

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 154
Judiciary

(Delegate Anderson, *et al.*)

Criminal Procedure - District Court - Stay of Sentence Pending Appeal

This bill requires that when a defendant is convicted of a crime in the District Court, the court must stay any sentence imposed that includes an unserved, nonsuspended period of imprisonment (1) until the time for filing an appeal has expired and (2) during the pendency of a filed appeal. A defendant may waive this stay of sentence.

Fiscal Summary

State Effect: Minimal decrease in general fund expenditures due to fewer individuals being incarcerated in Baltimore City, individuals being incarcerated for less time in Baltimore City, and reduced payments to counties for reimbursement of inmate costs. Revenues are not affected.

Local Effect: Minimal decrease in local expenditures due to fewer individuals being incarcerated in local facilities or individuals being incarcerated for less time in local facilities, offset in part by an increase in local expenditures due to expanding circuit court dockets and more *de novo* appeals for State's Attorneys. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: A defendant convicted in the District Court has the right to appeal the conviction in a circuit court. Appeals to the circuit court must be filed within 30 days of the conviction. Under Maryland Rule 7-112(b), the conviction remains in effect pending the appeal. Under Rule 4-348(b), the filing of an appeal ordinarily stays any sentence of imprisonment if a court releases the defendant pending the appeal.

Discretion is left to the *trial court* (the District Court in the case of an appeal to a circuit court) as to whether to release a convicted defendant pending appeal. Rule 4-349 establishes the factors the District Court is to consider in determining whether to release a convicted defendant pending appeal. In determining whether to release the defendant, the District Court is to consider whether the appeal appears to be frivolous or taken for the purposes of delay. The District Court is also to consider the same factors that govern pretrial release, including the nature and circumstances of the offense charged, any recommendation of the State's Attorney, any information presented by the defense, and the danger of the defendant to any alleged victim. The District Court may impose different or greater conditions of release than it imposed pretrial. The rule specifies that a defendant has the burden of establishing that he or she will not flee or pose a danger to any other person or to the community. A convicted defendant is not entitled to bail pending an appeal. See *Hurley v. State*, 59 Md. App. 323, 327 (1984).

However, a defendant who is denied a request for release pending appeal and stay of sentence by the District Court may request that a circuit court review the District Court's decision. In response to a motion, the circuit court may modify the District Court's decision.

A circuit court is authorized to stay a sentence of imprisonment imposed by the District Court and release a defendant pending trial upon the defendant's filing of an appeal to the circuit court for a *de novo* criminal appeal.

The bill's provisions requiring a court to issue a stay of sentence pending appeal already apply to a person convicted of possessing less than 10 grams of marijuana. However, the court may not require the defendant to post an appeal bond in those cases.

Background: In *de novo* appeals, the court hearing the appeal treats the appeal as if the previous trial never took place and conducts an entirely new trial. Most appeals from District Court decisions are tried *de novo*. Exceptions include (1) criminal actions in which the parties agree to an appeal on the record; (2) an appeal from an order or judgment of direct criminal contempt if the sentence imposed by the District Court was less than 90 days imprisonment; and (3) an appeal by the State from a judgment quashing or dismissing a charging document or granting a motion to dismiss in a criminal case.

State Expenditures: Minimal decrease in general fund expenditures due to (1) fewer individuals being incarcerated in Baltimore City; (2) individuals being incarcerated for less time in Baltimore City; and (3) reduced payments to counties for reimbursement of inmate costs.

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 a State correctional facility. 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 State 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 State correctional facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Persons serving a sentence longer than 18 months are incarcerated in State correctional 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 State inmate (including variable medical care and variable operating costs) is about \$370 per month. Excluding all medical care, the average variable costs total \$180 per month.

Local Expenditures: Minimal decrease in local expenditures due to fewer individuals being incarcerated in local facilities or individuals being incarcerated for less time in local facilities, offset in part by an increase in local expenditures due to expanding circuit court dockets and more *de novo* appeals for State's Attorneys.

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.

In terms of fiscal impact, the following populations have the most influence:

Group #1: Individuals who are (1) found guilty in the District Court; (2) have an unserved and unsuspended portion of their sentence remaining; (3) are not released by the District Court pending appeal; and (4) are not released by the circuit court pending appeal through avenues available in statute.

Group #2: Individuals who are (1) found guilty in the District Court; (2) have an unserved and unsuspended portion of their sentence remaining; and (3) would not normally file an appeal to the circuit court but are incentivized to file an appeal to the circuit court by the guarantee of release pending appeal.

Data is not readily available on how many people belong to Group #1. According to the *Maryland Judiciary Annual Statistical Abstract FY 2011*, there were 42,669 guilty dispositions in criminal cases in the District Court in fiscal 2011. There were also 3,697 appeal filings to the circuit court from criminal cases (other than motor vehicle cases) in the District Court. It is unclear how many of the individuals in these appeals are not released by the District Court or a circuit court pending appeal under current law. However, it is assumed that this population is small. If these individuals lose their appeals, then local expenditures are delayed, since they will serve their sentences in the same facility at a later date. If they win their appeals or receive a shorter sentence from the circuit court, then local expenditures decrease from individuals spending less time in local facilities or fewer individuals spending time in local facilities.

With respect to Group #2, there were 183,856 criminal (excluding motor vehicle) filings in the District Court and 3,697 criminal appeal filings to the circuit courts in fiscal 2011. This represents a 2% appeal rate. The number of individuals who would opt for a circuit court appeal based on the guaranteed release pending appeal in the bill cannot be readily determined at this time. However, based on the low appeal rate represented by this data, it is assumed that a guaranteed release on appeal will not significantly increase the number of appeals.

Garrett County advises that while the District Court sentences defendants to actual jail time starting on the day of sentencing or to weekend service, the circuit court tends not to sentence the same individuals to some jail time. Based on this difference in sentencing, Garrett County has noticed a significant increase in the number of individuals praying jury trials or appealing their District Court sentences. The county anticipates that should the bill result in an increase in appeals to the circuit court, local incarceration expenditures will decrease. This decrease will be offset by an increase in local expenditures if the bill increases the circuit court docket.

The Office of the State's Attorney for Howard County anticipates that this bill will generate a significant fiscal burden from *de novo* appeals (which are essentially new trials) for individuals appealing their unserved, unsuspended prison time.

Montgomery County does not anticipate a fiscal impact to its Department of Corrections and Rehabilitation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Garrett, Howard, and Montgomery counties; *Maryland Judiciary Annual Statistical Abstract FY 2011*; Department of Legislative Services

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