

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE

Senate Bill 494 (Senator Ferguson. *et al.*)

Judicial Proceedings

Sentencing - Confinement as a Condition of Probation - Ineligibility for Probation

This emergency bill expands, statewide, the authority of the courts to impose a sentence of confinement as a condition of a suspension of sentence, probation before judgment, or probation following judgment. The bill also prohibits persons convicted of drunk and drugged driving offenses from eligibility for probation before judgment for second or subsequent violations, and requires that such offenders serve their full sentence.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures due to the bill's effect on various sentencing provisions. Revenues would not be affected.

Local Effect: Potential significant increase in local expenditures due to the bill's effect on various sentencing provisions. Local revenues would not be affected.

Small Business Effect: Minimal. This bill's effect on the operations of private home detention operators is not expected to be significant.

Analysis

Current Law: The authority of a court to impose a sentence of confinement as a condition of a suspended sentence currently exists in Calvert, Charles, and St. Mary's counties. This authority applicable to probation before judgment is currently available to a court in Allegany, Calvert, Charles, Garrett, and St. Mary's counties. This authority applicable to probation following judgment is currently available to a court in Charles, St. Mary's, Cecil, Harford, and Calvert counties.

Depending on the actual charge and the circumstances of the offense, second and subsequent

violations of drunk and drugged driving offenses subject defendants to varying maximum incarceration penalties ranging up to imprisonment for four years.

Background: In August 1999, in the case of *Frederick A. Bailey v. State of Maryland*, the Court of Appeals found that home detention (or house arrest) is a form of confinement and, in the absence of statutory authority, a trial court lacks power to order home detention as a condition of probation.

State Fiscal Effect: It is assumed that any additional confinements resulting from this bill's expansion of a court's authority to impose a sentence of confinement as a condition of a suspended sentence, probation before judgment, or probation following judgment, would likely involve home detention or house arrest as the form of confinement. Accordingly, this change is not expected to have any significant impact on State incarceration costs or reimbursements to local governments for incarceration costs. The number of additional confinements resulting from these provisions of the bill is assumed to be minimal.

However, denial of probation for second or subsequent violations of drunk or drugged provisions may result in significant numbers of additional incarcerations. In fiscal 1999, there were 37,157 dispositions of drunk and drugged driving offenses heard in the District Court. Of that number, 10,948 cases resulted in a probation before judgment (PBJ). However, it is unknown how many instances of PBJ involved a second or subsequent offense. The number could be significant.

In any event, to the extent that more persons might be confined, as a result of any of the provisions of this bill, in State prisons or local detention facilities, the following costs would apply. Persons serving a sentence longer than one year are incarcerated in Division of Correction (DOC) facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,700 per month. The average variable cost of housing a new inmate (food, medical costs, etc.), excluding overhead, is \$260 per month. This bill could increase the average daily population in DOC facilities to the extent that additional beds, personnel, infrastructure improvements, or a new prison facility will be necessary. Based on a cost of approximately \$105,000 per bed, the cost of building a new medium security 1,300 bed prison facility is currently estimated at \$136.5 million.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2001 are estimated to range from \$11 to \$54 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility.

Local Fiscal Effect: Expenditures could increase as a result of a significant number of additional confinements depending upon the number of convictions and sentences imposed. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$22 to \$83 per inmate in fiscal 2001.

Additional Information

Prior Introductions: Chapter 460 of 1998 granted the authority of a court to impose a sentence of confinement as a condition of probation before judgment in Allegany County and Garrett County. HB 1305 of 1998 (failed) would have extended that authority in Anne Arundel County.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services (Division of Correction, Division of Parole and Probation), Office of the Public Defender, Department of Legislative Services

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