

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 49
 Judiciary

(Delegate Palakovich Carr)

Judicial Proceedings

Criminal Procedure – Pretrial Release – Pretrial Risk Scoring Instruments

This bill requires a jurisdiction that uses a “pretrial risk scoring instrument” to determine the eligibility of a defendant for pretrial release to have an independent validation study of the instrument conducted at least once every five years. The bill also adds “pretrial risk scoring instrument validation” as an authorized purpose for grants from the Pretrial Services Program Grant Fund and makes corresponding changes to provisions governing the fund. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: General fund expenditures increase by \$50,000 in FY 2022 and by \$25,000 in FY 2027 and every five years thereafter, as discussed below. Revenues are not affected.

(in dollars)	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	50,000	0	0	0	0
Net Effect	(\$50,000)	\$0	\$0	\$0	\$0

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

Local Effect: Local expenditures increase minimally beginning in FY 2022 to comply with the bill’s requirement to conduct independent validation studies; these costs may be partially offset by grant revenues during the initial years. **The bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: A “pretrial risk scoring instrument” is a tool, a metric, an algorithm, or software that is used to assist in determining the eligibility of a defendant for pretrial release in a pretrial proceeding based on the defendant’s flight risk and threat to community safety. A “pretrial risk scoring instrument validation” is an independent validation study of a pretrial risk scoring tool.

Current Law/ Background:

Pretrial Risk Assessments

Pretrial risk assessments often evaluate a defendant’s flight risk and threat to public safety and assist judicial officers in making pretrial release determinations. Validation of a pretrial risk scoring instrument typically involves analyzing data to determine if the outcomes in cases correlate to the way the instrument was intended to function.

There are no statutory provisions that require jurisdictions to use or validate pretrial risk scoring instruments. However, in 2017, the Maryland Court of Appeals adopted amendments to the Maryland Rules to change 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. When determining whether a defendant should be released and the conditions of release, the judicial officer must give consideration to the recommendation of any pretrial release services program that has made a risk assessment of the defendant in accordance with a validated risk assessment tool and is willing to provide an acceptable level of supervision over the defendant during the period of release if so directed by the judicial officer.

Pretrial Services Program Grant Fund

Chapter 771 of 2018 established 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. 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 for grant recipients. Chapter 771 terminates June 30, 2023.

A pretrial services program established or improved using a grant from the fund must (1) use a validated, evidence-based, and race-neutral risk scoring instrument that is consistent with the Maryland Rules to make pretrial release-related recommendations to a judicial officer; (2) apply best practices shown to be effective in other jurisdictions; and (3) incorporate multiple levels of supervision based on defendant risk scores with features

that include specified items, including cellular telephone reminders of a defendant's hearing date and drug and alcohol testing. Grant funds must be used to supplement and not supplant any other funding for the establishment or improvement of a pretrial services program. The Governor's Office of Crime Prevention, Youth, and Victim Services (GOCPYVS) administers the fund. (Chapter 11 of 2020 renamed the Governor's Office of Crime Control and Prevention (GOCCP) to be GOCPYVS.)

The fiscal 2019 budget included \$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. However, no additional funding was provided for these grants in fiscal 2020, and, as noted above, Chapter 771 terminates June 30, 2023. The fiscal 2021 budget does, however, restrict \$750,000 of the general fund appropriation for the Administrative Office of the Courts for the purpose of being transferred by budget amendment to GOCPYVS to be used for the Pretrial Services Program Grant Fund. Funds not expended for this restricted purpose revert to the general fund.

GOCPYVS advises that the following five counties have received grant funding to validate their pretrial risk scoring instruments: (1) Anne Arundel (\$45,000); (2) Howard (\$14,720); (3) Montgomery (\$50,000); (4) St. Mary's (\$35,000); and (5) Wicomico (\$25,000).

Pretrial Services Programs

As shown in **Exhibit 1**, based on information received by the Department of Legislative Services, as of January 2020, 19 jurisdictions in the State have a pretrial services program. The programs vary in scope and services offered. Several of the programs use a pretrial risk scoring instrument. Two counties do not have a pretrial services program, but did receive grant funding from GOCCP and may be in the process of establishing a program.

Exhibit 1
Jurisdictions with Pretrial Services Programs

Jurisdictions with Pretrial Services

Anne Arundel County*
Baltimore City^
Baltimore County
Calvert County*
Caroline County
Cecil County*
Carroll County
Dorchester County*
Frederick County
Harford County
Kent County
Montgomery County*
Prince George's County*
Queen Anne's County
St. Mary's County*
Somerset County*
Talbot County
Wicomico County*
Worcester County

Jurisdictions without Pretrial Services

Allegany County
Charles County
Garrett County
Howard County*
Washington County*

*Received a Pretrial Services Program Grant from GOCCP.

^Operated by the Department of Public Safety and Correctional Services.

Source: Governor's Office of Crime Prevention, Youth, and Victim Services; Department of Legislative Services

State Expenditures: General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase by \$50,000 in fiscal 2022 for DPSCS to conduct an initial validation of its pretrial risk scoring instrument under the bill. General fund expenditures increase by \$25,000 in fiscal 2027 and every five years thereafter for DPSCS to conduct subsequent validations. This estimate reflects the costs of hiring outside contractors to conduct validations of the pretrial risk scoring instrument used by the Pretrial Release Services Program in Baltimore City, which is operated by DPSCS. The estimate assumes that the initial validation is conducted in fiscal 2022. DPSCS advises that costs associated with hiring an outside contractor to validate the instrument reflect the complex and time-consuming nature of the validation process.

Local Revenues: Local revenues may increase, beginning in fiscal 2022, to the extent that jurisdictions apply for and receive funds from the Pretrial Services Program Grant Fund to conduct pretrial risk scoring instrument validations. Any such increase occurs in the initial years of the bill, since Chapter 771 of 2018 terminates June 30, 2023.

Local Expenditures: Local expenditures increase minimally beginning in fiscal 2022 to comply with the bill’s requirements. This estimate assumes that (1) the reference to “an independent validation study” in the bill means a validation of the pretrial risk scoring instrument based on data from the local jurisdiction in which it is being used and (2) jurisdictions will begin validating their instruments on a five-year cycle as early as fiscal 2022. Information from counties that provided a specific estimate of expenditures needed to comply with the bill’s requirements is as follows:

- Anne Arundel County expenditures increase by \$35,000 to conduct an initial validation;
- Howard County expenditures increase by \$25,000 to conduct an initial validation;
- Montgomery County expenditures increase by \$105,000 for an initial validation, by \$35,000 for a subsequent validation, and by \$5,000 each year between validations;
- Prince George’s County expenditures increase by \$90,000 in fiscal 2022 and by \$75,000 for each subsequent validation; and
- Queen Anne’s County expenditures increase by a minimum of \$10,000 to conduct an initial validation.

As indicated above, subsequent validations may have reduced costs compared to initial validations.

Baltimore and Caroline counties advise that although their jurisdictions use pretrial risk scoring instruments, they have not had the instruments validated and do not have estimates for the costs associated with that process.

To the extent that grant funding from the Pretrial Services Program Grant Fund is available during the initial years, some local expenditures may be partially offset.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 68 (Senator Waldstreicher) - Judicial Proceedings.

Information Source(s): Allegany, Anne Arundel, Baltimore, Caroline, Charles, Harford, Howard, Montgomery, Prince George's, Queen Anne's, and Somerset counties; Governor's Office of Crime Prevention, Youth, and Victim Services; 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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