



Pretrial Justice Clinic

YEAR-END REPORT
June 2018
University of Baltimore
School of Law

EXECUTIVE SUMMARY

The Pretrial Justice Clinic (PTJC or “the clinic”) opened its doors in August 2016 and has now completed its second academic year of operation at the University of Baltimore School of Law (UB). Funded in part by a generous grant from the Abell Foundation, the PTJC promotes pretrial justice in Baltimore City through litigation, lobbying, and education. This second annual year-end report details outcomes achieved by the clinic and presents findings and recommendations based on its work.

In 2017-18, litigation remained the primary focus of the clinic. Working in partnership with the Office of the Public Defender (OPD), the PTJC screened more than 80 cases, and PTJC student-attorneys represented 45 low-income Marylanders in their attempts to secure pretrial release. Despite significant systemic obstacles, PTJC attorneys secured the release of 15 clients. The majority of PTJC clients ultimately enjoyed favorable outcomes in their underlying criminal cases.



Spring 2018 Pretrial Justice Clinic Students (left to right): Brandon Cahee (2L), Shaneel Myles (2L), Michael Doran (2L), Jeremy Brooks (3L) and Sarah Simmons (2L).

The PTJC also continued its legislative advocacy alongside partner organizations in the Coalition for a Safe and Just Maryland (CSJM). By contributing to collective CSJM efforts, the PTJC helped inform strategy around public education and communications to sustain momentum for bail reform. During the 2018 Maryland General Assembly’s legislative session, the PTJC drafted testimony in support of budget language that was ultimately adopted to fund pretrial service resources across the state.

Based on its work and analysis of its internal data, the PTJC makes two findings and three related recommendations. First, we find that significant delays in the bail re-review process prevent Marylanders from timely access to justice. Too often, meritorious bail challenges become moot before relief is granted. The greatest impact is on those whose cash bail is set at an unaffordable amount. To rectify this problem, the PTJC proposes that there be an automatic re-review for individuals held on monetary bonds for over 72 hours.

Second, we find that too many Marylanders are unnecessarily incarcerated pretrial. Similar to our experience in year one of the clinic, the PTJC saw 16 of our clients spend a total of 966 days in jail pretrial only to have all of their charges dropped. When including all PTJC referrals, we observed 28 Marylanders spend a total of 1438 days locked up before charges were nolle prossed – an average of 51 days. These unjustified days of incarceration represent a tragic disruption of the lives of individuals and their communities and an extreme waste of taxpayer money. To promote increased release rates for Marylanders and to facilitate a better informed pretrial justice system, we recommend increased funding for pretrial services and greater public access to key pretrial data. If Maryland wants to get serious about combatting mass incarceration through pretrial de-carceration, we need to support proven solutions and track key justice metrics. ■

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Want to learn more about our bail system? Check out this report's short features!

Violations of Probation are explained in less than 350 words on **page 9**.

We explore the impact **family members** have in the courtroom on **page 11**.

The intersection between bail, public health, and Maryland's current **drug crisis** in Maryland is highlighted on **page 12**.

PTJC's initial data leads to interest **trends** worthy of tracking on **page 13**.

PTJC spotlights **juvenile justice** on **page 15**.

OUR MISSION

Established in 2016 and funded in part through a generous grant from the Abell Foundation, the PTJC partners with the Office of the Public Defender (OPD) to represent indigent Marylanders accused of crimes who are unnecessarily incarcerated before trial. The PTJC's goals are to:

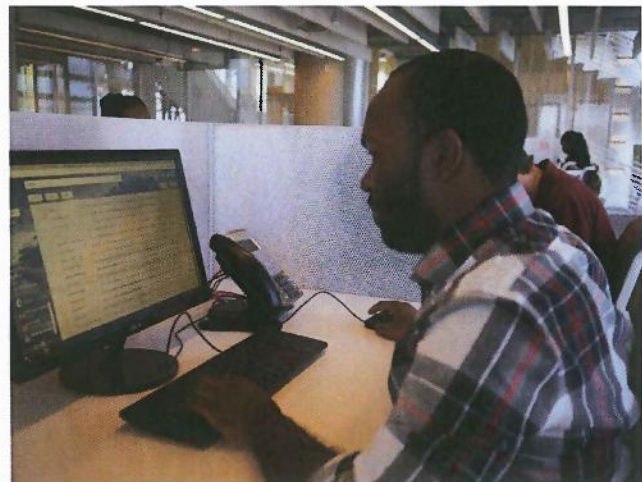
- (1) **litigate** on behalf of low-income defendants seeking pretrial release from custody;
- (2) **advocate** to end the system of money bail in Maryland and/or introduce sensible and fair legislation to reform bail standards and practices; and
- (3) **educate** the bench, bar and public about legal issues and social consequences of Maryland's current bail system and other ways to approach pretrial release.



Student-attorneys Arien Parham and J. Ethan Clasing with a client's mother after successfully securing pretrial release for her daughter after she had been incarcerated for 248 days.



Shaneel Myles calling a client's family members to verify living information the day before a habeas hearing.



Brandon Cahee working in the clinic suite with his colleagues prior to a filing.

LITIGATION

PTJC's litigation goal is to challenge pretrial detention practices and procedures that contribute to mass incarceration. PTJC students made a significant impact through litigation this past year, filing more than twice as many motions as in our prior year and securing release for five times as many clients.

The PTJC, through its litigation, aims to establish better procedural and substantive safeguards for low-income defendants and to preserve the presumption of innocence. As part of the University of Baltimore School of Law's clinical program, the PTJC functions as a law office staffed by student-attorneys admitted to practice law under Maryland Rule 19-217. The clinic retains its clients through a referral system that is governed by a Memorandum of Understanding with the Office of the Public Defender.

<u>PTJC INTAKE</u>	Fall 2017	Spring 2018	Total
Referrals Received from OPD	45	37	82
Referrals Retained as PTJC Clients	24 (54%)	21 (57%)	45 (55%)
Referrals Accepted as Consults	6 (13%)	0 (0%)	6 (7%)
Referrals Declined at Intake	15 (33%)	16 (43%)	31 (38%)

Table 1

Table 1 summarizes PTJC's intake statistics across its last two semesters. Of the 82 total referrals from the OPD, the PTJC accepted 55% of the referrals as clients for direct representation. This represents a doubling of representation from 2016-17 where the PTJC accepted 21 total clients out of 77 referrals (27%).¹

Student-attorneys visited each accepted client in a Baltimore City jail at least once (and often multiple times). During jail visits, PTJC attorneys interviewed clients, built relationships, and devised litigation strategies. Occasionally, the PTJC also consulted with OPD attorneys without directly representing clients. Consultation work included drafting litigation documents and producing memoranda to assist OPD attorneys in their own pretrial challenges. While the PTJC accepted 13 consults in 2016-2017, this year we consciously scaled back the practice (6 cases in the Fall, none in the Spring). The pedagogical value of consult cases is far less for students as they do not directly interact with the client and are unable to be the "lead" attorney as on regular client cases.

¹ To assess progress from its first year, comparisons are made to data from 2016-2017. To view the complete data from year one, please see our [June 2017 Year-End Report](#).

Table 2 disaggregates PTJC referrals by their pretrial status at the time of intake. As in year one, the PTJC deliberately focused this year on cases where the accused faced felony and/or serious misdemeanor charges. In Baltimore City, judges typically hold such defendants without bail – an unfortunate practice that the PTJC is committed to challenging. This year, 80% of the referrals received (66 out of 82) and 78% of the clients accepted (33 of 45) were held without bail.

PRETRIAL STATUS AT INTAKE	Fall 2017	Spring 2018	Total
Referrals Retained as Clients – Held without Bail	21	12	33
Referrals Accepted as Consults – Held without Bail	6	0	6
Referrals Declined at Intake – Held without Bail	13	14	27
Total Referrals Received – Held without Bail	40 (89%)	26 (70%)	66 (80%)
Referrals Retained as Clients – Secured Money Bail	3	9	12
Referrals Accepted as Consults – Secured Money Bail	0	0	0
Referrals Declined at Intake – Secured Money Bail	2	2	4
Total Referrals Received – Secured Money Bail	5 (11%)	11 (30%)	16 (20%)

Table 2

After a client is accepted, PTJC student-attorneys work toward filing litigation challenges to unjust pretrial incarceration. Procedurally, these challenges take the form of a civil habeas appeal or a request for a bail re-review. **Table 3** summarizes this litigation. In total, the PTJC filed challenges for 36 clients – more than doubling its total of 15 client submissions to court from 2016-17. As happened last year, there were instances where student-attorneys drafted litigation but were unable to file before the pretrial challenge “mooted out” due to the client’s release from custody (usually because the state dismissed charges, but sometimes because the client posted bond). Given the pace of pretrial litigation, mooting is an inherent problem. However, the PTJC learned from prior experience and became better at identifying cases where mooting is less likely. Thus, we reduced our “moot out” rate prior to filing from 29% in year one to 11% this year.

PTJC LITIGATION FILINGS	Fall 2017	Spring 2018	Total
Number of Clients	24	21	45
Clients for Whom Challenges Filed	21 (88%)	15 (72%)	36 (80%)
Clients - Challenge Mooted Before Filing	2 (8%)	3 (14%)	5 (11%)
Clients - No Pretrial Challenge Filed (Strategic)	1 (4%)	3 (14%)	4 (9%)
Number of Consults	6	0	6
Consults for Whom Challenges Filed	1 (17%)	0 (0%)	1 (17%)
Consults - Challenge Mooted Before Filing	0 (0%)	0 (0%)	0 (0%)
Consults - No Pretrial Challenge Filed	5 (83%)	0 (0%)	5 (83%)

Table 3

Once a challenge is filed, PTJC student-attorneys engage in intense preparations for potential oral argument. In habeas challenges, the basic argument is that error infected the original bail hearing, rendering detention illegal. If the court grants a habeas challenge, the remedy is a new bail review hearing. In bail re-review cases, the argument is that changed circumstances warrant new pretrial release conditions. After any bail review hearing (following a successful habeas or a grant of a re-review), the court may order release, set a monetary bail, set release with non-monetary conditions or hold without bail. **Table 4** details the litigation outcomes from the PTJC's docket.

<u>PRETRIAL LITIGATION OUTCOMES</u>	Fall 2017	Spring 2018	Total
Total Referrals Retained as PTJC Clients	24	21	45
Total Client Challenges Filed ²	23	17	40
Challenge Granted – Client Released	10 (44%)	5 (30%)	15 (38%)
Challenge Granted – Release Not Secured	1 (4%)	1 (6%)	2 (5%)
Challenge Denied	11 (48%)	7 (41%)	18 (45%)
Challenge Mooted After Filing	1 (4%)	4 (23%)	5 (12%)
Total Referrals Accepted as Consults	6	0	6
Total Consult Challenges Filed	1	0	1
Consult Challenge Granted – Client Released	0 (0%)	0 (0%)	0 (0%)
Consult Challenge Denied	1 (100%)	0 (0%)	1 (100%)
Consult Challenge Mooted After Filing	0 (0%)	0 (0%)	0 (0%)

Table 4

This year, the PTJC had its habeas or re-review request granted in 17 of 40 instances (43%). Unfortunately, the Circuit Court denied relief without even holding a hearing in 18 of 40 cases (45%). In the remaining 5 cases, the case mooted after the petition was filed but before the court came to a decision.

While the hearing-grant rate was problematically low – see “Trends to Track” in **Finding #1** below – the success rate once hearings were granted was encouragingly high. In 15 of the 17 cases where a hearing was granted, the client obtained pretrial release. This 88% success rate in live hearings demonstrates both how important it is to be granted a hearing and how prepared PTJC student-attorneys were for their oral advocacy!

² As Table 3 indicates, the PTJC filed litigation on behalf of 36 individual clients. Table 4 shows that 40 total challenges were filed. This is not a discrepancy but rather reflects that the PTJC filed multiple petitions on behalf of a small subset of clients when relief was initially denied and further litigation was appropriate. In other words, 40 petitions were filed on behalf of 36 clients.

While the role of pretrial litigation is obviously important in providing strategic help to defendants fighting criminal charges, the ultimate outcome of cases shows why such litigation is essential in the broader struggle for justice. **Table 5** shows that, as of June 1, 2018, 49% of PTJC clients (22 of 45) had favorable case outcomes (acquittal, charges dropped, or given PBJ or stet). On the other hand, only 27% of clients (12 of 45) had less favorable outcomes (guilty by plea or conviction to at least one charge). The remaining PTJC cases are pending. The chances are high that most of these remaining cases will result in favorable dispositions. After all, in 70% of all cases referred to the PTJC that have had a disposition (45/64), the defendant obtained a favorable or partially favorable result. These data show that far too many people are locked up pretrial on charges that ultimately go away. This is the injustice PTJC continues to fight. See **Finding #2** below. ■

<u>CASE OUTCOMES</u>		Fall 2017	Spring 2018	Total
Total Referrals Received by OPD		45	37	82
Clients		24	21	45
Favorable	(<i>Nolle Prose</i> or Acquittal – All Charges)	7 (29%)	10 (48%)	17 (38%)
Partially Favorable	(PBJ or Stet – All Charges)	5 (21%)	0 (0%)	5 (10%)
Less Favorable	(Guilty Plea or Conviction – At Least One Charge)	9 (37%)	3 (14%)	12 (27%)
Case Still Pending	(as of 6/1/18)	3 (13%)	8 (38%)	11 (24%)
Consults		6	0	6
Favorable	(<i>Nolle Prose</i> or Acquittal – All Charges)	3 (50%)	0 (0%)	3 (50%)
Partially Favorable	(PBJ or Stet – All Charges)	2 (33%)	0 (0%)	2 (33%)
Less Favorable	(Guilty Plea or Conviction – At Least One Charge)	1 (17%)	0 (0%)	1 (17%)
Case Still Pending	(as of 6/1/18)	0 (0%)	0 (0%)	0 (0%)
Declined		15	16	31
Favorable	(<i>Nolle Prose</i> or Acquittal – All Charges)	6 (40%)	5 (31%)	11 (35%)
Partially Favorable	(PBJ or Stet – All Charges)	2 (13%)	3 (19%)	5 (16%)
Less Favorable	(Guilty Plea or Conviction – At Least One Charge)	6 (40%)	2 (13%)	8 (26%)
Case Still Pending	(as of 6/1/18)	1 (7%)	6 (38%)	7 (23%)

Table 5

LEGISLATION

The PTJC is a founding member of the Coalition for a Safe and Justice Maryland and works with advocates, community groups and other stakeholders to lobby for fair bail practices in Baltimore City and for the elimination of Maryland's unjust money bail system. The 2018 Maryland legislative session was another successful year for reform.

HB447/SB1156

Pretrial Services Program Grant Fund – Establishment

This year, PTJC students advocated for increased funding to support expanded pretrial release services for Maryland's 24 counties. Specifically, students were involved in writing testimony in favor of **HB447/SB1156**. This bill established the Pretrial Services Program Grant Fund which provides grants to eligible counties in order to establish pretrial services programs. The legislation passed both the House and Senate, and \$1,000,000 in funding was secured for Pretrial Services across Maryland.

In support of its testimony, PTJC students conducted research across all 24 counties in Maryland to determine what pretrial services were offered, where the funding currently came from, and what the annual budget was for those services. One of our findings was that at least five counties in Maryland did not offer any pretrial services whatsoever. This research was used to develop a budget proposal in hopes of securing funding for pretrial release services across Maryland.



Pretrial Justice Clinic

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Testimony for the House Judicial Proceedings Committee and Appropriations Committee

March 13, 2018

HB447 – Pretrial Services Program Grant Fund – Establishment

SUPPORT

The Pretrial Justice Clinic at the University of Baltimore School of Law (member of the Coalition for a Safe and Just Maryland) supports House Bill 447. This Bill requires that certain proceeds from the sale of certain forfeited property be paid to the Pretrial Services Program Grant Fund; establishes the Pretrial Services Program Grant Fund to provide grants to eligible counties to establish pretrial services programs; requires the Executive Director of the Governor's Office of Crime Control and Prevention to administer the Fund; provides for the uses, purposes, sources of funding, investment of money, and auditing of the Fund; and establishes the requirements for a pretrial services program established using grants from the Fund; etc.

As a clinical program which represents incarcerated individuals at the pretrial stage, the benefits of expanding pretrial services in Maryland are not only evident, but clear, as set forth below. For the following reasons, we support HB 447 and urge this committee to do the same.

Increased funding to Pretrial Services under HB 447 will expand the access to justice and allow more pretrial defendants to be released on their own recognizance.

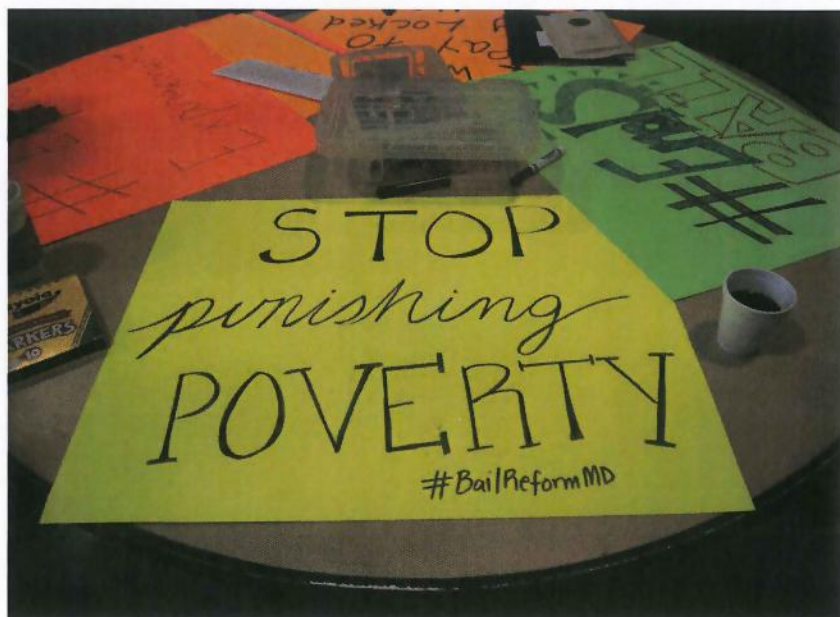
Increased funding and consistency of pretrial release services creates a more equitable process and allows more pretrial defendants to be released on their own recognizance. In counties that have robust pretrial services, defendants are more likely to be released pretrial due to assurances that Pretrial Services would be able to administer the requisite amount of monitoring. The purpose of the funding is to expand Pretrial Release Services' current offerings to include: GPS monitoring, drug screening/testing, and pretrial supervision. Through our research, we have found that when these services are not available in a county, courts are reluctant to release defendants on their own recognizance. Expanding these services is integral to expanding pretrial justice in Maryland.

HB480/SB484**Criminal Procedural – Pretrial Release - Fees**

This legislative session also saw the PTJC submit testimony in favor of **HB480/SB484**. This bill repealed the requirement that defendants pay fees for certain court-imposed services or security measures such as GPS monitoring.

After conducting research, PTJC students found that private home detention monitoring companies charge exorbitant fees and daily rates that are onerous to indigent persons. For instance, one Baltimore City service charges a \$100 hook-up/evaluation fee as well as a \$75 disconnect fee, on top of a \$15 per day rate, for a GPS monitor. These fees are especially burdensome considering the prior detention may have resulted in loss of employment.

Ultimately, HB480/ SB484 passed in both chambers and was a win for indigent pretrial detainees.

**2018 MD Legislative Session Debriefed**

The numerous successes for bail reform that occurred during this legislative session show that the Legislature understands the inherent problems associated with money-based pretrial release conditions. By providing more funding for pretrial release services and protecting defendants from other forms of predatory for-profit services, Maryland is moving in the right direction. Next year, the PTJC hopes bail reform will continue with an emphasis on reducing the number of individuals unnecessarily incarcerated prior to trial. ■

What is a Violation of Probation (VOP)?

When a defendant is on probation for a previous offense he must abide by conditions of probation, which generally include not committing any other crimes. So, if a defendant is arrested for a second offense while serving probation, this will often trigger a VOP, a new charge in itself. Many times, probation courts pre-set a condition that defendants be held without bail or on a specific cash bond in the event a VOP occurs.

Problems Inherent in Pre-set VOPs.

VOPs set up a problematic situation whereby the defendant may be released without bond on the current charges, and yet detained on the VOP condition alone. This creates a presumption of guilt which is illogical and incongruent with pretrial release rules and principles. While this matter could be resolved by simply modifying the VOP condition when such a determination is made, judges have been unwilling to modify VOP conditions set by their peers. Under Maryland Rule 4-216.3(b), however, a pretrial release order can be amended to impose different conditions. In other words, while the current culture defers to pre-set bonds, the rules permit courts to alter conditions set by another judge. And unless VOP conditions are reexamined, defendants can be held in jail without any recourse for approximately 60 days.

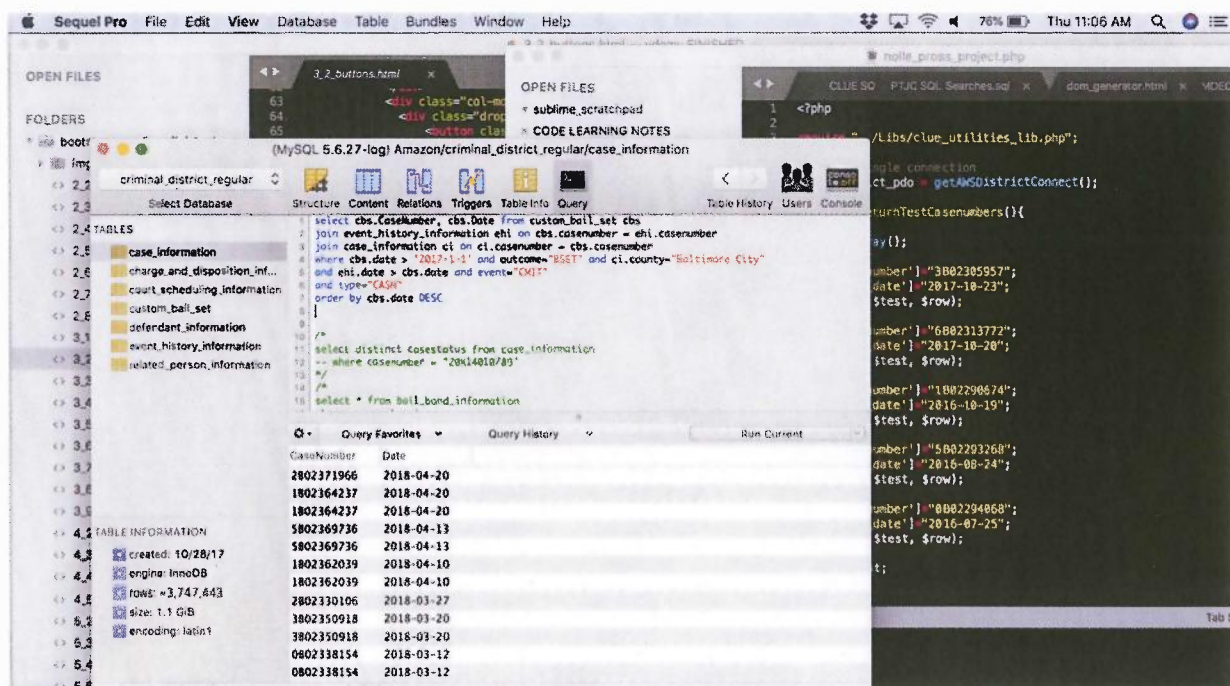
The Impacted.

PTJC client Mark Tremble (a pseudonym) fell victim to the pre-set trap. Mark was completing his last of a three-year probation term when he was charged with minor drug possession. At a bail review, the court granted release on recognizance for the new charge but held Mark without bail because there was a pre-set VOP detainer. After weeks of litigation, Mark was eventually released back to his original probation terms. However, Mark lost many days of his life and unnecessarily suffered in jail. This situation could have been easily avoided had the district court broken with the dominant culture and instead reviewed the VOP as allowed by the rules. Tradition should not stand in the way of individualized reviews to determine whether or not VOP detainers are appropriate.

EDUCATION & DATA

A fundamental goal for the PTJC is to educate the public, bench, bar, students, clients and other key players within our criminal justice system about pretrial justice issues. This year, the PTJC has focused on providing access to, and analysis of, court data in order to educate the public on the progress of the new Maryland Rule.

This year, the PTJC stepped up its data game. In addition to tracking internal client data using traditional spreadsheets, PTJC students in 2017-18 learned about a useful tool for sophisticated analysis of relational databases – Structured Query Language (SQL). Specifically, students learned how to use SQL to design queries for a powerful database called CLUE, created by Matthew Stubenberg of Maryland Volunteer Lawyers Services. The CLUE database takes public information available via Maryland Judiciary Case Search and stores them in relational tables. Using SQL syntax, users can ask complex questions of CLUE. Many of those questions related to pretrial and bail issues – for example: “How many criminal defendants were held without bail on a particular day with the charge of Assault in the Second Degree?” The PTJC has designed CLUE SQL queries to inform its own litigation and to provide much-needed data about the state of Maryland’s pretrial justice system.



Deep in the data – this is a screenshot from a PTJC workstation.

On the litigation front, the PTJC designed a query to identify defendants held on monetary bonds for extended periods of time. Since these defendants had not posted bond, it seemed likely that they were detained because of their inability to pay. Working with OPD, PTJC student-attorneys then did further research – checking court records and meeting with detained individuals – to confirm whether detention was the result of inability to pay bond. And when poverty was indeed the problem, the PTJC conducted a “mass filing” of habeas petitions.

Designing SQL queries also allowed PTJC students to assist in advocacy around the **Baltimore Police Gun Trace Task Force (GTTF)**. After the GTTF was exposed during a dramatic federal prosecution of a disgraced GTTF officer, it became imperative to identify OPD clients with cases potentially compromised by the GTTF. Knowing of the OPD's efforts in this regard, PTJC students proposed to write a CLUE query to find GTTF cases. They did so and provided the results directly to OPD. This resulted in a series of follow-up queries refining the original search in various ways requested by OPD. Although the actual number of GTTF cases which will receive a dismissal of charges or undoing of convictions has yet to be finalized, it is clear that combining technology with data can help the cause of justice.

Beyond litigation, the PTJC also provided information from CLUE to help researchers and journalists understand the rates of pretrial release and detention before and after the new rule. For example, in March 2018, researchers from Princeton University released a report for the Baltimore City and Prince George's County Branches of the NAACP entitled "Advancing Bail Reform in Maryland: Progress and Possibilities." This report leveraged PTJC-created data that showed that the use of cash bail happily declined after the new rule came into effect in August 2017, but also showed that rates of pretrial detention unfortunately rose. In a follow-up interview with the Daily Record, PTJC co-director Colin Starger pointed out that "data should be used to educate judges and the general population about what is happening in pretrial hearings."

In the same article, Starger noted another disturbing pattern apparent from data analysis – black defendants in Maryland still pay higher bails on average than their white counterparts and black defendants also have higher rates of pretrial detention.

"It just shows the systemic problems of structural bias are unfortunately alive and well," Starger said. The struggle for pretrial justice is part and parcel of the struggle for racial justice. The PTJC remains committed to using data to help educate the public about these struggles. ■

Family Matters.

To provide effective representation, students in the clinic learned that meeting with a client is not necessarily enough – family contact matters too. The presence of family members in the courtroom demonstrates to the judge the community ties of the individual and shows that the person in handcuffs is someone's son, daughter, brother, sister, or spouse. Students in the PTJC work tirelessly making phone calls and staying in constant communication with clients' families to ensure that family members and loved ones are aware of hearings and can attend. This work does not end at 5:00PM on weekdays. PTJC students often have frequent communication with family members and loved ones of their clients in the evenings and over weekends.

While family members often attended habeas hearings, this year the client him/herself was frequently not present. Throughout this Spring semester, PTJC clients were not transported by the jail for their hearings or arrived late. Out of the seven (7) hearings granted this semester, the system broke down three (3) times. While 4 for 7 would be a good batting average in baseball, it is an egregious rate when it comes to appearance at hearings where liberty is at stake.

In cases where systemic failures meant the client was not present, family members made the greatest difference. On one occasion, Kevin Mack (a pseudonym) was not present at his habeas hearing. The habeas judge asked Kevin's mother and father to take the stand. After hearing from his family and learning about his particular circumstances, the judge released Kevin from detention. Sometimes family makes all the difference between release or continued detention.



PTJC I student-attorneys (left to right) Charlie Kerr, J. Ethan Clasing, and Arien Parham preparing for their first "mass filing" during the Fall 2017 semester. The filing was a team effort requiring all students to assist in filing habeas petitions for 7 clients based on a single legal issue.

PTJC FINDINGS

Finding #1: Systemic delays lead to injustice.

As the saying goes, “Justice delayed is justice denied.” This year the PTJC became especially attuned to the injustices suffered by misdemeanor defendants held on unaffordable money bonds. In the Spring 2018 semester, the PTJC filed 7 habeas petitions on behalf of defendants detained on unaffordable bails. Unfortunately, 4 out of 7 of these filed petitions became moot before a hearing was granted or denied. The mooting of these cases highlights problems of systemic delay that require attention.

Delay in addressing pretrial challenges particularly impacts defendants held on unaffordable cash bails. This is because cash bails are typically given to defendants facing misdemeanor charges and misdemeanors typically reach a disposition around 30 days after arrest.³ While it is good that misdemeanors resolve relatively quickly, the new Maryland Rule famously prohibits detention based on inability to pay. The rule is undermined if challenges to unaffordable bail go unheard due to systemic delay.

The primary sources of delay are revealed by **Tables 6**. As this table shows, it took an average of 12.5 days for PTJC students to file challenges on behalf of their clients after meeting them. Much of this time is attributable to waiting for CD transcript from district court; the rest derives from iterative drafting process undertaken by student-attorneys with their supervisors. It then took the Circuit Court an average of 9.3 days to decide whether to grant a hearing. When a hearing was granted, a hearing was not scheduled for another 8 days on average.

While the PTJC could make its process more efficient (and is working in that regard), the court system also needs to do better. As shown in **Table 4** above, 12% of PTJC’s filings became moot before the client could even receive a hearing. Given that so few clients go to trial and that so many have their cases dismissed, increasing efficiency of pretrial adjudications should be a priority.

Are Drugs “Dangerous”?

Drug use and drug distribution certainly pose serious problems for individuals and communities in Maryland. But should every person charged with a drug-related crime be automatically detained without bail on the theory that drugs are inherently dangerous? This is not an academic question – detention for mere association with drugs is an all-too-common practice in Maryland.

The PTJC takes the position that the Maryland Rules do not permit automatic detention of defendants based solely on allegations of drugs. In April 2018, the PTJC filed a challenge on behalf of Richard Donahue (a pseudonym). He was accused of heroin possession and distribution. The alleged quantity of drugs was small, and the commissioner set a \$3,000 bond. Pretrial Release Services recommended release. Yet the district court held Richard without bond. On the same docket, the court held without bail five of six defendants who had drug related charges. The court justified its policy of blanket detention by saying that heroin “is dangerous to the public and objectively so.”

Thankfully, Richard’s habeas challenge was successful. The Circuit Court recognized that the Maryland rules require individualized inquiries and that automatic detention based on a generalized view of drugs violates this requirement. Though Richard was subsequently released, he spent many days incarcerated for something that many would consider a drug treatment problem, not a public safety concern.

It is important to recognize that the bail review court’s intentions seemed honorable. The judge expressed genuine concern and tried to make arrangements for drug treatment for all the defendants sent to jail. Yet the idea that jail is the best place to confront addiction is deeply flawed. Drug-treatment services are equally available and more effective when administered as part of pretrial release.

Although many Baltimore City residents struggle with addiction, detaining everyone charged with drug crimes is the wrong solution. Not only does it violate Maryland law, it also misdiagnoses a public health problem as a law-and-order problem. Liberty prior to trial is supposed to be the rule, and detention the “carefully crafted exception”. *United States v. Salerno*. Reflexively detaining defendants solely based on allegations of drugs reverses the presumption of innocence and liberty at the heart of our criminal justice system and featured in Maryland’s bail rule.

³ Felonies typically take 90 plus days to resolve. The fact that felony defendants are typically held without bond is a distinct – yet also serious – problem.

FALL 2017 – SPRING 2018 SNAPSHOT	Average
Date Client Retained to Date Habeas Petition or Bail Mod Filed w/the Court (*Calculation based on 39 Client Challenges)	12.5 Days
Total Days: Date Filed to Notification Date (*Calculation based on 37 Client Challenges)	9.3 Days
Total Days: Date Filed to Hearing Date (*Calculation based on 22 Client Challenges where Hearings Granted)	16.6 Days
Total Days: Date Retained to Hearing Date (*Calculation based on 22 Client Challenges where Hearings Granted)	27.3 Days

Table 6

Table 6 Terms Explained: The “Date Client Retained” refers to the date the PTJC Retainer Agreement is executed by the client, the PTJC student-attorney and the student’s supervising attorney. The “Date Filed” reflects the date the habeas petition or bail modification is filed with the Court. The “Notification Date” refers to the date in which the PTJC is notified by the Court as to whether a hearing has been granted for a previously filed pretrial challenge (either a habeas petition or a bail modification). If a hearing for a pretrial challenge is granted, the “Hearing Date” above refers to the date that hearing is scheduled and takes place before the Circuit Court Judge. The “Judicial Order of Release Date” refers to the date the Circuit Court Judge enters his or her Order of Release at the hearing and after granting pretrial release. The “Actual Release Date” is the date the client was released from commitment after his or her release was ordered by the Circuit Court Judge at the pretrial challenge hearing.

In particular, challenges to unaffordable bails should not go unheard. The new rule was specifically designed to address the problem of loss of freedom due to poverty. The experiences of two PTJC clients Sonya Timber and Marvin Gusto (pseudonyms) are illustrative of the great human costs. Sonya was charged with simple assault and was given a \$1000 bail. Marvin was charged with misdemeanor theft and given a \$2,500 bail. Both Sonya and Marvin are indigent, and neither could afford their bails. Although the PTJC filed petitions, they were never heard. Before habeas relief could materialize, the State elected to dismiss their charges. Sonya and Marvin spent 36 and 29 days in jail for no reason other than poverty.

The system failed Sonya and Marvin as it has failed too many others. Much of this injustice can be resolved by creating automated review processes for individuals who are held prior to trial. **Recommendation #1** discusses this solution in greater depth below.

Trends to Track: Denial of Habeas Petitions without a Hearing.

Table 4 on p. 6 displays data showing how often the PTJC filed a habeas petition or bail review but had the petition denied without a hearing. This year denials without hearing occurred in 18 out of 40 filings – a disturbingly high rate of 45%. Last year, our denial rate was 13% (2 out of 15). Based on internal review, we do not believe the quality of our petitions or our case selection was demonstrably worse than last year. Given the large number of individuals who are detained unnecessarily for prolonged periods of time (see Finding #2), it seems habeas hearings might be useful opportunities to provide justice to those who are legally innocent and may never be convicted of any crimes.

PTJC provides recommendations below for increasing avenues of relief for accused individuals we believe courts should adopt. Meanwhile, we recognize that the causes of the increased denial rate have not been fully studied and that more research and data are required. The PTJC plans to track this trend in the coming year.

Finding #2: Marylanders continue to suffer from unnecessary pretrial incarceration.

PRETRIAL DETENTION LENGTH		Fall 2017	Spring 2018	Total
Nolle Prose				
Clients	(number / total days)	6 / 207	10/759	16 /966
Consults	(number / total days)	2 / 69	0 / 0	2 / 69
Declined	(number / total days)	5 / 102	5 / 301	10 /403
Total	(number / total days)	13 / 378	15 /1060	28 / 1438
Average Nolle Prose Pretrial Detention Days		29	71	51
Median Nolle Prose Pretrial Detention Days		29	36	32
Acquittal				
Clients	(number / total days)	1 / 30	0 / 0	1 / 30
Consults	(number / total days)	1 / 38	0 / 0	1 / 38
Declined	(number / total days)	1 / 26	0 / 0	1 / 26
Total	(number / total days)	3 / 94	0 / 0	3 / 94
Average Acquittal Pretrial Detention Days		31	0	31
Median Acquittal Pretrial Detention Days		30	0	30
Stet and Probation Before Judgment				
Clients	(number / total days)	5 / 240	0	5 / 240
Consults	(number / total days)	2 / 232	0	2/232
Declined	(number / total days)	2 / 58	3 / 189	5 / 247
Total	(number / total days)	9 / 530	3 / 189	12 / 719
Average Stet + Probation Before Judgment Pretrial Detention Days		60	63	60
Median Stet + Probation Before Judgment Pretrial Detention Days		33	34	34
Guilty Plea				
Clients	(number / total days)	6 / 714	3 / 346	9 / 1932
Consults	(number / total days)	1 / 177	0 / 0	1 / 177
Declined	(number / total days)	6 / 695	2 / 107	8 / 802
Total	(number / total days)	13 / 1586	5 / 453	18 / 2911
Average Guilty Plea Pretrial Detention Days		122	69	107
Median Guilty Plea Pretrial Detention Days		144	63	119.5
Conviction				
Clients	(number / total days)	2 / 58	0 / 0	2 / 58
Consults	(number / total days)	0 / 0	0 / 0	0 / 0
Declined	(number / total days)	1 / 30	0 / 0	1 / 30
Total	(number / total days)	3 / 88	0 / 0	3 / 88
Average Conviction Pretrial Detention Days		29	0	29
Median Conviction Pretrial Detention Days		30	0	30

Table 7

In our 2016-17 Year-End Report, our top finding was that too many Marylanders are unnecessarily incarcerated pretrial. As **Table 7** shows, this remains a serious problem despite the new Maryland pretrial release rule. Thus, we repeat our finding that Marylanders suffer from unnecessary pretrial incarceration. The new Maryland Rule “is designed to promote the release of defendants on their own recognizance, or when necessary, unsecured bond.” Yet far too many legally innocent Marylanders are detained for extensive periods only to see their charges dropped entirely. While the new Maryland Rule should be celebrated, its success is clearly not yet complete.

Table 7⁴ calculates the time spent in pretrial detention by PTJC clients and referrals, disaggregated by disposition type. As shown, 16 PTJC clients spent a total of 966 days in jail pretrial only to have all of their charges dropped. Including declined referrals and consults, 28 Marylanders on PTJC's docket spent a total of 1438 days locked up before charges were nolle prossed – an average of 51 days. Imagine if you were ripped from your family for 51 days based on charges that the State ultimately decided not to pursue. This represents a tragic disruption of the lives of individuals and their communities and an extreme waste of taxpayer money. It also represents a deep injustice and a systemic failure of judgment. If charges were not strong enough to pursue, they should not have been used to detain in the first place.

However, despite the new rule, there remains a serious issue of unjustified detention. The rule's shift toward a presumption of release and away from an over reliance on money bail has not yet born out through Maryland's criminal justice system. In our key finding last year, we suggested the following:

Given inadequate respect for presumptive innocence pretrial, it is predictable that those simply charged with violent crimes will risk increased pretrial detention. However, widespread pretrial incarceration will not solve Baltimore's very real violent crime problem. As demonstrated, far too many accusations of violence are unfounded or unprovable. Subjecting large numbers of these legally innocent individuals to incarceration is unnecessary and counterproductive. It will not increase the trust of the community in the criminal justice system and it could even exacerbate the problem. The PTJC urges that institutional players play close attention to this developing HWOB trend so that preventive detention does not become the new norm, filling the void of money bail.

We repeat these words in the hope that history will not repeat itself. ■

Spotlight on Juvenile Justice.

It was at a school event that 17-year-old David Burns (a pseudonym) was arrested. David was charged with Assault in the First Degree, a crime for which juveniles can be charged as adults. Based on his adult charge, David was held without bail in adult jail. What did David do to get detained in this way? He threw a single punch at a basketball game. That's it. A competitive school-rivalry game got heated and there was a fight. By any fair standard, David should not have been charged with an adult felony offense.

By the time the PTJC accepted his case and filed a habeas petition, David had already been incarcerated for 14 days. David's petition was denied without a hearing (see box on p. 13). David had no criminal record and he and his family were powerless and confused by the situation.

Predictably, the State's Attorney later dropped the top charge to Assault in the Second Degree, a misdemeanor. David was transferred back to juvenile court and then released on his own recognizance. David, a child with no convictions, spent 99 days in jail for what should have been simply a school disciplinary issue.

Before this travesty, David had worked extremely hard to get grades good enough to be eligible to play on the varsity team. The bail system did not put value on his good grades, or his absence of a record, or even his humanity. David – and all of us – deserve better.

⁴ Though our finding relates to unnecessary incarceration, we note that Table 7 data are consistent with the well-known hypothesis that pretrial incarceration coerces guilty pleas. The average time spent locked up before taking a guilty plea across all PTJC referrals was 107 days. While it is impossible to assess the actual guilt or innocence of individuals in this sample, it is clear that the incentive to end pretrial incarceration becomes massive after 107 days. Despite being cloaked in the presumption of innocence, too many are incarcerated for too long before their cases are resolved.

RECOMMENDATIONS

Based on our experience and findings this year, the PTJC proposes the following recommendations to build on the current momentum for bail reform in Maryland:

1. **Courts should create an automated review procedure for individuals who fail to post monetary bonds after 72 hours.**
2. **The Legislature should increase its annual funding for pretrial release programs across Maryland.**
3. **The Judiciary and Department of Public Safety and Correctional Services should provide better public access to pretrial bail and incarceration data.**

Recommendation #1

72-Hour Automatic Re-Review for Individuals Held on Money Bail

The PTJC recommends that courts – district and/or circuit – create a mechanism to automatically review an individual’s bail determination if he/she has been held on a monetary amount for more than 72 hours. If an individual has not posted money bail after three days, he/she should be presumed to not afford that amount and therefore be eligible to re-visit the terms of the bond.

As discussed in **Finding #1**, existing mechanisms for challenging unaffordable bail suffer from substantial delay. Defense attorneys must file petitions and await court review. If a hearing is granted, there is often another week’s delay before a hearing can be held. This process most notably fails misdemeanor defendants held on money bond. Automated review would make the process efficient and honor the new rule, benefitting pretrial defendants and their communities as well as the courts.

First, the new rule makes clear that money bails should be affordable and that nobody should be given a money bond if he/she is a danger to the community. Providing automatic review of unmet bails thus presents no public safety concern and also ensures that nobody is accidentally incarcerated due to poverty. As **Finding #2** has shown, the problem of unnecessary incarceration remains in Maryland and this proposed process is a concrete step towards addressing this problem.

Second, creating an automated review process would increase efficiency. Providing automatic hearings would ensure that the “mooting out” problem for low-level misdemeanor defendants would not occur. Moreover, by eliminating the petition review stage of the current process for certain “easy” cases, this proposal would permit circuit courts to spend more time scrutinizing habeas petitions in the “hard” felony cases. In truth, decisions to hold without bail require closer review. A CD transcript is necessary to assess whether the judge made the decision to detain based on “clear and convincing evidence.” But this kind of searching analysis is not necessary in unaffordable bond cases. The presumption should be that poverty is the problem. If it is not, the hearing will clarify the issue.

Finally, this proposal should come at little cost. The new rule makes clear that money bond should be considered a last option – so there should not be a high volume of these unaffordable-bond hearings. Indeed, publicly available data confirms that the number of money bails given in Maryland has precipitously dropped since the new rule went into effect on July 1, 2017. The long-term goal is clearly elimination (or near-elimination) of money bail. This proposal will provide an incentive to make sure that goal is met as well as accountability to the commitment made by the rule. Since no Marylander should be jailed solely because of his/her poverty and given that those on money bail by definition present no public safety risk, PTJC believes 72-hour review of unaffordable bails is a critical recommendation.

Recommendation #2

Increased Funding for Pretrial Release Services

Full funding for pretrial release services is vital to reform. The old system was premised on the empirically dubious propositions that defendants needed “skin in the game” and that the for-profit bail bond industry could adequately supervise defendants. Reform is now underway, and research shows that pretrial release services are the best way to provide nonmonetary conditions of release that ensure court appearances of the accused while promoting public safety. But for pretrial services to function properly, funding is critical.

The 2018 Maryland General Assembly recognized this need and committed a million dollars to pretrial release services. While this is admirable, full statewide services will require more. Creating an infrastructure that uses the latest technology to ensure a high bar of service for the community requires investment. Yet in the long run, the investment will pay for itself. Full funding for pretrial services will ultimately save Maryland money by allowing the state to seriously decrease its pretrial jail population. In state after state, the numbers demonstrate that pretrial incarceration costs far more per capita than pretrial services. Pretrial freedom isn’t free, but it is the best financial option – as well as the most just one.

Recommendation #3

Better Public Access to Pretrial Data

Maryland has proven itself a national leader in bail reform. Yet true reform requires a commitment to ongoing monitoring and accountability. Real change takes time and must respond to realities on the ground. Lasting reform requires constant attention to detail – and the details of reform’s success or failure are revealed by data. In order to promote pretrial justice over the long run, the judiciary and the Department of Public Safety and Correctional Services should commit to providing better public access to pretrial data.

It is important to recognize that the bail system is not an independent machine separate and distinct from the criminal justice system – it is one spoke in the wheel and its long-term effects on case dispositions and sentencing require constant monitoring. After the release of the new rule, the Judiciary distributed an excellent analysis of pretrial populations. This data should regularly be released quarterly or semi-annually in a format suitable for independent analysis (i.e. in CSV or Excel form). In addition, the PTJC recommends that the following data points also be recorded and publicly released:

- Average daily pretrial population: incarcerated v. released.
- For incarcerated population, percent held without bail v. held on money bail.
- For released population, percent under pretrial supervision v. under no supervision.
- For all above-listed categories, demographic information including race, gender, and zip code.
- For all above-listed categories, charge disposition information (conviction, plea, *nolle pross*, etc).
- For released population, failure-to-appear rate and new-offense rate
- For incarcerated population where charges dropped, days spent in “unnecessary incarceration”

The PTJC recommends that the data points above be tracked because they represent many of the “bottom lines” of bail reform. If we want to combat mass incarceration by decreasing pretrial incarceration, we need to know the population numbers. If we want to decrease racial disparities, we need be informed about racial compositions. To assess pretrial release success, we must track appearance and re-offense rates. Finally, if we are to become serious about fixing the problem of unnecessary incarceration, we need to have an honest accounting. This information must be public so that institutional players and affected communities can understand the real challenges and then work together to find evidence-based solutions. ■