



## Testimony for the House Judiciary Committee

March 9, 2023

### HB 1041 – Criminal Procedure – Pretrial Release Restrictions – Firearm Crimes

#### UNFAVORABLE

The ACLU of Maryland urges an unfavorable report on HB 1041, which seeks to prohibit the pre-trial release of people charged with alleged firearm related crimes.

In alignment with federal law, the ACLU of Maryland believes everyone is innocent until proven guilty. There are plenty of pretrial procedures in place to determine whether someone is dangerous and in need of further restraint pretrial. HB 1041 specifically prohibits a District Court commissioner from authorizing the pretrial release of a defendant charged with transporting a regulated firearm for illegal sale or trafficking, participating in a straw purchase of a regulated firearm, or possessing an un-serialized firearm or unfinished frame or receiver. All of these crimes are alleged and simply being charged with one of these alleged crimes should not necessitate holding someone longer pretrial.

#### **Pretrial release should be determined on a case-by-case basis**

Existing statutes already provide judges with the authority and discretion to consider case-specific concerns that may provide legitimate reasons for denying pretrial release. For example, judges can already account for factors that may indicate flight risk and public safety concerns in determining whether to release a defendant. Pretrial release is appropriately determined on a case-by-case basis, without blanket denials on release, such as the one proposed in HB 1041.

#### **Pretrial incarceration has poor socioeconomic and criminogenic effects**

Pretrial incarceration is also tied to loss of employment and the likelihood that the individual will reoffend in both the short and long-term. One study demonstrated that low-risk defendants who are held 2-3 days were 40% more likely to commit

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new crimes before their trial than those held no more than 24 hours.<sup>1</sup> Therefore, the social and criminogenic effects of pretrial incarceration weigh against the wholesale pretrial detention of individuals.

There are many biases against Black and brown people ingrained in the criminal legal system. In Maryland, Black people make up only 30% of the general population, but over 70% of the incarcerated population.<sup>2</sup> Nationwide, Black and Brown people are more likely than white people to be denied pretrial release, to have a higher money bond set, and to be detained because they cannot pay their bond.<sup>3</sup> HB 1041 could further the existing racial disparities in pretrial detention.

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For these reasons, the ACLU of Maryland urges an unfavorable report of HB 1041.

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<sup>1</sup> The Laura and John Arnold Foundation, Pretrial Criminal Justice Research (Nov. 2013) [http://arnoldfoundation.org/sites/default/files/pdf/LJAF-Pretrial-CJ-Research-brief\\_FNL.pdf](http://arnoldfoundation.org/sites/default/files/pdf/LJAF-Pretrial-CJ-Research-brief_FNL.pdf)

<sup>2</sup> Vera Institute, *Incarceration Trends in Maryland*, <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-maryland.pdf> (last visited March 4, 2023).

<sup>3</sup> Jones, C. E. (2013). "Give Us Free": Addressing Racial Disparities in Bail Determinations. *New York University Journal of Legislation and Public Policy*, 16(4), 919-62.