

PRINCE GEORGE'S COUNTY

A Study of Bail

June 2018



“I don’t know what’s worse- having a loved one being held on bail that they can’t afford to pay, or being held with no hope of release. Either way, if that person can plead guilty to get out of jail they will, even if it gives them a criminal record or if they are innocent. Wouldn’t you?”

– Seanniece Bamiro, Lead Organizer for Mass Liberation at Progressive Maryland-Prince George’s County.

EXECUTIVE SUMMARY

This report provides an analysis and evaluation of the current state of pre-trial incarceration after a 2017 rule change that instructed judges to use bail only as a last resort and instead, consider non-financial conditions of release. Methods of analysis include data collection on pre-trial incarceration rates and conditions of confinement and release, interviews with community advocates and public defenders, and observations made by court watchers from the grassroots organization, Progressive Maryland.

The results were troubling, as the jail population is not declining and judges are holding more and more people without bail, or on “no bond” holds. Specifically, the report finds that:

- The pre-trial jail population has stayed the same.
- The pre-trial jail population of those accused of drug and misdemeanor offenses remained the same.
- A disproportionate number of African Americans are held pre-trial.
- There has been an increase in people without bond.
- Bond review hearings, where the judge must consider the person’s case, his job, and his ties to the community, among other factors, last mere minutes.
- While the State’s Attorney is present in the courtroom, the charged individual and his attorney, who he has often just met, are brought in through closed-circuit television.

We make five recommendations to improve the pre-trial system in Prince George’s County, which the State’s Attorney and judges can implement immediately.

- State’s Attorneys should presume release for all misdemeanors and drug offenses.
- The use of “no bail” in Prince George’s County should not replace cash-bail requests, and State’s Attorneys should presume release in most cases unless there is specific and detailed information that suggests the person charged is a real threat to the community or will not show up in court.
- State’s Attorneys should consider the availability of easy pre-trial services that can aid those with failures to appear in court like text messages and rides to court, rather than asking for jail holds.
- State’s Attorneys should advocate for the defense attorney to have more time with his or her client prior to the hearing, and for changing the review process so that the charged individual is actually present in the courtroom to advocate for themselves.
- State’s Attorneys have powerful voices. They should push for meaningful reform - the end to cash bail and the release of most defendants - back into the community and in the state house.

INTRODUCTION

In 2017, Maryland tried to put an end to its reliance on cash bail. For decades, judges conditioned the release of people charged with crimes on whether they could pay money bail. If they had money, they could go home, if they did not, they sat in jail. But over the last several years, lawmakers have acknowledged what research shows: ***Our communities are safer when people are released from prison before trial and are able to work, spend time with their families, and contribute to their communities.***¹ From Orlando, Florida to New Jersey to Houston, Texas, jurisdictions have moved away from the use of cash bail. Last year, Maryland followed suit and implemented a new court rule that requires judges to use cash bail as a last resort and instead, consider non-financial conditions of release.

A year later, there has been minimal progress in reducing the pre-trial jail population or creating a more fair pre-trial system in Prince George's County (PG County). A review of data and observations made by court-watchers² shows that the pre-trial jail population in PG County has not decreased in the year since reform. At the same time, PG County detains as many people accused of drug and misdemeanor offenses as it did before the new rule, and a disproportionate number are black. Equally troubling, while judges set unaffordable money bail with less frequency, State's Attorneys are requesting - and judges are ordering - more people to be held in jail without the possibility of bail.

There are also serious procedural problems present in these hearings. First, these hearings leave little time for a defendant to show he can safely return to the community. They last a matter of minutes and in some cases, the defendant is not even present in the courtroom. Neither is his lawyer -- both are brought in via closed-circuit television as the State's Attorney and the judge stand face-to-face in court, a practice that both inhibits meaningful input from the defendant, and prevents the judge from humanizing the defendant, resulting in higher bond amounts. In a 2010 Northwestern study, researchers found that the average bail set by judges in Chicago's Bond Court had risen 51 percent since Cook County started using video technology for bail hearings, while

the bond amounts for live hearings rose only 13 percent in the same period.³

These findings are unfortunately consistent with those seen across Maryland in other studies. One year ago, the Pretrial Justice Clinic at the University of Baltimore warned that preventative detention was on the rise throughout the state, pointing to an increase in case referrals for individuals held without bond.⁴ Two other reports, published by Princeton University and The Office of the Public Defender respectively, noted similar results during the first months of the implementation of the rule.⁵

These findings should concern all Prince George's residents. Whether a defendant spends a night in jail or is immediately released pending trial can determine the outcome of his case or even his life. In one 2016 study, the researchers found that "the assignment of money bail causes a 12% rise in the likelihood of conviction, and a 6–9% rise in recidivism."⁶ People who sit in jail, unable to make bail or held without release, lose their jobs, lose touch with their family, are more likely to fall into debt, and miss out on school. And it is exponentially more difficult for them to aid their defense. People who are free before trial can gather information and assist their attorneys. For those locked up, they must wait for their lawyer to visit, if he ever does. And holding people pre-trial doesn't increase public safety. The longer people are detained, the more likely they are to have new criminal activity pretrial.⁷

In 2017, Maryland and Prince George's County took an important step in recognizing the problems with cash bail, but it needs to go much further if it is actually going to keep people out of jail. This report examines the state of pre-trial incarceration in PG County, and makes key recommendations on next steps.

“I was surprised everytime the judge held someone when they were charged with a non-violent crime. I thought under the new rules that it would be very rare for someone with a low-level case to not be released. But time and time again, the prosecutor in the room would ask the Judge to set bail or hold someone with no-bail even when it was a non-violent crime.”

– Qiana Johnson, Progressive Maryland Fellow and Life After Release

WHAT IS BAIL: A PRIMER

Bail is the temporary release of a person who has been arrested often in return for a sum of money that is posted to guarantee their future appearance in court. When a person is obligated to pay a certain amount of money as a condition of release, this is referred to as cash or money bail.

When the PG County Sheriff arrests Joe for petty theft, for example, the officers generally bring him to the Prince George's County jail. Within 24 hours, Joe will see a bail commissioner, who decides whether there is probable cause to believe Joe committed the crime and whether he should be released or held on money bail. Joe may have an attorney assigned to him for this hearing, however, that attorney will not stay on Joe's case.

If Joe is held and cannot afford his money bail, or the judge holds Joe with no bail, he has a bail review hearing before a District Court Judge. This time, Joe will have a lawyer -- the two will likely have just met -- but neither will actually be in the courtroom. Rather, the lawyer and Joe are presented in the courtroom through closed circuit television, a setup that in at least one jurisdiction led to substantial increases in bail amounts compared to hearings where people were present before the judge.⁸ The judge and the State's Attorney are there live. The State's Attorney makes a recommendation on whether Joe should be released, whether his money bail amount should be reduced, or whether it should be increased. The State's Attorney may have paperwork relevant to the release decision, such as Joe's juvenile contacts, that the Judge can see, but that the defense attorney is unable to challenge or even read. The defense lawyer gives his response and the judge makes a ruling.

At the hearing, the judge has many options in considering whether to grant bail and on what terms.

JUDGE'S OPTIONS: THE VOCABULARY

- **Release on own Recognizance (ROR).** Joe does not have to pay any money or offer any property to get out of jail. The commissioner or judge may include certain conditions, such as staying away from the complaining witness or undergoing a mental health evaluation. Failure to fulfill the conditions could result in re-arrest and being detained.
- **Unsecured Bond.** With an unsecured bond, Joe does not have to produce a percentage of the money or title to a property. Instead, Joe is released with a promise to pay the bond he fails to appear for court.
- **Secured Cash-Bond.** If a judge orders cash-bond, he or she may order a percentage of it, usually 10%, to be paid prior to release. For instance, if the bond is set at \$50,000, Joe has to pay \$5,000 to be released. Joe can also be released by utilizing a bail bondsman. Usually family members have to pay a fee and promise to pay back the money, secured through either promissory notes or property. If Joe is released by a bondsman, he may have to report to the bondsman on a regular basis or risk having his bond revoked.
- **No Bail.** If a commissioner orders “no bail,” it means Joe cannot be released under any condition. This is often referred to as “Held Without Bail (HWOB).”



HISTORY & IMPLEMENTATION OF BAIL REFORM IN PG COUNTY

While neighboring Washington, D.C. reformed its bail system in 1992,⁹ effectively ending cash bail, Maryland was slow to make progress until late 2016. That year, in a letter to the Maryland Court of Appeals' Standing Committee on Rules of Practice and Procedure, Maryland Attorney General Brian Frosh warned that the state's implementation of bail was likely unconstitutional.¹⁰ "State law and constitutional principles," he wrote, "demand that, in cases where it is not necessary to detain a defendant to ensure appearance at trial or to protect public safety, conditions of release from pretrial detention should be the least onerous necessary to serve those important public interests." Frosh argued that the state could not use cash bail solely as a means to detain a defendant and that judges should only issue cash bail if it was the "least onerous" condition of release.

One month later, the Rules Committee followed Frosh's advice and proposed an amendment to Maryland Court Rule 4-216.1 on pretrial procedure, which was approved several months later. Rule 4-216.1 is "designed to promote the release of defendants on their own recognizance or, when necessary, unsecured bond," reserving additional conditions of release only if necessary to ensure appearance, protect the community or individuals, or maintain the integrity of the judicial process.

A judge must now consider each person's individualized circumstances, including "the ability of the defendant to meet . . . with financial terms" and impose the least onerous conditions to ensure public safety and the defendants return to court. A judge can only hold someone in custody if there is a reasonable likelihood that the defendant is a flight risk or a danger to the community. Bail should never be unaffordable.

THE EARLY RESULTS

This was a critical reform, but a study of Prince George's County's pre-trial population, and observations made by court watchers from Progressive Maryland, show that pre-trial reform has miles to go before the system is fair and equitable. This report reaches three conclusions:

1. The reform has failed to meaningfully reduce PG County's jail population, even though PG County is safer than it has been in a decade.¹¹
2. While the use of cash-bail has decreased, there has been a shocking increase in "no bail" holds, where people charged can neither pay cash bail nor be released. The increase in the rate of "no bail" holds has far outpaced the increase in the rate of release on recognizance.
3. Bail hearings need massive procedural reforms. Most observed bail hearings took less than five minutes and sometimes took no more than a minute. The defense attorneys and their clients were not present, but were brought in through closed-circuit TV.

Finding #1: The jail population in Prince George's County has remained the same pre and post reform, and the percentage of people held only on misdemeanor and drug charges remains constant.

The Rules Committee intended for the new bail rules to keep people out of jail and in the community. That didn't happen. PG County has not seen any significant change in its jail population.¹² Defendants are still overwhelmingly held pre-trial, and over 40% of the people in the jail are still charged with misdemeanor offenses. While the African-American population of Prince George's County is about 65%, more than 80% of the people housed in the jail a year after the reform still self-report as black.

	June 2, 2017	June 6, 2018
Total Population	878	908
Pre-Trial Population	764 (83.68%)	805 (84.74%)
Felony Charges	603 (55.63%)	617 (55.79%)
Misdemeanor Charges	447 (41.24%)	470 (42.50%)
Drug-Related Charges	115 (10.61%)	111 (10.4%)
Under Age 18	14	14
Race - Black	727 (82.80%)	757 (83.37%)
Race - White	71 (8.09%)	63 (6.94%)

Finding #1: The jail population in Prince George's County has remained the same pre and post reform, and the percentage of people held only on misdemeanor and drug charges remains constant.

This is consistent with what many court watchers observed during hearings, and it is deeply troubling. In a study of misdemeanor cases in Harris County, Texas, researchers at the University of Pennsylvania found considerable “downstream” effects for misdemeanor holds: (1) detained misdemeanor defendants were 25% more likely than similarly situated people released to plead guilty; (2) they were 43% more likely to receive jail time during sentencing; (3) they received sentences twice as long as the average sentence for misdemeanors; and (4) they were more likely to commit future crimes than those who went home.¹³

There is no reason to believe the results in Prince George’s County would be meaningfully different. That means our bail system continues to decrease safety while increasing the risk that innocent people plead guilty and that people receive unnecessarily long jail time.

Finding #2: While the use of cash-bail has decreased, judges have largely replaced it with “no bail” holds rather than releasing people on their own recognizance.

The new rule states that judges should set bail with the least onerous conditions necessary, yet it does not appear that in PG County judges are doing that. Over the last year, while there was a slight increase in the percentage of ROR releases, there has also been a troubling increase in people being held on “no bail” at the bond review hearings.¹⁴ It seems as if judges and State’s Attorneys simply replaced cash bond with “no bail.”

At the initial commitment hearing, the percentage of defendants held on a cash-bond has decreased by 9%. One would expect, pursuant to the reform, that RORs would rise by at least 9% and those held on no bail would have stayed the same or gone down. Instead, a percentage of people who would have received cash-bail a year ago now sit held on no-bail after the initial commitment hearing, with those released on ROR only increasing by about 6%. Beyond the increase in no-bail holds, 40% of defendants after the reform are still held on cash-bail.

COMMISSIONER

	Eleven Months Prior to the Rule (August 1, 2016 - June 30, 2017)	Eleven Months After the Rule (July 1, 2017 - May 31, 2018)
No Bail	1390 (10.7%)	1597 (13.8%)
ROR	5109 (39.4%)	5292 (45.9%)
Cash-Bond	6463 (49.9%)	4642 (40.3%)

As demonstrated below, the percentage of defendants released on their own recognizance after the bail review hearings grew by less than 2% after the reform in PG County, while the percentage of defendants held after the bail review hearing on “no bail” grew by 14.5%.

BAIL REVIEW HEARING

	Eleven Months Prior to the Rule (August 1, 2016 - June 30, 2017)	Eleven Months After the Rule (July 1, 2017 - May 31, 2018)
No Bail	1651 (28.3%)	1891 (36.5%)
ROR	599 (10.3%)	677 (13.1%)
Cash-Bond	3581 (61.4%)	2610 (50.4%)

Based on analysis of case search data by Prof. Colin Starger, Pretrial Justice Clinic at the University of Baltimore. On file with The Justice Collaborative.

Finding #2: While the use of cash-bail has decreased, judges have largely replaced it with “no bail” holds rather than releasing people on their own recognizance.

Replacing cash bail with no bail holds simply perpetuates many of the problems in the cash bail system -- people are kept away from their jobs, families, and loved ones, all of the factors that have criminogenic effects.

Finding #3: There are serious procedural protections absent in bail hearings.

As explained above, if a person is not released at the initial hearing before the commissioner, he is entitled to a bail review hearing before a judge with a lawyer present. During that hearing, the judge is supposed to consider numerous factors: the person's family ties and employment, his prior record, his character, his ties to the community, and whether he is a flight risk or a risk to the community. Per the rule, the State's Attorney is supposed to offer recommendations as to release and information, if known, that go to the above factors. He is also entitled to a lawyer.

In reality, these hearings are profoundly lacking in procedural protections. The defendant and his public defender remain at the jail during the hearing and are brought in through closed-circuit TV, making communication and presentation difficult. Meanwhile, the State's Attorney, who often is asking for money bail or a "no bail", is in the courtroom with the pre-trial officer, court staff, occasionally, the defendant's family members, and critically, the judge.

According to Courtwatchers and Public Defenders, the defense attorney rarely knows anything about the person's case or life history. Many lawyers meet their clients just before the hearings, making it difficult to put forward any personalized argument for release. The lawyer must conduct any phone calls or interviews to confirm employment and family ties from the jail, with limited time to verify any of the factors that the judge is supposed to be considering. Additionally, the hearings go at a rapid pace -- most lasting no more than five minutes, and some concluding within one minute.

Finding #3: There are serious procedural protections absent in bail hearings.

RECOMMENDATIONS

Bail reform has a long way to go in Prince George's County, and in 2017, the Maryland legislature failed to pass meaningful reform. But the State's Attorney in Prince George's County can implement meaningful reform **right now**.

Recommendations:

1. **Recommendation #1: State's Attorneys should presume release for all misdemeanors and drug offenses.** Any exceptions must be narrowly drawn, lest the exception swallow the rule. This is reasonable reform -- it is what occurs just across the border in Washington D.C.
2. **Recommendation #2: The use of "no bail" in Prince George's County should not replace cash-bail requests.** State's Attorneys should presume release in most cases unless there is specific and detailed information that suggests the person charged is a real threat to the community or will not show up in court.
3. **Recommendation #3: The State's Attorney and judges should consider the availability of easy pre-trial services that can aid those with failures to appear in court.** If a defendant is ordered to comply with pre-trial services as a condition of release, the release should be immediate and the defendant should be given an appointment with pre-trial services. Calls, simple text message reminders or even rides from pre-trial services meaningfully increase the likelihood of making a court hearing.¹⁵
4. **Recommendation #4: The prosecution should advocate for the defense attorney to have more time with his or her client prior to the hearing.** The State's Attorney should also advocate for a change in the bail review process such that the person charged and his lawyer can be present in the courtroom, improving their ability to advocate for themselves.
5. **Recommendation #5: State's Attorneys have powerful voices. They should push for meaningful reform, the end to cash bail and the release of most defendants** back into the community and in the state house.

CONCLUSION

Keeping people out of jail and in the community where they can work, learn, and be with loved ones is good for public safety, these individuals and their community as well as the overall health of Prince George's County. State's Attorneys, judges, and other actors cannot sit back. They must push for reform. Following these simple suggestions will go a long way to making our community safe and just.

ENDNOTES

1. Christopher T. Lowenkamp et. al., Laura and John Arnold Foundation, *The Hidden Costs of Pretrial Detention* 10 (2013).
2. Progressive Maryland(PM), PG Chapter, observed over 70 bail review hearings in PG County. Courtwatchers noted information in one page forms. Data reviewed for this report on file with The Justice Collaborative Engagement Project.
3. Shari Seidman Diamond et.al, *Efficiency and Cost: The Impact of Videoconferenced Hearings on Bail Decisions*, 100 J. Crim. L. & Criminology 869, 897 (2010) [hereinafter *Efficiency and Cost*].
4. Pretrial Justice Clinic, Univ. of Balt. Sch. of Law, *End of Year Report* (2017).
5. Christine Blumauer et al., Princeton Univ. Sch. of Public & Int'l Affairs, *Advancing Bail Reform in Maryland: Progress and Possibilities* (2018); Md. Off. of the Public Defender, *Bail Reviewed: Report of the Court Observation Project* (2018)
6. Arpit Gupta et al., *The Heavy Costs of High Bail: Evidence from Judge Randomization*, 45 J. of Legal Studies 471 (2016).
7. Lowenkamp et. al. supra note 1.
8. *Efficiency and Cost*.
9. Ann E. Marimow, *When it comes to pretrial release, few other jurisdictions do it D.C.'s way*, Wash. Post (July 2, 2016).
10. Letter from Brian Frosh, Attorney General of Maryland, to the Honorable Alan M. Wilner, Chair of the Standing Committee on Rules of Practice and Procedure, requesting changes to Maryland Rule 4-216 (2016).
11. Megan Cloherty, *'Do the Math': Drop in Prince George's County crime translates to economic investment*, WTOP (Jan. 8, 2018).
12. Prince George's County Jail Population Data, reports dated 6/2/2017 and 6/6/2018, obtained through public information act request to PG Jail, on file with The Justice Collaborative Engagement Project.
13. Paul Heaton et. al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711 (2017).
14. This report examines the data from pre-trial bond review hearings, not the initial detention hearing before a magistrate.
15. The use of automated telephone call reminders was associated with a 41 percent decrease in failures to appear among defendants who successfully received a phone call in Multnomah County. Matt O'Keefe, *Court Appearance Notification System: 2007 Analysis Highlights*, LPSCC (2007). See also, Timothy R. Schnacke, et al., *Increasing Court-Appearance Rates and Other Benefits of Live-Caller Telephone Court-Date Reminders: The Jefferson County, Colorado FTA Pilot Project and Resulting Court Date Notification*, 48 Court Rev. 86 (2012); Wendy F. White, *Court Hearing Call Notification Project*, Coconino County, AZ: Criminal Coordinating Council and Flagstaff Justice Court (2006).