

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 412 (Senator Gladden)
Judicial Proceedings

Crimes - Elder Abuse or Neglect - Restrictions on Pretrial Release

This bill prohibits a District Court commissioner from authorizing the pretrial release of a defendant charged with causing abuse or neglect of a vulnerable adult in the first or second degree. A judge may authorize the pretrial release of such a defendant on suitable bail of more than \$5,000, retention of the defendant's passport, any other condition that will reasonably ensure that the defendant will not flee the State or country or pose a danger to another person or the community, or a combination of these factors and other conditions.

A judge must order the continued detention of the defendant if the judge determines that suitable bail and/or conditions will not reasonably ensure that the defendant will not flee the State or country or will not pose a danger to another person or the community.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures for pretrial detentions in Baltimore City if the bill increases the number of defendants unable to obtain pretrial release or the duration of pretrial detentions. The Office of the Public Defender (OPD) can handle any increase in the number of judicial bail review hearings generated by the bill with existing resources. Revenues are not affected.

Local Effect: Minimal increase in local expenditures for pretrial detentions if the bill increases the number of defendants unable to obtain pretrial release or the duration of pretrial detentions. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law:

Abuse or Neglect of a Vulnerable Adult: 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 imprisonment for five years 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.

Pretrial Release of a Criminal Defendant: A criminal defendant is entitled to be released pending trial unless a judge ultimately determines that no conditions can be placed on the defendant's release that would reasonably ensure the defendant's appearance at trial and the safety of the alleged victim, another person, and the community. However, if a judicial officer determines that release on personal recognizance alone is not appropriate, or the defendant is by law ineligible for release on recognizance, the defendant may be released prior to trial only by posting bail in an amount set by the judicial officer.

In determining whether a defendant should be released and the conditions of pretrial release, the judicial officer is required to take into account the following information, if available: (1) the nature and circumstances of the offense; (2) the nature of the evidence against the defendant and the potential sentence upon conviction; (3) the defendant's prior record and history with regard to appearing in court as required; (4) the defendant's employment status and history, family ties, financial resources, reputation, character and mental condition, and length of residence in the community and the State; (5) the potential danger of the defendant to himself or herself, the victim, or others;

(6) recommendations of the State's Attorney and any agency that conducts a pretrial release investigation; (7) information provided by the defendant or the defendant's counsel; and (8) any other factor bearing on the risk of a willful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

In most cases, pretrial release determinations are made at the defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants, including defendants registered with the sex offender registry maintained by the Department of Public Safety and Correctional Services and defendants charged with specific offenses (*e.g.*, crimes of violence, violation of a protective order, drug kingpin, etc.). Pretrial release of such defendants may be authorized only by a judge, and only on suitable bail, or any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to others, or on both bail and such other conditions.

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 if the court is in session. If the court is not in session, the defendant must be presented at the next session of 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 his caretaker, Anastasia Oluoch. A grand jury in Baltimore City indicted Ms. Oluoch on multiple counts of assault, abuse of a vulnerable adult, and reckless endangerment. Ms. Oluoch did not show up for a court appearance date, and police later determined that she fled the country using her Kenyan passport. Ms. Oluoch was extradited to Baltimore from Kenya in August 2012 and pleaded guilty to three counts of abuse or neglect of a vulnerable adult on February 21, 2013. She was sentenced to six years in prison.

The Maryland State Commission on Criminal Sentencing Policy reports that four individuals were sentenced for convictions for first degree abuse or neglect of a vulnerable adult and seven individuals sentenced for convictions for second degree abuse or neglect of a vulnerable adult in the State's circuit courts, during fiscal 2014.

According to the Judiciary, there were 59 violations of second degree abuse or neglect of a vulnerable adult presented to the District Court in fiscal 2014.

State Expenditures: The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions. Thus, general fund expenditures increase minimally if the bill increases the number of defendants unable to obtain pretrial release or the duration of pretrial detentions.

OPD represents indigent criminal defendants at judicial bail review hearings. Because the bill prohibits a District Court commissioner from authorizing the pretrial release of an individual charged with the applicable offenses, those defendants are required to appear before a judge for a bail review hearing. The number of individuals OPD must represent as a result of the bill depends on (1) the number of individuals charged with the applicable offenses; (2) the number of individuals charged with the applicable offenses who are eligible for OPD representation; and (3) the extent to which these defendants would not otherwise appear before a judge for a bail review hearing under existing statute (*e.g.*, denial of pretrial release by a District Court commissioner, inability to post bail within 24 hours after an initial appearance, etc.)

However, given the relatively small number of individuals who are likely to be represented by OPD at a judicial bail review hearing as a result of the bill, OPD can handle the additional representation duties with existing budgeted resources. Based on a review of its case management system, OPD anticipates that it needs to participate in up to 100 additional judicial bail reviews as a result of the bill. OPD advises that the office provided representation in approximately 59,000 judicial bail review hearings in 2014 using between 38 and 45 attorneys per day.

Local Expenditures: Local expenditures increase minimally if the bill increases the number of defendants unable to obtain pretrial release or the duration of pretrial detentions. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Montgomery County advises that the bill does not have a fiscal impact on the county. According to the Carroll County Sheriff's Department, there have only been a handful of cases involving the applicable offenses in the county over the past few years. As a result, the county does not anticipate a substantial fiscal impact as a result of the bill. Baltimore County advises that due to the infrequency of the occurrence of the applicable offenses and the variables involved in denial of pretrial release, the county does not anticipate a significant fiscal impact as a result of the bill. Harford County advises that the bill increases county incarceration expenditures by \$20,000.

Additional Information

Prior Introductions: HB 382 of 2014 received an unfavorable report from the House Judiciary Committee. Its cross file, SB 182, received an unfavorable report from the Senate Judicial Proceedings Committee. HB 1259 of 2013 was withdrawn after being scheduled for a hearing in the House Judiciary Committee.

Cross File: HB 31 (Delegate Glenn) - Judiciary.

Information Source(s): Baltimore, Carroll, Harford, and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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