

House Bill 5199 (Substitute H-2)
First Analysis (11-12-03)

Sponsor: Rep. Leon Drolet
Committee: Criminal Justice

THE APPARENT PROBLEM:

Generally speaking, a person found to be guilty of a crime may be released on bail until the sentencing date and during the time that an appeal is pending. However, the Code of Criminal Procedure currently specifies that a defendant convicted of an assaultive crime must not be admitted to bail while awaiting sentence unless the trial court finds by clear and convincing evidence that the defendant is not likely to pose a danger to other persons. A defendant who, after being convicted and sentenced, has filed an appeal or an application for leave to appeal must also be detained and not admitted to bail unless the trial court or the court to which the defendant appealed finds by clear and convincing evidence that the defendant is not likely to pose a danger to others and the appeal or application raises a substantial question of law or fact. Criminal sexual conduct offenses are included in the list of offenses defined as assaultive crimes.

However, some people believe that pedophiles, those who prey on children, should not be released on bail during these time periods under any circumstances. They argue that pedophiles have a high rate of recidivism and that there is no cure. In addition, the Internet makes it very easy for a pedophile to make contact with children or access child pornography. Therefore, allowing bail to persons convicted of sex crimes with children could pose a safety threat to communities. Legislation has been offered to require that persons convicted of certain sex crimes with minors be denied bail during the time periods between conviction and sentencing and during the time period that an appeal is pending.

THE CONTENT OF THE BILL:

House Bill 5199 would amend the Code of Criminal Procedure to make "sexual assault of a minor" a nonbailable offense. The bill would define "minor" as a person under 16 years of age. "Sexual assault of a minor" would mean any first- or second-degree CSC offenses, and certain third-degree CSC offenses; third-degree CSC involving intercourse with a person

at least 13 but less than 16 years of age if the actor were five or more years older than the victim; and a violation of Section 520g for assaulting an individual with the intent to commit criminal sexual conduct described in the previous references.

Therefore, under the bill, a court could not release on bail a defendant during the time period between when he or she was convicted of a specified sex crime and when he or she was sentenced, even if the defendant did not pose a danger to others, nor could a court release on bail a defendant who had filed an appeal or application for leave to appeal after sentencing, for sexual assault of a minor as defined in the bill.

MCL 770.9 et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, by requiring that certain offenders remain in jail post-conviction and pre-sentence, the bill could increase local correctional costs or affect jail utilization regarding various accused, convicted, and sentenced offenders. Data from the Department of Corrections indicate that of the 2,522 felony dispositions in 2001 for criminal sexual conduct offenses, at least 1,131 were for offenses involving minors. Of those, 1,131 dispositions, 953 were for violations and 178 were for attempts. (10-28-03)

ARGUMENTS:

For:

Currently, it is within the discretion of a judge to release on bail a person convicted of molesting a child while that person awaits sentencing or while the case is on appeal. This needs to be changed as pedophiles represent a greater danger to society than some other sex offenders. Studies support the contention that pedophilia is almost never curable and that the average number of victims per pedophile before conviction is at least 13, though some studies suggest the figure may be closer to 150.

In addition, the Internet provides easy access to more victims and to child porn sites. With convicted offenders being free on bail for months at a time, the danger is too great to allow this to continue.

House Bill 5199 would address this problem by requiring a court to deny bail for those convicted of certain sex crimes with children under 16 years of age. The denial of bail would not apply to those convicted of CSC in the fourth degree, which a misdemeanor, nor to teenagers or young adults who had consensual sex with a partner at least 13 but less than 16 years of age. In light of the serious nature of child molestation, and the need to protect vulnerable children, the bill represents good public policy.

Against:

House Bill 5199 is not needed. Current law already classifies all CSC crimes as “assaultive” for the purpose of denying bail. The defendant carries the burden of proof that he or she poses no danger and therefore is eligible for release on bail. If a sufficient level of proof is not presented, the court is prohibited from releasing that person on bail.

Further, no evidence was presented at the committee hearing that a problem existed with judges releasing dangerous pedophiles who then committed more crimes while out on bail. Even if there was a bad judge who was releasing these offenders, the solution is not to change the law, but to remove the judge, or to better educate judges on the dangers that pedophiles pose to public safety.

Against:

House Bill 5199 may be so overly broad as to capture the unintended and lead to more jail overcrowding. Youths tried as adults for some sex offenders, such as incest with a sibling under 13, could be denied bail under this bill, even though they may not pose a risk for reoffending. Such kids pose no threat to others and are highly treatable. Housing them in county jails or youth detention centers would serve no positive purpose, especially since their sentences may carry no jail time. For this reason, it is imperative that courts retain discretion to decide bail on a case by case basis.

POSITIONS:

The Oakland County Sheriff submitted written testimony supporting the bill. (11-4-03)

Representatives from the Citizens for Second Chances indicated opposition to the bill. (11-5-03)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.