

Testimony in Support (FAV) of HB 21

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I offer this testimony to give just one example of the enormous power wielded by district court commissioners and the ways in which that power can do serious harm without accountability or redress. For that reason, I am strongly in favor of this bill, which would put some guardrails around the commissioners' authority to better protect the due process rights of all Marylanders.

A district court commissioner came into my life via a Tweet. My husband used his Twitter account to call another man a "misogynist shithead" after that man grossly insulted a friend. Was that mature? Probably not. Productive? Also probably no. (Justified? Absolutely.) But it definitely wasn't illegal. And yet that other man went straight to a district court commissioner anyway and, on the basis of that one tweet, asserted that he had been harassed and threatened.

That commissioner had my husband charged with criminal harassment. He was served notice of the charge by the court itself. He was given a case number, complete with the designation "State of Maryland v. [his name]." He was directed to immediately hire an attorney. He was threatened with arrest if he failed to appear on a specified date. His name was added to publicly available online databases as a defendant in a criminal case being brought by the state of Maryland, which led to us being contacted by numerous law firms and journalists. And all of that before a single individual with any relevant legal expertise or credentials had ever set eyes on the allegations.

It didn't take long for it to become clear that the charges were bogus and that the State's Attorney had no intention of actually pursuing the case. The whole thing was dropped. But that doesn't mean that no damage was done. At the direction of the state, we had already paid a (non-refundable) retainer for a criminal defense attorney. We had spent many hours of time trying to figure out what was happening. My husband's name and reputation were dragged through the mud. You can't get those things back even after the accusation is discredited.

Any judge or qualified attorney who evaluated the initial harassment complaint would have seen at a glance that there was no substance or validity to it. They would have recognized it for what it was, which was a transparent attempt to use the criminal justice system to pursue a petty personal grievance. But the district commissioner who evaluated the charges is not a judge or a qualified attorney. Under the current system, a commissioner doesn't need to be a bar-admitted lawyer or have a law degree or even hold *any* specific legal expertise or credential. And yet this person is making judicial charging decisions that have life changing consequences.

I had no idea it was even possible to be charged by the state with a criminal offense without the approval of a single judge, lawyer or police officer along the way. Any private citizen with a personal axe to grind can accomplish this via a commissioner who lacks the legal qualifications

to assess claims of illegality. That is far too casual of an approach to the basic rights of the accused, which are supposed to be a foundational element of our judicial system. The state owes its residents every effort to protect those rights, and that starts with ensuring that the people involved in this process are appropriately qualified to make these weighty decisions.

We were lucky. We had the resources to hire an attorney without jeopardizing our ability to pay for rent, food, or other essentials. My husband is self-employed, and so the stigma of being a criminal defendant didn't cost him his job and livelihood. We don't have children and so there was no impact on custody arrangements. But there are many other Marylanders who would not be so lucky in a similar situation. One hasty, poorly justified charging decision could ruin their lives, and I would like to see the system changed in order to protect *those* people.

I appreciate that this bill will add some safeguards to the system by eliminating the commissioners' ability to issue arrest warrants not requested by the police or State's Attorney. That doesn't address every condition that allowed my husband's situation to unfold as it did, but I think it's a good step that could help to prevent serious errors and abuses. Also, importantly, it does not curtail a citizen's right to report alleged crimes to a commissioner, which may be easier or safer than calling the police when a potential crime has been committed. It simply adds some qualified review before an arrest warrant is issued in response to that report.

In a perfect world, I would also like the Assembly to address the effects of commissioners issuing criminal charges based on citizen complaints without the concurrence of a judge or State's Attorney. Arrest warrants are the worst case scenario for the falsely accused, but as laid out above, there are plenty of irreparable harms that come simply from being charged. It's not too much to ask that the state have an appropriately qualified individual validate that charges are justified before unleashing those harms. Again, I am not asking to deprive citizens of the ability to file charges with the commissioners, but I am asking that we enforce some minimum standards around the merit of citizen complaints before those charges are acted on by the state.

What happened to my husband could happen to anyone because it is far too easy for any random person to weaponize the state's justice system against you. In our case, it was done by an unhappy online troll. In others, it could be an abusive spouse who is furious at a partner for leaving; someone trying to influence a custody dispute; or someone seeking retaliation for any kind of petty, unjustified or even bias-motivated disagreement. All it takes is filling out a form, and you, too, can get the state to help intimidate and inflict damage on someone you don't like.

The authorities of the district court commissioners are simply too broad and too far reaching to be invested in a position with so few educational and experiential requirements and no other institutional checks on their decision making. A limiting of those authorities by imposing some additional review within the system is both responsible and in the interests of justice.