



Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 5846 (Substitute H-1 as reported without amendment)
Sponsor: Representative John Stakoe
House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 7-13-04

RATIONALE

In most cases, a criminal defendant may be released on bail or bond pending court proceedings in the case against him or her. When a defendant fails to appear at a scheduled court proceeding, the court clerk must enter the default on the record. Upon the motion of the prosecutor, the court must give notice of the defendant's default to the surety (the person or agency who provided the bond) within seven days. Since the court already is aware of the default in these situations, some people believe that the court should notify the surety without a motion from the prosecutor.

CONTENT

The bill would amend the Code of Criminal Procedure to eliminate a requirement that a prosecutor file a motion before a court notifies a surety of a person's failure to appear.

The Code provides that the court clerk must enter a default on the record if default is made in any recognizance in a court of record (e.g., a defendant who has posted bail, or a person has posted a bond upon an appeal from a conviction fails to appear in court). After that, the court, upon the motion of the Attorney General, prosecuting attorney, or the attorney for the local unit of government, must give each surety immediate notice not to exceed seven days after the date of the failure to appear. The bill would retain the requirement that the court notify each surety, but would delete the requirement that notice be given upon the motion of the Attorney General, prosecuting attorney, or attorney for the local unit.

MCL 765.28

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

There are several reasons why a prosecutor should not be required to make a motion that the court notify the surety of a defendant's default. First, it is unnecessary because the court already is aware of the default since the defendant failed to appear for a scheduled court proceeding. Second, requiring a motion to trigger the notice can cause a court to miss the seven-day deadline to notify the surety because the prosecutor and court must dispose of other motions, as well, and the motion to notify the surety can get caught up in a backlog. Third, any delay in notifying the surety of a defendant's failure to appear could result in a threat to public safety because a fugitive would be at large for a longer time before the surety's bail enforcement agents could locate him or her. Finally, deleting the motion requirement could result in more efficient operation of the courts, the Attorney General's office, and county prosecuting attorneys' offices, which could decrease public costs on both the State and local levels.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill potentially would decrease costs for both State and local government. By eliminating the requirement that the

prosecutor file a motion before the court sends a failure-to-appear notice to the surety, the bill would provide efficiencies and related savings for the Attorney General or local prosecutor without creating any additional costs to the courts.

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.