

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 685

(Senator Bailey)

Judicial Proceedings

Criminal Procedure - Supervised Probation - Convicted Sex Offenders

This bill requires a court to order a defendant convicted of an offense that requires the defendant to register as a sex offender to order, in addition to any other sentenced imposed, probation for a term of years equal in length to the applicable term of registration.

Fiscal Summary

State Effect: Potential significant cumulative increase in general fund revenues and expenditures, beginning in the out-years, as discussed below.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Probation

In general, a court may order a defendant to be under probation after judgment for up to 5 years (circuit court) or 3 years (District Court). However, if the defendant is convicted of the following involving a victim who was a minor and consents in writing, the court may order probation for up to 10 years (circuit court) or 6 years (District Court):

- § 3-602 of the Criminal Law Article (sexual abuse of a minor);
- § 3-303 of the Criminal Law Article (rape in the first degree);

- § 3-304 of the Criminal Law Article (rape in the second degree);
- § 3-305 of the Criminal Law Article (Sexual offense in the first degree – prior to October 1, 2017);
- § 3-306 of the Criminal Law Article (Sexual offense in the second degree – prior to October 1, 2017); or
- § 3-307 of the Criminal Law Article (Sexual offense in the third degree).

Sex Offender Registry

Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment under specified circumstances, 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. The registry is maintained by the Department of Public Safety and Correctional Services (DPSCS).

A Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life. If a Tier I sex offender meets specified requirements, the registration term may be reduced to 10 years.

Lifetime Supervision

Lifetime supervision of the following sexual offenders is required for a crime committed on or after October 1, 2010:

- a sexually violent predator;
- a person convicted of first- or second-degree rape or attempted first- or second-degree rape;
- a person convicted of first- or second-degree sexual offense, attempted first-degree sexual offense, specified circumstances of second-degree sexual offense, or an attempt to commit specified circumstances of second-degree sexual offense, as those offenses existed before October 1, 2017;
- a person convicted of sexual abuse of a minor if the violation involved a child younger than age 12;

- a person required to register with the person's supervising authority because the person was at least 13 years old but not older 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 older than age 18 at the time of the act, the term of lifetime sexual offender supervision begins when the person's obligation to register in juvenile court 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 thus orders the supervision to continue for a specified time. A court (1) may sentence a person convicted of a third-degree sexual offense involving an aggravating factor or with a mentally disabled victim to lifetime supervision and (2) must require a risk assessment be conducted before that sentence is imposed.

A person subject to lifetime supervision is prohibited from knowingly or willfully violating the conditions of the supervision, with possible imprisonment and/or monetary fines as sanctions. 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 on 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. Allowable special conditions, including global positioning satellite tracking or equivalent technology and required participation in a sexual offender treatment program, are cited in statute. A victim or a victim's representative must be notified of hearings relating to lifetime sexual offender supervision.

State Revenues: Cumulative general fund revenues for DPSCS may increase significantly, beginning in the out-years, from additional fees collected from individuals who spend longer amounts of time on probation under the bill. Section 6-226 of the Criminal Procedure Article authorizes a court to impose a \$50 per month supervision fee upon a person the court places under supervision to Division of Parole and Probation (DPP). A court may adjust this fee or exempt a defendant from paying the fee under specified circumstances.

For illustrative purposes only, assuming that none of the 188 Tier I and Tier II registrants/offenders discussed below are exempted and all of them pay the full fee, general fund revenues increase by as much as \$112,800 for each additional year that this group of individuals is under DPP supervision. If the Tier I population (114 individuals) spends an additional 10 years on probation (5 years to 15 years), those individuals will pay \$684,000 in fees for their additional time on probation. If the Tier II population (74 individuals) spends an additional 20 years on probation (5 years to 25 years), those individuals will pay \$888,000 in fees for their additional time on probation. This equates to \$1,572,000 in additional general fund revenues from each annual cohort of Tier I and Tier II registrants/offenders subject to extended probation under the bill.

State Expenditures: General fund expenditures for DPSCS increase significantly, beginning in the out-years, due to increased terms of probation and reduced turnover of probation cases under the bill. This estimate assumes that:

- registrants/offenders who qualify for lifetime registration (Tier III) also qualify for lifetime sexual offender supervision under § 11-723 of the Criminal Procedure Article;
- offenders required to serve a 10-year registration term are not statistically significant for cost estimate purposes;
- Tier I and II registrants/offenders are serving a maximum of 5-year probation sentences; and
- the number of new sex offender registrants on DPP supervision remains constant each year.

During calendar 2018, the Maryland Sex Offender Registry (MSOR) received a total of 814 new registrants. Approximately 418 of these new registrants are under some form of DPP supervision (probation, parole, or mandatory release supervision). According to DPSCS, the breakdown by Tier/Registration Term of those registrants is as follows:

	<u>10 years</u>	<u>Tier I 15 years</u>	<u>Tier II 25 years</u>	<u>Tier III Lifetime</u>
CY 2018 New MSOR Registrants Under DPP Supervision	4	114	74	226

Based on the assumptions above, the fiscal impact of the bill depends primarily on the impact on caseloads from extended supervision of Tier I and Tier II offenders under the bill.

The bill may result in the need for additional probation officers to maintain current caseload standards. Requiring each annual cohort of registrants/offenders to spend longer amounts of time on probation reduces the turnover of DPP cases and the ability of existing probation agents to accommodate new cases. Using the assumptions above, the bill's impact on DPP caseloads will not be felt until at least five years in the future, when individuals who would normally be discharged from probation continue to be subject to DPP supervision under the bill.

According to DPP, 74 agents supervise approximately 2,800 individuals designated as sexual offenders by agency policy. DPP supervises sexual offenders through containment model supervision and consistent with the requirements of § 11-725 of the Criminal Procedure Article (requiring, among other things, the establishment of community sexual offender management teams). Individuals who are required to register with MSOR are automatically supervised in accordance with this containment policy. Because of the intense level of supervision that is afforded to sexual offenders, DPP has established that the appropriate caseload is a ratio of 30 cases to 1 agent. As caseload sizes increase with the increase in sentence length, DPP will be required to hire additional agents to keep the sexual offender caseload ratios within the range of 30:1.

For illustrative purposes only, assuming that the effect of the bill on DPP caseloads begins on the effective date of the bill and Tier I and Tier II registrants/offenders spend 5 years on probation under existing statute and 15 years on probation under the bill, the effect of the bill on DPP caseloads will not stabilize until 15 years into the future, when annual cohorts of registrants/offenders begin phasing in and out of probation. At this stabilization point and each year thereafter, there will be 1,880 individuals on probation who would not be on probation under existing statute. Using the 30:1 ratio cited above, this equates to the caseloads for 62.6 probation agents. DPP operates with ratios of 38 cases per agent, equating to 49.5 agents as of fiscal 2019, at the time of this analysis. The cost associated with hiring one probation agent in fiscal 2024 is \$77,965, including a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: HB 596 (Delegate Morgan, *et al.*) - Judiciary.

Information Source(s): Montgomery County; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2019
mm/kdm

Analysis by: Amy A. Devadas

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