

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

House Bill 682
Judiciary

(Delegate K. Kelly)

Judicial Proceedings

Criminal Procedure - Forfeiture of Bail Bonds

This bill prohibits a court from refunding a forfeited bail bond or collateral to a surety because of a defendant's failure to appear due to being incarcerated out of state unless the surety paid the forfeiture of bail or collateral within 90 days after the defendant's failure to appear or 180 days for good cause shown. However, the court may refund the forfeited bond or collateral if the surety produces evidence on motion that the defendant was incarcerated when the court entered the forfeiture judgment and the court strikes out the judgment of forfeiture for fraud, mistake, or irregularity.

Fiscal Summary

State Effect: Increase in State revenues if the bill's restrictions on recovery of forfeited bail bonds or collateral result in fewer recoveries. State expenditures are not affected.

Local Effect: Increase in local revenues if the bill's restrictions on recovery of forfeited bail bonds or collateral result in fewer recoveries. Local expenditures are not affected.

Small Business Effect: Potential meaningful impact on small businesses that are unable to recover forfeited bail bonds or collateral as a result of the bill's restrictions on recovery.

Analysis

Current Law: Bail is intended to ensure the presence of the defendant in court, not as punishment. If there is a concern that the defendant will fail to appear in court, but otherwise does not appear to pose a significant threat to the public, the defendant may be required to post a bail bond rather than be released on recognizance. A bail bond is the

written obligation of the defendant, with or without a surety or collateral security, conditioned on the personal appearance of the defendant in court as required and providing for payment of a specified penalty (the amount of the bail) upon default.

Once the bail has been set, the defendant may secure release by posting cash or other collateral with the court, such as a corporate surety bond, a certified check, intangible property, or encumbrances on real property, in an amount required by the judicial officer. Often the defendant is released after posting cash equal to 10% of the full penalty amount, although security for a greater percentage of the penalty amount, up to the full amount of the bail, may be required by the judicial officer. When the defendant is unable to post the amount required, as is often the case, the defendant may seek the assistance of a bail bondsman to obtain a corporate surety or lien on the bondsman's real property to secure the bond with the defendant. The bail bondsman typically charges a fee equal to 10% of the required bail bond amount for this service.

If a defendant fails to appear in court as required, the court will order the forfeiture of the bond and issue a warrant for the defendant's arrest. If the defendant or surety can show that there were reasonable grounds for the failure to appear, a judge may strike the forfeiture in whole or in part. Where a surety executed the bond with the defendant, the surety has 90 days to satisfy the bond by either producing the defendant or by paying the penalty amount of the bond. The court may extend this period to 180 days for good cause shown.

A court is required to strike out a forfeiture of bail or collateral and discharge the underlying bail bond if the defendant can show reasonable grounds for the defendant's failure to appear. The court is also required to do this if the defendant is returned to the custody of law enforcement and the arrest, apprehension, or surrender occurs more than 90 days after the defendant's failure to appear or at the end of the period that the court allows to return the defendant. Evidence of the confinement of a fugitive defendant in a correctional facility in the United States is a wholly sufficient ground to strike out a forfeiture, if assurance is given that the defendant will come back to the jurisdiction of the court on expiration of the sentence at no expense to the State, county, or municipal corporation.

A court that has ordered forfeiture of a bail bond or collateral after expiration of the time limits for a surety to return a defendant must give back the forfeited bail bond or collateral if, within 10 years after the date the bail bond or collateral was posted, the surety produces evidence that (1) the defendant is confined in a correctional facility outside the State; (2) the State's Attorney is unwilling to issue a detainer and later extradite the defendant; and (3) the surety agrees in writing to defray the expense of returning the defendant to the jurisdiction.

State and Local Revenues: Potential increase in State and local revenues if the bill's increase in requirements for a surety to recoup forfeited bail or collateral results in fewer returns of forfeited bail bonds or collateral.

Additional Information

Prior Introductions: None.

Cross File: SB 809 (Senator Zirkin) - Judicial Proceedings.

Information Source(s): Baltimore City, Worcester County, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2011
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