

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 551
Judiciary

(Delegate Simmons)

Judicial Proceedings

Criminal Procedure - Alien Defendants - Nullity of Bail Bonds

This bill establishes that if a defendant who has posted a bail bond is taken into custody and deported by U.S. Immigration and Customs Enforcement (ICE) or another agency of the federal government because of the defendant's immigration status (1) the bond posted by the defendant is null and void; (2) the bond must be returned to the surety and the surety may not have any liability with respect to the bond; and (3) if the surety is a compensated surety, the surety must refund any premium paid in connection with the bond within five business days after the bond is returned to the surety.

Fiscal Summary

State Effect: Potential minimal reduction in general fund revenues from bonds forfeited in the District Court. Expenditures are not affected.

Local Effect: Potential minimal reduction in local revenues from bonds forfeited in the circuit courts. Expenditures are not affected.

Small Business Effect: Potential meaningful impact on surety companies who are not determined to have forfeited a bail bond when a criminal defendant fails to appear in a Maryland court because the defendant has been deported by the federal government.

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.

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.

If a defendant fails to appear in court as required, the court will order the forfeiture of the bond in the full penalty amount 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.

If the surety does not satisfy the forfeiture within the court allotted time period, the clerk of the court must enter the forfeiture as a judgment in favor of the governmental entity entitled by statute to receive the forfeiture (usually the jurisdiction where the offense occurred) and against the defendant and the surety. The judgment is for the full penalty amount of the bond with interest and costs. Interest on the penalty is calculated at an annual rate of 10% dating back to the date of forfeiture.

Should the defendant be produced subsequent to forfeiture of the bond, the surety may seek a refund of any penalty paid, less expenses incurred by the State in apprehending the defendant. This right of remission only exists if the surety paid the forfeiture within the time limit prescribed by the court, unless the surety can prove that the defendant was incarcerated outside of the State when the judgment of forfeiture was entered and the court strikes out the judgment of forfeiture for fraud, mistake, or irregularity. If a surety appeals a forfeiture, does not pay the forfeiture in the time allotted, and loses on appeal, the surety must pay the forfeiture and loses its right to remission. Remission of a forfeited bond may occur within 10 years after the date the bond was posted.

Every quarter, the Chief Clerk of the District Court compiles and distributes a "List of Absolute Bond Forfeitures in Default" for each surety insurance company. This list contains all bond forfeitures that have ripened into judgments and remain unpaid or unsatisfied in the District Court and the circuit courts. The list is distributed to each surety insurance company and the company has to produce documentation that the forfeitures have been paid or stricken by the court within a certain number of days. If a company fails to satisfy all of the outstanding forfeitures on its list, the surety insurance company and all of its agents (the bondsmen who write bonds on behalf of the surety) are

precluded from writing any business in the State until all of the forfeitures have been satisfied, with the exception of forfeitures that have been appealed.

Background: ICE is the second largest investigative agency in the federal government and is responsible for the detention and removal of noncitizens. While immigration is controlled by federal law, the U.S. Department of Homeland Security (DHS) and ICE have begun to look to state and local law enforcement agencies as allies and as additional resources. While federal law does not mandate that state and local law enforcement agencies become involved in immigration efforts, the U.S. Supreme Court has ruled that state and local law enforcement officers may question criminal suspects about their immigration status. Local law enforcement agencies throughout the nation have often expressed reluctance in becoming involved in federal immigration enforcement because of a lack of resources and the need to maintain open relationships with members of the community so that they may effectively carry out their policing duties.

Section 287(g) of the Immigration and Nationality Act, which was established by the 1996 Illegal Immigration Reform and Immigrant Responsibility Act authorizes DHS to create voluntary cooperative agreements between the federal government and state and local law enforcement agencies on immigration enforcement. While the agreements contain two models for immigration enforcement (task force and correctional-detention), the correctional-detention model is the one focused primarily on identifying immigrant felons within the prison system. Under the agreements, designated local officers receive training and function under the supervision of ICE officers. On July 10, 2009, DHS announced a new standardized memorandum of agreement for 287(g) participants that shifts the focus of these partnerships to “the identif[ication] and remov[al] of dangerous criminal aliens.” A “criminal alien” is a noncitizen who is residing in the United States lawfully or unlawfully and is convicted of a crime.

The new agreements provide guidelines for supervision, reporting information, and complaint procedures. The new agreements require that interpretation services be made available and state that civil rights laws and regulations pertaining to nondiscrimination apply to the agreements. As a result, all existing agreements must be negotiated and new agreements sunset every three years. The Frederick County Sheriff’s Office is the only Maryland law enforcement agency that has entered into a 287(g) agreement with DHS. The agreement was signed in October 2009. In February 2012, DHS officials announced that they would not sign any new 287(g) agreements and will terminate the least productive of the existing agreements. DHS will instead focus on expanding the Secure Communities program.

In March 2008, DHS launched the Secure Communities program. Under the program, participating correctional facilities submit the fingerprints of arrestees into traditional criminal databases and immigration databases, such as the U.S. Visitor and Immigrant

Status Indicator Technology Program and the Automated Biometric Identification System. If the database indicates that the arrestee matches a record for an individual with an immigration violation, ICE and local law enforcement are automatically notified. ICE then reviews the case and the arrestee's immigration status and determines what action it wishes to take. In these cases, ICE will often issue a detainer, which is a notice by federal law enforcement requesting the detention of an individual to insure the individual's availability for any additional federal proceedings. As of April 9, 2011, 22 counties (the exceptions are Baltimore City and Montgomery County) participate in the Secure Communities program. Local law enforcement agencies (even agencies that do not participate in Secure Communities) may contact ICE to verify if there is an outstanding detainer of an individual if an individual self reports information relevant to the individual's immigration status.

An ICE detainer is a request to a local law enforcement agency to detain an individual for up to two business days after that person would otherwise be released (*i.e.*, when the individual is no longer subject to detention by local law enforcement, such as when a person posts bond or completes a jail sentence). If ICE places a detainer on an individual pretrial and the individual posts bail, the individual should be released if ICE does not take custody of the individual within this two-day time period. If ICE places a detainer before an individual has an opportunity to post bond and the individual posts bond, ICE has the authority to assume immediate custody of the individual.

State Fiscal Effect: The Judiciary advises that there is no notification system in place for the court to be notified by federal agencies when a defendant is taken into federal custody. However, because of the significant financial consequences of a forfeited bond to a surety, it is assumed that the Judiciary will implement procedures whereby a surety will have to provide acceptable proof to the court that a defendant is in federal custody before being released from liability on the bail bond.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Governor's Office of Crime Control and Prevention, Maryland Insurance Administration, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Public Safety and Correctional Services, U.S. Department of Homeland Security – Immigration and Customs Enforcement, North Carolina Court System Office of Indigent Defense Services, *USA Today*, Department of Legislative Services

Fiscal Note History: First Reader - February 26, 2012
ncs/kdm Revised - House Third Reader - March 23, 2012

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510