

Department of Legislative Services
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FISCAL AND POLICY NOTE
 Revised

House Bill 1046
 Judiciary

(Delegate Conway, *et al.*)

Judicial Proceedings

**Criminal Procedure - Registered Sex Offenders - Restrictions on Pretrial Release
 and Inclusion on RAP Sheet**

This bill prohibits a District Court Commissioner from authorizing the pretrial release of a defendant who is a registered sex offender. A judge is authorized to release such a defendant on suitable bail, on any other conditions reasonably assuring that the defendant will not flee or pose a danger to others, or both bail and such other conditions. A State record of arrest and prosecution (“RAP” sheet) that is accessible to judicial officers making pretrial release determinations must prominently indicate, when applicable, that the subject of the report is a registered sex offender or subject to a term of lifetime sexual offender supervision.

The bill also specifies that, under the Maryland Rule governing the review of a commissioner’s pretrial release order, when such a defendant is presented to the court, the judge must order a continued detention if the judge determines that bail or other conditions of release would not protect against flight or a danger to others. There is a rebuttable presumption that such a defendant will flee or pose such a danger. The bill makes the imposition of lifetime sexual offender supervision a reportable offense to the Criminal Justice Information System (CJIS) Central Repository.

Fiscal Summary

State Effect: The bill’s requirements can be handled with existing budgeted resources in both FY 2011 and the near future.

Local Effect: Depending on current operating capacities of local detention facilities and average daily populations, local government expenditures may eventually increase by a significant amount in some jurisdictions.

Small Business Effect: None.

Analysis

Current Law: The circumstances under which a District Court commissioner may not authorize pretrial release include: a defendant charged with escaping from a correctional facility or any other place of confinement in the State; a defendant charged as a drug kingpin; or a defendant charged with a crime of violence if the defendant has been previously convicted of a crime of violence in Maryland or in any other jurisdiction of a crime that would be a crime of violence if committed in Maryland.

Under Maryland Rule 4-216(f), relating to the review of a commissioner's pretrial release order, a defendant who is denied pretrial release by a commissioner or who for any reason remains in custody for 24 hours after a commissioner has determined conditions of release pursuant to this rule must be presented immediately to the District Court. The District Court must review the commissioner's pretrial release determination and take appropriate action. If the District Court requires the defendant to remain in custody after the review, the District Court must set forth in writing or on the record the reasons for the continued detention.

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.

“Offender” means a person who is ordered by a court to register and who has been convicted of (1) child kidnapping; (2) kidnapping; (3) fourth degree sexual offense, if the victim is under 18; (4) false imprisonment, if the victim is under 18 and the person is not the victim's parent; (5) a crime that involves soliciting a person under 18 to engage in sexual conduct; (6) production or distribution of child pornography; (7) prostitution or related criminal prohibitions if the intended prostitute or victim is under 18; (8) any crime

that involves conduct that by its nature is a sexual offense against a person under 18; (9) an attempt to commit any of these offenses; or (10) has been convicted in another state or in a federal, military, or Native American tribal court of a crime that, if committed in Maryland, would constitute one of these crimes.

“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.

Sexual offenders are required to register, every three months or every six 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 (DPSCS). 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 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, in part, sexually violent offenders, child sex offenders, and offenders register in person every six months and provide an updated photograph at least once each year (sexually violent predators continue to reregister every three months).

The CJIS Central Repository at DPSCS collects, manages, and disseminates Maryland criminal history record information for criminal justice and noncriminal justice purposes. CJIS is a fingerprint-supported system for positive identification. The following events are required reportable events to the Central Repository:

- the issuance or withdrawal of an arrest warrant;
- an arrest;
- the release of a person after arrest without the filing of a charge;
- the filing of a charging document;
- a release pending trial or an appeal;
- a commitment to an institution of pretrial detention;
- the dismissal of an indictment or criminal information;
- a *nolle prosequi*;
- the marking of a charge “stet” on the docket;
- an acquittal, conviction, verdict of not criminally responsible, or any other disposition of a case at or following trial, including a finding of probation before judgment;
- the imposition of a sentence;
- a commitment to a State or local correctional facility;
- a commitment to the Department of Health and Mental Hygiene (DHMH) as incompetent to stand trial or not criminally responsible;
- a release from detention or confinement;
- a conditional release, revocation of conditional release, or discharge of a person committed to DHMH as incompetent to stand trial or not criminally responsible;
- an escape from confinement or commitment;
- a pardon, reprieve, commutation of a sentence, or other change in a sentence, including a change in a sentence that a court orders;
- an entry of an appeal to an appellate court;
- a judgment of an appellate court;
- an order of a court in a collateral proceeding that affects a person’s conviction, sentence, or confinement;
- certain adjudications of a child as delinquent:
- the issuance or withdrawal of a writ of attachment by a juvenile court;
- the initial registration of a sex offender; and

- any other event arising out of or occurring during the course of a criminal proceeding that the Secretary of Public Safety and Correctional Services by regulation or the Court of Appeals by rule makes a reportable event.

To avoid duplication in the reporting of criminal history record information, the Secretary by regulation and the Court of Appeals by rule may determine those reportable events to be reported by each criminal justice unit to the Central Repository.

Background: The Division of Pretrial Detention and Services (DPDS) is responsible for processing and managing the care, custody, and control of Baltimore City arrestees and inmates, primarily at the Baltimore City Detention Center. DPDS also provides bail recommendations to the courts in Baltimore City and supervises defendants who have been released to the community to await trial.

Judicial officers have access to a variety of current offender databases, including the FBI's National Crime Information Center, CJIS Central Repository, and the State's sex offender registry. The initial registration of a sex offender with the State's sex offender registry is already a reportable CJIS event. A "RAP" sheet, *per se*, does not exist.

State Expenditures: DPDS advises that there is insufficient data to predict the effect of this bill on average daily populations (ADP) or costs for the division in Baltimore City. DPDS believes that the bill may increase the pretrial detention for affected individuals by an average of five days. In any event, even though this bill could significantly add to ADP in fiscal 2011, DPDS believes that such an increase can be handled with existing budgeted resources – for now. In future years, depending on overall arrest activity in Baltimore City and its effect on ADP at the Baltimore City Detention Center, this bill could drive the need for additional space (including contingency housing) and additional correctional officers. The bill allows some pretrial releases on bail or other suitable conditions as determined by a judge, rather than a commissioner.

While the bill will also add to the workload of District Court commissioners and judges, the effects will not be immediately felt to the extent that additional personnel or operating expenses are needed.

Local Expenditures: This bill would likely increase the number and length of pretrial incarcerations at some local detention facilities in a similar fashion. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Charles, and Montgomery counties; Judiciary (Administrative Office of the Courts); State's Attorneys' Association; Department of Legislative Services

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Analysis by: Guy G. Cherry

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