

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 879

(Senator Kelley)

Judicial Proceedings

Criminal Procedure - Pretrial Release - Pilot Program and Conditions

This bill (1) requires the Pretrial Release Services Program (PRSP) of the Department of Public Safety and Correctional Services (DPSCS) to establish a pretrial resource center to, among other things, provide specified assistance to county pretrial services programs; (2) establishes a Pretrial Release Pilot Program in the Division of Parole and Probation (DPP); (3) allows the District Court and circuit courts to use a terminated bond to satisfy specified financial obligations; (4) limits the circumstances under which the District Court or a circuit court may issue a warrant or notice in response to an alleged violation of probation and requires a court to set a hearing on the alleged violation within specified timeframes; (5) requires a State’s Attorney or designee to review all charging documents within a specified timeframe and consider cases for pretrial diversion programs; and (6) requires the Justice Reinvestment Oversight Board to make legislative and budgetary recommendations for reducing the pretrial detention population.

Provisions governing the pretrial resource center take effect January 1, 2018. Provisions pertaining to the pilot program take effect January 1, 2018, and terminate December 31, 2022.

Fiscal Summary

State Effect: General fund expenditure for DPSCS increase by at least \$792,200 in FY 2018 to establish the pretrial resource center and pilot program and by at least \$429,400 annually thereafter. The increased costs may be at least partially offset by decreased expenditures for pretrial detentions in Baltimore City. Revenues are not affected.

Local Effect: Local expenditures may increase significantly if local jurisdictions must finance participation in the pilot program. Potential significant decrease in local expenditures for pretrial incarceration. Local revenues are not affected.

Small Business Effect: Potential meaningful impact on small business bail bondsmen if the bill alters the number of defendants held on bond in pilot program jurisdictions.

Analysis

Bill Summary:

Pretrial Resource Center: PRSP must establish a pretrial resource center to:

- provide training and technical assistance to each county in the State with a pretrial release program;
- review research and studies to determine best practices in pretrial release programs;
- serve as a repository and resource center for research and studies on pretrial release programs; and
- periodically make recommendations for implementation of best practices for pretrial release programs to the Commissioner of Pretrial Detention and Services and counties in the State.

PRSP must also provide training, coordination, and technical assistance for implementation of pretrial release services in the State.

Pretrial Release Pilot Program: The bill establishes a Pretrial Release Pilot Program in DPP. The pilot program applies to Baltimore City and one rural and one suburban county in the State to be designated by the Secretary of Public Safety and Correctional Services by July 1, 2017. The designated rural and suburban counties must already have pretrial release programs.

DPP must select a pretrial safety assessment to be used by pretrial services during the pilot program and provide training for pretrial services program staff on the use of the pretrial safety assessment.

A judicial officer in a jurisdiction participating in the pilot program may impose conditions of pretrial release that will reasonably ensure the appearance of the defendant as required and ensure that the defendant will not pose a danger to another person or the community. A judicial officer may impose a financial condition as a condition of pretrial release only to reasonably ensure the appearance of the defendant as required.

A defendant who is denied pretrial release by a District Court commissioner, or who remains in custody after a District Court commissioner has determined conditions of release, must be assessed by a pretrial release program using the selected assessment and presented immediately to the District Court if the court is in session or, if not, at the next session of the court.

A defendant's pretrial safety assessment results and subsequent participation in a pretrial release program are not admissible at trial as evidence of guilt or at sentencing unless offered by the defendant as mitigation.

In determining whether to impose conditions of pretrial release, the court must consider:

- the results of a pretrial safety assessment, including the risk presumptions described below;
- 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 family ties, employment status and history, financial resources, character, mental condition, length of residence in the community, and length of residence in the State;
- any recommendation of an agency that conducts pretrial release investigations;
- any recommendation of the State's Attorney;
- any information presented by the defendant or the defendant's attorney;
- the danger of the defendant to himself or herself, the alleged victim, another person, or the community;
- the defendant's prior convictions or adjudications of delinquency that occurred within three years before the date of the offense for which the defendant is in custody; and
- any other factor that the court finds relevant.

The risk presumptions in the program are based on assessment scores and are as follows:

- a defendant who receives a "low risk" score is presumed qualified for release on personal recognizance or with conditions;
- a defendant who receives a "medium risk" score may be released with conditions; and
- a defendant who receives a "high risk" score is presumed not qualified for release.

The court must state the reasons for a denial of pretrial release on the record.

A defendant who is unable to meet a financial condition of release within 24 hours after imposition of the financial condition may file for a bail review that includes the reason that the defendant was unable to meet the financial condition. The court may grant a hearing on the motion for a bail review and must state the reasons for denying the motion either in writing or on the record.

By December 31 of each year from 2018 through 2022, DPP must submit a report to the Governor and the General Assembly on the progress of the pilot program, including specified information for each participating county. By December 31, 2021, DPP must submit a report to the Governor and the General Assembly that summarizes the implementation, results, and relevant data from the pilot program and makes recommendations regarding the implementation of a statewide pretrial services program.

Use of Terminated Bonds: In the District Court and the circuit courts, on termination of a cash bond posted by the defendant or an individual other than a surety on behalf of the defendant, the court may order that the cash deposit be used to satisfy financial obligations related to the case for which the bond was posted, including court costs, attorney's fees, and restitution, or for an outstanding child support obligation. The court may also order that the portion of the cash deposit remaining after satisfying these obligations be used to satisfy the defendant's outstanding financial obligations in a different case.

Violations of Probation: The bill limits the circumstances under which the District Court or a circuit court may issue a warrant or notice requiring a probationer or defendant to appear before the issuing judge in response to receipt of written charges that a probationer or defendant violated a condition of probation by authorizing a court to issue a summons requiring the probationer or defendant to appear for a hearing or issue a warrant if the alleged violation is not a technical violation or the defendant has a history of failing to appear.

If a probationer or defendant is remanded to a correctional facility pending a hearing or determination of a charge alleging a violation of a condition of probation, the court must set a hearing according to the following timetable:

- first technical violation: within 15 days after the remand order;
- second technical violation: within 30 days after the remand order;
- third or subsequent technical violation: within 45 days after the remand order; and
- nontechnical violation (charge alleges a violation of a criminal prohibition other than a minor traffic offense): within 90 days after the remand order.

If the original sentencing judge in the circuit court is unable to hear a charge alleging a violation of a condition of probation within this timetable, any other judge in the circuit

court may act on the matter. If the District Court judge who originally imposed conditions of probation is unable to hear a charge alleging a violation of probation within this timetable, any other judge of the District Court may act in the matter.

Review of Charging Documents by State's Attorneys and Referrals to Pretrial Diversion Programs: The State's Attorney or the State's Attorney's designee must review all charging documents for sufficient drafting, accurate statutory references, and sufficient evidentiary support within 30 days after charges are filed for a defendant held in pretrial detention or at least 30 days before the scheduled trial date for all other defendants, unless the court orders an expedited trial date.

The State's Attorney/designee must also consider a case for pretrial diversion programs, including mental health treatment, substance abuse treatment, veterans' care, or mediation. If the State's Attorney refers a case to a pretrial diversion program, the State's Attorney may request a postponement for the defendant to complete the program, enter a *nolle prosequi*, move to stet the charges, or request that program completion be required as a condition of probation before judgment.

The bill also requires the Justice Reinvestment Oversight Board to make legislative and budgetary recommendations based on data-driven, fiscally sound criminal justice policy for reducing the pretrial detention population, including recommendations for:

- the development and use of a pretrial safety assessment tool;
- the implementation of effective pretrial release services;
- the expansion of the use of citations;
- the implementation of diversion programs; and
- training law enforcement, pretrial staff, and the Judiciary on pretrial release.

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.

Violations of Probation: A circuit court or the District Court may end the period of probation at any time. On receipt of written charges, filed under oath, that a probationer or defendant violated a condition of probation during the period of probation, the District Court may, during the period of probation or within 30 days after the violation, whichever is later, issue a warrant or notice requiring the probationer or defendant to be brought or appear before the judge issuing the warrant or notice (1) to answer the charge of violation of a condition of probation or of suspension of sentence and (2) to be present for the setting of a timely hearing date for that charge. Pending the hearing or determination of the charge, a circuit court or the District Court may remand the probationer or defendant to a correctional facility or release the probationer or defendant with or without bail. If at the hearing, a circuit court or the District Court finds that the probationer or defendant violated a condition of probation, the court may revoke the probation and impose any sentence that might have originally been imposed for the crime.

Effective October 1, 2017, if at the hearing, a circuit court or the District Court finds that the probationer or defendant violated a condition of probation, the court may revoke the probation and for a technical violation, impose a period of incarceration of:

- not more than 15 days for a first technical violation;
- not more than 30 days for a second technical violation; and
- not more than 45 days for a third technical violation; and
- for a fourth or subsequent technical violation or a violation that is not a technical violation, impose any sentence that might have originally been imposed for the crime of which the probationer or defendant was convicted or pleaded *nolo contendere*.

There is a rebuttable presumption that these limits on the period of incarceration for a technical violation are applicable.

Typically, the judge that originally imposed conditions of probation must hear a charge alleging a violation of the probation. However, an alternate District Court judge may act in the matter if the judge has been removed from office, has died or resigned, or is otherwise incapacitated.

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, the U.S. Department of Justice (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 non-financial 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 have pretrial services units. The programs vary in their policies and duties. 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 | Garrett County |
| Frederick County | Howard County |
| Harford County | Kent County |
| Montgomery County | Queen Anne’s County |
| Prince George’s County | Somerset County |
| St. Mary’s County | Talbot County |
| Wicomico 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: General fund expenditure for DPSCS increase by \$792,239 in fiscal 2018 for DPSCS to establish the pretrial resource center and administer the pilot program, as discussed below. Future year expenditures reflect annualization and ongoing costs. DPSCS may incur significant additional expenditures if it must pay costs incurred by local jurisdictions selected to participate in the pilot program. General fund expenditures for DPSCS may decrease if the bill’s provisions regarding violations of probation, subsequent bail review hearings, and reviews of documents and referrals to diversion programs reduce expenditures for pretrial detentions in Baltimore City.

Pretrial Resource Center

| | <u>FY 2018</u> | <u>FY 2019</u> | <u>FY 2020</u> | <u>FY 2021</u> | <u>FY 2022</u> |
|---------------------------|----------------|----------------|----------------|----------------|----------------|
| General Fund Expenditures | \$442,239 | \$428,417 | \$448,305 | \$469,316 | \$491,525 |

General fund expenditures for DPSCS increase by \$442,239 in fiscal 2018, which accounts for the October 1, 2017 effective date of these provisions. This estimate reflects the cost of hiring six employees to staff the pretrial resource center (one administrator/manager, four administrative officers, and one administrative assistant) and the development of a database to track training of pretrial services personnel throughout the State. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

| | |
|-----------------------------------|------------------|
| Positions | 6 |
| Salaries and Fringe Benefits | \$311,586 |
| Database Development | 100,000 |
| Equipment/Operating Expenses | <u>30,653</u> |
| FY 2018 DPSCS Expenditures | \$442,239 |

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

DPSCS advises that in order for the center to meet the requirements of the bill, the following 12 staff are needed: 1 administrator to serve as director, 1 administrator to serve as deputy director/manager, 8 administrative officers with experience in pretrial supervision to provide technical assistance and training, and 2 office administrative assistants. However, the Department of Legislative Services advises that because 12 of the State’s jurisdictions (including Baltimore City, whose program is administered by DPSCS) already have pretrial services units, the amount of existing research on pretrial justice, and the likely training needs among the 11 jurisdictions, only 6 additional employees are needed.

Implementation of Pilot Program – Selection of Pretrial Safety Assessment and Development of Database

| | <u>FY 2018</u> | <u>FY 2019</u> | <u>FY 2020</u> | <u>FY 2021</u> | <u>FY 2022</u> |
|---------------------------|----------------|----------------|----------------|----------------|----------------|
| General Fund Expenditures | \$350,000 | \$0 | \$0 | \$0 | \$0 |

General fund expenditures for DPSCS increase by \$350,000 in fiscal 2018 for the validation of a safety assessment for each of the three jurisdictions participating in the pilot program and the development of a database to track the assessments and maintain data for the annual report required under the bill.

According to DPSCS, while the bill does not specifically require each jurisdiction in the pilot program to have its own safety assessment, best practices dictate that an assessment be validated for the area in which it is used, and that it is not advisable for DPSCS to dictate to any county-funded pretrial services program what instruments they must use in making pretrial release determinations. The cost associated with this effort is \$150,000 (\$50,000 per assessment) in fiscal 2018.

DPSCS further advises that it must develop a database to track the risk assessment and compile data for the annual report required under the bill. Based on previous projects for its Offender Case Management System, DPSCS estimates that development of the database requires six months of work at a cost of \$200,000 in fiscal 2018.

Implementation of Pilot Program – Funding for Jurisdictions to Participate in Pilot Program

The bill does not specify a funding source to cover the costs incurred by jurisdictions participating in the pilot program. However, if DPSCS is required to compensate the participating suburban and rural counties, then DPSCS may incur significant additional expenditures, as discussed below. The extent of the expenditures, which are incurred from fiscal 2018 through 2023, depends on the counties selected to participate in the program. DPSCS did not provide information on the potential impact of Baltimore City’s participation in the program. The Governor’s proposed fiscal 2018 budget includes \$3.8 million for PRSP, and PRSP has 88 positions. The following information provides insight into the possible State expenditures if DPSCS must compensate pilot program participants:

- Montgomery County advises that it does not expect a fiscal impact from the bill, since the county has a fully funded pretrial services program. Montgomery County’s pretrial services program uses a validated risk assessment.

- Baltimore County's pretrial services program screens defendants through interviews, but does not use an assessment. The county advises that participation in the pilot program may result in an increase in its pretrial supervision caseloads, depending on the outcomes of the assessment on its population and the use of the assessment by judicial officers. Baltimore County advises that the cost to hire two case managers and one correctional officer is \$197,648, including fringe benefits. Baltimore County's annual operating expenditures for its pretrial release and home detention program are \$983,323. The pretrial release program has four staffers who conduct investigations, three classification officers to supervise offenders in the community, one case manager for drug and alcohol treatment referrals, home detention staff, and clerical support.
- Carroll County advises that it incurs \$498,653 in annual additional expenditures to participate in the pilot program, which includes costs associated with three correctional specialists, one deputy, drug testing, GPS equipment, and a vehicle. The county estimates that an additional 100 defendants are placed on supervision under the program. The county has 30 inactive cases that fit the criteria for supervision under the program. Inactive cases involve defendants for whom a judge has recommended supervision, but who cannot afford to pay their bonds to be released into supervision. The county's projected personnel needs are based on the county's supervision caseload and current procedures in the county. The county advises that while the supervision population may not increase significantly during the initial days of the pilot program, its estimates are based on a gradual increase in caseloads. Carroll County has 225 active supervision cases on average. The county's pretrial services program has five correctional specialists, one deputy, and one administrative employee. Annual operating costs for the program are \$557,195.

Violations of Probation

The bill's provisions regarding the issuance of summons in lieu of warrants for violations of probation and scheduling hearings on violations within prescribed timeframes may result in a decrease in general fund expenditures for DPSCS for detentions in Baltimore City, the extent of which cannot be reliably determined at this time. The Judiciary advises that it does not maintain data on the number of initial appearances for violations of probation or the time between an order to remand a defendant for a violation of probation and the defendant's hearing on the violation. DPSCS was not able to provide data on the number of warrants and summons issued for violations of probation or the number of technical violations of probation during fiscal 2016.

Miscellaneous Provisions

The bill's provisions pertaining to subsequent bail reviews of individuals who cannot meet financial conditions of release and reviews of charging documents and referrals to diversion programs may result in reduced incarceration expenditures in Baltimore City. The magnitude of this decrease cannot be reliably determined at this time.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

This estimate assumes that the Office of the Public Defender (OPD) can incorporate supplemental bail review hearings under the bill into its current representation of indigent defendants at judicial bail review hearings. OPD provided representation in 32,803 judicial bail review hearings during fiscal 2016.

Local Expenditures: Expenditures for local jurisdictions participating in the pilot program may decrease if the bill results in more defendants being placed on supervision instead of pretrial detention and if the bill's provisions regarding violations of probation reduce detention expenditures.

Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years. Carroll County advises that the per diem cost to supervise an inmate at the county's detention center is \$60.55, compared to a \$6.75 per diem cost for supervision. Baltimore County advises that the daily cost of pretrial detention is approximately \$3,420 (including overhead, personnel, and fixed costs) compared to \$2,232 for supervision.

As noted above in the State Expenditures section of this fiscal and policy note, if participating counties must fund the increased costs associated with participation in the pilot program, then costs for participating jurisdictions may increase significantly.

This analysis assumes that State's Attorneys can implement the bill with existing budgeted resources. The State's Attorneys' Association did not respond to a request for information on their procedures regarding document review and referrals to diversion programs.

Additional Information

Prior Introductions: None.

Cross File: HB 1157 (Delegate Dumais, *et al.*) - Judiciary.

Information Source(s): Baltimore, Carroll, Charles, and Montgomery 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 Health and Mental Hygiene; Department of Public Safety and Correctional Services; Department of Veterans Affairs; Department of Legislative Services

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mm/kdm

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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