Advancing Bail Reform In Maryland: Progress & Possibilities

Prepared for the Baltimore City and Prince George's County Branches of the NAACP

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Initial Draft: Released January 10, 2018

Acknowledgments

We wanted to give a special thank you to the people who made this report possible. From taking time to meet with us over the fall semester, sharing your work and experiences, and providing feedback on our early findings, we sincerely appreciate you!

C. Shawn Boehringer, *Maryland Legal Aid Bureau*
Donna Brown, *No Boundaries Coalition*
Dr. Lawrence Brown, *Morgan State University School of Community Health and Policy*
Jill Carter, *Baltimore City Office of Civil Rights and Wage Enforcement*
The residents of Cherry Hill Homes
Councilman Zeke Cohen, *Baltimore City Council*
Doug Colbert, *University of Maryland Carey School of Law*
John Comer, *Maryland Communities United*
Eddie Conway, *Tubman House*
Gregory Countess, *Maryland Legal Aid Bureau*
Navasha Daya, *Youth Resiliency Institute*
Ronald Flamer, *Baltimore City Branch, NAACP*
Maryland Attorney General Brian Frosh
Clayton Guyton, *Rose Street Center*
Tiffany Harvey, *Maryland Attorney General's Office*
Steven Hawkins, *political consultant*
Fanon Hill, *Youth Resiliency Institute*
Tessa Hill-Aston, *Baltimore City Branch, NAACP*
Toni Holness, *ACLU of Maryland*
Zenita Hurley, *Maryland Attorney General's Office*
Ray Kelly, *No Boundaries Coalition*
Gina Polley, *Maryland Legal Aid Bureau*
Delegate David Moon, *Maryland General Assembly*
Rebecca Nagle, *No Boundaries Coalition*
Bob Ross, *Prince George's County Branch, NAACP*
Chief Melvin Russell, *Baltimore Police Department*
Sonia Sarkar, *Baltimore City Department of Health*
Councilman Brandon Scott, *Baltimore City Council*
Mamie Simpson, *Morgan State University School of Community Health and Policy*
Jeff Singer, *University of Maryland School of Social Work*
Deborah Spence, *Maryland Attorney General's Office*
Colin Starger, *University of Baltimore*
Alexandra Staropoli, *New Jersey Drug Policy Alliance*
Marc Steiner, *Center for Emerging Media*
Dominque Stevenson, *Tubman House*
Robert Strupp, *Baltimore Neighborhoods, Inc.*
Matthew Stubenberg, *Maryland Volunteer Lawyers Service*
Emanwel Turnbull, *The Holland Law Firm, P.C.*
Heather Warnken, *U.S. Department of Justice Office of Justice Programs*
Delegate Mary Washington, *Maryland General Assembly*
Chris Wilson, *Barclay Investment Corporation*
Ana Yáñez-Correa, *Public Welfare Foundation, Inc.*

Contents:

Executive Summary

The cash bail system in Maryland has long been a subject of great debate among policymakers and the public. In 2017, years of attempts at reforming cash bail culminated in a change in court procedure enacted by the Maryland Court of Appeals. The new court rule drastically changed the way the bail system operates in Maryland.

Prior to the rule change, several studies found that Maryland's bail system unfairly punished Maryland's low-income communities while providing dubious benefits to public safety. Marylanders paid much higher bail amounts than other cities and states:

- In Maryland, the average bail for a felony in 2015 was $73,000 while in New York City, the average was $5,000.
- In addition, residents of low-income zip codes paid a huge proportion of the total bail amount imposed on Marylanders. In effect, this means low-income people enriched the for-profit bail industry, even while they struggled to pay for housing and food.
- Many Maryland defendants were held in jail before being convicted of a crime—not because they posed a flight risk or were a risk to public safety, but because they could not afford to pay bail. This came at great cost to Maryland taxpayers.

So far, the court rule change has led to significant shifts in the bail system. According to our analysis, the number of defendants assigned bail has dropped by over 40% with more defendants released on their own recognizance or held without bail before trial. Those who are assigned bail since the rule change have been given bail amounts that are on average 70% lower than in 2015. Additionally, the use of unsecured bail (which requires no payment upfront) has increased. In short, fewer people are held in jail before trial simply because they are too poor to pay bail.

The for-profit bail industry stands to lose a great deal due to the shrinking role of cash bail. Indeed, some bail bondsmen have reported seeing their profits go down over 70% since policy changes began.[1] These companies, committed to preserving their industry, have criticized the rule and rallied to reinstate the traditional cash bail system.

This report argues that rather than return to the bail system as it was, Maryland policymakers should continue to build upon the successes of the rule change by strengthening alternatives to bail and pretrial detention.

We offer four policy recommendations:

1. *Strengthen implementation of Court Rule 4-216.1 and discourage judges from detaining low-level offenders.*
2. *Develop and adopt an evidence-based risk assessment tool in all Maryland counties.*
3. *Expand pretrial services to every county in Maryland.*
4. *Take further steps to reduce reliance on the for-profit bail system.*

Introduction

History of Bail

Bail has a long history in the United States, dating back to the colonial period. However, it was not commonly used as we understand it today until Congress passed the Bail Reform Act in the late 1960s. Bail was seen as an important mechanism to ensure defendants returned to court instead of failing to appear or fleeing.

It is important to note, however, that the United States bail system is not the international norm. Across the world, the United States and the Philippines are the only two countries that employ a bail system.

Maryland's Bail System

Each state addresses the issue of bail differently. Recently in Maryland, state legislators and the Attorney General's Office have been attempting to reform the bail system, given evidence that current policies and practices are economically and racially discriminatory to lower-income Marylanders and the state's Black and Brown communities.

With the goal of reforming the bail system, the state established two bodies: the Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defense in 2013 and the Governor's Commission to Reform Maryland's Pretrial System in 2014. However, little changed until October 2016, when Maryland Attorney General Brian Frosh issued a letter to the General Assembly's Rules Committee stating that the way bail was being administered in the state was potentially unconstitutional. Frosh argued that judges should only issue bail if it was the "least onerous" condition of release and that bail could not be used solely to prevent releasing a defendant from detention.

One month later, the Rules Committee followed Frosh's advice and amended Maryland Court Rule 4-216.1 on pretrial procedure. The Court of Appeals then upheld the rule change, and the amended rule took effect in July 2017.

Bail Reform in the Legislature

In the 2017 legislative session,[2] the Maryland General Assembly considered three bail reform bills:

- One that would only allow the use of cash bail after all other avenues had been considered, which would explicitly require judicial consideration of the defendant's ability to pay;
- One that would end the use of cash bail and require all counties to create pretrial services divisions; and
- One that would roll back the reforms from the amended court rule.

All three bills failed, leaving the Court of Appeals' rule as the standard for the use of bail in Maryland.

In advance of the 2018 legislative session, justice reform advocates have been working on proactive measures to end cash bail in the state. However, the bail industry has been lobbying to repeal Court Rule 4-216.1. The industry wishes to return to the pre-rule system, likely because the bail industry is earning less since the rule went into effect. By some estimates, the profits of the bail bond industry have dropped by 70% due to judges assigning significantly lower bail amounts (or no bail at all).

How Bail Works In Maryland

The Arrest

When a person is arrested and booked in jail, they will see a judicial official for a pretrial determination, where they will either be:

- Released on their own recognizance before their trial, with or without supervision;
- Made to post bail as a condition of their release; or
- Kept in jail without bail until their trial.

In Maryland, the overwhelming majority of initial pretrial release determinations are made by the District Court Commissioner and not by a judge. In most cases, the arrested person will see a commissioner within the first 24 hours of being arrested.

To determine whether the defendant should be released before trial, the District Court Commissioner or judge may use risk assessment tools to help "predict if a defendant is likely to not appear in court or pose a threat to themselves or the public."[3] But in practice, an objective risk assessment tool is rarely available.

At the initial pretrial determination, low-income people legally have a right to counsel from the state, but a 2014 study[4] by the Commission to Reform Maryland's Pretrial System found that they rarely gain access to counsel.[5] If the defendant is not granted release by the Commissioner, they will be held in pretrial detention until the next court business day, when they will appear before a District Court judge for a bail review hearing.

The Bail Review Hearing

At the bail review hearing, the judge can decide to release the defendant on their own recognizance, release them on bail, or hold them in pretrial detention without bail. In theory, a judge should only call for pretrial detention without bail when there is "clear and convincing evidence" that the defendant poses a significant public safety threat or is unlikely to appear in court for subsequent hearings.

Bail bond companies are for-profit corporations that provide corporate bonds, which are guarantees to the court for the full amount of a defendant's bail in exchange for a fee of up to 10% of the bail amount paid by the defendant or their co-signer. Bail bond surety companies provide insurance to bail bond companies to decrease their risk.

If the judge determines that bail is appropriate, they can decide whether the bail should be "unsecured" or "secured." Unsecured bail requires no money to be paid up front. However, if the defendant fails to appear in court, they then would owe the full amount of the unsecured bail. A secured bail requires money and/or collateral to be posted or paid before the person is released.

The Bail Payment

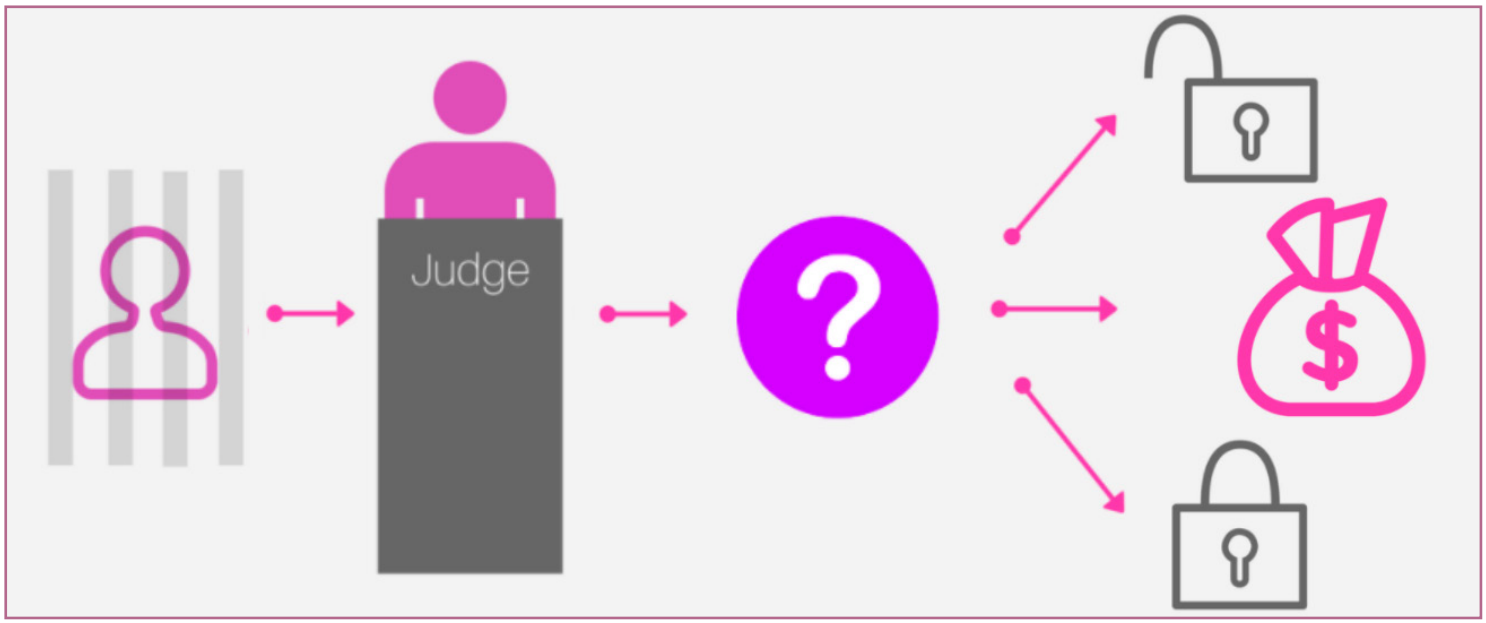
Once the defendant pays their secured bail, they will be released from jail. If a defendant cannot afford to pay a secured bail on their own, their family or friends can help with the payment. For a low-income family, the money paid for bail may come out of funds allocated for other daily necessities such as food, rent, or childcare. If the defendant and their loved ones are unable to come up with the full bail amount, they may choose to pay a bail bond company instead.

The Bail Collection

If the person fails to appear at their next court date, the bail bond company will be responsible for paying the court the full amount of the bond, and then may proceed to recuperate those costs from the borrower. Most bail bond agents insure themselves from risk by taking out insurance policies with bail bond surety companies, paying the surety company about 10% of the amount they charge the defendant.[6] Surety agents get to keep a portion of the payment, while the insurance company receives the rest.

Many pieces of legislation have entrenched and empowered the bail industry in Maryland. For example, a bill (HB 742) passed by the General Assembly in 2012 required bail bondsmen to "take all necessary steps to collect the total amount owed, including any debt collection remedies provided by law."[7] In addition, the District Court assists bail surety companies in their debt collection by producing a list of bail bond forfeitures every quarter titled "List of Absolute Bond Forfeiture in Default."[8]

The debt collection process can be costly to the defendant. If they fail to meet the terms of their bail and do not show up to court, they may be forced to pay the full amount of their bond. These cases can land in the hands of a debt collector, who can charge annual interest rates of up to 10% of the bond amount, in addition to attorney fees and court costs.[9] This practice is legally permitted by the state: a legal assistant for a debt collector explained that they charge a 10% annual interest rate because "under Maryland law we're allowed to."[10]



A System In Need of Reform

Over the past several years, a growing cohort of Maryland legislators, legal representatives, state officials, and advocates have concluded that Maryland's bail and pretrial system needs reforming. Indeed, our report follows a string of previous studies of the bail and pretrial system in Maryland, each finding substantial discrepancies between the theory and practice of how bail is implemented by courts across the state. These previous reports have helped fuel ongoing attempts to reform Maryland's pretrial system and bail's role within it.

Though comprehensive bail reform has yet to pass in the Maryland legislature, the system experienced significant changes in 2017 due to the implementation of Court Rule 4-216.1. The Attorney General and Maryland Court of Appeals expected the rule would strictly curtail the use of secured bail in the state.

In this section, we review previous studies that illuminated the workings of the bail system in Maryland before the court rule was amended.

Previous reports regarding the bail system in Maryland offered several troubling conclusions:

In 2014, more than 65% of Maryland's jail population consisted of persons held pretrial.

A 2014 report of the Commission to Reform Maryland's Pretrial System found that over 65% of those held in Maryland jails were held without having been convicted of a crime. In comparison, the national average is around 60%.[13] Many of those held pretrial in Maryland were in jail because they could not afford to make bail.[14] This pretrial jail population cost the state anywhere between $22 million and $44 million per year.[15]

Maryland's poorest zip codes paid the most to the bail industry.

Maryland's for-profit bail system preyed on the most impoverished Marylanders. A 2016 study from the Maryland Office of the Public Defender looked at District Courts across the state and found that defendants who posted a corporate bond through a bail bondsman paid a total of $256 million in non-refundable corporate bail bond premiums between 2011-2015.[16] Most of the bond premiums were paid by residents of Baltimore City and Baltimore County.

The study also found that corporate bonds extracted "tens of millions of dollars from Maryland's poorest zip codes, contributing to the perpetuation of poverty."[17]

Bail disproportionately harmed Black communities in Maryland.

Studies revealed that Black defendants in Maryland paid higher average bail amounts than white defendants, and that Black neighborhoods paid huge and disproportionate shares of the total premiums paid.

A 2014 report by the Office of the Public Defender found that initial bail amounts for Black defendants were 45% higher than those of white defendants. From 2011 to 2015, the two zip codes that paid the most in bail premiums were over 90% Black. These two areas alone were charged $22.6 million in premiums, or "enough to send 219 students to the University of Maryland at College Park for four years or provide a year of childcare to approximately 2,800 preschoolers in Baltimore City."[18]

"All out of the blue a bunch of police cars pulled up and grabbed me... They thought I was someone else the whole time. They called a name out that wasn't me."

Rafiq Shaw's arrest was due to mistaken identity. Shaw was arrested for possession of a gun in a car that wasn't his.

Once Shaw made it to trial, the jury deliberated for less than half an hour and found Shaw innocent on both counts.

Shaw is still paying for the crime he never committed. He's on the hook for the $10,000 his family agreed to pay the bail bondsman who got him out of jail two days after his arrest.[12]

Assessing Recent Changes To Maryland's Bail System

In reaction to the aforementioned findings, the Maryland Court of Appeals adopted Court Rule 4-216.1. In the following section, we measure the impact of the rule on bail use and bail amounts. In the 2018 Maryland Legislative Session, the for-profit bail industry and its proponents will argue against the efficacy of the rule and push to return to the pre-2017 cash bail system.

We find, however, that the rule has created positive changes, although there is still more work to be done on bail reform. The rule has reduced the use of bail and average bail amounts, and has increased the percentage of people released on their own recognizance. It has also, however, increased the percentage of people held without bail.

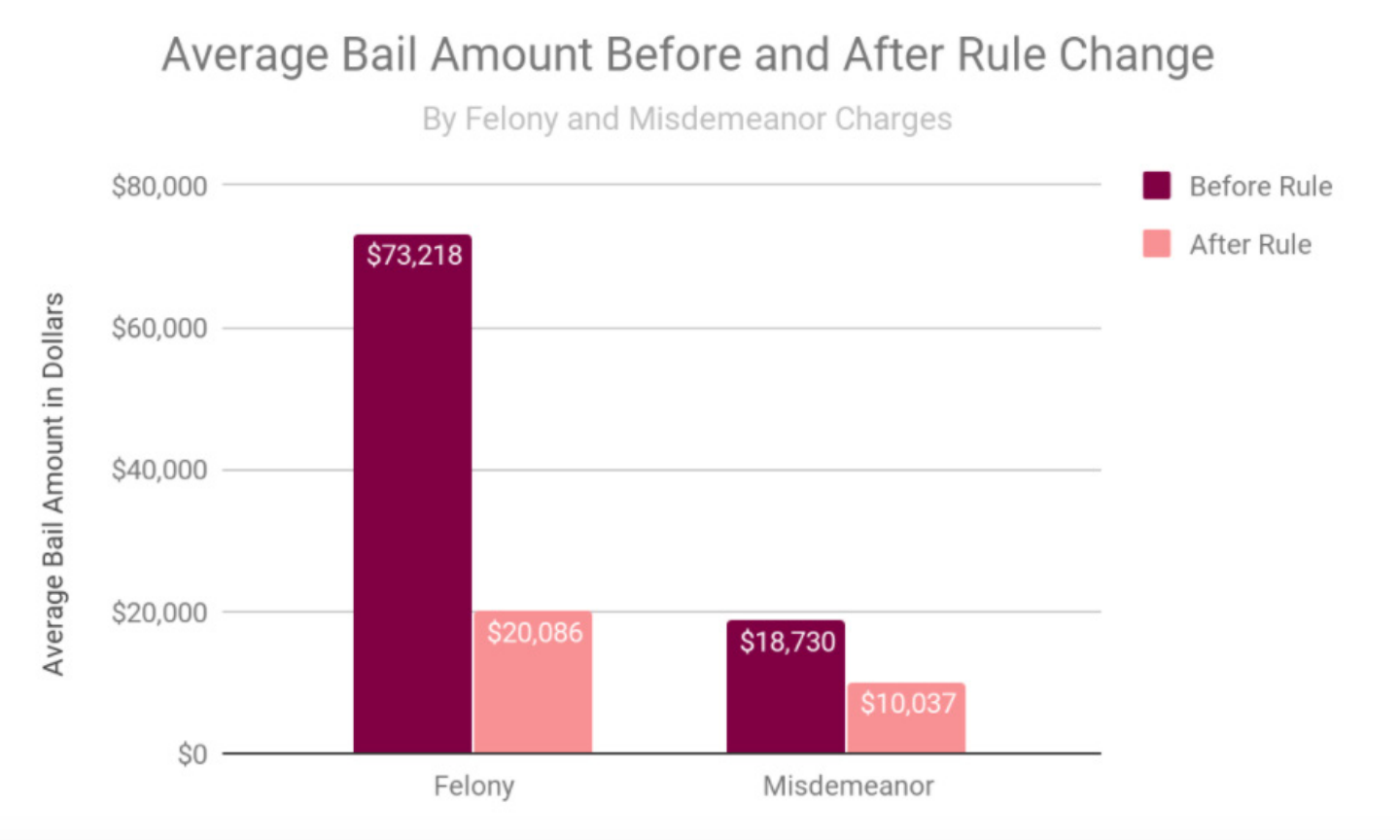
To measure the impact of the rule, we collected data on every case filed with the Maryland Court Record System after the rule was officially implemented, from July 2017 to the start of November 2017, when we began this project. We then obtained data on every case filed between July and November in 2015 and compared the two time periods. We chose to use data from 2015 rather than 2016 as the Attorney General's public questioning of the constitutionality of cash bail in Maryland had already begun affecting court behavior by early October 2016.[19]

Throughout this section, we will further break down defendants into those charged with felonies and misdemeanors, and those charged with a "high" serious crime and those charged with a "low" serious crime. To rank charge by seriousness, we used the seriousness ranking provided by the Maryland Sentencing Commission.[20]

FINDING 1:

The average dollar amount of bail decreased by more than $29,000 following the rule change.

In the study period in 2015, the average bail amount for those assigned bail was $41,622. In the period after the implementation of the court rule in 2017, the average dropped to $12,426. This may be because judges, per instruction in the rule, began to consider a defendant's ability to pay when determining bail amount. The average bail amount, however, still remains very high. Today, the average defendant charged with a misdemeanor and released on bail would still have to pay at least a $1,000 premium to a bail bond company to make bail. The chart below shows significant drop in the average bail amounts for felony and misdemeanor charges as a result of the rule change.

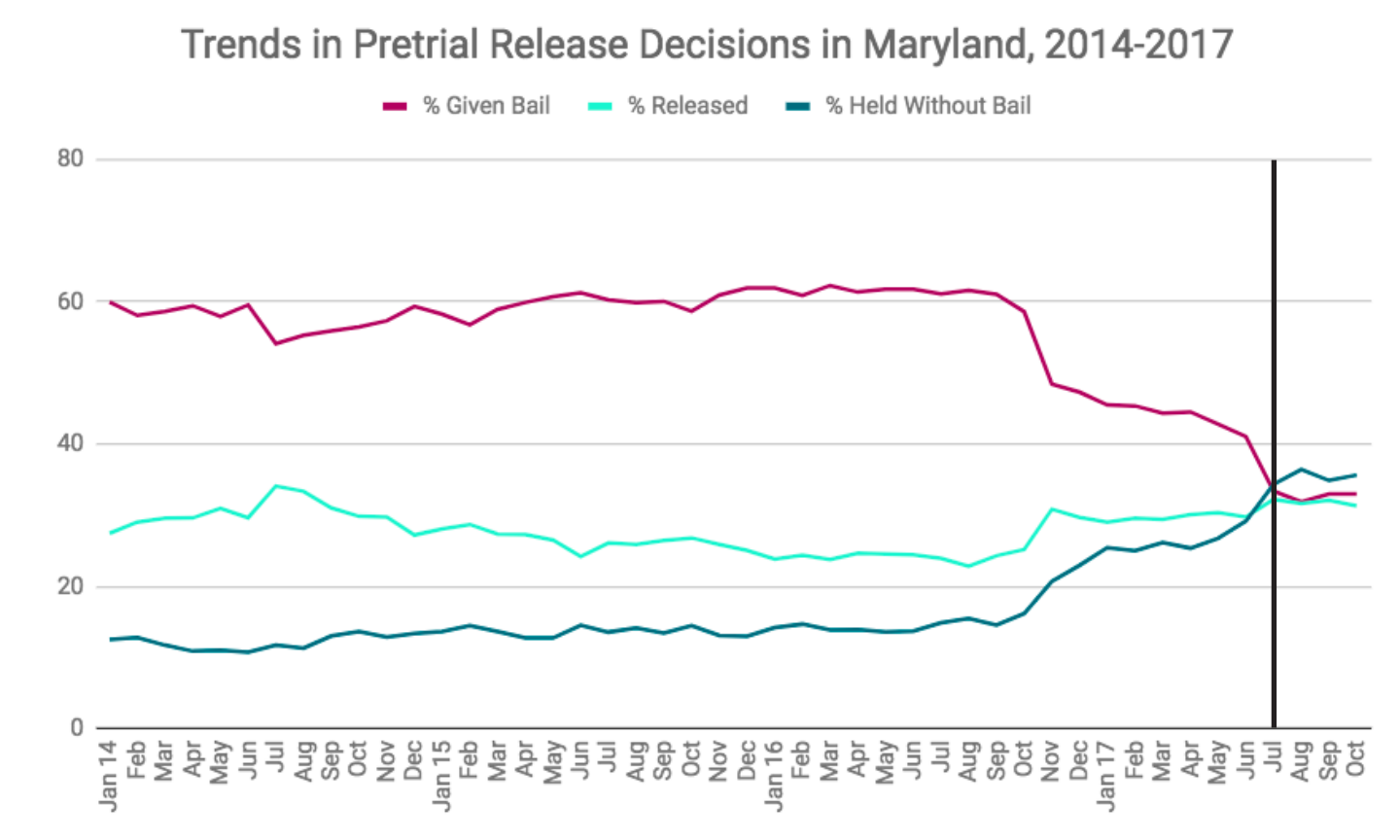


FINDING 2:

The percentage of people assigned bail decreased by over 40%.

In 2015, almost 60% of defendants were assigned bail. In 2017, that amount decreased to just under 36%, losing roughly 23 percentage points. By design, Court Rule 4-216.1 is intended to decrease the use of secured bail by promoting "the release of defendants on their own recognizance or, when necessary, unsecured bond."[21] This initial data suggests that judges are, in fact, moving away from using bail as a condition of release.

This indicates a significant change in release decisions. From 2014 to October 2016, the trends in release decisions for defendants across the state of Maryland were consistent over time, with about 60% of defendants assigned bail. However, starting in October 2016, decisions began to trend differently. The percentage of people assigned bail decreased while the percentage of people held without bail or released on their own recognizance increased. By the time the rule was officially implemented on July 1, 2017, the percentage of people given bail had fallen below the percentage of people held without bail.


Trends in Pretrial Release Decisions in Maryland, 2014-2017
% Given Bail
% Released
% Held Without Bail
80
60
40
20
0
Jan 14
Feb
Mar
Apr
May
Jun
Jul
Aug
Sep
Oct
Nov
Dec
Jan 15
Feb
Mar
Apr
May
Jun
Jul
Aug
Sep
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Nov
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Jan 16
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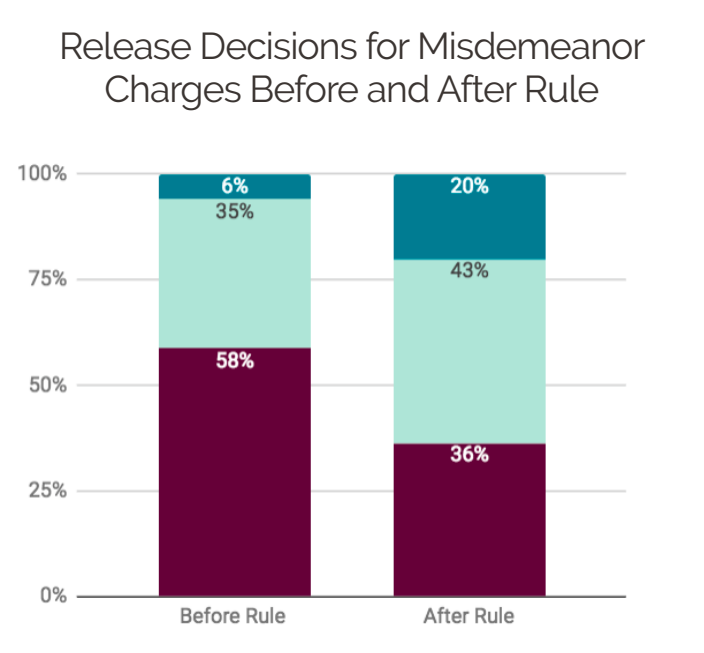
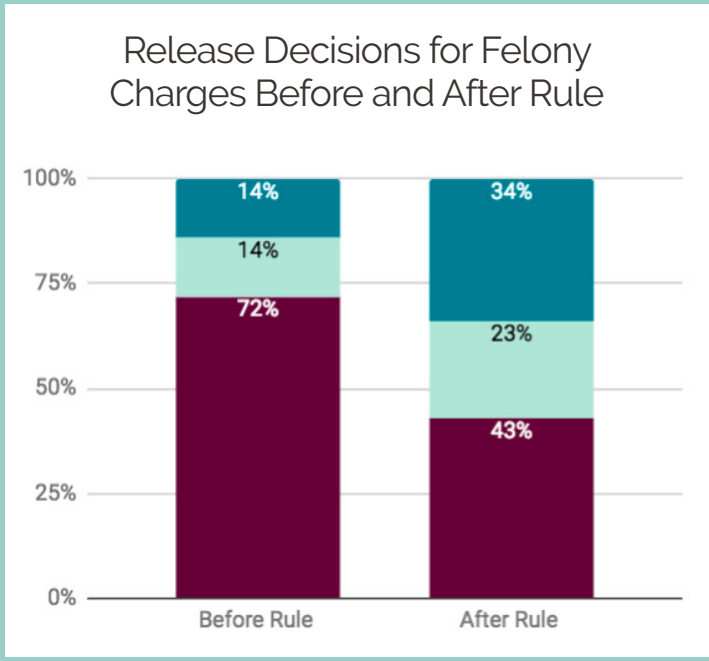
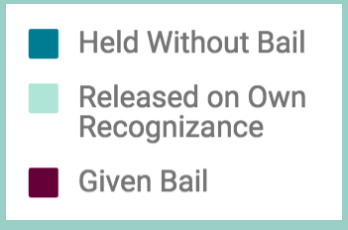
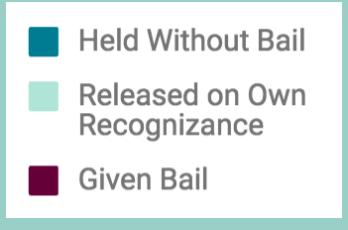
Oct


Release Decisions for Misdemeanor Charges Before and After Rule
100%
75%
50%
25%
0%
6%
35%
58%
20%
43%
36%
Before Rule
After Rule


Release Decisions for Felony Charges Before and After Rule
100%
75%
50%
25%
0%
14%
14%
72%
34%
23%
43%
Before Rule
After Rule


Held Without Bail
Released on Own Recognizance
Given Bail


Held Without Bail
Released on Own Recognizance
Given Bail

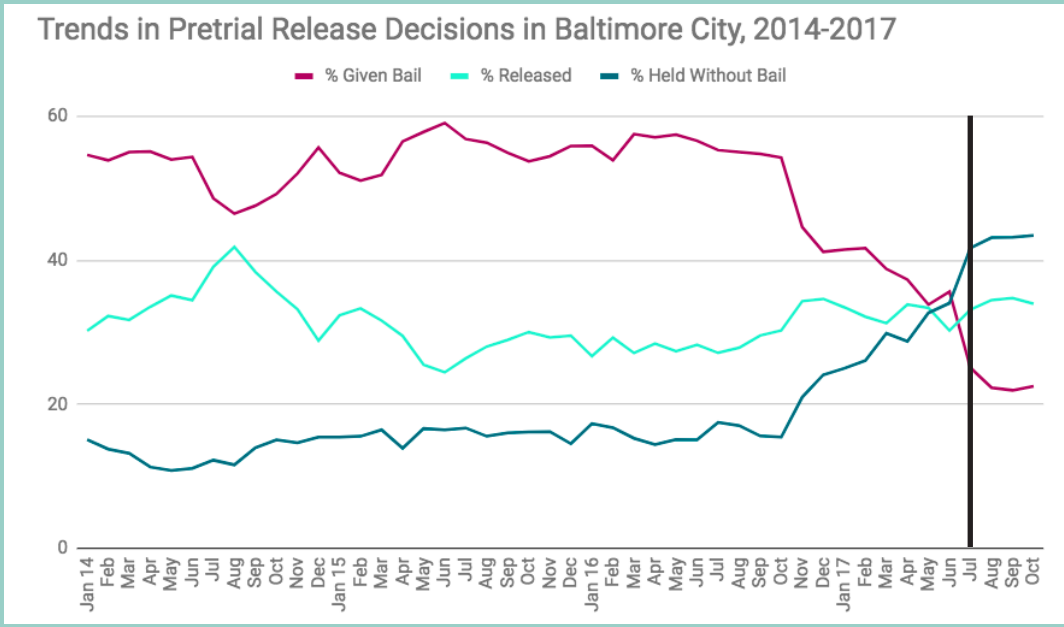
FINDING 3:

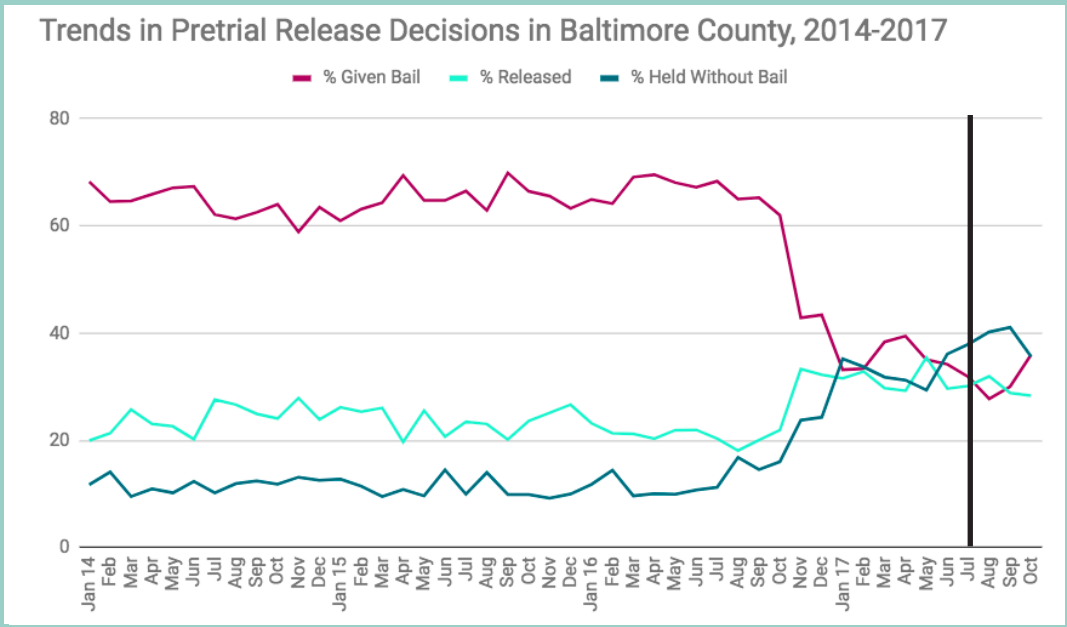
The percentage of people released on their own recognizance increased—but the percentage of people held without bail increased *even more*.

Given Court Rule 4-216.1's explicit instructions to defer to releasing defendants on their own recognizance, one might expect to see the percentage of defendants released increase more than those held without bail. Instead, we see that among the defendants not given bail, a higher percentage were held in jail than were released. The percentage of defendants held without bail increased by 14.3 percentage points; the percentage of those released on their own recognizance increased by 9.6 percentage points.

Bail reform advocates have argued that judges are misinterpreting the rule.[22] Some have pointed to the need to supplement procedural changes with comprehensive pretrial services across district courts in the state, so that defendants who are released receive supportive services and accountability measures to better ensure they appear in court and do not re-offend. This data suggests that in the absence of such options, many judges are opting to hold defendants in jail pretrial rather than release them on their own recognizance.


RECEIVED BAIL
-23.9%
+14.3%
HELD WITHOUT BAIL
+9.6%
RELEASED ON THEIR OWN RECOGNIZANCE


Trends in Pretrial Release Decisions in Baltimore City, 2014-2017
% Given Bail
% Released
% Held Without Bail
60
40
20
0
Jan 14 Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan 15 Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan 16 Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan 17 Feb Mar Apr May Jun Jul Aug Sep Oct


Trends in Pretrial Release Decisions in Baltimore County, 2014-2017
% Given Bail
% Released
% Held Without Bail
80
60
40
20
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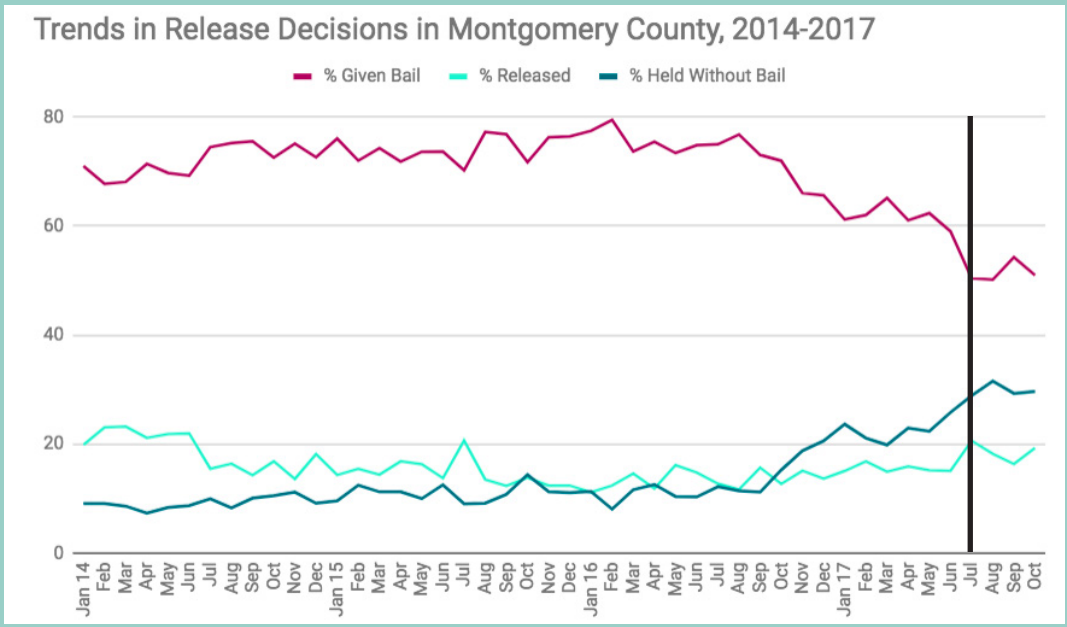
Jan 14 Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan 15 Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan 16 Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan 17 Feb Mar Apr May Jun Jul Aug Sep Oct


Trends in Release Decisions in Montgomery County, 2014-2017
% Given Bail
% Released
% Held Without Bail
80
60
40
20
0
Jan 14 Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan 15 Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan 16 Feb Mar Apr May Jun Jul Aug Sep Oct Nov Dec Jan 17 Feb Mar Apr May Jun Jul Aug Sep Oct

FINDING 4:

There are no standard pretrial practices across Maryland counties.

Across Maryland between 2014 and 2017, trends in release decisions for defendants remained fairly consistent over time, with about 60% of defendants assigned bail. Starting in October 2016, decisions began to trend differently. The percentage of people assigned bail decreased while the percentage of people held without bail or released on their own recognizance increased. Around the time of the official implementation of the rule change—July 1, 2017—the percentage of people given bail actually fell below the percentage of people held without bail.

However, different counties across the state had different initial levels of release decisions, as well as differing trends. In both Baltimore City and Baltimore County, rates of bail dipped precipitously starting in late 2016, and around the time of the enactment of the court rule, the rate of people assigned bail dipped below that of those released or held without bail.

In Montgomery County, initial rates of bail assignment were higher than in Baltimore—peaking at about 80% of defendants in mid-2016. While each of the lines trends in the same direction as other counties, the percentage of people given bail never dipped below the rate of people released or held without bail.

FINDING 5:

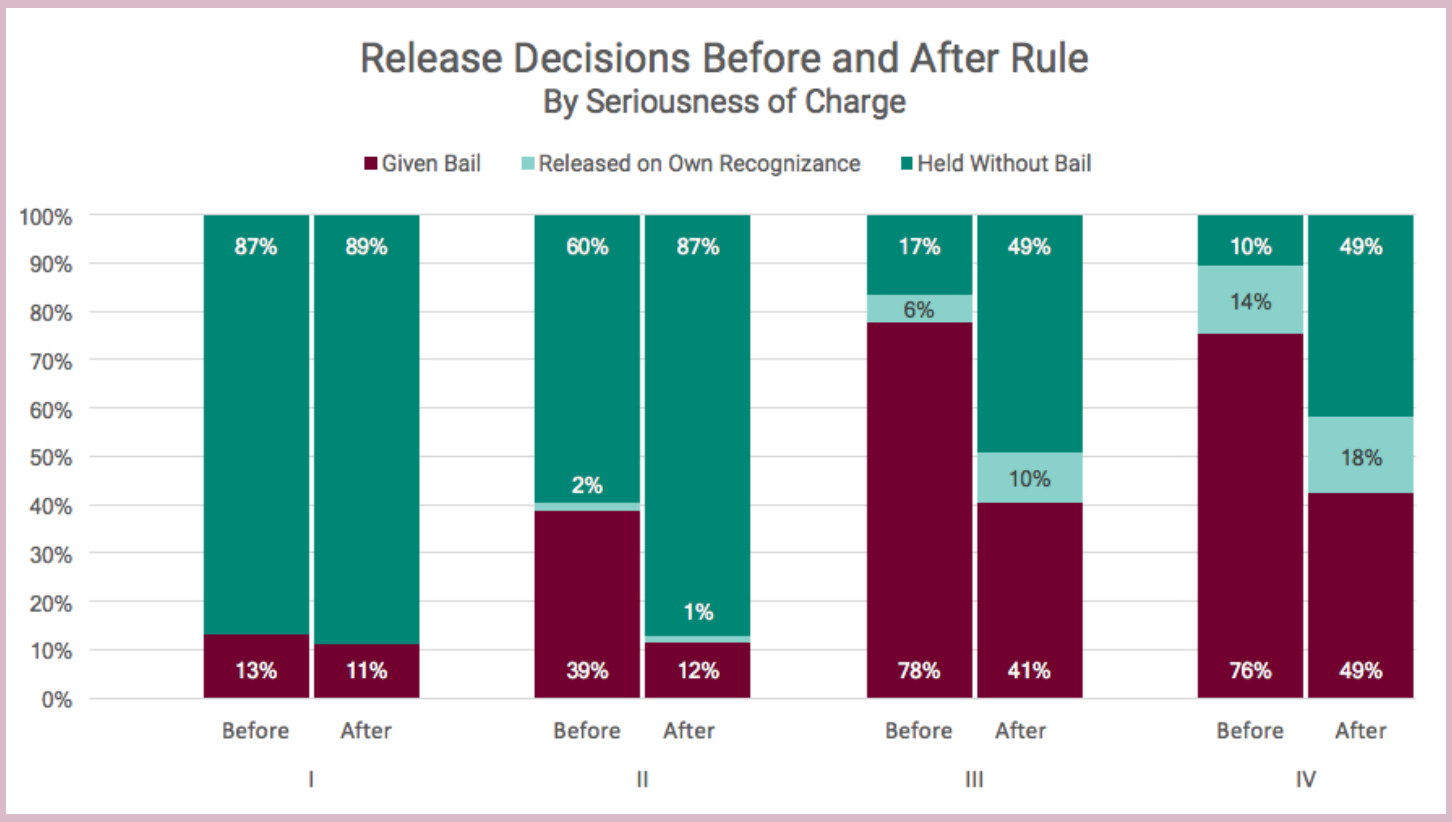
Many people with more serious charges were held without bail after the rule change, when previously they were given bail.

Under the old bail system, a wealthy, high-risk defendant might be able to post bail whereas a low-income, low-risk defendant might be held in jail. Advocates of the court rule expected to see defendants with more serious charges held without bond rather than released on bail. Our data shows that indeed, people with the most serious charges (Categories I-IV) have been held without bail at higher rates than before the rule.

FINDING 6:

Release decisions for lower-level crimes are inconsistent.

The use of cash bail for less serious charges decreased across the board after the rule change. However, the rate of defendants being held without bail for less serious charges also increased. In making pretrial release decisions, it appears that many judges are opting to hold lower-level offenders in jail until their trial rather than release them. This runs contrary to the language of the rule itself.


Release Decisions Before and After Rule
By Seriousness of Charge
Given Bail
Released on Own Recognizance
Held Without Bail
100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
87%
13%
89%
11%
60%
2%
39%
87%
1%
12%
17%
6%
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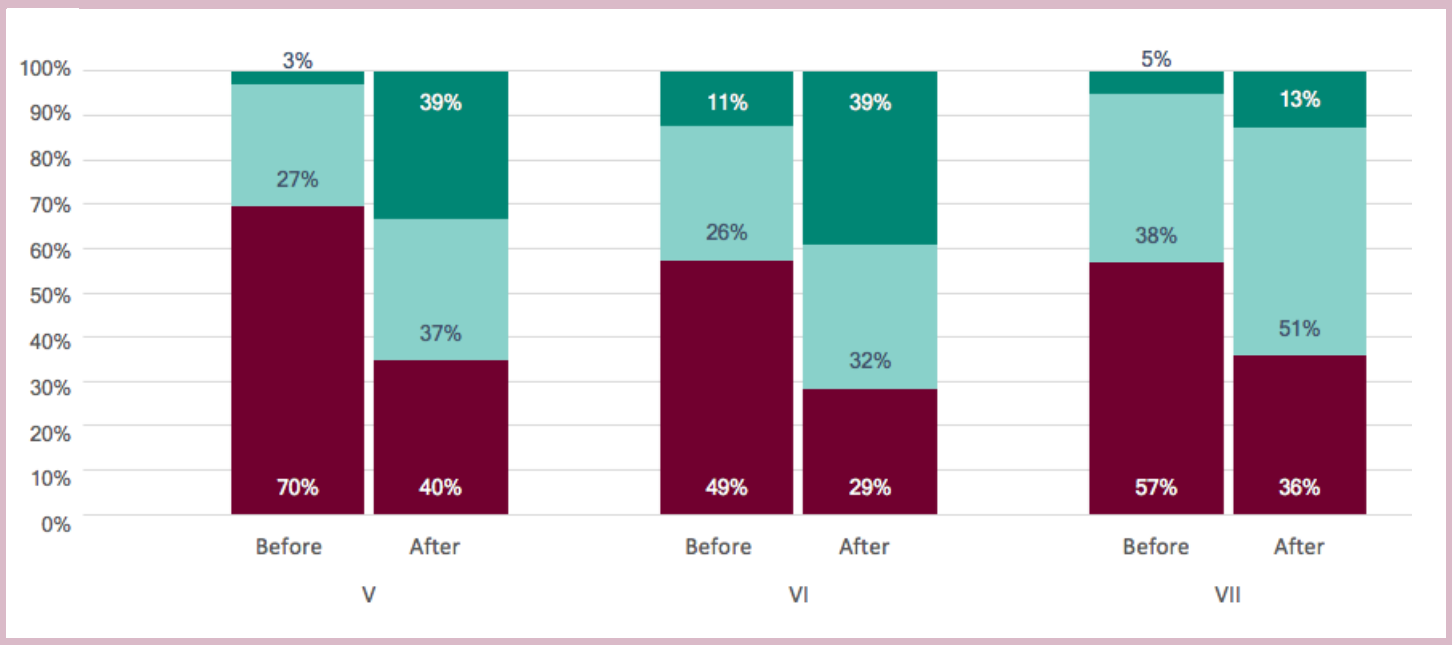
10%
14%
76%
49%
18%
49%
Before
After
I
II
III
IV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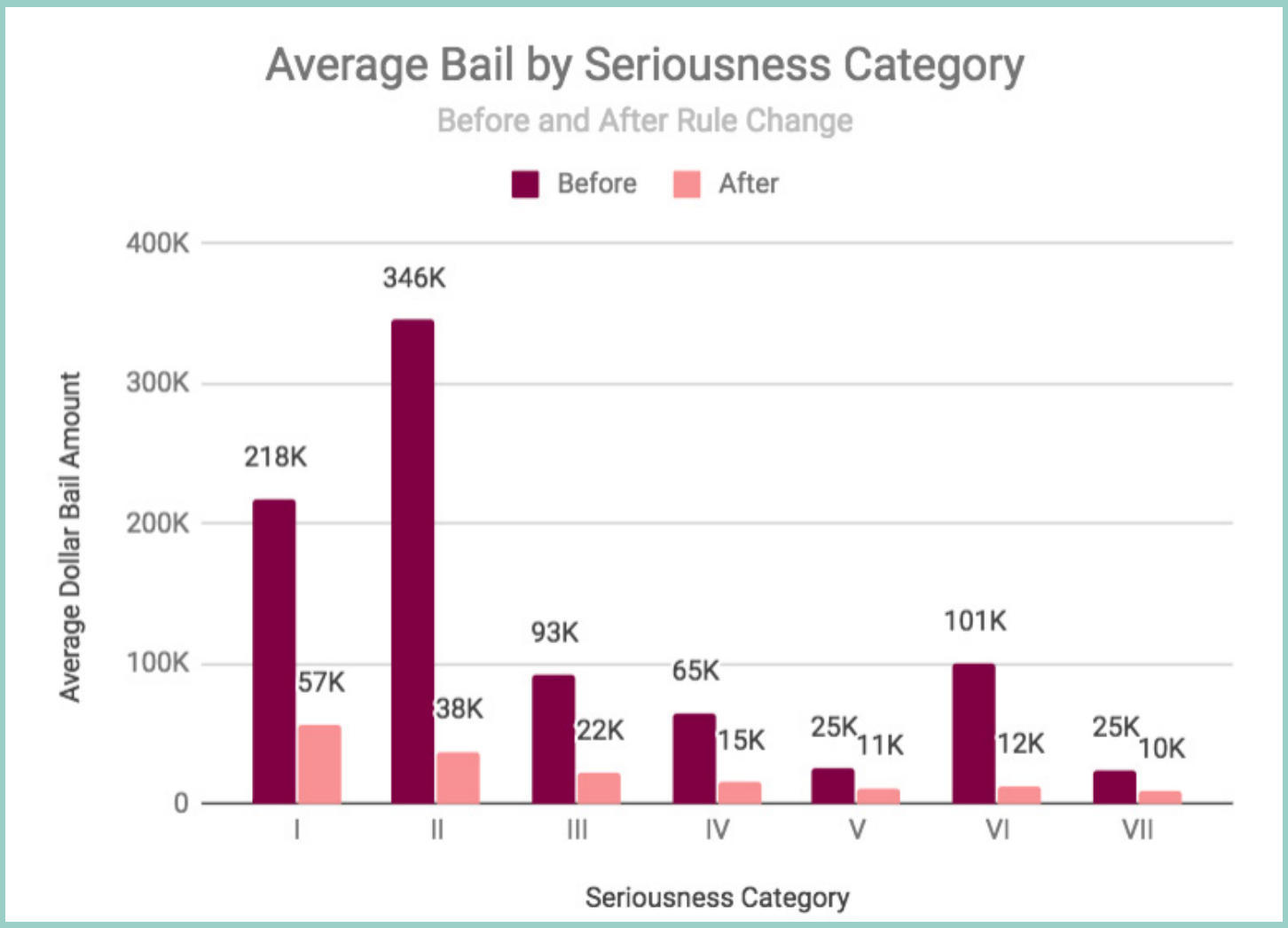
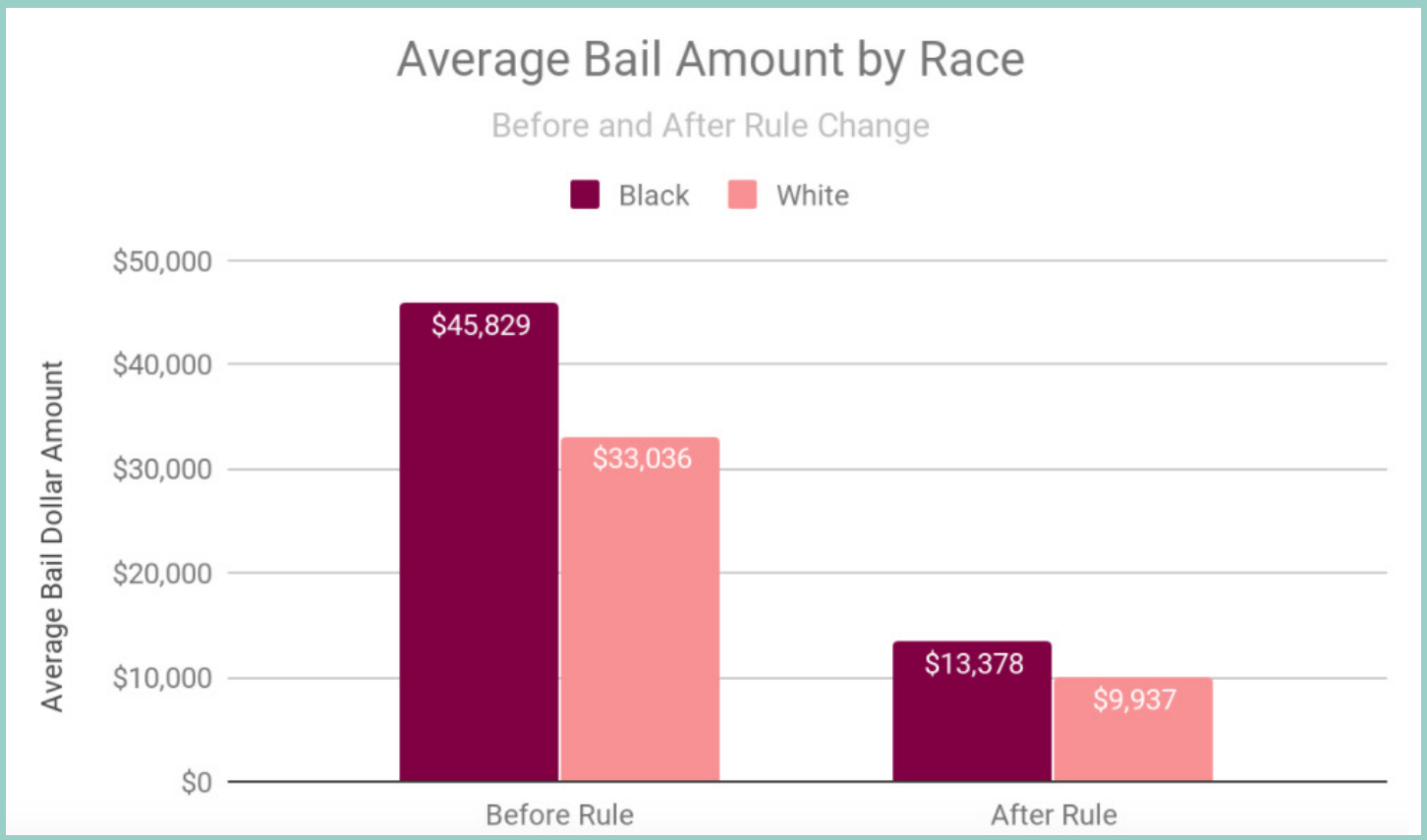
39%
37%
40%
11%
26%
49%
39%
32%
29%
5%
38%
57%
13%
51%
36%
Before
After
V
VI
VII


Average Bail by Seriousness Category
Before and After Rule Change
Before
After
400K
300K
200K
100K
0
Average Dollar Bail Amount
218K
57K
346K
38K
93K
22K
65K
15K
25K
11K
101K
12K
25K
10K
I
II
III
IV
V
VI
VII
Seriousness Category


Average Bail Amount by Race
Before and After Rule Change
Black
White
$50,000
$40,000
$30,000
$20,000
$10,000
$0
Average Bail Dollar Amount
$45,829
$33,036
$13,378
$9,937
Before Rule
After Rule

FINDING 7:

Court Rule 4-216.1 reduced distortions in the amount of bail assigned.

Average bail amounts across all Seriousness Categories decreased significantly following the rule change. However, before the rule, a serious charge was not necessarily associated with a higher bail amount. For example, in 2015, the average bail amount for a Category VI crime was greater than the average for Category V, even though the latter crimes are deemed more serious. In 2017, the discrepancy is much smaller, and bail amounts assigned follow a clear pattern of decreasing bail amounts as charges become less serious.

FINDING 8:

Black defendants paid a higher average amount of bail both before and after the rule change.

The rule change seems to have shrunk the gap in bail amounts between Black and white defendants. Before the rule change, bail was on average 39% higher for Black defendants than white defendants. After the rule change, bail was on average 35% higher for Black defendants.

FINDING 9:

Black defendants are disproportionately held without bail for lower-level charges.

Some of the inconsistencies of release decisions for lower-level charges may be driven by the fact that Black defendants are held without bail at higher rates than white defendants with a similar level charge. The gap is especially large for Seriousness Category VI charges, for which Black defendants are held without bail at a 12.6 percentage points higher rate than white defendants. This pattern persists both before and after the rule change.

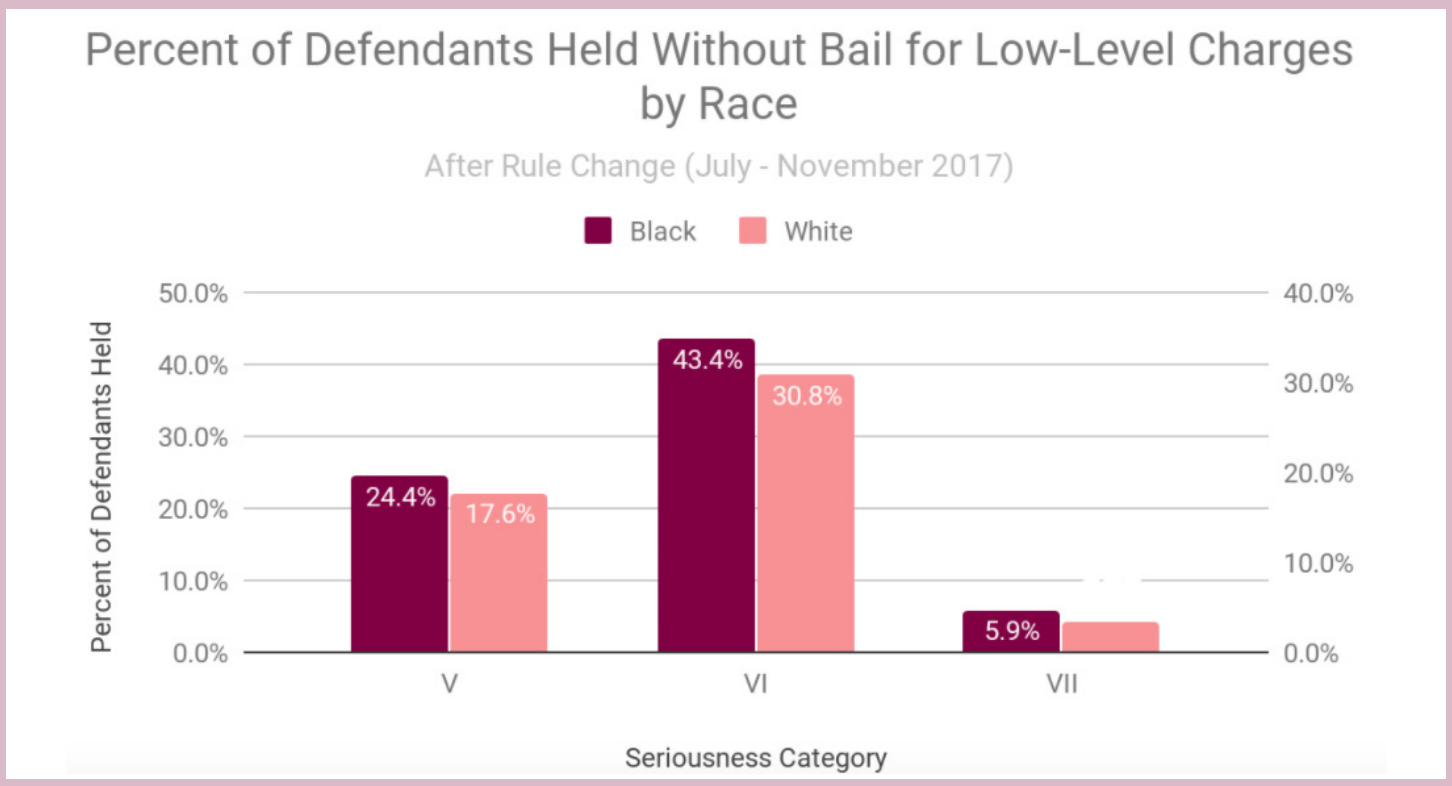
FINDING 10:

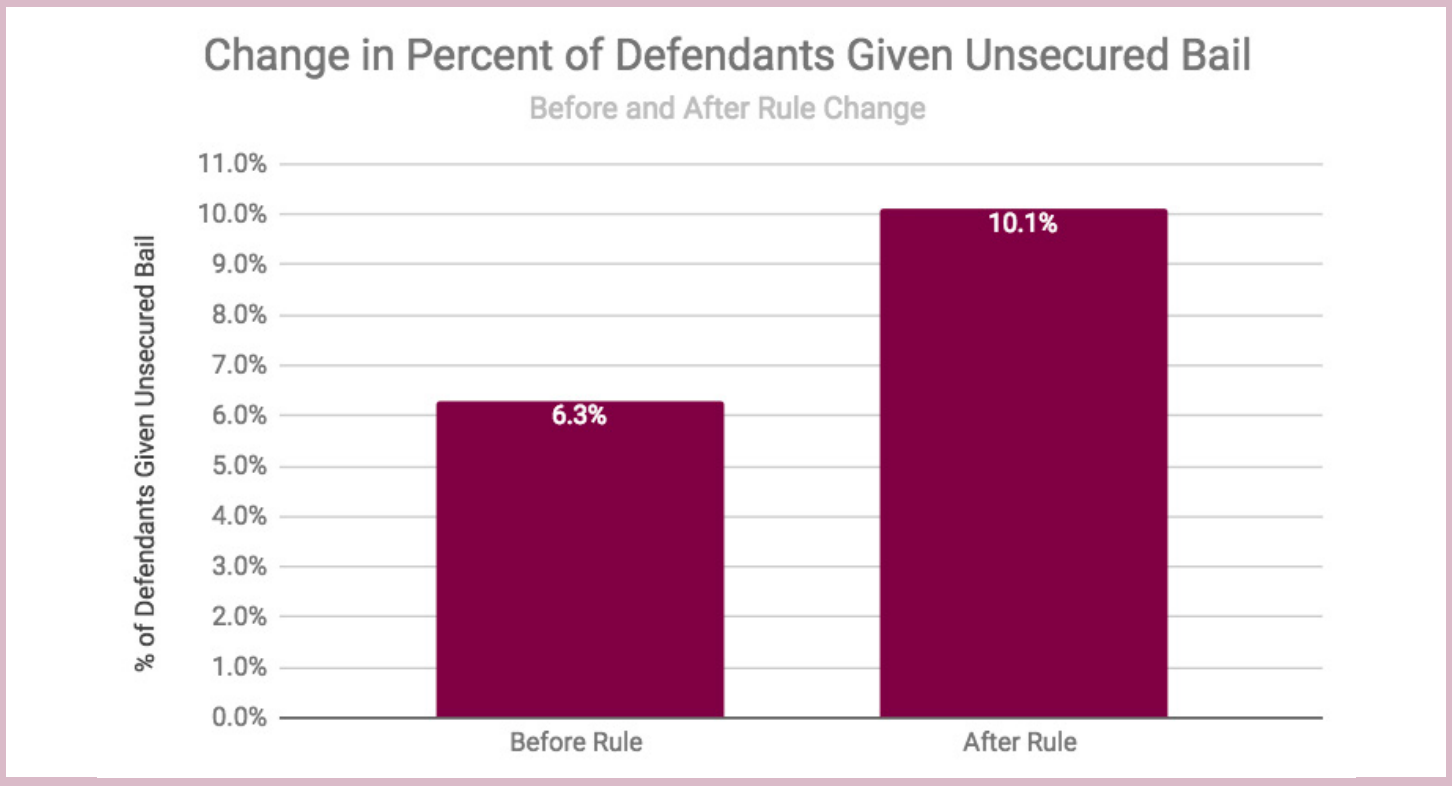
The use of unsecured bail increased by 4 percentage points after the rule change.

As previously mentioned, Court Rule 4-216.1 created a default for judges' release decisions to release defendants either on their own recognizance or with unsecured bail (where no upfront payment is required) barring "clear and convincing evidence" that the defendant poses an unreasonable risk. However, data shows that the rate of defendants being released on unsecured bail only increased by approximately 4 percentage points after the implementation of the rule change—from 6.3% to 10.1%.

Need for Further Study

The conclusions found from our initial data analysis are consistent with those found by the Maryland Judiciary in their first assessment of the impact of the rule change. Additionally, that report found that the percent of people held on bail who stayed in jail for more than five days decreased after the rule change, suggesting that defendants are better able to afford bail following the change.


Percent of Defendants Held Without Bail for Low-Level Charges by Race
After Rule Change (July - November 2017)
Black
White
Percent of Defendants Held
50.0%
40.0%
30.0%
20.0%
10.0%
0.0%
40.0%
30.0%
20.0%
10.0%
0.0%
24.4%
17.6%
43.4%
30.8%
5.9%
V
VI
VII
Seriousness Category


Change in Percent of Defendants Given Unsecured Bail
Before and After Rule Change
% of Defendants Given Unsecured Bail
11.0%
10.0%
9.0%
8.0%
7.0%
6.0%
5.0%
4.0%
3.0%
2.0%
1.0%
0.0%
6.3%
10.1%
Before Rule
After Rule

Advancing Bail Reform In Maryland

By employing best practices from other states and jurisdictions, Maryland could reduce its pretrial jail population, increase public safety, and save taxpayers' money. To do so, we suggest Maryland adopt the following recommendations:

1. Strengthen implementation of Court Rule 4-216.1.
2. Develop and adopt an evidence-based risk assessment tool in all Maryland counties.
3. Expand pretrial services to every county in Maryland.
4. Take further steps to reduce reliance on the for-profit bail system.

Recommendation #1:

Strengthen Implementation of Court Rule 4-216.1.

Court Rule 4-216.1 has ushered in many promising changes to Maryland's pretrial system. The use of cash bail has decreased and bail amounts are down substantially. Jails are holding fewer people who were incarcerated simply because they could not afford to pay. Finally, rates of release on defendants' own recognizance and the use of unsecured bail have increased.

However, while the new rule reduced the number of defendants assigned bail, it did not reduce the number of defendants held before trial. The findings from both the Maryland Judiciary's report on the impact of the rule change and our own analysis show that the percentage of defendants held without bail has risen dramatically.[23] In fact, many of those held before trial since the rule change are accused of low-level misdemeanor offenses. The most recent analysis shows that 1 in 5 Maryland defendants is still held in jail because they cannot afford bail.[24]

Advocates from several law school clinics in Baltimore have reported that judges routinely hold people in jail without bail before their trial rather than turn to the array of pretrial release options that are available to them (e.g., as in the case of Baltimore City, which has a pretrial services division).[25] Judges may be choosing to do so in response to the limited pretrial tools and services that have resulted from the cash bail system. While holding someone in jail without

bail removes the possibility that they are held due to inability to pay bail, it still carries with it the possibility of causing the person to lose their job, housing, or family stability. Thus, it leads to similar consequences as cash bail in the case of low-level offenses.

In the short term, the Maryland Judiciary should issue additional guidance to district court judges and commissioners to ensure proper implementation of Court Rule 4-216.1. The guidance should include specific instructions to discourage judges and commissioners from holding defendants with low-level charges.

In the longer term, the Maryland Legislature should continue to take proactive steps to move away from the use of for-profit bail in the state, informed by the following three recommendations.

Recommendation #2:

Develop and adopt an evidence-based risk assessment tool in all Maryland counties.

Evidence-based risk assessment tools, which are informed by data analyses of millions of criminal cases, have the potential to provide judges with more objective information to inform their pretrial release decisions. Risk assessment tools are cornerstones of many successful bail reform efforts across the country. Thirty-eight jurisdictions, including the states of Arizona, Kentucky and New Jersey, and large cities such as Charlotte, Chicago and Houston, have adopted the tool the Arnold Foundation created, which is called the Public Safety Assessment (PSA).[26] The PSA was created "using a database of over 1.5 million cases drawn from more than 300 jurisdictions."[27] It analyzes the following factors in determining a risk score: "whether the current offense is violent; whether the person has a prior misdemeanor or felony charge; the person's age at the time of the arrest; and how many times the person failed to appear at a pretrial hearing in the last two years".[28] While many jurisdictions have adopted other risk-assessment tools, several of the aforementioned factors are used to compute risk scores around the country.

In Maryland, six out of 24 counties use risk assessment tools, but only two—Montgomery and St. Mary's Counties—use a tool that has been empirically validated.[29] Mandating that judges use evidence-based tools could increase fairness within the Maryland criminal justice system and allow the state to systematically assist counties with implementation. Moreover, use of data-driven risk assessment tools would reduce judges' personal biases, which may contribute to pretrial release disparities within defendant groups charged with similar offenses and with parallel criminal histories.

Jurisdictions across the country that have adopted evidence-based risk assessment tools have experienced increased rates of pretrial release on defendants' own recognizance, and reduced re-offense rates, reduced failure to appear in court rates, and reduced taxpayer costs.

Examples Across The U.S.

In 2003, **Virginia** became the first state to use a statewide risk assessment tool. The tool considers the defendant's risk level and the seriousness of the charge to "assign defendants to the appropriate risk management strategy."[30] Defendants with cases that were assessed by trained pretrial services staff were 1.3 times less likely to have a new arrest pending trial and were more likely to appear at their court dates than defendants whose cases were assessed by untrained staff. Additionally, trained staff were 2.3 times more likely to recommend defendants be released on their own recognizance.[31]

In 2011, the **Kentucky** legislature required the use of an evidence-based risk assessment tool with the goal of reducing the costs of housing defendants in the state's prisons and jails.[32] Defendants with low risk scores are released on their own recognizance, while those who score a moderate risk are released into a pretrial services program. Those charged with misdemeanor offenses are assigned cash bail, although their cash bond cannot exceed the maximum fine and court costs the defendant would receive if convicted. In 2013, the state of Kentucky began using the Arnold Foundation's Public Safety Assessment (PSA). Six months of PSA use yielded a 15% reduction in new criminal activity on pretrial release, while pretrial release rates rose from 68% to 70%. Two years after the law's passage, the court appearance rate rose from 89% to 91%.[33]

"One beneficiary of the St. Mary's policy is DaShawn Lawson. Arrested on a charge of driving on a suspended license and delinquent in his payments on past traffic offenses, he said he wouldn't have been able to afford bail. The 22-year-old has no criminal record, but a history of missing court appearances on traffic charges. He was placed on Level 1 supervision. Pretrial supervisors will remind him of his court date.

'Pretrial is great,' Lawson said. *'They work with me really well.'*

He's working now in an apprenticeship program with an insulators' union. He said he'll soon pay off his past fines. [O]ne of the program's aims is to see that jail doesn't cost people jobs. 'You miss three days of work and you're fired,' he said."[38]

The Importance Of Racial Equity In Risk Assessment Design

There is mounting concern among policymakers, advocates, and scholars that evidence-based risk assessment tools have the potential to aggrevate existing racial biases in the criminal justice system. Yet, a well-constructed risk assessment tool that relies on factors that are more race-neutral could reduce racially biased judicial release decisions.

Virginia's risk assessment tool is one model that attempts to be race- and gender-neutral. It was recently tested and validated for race and gender predictive bias and subsequently revised to improve predictive validity.[34]

Additionally, a 2017 study of Kentucky's risk assessment tool found that it had no effect on racial disparities in pretrial detention.[35]

Maryland's statewide evidence-based risk assessment tool must be developed to minimize the possibility of racially-biased outcomes. It must also include mechanisms to validate that it does not simply reproduce existing biases against Black and Brown communities in the bail system. The tool should also be developed with input from community stakeholders across all of Maryland's counties. Often, risk assessment tools are crafted and implemented with "no public forum of transparency and accountability whereby people [can] evaluate the frequency with which judges deviated from the presumptive default of non-monetary release."[36]

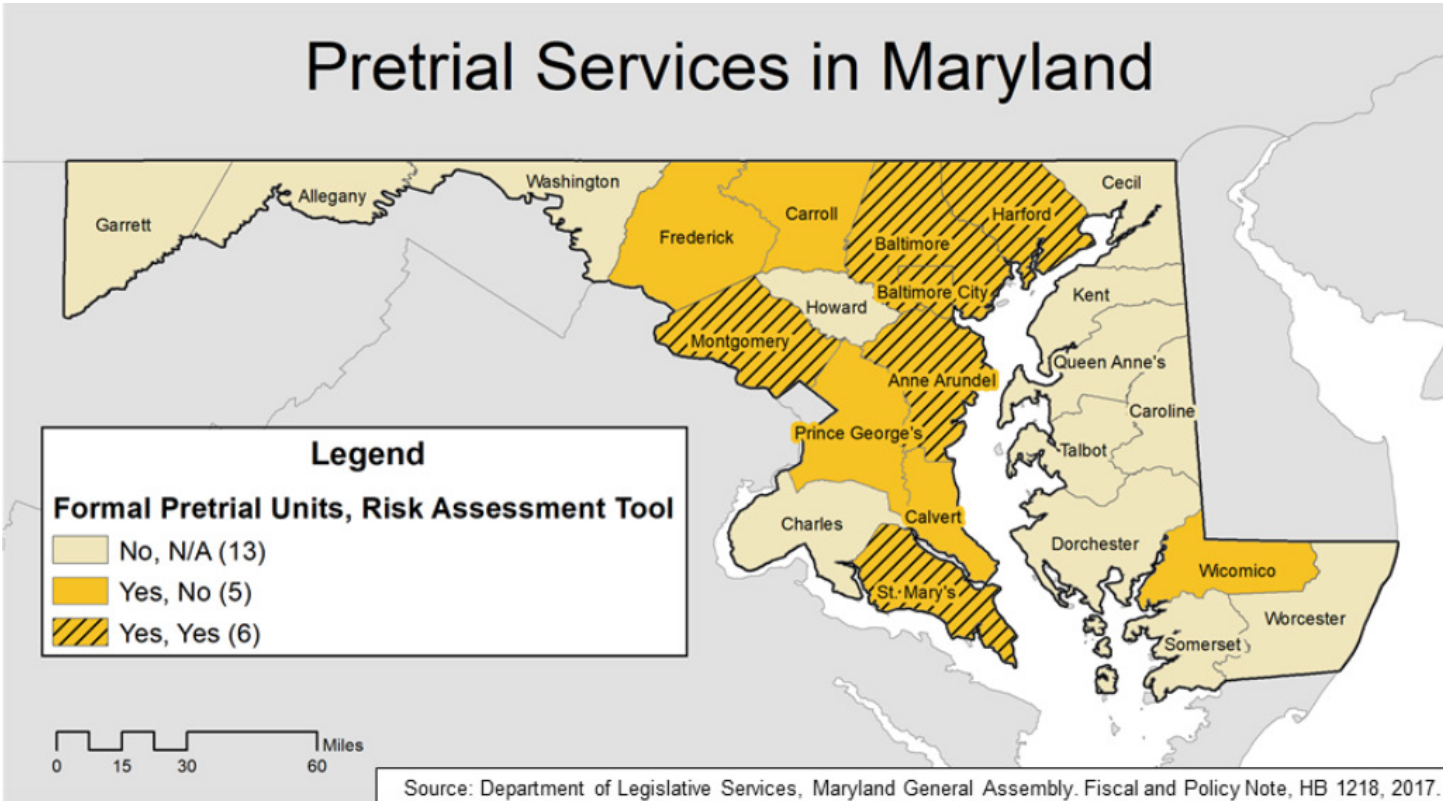
One of the bail reform bills that the General Assembly considered in the 2017 legislative session, HB 1390, called for the Governor's Office of Crime Control and Prevention to "collaborate with all counties to develop or update a risk assessment tool."[37] This bill should be the model for risk assessment tool development in Maryland.

Recommendation #3:

Expand pretrial services to every county in Maryland.

Instead of relying on cash bail and overusing pretrial detention, all Maryland counties should adopt a pretrial release program run by their respective justice systems.[39] Furthermore, the pretrial program should be uniform across the state.[40] This recommendation comes from the assumption that pretrial defendants should be released if they are not deemed a serious risk to society. Pretrial release programs have been proven to reduce recidivism, increase court appearance rates, and reduce taxpayer costs. Detaining low- and moderate-risk defendants for as little as two days (the time it may take to gather the money to pay cash bail) significantly increases recidivism and failure to appear rates.[41] Additionally, the programs are significantly cheaper than holding defendants in jail pretrial.[42]

In jurisdictions throughout the country, pretrial service agencies use a mix of non-detention-based programs and interventions to ensure defendants appear at trial. The programs include mental health and substance abuse treatment, as well as referrals for housing, employment training, or job placement. The interventions usually include supervision. Supervision varies widely across jurisdictions but involves agencies maintaining regular contact with defendants to ensure compliance with programming in the following ways: in-person contact, home contact, telephone contact, contact with individuals knowledgeable about the defendant's condition, regular criminal history checks, and court date reminders.[43]



Pretrial Services In Maryland Counties

While eleven of Maryland's 24 counties have pretrial services agencies, only Montgomery and St. Mary's Counties provide pretrial services in addition to using evidence-based risk assessment tools.[44]

In Maryland, there are significant cost savings from using pretrial services instead of incarceration. It costs a $100 per day to hold a person in the Baltimore City Detention Center and $159 per person per day in Baltimore Central Booking and Intake Center. Pretrial release services, on the other hand, cost just $2.50 per person per day.[45] This means that, at a minimum, holding a low-risk person in detention can cost 40 times as much as releasing them and offering them pretrial services.

The Montgomery County and St. Mary's County pretrial services programs use a treatment model called STEER (Stop, Triage, Educate and Rehabilitate), which connects people who have substance abuse issues with treatment options instead of arresting them.[48] The STEER program prepares pretrial risk assessments on arrested persons, presents its recommendations to the court, and supervises those who have been released. A year after the St. Mary's County program was implemented in 2015, the county saw:

- court appearance rates increase from 85% to 98%;[49]
- the jail population decrease by 33%;
- 91% of program participants not arrested for new offenses during the pretrial period;
- 70% of program participants receive no further jail time; and
- between $400,000 and $500,000 in jail-bed savings.[50]

Precautions On The Use Of Electronic Monitoring

Supervision can be a critical component of pretrial services, but it is imperative that it is conducted in a way that reduces, rather than perpetuates, existing oppression in the criminal justice system. Electronic monitoring, including GPS ankle bracelets, is a commonly considered supervisory tool that can track a defendant's movements to ensure they do not flee or commit another crime. However, research on the impact of electronic monitoring to reduce failure to appear in court rates is mixed. Electronic monitoring "restricts [defendants'] liberty in profound and sometime[s] subtle ways."[51]

Electronic monitoring must be used cautiously and developed with the input of individuals who have been on electronic monitoring, their family members, and officials. Specifically, defendants on electronic monitoring should have a complete set of rights and guarantees, including the ability to seek and attend work, access education and medical treatment, and participate in community activities.[52]

Both Montgomery County and St. Mary's County's pretrial services supervision includes electronic monitoring. Maryland's legislature should be prudent when urging pretrial service agencies to use electronic monitoring as it can cause undue harm to defendants, especially those charged with nonviolent offenses.

States And Counties With Successful Pretrial Programming

Kentucky's pretrial program is run at the state level. It was created in 1976 under the Bail Bond Reform Act, which abolished bail bonding. The results are striking:

- 92% of pretrial defendants do not re-offend;
- 90% make all future court appearances; and
- approximately 70% are released before their trial.[53]

Colorado revised its pretrial bail statute in 2013, redefining the term "bail bond" to mean not simply "an amount of money" but rather a "security, which may include a bond with or without monetary conditions." The statute also provided for pretrial service programs that could replace monetary bonds.[54] Currently, ten out of 64 counties have pretrial service programs.

In 2012, the program in Denver County resulted in:

- less than 1% of defendants being expelled for committing new offenses;
- a 98% appearance rate at court dates; and
- savings of $99,050 in jail-bed days.

The more rural Mesa County saw cost savings of $1.5 million in reduced jail-bed days.[55]

The pretrial services program in **Multnomah County, Oregon** includes automated phone call reminders, which has resulted in 750 people appearing in court when they might otherwise have not.[56]

King County, Washington implemented a popular pretrial services model in 2011 called LEAD (Law Enforcement Assisted Diversion). The LEAD model empowers officers to divert eligible people to community-based services and treatment prior to a court hearing. LEAD participants were:

- 89% more likely to obtain permanent housing;
- 46% more likely to find stable employment; and
- 60% less likely to be re-arrested, compared with similar individuals incarcerated for similar offenses.[57]

Moreover, "participants were jailed 39 fewer days per year than prior to the program." The LEAD program currently costs $2,100 less per participant than pretrial detention.[58]

New York City has diverted more than 3,000 people from jail since its pretrial services program was expanded in March 2016 to include a supervised release component. The supervised release program connects defendants with community-based organizations that conduct a risk assessment and a personalized needs assessment to better provide support. The $17.8 million program has been credited with reducing re-offense rates and has contributed to New York City's 70% pretrial release rate.[59]

Discouraging Judges From Detaining Low-Risk Offenders

In tandem with the use of an evidence-based risk assessment tool and pretrial services, Maryland prosecutors should discourage judges from detaining low-risk persons in order to further reduce jail populations while minimizing collateral consequences. Evidence-based risk assessment tool results are not required to be used by judges, which can decrease the impact of implementing the tool.[60]

A study of Kentucky's requirement to use an evidence-based risk assessment tool found only a small increase in rates of defendants being release on their own recognizance in the state. This was attributed, in part, to judges failing to

heed the recommendations produced by the risk assessments.[61]

Prosecutors in a number of jurisdictions have adopted policies requiring the use of an evidence-based risk assessment tool. These jurisdictions span cities, counties, and states:

- Cook County, Illinois;
- Harris County, Texas;
- Kentucky;
- New Jersey;
- New Mexico;
- New Orleans, Louisiana; and
- Washington D.C.

Cook County, IL prosecutors have recommended that people charged with minor offenses be released upon case resolution. The Cook County State's Attorney Kim Foxx asserts that release of defendants charged with minor offenses is logical, as otherwise jails are holding people who have not been convicted simply because they cannot afford bail. A spokesman for the Chicago Police Department said the Department does not think the criminal justice system functions when "nonviolent offenders spend more time in jail than those who use and carry illegal guns."[62]

Harris County, TX District Attorney Kim Ogg has also called for release of low-risk defendants. She joined an amicus brief filed in August 2017 which asks a U.S. appeals court to end Harris County's use of cash bail for misdemeanors.[63]

Recommendation #4:

Take further steps to reduce reliance on the for-profit bail system.

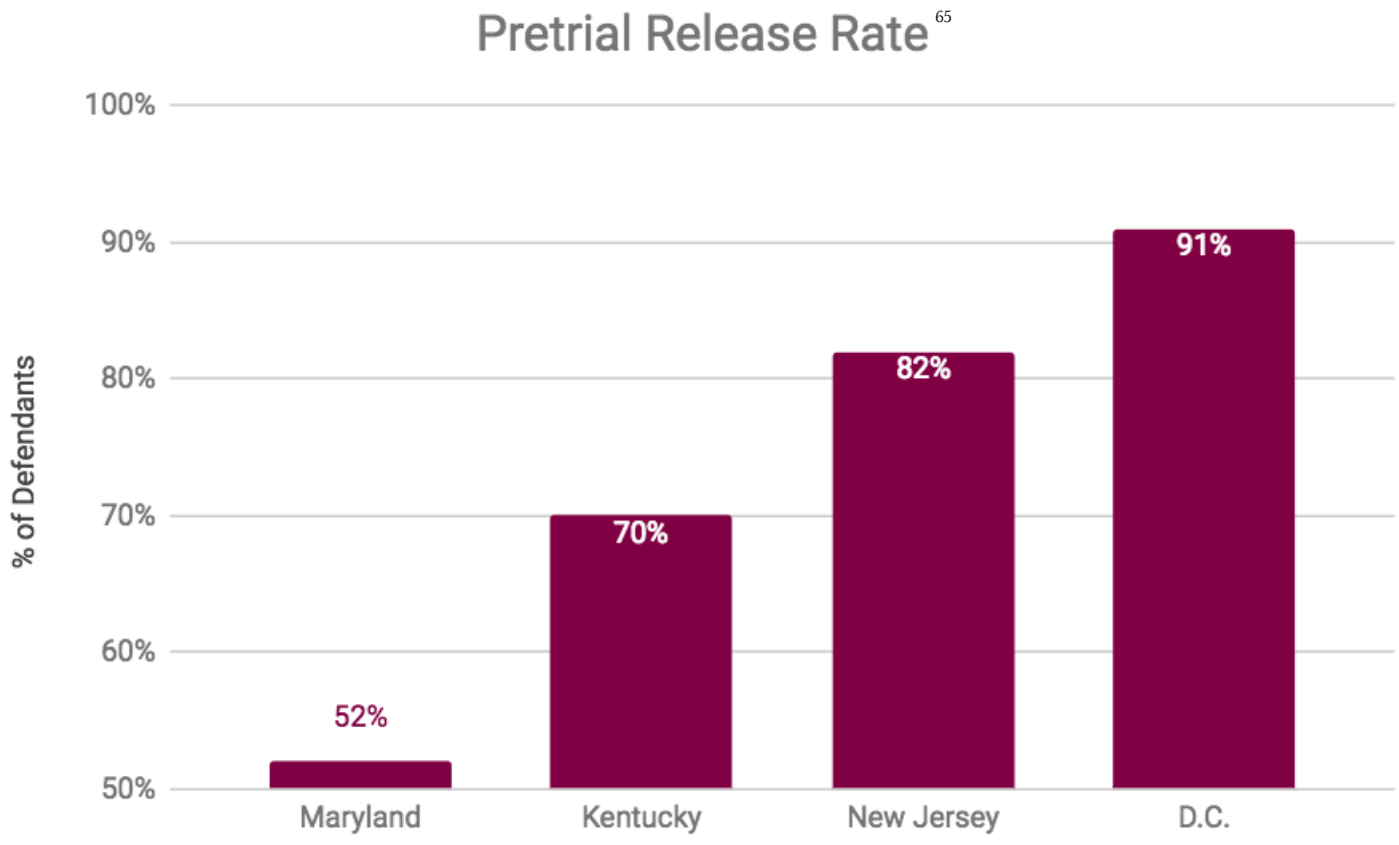
Jurisdictions such as Washington, D.C., Kentucky, and New Jersey have developed efficient pretrial systems and have completely ended the use of cash bail.[64] In lieu of the cash bail system, they use system-wide, evidence-based risk assessment tools and pretrial services to increase the likelihood that low and medium-risk individuals are released pretrial and are offered appropriate services. Each state has exceptionally high pretrial release rates without negatively impacting court appearance and re-offense rates.

The state of **New Jersey** has continued to experience declines in crime since ending cash bail in January of 2017. Since ending cash bail, New Jersey experienced a 3.5% decline in crime and 9.3% decline in violent crime.[66] During the same time period, the pretrial jail population statewide decreased by 16%. This data indicates that states can release more defendants and reduce the jail population while simultaneously improving public safety.

While the Maryland court ruling is a positive step, it ultimately has not yet lead to results like in the aforementioned jurisdictions. Maryland's for-profit bail system is less efficient and cost-effective compared to a pretrial services program that uses an evidence-based risk assessment tool. It also poses ethical issues and imposes a financial burden—often on those who can least afford it—all while failing to improve public safety.

Ethical Concerns

The cash bail system incorrectly conflates personal wealth with the risk of committing future crimes. In the for-profit bail system, a person's wealth may be a better predictor of whether they get out



of jail than the risk they pose to the public. These inherent inequities in the use of cash bail led Maryland's highest court to issue the new rule that requires judges to account for a defendant's ability to pay when considering bail. While we document that this change has yielded an overall reduction in the issuance of bail across Maryland—particularly for individuals charged with low-level crimes—the current system is in need of additional change.

Financial Concerns

The average bail amount in Maryland is more than half the annual income of a family living in poverty and several times higher than the average median savings of a family in Maryland.

Marylanders—including innocent defendants—spend millions of dollars annually on bail bonds. A 2016 study showed Maryland defendants and their families paid $256 million in one-year for non-refundable bail amounts, and the vast majority of these expenses were paid by poor Black families. Cash-constrained families who have to pay bail are subject to collateral consequences and have to make difficult tradeoffs, such as paying bail instead of rent.

Our analysis of Maryland's bail system after the enactment of the court rule shows that the average bail amount is still more than $12,000, while the average bail amount for low-level crimes is more than $11,000. At this amount, a defendant or their family would have to pay around $1,100 to obtain release from jail.

Paradoxically, recent national data indicate that 57% of Americans do not have enough savings to cover a $500 emergency.[67] Moreover, local data from Baltimore City, which has the highest number of individuals paying bail, shows that nearly one quarter of families in this city live below the poverty line, $20,090 a year for a family of three.[68]

Even for families who can manage to pay their bail amount, the financial collateral consequences are inherently more pernicious for poor families. As such, any system based on cash payments in exchange for pretrial freedom is discriminatory. Moreover, the determination of whether an individual can pay bail is subject to human error and may still result in poorer individuals being detained more than wealthier individuals—independent of the alleged crime. Ending money bail and determining detention with the assistance of an evidence-based risk assessment tool can make progress toward solving these problems.

Public Safety Concerns

The cash bail system is less safe than determining pretrial detention based solely on risk. In the cash bail system, high-risk individuals who can afford bail can reenter society despite public safety concerns. In fact, according to a recent Arnold Foundation study, nearly half of high-risk defendants from two large jurisdictions were released pending trial due, in part, to their being able to post bail.[69] Moreover, upfront cash payments are not needed to ensure defendants attend trial. Several districts without for-profit bail systems have some of the highest court-attendance rates in the country.

Resistance To Evidence-Based Policy

The for-profit bail system funds an industry that actively promotes the use of cash bail—not for safety reasons—but for the bail industry's own economic interest. Further reforms and other data-driven approaches that could benefit public safety will be challenged by the bail bonds industry and politicians who receive thousands of dollars from the industry.[70] Alternatively, moving away from cash bail has the potential to open the door to further data-driven criminal justice reforms.

Toolkit Appendix

1. Case Studies: The Impact Of Bail Reform Across The U.S.

Washington, D.C.

In 1992, Washington, D.C. passed a bail reform amendment that ended money bail in the city. According to many criminal justice experts, Washington, D.C.'s reforms serve as a model for the nation. Today, Washington, D.C. boasts some of the lowest pretrial defection rates in the nation. The defendants it releases are re-arrested prior to case resolution at much lower rates than the national average. On average, 91% of defendants were released without bail. Nine percent were jailed without the option of bail because they were deemed too high-risk by an evidence-based risk assessment. Of those released, 90% showed up to their court date and 90% were not re-arrested before their case was resolved. Of the 10% who were rearrested prior to their case resolution, the majority were charged with nonviolent offenses.[71]

For individuals released, a combination of supports, separation orders, and monitoring mechanisms are employed to reduce the likelihood of new offenses. About two-thirds of defendants are released "with terms that include drug-testing, stay-away orders or weekly phone or in-person reporting." Another 10% receive GPS bracelets or home confinement.[72] In addition to treatment services for defendants, Washington, D.C. uses special drug courts and other diversion programs to ensure that people with substance abuse programs and mental illness receive treatment, diverting them from jail. Washington, D.C.'s robust pretrial service agency is fully funded at $62 million annually and has about 350 employees. Despite the relatively large expense on pretrial services, D.C. saves money due to its smaller jail population. According to some estimates, Washington, D.C. saves $398 million annually by implementing its comprehensive approach to pretrial services.[73]

New Jersey

In 2014, voters in New Jersey passed a constitutional amendment to functionally eliminate cash bail. The policy went into effect in January of 2017, and the latest data from June 2017 indicates that only nine defendants have been issued bail so far.[74] Prior to bail reform, the Drug Policy Alliance found that on an average day 5,000 people (or 39% of the entire jail population) remained in custody simply because they could not pay bail.[75] The report revealed that New Jersey spent millions of dollars annually on incarcerating individuals pretrial unnecessarily for an average

of 10 months. After years of grassroots advocacy, public opinion shifted to support bail reform. In 2014, when the popular referendum passed, it was endorsed by Governor Chris Christie, the head of the New Jersey Supreme Court, the New Jersey Public Defender, and the state's attorney general.

The new system mandates that individuals be assessed using a risk assessment tool within 48 hours of arrest to minimize disruption and collateral consequences. New Jersey's risk assessment tool is based on the Arnold Foundation prototype. Under the new system, individuals can only be detained if they pose a risk to society or are likely to flee. Judges can only detain defendants if the prosecutors request it. As a result of the amendment, New Jersey experienced a 35.6% drop in the jail population from November 2015 to November 2017.[76] Public data shows that statewide, 18.1% of all defendants were detained during the first eleven months of the policy (7,410 of 40,962).

New Jersey reforms have not come without criticism. While pretrial detention rates are down across all counties, wide disparities across the state persist. In Atlantic County, officials detained 35% of defendants pretrial, whereas Bergen County officials detained only 7%.[77]

Many law enforcement groups, local officials and the entire bail bond industry have denounced the reforms. New Jersey bail bondsmen created a Facebook page detailing "risky" releases of defendants. In one widely publicized case, an adult male attempted to bribe a 12-year old girl to have sex with him. Instead of being detained pretrial, he was placed under house arrest with an electronic monitoring bracelet. The local police chief "issued an emotional warning to parents saying he 'could not sleep tonight' if he remained silent."[78] Lastly, some local governments oppose the new law because they believe it requires them to spend more money on case processing and other law enforcement programming. While New Jersey's bail reform remains relatively popular, the old system could be reinstated if supporters do not remain vigilant.

New Mexico

In New Mexico, 87% of voters passed a constitutional amendment that bars judges from detaining low-risk defendants, while empowering judges to deny bail to high-risk defendants. It also creates a process to ensure poor individuals are not detained simply because they cannot afford bail. According to Constitutional Amendment 1, defendants who cannot afford bail "may file a motion with the court requesting relief from the requirement to post bond."

New Mexico's system has been in place for less than three months, and reliable data on its efficacy is not publicly available. However, previous data on New Mexico's bail system shows that thousands of individuals remained in pretrial custody for lengthy periods of time. In 2010, defendants in New Mexico spent a median of 147 days in jail awaiting trial.[79] Defendants awaiting trial for misdemeanors spent a median of 80 days in jail.

While the new system has likely reduced the jail population, the amendment has come under heavy criticism from the local politicians, the bail bond industry, some law enforcement, and the Governor, who recently called for "repeal and replacement" of the amendment.[80] Even supporters of the amendment believe the roll out has been unpleasant and that judges could benefit

from more robust risk assessment tools.

New Mexico has experienced intense implementation issues for several reasons. While voters passed the amendment in November of 2016, the state supreme court did not finalize the implementation rules until the following June.[81] The rules, based on recommendations from an 18-person task force, went into effect statewide on July 1st. The sheer speed of implementation led to confusion and inconsistencies among prosecutors and judges.

According to US News, "the district attorneys argue there's no uniformity in how the rules are being interpreted in courtrooms across the state."[82] Due to confusion and improper use of risk assessment tools, several districts saw increases in the percentage of defendants who did not appear in court. Unlike New Jersey, the governor forcefully condemned the policy early on, stating that the amendment resulted in a "catch and release" system for criminals.[83] The governor's use of the bully pulpit has emboldened opponents of the amendment, and public support is waning.

The New Mexico Supreme Court is considering possible changes to the rules governing implementation of the amendment.[84] District attorneys from counties across the state met with the Supreme Court to request modifications. Their top requests were to clarify and expand factors that can be used in a risk-assessment and to eliminate the need for evidence at arraignment. "The prosecutors have said inconsistent interpretations of the rule have effectively turned such hearings into mini-trials, lasting hours in some cases and exacerbating an already burdensome caseload."[85] While it is too early to know for certain, experts believe the rules governing implementation will be modified to include more discretion for judges.

Kentucky

In 1976, Kentucky made it illegal to profit from bail—eliminating the for-profit bondsmen industry in the state. After the 1976 legislation, the state began using a risk-assessment tool, which informed judges' decisions regarding pretrial conditions. While the policy was decades ahead of its time, the state still incarcerated many poor defendants. In 2011, state legislators further limited pretrial detention by passing a law that "directed judges to release defendants with low- and moderate-risk scores…without requiring that they post money."[86]

As result of the law, Kentucky's pretrial jail population plummeted. Today, only roughly 43% (17 percentage points less than the national average) of Kentucky's jail population is due to pretrial detainees. In 2013, Kentucky further improved its pretrial services by being the first state to implement the Public Safety Assessment developed by the Arnold Foundation.[87] According to the Pretrial Justice Institute, "Kentucky's implementation of the PSA led to an increase in pretrial release, higher court appearance rates, and fewer crimes committed by people on pretrial release." After implementation, the arrest rate for defendants released before trial fell from 10% to 8.5%, representing a 15% decrease in overall pretrial crime.[88] Moreover, Kentucky's pretrial detention rate is now 8.5 percentage points lower than the national average.[89]

2. The Myths Of The Bail Industry

When bail reform was up for discussion during past legislative sessions, the for-profit bail industry aggressively lobbied Maryland legislators and touted that cash bail supported public safety, saved taxpayer dollars, and protected the state's Black and Brown communities. The truth, however, is that these claims are simply wrong.

The for-profit bail industry is vocal about preserving the cash bail system because it is primarily concerned about how much money it stands to lose if the status quo changes. The 15,000 bail bond agents[90] across the country write an estimated $14 billion[91] in bonds, and a conservative estimate suggests that the industry collects around $2 billion annually.[92]

In the 2018 Maryland legislative session, the bail industry will likely lobby to have Court Rule 4-216.1 overturned.

To combat the inaccurate claims peddled by cash bail advocates, we break down several of the industry's most common myths and provide evidence-based counterarguments to rebut them.

Myth 1: Bail makes us safer.

Truth: *Bail is about who has money, not who poses risk.*

> *Bail is not a public safety tool. It is meant to serve as a guarantee that a defendant will show up to court.*

The bail industry may claim that cash bail helps keep high risk defendants off the street, improving public safety in the process. However, a 2014 report from the Governor's Commission to Reform Maryland's Pretrial System found that low-risk individuals were given higher average bail amounts than moderate- or high-risk defendants at the bail review hearing,[93] suggesting that many bail amount decisions are made without risk in mind.

Furthermore, recent research suggests that pretrial detention may be criminogenic, particularly for low-risk defendants: a 2013 study using data from Kentucky found that low-risk defendants held 2-3 days are nearly 40% more likely to commit new crimes before trial compared to similar defendants held for less than 24 hours.[94]

And the criminogenic effects of pretrial detention may be long-term: the same study found that low-risk defendants held 8-14 days are nearly 51% more likely to commit new crimes within two years of the completion of their cases compared to similar defendants held less than 24 hours. Therefore, the detention of low-risk defendants who are unable to pay bail may be more detrimental to public safety than alternative pretrial strategies.

Myth 2: Bail is cheap and allows individuals an option that can be best tailored to their needs.

Truth: *Bail is more expensive than pretrial services, which provide better options for defendants.*

Incarceration is 40 times more expensive than pretrial services.

Pretrial release services can cost an estimated $2.50 per day, while the Maryland Department of Budget and Management estimates that it costs $100 per day to hold one person in a Detention Center.[95] The St. Mary's County pretrial supervision program costs nearly $29 per day compared to the $149 daily cost of detaining someone in jail.[96]

Bail costs communities millions.

Maryland communities were charged more than $256 million in non-refundable bail fees from 2011 to 2015.[97] Thirty percent of those fees were connected to cases in which the defendant was cleared of wrongdoing. African-Americans had the largest burden, paying 71%, or $181 million, of the bail fees during this period.

Cash bail is rife with corruption and abuse.

Once a defendant is beholden to the for-profit bail industry, bail agents have outsized levels of control over a defendant's liberty, leading to a number of abuse and corruption cases.[98] In these cases, bondsmen have been found:

- Bribing jailers and inmates for access to potential clients;
- Employing brutal and illegal methods to extort money and information;[99] and
- Using their extralegal powers to coerce people into sexual acts.[100]

In a particularly egregious example, a former detention officer in Fulton County, Georgia, pled guilty to accepting $7,000 in kickbacks from a county bail agent in return for referring defendants to her bond company.[101]

Evidence-based risk assessment tools are more responsive to individual rights

Basing risk classifications on group behavior goes against the logic of a justice system founded on the ideals of individual rights and individualized justice. However, evidence-based risk assessments—especially those that measure both needs and risk—improve the ability of the justice system to respond to each defendant's unique needs and attributes, creating more just outcomes.[102]

Importantly, not all risk assessment tools are created equally: due to racial biases in arrests and sentencing, discrimination in educational and economic opportunities, and more, the key inputs for risk assessment tools could simply perpetuate the racial disparities in bail amounts and sentencing that currently exist when those tools are not used.[103] Therefore, it is paramount that evidence-based risk assessment tools that correct for racial biases are utilized. An example of such an instrument is the Post Conviction Risk Assessment (PCRA), a tool used in federal

courts. A recent study of the PCRA suggested that there was little to no discrepancy by race in the predictive accuracy of the tool. Furthermore, no significant disparate impact of the tool was found between Black and white defendants.[104]

In fact, these tools can effectively mitigate racial disparities arising from implicit biases in laws, police practices, or the discretionary patterns of individual decision-makers. The risk assessment tool in Colorado, for example, eliminated a pattern in which judges were more likely to place African-American juveniles in secure detention compared to white juveniles with similar case characteristics.[105]

Myth 3: Bail strengthens Black and Brown communities by providing employment and support.

Truth: *Bail destroys wealth and employment prospects for communities of color.*

Black and Brown communities are more likely to suffer under bail.

Due to racial biases and discriminatory law enforcement implementation, Black and Brown people are more likely to be arrested, held in jail, and receive harsher bail conditions than white people.[106] In Baltimore, over 8,200 defendants were kept in jail due to their inability to pay steep bail amounts.[107] A study from the University of Maryland found that 25% of pretrial detainees who could not post bail feared they would lose their job, and 40% feared they would lose their home.[108]

In the 2016 legislative session, the for-profit bail industry argued that changes to the cash bail system would harm those bail bonds businesses owned by Black and Brown individuals. As of October 2017, there were approximately 1,240 bail bondsmen registered with the Maryland District Court. While we do not know the exact proportion of minority-owned bail bonds companies, we can see from these numbers that the harm cash bail does to Black and Brown communities is greater than the unemployment prospects faced by bail bondsmen if the cash bail system were to end, even if every single registered bail bondsmen in Maryland was Black or Brown.

Myth 4: The new court rule is not working, so we should go back to the old system.

Truth: *The rule is being misinterpreted by judges, yet it is still better than the old system. We must continue to develop pretrial services and build upon the successes of recent reforms.*

Bail amounts have decreased.

The average bail amount before the court rule was $41,622. Our analysis shows that the average bail amount decreased to $12,426 after the rule, a drop of more than $29,000. Not only does this mean that bail amounts became more reasonable, but also that the for-profit bail industry is making less money.

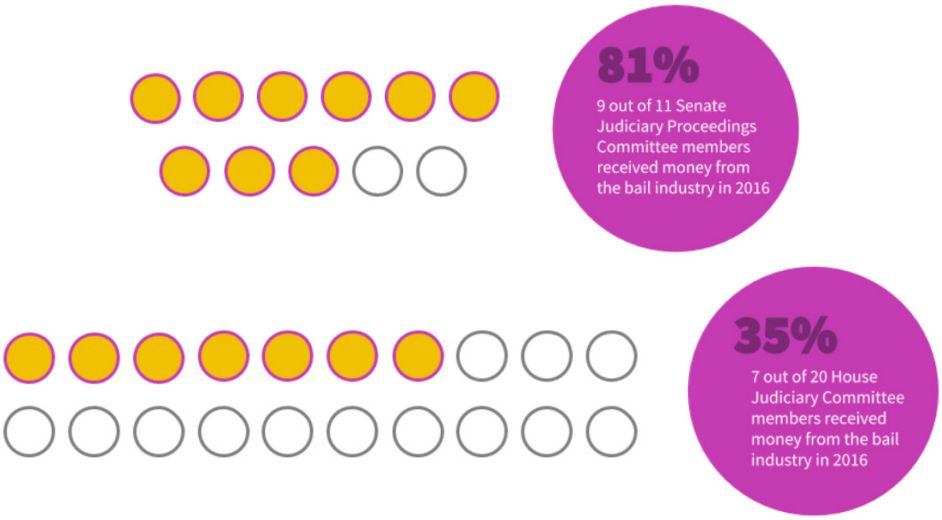
Courts have increased the number of people released on their own recognizance, but also the number of people held without bail.

Our analysis also shows that a higher percentage of defendants are being released on their own recognizance after the court rule (a 9.6 percentage point increase). However, an even greater percentage of defendants are being held in jail without bail since the court rule (a 14.3 percentage point increase). Further reforms should work to properly assess risk to minimize the number of defendants who are needlessly detained in jail.

The rule was a promising first step, but more needs to be done.

Despite the court rule, there is not yet a standard risk assessment tool or pretrial service framework across the state. Furthermore, many courts are unaware of the range of risk assessment tools or pretrial services offered. Many of the recommendations in this report can be used to build upon the success of the rule, creating a more just system for all Marylanders.

3. The Bail Industry's Political Contributions

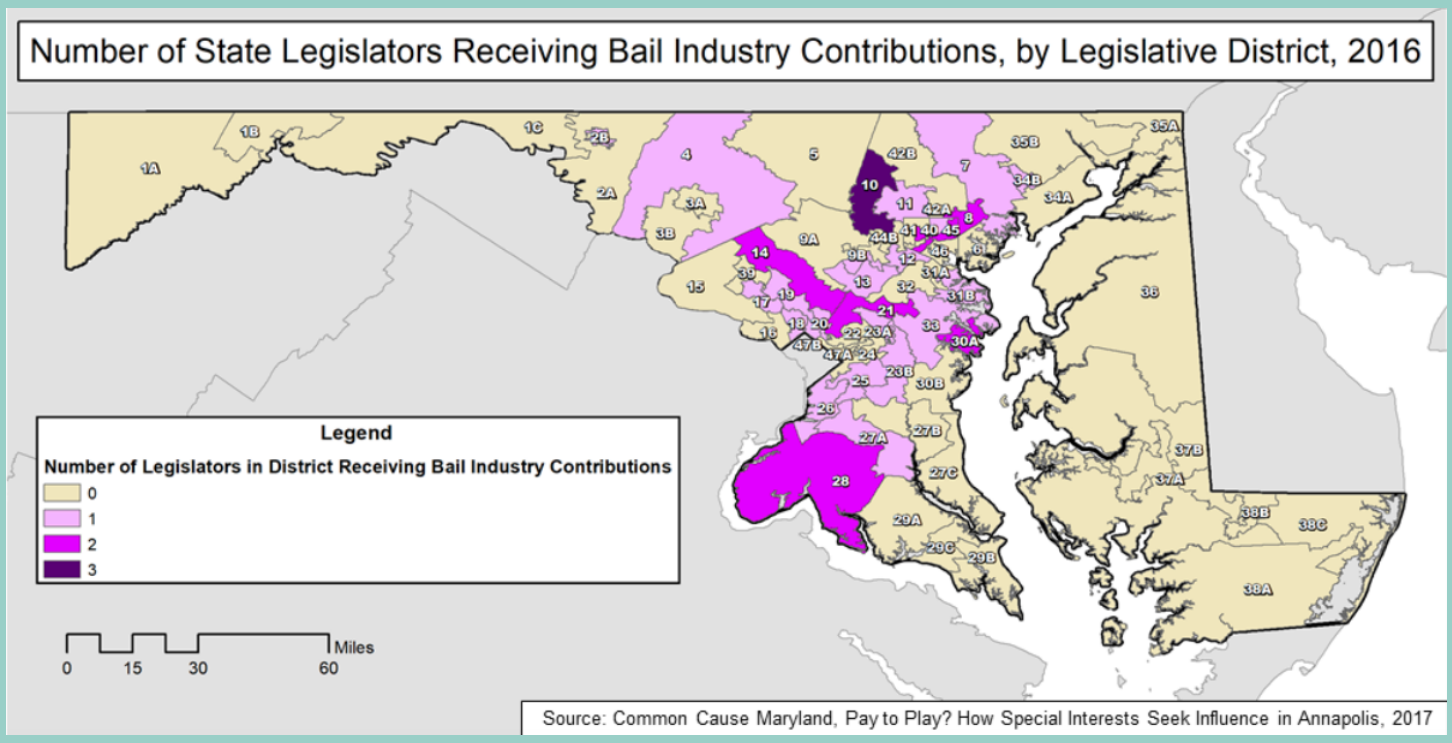


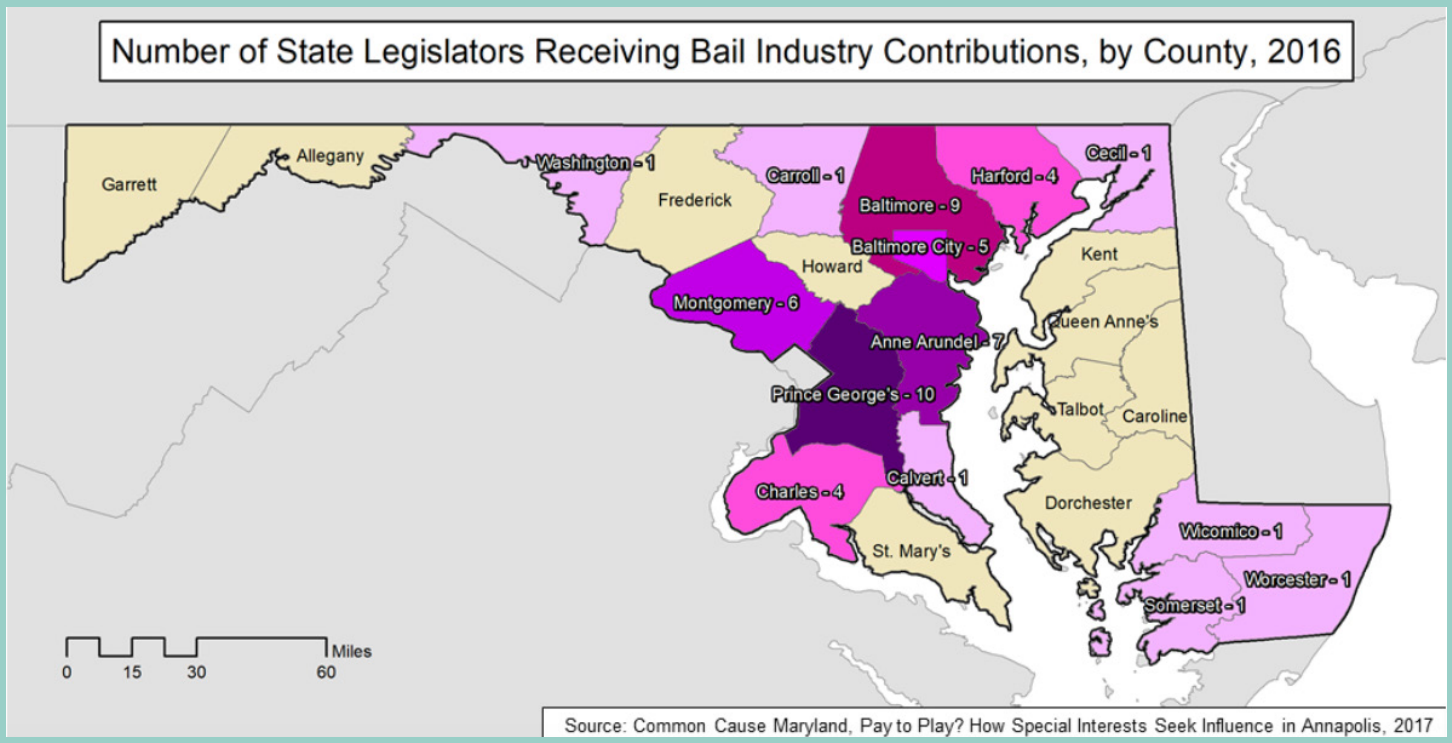
The bail industry is a key funder of members of the Maryland General Assembly. Two reports by Common Cause Maryland, completed in 2016 and 2017, found that the bail lobby has provided critical campaign funding to elected officials. The numbers illustrate how the for-profit bail industry targeted those legislators with the greatest influence over the state's criminal justice system.

Maryland is number three in the nation for campaign donations by the bail industry, after California and Florida. From 2011 to January 2017, the bail bond industry contributed $288,550 to Maryland elected officials in state government.[109] A review of all the General Assembly members found that in 2016, 18 of 47 state Senators (38%) and 26 of 141 Delegates (18%) received money from the bail lobby. In addition, more than half of all House and Senate Judiciary Committee members (16 of 31 total members) received money from the bail industry in 2016, represented in the charts above.[110]

The two elected officials who received the most in contributions were Senator Bobby Zirkin, Chair of the Senate Judicial Proceedings Committee, and Delegate Joseph Vallario, Chair of the House Judiciary Committee. Senator Zirkin and Delegate Vallario received the second and third largest contributions from the bail lobby *in the nation*. Senator Zirkin received $78,200 from the bail lobby between 2011 and January 2017, $37,000 of which went toward his 2014 campaign (11% of his total campaign funding for the year). Delegate Vallario received $45,500 total and $33,500 (13%) in campaign contributions over the same period.[111] Senator Michael Hough, a member of the Senate Judicial Proceedings Committee, received $19,000.

Bail industry money was not just given to legislators, but also to key members of the state's executive branch. In the last year alone, Governor Larry Hogan received $11,300 and Lieutenant Governor Boyd Rutherford received $6,000 from the for-profit bail industry.[112]


Number of State Legislators Receiving Bail Industry Contributions, by Legislative District, 2016
Legend
Number of Legislators in District Receiving Bail Industry Contributions
0
1
2
3
Miles
0 15 30 60
Source: Common Cause Maryland, Pay to Play? How Special Interests Seek Influence in Annapolis, 2017


Number of State Legislators Receiving Bail Industry Contributions, by County, 2016
Garrett
Allegany
Washington - 1
Frederick
Carroll - 1
Harford - 4
Cecil - 1
Baltimore - 9
Baltimore City - 5
Howard
Kent
Montgomery - 6
Queen Anne's
Anne Arundel - 7
Prince George's - 10
Talbot
Caroline
Calvert - 1
Charles - 4
Dorchester
Wicomico - 1
St. Mary's
Worcester - 1
Somerset - 1
Miles
0 15 30 60
Source: Common Cause Maryland, Pay to Play? How Special Interests Seek Influence in Annapolis, 2017

4. Bail Reform In The 2017 Legislative Session

In 2017, the Maryland General Assembly considered three different bills that could have made changes to the bail system. There was consensus in the General Assembly that a poor person should not have to stay in jail simply because they could not pay bail, but there was substantial debate about whether there was a legitimate role for for-profit bail in the Maryland criminal justice system and what kind of pretrial services would be necessary to supplant any changes to the bail system.

None of the following three bills became law, although HB 1215—the most conservative bill—passed in the Senate but was then blocked in the House due to opposition from the state legislature's Black Caucus.

HB 1215: Concerning Pretrial Release[113]

Sponsored by Delegate Curt Anderson (D—Baltimore City)

HB 1215 would have codified and enshrined parts of the existing bail system and added some protections to ensure that low-income people were not unfairly affected by bail that is not affordable. In February 2017, the Maryland Court of Appeals upheld the amended Court Rule 4-216.1 which required that bail be considered if it is the "least onerous" condition of release.

HB 1215 would have rolled back this ruling and left it vulnerable to legal challenge. Above all, the bill would not have addressed the underlying issues of the use of bail in Maryland that have caused so many to critique the system, such as the fact that being made to post bail often requires defendants to get their family involved. During testimony, the bail bonds industry presented this fact as a positive, yet as Myth 2 in the Appendix shows, bail can harm families and strip them of wealth.

A bipartisan group of seven Delegates co-sponsored HB 1215: Delegates Anderson, Atterbeary, Buckel, Cluster, Conaway, Glenn, Parrott, and Wilson. Delegate Vallario is the chair of the Judiciary committee to which this bill (and the other two bills) were assigned.

Of note, Delegates Vallario, Atterbeary and Buckel all received donations from the bail lobby, with Chair Vallario receiving the highest amount, as can be seen in Appendix III.

The bill was supported by the bail bonds industry, the Urban League Baltimore chapter, the Fraternal Order of Police, the Maryland Minority Bar Association, the Maryland Crime Victims Resource Center, the NAACP of Maryland, and the Southern Christian Leadership Conference.

Opponents to the bill included the Maryland Office of the Public Defender, the ACLU of Maryland, the Coalition for a Safe and Just Maryland, and Leaders of a Beautiful Struggle.

HB 1218: Concerning the Financial Conditions of Pretrial Release[114]

Sponsored by Delegate David Moon (D—Montgomery County)

If HB 1215 would have restored the pretrial system that existed before the amended court rule, HB 1218 would have completely abolished the use of for-profit bail in the criminal justice process, requiring counties to create pretrial services divisions that would develop other forms of pretrial supervision and requirements.

HB 1218 never left the House of Delegates. It received an unfavorable report by the Judiciary Committee.

The bill was sponsored by 8 Democrats: Delegates Angel, Hill, Moon, Morales, Pena-Melnyk, Platt, Robinson and Tarlau. The bill was also supported by the Office of the Public Defender and the ACLU of Maryland.

Opponents to the bill included a number of bail bonds companies.

HB 1390: Concerning Pretrial Release Reform[115]

Sponsored by Delegate Erek Barron (D—Prince George's County)

HB 1390 was the middle ground bill of the three. This bill would have created a presumption of release (subject to some terms and conditions), except where the public safety or flight risk was deemed too great. The bill would have allowed the use of for-profit bail only after all other options had been considered and it would have required that the person's ability to pay be explicitly considered when determining whether bail was appropriate for release. HB 1390 would have also required the creation of a risk assessment tool to help judges decide the terms of release and stipulated that the tool be developed openly and with community engagement.

HB 1390 was sponsored by 66 Delegates, with Delegate Barron as the main sponsor. Of the 66 Delegates, 3 were Republicans. The bill was also supported by the Office of the Public Defender, the ACLU of Maryland, the Coalition for a Safe and Just Maryland, and Leaders of a Beautiful Struggle.

Opponents to the bill included the bail bonds industry, the Urban League Baltimore chapter, the Fraternal Order of Police, the Maryland Minority Bar Association, the Maryland Crime Victims Resource Center, the NAACP of Maryland, and the Southern Christian Leadership Conference.

During testimony, opponents argued that the bill imposed an unfunded mandate on local governments by requiring a pretrial services division be created while providing no funds to pay for it.

5. How Maryland Voters Feel About Bail According To Public Opinion Data

A November 2016 report prepared by the Pretrial Justice Institute analyzed data collected by the Open Society Institute in Baltimore and found that Maryland voters generally knew that the state criminal justice system treated people unfairly.[116]

The System Favors The Rich

Of those polled, 72% of voters felt that the criminal justice system favored the rich above everyone else, compared to the 15% who believed the system treated everyone equally.

When asked about the pretrial period, 86% said that wealthy people arrested for crimes were too often able to buy their way out of jail.

The System Discriminates Against People Of Color

The study found that most Maryland voters appeared to recognize racial bias in the criminal justice system, as 53% expressed a belief that the criminal justice system favored white people compared to the 27% think the system treated all people fairly.

Among Black respondents, 73% said that whites were favored above people of color.

The System Should Rely On Risk Assessment Not Wealth

The study also found that voters preferred that risk—not wealth—be used in making pretrial release decisions by a factor of seven-to-one. This opinion was especially strong among Republican voters.

In questions where voters could choose alternatives, 85% of voters expressed support for risk assessment and supervision. Of the total respondents, 57% said they "strongly favored" this kind of system.

While respondents were aware of disparities and were supportive of the use of a risk assessment, however, they seemed ignorant of the current system of money bail. Nearly one in three voters believed that risk assessment was already part of Maryland's pretrial procedures. Voters who did not support replacing money bail with a risk assessment were more likely than others to believe risk assessment was already in use, indicating that voters were intuitively supportive of risk assessment but ignorant of what pre-trial populations actually experience.

6. Data Methodology & Findings

We obtained data about cases filed in the Maryland Judiciary Case Search from researchers at the University of Baltimore Law School, who worked with a data scraping tool to pull underlying data from the court's records. The data represents every case from that system filed between January 1, 2012 and November 4, 2017. For each case, we had information about the date that an initial release decision was made, what that decision was (held without bail, released on personal recognizance, issued bail, etc.) If bail was issued, we had the amount. We also had data about the underlying charges, plea, fine amounts, and court outcomes.

We attempted to recreate some of the analysis performed as part of two prominent reports: "The High Cost of Bail" by the Office of the Maryland Public Defender and Final Report of the Commission to Reform Pretrial Services in Maryland. Similar to the Public Defender's report, we opted to analyze data related only to the initial release decision using the first listed charge (which is typically the most serious).

We created a separate database of CJIS Codes (unique codes assigned by the Maryland Sentencing Commission to distinguish among criminal charges) based on the most recently updated version of the Sentencing Guidelines Offense Table. This allowed us to include information about whether the charge was a felony or misdemeanor, as well as the assigned "Seriousness Category" of the charges listed.

We merged this data with the CJIS codes from the court records. There were many CJIS codes represented in the court record data that were not categorized by the Sentencing Commission. The Director of Research of the Sentencing Commission advised us that charges without the possibility of incarceration are not categorized by sentencing guidelines. Additionally, offenses which carry a maximum penalty of less than one year of incarceration are automatically assigned a seriousness category of VII, which designates the least serious offenses. As such, we assumed that all CJIS codes not categorized through the Sentencing Commission's offense table were less serious, and assigned a seriousness category of VII.

Future researchers may be able to compile a more complete list of CJIS codes and their associated seriousness categories.

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Student Biographies

Christine Blumauer, holds a master's degree in Peace and Security Studies from the University of Hamburg and a B.A. in Political Science/European studies from Sciences Po Lille and the Westfälische Wilhelms-Universität. She worked with the German Konrad-Adenauer Foundation on regional peace-building and democracy promotion initiatives among Armenia, Azerbaijan and Georgia. She also worked as a research associate with the Eurasia Program at the Foreign Policy Research Institute.

Alessandra Brown, graduated with a degree in marketing and international business from Georgetown University. She served as a budget analyst with the Department of Finance in Sacramento, California, overseeing critical public safety infrastructure projects. She interned in the New York City Mayor's Office where she worked on climate policy. After graduating, she hopes to continue her career in public service in government, and work on policy that assists in the development of sustainable and equitable cities.

Mariella Castaldi, studied at Oberlin College and worked organizing migrant farmworkers. She worked as a legal advocate at the East Bay Community Law Center. In her time at the Law Center, she spearheaded research, policy advocacy and community organizing around the reform of California's criminal fines and fees system. She interned with the Western Center on Law and Poverty, where she lobbied for statewide legislation to address the causes and conditions of poverty in California. After graduating, she hopes to continue to work on the state and local level against the criminalization of poverty.

Seleeke Flingai, graduated from MIT with a Bachelor of Science in brain and cognitive sciences and completed his Ph.D. in cell and molecular biology at the University of Pennsylvania. He explores the relationship between race, place and health. He interned in the public health department of the Metropolitan Area Planning Council in Boston, where he worked to integrate racial health equity work in the agency's planning considerations. After graduating, he hopes to work in neighborhood and city planning and development.

Phillip Hernandez, graduated with a B.A. in political science and economics. He worked at Public Policy Associates, Inc. (PPA), a public policy research and evaluation firm, where he visited police departments, county jails and youth homes for Juvenile Justice and Delinquency Prevention Act compliance. He interned at the Center on Budget and Policy and Priorities working on Supplemental Nutrition Assistance Program budget analysis and legislation.

Stefanie Mavronis, graduated as a Sondheim Public Affairs Scholar from UMBC with degrees in political science and media and communication studies. She produced the Peabody-award winning *Marc Steiner Show* on WEAA-FM in Baltimore. She interned at the Community Economic Justice clinic at the East Bay Community Law Center in Berkeley, California, where she worked on affordable housing advocacy and anti-displacement policy. After graduating, she plans to return to Baltimore to focus on making her city a more equitable place for Baltimoreans of all walks of life to live, grow and thrive.

Kalie Pierce, graduated from Dartmouth College, where she studied post-colonialism. She worked as a government consultant in D.C. and worked with Innovations for Poverty Action in Uganda, evaluating the impact of cash transfer programs. She interned at the New York Federal Reserve. She intends to spend the rest of her time at Princeton delving deeper into economics and statistics and, after graduation, returning to research and policy analysis.

Tom Stanley-Becker, graduated from Yale University, where he majored in political science and American studies. He worked in Washington, D.C., most recently as the policy director on the U.S. House of Representatives campaign of Jamie Raskin (now a House member representing Maryland's Eighth District). He interned at the New York City Mayor's Office for Economic Opportunity, where he worked to develop and evaluate anti-poverty programs. After graduating, he plans to pursue a career in urban policy.

Jordan Stockdale, worked for the De Blasio Administration, first as the program director of school climate initiatives for the Mayor's Office of Criminal Justice and then as a policy staffer for the first deputy mayor. He was responsible for organizing the Mayor's Leadership Team on School Climate and Discipline, developing new school climate and safety programs, and shaping related policies. He recently launched Hire Harlem, an initiative that promotes small businesses that hire locally, give back to local community organizations or are owned by women/people of color.

Report Design by Stefanie Mavronis (2018)