



Studies conclude cash bail down but reform still needed

By: Heather Cobun Daily Record Legal Affairs Writer ◉ March 11, 2018

Maryland's new pretrial release rule dramatically decreased the use of cash bail but two recent independent studies concluded additional education and resources are needed.

The Maryland Office of the Public Defender sent 64 volunteers to observe bail reviews in multiple jurisdictions last year as the rule went into effect July 1. It clarifies that judicial officers' preference should be to impose non-monetary conditions to ensure defendants show up for trial.

After sitting through more than 1,600 hearings, the observers expressed concerns about the subjectivity of the process and disparate outcomes between jurisdictions and judges, according to a report released Monday. The study was funded through a grant from the Open Society Institute-Baltimore.

"Observers noted a lot of variance by judge," said Melissa Rothstein, director of policy and development at the Maryland Office of the Public Defender. "They could be in the same jurisdiction and go one day and it's one judge and they're seeing a lot of one result and go another day with a (similar) docket that turns out different because of who was sitting."

More than half of the unpaid volunteers had no understanding of the bail review process and 70 percent had never seen a hearing, according to the public defender's office. Each volunteer underwent two hours of training before visiting courtrooms.

After seeing the dockets, the observers were questioned through online forms, phone conversations and focus groups, according to Rothstein. The result was a series of recommendations to provide judges with more resources to encourage release, risk assessment tools, education for judges and the community, and bringing defendants into the courtroom rather than relying on video conferencing at bail reviews.

The feedback largely reflected what attorneys and advocates who have been paying attention to bail trends have said is needed.

"In some ways I think what was surprising was that nothing was surprising," Rothstein said. "They had the same concerns that we did."

A second report, released in late February by a group of graduate students from the Princeton University School of Public & International Affairs, made similar recommendations despite analyzing court data without observing hearings.

The report, prepared for the Baltimore city and Prince George's County branches of the NAACP, collected data on cases from July to November 2017, when the new rule was in effect, and compared it to the same period in 2015. The researchers also recommended additional guidance from the Judiciary for judges, risk assessment tools and expansion of pretrial services.

'Work to go'

University of Baltimore School of Law professor Colin Starger was not involved in either study but said he would be confident relying on their conclusions because they identified the same issues despite different methodologies.



“It’s really interesting to me that both reports that were conducted independently essentially identify the same trends and make similar recommendations,” he said. “Both reports come to the conclusion that we’re moving in the right direction but there’s still work to go.”

Starger, co-director of the school’s Pretrial Justice Clinic, said the data should be used to educate judges as well as legislators and the general population about what is happening in pretrial hearings.

The observations in the reports track with data provided by the Maryland Judiciary that shows more people are being released with non-financial conditions and overall use of cash bail is dropping — dramatically, in some jurisdictions — since the rule went into effect, but more are being held without bond as well.

“Everybody noted an instance where a held without bail was troubling to them,” Rothstein said.

The Judiciary has attributed the rise in individuals being held to judges stopping the practice of assigning high bond when they believe someone is dangerous. But the public defender’s report suggests judges “expanded their definition of dangerousness to include a presumption of danger for charges that are generally considered a low risk,” leading to drug and misdemeanor assault offenders being held.

In Baltimore in particular, defendants with second-degree assault as the lead offense were held without bail 44 percent of the time after a bail review, according to the report. Individuals with the same charge were held 17 percent of the time in Baltimore County.

The Princeton report also identified demographic differences, such as black defendants paying higher bails and being held without bond more than others.

“It just shows the systemic problems of structural bias are unfortunately still alive and well,” Starger said.

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