



THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401-1991

November 15, 2016

Judge Alan M. Wilner
Maryland Standing Committee On
Rules of Practice and Procedure
2011-D Commerce Park Drive
Annapolis, Maryland 21401

Re: Consideration of Amendment of Rules Regarding Bail

Dear Judge Wilner;

We want to take this opportunity to thank you for your tireless work on behalf of Maryland's judicial system. We face many challenges to ensure justice is administered in an equitable manner.

We are writing to you regarding the recent opinion by Attorney General Frosh raising issues about Maryland's bail system and the constitutionality of bail in some cases. The opinion indicates that were a case to make it to the Court of Appeals wherein high bail was set solely for the purpose of holding someone in jail, it might be held unconstitutional.

As you are aware, over the past several years we have debated pre-trial issues at great length in the Maryland General Assembly. Ensuring that indigent defendants would have representation before District Court Commissioners led to a Task Force, and Executive Order establishing a commission to study pre-trial issues. After two years, no consensus emerged and the only manner in which the General Assembly was able to comply with the *Richmond* decision was through a program run by the Judiciary and funded in the State budget.

While we have the utmost respect for Attorney General's Frosh and very sympathetic to the issues raised in his opinion, we do not believe that Maryland Standing Committee on Rules of Practice and Procedure should act as a legislative policy making body. In the absence of a case wherein the Court of Appeals has ruled on the issues Attorney General Frosh has raised, the General Assembly is the appropriate branch of government to make significant public policy changes.

We would also note that any major changes must also be considered in terms of implementation and State budget issues. Many have pointed counties such as Montgomery County where a robust pre-trial process exists that if expanded to all counties would work to

address the issues raised in Attorney General Frosh's opinion. You may remember however from the work of the Task Force and Commission, that to do so would cost tens of millions of dollars. Moreover, counties with existing programs indicated they would then ask for new State support if it was being given to other jurisdictions. Another recommendation was to meet a 48 hour bail review requirement by requiring District Court to be open 6 days a week but the Judiciary was unsupportive of this solution.

There simply was no easy answer as each proposal had significant advantages and disadvantages. There is also no easy solution here as similar issues are raised. We therefore would ask that the legislative process which includes full participation from the public, victim advocates and other interested parties not be sidestepped. We would further note that based on revised revenue projections, the State of Maryland is facing a deficit of as much as \$500 million next year and \$800 million the year after. This means that the legislative consideration of this issue and other pre-trial issues must also evaluate the potential cost of different options.

For all these reasons, we offer to you our sincere commitment to work with you and Attorney General Frosh during the 2017 Maryland General Assembly Session review and seek consensus as to the bail system with particular attention paid to constitutional questions. Please let us know of any specific thoughts or ideas the Committee has on this issue so that work can begin as soon as possible in anticipation of the Session in January.

Respectfully;



Thomas V. Mike Miller, Jr.
Senate President



Robert A. Zirkin, Chair
Judicial Proceedings Committee

cc: Chief Judge Mary Ellen Barbera
Governor Lawrence Hogan
House Speaker Michael E. Busch
Senate President Thomas V. Mike Miller, Jr.