

Department of Legislative Services
 Maryland General Assembly
 2010 Session

FISCAL AND POLICY NOTE

House Bill 1234

(Delegate Ramirez, *et al.*)

Judiciary

Crimes - Violation of Condition of Pretrial or Posttrial Release

This bill makes violations of a condition of pretrial or posttrial release a misdemeanor offense, punishable by imprisonment for up to 90 days. A police officer is authorized to make a warrantless arrest if the officer has probable cause to believe that the arrestee is in violation of a condition of pretrial or posttrial release.

Fiscal Summary

State Effect: General fund expenditures for the Office of the Public Defender (OPD) increase by \$387,000 in FY 2011 to hire additional personnel to assist with additional misdemeanor cases as a result of the bill. Potential minimal increase in general fund expenditures for the Department of Public Safety and Correctional Services due to more people being committed to Division of Correction facilities for convictions in Baltimore City. Potential minimal increase in general fund expenditures for the Judiciary to handle additional bail review hearings and misdemeanor cases in the District Court.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	387,000	489,400	512,400	536,600	562,100
Net Effect	(\$387,000)	(\$489,400)	(\$512,400)	(\$536,600)	(\$562,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential minimal increase in local expenditures as a result of the bill's incarceration penalty. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: A police officer *may* arrest a person without a warrant if the officer has probable cause to believe that the person has committed 1 of 10 crimes specified in statute and that unless the person is arrested immediately, the person may not be apprehended; may cause physical harm or property damage; or may tamper with, dispose of, or destroy evidence. The crimes specified in statute include vehicular manslaughter, malicious burning and mischief, certain theft offenses, carrying or wearing a concealed weapon, and certain controlled dangerous substance offenses.

A police officer may also arrest a person without a warrant in situations involving domestic abuse and stalking. An officer is required to arrest with or without a warrant and take into custody any person the officer has probable cause to believe is in violation of an interim, temporary, or final protective order in effect at the time of the violation.

A court may issue a bench warrant for the arrest of a defendant who violates a condition of pretrial release. Once the defendant is presented before a court, the court may revoke the defendant's pretrial release or continue the defendant's pretrial release with or without conditions.

Under Maryland Rule 4-349, after conviction, a trial judge may release the defendant pending sentencing or appellate review subject to conditions. The defendant has the burden of establishing that he/she will not flee or pose a danger to any other person or to the community. The court may consider the same factors that must be considered for pretrial release, but may impose different or greater conditions for post-trial release. The court, on motion of any party, or on its own initiative, and after notice and opportunity for hearing, may revoke an order of release or amend it to impose additional or different conditions of release. If the decision results in the defendant's detention, the court must state the reasons for its action in writing or on the record.

State Expenditures: The bill may impact general fund expenditures for the Department of Public Safety and Correctional Services, the Judiciary, and OPD.

General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction facilities for convictions in Baltimore City. Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

The Judiciary advises that while there is no statistical data available about the number of violations of pretrial or posttrial release violations, the number of such violations could

be significant. Legislative Services advises that the bill could result in a minimal increase in general fund expenditures for additional bail review hearings and adjudication of the new misdemeanors.

It is unclear how often prosecutors will opt to pursue the misdemeanor offense created by this bill in lieu of advocating that a defendant's bail be revoked. It also unclear how often the misdemeanor charge will be used as leverage in plea bargaining negotiations. If prosecutors do opt to pursue the misdemeanor charge, there is a likelihood that defense attorneys will opt to try the violation of pretrial or posttrial release charge separately due to the potential for prejudice created by the offense. Regardless of the ultimate use and procedural outcome of the misdemeanor offense, the bill may result in a significant increase in expenditures for OPD, since public defenders will still have to go through trial preparation if a client is charged with the misdemeanor offense.

OPD advises that the office handled approximately 105,000 criminal cases in 2008 and that approximately one-half of OPD clients are released on bail. If even 10% of the 52,500 OPD clients released on bail are charged with the misdemeanor offense created by this bill, general fund expenditures would increase by \$387,000 in fiscal 2011, which accounts for the bill's October 1, 2010 effective date.

This estimate reflects the cost of hiring six assistant public defenders to handle the increased caseload. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. This estimate assumes that (1) each additional misdemeanor will require 1.5 hours of additional trial preparation; and (2) each public defender spends 1,378 hours on case related tasks every year (pursuant to the Case Weighting Study conducted by the National Center for State Courts).

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Salaries and Fringe Benefits	\$349,293
Operating Expenses	37,755
Total FY 2011 State Expenditures	\$387,048

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover; and 1% annual increases in ongoing operating expenses.

Local Expenditures: Expenditures increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Howard and Montgomery counties, Commission on Criminal Sentencing Policy, Governor's Office of Crime Control and Prevention, Judiciary (Administrative Office of the Courts), Department of Juvenile Services, Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

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