

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 502 (Senator Gladden)
Judicial Proceedings

Criminal Appeals - District Court - Stay of Sentence and Release

This bill requires, in a criminal appeal that is tried *de novo*, that the District Court stay service of a sentence of imprisonment and release a defendant pending the defendant's appeal to circuit court. The bill permits the District Court to impose conditions for release of the defendant or deny release of the defendant pending appeal. The District Court is required to state the reasons for denying release of the defendant in writing or on the record. The bill authorizes the defendant to seek review of the District Court's decision in the circuit court while the appeal is pending in accordance with the Maryland Rules or by petitioning for a writ of *habeas corpus*.

The bill only applies prospectively to criminal offenses charged on or after the October 1, 2009 effective date.

Fiscal Summary

State Effect: The bill does not significantly impact State operations or finances.

Local Effect: The bill does not significantly impact circuit court operations or finances.

Small Business Effect: None.

Analysis

Current Law: A defendant convicted in the District Court has the right to appeal the conviction to the circuit court. Under Maryland Rule 7-112(b), the conviction remains in effect pending the appeal. Under Rule 4-348(b), the filing of an appeal ordinarily stays any sentence of imprisonment if a court releases the defendant pending the appeal.

A convicted defendant is not entitled to bail pending an appeal. See *Hurley v. State*, 59 Md. App. 323, 327 (1984). Discretion is left to the court as to whether to release a

convicted defendant pending appeal. Rule 4-349 establishes the factors a District Court is to consider in determining whether to release a convicted defendant pending appeal. In determining whether to release the defendant, the District Court is to consider whether the appeal appears to be frivolous or taken for the purposes of delay. The District Court is also to consider the same factors that govern pretrial release, including the nature and circumstances of the offense charged, any recommendation of the State's Attorney, any information presented by the defense, and the danger of the defendant to any alleged victim. The District Court may impose different or greater conditions of release than it imposed pretrial. The rule specifies that a defendant has the burden of establishing that he or she will not flee or pose a danger to any other person or to the community.

A defendant may seek review of a District Court's decision to deny release pending appeal and a stay of sentence. A defendant may also petition for the writ of *habeas corpus*. In response to a motion, the circuit court may modify the District Court's decision.

Background: In *de novo* appeals, the court hearing the appeal treats the appeal as if a previous trial never took place and conducts an entirely new trial. Most appeals from District Court decisions are tried *de novo*. Exceptions include (1) criminal actions in which the parties agree to an appeal on the record; (2) an appeal from an order or judgment of direct criminal contempt if the sentence imposed by the District Court was less than 90 days imprisonment; and (3) an appeal by the State from a judgment quashing or dismissing a charging document or granting a motion to dismiss in a criminal case.

Additional Information

Prior Introductions: HB 144 of 2008 received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: HB 202 (Delegate Cardin, *et al.*) - Judiciary.

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

Fiscal Note History: First Reader - February 15, 2009
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