

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 492
Judiciary

(Delegate K. Kelly, *et al.*)

Criminal Procedure - Bail Bonds - Cash Bail

This bill specifies that an order setting “cash bail” or “cash bond” may be posted in the form of cash, surety bond, or property bond by the defendant or a private surety acting for the defendant. An order setting “cash bond” or “cash bail” for a failure to pay support under the Family Law Article may only be posted by the defendant, unless otherwise ordered by the court or a District Court commissioner. The bill repeals all public general or public local laws or parts of these laws that are inconsistent with the bill’s provisions, to the extent of the inconsistency.

Fiscal Summary

State Effect: Minimal reduction in State expenditures for pretrial detentions in Baltimore City if the bill results in an increase in the number of defendants who are able to post bail. Revenues are not affected.

Local Effect: Minimal reduction in local expenditures for pretrial detentions if the bill results in an increase in the number of defendants who are able to post bail. Revenues are not affected.

Small Business Effect: Potential meaningful impact for surety companies that can post bonds for cash bail defendants as a result of the bill.

Analysis

Current Law: As its name suggests, “cash bail” or “cash bond” is bail or a bond that must be posted to the court in cash. There are two types of bondsmen in the State,

property bondsmen and corporate surety bail bondsmen (corporate bondsmen). Corporate bondsmen are by far the more common of the two types.

Property bondsmen post bail for defendants by pledging real estate as security for the defendant's appearance in court. Corporate bondsmen post bail by executing the bail bond as the agent or attorney in fact for a surety insurance company. A corporate bondsman typically executes a bail bond by filing a Power of Attorney with the court in an amount sufficient to cover the full penalty amount of the bail. In return, the corporate bondsman charges the defendant a premium equal to 10% of the full amount of the bail bond.

Background: According to the Judiciary, one surety insurance company has been approved to post cash bonds in the State. These bonds are posted with a cashier's check for the full penalty amount of the bail bond in return for a 15% premium from the defendant.

State Expenditures: General fund expenditures decrease minimally if more defendants are able to post bail as a result of the bill. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions. Data is not available on the number of defendants ordered to pay cash bail who were unable to obtain pretrial release as a result of the requirement. However, it is assumed that this group is small. To the extent that this group is sizeable, general fund expenditures will decrease to a greater extent.

The Department of Public Safety and Correctional Services advises that the bill's requirement that only a defendant (as opposed to a family member) may post cash bail or cash bond for a failure to pay support may increase the pretrial detention population. However, given that the number of individuals facing incarceration for failure to pay support is relatively small, any change in the pretrial population as a result of this portion of the bill is not likely to materially affect State expenditures.

Local Expenditures: Local expenditures decrease minimally if more defendants are able to post bail as a result of the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Charles, Frederick, and Montgomery counties; Maryland Insurance Administration; Judiciary (Administrative Office of the Courts); 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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mm/kdm

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