



## POSITION ON PROPOSED LEGISLATION

**BILL:** SB 229 Public Safety – Pretrial Services Program Grant Fund  
**POSITION:** SUPPORT WITH AMENDMENTS  
**DATE:** January 22, 2021

The Maryland Office of the Public Defender respectfully requests that the Senate Judicial Proceedings Committee issue a favorable report on Senate Bill 229, with amendments.

Senate Bill 229 would extend the Pretrial Services Program Grant Fund and prohibit pretrial services programs from charging fees to defendants for their participation. The Maryland Office of the Public Defender supports funding to provide for greater statewide consistency on pretrial services and a wider range of tools available to facilitate release. The Office also supports the requirement that pretrial grant programs may not charge a fee to defendants. However, it opposes the reliance on risk assessment tools, and strongly encourages prioritizing funding for systems that currently lack pretrial services.

Most defendants can be released without any pretrial services and will pose no safety or flight risk. National data shows that most people return to court if they are sufficiently informed of when and where they need to be, and Maryland’s failure to appear rates are consistently below the national average. To the extent that oversight is needed, there needs to be greater consistency statewide and an appropriate range of tools that do not impose financial burdens on defendants in exchange for their release. This bill furthers those needs.

The Pretrial Services Program Grant Fund (“the Fund”) requires the use of a validated risk assessment tool. While once considered a best practice, these tools have become increasingly controversial due to their inherent racial biases. The Pretrial Justice Institute, which was previously a strong advocate of these tools, have since changed their position in recognition of the structure racism and institutional inequities that underlie the algorithms and data at the heart of these instruments. Statement of Pretrial Justice Institute, February 7, 2020, <https://www.pretrial.org/wp-content/uploads/Risk-Statement-PJI-2020.pdf>. Addressing the racial disparities in the criminal justice system require critical examination of these tools, and the Fund should no longer require or automatically endorse their use.

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The Fund should also prioritize expenses that will expand release and remove financial conditions that result in unnecessary detention, including the so-called non-financial condition of private home detention and its costs.

The prior round of grants under the fund encouraged well-established pretrial programs to secure additional resources, allowing for increased monitoring of defendants even where it may not be needed. Fund resources should not be used to increase monitoring where release on recognizance can be sufficient; but to enable all jurisdictions to provide monitoring where needed without shifting those costs to the defendant. Targeted funding should be provided to ensure a base level of pretrial options in every county, and for DPSCS to secure the resources it needs to expand release of the Baltimore City pretrial population.

For these reasons, the Maryland Office of the Public Defender urges a favorable report with amendments on Senate Bill 229.

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