

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 973
(Senator Frosh)
Judicial Proceedings

Criminal Procedure - Pretrial Confinement and Release

This bill establishes a Pretrial Release Services Program in the Department of Public Safety and Correctional Services (DPSCS). By May 1, 2015, DPSCS must (1) establish a Pretrial Release Services Program within DPSCS that offers alternatives to pretrial detention in each county and (2) establish by regulation the terms and conditions of the program, including the adoption of a validated risk assessment tool. The bill (1) establishes requirements for the program; (2) authorizes administrative pretrial release of specified persons; (3) provides for reimbursement agreements with specified county pretrial services programs; (4) alters the duties of District Court commissioners to reflect the duties of the pretrial services program; and (5) amends the Public Defender Act to reflect the bill's changes. Beginning in fiscal 2016 and in each fiscal year thereafter, the Governor must include in the annual budget bill an appropriation to DPSCS to cover the operating costs of the program and the personnel costs of carrying out the duties authorized and required under the bill.

The bill also establishes a permanent Pretrial Services Commission within DPSCS and requires the commission to appoint an executive director, who is a special appointment in the State Personnel Management System.

The bill generally takes effect July 1, 2014; specified provisions take effect May 1, 2015.

Fiscal Summary

State Effect: General fund expenditures increase by \$1.2 million in FY 2015 and decrease by \$11.8 million in FY 2016 reflecting increased general fund expenditures from implementation of a statewide pretrial release services program as well as decreased general fund expenditures from the elimination of commissioner positions and the Office of the Public Defender's (OPD) responsibilities under the *Richmond II* decision, as

shown in **Appendix 1**. Future years reflect ongoing savings. Any change in long-term general fund expenditures for pretrial detentions in Baltimore City depends on the pretrial release rate experienced under the validated risk assessment tool and the effect of law enforcement affidavits. **This bill establishes a mandated appropriation beginning in FY 2016.**

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,185,100	(11,779,000)	(11,987,400)	(12,198,400)	(12,412,000)
Net Effect	(\$1,185,100)	\$11,779,000	\$11,987,400	\$12,198,400	\$12,412,000

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

Local Effect: Local expenditures decrease significantly in counties that receive reimbursements from the State for their pretrial services programs. The effect of the bill on long-term local pretrial detention costs depends on the release rate experienced under the validated risk assessment tool. State's Attorneys' offices that choose to appear at initial appearances may experience a reduction in expenditures compared to staffing initial appearances under the *Richmond II* decision. Local expenditures may increase for law enforcement officers to attend judicial initial appearance hearings. Law enforcement officers currently do not attend judicial bail review hearings. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Meaningful effect on small business bail bondsmen and surety insurers if the creation of a statewide pretrial release services program reduces the number of individuals released on surety bond.

Analysis

Bill Summary:

Pretrial Release Services Program Requirements

The program must:

- screen, at all times, all arrested persons not released on a citation;
- gather and compile local and national criminal justice information for each arrested person;
- prepare a written report for the court of all information gathered for each arrested person not administratively released, with or without a recommendation regarding pretrial release;
- supervise everyone as ordered by the court;

- coordinate for other agencies and organizations in the State that serve or are authorized to serve as custodians of persons released pretrial under supervision and advise the court on the eligibility, availability, and capacity of these organizations and agencies; and
- inform the court of the failure of arrested persons to comply with pretrial release conditions or the arrest of persons released under supervision and recommend modifications of release conditions, as appropriate.

Release of Arrested Persons

The program may order the administrative pretrial release of an arrestee determined eligible for pretrial release after use of a validated risk assessment tool adopted by the Secretary of Public Safety and Correctional Services. The program may not authorize the administrative pretrial release of an arrested person charged with a crime for which pretrial release by a commissioner is prohibited under existing statute. The program may not authorize the pretrial release of a person if a law enforcement officer certifies by affidavit and articulates under oath specific facts to support the contention that the defendant (1) is a flight risk; (2) poses a credible public safety risk; or (3) is a threat to self or to others. If a law enforcement officer submits an affidavit, the law enforcement officer must appear at a pretrial release hearing for the defendant held before a judge on the next day that the court is in session.

A defendant who is not administratively released by the program 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. The District Court is required to operate in session at least six days a week for the purpose of making a release determination for a person not administratively released by the Pretrial Release Services Program. A court or clerk's office that is in session or open on a weekend or holiday for the purpose of conducting an initial appearance or a bail review of an arrested person is not in session or open for any other purpose or function.

County Pretrial Services Programs

If a county is operating a pretrial services program on or before October 1, 2014, the county may continue to operate the program. However, a county program (1) must be administered in a manner that is consistent with the State's program; (2) is considered part of the State's program for purposes of information sharing; and (3) must use the State program's validated risk assessment tool. A county employee assigned to a pretrial program and who carries out duties as provided for the program is included within the definition of "State personnel" for the purposes of the Maryland Tort Claims Act (MTCA).

Reimbursement of County Programs

The Secretary of Public Safety and Correctional Services, in consultation with the Pretrial Services Commission, must enter into agreements with individual counties to reimburse a county as provided in the State budget for the costs of operating the county's pretrial services program, including the administration of the required validated risk assessment tool and pretrial supervision.

The Secretary of Public Safety and Correctional Services must allocate the total amount of funding provided in the State budget for county reimbursements in a manner that provides a proportionate amount of funding to each county that enters into a reimbursement agreement with the Secretary.

A reimbursement agreement must (1) provide for payments to a county for the costs of administering the county's pretrial services program at funding rates agreed to by the Secretary and the county, including salaries, overhead, general liability coverage, workers' compensation, and employee benefits and (2) utilize the same budget categories as appropriations in the State budget for the established statewide program.

Information Sharing System

The Secretary of Public Safety and Correctional Services must establish and maintain an electronic information sharing system that contains information on each inmate who is or has been confined in a State or local correctional facility. The Secretary must adopt regulations to implement the system, including regulations specifying (1) the information to be collected; (2) procedures to protect the confidentiality of information contained in the system; (3) the permissible use of information compiled by the system; and (4) standards for maintaining security and reliability of information collected in the system.

District Court Commissioner Duties

As of May 1, 2015, the bill (1) repeals provisions authorizing a District Court commissioner to advise arrested persons of their constitutional rights; make probable cause determinations for charging documents, warrants, or criminal summonses; set bond; or commit individuals arrested to pretrial detention and (2) makes corresponding changes to other related statutory provisions.

The bill retains provisions requiring commissioners to be on duty at all times for the convenience of the public and law enforcement to obtain charging documents, warrants, or criminal summons. The bill retains provisions authorizing an individual to file an application for a statement of charges with a commissioner.

Representation by the Office of the Public Defender

The bill amends the Public Defender Act to require OPD to represent indigent individuals at an initial appearance before a District Court or circuit court judge.

Pretrial Services Commission

The bill establishes a permanent Pretrial Services Commission. The commission must (1) advise the Secretary regarding the administration of the Pretrial Release Services Program; (2) consult with specified entities; and (3) adopt regulations. By November 1, 2014, the commission must recommend to the Secretary of Public Safety and Correctional Services a pretrial risk assessment tool for adoption by regulation for use in making an administrative pretrial release determination. Commission members may not receive compensation but are entitled to reimbursement for expenses. The commission must report annually to the Governor and the General Assembly on its activities and must provide a copy of the report to specified entities. The commission must employ a staff necessary to carry out the bill.

Validated Risk Assessment Tool

Subject to the approval of the Court of Appeals Standing Committee on Rules of Practice and Procedure, the Secretary of Public Safety and Correctional Services must adopt by regulation a pretrial risk assessment tool based on the recommendation of the commission. Any change to the validated risk assessment tool adopted by the Secretary must also be approved by the Court of Appeals Standing Committee on Rules of Practice before the change is implemented.

Commissioner Positions

The Chief Judge of the District Court must determine the number of commissioners necessary to perform the functions of District Court commissioners after the bill's repeal of the authority of a District Court commissioner to perform duties regarding the initial appearance of an arrested person. If the Secretary of Public Safety and Correctional Services determines that there is a need to fill positions within the State Pretrial Release Services Program established under the bill, the Secretary must give priority to District Court commissioners whose positions were eliminated as a result of the bill's provisions.

Pilot Program

Before May 1, 2015, the Secretary of Public Safety and Correctional Services, on the adoption of a validated risk assessment tool recommended by the Pretrial Services

Commission, may establish a Pretrial Release Services Pilot Program in one or more counties in the State without establishing the program in every county of the State. Before the Secretary may establish a Pretrial Release Services Pilot program in a county, the governing body of the county must approve the establishment of the pilot program by the adoption of a resolution. A county that has not been selected by the Secretary for the establishment of a Pretrial Release Services Pilot Program may establish, by resolution, an independent pilot program utilizing the validated risk assessment tool adopted by the Secretary at the expense of the county that establishes the program.

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** 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.

Background: In *DeWolfe v. Richmond*, No. 34 (September Term 2011), 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 *Richmond I* opinion was based on the 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 an initial appearance.

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 an initial appearance phase. On the other hand, serious questions were raised about whether people do possess a constitutional right to legal representation at an initial appearance, regardless of cost. This debate prompted broader questions about and scrutiny of Maryland’s criminal justice system, including the District Court commissioner and pretrial release systems. A number of bills were introduced to attempt to counteract or mitigate the effect of *Richmond I*. The House Judiciary and Senate Judicial Proceedings committees spent a considerable amount of time exploring these issues and dialoguing with stakeholders including OPD, the Judiciary, law enforcement agencies, State’s Attorneys, and civil liberties advocates.

Ultimately, the General Assembly passed Chapters 504 and 505 of 2012, which were signed into law by the Governor on May 22, 2012. Among other things, these Acts amend the 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.

On September 25, 2013, the Court of Appeals issued an opinion 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 has issued a temporary stay of implementation of the *Richmond II* decision until June 5, 2014, and granted writ of certiorari limited to the following questions presented:

- Did the circuit court err in entering an injunction directing officials of the District Court to conduct initial appearances in a manner inconsistent with the existing rules promulgated by this court?

- Did the circuit court err in granting an application for supplemental relief based on a prior declaratory judgment without first issuing a show cause order, as required by the statute governing such applications?
- Did the circuit court err in ordering officials of the District Court to appoint counsel for all arrestees at initial appearances and prohibiting those court officials from conducting initial appearances for arrestees who were not provided with counsel?

In an order issued on March 11, 2014, extending the stay until June 5, 2014, the court stated that it (1) will not revisit its decision in *Richmond II*; (2) retains jurisdiction to revise the circuit court's injunction; and (3) will hear oral arguments on May 6, 2014, concerning potential actions regarding the circuit court's injunction based on existing circumstances, including any legislative action.

According to a survey conducted for the Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by OPD, 11 of the State's 24 jurisdictions have a pretrial services program, as indicated in **Exhibit 1**. However, the programs vary in their policies and duties. **Exhibit 2** includes information on local and State-operated programs under the bill by District Court Judicial District.

Exhibit 1 **Pretrial Services Units in Local Jurisdictions**

<u>Jurisdictions with Pretrial Services Units</u>	<u>Jurisdictions Without Pretrial Services Units</u>
Anne Arundel County	Allegany County
Baltimore City	Caroline County
Baltimore County	Cecil County
Calvert County	Charles County
Carroll County	Garrett County
Dorchester County	Howard County
Frederick County	Kent County
Harford County	Queen Anne's County
Montgomery County	St. Mary's County
Prince George's County	Somerset County
Wicomico County	Talbot County
	Washington County
	Worcester County

Source: Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender – Survey by Pretrial Justice Institute

Exhibit 2
Pretrial Services Programs by District Court Judicial Districts

<u>Judicial District</u>	<u>Jurisdiction</u>	<u>Local or State-operated Program</u>
District 1	Baltimore City	State runs Baltimore City Pretrial Services Program (status quo)
District 2	Dorchester, Somerset, Wicomico, and Worcester counties	Dorchester and Wicomico counties have programs State will run programs in Somerset and Worcester counties
District 3	Caroline, Cecil, Kent, Queen Anne's, and Talbot counties	State will run all programs
District 4	Calvert, Charles and St. Mary's counties	Calvert County has its own program State will run programs in Charles and St. Mary's counties
District 5	Prince George's County	Prince George's County has its own program
District 6	Montgomery County	Montgomery County has its own program
District 7	Anne Arundel County	Anne Arundel County has its own program
District 8	Baltimore County	Baltimore County has its own program
District 9	Harford County	Harford County has its own program
District 10	Carroll and Howard counties	Carroll County has its own program State will run Howard County's program
District 11	Frederick and Washington counties	Frederick County has its own program State will run Washington County's program
District 12	Allegany and Garrett counties	State will run programs in Allegany and Garrett counties

Source: Department of Legislative Services

State Expenditures: General fund expenditures increase by \$1,185,108 in fiscal 2015 and decrease by \$11,778,970 in fiscal 2016, reflecting required additional general fund expenditures from implementation of a statewide pretrial release services program as well as decreased general fund expenditures from the elimination of commissioner positions and OPD's responsibilities under the *Richmond II* decision, as shown in Appendix 1.

In spite of the apparent cost savings, the Department of Legislative Services (DLS) advises that implementation of the pretrial services program contemplated in this bill requires significant additional resources.

I. Costs Associated with Implementation of SB 973

Establishment of a Statewide Pretrial Release Services Program within DPSCS

The bill requires the implementation of a 24/7 statewide pretrial services program within DPSCS by May 1, 2015. Based on statewide caseloads of 153,305 initial appearances in fiscal 2013 (including initial appearances in the 11 jurisdictions that currently have pretrial services programs), implementing a statewide pretrial services program requires at least the following 373 employees: 120 assessment employees; 201 supervision agents; 17 managers; 24 administrative assistants; 10 assessment supervisors; and 1 fiscal clerk. The costs associated with this function are as noted below.

	<u>FY 2015*</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
General Fund Expenditures	\$7,606,515	\$26,608,215	\$27,807,534	\$29,064,174	\$30,380,963

*Represents May 1 through June 30, 2015

General fund expenditures for implementation of a statewide pretrial services program results in at least the following expenditures, including salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	<u>FY 2015*</u>	<u>FY 2016</u>
New Positions	373	0
Salaries and Fringe Benefits	\$4,115,240	\$24,938,342
Information Technology Costs	2,586,227	1,162,914
Other Operating Expenses	<u>905,048</u>	<u>506,959</u>
Total DPSCS Expenditures	\$7,606,515	\$26,608,215

*Represents May 1 through June 30, 2015

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses

This estimate does not include the potential need for additional administrative personnel or the need for significant operations-related items, such as vehicles, travel, and monitoring equipment.

This estimate contains calculations based on overall State caseloads (including caseloads within the 11 jurisdictions that have existing programs), as opposed to solely caseloads within the 13 jurisdictions that receive State-operated programs under the bill.

The estimate makes the following assumptions:

- a computerized, validated, risk assessment tool will be adopted and implemented by May 1, 2015;
- the adopted risk assessment tool generates an average caseload of 2,000 assessments per assessment employee (based on computerized assessments taking one-third of the time of an interview-based assessment as applied to current pretrial assessment employee caseloads);
- counties with fewer than 2,000 initial appearances per year (based on fiscal 2013 data) or counties requiring fewer than 3 assessment employees (based on assumed caseloads) need at least 3 assessment employees to maintain adequate coverage;
- an assessment employee is able to remotely conduct a pretrial assessment of an arrestee in custody in another jurisdiction if an assessment employee is not on duty at the time;
- approximately 8% of the individuals represented by the 153,305 initial appearances in fiscal 2013 are released on supervision;
- each supervision agent conducts 61.52 supervisions at any given time (based on Baltimore City Pretrial Services Program caseloads);
- there is a 12:1 ratio of assessment employees to assessment supervisors (based on current ratio in the Baltimore City Pretrial Services Program);
- the program is organized in part based on District Court districts, and as such, requires 17 managers (assuming managers exist in the 11 counties that currently have programs and 6 additional managers are needed based on District Court districts in which none or some of the counties currently have pretrial services programs – see Exhibit 2); and
- the bill's provisions regarding law enforcement affidavits do not materially affect the pretrial release rate (compared to the current rate of approximately 50% of arrestees released on personal recognizance).

The bill requires the commission to recommend a “pretrial risk assessment tool” to the Secretary of Public Safety and Correctional Services by November 1, 2014. The Secretary must establish a statewide pretrial services program with the advice of the commission by May 1, 2015. The established program must utilize a “*validated* risk assessment tool”; however, the validated risk assessment tool may not be adopted by the Secretary for use by the program without approval by the Court of Appeals Standing Committee on Rules of Practice and Procedure.

Based on available information, the only computerized risk assessment tool in use in the country is the Public Safety Assessment Court tool developed by the Laura and John Arnold Foundation (Arnold Foundation tool), which is being used statewide in Kentucky and was the subject of extensive discussion by the task force. Kentucky passed legislation in 2011 with broad criminal justice reforms, including requiring judges to consider the results of an assessment tool when determining a defendant’s flight risk and potential for engaging in criminal conduct while on release. Kentucky’s statewide use of the tool (following a pilot program) began in July 2013, nearly two years after enactment of the legislation.

The personnel needs of the program depend on the risk assessment tool that is eventually approved for use by the pretrial services program. The estimate above is based on the assumption that assessment employees will have caseloads similar to those anticipated with use of the Arnold Foundation tool. However, if the approved tool requires assessment employees to spend more time per assessment or if the Arnold Foundation tool, for whatever reason, does not produce assessment caseloads similar to the anticipated/anticipated assessment caseloads, additional assessment personnel may be needed, as discussed below.

Should the adopted tool generate an assessment rate that is not comparable to the rate expected under the Arnold Foundation tool (used in the assumptions above), significant additional expenditures will be incurred for additional assessment employees and supervisors. Based on fiscal 2013 initial appearance data and Baltimore City pretrial services assessment caseloads, implementation of an interview-based assessment tool could require 129 assessment workers and 11 assessment supervisors in addition to the employees listed above, at an additional cost of \$1,423,664 in fiscal 2015 and \$8,632,953 in fiscal 2016 for salaries, wages, and fringe benefits. These potential costs have not been factored into the estimate above.

As previously stated, this estimate makes certain assumptions regarding the number of employees needed to operate a statewide pretrial services program in accordance with the bill. There are 19 jurisdictions that, based on initial appearance volume and assumed assessment caseload, require fewer than three assessment employees. This assessment assumes that each of these jurisdictions requires at least three assessment employees to

maintain adequate coverage under the bill, assuming that coverage among jurisdictions can be coordinated so that an assessment employee in another jurisdiction may remotely conduct an assessment of an arrestee located in a jurisdiction where an assessment worker is not physically present. However, if the requirements of the bill, including the filing of an affidavit by a law enforcement officer regarding an arrestee's flight risk and public safety risk, are interpreted to require these jurisdictions to have an assessment employee physically present for 24 hours a day/7 days a week, then an additional 22.8 assessment employees and 1.9 assessment supervisors may need to be employed, with an estimated cost of \$251,155 in fiscal 2015 and \$1,522,978 in fiscal 2016 for salaries, wages, and fringe benefits. This potential cost has not been included in the estimate above.

As previously stated, this fiscal estimate is based on statewide caseloads. The State funds and operates Baltimore City's pretrial services program. The fiscal 2015 budget includes \$6,158,601 in general funds for the program. Applying this appropriation amount to the bill's May 1, 2015 implementation date results in expenditures of \$1,026,434 in fiscal 2015 and \$6,404,945 in fiscal 2016 that would no longer be incurred.

Opening the District Court for Six Days per Week

The bill requires the District Court to conduct initial appearances or bail reviews six days per week. This requires the District Court to be open for one additional day per week. Based on information provided by the Judiciary, opening a total of 28 courtrooms (4 courtrooms in Baltimore City, 2 courtrooms in Prince George's County, and 1 courtroom in each of the other jurisdictions) results in an annual cost of approximately \$8.0 million, which accounts for staff, building costs, etc. The Judiciary advises that courtrooms must be open to the public because initial appearances before judges are public hearings that need to be on the record.

	<u>FY 2015*</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
General Fund Expenditures	\$1,325,038	\$8,268,237	\$8,598,967	\$8,942,925	\$9,300,642

*Represents May 1 through June 30, 2015

In addition to these costs, the Judiciary advises that use of video conferencing to allow multiple sites to conference into one courtroom needs to be implemented, at a cost of \$1.9 million in fiscal 2015 and \$80,000 each year thereafter for maintenance. The fiscal 2015 budget includes \$1.9 million for the Judiciary to implement Court Smart technology (discussed below); under the bill, it is assumed that these funds would be used for video conferencing instead.

Additional Judges, Bailiffs, and Clerks

The Judiciary advises that assuming that 50% of arrestees are administratively released by the pretrial services program, *based on workload standards only*, the Judiciary needs to employ an additional three judges, bailiffs, and clerks. However, the addition of one weekend work day presents coverage issues, especially in jurisdictions with limited judges. Eight jurisdictions have one District Court judge; seven of these jurisdictions have one circuit court judge. Thus, the District Court may need up to six additional judgeships, six clerks, and six bailiffs to accommodate the bill's requirements. The cost associated with this effort is \$410,725 in fiscal 2015 (accounting for a May 1, 2015 start date), and \$1,946,805 in fiscal 2016, which includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. Additional significant costs for equipment and renovation may also be incurred.

Additional coverage needs may be addressed, or the above costs mitigated, through the use of retired judges, docketing measures, or the video conferencing mentioned above.

	<u>FY 2015*</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
General Fund Expenditures	\$410,725	\$1,946,805	\$1,978,215	\$2,011,170	\$2,045,744

*Represents May 1 through June 30, 2015

Elimination of District Court Commissioner Positions

The bill requires the Chief Judge of the District Court to determine the number of commissioner positions that can be eliminated as a result of the bill's repeal of a commissioner's authority to (1) advise arrested persons of their constitutional rights; (2) set bond or commit persons to jail in default of bond; (3) release them on personal recognizance if circumstances warrant; (4) conduct investigations and inquiries into the circumstances of any matter presented to the commissioner to determine probable cause for the issuance of a charging document, warrant, or criminal summons; and (5) perform, in general, all the functions of committing magistrates as exercised by the justices of the peace prior to July 5, 1971.

According to the Judiciary, 50% of a commissioner's activity is spent conducting initial appearance hearings. In fiscal 2012, commissioners conducted 172,895 initial appearance hearings and 168,804 activities relating to their other responsibilities, such as statement of charges and interim orders.

There are currently 271 full-time equivalent District Court commissioner positions in the Judiciary (235 regular positions and 36 contractual positions), with an associated cost of

\$25 million for salaries and fringe benefits and \$1 million in rent, supplies, and miscellaneous items. Assuming that 50% of commissioner positions can be eliminated as a result of the bill, general fund expenditures decrease by \$2,158,000 in fiscal 2015, which reflects a reduction in positions as of May 1, 2015. Future year decreases reflect inflation and turnover. However, any actual decrease in general fund expenditures as a result of a reduction in commissioner positions depends on the final decision of the Chief Judge of the District Court.

While the bill requires the Chief Judge of the District Court to determine the number of commissioner positions required after consideration of the bill's transfer of responsibilities from the District Court commissioners to a statewide pretrial services program, it does not require the Chief Judge to reduce the number of commissioner positions.

	<u>FY 2015*</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
General Fund Expenditures	(\$2,158,000)	(\$13,045,000)	(\$13,229,650)	(\$13,416,905)	(\$13,606,803)

*Represents May 1 through June 30, 2015

OPD – Representation at Initial Appearances Before District Court Judges Six Days per Week

OPD currently represents clients at bail review hearings at 41 sites on weekdays. These sites are a combination of courtrooms and detention centers. Under the bill, OPD needs to represent clients for initial appearances before a District Court judge during one weekend day. It is unclear at this time how many of the 41 existing sites will be operational on the weekend; however, assuming that OPD needs to be present on one weekend day for at least 28 dockets statewide (corresponding to the number of opened courtrooms), OPD needs 28 attorneys, 28 intake employees, 3 attorney supervisors, and 1 information technology employee to comply with the bill's requirements. This personnel need represents 1 attorney and 1 intake employee for each of the 28 courtrooms open on one day of the weekend and employees (attorney supervisors and an information technology specialist) to provide infrastructure during the weekend that is not currently present in OPD operations.

The estimated cost associated with this effort is \$983,973 in fiscal 2015, which reflects the May 1, 2015 implementation date, and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

This estimate does not include expenditures associated with travel, software licenses, or facilities charges.

As is the case with existing OPD bail review attorneys, assistant public defenders employed as a result of the bill will also be used to address current OPD nonbail review caseloads, which have been a chronic problem.

	<u>FY 2015*</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
General Fund Expenditures	\$983,973	\$4,633,385	\$4,848,956	\$5,074,815	\$5,311,462

*Represents May 1 through June 30, 2015

Employment of an Executive Director of the Pretrial Services Commission

The bill establishes a permanent Pretrial Services Commission and requires the employment of an executive director, who is a special appointment of the State Personnel Management System. Based on the salaries of executive directors within DPSCS, and accounting for the potential responsibilities of the executive director, employment of an executive director results in \$117,548 in general fund expenditures in fiscal 2015, which accounts for a July 1, 2014 effective date, and includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

	<u>FY 2015*</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
General Fund Expenditures	\$117,548	\$116,210	\$121,533	\$127,102	\$132,931

*Represents July 1, 2014 through June 30, 2015

State Insurance Trust Fund (SITF) – MTCA

The bill includes county pretrial employees administering a program in accordance with the bill's provisions under MTCA. Under the common law, judicial officers are immune from liability for their decisions. The bill's substitution of an administrative employee's decision for a decision currently made by a judicial officer (District Court commissioner) may result in additional special fund expenditures for SITF, which is administered by the Treasurer's Office, for payments of MTCA claims. General fund expenditures increase for DPSCS for higher SITF premiums/assessments if SITF incurs losses from MTCA payments as a result of the bill. The extent to which MTCA claims will be filed as a result of the bill cannot be reliably estimated at this time.

II. Costs Avoidance of Full, Default Implementation of the *Richmond II* Decision

Assuming that the bill absolves the State of its responsibility to provide legal representation to indigent individuals at initial appearances under the *Richmond II*

decision, the bill results in cost avoidance associated with full, default implementation of the *Richmond II* decision (public defenders at District Court commissioner initial appearance hearings).

OPD – Representation at Initial Appearances Before District Court Commissioners

Under the *Richmond II* decision, the State is required to provide legal representation to indigent defendants at initial appearances before District Court commissioners. Based on the number of commissioner work hours in fiscal 2011, compliance with this requirement necessitates hiring 237 assistant public defenders, 20 attorney supervisors, 50 support staff, 10 support supervisors, 3 information technology employees, 2 fiscal clerks, and 1 human resources specialist. The cost of this requirement is \$5,929,757 in fiscal 2015, which accounts for a May 1, 2015 implementation date, and \$33,000,197 in fiscal 2016, and includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. This estimate does not include expenditures associated with travel, software licenses, or facilities charges.

	<u>FY 2015*</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
General Fund Expenditures	(\$5,929,757)	(\$33,000,197)	(\$34,514,059)	(\$36,098,846)	(\$37,757,937)

*Represents May 1 through June 30, 2015

Court Smart Technology

General fund expenditures decrease by \$1.9 million in fiscal 2015 and \$80,000 each year thereafter due to elimination of the Judiciary's need to procure "Court Smart" technology to digitally record all District Court commissioner proceedings in the State. Included in the Judiciary's fiscal 2015 budget is \$1.9 million in general funds for the procurement of this new technology, which the Judiciary is purchasing in response to the *Richmond II* decision. The bill's repeal of a District Court commissioner's authority to conduct initial appearance hearings eliminates the need for this technology. In addition to the fiscal 2015 procurement cost, maintenance costs for the technology are estimated at \$80,000 annually in future years.

	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
General Fund Expenditures	(\$1,900,000)	(\$80,000)	(\$80,000)	(\$80,000)	(\$80,000)

DPSCS – Central Booking Costs Associated with *Richmond II* Decision

The bill’s elimination of District Court commissioner initial appearance hearings and substitution of an administrative pretrial release decision for a pretrial release decision by a judicial officer is assumed, for purposes of this estimate, to absolve the State of its responsibility to provide legal representation to indigent individuals at initial appearance hearings before a District Court commissioner. According to DPSCS, in order to accommodate OPD consultations with clients at the Central Booking Facility in Baltimore City, DPSCS plans to separate arrested persons who wish to be represented by OPD, contain them in one section of the facility, and guard them until their commissioner appearances. The cost associated with this requirement is estimated at \$867,000 per year, which is not included in the fiscal 2015 budget for DPSCS. Assuming that a pretrial services program is in operation as of May 1, 2015, the bill results in general fund cost avoidance of \$144,500 in fiscal 2015 and \$901,680 in fiscal 2016.

	<u>FY 2015*</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
General Fund Expenditures	(\$144,500)	(\$901,680)	(\$937,747)	(\$975,257)	(\$1,014,267)

*Represents May 1 through June 30, 2015

Local Expenditures: Local expenditures decrease significantly in counties that receive reimbursements from the State for their pretrial services programs. The effect of the bill on long-term local pretrial detention costs depends on the release rate experienced under the validated risk assessment tool.

This estimate assumes that the bill’s provisions regarding law enforcement affidavits do not materially affect the pretrial release rate currently experienced under the commissioner system, in which approximately 50% of arrestees are released on personal recognizance. However, should law enforcement officers file affidavits in a significant number of cases to the extent that the pretrial release rate is affected and a significant portion of arrestees are detained until they receive judicial initial appearances, local expenditures for pretrial detentions could increase significantly. The same effect would apply to general fund expenditures for pretrial detentions in Baltimore City.

The extent to which law enforcement officers file affidavits under the bill will likely depend on (1) the officer’s assessment of an arrestee’s flight/public safety risk; (2) the officer’s assessment of the likely decision by pretrial services regarding an arrestee compared to the officer’s opinion on what the arrestee’s pretrial release decision ought to be; and (3) the ability, willingness, or utility of the officer to appear in court for an arrestee’s initial appearance before a judge.

Additional Comments: 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 holding of the Court of Appeals in *DeWolfe v. Richmond*, 434 Md. 403 (2012) and 434 Md. 444 (2013). Any funds not expended for this purpose must revert to the general fund. The Budget Reconciliation and Financing Act (BRFA) of 2014 (SB 172) 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 statutory authority or separate authorization in the State budget as passed by the General Assembly.

The BRFA of 2014 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.

Additional Information

Prior Introductions: None.

Cross File: HB 1232 (Delegate Dumais, *et al.*) - Judiciary.

Information Source(s): Department of Public Safety and Correctional Services, Governor's Office of Crime Control and Prevention, Department of State Police, Office of the Public Defender, Judiciary (Administrative Office of the Courts), Maryland Association of Counties, Montgomery County, *State Legislature Magazine* – National Conference of State Legislatures, Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2014

mm/kdm Revised - Updated Information - February 24, 2014

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Appendix 1 – Net Impact of SB 973 Fiscal 2015-2019

	<u>FY 2015*</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
DPSCS – Statewide Pretrial Release	\$7,606,515	\$26,608,215	\$27,807,534	\$29,064,174	\$30,380,963
Judiciary – Video Conferencing	1,900,000	80,000	80,000	80,000	80,000
Opening District Court for One Additional Day	1,325,038	8,268,237	8,598,967	8,942,925	9,300,642
OPD – Initial Appearances Before Judges Six Days/Week	983,973	4,633,385	4,848,956	5,074,815	5,311,462
Additional District Court Judges – Six Days/Week	410,725	1,946,805	1,978,215	2,011,170	2,045,744
Executive Director – Pretrial Services Commission**	117,548	116,210	121,533	127,102	132,931
Current Cost of Baltimore City Pretrial Services***	(1,026,434)	(6,404,945)	(6,661,143)	(6,927,589)	(7,204,692)
Elimination of Commissioner Positions	(2,158,000)	(13,045,000)	(13,229,650)	(13,416,905)	(13,606,803)
Subtotal – Cost of Implementing SB 973	\$9,159,365	\$22,202,907	\$23,544,412	\$24,955,692	\$26,440,247
OPD – Cost Avoidance – Richmond II	(\$5,929,757)	(\$33,000,197)	(\$34,514,059)	(\$36,098,846)	(\$37,757,937)
Judiciary – Cost Avoidance – Court Smart Technology	(1,900,000)	(80,000)	(80,000)	(80,000)	(80,000)
DPSCS – Cost Avoidance – Richmond II at Central Booking	(144,500)	(901,680)	(937,747)	(975,257)	(1,014,267)
Subtotal – Cost Avoidance – Default Implementation of Richmond II	(\$7,974,257)	(\$33,981,877)	(\$35,531,806)	(\$37,154,103)	(\$38,852,204)
<i>Net Impact (Subtotal for SB 973 + Subtotal Cost Avoidance Richmond II Default)</i>	<i>\$1,185,108</i>	<i>(\$11,778,970)</i>	<i>(\$11,987,394)</i>	<i>(\$12,198,411)</i>	<i>(\$12,411,957)</i>

*Represents expenditures for May 1, 2015 - June 30, 2015 (except for commission director, Court Smart, and video conferencing)

**FY 2015 represents expenditures for July 1, 2014 through June 30, 2015

***Based on FY 2015 budget

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 pistols 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.