



TESTIMONY IN SUPPORT OF SB 879 and 880

TO: Hon. Chair Bobby Zirkin, Jr. & Senate Judicial Proceedings Committee members

FROM: MAJR Executive Committee

DATE: March 1, 2017

Maryland Alliance for Justice Reform (MAJR – www.ma4jr.org) is a not-for-profit organization with more than 1,000 individual Marylanders and more than 40 churches and other organizations as members and supporters from every part of Maryland. For the following reasons, we strongly urge the Committee to give a favorable report to SB 879 and SB 880.

Six reasons and opportunities to change Maryland pretrial / bail policies for the better:

- 1) **U.S. Constitution standard & recent action by the Md. Court of Appeals** (p.1)
- 2) **Foreseeable overcrowding and pretrial pilot /resource center for Md. jails** (p.2)
- 3) **Taxpayer consequences of continuing current trends in pretrial detention**(p.3 and appendix A, p.7)
- 4) **Low-income individuals and their families suffer devastating impacts**(p.3 appendix B, p.8)
- 5) **Public safety and validated risk assessments**(p.3 and appendix C, p.10)
- 6) **Other ways to reduce pretrial detention:**
 - a) **Technical VOPs**(p.4)- **ensuring Justice Reinvestment savings**
 - b) **Citations for simple possession**(p.4)
 - c) **Earlier screening of misdemeanors**(p.5)
 - d) **Earlier diversion**(p.5 and appendix D, p.11) of appropriate cases to community mental health, homeless, substance abuse treatment, veterans care, and mediation programs

1)U.S. Const. & recent action by the Md. Court of Appeals- The U.S. Supreme Court has made clear that “*Liberty is the norm, and detention prior to trial ... is the carefully limited exception...*” Under the U.S. Constitution, Chief Justice Rehnquist explained in U.S. v. Salerno (1987) that the only two exceptional circumstances in which courts properly may approve pretrial detention are: a) for those individuals found likely to flee, or b) those that pose “*a threat to the safety of ...the community which no condition of release can dispel.*”

With its February 2017 action changing the pretrial rules that Maryland Courts apply to bail decisions, Maryland’s high court applied this constitutional standard. There is no reason to expect that a statute passed by the General Assembly would be upheld by the Court of Appeals to change this unanimously-adopted constitutional standard.

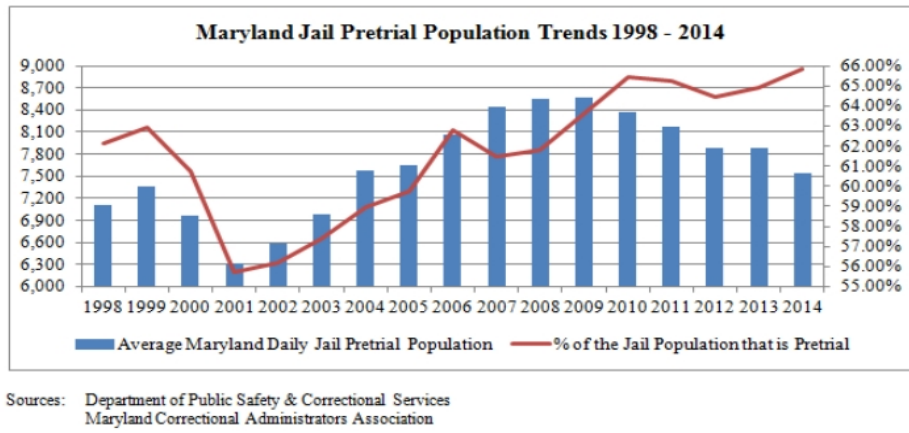
However, Maryland’s high court did call for the Md. General Assembly to take two important actions to implement the pretrial requirements of our Constitution:

- i) to adopt effective risk-assessment to assist judicial officer to make better pretrial release and bail decisions and
- ii) to enable the counties to establish pretrial services programs—that several counties now completely lack or have only in very rudimentary form.

So, MAJR today asks the committee to give a favorable report to HB 1157 i) to uphold the U.S. constitution’s standard, ii) to make a plan for adoption of effective, nondiscriminatory risk assessment, and iii) to make a plan to assist the counties to establish pretrial services program that will be able to implement “best practices” – so there can be fair and equal

treatment for Marylanders who need pretrial release in every part of the state.

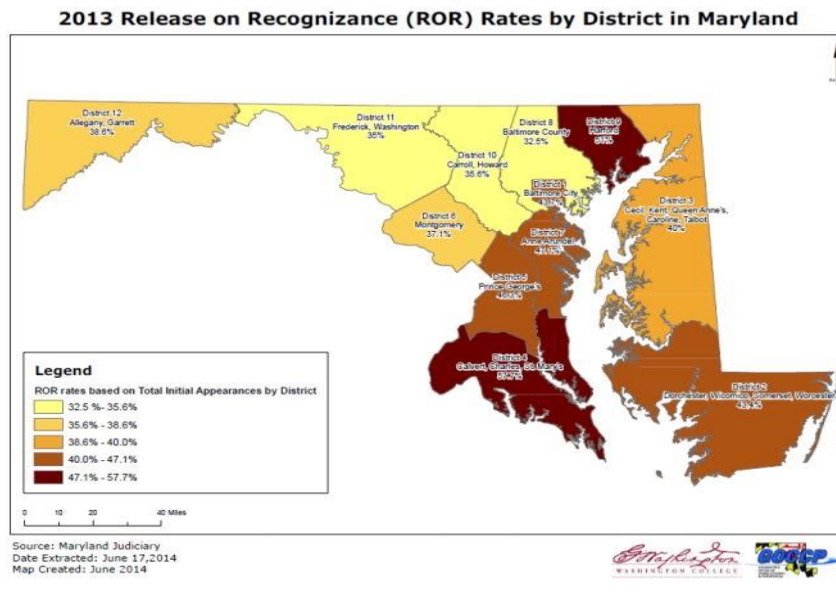
2) **Foreseeable overcrowding of Md. Jails**- With higher bails, Md. pretrial detention rates have gone up in recent years



With the recent Md. Court of Appeals Rule change, it is reported that the number of defendants held in pretrial detention without bail has been going up. The Baltimore Sun, on 2/26/17, reported that 1,000 more defendants statewide were held without bail during January than prior to the Rule change.

With the 2016 Justice Reinvestment Act’s lowering criminal penalties, more defendants who would have received state prison sentences now will receive local jail sentences- increasing jail crowding. Pew researchers estimate a six percent reduction of state prison populations within 10 years; but this may come at a cost of increasing local detention center populations – that have approximately 50% the capacity of state prisons.

Today, Maryland pretrial detention rates from county-to-county are very inconsistent, so it should be anticipated that



some counties will experience overcrowding sooner than others.

To stop these trends towards local jails overcrowding, to prepare for Justice Reinvestment’s redistribution of inmates, and to fix this very unequal treatment of Maryland citizens in different parts of the state, action is need soon to bring order and more efficient use of pretrial detention. SB 879 offers a pilot program & one-stop resource center to help counties.

3) **Taxpayer consequences of continuing current trends in pretrial detention:**

Adding up all costs of pretrial detention, the average cost per person per day is \$83- \$259 per day. By comparison, the cost of pretrial risk assessment and pretrial community services is a small fraction — between \$2.50 and \$20 per day. (See 2014 Md. Pretrial Commission – Final Report.)

Based on the experience in St. Mary’s County (see appendix A, p.7), building new cellblocks may average \$6 million for one unit to house up to 50 individuals, plus \$400,000 per year for 7 guards to patrol and maintain it 24 hours per day. By comparison, a pretrial services program can safely release more than 50 low and moderate risk individuals over the course of a year for only \$200,000 and without new construction. Because new detention centers’ construction is a cost shared by the State Govt. with each county, greater use of pretrial supervision instead of pretrial detention represents both major savings for both state and local budgets.

Nationally, pretrial reform is supported for economic reasons by both conservative and progressive groups including: Right on Crime, Americans for Tax Reform, the National Association of Counties, the Council of State Governments. In Md., similar support has been offered by the Md. Assoc. of Counties and the Md. Correctional Administrators Association.

4) **Lower income individuals and their families suffer huge impacts** after an arrest but before trial when they are unable to pay even small amounts of money bail required by courts and by bail bondsmen.

After only a few days, a good job may be lost. Without pay, a family may be unable to pay rent and at risk for homelessness. (See Appendix B, p.8, attached. Also, see, for example, *Finishing the Job: Modernizing Maryland’s Bail System*- Abell Foundation / Pretrial Justice Institute, June 2016.)

When both parents are arrested and detained, children often are taken into shelter care and/or foster care at a cost of approximately \$9,000 per year to Maryland taxpayers, on top of the costs to counties to keep their parents in detention.

5) **Public safety, public impact, and validated risk assessments:** Many judges, in fact, before their appointment may have only backgrounds in civil and family law; but, despite this limited experience, all judges necessarily must perform the full range of court duties—including establishing bail conditions for criminal cases.

In recent years, Maryland’s judicial training system has not offered any comprehensive pretrial / bail training to new judges, to judges lacking in criminal experience, or for judges in jurisdictions with disproportionate use of pretrial detention. The result has been substantial inconsistencies in bail levels from county to county, as well as much higher rates of pretrial detention in certain jurisdictions.

	<u>Violent</u>	<u>Non-violent</u>
Baltimore Co.	\$57,788	\$13,505
Harford	\$57,083	\$3,000
Montgomery	\$15,310	\$8,685
Prince Georges	\$25,665	\$8,189
St. Mary's	\$37,000	\$7,083
Washington	\$43,926	\$26,800

[NOTE: This chart is excerpted from the 2014 Maryland Pretrial Commission- Final Report, Apx.A-Table5]

So, despite their reputed wisdom, Maryland judges and commissioners really could use training and evidence-based practices to improve their track record in deciding at bail hearings which arrested individuals actually are a) a danger for failing to appear for trial dates, and b) which actually are a danger to public safety.

Fortunately, Maryland Courts are well-positioned to remedy this lack of training at minimal cost: The Courts already have in-place the Maryland Judicial College which every judge must attend for two full days each year, as well as an annual statewide conference, and new-judge training programs. The cost to add updated pretrial / bail training to this curriculum should be minimal.

MAJR realizes that many Marylanders are concerned about possible adoption of a risk instrument that could be discriminatory—giving higher scores to African-Americans and to those who live in areas with “high-intensity” law enforcement practices.

Two measures effectively can address these concerns: i) allowing public hearings as part of the process to adopt the risk assessment; and ii) adopting a nondiscriminatory risk instrument that will be validated to account of inconsistencies in demographics and law enforcement practices in different parts of the state.

Demonstrating the effectiveness of these validated risk instruments in Pilot Programs in Baltimore City, a suburban county and a rural county can add to public confidence in fair and equal Pretrial system across Maryland.

(See Appendix C, p 10 – written testimony of Judith Sachwald, retired Md. Parole and Probation Director)

6) Other ways to reduce pretrial detention: In addition to risk assessment and pretrial supervision, there are three other important ways the pretrial pilot bill (SB 879/ HB 1157) offers to avoid unnecessary pretrial detention:

a) Technical VOPs (SB 879, section 4): Maryland’s Justice Reinvestment Coordinating Council found that more than 20% of all prison commitments resulted from violation of probation and 40% of that group resulted only from “technical violations of probation.” Seeking to resolve his approximately 10% portion of the prison population, the General Assembly in the Justice Reinvestment Act in 2016 limited the sentence judges could impose for violations of probation to 15, 30 or 45 days for a first, second or third technical violation.

But, this Justice Reinvestment Act provision does not prevent judges from continuing with the common practice by many of issuing “no bond bench warrants” for every violation of probation so that each of their violation defendants may be required to spend every day in detention until violation trial date. The result could be months of detention despite the 15, 30 and 45 day JRA limits. SB 879 / HB 1157 makes clear that this practice may not continue and that all judges must respect the JRA limits on technical violations.

b) Citations in lieu of arrests for nonviolent misdemeanors (SB 879, section 6): Separately contained in SB 477 / HB 408, MAJR also urges the Committee to support an amendment to Maryland’s citation law, expanding the scope of offenses that an officer may charge by citation without arrest to include simple possession of drugs. This bill would not require officers to use citations for this purpose, but would permit it in appropriate cases that did not involve more serious charges or concerns as to health, the offender’s identity, etc.

SB 879, in its section 6, also calls on the Justice Reinvestment Oversight Board to study potential expansion of

the use of citations.

c) Earlier screening of misdemeanors (SB879, section 5):

Written testimony of William D. Roessler,
Deputy State's Attorney for Anne Arundel Co. (retired):

To the Honorable Bobby Zirkin, Chair, and
Judicial Proceedings Committee members,

As former Deputy State's Attorney for Anne Arundel County, I am supporting bill SB 879 / HB 1157. I saw how pretrial screening of misdemeanor citizen complaints has worked for our office for years, cutting down significantly the number of cases that went to court needlessly. Some of the cases were simply inappropriate for criminal prosecution, and some needed enhanced preparation so that they could be presented on the first trial date. Many others were diverted to our Mediation unit, where cases were resolved without going to court.

The 2014 Pretrial Commission Report [excerpt below] found that the evidence indicated that early and enhanced prosecutorial screening of citizen complaints would reduce the number of cases that go to court, and our experience in Anne Arundel County confirms that opinion.

William D. Roessler
Deputy State's Attorney for Anne Arundel Co. (retired)

Excerpt from 2014 Maryland Pretrial Commission – Final Report of Dec. 19, 2014:

In 2014, the Pretrial Commission found that, “In Maryland, all State’s Attorney’s Offices screen felony cases, but only four jurisdictions screen misdemeanor cases [sworn out by private citizens at the Commissioners’ offices. By comparison,] In the District of Columbia, all local charges are screened... and, as a result, only 40-50% of those misdemeanor cases go to court.”

“In 2012 in Maryland, citizen complaints comprised 42.8% of the total charging documents issued by District Court Commissioners. In Prince George’s County, 60% of the charging documents issued were originated by citizen complaints. In Maryland, 96.7% of the complaints filed with a District Court Commissioner result in the issuance of a charging document; only 3.3% are denied.”

“[For these reasons, there is good reason to believe that] Earlier and enhanced prosecutorial screening of citizen complaints may help reduce the number of cases that advance through the criminal justice system [and that keep many individuals in unnecessary pretrial detention].”

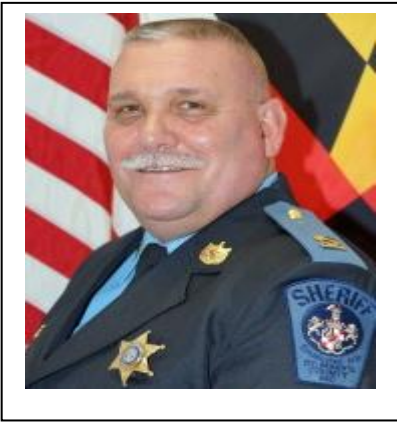
d)Pretrial diversion is another benefit of earlier pretrial screening (SB879,section 5): Earlier screening also may identify cases that could be handled in restorative ways without the need for fully-contested prosecution. It is a well-known fact that a large percentage of individuals in state prisons and local detention centers suffer from mental health disorders; if nonviolent individuals with mental health disorders are identified and referred successfully to community-based treatment, detention and prison costs, plus the mentally ill population of our correctional facilities may be reduced.

(See Appendix D, p.11 - written testimony by the Honorable Jacob Day, Mayor of Salisbury, Md., in support of a Wicomico County Pretrial Pilot program that would include a homeless individuals diversion program.)

Conclusion: For all these reasons — principles of the U.S. Constitution and Maryland law, preventing a trend towards overcrowding in our jails, otherwise saving taxpayer funds, preserving employment and families, improving public safety by community programs that will reduce new offenses—for all these reasons, MAJR strongly urges the

committee to give a favorable report to SB 879—as well as SB 880.

APPENDIX A



TESTIMONY OF CAPT. MICHAEL R. MERICAN – WARDEN, ST. MARY’S CO., MD., DETENTION CENTER: I have 33 years of law enforcement experience with the St. Mary’s Co. Sheriff’s Department with investigations from disturbing the peace to murder. In the last 12 years, I’ve been assigned as the Warden of the St. Mary’s Detention Center.

Ten years ago, our St. Mary’s Detention Center reached a point of severe overcrowding with a population of 370 for a 230-bed facility. We began planning construction for jail expansion and renovation that would have cost \$30 million to include 5 new units. One such new cell block unit might accommodate up to 50 more individuals, but each cell block also would require at least 7 additional staff to monitor 24/7 operation.

But, when we were ready to begin construction in 2014, the St. Mary’s County Council rejected the funding. Our jail population had dropped to about 250 with a decrease in the crime rate, but we still were more than 50 over capacity.

From my experience as president of the Md. Correctional Administrators Association (MCAA) and as member of the 2014 Maryland Pretrial Commission, I knew many counties around the U.S. and Maryland had successfully used risk screening and community supervision to reduce their pretrial jail populations. With advice from Montgomery and Anne Arundel Co., we decided to start up our own [pretrial risk screening and community supervision] program. We used the risk screening instrument from Montgomery and spent a couple of days visiting and talking with the other counties’ staff. After about 6 months preparations – including consultation with our Sheriff, Health Department, local judges, Parole & Probation, State’s Attorney & Public Defender, our St. Mary’s Pretrial Screening and Supervision program went into effect in November 2015. We did it by reorganizing the duties of two (2) floor officers and obtaining approval for one new position to serve as case manager. We incurred \$80,000 on GPS equipment and \$40,000 on drug screening, supplies, etc. Our overall cost were approximately \$200,000 per year to supervise 53 individuals. Comparing overall costs for pretrial detention vs. pretrial community monitoring, our jail realized annual cost savings in FY16 of almost \$595,000.

Our inmate housing issues clearly do not occur as they did in extremes 10 years ago, even if we still have some critical requests to improve existing infrastructure.

There also have been clear improvements in our sentenced jail population and other law enforcement costs: Before the pretrial program started, the average individual’s sentence for our detention center was 1 year to 18 months. But, the vast majority of our pretrial participants are able to demonstrate their compliance with supervision, substance abuse treatment and no new offenses during the pretrial period. This is very persuasive for judges so 70% of these defendants a chance on probation without further jail time.

Also, we have found that 98% of our pretrial defendants do not miss their court dates. This is a great improvement over the 15% average “failure to appear(FTA)” rate for all St. Mary’s defendants in 2013 when we had no pretrial supervision program—and much better than our 9.6% FTA rate for those with bail bondsmen. We also found more than 91 percent in our pretrial program did not commit any new offense during supervision. This major drop in new offenses and FTAs also saves time and money for law enforcement and for our community.

Another big savings involves our drug screening and drug treatment referrals: Just locking someone up for a few weeks or months doesn't stop them from being a heroin addict or some other kind of drug user. But, when we find drugs in their screening, we can take them to the Health Dept., get them signed up under the Affordable Care Act, and help them get clean. At the same time, they still can hold a job and keep their housing. Much the same way, we try to help mental health patients stick with their treatment and their medication so they can stay in the community, if they have housing.

The biggest thing I remember was, after we got the system all set up and running, the judges all said "thank you." Now, some judges even combine bail bond and supervision, and since they've become familiar with the program, they sometimes refer cases even before a bail review.

From my perspective, cash bail never has guaranteed compliance [with public safety requirements] and our leadership appears to struggle with this issue. There's a major change going [around the U.S.] as we can no longer afford or build bigger jails & prisons with our jurisdiction (St.Mary's) being a case in point.

Inmate population management is paramount for local jails and a properly executed pretrial supervision component offers both population stability and increased community safety. Maryland reports half the jails have chosen to do it and they chose to do it for a reason. But, quite simply, this is a jurisdictional decision and not a mandated requirement.

In conclusion, it is not my position to proffer an endorsement or rejection to this Rule change, but I strongly advocate that any type of offender release or procedural change must include a pretrial supervision monitoring program.

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APPENDIX B

ILLUSTRATIONS OF BAIL IMPACT ON INDIVIDUALS AND FAMILIES —COLLECTED BY UNIVERSITY OF MARYLAND- ACCESS TO JUSTICE CLINIC AND BY MD. ALLIANCE FOR JUSTICE REFORM (MAJR)

Gail was given a trespass charge for remaining too long in a hospital's emergency area. She stayed in jail on \$100 bail until her student-lawyers found the ideal residential treatment to address alcoholism and depression. Gail called last week. "Thank the students, judge and pretrial agent for giving me the chance to turn around my life," she said.

Brendan, unemployed and the single parent of his young son, was arrested at home one morning for failing to appear in court on an unregistered dirt bike charge. The judge imposed an extraordinary bail in his absence: \$5,000 cash only, "defendant only." After a student-lawyer presented new information, the judge granted Brendan release with supervision. Brendan's \$5,000 cash-only bail defined excessive. Had we not appeared, he would have served most of the 90-day maximum — shameful for a system priding itself on an accused's presumed innocence.

Ronald was a 29-year old father of four struggling with heroin addiction; he was charged with taking the dog he recently purchased from the home where he and his ex-wife shared child care. A commissioner originally set his bail at \$10,000, which was later lowered to \$2,500 by a reviewing judge in the hopes that would make the \$250

bond fee attainable. It did not. With the student lawyers help, he was eventually released on a condition that he address his drug use. He found a program, reunited with his ex-wife — who said he was a great dad and not dangerous, but needed help — and had his charges dismissed.

Antonio spent 16 days behind bars on \$5,000 bail. Neither he nor anyone he knew could afford giving \$500 to a bondsman to buy his freedom pending trial. Antonio had been in and out of the system as a prisoner of addiction. When he was drug-free, he devoted himself to his children and to his trade as a chef. After speaking at length with him, his student-lawyer became convinced Antonio was ready to show this same commitment to battling addiction. Identifying a structured residency treatment program convinced the judge it was a better alternative to jail, and Antonio has since made valiant strides toward being a dad and great chef again.

James was facing trial for a four-year old “dropsy” drug case with slim evidence: A police officer said he dropped a plastic bag containing a tiny unspecified drug, but James denied having drugs. Student lawyers verified that he lived with his 98-year old mom and worked on home improvements. But because he missed court several times, a judge ordered \$3,500 bail. Twelve days later, one student-lawyer asked a different judge to lower his bail; that judge went one step further and made the bond unsecured, meaning it required no money or payment upfront, only reappearances and supervision. James made good on his promises and the state dropped the charge against him.

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Krissy was held in detention for six days while her family and friends collected money to pay a bail bondsman 10 percent of her bail. During her detention, she also lost a week’s income. Her job took her back only after the charges were dropped—so, four more weeks’ lost income. The bail money was lost as well as bail bondsmen don’t return money, even if charges are dropped or dismissed. These losses meant Krissy and her husband got behind with their rent. A late penalty was imposed each month, so in effect their rent went up. By late summer an eviction was imminent and they were barely rescued again by extended family. Still, the apartment complex will not renew their lease. So 10 months later, they still struggling to create a stable home for their 2-year-old.