



Testimony for the Judiciary Committee

February 20, 2023

HB 736- Criminal Procedure - Pretrial Release - Crime of Violence (No Bail for Repeat Violent Offenders Act of 2023)

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Unfavorable

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The ACLU of Maryland strongly opposes HB 736, a bill that would prohibit a judicial officer from authorizing the pretrial release of a defendant who is charged with a crime of violence if the defendant has a pending charge for a crime of violence or was convicted within the previous 10 years of a crime of violence. To start this bill is unconstitutional on its face, violating the 5th, 6th, and 14th Amendments, as well as the long established legal principle of presumed innocence. Additionally, as policy, this bill would take away a judge's discretion in pretrial release proceedings with its mandatory provisions.

Unconstitutional

In the United States legal system those charged with crimes are presumed innocent until proven guilty. The presumption of innocence is foundational to our court system and criminal procedure laws. This bill would run counter to that presumption by illegally confining presumptively innocent defendants based on charges arising out of completely unrelated instances, or as this bill would allow, charges for alleged activity that did not even take place in this state. This would be an irrebuttable presumption that Marylanders with certain pending charges, or prior convictions, are too much of a flight risk, or too dangerous to the community to be afforded bail, essentially presuming them guilty due to past actions. The Supreme Court in Vlandis v. Kline, 412 U.S. 441, 452 (1973), and again in Cleveland Board of Education v. Laflour, 414 U.S. 632, 644 (1974) affirmed that permanent irrebuttable presumptions are violative of the Due Process clause of the 5th and 14th Amendments. The state cannot blanketly deny bail to all who would come before it having previous convictions or charges pending without providing them due process of a hearing.

Also, this bill would be violative of the 6th Amendment as it would make the right to counsel, in a bail proceeding, useless as the judge would be mandated to deny bail if the defendant had charges pending for another matter or if they had been previously convicted.

Judicial Discretion

As a matter of policy, taking the ability of judges to review the facts and circumstances of each individual case away is detrimental to the interest of justice. Both aggravating and mitigating factors should be taken into account when someone appears before a judge for a bail hearing. Mandatory provisions of bail denial take the human aspect out of the only human who is tasked with balancing the facts of the alleged crime with the circumstances surrounding the alleged perpetrator. The current policy is governed by Maryland Rule 4-216.1 which requires that decisions whether to grant pretrial release be based on the “specific facts and circumstances applicable to the particular defendant.” Straying from this standard would be detrimental to the aims of justice, which will likely fall hardest on Black Marylanders.

For the foregoing reasons we urge an unfavorable report on HB 736.

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