

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 494
Judiciary

(Delegate Anderson, *et al.*)

Judicial Proceedings

Criminal Procedure - Pretrial Release - Charge by Summons

This bill repeals provisions of law authorizing a District Court commissioner to (1) set bond or commit persons to jail in default of bond and (2) generally perform all functions of committing magistrates as exercised by the justices of the peace prior to July 5, 1971.

Except as otherwise prohibited, a police officer must submit a statement of charges to a District Court commissioner in accordance with the Maryland Rules and serve on the defendant a statement of charges and summons. If the commissioner determines that the charge or charges are supported by probable cause, a defendant must be released if the most serious crime with which the defendant is charged is one of several specified offenses. A person who is arrested and not released pursuant to a citation or summons must be taken before a judge of the District Court or circuit court without unnecessary delay.

The bill takes effect June 1, 2015, and terminates June 30, 2018.

Fiscal Summary

State Effect: General fund expenditures decrease by \$10.7 million in FY 2016 (as shown in **Appendix 1**) assuming that (1) the bill absolves the State of its responsibilities to provide State-furnished counsel at commissioner hearings under the *Richmond II* decision and (2) the current release rate for arrestees is maintained. To the extent that the number and length of pretrial detentions increases, estimated savings may be partially or totally offset by a significant increase in general fund expenditures and additional staff for the Judiciary, Office of the Public Defender (OPD), and the Department of Public Safety and Correctional Services (DPSCS). Future years reflect ongoing savings through FY 2018, when, consistent with the bill's termination date, the State does not continue with the system of detention and release as established in this bill but instead, returns to implementation of the *Richmond II* decision.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	(10,666,100)	(10,382,100)	(10,512,100)	0	0
Net Effect	\$10,666,100	\$10,382,100	\$10,512,100	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The effect of the bill on long-term pretrial detention costs depends on the release rate experienced under the bill’s provisions. Assuming that the bill results in a release rate equivalent to the release rate experienced under the current system and that the summons procedures do not materially affect law enforcement procedures, then the bill could eliminate expenditures incurred as a result of the *Richmond II* decision on local detention facilities, law enforcement, and State’s Attorneys. If the bill’s provisions do not generate a release rate that is at least equivalent to the current pretrial release rate, then the bill could require significant additional expenditures to manage local detention center populations. Local expenditures may also increase to the extent that law enforcement officers appear in court to support affidavits for continued detention.

Small Business Effect: Minimal effect on small business bail bondsmen and surety insurers to the extent that the system of detention and release established under the bill affects the number of individuals released on surety bond. Minimal effect on private attorneys who are able to work for compensation in the Judiciary’s Appointed Attorneys Program.

Analysis

Bill Summary: If the commissioner determines that the charge or charges are supported by probable cause, a defendant must be released if the most serious crime with which the defendant is charged is (1) punishable by imprisonment for 18 months or less; (2) obstructing and hindering; (3) telephone misuse; (4) indecent exposure; (5) malicious destruction of property with a value of at least \$1,000; or (6) possessing or administering a controlled dangerous substance.

A District Court commissioner may *not* issue a summons for a defendant who (1) is charged with nine specified offenses; (2) is on parole or supervised probation; (3) is the subject of an outstanding arrest warrant; (4) was arrested on another occasion within the 72 hours preceding the appearance before the commissioner; (5) has failed to appear in a criminal nontraffic case within the two years preceding the appearance before the commissioner; (6) is charged with violating the provisions of a protective order or peace order, as specified; or (7) is registered as a sex offender.

A defendant may not be charged by summons if a law enforcement officer certifies by affidavit and articulates, under oath, specific facts contending that the defendant (1) is a

flight risk; (2) poses a credible public safety risk; or (3) is a threat to self or others. The law enforcement officer must file the affidavit with the court. The clerk of court must send a copy of each filed affidavit and the corresponding statement of charges to the Maryland Statistical Analysis Center (MSAC), a unit within the Governor's Office of Crime Control and Prevention (GOCCP). By March 1 of each year, beginning in 2016, MSAC must analyze the affidavits and statements of charges during the prior calendar year and provide a summary report to the Governor and the General Assembly on the number of submitted affidavits categorized by jurisdiction, charge type, and race and gender of the defendant.

A defendant who is subject to a criminal charge by summons may instead be charged by citation, as specified, if a detailed statement of probable cause is included with the citation.

Before a defendant who is charged by summons is released from custody, a District Court commissioner must (1) explain the charges against the defendant; (2) advise the defendant of his/her right to counsel and the importance of obtaining counsel; (3) advise the defendant that he/she must appear for trial, as notified; and (4) explain that if the defendant fails to appear for trial, a bench warrant will be issued. The defendant must sign a written acknowledgement of the given advice.

An application for a statement of charges and its confidential supplement must specify that an applicant may request a condition of "no contact" with the alleged victim or the alleged victim's residence or place of employment. When a District Court commissioner charges a defendant by summons and a no contact request is made, the commissioner must include the express conditions of no contact as part of the statement of charges and summons. If the defendant objects to the conditions of no contact, the District Court must schedule a hearing to determine whether to continue, modify, or eliminate the statement of charges and summons.

Current Law:

Initial Appearance of a Criminal Defendant: Within 24 hours after arrest, a criminal defendant is taken before a judicial officer – typically a District Court commissioner – for an initial appearance. At the initial appearance, the defendant is advised of (1) each offense charged; (2) the right to counsel; and (3) the right to a preliminary hearing, if applicable. In some jurisdictions, the defendant is given a District Court trial date at the initial appearance. Otherwise, the defendant is told that notice of the trial date will follow by mail.

If the defendant was arrested without a warrant, the commissioner must determine whether there was probable cause for the arrest. If it is determined that there was no probable cause, the defendant is released on personal recognizance with no other conditions of release. If it is determined that there was probable cause, the commissioner must also determine whether the defendant is eligible for release from custody prior to trial and, if so, under what conditions. A defendant who is denied pretrial release by the commissioner, or one who remains in custody 24 hours after the commissioner has set the conditions of release, is entitled to a bail review hearing before a judge. The primary purpose of the bail review hearing is to determine whether the conditions of release set by the commissioner should be continued, amended, or revoked.

Pretrial Release of a Criminal Defendant: A criminal defendant is entitled to be released pending trial unless a judge ultimately determines that no conditions can be placed on the defendant's release that would reasonably ensure the defendant's appearance at trial and the safety of the alleged victim, another person, and the community. Historically, approximately 50% of people who appear before commissioners are released on personal recognizance. However, if a judicial officer determines that release on personal recognizance alone is not appropriate, or the defendant is by law ineligible for release on recognizance, the defendant may be released prior to trial only by posting bail in an amount set by the judicial officer.

In determining whether a defendant should be released and the conditions of pretrial release, the judicial officer is required to take into account the following information, if available: (1) the nature and circumstances of the offense; (2) the nature of the evidence against the defendant and the potential sentence upon conviction; (3) the defendant's prior record and history with regard to appearing in court as required; (4) the defendant's employment status and history, family ties, financial resources, reputation, character and mental condition, and length of residence in the community and the State; (5) the potential danger of the defendant to himself or herself, the victim, or others; (6) recommendations of the State's Attorney and any agency that conducts a pretrial release investigation; (7) information provided by the defendant or the defendant's counsel; and (8) any other factor bearing on the risk of a willful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

In most cases, pretrial release determinations are made at the defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants, including defendants registered with the sex offender registry maintained by DPSCS and defendants charged with specific offenses (*e.g.*, crimes of violence, violation of a protective order, drug kingpin, *etc.*). Pretrial release of such defendants may be authorized only by a judge, and only on suitable bail, on any other

conditions that will reasonably ensure that the defendant will not flee or pose a danger to others, or on both bail and such other conditions. Please see **Appendix 2 – Defendants Ineligible for Pretrial Release by a District Court Commissioner** – for a more comprehensive list of defendants ineligible for pretrial release by a District Court commissioner.

At the initial appearance, the commissioner has access to several criminal justice databases to review the defendant’s criminal history and to determine whether there are any pending charges, any prior occasions when the defendant failed to appear in court, or any outstanding warrants. The commissioner also relies on information provided in the statement of probable cause or charging document, the defendant’s Record of Arrest and Prosecution (RAP) sheet, and information learned from the defendant.

In some jurisdictions, a pretrial investigation services unit provides verified factual information that becomes available to assist the judge in setting conditions for release at a bail review hearing. The investigation by the pretrial services unit could include a community background check, verification of employment, information provided by the defendant or the defendant’s family, and additional factors concerning the defendant’s criminal history that were not available to the commissioner.

Citations: A police officer must issue a citation for possession of marijuana or any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment or for which the maximum penalty of imprisonment is 90 days or less, except for (1) failure to comply with a peace order or protective order; (2) violation of a condition of pretrial or posttrial release while charged with a sexual crime against a minor; (3) possession of an electronic control device after conviction of a drug felony or a crime of violence; (4) violation of an out-of-state domestic violence order; or (5) abuse or neglect of an animal.

A police officer may charge a defendant by citation only if (1) the officer is satisfied with the defendant’s evidence of identity; (2) the officer reasonably believes that the defendant will comply with the citation; (3) the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety; (4) the defendant is not subject to arrest for another criminal charge arising out of the same incident; and (5) the defendant complies with all lawful orders by the officer. A police officer who has grounds to make a warrantless arrest for an offense that may be charged by citation may (1) issue a citation in lieu of making the arrest or (2) make the arrest and subsequently issue a citation in lieu of continued custody.

Background: In *DeWolfe v. Richmond*, 434 Md. 403(2012), the Maryland Court of Appeals held on January 4, 2012, that under the then-effective version of the Maryland Public Defender Act, no bail determination may be made by a District Court commissioner

concerning an indigent defendant without the presence of counsel, unless representation by counsel is waived (“*Richmond I*”).

The plaintiffs in the case represented a class of indigent criminal defendants who were arrested, detained at the Central Booking and Intake Facility in Baltimore City (CBIF), brought before a commissioner for initial bail hearings, and requested and were denied representation by counsel at the initial bail hearings. The facts were undisputed that the initial appearances of criminal defendants in Baltimore City were not conducted in a courtroom, open to the public, or recorded. The initial appearances occurred at CBIF, in a small room, with the defendant and the commissioner on opposite sides of a plexiglass window talking through a speaker system. Evidence was presented that the commissioner’s initial bail decision often was not disturbed by the District Court judge on bail review.

The *Richmond I* opinion was based on the then-effective wording of the Maryland Public Defender Act, including language that OPD must represent an indigent defendant “in all stages” of a criminal proceeding. The court did not address the plaintiffs’ federal and State constitutional claims of a right to representation. However, the Circuit Court for Baltimore City had previously held, based on *Rothgery v. Gillespie County*, 554 U.S. 191 (2008), that indigent arrestees have a federal and State constitutional right to be appointed counsel at initial appearance.

Activity During 2012 Legislative Session

Richmond I sparked a heated debate during the 2012 session of the General Assembly. There was much concern about how the State would fund the obligation of OPD to begin representing people at the initial appearance phase. It was estimated that the cost to OPD alone (aside from costs that would be incurred by the Judiciary, DPSCS, State’s Attorneys’ offices, law enforcement agencies, and local correctional facilities) would exceed \$27 million annually. On the other hand, serious questions were raised about whether people do possess a constitutional right to legal representation at initial appearance, regardless of cost. A number of bills were introduced to attempt to counteract or mitigate the effect of *Richmond I*.

Ultimately, the General Assembly passed Chapters 504 and 505 of 2012, which (1) amended the Maryland Public Defender Act to specify that OPD is required to provide legal representation to an indigent defendant at a bail hearing before a District Court or circuit court judge, but is not required to represent an indigent criminal defendant at an initial appearance before a District Court commissioner; (2) prohibited a statement made during an initial appearance before a District Court commissioner from being used as evidence against the defendant in a criminal or juvenile proceeding; (3) codified the rule that a defendant who is denied pretrial release by a District Court commissioner or who

remains in custody after a District Court commissioner has determined conditions of release must be presented to a District Court judge immediately if the court is in session or, if the court is not in session, at the next session of the court; (4) required a police officer to charge by citation for specified offenses if certain conditions are met; (5) authorized a District Court commissioner to issue an arrest warrant based on an application for a statement of charges filed by an individual only if specified criteria are met; (6) established the Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender; and (7) required specified entities to develop a format and procedures to record specified citation data and required MSAC within GOCCP to analyze citation data for five years beginning January 1, 2013.

2012-2013 Developments

Subsequently, the Court of Appeals was asked to decide whether there was a federal or State constitutional right to State-furnished counsel for indigent defendants at their initial appearance before a District Court commissioner. On September 25, 2013, the Court of Appeals issued an opinion (434 Md. 444 (2013)) in the *Richmond* case holding that, under the Due Process component of Article 24 of the Maryland Declaration of Rights, an indigent defendant has a right to State-furnished counsel at an initial appearance before a District Court commissioner (“*Richmond II*”). The Court of Appeals issued a temporary stay of implementation of the *Richmond II* decision pending legislative action.

The task force created by Chapters 504 and 505 met several times during 2012 and 2013 and submitted a final report containing 16 recommendations, including elimination of the money bond system; implementation of a statewide pretrial services agency that utilizes risk and need-based supervision, referral, and treatment options in all Maryland counties; and adoption of an objective, validated risk assessment tool for use by pretrial services agents.

2014 Developments

Several bills were introduced during the 2014 session to specifically address the *Richmond II* decision. Proposals considered involved establishing a statewide pretrial release services program, requiring that release decisions be based on risk assessments, limiting the authority of District Court commissioners, altering procedures relating to the initial appearance process and the filing of criminal charges by police officers, expanding the hours of operation of the District Court, establishing a task force on pretrial risk assessment, and amending the State constitution to establish that the Maryland Declaration of Rights may not be construed to require OPD to represent a defendant at an initial appearance before a District Court commissioner. Additional funding for OPD was also a major topic of discussion for the budget committees.

Although no bills specifically addressing the *Richmond II* decision passed, the fiscal 2015 budget restricts \$10,000,000 of the Judiciary’s general fund appropriation to be used only

for the purpose of providing attorneys for required representation at initial appearances before District Court commissioners, consistent with the *Richmond II* decision. Any funds not expended for this purpose must revert to the general fund. The Budget Reconciliation and Financing Act of 2014 (BRFA) specifies that authorization of State funds in the fiscal 2015 State budget for this purpose represents a one-time allocation and provides no authority for additional State expenditures or commitment of funds without separate authorization in the State budget as passed by the General Assembly.

The BRFA also requires that, in implementing the holding of the Court of Appeals in *DeWolfe v. Richmond*, if attorneys are appointed in a county to provide legal representation at an initial appearance before a District Court commissioner in fiscal 2015, the cost of compensating the attorneys beyond the amount restricted for that purpose in the State budget must be billed by the appointing authority to the county in which the representation is provided and must be paid by that county.

On May 27 and 28, 2014:

- the Court of Appeals adopted changes to the Maryland Rules to implement *Richmond II*'s requirement that indigent defendants be provided counsel at initial appearances and lifted the stay of *Richmond II* effective July 1, 2014;
- the Judiciary created the District Court of Maryland Appointed Attorneys Program to provide attorney representation to indigent criminal defendants during initial appearances; and
- the Governor issued an executive order establishing the Governor's Commission to Reform Maryland's Pretrial System to look at best practices from around the country and recommend how an objective-validated risk assessment tool could be used in Maryland to help determine who should be detained and who should be released before trial. The executive order directed the 23-member panel to identify ways to reduce detainment times, assist and advise the State on issues arising from the ongoing implementation on a pilot basis of a risk assessment tool in one or more counties, and develop and issue legislative recommendations.

To be eligible to participate in the District Court of Maryland Appointed Attorneys Program, an attorney must be licensed to practice law in the State of Maryland and be in good standing and not subject to any pending disciplinary proceedings; attend an in-person training session or a webinar and certify that the rules on initial appearances have been reviewed; and agree to compensation of \$50 an hour for services rendered (or receive *pro bono* credit). From July 2014 through December 2014, 73,708 initial appearances were conducted statewide. The Appointed Attorneys Program represented defendants in approximately 34% of those proceedings, while the defendant waived counsel in

approximately 64% of the proceedings. Preliminary determinations of release and private counsel representation accounted for the remaining 2% of initial appearances.

The Judiciary advises that it projects to spend approximately \$8.5 million in fiscal 2015 for payments for attorney representation at initial appearances before a District Court commissioner.

The Governor's Commission to Reform Maryland's Pretrial System met several times during 2014. Three subcommittees were established at the second meeting: (1) the Managing Public Safety through Risk-based Decision Making Subcommittee; (2) the Pretrial System Improvement Subcommittee; and (3) the Individual Rights and Collateral Consequences Subcommittee. The subcommittees worked independently and kept the full task force abreast of their progress. The commission submitted its final report in December 2014.

State Fiscal Effect: In fiscal 2016, the cost to implement the bill is \$95,476, whereas the cost for the default implementation of the *Richmond II* decision using the Appointed Attorneys Program is nearly \$10.8 million, resulting in a net impact of approximately \$10.7 million in reduced general fund expenditures. This estimate assumes that (1) the bill absolves the State of its responsibilities to provide State-furnished counsel at commissioner hearings under the *Richmond II* decision and (2) approximately 51% of arrestees continue to be released following an appearance before a commissioner under the bill (as they are under the current system). Future years assume ongoing savings through fiscal 2018, when the bill terminates and the State must provide State-furnished counsel in accordance with the *Richmond II* decision, as required under the bill and current law.

However, the overall fiscal effect of the bill depends on the bill's impact on the number and length of pretrial detentions and judicial operations for pretrial release determinations. How pretrial detentions and judicial operations are affected is, in turn, dependent on (1) the rate at which individuals are released through the use of summons and citations under the bill compared to the rate at which individuals are released following an initial appearance before a District Court commissioner under current law and (2) the effect on judicial dockets of the bill's requirement that individuals must appear before a judge for pretrial release determinations under specified circumstances compared to current procedures for judicial bail reviews. Should either of these factors be significantly impacted by the bill, the resulting increase in general fund expenditures and additional staff for DPSCS, the Judiciary, and OPD may partially or completely offset the savings mentioned above.

Required Issuance of Summonses to Arrestees Meeting Specified Criteria

The bill requires a police officer to submit a statement of charges to a District Court commissioner, and serve a statement of charges and summons on a defendant. If the District Court commissioner determines that the charge or charges are supported by

probable cause, the commissioner must release the defendant if the most serious charge with which the defendant is charged is contained on a list of offenses specified in the bill, subject to several specified exceptions.

This estimate assumes that individuals eligible for a citation under current statute continue to be issued citations by law enforcement under the bill. The bill also authorizes a defendant eligible for a summons to be charged by citation if a detailed statement of probable cause is included with the citation.

Data is not available on the number of *individuals* who are subject to a summons as a result of the bill's provisions. While the Judiciary does have charging data, its current charging data is organized by *cases*, not individuals. Furthermore, the database system is not capable of subtracting from the number of individuals charged with summons-eligible offenses under the bill (1) the number of individuals who were simultaneously charged with an offense that is not eligible for a summons and (2) the number of individuals who meet any of the several specified exceptions to eligibility for a summons under the bill.

Exhibit 1 contains information provided by the Judiciary (Administrative Office of the Courts) regarding the number of charges in calendar 2012 for some of the offenses eligible for a summons under the bill.

Exhibit 1
Frequency of Charges for Offenses Eligible for Summons under the Bill
Calendar 2012*

Offenses Punishable by Imprisonment for 18 months or Less	Not Available
Obstructing and Hindering (Includes Common Law Charge)	6,190
Telephone Misuse (Criminal Law, § 3-804)	2,190
Indecent Exposure (Criminal Law, § 11-107)	764
Malicious Destruction of Property with a Value of at Least \$1,000 (Criminal Law, § 6-301)	4,815
Possessing or Administering CDS (Criminal Law, § 5-601)	62,203**

*Data based on the number of times the Criminal Justice Information System (CJIS) codes associated with the statute for the specified offense were entered into the database. Data does not represent the number of individuals charged and does not include charges by citation or circuit court charges entered without a CJIS code.

**Approximate total based on most frequently charged offenses for possessing/administering a controlled dangerous substance.

Source: Judiciary (Administrative Office of the Courts)

According to the Judiciary, in calendar 2014, District Court commissioners conducted 145,705 initial appearances and released 74,092 defendants (70,403 on personal recognizance and 3,689 for no probable cause) for a post-initial appearance immediate release rate of approximately 51%. Of the 71,613 defendants who were not released by a commissioner, 64,411 were held on bond. According to the Judiciary, the District Court conducted 66,861 judicial bail reviews during calendar 2014 (53,287 criminal and 13,574 traffic).

Though the release rate under the bill cannot be reliably predicted at this time, given the scope of factors under the bill that disqualify an individual from being issued a summons and the extent of law enforcement discretion to restrict a person from being issued a summons, it is possible that the bill results in a *decrease* in the pretrial release rate following an appearance before a commissioner and an *increase* in the number of defendants who must appear before a judge for a pretrial release determination.

The bill authorizes individuals to be charged by summons and released if the most serious charge with which the defendant is charged meets specified criteria. However, the bill also prohibits an otherwise eligible defendant from being charged by summons by a commissioner and released if (1) the person meets any of a list of specified disqualifying factors, including being on parole or probation or failing to appear in a criminal nontraffic case within the two years preceding the defendant's appearance before a commissioner or (2) a law enforcement officer certifies by affidavit and articulates under oath that the defendant is a flight risk, poses a credible safety risk, or is a threat to self or others.

Individuals who are not charged by a citation/summons must appear before a District Court judge for pretrial release determinations without unnecessary delay. Furthermore, it appears that based on the language of the bill, individuals taken into custody under an arrest warrant or bench warrant or detained for a crime ineligible for a summons/citation have to be seen by a judge. District Court commissioners operate on a 24/7 schedule. The District Court operates on weekdays during standard business hours and currently conducts judicial bail reviews during normal business hours.

DPSCS – The State operates the Central Booking and Intake Facility (CBIF) and the Baltimore City Detention Center (BCDC), both of which are used for pretrial detentions. Defendants held in pretrial detention for more than 30 days are transferred from CBIF to BCDC.

If the bill results in an increase in the number of individuals who must appear before a judge for a pretrial release determination, then *DPSCS* general fund expenditures for pretrial detentions in Baltimore City increase, the magnitude of which depends on the bill's effect on the number and length of pretrial detentions under the bill compared to current practice.

The cost of housing a pretrial offender in Baltimore City is approximately \$26 per day, including medical costs (\$8 per day excluding medical costs). According to information provided by the Maryland Correctional Administrators Association, between January and July 2014, an average of 85.79% of the daily jail population in Baltimore City consisted of pretrial detainees.

Judiciary – Should the bill significantly increase the number of individuals appearing before District Court judges for pretrial release determinations, then the bill may significantly impact the management of District Court dockets. To the extent that additional personnel are needed to accommodate increased caseloads, general fund expenditures for the Judiciary may increase significantly.

For illustrative purposes only, the cost associated with employing one additional District Court judge, a clerk, and a contractual bailiff is \$328,227 in fiscal 2016 (assuming a 30-day start-up delay from the bill's June 1, 2015 effective date), which includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Additional coverage needs may be addressed, or the above costs mitigated, through the use of retired judges or docketing measures. This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State's implementation of the federal Patient Protection and Affordable Care Act.

OPD – OPD currently represents clients at judicial bail review hearings at 41 sites on weekdays. These sites are a combination of courtrooms and detention centers. Under the bill, District Court judges make pretrial release determinations for individuals who are not released pursuant to a summons or citation. If the pretrial release process proposed under the bill does not significantly change judicial dockets, then OPD can address the bill's requirements with existing resources. However, should the bill significantly affect judicial pretrial release/bail review dockets, then OPD may require additional resources, which will largely be dependent on the number of additional bail review locations/dockets added by the Judiciary to implement the bill and the extent to which existing OPD staff can provide coverage in these additional locations given OPD's current heavy caseload.

For illustrative purposes only, the cost associated with employing one additional assistant public defender and one additional intake worker is \$150,266 in fiscal 2016 (assuming a 30-day start-up delay from the bill's June 1, 2015 effective date), which includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. These costs may be mitigated through the use of temporary employees and panel attorneys, depending on the number of hours per week that these individuals are needed.

Governor’s Office of Crime Control and Prevention/ Maryland Statistical Analysis Center – Reporting Requirements

By March 1 of each year, beginning in 2016, MSAC must analyze the affidavits and statements of charges during the prior calendar year and provide a summary report to the Governor and the General Assembly on the number of submitted affidavits categorized by jurisdiction, charge type, and race and gender of the defendant. Given that the bill terminates on June 30, 2018, this means that MSAC must submit reports by March 1, 2016, March 1, 2017, and March 1, 2018.

MSAC advises that given the extent of the data analysis required under the bill and its available resources, it needs to employ two contractual data analysts to assist with data analysis and preparation of the reports. The estimated cost associated with this effort is \$95,476 in fiscal 2016, which assumes a 30-day start-up delay from the bill’s June 1, 2015 effective date, and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The employment of the contractual analysts terminates on March 1, 2018, the due date for the final MSAC report required under the bill.

	<u>FY 2016*</u>	<u>FY 2017</u>	<u>FY 2018**</u>	<u>FY 2019</u>	<u>FY 2020</u>
General Fund Expenditures	\$95,476	\$84,096	\$58,797	\$0	\$0

*Assumes a 30-day start-up delay from the bill’s June 1, 2015 effective date.

**Represents costs through March 1, 2018, the due date for the final MSAC report.

This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

Default Implementation of *Richmond II*/Appointed Attorneys Program and Central Booking Overtime Costs

This estimate assumes that the default implementation of *Richmond II* is the Appointed Attorneys Program, which is the system currently being used to address the Court of Appeals’ ruling. The bill’s provisions eliminate the need for the Appointed Attorneys Program from fiscal 2016 through fiscal 2018. The program resumes operation upon the termination of the bill.

Currently, the Judiciary is absorbing administrative costs associated with this program using Judiciary personnel who have been reassigned to this task. The Judiciary advises that in order to properly administer the program, it requires the following positions: three accounting clerks, one accounting supervisor, one manager, and four clerks/support staff

employees. Though not currently funded, this estimate assumes that, under current law, the Judiciary is no longer able to absorb these functions by redirecting existing staff; thus, this estimate includes those positions as part of the cost for the default implementation of the *Richmond II* decision.

As previously stated, the Judiciary projects to spend \$8.5 million in fiscal 2015 for payments to attorneys for representation of indigent defendants at initial appearances. This estimate assumes that the demand for representation and current waiver rates remain consistent.

The estimated cost associated with the continuation of this effort is \$8,983,986 in fiscal 2016, which assumes a July 1, 2015 implementation date, and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	<u>FY 2016*</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019**</u>	<u>FY 2020**</u>
General Fund Expenditures	(\$8,983,986)	(\$8,670,850)	(\$8,757,559)	\$0	\$0

*Assumes a July 1, 2015 implementation date in the absence of this bill. Represents costs avoided as a result of the bill. Assumes maintenance of current demand for attorney representation and waiver rates.

**There are no savings in fiscal 2019 and 2020 under the bill, because under both the bill and current law, the State (through the Appointed Attorneys Program) must implement *Richmond II*.

In addition, in the absence of the bill, DPSCS incurs overtime costs at CBIF totaling approximately \$1.8 million annually; these costs are not incurred from fiscal 2016 through 2018 under the bill.

Local Expenditures: Assuming that the bill results in a release rate equivalent to the release rate experienced under the current system and that the summons procedures do not materially affect law enforcement procedures, then the bill could eliminate expenditures incurred as a result of the *Richmond II* decision on local detention facilities, law enforcement, and State’s Attorneys.

According to information provided by the Maryland Judiciary and included in the final report of the Governor’s Commission to Reform Maryland’s Pretrial System, local corrections departments and State’s Attorney’s reported \$2.2 million in additional costs incurred during July 1 to November 30, 2014 as a result of implementation of the *Richmond II* decision.

However, as with the potential impact on State expenditures, the bill’s impact on local expenditures depends on the effect of the bill on the number and length of pretrial detentions. Should the bill significantly impact pretrial detentions, local expenditures may increase significantly to house pretrial detainees, employ additional detention staff, and/or

pay overtime costs for existing staff. According to information presented to the legislature, based on a May 2014 estimate of local detention center populations, approximately 65% of the individuals in local detention centers are pretrial detainees.

Pretrial detainees in jurisdictions other than Baltimore City are housed in local detention centers. The State does not pay for pretrial detention time in a local correctional facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Based on information provided to the Maryland Association of Counties, several county wardens have expressed concern over the bill's effect on local pretrial detention populations and the length of time under the bill before an individual subject to on-view/warrantless arrest can see a neutral third-party (a judge under the bill, currently a judge or commissioner) if there is no threat or risk posed.

According to the State's Attorneys' Association, the effect of the bill on prosecutors is unknown at this time.

Additional Comments: Although not designated as a specific program, the proposed fiscal 2016 budget for the Judiciary includes \$10 million for continuation of the Appointed Attorneys Program. However, the allowance does not include a specific restriction on the use of these funds for program purposes.

In *Gerstein v. Pugh*, 420 U.S. 103 (1975), the U.S. Supreme Court held that an individual arrested without a warrant is entitled to a "prompt" determination of probable cause as a condition for any significant pretrial restraint of liberty. In *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991), the court held that "prompt" under the *Gerstein* decision means as soon as is reasonably feasible, but in no event later than 48 hours after arrest.

It appears that under the language of the bill, a person who is in custody after a warrantless arrest for a crime that is not eligible for a citation or summons is not seen by a District Court commissioner and must be seen by a judge. Given the schedule of the District Court, a person who is arrested on Friday after the court is closed will not be able to see a judge until Monday morning at the earliest, which is beyond the 48-hour standard noted above.

Additional Information

Prior Introductions: HB 1186 of 2014 passed the House with amendments and received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: None.

Information Source(s): Anne Arundel, Dorchester, Garrett, and Montgomery counties; Governor's Office of Crime Control and Prevention; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Department of State Police, Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Governor's Commission to Reform Maryland's Pretrial System, Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2015
md/kdm Revised - House Third Reader/Clarification - March 31, 2015

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**Appendix 1 – Net Impact of the Bill
Fiscal 2016-2020**

	<u>FY 2016¹</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020</u>
MSAC/GOCCP - Data Analysts for Report ²	95,476	84,096	58,797		
Subtotal – Cost of Implementing House Bill 494³	\$95,476	\$84,096	\$58,797		
Appointed Attorneys – <i>Richmond II</i> ⁴	(\$8,983,986)	(\$8,670,850)	(\$8,757,559)	\$0	\$0
DPSCS – <i>Richmond II</i> at Central Booking ⁵	(1,777,600)	(1,795,376)	(1,813,330)	0	0
Subtotal – Cost Associated with Default Implementation of <i>Richmond II</i>	(\$10,761,586)	(\$10,466,226)	(\$10,570,889)	\$0	\$0
<i>Net Impact</i>⁶	(\$10,666,110)	(\$10,382,130)	(\$10,512,092)	\$0	\$0

¹Assumes 30-day start up delay from the bill's June 1, 2015 effective date and implementation of bill through June 30, 2018.

²Costs to hire two contractual data analysts from July 1, 2015, to March 1, 2018 (the due date for the final MSAC/GOCCP report required under House Bill 494).

³Does not include potential significant increase in expenditures for DPSCS, Judiciary, and OPD if the bill significantly impacts pretrial detentions and judicial pretrial release/bail review dockets.

⁴Only reflects the costs associated with *Richmond II* in fiscal 2016 through fiscal 2018. Assumes maintenance of current waiver rate/demand for appointed attorneys. Includes costs for positions to administer the Appointed Attorneys Program currently being absorbed by the Judiciary. There are no costs in fiscal 2019 and 2020 under the bill because under both current law and the bill, the State (Judiciary) must implement *Richmond II* at a cost of \$9.26 million in fiscal 2019 and \$9.37 million in fiscal 2020.

⁵Overtime Costs at Central Booking – Only reflects the costs associated with *Richmond II* in fiscal 2016 through 2018. There are no costs in fiscal 2019 and 2020 because under both current law and the bill, DPSCS must implement *Richmond II* at Central Booking at a cost of approximately \$1.83 million in fiscal 2019 and \$1.85 million in fiscal 2019.

⁶Net impact for fiscal 2016 through 2018 equals subtotal for the bill minus subtotal for *Richmond II* default.

Source: Department of Legislative Services

Appendix 2 – Defendants Ineligible for Pretrial Release by a District Court Commissioner

Please refer to Criminal Procedure Article, § 5-202 for complete information on defendants who are not eligible for pretrial release by a District Court commissioner.

In General

In most cases, pretrial release determinations are made at the defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants, including defendants who are registered sex offenders and defendants charged:

- with a crime punishable by life imprisonment;
- with escaping from a correctional facility or any other place of confinement in the State;
- as a drug kingpin;
- with a crime of violence (as defined under Criminal Law Article, § 14-101), if the defendant has been previously convicted of a crime of violence under the laws of this State or has been convicted under the laws of another state of a crime classified as a crime of violence in Maryland; and
- with violating the provisions of a domestic violence protective order (temporary or otherwise) ordering the defendant to refrain from abusing or threatening to abuse a person eligible for relief (applies to orders issued by a court in Maryland, another state, or by a Native American tribe).

Repeat Offender – Defendant Charged with a Specified Crime Who Has a Prior Conviction for a Specified Crime

A District Court commissioner may not authorize the pretrial release of a defendant charged with one of the following crimes ***if the defendant has previously been convicted of one of the following crimes:***

- wearing, carrying, or transporting a handgun;
- use of a handgun or an antique firearm in commission of a crime;
- violating prohibitions relating to assault weapons under § 4-303 of the Criminal Law Article;
- use of a machine gun in a crime of violence;
- use of a machine gun for an aggressive purpose;

- possessing, using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking crime under § 5-621 of the Criminal Law Article;
- possession of a regulated firearm under § 5-133 of the Public Safety Article;
- transporting a regulated firearm for unlawful sale or trafficking; or
- possession of a rifle or shotgun by a person with a mental disorder.

Repeat Offender – Defendant Charged with Committing a Specified Crime While Released on Bail or Personal Recognizance on a Prior Charge of Committing a Specified Crime

A District Court commissioner also may not authorize the pretrial release of a defendant charged with committing one of the following crimes ***while the defendant was released on bail or personal recognizance for a pending prior charge of committing one of the following crimes:***

- aiding, counseling, or procuring arson in the first degree;
- arson in the second degree or attempting, aiding, counseling, or procuring arson in the second degree;
- burglary in the first, second, or third degree;
- child abuse or sexual abuse of a minor;
- manufacture or possession of a destructive device;
- various offenses related to controlled dangerous substances (CDS), except for possessing or administering CDS;
- manslaughter by vehicle or vessel; and
- a crime of violence.