

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 1134

(Senator DeGrange)

Judicial Proceedings

**Criminal Procedure - Initial Appearance Before a District Court Commissioner -
Costs for Appointed Legal Representation**

This bill establishes that if attorneys are appointed in a county to provide legal representation at an initial appearance before a District Court commissioner, and the total amount of the costs of compensating the attorneys plus the associated costs of administering the program are greater than the amount restricted for this purpose in the State budget, then the overage must be charged by the appointing authority to the county in which the representation is provided and must be paid by that county.

The bill takes effect July 1, 2016.

Fiscal Summary

State Effect: Assuming that funding levels and expenditures for State-funded legal representation at initial appearances remain consistent with funding and expenditures in FY 2015 and 2016, the bill does not materially affect State finances.

Local Effect: Assuming that funding levels and expenditures for State-funded legal representation at initial appearances remain consistent with funding and expenditures in FY 2015 and 2016, the bill does not materially affect local finances. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Current Law/Background: In *DeWolfe v. Richmond*, 434 Md. 403 (2012) (“*Richmond I*”) and 434 Md. 444 (2013) (“*Richmond II*”), the Maryland Court of Appeals held that (1) under 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*) and (2) pursuant to 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*).

Although several bills were introduced during the 2014 and 2015 legislative sessions to address the court’s decision in *Richmond II*, none passed. However, the Judiciary created the District Court of Maryland Appointed Attorneys Program (Appointed Attorneys Program) to provide attorney representation to indigent criminal defendants during initial appearances. The fiscal 2015 budget restricted \$10 million 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 were required to revert to the general fund. The Budget Reconciliation and Financing Act (BRFA) of 2014 specified 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 of 2014 also specified that costs for attorneys appointed to implement the holding beyond the amount expressly provided in the State budget are to be billed to and paid by the county in which the representation is provided. The *2014 Joint Chairmen’s Report* expressed the intent of the General Assembly that any State funds disbursed to counties to provide attorneys for required representation at initial appearances before District Court commissioners be done so proportionately on the basis of the calendar 2013 distribution of initial appearances within each county.

The fiscal 2016 budget and the 2015 BRFA contain similar provisions. In fiscal 2015, the Judiciary spent approximately \$8.1 million on hourly wages and travel reimbursements for the Appointed Attorneys Program. Accordingly, approximately \$1.9 million reverted to the general fund in fiscal 2015. The Judiciary projects that it will spend \$8.8 million on the program in fiscal 2016.

Fiscal 2016 funding for the program is allocated based on the calendar 2014 distribution of cases by county. However, this allocation is only considered if total expenditures for the program exceed the \$10 million restricted amount. If the total expenditures for the program stay under \$10 million and a county exceeds its allocation, unspent allocations for other counties will be used.

As in previous years, the fiscal 2017 budget bill (Senate Bill 190), as passed by the Senate, restricts \$10 million of the general fund appropriation for the District Court for the purpose of providing attorneys for required representation at initial appearances before District Court commissioners consistent with the *Richmond* decisions. Any funds not expended for this purpose must revert to the general fund. Senate Bill 190 as passed by the Senate also contains language that, contingent on the passage of Senate Bill 1134 (this bill), any State funds for this representation must be distributed on the basis of the calendar 2015 distribution of initial appearances within each county. If the allotment for a specific county is expended before the end of the fiscal year, then any additional costs must be addressed first by reallocating any unspent amounts remaining from other county allotments at the end of the fiscal year, with any final unresolved amounts to be paid by that county. The final budget bill must be enacted by both houses.

In fiscal 2015, District Court commissioners conducted 146,180 initial appearances. Defendants waived their right to counsel in 95,143 of those initial appearances, for a statewide waiver rate of 65.1%. Appointed attorneys represented defendants in 47,909 initial appearances.

State Expenditures: Assuming that future funding levels and expenditures for State-funded legal representation at initial appearances remain consistent with funding and expenditures during fiscal 2015 and 2016, the bill does not materially affect State finances.

However, to the extent that State funding in future years is less than current funding levels and/or program expenditures increase beyond State funding levels, future general fund expenditures decrease, perhaps significantly.

Local Expenditures: Assuming that future funding levels and expenditures for State-funded legal representation at initial appearances remain consistent with funding and expenditures during fiscal 2015 and 2016, the bill does not materially affect local finances.

However, to the extent that State funding in future years is less than current funding levels and/or program expenditures increase beyond State funding levels, future local expenditures increase, perhaps significantly.

The Maryland Association of Counties advises that the bill has a fiscal and operational impact on counties because counties do not have any control over the Appointed Attorneys Program and the bill does not specify a threshold for expenditures beyond which counties are responsible for costs to administer the program. Thus, should future funding levels in the State budget be less than current amounts, county expenditures increase despite the fact that counties have yet to pay any expenditures for the program since its inception.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Charles, Frederick, and Montgomery counties; Maryland Association of Counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Legislative Services

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min/kdm

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