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Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 1390
Judiciary

(Delegate Barron, *et al.*)

Criminal Procedure - Pretrial Release - Reform

This bill (1) makes several changes to statutes governing pretrial release of criminal defendants; (2) requires counties to establish pretrial services agencies or collaborate with existing public or private providers to provide pretrial services by December 31, 2021; and (3) requires the Governor's Office of Crime Control and Prevention (GOCCP) to collaborate with all counties to develop or update a risk assessment tool that may be used by District Court commissioners in making pretrial release determinations.

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: Potential significant increase in special fund expenditures for GOCCP in FY 2019 and 2022 for grants to local jurisdictions for the development of validated risk assessment tools and start-up costs for pretrial services programs. General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase by \$50,000 in FY 2019 only to develop/validate a risk assessment tool for use in Baltimore City. Revenues are not affected.

Local Effect: Significant increase in local expenditures to develop risk assessment tools and establish pretrial services programs in accordance with the bill, offset by potential significant reductions in expenditures for pretrial detentions and incarcerations. Potential significant increase in local grant revenues. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful impact on small business bail bondsmen if the establishment of pretrial services programs in every jurisdiction reduces use of bail under the bill and recent changes to the Maryland Rules.

Analysis

Bill Summary:

Interpretation of Pretrial Release Provisions: The bill establishes that specified statutory provisions regarding the pretrial release of criminal defendants must be liberally construed to authorize the pretrial release of a defendant charged with an offense on personal recognizance or unsecured bond, with or without permissible conditions, unless a judicial officer finds, based on evidence, that no permissible nonfinancial condition attached to the pretrial release will reasonably assure the appearance of the defendant as required or the safety of alleged victims, other persons, and the community at large.

Least Onerous Condition of Release: If a judicial officer makes such a finding, the defendant may not be released on personal recognizance or unsecured bond pending trial, and the judicial officer must clearly state the basis for the finding on the record.

If a defendant cannot be released on personal recognizance or unsecured bond, the judicial officer must impose the least onerous condition(s) that will reasonably assure the appearance of the defendant and the safety of alleged victims, other persons, and the community at large.

Individualized Consideration: A judicial officer's decision whether and on what conditions to release a defendant must be based on a consideration of specific facts and circumstances applicable to the particular defendant, including the defendant's financial status and the facts and circumstances constituting probable cause for the charges.

Required Conditions: A judicial officer must include the following conditions of release for a defendant: (1) the defendant may not engage in any criminal conduct while on pretrial release; and (2) the defendant must appear in court when required.

Imposition of Nonfinancial Conditions: If a judicial officer finds that nonfinancial conditions are also required to reasonably assure the appearance of the defendant and the safety of each alleged victim, other persons, and the community at large, the judicial officer may impose on the defendant one or more nonfinancial conditions, as specified below. The judicial officer may amend the release order to impose additional or different conditions of release.

Nonfinancial conditions of release imposed by a judicial officer may include, to the extent appropriate and capable of implementation:

- a requirement that the defendant:
 - maintain employment or actively seek employment;

- maintain or commence an educational program;
 - maintain child support and alimony payments;
 - abide by a reasonable curfew, taking into account specified factors;
 - refrain from possessing a firearm, a destructive device, or any other dangerous weapon;
 - refrain from excessive or any use of alcohol or unlawful use of a controlled dangerous substance;
 - undergo available medical, psychological, or psychiatric treatment for drug or alcohol dependency and remain in a specified institution if required for purposes of the treatment;
 - report on a regular basis to a designated law enforcement agency, pretrial services agency or department, or other agency; or
 - comply with the requirements of electronic monitoring;
- one or more of the conditions authorized under § 9-304 of the Criminal Law Article reasonably necessary to stop or prevent the intimidation of a victim or witness or a violation of § 9-302, § 9-303, or § 9-305 of the Criminal Law Article, including a general no-contact order;
 - reasonable restrictions with respect to travel, association, and place of residence;
 - committing the defendant to the custody or supervision of a designated person or organization that agrees to supervise the defendant and assist in ensuring the defendant's appearance in court; or
 - any other lawful condition that helps assure the appearance of the defendant or the safety of each alleged victim, other persons, and the community at large.

Financial Conditions of Release: A judicial officer is prohibited from imposing a financial condition of release (1) solely to prevent future criminal conduct during the pretrial period; (2) solely to protect any person or the community; (3) to punish the defendant; (4) to placate public opinion; or (5) in a form or amount that results in the pretrial detention of a defendant solely because the defendant is financially incapable of meeting the condition. A judicial officer may not set a financial condition by using a predetermined schedule of amounts fixed according to the nature of the charge.

A judicial officer may consider all resources available to the defendant from any lawful source when determining whether a defendant can meet a financial condition of release.

Subject to the conditions specified in the bill and on finding that a defendant should not be released on personal recognizance or on an unsecured bond executed solely by the defendant, a judicial officer must require the first of the following alternatives that the

judicial officer finds sufficient to provide reasonable assurance of the defendant's appearance:

- execution of unsecured bonds by the defendant and an uncompensated surety that (1) has a verifiable and lawful relationship with the defendant; (2) is acceptable to the judicial officer; and (3) is willing to execute the bond in an amount specified by the judicial officer;
- execution of a bond in an amount specified by the judicial officer secured by the deposit of collateral security equal in value to not more than 10% of the penalty amount of the bond or by the obligation of a surety acceptable to the judicial officer; or
- execution of a bond secured by the deposit of collateral security of a value in excess of 10% of the penalty amount of the bond or by the obligation of a surety acceptable to the judicial officer.

Recommendations by Pretrial Services Programs and Other Considerations: When deciding whether a defendant should be released and/or the conditions of release, a judicial officer must consider the recommendation of any pretrial services program that has made a risk assessment of the defendant in accordance with a validated risk assessment tool and is willing to provide an acceptable level of supervision over the defendant during the period of release.

In addition to recommendations by a pretrial services unit, a judicial officer must also consider:

- the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence on conviction;
- the defendant's prior record of appearance at court proceedings, flight to avoid prosecution, and failure to appear at court proceedings;
- the defendant's family ties, employment status and history, financial resources, reputation, character, mental health, length of residence in the community, and length of residence in the State;
- any request made for reasonable protections for the safety of an alleged victim;
- any recommendation of an agency or a department that conducts pretrial release investigations;
- any information or recommendations presented by the State's Attorney;
- any information presented by the defendant or the defendant's attorney;
- the danger of a defendant to an alleged victim, other person, or the community at large;
- the danger of the defendant to the defendant; and

- any other factor relevant to the risk of a willful failure to appear and the safety of each alleged victim, other person, or the community at large, 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.

Prohibited Release: If a judicial officer determines that the defendant poses a danger to alleged victims, other persons, or the community at large, the defendant may not be released pretrial.

Restrictions on Pretrial Release by a District Court Commissioner: The bill retains existing statutory provisions prohibiting a District Court commissioner from authorizing the pretrial release of specified defendants, with conforming changes to reflect the bill's provisions. However, the bill also prohibits a District Court commissioner from authorizing the pretrial release of specified defendants subject to extradition.

Pretrial Services Agencies: The bill requires each county that does not have pretrial services to either establish a local agency specific to the needs of the jurisdiction or collaborate with existing public or private providers for pretrial services by December 31, 2021. Local pretrial services should include pretrial supervision, notification of upcoming court dates, mental health and substance abuse assessments, coordinated mental health and substance abuse treatment referrals, counseling, education, and employment assistance.

Counties must be eligible for start-up funding to implement pretrial services through grants from the Justice Reinvestment Performance Incentive Grant Program, GOCCP, and any other grant-funding authority, including the U.S. Department of Justice (DOJ) and private foundations.

Risk Assessment Tool: GOCCP, with the assistance of an academic institution, must collaborate with all counties to develop or update a risk assessment tool validated for the individual jurisdiction and modeled after national best practices that may be used by District Court commissioners in making pretrial release determinations. The validated risk assessment tools must be developed by December 1, 2018, and in use by District Court commissioners in all 24 counties by January 1, 2019.

A county may request funding assistance for the development of a validated risk assessment tool through the Justice Reinvestment Performance Incentive Grant Program, GOCCP, and any other grant-funding authority, including DOJ and private foundations.

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 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.

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 **Appendix 1 – 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: When an individual is charged with a crime, Maryland law currently allows District Court commissioners and judges to permit release on personal recognizance, set a bail amount, or order pretrial detention. To meet a bail amount, an arrestee must either make a payment directly to the court, post property, or seek the assistance of a bail bondsman.

Bail Systems Scrutinized Nationally: Bail systems have come under increased scrutiny nationwide due to the disproportionate financial burden placed on lower income individuals and the risk that they will be held before trial solely because of their financial status. Advocates for bail reform contend that alternative pretrial release strategies perform as well as or better than bail for court appearance rates and public safety without imposing a disparate impact on low-income defendants.

In February 2015, DOJ filed a statement of interest in a case pending in federal district court in Alabama, *Varden v. City of Clanton*, in which an arrestee was held for a week because she could not afford to pay the preset bail for her charges. The DOJ statement argued that such fixed-sum bail schemes violate the Equal Protection Clause of the Fourteenth Amendment because “they essentially mandate pretrial detention for anyone who is too poor to pay the predetermined fee.” The case was settled shortly after DOJ filed its statement. Under the settlement agreement, the city agreed to release most individuals arrested for violations of city ordinances on unsecured bonds and to conduct a bail hearing within 48 hours after arrest for anyone who was not released.

In August 2016, DOJ filed an *amicus curiae* brief in *Walker v. City of Calhoun, Georgia* stating that a bail system that required an arrestee to pay a fixed amount violated the Fourteenth Amendment because it failed to engage in a meaningful consideration of the arrestee’s ability to pay the bail and alternatives to money bail. The plaintiff in the case

alleged that he was kept in jail for six days because of his inability to pay a \$160 bail, which was determined according to the City of Calhoun's preset bail schedule.

In January 2016, a federal district court granted Mr. Walker's request for a preliminary injunction and ordered the City of Calhoun to implement constitutional post-arrest procedures. The court also prohibited the city from keeping arrestees in custody solely because of their inability to pay their monetary bonds and ordered the city to release present and future misdemeanor arrestees in its custody on personal recognizance or unsecured bond until it can implement lawful procedures. The court also granted Mr. Walker's motion for class certification. The U.S. Court of Appeals for the Eleventh Circuit heard oral arguments in the case on February 23, 2017.

Though the *Varden* and *Walker* cases involve bail schedules and preset bail amounts, DOJ officials have stated that the department's position applies to any system that incarcerates an individual solely because of the individual's inability to pay a cash bond, fee, or fine.

Imposition of Bail in Maryland: Maryland does not utilize preset bail schedules or fixed-sum bail systems. Rather, judges and commissioners in Maryland are required to consider a number of factors when determining whether an arrestee is to be held in pretrial detention, released with a money bail, or released on recognizance. According to information provided by the Maryland Judiciary during the 2016 session, approximately 50% of arrestees are released immediately on personal recognizance or by unsecured personal bonds, 10% post bonds the same evening, and 10% post bonds prior to a judicial bail review hearing.

In an advisory letter dated October 11, 2016, the Office of the Attorney General stated its belief that, if presented with an appropriate case, the Court of Appeals would determine that the State's laws and rules require judicial officers to inquire into an arrestee's ability to meet a financial condition of release. The advisory letter concluded that if a judge or commissioner determines that pretrial detention without bail is not necessary, then they "may not impose a financial condition set solely to detain the defendant," and release conditions must be the "least onerous" possible to meet the State's interests in public safety and ensure the appearance of the defendant. The office also determined that if bail is set at a financially unreachable level for a defendant for whom pretrial detention is not justified, the Court of Appeals would likely determine that the bail is excessive under the Eighth Amendment of the U.S. Constitution and Article 25 of the Maryland Declaration of Rights. State law does not require that bail be set within an arrestee's ability to pay.

Ensuring Least Onerous Conditions: The Chief Judge of the District Court of Maryland, John P. Morrissey, issued a guidance letter to all District and circuit court judges and District Court commissioners on October 25, 2016, advising them on several aspects of the bail-setting process under current law. In particular, Chief Judge Morrissey cautioned that

judicial officers are to apply the “least onerous” conditions that will ensure public safety and the appearance of the defendant and that cash bail is not an appropriate means of ensuring public safety. He also advised that judicial officers should avoid “defendants being detained who do not need to be detained.”

Also on October 25, 2016, Maryland Attorney General Brian E. Frosh requested that the Maryland Judiciary’s Standing Committee on Rules of Practice and Procedure consider changes to the Maryland Rules to ensure that arrestees do not remain incarcerated solely because they cannot afford bail. The 24-member panel considers proposed amendments to the Maryland Rules of Procedure and submits recommendations for amendments to the Court of Appeals. On February 7, 2017, the Maryland Court of Appeals approved changes to the Maryland Rules regarding pretrial release of criminal defendants.

While the amended rules still authorize the imposition of financial conditions of release, the rules (1) establish that unless a judicial officer finds that no permissible nonfinancial condition of release will reasonably ensure the defendant’s appearance in court or public safety, the judicial officer must release the defendant on personal recognizance or unsecured bond, with or without conditions; (2) require a judicial officer to impose the least onerous conditions of release to ensure the defendant’s appearance as required and ensure public safety; and (3) require a judicial officer to consider the specific facts and circumstances applicable to the defendant, including the defendant’s ability to meet financial conditions of release. **Appendix 2 – Summary of Recent Changes to the Maryland Rules Regarding Pretrial Release of Criminal Defendants** contains a summary of recent changes to the Maryland Rules.

Exhibit 1 contains information on local jurisdictions with pretrial services units, based on information from legislative reports and recent developments. Based on the most recent available information, 11 counties currently have pretrial services units. The programs vary in their policies and duties. The Division of Parole and Probation (DPP) does provide some supervision of pretrial defendants in counties without pretrial services units or under specific limited circumstances in counties with pretrial services units (*e.g.*, pretrial defendants ineligible for pretrial services in Frederick County). However, DPP advises that this service is not routine and is provided sporadically as ordered by the court. Pretrial defendants assigned to DPP supervision are supervised in the same manner as standard DPP clientele.

Exhibit 1
Pretrial Services Units in Local Jurisdictions

<u>Jurisdictions with Pretrial Services Units</u>	<u>Jurisdictions Without Pretrial Services Units</u>
Anne Arundel County	Allegany County
Baltimore City	Caroline County
Baltimore County	Cecil County
Calvert County	Charles County
Carroll County	Dorchester County
Frederick County	Garrett County
Harford County	Howard County
Montgomery County	Kent County
Prince George’s County	Queen Anne’s County
St. Mary’s County	Somerset County
Wicomico 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; Maryland Association of Counties; Department of Legislative Services

Appendix 3 – Initial Appearances and Outcomes by Jurisdiction contains statistics on initial appearances and release determinations in the District Court during fiscal 2016.

State Expenditures: State expenditures increase, perhaps significantly, for GOCCP to provide grants to local jurisdictions for the development of validated risk assessment tools and start-up costs for pretrial services programs. The bill does not define “start-up costs” and specifies that local jurisdictions must be *eligible* for this funding. The potential costs incurred by local jurisdictions, for which they might request funding assistance, are described below under the Local Fiscal Effect section of this fiscal and policy note. In addition, general fund expenditures for DPSCS increase by \$50,000 in fiscal 2019 to develop/validate a risk assessment for use in Baltimore City.

The bill essentially codifies recent changes to the Maryland Rules that take effect on July 1, 2017 (the same date as the effective date of the bill), independent of the bill. Thus, this estimate assumes that the bill’s provisions pertaining to pretrial release procedures and policies do not materially affect State finances.

The Judiciary advises that it incurs \$25,590 in reprogramming costs for its case management systems in fiscal 2018 to implement the bill's provisions. However, the Department of Legislative Services advises that the Judiciary incurs these expenditures independent of the bill, since the bill codifies a significant portion of recent changes to the Maryland Rules approved by the Court of Appeals. Therefore, it is anticipated that the Judiciary can implement the bill with existing resources.

Local Fiscal Effect: Local expenditures increase significantly (collectively) in fiscal 2019 to develop risk assessment tools and establish pretrial services programs in accordance with the bill's provisions beginning in fiscal 2022. These costs are mitigated to the extent that State and federal grant funding is secured for these purposes. Local expenditures may decrease significantly to the extent that the bill's requirement that counties establish pretrial services programs (1) shifts defendants from pretrial detention to pretrial supervision in counties that currently do not have pretrial services programs and (2) results in more defendants receiving lighter sentences or probation in lieu of sentences after demonstrating success on pretrial supervision.

Development of Validated Risk Assessment Tools

The bill requires GOCCP, with the assistance of an academic institution, to collaborate with all counties to develop or update a risk assessment tool validated for the individual jurisdiction and modeled after national best practices that may be used by District Court commissioners in making pretrial release determinations. The validated risk assessment tools must be developed by December 1, 2018, and in use by District Court commissioners in all 24 counties by January 1, 2019. Under the bill, a county may request funding assistance for the development of a validated risk assessment tool through the Justice Reinvestment Performance Incentive Grant Program, GOCCP, and any other grant-funding authority, including DOJ and private foundations.

GOCCP advises that the cost to develop and/or validate a risk assessment tool is \$75,000 in fiscal 2019, which accounts for \$25,000 for contractual services to clean up data prior to submission for validation and \$50,000 for validation of the assessment. However, this estimate is based on validation of *one assessment using statewide data*, whereas the bill requires the assessment to be validated *for the individual jurisdiction*, which appears to imply the validation of 24 assessments. Under that scenario, local expenditures increase by \$1.2 million in fiscal 2019 with additional expenditures for data cleanup. These expenditures are mitigated to the extent that State or federal grant funds are secured to assist local jurisdictions in this effort.

The bill states that the assessment is to be in use by District Court commissioners in all 24 counties by January 1, 2019. This estimate assumes that commissioners operate the assessment, not pretrial services employees. Pretrial services programs screen defendants who remain in custody following an initial appearance before a District Court

commissioner. None of the pretrial services programs currently in operation in the State screen defendants prior to an initial appearance before a District Court commissioner, and none provide recommendations to commissioners. If pretrial services employees are to run the assessment, then local expenditures increase significantly for existing programs to expand their operations to screen additional defendants and provide coverage during commissioner hours of operation. This estimate does not account for any changes in turnaround times for initial appearances before District Court commissioners that may occur through the administration of a risk assessment during an initial appearance.

Establishment of Pretrial Services Programs

Local expenditures increase significantly beginning in fiscal 2022 for counties to establish pretrial services programs in accordance with the bill's requirements, which are mitigated to the extent that State or federal grant funding is secured to assist in this effort.

The bill requires each county that does not currently have pretrial services to either establish a local agency specific to the needs of the jurisdiction or collaborate with existing public or private providers for pretrial services by December 31, 2021. Local pretrial services should include pretrial supervision, notification of upcoming court dates, mental health and substance abuse assessments, coordinated mental health and substance abuse treatment referrals, counseling, education, and employment assistance. Counties must be eligible for start-up funding to implement pretrial services through grants from the Justice Reinvestment Performance Incentive Grant Program, GOCCP, and any other grant-funding authority, including DOJ and private foundations.

As noted in Exhibit 1, 13 jurisdictions do not have pretrial services programs. These jurisdictions are smaller jurisdictions in terms of initial appearances, as noted in Appendix 3.

The Maryland Association of Counties (MACo) advises that counties that do not have pretrial services programs face operational and fiscal impacts to establish programs in accordance with the bill. The fiscal impact depends on the services to be offered. While start-up costs for programs may be mitigated through grant funding, costs to continue to operate a program are borne by local jurisdictions. MACo received the following estimate of costs based on feedback from its members:

- reminder calls can be made with existing budgeted resources;
- additional staff positions, if needed, are approximately \$70,000 per position, which is based on the salary, benefits, and insurance for a case manager in St. Mary's County, which started a pretrial services program in November 2015;
- \$5.50 per day per person for operation of electronic monitoring equipment;
- \$6.00 per week per person for urine testing; and

- costs for support services (*e.g.*, substance abuse, mental health, etc.) vary and are based on availability of services from local providers that partner with local jails to provide programs.

The following is a compilation of fiscal estimates received from local jurisdictions that currently do not have pretrial services programs:

- Allegany County advises that while the bill increases costs for the county, it cannot estimate the extent of those costs at this time.
- Charles County advises that county expenditures increase by \$356,000 for (1) one supervisor and two officers, at an estimated cost of \$270,000, including fringe benefits; (2) two vehicles to conduct supervision checks, at an estimated cost of \$70,000; and (3) office supplies and equipment, at an estimated cost of \$16,000. The county estimates the cost of urinalysis testing at \$8 per sample.
- Garrett County advises that the bill slightly reduces the number of inmates in the county's jail pending trial but also requires more resources to address failures to appear for defendants released without bond.
- Howard County advises that it needs three employees, at a cost of \$144,000 in salaries alone.
- Kent County advises that the bill has little impact on county operations.
- Queen Anne's County estimates that county expenditures increase by at least \$70,000 to hire one officer, including a salary, fringe benefits, and administrative assets.
- Washington County did not provide information on establishing a pretrial services program in the county, but did estimate that the county incurs \$326,558 in fiscal 2018 and approximately \$127,000 annually thereafter to employ two additional deputy sheriffs to serve failure to appear warrants.

As previously stated, St. Mary's County started a pretrial services program in November 2015. The program is based at the detention center and uses a risk assessment (not validated) to screen defendants who remain in custody after an initial appearance before a District Court commissioner. The program makes recommendations based on a defendant's score on the assessment. A defendant's results and the program's recommendations are sent to the judge, State's Attorney, and public defender. In order to establish the program, the county reassigned two officers from floor duty in the detention center. Services offered include substance abuse and mental health referrals, drug testing, electronic monitoring, and education programs.

The program incurred \$200,000 in start-up costs, including \$90,000 for monitoring and substance abuse-related costs and \$50,000 for other operating costs, but excluding the reassignment of employees. The program currently supervises 50 individuals at any given time, and has two correctional case managers and one civilian supervisor case manager,

with approximately \$500,000 in annual operating costs. The county estimates that pretrial supervision costs \$30 per day compared to \$140 per day for pretrial detention. While program employees conduct assessments and supervision, the program utilizes a supervision caseload of 35 people per supervision employee. The county estimates that it saved \$400,000 to \$500,000 in reduced bed days per year as a result of instituting the program. The county also advises that approximately 70% of program participants receive no jail time due to demonstrated success in the program.

The costs associated with a pretrial services program depend on many factors, including the number of individuals referred to supervision, the level of supervision required for referred individuals, supervision caseload standards, the rate at which supervision caseloads turn over, services offered, coverage needs, and the ability to reassign existing employees. Due to recent changes to the Maryland Rules, which take effect on July 1, 2017, and have been codified in the bill, data is not available on the potential supervision caseloads that may be expected under the bill and the rules. However, Kentucky, which has had a statewide pretrial services program for several years, advises that approximately 5% of defendants are placed on supervision. *For illustrative purposes only*, applying a 5% supervision rate to fiscal 2016 initial appearance data for counties without pretrial services programs, a caseload of 35 defendants per supervision employee (the ideal caseload standard in Carroll and St. Mary’s counties), and assuming that caseloads turn over every six months (based on the 180-day time standard for completion of criminal cases in the Judiciary’s *FY 2015 Caseflow Assessment*) yields the information below. Additional employees may be needed to manage units and provide coverage.

<u>County</u>	<u>Fiscal 2016 Initial Appearances</u>	<u>Estimated Supervision Cases Per Year (Based on 5% Supervision Rate)</u>	<u>Potential Number of Supervision Employees (Rounded)</u>
Allegany	2,201	110	2
Caroline	838	42	1
Cecil	3,636	182	3
Charles	4,529	226	3
Dorchester	1,275	64	1
Garrett	575	29	1
Howard	4,001	200	3
Kent	454	23	1
Queen Anne’s	1,121	56	1
Somerset	687	34	1
Talbot	978	49	1
Washington	3,903	195	3
Worcester	3,433	172	2

Additional Information

Prior Introductions: None.

Cross File: SB 880 (Senator Kelley) - Judicial Proceedings.

Information Source(s): Baltimore City; Allegany, Carroll, Charles, Garrett, Harford, Howard, Kent, Montgomery, Queen Anne's, St. Mary's, Talbot, Washington, Wicomico, and Worcester counties; Maryland Association of Counties; Governor's Office of Crime Control and Prevention; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Public Safety and Correctional Services; Kentucky Department of Pretrial Services; Department of Legislative Services

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Appendix 1 – Defendants Ineligible for Pretrial Release by a District Court Commissioner

Please refer to § 5-202 of the Criminal Procedure Article 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 in the State or defendants required to register as a sex offender by another jurisdiction/court/government 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 § 14-101 of the Criminal Law Article), if the defendant has been previously convicted of a crime of violence under the laws of this State, has been convicted under the laws of another state of a crime classified as a crime of violence in Maryland or has been convicted of specified weapons-related offenses; 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, by 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 a crime of violence or 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.

Appendix 2 – Summary of Recent Changes to the Maryland Rules Regarding Pretrial Release of Criminal Defendants (Effective July 1, 2017)

On February 7, 2017, the Maryland Court of Appeals approved significant changes to the Maryland Rules on pretrial release of defendants. The rules take effect July 1, 2017.

General Principles: The new rules are designed to promote the release of defendants on their own recognizance or unsecured bond, when necessary. A judicial officer should impose additional conditions on release only if needed to ensure the defendant's appearance in court; to protect the community, victims, witnesses, or other persons; and to maintain the integrity of the judicial process, as demonstrated by the circumstance of the individual case. Preference should be given to additional conditions without financial terms.

Interpretation of Rules: The rules must be construed to permit the release of a defendant pending trial except if the judicial officer finds that if the defendant is released, there is a reasonable likelihood that the defendant will not appear as required or will be a danger to the victim, witnesses, another person, or the community.

Individualized Consideration: A judicial officer must consider the specific facts and circumstances applicable to the defendant when determining whether or on what conditions to release a defendant, including the ability of the defendant to meet a special condition of release with financial terms or comply with a special condition.

Least Onerous Conditions: If a judicial officer determines that a defendant should be released other than on personal recognizance or unsecured bond with special conditions, the judicial officer must impose the least onerous condition(s) of release to reasonably ensure the defendant's appearance in court and the safety of specified individuals and the community.

Priority Given to Release on Personal Recognizance or Unsecured Bond: Except as prohibited under § 5-101 or § 5-202 of the Criminal Procedure Article (no personal recognizance for specified defendants and individuals ineligible for pretrial release by a District Court commissioner), unless the judicial officer finds that no permissible nonfinancial condition of release will reasonably ensure the appearance of the defendant or safety of victims, witnesses, other persons, or the community, the judicial officer must release the defendant on personal recognizance or unsecured bond, with or without special conditions. If the judicial officer makes such a finding, the judicial officer must state the basis for it on the record.

Required Conditions of Release: The following conditions of release are required for all defendants: (1) the defendant will not engage in any criminal conduct while on pretrial release; and (2) the defendant will appear in court when required to do so.

Special Conditions of Release: Special conditions of release that may be imposed on a defendant include:

- statutory conditions to stop or prevent witness intimidation, including a general no-contact order;
- reasonable travel or residential restrictions;
- maintaining or seeking employment;
- maintaining or commencing an education program;
- a reasonable curfew;
- refraining from possessing a firearm, destructive device, or dangerous weapon;
- refraining from use of alcohol, narcotics, or controlled dangerous substances;
- medical, psychological, or psychiatric treatment or drug/alcohol counseling;
- electronic monitoring;
- periodic reporting to designated supervisory persons;
- committing the defendant to the custody or supervision of a designated person or organization that agrees to supervise the defendant and assist in ensuring the defendant's appearance in court;
- execution of unsecured bonds by the defendant and an uncompensated surety who meets specified requirements;
- execution of a bond secured by the deposit of collateral security of a value in excess of 10% of the penalty amount of the bond or by the obligation of a surety, including a surety insurer acceptable to the judicial officer (preference to uncompensated surety with personal relationship to the defendant and posting of collateral security by that surety); and
- any other lawful condition that will help ensure the appearance of the defendant or safety of specified individuals or the community.

Conditions of Defendant's Resources: A judicial officer may not impose a special condition of release with financial terms in a form or amount that results in the pretrial detention of the defendant solely because of the defendant's inability to meet the financial condition. The judicial officer may consider resources available to the defendant from all lawful sources when determining the defendant's ability to meet a financial condition of release.

Imposition of Special Conditions: Special conditions of release with financial terms are appropriate only to ensure the appearance of the defendant and may not be imposed solely to prevent future criminal conduct during the pretrial period or to protect the safety of any

person or the community or to punish the defendant or placate public opinion. Judicial officers may not use a predetermined charge-based schedule to set financial terms of release.

The judicial officer may also impose one or more special conditions of release if the officer finds that such conditions are necessary to ensure the defendant's appearance and protect the safety of victims, other persons, or the community.

Recommendations by Pretrial Services Units: When determining whether or not to release a defendant and the conditions of release, a judicial officer must consider the recommendations of a pretrial services unit that has administered a validated risk assessment to the defendant and is willing to provide an acceptable level of supervision over the defendant during the pretrial period if asked to do so.

Additional Factors for Consideration: Additional factors the judicial officer must consider are:

- the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction;
- the defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;
- the defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community, and length of residence in this State;
- any request made under § 5-201 of the Criminal Procedure Article for reasonable protections for the safety of the victim;
- any recommendation of an agency that conducts pretrial release investigations;
- any information presented by the State's Attorney and any recommendation of the State's Attorney;
- any information presented by the defendant or defendant's attorney;
- the danger of the defendant to the alleged victim, another person, or the community;
- the danger of the defendant to himself or herself; and
- 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.

Refunds of Posted Collateral Security: If the judicial officer requires collateral security, the officer must advise the defendant that any posted cash or property will be refunded at the conclusion of the criminal proceedings if the defendant has not defaulted in the performance of the conditions of the bond.

Appendix 3 – Initial Appearances and Outcomes by Jurisdiction

<u>County</u>	<u>Number of Initial Appearances</u>	<u>No Probable Cause Release</u>	<u>Personal Recognizance</u>	<u>Unsecured Personal Bond</u>	<u>% Personal Recognizance and Unsecured Personal Bond</u>	<u>Held on Bond</u>	<u>% Held on Bond</u>	<u>Held Without Bond</u>	<u>% Held Without Bond</u>
Allegany	2,201	25	580	65	30.4%	1,175	53.4%	345	15.7%
Anne Arundel	13,699	579	6,280	1,064	57.8%	4,658	34.0%	887	6.5%
Baltimore City	29,223	97	11,855	785	43.6%	13,482	46.1%	2,996	10.3%
Baltimore	17,392	110	5,720	905	38.7%	8,829	50.8%	1,067	6.1%
Calvert	2,202	22	645	776	65.5%	665	30.2%	87	4.0%
Caroline	838	1	268	194	55.3%	301	35.9%	72	8.6%
Carroll	2,055	20	748	357	54.7%	665	32.4%	263	12.8%
Cecil	3,636	8	988	648	45.2%	1,348	37.1%	633	17.4%
Charles	4,529	130	2,525	223	63.5%	1,292	28.5%	311	6.9%
Dorchester	1,275	5	238	148	30.7%	764	59.9%	109	8.5%
Frederick	4,101	89	1,590	291	48.0%	1,690	41.2%	343	8.4%
Garrett	575	1	232	38	47.1%	241	41.9%	63	11.0%
Harford	3,326	62	1,644	42	52.6%	1,158	34.8%	388	11.7%
Howard	4,001	19	647	1,249	47.9%	1,669	41.7%	355	8.9%
Kent	454	0	102	84	41.0%	203	44.7%	53	11.7%
Montgomery	13,617	141	3,518	2,917	48.3%	6,249	45.9%	772	5.7%
Prince George's	27,265	829	11,866	777	49.4%	10,165	37.3%	1,835	6.7%
Queen Anne's	1,121	8	190	166	32.5%	558	49.8%	171	15.3%
St. Mary's	2,144	33	1,168	294	69.7%	535	25.0%	110	5.1%
Somerset	687	12	107	175	42.8%	273	39.7%	90	13.1%
Talbot	978	10	406	186	61.6%	340	34.8%	35	3.6%
Washington	3,903	97	1,624	159	48.2%	1,473	37.7%	477	12.2%
Wicomico	4,539	212	1,079	424	37.8%	2,105	46.4%	521	11.5%
Worcester	3,433	318	1,699	257	66.2%	940	27.4%	196	5.7%
Total	147,194	2,828	55,719	12,224	48.1%	60,778	41.3%	12,179	8.3%

No Probable Cause Release: Commissioner found no probable cause for all charges and must release without conditions.

Unsecured Personal Bond: Commissioner released on unsecured personal bond. Defendant does not need to post money to be released, but owes money if he/she fails to appear.

Held on Bond: Commissioner held defendant on bond. Defendant is released if bond is paid.

Held Without Bond: Commissioner held defendant without bond due to statutory requirements under § 5-202 of the Criminal Procedure Article (restrictions on release by commissioner), fugitives, or discretionary holds without bond (significant danger, etc.).

Note: Total initial appearances include manual circuit court entries and civil body attachments in which pretrial release determinations are not recorded. Individual category totals will not add up to grand total of initial appearances.

Source: Maryland Judiciary; Department of Legislative Services