

Department of Legislative Services
2010 Session

FISCAL AND POLICY NOTE

House Bill 1005
Judiciary

(Delegates Conaway and Glenn)

**Parole Elimination and Restrictions on Pretrial Release - Cases Involving Victim
at Least 35 Years Older Than Defendant**

This bill eliminates parole eligibility for an inmate serving a term for a crime of violence, if the victim of that crime was at least 35 years older than the inmate. This does not restrict the authority of the Governor to pardon or remit any part of a sentence. The bill also places specified limitations on bail and pretrial release considerations for such offenders.

Fiscal Summary

State Effect: Potential minimal increase in the pretrial or post conviction incarceration time for inmates charged with or convicted of offenses covered by the bill. While the bill may create some operational difficulties for District Court judges handling bail review hearings, such an effect is not expected to increase expenditures beyond the existing budgeted resources of the Judiciary. Revenues are not affected.

Local Effect: Potential minimal increase in expenditures resulting from pretrial detentions. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill eliminates parole eligibility for an inmate serving a term for a crime of violence, if the victim of that crime was at least 35 years older than the inmate. This does not restrict the authority of the Governor to pardon or remit any part of a sentence. The bill also prohibits a District Court commissioner from authorizing the pretrial release of a defendant charged with a crime of violence if the victim was at least 35 years older than the defendant. A judge is authorized to release such a defendant on

suitable bail, on any other conditions reasonably assuring that the defendant will not flee or pose a danger to others, or both bail and such other conditions.

The bill also specifies that, under the Maryland Rule governing the review of a commissioner's pretrial release order, when such a defendant is presented to the court, the judge must order a continued detention if the judge determines that bail or other conditions of release would not protect against flight or a danger to others. There is a rebuttable presumption that such a defendant will flee or pose such a danger.

Current Law: The Maryland Parole Commission has the exclusive power to authorize the parole of an inmate in the Division of Correction (DOC). The Board of Review of the Patuxent Institution has the exclusive power to recommend an inmate for parole to the Secretary of Public Safety and Correctional Services or the Governor.

A person sentenced to a term of incarceration of six months or more is entitled to a parole hearing after having served one-fourth of the term or consecutive terms. A person sentenced to more than one term, including a term during which the person is eligible for parole and a term during which the person is not eligible for parole, cannot be considered for parole unless the person has served the greater of one-fourth of the aggregate term or a period equal to the term during which the inmate is not eligible for parole.

For purposes of parole eligibility for a violent crime, the term "crime of violence" means:

- abduction;
- first degree arson;
- kidnapping;
- manslaughter, except involuntary manslaughter;
- mayhem;
- maiming;
- murder;
- rape;
- robbery;
- robbery with a dangerous weapon;
- carjacking and armed carjacking;
- first or second degree sexual offense;
- use of a handgun in the commission of a felony;
- first degree child abuse;
- sexual abuse of a minor (under specified circumstances);
- an attempt to commit any of the above crimes;

- continuing course of conduct with a child;
- first degree assault;
- assault with intent to murder, rape, or rob;
- assault with intent to commit first or second degree sexual offense; and
- first, second, or third degree burglary.

Parole eligibility for persons incarcerated for commission of a violent crime is as follows:

- An inmate who has been sentenced to DOC after being convicted of a violent crime committed on or after October 1, 1994, is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes or one-fourth of the inmate's total aggregate sentence.
- An inmate who has been sentenced to DOC after being convicted of a violent crime committed on or after October 1, 1994, and who has been sentenced to more than one term of imprisonment, including a term during which the inmate is eligible for parole and a term during which the inmate is not eligible for parole, is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes; one-fourth of the inmate's total aggregate sentence; or a period equal to the term during which the inmate is not eligible for parole.
- An inmate who is serving a term of imprisonment for a violent crime committed on or after October 1, 1994, must receive an administrative review of the inmate's progress in the correctional facility after the inmate has served the greater of one-fourth of the inmate's aggregate sentence; or if the inmate is serving a term of imprisonment that includes a mandatory term during which the inmate is not eligible for parole, a period equal to the term during which the inmate is not eligible for parole.

A person sentenced to life imprisonment is not eligible for parole consideration until that person has served 15 years. A person sentenced to life imprisonment for first degree murder is not eligible for parole consideration until that person has served 25 years. An inmate sentenced to life imprisonment without the possibility of parole is not eligible for parole consideration and may not be granted parole at any time during the inmate's sentence. This does not restrict the authority of the Governor to pardon or remit any part of a sentence. If eligible for parole, an inmate serving a life term may only be paroled with the approval of the Governor.

The circumstances under which a District Court commissioner may not authorize pretrial release include: a defendant charged with escaping from a correctional facility or any other place of confinement in the State; a defendant charged as a drug kingpin; or a defendant charged with a crime of violence if the defendant has been previously

convicted of a crime of violence in Maryland or in any other jurisdiction of a crime that would be a crime of violence if committed in Maryland.

Under Maryland Rule 4-216(f), 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 pursuant to this rule 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 District Court requires the defendant to 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: Maryland criminal law does not provide for criminal sanctions based on the difference in age between the defendant and the victim. According to the Maryland District Court, under the bill, it may prove difficult to establish the age of a victim of a crime of violence at the time of bail review. The number of additional bail hearings resulting from the bill cannot be reliably predicted.

The number of victims of the covered offenses who were at least 35 years older than the offender is unknown. In fiscal 2008, there were 2,003 defendants convicted of 2,904 crimes of violence in the circuit courts.

State Expenditures: This bill may eventually increase the length of stay in DOC facilities for a few offenders. Such an impact is not expected to be significant and would not occur immediately.

The number of additional bail review cases for District Court judges resulting from the bill is unknown, but assumed to be minimal, statewide. In any event, the Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions in Baltimore City. Accordingly, general fund expenditures may increase minimally as a result of increased pretrial detentions in Baltimore City.

Local Expenditures: Expenditures may increase minimally as a result of increased pretrial detentions. 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 DOC 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: HB 1509 received a hearing in the House Judiciary Committee and had no further action taken on it.

Cross File: None.

Information Source(s): Charles and Frederick counties, Commission on Criminal Sentencing Policy, Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

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