

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 685 (Delegate Conaway)
 Judiciary

Criminal Procedure - Pretrial Release - Grace Period for Failure to Appear

This bill establishes that a defendant who is granted pretrial release and who subsequently fails to appear at a scheduled court hearing as required may not be penalized for the failure to appear if the defendant (1) turns himself/herself in to the court within seven days of the missed hearing and (2) was not arrested or charged with another crime after the failure to appear. The court is authorized to order a defendant to pay court fees and costs associated with the hearing for which the defendant failed to appear. The bill’s provisions do not apply to a defendant who has been granted pretrial release on bail.

Fiscal Summary

State Effect: Minimal increase in general fund revenues from court costs and fees. General fund expenditures increase by at least \$24,200 in FY 2019 for the District Court to implement the bill; additional costs may be incurred in future years.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF Revenue	-	-	-	-	-
GF Expenditure	\$24,200	-	-	-	-
Net Effect	(\$24,200)	(-)	(-)	(-)	(-)

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

Local Effect: Potential minimal increase in local revenues from court costs and fees in the circuit courts. Potential operational efficiencies for local police departments and detention facilities.

Small Business Effect: None, as discussed below.

Analysis

Current Law: There is no grace period under existing statute and court rules for a failure to appear as required in court. If a defendant fails to appear in court as required, a judge may issue a bench warrant for the defendant's arrest. A defendant who is on pretrial release on an unsecured bond may have to pay the amount of the bond because of his/her failure to appear. If a defendant on pretrial release with a secured bond fails to appear, the bond is subject to forfeiture.

Background: The District Court currently has procedures in place for a defendant who failed to appear in court to request to have an arrest warrant recalled, free of charge. A defendant may make such a request in person or in writing. If made in person, a defendant's request is often reviewed at the end of the judge's docket for that day. Written requests are typically taken to the judge on the same day or the next business day. Depending on the circumstances of the case and the defendant's history of failures to appear, the judge may recall the warrant on a nonserious charge without requiring the defendant to appear in court. For other situations, the judge may require the defendant to appear for a recall hearing, which usually occurs within 5 to 10 days.

According to the Judiciary, in fiscal 2017, there were a total of 26,446 failures to appear in the District Court and 3,623 failures to appear in the circuit courts, excluding the circuit courts for Baltimore City and Prince George's County. Failure to appear statistics for those circuit courts are not available at this time. The Judiciary advises that at this time, it cannot determine how many of these defendants who failed to appear were granted pretrial release.

However, according to information provided by the Judiciary earlier this year, between July 2016 and December 2017, there were 6,774 failures to appear among individuals released on their own recognizance and 1,591 failures to appear by individuals released on unsecured personal bonds.

State Revenues: General fund revenues increase minimally from court costs and fees in applicable cases under the bill.

State Expenditures: General fund expenditures for the Judiciary increase by \$24,160 in fiscal 2019 for computer reprogramming. Additional operational expenditures and delays may be incurred as a result of the bill, as discussed below.

The bill does not define "penalized." If penalized means the issuance of bench warrants, new bails, or bond forfeitures, the Judiciary needs to develop and implement new codes and procedures to put a "stay" on the case until the expiration of the seven-day grace period. An individual would have to turn himself/herself into a commissioner, since clerks do not have access to the appropriate databases and verification of a defendant's identity is beyond

the scope of a clerk's duties. Thus, judicial workloads increase by an indeterminate amount. The bill also does not impose a limit on the number of grace periods a defendant may receive. The Judiciary may experience an increase in hearings for failure to pay court fees and costs, partially offset by a decrease in bench warrants issued and subsequent bail review hearings.

The bill does not apply to a defendant who has been granted pretrial release on bail. However the bill does not define "bail." Pretrial defendants may be released on their own recognizance, unsecured personal bond, or secured personal bond.

The Department of Public Safety and Correctional Services operates the Baltimore Pretrial Complex and the Pretrial Release Services Program (PRSP) in Baltimore City. PRSP advises that few, if any, defendants are charged with the crime of failing to appear and that the usual practice is issuance of a bench warrant for failure to appear, arrest of a defendant for failure to appear, and adjudication of the defendant on the underlying charge with no penalty associated except for the arrest warrant.

Local Expenditures: Local police departments and detention facilities may experience some operational efficiencies if the bill reduces the number of arrests and detentions for failures to appear. The bill is not expected to significantly impact circuit court operations.

Frederick and Montgomery counties and the cities of Frederick and Havre de Grace do not anticipate a fiscal impact from the bill. Charles County advises that it does not anticipate a fiscal impact, but that its revenues may increase from the imposition of court fees and costs.

Small Business Effect: Assuming that "bail" means a secured bond, then the bill does not impact small business surety insurers and bail bondsmen.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Charles, Frederick, and Montgomery counties; cities of Frederick and Havre de Grace; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; *The Baltimore Sun*; Department of Legislative Services

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