

# MARYLAND ALLIANCE FOR JUSTICE REFORM

Working to end unnecessary incarceration and build strong, safe communities



## Maryland's Pretrial / Bail Troubles – How and Why to Fix Them

### **What is “pretrial detention”?**

When a person has been arrested and charged with an offense, Maryland law permits the person to be held temporarily in detention before trial. The length and place of this detention may vary, depending on the amount of time needed to prepare written charges, to verify the person's identity, to have a court “appearance” for official notification of the person of the charges and his rights, and to make sure he or she can be safely returned to the community.

### **How do these differ: “jails,” “detention centers,” and state prisons?**

“Jail” is the traditional term for what Maryland now calls “County Detention Centers.” Detention centers are used mainly for two types of inmates: 1) pretrial detention and 2) for briefer (under 18 months) criminal sentences.

### **What are “bail” and “bail bonds”?**

When a person has been arrested and charged with a criminal offense, “bail” means conditions set by a court for the person's release. The purpose is to ensure: 1) that the person will return to court for trial on the criminal charges and 2) that the person will not endanger others in the meantime.

“Bail bond” means a written obligation of the arrested person, with or without a surety or collateral security (defined below), requiring his or her attendance for court hearing dates and providing for payment of a penalty sum if a violation occurs.

### **Who decides “bail” conditions for the courts?**

When Maryland Courts are not in session (at night, on weekends, on holidays, etc.), a District Court commissioner is on duty 24 hours per day to hold a hearing and to set bail conditions. However, there are certain types of offenses for which Commissioners are not permitted to set bail. Examples include serious charges (such as murder or first degree sex offenses) that could be punished by a life sentence).

If a person has not been released by Commissioner's action, he or she will be taken to a bail hearing with a District Court judge the next day that court is in session. If the person is not satisfied with the judge's bail decision, he or she may seek review by a higher level of the courts.

## **Are there different forms of “bail?”**

Bail may take different forms – each with the goal of assuring compliance with bail conditions. Two major categories are: 1) “personal recognizance” – that is, a promise by the person charged to court; and 2) a “bond” either with or without security. (See definitions of “security” and “surety” below.)

A judge also may add different nonmonetary conditions to a bail order to ensure public safety and health, such as a) requiring an alleged assailant to stay away from an alleged victim, b) requiring someone with alleged alcohol or drug problems to cooperate with testing or treatment, c) requiring that a person cooperate with house arrest or wear a Global Positioning System (GPS) tracking device to verify that they will not flee; and d) requiring that someone maintain contact with a pretrial supervision office to permit trial date reminders and verification of cooperation with other conditions.

## **What is “security” or “a surety” for a bail bond? What is “money bail”?**

Security—or a “secured bond” may involve:

- filing with the court a sum of money by cash or certified check, or, if allowed by the court, a 10% portion of sum set by the court;
- pledging a piece of property—whether real estate, personal property, or some intangible property (such as stock or bonds); or
- posting an “indemnity” – in effect, an insurance policy.

“Surety” means that a person other than the defendant signs a bail bond that guarantees the appearance of the defendant. This may be an uncompensated person (such as a family member of the arrested person) or a commercially-paid bail bondsman.

An indemnity bond also commonly is referred to as “money bail.” A commercial “indemnity bond” is provided upon payment of money, known as a “premium,” to a “bail bondman”—in effect, to an insurance agent or broker.

## **What difference does it make which form of secured bond is used?**

After trial and charges have been resolved, a bail bond is considered “satisfied.” Money or property filed with the court can be returned to the person who provided it.

However, if “money bail” (a commercial indemnity bond) was used, *any money paid to the bail bondsman is never returned*—not even if the person had his charges reduced or dismissed, or if the individual is found “not guilty” after a trial.

The permanent loss of “money bail” payments by the person who was arrested, especially when bail is set in large amounts, may cause serious financial problems for the person, his family, and his community. The result may be increased poverty, need for public assistance, and in some cases, homelessness.

What are some illustrations of personal problems aggravated by excessive bail and improved by alternative pretrial supervision? (The first several examples are offered by the University of Maryland Law School's Access to Justice Clinic)

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.

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.

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. 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.

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.

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.

A MAJR supporter's illustration: "My goddaughter's case is a perfect example. In January, she was held in detention six days while her family and friends collected money to pay a bail bondsman 10 percent of her bail. During her time in detention, she lost a week's income. Her job took her back only after the charges were dropped, which meant four more weeks' lost income. The bail was lost as well; bail bondsmen don't return money, even if a defendant is declared innocent or charges are dropped.

"These losses meant that she 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. But now the apartment complex will not renew their lease. So 10 months after her arrest, they are still struggling to create a stable home for their 2-year-old.

“There are other proven ways besides bail to ensure defendants show up in court. Bail reform could be a win-win.”

### Is there any alternative to using “money bail” bonds?

Yes. In many parts of Maryland, other U.S. states, and much of the world, an individual may be released with “pretrial supervision” until any trial date. Pretrial supervision, by agreement with the court and the person charged, may give the person a reminder—such as a phone call or text message—a few days before his trial date. In the meantime, pretrial supervisors also may require the person to appear and take a test to prove he is not using illegal drugs or alcohol, require the person to provide proof of employment, or require the person to stay away from an alleged victim. The latter could be verified by GPS, or it could require other conditions approved by the court.

### What’s wrong with Maryland’s pretrial / bail system?

Maryland’s pretrial / bail troubles have several parts:

- 1) Unfairness. Too many low income persons are unable to pay even low money bail and must wait in detention for many months until their trial date, even for minor criminal charges. Others with middle or high income can pay and be released promptly, *although there may be no difference in their circumstances besides the ability to pay*.
- 2) Lack of information and supervision. Before setting bail conditions or amounts, slightly more than half of all Maryland counties (13 of 24) have a “pretrial supervision unit” to gather information about the background of the persons arrested, present at bail hearings, and supervise any persons released, if directed by the courts. (Baltimore City is referred to as a “county” here.)

However, many other Maryland counties (11 of 24) do not have any pretrial supervision units. As a result, judges may lack information to make the best possible bail decisions and, without supervisors, may decide to keep more citizens in jail until their trial dates.

- 3) Inconsistencies.
  - a. In some parts of Maryland , money bail levels nearly 50% higher. (Baltimore City-\$29 vs. Mont. Co.-\$15,000)
  - b. In some parts of Maryland, the percentage of jail inmates who are pretrial (rather than serving a short jail sentence) is nearly three times higher than in other counties. (Examples include the Baltimore City (85.8%) and Prince George’s County (82.3%) vs. Cecil County and Garrett County (both 30%).

NOTE: All these statistics are drawn from the [2014 Maryland Pretrial Commission – Final Report](#).

- 4) De facto racial discrimination.

While MAJR does not claim intentional racial discrimination in our pretrial bail system, it cannot be ignored that our state's current money bail system has huge unintended consequences of penalizing African-Americans and other minorities, even before their court dates:

An extensive, [five-year statistical report and analysis by Maryland's Public Defender](#) has found that *"The mean bail amount for black defendants is 45 percent higher than the mean amount for white defendants at the initial appearance before a District Court commissioner (\$48,895 versus \$33,678) and 51 percent higher at the bail review hearing before a District Court judge (\$54,565 versus \$36,224)."* This disparity is compounded by the fact that the poverty rate is much higher among the black than the white population.

Collectively, the greater money bond requirements produce two other attention-getting numbers:

1. Maryland and other U.S. state's numbers in pretrial detention because they are unable to afford to pay the money bail is disproportionately African-American. See, e.g., [Vera Institute 2015 report: "Incarceration's Front Door."](#)
2. *"Black defendants were charged more than \$181 million in premiums by the bail bond industry—more than twice the premiums charged to defendants of all other races combined, even though only approximately 30 percent of the Maryland population identifies as black."* [Maryland Public Defender report, above.](#)

5) Lack of impact on "failure to appear (FTA)" rates:

Results also have been shown as wildly inconsistent in different areas of Maryland. In a 2014 study, Maryland failures to appear (FTA) rates (from all types of pretrial release combined) ranged from below 6% in some Eastern Shore counties to more than 15% in others.

Does use of commercial "money bail" result in lower FTA rates? *Results do not show commercial bail bonds to have consistently better results than other types of bail.* To the contrary, Maryland's statewide 2013 average showed better court appearance rates for persons able to post amounts of cash bail or 10% of larger amount from their own resources as compared to commercial bail. Rates are as follows: Commercial bail— 7.8%, Cash bail – 6.0%; Ten-percent bail – 7.7%)

The Public Defender's 5-year study concluded that, in Baltimore City, the average FTA rate for all defendants on unsecured bonds (no money or security posted) was 6.3%, while all defendants posting secured bonds (such as commercial money bail) averaged 6.5%.

## What is the True Cost of Detention?

### 1) *Taxpayers pay too much for money bail in three ways:*

- a) One day of jail or “pretrial detention” costs between \$100 per inmate per day. By comparison, one day of pretrial supervision only costs between \$2.50 per day per person. See [Modernizing Maryland’s Bail System, Abell-PJI Report of June 2016](#).
- b) Additionally, over time, local detention centers become overcrowded and local taxpayers may be required to spend tens or hundreds of millions of dollars to build detention center expansions or entirely new detention centers. See, for example, the testimony of Capt. Michael Merricam, St. Mary’s County Detention Center, at Maryland Rules Com. hearing of 11/18/16.
- c) Personnel costs are increased for government-attorneys and court personnel, due to additional hours required for additional bail and bail review hearings. See [2014 Pretrial Commission Report](#).

### 2) *Individuals in pretrial detention face unfair penalties due to poverty.*

Standardized “risk assessment” questions can identify a person who, despite an arrest, is “low risk” to commit a new offense or to miss a court date. “Protective factors” apply to persons who have regular employment and strong family support, for example. “High risk” persons are those found more likely to commit new offense. This is attributable to various “risk factors” such as unemployment, homelessness, mental illness, drug abuse, lack of family support, or participation in criminal-peer-groups. Numerous studies support the value of risk assessment. See, e.g., [The Hidden Costs of Pretrial Detention, Arnold Foundation, November 2013](#).

Studies show, however, that persons held in pretrial detention -- even for a few days—begin to lose their support systems. Those held longer in jail report:

- loss of jobs (25%)
- loss of housing (40%)
- serious family financial difficulties (70%).

These statistics were collected in a [2001 survey](#) by University of Maryland criminologists from 300 cases in Baltimore City Detention Center.

Still more long-term impacts result to persons unable to afford to pay for money bail. [Studies](#) show that, when compared to persons able to pay for pretrial release, defendants held in pretrial detention are more likely:

- to be convicted after trials,
- to receive a prison sentence,
- to receive longer sentences, and
- to receive lower income for future work.

### 3) *Families pay too much for money bail.*

Common experience shows us that a parent stuck in pretrial detention

- may lose custody of his or her children,
- may be unable to pay child support, or
- may be unable to maintain employment to buy groceries and pay rent.

Results may include:

- children placed in foster care at taxpayer expense,
- families required to seek public assistance for food and housing, or
- homelessness.

### 4) *Communities pay for money bail in increased crime rates.*

When a “low risk” person is held in pretrial detention—losing jobs, housing, and family ties – he or she may become desperate and may seek the quickest way possible to earn money. This can include committing new offenses (or a first-time offense). Young offenders kept in jail, coincidentally, will meet and form relationships with more experienced offenders.

Studies show the alarming impact of pretrial detention on low-risk offenders:

- After 3 days, on average, these offenders become 39% more likely to commit another offense.
- After 7 days, on average, these offenders become 50% more likely to commit another offense.

(See [2014 Maryland Pretrial Commission report.](#) )

## What is the best approach?

Maryland’s 2017 Pretrial – Justice Reinvestment Act (PJRA) offers a half-dozen tools to reduce costly pretrial detention with long-term taxpayer savings. These include:

- 1) Use of a low-cost pilot program in three or four willing counties to demonstrate:
  - a) a standardized, nondiscriminatory “low risk” screening system for arrested individuals to identify those who can safely and reliably be released to community supervision
  - b) “best practices” for community supervision instead of pretrial detention or money bail.
- 2) State coordination to assure program effectiveness and to help counties economize on training and computer programming for pretrial supervision. [See Justice Reinvestment Oversight Board statute.](#)
- 3) [Expanded use of citations for misdemeanor arrests](#)
- 4) [Streamlined handling of technical violation of probations](#)
- 5) Requirement for prosecutor’s timely pretrial screening and

6) Pretrial diversion when available and appropriate, e.g., for mental health treatment, veterans' care, substance abuse treatment, or [community mediation with willing complainants](#)

## The key is to reduce risk and address needs.

The most effective pretrial supervision programs evaluate the risk and needs of an arrested person.

When community resources are available to reduce a risk and to treat a need, a low-risk person may be placed on community supervision with the requirement that, *instead of pretrial detention*, he or she receive and give proof of appropriate services. For example:

- A former mental health patient may be required to return to treatment.
- A disturbed veteran may be referred to Veterans Administration programs.
- A homeless person may be referred to a homeless shelter.
- A nonviolent offender may be referred to community mediation to attempt settlement of disputes with a consenting complainant.
- An unemployed person on community supervision may be directed to job banks or employment services.

Taken together, pretrial supervision can help reduce crime and solve social problems, even before an alleged offender gets into a courtroom.

## Are arrests always appropriate?

Not every person suspected of breaking the law must be arrested. Marylanders have decades of experience with police officers' use of traffic citation, parking tickets, citations for county code violations. Notably, even the most serious juvenile charges have been initiated via citations for more than 20 years.

In Maryland, statutes currently permit use of citations for adults only for traffic, local code violations and offenses that carry a maximum penalty of 90 days incarceration or less. Other states permit much broader use of citations. Such expanded use is recommended, in appropriate cases, by the [International Association of Police Chiefs](#), and by the [National Association of Counties](#).

Maryland's 2017 JRPA would permit wider use of citations but still allow officers to arrest if

- an offense involved or threatened serious injuries,
- an offender is uncooperative,
- there are other arrest warrants or more serious charges for the offender, or
- there are grounds to suspect the offender has given a false name or otherwise may not cooperate with courts.



## We need to get the prosecutors involved.

Maryland's 2017 JRPA will encourage prosecutors to take an earlier look at charges for a defendant held in detention and not released to community supervision.

A study in the District of Columbia showed that, when private citizens rather than police officers swear out charges, prosecutors found the evidence to be insufficient and dismissed or otherwise resolved charges without taking them to court in approximately 40% of such cases. See [2014 Maryland Pretrial Commission Report, p. 26](#).

[A 2012 study](#) confirmed that 42.8% of all Maryland District Court criminal cases originated from citizen complaints. Yet, only 4 Maryland counties in 2014 required prosecutors' early screening of such misdemeanors. As a result, too many individuals could be required to sit in jail for months awaiting a trial date upon which the prosecutor finally may determine that charges were insufficient and should be dismissed.

## What can I do to help reduce unnecessary pretrial detention in Maryland?

Two steps can make a real difference and can help Maryland reduce its unnecessary, but [increasing use](#) pretrial detention:

- Please [sign the petition to support Maryland pretrial / bail reform](#)!
- Please [contact your legislator\(s\) and let them know that you support Maryland pretrial / bail reform](#)
  - to stop pretrial detention solely because a person is too poor to pay money bail and, instead,
  - to support community supervision and other proven alternatives to pretrial detention.