

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

House Bill 96
Judiciary

(Delegate Anderson, *et al.*)

Judicial Proceedings

Criminal Procedure - Probation Before Judgment - Possession of a Controlled
Dangerous Substance

This bill authorizes a court to impose probation before judgment for a second offense of drug possession if (1) the defendant has been convicted once previously of or received probation before judgment once previously for possession of a controlled dangerous substance; (2) the court requires the defendant to graduate from drug court or successfully complete a substance abuse treatment program as a condition of probation; and (3) the defendant graduates from drug court or successfully completes a substance abuse treatment program as required.

Fiscal Summary

State Effect: Minimal decrease in State revenues from fines imposed in the District Court if defendants are granted probation before judgment as a result of the bill. Minimal decrease in State expenditures for incarceration. Minimal increase in State expenditures for drug court participation.

Local Effect: Minimal decrease in local revenues from fines imposed in the circuit courts if defendants are granted probation before judgment as a result of the bill. Minimal decrease in local expenditures for incarceration, offset by increases in local expenditures for drug court participation.

Small Business Effect: None.

Analysis

Current Law:

Probation Before Judgment

A court may place a defendant on probation before judgment (PBJ) when a defendant pleads guilty or *nolo contendere* or is found guilty of a crime, and (1) the court finds that PBJ would be in the best interest of the defendant and the public welfare; and (2) the defendant gives written consent to PBJ after determination of guilt or acceptance of a *nolo contendere* plea.

PBJ may include (1) custodial confinement or imprisonment; (2) payment of a fine or restitution; (3) participation in a rehabilitation program, or other specified programs; or (4) participation in an alcohol or drug treatment or education program approved by the Department of Health and Mental Hygiene.

A defendant who agrees to PBJ waives the right to appeal at any time from the judgment of guilt. When a defendant fulfills the conditions of PBJ, the court must discharge the defendant from probation, which is the final disposition of the matter. A defendant discharged from PBJ is not considered to have been convicted of a crime.

If a defendant violates PBJ, the court may enter judgment and proceed as if the defendant had not been placed on probation. However, the defendant must receive credit for any time served under custodial confinement during PBJ.

A court is prohibited from imposing PBJ on defendants for the following crimes:

- violations of specified offenses relating to driving a motor vehicle or operating a vessel while impaired or under the influence of alcohol, if within the preceding 10 years the defendant had been convicted of one of the specified offenses or had been placed on PBJ for one of the specified offenses;
- a second or subsequent controlled dangerous substance crime under Title 5 of the Criminal Law Article;
- a violation of specified sexual offenses involving a person under the age of 16; or
- a moving traffic violation, if (i) the defendant holds a provisional license and had previously been placed on PBJ while holding a provisional license.

Possession of a Controlled Dangerous Substance

Controlled dangerous substances are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use.

No distinction is made in the law regarding the illegal possession of any controlled dangerous substance, regardless of which schedule it is on, with the exception of marijuana. When the substance is marijuana, the defendant is guilty of a misdemeanor and the maximum criminal penalties for a violation are one year imprisonment and/or a \$1,000 fine. If the court finds that the defendant used or possessed marijuana out of medical necessity, the maximum punishment is a \$100 fine. The use or possession of any other controlled dangerous substance is a misdemeanor with maximum criminal penalties of four years imprisonment and/or a \$25,000 fine.

Pursuant to Chapter 215 of 2011, in a prosecution for the use or possession of marijuana or related paraphernalia, it is an affirmative defense that the defendant used or possessed marijuana or related paraphernalia because (1) the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a bona fide physician-patient relationship (*i.e.*, a relationship in which the physician has an ongoing responsibility for the assessment, care, and treatment of a patient's medical condition); (2) the debilitating medical condition is severe and resistant to conventional medicine; and (3) marijuana is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition. The affirmative defense may not be used if the defendant was either using marijuana in a public place or in possession of more than one ounce of marijuana.

Background: Maryland's first two drug courts were established in Baltimore City in 1994. The program has since grown and the State operates 42 drug courts in the circuit courts and the District Court for adult and juvenile offenders. A drug court is a specialized docket that handles drug and dependency-related cases through judicial intervention, intensive monitoring, and continuous substance abuse treatment. These programs are used for offenders who are charged with less serious drug crimes and who do not have a history of violence. The drug treatment court program provides options other than commitment or incarceration. Participants are generally assigned to one of two tracks: probation or diversion from prosecution in exchange for a plea of guilty or admission of a delinquent act. Terms of program participation require intensive supervision and alcohol and other drug treatment. Family/dependency drug courts in several circuit courts address parents at risk of losing custody of their children due to alcohol and other drug dependence. Eligible participants can voluntarily enter prior to the filing of the petition, enter pre-adjudication at shelter care, or be required to

participate as part of disposition. Operating costs for drug courts are shared between the State and local jurisdictions.

According to the *Annual Report of the Office of the Problem-Solving Courts in Fiscal Year 2011*, 1,153 individuals entered drug court programs and 498 people graduated from drug court programs in fiscal 2011. Approximately 3,400 people received drug court services during fiscal 2011.

According to the Maryland State Commission on Criminal Sentencing Policy, there were 19 convictions in fiscal 2010 for the mandatory minimum primary controlled dangerous substances offenses mentioned above.

State Revenues: General fund revenues decrease minimally if fewer fines are imposed in the District Court as a result of the bill.

State Expenditures: If the bill results in defendants being sent to drug court programs instead of serving sentences in Division of Correction (DOC) facilities (1) State incarceration expenditures decrease minimally; and (2) State expenditures for drug court programs increase minimally. The extent to which these two effects offset each other depends on (1) the cost associated with incarcerating a defendant who receives PBJ as a result of the bill; (2) the cost associated with treating a defendant who participates in drug court as a result of the bill; and (3) the extent to which defendants granted PBJ under the bill successfully complete drug court instead of being incarcerated for violating probation.

According to the Office of Problem-Solving Courts (OPSC), a participant in adult circuit drug court spends an average of 19.1 months in the program. A participant in the Adult/DUI District Court drug court program spends an average of 12.6 months in the program. According to OPSC, there is not a waiting list for drug court programs. However, program capacity is set to accommodate treatment resources.

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 \$2,900 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 about \$385 per month. Excluding all medical care, the average variable costs total \$170 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 DOC 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: Revenues decrease minimally if fewer fines are imposed on defendants in the circuit courts as a result of the bill.

Local Expenditures: Assuming that the bill results in defendants being sent to drug court programs instead of serving sentences in local correctional facilities (1) local incarceration expenditures decrease minimally; and (2) local expenditures for drug court programs increase minimally.

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 have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510