

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 388
Judiciary

(Delegate A. Miller, *et al.*)

Judicial Proceedings

Criminal Procedure - Violation of Conditions of Release

This bill adds a crime of violence under § 5-101 of the Public Safety Article and a crime against a victim who is a person eligible for relief under § 4-501 of the Family Law Article to the list of charges for which a person is statutorily prohibited from violating a condition of pretrial or posttrial release prohibiting contact, harassment, or abuse of the alleged victim or going in or near the alleged victim's residence or place of employment.

Fiscal Summary

State Effect: Minimal increase in general fund incarceration expenditures. Revenues are not affected.

Local Effect: Minimal increase in local incarceration expenditures. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: A person charged with committing a sexual crime against a minor is prohibited from violating a condition of pretrial or posttrial release that prohibits the person from contacting, harassing, or abusing the victim or going in or near the alleged victim's residence or place of employment. Violators are guilty of a misdemeanor, punishable by up to 90 days imprisonment. A police officer is authorized to make a warrantless arrest if the officer has probable cause to believe that the person has violated a condition of pretrial or posttrial release under these circumstances.

The court or a District Court commissioner must consider including reasonable protections for the safety of any alleged victim as a condition of pretrial release for a defendant. If the victim has requested reasonable protections for safety, the court or a District Court commissioner must consider including provisions that prohibit contact with the alleged victim or the alleged victim's premises or place of employment.

Under Maryland Rule 4-216.1, a judicial officer should impose additional conditions on pretrial release only if needed to ensure the defendant's appearance in court; to protect the community, victims, witnesses, or other persons; and to maintain the integrity of the judicial process, as demonstrated by the circumstance of the individual case. The Rule requires that preference be given to additional conditions without financial terms. The Rule also specifies several types of special conditions of release that may be imposed on a defendant, including any lawful condition that will help ensure the appearance of the defendant or the safety of each alleged victim, other persons, or the community. When making a pretrial release decision, a judicial officer must consider the danger of the defendant to an alleged victim, another person, or the community.

A court may issue a bench warrant for the arrest of a defendant who violates a condition of pretrial release. Once the defendant is presented before a court, the court may revoke the defendant's pretrial release or continue the defendant's pretrial release with or without conditions.

Under Maryland Rule 4-349, after conviction, a trial judge may release the defendant pending sentencing or appellate review subject to conditions. The defendant has the burden of establishing that he/she will not flee or pose a danger to any other person or to the community. The court may consider the same factors that must be considered for pretrial release but may impose different or greater conditions for posttrial release. The court, on motion of any party, or on its own initiative, and after notice and opportunity for hearing, may revoke an order of release or amend it to impose additional or different conditions of release. If its decision results in the detention of the defendant, the court must state the reasons for its action in writing or on the record.

Section 5-101 of the Public Safety Article defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) assault in the first or second degree; (4) burglary in the first, second, or third degree; (5) carjacking and armed carjacking; (6) escape in the first degree; (7) kidnapping; (8) voluntary manslaughter; (9) maiming; (10) mayhem; (11) murder in the first or second degree; (12) rape in the first or second degree; (13) robbery; (14) robbery with a dangerous weapon; (15) sexual offense in the first, second, or third degree; (16) home invasion; (17) an attempt to commit offenses (1) through (16); or (18) assault with the intent to commit offenses (1) through (16) or a crime punishable by imprisonment for more than one year.

The Family Law Article sets forth the process by which individuals who meet specified intimate or familial relationship requirements may petition for relief from abuse. Section 4-501 of the Family Law Article specifies that a “person eligible for relief” includes the current or former spouse of the respondent alleged to have committed domestic abuse, a cohabitant of the respondent, a person related by blood, marriage, or adoption, and a vulnerable adult.

Background: The Judiciary advises that no violations of § 5-213.1 of the Criminal Procedure Article were filed in the trial courts during fiscal 2017.

State Expenditures: General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase minimally to the extent that the bill results in increased incarcerations or probation-related costs for individuals charged with the offenses specified in the bill who violate no-contact orders. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

As noted above, judicial officers and trial judges have the authority to impose no-contact orders as a condition of release and have the authority to revoke a defendant’s release for violation of the order. Should the designation of such a violation as a misdemeanor subject to up to 90 days of incarceration and the specification in statute that a law enforcement officer may make a warrantless arrest for this offense (instead of a court issuing a bench warrant) increase the amount of incarceration time in Baltimore City for these violations, then general fund expenditures increase for DPSCS.

The Division of Parole and Probation (DPP) advises that the bill’s impact is indeterminate because it cannot estimate the rate at which judges will sentence a defendant to probation supervision in lieu of incarceration. DPP notes that it does not incur additional costs if a defendant is serving two probation sentences simultaneously as a result of being sentenced to probation in the community upon conviction for the original underlying crime and the offense established under the bill. DPP advises that if the defendant receives a sentence that includes a period of incarceration, DPP does not incur supervision costs until the defendant is released from incarceration.

It should be noted that some of the defendants subject to the bill’s provisions may already be being held without bond due to their particular circumstances and the circumstances surrounding the alleged offense.

Local Expenditures: For the reasons stated above, local incarceration expenditures in jurisdictions other than Baltimore City increase minimally. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem

operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Some jurisdictions advise that the bill does not materially affect local finances. For example, Caroline County advises that, given the county's crime statistics for the types of crimes listed in the bill, it does not anticipate a substantive fiscal impact from the bill. The Office of the State's Attorney for Montgomery County advises that the bill does not have a fiscal impact on the office. In addition, the City of Bowie does not foresee a fiscal impact from the bill.

Additional Information

Prior Introductions: None.

Cross File: SB 170 (Senator Lee, *et al.*) - Judicial Proceedings.

Information Source(s): Caroline and Montgomery counties; City of Bowie; 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 - January 26, 2018
md/kdm Third Reader - March 2, 2018

Analysis by: Amy A. Devadas

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