

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 404 (Senator Giannetti)
Judicial Proceedings

Criminal Procedure - Confinement as a Condition of Probation or Suspension of Sentence

This bill expands, statewide, the authority of the courts to impose “imprisonment” as a condition of probation following judgment, and “confinement” as a condition of probation before judgment.

Fiscal Summary

State Effect: Minimal. This bill is not expected to significantly affect governmental operations or finances.

Local Effect: Minimal – see above.

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 imprisonment as a condition of probation before judgment is currently available in Allegany, Calvert, Charles, Garrett, Howard, and St. Mary’s counties. This authority applicable to probation following judgment is currently available in Charles, St. Mary’s, Cecil, Harford, and Calvert counties.

Chapter 356 of 2001 expanded statewide the authority of the courts to impose “custodial confinement” as a condition of a suspended sentence, probation before judgment, or probation following judgment. Any time served by an individual in custodial

confinement must be credited against any sentence of incarceration imposed by the court if the individual violates a term or condition of probation.

Chapter 356 defined custodial confinement as home detention, certain correctional options programs, or inpatient drug or alcohol treatment. The definition specifically excluded imprisonment.

While the term “custodial confinement” has been defined since 2001, current provisions relating to a suspended sentence, probation before judgment, or probation after judgment do not now define the terms “confinement” or “imprisonment.” This bill also does not define “confinement” or “imprisonment.”

Background: In August 1999, in the case of *Bailey v. State*, the Court of Appeals of Maryland found that home detention 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 Comment: It is unclear whether this bill, by eliminating the current CP 6-220(h) and not defining the term “confinement,” eliminates the ability of a court to order imprisonment as a condition of probation before judgment in Allegany, Calvert, Charles, Garrett, Howard, and St. Mary’s counties.

Additional Information

Prior Introductions: In 2001, HB 709 passed the House, was referred to the Senate Judicial Proceedings Committee, and had no further action taken on it.

Cross File: None.

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

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