

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 60
Judiciary

(Delegate Smigiel, *et al.*)

Judicial Proceedings

Criminal Procedure - Violation by Child Sexual Offender of Pretrial or Posttrial
Release No Contact Order ("Alexis's Law")

This bill prohibits a person charged with committing a sexual crime against a minor from violating a condition of pretrial or posttrial release that prohibits the person from contacting the victim. Violators are guilty of a misdemeanor, punishable by up to 90 days imprisonment. A police officer is authorized to make a warrantless arrest if the officer has probable cause to believe that the person has violated a condition of pretrial or posttrial release as prohibited under the bill.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's incarceration penalty.

Local Effect: Potential minimal increase in local expenditures due to the bill's incarceration penalty.

Small Business Effect: None.

Analysis

Current Law: The court or a District Court commissioner must consider including reasonable protections for the safety of any alleged victim as a condition of pretrial release for a defendant. If the victim has requested reasonable protections for safety, the court or a District Court commissioner must consider including provisions that prohibit contact with the alleged victim or the alleged victim's premises or place of employment.

A court may issue a bench warrant for the arrest of a defendant who violates a condition of pretrial release. Once the defendant is presented before a court, the court may revoke the defendant's pretrial release or continue the defendant's pretrial release with or without conditions.

Under Maryland Rule 4-349, after conviction, a trial judge may release the defendant pending sentencing or appellate review subject to conditions. The defendant has the burden of establishing that he/she will not flee or pose a danger to any other person or to the community. The court may consider the same factors that must be considered for pretrial release, but may impose different or greater conditions for post-trial release. The court, on motion of any party, or on its own initiative, and after notice and opportunity for hearing, may revoke an order of release or amend it to impose additional or different conditions of release. If its decision results in the detention of the defendant, the court must state the reasons for its action in writing or on the record.

A police officer may arrest a person without a warrant if the officer has probable cause to believe that the person has committed 1 of 10 crimes specified in statute and that unless the person is arrested immediately, the person may not be apprehended; may cause physical harm or property damage; or may tamper with, dispose of, or destroy evidence. The crimes specified in statute include vehicular manslaughter, malicious burning and mischief, certain theft offenses, carrying or wearing a concealed weapon, and certain controlled dangerous substance offenses.

A police officer may also arrest a person without a warrant in situations involving domestic abuse and stalking. An officer is required to arrest with or without a warrant and take into custody any person the officer has probable cause to believe is in violation of an interim, temporary, or final protective order in effect at the time of the violation.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction facilities for convictions in Baltimore City. The number of people convicted of this proposed crime is expected to be minimal.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

The Office of the Public Defender (OPD) advises that it will need one-half of an assistant public defender position to handle the bill's requirements. Legislative Services disagrees with this assessment. Given the narrow scope of the bill's application, OPD can handle the bill's requirements with existing budgeted resources.

Local Expenditures: Expenditures increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Additional Comments: There is no definition in this bill or in statute for the term "post-trial." Rule 4-349 does not refer to parole or probation as being part of the "post-trial" period. This note was written on the assumption that the term "post-trial" is used in this bill in the same manner it is used in Rule 4-349.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Charles, Frederick, Montgomery, and Somerset counties; State's Attorneys' Association; Department of Legislative Services

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