

**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**

House Bill 304  
Judiciary

(Delegate Sophocleus, *et al.*)

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**Courts - Criminal Cases - Release of Defendant Pending and Dismissal after Appeal by State**

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This bill repeals the requirements in current law that (1) a defendant be released on personal recognizance pending the determination of certain types of appeals taken by the State; and (2) the underlying charges be dropped if the State's appeal is unsuccessful.

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**Fiscal Summary**

**State Effect:** General fund expenditures could increase minimally for Baltimore City pretrial detention costs and for possible post-conviction incarceration costs of defendants who remain in the criminal justice system.

**Local Effect:** Minimal – see above.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** If the State appeals a court's ruling dismissing an indictment, information, presentment, or inquisition; or, in a crime of violence, a ruling excluding evidence offered by the State or requiring the return of property found to have been unconstitutionally seized by the State, the defendant must be released on personal recognizance while the appeal is pending. A person released on personal recognizance is freed based on a promise to return to court, without having to post bail. If the State loses the appeal, the underlying charges against the defendant are dismissed.

A “crime of violence” means:

- abduction;
- arson in the first degree;
- kidnapping;
- manslaughter (except involuntary manslaughter);
- mayhem;
- maiming;
- murder;
- rape;
- robbery;
- carjacking;
- armed carjacking;
- sexual offense in the first or second degree;
- use of a handgun in the commission of a felony or other crime of violence;
- an attempt to commit any of the above crimes;
- assault in the first degree; and
- assault with intent to murder, rape, rob, or commit a first or second degree sexual offense.

**Background:** The current statute has received substantial attention since the release on personal recognizance of two defendants charged with first degree murder in connection with a death that occurred in the Annapolis Historic District in September 2002. Each defendant confessed to the crime, but their confessions were ruled inadmissible by the court. They were released pending the State’s appeal of these rulings.

**State Expenditures:** General fund expenditures could increase minimally if additional defendants are detained or incarcerated in Division of Correction (DOC) facilities and for increased payments to counties for reimbursement of inmate costs. The number of people affected by this change is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$350 per month. Excluding medical care, the average variable costs total \$120 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2005 are estimated to range from \$14 to \$58 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

**Local Expenditures:** Expenditures could increase minimally if additional defendants are detained, tried, and incarcerated as a result of the bill's enactment. In jurisdictions other than Baltimore City, pretrial detention takes place at local detention facilities funded by each county. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$29 to \$97 per inmate in fiscal 2005.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Office of the Public Defender, Baltimore City, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - February 5, 2004  
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