

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 569
Judiciary

(Delegate Carter, *et al.*)

Judicial Proceedings

Criminal Procedure - De Novo Appeal - Stay of Sentence

This bill authorizes a circuit court, in a criminal appeal that is tried *de novo*, to stay a sentence of imprisonment imposed by the District Court and release a defendant pending trial in the circuit court upon the defendant's filing of a notice of appeal to the circuit court.

Fiscal Summary

State Effect: Potential minimal decrease in expenditures for the Judiciary due to fewer District Court proceedings. Revenues are not affected.

Local Effect: Any increase in circuit court proceedings as a result of the bill's changes can be handled with existing budgeted resources.

Small Business Effect: None.

Analysis

Current Law: A defendant convicted in the District Court has the right to appeal the conviction in a 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.

Discretion is left to the *trial court* (the District Court in the case of an appeal to a circuit court) as to whether to release a convicted defendant pending appeal. Rule 4-349 establishes the factors the 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 convicted defendant is not entitled to bail pending an appeal. See *Hurley v. State*, 59 Md. App. 323, 327 (1984).

However, a defendant who is denied a request for release pending appeal and stay of sentence by the District Court may request that a circuit court review the District Court's decision. In response to a motion, the circuit court may modify the District Court's decision. A defendant may also petition for a writ of *habeas corpus*.

Background: In *de novo* appeals, the court hearing the appeal treats the appeal as if the 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: None.

Cross File: None.

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

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