MARYLAND Association of COUNTIES

Senate Bill 973

Criminal Procedure - Pretrial Confinement and Release

MACo Position: **SUPPORT WITH AMENDMENTS**

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To: Judicial Proceedings Committee

From: Natasha Mehu or Michael Sanderson

The Maryland Association of Counties **SUPPORTS** SB 973, **WITH AMENDMENTS**. This broad-based bill proposes a practical reform to Maryland's administration of pre-trial risk assessment, driven by the decision of the recent *Richmond v. DeWolfe* case mandating legal representation during bail hearings. County governments and their funded agencies are an important part of any resolution on this matter, and wish to express a series of principles to help guide the work that lies ahead on these important issues.

MACo has taken a comparable position of Support with Amendments on Senate Bill 920, a bill seeking to address the same issues, and submits this statement to cover both bills.

<u>The Approach: Initial Risk Assessment</u>

SB 973 advances the concept of a Division of Pretrial Confinement and Release, as a new state entity replacing many functions currently performed by District Court Commissioners. The essence of this approach is to offer a statistical-based assessment at an early stage following an arrest, where risk factors may be considered with an eye toward initial release for lower-risk defendants.

With the *Richmond* decision raising both the costs and impracticalities of a full service bail review process at all hours of every day, this revised structure merits consideration.

<u>State Responsibility, With Option to Provide Locally</u>

The pre-arraignment risk assessment is a State responsibility. Counties have a direct stake in this process working efficiently, to minimize needless stays in local detention centers and delays in case processing. In some cases, counties may seek to operate and manage these functions locally – SB 973 is open to this local flexibility, though the mechanism to do so likely requires revision.

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It is important to recognize that despite the term "pre-trial" being used in both cases, the functions envisioned under the new Pretrial Division are not comparable to current services offered by local correctional centers. Some counties, especially those with central booking facilities and their own pre-trial services, may have the physical space and staff structure to incorporate these new early risks assessment (albeit with new substantial staff costs), but this is not a matter of counties seeking support for current county functions.

Funding Must Remain Secure and Adequate

For counties to elect to offer these early assessment services locally, the State incentive must be both adequate to cover their reasonable costs, and must be secure enough to convince local decision-makers that the decision is sensible. Both of these goals must be addressed in amendments to SB 973 or any bill that moves forward with this hybrid structure.

On adequacy, MACo suggests that the best model is for the State to commit via statute to a reimbursement of actual costs. Counties could work with the appropriate State actor to submit and explain their costs of providing the services comparable to those undertaken by the State pretrial division, and would be compensated by State funds for doing so. This budgeting-by-reimbursement model has worked in other functional areas. A formula-driven approach, mandated in statute, could also be workable, but will likely overlook specific jurisdictional differences and leave many costs uncompensated.

On security, MACo would urge the Committee to include statute directing the Governor to include certain prescribed funding into each annual budget. Statute may bind the actions of the General Assembly, but it may oblige the Executive to provide these funds in clearly delineated amounts or formulas. This model is the only means to offer security to counties that the State funding will be provided each year, rather than an annual funding battle for fully discretionary appropriations.

With reasonable components to address both adequacy and security, the State maximizes the participation of county systems, which likely can better address the justice and administrative needs of those jurisdictions. This partnership is worth defending.

Any New System Should Not Increase Jail Populations

All stakeholders engaged in the process agree that the reforms to the pretrial processes should not yield an increase in jail populations. This policy objective requires several components of legislation to avoid a failure in this regard. Notably:

> A defendant who is not released through the early assessment must be brought to a District Court judge within 24 hours, a 48 hour delay is not reasonable.

> The State-provided assessment functions must provide 7 day, 24 hour service– with appropriate staffing levels and redundancies to ensure this.

A major risk of not carefully anticipating and addressing the needs of this system would be an unwieldy or understaffed s\State agency, where caseloads are not attended efficiently. Such a resolution would not only frustrate the goals of swift early screening, but also would lead to greater burdens for short-term stays in correctional facilities. Most counties simply lack the space and staff to adequately respond to a major failing in this regard.

Pretrial Release Commission

The last, uncodified, section of SB 973 establishes the Pretrial Release Commission. This multi-member body is charged with developing the risk assessment tool and overseeing processes to ensure that policy goals of these early assessments are being faithfully upheld. Counties feel this Commission serves a worthy purpose – but should be more than a transitional body.

Pretrial services are currently managed by local correctional facilities, and that is the source of most of Maryland's expertise. Inviting only one member of the Maryland Correctional Administrator's Association denies participation from the breadth of different management structures and procedures being used locally in various counties – MACo suggests that a much wider presence from local correctional administrators would serve the body well.

Further, the short-term nature of the proposed Commission (sunsetting in 13 months in SB 973) likely overlooks the ongoing oversight and collaboration that will be needed as these services evolve. Making the Commission a permanent standing body would better serve these employees and processes.

Conclusion

MACo hopes that the statements and principles above can help guide the Committee in deliberating this important issue. We further attach ourselves to the more substantive and numerous amendments that will be forthcoming from the Maryland Correctional Administrators' Association – whose insights into pretrial processes are absolutely essential.

MACo hopes that county governments, local corrections officials, and state's attorneys will remain deeply involved in the ongoing legislative work on this issue. While we do not believe that SB 973 (or any particular bill) currently represents the full answer to this vexing issue, we are optimistic that a collaborative effort can yield a workable outcome. We urge that SB 973 be amended to reflect the principles stated herein, and would **SUPPORT** such an amended bill.