

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 850

(Senator West)

Judicial Proceedings

Criminal Procedure - Restorative Justice Program

This bill (1) establishes the Restorative Justice Program within the Victim Services Unit (VSU) of the Governor's Office of Crime Prevention, Youth, and Victim Services (GOCPYVS); (2) establishes the position of restorative justice legal specialist within VSU to ensure the compliance of the program with all applicable laws, regulations, and established policies; (3) establishes the Restorative Justice Program Revolving Fund as a special fund administered by VSU for costs and administrative expenses associated with the restorative justice legal specialist position; (4) expands the purposes of the Performance Incentive Grant Fund to authorize the Justice Reinvestment Oversight Board to recommend to the Executive Director of GOCPYVS that grants be made to provide for restorative justice programs; and (5) establishes the Maryland Restorative Justice Council within GOCPYVS and its responsibilities. By December 1, 2023, and annually thereafter, the council, in coordination with the restorative justice legal specialist, must submit a report on the status of the program to the Governor and the General Assembly. **The bill's provisions relating to the council terminate September 30, 2027.**

Fiscal Summary

State Effect: A reliable estimate of the bill's overall impact on State finances cannot be made at this time. However, general fund expenditures increase by \$64,600 in FY 2023, increasing to \$82,400 by FY 2027, to capitalize the new special fund at a level sufficient to cover the costs of the restorative justice legal specialist position. Special fund revenues and expenditures increase correspondingly. Additional general fund expenditure increases are anticipated; while they cannot be quantified, they may be significant.

Local Effect: Local expenditures may increase beginning in FY 2023. Revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary:

Purpose of the Restorative Justice Program: Generally, the purpose of the program is to:

- ameliorate the harmful effects of offenses on a victim in a manner that treats the victim with dignity, respect, and sensitivity;
- address the rates of incarceration and commitment of offenders;
- generally, repair the harm caused to victims and encourage behavioral changes in offenders;
- create a victim-centered approach of restorative justice that seeks and obtains positive outcomes for victims, offenders, and communities;
- develop a restorative justice approach as an option for appropriate matters of the justice system that ensures the balancing of specified factors; and
- develop a post adjudicatory restorative justice approach that addresses the need of a victim for acknowledgment, information, privacy, safety, and involvement in matters of the justice system.

Program Participation: The bill establishes a process for parties to participate in the program and for a facilitator or facilitating organization to facilitate the program while ensuring the safety of the victim and in a manner consistent with trauma-informed methodologies and the restorative justice purpose of the program. The facilitator or facilitating organization may request access to all materials in a case file at no cost and any other materials to facilitate the process. Except for required reports with nonconfidential information, all information relating to the process is confidential.

The Department of Public Safety and Correctional Services (DPSCS) must develop posters informing an inmate of the right to participate in the program. Each correctional facility must prominently display the posters and implement standards set by the council to facilitate an inmate's participation in the program.

Following conviction or adjudication and sentencing of a defendant, or disposition of a case involving a child respondent, the State's Attorney must (1) notify the victim or the victim's representative of the right to participate in the program and (2) provide the victim or the victim's representative with information regarding how to request participation in

the program. The State Board of Victim Services must include information on how to request participation in the Restorative Justice Program within pamphlets developed by the board for victims and victim's representatives.

Restorative Justice Legal Specialist: The restorative justice legal specialist (1) must have knowledge of restorative justice programs; (2) is responsible for the management of the program within the Maryland Electronic Courts System (MDEC); and (3) may facilitate partnerships between State agencies and restorative justice organizations in order to provide restorative justice services. The duties of the specialist include ensuring the compliance of the program with all applicable laws, regulations, and established policies.

Restorative Justice Program Revolving Fund: The fund consists of (1) revenue distributed to the fund from restitution payments by an offender; (2) federal funds received by the State for the purposes of the program; and (3) any other money from any other source accepted for the benefit of the fund. Although the bill specifies that the stated purpose of the fund is to carry out the provisions of *the program*, the bill also specifies that the fund may be used only for *costs and administrative expenses associated with the position of restorative justice legal specialist*.

Any interest earnings of the fund must be credited to the general fund. Expenditures from the fund may be made only in accordance with the State budget. The fund is subject to audit by the Office of Legislative Audits (OLA).

Maryland Restorative Justice Council: The bill establishes the membership of the council and requires the council to be responsible for:

- developing standards, policies, and procedures for the program;
- developing, in consultation with the restorative justice legal specialist and other relevant authorities, restorative justice standards, policies, training requirements, and certifications for facilitators, as specified; and
- creating program reporting requirements.

In addition, the council may create alternative restorative justice training to include directly impacted victim-offender dialogue or victim reconciliation programming with nondirect victims.

Current Law: State law has not created a program in which a criminal case is diverted off the criminal docket into a program in which victims and offenders agree to mediation or some other type of face-to-face meeting. Once a defendant is charged with a crime, the offender has a right to a speedy trial. During the trial, a defendant has a constitutional right to confront and cross-examine the accuser. Peace orders or protective orders include

no-contact conditions, and there are other circumstances where no-contact orders may be issued by a court on behalf of a victim after a defendant is charged with a crime.

The District Court's Alternative Dispute Resolution Office provides mediation and settlement conferences for civil cases in many District Court locations. The services are offered at no charge, either on the day of trial or before the trial date. "Alternative dispute resolution" means the process of resolving matters in pending litigation through arbitration, mediation, neutral case evaluation, neutral factfinding, settlement conference, or a combination of those processes.

State Fiscal Effect: A reliable estimate of the bill's overall impact on State finances cannot be made at this time. However, general fund expenditures increase by \$64,591 in fiscal 2023 to capitalize the new special fund at a level sufficient to cover the costs of the restorative justice legal specialist position, as discussed below. Future year expenditures are annualized, adjusted for inflation, and reflect ongoing costs. Special fund revenues and expenditures increase correspondingly.

General fund expenditures increase further beginning in fiscal 2023 for DPSCS and the Judiciary to implement the bill, as discussed below. Such costs cannot be reliably estimated at this time but may be significant.

Governor's Office of Crime Prevention, Youth, and Victim Services

The bill establishes the program, fund, council, and restorative justice legal specialist position within VSU. As noted above, the new special fund consists of (1) revenue distributed to the fund from restitution payments by an offender; (2) federal funds received by the State for the purposes of the program; and (3) any other money from any other source accepted for the benefit of the fund. While the bill contemplates the potential for restitution payments and federal funds as a source of funding, in the absence of such funds, general funds are needed.

Therefore, this analysis assumes that general fund expenditures increase by \$64,591 in fiscal 2023 to capitalize the fund at a level sufficient to cover the anticipated costs for GOCPYVS to hire a restorative justice legal specialist position. (The bill specifies that the fund may be used only for costs and administrative expenses associated with the position of restorative justice legal specialist.) The estimate, which accounts for the bill's October 1, 2022 effective date, reflects the cost of hiring the restorative justice legal specialist, as required by the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$57,248
Operating Expenses	<u>7,343</u>
Total FY 2023 GOCPYVS Expenditures	\$64,591

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Special fund revenues and expenditures increase correspondingly. To the extent that restitution payments or federal funds materialize as revenue sources for the fund, the need for general funds decreases.

This analysis assumes that GOCPYVS can implement the program established by the bill with the addition of only one new position – the restorative justice legal specialist. It is unclear if this is sufficient; the workload depends largely on program participation, which cannot be predicted in advance. To the extent GOCPYVS must hire additional staff to fully implement the new program, general fund expenditures increase further.

The bill also expands the authorized uses of the Performance Incentive Grant Fund within GOCPYVS. To the extent that money is granted for restorative justice programs from the Performance Incentive Grant Fund, less money is available to provide grants to other approved purposes for the fund.

Judiciary

The bill requires (1) access to MDEC by the restorative justice legal specialist in order to create files within the system and manage the program and (2) the court to provide access to all materials in a case file at no cost to a facilitator or facilitating organization within the program. Case files within MDEC and other electronic court files are not currently able to be accessed and altered by individuals outside of the courts. In order to allow the access necessary in order to meet the bill’s requirements, reprogramming is needed; however, without specifics regarding the volume of potential individuals in the program and the level of access necessary, a reliable estimate of such costs is not possible.

In addition, as discussed above, restitution payments by offenders may be distributed to the new special fund. Although it is unclear to what extent restitution payments will accrue to the fund, in order to have the capacity to distribute any such payments to the fund, the Judiciary’s accounting software needs to be updated. Such costs cannot be reliably estimated at this time.

While the overall effect on the Judiciary is unknown, the increase in general fund expenditures may be significant.

Department of Public Safety and Correctional Services

General fund expenditures increase at least minimally beginning in fiscal 2023 for DPSCS to develop and print the required posters to inform inmates of the right to participate in the program. General fund expenditures may increase further in fiscal 2023 and in future years to the extent that DPSCS must implement standards set by the council to facilitate an inmate's participation in the program. However, until the standards are developed, it is not possible to estimate the fiscal impact of any changes necessary to implement the standards within all State correctional facilities.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 *per diem* grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The bill may result in a minimal decrease in expenditures if the program reduces incarcerations.

Office of Legislative Audits

OLA can absorb any additional workload necessary to complete an audit of the fund with existing resources.

Local Expenditures: The bill may result in a significant increase in local government expenditures in order for local correctional facilities and State's Attorney Offices to implement the bill's requirements. However, until the required standards are developed, it is not possible to estimate the fiscal impact of any changes necessary to implement the standards within local correctional facilities.

Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 *per diem* State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility. *Per diem* operating costs of local detention facilities have ranged from approximately \$90 to \$300 per inmate in recent years.

The bill may result in a minimal decrease in local expenditures if the program results in fewer incarcerations.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 997 (Delegate Davis) - Judiciary.

Information Source(s): Baltimore, Charles, Frederick, Montgomery, and Somerset counties; Governor's Office of Crime Prevention, Youth, and Victim Services; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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