

REPORT OF THE BAIL SYSTEM TASK FORCE

Overview

The Honorable Robert M. Bell, Chief Judge of the Court of Appeals, formed the Bail System Task Force in response to a report in which the Judiciary's Internal Auditor expressed concern that the Judiciary's practices and procedures may not be effective in implementing the current laws governing the bail system in Maryland.

Due to the complexity of the bail system, involving District and Circuit Courts and other units of the Judiciary, as well as prosecutors, defense counsel, and other stakeholders in the criminal justice system, the Chief Judge solicited nominees for Task Force membership from *inter alia* the Conference of Circuit Judges, the Chief Judge of the District Court, the Attorney General of Maryland, the Conference of Circuit Court Clerks, the Maryland Association of Counties, the Maryland Bail Bond Association, the Maryland Insurance Administration, the Maryland Public Defender, the Maryland State's Attorneys' Association, and various bar associations. A roster of the Task Force appears as Appendix I.

The Administrative Order creating the Task Force [Appendix II] charged its members with reviewing the report of the Judiciary's internal auditor [Appendix III], studying all laws, practices, procedures, and internal controls pertinent to the deficiencies noted in the internal auditor's report or otherwise affecting the effectiveness of the bail system, recommending changes to rules or statutes needed to make the bail system effective, considering federal laws imposing reporting requirements or other duties on Judiciary personnel in connection with bail bonds, and making detailed recommendations for operational practices and

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1 procedures facilitating implementation, and internal control of, the bail system in an effective
2 manner, including Statewide access by appropriate Judiciary personnel to timely electronic
3 data on bail bondsmen and collateral and protocols for referral of defaults for enforcement,
4 and entry and timely release of judgments.

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5 The Task Force held its organizational meeting on December 17, 2003, at which the Director
6 of Internal Audit, Rhea R. Reed, laid out for the Task Force the problems and possible
7 solutions with regard to the bail system, including a demonstration of a profession property
8 bond data base. Staff provided the Task Force with a compilation of Maryland laws relating
9 to the bail system.

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10 The Task Force met again on January 21, 2004, for a preliminary discussion of the Internal
11 Auditor's recommendations. On March 3, 2004, the Task Force heard from the Honorable
12 James K. Bredar, Magistrate Judge, United States District Court for the District of Maryland,
13 about the federal system, and from Lelia E. Newman, Bail Bond Commissioner, about the
14 procedures for the 7th Judicial Circuit. On May 5, 2004, the Task Force met for discussion
15 of proposals crafted by members. On August 11, 2004, the Task Force met to discuss the
16 draft report. This meeting was attended by [Professor Douglas Colbert and bail bondsmen].

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17 **Recommendations**

18 *Recommendation No. 1: Licensing of Property Bondsmen*

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1 **Property bondsmen, as well as corporate surety and their agents, should be licensed.**
2 **The Maryland Insurance Administration should be given responsibility for licensing**
3 **of bondsmen, whether corporate or property bondsmen or their agents (insurance**
4 **producers).**

5 Under the current law, corporate bondsmen are subject to licensing by the Maryland
6 Insurance Administration, while corporate and property bondsmen are subject to regulation
7 as individual Judicial Circuits see fit. Notwithstanding the authority to license bondsmen
8 under the Maryland Rules and the duty to do so under certain public local laws, only the 8th
9 Judicial Circuit actively licenses bondsmen.

10 The Task Force believes that a single licensing entity – for corporate and property bondsmen
11 and their agents – would provide the underpinning for establishment of Statewide practices
12 and procedures, reduce the potential for fraud by unlicensed sureties or sureties posting bond
13 in excess of their authority, make the option of property bonds available throughout the State,
14 enhance due process by transferring licensing and enforcement functions to an administrative
15 agency from the courts, allow better dissemination of information as needed to all
16 components of the criminal justice system, and prevent defrauding of criminal defendants
17 who have employed unlicensed sureties in good faith.

18 Enabling legislation is included as part of Appendix IV. Conforming changes to the
19 Maryland Rules are included as part of Appendix V. Draft amendments to the Maryland
20 Insurance Administration provisions as to bail bondsmen in the Code of Maryland

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1 Regulations are set forth in Appendix VI.

2 The draft legislation includes an exemption for individuals acting as accommodation sureties
3 for family members up to three times each year. The Task Force would require, however, that
4 data on accommodation bonds be forwarded to the Maryland Insurance Administration, to
5 ensure against execution of accommodation bonds in excess of three per year or for non-
6 family members. It is contemplated that a list of persons executing three or more
7 accommodation bonds would be available to court personnel who could verify licensure if
8 asked to accept another such bond. Additionally, the Administration should have
9 enforcement powers, not only with regard to licensees but also unauthorized persons
10 providing bail bond services.

11 *Recommendation No. 2: Standardization of Procedures*

12 **Standard procedures for acceptance and processing of bonds should be formulated for**
13 **all courts.**

14 The Internal Auditor recommended, and the Task Force agrees, that Statewide rules, policies
15 and procedures, eliminating the differences between District Court and circuit court and
16 among the circuit courts, are essential to development of an effective bail bond system.

17 Currently, there exist a number of obsolete, conflicting, ignored, or otherwise inappropriate
18 statutes, public local laws, regulations, and rules governing bail bonds and corporate and

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1 property bondsmen. Additionally, a number of written and *ad hoc* practices pertain to such
2 matters the acceptance of bonds by individual clerks and the reporting of events in
3 connection with bonds and forfeitures.

4 Accordingly, as part of Appendix IV, the Task Force has proposed the repeal of current
5 statutes and public local laws relating to bail bonds and recodification of those laws still
6 pertinent as general public laws applicable Statewide.

7 The Task Force also is proposing that, contingent on implementation of Recommendation
8 No. 1, the Judiciary's Internal Auditor and the Maryland Insurance Administration develop
9 a detailed operating manual to govern procedures for timely communication by the Judiciary
10 and Administration. Until implementation of Recommendation No. 1, the Task Force
11 recommends that the interim operating procedures developed by the Internal Auditor
12 [Appendix VII] be carried out. These include procedures for timely recordation of bonds and
13 release of bonds that have been satisfied and forfeitures that have been stricken.

14 *Recommendation No. 3: Uniform Data System*

15 **A comprehensive, unified system of bail bond information should be accessible to**
16 **Judiciary personnel involved in the bail bond process.**

17 Accurate, complete, and current data such as the net equity available on collateral and
18 verification of ownership and value of collateral posted by accommodation sureties are

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1 critical to a functional bail system.

2 The Task Force believes that licensing by a single licensing entity – the Maryland Insurance
3 Administration – and regular dissemination of a current licensee roster will reduce the
4 instances in which a commissioner or clerk accepts a bond not enforceable because of *e.g.*
5 encumbrances on the pledged property.

6 In instances of accommodation bonds, however, procedures should be set in place whereby
7 the commissioner or clerk being offered the bond will do a preliminary check of Land
8 Records and SDAT online to verify ownership, encumbrances on the property and assessed
9 value. Subsequently, the Chief Clerk of the District Court would confirm net equity
10 available post-acceptance and notify administrative judge if collateral is not sufficient.

11 The Task Force hopes that, contingent on adoption of Recommendation No. 1, the Maryland
12 Insurance Administration and the Judiciary can cooperate in developing an electronic system
13 for transfer of information about licensees, defaults by licensees, unauthorized practice, and
14 execution of bonds, with the aim of ensuring compliance with the laws regulating bondsmen
15 and bail bonds. To this end, the Administration and Judiciary may wish to explore the
16 feasibility of issuing debit cards to licensees embedded with the applicable limitations on
17 execution of bonds. Such usage in conjunction with a debit machine located in a District
18 Court commissioner's office could reduce the possibility that a commission would accept a
19 bond executed by unauthorized personnel or a bond in an amount exceeding the bondman's
20 limitations as imposed by the corporate or property bondsman and may afford surety insurers

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1 greater control over agents by facilitating the withdrawal of bond writing authority.

2 Debit machines should allow same-day transmittal of data between the Administration and
3 Judiciary as to licensees. Procedures would be required for the transmittal of information
4 about bonds executed by non-licensees.

5 Exchange of data can be enhanced with appropriate training of personnel as to consistent and
6 correct entry of information into the system and timely updates.

7 The Task Force recognizes that the creation of a data system will involve costs and
8 recommends making the enabling legislation contingent on appropriate funding through the
9 licensing fees.

10 *Recommendation No. 4: Judiciary Personnel*

11 **Bail Bond Commissioner positions in individual Judicial Circuits should be eliminated**
12 **and a central position in the Judiciary headquarters should have expanded duties.**

13 As noted above, only the 7th Judicial Circuit has a formal bail bond commissioner position,
14 albeit that every judicial circuit had the authority to create such a position. The 7th Circuit bail
15 bond commissioner is concerned primarily with licensing of property bondsmen and receipt
16 of information from, and dissemination of information to, District Court commissioners. The
17 Task Force believes that, with transfer of licensing responsibility to the Maryland Insurance

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1 Administration, a separate bail bond position for each circuit no longer could be justified.
2 Rather, the Task Force believes that the critical component of data sharing, currently
3 assigned primarily to the Chief Clerk of the District Court, can best be accomplished by
4 consolidation of data sharing coordination in a single Judiciary position and sees no reason
5 at this time to move the duties from the Chief Clerk's office.

6 The Task Force recognizes that every court will need to have personnel sufficiently trained
7 as to the procedures governing bail bondsmen and bail bonds.

8 *Recommendation No. 5: Recordation and Release*

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9 **Effective notice of the State's interest in collateral depends upon recordation of**
10 **Declarations of Trust or Deeds of Trust and prompt release on discharge of a bond.**

11 Contingent on implementation of Recommendation No. 1, the Task Force believes that the
12 licensing procedures for property bondsmen should include recordation of the deeds of trust
13 as to property registered for use as collateral. Copies of declarations of trust executed by
14 accommodation sureties should be forwarded to the Maryland Insurance Administration.
15 Whether recorded before or after forwarding depends on the speed with which recordation
16 can be accomplished. Of equal importance is the timely notation of forfeiture and the timely
17 release of bonds that have been satisfied and forfeitures that have been stricken, and the Task
18 Force would urge the Judiciary and Maryland Insurance Administration to incorporate
19 exchange of this data in any automated system design.

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1 *Recommendation No. 6: Enforcement*

2 The Task Force believes that enforcement is a key component to an effective bail system. As
3 noted above, consolidation of licensing functions within the Maryland Insurance
4 Administration is expected to enhance enforcement by providing administrative remedies in
5 addition to the criminal penalties now available. Additionally, the Task Force contemplates
6 transmittal of data enabling the Administration to monitor accommodation sureties to ensure
7 against unauthorized provision of bail bond services and to enforce forfeitures.

8 As a matter of equity, the Task Force thinks that there also should be enforcement of bond
9 forfeitures in instances in which the defendant posts a percentage of the penalty amount.
10 Accordingly, the Task Force includes, in the enabling legislation, the duty to report such
11 forfeitures to the Administration and the powers needed for enforcement.

12 **Conclusion**

13 The Task Force believes that the bail system needs to be simplified as set forth in this report
14 and expresses its appreciation to the Chief Judge for forming the Task Force.

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APPENDIX I

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Task Force

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Appendix II

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Administrative Order

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IN THE COURT OF APPEALS OF MARYLAND

ADMINISTRATIVE ORDER ESTABLISHING BAIL SYSTEM TASK FORCE

WHEREAS, Detention or release of an accused is a critical component of due process, premised on the presumption of innocence balanced against the need to ensure the appearance of a criminal defendant when required by a court; and

WHEREAS, An effective bail system is a critical factor enabling release of defendants who otherwise might remain in detention due to ineligibility for release on personal recognizance or release on other conditions; and

WHEREAS, The Judiciary's internal auditors have expressed concern that current laws, practices and procedures governing the bail system may not be effective; and

WHEREAS, The bail system is complex, involving the District and Circuit Courts, as well as other units of the Judiciary and also prosecutors, defense counsel, and other stakeholders in the criminal justice system; and

WHEREAS, It is appropriate that all of the stakeholders be brought together in a task force for review of the bail system, including the rules, statutes, practices and procedures with respect thereto;

NOW, THEREFORE, I, Robert M. Bell, Chief Judge of the Court of Appeals and administrative head of the Judicial Branch, pursuant to the authority conferred by Article IV, § 18 of the Maryland Constitution, do hereby order this 23rd day of October, 2003, effective immediately:

1. Creation. There is a Bail System Task Force.
2. Members and Advisors.
 - a. Task Force. The Task Force shall consist of the following members, appointed by the Chief Judge of the Court of Appeals:

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- 1 (i) The Chief Judge of the District Court, who shall chair the Task Force;
- 2 (ii) The Chair of the Conference of Circuit Judges, who shall be vice chair
- 3 of the Task Force;
- 4 (iii) A second circuit court judge;
- 5 (iv) A second District Court judge;
- 6 (v) A representative of the Attorney General of Maryland;
- 7 (vi) A member of the Conference of Circuit Court Clerks;
- 8 (vii) The Chief Clerk of the District Court;
- 9 (viii) A District Court commissioner;
- 10 (ix) A member of the Bar of Maryland who is not an officer or employee of
- 11 the State or a local government;
- 12 (x) A representative of the Maryland Association of Counties;
- 13 (xi) A representative of the Maryland Bail Bond Association;
- 14 (xii) A representative of the Maryland Insurance Administration;
- 15 (xiii) A representative of the Maryland Public Defender; and
- 16 (xiv) A member of the Maryland State's Attorneys' Association.
- 17 b. Advisors.
- 18 (i) The Task Force may invite others to provide advice to or otherwise
- 19 participate in the Task Force's work, through invitations to public fora, appointment to
- 20 subcommittees, or assignment of specific tasks such as statistical and academic research.
- 21 (ii) Among the entities to be consulted are the Conference of Circuit Court
- 22 Administrators, the Judiciary's Internal Auditor, the Administrative Office of the Courts
- 23 including its Judicial Information System unit, the Director of Governmental Affairs, and the
- 24 Internal Revenue Service and other appropriate federal agencies.
- 25 c. Compensation. Task Force members and advisors are not entitled to
- 26 compensation but, to the extent that budgeted funds are available, may be reimbursed for
- 27 expenses in connection with travel related to the work of the Task Force.
- 28 3. Meetings.
- 29 a. Scheduling. The Task Force and its subcommittees, if any, shall meet at the
- 30 call of the Chair.
- 31 b. Quorum. A majority of the authorized membership of the Task Force shall

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1 constitute a quorum for the transaction of business.

2 c. Judiciary Personnel. The Task Force shall meet at least once with those
3 Judiciary personnel responsible for implementation of laws governing bail.

4 4. Functions.

5 a. Purposes. The purpose of the Task Force is to make detailed recommenda-
6 tions as to Statewide laws to ensure that the bail system effectively guarantees the appearance
7 of criminal defendants as required by courts without undue detention and that the interests
8 of the State and other governmental bodies in collateral are protected through timely
9 recordation of bonds and enforcement on default.

10 b. Duties. To carry out the purpose of the Task Force, it shall:

11 (i) review the report of the Judiciary's internal auditor;

12 (ii) study all laws, practices, procedures, and internal controls pertinent to
13 the deficiencies noted in the internal auditor's report or otherwise affecting the effectiveness
14 of the bail system;

15 (iii) recommend changes to rules or statutes needed to make the bail system
16 effective;

17 (iv) consider federal laws imposing reporting requirements or other duties
18 on Judiciary personnel in connection with bail bonds; and

19 (v) make detailed recommendations for operational practices and
20 procedures facilitating implementation, and internal control of, the bail system in an effective
21 manner, including Statewide access by appropriate Judiciary personnel to timely electronic
22 data on bail bondsmen and collateral and protocols for referral of defaults for enforcement,
23 and entry and timely release of judgments.

24 c. Powers. The Task Force may refer to the Maryland Insurance Administra-
25 tion or other licensing authority or to a State's Attorney, the State Prosecutor, or other
26 appropriate prosecutor matters coming to the attention of the Task Force and, in its opinion,
27 warranting investigation for possible civil or criminal action, including false declarations or
28 other fraudulent practices in connection with bonds.

29 5. Staff. The Task Force shall have the staff assistance assigned by the Chief Judge of
30 the Court of Appeals.

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APPENDIX III
Internal Auditor's Report

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APPENDIX IV

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Draft Legislation

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APPENDIX V

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Draft Rule Changes

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APPENDIX VI
Draft COMAR Changes

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APPENDIX VII
Interim Operating Procedures

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