

REVISED

Department of Planning and Budget

2008 Fiscal Impact Statement

1. Bill Number HB 461

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron Albo

3. Committee Appropriations

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, as amended by the House Courts of Justice Committee, 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. Fiscal Impact: Preliminary. See Item 8.

7. Budget amendment necessary: Yes. Item 70.

8. Fiscal implications:

The proposed legislation 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 \$8.00 per day for each person housed in a local 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 bond, to the supervision of a pretrial services agency while he awaits trial. If the magistrate does not release the defendant, a judge

may do so upon his initial appearance in court. Data from the Pre-trial Community Corrections (PTCC) Database, maintained by the Department of Criminal Justice Services, indicate that, in FY 2007, 5,785 defendants were released by a magistrate directly to a pretrial services agency. Another 4,413 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 secure bond, unless the court had determined they were indigent. Therefore, the 5,785 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. Assuming that 25 percent of these defendants would have been able to post a secure bond, that would leave 4,338 defendants remaining in jail until they could appear before a judge. 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:

5,785	Otherwise released by magistrate to pretrial services agency
1,447	Number assumed that would post secure bond (25 percent)
4,338	Remaining in jail pending initial court appearance
3	Days spent in jail
13,014	Additional prisoner days
\$8	Per diem payment
\$104,112	Total additional per diem cost

The additional cost shown above is a conservative estimate and could be significantly higher. A portion of those 4,338 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 could also not post a secure bond, a portion of those more than 4,300 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 \$8.00 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 4,413 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. Data from the PTCC database indicate that such defendants today stay in jail an average of 5 days less than those released to supervision and a secured bond. The table below sets out the projected annual cost of these additional defendants in jail as a result of this legislation:

4,413	Number released to supervision by judge
5	Additional days in jail while securing secure bond
22,065	Additional prisoner days
\$8	Per diem payment
\$176,520	Total additional per diem cost

This 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 supervision, 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 will not be able to post a secure bond and will, 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. It is not feasible to project whether any jails would qualify for additional deputies as a result of this legislation, however.

Finally, the proposed legislation would have an impact on courts. Based on the assumptions outlined above, there would need to be more than 4,300 additional court hearings, as these defendants would have to appear in court, rather than be released by a magistrate following their arrest. Circuit and district court dockets are already crowded and these additional required court appearances will place more pressure on them.

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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