

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
 Third Reader

House Bill 263
 Judiciary

(Delegate Atterbeary)

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 (1) incorporates pretrial services programs into various requirements pertaining to notification of a victim or victim’s representative (victim/representative); (2) requires development of a work plan that facilitates victim notification; and (3) requires an annual progress update to be included in the annual report of the State Board of Victim Services that identifies the availability of specified types of funding. **Specified collaboration and reporting provisions take effect June 1, 2019. The bill’s other provisions take effect October 1, 2019.**

Fiscal Summary

State Effect: General fund expenditures increase by \$23,600 in FY 2020 only. Special fund expenditures increase by \$25,000 in FY 2020 and by \$5,000 each year thereafter. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	23,600	0	0	0	0
SF Expenditure	25,000	5,000	5,000	5,000	5,000
Net Effect	(\$48,600)	(\$5,000)	(\$5,000)	(\$5,000)	(\$5,000)

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

Local Effect: Potential increase in local expenditures, as discussed below. Revenues are not affected. **This bill may impose 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.

The bill contains requirements applicable only in Howard, Montgomery, and St. Mary’s counties. In these counties, 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. Even though these provisions only apply in Howard, Montgomery, and St. Mary’s counties, nothing in the bill may be construed to prevent another jurisdiction from complying with these provisions.

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.

Finally, the bill requires the Department of Public Safety and Correctional Services (DPSCS), the Governor's Office of Crime Control and Prevention (GOCCP), and the Maryland Correctional Administrators' Association to consult and collaborate with each other and the State's Victim Information and Notification Everyday (VINE) vendor to ascertain how best to expand the capacity and functionality of the State's notification systems and to develop a work plan that facilitates notification to victims when offenders are eligible for pretrial release services. The work plan and an annual progress update must be included in the annual report of the State Board of Victim Services and must identify all potentially available federal funding for technological enhancements and expansion of victim services for pretrial release services programs.

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.

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. Under the new Rules, 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.

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. Not all of the programs utilize validated risk assessment tools.

Exhibit 1
Jurisdictions with Pretrial Services Programs

Jurisdictions with Pretrial Services

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

Jurisdictions without Pretrial Services

Allegany County
Caroline County
Cecil County
Charles County
Garrett County
Howard County
Queen Anne's County
Somerset County
Washington County

*Operated by the Department of Public Safety and Correctional Services

Source: 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 fund expenditures for the Judiciary increase by \$23,645 in fiscal 2020 only. Special fund expenditures for GOCCP increase by \$25,000 in fiscal 2020 and by \$5,000 each year thereafter. This estimate assumes that the Division of Parole and Probation (DPP) within DPSCS is not required to comply with the requirements for pretrial release services programs under the bill, as discussed below.

Department of Public Safety and Correctional Services

The bill requires DPSCS and GOCCP to study expansion of VINE. DPSCS advises that GOCCP no longer administers VINE, and DPSCS is the sole administrator of the system. DPSCS advises that it has determined that the functionality exists to make the enhancements in VINE specified in the bill at no additional cost.

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 DPSCS. PRSP advises that it already provides many of the services mandated in the bill,

including providing the court with information regarding violations of conditions of release and requesting a bench warrant depending on the level of violation. PRSP notes that it rarely, if ever, has direct face-to-face contact with victims, so requiring a pretrial release services program to provide a pamphlet may be a challenge. PRSP advises that in certain cases, such as domestic violence cases, it does try to contact victims by telephone to inform them of stay away orders, certain conditions of supervision, etc. Regardless, PRSP does not foresee a major impact on the program.

The bill defines a “pretrial release services program” as 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 DPP does not provide information to the court regarding whether a defendant should be released, DPP does supervise pretrial defendants upon request of the court. As of January 30, 2019, there are 420 individuals under community supervision statewide to DPP on a pretrial basis. Assuming that DPP is not required to provide notification to victims as a result of the bill, then DPP does not incur additional expenditures. However, should DPP be subject to the bill’s requirements, then the division advises that it may need to hire additional personnel to absorb the additional workload.

Judiciary

General fund expenditures for the Judiciary increase by \$23,645 in fiscal 2020 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 2020 and \$5,000 in annual mailing costs each year thereafter.

However, the Department of Legislative Services advises that special fund expenditures for GOCCP are likely to increase only by as much as \$25,000 in fiscal 2020 (including mailing costs) and by \$5,000 each year thereafter. 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 may increase 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

at this time but is likely minimal. The following information was derived from a survey of local jurisdictions regarding the potential fiscal effects of the bill:

- Howard County advises that the county does not have a pretrial services program, but is investigating the potential to start one in late 2019. According to the county, any impact from the bill is minimal.
- Montgomery County advises that it currently has the services required under the bill in place and can meet the bill's requirements with existing resources.
- St. Mary's County advises that pretrial services victim notification duties can be absorbed by the county's pretrial services case managers at no additional cost.
- Harford County advises that the bill has a significant fiscal impact on its sheriff's department, but provided no additional information to explain this assessment.

With respect to previous similar legislation, Anne Arundel, Charles, and Frederick counties advised that they did not foresee a fiscal impact from similar notification requirements.

Additional Information

Prior Introductions: HB 1520 of 2018 received a hearing in the House Judiciary Committee. No further action was taken. Its cross file, SB 766, received a hearing in the Senate Judicial Proceedings Committee. No further action was taken.

Cross File: SB 551 (Senator Lee, *et al.*) - Judicial Proceedings.

Information Source(s): Harford, Howard, Montgomery, and St. Mary's counties; Governor's Office of Crime Control and Prevention; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Juvenile Services; Department of Public Safety and Correctional Services; Maryland Crime Victims Resource Center; Department of Legislative Services

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