Senate Bill 151 (as introduced 2-6-03)
Sponsor: Senator Hansen Clarke
Committee: Judiciary

Date Completed: 5-11-04

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-half 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.

Under the Code, except as otherwise provided by law, a person accused of a criminal offense is entitled to bail. 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   Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on the State, but according to the State Court Administrator's Office (SCAO), it could increase costs for local court funding units.

Currently, 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 then 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. This helps to ensure that the court is able to collect a portion of court-ordered costs. 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 could post a 10% deposit, or a surety bond equal to only half of the full bail amount, or $5,000. This could create a number of possibilities. First, if judges maintained the same bail practices, and it increased the number of defendants who post a surety bond, the courts would collect only $5,000 rather than $10,000 if the defendant failed to reappear. 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.

Second, the bill could create a scenario under which judges bifurcated the bail they set in order to maintain the status quo. For example, they could set a $10,000 bail with a 10%

deposit or a $20,000 surety bond. The courts would receive the same revenue under this possibility, but according to the SCAO, current court computer information systems are not capable of tracking two different bail amounts for a single defendant. Local courts likely would face increased costs in order to have these programs updated, but actual cost estimates are not currently available.

Finally, the bill 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 $20,000 instead of $10,000, in which case the defendant would have to post a $2,000 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.

<div align="right">Fiscal Analyst: Bethany Wicksall</div>