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FISCAL AND POLICY NOTE
First Reader

House Bill 1046
Judiciary

(Delegate Dumais, *et al.*)

Criminal Procedure - Pretrial Release

This bill requires a judicial officer to, depending on the charges involved, order the pretrial release of a person (1) on personal recognizance, on nonfinancial conditions, or on execution of an unsecured appearance bond in a certain amount under certain conditions or (2) subject to the least restrictive condition(s) that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

The bill also establishes that the statutory provisions governing release on personal recognizance must be liberally construed to avoid the imposition of a financial condition that results in the pretrial detention of a person charged with a crime unless necessary to assure the appearance of the person as required or to preserve public safety.

Fiscal Summary

State Effect: Minimal increase in general fund revenues if the bill increases the amount of bail forfeitures in the District Court, as discussed below. Potential significant decrease in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS).

Local Effect: Minimal increase in local revenues if the bill increases bail forfeitures in the circuit courts. Potential significant reduction in local expenditures for pretrial detentions.

Small Business Effect: Meaningful effect on small business bail bondsmen and sureties that write fewer bonds as a result of the bill.

Analysis

Bill Summary: If a person is charged with only one or more misdemeanors, other than a domestically related crime or driving under the influence or while impaired, a judicial officer must order the pretrial release of the person on personal recognizance, on nonfinancial conditions, or on execution of an unsecured appearance bond in an amount specified by the court, unless the person has previously failed to appear as required in that case without good cause.

If a person is charged with a felony, driving while under the influence or while impaired, or a misdemeanor that is a domestically related crime, a judicial officer must order the pretrial release of the person on personal recognizance, on nonfinancial conditions, or on execution of an unsecured appearance bond in an amount specified by the court unless the judicial officer articulates into the record specific facts supporting the determination that such a release will not reasonably assure the appearance of the person as required or will endanger the safety of any person or the community.

If a judicial officer determines that a person should not be released on personal recognizance or on execution of an unsecured appearance bond, the judicial officer must order the pretrial release of the person subject to the least restrictive further condition, or combination of conditions, that the judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community.

The bill also repeals the requirement of express authorization by a circuit court in order for a defendant in a circuit court or a private surety acting for the defendant to post a bail bond by executing the bail bond in the full penalty amount and depositing with the clerk of court 10% of the penalty amount or \$25, whichever is greater.

Current Law: The statutory provisions pertaining to release on personal recognizance must be liberally construed to carry out the purpose of relying on criminal sanctions instead of financial loss to ensure the appearance of a defendant in a criminal case before verdict or pending a new trial.

In general, if the court believes, based on all the circumstances, that a minor or adult defendant in a criminal case will appear as required for trial before verdict or pending trial, the defendant may be released on personal recognizance. A failure to appear as required by personal recognizance is subject to specified penalties.

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 to reasonably ensure the defendant's appearance at trial and the safety of the alleged victim, another person, and the community. Most defendants are eligible for and will be 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.

A defendant is by law ineligible for release on personal recognizance if charged with (1) a crime punishable by life imprisonment without parole or (2) a crime of violence, certain drug offenses, or certain other serious crimes, after having been previously convicted of one of these crimes.

In most cases, pretrial release determinations are made at a defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants. 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 comprehensive list of defendants ineligible for pretrial release by a District Court commissioner.

A defendant who is denied pretrial release by a District Court commissioner or who for any reason remains in custody after a District Court commissioner has determined conditions of release under Maryland Rule 4-216 must be presented to a District Court judge immediately if the court is in session, or if the court is not in session, at the next session of the court.

Whether released on recognizance or bail, one or more conditions may be imposed, including:

- committing the defendant to the custody of a designated person or organization (including a private home detention company) that agrees to supervise the defendant and assist in ensuring the defendant's future appearance in court;
- placing the defendant under the supervision of a probation officer or other appropriate public official, such as a governmental pretrial services unit, which in some jurisdictions can provide home detention, electronic monitoring, and drug testing or treatment pending trial;
- restricting the defendant's travel, associations, or residence;
- prohibiting contact with the alleged victim;

- subjecting the defendant to any other conditions reasonably necessary to (1) ensure the appearance of the defendant as required; (2) protect the safety of the alleged victim; and (3) ensure that the defendant will not pose a danger to another person or the community; and
- for good cause shown, imposing one or more statutorily authorized conditions reasonably necessary to stop or prevent intimidation of a victim or witness or a violation of certain laws relating to obstruction of justice.

In determining whether a defendant should be released and the conditions of pretrial release, the judicial officer (judge or commissioner) is required to take into account the following information, to the extent 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 or flight from prosecution; (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 alleged victim, the community, 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.

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.

Once the bail has been set, the defendant may secure release by posting cash or other collateral with the court, such as a corporate surety bond, a certified check, intangible property, or encumbrances on real property, in an amount required by the judicial officer.

If expressly authorized by a circuit court, a defendant or a private surety acting for the defendant may post a bail bond by executing it in the full penalty amount and depositing with the clerk of court 10% of the penalty amount or \$25, whichever is greater. In a criminal or traffic case in the District Court in which a bail bond has been set and if expressly authorized by the court or District Court commissioner, the defendant or a private

surety acting for the defendant may post the bail bond by executing it in the full penalty amount and depositing with the clerk of the court or a commissioner the greater of 10% of the penalty amount or \$25. A judicial officer may increase the percentage of cash surety required in a particular case but may not authorize a cash deposit of less than \$25. This option is not available to a defendant in the District Court who has been arrested for failure to appear in court or for contempt of court.

Background: According to the Judiciary, District Court commissioners conducted 146,180 initial appearances in fiscal 2015. The Judiciary advises that based on current statistics and recent studies on initial appearances, 50% of defendants are released on personal recognizance, 10% post bonds the same evening, and 10% post bonds prior to bail review.

State Revenues: General fund revenues increase minimally from bail forfeitures in the District Court. The bill increases the use of unsecured personal bonds and nonfinancial conditions and reduces the use of secured bonds. Furthermore, a judicial officer may deviate from the required pretrial release conditions for a defendant exclusively charged with misdemeanors if the defendant failed to appear as required *in that particular case*, not if the defendant has a history of failing to appear in prior cases. To the extent that these factors increase the amount of bail forfeitures in the District Court, general fund revenues increase. However, other than an anticipated minimal impact, the extent of this increase cannot be reliably estimated at this time.

State Expenditures: General fund expenditures may decrease significantly for DPSCS for pretrial detentions in Baltimore City. Pretrial detainees in Baltimore City are held at the Central Booking and Intake Facility, which is operated by the State. If the defendant is held more than 30 days, the defendant is transferred to the Baltimore Pretrial Complex. According to DPSCS, based on fiscal 2015 expenditures, the cost of holding a defendant at the Central Booking and Intake Center is \$180 per day.

According to DPSCS, 20,875 individuals were charged solely with misdemeanors, including many individuals who were charged and received by the Division of Pretrial Detention Services more than once during the fiscal year. Approximately 50% of these individuals (10,315) were detained pending trial. This population is eligible for release on personal recognizance, nonfinancial conditions, or an unsecured appearance bond under the bill. These statistics do not account for defendants charged with a domestically related crime, driving while under the influence or while impaired, or who had previously failed to appear *in that case*, all of which are disqualifying factors under the bill and could not be filtered from this data.

DPSCS further notes that there were 6,029 individuals charged solely with felonies in fiscal 2015. Of this group, 5,174 (85.8%) were committed/detained pending trial. This

population may be able to obtain pretrial release if the pretrial release conditions imposed on them under the bill are more attainable than the ones imposed under existing statute.

These reduced expenditures may be partially offset by increased general fund expenditures if the bill increases the imposition of nonfinancial conditions on defendants that must be enforced/monitored by DPSCS.

The Office of the Public Defender (OPD) advises that the bill may result in a significant reduction in the office's bail review caseloads. OPD provides legal representation for indigent defendants at judicial bail reviews. According to information provided by OPD, the office participated in approximately 36,500 bail reviews in fiscal 2015, compared to 51,530 hearings in fiscal 2014. Between 38 and 45 OPD attorneys represented clients in bail reviews each day. Bail review attorneys rotate through various types of cases and do not litigate bail reviews exclusively. Given OPD caseloads, this estimate assumes that resources from reduced bail review caseloads are redirected to other OPD cases.

The bill is unlikely to have a significant fiscal impact on the Judiciary. While the bill reduces the number of bonds that commissioners need to process, it does not reduce the number of initial appearances that need to be conducted, since the pretrial release determinations required under the bill still need to be made at an initial appearance, in addition to other procedural requirements under existing statute. Thus, it is unlikely that the bill reduces the need for commissioners.

Indigent criminal defendants are eligible for free legal representation at initial appearances through the Maryland Appointed Attorneys Program, which is administered by the Judiciary. Since the bill does not reduce the number of initial appearances, it is unlikely to materially affect general fund expenditures for the program. In fiscal 2015, the program cost a total of \$8.1 million.

The Judiciary advises that bonds are usually only set by commissioners on minor misdemeanors when there is a risk of failure to appear or probable cause to believe the defendant is a danger to the community. The lack of a secured bond may result in an increase in failures to appear, the issuance of bench warrants, and processing of bail forfeitures. Should this occur, the bill may result in increased clerical and court time. However, the extent to which this may occur cannot be reliably estimated at this time. Regardless, the Judiciary advises that it does not anticipate a significant fiscal or operational impact from the bill.

Local Revenues: For the reasons stated above, local revenues increase minimally from bail forfeitures in the circuit courts.

Local Expenditures: Local expenditures for pretrial detentions may also decrease significantly. In jurisdictions other than Baltimore City, pretrial detainees are housed in local facilities. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years. These reduced expenditures may be partially offset by increased expenditures for local law enforcement and/or pretrial services if the bill increases the imposition of nonfinancial conditions on defendants that must be enforced/monitored by local agencies.

The State's Attorneys' Association advises that the bill has no effect on prosecutors.

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, State's Attorneys' Association, 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 under §4-203 of the Criminal Law Article;
- use of a handgun or an antique firearm in commission of a crime under §4-204 of the Criminal Law Article;
- violating prohibitions relating to assault weapons under §4-303 of the Criminal Law Article;

- use of a machine gun in a crime of violence under §4-404 of the Criminal Law Article;
- use of a machine gun for an aggressive purpose under §4-405 of the Criminal Law Article;
- use of a weapon as a separate 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 under §5-140 of the Public Safety Article; or
- possession of a rifle or shotgun by a person with a mental disorder under §5-205 of the Public Safety Article.

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.