

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 480
 Judiciary

(Delegate Mosby, *et al.*)

Criminal Procedure - Pretrial Release - Fees

This bill establishes that a defendant who is subject to pretrial release may not be required to pay for any pretrial services provided or pretrial security measures taken by the State, a county, or another entity acting on behalf of the State or a county. This prohibition does not apply to bail bond services. The bill also repeals a requirement that a pretrial defendant being monitored by a private home detention monitoring agency as a condition of release pay a fee directly to the private home detention monitoring agency providing the monitoring services.

Fiscal Summary

State Effect: General fund revenues decrease by as much as \$96,800 in FY 2019 and by \$129,000 annually thereafter. Expenditures are not materially affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF Revenue	(\$96,800)	(\$129,000)	(\$129,000)	(\$129,000)	(\$129,000)
Expenditure	0	0	0	0	0
Net Effect	(\$96,800)	(\$129,000)	(\$129,000)	(\$129,000)	(\$129,000)

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

Local Effect: Minimal impact on local finances, with the potential for more significant impacts depending on jurisdictional practices, as discussed below.

Small Business Effect: Meaningful.

Analysis

Current Law/Background: 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 is subject to additional conditions of release, financial and/or nonfinancial.

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. 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.

Under § 5-201 of the Criminal Procedure Article, in accordance with eligibility criteria, conditions, and procedures required under the Maryland Rules, the court may require, as a condition of a defendant's pretrial release, that the defendant be monitored by a private home detention monitoring agency licensed under Title 20 of the Business Occupations and Professions Article. A defendant placed in private home detention must pay the agency's monitoring fee directly to the private home detention monitoring agency.

On February 7, 2017, the Maryland Court of Appeals adopted amendments to the Maryland Rules changing how judicial officers make pretrial release decisions. The amended Maryland Rules favor nonfinancial conditions of release over bail and state that defendants cannot be held solely because they cannot afford to post bail. The new Rules went into effect on July 1, 2017.

As of October 2017, 13 jurisdictions in the State offer a pretrial services program. The programs vary in scope and services. Charles and Kent counties are implementing programs for the first time with assistance from other jurisdictions. With the exception of Baltimore City, pretrial services programs are operated by local jurisdictions. In Baltimore City, the Pretrial Release Services Program (PRSP) is within the Maryland Department of Public Safety and Correctional Services (DPSCS). **Exhibit 1** contains information on local jurisdictions with pretrial services programs.

Exhibit 1
Jurisdictions with Pretrial Services Programs
(As of October 2017)

Jurisdictions with Pretrial Services

Anne Arundel County
Baltimore City
Baltimore County
Calvert County
Carroll County
Charles County
Frederick County
Harford County
Kent County
Montgomery County
Prince George's County
St. Mary's County
Wicomico County

Jurisdictions without Pretrial Services

Allegany County
Caroline County
Cecil County
Dorchester County
Garrett County
Howard County
Queen Anne's County
Somerset County
Talbot County
Washington County
Worcester County

Source: Maryland Judiciary; Department of Legislative Services

State Revenues: General fund revenues decrease by as much as \$96,750 in fiscal 2019, which reflects the bill's October 1, 2018 effective date, and by \$129,000 annually thereafter from a reduction in fees collected by the Division of Parole and Probation (DPP) in DPSCS. DPP supervises approximately 430 defendants statewide who have been ordered by the

courts to be supervised by DPP on a pretrial basis. During fiscal 2017, the average length of supervision performed by DPP was 185 days, or approximately six months. Section 6-226 of the Criminal Procedure Article authorizes a court to impose a \$50 per month supervision fee upon a person the court places under supervision to DPP. While the court does not impose a supervision fee in every case, this estimate is based on the monthly fee, average length of supervision, and estimated caseload cited above.

The bill's provisions that prohibit the imposition of pretrial services fees and repeal fees for private home detention monitoring do not materially affect PRSP in Baltimore City or the pretrial detention population in Baltimore City. PRSP, which is operated by DPSCS, advises that it does not charge any fees for services. According to PRSP, very few pretrial defendants are placed on private home detention and the few that are placed on private home detention are usually placed at the request of the defendant's attorney. Payment for monitoring fees is typically worked out between the defendant and the private company.

Local Fiscal Effect: Local revenues decrease minimally from a reduction in fees collected by pretrial services programs. The Department of Legislative Services contacted each of the jurisdictions listed in Exhibit 1 as having a pretrial services program. Most of the counties that responded indicated that the bill results in minimal or no impact on county revenues, as discussed below:

- Prince George's County advises that county revenues decrease by \$34,237 annually from fees billed to participants in the county's home detention alternative-to-incarceration program. The county did not provide information on any other fees it charges pretrial defendants.
- Calvert County reported that some of its pretrial population is monitored through the State's DPP, but did not indicate the use of private home detention monitoring of pretrial defendants. Pretrial defendants are subject to a urinalysis fee of \$12 per test and a GPS monitoring fee of \$5 per day. The county collected \$2,436 in fees from pretrial defendants in fiscal 2017. Funds are deposited into the county's general fund to pay for testing of urine specimens and GPS monitoring.
- Pretrial defendants in Carroll County are not placed on private home detention monitoring. Monitoring is conducted through the county's program. In fiscal 2017, the county collected \$5,067 in fees from program participants (\$2,849 up front and \$2,218 in arrears). Pretrial defendants in Carroll County are subject to fees of \$10 per month for testing and \$10 per day if the defendant is required to be monitored by a GPS unit or a Sobriotor unit. The county advises that while the impact of the bill is likely minimal, that may change if the volume of defendants on electronic monitoring continues to grow, as it has since the new rules went into

effect. At some point, the elimination of fees (and an assumption of these costs by the county) may result in a more significant fiscal impact.

- Frederick County advises that pretrial defendants in the county are not placed on private home detention monitoring, and the county does not charge for pretrial services.
- Montgomery County advises that its pretrial supervision program monitors pretrial defendants, not a private agency. Montgomery County does not charge any fees for pretrial services.
- St. Mary's County advises that its pretrial population is not placed on private home detention monitoring, and the county does not charge for pretrial services.

In counties that use home detention monitoring of pretrial defendants more extensively and charge fees for those services, the bill likely has a more significant impact on local finances.

Prince George's County advises that the bill results in the need for 2,080 hours of overtime for two officers each year, at a cost of \$244,608 per full year and \$726,108 per year in additional operating expenses. However, the county did not respond to a request for further explanation of these estimated expenditures.

Small Business Effect: It is unclear if any pretrial defendants in the State are being monitored by private home detention monitoring agencies. To the extent that there are pretrial defendants being monitored in this manner, then the bill has a meaningful impact on small business private home detention monitoring agencies; these small businesses may be unable to retain clients due to the bill's prohibition on defendants paying for pretrial services. However, the impact may be mitigated somewhat if local governments decide to contract with private home detention monitoring agencies and pay the monitoring costs on behalf of defendants.

Additional Information

Prior Introductions: None.

Cross File: SB 484 (Senator Conway) - Judicial Proceedings.

Information Source(s): Calvert, Carroll, Frederick, Montgomery, Prince George's, and St. Mary's counties; Judiciary (Administrative Office of the Courts); Office of the Public

Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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