



Testimony submitted to the Joint Committee on the Judiciary
In Support of S.834/H.3120 – An Act Reforming Pretrial Process
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The League of Women Voters of Massachusetts strongly supports this bill proposed by the late Sen. Ken Donnelly and Rep. David Rogers to reform bail and pretrial processes in order to shift away from a cash bail system, decrease recidivism, increase public safety, save the taxpayers money, and give the poorest, most troubled people in our Commonwealth some hope for a better future. Many states, including Maryland, Texas, Kentucky and New Jersey, have been moving away from cash bail before pretrial release.^{1, 2}

In Massachusetts, around one-fourth of our residents in custody are being held before trial, which is antithetical to “innocent until proven guilty.” A study of the Middlesex County pretrial population shows this number has grown in the past six years and so has the average length of stay³ despite a falling crime rate. Some of these people are held because they cannot afford monetary bail, fines, and fees.⁴ It is essential to keep dangerous people off the streets, but it is also essential for the rest to keep their liberty while awaiting trial. The purpose of bail is solely to make sure people show up for trial. Most individuals do turn up for their trials, especially if they are given reminders or provided the support they need.

Our current system has two tiers: indigent people are held pretrial and those with means are released. This drains the resources of the Commonwealth, and is costly since those in jail cannot go to work or school, take care of their families, pay their bills, attend job training, or go to substance abuse or mental health programs, and thus may end up losing their jobs, their housing or even custody of their children.

This bill creates a Pretrial Services Agency to develop a validated risk assessment tool to determine likelihood of an individual to appear for trial; enables data collection and analysis using National Institute of Corrections methods; provides mandatory training in use of the risk assessment tool; and expands the Office of Community Corrections so non-violent pre-trial individuals can be sent to programming instead of paying cash bail (especially useful for individuals in need of support, including substance abuse treatment or housing assistance).

Risk assessment tools help judges make informed decisions about release options and protects judicial discretion. They determine an individual’s resources to prevent custody for being impoverished, and include a mechanism for review if an individual is denied release. Informing judges with a bench card, as used in Ohio,⁵ may be an efficient way to ensure that this is put into practice to decrease those ending up in custody for failure to pay.

There are concerns about how the risk assessment tool is developed to make sure it doesn't result in increasing the number of individuals held pre-trial. It is essential that the risk assessment tool does not codify racial or ethnic disparities if it is based on historical data that is already skewed. It is also important that this tool take the needs of families into account, especially when there are dependents involved. Where the bill references "other needed social services," perhaps it should explicitly mention "such as affordable child care," or in some way make it possible to take the needs of caretaking into account (which can make it difficult to attend programs or show up for court dates).

The Office of Community Corrections is currently underutilized and already has many programs that could be put to use to serve the pretrial population by giving these individuals the support they need so they don't miss their court dates, and putting them on a better path so they are less likely to become a repeat offender. This will save the Commonwealth money as it is far less expensive to provide services to individuals who are at liberty than it is to house them in a correctional facility.

We urge legislators to make sure that this bill is passed and that the risk assessment process and the OCC are adequately funded up front since decreasing our numbers of incarcerated residents will eventually save the Commonwealth money.

Thank you for your consideration.

¹ https://www.washingtonpost.com/local/md-politics/maryland-highest-court-overhauls-the-states-cash-based-bail-system/2017/02/07/36188114-ed78-11e6-9973-c5efb7ccfb0d_story.html

² <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/03/01/locked-up-is-cash-bail-on-the-way-out>

³ http://www.middlesexsheriff.org/sites/middlesexsheriff/files/uploads/nic_-_mso_pretrial_analysis.pdf

⁴ <http://senatormikebarrett.com/wp-content/uploads/2016/11/Fine-Time-the-Report-Nov.-7-2016..pdf>

⁵ http://www.acluohio.org/wp-content/uploads/2014/02/OhioSupremeCourtBenchCard2014_02.pdf