



**Testimony for the House Judiciary Committee  
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**HB 447 Pretrial Services Program Grant Fund – Establishment**

**FAVORABLE**

The ACLU of Maryland urges a favorable report on HB 447, which would establish a Pretrial Services Program Grant Fund; a new special fund established to provide grants to local jurisdictions to establish pretrial services programs, subject to specified requirements. The Governor’s Office of Crime Control and Prevention (GOCCP) would administer the fund.

**The 2017 Court of Appeals Pretrial Rule was a step forward**

In February 2017 the Maryland Court of Appeals unanimously voted to implement progressive and long overdue changes to the use of commercial bail in the state. The revised Court Rule made three critical reforms—

**1. Preference should be given to non-financial conditions**

Under Rule 4-216.1 (b)(1)(A), “preference should be given to additional conditions without financial terms.” This provision is critical because it directs courts to consider non-financial conditions of release before relying on financial conditions. Non-financial conditions can be equally or more effective than bail in encouraging accused persons to appear in court and avoid future criminal entanglement. These conditions could include job training, educational opportunities, substance use disorder treatment, anger management, and a host of other conditions that do not implicate a person’s ability to pay.

**2. Bail may not be used for public safety**

Under Rule 4-216.1 (e)(1)(B), “financial terms are appropriate only to ensure the appearance of the defendant and may not be imposed solely to prevent future criminal conduct during the pretrial period or to protect the safety of any person or the community; nor may they be imposed to punish the defendant or to placate public opinion.” This provision is both fair and reasonable—a defendant who poses no public safety threat should not be saddled with a financial obligation and jailed for failure to afford it. Alternatively, a defendant who does pose a public safety threat is no less dangerous simply because they can afford to post bond.

**3. Bail may not be unaffordable**

Under Rule 4-216.1 (e)(1)(A), “A judicial officer may not impose a special condition of release with financial terms in the form or amount that results in the pretrial detention of the defendant solely because the defendant is financially incapable of meeting that condition.” Setting unaffordable bail is functionally equivalent to

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punishing poverty—such a practice allows for a perverse result wherein a wealthy defendant in factually similar circumstances is allowed to post bond and walk free, where as her poor counterpart remains detained pretrial. Fortunately, the revised rule prevents this dynamic by disallowing courts from setting bail in an amount it knows the defendant cannot afford.

**Adequately resourced Pretrial Services are needed to fully implement the Court of Appeals Rule**

Pretrial services should be established, expanded and improved. In 2017, 11 jurisdictions had pretrial services and 13 did not.<sup>1</sup> The data produced by the Judiciary in the 6 months since the rule’s implementation (July 1 – November 1, 2017) demonstrate that pretrial services are sorely needed. Specifically, the data shows that more persons are being released without financial conditions, but also more persons are being held without bond. This is exactly the result that one would expect if pretrial services are insufficient. The Court rule discourages courts from setting financial conditions of release and in jurisdictions with no pretrial services or inadequate pretrial services, courts have few (if any) good alternatives to setting bail, they are forced to either release defendants without conditions of release or hold defendants without bond. The solution to this dilemma is to develop, expand and improve pretrial services across the state.

HB 447 is a step in the right direction—it is a creative call for resources to fund pretrial services across the state and thereby support full implementation of the Court Rule.

For the foregoing reasons, we urge a favorable report on HB 447.

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<sup>1</sup> Jurisdictions with pretrial services: Anne Arundel, Baltimore County, Baltimore City, Calvert, Carroll, Frederick, Harford, Montgomery, Prince George’s, St. Mary’s, and Wicomico Counties. Jurisdictions without pretrial services: Allegany, Caroline, Cecil, Charles, Dorchester, Garrett, Howard, Kent, Queen Anne’s, Somerset, Talbot, Washington, and Worcester Counties.