



Thurgood Marshall
Civil Rights Center
School of Law

INSIDE PG COUNTY BOND HEARINGS:

Analysis, Findings, & Recommendations

Movement Lawyering Clinic
December 2020

I open up Zoom and my court watch of the bond hearing in Prince George’s County, Maryland begins. There are four screens. Two of them show a lawyer in suit and tie. One shows a judge in a robe. The last: a person with a mask in an orange jumpsuit, their hands cuffed behind their back. Nine times out of ten this is a Black man. Judges go through each of these bond decisions—whether they will order a person to risk his or her life in an overpopulated jail during a pandemic, often caged for months waiting for their trial date to be set—like an assembly line. Minutes is all it takes for judges to determine their fates.

I have witnessed judges ignore the people they are about to jail, when they say they cannot hear what is happening in their hearings. Meanwhile, they make technical adjustments with prosecutors make the same complaint.

I have witnessed judges fail to have a translator communicate with a non-English speaking person.

I have witnessed judges chastise attorneys who present extended arguments on behalf of their clients. “How much longer are you going to be?”

I have witnessed judges make jokes at the expense of the men and women who stand before them.

I have witnessed judges yelling and berating people experiencing clear signs of mental health illnesses for not responding to their questions.

Meanwhile, while the State Attorney’s Office has taken the public stance that they are against cash bond (one even referred to herself as “No Bond Nancy”). Yet, I hardly see them objecting to putting defendants in jail pre-trial.

I have witnessed her prosecutors fight for the pre-trial detention of countless men and women who are charged with non-violent crimes.

Meanwhile, the jail population continues to increase, and COVID-19 threatens the lives of those inside and out. While millions of us have been protesting against racial inequality and mass incarceration, PG County District Court continues to perpetuate these structural forms of oppression against human beings.

Testimony of Daniela Charris
Movement Lawyering Clinic 2020

Executive Summary

Since August of 2020, the Movement Lawyering Clinic (“the Clinic”) at Howard University School of Law has observed bond hearings in Prince George’s County District Court. The impetus of this project came from reports and a lawsuit from Civil Rights Corps, alleging that PG County’s jail was overcrowded, unsanitary, at risk of a COVID-19 breakout, and teeming with pre-trial defendants, many who are charged with non-violent crimes.¹ The Clinic decided to observe PG County bond hearings to determine the extent of pre-trial detention in the County, or more specifically, who was being put in pre-trial detention and why.

Over the course of three months, the Clinic collectively observed approximately 100 hours of bond hearings. This report details the Clinic’s findings and offers recommendations to mitigate some of these concerns.

While the Clinic was initially concerned with finding out how pre-trial detention recommendations and decisions were being made by the State Attorney’s Office and the judiciary, the Clinic also **discovered several troubling trends relating to due process rights, judicial ethics and conduct, and over-criminalization**. Some examples include, *defendants being unable to hear the proceedings against them, translation services lacking, and judges making demeaning and disparaging comments to defendants and defense counsel*. Together, these problems have contributed to the overuse of pre-trial detention and jail overcrowding in PG County.

The Clinic emphasizes that no one party is responsible for the problems it has observed in the PG County District Court. Rather, the judiciary, the jail, Pre-Trial Services, the State Attorney’s office, and defense counsel contribute to the current situation in PG County.

It is the Clinic’s hope that **this report can remind judges, prosecutors, the jail, defense counsel of their responsibilities and the ways they have fallen short**. The Clinic also hopes that advocates, litigators, and even the local government can use this report to continue to push for change.

As this report notes, **the situation in PG County District Court is dire**. As of writing, the jail population in PG County District Court is over 760 people. Yet, PG County is also unfortunately representative of the administration of criminal justice throughout the country. In the midst of an unprecedented COVID-19 pandemic nationwide that makes **every decision to incarcerate someone, no matter how small the offence, a potential capital punishment**, the need to

¹Class Action Complaint for Declaratory and Injunctive Relief and Petition for Writs of Habeas Corpus Pursuant to 28 U.S.C. §2241, Seth v. McDonough, No. 8-20-cv-01028 (2020).

reevaluate how we, as a society, respond to those who allegedly commit crimes is as important as ever.

The Clinic urges all responsible parties to **consider non-carceral solutions to the challenges of crime, poverty, and mental illness**. It is crucial that for the sake of the health of those inside the jail and those outside that these problems are addressed in a manner that respects the constitutional rights and dignity of all who are involved.

Movement Lawyering Clinic students Jasmine Bermudez, Daniela Charris, Astrid Diaz, Brittany Griffin, Rachel Palmer, Brooke Radford, Nia Reese, Khalil Rivers, Sharde Slaw, and Reginald Young-Drake wrote this report, under the supervision of Tasnim Motala and Justin Hansford. The Clinic thanks Dr. Carmen Johnson from Life After Release for her assistance in coordinating the Court Watch in PG County. This project would not be possible without her energy, guidance, and encouragement.

TABLE OF CONTENTS

<i>I. Due Process Concerns</i>	5
1. Defendants are Unable to Meaningfully Participate in the Proceedings	5
2. Translation Services are Lacking, Incorrect, or Rushed	8
3. Defense Counsel Does Not Have Access to Pre-Trial Sheets	8
4. Incorrect Pre-Trial Sheets Negatively Affect Bond Results	9
5. Defendants Are Unable to Reach Counsel While in Custody	9
6. The Court Often Responds Inappropriately Mental Health Concerns	10
7. The Court Often Shows a Lack of Care for Each Case	12
8. Lack of Public Access to Bond Hearings	13
<i>II. Over Punitiveness & Criminalization</i>	13
1. Non-Violent Offenders are Being Held in Pre-Trial Detention	13
2. The State Attorney’s No Cash Bail Stance Often Leads to Increased Use of Pre-Trial Detention	15
3. Criminalization of Homelessness	16
4. The State Attorney’s Office Prosecutes Cases that Are Meritless at Face Value	17
5. Judges Do Not Order Pre-Trial Services	18
6. Pre-Trial Services Requirements are Unduly Onerous	19
<i>III. Judicial & Prosecutorial Conduct</i>	19
1. Disparity Between the Way Judges Treat Defense as Opposed to State	19
2. Judges & Prosecutors Often Show a Lack of Professionalism	21
3. Proclivity for Extended Pre-Trial Detention	22

I. Due Process Concerns

1. Defendants are Unable to Meaningfully Participate in the Proceedings

The Clinic has observed multiple instances when defendants are unable to hear their defense attorneys or the judge. On multiple occasions, the Clinic has observed defendants state that they are unable to hear their defense attorneys' arguments over the background noise of the jail. Additionally, the Clinic has observed defendants state that they can neither hear a judge's ruling nor explanations for the ruling.

In addition, the Clinic has observed defendants state that they are unable to hear witnesses (often defendants' friends and family members) who come to speak on their behalf. This often happens because the witnesses are attending the proceeding in-person at the courthouse, in which the Zoom microphone is too far away from them for those on Zoom to hear.

On several occasions, the *presiding judge has continued with the hearing without repeating their ruling or the argument on the defendant's behalf.*

Understandably, the virtual proceedings have made communication between all parties difficult. However, defendants' ability to hear and participate in bond hearings (which, if they result in their incarceration, have major implications for their physical and mental health) cannot be encumbered.

Zoom technical difficulties have also made it difficult to hear what is occurring, a challenge directly experienced by the Clinic (this issue has become particularly acute after Court Observers were prohibited from video calling and limited to calling in via telephone). While Court Watching over the telephone, the Clinic has noticed that the speakers' voices often waiver as a result of technical difficulties or background noise.

The Sixth Amendment guarantees criminal defendants the right to confront their accusers and the nature of the charges and evidence against them in all criminal proceedings. Particularly in adversarial proceedings that can have major implications for the criminal defendant (in this case, bond hearings can result in prolonged pre-trial detention during a pandemic), **it is crucial that defendants have the opportunity to confront all witnesses testifying against them and at the minimum, understand the nature of the charges against them.**

The Clinic urges the judiciary to be mindful of limitations of the Zoom format of these bond hearings: depending on where the defendants, witnesses, and attorneys are located, they might be unable to hear these proceedings. The onus is on the judiciary to take steps to ensure that all relevant parties can hear.

The Clinic highlights three specific incidents that illustrate the extent of the problem:

- On September 11, 2020, Judge Brian Denton proceeded through several cases in his docket, despite each respective defense attorney explicitly informing the judge that they could not hear what was being said. For instance, one of the defense attorneys told Judge Denton that he was having trouble hearing the witnesses that were present in the courtroom and were speaking on behalf of the defendant through the Zoom platform. *Judge Denton, however, continued with the proceeding without acknowledging the defense attorney's objection.* Additionally, a different defense attorney voiced he was unable to hear the Assistant State's Attorney's ("ASA") argument and asked for further clarification on what was said. Judge Denton mockingly addressed the defense attorney's complaints by responding, "State Attorney Martin has been arguing that your client needs to stay locked up." As a result, the defense attorney was unable to clearly hear the ASA argue that she had spoken to the respective victim earlier that week who stated she felt in danger of her life if the defendant were to be released. Because he was unable to hear the State's argument, the defense attorney could not rebut the ASA's claims and thus adequately defend his client. In addition to the defense attorneys' complaints, several of the defendants stated that they also had trouble hearing what was said at the proceeding. In one instance, a defendant told Judge Denton that he could not hear his attorney's and the state's arguments. *Instead of remedying the situation, Judge Denton advised the defendant not to speak,* as whatever he said could and would be used against him. In other instances, a number of defendants indirectly mentioned that they could not hear to the guards or other defendants. As Court Observers, the Clinic could hear the defendants articulating that they could not hear, so the Clinic presumes that Judge Denton also heard these complaints. One defendant who could not hear the Zoom proceeding over the noise of the jail voiced several times to the guards and other inmates he was having trouble hearing what the judge was saying. Although having heard the defendant make these complaints, *Judge Denton continued through the proceeding without acknowledging the defendant's concerns.* Having also heard his client's complaints of being unable to hear, the defense attorney reiterated to Judge Denton that his client could not hear the proceedings. Again, Judge Denton continued the proceedings, ignoring both the defendant and defense counsel. *Judge Denton only addressed these concerns when ASA Elveta Martin raised them.* When ASA Martin said that she, too, was unable to hear what was said over the noise of the jail, Judge Denton apologized to ASA Martin and then asked the jail to mute their speakers. Despite the problem being fixed for ASA Martin, the defendant, who was present amidst the noise of the jail, still was still unable to hear the proceedings. Following Judge Denton's ruling, the jail unmuted its microphone and the defendant had to ask his defense attorney how the case was ruled and if he was able to go home.

- On September 18, 2020, Judge Donnaka Varner-Lewis oversaw a hearing where the defendant told her several times that he could not hear what his family members present in the courtroom had said on his behalf. *When the defendant spoke directly to the judge to explain he could not hear, Judge Varner-Lewis ignored him.* The defense attorney then reiterated that his client was unable to hear his family members speak on his behalf. *Judge Varner-Lewis responded by asking the ASA, Todd Stewart, if he was also having trouble hearing.* ASA Stewart agreed that he was also having trouble hearing the family members. Judge Varner-Lewis asked the family members in the courtroom to speak louder. While Judge Varner-Lewis, who was in the same room as the family members, was able to hear them, it was still difficult for those outside the courtroom to hear those testifying. The defense attorney again voiced that he could not hear what was being said. Judge Varner-Lewis ignored him. At this point, the Clinic, which was court watching using the name “Howard Law Observers,” commented in the Zoom chat that they, too, were unable to hear what was being said. Judge Varner Lewis’s clerk responded in the Zoom chat by chastising those who used the Zoom chat, stating that the chat was meant for communication solely between the court and the clerk. The clerk equated the observers' comments in the chat to standing up during a proceeding and interrupting the Judge while making her ruling. About a week later, the PG County District Court banned court observers from attending virtual Zoom hearings and limited their access to telephone calls. The Clinic understands that this September 18, 2020 interaction played a role in why the Zoom video function was now limited solely to the court, the jail, the defense attorneys, the state attorneys, and family members speaking on behalf of the defense.
- On October 2, 2020, a defense attorney was unable to communicate with his client before his bond hearing. However, because the defendant had low charges and no previous criminal record, his defense attorney opted to continue with the bond hearing and ask for release on personal recognizance or an unsecured bond. Judge LaKeecia Allen, who was overseeing the bond hearing, began an unprompted on-the-spot mental health evaluation on the defendant. Judge Allen asked the defendant what their charges were, and the defendant responded that they did not know. Then Judge Allen asked who the United States’ current president was, to which the defendant responded, “Trump.” Then, on the last question, Judge Allen’s internet connection broke due to technical difficulties. As a result, the defendant misheard the question, thinking that Judge Allen asked what year he was born. The defendant responded “1992” and Judge Allen automatically referred the defendant to mental health court. Judge Allen had asked what year it is. Because she did not realize that there were technical difficulties, Judge Allen sent the defendant to the mental health court based on her misunderstanding of the situation. *Both the defense and the state attempted to inform Judge Allen of the miscommunication caused by the technical difficulty. However, she neglected to consider the issues over Zoom and still referred the defendant to mental health court, although he had no obvious mental health concerns.*

2. Translation Services are Lacking, Incorrect, or Rushed

The Clinic has observed multiple instances of language inaccessibility, in which the translation services were rushed, incorrect, or completely missing. As a result, defendants whose first language is not English are disadvantaged: they are unable to assist in their own defense, hear the proceedings against them, or rebut the State's allegations. **The Clinic urges all parties—the judge, defense counsel, and the state - to be mindful of translation needs and when a translator is being used, to speak slowly and allow opportunities for the translator to precisely communicate the proceedings to the defendant.**

- On August 31, 2020, after the public defender presented the defendant's case, Judge Patrice Lewis and ASA Elveta Martin both spoke in turn, neglecting the fact that the defendant did not speak English and needed an interpretation. *The interpreter himself had to interrupt the judge and the prosecutor in order to remind them that he needed to translate the proceedings to the defendant. ASA Martin bluntly remarked that she had forgotten about the need to interpret.* Consequently, because the interpreter had a large amount of information to relay to the defendant, *he did not communicate the bond amount that the public defender was requesting to the defendant.* Ultimately, Judge Lewis did not grant the public defender's request, and instead ordered that the defendant be held without bond. Although the requested bond amount was a moot point in light of the final decision, the defendant was disadvantaged in his understanding of the proceedings due to the language barrier. **All defendants subjected to the same carceral system should be able to have access to information that has considerable consequences for their livelihood.**

3. Defense Counsel Does Not Have Access to Pre-Trial Sheets

The Clinic has observed multiple instances of when defense counsel has not had access to pre-trial sheets, which provide crucial information related to the defendant's charges and criminal history. **This hinders the defense's ability to zealously advocate for their clients, as they have less context about their client's case.** It also makes them seem unprepared to the Court and Court Observers. The Clinic has observed instances of when the Court has access to the pre-trial sheets, but the defense counsel does not. The Court is then able to make pre-trial determinations based on this information, while defense counsel can do little to rebut or address the pre-trial sheet's assessments. This, in addition to the number of cases that many public defenders have, can impede a defendant's representation.

4. Incorrect Pre-Trial Sheets Negatively Affect Bond Results

Relatedly, pre-trial sheets often contain errors, which prejudice defendants' bond results. *The Clinic has observed instances when defense counsel has raised that pre-trial reports contain incorrect information, such as wrong numbers of FTAs, wrong previous convictions, or missing information.*

In particular, the quantity of FTAs is a crucial factor considered in a bond hearing on whether to release a defendant. On multiple occasions, the Clinic has witnessed an incorrect distribution or miscategorizing of FTAs due to lack of organization and the assembly line nature of these proceedings. The Clinic also understands that occasionally the jail fails to transport an incarcerated defendant, resulting in the defendant receiving a FTA.

Moreover, the Clinic is concerned that given public defenders' high caseloads, their lack of access to their clients, and sometimes them receiving pre-trial sheets late or not at all, they do not have the time to research the information provided on these pre-trial sheets and rebut potentially incorrect information on these sheets.

This limits public defenders and defense attorney's ability to advocate for pre-trial release of their clients, which ultimately hinders the defendant's ability to get pre-trial release and that is especially troubling in a pandemic.

5. Defendants Are Unable to Reach Counsel While in Custody

The Clinic has observed multiple instances when either *defense counsel or defendants have expressed that they have been unable to contact each other, while defendants have been in custody.*

From conversations with defense counsel, the Clinic understands that this lack of access is mostly due to conditions in the jail. The Clinic understands that there are limited phones available in the jail and on Mondays or after long weekends, there tends to be a backlog of defendants trying to get access to the phones. Additionally, if a defendant is in punitive isolation or medical isolation, they might have difficulty accessing the jail's phones. Finally, defense counsel has also noted instances when jail phones do not work or the jail has not given defendants a PIN, so they are unable to use the phones.

In instances when counsel has not been able to speak to their client, the Clinic has observed judges ordering the defendant detained. This requires defense counsel to file a bond motion to give their client another opportunity for a hearing. Particularly when the defendant is being charged with a non-violent crime or they have no prior arrests, it makes little sense for the judge to push the

defendant's bond hearing to another day, resulting in the defendant languishing in jail for longer periods.

The Clinic urges the PG County Jail to make sure that defendants are able to access phones and speak to their attorneys. When defendants are unable to speak to their attorneys, the Clinic urges the judiciary to review the defendants' records to determine whether the defendant is eligible for pre-trial release. Particularly in the pandemic, the stakes are simply too high, to send defendants eligible for pre-trial release back to the jail and postpone their bond hearings for another day.

- On October 23, 2020, a number of the defendants did not appear to have spoken to their counsel before the bond hearing. For example, one defendant openly said to her counsel during the hearing, "Why didn't you call me?" Additionally, several defendants did not even know who their counsel was. Because of this general confusion, a few minutes would be spent before the defendant's case hashing out the conflicts with representation.
- On October 19, 2020, counsel for defendants brought up a number of times that the jail phones were not in service and thus they were unable to speak to their clients. However, Judge Clayton Aarons hardly took this fact into consideration when making his rulings.

6. The Court Often Responds Inappropriately Mental Health Concerns

The Clinic has observed judges mishandling mental health-related concerns. *The Clinic is concerned that the judiciary has taken a cavalier attitude towards defendants' mental health problems.* In some instances, they are too eager to send defendants to mental health court ("MHC") and in others, they are insensitive towards obvious signs of mental illness. The Clinic reminds the judiciary that defendants facing criminal justice proceedings are under a tremendous amount of stress and likely find their experiences in the jail traumatizing.

The Clinic has observed judges attempting to make unilateral mental health determinations, without considering the full circumstances of the defendant's situation. While those with mental health concerns should rightly be referred to MHC, judges must be circumspect in who they send to MHC. For defendants who do not have mental health concerns, like the defendant discussed below, MHC results in them spending an unnecessary amount of time in jail, waiting for their MHC appearance. Additionally, on-the-spot and unilateral mental health determinations, like the one detailed below, raise important questions about a defendant's right to remain silent.

- On October 2, 2020, Judge LaKeecia Allen questioned the defendant in an attempt to determine his mental competency. Judge Allen's connection had some technical difficulties, resulting in the defendant (and others) being unable to hear her question. When the defendant answered Judge Allen's question incorrectly due to being unable to hear her question, Judge Allen sent the defendant to MHC. Both defense counsel and the ASA

attempted to explain that the defendant could not hear Judge Allen's question, but she ignored them.

- On October 2, 2020, Judge LaKeecia Allen ordered a twenty-year-old defendant to mental health court because his mother mentioned in passing that he once suffered from PTSD when he was younger. Upon hearing this, *Judge Allen decided to send the defendant to MHC, despite the fact that no one (not even the defendant's mother) was alleging that the defendant continued to display mental health issues.* The State asked for the case to be pushed back to Monday so they could make their own evaluations of the mother's testimony of PTSD and then reconsider the case on those grounds. The defense counsel also asked for the case to be pushed back to Monday. Judge Allen, however, referred the defendant to MHC despite the ASA's and defense counsel's requests and despite the fact that there was no information as to whether the defendant still suffered from PTSD, received treatment, or was taking medication.

In addition, judges can be overly combative and treat clients with mental health concerns as if their mental health is criminal in and of itself. The criminalization of mental health diagnoses and treating someone as de facto violent simply because they have a prior diagnosis is a major concern. *The Clinic has observed that the Court orders defendants with mental health concerns detained without bond and either coerce or forcibly refer them into mental health court as the only means of pretrial release.* Furthermore, the court will refuse to release people or even continue bond hearings for attorneys to ascertain more information about mental health status and any treatment or medications with which the client may even be compliant.

- On August 31, 2020, the defendant appeared to either be experiencing a mental health crisis or was coming off a drug withdrawal. The defendant was rocking back and forth, not making eye contact, and not acknowledging any of the questions posed to him by Judge Patrice Lewis. To the Clinic, it appeared obvious that the defendant did not understand the proceedings in front of him and he needed medical attention. *Judge Lewis was rude and abrupt with the defendant, snapping at him and declaring that, "he refused to speak."* While she ultimately ordered a mental health evaluation for him, the Clinic was taken aback at the disrespect that the Judge showed the defendant, when he was having a medical crisis.
- On November 13, 2020, a defendant was charged with a non-violent burglary of property under \$1,000. His public defender asked the court for a continuance of the case until Monday because they were not able to speak to their client ahead of the bond hearing. The defendant objected to his case passing until Monday. Judge Wanessa Snoddy asked the defendant why he was against postponing his hearing. The defendant explained that he wished, "to go to Southern Maryland Hospital to speak on the phone to Michelle Obama." There was immediate interjection by the public defender, who persisted to ask for a continuance. Instead, the judge passed the matter to the very end of the hearing so that the public defender could speak to their client about the case in the meantime. When the Court returned to the matter, it was clear that counsel was advocating for release on unsecured bond or Pre-Trial Services as the best option for their client, so that the defendant could visit their preferred doctor, who was treating him. ASA Stewart opposed, requesting instead that the defendant go to mental health court. Judge Snoddy agreed with ASA Stewart and the defendant was sent back to jail pending his mental health court hearing.

Especially given the non-violent nature of his charge, the Clinic finds it would have been more appropriate to release the defendant, so he could seek mental health care outside of the criminal justice system.

7. The Court Often Shows a Lack of Care for Each Case

The Clinic is concerned that the Court consistently demonstrates that each case needs to be handled quickly, often without due care. Judges tend to rush through the docket, verbally express a desire to get through the docket quickly, and have gone as far as to chastise attorneys who present extended arguments, including asking public defenders questions such as, “How much longer are you going to be, Defense?” **This proclivity for assembly line style justice is not a demonstration of efficient use of judicial resources, but a disservice to the parties involved, especially the accused.**

- On September 18, 2020, Judge Donnaka Varner-Lewis rushed through the bond hearing without any concern for whether the accused needed an interpreter. As the case proceeded and the defense attorney made their argument from the courtroom, the Department of Corrections, nor the interpreter were able to hear the argument over the Zoom call. Despite several attempts to resolve the issue by the interpreter and the Department of Corrections the issue was not resolved until the ASA brought the issue forward to the judge and clerk.
- On August 28, 2020, Judge Joseph L. Wright berated a public defender representing an out of county defendant who made an argument the judge believed was too drawn-out. *When the same public defender re-appeared to defend another client the judge asked the public defender if their argument was going to be as long as the previous argument stating, “If it is, I’ll skip you and save it till the end,” and “it seems to me like you’re reading from something.”* Actions like this are a demonstration of lack of tact, as well as a lack of consideration for due process rights of the accused.
- On October 2, 2020, the defendant needed an interpreter. While the Court acknowledged the interpreter, *the public defender made their entire argument to the court before realizing the Department of Corrections may have presented the wrong person for the case.* When the public defender stated that the Department of Corrections may have confused the identity of their client and presented the wrong person before the court, *Judge LaKeecia Allen threatened to revoke the ruling of the case that fell in the accused’s favor and deferred to the Department of Corrections’ choice of who stood before the court.* The public’s faith in the court’s ability to provide an accurate and deliberate hearing dwindles when the court treats the accused as widgets on a conveyor belt instead of treating them as civilians who deserve a fair hearing. The public deserves for the court to follow procedure attentively rather than rush and suffer the consequences of confusion for the sake of time.

8. Lack of Public Access to Bond Hearings

The Clinic is troubled about the lack of public access to bond hearings. While the Clinic has been able to call into bond hearings via telephone, the Clinic's ability to follow the proceedings over telephone, as opposed to over Zoom, has diminished. On the Zoom platform, observers are able to observe the demeanor of the judges, defendants, counsel, and ASAs, which are important elements of a fair trial. Further, when multiple participants are talking without introduction, it is difficult to make out who exactly is speaking, in part because of poor audio quality of a telephone, as well as that many of the speakers (including the judges) do not introduce themselves.

The Clinic is concerned that the lack of public access to bond hearings will result in a lack of transparency and accountability in the courtroom. Without being able to visually see the courtroom proceedings, court observers are unable to fully assess the due process concerns and violations of rights (some of which the Clinic have detailed here) that might arise. Relatedly, since losing access the visual hearings, the Clinic has sensed a change in the demeanor of judges during these bond hearings – **it is the Clinic's opinion that without having court watchers visually observing what is happening, judges have been less professional and thoughtful in their work.**

While the Clinic understands that in-person bond hearings have recommenced, the pandemic is still raging nationwide. Given the Center for Disease Control's guidance and medical experts' recommendations that the public stay at home and avoid unnecessary indoor gatherings, it is impossible for the public to attend these bond hearings without putting themselves and others at risk. At this time, the only feasible way to allow the public to effectively observe bond hearings is to reinstate the Zoom video platform.

II. Over Punitiveness & Criminalization

1. Non-Violent Offenders are Being Held in Pre-Trial Detention

Despite State Attorney Aisha Braveboy's stated commitment to recommend pre-trial detention only for violent offenders, the Clinic has observed multiple instances when defendants accused of non-violent crimes are held with either no bond option or with a secured bond. Oftentimes, the Judge or the ASA contend that the defendant will not return to court, despite that many of these defendants have little to no failures to appear.

- On September 25, 2020, a defendant who was held on a \$5,000 bond requested a reduced bond because his family could not afford to pay \$5,000. The defendant was accused of possessing a firearm and only had one prior conviction 4 years ago. However, *Judge Katina*

Stewart refused to reduce the bond and he was held in pre-trial detention for an indefinite amount of time, as the judge also did not set a court date.

- On November 13, 2020, a defendant was charged with a non-violent robbery charge and held on no bond status. The public defender argued that the defendant, who works in construction, could afford a \$1,000 bond and did not have a history of violent prior convictions or failures to appear in court. The public defender further argued that according to the statement of charges co-defendant in the case was violent and not his client. *ASA Stewart facetiously rebutted, "Of course he was not violent, or we would have charged him with armed robbery, this is just robbery," and proceeded to argue for no bond without objection to pre-trial.*
- On August 31, 2020, the Clinic observed a defendant who was charged with violation of a protective order. *The defendant had already served 41 days in pre-trial detention, which exceeded the maximum amount of time he would have spent in jail if he were found guilty.* The defendant's public defender asked the court for release and good time credit. *The judge refused and instead gave the option of pretrial services.*
- On October 8, 2020, *ASA Martin argued that a defendant who was charged with malicious destruction of property should be held in pre-trial detention, despite the fact that the defendant was not charged with harming any persons.* ASA Martin argued that the defendant's alleged actions (breaking glass) was "frightening," to those inside the building, and thus opposed release.

Additionally, *the Clinic has observed that many defendants are in pre-trial detention for violating protective orders whose terms they did not fully comprehend.* Since requesting a protective order is not a criminal proceeding, and respondents thus are not entitled to a public defender, there is a substantial chance that respondents will violate the terms unintentionally because they do not fully understand the parameters of the protective order. It is the Clinic's understanding that the complaining witness does not always understand protective order, nor was it explained to both parties for them to comprehend.

Additionally, the Clinic disagrees with the use of pre-trial detention as a uniform response to alleged domestic violence. *The Clinic has observed a number of instances when the complaining witness opposes pre-trial detention of the defendant, yet the ASA and the Court ignore their wishes and seek jail time.* Also, using pre-trial detention for violations of protective orders is a method devoid of investigation that relies heavily on 'he-said-she-said' statements, which automatically incriminate the defendant.

- On September 24, 2020, a defendant unknowingly violated his girlfriend's protective order against him. His public defender explained that this violation was due to a misunderstanding about the provision of the protective order that stated that he must vacate the premises of their shared residence. Because of the ambiguity of the language, he did not understand that he would violate the protective order if he went to retrieve his belongings as requested by his girlfriend. *His girlfriend stated that she was not afraid of the defendant, did not want him to be arrested, and had even started the process of rescinding the protective order.* Judge Robert W. Heffron, Jr. released the defendant on a \$25,000 unsecured bond and ordered him to have no contact with his girlfriend, to stay away from their shared residence, and to arrange for his sister to retrieve his belongings pending the modification of the protective order.
- On October 22, 2020, a defendant unknowingly violated her mother's protective order against her by sending texts to her mother. *The mother did not allege there was violent conduct or in-person contact, nor did she allege that she was in fear.* The defendant noted that she did not know that a text message violated the protective order and vowed not to communicate with her mother over text messages again. Judge Stacey Cobb Smith ordered pretrial release at Level 3 and ordered the defendant to have no contact with any of the complaining witnesses. However, this order only pertained to one case, so it was moot because the defendant continued to be held without bond for charges in other cases in another county. **It is important to be cognizant of how legalese can be inaccessible and have dire consequences for defendants who are not fully informed, and of the importance of having alternative resources for survivors of domestic violence that do not rely on the carceral system to intervene and protect them.**

2. The State Attorney's No Cash Bail Stance Often Leads to Increased Use of Pre-Trial Detention

The Clinic has observed that judges often turn to the ASAs to request their input on whether a defendant should be released on bond. The ASAs time and again state that they cannot and will not recommend monetary bond. The Clinic applauds the State Attorney's office for moving away from a system of cash bond, which results in the poorest of defendants languishing in pre-trial detention. However, this position removes an option for pretrial release.

The Clinic observed that in the absence of a recommendation of monetary bond from the State Attorney's office, judges tend to resort to pre-trial detention. The result is the worst-of-all-worlds scenario - defendants are held in indefinite pre-trial detention and are not given the option to commit to an unsecured bond instead of spending time in jail. **While the Clinic does not support the use of bond or pre-trial detention, the Clinic suggests that judges and ASAs should rather**

use unsecured bonds, which would strike the right balance between ensuring that defendants show up for trial, not penalizing the poorest of defendants, and preventing pre-trial detention.

- *ASA Elveta Martin has referred to herself as “No Bond Nancy.” On several occasions when asked for the state’s position, she has stated that she cannot and will not recommend monetary bonds. In contrast, the Clinic has not observed the ASAs objecting to judges recommending pre-trial detention in these instances.*
- On September 11, 2020, Judge Brian C. Denton asked ASA Martin “Are you a ‘no bond’ person?” Martin responded, “Yes, I am,” to which Judge Denton responded, “I had a feeling.” This dialogue occurred during the bond hearing of an eighteen year old Latino man who was charged with kidnapping after bringing his little sister’s boyfriend back to their house. The accused was woken up that night by his mother’s screams because she thought her daughter had been kidnapped. The accused left the house in search of his sister and found his sister with her boyfriend. After a brief confrontation, the accused brought both of them back to his house. The accused called the complainant's father to inform him that his son was at their house and that he should pick his son up. The judge decided to give the defendant a \$25,000 bond.

3. Criminalization of Homelessness

The Clinic has observed the entrenched criminalization of poverty and homelessness in the PG County criminal justice system. People without a permanent place of residence have no way to receive notifications for court appearances. They are then punished for their failures to appear. **Criminalization of homelessness exacerbates the underlying problem of poverty, instead of addressing it.**

- For example, on September 4, 2020, a woman was issued nine “failures to appear” because her shelter moved her. Her public defender advocated for an unsecured bond because she could not afford to pay the \$2,000 bond. However, Judge Donnaka Verner Lewis denied the request and refused to give the 10% option because the case was out of county.
- On September 4, 2020, an elderly man was detained on a bench warrant by Judge Donnaka Verner Lewis because he had eleven failures to appear. Although he was using a friend’s address to receive mail, he was homeless.
- On August 31, 2020, *the Clinic observed a man being charged because he broke a window to use a bathroom. The defendant explained that he had nowhere to relieve himself because*

public facilities are closed during the pandemic. In instances such as these, the Clinic urges the ASA's office to exercise discretion in prosecuting crimes of poverty.

4. The State Attorney's Office Prosecutes Cases that Are Meritless at Face Value

The Clinic has observed the State Attorney's office bring forth charges against defendants that at face value, appear meritless and seem unlikely to be successfully prosecuted either because of unreliable complaining witnesses or because the complaining witness does not agree with the prosecution's narrative of events. When defendants' counsel raise the weaknesses in the allegations against their clients, the State's Attorney's office has repeatedly presented no argument or maintained they "have no objection to Pre-Trial Services."

When the State Attorney's office fails to make an argument, the public is denied the confidence that they will be given a fair bond hearing. If the State Attorney's office wants to ensure safety, they should be persuasive and transparent with that intention in court by demonstrating what facts are pertinent to withholding an individual on a no bond status or subjecting them to Pre-Trial Services.

The Clinic is aware that bond hearings are not an opportunity to litigate the facts of a defendant's case. However, **the fact that many of the defendants in these cases end up in pre-trial detention without a trial date on the calendar, makes the Clinic particularly concerned that the State Attorney's office is not more circumspect in which cases they choose to prosecute.**

- On August 6, 2020, the Clinic observed a defendant charged with domestic assault of his partner. *The complaining witness' mother testified that her daughter was not mentally sound and had fabricated the assault.* Additionally, the complaining witness' mother requested that the defendant not be put in jail, as that would prevent her from seeing her grandchildren, who would have to stay with her mentally unfit daughter if their father was jailed. *The ASA argued for detention, despite the fact that it seemed obvious to the Clinic that State could not successfully prosecute this case.* Ultimately, Judge Robert Heffron agreed with the Clinic's assessment and allowed the defendant to be released pretrial.
- On September 25, 2020, a woman appeared before the court for bail review for alleged assault. The public defender argued that the facts presented were unreliable because their client was at her own home and the complaining witness came to her residence seeking the mother of his children who was not present. The complaining witness became violent with their client and she was forced to defend herself against him. The public defender demonstrated that the complaining witness had relocated residences on two prior occasions because of the complaining witness's harassment and asked for a \$500 bond or pre-trial

release. The client had no prior history of violence and no “failures to appear,” yet the State’s Attorney’s office made no argument and simply remained silent.

- On October 16, 2020, a public defender asked the court to review bond status for a man accused of violating a protective order. The complaining witness, his wife, reported to the public defender and the State’s Attorney’s office that she was not in fear for her life, that she agreed to allow her husband to return to their shared residence, and that he could acquire his things until he could secure another place to live. *Despite the accused having no violent prior convictions and only two failures to appear for traffic violations the State’s Attorney Stewart maintained the argument of a “no bond status.”*

5. Judges Do Not Order Pre-Trial Services

The Clinic has observed that judges might provide a defendant the option for Pre-Trial Services but will refuse to order it. In return, Pre-Trial Services sometimes refuse to take a defendant without a judge’s order. **The defendants are thus stuck in limbo: a judge has determined that it is safe for the community to have the person in Pre-Trial Services instead of in jail, however, because they will not make the decision an order, purely an option, the person spends unnecessary time in jail prior to even having their trial.** Unnecessary jail time is always concerning, and specifically in the time of a global pandemic it is even more alarming to crowd the jails when the judges are able to order pre-trial.

Additionally, by abdicating this decision to Pre-Trial Services, the judges are effectively allowing the executive branch to make detention decisions. This is in direct opposition to the constitutionally mandated separation of powers thus violating defendant’s due process rights.

- On August 31, 2020, a public defender sought a court order for pre-trial release at Level 4 for their client. An earlier judge had provided a pre-trial option but Pre-Trial Services wanted an order, so the public defender had to turn back to the court. Judge Patrice Lewis refused to issue the order, meaning that the defendant would continue to be held in pre-trial detention. The injustice was exacerbated by the fact that the defendant had been detained in pre-trial for what would amount to the maximum time he would be incarcerated if found guilty in an actual trial. The only barrier to the defendant’s pre-trial release was a simple order from the judge, but her unwillingness to do so meant that the defendant would remain detained. Though this is one example, this happened many times when judges could have ordered pre-trial initially.

The Clinic applauds Judge Donine Carrington, who on October 29, 2020, called Pretrial Services to reprimand them for failing to comply with a previous order by Judge Heffron, who had ordered

Pretrial Level 4. *Judge Carrington's actions illustrate the proactive role that the judiciary can play to ensure that all state actors are fulfilling their responsibilities.*

6. Pre-Trial Services Requirements are Unduly Onerous

Pre-Trial Services is a subdivision of the jail and Department of Corrections that is supposed to be an alternative to detention while awaiting trial. *Pre-Trial Services maintains an extensive and unpublished list of criteria.* The criteria for obtaining pre-trial release was deduced from hours of court watching and conversations with the public defenders. The criteria include an address in Prince George's County, a landline, no pending cases in another county, and no active supervision in Washington, DC. The PG County address must be one that the defendant can live at upon release. This requirement is difficult to satisfy for those who are arrested in, but are not from, PG County. This requirement is also especially burdensome for defendants who are charged with domestic violence offenses, since they are often prohibited from contacting a family member or partner they live with. The requirement of a landline is outdated since most people only have cell phones today and the defendant must get explicit authorization to use a cell phone for home detention.

- On September 23, 2020, defense counsel tried to secure a lower level of pre-trial release for their client because the client did not have a Prince George's County address, which is a requirement for granting level 4 of pre-trial release. *Judge Katina Steuart denied the attorney's request even though the state's attorney did not object to the request. This resulted in the continued detention of the defendant.*

Judges routinely order someone detained without bond, but give them the option of release to Pre-Trial Services. However, Pre-Trial Services in turn, often require judges to explicitly order pre-trial release, rather than give the defendant the option for Pre-Trial Services. *The Clinic has observed instances of a judge giving defendants the option for Pre-Trial Services, but refusing to order Pre-Trial Services.* The Clinic has observed defendants stuck in limbo, in which the judge passes the buck to Pre-Trial Services and Pre-Trial Services passes the buck to the judge, with neither taking full responsibility for the release of the defendant.

III. Judicial & Prosecutorial Conduct

1. Disparity Between the Way Judges Treat Defense as Opposed to State

The Clinic has observed significant disparities in the way judges treat defense counsel as opposed to State. Judges do not allow the defense to zealously represent their clients, as is required by

the Model Rules of Professional Conduct. In some instances, defense counsel is not allowed sufficient time to adequately present their case.

For example, the defense will tell the judge that they expect a family member or witness to speak on behalf of the accused. Yet, the judge does not allow the family members or witnesses to present themselves in court. *In only a handful of cases, has the Clinic observed family members or witnesses sympathetic to the defendant having an opportunity to present their views.* When witnesses are given an opportunity to offer comments, the judge sometimes cuts them short. In the alternative, the Clinic has observed witnesses having technical issues and the judge not making sufficient efforts to ensure that their testimony is heard.

- On September 25, 2020, during a seventeen year old defendant's bond hearing, his sister called in and there were technical issues that did not allow for the court to hear her testimony fully. Nevertheless, *Judge Katina Steuart made no effort to clarify what the witness was saying and continued with the court proceeding.*
- On September 28, 2020 the Clinic observed Judge Patrice Lewis belittle the defense for their efforts to advocate for their client. *On one occasion, Judge Lewis warned the defense counsel that he would not allow her to argue additional points if they would be as time-consuming as her previous presentation of the facts.* While the judge considered the defense's advocacy as "time-consuming," it was a dynamic and appropriate response to her responsibility as an advocate for her client. These instances of partiality illustrate that judges might presume defendant's guilt and rule accordingly.
- Additionally, on October 15, 2020, a defendant was in detention on a bench warrant petitioned for by Pre-Trial Services, after the defendant was newly arrested while out on an unsecured bond. His public defender argued that Pre-Trial Services followed improper procedure by ex parte revoking bond and that instead, it should have set a hearing to see if the defendant's release conditions should be changed. He requested that the defendant's previous unsecured bond be reinstated. When it was the state's turn to present their position, *Judge Brian C. Denton turned his attention to ASA Martin and said, "State help me out, what are we doing with this," asking ASA Martin for her pre-trial detention recommendation.* Audio issues made it difficult to hear how ASA Martin responded, but Judge Denton ended up offering Pre-Trial Services the option of pre-trial release at an unspecified level, which essentially amounted to the defendant being held without bond, since Pre-Trial Services' initial petition had triggered the present series of events. The exchange between the judge and ASA Martin demonstrates that while **judges are supposed to be impartial in theory, in practice they often act in concert with prosecutors.** The phrasing Judge Denton used indicated that he perceived himself as working together with the State, and that speaks volumes about how the system actually

works and why the prosecution almost never has to carry the burden of proof, even though that is the proper procedure. Instead, the defense is the one held responsible for proving their case as to why pre-trial detention is not warranted, rather than the prosecution having to prove that it is.

2. Judges & Prosecutors Often Show a Lack of Professionalism

The Clinic has observed a number of incidents where the judges show a lack of professionalism and tact that is required for their position. The Clinic has been disturbed by many of the judges' inappropriate jokes, which make light of the dire circumstances at hand, short temper, and general disrespect to defendants and on occasion, defense counsel. Judges are in a position of authority over all parties in the courtroom. The Clinic has been disheartened by specific circumstances of judges abusing this authority and using their positions of power to threaten defendants with additional penalties.

- For example, on August 31, 2020, Judge Patrice Lewis was overtly combative with defense attorneys. When they did not respond fast enough, she implied that they were not prepared. As detailed above, when addressing a defendant with clear mental health issues, she spoke to him with anger and contempt. *When a defendant understandably expressed frustration that he was still being detained without a court date (despite him already serving more than the maximum time in prison, if he were to be found guilty), Judge Lewis threatened to sanction him.*
- On October 15, 2020, Judge Denton used the phrase “cutting him loose” to refer to a defendant’s release. It is a dehumanizing and patronizing expression that is indicative of the amount of power that judges wield over people caught up in the carceral system.
- On September 11, 2020, Judge Denton repeatedly referred to a defendant’s case as “Romeo and Juliet.” The case was about an alleged kidnapping and the facts discussed were that a brother hunted down his sister’s boyfriend because she ran away from the house at night.
- On October 20, 2020, Judge Dolores Dorsainvil yelled at a hand-cuffed defendant via Zoom for not wearing their mask properly because his mask was not covering their mouth and nose. The judge also complained that the defendant needed to respect the COVID-19 precautions and respect her request. The defendant’s hands were clearly cuffed behind their back and they were not in a position to be able to adjust their mask to fit appropriately.

The Clinic has also observed prosecutors on occasion making demeaning or insulting comments to defendants. As representatives of the “State,” ASAs have a duty to act professionally and

respectfully and with an understanding of the weight of their roles. **While their positions are, by nature, adverse to the interests of defendants and defense counsel, this does not give prosecutors permission to degrade or make light of defendants.**

- On September 24, 2020, after the public defender presented her client's position and highlighted ongoing COVID concerns about the jail population numbers, ASA Martin said that the state opposed bond and then quipped, "I heard we've turned the corner on the pandemic," in what sounded like an attempt at sarcasm because of the clearly rising number of cases at the time. Given the devastation of the pandemic in the United States, particularly among incarcerated people, it was a comment made in poor taste and insensitive to the reality that many defendants face after their bond hearings. Alternatively, if ASA Martin was sincere in her belief that COVID numbers were falling, it was ignorant at best and also telling of the state's inclination to hold defendants in pre-trial detention if it is considered safe to do so
- On August 28, 2020, a defendant, who raps for a career, attempted to speak during his hearing. *ASA Stewart responded, "Save the talking for the studio."* Those in attendance, including Judge Joseph Wright, laughed.

3. Proclivity for Extended Pre-Trial Detention

Along with the over reliance on pre-trial options instead of orders, the Clinic has also observed that judges are unable to provide most people with a court date. As such, the overwhelming majority of people were sent either back to jail or out through Pre-Trial Services with no information about when they needed to return to court. When this happened, the public defender would ask the judge to note their objections, which the judges would do. Seemingly, the lack of court dates is related to COVID-19. However, this means that many people are in a prolonged middle ground when it comes to their cases being resolved and are bound by the rules of Pre-Trial Services much longer than is intended.

- On August 31, 2020, the Clinic observed a defendant who was detained for 41 days and still had no trial date. If he were to be convicted and found guilty, his time in prison would have been less than the 41 days he had already spent behind bars.