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May 14, 2024

Chair Sokola and Members of the Senate Executive Committee:

Senate Bill 11 and Senate Bill 12 are the product of years of research and negotiation among criminal justice stakeholders. The Office of Defense Services (ODS) supports the strong due process protections the constitutional amendment, SB 11, affords. There are pieces of SB 12 that ODS supports, such as the presence of counsel at initial hearings in the Justice of the Peace Court, but other provisions that give ODS pause, such as the breadth of the detention-eligible offenses.

This process was started to modernize the cash bail system in Delaware, which is rife with inequities, and we cannot lose sight of that intention. This is the reason why ODS has been at the table for the last several years.

As public defenders, it is difficult to fully embrace a system in which our clients can be held without bail, but we realize that if monetary bail is to eventually be eliminated, we need a system that allows the court to detain individuals when absolutely necessary. However, preventive detention should only be used for a very small percentage of our pretrial population: those who pose significant, articulable risk that cannot be mitigated with conditions of release. We have seen this work in jurisdictions such as New Jersey, which implemented a preventive detention system that resulted in a 27.2% decrease in the pretrial population between 2015-2023.

Any preventive detention system must ensure that the hallmarks of the presumption of release and the presumption of innocence are upheld. The goal should be to release as many individuals as possible on non-monetary conditions during their pretrial period with supports that mitigate any potential risk. It should not be seen solely as a mechanism to detain individuals for long periods of time pretrial.

We know from research that pretrial detention, even for three or fewer days, does more harm than good: it leads to unemployment, housing instability, financial instability, and family issues.

This new system will need to be closely monitored to ensure our clients are afforded strong due process protections. Pretrial data must be collected and analyzed to ensure we have not cast too wide of a net; and if we have, changes will need to be made.

ODS genuinely appreciates Senator Townsend's effort to reform the current bail system and for including ODS in these discussions. We look forward to participating in future conversations as Delaware's preventative detention framework is further developed and implemented.

Sincerely,

Lisa A. Minutola, Esq.
Chief of Legal Services
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