

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1109
Judiciary

(Delegate Carter, *et al.*)

Criminal Procedure - Defendants Held on No Bail Status - Comprehensive Risk Assessment

This bill requires a pretrial services unit to immediately perform a comprehensive risk assessment to determine a defendant's flight risk or danger to another person or the community if the defendant is held on a no bail status by a court in a case that does not involve a crime of violence. The court must conduct a hearing to review the defendant's no bail status in light of the assessment's findings immediately after the completion of the risk assessment.

Fiscal Summary

State Effect: Potential minimal decrease in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) if the bill results in fewer or shorter pretrial detentions in Baltimore City. Revenues are not affected.

Local Effect: Potential minimal increase in local expenditures if jurisdictions without pretrial services units have to hire additional personnel to conduct assessments of defendants denied bail in cases that do not involve a crime of violence. Revenues are not affected. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Current Law/Background:

Initial Appearance/Bail Review: Within 24 hours after arrest, a criminal defendant is taken before a judicial officer – typically a District Court commissioner – for an initial appearance. At the initial appearance, the defendant is advised of (1) each offense charged; (2) the right to counsel; and (3) the right to a preliminary hearing, if applicable. In some jurisdictions, the defendant is given a District Court trial date at the initial appearance. Otherwise, the defendant is told that notice of the trial date will follow by mail.

If the defendant was arrested without a warrant, the commissioner must determine whether there was probable cause for the arrest. If it is determined that there was no probable cause, the defendant is released on personal recognizance with no other conditions of release. If it is determined that there was probable cause, the commissioner must also determine whether the defendant is eligible for release from custody prior to trial and, if so, under what conditions. A defendant who is denied pretrial release by the commissioner, or one who remains in custody 24 hours after the commissioner has set the conditions of release, is entitled to a bail review hearing before a judge. The primary purpose of the bail review hearing is to determine whether the conditions of release set by the commissioner should be continued, amended, or revoked.

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 that would reasonably ensure the defendant's appearance at trial and the safety of the alleged victim, another person, and the community. Historically, approximately 50% of people who appear before commissioners are 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.

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 registered with the sex offender registry maintained by DPSCS and defendants charged with specific offenses (*e.g.*, crimes of violence, violation of a protective order, drug kingpin, etc.). 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.

At the initial appearance, the commissioner has access to several criminal justice databases to review the defendant's criminal history and to determine whether there are any pending charges, any prior occasions when the defendant failed to appear in court, or any outstanding warrants. The commissioner also relies on information provided in the statement of probable cause or charging document, the defendant's Record of Arrest and Prosecution (RAP) sheet, and information learned from the defendant.

In some jurisdictions, a pretrial investigation services unit provides verified factual information that becomes available to assist the judge in setting conditions for release at a bail review hearing. The investigation by the pretrial services unit could include a community background check, verification of employment, information provided by the defendant or the defendant's family, and additional factors concerning the defendant's criminal history that were not available to the commissioner. Pretrial services units are located in jails and typically convey their recommendations during the bail review process. Pretrial services units also monitor individuals released on pretrial supervision.

Exhibit 1 contains information on which counties have pretrial services units and which counties do not.

Exhibit 1
Pretrial Services Units in Local Jurisdictions

Jurisdictions with Pretrial Services Units

Anne Arundel County
Baltimore City
Baltimore County
Frederick County
Harford County
Montgomery County
Prince George's County
Wicomico County
Worcester County

Jurisdictions Without Pretrial Services Units

Allegany County
Calvert County
Caroline County
Carroll County
Cecil County
Charles County
Dorchester County
Garrett County
Howard County
Kent County
Queen Anne's County
St. Mary's County
Somerset County
Talbot County
Washington County

Source: Office of the Public Defender

Crime of Violence: Section 14-101 of the Criminal Law Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first and second degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) an attempt to commit crimes (1) through (14); (16) continuing course of conduct with a child; (17) assault in the first degree; or (18) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

State Expenditures: General fund expenditures for DPSCS may decrease minimally if the bill reduces the number and/or the length of pretrial detentions in Baltimore City. The extent of this decrease cannot be reliably determined at this time, but will depend on (1) the number of defendants who are granted bail at the post-assessment hearing and (2) the number of defendants who can afford to make bail and obtain pretrial release following a post-assessment hearing.

This decrease in general fund expenditures may be partially offset by an increase in general fund expenditures should DPSCS need to hire additional personnel to coordinate the additional bail reviews under the bill. However, the need for additional personnel cannot be ascertained until actual experience is gained under the bill.

Given the volume of cases in Baltimore City, that jurisdiction will likely represent a large number of the cases affected by the bill. Baltimore City conducts multiple video bail reviews each day and has a courtroom in Central Booking. While defendants do not need to be transported to a courthouse outside of the facilities in which they are being detained, the bill's creation of an additional bail review hearing may require additional coordination to move detainees from their cells to the video bail review or Central Booking courtroom.

The Judiciary advises that it does not anticipate a significant fiscal or operational impact from the bill. The Office of the Public Defender (OPD) advises that it can handle the bill's requirements with existing resources. OPD already represents clients at judicial bail reviews and will represent clients at the additional hearings conducted pursuant to this bill.

Local Expenditures: As previously noted, several jurisdictions do not have pretrial services units. These jurisdictions may choose to meet the bill's requirements by training and designating existing jail personnel to conduct assessments on an as needed basis. Since many of the jurisdictions that do not have pretrial services units are smaller jurisdictions with lighter caseloads, it is likely that the bill applies in very few cases. However, to the extent that local jurisdictions need to hire additional personnel to accommodate the bill's requirements, local expenditures increase. Any such increase is expected to be minimal, however.

Given that the District Court operates on a standard business schedule, it is unclear what the definition of "immediately" is under the bill. This analysis assumes that "immediately" means the next available court session. For jurisdictions without video bail review, defendants need to be transported from local jails to the District Court. Since the bill creates an additional bail hearing in a limited number of cases, it is assumed that any additional transportation is incorporated into an existing transport schedule for judicial bail hearings.

Frederick County advises that the bill's requirements can be handled with existing resources. The county's detention center currently provides a risk assessment/pretrial report that includes "no bail" status. The Office of the State's Attorney for Frederick County indicates that the increase in workload anticipated could be absorbed due to the low number of cases to which the bill applies.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Frederick and Montgomery counties, Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

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