

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 21
(Senator Carter)
Judicial Proceedings

Criminal Procedure - Sentencing - Primary Caretaker

This bill authorizes a defendant, on conviction of a “nonviolent crime,” to file a motion requesting that the court consider the defendant’s status as a “primary caretaker” of a child or vulnerable adult in determining the sentence for the crime; the bill establishes corresponding procedures.

Fiscal Summary

State Effect: The bill is procedural in nature and is not expected to materially affect State finances or operations, as discussed below.

Local Effect: The bill is procedural in nature and is not expected to materially affect local finances or operations, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary: A “primary caretaker” is (1) a person who has assumed responsibility for a minor child’s or vulnerable adult’s housing, health, financial support, education, family ties, or safety or (2) a woman who has given birth to a child after or while awaiting her sentencing hearing and who expresses a willingness to assume responsibility for the housing, health, and safety of the child.

A “nonviolent crime” is a crime that (1) does not involve the use, attempted use, or threatened use of physical force or a deadly weapon against another person; (2) is not

burglary, extortion, arson, or kidnapping; (3) does not involve the use of explosives; and (4) does not involve conduct that presents a serious risk of physical injury to another.

Within 10 days after the entry of judgment of conviction for a nonviolent crime, a defendant may file a motion requesting the court to consider the defendant's status as a primary caretaker in determining the sentence for the crime. On receipt of the motion, the court must make written findings about the defendant's primary caretaker status and the availability of appropriate sentencing alternatives that do not involve imprisonment. The court is prohibited from imposing a sentence of imprisonment without first making the written findings.

A parent who, in the best interest of the parent's child, has arranged for the temporary care of the child in the home of a relative or another responsible adult may not for that reason be excluded from being considered a primary caretaker. If a court determines that a defendant is a primary caretaker and identifies available, appropriate sentencing alternatives, the court may impose a sentence with conditions, in writing, that emphasizes community rehabilitation and family unity and support. The bill specifies various conditions and interventions that may be included in the sentence, such as drug and alcohol treatment, job training and placement, affordable and safe housing assistance, or home confinement.

The court may require a person sentenced as a primary caretaker to appear in court at any time during the person's sentence to evaluate the person's progress in treatment or rehabilitation or to determine if the person violated a condition of the sentence. At this appearance, the court may modify the conditions of the sentence; decrease the duration of the sentence; or sanction the person for violation(s) of the conditions of the sentence, as specified.

Current Law: There are no statutory provisions or court rules that specifically address the sentencing of a primary caretaker. However, under Maryland Rule 4-342, prior to imposing a sentence, the court must afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment. A court ordinarily must state on the record its reasons for the sentence imposed.

Probation After Judgment

On entering a judgment of conviction, a court may suspend the imposition or execution of sentence and place the defendant on probation on the conditions that the court considers proper.

A court may (1) impose a sentence for a specified time and specify that a lesser period of the sentence be served in confinement; (2) suspend the remainder of the sentence; and (3) order probation for a time longer than the sentence. However, in general, a defendant in the circuit court may not be placed on probation for longer than five years; a defendant in the District Court may be placed on probation for up to three years. Other provisions apply to defendants convicted of specified sexual crimes. The court may extend probation for the purposes of making restitution or alcohol or drug treatment.

Under the Maryland Rules, a court must advise a defendant placed on probation of the conditions and duration of probation and the possible consequences of a violation of any of the conditions. The court also must provide the defendant with a written order stating the conditions and duration of probation. During the period of probation, on motion of the defendant or of any person charged with supervising the defendant while on probation or on its own initiative, the court, after giving the defendant an opportunity to be heard, may modify, clarify, or terminate any condition of probation, change its duration, or impose additional conditions.

State/Local Fiscal Effect: Data is not available to reliably predict how many individuals would qualify as primary caretakers and how many of these individuals would receive alternative sentences *solely* as a result of the bill. Defendants currently have the opportunity to advocate for alternative sentencing; many of the considerations formalized in the process proposed under the bill are part of the existing sentencing process. Furthermore, it is still within the court's discretion to grant this alternative sentencing, and the bill does not require State and local agencies to expand or alter existing programming. Accordingly, while the bill *may* result in a shifting of some defendants from incarceration or detention to other types of supervision and programming, it is assumed that the bill does not have a material effect on State or local finances.

Additional Information

Prior Introductions: SB 617 of 2018, a similar bill, received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 1166, received an unfavorable report from the House Judiciary Committee.

Designated Cross File: HB 337 (Delegate Lopez) - Judiciary.

Information Source(s): Harford and Montgomery counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Department of Housing and Community Development; Department of Human

Services; Maryland Department of Labor; Department of Public Safety and Correctional Services; Department of Legislative Services

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