



BILL NO.: House Bill 261

TITLE: Criminal Procedure – Office of the Public Defender - Representation

POSITION: **SUPPORT**

DATE: January 31, 2012

COMMITTEE: Judiciary

CONTACT: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **SUPPORTS** House Bill 261. The bill would statutorily specify that the Office of the Public Defender (OPD) is not required to provide representation to an indigent individual during custody, interrogation, or for an initial appearance in District Court or circuit court. Representation is required for bail review.

On January 4, the Maryland Court of Appeals in *DeWolfe v. Richmond* held that OPD is required to provide indigent representation at Commissioner bail hearings and judicial bail reviews and gave a deadline of February 3 to comply (later extended to February 16). This ruling upset longstanding practice and would place a significant burden on local law enforcement and corrections, State’s Attorneys, as well as OPD.

As the Committee heard during its briefing on January 26, county governments will incur significant costs complying with the *DeWolfe* case. The State’s Attorneys, who are funded by the counties, indicated that compliance with *DeWolfe* will cost them \$83 million just in attorney costs. OPD noted that in the long term, it would need to hire 260 new attorneys to meet the new requirements.

Additionally, local law enforcement and corrections departments will have to provide secure office space for OPD and the State’s Attorneys, hire additional employees to provide security, and redesign existing or construct new bail hearing facilities. According to the bill’s fiscal note, there were 176,523 initial hearings in 2011. If the time each bail hearing takes increases because of the presence of attorneys, a backlog in detainees could result.

MACo recognizes that if the Court ultimately holds the right to representation before a District Court Commissioner is constitutionally based, as opposed to statutorily based, then compliance will have to occur. However, absent an explicit ruling by the Court and given the significant cost and logistical challenges to both the State and county governments, MACo urges that a reasonable legislative “fix” be attempted.

HB 261 would continue what until recently has been a longstanding practice with respect to appearances before District Court Commissioners and would save the State and county governments hundreds of millions of dollars in new costs at a time when neither can afford it. Accordingly, MACo recommends the Committee issue a **FAVORABLE** report on HB 261.