

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 392 Delegate Dembrow, et al.)

Judiciary

Judicial Proceedings

Criminal Procedure - Sentencing - Custodial Confinement as a Condition of Probation

This emergency bill expands, statewide, the authority of the courts to impose “custodial confinement” as a condition of a suspended sentence, probation before judgment, or probation following judgment.

In addition, the bill provides that a term of imprisonment or custodial confinement imposed under these provisions may not exceed the maximum incarceration penalty for the underlying crime. This provision may not be construed to limit a court’s authority to order other appropriate conditions of probation that may run longer than that period of time.

Fiscal Summary

State Effect: No effect on State incarceration costs or reimbursements to local governments for incarceration costs. It is assumed that the provisions of this bill would be carried out within the operating capacities of the various existing custodial confinement programs.

Local Effect: No effect on local incarceration costs. It is assumed that the provisions of this bill would be carried out within the operating capacities of the various existing custodial confinement programs.

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

Analysis

Bill Summary: The bill defines “custodial confinement” to mean home detention, certain correctional options programs, or inpatient drug or alcohol treatment. The definition specifically excludes imprisonment.

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, Howard, 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 *Bailey v. State*, the Court of Appeals of Maryland 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.

Additional Comments: Although the Department of Health and Mental Hygiene (Alcohol and Drug Abuse Administration) has advised that this bill could result in annual costs to that agency of over \$30 million for in-patient substance abuse referrals, that concern seems completely unwarranted. As is stated above, it is assumed that the provisions of this bill would be carried out within the operating capacities of the various existing custodial confinement programs.

Additional Information

Prior Introductions: Chapter 350 of 2000 granted the authority of a court to impose a sentence of confinement as a condition of probation before judgment in Howard County. 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. Similar bills (SB 25, SB 494, and HB 81) were introduced during the 2000 session. SB 494 was recommitted to the Senate Judicial Proceedings Committee after a favorable report, but had no further action taken on it. SB 25 and HB 81 went to conference. The House approved the conference report for HB 81 but no action was taken on it in the Senate. The House and Senate appointed conferences for SB 25 but no further action was taken. HB 1305 of 1998, which would have extended that authority in Anne Arundel County, was withdrawn without a hearing.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services (Division of Correction), State Commission on Criminal Sentencing Policy, Department of Health and Mental Hygiene (Alcohol and Drug Abuse Administration), Department of Legislative Services

Fiscal Note History: First Reader – February 22, 2001
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