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FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 166
Judiciary

(Delegate Valentino-Smith, *et al.*)

Judicial Proceedings

Criminal Procedure - Pretrial Release - Out-of-State Sex Offenders

This bill prohibits a District Court commissioner from authorizing the pretrial release of a defendant who is a sex offender who is required to register by another jurisdiction; a federal, military, or tribal court; or a foreign government. A judge may authorize the pretrial release of such a defendant on suitable bail, any other condition that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community, or a combination of these factors and other conditions. There is a rebuttable presumption that the defendant will flee and pose a danger to another person or the community. A judge must order the continued detention of the defendant if the judge determines that suitable bail and/or conditions will not reasonably ensure that the defendant will not flee or will not pose a danger to another person or the community.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures for pretrial detentions in Baltimore City if the bill increases the number of defendants unable to obtain pretrial release or the duration of pretrial detentions. The Office of the Public Defender (OPD) can handle any increase in the number of judicial bail review hearings generated by the bill with existing resources. Revenues are not affected.

Local Effect: Minimal increase in local expenditures for pretrial detentions in most local jurisdictions if the bill increases the number of defendants unable to obtain pretrial release or the duration of pretrial detentions. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law:

Release of Sex Offender Registry Defendants: 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 maintained by the Department of Public Safety and Correctional Services upon release from prison or release from court if the person did not receive a prison sentence. Pretrial release of such defendants may be authorized only by a judge and only on suitable bail, or any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to others, or on both bail and such other conditions. There is a rebuttable presumption that a defendant who is a sex offender who is required to register will flee and pose a danger to another person or the community.

Offenders who are required to register in other states and who come to Maryland to reside or habitually live, for employment, to attend an educational institution, or as a transient, 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.

Pretrial Release of a Criminal Defendant, Generally: A criminal defendant is entitled to be released pending trial unless a judge ultimately determines that no conditions can be placed on the defendant's release that would reasonably ensure the defendant's appearance at trial and the safety of the alleged victim, another person, and the community. However, if a judicial officer determines that release on personal recognizance alone is not appropriate, or the defendant is by law ineligible for release on recognizance, the defendant may be released prior to trial only by posting bail in an amount set by the judicial officer.

In determining whether a defendant should be released and the conditions of pretrial release, the judicial officer is required to take into account the following information, if available: (1) the nature and circumstances of the offense; (2) the nature of the evidence against the defendant and the potential sentence upon conviction; (3) the defendant's prior record and history with regard to appearing in court as required; (4) the defendant's employment status and history, family ties, financial resources, reputation, character and mental condition, and length of residence in the community and the State; (5) the potential danger of the defendant to himself or herself, the victim, or others; (6) recommendations of the State's Attorney and any agency that conducts a pretrial release investigation; (7) information provided by the defendant or the defendant's counsel; and (8) any other factor bearing on the risk of a willful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior

adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

In most cases, pretrial release determinations are made at the defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants, as noted above, and including defendants charged with specific offenses (*e.g.*, crimes of violence, violation of a protective order, drug kingpin, etc.). Pretrial release of such defendants may be authorized only by a judge and only on suitable bail, or any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to others, or on both bail and such other conditions.

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 must be presented immediately to the District Court if the court is in session. If the court is not in session, the defendant must be presented at the next session of court. The District Court must review the commissioner's pretrial release determination and take appropriate action. If the defendant will remain in custody after the review, the District Court must set forth in writing or on the record the reasons for the continued detention.

State Expenditures: The Baltimore Pretrial Complex (formerly the Baltimore City Detention Center), a State-operated facility, is used primarily for pretrial detentions. Thus, general fund expenditures increase minimally if the bill increases the number of defendants unable to obtain pretrial release or the duration of pretrial detentions.

OPD represents indigent criminal defendants at judicial bail review hearings. Because the bill prohibits a District Court commissioner from authorizing the pretrial release of a defendant who is a sex offender who is required to register, as specified in the bill, those defendants are required to appear before a judge for a bail review hearing. The number of individuals OPD must represent as a result of the bill depends on (1) the number of individuals charged and who meet the bill's required classification; (2) the number of those charged who are eligible for OPD representation; and (3) the extent to which these defendants would not otherwise appear before a judge for a bail review hearing under existing statute (*e.g.*, denial of pretrial release by a District Court commissioner, inability to post bail within 24 hours after an initial appearance, etc.).

However, given the relatively small number of individuals who are likely to be represented by OPD at a judicial bail review hearing as a result of the bill, OPD can handle the additional representation duties with existing budgeted resources.

Local Expenditures: Generally, local expenditures increase minimally if the bill increases the number of defendants unable to obtain pretrial release or the duration of pretrial

detentions. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Garrett and Montgomery counties advise that the bill does not have a fiscal impact. Montgomery County states that the assessment unit conducts daily bond review hearings for all defendants not released by the District Court Commissioner or who are unable to make bail. The supervision unit supervises sex offenders who are not Maryland residents. However, out-of-state cases are small in number and mostly reside within the Washington, DC, metropolitan area. Baltimore County also advises that the bill is not likely to have a fiscal impact. According to Baltimore County, there have only been a handful of offenders who were out-of-state sex offenders in county detention over the past few years and most have remained in detention for other reasons. As a result, the county does not anticipate a substantial fiscal impact as a result of the bill.

On the other hand, Prince George's County advises that the bill's requirements may increase workload demands and impose additional overtime costs. Prince George's County states that two officers may be required to work overtime at an additional cost ranging from \$100,000 to \$115,000 annually to meet the bill's requirements.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Garrett, Montgomery, and Prince George's counties; Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Office of the Public Defender; Department of Legislative Services

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