

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1053

(Delegate Anderson, *et al.*)

Judiciary

Judicial Proceedings

Criminal Procedure - Posting of Bail Bonds - Authorization

This bill provides that if expressly authorized by a court or District Court Commissioner, a defendant may post a bail bond by executing it in the full penalty amount and depositing the greater of 10% or \$25 with the clerk of court.

Fiscal Summary

State Effect: The bill is not expected to have a significant impact on State operations or finances. The bill codifies current practice for bail set above \$2,500 and restores the practice in effect before 2004 for bail set at or below \$2,500.

Local Effect: Minimal – see above.

Small Business Effect: Minimal. Private surety companies could receive more business to the extent defendants are no longer given the option of posting a 10% cash bond with the court.

Analysis

Current Law: A person arrested for a crime is taken before a District Court official (judge or commissioner), who determines if there is probable cause to believe the person committed the crime. If so, the official also determines whether the person should be detained or released pending trial. If the person is released, the court determines the appropriate conditions of release, which may include posting bail.

Maryland Rule 4-217 notes the types of tangible (real property) and intangible (financial assets) that may serve as collateral security if a defendant is required to pledge security prior to being released on bail. Under Maryland Rule 4-216(e)(4), a judicial officer may set bail in an amount and on conditions specified by the officer, including any of the following:

- without collateral security;
- except as discussed below, with collateral security in any amount from the greater of 10% of the full bail amount or \$100, up to the full bail amount; or
- with the obligation of a corporate surety in the full bail amount.

However, there is an exception set forth at Rule 4-216(e)(4)(B): if the officer sets bail at \$2,500 or less, the officer must advise the defendant that the defendant may post a bail bond secured by either a corporate surety or a cash deposit of 10% of the full bail amount.

If the person appears for trial or the charges are dismissed, the deposit is refunded. If not, a warrant is issued for the person's arrest, the deposit is forfeited, and the full amount becomes due. The person is also charged with an additional offense, failure to appear (FTA).

A defendant, regardless of the amount of bail, may post a deposit with a private surety company. That deposit is retained by the surety company regardless of whether the defendant appears for trial.

A defendant who does not post bail is held in a detention center while awaiting trial.

Background: The Court of Appeals' Standing Committee on Rules of Practice and Procedure proposed revising Maryland Rule 4-216(e)(4)(b) to provide for the current 10% deposit rule in July 2003. After public notice and comment, the Court of Appeals adopted this revision in November 2003. The revised rule became effective on January 1, 2004. Prior to the amendment, a court could require a 10% cash deposit on any amount of bail, but it was not required to do so at any level.

Chief Judge Robert Bell of the Court of Appeals created the Pretrial Release Project Advisory Committee in June 2000 to consider, among other things, whether the 10% option was being used less often than appropriate. The Pretrial Release Advisory Committee encouraged the adoption of rules that would rely to the extent practicable on criminal sanctions, rather than financial loss, to ensure the defendant's appearance. This amendment reflects this approach.

State Expenditures: The revised rule took effect on January 1, 2004. No data has been provided on its impact.

The bill's potential impact on State expenditures cannot be stated with certainty, because it cannot be accurately predicted to what extent, if any, judicial officers will revise their current practices in setting bail. Studies differ on the extent to which the current approach will or will not result in additional pretrial detentions or FTAs. The Judiciary and the Department of Public Safety and Correctional Services have advised that they expect the bill's financial impact to be minimal.

If judicial officers continue to follow the 10% deposit rule in all or most of the cases in which they impose bail, the bill's impact will be minimal. If the bill results in additional pretrial detentions in Baltimore City, a State-run facility, the Division of Correction would incur estimated expenditures of \$350 per inmate per month. If the bill results in fewer FTAs, economies of scale could be realized from fewer warrants being issued and executed.

Local Expenditures: The bill could result in additional pretrial detainees in local detention facilities. Per diem operating costs of local facilities are expected to range from \$29 to \$97 per inmate in fiscal 2005. It could also lead to fewer warrants, if the bill reduces FTAs.

Additional Information

Prior Introductions: None. However, in 2002, cross filed bills were introduced that would have legislatively established the 10% deposit rule. SB 432 of 2002 received an unfavorable report from the Senate Judicial Proceedings Committee, and HB 792 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Public Safety and Correctional Services; Proposed Revisions to Maryland Rules of Procedure Title 4 – Criminal Causes, Chapter 200 – Pretrial Procedures; 30 *Md. Register* 1141-1144 (August 22, 2003); *The Pretrial Release Project: A Study of Maryland's Pretrial Release and Bail System*, The Abell Foundation, Baltimore, MD (September 12, 2001); *Warnken Report on Pretrial Release*, Warsharski Public Relations, Baltimore, MD (February 2002); Department of Legislative Services

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