Report of the Pretrial Release Project Advisory Committee

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Chairman

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Table of Contents

APPENDICES

EXECUTIVE SUMMARY

Detention or release of an accused pending trial is a critical component of due process, premised on the presumption of innocence balanced against the need to ensure the appearance of the defendant at trial and the safety of witnesses and alleged victims prior to trial.

The Committee has concluded that the framework of rules and statutes in Maryland provides the appropriate undergirding for appropriate detention/release decisions by judicial officers. Education and training, not just of judicial officers but of all participants in the criminal justice process and of the general public, cannot but be beneficial to the correct implementation of the law. The non-substantive recodification of a Criminal Procedure Article provides a propitious moment for such education and training. This will, however, do little more than ensure the continued operation of the process currently in place.

In the Committee's estimation, a key element in overall improvement of the criminal justice system is implementation, in each Maryland jurisdiction, of pretrial services, with two facets. First is representation of the accused and, where appropriate, the State at the earliest practicable stage of the criminal justice system. The second is adequate personnel and other resources to afford judicial officers, prosecutors and defense counsel with verified information relevant to pretrial release determinations, to answer queries from victims, witnesses, and defendant's families about the criminal justice process, to review the status of detainees as to release eligibility, and to monitor defendants pending trial to ensure compliance with all conditions of pretrial release.

It is the Committee's considered opinion that such pretrial services can provide for screening to dispose of minor cases expeditiously, without unnecessary pretrial detention and with less inconvenience to witnesses and victims and, in those cases in which trial is appropriate, to allow judicial officers to make more informed decision about pretrial release, based on verified information and confident of monitoring to ensure compliance with release conditions. Presence of defense counsel and, as the State deems necessary, a prosecutor ensures implementation of the rules and statutes as intended, presentation of the information relating to the accused and alleged victims in the adversarial mode on which our system of justice is predicated, and earlier opportunity for disposition of the case.

Necessary to these services are, of course, adequate resources. The Committee believes that full implementation of the pretrial services as outlined in this report can be afforded through the offset of detention expenses, lost wages, and other costs of unnecessary pretrial detention.

To this end, the Committee has formulated its recommendations in a manner which the Committee believes will balance the concerns of all persons interested in the administration of the criminal justice system, set out here in abbreviated form:

Recommendation No. 1: A statewide pretrial release agency shall be created, with

adequate staff and other necessary resources in each Maryland jurisdiction to provide judicial officers with information relevant to pretrial release determinations and assistance in monitoring those determinations.

Recommendation No. 2: Every defendant is entitled to representation by counsel at initial appearance and bail review hearings, and every indigent defendant shall be afforded representation, if desired, by the office of the public defender at bail review hearings.

Recommendation No. 3: If appropriate and with consideration given to relevant factors such as the seriousness of the offense and the criminal history of the defendant, a prosecutor shall be present at bail review hearings.

Recommendation No. 4: Maryland Rules shall make clear that the use of monetary bail should be sparing, limited to situations when "no [other] condition of release will reasonably assure (1) the appearance as required ... ", Maryland Rule 4-216(c), and shall encourage consideration of an unsecured collateral bond in lieu of a collateral bond. Maryland Rule 4-216(f)(4)(A).

Recommendation No. 5: Maryland Rules shall be conformed to Maryland Code Annotated, Art. 27, § 616½(b)(2) as to automatic 10% bonds.

Recommendation No. 6: Consideration should be given to the feasibility of dedicating resources to other modes of pretrial release currently enumerated under the Maryland Rule 4-216(f), such as pretrial supervision of accused, funded through decreased detention costs.

Recommendation No. 7: Judicial officers shall receive training and education with regard to pretrial release determinations prior to assuming judicial duties and at annual judicial seminars.

Recommendation No. 8: A commissioner should have the ability to set conditions of pretrial release for bailable offenses, other than crimes punishable by death or a life sentence, after due consideration of the factors affecting release, based on the most current information.

Recommendation No. 9: Maryland Rule 4-216(j) should be clarified to specify that weekly reports are made to the appropriate administrative judge, containing the information necessary to monitor and assess prolonged pretrial incarceration and, consistent with recommendation 1(5), should provide for pretrial release personnel to provide information that a judge should consider with respect to change in detention status.

Committee

Formation and Membership

The Honorable Robert M. Bell, Chief Judge of the Court of Appeals, created the Pretrial Release Project Advisory Committee on June 19, 2000, having been asked by Professor Douglas L. Colbert for assistance and support of his study of pretrial procedures and practices. This study, under the aegis of the University of Maryland School of Law and with funding from the Abell Foundation, Inc., was an outgrowth of Professor Colbert's earlier Lawyers At Bail Project in Baltimore City and was similarly to be focused on practices and procedures within the City. The Chief Judge believed, however, that a more comprehensive study, with participation of the various agencies of the criminal justice system, could lead to recommendations for broader range of changes in practice and procedure, for the betterment of the criminal justice system Statewide.

To that end, the Chief Judge solicited recommendations for Committee membership from, among others: the Honorable Martha F. Rasin, Chief Judge of the District Court; the Honorable Joseph I. Cassilly, Esq., President of the Maryland State's Attorneys' Association; the Honorable Stuart O. Simms, Secretary of Public Safety and Correctional Services; Benjamin R. Civiletti, Esq.; Douglas L. Colbert, Esq., Professor, University of Maryland School of Law; Stephen E. Harris, Esq., Maryland Public Defender; and James L. Thompson, Esq., then President of the Maryland State Bar Association, Inc. From the nominees, the Chief Judge put together a Committee experienced in the criminal justice process and administration of justice and dedicated to their improvement. A roster appears in Appendix A.

Meetings

The Committee met on July 18, 2000, August 22, 2000, September 12, 2000, December 11, 2000, January 9, 2001, April 30, 2001, and July 19, 2001. Additionally, a subgroup of the Committee met on October 25, 2000. Minutes of the meetings appear in Appendix B.

Professor Colbert generously shared with the Committee not only his original research data but his informed opinions. *See* Appendix C. At his recommendation, the Committee had the opportunity to hear from D. Alan Henry, Executive Director of the National Pretrial Services Resource Center. Robert S. Weisengoff, Director, Pretrial Services, Division of Pretrial Detention and Services in the Department of Public Safety and Correctional Services attended a meeting as well. The Committee also heard from Russell P. Butler, Esq., representing the Stephanie Roper Committee, Inc. District Court personnel, in addition to Committee-members Judge Eaves and Assistant Commissioner Elmore, communicating with the Committee through meetings and letters were: the Honorable Martha F. Rasin, Chief Judge of the District Court; the Honorable Theodore B. Oshrine, Judge of the District Court — District 1 and Chair of the Commissioner Education Committee; and David W. Weissert, Coordinator of Commissioner Activity.

The Chairman of the Committee, by letters dated July 27, 2000, solicited local detention

centers for specific data on their respective populations. Requests were sent to, and responses received from: Charles F. Mades, Sheriff, Washington County; Colonel Howard G. Walter, Jr., Warden, Harford County Detention Center; and Dorothy M. Williams, Administrator, Baltimore County Bureau of Corrections. Requests also were sent to: LaMont W. Flanagan, Commissioner of Pretrial Detention and Services; Major Robert Orr, Prince George's County Department of Corrections; and Major Robert Greene, Frederick County Detention Center.

At the 2001 annual meeting of the Maryland State Bar Association, Inc., Committee members Judge Eaves and Commissioner Elmore served on a panel, entitled "Pretrial Release, Bailbonds, Presumption of Innocence, and Prospects for Reform", sponsored by the Correctional Reform Section, moderated by Professor Colbert, and comprised additionally of Erin Elizabeth Schaden, Esq., representing the defense bar, John Joseph McCarthy, Esq., Deputy State's Attorney for Montgomery County, and Michelle Middleton of the Pretrial Services Unit in Baltimore City. The Chairman and staff, also in attendance, were able to share with the Committee the comments of the audience, including a representative of an insurer for commercial bail bondsmen.

The Committee wishes to acknowledge the interest of the Chief of the Pretrial Services Office of the District Court for the Eastern District of Virginia, who kindly forwarded various informational packets used by that Office in its operations. See Appendix H.

The Committee is grateful to all of those who made an effort to exchange views and opinions with the Committee and its individual members.

Professor Colbert was able to provide the Committee with details about the experiences of several states, such as Kentucky, with regard to pretrial release systems. These details were fleshed out for the Committee by available reports on various other projects. Following the National Bail Conference in Washington, "some twenty to twenty-two ... [we]re being started across the country, attacking in various ways this problem of pretrial release, particularly for the defendant who doesn't have money." *Transcript of the 20th Annual Meeting of the Judicial Conference* at 121 (January 14-15, 1965)[1]. Among the innovations, follow-up to the Manhattan Bail Project — the Manhattan Summons Project — was being made, in conjunction with the New York City police, to extend use of summonses in misdemeanor cases. *Id.* at 124.[2]

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[1] Maryland judges have met almost annually since 1946, first as the Judicial Council and later as the Judicial Conference. Hereinafter, reference to the transcripts of such meetings will be cited as, *e.g.*, "*20th Judicial Conference*".

[2] *The Third Branch* cites a 1979 report to the U.S. Congress about 10 demonstration districts in which pretrial service agencies were established. Subsequently, the Pretrial Services Act mandated services in each judicial

(continued...)

Bureau of Justice Assistance, *A Second Look at Alleviating Jail Crowding: A Systems Perspective* (October 2000)[3] emphasizes that jail populations continue to generate significant problems, including impairment of access by defense counsel with the client and interference with transportation of inmates to court as scheduled. "Jail population is driven by two factors: the number of inmates admitted and how long they stay. Jails have little control over admissions, but the policies and practices of others may contribute to unnecessary use of jail space. For example, inmates such a public inebriates and the mentally ill may be better handled by community mental health or substance abuse centers rather than jails. Maximum use of citation release by police and sentencing alternative by the could can also reduce jail admission." *Id.* at 5-6.

The Committee has considered what can contribute best to efficient and judicious policies. One difficulty has been that the extant projects are so varied that meaningful interpretation of data is difficult. Thus, for example, the Manhattan Bail Project and Cook County Pretrial Release Programs[4] are felony-directed programs, whereas Maryland's Lawyer At Bail Project was limited to misdemeanor offenses. To assist those who have an interest in implementation of one or more of the Committee's recommendations, information relating to Maryland studies and legislation are included in the discussion of, and after, the recommendations. As to the current Maryland laws relating to pretrial detention and release, *see* Appendix D.

The Committee urges that the following caution be kept in mind:

> Rules and administrative structures alone are insufficient, Indeed they may be counter-productive in that they provide the appearance of change without the substance, and they may lull a concerned public into quiescence. By carefully examining the history, process, and impact of bail reform in two communities, Baltimore and Detroit, Flemming reveals the types of concrete actions that must accompany good intentions if innovations are to be effective.

Malcolm M. Feely, Forward to Roy B. Flemming, *Punishment Before Trial: An*

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[2](...continued)
district.

[3] Hereinafter "Second Look".

[4] *See* Illinois Criminal Justice Information Authority, *Cook County Pretrial Release Study* (Revised September 1992) (hereinafter "*Cook County Study*"). This study was undertaken to determine the effects of releases resulting from federally mandated reduction of inmate populations, which began with misdemeanor offenders but had to be expanded to felony offenses as well.

Organizational Perspective of Felony Bail Processes (New York: Longman, Inc. 1982)[5].

[5] Hereinafter *"Punishment Before Trial".*

Discussion of Recommendations

Judicial Pretrial Release Proceedings

Recommendation No. 1: A Statewide pretrial release agency shall be created, with adequate staff and other necessary resources in each Maryland jurisdiction to provide judicial officers with information relevant to pretrial release determinations and assistance in monitoring those determinations.

The Committee envisions that such pretrial release personnel shall at a minimum:

(1) conduct a pre-release investigation into each defendant's background and provide, to judicial officers, prosecutors and defense counsel, verified information relevant to pretrial release pursuant to Maryland Rule 4-216, including the defendant's employment status and history, family ties, financial circumstances and ability to afford financial bail, and residence;

(2) answer queries from victims and witnesses about scheduling; ascertain the victim's interest in pursuing prosecution; and provide assistance to victims and witnesses present at initial appearances or bail review hearings, in such ways as instructing them on procedures, on requesting that release, if granted, be conditioned on the defendant's staying away from victim(s) and witness(es), and on other rights;

(3) answer queries from the defendant's family about scheduling;

(4) 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;

(5) communicate with employers, family members, treatment facilities, victims and witnesses, *etc.,* to ensure defendant's compliance with conditions of pretrial release, such as a stay-away order; and appraise interested persons of court continuances and changes in pretrial status; and

(6) review, on an ongoing basis, the status and release eligibility of detained defendants and provide, to judicial officers, prosecutors, and defense counsel, information that may alter the release determination.

The rationale for creation of such an agency will become clear in discussion of the individual functions recommended to be carried out by personnel. Accordingly, this report addresses first what is clearly a key issue in creation of such an agency — funding. A committee of the Illinois Judicial Conference recommended, in 1980, that pretrial services be established in every Illinois Circuit Court and, in 1987, the standards for such services became law. *The Compiler* (Illinois Criminal Justice Information Authority: Summer 1992) at 10.[6] "Today, however, the Administrative Office of the Illinois Courts ... coordinates only nine county pretrial services agencies in seven judicial circuits" with "[i]nsufficient funds

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[6] Hereinafter "*The Compiler*".

[being] the biggest reason for lack of statewide compliance." *Id.*[7] "In most counties outside of Cook, pretrial services are provided by probation departments and not separate agencies", in accordance with Illinois statute, which "states that pretrial responsibilities can be assigned to probation departments 'where the volume of criminal proceedings does not justify the establishment of a separate division.'" *Id.* at 11.

The Committee makes no recommendation whether such agency be funded entirely by the State, partly by the State and local governments, or entirely by local governments, noting only that various formats have been proposed in Maryland from time to time. Thus, in 1990, Delegate Pauline H. Menes introduced the latest of measures to create pretrial units, House Bill 1360. The fiscal note for that bill indicated a $5,484,792 increase in State expenditures for Fiscal Year 1991 for a grant program under the Department of Public Safety and Correctional Services for local units funded by the State entirely. This figure did not include the $2,370,481 already expended by the State for the Baltimore City program, which had been a locally funded function until the State takeover of the City detention center and personnel. The fiscal note indicated that Anne Arundel, Baltimore, Montgomery, and Prince George's Counties continued to have locally funded programs in 1991.

Many factors will affect the cost, including the decision to limit services or make them available 24-hours a day as in the District of Columbia. *Second Look* at 22.

The Director of the Manhattan Bail Project noted that 6 staff were able to handle all of the cases in Manhattan, approximately 4,800. *20th Judicial Conference* at 128 and 137, with a budget of $ 110,000. That figure, which included the experimental features, could in his estimate be trimmed to $ 85,000, a third at least of the incarceration savings. *Id.* While it is not possible to set precise amounts of savings that could be effected, some data is available from fiscal notes prepared by the Department of Legislative Services in connection with legislation introduced during the 2001 session.

The average total cost per month for incarceration of an inmate in a Division of Correction ("DOC") facility, was given as $ 288. Fiscal Note for House Bill 405 (2001). In Baltimore City, the *per diem* for convicts, generally held in a DOC facility, was stated as $ 50.35, while elsewhere in the State, the *per diem* operating costs of local detention facilities for FY 2002 were estimated at $17 to $ 77 per inmate. Fiscal Note for House Bill 69 (2001).

House Bill 69 would have postponed release of alleged drunk or drugged drivers for at least 12 hours. Montgomery County estimated its costs for additional holding cells and personnel necessary to implement House Bill 69 would be $ 600,000, without consideration

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[7] "In fiscal year 1992, the Illinois General Assembly appropriated less than $1 million to the Supreme Court's budget for pretrial services, and stipulated all of that money be directed to Cook County. In the counties outside of Cook where programs exist ... county governments bear most, if not all, of the costs." *The Compiler* at 10.

of meals, medical costs, and other ancillary expenses. Fiscal Note for House Bill 69 (2001). Prince George's County estimated operating costs at $ 98,600, without stating acquisition costs, although the fiscal analyst of the Department of Legislative Services believed an half day estimate, of $ 49,300, to be more accurate. *Id.* Overhead for DOC facilities raises the per inmate amount to $1,700. Fiscal Note for House Bill 405 (2001). This illustrates a second factor cited as to non-compliance in Illinois — "the lack of an incentive to do so. In most counties where they exist, pretrial programs were created to relieve jail crowding. Officials point out that poorer and less populated counties, which tend to have fewer crowding problems, often have little incentive to develop programs on their own." *The Compiler* at 10. A number of Maryland jurisdictions face jail over-crowding and every increasing construction costs.[8]

An offsetting cost, however, is cost of rearrest, estimated in the Cook County study at $ 3,474 per individual. *Cook County Study* at 74. Even so, "[f]rom a simple release or incarceration perspective, pretrial release, even given relatively high failure rates, is more economical, at least in terms of direct criminal justice costs. However, this cost does not reflect the larger (and largely unmeasurable) costs to the victims of the new crimes." *Id.* at 89. Therefore, the study suggested, "a more economical option still — formalized and more structured pretrial services." *Id.*

Other variables may be less obvious but should be borne in mind in tallying the costs of such an agency, including reduction of filings of *habeas corpus* petitions for denial or review of bail. Release may enable an accused to continue working — and earning wages that, in turn, will generate income tax revenue and continuing other benefits such as health care and support for dependents. Accused entered into substance abuse programs pending trial can shorten any needed post-conviction period of treatment. In Cook County, staff of the Felony Trial Courts Unit make "special efforts to obtain suitable placements for defendants who present special challenges *i.e.*, the homeless, addicted, and mentally ill. As part of its work, the FTC Unit regularly screens candidates for pretrial release." *Cook County Study* at 155. This information also is available to judges in the event of sentencing, thus lessening the need for pre-sentence investigations.

As to the functions of the personnel, the Director of the Manhattan Bail Project, in his address to the Maryland Judicial Council, said:

> "[J]udges are asked to set bail ... [in] one of the few places in the judicial process where judges are being asked to make factual determinations

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[8] Anne Arundel County facilities are reported at 94% of the capacity anticipated for 2010, notwithstanding the 1998 completion of an Ordinance Road jail at a reported cost of $29.3 million and a still incomplete expansion of the Jennifer Road jail at a cost of $18.8 million. Montealegre *et al.*, "County's two jails nearing capacity", *The Capital* (June 27, 2001). The population was ascribed, in part, to a popular drug treatment program at the Ordinance Road jail.

> without being given raw materials. The determinations of fact are fragmentary. If they exist at all they are hearsay, and they are not specific in detail. ... [A]nd it becomes increasingly aggravated where you go to the large cities where the sheer numbers of defendants to go through requires mass provisions. ... It is a pro forma proceeding almost, and as a result judges are reduced to setting bail on the basis of a schedule, where the thing that really determines the amount of bail is the charge, the specific charge. This is an invidious process. It doesn't really have to do with making a decision as to this defendant, it has to do with making a decision essentially as to this criminal charge ... in itself ... a defect in the system."

20th Judicial Conference at 109.

While District Court commissioners attempt to elicit meaningful, and consistent, information about defendants, through use of a standard form (Appendix E)[9], the basic problem of lack of verified information continues to exist. The Committee believes that the implementation of its recommendation no. 1 would result in more informed decisions about release or detention of accused. The Committee recognizes the potential prejudice if a judicial officer — a judge — has extensive, derogatory information about an accused, particularly burdensome in small jurisdictions without the judicial resources allowing recusal, an issue of some concern to judges. *See 20th Judicial Conference* at 130-31; Arizona Judicial Ethics Advisory Committee Opinion 97-11 (July 23, 1999). There is, however, information of a non-prejudicial nature that could be aid in the decision making, if verified. Under the New York system, an interview by student interviewers took about 20 minutes and verification of the information, generally by telephone, took another 30 to 40 minutes. *20th Judicial Conference* at 112.

The Committee feels that pretrial personnel can be most effective viewed as an impartial officers of the courts, rather partisan advocates for defendants. This balance can be effected when pretrial personnel serve as an interface between victims and witnesses and the criminal justice system. This function can be particularly valuable in cases in which a prosecutor decides not to attend pretrial proceedings, by explaining to victims and witnesses the process for exercising their rights. In the event of release, the pretrial personnel would be an appropriate conduit for victim and witness concerns about non-compliance with release conditions.

Decisions as to pretrial release/detention necessitate a judgment as to future conduct, and such conduct can be influenced by monitoring. Thus, the Circuit Court of Cook County Pretrial Services Department was able to reduce failure-to-appear rates through letters to

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Some discussion of the form ensued in Committee meetings. Should the form be restructured, additional ties to the community, including such factors as source of livelihood (not just wages but State aid) and doctor's care for chronic conditions, have been mentioned as potentially significant. *20th Judicial Conference* at 135.

defendants about court dates. *Cook County Study* at 154. "The department also has a check-in booth in the lobby of the Criminal Court Building where defendants who have missed a court date are encouraged to voluntarily surrender themselves. FTA officers attempt to verify any information provided by the defendant and accompany him/her to court." *Id.*

Recommendation No. 2: Every defendant is entitled to representation by counsel at initial appearance and bail review hearings, and every indigent defendant shall be afforded representation, if desired, by the office of the public defender at bail review hearings.

Debate as to timely representation predates establishment of the Office of the Public Defender. Thus, for example, the Chair of the Committee on Defense of Indigent Persons Accused of Crime stated the conclusion that representation should commence at the "earliest possible moment", 68 *Transactions of the Maryland State Bar Association* 166 (1963)[10], and should be accomplished through an administrator attached to the court. *Id.* Although the comments focused on preliminary hearings and the description of the spirited debate at the Committee's meeting had made clear that the types of case in which counsel should be provided would not be resolved easily. *Id.*

Legislation seeking to mandate such representation at bail review proceedings has been introduced during each of the last four sessions of the General Assembly. *See* Senate Bill 78/House Bill 703 (2001); Senate Bill 138 (2000); Senate Bill 335/House Bill 889 (1999); and House Bill 1092 (1998). It is the Committee's understanding that the issue with respect to passage of such legislation has been the cost of such representation and, as an ancillary manner, the need for legislation versus budget allocation. Thus, despite being informed that *McCarter v. State*, 363 Md. 705 (2001), is not uniformly perceived as dispositive of the right, the Committee will focus on the funding issue.[11]

The Department of Legislative Services' fiscal note for Senate Bill 78/House Bill 703 (2001) estimates State expenditures for the Office of the Public Defender would increase by $ 898,400 for Fiscal Year 2002 with a five-year rollout to $ 1,267,100. These figures are based on the hiring of additional, full-time, personnel for such representation at the outset of a case. What is not clear, however, is whether consideration has been given to any

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10 Hereinafter, *e.g.*, "*68th MSBA Transactions*".

11 The issue of appointment of counsel was discussed by the Judicial Council with appointment at arraignment cited as the practice in Dorchester County. *4th Judicial Conference* at 41. At the 1960 meeting of the Judicial Council, revision of the rules governing criminal procedure, particularly the appropriate cases for assignment of counsel at arraignment, were discussed at length. *15th Judicial Conference* at 116-36 (1960). At the 1968 meeting, the Council took up the right to counsel at preliminary hearings. *23rd Judicial Conference* at 41-42 (1968). These discussions predated the adoption of the Maryland Public Defender statute on which the Court relied in *McCarter*.

savings in resources that might be effected by disposition of cases earlier in the process. Additionally, the fiscal note for House Bill 1092 (1998) had noted a potential small business benefit through contractual representation by private law firms on behalf of the Office of the Public Defender, though no dollar amount was stated.

The 2001 note does state "potential significant decrease in incarceration costs for local governments" as the local effect, citing the conclusion of the Lawyers at Bail study that annual savings as to incarceration costs would be $ 4,500,000.

Recommendation No. 3: If appropriate and with consideration given to relevant factors such as the seriousness of the offense and the criminal history of the defendant, a prosecutor shall be present at bail review hearings.

The role of the prosecutor in ensuring detention or appropriately high conditions of release is described in detail by Gregory Bruce English, *A Federal Prosecutor's Guide to Bond and Sentencing Issues: Pretrial Detention, Sentence Enhancement, Parole Eligibility, and Penal Designation in Federal Prosecutions* (U. S. Department of Justice, Criminal Division: Washington, D. C. 1984). The converse, however, is not always stated. A prosecutor can identify cases in which detention is not required. Bureau of Justice Assistance, *A Second Look* notes, at 9 and 26 respectively, that "[d]iversion is an option that many prosecutors and courts consider at the early stages of case processing" with "the opportunity to decline prosecution, reduce charges as necessary, and identify cases eligible for diversion." In federal districts with "'duty attorney's' for magistrate court, a review of the pretrial report is essential to make an accurate statement regarding the government's position on the matter of bond." United States Department of Justice, *Criminal Resource Manual* at 1.

The Director's perception of the Manhattan Bail Project experience was "the longer we have been in the Courts the fewer [the District Attorney's] recommendations [as to bail] have been. ... [H]e was really setting bail before because he was the only one who had information, and the magistrates were simply relying on him to set the amount of bail and they were signing it. ... " *20th Judicial Conference* at 138. In the event of a conflict between Project personnel and a prosecutor, "the presumption usually is in favor of the District Attorney, but it is getting so he's got to have some reasons now. One of the problems is, sometimes in the City of New York — maybe you have the same thing here — he's got an interest in keeping the fellow in because he's an informer, or for some other reason, to continue the investigation, something like that, he doesn't want to announce in Court, and that creates a problem, and I think there is some kind of code that passes between the D. A. and the judge. ..." *Id.* at 139.

One of the factors pointed out by the Director was "part of the tactics used more widely in New York than any place else of loading the indictment with as many charges as you can so you can bargain and 'cop a plea' to one and dismiss the others. So a lot of times those additional charges are pretty flimsy, and they make multiplications of the same charge."

20th Judicial Conference at 136-37.

Financial Pretrial Release Conditions

Recommendation No. 4: Maryland Rules shall make clear that the use of monetary bail should be sparing, limited to situations when "no [other] condition of release will reasonably assure (1) the appearance as required and (2) ... the safety of the alleged [stalking] victim", Maryland Rule 4-216(c)[12], and shall encourage consideration of an unsecured collateral bond in lieu of a collateral bond. Maryland Rule 4-216(f)(4)(A).

There seems to be some discrepancy in the construction of the Maryland Rules governing pretrial release. For example, Mr. Flemming, hailing the adoption of the District Court's rules as a "potentially far-reaching reform", *Punishment Before Trial* at 8, noted also that the rule (then Rule 777) "included a presumption that defendants would be released on recognizance." *Id.* See also George W. Liebmann, 2 *Maryland Practice* (West Publishing: 1976, 1984 Supplement)[13] § 942 at 148. Furthermore, Mr. Liebmann makes clear that, the Maryland rule having been patterned after the federal statute, *Maryland Practice* § 943 at 149, there was an "ascending order" of conditions for release. *Id.* at 148.

To obviate any dispute as to construction, however, the Committee notes that Maryland Code Annotated (1957, 1998 Replacement Volume), Article 27, § 638A, which Chapters 10 and 35, Acts of 2001, recodifies, together with § 616½(d), as Criminal Procedure Article, § 5-101, provides in its revised form, effective October 1, 2001:

> (a) This section shall be liberally construed to carry out the purpose of relying on criminal sanctions instead of financial loss to ensure the appearance of a defendant in a criminal case before verdict or pending a new trial.
>
> (b) (1) Except as provided in subsection (c) of this section, if, from all the circumstances, the court believes that a minor or adult defendant in a criminal case will appear as required for trial before verdict or pending trial, the defendant may be released on personal recognizance.
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> (2) A failure to appear as required by personal recognizance is subject to the penalties provided in § 5-211 of this title.."[14]

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12 Ch. 484 (HB 507), Acts of 2001, deletes from a comparable statutory provision a provision limiting consideration of safety to stalking victims. A change in Md. Rule 4-216(c) may be necessary.

13 Hereinafter, "*Maryland Practice* § . . . ."

14 Although part of a bulk, non-substantive revision, "section" inadvertently broadens the revision to pertain to the provision derived from Art. 27, § 616½(d), as well as that derived from § 638A.

As various Maryland Rules will need to be amended to correct cross references and to make other technical changes reflecting the creation of the Criminal Procedure Article, as well as substantive legislation enacted in 2001, the Committee believes this to be a propitious moment for incorporation of the rule of statutory construction into the rules. See Appendix F.

Recommendation No. 5: Maryland Rules shall be conformed to Maryland Code Annotated, Art. 27, § 616½(b)(2) [Criminal Procedure Article § 5-205] as to automatic 10% bonds.

This recommendation is intended to clarify the scope of the 10% provision. See *Maryland Practice* § 943 at 150-53.

Recommendation No. 6: Consideration should be given to the feasibility of dedicating resources to other modes of pretrial release currently enumerated under the Maryland Rule 4-216(f), such as pretrial supervision of accused, funded through decreased detention costs.

The Committee was informed that few if any jurisdictions provide such alternatives to detention as supervised probation. *A Second Look* at 4748, identifies potential "extra-system" actors" as "persons skilled in treating and counseling juveniles, drunk drivers, chronic public inebriates, the mentally disabled, and drug addicts[;] professionals and volunteers in shelters, dispute settlement, crisis intervention and emergency relief programs[;] employers able to provide jobs and community service slots[;] church groups and social service providers willing to supervise pretrial or sentence defendants."

Judges have had, since 1945, the authority to commit accused in State facilities for alcoholism, Chapter 517 — authority subsequently expanded to drug addicts. Chapter 89, Acts of 1960. District Court commissioners have no such authority, although House Bill 1747(1979), by Delegates Richard A. Palumbo and Joseph F. Vallario, Jr., proposed a Constitutional amendment for that purpose.[15] Placement slots, however, have been a matter of contention. *See, e.g.,* Chapter 305, Acts of 1972.

Judicial Officers

Recommendation No. 7: Judicial officers shall receive training and education with regard to pretrial release determinations prior to assuming judicial duties and at annual judicial

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A memorandum to Maryland trial judges, dated June 21, 1979, indicates that, during the 1979 legislative session, the authority of judges to commitment addicts and alcoholics came under discussion when Chapter 711, Acts of 1979 — intended merely to clarify that District Court judges had the same authority as their predecessors — became embroiled in issues such as the standard of proof for commitment. That, together with the late introduction of HB 1747 and the informal policy of not considering Constitutional amendments in non-election years may explain its failure of enactment.

seminars.

The Judicial Branch devotes considerable resources to keeping judges, commissioners and other staff informed of the latest developments in the law. Thus, for example, weekly legislative reports are distributed during the session, with post-session analysis of bills that have passed. Conferences are held at least annually and a number of other venues, such as bench meetings, afford an opportunity for updating on developments. Commissioners, for example, meet annually for instruction on legislative changes and receive annual updates of the *Maryland District Court Commissioners' Manual*, part of which is included in Appendix E.[16]

Nonetheless, the Committee believes that it may be beneficial to focus not solely on the rules and statutes but also on the practical application and effect of decisions. This focus may ensure that judicial officers follow through to ensure that their decisions are effectuated — *i.e.*, that an accused does not remain incarcerated because the bail amount was not, in fact, reflective of the accused's financial resources or that an accused has been placed under less than effective supervision.

District Court personnel have indicated already that materials compiled for the Committee's work will be helpful in such training.

Recommendation No. 8: A commissioner should have the ability to set conditions of pretrial release for bailable offenses, other than crimes punishable by death or a life sentence, after due consideration of the factors affecting release, based on the most current information. This would mitigate against the use of preset bails in all but the most unusual circumstances.

Mr. Liebmann described former Maryland District Rule 777 as "clear that bail is not to be determined in accordance with a predetermined schedule fixed according to the nature of the charge but shall be in each case an individualized decision taking into account the special circumstances of each defendant." *Maryland Practice* § 944 at 155. Indeed, the *District Court Commissioners' Manual* (10/1/99), at 44, directs a commissioner to contact the judge issuing a bench warrant or a duty judge "[i]f ... from the circumstances presented to you, ... an injustice would result" from, e.g., following the directions of the issuing judge to hold a defendant without bond or in a preset amount and to follow the directions of the judge contacted. The Committee believes, however, that Maryland Rule 4-216(i) could be clarified to state explicitly that the authority of a judge to alter conditions applies to conditions set by another judge as well as by a commissioner.

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The 2000 *Manual* consists of 3 parts — including instructions, charge codes, and fine tables. Only the instructions are included in Appendix E. However, the *Manual*, in its entirety and as updated from time to time, can be accessed on the Judiciary's website at "www.courts.state.md.us".

Recommendation No. 9: Maryland Rule 4-216(j) should be clarified to specify that weekly reports are made to the appropriate administrative judge, containing the information necessary to monitor and assess prolonged pretrial incarceration and, consistent with recommendation 1(5), should provide for pretrial release personnel to provide information that a judge should consider with respect to change in detention status.

The Committee is informed that compliance with this requirement for reports is sporadic. As noted in recommendation no. 7, judicial officers should be conscious whether their decisions are being implemented as intended. These reports are a critical component to such follow through, coupled with information afforded by pretrial services.

Some jurisdictions, such as Spokane County, Washington, use “jail case monitors” who “continuously review jail inmates to identify those who could be diverted from the jail or ... whose case can be expedited in some manner.” *A Second Look* at 25. The Committee envisions that pretrial service personnel would give courts information on inmates appropriate for diversion, release, or fast-track handling of cases.

Additional Maryland Materials

Considerable attention has been devoted, by both the Judicial and Legislative Branches of the Maryland State government, to consideration of issues relating to pretrial release or detention of an accused. This part outlines actions of these Branches, supplemented by a summary of legislative proposals set forth in Appendix G.

Even a cursory look at legislative and rule proposals illustrates that ever present in any pretrial release/detention discussion are the issues of bondsmen and every aspect of bail. The Committee declines to make any recommendation, noting the extensive consideration already given to these issues. The accumulated materials on this topic are provided for information.

Bail

The Chairman of the Baltimore City Board of Bail Bond License Commissioners, Thomas B. Sprague, cited 5 inquiries in that City alone between 1923 and 1962. *Organizational Report of the Board of Bail Bond License Commissioners of Baltimore*, Forward (September 15, 1962)[17]. Four of these were studies by the Baltimore Criminal Justice Commission, with reports released: October 23, 1923; 1929; October, 1946; and 1952. *Id.* at 5. The 1946 and 1952 reports resulted from studies made at the behest of the Supreme Bench of Baltimore City, amidst duplicate pledging of property. *14th Judicial Conference* at 101-02 (1958).

At the 14th Judicial Council meeting, a history of pretrial issues was recounted, with the 1945 enactment of a public local law regulating bondsmen in Montgomery County and capping their fees being cited. *Id.* at 103-04. A trend was seen away from individual to corporate sureties required to file rates with the Insurance Commissioner, *id.* at 104, and pay into a sinking fund. *Id.* at 105. The suggestion was made that tie-ins between bondsmen and attorneys, police officers, or jailors be addressed not through the bondsmen but their cohorts, through supervision by*, e.g.,* the Bar. *Id.* at 105-06.[18] Judges were reminded of Chapter 240, Acts of 1949, allowing cash in lieu of property. *Id.* at 103. The summary of legislation since 1943 shows the diverse proposals that the General Assembly has considered with regard to regulation of bail bondsmen, whether by individual courts, local licensing boards, or State boards.[19] However, Judge Raine opined that greater use

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17 Hereinafter, "*Organizational Report*".

18 Mention was made of a public local law barring attorneys from giving bail with note of an instance of jointly owned property, titled in a bondsman's name in "a deliberate effort to conceal the attorney's interest in the property", with neither Bench nor Bar reprimanding the attorney. *14th Judicial Conference* at 106.

19 In the 1940's, the rule-making authority of courts was an unsettled matter, centered on separation of powers

(continued...)

of recognizance was the answer, with failure to appear a crime[20] or payment to the clerk of court for a fee useable for *inter alia* deputy sheriffs to perform bondsmen's functions. *Id*. at 111.[21]

At the 1958 meeting of the Judicial Council, judges discussed the procedures to establish the need for bail for State witnesses,[22] and reconvening juries to allow the witnesses release, *14th Judicial Conference* at 90-101 and 111-14, and problems in connection with regulation of bail bondsmen. *Id.* at 101-11. The Baltimore City Bar and Junior Bar Association of Baltimore, were cited as concurring in the recommendations, with the Legislative Council "thinking along this line". *Id.* at 97. However, the minutes of the Legislative Council during this period do not reflect any formal action.

In a 1960's discussion of a revision of the rules governing criminal procedure, it was noted that the Rules Committee did nothing to address bail bondsmen, because "[i]t is a very sticky subject, one which is ... in certain jurisdictions involved in politics and local custom, and one which we felt couldn't be properly the subject of a Rule that would have state-wide application." *15th Judicial Conference* at 164. The Council, however, passed an order asking the Committee to consider bondsmen. *Id.* at 165.

Additionally, the Baltimore City Board of Bail Bond License Commissioners and the Bar Association of Baltimore City conducted a joint investigation in 1960. *Organizational Report* at 6-7. The President of the City Council for Baltimore City, the Honorable Philip H. Goodman, sought a legislative study of licensing and regulating bail bondsmen, which was referred to the House Judiciary Committee without indication of further action. *Report of the Legislative Council to 1962 General Assembly*, Minutes (Item 103) at 123.

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[19](...continued)
issues. *See, e.g.,* 32 *MSBA Transactions* 88 (1927) and 35 *MSBA Transactions* 5, 23 (1930). There was, additionally, uncertainty about local versus Statewide rules. *See* 40 Op. Att'y Gen. 659 (1955). Thus, some of the seemingly duplicative, or repetitive, legislative proposals may have resulted from a perceived need to codify, by statute, rules adopted locally.

[20] HB 92 (1952) and HB 568 (1953) were introduced to provide a penalty for non-appearance. The House Judiciary Committee failed to act on either measure. *1952 House Journal* at 247; *1953 House Journal* at 711. Such legislation finally was enacted by Ch. 36, Acts of 1965.

[21] In 1965, Illinois was using a 10% deposit system, "which frankly [wa]s aimed at the professional bondsmen," and which allowed refund of 90% of the deposit on appearance. Director of Manhattan Bail Project, *20th Judicial Conference* at 118. Ch. 266, Acts of 1969, permitted such deposits in the People's Court in Montgomery County -- authority ultimately carried over to the successor District Court.

[22] The Rules Committee drafted a rule to address this issue. *15th Judicial Conference* at 158-61 (1960).

The Committee on Defense of Indigent Persons Accused of Crime declined to address bail bondsmen. 68 *MSBA Transactions* 166, 168 (1963).

In 1966, the House of Delegates requested that the Legislative Council, itself or through a committee, study the laws relating to bail and recognizance. House Resolution 69 (1966) made specific note of the numerous bills that the legislature had been called on to consider, the Baltimore City Municipal Court's consideration of the "Baer Plan" for release of prisoners unable to pay fines, and the federal pretrial release services legislation. 1966 *House Journal* at 899-90. The Legislative Council referred House Resolution 69 to the Governor's Commission on Criminal Laws. *Minutes of the Legislative Council*, Item 182 (1967).

Other issues of discussion by the Judicial Council were continuity of bail following conviction by the District Court pending trial *de novo* in a circuit court and remission, in light of House Bills 2075 and 2074 (1976), respectively. *31st Judicial Conference* at 55-57 (1976). *See also Minutes of Rules Committee Meeting of September 13, 1974* at 11 and *Minutes of Rules Committee Meeting of April 30-May 1, 1976* at 6.

At the Rules Committee meeting, *id.* at 5-14 and 16-18, as well as several following meeting, *Minutes of Rules Committee Meeting of June 24-25, 1976* at 19-20 and *Minutes of Rules Committee Meeting of October 15, 1976* at 4-5, the focus was a rewrite of the bail bond rules and bail forms. As to regulation of bondsmen, it was stated:

> Although some opposition was expressed as to the desirability of the Draft Rule [1285], which permitted a majority of the judges of any judicial circuit to adopt circuit wide rules, it was pointed out that this power already exists under Section 616½ ... with respect to the Second and Seventh Circuits, which had promulgated rules; that the Seventh Circuit had appointed a Bail Bond Commissioner who was presently licensing and regulating bail bondsmen in that circuit; that the Administrative Judges of the Seventh Circuit had expressed their desire and intention to continue to operate under their rules. The difficulty of regulating bail bondsmen in, say Anne Arundel, Prince George's or Montgomery County under local law, when they sought to write bonds in other jurisdictions, and the desirability of the appointment of a statewide bail bond commissioner, were recognized. However, the Chairman ... had been informed that neither the State Court Administrator nor the Insurance Commissioner wished to undertake the statewide regulation of bail bondsmen. Under the circumstances, and because of the existing patchwork of local regulation and the improbability of legislation, it appeared to be the sense of the meeting that adoption of Rule 1285 probably affords the best alternative expedient. ...

Minutes of Rules Committee Meeting of April 30-May 1, 1976 at 14.

Then Chief Judge of the District Court Robert F. Sweeney addressed the Rules Committee at its October 12, 1977, meeting to urge the recission of Rule 1285, based on the difficulty of implementation. "[T]he District Court had worked out a modus vivendi with the 7th Circuit Bail Bond Commissioner. ... [H]owever, ... the prospect of either bond commissioners being appointed throughout the state would create problems for the District Court of horrendous and nightmarish proportions." *Minutes of Rules Committee Meeting of October 12, 1977* at 2. Under then Rule 722, the Chief Clerk of the District Court had "authority to regulate bail bondsmen who execute bail bonds as authorized agents for a corporation which is a surety-insurer authorized to write [approximately 85% of the] bail bonds in this state", whereas then Rule 1285 was "designed to permit regulation of property bonds ... [who] write most of the remaining 15% of bail bonds accepted." *Id.* at 2-3. Absent, however, "a central office ... it is possible to write property bonds against the security of property situated in another county than that in which the bail bond is accepted" , with the applicable law unclear. *Id.* at 3-4. Chief Judge Sweeney advised the Committee "that the Circuit Administrative Judges had unanimously agreed with him, providing some mechanism can be worked out to preserve the status quo in Prince George's County", and expresed his preference for bondsmen to "be regulated by the State Court Administrator, or by an independent statewide bail bond commissioner [or, a]lternative, ... the Chief Judge of the district Court", or, perhaps making the 7th Circuit commissioner a Statewide commissioner. *Id.* at 4-5. The Criminal Law Subcommittee concurred, *Minutes of Rules Committee Meeting of November 18, 1976* at 7, but concern was expressed by Committee member James J. Lombardi, Esq., about the effect of recission on valuation of property in the 7th Circuit, with the anticipated opinion of the Attorney General. Accordingly, the proposal was tabled. *Id*. at 8-9.

The Rules Committee's Criminal Rules Subcommittee addressed an query directed to it by then Chief Judge of the Court of Special Appeals Charles E. Orth, Jr., with respect to habeas proceedings as to readmission to bail following forfeiture. *Minutes of Rules' Subcommittee Meeting of March 14-15, 1975* at 12-13. The Committee concurred in the Subcommittee's conclusion that legislation would be the appropriate mode by which to address the issue. *Minutes of Rules Committee Meeting of March 14-15, 1975* at 17-18. At the same time, Delegate Gerald J. Curran was seeking a gubernatorial commission to study bail through House Resolution 7, on which the House Judiciary Committee reported no action. *1975 House Journal* at 239-40.

The General Assembly passed, and the Governor signed, Joint Resolution 5 (1981), asking the Insurance Commissioner to undertake a comprehensive review of the bail bond and insurance industries. However, the Commissioner's annual report for 1981 and 1982 do not even show Joint Resolution 5 in the list of significant legislation and no report seems to have been filed, if indeed, the recommended committee was appointed.

In *Update* (1982), the Department of Legislative Reference reported on a California Constitutional amendment to allow consideration of public safety as a bail consideration,

comparing the Maryland law.

Pretrial Alternatives to Bail

Judges in Maryland were not unaware of pretrial release studies. For example, mention was made of co-defendants, some of whom are able to make bail, while others cannot, at the Judicial Council meeting in 1963, based on an article in *The New York Times Magazine* about the Vera Institute of Justice, Inc.-Ford Foundation's Manhattan Bail Project. *18th Judicial Conference* at 99-102 (1963). While the speaker made no specific recommendation, he did posit the possibility of the then Department of Parole and Probation doing an investigation in certain instances. *Id.* at 102.

The following year, the Judicial Council was addressed by Charles E. Ares, Associate Director of the Institute of Judicial Administration and, since 1961, Director of the Manhattan Bail Project. *20th Judicial Conference* at 100-40. He noted that, in September, the project had been integrated into, and become a permanent, City-wide part of, the New York Probation Department. *Id.* at 110, 114-15. Professor Ares premised his discussion on "three aspects ... of the defect in our bail system. The unthinking automatic use of bail in every case, or substantially every case, a misuse of the bail system to serve a purpose which the theory of process does not warrant, and finally the fact than any system of release which is conditioned on financial security is going to be irrelevant and work hardship on those who are poor, and there are a substantial number of our criminal defendants who are in that category." *Id.* at 107.

The Criminal Law and Procedure Section Council formed a subcommittee to study the National Bail Bond Project. 71:1 *MSBA Transactions* 34 (1966). One of the subcommittee members was then assistant State's attorney, now retired Judge, Charles Moylan, *id.,* whose office in Baltimore City was conducting a volunteer project patterned after the Manhattan Bail Project. *Punishment Before Trial* at 8. The pilot used Volunteers in Service to America, from 1966 through 1968. *Maryland Manual 1996-1997* at 461. The subcommittee made its report too late for consideration at the July 1966 conference of the Maryland State Bar Association, but the Council subsequently approved the report and forwarded it to the Board of Governors. 72:1 *MSBA Transactions* 43-44 (1967). Unfortunately, though approved for publication, *id.* at 160, no copy of the report seems extant.

During the 1967 Constitutional Convention, considerable discussion ensued about the wording of the provision granting powers to District Court commissioners, led by Delegate Elsbeth Levy Bothe, who wished to ensure that commissioners were not limited to setting money bail, Debate No. 952, 104 *Proceedings and Debates of the 1967 Constitutional*

Convention[23], joined by Delegate Marvin H. Smith. Debate No. 955. Additionally, a proposal was made (and ultimately rejected) to state an express right to release on conditions necessary to secure appearance. *Id.* at 9129 and 12035-57. During the discussion, reference was made by Delegate William L. Henderson to a study "by the legislative council and jointly with the Rules Committee ... . A sub-committee of [which] ... is ready to report to the whole committee at a meeting which has been called for January 5", *id.* at 12044, although Delegate E. Clinton Bamberger, Jr. stated his understanding that the Legislative Council had no intent of acting on bail reform during the 1968 session. *Id.* At 12054. Delegate Franklin L. Burdette, meanwhile, queried handling of dangerous defendants. *Id.* at 12047.

In 1968, Delegate Martin S. Becker introduced House Bill 651, which its title described as revising the procedures related to bail to prevent needless detention. The bill was referred to the House Judiciary Committee, which reported no action. *1968 House Journal* at 292-93.

From August 8, 1968 through September 11, 1970, the then Supreme Bench of Baltimore City inaugurated a pretrial release division for defendants within the jurisdiction of the City's Criminal Court, *Maryland Practice* § 942 at 145, under the supervision of three judges. *Punishment Before Trial* at 8. The program continued until 1983. *Maryland Manual 1996-1997* at 461. The director, later judge, was Richard O. Motsay, who was a consultant on pretrial release with the "LEAA, American University, and American Corrections Association". *Maryland Manual* 1991-1992 at 638.[24] The Division subsequently was taken over by John R. Camou. *Maryland Manual* 1981-1982 at 459.

In 1970, now Judge Andrew L. Sonner was asked by the Criminal Law and Practice Section Council to undertake a report on the use, in the Montgomery County People's Court, of 10% deposits in lieu of bail. 75:1 *MSBA Transactions* 40 (1970). It appears this study may have been in contemplation of the formation of the District Court, as "the provisions of the District Court Revision Act of 1971 [Chapter 423] were inspired by the 10% bail provisions ... relating to the People's Court for Montgomery County." *Maryland Practice* § 943 at 153.

The 1971 session saw enactment of House Resolution 60 (HJR 32), which sought a study

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23 Hereinafter "*1967 Constitutional Debates*".

24 By Ch. 725, Acts of 1985, the Baltimore City program was subsumed within the Department of Public Safety and Correctional Services, as part of the takeover of the Baltimore City Detention Center. Further reorganization was effected by Ch. 474, Acts of 1988.

by the Governor's Commission on Law Enforcement and Administration of Justice[25] of "the feasibility of a pilot project of early release of persons charged with misdemeanors and petty offenses, on their honor or recognizance, prior to arraignment, if verified information documents a defendant's roots in the community." 1971 *Laws of Maryland* at 1862. The resolution cites the Manhattan Summons Project.

In 1972, the Criminal Law Section formed, in conjunction with and at the request of, the Maryland Judicial Conference, a special committee one of whose subcommittees was to look at pretrial release issues. 77:1 *MSBA Transactions* 82, 83 (1972). Additionally, the special committee was to compare Maryland's compliance with ABA Standards. *Id.* at 82. Mr. Liebmann reports that the Maryland Joint Committee to Study Implementation of the A.B.A. Standards "declined to recommend the total abolition of compensated surety bonds in line with the A. B. A. Standards (Section 5.4) 'because of interjurisdictional problems concerning extradition of criminal defendants.' The Joint Committee was reluctant to recommend the complete sacrifice of the professional bondsman's common law power to 'pursue and recapture [fugitives] without the necessity of complying with any of the rigorous extradition safeguards required of law enforcement officers seeking a fugitive." *Maryland Practice* § 943 at 150. *See Wiegand v. State*, 363 Md. 186 (2001). The State's attorney for Prince George's County evidently indicated to the Rules Committee that "'we have found in Prince George's County due to its proximity to the District of Columbia and the Commonwealth of Virginia that the ability of having professional bondsmen available is almost a prerequisite. *Maryland Practice* § 943 at 153. *See also Minutes of Rules Committee Meeting of September 13, 1974* at 10, at which it was noted that the Chapter 700 Subcommittee "was of the opinion that a comprehensive review of the proper manner by which to regulate bondsmen might be appropriate and the question of premature surrender should be a part of the study. ... The subcommittee felt that further regulation of this industry should be by legislation rather than Rules of Court."

The Senate Judicial Proceedings Committee recommended to the Legislative Council that no action be taken with regard to the issue of denial of bail in certain serious cases, because the Court of Appeals had contracted for a study of the issue. *Minutes of the Legislative Council*, Item 3-11 (1974). The referenced study, *Pretrial Release in Maryland: A Study of Maryland District Rule 777* (1974) (hereinafter "*1974 Maryland Pretrial Study*"), was conducted by the National Council on Crime and Delinquency Survey and Planning Center, under a grant from the Governor's Commission on Law Enforcement and the Administration of Justice. The study was an out-growth of the 1965 adoption of Article 27, § 638A, which enabled release on recognizance, and the 1971 adoption of District Rule 777, which required for release on recognizance absent a specific finding as to flight. The

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The Governor's Commission on Law Enforcement and the Administration of Justice was created by executive order in June, 1967, as the successor of the Commission on Crime and Delinquency and was itself succeeded by the Criminal Justice Coordinating Council (Executive Order 01.01.1982.02) and later the Governor's Office of Justice Assistance (Executive Order 01.01.1987.05).

latter generated criticism and concerns about public safety following the death of a police officer. *Minutes of Rules Committee Meeting of September 13, 1974* at 11. Hence, the Court of Appeals and its Rules Committee undertook to have the study in Baltimore City and Baltimore and Prince George's Counties of failure to appear rates and re-arrest rates. *1974 Maryland Pretrial Study*, Chapter 1. Mr. Liebmann criticizes the focus on offenders while under the jurisdiction of the District Court, rather than a broader examination of accused felons. *Maryland Practice* § 942 at 145-46, but, nonetheless, concurred with the Rules Committee's conclusion that the study justified adoption of then Maryland District Rule 777. Comments generated by the study were addressed at a Rules Committee meeting, and then Senator J. Joseph Curran, Jr. was asked to "discuss the matter with the police and report back to the committee." *Minutes of Rules Committee Meeting of September 13, 1974* at 12.

During the 1975 session, Delegates Pinkney A. Howell and R. Charles Avara introduced House Bill 226, seeking to create a Statewide pretrial release agency. The bill was referred to the House Constitutional and Administrative Law Committee, *1975 House Journal* at 200-01, which reported no action. Unfortunately, bill file records were not preserved until 1976.

Discussion of the statutory bar against on the grant of pretrial release to certain accused by commissioners appears in the *Minutes of Rules Committee Meeting of September 12-13, 1975* at 20-21.

During the 1980 session, two measures were introduced for creation of pretrial services in the Administrative Office of the Courts. House Bill 1893 (1980) would have allowed transfer of merit system personnel from the Baltimore City unit to the Administrative Office at a first year cost of $1,576,700, while House Bill 1896 (1980) would have created an independent unit in that Office. The chairman of the Baltimore City Delegation, the Honorable Dennis G. McCoy, asked that the measures be withdrawn and referred for summer study. The State Court Administrator William Adkins concurred in this disposition. The House Judiciary Committee subsequently reported to the Legislative Policy Committee that, as a result of House Bill 1896 (1980), the Judiciary Committee had looked at the pretrial services in Baltimore City and in Kentucky and continued to study the issue, although no subsequent report seems to have been made. *Minutes of the Legislative Council*.

In 1989, Delegate Timothy F. Maloney introduced House Bill 1598, providing for pretrial units. The measure had the support of the Maryland Association of Counties, but the Director of the Montgomery County Department of Correction and Rehabilitation suggested that the measure should provide "at least 100% grants", while giving counties the option of running the units themselves rather than through the Division of Parole and Probation. The Maryland Correctional Administrators Association concurred in county operation but suggested 50-50 funding. Subsequently, the Committee for Montgomery formed a Task

Force on Pre-Trial Release, chaired by James A. Hyatt, resulting in the introduction of legislation in 1990 (House Bill 1360). The Secretary of Budget and Fiscal Planning, by letter dated March 12, 1990 to the Chairman of the House Judiciary Committee, strenuously opposed House Bill 1360 in light of the costs to the State, which the budget analysts believed to be understated, and because of the believe that this was a local funding responsibility. Subsequently, the measure was withdrawn by the sponsor. The budget committees report noted that the Fiscal Year 1991 budget of the Department of Public Safety and Correctional Services contained funding for home detention for pretrial release purposes.

In 1993, Delegate Tony E. Fulton introduced the unsuccessful House Bill 1600, asking the General Assembly to study of pretrial system.

Appendix G further sets out the numerous collateral issues studied with respect to pretrial release and detention.

APPENDICES

APPENDIX A

Pretrial Release Project Advisory Committee

APPENDIX B

Minutes of Committee Meetings

APPENDIX C
Professor Colbert's Report

APPENDIX D
Laws

APPENDIX E

District Court Commissioners' Manual and Forms

APPENDIX F

Proposed Amendments to Maryland Rules

Appendix G
Maryland Legislation

Appendix H
Informational Packets from
the Pretrial Services Office of
the District Court for the Eastern District of Virginia