

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 219

(Senator Lee, *et al.*)

Judicial Proceedings

Criminal Procedure - Pretrial Release - Victim Protection

This bill requires the forms for a confidential supplement to an application for a statement of charges and a statement of probable cause to incorporate a request by an alleged victim or the victim's representative for (1) reasonable protections for the safety of an alleged victim or the victim's family and (2) registration with the State's Victim Information and Notification Everyday (VINE) vendor to inform the alleged victim or the victim's representative of the release determination made by the court and any other notice available through the State's VINE vendor.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for the Judiciary in FY 2018 due to computer programming costs associated with implementation of the bill. Revenues are not affected.

Local Effect: The bill does not materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: The confidential supplement form allows a victim, complainant, or witness to request the shielding of his/her information due to a threat to his/her safety made by the defendant or person(s) on the defendant's behalf, an act of violence by the defendant or person(s) on the defendant's behalf, or other reasons. Generally, the confidential supplement form is submitted with an application for a statement of charges. A commissioner also advises an applicant of his or her right to shielding when the application

is filed and notes whether the applicant denies the shielding. The form is completed on affidavit, and a judge or commissioner must approve or deny the request or determine that shielding is not required.

The issuance of a charging document, regardless of whether an individual is arrested, formally initiates the criminal process. The charging document is a written accusation alleging that the defendant has committed a crime. A charging document may come in the form of a citation, a statement of charges, an information, or an indictment.

Statement of Charges: Before the arrest of an alleged offender, a judicial officer may file a statement of charges with the District Court based on an application of a police officer or any other individual. The application contains an affidavit demonstrating probable cause that the defendant committed the crime charged. The judicial officer has the authority to determine whether the application establishes probable cause.

Although the judicial officer may be a judge, it is more likely that the officer is a District Court commissioner. District Court commissioners are available 24 hours per day for judicial duties. A statement of charges may only be used for offenses that may be prosecuted in the District Court.

If a police officer makes a warrantless arrest, the officer must then apply for a statement of charges to be filed in the District Court, along with an affidavit showing probable cause.

Once a charging document is filed, the court must issue a summons or arrest warrant. A copy of the charging document accompanies the summons or warrant. A summons notifies the defendant of the time and place to appear in court to answer the charges at a preliminary inquiry. It may be served on the defendant by mail or in person. A summons is issued unless (1) an arrest warrant has been issued; (2) the defendant is in custody; or (3) the charging document is a citation.

Pretrial Release: In most cases, pretrial release determinations are made at a defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants. Pretrial release of such defendants may be authorized only by a judge, and only on suitable bail, on any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to others, or on both bail and such other conditions.

In determining whether a defendant should be released and the conditions of pretrial release, the judicial officer (judge or commissioner) is required to take into account specified information, to the extent available, including the potential danger of the defendant to himself or herself, the alleged victim, the community, or others.

Victim's Rights and VINE: A “victim” is a person who suffers personal injury or property damage or loss directly resulting from a crime or delinquent act, or the person’s representative in the event of the person’s death.

Under Maryland law, a victim of a crime or delinquent act (or a representative in the event the victim is deceased, disabled, or a minor) has a broad range of specific rights during the criminal justice process. On first contact with a victim, a law enforcement officer, District Court commissioner, or juvenile intake officer must give an identified victim a pamphlet that advises the victim of the rights, services, and procedures available in the time before and after the filing of a charging document. Also, within 10 days after the filing or unsealing of an indictment or information, the State’s Attorney must provide a victim with a pamphlet that describes the rights, services, and procedures available to a victim after the indictment or information is filed and a notification request form by which a victim may request notice of various proceedings. The pamphlets are prepared by the State Board of Victim Services.

Many of the rights afforded a victim of crime depend on a victim completing a notification request form or requesting notice by following the Maryland Electronic Courts (MDEC) system protocol. Unless provided by the MDEC system, the State’s Attorney is required to notify the victim of (1) all court sentencing proceedings; (2) the terms of any plea agreement; and (3) the victim’s right to file a victim impact statement. However, a victim who has not filed a notification request form is still entitled to submit a victim impact statement to the court.

VINE is a free-of-charge, fully automated service that can provide individuals with information on the custody status of offenders and upcoming court hearing dates through a variety of methods, including telephone, email, and text message where available. Access to VINE and operator assistance with VINE is available 24 hours per day. A national call center located in Louisville, Kentucky, constantly monitors offender and court case activity through a connection with local booking and court case management systems. Updated offender records are automatically sent to the center as often as every 15 minutes. Individuals may register for notifications from VINE by calling the system’s toll-free telephone number or by visiting its website (www.vinelink.com). VINELink provides information regarding offenders who are currently in custody or who may have been recently released from custody.

VINE is a supplemental service to victim notification by a State’s Attorney’s office or victim services units within the Department of Public Safety and Correctional Services (DPSCS). DPSCS operates Maryland VINE.

State Expenditures: General fund expenditures may increase significantly for the Judiciary in fiscal 2018 only to implement the bill's requirements. Judiciary operations are also impacted.

While victims of crime are informed of the existence of VINE through brochures and other materials provided at various points during the criminal justice process, victims register with VINE by calling the toll-free telephone number or by visiting VINE's website. The bill requires the forms for a confidential supplement to incorporate a request by an alleged victim or the victim's representative for registration with VINE so that the victim or representative may be informed of the release determination by the court and other notice available through VINE. Thus, compliance with this requirement necessitates the development of a link between judicial computer systems and VINE to register victims upon their request, transmit pretrial release outcomes, and notify registered victims. The Judiciary advises that programming costs to create this link total \$164,250 in fiscal 2018. If other legislation is passed requiring computer reprogramming changes, economies of scale could be realized, thereby reducing the costs associated with this bill and other legislation affecting the Judiciary.

The bill also requires the implementation of new procedures to share confidential information between the commissioner who issues charges and the commissioner who handles the initial appearance. The District Court commissioner who processes an application for a statement of charges may not be the same commissioner who sees the defendant and conducts the initial appearance. Also, a significant time may pass between the issuance of an arrest warrant and a defendant's initial appearance. Under existing procedures, confidential information at the time of the issuance of charges remains in the court file and is not available to the commissioner who conducts the initial appearance.

DPSCS advises that the bill does not have an impact on agency finances or operations, since registration of alleged victims is addressed by existing procedures.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Governor's Office of Crime Control and Prevention; Judiciary (Administrative Office of the Courts); State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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