BACKGROUND

- 2017 LWVMD state convention adopted the bail reform study.
- The study was expanded to include the entire pretrial system since it was impossible to separate bail from the other components.
• Pretrial Justice System

• Presumption of innocence until found guilty of a crime. Preference for liberty pending trial.
  • If necessary to protect public safety and assure the defendant’s appearance at trial, conditions of release may be imposed.
The system lacked standards and consistent application.
Resulted in increasing number of people held before trial and disproportionate impact on racial minorities and economically deprived citizens.
Defendants, some of whom were innocent, lost jobs, custody of their children.
Increased cost to taxpayer.
1/4 of people in jail were waiting for trial.
Oct 15, 2016 Attorney General Frosh urged MD Court of Appeals to change Rule 4-216

Rule provides criteria and standards to apply during pretrial hearings.

AG argued Rule’s application was inconsistent with state and federal law.

Resulted in disproportionate impact on communities of color, often separating them from their families and jobs.
February 2017  MD Court of Appeals amended Rule 4-216, effective July 1, 2017

- Requires judges to consider individual circumstances of the defendant, especially financial.
- No bail may be imposed that results in detention of the defendant solely because of inability to pay
What is Bail?

• A financial condition of release intended to guarantee that the defendant will be present at trial.

• Assets can be pledged by the defendant or by a bail bondsman who charges the defendant a premium (usually 10% of the amount of the bail).

• The pledged amount is returned when the defendant appears for trial. The premium is not refunded.

• U.S. and Philippines are the only 2 countries that use bail.
Pretrial detention ordered only if bail commissioner deems no pretrial conditions are sufficient to:
  • protect the public’s safety and
  • ensure the defendant’s appearance in court.

Pretrial detention must be reviewed immediately by a judge.
BAIL HEARING

• Held before Bail Commissioner in District Court to:
  • determine probably cause
  • set pretrial conditions, if any.
• Imposition of pretrial conditions and detention reviewed by a judge.
• Serious felony crimes heard by a Circuit Court judge.
Arguments Against 2017 Rule Change

• Former Solicitor General Paul Clement –
  • Prior practice constitutional and effective if enforced properly.
  • “No constitutional right to affordable bail.”
• Maryland Police Chief’s and Sheriff’s Assn
  • Sends message that judicial system doesn’t support arresting officers or hold defendants accountable;
  • Government not prepared to provide needed services;
  • Additional demands on law enforcement;
  • Bond creates accountability; gives police an ally.
• Attorneys representing crime victims –
  • Most dangerous time is right after defendant is released.
Arguments In Favor of Bail

• Bail Bond Industry –
  • Recidivism rate is higher for defendants released without bond.
  • Risk assessment tools are not standardized.

• Others –
  • Government lacks resources to chase down offenders.
  • Bail gives judges another sentencing option in the absence of adequate pretrial services.
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Table 3: Disposition after Bail Review Hearing

- Cash Bail Imposed
- Released on Own Recognizance
- Released w/Non-Financial Conditions
- Held w/o Bail
Table 5: Failure to Appear (FTA) Rate by Release Type

- Cash Bail Imposed
- Released on Own Recognizance
- Released w/Non-Financial Conditions
Table 5-A: Total FTA as % of Total Initial Appearances
Table 7: Pretrial Detention Rates

- Posted Bail in 0-5 Days
- Detained
- Held Pending Bail 6+ Days
- Released (No Cash Bail)
RESULTS

• Unsecured releases have increased
• Number of defendants assigned bail has decreased
• Number of defendants held without bail has increased
CRITERIA TO BE USED

- Nature of the crime
- Defendant’s prior record of appearance at trial
- Family situation
- Employment status
- Financial resources
- Danger to self or public
• Scoring system of various criteria to assist judicial officials in determining whether to impose bail or other conditions

• Empirically Validated Risk Assessment Tool
  • Data-based to eliminate factors such as race, gender, socioeconomic status.

• 6 counties in Maryland use risk assessments.

• Only St. Mary’s and Montgomery use a validated risk assessment tool.
Study Questions:

- Yes
- No
- No Consensus
A person accused of a crime should be released awaiting trial without bail if:

- a. a risk assessment tool indicates that the defendant is likely to appear in court;
- b. the defendant does not pose a threat to victims, others or the community;
- c. the jurisdiction has pretrial services to monitor and/or treat the defendant;
Question 2

• Conditions for pretrial release should be determined based on:
  ❖ a validated, evidence-based, race-neutral risk scoring instrument;
  ❖ information presented at the initial appearance and bail review hearing;
  ❖ an in-person assessment of the defendant whenever possible;
  ❖ judicial discretion;
Questions 3 & 4

Should bail be abolished

Even if you said, “Yes” to question 3 above, please answer question 4.

If bail continues to be authorized by law, it should be imposed:

• if there is a risk that the defendant will not appear in court for trial;
• with consideration of the defendant’s ability to pay bail;
• if all alternatives have been considered and rejected.
Pretrial Services

• Services for people who are awaiting trial –
  • Monitoring, drug and alcohol treatment, job training, etc.
  • In 2017, 13 counties provided some form of pretrial services, 11 did not.
  • Maryland establishing Pretrial Services Program Grant Fund in 2018 to increase and improve county pretrial services across the state.
Defendant pleads guilty and agrees to be subject to the conditions imposed by the Court.

- Drug courts, mental health courts, teen courts. Veterans courts, etc.
- 21 of 24 MD counties have some form of pretrial diversion.

Pretrial Diversion

Overseen and supported by the Office of Problem Solving Courts.
• Pretrial services should:
  • a. be required in all jurisdictions;
  • b. provide supervision and use automated means of ensuring court appearance, when possible;
  • c. include a range of services including treatment programs, when possible.
Question 6

• Funding for pretrial services should be:
  • 1. partially funded by the state, with the balance funded by the counties
  • 2. fully funded by the state
  • 3. based exclusively on savings realized through reduced prison populations;
  • 4. approved without regard to savings realized through reduced prison populations;
  • 5. partially funded by financial contribution from defendant, when appropriate.
Bail Bond Agents

Licensed by MD Department of Insurance

- Must have worked in bail bond field for at least one year
- Must pass an initial exam
- Must post a surety bond
- Must take continuing education classes
Bail Bond Agents

Allegations of abuse

• Intimidation of defendants
• Cases of extortion, theft, kidnapping.
• Addition of fees on top of required premium
Questions 7 & 8

Should the use of bail bond agents be disallowed

Even if you said, “yes” on question 7, please answer question 8.

Bail bond agents should be:
- a. closely regulated and monitored
- b. subject to recourse for abuse
- c. utilized to supervise released defendants and track down any who fail to appear