

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

House Bill 746
Judiciary

(Delegate Carter, *et al.*)

**Criminal Procedure - Defendants Held on No-Bail Status - Comprehensive
Evidence-Based 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:

Initial Appearance of a Criminal Defendant: 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.

Pretrial Release of a Criminal Defendant: 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. Please see the **Appendix – Defendants Ineligible for Pretrial Release by a District Court Commissioner** – for a more comprehensive list of defendants ineligible for pretrial release by a District Court commissioner.

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.

According to a survey conducted for the Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender (OPD), 11 of the State's 24 jurisdictions have a pretrial services program, as indicated in **Exhibit 1**. However, the programs vary in their policies and duties.

Exhibit 1
Pretrial Services Units in Local Jurisdictions

Jurisdictions with Pretrial Services Units

Anne Arundel County
Baltimore City
Baltimore County
Calvert County
Carroll County
Dorchester County
Frederick County
Harford County
Montgomery County
Prince George's County
Wicomico County

Jurisdictions Without Pretrial Services Units

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

Source: Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender – Survey by Pretrial Justice Institute

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 depends 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.

The 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 likely represents 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. To the extent that the risk assessment under this bill is different than the one currently used in Baltimore City, DPSCS may need to train staff as needed.

The Judiciary advises that it does not anticipate a significant fiscal or operational impact from the bill. OPD advises that the bill has no fiscal impact on the office. OPD already represents clients at judicial bail reviews and can 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.

Additional Information

Prior Introductions: HB 1109 of 2013 received a hearing in the House Judiciary Committee. No further action was taken.

Cross File: None.

Information Source(s): Harford and Talbot 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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Appendix – Defendants Ineligible for Pretrial Release by a District Court Commissioner

Please refer to Criminal Procedure Article, § 5-202 for complete information on defendants who are not eligible for pretrial release by a District Court commissioner.

In General

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 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).

Repeat Offender – Defendant Charged with a Specified Crime Who Has a Prior Conviction for a Specified Crime

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.

Repeat Offender – Defendant Charged with Committing a Specified Crime While Released on Bail or Personal Recognizance on a Prior Charge of Committing a Specified Crime

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; and
- a crime of violence.