

Maryland's Bail System Causes Undue Economic Harm, Wastes State Resources

Position Statement Supporting House Bill 1390

Given before the House Judiciary Committee

Mounting evidence overwhelmingly indicates that Maryland's bail system is broken. The Court of Appeals recently confirmed that dependence on cash bail creates unconstitutional conditions in which many individuals languish in jail solely because they cannot afford to pay bail.ⁱ This practice disproportionately harms racial and ethnic minorities while releasing defendants who could pose a risk to their community but have access to money.ⁱⁱ

Jailing someone solely because they can't afford cash bail can have significant long-term social and economic consequences. Even if the charges are ultimately dropped or the person is found not guilty, time spent in jail while awaiting trial can lead to the loss of a job, loss of housing, or other severe economic consequences.

In addition, cash bail is inefficient from the state's perspective. Locking up people who pose no threat to their community is expensive. The original purpose of bail was to ensure defendants appear in court and prevent dangerous defendants from harming the community. It is time for state law to reflect this intent. For these reasons, the Maryland Center on Economic Policy supports House Bill 1390.

Keeping low-risk defendants behind bars costs the state between \$83 and \$153 a day, whereas pretrial release services cost closer to \$2.50 a day.ⁱⁱⁱ Since there are 7,000 people detained awaiting trial on any given day, this means correctional agencies are spending between \$500,000 and \$1 million a day on pretrial detention.^{iv} Despite the high cost, there are no evident benefits to this model. Given the often negative impacts on their income and well-being, it is no surprise that defendants detained for as little as two days have an increased likelihood of arrests for new criminal activity and failure to show up in court. Defendants unable to pay bond are also 30 percent more likely to be convicted, partially because they have an incentive to plead guilty in order to end the ordeal of prison, regardless of their guilt.^v

Inequalities in the current system surface most dramatically in Baltimore City. Defendants there who were identified as low risk, extremely likely to appear in court, and likely to avoid new criminal activity before their trial, have been assigned bond amounts five times higher than bond amounts for similar low-risk defendants in

Montgomery County.^{vi} Considering the human and economic toll jail time imposes on individuals and families, it is unconscionable that bond can be set arbitrarily, without safeguards ensuring that inability to pay and geographic location are not the primary factors affecting access to freedom.

Other jurisdictions have already moved to reduce their use of money bail. In Kentucky, shifting to a nonfinancial pretrial release program and an evidence-based risk assessment tool increased court appearance rates while decreasing new criminal activity in the pretrial period.^{vii} The recent Court of Appeals ruling is a step in the right direction for Maryland, leading the way for legislation. A complete and thorough reform of the antiquated, economically inefficient and unjust bail system is long overdue in Maryland.

For these reasons, the Maryland Center on Economic Policy respectfully requests that the Senate Judiciary Committee give a favorable report to House Bill 1390.

ⁱ Michael Dresser. February 8, 2017. The Baltimore Sun. “Maryland Court of Appeals: Defendants Can’t Be Held in Jail because They Can’t Afford Bail.” Accessed February 24, 2017. <http://www.baltimoresun.com/news/maryland/bs-md-bail-rule-20170207-story.html>.

ⁱⁱ John Clark. Pretrial Justice Institute. June 2016. “Finishing the Job: Modernizing Maryland’s Bail System.” Accessed February 24, 2017. [http://www.abell.org/sites/default/files/files/cja-pretrial616\(1\).pdf](http://www.abell.org/sites/default/files/files/cja-pretrial616(1).pdf) and Maryland Attorney General’s Office. “Frequently Asked Questions.” Accessed February 24, 2017. <http://www.marylandattorneygeneral.gov/Pages/BailReform.aspx>.

ⁱⁱⁱ John Clark pg 2.

^{iv} Maryland Attorney General’s Office.

^v John Clark, pg 2.

^{vi} Ibid pg 1.

^{vii} Maryland Attorney General’s Office.