



Senator Chair William C. Smith, Jr.
 Miller Senate Office Building, 2 East Wing
 11 Bladen St., Annapolis, MD 21401

Senator Vice Chair Jeff Waldstreicher
 Miller Senate Office Building, 2 East Wing
 11 Bladen St., Annapolis, MD 21401

Chief Justice Matthew Fader
 Maryland Supreme Court
 Robert C. Murphy Courts of Appeal Building
 361 Rowe Blvd., Annapolis, MD 21401

Chief Judge John P. Morrissey
 District Court of Maryland
 Maryland Judicial Center, 187 Harry S.
 Truman Parkway, Annapolis, MD 21401

Judge Audrey J. S. Carrion
 Chair, Conference of Circuit Court Judges
 Elijah E. Cummings Courthouse, East
 111 North Calvert St., Baltimore, MD 21202

February 27, 2024

Dear Chair Smith, Vice Chair Waldstreicher, Members of the Senate Judicial Proceedings Committee, Chief Justice Fader, Chief Judge Morrissey, and Judge Carrion:

We, the undersigned organizations, write to address an unfolding crisis that demands the judiciary’s and General Assembly’s prompt attention. Private companies are sending threatening messages to our clients and communities, telling them they need to send the companies money or they may be jailed. Although we urge the Judicial Proceedings Committee to vote YES on SB1095, a task force is not enough. We ask that you take immediate steps to stop being complicit in the companies’ extortionate practices and clarify that no one will be sent to jail—or remain stuck in jail—because they can’t pay home detention or electronic monitoring fees.

L.C. is just one person caught in the crosshairs of the current crisis.

In 2022, a judge ordered L.C. released on private home detention. At her initial meeting with the private monitoring company, L.C. was told that because she received public assistance, she would not have to pay for monitoring. That was a relief—she couldn’t possibly afford the monthly \$400 payment the company otherwise would have charged her. For the next 18 months, L.C. followed each and every condition of her release. So she was shocked when, just over a week ago, she received a threatening letter from the company in charge of her supervision. Dated Friday, February 16, 2024, the letter informed L.C. that her supervision was no longer free: she would now have to pay the company

for monitoring her. The company said this was because it was no longer receiving state funds, an explanation that meant little to L.C. The letter instructed L.C. to make arrangements to start making payments by the following business day, February 20. If she didn't, the letter continued, the company would seek termination of her release, possibly sending her back to jail.

L.C. was deeply distressed. She has a 12-year-old son, as well as an adult daughter and grandchild. She has no income and relies on public assistance to support herself. She struggles to pay her bills and her electricity could be shut off at any moment. L.C. cannot possibly afford to pay a private company to stay out of jail. After 18 months during which she had done everything the state asked of her—demonstrating beyond any doubt that jailing her was plainly unnecessary—L.C. trembles at the thought of being arrested and sent back to the county jail.

L.C. is not alone. Maryland's private monitoring companies have sent similar threatening letters to hundreds of other people on pretrial release, causing immense distress and anxiety. The message to each is the same: pay up or you could be locked up.

This crisis demands a continuation of the state's efforts to protect the constitutional rights of indigent people arrested and accused of crimes. Decades ago, the United States Supreme Court articulated two principles that undergird pretrial justice throughout the country, including in Maryland: First, that equal protection and due process forbid jailing a person solely because they cannot make a monetary payment, *Bearden v. Georgia*, 461 U.S. 660, 665 (1983), and, second, that pretrial detention is a last resort, permissible only when necessary to prevent a person from intentionally fleeing prosecution or causing physical harm to another person. *United States v. Salerno*, 481 U.S. 739, 755 (1987). Maryland's appellate court made an analogous ruling almost 20 years ago under the state constitution, holding in *Wheeler v. State*, 160 Md. App. 566, 579 (2005), that a judicial officer lacks "discretion" to detain a person unless the judge first finds by clear and convincing evidence that alternatives are unavailable. In short, pretrial detention is constitutional only if it is absolutely necessary. Being poor is not a good reason.

Recognizing these fundamental principles—and that this state's pretrial system was failing to meet them—in late 2016 and early 2017, the Maryland judiciary engaged in the commendable process of amending its bail rules to ensure that they comport with both the state and federal constitutions. Chief Judge Morrissey personally sent a letter to all judges and bail commissioners in the state in October 2016 reminding them that financial conditions of pretrial release must not be used to detain people who can be safely released, and that people accused of crimes may be detained only when necessary.

Now, hundreds if not thousands of people across the state fear being sent back to jail because they can't afford to pay fees to the private companies that have been "supervising" them on home detention or electronic monitoring. And there are hundreds more people arrested every day in Maryland who face detention rather than release solely because they cannot afford to pay the private companies' fees.

Over the past week, there has been a tremendous amount of finger-pointing about who put the state in this financial mess. It's a question we demand answers to: just how did we come to rely on private "monitoring" companies that profiteer off of our jail overcrowding crisis to plunder the state (i.e. taxpayers) for millions of dollars, all to provide a "service" that is excessively punitive if not completely unnecessary. After all, data shows that most of the people these companies are monitoring will see their cases dropped or dismissed entirely.¹

However, the blame game can wait. One thing is indisputable: whether the financial condition of release is a secured bail amount or a requirement to pay monitoring fees, a poor person's inability to make that payment must never result in their pretrial detention. The judiciary, led by Chief Judge Morrissey and Judge Adam M. Wilner, Chair of the Standing Committee on Rules of Practice and Procedure, made this point crystal clear in 2016 and 2017. Where is that clarity and leadership now?

Our clients and community members are terrified. They were told they could remain among their families and loved ones. Now, they are opening their mail to find letters from private companies threatening that if they do not pay, they will be required to appear in court for a hearing and may be sent to jail. The companies, having already pocketed millions of taxpayer dollars, are coercing our clients—and their moms, partners, cousins, and friends—to pony up cash for payment plans they can't afford. Meanwhile, the legislature is twiddling its thumbs, planning for yet another task force that may or may not materialize, and that offers no relief to the immediate problem at hand anyway.

This is the moment for the state's leaders to act. Rather than wringing their hands, the judiciary and the legislature should be reassuring the public that the law has not changed: that anyone arrested in Maryland need not fear being detained due to inability to pay, that people who have been compliant on home detention or electronic monitoring will not be handcuffed and sent to jail just because they can't pay the ransom demanded by these private companies, and that newly arrested people who can be safely released will not be stuck in jail because they can't afford the price tag these companies set on monitoring.

None of these principles are new. The judiciary incorporated each of them into the bail rule it passed in 2016, and which went into effect in 2017.

Whatever the solution to the financial dilemma, poor people who are presumptively innocent must not be threatened with bearing the consequences of bureaucratic ineptitude and corporate greed. We are hopeful that judges throughout the state will protect the rights of indigent people charged with crimes, even as the companies begin sending violation letters to the courts. But a strong reiteration of these principles from the highest echelons of the state's judiciary would provide much-needed

¹ In April 2022, movement-lawyering organization BALT released a report showing that the vast majority of people charged with crimes in Baltimore are never convicted of anything. *See* Baltimore City District Court 2019 Bail Hearings and Case Outcomes (published April 13, 2022), available at <https://www.baltimoreactionlegal.org/new-blog/2019pretrialdatareport>.

reassurance that the chaos in Annapolis will not impact our loved ones' ability to remain in their community: to hug their children, attend school, go to work, and fight their case.

A public statement from the Maryland judiciary is a crucial first step. We also ask that the judiciary and the legislature demand additional transparency and accountability from the private companies, which have received millions of taxpayer dollars. Specifically, we request a full-scale investigation of the costs and benefits of state-funded private supervision, including the following information:

- How much money has the state of Maryland paid to the companies?
- How many private companies are authorized to provide for-profit supervision?
- How many people have had their supervision fees paid for by the state?
- What were the outcomes of their cases? More specifically, after sending hundreds of thousands of dollars to companies to supervise people who were supposedly too dangerous to be released without supervision, how many of those individuals had their cases dismissed or were acquitted?

People like L.C. should not live in fear that they are going to be jailed because they can't afford to pay fees to a private company. The judiciary has already announced that such a system—one that makes release and detention decisions based on how much cash a person has in their pocket—violates basic notions of civil rights and human dignity.

We urge you to vote YES on SB1095. But we also ask you to do what is most necessary and urgent, to reiterate what the judiciary stated so clearly just over seven years ago: that when you are summoned before a court of justice in this state, your fate will depend on the law and the facts—not how much you can pay.

Sincerely,

Qiana Johnson, Founder and Executive Director
LIFE AFTER RELEASE

Iman Freeman, Executive Director
BALTIMORE ACTION LEGAL TEAM

Heather Warnken, Executive Director
David Jaros, Faculty Director
Center for Criminal Justice Reform
UNIVERSITY OF BALTIMORE SCHOOL OF LAW

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