

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 244 (Senator Gladden)
Judicial Proceedings

Crimes - Elder Abuse or Neglect - Increased Penalties and Restrictions on Pretrial Release (The John H. Taylor Act)

This bill increases the maximum criminal penalties for causing abuse or neglect of a vulnerable adult in the first degree from 10 years imprisonment and/or a \$10,000 fine to 20 years imprisonment and/or a \$20,000 fine; and increases the maximum criminal penalties for this offense in the second degree from 5 years imprisonment and/or a \$5,000 fine to 10 years imprisonment and/or a \$10,000 fine. In addition, a District Court commissioner may not authorize the pretrial release of a defendant charged with either offense. A judge may authorize the release of such a defendant however, on suitable bail that exceeds \$5,000, retention of passport, or any other condition that reasonably ensures that the defendant will not flee or pose a danger to others, or on a combination of bail and such other conditions.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from District Court cases due to the bill's monetary penalty provisions. Minimal increase in general fund expenditures due to the bill's incarceration penalty provisions. It is assumed that the bill's restrictions on pretrial releases will occur in a small number of cases and not impose any measurable operational or financial impact on the Division of Pretrial Detention and Services or the courts.

Local Effect: Minimal increase in local revenues and expenditures due to the bill's penalty provisions. It is assumed that the bill's restrictions on pretrial releases will occur in few cases and not impose any measurable operational or financial impact on local jails or the courts.

Small Business Effect: None.

Analysis

Bill Summary: The bill also provides that when such a defendant is presented to the court under the Maryland Rule governing the review of a commissioner's pretrial release order, the judge must order continued detention if the judge determines that bail or a combination of conditions of release would not protect against flight or a danger to others prior to the trial.

Current Law: A caregiver, a parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable adult that results in death, causes serious physical injury, or involves sexual abuse. The same prohibition applies to a household member or family member.

A violator is guilty of the felony of abuse or neglect of a vulnerable adult in the first degree and subject to maximum penalties of 10 years imprisonment and/or a fine of \$10,000. A sentence imposed under this section must be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical.

Under the second degree prohibition, a caregiver, a parent, or other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult may not cause abuse or neglect of the vulnerable adult. A household member or family member may not cause abuse or neglect of a vulnerable adult. A violator is guilty of a misdemeanor and subject to maximum penalties of five years imprisonment and/or a \$5,000 fine. A sentence imposed under this section must be in addition to any other sentence imposed for a conviction arising from the same facts and circumstances unless the evidence required to prove each crime is substantially identical. The second degree prohibition does not apply to sexual abuse of a vulnerable adult.

Under Maryland Rules relating to the review of a commissioner's pretrial release order, a defendant who is denied pretrial release by a commissioner or who for any reason remains in custody for 24 hours after a commissioner has determined conditions of release must be presented immediately to the District Court. The District Court must review the commissioner's pretrial release determination and take appropriate action. If the defendant will remain in custody after the review, the District Court must set forth in writing or on the record the reasons for the continued detention.

Background: According to published news accounts in August 2007, 90-year-old John H. Taylor was seen, on a security video tape installed in the man's home, to have been severely beaten on four separate occasions by a caretaker. A grand jury in Baltimore City indicted the caretaker on multiple counts of assault, abuse of a vulnerable adult, and reckless endangerment. The caretaker did not show up for a court appearance date and police later determined that she fled the country on her Kenyan passport.

The Maryland State Commission on Criminal Sentencing policy reports that, in fiscal 2009, there were two convictions in the circuit courts of second degree elder abuse and one conviction of first degree elder abuse. The two individuals convicted of second degree elder abuse received an average sentence of 15 months imprisonment. The person convicted of first degree elder abuse was sentenced to 10 years imprisonment.

State Revenues: General fund revenues may increase minimally as a result of the bill's monetary penalty provision from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,750 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is \$409 per month. Excluding all medical care, the average variable costs total \$182 per month.

For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

The Office of the Public Defender (OPD) reports that the bill's increased penalties for the crime of elder abuse may affect the course of prosecution of this offense and the ability of the judicial system to resolve these cases without lengthy trials. Although this bill may increase the workload for OPD attorneys handling this type of case, it is anticipated that OPD can handle the bill's requirements with existing resources.

Local Revenues: Revenues increase minimally as a result of the bill's monetary penalty provision from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's incarceration penalties. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of the Division of Correction but are confined in a local facility. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: SB 360 of 2009 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: HB 457 (Delegate Glenn, *et al.*) - Judiciary.

Information Source(s): Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

Fiscal Note History: First Reader - February 5, 2010
ncs/kdm

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