

Department of Legislative Services
 Maryland General Assembly
 2000 Session

FISCAL NOTE

Senate Bill 138 (Senator Green)

Judicial Proceedings

Public Defender - Bail Review Hearings - Representation of Indigent Defendants

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

The bill also requires OPD to provide a statistical report to the General Assembly on or before December 15, 2001, and every two years thereafter, on the efficacy of representation of indigent defendants at bail hearings.

The bill is contingent on an appropriation of general funds in the State budget for OPD to be used to provide legal representation at bail hearings.

Fiscal Summary

State Effect: General fund expenditures would increase by \$1.1 million in FY 2001 for the Office of the Public Defender; out-year expenditures reflect annualization, salary increases, and inflation.

(in millions)	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
GF Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditures	\$1.10	\$1.36	\$1.42	\$1.49	\$1.56
Net Effect	(\$1.10)	(\$1.36)	(\$1.42)	(\$1.49)	(\$1.56)

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

On the other hand, incarceration costs for the Baltimore City Detention Center and Central Booking and Intake Center would decrease, possibly significantly.

Local Effect: Potentially significant decrease in incarceration costs for local governments.

Small Business Effect: None.

Analysis

Current Law: OPD is not statutorily required to represent defendants during bail hearings.

Background: OPD currently provides representation at bail hearings in Baltimore City and Anne Arundel, Harford, and Montgomery counties. The bail hearing representation in Anne Arundel and Harford counties is locally funded.

OPD received a \$300,000 general fund appropriation for fiscal 2000 for four attorneys and four support persons to provide representation at bail hearings in Baltimore City. This representation began on July 14, 1999. OPD provided the following information about the representation during the period from August 1, 1999 through August 26, 1999:

- the Office of the Public Defender provided representation at 656 of the 711 bail hearings conducted, or approximately 92%;
- bail was reduced at the hearing in 34% of the cases; and
- the defendants in 53% of the cases remained in detention pretrial, while the defendants in 47% of the cases were released pretrial.

OPD was not able to determine what specific impact its representation had in effectuating clients' releases. OPD did, however, gain the ability to interview every client before trial and to prepare each case for trial at an earlier date. These efforts resulted in fewer postponements and more expeditious disposition of cases.

Reportedly, Baltimore City's failure to appear rate (the rate of defendants who are released pretrial and then fail to appear at trial) and rearrest rate have not increased since the inception of the bail review representation by OPD.

Another group, the Lawyers at Bail (LAB) project, represented people charged with nonviolent offenses at bail hearings in Baltimore City for approximately 18 months beginning in August 1998. LAB was funded by the Abell Foundation and was affiliated with the University of Maryland School of Law. A study of the LAB project conducted by University of Maryland professors has concluded that clients who were represented by LAB attorneys at their bail hearings spent an average of five fewer days in pretrial detention than a control group of clients who were unrepresented at their bail hearings. The study further

concluded that providing attorney representation at bail hearings for the entire client base would result in an annual incarceration cost savings of \$4.5 million.

State Fiscal Effect: General fund expenditures for OPD would increase by an estimated \$1,098,594 in fiscal 2001, which reflects the bill's October 1, 2000 effective date. This estimate includes the cost of hiring 17.8 attorneys and 12 support personnel throughout the State to meet the bill's requirements. These positions include four attorneys and four support persons for Baltimore City, which OPD advises that it needs to provide 100% representation at bail hearings in Baltimore City, but do not include the attorneys and support personnel currently providing representation at Baltimore City bail hearings. The estimate includes salaries, fringe benefits, communications, office supplies, and remote transmission equipment costs. Typically, bail hearings are conducted by video camera, with the defendant appearing by video camera from the detention facility and the judge, attorneys, and other participants present in the courtroom. Support personnel assist attorneys by interviewing defendants, determining financial eligibility of defendants, and performing other fact-finding functions.

Salaries and fringe benefits	\$989,332
One-time equipment purchases	98,930
Ongoing operating expenses	<u>10,332</u>
Total FY 2001 State expenditures	\$1,098,594

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses. The estimates assume that support and cooperation are provided to OPD by the Judiciary and other involved agencies.

The bill is not expected to significantly impact the operations or finances of the Judiciary. Hearing times have increased due to OPD involvement in the bail hearings in Baltimore City, but not beyond what can be accommodated with existing resources. In addition, the bill is not expected to significantly impact the operations or finances of the Pretrial Release Services Program, which is responsible for investigating arrestees' backgrounds and supervising arrestees who are released on their own recognizance.

To the extent that the bill results in reduced stays in pretrial detention, incarceration expenditures would decrease. A total of 27,397 video bail hearings were conducted in Baltimore City in fiscal 1999. Baltimore City defendants are incarcerated either in the Central Booking and Intake Center or in the Baltimore City Detention Center (BCDC) pretrial, which are both operated by the State. The fiscal 2001 estimated daily cost per capita for BCDC is approximately \$55. Based upon the LAB study's conclusion that attorney representation at bail hearings for nonviolent offenders reduces pretrial detention time served by those offenders by an average of five days, incarceration costs could decrease significantly. The precise amount of savings that the bill would bring about cannot be reliably estimated, because incarceration cost figures include overhead.

Local Expenditures: Local government expenditures would decrease to the extent that the average incarceration time for pretrial detainees decreases. In general, defendants in jurisdictions other than Baltimore City are detained in local detention facilities pretrial. Per diem operating costs of local detention facilities are expected to range from \$15 to \$80 per inmate in fiscal 2001. The precise amount of savings that the bill would bring about cannot be reliably estimated, because incarceration cost figures include overhead.

Additional Information

Prior Introductions: Similar bills were introduced during the 1998 and 1999 sessions. HB 1092 of 1998 received an unfavorable report from the House Judiciary Committee. SB 335 of 1999 received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: None.

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

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