

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 543
Judiciary

(Delegate Hough, *et al.*)

Judicial Proceedings

Criminal Procedure - Victim-Offender Mediation Program

This bill (1) requires the Chief Judge of the District Court to establish a pretrial victim offender mediation program that diverts cases from the regular criminal docket to mediation; (2) establishes procedures for referral of cases to the program; (3) specifies that agreements under the program may contain specified provisions; (4) requires cases in the program to be sent back to the criminal docket if the defendant fails to satisfy the terms of the mediation agreement; and (5) authorizes the Chief Judge of the District Court to establish a court cost that is sufficient to cover the cost of the mediation.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues from District Court cases diverted to the program. Potential significant increase in general fund expenditures for the District Court if authorized court costs are not established or do not generate sufficient revenue to cover the cost of the program. Minimal decrease in expenditures for the Department of Public Safety and Correctional Services if the program reduces incarcerations.

Local Effect: Potential minimal decrease in local expenditures if the program results in fewer incarcerations. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: Eligibility for the program is limited to cases involving “eligible defendants.” An “eligible defendant” is defined as a person who (1) is charged with a

misdemeanor that is not an act of domestic violence, a sexual crime, or sexual abuse of a minor; (2) does not have a pending felony charge; and (3) has not previously been convicted of a felony or a misdemeanor, other than a minor traffic violation. “Domestic violence” means abuse occurring between (1) current or former spouses or cohabitants; (2) persons who have a child in common; or (3) persons currently or formerly involved in a dating relationship.

Cases can be referred to the program by a request to the court by a State’s Attorney that an eligible defendant’s case be diverted to the program. The State’s Attorney must inform the victim or victim’s representative (victim/representative) about the victim-offender mediation program, the right to restitution, and the ability to seek a no contact order.

If a victim/representative and eligible defendant reach an agreement, a court may divert a case to the program if (1) the court finds that the victim/representative and eligible defendant have knowingly and voluntarily consented to the mediation agreement; and (2) the eligible defendant agrees to a waiver of speedy trial rights, enters into a mediation agreement, agrees to any other terms that the court sets for the charge to be marked “*stet* by victim-offender mediation” on the docket, and pays the costs that would have been assessed if the defendant would have been found guilty of the charge, unless the defendant is unable to pay by reason of indigency.

The mediation agreement is required to be signed by the eligible defendant and the victim or victim’s representative and incorporated but not merged into an order of the court, if the State’s Attorney has ratified the agreement and the court has approved.

A mediation agreement or court order imposing additional separate requirements on the eligible defendant as a condition of marking the charge “*stet* by victim-offender mediation” may require (1) testing, counseling, and treatment of the defendant for alcohol or drug abuse, mental health, or anger management; (2) payment of restitution or other amounts to the victim; (3) performance of community service; (4) a condition of no contact, if requested by the victim/representative; and (5) any other condition agreed to by the victim/representative and eligible defendant. Unless the court, victim/representative, and eligible defendant approve an extension or reduction, a mediation agreement is enforceable for no more than three years after the date on which the case is marked “*stet*” on the docket.

Once a mediation has been approved by the court, the court may defer the proceedings by marking the charge “*stet* by victim-offender mediation” on the docket and except in a proceeding concerning the meaning of a mediation agreement, all communications made in the program are confidential and may not be introduced into evidence. If an eligible defendant satisfies the conditions of the mediation agreement, the State’s Attorney must dismiss the charge by entering a *nolle prosequi*. An eligible defendant’s case must be

returned to the docket and proceed through the criminal justice system if the defendant fails to satisfy the terms of the mediation agreement. In the event that the eligible defendant's case is returned to the docket, the defendant retains the rights that the defendant possessed before entering into the program.

Current Law: State law has not created a program in which a criminal case is diverted off the criminal docket into a program in which victims and offenders agree to mediation or some other type of face-to-face meeting. Once a defendant is charged with a crime, the offender has a right to a speedy trial. During the trial, a defendant has a constitutional right to confront and cross-examine the accuser. Peace orders or protective orders include no contact conditions, and there are other circumstances where no contact orders may be issued by a court on behalf of a victim after a defendant is charged with a crime.

Background: Mediation between a crime victim and the offender, also referred to as "victim-offender dialogue" or "restorative justice," is a structured face-to-face meeting in the presence of a trained mediator. In some programs, the victim and offender are joined by family and community members. In this structured setting, the offender and the victim talk about what happened and the effects of the crime on their respective lives. Proponents of the program cite the opportunity for the offender to provide redress to the crime victim, through restitution, apology, or community service.

According to the Victim-Offender Mediation Association, the first program of this type began in Ontario, Canada in 1976. The first program in the United States began in Elkhart, Indiana in 1978. According to the National Institute of Justice, at least 290 victim-offender mediation programs exist in the United States. Delaware, Indiana, Minnesota, and Pennsylvania are among the states where such programs have been initiated. In more recent times, over 1,200 restorative justice programs have been initiated world-wide.

State Expenditures: The bill authorizes the Chief Judge of the District Court to "establish a court cost sufficient to cover any costs of the mediation." It is assumed that this provision authorizes the Chief Judge to establish a court cost sufficient to cover the Victim-Offender Mediation Program, not just the eligible defendant's mediation, and that a court would be authorized to impose this standard and uniform fee on a defendant who participates in the program. It is also assumed that similar to the language in the bill regarding current statutory court costs for criminal defendants, a defendant who is indigent may not be ordered to pay the mediation court cost.

Regardless, general fund expenditures could increase, perhaps significantly, if (1) the number of cases processed through the program is insufficient to generate the necessary revenue; or (2) the number of nonindigent defendants who participate in the program is insufficient to cover the cost of the program. The extent to which this occurs will depend on the scope of the program established by the District Court.

General fund expenditures for the Department of Public Safety and Correctional Services may decrease to the extent that diversion of cases to the program results in fewer incarcerations.

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. 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 the Division of Correction 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 Expenditures: Local incarceration expenditures may decrease to the extent that diversion of cases to the program results in fewer incarcerations.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

It is assumed that the District Court will be responsible for administration of the program. However, if local jurisdictions are responsible for administration, local expenditures for case management would increase. The Montgomery County Department of Correction and Rehabilitation advises that should the bill require local case management, its expenditures would increase. The county advises it currently has very effective diversion programs with case management costs that accrue for every 50-70 additional participants, and that the program is operating at maximum caseload levels. Employing an additional employee to process cases and follow up with participants would cost \$70,000 per year.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City, Kent and Montgomery counties, Commission on Criminal Sentencing Policy, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Maryland Department of Transportation, Victim-Offender Mediation Association, National Institute of Justice, Department of Legislative Services

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