

Department of Legislative Services
 Maryland General Assembly
 1999 Session

FISCAL NOTE

House Bill 889 (Delegate Montague, *et al.*)

Judiciary

Public Defender - Bail Review Hearings - Representation of Indigent Defendants

This bill requires the Office of the Public Defender to provide legal representation to indigent defendants during bail review hearings.

The bill also requires the Office of the Public Defender to provide a statistical report to the General Assembly on or before December 15, 2000, and every two years thereafter, on the efficacy of representation of indigent defendants at bail review hearings.

An appropriation of general funds in the State budget for the Office of the Public Defender shall be used to pay not more than 67% of the costs of providing legal representation at bail review hearings. The remaining costs shall be paid by the counties or private funding sources, in amounts proportionate to the use of legal representation at bail review hearings in each county.

Fiscal Summary

State Effect: General fund expenditures could increase by \$1.1 million in FY 2000 for the Office of the Public Defender; out-years reflect annualization, salary increases, and inflation. Additional court-related costs could be incurred as a result of expanded hearing times. These costs may be fully or partially offset by decreased incarceration costs for Baltimore City Detention Center. No effect on revenues.

(in millions)	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004
GF Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditures	\$1.1	\$1.5	\$1.5	\$1.6	\$1.7
Net Effect	(\$1.1)	(\$1.5)	(\$1.5)	(\$1.6)	(\$1.7)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Expenditures could increase by as much as \$539,700 in FY 2000; \$735,600 in

FY 2001; \$761,700 in FY 2002; \$788,700 in FY 2003; and \$816,700 in FY 2004 for the Office of the Public Defender. Potential indeterminate decrease in incarceration costs. No effect on revenues. **This bill imposes a mandate on units of local government.**

Small Business Effect: Potential meaningful.

Fiscal Analysis

State Expenditures: Expenditures for the Office of the Public Defender resulting from the bill are estimated at \$1,635,484 in fiscal 2000, which reflects the bill's October 1, 1999 effective date. This estimate reflects the cost of hiring 27.25 attorneys and 29.5 intake specialists II throughout the State to perform the functions of the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. No new employees would be needed in Montgomery and Harford counties, where public defenders already represent defendants at bail review hearings. An intake specialist II supports attorneys by interviewing defendants, determining financial eligibility of defendants, and performing other factfinding functions. The information and assumptions used in calculating the estimate are stated below:

	<u>FY 2000</u>
Salaries and Fringe Benefits	\$1,500,947
Operating Expenses	35,607
One-Time Equipment Purchases	<u>98,930</u>
Total	\$1,635,484

Future year expenditures reflect: (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses. Fringe benefit expenses could be lower if the Office of the Public Defender decides to contract out some of the legal work to attorneys who are not employees of the Office of the Public Defender.

Assuming that 67% of these costs would be paid by the State, general fund expenditures would increase by \$1,095,774 in fiscal 2000.

Additional court-related costs could be incurred as a result of expanded hearing times. For

example, more than 100 bail review hearings are typically held in one day in Baltimore City. For defendants who are not represented by attorneys, each hearing usually lasts two to three minutes. With a lawyer, each hearing can take ten minutes or longer. If the average hearing time were to be extended by seven minutes, total court time devoted to bail review hearings would be expanded by approximately 11 hours and 40 minutes a day in Baltimore City. This could result in the need to hire additional courthouse personnel (e.g., clerks, bailiffs) and/or pay overtime compensation to existing personnel. The amount of additional court-related expenditures that would result from the bill cannot be determined at this time.

These costs could be fully or partially offset by decreased general fund expenditures for pretrial incarceration. The Office of the Public Defender advises that involvement of defense counsel at the bail review stage of a case can facilitate alternatives to pretrial detention, including bail reduction, release on personal recognizance, and early resolution of the case. Data relating to how the involvement of public defenders at bail review hearings in Montgomery and Harford counties has affected expenditures has not been made available to the Department of Legislative Services.

Pretrial detainees in Baltimore City are housed in the Baltimore City Detention Center (BCDC), a State operated facility. The daily cost per capita for BCDC in fiscal 2000 is estimated at \$47.75 per inmate (includes all operating and overhead costs). In the other jurisdictions, defendants are held in local detention facilities pretrial, which costs are generally paid by the local jurisdictions.

The extent to which the number of pretrial detainees would be reduced as a result of this bill cannot be reliably estimated at this time, because it would depend largely upon the success with which the Office of the Public Defender could demonstrate to courts that individual defendants are low flight risks and are not dangerous to the community. Additionally, because average cost figures include overhead, the extent to which the average daily population in BCDC would need to be reduced in order to realize actual operating expense reductions that more than offset the costs of the bill is unknown. The analysis is further complicated by the fact that BCDC can be used for purposes other than pretrial detention. Therefore, if excess capacity were to become available at BCDC, the space could be used to house other types of inmates.

Local Effect: Assuming that the State pays 67% of the increased costs for the Office of the Public Defender, local governments could be required to pay part or all of the remaining \$539,710 in estimated increased costs in fiscal 2000 (private funding sources could be used to pay part or all of these costs).

Local government expenditures could decrease to the extent that the number of and/or average incarceration time for pretrial detainees decreases. Per diem operating costs of local detention facilities are expected to range from \$15 to \$80 per inmate in fiscal 2000. The total

amount of any expenditure reductions that may result from this bill cannot be reliably estimated at this time.

Small Business Effect: Small law firms that perform criminal defense work could obtain more contract work from the Office of the Public Defender as a result of this bill.

Information Source(s): Department of Public Safety and Correctional Services (Division of Pretrial Detention and Services), Judiciary (District Court of Maryland), Office of the Public Defender, University of Maryland School of Law, Department of Legislative Services

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