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BILL ANALYSIS

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House Bill 5199 (Substitute H-2 as passed by the House)

Sponsor: Representative Leon Drolet

House Committee: Criminal Justice

Senate Committee: Judiciary

Date Completed: 2-18-04

CONTENT

The bill would amend the Code of Criminal Procedure to prohibit a person convicted of "sexual assault of a minor" from being released on bail.

"Minor" would mean a person under 16 years of age. "Sexual assault of a minor" would mean:

- Any of the following in which the victim was a minor: first-degree criminal sexual conduct (CSC); second-degree CSC; or third-degree CSC under certain circumstances (described below).
- Third-degree CSC in which the victim was at least 13 but less than 16, and the offender was five or more years older than the victim.
- Assault with intent to commit a CSC offense described above.

(The bill would apply to third-degree CSC that involved force or coercion; an offender who knew or had reason to know that the victim was mentally incapable, mentally incapacitated, or physically helpless; a victim who was related to the offender by blood or affinity to the third-degree, and sexual penetration under circumstances not otherwise prohibited; or a victim who was at least 16 but less than 18 years old and was a student at a school where the offender was a teacher, substitute teacher, or administrator.)

Under the bill, a defendant who was convicted of sexual assault of a minor and was awaiting sentence, or who had been sentenced to a term of imprisonment and filed an appeal or an application for leave to appeal, would have to be detained and could not be released on ("admitted to") bail.

Generally, under the Code, a court in which an appeal or application for leave to appeal is filed may release the defendant on bail, if the offense charged is bailable and is not among the assaultive crimes identified in the Code. A defendant convicted of an assaultive crime and awaiting sentence may be released on bail if the trial court finds by clear and convincing evidence that the defendant is not likely to pose a danger to other people. A defendant convicted of an assaultive crime and sentenced to a term of imprisonment who has filed an appeal or an application for leave to appeal may be released on bail if the trial court or the court to which the appeal is taken finds by clear and convincing evidence that the defendant is not likely to pose a danger to others and that the appeal or application raises a substantial question of law or fact. Under the bill, a defendant convicted of sexual assault of a minor would be excluded from release on bail under those provisions.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government.

By requiring that certain offenders be retained in jail, postconviction but presentence and post-sentence waiting for an appeal, the bill could increase local correctional costs, which vary by county. This also could create an added pressure on jail capacity, potentially limiting jail space for otherwise prison-bound offenders, and thereby increasing prison commitment rates and State correctional costs. According to the Department of Corrections Statistical Report, in 2001 there were 1,870 felony dispositions for the applicable offenses, of which at least 1,008 were for offenses involving minors.

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