



## District Court chief judge advises against using bail to detain, punish defendants

By: Heather Cobun Daily Record Legal Affairs Writer October 31, 2016

The chief judge of the District Court of Maryland has advised judges and court commissioners to impose the least-onerous conditions when setting bail in light of a recent opinion from the state attorney general's office that such a practice might be unconstitutional.

Judge John P. Morrissey, in a letter last week, emphasized that financial conditions are not an appropriate way to ensure public safety. State legislators, along with Attorney General Brian E. Frosh, have been pushing to reform pretrial procedures to avoid holding defendants who cannot afford the monetary bail set. The Judiciary's rules committee is set to discuss potential rule changes at its Nov. 18 meeting.



Chief Maryland District Court Judge John P. Morrissey (Maxin Franz/The Daily Record)

"Sometimes, I think it's healthy to reexamine why we're doing things the way that we're doing and not just going through," Morrissey said Monday.

Morrissey said his Oct. 25 letter provided "cautionary advice" for setting bail, including a reminder that defendants should be released on their own recognizance, with or without conditions, unless no conditions could assure appearance when required and the safety of victims and community.

If personal recognizance is not appropriate, Morrissey wrote, "the judicial officer should impose the least onerous condition or combination of conditions."

Morrissey's letter noted that financial conditions should not be imposed to keep a defendant in custody, please public opinion or punish the defendant.

"I think it's important that we walk through the process, starting at release on recognizance and work up from there," he said Monday.

The letter was sent in advance of a regular meeting between Morrissey and the administrative judges from districts and a "robust discussion" of the issue between the judges, he said.

"There's always wide views of discretion and I certainly wasn't trying to influence anyone's discretion, it was cautionary advice to make sure we're hitting our marks like we're supposed to," he said. "I don't have the authority to tell a judge how to judge."

### Old issue, new focus

The issues raised by the attorney general were not new to the Judiciary, Morrissey added.

"Myself and (Court of Appeals) Chief Judge (Mary Ellen) Barbara have been looking at this issue for over twenty years now and certainly it's an issue that's near and dear to my heart," Morrissey said. "The attorney general raised issues that we're aware of and I thought the time was right to make sure that we are doing it the right way."

Frosh also sent a letter to the Maryland Judiciary rules committee last week, pressing for examination into defendants' personal financial circumstances before assessing bail.

"Indigence or the inability to post bail should not trigger the often life-altering and devastating effects of pretrial detention," Frosh wrote. "The people made to suffer these consequences have not been convicted of any crime. In many cases they are ultimately found not guilty or the charges against them are dismissed."



Retired Court of Appeals Judge Alan M. Wilner, chairman of the Judiciary's rules committee, said the comm picked up the issue of bail hearings in 2014 after the *DeWolfe v. Richmond* decision but financial condition release were not as germane to the conversation as finding a way to staff initial appearances.

The committee was "aware that things were brewing" and spoke with the attorney general about the issue according to Wilner. The subcommittee on criminal procedure is in the process of researching the issue and determining what, if any, rule changes are necessary.

The committee is also in touch with General Assembly members so the two groups don't work at cross-pur said.

"We had some conversations with some legislators to kind of get a sense of where they want to go," Wilne "Some of this still has to play out because we haven't had any hearings on this yet but there are some thin the Court of Appeals can do by rule that relates explicitly to practice and procedure and judicial proceeding

Any proposed rules will be posted online, and the committee will accept written comments as well as public comment at the November meeting.

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#### ONE COMMENT

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October 31, 2016 at 4:48 pm

The initial response has been for many commissioners to hold people without bail who otherwise would received a bail for a charge. Previously, it was extremely rare for a commissioner to HWOB unless there statutory restriction, such as a charge with a life sentence or a crime of violence charge with a previous conviction for a crime of violence. Now misdemeanor second degree assault charges are being HWOB with any consideration of less onerous conditions. Hopefully, this is a misinterpretation that will soon be clarified by the commissioners.

