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

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

The bill also 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

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.

When a defendant is arraigned, a judge or magistrate sets bail to ensure that the defendant returns and fulfills any other court-ordered conditions. For example, if the court sets bail at \$10,000 or 10%, the defendant may post a \$1,000 deposit or a \$10,000 surety bond. If the defendant fails to reappear or fulfill court conditions, the court retains the \$1,000 or collects the \$10,000 bond from the bonding agency. If the defendant reappears and meets all of the conditions, the court may keep up to 10% of the 10% deposit for court costs if ordered, which in this scenario would equal \$100. The court does not, however, receive any portion of the surety bond if the defendant appears and meets all conditions.

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.

Date Completed: 5-20-04

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.