

AFFIDAVIT OF JUDGE TRUMAN MORRISON

The Honorable Truman A. Morrison III, having been duly sworn according to law, deposes and states as follows:

Background

1. My name is Truman Morrison. I am a Senior Judge on the Superior Court of the District of Columbia. In 1971 I began work as a lawyer at the District of Columbia Public Defender Service. In 1975, I was named head of the trial division where I supervised 40 lawyers trying cases ranging from delinquency matters to first-degree murder. I worked in that position until my appointment to the District of Columbia Superior Court by President Jimmy Carter in 1979.

2. In my thirty-seven continuous years as a trial judge, I have handled family, domestic violence, civil, and criminal cases. I sit regularly as a Senior Judge, hearing mainly criminal cases.

Overview

3. In this affidavit, I will give an overview of the pretrial justice decision-making system in Washington, D.C. I will explain how Washington, D.C.'s pretrial system operates effectively and safely without using money bail to decide detention or release of defendants based on their wealth-status. This overview is based on my 45 years of experience with the court as well as statistics from the District of Columbia's Pretrial Services Agency ("PSA").

4. I am receiving no compensation for my preparation of this affidavit.

Analysis

5. Our bail law in Washington, D.C. is rooted in the premise that a defendant's inability to pay money bail should not determine whether he is detained before trial. Release or detention prior to trial is instead to be based upon one's risk.

6. Prior to 1994, Washington, D.C. operated its pretrial decision-making scheme in largely the same way that virtually all jurisdictions now operate: defendants were given arbitrary amounts of money as bail amounts, and those who could afford to pay the amount were released regardless of risk. Those who could not pay remained in jail, also regardless of risk. In other words, the system was totally based on wealth-status.

7. In 1994, the D.C. Code was amended to state that financial conditions could be utilized to reasonably assure appearance only if they do not result in pretrial detention. In other words, if money is used, defendants are entitled to a bond they can meet. It has always been our law that money may never be used to attempt to assure community safety. In practice today, financial conditions are almost never used for any purpose. To my knowledge, we operate the only jail in America that contains no persons detained there prior to trial because they cannot afford to pay bond amounts.

8. The District of Columbia now operates an “in or out” pretrial decision-making system. Decisions about release or detention are made transparently with open courtroom discussions of any accused person’s actual potential risk. The court employs a preventive detention statute that provides a Due Process-appropriate hearing for fairly determining who is too dangerous or too much of a flight risk to be released. The use of preventive detention has been appropriately limited to less than 10–15% of all defendants. Everyone else is released on his or her promise to appear in court or on conditions supervised by our Pretrial Services Agency. Neither money bond nor private bail bond companies play any role in release decision-making (although both are technically legal in Washington today).

9. The overall process for pretrial defendants in Washington, D.C. is as follows: After an arrest, law enforcement agencies process arrestees at one of the city’s local police districts. Arrestees charged with nonviolent misdemeanors may receive a citation release from the police station, with a future court date provided. Otherwise, after processing, arrestees are transferred to the court for an arraignment (for misdemeanors) or presentment (for felonies) hearing. At this initial appearance, the judge considers whether the defendant should be released or briefly detained pending a formal detention hearing within three to five days. After hearing, pretrial detention until trial can be ordered if the judicial officer concludes that a defendant presents an unmanageable risk of flight or harm to the community.

10. Our Pretrial Services Agency conducts a risk assessment for defendants to assist judicial officers in release/detention determinations. The risk assessment process consists of two components: conducting a background investigation and interviewing defendants. PSA interviews defendants and collects and verifies information on each defendant’s community ties, criminal history, physical and mental health status, substance abuse, and current supervision status with probation or parole agencies. It also uses a scientifically determined set of factors to assess risk. This process takes place for most defendants within 24 hours of arrest.

11. When ordered to do so, PSA supervises defendants released during the pretrial period by monitoring their compliance with certain conditions of release and helping to assure that they appear for scheduled court hearings. There are a number of programs and supervision conditions that can be assigned to defendants based on their risk and needs. Last year, we released about one third of arrested persons with no special supervision conditions, asking them only to return to court and not break the law.

12. In the District of Columbia, in recent years we release between 85% and 92% of all arrestees, a much higher percentage than all but a few court systems. In the fiscal year 2015, more than 91% were released and 98% of released defendants remained arrest-free from violent crimes during pretrial release. 89% of released defendants remained arrest-free from all crimes. Of those released pretrial, 88% made *all* scheduled court appearances during the pretrial period. The District accomplishes these high rates of non-arrest and court appearances, again, without using money bonds.

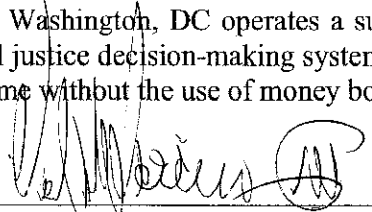
13. Our system, simply stated, seeks to scientifically assess risk and then attempts to mitigate that assessed risk in a law-based fashion, maximizing release. For those relatively few persons

for whom risk cannot be effectively mitigated while released, we order bondless detention pending an expedited trial. There is no guesswork as to their status. Rich or poor, they are detained.

14. We have learned that we have numerous tools at our disposal to maximize court appearance and public safety for the vast majority of defendants without resorting to detention. Stay-away orders (for example, in shoplifting, assault, or domestic violence cases); counseling; drug, mental health, and alcohol treatment programs; reporting to pretrial services; mail, phone and text message reminders of court dates; drug testing; and electronic and GPS monitoring can all be employed to reasonably assure high rates of court appearance and public safety.

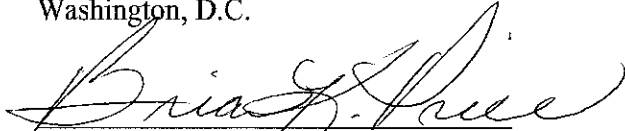
Conclusions

15. Washington, DC operates a substantially safe, effective, transparent, and fair system of pretrial justice decision-making system. We have empirically demonstrated that this can be done over time without the use of money bond.



Truman Morrison

SWORN AND SUBSCRIBED BEFORE ME
This 14 day of March, 2016
Washington, D.C.



NOTARY PUBLIC

Brian K. Price
District of Columbia, Notary Public
My Commission Expires
August 31, 2019

