



POSITION ON PROPOSED LEGISLATION

BILL: SB 68 - Criminal Procedure - Pretrial Release - Pretrial Risk Assessment Instruments

POSITION: SUPPORT

DATE: January 21, 2020

That part of our pretrial system that ultimately decides a person's detention or release before trial must be fair and just. To do so, it must balance as precisely as possible several fundamental interests/objectives: it must respect an accused person's presumption of innocence; it must help ensure the public's safety; it must help ensure a person's appearance in court.

Not so long ago, the actors and stakeholders within the pretrial system relied on their own experience, perspectives and beliefs, as applied to any facts they deemed relevant and were aware of, to argue and decide who gets detained or who is set free before trial. As might be expected, what one thought of this largely subjective system was itself subjective, with law enforcement and victim groups typically asserting that too many people were being let free, and defendants and their advocates typically asserting that too many were being locked up.

With the advent of data keeping at a breadth and depth that was not possible before, and with new access to and analysis of such data by social and statistical scientists, most justice systems, including Maryland's, have thankfully started to turn away from a largely subjective approach to one that involves increasing levels of objective analysis. The way this analysis is currently embodied in our pretrial system is through the use of pretrial risk assessment tools, which can include statistical analysis of thousands of records and cases, and dozens of factors, to determine what factors most reliably predict either flight or safety risk. As important as such tools are, no tool is used, as far as we are aware, to alone make final decisions regarding pretrial detention or release. Rather, the tool's analysis is considered along with facts, arguments or explanations provided by the defense and/or prosecution. Whether and to what extent the tool's prediction is taken into account is always the judge's final call.

SB 68 aims to put in place a critical element in assuring that pretrial risk assessment instruments continue improving predictive accuracy, through the use of independent validation. This is not merely a best practice, but an essential one, and for that reason, we support SB 68.