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Constitutionality of Maryland Bail Procedures

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Executive Summary

The Counsel to the Maryland General Assembly recently authored an opinion letter responding to questions raised by a group of State Delegates about Maryland's pretrial criminal procedures and its use of secured bail. The opinion acknowledges that Maryland law requires judicial officers to impose the "least onerous" conditions of release that will "reasonably ensure the appearance of the defendant as required, protect the safety of the victim, or ensure that the defendant will not pose a danger to another person or the community." Yet, it expresses concern that the existing system might unconstitutionally allow "bail in an amount not affordable to the defendant, thus effectively denying release." The Attorney General and others have seized on this conclusion to advance policy proposals that would eliminate or vastly reduce the role of secured bail in Maryland's system.

But those efforts are a solution in search of a problem, and the Counsel's concerns are misplaced. Based on our thorough review of Maryland law and the relevant judicial precedents, the existing system is clearly constitutional. Maryland law vigorously protects against excessive bail, just as it has done for decades without any serious question about its constitutionality or wisdom. It requires an individualized determination, which among other things must include an examination of a defendant's ability to pay any bail that might be imposed. Bail is one option alongside many other available alternatives, and judges are required to craft release conditions that serve the interests of both defendants and communities. For defendants who can assure the court of their likelihood to appear by a mere promise, Maryland law permits release without secured bail. No change is necessary to continue that practice which makes financial circumstances irrelevant. But for defendants who cannot assure a court of their likelihood to appear, secured bail provides a means for allowing pretrial release while protecting the community's interests in security. Change on this score would be devastating. And decades of precedents flatly reject the notion that bail is unconstitutional anytime a defendant is unable to secure his release. In some instances, the community's interests require a bail amount that a defendant cannot satisfy, just as in some instances no amount of bail is sufficient. When bail conditions, whether financial or otherwise, result in pretrial detention, that does not make the bail system unlawful; it makes it rational.

This memorandum proceeds in three parts. First, it describes Maryland's current system, which is exceptionally protective of defendants' rights and eminently rational. Second, it explains how that regime is plainly constitutional, just as it has been for decades. Third, it refutes the Counsel's newfound and baseless legal concerns and critiques the dangerous policy reforms that the Attorney General and others are advancing based on the Counsel's mistaken legal analysis. In short, there is nothing wrong with the current system, and illusory constitutional concerns should not be used as a pretext for changing laws that are in no need of repair.

Analysis

I. MARYLAND'S EXISTING SYSTEM OF BAIL IS EXCEPTIONALLY PROTECTIVE AND EMINENTLY RATIONAL.

The existing system of bail in Maryland, which has been in place for decades, already imposes a number of substantive requirements and procedural safeguards to ensure that the State detains the accused only when necessary and appropriate. Maryland provides all defendants with a preliminary, individualized bail determination no later than 24 hours after arrest at a hearing in which the accused is entitled to counsel. At this hearing, the judicial officer must consider the defendant's financial resources and choose the least onerous conditions that will reasonably ensure that the defendant appears at trial. Where bail is not necessary to ensure a defendant's appearance, a judicial officer must consider alternative measures. But where bail is an appropriate means of offering release with adequate incentive to appear for future proceedings, it is made available to the defendant.

Maryland state law requires that defendants be brought before a judicial officer of the District Court "without unnecessary delay and in no event later than 24 hours after arrest." Maryland Rules, Rule 4-212(e) (governing individuals arrested with a warrant) and Rule 4-212(f) (governing individuals arrested without a warrant). At this appearance, defendants have the right to be represented by an attorney. Rule 4-213.1. Indigent defendants who cannot afford a lawyer are provided a court-appointed attorney. *See DeWolfe v. Richmond*, 434 Md. 444, 457-58 (2013) (holding that the due process component of Article 24 of the Maryland Declaration of Rights requires indigent defendants to be represented by counsel at an initial appearance before a judicial officer); Rule 4-213.1(d) (providing counsel).

At a defendant's initial appearance, the judicial officer must reach a preliminary decision about the defendant's eligibility for and terms of release. In setting those individualized conditions, "the judicial officer shall impose on the defendant the least onerous condition or combination of conditions of release … that will reasonably (A) ensure the appearance of the defendant as required, (B) protect the safety of the alleged victim … and (C) ensure that the defendant will not pose a danger to another person or to the community." Rule 4-216 (e)(3). If the defendant sufficiently demonstrates that he can be trusted to appear as required before trial, the defendant may be released on personal recognizance. Maryland Code, Criminal Procedure (CP) §5-101(b)(1). And Maryland law requires that every effort be made to ensure that "criminal sanctions instead of financial loss" are used to secure the appearance of a defendant in subsequent proceedings. *Id.* §5-101(a).

When reaching a preliminary decision about the availability of pretrial release, the judicial officer is bound to consider a list of factors bearing on the likelihood of subsequent appearance:

> (A) the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the possible sentence upon conviction;
>
> (B) the defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;
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> (C) the defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community, and length of residence in this State;
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> (D) any recommendation of an agency that conducts pretrial release investigations;
>
> (E) any recommendation of the State's Attorney;
>
> (F) any information presented by the defendant or defendant's attorney;
>
> (G) the danger of the defendant to the alleged victim, another person, or the community;
>
> (H) the danger of the defendant to himself or herself; and
>
> (I) any other factor bearing on the risk of a willful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

Rule 4-216(e)(1).

After considering these factors, a judicial officer may choose to release a defendant on personal recognizance or on bail, and in either case, with or without additional conditions imposed. Rule 4-216(c); *see also* CP §5-205(a). Additional release conditions can include (1) committing the defendant to the custody of a designated person or organization that will ensure appearance in court; (2) placing the defendant under the supervision of a probation officer or under private home detention; (3) imposing reasonable restrictions on travel, association, or residence during release; (4) requiring the defendant to post a bail bond, either secured or unsecured; or (5) imposing any other condition reasonably necessary to ensure the defendant's appearance in court, protect the safety of the alleged victim, and ensure

that the defendant will pose no danger to another person or the community, nor cause the intimidation of a victim or witness. Rule 4-216(f); CP §5-201(b). Maryland statutory law specifically contemplates the availability of bail as one means of pretrial release. Maryland Code §5-205(a) (empowering District Court judges to "set bond or bail"); §5-202 (enumerating offenses that carry a rebuttable presumption of flight or danger and empowering judges to set bail for such offenses with certain conditions). For certain crimes, Maryland law prohibits any form of release or limits release to specific circumstances. *See* CP §§5-101(c) & 5-202; Rule 4-216(d).

While a defendant's eligibility for release is preliminarily determined at the initial appearance before a judicial officer (typically a District Court commissioner), that is not necessarily the end of the matter. Any defendant who is denied release at an initial appearance is entitled to a hearing before the District Court "immediately …, if the court is then in session, or if not, at the next session of the court." Rule 4-216.1(a). The District Court will "review the commissioner's pretrial release decision and take appropriate action" to order continued detention, set new conditions for release, or affirm the commissioner's decision. Rule 4-216.1(c).

These requirements and procedural safeguards not only afford defendants the gold standard in pretrial protections, but they are eminently rational. The system is consciously designed to encourage judges to impose only those conditions necessary to achieve the State's legitimate interests in securing a defendant's appearance for later proceedings and protecting victims and the community against potentially dangerous individuals. It requires judges to consider a range of individualized factors and invites the defendant, as well as the prosecutor and any other relevant state agency, to submit evidence to guide the decision. And by guaranteeing the right to counsel for all defendants, the system tests the State's evidence through the adversarial process. To the extent that some defendants remain unable to make bail, it is through no fault of the system—which is designed to identify the minimally necessary conditions for relief, not to eliminate the possibility of pretrial detention even when it is warranted.

II. MARYLAND'S BAIL SYSTEM IS CLEARLY CONSTITUTIONAL.

Maryland's existing system for setting bail or other conditions of release, as outlined above, readily satisfies state and federal constitutional requirements, just as it has for decades. Indeed, far from raising constitutional concerns, Maryland's procedures go well beyond what the Constitution requires. The Counsel's suggestions to the contrary are squarely refuted by decades of precedents and tradition. The state and federal courts have long endorsed secured bail as a means for assuring a defendant's appearance for prosecution and compliance with the conditions of his release—which is precisely how it functions under Maryland law.

The U.S. Constitution clearly permits the use of bail to secure appearance at trial and protect society from dangerous individuals. That much is clear from the

text of the Constitution. The Eighth Amendment presupposes the permissibility of secured bail by providing only that "*[e]xcessive* bail shall not be required." U.S. Const., amend. VIII (emphasis added). The Maryland Court of Appeals has held that Article 25 of the Maryland Constitution must be read "in para materia" with the Eighth Amendment "because both of them were taken virtually verbatim from the English Bill of Rights of 1689." *Walker v. State*, 53 Md. App. 171, 183 (Ct. Spec. App. 1982); *Evans v. State*, 396 Md. 256, 327 (2006). And the American criminal justice system has long relied on secured bail to balance the individual's interest of pretrial liberty with the community's interest in prosecuting crimes and protecting itself.

Secured bail is as old as the Republic. Even before independence, bail existed within the American colonies, modeled largely on the English bail system. *See, e.g.*, William F. Duker, *The Right to Bail: A Historical Inquiry*, 42 Alb. L. Rev. 33, 77-83 (1977). Since the Founding, States and local governments have consistently employed secured bail to strike an appropriate balance between the liberty of the accused and the security interests of the community. In 1813, Chief Justice John Marshall eloquently explained: "The object of a recognizance is, not to enrich the treasury, but to combine the administration of criminal justice with the convenience of a person accused, but not proved to be guilty." *United States v. Feely*, 25 F. Cas. 1055, 1057 (C.C.D. Va. 1813). And in 1835, Justice Story, writing for a unanimous Supreme Court, echoed that sentiment: "A recognizance of bail, in a criminal case, is taken to secure the due attendance of the party accused, to answer the indictment, and to submit to a trial, and the judgment of the court thereon." *Ex parte Milburn*, 34 U.S. (9 Pet.) 704, 710 (1835). Thus, bail has always been understood "as a means of compelling the [accused] party to submit to the trial and punishment, which the law ordains for his offence," and not as a form of punishment or discrimination against the poor. *Id.*

The Supreme Court's decisions underscore this fact. In *Stack v. Boyle*, the Court emphasized that "[t]he right to release before trial is conditioned upon the accused's giving adequate assurance that he will stand trial and submit to sentence if found guilty." 342 U.S. 1, 4 (1951) (citing *Ex parte Milburn*, 34 U.S. (9 Pet.) at 710); *accord Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978). "[T]he modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture" the Court explained, "serves as additional assurance of the presence of an accused." *Stack*, 342 U.S. at 5. Thus, rather than prohibiting secured bail, the Constitution presupposes the validity of bail and requires only that it not be excessive. And the question of excessiveness is considered with great deference to legislative judgments and turns primarily "on standards relevant to the purpose of assuring the presence of th[e] defendant," which is precisely what Maryland law requires judges to consider when setting the terms of pretrial release. *Id.*

Maryland's system utilizes bail in a clearly constitutional manner. In Maryland, bail is considered alongside numerous other options for pretrial release. *See* Rule 4-216(c); *see also* CP §5-205(a). The State allows secured bail only following

an individualized determination designed to ensure a particular defendant's appearance in court, taking into account a wide array of relevant factors, including the defendant's financial resources, history of appearance, and community ties. In doing so, Maryland makes use of secured bail not as an instrument of punishment or as a means for jailing defendants based on their poverty, but as an effective and efficient tool to permit more defendants to be released before trial while still ensuring court appearances and community safety. And rather than mandating unattainable financial conditions for release, Maryland law requires just the opposite: Judicial officers must adopt the least onerous form of pretrial release possible that will reasonably guarantee the defendant's appearance in court and ensure the community's protection. *See* Rule 4-216(e)(3). Maryland's current system thus achieves the "primary function[s] of bail" while steering far clear of all constitutional concerns. *United States v. Salerno*, 481 U.S. 739, 753 (1987).

As noted, Maryland law far exceeds federal constitutional demands. The U.S. Constitution does not impose a deadline for setting bail and federal courts have never recognized a "constitutional right to speedy bail." *Fields v. Henry Cty.*, 701 F.3d 180, 185 (6th Cir. 2012). On the contrary, "[t]here is no right to post bail within 24 hours of arrest." *Collins v. Ainsworth*, 382 F.3d 529, 545 (5th Cir. 2004). Yet, that is precisely what Maryland law provides. Rule 4-212(e)-(f). This 24-hour rule also outpaces the 48-hour deadline for holding a probable cause hearing under the Fourth Amendment. *See County of Riverside v. McLaughlin*, 500 U.S. 44, 54-55 (1991); *Gerstein v. Pugh*, 420 U.S. 103 (1975). And Maryland law guarantees the right to counsel during bail determinations, including by providing state-funded counsel to indigent defendants, despite the absence of any federal constitutional requirement. *See DeWolfe*, 434 Md. at 460-61; Rule 4-213.1(d).

In an effort to obscure the constitutionality of the current system, the Counsel's opinion posits "a significant risk" that due process could be violated if a judicial officer were to set "bail in an amount not affordable to the defendant." Counsel Op. 2. But that conclusion is clearly wrong. Neither the federal nor the state constitution compels "affordable" bail. In fact, as the Counsel acknowledges, courts in both systems have long *rejected* that very notion. *Id.* at 9-10. "The question of excessive bail is not resolved on the basis of an individual's ability or inability to raise a certain sum." *Simmons v. Warden of Baltimore City Jail*, 16 Md. App. 449, 450 (Ct. Spec. App. 1973). Indeed, courts have consistently held that "bail is not excessive merely because the defendant is unable to pay it." *Hodgdon v. United States*, 365 F.2d 679, 687 (8th Cir. 1966); *accord, e.g.*, *United States v. McConnell*, 842 F.2d 105, 107 (5th Cir. 1988); *United States v. James*, 674 F.2d 886, 891 (11th Cir. 1982); *United States v. Beaman*, 631 F.2d 85, 86 (6th Cir. 1980); *United States v. Wright*, 483 F.2d 1068, 1070 (4th Cir. 1973); *White v. Wilson*, 399 F.2d 596, 598 (9th Cir. 1968). The Counsel's only response to this wall of authority is to predict that the Maryland Court of Appeals "might" ignore it. Counsel Op. 8.

But the mere fact that some defendants might not be able to secure their release does not, on its own, raise constitutional concerns. In certain circumstances, such as where a defendant is a flight risk or poses a substantial threat to the community, the State is justified in setting a high bail amount or declining bail altogether. That is the point of the Supreme Court's decision in *Salerno*, which held that federal defendants who pose a serious risk to the community may constitutionally be detained with *no bail at all*. 481 U.S. at 750; *see also* CP §§5-101(c) & 5-202. The U.S. Supreme Court has "repeatedly held that the Government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest." 481 U.S. at 748. So long as the bail amount is calculated to secure the defendant's appearance and protect the public, it is constitutional, even if it will result in pretrial detention, rather than posting.

Maryland's existing safeguards are fully consistent with, and designed to respect, these well-established limits. As the Counsel's opinion itself acknowledges, Maryland law mandates that judges must adopt "the least onerous" conditions of release necessary "to reasonably ensure the appearance of the defendant as required, protect the safety of the victim, or ensure the defendant will not pose a danger to another person or the community." Counsel Op. 2; Rule 4-216(e)(3). Defendants are afforded the right to counsel during bail proceedings to guarantee the consideration of all relevant facts and circumstances. *See, e.g.*, *DeWolfe*, 434 Md. at 450-52. And the Legislature has directed that the procedural rules "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." CP §5-101(a).

Maryland law thus prohibits and prevents the only risk the Counsel falsely perceives. There is simply nothing in need of reform.

III. THE COUNSEL'S ILLUSORY CONCERNS SHOULD NOT SERVE AS A PRETEXT FOR UNNECESSARY AND DANGEROUS POLICY REFORMS.

The real risk at this juncture is not that longstanding law implicates some long-missed constitutional issue, but instead that illusory concerns will be used as a pretext for troubling changes to a long-established, well-functioning and wholly-constitutional system. Shortly after the Counsel issued her opinion, the Attorney General, legislators, and a number of activists quickly touted it as grounds for legislative or regulatory action against the current bail procedures. But the Counsel's legal concerns are fundamentally misplaced, and secured bail is not the problem. On the contrary, it has long been part of the solution by providing an effective and efficient means of allowing defendants to obtain pretrial release while ensuring the protection of local communities and their resources. Adopting the Counsel's flawed constitutional theory and the Attorney General's misguided policy of "affordable bail," by contrast, would raise all manner of problems, including serious threats to community safety, the public fisc, and the rule of law.

The Attorney General and others have seized on the Counsel's flawed legal analysis to advocate for reforms that would eliminate or restrict the role secured bail plays in Maryland's balanced scheme. The Attorney General has indicated "that he will ask the Maryland judiciary's Standing Committee on Rules of Practice and Procedure to embrace his conclusion that the state's long-standing money bail system is unconstitutional." Michael Dresser, *Frosh to ask judiciary to change money bail system*, Balt. Sun (Oct. 17, 2016), http://bsun.md/2edusFK. And after the Counsel's opinion, the State's Public Defender, Paul DeWolfe, told reporters that he planned to "'start using it tomorrow morning.'" Michael Dresser & Justin Fenton, *Maryland Attorney General Brian Frosh questions legality of bail defendants can't afford*, Balt. Sun (Oct. 11, 2016), http://bsun.md/2dGgxr9.

As an initial matter, it is not at all clear that the Attorney General's proposal to change the State's bail policy through rulemaking is consistent with basic separation of powers principles. The Legislature has determined that bail is a permissible and valuable tool for securing defendants' appearance at trial and protecting the community. *See* CP §5-205(a) ("A District Court judge may … set bond or bail…."). If that policy is to change, it must occur through the Legislature. *See* Md. Const. Decl. of Rts. art. 8 ("[T]he Legislative, Executive and Judicial powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other."). Agencies may not effectively amend legislation "by issuing a rule or regulation which is inconsistent or out of harmony with, or which alters, adds to, extends or enlarges, subverts, impairs, limits, or restricts the act being administered." *Ins. Comm'r of State of Md. v. Bankers Indep. Ins. Co.*, 326 Md. 617, 624 (1992). The wide-reaching rule the Attorney General envisions would be tantamount to creating substantive law, while ignoring the attenuated fiscal impact of the measure. Moreover, the rulemaking process is not designed to address either substantive law or fiscal impact, but rather to make procedural or practical changes to existing laws that have already been duly weighed and measured. Thus, regulatory efforts to bypass the peoples' representatives and frustrate their considered judgment would be both unwise and illegitimate.

As demonstrated above, moreover, there is no legitimate basis for reform, and a system aimed at releasing every defendant would wreak untold consequences. While defendants have an interest in securing their liberty before trial, communities cannot release all defendants without sufficient surety that they will appear. Doing so would significantly reduce defendants' incentive to appear for court hearings and place an unnecessary strain on the criminal justice system. *See* Eric Helland & Alexander Tabarrok, *The Fugitive: Evidence on Public Versus Private Law Enforcement from Bail Jumping*, 47 J. L. & Econ. 93, 94 (2004). When a defendant fails to appear, local courts must reschedule proceedings, wasting the time of court personnel, judges, lawyers, and testifying witnesses, including victims, and inhibiting the community's ability to enforce its laws. *Id.* Studies conservatively estimate that the cost to the public for each failure to appear is approximately $1,775. *See* Robert

G. Morris, Dallas Cty. Criminal Justice Advisory Bd., *Pretrial Release Mechanisms in Dallas County, Texas* 17 (Jan. 2013), http://bit.ly/1tttqJD.

A defendant who fails to appear for a scheduled court hearing typically incurs an additional criminal charge and an associated warrant, which not only burdens that defendant but also imposes more costs on law enforcement who must track down missing defendants, diverting scarce community resources from other law enforcement efforts. *The Fugitive*, at 98. This is no trifling concern. To take an example, Philadelphia releases approximately half of its criminal suspects on personal recognizance and for a long time prohibited commercial bail. As of November 2009, Philadelphia's "count of fugitives (suspects on the run for at least a year) numbered 47,801," and in 2007 and 2008 alone, "19,000 defendants each year—nearly one in three—failed to appear in court for at least one hearing." *Report of the Advisory Committee on the Criminal Justice System in Philadelphia* 19 (Jan. 2013), http://bit.ly/25Y8c8s.

The reforms that advocates are pushing on the basis of the Counsel's flawed premise would produce similar problems in Maryland. Law enforcement is not staffed or funded to re-arrest defendants who fail to appear. Commercial bondsmen, by contrast, are charged with investigating the failure of the defendant to appear and then are further responsible for actually returning the defendant to court. To do so, they often enlist the help of a defendant's community by obtaining contact information for friends and family, using cosigners on the surety, and requiring periodic check-ins and monitoring. *The Fugitive*, at 97. Bondsmen are able to pursue these strategies without public expense and without diverting the resources of law enforcement. And because the bondsman earns his living in the industry, his incentives for returning defendants are very high. *Id*. Secured bail and the bondsman thus play a vital public safety role by bearing the costs and risks associated with the defendant's release.

Without secured bail, the community risks encouraging further criminal behavior and losing any incentive for securing appearance, which adds to the public costs of crime and diminishes the rule of law. Indeed, statistical studies show that secured bail provides the greatest protection against failure to appear. One report determined that "[d]efendants released on a surety bond are 28 percent less likely to fail to appear than similar defendants released on their own recognizance, and if they do fail to appear, they are 53 percent less likely to remain at large for extended periods of time." *The Fugitive*, at 118. Another study of pretrial release mechanisms in Dallas County, Texas concluded that defendants released on surety bonds were the least likely to abscond. *Pretrial Release Mechanisms*, at 5. And a Special Report from the U.S. Department of Justice reached the same conclusion: "Compared to release on recognizance, defendants on financial release were more likely to make all scheduled court appearances." Bureau of Justice Statistics, *Pretrial Release of Felony Defendants in State Courts* 1 (2007) (revised 2008).

Maryland's existing scheme currently allows judges to tailor bail to an individual defendant's risk, not only his ability to pay. As explained above, Maryland law requires judges to set bail based on a host of factors—including the defendant's risk of flight and danger to the community, along with his "family ties, employment status and history, … reputation, character, and mental condition" and status within the community. Rule 4-216(e)(1). If a defendant cannot himself satisfy a bail amount, moreover, he still has the opportunity to rely on his network and reputation in obtaining pretrial release, by asking relatives, friends, and neighbors to assist with posting bail. And studies show that a defendant with significant community ties is more likely to appear. *See* Clara Kalhous & John Meringolo, *Bail Pending Trial: Changing Interpretations of the Bail Reform Act and the Importance of Bail from Defense Attorneys' Perspectives*, 32 Pace L. Rev. 800, 841 (2012).

By including secured bail among the many options for pretrial release, Maryland law thus provides judges with the tools to protect both defendants and local communities. Maryland law provides ample opportunity for defendants who are likely to appear for trial to be released on personal recognizance, with or without supervisory conditions. In fact, Maryland law *requires* judicial officers to choose personal recognizance where it is the least onerous way of reasonably assuring court appearance and community safety. And it guarantees defendants a host of procedural safeguards to ensure these guidelines are followed. But for defendants who cannot be reasonably expected to appear based on a promise alone, bail provides a valuable means for enabling pretrial release while preserving a strong incentive to appear for trial and to avoid additional arrest. Far from discriminating against the poor, the system allows those with lesser means to preserve their liberty while providing the community with sufficient security that they will appear for trial and comply with the conditions of their release.

Conclusion

In sum, Maryland's existing bail system is fair, rational, and entirely constitutional. Maryland law requires courts to consider all relevant factors—including a defendant's ability to pay, along with the risk that he will abscond or threaten the community—and instructs them to adopt the least onerous conditions of release. Moreover, this determination is required to occur in an especially expeditious fashion and with the assistance of counsel. Neither the state nor the federal constitution requires any more. Maryland already prohibits and prevents excessive bail, and the purported constitutional concerns with the status quo are illusory. Efforts to eliminate or further restrict the use of commercial bail will cause only harm. There is thus no problem to be fixed; no policy in need of reform.