



House Bill 494

Criminal Procedure – Pretrial Release – Charge by Summons

MACo Position: **OPPOSE**

Date: April 1, 2015

To: Judicial Proceedings Committee

From: Natasha Mehu

The Maryland Association of Counties (MACo) **OPPOSES** HB 494. This broad-based bill proposed reforms to Maryland’s pretrial system that are intended to reduce the burdens on the pretrial system and increase efficiencies through the increased use of citations and charge by summons, however provisions of the bill undermine potential benefits and may actually force longer stays in local jails for many arrests.

In recent years, Maryland’s pretrial system has been the focal point of reform efforts. Most notably, the Maryland Court of Appeals ruling that there is a right to legal representation at the initial appearance before a District Court Commissioner and a one-time \$10 million earmark in the Judiciary’s FY 15 budget to cover the costs of hiring appointed attorneys to provide this representation.

These recently implemented measures impose significant challenges and costs on county governments – local jails are seeing substantial backups in pretrial processing, and are absorbing substantial new costs for staff overtime driven by this new system. Furthermore, the temporary nature of recent changes leaves the future of Maryland’s pretrial system to be determined. While counties support the efficient use of already limited resources to maximize the State’s administration of justice and public safety, they are concerned with these uncertain and looming developments.

HB 494 changes the pretrial system framework by:

- Repealing provisions of law authorizing a District Court Commissioner to set bond or commit persons to jail in default of bond;
- Giving discretion to a police officer, with certain exceptions, to issue a charge by summons or citation for certain defendants;
- Requiring a defendant charged with certain low-level crimes that indicate the defendant does not pose a risk to themselves or others to be released on personal recognizance; and
- Requiring a person who is arrested and not released pursuant to a citation or charge by summons to be taken before a district court judge without unnecessary delay.

The changes were intended to increase efficiency and cost-effectiveness by:

- Absolving the State of its responsibility to provide state-furnished counsel at commissioner hearings under the *Richmond II* decision and the associated costs with the representation;
- Reducing the number of individuals held pretrial through the increased use of charge by summons and citations; and
- Reducing the time individuals are held in the pretrial system by requiring an individual not released to see a judge within 48 hours and by having the court open an additional day per week for such hearings.

HB 494 offers a commendable framework to address pretrial issues. However, there are a number of difficulties with implementing the changes proposed in the bill and many of the potential benefits are assumed. **Much of the impact on local detention centers is dependent upon whether the bill's provisions generate a release rate that exceeds the current rate. But parts of the bill may instead slow down and backlog the process increasing local pretrial expenditures and system woes.**

The bill has been amended to remove provisions that require a person who is arrested and not released pursuant to a citation or charge by summons to be taken before a district court judge no later than 48 hours after arrest and the bill no longer requires the district court to operate six days per week to make release determinations for arrested persons.

Removal of both Commissioners and Judges from a rapid response to determine bail/release eligibility would mean many after-hours arrestees could be detained much longer in local jails.

There will be no timely decisions without the District Court commissioners' authority to commit individuals to jail or release on bond or personal recognizance at an initial appearance. And without provisions requiring courts to be open 6 days a week for initial appearances, arrestees must wait for a judge. Since the bill no longer requires detainees see a judge within 48 hours, more and more arrestees (many of whom may be released once reviewed) will be waiting overnight or longer to see a judge.

This means that if someone is arrested on a Friday and is not eligible for a criminal summons, they can't be released until the judge sees them on Monday or later depending on the docket. Currently, within 24 hours of an arrest an individual must be brought before a District Court Commissioner for an initial appearance and the commissioner may have the individual released or detained as the situation warrants.

MACo supports the effort of policy-makers to take steps to resolve issues of inefficiency within the pretrial system. But care must be taken to rectify certain issues before implementing broad change. The move toward creating more summons/citation offenses could help with pretrial population management, but isn't enough to overcome the major problems posed by the procedural parts of the bill described above. For these reasons, MACo urges an **UNFAVORABLE** on HB 494.