

Department of Legislative Services
 Maryland General Assembly
 2018 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 447

(Delegate Barron, *et al.*)

Judiciary and Appropriations

Judicial Proceedings and Budget and Taxation

Pretrial Services Program Grant Fund - Establishment

This bill establishes the Pretrial Services Program Grant Fund to provide grants to “eligible counties” to establish pretrial services programs or to improve existing pretrial services programs to comply with specified requirements. The Governor’s Office of Crime Control and Prevention (GOCCP) must administer the fund. **The bill takes effect July 1, 2018, and terminates June 30, 2023.**

Fiscal Summary

State Effect: General fund expenditures increase by \$1.0 million annually from FY 2019 through 2023 to capitalize the special fund; special fund revenues and expenditures increase correspondingly. General fund expenditures also increase by \$61,200 in FY 2019 for administration; future years reflect ongoing costs through FY 2023. The FY 2019 budget includes \$1.0 million in general funds for GOCCP for pretrial services grants.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
SF Revenue	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
GF Expenditure	\$1,061,200	\$1,052,900	\$1,054,600	\$1,056,500	\$1,058,400
SF Expenditure	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000	\$1,000,000
Net Effect	(\$1,061,200)	(\$1,052,900)	(\$1,054,600)	(\$1,056,500)	(\$1,058,400)

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

Local Effect: Local grant revenues and corresponding expenditures increase by \$1.0 million annually from FY 2019 through 2023 for eligible counties. Potential decrease in local incarceration expenditures, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary: The Pretrial Services Program Grant Fund is a special, nonlapsing fund that consists of money appropriated in the State budget to the fund, interest earnings of the fund, and any other money accepted from any other source for the benefit of the fund. Expenditures from the fund may only be made in accordance with the State budget, and the fund may only be used to provide grants to eligible counties to establish or improve pretrial services programs. The accounts and transactions of the fund are subject to audit by the Legislative Auditor, as specified.

An “eligible county” is (1) a county that does not provide defendants with pretrial services or (2) a county that does provide defendants with pretrial services but seeks to improve the services to comply with specified requirements, as described below. The Executive Director of GOCCP must (1) establish procedures for eligible counties to apply for and receive grants from the fund; (2) solicit grant proposals from eligible counties; and (3) make grants from the fund to eligible counties for the establishment or improvement of a pretrial services program. An eligible county that applies for grant funding must provide the executive director with a description of how the proposed pretrial services program or the proposed improvements to an existing program will meet the program requirements listed below and any other information the executive director considers necessary.

A pretrial services program established or improved using a grant from the fund must:

- use a validated, evidence-based, race-neutral risk scoring instrument that is consistent with the Maryland Rules to make recommendations to a judicial officer to determine whether a defendant is eligible for release on personal recognizance, is eligible for pretrial release with appropriate pretrial supervision, or should be held without bail;
- apply best practices shown to be effective in other jurisdictions; and
- incorporate multiple levels of supervision based on defendant risk scores with features that include cellular telephone reminders of a defendant’s hearing date; drug and alcohol testing; global positioning satellite monitoring, if applicable; and substance abuse, mental health, or mediation referrals, if approved by the judicial officer and available in the eligible county.

An eligible county that receives grant funds must submit proof of the expenditure of the funds to the executive director. Grant funds must be used to supplement and not supplant any other funding for the establishment or improvement of a pretrial services program.

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.

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 is within the Department of Public Safety and Correctional Services. **Exhibit 1** contains information on local jurisdictions with pretrial services programs and local jurisdictions without such programs.

Exhibit 1
Jurisdictions with and without 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 Fiscal Effect:

Capitalization of the Special Fund and Grants to Eligible Counties

General fund expenditures increase by \$1.0 million annually from fiscal 2019 through 2023 to capitalize the fund. The fiscal 2019 budget includes \$1.0 million in general funds for GOCCP to provide grants, technical assistance, and other support to local governments for

the establishment, expansion, and improvement of pretrial services agencies. This estimate assumes that:

- the \$1.0 million appropriation in the fiscal 2019 budget for GOCCP that is described above is deposited into the Pretrial Services Program Grant Fund established by the bill;
- the program is level funded through fiscal 2023 at \$1.0 million annually; and
- GOCCP makes grants totaling \$1.0 million annually from the fund to eligible counties through fiscal 2023.

Accordingly, special fund revenues to and expenditures from the new fund increase correspondingly each year through fiscal 2023. This analysis does not reflect any additional special fund revenues that may accrue to the fund from investment earnings or from other sources.

GOCCP's Administrative Costs

The bill does not authorize the new special fund to be used to pay GOCCP's administrative costs; accordingly, additional general funds are needed. Thus, general fund expenditures increase by an additional \$61,175 in fiscal 2019 for GOCCP to administer the fund, which accounts for the bill's July 1, 2018 effective date. This estimate reflects the cost of hiring one contractual program manager to administer the fund in accordance with the bill's requirements. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1.0
Salary and Fringe Benefits	\$55,660
Operating Expenses	<u>5,515</u>
Total FY 2019 Admin. Expenditures	\$61,175

Future year administrative expenditures, which range from \$52,866 to \$58,378 from fiscal 2020 to 2023, reflect annual increases in the salary and employee turnover and ongoing operating expenses.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

Other Agencies

The bill specifies that the purpose of the fund is to provide grants to eligible counties to establish or improve pretrial services. It defines an "eligible county" as a *county* that does

not provide defendants with pretrial services or a *county* that does provide these services, but seeks to improve the services provided. The *State*, through the Department of Public Safety and Correctional Services (DPSCS), operates the Pretrial Release Services Program (PRSP) in Baltimore City. Because the State does not meet the definition of an eligible county under the bill, this analysis assumes that DPSCS and PRSP are not eligible for grant funds and that the bill does not affect the pretrial release population in Baltimore City and related State expenditures. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

The Office of Legislative Audits can audit the new special fund with existing budgeted resources.

Local Fiscal Effect: Local grant revenues and expenditures for county pretrial services programs increase by \$1.0 million each year from fiscal 2019 through 2023, based on the assumptions outlined above.

Local incarceration expenditures decrease to the extent that the bill makes it possible for an eligible county to establish a pretrial services program or make improvements to an existing program that results in the provision of less expensive alternatives to pretrial detention and/or a reduction in the county's overall pretrial detention rate. The extent to which this occurs solely due to a grant received under the bill cannot be reliably determined at this time. However, *for illustrative purposes only*, St. Mary's County, which has had a pretrial services program since 2015, advises that the per diem cost of monitoring a defendant through pretrial services is \$30, compared to a per diem detention cost of \$150.

Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: SB 1156 (Senator Smith) - Judicial Proceedings and Budget and Taxation.

Information Source(s): Baltimore City; Harford, Montgomery, and St. Mary's counties; Comptroller's Office; Governor's Office of Crime Control and Prevention; Judiciary (Administrative Office of the Courts); University System of Maryland; Department of General Services; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of State Police; Department of General Services; Department of Budget and Management; Maryland Department of Transportation;

Department of Natural Resources; Pretrial Justice Institute; Department of Legislative Services

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