

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 447 (Delegate Barron, *et al.*)
Judiciary and Appropriations

Pretrial Services Program Grant Fund - Establishment

This bill requires a State law enforcement unit to deposit proceeds from a sale of forfeited property under § 12-403 of the Criminal Procedure Article into the Pretrial Services Program Grant Fund, a new special fund established by the bill to provide grants to “eligible counties” to establish pretrial services programs, subject to 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 revenues decrease by \$324,000 annually from FY 2019 through 2023 due to the redirection of proceeds. Special fund revenues and expenditures increase correspondingly. General fund expenditures increase by \$33,000 in FY 2019 to administer the fund; future years reflect ongoing costs through FY 2023.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
GF Revenue	(\$324,000)	(\$324,000)	(\$324,000)	(\$324,000)	(\$324,000)
SF Revenue	\$324,000	\$324,000	\$324,000	\$324,000	\$324,000
GF Expenditure	\$33,000	\$26,400	\$27,300	\$28,200	\$29,200
SF Expenditure	\$324,000	\$324,000	\$324,000	\$324,000	\$324,000
Net Effect	(\$357,000)	(\$350,400)	(\$351,300)	(\$352,200)	(\$353,200)

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 \$324,000 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 revenue distributed to the fund under § 12-403 of the Criminal Procedure Article (from proceeds from specified forfeited property), 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 pretrial services programs. The accounts and transactions of the fund are subject to audit by the Legislative Auditor, as specified.

An “eligible county” is a county that does not provide defendants with pretrial services. 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 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 will meet the program requirements listed below and any other information the executive director considers necessary.

A pretrial services program 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 of a pretrial services program.

Current Law/Background:

Disposition of Forfeited Property/Proceeds

Section 12-403 of the Criminal Procedure Article addresses the disposition of property forfeited in connection with a violation of the State's controlled dangerous substance laws. Section 12-403 of the Criminal Procedure Article requires a State law enforcement unit that receives forfeited property or proceeds from a sale of forfeited property to dispose of the property in a specified manner and deposit proceeds from the sale of forfeited property into the State's general fund.

Pretrial Release and Pretrial Services Programs

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: General fund revenues decrease by \$324,000 annually from fiscal 2019 through 2023 due to the redirection of proceeds from forfeited property. Special fund revenues and expenditures increase by a corresponding amount from fiscal 2019 through 2023. General fund expenditures for GOCCP increase by \$33,034 in fiscal 2019 for administration, with administrative costs ranging from \$26,434 to \$29,190 from fiscal 2020 to 2023. The Office of Legislative Audits can audit the fund with existing budgeted resources.

This estimate assumes that:

- forfeited property/proceeds levels for fiscal 2019 through 2023 remain consistent with fiscal 2017 amounts;
- the fund does not receive revenues from any other source; and
- GOCCP makes grants equivalent to the total annual deposits into the fund each year from fiscal 2019 through 2023.

Redirection of Funds from the General Fund to the Pretrial Services Program Grant Fund

According to information provided by the Comptroller's Office and inquiries made by the Department of Legislative Services to various State agencies, approximately \$324,000 was deposited into the general fund during fiscal 2017 from proceeds from forfeited property under § 12-403 of the Criminal Procedure Article. Under this bill, these proceeds are instead deposited into the special fund and used to provide grants to eligible counties to establish pretrial services programs.

GOCCP – Administrative Expenditures

General fund expenditures for GOCCP increase by \$33,034 in fiscal 2019 to administer the fund, which reflects the bill's July 1, 2018 effective date. The bill does not authorize the new special fund to be used to pay GOCCP's administrative costs; accordingly, this analysis assumes that general funds are needed.

GOCCP has determined that one regular full-time position is needed to administer the new fund. However, the Department of Legislative Services advises that the added responsibilities resulting from the bill are not permanent and, thus, may be performed by a contractual employee rather than a full-time employee. Also, given GOCCP's institutional knowledge and functional expertise as a grants administrator, the limited number of applicants for grant funding, and the limited amount of funds for grants (barring any additional State budget appropriation), the responsibilities for the program manager can be accomplished with a part-time position. Thus, this estimate reflects the cost of hiring a part-time contractual program manager position 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	0.5
Salary and Fringe Benefits	\$27,831
Operating Expenses	<u>5,203</u>
Total FY 2019 Admin. Expenditures	\$33,034

Future year expenditures 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.

Local Fiscal Effect: Local grant revenues and expenditures for county pretrial services programs increase by \$324,000 each year from fiscal 2019 through 2023, based on the

assumptions outlined above. As shown above in Exhibit 1, there are 11 counties that are eligible to apply for grants under the bill.

Local incarceration expenditures decrease to the extent that the bill makes it possible for an eligible county to establish a pretrial services program that provides less expensive alternatives to pretrial detention or reduces 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) - Rules.

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 - Office of Legislative Audits

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