



THE MARYLAND GENERAL ASSEMBLY

FOR IMMEDIATE RELEASE

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MARYLAND ATTORNEY GENERAL CONFIRMS LAWMAKERS' CONCERNS ABOUT PRETRIAL DETENTION

Baltimore, MD - Legal advice requested by Delegates Erek Barron, Kathleen Dumais, Shelly Hettleman, Marc Korman, and Brooke Lierman concludes that Maryland "law and court rules should be applied to require a judicial officer to conduct an individualized inquiry into a criminal defendant's ability to pay a financial condition of pretrial release." The letter further advises that "setting the bail in an amount not affordable to the defendant, thus effectively denying release, raises a significant risk that the Court of Appeals would find it violates due process. If pretrial detention is not justified yet bail is set out of reach financially for the defendant, it is also likely the Court would declare that the bail is excessive under the Eighth Amendment of the U.S. Constitution and Article 25 of the Maryland Declaration of Rights."

Del. Barron stated that the legal analysis "confirms that pretrial reform is not only a moral and fiscal necessity but also a legal imperative." Referring to the recently enacted Justice Reinvestment Act, Del. Hettleman stated, "In practice, the current pretrial process is inconsistent with our State's more recent 'smarter on crime' approach to criminal justice that mandates data driven, cost-effective public safety measures."

The lawmakers' request, noting that financial conditions of pretrial release "tears citizens away from their families, separates them from employment, and punishes them without due process of law," asked the Attorney General to analyze whether Maryland law requires judges to set bail based on a defendant's financial resources and not detain based solely on inability to pay.

Lawsuits around the nation, including one pending in the federal appeals court in Atlanta, have successfully challenged bail practices as unconstitutional. A June 2016 Abell Foundation report states that while crime rates have remained historically low, Maryland's jail populations have only begun to decline. In December 2014 the state Commission to Reform Maryland's Pretrial System, found that "at any given time in Maryland, there are roughly 7,000 – 7,500 defendants detained in jail awaiting trial with an average length of stay of 39 days."

Under this system, the state spends approximately \$22.65 - \$44.75 million each year (\$83-\$153 a day in jail) in detention costs. By contrast, a 2010 Justice Policy Institute

report estimates a \$2.50 per person per day cost of pretrial services system designed to monitor individuals released pending trial.

Not only is Maryland's bail system costly, it's also ineffective. The state consistently fails to detain individuals posing the highest risk to community safety. The 2014 Commission report determined that bail amounts for low risk defendants were higher than for moderate and higher risk defendants.

To get it right, evidenced-based risk assessment tools are being used effectively in communities around the nation to guide judicial officers at bail hearings. Meanwhile, the federal system eliminated cash bail decades ago. The overwhelming evidence is that public safety is not compromised while Constitutionally presumed innocent individuals are effectively supervised.

In a joint statement, the Delegates said, "We thank Maryland Attorney General Brian Frosh for his willingness to examine these difficult issues and we look forward to continuing our work with him, the Judiciary and our legislative colleagues to reform our pretrial system, ensuring that Maryland provides the access to equal justice our citizens deserve."

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PRETRIAL DETENTION FACT SHEET

Background

On August 3, 2016, Delegates Erek Barron, Kathleen Dumais, Shelly Hettleman, Marc Korman, and Brooke Lierman requested an opinion of the Attorney General on whether the law requires “individualized inquiries regarding a criminal defendant’s financial resources prior to ordering money bail or other financial conditions of release” and whether “judicial officers must avoid ordering money bail or other financial conditions of pretrial release exceeding a criminal defendant’s ability to pay.” The request comes on the backdrop of successful lawsuits challenging bail systems around the country by the nonprofit Equal Justice Under Law in which the U.S. Department of Justice has joined as an amicus. Speaking on the issue of bail, U.S. Attorney General Loretta Lynch has said, “We have seen jurisdictions routinely impose excessive bail for minor offenses and people without means often languish in jail – not because they’ve been convicted of a crime, not because they pose a risk of flight, but because they are poor.”

The problem and solutions

Judges often impose cash bail at an amount much higher than people can afford and without consideration of financial circumstances and resources. This reliance on monetary bail threatens public safety, it’s expensive, and it’s constitutionally troublesome. Our current practice allows potentially dangerous people with money to purchase their freedom, while poor people are detained pretrial. The cost of this unfair practice ranges from \$83-\$153 per-inmate per-day – for an average of 7,500 people daily who are *mostly charged with non-violent offenses*. Meanwhile, the state is exposed to costly lawsuits.

Time tested and evidence-based practices by the federal government and other jurisdictions demonstrate that pretrial services are safe, effective, and cheaper than jail. In fact, the federal system abolished cash bail decades ago with no sacrifice to public safety. Many states and the District of Columbia successfully use risk assessment tools to guide judges and prohibit the truly dangerous from walking free.

How bail works

After arrest, a judge decides whether to release a person before trial and under what conditions. The judge may order release: (1) on a promise to appear, (2) under certain conditions, or (3) require that the person pay bail – an amount of money deposited with the court. Bail is usually imposed in the form of cash or surety. Cash bail is paid to the court and returned after a person appears for all hearings and the case is over. Most people cannot afford cash bail, so the court may authorize a “surety bond,” a promissory note from a bail bondsman to the court for the entire amount. Before insuring bail, a bail bondsman charges a non-refundable fee (usually 10%) and requires personal/family collateral in the amount of the bail. If a person lacks the collateral or cash to pay, the person remains jailed.