

**THE PRETRIAL RELEASE PROJECT: A STUDY OF MARYLAND'S
PRETRIAL RELEASE AND BAIL SYSTEM**

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EXECUTIVE SUMMARY: THE PRETRIAL RELEASE PROJECT STUDY

Nearly 40 years ago, Congress transformed this nation's federal pretrial release system. Recognizing that the use of money bail and dependence on bail bondsmen disadvantaged lower-income people, Congress concluded that "proper respect for law and order is jeopardized when the disposition of justice turns upon the financial status of the accused."¹ The new federal system relied extensively on a pretrial release agency's investigation and supervision and guaranteed legal representation to indigent defendants.

The federal system provided the model for legislating reform of Maryland's pretrial release system. But it is a model only in theory, not in practice. Like its federal model, Maryland's written pretrial release rules entitle most defendants to be released on the least onerous conditions.² However, its practices do not follow its rules. Indigent defendants, most facing nonviolent, District Court offenses,³ are usually unrepresented by a lawyer at the bail stage. While Maryland judicial officers released half of arrestees on personal recognizance, they invariably ordered full financial bond for the remaining half.⁴ About 75,000 detainees regained their liberty pending trial in 1998 and

¹ 18 U.S.C. section 3142. In 1963, Attorney General Robert F. Kennedy called for a national conference on bail and delivered a comprehensive report on Poverty and The Administration of Criminal Justice, leading to Congress' passage of the Bail Reform Act of 1966. See, *The Pretrial Release Project: A Study of Maryland's Pretrial Release System* (hereinafter APRP Study"), May 14, 2001, at 9-13.

² Md. R. 4-216(c) states that "a defendant is entitled to be released before verdict . . . on personal recognizance or with one or more conditions imposed." Md. R. 4-216(e)(3) states that "[i]f the judicial officer determines that the defendant should be released other than on personal recognizance . . ., the judicial officer shall impose on the defendant the least onerous condition or combination of conditions of release . . . that will reasonably (A) assure the appearance of the defendant . . ."

³ In fiscal year 1999 and 2000, approximately 92% of Maryland arrestees were charged with District Court mostly misdemeanor offenses.

⁴ Maryland judicial officers required 93% of incarcerated detainees,

1999 by paying bondsmen a nonrefundable 10% fee. Collectively, Maryland's annual bail bond revenue totaled between \$42.5 million and \$170 million and caused economic hardship to many families who paid bail with money designated for rent, food and utilities.⁵ Under Maryland's pretrial release rules, the overwhelming majority of these detainees should have been offered less onerous alternatives and been released without bondsmen. This would, of course, not include individuals who pose a threat to public safety or who represent a flight risk.

The Abell Foundation funded the Pretrial Release Project (PRP) after the Maryland State Bar Association requested that the Maryland Court of Appeals authorize "a study be undertaken to evaluate the entire bail review process."⁶ Chief Judge Robert M. Bell agreed and suggested that "a comparative analysis [of Baltimore City] with other representative jurisdictions would be . . . helpful in that its findings would be more likely to lead to substantive changes in the bail and pretrial release system statewide."⁷ Thereafter, the Abell Foundation

i.e. defendants not released on recognizance, to meet the conditions of full financial bond, i.e. posting a 100% cash, property or security bond. *Id.* at note 133. Statewide, three of five detained defendants relied on bail bondsmen to meet the condition of a full bond.

⁵ Seventy percent of interviewed arrestees for this Study reported that the expense of the bondsmen's fee would result in a delay paying rent and utilities and in buying less food. *Id.* at 51-52.

⁶ Letter from then-President of the Maryland State Bar Association, Charles M. Preston, to the Hon. Robert M. Bell, April 20, 1999. *Id.*, at Appendix A. Subsequently, Chief Judge Bell appointed a 12-person advisory committee to assist the PRP Study. For a listing of the members of the Pretrial Release Project's Advisory Committee, see *id.*, at note 3.

⁷ *Id.* at Appendix B. The call for a study came after the Baltimore City Lawyers at Bail (LAB) Project, an 18-month Foundation-funded study, demonstrated the significant difference legal representation made for lower-income people charged with nonviolent charges. LAB's randomly selected clients were released on recognizance 2 1/2 times as frequently as defendants without counsel. Additionally, 2 1/2 times as many LAB clients gained release after bail was reduced to an affordable amount. Families living in poverty, or on the brink of it, were usually spared the bondsman's nonrefundable 10% fee and making the Hobson

made funding available, launching the two-year Pretrial Release Project (PRP). The PRP Study is the culmination of this project. It makes the following findings and recommendations:

Findings and Recommendations⁸

a. Judicial Officers Require Additional Information

Maryland pretrial release proceedings are usually conducted without a public defender or private counsel to represent the accused⁹ and without a pretrial representative to provide judicial officers with verified background information about each defendant. Consequently, most judicial officers decide whether to order release on recognizance or a financial bail without having essential information about the person's employment status, family and community ties, and ability to afford bail.¹⁰

choice between gaining the accused's release or buying food or paying rent, utilities or other basic necessities. LAB concluded that providing judges with additional verified information led to better informed decisions about defendants' likelihood of reappearing in court and resulted in substantial savings in pretrial detention costs. *Id.*, Appendix C, Ray Paternoster and Shawn Bushway, *An Empirical Study of the Lawyers at Bail Project*.

⁸ *Id.* at 52-55.

⁹ In Maryland's two-stage pretrial release system, *id.* at 19, public defenders do not represent indigent defendants at the initial appearance before a commissioner. At bail review hearings, public defenders provide representation in only two of Maryland's 26 counties (Baltimore City and Montgomery). See, *State v. McCarter*, 363 Md. 705 (decided April 16, 2001) (Md. Code Art. 27A, section 4 requires the public defender to represent indigent defendants at the initial appearance and at all stages of a criminal proceeding). Pretrial Services representatives rarely are present at the commissioner stage and are usually unable to provide bail review judges verified personal information about each defendant.

¹⁰ *Id.* at 23-25 (commissioners' survey), 41-42 (bail review proceedings).

b. Less Onerous Alternatives To Full Financial Bond Needed

While Maryland law provides for placing a 10% cash deposit with the court clerk and having it refunded when the case concludes, judicial officers virtually ignore this less onerous financial alternative. Only three of 100 Maryland detainees not released on recognizance gained pretrial release by posting a 10% cash alternative.¹¹ In Baltimore City, *only one of 450 detainees* not released on recognizance were given the opportunity to post a 10% cash alternative.¹²

Maryland law also provides judicial officers with the option of using the less onerous unsecured collateral bond, which requires the defendant's personal commitment to assume financial responsibility for willfully failing to appear in court. Only 4% of detainees statewide were given this option.¹³ In Baltimore City, unsecured bonds were almost non-existent: less than one out of 100 arrestees who had a financial bail were given the option to promise to pay the full bond in the event of nonappearance.¹⁴

¹¹ *Id.*, at 38-39.

¹² In Baltimore City in calendar year 1998, not a single person of the 13,198 who were released at commissioner stations posted a 10% cash deposit. In calendar year 1999, a total of 49 people, or 6/10 of 1%, detained defendants posted a 10% cash deposit. *Id.* at note 137. Ten percent cash deposits also were exceedingly rare in Baltimore, Eastern Shore, Fredericks, and Prince George's counties. In contrast, Howard and Carroll County judicial officers permitted one in four detainees to post a refundable 10% cash deposit. *Id.*

¹³ *Id.*

¹⁴ In calendar year 1998, only 18 of 13,198 detained arrestees or 1/7 of 1% posted an unsecured bond in Baltimore City. In 1999, the figures increased slightly: judicial officers ordered unsecured bond for 116 people or 1.5% of detained arrestees for whom bail was set. *Id.* at 38. Similarly, arrestees rarely posted an unsecured bond in Baltimore, Frederick and Prince George's counties.

c. Bail Practices in Baltimore City

Despite having the lowest per capita household income among the five counties studied,¹⁵ Baltimore City defendants and families faced the second highest average bail amount for all offenses. The average, \$13,657, set following a bail review hearing is more than 2 1/2 times greater than Harford County's average bail.¹⁶ Baltimore City's median (50th percentile) \$5,000 bail was midway among the counties studied; its \$3,250 typical bail for nonviolent offenses was second lowest.¹⁷

Baltimore City judges released 60% of arrestees on personal recognizance, a higher proportion than the statewide 50% average. However, Baltimore City judges ordered full financial bond for 98% of detainees, more than any other Maryland county, which resulted in the highest proportion of detainees' using bondsmen to gain release. In addition, bail review judges in Baltimore City maintained the commissioner's bail ruling for three of four detainees, also more than any county studied. When the judges changed the bail, they *increased* bail for one of 10 detainees.¹⁸

¹⁵ According to the 1995 national census, the median (50th percentile) income for the typical household in Baltimore (\$42,021), Frederick (\$51,220), Harford (48,467) and Prince George's (\$45,281) counties was 75 to 100% higher than for Baltimore City (\$25,918). See, *id.*, at 51, notes 183-184. Consequently, the same dollar amount is likely to represent a greater financial hardship for individuals and families in Baltimore City.

¹⁶ *Id.* at notes 113-116.

¹⁷ For all crimes charged, Frederick County had the highest average post bail review bond amount, \$15,566, and the highest median (\$7,500). Harford County had the lowest average bail, \$5,471, and the lowest median (\$2,500) for all crimes charged. Baltimore City's median bail for all crimes charges was \$5,000, the same as Prince George's and Baltimore County and midway between Fredericks and Harford County. For non-violent offenses, Baltimore City's median bail was \$3,250, compared to Harford (\$2,500), Baltimore and Prince George's counties (\$5,000), and Frederick (\$7,500). *Id.*

¹⁸ *Id.*, at notes 118-121.

d. Defendants Appear As Scheduled in Court

The overwhelming majority of Maryland defendants released pretrial returned to court when required. No objective basis exists for believing bail bondsmen provide a greater assurance that defendants will appear in court.

During fiscal years 1999 and 2000, Maryland District Court's Annual Statistical Reports showed that nearly 94% of defendants appeared on their scheduled District Court date, considerably higher than the national appearance rate for felony prosecutions.¹⁹ Recently obtained District Court statistics, suggests that defendants who posted a refundable 10% cash bond with the court reappear at a higher rate than bonded defendants.²⁰ Further analysis of the data regarding defendants' appearance rate in court is needed.

There are misconceptions not only about the overall reliability of defendants in appearing in court, but also about how absconders are located, apprehended and returned to court. In the vast majority of cases, it is the police, not bondsmen, who perform this role, even where defendants paid bondsmen to secure their release.²¹ Maryland law offers many protections to bondsmen, making the multimillion-dollar industry appear nearly risk-free.²²

CONCLUSION AND RECOMMENDATIONS

The bail determination is crucial to the legitimacy of the criminal process. Judges' duty to balance individual liberty, judicial efficiency and public safety require that they have essential and reliable information about each individual defendant. When all critical players are involved --- a statewide pretrial release agency, a public defender to represent an indigent accused, and an assistant state's attorney --- judicial officers are assured of

¹⁸ *Id.*, at 45-46 and accompanying notes 155-156.

²⁰ In 1999, defendants released on cash bond had a higher appearance rate than defendants released on bail bond in 24 of Maryland's 33 reported District Court locations. In 1998, the rate was comparable for both groups. See *id.*, at notes 159-162.

²¹ *Id.*, at 49-50.

²² *Id.*, at 50-51 and accompanying notes 176-181.

receiving maximum information about an accused's likelihood to reappear when required. Offering such vital information should change the current court culture in which judicial officers condition pretrial release for nearly half of arrestees on the posting of a full financial bond, resulting in arrestees relying on the commercial bail bondsmen or remaining incarcerated for lengthy periods if bail is unaffordable. When financial conditions are ordered, judicial officers should view the 10% cash deposit as at least as good an incentive for defendants reappearing in court as the surety bond, since it permits families and individuals to recover their deposit at the conclusion of the case. Further study will ensure that Maryland's practices conform to existing pretrial release rules.

This Study recommends that:

- 1. Maryland should expand its pretrial release investigative statewide and invest greater resources in supervising pretrial detainees, particularly those charged with nonviolent offenses.**
- 2. The Public Defender should comply with its statutory duty to represent indigent defendants statewide at the initial appearance and at bail review hearings.**
- 3. An assistant state's attorney should be present at bail review hearings.**
- 4. Maryland Rules should provide an automatic 10% refundable cash bond payable to the court for allailable criminal or traffic offenses.**
- 5. Monetary bail should be used sparingly, limited to situations when "no [other] condition of release will reasonably assure" the defendant's appearance and the complainant's safety. Md. R 4-216 (c).**
- 6. Judicial officers should consider an unsecured bond in lieu of a collateral bond.**
- 7. Upon implementation of recommendations #1 through #6, Maryland should further study the viability of eliminating the bail bondsman commercial surety, as recommended by the American Bar Association Standard Relating to Pretrial Release 10.1-3.**
- 8. Judicial officers shall receive training and education with regard to pretrial release determination prior to assuming judicial duties and at annual training seminars.**
- 9. A community-based revolving bail fund should be established to post 10% cash bond for individuals who are employed, are caretakers, or who otherwise have reliable community ties.**

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I. INTRODUCTION

Nearly 40 years ago, a report by the United States Attorney General delivered three major conclusions: first, that conditions of pretrial release for criminal defendants should be carefully tailored to each individual situation; second, that there should be a preference for nonfinancial conditions of release; and third, that too large a role for commercial bail bondsmen endangered the fair administration of the criminal justice system. The report spurred Federal reform. Our study reaches similar conclusions about the pretrial release system in the State of Maryland.

Part II of this report provides the national historical background of pretrial release and bail. History reveals how the lessons learned in the past resonate today for Maryland. During the decades of the 60's and 70's, guided by the federal model's emphasis on eliminating the inequities of money bail and responding to corruption and scandal arising from the powerful bail bondsmen industry, many states instituted sweeping reforms of their pretrial release procedures. Part III of this study explores these states as a point of comparison with our own state.

In Maryland, a statutory framework provides for imposition of the least onerous conditions of pretrial release;¹ where financial bail is appropriate, the Maryland statute specifies what types of bail should be considered.² The decision whether to grant bail, what type and in what amount is to be guided by a long list of enumerated factors. Parts IV and V document the procedures actually followed statewide and in five particular counties and demonstrate that courts routinely disregard the statute. These sections also highlight

¹ Md. R. 4-216(e)(3). Imposition of Conditions of Release. If the judicial officer determines that the defendant should be released other than on personal recognizance without any additional conditions imposed, the judicial officer *shall impose on the defendant the least onerous condition or combination of conditions of release . . . that will reasonably (A) assure the appearance of the defendant*

² Md. R. 4-216(c). Defendants Eligible for Release By Commissioner or Judge. Rule 4-216(c) states that “ a defendant is entitled to be released before verdict . . . on personal recognizance or with one or more conditions imposed” Defendants charged with crimes punishable by death or that carry a life sentence, Md. R. 4-216(d), or that are regarded as serious felonies, Md. Ann. Code Art.27 s.6161/2(c), may be denied bail where a judicial officer determines that no condition of release will reasonably ensure the defendant's appearance or the physical safety of another individual. Md. R. 4-216(d).

how, in setting bail, judicial attempts to fairly balance the prosecution's desire to ensure a defendant's appearance, public safety, and the defendant's desire for freedom are frequently hampered by the lack of representation for the accused and thus the lack of critical information on matters such as the defendant's community ties and financial situation. Consequently, judicial officers order full financial bond for most defendants not released on recognizance, which results in an overdependence on bail bondsmen in Maryland's pretrial release system. When conditioning release on financial bond, judicial officers rarely provide detainees with the alternative of posting a refundable 10% cash deposit with the court.

Part VI reveals surprising and disturbing facts about bail bondsmen, whose powerful role is based on misconceptions. There is an impression that defendants have low court-appearance rates and that bail bondsmen's aggressive efforts improve that rate. However, the truth is that Maryland defendants' appearance rate is very good to excellent - - higher than the national average - - and that Maryland defendants' reliability is as good, if not better, when a bail bondsmen is not involved. Moreover, bondsmen are usually passive and far less effective than local law enforcement in procuring the presence of defendants who fail to appear in court. They face little risk of financial loss for their clients' nonappearance and thus have little incentive to do their job. Yet their industry has grown into a highly lucrative, unregulated business in this state. This Study conservatively estimates that in 1998 bondsmen's' collective fees ranged between \$42.5 million and \$170 million.

The bail bondsmen's business success has come at the expense of defendants, who face economic hardship resulting from inappropriately high bail and nonrefundable fees, as discussed in Part VII. Gaining pretrial release usually required a detained defendant's family and friends to pay bondsmen's' fees from money designated for rent, food and utilities.

In 1999, the Maryland State Bar Association wrote to the Maryland Court of Appeals requesting that “a study be undertaken to evaluate the entire bail review process.”³ Chief Judge Robert M. Bell indicated the Judiciary’s approval for such a study and also suggested that “a comparative analysis [of Baltimore City] with other representative jurisdictions would be . . . helpful in that [such] findings would be more likely to lead to substantive changes in the bail and pretrial release system statewide.”⁴ Pursuant to these requests, the Abell Foundation made funding available, launching the Pretrial Release Project (PRP).

The call for a study came after the Baltimore City Lawyers at Bail (LAB) Pilot Project, also funded by the Abell Foundation, demonstrated the significant difference legal representation made for lower income people at bail review hearings. LAB lawyers provided judges additional verified information about their nearly 4,000 clients, enabling judges to make better informed decisions about defendants’ reasonable likelihood of reappearing in court on personal recognizance. A University of Maryland Study tracked LAB’s performance and concluded that for nonviolent offenses lawyers’ advocacy led judges to release LAB clients on recognizance 2 1/2 times more often, and to reduce bails for many others to affordable amounts, when compared to cases of arrestees without counsel.⁵ Legal representation at bail review helped to significantly reduce pretrial jail

³ Letter from then-President of the Maryland State Bar Association, Charles M. Preston, to The Honorable Robert M. Bell, Chief Judge of the Maryland Court of Appeals, dated April 20, 1999. *See*, Appendix A. Chief Judge Bell appointed an Advisory Committee to assist the Pretrial Release Project’s statewide study. The Advisory Committee is chaired by C. Carey Deeley, Jr., Esq., Venable, Baetjer & Howard and includes the Hon. Stuart O. Simms, Secretary of Public Safety & Correctional Services; Hon. Andrew L. Sonner, Associate Judge, Court of Special Appeals; Hon. Angela M. Eaves, District Court Judge for Harford County; Hon. Scott G. Patterson, State’s Attorney for Talbot County; Michael Elmore, District Court Administrator Commissioner for Charles County; Professor Douglas L. Colbert, University of Maryland School of Law; Robert L. Dean, Assistant State’s Attorney for Prince George’s County; Wilhelm H. Joseph, Jr., Executive Director Maryland Legal Aid Bureau, Inc.; Dennis J. Laye, Assistant Public Defender; Laura Kelsey Rhodes, President-elect Maryland Criminal Defense Attorneys Association; and Elizabeth Buckler Veronis, Esq., Legal Officer, Administrative Office of the Courts. Professor Colbert is the recipient of the Abell Foundation grant and serves as the Advisory Committee’s main researcher and reporter.

⁴ Letter from Chief Judge Bell to the Abell Foundation, May 19, 1999. *See*, Appendix B.

⁵ From October to November 1998, University of Maryland Professors Ray Paternoster and Shawn Bushway of the Department of Criminology and Criminal Justice conducted a multiple regression statistical analysis in which they evaluated the effect of legal representation at the bail review hearing stage. Their report, *An Empirical Study of The Lawyers at Bail Project* (hereinafter “Paternoster-Bushway Study”), which

overcrowding at the Baltimore Centralized Booking & Intake Center (BCBIC), and resulted in substantial bed space and cost savings.⁶ Moreover, 96% of LAB clients appeared in court when required.⁷ The PRP Study provides follow up to LAB's representation. While a lawyer's presence at bail reviews is likely to result in more favorable bail conditions for an accused, much more is at stake: a person's ultimate liberty will depend upon the ability to afford and post bail. PRP examines Baltimore's (and Maryland's) judicial bail and pretrial release practices and evaluates the impact of requiring financial bail for low-income and working defendants, their families and dependents, and the larger community.

was completed on May 14, 1999, compared a randomly selected group of 300 jailed defendants charged with nonviolent offenses. *See*, Daily Record, April 22, 2000. Though each defendant was eligible for representation by a LAB attorney, half were randomly assigned lawyers. The remaining individuals formed a control group that appeared without an attorney at the bail review hearing. LAB attorneys focused on corroborating their clients' residence, family and employment status. Lawyers also emphasized that their clients' financial circumstances limited their ability to post a full bail bond or to pay bail bondsmen a 10% nonrefundable fee. *See, infra*, Part IV at 17-18. In addition to finding a substantial increase in the number of detainees released on recognizance, the Paternoster-Bushway Study found that 2 1/2 times as many LAB clients gained release after having had their bails lowered to affordable amounts. Overall, one of two LAB clients had his or her bail reduced, compared to one out of seven for the unrepresented group. On average, judges decreased bail for represented detainees by \$1,000, compared to \$166 for the unrepresented group. *See*, Appendix C.

⁶ When LAB began on August 25, 1998, the pretrial population at BCBIC was 1,211, nearly 50% greater than the maximum capacity of 811. During each of the next six months, the pretrial population declined steadily, until it fell below its maximum in March, 1999. LAB was not alone in its effort to address Baltimore City's overcrowded pretrial detention population. District and Circuit Court judges contributed significantly to a more manageable pretrial population by conducting twice-weekly habeas corpus bail proceedings. In addition, District Court judges, Assistant State Attorneys and Public Defenders disposed of some minor charges as part of an early disposition program. By August 1999, one year after LAB began, the pretrial population was 620, and remained in the low 600's during the Fall, 1999. Professors Paternoster and Bushway estimated that representation at bail for nonviolent offenders alone would result in a savings of 100,000 bed days and five million dollars. *See, supra*, note 7, pp. 2, 8-9

⁷ The results of LAB persuaded Governor Paris Glendenning to allocate more than \$500,000 to the Public Defender in July, 1999, and an additional \$1.6 million in July, 2000 to represent indigent defendants in Baltimore City. In Maryland's eleven other judicial districts, only Anne Arundel, Harford, and Montgomery counties provided representation at bail review hearings when LAB commenced. In April, 2001, the Public Defender discontinued such representation in Harford County and Anne Arundel County. No Maryland county provides for representation at the defendant's initial appearance before a bail Commissioner. Conversation with David Weissert, Coordinator of Commissioner Activity, Maryland District Court, December 1999.

HISTORICAL BACKGROUND

The public interest is not served by a pretrial release and bail system that punishes criminal defendants with onerous financial requirements to obtain release and gives bail bondsmen too powerful and profitable a role. This lesson, which emerged from the PRP study of Maryland's system, is a disturbing one. It is not, however, a new one. Indeed, nearly four decades ago, a federal report yielded similar conclusions.

In 1963 Attorney General Robert F. Kennedy delivered to Congress a comprehensive report⁸ on the federal bail system. It described how bail disadvantaged individuals with little or no financial resources. Most detainees were incarcerated solely because they could not afford bail.⁹ Pretrial detention translated to loss of jobs, disruption of family life, and interference with the ability to prepare a defense. At the typical bail hearing, the accused appeared without counsel.¹⁰ Consequently, decisions on bail largely relied upon the nature of the charge, the accused's prior criminal record, and a prosecutor's recommendation. Judicial officers lacked reliable information concerning the accused's

⁸ 1963 Report of the Attorney General's Committee on Poverty and the Administration of Criminal Justice (hereinafter "Attorney General's 1963 Report"). See also, Daniel J. Freed and Patricia M. Wald, *Bail in the United States* (1964), which summarizes the findings of the National Conference on Bail and Criminal Justice the Attorney General organized. Cosponsored by the United States Department of the Justice and The Vera Foundation (now the Vera Institute of Justice), the conference focused public attention on the defects in a bail system which denied freedom to hundreds of thousands of people unable to raise the money necessary for bail. The conference also considered the law enforcement stakes and the human and monetary costs of pretrial detention and explored alternatives.

⁹ The Attorney General's 1963 Report concluded that the ultimate determination of pretrial release depended upon the financial means the accused was able to command. *Id.*, at 66. In more than one half of jurisdictions, detainees could not afford bond amounts between \$1,501 and \$2,500. *Id.* Three decades later, approximately one third of Baltimore City's average pretrial population of more than 2,000 detainees remain incarcerated prior to trial because they are unable to afford bail of \$500 or less. Conversation with George Fredericks, Statistics Office, Baltimore Central Booking & Intake Center, November 12, 1999; Stuart O. Simms, Secretary of Maryland Department of Public Safety, July 24, 2000.

¹⁰ Attorney General's 1963 Report, *supra*, note 8, at 62-63. Prior to the United States Supreme Court's 1963 ruling in *Gideon v. Wainwright*, 372 U.S. 335 (1963), there was no guaranteed constitutional right to counsel at trial for indigent defendants facing state criminal charges and certainly not at bail proceedings. In *Gideon*, the Court declared that the right to counsel was "a necessity, not a luxury," and was fundamental to protecting an accused's liberty. *Id.*, at 344.

personal background, i.e. family, employment, residence, and availability of financial resources.¹¹

The Attorney General's 1963 Report made several recommendations. These recommendations were based in part on the Vera Foundation's Manhattan Bail Project, which showed that people who had strong family and community ties had an extremely high reliability of returning to court without requiring bail.¹² Judges should make greater use of nonfinancial conditions of pretrial release, such as release on recognizance with personal bond and out-of-court supervision, the Report stated.¹³ Also, when financial bail is ordered, judicial officers should provide an automatic 10% cash alternative or a percentage cash bond. Unlike the nonrefundable bondsman's fee, such an amount would be returned when the case concluded, for a defendant who appeared in court.¹⁴

To make decisions about bail, more information was needed, according to the Report. The Attorney General thus urged that pretrial services representatives should be present at bail hearings to verify information regarding the accused's personal background, including criminal history.¹⁵ Moreover, the Report highlighted the necessity for guaranteeing counsel for an accused at bail hearings. Characterizing the lack of legal representation as "a prejudice of defendant's rights,"¹⁶ the Report referred to counsel's many roles: advising the accused, assisting the magistrate, and securing prompt review

¹¹ Attorney General's 1963 Report, *supra*, note 8, at 70-72.

¹² The Vera Foundation's Study demonstrated the importance of providing judicial officers with relevant information at bail hearings. The Project created two groups of defendants: for one group, Vera pretrial representatives recommended release on recognizance; for the second control group, Vera was prepared to recommend release but did not. Judges granted release for 120 of 200 Vera's clients in the first group, but for only 35 of 200 clients in the control group. Only two of the defendants granted pretrial liberty failed to appear for trial. *See*, Attorney General's 1963 Report, *supra*, note 8, at 63-64.

¹³ *Id.*, at 76-77.

¹⁴ *Id.*, at 81. *See also, infra*, Part IV (B), notes 62-63 and accompanying text.

¹⁵ *Id.*, at 77.

¹⁶ Attorney General's 1963 Report, *supra*, note 8, at 24.

when a court orders conditions beyond the person's financial ability.¹⁷ Counsel also played a vital role in ensuring a client's speedy discharge from custody and a return to court when required.

Finally, the powerful role of bail bondsmen, characterized as "crucial in current federal pre-release practices,"¹⁸ was explored. The Report concluded it was a bondsman's business decision, not a judicial determination, that governed who would be released and who would remain incarcerated prior to trial. As noted in a 1964 National Conference on Bail and Criminal Justice, organized by the Attorney General, many bail bondsmen refused to write bonds for people because of their race, the particular charge, and local hostility.¹⁹ The Attorney General concluded that the bondsmen's decisions should be scrutinized because they "affected [the] public interest."²⁰ His Report called for a congressional inquiry to discover whether bail bondsmen advanced the policy of pretrial release of accused persons, or whether they were merely engaged in a practice²¹ that required working and lower income people to pay nonrefundable 10% fees.²²

Following the Attorney General's 1963 Report, the Senate held hearings in 1964 and 1965,²³ resulting in the Federal Bail Reform Act of 1966.²⁴ Referring to nearly 700 years in

¹⁷ *Id.*, at 24-25.

¹⁸ *Id.*, at 67.

¹⁹ *Id.*, at 32-34.

²⁰ *Id.*, at 67.

²¹ *Leary v. United States*, 224 U.S. 567, 575 (1912) ("interest to produce the body of the principle in court is impersonal and wholly pecuniary."). *Id.*

²² Attorney General's 1963 Report, *supra*, note 8, at 68. During the congressional hearings, Professor Bowman from the University of Illinois College of Law compared 10% deposit bail bond in Illinois with the use of commercial sureties. He concluded "no-shows by 10% deposit releases are not greater and perhaps considerably less than the 3% who forfeit commercial bail bond." According to Professor Bowman, "most [released defendants] have employment or family ties in the community and no desire to flee." Testimony of Charles H. Bowman, August 6, 1964, before the Senate Subcommittee on Constitutional Rights and Improvements in Judicial Machinery, p.161.

²³ H. R. Rep. No 1541, 89th Cong., 2nd Sess. 1966, 1966 U.S.C.C.A.N. 2293, 1966 WL 4286 (Leg.Hist.).

which common law, constitutional, and statutory principles recognized an accused's right to liberty pending trial for noncapital offenses, Congress concluded that pretrial detention was not consistent with the basic tenets of equality before the law and the presumption of innocence,²⁵ and that judicial responsibility for the administration of criminal justice had been abdicated to commercial bondsmen.²⁶

Bail bondsmen countered that they performed a public service at little expense by assisting "good risk" indigents to make bond through family and friends and by rejecting defendants who represented a "bad risk" for reappearing in court. They insisted that the bail bonds industry was a free enterprise which the government need not regulate.²⁷

Congress rejected the argument and moved to replace the existing system and implement the Attorney General's reform:

Because Federal bail procedures rely primarily upon financial considerations rather than the accused's character or community ties, such procedures inevitably disadvantage person of limited means. Proper respect for law and order is jeopardized when the disposition of justice turns upon the financial status of the accused.²⁸

Nearly twenty years later, Congress passed another reform act. Addressing concerns about individuals who had been rearrested after having been released pending trial, the Bail Reform Act of 1984²⁹ empowered judges to deny bail to a defendant who had

²⁴ P.L. 89-465, amending 18 U.S.C. section 3146, et. seq.

²⁵ H.R. Rep. 89-1541, General Statement.

²⁶ *Supra*, note 26, at 170.

²⁷ *Id.*, at 177-182.

²⁸ §.1357, Bail Reform Act of 1966, section 2(a), Findings and Purpose.

²⁹ 18 U.S.C. section 3142.

been newly accused of committing a serious crime while on pretrial for an unrelated charge. Preventive detention was to be used only when there was “no condition or combination of conditions [that] will reasonably assure the appearance of the person as required and the safety of any other person and the community.”³⁰ The Act prohibited the use of high bail to detain an otherwise bail-eligible defendant and indicated a clear preference for nonfinancial conditions of pretrial release for most defendants awaiting trial.

In *Salerno v. United States*,³¹ the Supreme Court upheld the constitutionality of the provision, which required a judicial determination that no condition of release would eliminate the significant threat the defendant posed to the safety of another individual or to the community. The ruling rested upon the safeguards provided to an accused, including the right to counsel and to challenge the denial of bail. Emphasizing that “[i]n our society, liberty is the norm and detention prior to trial or without trial is the carefully limited exception,”³² the Court concluded that the public safety consideration was narrowly tailored to meet a compelling government interest.

The spirit infusing the Bail Reform Acts guided standards of the American Bar Association, declaring that most detainees are entitled to pretrial release under less onerous nonfinancial conditions.³³ Under the 1984 Reform Act, denying pretrial release may be appropriate to a limited number of defendants who represent a potential danger to the community,³⁴ the ABA standards acknowledge. However, the ABA also urges judicial

³⁰ 18 U.S.C. section 3142(e).

³¹ 481 U.S. 739 (1987).

³² *Id.*, at 755.

³³ Standard 10-1.1 Policy Favoring Release and Exceptions to Release, refers to conditional release pending diversion to further rehabilitation needs and diversion from prosecution. The ABA standard calls for additional funds to be provided for pretrial supervision, adding that many defendants could be safely released if only a small fraction of the costs of detention were diverted to supervision.

³⁴ In 1968, the American Bar Association published the first set of criminal justice Standards Relating To Pretrial Release. ABA Project on Minimum Standards for Criminal Justice: Standards Related to Pretrial Release 64-65 (1968). The 1968 standards incorporated the Bail Reform Act of 1966, including the Act’s enumeration of specific factors judicial officers should take into account when making a pretrial release determination. Subsequently, the National Association of Pretrial Services Agencies and the National District

officers to refrain from using bail as punishment, such as when they impose a financial condition beyond the accused's ability to afford. Standard 10.1-3 recommends that money bail should only be used in limited circumstances and must always serve a legitimate government purpose of pretrial release.³⁵ The commentary suggests a 10% cash bond could serve such a purpose, since the defendant bears the risk of financial loss and has an incentive to appear to recover the money posted as security.³⁶ Bail bonds, on the other hand, would not serve such a legitimate purpose. Defendants did not fear an enhanced punishment for not appearing in court, and did not face a real risk of financial loss, since most were judgment proof. Consequently, Standard 10.1-3 reiterates the call for abolishing the compensated bail bondsman.³⁷

The federal reform acts and the ABA guidelines are models for Maryland's rules regarding bail. Maryland Rule 4-216 entitles most defendants to be released pretrial on the least onerous conditions.³⁸ However, as discussed later in this study, the statute's intent

Attorneys Association introduced the issue of potential danger to the community, which the 1985 ABA Standards followed. John Clark and Alan D. Henry, *The Pretrial Release Decision Making Process: Goals, Current Practices, and Challenges*, at 5, notes 17, 18, Pretrial Services Resource Center, November 1996.

³⁵ ABA Standard 10.1-3(c) proposes limiting the use of release on monetary conditions to situations when there are no other conditions to reasonably ensure a defendant's appearance. Judicial officers should impose "the lowest level necessary to ensure the defendant's reappearance and with regard for the defendant's financial ability to post bond."

³⁶ Twenty-five states, the District of Columbia, and the federal system use 10% cash bonds. Three other states provide judges with the discretion to determine the amount of a percentage cash bond. In six of the 28 states, a defendant is given the right to post 10% cash. D. Alan Henry, *Ten Percent Deposit Bail 1988 Update* (hereinafter "*Ten Percent Deposit Bail*"), Pretrial Services Resource Center; *infra*, at 12. When a case concludes, the 10% cash deposit is returned, less a small administrative fee. *Schilb v. Kuebel*, 404 U.S. 357 (1971). In contrast, the bondsman keeps the 10% payment as a fee, regardless of whether the defendant appears or the charges are dismissed. *Infra*, Part IV.

³⁷ ABA Standard 10.1-3. The 1985 Standards followed earlier ABA versions in 1980 and 1968, which had called for the abolition of surety bonds. ABA Project on Minimum Standards for Criminal Justice, Standard 10.5-5 (1980); ABA Project on Minimum Standards for Criminal Justice: Standards Related to Pretrial Release 64-65 (1968). In 1968, the -ABA Pretrial Release Project stated: "The professional bondsmen is an anachronism in the criminal process. Case analysis of his role indicates he serves no major purpose that could not be better served by public officers at less cost in economic and human terms."

³⁸ *Infra*, Part IV (A) at 16-18; *supra*, note 1.

has not been honored. For nearly half of arrestees, judicial officers ordered financial bail.³⁹ Indeed, release invariably results in the posting of the full amount of a bail bond that is guaranteed by a commercial surety. Those financially able to pay the 10% bondsmen's fee are freed, while many others remain incarcerated until their trial date. As the next section explains, other states pretrial release systems have been more successful than Maryland in implementing bail reform.

II. OTHER STATES' PRETRIAL RELEASE SYSTEMS

After enactment of the Bail Reform Act of 1966, many states subsequently reformed their pretrial release system to favor nonfinancial supervised release and privately raised bail. These states were influenced by reasons Congress espoused in creating a federal pretrial release program that supervised many defendants awaiting trial and provided 10% cash deposit alternatives. First, legislators recognized the financial hardship to many defendants. Second, they resented bail bondsmen making decisions affecting individual liberty. Third, bail bondsmen were viewed as a self-interested group whose lucrative business created an appearance of impropriety and increased the likelihood of corruption. Finally, legislators believed that conditional release supervision would ensure a comparable defendant appearance rate.⁴⁰

Illinois became the model for institutionalizing an automatic 10% cash deposit following a major corruption scandal in Chicago in 1959, when a municipal judge was indicted for accepting kickbacks in setting bail. Today, Illinois' automatic 10% cash alternative (defendant option) is followed in Kansas (Sheronee County), Kentucky, Nebraska, Ohio, Oregon, Pennsylvania, and Rhode Island. Twenty-two additional states, along with the District of Columbia and the federal courts, provide for a 10% cash bond at the discretion of the court (court-option).

³⁹ *Infra*, notes 82-83.

⁴⁰ *Supra*, Part II, and notes 25-30.

Other states went further than Illinois and abolished the bail bond system. In the 1970's Kentucky passed a series of laws that regulated and then eliminated the bail bondsmen, based on fears of corruption and violent incidents by bounty hunters. Led by the Governor,⁴¹ legislators created a statewide pretrial release program that required defendants be released on recognizance or on unsecured collateral bond, unless a judge determined they were a flight risk. Kentucky's 24 hour, seven day a week⁴² pretrial agency has been extremely effective in reducing the state's pretrial detention population and in ensuring that defendants appear in court.⁴³ In fiscal years 1999 and 2000, more than 90%

⁴¹ John Palmore, former Chief Judge of Kentucky's Supreme Court, described Governor Julian Carroll's accomplishment of creating a statewide pretrial release and supervision agency to replace the bail bond system, as the "greatest thing the Governor ever did for the people of Kentucky and for the administration of our criminal justice system." Telephone conversation, July 11, 2000. As a former legislator and Speaker of the House and Senate, Julian Carroll had attempted unsuccessfully to regulate Kentucky's bail bond system. The Courier-Journal, which supported the Governor's efforts, wrote a series of investigative articles and editorials over a four-year period. See, e.g., *Bondsman, Lawyer Practices Questioned*, *Courier-Journal*, May 4, 1973, at A6. The newspaper called for "a whole new way of arranging bail for persons accused of crime," and declared that "three things are wrong with the way the bail bond system works in Louisville and just about every other place it is employed:

[First], [i]t's harshly discriminatory, and thus contributes to mistrust of and disrespect for our system of justice. [Second,] [b]ail bonds don't really guarantee that the accused will appear for trial. [And third,][f]ailure of the accused to appear for trial doesn't necessary lead even to the forfeiture of his bond. *Courier-Journal, The Professional Bail Bondsman Is An Unnecessary Evil in Court*, June 15, 1972, at A6.

Three years later, the Courier-Journal suggested that the "posting of bond with the court . . . wherever this method has been tried, the rate of return for trial is as good as or better than it is under the bail bondsman." *Courier-Journal, Time For Kentucky To End The Bail Bond Stranglehold*, Nov. 10, 1975, p. A22. Arguing that the bail bond system is difficult to defend, the editorial declared: "The concept of selling a man his freedom while he awaits trial should not be tolerated in a society that claims to believe in equal justice for rich and poor alike." *Id.*

Governor Carroll's proposed legislation sailed through the legislature, and was signed into law. *Courier, Bail On Bail Bond Industry Signed Into Law by Governor*, Feb. 11, 1976. Shortly thereafter, Kentucky's Supreme Court upheld its constitutionality. *Stephens v. Bonding Ass'n of Kentucky*, 538 S.W.2d 580 (1976). See also, *Johnson Bonding Co., Inc. v. Com. of KY*, 420 F. Supp. 331 (E.D. Ky. 1976); *Benboe v. Carroll*, 494 F.Supp. 462 (W.D. Ky. 1977).

⁴² Kentucky's pretrial release representatives are available on an around-the-clock basis. Often, when court is not in session on weekends or evenings, pretrial will call judges at their home and request release on nonfinancial conditions. Defendants not released appear in court the following court session, where a public defender and prosecutor are present. Telephone conversation, Starkey Ray, general manager of Kentucky=s pretrial release system, December 8, 2000.

⁴³ The volume of arrests in Kentucky's criminal justice system is virtually the same as Maryland's. In fiscal year 2000, 197,102 people charged with misdemeanor and felonies were eligible for bail. Almost seven in ten people were released prior to trial. The breakdown of pretrial release follows below:

of Kentucky defendants appeared in court when required,⁴⁴ an extremely dramatic rate when compared to available statistics.⁴⁵

Oregon also eliminated the professional bail bondsmen.⁴⁶ Reform occurred in 1973, after discovery of an elaborate kickback scheme in which bail bondsmen paid police and jail officials to gain speedy access to arrestees.⁴⁷ Bail bondsmen could easily recover a forfeited bail because of their cozy relationship with some judges. In place of the old system, Oregon created a “release agreement,” which directed judges to place the most weight on a defendant’s employment status, financial circumstances, family relationships, and residence.⁴⁸ An accused is presumed to be entitled to release on recognizance and

| | |
|---|--------|
| Release on recognizance | 22,160 |
| Unsecured bail | 13,453 |
| Nonfinancial conditions | 11,596 |
| 10% cash | 23,320 |
| 100% cash | 41,251 |
| Performance Bond | 116 |
| Judicial release on recognizance or nonfinancial conditions | 24,167 |

⁴⁴ The failure to appear rate was 8% for fiscal year 2000 and 9.4% for fiscal year 1999. The general manager of Kentucky’s release system indicated that for data collection purposes, his agency --“overreports” failures to appear, i.e. the statistics includes defendants who arrive late to court on the same day when a case was scheduled. Conversation with Starkey Ray, December 8, 2000.

⁴⁵ *Infra*, notes 159. 163-169.

⁴⁶ *Burton v. Tomlinson*, 527 P.2d 123, 19 Or. App. 247 (1974) (holding that the Oregon pretrial release statute did not deprive bail bondsmen of their right to engage in the bail bond business and did not violate the Oregon Constitution or United States Constitution). See, William C. Snouffer, *An Article of Faith Abolishes Bail in Oregon*, 53 Or. L. Rev. 273 (1974).

⁴⁷ “In bail bonds “heyday”, it was common for bondsmen to court correction officers and judges with favors. They had the power to refund or reduce a bond even when one of the bondsman’s clients skipped bail. It was a spoils system, pure and simple, and it tarnished the criminal justice system’s integrity.” Editorial, *Portland Oregonian*, April 12, 1991, C10 (1991 WL 8462973); see also, Holly Danks, *“Making Bail”*, *Portland Oregonian*, Feb. 26, 1998, 1998 WL 418596 (interviewing the supervisor of Oregon’s state release office who stated: “Having bail bondsmen was a real corrupt system. . . .[H]e sets up shop across the street from the jail, with neon lights. Your family sees the signs and pays him to get you out, and you never see the money again. “ Our system is much fairer. You put up 10%, get the money back, or it is used to pay fines.”).

⁴⁸ Snouffer, *supra*, note 46, at 275. The statute’s first five pretrial release factors pertain to the accused’s employment, financial condition, family relationships, residence, and people available to assist an accused’s future court appearances. Or. Rev. Stat. s.135.230 (6). The method of release, i.e. release on recognizance, conditional release, and security release, is formalized by a “release decision,” which considers the nine factors of “release criteria.” *Id.*, at 135.245 (1998). Release assistance officers are available to

then to conditional release. If the circumstances do not allow either option and requires a financial bail, an automatic 10% cash deposit is available. Financial bail is used as a last option.⁴⁹ Bondsmen's efforts to repeal reform laws were rejected.⁵⁰

Wisconsin's pretrial release system, also demonstrating sensitivity to defendants' financial condition, requires judges to consider the individual's ability to afford bail, and to set financial bail only when necessary to assure the defendant's appearance.⁵¹ In the late 1970's, the State legislature eliminated the profit-making surety.⁵² Wisconsin legislators then abolished money bail for indigent defendants who were charged with misdemeanor crimes.⁵³ The State established a correctional service fund in which revolving monies are

assist magistrates by researching the accused's background information. *Id.*, § 135.235 (1).

⁴⁹ Snouffer, *supra*, note 46, at 305. Oregon legislators were concerned that magistrates would inflate security amounts to counteract the 10% cash option. Legislators included the following commentary: "The Commission discourages the concept of establishing the security amount 10 times the amount the magistrate considers necessary to assure appearance because the defendant may only deposit 10% of the security amount. The concept of setting the security amount 10 times higher would be counter to the intent and spirit of this Article and should not be followed." *Id.* at 308 (emphasis added).

⁵⁰ An editorial in the Portland Oregonian, April 12, 1991 (1991 WL 8462973) called for maintaining Oregon's current pretrial release system:

The 18-year-old law that eliminated the commercial bail bondsmen from Oregon's state courts also closed the door on sleazy bonding practices. When the law passed, it was an overdue reform. It ended an era when some bondsmen would do favors for police and jail admissions officers to gain access to arrested persons. [The proposed bill] to bring the bondsmen back . . . should remain on the sideline, preferably buried so deep in paper that the overworked clerks in Judiciary won't be able to find it.

⁵¹ Wis. Stat. section 969.01 (1998) enumerates the statutory criteria to be considered for pretrial release. In identifying twelve factors, Wisconsin's legislature began with (1) the ability of the person to give bail before proceeding to list factors (2-4) dealing with the offense and the defendant's prior criminal record. The financial hardship of monetary bail was recognized.

⁵² Retired judge Fred Kessler, who previously served as a Wisconsin State assemblyman for ten years, is given the main credit for reforming the state's pretrial release system. Conversation with Milwaukee District Attorney Michael McCann, June 29, 2000. As a judge, Kessler had seen the professional surety as an "informal" corrupting force in the criminal justice system. Bondsmen had their "favorite" judges for setting bail or for returning forfeited bond money. As a legislator, Kessler knew that bondsmen had strong political support because they had contributed heavily to legislators' election campaigns. In 1979, Judge Kessler was instrumental in drafting and introducing a bill, modeled after the ABA Standards Relating to Pretrial Release, that made it illegal for sureties to charge a fee for their bonding services. Wis. Stat. section 969.12 (1998). The bill passed both houses, and Wisconsin's Republican Governor signed it into law. Conversation with Judge Kessler, July 11, 2000.

⁵³ In misdemeanor cases, judges' first option is to release the defendant on recognizance or with an

used to pay half the amount of bail bond for low risk defendants (the defendant or family pays the other half). In the early 1990's, Wisconsin also rejected bail bondsmen's efforts to undo bail reform.

Massachusetts and Pennsylvania also reformed their pretrial release systems.⁵⁴ Each relies heavily upon conditional release and severely limit the use of commercial bail sureties. Pennsylvania legislators acted after finding that judges too often required individuals to pay bail when none should have been ordered. Pennsylvania's Criminal Rules Committee Report recognized that people charged with nonviolent charges should be released, and endorsed the broad use of the unsecured collateral bond. Money bail is used only when necessary.

Contrary to these states' practices, Maryland's pretrial release system uses full financial bonds extensively for nearly half of arrestees,⁵⁵ many of whom are charged with misdemeanors. The following section explains how defendants in Maryland are compelled to rely on bondsmen to regain liberty pending trial, and explains the question whether judicial officers should be providing less onerous alternatives for low income defendants, particularly those charged with nonviolent offenses.

IV. MARYLAND'S PRETRIAL RELEASE SYSTEM

A. Nonfinancial and Financial Conditions of Pretrial Release

Maryland criminal procedure rules provide that an accused awaiting trial on all but the most serious charges is entitled to be released on personal recognizance or with one or

unsecured bond; the second option is an appearance bond with solvent sureties; the third option is to place the defendant under a third party's supervision; the final option is to place restrictions on travel, including home detention. Wis. Stat. section 969.065 (1998). *See, Demmith v. Wisconsin Judicial Conference*, 166 W.2d 649 (1992) (striking down a misdemeanor bail schedule which allocated cash bail to the particular offense rather than the individual circumstances of the defendant).

⁵⁴ Esmond Harmsworth, *Bail and Detention: an Assessment and Critique of the Federal and Massachusetts Systems*, 22 New Eng. J. on Crim & Civ. Confinement 213 (1996).

⁵⁵ *See also, infra*, note 132-133.

more conditions imposed.⁵⁶ When personal recognizance is inappropriate, judicial officers are required to consider *the least onerous* nonfinancial or financial condition of release or a combination of conditions that would reasonably ensure the defendant's appearance in court.⁵⁷ Implicit in the statutory preference for liberty prior to trial is the deeply-rooted presumption of innocence and an understanding of the harsh impact pretrial detention has on defendants. Many detainees lose their jobs and are evicted from their homes.

Maryland's least onerous rule requires that a variety of nonfinancial pretrial release conditions be considered. They range in intensity to match the level of risk posed by the individual defendant. For instance, a judicial officer may direct that an accused be released to the custody of a parent or community organization.⁵⁸ Or the officer may place the individual under court supervision with a probation or pretrial release agency and require drug or alcohol testing.⁵⁹ Further restrictions may subject the defendant to reasonable limitations, such as a curfew or pretrial electronic monitoring.⁶⁰

There are many advantages to nonfinancial conditions. First, they are more equitable to the person with limited financial resources who otherwise would remain incarcerated. Second, they allow the judicial officer, and not commercial bail agents, decide who is actually released. Third, pretrial supervision may deter criminal activity, and minimize the risk of pretrial misconduct. In addition, such supervision serves as an "early warning system" for defendants who present too high a risk to remain on pretrial release.⁶¹

⁵⁶ Md. R. 4-216(c); *see, supra*, note 2. Commissioners are not authorized to decide pretrial release for serious felonies enumerated in Art.27 section 616(c), and do not make such determinations in cases involving a present bail or a bench warrant. Conversation with David Weissert, *supra*, note 9, Nov. 14, 2000.

⁵⁷ Md. R. 4-216(e)(3); *see, supra*, note 1.

⁵⁸ Md. R. 4-216(f)(1). Commissioners indicate that this alternative is not used because parents or community representatives rarely appear at hearings, which are usually held in jail detention facilities or inside police precincts. *See, infra*, notes 80-81.

⁵⁹ Md. R. 4-216(f)(2).

⁶⁰ Md. R. 4-216(f)(3).

⁶¹ Henry, *Ten Percent Deposit Bail*, *supra*, note 36, at 10.

Nonfinancial release is not always sufficient. Where an accused is a flight risk or a danger to the community, the judicial officer must require bail bond. Maryland provides several alternative financial bail bonds:⁶²

- (A) bonds without collateral security (“unsecured”);
- (B) bonds with collateral security equal in value to the greater of \$25 or 10% (10% cash or court deposit), or a larger amount (“percentage deposit”)
- (C) bonds with collateral security equal in value to the full penalty amount (“property”); or
- (D) bonds with the obligation of a corporate surety in the full bond amount (“corporate surety or commercial bail bondsman”).

B. The Different Types of Financial Bail Bonds

Unsecured bonds require only the defendant’s signature and a commitment to assume the full obligation in the event that he fails to appear in court.⁶³ It may be appropriate for lower-income defendants who have strong community ties, are charged with nonviolent offenses, and lack the resources for bond collateral.

The 10% cash or court deposit is posted with the court clerk and is guaranteed by a surety, usually a family member or friend. If the defendant appears in court, the 10% cash deposit is returned to the surety, less administrative costs, once the case concludes. Obviously, the higher the amount of a percentage cash or court deposit bond, the more likely it will be beyond most defendants’ ability to afford.

⁶² Md. R. 4-216(f)(4). A judicial officer also may subject a defendant to “any other condition reasonably necessary to ensure the appearance of the defendant.” Md. R. 4-216(f)(5).

⁶³ Md. R. 4-216(f)(4)(A). Since noncollateral and percentage cash bonds are rarely used, *see, infra*, notes 132-134, there is no data available to evaluate concerns that such bonds may not be collectible in the event a defendant fails to appear in court. Considering Maryland’s relatively low failure-to-appear rate, *see, infra*, notes 154-158, this problem is significant. Moreover, Maryland’s minimal record for collecting forfeited surety bonds, *see, infra*, notes 175-180, has not persuaded judicial officers to turn to other less onerous financial incentives.

Property or full collateral bail bond⁶⁴ is used both by individuals and by professional bail bondsmen.⁶⁵ Each pledges property they own to secure the defendant's court appearance. In general, property bond is assessed at twice its tax value. However, Prince George's County (District Five) and Calvert, St. Mary's, Charles Counties (District Four) authorize professional bail bondsmen to post their own property as collateral and their calculate the bondsmen's property at *ten times* its assessed tax value.⁶⁶ Thus, bondsmen there underwrite many more bonds and substantially increase their business capacity. These bondsmen must remit a 1% payment of their total annual amount of bonds, making this arrangement profitable for local government, as well as the corporate surety.⁶⁷

Most Maryland detainees gain pretrial release by transacting business with a local bail bondsman and paying a nonrefundable 10% fee, either as a lump sum or in installments.⁶⁸ The individual bail bond agent then shares this 10% fee with a licensed insurance company.⁶⁹ Bail bondsmen may also require individuals to post collateral security, or to cosign and take responsibility for the balance of the bond, in the event the defendant fails to appear or absconds from the jurisdiction.

⁶⁴ 71 Md. R. 4-216(f)(4)(C).

⁶⁵ Detainees and families use the professional bail bondsman far more widely than they would use their own property (home) as collateral. Conversation with David Weissert, *see, supra*, note 7.

⁶⁶ 73 Md. 7th Jud. Circ. R. 714A(f)(1). *See, infra*, notes 138-140.

⁶⁷ Md. Ann. Code Art. 27, § 616 1/2(f)(2). When professional bail bondsmen post their own property, their profit margin increases considerably. Ordinarily, a bail bond agent is backed by a surety insurance company, licensed under state insurance laws. The company receives a portion of the customer's 10% premium fee. Usually, this amount ranges from 2% to 4% of each bond written by agents. Thus, it is greatly to the bondsman's advantage to secure bonds with his own property and avoid paying insurance companies this percentage expense. The special legislation in Prince George's, Charles, Calvert, and St. Mary's counties maximizes bondsmen's profits by retaining the defendant's entire 10% fee for them. Such unique pretrial release procedures have enabled professional bondsmen to become the dominant force there. *See, infra*, at notes 138-140 and accompanying text.

⁶⁸ *Insurance Com'r for the State v. Engelman*, 692 A.2d 474 (1997) (permitting installment payments to commercial bail bondsmen, which provides for payment of a smaller portion of the 10% fee and full payment following a detainee's release).

⁶⁹ *See, infra*, Part VI (C)(1).

C. Maryland's District Court Procedures

Maryland has a two-stage pretrial release procedure. First, the accused appears before a District Court Commissioner. Then, if still detained, he appears before a District Court judge at a bail review proceeding. The judicial officer is required to take many factors into account.⁷⁰

- (A) The nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction, insofar as these factors are relevant to the risk of nonappearance;
- (B) the defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;
- (C) the defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, and length of residence in the community and the state;
- (D) the recommendations of an agency which conducts pretrial release investigations;
- (E) the recommendation of the State's attorney;
- (F) information provided by defendant's counsel;
- (G) the danger of the defendant to another person or to the community;
- (H) the danger of the defendant to himself or herself; and
- (I) any other factor bearing on the risk of a willful failure to appear, including prior convictions.

The availability of this information varies among the jurisdictions studied.⁷¹ Judicial officers invariably have reliable information about the specific criminal charge, the

⁷⁰ Md. R. 4-216(e)(1)(A-I).

⁷¹ *Infra*, Part V.

defendant's criminal record, and any failure to appear on previous cases.⁷² However, often lacking is salient information needed to make fair decisions, such as verified information about the detainee's ties to the community, employment status, or financial ability to afford a money bail.⁷³ Consequently, many judicial officers appear to give less weight to these latter factors in determining pretrial release.⁷⁴

1. The Initial Appearance Before A Commissioner

Following arrest and processing, an accused remains in custody for up to 24 hours before appearing before a District Court Commissioner. Commissioners, who are appointed by an Administrative Judge, need not be lawyers.⁷⁵ Absent new information, a Commissioner's detention decision is likely to be sustained⁷⁶ by the District Court judge who presides at a bail review hearing, held during the next available court session (within one to three days). For this reason, and because the defendant's next court appearance is usually scheduled at least 30 days later, the Commissioner's hearing should be considered a crucial stage of the pretrial release process.

⁷² *Id.*

⁷³ *Id.* Pretrial Release conducts a background investigation of each arrestee to determine whether the individual is a good risk to reappear in court. Those findings are reported to the court, along with a recommendation for pretrial release on nonfinancial or financial conditions. A judge may release a detainee conditionally and require pretrial to ensure that the individual receive necessary social services, such as substance abuse counseling or testing. *Supra*, note 58-60.

⁷⁴ *Infra*, Part IV (C)(2).

⁷⁵ Recently, a four-year college degree became a requirement for the Commissioner position. A recent survey indicated that three of four Commissioners are college graduates; the remaining one quarter had been hired prior to the requirement. Appendix E, The Commissioners Survey, Table 2, at 2. More than three of four Commissioners stated that their legal training included a paralegal education. About 15% graduated from law school, and one of five commissioners had taken some law school courses. *Id.*, Table 3.

⁷⁶ *Infra*, note 144. Conversation with Weissert, *supra*, note 7, December 30, 1999. Professor Paternoster's analysis of bail review decisions in five Maryland counties revealed that judges affirmed Commissioner decisions in more than half the cases; in Baltimore City and Frederick, judges maintained the same bail for three of four defendants. Appendix H at 14.

The Commissioner's bail hearing does not occur inside a public courtroom, but rather at his "office", which often is located inside a jail facility or a police precinct.⁷⁷ In Baltimore's newest pretrial jail, for instance, a Commissioner sits on one side of a jail interview booth inside the central booking facility, and the accused remains on the other side. A plexiglass wall separates them, and they communicate through a speaker system. It is not uncommon for several defendants to be located in the same "booth" area and to listen to one another's hearings. In other jurisdictions, Commissioners may be located inside a small room in the courthouse where the handcuffed defendant is brought. While Commissioner hearings are open to the public in most of Maryland, space limitations make it difficult to observe the proceedings.⁷⁸ In Baltimore City, people are denied entrance, although they may view the proceedings on television.

Generally at this initial appearance there is neither a pretrial release representative available to assist Maryland commissioners by providing essential information about the accused.⁷⁹ In addition, there is no public defender present to represent the accused.

Typically, only the defendant and commissioner are present at this initial appearance. The commissioner has information about the charges, the factual allegations, the potential sentence, and the accused's prior criminal history and record for previously

⁷⁷ Apparently, this was the result of pressure to reduce local prisoner transportation costs and policies that allow police officers to return to street patrol. According to David Weissert, *supra*, note 7, Commissioner hearings are held inside jail detention facilities in District One (Baltimore City), District Two (Wicomico County), District Four (Charles and St. Mary's), District Five (Prince George's), District Six (Montgomery), District Nine (Harford), and District Eleven (Frederick). Commissioner hearings also are conducted in numerous police stations, in courthouses (Baltimore County), and in an even smaller private office in Kent County. Telephone conversation, Weissert, December 16, 1999. Montgomery County also conducts some commissioner hearings at police precincts. Conversation with Laura Kelsey Rhodes, Esq., August 22, 2000.

⁷⁸ The average commissioner's office holds only four people. David Weissert, *supra*, note 7.

⁷⁹ According to David Weissert, the Coordinator of Commissioner Activity, Pretrial Services are available to assist commissioners only in Baltimore, Montgomery and Prince George's counties. Communication (e-mail), May 18, 2001. Even in these few counties, Pretrial Services' assistance appears limited; Baltimore City's agency representatives only perform a criminal record check and do not appear before the Commissioner. *Id.* In the "old days", i.e. from 1971 to 1976, Baltimore City's Pretrial representative made recommendations to the commissioner and provided relevant background information. *Id.* In preparing for bail review hearings, pretrial interviews detainees and reports relevant information to the court. *See, supra*, note 96.

failing to appear in court. The commissioner compares the defendant's responses to his information, and asks the detainee about family, residence and employment background, but not about his ability to afford bail.⁸⁰ Since commissioners are unable to verify the accuracy of a defendant's reported information, they place considerable weight upon his demeanor and responses:

Many defendants display poor communication skills and, . . . may appear evasive, argumentative or worse When the defendant loses credibility and appears to distort crucial information, this goes to the determination of their willingness to appear for trial.⁸¹

In 1998 and 1999, about 195,000 people appeared annually before Maryland District Court Commissioners. Commissioners released only half of these individuals on personal recognizance or on nonfinancial conditions of release during 1998⁸² and 1999.⁸³

⁸⁰ Following a decision to set a financial bond, Commissioners consider the defendant's financial circumstances. David Weissert, *supra*, note 7. Cf., *infra*, note 85 (where only 20% of Commissioners thought that obtaining information about the defendant's financial circumstances was important in the pretrial release determination).

⁸¹ Michael Elmore, District Court Administrator Coordinator for Charles County, correspondence dated July 22, 2000. Commissioner Elmore also advocated legal representation at bail and for a pretrial representative's investigation and recommendation during the pretrial and bail review stages.

⁸² Appendix D, Tables 8(a)-(b). The 1998 Annual Report of the Maryland District Court Commissioner System ("Commissioners Report" or "1998 Report") indicates that between January 1, 1998 and December 31, 1998, 194,616 people were charged with offenses and appeared before a District Court Commissioner. Commissioners ordered release on recognizance (ROR) for 49.2% of the total of initial appearances. In addition, commissioners released on recognizance an additional 3.7% after finding no probable cause to support the offense. Md. R. 4-213. Consequently 53% of arrestees were released on recognizance prior to the bail review hearing. Additionally, commissioners ordered bail for 42.2%, and denied bail to 2.8%.

Harford County District Court Commissioners (District Nine) had the highest proportion of release on recognizance, 63.4%, followed by Calvert, Charles, and St. Mary's, which released 57.1% of defendants, (District Four) and Baltimore City (District One), which released 55.5%. The remaining nine districts ordered release on recognizance less frequently, ranging between 40 to 46%. Baltimore County (District Eight) Commissioners had the lowest release on recognizance rate, 40.3%, followed by a 41.5% rate in Eastern Shore (District Two) and a 41.8% rate in Howard/Carroll (District Ten). Interestingly, commissioners in Harford, Calvert, Charles, St. Mary's, and Baltimore City, who released the most people on personal recognizance, also had the highest statewide percentage for finding a lack of probable cause; they released between 5% and 6% for this reason.

Combining releases on personal recognizance with releases attributed to a lack of finding of probable cause reveals a disparity among Maryland's twelve districts. Harford County's (District Nine) figure of 69% was the highest, followed by Calvert, Charles, and St. Mary's at 62.2% and Baltimore City at 61.5%.

To learn more about commissioners' pretrial release decisions in each of the five counties, PRP developed a questionnaire with the cooperation of the Chief Judge of the Maryland District Court, Martha F. Rasin, and her staff.⁸⁴ The following section provides a detailed picture of the commissioners' decision-making.

2. Survey of Maryland Commissioners

The PRP commissioned a survey of Maryland District Court Commissioners, to which almost 80% of the 239 Commissioners replied. University of Maryland Professor Paternoster analyzed the data and produced a report revealing that the statutory mandate, requiring the least onerous options possible for release, is routinely contravened, because judicial officers lack critical information. He describes his findings in three separate sections. The first two sections detail the Commissioners' experience and educational background and the volume of cases they decide in their various urban, suburban, and rural jurisdictions. The third section is more detailed and presents valuable information about the pretrial release process. Highlights include:

- Seventy-one percent of Commissioners had no information about the defendant's financial ability to post bail. Less than 20% of Commissioners thought such information was important; 44% considered

On the other end of the spectrum, Baltimore County's (District Eight) Commissioners released 41.1% of detainees, followed by Howard and Carroll County's (District Ten) rate of 42%.

⁸³ Between January 1, 1999 and December 31, 1999, defendants' initial appearances before the Commissioner increased only slightly: 196,304 people were arrested in 1999, compared to 194,616 in 1998. In addition, Commissioners' finding of no probable cause also remained relatively constant (3.6% versus 3.7%). But in 1999, Commissioners released fewer people (46.6%) on personal recognizance than they had in 1998 (49.2%). Consequently, more arrestees received bail in 1999 than 1998 (44% versus 42.2%). *See*, Appendix D, Tables 8(c)-(d).

⁸⁴ Chief Judge Rasin wrote a cover letter and mailed the questionnaire to each Maryland commissioner. Appendix E.

this factor the least important information they sought or thought it was irrelevant.⁸⁵

- When imposing a financial condition, Commissioners used a full bond for four of five detainees. While Commissioners thought they used less onerous options one third of the time, they actually provided such options for only one of fourteen detainees.
- In determining pretrial release, Commissioners invariably had information available concerning the charge and possible sentence, and the detainee’s past criminal record, including prior convictions (87%), failures to appear in court (92%), current parole and probation status (82%), and pending cases (86%). Primacy was given to such factors in making decisions.⁸⁶

⁸⁵ Appendix E, at Table 7. In this question, Commissioners were asked whether they had information about detainees’ financial ability to afford bail and what weight they attached to these responses. Most indicated such information was unavailable and not particularly important. In a separate inquiry (Table 6), Commissioners replied that they had information about defendants’ financial circumstances in more than two of three cases and used it almost two thirds of the time in rendering a decision. One way to reconcile these responses is to believe that while two of three Commissioners inquired about defendants’ financial circumstances, they considered such unverified information “unavailable” and consequently of less importance in rendering a pretrial determination.

⁸⁶ Appendix E, Table 7. A score of 5.0 indicates that a given factor is “Very Important” to the Commissioner in Setting Bail.

Table 7: Bail Commissioner’s Assessment as to “How Important” Each Factor is in Setting Bail

| Factor | Average Importance Score* |
|-----------------------------------|---------------------------|
| Prior failure to appear for trial | 4.80 |
| Nature & circumstances of charge | 4.64 |
| Prior Convictions | 4.33 |
| Nature & weight of evidence | 4.24 |
| Pending cases | 4.24 |
| Possible sentence if convicted | 4.23 |
| Parole or probation status | 4.14 |
| Prior Arrests | 3.85 |

- Commissioners lacked reliable information on, and thus gave considerably less weight to community ties pertaining to employment (85%), reputation (74%), family (66%), current school status (21%), and military status (20%).⁸⁷
- Commissioners relied on defendants as a primary source for information in almost 60% of the sample cases. When a detainee had counsel or when family/friends were present, commissioners reported considering each as a primary source for information in about one in seven cases.

3. Bail Review Hearing

Maryland's criminal procedure rules provide for a judicial bail review hearing for every person who is denied pretrial release by a Commissioner or who remains in custody for 24 hours after a Commissioner had set conditions of release.⁸⁸ The District Court judge is required to review the Commissioner's determination and may maintain or modify bail.⁸⁹

Bail review hearings are unlike traditional criminal court proceedings, where an accused indigent appears in a public courtroom and is represented by counsel. It is rare for an accused to be inside the courtroom; most defendants remain inside a detention facility and observe the presiding judge through a two-way video and audio transmission.⁹⁰

⁸⁷ Appendix E. Table 7. Commissioners cumulative scores for family (3.42), employment history (3.59), school status (3.59) and military status (3.77) were considerably lower than factors related to the charge and the defendant's criminal history. *See, supra*, note 86.

⁸⁸ Md. R. 4-216(g).

⁸⁹ The Attorney General's 1963 Report opposed similar bail review hearings, because reconsideration often resulted in higher bails and longer time in detention. Bail reductions, for example, were infrequent in New York City where judges lowered bail in fewer than 4% of the cases. *Supra*, note 8, at 64.

⁹⁰ Four of the five counties included in the Pretrial Release Project's study use video bail reviews; only Baltimore County defendants appear before a judge in a courtroom. In Baltimore City, defendants appear on a twenty-seven inch color television monitor and usually are seen sitting in one of several rows with as many as twenty-five other men. Often, the picture does not identify the individual defendant. A reporter described the scene:

Eight men in orange jumpsuits are visible. At least, the jumpsuits are visible. The detainees' body

The accused is usually unrepresented by counsel. Until the Lawyers at Bail Project (LAB) began to represent many people accused of committing nonviolent offenses at Baltimore City bail reviews in 1998,⁹¹ Harford and Montgomery counties were the only districts in which the Office of the Public Defender guaranteed such representation.⁹² Providing legal representation to indigent defendants at the bail review hearing would significantly reduce Maryland's pretrial jail population.⁹³ LAB's results demonstrated that a lawyer's advocacy makes a substantial difference as to bail,⁹⁴ and that the popular stereotype of arrestees is inaccurate: most arrestees had strong ties within the community and were good risks to return to court.⁹⁵

motion is jerky, their faces difficult to see, and their voices frequently are muffled. "Can you hear me? I can't hear you," said Judge H. Gary Bass. Then in an aside to no one in particular, "Since we've started video bail review, this equipment has never been good." An attorney added: "It's particularly hard to distinguish the faces of black detainees on the screen because of the lighting." . . . As bail reviews proceeded into the afternoon, the image quality never improved and the sound got worse. "This is pitiful," Bass moaned.

Joe Surkiewicz, *Just Waiting for the Videophone to Ring: Testimony Meets Technology in the Court*, Daily Record, pp. 1C-2C, September 25, 1999 (Appendix G). In December, 2000, the Public Defender successfully challenged the quality of the video bail system, and a new improved system began operating in April, 2001. See, Caitlin Francke, *Inmates To Be Bused To Courthouse For In-Person Hearings, Judge Rules*, Baltimore Sun at 3B, December 5, 2000 (describing a ruling by the Administrative Judge for Baltimore City, Keith E. Matthews, that the poor quality of video bail reviews violated defendant's due process rights). In May, 2001 the quality of the city's video broadcast had improved considerably.

⁹¹ See, *supra*, notes 5-6.

⁹² See, *infra*, at Appendix H, Comparing Bail Practices, indicating that within this project's study of five counties, only 23% of defendants had a lawyer at their bail hearing. Harford defendants represented two thirds of the comprised sample. In April, 2001 the Public Defender ceased representing indigent defendants at bail review hearings in Harford County. Conversation with District Court Judge Angela Eaves, April 30, 2001.

⁹³ Funded by the Abell Foundation, LAB succeeded in gaining the release of one half of the nearly 4,000 people it represented during an 18 month period, beginning on August 25, 1998. This release figure is about five times greater than had occurred for defendants without counsel. See, *supra*, note 5.

⁹⁴ Professor Paternoster's analysis of five counties confirmed that represented defendants were released on recognizance twice as often as people without attorneys. Appendix H at 15.

⁹⁵ LAB clients were all randomly selected among detainees charged with nonviolent offenses. See, *supra*, note 5. Paternoster-Bushway Empirical Study. The typical LAB client was 32 years old, had lived in the Baltimore community for 24 years, had relatives living in Baltimore city or county, and had been with their current employers an average of four years. Additionally, four of five had never been previously convicted for a violent felony crime, half had no prior conviction for a felony offense, two out of three were not under parole and probation supervision, and two out of three had no prior failures to appear in court. *Id.*

The court frequently had the assistance of a neutral pretrial representative to provide relevant information and to make a release recommendation, to which judges usually give strong consideration.⁹⁶ Not all judges ask the pretrial representation to make a full report on background information. Some ask only for pretrial's recommendation.⁹⁷

An assistant State's Attorney is present at some District Court bail review hearings.⁹⁸ This may work to an unrepresented defendant's disadvantage where defense counsel is not present, since a lawyer's input is likely to influence the pretrial release recommendation.

The public is able to attend the bail review proceedings, which are scheduled at a regular time and place. Most judicial districts publish a court docket of cases.⁹⁹ Hearings usually move very quickly. The quality of justice at these proceedings depends on the amount of relevant information readily available.¹⁰⁰

⁹⁶ *Supra*, notes 79, 81. A Pretrial Services representative is present at bail reviews in Baltimore City and in Anne Arundel, Baltimore, Carroll, Frederick (serious traffic violations), Harford, Montgomery, Prince George's and Wicomico counties. Communication (e-mail), David Weissert, *see, supra* note 79.

⁹⁷ Courtroom observations in Baltimore City and Prince George's counties reveal that the colloquy between some judges and a pretrial representative may be extremely brief.

⁹⁸ In District Five (Prince George's) and District Eleven (Frederick/Washington), an Assistant State's Attorney is assigned to the bail review courtroom.

⁹⁹ Baltimore City, which conducted about one out of every three bail review hearings statewide, provided no itemized docket of bail review hearings from September 1994 through calendar year 1999. LAB attorneys often experienced bail review hearings being moved from one courtroom to another without receiving notice, making it more difficult to be present. Various conversations with LAB legal director, Chris Flohr. October to November, 1999.

¹⁰⁰ The LAB study timed the average Baltimore City hearing for a represented defendant at two minutes and 30 seconds. For the unrepresented accused, judges took an average of one minute and 45 seconds. In Frederick and Prince George's counties, judges took considerably *less* time in deciding bail reviews for the unrepresented defendant. *See, supra*, note 5, Paternosier-Bushway Study, at 2.

V. SURVEY OF BAIL PRACTICES IN FIVE MARYLAND COUNTIES

PRP developed a questionnaire (Appendix F) and observed hearings in five judicial districts: Baltimore City, Baltimore, Frederick, Harford, and Prince George's counties. During summer 1999, observers attended 628 bail review hearings and recorded information about the individual defendant, including race, gender and age; the criminal charge; the current bail; the availability of information to the bail review court; the eventual outcome of the bail review proceeding; and the type of financial bail conditions judges ordered. Professor Paternoster's findings are included in Appendix G.¹⁰¹ A summary highlighting the five-county comparative analysis follows.

A.. Race

The typical pretrial incarcerated detainee, who is not released on recognizance at the initial appearance before a commissioner, is a 31-year old, male (71%) African-American (67%). African Americans remain in jail awaiting trial because they cannot afford the bail amount at a strikingly higher rate compared to their overall population.¹⁰²

¹⁰¹ Appendix H, Comparing Bail Practices. Professor Paternoster's objective in doing this study was to present a "snap shot" of how various counties process cases at the bail stage. Counties were selected to reflect a mix of urban, suburban and rural practices. The cases selected were studied over a six-to eight-week span. Because this time period for collecting data was "not atypical", Professor Paternoster concludes that his report provides an accurate "snap shot" of how different Maryland counties processes bail cases. Correspondence January 16, 2001.

¹⁰² For example, in suburban Baltimore County, Maryland's third largest region, African-Americans constitute 12.4% of the general population, but were 54% of the pretrial detainees who appear at bail reviews. In smaller rural counties, such as Frederick and Harford counties, the ratio of African-American bail review detainees to their representation in the local population is even greater: about six times as many African-American defendants appeared at Frederick and Harford bail reviews than their single digit proportion within the county's population.

B. Availability of Information

In each county, procedures differ as to whether a defense attorney, a prosecutor, and a pretrial release representative is present to provide judicial officers with information. Public defenders represented indigent defendants infrequently. A defense attorney's advocacy makes it significantly more likely that a judge will release a detainee on recognizance.¹⁰³ Often a State's Attorney and a pretrial representative are present. In Frederick, where a pretrial representative and a defense attorney were both absent, judges ordered the highest financial bail conditions.¹⁰⁴

1. Defense Counsel

Lawyers represented only 23% of detainees.¹⁰⁵ More than two-thirds of the represented detainees were in Harford County. In the remaining four counties, it was unusual to see a lawyer speaking on behalf of an accused. For instance, during six consecutive days in Prince George's County, none of the defendants were represented at a bail review hearing; over an intermittent six-week period in Baltimore County, only one of 20 detainees was represented by counsel. In Baltimore City and Frederick County, the situation was somewhat better. Lawyers appeared on behalf of one in seven individuals.¹⁰⁶ Many represented defendants had retained private counsel.¹⁰⁷

¹⁰³ See, *supra*, note 5, Paternoster-Bushway Study.

¹⁰⁴ *Infra*, note 113.

¹⁰⁵ Appendix H, Comparing Bail Practices, at 6.

¹⁰⁶ *Id.*, at 7. In Baltimore City, lawyers appeared in 15% of the cases, while in Frederick County, private counsel was present on behalf of 13% of the detainees.

¹⁰⁷ In Prince George's, Baltimore, and Frederick counties, the Public Defender does not assign attorneys to bail reviews. In July 1999, Baltimore City Public Defenders began representing indigent defendants and provided full representation by Fall, 2000. At the time when this Study was conducted, the Public Defender had been representing indigent defendants in Harford and Montgomery counties. See, *supra*, note 7, indicating Harford public defender ceased representation in April, 2001.

2. The Defendant and Family or Friends

Only 6% of the sample group had family or friends present to provide favorable information to the presiding judge.¹⁰⁸ Moreover, many unrepresented detainees were unlikely to speak on their own behalf. Owing perhaps to a concern that they might utter a prejudicial remark¹⁰⁹ or that they lacked legal training, Baltimore City judges failed to offer an opportunity to speak to nearly four of five detainees. In Prince George's County, more than two of three defendants remained silent and were never asked to provide relevant information to the bail review judge. Consequently, in these jurisdictions, bail hearings, neither a defense counsel, a family member or friend, or the defendant speaks. Defendants in Baltimore, Frederick and Harford counties are much more likely to be given the opportunity to speak.¹¹⁰

3. State's Attorneys

An Assistant State's Attorney's odds of being present were about twice as great as their adversarial counterpart.¹¹¹ Prosecutors' practices, however, vary from county to county. In Prince George's and Frederick, they attend 90% of the bail reviews. Harford prosecutors generally chose not to be present at the daily bail reviews, after having reviewed that day's docket of scheduled cases. Baltimore City and Baltimore County state attorneys attended fewer than 5% of the bail review hearings.

¹⁰⁸ Appendix G at 8. The data does not include the proportion of family or friends who spoke to a pretrial representative.

¹⁰⁹ Some judges provide detainees with *Miranda* warnings just prior to being asked whether they wanted to say anything, causing many to remain silent.

¹¹⁰ Baltimore County judges asked 88% of detainees whether they wished to say anything, while Frederick and Harford county judges made it a common practice to include the detainee's input. Appendix H, Table 7 at 10.

¹¹¹ An Assistant State Attorney was present for 43% of the 628 bail reviews that comprised the sample.

4. Pretrial Release Representative

Judges usually depend upon a pretrial release representative. With the exception of Frederick County, a pretrial representative was present in each county to provide information on the charge, the defendant's past record of arrests, convictions, and failures to appear, any pending cases, and probation or parole status. For only two of five detainees was information provided as to an accused's verified community ties, such as residence, family, and employment.¹¹²

C. Contrasting Bail Practices in the Five Counties

Frederick and Baltimore County Commissioners set the highest mean (arithmetic average) bail.¹¹³ In Harford County, Commissioners' initial bail amounts were 2 1/2 times *lower* than Baltimore City's bails and substantially lower than in the other counties.¹¹⁴

The typical median (50th percentile) initial bail was highest in Frederick County and lowest in Harford County.¹¹⁵ As discussed in Part VII, because Baltimore City's per-household income level is considerably lower than that in the other four counties in this Study, the same dollar amount is likely to represent the greatest financial hardship for individuals and families living there.

¹¹² Conversation with Professor Paternoster, January 9, 2001. *See*, Appendix G; *see also*, note 96.

¹¹³ Excluding the rare extreme bail of \$150,000 or higher, which may have been set in one or two cases, *see, infra*, note 116, commissioners in Frederick County averaged the highest bail, \$20,454, followed closely by Baltimore County, \$19,408, Prince George's County, \$16,449, and Baltimore City, \$14,954. These figures refer only to cases where bail was set. Appendix H at 4.

¹¹⁴ Harford County's average \$5,759 bail, excluding one extreme over \$150,000 amount, was considerably lower than every other Maryland county and about two fifths of Baltimore City's average.

¹¹⁵ When considering nonviolent crimes only, Frederick and Harford's Commissioners again represented the high and low positions: Frederick's prereview bails for nonviolent offenses averaged \$7,500, while Harford County averaged \$2,500. Baltimore City's typical bail for defendants accused of nonviolent crimes was \$3,250. Baltimore and Prince George's counties typically ordered \$5,000 bail for offenders charged with such crimes. Appendix H at 4.

The main players' different attendance records at a county's bail review hearing may help to explain the different outcomes. Reviewed bails were the highest in Frederick, where there is neither a defense lawyer nor a pretrial representative in court, and the lowest in Harford County which provided for a Public Defender representation and a pretrial representative.¹¹⁶ In addition, represented detainees were twice as likely to be released on recognizance at bail review hearings as unrepresented detainees. Release on recognizance was granted for one in four represented Harford detainees, compared to only one in fourteen unrepresented Frederick detainees.

For the entire sample group, judges released about one of four detainees on personal recognizance (24.5%) and lowered bail for one in four individuals (27%). In nearly half the cases, judges maintained the prior bail conditions.¹¹⁷ It was relatively rare for a judge to increase the amount.

Yet there were substantial differences in the counties proceedings. Baltimore County judges changed bail conditions in 72% of the cases, while Frederick judges maintained the same bail for 63% of defendants and Baltimore City judges for 55%.¹¹⁸ Similarly, differences existed in the frequency with which judges changed bail and ordered release on recognizance. Baltimore and Harford county bail review judges granted release on recognizance to one of four detainees, compared to their colleagues in the three other

¹¹⁶ In calculating the mean (average) bail following a judge's review, Professor Paternoster excluded bails that were greater than \$150,000. For example, Baltimore County had the most number of extreme bails: four bail amounts of \$250,000, and one of \$500,000. Baltimore City, on the other hand, had no bails that were "extreme" and over \$150,000. Frederick County had one \$200,000 bail and one \$500,000 bail. Harford County had a \$1 million bail for one of its cases, and Prince George's had a single \$250,000 bail. When these unusual bails are excluded, Frederick County had the highest reviewed bail (\$15,668), followed by Baltimore City (\$13,657), Baltimore County (\$12,359), and Prince George's County (\$8,300). Harford County's reviewed bail was far and away the lowest at \$5,471.

¹¹⁷ Forty-four percent of commissioner bails remained the same after judicial review in the five counties. Some counties, however, maintained the prior bail far more frequently. Appendix H, at 14.

¹¹⁸ While video jail bail reviews are the norm in the other four counties, Baltimore County detainees are the only defendants to physically appear before a judge in bail review court. This study was not designed to measure the impact of a detainee's personal courtroom appearance. Thus, it would be speculative to suggest the extent to which this factor is responsible for the likely change in Baltimore County's prereview bails.

counties who did so for fewer than one of ten individuals.¹¹⁹ Baltimore County judges also reduced the dollar amount of bail in almost one half of its cases; at the other extreme, Prince George's judges rarely (3.7%) lowered the amount previously set.¹²⁰ Baltimore City and Harford judges were the most likely to *increase* bail; detainees in the remaining counties rarely suffered similar adverse rulings at bail reviews.¹²¹

The nature of the charge justified half of judges' review rulings in Baltimore City and County. In comparison, Harford judges declared that the particular charge was responsible for their ultimate determination in only one of five bail reviews. An accused's criminal past drove 15% of judges' decisions in the five jurisdictions. But Frederick County judges cited this factor three times as often. Finally, there were significant differences in the frequency with which judges identified a defendant's prior failure to appear in court.¹²²

Only 5% of the judges based determinations on an accused's residential, family, or employment ties. It is not clear whether this is due to the lack of information or minimization of its value. It is clear that in the absence of a defense attorney, or a pretrial release representative, judges are unlikely to obtain a perspective on the detainee's reliability for reappearing in court, based on being a long-time resident of the community and having a stable or supportive home environment.

¹¹⁹ Appendix D, Commissioners Report. In reviewing commissioners' bail decisions, Baltimore City judges granted release on recognizance in less than 10% of its cases, second lowest to Frederick County. Prince George's judges have a unique practice: it provides for a "pretrial option" which permits the pretrial agency to decide whether to supervise a detainee while a case is pending. Consequently, judges' ordering release on recognizance for 1% of detainees is misleading. Prince George's pretrial release agency takes the "option" for about half of its detainees. *See, supra*, note 119.

¹²⁰ In Baltimore City and Frederick County, approximately one of four bail amounts were reduced following the review hearing; in Harford County, bail reductions occurred for roughly one of six detainees (17.8%). Appendix H at 14. While Prince George's judges do not often reduce bail, they follow Pretrial Release's active role and its recommendation for supervised release for one half of detainees.

¹²¹ About one in ten Baltimore City and Harford detainees had their bail amount increased. In comparison, this was a rare occurrence in Baltimore (2.4%), Frederick (2.7%), or Prince George's counties. *Id.*

¹²² Appendix E, Tables 6 and 7; Appendix H, Table 10, at 16.

D. Type of Bond

Because of the lack of defendants' representation, judges rarely heard applications for a less onerous financial alternative to a surety or commercial bail bond. Overall, such options were raised, presumably by the detainee or a pretrial representative, in only one out of six cases. Judges heard requests for unsecured collateral bonds nine times as frequently as they did for a cash alternative, suggesting detainees' inability to afford a money bail, even if it was refundable. Baltimore and Harford judges received the most suggestions, 20% in all, for permitting detainees to post unsecured collateral bonds. Frederick County judges heard the most requests for 10% cash alternatives: one in 10 unrepresented detainees made this application.

Finally, judges in Baltimore and Harford County and Baltimore City were the most likely to impose conditions on pretrial release. For example, one of two Baltimore County, two of five Harford, and one of three Baltimore City detainees were released upon complying with certain conditions. Stay-away orders were the most common, having been included in 43% of personal recognizance decisions. Pretrial supervision was the next most frequent condition. Judges directed 31% of released detainees to report to a pretrial agency, 15% to receive drug counseling, and 11% to be tested for drug substance abuse.

E. Impact of Bail Decision

The importance of the bail review decision is magnified when one considers the lengthy delay between the hearing and the next court appearance. Detainees typically wait 30 days and longer before returning to court.¹²³ As a practical matter, writs of habeas corpus offer little recourse, either because the defendant does not have an attorney or because the "emergency" writ is often not heard until many weeks after the filing date.¹²⁴

¹²³ *Supra*, note Part IV (C)(1) at 21. For example, it is not uncommon for trials in Prince George's county to be scheduled 60 days after the bail review hearing is held.

¹²⁴ Baltimore City writs of habeas corpus usually take between two to four weeks before being heard. Beginning in November 1995 when the Centralized Booking & Intake Center opened, detainees could apply for an expedited habeas hearing. The Pretrial Release agency helped detainees who appeared eligible for

Consequently, many defendants remain incarcerated unnecessarily after their bail has been reviewed, because they cannot afford bail. Maryland's pretrial jails are burdened with managing a large population, consisting of many detainees who are charged with nonviolent offenses that ultimately do not result in a conviction.¹²⁵ This Report's next section explains that many detainees remain in pretrial detention because Maryland judicial officers set full financial bail conditions that are most onerous for economically disadvantaged people.

VI. BAIL BONDSMEN'S PROMINENT ROLE IN MARYLAND

Under Maryland law,¹²⁶ judicial officers must consider *the least onerous* option before moving to the next available choice.¹²⁷ However in practice, they generally opted for the most onerous choice, a full financial bond, and rarely used unsecured or percentage cash bonds. Inadequacy of information available appears to be at the root of the problem.

A. Analyzing Maryland's Bail Bond Options in Calendar Year 1998

The 1998 Commissioners' Report provides a nearly complete picture of the extent to which the various types of financial bail bonds were utilized to secure the pretrial release of 59,574 defendants facing criminal charges in the twelve judicial districts.¹²⁸

pretrial release.

¹²⁵ In fiscal year 1999, 194,468 people (about 92% of arrestees) were prosecuted in Maryland's District Courts; 59,446 were found guilty, including individuals who received probation before judgment sentences. Statewide, Maryland's District Court conviction rate was slightly more than 30% percent (30.6%). District Court of Maryland, Statistical Report for Criminal Proceedings, July 1998 to June 1999. In fiscal year 2000, the conviction rate rose to just under one third (33.1%). Appendix F, District Court of Maryland, Statistical Report for Criminal Proceedings, July 1999 to June 2000.

¹²⁶ *Supra*, Part IV at 16-19.

¹²⁷ *Supra*, note 1.

¹²⁸ Appendix I, Commissioners Report, Tables 10(a)-(d).

According to David Weissert, Coordinator of Commissioner Activity, Maryland District Court, and Joan E. Baer, Operations Specialist for the District Court of Maryland, the Report indicates that approximately 90% of District Court bail bonds were posted at the commissioner's station following the defendant's initial appearance, either before or after the bail review hearing.¹²⁹ While the Report excludes bail bonds paid at Court offices,¹³⁰ it provides the best available source on the types of bail and conditions imposed in releasing nearly 60,000 detainees pending trial.¹³¹

Most pretrial detainees for whom bail was set used a corporate surety bail bond, the last option enumerated in the Maryland Rules.¹³² Such bonds were used for 60% of detainees at Maryland District Court commissioner stations in 1998. Property bonds represented 19% of the overall total. Close behind were full cash deposits with a court clerk, accounting for 13%. Thus, almost 93% of defendants awaiting trial were released after posting the full amount of the financial bail bond, by a corporate surety, property, or full cash bond.¹³³

Of course, many detainees were not able to afford the full amount of a financial bail bond. They may not have owned any property or the property available might have been insufficient collateral. Others may not have had the full cash amount or found it difficult to

¹²⁹ The Report categorizes 59,574 bail bonds that were posted at some point following the initial appearance, either before or after the bail review hearing. *See, supra*, note 90. The statistical breakdown does not include 4,097 bonds that defendants posted immediately following a Commissioner's pretrial release order. Weissert indicated that defendants usually paid the full amount of these 4,097 bonds by full cash or by credit card. Telephone conversation, October 9, 1999. The Report also does not include bail bonds that were posted at Maryland's Circuit Courts.

¹³⁰ *Id.*

¹³¹ The Report's data do not provide precise numbers for when judicial officers imposed a particular type of financial option for defendants at bail hearings. It only indicates the type of financial bail bond people posted at Commissioner stations. While it is theoretically possible that a detainee chose to remain incarcerated on an unsecured or a percentage bond, most detainees likely remained in jail because they could not afford the amount of financial bail.

¹³² Md. R. 4-216(d)(4)(D)

¹³³ Appendix D, Commissioners Report, Tables 10(a)-(b).

pay the bondsmen's 10% fee, knowing it would not be returned, even if the defendant reappeared in court and the charge was dismissed. For these detainees, the Maryland Rules theoretically provided two more accessible types of financial conditions, unsecured bail bonds and percentage cash bonds.

*Yet these were the least frequently used bonds. Less than 5% of detainees were released on an unsecured collateral bond; less than 3% deposited a 10% cash alternative.*¹³⁴

Corporate surety bonds, the most onerous type of bond, were used nearly fifteen times as often as were unsecured bail bonds, the least onerous bond option. In addition, detainees and families paid the nonrefundable 10% fee for a corporate surety bond 20 times as frequently as they deposited the refundable 10% cash bond with a court clerk. Only one of 25 defendants signed an unsecured bond.

These results, so at variance with Maryland's statutory provisions, raise obvious questions. Why do judicial officers rely so extensively on full financial bonds? Are they aware that when they order a full bond, bail bondsmen are then the likely option for most detainees and families? Do bail bondsmen provide a greater assurance that defendants will appear? Are most defendants a poorer risk to reappear without the bondsmen's intervention? Before these questions are addressed, the next section discusses different bail practices among the five jurisdictions studied.

B. Contrasting Statewide Bail Bond Practices

Within Maryland's twelve judicial districts, there are startling differences in the terms of pretrial release. Consider the following:

¹³⁴ *Id.*

- In 1998 and 1999, 42 of 100 Baltimore City arrestees gained pretrial release through the corporate surety bail bondsmen, the highest percentage in the State. In contrast, only 16 of 100 Howard County incarcerated arrestees and 5 of 100 Montgomery County arrestees used bail bondsmen to gain release.

While almost 60% of Baltimore City's defendants were released on personal recognizance, 84% of the remaining detainees gained pretrial release by paying a bail bondsman a 10% nonrefundable fee. In four other judicial districts, District Two (Eastern Shore), District Seven (Anne Arundel), District Eight (Baltimore County), and District Eleven (Frederick/Washington), 75% to 80% of defendants not released on personal recognizance also relied on bail bondsmen to regain their liberty pending trial.¹³⁵ Additionally, more than 80% of Prince George's detainees likely depended on a bondsman.¹³⁶

- Judicial officers in Baltimore City and Frederick/ Washington County almost never ordered an unsecured collateral bond.

In Baltimore City in 1998, only 18 of 13,198 defendants -- one seventh of one percent -- were released on unsecured bond; in 1999, the unsecured bond was used by 1.5% of detainees. In Frederick in 1998, only five of 3,910 defendants, and in 1999, only 8 of 4,033 detainees regained their liberty by assuming responsibility for not reappearing in court. In comparison, District Ten's (Howard/Carroll counties) judicial officers used unsecured bonds 17.5% of the time, while District 3's (Cecil, Kent, Queen Anne's, Talbot, Caroline) judicial officers permitted 11.7% defendants to sign for their release.

- In 1998, Baltimore City judicial officers did not order a single refundable 10% cash alternative; in 1999, only 49 detainees, or 6/10 of 1%, were given the

¹³⁵ The exact percentage for District Two (Eastern Shore) is 79.6%; for District Eleven (Frederick), 78.9%; for District Eight (Baltimore), 78.2%; and for District Seven (Anne Arundel), 74.8%. Commissioners 1998 Report, Appendix I, Table 10(b).

¹³⁶ *Id.* In Prince George's County, 32% of detainees were released directly through a surety bond; in addition, 51.4% posted property bonds, which are frequently those of professional bail bondsmen.

opportunity to post a 10% cash deposit. Anne Arundel, Baltimore, Eastern Shore and Prince George's judicial officers also made rare use of the 10% cash alternative. In contrast, Howard and Carroll county judicial officers permitted 23% to post refundable 10% cash deposits.

Overall, Maryland judicial officers overlooked the refundable 10% cash bail as a preferred financial condition. In 1998, only 3% of Maryland defendants posted such bail. In Baltimore, *none* of the defendants among the 13,198 people who obtained pretrial release posted such bail.¹³⁷ Prince George's, Baltimore, and Eastern Shore judicial officers declined to provide a 10% bail alternative for 99.9% of the individuals who eventually posted bail.

- **Two judicial districts, Prince George's (District Five) and Calvert, Charles, and St. Mary's (District Four) allow licensed bail bondsmen to profit from placing their own property as collateral. These districts rely on surety property bonds substantially more than any other Maryland jurisdiction.**

In Districts Four and Five, licensed bail bondsmen secure defendants' appearance by placing their own property with the court. Current Maryland law values the professional bail bondsman property in these districts at ten times its assessed tax value, five times more than the ordinary assessment rate.¹³⁸ Bail bondsmen still collect their standard ten percent nonrefundable fee, but avoid sharing the fee with an insurance company for

¹³⁷ Some court personnel recalled hearing about an administrative judicial order that directed Baltimore City commissioners to refrain from ordering 10% cash alternatives. However, no one could locate any such order. Current officials denied that an official policy ever existed, and insist that historically 46 Baltimore City commissioners simply declined to issue 10% cash bonds as a general practice. This practice apparently continues: Maryland law students enrolled in the Spring, 1998 clinic did not observe a single case in which Commissioners used a 10% cash alternative. While acting as attorneys under the student practice order, students regularly asked bail review judges to provide for a 10% cash alternative. Attorneys of the Lawyers at Bail Project included similar applications; judges granted 10% cash bonds in about 100 cases during the Fall, 1998. *See, supra*, note 4.

¹³⁸ *Supra*, note 66.

underwriting the bond.¹³⁹ Instead, bondsmen pay a reduced 1% licensing fee to Prince George's and Calvert/Charles/St. Mary's counties, based on the total amount of bonds written annually.¹⁴⁰

More than one out of two of Prince George's defendants and two out of five of Calvert/Charles/St. Mary's defendants (41%) were released on property bonds in 1998. Cumulatively, in Prince George's County, 83% of defendants were released either through property or corporate surety bonds.

- Howard/Carroll county (District Ten) has the most balanced use of less onerous bail bonds.

More than 40% of Howard/Carroll defendants gained release by posting a refundable ten percent cash or an unsecured bond. In contrast, fewer than 5% of detainees were spared full financial bond in Baltimore City (District One), and in Eastern Shore (District Two), Prince George's (District Five), Anne Arundel (District Seven), and Baltimore (District Eight) counties.¹⁴¹

It is not clear why so many judicial districts rely so extensively on full financial bond, or why counties' practices differ so dramatically.¹⁴² It is clear that no objective evidence supports the notion that corporate sureties are a more reliable form of pretrial release than other less onerous conditions. It is also clear that the bail bond industry is extremely profitable. The following section examines the revenues generated by corporate surety bonds.

¹³⁹ Districts Four and Five have established a unique property bail bond system from other judicial districts. In these jurisdictions, licensed bail bondsmen may post bonds annually to the full amount of the total assessed property value. Bondsmen still collect their standard 10% fee from the defendant, but avoid paying the 2% to 4% cost to insurance companies for underwriting a surety bond. *See, supra*, note 64-69.

¹⁴⁰ Md. Ann. Code Article 27, Sec. 616 1/2(f)(2).

141 Appendix I, Table 10(b).

C. Revenue From Professional Surety Bonds

Statewide statistics are not maintained to indicate the annual dollar amount that corporate sureties, i.e. insurance companies and individual agents, earn from 10% premium fees. An investigation by this study revealed that in 1998, revenues from insurance companies and their agents ranged from \$42.5 million to \$170 million.

1. The Maryland Department of Insurance

The multimillion-dollar bond industry is largely unregulated. The Maryland Department of Insurance, responsible for licensing insurance companies and bail bond agents who are engaged in the insurance business within the State,¹⁴³ provides no oversight of the bail bond industry, except that each licensed insurance company must file an annual financial statement of the total business transacted here.¹⁴⁴ Individual agents are not required to file an annual financial statement. Indeed, the Insurance Department does not maintain even a list of the *individual* bail bond agents.

The District Court of Maryland, which requires every insurance company and every bail bond agent to register,¹⁴⁵ provided a complete list of 23 insurance companies licensed to do business in the State of Maryland through their 885 individual agents. In addition, 71 independent bail bond agents are authorized to write property bonds.¹⁴⁶

The Department of Insurance provided annual statements for each of the 23 insurance companies, but not for any of the 71 independent bondsmen. In their annual statement, each company included a figure for direct premiums written and earned for surety bonds.

¹⁴³ Md. Ann. Code Article 10, Sec. 304.

¹⁴⁴ Conversation with Kathleen Loughran, Department of Insurance, September 29, 1999.

¹⁴⁵ Md. Ann. Code Article 16, Sec. 817.

¹⁴⁶ Conversation with Cindy Spieth, Operations Specialist, Maryland District Court, May 8, 2001.

Many companies' surety premiums were divided between surety bail bonds and other types of surety bond. For example, the Lexington National Insurance Company, which is based in Baltimore and is one of the largest bail bond companies doing business in Maryland, reported total premiums for surety bonds in 1998 in the amount of \$2,289,060. The company divided this amount between surety for bail bonds, \$1,386,800, and surety-other, \$902,260. In fiscal year 1999, the total estimated amount of bail bond premiums earned by these 23 insurance companies was \$17 million.¹⁴⁷ However, the amount of earnings insurance companies reported is to be distinguished from its *gross* annual taxable revenue. For instance, in 1998 the Lexington National Insurance Company reported net premium earnings of \$1,386,800, but actually received 10 times as much: \$13,177,366.¹⁴⁸ See, Appendix J.

If every insurance company's annual financial statement reflected a similar calculation, the bail bond industry's reported revenue of \$17 million should be multiplied by

| | |
|--|-----------|
| ¹⁴⁷ Accredited Surety and Casualty Company | 31,175 |
| Allegheny Casualty Company | 307,987 |
| American Bankers Insurance Company | 28,336 |
| American Reliable Insurance Company | 2,124,985 |
| American Surety Company of Haywood | 313,225 |
| Amwest Surety Insurance Company | 356,100 |
| <i>(Amwest, too, reporting only net premiums received)</i> | |
| Atlantic Bonding Company | 948,225 |
| Bankers Insurance Company | 498,300 |
| Continental Heritage Insurance Company | 1,566,220 |
| First Community Insurance Company | 279,748 |
| Frontier Insurance Company | 1,825,524 |
| Granite State Insurance Company | -0- |
| International Fidelity Insurance | 1,749,894 |
| Legion Insurance Company | -0- |
| Lexington National Insurance Corporation | 1,386,800 |
| National American Insurance Company | 65,570 |
| National Surety Corporation of Chicago | 146,655 |
| Nobel Insurance Company | 41,329 |
| Ranger Insurance Company | 115,877 |
| Safety National Casualty Corporation | 60,677 |
| Seneca Insurance Company | 2,187,843 |
| St. Paul Mercury Insurance Company | 73,506 |

¹⁴⁸ See, Appendix J, Lexington National's Schedule of Premiums.

a factor of ten. Moreover, the \$17 million reported revenue does not include the income of the 71 individual bail bond agents.¹⁴⁹

Here's how the system works. Anyone seeking to obtain the release of an incarcerated family member or friend through a bail bondsman goes to the local bail bond office. There, the agent demands payment of 10% and the insurance company or independent agent underwrites the full amount of the bond and guarantees payment to the State if the defendant does not appear.¹⁵⁰

The individual agent bondsman and the insurance company share the customer's 10% fee. Usually, the agent pays the company 2% to 4% of the bond's face value (or 20% to 40% of the customer's 10% fee). For example, for a full bond of \$10,000, the defendant's family or friend pays an agent a nonrefundable fee of \$1,000. The agent receives between \$600 and \$800, and the insurance company receives the balance.

Consequently, when calculating gross revenue for the bail bond industry in 1998, the annual reported \$17 million premiums of each insurance company must be increased by one of the following multiples:

- 2.5 times if the agent paid the principal company 4% of the fee charged;
- 5 times if the agent paid the principal 2% of the fee charged; or
- 10 times based on insurance companies' estimated gross taxable income.

¹⁴⁹ In Prince George's County, Commissioner Leila Newman, who is responsible for regulating the bail bond business, indicated that individual bail bondsmen there wrote bonds totaling \$27 million in 1998. Conversation November 9, 1999.

¹⁵⁰ See, *supra*, note 68 and accompanying text (indicating that the bondsman accepts installment payments and often requires the individual payee to accept financial responsibility in the event the defendant absconds).

2. District Court and Circuit Court

An alternative method of calculating the annual revenue of corporate sureties would be to calculate the combined bail bonds posted in the District Court and in the Circuit Court. Unfortunately, the District Court does not maintain data on the dollar amount of bail bonds posted at the commissioner station or at the District Court clerk's office.

However, approximately 90% of bail bonds are posted at District Court commissioner stations, and these bail bonds are recorded daily. Totaling this daily amount would provide an annual figure for most of the financial bail bonds posted in an individual judicial district.¹⁵¹ To this amount, one would add the bail bonds that were posted at the clerk's office and at the Circuit Court. Obtaining this revenue information would reveal the extent to which defendants and families use each type of bail bond.

The Circuit Courts of Maryland, which handle about one twelfth the volume of District Court cases, seem a more likely candidate to retrieve information about financial bail bonds. To test this belief, relevant data was obtained from Prince George's County.¹⁵² Similar information should be available from most other Circuit Court judicial districts.¹⁵³

3. Insurance Companies and Bail Bond Agents

Department of Insurance and the District Court personnel suggested contacting the surety company and individual bail bondsmen to obtain the revenue information. Adding

¹⁵¹ Baltimore City provided a list of the 14,858 bail bonds posted at commissioner stations during calendar year 1998. Totaling the daily amounts, the value of the full bonds set was more than \$140 million; the average bond was \$8,239. Since bail bondsmen receive a 10% fee and were responsible for 84% of pretrial detainees being released, they would have earned about \$12 million dollars, exclusive of Baltimore City Circuit Court bonds, and the remaining bail bonds posted at the clerk's office.

¹⁵² See, *supra*, note 149.

¹⁵³ Telephone conversation, The Honorable Paul H. Weinstein, Administrative Judge of the Circuit Court, November 1999.

the annual income of each registered bondsmen would produce an accurate overall amount for the industry.

A State agency, such as the Department of Insurance, is in the best position to obtain such information by requiring individual bondsmen to file an individual 1040 as part of the annual licensing requirement. The District or Circuit Court also might condition authorization upon receiving information on each agent's annual income.

At present, the annual financial statements filed by insurance companies appear to be the best source for estimating the revenue generated by bail bonds. These figures suggest a wide range of income, from \$42 million to \$170 million. While only an estimate, it is clear that substantial amounts extracted from economically disadvantaged persons, have created a high-profit, unregulated industry. Before considering the impact of the 10% bondsmen's fee, this study analyzes the most common justifications offered in support of the corporate surety.

D. Examining Justifications for Corporate Surety Bonds

Maryland judicial officers usually order a full financial bond as a condition of pretrial release. Detainees usually must use bail bondsmen. Indeed, bondsmen are the means by which 60% of detainees gain pretrial release.¹⁵⁴

Reliance on professional sureties is based on the belief that bail bondsmen are the best guarantor for ensuring that defendants appear in court and for locating and apprehending those who fail to appear. There is no truth in such belief.

¹⁵⁴ *Supra*, notes 132-133 and accompanying text. Overall, almost 20% of Maryland arrestees depend upon paying a bondsman to be released from detention.

1. Defendants' Appearance Rate

Bail bondsmen claim that defendants released on surety bail have a higher appearance rate than defendants released on nonfinancial conditions and on less onerous types of bail. There is no objective support for this contention. According to the District Court's annual statistical reports, Maryland defendants appear in court at a high rate, regardless of the form of pretrial release. In fiscal year 1999, almost 95% of the 215,000 defendants charged with misdemeanor and felony offenses appeared at their scheduled District Court proceeding.¹⁵⁵ This rate remained relatively constant in fiscal year 2000.¹⁵⁶

The no-show rates are substantially less than national figures and those in other states.¹⁵⁷ Maryland pretrial release programs also indicate that defendants who are supervised pending trial have a high appearance rate.¹⁵⁸

Earlier last year, the Judicial Information System (JIS) for the Maryland District Court provided statistical data on the failure to appear rate for each type of pretrial release in

¹⁵⁵ In fiscal year 1999, 213,343 people were charged with criminal offenses in Maryland. District Court statistics indicated that 5.3% failed to appear ("FTA") for their scheduled court date. District Court of Maryland, Monthly Statistical Reports, Criminal Filing and Disposition Statistics ("District Court Statistical Report"), July 1, 1998 to June 30, 1999, Appendix F. This rate does not include defendants who failed to appear for cases that were ultimately dismissed or nolle prossed. See, *infra*, note 160, for more current data suggesting that the FTA rate is higher for District Court cases.

¹⁵⁶ In fiscal year 2000, 204,642 people were charged with criminal offenses. Of this number, 5.4% failed to appear in court. District Court Statistical Reports, July 1, 1999-June 30, 2000. This rate does not include defendants who failed to appear for cases that were ultimately dismissed or nolle prossed.

¹⁵⁷ Nationally, 14% of defendants charged with felonies in forty of this nation's seventy-five largest cities obtained pretrial release through bail bondsmen. *National Pretrial Reporting Program: Felony Defendants in Large Urban Counties 1990*, Bureau of Justice Statistics, May, 1993 at 8. The National Pretrial Services Release Center, which monitors the National Pretrial Reporting Program's data collection and reporting for the Department of Justice, has suggested a higher percentage of people use bail bondsmen in misdemeanor cases and when charged with felonies in suburban and rural areas. D. Alan Henry and Bruce D. Beaudin, *Bail Bondsmen, American Jails*, Nov/Dec 1990, at 10. See, *infra*, notes 165-169.

¹⁵⁸ In Baltimore City, 93% of defendants conditionally released to pretrial services appeared in court when required. Baltimore City Pretrial Release Agency, 1998-99 statistics.

Maryland counties.¹⁵⁹ These data belie the bondsmen's claim that bonded defendants have a higher appearance rate.

Defendants who posted refundable cash bond with the court reappeared at a higher rate than bonded defendants.¹⁶⁰ Bonded defendants generally reappeared in court at a higher rate than defendants released on recognizance and at a lower rate than people who posted property bond. The data, however, provide no indication of whether the difference in court appearance rate is related to the type of charge, i.e. felony or misdemeanor, or whether defendants were supervised when released on recognizance. Maryland's Circuit Courts, which includes fewer defendants facing only felony prosecutions, maintains statistics about the failure-to-appear rate for defendants who were released on various nonfinancial and financial pretrial conditions. Montgomery¹⁶¹ and Prince George's¹⁶²

¹⁵⁹ In some respects, the data obtained from District Court is puzzling and requires additional study. First, the higher failure-to-appear rate is significantly different than the District Court's statewide statistics. In Baltimore City, 10.8% failed to appear in 1998, and 12.8% missed their court appearance in 1999; Baltimore County's FTA rate was 15% in 1998 and 17% in 1999; Frederick County's FTA rate was 11.1% in 1998 and 11.7% in 1999; Harford County's rate was 15.1% in 1998, and 14.1% in 1999; and Prince George's County's FTA rate was 17.9% in 1998 and 17.5% in 1999. Second, the recent information seems at odds with the number and type of bonds posted by detainees at commissioner stations. *See, supra*, notes 90-91. Third, some districts report an improbable failure to appear rate. For example, while Baltimore City was one of the few judicial districts with a single digit failure to appear rate, its two smallest districts showed that 66% and 94% of defendants missed their scheduled court appearance. David Weissert, Coordinator of District Court Commissioner Activity, also believes that the new data requires further analysis. Telephone conversation, February 12, 2001.

¹⁶⁰ In 1999, in 24 of Maryland's 33 reported district court locations, defendants released on cash bond had a higher appearance rate than defendants released on bail bond. In three other districts, the appearance rate was the same. In 1998, the appearance rate for both groups was comparable.

¹⁶¹ The Montgomery County Circuit Court maintained annual data, which showed that in fiscal year 1999, a total of 558 bail bonds were set. Twenty-three percent failed to appear and ultimately forfeited their bail bond. Montgomery County's breakdown showed that defendants released on surety bond and cash bond had the highest non-appearance rate of 30%, while only 21% of people released on personal bond failed to attend court. Property bonds had a slightly lower rate of forfeitures at 20% percent. Telephone conversation with Circuit Court Judge Paul H. Weinstein, Nov. 9, 1999; telephone conversation with Commissioner Leila Newman, January 21, 2000.

¹⁶² From January 1, 1998 to December 31, 1998, a total of 9,439 bail bonds were written for felony crimes in Prince George's County Circuit Court. More than half the defendants remained in pretrial detention awaiting trial. Of the 4,260 defendants released pending trial, 13% failed to appear in court. Prince George's County maintains bond forfeiture statistics for the different categories of pretrial release. According to Commissioner Leila Newman, bail bondsmen fall under two categories, corporate and surety. Compared to the overall 13% failure to appear rate for Circuit Court felonies, the rate for bonded defendants was 18%. People released on recognizance or pretrial supervision had a much better record for appearing in court: only

counties provided information which showed that defendants released on recognizance had a considerably higher appearance rate than surety bonded defendants.

Outside of Maryland, most studies have concluded that defendants appear in court less often when bail bondsmen are involved than when defendants are released on recognizance, conditional supervision, or private surety.¹⁶³ In 1981, for example, a Lazar Institute study, sponsored by the Department of Justice, showed that the failure to appear rate for nonfinancial bail (12.2%) was lower than the rate for financial bail (13.6%).¹⁶⁴ In 1992, Connecticut also found a better appearance rate for defendants released on nonfinancial bail than those on financial bail: 11% versus 15%.¹⁶⁵ Similarly, a 1993 Arizona pretrial release study found that defendants released conditionally had a failure to appear rate nearly half that of bonded defendants.¹⁶⁶

In 1992, a national study reached a different conclusion. Conducted by the Federal Bureau of Justice, the study focused on felonies in 40 of the most populous counties and revealed that bonded defendants failed to appear in 15% of their cases, while defendants conditionally released were no-shows 19% of the time.¹⁶⁷

9%, failed to attend their scheduled Circuit Court proceeding.

¹⁶³ Spurgeon Kennedy and Alan Henry, *Commercial Surety Bail: Assessing Its Role in the Pretrial Release and Detention Decision*, *Pretrial Issues*, Nov. 1996, at p. 5.

¹⁶⁴ *Id.*, citing The Lazar Institute, *Pretrial Release: A National Evaluation of Practices and Outcomes: Summary and Policy Analysis*, Volume 1981, p.15.

¹⁶⁵ *Id.*, citing Justice Education Center, Inc., *Alternatives to Incarceration Phase I: Pretrial Evaluation* (August 1993).

¹⁶⁶ *Id.*

¹⁶⁷ National Pretrial Reporting Program: Pretrial Release of Felony Defendants in Large Urban Counties 1992, (Washington, DC: Bureau of Justice Statistics) at 10, Table 14. The Pretrial National Resource Center attributed these differences to the use of aggregate statistics which varies from jurisdiction to jurisdiction. For example, in 13 of 28 jurisdictions, the FTA rate for conditionally released defendants was lower than for bonded defendants, ranging between 5% and 16%. *Id.* at 4; Kennedy and Henry, *supra*, notes 164-167. The Center also explained the difference to bondsmen gaining early access to low-risk detainees, who would have been released conditionally or on recognizance. *Id.*

Moreover, most of these outside studies focus on rates of failure to appear rates in felony cases, and may not apply to misdemeanor charges, which represent the overwhelming majority of cases entering Maryland's criminal justice system.¹⁶⁸ A statewide District and Circuit study would obtain accurate information about the likelihood of people returning to court for each type of pretrial release condition.

2. Apprehending Absconders

Despite widespread beliefs to the contrary, bail bondsmen assume a less active role in securing the return of clients who failed to appear in court. Indeed, police catch absconders far more often than do bail bondsmen. Moreover, in Maryland, bondsmen face virtually no risk of financial loss for failure to obtain their clients' appearance, so there is virtually no incentive to aggressively pursue absconders.

In 1998, corporate sureties surrendered only 245 Maryland defendants,¹⁶⁹ one sixth of the bonded defendants who failed to appear and forfeited bail.¹⁷⁰ This is comparable to the national rate.

Most national studies have concluded that, contrary to popular belief, bondsmen are "relatively passive about overseeing the appearance of their clients,"¹⁷¹ and that "in reality, bail jumpers are far more often caught by the police than by the bail bondsmen."¹⁷² A 1979 American Bar Association study, for instance, found that bondsmen had no

¹⁶⁸ See, *supra*, note 56.

¹⁶⁹ 1998 Commissioners Report, Appendix I, Table 10(a). In 1999, bondsmen apprehended only 211 defendants who had failed to appear in court. *Id.*, at Table 10(c).

¹⁷⁰ This figure is based upon reviewing monthly forfeitures maintained by the District Court of Maryland's District Court Headquarters for the 1999 calendar year.

¹⁷¹ James G. Carr, *Bail Bondsmen and the Federal Courts: Federal Probation*, March 1993, at 12, who referred to the Hearings on Bail Reform Before the Subcommittee on the Constitution of the Senate (Committee on the Judiciary at 205 (Statement of Jerry Watson)); Wayne H. Thomas Jr., *Bail Reform in America* 1976 at xi (forward by Floyd Feeney).

¹⁷² *Id.* ("Society's reliance on a private bounty system for such a serious purpose seems unwarranted.")

involvement in 89% of cases in which defendants were apprehended and returned. Local studies in Harris County, Texas and Pima County, Arizona reported that the police, not the bondsmen, were responsible for returning absconders on bail bonds.¹⁷³

As stated by United States Magistrate James G. Carr: “In an era of NCIC, instantaneous communication, and ever improving methods of ascertaining and verifying identities, the claim that bail bondsmen are able to respond more effectively than federal and local law enforcement agencies to a defendant’s flight is more implausible and less tenable than ever.”¹⁷⁴ Magistrate Carr further suggests that perhaps full financial bond and corporate bondsmen are used widely because judicial officers are acting “uncritically and on the basis of local custom and practice.”¹⁷⁵

In theory, bondsmen are financially responsible for paying the remaining 90% of the full amount whenever a criminal defendant fails to appear and becomes a fugitive from justice. In practice, bondsmen rarely pay an outstanding amount. Some attribute the lack of enforcement to the lack of state regulation over bonding activities.¹⁷⁶ Others explain that bondsmen shift the responsibility for paying the full bond amount to the person paying the 10% fee.¹⁷⁷

Special legislation permits bail bondsmen to delay the bond forfeiture by obtaining a 90-day and a 180-day extension for the defendant to reappear or to surrender.¹⁷⁸ Moreover, bail bondsmen may always apply for recovery of any forfeited money when a

¹⁷³ Kennedy and Henry, *see, supra*, note 177 at 7.

¹⁷⁴ *Supra*, note 172 at 12 n.40. (“The claim that private agents can do a better job of finding and returning fugitives than Federal and local law enforcement officers has never had empirical support.”) *Id.*

¹⁷⁵ *Id.* at 9.

¹⁷⁶ Kennedy and Henry, *supra*, note 177, at 6; Mary A. Toborg, et. al., *Commercial Bail Bonding: How It Works (Summary of Final Report)*, Washington, D.C., April 1986, at 7.

¹⁷⁷ National Pretrial Resource Center, *supra*, notes 71-73.

¹⁷⁸ Md. R. 4-217(i)(3); Md. Ann. Code Art. 27, s.616(e)(2)(i).

defendant appears in court *at any time* beyond the 180-day extension period.¹⁷⁹ Indeed, Maryland law permits the bondsmen to recover forfeited money during a *10 year period* following a failure to appear by showing that the defendant is incarcerated at an out-of-state facility, and that the state is unwilling to issue a detainer and extradite the defendant to Maryland.¹⁸⁰ Finally, when forfeiture occurs, bondsmen usually are able to avoid Maryland's collection process. In 1998, Montgomery County recovered a paltry sum of \$20,000 from bail bondsmen from among the 130 bonds that were forfeited.¹⁸¹

VII. ECONOMIC IMPACT OF FINANCIAL BAIL¹⁸²

When judicial officers condition pretrial release upon money bail, the financial hardship upon detainees and their families or friends is often substantial. To secure the defendant's release, they often must use money that is designated for rent, food, or utilities, or else borrow from others. Paying the bail bondsman an outright 10% fee to gain the release of an economic provider represents the loss of one or two weeks of that person's take home salary.

Obviously, people living in impoverished communities will be least able to make money bail. According to the 1995 United States Census Bureau, Frederick County had the highest median income of the five counties, \$51,220, compared to \$25,918 in Baltimore City, \$25,918¹⁸³ where one of four people are estimated to be living in poverty.¹⁸⁴

¹⁷⁹ Md. R. 4-217(i)(5) ("When the defendant is produced in court after the [180-day] period allowed . . . the surety may apply for the refund of any penalty sum paid in satisfaction of the forfeiture less any expenses permitted by law."); Md. Ann. Code Art. 27, s. 616(e)(2)(ii).

¹⁸⁰ Md. Ann. Code Art. 27 Sect. 616(e)(5)(ii)(1-3).

¹⁸¹ The total amount collected for forfeited bonds was \$25,600, the difference being the amount of surety cash bail that was recovered. While the aggregate amount of Montgomery County's 130 forfeited bonds is not available, one can gain a picture of just how small the collectibles were by assuming that the typical outstanding Circuit Court bond was \$10,000. If bondsmen were liable for 90%, they would have owed the county \$1,170,000 (\$1,300,000 less \$130,000).

¹⁸² Appendix L, Report by Professor Ray Pasternoster, *Economic Impact of Financial Bail*.

¹⁸³ Baltimore County's 1995 median household income was \$42,021, while Prince George's was \$45,281.

PRP measured the economic impact of financial bail by interviewing pretrial detainees in each of the five Maryland counties. Professor Paternoster analyzed this data and confirmed that:

- 75% of the people who were expected to be asked to post bond believed it would be “very difficult” or “difficult” to provide the money;¹⁸⁵
- Because of paying bail, 70% of those surveyed would have to delay payment of the rent and utilities, and would be able to purchase fewer groceries;¹⁸⁶
- The inability to post bail meant that during incarceration 25% feared they would lose their job, and two in five thought they would lose their home;¹⁸⁷ and
- Baltimore City defendants made an average payment of \$500 to bail bondsmen, twice the average median, despite the fact that its average household income is the lowest among the five counties studied.¹⁸⁸

VIII. CONCLUSION

Maryland has a sound pretrial release and bail law, requiring the least onerous possible conditions to be set for all but the most serious charges. However, judicial officers are thwarted in their efforts to honor the letter and spirit of the law because of a dearth of essential information. Lack of counsel for the accused, a complete pretrial release

¹⁸⁴ Baltimore County's poverty rate was 6.65%, while Prince George's was 8.1%.

¹⁸⁵ Appendix L at Table 10.

¹⁸⁶ *Id.* at Table 11.

¹⁸⁷ *Id.* at 5.

¹⁸⁸ *Id.* at Table 9 at 3.

investigation, and an assistant state's attorney input means a lack of critical data about the defendants' community ties and financial ability to pay. As a result, judicial officers impose full financial bond for nearly half of arrestees and set bail too high for low income defendants, particularly those charged with nonviolent offenses. In the absence of these critical players, a judicial culture has evolved in which bail bondsmen play too great a role, despite the widespread and longstanding knowledge that such a role is contrary to the fair administration of the criminal justice system. Such a culture is particularly damaging to individual criminal defendants and creates a devastating hardship on their financial and family situation and ability to obtain liberty before trial.

To assist in making the actual practice in Maryland in the use of bail consistent with the statutory provisions and with the fair administration of justice, this study offers a number of recommendations.

RECOMMENDATIONS

Judicial Pretrial Release Proceedings

1. Maryland's pretrial release and supervision system should be expanded statewide to provide judicial officers with information relevant to pretrial release determinations and assistance in monitoring those determinations. Such personnel should:
 - a) conduct a prerelease investigation into each defendant's background and provide, verified information about the defendant's financial circumstances and ability to afford bail, employment status and history, and family and community ties;
 - b) answer queries from the defendant's family, victims, and witnesses about scheduling; ascertain the victim's interest in pursuing prosecution; and provide assistance to victims and witnesses by instructing them on

procedures and on requesting that release, if granted, may be conditioned on the defendant's staying away from victim(s) and witness(es);

c) monitor defendants prior to trial, including defendants who are on home detention and who are released to pretrial work release, treatment, or other programs, and assist them in compliance with all conditions of pretrial release; and

d) review, on an ongoing basis, the status and release eligibility of detained defendants and provide, information that may alter the release determination.

2. Maryland defendants should be provided with public defendant representation at the initial appearance and bail review hearings.
3. An Assistant State's Attorney should be present at the bail review proceedings.

Financial Pretrial Release Conditions

4. Maryland Rules should provide an automatic 10% refundable cash bond payable to the court for all bailable criminal or traffic offenses. Md. Code Annotated, Art. 27, s.616 2 (b)(2).
5. Maryland Rules shall make clear that monetary bail should be used sparingly, limited to situations when "no [other] condition of release will reasonably assure (1) the appearance as required and (2) . . . The safety of the alleged victim." Md. R. 4-216 (c).
6. Judicial officers should consider an unsecured collateral bond and other modes of pretrial release in lieu of a collateral bond. Md. R. 4-216(f)(4)(A).

7. Upon implementation of recommendations #1 through #6 above, Maryland should study the viability of eliminating the use of the commercial surety, as recommended by American Bar Association Standards Related to Pretrial Release 10.1-3.

Judicial Officers

8. Judicial officers should receive training and education with regard to pretrial release determination prior to assuming judicial duties and at annual judicial seminars.
9. A Commissioner should determine the conditions of pretrial release for all bailable offenses after due consideration of the factors affecting pretrial release, except as to crimes punishable by death or a life sentence or instances when a judge specifies that no bail is allowable.
10. Each county's administrative judge should receive a weekly report detailing a complete list of detainees held in pretrial custody and consider whether any change is warranted in detention status. Md. R. 4-216(j).

Community-Based Revolving Bail Fund

11. In the short term detainees should be offered an alternative to paying the bondsmen's fee. A revolving bail fund would identify and post 10% cash bail for individuals who were employed, were caretakers, or otherwise had reliable community ties. Ideally, this bail project would have a visible location within the local detention facility. The bail project would educate detainees and families about the bail process.

APPENDIX A

Charles M. Preston Letter



Maryland State Bar Association, Inc.

The Maryland Bar Center

April 20, 1999

520 West Fayette Street
Baltimore, MD 21201-1781

The Honorable Robert M. Bell
Chief Judge, Court of Appeals of Maryland
634 Courthouse East
111 North Calvert Street
Baltimore, Maryland 21202

(410) 685-7878

Re: *Maryland Bail Review Hearings*

(800) 492-1964

Dear Chief Judge Bell:

fax (410) 837-0518

tdd (410) 539-3186

e-mail msba@msba.org

In the recently concluded Session of the Maryland General Assembly, House Bill 889 and Senate Bill 335 proposed making Public Defenders available for indigent defendants at bail review hearings. The proposed legislation was supported by many, including the Board of Governors of the Maryland State Bar Association, Inc. (MSBA), as a sensible and much needed reform measure which would, among other things, provide relief to the severely crowded jail and criminal dockets in the City of Baltimore. Unfortunately, the effort met with defeat in committee, albeit some relief may yet be forthcoming as a result of certain appropriations.

Charles M. Preston
President

Hopefully, the matter can be addressed in the next Session in Annapolis. In that vein, I respectfully suggest that, at the Court's direction, a study be undertaken to evaluate the entire bail review process. You should know that I have the unanimous support of MSBA's Executive Committee and Board of Governors. One objective would be to have a report available prior to the next Session so that any similarly proposed legislation could be considered in light of such a report.

James L. Thompson
President-Elect

James P. Nolan
Secretary

Hon. Richard H. Sothoron, Jr.
Treasurer

Paul V. Carlin
Executive Director

If the Court deems this proposal worthwhile, I commend Professor Doug Colbert of the University of Maryland School of Law to your attention as an ideal person to involve in such work. Professor Colbert successfully spearheaded an effort by the MSBA to establish a similar policy position by the American Bar Association this past year and has been recognized for his efforts by the Maryland Bar Foundation. Not only was he active in the debate before this year's General Assembly, but he is also planning to take a leave of absence from the law school this Fall so that he may continue to pursue the issue. Of course, the MSBA would stand ready to assist as well.

Thank you for your continuing attention and consideration.

Kindest regards.

Charles M. Preston
President

APPENDIX B

Chief Judge Bell Letter



ROBERT M. BELL
CHIEF JUDGE

COURT OF APPEALS OF MARYLAND

634 COURTHOUSE EAST

111 N. CALVERT STREET

BALTIMORE, MARYLAND 21202

(410) 333-6396

May 19, 1999

Robert Embry, President
Abell Foundation
111 South Calvert Street
Baltimore, Maryland 21202

Dear Mr. Embry:

I wish to voice the support of the Maryland Judiciary for the grant proposal submitted by Professor Douglas L. Colbert of the University of Maryland School of Law to study the bail and pretrial release practices in Baltimore City. While the results of a study narrowly focused, as the proposal is presently formulated, on the City of Baltimore promise to be both interesting and revealing, the Judiciary believes that one that conducts a comparative analysis with other representative jurisdictions in Maryland would be more helpful in that its findings would be more likely to lead to substantive changes in the bail and pretrial release system statewide. It is for that reason that the Judiciary has encouraged Professor Colbert to amend his grant proposal. Whether amended or not, we urge the Abell Foundation's favorable consideration of this project.

Sincerely yours,

Robert M. Bell

RMB/vr
cc: Professor Douglas L. Colbert
Frank Broccolina

APPENDIX C

Ray Paternoster Report

AN EMPIRICAL STUDY OF THE LAWYERS AT BAIL PROJECT

Professor Ray Paternoster

Professor Shawn Bushway

University of Maryland

Department of Criminology and Criminal Justice

LAWYERS AT BAIL: EMPIRICAL RESULTS

EXECUTIVE SUMMARY

The purpose of the Lawyers At Bail Project (LAB) was to provide legal representation for non-violent indigent defendants at their bail review hearing in Baltimore City. The lawyer would have several functions: to provide the bail review hearing officer with information about the defendant that may be relevant to the bail decision, to attempt to have the defendant released on his/her own recognizance, and failing that to have the money bail lowered to a level where the defendant would have a greater chance of posting it. The empirical component of the study involved a randomized allocation of lawyers to clients. Approximately 300 subjects were involved in the study, 175 of whom received a LAB lawyer. The major findings of this study were:

- **LAB clients were substantially more likely to be released on their own recognizance.**
Thirteen percent of those defendants without lawyers were released ROR, while thirty-four percent of LAB clients were released without money bail. *LAB clients, therefore, were over two and one-half times more likely to be released on their own recognizance.*
- The amount of bail that had to be posted by LAB and non-Lab clients was different after the bail review hearing, though they were initially similar. This difference had three manifestations.
 1. **First, LAB lawyers had reduced their clients initial bail amount on average by nearly \$1,000, while the bail amount for those defendants without lawyers stayed virtually the same (an average reduction of \$166).**
 2. **At the end of the bail review hearing, about twice as many of the LAB clients had bails set at \$500 or under.** While twenty-percent of the LAB clients had bails of \$500 or under, only

thirteen percent of defendants without lawyers did.

3. The bail review judge reduced the bail amount for one out of every two LAB clients, but only about one out of every seven non-LAB defendant.

- In one of the more remarkable findings of the analysis, it was found that there was a substantial difference in the total amount of time served in jail for LAB and non-LAB defendants. We found that the median length of time in jail for defendants without lawyers was 9 days, while for those with LAB lawyers, it was only 2 days. The difference in the total time served in jail before regaining their liberty between the two groups was one week. The mean or average difference for time in jail between the two groups was five days, still a considerable difference.
- Considering that the average postponement is 30-45 days, this suggests that defendants without lawyers are relying on bail bondsmen and their ten percent non-refundable fee in order to secure their release.
- The difference in jail time between LAB and non-LAB clients is readily translated into reduced bed space required by the jail and significant financial savings. At a daily cost of \$50 per inmate, a conservative estimate of what the LAB Project saved the jail is \$250 per person. With an estimated annual potential pool of 20,000 District Court jail inmates who would be eligible for LAB lawyers, *this would translate into a net savings to the jail of \$5,000,000 per annum and 100,00 bed days saved.*
- Twenty percent of those defendants without lawyers were released on the day of their bail review, while nearly forty percent of the LAB clients were released on that same day.
- Bail review hearings with lawyers lasted an average of two minutes and thirty-seven seconds, while those without lawyers lasted on average one minute and forty-seven seconds.

LAWYERS AT BAIL: STUDY FINDINGS

A critical dimension of the Lawyers at Bail (LAB) Project was to empirically evaluate the effect of the appearance of an attorney at the bail review hearing. To examine this, lawyers were assigned to clients on a random basis. In other words, the evaluation of LAB consisted of a randomized trial. There were approximately 300 jailed defendants in the study, of these forty-three percent were randomly assigned not to have a lawyer provided at the hearing while fifty-seven percent were provided with an attorney from the LAB staff. The random assignment was instituted so that the defendants that were not provided with legal representation would be as similar as possible to the LAB clients. Thus, any observed differences in bail outcome could be more confidently attributed to the presence of a lawyer, rather than any pre-existing differences between the two groups of bail defendants. As a check on whether or not the two groups were substantially different, we compared them on a number of dimensions that are likely to be relevant considerations in the setting of bail (number of prior arrests and convictions, number of prior failure to appears, time living in the community, employment status, age, number of charges, prior jail time, and prior drug and alcohol history). The results of this comparison indicated that the group of jailed defendants that were not provided with lawyers were initially comparable to the LAB clients on all of these dimensions.

PROFILE OF LAB CLIENTS

Based on the information obtained by LAB lawyers, we were able to construct a characterization of the LAB clients. They were:

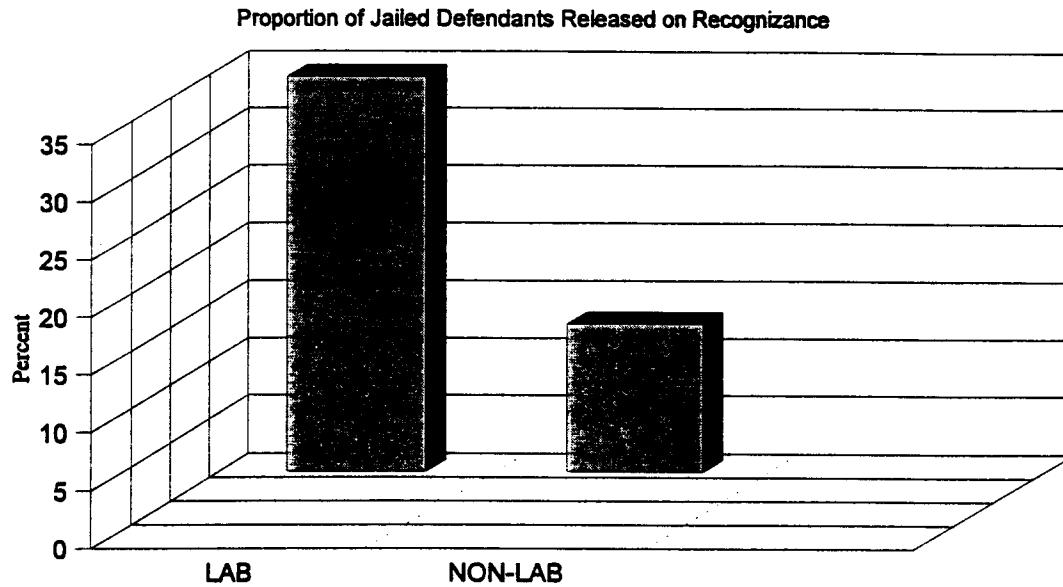
- ◆ on average 32 years of age
- ◆ had lived in the community approximately 24 years
- ◆ had been with their current employer an average of four and one-half years

- ◆ 51% had no prior conviction for a felony offense
- ◆ 80% had never been convicted of a violent offense
- ◆ approximately 65% were not under probation supervision
- ◆ 67% have no prior failures to appear for trial
- ◆ approximately 90% of the defendants had relatives living in Baltimore City or County

EMPIRICAL FINDINGS ABOUT THE LAWYERS AT BAIL PROJECT

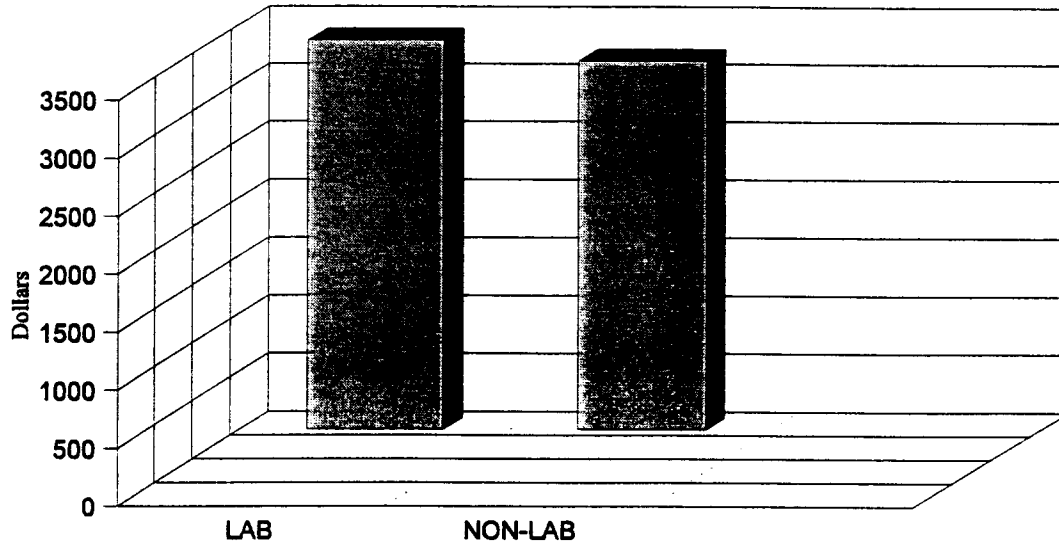
The key questions for the evaluation of the Lawyers at Bail Project, was to determine if the presence of an attorney at the bail hearing had any appreciable effect on bail outcomes. The outcome of the bail hearing was judged on a number of different dimensions. The first issue is whether or not those defendants with lawyers were more likely to be released without money bail, that is, released on their own recognizance.

Our results indicate that defendants with LAB lawyers were substantially more successful in being released on their own recognizance than were jailed defendants without lawyers. The figure below shows that only thirteen percent of those defendants without lawyers were released on their own recognizance, while thirty-four percent of LAB clients were. LAB clients, therefore, were over two and one-half times more likely to be released on their own recognizance than were jailed defendants without lawyers.



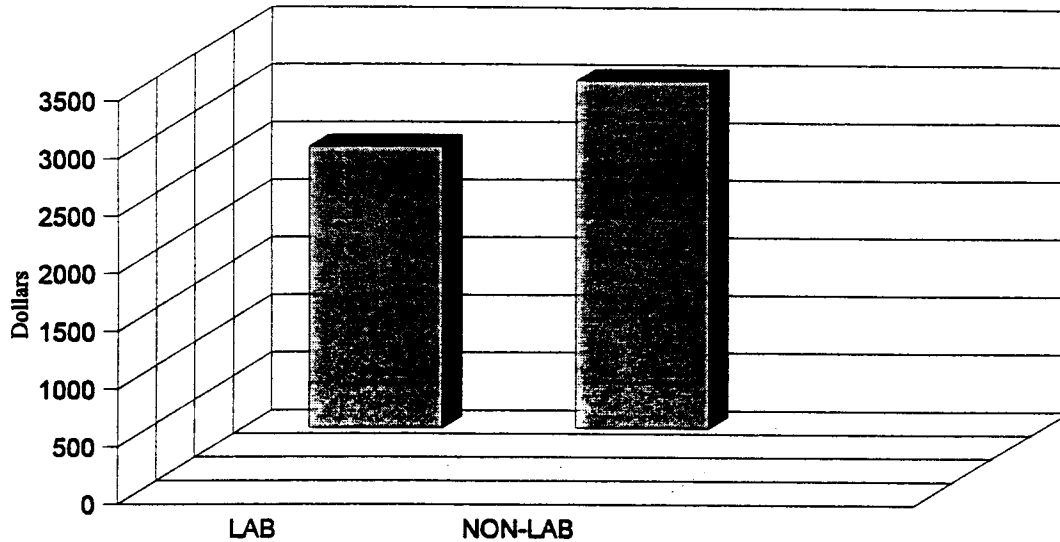
If they were not released on their own recognizance, the next issue to address is how successful LAB lawyers were in lowering the amount of bail for their clients from the initial setting of bail to the bail review hearing. In the figure below, we report the original bail amounts for the two groups (LAB and Non-LAB) before the bail review hearing. Given the randomization, their original bails should have been comparable, and they were. The average bail amount for the defendants without lawyers was approximately \$3,178. while for the LAB clients who were provided with legal representation the average bail was \$3,357. This small difference is not statistically significant, and we can conclude that before the bail review hearing the two groups had approximately the same amount of bail.

Original Bail Amount for Those With (LAB) and Without (Non-LAB) Lawyers



Although comparable before, after the bail review hearing, clients of the LAB Project fared significantly better. The lawyers in the LAB Project were substantially more successful in reducing the amount of bail for their clients when compared with the comparable defendants who did not have lawyers. We found that the bail review hearing judge reduced the bail for over one-half of the LAB clients (59%), but in only fourteen percent of the cases for defendants without a lawyer was the bail reduced from its original amount. In other words, defendants who had a lawyer were over four times more likely to have their bail reduced by the bail review judge than those not provided legal representation. Not surprisingly, therefore, though initially comparable, at the conclusion of the bail review hearing, jailed defendants in the LAB project had significantly lower bails than those defendants without lawyers. The figure below reveals that on average the bail for LAB clients was reduced nearly one thousand dollars to \$2,441., while the bail amount for the non-LAB clients was only trivially reduced

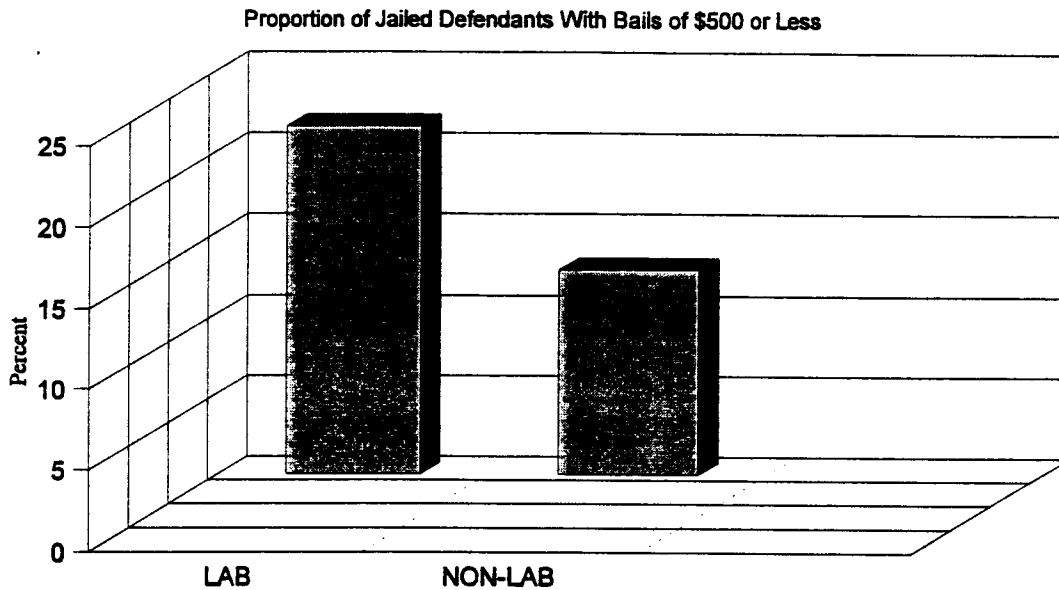
Final Bail Amount for Those With (LAB) and Without (Non-LAB) Lawyers



(on average \$166), to a current average of \$3,012. Another way to look at this is that LAB clients had their original bail amount reduced almost by one-third, while those without lawyers had their initial bails reduced by less than five percent. Though they were initially comparable, the bail amounts for the LAB clients are now significantly lower than non-LAB clients. Thus, the LAB lawyers were successful in reducing the initial amount of bail suspects had to make in order to be released from jail.

There are a number of other ways to examine the issue of the effectiveness of LAB counsel at the bail review hearing. One is to examine if the LAB lawyers were able to have their client's bail reduced to a more reasonable level, say \$500 or under. Before the bail review hearing a comparable percent of defendants with and without lawyers had bails under \$500; nine percent of the LAB clients and ten percent of the non-LAB clients had bails that were \$500 or under. At the conclusion of the bail review hearing, however, those with \$500 or under bails increased by 13 percent for the LAB clients, and only three percent for the non-LAB clients. As the figure below shows quite clearly, twenty-two percent of jailed suspects with lawyers had bails of \$500 or under after the bail review hearing, but only thirteen

percent of those without lawyers. This would suggest that jailed suspects with lawyers were substantially



more successful in getting their bail amount reduced than those without lawyers.

In addition, the appearance and participation of counsel at the bail review hearing may allow the defendant the opportunity to better present information concerning the appropriate amount of bail. One consequence of this is that the hearing itself may take more time when an attorney is present. Our data confirm this. Although not lengthy by any standard, bail review hearings were longer when LAB attorneys were present. In those cases without LAB counsel, the bail review hearing lasted on average one minute and forty-seven seconds. The bail review hearings of LAB clients lasted on average two minutes and thirty-seven seconds.

Finally, the success of the Lawyers At Bail Project can be assessed in terms of how likely and soon their clients were released from jail, compared to those defendants without lawyers. We found that the median time in jail for defendants without lawyers was nine days while for those with lawyers it was

only two days. The average time difference was five days. The difference between the median and mean is due to a few aberrant cases where a few (two) LAB clients had considerable stays in jail. Taking the five day difference as a conservative estimate, and at an average cost per inmate of \$45 dollars per day, the Lawyers At Bail Project saved the jail \$225 per person. To estimate savings per year for the jail we estimated that with a population of 40,000 approximately one-half would be eligible for LAB lawyers. At a savings of \$225 for a projected LAB client population base of 20,000 we determined that the net savings per year for the Baltimore City Jail would be \$4,500,000.

Finally, we determined that LAB clients were almost twice as likely to be released on the same day as their arrest as non-clients. We found that 38.7% of defendants with lawyers were released on the same day while only 20.5% of those without lawyers were released from jail the same day they were arrested. Moreover, nearly two thirds (62.8%) of LAB clients were released from jail within 9 days of their arrest while only one-half of those without lawyers were.

ADDITIONAL ANALYSIS OF LAWYERS AT BAIL

One of the final issues examined of the Lawyers at Bail (LAB) project were the issues of time until release/disposition, and potential recidivism while on release status. To be successful, it was anticipated that those suspects who had lawyers at their bail hearings would spend less overall time in jail than those without counsel. In addition, it was expected that this greater release time would not come at the price of greater criminal recidivism. That is, we should expect the rearrest rates to be comparable between the LAB clients and those without lawyers.

RELEASE TIME

We found that defendants with lawyers did spend less time in jail than those without lawyers. For the entire pool of subjects, clients in the LAB program spent on average 32 days in jail until they were released while defendants who did not have lawyers spent on average 16 days in jail. This comparison is a little deceptive because there was a small group of defendants who spent an unusually long period of time in jail (over 100 days) before being released. These defendants skewed the results somewhat therefore, and most of them, 12 out of 14, were in the non-LAB group, that is, they did not have lawyers. On one hand, this suggests that defendants without lawyers run a much higher risk of spending a very long period of time in jail (3 months or more) before being released. When these cases are excluded from the analysis, LAB clients still spent less time in jail before being released. LAB clients spent on average 12 days in jail while those without lawyers spent on average 17 days in jail. The presence of a lawyer at the bail review hearing, then, cut the average length of stay in jail by almost one-half.

RECIDIVISM

A final question to be addressed was the post-release behavior of LAB clients. There may be some grounds for early release if release simply provides accused defendants with a greater opportunity to commit more offenses. We find no evidence here of that- LAB clients were no more (or less) likely to commit a new offense than defendants without lawyers. We found that approximately 10 percent of both groups had a new arrest between the time they were released from jail and the disposition of their current case. Approximately 20 percent of both groups had a new arrest at sometime since being released - that is, from the time they were released from jail until our records check in December of 1999. This finding is noteworthy for two reasons:

1. Given the fact that these are urban, indigent, and overwhelmingly poor males, the 20% rearrest rate is rather low. This are high-risk males, it must be remembered.
2. We only have a measure of rearrest - we do not know what they were rearrested for (violent crime, property crime, vagrancy?), nor do we know if the arrest resulted in a conviction. This is a subject of additional research.

APPENDIX D

1998 AND 1999 Commissioner's Report - Initial Appearance
Tables 8(a) - 8(d)

TABLE 8 (a)

1998 INITIAL APPEARANCE

(Actual Numbers)

| DIST. | TOTAL I. A. | NO P.C. | HELD/DEF. BAIL | HELD W/O BAIL | ROR |
|--------------|---------------|-------------|----------------|---------------|--------------|
| 1 | 78743 | 4684 | 26806 | 3413 | 43718 |
| 2 | 8381 | 448 | 3962 | 86 | 3478 |
| 3 | 5983 | 25 | 2854 | 74 | 2651 |
| 4 | 7704 | 397 | 2458 | 93 | 4398 |
| 5 | 26220 | 415 | 13153 | 582 | 12041 |
| 6 | 13546 | 109 | 6639 | 250 | 5849 |
| 7 | 15014 | 676 | 6895 | 245 | 6792 |
| 8 | 20456 | 159 | 11269 | 484 | 8249 |
| 9 | 3249 | 175 | 866 | 53 | 2061 |
| 10 | 6734 | 18 | 2636 | 104 | 2812 |
| 11 | 5983 | 34 | 3232 | 101 | 2561 |
| 12 | 2603 | 22 | 1290 | 34 | 1168 |
| TOTAL | 194616 | 7162 | 82060 | 5519 | 95778 |

I.A. = Initial Appearances
 P.C. = Probable Cause
 DEF. = Default
 W/O = Without
 ROR = Released on Recognizance.

TABLE 8 (b)

1998 INITIAL APPEARANCE

(Percentages)

| 1998 Initial Appearance | | | | | | |
|-------------------------|------------|-------|--|---------------|---------------|--------|
| I.A. | Total I.A. | No PC | | Held/Def Bail | Held w/o bail | ROR |
| 1 | 78743 | 5.95% | | 34.04% | 4.33% | 55.52% |
| 2 | 8381 | 5.35% | | 47.27% | 1.03% | 41.50% |
| 3 | 5983 | 0.42% | | 47.70% | 1.24% | 44.31% |
| 4 | 7704 | 5.15% | | 31.91% | 1.21% | 57.09% |
| 5 | 26220 | 1.58% | | 50.16% | 2.22% | 45.92% |
| 6 | 13546 | 0.80% | | 49.01% | 1.84% | 43.18% |
| 7 | 15014 | 4.50% | | 45.92% | 1.63% | 45.24% |
| 8 | 20456 | 0.78% | | 55.09% | 2.37% | 40.33% |
| 9 | 3249 | 5.39% | | 26.65% | 1.63% | 63.43% |
| 10 | 6734 | 0.27% | | 39.14% | 1.54% | 41.76% |
| 11 | 5983 | 0.57% | | 54.02% | 1.67% | 42.80% |
| 12 | 2603 | 0.85% | | 49.56% | 1.31% | 44.87% |
| TOTAL | 194616 | 3.68% | | 42.17% | 2.83% | 49.21% |

TABLE 8 (c)

1999 INITIAL APPEARANCE

(Actual Numbers)

| DIST. | TOTAL I. A. | NO P.C. | HELD/DEF. BAIL | HELD W/O BAIL | ROR |
|--------------|---------------|-------------|----------------|---------------|--------------|
| 1 | 75064 | 4955 | 26935 | 3326 | 39572 |
| 2 | 9023 | 274 | 4742 | 135 | 3386 |
| 3 | 6560 | 24 | 3045 | 80 | 2877 |
| 4 | 9086 | 316 | 2921 | 112 | 5225 |
| 5 | 27381 | 544 | 13765 | 596 | 12416 |
| 6 | 15101 | 89 | 7855 | 318 | 5767 |
| 7 | 13356 | 451 | 6806 | 192 | 5395 |
| 8 | 20465 | 173 | 11476 | 528 | 8082 |
| 9 | 3095 | 97 | 9316 | 53 | 1937 |
| 10 | 8139 | 20 | 3302 | 208 | 2924 |
| 11 | 6426 | 34 | 3379 | 166 | 2682 |
| 12 | 2608 | 20 | 1303 | 53 | 1150 |
| TOTAL | 196304 | 6997 | 86460 | 5767 | 91413 |

I.A. = Initial Appearances
 P.C. = Probable Cause
 DEF. = Default
 W/O = Without
 ROR = Released on Recognizance.

TABLE 8 (d)

1999 INITIAL APPEARANCE
(Percentages)

| 1999 Initial Appearance | | | | | | |
|-------------------------|---------------|--------------|--|---------------|---------------|---------------|
| District | Total I.A. | No PC | | Held/Def Bail | Held w/o bail | ROR |
| 1 | ##### | 6.60% | | 35.88% | 4.43% | 52.72% |
| 2 | 9023 | 3.04% | | 52.55% | 1.50% | 37.53% |
| 3 | 6560 | 0.37% | | 46.42% | 1.22% | 43.86% |
| 4 | 9086 | 3.48% | | 32.15% | 1.23% | 57.51% |
| 5 | 27381 | 1.99% | | 50.27% | 2.18% | 45.35% |
| 6 | 15101 | 0.59% | | 52.02% | 2.11% | 38.19% |
| 7 | 13356 | 3.38% | | 51.00% | 1.44% | 42.48% |
| 8 | 20465 | 0.85% | | 56.08% | 2.58% | 39.49% |
| 9 | 3095 | 3.13% | | | 1.71% | 62.58% |
| 10 | 8139 | 0.25% | | 40.57% | 2.56% | 35.93% |
| 11 | 6426 | 0.53% | | 52.58% | 2.58% | 41.74% |
| 12 | 2608 | 0.77% | | 49.96% | 2.03% | 44.10% |
| TOTAL | 196304 | 3.56% | | 44.04% | 2.94% | 46.57% |
| | | | | | | |

APPENDIX E

Professor Ray Pasternoster's Report,
Chief Judge Rasin Letter, Commissioner Surrvey

SURVEY OF MARYLAND BAIL COMMISSIONERS

During the fall of 1999 as part of a broader study of bail practices in the state of Maryland, a survey of Maryland district Court Bail Commissioners was undertaken. Questionnaires were mailed to each commissioner in the state asking them questions about their bail review procedures. We will separate three features of this report. The first section will briefly describe some characteristics of the commissioners, the second will provide information about the jurisdiction where the commissioner hears cases, and the third and more detailed section will present information about the commissioners' bail review procedures.

CHARACTERISTICS OF COMMISSIONERS

Commissioners were asked about their tenure as bail commissioner. Table 1 reveals that most of the state bail commissioners have been in the post a number of years. For example over sixty percent (61.95) have been a bail commissioner for more than five years, and more than a quarter have been commissioner for more than sixteen years.

Table 1: Length of Time on the Job for Bail Commissioners

| | Frequency | Percent |
|------------------|-----------|---------|
| Less than 1 year | 18 | 9.7% |
| 1-2 years | 26 | 14.1% |
| 3-5 years | 26 | 14.1% |
| 6-10 years | 35 | 19.0% |
| 10-15 years | 30 | 16.3% |
| 16+ years | 49 | 26.6% |

Several different queries were made into the commissioners educational background and training for the job. This information is shown in Tables 2-4. Table 2 reports basic educational information about the bail commissioners. A majority of the commissioners (54.1%) have a bachelor's degree, while an additional twenty-three percent have post-college education (law or graduate school), a sizeable proportion of them have some college, but did not matriculate (13.8%).

Table 2: General Education of the Bail Commissioners

| | Frequency | Percent |
|------------------------|-----------|---------|
| Some College | 25 | 13.8% |
| Associate Degree | 16 | 8.8% |
| Bachelor's Degree | 98 | 54.1% |
| Law of Graduate School | 42 | 23.2% |

Approximately forty percent of the commissioners reported that they have some type of legal education. Table 3 indicates that for the most part the commissioners' legal education has consisted of paralegal education, fewer than 20% of the commissioners reported having a law degree.

Table3: Legal Education of Bail Commissioners

| | Frequency | Percent |
|--------------------------|-----------|---------|
| Paralegal Training | 39 | 62.9% |
| Some Law School | 12 | 19.4% |
| Law Degree | 9 | 14.5% |
| Post-Graduate Law Degree | 2 | 3.2% |

Finally, in addition to their formal education, commissioners were asked if they had received any special training to prepare them for being a bail commissioner in the state of Maryland. Nearly all (90%) reported that they had, although the amount of training varied. Table 4 shows that a minority of commissioner received only modest training (fewer than 25 hours), while the vast majority (82%) received forth hours or more of specific training.

Table 4: Amount of Training for Bail Commissioners

| | Frequency | Percent |
|-----------------|-----------|---------|
| 8 hours of less | 2 | 1.2% |
| 9-24 hours | 13 | 7.8% |
| 25-40 hours | 14 | 8.4% |
| 40+ hours | 137 | 82.5% |

JURISDICTION

Each bail commissioner was asked the nature of the jurisdiction within which they served. Approximately thirty-four percent reported that they served a primarily urban area, forty-two percent a predominately suburban area, and twenty-four percent a rural area. They were also asked if they had occasion to set bail for suspects who lived outside the county within which they worked. Only one commissioner responded that he/she had "never" done this, while a majority (73%) reported that they had either "often" or "sometimes". Table 5 reports the number of suspects each bail commissioner saw during the course of an average week. Although there is great variation in how busy each commissioner is, the majority of the commissioners reported that they set bail for between eleven and fifty suspects during an average week. Approximately fifteen percent of the commissioners reported setting bail for fifty or more suspects during an average week.

Table 5: Average Number of Suspects per Week

| | Frequency | Percent |
|--------|-----------|---------|
| 0-5 | 10 | 5.4% |
| 6-10 | 31 | 16.8% |
| 11-20 | 46 | 24.9% |
| 21-50 | 63 | 34.1% |
| 51-75 | 20 | 10.8% |
| 76-100 | 9 | 4.9% |

CHARACTERISTICS OF BAIL REVIEW HEARING

A critical part of the questionnaire sent to each bail commissioner was their description of the bail review hearing. One factor of interest to us was the factors that the commissioner used in setting bail, and how often it was that they had information about that particular factor. To gather this information, we had a list of factors that could conceivably affect the bail decision and asked each commissioner two questions about each, (1) was this a factor that they considered, and (2) an estimate of the percentage of time that they had information on this factor. Ideally, if a bail commissioner reported that they used a given factor in setting bail that they would frequently have this information at their disposal before setting bail. Information about these possible bail factors is provided in Table 6.

What we can easily ascertain from Table 6 are those bail commissioners that seem to share a great deal of consensus in terms of what factors they use in setting bail. We can make sense of this table by grouping the factors into meaningful clusters. For example, there are two items that reflect the current offense that are frequently used by commissioners in setting bail. Ninety-seven percent of the commissioners reported that they used the nature of the charge as a factor in setting bail, and almost ninety percent (86%) reported that the possible sentence that the suspect could receive if convicted of the current charge is a factor in setting bail. There is also a cluster of prior offense factors that is important to commissioners in setting bail. Ninety-seven percent reported that a prior failure to appear is an important consideration, eighty-nine percent use the suspect's current parole or probation status, ninety-four percent use any pending cases against the suspect as a factor, and an equal percentage use the suspect's prior convictions. Finally, there is a cluster of suspect's characteristics that are frequently used in setting bail. Nearly ninety percent (85%) of the commissioners reported that the suspect's employment history is a factor in setting bail, and almost three-quarters (74%) reported that they consider the suspect's reputation in the community. Perhaps surprisingly, only sixty-three percent of the commissioners said that they consider the suspect's financial circumstances in setting bail, and fewer (66%) reported that they used the suspect's family ties. A history of drug and alcohol use or the use of drugs/alcohol during the immediate offense was considered a factor in setting bail by about one-half of the commissioners.

Table 6: Percentage of Time That a Commissioner Used Each Factor in Setting Bail, and the Percentage of Time that Information About the Factor was Available to the Commissioner

| Factor | Percent Saying That They Use it to Set Bail | Percentage of Time Information was Available |
|-----------------------------------|---|--|
| Nature & Circumstances of charge | 97% | 90% |
| Nature & Weight of evidence | 73% | 83% |
| Possible sentence if convicted | 86% | 92% |
| Prior failure to appear for trial | 97% | 91% |
| Parole or probation status | 89% | 82% |
| Pending cases | 94% | 86% |
| Prior arrests | 71% | 86% |
| Prior convictions | 94% | 87% |
| Family ties | 66% | 65% |
| Employment History | 85% | 75% |
| Suspect's financial resources | 63% | 69% |
| Suspect's school status | 21% | 41% |
| Suspect's military status | 20% | 43% |
| Suspect's other status (INS) | 29% | 35% |
| Suspect's reputation | 74% | 65% |
| Suspect's medical condition | 25% | 38% |
| History of alcohol abuse | 43% | 55% |
| History of drug abuse | 44% | 56% |
| Arrested while under alcohol | 51% | 76% |
| Arrested while under drugs | 52% | 73% |

In addition to the factors they used in setting bail commissioners were asked to estimate the percentage of time information on each factor was available to them. This data is provided in the second column of Table 6. What we can determine is that for the most part information was almost always available for those factors that the commissioners reported using in setting bail. For example, the most frequently used factors in setting bail was the nature of the charge, prior failure to appear, the suspect's prior convictions, any pending cases, and the possible sentence given the suspect if convicted. This information was available to the commissioners (according to their estimated), approximately ninety percent of the time. So important information that the bail commissioners use in setting bail was on average available in 9 out of every 10 cases. Information was less readily available, for those characteristics that a fewer percentage of the bail commissioners used. For example, the suspects' employment history was a factor in setting bail for 85% of the commissioners, but was available only 75% of the time. The suspect's history of alcohol and drug abuse was used by less than one-half of the commissioners and only available in about one-half of the cases.

Each bail commissioner was also asked a more normative set of questions. They were asked to estimate how important a given factor was in their decision to set bail. They were asked to provide this estimate on a five point scale that ranged from “Least Important” with a score of 1 to “Very Important” with a score of 5. A high score (one close to 5), therefore indicates that a commissioner thought that the particular factor was important in setting bail. In Table 7, we report each of the factors given to the commissioners, and the average score across commissioners for that factor. One conclusion we can arrive at from this data is that the factors that are considered “important” by the commissioners are the ones that they generally use in setting bail. For example the two highest importance scores are for the nature of the current charge and the suspect’s history of failure to appear for trial. In Table 6 we learned that ninety-seven percent of the bail commissioners reported that they used these two factors in setting bail. Generally, the most important set of factors seems to reflect the nature of the current offense and the suspect’s criminal history. The second most important set of factors seems to be the suspect’s personal characteristics and community ties. The least important seem to reflect mitigating factors on the current offense (drug and alcohol use).

Table 7: Bail Commissioner’s Assessment as to “How Important” Each Factor is in Setting Bail

| Factor | Average Importance Score* |
|-----------------------------------|---------------------------|
| Nature & Circumstances of charge | 4.64 |
| Nature & Weight of evidence | 4.24 |
| Possible sentence if convicted | 4.23 |
| Prior failure to appear for trial | 4.80 |
| Parole or probation status | 4.14 |
| Pending cases | 4.24 |
| Prior arrests | 3.85 |
| Prior convictions | 4.33 |
| Family ties | 3.42 |
| Employment History | 3.59 |
| Suspect’s financial resources | 3.34 |
| Suspect’s school status | 3.59 |
| Suspect’s military status | 3.77 |
| Suspect’s other status (INS) | 3.50 |
| Suspect’s reputation | 3.51 |
| Suspect’s medical condition | 3.52 |
| History of alcohol abuse | 3.28 |
| History of drug abuse | 3.36 |
| Arrested while under alcohol | 3.69 |
| Arrested while under drugs | 3.66 |

*A score of 5.0 indicates that a given factor is “Very Important” to the Commissioner in Setting Bail

In their decision to set bail, bail commissioners have access to a number of different sources of information – the police, pretrial services, the suspect, the suspect’s family, and the state’s attorney, for example. We asked each commissioner to indicate the extent to which they relied on seven different sources of information. This information is provided in Table 8. From this information obtained from bail commissioners, we can see that the defendant is the primary source of information of most commissioners. Forty-one percent of the commissioners reported that they relied on the defendant as the primary source of information they used in assigning bail. Only five percent said that they “never” used information in setting bail was the arresting officer. Twenty-five percent of the commissioners reported that the police were a “primary” source of bail information. It is also interesting to note from Table 8 that the arresting officer, the state’s attorney, and the defendant are most likely to be available at the hearing to be used as a source of information. Over one-half of the commissioners reported that pretrial services and a bail bonds person were “seldom or never” available at the hearing.

Table 8: How Often A Source of Information is used by Bail Commissioners*

| Source | Never Use | | | | Primarily Used | Seldom or Never Available |
|----------------|-----------|-----|-----|-----|----------------|---------------------------|
| | 1 | 2 | 3 | 4 | | |
| Family/Friends | 18% | 28% | 18% | 5% | 2% | 30% |
| Police | 10% | 14% | 21% | 20% | 25% | 11% |
| Prosecutor | 11% | 15% | 22% | 11% | 6% | 6% |
| Defense Lawyer | 19% | 20% | 20% | 7% | 1% | 34% |
| Pretrial | 17% | 5% | 7% | 6% | 7% | 58% |
| Bondsman | 39% | 8% | 1% | 1% | 0% | 52% |

We asked each commissioner several questions about the non-financial conditions of release. First, we asked them to estimate the proportion of cases in which they set non-financial conditions of release. Table 9 indicates that the commissioners set non-financial conditions in a substantial proportion of the cases that they hear. Over two-thirds (70%) of the commissioners reported that they employ non-financial conditions at least 25% of the time, and forty percent of them reported that they use non-financial conditions more than one-half of the time.

Table 9: Percentage of Cases Bail Commissioners Reported That They Set Non-Financial Conditions of Release

| | |
|---------------------------|-----|
| Never or Rarely | 4% |
| About 25% of the time | 26% |
| About 50% of the time | 30% |
| About 75% of the time | 26% |
| More than 90% of the time | 14% |

Each commissioner was then asked to estimate the frequency with which they imposed two specific types of non-financial conditions: (1) release on recognizance with no special conditions, and (2) release on recognizance with special conditions. This data is reported in Table 10. We can see that release on recognizance with some special conditions (drug or alcohol counseling, stay away order) is generally used more frequently than ROR with no conditions. However, even non-conditional release on recognizance is frequently used by over one-half of the bail commissioners in our survey.

Table 10: Frequency of Non-Financial Conditions of Bail

| Source | Frequently Used | | | | Never Used |
|---------------------|-----------------|-----|-----|-----|------------|
| | 1 | 2 | 3 | 4 | 5 |
| ROR | 23% | 28% | 28% | 10% | 11% |
| ROR With Conditions | 51% | 26% | 21% | 2% | 0% |

Finally, each commissioner was asked about the effectiveness of financial conditions of release. For example, they were asked the frequency with which they imposed three types of financial bail; unsecured, percentage bond, and a full cash bail. We report these data in Table 11. We can see that the bail commissioners we surveyed were unlikely to impose bails that were unsecured (without collateral) or percentage bonds. In fact, fewer than twenty percent said that they frequently imposed such financial conditions of release. Much more frequently imposed was the full cash bail. Almost eighty percent of the commissioners imposed these financial bails.

Table 11: Frequency of Financial Bail Conditions

| Source | Frequently Used | | | | Never Used |
|-----------------|-----------------|-----|-----|-----|------------|
| | 1 | 2 | 3 | 4 | 5 |
| Unsecured | 5% | 11% | 28% | 37% | 19% |
| Percentage Bond | 6% | 9% | 17% | 31% | 37% |
| Full Cash | 59% | 20% | 8% | 3% | 11% |

With respect to the financial conditions of bail, we asked each commissioner if they had information available to them about the defendant's ability to post the bail that was set. A majority (71%) said that they did not have such information. Finally, we asked them to estimate how important it would be to have information about the defendant's ability to post the amount of bail that was set. Less than twenty percent of the commissioners thought that such information was important for them to have, while almost half (44%) reported that information about the suspect's ability to post bail was either the least important information they sought or that it simply was not relevant.



DISTRICT COURT OF MARYLAND

MARTHA F. RASIN

Chief Judge

Courts of Appeal Building
Annapolis, Maryland 21401
Tel: (410) 260-1525
Fax: (410) 974-5026

December 28, 1999

All District Court Commissioners
District Court of Maryland

Dear Commissioner:

With this cover letter you will find another cover letter and a survey for you to complete. The survey is part of a statewide study being conducted by Professor Douglas L. Colbert of the University of Maryland School of Law. I have agreed to help him distribute this survey in which he seeks certain information from you - anonymous or otherwise - which will help him in his assessment of overall pretrial release practices in this State.

I have asked your Administrative Commissioners to distribute this survey to you and to collect them from you for forwarding to Professor Colbert directly. After you finish the survey, please seal it in a plain envelope and give it back to your Administrative Commissioner. All surveys should be returned by January 6th.

As Professor Colbert states in his cover letter, you should feel free to contact him directly with any questions you have about the survey. Certainly if you are not sure about how to answer any of the questions, you should seek his guidance. Although I did not prepare the survey and am not involved in assessing its results, I will be glad to help in any way if you need assistance. Please feel free to call Dave Weissert as well.

I appreciate your cooperation in providing the Professor the information he seeks.

And I hope you have had a happy holiday season!

Sincerely,

Martha F. Rasin

Martha F. Rasin
Chief Judge

MFR:jlj
Enclosures

cc(with enclosure): The Honorable Robert M. Bell
Mr. David W. Weissert

COMMISSIONER QUESTIONNAIRE

The purpose of this questionnaire is to ascertain the types of information Commissioners in Maryland rely on in deciding conditions of release for defendants who appear before them.

The questionnaire is in SIX parts. The questionnaire can be completed in less than ten minutes.

In Part I you are asked a few background questions about the jurisdiction in which you serve and the nature of your bail setting caseload.

In Part II you are asked to indicate which factors you consider in setting bail and the availability of that information at the time of bail setting.

In Part III you are asked to indicate the relative priority of each factor that you consider in setting bail.

In Part IV you are asked to indicate which source(s) of information you rely on and the relative frequency with which you use the source(s) for information.

In Part V you are asked to indicate the non-financial conditions of release you find effective in assuring the defendant's appearance at future court hearings.

In Part VI you are asked to indicate the financial conditions of release you find effective in assuring the defendant's appearance at future court hearings.

Part I: BACKGROUND INFORMATION

Please check the appropriate response.

(1) Approximately how many defendants do you set bail on in an average week?

- | | | |
|--------------------------------|--------------------------------|---------------------------------|
| <input type="checkbox"/> 0-5 | <input type="checkbox"/> 6-10 | <input type="checkbox"/> 11-20 |
| <input type="checkbox"/> 21-50 | <input type="checkbox"/> 51-75 | <input type="checkbox"/> 76-100 |
| <input type="checkbox"/> 101 + | | |

(2) Approximately how often are the persons on whom you set bond from outside the county?

- Often
- Sometimes
- Infrequently
- Never

(3) How would you describe the nature of the jurisdiction in which you serve?

- Urban
- Suburban
- Rural

Name of County (optional) _____

(4) How long have you served as Commissioner?

- | | | |
|---|------------------------------------|-------------------------------|
| <input type="checkbox"/> Less than one year | <input type="checkbox"/> 1-2 years | <input type="checkbox"/> 3-5 |
| <input type="checkbox"/> 6-10 | <input type="checkbox"/> 10-15 | <input type="checkbox"/> 16 + |

(5) What is the highest level of education that you have completed?

- Some college
- Associate Degree (Two-year)
- Bachelor of Arts or equivalent (Four-year)
- Graduate School (MA, MBA, PhD, etc.)

(6) Do you have any legal education?

- Yes
- No

If YES, indicate the type of legal education?

- Some para-legal training
- Some Law School
- LLB or JD degree
- Post-graduate law degree

(7) Did you receive any training to prepare you for the position of Commissioner in Maryland?

- Yes
- No

If YES, indicate the number of hours of training that you completed?

- | | | | |
|--|-------------------------------------|--------------------------------------|---|
| <input type="checkbox"/> 8 hours or less | <input type="checkbox"/> 9-24 hours | <input type="checkbox"/> 25-40 hours | <input type="checkbox"/> More than 40 hours |
|--|-------------------------------------|--------------------------------------|---|

PART II: FACTORS CONSIDERED IN SETTING BAIL

Many factors are taken into account in setting bail. Information about certain factors may be more readily available than for others. The purpose of this question is twofold:

- (1) to determine which factors you take into consideration when setting bail (check the box by each item) and
- (2) to determine the relative availability of information concerning those factors (indicate how often, in percentage terms) you have information about a specific factor when setting bail.

**FACTORS YOU CONSIDER
WHEN SETTING**
(Check all that apply)

AVAILABILITY OF INFORMATION
(Indicate the percentage of time you have
the information)

-
- | | |
|--|---|
| <input type="checkbox"/> Nature and circumstances of the offense charge | % |
| <input type="checkbox"/> Nature/weight of evidence against defendant | % |
| <input type="checkbox"/> Potential sentence upon conviction | % |
| <input type="checkbox"/> Defendant's prior failure(s) to appear | % |
| <input type="checkbox"/> Defendant's parole/probation status | % |
| <input type="checkbox"/> Pending case(s) status | % |
| <input type="checkbox"/> Defendant's prior arrests | % |
| <input type="checkbox"/> Defendant's prior convictions | % |
| <input type="checkbox"/> Defendant's family ties | % |
| <input type="checkbox"/> Defendant's employment status/history | % |
| <input type="checkbox"/> Defendant's financial resources/means of support | % |
| <input type="checkbox"/> Defendant's school status/history | % |
| <input type="checkbox"/> Defendant's military status | % |
| <input type="checkbox"/> Defendant's other status (e.g., INS status) | % |
| <input type="checkbox"/> Defendant's reputation, character, mental condition | % |
| <input type="checkbox"/> Under medical treatment | % |
| <input type="checkbox"/> History of alcohol abuse | % |
| <input type="checkbox"/> History of drug abuse | % |
| <input type="checkbox"/> Arrested while under influence of alcohol | % |
| <input type="checkbox"/> Arrested while under influence of drugs | % |
| <input type="checkbox"/> Other (please specify) | % |
-
-
-

PART V: EFFECTIVENESS OF NON-FINANCIAL CONDITIONS OF RELEASE

In setting bail, Commissioners in Maryland impose any one of a combination of conditions of release that will reasonably assure the appearance of the accused for trial and safety of the community.

(1) In what percentage of cases do you set **NON-FINANCIAL CONDITIONS** of release?
Check appropriate response.

- 0%
 - about 25 %
 - about 50 %
 - about 75 %
 - more than 90 %
-

(2) For each condition you impose, indicate the frequency with which you impose it using a graduate scale: "very frequently or 1" "often or 2" "sometimes or 3" "seldom or 4" or "never or 5."

| Non-financial conditions | "Very frequently" to "never" | | | | |
|--|------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| | 1 | 2 | 3 | 4 | 5 |
| Release on personal recognizance with no special conditions | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Release on personal recognizance with special conditions (e.g., drug or alcohol counseling, stay away from place or stay away from person) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

PART VI: EFFECTIVENESS OF FINANCIAL CONDITIONS OF RELEASE

(1) For each condition you impose, indicate the frequency with which you impose it using a graduate scale: "very frequently or 1" "often or 2" "sometimes or 3" "seldom or 4" or "never or 5."

| Financial Conditions | "Very frequently" to "never" | | | | |
|--|------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| | 1 | 2 | 3 | 4 | 5 |
| Unsecured (without collateral) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Percentage bond | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Full cash (including property and surety/corporate bond) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

(2) In setting bail do you have information about the defendant's ability to post the amount of bail set?

Yes No

(3) Indicate the relative importance of having information about a defendant's ability to post the amount of bail set.

Check box that applies.

- Very important
- Important
- Somewhat important
- Not very important
- Least Important
- Not relevant or appropriate

APPENDIX F

1998, 1999 Maryland District Court Statistical Report

DISTRICT COURT OF MARYLAND
JULY, 1998 - JUNE 1999

CRIMINAL FILING AND DISPOSITION STATISTICS

| DIST | COUNTY | CASES TRIED | | | | | CASES UNTRIED | | | | | | | | | | TOTAL DISPOSITION | FTA | APPEALS | P.P. |
|------|-------------------|-------------|--------|---------------|------------|------------|----------------|-------|-------|-------------|-------|------|-------|---------|--------|-------|----------------------|--------|---------|------|
| | | FILED | GUILTY | NOT GUILTY | PBJ 292 | PBJ 641 | TOTAL TRIED | FCC | JTP | NOL PROS | STET | DISM | OTHER | UNTRIED | | | | | | |
| 1-0 | BALTIMORE CITY | 86984 | 14038 | 1822 | 23 | 4538 | 20221 | 7949 | 4734 | 44274 | 12398 | 424 | 7868 | 77363 | 97584 | 3109 | 185 | 63708 | | |
| 2-1 | DORCHESTER | 1349 | 478 | 117 | 0 | 113 | 708 | 140 | 119 | 292 | 71 | 89 | 0 | 691 | 1389 | 40 | 13 | 733 | | |
| 2-2 | SOMERSET | 1079 | 190 | 89 | 0 | 47 | 328 | 174 | 156 | 270 | 50 | 5 | 0 | 635 | 981 | 28 | 9 | 781 | | |
| 2-3 | WICOMICO | 2740 | 733 | 125 | 0 | 205 | 1063 | 434 | 415 | 346 | 504 | 7 | 55 | 1761 | 2824 | 72 | 32 | 2158 | | |
| 2-4 | SNOW HILL | 1100 | 347 | 88 | 0 | 35 | 448 | 98 | 180 | 385 | 90 | 2 | 6 | 761 | 1209 | 65 | 2 | 778 | | |
| 2-5 | OCEAN CITY | 3828 | 604 | 96 | 0 | 242 | 942 | 98 | 243 | 2284 | 99 | 3 | 103 | 2810 | 3782 | 471 | 16 | 1438 | | |
| | TOTAL DISTRICT 2 | 10098 | 2352 | 493 | 0 | 642 | 3487 | 944 | 1113 | 3557 | 814 | 88 | 184 | 6878 | 10165 | 674 | 72 | 5804 | | |
| 3-2 | CECIL | 2842 | 400 | 99 | 0 | 95 | 594 | 145 | 439 | 1021 | 515 | 10 | 9 | 2139 | 2733 | 133 | 7 | 2398 | | |
| 3-3 | KENT | 583 | 229 | 27 | 0 | 32 | 308 | 42 | 49 | 139 | 71 | 4 | 2 | 307 | 615 | 22 | 0 | 716 | | |
| 3-4 | QUEEN ANNES | 1048 | 436 | 44 | 0 | 84 | 564 | 37 | 16 | 464 | 77 | 3 | 2 | 597 | 1161 | 46 | 8 | 1486 | | |
| 3-5 | TALBOT | 1324 | 858 | 138 | 0 | 261 | 957 | 111 | 59 | 306 | 51 | 25 | 3 | 554 | 1511 | 31 | 5 | 1071 | | |
| 3-6 | CAROLINE | 1293 | 504 | 45 | 0 | 84 | 633 | 77 | 40 | 355 | 232 | 3 | 3 | 730 | 1343 | 43 | 5 | 1128 | | |
| | TOTAL DISTRICT 3 | 7090 | 2127 | 353 | 0 | 576 | 3055 | 412 | 603 | 2285 | 968 | 45 | 16 | 4327 | 7313 | 275 | 34 | 8807 | | |
| 4-1 | CALVERT | 2438 | 575 | 53 | 0 | 57 | 885 | 144 | 102 | 790 | 578 | 5 | 10 | 1827 | 2312 | 70 | 3 | 1501 | | |
| 4-2 | CHARLES | 4257 | 1085 | 213 | 0 | 236 | 1534 | 407 | 241 | 781 | 980 | 5 | 6 | 2430 | 3944 | 144 | 12 | 1745 | | |
| 4-3 | ST. MARYS | 2863 | 787 | 99 | 0 | 77 | 903 | 98 | 220 | 433 | 893 | 81 | 59 | 1844 | 2747 | 66 | 5 | 1035 | | |
| | TOTAL DISTRICT 4 | 9358 | 2427 | 325 | 0 | 370 | 3122 | 849 | 563 | 2084 | 2459 | 91 | 75 | 5901 | 9023 | 280 | 20 | 4282 | | |
| 5-0 | PRINCE GEORGES | 26303 | 1980 | 692 | 0 | 1300 | 3972 | 2390 | 3310 | 8346 | 5046 | 344 | 1793 | 21829 | 25801 | 1822 | 249 | 22997 | | |
| 6-0 | MONTGOMERY | 14338 | 3953 | 285 | 3 | 1448 | 5899 | 875 | 714 | 6494 | 456 | 351 | 3 | 8893 | 14592 | 1474 | 213 | 21305 | | |
| 7-0 | ANNE ARUNDEL | 14084 | 3286 | 494 | 0 | 1957 | 5717 | 1474 | 225 | 3311 | 3397 | 122 | 695 | 8224 | 14841 | 854 | 120 | 18814 | | |
| 8-0 | BALTIMORE COUNTY | 22095 | 6552 | 1080 | 0 | 3396 | 11028 | 2298 | 1060 | 6420 | 2306 | 998 | 51 | 13133 | 24181 | 1823 | 456 | 15043 | | |
| 8-0 | HANFORD | 4133 | 1329 | 102 | 0 | 631 | 2082 | 304 | 508 | 1001 | 470 | 145 | 108 | 2536 | 4596 | 228 | 45 | 3528 | | |
| 10-1 | HOWARD | 4169 | 886 | 142 | 0 | 586 | 1584 | 264 | 488 | 1387 | 550 | 19 | 11 | 2709 | 4293 | 284 | 31 | 4987 | | |
| 10-2 | CARROLL | 3094 | 614 | 92 | 0 | 403 | 1109 | 332 | 298 | 450 | 760 | 15 | 4 | 1859 | 2968 | 79 | 25 | 2837 | | |
| | TOTAL DISTRICT 10 | 7283 | 1470 | 234 | 0 | 889 | 2893 | 596 | 766 | 1847 | 1310 | 34 | 15 | 4588 | 7881 | 343 | 68 | 7434 | | |
| 11-1 | FREDERICK | 3430 | 906 | 123 | 0 | 580 | 1589 | 378 | 544 | 527 | 693 | 24 | 200 | 2388 | 3855 | 148 | 39 | 3250 | | |
| 11-2 | WASHINGTON | 3671 | 975 | 150 | 0 | 337 | 1482 | 465 | 673 | 528 | 422 | 10 | 345 | 2443 | 3805 | 187 | 45 | 1925 | | |
| | TOTAL DISTRICT 11 | 7101 | 1881 | 273 | 0 | 887 | 3051 | 843 | 1217 | 1055 | 1115 | 34 | 545 | 4809 | 7660 | 335 | 84 | 5175 | | |
| 12-1 | ALEGGANY | 3487 | 826 | 46 | 0 | 181 | 1033 | 108 | 285 | 1179 | 840 | 3 | 0 | 2388 | 3429 | 38 | 12 | 4260 | | |
| 12-2 | GARRETT | 1021 | 204 | 114 | 0 | 108 | 426 | 32 | 20 | 281 | 344 | 7 | 0 | 694 | 1110 | 22 | 2 | 1305 | | |
| | TOTAL DISTRICT 12 | 4518 | 1030 | 180 | 0 | 289 | 1459 | 141 | 285 | 1480 | 1184 | 10 | 0 | 3080 | 4539 | 61 | 13 | 5565 | | |
| | GRAND TOTAL | 213343 | 42405 | 6123 | 28 | 17013 | 65567 | 18875 | 15118 | 82114 | 32818 | 2884 | 11031 | 162341 | 227908 | 11288 | 1527 | 180880 | | |

Note: Fugitive Warrants now included on Special Proceedings Statistics.

DISTRICT COURT OF MARYLAND
JULY, 1996 - JUNE, 1999

SPECIAL PROCEEDINGS

| DISTRICT | COUNTY | REPT | EXCON | EMERGENCY EVALUATION | | DOMESTIC VIOLENCE | | CHILD ABUSE | | PETITION TO STRIKE FROM FORECLOSURE | | PARKING REQUEST FOR TRIAL | | NATURAL RESOURCES | | MUNICIPAL CIVIL INFRACTIONS CITATIONS | | FUGITIVE WARRANTS | | MVA'S ENFORCEMENT | | VIOLATION OF PROBATION | | CONTRV | | FORFEITURE OF CONTINUUM ESTIMATION | | | |
|-------------------|------------------|------|-------|----------------------|---------|-------------------|---------|-------------|---------|-------------------------------------|---------|---------------------------|---------|-------------------|---------|---------------------------------------|---------|-------------------|---------|-------------------|---------|------------------------|---------|--------|---------|------------------------------------|---------|-------|---------|
| | | | | FILED | GRANTED | FILED | GRANTED | FILED | GRANTED | FILED | GRANTED | FILED | GRANTED | FILED | GRANTED | FILED | GRANTED | FILED | GRANTED | FILED | GRANTED | FILED | GRANTED | FILED | GRANTED | FILED | GRANTED | FILED | GRANTED |
| 1-0 | BALTIMORE CITY | 449 | 431 | 1386 | 3976 | 3123 | 129 | 121 | 21 | 14496 | 122 | 0 | 0 | 254 | 5983 | 3186 | 216 | 18659 | 523 | 853 | 460 | 1365 | 125 | | | | | | |
| 2-1 | DORCHESTER | 3 | 13 | 16 | 119 | 94 | 1 | 1 | 1 | 38 | 469 | 156 | 60 | 13 | 0 | 13 | 0 | 420 | 130 | 26 | 18 | 1 | 17 | | | | | | |
| 2-2 | SOMERSET | 0 | 3 | 8 | 24 | 22 | 1 | 1 | 12 | 49 | 218 | 28 | 44 | 26 | 0 | 16 | 0 | 110 | 2 | 4 | 7 | 0 | 27 | | | | | | |
| 2-3 | WICOMICO | 4 | 4 | 16 | 542 | 303 | 0 | 0 | 47 | 63 | 107 | 351 | 549 | 79 | 0 | 115 | 0 | 1137 | 44 | 143 | 25 | 0 | 54 | | | | | | |
| 2-4 | SPRING HILL | 5 | 9 | 14 | 181 | 68 | 3 | 1 | 38 | 1 | 602 | 15 | 159 | 37 | 0 | 332 | 0 | 417 | 64 | 62 | 6 | 1 | 67 | | | | | | |
| 2-5 | OCEAN CITY | 8 | 13 | 6 | 63 | 44 | 1 | 0 | 39 | 181 | 1 | 2446 | 39 | 0 | 0 | 0 | 2446 | 39 | 39 | 0 | 0 | 0 | 0 | | | | | | |
| TOTAL DISTRICT 2 | | 12 | 92 | 56 | 849 | 611 | 6 | 3 | 129 | 124 | 1588 | 599 | 3298 | 194 | 0 | 495 | 1 | 2369 | 236 | 235 | 48 | 2 | 169 | | | | | | |
| 3-2 | CITIL | 2 | 34 | 0 | 310 | 241 | 7 | 7 | 38 | 84 | 503 | 9 | 63 | 143 | 0 | 76 | 36 | 361 | 211 | 65 | 16 | 1 | 71 | | | | | | |
| 3-3 | DEPT | 0 | 4 | 8 | 29 | 19 | 3 | 3 | 1 | 1 | 142 | 183 | 44 | 13 | 0 | 11 | 7 | 289 | 62 | 9 | 1 | 1 | 1 | | | | | | |
| 3-4 | QUEEN ANNE'S | 0 | 0 | 24 | 106 | 63 | 3 | 3 | 4 | 4 | 515 | 11 | 130 | 14 | 0 | 42 | 0 | 535 | 10 | 10 | 5 | 0 | 18 | | | | | | |
| 3-5 | TALBOT | 7 | 4 | 0 | 78 | 63 | 6 | 2 | 18 | 151 | 360 | 48 | 380 | 16 | 0 | 64 | 3 | 457 | 91 | 24 | 3 | 12 | 10 | | | | | | |
| 3-6 | CAROLINE | 2 | 3 | 0 | 186 | 88 | 6 | 5 | 3 | 1 | 81 | 48 | 188 | 24 | 0 | 7 | 7 | 252 | 0 | 0 | 9 | 6 | 1 | 11 | | | | | |
| TOTAL DISTRICT 3 | | 11 | 59 | 32 | 621 | 492 | 22 | 20 | 53 | 241 | 1684 | 251 | 725 | 156 | 0 | 196 | 45 | 1864 | 374 | 137 | 31 | 15 | 131 | | | | | | |
| 4-1 | CALVERT | 0 | 13 | 2 | 165 | 135 | 15 | 13 | 4 | 7 | 284 | 1 | 102 | 18 | 0 | 73 | 5 | 172 | 48 | 12 | 18 | 0 | 14 | | | | | | |
| 4-2 | CHARLES | 2 | 54 | 86 | 232 | 174 | 35 | 26 | 39 | 34 | 211 | 4 | 285 | 35 | 0 | 167 | 78 | 438 | 72 | 61 | 20 | 0 | 0 | | | | | | |
| 4-3 | ST. MARY'S | 1 | 44 | 72 | 167 | 133 | 8 | 4 | 7 | 0 | 733 | 5 | 349 | 24 | 0 | 44 | 0 | 67 | 61 | 20 | 15 | 0 | 18 | | | | | | |
| TOTAL DISTRICT 4 | | 3 | 111 | 160 | 565 | 442 | 56 | 43 | 59 | 41 | 1228 | 18 | 736 | 73 | 0 | 244 | 83 | 677 | 181 | 64 | 63 | 0 | 64 | | | | | | |
| 5-0 | PRINCE GEORGES | 216 | 346 | 630 | 3317 | 2380 | 228 | 179 | 625 | 2344 | 219 | 824 | 276 | 438 | 0 | 1680 | 951 | 1984 | 281 | 93 | 229 | 228 | 64 | | | | | | |
| 6-0 | MONTGOMERY | 23 | 408 | 64 | 1271 | 1074 | 0 | 0 | 117 | 7800 | 269 | 2301 | 1673 | 325 | 0 | 2188 | 6 | 5257 | 0 | 277 | 191 | 95 | 211 | | | | | | |
| 7-0 | ANNE ARUNDEL | 24 | 298 | 474 | 1676 | 1336 | 122 | 101 | 45 | 1499 | 948 | 27 | 1308 | 125 | 265 | 744 | 104 | 2362 | 196 | 728 | 145 | 9 | 4 | | | | | | |
| 8-0 | BALTIMORE COUNTY | 90 | 447 | 390 | 2887 | 2154 | 53 | 50 | 301 | 2912 | 1279 | 0 | 321 | 54 | 0 | 198 | 2 | 1669 | 39 | 14 | 62 | 1 | 47 | | | | | | |
| 9-0 | HARFORD | 8 | 53 | 14 | 364 | 298 | 18 | 13 | 40 | 120 | 564 | 43 | 180 | 54 | 0 | 198 | 3 | 1709 | 25 | 67 | 32 | 22 | 109 | | | | | | |
| 10-1 | HOWARD | 5 | 168 | 178 | 355 | 224 | 16 | 14 | 54 | 822 | 152 | 35 | 427 | 43 | 0 | 283 | 8 | 889 | 157 | 66 | 18 | 1 | 30 | | | | | | |
| 10-2 | CARROLL | 6 | 34 | 54 | 306 | 273 | 19 | 16 | 8 | 36 | 127 | 47 | 72 | 37 | 0 | 111 | 8 | 889 | 157 | 66 | 18 | 1 | 30 | | | | | | |
| TOTAL DISTRICT 10 | | 11 | 142 | 232 | 661 | 497 | 35 | 34 | 62 | 658 | 289 | 82 | 499 | 88 | 0 | 364 | 11 | 2598 | 142 | 133 | 50 | 6 | 118 | | | | | | |
| 11-1 | FREDERICK | 4 | 57 | 106 | 479 | 383 | 16 | 50 | 95 | 37 | 119 | 134 | 168 | 66 | 0 | 138 | 1 | 784 | 0 | 60 | 72 | 6 | 16 | | | | | | |
| 11-2 | WASHINGTON | 8 | 62 | 106 | 586 | 448 | 59 | 42 | 51 | 17 | 310 | 42 | 296 | 129 | 0 | 60 | 1 | 396 | 73 | 63 | 60 | 8 | 113 | | | | | | |
| TOTAL DISTRICT 11 | | 12 | 119 | 212 | 1065 | 831 | 126 | 188 | 146 | 54 | 429 | 176 | 464 | 195 | 0 | 198 | 2 | 1180 | 73 | 143 | 132 | 6 | 129 | | | | | | |
| 12-1 | ALLEGANY | 2 | 38 | 52 | 262 | 209 | 0 | 2 | 21 | 577 | 153 | 104 | 1085 | 64 | 0 | 151 | 0 | 149 | 30 | 8 | 4 | 4 | 18 | | | | | | |
| 12-2 | CORRETT | 2 | 18 | 28 | 186 | 99 | 0 | 0 | 5 | 0 | 307 | 0 | 87 | 11 | 0 | 54 | 0 | 102 | 20 | 18 | 1 | 1 | 6 | | | | | | |
| TOTAL DISTRICT 12 | | 4 | 48 | 72 | 368 | 299 | 0 | 2 | 26 | 577 | 480 | 104 | 1093 | 71 | 0 | 205 | 0 | 251 | 50 | 18 | 5 | 7 | 23 | | | | | | |
| GRAND TOTAL | | 1863 | 2786 | 3510 | 17489 | 13737 | 817 | 663 | 1676 | 31276 | 9271 | 4408 | 10493 | 2897 | 7843 | 11099 | 1424 | 33839 | 4182 | 3242 | 1944 | 2159 | 1244 | | | | | | |

Note: Fugitive Warrants Previously Included in Criminal Statistics.

DISTRICT COURT OF MARYLAND
JULY, 1998 - JUNE, 1999

MOTOR VEHICLE CASES

TICKETS TRIED

OTHER DISPOSITIONS

| DIST | COUNTY | DVI | SERIOUS | NON | TOTAL | GUILTY | N.G. | P.B.J. | DISM. | MERGED | NOL | TOTAL | NOL | PROS | STET | OTHER DISPOSITIONS | | MISC. | TOTAL | PAID | TOTAL | DISPOS. | APPEALS | P.P. | FTA |
|------|-------------------|-------|---------|---------|---------|--------|-------|--------|-------|--------|-----|--------|-------|-------|-------|--------------------|---------|--------|--------|---------|-------|---------|---------|------|-----|
| | | | | | | | | | | | | | | | | J.T.P. | SERIOUS | | | | | | | | |
| 1-1 | BALTIMORE CITY | 681 | 8184 | 51356 | 58201 | 7140 | 8874 | 15187 | 8930 | 90 | 0 | 40821 | 3848 | 2232 | 384 | 478 | 197 | 7117 | 26882 | 74600 | 185 | 18528 | 34450 | | |
| 1-1 | BALTIMORE CITY | 780 | 8773 | 61082 | 67885 | 6089 | 10886 | 15293 | 8631 | 85 | 3 | 40887 | 3185 | 1804 | 199 | 242 | 135 | 5385 | 36718 | 83068 | 131 | 13899 | 39808 | | |
| | TOTAL DISTRICT 1 | 1441 | 11857 | 112408 | 128786 | 13229 | 19766 | 31060 | 17981 | 175 | 3 | 81808 | 7033 | 3838 | 583 | 718 | 332 | 12482 | 63378 | 187888 | 316 | 32347 | 74388 | | |
| 2-1 | DORCHESTER | 291 | 678 | 9438 | 10488 | 1814 | 109 | 193 | 294 | 112 | 0 | 2922 | 813 | 0 | 71 | 72 | 21 | 783 | 7234 | 10839 | 16 | 1651 | 2447 | | |
| 2-2 | BOWEN | 182 | 466 | 13734 | 14392 | 817 | 70 | 128 | 4 | 0 | 0 | 1017 | 587 | 1468 | 100 | 77 | 36 | 780 | 10801 | 12888 | 13 | 880 | 3444 | | |
| 2-3 | WICOMICO | 875 | 2185 | 32288 | 35088 | 2743 | 835 | 2318 | 32 | 63 | 0 | 5812 | 1210 | 43 | 378 | 652 | 38 | 3926 | 22707 | 32445 | 30 | 8283 | 8433 | | |
| 2-4 | SNOW HILL | 811 | 1058 | 18824 | 17284 | 1492 | 225 | 832 | 3 | 92 | 0 | 2644 | 1370 | 15 | 183 | 187 | 49 | 2087 | 10837 | 13588 | 12 | 2781 | 3870 | | |
| 2-5 | OCEAN CITY | 589 | 888 | 8504 | 8887 | 818 | 124 | 178 | 9 | 28 | 0 | 857 | 1531 | 13 | 183 | 197 | 22 | 1948 | 3278 | 8183 | 8 | 1888 | 1907 | | |
| | TOTAL DISTRICT 2 | 2127 | 4884 | 78779 | 83880 | 7485 | 1183 | 3848 | 342 | 286 | 0 | 12952 | 5311 | 1843 | 1217 | 1288 | 188 | 9384 | 54887 | 77343 | 182 | 12128 | 21800 | | |
| 3-2 | GEORGETOWN | 987 | 1850 | 33731 | 36388 | 2082 | 1217 | 2014 | 188 | 44 | 0 | 5325 | 1088 | 80 | 677 | 628 | 66 | 2440 | 24659 | 32824 | 38 | 3842 | 7888 | | |
| 3-3 | KENT | 184 | 528 | 3438 | 4128 | 603 | 114 | 336 | 2 | 17 | 0 | 1072 | 402 | 28 | 23 | 24 | 2 | 417 | 3717 | 5285 | 12 | 630 | 1174 | | |
| 3-4 | QUEEN ANNES | 455 | 524 | 14828 | 16208 | 2277 | 738 | 882 | 8 | 26 | 0 | 3811 | 1488 | 5 | 17 | 22 | 12 | 1949 | 8838 | 15885 | 28 | 2833 | 4333 | | |
| 3-5 | TALBOT | 347 | 772 | 11840 | 13039 | 1878 | 1855 | 727 | 19 | 111 | 0 | 4389 | 902 | 31 | 57 | 54 | 23 | 1087 | 7318 | 12870 | 18 | 2781 | 3870 | | |
| 3-6 | CAROLINE | 207 | 460 | 8772 | 7439 | 880 | 151 | 339 | 17 | 21 | 0 | 1528 | 478 | 88 | 27 | 28 | 13 | 832 | 4128 | 8288 | 18 | 878 | 1758 | | |
| | TOTAL DISTRICT 3 | 2141 | 4332 | 72727 | 79200 | 7820 | 2847 | 8428 | 213 | 219 | 0 | 16825 | 4339 | 227 | 801 | 658 | 116 | 8181 | 49458 | 72244 | 108 | 11265 | 18873 | | |
| 4-1 | CALVERT | 686 | 1084 | 13335 | 15085 | 1522 | 409 | 1293 | 30 | 24 | 0 | 3278 | 1521 | 435 | 84 | 71 | 60 | 2191 | 8265 | 13734 | 8 | 2783 | 3105 | | |
| 4-2 | CHARLES | 1172 | 2477 | 31833 | 35282 | 2822 | 1488 | 2196 | 131 | 59 | 0 | 6496 | 2255 | 707 | 294 | 321 | 45 | 3822 | 18388 | 28486 | 29 | 3852 | 6887 | | |
| 4-3 | ST. MARY'S | 1416 | 1360 | 21493 | 24289 | 1091 | 244 | 357 | 247 | 28 | 0 | 1965 | 1876 | 3480 | 300 | 161 | 17 | 5834 | 14839 | 22838 | 14 | 2808 | 5108 | | |
| | TOTAL DISTRICT 4 | 3254 | 4921 | 88461 | 74636 | 5335 | 2141 | 3848 | 408 | 109 | 0 | 11739 | 5852 | 4842 | 678 | 533 | 122 | 11647 | 41472 | 64858 | 49 | 9821 | 15100 | | |
| 5-0 | PRINCE GEORGES | 5452 | 19381 | 186488 | 189721 | 13068 | 10053 | 20886 | 1974 | 236 | 2 | 48227 | 28428 | 1432 | 3338 | 2824 | 150 | 34172 | 78036 | 159235 | 171 | 32003 | 71176 | | |
| 6-0 | MONTGOMERY | 7086 | 7787 | 132935 | 147808 | 21865 | 4182 | 9390 | 4781 | 73 | 1 | 40992 | 11293 | 784 | 589 | 434 | 190 | 13290 | 79686 | 133988 | 383 | 29821 | 31902 | | |
| 7-0 | ANNE ARUNDEL | 6534 | 7130 | 100272 | 113938 | 8103 | 4594 | 18481 | 553 | 638 | 0 | 31089 | 5085 | 12331 | 200 | 131 | 233 | 18800 | 58838 | 108825 | 429 | 22700 | 30834 | | |
| 8-0 | BALTIMORE COUNTY | 2958 | 12837 | 142028 | 137621 | 18097 | 7244 | 35631 | 899 | 630 | 0 | 60501 | 14489 | 435 | 590 | 704 | 419 | 16837 | 78339 | 153497 | 837 | 27532 | 48588 | | |
| 8-0 | HARFORD | 1213 | 7088 | 38184 | 38415 | 5417 | 702 | 5171 | 177 | 338 | 0 | 11806 | 1898 | 254 | 419 | 358 | 98 | 2823 | 20477 | 33108 | 63 | 6042 | 8807 | | |
| 10-1 | HOWARD | 1488 | 2379 | 87185 | 61082 | 9185 | 2219 | 7460 | 432 | 488 | 0 | 19814 | 3897 | 287 | 488 | 523 | 78 | 5285 | 38085 | 63184 | 157 | 12585 | 18700 | | |
| 10-2 | CARROLL | 1037 | 1384 | 27184 | 28575 | 3311 | 589 | 4314 | 138 | 142 | 0 | 8514 | 1799 | 182 | 338 | 270 | 82 | 2702 | 18184 | 27400 | 75 | 5389 | 5850 | | |
| | TOTAL DISTRICT 10 | 2335 | 3723 | 84379 | 80837 | 12486 | 2808 | 11774 | 810 | 640 | 0 | 23328 | 5884 | 438 | 838 | 783 | 181 | 7887 | 84289 | 90984 | 232 | 17884 | 22880 | | |
| 11-1 | FREDERICK | 1397 | 1879 | 32382 | 35458 | 3493 | 588 | 4904 | 415 | 17 | 0 | 9417 | 1861 | 849 | 705 | 683 | 90 | 3848 | 21880 | 32445 | 147 | 8332 | 8333 | | |
| 11-2 | WASHINGTON | 743 | 1450 | 23631 | 23824 | 2878 | 431 | 1280 | 20 | 23 | 0 | 4433 | 1484 | 71 | 741 | 781 | 81 | 3118 | 16387 | 23848 | 61 | 3883 | 5182 | | |
| | TOTAL DISTRICT 11 | 2140 | 3129 | 56013 | 61282 | 6172 | 1019 | 6184 | 435 | 40 | 0 | 13850 | 3345 | 720 | 1448 | 1444 | 111 | 7088 | 38277 | 58183 | 208 | 9888 | 13808 | | |
| 12-1 | ALLEGANY | 517 | 885 | 12867 | 14179 | 1271 | 244 | 847 | 18 | 28 | 0 | 2308 | 1338 | 275 | 114 | 99 | 34 | 1838 | 8978 | 13343 | 22 | 2437 | 2072 | | |
| 12-2 | GARRETT | 280 | 340 | 8449 | 10049 | 381 | 108 | 489 | 14 | 18 | 0 | 988 | 882 | 214 | 18 | 18 | 18 | 18 | 2790 | 7882 | 9810 | 4 | 2287 | 1378 | |
| | TOTAL DISTRICT 12 | 777 | 1195 | 22286 | 24228 | 1632 | 350 | 1448 | 30 | 44 | 0 | 3502 | 1998 | 489 | 133 | 117 | 53 | 2790 | 18981 | 23233 | 28 | 4704 | 3448 | | |
| | GRAND TOTAL | 37658 | 83334 | 1088138 | 1187130 | 119717 | 58883 | 151531 | 28003 | 3439 | 8 | 359719 | 92385 | 27154 | 10832 | 10049 | 2151 | 142371 | 632686 | 1134896 | 2732 | 218173 | 383828 | | |

DISTRICT COURT OF MARYLAND
JULY, 1998 - JUNE, 1999

21:902 REPORT

| DIST | COUNTY | RECEIVED | | | | TOTAL | GUILTY | | | | TOTAL | NG | PAJ | DISM. | NP | STET | MERGED | CONV | NOLO | JTP | MISC. | DISPOSITION | APPEALS | P.P. | FTA |
|------|-------------------|----------|------|-----|-----|-------|--------|------|----|----|-------|-----|-------|-------|------|------|--------|------|------|-----|-------|-------------|---------|------|-----|
| | | A | B | C | D | | A | B | C | D | | | | | | | | | | | | | | | |
| 1-1 | BALTIMORE CITY | 617 | 60 | 1 | 3 | 681 | 156 | 68 | 1 | 0 | 225 | 31 | 247 | 11 | 98 | 58 | 75 | 1 | 0 | 53 | 7 | 731 | 18 | 1191 | 81 |
| 1-3 | BALTIMORE CITY | 703 | 53 | 2 | 2 | 760 | 108 | 93 | 1 | 1 | 210 | 27 | 314 | 6 | 125 | 75 | 0 | 1 | 1 | 46 | 4 | 808 | 18 | 768 | 108 |
| | TOTAL DISTRICT 1 | 1320 | 113 | 3 | 5 | 1441 | 265 | 161 | 2 | 2 | 435 | 58 | 561 | 17 | 223 | 133 | 1 | 1 | 99 | 11 | 1539 | 36 | 1957 | 189 | |
| 2-1 | DORCHESTER | 247 | 3 | 0 | 1 | 251 | 63 | 108 | 0 | 1 | 193 | 4 | 31 | 6 | 28 | 0 | 0 | 0 | 29 | 0 | 0 | 0 | 230 | 30 | |
| 2-2 | SOMERSET | 185 | 7 | 0 | 0 | 192 | 34 | 61 | 0 | 0 | 85 | 4 | 17 | 0 | 28 | 1 | 0 | 0 | 40 | 3 | 1 | 1 | 117 | 25 | |
| 2-3 | WICOMICO | 658 | 17 | 0 | 0 | 675 | 136 | 97 | 0 | 0 | 283 | 16 | 185 | 0 | 35 | 14 | 0 | 0 | 116 | 5 | 615 | 5 | 615 | 54 | |
| 2-4 | SNOW HILL | 592 | 19 | 0 | 0 | 611 | 108 | 118 | 0 | 0 | 224 | 15 | 129 | 0 | 80 | 1 | 0 | 0 | 155 | 1 | 1 | 1 | 441 | 81 | |
| 2-5 | OCEAN CITY | 321 | 77 | 0 | 0 | 398 | 72 | 105 | 0 | 0 | 177 | 9 | 86 | 1 | 58 | 0 | 0 | 0 | 73 | 2 | 0 | 2 | 217 | 47 | |
| | TOTAL DISTRICT 2 | 2003 | 123 | 0 | 1 | 2127 | 491 | 480 | 0 | 1 | 882 | 48 | 458 | 7 | 206 | 16 | 0 | 0 | 413 | 7 | 2136 | 24 | 1830 | 237 | |
| 3-2 | CECL | 955 | 12 | 0 | 0 | 967 | 88 | 167 | 0 | 0 | 253 | 7 | 198 | 0 | 143 | 16 | 0 | 0 | 353 | 4 | 979 | 13 | 758 | 152 | |
| 3-3 | KENT | 183 | 0 | 0 | 1 | 184 | 21 | 91 | 0 | 0 | 112 | 11 | 69 | 0 | 18 | 1 | 0 | 0 | 3 | 0 | 216 | 3 | 137 | 16 | |
| 3-4 | QUEEN ANNES | 437 | 17 | 0 | 1 | 456 | 72 | 202 | 0 | 0 | 274 | 14 | 98 | 0 | 64 | 1 | 0 | 0 | 10 | 0 | 482 | 0 | 444 | 48 | |
| 3-5 | TALBOT | 335 | 11 | 0 | 1 | 347 | 91 | 79 | 0 | 0 | 170 | 18 | 102 | 0 | 32 | 3 | 0 | 0 | 35 | 1 | 352 | 2 | 335 | 45 | |
| 3-6 | CAROLINE | 200 | 7 | 0 | 0 | 207 | 87 | 76 | 1 | 1 | 135 | 1 | 38 | 0 | 18 | 8 | 0 | 0 | 7 | 2 | 209 | 0 | 180 | 31 | |
| | TOTAL DISTRICT 3 | 2090 | 47 | 1 | 3 | 2141 | 329 | 615 | 1 | 1 | 946 | 51 | 504 | 0 | 295 | 29 | 0 | 0 | 399 | 7 | 2236 | 18 | 1834 | 292 | |
| 4-1 | CALVERT | 645 | 21 | 0 | 0 | 666 | 88 | 167 | 0 | 0 | 253 | 2 | 208 | 1 | 53 | 28 | 0 | 0 | 32 | 6 | 585 | 1 | 707 | 65 | |
| 4-2 | CHARLES | 1130 | 42 | 0 | 0 | 1172 | 138 | 222 | 0 | 0 | 359 | 9 | 268 | 0 | 85 | 12 | 0 | 0 | 105 | 3 | 823 | 14 | 654 | 82 | |
| 4-3 | ST. MARY'S | 690 | 719 | 3 | 4 | 1416 | 43 | 281 | 0 | 1 | 325 | 21 | 203 | 37 | 842 | 47 | 0 | 0 | 170 | 5 | 1357 | 7 | 860 | 127 | |
| | TOTAL DISTRICT 4 | 2465 | 782 | 3 | 4 | 3254 | 287 | 670 | 1 | 1 | 939 | 32 | 679 | 38 | 880 | 87 | 0 | 0 | 307 | 14 | 2765 | 22 | 2441 | 274 | |
| 6-0 | PRINCE GEORGES | 3225 | 2153 | 38 | 38 | 5452 | 102 | 176 | 3 | 3 | 284 | 137 | 889 | 17 | 2087 | 63 | 8 | 0 | 1558 | 9 | 5052 | 39 | 4888 | 1209 | |
| 6-0 | MONTGOMERY | 6796 | 151 | 86 | 73 | 7088 | 429 | 632 | 18 | 4 | 1083 | 169 | 2284 | 22 | 2182 | 183 | 11 | 0 | 354 | 20 | 8308 | 87 | 8190 | 1236 | |
| 7-0 | ANNE ARUNDEL | 4054 | 2385 | 55 | 40 | 6534 | 424 | 548 | 7 | 8 | 987 | 236 | 1400 | 56 | 1249 | 2534 | 68 | 0 | 114 | 43 | 6885 | 131 | 6788 | 672 | |
| 8-0 | BALTIMORE COUNTY | 2835 | 23 | 0 | 0 | 2858 | 794 | 289 | 12 | 0 | 1111 | 91 | 1410 | 7 | 215 | 15 | 0 | 0 | 124 | 23 | 2986 | 131 | 2256 | 259 | |
| 9-0 | HARFORD | 1183 | 29 | 0 | 1 | 1213 | 392 | 108 | 1 | 6 | 507 | 6 | 504 | 2 | 60 | 5 | 5 | 0 | 177 | 6 | 1272 | 16 | 1251 | 123 | |
| 10-1 | HOWARD | 1435 | 56 | 4 | 3 | 1498 | 216 | 180 | 4 | 3 | 383 | 76 | 787 | 28 | 288 | 38 | 2 | 0 | 285 | 8 | 1793 | 26 | 1944 | 193 | |
| 10-2 | CARROLL | 987 | 40 | 0 | 0 | 1027 | 185 | 41 | 3 | 1 | 230 | 27 | 272 | 0 | 323 | 9 | 0 | 0 | 157 | 5 | 1047 | 18 | 973 | 61 | |
| | TOTAL DISTRICT 10 | 2432 | 96 | 4 | 3 | 2535 | 401 | 201 | 7 | 4 | 913 | 103 | 1058 | 28 | 529 | 47 | 26 | 0 | 422 | 13 | 2840 | 44 | 2537 | 254 | |
| 11-1 | FREDERICK | 1369 | 10 | 9 | 9 | 1387 | 323 | 146 | 3 | 2 | 474 | 9 | 616 | 0 | 67 | 60 | 0 | 0 | 344 | 6 | 1576 | 64 | 1321 | 128 | |
| 11-2 | WASHINGTON | 736 | 5 | 1 | 1 | 743 | 138 | 51 | 2 | 0 | 191 | 5 | 250 | 0 | 81 | 2 | 0 | 0 | 358 | 4 | 889 | 10 | 630 | 75 | |
| | TOTAL DISTRICT 11 | 2105 | 15 | 10 | 10 | 2140 | 461 | 197 | 5 | 2 | 665 | 14 | 868 | 0 | 148 | 62 | 0 | 0 | 700 | 10 | 2485 | 64 | 1951 | 201 | |
| 12-1 | ALEGANY | 595 | 10 | 0 | 2 | 617 | 145 | 77 | 3 | 0 | 225 | 5 | 222 | 0 | 55 | 26 | 0 | 0 | 38 | 2 | 573 | 6 | 365 | 25 | |
| 12-2 | GARRETT | 253 | 7 | 0 | 0 | 260 | 70 | 35 | 0 | 0 | 105 | 5 | 110 | 0 | 36 | 28 | 0 | 0 | 5 | 3 | 290 | 1 | 474 | 22 | |
| | TOTAL DISTRICT 12 | 798 | 17 | 0 | 2 | 777 | 215 | 112 | 3 | 0 | 330 | 10 | 332 | 0 | 91 | 52 | 0 | 0 | 43 | 5 | 863 | 7 | 829 | 47 | |
| | GRAND TOTAL | 31386 | 5834 | 180 | 178 | 37898 | 4570 | 4209 | 68 | 37 | 8882 | 955 | 10948 | 194 | 7844 | 3226 | 131 | 1 | 4710 | 168 | 37157 | 619 | 34623 | 4893 | |

* Miscellaneous includes "Abused by Death", "Forwarded to Circuit Court", and "Forwarded to Juvenile Authorities".

DISTRICT COURT OF MARYLAND
JULY, 1989 - JUNE, 1989

CIVIL STATISTICS

| DIST COUNTY | FILED | APPEARED | DISMISSED | CONTRACT FORTH | TOTAL OTHER COMPLAINTS FILED | UNCONTESTED JUDGMENTS | JUDGMENTS CONTESTED TRIALS | DISM AT BEFORE TRIAL | 3-307 DISMISSALS | SATISFIED JUDGMENTS | TOTAL WRITS | AD OF EXECUTION | RENEWAL OF SUMMONS | NOTICE OF LEN | APPEALS ON THE RECORD | |
|----------------------|--------|----------|-----------|-------------------|------------------------------------|--------------------------|----------------------------------|----------------------------|---------------------|------------------------|----------------|--------------------|--------------------------|---------------------|-----------------------------|------------------------------|
| | | | | | | | | | | | | | | | | LANDLORD/TENANT DEFENDENT |
| 1-1 BALTIMORE CITY | 175761 | 5284 | 12893 | 46504 | 1514 | 99801 | 15785 | 11390 | 70249 | 11734 | 18594 | 4875 | 20174 | 32719 | 123 | 92 |
| 2-1 DORCHESTER | 1461 | 174 | 577 | 1738 | 23 | 2414 | 208 | 443 | 558 | 682 | 800 | 184 | 614 | 316 | 4 | 9 |
| 2-2 SOMERSET | 978 | 251 | 368 | 1163 | 37 | 1221 | 115 | 213 | 177 | 387 | 519 | 90 | 286 | 175 | 4 | 2 |
| 2-3 WICOMICO | 8198 | 674 | 2398 | 4761 | 128 | 7328 | 549 | 1220 | 3300 | 1160 | 1854 | 421 | 1732 | 757 | 12 | 6 |
| 2-4 WORCHESTER | 832 | 175 | 198 | 2561 | 101 | 2816 | 511 | 682 | 983 | 587 | 868 | 289 | 888 | 498 | 8 | 4 |
| TOTAL DIST 2 | 11587 | 1274 | 3531 | 10223 | 289 | 13779 | 1381 | 2558 | 5219 | 2776 | 4139 | 974 | 3498 | 1704 | 28 | 21 |
| 3-2 CEOL | 2888 | 248 | 1354 | 1921 | 103 | 2058 | 434 | 627 | 827 | 437 | 581 | 301 | 776 | 529 | 18 | 9 |
| 3-3 KENT | 330 | 45 | 101 | 917 | 15 | 1082 | 102 | 230 | 235 | 318 | 285 | 115 | 196 | 101 | 3 | 0 |
| 3-4 QUEEN ANNES | 325 | 58 | 119 | 1199 | 34 | 1226 | 257 | 348 | 280 | 299 | 471 | 117 | 280 | 226 | 2 | 1 |
| 3-5 TALBOT | 718 | 85 | 218 | 1404 | 32 | 1844 | 253 | 340 | 450 | 449 | 702 | 96 | 387 | 218 | 3 | 7 |
| 3-8 CAROLINE | 740 | 61 | 183 | 1362 | 38 | 1527 | 159 | 329 | 382 | 410 | 631 | 86 | 254 | 232 | 1 | 0 |
| TOTAL DIST 3 | 5001 | 495 | 1975 | 6803 | 220 | 7537 | 1205 | 1874 | 1894 | 1911 | 2870 | 715 | 1873 | 1308 | 27 | 17 |
| 4-1 CALVERT | 681 | 98 | 283 | 1948 | 55 | 1886 | 427 | 517 | 561 | 488 | 585 | 231 | 895 | 381 | 8 | 5 |
| 4-2 CHARLES | 3861 | 285 | 1719 | 3129 | 82 | 3506 | 854 | 817 | 1027 | 851 | 1158 | 521 | 1958 | 748 | 12 | 9 |
| 4-3 ST. MARYS | 2840 | 87 | 705 | 1832 | 91 | 1759 | 387 | 447 | 480 | 458 | 720 | 238 | 875 | 310 | 9 | 7 |
| TOTAL DIST 4 | 7392 | 470 | 2887 | 8808 | 228 | 7121 | 1478 | 1781 | 2068 | 1796 | 2441 | 991 | 3528 | 1439 | 28 | 21 |
| 5-0 PRINCE GEORGES | 147031 | 7380 | 80282 | 38173 | 1837 | 89139 | 9903 | 8828 | 43250 | 8942 | 17339 | 2827 | 29004 | 7978 | 122 | 92 |
| 6-0 MONTGOMERY | 48539 | 2103 | 15230 | 28202 | 906 | 30699 | 8847 | 7554 | 14842 | 5463 | 9273 | 3045 | 15783 | 4158 | 118 | 75 |
| 7-0 ANNE ARUNDEL | 26581 | 837 | 9071 | 13385 | 447 | 23888 | 4079 | 3412 | 15073 | 3183 | 5678 | 1878 | 9151 | 2428 | 50 | 34 |
| 8-0 BALTIMORE COUNTY | 108198 | 1300 | 22722 | 33847 | 714 | 38419 | 7058 | 7075 | 17406 | 6675 | 11802 | 4555 | 18740 | 5885 | 111 | 102 |
| 9-0 HARFORD | 9660 | 395 | 2739 | 4878 | 201 | 5189 | 1317 | 1184 | 1775 | 1283 | 1735 | 818 | 2809 | 1181 | 18 | 8 |
| 10-1 HOWARD | 13091 | 376 | 5660 | 4951 | 153 | 5247 | 1498 | 1508 | 2048 | 973 | 1761 | 799 | 3866 | 843 | 36 | 40 |
| 10-2 CARROLL | 1991 | 175 | 692 | 3219 | 90 | 2659 | 639 | 878 | 360 | 794 | 1068 | 600 | 1301 | 554 | 9 | 8 |
| TOTAL DIST 10 | 15082 | 551 | 6352 | 8170 | 243 | 7908 | 2157 | 2387 | 2408 | 1767 | 2830 | 1399 | 4867 | 1387 | 45 | 48 |
| 11-1 FREDERICK | 5342 | 280 | 2190 | 4505 | 204 | 4683 | 1006 | 1203 | 1298 | 1289 | 1810 | 724 | 1733 | 783 | 23 | 18 |
| 11-2 WASHINGTON | 6764 | 391 | 2521 | 4356 | 230 | 4488 | 592 | 1129 | 1040 | 1181 | 1517 | 674 | 1489 | 578 | 13 | 7 |
| TOTAL DIST 11 | 12106 | 651 | 4711 | 8861 | 434 | 9152 | 1598 | 2332 | 2336 | 2430 | 3327 | 1398 | 3222 | 1342 | 36 | 25 |
| 12-1 ALLEGANY | 860 | 245 | 248 | 2587 | 43 | 2383 | 382 | 612 | 545 | 462 | 581 | 67 | 771 | 346 | 9 | 2 |
| 12-2 GARRETT | 90 | 25 | 18 | 638 | 21 | 639 | 119 | 123 | 180 | 196 | 133 | 83 | 134 | 171 | 2 | 3 |
| TOTAL DIST 12 | 940 | 270 | 264 | 3203 | 64 | 3022 | 481 | 735 | 705 | 658 | 894 | 130 | 905 | 517 | 11 | 5 |
| GRAND TOTAL | 588858 | 21020 | 182357 | 208838 | 7887 | 315712 | 53287 | 50688 | 177175 | 48818 | 80322 | 23405 | 122832 | 81788 | 714 | 538 |

APPENDIX G

Daily Record Article

For bail review hearings at Baltimore's Wabash District Court, a videophone camera transmits the judge's image and voice downtown to the new central lockup. Detainees' images are displayed on 27-inch color monitors.

- CIVIL PROCEDURE

Just Waiting for the Videophone to Ring: Testimony Meets Technology in the Court

For Witnesses Repeatedly Called to District Court, Advances Could Take Much of the Hassle, Expense Out of Testifying

BY JOE SURKIEWICA
Daily Record Legal Affairs Writer

Picture this: Instead of schlepping to the courthouse to testify about a neighbor's barking dog for the third time, you could attach a small camera to your phone and get cross-examined from the comfort of your home or office.

Sound farfetched? Not at all. Many states allow the use of telephones and videophones for witness testimony, including Pennsylvania, where telephone testimony is allowed in all domestic-relations matters.

In Maryland, though, getting the OK for a witness to testify electronically isn't very easy, with the exception of expensive medical experts.

That could change soon.

A bill to establish a pilot project that would allow telephone and videophone witness testimony as a right was introduced earlier this year in the General Assembly by Del. Dana L. Dembrow, D-Montgomery. It would have allowed telephone and videophone testimony in selected Maryland district courts for civil infractions that don't carry criminal consequences.

While the bill didn't pass, the House Judiciary Committee will study the issue this fall. Depending on the committee's conclusions, it could introduce a bill allowing its use in the 2000 legislative session.

"We had a demonstration last year, and there was either a bad connection or the technology was poor," said Judiciary Chairman Joseph F. Vallario Jr., D-Prince George's. "We're hoping the next demonstration is better. But if we approve it, it would be only for limited cases."

Dembrow says the technology is evolving. "There are devices out there that didn't exist before," he noted. "We have video conference and telephone capability. The question is, to what extent will we allow technological advances in the courtroom?"

Rights vs. reality

Proponents say videophones are \$500 devices that witnesses could borrow from prosecutors and attach to their office or home phones. To testify, the witness simply sets up the gear and agrees to be available at a specified time.

"Bringing people together, even for five minutes, is a huge logistical problem," Dembrow explained. "It's a Sixth Amendment right to be personally in the courtroom and confront witnesses, but today, it's often impractical. Plus, there are the games, usually played by the defendant, that result in endless postponements in the hope that the case gets dropped when a witness doesn't show."

Videophone testimony could save time, money and vacation time for citizens doing their duty when summoned to court.

"Just about everyone agrees the situation is impossible," said David L. Scull, a Bethesda attorney and former state delegate who supports electronic testimony. "Witnesses get subpoenaed, show up, wait around for half a day and do nothing. Plus, you often see a small army of policemen standing around the courthouse who usually don't testify because someone didn't show."

The attorney, who has presented the testimony by speakerphone of a witness in China and a person housebound for health reasons, said the time has come to widen the use of electronic testimony.

“Dembrow’s bill would have mandated district courts to choose which crimes to try out the technology,” Scull said. “It’s still live, interactive, and witnesses can be cross-examined. Either party could be put on witnesses electronically, by telephone or videophone.”

Far from perfect

Videophones are already in use in Maryland courtrooms for bail review hearings. In northwest Baltimore’s Wabash District Court, the hearings are held in a second-floor courtroom; the detainees are downtown at the new central lockup. Formerly, detainees were transported to Wabash for bail reviews. Video bail reviews, officials said, save the court money and reduce the risk of escape.

Three 27-inch color monitors hang from the wall and ceiling, where eight men in orange jumpsuits are visible. At least, the jumpsuits are visible. The detainees’ body motion is jerky, their faces difficult to see, their voice frequently are muffled.

“Can you hear me? I can’t hear you,” said Judge H. Gary Bass, leaning forward and speaking into the microphone on his desk. Then, in an aside to no one in particular, “Since we’ve started video bail review, their equipment has never been good.”

small courtroom; their 18-year-old son had been arrested for crashing a car, evading arrest and drug possession. He’s one of the jumpsuits on the screen – but they don’t recognize him. His public defender pointed the young man out.

“It’s particularly hard to distinguish the faces of black detainees on the screen because of the lighting,” the attorney said later. On this day, the overwhelming number of detainees were black.

As bail reviews proceeded into the afternoon, the image quality never improved, and the sound got worse. “This is pitiful,” Bass moaned as he tried to understand a man arrested on a child abuse charge.

“A lot of the facial expressions are lost on the videophone, especially when trying to detect mental illness during bail reviews,” said Sharon Cole of the Wabash District Court’s public defender office. “There are things you can miss when judging if someone is truthful. So the question is, how much would you miss in videophone testimony?”

Baltimore District Court officials concede that the current videophone system has problems. “It’s 1995 technology and no longer cutting-edge,” said Lonnie Ferguson, Wabash’s administrative clerk. “We’re all for video bail reviews. We’re just looking for a better system.”

At Montgomery County District Court, the videophone system works better at its bail review hearings, said administrative clerk Jeffrey Ward. “Technology-wise, if the gear used for videophone testimony is the same we use, it should work fine,” he said.

Mixed Feelings

Assuming the glitches can be fixed, the ability to testify by videophone offers a glimmer of hope for citizens who often find themselves cooling their heels as they wait to testify in court.

Last year, Gail Helfer, an unpaid bicycle patrol volunteer who rides her bike on Montgomery County’s Sligo Creek Park, made two trips to court to testify as a witness. On the first trip, a woman accused of a civil infraction – driving without a valid license – showed up without an attorney. The trial was rescheduled.

“I’ve got mixed feelings about videophone testimony,” said Helfer, who lives in Takoma Park. “I believe in facing your accusers. But in some petty thing, does me being there really make a difference? Nothing is convenient, but compared to driving, fighting traffic and parking, videophone testimony would be better.”

SURVEY OF BAIL PRACTICES IN FIVE MARYLAND COUNTIES

This research project was an attempt to study the bail practices in a general sample of Maryland jurisdictions. The jurisdictions studied included urban, suburban, and rural populations, and consisted of the following: Baltimore County, Baltimore City, Frederick County, Harford County and Prince George’s County. In order to understand the actual bail practices in each jurisdiction, research staff attended bail review hearings for suspects charged with a criminal offense. We did not intend, and could not given the financial limitations of the study, gather a random sample of bail review hearings throughout the entire state. Rather, our more modest intention was to gather a sufficient number of cases from each type of jurisdiction (urban, rural, and suburban) in order to provide a comprehensive picture of general bail practices in the state of Maryland. In total, staff attended 628 bail review hearings, the break down for each jurisdiction is shown in Table 1. In most counties the data were collected over a 4-6 week period.

Table 1: Number of Bail Review Hearings Attended in Each Jurisdiction

| Jurisdiction | Number of Hearings |
|------------------------|--------------------|
| Baltimore County | 211 |
| Baltimore City | 125 |
| Frederick County | 75 |
| Harford County | 104 |
| Prince George’s County | 113 |

SAMPLE CHARACTERISTICS

We can briefly summarize the demographic characteristics of the sample. Data for the racial composition of the respondents are reported in Table 2. Approximately one-third of the full sample were Caucasian, with the other two-thirds made up primarily of African-Americans.

Other minority groups comprised less than two percent of the study group. Not surprisingly, the racial composition of the sample of suspects whose bail review hearings were attended by research staff varied by jurisdiction. Nearly 90% of the suspects in Baltimore City (86%) and Prince George’s County (86%) were African-American. A slight majority of the hearings in Baltimore County also had African-American suspects (54%).

Table 2: Racial Make Up of Bail Review Suspects by Jurisdiction

| | Caucasian | African-American | Other |
|------------------|-----------|------------------|-------|
| Full Sample | 37% | 62% | 1% |
| Baltimore County | 46% | 54% | |
| Baltimore City | 12% | 86% | 2% |
| Frederick County | 69% | 31% | |
| Harford County | 50% | 46% | 4% |
| Prince George’s | 12% | 86% | 2% |

Table 3 reports the distribution of the gender of sample suspects and the mean age for each group. In each jurisdiction, more than two-thirds of the suspects were males, with virtually all suspects in Prince George’s County being male. The average age for these suspects was approximately 31 years old, and this mean age did not vary substantially by jurisdiction. African-American suspects (54%).

Table 3: Gender Make Up of Bail Review Suspects by Jurisdiction and Mean Age

| | Male | Female | Mean Age |
|------------------|------|--------|----------|
| Full Sample | 71% | 29% | 31 |
| Baltimore County | 62% | 38% | 30 |
| Baltimore City | 83% | 17% | 32 |
| Frederick County | 83% | 17% | 32 |
| Harford County | 86% | 14% | 33 |

CHARACTERISTICS OF BAIL

Before discussing some of the features of the bail process in these jurisdictions, we would like to provide some simple descriptive information about the actual release procedures. The purpose of this bail review hearing is to review the initial bail set by a commissioner, and allow the defendant the opportunity to provide information that might argue either for outright release or a lower bail. It also allows for the court, prosecutor, or pretrial services to present information to increase the bail amount. The suspects' side of the story can be told by several possible actors, the suspect him/her self, pretrial services, family members, or defense counsel if present. These persons could provide the court with valuable information concerning the suspect's job or family status, as well as the existence of other community ties.

One of the first issues concerns whether or not the bail was "preset". Preset bails are set by another judge prior to the bail review hearing. The importance of the preset bail is that most bail review hearing officers traditionally have been reluctant to modify these preset bails in any way. In our survey, approximately one-half of all the bail review hearings involved preset bails (46%). This percent varied somewhat, and in one case substantially, by jurisdiction. For example, approximately 75% of all bail hearings in Baltimore County involved preset bails, about 48% of those in Harford County involved preset bails, while the corresponding percentages in Baltimore City and Frederick County were 26% and 19%, respectively.¹ While about one-half of the bails were preset prior to the bail review hearing, this did vary considerably

¹ There was no information on the percent of bail review hearings in Prince George's County that involved preset bails.

across the five jurisdictions.

An additional question pertains to the type of bail that was set prior to the bail review hearing (whether it was a cash or bail/bond), if the bail was a surety bond or cash bail, and the amount of the initial bail. Table 4 reports information for the full sample and each of the five separate jurisdictions on these issues. For the full sample of cases, the most likely form of bond is the bail bond rather than the cash bond. Eighty-three percent of the cases in this sample were given a

Table 4: Type and Amount of Bail for Full Sample and By Jurisdiction

| | Cash | Bail/Bond | Surety | Cash | Average Bail* |
|------------------|------|-----------|--------|------|---------------|
| Full Sample | 17% | 83% | 68% | 32% | \$5,000 |
| Baltimore County | 56% | 44% | 38% | 62% | \$5,000 |
| Baltimore City | 5% | 95% | 89% | 11% | \$5,000 |
| Frederick County | 10% | 90% | 87% | 13% | \$7,750 |
| Harford County | 5% | 95% | 35% | 65% | \$3,000 |
| Prince George's | 1% | 99% | 99% | 1% | \$5,000 |

* The reported "average" bail is the median of the sample rather than the arithmetic mean. The mean bail set was substantially higher because a few very high bails skewed the arithmetic average.

bail bond rather than a cash bond. This was also true, with one exception, for each of the five separate jurisdictions. Only in Baltimore County was a defendant more likely to have a cash (56%) than a bail bond (44%). In the other four jurisdictions, bail/bonds exceed cash bonds by 9 to 1. If a bail was set, it was generally more likely to be a secured (surety) bond than a cash bail. A surety bond was set in over two-thirds (68%) of the full sample of cases. Again, however,

there was some non-trivial variation in the different jurisdictions. Suspects in Baltimore and Harford County were more likely to have a cash than a surety bond set, with approximately two-thirds of the suspects in those two jurisdictions having a cash bond set. There was some uniformity in the amount of the initial bail that was set in each jurisdiction prior to the bail review hearing. The average (median) amount of the initial bail set across the five jurisdictions was \$5,000. This was also the average bail that was set for suspects in Baltimore County, Baltimore City, and Prince George’s County. The initial bail was set somewhat higher on average in Frederick County (\$7,500) and somewhat lower on average (\$3,300) in Harford County.

There was, of course, variation in the amount of bail set for different kinds of charges. We classified the initial charge into one of four types: (1) non-violent, (2) drug, (3) violent non-felonies, and (4) violent felonies. Table 5 reports the median bail amounts when all counties are combined. As can be seen, the lowest bails are for non-violent offenses and for non-felony violent offenses, somewhat higher than this is the average bail for drug offenses. The highest bail, more than three times the amount for non-violent offenses and violent non-felonies, and nearly twice that for drug offenses, was for violent offenses. The median bail amount for a violent felony was approximately \$10,000. The arithmetic average (mean) for these offenses was much higher (nearly \$34,000), indicating that there were a few very high bails set.

Table 5: Amount of Initial Bail (Median) for Types of Charges - All Cases

| Type of Offense | Median Bail |
|----------------------|-------------|
| Non-Violent | \$3,000. |
| Drug | \$5,600. |
| Violent Non-Felonies | \$3,500. |

Violent Felonies \$10,000.

Because too few numbers in some counties for some offense categories prevent us from reporting a similar breakdown for each specific county, we further collapsed the type of offense into violent felonies vs. all other offenses and report the median bail amount for these two types of crimes by county in Table 6.

Table 6: Median Bail Amount for Violent Felonies and All Other Offenses by County

| County | Type of Offense | Median Bail |
|------------------|-----------------|-------------|
| All | Non-Violent | \$5,000. |
| | Violent | \$10,000. |
| Baltimore County | Non-Violent | \$5,000. |
| | Violent | \$12,500. |
| Baltimore City | Non-Violent | \$3,250. |
| | Violent | \$10,000. |
| Frederick | Non-Violent | \$6,500. |
| | Violent | \$50,000. |
| Harford | Non-Violent | \$2,500. |
| | Violent | \$7,500. |
| Prince George's | Non-Violent | \$5,000. |
| | Violent | \$10,000. |

We can see that in each of the specific jurisdictions the initial bails were substantially higher (generally twice as high) for violent compared to non-violent offenses. With one exception (Frederick County) the county-by-county bails for violent and non-violent offenses are roughly comparable. The data for violent offenses in Frederick County should not be given great weight, however, since there so few cases for analysis (only 15 violent crimes).

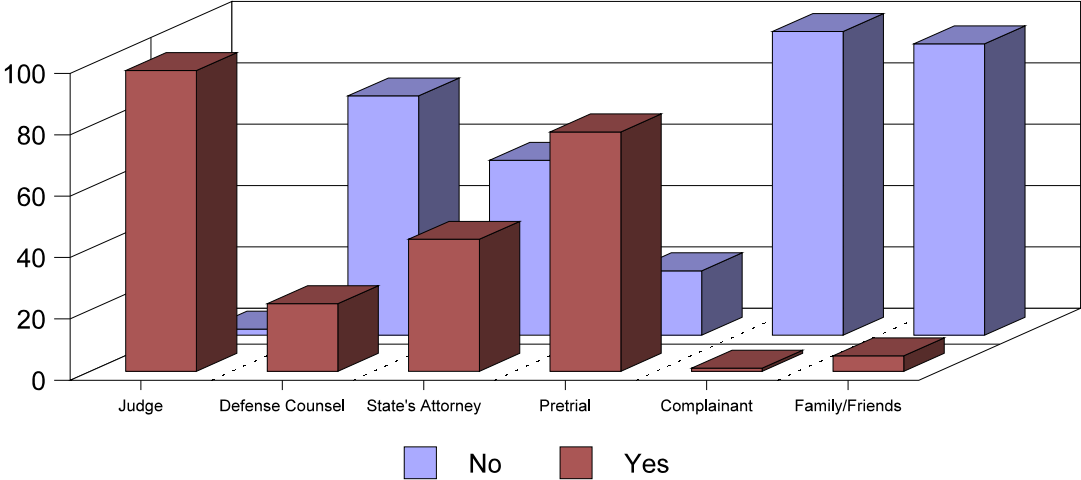
CHARACTERISTICS OF HEARING

In this section of the report, we would like to present some information about the characteristics of the bail review hearing itself. One issue concerns the presence of counsel at the bail review hearing. Neither Maryland state nor Federal constitutional law requires the provision of counsel at a bail hearing, and it appears that counsel's presence is not typical. In the pooled sample of five counties defense counsel was present at the bail review hearing less than one-quarter of the time (23%). Even this number is deceptive, however, for the weight of these cases come from one county. In Harford County, defense lawyers were present at the bail review hearings in ninety-eight percent of the cases. It is common and accepted practices, therefore, that suspects at bail review hearings in Harford County are provided with legal representation. This is not, however, common throughout the state, in fact, it is the exception. Legal counsel for suspects were present in only five percent of the cases in Baltimore County, fifteen percent of the cases in Baltimore City, thirteen percent of the cases in Frederick County, and at least in terms of our sample of 113 cases from Prince George's County, no suspect had counsel at the bail hearing.

More specific information about the cast of characters who typically appear at a bail review hearing is shown in Figure 1. There is no "common cast", but the hearing may be comprised of the defendant, the judge, defense counsel, state's attorney, a representative of pre-trial services, the complainant (if any) in the case, and the family or friends of the defendant. Optimally, it would seem that as many actors as possible should attend the bail review hearing in order to provide the judge with as much information as possible to make his/her bail decision. In

the figure below, we show the percent of the time that each of several possible persons attend the bail review hearing for the pooled sample (all five counties combined).

Figure 1: Prevalence of Personnel at Bail Review Hearing



One very clear conclusion from this graph is that with the exception of the judge and pretrial services, very few others are in attendance at the bail review hearing. We know that defense counsel is unlikely to be there, so too is any member from the states attorney's office,

but a state's attorney is about twice as likely (43%) to be at a bail review hearing compared with an attorney for the defendant (22%). A representative from pre-trial services attended about 80% of the bail review hearings. Who is very unlikely to appear at these hearings is either the one making the complaint or a family member or friend who is willing to speak on behalf of the defendant. Family members or friends attended only five percent of the bail review hearings. It would appear, then, that other than someone from pre-trial services, the suspect stands alone at a typical bail review hearing.

With the exception of the appearance of counsel in Harford County (defense counsel is virtually always there), these data for the full sample is played out in each individual jurisdiction. Two other exceptions are the attendance of someone from pre-trial services and the state's attorney office, which also evidence some noticeable jurisdiction-to-jurisdiction variation. We noted that in the pooled sample, pre-trial services attended about 80% of the bail review hearings. In terms of individual jurisdictions, this ranged from a high of more than 90% of the time in Baltimore County, Harford County and Prince George's County to a low of about 5% of the time in Frederick County. Recall that someone from the state's attorney office attended about forty percent of the pre-trial hearings in the full sample (see Figure 1). This was more likely to be true in Frederick and Prince George's County where a state's attorney attended approximately 90% of the time, and less true in both Baltimore City and Baltimore County where a state's attorney attended fewer than five percent of the bail review hearings.

Two features of the bail review process that evidence some variation across the five

studied jurisdictions was whether or not the hearing was conducted via video (or the defendant personally appeared before the hearing officer), and if the defendant was asked by the hearing officer to say something on his/her behalf. In the pooled sample of 600 cases, approximately two-thirds of them were conducted via video transmission where the defendant and hearing officer are in separate physical facilities. Four of the five jurisdictions that were studied followed this policy. This included both heavily urban (Baltimore City) and suburban and rural jurisdictions (Frederick, Harford, Prince George’s County). Only Baltimore County followed the contrary practice of having the defendant personally appear before the bail review officer.

In the pooled sample of cases, the defendant was asked if he/she had anything to say on their behalf in approximately two-thirds of the hearings. It is somewhat surprising that this simple request is not made in a higher percent of the hearings. In addition, in both Baltimore City and Prince George’s County the suspect is unlikely to be asked to speak. Table 7 indicates that the hearing is conducted with virtual silence from the defendant in about seventy percent of the hearings from these two jurisdictions.

Table 7: Was the Defendant Asked if He/She Had Anything to Say by the Bail Review Officer?

| | Yes | No |
|------------------|-----|-----|
| Full Sample | 60% | 40% |
| Baltimore County | 88% | 12% |
| Baltimore City | 28% | 78% |
| Frederick County | 75% | 25% |
| Harford County | 70% | 30% |
| Prince George’s | 31% | 69% |

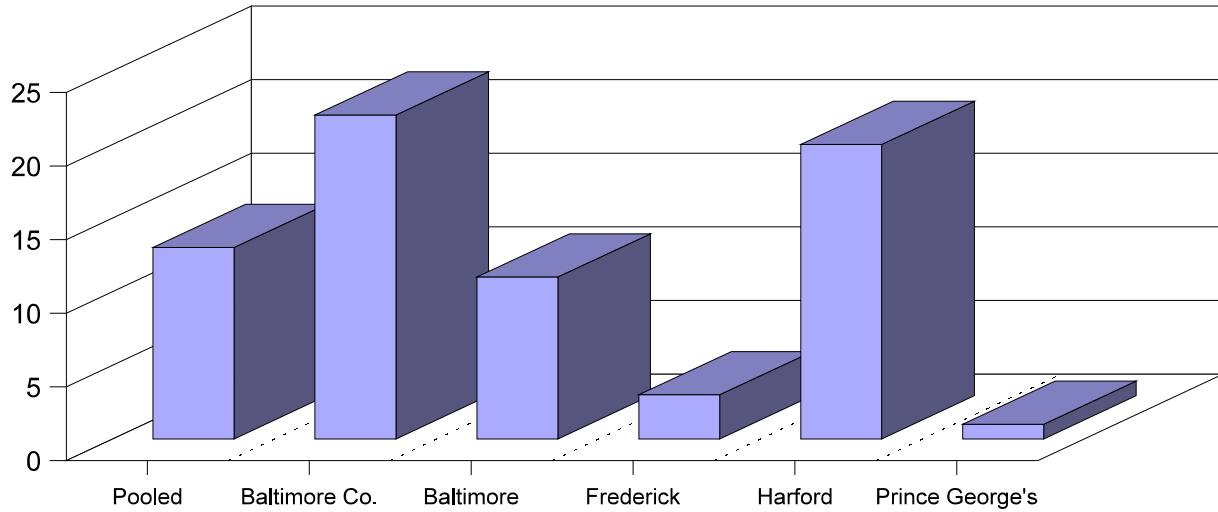
One of the important purposes of this study was to examine the extent to which bail

hearing officers had knowledge of alternatives to traditional bail practices. One question in the data collection instrument asked whether or not anyone provided the judge with any information about alternatives to a surety bond. The results are shown in Figure 2, and they provide little grounds for optimism about innovation in bail practices. For example, in the pooled sample the hearing officer was given information about alternatives to a secured bond in only 13% of the cases. In almost 9 out of every 10 cases, then, the hearing officer is blind with respect to alternatives to traditional bail. The likelihood that the bail review officer would get information about alternatives to traditional bail was more likely in hearings in Baltimore County (22% of the time the hearing officer was given some information about bail alternatives) and Harford County (20% of the time). It was very unlikely in both Frederick and Prince George's County.

In addition to asking about the provision of alternatives to traditional bail, we also obtained information about what alternatives to a secured bond were suggested. Two options were possible, either an unsecured personal recognizance bond (collateral bond) or paying 10% of the bail to the court. In most jurisdictions, the likely alternative that was suggested was the unsecured bond. In the pooled sample this alternative was suggested nearly 90% of the time that the hearing officer was informed of an alternative to a secured bond. This alternative was suggested 98% of the time that an alternative was raised in Baltimore County, 71% of the time in Baltimore City, and 84% of the time in Harford County. Only in Frederick County was the 10%

payment to the court more often suggested over the unsecured bond (60% v. 40% of the time).

Figure 2: Proportion of Time Hearing Officer Was Informed of Bail Alternatives



At the conclusion of the bail review hearing, there were several possible outcomes for the bail review hearing officer to follow: (1) release the suspect on his/her own recognizance, (2) maintain the pre-set bail, (3) maintain the initial bail amount, (4) reduce the bail, and (5) increase the bail. For the full sample of approximately 600 cases, the prevalence of each outcome that was actually taken is illustrated in Table 8. As can be seen, the bail review officer released the suspect on recognizance approximately 15% of the time, maintained a pre-set bail about 11% of the time, maintained the current bail amount 40% of the time, reduced bail 30% of the time, and in only 4% of the cases was the amount of bail increased after the bail review hearing.

Table 8: Percent of Cases with Each Outcome of Bail Review Hearing

| Outcome | Pooled Cases | Baltimore County | Baltimore City | Frederick County | Harford County | PG County |
|------------------|--------------|------------------|----------------|------------------|----------------|-----------|
| ROR Maintain | 15% | 24% | 8% | 7% | 25% | 0% |
| Pre-set Maintain | 11% | 14% | 16% | 4% | 18% | 0% |
| Initial Reduce | 40% | 18% | 40% | 60% | 25% | 80% |
| Initial Increase | 30% | 44% | 28% | 29% | 24% | 14% |
| Initial | 4% | 1% | 7% | 0% | 8% | 6% |

Numbers may not sum to 100% due to rounding error.

There is some interesting and notable variation in the decisions made by the bail review hearing officer across the different jurisdictions. For example, the probability that the initial bail will be maintained is quite high in Prince George’s and Frederick County, where over one-half of those bails are left untouched. Simply keeping the bail at its current level is unlikely in both Baltimore and Frederick County. The initial bail is most likely to be reduced in Baltimore County and most likely to be increased over the initial amount in Baltimore City and Harford County. It should be noted, however, that if the initial bail amount is altered, it is far more likely to be reduced than it is to be increased. This is true across the five jurisdictions.

One very interesting finding from this study was that the appearance of defense counsel at the bail review hearing had an impact on the chances that the suspect would be released on his/her own recognizance. In those cases where defense counsel was absent, 10.5% of the suspects were released ROR, when counsel was present, however, the percent released ROR doubled to 22.6%. The effect of defense counsel at the bail review hearing, therefore, was to

roughly double the probability that the suspect would be immediately released from jail.

We also secured some information about the existence and nature of bail release conditions, though there is only data available for Baltimore County, Baltimore City, and Harford County. In terms of whether or not there were any pre-trial release conditions, there were in about one-half of the Baltimore County cases, one-third of the Baltimore City cases, and about forty percent of those in Harford County. Usually, then, the hearing officer did not impose any conditions on bail. In terms of what those conditions were, Table 9 reports the data when the three jurisdictions are combined (there was substantial commonality in the conditions across the three jurisdictions that we have information on). The data show the percent of the time that a given condition was used as a release condition by a bail review hearing officer (please note that these will not sum to 100% since more than one condition could be required).

Table 9: Nature of Release Conditions

| | |
|-----------------|-----|
| Supervision | 32% |
| Drug Testing | 11% |
| Drug Counseling | 15% |
| Stay-away order | 43% |

The most likely condition of release is that the suspect stay away from some other party. This may reflect a domestic dispute or some other entanglement that got the suspect into trouble in the first place. The second most likely condition is that the suspect be under some form of supervision, with a combination of drug testing and drug counseling a condition of release in about 25% of the cases.

Two other pieces of information were obtained about these bail review hearings, the reason the judge gave for his decision in the bail review matter, and the time the bail review

hearing took. We identified seven non-mutually exclusive reasons the hearing officer could provide for making the decision that he/she did: (1) the nature of the charge, (2) the suspect posed a threat, (3) prior convictions, (4) a pending case (5) the suspect was on probation at the time of the incident offense, (6) existence of community ties, and (7) prior failure to appear in court. In Table 10 we report the prevalence of each of these reasons for the full sample of cases.

Table 10: Stated Reasons for Decision Made by Bail Review Hearing Officer

| | |
|-----------------------------|-----|
| Nature of Charge | 38% |
| Threat to Community | 7% |
| Prior Convictions | 15% |
| Pending Case | 9% |
| Defendant on Probation | 4% |
| Insufficient Community Ties | 5% |
| Prior Failure to Appears | 14% |

The most frequent reason cited for the bail review hearing officer’s decision was the nature of the charge against the defendant. This was one of the stated reasons for the decision in nearly 40 percent of the cases. The next most likely reasons was the suspect’s prior history of convictions (15%), and the fact that they have failed to appear in a previous case (14%). Insufficient ties to the community was given as a reason for the bail decision in only five percent of the cases.

There was some variation by jurisdiction in the stated reasons for the bail review hearing officer’s decision. In Baltimore County and Baltimore City, for example, the nature of the charge was stated as a reason for the bail decision by the hearing officer in approximately one-half of the cases. In Harford County, the nature of the charge was given as one reason for the bail decision in about 22 percent of the cases. The number of prior convictions of the suspect was stated as a reason by 46% of the cases in Frederick County.

Finally, in terms of the average time of the bail review hearing, we found that the median time was 1.98 minutes in the pooled sample of cases. The median bail review hearing time was three minutes in both Baltimore County and City, 2 minutes in Frederick County, and only one minute in Harford County.

SUSPECT INTERVIEWS ABOUT BAIL AND BAIL REVIEW

In addition to information collected by research staff acting as observers who witnessed a large sample of bail review hearings in each of five Maryland Counties, in a small subset of cases the suspect or a member of the suspects family was interviewed immediately after the hearing. The purpose of these interviews was to provide us with information about how the suspect expected to make bail, and any anticipated hardships that having to raise a cash bail or bond might pose for the suspect or his/her family. Approximately 400 interviews were obtained, 360 from the defendant in the case and in 43 cases it was some family member speaking on behalf of the suspect. In terms of representation by jurisdiction, approximately 137 of the interviews came from Baltimore County, 48 in Baltimore City, 45 in Frederick County, 66 in Harford County, and 106 in Prince George's County.

Suspects were initially asked if they expected to make bail. In the full sample of cases a slight majority of the suspects (55%) said that they did not expect to make bail. This varied from a high of 65% of the suspects in Prince George's County who reported that they did not expect to make bail to 43% of those in Baltimore County. Only in Baltimore County did a majority of those who had a bail review hearing expect to make their bail. Suspects were also asked if they had posted their bail by the time of the interview. In each of the jurisdictions, approximately

90% of the suspects had not. There was little variation in this percent across jurisdictions.

Defendants were asked where they expected to get the money to make their bail and were provided with a list of possible candidates. These data are reported for the pooled sample of cases in Table 9. The table reports the percent of the time that each person was named by the suspect or a family member as a source for his/her bail. A striking feature of Table 11 was that the second most frequently cited source of financial resources for the suspects bail was a bail bondsman, who was named as one possible source in almost one-half of the cases (47%). This was only exceeded by a family member who was named as a financial source of bail in 51% of the cases, while the suspect named him/herself as a source in only 27% of the cases. The only other likely source for the suspects bail was a friend, who was named as a financial source in 27% of the cases. In terms of variation by jurisdiction, appeal to a bail bondsman is particularly likely in Baltimore City and Prince George’s County.

Table 11: Where did the Suspect Expect to get the Money to Make Bail

| Source | Pooled | Baltimore County | Baltimore City | Frederick County | Harford County | PG County |
|-----------|--------|------------------|----------------|------------------|----------------|-----------|
| Defendant | 27% | 17% | 4% | 39% | 23% | 60% |
| Family | 51% | 55% | 36% | 48% | 45% | 60% |
| Bondsman | 47% | 47% | 54% | 30% | 42% | 60% |
| Friend | 27% | 28% | 4% | 26% | 42% | 20% |
| Employer | 5% | 0% | 0% | 26% | 0% | 7% |

As part of the interview, suspects were asked how much money they had to pay if they had to secure their release money from a bail bondsman. The average amount (median) for the pooled sample was \$250, but there were a few instances where suspects had to secure substantially higher amounts since the mean was close to a thousand dollars (\$941). The median

amount of money that had to be secured from a bail bondsman was slightly higher in Baltimore City and Frederick County (approximately \$500). In addition, in a majority of the cases where release money came from a bail bondsman, the money had to be paid all at once (67% of the time) rather than in installments, increasing the financial burden on the suspect and his/her family. In no jurisdiction did a majority of the respondents report that they could repay their bail bondsman in installments.

We attempted to calibrate the financial burden that having to post bail posed for the suspect and his/her family with a number of interview questions. Suspects were first asked how difficult it would be for them personally if they had to put up their own bail money. The responses are shown for the full sample in Table 12.

Table 12: “If you had to put up the money yourself, how difficult was it to afford the bail money?”

| | |
|----------------|-----|
| Very Difficult | 42% |
| Difficult | 34% |
| Easy | 17% |
| Very Easy | 7% |

There is some compelling, though perhaps not surprising, evidence here that having to post bail poses a financial hardship on suspects. Almost one-half (42%) of the suspects thought that it would be “very difficult” for them to put up the bail money themselves, and over three-quarters thought that there would be some difficulty.

Suspects who had someone else put up their bail money were asked how difficult they thought it would be for this person to afford their bail. The responses for the full sample of respondents is reported in Table 13.

Table 13: “If someone else put up the money, how difficult do you think it was for this person to afford the bail money?”

| | |
|----------------|-----|
| Very Difficult | 39% |
| Difficult | 37% |
| Easy | 17% |
| Very Easy | 7% |

From Table 11, it appears that there is no less a financial burden if someone close to the suspect is the one to put up the bail money. Over three-fourths (76%) of the suspects said that it would either be very difficult or difficult for someone else to secure their bail money. Clearly, then, the requirement to post bail constitutes an expected financial hardship for these defendants.

Another way to capture the financial burden that having to post bail imposes on criminal suspects, those interviewed were asked to report any hardships they had to endure as a result, such as missing or delaying a rent payment. The responses from all respondents are shown in Table 14.

Table 14: Did having to post bail cause you or your family to:

| | |
|--|-----|
| Delaying paying the rent | 49% |
| miss a loan payment | 11% |
| borrow money from someone | 38% |
| buy fewer groceries | 42% |
| delay paying electric, phone or other bill | 42% |

This table puts some content to the financial hardships that suspects who have to post bail have to contend with. About one-half of those interviewed reported that having to post bail meant that they would have to delay paying their rent, more than one-third (38%) said that they would have to borrow money, and about 4 in 10 indicated that they would have to buy fewer groceries or

delay paying some other household bills in order to get their bail money. It is clear, then, that criminal suspects and their families bear some non-trivial financial hardships in having to raise money for their bail.

Finally, suspects were asked about the tangible consequences of their arrest and confinement. More specifically, they were asked if as a result of being in jail they had lost their job, lost some wages, or lost their apartment or domicile. The data indicate again that the costs of a failure to be immediately released are profound for many suspects. Nearly a quarter of our interviewed suspects (23%) said that they lost their job as a result of being in jail, over one-half (57%) said that they lost wages as a result of being jailed, and an additional 40% said that they lost their home, apartment or residence. These negative consequences derive at least in part from the fact that jailed suspects tended to remain in jail. Over two-thirds (68%) of our interviewed suspects reported that they remained in jail under their trial date.

APPENDIX I

1998 AND 1999 Commissioner's Report - Breakdown of Bail Bonds
Tables 10(a) - 10(d)

TABLE 10 (a)

1998 BOND INFORMATION

(Actual Numbers)

| DIST. | CASH. | CORP. | % | PROP. | UNSEC. | SURR. |
|--------------|--------------|--------------|-------------|--------------|---------------|--------------|
| 1 | 895 | 11072 | 0 | 1213 | 18 | 21 |
| 2 | 280 | 2248 | 7 | 188 | 101 | 15 |
| 3 | 737 | 1201 | 23 | 402 | 314 | 26 |
| 4 | 721 | 628 | 228 | 1253 | 226 | 13 |
| 5 | 913 | 2698 | 9 | 4341 | 484 | 15 |
| 6 | 1444 | 695 | 387 | 1674 | 264 | 3 |
| 7 | 486 | 4470 | 97 | 730 | 197 | 60 |
| 8 | 677 | 6877 | 9 | 914 | 313 | 65 |
| 9 | 413 | 906 | 95 | 133 | 63 | 1 |
| 10 | 636 | 1268 | 800 | 155 | 606 | 17 |
| 11 | 508 | 3083 | 76 | 238 | 5 | 6 |
| 12 | 220 | 779 | 22 | 108 | 26 | 3 |
| TOTAL | 7930 | 35925 | 1753 | 11349 | 2617 | 245 |

NOTE: District 1 figures reflect a total number of bonds taken by clerks of 10,604.

Total bonds posted 59,574

Total bonds posted at Initial Appearance 4,097

Total bonds surrendered 245

TABLE 10 (b)

Numbers in Percentages

| 1998 Bond Information | | | | | |
|-----------------------|--------|--------|--------|--------|--------|
| | Cash | Corp | % | Prop | Unsec |
| 1 | 6.78% | 83.89 | 0% | 9.19 | 0.13 |
| 2 | 9.92% | 79.60% | 0.25% | 6.66% | 3.58% |
| 3 | 27.53% | 44.87% | 0.86% | 15.02% | 11.73% |
| 4 | 23.60% | 20.55% | 7.46% | 41% | 7.40% |
| 5 | 10.81% | 31.95% | 0.12% | 51.40% | 5.73% |
| 6 | 32.43% | 15.57% | 8.67% | 37.50% | 5.69% |
| 7 | 8.13% | 74.75% | 1.62% | 12.21% | 3.30% |
| 8 | 7.70% | 78.24% | 0.10% | 10.40% | 3.56% |
| 9 | 25.64% | 56.24% | 5.90% | 8.26% | 0.86% |
| 10 | 18.27% | 36.42% | 22.98% | 4.45% | 17.49% |
| 11 | 12.00% | 78.85% | 1.94% | 1.94% | .09% |
| 12 | 19.05% | 67.45% | 1.90% | 9.35% | 2.25% |
| | | | | | |

1999 BOND INFORMATION

(Actual Numbers)

| DIST. | CASH. | CORP. | % | PROP. | UNSEC. | SURR. |
|--------------|-------------|--------------|-------------|--------------|-------------|------------|
| 1 | 501 | 6539 | 49 | 727 | 116 | 5 |
| 2 | 322 | 2770 | 102 | 265 | 198 | 14 |
| 3 | 705 | 1707 | 39 | 452 | 471 | 20 |
| 4 | 595 | 914 | 254 | 1572 | 296 | 12 |
| 5 | 878 | 2658 | 17 | 4843 | 555 | 9 |
| 6 | 1185 | 583 | 206 | 1126 | 247 | 0 |
| 7 | 471 | 4705 | 41 | 754 | 237 | 49 |
| 8 | 741 | 8105 | 42 | 832 | 332 | 66 |
| 9 | 406 | 1060 | 39 | 88 | 45 | 11 |
| 10 | 658 | 1176 | 538 | 172 | 1240 | 20 |
| 11 | 596 | 3231 | 41 | 157 | 8 | 1 |
| 12 | 288 | 873 | 69 | 83 | 18 | 4 |
| TOTAL | 7346 | 34321 | 1437 | 11071 | 3763 | 211 |

Total bonds posted 57,938

Total bonds posted at Initial Appearance 5,771

Total bonds surrendered 211

TABLE 10 (d)

Numbers in Percentages

| 1999 Bond Information | | | | | |
|-----------------------|--------|--------|--------|--------|--------|
| | Cash | Corp | % | Prop. | Unsec. |
| 1 | 6.32% | 82.44% | 0.62% | 9.17% | 1.46% |
| 2 | 8.81% | 75.75% | 2.79% | 7.25% | 5.41% |
| 3 | 20.90% | 50.60% | 1.16% | 13.40% | 13.96% |
| 4 | 16.39% | 25.17% | 6.00% | 43.29% | 8.15% |
| 5 | 9.81% | 29.70% | 0.19% | 54.12% | 6.20% |
| 6 | 35.40% | 17.42% | 6.15% | 33.64% | 7.38% |
| 7 | 7.59% | 75.79% | 0.02% | 12.15% | 3.82% |
| 8 | 7.37% | 80.63% | 0.42% | 8.28% | 3.30% |
| 9 | 24.79% | 64.71% | 2.38% | 5.37% | 2.75% |
| 10 | 17.39% | 31.08% | 14.22% | 4.54% | 32.77% |
| 11 | 14.78% | 80.11% | 1.02% | 3.89% | 0.20% |
| 12 | 21.63% | 65.59% | 5.18% | 6.24% | 1.35% |

APPENDIX J

Lexington Bail Company

LEXINGTON NATIONAL INSURANCE CORPORATION
Supplemental Schedule of Premiums Written in Maryland
For the year ended December 31, 1998

| <u>Type of Business</u> | <u>Gross Written Premium</u> | <u>Premiums as Reported on Schedule "T"</u> |
|-------------------------|------------------------------|---|
| Surety-Bail Bonds | 13,177,366 | 1,386,800 |
| Surety-Other* | 902,260 | 902,260 |
| | <u>14,079,626</u> | <u>2,289,060</u> |

As authorized by the State of Maryland, our Company only reports the net premium received by the Company on bail undertakings as written premium on the Schedule "T", although we are taxed on the gross premiums charged by the bondsman.

This is consistent with the treatment of bail premiums as permitted by the Maryland Insurance Administration.

*Other surety bonds reported gross, written in the State of Maryland only.

EXHIBIT OF PREMIUMS AND LOSSES
(Statutory Page 14 Data)

Document Code 450
NAIC Company Code 37940

0000790199843021100

DIRECT BUSINESS IN THE STATE OF Maryland DURING THE YEAR

| 1 Line of Business | 2 Cross Premiums, Including Policy and Membership Fees, Less Return Premiums and Premiums on Policies Not Taken | | 3 Direct Premiums Earned | 4 Dividends Paid or Credited to Policyholders on Direct Business | 5 Direct Unearned Premium Reserves | 6 Direct Losses Paid (deducting salvage) | 7 Direct Losses Incurred | 8 Direct Losses Unpaid | 9 Direct Allocated Loss Adjustment Expense Paid | 10 Direct Allocated Loss Adjustment Expense Incurred | 11 Direct Allocated Loss Adjustment Expense Unpaid | 12 Commissions and Brokerage Expenses | 13 Taxes, Licenses and Fees |
|---|--|-----------|-----------------------------|---|---------------------------------------|---|-----------------------------|---------------------------|--|---|---|--|--------------------------------|
| | Written | | | | | | | | | | | | |
| 1. Fire | | | | | | | | | | | | | |
| 2.1 Allied lines | | | | | | | | | | | | | |
| 2.2 Multiple peril crop | | | | | | | | | | | | | |
| 2.3 Federal Flood | | | | | | | | | | | | | |
| 3. Farmowners multiple peril | | | | | | | | | | | | | |
| 4. Homeowners multiple peril | | | | | | | | | | | | | |
| 5.1 Commercial multiple peril (non - liability portion) | | | | | | | | | | | | | |
| 5.2 Commercial multiple peril (liability portion) | | | | | | | | | | | | | |
| 6. Mortgage guaranty | | | | | | | | | | | | | |
| 8. Ocean marine | | | | | | | | | | | | | |
| 9. Inland marine | | | | | | | | | | | | | |
| 10. Financial guaranty | | | | | | | | | | | | | |
| 11. Medical malpractice | | | | | | | | | | | | | |
| 12. Earthquake | | | | | | | | | | | | | |
| 13. Group accident and health | | | | | | | | | | | | | |
| 14. Credit A & H (group and individual) | | | | | | | | | | | | | |
| 15.1 Collectively renewable A & H | | | | | | | | | | | | | |
| 15.2 Non-cancelable A & H | | | | | | | | | | | | | |
| 15.3 Guaranteed renewable A & H | | | | | | | | | | | | | |
| 15.4 Non-renewable for stated reasons only | | | | | | | | | | | | | |
| 15.5 Other accident only | | | | | | | | | | | | | |
| 15.6 All other A & H | | | | | | | | | | | | | |
| 15.7 Federal employees health benefits program premium | | | | | | | | | | | | | |
| 16. Workers compensation | | | | | | | | | | | | | |
| 17. Other liability | | | | | | | | | | | | | |
| 18. Products liability | | | | | | | | | | | | | |
| 19.1 Private passenger auto no-fault (personal injury protection) | | | | | | | | | | | | | |
| 19.2 Other private passenger auto liability | | | | | | | | | | | | | |
| 19.3 Commercial auto no-fault (personal injury protection) | | | | | | | | | | | | | |
| 19.4 Other commercial auto liability | | | | | | | | | | | | | |
| 21.1 Private passenger auto physical damage | | | | | | | | | | | | | |
| 21.2 Commercial auto physical damage | | | | | | | | | | | | | |
| 22. Aircraft (all perils) | | | | | | | | | | | | | |
| 23. Fidelity | | | | | | | | | | | | | |
| 24. Surety | | | | | | | | | | | | | |
| 26. Burglary and theft | | | | | | | | | | | | | |
| 27. Boiler and machinery | | | | | | | | | | | | | |
| 28. Credit | | | | | | | | | | | | | |
| 31. Aggregate write-ins for other lines of business | | | | | | | | | | | | | |
| 32. TOTALS (a) | 2,289,062 | 2,174,368 | 2,174,368 | | 832,250 | 6,501 | 37,687 | 148,687 | 2,336 | | | | 280,784 |
| DETAILS OF WRITE-INS | | | | | | | | | | | | | |
| 3101. | | | | | | | | | | | | | |
| 3102. | | | | | | | | | | | | | |
| 3103. | | | | | | | | | | | | | |
| 3198. | Summary of remaining write-ins for Line 31 from overflow page | | | | | | | | | | | | |
| 3199. | TOTALS (Lines 3101 through 3103 plus 3198) (Line 31 above) | | | | | | | | | | | | |

(a) Finance and service charges not included in Lines 1 to 32 \$.....0.

APPENDIX K

Economic Impact
Professor Ray Pasternoster

ECONOMIC IMPACT OF FINANCIAL BAIL

When judicial officers condition pretrial release upon the posting of money bail, the financial hardship upon detainees and their families or friends is often substantial. Typically, poor and lower income people do not have any available funds. To secure the release of a family member or loved one, they often must dip into money that is designated for rent, food, or utilities, or else borrow from others. Paying the bail bondsman an outright ten percent fee to gain the release of an economic provider represents the loss of one or two weeks of that working person's (and family's) take home salary. While families try to recover from this unplanned expense, people receiving government assistance are unlikely to even have a choice: their monthly stipend would be all but consumed in a similar transaction.

People living in impoverished communities are the most likely to find that money bail is beyond their financial capacity. In the five-counties being analyzed for this study, for instance, there is a significant difference between the ability of the average Baltimore City household to afford a five thousand dollar bail compared to a family living in Frederick County or Harford County. According to the 1995 United States Census Bureau, the typical Frederick County household had the highest median income of the five counties, \$51,220, while Harford County was next, \$48,967. These amounts were nearly twice as much as the average household in Baltimore City, \$25,918.¹ Indeed, in Baltimore City nearly one of four people are estimated to be living in poverty, compared to one of eighteen living in Frederick and Harford counties.²

Consequently, when judicial officers order a financial bail, they should take into account the poverty conditions in which many people live in the jurisdiction, and consider the limited financial capability of an individual detainee's household. Most commissioners and judges, however, overlook and appear to be disinterested in the reality of a detainee's financial circumstances. Instead, they set bail mainly on the charge, on the detainee's prior record of convictions, and on whether the individual ever missed a court appearance.

The Pretrial Release Project sought to measure the economic impact of financial bail by collecting information from a large sample of bail review hearings in each of the five Maryland counties. University of Maryland Professor Ray Paternoster analyzed this data and confirmed:

-- that financial bail is a hardship for family and friends. Three quarters of the people who were expected to be asked to post bond believed it would be "very difficult" or "difficult" to provide the money;

--that seventy percent of respondents to the survey indicated that by paying bail they would delay payment of the rent and utilities, and would be able to purchase fewer groceries; and

¹ Baltimore County's 1995 median household income was \$42,021, while Prince George's was \$45,281

² Baltimore County's poverty rate was 6.65, while Prince George's was slightly higher at 8.1%.

--that the inability to post bail meant that during incarceration one in four would lose their job, and two in five would lose their home.

Professor Paternoster also found that detainees are most likely to rely upon bail bondsmen to regain their freedom. Interestingly, Baltimore City and Frederick detainees on average pay the highest fee to bail bondsmen (\$500), despite the fact that their average household income were significantly lower than those of detainees in the other Maryland counties. Professor Paternoster's full report follows.

SUSPECT INTERVIEWS ABOUT FINANCIAL BAIL CONDITONS

After observing bail review hearings in each of five Maryland Counties, research staff also interviewed approximately two of three detainees or members of the suspect's family immediately after the hearing. The purpose of these interviews was to provide information about how the detainee expected to make bail, and any anticipated hardships that having to raise a cash bail or bond might pose for the individual and his/her family. Approximately 400 interviews were obtained, 360 from the defendant in the case and 43 from a family member speaking on behalf of the detainee. In terms of representation by jurisdiction, approximately 137 of the interviews came from Baltimore County, 48 in Baltimore City, 45 in Frederick County, 66 in Harford County, and 106 in Prince George's County.

Suspects were initially asked if they expected to make bail. In the full sample of cases, a slight majority (55%) said that they did not. This varied from a high of 65% of the suspects in Prince George's County to 43% of those in Baltimore County. Only in Baltimore County did a majority of those who had a bail review hearing expect to make their bail. Suspects also were asked if they had posted their bail by the time of the interview. In each of the jurisdictions, approximately 90% of the suspects had not. There was little variation in this percent across jurisdictions.

Defendants were asked where they expected to get the money to make their bail and were provided with a list of possible candidates. These data are reported for the pooled sample of cases in Table 9. The table reports the percent of the time that each person was named by the suspect or a family member as a source for his/her bail. A striking feature of Table 9 was that the second most frequently cited source of financial resources for the suspects bail was a bail bondsmen, who was named as one possible source in almost one-half of the cases (47%). This was only exceeded by a family member who was named as a financial source of bail in 51% of the cases, while the suspect named him/herself as a source in only 27% of the cases. The only other likely source for the suspects bail was a friend, who was named as a financial source in 27% of the cases. In terms of variation by jurisdiction, appeal to a bail bondsman is particularly likely in Baltimore City and Prince George's County.

Table 9: Where Did The Suspect Expect To Get The Money To Make Bail

| Source | Pooled | Baltimore County | Baltimore City | Frederick County | Harfound County | PG County |
|-----------|--------|------------------|----------------|------------------|-----------------|-----------|
| Defendant | 27% | 17% | 4% | 39% | 23% | 60% |
| Family | 51% | 55% | 36% | 48% | 45% | 60% |
| Bondsman | 47% | 47% | 54% | 30% | 42% | 60% |
| Friend | 27% | 28% | 4% | 26% | 42% | 20% |
| Employer | 5% | 0% | 0% | 26% | 0% | 7% |

As part of the interview, suspects were asked how much money they had to pay if they had to secure their release money from a bail bondsman. The average amount (median) for the pooled sample was \$250, but there were a few instances where suspects had to secure substantially higher amounts since the mean was close to a thousand dollars (\$941). The median amount of money that had to be secured from a bail bondsman was slightly higher in Baltimore City and Frederick County (approximately \$500). In addition, in a majority of the cases where the release money came from a bail bondsman, the money had to be paid all at once (67% of the time) rather than in installments, increasing the financial burden on the suspect and his/her family. In no jurisdiction did a majority of the respondents report that they could repay their bail bondsman in installments.

We attempted to calibrate the financial burden that having to post bail posed for the suspect and his/her family with a number of interview questions. Suspects were first asked how difficult it would be for them personally if they had to put up their own bail money. The responses are shown for the full sample in Table 10.

Table 10: "If you had to put up the money yourself, how difficult was it to afford the bail money?"

| | |
|----------------|-----|
| Very Difficult | 42% |
| Difficult | 34% |
| Easy | 17% |
| Very Easy | 7% |

There is some compelling, though perhaps not surprising, evidence here that having to post bail poses a financial hardship on suspects. Almost one-half (42%) of the suspects thought that it

would be “very difficult” for them to put up the bail money themselves, and over three-quarters thought that there would be some difficulty.

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Table 11: “If someone else put up the money, how difficult do you think it was for this person to afford the bail money?”

From Table 11, it appears that there is no less a financial burden if someone close to the suspect is the one to put up the bail money. Over three-fourths (76%) of the suspects said that it would either be very difficult or difficult for someone else to secure their bail money. Clearly, then, the requirement to post bail constitutes an expected financial hardship for these defendants.

Another way to capture the financial burden that having to post bail imposes on criminal suspects, those interviewed were asked to report any hardships they had to endure as a result, such as missing or delaying a rent payment. The responses from all respondents are shown in Table 12.

Table 12: Did having to post bail cause you or your family to:

| | |
|--|-----|
| Delay paying the rent | 49% |
| Miss a loan payment | 11% |
| Borrow money from someone | 38% |
| Buy fewer groceries | 42% |
| Delay paying electric, phone or other bill | 42% |

This table puts some content to the financial hardships that suspects who have to post bail have to contend. About one-half of those interviewed reported that having to post bail meant that they would have to delay paying their rent, more than one-third (38%) said that they would have to borrow money, and about 4 in 10 indicated that they would have to buy fewer groceries or delay paying some other household bills in order to get their bail money. It is clear, then, that they would have to delay paying their rent, more than one-third (38%) said that they would have to borrow money, and about 4 in 10 indicated that they would have to buy fewer groceries or delay paying some other household bills in order to get their bail money. It is clear, then, that criminal suspects and their families bear some non-trivial hardships in having to raise money for their bail.

Finally, suspects were asked about the tangible consequences of their arrest and confinement. More specifically, they were asked if as a result of being in jail they had lost their job, lost some wages, or lost their apartment or domicile. The data indicate again that the costs of a failure to be immediately released are profound for many suspects. Nearly a quarter of our interviewed suspects (23% said that they lost their job as a result of being in jail, over one-half (57%) said that they lost wages as a result of being jailed, and an additional 40% said that they lost their home, apartment, or residence. These negative consequences derive at least in part from the fact that jailed suspects tended to remain in jail. Over two-thirds (68%) of our interviewed suspects reported that they expected to remain in jail until their trial date.