

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 337
Criminal Procedure – Sentencing Primary Caretaker
DATE: January 24, 2022
(2/8)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 337. House Bill 337 adds to Criminal Law §6-236 by authorizing a defendant convicted of a nonviolent crime to file a motion requesting the court consider the defendant’s status as a primary caretaker of a child, or vulnerable adult per Criminal Law §3-604, when determining sentencing.

Although judges already consider each defendant’s individual facts and circumstances at sentencing, establishing procedures for additional motions, hearings, and modifications layers on additional requirements at sentencing that impinge on judicial discretion and violate separation of powers. Courts routinely consider the personal circumstances of each defendant when engaged in sentencing. The requirements that the bill seeks to place upon courts regarding sentencing are unduly burdensome. The exclusion of fathers (and of same-sex partners where one has given birth but the other is the primary caregiver) at page 2, lines 9 through 12 is problematic. The bill also creates the potential for mischief in terms of parents jostling to be primary caretakers, to the detriment of children.

In addition, the Judiciary is concerned that the bill would prevent the ability of courts to conduct same-day sentencing for nonviolent crimes because, at Criminal Procedure § 6-236(b)(2)(iii), the bill gives defendants 10 days after a conviction to file a motion requesting the court to consider their status as a primary caretaker, and courts must then make written findings. This 10-day waiting period and written finding requirement would prevent same-day sentencings which may result in defendants remaining incarcerated longer than intended by the courts.

This bill also does not outline the timeframe or rationale for a person who has assumed the responsibility for a minor child or vulnerable adult’s housing, health, financial support, education, family ties, or safety.

Finally, in addition on page 4, lines 3 through 8, the bill provides that the court may “sanction the person for each detected violation of a condition of the sentence imposed, including requiring the person to serve a term of imprisonment within the range for the crime of which the person was originally convicted, notwithstanding the determination made under this section that the person is a primary caretaker.” This provision is in conflict with the spirit of the Justice Reinvestment Act (Chapter 515) which was passed in 2016.

cc. Hon. Lesley Lopez
Judicial Council
Legislative Committee
Kelley O’Connor