



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

August 3, 2016

The Honorable Brian E. Frosh
Attorney General of Maryland
200 St. Paul Place
Baltimore, MD 21202

Dear Mr. Attorney General,

It is with great concern regarding Maryland's system of pretrial detention that we write to request a formal opinion on the following:

I. Whether the United States Constitution, the Maryland Declaration of Rights, and/or other applicable federal and state law and regulations require that a judicial officer conduct an individualized inquiry regarding a criminal defendant's financial resources prior to ordering money bail or other financial condition of pretrial release.

II. Whether the United States Constitution, the Maryland Declaration of Rights, and/or other applicable federal and state law and regulations require that a judicial officer avoid ordering money bail, or other financial condition of pretrial release, clearly exceeding a criminal defendant's ability to pay.

Answering these questions and providing clear guidance regarding judicial officers' duties at the pretrial stage would be a tremendous service to the bar, the judiciary, and the general public. All Marylanders, including its three branches of government, support a criminal justice system that is equal and fair to all, regardless of birth, poverty or wealth, race or ethnicity, or relationships. Yet, it appears that the systemic practice in our courts is misaligned with these ideals and the rule of law.

A long line of Supreme Court precedent, beginning with *Stack v. Boyle*, 342 U.S. 1 (1951), along with a long-since reformed federal pretrial system, demonstrate we are not alone in believing that pretrial detention of individuals *solely* because they are poor and cannot afford money bail violates the Equal Protection Clause of the Fourteenth Amendment. To avoid this constitutional

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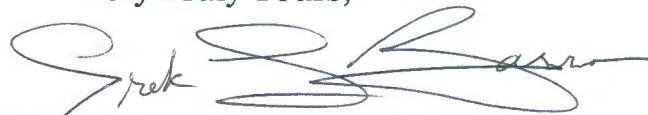
infirmity, a judicial officer *must* inquire, of his or her own accord if necessary, into a defendant's financial resources before ordering money bail or other financial conditions of pretrial release. Less than a year ago, in *Varden v. City of Clanton*, a federal district court, in overturning a fixed bail system, declared that "the use of a secured bail schedule to detain a person after arrest, without an individualized hearing regarding the person's indigence and the need for bail or alternatives to bail, violates the Due Process Clause of the Fourteenth Amendment." The same principle requires an individualized hearing and determination of financial resources and indigence before a judicial officer may order money bail or other financial condition.

Maryland's Declaration of Rights declares that "excessive bail ought not to be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted, by the Courts of Law." Maryland Rules 4-213 through 4-216 outline the procedure a judicial officer must conduct after an arrest and require that he or she determine the "least onerous" condition(s) to ensure public safety and ensure a defendant's presence in court. Additionally, the Rules require judicial officers consider, among other factors and "to the extent available," a defendant's financial resources. We believe this language has failed to deter a systemic and unconstitutional resort to money bail. Indeed, based on our own experience and conversations with members of the bar, we believe Maryland judicial officers order money or other financial conditions of release without inquiring or considering a defendant's financial circumstances. This practice must end.

Pretrial incarceration as a result of money bail and other financial conditions tears citizens away from their families, separates them from employment, and punishes them without due process of law. Moreover, it is an expensive proposition for a State poised to be smarter on crime. Fair and prudent public policy, and the legal system's commitment to equal justice, demand we do better.

We respectfully request a formal opinion from your office, thank you for your time and attention to this important issue.

Very Truly Yours,



Delegate Erik L. Barron
Delegate Kathleen M. Dumais
Delegate Shelly Hettleman
Delegate Marc Korman
Delegate Brooke Lierman