

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 Enrolled - Revised

Senate Bill 228

(Senator Ready, *et al.*)

Judicial Proceedings

Judiciary

Criminal Procedure - Pretrial Release - Sex Offenders

This bill prohibits a District Court commissioner from authorizing the pretrial release of a defendant who the commissioner knows is *required* to register as a sex offender in Maryland. A judge, however, may authorize the pretrial release of such a defendant on suitable bail, any other condition that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community, or a combination of these factors and other conditions. There is a rebuttable presumption that the defendant will flee and pose a danger to another person or the community. A judge must order the continued detention of the defendant if the judge determines that suitable bail and/or conditions do not reasonably ensure that the defendant will not flee or will not pose a danger to another person or the community.

Fiscal Summary

State Effect: General fund expenditures increase by \$92,000 in FY 2020 only for programming changes. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	92,000	0	0	0	0
Net Effect	(\$92,000)	\$0	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Release of Sex Offender Registry Defendants: Generally, a person convicted of a sex crime or other specified crime in Maryland, including kidnapping and false imprisonment, is required to register with the State sex offender registry maintained by the Department of Public Safety and Correctional Services upon release from prison or release from court if the person did not receive a prison sentence. Offenders who are required to register in other states and who come to Maryland to reside or habitually live, for employment, to attend an educational institution, or as a transient, are required to register upon entering Maryland. In addition, offenders from other states who may not be required to register in the home state are required to register in Maryland if the crime would have required registration in Maryland if the crime had been committed in Maryland.

Pretrial release of a registered sex offender or a sex offender who is required to register by another jurisdiction, a federal, military, or tribal court, or a foreign government 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. There is a rebuttable presumption that a defendant who is a registered sex offender or a sex offender who is required to register by another jurisdiction, a federal, military, or tribal court, or a foreign government will flee and pose a danger to another person or the community.

Pretrial Release of a Criminal Defendant, Generally: A criminal defendant is entitled to be released on personal recognizance pending trial unless a judge ultimately determines that there are no permissible nonfinancial conditions that can be placed on the defendant's release that 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, as noted above, including 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 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 remains in custody after the review, the District Court must set forth in writing or on the record the reasons for the continued detention.

State Expenditures: General fund expenditures for the Judiciary increase by \$91,954 in fiscal 2020 for one-time computer programming changes in order to create an in-state system to flag cases where a person has a conviction for a crime for which the person is required to register with the State sex offender registry. The Judiciary advises that District Court commissioners are not always able to determine if a person is *required* to register in a Maryland case without an exhaustive search through docket entries on cases involving sex offenses. The Judiciary further advises that this type of search is impracticable in several counties and impossible in counties that are not incorporated into the Maryland Electronic Courts system, which allows for a more complete case file inspection.

In addition, the Judiciary advises that while additional restrictions on pretrial release are likely to result in an increase in bail review hearings in the District Court, any increase is not anticipated to have a significant impact on District Court operations.

Additional Comments: Although under current law District Court commissioners are prohibited from releasing a defendant who is required to register by another jurisdiction, a federal, military, or tribal court, or a foreign government jurisdiction, the Judiciary advises that commissioners are not always able to determine if a defendant is required to register by another jurisdiction, a federal, military, or tribal court, or a foreign government

jurisdiction. Although the National Crime Information Center provides information regarding sex offenders who are part of the National Sex Offender Registry, a real-time database that provides information or notice when an offender is required to register does not exist.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Garrett County; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 5, 2019
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