

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 634 (Senators Giannetti and Stone)
(Committee to Revise Article 27 – Crimes and Punishments)

Judicial Proceedings

Judiciary

**Criminal Law – First and Second Degree Escape – Home Detention, Juvenile, and
Custodial Confinement Programs**

This bill modifies the elements for first and second degree escape by transferring current escape offenses involving juvenile facilities, home detention orders, temporary releases from confinement, custodial confinement, and juvenile community detention orders from first degree escape to second degree escape.

The bill also modifies the definition of “place of confinement” to address existing ambiguities with current law, and prohibits violations against restrictions on movement imposed under the terms of a temporary release, custodial confinement, or home detention order. The bill prohibits tampering with certain electronic monitoring equipment used to track a person’s location.

Fiscal Summary

State Effect: Minimal. Any potential cost savings for the Division of Correction (DOC) resulting from the bill’s changes to criminal escape provisions, and attendant incarceration penalties, are not expected to significantly affect State correctional costs.

Local Effect: Minimal.

Small Business Effect: None.

Analysis

Bill Summary: Specifically, this bill:

- eliminates a home detention or agreement and a juvenile services facility (including a detention center) from the definition of a place of confinement under provisions relating to escape;
- repeals violations of first degree escape involving juvenile facilities, home detention orders, temporary releases from confinement, custodial confinement, and juvenile community detention orders;
- establishes escape violations involving juvenile facilities, home detention orders, temporary releases from confinement, custodial confinement, and juvenile community detention orders as second degree escape;
- establishes that a person may not knowingly: (1) violate any restriction or movement imposed under the terms of a temporary release, custodial confinement, or home detention order or agreement; or (2) fail to return to a place of confinement under the terms of a temporary release, custodial confinement, or home detention order or agreement; and
- for these newly established offenses, a violator is guilty of the misdemeanor of second degree escape and subject to current law maximum penalties of imprisonment for three years and/or a fine of \$5,000.

Current Law: A person may not knowingly escape from a “place of confinement,” which is defined as: (1) a juvenile detention center or juvenile facility; (2) a correctional facility; (3) a place identified in a home detention order or agreement; (4) a facility of the Department of Health and Mental Hygiene; (5) a place identified in a juvenile detention order; or (6) any other facility in which a person is confined under color of law. A violator is guilty of the felony of first degree escape and subject to maximum penalties of imprisonment for 10 years and/or a fine of \$20,000. A violator of second degree escape is guilty of a misdemeanor and subject to maximum penalties of imprisonment for three years and/or a fine of \$5,000.

Background: 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.

In *Boffen v. State*, 372 Md. 724, 816 A.2d 88 (2003), the Court of Appeals held that first degree escape did not apply to a defendant who fled from the courtroom after being sentenced because he was not in the actual or constructive custody of a “place of confinement” because the courtroom is not such a place and he had not yet been committed to DOC.

The Criminal Law Review Committee has noted that the forms of home detention listed in certain provisions of current law do not cover home detention programs administered by counties or other forms of custodial confinement. This bill addresses those issues.

In fiscal 2003, DOC had a total of 115 “walk-offs.” This included 30 such instances from the Home Detention Unit and two escapes.

Additional Information

Prior Introductions: None.

Cross File: HB 575 (Delegate Brown) (Committee to Revise Article 27 – Crimes and Punishments) – Judiciary.

Information Source(s): Washington County, Montgomery County, Worcester County, Kent County, Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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