

Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE

House Bill 319

(Delegate Menes, *et al.*)

Judiciary

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**Criminal Procedure - Pretrial Release of Inmates for Health Reasons or to Reduce Overcrowding**

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This bill requires a court to order the pretrial release of a defendant on personal recognizance, or on conditions not resulting in continued pretrial incarceration, if the court determines that State interests in pretrial detention are outweighed by: (1) the need to reduce detention facility overcrowding; or (2) potential adverse effects of incarceration on the defendant's health or safety.

The bill provides circumstances under which a defendant may not be released under these provisions, including when the charge is a certain "crime of violence" or punishable by death or life imprisonment without parole. The bill also provides that Title 5 (Evidence) of the Maryland Rules does not apply to determinations made under these provisions.

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**Fiscal Summary**

**State Effect:** Minimal general fund savings for the Division of Pretrial Detention and Services and minimal operational increases for the District Court in the form of increased numbers of bail review hearings.

**Local Effect:** Minimal cost reductions for the local detention facilities and minimal operational increases for the circuit courts in the form of increased numbers of bail review hearings.

**Small Business Effect:** Minimal.

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## Analysis

**Current Law:** Provisions relating to release on personal recognizance are required to be liberally construed to rely on criminal sanctions instead of financial loss to ensure the appearance of a defendant in a criminal case. If the court believes that a minor or adult defendant in a criminal case will appear, the defendant may be released on personal recognizance. A failure to appear as required by personal recognizance is subject to maximum penalties of \$5,000 and/or five years for a felony charge and \$1,000 and/or one year, as specified.

A defendant may not be released on personal recognizance if the defendant is charged with: (1) a listed crime for which a District Court commissioner may not order such a release due to a prior conviction for an offense on that same list; or (2) a crime punishable by death or life imprisonment without parole

**State Expenditures:** General fund expenditures could decrease if the bill reduces the number of people held by the Division of Pretrial Detention and could decrease services at the Baltimore City Detention Center (BCDC), a State-run facility used primarily for pretrial detentions. However, unless the population at BCDC is reduced sufficiently to eliminate overcrowding and the use of contingent housing, State savings from this bill would likely be minimal. If use of contingent housing is eliminated, overtime expenditures for the division would be reduced. Excluding overhead, the average monthly variable costs per inmate (food, inmate supplies, etc.) total \$120 per month. In addition, the division advises that, unless a significant number of releases resulting from this bill occur continuously, any reduction in population at BCDC would be temporary.

The Administrative Office of the Courts advises that this bill adds two elements to a pretrial release determination and mandates release even if pretrial detention would ordinarily be justified. The bill would create a new subcategory of litigation. A defendant could argue that his or her health or safety, or prison overcrowding, outweighs a court belief that he or she will not appear for trial. The office also advises that the bill would allow a defendant to argue that the imposition of bail is outweighed by those factors. Accordingly, it is estimated that this bill would result in an increase in the number of bail review hearings in the District Court and the circuit courts. (It is unclear whether the bill would have a similar effect on District Court commissioners.) Any such impact is not expected to be significant.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services (Division of Pretrial Detention and Services), Department of Legislative Services

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