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Revised Fiscal Note

(replaces fiscal note dated April 21, 2023)

Drafting Number: LLS 23-0318 Date: April 27, 2023
Prime Sponsors: Sen. Gonzales; Gardner Bill Status: House Judiciary
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Bill Topic: SUNSET PROCESS SEX OFFENDER MANAGEMENT BOARD

- Summary of Fiscal Impact: [x] State Revenue [x] State Expenditure [] State Transfer [] TABOR Refund [] Local Government [] Statutory Public Entity

Sunset Bill. This bill continues the Sex Offender Management Board in the Department of Public Safety, which is scheduled to repeal on September 1, 2023. State fiscal impacts include both increased expenditures from changes to the program under the bill, as well as the continuation of the program's current revenue and expenditures. The program is continued through September 1, 2028.

Appropriation Summary: For FY 2023-24, the bill requires a net change in appropriations of \$70,388 to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the reengrossed bill.

Table 1. State Fiscal Impacts Under SB 23-164¹

Table with 4 columns: Impact Category, Sub-Category, Budget Year FY 2023-24, and Out Year FY 2024-25. Rows include New Impacts (Revenue, Expenditures) and Continuing Impacts (Revenue, Expenditures).

1 Table 1 shows the new impacts resulting from changes to the program under the bill and the continuing impacts from extending the program beyond its current repeal date. The continuing program impacts will end if the bill is not passed and the program is allowed to repeal. Due to space limitation, centrally appropriated expenditures are excluded from Table 1, and instead listed in Table 2 in the State Expenditures section below.

Summary of Legislation

The bill continues the Sex Offender Management Board (SOMB) in the Department of Public Safety (DPS) for 5 years, from September 1, 2023 to September 1, 2028. In addition, the bill also makes the following changes to the SOMB:

- requires the SOMB to perform a compliance review of at least 10 percent of treatment providers every two years;
- requires treatment to be responsive to the age, developmental status, cultural or racial characteristics, sexual orientation, and gender identify or expression of the offender;
- requires the SOMB to revise the Sex Offender Release Guideline Instrument for use by the State Board of Parole by December 1, 2023;
- requires the Division of Criminal Justice in the DPS to work with a third-party vendor to take and forward fingerprints for service provider applications;
- requires supervising officers to follow the guidelines and standards development by the SOMB; and
- requires agencies supervising sex offenders (not including those in the Division of Youth Services) to provide offenders access to the complete list of treatment providers and allows an offender to change treatment providers or agencies once within 90 days of the court imposing the sentence or the offender's release on parole.

Request for evaluation. The bill removes the requirement that individuals convicted of a criminal offense who had previously been convicted of a sex offense have an evaluation included in their presentence report unless the prosecuting attorney or the court request the evaluation.

Definition of juvenile. The bill adds juveniles who are subject to direct filing or are transferred to district court and sentenced prior to their 21st birthday to the definition of juvenile who has committed a sexual offense.

Sex offenders in the supervision of the Department of Corrections. The bill requires the Department of Corrections (DOC) to identify all inmates who are classified to undergo sex offender treatment, who are eligible to receive the treatment, and have not been provided the opportunity to receive treatment. The data must be provided to the Parole Board before July 31, 2023, and the board must form a subcommittee to develop solutions to address treatment resources for sex offender who are under the supervision of the DOC.

The bill also allows the DOC to employ or contract for sex offender treatment and polygraph services if they are an approved provider and the department operates a sex offender treatment program that aligns with SMOB standards.

Background

The SOMB is a 25-member board within the DPS that develops standards and guidelines to oversee adult and juvenile sex offenders and approves the treatment providers, evaluations, clinical supervisors and polygraph examiners. The full sunset report can be found [here](#).

The SOMB is funded through the General Fund, the Sex Offender Surcharge Fund, and the Sex Offender Treatment Provider Fund. The Sex Offender Surcharge Fund contains money from surcharges paid by individuals who are convicted of a sex offense. Surcharge amounts are established in statute and therefore, revenue to the fund is not impacted by the sunset of the SOMB.

The Sex Offender Treatment Provider Fund contains money from application fees paid by approved providers. Providers must renew their application every three years. Statute caps the application fee at \$125, which is the current application fee.

Continuing Program Impacts

According to the DPS, the SOMB is expected to have revenue of \$19,862 in provider application fees and expenditures of \$645,856. If this bill is enacted, current revenue and expenditures will continue for the program starting in FY 2024-25. This continuing revenue is subject to the state TABOR limits. If this bill is not enacted, the program will end on September 1, 2023, followed by a wind-down period, and state revenue and expenditures will decrease starting in FY 2024-25 by the amounts shown in Table 1. The changes to the program that drive additional revenue and costs are discussed in the State Revenue and State Expenditures sections below.

State Expenditures

Beyond the continuation of the program, changes in the bill will increase net state General Fund expenditures in by about \$80,000 per year, starting in FY 2023-24. The bill will increase expenditures in the DPS, decrease net expenditures in the Judicial Department, and increase workload to the DOC and Parole Board. Expenditures are shown in Table 2 and detailed below.

**Table 2
 Expenditures Under SB 23-164**

	FY 2023-24	FY 2024-25
Department of Public Safety		
Personal Services	\$147,906	\$161,352
Operating Expenses	\$2,700	\$2,700
Capital Outlay Costs	\$13,340	-
Centrally Appropriated Costs ¹	\$33,685	\$37,146
FTE – Personal Services	1.8 FTE	2.0 FTE
DPS Subtotal	\$197,631	\$201,198

**Table 2
 Expenditures Under SB 23-164 (Cont.)**

	FY 2023-24	FY 2024-25
Judicial Department		
Personal Services	(\$95,631)	(\$92,318)
Operating Expenses	(\$4,597)	(\$4,597)
Capital Outlay Costs	\$6,670	-
Centrally Appropriated Costs ¹	(\$24,378)	(\$24,067)
FTE – Personal Services	(1.4 FTE)	(1.4 FTE)
Judicial Subtotal	(\$117,936)	(\$120,982)
Total Costs	\$79,695	\$80,216
Total FTE	0.4 FTE	0.6 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Public Safety. Starting in FY 2023-24, the DPS will require 2.0 FTE to review 10 percent of approved providers every two years. This includes 1.0 FTE to collect required compliance review information and to analyze results, and 1.0 FTE to work with providers after the review to ensure providers implement required corrective actions and to provide technical assistance. In addition, workload to the SOMB will increase to revise the Sex Offender Release Guideline Instrument. Costs in FY 2023-24 are prorated for the General Fund payday shift.

Judicial Department. Starting in FY 2023-24, net expenditures in the Judicial Department will decrease by 1.4 FTE. This includes a reduction of 1.9 FTE in the Division of Probation to no longer provide evaluation for offenders with a past sex offense and an increase an 0.5 FTE in the Office of the State Court Administrator to assist probation officers when offenders enroll with providers outside of the referring district, manage any additional contracts, train probation staff on the responsibility to provide the full list, and to collaborate with the SOMB to develop or modify current supervising standards. Costs in FY 2023-24 are prorated for the General Fund payday shift.

Department of Corrections. Starting in FY 2023-24, workload in the DOC will increase to collect data that is required by the bill. This work can be accomplished within existing resources.

Department of Corrections – Parole Board. Starting in FY 2023-24, workload to the Parole Board will increase to create a subgroup to develop solutions to address treatment resources for sex offender who are under the supervision of the DOC. In addition, workload will increase to work with the SOMB to revise the Sex Offender Release Guideline Instrument. All work can be accomplished within existing appropriations.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

Other Budget Impacts

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2023-24, the bill requires appropriations totaling \$70,388 from the General Fund, including:

- an increase of \$163,946 to the Department of Public Safety and 1.8 FTE; and
- a decrease of \$93,558 to the Judicial Department and 1.4 FTE.

State and Local Government Contacts

Corrections
Information Technology

District Attorneys
Judicial

Human Services
Public Safety