

Department of Planning and Budget

2016 Fiscal Impact Statement

1. Bill Number HB 774

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron Gilbert

3. Committee House Courts of Justice

4. Title Conditions of release without bond

5. Summary/Purpose:

Under current law, a magistrate or judge may release someone arrested for a felony or misdemeanor offense and may impose any of several conditions for release. However, a person arrested for a felony offense who has been previously convicted of a felony, or who is presently on bond for an unrelated arrest, or who is on probation or parole, may be released only upon a secure bond. The requirement for a secure bond may be waived by the judicial officer, with the concurrence of the Commonwealth's attorney.

For anyone arrested for a felony or misdemeanor, the proposed legislation would prohibit his release to a pretrial services agency in lieu of a secured bond, unless he is determined by the court to be indigent.

6. Budget amendment necessary: Yes. Item 70.

7. Fiscal Impact: Preliminary. See Item 8.

8. Fiscal implications:

According to data from the Pre-Trial Community Corrections (PTCC) Database, maintained by the Department of Criminal Justice Services, two-thirds of defendants placed in pre-trial supervision programs are now required by magistrates or courts to post a secured bond. The proposed legislation would affect the remaining one-third and would result in additional costs to the state, but only a portion of those higher costs can be identified.

Most obviously, the bill would result in arrested persons staying in jail longer rather than being released quickly to a pretrial services agency. Through the Compensation Board, the state reimburses localities \$4.00 per day for each person housed in a local or regional jail awaiting trial. Therefore, the bill would result in higher per diem costs for the state.

Following a person's arrest, a magistrate may take one of several actions. One of the options available is the release of the defendant, without secured bond, to the supervision of a pretrial services agency while he awaits trial. If the magistrate does not release the defendant

to pretrial services supervision without a secured bond, a judge may do so upon his initial appearance in court. PTCC data indicate that, in FY 2015, 2,066 defendants were released by a magistrate directly to a pretrial services agency without a secured bond. Another 5,284 defendants were released to a pretrial services agency without a secure bond following their initial appearance in court.

Under the proposed legislation, none of these defendants could have been released to a pretrial services agency without posting a secured bond, unless the court had determined they were indigent. Therefore, the 2,066 defendants who were released to a pretrial services agency directly by a magistrate would have to stay in jail until their court appearance, unless they could post a secure bond. The data in PTCC indicate that approximately 75 percent of the defendants placed on pretrial services supervision in FY 2015 were at or below the poverty level. If it is assumed that this poverty rate percentage is applicable to this population of offenders placed in pretrial services without a secured bond, the result is that 1,550 of the defendants may not be able to post a secured bond. It is assumed that these remaining defendants would stay in jail an average of three days before their initial court appearance. The following table sets out the calculation of the projected additional per diem cost:

| | |
|----------|--|
| 2,066 | Placed in pretrial services without secured bond |
| 516 | Number assumed that could post secured bond (25 percent) |
| 1,550 | Remaining in jail pending initial court appearance |
| 3 | Days spent in jail |
| 4,650 | Additional prisoner days |
| \$4 | Per diem payment |
| \$18,600 | Total additional per diem cost |

The additional cost shown above is a conservative estimate and could be significantly higher. A portion of those 1,550 who would have to wait in jail until their initial court appearance would not qualify as indigent but also would not be able to post a secure bond. Under the provisions of the proposed legislation, because they would not be indigent, but may not be able to post a secured bond, a portion of those 1,550 defendants would have had to stay in jail until their trial, rather than being released to a pretrial services agency. The state would reimburse the localities \$4.00 per day for those additional days. However, there is not enough information available to be able to project how many of these defendants would have to remain in jail pending trial, rather than being released to a pretrial services agency.

There is another group of defendants who would likely have to stay in jail longer under the proposed legislation. These are the 5,284 defendants who were not directly released by the magistrate to supervision by the pretrial services agency, but were released by the judge to such supervision without secured bond. Under the same assumption that 25 percent of these defendants would be above the poverty level, they would be required to post secured bond before being released to pre-trial services. An analysis by DCJS staff of LIDS data from the Compensation Board and PTCC data suggests that these offenders would need to stay in jail another two days before being released on secured bond. The table below sets out the projected annual cost of these additional defendants in jail as a result of this legislation:

| | |
|----------|--|
| 1,320 | Number released to supervision by judge |
| 2 | Additional days in jail while securing secure bond |
| 2,640 | Additional prisoner days |
| \$4 | Per diem payment |
| \$10,560 | Total additional per diem cost |

The above amount is also a minimum projection, and therefore is likely understated. The analysis assumes that all those defendants who appeared before a judge and would have been previously released on pretrial supervision without secured bond, would, under the proposed legislation, post a secure bond and then be released to supervision. It is likely, however, that a significant number of those defendants may not be able to post a secured bond and would, therefore, remain in jail awaiting trial. However, there is not enough information available to estimate the size of this group or how long they would be likely to stay in jail awaiting trial.

Another impact of this proposed legislation, and a possible additional cost to the state, would be additional crowding in jails as a result of these additional defendants in jails awaiting trial. Based on a formula used by the Compensation Board, the state provides additional deputies to jails experiencing a certain level of overcrowding. However, it is not feasible to project whether any jails would qualify for additional deputies as a result of this legislation.

Finally, the proposed legislation could have an impact on courts. Based on the assumptions outlined above, there would need to be 1,550 additional court appearances and indigent determinations, as these defendants would have to appear in court, rather than be released by a magistrate following their arrest.

9. Specific agency or political subdivisions affected:

Compensation Board
Local and regional jails
Circuit and district courts

10. Technical amendment necessary: No.

11. Other comments: None.

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