



To: Members, Trial Court Public Access to Court Records Committee  
From: Norma Wassel, LICSW, Chair, Steering Committee, Massachusetts Bail Fund  
Date: June 15, 2016  
Re: Testimony at Public Hearing

My name is Norma Wassel and I am the Chair of the Steering Committee of the Massachusetts Bail, founded in 2011 by social workers who were seeing our clients and our clients' family members being held in jail on very low bails. In addition to operating a revolving bail fund, posting bail for under \$500, we also advocate for reform to the current bail process being utilized throughout the Commonwealth.

We were witnessing then, and continue to see, individuals being held pretrial on very low amounts of bail, while still not having been proven guilty of a crime, have lead to significant collateral consequences such as loss of employment, housing, custody of children, termination of substance abuse and/or mental health treatment in addition to significant expense to the taxpayer at maintaining a person in custody at an average of \$135 per day.

The Massachusetts Bail Fund strongly supports more transparency with regard to court information, specifically records of bail and the pretrial process.

In the experience of the Bail Fund, many poor defendants are held on cash bails that result in pretrial detention. This practice jails presumptively innocent individuals, at great cost to the Commonwealth, and may be a violation of the 8<sup>th</sup> Amendment of the U.S. constitution and Article 26 of the Massachusetts Declaration of Rights due to the excessive nature of the bail.

As we work toward reform of our current process in increasing access to justice for all state residents, regardless of income, and advocating for reforms implemented in other states, we have attempted to understand how widespread this problem is and to document the extent of the problem.

The biggest problem with this issue is that it is difficult to track it.

Our requests from the Mass. Trial Court and the former State Bail Administrator had not been successful. This lack of information has been documented in our March 2014 report "Massachusetts Bail: Alternatives and Opportunities", conducted with the Northeastern University Law School. It also has been noted in the recent Dec. 2014 Technical Assistance Report "Pretrial Analysis for Middlesex County, Massachusetts" completed by the National Institute of Corrections.

Even when we recruited and trained over 50 volunteers in Nov. 2014 to duplicate a random sampling two week sampling of the amount of bail a defendants were being held on, we encountered systemic barriers in the courts in every county. Only one court had access to court records utilizing a computer.

The judiciary is specifically exempted from the Massachusetts Public Records Law<sup>1</sup> by both the language of the statute and Supreme Judicial Court precedent.<sup>2</sup> Although offices in the judiciary may voluntarily comply with a request for records, there is little impetus to do so.

The Massachusetts Bail Fund believes that the lack of public access to records of bail and the pretrial process leads to uninformed and expensive policy making. There is no way to tell if the bail system is working well or not. There is no way to tell if a constitutional violation is occurring because of the bail system or not. With no data on bail, there is no way to monitor and track the bail system, which affects

---

<sup>1</sup> Mass. Gen. Laws ch. 66 § 10 (2015).

<sup>2</sup> See *O'Connell v. George W. Prescott Publ. Co., LLC*, 463 Mass. 258, 268 n. 12 (2012); and *Kettenbach v. Board of Bar Overseers*, 448 Mass. 1019, 1020 (2007).

thousands of peoples' lives every year. One cannot make policy on a system one knows little about.

While one can access bail records by going to court records that are available to the public, it is the experience of the Massachusetts Bail Fund that such records lack uniformity clarity. The only thing worse than no data is uncertain data. Records that do exist regarding bail and pretrial process in Massachusetts are not uniform, meaning that the data from them is uncertain.

Another problem with the lack of transparency in the administration of bail is that there is little monitoring of the individual bail commissioners. Bail commissioners, which are clerk-magistrates, set bail amounts after court hours at the county jails. For each cash bail posted, they get \$40.<sup>3</sup> Bail commissioners must submit a report to the chief justice of the trial court on the times they took bail out of court every second Monday of every month, but, since this report is in the judiciary, the public does not have ready access to it under the Public Records Law.<sup>4</sup>

There is also no possibility for public monitoring of the fees bail commissioners collect. These fees, which in all likelihood total between two and three million dollars, are difficult if not impossible for the public to track. Such large sums of money, drawn often from the poor, deserve public scrutiny.

To remedy these issues, the Massachusetts Bail Fund recommends the following reforms:

1. Aggregation of court data for easy access and review
2. Standardization of data and reporting
3. Allowing access to information on bail, bail commissioners' fees, and the pretrial process

---

<sup>3</sup> Mass. Gen. Laws ch. 262 § 24(a) (2015).

<sup>4</sup> Mass. Gen. Laws ch. 276 § 61 (2015).