

**Department of Legislative Services**  
Maryland General Assembly  
2010 Session

**FISCAL AND POLICY NOTE**

Senate Bill 618

(Senator Jacobs, *et al.*)

Judicial Proceedings

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**Criminal Procedure - Violation of Pretrial or Posttrial Release No Contact Order  
- Expedited Hearing ("Alexis's Law")**

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This bill authorizes an alleged victim, pretrial services representative, or a State's Attorney to request an expedited hearing before any District Court or circuit court judge of the county in which a case is pending if the alleged victim alleges that the defendant in the case has violated a condition of pretrial or post-trial release prohibiting the defendant from contacting, harassing, or abusing the alleged victim or going in or near the alleged victim's premises or place of employment.

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**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$185,200 in FY 2011 for the Office of the Public Defender (OPD) to comply with the provisions of this bill. Potential significant increase in general fund expenditures for the District Court to conduct expedited hearings in compliance with the requirements of the bill. Potential significant increase in expenditures for the Department of Public Safety and Correctional Services (DPSCS) to house defendants in the Baltimore City Detention Center whose pretrial or post-trial release is revoked at an expedited hearing.

(in dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	185,200	238,300	249,800	261,800	274,500
Net Effect	(\$185,200)	(\$238,300)	(\$249,800)	(\$261,800)	(\$274,500)

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

**Local Effect:** Potential significant increase in local expenditures for circuit courts to conduct expedited hearings in compliance with the requirements of the bill. Potential significant increase in local expenditures if the bill results in increases in population at

local detention facilities due to the revocation of pretrial or post-trial release at an expedited hearing.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** Once a request for an expedited hearing has been filed, the court receiving the request must issue a bench warrant for the defendant's arrest and schedule an expedited hearing to occur no later than two business days after the filing of the request. At the conclusion of the hearing, the court may revoke the defendant's release or continue the defendant's release with or without conditions.

**Current Law:** The court or a District Court commissioner must consider including reasonable protections for the safety of any alleged victim as a condition of pretrial release for a defendant. If the victim has requested reasonable protections for safety, the court or a District Court commissioner must consider including provisions that prohibit contact with the alleged victim or the alleged victim's premises or place of employment.

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 its decision results in the detention of the defendant, the court must state the reasons for its action in writing or on the record.

**State Expenditures:** General fund expenditures could increase significantly as a result of this bill. The bill does not specify the types of cases in which a victim would be entitled to an expedited hearing or the type of alleged contact that would trigger an expedited hearing. Thus, it is assumed that the bill applies to all cases in which a defendant is subject to a "no contact" provision and all types of contact with the victim.

Given the potential scope of the bill's applicability, the number of cases in which an expedited hearing under the bill may occur cannot be reliably determined at this time.

However, using peace order cases as an example, the potential impact of the bill could be significant. Though OPD does not currently handle peace order cases, the peace order population is used as an illustration of the bill's potential fiscal impact because it represents cases that are more personal in nature and where a victim fears the defendant – attributes that would make a victim more likely to report a violation of a no contact order. The Administrative Office of the Courts reports that 16,749 peace order cases were filed in the State in fiscal 2007. Assuming that no contact orders were violated in 15% of those cases by defendants who were not already clients of OPD, the bill would generate approximately 2,500 additional cases for OPD.

Currently, OPD requires defendants to apply for OPD services at least 10 days prior to a hearing or trial date. Given the two-day timeframe in the bill, it is unlikely that OPD will be able to verify assets and determine OPD eligibility before a hearing. Therefore, it is likely that OPD will accept these cases regardless of the defendant's eligibility. The timeframe also imposes significant administrative requirements, since it requires OPD to open a file, assign a public defender, and provide representation in one-fifth of the time it currently has. Assuming that an assistant public defender handles 728 cases per year (the upper portion of the range of average cases handled by public defenders by region), the bill would necessitate the hiring of approximately three additional assistant public defenders. As a result, general fund expenditures would increase by \$185,199 in fiscal 2011, which accounts for the bill's October 1, 2010 effective date. This estimate reflects the cost of hiring three assistant public defenders to help with the increased workload. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses

Salaries and Fringe Benefits	\$174,646
Operating Expenses	<u>10,553</u>
<b>Total FY 2011 State Expenditures</b>	<b>\$185,199</b>

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

The bill may potentially result in significant increases in operational costs for the District Court, since an expedited hearing would have to be held within two business days of the hearing request. Though the bill does not specify if a hearing must be postponed if a defendant is not arrested by the time of the expedited hearing, it is assumed that some hearings will have to be postponed pending arrest of the defendant.

The bill may result in a significant increase in local expenditures to the extent that judges revoke pretrial or post-trial releases of defendants at expedited hearings, forcing them to be housed in local detention facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

With respect to increased appearances by pretrial agents at expedited hearings, expenditures for DPSCS will not be affected since pretrial agents currently participate in all pretrial hearings.

**Local Expenditures:** Potential significant increase in local expenditures for circuit courts to conduct expedited hearings in compliance with the requirements of the bill. Local expenditures may also increase to the extent that local detention facilities experience an increase in their populations when pretrial or post-trial release for a defendant is revoked as a result of the provisions of this bill. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

**Additional Comments:** There is no definition in this bill or in statute for the term “post-trial.” Rule 4-349 does not refer to parole or probation as being part of the “post-trial” period. This note was written on the assumption that the term “post-trial” is used in this bill in the same manner it is used in Rule 4-349.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 60 (Delegate Smigiel) - Judiciary.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Charles, Frederick, Montgomery, and Somerset counties; State’s Attorneys’ Association; Department of Legislative Services

**Fiscal Note History:** First Reader - February 15, 2010  
mpc/kdm

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