152nd GENERAL ASSEMBLY
FISCAL NOTE

BILL:	**SENATE BILL NO. 4**
SPONSOR:	**Senator Pinkney**
DESCRIPTION:	**AN ACT TO AMEND TITLE 11, TITLE 13, AND TITLE 29 OF THE DELAWARE CODE RELATING TO THE CRIMINAL JUSTICE SYSTEM, INCLUDING PROBATION.**

Assumptions:

1. This Act becomes effective upon signature by the Governor.
2. This Act modernizes Delaware's probation system. Other provisions of this Act relevant to this fiscal projection include:
   a. enables the customization of conditions of probation to meet individual needs.
   b. requires collecting and publishing community corrections data by the Statistical Analysis Center (SAC).
   c. provides access to community-based re-entry programs.
   d. requires Probation and Parole Officers to refrain from imposing special conditions with which a person cannot in good faith comply and assess whether the person has the necessary resources to comply with the condition.
   e. prohibits the imposition of a condition of supervision that requires paying court fines, fees, supervision-related fees, and supervision-mandated programs.
   f. authorizes the Department of Correction (DOC) to use alternate reporting methods, such as audiovisual communications.
   g. requires the DOC to bear the cost of house arrest programs.
   h. requires that a probationer have a right to be represented by counsel at recognizance and revocation hearings at no cost if the probationer cannot afford counsel.
3. This Act significantly expands upon the SAC's duties through the requirement of the collection and the public dissemination of various types of community corrections data. The SAC estimates it would require an expansion of 7.0 FTE positions to implement and comply with the provisions of this Act. The Fiscal Year 2024 costs are estimated at $527,746, and one-time costs are estimated at $825,200 and are as follows:
   a. Recurring Costs – $527,746
      1. $473,505 in Fiscal Year 2024 personnel costs, including OECs (at a rate of 31.83%), for 2.0 FTE, Planner V; 1.0 FTE, Database Administrator II; 3.0 FTE, Research Specialist II; and 1.0 FTE Legal Services Administrator.
      2. $35,150 for the estimated rent for a facility to house the new positions.
      3. $2,486 estimated for Fleet Services needs.
      4. $10,305 estimated for telecommunications, technology license needs, and annual estimated costs to maintain and host a database.
      5. $6,300 estimated for annual office supply needs.

b. One-Time Costs – $825,200

1. $25,200 for computers, office furniture, and other supply startup costs for the new positions.
2. $800,000 estimated for creating and launching a database to provide the collection, analysis, and reporting required by this Act.

4. This Act provides that should a Probation and Parole Officer have probable cause that a probationer committed a violation, upon proper notice, a recognizance hearing may occur, and upon the conclusion of the recognizance hearing, a revocation hearing may be held. In both instances, a probationer has a right to be represented by counsel. If the probationer cannot afford counsel, the Court shall appoint counsel without charge. For both hearing types, if counsel is appointed, it is assumed it would be from the Office of Defense Services (ODS). The number of filings and volume of trials cannot be predicted, but it is anticipated that an increased standard of evidence will generate an additional workload for the Department of Justice (DOJ) and the ODS. The Judicial Branch may have additional resource needs in future years should the volume of filings and hearings become burdensome.
5. The Department of Justice (DOJ) anticipates that it will need additional support in its Criminal Division to represent the State at the additional hearings statewide created by this Act. The DOJ anticipates it would require 3.0 FTE, Deputy Attorneys General (DAG), and 3.0 FTE, Legal Assistant (1.0 DAG and 1.0 Legal Assistant in each county) to accommodate the additional workload. The Fiscal Year 2024 costs are estimated at $577,890, and one-time costs are estimated at $18,000 and are as follows:

   a. Recurring Costs – $577,890 in Fiscal Year 2024 personnel costs, including OECs (at a rate of 31.83%), for 3.0 FTE, DAG V, and 3.0 FTE, Legal Assistant IV.

   b. One-Time Costs – $18,000 for computers, office furniture, and other supply startup costs for the new positions.

6. This Act significantly expands upon the ODS's duties through the anticipated requirement of providing representation for probationers statewide at hearings. The ODS estimates it would require an expansion of 13.0 FTE positions to accommodate the additional caseload. The Fiscal Year 2024 costs are estimated at $639,240, and one-time costs are estimated at $45,140 and are as follows:

   a. Recurring Costs – $639,240

      1. $421,051 in Fiscal Year 2024 personnel costs, including OECs (at a rate of 31.83%), for 7.0 FTE, Assistant Public Defenders V (APD); 3.0 FTE, Legal Assistant IV; and 3.0 FTE, Forensic Social Specialist.
      2. $155,250 estimated for the Office of Conflicts Counsel in situations where the Public Defender's Office cannot represent a probationer due to a conflict of interest. $195,500 estimated in Fiscal Years 2025 and 2026.
      3. $2,982 estimated for membership dues for new APD positions.
      4. $44,160 for the estimated rent for a facility to house the new positions.
      5. $4,297 estimated for Fleet Services needs.
      6. $5,000 estimated for consultant/expert services needs.
      7. $6,500 estimated for annual office supply needs.

   b. One-Time Costs – $45,140

      1. $42,900 for computers, office furniture, and other supply startup costs for the new positions.
      2. $2,240 estimated for adjustments needed to internal organization databases for the new positions.

7. This Act requires that if a person does not have the necessary resources or capabilities to comply with a condition of supervision, the Court, Board of Parole, or Probation and Parole Officer must provide resources or impose an alternative condition that is the same as or not more restrictive than the condition. And that a court, Board of Parole, or Probation and Parole Officer may not impose a condition of supervision that a probationer pay court fines or fees or supervision-related fees, including fees for being on supervision or enrolled in supervision-mandated programs. Therefore, it is assumed that the DOC will have to significantly expand its ability to provide access to a variety of supervision-mandated programs to probationers, as often, a probationer will be required by court order or statute to participate in applicable programming and be required to pay for the evaluation and treatment.

8. The DOC must enter into various contractual agreements for probationer services. Due to the state's procurement laws, the DOC must engage in a Request for Proposal (RFP) process for many of these services. Therefore, for Fiscal Year 2024, it is assumed that if this bill were enacted by July 1, 2023, the DOC would need three months to draft RFPs and complete the bidding and award process. For this reason, it is assumed that in Fiscal Year 2024, contracts for services may not begin until around October 2023, leaving nine months to be funded the first year, with subsequent years being projected for 12 months of funding. The Fiscal Year 2024 costs are estimated at $20,941,485, and one-time costs are estimated at $503,000 and are as follows:

    a. Recurring Costs – $20,941,485

        1. $67,847 in Fiscal Year 2024 personnel costs, including OECs (at a rate of 31.83%), for 1.0 FTE, Management Analyst III, to assist with contract administration.
        2. $146,625 in Fiscal Year 2024 and $195,500 in subsequent fiscal years for an average of 500 cases per year of court-ordered domestic violence programming as a condition of supervision.
        3. $14,063 in Fiscal Year 2024 and $18,750 in subsequent fiscal years for an average of 750 cases per year of court-ordered anger management programming as a condition of supervision.
        4. $112,500 in Fiscal Year 2024 and $150,000 in subsequent fiscal years for an average of 150 cases per year of court-ordered ignition interlock devices programming as a condition of supervision.
        5. $1,125,000 in Fiscal Year 2024 and $1,500,000 in subsequent fiscal years for an average of 1,800 cases per year of court-ordered DUI programming as a condition of supervision.
        6. $22,500 in Fiscal Year 2024 and $30,000 in subsequent fiscal years for polygraph testing services related to sex offender treatment programming as a condition of supervision.
        7. $114,750 in Fiscal Year 2024 and $153,000 in subsequent fiscal years for an average of 288 probationers receiving sex offender treatment services as a condition of supervision.
        8. $18,750,000 in Fiscal Year 2024 and $25,000,000 in subsequent fiscal years for an estimated 4,500 probationers to receive mental health and substance abuse evaluation, assessment, and treatment services as a condition of supervision.
        9. $25,000 annually to offset self-pay collections for the current GPS monitoring contract.
        10. $431,200 in Fiscal Year 2024 and $367,200 in subsequent fiscal years to establish a mobile case management application to allow field officers to visit probationers at their residence or work area to reduce or eliminate the need for office visits.
        11. $132,000 to deploy approximately 275 cell phones to Probation and Parole Officers to conduct official business virtually.

b. One-Time Costs – $503,000

1. $3,000 for computers, office furniture, and other supply startup costs for the new position.
2. $500,000 estimated for significant programming changes to the DOC's Delaware Automated Correction System (DACS) for enhancements to sentencing calculation modules, the addition of special condition functions, enhancements to earned credit compliance, various reports and queries identified in the Act, enhancements to the Criminal Justice Information System (CJIS) interface to provide required probation information for SAC reporting and more.

9. The Delaware Criminal Justice Information System (DELJIS) will have contractual programming needs that would require the creation of new fields in the system mainframe in which CJIS resides and would need to create a new integration service to ensure the new additional data elements being added to DACS are delivered to the CJIS. The DELJIS estimates it would require one-time funding of $15,100 to complete the integration and additional programming.
10. This fiscal projection does not consider if programming resources for Mental Health & Substance Abuse Evaluation, Assessment, and Treatment needs could be done more efficiently or cost-effectively in collaboration with the Department of Health and Social Service's Division of Substance Abuse and Mental Health. At this time, it is unknown if alternative funding options or suggestions exist to account for probationers with court-ordered treatment that may not be covered, such as for those who may be self-insured or enrolled in Medicaid.
11. Lastly, all Fiscal Year 2024 personnel costs have been estimated for nine months of funding, with the annualization of the remaining three months incorporated into subsequent year estimates. Additionally, a 2% inflation cost has been included for projected increases in salary, health insurance, and OECs.

Cost:

	One-Time	**Operating/Recurring**
Fiscal Year 2024:	$1,406,440	$22,686,361
Fiscal Year 2025:		$31,144,871
Fiscal Year 2026:		$31,209,916

Prepared by Jason R. Smith
Office of the Controller General