

Department of Legislative Services
Maryland General Assembly
2000 Session

FISCAL NOTE
Revised

Senate Bill 25 (Senator Baker. *et al.*)

Judicial Proceedings

Criminal Sentencing - Confinement as a Condition of 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.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due to the bill's incarceration provision. Revenues would not be affected.

Local Effect: Minimal increase in expenditures due to the bill's incarceration provision. Local revenues would not be affected.

Small Business Effect: Minimal. This bill's effect on the operations 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.

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, 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 bill is not expected to have any significant impact on State incarceration costs or reimbursements to local governments for incarceration costs.

To the extent that persons might be confined, as a condition of a suspended sentence or probation, in State prisons or local detention facilities, the following costs would apply. 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 Division of Correction (DOC) facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$1,700 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. The average variable cost of housing a new DOC inmate (food, medical care, etc.), excluding overhead, is \$260 per month.

Accordingly, general fund expenditures could increase as a result of additional confinements at the local detention centers in all counties where this court authority does not already apply and increased payments to those counties for reimbursement of inmate costs, depending on the number of times such a sentence of confinement is imposed. However, the number of additional confinements resulting from this bill is assumed to be minimal.

Local Fiscal Effect: Expenditures could increase as a result 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: HB 81 (Delegate Dembrow, *et al.*) - Judiciary.

Information Source(s): Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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