

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 690 (Senator Shank)
Judicial Proceedings

Criminal Procedure - Pretrial Release - Restrictions

This bill prohibits a District Court commissioner from authorizing the pretrial release of a defendant charged with committing one of the following crimes: (1) murder; (2) manslaughter; (3) kidnapping; (4) sexual offense in the first, second, or third degree; (5) assault with intent to commit a sexual offense in the first or second degree; (6) sexual abuse of a minor; or (7) carjacking. Under the bill, a judge may authorize the pretrial release of these defendants if specified conditions are met.

Fiscal Summary

State Effect: Minimal increase in State expenditures for additional judicial bail reviews in the District Court and pretrial incarcerations in Baltimore City if the bill results in additional pretrial detentions. Potential minimal increase in State expenditures for reprogramming of District Court computers. Revenues are not affected.

Local Effect: Minimal increase in local expenditures in jurisdictions other than Baltimore City if the bill results in additional pretrial detentions. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: A judge may authorize the pretrial release of these defendants on:

- any conditions that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community; and

- suitable full cash bail, an authorized corporate surety bond, or a bail bond secured by real property located in the State with unencumbered equity equal to the amount of bail undertaking plus \$20,000.

There is a rebuttable presumption that these defendants will flee and pose a danger to another person or the community.

Current Law: A person arrested for a crime is taken before a judicial officer (a judge or District Court commissioner), who determines if there is probable cause to believe the person committed the crime. If so, the official also determines whether the person should be detained or released pending trial.

A criminal defendant is entitled to be released pending trial unless a judge ultimately determines that no conditions can be placed on the defendant's release to reasonably ensure the defendant's appearance at trial and the safety of the alleged victim, another person, and the community. About half of defendants are eligible for and will be released on personal recognizance. However, if a judicial officer determines that release on personal recognizance alone is not appropriate, or the defendant is by law ineligible for release on recognizance, the defendant may be released prior to trial only by posting bail in an amount set by the judicial officer and any other conditions deemed appropriate.

In determining whether a defendant should be released and the conditions of pretrial release, the judicial officer is required to take into account the following information, if available: (1) the nature and circumstances of the offense; (2) the nature of the evidence against the defendant and the potential sentence upon conviction; (3) the defendant's prior record and history with regard to appearing in court as required; (4) the defendant's employment status and history, family ties, financial resources, reputation, character and mental condition, and length of residence in the community and the State; (5) the potential danger of the defendant to himself or herself, the victim, or others; (6) recommendations of the State's Attorney and any agency that conducts a pretrial release investigation; (7) information provided by the defendant or the defendant's counsel; and (8) any other factor bearing on the risk of a willful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

In most cases, pretrial release determinations are made at the defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants, including defendants who are registered sex offenders and defendants charged:

- with a crime punishable by death or life imprisonment;

- with escaping from a correctional facility or any other place of confinement in the State;
- as a drug kingpin;
- with a crime of violence (as defined under Criminal Law Article, § 14-101), if the defendant has been previously convicted of a crime of violence under the laws of this State or has been convicted under the laws of another state of a crime classified as a crime of violence in Maryland; and
- with violating the provisions of a domestic violence protective order (temporary or otherwise) ordering the defendant to refrain from abusing or threatening to abuse a person eligible for relief (applies to orders issued by a court in Maryland, another state, or by a Native American tribe).

A District Court commissioner may not authorize the pretrial release of a defendant charged with one of the following crimes *if the defendant has previously been convicted of one of the following crimes:*

- wearing, carrying, or transporting a handgun;
- use of a handgun or an antique firearm in commission of a crime;
- violating prohibitions relating to assault pistols under § 4-303 of the Criminal Law Article;
- use of a machine gun in a crime of violence;
- use of a machine gun for an aggressive purpose;
- possessing, using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime under § 5-621 of the Criminal Law Article;
- possession of a regulated firearm under § 5-133 of the Public Safety Article;
- transporting a regulated firearm for unlawful sale or trafficking; or
- possession of a rifle or shotgun by a person with a mental disorder.

A District Court commissioner also may not authorize the pretrial release of a defendant charged with committing one of the following crimes *while the defendant was released on bail or personal recognizance for a pending prior charge of committing one of the following crimes:*

- aiding, counseling, or procuring arson in the first degree;
- arson in the second degree or attempting, aiding, counseling, or procuring arson in the second degree;
- burglary in the first, second, or third degree;
- child abuse or sexual abuse of a minor;
- manufacture or possession of a destructive device;

- various offenses related to controlled dangerous substances (CDS), except for possessing or administering CDS;
- manslaughter by vehicle or vessel; or
- a crime of violence.

Pretrial release of such defendants may be authorized only by a judge, and only on suitable bail, on any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to others, or on both bail and such other conditions. There is a rebuttable presumption that some of these defendants will flee upon release and pose a danger to another person or the community.

Release on Bail

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.

Maryland Rule 4-217 notes the types of tangible (real property) and intangible (financial assets) that may serve as collateral security if a defendant is required to pledge security prior to being released on bail. Under Maryland Rule 4-216(e)(4), a judicial officer may set bail in an amount and on conditions specified by the officer, including any of the following:

- without collateral security (unsecured bail);
- except as discussed below, with collateral security in any amount from the greater of 10% of the full bail amount or \$100, up to the full bail amount; or
- with the obligation of a corporate surety in the full bail amount.

Unsecured Bail: With unsecured bail, the defendant does not need to deposit any money with the court, but does have to promise to pay the full amount if he/she fails to appear in court. The defendant's promise is not backed by any monetary/financial security.

Deposit Bail: Under Maryland Rule 4-216(e)(4)(B), a defendant may be given an option to post a bail bond with collateral security equal to the greater of \$100 or 10% of the full penalty amount. Maryland Rule 4-216(e)(4)(B) also requires a judicial officer to advise a defendant, whose bail is set at \$2,500 or less, of his/her option to self-post the bond through a cash deposit of 10% of the full penalty amount or post the bond through a corporate surety.

Under Criminal Procedure, § 5-205(b), notwithstanding any other law or rule to the contrary, in a criminal or traffic case in the District Court in which a bail bond has been set and if expressly authorized by the court or District Court commissioner, the defendant or a private surety acting for the defendant may post the bail bond by (1) executing it in the full penalty amount; and (2) depositing with the clerk of the court or a commissioner the greater of 10% of the penalty amount or \$25.

The remaining portion of the bail is backed by the defendant's promise to pay the remainder of the full penalty amount if he/she fails to appear in court. If the defendant appears in court as ordered, the deposit is refunded.

Secured Bail: In addition to the 10% deposit option mentioned above, a judicial officer has the authority to require a defendant to provide collateral security for a greater percentage of the penalty amount, up to the full penalty amount of the bail. A defendant can post secured bail by executing the bond for the full amount and depositing cash or property in an amount equal to the percentage security required by the judicial officer or through a corporate surety company.

A defendant, regardless of the amount of bail, may post a deposit with a surety company. If the defendant uses a surety company, the company/bail bondsman will execute a Power of Attorney with the court in an amount sufficient to cover the full penalty amount should the defendant fail to appear. In return, the surety company will receive a premium from the defendant equal to 10% of the full penalty amount. Premiums paid to surety companies are nonrefundable.

State Expenditures: State expenditures increase minimally for bail review hearings in the District Court and extended pretrial detentions in Baltimore City.

Given the seriousness of the offenses affected by the bill, it is highly likely that defendants affected by the bill (1) are not being granted pretrial release by a District Court commissioner; (2) are not being granted pretrial release by a judge at a bail review hearing; or (3) are being granted pretrial release (by a judge or commissioner) on secured bail set at amount that would necessitate the procurement of a corporate surety bail bond or the posting of real property. As a result, the bill's fiscal impact on State general fund expenditures exists only to the extent that the bill (1) increases the number of District Court judicial bail review hearings; and (2) increases pretrial detentions in Baltimore City.

District Court Bail Review Hearings

It is likely that many defendants affected by the bill would not be eligible for pretrial release by a District Court commissioner under current law. Under current law, a District Court commissioner may not grant the pretrial release of a defendant charged with a crime of violence who has a prior conviction for a crime of violence. With the exception of involuntary manslaughter, sexual offense in the third degree, and specific instances of sexual abuse of a minor, all of the offenses listed in the bill are crimes of violence. Thus, depending on their criminal records, many defendants covered under the bill's provisions are not currently eligible for pretrial release at an initial appearance before a District Court commissioner.

In addition, District Court commissioners may not be currently releasing some of the defendants affected by the bill who are eligible for pretrial release by a commissioner. These defendants would have to go through a District Court bail review hearing under current law.

According to the Judiciary, during fiscal 2011, there were (1) 7,519 instances in which a District Court commissioner was not authorized to grant a pretrial release to a defendant at an initial appearance; and (2) approximately 85,000 bail reviews in the District Court. While this bill would increase the number of judicial bail reviews, the extent of the increase cannot be reliably determined at this time but is assumed to be minimal.

Pretrial Release

The Division of Pretrial Detention and Services (DPDS) is responsible for processing and managing the care, custody, and control of Baltimore City arrestees and inmates, primarily at the Baltimore City Detention Center.

The bill will result in extended detentions at DPDS while defendants await a judicial bail review hearing and if defendants are unable to obtain pretrial release from a judge due to bail set according to the bill's provisions. For the reasons stated above, any additional detentions that may result from the bill's provisions are expected to be minimal.

Local Expenditures: Outside of Baltimore City, defendants awaiting trial are housed in local detention facilities. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: HB 338 (Delegate Hough, *et al.*) - Judiciary.

Information Source(s): Montgomery and Prince George's counties, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

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