



December 22, 2016

The Honorable Mary Ellen Barbera, Chief Judge
The Honorable Clayton Greene, Jr.
The Honorable Sally D. Adkins
The Honorable Robert N. McDonald
The Honorable Shirley M. Watts
The Honorable Michele D. Hotten
The Honorable Joseph M. Getty, Judges

The Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Building
Annapolis, Maryland 21401

Dear Judges of the Court of Appeals,

Counties share an interest with the Court in maintaining a just, effective, and efficient pretrial system for all Marylanders. Local jails are a meaningful and substantial part of the state's criminal justice system as individuals being held pretrial account for 60-65% of the local jail population; this amounts to 7,000-7,500 individuals at any given point in time¹.

As such the Maryland Association of Counties (MACo) supports the Maryland Judiciary's Standing Committee on Rules of Practice and Procedure One Hundred Ninety Second Report recommending that the Court adopt new Rule 4- 216.1 and conforming amendments.

MACo has not traditionally taken a position specifically on whether monetary bail is an appropriate part of the overall system or what role it should play. Rather, MACo has supported efficient and effective pretrial functions as a whole including resolving issues of inefficiency and inequality; protecting against overburdening local financial and operational resources; and ensuring proper investment in staff, technology, and tools. It is through this lens that MACo submits comments.

The proposed rule changes seek to address concerns that monetary bail is not uncommonly being set at amounts that many defendants cannot afford. This results in some individuals being incarcerated pretrial simply because they lack the financial resources to pay. The Attorney General has noted that this state of affairs could be determined to violate due process rights and Constitutional prohibitions against excessive bail. While leaving the broader policy considerations of bail and pretrial reform to the general assembly, the proposed rule change appropriately clarifies the procedures for judicial officers to follow when determining whether a defendant should be released and under what terms – helping to alleviate some of those concerns.

¹ Commission to Reform Maryland's Pretrial System, Final Report (2014)

From a county perspective the fiscal and human costs of incarcerating individuals pretrial that do not need to be incarcerated or simply cannot pay for monetary bail can be significant. It costs \$83-\$153 a day to incarcerate an individual in jail, with an annual cost of \$22.65-\$44.75 million². Those resources can be better expended on incarcerating those who are a risk to the community and otherwise releasing or supervising those who are not. Individuals that are held pretrial unnecessarily also face the loss of employment, housing, government benefits and other disruptions that can impede efforts to become a productive member of the community. The proposed rule change helps to assuage these fiscal and human cost concerns.

Finally, the rule change requires judicial officers to give consideration to recommendations from pretrial release programs with validated risk assessments tools when and where such pretrial release programs are available. Currently 14 counties operate some form of a pretrial program. This evidence based change helps support safety and efficiency by ensuring the appropriate high risk individuals are incarcerated, while the appropriate low risk individuals are released. It encourages closer partnerships with local programs without setting mandates on judicial officer or on local pretrial programs.

MACo remains committed to working towards an efficient and effective pretrial system and hopes you find these comments on the proposed court rules change helpful as you deliberate this important issue.

Sincerely,



Natasha Mehu
Associate Director
Maryland Association of Counties

² Commission to Reform Maryland's Pretrial System, Final Report (2014)