



The League of Women Voters of Delaware Statement on HB 204 Aimed at Reform of Delaware's Money Bail System

The Eighth Amendment to the U.S. Constitution prohibits excessive bail. Further, Article I of Delaware's Constitution, Section 11 states that "Excessive bail shall not be required, nor excessive fines imposed...." Yet, the number of inmates held due to lack of funds to pay bail suggests that it is often excessive. This and other factors result in too many non-violent offenders languishing in prison before a trial, a serious disparity in the number of the poor and minorities held in pretrial detention, and severely overcrowded prisons in Delaware.

"The presumption is we are going to hold you until you can tell us why you shouldn't be held," said a Delaware Public Defender. "I think to some extent the court forgets that it is only an accusation."¹

A distinguished group of experts has worked with the Delaware Access to Justice Commission's Committee on Fairness in the Criminal Justice System that held public hearings on bail reform issues in the fall of 2015 that we attended. Their objective was aimed at reducing unnecessary detention of defendants who do not pose a threat to the community and increasing fairness to defendants with limited economic resources while better protecting the public.²

About 56 percent of Delaware's prison population is African-American, but only 22 percent of the state's population is black.³ And, about 23 percent of the state's prisoners are being incarcerated while awaiting trial, mostly because they cannot afford bail. This number jumps to 40 percent for female prisoners.

Various studies document the benefits of eliminating the use of money bail or at least reducing it based on a defendant's risk. Kentucky moved toward a presumption of release without bail in 2011 and has experienced an increase in the number of defendants showing up for their trials. Case studies from Kentucky, New Jersey, Colorado, the District of Columbia, and other states document how the elimination or major reduction in bail can work.⁴

Experts at the bail hearing said even short detention stays create unnecessary trauma for low-risk defendants – and make it more likely they will commit new crimes because of the impact of incarceration on jobs, housing and family connections. Also, defendants are more likely to plead guilty, said Ryan Becker, an attorney with the Equal Justice Initiative.

Multiple state-sanctioned reviews are currently underway, including an effort that is studying racial disparities in the state's prisons and jails. Initial recommendations are expected in the coming months, but they would be subject to rounds of public review.

A case study of Washington, DC, where money bail has been eliminated, about 88 percent of released defendants return to court, thanks to the District's pretrial services program that monitors defendants who are released on specific conditions from the judge, such as curfews, regular check-ins at pretrial services, urinalysis, drug and mental health treatment and GPS ankle monitoring. "Conditions work when they are tailored to an individual's risk, said one expert, adding that appearance rates also improve when defendants are sent reminders. He pointed out that most defendants don't keep iPhones or calendars, but in a lot of places, the pretrial notification process is a lot less sophisticated than what your dentist office uses."⁵

LWVDE official position urges elimination of money bail as a step toward reducing pretrial detention and the overall prison population with funds saved being shifted toward re-entry and prevention programs. We believe that HB 204 appears to move us in this direction. So we support its release from Committee.

¹ Beth Savitz, at a hearing of Delaware's Committee on Fairness in the Criminal Justice System, November 13, 2015.

² Press Release issued by the Criminal Justice Improvement Committee of the General Assembly, March 21, 2017.

³ Committee on Fairness in the Criminal Justice System, a subgroup of Access to Justice commission. Public hearing, November 13, 2015, at the Chase Center, Wilmington.

⁴ Equal Justice Initiative, *A Report on Bail & Pretrial Detention*, prepared for a hearing of Delaware's Committee on Fairness in the Criminal Justice System, October 2015, presented November 13, 2015.

⁵ Stephanos Bibas, a law and criminology professor at University of Pennsylvania Law School.