

Department of Legislative Services
2014 Session

FISCAL AND POLICY NOTE

House Bill 500 (Chair, Judiciary Committee)(By Request - Maryland
Judicial Conference)

Judiciary

Judgeships - District Court

This bill creates 12 additional District Court judgeships. Of the judgeships, 5 are in District 1 (Baltimore City), 3 are in District 5 (Prince George’s County), 1 is in District 6 (Montgomery County), 1 is in District 7 (Anne Arundel County) and 2 are in District 8 (Baltimore County). The bill is contingent on passage of HB 537 of 2014, which makes numerous changes to the pretrial release process, including requiring that a person arrested must be presented before a District Court judge within 24 hours after arrest for an initial appearance if the court is in session.

Subject to the bill’s contingency, the bill takes effect July 1, 2014.

Fiscal Summary

State Effect: General fund expenditures increase by \$3.6 million in FY 2015 for additional judges and associated staff, if the contingency is met. Future year expenditures reflect annualization and inflation. Revenues are not affected.

(in dollars)	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	3,553,800	3,893,600	3,956,400	4,022,300	4,091,500
Net Effect	(\$3,553,800)	(\$3,893,600)	(\$3,956,400)	(\$4,022,300)	(\$4,091,500)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: There are 115 District Court judges in the State. For purposes of the operation and administration of the District Court, the State is divided into 12 districts. **Exhibit 1** illustrates the jurisdiction and current number of judges in the District Court locations impacted by the bill's provisions.

Exhibit 1 District Court Judgeships

<u>Jurisdiction</u>	<u>Number of Judges</u>
Anne Arundel County	9
Baltimore City	28
Baltimore County	13
Montgomery County	12
Prince George's County	16

Source: Department of Legislative Services

Background: The bill and HB 537 represent part of the Maryland Judicial Conference's plan to address issues that have been raised in recent years regarding the right to counsel at initial appearances before District Court commissioners and bail review hearings. 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 the Office of the Public Defender (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 March 7, 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?

State Expenditures: General fund expenditures increase by \$3,553,813 in fiscal 2015, which assumes a 90-day start-up delay. This estimate reflects the cost of creating 12 additional District Court judgeships, the associated positions of 1 courtroom clerk and 1 contractual bailiff with each judgeship (a total of 36 positions), and includes salaries and fringe benefits. The estimate also reflects the cost of additional equipment and

facility modifications within the District Courthouses that are required to accommodate the new judges. **Exhibit 2** shows the estimated costs in further detail.

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses. Pursuant to Senate Joint Resolution 3 of 2012, judicial salaries have been set in statute through fiscal 2016. Because future increases in judicial salaries depend on any recommendations proposed by the Judicial Compensation Commission and subsequent action by the General Assembly, judicial salaries for fiscal 2017 through 2019 as shown in the exhibits do not account for additional increases.

Exhibit 2
Estimated Increase in General Fund Expenditures – District Courts

	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>
Salaries					
Judges	\$1,228,500	\$1,695,996	\$1,695,996	\$1,695,996	\$1,695,996
Courtroom Clerks	288,297	392,999	410,291	428,344	447,191
Bailiffs	325,701	415,471	433,752	452,837	472,762
<i>Subtotal</i>	<i>\$1,842,498</i>	<i>\$2,504,466</i>	<i>\$2,540,039</i>	<i>\$2,577,177</i>	<i>\$2,615,949</i>
Fringe Benefits	\$983,715	\$1,368,056	\$1,395,094	\$1,423,650	\$1,453,812
Salaries and Benefits	\$2,826,213	\$3,872,522	\$3,935,133	\$4,000,827	\$4,069,761
Operating Costs	\$213,600	\$21,089	\$21,300	\$21,512	\$21,728
Facility Modifications	\$514,000	0	0	0	0
Total Expenditures	\$3,553,813	\$3,893,611	\$3,956,433	\$4,022,339	\$4,091,489

Source: Department of Legislative Services

Additional Comments: For more information regarding how the additional judgeships created by this bill will be used in the pretrial release process, see the fiscal and policy note for HB 537.

Additional Information

Prior Introductions: None.

Cross File:None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

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mm/kdm

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