

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1106
Judiciary

(Delegates Conaway and Robinson)

**Criminal Law - Limited Immunity - Seeking Care or Medical Assistance for a
Vulnerable Adult**

This bill prohibits a caregiver, parent, or any other person who has permanent or temporary care or responsibility for the supervision of a vulnerable adult from being charged with or prosecuted for abuse or neglect of a vulnerable adult in the first or second degree if (1) the person voluntarily seeks care or medical assistance for the vulnerable adult in good faith; and (2) the evidence for the prosecution was obtained solely as a result of seeking care or medical assistance for the vulnerable adult.

The bill goes into effect on October 1, 2010, and terminates on September 30, 2011.

Fiscal Summary

State Effect: Potential minimal decrease in general fund revenues in FY 2011 and 2012 from immunity provided to individuals who would otherwise be subject to monetary penalties for misdemeanor second degree abuse or neglect of a vulnerable adult. Potential minimal decrease in general fund expenditures due to a decrease in incarceration costs for individuals who receive immunity from prosecution as a result of this bill.

Local Effect: Potential minimal decrease in local revenues in FY 2011 and 2012 from immunity provided to individuals who would otherwise be subject to monetary penalties for abuse or neglect of a vulnerable adult. Potential minimal decrease in local expenditures as a result of immunity from prosecution for individuals who might have otherwise been incarcerated in local detention facilities.

Small Business Effect: None.

Analysis

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.

Background: 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 decrease minimally in fiscal 2011 and 2012 due to the bill's immunity provisions resulting in fewer monetary penalties being imposed in District Court cases for misdemeanor second degree abuse or neglect of a vulnerable adult.

State Expenditures: General fund expenditures may decrease minimally in fiscal 2011 and 2012 as a result of the bill's provision of immunity to individuals otherwise subject to prosecution for abuse or neglect of a vulnerable adult in the first and second degrees.

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.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. 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.

Local Revenues: Local revenues may decrease minimally in fiscal 2011 and 2012 as a result of fewer monetary penalties being imposed in applicable circuit court cases.

Local Expenditures: Local expenditures may decrease minimally in fiscal 2011 and 2012 as a result of the bill's immunity provisions. 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: None.

Cross File: None.

Information Source(s): Kent, Montgomery, Washington, and Worcester counties; Commission on Criminal Sentencing Policy; Department of Human Resources; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Aging; Office of the Public Defender; Department of Legislative Services

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