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BILL ANALYSIS

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Senate Bill 151 (Substitute S-1 as enrolled)  
Sponsor: Senator Hansen Clarke  
Committee: Judiciary

Date Completed: 5-21-04

### **RATIONALE**

Under the Code of Criminal Procedure, a person accused of a criminal offense is entitled to bail, unless otherwise provided by law. Bail is set in order to provide a financial incentive for the defendant to return to court for further proceedings and fulfill any other court-ordered conditions. The Code provides that the amount of bail may not be excessive and must be uniform, whether the bail bond is executed by the person for whom bail has been set or by a surety. Typically, bail is granted when the defendant pays to the court a 10% deposit of the bail amount or posts a surety bond in the full amount of the bail. For example, a defendant whose bail is set at \$10,000 may be released upon paying \$1,000 or by securing a surety bond for \$10,000. Surety bond providers typically require the payment of a 10% deposit of the surety amount, so a defendant's out-of-pocket cost to post a \$10,000 surety bond also is \$1,000. If a defendant who is released on bail fails to appear for a future court date, the court retains the 10% bail deposit paid to it or the full amount of a posted surety bond if bail was secured in that manner. Some people believe that defendants should be allowed to post a surety bond in an amount less than full bail, in order to make it easier for a defendant to secure a surety bond to post bail. It has been suggested that this could alleviate jail crowding problems, as well as make it more likely that a court would collect the full amount of a surety bond, rather than a 10% bail deposit, if the defendant failed to appear.

### **CONTENT**

The bill would amend the Code of Criminal Procedure to allow an accused person to post bail by a surety bond in an amount equal to one-fourth of the full bail amount set by the court, if the court fixed a bail

amount and allowed for the posting of a 10% deposit bond. The bond would have to be executed by a court-approved surety.

The bill would delete a requirement that the bail amount be uniform whether the bail bond is executed by the person for whom bail has been set or by a surety.

MCL 765.6

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

The bill would result in a beneficial situation for defendants, courts, and county jails. If a defendant were allowed to post a surety bond in an amount lower than the full bail amount, he or she could more easily secure release on bail. For instance, if the full bail amount were set at \$10,000 with a 10% deposit or a \$2,500 surety bond, a defendant could post bail either by paying \$1,000 to the court, as currently is the case, or by paying only \$250 to a bond provider, who then would post a \$2,500 bond with the court. If more defendants were able to secure release on bail under this proposal, crowding in county jails would be relieved, since fewer defendants would have to be jailed while awaiting trial.

In addition, defendants released on bond apparently are more likely to return to court than are defendants who post bail by paying a 10% deposit. Bail bond providers have a financial incentive to see that their clients appear in court, and they use their own resources to ensure that happens. Reportedly, the failure-to-appear rate for defendants released under a 10% bail

deposit is approximately 40%, while less than 10% of those released under the surety bond system fail to appear in court for further proceedings.

In the event that a defendant does jump bail, the court collects more if he or she had posted a bond than it would collect if the defendant had paid a 10% deposit. If a defendant pays a 10% deposit to the court, and fails to appear, the court retains that deposit. If, however, a defendant who fails to appear had posted a surety bond, the court retains the full amount of that bond. In the example discussed above, the court could retain \$1,000 from a bail absconder who had paid the court 10% of the \$10,000 bail; but if the defendant instead had posted a \$2,500 surety bond under the bill, the court could retain the full \$2,500. Thus, by eliminating the requirement that bail by surety bond be the same amount as cash bail, and allowing a defendant to post a surety bond equal to one-fourth of the full bail amount, the bill could increase the amount courts collect when defendants failed to appear after being released on bail.

**Response:** Courts actually could collect less money from bail absconders under the bill. If a defendant who posted a \$10,000 bond under current law would have to post only a \$2,500 bond under the bill, the court would retain only one-fourth the amount that it would under current law if the defendant failed to appear.

### **Opposing Argument**

Despite the potential benefit to defendants and the possibility of reduced jail populations, courts might not be interested in making it easier for defendants to secure bail. The bill could encourage judges to increase bail amounts by as much as four times current bail amounts in order to ensure that a defendant did not have an easier time securing a bail bond.

**Response:** Courts still would be bound by the Code's prohibition against excessive bail. In addition, since bail absconder rates evidently are lower for those released on bond and since courts may collect on the full amount of a bond, rather than just a 10% deposit, judges would have an incentive to continue current bail-setting practices.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have no fiscal impact on the State, and an indeterminate fiscal impact on local court funding units.

Under the bill, if the judge or magistrate ordered a \$10,000 bail, the defendant still could post a 10% deposit, or a surety bond equal to only one-quarter of the full bail amount, or \$2,500. This could create a number of possibilities. First, if judges maintained the same bail practices, and a defendant who would have posted a \$10,000 bond instead posted a \$2,500 bond, the court would collect only \$2,500 rather than \$10,000 if the defendant failed to reappear. On the other hand, if a defendant who would have paid a 10% deposit instead posted a \$2,500 bond, the court would be able to retain \$2,500 rather than the \$1,000 if the defendant failed to reappear. Whether courts would retain more or less money would depend on the extent to which defendants would post a bond rather than pay a deposit, compared with what they would do under current law. Also, if the number of surety bonds increased, the courts would be able to collect a portion of court costs directly in fewer cases, thereby potentially decreasing court revenue.

The bill also could create a situation in which judges simply increased the bail they set in order to compensate for the proposed change. In the example above, the judge could set bail at \$40,000 instead of \$10,000, in which case the defendant would have to post a \$4,000 deposit or a \$10,000 surety bond. This would increase the amounts defendants would have to post for deposit. If this decreased the number of offenders who are able to post bail, it would potentially increase the number of offenders who are kept in jail and increase local corrections costs.

Alternatively, if judges maintain current bail practices, the bill would enable more defendants to secure release on bail; thereby reducing local jail populations and local corrections costs.

Fiscal Analyst: Bethany Wicksall

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.