

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 659
(Senator Washington)
Judicial Proceedings

Criminal Procedure - Pretrial Release - Reimbursement of Special Condition Costs

This bill requires a county to reimburse a defendant for any costs incurred by the defendant to satisfy special conditions imposed, in accordance with Maryland Rule 4-216.1(d), by a court or a District Court commissioner if the defendant is found not guilty of or a *nolle prosequi* is entered for all charges arising out of the same incident, transaction, or set of facts.

Fiscal Summary

State Effect: Any increase in District Court caseloads resulting from the bill can be implemented with existing budgeted resources. Revenues are not affected.

Local Effect: Potential significant increase in expenditures for some jurisdictions, as discussed below. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Current Law: 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.

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.

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.

Under Maryland Rule 4-216.1, a judicial officer may impose additional conditions on pretrial release, but only if they are 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. The Rule requires that preference be given to additional conditions without financial terms. The Rule also specifies several types of special conditions of release that may be imposed on a defendant, including any lawful condition that will help ensure the appearance of the defendant or the safety of each alleged victim, other persons, or the community. When making a pretrial release decision, a judicial officer must consider the danger the defendant poses to an alleged victim, another person, or the community.

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.

Background: As shown in **Exhibit 1**, as of October 2018, 15 jurisdictions in the State have a pretrial services program. The programs vary in scope and services offered.

Exhibit 1 **Jurisdictions with Pretrial Services Programs**

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

*Operated by the Department of Public Safety and Correctional Services

Source: Department of Legislative Services

Local Expenditures: The bill may result in a significant increase in expenditures for local jurisdictions with higher caseloads or a higher number of pretrial defendants who meet the bill's eligibility criteria for reimbursement, as discussed below.

The *Maryland Judiciary Statistical Abstract 2017* reports the following statistics for fiscal 2017:

- there were 198,855 District Court criminal cases statewide;
- 6,295 (3.17%) of District Court criminal cases resulted in a not guilty disposition;
- 80,369 (40.42%) of District Court criminal cases resulted in a *nolle prosequi* disposition; and
- there were 67,474 criminal case terminations in the circuit courts during fiscal 2017.

The report did not include information on the number of circuit court cases resulting in not guilty and *nolle prosequi* dispositions. However, assuming that the same percentages from the District Court cases apply, an estimated 2,136 circuit court criminal cases may have resulted in not guilty dispositions and an estimated 27,270 circuit court criminal cases may have resulted in *nolle prosequi* dispositions during fiscal 2017.

According to Maryland Judiciary's *Fiscal Year 2018 Impact of Changes to Pretrial Release Rules* (pretrial report), the Judiciary does not track any additional conditions placed on a particular individual. Thus, data is not available on the frequency with which special conditions of release are imposed on pretrial defendants. Based on the language of Rule 4-216.1, many of the special conditions of release require a pretrial defendant to adhere to or refrain from specified behavior without financial implications. Furthermore, many counties with pretrial services programs do not charge for pretrial services.

The Judiciary advises that a District Court commissioner is only authorized to set those conditions which are minimally required to ensure the safety of the parties involved. These conditions do not include treatment, monitoring, or supervision of any kind. Conditions in which a defendant may incur a cost for participation (treatment, monitoring, and supervision) are only set by a judge upon review of the case at a bail review hearing. According to the Judiciary's pretrial report, there were 79,055 initial appearances and 27,516 judicial bail reviews statewide from October 2017 through September 2018. Based on these numbers, a significant portion of pretrial defendants do not progress to a judicial bail review where, based on the Judiciary's comments, a special condition of release with financial implications may be imposed. However, the Department of Legislative Services advises that, based on the language of the bill and Rule 4-216.1(d), it appears that a county has to reimburse any funds paid to a corporate surety by a pretrial defendant who is found not guilty or receives a *nolle prosequi*. Thus, the bill may have implications for pretrial defendants released following an initial appearance by a District Court commissioner. Data is not readily available on the percentage of defendants who posted bonds through a corporate surety. These sureties typically charge a nonrefundable fee that is 10% of the bond amount.

Absent specific data on special conditions imposed on pretrial defendants, the fiscal impact of the bill on local jurisdictions cannot be readily determined. However, *for illustrative purposes only*, according to the Judiciary's pretrial report, 13.1% of defendants were held in default of bond following an initial appearance before a District Court commissioner. Assuming that 20% of pretrial defendants are subject to a special condition with financial conditions (including defendants not subject to a bond but subject to other conditions requiring expense), applying this percentage to the 116,070 fiscal 2017 District Court and circuit court cases with not guilty and *nolle prosequi* dispositions (as discussed above) results in 23,214 cases in which a local jurisdiction may have to reimburse a defendant. Further, assuming an average of \$100 in reimbursement per case, local jurisdictions may have to reimburse pretrial defendants more than \$2.3 million annually. While these costs are distributed among the State's 24 local jurisdictions, the impact will be greater in jurisdictions with higher caseloads or with significant numbers of pretrial defendants who meet the bill's eligibility criteria and will depend on the expenses incurred by those defendants that are eligible for reimbursement under the bill.

Additional Information

Prior Introductions: None.

Cross File: HB 758 (Delegate Moon, *et al.*) - Judiciary.

Information Source(s): Montgomery County; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Legislative Services

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