SB 766

Department of Legislative Services

Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 766 (Senator Lee)
Judicial Proceedings

Criminal Procedure - Pretrial Release Services Program - Victim Notification

This bill requires that when determining whether a defendant should be released and the conditions of release, a judicial officer must consider the recommendation of a "pretrial release services program," under specified circumstances. The bill also incorporates pretrial services programs into various requirements pertaining to notification of a victim or victim's representative (victim/representative).

Fiscal Summary

State Effect: General fund expenditures increase by $140,400 in FY 2019. Special fund expenditures increase by as much as $25,000 in FY 2019. Future years reflect annualization. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	$0	$0	$0	$0	$0
GF Expenditure	140,400	116,600	119,900	124,300	128,900
SF Expenditure	25,000	5,000	5,000	5,000	5,000
Net Effect	($165,400)	($121,600)	($124,900)	($129,300)	($133,900)

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

Local Effect: Potential significant increase in local expenditures. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: A "pretrial release services program" means a governmental program that (1) provides information to the court for the court to consider regarding whether to release

a defendant from incarceration in a criminal case or (2) supervises or monitors a defendant in a criminal case while charges are pending.

When determining whether a defendant should be released and the conditions of release, a judicial officer must consider the recommendation of a pretrial release services program that (1) has conducted a risk assessment of the defendant in accordance with a validated risk assessment tool and (2) is willing to provide an acceptable level of supervision over the defendant during the period of release as directed by the judicial officer.

A court or a District Court commissioner must consider including specified types of no-contact provisions as a condition of release if a pretrial release services program has requested reasonable protections for the safety of the alleged victim.

On receipt of credible information that a defendant has violated a condition of release or that conditions of supervision should be modified, a pretrial release services program must notify the court and may request a bench warrant or hearing related to the potential violation or future supervision or monitoring of a defendant.

The bill adds pretrial services programs to the list of individuals or entities required to provide a victim/representative with the victims' rights and services pamphlet required under statute. The bill also (1) requires the clerk of the appropriate court to include a notification request form filed by a victim/representative with an order of supervision to a pretrial release services program; (2) specifies that a victim/representative is not prohibited from filing a notification request form with a unit that supervises a defendant; and (3) authorizes a victim/representative to discontinue future supervision notifications by filing a written request with the unit that supervises the defendant or child respondent.

If a victim/representative has filed a notification request form, a pretrial release services program must provide the victim/representative with notice regarding (1) any crime charged; (2) conditions of release imposed on a defendant and how to inform the program if the victim/representative has information regarding a potential violation of the defendant's conditions of release; and (3) any request to modify a condition of release, a judicial hearing on the request, and the determination of the request.

The bill also requires the State Board of Victim Services to develop a pamphlet with information regarding pretrial release, including how to contact a pretrial release services program regarding the release or monitoring of a defendant.

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 "judicial officer" is a judge or a District Court commissioner.

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. Not all of the programs utilize validated risk

assessment tools. Typically, these programs work with defendants who are awaiting a bail review hearing before a District Court judge, not an initial appearance before a District Court commissioner. However, in some jurisdictions, commissioners may be able to refer defendants to pretrial services programs for supervision.

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 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	**Jurisdictions without Pretrial Services**
Anne Arundel County	Allegany County
Baltimore City	Caroline County
Baltimore County	Cecil County
Calvert County	Dorchester County
Carroll County	Garrett County
Charles County	Howard County
Frederick County	Queen Anne's County
Harford County	Somerset County
Kent County	Talbot County
Montgomery County	Washington County
Prince George's County	Worcester County
St. Mary's County	
Wicomico County	

Source: Maryland Judiciary; Department of Legislative Services

Victim Notification

A "victim" is a person who suffers personal injury or property damage or loss directly resulting from a crime or delinquent act, or the person's representative in the event of the person's death.

Under Maryland law, a victim of a crime or delinquent act (or a representative in the event the victim is deceased, disabled, or a minor) has a broad range of specific rights during the criminal justice process. On first contact with a victim, a law enforcement officer, District Court commissioner, or juvenile intake officer must give an identified victim a pamphlet that advises the victim of the rights, services, and procedures available in the time before and after the filing of a charging document. Also, within 10 days after the filing or unsealing of an indictment or information, the State's Attorney must provide a victim with a pamphlet that describes the rights, services, and procedures available to a victim after the indictment or information is filed and a notification request form by which a victim may request notice of various proceedings. The pamphlets are prepared by the State Board of Victim Services.

Many of the rights afforded a victim of crime depend on a victim completing a notification request form or requesting notice by following the Maryland Electronic Courts (MDEC) system protocol. Unless provided by the MDEC system, the State's Attorney is required to notify the victim of (1) all court sentencing proceedings; (2) the terms of any plea agreement; and (3) the victim's right to file a victim impact statement. However, a victim who has not filed a notification request form is still entitled to submit a victim impact statement to the court.

State Expenditures: General/special fund expenditures increase by as much as $165,429 in fiscal 2019, which accounts for the bill's October 1, 2018 effective date. This estimate reflects the cost of hiring two employees to coordinate victim notification for PRSP within DPSCS, computer reprogramming costs for DPSCS and the Judiciary, and costs for the Governor's Office of Crime Control and Prevention (GOCCP) to produce and distribute victims' rights/services brochures. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	$85,741
Computer Reprogramming and Brochures	68,970
Operating Expenses	10,718
Total FY 2019 State Expenditures	**$165,429**

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

These estimated costs are discussed in more detail, by agency, below.

Department of Public Safety and Correctional Services

DPSCS general fund expenditures increase by an estimated $121,459 in fiscal 2019, which reflects $25,000 in one-time computer reprogramming costs for the Offender Case Management System and the hiring of two case agents for PRSP (and associated costs), at a cost of $96,459 in fiscal 2019, to coordinate victim notification, monitor requests, and ensure timely responses. While the bill's notification requirements generally apply to victims associated with defendants under pretrial supervision, and not all victims will request notification, PRSP likely requires additional personnel to coordinate these new responsibilities and ensure timely receipt and dissemination of information.

PRSP has a 22% vacancy rate, which exceeds DPSCS's high vacancy rate of 18%. PRSP supervision caseloads had been steadily decreasing over recent years. However, with the emphasis toward release of defendants with nonmonetary conditions, if possible, supervision caseloads have started to steadily increase. Given recent bail reforms and legislative changes, it is likely that PRSP supervision caseloads continue to increase. **Exhibit 2** contains information on PRSP supervision caseloads in recent years. According to *Managing for Results* (MFR), an estimated 3% of defendants under PRSP supervision were rearrested while under supervision and 6% of supervised PRSP defendants failed to appear for their scheduled court dates. Both of these statistics are within MFR benchmarks for PRSP.

Exhibit 2
Pretrial Release Services Program Caseloads
Fiscal 2015-2019

	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019 Est.
Defendants under PRSP supervision at beginning of fiscal year	1,133	757	772	1,028	1,264
Cases received during fiscal year	3,952	3,655	3,879	4,111	4,358
Cases closed during fiscal year	4,263	3,711	3,625	3,842	4,072
Total under supervision at end of fiscal year	822	795	1,028	1,264	1,339

PRSP: Pretrial Release Services Program

Source: Department of Public Safety and Correctional Services, Department of Legislative Services

Judiciary

General fund expenditures for the Judiciary increase by $18,970 in fiscal 2019 only for computer reprogramming.

Governor's Office of Crime Control and Prevention

The State Board of Victim Services is within GOCCP. GOCCP estimates that developing, printing, and mailing brochures in accordance with the bill's requirements results in $25,000 to $50,000 in additional expenditures in fiscal 2019 and $5,000 in annual mailing costs each year thereafter.

However, the Department of Legislative Services advises that special fund expenditures for GOCCP increase by as much as $25,000 in fiscal 2019 (including mailing costs) and by $5,000 each year thereafter because, while the bill requires GOCCP to develop a new brochure, the publication of contact information for pretrial services programs does not require an independent brochure. The bill's requirement that the MDEC brochure contain information regarding pretrial release can be incorporated into existing publication plans since the MDEC brochure has not been produced yet.

Local Expenditures: Local expenditures increase, perhaps significantly, for pretrial services programs to comply with the bill's notification requirements. The magnitude of any such increase depends on local interpretation and implementation of the bill, which cannot be predicted. The following information was gleaned from a survey of local jurisdictions regarding the potential fiscal effects of the bill:

- Montgomery County, which has an extensive pretrial services program, estimates that, in order to comply with the bill, it needs to locate and procure new electronic services or personnel to monitor and assure notification 24 hours per day, 7 days per week for a daily population of 675 individuals under pretrial community supervision, at a cost of approximately $350,000 per year. Montgomery County advises that the bill does not provide a timeframe for notification, so the program requires 24/7 coverage for this purpose, either through personnel or technology, including a process for reporting violations.

- Anne Arundel, Charles, and Frederick counties do not anticipate a fiscal impact from the bill.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, HB 1520 (Delegate Vallario, *et al.* – Judiciary) is not identical.

Information Source(s): Department of Public Safety and Correctional Services; Judiciary (Administrative Office of the Courts); Governor's Office of Crime Control and Prevention; Maryland State Commission on Criminal Sentencing Policy; Department of Juvenile Services; Office of the Public Defender; Anne Arundel, Charles, Frederick, and Montgomery counties; cities of Frederick and Havre de Grace; Department of Legislative Services

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