

PRETRIAL DETENTION IN MARYLAND

by
Christopher F. Massad

A capstone project submitted to Johns Hopkins University in conformity with the
requirements for the degree of Master of Arts in Public Management

Baltimore, Maryland
May, 2015

© 2015 Christopher F. Massad
All Rights Reserved

ABSTRACT

In September of 2013, the Maryland courts upheld *DeWolfe v. Richmond*. This ruling warrants impoverished defendants to have state-appointed counsel present at their initial appearance before a District Court commissioner. Since its implementation, funding required to meet the ruling's stipulations has added to the already high costs of the judicial process.

This paper reviews the history and current state of pretrial release both nationally and locally in Maryland. In addition, it investigates the issues related to pretrial detention and recommends a policy solution to Governor Hogan along with an analysis of the proposal.

Reviews of case studies and data found that Maryland's current pretrial laws have detrimental financial and social impacts. Many of the issues are related to the state's use of money bonds as a condition of pretrial release.

It is recommended Governor Hogan adopt a policy that limits the use of money bonds, repurposes District Court commissioners to conduct data-driven risk assessments to determine defendants' release, and establishes a statewide pretrial supervision agency to ensure the public's safety and defendants' appearance in court.

MEMORANDUM

To: Governor Larry Hogan
From: Christopher F. Massad
Subject: Pretrial Detention in Maryland
Date: May 2, 2015

Action Forcing Event

On September 25th, 2013, the Court of Appeals of Maryland affirmed the January 4th, 2012, ruling in *DeWolfe v. Richmond* (the Richmond decision) stating, “An indigent defendant is entitled to state-furnished counsel at an initial hearing before a District Court commissioner.”¹ The first five months of this ruling’s implementation has already required a substantial increase in funding.² One of your leading campaign promises was to save Maryland taxpayers \$1.75 billion, and corrections is an area in which spending should be examined.³

Statement of the Problem

The Richmond decision caused former Governor O’Malley to create a council to review and reform current pretrial practices.⁴ The Office of the Public Defender and the State’s Attorney’s Office stated they will require \$28 and \$83 million additional annual

¹ *DeWolfe v. Richmond*, Court of Appeals of Maryland, 434 Md. 444; 76 A.3d 1019; 2013 Md. September 25, 2013

² Governor’s Office of Crime Control & Prevention. Governor’s Commission to Reform Maryland’s Pretrial System. *Commission to Reform Maryland’s Pretrial System Final Report*. By Richard Karceski, Esq., Annapolis, MD December 19, 2014

³ Johnson, Jenna, “Fact Check: Would Larry Hogan cut \$450 million from school construction?” *The Washington Post*, October 8, 2014, Accessed January 30, 2015 <http://www.washingtonpost.com/local/md-politics/fact-check-would-larry-hogan-cut-450-million-from-school-construction/>

⁴ The Governor’s Commission to Reform Maryland’s Pretrial System, *Final Report*, Annapolis, MD: The Governor’s Office of Crime Control and Prevention, 2014

funding, respectively.^{5 6} Preliminary reports show the increased corrections spending associated with the Richmond decision is \$2.24 million.⁷

In your budget report, you noted Maryland is facing a \$1.25 billion deficit over the next two years - \$423 million in FY 2015 and \$802 million in FY 2016.⁸ More than \$1.3 billion has been allocated to the Department of Public Safety and Correctional Services (DPSCS).⁹

In the State of the State Address, you indicated Maryland was set to spend \$700 million more than it expects to collect in revenue. The state's debt has increased by 96 percent over the past year.¹⁰ Maryland has a budget deficit, and if the Richmond decision goes forward as planned it will add to the spending of the State and local jurisdictions.

A majority of State and county spending on corrections is due to the detention of pretrial defendants. Sixty percent of jail populations are those who have not been convicted but are awaiting trial.¹¹ In the Baltimore County Detention Center, 91 percent of the population is awaiting trial.¹² It is estimated to cost approximately \$100 per person per day in the Detention Center. Using arbitrary numbers, if there are 2,500 individuals in

⁵ Lauren Kirkwood, "Md. Cute Back on Funding Criminal Defense for Poor." *NBC4 Washington*, July 25, 2014, Accessed January 30, 2015: <http://www.nbcwashington.com/news/local/Md-Cut-Back-on-Funding-Criminal-Defense-for-Poor>

⁶ Daniel Menefee, "\$28M Needed to Comply with Court Ruling, Public Defender Says; Prosecutors say it will cost them \$83M." *The Maryland Reporter*, January 27, 2012, Accessed January 30, 2015:

⁷ GOCCP Pretrial Commission, *Final report*

⁸ Maryland Department of Budget and Management, *Maryland Budget Highlights FY 2016*. Annapolis, MD: Maryland DBM, 2015

⁹ Ibid.

¹⁰ The Baltimore Sun, "Transcript of Gov. Larry Hogan's State of the State Address" *The Baltimore Sun*, February 4, 2015, Accessed February 28, 2015: <http://www.baltimoresun.com/news/maryland/politics/blog/bs-md-larry-hogan-state-of-state-transcript-20150204>

¹¹ Justice Policy Institute, *Bail Fail: Why the U.S. Should End the Practice of Using Money for Bail* Washington, DC: JPI 2012

¹² Justice Policy Institute, *Baltimore Behind Bars: How to Reduce the Jail Population, Save Money and Improve Public Safety*, Washington, DC: JPI 2010

custody on a given day, then 2,275 are on pretrial status, which would cost an estimated \$227,500 per day on pretrial detention.¹³

The inability of being released results in more defendants plea-bargaining in order to avoid further detention and longer sentences.¹⁴ Of all criminal cases, 95 percent end in plea bargains. More than 50 percent of defendants who plead guilty for a lower sentence are actually innocent.¹⁵

Pretrial detention hinders defendants' ability to care for their family, maintain employment, and be active participants in their communities.¹⁶ The loss of income hampers their ability to obtain legal counsel, and being detained limits their access to counsel.¹⁷ Those who are detained during pretrial and take their case to trial are more likely to be convicted, be sentenced to prison instead of put on probation, and receive longer sentences than defendants who are released.¹⁸

The money bond system has created the for-profit bail bonding industry. For-profit bail bondsmen have significant control over the pretrial process and those who use their services. They function as a supervising agency for defendants in the community due to their power to revoke bond.¹⁹ Bail bonding is a multi-billion dollar industry backed by giant insurance companies that take advantage of poor communities and have

¹³ Calculation: $2,500 \times 0.91 = 2,275$ Pretrial Defendants.

$2,275 \times 100 = \$227,500$ per day

¹⁴ JPI, *Bail Fail*

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Richard M. Aborn and Ashley D. Cannon, "Prison: In Jail, But Not Sentenced." *Americas Quarterly*, Winter 2013, <http://www.americasquarterly.org/aborn-prisons>

¹⁸ Ibid.

¹⁹ Justice Policy Institute, *Bail Reform Update, 2013: Pretrial Services Programs Refined and Expanded their Reach, while the Bail Industry Continued to Fight Forfeiture Collection and Non-financial Release*, Washington, DC: JPI 2013

great political power.²⁰ Often times, when a bondsman's defendant fails to appear in court, the court is unable to recover forfeited bonds due to loose regulations heavily influenced by bondsmen lobbyists.

The regular use of money bonds has created a system in which private businesses have discretion over who they post a bond for based on profitability, not the likelihood to appear in court or the public's safety.²¹ The for-profit bond industry does not focus on protecting the community or ensuring appearance in court, nor are the bondsmen criminal justice professionals trained to supervise defendants.²²

History

Pretrial detention in the United States has been through two reforms and is currently in a third. To best understand how the current system came to be, it is important to understand the laws, policies, and cultural changes that got it here. Before commercial bonding the United States operated on a personal surety system.²³

William Blackstone, an influence on the Declaration of Independence, the United States Constitution, and common law in America, stated the principles of liberty and freedom are directly related to the right of bail for the accused.²⁴ ²⁵ He further stated that denying release of an accused was considered an offense.²⁶ Since the origins of the American colonies, the release of the accused is a fundamental right.

²⁰ Justice Policy Institute, *For Better or for Profit: How the Bail Bonding Industry Stands in the way of Fair and Effective Pretrial Justice*, Washington, DC: JPI 2012

²¹ Ibid.

²² Ibid.

²³ Surety: Known as a pledge or promise to appear in court

²⁴ Dennis R. Nolan, "Sir William Blackstone and the New American Republic: A Study of Intellectual Impact." *New York Law Review*, 51, no. 731 (1976) 731-768

²⁵ Timothy R. Schnacke, *Fundamentals of Bail: A Resource Guide of Pretrial Practitioners and a Framework for American Pretrial Reform*, Washington, DC: U.S. Department of Justice National Institute of Corrections, 2014

²⁶ Ibid.

In *United States v. Barber*, the Supreme Court affirmed that criminal bail is in the interest of the public and the accused. The purpose of this is so the latter are not detained prior to trial if the government can be assured of their appearance in court.²⁷ Four years later, this was confirmed in *Hudson v. Parker*. Here, the court stated the laws of the U.S. were framed on the theory that the accused not, until found guilty, be imprisonment or be punished.²⁸

The above cases built the foundation for pretrial release in the United States. As the criminal justice system in America became more formalized and the jails overcrowded, sheriffs began using personal sureties to reduce growing jail populations.²⁹ This established what is known as personal and group sureties.

Personal and group sureties are a promise given that can be forfeited to the government. As the country grew and personal relationships were diluted, fewer individuals were willing to take on a personal surety for the accused. Defendants who should have been released were now being unnecessarily detained.³⁰ The avoidable detainment of defendants led to the commercial surety system.

By 1898, commercial sureties had become the norm. Bondsmen began charging upfront collateral to make profit, resulting in today's 'bail enterprise'. This, with a few variations, is the model currently used for pretrial release. Money is secured prior to an individual's release as opposed to a promise to forfeit the money on the back end.³¹

The first generation of reform to pretrial began in the 1920s. Research of criminal justice systems in Cleveland and Chicago found most of the accused lacked

²⁷ *United States v. Barber*, 140 U.S. 164 (1891)

²⁸ *Hudson v. Parker*, 156 U.S. 277 (1895)

²⁹ Schnacke, *Fundamentals of Bail*

³⁰ *Ibid.*

³¹ *Ibid.*

representation, were indigent, and were accepting unfavorable plea-bargains.³² It also found bonds were being set based on the alleged offense, not the likelihood to appear, and bondsmen were abusing the system for profit.³³

In 1951, the Supreme Court heard its first major case on the issue of bail. In *Stack v. Boyle*, the court ruled setting a bail amount solely on the alleged offense is an arbitrary act.³⁴ The court further clarified that bail set at an amount higher than deemed reasonable to assure the defendant appears in court is excessive under the eighth amendment.³⁵ This case established that, where bail bonds are permitted, there must be an individualized determination on the amount set to assure the defendant's appearance in court.³⁶

In *Carlson v. Landon*, the Supreme Court established that the right to bail is not absolute in certain circumstances such as capital offenses.³⁷ The ruling allowed for the detention of the accused, without the possibility of bail, if the offense is punishable by death. It further stated that not allowing bail did not violate the constitution.³⁸

In 1961, the recurring injustices of the money bail system led the founders of the Vera Institute of Justice to implement the Manhattan Bail Project in New York City.³⁹ The project demonstrated that people with strong ties to the community could be safely released from custody without bail on the promise to return to court.⁴⁰ This became known as 'release on recognizance.' The program also initiated the use of computerized

³² Ibid.

³³ Ibid.

³⁴ *Stack V. Boyle*, 343 U.S. 1 (1951) p. 6

³⁵ Ibid.

³⁶ Scnacke, Jones, and Brooker, *The History of Bail*

³⁷ *Carlson v. Landon*, 342 U.S. (1952)

³⁸ Ibid.

³⁹ Jerome E. McElroy, "Introduction to the Manhattan Bail Project," *Federal Sentencing Reporter* 24, no. 1 (2011) 8-9

⁴⁰ Ibid.

databases of defendants' case outcomes and statistically based risk assessments.⁴¹ The program was the centerpiece for Attorney General Robert Kennedy's National Conference on Bail in 1964.

The purpose of the conference was to promote awareness of unfair bail practices and share new methods for managing pretrial release in criminal cases.⁴² The conference led to the federal Bail Reform Act of 1966 and local jurisdictions around the country establishing their own pretrial release programs.⁴³

The Bail Reform Act of 1966 was the first major bill since 1789 focused solely on bail. It has five major provisions: adopting an attitude in favor of releasing defendants on their own recognizance; conditional pretrial release that reduces the risk of failing to appear; restrictions on money bonds (which the court could impose only if non-financial release options were not enough to assure a defendant's appearance); a deposit money bond option that allows defendants to post 10 percent of the bond amount in lieu of the full monetary amount; and a review of bonds for defendants detained for twenty-four hours or more.⁴⁴ By 1971, thirty-six states passed statutes similar to the act.⁴⁵

To incorporate public safety when considering pretrial release, Congress passed the District of Columbia Court Reform and Criminal Procedure Act of 1970. The act authorized judicial officers to consider the accused's potential danger to the community when setting conditions of pretrial release.⁴⁶ It also allowed judicial officers to detain

⁴¹ Ibid.

⁴² Freed, Daniel J., and Patricia M. Wald. *Bail in the United States 1964*. 1964.

⁴³ McElroy, "Introduction to the Manhattan Bail Project"

⁴⁴ Scnacke, Jones, and Brooker, *The History of Bail*

⁴⁵ Ibid.

⁴⁶ Rauh, Carl S., and Earl J. Silbert. "Criminal Law and Procedure: DC Court Reform and Criminal Procedure Act of 1970." *American University Law Review*. 20 (1970): 252.

certain non-capital defendants on the grounds of dangerousness.⁴⁷ After its passage, local jurisdictions followed suit, passing similar standards for determining bail.⁴⁸

The 1970s ushered in a new era of bail reform. It focused on heightened public concern over criminal acts, specifically those committed by individuals released on bond. Publicized violent crimes committed by those defendants fueled a growing dissatisfaction with the system. The main targets were standards that did not permit judges to consider danger to the community when determining bail.⁴⁹

As a response, Congress passed the Bail Reform Act of 1984, chapter one of the Comprehensive Crime Control Act of 1984.⁵⁰ This act amended the 1966 Act to include consideration of danger in order to address public safety. The Bail Reform Act of 1984 mandated the release of the accused unless the judicial officer determines it will not assure their appearance in court or it will endanger the safety of the community.⁵¹ The act further states that if the judicial officer finds no condition or combination of conditions will assure the appearance or safety of community, they may order detention until trial.⁵²

In *United States v. Salerno*, the Supreme Court upheld the 1984 Act. Salerno contested that the act violated the 5th and 8th amendments.⁵³ The court concluded that the regulatory purpose of the act and the procedural protections it offers makes it not facially invalid under the due process clause.⁵⁴ As far as the 8th amendment is concerned,

⁴⁷ Ibid.

⁴⁸ Schnacke, *Fundamentals of Bail*

⁴⁹ Schnacke, Jones, and Brooker, *The History of Bail*

⁵⁰ Ibid.

⁵¹ 18 U.S. Code Sections 3141-3156

⁵² Ibid.

⁵³ *U.S. v. Salerno*, 481 U.S. 739, 742 (1987)

⁵⁴ Ibid.

specifically the bail clause, nothing in the text limits the government to consider only flight of a defendant.⁵⁵

Issues of jail overcrowding, corruption of bond enterprises, and the negative impacts associated with pretrial detention have led to the reforms of the past twenty plus years.⁵⁶ The current generation is using more relevant research than ever before to reform pretrial detention. At their core, these reforms look to implement a lawful bail/no bail dichotomy, lawfully achieve the release and mitigation of pretrial risk of defendants, and replace the money-based system with empirically measured risk.⁵⁷

Maryland's Current Pretrial System

Until 1971, the Maryland judiciary system consisted of local justices of peace, magistrates, and the People's Courts. Between 1939 and 1971, magistrates served as notaries, arresting individuals, issuing criminal warrants, setting bail or collateral, and committing defendants to jail.⁵⁸ In 1971, a constitutional amendment repurposed judges in the People's and Municipal courts to District Court judges and established District Court commissioners.^{59 60}

Commissioners are allowed to exercise power in respect to warrants of arrest, terms of pretrial release pending hearings, and the issuance of civil peace and protective orders.⁶¹ In accordance with Maryland laws on pretrial release, commissioners are viewed as judicial officers.⁶² Upon being served a warrant or charging document(s),

⁵⁵ Ibid.

⁵⁶ Scnacke, Jones, and Brooker, *The History of Bail*

⁵⁷ Ibid.

⁵⁸ Maryland Department of Legislative Services, Office of Policy Analysis, *The District Court Commissioner*, Annapolis, MD: OPA 2013

⁵⁹ Maryland Constitution Article IV, Part VI

⁶⁰ Maryland Constitution Article IV, Part VI, Sec 41G

⁶¹ Maryland Constitution Article IV, Part VI, Sec 41G(b)(1)&(2)

⁶² Maryland Constitution Courts and Judicial Proceedings Article Section 2-607

arrestees need to be presented before a judicial officer of the District Court no later than twenty-four hours from arrest.⁶³

The commissioner has the power to release the defendant on personal recognizance or on bond with or without conditions. If they determine there are no conditions of release that will ensure appearance in court and/or the safety of the alleged victim, another person, and/or the community, they can detain the defendant without bail.⁶⁴ The only instance in which a commissioner is not allowed to release a defendant is if the defendant is charged with an offense for which the maximum penalty is death or life imprisonment.⁶⁵

In determining whether a defendant should be released, the law lists factors that should be taken into account.⁶⁶ It also lays out the types of conditions that can be imposed, ranging from supervision, stay away, or no-contact orders amongst other options.⁶⁷ Finally, the conditions of release can require the defendant to post a bail bond in a specified amount or percentage of the amount as set by the judicial officer.⁶⁸

Anyone denied pretrial release by a commissioner or who for any reason remains in custody for twenty-four hours after his or her initial appearance is entitled to see a

⁶³ MD Rule 4-212 (e)

⁶⁴ MD Rule 4-216(a)(b)

⁶⁵ MD Rule 4-216(C)

⁶⁶ MD Rule 4-216 (D) Note: A. the nature of the offense; B. the defendants prior record of appearance at court; C. Defendants family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community; D. any recommendation of an agency that conducts pretrial release investigations; E any recommendation of the State's Attorney; F. any information presented by the defendant or defendant's counsel; G. Danger of the defendant to alleged victim, another person, or the community; H. Danger of the defendant to himself or herself and; I Any other factor bearing on the risk of a willful failure to appear and the safety of the community.

⁶⁷ MD Rule 4-216 (e)(1) & (2)

⁶⁸ MD Rule 4-216 (e)(4)

District Court judge.⁶⁹ At this hearing, the judge reviews the commissioner's pretrial determination and makes appropriate modifications.⁷⁰

Previous to the Richmond decision, indigent defendants did not have access to representation during their initial appearance.⁷¹ The Maryland Public Defender Act states "representation shall be provided to an indigent individual in all stages of a proceeding... including criminal proceedings, custody, interrogation, bail hearing before a District Court or Circuit Court judge, preliminary hearing, arraignment, trial and appeal".⁷² Despite this language, initial appearances were not viewed as a criminal proceeding.

In 2012, the courts ruled that indigent defendants are entitled to representation at an initial appearance.⁷³ The court stated an initial appearance before the commissioner is clearly within a criminal proceeding and may result in the defendant's incarceration.⁷⁴ The question left before them was whether or not bail determination was a 'stage' of that proceeding; they ruled it was.⁷⁵

Background

The Richmond decision has already had a financial impact. In Prince George's County, additional staffing needs have increased overtime costs by \$86,000 per month.⁷⁶ Prince George's County estimates they will need approximately \$1 million in FY 2015 for increased correctional personnel alone.⁷⁷ From the implementation of the law to December 2014 (five months), the added expenses related to Richmond have totaled an

⁶⁹ MD Rule 4-216 (f)(1)

⁷⁰ Ibid.

⁷¹ GOCCP Pretrial Commission, *Final Report*

⁷² MD Criminal Procedure Article, Section 16, Chapter 204 (b)(2)(i)

⁷³ DeWolfe v. Richmond

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ GOCCP Pretrial Commission, *Final Report*

⁷⁷ Ibid.

estimated \$2.24 million dollars among all twenty-four Maryland counties and Baltimore City.⁷⁸

Detaining pretrial defendants in Maryland is expensive. The State spent a combined \$150 million dollars in 2011 on Baltimore City Detention Center and the Baltimore Central Booking and Intake Center alone.⁷⁹ Ninety percent of the Department of Public Safety and Correctional Services' (DPSCS) budget goes to Baltimore's jails.⁸⁰

Roughly 60 percent of jail inmates nationwide are under pretrial detention.⁸¹ Over the past decade Maryland's pretrial jail population has ranged from 60 percent to 65 percent. In 2014 the state had its highest pretrial population despite declining overall jail populations.⁸² There are approximately seven thousand defendants detained in Maryland jails awaiting trial for up to thirty-nine days at any given time.⁸³

In 2014, a study was conducted of Maryland defendants over a two-week period. It used a validated risk assessment tool to measure defendant's risk to be re-arrested and/or fail to appear in court.⁸⁴ The study found that, on average, District Court judges and commissioners issue higher bonds to low-risk defendants. Median bond amounts are higher for low-risk defendants and lower for moderate and high-risk defendants.⁸⁵

⁷⁸ Ibid.

⁷⁹ JPI, *Baltimore Behind Bar*

⁸⁰ Ibid.

⁸¹ Minton, Todd, D., and Golinelli, Daniela, *Jail Inmates at Midyear 2013- Statistical Tables*, Washington, DC: Bureau of Justice Statistics, May 2014

⁸² GOCCP Pretrial Commission, *Final report*

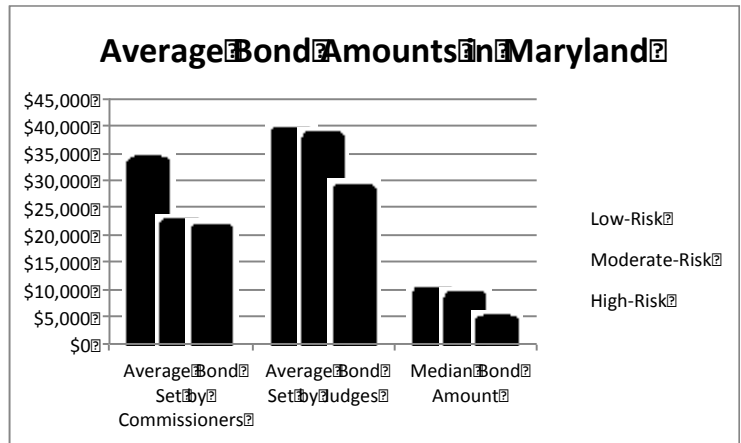
⁸³ Ibid.

⁸⁴ James Austin, PH.D., and Johnette Peyton, M.D., MPH, *Maryland Pretrial Risk Assessment Data Collection Study*. Washington, DC: The JFA Institute 2014. Note: It measured the level of risk of failing to appear or being re-arrested while under pretrial status. They found bonds set by commissioners during Initial Appearances had no relationship between risk and the amount of bond set.

⁸⁵ Ibid.

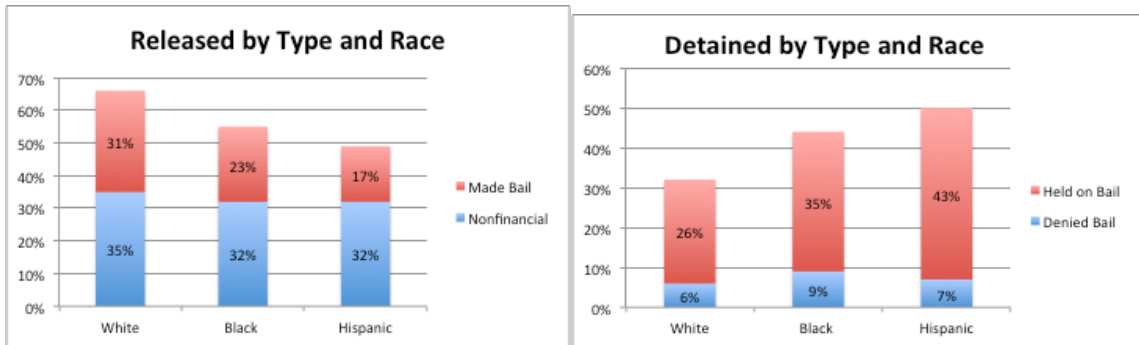
Note: It measured the level of risk of failing to appear or being re-arrested while under pretrial status. They found bonds set by commissioners during Initial Appearances had no relationship between risk and the amount of bond set.

Overall, there was no relationship between the defendant’s measured risk and the commissioners’ and judges’ bond decisions.



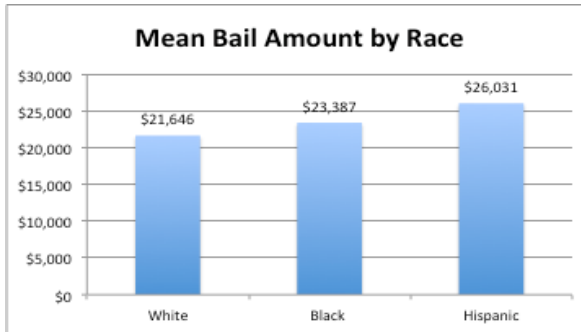
Source: James Austin, PH.D., and Johnette Peyton, M.D., MPH, *Maryland Pretrial Risk Assessment Data Collection Study*. Washington, DC: The JFA Institute 2014

Bail decisions are not consistent amongst races. Hispanic and black defendants are detained pending trial more often than white defendants.⁸⁶ As the charts below show, white defendants are released more, detained less, and have a lower mean bail amount than Hispanics and blacks. White defendants are also more likely to be released without having to pay a money bond and are less likely to be held without bail.⁸⁷



⁸⁶ Justice Policy Institute, *Bail Fail: Why the U.S. Should End the Practice of Using Money for Bail* Washington, DC: JPI 2012

⁸⁷ Stephen Demuth, “Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees” *Criminology* 41, No. 3 (2003) 873-907



Source: Stephen Demuth, “Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees” *Criminology* 41, No. 3 (2003) 873-907

Those who are detained pending their trial are negatively impacted by their detention. They may lose their job or housing, have medical care disrupted, and/or have health insurance prematurely stopped. Families are adversely impacted, as children may have to move in with another parent or relative, disrupting their education and home life.⁸⁸

The bail bonding industry is profit-based and not concerned with public safety or ensuring appearance in court. It targets high bail cases because they have higher profit potential than lower bond cases. This results in low-risk defendants with small bond amounts not being released because the potential profit is not great enough for bondsmen. Bondsmen rarely repay forfeited bonds as required by law, creating little incentive to find and produce the defendant they bonded out.⁸⁹

Lobbyists for the bail bonding industry have great influence over the legislature. In Ohio, lobbyists pressured the legislature to eliminate a refundable 10 percent deposit if

⁸⁸ JPI, *Bail Fail*

⁸⁹ National Association of Pretrial Services Agency. “The Truth About Commercial Bail Bonding in America.” *Advocacy Brief* 1, no 1 (2009) NOTE: Capital Bail Bonding Corporation ran up \$100 million in unpaid bond forfeitures. In California it’s estimated between \$100 million and \$150 million is owed in unpaid bond forfeitures.

it was made to the court as opposed to a bondsman.⁹⁰ The basis of the bail bond industry's objection to this is that they would lose potential profits.⁹¹

In Broward County, Florida, the bondsmen's association hired a lobbyist who helped severely restrict the Sheriff's pretrial services program.⁹² Bondsmen lobbyists have had a similar impact in Maryland. They have been successful in stalling the Maryland legislature from adding any restrictions to the bail bond industry.⁹³

Review of the Current Policy

The current process varies from jurisdiction to jurisdiction, but the same foundation applies to each. Newly arrested individuals go through a booking process, an initial appearance, and a bond review, and then they are released from or processed into custody. Despite differences in the number of arrests, seriousness of offenses, and facility organization, every arrest follows a similar process.

Once arrested by a police officer, the defendant is brought to the central processing unit located within the detention center. The individual will be screened for medical or mental health conditions that would prevent them from going through the process.⁹⁴ Defendants are then booked in. This process is done every time an individual is arrested, regardless of the frequency.⁹⁵

Defendants are then put in a holding cell while waiting to be presented before an on-site District Court commissioner for an initial appearance. The commissioner reviews

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ Harris, Melissa. "In MD., Many get Discount on Bail." Baltimore Sun, February 20, 2008. http://articles.baltimoresun.com/2008-02-20/news/0802200092_1_bondsmen-bail-bondsman

⁹⁴ JPI, *Baltimore Behind Bars*. NOTE: If deemed not able to withstand process due to mental health or Medical reason CPU will not accept defendant and arresting officer is responsible for getting the defendant proper treatment

⁹⁵ Ibid. Note: If more violent or serious off he or she's DNA is collected through saliva

the current charges, factual allegations, potential sentence, criminal history, and the State Attorney's recommendation. No bail determination for an indigent defendant can be made without counsel present unless representation is waived.⁹⁶

The commissioner has the options of releasing a person without charges, releasing on personal recognizance, setting a bond, or detaining without a bond.⁹⁷ If the individual is not immediately released, they are afforded a call to arrange money for bail, arrange a pickup when released, or to reach a lawyer.

If they are not given a bail or can't afford their bond, they are committed while awaiting a bail review hearing before a District Court judge. Pending their bond review, the individual is processed into the jail according to that facility's specific standards and procedures. Within twenty-four hours or the next court session, the defendant will appear before a reviewing judge via video broadcast.

The purpose of the bail review hearing is to review bond and conditions set by the commissioner. Defendants have an opportunity to obtain and meet with counsel before the bond hearing. This review allows the accused, prosecutor, attorney, family of the individual, and/or another agency the opportunity to provide information to the presiding judge.⁹⁸

Another agency includes a pretrial services agency or parole and probation. Currently Maryland has eleven pretrial services programs out of its twenty-four jurisdictions.⁹⁹ Pretrial investigators interview defendants to gather and verify

⁹⁶ GOCCP Pretrial Commission, Final report.

⁹⁷ Note: Release without charge is based on the State's Attorney's review of the charges and recommendation.

⁹⁸ Ibid.

⁹⁹ Pretrial Justice Institute. *Report to the Pretrial Release Subcommittee of the Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of the Public*

information for the bond review. The information gathered includes the defendant's ties to the community, mental health and substance abuse issues, and verified information from family members, employers, and community members regarding the defendant.

Necessity for Change

Due to the Richmond decision, the current generation of pretrial detention reform, and growing scientific evidence on the negative effects of pretrial detention, it is time for reform. Recent events have opened the window for changes to Maryland's fifty-year-old judicial process. The State's recent anticipated budget has the state spending hundreds of millions of dollars without matching revenues.¹⁰⁰

As previously stated, Maryland is facing a deficit of \$1.25 billion over the next two years. Pretrial detention costs counties and the state hundreds of millions of dollars in corrections spending.^{101 102} The Richmond decision mandated appointed attorneys for indigent defendants during their initial appearance.¹⁰³ Projections by the Office of the Public Defender and State's Attorneys Office estimated their offices would need an additional \$111 million annually to comply with the court's decision.^{104 105} After the first five months of implementation of Richmond, local jurisdictions are already spending more money to comply with the law.¹⁰⁶

More scientific research has been conducted on pretrial detention and commercial sureties. A commission has been formed twice to make recommendations to reform

Defender. Washington, DC: PJI 2013

Note: Maryland's 24 Jurisdictions consist of twenty-three counties plus Baltimore City.

¹⁰⁰ Maryland Department of Budget and Management, *Maryland Budget Highlights FY 2016*. Annapolis, MD: Maryland OBM, 2015

¹⁰¹ JPI, *Baltimore Behind Bars*

¹⁰² GOCCP Pretrial Commission, *Final report*

¹⁰³ DeWolfe v. Richmond

¹⁰⁴ Kirkwood, "Md. Cuts Back on Funding Criminal Defense for Poor."

¹⁰⁵ Menefee, "\$28M Needed to Comply with Court Ruling"

¹⁰⁶ GOCCP Pretrial Commission, *Final report*

pretrial in Maryland.^{107 108} Both commissions recommended pretrial risk assessment investigations be conducted statewide and to invest resources to supervise pretrial detainees.

Both commissions have recommended the sparing use or complete elimination of commercial surety as a condition of bail.^{109 110} National and local research has shown pretrial detention is expensive, there is no relationship between the likelihood of court appearance and bond amounts, bail bondsmen have an incentive for profit not public safety, and the current system does not mitigate risk.

Key Players

Delegate Curtis Anderson is important due to his extensive experience in criminal justice policy. He is a member of the House Judiciary Committee, Chair of the Criminal Justice subcommittee and a member of the Special Committee on Drug and Alcohol Abuse.¹¹¹ He has been on the State Commission on Criminal Sentencing Policy since 2003 and was a member of the Task Force to Study the Laws and Policies Relating to the Representation of Indigent Criminal Defendants by the Office of the Public Defender from 2012 to 2014.¹¹²

He has introduced or been involved with legislation on topics such as increased drug treatment, repeal of parole provisions for non-violent drug offenders, and changing

¹⁰⁷ Ibid.

¹⁰⁸ The Abell Foundation, *The Pretrial Release Project: Study of Maryland's Pretrial Release and Bail System*, Baltimore, MD: The Abell Foundation, 2001

¹⁰⁹ GOCCP Pretrial Commission, Final report. NOTE: Recommendation Four recommends the use of secured, financial conditions of pretrial release be completely eliminated

¹¹⁰ Abell, *The Pretrial Release Project*. NOTE: Recommendation Five states monetary bail should be used sparingly and only when no other condition of release will reasonably assure a defendant's release.

¹¹¹ Maryland State Archives, *House of Delegates: Curtis Stovall (Curt) Anderson*, Maryland Manual On-Line: MSA April 09, 2015: <http://msa.maryland.gov/msa/mdmanual/06hse/html/msa13208.html>

¹¹² Ibid.

sentencing guidelines for low level, felony drug offenders.¹¹³ Recently, Delegate Anderson has introduced legislation repealing the law that authorizes District Court Commissioners to set bond and bail and giving police such authorization in the streets.¹¹⁴

Former Senator Christopher Shank was appointed Executive Director of your Office of Crime Control & Prevention (GOCCP). As a former Republican member of the senate he will be crucial to gaining support from republicans in the House of Delegates and Senate. He was a member of former Governor O'Malley's Commission to Reform Maryland's Pretrial System, which recommended major reforms for the current system.¹¹⁵ He has four years experience as a member of the senate, was Minority Whip from 2014 to 2015, and served as a member of the Judicial Proceedings Committee from 2011 to 2015.¹¹⁶

Paul B. DeWolfe was appointed Public Defender of Maryland in 2009. He has over thirty-two years experiences working in criminal defense.¹¹⁷ He is currently a member of the Board of Directors of the National Association of Criminal Defense Lawyers and Secretary of the Criminal Law Section Council of Maryland State Bar Association. He was a member of former Governor O'Malley's Commission to Reform Maryland's Pretrial System and played a major role in the Richmond decision.^{118 119}

¹¹³ Cole, Kevin, "Report Shows the Racism Behind Drug Sentences," *Law Professor Blogs LL*, February 27, 2007 http://lawprofessors.typepad.com/crimprof_blog/2007/02/report_shows_th.html

¹¹⁴ Maryland Criminal Procedure §4-101.2, §4-101.3 §4-101, §5-201, & §5-202,

¹¹⁵ GOCCP Pretrial Commission, *Final report*

¹¹⁶ Maryland State Archives, *Governor's Office of Crime Control & Prevention: Executive Director: Christopher B. Shank*, Maryland Manual On-Line: MSA April 09, 2015: <http://msa.maryland.gov/msa/mdmanual/08conoff/coord/crime/html/msa02786.html>

¹¹⁷ Ibid.

¹¹⁸ Maryland Office of the Public Defender, The Public Defender, last modified 2012: <http://www.opd.state.md.us/AboutOPD/ThePublicDefender.aspx>

¹¹⁹ GOCCP Pretrial Commission, *Final Report*

Bail bondsmen will be impacted by any reform to the current system. Lobbyist for bond insurers have been successful in halting past legislation that restricts or changes surety bonds in Maryland.¹²⁰ Registered lobbyists employed by bail bondsmen in 2014 include, but are not limited to: Bruce Bereano, Manis Canning & Associates, Gerard E. Evans Ltd, and Maryland Bail Bond Association.¹²¹

Brian J. Frank from Lexington National Insurance is one of the key bond insurers. His company has sued the district courts for not collecting forfeited bonds from other insurers.¹²² He understands the issues with the current system and offers valuable information on practical reform.

District Court Chief Judge John P. Morrissey and Chair of the Conference of Circuit Judges John W. Debelius III's involvement is crucial.¹²³ ¹²⁴ A change to the current bond system could entirely change the judicial proceedings in both district and circuit court. Both judges will play an important role in the implementation of these changes.

Acting Director Robert Green from Montgomery County Department of Corrections and Rehabilitation, Mary Lou McDonough from Prince George's County,

¹²⁰ NAPSA, "The Truth About Commercial Bail Bonding"

¹²¹ Maryland State Ethics Commission, *Regulated Lobbyist: Lobbyist/Employer*, Annapolis, MD: Executive Department November 13, 2014

¹²² George, Justin. "Lawsuit: Maryland District Court Failing to Make Bail Bonds Insurers Pay Up." Baltimore Sun, August 12, 2013.

http://articles.baltimoresun.com/2013-08-12/news/bs-md-sun-investigates-bail-bonds-20130812_1_lexington-national-insurance-corp-bond-businesses-bail

¹²³ Maryland State Archives, *District Court of Maryland: Chief Judge: John P. Morrissey*, Maryland Manual On-Line: MSA April 09, 2015:

<http://msa.maryland.gov/msa/mdmanual/32dc/html/msa14354.html>

¹²⁴ Maryland State Archives, *Circuit Courts*, Maryland Manual On-Line: MSA April 09, 2015:

<http://msa.maryland.gov/msa/mdmanual/31cc/html/cc.html>

Note: Unlike the District Court, Circuit Court in MD does not have a Chief Justice. Instead it has a conference of sixteen members who select a chair for a two-year term. Each of the eight circuits is represented.

and Stephen T. Moyer Secretary of the DPSCS must be involved.^{125 126 127} These are the heads of the corrections departments in the three most populated jurisdictions in the state.^{128 129 130} Both Montgomery County and Baltimore City have well-established pretrial agencies to model any statewide systems after.¹³¹

President Robert C. Embry Jr. of the Abell Foundation (Abell), Matt Alsdorf Director of Criminal Justice for the Laura and John Arnold Foundation (LJAF), Executive Director Marc Schindler of the Justice Policy Institute (JPI), and Cherise Fanna Burdeen of the Pretrial Justice Institute (PJI) have done extensive research on national and Maryland pretrial systems.^{132 133 134} Abell conducted a study of the current system in 2001 and recommended many reforms similar to this memorandum's proposal.¹³⁵ In 2010, the JPI examined Baltimore jails and made recommendations for reform.¹³⁶ The PJI has provided research and development in the field of pretrial services since 1977.¹³⁷ These organizations are imperative to collecting and analyzing data to make appropriate reforms.

Policy Proposal

¹²⁵ Montgomery County, Maryland, Department of Correction and Rehabilitation: Contact Us, last modified 2015: <http://www.montgomerycountymd.gov/cor/contactus.html>

¹²⁶ Prince George's County, Maryland, Corrections>About>Director's Office, last modified 2013: <http://www.princegeorgescountymd.gov/sites/Corrections/About/DirectorOffice/Pages/default.aspx>

¹²⁷ Maryland.gov Department of Public Safety & Correctional Services, DPSCS Staff Biographies, last modified 2015: <http://www.dpscs.state.md.us/about/bios.shtml>

¹²⁸ Maryland State Archives, Maryland At A Glance Population, Counties & Cities, last modified April 14, 2015: <http://msa.maryland.gov/msa/mdmanual/01glance/html/pop.html#>

¹²⁹ Ibid.

¹³⁰ Justice Policy Institute, *Bailing on Baltimore: Voices from the Front Lines of the Justice System*, Washington, DC: JPI 2012

¹³¹ Austin and Peyton, *Maryland Pretrial Risk Assessment Data Collection Study*.

¹³² The Abell Foundation, Our Staff, last modified 2014: <http://www.abell.org/our-staff>

¹³³ Laura and John Arnold Foundation, Our Team: Matt Alsdorf, last modified 2015: <http://www.arnoldfoundation.org/node/1#alsdorf>

¹³⁴ Pretrial Justice Institute, PJI Staff, last modified 2014: <http://www.pretrial.org/about/staff/>

¹³⁵ Abell, *The Pretrial Release Project*

¹³⁶ JPI, *Baltimore Behind Bars*

¹³⁷ Pretrial Justice Institute, About PJI, last Modified 2014L <http://www.pretrial.org/about/>

You will request that House of Delegate Curtis Anderson introduce legislation titled “Reforming Pretrial Detention Act” during the next session. The goal of this act will be to repeal and amend the current Maryland pretrial release laws. The purpose of legislation will be to repurpose commissioners to do risk assessments on defendants prior to their initial appearance, restrict the use of commercial sureties as a condition of release, and to place released defendants under some level of pretrial supervision.

The Act will amend Maryland Rule 4-213 to include “District Commissioner’s shall, except when impracticable, interview any person detained pursuant to law or charged with an offense in the state of Maryland who is to appear before a judicial officer for pretrial release.”¹³⁸ “The interviewer shall seek verification of information, secure any such person’s prior criminal record, and prepare a written report of the information for submission to the appropriate judicial officer so they may decide whether such person should be released or detained under any conditions specified in MD Rule 4-216 (e)(1),(2),(3), and (4).¹³⁹

Rule 4-216 d (1) (D) will be amended to state “in determining whether a defendant should be released and the conditions of release, the judicial officer shall take into account the following information to the extent it is available: any recommendation of an agency that conducts pretrial release investigation based on an empirically developed risk assessment instrument designed to improve pretrial release decisions by providing to the court information that classifies a person based upon predicted level of risk of pretrial failure”.^{140 141 142}

¹³⁸ District of Columbia Code Section 23-1303 (a)

¹³⁹ Ibid.

¹⁴⁰ MD. Rule 4-216 (1) (D)

¹⁴¹ Colorado Statutes Section 16-4-103 (3)(b)

The bill will also repeal MD Rule 4-216 (e)(4) (B), (C), (D), and (E). It will be replaced with: “A judicial officer may not impose a financial condition to assure the safety of any other person or the community, but may impose such a financial condition to reasonably assure the defendant’s presence at all court proceedings that does not result in the preventive detention of the person, except as provided in MD Rule 4-216 (c).”¹⁴³ This should be interpreted that every individual has a right to a bond they can meet.¹⁴⁴ It is intended to limit the use of commercial bonds unless the judicial officer knows the defendant can afford the amount and render the use of bail to rare occasions.¹⁴⁵

Repeal MD Rules 4-216 (e) (1) and (2). These will be replaced with “all persons released on no surety release, including release on personal recognizance, personal bond, nonfinancial conditions, or cash deposit with the clerk magistrate shall be placed under the supervision of a probation officer, another appropriate public official, or organization that agrees to supervise the defendant and assist in ensuring the defendant’s appearance in court.”¹⁴⁶ “The supervising agency will have various functions to perform for the court, individual, and other agencies.”¹⁴⁷

Finally, the legislation will amend Maryland rule 2-607 (c) (2) by adding “a commissioner shall...conduct a pretrial investigation and risk assessment to be used in

¹⁴² Austin and Peyton, *Maryland Pretrial Risk Assessment Data Collection Study*. NOTE: Per recommendations of Dr. James Austin and Peyton the state should develop its own risk assessment instrument that is validated in relation to Maryland’s own defendant population. It will require a study and implementation that would take approximately six months.

¹⁴³ DC Code Sec.2 section 23-1321 (c)(3)

¹⁴⁴ Beaudin, Bruce. “The D.C. Pretrial Services Agency: Lessons From Five Decades of Innovation and Growth,” *Case Studies 2*, no. 1 (2013). [http://www.pretrial.org/download/pji-reports/Case percent20Study-percent20DC percent20Pretrial percent20Services percent20- percent20PJI percent202009.pdf](http://www.pretrial.org/download/pji-reports/Case%20Study-percent20DC%20Pretrial%20Services%20-%20PJI%202009.pdf)

¹⁴⁵ Ibid.

¹⁴⁶ DC Code Section 23-1303 (h)(1)

¹⁴⁷ DC Code Section 23-1303 (h) (2), (3), (4), (5), (6), (7) NOTE: The agency shall make reasonable effort to give notice of required court appearance to each person released by the court, service as a coordinator for other agencies and organizations, assist persons released in securing employment or necessary medical or social services, inform judicial officer or other legal parties of failure to comply with pretrial release conditions or arrest of released person under supervision, perform such other pretrial functions as needed.

determining whether to set bond, commit persons to jail in default of bond, or release the on personal recognizance if circumstances warrant”.¹⁴⁸

This reform is a ‘stick’ type of policy. It further regulates the District Court Commissioners, mandates the use of a statewide risk assessment tool to determine release, regulates the amount of a financial bond, and requires anyone who is released to be on some level of community supervision while pending trial.

New regulations in regards to setting a financial bond as a condition of release will drastically change Maryland pretrial release. These regulations are intended to create mostly a bail/no bail dichotomy like the pretrial system in Washington, DC.¹⁴⁹ The requirement of some type of supervision by a pretrial agency for any defendant released will require the expansion of and/or creation of current community supervision agencies.

If such regulations are not followed defendants will have the right to appeal the decisions. Anyone who is detained will still be presented before a District court judge within twenty-four hours or the next court session to review the judicial officer’s pretrial decision and modify the decision accordingly.¹⁵⁰

POLICY ANALYSIS

Effectiveness/Efficiency

This policy will reduce the number of people detained in jail while awaiting trial, which saves money that can be redirected towards cost-effective public safety strategies.¹⁵¹ In 2013, the DPSCS appropriated \$156 million to pretrial detention alone.¹⁵²

¹⁴⁸ MD Courts and Judicial Proceedings Section 2-607(c) (2)

¹⁴⁹ Beaudin, “Lessons From Five Decades of Innovation and Growth”

¹⁵⁰ MD Rule 4-216 (f) (1)

¹⁵¹ JPI, *Baltimore Behind Bars*

¹⁵² Justice Policy Institute, *MarylandMonth: Prison Fact Sheet*, Washington, DC: JPI 2014

That does not include the \$83 to \$153 per day costs incurred by the twenty-four counties.¹⁵³

To release an individual until their next court day without supervision would cost zero dollars. Defendants released with a condition of pretrial supervision costs an estimated \$2.50 per day per defendant.¹⁵⁴ In Baltimore, moving just 1,000 individuals from the detention center to the supervision of a pretrial services program for thirty days would save the state approximately \$2.92 million per month.¹⁵⁵

Pretrial services programs require relatively small upfront investments and result in significant cost savings.¹⁵⁶ In 2007, Okaloosa County, Florida's, jail population was at 117 percent of capacity.¹⁵⁷ In 2008, they reformed their pretrial services program. By 2011, their jail population dropped to 22 percent below capacity.¹⁵⁸ This saved the county approximately \$27 million annually.¹⁵⁹

Denver, Colorado, operates in a similar manner as this proposal. Their pretrial program determines a defendant's eligibility to be released from jail and provides essential information to the courts along with a recommendation to be supervised as a condition of the defendant's release.¹⁶⁰ In 2012, the organization saved \$999,050 and reduced jail bed days by 76,850.

¹⁵³ GOCCP Pretrial Commission, *Final* report

¹⁵⁴ JPI, *Baltimore Behind Bars*

¹⁵⁵ *Ibid.*

¹⁵⁶ ABA, *Frequently Asked Questions About Pretrial Release Detention Making*

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.* NOTE: Originally the county had planned a \$12.5 million expansion to the jail that would have cost an addition \$3.5 million annually. The expansion of pretrial services negated that expansion and addition costs associated with it.

¹⁶⁰ City and County of Denver, Department of Public Safety: Pretrial Supervision Services, last modified 2015:

<http://www.denvergov.org/safety/DepartmentofSafety/AlternativeCorrections/CommunityCorrections/PretrialSupervisionServices/tabid/443528/Default.aspx>

Locally, Montgomery County's Department of Corrections and Rehabilitation's Pretrial Services Division also operates in a similar manner to this proposal.¹⁶¹ During FY 2012, the division's approved operating budget for the assessment and supervision units was approximately \$2.35 million dollars.¹⁶² The assessment unit screened over 7,000 defendants and the supervision unit supervised 2,904 defendants. The average daily caseload of the supervision unit was 511 defendants averaging eighty-two days under supervision.¹⁶³ This equates to approximately \$10 per day per defendant.¹⁶⁴

For comparison, the operating budget for the two jails in Montgomery County during the same year was \$48.79 million.¹⁶⁵ The two facilities' average daily population was approximately 772 inmates.¹⁶⁶ Based on this, it cost approximately \$185 per day to house each inmate.¹⁶⁷

¹⁶¹ Ricci Greene Associates, *Montgomery County, Maryland Master Facilities Confinement Study*, New York, NY: RGA 2014

NOTE: an assessment unit interviews all individuals not released by the commissioner. They make a recommendation to a district court judge regarding the defendant's release. As a condition the defendants are released to a pretrial supervision unit that supervises them in the community pending their trial.

¹⁶² Montgomery County Office of Management and Budget, *Correction and Rehabilitation FY12 Approved Budget Details*, Rockville, MD: Office of Management and Budget, 2012

NOTE: The total operating budget was \$5,010,950 for 42.6 work years. The Supervision unit in 2012 consisted of 14 total work years and the assessment unit of 6 work years with a sum of 20. The expenditure per work year = \$5,010,950/42.6=\$117,627.93. Pretrial detention related work years (20) * \$117,627.93 per work year= \$2,352,558.69.

¹⁶³ RCA, *Montgomery County Facility Confinement Study*

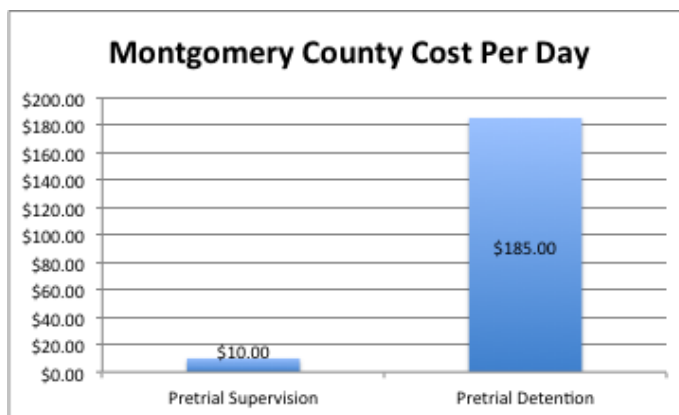
¹⁶⁴ \$2,352,558 budget/2904 total defendants supervised= \$810.10 per defendant. \$810.10/82 average days under supervision=\$9.87 per day per defendant.

¹⁶⁵ Montgomery County OMB, *Correction and Rehabilitation FY12 Approved Budget Details*

¹⁶⁶ Montgomery County, Maryland Department of Correction and Rehabilitation, *Daily Population Count*, Rockville, MD: DOCR March 2015:

<http://www.montgomerycountymd.gov/COR/Resources/Files/ADP/DOCR-Daily-Population-Count-March-31-2015.pdf>

¹⁶⁷ NOTE: Jail cost per day: Total Budget \$48,793,640/365 days= \$133,681 per day. Daily cost \$133,681/722 average daily population = \$185.15 per day per inmate



Source: Ricci Greene Associates, *Montgomery County, Maryland Master Facilities Confinement Study*, New York, NY: RGA 2014
 Montgomery County, Maryland Department of Correction and Rehabilitation, *Daily Population Count*, Rockville, MD: DOCR March 2015
 Montgomery County Office of Management and Budget, *Correction and Rehabilitation FY12 Approved Budget Details*, Rockville, MD: Office of Management and Budget, 2012

Program budgets for pretrial service agencies across the country are small. In 2009, 50 percent of program budgets were less than \$500,000 annually.¹⁶⁸ Nine percent were between \$500,000 and \$800,000 and 11 percent between \$800,000 and \$1.5 million. Twenty-two percent operated with a budget between \$1.5 million and \$10 million, and just 3 percent of programs required over \$10 million annually.¹⁶⁹

No new funding will be necessary to interview and investigate defendants'. This law repurposes the existing District Court commissioners to conduct investigations and use a data-drive risk assessment to determine pretrial release.¹⁷⁰ District Court commissioners are already trained to perform many of the essential functions required by

¹⁶⁸ Pretrial Justice Institute, *2009 Survey of Pretrial Services Programs*, Washington, DC: PJI, August 11, 2009

¹⁶⁹ Ibid.

¹⁷⁰ Note: Administrative Judges have the authority to repurpose them as long as it is in relation to terms of pretrial release pending their hearing according to Article IV, Part VI, Sec 41G(b)(1) of the Maryland Constitution

this law.¹⁷¹ Maryland laws have already allocated the proper amount of commissioners to each jurisdiction to perform these duties.¹⁷²

To meet the requirements of this proposal requires community supervision agencies to expand to properly manage larger caseloads. This requires more staff, supplies, and electronic monitoring equipment. If properly funded and planned, community supervision can be an effective response to criminal behavior. Without the proper funding for resources, redirecting defendants to existing systems may not immediately generate expected cost savings or public safety outcomes.¹⁷³

This policy is intended to cut spending on pretrial detention and justice reinvestment into community supervision.¹⁷⁴ During the transition phase, the state and counties will continue to fund those who are already held pending trial while expanding current community supervision programs to accommodate those released to supervision under the new law.

For FY 2015, the allowance for the Maryland Parole and Probation Division, Pretrial Release Services Program, and other units responsible for supervising offenders under criminal supervision is \$98.6 million.¹⁷⁵ The agency is underfunded as it is, and the addition of pretrial defendants could put significant stress on the agency.

At any given time, there are 7,000 to 7,500 defendants detained in Maryland jails awaiting trial.¹⁷⁶ In neighboring Washington D.C. approximately 85 percent of

¹⁷¹ GOCCP Pretrial Commission, *Final Report*

¹⁷² Maryland Courts and Judicial Proceedings, Section 2-607(a)(1)

¹⁷³ Vera Institute of Justice, *The Potential of Community Corrections to Improve Safety and Reduce Incarceration*. New York, NY: Vera Institute of Justice, 2013

¹⁷⁴ Ibid. Note: Justice Reinvestment is the promise of reallocation of institutional cost savings to community-based treatment, education, and other services at crime prevention or recidivism reduction

¹⁷⁵ Department of Legislative Affairs. *Department of Public Safety and Correctional Services Fiscal 2015 Budget Overview*. Annapolis, MD: Office of Policy Analysis 2014

¹⁷⁶ GOCCP Pretrial Commission, *Final Report*

defendants are released while pending trial.¹⁷⁷ If Maryland were to have similar results, the DPSCS would be responsible for an additional 5,950 to 6,375 cases added to their daily population.¹⁷⁸

The Maryland Division of Parole and Probation has three levels of supervision: violence prevention initiative (VPI); sex offenders; and general. Each caseload has an ideal average ratio of 30:1, 30-49:1 and 100:1, respectively.¹⁷⁹ The agency meets the ratio requirements for VPI and sex offender cases; however, between sixteen and eighteen jurisdictions operate with caseloads in excess of the 100:1 general ratio.¹⁸⁰ The average general caseload statewide is 136 cases per agent with two counties consistently averaging over 200 cases per agent.¹⁸¹ Without significant increased funding the additional caseload for the division could put a major stress on the agency and not have the intended cost saving results.

An alternative to using the Division of Parole and Probation is to create a new agency, expand the current Pretrial Release Services of the DPSCS, and/or allow the eleven counties with existing pretrial programs the option to use their current systems in lieu of a state operated program. Any of these options requires additional funding.

Currently, the Department of Public Safety and Correctional Services' pretrial program supervises 19,000 individuals.¹⁸² In FY 2011 their operating budget was

¹⁷⁷ Beaudin, "Lessons From Five Decades of Innovation and Growth"

¹⁷⁸ Calculations: $7000 \times 0.85 = 5,950$ & $7500 \times 0.85 = 6,375$

¹⁷⁹ Department of Public Safety and Correctional Services, *Division of Parole and Probation 2013 Budget Analysis*, Annapolis, MD: Md. OBM, 2013

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Maryland State Archives, Department of Public Safety & Correctional Services: Division of Pretrial Services: Pretrial Release Services, last modified February 09, 2015: <http://msa.maryland.gov/msa/mdmanual/22dpacs/html/22agen.html#release>

approximately \$45.5 million to service just Baltimore City.¹⁸³ Prince George and Montgomery County's pretrial programs, the second and third largest population jurisdictions in the state, have operating budgets of \$5.6 million and \$4.5 million, respectively.¹⁸⁴ ¹⁸⁵ Increased resources will be needed for these organizations to adequately manage increased cases. This creates funding burdens on both county and state governments.

Estimates to start a new agency suggest an annual budget for a program that screens up to 90,000 individuals to be approximately \$10 million.¹⁸⁶ This figure varies greatly based on what percentage of screened individuals are placed on which level of supervision.¹⁸⁷

For comparison purposes, Kentucky has a statewide pretrial services program with a \$12.75 million operating budget for FY 2015.¹⁸⁸ Washington, DC's Pretrial Services Agency had an operating budget of \$60.8 million for FY 2015. In 2014, they supervised 18,656 defendants.¹⁸⁹

¹⁸³ JPI, *Baltimore Behind Bar*

¹⁸⁴ Prince George's County Office of Management and Budget, *Department of Corrections FY2015 Approved Budget*, Upper Marlboro, MD: P.G. OMB, 2015. Note: Prince George's County's pretrial program is under the population management division of the Corrections Department. There are six total units under the Population Management Division; Inmate Records, Classification, Billing/Sentenced Inmates, Pretrial Services, Case management, and Monitoring Services. There is no specific breakdown of which unit is allocated how much funding.

¹⁸⁵ Montgomery County Office of Management and Budget, *Correction and Rehabilitation FY15 Approved Budget Details*, Rockville, MD: Office of Management and Budget, 2015

¹⁸⁶ Policy Justice Institute, *Pretrial Services Program Implementation: A Starter Kit*. Washington, DC: PJI 2009

¹⁸⁷ There are cost differences for an organization that has 50% of screened individuals placed under supervision versus 25%.

¹⁸⁸ GOCCP Pretrial Commission, *Final report*

¹⁸⁹ Pretrial Services Agency for the District of Columbia, *Congressional Budget Justification and Performance Budget Request Fiscal year 2016*, Washington, DC: PSA 2015

In 2009, Pretrial Services in Broward County, Florida, had an operating budget of approximately \$6 million for a total of fifty-six staff members. They supervised 5,582 individuals that year, and 4,095 were released without having to pay a bond.¹⁹⁰

Towson University's Regional Economic Studies Institute conducted a study to estimate the cost of a statewide pretrial program in Maryland. They reviewed the potential of establishing a state pretrial services agency and expanding Baltimore City's Pretrial Service program. They estimated the annual costs for the program range between \$102 million and \$300 million annually.¹⁹¹

A statewide pretrial services will cost taxpayer money. The current system offers a free guarantee of the defendant's appearance to court.¹⁹² Money bonds and bondsmen save taxpayer dollars by requiring defendants to pay personal money to ensure their appearance in court. This policy will require government funding to measure risk and supervise defendants pending court trial.

Equity

This policy requires the use of scientific methods in measuring defendants' likelihood of appearing in court and being re-arrested using a risk assessment tool. The current law establishes what a judicial officer can take into account when determining pretrial release.¹⁹³ However, it is subjective, and judicial officials do not have the benefit

¹⁹⁰ Broward County, Florida. *Evaluation of the Pretrial Services Program Administers by the Broward Sheriff's Officer*, Broward County, FL: Office of the County Auditor, 2009.

¹⁹¹ Irani, Daraius, Ph.D., Frye, Raquel, and Jones, Zachary, "Estimating the Cost of the Maryland Pretrial Release Services Program," Towson, MD: Regional Economic Studies Institute Towson University, March 11, 2014

¹⁹² Montopoli, Brian, "Is the U.S. Bail System Unfair?" CBSNews, February 8, 2013: <http://www.cbsnews.com/news/is-the-us-bail-system-unfair/2/>

¹⁹³ MD Rule 4-215 (d)(1)(A,B,C,D,E,F,G,H, and I)

of data-driven objective assessments of the risks defendants pose.¹⁹⁴ As noted, the current system has led to disparities in release, detainment, and bond amounts amongst races.¹⁹⁵ Research also shows defendants deemed high-risk and/or violent are released more than those who are low-risk.¹⁹⁶

This law requires a risk assessment tool be developed and implemented statewide. It needs to be tested and validated on Maryland's population.¹⁹⁷ It will ensure that every defendant's likelihood to appear or be re-arrested is objectively measured. This information is one of the main considerations in determining defendants' release.

Risk assessment tools are not a guarantee and there isn't always enough information available to accurately measure risk. An example is if an individual is arrested for the first time. The defendant has never been in the community while pending trial, convicted of an offense, or had court dates to fail to appear to. Without this information it becomes harder to measure an individuals' risk, putting more reliance on judicial officers to make a subjective decision.¹⁹⁸

Liberty

¹⁹⁴ Laura & John Arnold Foundation, *Developing a National Model for Pretrial Risk Assessment*. Houston, TX: LJAF 2013

¹⁹⁵ Demuth, *Racial and Ethnic Differences in Pretrial Release*

¹⁹⁶ LJAF, *Developing a National Model for Pretrial*

¹⁹⁷ Austin and Peyton, *Maryland Pretrial Risk Assessment Data Collection Study*. NOTE: The tool is used identify screening factors that are statistically associated likelihood to fail to appear and/or re-arrest while under Pretrial Supervision. Scoring Items (independent variables) are tested to see which ones have the strongest relationship to FTA and re-arrest in Maryland.

Validation research creates a cohort of released defendants. Potential risk factors and FTA/re-arrest data are collected and an analysis is performed to determine which set of variables perform best in identifying risk level of released defendants in Maryland.

¹⁹⁸ Mamalian, Cynthia A. Ph.D., *State of the Science of Pretrial Risk Assessment*, Washington, DC: PJI, 2011

The principles of freedom and liberty in the U.S. are directly related to pretrial detention.¹⁹⁹ However, over one hundred years after the Supreme Court affirmed this in the Hudson decision, more than 60 percent of inmates in jail are awaiting trial.^{200 201} This law releases more individuals pending trial. In neighboring Washington, DC, which has a similar policy, 80 percent of arrested defendants are released without money bond. Five percent are released on a financial bond and 15 percent are detained.²⁰²

Kentucky's statewide pretrial services program was established in 1976 and outlawed commercial bail bonding for profit. Figures show Kentucky Pretrial Services releases 74 percent of defendants on average.²⁰³ Kentucky's jails are comprised of only 43 percent pretrial detainees, compared to 68 percent in Maryland.²⁰⁴

By maximizing the release of pretrial defendants, the state can ensure as many individuals' liberty and innocence are protected as possible. Those released are able to maintain employment, personal relationships, and obtain proper counsel for their defense.^{205 206} Detained defendants are more likely to be found guilty and receive sentences of incarceration over probation.²⁰⁷ This act increases Maryland's citizens' liberty and freedom while decreasing the likelihood of them being found guilty and incarcerated.

Some individuals, regardless of measured risk, still fail to appear in court and commit new crimes. In Washington, DC, 3 percent of defendants released are re-arrested

¹⁹⁹ Nolan, *Sir William Blackwell*

²⁰⁰ Hudson v. Parker, 156 U.S. 277 (1895)

²⁰¹ LJAF, *Developing a National Model for Pretrial*

²⁰² Beaudin, "Lessons From Five Decades of Innovation and Growth"

²⁰³ ABA, *Frequently Asked Questions About Pretrial Release Detention Making*

²⁰⁴ GOCCP Pretrial Commission, *Final report*

²⁰⁵ JPI, *Bail Fail*

²⁰⁶ Aborn and Cannon, "Prison: In Jail, But Not Sentenced."

²⁰⁷ Justice Policy Institute, *Finding Direction: Expanding Criminal Justice Options by Considering Policies of Other Nations*, Washington, DC: JPI 2011

on new felony charges and 9 percent are arrested on new misdemeanor charges. Twelve percent of released defendants fail to appear for court.²⁰⁸ In Kentucky, 8 percent of released defendants miss their court date and 7 percent are re-arrested on new charges.²⁰⁹ Risk tools are not always accurate and even the highest level of supervision can't prevent new criminal activity.

Technology

Maryland has nearly 250,000 arrests each year that are processed through twenty-four local jurisdictions.²¹⁰ Currently, each jurisdiction utilizes its own jail information management system. This makes it virtually impossible for information to follow a defendant in and out of different facilities and courts throughout the state. In 2014, the GOCCP was awarded a grant to interface local jail systems with the state's Offender Case Management System.²¹¹ This system will achieve greater integration among institutional data systems to better track and monitor defendants.

The new system, along with the Maryland Electronic Courts project, give pretrial programs the ability to effectively share information. The State's vision, as seen below, will allow for numerous stakeholders to input and receive information regarding arrests, supervision progress, trial outcomes, release conditions, and more.²¹²

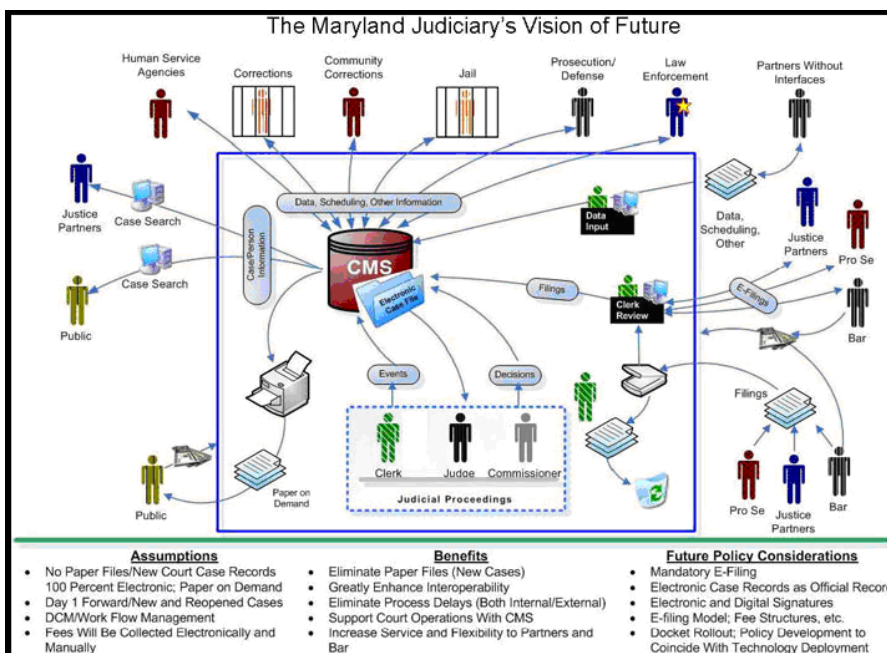
²⁰⁸ ABA, *Frequently Asked Questions About Pretrial Release Detention Making*

²⁰⁹ Ibid.

²¹⁰ GOCCP Pretrial Commission, *Final report*

²¹¹ Ibid.

²¹² Maryland Courts, Maryland Electronic Courts: About MDEC, last modified 2015: <http://www.mdcourts.gov/mdec/about.html>



Source: Maryland Courts, Maryland Electronic Courts: About MDEC: Vision of the Future, last modified 2015: <http://www.mdcourts.gov/mdec/img/vision-screen.jpg>

There is currently no timeline for the implementation of this system.²¹³ If it is not running when this law goes into effect judicial officers and criminal justice staff across the state will spend unnecessary time tracking and gathering information. Other issues facing the implementation of this new system are funding, capacity of current support staff to handle implementation, and individual courts' capacity for change.²¹⁴

Electronic monitoring, check-in kiosks, and Global Positioning Systems (GPS) are an integral part of community supervision. This technology reduces defendant's risk of failure under supervision by 31 percent and has significant impacts on the behavior of violent and sex offenders.²¹⁵ This technology plays an important role in monitoring and identifying defendants, ensuring public safety, and reducing the risk of re-offending.

²¹³ Maryland Courts, Maryland Electronic Courts: Latest Updates (Archive), last modified 2015: <http://www.mdcourts.gov/mdec/latestupdatesarchive.html#mdec20141010>

²¹⁴ MTG Management Consultants. *Maryland Administrative Office of the Courts Case Management System Replacement*. Washington, DC: MTG Management Consultants 2009

²¹⁵ U.S. Department of Justice National Institute of Justice, *Electronic Monitoring Reduces Recidivism*. Washington, DC: National Institute of Justice, 2011

Currently, the Maryland DPSCS utilizes each of these tools to assist in the monitoring of those under their supervision.²¹⁶ This reduces the need for new vendors, training, and implementation of standard practices.

The adoption of this law will expand the use of technology to properly monitor high-risk defendants. As caseloads grow, the use of this technology also will. This requires more staff specialized in the use and troubleshooting of the equipment, larger equipment inventories, and training to properly monitor and use the technology. If pretrial service programs are not prepared for the technology needs, higher-risk offenders could be released without the best possible tools to reduce risk of failure under supervision.

Political Analysis

During your campaign and tenure in Annapolis you have voiced support for rehabilitation and to reduce spending on corrections. On March 19th of this year, you announced your backing for the passage of SB 526- the Maryland Second Chance Act of 2015.²¹⁷ This bill authorizes individuals with non-violent, misdemeanor criminal records to petition the court to shield court and police records after three years.²¹⁸ You said this bill allows “those who meet certain conditions to re-enter the workforce without the stigma of criminal background. It is not only the right thing to do but will contribute to the economic growth and development of our state.”²¹⁹

²¹⁶ Maryland Courts, Maryland Electronic Courts: Latest Updates (Archive), last modified 2015

²¹⁷ Maryland.gov The Office of Governor Larry Hogan, *Governor Larry Hogan Announces Support for Maryland Second Chance Act*, Annapolis, MD, March 19, 2015:
<http://governor.maryland.gov/2015/03/19/governor-larry-hogan-announces-support-for-maryland-second-chance-act/>

²¹⁸ Maryland Second Chance Act of 2015, Criminal Procedure Article, Sections 10-301 & 10-306:
<http://mgaleg.maryland.gov/2015RS/bills/sb/sb0526T.pdf>

²¹⁹ The Office of Governor Larry Hogan, *Governor Larry Hogan Support for Maryland Second Chance Act*

You also announced your backing of HB 388, which establishes the Justice Reinvestment Coordinating Council under the GOCCP. The purpose of the council is to develop a statewide framework of sentencing and corrections policies to reduce the State's incarcerated population, spending on corrections, and to reinvest in strategies for specified purposes.²²⁰ The council is to use data-driven approaches to achieve these goals with reinvestment in strategies that increase public safety and reduce recidivism.²²¹ You said "taking a tough stance on crime isn't just about incarceration. In order to achieve lasting results in our criminal justice system, we must strike a balance and explore better, smarter options."²²²

Your views towards marijuana are proof you understand the negative impact incarceration has on individuals. In response to your stance on the State's Marijuana laws, you said you opposed full legalization of marijuana but believe destroying someone's chances of employment and exposing them to violent offenders in jails seemed unjust.²²³

Delegate Anderson has an extensive history in criminal justice reform. During the General Assembly's most recent session, Delegate Anderson introduced or supported legislation including; the Second Chance Act, Inmates Life-Imprisonment Parole Reform allowing those servicing life terms be paroled, the Marijuana Control and Revenue Act repealing criminal prohibitions against the use and possession of marijuana, and the

²²⁰ Justice Reinvestment Coordinating Council, Maryland Public Safety article, Sections 1-601 through 605: <http://mgaleg.maryland.gov/2015RS/bills/hb/hb0388T.pdf>

²²¹ Ibid.

²²² The Office of Governor Larry Hogan, *Governor Larry Hogan Support for Maryland Second Chance Act*

²²³ Brockett, Megan, "Gubernatorial Candidates Run the Gamut on Views About Marijuana" *Capital News Service*, April 15, 2015: <http://cnsmaryland.org/2014/04/15/gubernatorial-candidates-run-the-gamut-on-views-about-marijuana/>

Charge by Summons bill, which allows police to charge defendants via citation and release them.^{224 225 226 227}

His support for reform in this field is reinforced by his career in Maryland. He has worked for Pretrial Release Services in Baltimore and practiced law in the state as a criminal defense attorney.²²⁸ This experience, combined with his leadership as a member of the House of Delegates, makes him a key supporter of this bill and its success.

As a member of former Governor O'Malley's Pretrial Commission, your Office of Crime Control and Prevention taskforce head, Christopher Shank, supported many of the recommendations in this policy. They include creating a uniform pretrial services agency statewide, funding a risk assessment tool, and repurposing the District Court commissioner's from their current duties to conduct risk assessments.²²⁹

Shank joined the commission in supporting all of the recommendations except for one. Executive Director Shank disagreed with Recommendation Four, recommending that the use of secured financial conditions of pretrial release be completely eliminated.²³⁰ In his dissent, he stated secured financial bonds, whether in the form of cash, property, or surety, serves an important function in the system.²³¹

²²⁴ Maryland Second Chance Act of 2015

²²⁵ Maryland 2015 Regular Session, 435th Session of General Assembly, House Bill 303, Delegate Anderson, Last Action: February 17, 2015: <http://mgaleg.maryland.gov/2015RS/bills/hb/hb0303F.pdf>

²²⁶ Maryland 2015 Regular Session, 435th Session of General Assembly, House Bill 911, Delegate Anderson, Last Action: February 13, 2015: <http://mgaleg.maryland.gov/2015RS/bills/hb/hb0911F.pdf>

²²⁷ Maryland 2015 Regular Session, 435th Session of General Assembly, House Bill 494, Delegate Anderson, Last Action: April 3, 2015: <http://mgaleg.maryland.gov/2015RS/bills/hb/hb0494T.pdf>

²²⁸ Maryland State Archives, *House of Delegates: Curtis Stovall (Curt) Anderson*

²²⁹ GOCCP Pretrial Commission, *Final Report*

²³⁰ Ibid.

²³¹ Ibid.

He further argued that when family members, loved ones, or friends put financial resources toward a defendant's release, it is an incentive for them to appear.²³² It should be noted that Mr. Shank is a former member of the American Legislative Exchange Council, a powerful conservative group that has been successful in passing bills that give advantages to for-profit bail businesses and restricts or defunds pretrial services programs.²³³

Other key stakeholders, and/or representatives from their agencies, were also part of the Maryland Pretrial Commission. Head Public Defender Paul DeWolfe, Chief Justice of District Court John P. Morrissey, Angela Talley from the Pretrial Services Division of Montgomery County, Mary Lou McDonough from Prince George's County Department of Corrections, and Wendell France Deputy Secretary to Stephen Moyer of the DPSCS were all members of the committee. As previously noted, the commission made endorsements in line with this policy.²³⁴ None of which, besides Mr. Shank's, offered a dissent for any of the recommendations.

Abell, JPI, LJAF and PJI have each conducted extensive research on the topic. In their 2001 review of the Maryland pretrial detention, Abell recommended pretrial release and supervision be statewide, limit the use of cash bonds, and eliminate the use of commercial sureties.²³⁵ JPI's 2010 review of Baltimore City's jail and pretrial system recommended developing a mechanism for screening and recommending the release of

²³² Ibid.

²³³ JPI, *For Better or For Profit*

²³⁴ GOCCP Pretrial Commission, *Final Report*

²³⁵ Abell, *The Pretrial Release Project: Study of Maryland's Pretrial Release and Bail System*

low-risk offenders using data-driven methods, reforming the bail system to limit cash bonds, and increasing the use of pretrial supervision.²³⁶

LJAF has done a significant research on the effects pretrial detention and supervision has on defendants.²³⁷ They, too, have made recommendations in line with this proposal to determine risk, release accordingly, and utilize pretrial supervision.²³⁸ PJI has been a pioneer in pretrial research. They have documented the history of pretrial in the U.S. and given countless proposals on reforming it on the local, state, and federal levels.²³⁹

A major opponent of this legislation is the bail bonding industry and its lobbyists. The bail bonding industry has donated upwards of \$3 million to political campaigns to secure support for the industry.²⁴⁰ The industry is estimated to be worth \$2 billion annually and is supported by approximately thirty insurance companies who employ 15,000 people.²⁴¹ Over the past five years, for-profit bail bonding industry lobbyists have successfully been able to limit pretrial services agencies and loosen restrictions on bondsmen.²⁴²

The American Bail Coalition (ABC) and the American Legislative Exchange Council (ALEC) are leading advocacy organizations for the bail industry.²⁴³ In both Florida and Texas, these organizations played a vital role in the passing of legislation that restricts pretrial programs to the point where they are not effective.²⁴⁴ They have put

²³⁶ JPI, *Baltimore Behind Bars*

²³⁷ Laura & John Arnold Foundation, *Pretrial Criminal Justice Research*. Houston, TX: LJAF 2013

²³⁸ *Ibid.*

²³⁹ Schnacke, *Fundamentals of Bail*

²⁴⁰ JPI, *For Better or For Profit*

²⁴¹ *Ibid.*

²⁴² *Ibid.*

²⁴³ *Ibid.*

²⁴⁴ NAPSA, "The Truth About Commercial Bail Bonding"

pressure on states like Oregon, one of four states outlawing bondsmen, to reestablish for-profit bail industry.²⁴⁵

Former judicial leaders and legislative leaders have gone on record regarding the power of bondsmen in Maryland. Former District Court Chief Justice Ben Clyburn testified at the general assembly about proposals to change the judicial process. He stated it wouldn't be realistic to eliminate money bond in Maryland due to the bondmen's lobby being so powerful.²⁴⁶ He said, "We are very realistic in terms of bail here in Maryland. Bail Bondsmen, they have a lobby- a very strong lobby- and there is a reason why they're still here".²⁴⁷ He suggested the only way to not rely on monetary bond is to give enough diversion options to judges to not use money bonds.²⁴⁸

In early 2013, Lake Research Partners conducted a public opinion research study on pretrial risk assessment programs.²⁴⁹ They found that, nationwide, voters support this type of reform. Many voters believe that risk-based tools and supervision are already part of the pretrial system.²⁵⁰ Seven-in-ten voters nationwide support replacing cash bail bonds with risk assessments. Nearly half of voters strongly support it.²⁵¹ As seen below, support crosses many demographics including gender, age, party identification, and region.

²⁴⁵ Ibid.

²⁴⁶ Ian Duncan, "Top District Court Judge Points to Power of Bail Bonds Lobby in Debate Over Reform," *The Baltimore Sun*, January 23, 2014: <http://www.baltimoresun.com/news/maryland/crime/blog/bal-top-district-court-judge-calls-out-bail-bonds-lobby-in-debate-over-reform-20140123-story.html>

²⁴⁷ Ibid.

²⁴⁸ Ibid.

²⁴⁹ Policy Justice Institute, *Implementing the Recommendations of the 2011 National Symposium on Pretrial Justice: A Progress Report 2013*. Washington, DC: PJI, 2013

²⁵⁰ Ibid.

²⁵¹ Celinda Lake, Daniel Gotoff, and Kristy Pultorak. *Support for Risk Assessment Programs Nationwide*. Washington, DC: Lake Research Partners 2013

| Support for Risk Assessment Programs Nationwide | | | | |
|---|-------------|-----------|-----------------|------------------------------------|
| | | % Support | % Strong Report | Margin of Support (Support-Oppose) |
| All | | 70% | 47% | 57 |
| Gender | Men | 72% | 42% | 59 |
| | Women | 67% | 44% | 56 |
| Age | Under 50 | 72% | 40% | 60 |
| | Over 50 | 67% | 44% | 54 |
| Party Identification | Democrat | 74% | 41% | 64 |
| | Independent | 66% | 44% | 52 |
| | Republican | 69% | 46% | 56 |
| Region | Northeast | 66% | 40% | 55 |
| | Midwest | 70% | 50% | 59 |
| | South | 69% | 48% | 55 |
| | West | 74% | 51% | 61 |

Source: Celinda Lake, Daniel Gotoff, and Kristy Pultorak. *Support for Risk Assessment Programs Nationwide*.

Washington, DC: Lake Research Partners 2013

There is nationwide support for pretrial risk assessment reform.²⁵² This eases concerns of voter backlash in response to this legislation. Most promising for you is that 69 percent of Republicans support reform, with 46 percent feeling strongly for it. In the northeast and south, voters are 66 percent and 69 percent supportive of reform, respectively.²⁵³

During your State of the State Address, you said that Maryland couldn't continue the same path of spending.²⁵⁴ This proposal has potential to decrease corrections spending for both the state and counties. Your support of this legislation will further prove your dedication adopting new strategies towards crime and incarceration.²⁵⁵

On March 19th, 2015, you expressed support to establish the Justice Reinvestment Coordinating Council.²⁵⁶ As previously mentioned, the focus of this council is to use data-driven approaches to reduce spending on corrections and reduce recidivism.²⁵⁷ Your

²⁵² Ibid.

²⁵³ Ibid.

²⁵⁴ The Baltimore Sun, "Transcript of Gov. Larry Hogan's State of the State Address"

²⁵⁵ The Office of Governor Larry Hogan, *Governor Larry Hogan Support for Maryland Second Chance Act*

²⁵⁶ Ibid.

²⁵⁷ Ibid.

support of this proposal can be a key legislation for that council. This proposal creates a data-driven risk assessment tool used to release more defendants pending trial.

This policy could have significant up front costs. They can come in the form of expanding the Division of Parole and Probation or Baltimore City's Pretrial Services and/or creating a new pretrial agency. You promised to roll back taxes and proposed a handful of tax cuts.²⁵⁸ The support of this policy could require appropriating additional funds to meet new requirements set by this proposal.

The release of more defendants increases the likelihood of pretrial defendants committing new offenses while pending trial. In Washington, DC, eleven defendants were charged with violent crimes while on GPS monitoring.²⁵⁹ One pretrial defendant, Javon Hale, was charged in two shootings and a kidnapping over three days, leaving one man dead and two others wounded.²⁶⁰ A DC Superior Court judge stated, "No judge wants to release someone and have that person commit a violent crime while on release".²⁶¹ If this were to happen in Maryland as a result of this legislation, backlash would be imminent.

Bail bondsmen lobbyists are so powerful in Maryland it's left some weary of the State's ability to eliminate monetary bonds.²⁶² They have been successful at restricting

²⁵⁸ The Washington Post Editorial Board, "Larry Hogan's Proposed Budget for Maryland Doesn't Match His Rhetoric," *The Washington Post*, February 4, 2015: http://www.washingtonpost.com/opinions/larry-hogans-proposed-budget-for-maryland-doesnt-match-his-rhetoric/2015/02/04/0a0204f0-acbc-11e4-ad71-7b9eba0f87d6_story.html

²⁵⁹ Alexander, Keith L., "11 Defendants on GPS Monitoring Charged with Violent Crimes in Past Year in D.C.," *The Washington Post*, February 9, 2013: http://www.washingtonpost.com/local/11-defendants-on-gps-monitoring-charged-with-violent-crimes-in-past-year-in-dc/2013/02/09/9237be1e-6c8b-11e2-ada0-5ca5fa7ebe79_story.html

²⁶⁰ Ibid.

²⁶¹ Ibid.

²⁶² Duncan, "Top District Court Judge Points to Power of Bail Bonds Lobby"

pretrial programs while defeating restrictions on the industry in Florida, North Carolina, and Texas.²⁶³ It is expected they will lobby against this legislation to the fullest.

Executive Director Christopher Shank will be one of this policy's biggest opponents. As a member of the Pretrial Commission he dissented against the elimination of cash bonds.²⁶⁴ He is also a former member of ALEC, one of the largest, most powerful lobbyists for bail bondsmen nationwide.²⁶⁵ His leadership in the Republican Party and in your GOCCP makes him a key stakeholder to gain support from.²⁶⁶

A crucial strategy for this policy's success is to inform the public and legislators. Despite strong public support for pretrial risk assessments, 33 percent of voters believe risk assessments are already being used to determine pretrial release.²⁶⁷ ²⁶⁸ If voters are better informed of Maryland's current pretrial system, support for these practices would grow.²⁶⁹ To do this, you should direct the Justice Reinvestment Coordination Council to take necessary steps to move forward with comprehensive pretrial reform.²⁷⁰

Despite potential new funding needs to create, implement, reorganize, or expand to a uniform pretrial release, it is still significantly cheaper than the current system. JPI estimates that by releasing just 1,000 individuals from the Baltimore City Detention Center to the Pretrial Release Services program has potential savings of \$2.92 million per month.²⁷¹

²⁶³ JPI, *For Better or For Profit*

²⁶⁴ GOCCP Pretrial Commission, *Final Report*

²⁶⁵ JPI, *For Better or For Profit*

²⁶⁶ Maryland State Archives, *GOCCP: Executive Director: Christopher B. Shank*,

²⁶⁷ Lake, Gotoff, and Pultorak, *Support for Risk Assessment Programs*

²⁶⁸ PJI, *Implementation Recommendations of Pretrial Justice*

²⁶⁹ Lake, Gotoff, and Pultorak, *Support for Risk Assessment Programs*

²⁷⁰ White, Brian, "O'Malley Creates Panel on Pretrial Reform," *The Washington Times*, May 27, 2014: <http://www.washingtontimes.com/news/2014/may/27/omalley-creates-panel-on-pretrial-reform/>

²⁷¹ PJI, *Baltimore Behind Bars*

Even a pretrial services program with a high operating budget, like DC's \$60.8 million budget, is less expensive than incarcerating these individuals. Washington, DC's, Pretrial Services Agency supervised 18,656 individuals during 2014.²⁷² In 2011, Maryland spent approximately \$150 million to operate just two Baltimore City jails.²⁷³ It will be imperative to focus on the number of defendants pretrial supervision can supervise for significantly less money.

Some pretrial defendants will re-offend regardless. However, LJAF found that low-risk defendants who spent two to three days in jail waiting to post a monetary bond were 39 percent more likely to be re-arrested while their case was pending than those who were released without a bond.²⁷⁴ Regardless of the case outcome, detained low-risk pretrial defendants are 27 percent more likely to recidivate within twelve months of release.²⁷⁵ Pretrial release is not only less expensive during the pretrial period, but has the potential to lower future recidivism.

Despite eleven defendants committing violent offenses on GPS monitoring, they represent only 0.8 percent of the 1,351 total defendants electronically monitored in DC.²⁷⁶ Only 8 percent of the 1,351 monitored defendants were re-arrested on new charges.²⁷⁷ For DC's entire pretrial program, 12 percent of the 18,000 plus defendants were arrested on new charges. In Kentucky, 7 percent of released defendants are re-

²⁷² PSA, *Congressional Budget Justification and Performance Budget Request Fiscal Year 2016*

²⁷³ JPI, *Baltimore Behind Bars*

²⁷⁴ Lowenkamp, Christopher T., VanNostrand, Marie, Holsinger, Alexander. *The Hidden Costs of Pretrial Detention*. Houston, TX: Laura & John Arnold Foundation 2013

²⁷⁵ Ibid.

²⁷⁶ Alexander, "11 Defendants on GPS Monitoring Charged with Violent Crimes"

²⁷⁷ Ibid.

arrested.²⁷⁸ These re-arrest rates are very low and it is imperative to inform both the public and general assembly of these facts.

Combating lobbyists will one of the biggest obstacles to this policy's success. An important aspect to focus on is this legislation does not eliminate the use of monetary bonds. Monetary bonds will still be used and defendants can still utilize bondsmen to secure their release. This legislation simply ensures that bonds are set at an amount that individuals can afford and that commercial bonds aren't used to prevent individuals' ability to be released.²⁷⁹

This law keeps Mr. Shank's concerns regarding the importance of money bonds intact. Family and friends will still be relied upon to secure defendant's release. Pretrial services will need to contact family and friends to verify information along with keeping supervising agents up to date on any issues with the defendant while under supervision.

A counter to Shank and bail bondsmen's concerns relates to the incentive created by posting personal or family funds to secure release. When the family or defendant posts a bond through a bondsman, that money is non-refundable.²⁸⁰ Whether they show up or not the money is gone. Yes, the bondsmen are supposed to forfeit the rest of the money to the courts, however, those forfeited bonds are rarely collected.²⁸¹

States can stand up to the bail bonding industry. In 2009, neighboring Virginia lawmakers proposed one of ALEC's Right to Know Acts that would have crippled their pretrial program.^{282 283} After being introduced, the Department of Planning and Budget

²⁷⁸ ABA, *Frequently Asked Questions About Pretrial Release Detention Making*

²⁷⁹ Beaudin, "Lessons From Five Decades of Innovation and Growth"

²⁸⁰ NAPSA, "The Truth About Commercial Bail Bonding"

²⁸¹ Ibid.

²⁸² Ibid.

²⁸³ American Legislative Exchange Council, Citizens' Right to Know: Pretrial Release Act, last modified January 9, 2014: <http://www.alec.org/model-legislation/citizens-right-to-know-pretrial-release-act/>

generated a fiscal impact statement stating the act would have required a significant re-write of the current system and would cost \$1.5 million to implement. By having data ready to combat the lobbyists, it is possible to ensure legislators and the public are properly informed to make the best decision for Maryland.

Recommendation

I recommend you adopt this proposal. Nationwide pretrial release policies are being reformed. The Richmond decision has brought the issues with Maryland's current system to the forefront. With tight budgets and an archaic system, it is an ideal time to reform Maryland's system.

As a state, Maryland is spending a lot of money to detain defendants. Many are taken away from their jobs, and separated from family and friends. Their lack of adequate funds places the burden on taxpayers to detain them because defendants cannot afford a \$50 or \$100 bond.²⁸⁴ In some jurisdictions, the cost per day to detain these individuals is more expensive than the bond amount necessary to be released.

During your campaign you acknowledged that putting nonviolent offenders in jails seems unjust.²⁸⁵ A majority of defendants pending trial are low-risk, nonviolent offenders.²⁸⁶ In many cases they are being housed with convicted, violent, high-risk offenders.

By adopting this recommendation Maryland, like Kentucky and DC, will be a leader in pretrial release. The use of data-driven risk assessment tools will ensure that

NOTE: This Act demands that pretrial service agencies reveal their budgets and staffing, number and kind of release recommendations made, number of defendants released and under what type of bond, number of times a defendant has been released, his FTA record, and crimes committed while on release, and report the above in a timely and intelligible way and make it available to the public.

²⁸⁴ JPI, *For Better or for Profit*

²⁸⁵ Brockett, "Gubernatorial Candidates Run the Gamut on Views About Marijuana"

²⁸⁶ PJI, *Baltimore Behind Bars*

every arrestee is measured on the same scale. It allows for the maximum number of people to be released back into the community to continue their lives. It better promotes the founding principles of our country: innocent until proven guilty.

The cost to supervise individuals in the community versus detaining them is significantly cheaper. Existing pretrial programs in Maryland are spending between \$2.50 and \$10 per day per defendant. These figures are much less expensive than the daily cost to incarcerate. Not only will citizens be allowed to be contributing members of society, but also tax dollars can be reallocated to other sectors such as education.

This proposal will save Maryland money. Additional funding will be necessary to meet the requirements of this law. However, once in effect, jails' operating budgets will decrease. If Maryland were to reduce its detained pretrial population to 40 percent, that is a 25 percent decrease in jail populations statewide. To supervise that 25 percent on pretrial supervision has a price tag only 2 to 5 percent of the cost to detain them.

Releasing more defendants Maryland will lower the costs of future incarceration. Those who are released during pretrial detention are less likely to be sentenced to incarceration. Even if they are incarcerated those released during pretrial are more likely to have shorter sentences than those who are detained. Released defendants' chances of recidivism are also reduced after their case is disposed.²⁸⁷ This saves future expenditures to arrest, process, supervise, and incarcerate these individuals.

Maryland's current system relies on private businesses without criminal justice backgrounds to supervise defendants in the community. Bondsmen are making profits off of citizens' freedom. They are allowed to decide whom they accept business from and whom they don't, based on the opportunity of profit, not public safety. This is against the

²⁸⁷ Lowenkamp, VanNostrand, & Holsinger, *The Hidden Costs of Pretrial Detention*.

very principles of pretrial release, which is to assure public safety and appearance in court.

By adopting this recommendation, many of the above issues will be addressed. Less taxpayer funding will be needed to support correctional facilities. More citizens will be able continue being contributing members of society. It will limit the use and/or need for for-profit bail bonding agencies that have a stronghold on the system. For those reasons, I recommend you adopt this policy proposal and make Maryland a leader in pretrial release.

CURRICULUM VITAE

Christopher F. Massad
Worcester, Massachusetts
February 4, 1987
CMassad55@gmail.com

EDUCATION

Johns Hopkins University
Master of Arts in Public Management

Baltimore, MD
May 2015

Northeastern University College of Criminal Justice
Bachelor of Science in Criminal Justice, Cum Laude

Boston, MA
May 2010

PROFESSIONAL EXPERIENCE

Montgomery County DOCR, Pretrial Services
Correctional Specialist II

Rockville, MD
October 2014- Present

Montgomery County DOCR, Pre-Release and Reentry Services
Resident Supervisor II

Rockville, MD
April 2012-October 2014

Community Resources for Justice, Coolidge House
Program Supervisor

Boston, MA
May 2009-August 2010

Roxbury Division of the Boston Municipal Court
Probation Department Intern

Roxbury, MD
July 2008-December 2008

Massachusetts Administrative Office of the Trial Courts
Office of Court Interpreters Intern

Boston, MA
July 2007-December 2008