supervision in consultation with the person's sexual offender management team.

The bill expands the prospective membership of a sexual offender management team. The Department of Public Safety and Correctional Services (DPSCS) is required to adopt regulations necessary to carry out the duties of DPSCS relating to lifetime offender supervision.

Finally, the bill requires notice to victims or a victim's representative of hearings relating to lifetime sexual offender supervision.

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 life, with the ability to petition for discharge after that minimum period. Chapter 4 also provided for the following:

- 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.

Background: DPSCS advises that this bill addresses unintentional operational difficulties that occurred with the enactment of Chapter 4 of the 2006 special session. This bill transfers most of the responsibilities for extended, now lifetime, supervision of sex offenders to the courts.

As of January 2010, 71 dedicated sex offender supervision agents, along with 12 mixed containment agents supervise approximately 2,300 individuals designated by agency policy as sexual offenders. This population includes not only those individuals currently being supervised for sexual offenses, but also those under supervision for nonsexual offenses, who are registered sexual offenders on the basis of past convictions.

The risk level of every sexual offender is determined through the use of the Static-99, a specialized risk assessment instrument, and offenders are reassessed at 90-day intervals using the Acute-2000, another specialized instrument. All sexual offenders are initially supervised at the highest level – which includes weekly face-to-face contacts, daily

telephone contact, mandatory risk-based treatment referrals, and at least monthly verification of residence, treatment, and supervision condition compliance, as well as compliance with registration requirements. Offenders are moved to lower supervision levels only on the basis of consistent successful compliance with all requirements and satisfactory risk assessment scores.

Based on fiscal 2009 data, the following chart shows the number of persons who would be subject to imposition of lifetime supervision. The probation, parole, or mandatory supervision periods for these persons will expire in the fiscal years noted, but the cases will remain under DPP’s jurisdiction for lifetime supervision under the bill. Unless the offenders are discharged by the court from lifetime supervision, the cumulative effect will significantly increase DPP’s offender population over time.

<u>Cases</u>	<u>FY</u> <u>2012</u>	<u>FY</u> <u>2013</u>	<u>FY</u> <u>2014</u>	<u>FY</u> <u>2015</u>	<u>FY</u> <u>2016</u>	<u>FY</u> <u>2017</u>	<u>FY</u> <u>2018</u>	<u>Total</u>
Probation	5	19	37	8	44	14	6	133
Parole/Mandatory Release	11	23	30	38	38	20	20	180
Total	16	42	67	46	82	34	26	313

Computer monitoring is used for any sexual offender whose criminal history includes an offense involving child pornography, or behavior in which access to the victim was accomplished through the use of the Internet. Sexual offenders with special conditions mandating computer monitoring who deny having access to a computer are referred for periodic polygraph examination to confirm their compliance with the imposed restrictions. DPP has already incurred one-time start-up costs for the hardware and software required for computer monitoring. The cost to monitor such an offender per year is \$472, or about \$40 per month.

State Expenditures: 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, 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; however, these additional costs would be significant.

Division of Parole and Probation

DPP reports that the courts already order similar presentence investigations for most sexual offender cases heard annually. It is assumed that those who would be convicted of crimes qualifying them for extended lifetime supervision with special conditions 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 in use by DPP.

DPP also indicates that the bill's requirement for lifetime extended supervision for all qualifying sexual offenders may 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 (1:30) so as to enforce special conditions such as residency restrictions, treatment, testing, computer, and electronic and GPS monitoring. An increase in specialized caseloads may 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 bill authorizes a court to require an offender to participate in a sexual offender treatment program. The average cost of private treatment is \$4,000 per year, per offender. This includes an initial evaluation and 45 treatment sessions – 15% individual (which may be used for the assessment) and 85% group. These costs are included under contractual services. Offenders normally participate in treatment for a 12-month period; however, it may be extended on a case-by-case basis.

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. Polygraph examinations cost about \$300 per exam; GPS tracking has basic costs of \$5.50 per day per offender; and treatment costs are estimated at about \$4,500 per year per offender.

In summary, general fund expenditures for DPP increase by an estimated \$99,500 in fiscal 2012 and by \$372,800 in fiscal 2013. By fiscal 2015, expenditures increase by \$884,200. This estimate reflects the cost of hiring two additional field agents in fiscal 2013. By fiscal 2015, DPP will need to hire a total of six field agents, one supervisory field agent, one senior agent, and one office secretary to provide lifetime sex offender supervision for the identified field of sex offenders; supervise sexual offender management teams; and (when necessary) administer polygraph exams, direct offenders to treatment, and track offenders with GPS technology. The number of additional positions required in each fiscal year and the associated costs are shown in the table below.

	<u>FY 2012</u>	<u>FY 2013</u>	<u>FY 2014</u>	<u>FY 2015</u>
Positions	0	2	3	4
Salaries and Fringe Benefits	\$0	\$112,400	\$307,100	\$579,600
Contractual Services	86,300	226,600	361,500	248,200
Operating Expenses	13,200	33,800	45,000	56,400
Total Expenditures	\$99,500	\$372,800	\$713,600	\$884,200

Future year expenditures reflect (1) full salaries with 4.4% annual increases and 3% employee turnover; (2) additional agents; and (3) 1% annual increases in ongoing operating expenses.

Office of the Public Defender

General fund expenditures also increase by \$318,400 for the Office of the Public Defender in fiscal 2011. This estimate reflects the cost of hiring five assistant public defenders (APDs) to handle an expected increased trial caseload for an anticipated 5,560 hours of additional attorney time for the affected accused sex offenders. It includes salaries, fringe benefits, and office supplies. The information and assumptions used in calculating the estimate are stated below:

- 278 affected cases (15% of the 1,850 annual sex offender caseload);
- 20 hours of trial preparation per case; and
- each APD works 212 days, or 1,378 hours, per year.

Salaries and Fringe Benefits	\$317,581
Supplies	<u>788</u>
Total FY 2011 Expenditures	\$318,369

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover; and 1% annual increases in ongoing operating supplies.

Additional Information

Prior Introductions: None.

Cross File: SB 280 (The President, *et al.*) (By Request - Administration) - Judicial Proceedings.

Information Source(s): Anne Arundel, Charles, Frederick, Montgomery, and Somerset counties; Commission on Criminal Sentencing Policy; State's Attorney's Association; Office of the Public Defender; Judiciary (Administrative Office of the Courts); 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

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Criminal Procedure - Sexual Offenders - Lifetime Supervision

PREPARED BY: HB 473

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.