

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 9

(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 at any bail review hearing when a defendant has not been released on bail as set by a commissioner. Representation at a bail review hearing does not constitute entry of appearance of the OPD for any other purpose or proceeding related to the defendant. The bill also requires OPD to provide a statistical report to the General Assembly by December 15, 2003, 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 \$1,004,700 in FY 2003 for the Office of the Public Defender; out-year expenditures reflect annualization, salary increases, and inflation. Incarceration costs for the Baltimore City Detention Center and Central Booking and Intake Center would decrease, possibly significantly.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,004,700	1,212,200	1,271,500	1,334,900	1,402,800
Net Effect	(\$1,004,700)	(\$1,212,200)	(\$1,271,500)	(\$1,334,900)	(\$1,402,800)

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

Local Effect: Potential 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. The right to counsel, guaranteed by the Sixth Amendment to the U.S. Constitution and Article 21 of the Maryland Declaration of Rights, does not extend to representation by counsel at bail review hearings. Under current statutory law, a bail review hearing is not one of the enumerated proceedings to which an indigent defendant is entitled to representation by OPD.

Background: OPD currently provides representation at bail hearings in Baltimore City and Harford and Montgomery counties. OPD no longer provides such representation in Anne Arundel County. The bail hearing representation in Harford County is locally funded with one attorney, and with the county supplying support staff. In Montgomery County, the hearings are staffed by all OPD attorneys on a rotating basis, with one half-time support person.

Beginning in fiscal 1999, OPD has received additional general funds to bolster this function in Baltimore City. OPD currently has 12 attorneys and 20 support personnel assigned to these responsibilities. OPD provided the following information about the representation during the period from January 1, 2000 through May 31, 2000:

- representation was provided at 6,602 bail hearings conducted;
- bail was reduced in 47% of those cases; and
- defendants remained in pretrial detention in 44% of those cases, with the remaining 56% being 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.

Pursuant to a request in the fiscal 2001 *Joint Chairmen's Report*, the Judiciary submitted a report on December 1, 2000, to "quantitatively and qualitatively" evaluate the use of a full-time cross-designated judge at the Central Booking and Intake Facility in Baltimore City and the expanded use of the courtroom at that facility. While that report does include some data relating to bail review hearings, it does not provide any effectiveness analysis of that data. In fact, to date, there have been no internal studies or reports on the effectiveness of OPD operations at bail review.

More recently, the *Report of the Pretrial Release Project Advisory Committee* (October 2001) of the Maryland Judiciary found that:

a key element in overall improvement of the criminal justice system is implementation, in each Maryland jurisdiction, of pretrial services, with two facets. First is representation of the accused and, where appropriate, the State at the earliest practicable stage of the criminal justice system. The second is adequate personnel and other resources to afford judicial officers, prosecutors and defense counsel with verified information relevant to pretrial release determinations, to answer queries from victims, witnesses, and defendant's families about the criminal justice process, to review the status of detainees as to release eligibility, and to monitor defendants pending trial to ensure compliance with all conditions of pretrial release.

To that end, the advisory committee's second recommendation of the nine total recommendations provided that "(e)very defendant is entitled to representation by counsel at initial appearance and bail review hearings, and every indigent defendant shall be afforded representation, if desired, by the Office of the Public Defender at bail review hearings."

State Expenditures: General fund expenditures for OPD would increase by an estimated \$1,004,708 in fiscal 2003, which reflects the bill's October 1, 2002 effective date. This estimate includes the cost of hiring 11 attorneys and 18 support personnel throughout the State to meet the bill's requirements. 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	\$890,781
One-Time Equipment Purchases	96,600
Operating Expenses	<u>17,327</u>
Total FY 2003 State Expenditures	\$1,004,708

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.

The bill is not expected to significantly impact the operations or finances of the Judiciary. Hearing time lengths 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. The estimates assume that backing and cooperation are provided to OPD by the Judiciary and other involved agencies.

To the extent that the bill results in reduced stays in pretrial detention, incarceration expenditures would decrease. 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 2003 estimated daily cost per capita for BCDC is approximately \$62. 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 \$20 to \$84 per inmate in fiscal 2003. 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, 1999, 2000, and 2001 sessions. HB 1092 of 1998 received an unfavorable report from the Judiciary Committee. SB 335 of 1999 received an unfavorable report from the Judicial Proceedings Committee. SB 138 of 2000 and SB 78 of 2001 passed the Senate and, after a hearing by the Judiciary Committee, had no further action taken on it.

Cross File: None.

Information Source(s): Office of the Public Defender, Judiciary (Administrative Office of the Courts, District Court of Maryland), University of Maryland (Department of Criminology and Criminal Justice), Department of Public Safety and Correctional Services (Division of Correction), Department of Legislative Services

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