

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 1001 (Delegates Jalisi and Moon)
 Judiciary

Criminal Procedure - Bail Bonds - Return of Defendant

This bill makes several changes to procedures pertaining to the striking out of a forfeiture of bail or collateral and discharge of the underlying bail bond because of a defendant's failure to appear in court.

Fiscal Summary

State Effect: Potential decrease in general fund revenues from filing fees if at least a \$25 filing fee is not required for the motions authorized under the bill. General fund expenditures increase by \$141,600 in FY 2016 only for reprogramming of the Judiciary's computers to accommodate the bill's provisions.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
GF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$141,600	\$0	\$0	\$0	\$0
Net Effect	(\$141,600)	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill does not materially affect local finances.

Small Business Effect: Meaningful effect if sureties are able to (1) delay or avoid payment of forfeited bail bonds under the bill compared to current practice or (2) avoid being placed on the District Court's list of forfeitures in default as a result of the bill.

Analysis

Bill Summary:

In General: The bill authorizes anyone, rather than just the defendant, to present the court with reasonable grounds for the defendant's failure to appear.

The bill also authorizes a surety to file a motion concerning the surety's inability to return the defendant. The motion must be filed within either a 90-day (generally) or 180-day time limit (for good cause shown), and the filing of such a motion must stay the ordering of the forfeiture and preclude payment of any forfeiture of bail or collateral unless or until the motion or any appeal of the motion is denied. If the motion or an appeal of the motion is denied, the surety must pay any forfeiture of bail or collateral within three business days of the denial.

Under the bill, if the arrest, apprehension, or surrender and return of the defendant occurs after the 90- to 180-day time period, the court must give back the forfeited bail bond or collateral (minus the expense for the defendant's arrest, apprehension, or surrender) if (1) the surety paid the forfeiture within the 90- or 180-day time period or (2) a motion described above was filed within the 90- to 180-day time period.

Evidence of a fugitive defendant's confinement in a correctional facility in the United States is a wholly sufficient ground to strike out a forfeiture, if the surety agrees in writing to defray the reasonable expense of returning the defendant to the jurisdiction of the court on expiration of the sentence at no expense to the State, county, or municipal corporation.

Defendant Confined – 90 to 180 Days: A court may not order the forfeiture of a bail bond or collateral posted by a surety and must give back the bail bond or collateral to the surety if the defendant fails to appear in court and the surety files a motion within the 90- to 180-day time period accompanied by evidence (1) stating that the defendant is confined in a correctional facility (within or outside the State) and (2) agreeing to defray the reasonable expense of returning the defendant to the jurisdiction of the court at no expense to the State, county, or municipality.

Defendant Confined – Within 10 Years: A court that has ordered forfeiture of a bail bond or collateral after expiration of the time limits for a surety to return, a defendant must give back the forfeited bail bond or collateral if, within 10 years after the date the bail bond or collateral was posted, the surety files a motion accompanied by evidence (1) stating that the defendant is confined in a correctional facility (within or outside the State) and (2) agreeing to defray the reasonable expense of returning the defendant to the jurisdiction of the court on expiration of the sentence at no expense to the State, county, or municipality.

A court is only required to return the forfeited bail bond or collateral if the surety paid the forfeiture within the 90- or 180-day time period.

Additional Provisions: When a surety files a motion established by the bill, a court may not order a forfeiture of the bail bond or collateral posted by the surety and must give back the bail bond or collateral to the surety whether or not the State's Attorney is willing to issue a detainer and later extradite the defendant.

A court may not order a forfeiture of the bail bond or collateral posted by a surety and must give back the bail bond or collateral to the surety if the defendant fails to appear in court, the surety files a motion within the 90- to 180-day time limit, and the surety:

- produces evidence that the defendant is deceased;
- provides an affidavit signed by the bondsman swearing, under the penalty of perjury, that the bondsman has located the defendant in another country and has requested the State's Attorney to apply to the federal government for an unlawful flight to avoid prosecution warrant under 18 U.S.C. § 1073; or
- provides an affidavit signed by the bondsman swearing, under the penalty of perjury, that the bondsman has located the defendant in another United States jurisdiction, but the law of the other jurisdiction or federal law prohibits the bondsman from returning the defendant within the 90- to 180-day time limit.

Return of Forfeited Bail Bond or Collateral When Surety Did Not Pay the Forfeiture within the Time Limit: A court may refund a forfeited bail bond or collateral that was not paid within the 90- to 180-day time limit if (1) the surety files a motion established by the bill within the 90- to 180-day time limit and (2) the court strikes out the judgment of forfeiture for fraud, mistake, or irregularity.

Current Law:

In General: If a defendant fails to appear in court as required, the court orders the forfeiture of the bond and issues a warrant for the defendant's arrest. If the defendant 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.

A court that has ordered forfeiture of a bail bond or collateral must give back the forfeited bail bond or collateral (minus the expense for the defendant's arrest, apprehension, or surrender) if (1) the surety paid the forfeiture within the 90- or 180-day time period; (2) the defendant is returned; and (3) the arrest, apprehension, or surrender occurs more than 90 to 180 days after the defendant's failure to appear.

Evidence of a fugitive defendant's confinement in a correctional facility in the United States is a wholly sufficient ground to strike out a forfeiture, if assurance is given that the defendant will come back to the jurisdiction of the court on expiration of the sentence at no expense to the State, county, or municipality.

Defendant Confined Out of State – 90 to 180 Days: A court may not order the forfeiture of a bail bond or collateral posted by a surety and must give back the bail bond or collateral to the surety if (1) the defendant fails to appear in court; (2) the surety produces evidence, within the 90- to 180-day time period, that the defendant is confined in a correctional facility outside the State; (3) the State's Attorney is unwilling to issue a detainer and later extradite the defendant; and (4) the surety agrees in writing to defray the expense of returning the defendant to the jurisdiction.

Defendant Confined Out of State – Within 10 Years: A court that has ordered forfeiture of a bail bond or collateral after expiration of the time limits for a surety to return a defendant must give back the forfeited bail bond or collateral if, within 10 years after the date the bail bond or collateral was posted, the surety produces evidence that (1) the defendant is confined in a correctional facility outside the State; (2) the State's Attorney is unwilling to issue a detainer and later extradite the defendant; and (3) the surety agrees in writing to defray the expense of returning the defendant to the jurisdiction. A court is only required to return the forfeited bail bond or collateral if the surety paid the forfeiture within the 90- or 180-day time period.

Return of Forfeited Bail Bond or Collateral When Surety Did Not Pay the Forfeiture Within the Time Limit: Though a court is generally prohibited from returning a forfeited bail bond or collateral to a surety unless the surety paid the forfeiture within the 90- to 180-day time limit, a court may refund a forfeited bail bond or collateral that was not paid within this time limit if (1) on motion, the surety produces evidence that the defendant was incarcerated when the judgment of forfeiture was entered and (2) the court strikes out the judgment of forfeiture for fraud, mistake, or irregularity.

State Revenues: General fund revenues decrease if the motion created by the bill does not have a filing fee of at least \$25, which is the filing fee currently required for the "Petition to Strike Bond Forfeiture/Extend Period of Satisfaction" (Form DC-CR-037).

State Expenditures: General fund expenditures for the Judiciary increase by \$141,640 in fiscal 2016 only for computer reprogramming. According to the Judiciary, computers need to be reprogrammed to account for the surety's ability to file a motion that will stay the forfeiting bond and preclude payment of any forfeiture until the surety's motion or appeal of a motion has been ruled on. This includes the necessary changes to track pending motions and subsequent denials where the surety is given an additional three business days

to pay any forfeiture of bail or collateral. The Judiciary estimates that incorporating these changes into its computer systems requires approximately 1,848 hours of reprogramming.

Small Business Effect: The bill has a meaningful impact on sureties that are able to (1) delay or avoid payment of forfeited bail bonds as a result of the bill or (2) avoid being placed on the Chief Clerk of the District Court's list of defaulters as a result of the bill.

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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Dorchester and Montgomery counties, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Maryland Insurance Administration, Department of Legislative Services

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