

JOTA

THE CRIMINALIZATION OF POVERTY

How to Break the Cycle through
Policy Reform in Maryland



January 2018



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About the Job Opportunities Task Force

The Job Opportunities Task Force (JOTF) is a nonprofit organization that works to develop and advocate policies and programs to increase the skills, job opportunities and incomes of low-skill, low-income workers and job seekers in Maryland.

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EXECUTIVE SUMMARY



EXECUTIVE SUMMARY

In August 2016, the United States Department of Justice issued a report following its investigation into the policies and practices of the Baltimore Police Department. The report was in response to the 2015 police-involved death of Baltimore resident Freddie Gray and the subsequent unrest that gripped the city. During that historic week in April 2015, the world watched as Baltimore residents took to the streets to call for an end to police brutality and demand reforms in police accountability. In response to the death of Freddie Gray, what surfaced was communal anger and frustration at a dynamic that has plagued Baltimore communities for decades: an overreliance on incarceration and a divestment in economic opportunities.

Given growing national attention and local concern around the impact of incarceration on working families, the Job Opportunities Task Force sought to define and determine the extent to which the criminalization of poverty is occurring in Maryland. Indeed, the August 2016 United States Department of Justice report on the Baltimore Police Department created a greater sense of urgency around issues of poverty, race and criminal records.

Therefore, the goal of this project is to identify whether there are key laws, policies and practices in Maryland that are either unnecessarily penalizing the poor or leading the poor to be unnecessarily arrested, charged with a crime or imprisoned because they are poor and therefore unable to satisfy the demands of the law. Our investigation revealed that the criminalization of poverty is occurring in Maryland, with disproportionate impact on people of color. Consequently, our findings are organized into three themes:

1. **Common Pathways Through Which the Poor Are Criminalized:** There are at least four key pathways through which the poor, especially people of color, are put at greater risk of entering the criminal justice

system than other groups: racial profiling, civil asset forfeiture, motor vehicle laws, and the collection of child support and civil debts. Part 1 will examine each entry point and how their intersection can easily lead poor communities of color into and through the criminal justice system.

2. **The Criminal Justice System's Disparate Impact on the Poor:** After arrest, certain groups, particularly poor communities of color, face disparate treatment and outcomes as compared to other groups in the community. These groups are also more likely to be impacted by and unable to afford the accompanying fees and fines and resulting increased debt. Part 2 will examine the imposition of both court-specific and court-related fines and fees and its impact on poor defendants in civil and criminal courts.
3. **Collateral Consequences of a Criminal Record:** While there are numerous collateral consequences of a criminal record in Maryland, there are a few key collateral consequences that present major barriers to economic success for individuals with a criminal background. Part 3 will examine those key sanctions and how they reinforce a cycle of poverty and criminalization.

We must break this cycle. Recommendations for policy reform are presented throughout the report to better understand the magnitude of this issue and explore opportunities to reduce the criminalization of poverty in Maryland. Key recommendations include:

1. End common practices that criminalize the poor by:
 - a. Enforce laws that protect against racial profiling.
 - b. Abolish civil asset forfeiture.
 - c. Eliminate driver's license suspension as a penalty for nonpayment of fines.



SNAPSHOT

Defining “criminalization of poverty”

There is no single, universal definition of the term “criminalization of poverty.” For the purposes of this report, we defined the criminalization of poverty to include:

1. State laws, policies and practices that unnecessarily penalize the poor without any counterbalancing benefit to them.
2. Situations where a person is arrested and charged with a crime and/or is imprisoned because of the fact that he is poor and unable to satisfy the demands of the law.

Several of the laws, policies and practices reviewed in the report only fit one of the two definitions above, but the majority encompass both definitions.

Additionally, given the history of the criminal justice system in the United States, race, poverty and criminalization are often inseparable. Because communities of color are disproportionately affected by the criminal justice system, we recognize that the “criminalization of poverty” is largely also the “criminalization of people of color.” We highlight throughout this report the various ways in which the criminalization of poverty disproportionately affects poor communities of color.

- d. Create a low-cost auto insurance program for low-income drivers.
 - e. Simplify the process to modify child support orders.
 - f. Eliminate the use of arrest as a way to collect debt.
2. Reform the criminal justice system to end disparate impact on the poor by:
 - a. Limit the use of cash bail.
 - b. Implement robust pre-trial services.
 - c. Eliminate most or all criminal justice fees.
 - d. Determine ability to pay before imposing fees.
 3. Limit the collateral consequences of a criminal record and help returning citizens remain out of prison by:
 - a. Expand the statewide “Ban the Box” law.
 - b. Continue to expand and simplify expungement.
- c. Monitor effective implementation of the Maryland Fair Access to Education Act of 2017 (ban the box on college applications).
 - d. Expand correctional education, job training and education behind the fence.
 - e. Opt out of the felony drug ban on TANF (TCA) and SNAP.

This report reveals that many of Maryland’s current laws, enforcement schemes, monetary penalties and related policies and practices disproportionately criminalize the poor, with disproportionate impact on communities of color. If we seek to achieve a more just and inclusive society, and if we truly believe that every resident of Maryland should have equal opportunities for economic mobility and life success, targeted reform, both within and outside of the criminal justice system, is needed.

To achieve a more just and inclusive society and to ensure that every resident of Maryland has equal opportunities for economic mobility and life success, targeted reform, both within and outside of the criminal justice system, is needed.

Part one:

COMMON PATHWAYS THROUGH WHICH THE POOR ARE CRIMINALIZED



Common Pathways Through Which the Poor are Criminalized

Law Enforcement Policies and Practices that Disproportionately Affect the Poor and People of Color

Racial Profiling

There is growing concern that racial profiling leads to the disproportionate criminalization of people of color, especially those who are poor. Racial profiling by law enforcement is loosely defined as the targeting of people for suspicion of crime based on their race, ethnicity, religion or national origin. According to the National Institute of Justice, the crux of the issue is that “creating a profile about the kinds of people who commit certain types of crimes may lead officers to generalize about a particular group and act according to the generalization rather than specific behavior.”¹

It is well documented by national research that African Americans and Latinos experience higher rates of stops, searches, use of force, detainment, arrests and tragically, killings by police, than other racial groups.² This is the main concern with racial profiling – that if police pay more attention to (and are more likely to stop and/or search) members of some racial or ethnic groups, then regardless of actual criminality or offending rates, those groups will bear a disproportionate share of sanctions and will be overrepresented in the criminal justice system.³

Jack Glaser, in his book, *Suspect Race*, provides a comprehensive overview of evidence of racial profiling, arguing not only that racial profiling is occurring, but that it is relatively common.⁴ More information on Glaser’s research and other studies on racial profiling can be found in Appendix A.

Data indicate that racial profiling by law enforcement has been an ongoing issue in Maryland, garnering the attention of the U.S. Department of Justice (DOJ), the American Civil Liberties Union (ACLU) and other organizations. Since the early 1990s, the Maryland State Police have been under scrutiny due to a high profile lawsuit and subsequent data that revealed that African-American motorists were far more likely to be stopped and searched in Maryland than white motorists.⁵

In response to this, the General Assembly passed legislation in 2001, TR 25-113 (described in detail on page 16), requiring local police departments to establish policies to reduce racial profiling in traffic stops and collect and report data to the state, which would analyze and publish the data annually. Though the data collected through TR 25-113 continue to show that African Americans are stopped and searched at disproportionate rates - despite being less likely in many jurisdictions to be found with illicit drugs or other contraband than whites - the state-commissioned reports say that the findings are inconclusive, citing limitations in data collection and analysis methods.⁶

An independent analysis of the same Maryland traffic stop data was conducted by the Southern Coalition for Social Justice (SCSJ). A staff attorney at the SCSJ stated that their analysis of the Maryland data shows that “race is the single biggest predictor of someone being treated more punitively. Namely, blackness is a pretty good indicator of whether a search will occur or not.”⁷

Additionally, the 2016 investigation conducted by the DOJ of Baltimore City’s Police Department (BPD) found irrefutable evidence of racial profiling, noting that “BPD’s targeted policing of certain Baltimore neighborhoods with minimal oversight or accountability disproportionately harms African-American residents. Racially disparate impact is present at every stage of BPD’s enforcement actions, from the initial decision to stop individuals on Baltimore streets to searches, arrests and use of force. These racial disparities, along with evidence suggesting intentional discrimination, erode the community trust that is critical to effective policing.”⁸ The report also noted that BPD conducts unconstitutional stops, searches and arrests that are concentrated on a small segment of the city’s population, namely the city’s central business district and several poor, urban neighborhoods with mostly African-American residents. The report released by the Department of Justice describes the numerous ways in which BPD practices racial profiling in great detail; key findings are listed in Appendix A.

The report findings indicate that people of color experience higher rates of criminalization than other groups in Baltimore City, especially in poor communities of color. Though only one out of 10 Maryland residents is from Baltimore City, one out of three inmates in Maryland state prisons is from Baltimore City. Thus, the actions of the Baltimore City Police Department have a major impact on Maryland’s criminal justice system as a whole. The DOJ’s investigation in Baltimore has led to the establishment of a consent decree which aims to ensure that the BPD will address racial profiling and other issues highlighted by the investigation. Strong data collection will be critical in determining whether this is achieved.

Indeed, outside of Baltimore City, several of the largest county police departments in Maryland (Montgomery County and Prince George’s County) have also been under investigation by the DOJ in recent decades over concerns in policing, including racial profiling in traffic stops and the use of excessive force.⁹ These facts indicate that racial profiling is an issue that has statewide impact in Maryland and warrants further study and subsequent action.

Policy Recommendations

Pass a comprehensive anti-profiling law with strong enforcement mechanisms.

A comprehensive law should include the following:

- **A comprehensive definition and an effective ban on racial profiling.** A comprehensive definition would prohibit the profiling of individuals and groups by law enforcement agencies, even partially, on the basis of race, ethnicity, national origin, religion, gender identity or expression, sexual orientation, immigration or citizenship status, language, disability (including HIV status), housing status, occupation or socioeconomic status, except when there is trustworthy information relevant to the locality and timeframe, which links person(s) belonging to one of the aforementioned groups to an identified criminal incident.
- **A ban on pretextual stops** – Instances in which police use minor/common traffic violations to inquire about drugs, guns or other breaches of the law – of pedestrians and motorists.
- **Consequences and incentives to ensure compliance.** Create incentives for law enforcement agencies to comply with anti-profiling legislation by conditioning state funding or other benefits on compliance. Violations of the racial profiling ban should lead to specific, meaningful penalties for individual officers and collective departments that



SNAPSHOT

Past Efforts to Address the Issue

Maryland Code, Transportation Article, Section 25-113

In 2001, the Maryland General Assembly passed a bill which establishes statute TR 25-113, which requires all Maryland law enforcement agencies to adopt a policy against race-based traffic stops and collect data on every eligible traffic stop in Maryland. The statute aims to provide information about the pervasiveness of racial profiling. Specifically, TR 25-113 required the Maryland Police and Correctional Training Commission (PCTC), in consultation with the Maryland Justice Analysis Center, to develop four guiding documents:

- A model recording and reporting format;
- A model policy for law enforcement agencies to address race/ethnicity-based traffic stops;
- Guidelines for law enforcement agencies to manage, counsel and train officers who collect traffic stop data;
- A model log for law enforcement agencies to record traffic stop data.

While TR 25-113 mandates state funding for data collection and analysis, neither law enforcement agencies nor the Maryland Statistical Analysis Center (MSAC) have received funding for traffic stop data reporting. However, as the provisions of TR 25-113 expired in 2010 and 2014, the General Assembly passed bills to reinstate the provisions through 2020.

Attorney General Guidance

The Maryland Attorney General issued guidance in 2015, which sought to extend DOJ guidance from then United States Attorney General Eric Holder regarding when law enforcement may use certain characteristics of a person – race, ethnicity, national origin, gender, gender identity, sexual orientation, disability or religion – as a basis to act. The state guidance provided governing standards for the use of race and ethnicity in two main sets of circumstances – routine police activity where there is no police investigation already underway and situations where the police have information and are investigating a certain crime, criminal organization or specific crime scheme.

The guidance states that it expands TR 25-113 (which prohibits the use of race or ethnicity as the sole justification to initiate a traffic stop in Maryland) to other classifications and to law enforcement activities beyond traffic stops and establishes that in routine police activity, “these defining personal characteristics should not be considered by law enforcement to any degree when taking an enforcement action.”

Past Efforts to Address the Issue (continued)

However, the guidance states that it is “not intended to and does not create any right, trust or responsibility enforceable at law or equity by a party against any person or against the state, its departments, agencies, entities, officers, employees or agents, nor does it create any right of review in an administrative, judicial or any other legal proceeding,” meaning that there are no enforcement powers attached to it.

Sources: Governor’s Office of Crime Control and Prevention. (2016, August 31). *Twelfth Report to the State of Maryland Under TR 25-113: 2015 Race-based Traffic Stop Data Analysis*. Retrieved from <https://goccp.maryland.gov/wp-content/uploads/traffic-stop-report-2016.pdf>; See 2015 bill SB 413 (HB 339) that was passed to renew TR 25-113 <http://mgaleg.maryland.gov/webmga/frmMain.aspx?pid=billpage&tab=subject3&id=sb0413&stab=01&ys=2015RS>; Frosh, B.E. (2015, August). *Guidance memorandum: Ending discriminatory profiling in Maryland*. Retrieved from www.marylandattorneygeneral.gov/Reports/Ending_Discriminatory_Profiling.pdf

repeatedly engage in racial profiling or fail to report required data.

- **Applicability to all police contact with the public.** Local and state law enforcement agencies should be required to collect and report data on *all* stops and searches (pedestrian and traffic), in all circumstances (warnings and citations given), as well as related seizures, arrests and use of force.
- **Mandatory data collection and use of findings to inform practice.** Require data analysis and publication of the data collected on racial profiling, as well as the regular review of data by local police departments and reporting on how data have been used to inform training and activities to prevent future profiling.
- **Creation of an independent commission** to review and respond to complaints of racial profiling and regularly publish results of racial profiling investigations.
- **Meaningful avenues for individuals to seek redress.** Allow individuals to seek legal relief through the court to stop individual law enforcement officers

and departments from engaging in racial profiling. Include meaningful complaint mechanisms for victims of racial profiling to seek recourse.

- **Funding.** Provide funds for periodically retraining officers and installing in-car video cameras, body-worn cameras and gun cameras for monitoring traffic stops and other police interactions.
- **Mandatory training.** Mandate law enforcement training on racial profiling and other civil rights and constitutional issues for both officers and leadership.¹⁰

Short of pursuing comprehensive legislation, there are several measures Maryland can take to strengthen existing laws, which are listed in Appendix B.

Civil Asset Forfeiture

Civil asset forfeiture laws allow law enforcement agencies to seize assets and property from individuals without a warrant, conviction or criminal charges, if they suspect that the property has been involved in criminal activity, even if the owner of the property is innocent.¹¹ Data

show that individuals involved in civil asset forfeitures are overwhelmingly poor and people of color.¹² National studies have found that low-income people, especially from communities of color, are overwhelmingly affected by civil asset forfeiture.¹³ One reason that these communities are hit particularly hard by civil asset forfeiture is that they are more likely to be disconnected from the financial mainstream, leaving them more likely to carry cash.¹⁴

Civil asset forfeiture was originally developed as a way to cripple large-scale criminal enterprises by diverting their resources, but today, it has become a little-known but widespread practice that has resulted in many thousands of people across the country having their property seized by the government without being charged for a crime.¹⁵ Civil asset forfeiture gives police officers and prosecutors the ability to seize someone's private property, such as a car or home, without a warrant, conviction or charges of committing a crime, if the officer claims a suspicion that the property has been involved in certain criminal activity, even if the owner of the property is innocent. This practice can result in both the further impoverishment of the poor as assets are seized and the criminalization of the poor through arrest and detention.¹⁶

Additional references on civil asset forfeiture, including investigations into the practice in other states, can be found in Appendix A.

Until very recently, Maryland law has not required local and state agencies to track the practice of civil asset forfeiture. As a result, we do not yet know the number of seizures and forfeitures conducted, types of property seized or the average value of possessions seized through forfeitures by local and state agencies. Staff at the Maryland Statistical Analysis Center estimate that the first round of data will be shared in March 2018.¹⁷

However, data from the federal Equitable Sharing Program indicate that civil asset forfeiture is actively practiced in Maryland. Maryland law does not permit the direct transfer of proceeds from forfeiture to local and state

law enforcement agencies; instead, proceeds are deposited into Maryland's general fund. However, a federal practice called equitable sharing has been used to circumvent these state laws. Under equitable sharing, state and local law enforcement agencies can have seized property adopted by the federal government, while keeping up to 80% of the proceeds and the remaining 20% going to federal agencies. Between 2000 and 2013, Maryland received more than \$80 million through the federal equitable sharing program.¹⁸

However, Maryland has made significant progress in recent years on this issue. Bills passed in 2015 and 2016 added several important provisions to Maryland's law:

- Placed the burden of proof on the state, rather than the property owner, to prove that the owner knowingly violated the law or allowed their property to be used in connection with a crime.¹⁹
- Required law enforcement agencies that have conducted seizures or forfeitures to be more open and transparent via annual data reporting on both money allocated to them as a result of forfeitures, as well as details on every forfeiture performed.²⁰
- Placed restrictions on Maryland's ability to participate in the federal equitable sharing program.²¹
- Prohibited cash seizures based on simple possession; law enforcement agencies may forfeit cash only in connection with the illegal manufacture, distribution or dispensing of controlled substances.²²
- Enabled the Governor's Office of Crime Control and Prevention (GOCCP) to review data and make recommendations to the legislature to ensure that innocent individuals are not unduly targeted by the practice of civil asset forfeiture by local and state agencies.²³

While these added provisions curb many unjust forfeitures, Maryland's law still allows an individual's property to be forfeited without a criminal conviction, making it possible for innocent people, especially the poor, to face seizure of their cash and property.

Policy Recommendations

Abolish civil asset forfeiture.

Two former directors of the Justice Department's Asset Forfeiture Office who were heavily involved in the creation of the federal asset forfeiture initiative in the 1980s have stated that the program began with good intentions, but now, "as it has failed in both purpose and execution," call for it to be abolished.²⁴ Following the example of New Mexico, Maryland could replace it with criminal forfeiture. Prosecutors must obtain a criminal conviction before property may be forfeited, and the state must prove by clear and convincing evidence that the owner of the property had "actual knowledge of the underlying crime giving rise to the forfeiture."²⁵

Any move to abolish civil asset forfeitures should also include ending petty cash seizures. This practice is particularly harmful to low-income individuals, who are more likely to carry cash and for whom these seizures create a significant financial burden.

Short of eliminating civil asset forfeiture, Maryland's law should be strengthened by requiring a criminal conviction before seizures and forfeiture are allowed. Currently, "clear and convincing evidence" of the seized property's link to criminal activity is required, but this is only a medium level of burden of proof.²⁶

Require a pre-seizure notice hearing.

Short of requiring a conviction before property may be taken through civil asset forfeiture, Maryland should at a minimum require a pre-seizure notice and hearing for all types of forfeitable property – not just real property. At such a hearing, the burden should lie with the government to prove that the property sought was involved in, or the proceeds of, a crime and that the owner had knowledge of this fact.²⁷

Ensure access to legal representation.

The fact that only individuals who can afford an attorney are able to secure the help of a lawyer in challenging civil asset forfeiture sets up a two-tiered system of justice based on income. Legislation should be enacted requiring that the government provide lawyers to property owners who cannot afford an attorney. Short of ensuring legal representation, Maryland should increase funding to civil legal aid programs, legal clinics and pro bono resources in order to increase access to free legal help for indigent defendants. Additional recommendations can be found in Appendix B.

Motor Vehicle Laws that Criminalize the Poor

Due to the shift of jobs away from city centers to suburbs and the limited reach of public transit in Maryland, the ability to own and maintain a vehicle is crucial for employment.²⁸ However, this is a significant challenge for the poor, as current state laws surrounding the use and ownership of motor vehicles have made the costs and requirements of owning and maintaining a car extremely high. Moreover, the penalties for noncompliance with these laws are significant, including fines, fees and incarceration. Due to their indigence, the poor are at greater risk of noncompliance with existing laws and, therefore, are more likely to face criminal penalties due to inability to comply with the financial requirements of the law.

Minor Traffic Violations, Citations and Traffic Stops

Minor traffic violations include offenses as trivial and common as broken taillights, seatbelt violations and rolling stops. Committing a minor traffic violation and receiving a citation is a reality that all drivers will face at one point or another; however, for low-income drivers, their inability to pay the related fines and fees can result

in severe consequences. The poor are more inclined to purchase older vehicles that are in disrepair.²⁹ This, combined with frequent patrolling by law enforcement in low-income neighborhoods and neighborhoods of color, make the poor more prone to be stopped for minor traffic violations, which may also lead to searches, seizures and arrests.³⁰ If the poor do not pay the related fines and fees on time or cannot afford to get required repairs performed, the fines and penalties quickly escalate, up to and including driver's license suspension and incarceration.

An individual charged with a minor traffic violation in Maryland has two choices: pay the fine within 30 days or go to court to contest it. Both are challenging for low-income individuals who often work hourly jobs and lack paid time off from work. If an individual does not pay the fine within 30 days or if they opt to contest the fine but do not appear in court, their license is automatically suspended for a minimum of 15 days.³¹ As many individuals have no option but to drive to work to make ends meet, they continue to drive and risk being caught while driving on a suspended license. A 'Driving While Suspended' conviction in Maryland for an individual whose license has been suspended for failing to pay a ticket or appear in court is subject to a 60-day jail term and a \$500 fine.³² The policy of driver's license suspension for failure to pay traffic fines has disproportionate and highly negative impacts on the poor. It is a policy that further impoverishes poor people who face income and job loss as a result of their inability to drive to work and can lead to criminal charges simply due to inability to pay a traffic fine.

As Maryland has not studied this issue in detail, limited data are available on the impact of the issue locally. However, data from other states indicate that the suspension of a driver's license due to failure to pay a traffic fine is an ineffective policy. In California, about 4.73 million licenses have been suspended since 2006 because of failure to pay traffic fines or appear in court.³³ However, license suspensions are not working as an effective tool to collect traffic debt. Traffic debt in California has ballooned to \$9.7 billion as of 2016, leading Governor Brown to state

in his budget summary that "there does not appear to be a strong connection between suspending someone's driver's license and collecting their fine or penalty."³⁴ A New Jersey survey of low-income drivers with suspended licenses found that 42% lost their jobs as a result and less than one-half were able to find new jobs, with 88% experiencing loss of income.³⁵ In 2011, the Wisconsin Department of Transportation (DOT) issued about 97,000 Failure to Pay Forfeiture (FPF) suspensions to drivers in Milwaukee County.³⁶ DOT records as of August 2013 show that FPF suspensions have constituted more than half of all license revocations or suspensions in Wisconsin in 2013.

In fiscal year 2013,
nearly 27,000
individual charges
were filed in
Maryland for driving
on a driver's license
suspended for
traffic reasons,³⁷ of
which 2,360 led to
convictions.³⁸



SNAPSHOT

California's Efforts to Reform Motor Vehicle Laws

There is much to learn from other states that have studied and worked to address this issue. In particular, California is taking strong measures. Despite implementing a statewide traffic amnesty program that allowed over 175,000 drivers statewide to make reduced payments and more than 153,000 individuals to get their suspended licenses restored, 600,000 people in California still have a suspended driver's license due to unpaid fines and fees. Seeking a more effective solution, a bill was introduced in California's legislature in 2017 that seeks to stop the automatic suspension of driver's licenses for people who are unable to pay fines or fees for minor traffic tickets. The bill requires courts to determine violators' ability to pay before setting fine amounts and reinstate suspended licenses for violators who make a good faith effort to begin payment plans. As of this writing, the bill (SB 185) awaits a committee hearing.

Policy Recommendations

Recommendations for Maryland include:

1. Collect data to understand the impact of current policies and practices.
2. Eliminate driver's license suspension as the penalty for nonpayment of fines or failure to appear in court.
3. Base traffic penalties on driver's ability to pay.
 - a. Allow fines to be paid in installments.
 - b. Allow individuals to request community service in lieu of a fine.
 - c. Allow individuals to appear in court to contest fines before paying them.
 - d. Implement a traffic amnesty program similar to California's.

Auto Insurance Laws

Maryland is a mandatory vehicle insurance state. However, auto insurance is unaffordable for low-income individuals, resulting in many drivers driving uninsured in order

to make ends meet. Penalties for insurance lapses and driving uninsured include suspension of vehicle registration, hefty fines and incarceration.

Maryland law mandates that drivers purchase at least a basic liability insurance policy that covers accidents caused by the driver. However, even this basic policy, which provides no protections to the driver, is largely unaffordable for low-income individuals.³⁹ The Maryland Consumer Rights Coalition found that in the five counties where the majority of Marylanders reside, average annual premiums are more than \$1,000 per year for all drivers.⁴⁰ For individuals living near the federal poverty line (\$16,020 for a family of two in 2016), this is a significant portion of their income.⁴¹

Maryland law allows private auto insurers to utilize non-driving related factors including credit scores, education level, occupation and zip code to set insurance premiums. The use of these factors results in disproportionately high premiums for low-income individuals and people of color.⁴²

The use of credit scores in insurance rating is particularly harmful to the poor. As low-income individuals are more likely to have lower credit scores due to their financial circumstances, the use of credit scores in setting premiums leads to higher rates for those who can least afford them.⁴³ Additionally, low-income individuals are less likely to have relationships with mainstream banking and credit, and therefore less likely to have a credit history.⁴⁴ Consequently, the use of credit scores has also been shown to result in higher premiums for drivers who have never used credit, penalizing them for their lack of a credit history, even if their personal financial history does not include a late payment or default.⁴⁵ Insurers' use of education level and occupation also serve as proxies for income and similarly contribute to disproportionately high premiums for low-income drivers.⁴⁶

Insurers in Maryland are also permitted to base premiums on residents' zip codes.⁴⁷ This practice, called "territorial rating," results in disparate premiums by income *and* race.⁴⁸ A study conducted in Maryland found that, holding all other factors constant, drivers living in urban neighborhoods pay 60% to 100% more than drivers living in nearby suburbs.⁴⁹ Because urban areas, and in particular Baltimore City, the largest city in Maryland, have high concentrations of low-income individuals and people of color, the findings of this study indicate that territorial rating results in disproportionately high premiums for both low-income individuals and people of color.⁵⁰ A national study found explicit racial disparity in premiums. The Baltimore-Towson metropolitan region, the largest metropolitan region in Maryland, was found to have the highest racial disparity in auto insurance premiums in the nation, with average



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Maryland Auto Insurance (MAI)

The Maryland General Assembly created the Maryland Auto Insurance Fund (now known as Maryland Auto Insurance or MAI) in 1972 to provide insurance to low-income individuals, to ensure that they would be able to meet the state's mandatory insurance requirement. Data show that more than 60% of MAI enrollees have no traffic offenses but were refused other coverage because they lack a credit history or driving experience. However, the average premium for MAI policies at \$1,800 per year is still unaffordable for low-income families, even with MAI's recently-instituted installment payment option. As a result, the vast majority of MAI enrollees turn to premium financing companies to help them afford insurance. However, these companies also add high interest rates and fees to already high premiums. Consequently, about half of drivers enrolled in MAI policies are eventually cancelled for nonpayment.

Sources: Atas, L.H., Burt, T.D., Bender, M.F., & Ellick, J.A. (2013, December). *Task force to study Maryland insurance of last resort programs: 2013 interim report*. Retrieved from <http://mgaleg.maryland.gov/pubs/commfworkgrp/2013-insurance-last-resort-programs-interim-report.pdf>; Rein, L. (2009, April 20). Costly high-risk car insurance resists change in Maryland. *The Washington Post*. Retrieved from http://www.washingtonpost.com/wp-dyn/content/article/2009/04/19/AR2009041902368_2.html; *The Baltimore Sun*. (2013, February 18). Don't clobber drivers (Editorial). *The Baltimore Sun*. Retrieved from http://articles.baltimoresun.com/2013-02-18/news/bs-ed-car-insurance-20130218_1_maif-policyholders-car-insurance-maryland-automobile-insurance-fund; Maryland Insurance Administration. (2016, January 29). *2015 report on Maryland Auto Insurance Fund installment payment plans*. Retrieved from <http://insurance.maryland.gov/Consumer/Appeals%20and%20Grievances%20Reports/2015ReportonMarylandAutoInsuranceFundInstallmentPaymentPlans.pdf>.

premiums in predominantly African-American zip codes being *nearly double*, or 94% higher than, the average premiums in predominantly white communities within the region.⁵¹

A 2013 study by the Consumer Federation of America found that the costs of limited liability insurance ranged from \$1,225 a year to more than \$4,180 a year for a Baltimore City driver.⁵² When low-income individuals must choose between paying rent or feeding their families, and auto insurance, there is no question that the auto insurance premium will go unpaid, as a matter of survival. However, insurers in the private market have the right to refuse coverage to individuals who have a history of nonpayment, whom they deem to be “high-risk,” as well as individuals who lack driving experience or a credit history.⁵³ As such, many low-income individuals are unable to obtain coverage through the private insurance market.

The high premiums charged by both private insurers and MAI are the result of current laws that permit insurers to use non-driving related factors in setting premiums. This has created a situation where low-income Marylanders are left with no realistic option but to drive uninsured, as the reason most uninsured drivers continue driving is to get to work. Current policies are leaving the poor with no feasible way to make ends meet. As one judge stated, “it’s turning into a horrible cycle, and we are criminalizing everyday folks who normally wouldn’t be in trouble.”⁵⁴ Penalties for lapses in coverage and driving uninsured in Maryland are high and serve to criminalize the poor.

If a driver is caught knowingly driving without insurance, the individual is subject to a fine of up to \$1,000 or up to one year in prison or both for the first offense. For a second offense, the penalty is a fine of up to \$1,000 or two years in prison or both.⁵⁵ Thus, Maryland’s laws are making it extremely challenging for the poor to afford auto insurance but are criminalizing them for driving uninsured.

A significant number of Marylanders are affected by these policies. The Insurance Research Council estimated that

12.2% of Maryland drivers had no car insurance in 2012, and MVA data from 2015 indicate that Prince George’s County, (22.8%), Baltimore County (16%) and Montgomery County (11.5%) have the highest percentage of uninsured vehicles.⁵⁶ In 2015 alone, Maryland collected more than \$86.5 million in uninsured motorist penalties.⁵⁷ Moreover, insured drivers pay for the high percentage of uninsured motorists in Maryland. In 2012, the Insurance Research Council estimated that \$38.8 million was paid in uninsured motorist claims in Maryland.⁵⁸

Maryland has studied and documented the high rate of uninsured motorists in the state since the 1980s. See Appendix A. Though these studies and reports have issued recommendations that would have a significant impact on reducing auto insurance rates in urban areas, very few of the recommendations have been implemented.

Policy Recommendations

Implement a low-cost auto insurance program for low-income drivers.

The most effective and comprehensive solution to address the need for affordable auto insurance for low-income Marylanders is to implement a low-cost auto insurance program. California has implemented a program that provides a good model and has successfully provided affordable auto insurance to its previously uninsured drivers in the state. See Appendix B.

Prohibit insurer use of non-driving-related factors in setting premiums.

Prohibiting insurers from using non-driving related factors in setting premiums can help to ensure that low-income individuals and people of color are not forced to pay disproportionately high premiums. California, along with Massachusetts and Hawaii, have banned insurer use of credit scores in setting premiums. California state



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Penalties for Lapsed Car Insurance

Maryland law specifies the assessment of the following penalties if the required insurance coverage for any vehicle lapses at any time:

- Suspension of vehicle registration automatically as of the date of the lapse.
- Confiscation of license plates.
- Assessment of a fine of \$150 for the first 30 days for each vehicle uninsured and \$7 per day thereafter with a maximum of \$2,500 per vehicle in a 12-month period.
- Prohibition from registering any future vehicles or renewing a suspended registration of any vehicle in the vehicle owner's name until all insurance violations are cleared, or a payment plan is in place.
- A fee of \$25 to re-register a vehicle.

Source: Burt, Smith & Duncan, see note 66; Maryland Insurance Administration, see note 66; Feltner & Heller, see note 61.

regulations also require that insurers give primary consideration to driving-related factors - such as driving record, years licensed and miles driven - over non-driving related factors in setting insurance rates.⁵⁹ A number of states have banned or placed restrictions on insurer use of education and occupation in underwriting or rating: Georgia, Wisconsin, New Jersey, Colorado and California.⁶⁰

Bills have been introduced in the Maryland legislature for several years to prohibit the use of non-driving related factors, including education, occupation, marital status and credit history. In 2017, an amended version of a bill (SB 534) was passed. However, the amendments greatly reduced the impact of the bill by removing education, occupation and credit history from the list of factors to be prohibited. The final version of the bill that passed prohibits insurers from increasing premiums for individuals who become a surviving spouse.

The Criminalization of Debt

Child Support Debt

Many noncustodial parents are poor but are assigned unrealistic child support orders that do not fully take into account their financial constraints and needs. When these parents are unable to pay, harsh enforcement measures are employed that present barriers to employment, and severe penalties, including incarceration, are imposed. These practices function to further impoverish and criminalize poor noncustodial parents, which further diminishes their ability to meet child support obligations.

Nationwide, the child support program serves one quarter of all U.S. children and half of all U.S. children in poor families.⁶¹ The goal of the program is to ensure that both parents abide by their legal duty to support their child

based on their ability to provide that support.⁶² More than half of the children born today in the United States are likely to spend some time in a single parent family, which greatly increases their risk of living in poverty. As most of these families are headed by mothers, the child support program provides the transfer mechanism for fathers to contribute to the financial support of children in single parent families.⁶³ For more information on how the court establishes child support orders, see Appendix A.

Though program eligibility is not income-tested, most families in the program have limited means. Over half of custodial families in the child support program have incomes below 150% of the poverty threshold, while 80% have incomes below 300% of the poverty threshold.⁶⁴ Approximately one quarter of noncustodial parents have incomes below the federal poverty level.⁶⁵ If the noncustodial parent fails to pay the monthly child support order, child support debt, known as arrears, will accrue to the state or to the custodial parent, dependent on the custodial parent's participation in TANF.

In 2012, there were a total of 238,833 families with child support orders in Maryland, with the greatest number in Baltimore City (74,918), Prince George's County (45,176), Baltimore County (22,162) and Montgomery County (18,647).⁶⁶ A study of custodial parents between 2010 and 2015 found that the typical custodial parents were African-American (63.8%) women (95.5%) who were on average 37 years old, usually had only one child support case (76.3%) and one or two children (69.6%).⁶⁷ As TANF is called Temporary Cash Assistance (TCA) in Maryland, the study found that most custodial parents did not participate in TCA. Two-thirds had a current support order, and an average of \$476 was owed to them per month. Approximately 60% were owed arrears in July 2015. The average total arrears owed was \$10,962.⁶⁸

Studies on noncustodial parents in Maryland, who are mostly African-American men, have found that noncustodial parents have limited ability to pay child support, as they are poor and face significant employment barriers

such as low education, a history of incarceration and economic hardship.⁶⁹ As many as a quarter of noncustodial parents in Baltimore City have a history of incarceration, which presents a major barrier to employment.⁷⁰ Qualitative studies have shown that young fathers want to be involved in supporting their children, but economic and personal factors often get in the way.⁷¹

Each state has the flexibility to determine the specific policies that will govern the administration of its child support program. In Maryland, several practices hamper the program's efficiency and effectiveness by criminalizing low-income noncustodial parents and undermining their ability to pay child support. Since 1990, Maryland has had guidelines in effect that provide a formula for calculating child support based on a proportion of each parent's gross income.⁷² Maryland uses an income shares model for its guidelines that takes into account the income of both parents, number of children, cost of health insurance for the child(ren), current child support being paid for other children, alimony being paid, alimony being received, the cost of daycare and extraordinary medical expenses of the child(ren).⁷³

However, if a noncustodial parent is unemployed, underemployed, or misses the initial determination hearing, the court often imputes the individual's income – that is, assigns a default income equivalent to full-time employment at minimum wage.⁷⁴ Imputation is only meant to be used in situations where a parent is choosing not to work, or choosing to work less, in order to have a lower child support obligation. In other words, imputation was designed as a tool to prevent individuals from manipulating the system by underrepresenting their income or ability to pay.

However, in practice, the use of imputation has been expanded to scenarios beyond its intended use and most often overrepresents the actual income of a noncustodial parent.⁷⁵ This results in a child support order that exceeds the parent's ability to pay, greatly decreasing the likelihood of collection. A study was conducted in 2014 of a random sample of 5,340 child support orders from

2007-2010 in Maryland to investigate the use of imputed income. It found that nearly 10% of noncustodial parents have imputed incomes, and that income imputation was used most frequently for noncustodial parents who earned nearly \$20,000 or less per year.⁷⁶ The study found that using imputed income results in unrealistic order amounts and arrears accrual due to low payment ability and compliance; that imputing income dramatically reduces payment rates; and that imputation disproportionately affects low-income obligors because the practice is commonly used among obligors who have low or no income.

The highest rates of income imputation were found to be on the Eastern Shore, in Dorchester and Caroline counties, likely due to the high unemployment rates and seasonal employment in these counties. The study found that the current practice of imputing income in Maryland creates unreasonable support burdens for obligors, fosters unrealistic expectations among custodial parents about how much financial support they will receive and puts the child support program at heightened risk of failing to meet federal performance mandates.⁷⁷

In many cases, the courts fail to consider the amount of money a noncustodial parent requires for his or her own self-sufficiency. Thus, child support orders ignore the real income constraints noncustodial parents face, resulting in unrealistic and unmanageable financial obligations on low-income parents, who, due to inability to fulfill these obligations as a result of their indigence, accrue mounting child support debt. Once arrears begin to accrue, child support debt can become an inescapable burden for low-income individuals. This is no small issue, as evidenced by Maryland's 2015 balance of \$1.29 billion in arrearages, amounting to nearly 170,000 cases with arrears due.⁷⁸

Data indicate that a small number of individuals carry a large fraction of this total child support debt; in 2015, the state found that 4,642 individuals within a four zip code radius owed more than \$30 million in back child support.⁷⁹ Most of these men couldn't pay their orders because they

earned less than \$10,000 a year.⁸⁰ In many cases, high child support debt can leave parents feeling so hopeless that they give up trying to pay it.⁸¹

The consequences of nonpayment for noncustodial parents are severe. As a condition of receiving federal Child Support Enforcement funds, Congress requires each state to have in effect laws requiring the use of a specified list of collection and enforcement procedures to increase the effectiveness of the state's child support enforcement program.⁸² In Maryland, there are a number of measures the state may take for nonpayment of child support in efforts to enforce the order and collect arrears, including but not limited to incarceration:

"If the noncustodial parent does not pay on time, or does not pay in full, your child support office will initiate the following automated enforcement actions:

1. *Withhold child support from wages and unemployment benefits, Workers' Compensation claims, etc.*
2. *Intercept federal and state tax refunds to pay child support arrears*
3. *Report parents owing past-due support to credit bureaus*
4. *Refer parents owing past-due support to the Motor Vehicle Administration for driver's license suspension*
5. *Intercept Maryland lottery winnings to pay child support arrears*
6. *Garnish accounts at financial institutions*
7. *Request the suspension or revocation of a professional or recreational license*
8. *Deny the issuance or renewal of a passport*
9. *The child support office may also initiate contempt of court proceedings against that parent if it appears the parent has the present ability to pay support."*⁸³

Several of the abovementioned enforcement actions directly undermine the noncustodial parent's financial sta-

bility by inhibiting employment and therefore the ability to earn the income needed to pay the child support order. Driver's license suspensions due to nonpayment of child support are very common. One review of license suspensions for failure to pay child support in Maryland found that 122,000 licenses were suspended for nonpayment of child support between 1996 and 2003.⁸⁴ As many individuals are unable to reach their jobs without a car, many of these noncustodial parents opt to drive on a suspended license. If they are caught, they are subject to hefty fines and jail time.

When arrears accrue, noncustodial parents may be expected to continue making current monthly child support payments in addition to paying off arrears. Moreover, the state may use multiple avenues simultaneously to collect arrears, and as "these processes are triggered automatically and may be implemented whether or not you [the noncustodial parent] are currently paying," the only way to avoid the above listed automated enforcement tools is by paying arrears in full.⁸⁵ Thus, when a child support order exceeds a noncustodial parent's ability to pay, it sets off a series of financial and criminal penalties that are virtually unavoidable.

Moreover, if parents miss any court hearings, a bench warrant or body attachment for arrest may be automatically issued:

"If you miss a court date a warrant may be issued for your arrest. Even if you are up to date on your current payments there may be other reasons why you were subpoenaed back to court. For example, a modification may have been requested, or there may be an issue of paying medical expenses for your child."⁸⁶

If a noncustodial parent's income changes substantially due to job loss or short-term or seasonal employment, as is often the case with low-income individuals, they must file a motion for modification of their child support order with the court. However, this process can be complex and lengthy, and require several months' evidence of the change in financial status, presenting a major barrier to

parents seeking to lower their child support order.⁸⁷ As a result, many orders remain higher than what parents can actually afford to pay, perpetuating this cycle of debt and criminalization.

Furthermore, if an individual is incarcerated, child support arrears may continue to accrue. National estimates found that about half of the incarcerated population are parents, and at least 1 in 5 parents has a child support obligation.⁸⁸ Thus, it is likely that a significant number of Marylanders who are either currently incarcerated or recently released are affected. A law was passed in Maryland in 2012 for the automatic suspension of child support payments and accrual of arrears upon incarceration for any individual sentenced to at least 18 months. However, it is unclear whether this policy is being fully implemented.

Wage withholding is the main way that child support is collected from working parents. Federal guidelines allow for the garnishment of up to 65% of wages to repay child support debt.⁸⁹ At a take home wage of \$10 an hour, this leaves just \$3.50 for a parent to meet his or her own needs. A study where 36 noncustodial parents in 10 states were interviewed found that all of these individuals left prison owing between \$10,000 and \$110,000 in child support.⁹⁰ Thus, even for noncustodial parents who are employed, unrealistically high support obligations can discourage parents from working in the formal labor market, if after wage withholding, they have little left to make ends meet. As a result, some parents leave their jobs and enter the underground economy.⁹¹ This can further exacerbate the situation by increasing interaction with the criminal justice system. Every interaction a noncustodial parent has with the criminal justice system diminishes his or her employment prospects, further undermining his or her ability to pay the child support they owe, while their child support debt continues to increase.

Policy Recommendations

As the ability to modify child support arrears is limited, it is essential that child support orders are set based on



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Past Efforts to Address the Issue

Maryland has taken measures over the years to address some of these issues through legislation. In 2000 and again in 2005, the Maryland Child Support Administration offered amnesty to parents who owed back child support, which gave them a chance to pay off their debt in full or make a good faith payment and arrange a payment plan.

In 2006, Maryland's Child Support Enforcement Administration received a two-year grant called "Project Fresh Start." In Prince George's County, state prisons and local jails partnered to review and adjust orders of incarcerated noncustodial parents. Of the pre-release case participants, 95% had their orders modified to \$0, while an additional 4% had orders that had been previously modified. In 2012, the Child Support Payment Incentive Program allowed noncustodial parents with incomes below 225% of the federal poverty level who have made 24 months of consecutive child-support payments on their current obligation to have their state-owed arrears reduced to zero. However, these efforts do not address the underlying issues with the child support system that are leading to high levels of debt, worsening poverty and criminalization.

Also in 2012, the Job Opportunities Task Force led efforts to automatically suspend child support orders for obligors sentenced to 18 or more months in jail. However, it is not clear that this policy is being implemented fully as data are unavailable.

During the 2017 legislative session, a bill was passed and signed into law (SB 799) that repeals the term of imprisonment, reduces the maximum fine and reduces the points assessed for a person convicted of driving while his or her license is suspended for being 60 days or more out of compliance with making child support payments. This bill represents significant progress for Maryland.

A bill was also passed and signed into law (SB 906) that extended, from 60 to 120 days, the period of time that an individual with a commercial driver's license may be out of compliance with a child support order before the individual's driver's license may be suspended.

Sources: WBOC 16. *Maryland offering temporary amnesty to parents behind in child support payments.* Retrieved from <http://www.wboc.com/story/3683008/maryland-offering-temporary-amnesty-to-parents-behind-in-child-support-payments>; U.S. Department of Health and Human Services, Office of Child Support Enforcement. (2012, July). "Voluntary Unemployment," imputed income, and modification laws and policies for incarcerated noncustodial parents. Retrieved from <https://www.acf.hhs.gov/css/resource/voluntary-unemployment-imputed-income-and-modification-laws-and-policies>; Warnock, D. (2012, October 21). Hurting dads, hurting kids. *The Baltimore Sun*. Retrieved from <http://www.baltimoresun.com/news/opinion/oped/bs-ed-child-support-20121019-story.html>; Evans, see note 115; Md. Family Law Code Ann. § 12-104.1.

actual income, can be modified easily as income changes and are suspended during periods of incarceration, in order to prevent the uncontrolled ballooning of debt. As many studies have been done on the challenges faced by low-income noncustodial parents in meeting child support obligations in Maryland,⁹² many of the following recommendations are not new.

Maryland's Child Support Enforcement Agency has worked hard over the years to change policies and practices and has been able to improve collections and compliance.⁹³ However, much work still remains.

Set child support orders based on the noncustodial parent's actual ability to pay.

As the goal of the child support program is to ensure that both parents abide by their legal duty to support their child based on their ability to provide that support, Maryland must make greater efforts to determine ability to pay and ensure that all child support orders are based on actual income rather than income imputation. This may also require revision of the child support guidelines. Research has found that overall, child support orders seem to be too high for low-income debtors,⁹⁴ and when child support orders are set above 15-20% of actual income, compliance is reduced.⁹⁵ This has a negative impact on the child, the custodial parent, the noncustodial parent and the state. As a result, research shows that the focus must shift to setting realistic orders, based on actual income rather than imputed income.

Specific policy recommendations include:

- **Ensure that imputation of income is used as per its intended use** – to deter individuals seeking to reduce their child support order by being “voluntarily” unemployed or underemployed - rather than to set a default income for legitimately un- or underemployed individuals and noncustodial parents who do not appear at court hearings. For additional in-

formation on child support guidelines and outreach programs in other states, see Appendix A.

- **Ensure that child support orders are set at no more than 20% of the noncustodial parent's actual income.** Compliance with child support orders is strongly linked to ability to pay.⁹⁶ A growing body of research finds that compliance with child support orders in some states, regardless of income level, declines when the child support obligation is set above 15-20% of the obligor's income, and that orders for excessive amounts result in lower, not higher, child support payments.⁹⁷

Ensure that the suspension of child support upon incarceration is fully implemented.

Research suggests that many incarcerated parents often leave prison with an average of \$15,000–\$30,000 or more in unpaid child support, with no means to pay upon release.⁹⁸ Studies also indicate that orders that are unrealistically high may undermine stable employment and family relationships, encourage participation in the underground economy and increase recidivism.⁹⁹ Thus, it is essential that the 2012 law that sought to implement the automatic suspension of child support orders and accrual of arrearages upon incarceration be implemented fully to ensure that it achieves its goal. Implementation should be tracked, and data should be made publicly available.

Limit the use of punitive efforts that undermine the noncustodial parent's ability to earn the income needed to pay the child support order.

Research shows that two of the most important factors in a former prisoner's successful reentry into the community are employment and positive relationships with family.¹⁰⁰ Both of these are hindered by the aggressive pursuit of child support arrears. The high rate of wage garnishment creates temptation to work in the underground economy,

Child support debt is no small issue, as evidenced by Maryland's 2015 balance of \$1.29 billion in arrearages, amounting to nearly 170,000 cases with arrears due.

driver's license suspension places a major mobility barrier to employment, and child support orders that exceed a parent's ability to pay may add significant strain to a non-custodial parent's relationship with his child and family.

Driver's license suspensions and incarceration should be used to enforce child support only if the noncustodial parent is able to pay. Maryland should modify its existing processes to require the state to determine whether a non-custodial parent has the ability to pay child support rather than automatically triggering punitive enforcement mechanisms. Though Maryland offers individuals the ability to obtain work-restricted licenses and have their licenses reinstated when they show good-faith efforts to pay child support, it is unclear the extent to which these measures are utilized. The use and impact of work-restricted licenses should be studied by the state.

Simplify the process and reduce restrictions on making modifications to child support orders.

In Maryland, a parent may request a review for modification every three years, or if there has been a significant change in circumstances, such as a loss of income, incarceration, changes in work-related day care cost, changes

in health care costs, changes in transportation costs for visitation, a change in custody or a change in the financial needs of the child.¹⁰¹ The change must be substantial (25% change) and must have occurred at least six months prior and is expected to continue indefinitely into the future.¹⁰² Multiple steps are involved in the modification process.

To request a modification, either parent requests a review of the current court order by completing paperwork. The child support worker reviews the request and informs the requesting party of the results of the investigation. If the worker determines that there has been a change as per the above criteria, they may schedule a pre-trial conference in order to obtain a consent order. If the parties do not consent, the case is scheduled for a judicial review and modification. This entire process is to be conducted within 180 days of the request.¹⁰³

The length and number of steps involved in this process may deter many parents from pursuing modifications, parents may not know of their right to request a modification, or parents may not have the funds needed to hire an attorney to file a motion for a support order reduction.¹⁰⁴ It is essential that the modification process be simplified to ensure that child support orders better reflect the ability of the noncustodial parent to pay.



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Undermining Parents' Ability to Pay Child Support

With regards to incarceration, there is no publicly available data nationally or in Maryland as to the use of incarceration as an enforcement mechanism for nonpayment of child support. However, anecdotal evidence from current and former participants in the Job Opportunities Task Force's Project JumpStart training program indicates that both driver's license suspension and incarceration are used when individuals are unable to pay child support. If a driver's license is suspended for nonpayment, it may pose short-term barriers to employment, but the individual may eventually be able to get it reinstated. In the case of incarceration, nonpayment of child support is a misdemeanor in Maryland. Thus, the charge appears on one's criminal record, placing a long-term barrier to employment. Both of these enforcement methods greatly reduce noncustodial parents' ability to pay child support by limiting employment opportunities, undermining the goal and effectiveness of the child support program overall.

Sources: Solomon-Fears, C., Smith, A.M., Berry, C. (2012, March 6). *Child support enforcement: Incarceration as the last resort penalty for nonpayment of support*. Congressional Research Service. Retrieved from <http://www.ncsea.org/documents/CRS-Report-on-CSE-and-Incarceration-for-Non-Payment-March-6-2012.pdf>; Solomon-Fears, C. (2011, April 11). *Child support enforcement and driver's license suspension policies*. Congressional Research Service. Retrieved from http://greenbook.waysandmeans.house.gov/sites/greenbook.waysandmeans.house.gov/files/2012/documents/R41762_gb.pdf.

Alaska and West Virginia are two states that have simpler modification processes than Maryland. For more information on how these states improved their modification processes, see Appendix A.

Debtors' Prisons

In the United States, though debtors' prisons are illegal, individuals are jailed for their inability to pay various civil and legal debts. A federal law in 1833 abolished the incarceration of people who failed to pay debts.¹⁰⁵ However, in recent years, the debtors' prison has made a resurgence, as an increasing number of poor people are being arrested and jailed for failure to pay debts.¹⁰⁶ A debtors' prison is defined as "any prison, jail, or other detention facility in which people are incarcerated for their inability, refusal, or failure to pay debt."¹⁰⁷

In the case of government-owed, or legal, debts, three separate Supreme Court rulings affirmed the unconstitutionality of incarcerating those too poor to pay debt.¹⁰⁸ Most important was the 1983 landmark Supreme Court case of *Bearden v. Georgia*, which established that imprisonment for no fault other than inability to pay is illegal. It also mandated that courts inquire into a defendant's reasons for failing to pay a fine or restitution and required local judges to distinguish between debtors who are too poor to pay and those who have the financial ability to pay but refuse to do so.¹⁰⁹ However, indigent defendants are imprisoned routinely throughout the country for failing to repay debts, many of which they could never realistically manage. In many cases, these individuals have no legal representation. However, most efforts to collect debts from poor individuals, who may be homeless, unemployed or simply too poor to pay, fail.¹¹⁰

Incarceration for failure to pay private or civil debts is also illegal. Examples of civil debt include credit card debt, unpaid medical bills, car payments, unpaid rent and payday loans. The federal Fair Debt Collection Practices Act prohibits debt collectors from threatening individuals with criminal prosecution for failure to pay a civil debt.¹¹¹ However, there is a growing national trend where creditors are circumventing the laws by obtaining court judgments and using the court system to put debtors in jail if they do not appear in court or pay their debts.

Under the law, debtors aren't arrested for nonpayment, but rather for failing to appear to court hearings - show-

ing "contempt of court" in connection with a creditor lawsuit.¹¹² The debtor is then held in jail until he or she posts bond or pays the debt, in a process known as "pay or stay."¹¹³ By using courts and the legal powers they possess, creditors are able to use arrest and incarceration as tools for debt collection. However, because most of the individuals in question are simply too poor to pay, the debt is usually not recovered. State resources are wasted, and already poor individuals are further impoverished through the increased burden of added penalties and incarceration.

Though the process through which debtors are criminalized varies slightly depending on whether the individual



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Why Debtors Miss Court Dates

There are many reasons why debtors may fail to appear in court or respond to court orders, thereby leading to their arrest:

- Court processing errors that led to debtor not receiving notice;
- Notice sent to wrong address;
- Debtor fear of court system or fear of imprisonment;
- Debt is unrecognizable to the debtor because it has been bought or sold. The debtor may not recognize the firm that is suing, the debt may be very old, or the amount of debt may have grown and changed significantly because of large interest charges, fees and penalties that have been added to the original debt;
- Debtors are accused of debts they don't owe;
- Debtors have already paid off the debt, but collectors attempt to collect on it years later;
- Debtors are confused by court notices, particularly if they are not proficient in English.

Sources: Harvard Law Review. (2016, February 10). *State bans on debtors' prisons and criminal justice debt*. Retrieved from <http://harvardlawreview.org/2016/02/state-bans-on-debtors-prisons-and-criminal-justice-debt/>; Sherter, A. (2012, April 20). Jailed for \$280: The return of debtors' prisons. *CBS News*. Retrieved from <http://www.cbsnews.com/news/jailed-for-280-the-return-of-debtors-prisons/>. Harvard Law Review, see note 155; Maryland Consumer Rights Coalition, *Testimony*, see note 202.

Indigent defendants are imprisoned routinely throughout the country for failing to repay debts, many of which they could never realistically manage.

owes legal or civil debts, the result is the same: criminalization of low-income debtors simply because they are too poor to pay. Research shows that 20% of those in local jails nationwide are incarcerated because of failure to pay a fee or fine.¹¹⁴ In the face of budget deficits and cuts at the state and local level, particularly since the Great Recession of 2008, courts across the country have used aggressive tactics to collect unpaid fines and fees, including for traffic and other low-level offenses. These courts have ordered the arrest and jailing of people who fall behind on debt payments, often without affording any hearings to determine an individual's ability to pay or offering alternatives to payment such as community service.¹¹⁵

Civil Debt in Maryland

Maryland laws, policies and practices surrounding various legal debts (due to inability to pay driving-related fines and fees, child support orders and criminal justice debt) are already covered in detail in other sections of this report; here, we focus on the ways in which Maryland laws allow the arrest and incarceration of poor individuals who owe civil debts.

Debt is commonplace in society and is required to some extent to demonstrate credit-worthiness. However, for the 10% of Marylanders living below the federal poverty line, even the management and repayment of small debts can be a major challenge.¹¹⁶

The Maryland Consumer Rights Coalition (MCRC) recently conducted a detailed study of processes used by creditors to recover civil debt from low-income debtors, with a focus on Baltimore City and Baltimore County.¹¹⁷ Typically, when a debtor cannot pay a creditor, the creditor may decide to take the debtor to court in an attempt to recover the debt. Once a case has been filed in court, the debtor must be notified. The debtor has an opportunity to file an “intention to defend” if they think they do not owe the money or if they wish to appear in court to defend their case. Few individuals file such a motion. Thus, the court is left to decide the case based on the information provided only by the creditor.

As a result, the courts usually decide that the debt is owed back to the creditor, and a judgment is entered against the debtor, often despite little evidence that the alleged debt is really owed.¹¹⁸ Winning a judgment against a debtor in court allows the creditor to use powerful legal tools of the court to collect on the debt, including the garnishment of wages from a debtor, garnishment of property from bank accounts, issuance of liens against real property (land or home that the debtor owns), and levies on personal property (seizing personal property such as vehicles).¹¹⁹

The court also greatly aids the creditor in legally securing all of the information necessary to make use of these methods of debt collection. In Maryland, the creditor may ask the judge either to bring the defendant into court to

answer questions about available assets or employment so wages can be garnished or to send written questions to the debtor.¹²⁰ If the debtor either fails to show up to court or fails to answer the questions asked by the court, the court issues a summons to determine whether the debtor should be held in contempt of the court. If the debtor again does not respond to the summons, a body attachment, or warrant for arrest, is issued.¹²¹ The MCRC found that if body attachments are requested, they are almost always issued. In fiscal year 2014, of 1,694 body attachments requested, 95% were granted.

Once the debtor is arrested, the judge or commissioner may release them or set a bond. The majority of debtors end up in jail as they are unable to pay the bond. For the few who are able to pay the bond, Maryland law allows

a bond that is posted by a debtor to be forfeited to the creditor as a payment against the judgment. This creates an incentive to use the body attachment (arrest) as a tool for collection. The forfeiture of bonds allows creditors to obtain payment from funds that they would otherwise not be able to access.¹²²

In a draft report of its study's findings, MCRC notes that though the Maryland Constitution explicitly prohibits the imprisonment of individuals for debt, in fiscal year 2012, body attachments issued by Maryland courts led to the imprisonment of 39 individuals for as many as 14 days in debt cases in Baltimore City and Baltimore County.¹²³

In 2014, the District Court of Maryland issued over 217,000 civil judgments, less than 55,000 of which



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Past Efforts to Address the Issue

Several bills have been introduced in recent years in an attempt to address the issue of debtors' prisons in Maryland. In 2013, two bills were introduced. SB 418/HB 597 sought to prevent individuals from being arrested and incarcerated for failing to appear in court in small claims cases. SB 419/HB 596 sought to provide an alternate procedure to ensure appearance of the individual to court, rather than incarceration. Though both bills did not pass as originally introduced, an amended version of SB 419/HB 596 was passed. The amended version of the bill that passed does not ban arrests in debt cases but mandates that the courts can only hold a person in a debt case if they can establish that doing so is the "least onerous" way to collect the debt. This is where current policy in Maryland stands on this issue.

Sources: Maryland General Assembly. SB 418/HB 597 – *Small Claims – Examination in aid of enforcement – Prohibition on arrest or incarceration for failure to appear*. 2013 Regular session. Retrieved from <http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=sb0418&stab=01&pid=billpage&tab=subject3&ys=2013rs.>; Maryland General Assembly. SB 419/HB 596 – *Civil actions – Discovery in aid of enforcement of money judgment – Body attachment*. 2017 Regular session. Retrieved from <http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=sb0419&stab=01&pid=billpage&tab=subject3&ys=2013rs.>

Though most debtors owed less than \$5,000, many judgments added interest, fees and court costs to the debt. The process and practices involved resulted in significant costs to both the state and debtor, to the benefit of the creditor.

were paid in full. Over 28,000 “aids of enforcement,” which includes body attachments, were requested. In a sample of 2,769 of these cases, 77 indigent Marylanders were arrested.¹²⁴

The hearings reviewed by MCRC in this study were initiated by large commercial creditors - particularly landlords and bail bondsmen - represented by lawyers, to enforce contractual debts against unrepresented individuals.¹²⁵ Though most debtors owed less than \$5,000, many judgments added interest, fees and court costs to the debt. The process and practices involved resulted in significant costs to both the state and debtor to the benefit of the creditor. The impact on debtors is significant; efforts to collect judgments do not result in many judgments being satisfied and may continue for years. Debtors may be repeatedly summoned to court to answer questions or may face repeated arrests for the same debt.¹²⁶ MCRC’s findings indicate that the use of body attachments as a debt collection tool functions to both further impoverish and incarcerate the poor.

Policy Recommendations

There are several legislative solutions that can help reduce the impact of debtors’ prisons on low-income Maryland-

ers. The Illinois Debtors’ Rights Act of 2012 provides a model for Maryland to follow; additional information on the Illinois law can be found in Appendix A.

Eliminate the use of body attachments as a debt collection device.

An effective first step is to enact legislation requiring the creditor to show the necessity of a body attachment before it is issued by the court. This will reduce unnecessary arrests.¹²⁷ Secondly, the forfeiture of bail bonds given by debtors to creditors should be prohibited. This will remove a major financial incentive for the creditor to have the debtor arrested. Arrest should not operate as a debt-collection device. Legislation to address both steps mentioned above was introduced in Maryland during the 2017 legislative session (SB 725/HB 1435) though neither bill passed.¹²⁸

Determine ability to pay and reasons for nonpayment.

Develop clear definitions for “indigent” and “willful nonpayment” to aid judges in deciding whether a debtor

is “indigent” or, rather, is “willfully” refusing to pay. These terms have not been defined elsewhere, leaving open the possibility that a local judge could circumvent the intent of the Supreme Court’s Bearden ruling and send a poor debtor to jail or prison.¹²⁹

Ensure that debtors receive court notifications to appear and that repeat court summonses are not issued unless the debtors’ financial circumstances have changed.

Maryland should require that defendants be personally served with a summons. Mailing a notice is not an effective way of reaching a low-income population that may relocate often due to housing insecurity.¹³⁰

Additionally, creditors should not repeatedly force debtors to come back to court in attempts to collect on the same debt unless the debtors’ financial circumstances have changed. Creditors sometimes summon debtors to hearings month after month, in order to ask for an arrest warrant when a debtor finally misses a hearing.



Arrest should not operate as a debt-collection device. And Maryland should require that defendants be personally served with a summons. Often debtors never see the notices because they have moved.

Part two:

THE CRIMINAL JUSTICE SYSTEM'S DISPARATE IMPACT ON THE POOR



The Criminal Justice System's Disparate Impact on the Poor

The Cash Bail System

Nationwide, jails are where most people land immediately following arrest and are the gateways to the criminal justice system. Pretrial detainment is intended only for individuals who pose a threat to public safety, or may be a flight risk and therefore may not show up at court. However, the practice of detaining individuals pretrial has become commonplace, so much so that jails today have become massive warehouses primarily for those too poor to post even a low bail amount.¹³¹

There are more than 3,000 jails in the United States, holding 731,000 people on any given day. In a typical year, jails have nearly 12 million admissions, which is nearly 19 times the annual admissions to state and federal prisons.¹³² Nationally, about 47% of felony defendants who are required to post bond remain jailed before their cases are heard because they cannot come up with the required amount.¹³³

In many states, including Maryland, the use of cash bail serves to create a two-tier system of justice based on income, where individuals who can afford to post bail are able to buy their freedom, but individuals who cannot afford to post bail are detained for days, weeks, months, even years at a time. Every day spent in detention increases the severity of consequences the poor must face, as the likelihood of receiving a criminal conviction increases in pro-

portion to time spent in jail. Moreover, being held pretrial is very disruptive to an individual's life and can result in loss of employment, public assistance, housing and other needs. Thus, the current system of cash bail in Maryland leads to the criminalization and further impoverishment of the poor.

As the nation's reliance on money bail has increased, so has the amount of money bail set for defendants. A Bureau of Justice Statistics survey of felony cases found that in the 75 most populous counties of the U.S., average bail amounts increased by over \$30,000 between 1992 and 2006, posing a serious concern for indigent populations.¹³⁴ Moreover, these trends have led to the rapid growth of the for-profit bail bond industry. The amount of money that bail bondsmen can collect has increased along with the rise in money bail amounts. This, along with political pressure from the bail bond industry, has reinforced the use of money bail.¹³⁵

Despite its growth, the use of cash bail is not fulfilling the primary functions of pretrial detention – to ensure public safety and defendants' appearance in court. In practice, many judges set higher bail amounts for individuals whom they consider to be more dangerous under the logic that a higher bail amount will be less likely to be posted, and therefore, there is a greater likelihood that the individual will be detained. However, the defendant may still be

able to raise the money needed to pay a high bond, or a for-profit bondsman may use it as an opportunity to profit from the 10% fee. Money bail is widely believed to incentivize a person's return to court; however, despite the use of money bail at increasingly higher amounts, failure to appear rates have not improved substantially.¹³⁶

Moreover, as there is no set guideline for the application of money bail, it is set arbitrarily, and bail amounts can vary from county to county. It is often the case that bail amounts do not match the severity of the charge. In Maryland, a bail schedule is not used, and non-judicial court commissioners make bail decisions based on a number of different factors as required by legislation, including the nature and circumstance of the offense, an individual's prior record, community ties, any recommendation from the State's Attorney's Office, if provided, and other factors. Therefore, individuals charged in Maryland with drug possession, for example, will likely have different bail amounts depending on the court commissioner who processed their case.¹³⁷

The overreliance on this arbitrary system of setting cash bail has led to the disproportionate detention of the poor,

who may not have the \$1,000 or even \$100 to pay the court or a bondsman for their release.¹³⁸ The focus on money alone as a mechanism for pretrial release means people often are not properly screened for more rational measures of public safety risk: their propensity to flee before their court date or their risk of causing public harm.¹³⁹ The major injustice of the cash bail system is that the majority of people who are jailed are detained for days, weeks, and even months at a time, when they have not been found guilty of anything other than being unable to pay the bail fee.

Additionally, as people of color are arrested at higher rates due to racial profiling, they are also disproportionately affected by the cash bail system. Estimates show that the rate of African Americans being detained in jail in 2012 was nearly five times higher than white people and three times higher than Hispanics.¹⁴⁰ Despite making up only 13% of the U.S. population, African Americans account for 36% of the jail population.¹⁴¹ Black males, in particular, are arrested at a younger age and at higher rates than their white counterparts, often giving them a longer "rap" sheet regardless of the charges or the eventual dispositions of the cases.¹⁴² Since being jailed while awaiting trial has a di-



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Discrimination in Pretrial Decisions

One study that looked at race and pretrial outcomes found that African-American defendants were less likely to be released on their own recognizance than white defendants, and that African Americans ages 18 through 29 received significantly higher bail amounts than all other types of defendants. Another study found evidence of bias on the part of judges and judicial officers in making pretrial decisions, finding strong evidence that these bail decision makers consider the lost freedom caused by pretrial detention to be a greater loss for whites than for blacks.

Source: Justice Policy Institute. (2012, September). *Bail fail: Why the U.S. should end the practice of using money for bail*. Retrieved from www.justicepolicy.org/uploads/justicepolicy/documents/bailfail.pdf.

rect impact on case outcomes such as conviction rates and sentencing decisions, racial disparities in the pretrial process have a ripple effect throughout the justice system.¹⁴³

Specific Ways in Which Pretrial Detention Further Impoverishes and Criminalizes the Poor

Money bail keeps many people in jail who could otherwise safely remain in the community as they await trial, while allowing the release of individuals who do pose a threat to safety but are able to afford high bail amounts. There are many significant consequences of being held pretrial that are disproportionately borne by the poor. Being jailed is a major disruption to an individual's life, resulting in lost wages, worsening physical and mental health, possible loss of custody of children, jobs and housing, possible default on vehicles and falling behind on child support payments. Thus, money bail serves to push low-income people further into poverty.

Additionally, people held in jail pretrial end up with worse trial outcomes than people who are free while awaiting trial. Researchers found that even a relatively short period of time in jail pretrial – as few as two days – correlates with negative outcomes for defendants and for public safety when compared with those defendants released within 24 hours.¹⁴⁴ People who were detained for 8-14 days were 56% more likely to be arrested before trial and 51% more likely to recidivate after sentence completion.¹⁴⁵ Another recent study showed that persons detained for inability to post bond face up to a 30% increase in the likelihood of a conviction.¹⁴⁶

Studies also show that detaining low- and moderate-risk defendants throughout the pretrial period significantly increases their likelihood of receiving harsher sentences.¹⁴⁷ Those held pretrial are more likely to receive custodial and longer sentences because defendants already in jail receive and accept less favorable plea agreements and do not have the leverage to press for better agreements.¹⁴⁸ The inability to pay money bail plays a significant role in coercing people to plead guilty so that they can get out of

jail sooner, despite being innocent. A 2012 study suggested that in an effort to avoid the maximum penalties of a potential conviction, more than 50% of innocent defendants pled guilty to get a lower sentence rather than risk a conviction that would lead to the maximum penalty.¹⁴⁹

As jail populations have swelled nationwide, courts have been overwhelmed and largely unable to process the growing number of individuals awaiting trial. As a result, many states and local jurisdictions have been unable to provide counsel at bail hearings (despite constitutional guarantee), and the plea bargain has become the de facto standard in resolving more than 95% of cases each year. Both the lack of legal representation and reliance on plea bargains has undermined justice for individuals held pretrial. A 2012 study in Maryland found that not having legal representation resulted in fewer releases on recognition, higher bail amounts and longer pretrial detention for defendants.¹⁵⁰

For the individuals who actually do go to trial, studies show that jurors tend to view defendants brought to court in jail uniforms and shackles as guilty regardless of the merits of the case. Moreover, individuals who are held pretrial and are assigned a public defender are not able to work with their counsel to prepare their defense, gather witnesses or engage in other activities needed to present a strong case due to limited phone use, obligations to work long shifts in jail programs, placement in jails long distances away from their counsel, among other reasons.¹⁵¹

Moreover, many jails, courts and other criminal justice agencies charge defendants for the services they provide, including charges for clothing and laundry, room and board, medical care, rehabilitative programming, and even core functions such as booking. Thus, individuals can leave jail with significant criminal justice debt, in addition to bail, even if they were never convicted.¹⁵²

It is clear that the current pretrial system's reliance on money bail has led to a broken system that perpetuates injustice in many ways. Our current system criminalizes

the poor, denies defendants their constitutional rights to counsel and a jury trial and perpetuates racial inequality, all while failing to protect public safety and ensure justice.

Current Situation in Maryland

Currently in Maryland, when an individual is arrested and taken into custody, they must appear before a District Court Commissioner for an initial hearing within 24 hours after arrest. If the individual is not released on their own recognizance (with a written promise to return to court on a specified date) or with a bond, they are sent to a District Court judge for a bail review hearing, which occurs the next court business day. At either the initial hearing or the bail hearing, if an individual is not released on their own recognizance, the courts may offer three general types of financial bonds:

- **An unsecured bond**, where the defendant simply signs a document to personally guarantee they will appear, and if they do not, they will pay the full bond amount.
- **A 10% cash deposit** on the bond.
- **A cash bond**, where the defendant has the option to either pay the full bond amount in order to be released, with the bond returned at the end of the case provided that it is not forfeited for the individual's failure to appear in court; or to engage the services of a commercial, for-profit bail bonding company that guarantees, before the defendant's release, the full bond amount. For this service, defendants typically pay a nonrefundable fee of 10% of the bond amount, either as a lump sum or in installments.

If the defendant satisfies the cash bond and appears for court, their monies are reimbursed at the conclusion of the trial, regardless of the verdict. However, if an individual is unable to afford any of these options at the time of the hearing, they must stay in jail either until they raise enough money to afford one of the above options, or until the case against them is settled by either a plea or trial.¹⁵³

Jails may hold individuals awaiting trial as well as those who have been convicted and are serving short sentences or are awaiting transfer to prison. Two-thirds of the individuals in Maryland's jails are held pretrial, the majority due only to inability to post bond.¹⁵⁴ According to a 2014 report by the Commission to Reform Maryland's Pretrial System, about 7,000 to 7,500 Marylanders are in jail awaiting trial on any given day.¹⁵⁵ On January 1, 2017, there were 5,113 individuals being held in pretrial detention in Maryland. Roughly 35% of these individuals were being held because they were unable to afford bail.¹⁵⁶

2014 study of six Maryland Jurisdictions found that 71% of defendants appearing at a bond review hearing had a secured financial bond set, with an average bond amount of \$39,041. Two-thirds of these individuals were unable to post bonds and remained in jail.¹⁵⁷ The data reveal that the situation is worst in Baltimore City, where defendants who are identified as low-risk have secured bond amounts that are set five times higher than those set for low-risk defendants in Montgomery County.¹⁵⁸ Despite not being convicted and posing a low threat to public safety, these individuals must choose between remaining in jail or risking their family's financial ruin in order to be released on bond. As one Baltimore defense lawyer stated, "they are literally being held hostage until they take the plea and admit guilt. The system as a whole needs to be overhauled."¹⁵⁹

The most comprehensive study of Maryland's pretrial detention system to date, conducted by the Maryland Office of the Public Defender, included a statistical analysis of more than 700,000 District Court criminal cases filed from 2011 to 2015 in 18 jurisdictions. It found that more than 46,000 defendants between 2011 and 2015 were detained more than five days at the start of their criminal case.¹⁶⁰ Of these, more than 17,000 were held on less than \$5,000 bail. The study revealed that the cost of using a commercial bail bondsman is high; Maryland communities were charged more than \$256 million in nonrefundable corporate bail bond premiums from 2011 to 2015.¹⁶¹ More than \$75 million of these premiums were in cases that were resolved



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Task Force Recommendations

Maryland's pretrial system has been studied numerous times since the 1980s, resulting in many common recommendations, namely to reduce the role of cash bail in Maryland's pretrial system. Detailed studies done by the Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Public Defender, established by legislation in 2012, and more recently, the Governor's Commission to Reform Maryland's Pretrial System, which was established by Executive Order in 2014, have identified three major problems with Maryland's current pretrial system, and corresponding solutions:

Problems:

1. Secured financial bonds, those requiring the actual payment of money or bail property to secure defendants' release, are used extensively throughout Maryland, leaving low-income individuals – most often racial and ethnic minorities – in jail pending trial.
2. Because of the reliance on secured financial bonds, defendants who pose a risk to community safety but have access to money can buy their way out of jail.
3. Despite the availability of evidence-based practices, which have shown to be effective in other jurisdictions in addressing fairness and safety issues, their use is spotty at best in Maryland.

Solutions:

1. Eliminate the use of money bail.
2. Create county-specific pretrial services programs throughout the state.
3. Implement the use of validated pretrial risk assessment tools.

Sources: Maryland Governor's Commission to Reform Maryland's Pretrial System. (2014, December 29). *Commission to reform Maryland's pretrial system: Final report*. Retrieved from <http://goccp.maryland.gov/pretrial/documents/2014-pretrial-commission-final-report.pdf>; Clark, J. (2016, June). *Finishing the job: Modernizing Maryland's bail system*. The Abell Foundation. Retrieved from <http://www.abell.org/publications/finishing-job-modernizing-maryland%E2%80%99s-bail-system>.

without any finding of wrongdoing. These data clearly show that the heavy reliance on money bail in Maryland enables the corporate bail bond industry to extract tens of millions of dollars from Maryland's poorest zip codes.

The study also found a disproportionate impact on racial minorities, as black defendants were charged premiums of \$181 million, while defendants of all other races combined

were charged \$75 million. Moreover, despite all these costs, the study found that *this form of secured money bail is no more effective than unsecured bonds, for which defendants pay nothing unless they fail to appear in court.*¹⁶²

The cost of our current reliance on cash bail is also high for taxpayers. Maryland pretrial detention costs per-inmate per-day range from \$83-\$153; by comparison, pretrial

assessment and supervision programs cost under \$10 per person per day. Thus, if Maryland reduced its pretrial population by as much as 23%, taxpayers could save more than \$150,000 per day. These funds could be better spent on treatment, prevention and reentry.¹⁶³

However, of the 24 jurisdictions in Maryland, only five, including Baltimore City, have pretrial services programs that conduct risk assessments before the defendant's bail review hearing in District Court, and only two of those programs use tools that have been validated.¹⁶⁴ Only 11 jurisdictions in Maryland currently have pretrial services programs that supervise defendants.¹⁶⁵ Thus, there is a need to expand the use of pretrial service programs and validated risk assessments.

In February 2017, after hearing hours of testimony on revisions proposed by the State Judiciary's Standing Committee on Rules and Practice and Procedure, the Maryland Court of Appeals unanimously approved changes to the pretrial systems in Maryland.¹⁶⁶ This significant change came after years of legislative efforts and studies on the existing pretrial system's heavy dependence on cash bail. The major change is a new requirement that in setting bail, judges must look at the defendant's situation, what his or her risks are of flight and to public safety, and seek to impose the least onerous conditions possible for individuals who are not considered a danger or flight risk.¹⁶⁷

The rules change still permits the use of money bail in Maryland but states that "a judge may not impose a financial condition, in form or amount, that he or she knows or has reason to believe that the defendant is financially incapable of meeting."¹⁶⁸ Thus, judges are still permitted to set cash bail, as long as the defendant can afford to pay it and only after exhausting any non-financial conditions of release that could ensure the defendant's appearance in court. According to Maryland Attorney General Brian Frosh, "the new rules tell judges to 'keep dangerous people behind bars' and to 'let the vast majority who are not a threat out' before trial."¹⁶⁹ The changes took effect on July 1, 2017.

In 2017, legislation spearheaded by the bail bonds industry was introduced to undo the Maryland Court of Appeals rule change. The bail industry in Maryland maintains robust political influence due to the numerous and sizeable contributions it has made to key elected officials in the General Assembly.¹⁷⁰ Despite this influence, pretrial reform advocates were able to successfully defeat the bail bonds industry legislation.

Policy Recommendations

Maryland must build on the recent progress of the Court of Appeals Rules change. As Judge Alan Wilner, a retired Court of Appeals judge and current Chairman of the State Judiciary's Standing Committee on Rules and Practice and Procedure stated, "to close the circle and to really make a real difference, the legislature does need to step up and provide for what people are calling robust pretrial release service centers throughout the state to do risk assessments and to provide monitoring... so that judicial officers can feel more comfortable releasing people, if they're going to be monitored."¹⁷¹

Study the impact of the Maryland Court of Appeals rule change.

It will be critically important to monitor and track the impact of the Court of Appeals rule, which took effect on July 1, 2017, on pretrial systems around the state. While the Justice Reinvestment Act and the FY18 state budget mandate the Judiciary to monitor, track and report the impacts of the rule change, it will be important for key legal and community stakeholders, including health and human services practitioners, to be actively involved in the monitoring and tracking of this important information to ensure quality and accuracy of the data. A report is to be issued by the Judiciary on the implementation of the new rule from its effective date, July 1, 2017, to September 30, 2017. The report is to provide an update on pretrial release practices, including any guidance on the new rule issued by the Judiciary, a preliminary evaluation of the rule's im-

impact on reducing the number of individuals held because they cannot afford to pay their set bail, an explanation of how affordable bail amounts are determined for individual defendants, and recommendations for General Assembly action that would be beneficial to the implementation of the new rule. This will help key policymakers, judicial officers and stakeholders understand the impact of the decreased utilization of cash bail likely to occur under the new rule and will be crucial in informing future efforts for pretrial reform in Maryland.

Eliminate or significantly limit the use of cash bail.

Maryland's legislature has been debating whether to limit or eliminate cash bail for more than a decade, over concerns that it is discriminatory and unconstitutional, but legislative efforts to date have failed.¹⁷² Several jurisdictions in the U.S. have eradicated the use of money bail in their pretrial process. These jurisdictions typically have a robust pretrial services agency, validated risk assessments and other processes in place to assure defendants return to the community safely and attend their court hearings.¹⁷³

Washington, D.C., is one example of a jurisdiction that has effectively eliminated the use of cash bail. The District passed a law in 1991 that prohibited judges from imposing a "financial condition" that a person could not pay.¹⁷⁴ D.C. has a robust Pretrial Services Agency, which works in close collaboration with D.C.'s law enforcement, corrections and judicial systems.¹⁷⁵ The focus of D.C.'s pretrial release model on not imposing financial bail allowed an average of 90% of people to be released after being held for one night in 2016.¹⁷⁶ This has increased since 2012, when 80% of people charged with an offense were released on nonfinancial bail options while awaiting resolution of their charge, while 15% were kept in pretrial detention.¹⁷⁷ Only 5% of defendants were released using some form of financial bail, but without the use of for-profit bondsman services. D.C.'s Pretrial Services Agency reports that 88% of individuals served successfully complete the pretrial process by appearing in court and not being rearrested.¹⁷⁸ Because of

D.C.'s extremely limited use of money bail, for-profit bail bonding companies although not banned, are nonexistent in D.C. because there is no market for their business. D.C.'s pretrial release model is described in greater detail in Appendix A.

Four other states - Kentucky, Wisconsin, Illinois and Oregon - have explicitly banned for-profit bail bonding companies as the presence of for-profit entities that benefit from the courts' use of money bail only reinforces the use of money bail.¹⁷⁹ Numerous other jurisdictions have also chosen to ban commercial bail even if their states have not, including cities in Alabama, Kansas, Missouri, Mississippi and Louisiana.¹⁸⁰

Several other states, including New Mexico, Colorado and New Jersey, have also enacted legislation to move away from bail as part of a larger criminal justice-overhaul movement.¹⁸¹

The Federal Court system also does not use cash bail. According to the U.S. Code, judicial officers are given four options: 1) release on personal recognizance or an unsecured bond; 2) release on a condition or combination of conditions; 3) temporarily detain an individual; or 4) detain an individual until trial.¹⁸²

Implement and invest in robust county-specific pretrial services agencies.

Effective pretrial services agencies can provide the risk assessment and supervision needed to monitor defendants as needed prior to their court date and have been saving jurisdictions money since the 1960s by reducing the need to house people in jail.¹⁸³ Pretrial services agencies have a demonstrated record of reducing pretrial jail populations, assuring appearance at court and maintaining safe behavior among their clients. This is accomplished by providing three main services: risk assessment; making recommendations to courts as to the most appropriate pretrial option for defendants based on the results of the risk assessment; and supervision.

Pretrial services agencies administer pretrial risk assessments (described in greater detail below), may conduct a fact finding to ensure that the information gathered from all parties is true, and will then make recommendations to judicial officers regarding the best pretrial option for the defendant.¹⁸⁴ Options that may be recommended include release on own recognizance (ROR), conditional release, detention with some form of bail or detention without bail (for the highest-risk defendants). By tailoring the pretrial option to the defendant's circumstances, pretrial services agencies are able to facilitate the release of a greater number of individuals without compromising public safety, and increase the overall success of defendants during the pretrial period.

Release on own recognizance (ROR) can be a very effective option. When pretrial services agencies employ validated pretrial risk assessments, many people can be safely released in the community on their own recognizance while awaiting trial. Risk assessment studies show that those rated low-risk generally complete the pretrial process successfully by attending their hearings and not having any incidence of re-arrest. They also are more likely to complete the pretrial process successfully by not having additional court-ordered expectations placed on them as they are already attending to other responsibilities.¹⁸⁵

Conditional release, or release under the supervision of a pretrial services agency, can also greatly expand the pool of people who may be safely released while awaiting trial. When used in conjunction with a valid risk assessment, judicial officers may safely release some people with conditions that will ensure return to court and safety in the community.

Pretrial services agencies play a key role in making recommendations to judicial officers and in ensuring that release conditions are matched both with the level of risk determined by the risk assessment and the needs of the person accused of the offense. This is particularly important, as placing inappropriate or unnecessary conditions on people with low-risk ratings, such as drug testing or

additional supervision, results in higher failure rates.¹⁸⁶

Common conditions include alcohol and/or drug testing, holding or getting a job, working towards a diploma or degree, curfews, no contact with victims and/or witnesses and remaining under the supervision of a family member, community service organization or pretrial services agency.¹⁸⁷

Pretrial services agencies monitor and assist defendants during the pretrial period. They establish specific parameters for the defendant's behavior during the pretrial period and link them with service providers in the community to help them address longstanding problems and remind them about upcoming court dates. This makes it possible for judges and other court officers to release higher-risk people who would otherwise be detained pending trial.

While pretrial service agencies have been effective in reducing the number of failure to appears (FTAs) for people under their supervision, people who are released without the supervision of pretrial services agencies may still fail to appear if they are not given a reminder of their court date.¹⁸⁸ Thus, Maryland should require all courts to provide reminders to defendants.

Court notification is a simple, practical and cost-effective strategy that has shown promising results in reducing FTAs and as a result can save resources and reduce the number of people incarcerated.¹⁸⁹ There are two types of court notification systems. The first uses a personal respondent, where an individual speaks to an actual person (usually a court clerk) who can answer questions and provide more information to the defendant.

The second is to use an automated notification service that provides a basic reminder. Baltimore County piloted a program in 2008 and found that using one full-time staff member to notify individuals improved court appearance rates by 15% in one year. Overall secure detention admissions were also reduced by 22.8%.¹⁹⁰ For more information on robust pretrial services models from other states, see Appendix A.

Implement the use of county-specific validated pretrial risk assessments.

County-specific pretrial risk assessments should be developed, allowing for frequent validation with community input. The use of county-specific validated pretrial risk assessment tools is a critical part of implementing an effective statewide pretrial services system. The ability of a pretrial services agency to correctly assess a defendant's risk level and make appropriate recommendations to commissioners and judges rests on the use of an evidence-based, racially unbiased tool: the validated pretrial risk assessment.

Pretrial risk assessments are tools that are administered to defendants and offenders to measure their risk level and aid in determining appropriate pretrial options.¹⁹¹ They are typically in the form of an electronic or paper survey.¹⁹² When used properly, they can provide a dependable prediction of whether a person will be involved in pretrial misconduct, whether by failure to appear in court or being a danger to the community.

They provide a way to make an objective assessment of the person being charged with an offense while minimizing bias on the part of the interviewer. The assessment findings provide a classification, usually “low risk,” “moderate risk,” or “high risk,” which aids in determining the most appropriate form of bail and pretrial supervision. Pretrial risk assessments play a critical role in risk-supported decision-making and eliminating the need for money bail.¹⁹³

Today's tools measure both static and dynamic risk factors, criminogenic needs and strengths or protective factors present in a person's behavior, life or history.¹⁹⁴ Static factors are characteristics about the defendant that can't change, such as age, criminal history, etc. Dynamic factors are things that can change, such as drug addiction, anti-social peers, etc. Doing a needs assessment based on these factors helps to identify a person's criminogenic needs – that is, personal deficits and circumstances known

to predict criminal activity if not changed.¹⁹⁵ Some tools are proprietary, while others are available at no cost.

Regardless of what type of tool is used, states and counties must validate them using data from their own populations to ensure that each factor accurately predicts pretrial misconduct within the parameters of that state's laws and environment.¹⁹⁶ Since the best tools evaluate the person's dynamic or changeable risk factors and needs, risk assessments should be re-administered routinely to determine whether current supervision or custody levels and programming are still appropriate.¹⁹⁷

The use of pretrial risk assessments has the foundation of more than 30 years of research. Despite this, their use is not common. Experts estimate that only about 85 jurisdictions in the U.S. are using a validated risk assessment in their pretrial release determinations.¹⁹⁸ As mentioned earlier, of the 24 jurisdictions in Maryland, only five, including Baltimore City, have pretrial services programs that conduct risk assessments before the defendant's bail review hearing in District Court, and only two of those programs use tools that have been validated.¹⁹⁹

One reason pretrial risk assessments are not widely used is due an incomplete understanding of their proper role and use. There is concern that risk assessments may not account for the individual case characteristics that will affect pretrial outcomes. However, years of risk assessment studies have confirmed a number of factors that consistently predict pretrial misconduct across a variety of charge types and localities. Table 1 on page 43 outlines several factors that have been tested and recommended by various sources:

Criminal Justice Debt

Individuals are charged fees for various “services” at every stage of interaction with the criminal justice system, whether they are found innocent or guilty. As these fees are imposed regardless of an individual's ability to pay,

Table 1: Recommended Factors for Use in Pretrial Risk Assessment

Bail Reform Act of 1966 criteria	Factors validated by multiple studies	Other factors supported by research
<ul style="list-style-type: none"> Nature and circumstance of the offense Weight of evidence Family ties Employment Financial resources Character and mental condition Length of time at current residence Record of convictions Appearance record at court proceedings 	<ul style="list-style-type: none"> Failure to appear Prior convictions Present charge a felony Being unemployed History of drug abuse Having a pending case 	<ul style="list-style-type: none"> Active community supervision at time of arrest History of violence Residence stability Community ties Caregiver responsibilities

Sources: Justice Policy Institute, see note 175; Mahoney, B., Beaudin, B.D., Carver, J.A., Ryan, D.B., & Hoffman, R.B. (2001, March). *Pretrial services programs: Responsibilities and potential*. National Institute of Justice. Retrieved from <https://www.ncjrs.gov/pdffiles1/nij/181939.pdf>; Justice Policy Institute, see note 175; Mamalian, C. (2011, March). *State of the science of pretrial risk assessment*. Pretrial Justice Institute. Retrieved from [https://www.pretrial.org/download/risk-assessment/PJI%20State%20of%20the%20Science%20Pretrial%20Risk%20Assessment%20\(2011\).pdf](https://www.pretrial.org/download/risk-assessment/PJI%20State%20of%20the%20Science%20Pretrial%20Risk%20Assessment%20(2011).pdf); VanNostrand, M. & Rose, K.J. (2009, May 1). *Pretrial risk assessment in Virginia: The Virginia pretrial risk assessment instrument*. Retrieved from <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/corrections/virginia-pretrial-risk-assessment-report.pdf>; Justice Policy Institute. (2012, September). *Bail fail: Why the U.S. should end the practice of using money for bail*. Retrieved from www.justicepolicy.org/uploads/justicepolicy/documents/bailfail.pdf.

they often result in significant levels of criminal justice debt. Thus due to the mark of a criminal record, individuals' ability to find employment to repay these debts is greatly reduced. As unpaid criminal justice debt grows with the accumulation of interest and penalties, people can be rearrested for nonpayment - virtually trapping them in a cycle of debt, poverty and criminalization. Thus, these debts have the effect of extending criminal sentences long past their intended duration, transforming punishment from a temporary experience to a long-term, even lifelong status. This disproportionately affects the poor, who are more likely to interact with the criminal justice system and less likely to ever be able to repay the criminal justice debt.

Criminal justice financial obligations (CJFOs) or legal financial obligations (LFOs), consist of three categories:

1. **Fines**, which are the monetary penalties that are imposed as a condition of a sentence and are levied as part of the criminal punishment for a convicted individual.
2. **Fees**, which may include jail book-in fees, bail investigation fees, public defender application fees, drug testing fees, DNA testing fees, jail per-diems for pretrial detention, court costs, felony surcharges, public defender recoupment fees, expungement, etc. This category also includes the costs of imprisonment, which are billed to inmates in 41 states, and the costs



SNAPSHOT - 12

Selecting Pretrial Risk Assessment Tools

It is essential to ensure that the selection of factors to be included in a pretrial risk assessment tool are race-neutral so that the use of the risk assessment tool does not perpetuate racial bias. Risk assessment tools must be developed using scientifically rigorous research methods and with a focus on race neutrality to ensure that risk assessments are free of predictive bias. They must also be validated and, in the validation process, should be tested for race and gender bias. Several resources exist that can assist Maryland in ensuring that current and future pretrial risk assessment tools are gender and race neutral.

Source: Pretrial Justice Institute. *Pretrial risk assessment – perpetuating or disrupting racial bias?* Retrieved from <http://www.pretrial.org/pretrial-risk-assessment-perpetuating-disrupting-racial-bias/>; Skeem, J. L. & Lowenkamp, C. T. (2015, November 8). Risk, race & recidivism: Predictive bias and disparate impact. Available at SSRN: <https://ssrn.com/abstract=2687339>; Albis, K. *Risk and needs assessment and race in the criminal justice system*. The Council of State Governments. Retrieved from http://www.csg.org/pubs/capitolideas/2016_sept_oct/risk_assessment.aspx?utm_source=The+Current+State+%2381&utm_campaign=The+Current+State+%2381%2C+10.17.16&utm_medium=email.

of parole and probation, which are billed to inmates in 44 states. The goal of fees is often to recoup costs and generate revenue.

3. **Restitution**, which is the payment an offender must pay to the victim or victims for personal or property damage. The goal of restitution is to compensate victims for their loss.²⁰⁰

This section focuses mainly on the second category – the fees associated with the criminal justice system.

Criminal Justice Fees

Alexes Harris, sociologist at the University of Washington, estimates that 80-85% of inmates now leaving prison owe criminal justice costs.²⁰¹ This is estimated to amount to some 10 million Americans who owe more than \$50 billion in criminal justice debt.²⁰²

Rising costs – including ever-growing corrections systems – have produced budgetary restraints that have caused states and localities to turn to criminal justice fees to help pay for the ever-increasing costs of operating the criminal justice system.

The number of individuals moving through the criminal justice system increased rapidly due to America's tough-on-crime policies, beginning with the War on Crime in the 1970s, followed by the War on Drugs in the 1980s. In 40 years, the number of people behind bars in the U.S. jumped 700%. Jails, prisons and courtrooms became overcrowded. The costs of running them, according to the federal Bureau of Justice Statistics, rose from \$6 billion for states in 1980 to more than \$67 billion in 2010.²⁰³ In 2010, the mean annual state corrections expenditure per inmate was \$28,323, although a quarter of states spent \$40,175 or more.²⁰⁴

As costs rose, states struggled with budget deficits and politicians faced new pressure not to raise taxes. As a result, states started passing the costs of running the criminal justice system on to defendants by charging user fees. Though fines have long been a tool used by judges as a form of punishment, the focus on fees that are used to pay court, jail and probation costs is newer.²⁰⁵ Many jurisdictions also began charging inmates fees in order to collect any money they could to offset staggering correctional costs.

In an effort to curry favor with voters, many policymakers and sheriffs touted the advantages of charging inmates fees to decrease the taxpayers' need to foot the bill for incarceration.²⁰⁶ Another reason given for charging fees to inmates is to reduce frivolous requests for services by inmates, particularly with regards to medical services. In many cases, facilities hope that fees "will reduce unnecessary sick call visits as well as cover a small portion of the costs of care." However, these fees can result in inmates delaying or foregoing needed medical care, leading to increased public health risk within facilities and higher costs for correctional institutions overall.²⁰⁷

Today, fees are extremely common, as states are under increased pressure to find funding. National Public Radio (NPR), with help from NYU's Brennan Center for Justice and the National Center for State Courts, surveyed state laws since the recent recession and found that 48 states have increased criminal and civil court fees or added new fees.²⁰⁸ The survey found that defendants are charged for a long list of government services that were once free – including for services that are constitutionally required. At least 43 states allow defendants to be billed for a public defender.²⁰⁹ This is despite a 1963 Supreme Court ruling that indigent defendants have the right to a lawyer.²¹⁰ Public defender charges are usually two-fold: 1) an upfront application fee to hire a lawyer, ranging from \$10-\$400; and 2) reimbursement fees, which can cost thousands of dollars, as after criminal proceedings, defendants can be asked to reimburse up to the full cost of representation by a public defender. This leads many poor defendants to

choose between forgoing the services of an attorney, which increases the likelihood of a negative trial outcome, or carrying the debt for years.²¹¹

In at least 41 states, inmates can be charged room and board for jail and prison stays; in at least 44 states, offenders can be billed for their own probation and parole supervision; and in 49 states, there is a fee for the electronic bracelet that monitors people after release from jail.²¹² Fees for electronic monitoring usually include a daily rental fee – typically around \$5 for a tracking device and often twice as much to rent an alcohol monitoring device – the cost of a land-line phone for the systems to work, and an installation fee.²¹³ However, electronic monitoring as a pretrial release option, which is aimed at helping defendants avoid jail time, is available only to those who can afford to pay for it, forcing those too poor to pay to remain in jail.²¹⁴

Fees are either charged per diem or per item or service.²¹⁵ The table on page 46 includes a list of common fees levied at various stages: after arrest, at the time of sentencing, during incarceration, and for probation, parole or other supervision.²¹⁶

As fees are usually assessed and collected at different times by different entities (law enforcement, courts, corrections, parole and probation services), their uncoordinated assessment and collection leaves individuals struggling to comprehend the full amount they owe and with significant debts unpaid. Adding to this, the fines and restitution individuals may owe put the successful rehabilitation and reentry of individuals in tension with making victims whole, satisfying criminal judgments and funding the criminal justice system.²¹⁷

The Impact of Criminal Justice Fees and the Resulting Debt on Low-Income Individuals and States

Studies suggest that charging defendants and offenders user fees creates a cycle of criminalization and poverty

and perpetuates mass incarceration, at high costs to state and local governments. As the majority of prisoners are poor and have no way to repay criminal justice debt, they become trapped by it. Sixty-five percent of prisoners do not have a high school diploma, and 70% have extremely low literacy.²¹⁸ Among persons leaving prison, 15 - 27% expect to go to a homeless shelter when they are released, and as many as 60% remain unemployed a year after release from prison.²¹⁹

Criminal justice debt reduces family income and further impoverishes already indigent people.²²⁰ As fees are levied without consideration of an individual’s ability to pay,

the resulting criminal justice debts have the effect of extending criminal sentences long past their intended duration, transforming punishment from a temporary experience to a long-term, even lifelong status.²²¹ Many fees can be waived for indigent defendants, but judges are more likely to put the poor on a more manageable payment plan. Courts, however, will then sometimes tack on extra fees penalties for missed payments and may even charge interest.²²²

Criminal justice debt looms over individuals for years, even a lifetime. A study in Washington state found that formerly incarcerated men owed between 36% and 60%

Table 2: Common Fees Charged to Defendants and Inmates at Various Stages of the Criminal Justice System			
Pre-conviction	Sentencing	Incarceration	Probation, Parole or Other Supervision
<ul style="list-style-type: none"> Arrest warrants Application fee to obtain public defender Jail fee for pre-trial incarceration Jury fees Rental fee for electronic monitoring devices 	<ul style="list-style-type: none"> Fines, with accompanying surcharges Restitution Fees for court administrative costs Fees for designated funds (e.g. libraries, prison construction, etc.) Public defender reimbursement fees Prosecution reimbursement fees 	<ul style="list-style-type: none"> Fees for room and board in jail and prison Health care and medication fees* 	<ul style="list-style-type: none"> Probation and parole supervision fees Drug testing fees Vehicle interlock device fees (DUIs) Rental fee for electronic monitoring devices Mandatory treatment (includes drug and alcohol,) therapy and class fees Expungement

**These charges range from “per-diems” for stays to charges for meals, toilet paper, clothing, medical co-pays, and dental fees.*
 Source: Eisen, L.B. (2014, July 31). *Paying for your time: How charging inmates fees behind bars may violate the excessive fines clause.* Brennan Center for Justice. Retrieved from <https://www.brennancenter.org/analysis/paying-your-time-how-charging-inmates-fees-behind-bars-may-violate-excessive-fines-clause>.

Criminal justice debts have the effect of extending criminal sentences long past their intended duration, transforming punishment from a temporary experience to a long-term, even lifelong status.

of their annual incomes in criminal debt and that even if they paid \$100 per month – on average 10 to 15% of their monthly earnings – they would remain significantly indebted years later.²²³ While a job can help individuals generate income to pay their debts, even when individuals are employed, they stand to lose much of their income to debt collectors.²²⁴ Moreover, legal protections often do not apply to the collection of criminal debt. Many statutes authorizing the imposition and collection of criminal-justice-related debts explicitly define them as not “debts,” thereby placing them outside the reach of the Fair Debt Collection Practices Act and other protective laws that regulate debt collection. Moreover, many statutes governing criminal debt authorize extraordinary collection remedies, such as wage and tax garnishment – in some cases without limit.²²⁵

Criminal justice debt also functions to push the poor underground because the debt is often insurmountable. Because people cannot repay the debt and face re-arrest due to inability to pay, they go underground to avoid the police. This cuts individuals off from job opportunities, welfare benefits or other programs that could get them on their feet.²²⁶ As the government pressures individuals to repay the debt or face additional consequences, many

individuals turn to illegal activities to generate income, as all doors to employment and participation in mainstream society are virtually closed to them. The NPR study found that Maryland charges defendants for electronic monitoring, probation and supervision, public defender and legal costs, and room and board.²²⁷

Maryland charges fees for the supervision of individuals by the Division of Parole and Probation of the Department of Public Safety and Correctional Services (DPSCS).²²⁸ The current monthly supervision fee charged to parolees is roughly \$50, recently increased from \$40. Of all of Maryland’s criminal justice fees, the parole supervision fee has been studied in greatest depth by the Brennan Center for Justice, which released a detailed report in 2009. The study found that on average, parolees in Maryland were ordered to pay \$743 in supervision fees over the course of their parole terms. This was in addition to other fees that many parolees were ordered to pay, such as fees for drug and alcohol testing and community service. Many parolees also had unpaid child support debt. The study concluded that the supervision fee is a penny-wise pound-foolish policy that undercuts the state of Maryland’s commitment to promoting the reentry of people into society after prison.²²⁹



SNAPSHOT

Parole Fees

The supervision fee was implemented nearly three decades ago during a national wave of new supervision fees and was intended to raise extra revenue for general state functions. At that time, the legislature was aware that individuals on parole would be unable to afford the fee, so it created categorical exemptions. At the time of implementation, the legislature predicted that only about 15% of the parolee population would be able to actually pay the fee. However, the legislature charged the Parole Commission, a body with which parolees have little ongoing contact, rather than the Division of Parole and Probation, whose Supervision Agents meet regularly with parolees, with the exclusive authority to grant exemptions.

The 2009 study found that as a result of this practice, and of the cumbersome process for securing exemptions after parole has begun, Maryland rarely granted exemptions to parolees even though most parolees were likely eligible. Specifically, the study found that 89% of unemployed persons and 75% of students were required to pay the fee, even though these statuses were grounds for exemption. The study concluded that the system for granting exemptions was broken, resulting in the fee creating barriers to reentry for individuals, while counteracting Maryland's efforts to reduce recidivism.

Moreover, the study found that the supervision fee is largely uncollectible due to the dire financial situation in which parolees find themselves, and the paper debt it creates does more harm than good. The study found that most parolees were unemployed and unable to afford the fee, resulting in only 17% of supervision fees collected by the end of parole. In 75% of cases, the debt was turned over by the Division of Parole and Probation to the Maryland Central Collection Unit (CCU) to pursue collection. The study revealed that the CCU sought civil judgments that mar credit reports – and which added a one-time 17% surcharge onto the underlying debt.

The report also highlighted that Parole Supervision Agents, reentry service providers and individuals on parole agreed that the strain of owing money that cannot be paid and the repeated receipt of threatening letters undermine efforts to reenter society successfully, and that the supervision fee is often just one of many financial obligations that parolees accrue during prison and parole in Maryland.

Parole Fees (continued)

JOTF worked with the Brennan Center to address the issues raised in the 2009 report via legislation. Specifically, bills were introduced in 2010 and 2011 which sought to remove the following barriers faced by parolees in obtaining the statutory exemptions from parole fees: 1) that supervisees were unaware of the exemptions; and 2) that the mechanism for obtaining the exemption was too complicated for people to navigate. In 2011, the bill was passed, and a new law was implemented that required the Division of Parole and Probation to inform supervisees, both verbally and in writing, of the existence of exemptions, the criteria used to determine exemptions and the process of applying for an exemption. It is important to study current exemption rates to ensure that the 2011 legislation is having the intended effect, and that exemptions are being made available to all who are eligible.

Additionally, the statute continues to permit revocation of probation for failure to pay required supervision fees. If an individual is found by the Division of Parole and Probation to have failed to pay the fee, the Division informs the court, which holds a hearing to determine if there are sufficient grounds to find the supervisee in violation, considering the supervisee's financial status, good faith efforts of the supervisee to pay the fee and alternative means to ensure payment of the fee before the supervision period ends. The 2009 report found that individuals were rarely incarcerated due to failure to pay the supervision fee, but it is important to review current data to ensure that ability to pay is adequately considered in determining if an individual has violated the conditions of supervision due to failure to pay.

Sources: Vallas, R. & Patel, R. (2012, July-August). Sentenced to a life of criminal debt: A barrier to reentry and climbing out of poverty. *Clearinghouse Review Journal of Poverty Law and Policy*. Retrieved from <https://csgjusticecenter.org/courts/publications/sentenced-to-a-life-of-criminal-debt-a-barrier-to-reentry-and-climbing-out-of-poverty/>; Diller, R., Greene, J., & Jacobs, M. (2009). *Maryland's parole supervision fee: A barrier to reentry*. Brennan Center for Justice at New York University School of Law. Retrieved from <https://www.brennancenter.org/publication/marylands-parole-supervision-fee-barrier-reentry>; See Md. CRIMINAL PROCEDURE Code Ann. § 6-226.

Maryland also permits individuals to be charged for electronic monitoring.²³⁰ Similar to the supervision fee, the statute states that if the Division of Correction of the DPSCS determines that an inmate cannot afford to pay the fee, they may be exempted wholly or partly from the fee.²³¹ As an example, the Baltimore County Corrections website outlines the following fees for participation in the Home Detention program: a one-time nonrefundable fee of \$34 (\$25 of which is for a urine test, and \$9 for an ankle bracelet), and a \$75 weekly fee (\$60 of which is paid towards the program, and \$15 is set up as a security deposit to be returned to the inmate at the end of the program).²³² The website states that in addition to the electronic monitor-

ing fees, the department ensures that the participating inmate pays court-ordered obligations and child support. As of the date of publication of this report, we did not find data about how much the average inmate accrues in fees for electronic monitoring and the extent to which exemptions are granted for eligible individuals.

Maryland charges room and board to individuals who are sentenced to a local correctional facility for nonconsecutive periods of 48 hours or less per week.²³³ These individuals "may be subject to payment of a reasonable fee in an amount not to exceed the average cost of providing food, lodging, and clothing for an inmate for the time the

Table 3: Criminal Justice Fees Charged to Defendants, Inmates and Returning Citizens in Maryland in 2014

Agency	Description	Rate or Amount of Fee(s)	FY 2014 Revenue	Description and Purpose	Fund to Which Revenues are Credited
Circuit Court	Circuit Court Charges, Costs and Fees ⁱ	\$0.25-\$300	\$32,123,256	These fees have historically been charged to offset the operation expenses of the court for certain activities.	General Fund
Circuit Court	Criminal Injury Compensation Fund (CICF), Victims of Crime Fund (VCF), Victim and Witness Protection Fund	\$3 for non-jailable vehicle offense, \$20 Criminal Injury Compensation, \$12.50 Victims of Crime, \$2.50 Victim and Witness Protection and Relocation Fund; \$45 for other crimes tried in Circuit Court	CICF/VCF Fund: \$1,728,277; Criminal Injuries Compensation: \$1,204,071; Victims of Crime Fund: \$667,442; Victims and Witness Protection and Relocation Fund: \$133,488	To pay for awards under the Criminal Injuries Compensation Act, the cost of administering the act and for the treatment and assistance of victims/witnesses of crime.	Special Fund
District Court of Maryland	District Court Fines and Costs	Traffic cases: \$22.50 + fines Criminal cases: \$22.50 + fines Civil cases: Vary from \$2 to \$40	\$82,409,522	The fines and costs collected by the District Court allow the court to recover some of the operating costs associated with bringing a case to trial.	General Fund
District Court of Maryland	Criminal Injury Compensation Fund (CICF), Victims of Crime Fund (VCF), Victim and Witness Protection Fund	\$3 for non-jailable vehicle offense, \$20 Criminal Injury Compensation, \$12.50 Victims of Crime, \$2.50 Victim and Witness Protection and Relocation Fund	\$9,450,574	To pay for awards under the Criminal Injuries Compensation Act, the cost of administering the act and for the treatment and assistance of victims/witnesses of crime.	Special Fund
Office of the Public Defender	Administrative Fee ⁱⁱ	\$50 for adults and \$25 for juveniles	\$2,088,839	Administrative fee charged to clients of the Office of the Public Defender under Article 27A.	General Fund
Department of Public Safety and Correctional Services	Fee for access to criminal history records	1) \$18 2) \$20 3) \$2	\$5,725,328	1) To cover the costs of each request to access for other than Criminal Justice purposes – an individual criminal history record maintained by the central repository. 2) Fingerprinting service fee 3) Processing portion of FBI fee	Special and Reimbursable Funds

Agency	Description	Rate or Amount of Fee(s)	FY 2014 Revenue	Description and Purpose	Fund to Which Revenues are Credited
Department of Public Safety and Correctional Services	Fee charged to inmates on Home Detention	\$40 per week for full-time workers	\$81,865	Reimbursement for costs of home monitoring equipment. Fee includes telephone service charges.	Special Funds
Department of Public Safety and Correctional Services	Fee for alcohol and drug testing of probationers	\$1/month for alcohol testing during probation; \$100 flat fee for drug testing on a consistent basis; \$6/test for random drug testing	\$761,560	To offset costs associated with the monitoring of probationers and/or parolees for alcohol and drug abuse.	General Fund
Department of Public Safety and Correctional Services	Fee for supervision of probationers and parolees ⁱⁱⁱ	\$50/month for probationer and parolees	\$7,493,084	To offset costs associated with the supervision of individuals sentenced to probation or parole by the courts.	General Fund
Department of Public Safety and Correctional Services	Administrative cost recovery fee	2% of restitution fees collected	\$81,865	To defray cost of collection of restitution fees.	Special Funds
Department of Public Safety and Correctional Services	Fee assessed to inmates for an initial sick call visit	\$2	\$49,935	To assess an inmate co-pay for applicable medical services to promote and encourage responsibility and accountability for inmates in the participation and management of their personal health in an effort to assist adjustment and re-entry to community life.	General Fund
Department of Public Safety and Correctional Services	Fee charged to inmates on Work Release	\$6.50 per daily round trip transportation; \$135.24 average per week for full-time employee for room and board	\$857,438	Reimbursement for a portion of the costs incurred for housing and feeding these inmates, and for providing transportation to/from the job.	Special Funds

Notes:

ⁱThe report notes that these fees are designed to recover some of the costs of processing a case, ensure access to the court, and provide a disincentive for frivolous lawsuits. It is also noted that Circuit Courts generate revenue from fines, forfeitures, and certain appearance fees, which are returned to subdivisions. These revenues are used to support the local governments' costs either of the direct function or other judicial-related functions such as local court libraries. For FY2014, the total of these local revenues was approximately \$105,462,566.

ⁱⁱThe regulations (14.06.03.07) note that an applicant seeking representation by the OPD office shall be required to enter into an agreement to pay an administrative fee at the time of application. However, it also states that entering into a fee agreement or paying the administrative fee, or both, is not a condition which shall be met before the provision of representation.

ⁱⁱⁱThe report notes that certain individuals are eligible for exemptions, including individuals who are indigent, disabled or attending school.

inmate is confined in the local correctional facility.”²³⁴ Additionally, state prisoners on extended work-release can be required to pay for a portion of room and board, amounting to an average of \$135 per week plus daily transportation costs.²³⁵ Inmates may also be charged medical fees, not to exceed \$4 per visit to a medical unit, physician, dentist or optometrist.²³⁶

Maryland also permits Circuit and District Courts, Offices of the Public Defender, and the Department of Public Safety and Correctional Services to charge individuals various fees as they move through the criminal justice system. The table that begins on page 50 lists the various criminal justice fees Maryland law currently permits, and includes the fee amounts that were charged in 2014.²³⁷

NOTE:

While we know that the law allows various government agencies to charge individuals these fees, we do not know the actual frequency with which defendants are charged fees, how much these fees amount to in aggregate and the specific consequences individuals face in Maryland when they are unable to pay fees or repay criminal justice debt. Data collection is needed to fully understand the impact of charging these criminal justice fees in Maryland.

Policy Recommendations

Study the impact of current fees and collateral consequences.

With regards to fee assessment, the state should study the average amount of fees incurred by individuals going through the criminal justice system and the impact that imposing these fees has on their lives, as well as how often exemptions are granted to eligible individuals.

With regards to collection, the state should evaluate the costs of debt collection methods such as arrests, incarceration and other methods, including the salary and time spent by employees involved in collection and the effect of these methods on reentry and recidivism.²³⁸ This will allow the state to obtain a true picture of the costs of imposing criminal justice fees, including both social and financial costs, and how these costs compare to any revenue generated.

In many states, criminal justice debt can be a barrier to employment, higher education and public assistance. Thus, the collateral consequences of criminal justice debt in Maryland should be studied in greater detail to understand the impact on Maryland residents. More information on the collateral consequences is available in Appendix A.

Eliminate criminal justice fees as well as existing interest and late fees.

Regardless of their impact, an argument can be made for eliminating criminal justice fees altogether, as they impose a financial burden on those who can least afford them, and disproportionately on the poor and people of color. Moreover, they present an often insurmountable barrier to reentry and serve to push individuals underground.

Fees for public defender services should be eliminated, as these fees increase the likelihood that indigent defendants will forego legal representation and lead to more negative outcomes for the poor. Moreover, as the Constitution guarantees legal representation for indigent defendants, charging defendants for legal representation is unconstitutional.²³⁹

The Central Collections Unit surcharge of 17% should be eliminated. Additionally, any interest and late fees cur-

In many states, criminal justice debt can be a barrier to employment, higher education and public assistance. An argument can be made for eliminating criminal justice fees altogether, as they disproportionately impose a financial burden on the poor and people of color.

rently added to outstanding criminal justice debt should be eliminated, as these only serve to reduce the likelihood of repayment.²⁴⁰

Determine ability to pay prior to imposing fees.

A clear, objective standard for determining ability to pay should be set and should be used by judges at the initial hearing upon arrest to determine an individual's ability to pay. A policy should be established such that indigent defendants are exempt from all user fees after this initial determination, rather than the use of fee-specific exemptions. Judges may choose to consider alternatives to fines and fees, including community service and participation in approved job skills training, education, mental health,

drug treatment and other counseling programs.²⁴¹

Payment plans and other debt collection efforts should be tailored to an individual's ability to pay.²⁴²

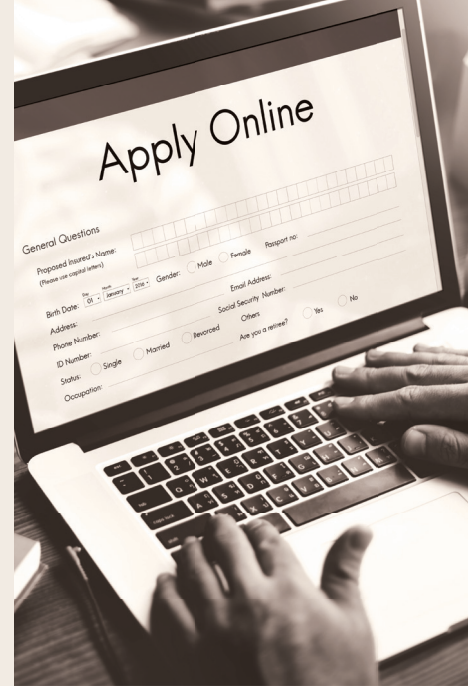
Fees can be implemented on a sliding scale tailored to an individual's financial circumstances. Even if offenders are able to pay only a few dollars a month on a payment schedule, prioritizing consistency over amount will likely generate more payment than the current system. In order to accomplish this, courts need access to offenders' financial records and must receive regular notifications about any changes in employment status so that financial obligations and payment schedules can be adjusted accordingly.²⁴³ Penalties for nonpayment should be imposed only if the court finds, based on evidence in the record, that a person willfully failed to pay.²⁴⁴

Our criminal justice system is based,
in theory, on the idea that once an
individual serves their sentence, they
have completed their punishment,
paid their dues to society, and, upon
completion, can resume life as a
participating member of society.

In practice, our criminal justice
system does not permit an individual
to leave their criminal past behind.

Part three:

COLLATERAL CONSEQUENCES OF A CRIMINAL RECORD



Collateral Consequences of a Criminal Record

The collateral consequences of a criminal record are penalties, restrictions and sanctions that are not placed by any court, but are imposed outside of the criminal justice system once an individual returns to society. They are imposed as a result of laws, policies and practices pertaining to the possession of a criminal record and are often shaped by social stigma and public safety concerns. They function to restrict the participation of individuals with criminal records in society.

In most cases, individuals are unaware of these collateral consequences at the time of arrest and learn of them when they face barriers upon seeking employment, housing, education, public assistance and various other needs. As such, they present significant and sometimes insurmountable barriers to reentry.

Nationally, nearly one in three Americans has a criminal record.²⁴⁵ It is estimated that more than 1.5 million Marylanders, roughly 25%, have a criminal record.²⁴⁶ Additionally, corrections data show that between 11,000 and 14,000 individuals are released from Maryland state prisons annually and face the challenge of reentering society.²⁴⁷ Thus, collateral consequences affect a significant proportion of our population and have not only individual level impacts, but also family, community and societal impacts. According to the National Inventory of the Collateral Consequences of Conviction compiled by the

American Bar Association's Criminal Justice Section there are 1,103 collateral consequences formalized by law in the state of Maryland.²⁴⁸

A criminal record is acquired upon arrest, whether or not a person is ever convicted of a crime. Anything that occurs after arrest is documented on an individual's criminal record and, in Maryland, will remain publicly visible until the charges and dispositions are expunged. Mere acquisition of a criminal record, *even if an individual is released immediately after arrest, charges are dropped and the individual is never found guilty of a crime*, triggers numerous collateral consequences.

To a significant extent, the magnitude of the collateral consequences an individual will face depends upon his or her level of interaction with the criminal justice system. The lowest tier of collateral consequences is endured by individuals who were arrested but were not found guilty of any crime and have never been incarcerated. Arguably, these individuals should not face any consequences since they were not found guilty of committing a crime. However, primarily due to social stigma and the public availability of criminal records in Maryland, these individuals may still face barriers to reentry. This is due, in part, to the fact that publicly available criminal record information is not easy to understand, making it difficult for laypeople to determine whether an individual was actually found guilty

of a crime. For example, employers may view one's arrest and charges and may choose not to consider a candidate further, even if the charges were dropped and the individual was not found guilty of any crime.

Those who are found guilty, whether by accepting a plea or through trial, face significantly greater collateral consequences. For these individuals, the collateral consequences are primarily due to legal restrictions, as opposed to social stigma. It is important to note two issues: 1) plea bargains are problematic because many people who maintain their innocence ultimately accept a plea agreement because they cannot afford cash bail, or they may agree to worse terms because they lack legal representation; and 2) many individuals who are found guilty of a crime may not go on to be incarcerated and may be released upon conviction with conditions such as supervision, rehabilitation and treatment, or community service. However, individuals with felony convictions face the most significant collateral consequences and are more likely to receive a custodial sentence. Individuals with a conviction record may be barred from working in specific professions, obtaining public assistance or living in public housing.

In general, individuals who are sentenced to incarceration and spend significant lengths of time behind the fence face the greatest burden of collateral consequences, as they are more likely to have felony convictions for more serious crimes. In addition to the collateral consequences of a criminal conviction described above, individuals returning to society after months and years of incarceration face the added barrier of psychological, social and emotional readjustment to life in public society. Many must rebuild their lives from scratch, finding housing, food and employment with little to no money and social support.

Collateral consequences function to extend punishment to anyone with an arrest record and beyond the length of a criminal sentence. They function as barriers to the full reentry and participation of individuals with criminal records in public society. As stated by the Brennan Center, "having a criminal history has in effect become a long-

term 'legal disability' that impedes reentry and prevents millions of Americans from moving on with their lives."²⁴⁹ Moreover, people of color are more impacted by the collateral consequences of a criminal record since race-based disparities permeate our criminal justice system.

NOTE:

What are shielding and expungement, and how do they differ?

Shielding is a process that allows an individual to ask the court to remove certain kinds of records about certain criminal convictions from public view. In Maryland, shielding can be requested only once in an individual's lifetime. Shielded records are not visible to the public, employers, educational institutions and state and local governments. However, certain entities, including criminal justice units, may view shielded records in certain circumstances.

Expungement is similar to shielding in that it is also a process that allows individuals to ask the court to remove certain kinds of court and police records from public view. However, expungement typically implies that the record itself is destroyed, as opposed to shielding, where the record is only hidden from view. As per regulations, expungement in Maryland is defined as the removal of police and court records from inspection by obliteration; by removal to a separate secure area to which the public and other persons having no legitimate reason for being there are denied access; or if effective access to a record can be obtained only by reference to other records, by the expungement of the other records or the part of them providing the access (Md. Rule 4-502). Expungement generally applies to records that did not result in a conviction, but there are several exceptions to this rule. In some cases, shielding allows greater protection, as several types of convictions can be shielded even though they cannot be expunged.



SNAPSHOT

Past Efforts to Address Collateral Consequences in Maryland

Many efforts have been taken over the years in Maryland to address the collateral consequences of a criminal record as a whole. The Department of Legislative Services issued a report on the collateral consequences of criminal convictions in 2009. Additionally, various bills have been introduced. In 2015, a bill was introduced that sought to give defendants information regarding the collateral consequences of convictions, as most people are unaware of the restrictions they will face after sentence completion. Since 2009, at least 17 states and the District of Columbia have taken steps to inform people of their rights, clarify remedies concerning criminal record information or delineate how individuals or corporations can responsibly use criminal history information to ensure procedural fairness. The 2015 bill sought to do the following:

1. Require the Attorney General to collect and publish a list of collateral consequences a person may face in Maryland as a result of a criminal conviction.
2. Require a person be given notice of the potential collateral consequences at formal charging, before a guilty plea or nolo contendere, upon conviction, and upon release from incarceration.
3. Authorize a person to seek relief from the court of Maryland Parole Commission through an Order of Limited Relief or a Certificate of Restoration of Rights.
4. Require state entities that impose the collateral consequences to consider a person's individual circumstances, including criminal history, nature of the offense, and relief provided by the court, before making a determination about denying a benefit.

Though this comprehensive bill did not pass, significant progress has been made in mitigating the impact of a criminal record through legislation, specifically by expanding the number and types of records, case dispositions and crimes eligible for shielding and expungement. The Second Chance Act, which JOTF helped to pass in 2015, authorizes a person to petition the court to shield court records and police records relating to shieldable convictions no earlier than three years after the person satisfies the sentence or sentences imposed for all convictions for which shielding is requested. Most recently, the Justice Reinvestment Act (JRA) was passed in 2016.

Past Efforts to Address Collateral Consequences in Maryland (continued)

The JRA is the most comprehensive criminal justice reform passed in recent years. Among a wide variety of provisions, the JRA expands the offenses for which an individual can apply for expungement of a police record, court record or other record maintained by the state or a political subdivision of the state. The JRA also provides that an individual who has been convicted of a wide range of misdemeanor offenses can petition for expungement 10 years after successfully completing the terms of his or her supervision if that individual does not commit a new crime.

Sources: Maryland Department of Legislative Services. (2009, January 30). *Collateral consequences of a criminal conviction*. Retrieved from http://dlslibrary.state.md.us/publications/OPA/I/CCOACC_2009.pdf. Subramanian, R., Moreno, R., Gebreselassie, S. (2014, December). *Relief in sight? States rethink the collateral consequences of criminal conviction, 2009-2014*. Vera Institute of Justice. Retrieved from <https://www.vera.org/publications/relief-in-sight-states-rethink-the-collateral-consequences-of-criminal-conviction-2009-2014>.

Shielding and expungement are very important tools that individuals can use to mitigate the impact of collateral consequences, as they serve to hide or erase non-convictions and minor crimes from an individual's record.²⁵⁰ However, the most effective method to address collateral consequences is to reduce or eliminate them altogether. Going forward, Maryland should ensure that any collateral consequences must be justified by a specific need, should rarely if ever be triggered by arrests or charges alone, generally should not be mandatory, and that it should be a priority to ensure that these consequences do not impede an individual's rehabilitation and reentry into society.²⁵¹

Major collateral consequences in Maryland and the barriers they present to reentry and rehabilitation are analyzed in detail below, including barriers to employment, higher education and public assistance. While housing is another area in which individuals with criminal records face significant barriers, its discussion is beyond the scope of this report. Several resources that describe barriers to housing for individuals with criminal records are listed in Appendix A.

Employment

Numerous studies have found that employment is one of the strongest factors in supporting the successful reentry of individuals with criminal records and in preventing recidivism.²⁵² However, Individuals with criminal records – even just arrest records without any charges or finding of guilt – face major obstacles in finding employment.

Individuals with criminal records are overwhelmingly poor and have low levels of education. Limited access to correctional education and job training in prison and time out of the job market with its changing technologies erode offenders' job skills and employability. Thus, even if individuals are able to find jobs, they are likely low-wage, with few, if any, benefits, and little opportunity for advancement or wage growth.²⁵³ According to one study that examined prison and jail incarceration together, individuals who do manage to find work after release earn less on average than their counterparts who have never been incarcerated. Among formerly incarcerated men in that study—two-thirds of whom were employed before being

incarcerated—hourly wages decreased by 11%, annual employment by nine weeks and annual earnings by 40% as a result of time spent in jail or prison.²⁵⁴ Moreover, incarceration erodes inmates' existing social networks that could have helped them attain better quality jobs.²⁵⁵

Aided by technology and the exponential increase in the availability of criminal history data, most U.S. employers now use criminal background checks in hiring.²⁵⁶ Due to the stigma associated with having a criminal history, the vast majority of employers hesitate to consider individuals with a criminal history, regardless of how minor it may be.

Additionally, an increasing number of occupations prohibit individuals with criminal histories from working in them or require a professional license, which are usually issued by state occupational licensing boards. However, these boards often deny licenses to individuals with criminal records, particularly in occupations that require interaction with the public, out of a fear that a criminal history automatically signals that the individual is a risk to public safety. Individuals with criminal convictions face the greatest occupational barriers. According to the American Bar Association's National Inventory of the Collateral Consequences of Conviction, there are 549 employment-related collateral consequences for individuals with convictions in Maryland.²⁵⁷

Hiring

The United States Equal Employment Opportunity Commission has long maintained that employers should not routinely discriminate in hiring against individuals with criminal records.²⁵⁸ Despite this, employers often use the presence of a criminal record – which may include only an arrest history – as a basis for denying employment.

In many states, including Maryland, a public online database exists where employers can easily determine if an individual has ever been arrested, convicted or incarcerated. However, as these databases are often difficult to understand, it is difficult for a layperson to distinguish between an arrest record where an individual may not have

been charged, charges were dropped or the individual was found not guilty, as compared to a conviction record where an individual was found guilty and served a sentence.

Many studies have documented employer discrimination against individuals with criminal convictions. In particular, a study by Devah Pager in 2001 found that men who reported criminal convictions on a job application were about 50% less likely to receive a callback or offer.²⁵⁹ Pager found that in considering individuals for employment, “employers seemed to use the reported convictions as a proxy for reliability and trustworthiness, and a broader range of concerns beyond simply whether they would be aggressive. Faced with a large number of applicants, this was one easy way of weeding out applicants.”²⁶⁰ Moreover, this study also uncovered the impact of race as related to the possession of a criminal record. The study found that not only did whites without criminal records receive more callbacks than blacks without criminal records, but that even whites with criminal records received more favorable treatment than blacks *without* criminal records.²⁶¹

Other studies have shown that these racial disparities continue even if individuals are able to secure employment, highlighting the particular disadvantage minorities face in economic success as race and criminal history intersect. Black and Latino offenders usually earn lower wages than white offenders.²⁶² Additionally, an examination of the quarterly earnings of returning citizens who were recently released from prison in Washington state found that the wages of black offenders increased at a considerably slower rate than the wages of white offenders.²⁶³ Even after controlling for additional factors, such as education, age and work history, black offenders still earned 10% less than white offenders.

Moreover, states often use employment laws to restrict individuals with criminal records from working in certain occupations. State employment laws often impose restrictions based on whether an offense is categorized as a felony or misdemeanor, as well as the sentence that was imposed, the nature of the crime itself or some combina-

tion of these factors. In Maryland, individuals with felony convictions face the greatest employment restrictions. A 2009 report by the Department of Legislative Services noted the prohibition of employment or denial or revocation of an occupational license in 55 distinct occupations based on the possession of a criminal record, felony, or misdemeanor conviction, or conviction of committing specific offenses.²⁶⁴

Programs exist at the federal level to encourage employers to hire individuals with criminal records. The Federal Work Opportunity Tax Credit (WOTC) and the Federal Bonding Program are two programs that offer incentives and protections to employers. The WOTC is a federal tax credit available to employers for hiring individuals from certain target groups, including ex-felons, who have consistently faced significant barriers to employment. The Federal Bonding Program, established in 1966, provides Fidelity Bonds that guarantee honesty for “at-risk,” hard-to-place job seekers. The program is designed to reimburse the employer for any loss due to employee theft of money or property. The bonds cover the first 6 months of employment at no cost to the applicant or employer. In most states, bonds are made available through the state agency responsible for workforce matters. However, it is unclear to what extent these programs are utilized by employers.²⁶⁵

Occupational Licensing

More than one-quarter of workers in the United States require a professional license; however, for individuals with criminal convictions, occupational licensing and certification can present a significant barrier to employment.

According to the American Bar Association’s National Inventory of the Collateral Consequences of Conviction, there are 348 collateral consequences related to occupational licensing and professional certifications in Maryland, 98 of which are mandatory or automatic.²⁶⁶

Maryland’s statute states that state licensing boards may not deny occupational licenses or certificates to

applicants solely on the basis of a prior conviction, unless: 1) there is a direct relationship between the applicant’s previous conviction and the specific occupational license or certificate sought; or 2) the issuance of the license or certificate would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.²⁶⁷ However, this only applies to nonviolent offenses, as 24 “crimes of violence” are exempted from these standards. The statute also permits the denial, suspension and revocation of licenses and imposition of probation for individuals who commit offenses related to the possession of controlled dangerous substances.²⁶⁸

In a 2016 review of state occupational licensing laws by the National Employment Law Project (NELP), Maryland received an overall grade of “minimal,” meaning that current laws offer minimal protections against the denial of occupational licenses and certificates for individuals with criminal records.²⁶⁹ In particular, NELP noted that Maryland’s current laws do not prohibit “blanket bans” completely – that is, prohibiting individuals from obtaining occupational licenses solely due to the fact that they have a criminal record – as they do not require consideration of a criminal conviction’s relatedness to the occupation in all instances, do not prohibit the consideration of certain record information (such as arrests, lesser offenses, dismissed convictions, older offenses, etc.), and lack a strong consideration of applicants’ rehabilitation.²⁷⁰

The 2016 report of the Collateral Consequences Workgroup states that a review of the Code of Maryland Regulations (COMAR) indicates that Maryland occupational licensing boards consider each application on a case-by-case basis, taking into consideration six factors: 1) the age at which the crime was committed; 2) the nature of the crime; 3) the circumstances surrounding the crime; 4) the length of time that has passed since the crime; 5) subsequent work history; and 6) employment and character references, as required by statute.²⁷¹ It states that those who receive an adverse decision regarding their occupational licenses, especially as a result of a criminal history

records search, may request a hearing before the Board to appeal the decision.²⁷² While these provisions do exist in the regulations, the collection and review of comprehensive data on the number of applications received by the various state licensing boards, number of denials, reasons for denial and any denials related to criminal record possession is necessary to confirm that individuals are not being unduly denied in practice.²⁷³

Past Efforts to Address the Collateral Consequences on Employment in Maryland

As outlined earlier, several bills have passed in recent years that have expanded the use of expungement and shielding; however, much work in this area remains.

Maryland “banned the box” in 2013, requiring the state to remove criminal history inquiries from state employment applications. Such policies seek to minimize the effects of a criminal record by requiring employers to postpone asking about criminal history until they have chosen an applicant as one of the most qualified job candidates. Several local jurisdictions within Maryland, including Baltimore City, Montgomery County and Prince George’s County, have passed even stronger “ban the box” laws that apply to both their local governments and employers operating businesses within the county.²⁷⁴

In 2016, a workgroup was convened to study the collateral consequences of incarceration on former inmates, which focused specifically on barriers to employment. The workgroup issued a number of recommendations on improving the practices of state licensing boards, including improved data collection, making information available to applicants and enhancing transparency of review processes.²⁷⁵

Through the passage of the JRA in 2016, Maryland will also begin issuing Certificates of Rehabilitation to persons convicted of certain nonviolent crimes who have been under the supervision of the Division of Parole and Probation and have completed all special and general conditions

of supervision. This certificate will aid individuals in removing legal restrictions accompanying their criminal convictions, including employment licensing restrictions. This mandate took effect on October 1, 2017.²⁷⁶

Policy Recommendations

Expand and strengthen the statewide Ban the Box law.

The state ban the box policy should be expanded to include private employers to ensure that the benefit of this policy is maximized for individuals with criminal records. Moreover, compliance monitoring and enforcement should be strengthened, as the policy will be disregarded by employers unless they are held accountable for noncompliance.

The 2016 Collateral Consequences Workgroup report recommended that Maryland consider passing a comprehensive anti-discrimination law as a way to address the barriers that individuals with criminal records face in both hiring and occupational licensing. Strong monitoring and enforcement are the keys to ensuring that an anti-discrimination law has the intended effect. Examples of other states with these kinds of laws are listed in Appendix A.

Continue to expand expungement.

Efforts to expand expungement should continue, as the erasure and removal of criminal records is the most effective way to ensure that individuals can truly reenter society and do not face the multitude of barriers associated with having a criminal record. Bills introduced in the 2017 legislative session include the automatic expungement of non-convictions (HB 1237)²⁷⁷ and repeal of the unit rule (HB 840),²⁷⁸ which prevents the expungement of eligible charges if they are included within a unit of other charges that are ineligible for expungement. Unfortunately, neither bill passed. Expungement fees should

also be eliminated, particularly for the expungement of non-convictions.

Strengthen occupational licensing laws.

There is also a need to take on comprehensive efforts to address barriers to occupational licensing for individuals with criminal records. The recommendations of the 2016 Collateral Consequences Workgroup and NELP should be considered. Specifically, there is a need for comprehensive data collection and analysis of occupational licensing applications and board decisions to understand the relationship between criminal history and an applicant's ability to achieve licensure or certification. Maryland law should prohibit blanket bans to licensure for individuals with criminal records, as well as the consideration of certain types of record information, including arrests, lesser offenses, dismissed convictions and older offenses. Language should be adopted that requires the consideration of an applicant's rehabilitation, including a list of specific rehabilitation factors to consider and should prohibit denial of a license if an applicant is rehabilitated as per the stated criteria.

Higher Education

Research has established that education, particularly post-secondary education including skills training, is a key factor in increasing upward mobility and earning capacity for all individuals. For individuals with criminal convictions, post-secondary education has been found to be essential in enabling rehabilitation and successful reentry after incarceration.²⁷⁹ The majority of prisoners have low-education and income levels before incarceration and need access to education and training programs to improve their chances of successful reentry.²⁸⁰ However, there are very limited opportunities for education during incarceration; thus, individuals seek educational opportunities after release. Individuals seeking to improve their employment prospects through education after incarceration can find themselves unable to either secure admission

to post-secondary institutions or take out student loans due their criminal history.

Admission

Currently, post-secondary institutions in Maryland are able to inquire about criminal history on the admissions application and use this information to deny admission to individuals with criminal records. These inquiries often include past disciplinary history as well and function to prevent individuals, disproportionately the poor and minorities, from accessing higher education.

Additionally, the admissions policies of institutions of higher education are neither uniform nor transparent, preventing individuals from being able to plan and prepare adequately to increase their chances of admission. Institutions do not publicly describe how criminal and disciplinary history information is considered in the admissions decisions process. This results in uncertainty, burdensome requirements and requests for additional information, a lengthy and unpredictable review process, which cause applicants to relive the stigma and scrutiny associated with their criminal history. This has the effect of discouraging applicants from even applying. Moreover, even for students who are applying to more than one campus within the same institution, admissions requirements may vary greatly.²⁸¹

As a result, the presence of criminal and disciplinary history inquiries on admissions applications serves as a major barrier to higher education for individuals with a criminal record. A study by the Center for Community Alternatives at the State University of New York (SUNY) campuses found that two-thirds of applicants who check "yes" on the box that inquires about criminal history on the application are driven away from completing the application due to the list of requirements for supplementary information, documentation and additional procedures.²⁸² The minority of individuals who are not deterred by criminal history questions and answer truthfully that they have a criminal record take the significant risk of being denied admission.

Research shows that education is one of the major predictors of recidivism and can give individuals a pathway out of poverty and an exit from the cycle of criminalization and poverty.²⁸³ However, when policies exist that ban individuals from entry, they have no opportunities for advancement, and poverty and criminalization are reinforced. Because poor people and people of color are disproportionately affected by the criminal justice system, limiting admissions to higher education for individuals with a criminal history discriminates against these vulnerable groups, and perpetuates income and racial disparities.

A significant number of post-secondary institutions in Maryland inquire about criminal and disciplinary history on their institutional admissions applications. A review of admissions applications in 2017 of 41 post-secondary institutions in Maryland revealed that 30, nearly 75%, ask applicants about prior criminal and disciplinary history.²⁸⁴ A number of institutions also use the Common Appli-

cation and other shared application portals, which also inquire about criminal and disciplinary history. A list of these institutions is available in Appendix C.

Financial Aid

The majority of individuals with criminal records are eligible for both federal and state financial aid for post-secondary education. There are two criminal conviction restrictions on federal financial aid, but no statutory restrictions for state aid in Maryland. The restrictions on federal financial aid are for individuals who are convicted of drug crimes *while receiving federal financial aid* and individuals who are subject to an involuntary civil commitment for a sexual offense. However, due to Maryland's use of federal guidelines for determining state aid, it is likely that individuals who are ineligible for federal aid are also denied state aid. Additionally, inmates face significant restrictions on federal financial aid while incarcerated,

Table 4: Restrictions on Federal Financial Aid

If convicted of an offense involving	
The possession of a controlled substance:	Ineligibility period is:
First offense	1 year
Second offense	2 years
Third offense	Indefinite
The sale of a controlled substance:	Ineligibility period is:
First offense	2 years
Second offense	Indefinite

Source: 20 U.S.C. section 1091 (r) (173) *Suspension of eligibility for drug-related offenses.*

and no dedicated state financial aid programs for inmates exist. This makes it difficult for inmates to afford even the few post-secondary educational opportunities behind the fence.

Restrictions on financial aid for individuals with criminal convictions. Only federal law places restrictions on financial aid eligibility for individuals with criminal convictions. The federal Higher Education Act of 1965 (HEA), which was reauthorized in 2008 as the Higher Education Opportunity Act, limits financial aid eligibility only for individuals who were convicted of drug offenses *while receiving federal financial aid*. Under the HEA, these individuals are ineligible from receiving federal financial aid for certain periods of time, depending on the type and recurrence of the offense. These terms are outlined in the table on page 64.

Individuals may regain eligibility early by: successfully completing an approved drug rehabilitation program; passing two unannounced drug tests administered by an approved drug rehabilitation program; or if the conviction is reversed, set aside or otherwise rendered nugatory. If students regain eligibility during the award year, they must notify their financial aid office immediately to receive any aid they are eligible for.²⁸⁵

There are several problems with the federal HEA provisions. First, they are limited only to felony drug convictions. This results in disproportionate impact on poor people and people of color, who receive drug convictions at higher rates than other groups. Moreover, the restrictions on financial aid do not apply to any other crimes, meaning that individuals who may commit crimes of greater severity that may pose more immediate risks to public safety face no restrictions on federal financial aid.

Second, there is a lack of clear and consistent information on the exact population that is affected by the HEA provision, which may lead individuals to think that they are ineligible for federal financial aid, when in fact, they face no restrictions. The federal financial aid website states

that eligibility for federal financial aid may be limited for individuals with drug convictions or an involuntary civil commitment for a sexual offense,²⁸⁶ but fails to specify that the HEA limits aid for students who are convicted of a drug offense only while receiving federal financial aid. The question is asked on the FAFSA, and this question alone may deter individuals with drug convictions from applying or lead them to think that they are ineligible for federal financial aid.

Additionally, it is likely that many individuals are inadvertently disqualified for state aid in Maryland because the FAFSA is the only way to apply for state aid. At the state level, Maryland does not have any laws that limit the ability of individuals with criminal records to receive state financial aid, nor does the federal HEA require states to follow the federal drug provision when making their own financial aid determinations. The only requirement in the statute pertaining to state aid is that students who are awarded state grants must sign a pledge to remain drug free, but there is no enforcement mechanism.²⁸⁷

Maryland follows a decentralized model in awarding state financial aid, meaning that MHEC passes state financial aid decisions on to individual institutions.²⁸⁸ Many institutions in Maryland simply follow the federal guidelines when determining eligibility for state financial aid. As a result, it is likely that many individuals with drug convictions - who data show are disproportionately poor and people of color - in Maryland are being denied state aid.²⁸⁹

Restrictions on financial aid for inmates. Only federal law places restrictions on federal financial aid for inmates. Inmates in federal or state institutions are ineligible for Federal Pell Grants and Federal Student Loans.²⁹⁰ They may apply for the Federal Supplemental Education Opportunity Grant (FSEOG) and Federal Work Study (FWS), but they are unlikely to receive them given that FSEOG funds are limited, priority is given to students with a Pell Grant and the logistical difficulties of performing an FWS job while incarcerated.²⁹¹ Inmates who are not in federal

Research shows that education is one of the major predictors of recidivism and can give individuals a pathway out of poverty and an exit from the cycle of criminalization and poverty.

or state institutions (local correctional facilities or jails) are ineligible for federal student loans but may qualify for Federal Pell Grants, FSEOG and FWS, but again, they are unlikely to receive the latter two while behind the fence.

In 2016, the U.S. Department of Education launched the Second Chance Pell Pilot Program individuals to test new models to allow incarcerated individuals to pursue post-secondary education. The goal of the program was to grant greater access to postsecondary education in order to help inmates get jobs, support their families, and turn their lives around after release. The program gave as many as 12,000 prison inmates nationwide the ability to use federal Pell grants to finance college classes. Several Maryland post-secondary institutions were selected, including Anne Arundel Community College, Goucher College, University of Baltimore and Wor-Wic Community College.²⁹²

Currently, there are no dedicated state financial aid programs for inmates in Maryland. Maryland offers state financial assistance in the form of scholarship and grant programs, but the only way to apply is by completing the FAFSA. This may lead to individuals with drug convictions being deemed ineligible, as explained above. Moreover, most state financial aid programs have specific eligibility criteria that may make inmates ineligible.²⁹³

Policy Recommendations

Monitor effective implementation of the Maryland Fair Access to Education Act of 2017.

Many institutions throughout the country have never asked about criminal history on their admissions applications, and an increasing number of institutions have removed the box or reduced the level of inquiry about criminal and disciplinary history.²⁹⁴ Appendix D contains a list of these institutions and the various approaches they have taken. Several states, including New York and Illinois, are currently considering legislation that seeks to prohibit the inquiry and consideration of criminal and disciplinary history during the admissions decision-making process. These bills permit the use of criminal history *after* an individual has been granted admission for the purposes of determining eligibility for campus housing and other campus-related activities, but prohibits institutions from rescinding admissions offers based on this post-admission inquiry.

Colleges cite concerns about public safety or liability as the main reason for preserving the ability to inquire about

criminal and disciplinary history on admissions applications. However, there are several research findings that indicate that criminal history inquiries on admissions applications do not actually make campuses safer. Moreover, in order to incur liability under current legal standards, a college must breach its duty to adopt measures that protect its students from “reasonably foreseeable” acts of another student. With the standard for liability set so high, it is highly unlikely that any institutions could be held liable for failure to screen out a student with a prior criminal history, even if the history involved a violent crime.²⁹⁵

Data on campus crime show that colleges remain remarkably safe places, particularly when compared to the larger community. Additionally, review of the limited data available on campus crime indicates that crime is more likely to be committed by students without criminal records than students with prior records. Studies that have compared the crime rates of campuses that collect criminal history information with campuses that do not collect this information have found no significant difference in crime rates.²⁹⁶ Moreover, on a societal level, as education is a key factor known to reduce recidivism, the admission of individuals with criminal records to post-secondary education institutions would result in enhanced safety for the general public.²⁹⁷

The Maryland Fair Access to Education Act (SB 543/HB 694) was introduced in the Maryland legislature during the 2017 Maryland General Assembly to eliminate criminal history inquiries from the admissions applications of all institutions of higher education. The bill was significantly amended over the course of the legislative session and was ultimately passed. The bill, as passed, would bar higher education institutions from inquiring into the criminal history of prospective students on initial school applications. Institutions are still allowed to use third-party applications such as the Common Application. However, schools using multi-institution applications must include a disclaimer indicating that although criminal history inquiries are made, the possession of a criminal history does not automatically disqualify the student

from the admissions process. The bill would also require institutions to develop a fair and consistent process in the evaluation of criminal history information that considers:

- Age of the student at the time of the student’s criminal history;
- Time that has elapsed since any aspect of the student’s criminal history;
- Nature of the criminal history; and
- Any evidence of rehabilitation or good conduct produced by the student.

The Maryland Fair Access to Education Act of 2017 received final approval from the Maryland General Assembly, making Maryland the first state in the nation to pass this type of law. Unfortunately, it was subsequently vetoed by Governor Hogan, and, a month later, the Republican Governor of Louisiana signed into law a similar “ban the box” bill. Thankfully, the Maryland General Assembly voted to override Governor Hogan’s veto during the first week of the 2018 legislative session in Annapolis. The next step is to ensure effective implementation of the law through an aggressive educational campaign for prospective students and college and university officials on effective implementation.

Expand correctional education, job training programs and access to college behind the fence.

The need for correctional education in Maryland is well documented. The average reading level of the 21,300 inmates currently in the Maryland prison system is between 5th and 8th grades. Less than half of these inmates have high school diplomas when they enter the correctional system.²⁹⁸

Studies of recidivism rates of people who attend college while in prison and people with criminal records who attend college following release show that a college education dramatically reduces recidivism. For correctional

education, programs have been shown to reduce recidivism by as much as 40%, with greater gains commensurate with the level of post-secondary degree obtained.²⁹⁹

A research brief prepared by the Open Society Institute reported that participation in higher education lowered recidivism to 15%, 13% and under 1% for people who earned an associate, bachelor's and master's degree, respectively.³⁰⁰ State-level studies in Texas, California, Alabama and Maryland have shown significant reductions in recidivism associated with higher education in correctional settings.³⁰¹ Similarly, sector-specific vocational training programs that train inmates for jobs in high-demand industries can be effective in helping individuals more smoothly transition to employment after release, facilitating reentry and reducing recidivism.

Maryland currently offers inmates who have a high school degree or equivalent with the option of participating in 23 pre-apprenticeship vocational training programs, as well as a limited selection of post-secondary courses where students can earn college credit at a community college or four-year liberal arts college. As the newly implemented Workforce Innovation and Opportunity Act (WIOA) allows for increasing funding for correctional education under Title II, funding for correctional education and job training should be increased, and Maryland's correctional education programming should be expanded.

Remove barriers to state financial aid for individuals with criminal records.

Through legislation, the state should mandate that MHEC and higher education institutions should award state aid to financially eligible applicants irrespective of their answers to the drug conviction question on the FAFSA, since there is no statutory bar on financial aid for individuals with drug convictions in Maryland.³⁰²

Given that inmates in state, federal and local correctional institutions are largely ineligible for federal financial aid,

the state should identify ways to provide inmates with financial support, so that they can pursue educational opportunities provided by postsecondary institutions while behind the fence. Currently, state efforts focus on providing only basic education geared primarily toward earning a high school diploma. To truly succeed upon release, inmates need access and the financial supports to pursue postsecondary education.

Public Assistance

Individuals with felony drug convictions face bans and restrictions on public assistance, namely Temporary Assistance for Needy Families (TANF, known as TCA in Maryland) and Supplemental Nutrition Assistance Program (SNAP, formerly called Food Stamps). This creates a significant barrier to reentry, as individuals often have few financial resources upon release and face sizeable barriers to employment. Moreover, as benefits for TANF and SNAP are calculated based on household size and income, the ineligibility of individuals with criminal records can result in reduced benefits for the household, unduly penalizing the individual's entire family.

It was estimated that in 2008, between 13 and 18 million individuals in the United States were unable to receive public benefits because of their criminal history,³⁰³ and the number of individuals with criminal records has grown since then. TANF and SNAP, the two major public assistance programs that are administered at the state or local level, feature drug- and crime-related restrictions and leave discretion in applying these restrictions to state and local administrators. Both TANF and SNAP are subject to the statutory "drug felon ban," which bars states from providing assistance to persons convicted of a drug-related felony, but also gives states the ability to opt-out of or modify the ban, which most states have done.

TANF provides cash assistance and other supports to low-income parents or caregivers and their children, with a specific focus on promoting work. Though TANF is best known for funding basic (cash) assistance, this represent-

ed only 25% of TANF funds in 2015. TANF funds a variety of services and supports, including child care, education and job training, transportation, aid to children at risk of abuse and neglect, and a variety of other services to help low-income families.³⁰⁴

States determine the rules that govern financial eligibility for TANF cash assistance and how much a family receives in assistance.³⁰⁵ Known as Temporary Cash Assistance (TCA) in Maryland, the monthly TCA benefit for a family of three as of July 2016 was \$636,³⁰⁶ and there were nearly 53,000 TCA recipients in Maryland as of August 2016.³⁰⁷

SNAP provides food assistance to a broad set of poor households, including families with children, elderly households and persons with disabilities. SNAP provides benefits through the use of electronic benefit transfer (EBT) cards that supplement low-income recipients' food purchasing power. Benefits vary by household size, income and expenses and averaged approximately \$127 per person per month for FY 2015.

Nationally, in FY2015, SNAP had average monthly participation of approximately 45.8 million individuals in 22.5 million households.³⁰⁸ In Maryland in FY 2015, more than 780,000 individuals in more than 400,000 households participated in the SNAP program monthly, with more than \$1 billion in benefits issued.³⁰⁹

In general, eligible households must meet a gross income test (monthly cash income below 130% of the federal poverty guidelines), a net income test (monthly cash income subtracting SNAP deductible expenses at or below 100% of the federal poverty guidelines), and have liquid assets under \$2,000. In most states, eligibility for SNAP automatically deems an applicant eligible for TANF. In most states, TANF and SNAP are administered by the same state agency. SNAP law includes many state options and opportunities to seek waivers, leading to considerable state-to-state variation, which is the case for some of the crime-related policies.³¹⁰

Restrictions on benefits for felony drug convictions.

With the passage of 1996 federal welfare reform, a lifetime ban on public assistance - specifically TANF and SNAP - was imposed only on individuals with drug convictions. States have the option to opt-out of the federal ban, and Maryland is one of 27 states that partially have opted-out of the TANF ban and one of 24 states that have opted out of the SNAP ban. In Maryland, TCA and SNAP applicants convicted of a drug-related felony after August 22, 1996, are subject to testing for substance abuse for two years.

Applicants who do not comply are denied assistance. Individuals who are convicted of drug-related felonies while receiving TCA or SNAP assistance will have benefits suspended for one year after the date of conviction and are subject to testing for substance abuse and treatment for two years after completing their sentence and any term of probation, parole or mandatory supervision. Benefits for recipients who do not comply with drug testing and substance abuse treatment are reduced by the individual's incremental portion. Benefits for other household members are paid to a third party.³¹¹

It is important to note that because household size is a major factor in determining the benefit amount, the ineligibility of even a single family member may result in less assistance for the family. Thus, the ban functions to unduly punish the entire family. For TCA, these restrictions apply only to the monthly ongoing cash benefit and do not apply to the broader set of benefits and services that are funded through the federal TANF block grant. Because the ban is focused only on drug convictions, individuals who may commit more severe crimes that are a greater threat to public safety do not face benefit restrictions. While the intent of the ban was to discourage drug activity, research shows that the ban is ineffective in doing so, as most individuals do not know that these bans and other collateral consequences exist until after they are convicted. Rather, the ban harms already struggling individuals and families and functions to push them further into poverty.

Due to the loss of income when an adult is incarcerated, families rely heavily on SNAP and TCA. They continue to rely on these benefits after an individual is released to cover basic needs as formerly incarcerated parents work to earn income and achieve self-sufficiency.³¹² Moreover, because the poor and people of color are disproportionately impacted by drug convictions, this policy is discriminatory as it serves to deny benefits specifically to these groups.³¹³ Moreover, public assistance has been shown to greatly aid individuals in their reentry to society; thus, this ban functions as an added barrier to reentry and financial stability *specifically* for individuals with drug convictions.

Relatedly, though incarcerated individuals are ineligible to receive SNAP benefits while they are residents of an institution, state agencies that administer SNAP may request the Prisoner Pre-Release Application Filing waiver, which allows agencies to take applications and conduct eligibility interviews from incarcerated applicants prior to their release. This allows the state agency to issue benefits immediately upon the individual's release if he or she is eligible for assistance. By ensuring food security upon release, the waiver can increase the likelihood of successful reentry.³¹⁴ Maryland has not requested the waiver.³¹⁵

Policy Recommendations

Opt out fully from the drug felony ban on TANF (TCA) and SNAP.

Maryland should opt out of the ban entirely. As of August 2016, 13 states, including neighboring states of Virginia and Delaware and the District of Columbia have opted out of the TANF ban entirely, and 20 states have eliminated the ban on SNAP entirely.³¹⁶ The ban is imposed for no other offenses but drug crimes, leaving individuals who commit crimes that are a greater threat to public safety free of any restrictions on TANF and SNAP benefits. Moreover, the decision by Congress to approve the felony drug conviction ban was made without meaningful discussion as to

whether the policy would advance the general objectives of welfare reform or the impact it could have on individuals seeking to reenter society and their families.³¹⁷

For the low-income populations that depend on TANF and SNAP, the sudden loss or reduction of benefits can move an otherwise stable household into instability and vulnerability.³¹⁸ Additionally, research shows that people who use SNAP and TANF typically use these benefits for short periods of time, in the wake of catastrophic life events, such as the loss of a job.

For formerly incarcerated individuals transitioning back to their home communities, SNAP and TANF benefits can help meet their basic survival needs during the period in which they are searching for jobs or housing. By doing so, the programs reduce the likelihood that formerly incarcerated individuals will return to criminal activity to secure food or other essentials for themselves or their families.³¹⁹ Moreover, given the large number of individuals with drug convictions, it is likely that a significant number of Maryland residents are affected by this ban. Thus, Maryland should work to make TCA and SNAP fully available to otherwise qualified persons, regardless of prior convictions.³²⁰

During the 2017 legislative session, JOTF and partners successfully led efforts (SB 853/HB 860)³²¹ to repeal the partial ban on TCA and SNAP for individuals with felony drug convictions. As passed, the legislation repealed the partial ban on benefits for individuals with felony drug convictions and eliminate the drug testing and substance abuse requirements for all individuals except drug kingpins, volume dealers and those who secure two or more felony drug convictions while receiving TCA and SNAP.

Request the SNAP pre-release waiver.

As of May 2016, only two states have obtained SNAP pre-release waivers – Montana and South Dakota. New York has requested the waiver as of March 2017.³²² Maryland should also request the waiver to ensure that

Barriers to employment, education, public assistance and housing prevent individuals from meeting their most basic needs.

individuals who are eligible for SNAP are able to access benefits immediately upon release, as this is one of the most difficult times in their transition back to society.

How the Collateral Consequences of a Criminal Record Perpetuate a Cycle of Criminalization and Poverty

The examples above are just a few of the many collateral consequences of a criminal record and serve to illustrate the types of barriers that individuals with criminal records face as they work to rebuild their lives. They provide an idea of the ways in which these consequences can serve as constant hurdles and roadblocks. Collateral consequences are numerous, and their aggregate impact is overwhelming.

Our criminal justice system is based, in theory, on the idea that once an individual serves their sentence, they have completed their punishment, paid their dues to society and, upon completion, can resume life as a participating member of society. However, in practice, our criminal justice system does not permit an individual to leave their criminal past behind. The mark of a criminal record serves as a *life sentence*. A criminal record – even just an arrest record – imparts a permanent label of “criminal.” Except for the lucky few who are able to get their records fully expunged, the “criminal” status is one that an individu-

al can never fully recover from or forget. After release, individuals face barriers at every turn due to the collateral consequences of a criminal record. Barriers to employment, education, public assistance and housing prevent individuals from meeting their most basic needs. These barriers threaten the ability to put a roof over one’s head, to feed and clothe oneself – much less to actually be able to thrive and progress in life.

In this way, the label of “criminal” serves to exclude individuals from participating in mainstream society. The expansion of criminalization – what actions are considered a crime and who is considered a criminal – during the era of mass incarceration is actually the expansion of exclusion. Both the number and scope of actions that are considered a crime and the powers and resources of law enforcement to act on these crimes have been greatly expanded due to the “war on crime” and “war on drugs” during the 1960s, 70s and 80s. As these efforts focused on poor communities and communities of color, the term “criminal” was no longer defined by actions of moral transgression or threats to public safety; the term was applied to entire groups and communities – namely the poor, with a special focus on people of color.

The criminalization of the poor, therefore, functions to exclude these groups from participation in mainstream society. Criminalization goes many levels beyond dis-

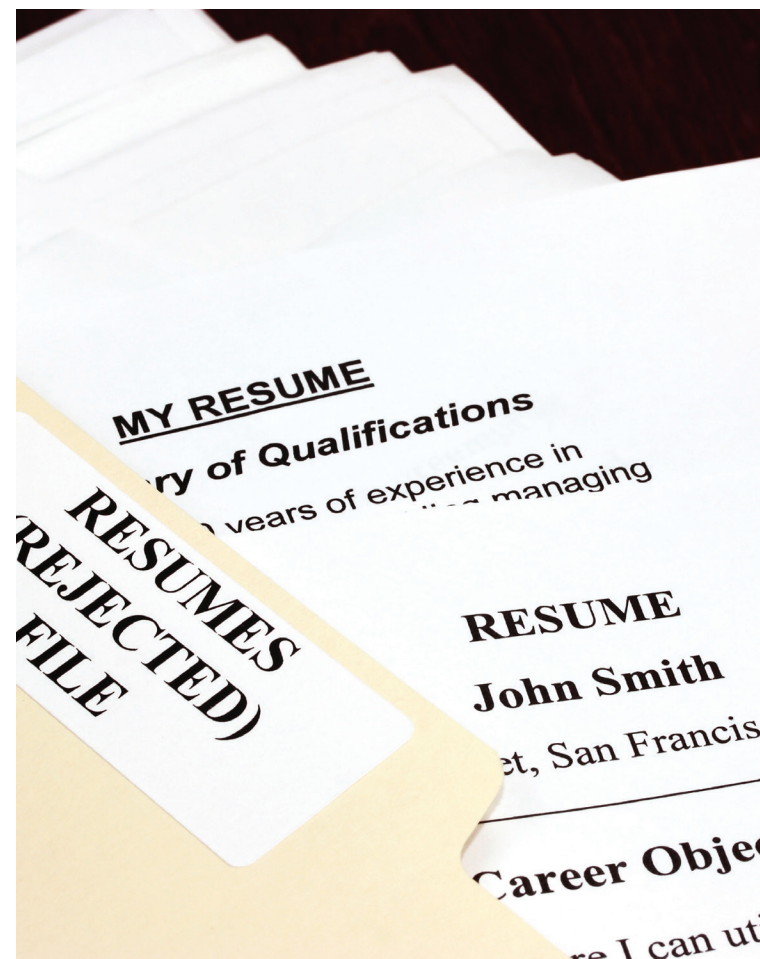
crimination; it involves punishment, condemnation and lost privileges and abilities for life. In a very real way, the collateral consequences of a criminal record send a clear and repeated message to the poor and people of color that they will never regain their status as full citizens.³²³

As a result, a new class of citizenship has emerged in America, known as carceral citizenship. Carceral citizenship is an alternate form of citizenship for individuals with a criminal record, who, due to the collateral consequences of a criminal record, are no longer able (or legally allowed) to participate in many key aspects of mainstream society. Much has been written about the emergence of carceral citizenship in the academic research literature.³²⁴ One key aspect of carceral citizenship is the idea that an individual is never able to escape the label of “criminal.” This is in part due to the inability to escape from the criminal record that is publicly available and used to deny many resources, rights and services.

Importantly, the collateral consequences of a criminal record serve to actually *reinforce* one’s criminal status by increasing the likelihood of recidivism. Because so few employers are willing to hire individuals with criminal records, many individuals have no option but to work in the underground economy in order to make ends meet. Thus, in a very real way, these individuals are *forced to participate in illegal activities by the very system that has labeled them as a criminal*. Because many individuals “go underground” to avoid interactions with law enforcement in order to ensure that they can earn money through the underground economy, they are at greater risk of being arrested and incarcerated again, which results in a cycle of criminalization and poverty. In this way, individuals are unable to escape the label of “criminal” because they continue to be re-labeled as criminals every time they engage in illegal activities for their survival, further cementing their status as carceral citizens.

In sum, the collateral consequences of a criminal record impose, for many, just as much (if not more) punishment as their criminal sentence. Collateral consequences serve

to extend criminal punishment to a life sentence. They are used as a tool to both exclude and punish those who are deemed unwanted or undesirable – namely the poor and especially people of color – and shun them from participation in mainstream society by limiting their participation through bans and restrictions. This has functioned to create a new category of citizenship exclusively for individuals with criminal records, because they can no longer participate in mainstream society. The use of collateral consequences functions to perpetuate a cycle where individuals are continually reoffending, maintaining a system of mass incarceration that perpetuates inequality, poverty and the criminalization of the poor and people of color. Thus, reducing and removing the collateral consequences of a criminal record must be a central part of criminal justice reform efforts in Maryland.



In a very real way, the collateral consequences of a criminal record send a clear and repeated message to the poor and people of color that they will never regain their status as full citizens and do not have the right to exist as equal, contributing members of society.

CONCLUSION

Currently in Maryland, justice is only served to those who can pay for it. The criminalization of poverty is very real and contributes greatly to racial and economic inequality in our state and the nation as a whole.

As outlined in this report, many of Maryland's current policies unintentionally criminalize the poor, with disproportionate impact on people of color. If we seek to achieve a more just and inclusive society, and if we truly believe that every resident of Maryland should have equal opportunities for economic mobility and life success, reforming our state's laws and practices, both in and outside of the criminal justice system is imperative. Through policy reform, we must replace existing policies and practices that disproportionately criminalize the poor, especially people

of color, with those that ensure equity, fairness and justice for all. We must critically analyze our existing laws and systems to identify the ways in which they are criminalizing the poor and work to dismantle them. We must also decriminalize behaviors that do not threaten public safety, as well as entire communities that have been unjustly affected for far too long.

Additionally, the many collateral consequences of a criminal record must be addressed. We must ensure that individuals are able to overcome their criminal past by providing meaningful pathways to progress. We must develop programs, policies and practices that provide individuals with criminal records with the opportunities and assistance they need to change their circumstances, in order to break the cycle of poverty and criminalization. As one in every four Marylanders has a criminal record, the progress of our state depends on this.

In Maryland, the criminalization of poverty is very real and contributes greatly to racial and economic inequality in our state and the nation as a whole. We must ensure that individuals are able to overcome their criminal past by providing meaningful pathways to progress.

APPENDICES



APPENDIX A. ADDITIONAL REFERENCES

This appendix includes a list of additional studies and articles by topic as well as more information and examples from other states.

Racial Profiling

The following studies and texts show that racial profiling remains common in the United States:

- Goldman School of Public Policy, University of California Berkeley. (2014, November 24). Suspect race: Causes and consequences of racial profiling, an interview with Professor Jack Glaser. Retrieved from <https://gspp.berkeley.edu/news/news-center/suspect-race-causes-and-consequences-of-racial-profiling>.
- Glaser, J. (2015, May 28). *How to reduce racial profiling*. Greater Good. University of California Berkeley. Retrieved from http://greatergood.berkeley.edu/article/item/how_reduce_racial_profiling.
- Ross, C.T. (2015, November 5). A Multi-level Bayesian analysis of racial bias in police shootings at the County-level in the United States, 2011-2014. *PLoS ONE*, 10(11). Retrieved from <http://journals.plos.org/plosone/article?id=10.1371%2Fjournal.pone.0141854>
- Goff, et al. (2016, July). The science of justice: Race, arrests and police use of force. Center for Policing Equity. Retrieved from http://policingequity.org/wp-content/uploads/2016/07/CPE_SoJ_Race-Arrests-UoF_2016-07-08-1130.pdf
- Lowery, W. (2016, April 7). Study finds police fatally shoot unarmed Black men at disproportionate rates. *The Washington Post*. Retrieved from https://www.washingtonpost.com/national/study-finds-police-fatally-shoot-unarmed-black-men-at-disproportionate-rates/2016/04/06/e494563e-fa74-11e5-80e4-c381214de1a3_story.html?tid=a_inl-amp&utm_term=.123ed88c7f11
- U.S. Department of Health and Human Services. (2014, September). Results from 2013 national survey on drug use and health: Summary of national findings. Retrieved from www.samhsa.gov/data/sites/default/files/.../Web/NSDUHresults2013.pdf.
- Glaser, J. (2015). *Suspect race: Causes and consequences of racial profiling*. New York, NY: Oxford University Press. p. 21.
- Newport, F. (1999, December 9). Racial profiling seen as widespread, particularly among young Black men. *Gallup*. Retrieved from <http://www.gallup.com/poll/3421/racial-profiling-seen-widespread-particularly-among-young-black-men.aspx>
- The Leadership Conference on Civil and Human Rights. (2015, October 26). *Civil rights group releases polling on criminal justice issues (Press release)*. Retrieved from <http://www.civilrights.org/press/2015/polling-body-cameras-civil-asset-forfeiture-racial-profiling.html>.
- American Civil Liberties Union. *Racial profiling: Definition*. Retrieved from https://www.aclu.org/other/racial-profiling-definition#_edn1.

Independent analysis of the Maryland traffic stop data was conducted by the Southern Coalition for Social Justice (SCSJ). SCSJ obtained the data through a public records request, and compiled it in a new, searchable online database for public use.

- Southern Coalition for Social Justice. Open data policing: Maryland. Retrieved from <https://opendatapolicing.com/md/>.
- Southern Coalition for Social Justice, see note 23; Rector, K. (2016, November 16). Black motorists in Md. are pulled over, searched at higher rates. *The Baltimore Sun*. Retrieved from <http://www.baltimoresun.com/news/maryland/crime/bs-md-police-traffic-stops-20161116-story.html>.

Key Findings from the U.S. Department of Justice’s report on the Baltimore Police Department:³²⁵

- BPD disproportionately stops African-American pedestrians. BPD officers recorded over 300,000 pedestrian stops from January 2010-May 2015, and the true number of BPD’s stops during this period is likely far higher due to under-reporting. These stops are concentrated in predominantly African-American neighborhoods and often lack reasonable suspicion. Citywide, BPD stopped African-American residents three times as often as white residents after controlling for the population of the area in which the stops occurred. Consequently, hundreds of individuals – nearly all of them African American – were stopped on at least 10 separate occasions from 2010-2015. Indeed, seven African American men were stopped more than 30 times during this period. One African American man in his mid-fifties was stopped 30 times in less than 4 years. Despite these repeated intrusions, none of the 30 stops resulted in a citation or criminal charge.
- BPD’s stops often lack reasonable suspicion. Review of incident reports and interviews with officers and community members found that officers regularly approach individuals standing or walking on City sidewalks to detain and question them and check for outstanding warrants, despite lacking reasonable suspicion to do so. Only 3.7% of pedestrian stops resulted in officers issuing a citation or making an arrest. Many of those arrested based upon pedestrian stops had their charges dismissed upon initial review by either supervisors at BPD’s Central Booking or local prosecutors.
- BPD stops African American drivers at disproportionate rates. African Americans accounted for 82% of all BPD vehicle stops, compared to only 60% of the driving age population in the City and 27% of the driving age population in the greater metropolitan area.
- BPD disproportionately searches African Americans during stops. BPD searched African Americans more

frequently during pedestrian and vehicle stops, even though searches of African Americans were less likely to discover contraband. Indeed, BPD officers found contraband twice as often when searching white individuals compared to African Americans during vehicle stops and 50% more often during pedestrian stops.

- African Americans similarly accounted for 86% of all criminal offenses charged by BPD officers despite making up only 63% of Baltimore residents. Racial disparities in BPD’s arrests are most pronounced for highly discretionary offenses: African Americans accounted for 91% of the 1,800 people charged solely with “failure to obey” or “trespassing”; 89% of the 1,350 charges for making a false statement to an officer; and 84% of the 6,500 people arrested for “disorderly conduct.” Moreover, booking officials and prosecutors decline charges against African Americans at significantly higher rates than charges against people of other races, indicating that officers’ standards for making arrests differ by race of the person arrested.
- BPD arrests far more African Americans for drug offenses than would be expected based on drug usage and population data, and this disparity is not attributable to any legitimate law enforcement objective. Despite similarities in rates of drug use, we found that BPD makes far more drug arrests than agencies in Baltimore’s peer cities.

Civil Asset Forfeiture

There are additional problems with civil asset forfeiture that place an undue burden on the individual whose property was seized. These issues are discussed in the following sources:

- Vallas, R., Ross, T., Cox, T. A., Hagler, J. & Corriher, B. (2016, April 1). *Forfeiting the American dream: How civil asset forfeiture exacerbates hardship for low-income communities and communities of color*. Center for American Progress. Retrieved from <https://www.>

americanprogress.org/issues/criminal-justice/reports/2016/04/01/134495/forfeiting-the-american-dream/.

- Dolan, K. & Carr, J. (2015). *The poor get prison: The alarming spread of the criminalization of poverty*. Institute for Policy Studies. Retrieved from <http://www.ips-dc.org/the-poor-get-prison-the-alarming-spread-of-the-criminalization-of-poverty/>
- Stillman, S. (2013, August 12). Taken. *The New Yorker*. Retrieved from <http://www.newyorker.com/magazine/2013/08/12/taken>.
- Ingraham, C. (2015, June 10). How Philadelphia seizes millions in 'pocket change' from some of the city's poorest residents. *The Washington Post*. Retrieved from https://www.washingtonpost.com/news/wonk/wp/2015/06/10/how-philadelphia-seizes-millions-in-pocket-change-from-some-of-the-citys-poorest-reidents/?utm_term=.ed32ce72b04c
- Snead, J. & Kloster, A.R. (2014, December 5). *Washington, D.C., civil forfeiture reform: A model for the states* (Issue brief No. 4312). The Heritage Foundation. Retrieved from <http://www.heritage.org/report/washington-dc-civil-forfeiture-reform-model-the-states>.
- Sallah, M., O'Harrow Jr., R., Rich, S. & Silverman, G. (2014, September 6). Stop and seize: Aggressive police take hundreds of millions of dollars from motorists not charged with crimes. *The Washington Post*. Retrieved from <http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/>
- Sibilla, N. (2016, February 8). Maryland property owners no longer have to prove their innocence in civil forfeiture cases. *Forbes*. Retrieved from <http://www.forbes.com/sites/instituteforjustice/2016/02/08/maryland-property-owners-no-longer-have-to-prove-their-innocence-in-civil-forfeiture-cases/2/#289105801572>.
- Sibilla, N. (2015, July 2). Civil forfeiture now requires a criminal conviction in Montana and New Mexico. *Forbes*. Retrieved from <https://www.forbes.com/sites/instituteforjustice/2015/07/02/civil-forfeiture-now-requires-a-criminal-conviction-in-montana-and-new-mexico/#3ee17a6e5ee3>
- Minnesota Legislature. S.F. 874, Criminal Justice, Judicial Forfeiture Provisions, and Statutory Amendments, 88th Session. Retrieved from https://www.revisor.mn.gov/bills/text.php?version=latest&session=ls88&number=SF0874&session_year=2014&session_number=0&format=pdf
- Nebraska Legislature. L.B. 1106, Amendments, Revisions, and Provisions Relating to Forfeiture of Property, 2016 Regular Session. Retrieved from <http://nebraskalegislature.gov/FloorDocs/Current/PDF/Slip/LB1106.pdf>
- Snead, J. (2016, April 22). Nebraska abolishes civil forfeiture. *Daily Signal*. Retrieved from <http://dailysignal.com/2016/04/22/nebraska-abolishes-civil-forfeiture/>
- Sibilla, N. (2016, June 27). New law requires criminal convictions to forfeit property in New Hampshire. *Forbes*. Retrieved from <http://www.forbes.com/sites/instituteforjustice/2016/06/27/new-law-requires-criminal-convictions-to-forfeit-property-in-new-hampshire/#1d9562c26183>;
- Carpenter, D., Knepper, L., Erickson, A., & McDonald, J. (2015, November). *Policing for profit: The abuse of civil asset forfeiture*. Institute of Justice. Retrieved from <http://www.ij.org/report/policing-for-profit/>

A number of states have laws that require a stronger burden of proof: Minnesota, Montana, Nebraska, New Hampshire and Nevada all require criminal convictions before forfeiture. New Mexico has abolished civil forfeiture altogether. Ohio recently passed legislation establishing a two-tier system where assets less than \$15,000 will require a criminal conviction before forfeiture, whereas assets greater than this threshold will remain in the civil system.

- Wing, N. (2017, January 4). New Ohio law stops cops from taking innocent people's stuff. *Huffington Post*. Retrieved from http://www.huffingtonpost.com/entry/ohio-civil-asset-forfeiture_us_584ae66be4b04c8e2baf88aa.

Auto Insurance Laws

Because of the discriminatory effect, California, Massachusetts, and Hawaii have banned the use of credit scores in auto insurance pricing:

- Brobeck, S., Hunter, J.R., & Feltner, T. (2013, December). *The use of credit scores by auto insurers: Adverse impacts on low- and moderate-income drivers*. Consumer Federation of America. Retrieved from http://www.consumerfed.org/pdfs/useofcreditcoresbyautoinsurers_dec2013_cfa.pdf

State studies and reports on the high cost of auto insurance in Maryland:

- Burt, T.D., Smith, R.K., & Duncan, R.L. (2016, July). *Task force to study methods to reduce the rate of uninsured drivers: Final report*. Retrieved from <http://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/021000/021892/unrestricted/20160146e.pdf>
- Waldron, T. (2005, January). *Actuarial discrimination: City residents pay up to 198% more for car insurance than county residents*. The Abell Foundation. Retrieved from http://www.abell.org/sites/default/files/publications/ec_auto_ins_1-05.pdf.
- Maryland Insurance Administration. (2006, April). *Final report of the automobile insurance task force to study rates in urban areas*. Retrieved from <http://insurance.maryland.gov/Consumer/Appeals%20and%20Grievances%20Reports/autotaskforcereport.pdf>.
- Atas, L.H., Burt, T.D., Bender, M.F., & Ellick, J.A. (2013, December). *Task force to study Maryland insurance of last resort programs: 2013 interim report*.

Retrieved from <http://mgaleg.maryland.gov/pubs/commntfworkgrp/2013-insurance-last-resort-programs-interim-report.pdf>.

Child Support Debt

Child support orders are usually established when a couple dissolves their relationship (e.g. divorce, separation) or when a custodial parent applies for welfare assistance. Orders are usually established administratively, where a state child support enforcement agency or the state's family court system decides how much support the noncustodial parent – the parent who does not primarily reside with the child – must pay. Like custody, the amount of support can be decided by agreement between the two parents, or by deliberating in front of a judge. Most commonly, the court issues a child support order, which states the date, amount and method through which the noncustodial parent must make a monthly payment to the custodial parent. The court retains the authority to change the order. If the custodial parent is a TANF recipient, child support is owed to the state, to reimburse the state for providing benefits to the custodial parent and child(ren). However, if the custodial parent is not a TANF recipient, the noncustodial parent owes child support directly to the custodial parent.

For more information on how child support works, see:

- Solomon-Fears, C. (2011, April 11). *Child support enforcement and driver's license suspension policies*. Congressional Research Service. Retrieved from http://greenbook.waysandmeans.house.gov/sites/greenbook.waysandmeans.house.gov/files/2012/documents/R41762_gb.pdf.

For more information on improving child support outcomes, see:

- Department of Health and Human Services. (2014, November 17). *Federal Register: Flexibility, efficiency and modernization in child support enforcement programs; proposed rule*. Retrieved from <https://www.federalregister.gov/documents/2014/11/17/proposed-rule-flexibility-efficiency-and-modernization-in-child-support-enforcement-programs>.

www.acf.hhs.gov/css/resource/nprm-flexibility-efficiency-and-modernization-in-child-support-enforcement-programs

- The National Child Support Enforcement Association (2013, January 30). *Setting Current Support Based on Ability to Pay*. Retrieved from http://www.ncsea.org/documents/Ability_to_Pay-final.pdf
- Passarella, L.L. & Born, C.E. (2014, June). *Imputed income among noncustodial parents: Characteristics and payment outcomes*. Family welfare research and training group, University of Maryland School of Social Work. Retrieved from <http://www.familywelfare.umaryland.edu/reports1/imputed.pdf>
- Waller, Doleac & Flanagan, see note 161; The Abell Foundation. (2003). *A License to a better life*. The Abell Report. p. 2. Retrieved from <http://www.abell.org/publications/license-better-life>.
- Legler, P. (2003). *Low income fathers and child support: Starting off on the right track*. Policy Studies Inc., and the Annie E. Casey Foundation. Retrieved from http://www.issuelab.org/resource/low_income_fathers_and_child_support_starting_off_on_the_right_track.

The Case Bail System

In recent years, many bills that have sought to alter Maryland's pretrial system have failed to pass. Legislation to overhaul the pretrial bail system statewide has never made it out of the House Judiciary Committee in the face of opposition from the bail industry, which argues that pledging cash or bonds is necessary to ensure appearance in court.

A bill (HB 1232/SB 973) introduced in 2014 sought to establish a task force on pretrial risk assessment, whose duty would be to recommend a validated pretrial risk assessment tool to be piloted by the state in certain jurisdictions. However, the bill ultimately did not pass. For more information on this bill, see:

- Maryland General Assembly. HB 1232/SB 973 – *Criminal procedure – Task force on pretrial risk assessment – Detainee electronic information sharing system*. 2013 Regular session. Retrieved from <http://mgaleg.maryland.gov/webmga/frmMain.aspx?id=hb1232&stab=01&pid=billpage&tab=subject3&ys=2014rs>.

Pretrial Services Models

The pretrial services model in Washington, D.C., is truly effective and provides many lessons for Maryland counties. Federal prosecutors handle most local criminal cases in D.C. Officers run the operation 24 hours a day, 7 days a week. A validated risk assessment that contains 70 questions is used, but in all but the most serious cases, the presumption is release.

A decision is made within five minutes by a court clerk and judge; about two-thirds of defendants are released with conditions that include drug testing, stay-away orders or weekly phone or in-person reporting. About 10% of individuals have tighter monitoring, such as a GPS ankle bracelet or home confinement. Only individuals presenting the highest risk are detained.

D.C.'s Pretrial Services Agency supervises about 14,000 people per year, and in the past five years, about 90% of defendants released were not arrested again before their cases were resolved. Of the 10% who were arrested, the majority were not for violent crimes. Moreover, D.C.'s model has an 89% court appearance rate, which is comparable to what is seen elsewhere under cash bail, but without all of the negative consequences of cash bail.

As D.C.'s Superior Court Judge Truman Morrison stated, "we've proven it can work without money, but the whole country continues as if in a trance to do what we know does not work...There's no evidence you need money to get people back to court, it's irrational, ineffective, unsafe and profoundly unfair."

For more information on D.C.'s pretrial services model, see:

- Marimow, A. E. (July 4, 2016). When it comes to pretrial release, few other jurisdictions do it D.C.'s way. *The Washington Post*. Retrieved from https://www.washingtonpost.com/local/public-safety/when-it-comes-to-pretrial-release-few-other-jurisdictions-do-it-dcs-way/2016/07/04/8eb52134-e7d3-11e5-b0fd-073d5930a7b7_story.html?hpid=hp_local-news_bailreform-1145pm%3A-homepage%2Fstory.

Kentucky is another state that employs a robust pretrial services system, though through a single statewide agency. Since 1976, it has been illegal to post a bond for profit on behalf of a defendant in Kentucky. Kentucky Pretrial Services assesses all defendants using a locally validated pretrial risk assessment tool. In recent years, the court has released 70% of all defendants pretrial, with only four percent requiring bail. Outcomes for people released without monetary bail in Kentucky are far better than for those released nationally with such bail: just eight percent of defendants at liberty in the community were rearrested during the pretrial period, and 10% missed a court date.

Among people released on bail nationwide, 16% were rearrested and 17% missed a court date. Moreover, Kentucky expanded its pretrial service capacity in 2011, which resulted in a 12% increase in people who were released on non-financial bail options, such as ROR, while the number of people held due to inability to afford bail dropped from 34 to 25%. Despite the increase in releases, appearance rates rose slightly from 90 to 92%, and the public safety rate (those not charged with a new offense) rose from 90 to 94%.

For more information on pretrial services in Kentucky, see:

- Subramanian, R., Delaney, R., Roberts, S., Fishman, N. & McGarry, P. (2015, February). *Incarceration's front door: The misuse of jails in America*. The Vera

Institute of Justice. Retrieved from <https://www.vera.org/publications/incarcerations-front-door-the-misuse-of-jails-in-america>.

- Justice Policy Institute. (2012, September). Bail fail: *Why the U.S. should end the practice of using money for bail*. Retrieved from www.justicepolicy.org/uploads/justicepolicy/documents/bailfail.pdf.

Validated Risk Assessments

Several states use statewide validated risk assessments or are conducting the research needed to have an appropriate tool in place. Although the above factors are consistently valid across different localities, it is still important that Maryland evaluate its risk assessment to ensure that each factor is accurately predicting pretrial misconduct within the parameters of the state's laws and environment.³²⁶

Virginia began the development of the Virginia Pretrial Risk Assessment Instrument (VPRAI) in 1998, and by 2005, had implemented it in all pretrial service agencies. In 2007, a validation study was conducted on the tool showing that it appropriately categorized people charged with offenses by risk level and accurately predicted pretrial behavior. It also allowed adjusting the list of factors assessed to focus on those that were most salient.³²⁷ When the VPRAI was developed, it was done so with a focus on race and gender neutrality. It was recently validated, tested for race and gender bias, and revised to improve predictive validity. The research methods used to ensure that the VPRAI is race and gender neutral can serve as a model for Maryland.

In 2011, six counties in Florida participated in the validation of a pretrial risk assessment tool based on the VPRAI. This study showed positive results, with an 87% success rate (defined by court appearance and no re-arrest for new charges). This indicated that the tool is likely to be effective in other counties in Florida, and efforts to broaden implementation are underway.

Kentucky validated a pretrial risk assessment it had been using for many years in 2009. The validation resulted in

editing the tool to include only the most predictive factors resulting in a twelve item “Yes/No” checklist with weighted questions allowing a simple capture of information indicative of a person’s behavior on release while awaiting trial. This tool is administered by a single statewide agency that assesses all defendants.

Thus, the implementation of county-specific pretrial risk assessments in Maryland need not be a complex or cumbersome process. In fact, assessments that are pages in length or require lengthy certification or training to be used will not be a practical solution as pretrial assessments should be conducted as soon as possible after arrest to capture the most accurate information.³²⁸ The Pretrial Justice institute can serve as an excellent resource for Maryland in planning and implementing a statewide validated pretrial risk assessment.³²⁹

Criminal Justice Debt

Collateral Consequences of Criminal Debt

In Illinois, a statutorily created court fees task force conducted a study of Illinois court fines and fees in 2016 by reviewing civil, criminal and traffic assessments, fines and fees. The study found that over time, an increasing share of the cost of court administration has been passed onto the parties to court proceedings, with court fines and fees constantly increasing and outpacing inflation.³³⁰ The study found that there was excessive variation across the state in the amount of assessments for the same types of proceedings, and that assessments on parties to civil lawsuits and defendants in criminal and traffic proceedings imposed severe and disproportionate impacts on low- and moderate-income residents. The study report also included a detailed analysis of Illinois practices, the legislative process for setting fines and fees, and recommendations.³³¹

In other states, criminal justice debt can prevent individuals from being able to seek expungement to remove eligible charges from their criminal record, as only after criminal justice debt is fully repaid can an individual file

for expungement. Criminal justice debt can also lead to civil penalties if it is not paid back quickly, or in full. If criminal justice debt is converted to civil debt, it can damage an individual’s credit. Judges in several states have sent former inmates back to prison for failure to appear at court hearings related to their debt.³³² Moreover, not being able to keep up with criminal justice debt payments results in a probation violation in some states, which may lead to more fees, penalties and reincarceration.³³³

Some states also convert criminal debts into civil judgments. Such debts become public information readily available for credit reporting, which may present a barrier to housing, vehicle ownership, and securing student and personal loans. In these states, the use of wage and tax garnishment to collect debts can eat away at income, while also pushing individuals to the underground economy.³³⁴

Criminal debts can also serve as a barrier to accessing public assistance, as State assistance programs often require compliance with payments towards criminal debts. Many states also require payment of criminal debts as a condition of probation or parole, as mentioned earlier, which can lead not only to reincarceration, but also ineligibility for federal public assistance programs such as TANF, SNAP, social security disability benefits and Supplemental Security Income for the elderly and disabled.³³⁵

Models from Other States on Determining Ability to Pay

In Biloxi, Mississippi, Biloxi Municipal Court judges will find that a person is “unable to pay” a fine or fee if, in the totality of the circumstances, payment will impose ‘substantial hardship’ on the person or his or her dependents. Judges will presume that a person is ‘unable to pay’ when he or she earns below 125% of the relevant Federal Poverty Guideline, is homeless, is incarcerated, or resides in a mental health facility. Any finding that a person is able to pay must be supported by evidence in the record, and all findings and supporting evidence must be made on the record or in writing.³³⁶

In 2014, Colorado passed a law that prohibits judges from jailing people simply because they are too poor to pay fines and fees.³³⁷

Collateral Consequences of a Criminal Record

Housing

The following list of resources contain useful information with regards to the barriers that individuals with criminal records face in securing housing:

- Vallas, R. & Patel, R. (2012, July-August). Sentenced to a life of criminal debt: A barrier to reentry and climbing out of poverty. *Clearinghouse Review Journal of Poverty Law and Policy*. Retrieved from <https://csgjusticecenter.org/courts/publications/sentenced-to-a-life-of-criminal-debt-a-barrier-to-reentry-and-climbing-out-of-poverty/>.
- Evans, D. (2014, August). *The debt penalty: Exposing the financial barriers to offender reintegration*. Research & Evaluation Center, John Jay College of Criminal Justice. Retrieved from <https://csgjusticecenter.org/courts/publications/the-debt-penalty-exposing-the-financial-barriers-to-offender-reintegration/>.
- Subramanian, R., Delaney, R., Roberts, S., Fishman, N. & McGarry, P. (2015, February). *Incarceration's front door: The misuse of jails in America*. The Vera Institute of Justice. Retrieved from <https://www.vera.org/publications/incarcerations-front-door-the-misuse-of-jails-in-america>
- Beitsch, R. (2015, June 18). *States try to remove barriers for ex-offenders*. Pew Charitable Trusts. Retrieved from <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/6/18/states-try-to-remove-barriers-for-ex-offenders>.
- The Washington Lawyers' Committee. (2014, October 22). *The collateral consequences of arrests and convictions under D.C., Maryland, and Virginia law*.

Retrieved from www.washlaw.org/pdf/wlc_collateral_consequences_report.pdf.

- McCarty, M., Falk, G., Aussenberg, R.A., Carpenter, D.H. (2016, November 28). *Drug testing and crime-related restrictions in TANF, SNAP and housing assistance*. Congressional Research Service. Retrieved from <https://fas.org/sgp/crs/misc/R42394.pdf>

Employment

Several states, including New York, Hawaii, and Pennsylvania, have passed anti-discrimination laws that prohibit discrimination against individuals with criminal records in licensing and in public and private employment. All of these states have a way to administratively enforce the law, except Pennsylvania. In Wisconsin, anti-discrimination laws prohibit discrimination based on arrest or conviction records in the same manner that they prohibit discrimination against members of other protected classes. The statutes apply to employers, labor organizations, employment agencies and licensing agencies. More information can be found here: Maryland Collateral Consequences Workgroup. (2016, December 1). *Final report of the collateral consequences workgroup*. Retrieved from <https://goccp.maryland.gov/wp-content/uploads/collateral-consequences-final-report-2016.pdf>.

APPENDIX B. ADDITIONAL POLICY RECOMMENDATIONS

Key policy recommendations are presented throughout the report. In addition to the key recommendations, Maryland should also consider these steps in order the end or mitigate the criminalization of poverty.

RACIAL PROFILING

Appropriate funding for traffic stop data reporting.

TR 25-113 mandates funding for data collection and analysis. However, funding has not been provided for either law enforcement agencies or MSAC for data collection and analysis. Thus, law enforcement agencies and MSAC have used existing resources to comply with the law, placing a burden on staff, which has likely contributed to the lack of complete data collection and limited analyses that have led to inconclusive findings. Funding should be appropriated as the law states.

Ensure that data collection and analysis methods lead to conclusive findings.

The data collected under TR 25-113 seem to indicate that racial profiling is occurring, yet annual reports state that findings are inconclusive. Maryland is home to a number of the nation's best universities, housing researchers with whom the State can partner to address any deficiencies in the current data collection and analysis methods. A clear conclusion should be drawn, that either racial profiling is occurring, or not. Various resources exist, including publications by the DOJ's Office of Community Oriented Policing Services, which provide guidance on the analysis of traffic stop data.³³⁸

Broaden data collection to include *all* police stops.

Collecting traffic stop data is insufficient, as police interact with the public in numerous other contexts as well. Local and state law enforcement agencies should be required to

collect and report data on all stops and searches (pedestrian and traffic), in *all* circumstances (warnings and citations given), as well as related seizures, arrests, and use of force.

Strengthen penalties for departments that do not comply with data collection and reporting requirements and the enforcement of these penalties.

Not all police departments are providing complete data. TR 25-113 states that a law enforcement agency that fails to comply with the required reporting provisions will be reported to the Governor and Legislative Policy Committee of the General Assembly. It is unclear what consequence this will have for the agency in question, as well as how this will encourage compliance. The awarding of State funding and other benefits should be based on compliance with reporting.

CIVIL ASSET FORFEITURE

Make data on civil asset forfeiture publicly available.

The data on civil asset forfeiture that the Governor's Office of Crime Control Prevention is required to review as a result of recent legislation should be made publicly available.

AUTO INSURANCE LAWS

Several states have low-cost insurance programs that could serve as a model for reforms to Maryland Auto Insurance.

The California Low Cost Automobile Insurance Program (CLCA) was established by the State Legislature in 1999 and began operation in 2000 as a pilot program in the counties of Los Angeles and San Francisco.³³⁹ Since 2007, the program has been available statewide.³⁴⁰ Since its in-

ception, more than 110,000 Californians have received insurance through the program.³⁴¹ At the end of 2015, there were 15,404 active policies in force, and approximately 96% of applications for the program were from motorists that had been previously uninsured. The program provides affordable insurance to low-income individuals that meet the program's eligibility criteria.³⁴² It has kept rates affordable in every county, including highly urbanized Los Angeles county (in 2016, the highest annual premium was \$428 for a good driver to obtain basic liability coverage).³⁴³

The program is administered by the California Automobile Assigned Risk Plan (CAARP), which assigns policies to licensed insurance companies, whose insurance agents sell policies to consumers.³⁴⁴ The program is self-sustaining, and is not subsidized by government funds or by other drivers who purchase traditional auto insurance.³⁴⁵ Between 2007-2010, there were more than 3,000 accidents and more than \$8 million in claims paid that were covered by the CLCA program that would likely have been uninsured accidents if the program didn't exist.³⁴⁶

Legislation was introduced for the first time in 2017 to bring a low-cost auto insurance program modeled after California to Maryland (SB 533/HB 1295).³⁴⁷ Unfortunately, neither bill moved forward. Advocates, the bill sponsors and opponents all agreed that an affordable option for auto insurance must be made available, but lacked clarity on specifics of how to operationalize such a program in Maryland. It was agreed that a workgroup would be convened during the interim to discuss details.

New Jersey has provided two options for low-income drivers who would otherwise be unable to afford insurance and would drive uninsured: 1) enroll in a Basic auto insurance policy that removes and reduces certain requirements of the standard auto policy, and therefore reduces the cost of auto insurance; or 2) enroll in a Special auto insurance policy for drivers who are eligible for federal Medicaid with hospitalization.³⁴⁸

Similarly, Under the Hawaii Motor Vehicle Insurance Law, recipients of public assistance benefits consisting of direct cash payments through the Department of Human Services or benefits from the Supplemental Security Income Program under the Social Security Administration are eligible to receive basic motor vehicle insurance coverage at no cost.³⁴⁹

DEBTOR'S PRISONS

Any changes to Maryland law should model the Illinois Debtors' Right Act of 2012. This law protects debtors in the following key ways:

- Prohibiting the routine turnover of bonds to creditors.
- Requiring debt collectors and lenders to provide evidence that unprotected assets may exist to repay a debt prior to sending the debtor to jail after a judgment has been entered compelling payment.
- Requiring defendants to be served personally with a summons, as opposed to receiving notice by mail.
- Prohibiting debtors from being repeatedly summoned unless the creditor has evidence that their circumstances have changed.

For more information on the Illinois law, see:

- Madigan, L. *Illinois Debtors' Rights Act of 2012 Fact sheet*; State of Illinois. *Public Act 097-0848, HB5434 Enrolled*. Retrieved from <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=097-0848>.
- Lunsford, P. (2012, July 26). Illinois "Debtors Prison" bill signed into law. *InsideARM*. Retrieved from <https://www.insidearm.com/news/00010710-illinois-debtors-prison-bill-signed-into-/>.

APPENDIX C. THE USE OF CRIMINAL HISTORY INQUIRIES ON HIGHER EDUCATION ADMISSIONS APPLICATIONS IN MARYLAND

Institutions Whose Applications Ask Questions Regarding Criminal and/or Disciplinary History	
Multi-Institution Applications	
The Common Application	<ol style="list-style-type: none"> 1. Have you ever been placed on probation, suspended, removed, dismissed or expelled from any school or academic program since 9th grade? 2. Other than traffic offenses, have you ever been convicted of any misdemeanor or felony? If you answered yes to either question, please provide an explanation and the approximate dates of each incident. Please attach your response to the end of this application.
The Coalition Application	<ol style="list-style-type: none"> 1. Have you ever been convicted of a crime other than a minor traffic violation? 2. Are there any criminal charges currently pending against you? 3. Have you entered a plea of guilty, a plea of no contest, a plea of nolo contendere, an Alford plea to a criminal charge, or a plea under a first offender act? 4. Do you currently have disciplinary charges (non-academic or academic) pending against you from a high school, college, university, or other postsecondary educational institution? 5. Have you ever been suspended or expelled for any reason from a high school, college, university, or other postsecondary educational institution? 6. Do you have a restraining order, order of protection, or any other form of legal injunction pending against you in any jurisdiction? <p>Please note that each question answered in the affirmative provides an additional opportunity for the applicant to provide more explanatory detail. In addition, no affirmative answer will automatically bar an applicant from consideration by an institution but may result in a separate review process.</p>
The Universal College Application	<ol style="list-style-type: none"> 1. Have you ever been found responsible for a disciplinary violation at any educational institution you have attended from the 9th grade (or the international equivalent) forward, whether related to academic misconduct or behavioral misconduct, that resulted in a disciplinary action? These actions could include, but are not limited to: probation, suspension, removal, dismissal or expulsion from the institution. 2. Have you ever been adjudicated guilty or convicted of a misdemeanor or felony? [Note that you are not required to answer “yes” to this question, or provide an explanation, if the criminal adjudication has been expunged, sealed, annulled, pardoned, destroyed, erased, impounded, or otherwise required by law or ordered by a court to be kept confidential]. <p>If you answered “yes” to either or both questions, please attach a separate sheet of paper that gives the approximate date of each incident, explains the circumstances, and reflects on what you learned from the experience.</p> <p>[Note: Applicants are expected to immediately notify the institutions to which they are applying should there be any changes to the information requested in this application, including disciplinary history].</p>

University-specific Applications		
Allegany College of Maryland	Non-profit, Public 2 year Institution	<ol style="list-style-type: none"> 1. Have you ever been charged with, indicted for, pleaded guilty/no contest to, or found guilty of any criminal offense excluding minor traffic violations? If yes, please type explanation on a separate sheet and attach.
Anne Arundel Community College	Non-profit, Public 2 year Institution	<ol style="list-style-type: none"> 1. Have you ever been convicted of a felony and/or are there any pending charges? If your answer is yes, provide a written explanation and all relevant documents and information regarding the matter. 2. Were you ever disciplined for any academic or conduct issue by any college, university or any other educational institution including but not limited to, probation, dismissal, suspension, disqualification or imposition of a failing grade as a disciplinary sanction? If your answer is yes to this question, provide a written explanation and all relevant documents and information regarding the matter. 3. Have you ever received disciplinary action since the 9th grade?
Bowie State University	Non-profit, Public 4 year Institution	<ol style="list-style-type: none"> 1. Do you currently have any criminal charges pending, have you been arrested, or have you been convicted of a felony?
College of Southern Maryland	Non-profit, Public 2 year Institution	<ol style="list-style-type: none"> 1. Have you been charged with a criminal offense classified as a felony? 2. Have you been expelled or dismissed from any college or university for disciplinary reasons?
Coppin state University	Non-profit, Public 4 year Institution	<ol style="list-style-type: none"> 1. Have you ever been convicted of a crime, other than a minor traffic violation, for which the charges have not been expunged or pardoned?
Frostburg State University	Non-profit, Public 4 year Institution	<ol style="list-style-type: none"> 1. Have you ever been convicted of a criminal offense other than a minor traffic violation (please include findings of probation before judgment)?
Goucher College	Non-profit, Public 4 year Institution	<ol style="list-style-type: none"> 1. Have you ever been placed on probation, suspended, removed, dismissed or expelled from any school or academic program since 9th grade? 2. Other than traffic offenses, have you ever been convicted of any misdemeanor or felony? 3. If you answered yes to either question, please provide an explanation and the approximate dates of each incident. Please attach your response to the end of this application.
Hagerstown Community College	Non-profit, Public 2 year Institution	<ol style="list-style-type: none"> 1. Have you ever been charged with, indicted for, pleaded guilty/No contest to or found guilty of any criminal offense excluding minor traffic violations? 2. Has disciplinary action been initiated or taken against you at any institutions of higher education that you have attended? If yes, indicate the name(s) of the institution.
Hood College	Non-profit, Public 4 year Institution	<ol style="list-style-type: none"> 1. Have you ever been placed on probation, suspended, removed, dismissed or expelled from any school or academic program since 9th grade? 2. Other than traffic offenses, have you ever been convicted of any misdemeanor or felony? If you answered yes to either question, please provide an explanation and the approximate dates of each incident. Please attach your response to the end of this application.

University-specific Applications (continued)

Howard Community College	Non-profit, Public 2 year Institution	1. Have you ever been adjudicated guilty or convicted of a misdemeanor or felony not shielded under the Maryland Second Chance Act?
Johns Hopkins University	Non-profit, Private 4 year Institution	Accepts the Common Application, Universal Application and the Coalition Application
Loyola University Maryland	Non-profit, Private 4 year Institution	<p>1. Have you ever been found responsible for a disciplinary violation at any educational institution you have attended from the 9th grade (or the international equivalent) forward, whether related to academic misconduct or behavioral misconduct, that resulted in a disciplinary action? These actions could include, but are not limited to, probation, suspension, removal, dismissal or expulsion from the institution.</p> <p>2. Have you ever been adjudicated guilty or convicted of a misdemeanor or felony? Note that you are not required to answer “yes” to this question, or provide an explanation, if the criminal adjudication or conviction has been expunged, sealed, annulled, pardoned, destroyed, erased, impounded or otherwise required by law or ordered by a court to be kept confidential.</p>
Maryland Institute College of Art	Non-profit, Private 4 year Institution	<p>1. Have you ever been placed on probation, suspended, removed, dismissed or expelled from any school or academic program since 9th grade?</p> <p>2. Other than traffic offenses, have you ever been convicted of any misdemeanor or felony?</p> <p>If you answered yes to either question, please provide an explanation and the approximate dates of each incident. Please attach your response to the end of this application.</p>
Maryland University of Integrative Health	Non-profit, Private 4 year Institution	1. Have you ever been convicted of a crime? Please provide a conviction description.
McDaniel College	Non-profit, Private 4 year Institution	1. Have you ever been convicted of a misdemeanor, felony or other crime?
Morgan State University	Non-profit, Public 4 year Institution	1. Have you ever been convicted of any crime or been sentenced to a correctional institution?
Mount St. Mary's University	Non-profit, Private 4 year Institution	1. Have you ever been dismissed or suspended from a high school or college?
Salisbury University	Non-profit, Public 4 year Institution	<p>1. Have you ever been placed on probation, suspended, removed, dismissed or expelled from any school or academic program since 9th grade?</p> <p>2. Other than traffic offenses, have you ever been convicted of any misdemeanor or felony?</p> <p>If you answered yes to either question, please provide an explanation and the approximate dates of each incident. Please attach your response to the end of this application.</p>

University-specific Applications (continued)		
St. John's College	Non-profit, Private 4 year Institution	1. Have you ever been adjudicated, guilty or convicted of a misdemeanor, felony, or other crime?
St. Mary's College of Maryland	Non-profit, Public 4 year Institution	1. Do you have any education interruption/disciplinary history to report?
Stevenson University	Non-profit, Private 4 year Institution	<p>1. Have you ever been academically dismissed from, declared ineligible to attend, or incurred disciplinary action from any institution? If yes, please provide an explanation on a separate sheet. Your application will be considered incomplete without this information.</p> <p>2. Have you ever been convicted or found guilty of any criminal or military offense, excluding minor traffic violations? If yes, please provide an explanation on a separate sheet. Your application will be considered incomplete without this information.</p>
Towson University	Non-profit, Public 4 year Institution	1. Have you been convicted of, or received a probation before judgment disposition for, a criminal offense, including DWI or DUI, but excluding minor traffic violations?
United States Naval Academy	Non-profit, Public 4 year Institution	1. Have you ever received a citation, been arrested for anything or have any criminal history?
University of Baltimore	Non-profit, Public 4 year Institution	1. Have you ever been convicted of a crime, other than a minor traffic violation, for which the charges have not been expunged or pardoned?
University of Maryland University College	Non-profit, Public 4 year Institution	1. Have you ever been convicted in court for other than a misdemeanor or a minor traffic violation?
University of Maryland, Baltimore County	Non-profit, Public 4 year Institution	<p>1. Have you ever been placed on probation, suspended, removed, dismissed or expelled from any school or academic program since 9th grade?</p> <p>2. Other than traffic offenses, have you ever been convicted of any misdemeanor or felony?</p> <p>If you answered yes to either question, please provide an explanation and the approximate dates of each incident. Please attach your response to the end of this application.</p>
University of Maryland, College Park	Non-profit, Public 4 year Institution	1. Have you ever been charged with, pleaded guilty to, or been found guilty of any criminal offense, other than a minor traffic violation, for which charges have not been expunged?
University of Maryland, Eastern Shore	Non-profit, Public 4 year Institution	1. Have you ever been charged with a criminal offense (excluding minor traffic violations) for which charges have not been expunged or pardoned?

University-specific Applications (continued)

Washington Adventist University	Non-profit, Private 4 year Institution	1. Have you ever been convicted?
Washington College	Non-profit, Private 4 year Institution	1. Have you ever been adjudicated guilty or convicted of a misdemeanor, felony, or other crime? Note that you are not required to answer “yes” to this question, or provide an explanation, if the criminal adjudication or conviction has been expunged, sealed, annulled, pardoned, destroyed, erased, impounded, or otherwise ordered by a court to be kept confidential.

Institutions Whose Applications Include a Statement Prohibiting the Admission of Sex Offender Registrants

Carroll Community College	Non-profit, Public 2 Year Institution
Harford Community College	Non-profit, Public 2 Year Institution

Institutions Whose Applications Do NOT Ask Questions Regarding Criminal History

University of Maryland, Baltimore	Non-profit, Public 4 Year Institution
Baltimore City Community College	Non-profit, Public 2 Year Institution
Cecil College	Non-profit, Public 2 Year Institution
Chesapeake College	Non-profit, Public 2 Year Institution
Community College of Baltimore County	Non-profit, Public 2 Year Institution
Frederick Community College	Non-profit, Public 2 Year Institution
Montgomery College	Non-profit, Public 2 Year Institution
Prince George's Community College	Non-profit, Public 2 Year Institution
Wor-Wic Community College	Non-profit, Public 2 Year Institution
Capitol Technology University	Non-profit, Private 4 Year Institution
Notre Dame of Maryland University	Non-profit, Private 4 Year Institution

Note: This information is from a review of admissions applications conducted by Job Opportunities Task Force staff in March 2017.

STUDENT LOAN APPLICATION

Applying For A ☐ Driver Permit ☐ ID Card ☐ Renewal ☐ Replacement (Check any that apply)

Personal

Last Name

First Name

Date of birth

Nationality

Driver license, Lerner Permit, or Non-Driver ID card number

Date of Expiration:

Your Personal Details

Height

cm / inches

Eye color

Identification Information

Driver license?

☐ Yes ☐ No

Lerner permit?

☐ Yes ☐ No

Non-driver ID Card?

☐ Yes ☐ No

There are lots of places to explore. Places could be urban or suburban. Some people loves to be with nature to free their minds and refresh their souls, but some like to be in the city. You will get lots of benefits such as exploring new culture, meet new people while learning to be adaptive, gain new experiences through things, improve

PHOTO HERE

Out-of-State License ID No:

Contact Details

Home Phone No.

APPENDIX D. HIGHER EDUCATION INSTITUTIONS THAT HAVE NEVER ASKED, ELIMINATED OR REDUCED CRIMINAL HISTORY INQUIRIES NATIONWIDE

Approach	School	Details
Application for admission has never had a question that asks about criminal history.	University of California System	-
	Arizona State University System	Application asks if a person is barred from returning to a prior institution of higher education, and if so, whether this was due to a sex offense.
	Oregon State University System and Community Colleges	Application asks if a person is barred from returning to a prior institution of higher education, and if so, whether this was due to criminal conduct.
Use the Common Application (which includes questions about criminal and disciplinary history), but does not consider criminal history information until an applicant is first considered academically admissible.	University of Minnesota	Students must respond to the criminal and disciplinary history questions on the Common Application, but this information is hidden from view to application reviewers until an applicant is deemed academically eligible for admission.
	New York University	Students must respond to the criminal and disciplinary history questions on the Common Application, but this information is hidden from view to application reviewers until an applicant is deemed academically eligible for admission.
Ask question(s) about criminal and disciplinary history on the admissions application, but have narrowed the scope of these questions to ensure that applicants are not unduly barred from admission.	University of Minnesota	UMN is removing the inquiry about past felony convictions and pending charges for the fall 2017 application cycle; only questions about academic dishonesty and sexual offenses will remain.
	New York University	NYU has opted to suppress answers to the criminal and disciplinary history questions on the Common Application and instead ask narrower questions, which focus only on violent incidents.
Completely removed criminal history inquiry from the admissions application (banned the box).	State University of New York System	As of September 2016, SUNY has removed the question on the admission application that asked about prior felony convictions. As a result, there is no longer any criminal history inquiry as part of the admissions application. SUNY campuses will inquire about criminal history post-admission for the purposes of campus housing and participation in certain clinical or field experiences, internships or study abroad, and a special committee will review criminal history information in order to make determinations. However, the University is prohibited from using post-admission information to revoke admission.

Note: JOTF collected this information through a mix of interviews with university staff, school websites and related articles: Arizona State University System: www.asu.edu; www.public.azregents.edu; president.asu.edu; University of Minnesota: www.uofminn.org; admissions.tc.umn.edu; <http://www.mndaily.com/article/2016/12/felony-question-taken-off-admission-application>; New York University: www.nyu.edu; State University of New York System: www.suny.edu.



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