

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 679

(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 all charges arising out of the same incident, transaction, or set of facts.

Fiscal Summary

State Effect: The bill does not materially affect the workload or finances of the Judiciary.

Local Effect: Potential significant increase in expenditures in 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/Background:

Maryland Rule 4-216.1

Pursuant to Maryland Rule 4-216.1, if a judicial officer determines that a defendant should be released other than on personal recognizance or unsecured bond without 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. 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.

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.

Additional conditions should be imposed on pretrial release 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. Preference should be given to additional conditions without financial terms. Maryland Rule 4-216.1(d) specifies several types of special conditions of release that may be imposed on a defendant, which 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.

Potential Number of Cases with Not Guilty Dispositions

The *Maryland Judiciary Statistical Abstract 2018* reports the following statistics for fiscal 2018:

- there were 165,331 District Court criminal cases statewide;
- 5,648 (3.4%) of District Court criminal cases resulted in a not guilty disposition; and
- there were 59,171 criminal case terminations in the circuit courts.

The report did not include information on the number of circuit court cases resulting in not guilty dispositions. However, assuming that the same percentage from the District Court cases applies, an estimated 2,012 circuit court criminal cases may have resulted in not guilty dispositions during fiscal 2018, for a total of 7,660 cases with not guilty dispositions in fiscal 2018.

Local Expenditures: Local expenditures may increase significantly to reimburse defendants for incurred expenses, particularly in jurisdictions with higher caseloads or with significant numbers of pretrial defendants who meet the bill's eligibility criteria. Absent specific data on special conditions imposed on pretrial defendants, which the Judiciary does not track, the magnitude of the fiscal impact of the bill on local jurisdictions cannot be readily determined. Available information regarding potential expenditures is discussed in greater detail below.

Treatment, Monitoring, and Supervision Costs

The Judiciary advises that a District Court commissioner is only authorized to set those conditions that are minimally required to ensure the safety of the parties involved. Conditions in which a defendant may incur a cost for participation (*e.g.*, treatment, monitoring, and supervision) are only set by a judge upon review of the case at a bail review hearing. According to the Maryland Judiciary's *Fiscal Year 2019 Impact of Changes to Pretrial Release Rules* (pretrial report), there were 80,084 initial appearances and 28,351 judicial bail reviews statewide during fiscal 2019. 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, such costs may be incurred.

Many counties with pretrial services programs do not charge for pretrial services. Prince George's County advises that it does not charge any fees to pretrial defendants. Frederick, Montgomery, and St. Mary's counties have historically advised that they do not charge fees for pretrial services. Caroline County charges \$32 in fees for all pretrial release program participants, plus additional weekly fees ranging from \$25 to \$105, depending on the level of supervision; the county was unable to quantify the amount of fees collected in fiscal 2019. Calvert County collected \$2,436 in fees from pretrial defendants during fiscal 2017. Carroll County collected \$5,067 in pretrial defendant fees during this time.

The Maryland Association of Counties advises that travel costs for pretrial reporting or treatment and costs for substance use disorder and mental health treatment not covered by Medicaid or insurance are examples of costs that may be incurred by pretrial defendants and may be significant.

Defendants may also incur costs associated with private services paid for by defendants, such as private electronic monitoring. Data is not readily available on the frequency with which pretrial defendants in Maryland opt for these services, the costs for these services, and the number of defendants who utilized private services who are eventually found not guilty. According to news reports, the cost of private electronic monitoring can range from \$5 to \$25 per day. The average statewide processing time for criminal cases in fiscal 2018 was 85 days (12 weeks) in the District Court and 114 days (16 weeks) in the circuit courts. Using this information, *for illustrative purposes only*, counties may be responsible for reimbursing a minimum of \$425 per defendant who meets the bill's eligibility requirements.

Corporate Surety Fees

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. These sureties typically charge a

nonrefundable fee that is 10% of the bond amount. Although data is not readily available on the percentage of defendants who post bonds through a corporate surety, according to the Judiciary's pretrial report referenced above, 10.9% of defendants were held in default of bond following an initial appearance before a District Court commissioner in fiscal 2019.

For illustrative purposes only, applying the percentage of defendants held in default of bond following an initial appearance (10.9%) to the not guilty disposition cases indicated above (7,660) results in 834 cases where a defendant was held on bond and was found not guilty. Data is not readily available on the average amount of bail imposed in cases. However, according to the report *Advancing Bail Reform in Maryland: Progress and Possibilities*, from July to November 2017, the average amount of secured bail in a criminal case in Maryland was approximately \$12,000. Using this figure and assuming that 60% of defendants procure a corporate surety bail bond with a 10% nonrefundable fee, counties would have to reimburse defendants for approximately \$600,500 in bail bond fees per year.

Additional Information

Prior Introductions: HB 758 of 2019, a similar bill, received a hearing in the House Judiciary Committee, but no further action was taken. Its cross file, SB 659, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Designated Cross File: HB 82 (Delegate Moon, *et al.*) - Judiciary.

Information Source(s): Calvert, Caroline, Carroll, Frederick, Howard, Montgomery, Prince George's, and St. Mary's counties; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); wired.com; *Advancing Bail Reform in Maryland: Progress and Possibilities* (Princeton University School of Public Affairs, prepared for the Baltimore City and Prince George's County branches of the NAACP); Department of Legislative Services

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