Testimony Submitted to the Illinois Senate Subject Matter Hearing On: Bail Reform & Police Reform, specifically in the following areas: 1) Abolishing Monetary Bail 2) Alternatives to Police Response/Co-Responder Models
October 20, 2020, 1:00 PM

The Illinois Network for Pretrial Justice and the Coalition to End Money Bond represent tens of thousands of individuals across Illinois through our more than 30 member organizations. Today, we offer this written testimony in support of ending money bail and passing the Pretrial Fairness Act.

The Pretrial Fairness Act will end the use of money bail and replace it with a fairer system that provides accused people with a robust, transparent decisionmaking process that respects the bedrock principle of "innocent until proven guilty." The Act focuses the court on protecting public safety and ensuring people will return to court by simplifying the factors considered in release and detention decisions, decreasing time between arrest and release, and reforming the warrant process, among other changes. The Pretrial Fairness Act alleviates the financial burden that money bonds place on innocent families, and it ensures lack of access to wealth is not the reason people stay in jail and that poverty is not a driver of incarceration. A fact sheet about the bill is also attached.

Many of the Pretrial Fairness Act's proposed changes are aligned with the recommendations of Illinois Supreme Court Commission on Pretrial Practices's Final Report issued earlier this year. These reforms are also supported by a broad array of local and national experts and community members. In 2019, 21 organizations, 3 elected officials, and 6 other individuals submitted written testimony to the Supreme Court Commission. The vast majority of the submissions recommended that Illinois end the use of money bond and dramatically reduce pretrial incarceration. Those testimonies are attached.

This year, an even broader array of more than 80 organizations across the state with a collective membership of hundreds of thousands of Illinois residents are calling for an end to money bail through the Pretrial Fairness Act. In addition, more than 2,500 individuals have submitted witness slips for today's hearing to register their support for ending money bail.

Organizations supporting the Pretrial Fairness Act include:

A Just Harvest
A Way Inn
ACLU of Illinois
Action Now
Asian Americans Advancing Justice Chicago
Believers Bail Out
Black Justice Project
Black Light Fellowship
Black Lives Matter Bloomington-Normal
Black Lives Matter Chicago
Bloomington-Normal Chapter of Democratic Socialists of America
Brighton Park Neighborhood Council
Cabrini Green Legal Aid
CAIR Chicago
Center for Empowerment and Justice
Central Illinois Mosque and Islamic Center
Champaign County ACLU

Champaign County Bailout Coalition
Champaign Urbana Immigration Forum
Champaign-Urbana Courtwatch
Champaign-Urbana Democratic Socialists of America
Champaign-Urbana Showing Up for Racial Justice (CU-SURJ)
Channing-Murray Foundation
Chicago Appleseed
Chicago Coalition for the Homeless
Chicago Community Bond Fund
Chicago Lawyers' Committee for Civil Rights
Chicago Metropolitan Association
Chicago Recovery Alliance
Chicago Torture Justice Center
Chicago United for Equity
Chicago Urban League
Chicago Votes
Clergy for a New Drug Policy
Coalition to Reduce Recidivism in Lake County
Community of Congregations
Community Renewal Society
Concerned Citizens of Precinct 12
Criminal Justice Task Force at First Unitarian Church of Chicago
Elliott Counseling Group
Faith Coalition for the Common Good
First Defense Legal Aid
First Followers
First United Methodist Church, Oak Park
Illini Hillel
Illinois Justice Project
Illinois National Organization for Women (NOW)
Illinois Religious Action Center of Reform Judaism (RAC-IL)
Jane Addams Senior Caucus
Lawndale Christian Legal Center
Liberation Library
Live Free Chicago
Live Free Illinois
MediaJustice
Muslim American Society
Muslim Civic Coalition
National Lawyers Guild-Chicago
Nehemiah Trinity Rising
New True Vine Baptist Church
Northside Transformative Law Center
Northwestern Pritzker School of Law's Black Law Students Association
Northwestern Pritzker School of Law Collaboration for Justice
Northwestern Pritzker School of Law National Lawyers Guild
ONE Northside
Party for Socialism and Liberation Champaign-Urbana
People's Action
Precious Blood Ministry of Reconciliation
Restore Justice
Revolution Workshop
Sanctuary of the People, UIUC
Showing Up for Racial Justice - Chicago
Shriver Center on Poverty Law
Students for Sensible Drug Policy-Illinois
Southsiders Organized for Unity and Liberation (SOUL)
The Graduate Employees' Organization at UIUC, AFT/IFT Local 6300
The Illinois Muslim Civic Coalition
The #LetUsBreath Collective
The People’s Lobby
The Roosevelt Network at UIC
Transformative Justice Law Project of Illinois
Trinity United Church of Christ
UChicago Students for Sensible Drug Policy
Unitarian Universalist Advocacy Network of Illinois
Unitarian Universalist Prison Ministry of Illinois
United Congregations of the Metro East
United Working Families
Uptown People's Law Center
Westside Justice Center
WIN Recovery
Workers Center for Racial Justice
YWCA of the University of Illinois

Now is the time for the Illinois General Assembly to take action to end the racially discriminatory, unjust, and ineffective practice of violating the presumption of innocence and locking people up only because they are poor.

THE BAIL SYSTEM IN ILLINOIS IS UNFAIR.

What does PRETRIAL FAIRNESS look like?

THE PROBLEM:

Our current system is broken. When courts use money bonds, it means that access to money becomes the deciding factor in determining whether someone remains in jail before the outcome of their case. Currently, money bonds compromise public safety because wealth, not safety, determines who remains in jail pretrial.

THE SOLUTION:

We need to reform the pretrial justice system by ending the use of money bonds, focusing the court on protecting public safety and ensuring people will return to court. The changes would make our system fairer by ensuring financial resources are used only to detain people who pose a risk to public safety. Ending money bond would alleviate the financial burden money bonds place on innocent families, ensuring that access to wealth, or lack thereof, is not the reason people are detained in or released from jail, and would assure that poverty is not a driver of incarceration.

ENDING MONEY BOND WORKS

Illinois would not be alone in ending money bond. The federal, state juvenile, and D.C. criminal systems have worked for decades without money bonds.

New Jersey essentially ended money bond in 2017. The vast majority of people released came back to court and were not charged with a new offense. Crime rates, both violent and nonviolent, went down.

WHAT DO WE NEED TO DO?

PROHIBIT THE USE OF MONEY BOND. No one will be incarcerated before they go to trial simply because they cannot afford to pay a certain amount of money.

MAINTAIN PUBLIC SAFETY AND JUDICIAL DISCRETION WITHOUT USING MONEY by establishing a legal process that allows judges to order pretrial detention in serious cases where the accused presents a specific risk of harming others or fleeing, while providing legal safeguards required by the state and U.S. Constitution to ensure that the pretrial detention is limited to only those that require it.

IMPROVE SYSTEM EFFICIENCY by giving law enforcement the ability to release a person after an arrest if it in the public interest and gives the Court an added tool to ensure court appearance through Notice to Appears along with warrants.

INCREASE GOVERNMENT TRANSPARENCY AND ACCOUNTABILITY by requiring that statewide data on detention hearings, pretrial incarceration and other key metrics be collected regularly and made public.

Coalition To End Money Bond

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VISION FOR A JUST PRETRIAL SYSTEM IN ILLINOIS

How to End Money Bond and Increase Pretrial Freedom

Coalition to End Money Bond

JANUARY 2020

INTRODUCTION

Since 2016, the Coalition to End Money Bond has been working to end the use of money bond and reduce pretrial jailing in Illinois. Our 14 member organizations include people who have been directly impacted by the existing unjust pretrial policies in Illinois as well as policy experts, community organizers, pastors, attorneys, and, collectively, tens of thousands of members and constituents. This policy vision lays out the specific principles and characteristics that would be the features of a fair, constitutional, and racially equitable system of pretrial practices in Illinois. Its recommendations are based on our extensive work speaking to a wide variety of stakeholders and community members throughout the state and nationally. **In short, this is our answer to the question, "What do we do after we eliminate money bond?"** We believe that everyone deserves access to pretrial freedom regardless of wealth and that ultimately, our system should work to prevent incarceration, provide resources for safety and stability in the community, and keep families and loved ones together. The following six principles provide a vision for how that system might look in Illinois.

PRINCIPLES FOR BOND REFORM

1. Release is the norm and detention is a carefully limited exception.

2. Money is never a determining factor in whether someone is free pending trial.

3. Accused people are viewed holistically and risk assessments are not used as substitutes for individualized decision-making.

4. Courts should help accused people attend court hearings and restrain people's freedom as little as possible while they are legally innocent and waiting for their trial.

5. Courts should only use restrictive pretrial conditions to ensure court appearance for people who have been proven to be willfully avoiding prosecution.

6. Pretrial practices should be transparent and accountable.

PRINCIPLE 1

Release is the norm and detention is a carefully limited exception.

Everyone is entitled to the presumption of innocence. **In a just pretrial system, the vast majority of people who come into contact with law enforcement will remain free and able to continue their lives in their communities during the pretrial period.** Illinois' pretrial system should be designed to release as many people as possible with as few conditions (drug testing, electronic monitoring, etc.) as possible. Everyone accused of low-level charges not considered violent should be released directly from police custody shortly after arrest. The less time someone spends in police custody, the less likely they are to be harmed and destabilized. The goal in designing pretrial processes should be to avoid setting off a cycle in which people lose their jobs, housing, and other positive things in their lives. **People should be returned to their lives and communities as quickly as possible.**

In situations where a rigorous, adversarial hearing with evidence has proven that there is a high likelihood that someone may intentionally flee to avoid prosecution or cause physical danger to a specific person, and no other measures can sufficiently protect that person from harm, a judge may determine that a person should be incarcerated before their trial as a last resort. People accused of crimes should have the ability to call witnesses in their own defense to oppose their detention and should have access to as much information about the charges against them as possible to ensure a thorough, fair, and constitutionally sufficient detention hearing. No one factor, such as the charge a person is accused of, their history of being accused or convicted of a crime, or their score on a risk assessment tool should determine whether they can be jailed pretrial. **Detention decisions should be holistic and take into account each accused person's full life.**

The state must be held to a very high standard in proving that incarceration is absolutely necessary. When a judge decides to deny a person their freedom while awaiting trial, they should be required to record the specific, individualized reasons for this decision. In cases where an order to jail a person before trial is given, it must be immediately appealable and should be reviewed throughout the life of the case to determine if incarceration continues to be necessary or if a person should be released and provided with the resources they need to succeed in the pretrial period. **The harm caused by pretrial incarceration to an individual, their family, and community should be considered as serious as risk of harm to someone else.**

PRINCIPLE

2 Money is never a determining factor in whether someone is free pending trial.

The amount of money a person has should never determine who is locked up and who is free while awaiting trial. **A just pretrial system should treat every person accused of a crime equally by completely eliminating the use of money bond.** The use of unaffordable money bonds to incarcerate people before they have been convicted of a crime is an unfair, ineffective, and unconstitutional practice. For decades, Illinois courts have set money bonds that are too high for people experiencing economic insecurity to pay, resulting in pretrial incarceration for the poor and pretrial freedom for the rich. **This is a form of wealth-based discrimination.** Lack of access to cash does not indicate that a person will miss a court date or be accused of a new crime while awaiting trial.

Unaffordable money bonds disproportionately harm Black, Brown, and impoverished people who are already disadvantaged by other forces in our criminal legal system. Money bond also hurts communities by removing their family members and friends from their homes while they are presumed innocent. Pretrial incarceration, even for as little as 24 hours, harms and destabilizes people in the long-term. Pretrial detention increases recidivism[1], causes people to lose their employment, and makes their housing situations more unstable.[2] Pretrial incarceration also warps our system of justice, pressuring accused people to plead guilty quickly in order to get out of custody, and increasing the leverage that prosecutors have to extract punitive plea deals.[3]

So-called "affordable" money bond is an ineffective and unfair pretrial condition that burdens Black and Brown families and impoverished families at alarming rates. Most money bonds are not paid by the accused people themselves but by their families. This means that when a person is arrested, their family is forced to sacrifice their financial safety net in order to bring their loved one home. Studies have shown that even when families can find the money to pay bond, these destabilizing factors can still lead to an increase in long-term recidivism for arrestees.[4] **Money bond has also proven to be an ineffective means of guaranteeing appearance in court, therefore eliminating any reason for its use.[5]**

It is immoral and unjust to use money bond to fund the court system in Illinois. Funding our courts through fees, fines, and costs subtracted from money bonds is doubly unjust; not only does it burden innocent family members of accused people, it also acts as a regressive tax by funding an essential government function on the backs of the communities least able to afford it. Funding our criminal justice system with revenue gained through money bond is also bad policy because it allows legislators to underestimate the true costs of running our criminal justice system instead of appropriately funding it.

PRINCIPLE

3

Accused people are viewed holistically and risk assessments are not used as substitutes for individualized decision-making.

Accused people must be provided with skilled counsel and given sufficient time to consult with their lawyer in advance of a bond hearing. They should be able to present the court with the factors in their lives that will help them attend all their court dates and avoid re-arrest before trial.

Risk assessment tools are more useful in evaluating how our criminal legal system will interact with a person based on racial identity and socio-economic status than they are in accurately anticipating the risk a person may pose to themselves or another. These tools gather data on how accused people have fared in attending court and avoiding rearrest. They should not be used as the primary or sole determinant of what conditions are placed on an accused person during the pretrial period and should never be used to order detention. **A just pretrial system looks at each individual accused of a crime holistically, using a variety of factors to determine what resources might be needed to support that person's success.**

A fair pretrial system does not rely on risk assessment tools that substantially over-predict "dangerousness" and risk of flight.[6] The stakeholders in a just pretrial system must understand that the majority of accused people will attend all their court dates and not be re-arrested without any additional conditions placed on them by the court. Prosecutors, judges, and defense attorneys should be carefully trained on how risk assessments tools calculate scores and make predictions, including what they can and cannot predict and the actual likelihood of success predicted. The application of risk assessment tools must be reported in full transparency to the public.

PRINCIPLE

4

Courts should help accused people attend court hearings and restrain people's freedom as little as possible while they are legally innocent and waiting for their trial.

A just pretrial system provides **voluntary pretrial services** to help accused people successfully navigate the pretrial process and appear at court dates. Pretrial services provided by the court should be non-restrictive and consist of evidence-based programs that have been shown to help people make court dates and avoid rearrest. **Some of the most promising pretrial services include text message reminders about court dates and transportation assistance to help accused persons get to and from the courthouse. These supportive services should be provided by a human services provider or community-based organization, not by a punitive or surveilling law enforcement agency, court, or probation department that oversees conditions of release as a form of punishment.**

Drug treatment programs should not be mandated by the court. Purely voluntary referrals to evidence-based services may be made, but there must not be consequences from the court regarding follow-through or "success" in programs. Studies show that mandated, coerced, or involuntary treatment run a much higher risk for both failure and, in the case of opioid use disorder, increased risk for fatal overdose than if the treatment is voluntary. Court-supervised treatment programs run the serious risks of giving the courts too much power over treatment decisions that should be made by healthcare providers and punishing people for return to substance use, which is a common part of recovery.

A fair pretrial system imposes the least restrictive pretrial conditions, which are requirements that constrain an accused persons' liberty. Pretrial conditions should only be imposed after a full and fair hearing, when a judge determines that the conditions are the least restrictive available to reasonably ensure someone's appearance at court or protect a specific, identifiable person from harm. **These conditions should be a last resort and never include conditions unrelated to the goals of ensuring appearance at court and protecting a specific person or persons from harm.**

Pretrial conditions should not prevent an accused person from performing basic personal responsibilities, impose direct or indirect economic costs, or unduly expose the accused person to new criminal charges. If conditions that substantially impede accused persons' freedom of movement and free participation in community life are used, the individual should be given pretrial detention credit for each day in those programs. **Under no circumstances should accused persons have to pay money in order to access conditions of release.**

PRINCIPLE 5

Courts should only use restrictive pretrial conditions to ensure court appearance for people who have been proven to be willfully avoiding prosecution.

A just pretrial system responds reasonably and proportionately to missed court dates and does not incarcerate accused people for missing court unless there is proof that the person willfully fled to avoid prosecution. When a person misses court, the court should give the accused person at least 48 hours to appear in court before issuing an arrest warrant.

Many barriers exist for accused people who wish to follow all the conditions of their release and attend each court date, including poverty, lack of transportation, family and work obligations, and medical needs. **A fair pretrial system recognizes that the vast majority of accused people want to cooperate with the court process and are making reasonable efforts to attend all their court dates.**

If a person is brought to court on an arrest warrant after failing to appear, the court should conduct a full and fair hearing to determine whether the failure to appear was a result of willful flight. If it was not, the judge should allow the person to be re-released, and, if necessary, provide additional pretrial services to support future attendance at court. Pretrial detention should be used only as a last resort in cases in which the evidence is clear and convincing that a person has willfully fled prosecution and there are no less restrictive pretrial conditions that can prevent future flight.

PRINCIPLE 6

Pretrial practices should be transparent and accountable.

A just pretrial system is transparent and accountable to the public. Illinois should have a statewide system of pretrial data collection for the courts. Statewide data on detention and release outcomes should be collected and made available for public review and system assessment purposes. Additionally, the public should have access to county-level information about bond decisions, how many individuals are being jailed pretrial and why, and what pretrial services and conditions exist in each county.

A fair pretrial system should give elected officials, court administrators, policy experts, and the public access to this information so that their practices can be consistently evaluated to make sure they are constitutional, that they follow Illinois law, that they conform with evidence-based research on effective pretrial services, and that they reflect principles of justice. A transparent and accountable pretrial system also helps ensure that pretrial practices are more reflective of community priorities and values.

CONCLUSION

Improving Illinois' pretrial justice system is an urgent and substantial project. Luckily it is an achievable one. The Pretrial Fairness Act would achieve all of the above reforms. Many different kinds of proposals exist that claim to or even do abolish money bond in Illinois, but that tagline alone is not enough. **Without ensuring other protections for accused people, eliminating money bond could actually increase the number of people jailed while awaiting trial.** We must ensure that any initiatives that reduce or eliminate the role of money in Illinois' pretrial justice system also abide by all of the above principles. **Bail reform in Illinois must lessen pretrial incarceration rates and racial disparities.**

And as we reduce the number of people in county jails, county budgets must also begin to shift from spending on incarceration toward spending on services and other resources in the community. Ultimately, a focus on prevention and meeting people's needs before they come into the criminal justice system is the best way to promote community safety and get better outcomes for individuals, communities, court systems, and the state. We call on the Illinois General Assembly, the Illinois Supreme Court Commission on Pretrial Practices, Governor JB Pritzker, and Lieutenant Governor Juliana Stratton to act swiftly to establish a just pretrial system as outlined in this vision.

ENDNOTES

1 | In one study, within 18 months of the resolution of their cases, detained people had a 20% increase in new misdemeanor charges and a 30% increase in new felony charges. See Paul Heaton, Sandra Mayson, Megan Stevenson, "The Downstream Consequences of Misdemeanor Pretrial Detention", 69 Stan. L. Rev. 711 (March 2017).

2 | Accused people detained more than 3 days were 2.5 times less likely to be employed. They had a 40% higher rate of reporting that their arrest led to unstable housing situations, and they reported a 59% higher rate of negative effects on their dependent children than did people who were incarcerated for fewer than 3 days. See Holsinger, Alexander, Analyzing Bond Supervision Survey Data: The Effects of Pretrial Detention on Self-Reported Outcomes, Crime and Justice Institute, June 2016.

3 | See Paul Heaton, Sandra Mayson, Megan Stevenson. "The Downstream Consequences of Misdemeanor Pretrial Detention", 69 Stan. L. Rev. 711 (March 2017) (observing a 25% higher rate of guilty pleas and a 43% higher rate of sentences to incarceration in Houston).

4 | See also Arpit Gupta, Christopher Hansman, and Ethan Frenchman. "The Heavy Costs of High Bail: Evidence from Judge Randomization", 45 J. Legal Stud. 471 (June 2016).

5 | Paul Heaton, Sandra Mayson, Megan Stevenson. "The Downstream Consequences of Misdemeanor Pretrial Detention", 69 Stan. L. Rev. 711 (March 2017).

6 | See Ethan Corey, "How a Tool to Help Judges May be Leading Them Astray," *The Appeal* (Aug. 8, 2019), available at https://theappeal.org/how-a-tool-to-help-judges-may-be-leading-them-astray/.

7 | See The Editorial Board, "If Addiction Is a Disease, Why Is Relapsing a Crime?," *The New York Times* (May 29, 2018), available at https://www.nytimes.com/2018/05/29/opinion/addiction-relapse-prosecutions.html.

All images in this document were taken at the Illinois Network for Pretrial Justice's launch, the People's Convening on Pretrial Freedom, in Springfield, Illinois on July 13, 2019.

ABOUT THE COALITION TO END MONEY BOND

The Coalition to End Money Bond formed in May 2016 as a group of member organizations with the shared goal of stopping the large-scale jailing of people simply because they were unable to pay a monetary bond. In addition to ending the obvious unfairness of allowing access to money determine who is incarcerated and who is free pending trial, the Coalition is committed to reducing the overall number of people in jail and under pretrial supervision as part of a larger fight against mass incarceration. The Coalition to End Money Bond is tackling bail reform and the abolition of money bond as part of its member organizations' larger efforts to achieve racial and economic justice for all residents of Illinois.

The current members of the Coalition to End Money Bond are: ACLU of Illinois; A Just Harvest; Believers Bail Out, Chicago Appleseed Fund for Justice; Community Renewal Society; Illinois Justice Project; Justice and Witness Ministry of the Chicago Metropolitan Association, Illinois Conference, United Church of Christ; Nehemiah Trinity Rising; The Next Movement at Trinity United Church of Christ; The Shriver Center on Poverty Law; Southsiders Organized for Unity and Liberation (SOUL); The People's Lobby; and Workers Center for Racial Justice.

Written Public Comments to the Illinois Supreme Court Commission on Pretrial Practices - July 2019

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Note: A group submission with multiple exhibits is available in a separate document due to length.

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Testimony of the Criminal Justice Advisory Committee of The Collaboration for Justice to the Supreme Court Commission on Pretrial Practices

June 17, 2019

Thank you for the opportunity to comment publicly on the work of the Supreme Court Commission on Pretrial Practices. The Criminal Justice Advisory Committee of Chicago Council of Lawyers/Chicago Appleseed ("CJAC") applauds the intentions and mission of the Commission and embraces the effort to create high functioning, evidence-based pretrial services agencies throughout Illinois.

We would like to focus on the part of the Supreme Court's Order establishing the Commission that seeks an "***adequately-resourced*** system of pretrial services."

CJAC has been active in the Coalition to End Money Bond, and supported the passage of the Bail Reform Act of 2017. CJAC also has been involved in efforts to overhaul Illinois' byzantine system of criminal justice fines, fees and costs (collectively, "court assessments"), which disproportionately are imposed on the poorest litigants and criminal defendants. We strongly supported the 2018 Criminal and Traffic Assessment Act.

In our experience, one of the largest stumbling blocks to criminal justice reforms in our state has been financial. Specifically, the criminal justice system and court clerks of many counties in Illinois depend heavily upon funding generated by D-bonds and court assessments. As you know, state law allows court clerks to retain an administrative fee of 10% of the bail amount (capped at $100 in Cook County but not elsewhere). In addition, many defendants are charged fees for electronic monitoring, supervision, or other mandated conditions while on pre-trial release. These court assessments may impose large burdens upon defendants, as CJAC's research has shown. While it is difficult to obtain data concerning the percentage of court budgets supported by bond fees and court assessments, court clerks in many counties have stated publicly and privately that they depend upon this revenue. Stakeholders in many Illinois counties understandably resist reforms that diminish the burden on litigants without providing replacement sources of funding.

Moreover, the interests of all stakeholders are not necessarily aligned. For example, reducing the population of incarcerated pre-trial detainees should free money that otherwise would be spent on jails to be spent elsewhere in the criminal justice system, but sheriff's departments and court clerks may have separate budgets and do not consider those dollars fungible.

We would applaud a statement of principle from the Commission that money bond should be eliminated in Illinois. We also would endorse a statement from the Commission that mandatory pre-trial supervision, if it is imposed, should not burden defendants with additional costs. But we believe that proposed legislation addressing bond and other pretrial practices will have a better chance of success if it specifies replacement funding mechanisms. Otherwise, we fear, the admirable goals of creating a more equitable and research-based pretrial system may stumble over the practical realities of operating and funding court systems statewide. Thus we urge the

Commission not to simply leave it up to the legislature to reach a compromise on funding. We urge the Commission to directly address funding in its report, and to specify that dollars saved in one area -- for example, county jails -- should be earmarked for related services -- for example, pretrial supervision and alternatives to incarceration.

TO: Illinois Supreme Court Commission on Pretrial Practices
FROM: Access Living of Metropolitan Chicago
SUBJECT: Impact of Pretrial Detention Practices on People with Disabilities
DATE: June 28, 2019

We at Access Living are pleased to take this opportunity to provide input to the Commission on the impact of pretrial detention and cash bail practices on people with disabilities.

As background to our perspective, Access Living is the Center for Independent Living (CIL) serving people with disabilities living in Chicago since 1980. A CIL is the federally designated term for a nonprofit whose staff and board are comprised of a majority of people with self-identified disabilities, provided core services including peer support, independent living services, advocacy, information and referral, and transition to community integrated living for youth and residents of institutions. We work to foster an inclusive society enabling Chicagoans with disabilities to live fully-engaged and self-directed lives in their homes and communities. Access Living has a well-established reputation as not only a national but a global leader in transforming society's conversations about people with disabilities and expanding civil rights. In my role at Access Living, I serve as the Disability and Incarceration Policy Analyst on a planning grant project funded by the MacArthur Foundation's Safety and Justice Challenge. I research and analyze how the criminal justice system impacts people with disabilities, with a particular focus on reducing jail incarceration.

Over the last 39 years, a number of the people we support through services and advocacy have also been involved with the Cook County criminal justice system. For this group of community members, self-determination and empowerment are made all that much harder because their disability needs were often neglected or completely overlooked while they were interacting with the criminal justice system. Time and again, we have been made aware of situations where people with disabilities would have benefited from supports and diversion rather than incarceration. We believe it is our responsibility to be part of the solution to reduce incarceration in our community through empowering leaders with disabilities to share their knowledge and input.

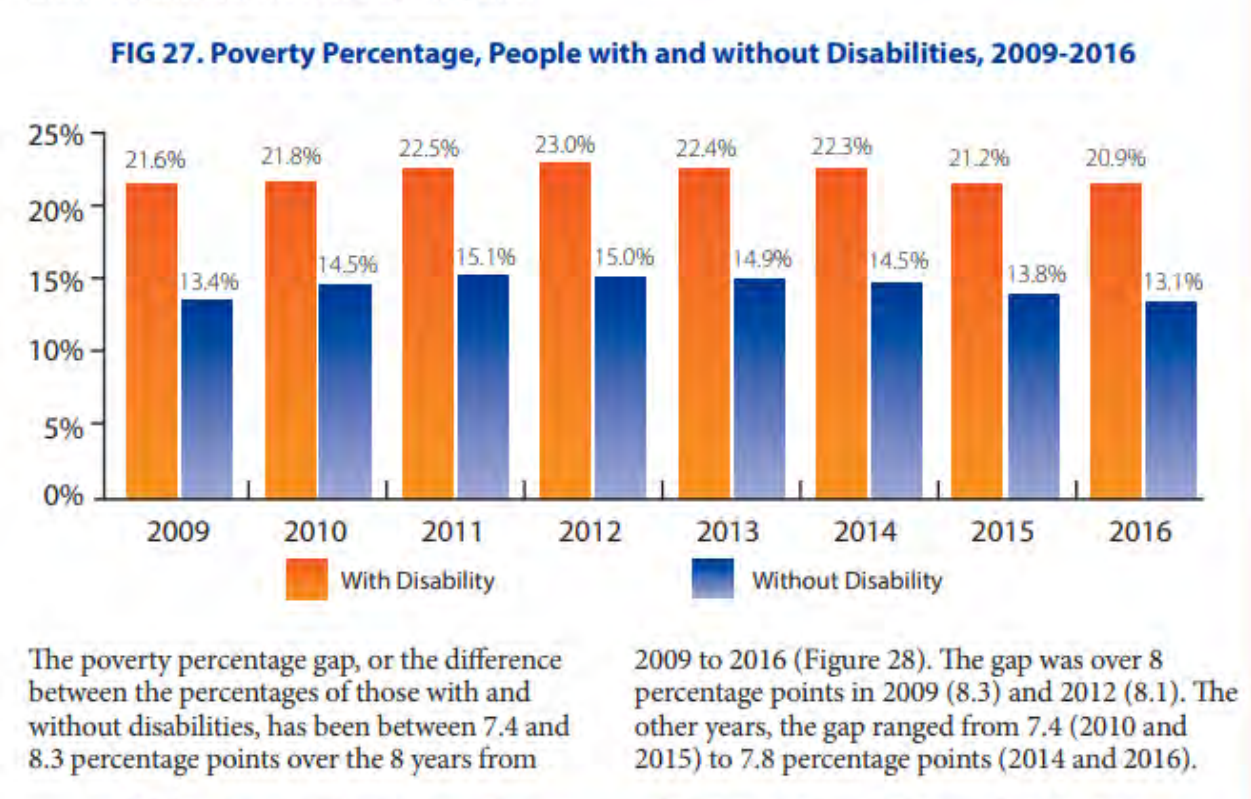
Jail time and cash bail are harmful to people with disabilities in Illinois and are literal barriers to moving society forward. Key points we ask you to consider are as follows:

Overrepresentation of People with Disabilities in Jail

According to the Center for Disease Control and Prevention, 61 million people, one in four adults in the United States have a disability.[1] If we know that basically 25% of the national population has a disability, then it's clear that people with disabilities are overrepresented in jails, with a disability jail population of 40%.[2] There is a fundamental situation of disparity that must be addressed on a large scale through system reform, and addressing disparities caused by cash bail requirements is critical.

Poverty and Disability

Rebecca Vallas has expertly noted that disability is both, "a cause and a consequence of poverty."[3] Furthermore, she notes that 70% of people with disabilities would not be able to come up with an estimated $2,000 for a sudden, unplanned expense, compared to 35% of non-disabled people. This should give policymakers serious pause in considering how and when cash bail is imposed, and whether it is biased or effective. See the below chart from the 2017 Disability Statistics Annual Report[4] to get a sense of year-by-year disability vs. non-disability poverty comparisons:



The poverty percentage gap, or the difference between the percentages of those with and without disabilities, has been between 7.4 and 8.3 percentage points over the 8 years from 2009 to 2016 (Figure 28). The gap was over 8 percentage points in 2009 (8.3) and 2012 (8.1). The other years, the gap ranged from 7.4 (2010 and 2015) to 7.8 percentage points (2014 and 2016).

[1] https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html
[2] https://www.bjs.gov/content/pub/press/dpji1112pr.cfm
[3] https://talkpoverty.org/2014/09/19/disability-cause-consequence-poverty/
[4] https://disabilitycompendium.org/sites/default/files/user-uploads/2017_AnnualReport_2017_FINAL.pdf

People with disabilities in poverty who rely on Social Security Income (SSI) are at risk of losing their sole source of income when they are detained pre-trial for any reason (including the inability to pay a cash bail). In 2017, there were 270,833 individual recipients of SSI in the state of Illinois, compared to 150,000 of those individuals living within Cook County.[5] When an individual receiving SSI is incarcerated for 30 days, their benefits are suspended, requiring them to report to Social Security upon release. They must provide proof of release and their benefits may or may not be reinstated. Further, if they are reinstated, they are only reinstated the month following the month of release, leaving a one-month gap of zero economic support.[6]

If an SSI recipient spends more than 12 months in jail, they lose their benefits entirely and must complete a new application for social security income. Other benefits granted to support people with disabilities in their communities may or may not dissolve pre-conviction, but for SSI benefits specifically (those which are granted to people 65 and over, people who are blind, or have a disability and no income or resources), "the Social Security Administration, generally do[es] not pay Social Security and Social Security Income recipients during confinement for a crime in jail, prison, and certain other public institutions."[7]

Furthermore, Medicare Part B (Medical Insurance) coverage does not continue during incarceration if the monthly premiums are not paid. This leaves a person without medical care, past due premiums to reenroll if coverage is lost while incarcerated, and a limited window to reenroll, which is basically January through March of each year only. If a person with a disability is incarcerated in the middle of the year, loses their Medicare, and must reenroll in January through March of the following year, their insurance will become effective only in July of the year in which they reenroll.[8] This again leaves a significant gap during which the person's opportunities for success in re-establishing themselves in the community is severely negatively impacted. For example, a Medicare coverage lapse means a person held pretrial cannot bill for services immediately upon release from custody.

Furthermore, during incarceration, the person with a disability who relies on SSI will not have any chance to accrue funds or assets that could positions them for success on re-entry. The Social Security Administration "will not pay benefits to someone who is confined in an institution…in connection with a criminal case if the court finds them insane…or incompetent to stand trial."[9] Therefore, this is fundamentally a disinvestment in the person's ability to succeed and contribute positively to their community.

For people with disabilities who are employed, it often only takes one day of pretrial detention to lose their jobs and sources of income all together.

[5] https://www.ssa.gov/policy/docs/statcomps/ssi_sc/2017/il.html
[6] https://www.ssa.gov/reentry/benefits.htm
[7] https://www.ssa.gov/reentry/benefits.htm
[8] https://www.ssa.gov/reentry/benefits.htm
[9] https://www.ssa.gov/reentry/benefits.htm

Inadequate Reasonable Accommodations and Supports in Jail Cause Harm

Reasonable accommodations for disability as well as nondiscriminatory practices, although required by the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, and the U.S. Constitution, are frequently poorly done or not provided at all in jails. Furthermore, many people with disabilities live within a web of complex disability supports, and jail resources are typically inadequate to meeting these needs. When a person with a disability is unable to bail out of confinement due to inability to pay cash bail, they are put at risk not only because disability accommodations may not be made, but also because the community supports they need to survive may be lost while they are detained. Extreme harm may be done to accused people detained pretrial who are unable to secure release to obtain the medical care or accommodations they need to survive. When accommodations are not met during incarceration of people with disabilities, they often suffer injury and, in some cases, death.[10]

Personal Care Network of Support and Caregiving

An under-addressed area of community impact related to cash bail and pretrial detention also has to do with personal care and caregiving. Many persons who are incarcerated are in the position of being caregivers to others or need personal care themselves if disabled. Those who are caregivers may be performing homemaker tasks such as cooking or cleaning, or personal care such as bathing, dressing, feeding, positioning and toileting for people with disabilities. Those employed formally or informally as personal assistants or caregivers, whose work is to care for people with disabilities in the community, lose their work upon incarceration. In practice, then, the person with a disability they serve is also punished by their pretrial detention. The community impact in these scenarios cannot be emphasized enough and is sorely neglected. It can be a lengthy difficult process for a person with a disablity to find a paid or unpaid personal assistant or caretaker.[11] Losing one can only have further unintended repercussions.

Additionally, we must also consider particular situations where the person incarcerated is the parent of a child with a disability who relies upon them for their primary care and support, especially while in school. In such situations, detaining the parent in jail can have devastating consequences on the family as a whole. That parent is no longer available for school coordination of special education services, nor are they able to support them in out-of-school therapies and other needed services. This is an important and overlooked community cost of pretrial detention.

Housing

Cash bail creates housing instability for people with disabilities because people cannot keep up rent or mortgage payments while incarcerated, ensure that housing inspections occur, or otherwise ensure that a number of key housing practices are maintained in order to keep their housing. While the lack of affordable housing overall is a national problem, less is understood about ensuring that this housing includes units that are accessible to people with disabilities. There is a significant lack of affordable accessible housing and people with disabilities struggle

[10] https://www.americanprogress.org/issues/criminal-justice/reports/2016/07/18/141447/disabled-behind-bars/
[11] http://www.dhs.state.il.us/page.aspx?item=59704

to locate and secure this housing in the first place, in part because many have or need housing vouchers in order to afford a place to live.[12] This need is actually the number one category of service requests made to Access Living, bar none. Being detained in jail pretrial puts people with disabilities great risk losing of their housing and increases the risk of being institutionalized in nursing homes or other settings. Some of the people Access Living has served through community transition services have been forced into this situation.

Conclusion

Access Living believes in the administration of justice and we believe most people in our criminal justice system want to do what is right for people with disabilities. What is right is to eliminate cash bail so people with disabilities are no longer being harmed by not being able to afford to buy their freedom to access the accommodations, medical care, and resources they need to survive and enjoy economic opportunities like anyone else. The use of outright pretrial detention should also be carefully limited and carefully monitored for disability discrimination.

Cash bail is essentially a way to perpetuate further injustice in our system by fining people before they are convicted of a crime—a fine that is not impactful if they have plentiful resources but devastating if they don't. It further perpetuates the class-based disparities in our justice system, which disproportionally impacts people with disabilities. The only way to eliminate these disparities pretrial is to eliminate cash bail.

Illinois has been a progressive leader in change throughout history. We have the opportunity to lead the way by eliminating cash bail. The Commission honorably has promised "to review pretrial practices in the State of Illinois and make recommendations that ensure defendants are not denied liberty solely due to their inability to financially secure their release from custody."[13] To advance best practices, it is within your purview to continue to lead the way on pretrial reform by eliminating cash bail in the State of Illinois and dramatically reducing the number of people jailed pretrial.

Questions or comments regarding this document may be addressed to Elesha Nightingale, Access Living's Disability and Incarceration Policy Analyst at: enightingale@accessliving.org or (312) 640-2131.

[12] https://www.housingactionil.org/downloads/Locating_Accessible_Hsg_IHARP%2007.pdf
[13] http://www.illinoiscourts.gov/Probation/12-18.pdf

June 28, 2019

Administrative Office of the Illinois Courts, Probation Division
c/o Honorable Robbin J. Stuckert
3101 Old Jacksonville Road
Springfield, IL 62704

Submitted electronically to pretrialhearings@illinoiscourts.gov

Re: Comments on Pretrial Reform Recommendations from the American Civil Liberties Union

Dear Honorable Robbin J. Stuckert:

ACLU SMART JUSTICE

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Susan Herman
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Anthony Romero
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Richard Zacks
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The American Civil Liberties Union (ACLU) welcomes the opportunity to submit public comment to the Illinois Supreme Court Commission on Pretrial Practices (hereafter, "Commission"). The ACLU is a non-partisan civil rights and civil liberties organization that advocates for issues such as criminal justice reform, voting rights, immigrants' rights, and reproductive freedom, with a presence in all 50 states. We represent approximately 1.6 million members nationwide, including more than 70,000 members located in Illinois. For the past few years we have engaged in legislative and judicial pretrial advocacy, as well as litigation, in over 35 states. We hope to contribute this wealth of experience to support the Commission in making recommendations on Illinois' pretrial system.

As recently as 2015, three-quarters of Illinois' jail population consisted of people waiting in jail pretrial.[1] This means more than 12,000 presumptively innocent people were languishing in jail at any given time. Across the country, state and local jurisdictions have recognized the legal, pragmatic, and moral importance of pretrial liberty. The State of Illinois judiciary has shown leadership in local efforts, issuing rule changes that contributed to nearly a 20% decrease in the size of the pretrial population since 2006.[2] Yet pretrial detention remains an acute problem in Illinois, with an estimated 250,000 people who cycle through the state's jails each year. We encourage the Commission to take the essential next steps to correct remaining deficiencies in the state's pretrial practices.

Much of the national momentum around pretrial reform has been driven by the public's increasing outrage at the damage wrought by an over-reliance on cash bail. Unaffordable money bail causes significant harms—removal from family, inability to maintain work, exposure to violence, deleterious effects on mental health, inability to effectively meet with counsel, disruption in life responsibilities— without advancing the public interest, primarily due to fact that unaffordable money bail drives pretrial incarceration. Recent

[1] Illinois Criminal Justice Information Authority Data Clearinghouse, County Jail Average Daily Population, April 24, 2018. Figure represents the average sentenced and pre-sentenced daily population in county jails statewide in 2016; American Civil Liberties Union, *Blueprint for Smart Justice: Illinois*, 7 (2018), https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-IL.pdf
[2] American Civil Liberties Union, *Blueprint for Smart Justice: Illinois*, 8 (2018), https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-IL.pdf

evidence suggests that pretrial detention undermines public safety.[3] Pretrial detention causes ripple effects that harm to individuals and their families. Research demonstrates the avoidable detrimental harm that pretrial detention can cause, such as a decreasing the likelihood of obtaining formal employment.[4] Worse still, people who remain incarcerated pretrial receive harsher sentences than those who are released.[5] And it is incarceration itself, not simply incarceration based on poverty, that needs careful limitation.

The Commission should closely scrutinize all causes of pretrial incarceration to not only redress constitutional deficiencies, but to make Illinois a national leader in pretrial justice. The state's primary focus should be ensuring that the constitutional standards are adhered to, which requires limiting the number of people who are detained pretrial and endeavoring to find mechanisms of safe release. Illinois must also strengthen the due process regulations for those who are eventually detained. When detention hearings are held the court's evidentiary standard should be increased so that persons are only detained if clear and convincing evidence is presented that no condition or combinations of conditions can mitigate a specific and imminent threat of physical violence to specific persons or willful flight. These due process protections will not only help narrow who can be detained pretrial, but will also offer significant protections to those persons who are detained.[6]

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The Fundamental Right to Pretrial Release

We encourage the Commission make its recommendations keeping front of mind that the right to pretrial liberty is fundamental. *Stack v. Boyle*, 342 U.S. 1, 4 (1951); *United States v. Salerno*, 481 U.S. 739, 750 (1987). "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). In the pretrial context, one's interest in bodily freedom is especially significant because prior to conviction, a person accused of a crime is afforded the presumption of innocence: "that bedrock, axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law." *In re Winship*, 397 U.S. 358, 363 (1970) (internal citation omitted). Thus, it is undisputed that "[i]n our society liberty is the norm, and detention prior to trial…is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

Given these fundamental rights, any denial of a person's right to pretrial freedom must be justified by specific, clear, and convincing evidence presented by the government. *See United States v. Salerno*, 481 U.S. 739 (1987). The government must further establish

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[3] Prison Policy Initiative, *Findings from Harris County: Money bail undermines criminal justice goals* (August 24, 2017), https://www.prisonpolicy.org/blog/2017/08/24/bail/

[4] Will Dobbie, Jacob Goldin and Crystal Yang, *The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges,* (July 2016), https://scholar.princeton.edu/sites/default/files/wdobbie/files/dgy_bail_0.pdf

[5] Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, (2013), https://csgjusticecenter.org/wp-content/uploads/2013/12/Investigating-the-Impact-of-Pretrial-Detention-on-Sentencing-Outcomes.pdf

[6] American Civil Liberties Union, *A New Vision for Pretrial Justice in the United States*, (March 2019), https://www.aclu.org/sites/default/files/field_document/aclu_pretrial_reform_toplines_positions_report.pdf,

that infringements on pretrial freedom are necessary before a person is detained. Detention is only appropriate if the court has found by clear and convincing evidence that a person is a willful flight risk or an imminent and serious physical threat to a reasonably identifiable person or persons.[7] This means a court cannot detain an individual unless it concludes there is no other less restrictive alternative available. This strict limitation applies whether the detention is outright or *sub rosa*, i.e., pursuant to an unattainable condition of release such as unaffordable money bail. *United States v. McConnell*, 842 F.2d 105, 110 (5th Cir. 1988); *Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001).

Who can be held pretrial and for how long?

The Illinois statute does not sufficiently tailor the offenses for which an accused person may be detained prior to trial. The law allows for pretrial detention, after a hearing, of people charged with stalking, felony offenses where imprisonment without conditional or revocable release may be levied upon conviction, unlawful use of a weapon (in certain situations), or with terrorist threats.[8] On their face these charges are not "extremely serious" and there is no evidence that these offenses are correlated to an elevated risk of flight or danger. There is also some precedent in Illinois that suggests that people can be detained to protect the integrity of the court process.[9] In addition to ensuring the charges creating detention eligibility are narrowly limited only to "extremely serious" instances, the Commission should also recommend against justifying pretrial detention based on a risk of interfering with the judicial process. Whereas this is a crime on its own,[10] we believe that it is improper to use as a basis of detention before it is even alleged to have occurred. Ensure all persons facing possible detention receive strong due process protections. Accusation of crime alone should never be a sufficient basis for detention. Detaining people based on probable cause of the charge alone undermines the presumption of innocence, which is a cornerstone of our democracy. At the release hearing, the court's role is to determine whether a person can be released back to their lives while they await trial, not merely whether there is enough evidence to justify an arrest. By the same justification, detention standards involving "proof evident and the presumption great" should be scrapped.

People not granted presumptive release must have the right to counsel, to pretrial discovery and to present and cross-examine any witnesses during their pretrial hearing. Even one day behind bars can have devastating consequences,[11] and the negative personal and public outcomes increase with each additional day. For some, the harms of pretrial detention are irreversible, as evidenced by the increasing rates of suicides amongst people held in local jails.[12] It is thus imperative that the Commission recommend that people be

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[7] Id.
[8] Id.
[9] *People ex rel. Hemingway v. Elrod*, 60 Ill.2d 74 (1975).
[10] 720 I.L.C.S. 5/32-1 (2012).
[11] Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *The Hidden Costs of Pretrial Detention,* (2013), https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf
[12] Bureau of Justice Statistics, Mortality in Correctional Institutions (2016), https://www.bjs.gov/index.cfm?ty=dcdetail&iid=243;
Matt Clarke, Department of Justice Releases Reports on Prison and Jail Deaths, Prison Legal News (January 8, 2018), https://www.prisonlegalnews.org/news/2018/jan/8/department-justice-releases-reports-prison-and-jail-deaths/

provided with a first appearance release hearing within 24 hours of arrest. These pretrial hearings must be provided with counsel, and with a strong presumption of release. People who are detained pretrial should have the strongest speedy trial rights to protect against indefinite detention. Under the current statute, people who are detained must be brought to trial within 120 days,[13] with a number of exclusions and exceptions. This is too long. The procedural barriers of the speedy trial statute, such as the requirement that a person in certain circumstances demand their trial to start the clock, and its lack of protections for defendants have long been criticized.[14] The deprivation of liberty through pretrial detention requires people to be brought to trial sooner. We encourage the Commission to recommend strengthening these speedy trial protections to require that people be brought to trial within thirty days or released without prejudice, limit excludable time, and remove any procedural barriers .

As detailed in this Commission's preliminary report, current pretrial practices in Illinois raise equity, fairness, and constitutional concerns. For example, defense counsel was only present at 49% of bail hearings.[15] These hearings involve crucial decisions about pretrial liberty, which is a vital right. The presence of an attorney can significantly improve the accuracy and fairness of outcomes. Moreover, the person accused was only present 82% of the time, including video appearances.[16] Thus, crucial release decisions are made in absentia for nearly one out of every five people. This deprives those facing charges of the ability to argue for a release on one's own recognizance or on decreased conditions, and the court cannot adequately determine a person's present ability to pay. It is because of due process and constitutional violations such as these that we implore the Commission to recommend strengthening procedural protections as a critical step in limiting the use of pretrial detention.

Who can Illinois automatically release?

A clear way to ensure that pretrial detention is appropriately limited while reducing the burden on local systems is to reduce the number of people booked into jails in the first instance to the greatest extent possible. It is therefore critical that Illinois widely adopt mandatory pre-booking citations or summons, or other release-based, diversionary practices. Doing so would significantly cut the number of people languishing in Illinois' jails awaiting trial. Illinois can accomplish this reduction without increasing failure to appear rates. Powerful evidence from other jurisdictions consistently demonstrates that increased pretrial release can be achieved without a negative impact on public safety or court appearance rates. In fact, people quickly released pretrial are *less* likely to miss court or be re-arrested than those who were forced to await their trial in jail.[17] Further, simple practices including court date reminders have been demonstrated to be highly

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[13] 725 I.L.C.S. 5/103-5 (2018).
[14] *Cf.*
David S. Rudstein, *Speedy Trial in Illinois: The Statutory Right*, DePaul Law Review (Winter 1976),
https://via.library.depaul.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2646&context=law-review
[15] Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *The Hidden Costs of Pretrial Detention,* (2013),
https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf
[16] Id.
[17] Illinois Network for Pretrial Justice.pdf

effective in reducing failure to appear rates.[18] We encourage the Commission to recommend that jurisdictions adopt mandatory citations or summonses for all misdemeanors to limit the number of people who can be held in jail pretrial.

How do we release people who aren't automatically released?

The Commission should recommend strong presumptions of release to make clear that release should be the norm and that the government may only disturb under carefully circumscribed circumstances. Properly enforced, presumptions of release make a return to one's family, job, and community the default. In addition, we implore the Commission to recommend that courts be required to release people on the least restrictive condition or combination of conditions possible. Release without conditions should be standard, and courts must otherwise take an individualized approach to imposing release conditions.[19] Cash bail should be dramatically limited. At a minimum, courts should assess every individual's present ability-to-pay, which, because of the exigency created by pretrial detention, the Commission should define as what a person can access on their own within 24 hours. Resources from family and friends must not be considered. This approach helps guarantee that a lack of financial resources does not lead to extended time in incarceration and protects family and loved ones from exploitation in their most desperate moments.

We strongly encourage the Commission to recommend people receive hearings within 24 hours where there are strong presumptions of release, a properly tailored ability to pay determination, and a requirement to be released on least restrictive conditions.

Conclusion

We thank the Commission for the opportunity to provide written comment. The Commission has an opportunity to propel Illinois forward as a national leader on pretrial issues, and we are encouraged by the demonstrated commitment of the court to improve the state's pretrial practices. We ask that the recommendations above be incorporation into the Commission's final recommendations for pretrial reform, and look forward to the opportunity for dynamic feedback and partnership between the Commission and the many community stakeholders across Illinois. If you have any questions, please contact Udi Ofer, Director of the Campaign for Smart Justice, at uofer@aclu.org.

Sincerely,

Udi Ofer
Director of the Campaign for Smart Justice

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[18] Pretrial Justice Center for Courts, *Use of Court Date Reminder Notices to Improve Court Appearance Rates*, (September 2017), https://www.ncsc.org/~/media/Microsites/Files/PJCC/PJCC%20Brief%2010%20Sept%202017%20Court%20Date%20Notification%20Systems.ashx

[19] E.g., *United States v. Scott*, 424 F.3d 888 (9th Cir. 2005) (finding that mandatory drug testing violated the Fourth Amendment);

Civic Federation Testimony
Illinois Supreme Court Commission on Pretrial Practices
Public Hearing, Monday, June 17, 2019

Good afternoon Honorable Chairman Stuckert and members of the Illinois Supreme Court Commission on Pretrial Practices. I am Laurence Msall, president of the Civic Federation—a 125-year-old, non-partisan government research organization in Chicago. Thank you for the opportunity to testify today.

The Civic Federation believes in efficient, effective government, which requires transparency and accountability. The Supreme Court recognized the importance of these principles in its 2017 statement on pretrial practices. In line with that statement, we urge the Commission to recommend the creation of a statewide system for the collection and public dissemination of data on pretrial actions and outcomes.

Currently no such system exists. This is problematic because without this data there is no way for criminal justice professionals or the public to evaluate policy reforms. Even with recent improvements in data disclosure—in particular by the Cook County Chief Judge's Office—there are still unanswered questions and conflicting information.

In order to make informed decisions and measure progress, policy makers need statistics to answer basic questions such as:

- How many people are held in custody without bail?
- How many pay for their release?
- How long do defendants stay in jail?
- What conditions are placed on released defendants such as electronic monitoring or home confinement?
- How do bond court judges make their decisions and how uniform are they?
- How frequently do released defendants miss court dates or commit new offenses?

Ideally, the collection and public release of data about bond court and pretrial jail populations should be done by a statewide agency with authority to require collection of the data from circuit court clerks and sheriffs. The data should be collected electronically and housed in a single repository. Reports with the compiled statistics should then be made available to the public.

The Civic Federation has been working with criminal justice advocates on House Bill 2689, a legislative proposal that would make this kind of data available statewide, and we would be happy to discuss it further.

In keeping with transparency and accountability, we encourage the Commission to expand the public availability of information about its own activities. Unless there is a compelling reason for

closed meetings, we believe the Commission should err on the side of transparency by allowing the public to attend meetings of the Commission and its subcommittees. We also request that the Commission post information on its website about its proceedings, including presentations and subcommittee membership. These steps would increase public confidence in the Commission's recommendations, along with public awareness and discussion of these important issues.

Thank you for the opportunity to share the Civic Federation's perspective on this matter. I would be happy to answer any questions.

CRIMINAL JUSTICE POLICY PROGRAM
HARVARD LAW SCHOOL

Honorable Robbin J. Stuckert
Chief Judge, DeKalb County
133 W. State Street
Sycamore, IL 60178

RE: Illinois Supreme Court Commission on Pretrial Practices

Dear Honorable Robbin J. Stuckert,

On behalf of the Criminal Justice Policy Program at Harvard Law School, we submit this testimony to the Illinois Supreme Court's Commission on Pretrial Practices. We are pleased to learn that the Illinois Supreme Court is considering reforms to the state's pretrial laws and practices. As national experts on bail who have closely studied Illinois's pretrial practices, we encourage the state to eliminate money bail and enforce procedural safeguards for pretrial detention.

In Illinois and across the country, bail reform has gained momentum as the public learns how the money bail system discriminates based on wealth and race. No pretrial system should treat people differently based on the money in their bank accounts or the color of their skin. But in Illinois today, some people accused of crimes can post bond and walk free while they await trial, while those who cannot afford their bonds must languish in jail until their case is resolved. Money bail disproportionately harms Black and Latinx people accused of crimes who often have less personal and familial wealth than their white counterparts. Implicit and explicit racial biases can make those disparities worse. Indeed, recent empirical research has found that money bail is imposed more often on Black people than on white people, and that Black people receive higher bail amounts than white people.[1]

The most grievous harm that money bail inflicts is jail. Pretrial reforms cannot focus on just money — reducing pretrial incarceration must be a central goal. Reducing pretrial incarceration can be accomplished only through clear limits on when and how judges can send people to jail pretrial. As we detail in our latest report, *Bail Reform: A Guide for State and Local Policymakers*, the only surefire way to reduce the number of people incarcerated pretrial is to eliminate money bail and to establish procedural safeguards for pretrial incarceration.[2]

[1] David Arnold et al., *Racial Bias in Bail Decisions*, 133 Q. J. ECON. 1885, at 1885–86 (2018).
[2] COLIN DOYLE, CHIRAAG BAINS, & BROOK HOPKINS, CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCH., BAIL REFORM: A GUIDE FOR STATE AND LOCAL POLICYMAKERS 13–16 (2019), http://cjpp.law.harvard.edu/publications/bail-reform-a-guide-for-state-and-local-policymakers.

In recent decades, the pretrial incarceration rate in the United States has skyrocketed beyond all historical and international norms.[3] Illinois has followed this national trend: over the last few decades, Illinois's pretrial jail population has tripled.[4]

Through pretrial incarceration, the money bail system imposes tremendous costs on the public, those who are detained, their families, and their communities. Excessive pretrial incarceration harms public safety and undermines the rule of law.

People jailed pretrial lose their jobs, their homes, and custody of their children.[5] As the Supreme Court has cautioned, a defendant detained pretrial "is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense."[6] A host of recent quasi-experimental empirical studies have found that pretrial detention influences case outcomes by causally increasing a defendant's chance of conviction and sentence length.[7] Innocent people who are detained pretrial become so desperate to get out of jail that they will plead guilty to crimes that they did not commit in exchange for a sentence of time served.[8] In other words, innocent people who mount a defense and are acquitted can face more jail time than innocent people who plead guilty.

Although judges send people to jail to prevent future crime, pretrial detention's relationship to crime is mixed at best. Social science research has found that pretrial detention causally increases someone's propensity to commit a crime in the future.[9] This effect has been found even with jail stays as short as two days.[10] Unless pretrial detention is used carefully and sparingly, the practice undermines public safety by destabilizing lives and causing crime.

Unwarranted pretrial incarceration also betrays our legal system's founding principles. Across the globe, there are governments that determine guilt and mete out punishment without the hassle of trials, defense attorneys, or rules of evidence. But a free society incarcerates people only after they have been convicted of crimes, with rare and carefully limited exceptions. People accused of crimes are innocent until proven guilty, but pretrial incarceration flips this legal maxim on its head by jailing people before giving them the opportunity to defend themselves and without requiring the government to prove its case. In the rare instances when a defendant is a serious threat to someone's safety, our Constitution requires that the government prove that pretrial detention is necessary at an adversarial hearing with strict procedural safeguards.[11]

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[3] Peter Wagner & Wendy Sawyer, PRISON POLICY INITIATIVE, *Mass Incarceration: The Whole Pie 2019* (Mar. 14, 2018), https://www.prisonpolicy.org/reports/pie2019.html.
[4] VERA INSTITUTE, *Incarceration Trends*, http://trends.vera.org/incarceration-rates?data=pretrial&geography=states&fips=17 (last viewed June 25, 2019).
[5] CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCH., MOVING BEYOND MONEY: A PRIMER ON BAIL REFORM 7 (2016), http://cjpp.law.harvard.edu/publications/primer-bail-reform.
[6] Barker v. Wingo, 407 U.S. 514, 533 (1972).
[7] Megan Stevenson & Sandra G. Mayson, *Pretrial Detention and Bail*, REFORMING CRIMINAL JUSTICE 22 (2017) (collecting studies).
[8] Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention* 69 STAN. L. REV. 711, 714–717 (2017).
[9] *Id.*
[10] CHRISTOPHER T. LOWENKAMP ET AL., LJAF, THE HIDDEN COSTS OF PRETRIAL DETENTION 4 (2013).
[11] United States v. Salerno, 481 U.S. 739, 746–50 (1987).

At present, courts across Illinois fail to live up to this constitutional mandate. Largely through the mechanism of money bail, people are detained pretrial without required constitutional protections. **To remedy this injustice, we recommend that the commission endorse the following policies:**

1) The prohibition of secured money bail as a condition of pretrial release.
2) Strict procedural safeguards for pretrial detention:
   a) Pretrial detention hearings should be held only upon motion of the prosecutor, and the government should have the burden to prove by clear and convincing evidence that the accused person is a present danger to the physical safety of a person or the community.[12]
   b) Defense counsel should be present at these hearings and have the opportunity to cross-examine the prosecution's witnesses and present evidence.[13]
   c) Pretrial detention should be allowed only for people charged with serious, violent felony crimes.[14] People charged with all other crimes should be released or conditionally released pending trial.
   d) In jurisdictions that use actuarial risk assessments as part of a pretrial screening process, these assessments should not be used to make decisions to detain people pretrial.

Thank you for the opportunity to submit these comments. If we can be of any assistance to the commission as it contemplates reforms, we are available.

Sincerely,

Brook Hopkins,
Executive Director, Criminal Justice Policy Program, Harvard Law School

Colin Doyle,
Staff Attorney, Criminal Justice Policy Program, Harvard Law School

[12] *E.g.*, N.J. STAT. ANN. § 2a:162-16, 18 (West 2017).
[13] *E.g.*, N.M. CT. R. 5-401(A)(2).
[14] For a thorough treatment of developing appropriate "detention eligibility nets," see generally TIMOTHY R. SCHNACKE, "MODEL" BAIL LAWS: RE-DRAWING THE LINE BETWEEN PRETRIAL RELEASE AND DETENTION (2017).

Coalition to End Money Bond

June 30, 2019

Illinois Supreme Court Commission on Pretrial Practices
Pretrial Comments
AOIC Probation Division
3101 Old Jacksonville Road
Springfield, IL 62704

Submitted via email to: Pretrialhearings@illinoiscourts.gov

Dear Members of the Commission:

Congratulations on completing your series of public hearings on pretrial justice in Illinois. The listening sessions were well received and participated in by many community members across the state. As you are well aware, the Coalition to End Money Bond remains steadfast and committed to improving pretrial practices through the elimination of wealth-based detention, not only in Cook County, but across the state. Over the last nine months, we have worked with partners and allies across the state to form the Illinois Network for Pretrial Justice. Member organizations are committed not only to eliminating money bond but ensuring that community safety is not compromised.

Since Cook County's General Order 18.8A went into effect in September 2017, the use of money bonds has decreased significantly. The median money bond amount has also dropped significantly (from $5,000 to $1,000) and the county's jail population has been reduced by over 40% with over 85% of people appearing at court dates and only about one half of one percent (.6%) being rearrested on violent charges. The success in Cook County shows that when people are released pretrial and provided, when necessary, with relevant support such as text message court date reminders, they return to court and public safety is not compromised. In fact, FBI statistics show that violent crime has decreased in Chicago while bond reform has taken place.

In light of the positive and successful results in Cook County, we are asking that you adopt the Supreme Court Rule initially proposed by Cook County Public Defender Amy Campanelli in October 2017. This proposed rule is supported by all Cook County stakeholders and more than 70 community organizations. This rule would expand upon the progress made by the Bail Reform Act of 2017 by further reducing Illinois's reliance on money bond. Money bond continues to result in thousands of people being incarcerated pretrial solely because they cannot afford to payment required to secure their freedom. In light of this, the commission should recommend that pretrial incarceration only be considered for people who are both accused of serious felonies and that also pose a specific provable threat of harm to others.

The Bail Reform Act of 2017's requirement of court-appointed lawyers to advocate for accused people at the initial court appearance has been a necessary and important first step. However, to further protect accused people's rights, this commission should recommend that courts be required to conduct rigorous bail hearings with strict due process protections before ordering detention, money bond, or restrictive release conditions. Bail determinations are the single most important factor in the outcome of a criminal case. Not only do accused people who are detained pretrial fare worse in plea negotiations (because they are bargaining from a weaker position), they are also often compelled to plead guilty, even when they are innocent. This practice leads to more convictions and longer sentences—and undermines our legal system as a result. Because of this, bail determinations should only be made after a truly meaningful hearing has occurred.

This Commission has the opportunity to significantly decrease the number of people in jail across Illinois while simultaneously increasing the protection and safety of accused people and their families. Your recommendations can honor the presumption of innocence without compromising community safety. It is imperative that this Commission's recommendations are designed to drastically decrease pretrial incarceration, which is the only path toward truly improving community health and safety.

Attached to this letter are 1) a copy of the proposed supreme court rule with a November 2017 letter in support signed by over 70 organizations and individuals; and 2) a petition signed by 1,550 people in support of the proposed rule. Please do not hesitate to contact us at info@endmoneybond.org with any questions or if we can be of assistance.

Sincerely,

The Coalition to End Money Bond

A Just Harvest
ACLU of Illinois
Chicago Appleseed Fund for Justice
Chicago Community Bond Fund
Community Renewal Society
Illinois Justice Project
Justice and Witness Ministry, Chicago Metropolitan Association, Illinois Conference United Church of Christ
Nehemiah Trinity Rising
The Next Movement at Trinity United Church of Christ
The People's Lobby
Shriver Center on Poverty Law
Southsiders Organized for Unity and Liberation
Workers Center for Racial Justice

Enclosures

November 14, 2017

Jan Zekich *Sent via email to JZekich@illinoiscourts.gov*
Secretary, Illinois Supreme Court Rules Committee
Administrative Office of the Illinois Courts
222 N. LaSalle Street, 13th Floor
Chicago, IL 60601

Dear Ms. Zekich and Members of the Rules Committee:

There is increasing recognition by legal advocates, stakeholders, and community members in Illinois that wealth-based pretrial detention practices are neither effective nor legally justifiable. We, therefore, write to express our strong support for the proposed Illinois Supreme Court Rule submitted on October 13, 2017 by Amy P. Campanelli, Public Defender of Cook County; Hon. Timothy C. Evans, Chief Judge Circuit Court of Cook County; Tom Dart, Cook County Sheriff; Toni Preckwinkle, President, Cook County Board; Jesús "Chuy" García, 7th District Commissioner, Chair of the Criminal Justice Committee, Cook County Board of Commissioners; and Kim Foxx, Cook County State's Attorney. The undersigned include ten individual signatories, forty-nine Illinois based organizations, and twelve national organizations.

The proposed rule would require an evidentiary hearing and a finding by the judge that an accused person is able to afford the amount of monetary bail set before permitting the setting of monetary bail in any criminal case. This rule would help bring the Illinois courts' current practice of setting bail in amounts higher than the accused can afford—a practice that occurs not only in Cook County, but also throughout the State—into compliance with both federal and state law. The illegal and unconstitutional nature of our current practices has been detailed thoroughly in the July 12, 2017 Memorandum of Law recently prepared by former United States Attorney General Eric Holder, Jr. and his law firm, Covington & Burling, LLP at the request of Ms. Campanelli. That memorandum is attached to this letter for your review.

The current practice in Illinois courts of using unpayable monetary bail to detain people is illegal and unconstitutional.

The United States Supreme Court has long recognized that the government "can no more discriminate on account of poverty than on account of religion, race, or color."[1] To prevent such wealth-based discrimination on the account of poverty in setting bail amounts, the Court made it clear that bail has a single purpose—to assure the defendant's presence at trial—and thus "[b]ail set at a figure higher than an amount reasonably calculated to fulfill this purpose is 'excessive' under the Eighth Amendment."[2] Similarly, the Illinois Supreme Court has long held that using a

[1] *Griffin v. Illinois*, 351 U.S. 12, 17-18 (1956).
[2] *Stack v. Boyle*, 342 U.S. 1 (1951).

high amount of monetary bail to effect pretrial detention violates a defendant's right to bail.[3] Lower courts in Illinois have reached the same conclusion that "excessive bail should not be required for the purpose of preventing a prisoner from being admitted to bail [release]."[4]

Alongside constitutional provisions, the Illinois Bail Statute states that pretrial release may only be denied where the court makes specific findings that the accused poses a risk of danger.[5] The statute further provides that secured monetary bail is to be the *last* resort as a condition of release: "Monetary bail should be set only when it is determined that no other conditions of release will reasonably assure the defendant's appearance in court, that the defendant does not present a danger to any person or the community and that the defendant will comply with all conditions of bail."[6] The statute mandates that when monetary bail is required, it may not be "oppressive" and must be set with consideration given to the financial ability of the accused.[7]

Despite all of these federal and state laws protecting the right to pretrial liberty, judges in the State of Illinois continue the unconstitutional practice of using unpayable monetary bail to detain thousands of people pretrial on any given day. It has become commonplace that accused persons are incarcerated before trial not because they have been found to meet the high burden for pretrial detention, but rather because they cannot afford to post the amount of monetary bail set by the court. This practice not only violates their fundamental constitutional and statutory rights, but also results in serious harms to all of the accused people and their loved ones. It is nothing short of punishment enacted while the accused are still presumed innocent.

There have been commendable efforts in Cook County to amend wayward bail practices through stakeholder engagement and a General Order issued by the County's Chief Judge.[8] The limitations of the General Order, however, have immediately born out. Recent data collection efforts by community courtwatchers are finding disparate use of monetary bail since the Chief Judge's order took effect. Numerous judges have been observed using unaffordable money bail as a tool to ensure pretrial detention in a manner that violates the constitutional rights afforded to poor people, as well as the requirements of the Illinois Bail Statute. In fact, only 48% of the people who were given monetary bails in the first three weeks after the order took effect were able to post their bonds and secure release within seven days.[9]

Excessive pretrial detention is harmful, discriminatory, and ineffective.

A growing body of research indicates that pretrial detention for more than 24 hours results in serious harms to the individuals detained and undermines the justice system's own goals by increasing their risk of recidivism and failure to appear. Research also shows that pretrial detention results in higher rates of conviction and longer sentences as compared to outcomes for

[3] *People ex rel. Sammons v. Snow*, 340 Ill. 464 (1930).
[4] *People v. Ealy*, 49 Ill. App. 3d 922, 934 (1st Dist. 1977).
[5] 735 ILCS 5/110-4.
[6] 725 ILCS 5/110-2.
[7] 735 ILCS 5/110-5.
[8] Circuit Court of Cook County, Illinois, General Order 18.8A. Procedures for Bail Hearings and Pretrial Release.
[9] Data collected on 184 people given monetary bails (both deposit and cash bonds) in Cook County's Central Bond Court from September 18th through October 8, 2017 by courtwatchers and analyzed by Chicago Community Bond Fund.

similarly situated individuals who are out of custody pending trial.[10] Pretrial detention can, and frequently does, coerce the innocent to plead guilty, increasing the risk of wrongful convictions. In addition, it results in often irrevocable damage to family relationships and employment and housing opportunities.

Monetary bail has also been proven to further racial disparities in the pretrial justice system by systematically disadvantaging Black and Latino people accused of crimes. African Americans, in particular, are the least likely to be released without monetary bail and the least likely to be able to pay a bail if given one. Lastly, pretrial incarceration results in very significant public expense. Illinois' current rate of pretrial detention is unjustifiable on legal, moral, and fiscal grounds.

There is widespread support for reform both in Illinois and nationally.

On behalf of the organizations and individuals listed as signatories at the end of this letter, we hereby request that the Illinois Supreme Court adopt the attached rule designed to eliminate wealth-based pretrial detention and to ensure that judicial decisions about pretrial detention and release of presumptively innocent individuals comply with federal and state law. As noted earlier, the attached rule is the same one previously submitted to you on October 13, 2017 by Cook County stakeholders and many other signatories.

No fewer than four other states have recently enacted similar Supreme Court rules designed to eliminate pretrial detention caused solely by unpaid secured monetary bail. In the last 13 months, Indiana,[11] Maryland,[12] New Mexico,[13] and Arizona[14] have all enacted new Supreme Court rules requiring that monetary bails be set only in amounts that accused people can afford to pay—transforming monetary bail from a mechanism of detention to a condition of release. These changes also bring bail practices in line with the best practices identified by the American Bar Association in their "Standards for Criminal Justice: Pretrial Release."

We appreciate your willingness to consider reform in Illinois. If you have any questions, please feel free to contact Sharlyn Grace, Senior Criminal Justice Policy Analyst at Chicago Appleseed Fund for Justice at sharlyngrace@chicagoappleseed.org or 773-946-8535.

Regards,

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[10] *Community Supervision as a Money Bail Alternative: The Impact of CJA's Manhattan Supervised Release Program on Legal Outcomes and Pretrial Misconduct* by Freda F. Solomon Ph. D. and Russell F. Ferri, April 2016.

[11] Rule 26 was adopted September 7, 2016 and became effective immediately in nine counties. It will be effective statewide on January 1, 2018. Available at: http://www.in.gov/judiciary/files/order-rules-2016-0907-criminal.pdf.

[12] Rule 4-216.1(d)(1)(B) was adopted February 7, 2017 and became effective July 1, 2017. Available at: http://mdcourts.gov/rules/rodocs/ro192.pdf.

[13] Rule 5-401 was adopted June 5, 2017 and became effective July 1, 2017. Available at: http://www.nmcompcomm.us/nmrules/NMRules/5-401_6-5-2017.pdf.

[14] Amendment to Rule 7.3(b)(2) was adopted December 14, 2016 and became effective April 3, 2017. Available at: http://www.azcourts.gov/Portals/20/2016 December Rules Agenda/R_16_0041.pdf.

Individual Signatories

Carla Barnes, McClean County Public Defender
Eric H. Holder, Jr.
Michael Johnson, Co-chair, Criminal Justice Advisory Committee of Chicago Appleseed Fund for Justice and Chicago Council of Lawyers
Lori E. Lightfoot
Arthur Loevy, Jon Loevy and Mike Kanovitz, Loevy & Loevy
Matthew Piers, Hughes Socol Piers Resnick & Dym
Tim Schnacke, Executive Director, Center for Legal and Evidence-Based Practices
Geoffrey R. Stone, Edward H. Levi Distinguished Service Professor of Law, University of Chicago

Illinois Based Organizations

A Just Harvest
ACLU of Illinois
Asian Americans Advancing Justice Chicago
Business and Professional People for the Public Interest (BPI)
Cabrini Green Legal Aid
Centro De Trabajadores Unidos (CTU)
Chicago Appleseed Fund for Justice
Chicago Area Fair Housing Alliance
Chicago Community Bond Fund
Chicago Council of Lawyers
Chicago Lawyers' Committee for Civil Rights
Chicago Urban League
Children and Family Justice Center at Bluhm Legal Clinic, Northwestern University Pritzker School of Law
The Coalition to End Money Bond
Community Activism Law Alliance
Community Renewal Society
Criminal Justice Task Force, First Unitarian Church
Growing Home
Hana Center
Illinois Justice Project
Imago Dei
Inner-city Muslim Action Network (IMAN)
John Howard Association
Justice and Witness Ministry of the Chicago Metropolitan Association, Illinois Conference, United Church of Christ
Juvenile Justice Initiative
Kenwood Oakland Community Organization (KOCO)
League of Women Voters of Cook County
League of Women Voters of Illinois
Mothers 4 Peace
Mothers Opposed to Violence Everywhere
Nehemiah Trinity Rising
The Next Movement
Office of the State Appellate Defender
Padres Angeles
PASO (West Suburban Action Project)
The People's Lobby
Riley Safer Holmes & Cancila LLP
Roderick and Solange MacArthur Justice Center
Safer Foundation
SEIU Healthcare IL
Showing Up for Racial Justice (SURJ) Chicago
Southside Indivisible
Southsiders Organized for Unity and Liberation (SOUL)
Target Area Development Corporation
Thresholds
Transformative Justice Law Project
Unitarian Universalist Advocacy Network of Illinois
United Congress of Community and Religious Organizations (UCCRO)
Uptown People's Law Center

National Organizations

Brooklyn Community Bail Fund
Center for Constitutional Rights (CCR)
Civil Rights Corps
Clergy for a New Drug Policy
Color of Change
Massachusetts Bail Fund
Mexican American Legal Defense and Educational Fund (MALDEF)
National People's Action
#No215Jail Coalition
Philadelphia Community Bail Fund
Prison Policy Initiative
Sargent Shriver National Center on Poverty Law

cc: Cook County Public Defender Amy Campanelli
Cook County President Toni Preckwinkle
Cook County State's Attorney Kimberly Foxx
Chief Judge of the Circuit Court of Cook County Timothy Evans
Cook County Sheriff Tom Dart
Jesus "Chuy" Garcia, Cook County Board of Commissioners
Marcia M. Meis, Director, Administrative Office of the Illinois Courts

Enclosures

Rule _____. Hearings on Pretrial Release.

(a) Determination of Entitlement to Pretrial Release. In making a determination of whether an accused is entitled to pretrial release, the court shall impose the least restrictive conditions or combination of conditions necessary to reasonably assure the appearance of the accused, the safety of any person or the community, and the integrity of judicial proceedings.

(1) Upon presentment of the accused after arrest, the court shall conduct a hearing to determine whether pretrial release is appropriate pursuant to the provisions of 725 ILCS 5/110 et seq.

(2) Where the court determines that pretrial release is not appropriate pursuant to 725 ILCS 5/110-4, 6.1, and 6.3 because of the nature of the offense charged, for which the proof is evident or the presumption great that the defendant is guilty, and because the State has presented clear and convincing evidence in an adversarial hearing to support a finding that release of the accused would pose a real and present threat to the physical safety of any person or the community, the court shall enter an order denying pretrial release that includes sufficient written findings supporting that denial, including a finding that there is no condition or combination of conditions that could reasonably mitigate any specific danger posed.

(b) Setting Conditions of Pretrial Release. Where the court determines that pretrial release is appropriate:

(1) Monetary Conditions. There shall be a presumption that any condition of release shall be non-monetary in nature, and no monetary condition may be imposed unless:

A. The court conducts an inquiry into the accused's financial resources and ability to pay monetary security, and

B. The court enters a written finding on the record that the accused has the current financial ability to pay the proposed amount of monetary security.

(2) Nonmonetary Conditions. The court shall impose the least restrictive non-monetary conditions that the court determines are necessary to assure the accused's appearance, protect the community from the accused or ensure the orderly administration of justice pursuant to 725 ILCS 5/110-10. Where the court determines that non-monetary conditions of release are necessary and the accused is indigent or otherwise qualifies for appointment of counsel, the accused will not be charged financial costs in connection with such conditions.

(c) Findings of record. All written findings required by this Rule shall be recorded in an approved form and made a part of the record in every case.

Demand the Illinois Supreme Court Commission on Pretrial Practices Recommend Supreme Court Rule

To: Illinois Supreme Court on Pretrial Practices via Hon. Robbin J. Stuckert, Chair

Dear Hon. Robbin J. Stuckert and members of the Illinois Supreme Court Commission on Pretrial Practices:

We the people of Illinois are calling on the Illinois Supreme Court Commission on Pretrial Practices to recommend adoption of a proposed Supreme Court Rule to prohibit incarceration due solely to the inability to afford a money bond as part of its report on pretrial reforms in December 2019. This proposed Supreme Court Rule is supported by more than 70 community organizations, all Cook County justice system stakeholders, and former Attorney General Eric Holder. These diverse constituencies all agree that access to wealth should not determine pretrial freedom and that unaffordable money bonds undermine the presumption of innocence guaranteed by the U.S. Constitution.

Why is this important?

Every year, more than a quarter of a million people are incarcerated while awaiting trial in Illinois. These individuals are treated as if they are guilty until proven innocent and are locked up most often because they can’t afford to pay a money bond. Wealth-based incarceration is destroying our communities by separating parents from their children, workers from their employment, and caregivers from those who need them most.

In 2017, more than 70 community organizations called on the Supreme Court of Illinois to issue a Supreme Court rule that would eliminate this unjust and archaic practice. That call was supported by the Cook County Chief Judge, Public Defender, State’s Attorney, Board President, and Sheriff. Later that year, the Illinois Supreme Court established its Commission on Pretrial Practices to review this unjust system. In December 2019, the commission will release a report with official findings and recommendations for improvement of Illinois’ pretrial justice system. These recommendations could include changes to state law, new Supreme Court rules, or even constitutional amendments.

We are now calling on the Illinois Supreme Court Commission on Pretrial Practices recommend that the Supreme Court of Illinois adopt the proposed rule to end wealth-based incarceration once and for all.

Signed by 1,550 people:

Name	Zip code
Ruby Pinto	60616
Matthew McLoughlin	60641
Benjamin Ruddell	60625
Daniel Epstein	60201
April Eckhardt	61604
Michelle Day	60643

Name	Zip code
Mareva Lindo	60660
Raina Wallace	60624
Bobby Vanecko	60646
Maura Kinney	60647
Mairead Case	60608
Amelia Ishmael	60608
Anna Munzesheimer	60608
Jeremy Washington	60653
Alex Ding	60640
Gary Tabb	48507
Thomas Callahan	60626
Darnell Bobo	60629
Dakota Sillyman	60608
Carly Ilg	60640
Anna McColgan	60660
Emily Coffey	60643
Dave Anians	60459
Karissa Talanian	60647
Patrice James	60616
Brooke Peery	60660
Robert Wallace	60620
Vivian McConnell	60608
Susan Bramlet Lavin	62704
kristi sanford	60626
Amy Eisenstein	60175
Sharlyn Grace	60612
Chris Preciado	60623
Kaitlyn Grissom	60647
Sharon Glassburn	60625
Ellen Mayer	60608

Name	Zip code
Gabriel Carrasquiillo	60634
Tyson Miller	53511
David Moran	60605
Mari Castaldi	60622
Fred Lonberg-Holm	12401
Aneesha Gandhi	60640
bridgit gallagher	60609
Erin Sindewald	60608
Emma Serikaku	60067
Tanuja Jagernauth	60660
Marsha Chomko	62040
Heather Sea	60608
Gavin Kearney	60304
Carly Faison	60558
Jessica Helsinger	33169
Jessica Royer Ocken	60304
Natasha Kohl	60304
Ivan Parfenoff	60657
Sean Kase	60647
Veronica Cortez	60804
Rachel Johnson	60626
Margaret Decker	60615
Anya Parfenoff	60657
Erin Sowers	60304
Peter Maunu	60657
Laura Stempel	60641
Meredith Wilkinson	60616
Caroline Wooten	60609
elizabeth scrafford	62703

Name	Zip code
Christopher Kimmons	60609
Christine Farolan	60517
Lea Palmeno	60641
Robert Manduca	60615
Deanna Pacelli	60304
Kristy Nydam	60657
Lewis Tupper	60645
Lindsey Hammond	60626-3354
Marten Henk	60647
Christina Lorenzo	60646
Sheila Bell	62220
Dave Peterson	60402
Arielle Tolman	60612
Sandra Russel	61108
Stacy Kline	60622
Kevin Pujanauski	60640
Kristoffer Stokes	60304
Keith Berg	60060
Julie M	60462
Patricia Addis	61938
Aurora Pineda	60304
Margaret Collins	60402
John Clinkman	60025
Khalid Bilal	60624
Nora Helfand	97219
Natasha Rodriguez	60618
Katharine Katinas	60402
Dania Daoud	60803
Rebecca Clough	60618
Niall Mangan	60606
Tracy ODowd	60629

Name	Zip code
Seymour Helfand	60091
Steven Serikaku	60660
Tova Markenson	60626
Joseph Crawford	60608
Vincent Kolodziej	60448
Chanel Davenport	60440
Patty Crawford	62467
Hannah Fidler	60651
Kris Clutter	60642
John Kasper	60621
Lynda McClendon	60643
Rachel Mikula	60126
Gabriela Kirk	60626
Elaine Safstrom	60062
Mark Courtney	60615
Anthony Buttitta	60016
Linda Waycie	60056
James Iberg	60201
Madeleine Van Hecke	60126
janice MANDOLINE	60181
Martin Mazzei	60640
Richard Pokorny	60304-1806
Evan Freund	60615
Celeste Flores	60031
BETH Fischer	60130
Carolyn McBride	60616
Camille Farrington	60615
Leslie Roberts	60304
Maria Morales	60651
Kaidrea Stockman	60302
Marian Gamble	60118

Name	Zip code
Shannon Campbell	60647
Jim Parks	60126
Mariana Montes	60639
Sarah Aubry	60640
s Harris	60628
Isabella Peek Weitz	60622
Ralph Lee	60302
Janet Ferguson	60302
Erika Bachner	60305
A Beato	60625
Kathleen Cummings	60622
Bonni McKeown	60644
Hill Wood-Naatz	60194
Anna Reosti	60626
Alice Cottingham	60304
Joyce Champelli	60302
Max Suchan	60651
Kate Walsh	60618
Kayleigh Greenwood	60614
Emily Rajkovac	60657
Deborah Lee	60640
Lara Ghisleni	60610
Andrew Hong	60608
Barbara Lacker-Ware	60640
Tina Dorow	60640
David Toropov	60618
Paula Lazarz	60613
Nancy Easton	60618
Mary Goetting	60304
Sophia Kortchmar	60615

Name	Zip code
Jen Dean	60660
Katy Leduc	60651
Prabhneek Heer	60625
Vanessa Oniboni	60613
Janet Kittlaus	60026
Drake G.	60632
Ama Oforiwaa Aduonum	61761
Elsie Cadieux	61761
Peter Kobak	61606
Megan Selby	60626
James Reid	61701
Debby Funk	61754
Paola Del Toro	60615
Samuel Dixon	60622
Brian Dolinar	61801
Colleen Duffy	60608
Robbie Craig	60443
Harriet Dart	60015
Chez Rumpf	60618
Michael Moran	60647
Maura Scroggs	60614
Scott Aaseng	60644-3834
Miriam Savad	60615
Terry Kinsey	60304
Nolan Wright	62901
Barb Nowak	61007
Luke Walden	60614
Betty Alzamora	60130
Christine Cooper	60613
Jimena Lopez	61614
Dhara Patel	60626

Name	Zip code
Sophia Sarantakos	60615
Kelsey Waite	60615
Ellen Garza	60628-5112
Katy Cesarotti	60532
Anne Haag	60608
Rachelle Soller	60622
Ashley Mills	60609
Eleanor Seaton	85224
Madeline Field	60647
Andrew Ten Eyck	60622
Sophia Manuel	60608
Weslie Bay	60625
marion najac	60202
Shaka Les	60619
sophia newman	60608
Amanda Ruch	60637
Mari Faines	60649
Elena Ailes	60657
Marie Shebeck	60626
Gus Spelman	60612
Jenny Green	60067
Hallie Bezner	60660
Kristina Beligratis	60067
Terri Clark	15213
Sam Letscher	60647
Sameena Azhar	60660
Jesse Self	60659
Macaire Grambauer	60647
Virginia Chesson	60618
N Kanhai	60505
Eleanor Marki	60637

Name	Zip code
Erica Knox	60608
katherine dunford	60623
Meghan Jarpe	60637
Nicole Dobrowolski	60626
Rachel Shrock	60612
Brad Thomson	60647
Iris Lo	60640
Michael Clark	60659
Allison Paulson	60647
Charlotte Cottier	60612
Sherry Conroy	60192
Phillip Ernstmeyer	61801
Tina Sacks	60615
J. Hileman	60618
Sarah Buckman	61802
Jane Hereth	60640
Keith Rose	62035
Benjamin Bontempo	60625
Laurel Chen	05401
Emily Williams	60647
Tara Goodarzi	60618
LaTrice Stewart	46324
Matthew McFarland	60411
Denara Watson	60653
Rochelle Cousineau	60625
Deborah Fenner	60640
b mccloud	80301
Emily Ralph	60130
Lisa Wieczorek	60641
Darnell Leatherwood	60471

Name	Zip code
Dhivya S	60611
Jennifer Brooks	93535
Danielle Scruggs	60626
Ellen Lawrence	60640
Julie Lawrence	60640
April Donerson	60426
Matt Perry	60093
Nicholas Lawrence	60640
Erin Eife	60608
Margot Smith	60154
Tracy Ayala-Dominguez	60505
Ann Russo	60626
Mechthild Hart	60292
Claire Parker	60647
Jacob Cousineau	60625
Sarah Harmon	60164
Lindsay Eanet	60641
Corrigan Nadon-Nichols	60615
Aubrey Dvorak	60660
John Stainthorp	60626
Stephen Weil	60604
Paul Vickrey	60614
Melinda Power	60622
Rosemary OMalley	60625
Karen Alanis	60304
Mariana Karampelas	60602
Jennifer Fertaly	62918
Lisa Oppenheim	60605
Eli Namay	60616
Owen Leddy	60615

Name	Zip code
Sam Heppell	60613
Julia Ryan	60304
Larry Redmond	60643
jan susler	60647
Emily Claypool	60618
Kay Wilson	61761
Christal Coleman	60620
Mark Enslin	61801
Daniel Scherer-Emunds	60622
Alex Kopecky	60622
Henry Tam	60603
Sarah Cocco	60707
Lawrence Marshall	60644
Dwight Stewart	60619
Antonio Bacon	60621
Miranda Zhang	60637
Bennett Smith	60540
Eric Dorsey	60503
Sinclair Gallighe	60506
Andy Williams	60527
Bobby Wright	60565
Greg Skiba	60563
Rebecca Bretz	60647
Noni Lindberg	60615
Brianna Lambrecht	60805
Pauline Taylor	60610
L Pollard	60609
Eric bjela	60625
Evan Freund	60615
E Edreva	60608
Kamona Kay	60608

Name	Zip code
Leo Williams	60608
Alex Apancio	60608
Gavin Hall	60616
Nancy Michaels	60622
Monie Tapp	60637
Madeleine Behr	60601
Cynthia Cotton	61761
Anthony Wulraven	61604
Edward Breitweiser	61701
Mary Moore	61701
Sonny Garcia	61701
Joyce Kaye	61704
Jenny Goves	61704
Emily Breitweiser	61701
Janice Brown	61701
Robert Hackett	61704
George Gordon	61761
Karla Smith	61701
Karl Smith	61701
Chad Kahl	61701
Myra Gordon	61761
Jeff Crabill	61705
Louis Goseland	61701
Emile Garneav	61751
Radiance Campbell	61761
Michelle Gan	60608
Molly Armour	60618
Seth LeDonne	15206
Michael Vincent	60510-2444
Reyad Mahmoud	14845
Jessica Law	60615

Name	Zip code
Sarah Staudt	60613
shayna watchinski	61701
Monica McKeown Gallicho	94521
Roslyn Taylor	60613
Michael Levin	60402
Amanda Oster	60647
Jennifer Castellanos	60099
Zach Taylor	60608
Gloria Picchetti	60613
Jon Bickel	60190
Cynthia Kegel	60610
Rheta Johnson	60189
Victoria Smith	60516
Katie Madden	60634
ANNETTE HOWELL	60647
Richard Clough	60660
Daniel Weinberg	60640
Carolyn Martineau	60614
Richard Cichon	60513
Erica Jordan	60154
Daniel Mackay	60914
Cary Moy	60302
Daniel Espinosa	60304
Susan Horton	60123
JUAN GERACARIS	60202
Patricia Knol	60190
Leslie Shipley	60611
Robertha Medina	60651
Etta Davis	60419
Alexa Lee-Hassan	60612

Name	Zip code
Alexander Somer	33139
Elaine Ford	60614
Sia Bogan	60619
Maria Gonzalez	60656
Johanna Russ	60615
Kristin Collins	60108
Francis Weiss Rabkin	60640
Gemini Garner-Jones	60626
John Comella	19103
salome chasnoff	60660
Ira Kriston	60202
Juan Hernandez	60085
Michael Moody	60626
Sophia Zisook	60614
Christopher Rapisarda	60613
Michael Madden	10956
Janice Gintzler	60418
Tyler He	60616
Susan Kaplan	60607
Amrita Singh	60646
Jennifer Castellanos	60085
Sheila Spica	60016
Maggie McGuire	60657-0496
Betty Erickson	60175
Ricardo Garcia	60629
Kevin Carroll	60626
Rachel Belkov	60647
karen Peterson	60625
Michael Nash	60634
Lydia P.	60647

Name	Zip code
Rachel Caidor	60607
Hannah Oakley	60612
Candace McDonald	60707
Fr. Tom Walsh	60644
Cathryn Crawford	60647-1118
Presley Loranca	60201
Brian Chapman	60625
Katherine Fryer	96821
Mildred Leonard	60087
Lynn Shoemaker	53190
Lucy Mead	97401
Rodrigo Anzures	60804
David Cannon	60542
Kenneth Page	62704
Jordan Megna	60640
Lauren Jordan	60643
Delia Barajas	60804
Nehemiah Hankins	61201
Matthew Klimczak	60516
Danny Mason	60628
Syvicie Aghayere	60637
Cortney Zaret	60657
Paul Safyan	60090
Barbara Youngquist	60203-1515
Jennifer Raber	60640
Dr William M Smith Jr	33852
Maria Baum	60634
Robert Schilling	62812
Lamont Garrett	89052
Peter Gunther	60659

Name	Zip code
Michael Plog	62704
Roger Gonnering	60193
Marilyn Penland	60189
Harmon Greenblatt	60062
Juquita Johnson	60428
Traci Schlesinger	60659
Kaniya Samm	60623
Jonathan Hancock	60622
Patricia Kula	60002
Maggie Shreve	60611
Alex Vir	60025
Reshma Kamath	94536
Brian Waak	60505
Susan Quaintance	60645
Lauren Franzen	60637
Lauren McFarlane	60201
Maureen Ellis	60613
Kendall Granberry	60625
Celine Blando	60513
RONNA STAMM	60202
Alina Mackenzie	60605
Melissa Lawrence	60406-1058
Jeff Czach	60195
Michael Pan	22182
Lindsey LaPointe	60602
Scott T. Johnson, Esq.	60201
Margaret Tucker	62703
Donna Janovsky	60613
Donald Hennig	61616
Emily Gage	60302
Krista Furgerson	62223

Name	Zip code
Ivy Abid	60612
Meredith Doll	60640
Lauren DeLand	60622
Mark Merrill	61455
KAREN NELSON	60068
Rachel B.	60115
Dennis Kreiner	60110
Georgette Foss	60646
T LaRue	60646
Nancy Bush	87540
Christine Drane	60625
Stephanie Maniglia	60657
Rick Simkin	60625
Debra Gleason	60634
James Gibbs	60202
George Pappas	60618-5602
Robin Caldwell	60542
vic hammond	60626
Harold Mitchell	60611
Flayveila Griffith	60302
Lee Dewey	60622
Catherine Luchins	60615
Louisd Gram	60660
steve adler	60625
Nikki Orvis	60626
Carol Jagiello	07403
Ash Samuelsson	60625
Lucas Klein	60661
Annabeth Roeschley	60615
carolyn massey	62301
Daphne Dixon	60428

Name	Zip code
Kim Thomas	61102
Michael Johnson	61821
Kate Goetz	60645
Ivan Velkovsky	61801
Erin Haddad-Null	60615
Sarah Stahly	62704
Sandra Rigsbee	60615
Rick Anderson	60660
Geri Collecchia	60601
Carmen Ringhiser	60611
Maria Kronfeld	60647-1223
Dorothy Silver	60068
Devon Benton	60660
Matthew Brandon	60637
Maliha Ali	60659
Jennifer Gilbert	60534
Ireneusz Kryczka	60305
Nancy Henninger	12800
Marcie Hill	60620
Tonya Beltran	78070
Barbara Sullivan	60004
Jessica Foster	53207
Lauren Woomer	60608
Kara Wagner Sherer	60641-2851
AURORA INSURRIAGA	60617
mary pounder	60661
Liz Buhai-Jacobus	60302
s reinken	60640
Marie LaPosta	60640
Dawn Albanese	60007
S. Smith	60647

Name	Zip code
Elizabeth Bible	61701
Sean Sullivan	60089
Christine E.	60625
Rose Martin	60429
Becca Greenstein	60660
Paul Callahan	60515
Tim Looney	60643
Robert Zieger	78721
Daniel Dornbrook	60068
Jim Khoury	60302
Fay Clayton	60202
Leda Khoury	60302
Julia Kohn	60607
Linda Clark	60605
Rev. Max Burg	60615-1921
Clara Raubertas	60615
Alyssa Carabez	60618
Erin Orozco	60660
Val Rivera	60623
Allison Fradkin	60062
Allan Lindrup	60649
Aaron Lucas	60430
Anayanzi Mendez	60804
Ilene Thornton	60302
Sarah Williams	60614
Jean Bruno	60126
Roger Masson	60304
Alex Matthews	60302
alex p	61455
Olivia Wilks	60618
Lisa Vinebaum	60622
Miclan Quorpencetta	80905

Name	Zip code
Abigail Loughlin	46556
Brian Hicks	60439
Heidi Rees	60563
Leslie Boyd	60452
Philip Hult	618539704
Shani B	60639
Stacey Weiss	60640
Glafira Lopez	90605
Eugene Sampson	60637-3656
Jennifer SanJuan	60625
Vershon Allen	61103
TIMOTHY GARRISON	60640
Kumaran Mudaliar	60616
Jamal Khoury	60302
Julie Cramer	61607
Veronica Presley	60643
David Rechs	60302
Siobhan Connors	60647
Alenka Figa	60640
Edward Thompson	60026
Joyce Hodel	60202-2251
Joseph Tanke	60638
Leuise Crumble	60624
Lydia Shepard	60643
Joseph Cavise	60647
Eileen Jones	60517
Omar Boumali	79901
Darlene Queen	60625
Sophia Bauerschmidt Sweeney	60653
mark novotny	60525

Name	Zip code
Christopher Promis	60615
Phoebe Rusch	60035
Sandi Redman	60077
Marilyn Thompson	60026
Katie Calhoun	60647
alyssa salas	60641
Marissa Dimaranan	60130
Brandi M	60657
Bridget Illian	60660
LINDA HEARN	60643
Martha Escobedo	60630
Megan Callahan	60515
Leonard Cavise	60607
Erica Austin	62703
Jessica McPeek	62703
Dottie Washington	62712
Aaron Douglas	60659
philip craft	60104
Maria Bergh	60623
Olivia Gahan	60614
Stephen Pickering	60625
Larry Hemingway, Sr.	62703
Shaketta Stephens	62703
Max Bever	60625
Rachel Murphy	60647
Annalise Buth	60622
Jay Smith	62711
Jesse Larson	60616
Davif Adamd	60637

Name	Zip code
Brianna Tong	60608
Brianna Lambrecht	60616
kristi sanford	60626
Cynthia Greenwood	60005
Annette Brown	60194
Nora Sharp	60647
Dan Brown	60194
Anna Ernst	60130
Maria Altmayer	60076
Maren Hoopfer	60608
Quade Gallagher	60616
Ted Miin	60626
JoLynn Doerr	60618-7232
Mark Weitkum	53402
Brian Cerullo	60608
Mary Santi	60047
Shirley Adams	60202-4441
Maria Alicia Ibarra	60616
Juliet Eyraud	60642
Colleen Vahey	60305
Pat Carpenter	62711
Grace Pai	60615
Bryon Medina	60633
Jaelyn Logan	62703
James Kliss	60640
Meredith Kachel	60618
Joseph Eichler	60647
Patrick Fowler	60640
Kevin Niemiec	60625
Gary Kleppe	60181-1902
Raoule Hilton	60651

Name	Zip code
Kevin Lindemann	60190
Rachel Darter	60647
Morgan Paulus	60626
Geoff Guy	60608
Ben Levenson	60640
Terry Jones	60440
James Schwartz	60301
Hannah Bollman	60640
Jims Porter	60660
Michele Childers	60637
Dan Bailey	60187-5908
laila sadat	60462
Rosalie Riegle	60201
MARY M LANE	60005
Stephen Oren	60659-1840
Stacey Austin	60305
Alex Garcia	60608
Jean Osberger	60647
Jessica Weller	60618-6722
Joe O’Connor	60608
Margaret Thurman	62704
Alex Kogan	60618
Lauren Savastio	60302
Michael Reda	60423
Diane Thodos	60201
Eli Namay	60616
Thomas Wisdom	60647
LeRoy knohl	60203
Jennifer Joiner	62702
Lynn Meissner	60626
Nicholas Fane	60625
Dolores Pino	60053

Name	Zip code
Alex Stein	60605
Janice Moore	60201
Jane Baldinger	69302
Alex Rixon	60608
Beth Lanford	60645
Jessica Rodzen	60076
Colin Sphar	60625
Linda Miranda	60625
Lauren Conway	60202
Alicia Locher	60647
Julia Dratel	60618
Thomas Bell	60619
Anthony Walraven	61604
Mary Shelden	60201
Morgan Chase	60647
Andrew Gardner	61554
Harry Elger	61614
Khabran Peters	61547
Stephen Bowie	60640
Kate Mauldin	60606
Mery Matthews	61571-9306
Patricia Fron	60643
Kelsie Hope Harriman	60637
Bria Dolnick	60626
Joyce Blumenshine	61614
Darryl Li	60637
Nebula Li	60640
S.K. Chidambaram	60625
Robbie Klinger	60605
James Fennerty	60647

Name	Zip code
Lilian Jimenez	60651
Kimberly Seymour	60611
Terah Tollner	60613
Robert Hartzer	60559
Sidney Hollander	60640
Michelle Zacarias	60611
Kristine Scott	60430
Lark Mulligan	60660
Jeff Ammons	60611
ANN ROSEWALL	60201
David Black	61103
sarah yousuf	60626
Jason Pfetcher	60640
Claudia Valenzuela	60626
Hetali Lodaya	60601
Dale Griffin	60202
Gemini B	60626
Joshua Jones	60647
Sonja Rajkovich	60068
Christina Uzzo	60622
Jesslyn Jobe	62901
Phillip Jaros	60559
Janine Hoft	60656
e. kadera	60555
Beth Babbitt Borst	60201
Daniel Cox	60618
Kennedy Bartley	60647
Laura Garza	60546
Charles Bridge	60085
Michele Cotrupe	60615
Monica Talbi	60608

Name	Zip code
Lupita Aguila	60608
Laytoyia Comb	60423
Faith Hook	60657-5492
Joel Moses	60025
Sam Walker	60640
Tobias Rodriguez	60640
Aryana McPike	62711
Christophe Ringer	60615
Christopher Griffin	60624
Elisabeth Scott	60546
Esau Chavez	60652
Elizabeth Ricks	60614
Karen Wilson	61605
David Kniker	62443
Helena Jordan	60649
Kim Grice	60419
Lauren Herold	60640
Joan Padilla	61081
Betty Birkhahn—Rommelfanger	60077
JEFFREY JOHNSON	61601-6296
Barbara Hawkins	60419
Caitlin Sinclair	60613
Monica Saavedra	60154
Maria Collado	60618
Deborah Gomez	60402
Monserat Morales	60804
alex escobedo	60618
Robert Mayfield	60402
Annaloisa Flores	65302
Catrice Rodges	60617
Seong-Ah Cho	60615

Name	Zip code
Elisa Maravilla	60614
Jesus Sanchez	60402
Barbara Ghoshal	60016
Katlin Wachholz	60619
Robionne Williams	62704
Nathan Buikema	60647
Alexa Solorzano	60101
Kenji Kuramitsu	60616
Jennifer Jeck	60637
Ari Karafiol	60615
Teagan Bigger	60615
Addie Domske	60615
Lisa Rademacher	60637
Julia Rademacher-Wedd	60637
Shirley LaBeau	60429
Timothy Biel	60477
Jewel Bingham	60422
John McLees	60605
Jeffery Jones	60612
Yaacov Delaney	60612
Finley Campbell	60615
Rose Etta Martin	60429
Betty Steele	60429
Lesly Morgan	60472
Janice Gintzler	60418
Cindy Ortega Ramos	60605
Christine Peters	60053
Breeza Camacho	60804
Donna Birkhahn	61615
Liz Sheridan	60613

Name	Zip code
LAVERN SWEARENGEN	60629
Charlene Hill	60628
Shelley Smith	46256
Nora Kyger	60607
Alia Poulos	60604
Mary Kreller	60616-6023
Monica George	60640
Ellen Kennedy	60653
Barbara Sheehan	60453
Julie Davis	60014
Katherine Adams	60626-2623
Alice Mar-Abe	60647
Ted Smukler	60076
Emily Redfern	60609
Amy Siebenmorgen	60609
Allison Anderson	60004
STEPHEN DAVIS	60516
Rachel Chruszczyk	63939
Jerry Davis-EL	60471
Daniel Newman	60626
Jonathan Wilson	60637
Mary Carroll	60614
Tiffany Swann-Covington	60532
Maghen Lykins	60647
Elizabeth Collins	60126
Dennis Davis	60630
Valerie Parker	61701
Saren Snyder	60625
Joan Hollingsworth	60614
Andrea Swanson	60188-1340

Name	Zip code
Fanny Moy	60516
Jamie Phelps	60637
Heather Ferguson	60616
Emily Davis	60640
Margaret Fulkerson	60304
CAMERON RAAB	61821
Jeannie Covert	61801
Sara Isenberg	62568
Stefanie Smith	61801
Nick Owens	61820
Joseph Taylor	61822
Marci Adelston-Schafer	61821
Pamela Hill	61801
Renee Trilling	61821
ellen craig	60657
Cristina Headley	60640
Aviva Futorian	60614
Ameenah R	60422
Umeeta Sadarangani	61822
Samuel Oehlert	61821
Daniel Cotter	60603
Thomas Eovaldi	60201
William Strom	60614
Scott Baseler	61822
Wayne Giampietro	60069
Sean Hux	60660
Grace Young	61801
Matthew Currey	61821
Marcey Goldstein	61801
Jennifer Castellanos	60085

Name	Zip code
David Chavez	60517
Daniel Feeney	60201
Amelia Piazza	60657
Audrey Dunford	60623
Carol Inskeep	61801
Ann Hettinger	61821
Gillian Daniels	60611
Theresa Kleinhaus	60640
Nathaniel Flack	60614
Scott Rauscher	60022
Danielle Hamilton	60607
Megan Pierce	60614
Abraham Corrigan	60607
Lucia Heppner	60607
Debra Loevy	60607
Julie Goodwin	60203
Derek Erdman	60607
Alison Leff	60607
Fern Kory	61920
Andrew Garden	60613
John Caplice	60642
Michael O'Connor	60626
Julia Angelica Muhsen	60608
Narmin Hasanova	60660
Blake Bunting	60607
Frank Newell	60654
Barbara Murphy	60620
Andrew Shaw	61821
Viki Perr	85283
Sanjana L	60614
Nicole Eveland	61821

Name	Zip code
Keianna Bates	60429
Jenniffer Thusing	60638
Armani Madison	60607
Joseph Person	69613
Joan Steinman	60091
Julie Pascoe	62711
Joshua Tepfer	60302
Carl Royal	60005
Sean Goodwin	60202
omavi shukur	60615
Daryle Brown	60302
Edmond Shegog	60411
megan Rosenfeld	60647
Lawrence Wojcik	60201
Victoria Stewart	60647
Nicole Levonyak	60101
Brenda Tippett	60628
Shelmun Dashan	60642
Warren Silver	60613
Rochelle Epperson	61938
Sylvia Mandel	61820
Lauren Barrett	60202
Patti Pattison	61801
Rebecca Powell	61820
Mary Dean	60626
Jennifer Roth	61801
Meredith Bennett-Swanson	60610
Darrius Frazier	61920
Dirk Beetner	62025
Melinda Ek	60302
Danielle Loevy	60625

Name	Zip code
Kianu El	60617
Kevin Salzstein	60606
Judith Levin	60640
Andi Piper	60616
Allison Mcardle	61821
JOYCE MAYS	60643
Sarah Wild	60623
Andrea Rundell	61801
Carolyn Klarquist	60614
Sonya Naar	60618
Robert Slobig	60602
Geoff Ower	61801
Eileen Borgia	61802
Kara Miller	60660
Yaya Torres	46321
Qudsiyyah Shariyf	60615
Savannah Felix	60640
Anthony Graefe	60302-1133
Fatoumata Magassa	60615
Kiran Misra	60615
Adam Mahoney	60201
Kathryn Howard	10562
Mary Jackson	60619
Shreyas Gandlur	61820
Catherine Denial	61401-1874
Caronina Grimble	60623
Lela Grimble	60153
Margaret (Betsy) Rubin	60615
Patricia Faire	60619
Julie Orlemanski	60640
Janelle Yanez	60201

Name	Zip code
lori deradoorian	60626
Nancy Heil	60525
Jeffrey Wilson	26501
Nikita Zook	15224
Angela Evans	60201
Clinton Nichols, III	60608
Zoe Palmer-Pike	60626
Wayne Smith	61822
Amy Settergren	60660
Rishona Taylor	60643
Candace McDonald	60707
Lawrence Murry	60629
Jacqueline Akines	60636
Deanna Lange	60640
Kathar CIKANEK	60613
Loid Duncan	60619
mary pendergast	60625
Alexandra Block	60601
Melanie Yeames	60601
ann souza	29653
Patricia Riemer	60194
Joseph Canino-Montanez	60478
Huma Manjra	90066
Marce Holmquist	37311
Eric Wells	60462
Bessie Hendley	60425
LaVerne Bell	60619
Denise Robinson	33168
Gaylon Alcaraz	60617
Tina Spratley	60619
James Frazier	98188

Name	Zip code
Joe Jensen	60625
Burt Rosenberg	60611
Jon McGinty	61063
Kaleena Slate	60640
Mason Donahue	60609
Asha Edwards	60637
April Harper	60645
Ben Miller	20001
Alyssa Wood	60651
Lamaria Bates	20148
Phyllis Coulter	60622
Billie Callahan	61109
Matthew McFarland	60411
Clark Logemann	61107
Marla Heflin	60643
Zelma Webb	60643
David Holmes	60202
Maria Vrettos	60804
Matthew Daniels	60610
VICKI FORTE	45212
Cynthia Brown	60466
Isaac Simmons	61701
Claudia Washburn	61853
Allan Axelrod	61801
Benjamin Meyer	60626
Julia Rowley	60640
Marilyn Scott	60564
Zaynab Shahar	60649
Kara Bucci	60608
Dylan Smith	60606
Priscilla bakos	60106
Saundra Lightfoot	60619

Name	Zip code
Rachel Williams	60546
Sue Stock	60302
Van Hecke	60126
Bob Innocervi	60188
Stephanie Wagner	60302
Emily Gage	60302
Allen McVey	60302
Ramona Mcnese	60302
Robert Sharpmen	60302
Julia Ryan	60304
Gary Wall	60153
Karen Bules	60302
Martha Swisher	60302
Gerry Messlev	60707
Elizabeth Whitney	60137
Shirley Lundon	60525
Pal Beclinith	60302
Leisa Baiken	60302
Kathleen Clark	60130
Mary Walder	60304
Chad Savage	60302
Richard Pokonny	60304
Fredevica Mulle	60302
Beth Erschen	60130
Sarah Ross	60651
Judith Grace	60302
Michael Fosekes	60513
Elekes Zsolt	60302
Jim Parks	60126
Magane Koshimura	60707
Trenace Ford	60302

Name	Zip code
Martin Stock-Wade	60651
Kathleen Irion	60126
Laura Navarn	60302
Marcia Sezer	60302
Denise Seeba	60302
Larry Spivack	60304
Mary Wacker	60302
Jeanette Mancusi	60302
Diana Coates	60302
Richard Whitney	60137
Di Reed	60644
Terry Grace	60302
Jerry Seeben	60302
Maurice Washington	60615
Cloee Cooper	02139
Michael Martinez	60626
Jesse Zhou	60201
Sehmon Burnam	60626
michelle johns	60067
Remigio Torres	60647
Andrew Jennings	60626
Asha Sawhney	60201
Malik Johnson	60615
Josh Klingenstein	60642
Jessica Lewis	60201
Heather Johnson	60647
Marissa Korte	60614
Tiera Rainey	85705
Ann F. Stanford	60625
Marj Monaghan	60641
Laura Urbazowksi	60641

Name	Zip code
Brian Urbazowksi	60641
Erica Zazo	60641
Caroline Olsen	60640
Natalie Lira	60616
Kevin McLemore	60618
Harlie Was, Jr.	60617
Jennifer Amy-Dressler	60617
Kirsten Peachey	60302
Kathlene Schultz	60056
Carol Currier-Frigheeto	60442
Scott Hagedorn	60012
Charlene Hill	60628
Joycelin Fowler	60305
Jillian Thomas	22025
Lily Hamer	60430
Judith Schader	60456
Jennifer DiFederico	60622
Sara Carminati	60613
Jasmine Hill	60615
Rebecca Brown	60647
Amy Reynaldo	60613
Vicki Byard	60625
Megan Groves	60625
Clifton McMillan Jr.	35080
Tina Spani	62948
Ayn Downey	62902
AJ Downey	62901
Gillian Harrison	62901
Thomas Finkenkeller	62903
Brandon Brown	62901

Name	Zip code
Rebecca Tally	62918
Jahi McClendon	62901
Chastity Mays	62981
Georgeann Hartzog	62905
Jaon Copp	61605
Lisa Ernst	49009
Chris Williamson	60603
Anna Williamson	60603
Carl Holloway	60604
Terry Ryan	60605
Blake Baxles	61530
Pam Adams	61605
Hannah Ramlo	61530
Bryce Foster	61546
Chris Schaffner	61734
Morgan Fulton	61604
Josh Dean	61604
Rebecca Runyon	61614
Elizabeth Brown	60624
Cecelia Smith	60624
Keyonna Tomkins	60623
Erin Brewster	60610
Morris Carr	60651
Tamela Milan	60153
Theresa Jefferson	60612
Florencia Carmona	60639
Cynthia Johnson	60644
Constance Tonney-Romanus	61604
Lisa Fix	61604
Sherry Cannon	61614
Ken Webster	60611

Name	Zip code
Staley Krause	60614
Abigail Davison	61606
Fabiola Orozco	61614
Tiana Huff	61605
Joe Macare	60625
Zachary Schneirov	60604
Kathleen Tahk	60642
shelly Leigh	11237
Theresa Jefferson	60612
Sean Young	60612
Bomani McClendon	60626
Reinessa Neuhalfen	60202
bernadette Gardner-Pittman	75287
Brittany Rothe	60614
Linda Jennings	60649
Michele Auch	60622
Jason Dewey	60046
emma williams	60625
Sue Welch	62305
David K. Antieau	60618
Pat Morton	60449
Kimberlee Vasko	60148
Daniel Jares	60108
Rev. Richard Lanford	60645
Ashley Dowden	60645
Jeffrey Phillips	60148
Janene Bergen	60402
William McCarthy	60137
Jane Ann Moore	60155
Bruce Ray	60647

Name	Zip code
Jeffrey Cobb	60441
Juanita Bradley	60649
Henry Fairman	61032
Sammie Dortch	60615
Rebecca White Newgren	61101
James Olson	60660
Alex Garnearz	61354
Carmen Flores-Rance	60622
Chuck Maney	61350
Vertie Powers	60637
Nancy A. Kneip	60140
Barbara Schmidt	60177
Constance Stewart	60005
Ken Stewart	60005
Paul Kraus	60005
Steven James	60618
Stephanie Ciupka	60605
Iyanna Harris	60614
Neal Cruduf	60649
Robert Dawson	60605
Jessica Jawidzik	60605
Yolanda Nutall	60428
Rozietta Curtis	60621
Justin Slaughter	60620
James A. Cook	60615
Paula Giroux	60618
Adamma Lhemeson	60154
Mazell Sykes	60153
Kandice Harns	60616
Joi Wells	60616

Name	Zip code
Dara Mamora	60610
Cara Lewis	60201
Charles Ruth	60126
Nolan Mobinson	60463
Sharon Clanton	60615
Deana Rutherford	60660
Darcy Carter	60643
Charles Miller	60061
Wilbert E. Cook	60624
Robert Mandaca	60615
Jason Hammond	60608
Roseanna Sommers	60615
Max Beuer	60625
Gerardo Culillo	60645
Ben Adams	60637
Holly Kerr	60035
Celia Colon	60617
Eileen Correz	60614
Deshaun Thomas	60619
Margaret McDaniel	60643
Miranda Lambert	60608
Katye Chambers	60621
Terra Jones	60651
Laura Hugg	60618
Lily Stark	60625
Copeland Smith	60647
Caleb Lemon	60607
Madrid St. Angelo	60622
Linda Morris	60624
Taylor Hales	60630
Brett Boor	60515

Name	Zip code
Stephanie Iverson	60622
Rachel Riehm	60022
Danae Kovac	60647
Sarah Roots	60660
James Kane	60402
Kierre Purchis	60644
Johnny Watson	60644
Shante Smith	60644
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Melissa Andrews	60657
Jeff Jones	60625
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Kris Lawrence	60070
Shane Sutton	60008
Kim Palanichamy	60056
Nancy Duel	60004
Elizabeth Williams	60004
Daniel Crusius	60005
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Andy WIlliams	60004
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Elain Soloway	60654
Phoebe Lin	60602
Cathy Blanford	60558

Name	Zip code
Lord Xopus	60626
Levey Williams	60601
Erin Harmon	60164
Mary Dycus	60143
Claire Machencius	60621
Yasmine Cordero	60632
Olivia Ramos	60623
Alexis Sanchez	60623
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Carin Zacher	60004
Jane Olszowka	60004
Paris Doachoo	60056
Shawn Porter	60090
MalcomX Blycenere	60609

Name	Zip code
ML Heth	60502
Deborah Sews	60630
Cameron Laramee	60618
Stefani Polacheck	60647
Gindi Weiss	60637
Carter Kelly	60640
Terris Clark	60610
Lavette Mayes	60649
Karen Mooney	60546
Mary M Peg Laje	60005
Ted Smurk	60076
Ben Carbes	60076
John Matz	60622
Daryle Brown	60302
Jim McGrath	60010
Marsha Barders	60302
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Peggy Pissarreck	60056
B. Jean Flood	61821
Barbra Sabaj	60056
Terri Morgan	60026
Rosemary Heilemann	60089
Jo Minor	61107
Laurie Bergner	61761
Joyce Williams	60525
Glenda Townsend	60430
Lois Taft	60201
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Gayle Klam	62901
Mary Avery	62958
Erin Roeper	60430

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Jenny Grochowski	60640
Jeanne Kearly	60073
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Maria Peterson	60010
Carolyn Cosentino	60430
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Laura Davis	60010
Annette Smith	60563
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Ralph Williams	60525
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Aun Lee	60526
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Michael Mader	60031
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Mary Mathews	60045
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Bruce Shapiro	60302
Stever Powers	60546

Name	Zip code
Shelby Silvernell	60647
Marcif Powers	60546
Marjory A Gilbert	60604
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J Gocherour	60487
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A Krueger	60513
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Marlene Soto	60804
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J Goldberg	60546
Teshika Silver	60608
Amanda Hwu	60618
David Arbertha	60615
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Matt Kellner	60637
Deborah Demiane	60546
Namnou Burkhouse	60516
R Boykin	60302
Kelly Lonn	60487
Gretchen Bucthaus	60402
Sarah Corbi	60304
Nora Abbormo	60304
Susan Paweski	60305
M. Fitzhenry	60130
Lars Juhl L	60302

Name	Zip code
Haiky Borden Lyna	60302
Hope Asya-Broughton	60626
Brittany Weber	99204
Steffany Bahamon	60613
Claudia Kowalchyk	10003
Kristi Leach	60618
Tim Harris	60107
Izzy M	15227
Carla Williams	60643
Cynthia Turner	60628
Merle Todd	60643
Earl Streets	60645
Bobbie Henry	60643
Joyce Shaw	60627
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Charlie King	60643
David Henry	60603
Althea Hammond	60620
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Gregory Freeman	60620
Victor Scotti	60643
Marilyn Bross	60643
Brenda Dorsey	60440
Pamela McNabb	60653

Name	Zip code
Barbara Sutton	60643
Cora Long	60643
Monique Long	60643
Katherine Brock	60643
Ralph Jester	60643
James Ross	60803
Ernest Leggs	60643
Ronald Bickham	60643
Larry Kelley	98312
John Banks	60643
Peter McMahan	60608
Michael Timberlake	60643
Jamal Turner	46407
Tony Abram	60409
Jermaine Williams	60619
Fulton Nolen	60643
Antoine Bailey	60637
Jay Virchow	60004
Amy Louvier	62298
Em Rabelais	60607
Ole Elfe	31901
Joseph Henderson	60048
Giudi Weiss	60637
Veronica Shaheen	60626
Allena Bradley	60653
Elise Percy	60630
Maria Bell	60637
Alexandra Fryer	60647
Dagmar Schalliol	60302
Michael Ericksen	60302
Derek Fugate	60618
Alice Singleton	60201

Name	Zip code
D Mak	11216
Sarah Oberholtzer	60620
Chris Preciado	60623
Emma Marsano	60615
Jennifer Gladkowski	07304
Lauren Schiller	60615
Marie Snyder	60647
Lulu Johnson	11221-1365
Marcus Lane	32726
Silvia Saucedo	60632
Seph Mozes	60640
Margaret Malinowski	60660
Imani Duhe	60612
Joshua Whitaker	60640
Mo Rex	60172
Ann Miller	60613
Sarah Enloe	60304
Elizabeth Reimer	60565
Josephine Ryan	60640
Shelby Klingberg	60647
Kimberly Robinson	60461
Laura Carther	60201
Jonda Brown	19802
Zach Zarnow	60604
Rebecca Anderson	60640
Sveta Stoytcheva	60615
Melissa Pavlik	60660
Monica Carmean	60626
Terry Foland	61501
Rebecca Ryan	53545

Name	Zip code
David Ryan	53545
Eliezer Rolon	60641
Penny Donehoo	60056
Brendan Shiller	60616
Elizabeth Zemke	60077
Nicholas Hussong	60625
Yujin Maeng	60640
Terrence O'Brien	61350
pamela kulig	60174
Kevin Daly	60005
Bill Harris	60640
Kristi Lin	60647
Sydney Hamamoto	60714
Max Gelula	60608
Jason Gusse	60642
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Liz Kantor	60641
Minku Sharma	60625
Lucero Macias	60647
Tamae Takarabe	60637
Amy Morton	60614
Betty Miller	60194
Colin Drozcloff	60647
Jack Denry	60103
Jon Montgomery	60103
Jane Jesudoss	60007
Joanne Gregorash	60107
Judy Wilson	60194
Margaret Gire	60194
Mary Illg	60133
Carolyn Meneely	60007
Ann Stanford	60625

Name	Zip code
Laura Urbaszewski	60641
Erica Zazo	60641
Lola Odusanya	60641
Sandra Boone	60641
Jeremy Rosen	60613
Henry Shah	60616
Kate Maley	60626
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Written Testimony to The Illinois Supreme Court Commission on Pretrial Practices

The Chicago Recovery Alliance (CRA) writes today to voice our emphatic support for bail reform in Illinois. There are numerous public health risks associated with policing and incarceration such as an increase in HIV risk,[1, 2] unemployment,[3] loss of housing,[4] injury and violence[5], and lower rates of recovery among people with a substance use disorder (SUD).[6]

However, this testimony focuses specifically on the life-and-death high stakes of bail reform. The Chicago Recovery Alliance is the world's longest running overdose prevention program. Our organization's mission is to support people actively using drugs in reducing drug-related harm and we do this by supporting any positive change as a person defines it for themselves. In 2018 alone we distributed 80,000 doses of naloxone (the opioid overdose antidote) to people who needed it most and have worked for decades to provide overdose prevention training and technical assistance across this city, and across the country. People with a SUD experience high rates of policing and arrest. Approximately half of incarcerated people have substance use-related conditions. People with a SUD and people in recovery are also often profiled and arrested despite being innocent. The risk of unnatural death and overdose is exacerbated by arrest and incarceration, but bail reform can help mitigate this risk of premature and preventable death. Our 10,000+ program participants are exactly the people who are most vulnerable to dying related to policing, arrest, and detention.

The exact mechanisms of risks for death among our participants as a result of pretrial detention are twofold: 1) untreated withdrawal symptoms and 2) loss of tolerance resulting in extremely heightened fatal overdose potential. We will examine them separately.

Untreated withdrawal symptoms— Sudden and untapered cessation of consuming substances—as occurs with arrest and incarceration—induces withdrawal symptoms.

Withdrawal from alcohol and benzodiazepines are considered dangerous enough that the process should be medically monitored so that the acute and dangerous physiological symptoms can be closely monitored and managed. Death from unmonitored alcohol and/or benzodiazepine withdrawal is not uncommon, including prominent Illinoisans.[7] Opioid withdrawal is often mistakenly dismissed as "uncomfortable, but not life threatening". However, opioid withdrawal can cause dehydration and metabolite imbalance that can lead to death.[8] This happens most frequently in an incarceration setting where people are restricted from acquiring or consuming household ingredients that can correct these imbalances. This is the cause of death of 21-year-old Sebastiano Ceraulo, who died on the 4th day of his detention in the DuPage County Jail as well as Toya Frazier, a 45-year-old woman who died on her 2nd day of incarceration in Champaign.[9] While rates of substance use disorder are high among detainees (often over 50%), only about ¼ of jail administrators report ever having the infrastructure to safely manage withdrawal.[10, 11]

Loss of tolerance and overdose death— The #1 cause of death for people leaving incarceration is drug overdose because of reduced opioid tolerance. Further, people with reduced or no tolerance to opioids are particularly vulnerable to the wide fluctuations in the strength of the illicit opioid market in the era of fentanyl-contaminated illicit opioid supply. It is important to note that, while overdose death during detention definitely does happen,[12] far more deaths happen upon being released.[13] We have heard this fact cited as a rationale against bail reform claiming that it's the releasing that puts people at risk, not the pretrial detention itself. This is absolutely an incorrect, uninformed rationale. Loss of tolerance is a process,[14, 15] so the longer a person is detained, the bigger the tolerance loss. In the context of shorter periods of detention—as should be the case with pretrial detention—every single additional hour that a person is detained increases their tolerance loss and fatal overdose potential. It is important to note that tolerance loss is dangerous and potentially deadly for 1) illicit opioid use,[16] 2) people using opioids for pain,[17] and 3) people taking methadone or buprenorphine for treatment of opioid addiction.[18]

Pretrial detention undermines our democracy by incarcerating people who are presumed innocent. Pretrial incarceration has negative public health and social quality of life effects. At CRA, we are most urgently concerned that pretrial incarceration is literally killing Illinoisans. Bail reform that reduces the rate of pretrial detention is thus a lifesaving ethical imperative.

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[15] White JM, Irvine RJ. Mechanisms of fatal opioid overdose. Addiction. 1999 Jul 1;94(7):961-72.
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Challenging E-Carceration

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Honorable Robbin J. Stuckert
Chief Judge
DeKalb County Courthouse
133 W. State Street
Sycamore, IL 60178

June 28, 2019

RE: Illinois Supreme Court Commission on Pretrial Practices

Dear Honorable Robbin J. Stuckert,

As the Director of Challenging E-Carceration, I am pleased to submit testimony to the Illinois Supreme Court Commission on Pretrial Practices. Challenging E-Carceration is an Illinois-based project of the national social justice organization Media Justice. For the past three years we have been involved in gathering evidence about the harms done by electronic monitoring in the pretrial and other contexts. In addition, we have conducted public forums on this issue and worked with Illinois Representative Carol Ammons to pass legislation earlier this year that will for the first time mandatory collection of data on electronic monitor usage in the post-prison setting. This is the first such legislation in the country.

We have also done considerable research into the use of electronic monitors for individuals who have been released pretrial. Based on our investigations, we have found the following:

1. Advocates of electronic monitoring have produced no evidence that pretrial electronic monitoring contributes to a higher rate of court appearance
2. The conditions imposed as part of the house arrest which virtually always accompanies electronic monitoring programs consistently hinder an individual from accessing employment, obtaining medical treatment, participating in court-ordered programs and taking part in family and community activities.[1] While a promise of "freedom" accompanies the implementation of electronic monitoring, those freedoms often meld into a set of liberty-depriving rules and regulations which serve no constructive purpose.
3. Placing an individual on house arrest often creates great burdens and stress for their family members and/or those with whom they share accommodation. Rules restricting the presence of alcohol and firearms as well as frequent intrusive searches and phone calls create a situation where the house become more like a site of incarceration than a home.
4. Many jurisdictions impose daily user fees and set-up costs for electronic monitoring which are prohibitive. In some instances, these can far exceed the cash bail a person might have had to put up to secure their release. Moreover, failure to pay these user fees can impact a person's ultimate dispensation, either contributing to an enhanced sentence or more restrictive probation conditions.

[1] See cases of "Jarrett" and Lavette Mayes in Chicago Community Bond Fund," Punishment Is Not A Service: The Injustice of Pretrial Conditions in Cook County," 2017

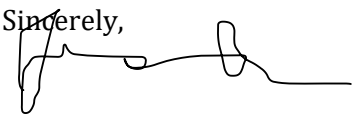
5. The restrictions of house arrest may inhibit care-giving for which the person on the monitor is responsible. This may mean the inability to accompany family members to medical appointments, to look after children (especially those who may not live with them), or to respond to emergencies.
6. The conditions of house arrest often mimic the pressures and restrictions of jail, leading the individual to accept an unreasonable plea bargain or even pleading guilty to a charge for which they are not legally culpable simply to avoid those conditions. In many instances the acceptance of a plea bargain connects to the burdens the monitor places on a charged person's loved ones and the desire to bring relief to them.
7. In cases where domestic violenceis involved, locking a person in their house may leave them in a position where they cannot escape a potentially violent or even life-threatening situation without risking reincarceration.
8. While data is limited in regard to EM, the overwhelming evidence of racial discrimination and disparity in the criminal legal system generally raises serious questions as to whether or not electronic monitoring can be applied in a manner that does not replicate the racism of the broader system.
9. When EM with GPS capacity is used, a vast amount of location tracking data is captured and stored in a way over which the person on the monitor has no control. Given the recent revelations about intrusions by Facebook and the increasing marketization of online data, this is a cause of concern for the privacy and human rights of the person on the monitor. [2]

For these reasons, we strongly recommend that the Commission encourage a ban on the use of electronic monitoring in the pretrial context. We are convinced that the money and human resources used for monitoring would be much better spent on programs that support people awaiting trial through options such as public housing, substance abuse and mental health treatment, job training programs, and services such as rides and reminders that ensure people can attend their court dates and court-mandated activities.

If electronic monitoring is to be used, we urge local authorities to implement the Guidelines for Respecting the Rights of Individuals on Electronic Monitors, a document developed by Challenging E-Carceration and endorsed by more than 50 organizations nationally, including the national offices of the ACLU, the NAACP, the National Association of Criminal Defense Lawyers, and the Pretrial Justice Institute. I have attached the Guidelines and list of the signatories here for your reference.

We look forward to your report and recommendations and remain ready to answer any queries you might have about electronic monitoring. If you would like further explanations of any of the contents of this letter or would like more information, feel free to contact me at james@mediajustice.org or by phone 217 778 2354.

Sincerely,



James Kilgore

Director, Challenging E-Carceration

[2] See J. Kilgore and E. Sanders, "Ankle Monitors Aren't Humane, They're Another Kind of Jail., Wired, August 4, 2018

#ChallengingEcarceration

Guidelines for Respecting the Rights of Individuals on Electronic Monitors

The criminal justice system's use of electronic monitors, typically in the form of ankle bands, has more than doubled in just over a decade. Electronic Monitoring threatens to become a form of technological mass incarceration, shifting the site and costs of imprisonment from state facilities to vulnerable communities.

Moreover, most evidence indicates electronic monitors are disproportionately used on people of color. The use of these devices is increasing with electronic monitoring now more frequently employed as a part of parole, probation and pretrial release, as well as in juvenile justice and immigration cases. Combining house arrest with the use of monitors with GPS tracking has made electronic monitoring more punitive and powerful as a method of surveillance.

To make matters worse, monitoring programs lack a transparent regulatory framework that respects the human rights of those being monitored and their family or household members. This situation demands action. Thus, we advocate the following guidelines for implementation of electronic monitoring:

1. Opportunity, rights, and dignity. Rules for electronic monitoring must facilitate freedom of movement and accommodate basic daily needs while not imposing unnecessary restrictions. Those monitored should have the freedom to carry out parenting and other caregiving activities and have access to employment, legal services, medical treatment, education, pro-social and religious activities. Those being monitored should be able to take part in family and community life.

2. No net widening. The net of electronic monitoring must not widen by capturing larger numbers of currently monitored groups (e.g. youth, immigrants), by targeting new groups (e.g. those with mental illness), nor by adding monitoring to less restrictive forms of supervision.

3. Economic and racial justice. Electronic monitoring should not be a vehicle for perpetuating inequality. Monitoring should not disproportionately be applied to people of color or poor people.

4. Transparency. Rules for electronic monitoring should be transparent. They should be based on an assessment of the needs and risks of the individual, and not on a generic, "one size fits all" set of conditions and restrictions.

5. No financial burdens. The governing jurisdictions should bear all costs of the technology and supervision. Monitored Individuals and their family members should pay no daily fees or other charges.

6. Credit for time served. Since electronic monitoring is a form of custodial detention, those subjected to it should receive credit for time served under surveillance.

7. Respect for privacy rights. Authorities must institute safeguards for data collected from GPS-based monitors in order to respect the privacy rights of those being monitored. Regulations must limit access to data and restrict the type of data collected. The method of retention and storage should be regulated as well, and concrete time frames for deleting data should be set.

8. Humane, minimally invasive technology. Electronic monitors should not be enhanced to enable monitoring biometrics or brain activity, recording audio or video, inflicting pain, remotely administering pharmaceuticals, or spying on family members and loved ones. The should also not be implanted as microchips.

9. Due process. Individuals on monitors should have the right to due process. This includes the ability to appeal the terms and conditions of their electronic monitoring regimes and, where appropriate, allowing them access to their own tracking data.

10. GPS as a last option. GPS-enabled monitors used under house arrest are the most restrictive form of community sanction and should be the last option, never the default. Terms for the GPS devices should be minimal, and they should never be imposed for life.

About These Guidelines

#ChallengingEcarceration is a project led by James Kilgore of the Urbana-Champaign Independent Media Center in partnership with the Center for Media Justice. These guidelines were developed via a consultation process that included organizers, attorneys, policy makers, researchers and individuals critically impacted by electronic monitoring. They are based on an original draft written by James Kilgore.

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#ChallengingEcarceration

A List of Our Endorsers

American Civil Liberties Union (ACLU)
All of Us or None
American Friends Service Committee
Arts & Democracy
Brooklyn Community Bail Fund
Business and Professional People for the Public Interest (BPI)
California Coalition for Women Prisoners
Center for Media Justice
Chicago Appleseed Fund for Justice
Chicago Community Bond Fund
Civil Rights Corps
East Bay Community Law Center
Economic Opportunity Council of Suffolk, Inc.
Electronic Frontier Foundation
Ella Baker Center for Human Rights
Essie Justice Group
EXPO of Wisconsin
Families for Freedom
First Followers Reentry
Generation Justice
Grassroots Leadership
Human Rights Defense Center
Holla
International CURE
Justice Policy Institute
JustLeadershipUSA
Line Break Media
Massachusetts Bail Fund
Media Alliance
National Association for the Advancement of Colored People (NAACP)
National Association for Public Defense
National Association of Criminal Defense Lawyers
National Guestworker Alliance
National Lawyers Guild
New Sanctuary Coalition
OVEC-Ohio Valley Environmental Coalition
Philadelphia Community Bail Fund
Pretrial Justice Institute
Prison Policy Initiative
Project Rebound (SF State University)
Richmond Community Bail Fund
Sargent Shriver National Center on Poverty Law
Smart Decarceration Initiative
Southern Center for Human Rights
Southerners on New Ground
The Bronx Freedom Fund
The Fortune Society
The Greenlining Institute
The National Council for Incarcerated and Formerly Incarcerated Women and Girls
The People's Press Project
The Release Aging People in Prison/RAPP Campaign
Urbana-Champaign Independent Media Center
Voices for Racial Justice
Washington Square Legal Services Bail Fund
#FedFam4life

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Dear Judge Stuckert:

On behalf of The Leadership Conference on Civil & Human Rights and the 24 undersigned organizations, we are pleased to submit the attached public comment to the Illinois Supreme Court Commission on Pretrial Practices. The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States. **As Illinois reconsiders the pretrial procedures of its criminal justice system, we ask the Commission to consider eliminating secured money bail and to recognize the potential and proven harms of risk assessment instruments (RAIs) and avoid their use.**

We thank the Commission for the opportunity to provide this public comment. We ask that the guidelines articulated in our letter be incorporated in the Commission's ultimate recommendations for pretrial reform in Illinois. We are encouraged by the court's commitment to improving pretrial justice and look forward to its continued partnership with all stakeholders, particularly those harmed by inequitable pretrial practices and mass incarceration at large.

If you have any questions related this letter, please feel free to contact me directly.

All the best,

Sakira Cook
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June 28, 2019

Honorable Robbin J. Stuckert
Presiding Judge, 23rd Judicial Circuit
DeKalb County Courthouse
133 W. State Street
Sycamore, IL 60178

Submitted electronically to pretrialhearings@illinoiscourts.gov

RE: Illinois Supreme Court Commission on Pretrial Practices

Dear Judge Stuckert:

On behalf of The Leadership Conference on Civil & Human Rights and the 24 undersigned organizations, we are pleased to submit this public comment to the Illinois Supreme Court Commission on Pretrial Practices. The Leadership Conference on Civil and Human Rights is a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the rights of all persons in the United States. **As Illinois reconsiders the pretrial procedures of its criminal justice system, we ask the Commission to consider eliminating secured money bail and to recognize the potential and proven harms of risk assessment instruments (RAIs) and avoid their use.**

Currently, 6 out of 10 people in U.S. jails are awaiting trial, and people who have not been found guilty of a crime account for 95 percent of all jail population growth between the years 2000-2014.[i] In the landmark 1984 ruling *U.S. v. Salerno*, Supreme Court Justice William Rehnquist wrote, "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."[ii] By law, pretrial detention may be ordered only if an arrested person presents an unmanageable risk to public safety or risk of flight.[iii] We ask the Supreme Court Commission to consider eliminating money bail and utilizing a pretrial model that would implement the least restrictive conditions needed for each individual in the pretrial space.

Pretrial reform is a critical civil rights issue because money bail discriminates against poor and working-class individuals and results in unequal justice outcomes based on wealth and/or racial status. Research suggests that half of Americans would struggle to come up with $400 in the case of an emergency,[iv] yet in jurisdictions using secured money bail, a person's ability to pay often substantial amounts of money determines who stays in jail while presumed innocent, and who goes home. Research shows that Black and Latino people are

more likely to be detained pretrial than white people with similar charges and backgrounds. For example, studies have found that African Americans face higher money bail amounts and are less likely to be released on conditions that don't involve paying money.[v] Another study concluded that simply being Black increases an accused person's odds of being jailed pretrial by 25 percent.[vi] People who cannot afford to pay money bail receive harsher case outcomes; they are three to four times more likely to receive a sentence to jail or prison, and their sentences are two to three times longer.[vii] Further, women are less likely to be able to afford money bail. The Prison Policy Initiative found that women in jail before trial earned little more annually than the average bond amount of $10,000.[viii] Finally, money bail practices do not appear to make the public any safer.[ix]

While we support the abolition of secured money bail, we strongly believe that adoption of risk assessment instruments (RAIs) in lieu of money bail is not a positive reform. We believe that jurisdictions should not use RAIs in pretrial decision making and should instead move to eliminate secured money bail, while releasing most accused people pretrial. Algorithmic decision-making tools like RAIs reflect and even exacerbate the biases found in the data sets used to train them. Further, in many jurisdictions, the use of RAIs has failed to reduce the number of people incarcerated pretrial.[x] RAIs also carry the potential to increase racial disparities in pretrial detention under the guise of objectivity.[xi] Algorithmic decision making tools like RAIs are only as smart as the inputs to the system. Many algorithms effectively only report out correlations found in the data that was used to train the algorithm. As a result, biases in data sets will not only be replicated in the results, they may actually be exacerbated. For example, since police officers disproportionately arrest people of color, criminal justice data used for training the tools will perpetuate this correlation. Thus, automated predictions based on such data—although they may seem objective or neutral—threaten to further intensify unwarranted discrepancies in the justice system and to provide a misleading and undeserved imprimatur of impartiality for an institution that desperately needs fundamental change.

In 2018, The Leadership Conference released a statement of principles (included with this letter) outlining ways to mitigate the harms of RAIs. The statement has been signed by more than 100 concerned organizations from across the country, including the American Civil Liberties Union, the NAACP, community organizations, bail funds, and public defense services. This statement of principles should not be interpreted as an endorsement of RAIs. Rather, these principles provide tools to mitigate the harm of RAIs in places where they are already in use or where their implementation is inevitable. Below is a summary of our recommendations from the statement of principles, which we submit to you for inclusion in your ultimate recommendations.

> **Principle 1:** Pretrial risk assessment instruments must be designed and implemented in ways that reduce and ultimately eliminate unwarranted racial disparities across the criminal justice system. Those engaged in the design, implementation, or use of risk assessment instruments should also test ways to reduce the racial disparities that result from using historical criminal justice data, which may reflect a pattern of bias or unfairness.
>
> **Principle 2:** Pretrial risk assessment instruments must be developed with community input, revalidated regularly by independent data scientists with that input in mind, and subjected to

regular, meaningful oversight by the community. The particular pretrial risk assessment instrument chosen should be trained by, or at least cross-checked with, local data and should be evaluated for decarceral and anti-racist results on a regular basis by the local community, including people impacted by harm and violence, and people impacted by mass incarceration, and their advocates.

Principle 3: Pretrial risk assessment instruments must never recommend detention; instead, when a tool does not recommend immediate release, it must recommend a pretrial release hearing that observes rigorous procedural safeguards. Such tools must only be used to significantly increase rates of pretrial release and, where possible, to ascertain and meet the needs of accused persons before trial, in combination with individualized assessments of those persons. Risk assessment instruments must automatically cause or affirmatively recommend release on recognizance in most cases, because the U.S. Constitution guarantees a presumption of innocence for persons accused of crimes and a strong presumption of release pretrial.

Principle 4: Neither pretrial detention nor conditions of supervision should ever be imposed, except through an individualized, adversarial hearing. The hearing must be held promptly to determine whether the accused person presents a substantial and identifiable risk of flight or (in places where such an inquiry is required by law) specific, credible danger to specifically identified individuals in the community. The prosecution must be required to demonstrate these specific circumstances, and the court must find sufficient facts to establish at least clear and convincing evidence of a substantial and identifiable risk of flight or significant danger to the alleged victim (or to others where required by law) before the exceptional step of detention of a presumptively innocent person, or other onerous supervisory conditions can be imposed. All conditions short of detention must be the least restrictive necessary to reasonably achieve the government's interests of mitigating risks of intentional flight or of a specifically identified, credible danger to others. Any person detained pretrial must have a right to expedited appellate review of the detention decision.

Principle 5: Pretrial risk assessment instruments must communicate the likelihood of success upon release in clear, concrete terms. In accordance with basic concepts of fairness, the presumption of innocence, and due process, pretrial risk assessment instruments must frame their predictions in terms of success upon release, not failure. Further, such tools should only predict events during the length of the trial or case—not after the resolution of the open case.

Principle 6: Pretrial risk assessment instruments must be transparent, independently validated, and open to challenge by an accused person's counsel. At minimum, the public, the accused person, and the accused person's counsel must all be given a meaningful opportunity to inspect how a pretrial risk assessment instrument works. The accused person's counsel must also be given an opportunity to inspect the specific inputs that were used to calculate their client's particular categorization or risk score, along with an opportunity to challenge any part—including non-neutral value judgments and data that reflects institutional racism and classism—of that calculation.

The Leadership Conference

We thank the Commission for the opportunity to provide this public comment. We ask that the guidelines above be incorporated in the Commission's ultimate recommendations for pretrial reform in Illinois. We are encouraged by the court's commitment to improving pretrial justice and look forward to its continued partnership with all stakeholders, particularly those harmed by inequitable pretrial practices and mass incarceration at large. If you have any questions, please contact, Sakira Cook, Director, Justice Reform Program, at cook@civilrights.org.

Sincerely,

1. African American Ministers In Action
2. CatholicNetwork.US
3. Center on Race, Inequality, and the Law at NYU School of Law
4. Colorado Freedom Fund
5. Defending Rights & Dissent
6. EHD Advisory
7. Fight for the Future
8. Freedom Inc
9. Global Justice Institute, Metropolitan Community Churches
10. Impact Fund
11. Juntos
12. Media Alliance
13. Media Mobilizing Project
14. National Association of Social Workers
15. National Association of Social Workers- Illinois
16. Portland Freedom Fund
17. POWER
18. Prison Policy Initiative
19. Richmond Community Bail Fund
20. Robert F. Kennedy Human Rights
21. The Greenlining Institute
22. The Leadership Conference Education Fund
23. The Leadership Conference on Civil and Human Rights
24. Tucson Second Chance Community Bail Fund
25. Voice of the Experienced

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[i] Zhen Zeng "Jail Inmates in 2016 (NCJ 251210)." *Bureau of Justice Statistics* (February 2018). Retrieved from. https://www.bjs.gov/content/pub/pdf/ji16.pdf

[ii] *United States v. Salerno*, 481 U.S. 739, 755 (1987).

[iii] Jones, Cynthia. ""Give Us Free: Addressing Racial Disparities in Bail Determinations" (2013). *Articles in Law Reviews & Other Academic Journals*. Paper 301.
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The Leadership Conference

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[xi] Angwin, J. Machine bias. (2016, May 23.)
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CHICAGO COMMUNITY BOND FUND

June 30, 2019

Judge Robbin J. Stuckert
DeKalb County Courthouse
133 W. State Street
Sycamore, IL 60178

RE: Illinois Supreme Court Commission on Pretrial Practices

Dear Honorable Judge Robbin J. Stuckert,

I write to you as a person who has been directly impacted by pretrial incarceration and unaffordable money bond. I also spoke to the Commission during the Chicago listening session on June 17, 2019. I spent 52 days in Cook County Jail because I couldn't afford my $7,500 bond, an amount that was totally unaffordable for my family. Without the help of the Chicago Community Bond Fund, I may have been in jail for more than a year while fighting my case. The time I spent in jail and separated from my family caused many hardships that could have been avoided if my bond were affordable. After my bond was paid, I was able to help my wife and family move after the property we lived in was foreclosed on. I was able to keep working to support my family, and I was able to receive proper medical care for my respiratory asthma condition.

When you read my words, you're not just reading my story. You're reading the story of thousands of other people who have been locked up simply because they couldn't afford their money bonds. I'm just a representation of the folks that don't have a voice in this conversation. Being able to fight my case from the outside was much better because the judge, the State's Attorney, and others looked at me differently. Most importantly, I was able to dress appropriately for my court dates, and I was able to fight my case with less pressure. If my bond hadn't been paid, I would have probably accepted a plea deal because I couldn't bear to be locked up any longer.

There are a lot of people that can't afford to get out of jail because of their financial circumstances, even if the bond amount is low. People go back and forth from jail to court for months—sometimes years—because they can't afford to pay a money bond. Wealthy people are able to bond out and fight their cases on the outside because they have money. The current

system is unbalanced. Nobody should be locked up because they can't afford to pay their money bond.

Money bond isn't keeping our communities safe. It's simply allowing those with money to have freedom while those that don't are locked up. Money bond should be eradicated. People shouldn't have to suffer because they do not have money. Everyone should be able to fight their case from a place of freedom, like I was.

We need to stop pushing this problem under the rug. We need to stop talking about this problem and start doing something about it. This commission has the power to fix this problem and change the lives of thousands of people. We must stop locking people up because of their financial situations.

Sincerely,

Flonard Wrencher
Volunteer

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New York, NY 10118-3299
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HUMAN RIGHTS WATCH

HRW.org

June 26, 2019

Hon. Robbin J. Stuckert
Chief Judge, 23rd Judicial Circuit DeKalb County Courthouse
Chair, Supreme Court Commission on Pretrial Practices
133 W. State Street
Sycamore, IL 60178

Supreme Court Commission on Pretrial Practices
Pretrial Comment
AOIC Probation Division
3101 Old Jacksonville Road
Springfield, IL 62704

By post and email: Pretrialhearings@illinoiscourts.gov

Dear Commissioners,

Human Rights Watch is an international non-profit organization dedicated to investigating and reporting on human rights violations throughout the world, including in the United States.[1] Human Rights Watch has reported on violations in over 90 countries and, as a founding member of the International Campaign to Ban Landmines, was a co-laureate of the Nobel Peace Prize in 1997. Our US Program focuses on, among other things, human rights compliance within the criminal legal system.

Human Rights Watch has produced two major reports and many shorter pieces documenting the human rights concerns raised by the money bail system employed in nearly all US criminal courts and recommending reforms. The reports specifically highlighted the systems in New York[2] and California,[3] but the principle problems of money bail and pretrial incarceration apply similarly in other states, including Illinois.

In light of the commission's exploration of pretrial reforms, we write today to share some of our findings and recommendations. We recommend Illinois adopt pretrial reforms that ameliorate the substantial harms of the money bail system by reducing pretrial detention overall while removing financial requirements for release. Human Rights Watch urges avoiding the use of risk assessment tools—that is, mathematical formulas to estimate the likelihood that an individual will commit some future misconduct—because they make recommendations based on statistical estimates and

[1] "About Us," Human Rights Watch, accessed June 24, 2019, https://www.hrw.org/about-us.
[2] Human Rights Watch, *The Price of Freedom: Bail and Pretrial Detention of low Income Nonfelony Defendants in New York City*, December, 2010. https://www.hrw.org/report/2010/12/02/price-freedom/bail-and-pretrial-detention-low-income-nonfelony-defendants-new-york
[3] Human Rights Watch, *"Not in it for justice": How California's Pretrial Detention and Bail System Unfairly Punishes Poor People*, April, 2017. https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly

profiles rather than individualized evidence, they have inherent racial and class bias, and because they will not guarantee reductions in pretrial incarceration rates. Instead, pretrial reform should honor the presumption of innocence by greatly limiting who is eligible for pretrial incarceration in the first place, and by requiring individualized hearings with rigorous evaluations of evidence, procedural requirements, and standards of proof, before a court can order incarceration.

The Harms of Money Bail and Pretrial Incarceration

Unnecessary use of pretrial incarceration betrays the presumption of innocence, a fundamental guiding principle of the US legal system, by keeping people in jail who have not been convicted of a crime. Our California report documented that between 2011-2015, close to half-a-million people, were subject to felony arrests and held in pretrial detention, but never found to be guilty of any crime, an unjust punishment that cost taxpayers millions of dollars.[4] Poor people jailed pretrial, with bail set, face the miserable options of taking on heavy debt to pay bail, remaining in custody until their cases resolve, or pleading guilty to gain freedom sooner, regardless of actual guilt.

Human Rights Watch documented families losing homes, selling cars, and foregoing basic living necessities to afford bail.[5] People who stay in jail lose jobs, cannot care for their children or disabled relatives, miss needed health care, while suffering boredom, violence, disease and physical and mental anguish.[6] In California, according to Human Rights Watch's analysis of data from six counties, the vast majority of people released from jail as "sentenced" on low-level felonies and misdemeanors were released before the earliest possible date they could have gone to trial. In other words, to assert their innocence at trial, they would have had to stay in jail longer than they did by pleading guilty.[7] Practitioners throughout the country, including Illinois, have told us that similar pressure to plead guilty exists in their jurisdictions that use money bail. Given the coercion inherent in this choice, convictions of innocent people are inevitable. The large-scale use of pretrial detention, resulting in pressured guilty pleas, damages the credibility of our criminal legal system.

These harms are more profound because they apply only to those too poor to pay bail, while the wealthy have the benefit of a system that honors the presumption of innocence.
Given the well-documented inequities of the money bail system, Human Rights Watch commends the many stakeholders in the Illinois courts and government who are taking serious steps to reform the way courts impose pretrial incarceration. However, we are concerned that these reforms will be derailed by reliance on risk assessment tools that influence who is imprisoned and who is released.

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[4] Human Rights Watch, *Not in it for Justice: How California's Pretrial Detention and Bail System Unfairly Punishes Poor People*, April, 2017, pp. 42-43.https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly
[5] Human Rights Watch, *Not in it for Justice: How California's Pretrial Detention and Bail System Unfairly Punishes Poor People*, April, 2017, pp. 65-77. https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly
[6] Human Rights Watch, *Not in it for Justice: How California's Pretrial Detention and Bail System Unfairly Punishes Poor People*, April, 2017, pp. 51-64. Stories describing this situation are found throughout the report. https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly
[7] Human Rights Watch, *Not in it for Justice: How California's Pretrial Detention and Bail System Unfairly Punishes Poor People*, April, 2017, p. 56. https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly

Risk Assessment Tools are a Dangerous, Unfair Substitute

The Illinois Supreme Court has released a policy statement indicating its intention to support the use of risk assessment tools for pretrial incarceration decision-making, as a foundation for a system that conforms to the presumption of innocence and provides due process through individualized decisions.[8] Human Rights Watch disagrees that these tools serve these objectives and strongly advises against their use in deciding the pretrial fates of accused people.[9]

Risk assessment tools used in the criminal legal system purport to estimate the statistical likelihood that a person will commit some misconduct (missing a court date or arrest for a new crime, in the case of pretrial prediction) in the future. They take discrete facts about the person, without providing individualized context for those facts, then compare that person to a large dataset of other people for whom the same discrete, non-contextualized facts exist. They then assign a likelihood of future misconduct by the person based on the percentages of successful or unsuccessful outcomes from the large dataset.

In other words, the tools make predictions that are used to determine freedom or imprisonment based on how other people have behaved in the past and statistical estimates, in other words, based on profiles. The criminal legal system, however, should ground decisions in an individual's own actions, not those of other people. The lack of consideration of individual context leads to unjust outcomes. For example, the most commonly used tool, developed by the Laura and John Arnold Foundation (Arnold), scores past missed court dates against a person, but does not distinguish between situations, such as in when the person missed court due to illness and appeared the next day, as opposed to when a person deliberately leaves a jurisdiction to avoid prosecution. The same tool scores for "prior violent conviction" without distinguishing between a misdemeanor battery involving a push and an attack with a knife causing serious injury. It similarly scores for "prior felony conviction," which can range from drug possession for personal use to murder.[10]

Despite their claims, the tools do not predict future crime. To the extent they predict anything, it is future arrest. While an individual's behavior partly determines likelihood of arrest, police behavior is a significant determining factor. People living in over-policed communities or otherwise subject to aggressive policing face higher risk of arrest for the same behavior. For example, someone who illegally possesses a firearm in a community with a low police presence will have little risk of being stopped and searched, while someone in a highly policed community will have a high risk of stop, search and arrest. Historic and current racial and class bias in policing, including discrimination by individual

[8] Illinois State Bar Association, *The Bar News*, "Illinois Supreme Court Adopts Statewide Policy Statement for Pretrial Services." https://www.isba.org/barnews/2017/05/01/illinois-supreme-court-adopts-statewide-policy-statement-pretrial-services (accessed June 24, 2019)
[9] Human Rights Watch, "Human Rights Watch advises against using profile-based risk assessment in bail reform," July, 2017. https://www.hrw.org/news/2017/07/17/human-rights-watch-advises-against-using-profile-based-risk-assessment-bail-reform
[10] Laura and John Arnold Foundation, "Public Safety Assessment: Risk factors and formula." https://www.psapretrial.org/about/factors (accessed June 24, 2019)

officers, racial profiling and biased deployment patterns, strongly influences arrest results.[11] Nationally, white and black people use illicit drugs at roughly equal rates, but police arrest black people at substantially higher rates for these offenses.[12]

Risk assessment tools generally do not use race or economic class specifically in their formulas. However, they use other factors that stand as proxies for race and class, including arrest history, employment history, residential stability and education levels. This means that the profiles have a built-in bias, reflective of and amplifying the biases already existing in the criminal legal system and in US society as a whole.[13] While the tools may not be designed to be racist, because they rely on racially biased inputs, their outputs or recommendations will reflect that bias.[14] In addition, because of their claim to scientific objectivity, they may provide a veneer of legitimacy to that discrimination.

Risk assessment tools are often promoted as an effective mechanism to reduce pretrial incarceration, but, in fact, they can be used just as easily to increase incarceration. While New Jersey, which used the tools as part of a comprehensive set of recent pretrial reforms, has had significant reduction in pretrial incarceration rates,[15] Kentucky, which also uses the tools, has not.[16] In Lucas County, Ohio, implementation of the Arnold tool increased the rate of pretrial detention and increased the percentage of people pleading guilty on their first court appearance.[17] The scoring system of any risk assessment tool can be adjusted to fit more or less people into the various risk categories, thus allowing it to be manipulated to raise or lower the numbers of people released or detained. Santa Cruz County in California adjusted its tool's "decision making framework" and doubled the number of people assigned to release with supervision.[18] If judges control the scoring system and implementation of the tools, as they did in Kentucky[19], given the effect of pretrial detention pressuring guilty pleas that move court calendars rapidly,[20] it is likely that risk assessment tools will not result in reductions in pretrial incarceration.

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[11] Elizabeth Hinton et al., "An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System," *Vera Institute of Justice*, May 2018. https://storage.googleapis.com/vera-web-assets/downloads/Publications/for-the-record-unjust-burden/legacy_downloads/for-the-record-unjust-burden-racial-disparities.pdf (accessed June 24, 2019)

[12] Human Rights Watch, *Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States*, October, 2016. https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-united-states

[13] Elizabeth Hinton et al., "An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System," *Vera Institute of Justice*, May 2018. https://storage.googleapis.com/vera-web-assets/downloads/Publications/for-the-record-unjust-burden/legacy_downloads/for-the-record-unjust-burden-racial-disparities.pdf (accessed June 24, 2019)

[14] Laurel Eckhouse, "Big data may be reinforcing racial bias in the criminal justice system," *Washington Post*, February 10, 2017. https://www.washingtonpost.com/opinions/big-data-may-be-reinforcing-racial-bias-in-the-criminal-justice-system/2017/02/10/d63de518-ee3a-11e6-9973-c5efb7ccfb0d_story.html?utm_term=.0bd98097310d (accessed June 24, 2019)

[15] New Jersey Judiciary, 2017 Report to the Governor and the Legislature, February 2018. https://www.judiciary.state.nj.us/courts/assets/criminal/2017cjrannual.pdf

[16] Megan Stevenson, *Assessing Risk Assessment in Action*, (December 8, 2017), George Mason Legal Studies Research Paper No. LS 17-25. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3016088 (accessed June 24, 2019)

[17] Human Rights Watch, *Not in it for Justice: How California's Pretrial Detention and Bail System Unfairly Punishes Poor People*, April, 2017, p. 91.

[18] Santa Cruz County Probation Department, Alternatives to Custody Report 2015, April 2016, p.11. file:///C:/Users/raphlij/Downloads/Snapshot-5956.pdf; Human Rights Watch, *Not in it for Justice: How California's Pretrial Detention and Bail System Unfairly Punishes Poor People*, April, 2017, pp. 99-100. https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly

[19] Megan Stevenson, Assessing Risk Assessment in Action, (December 8, 2017), George Mason Legal Studies Research Paper No. LS 17-25. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3016088 (accessed June 24, 2019)

[20] Human Rights Watch, *Not in it for Justice: How California's Pretrial Detention and Bail System Unfairly Punishes Poor People*, April, 2017, pp. 59-62. https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly

These inherent problems—decision-making based on non-contextual statistical predictions, racial and class bias, and subjectively adjustable scoring—are reason enough to reject use of the tools by a state seeking to implement an equitable system that respects the presumption of innocence. Additionally, the tools are not especially accurate[21] and rely on secretive formulas and data that makes it difficult, if not impossible, for defendants to understand how their scores were generated in order to challenge their recommendations.[22] The tools run counter to basic principles undergirding the US legal system, including that each person should be judged as an individual. International human rights law protects an individual's right to liberty from arbitrary curtailment, either through arbitrary laws or through arbitrary enforcement of the law.[23] The Inter-American Commission on Human Rights has emphasized that pretrial custody decisions should not be made by reference to pre-set formulas, patterns or stereotypes, but, instead, must be grounded in reasoning that contains specific, individualized facts and circumstances justifying such detention.[24]

Pretrial Reform Without Risk Assessment

Human Rights Watch recommends reforming the pretrial detention system by eliminating or strictly limiting money bail, but without replacing it with risk assessment tools. New York state recently passed a law that requires release for people accused of most lower-level categories of crimes, while requiring hearings with improved procedural guarantees for those eligible for detention. [25] Community organizations and national advocacy groups are supporting a pretrial reform framework, called "Preserving the Presumption of Innocence," which similarly favors release for lower-level categories of crimes, rigorous procedures for detention hearings for those eligible, and prohibition on the use of statistical prediction on risk assessment. [26] Human Rights Watch strongly supports this framework for reform. The city of Philadelphia recently changed policy to increase pretrial release, without relying on the tools, and found no significant increase in rates of new arrests or missed court appearances.[27]

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[21] Julia Angwin et al., "Machine Bias," *ProPublica*, May 23, 2016, https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing; Rowan Walrath, "Software Used to Make 'Life-Altering' Decisions Is No Better Than Random People at Predicting Recidivism," *Mother Jones*, January 17, 2018. https://www.motherjones.com/crime-justice/2018/01/compas-software-racial-bias-inaccurate-predicting-recidivism/ (accessed June 24, 2019)

[22] The Arnold tool has some degree of transparency about the factors it considers and how they are weighted. See Laura and John Arnold Foundation, "Public Safety Assessment: Risk factors and formula." https://www.psapretrial.org/about/factors However, Arnold has been criticized for not revealing how it developed its algorithms, why it used the data it chose to develop the system, whether it performed validation, and, if it did, what the outcomes were. John Logan Koepke and David G. Robinson, "Danger Ahead: Risk Assessment and the Future of Bail Reform," *Washington Law Review*, Vol. 93, December, 2018, p. 1803. http://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/1849/93WLR1725.pdf (accessed June 24, 2019)

[23] Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR). https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf (accessed June 24, 2019) The US has ratified the ICCPR.

[24] Inter-American Commission on Human Rights, Report on the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/VII, Doc. 46/13 (2013), para. 186. https://www.oas.org/en/iachr/pdl/reports/pdfs/Report-PD-2013-en.pdf (accessed June 24, 2019); The United States has signed, but not ratified, the American Convention, and as such is not legally bound by its provisions. However, the Inter-American Commission's guidance is a useful and authoritative guide to the protection of fundamental human rights. This is particularly true in this area, because the American Convention's due process guarantees are in many respects similar to those guaranteed under US law and by international instruments binding on the United States.

[25] https://www.courtinnovation.org/sites/default/files/media/document/2019/Bail_Reform_NY_Summary.pdf The New York law does not get rid of money bail in all cases, but restricts its use. It does not prohibit risk assessment, but does not require or encourage its use. It does set standards on the tools to mitigate their harms.

[26] Los Angeles Community Action Network, "Preserving the Presumption of Innocence: A New Model for Bail Reform," http://cangress.org/wp-content/uploads/2018/07/Preserving-the-Presumption-of-Innocence-Final-1.pdf (accessed June 24, 2019)

[27] Aurelie Ouss and Megan Stevenson, "Evaluating the Impacts of Eliminating Prosecutorial Requests for Cash Bail," February 17, 2019. file:///C:/Users/raphlij/Downloads/SSRN-id3335138.pdf (accessed June 24, 2019)

Illinois has an opportunity to reform its pretrial system in a way that increases fairness and respect for the rights of pretrial defendants without sacrificing public safety. Risk assessment tools have been heavily marketed as a shortcut to that goal, but, by their inherent nature, they fail to deliver the required fairness and may simply replace one unjust system with another. The state can achieve reform by respecting the presumption of innocence and providing for pretrial incarceration only where there is concrete evidence, proven through an adequate court process, that an individual poses a serious and specific threat to others if they are released. Human Rights Watch recommends having strict rules requiring police to issue citations with orders to appear in court to people accused of misdemeanor and low-level, non-violent felonies, instead of arresting and jailing them. For people accused of more serious crimes, Human Rights Watch recommends that the release, detain, or bail decision be made following an adversarial hearing, with right to counsel, rules of evidence, an opportunity for both sides to present mitigating and aggravating evidence, a requirement that the prosecutor show sufficient evidence that the accused actually committed the crime, and high standards for showing specific, known danger if the accused is released, as opposed to relying on a statistical likelihood.

Sincerely,

_____

John Raphling
Senior Researcher, US Program
Human Rights Watch
11500 W. Olympic Blvd., Suite 608
Los Angeles, CA 90064

I am a Licensed Clinical Social Worker and while currently retired have been a social worker for approximately 50 years, many of those years working for Metropolitan Services of Chicago. What I have observed is that there is not equal protection under the law when someone with resources can pay for bail, be free to work to support their family/ pay attorney fees compared to someone who can not pay bail and can not support the family, can not work on his/her case, etc. Additionally the family of the incarcerated person is impacted by loss of income and emotional support. The family then may turn to the limited support of the government for welfare, food stamps, etc while the government pays for the incarceration, room and board, guards, the medical bills of the inmate. The children are impacted and often need additional emotional help and have school issues due to the disruption of the family. Persons should not be detained due to lack of bail money or resources. It is a matter of fairness under the law. Persons who are dangerous should not be released regardless of their resources. Our jails and prisons are too costly and we also need to only detain those who are a threat to others. Our money would be better spent giving drug treatment, housing, education for adults.
Louise McCown

Hi,
I support No Money Bond because it separates the wealthy and the non-wealthy. Those who are arrested are asked to pay bond and if they can't then they are sent to jail to await their pretrial hearing while those who are able to post bond and go free. This is grossly unfair and especially to black and brown people. Those who can't make bond and are in prison may lose their jobs, lose their children to DCFS, lose income and in the end, may be found not guilty! HB3347 has built in help such as reminder calls and transportation assistance so they can attend their pretrial hearing.

I support HB 3347.
Linda Waycie

This Tennessee brought to light many problems with money bonds. It includes the President of TAPBA acknowledging "illegal practices" but doing nothing, sadly. There are dozens more reasons i support ending money bonds. Marce Holmquist https://www.timesfreepress.com/news/local/story/2018/apr/15/ex-bail-agent-sheriffs-wife-hunfair-advantage/468350/

What exactly is the purpose of bail bond? Yes, we want an arrestee to appear on a court date. But please consider that the arrestee has not been convicted of a crime yet. Is it proper to place in prison a person who is simply too poor to post bond?

Yes, we want to protect alleged victims. The Chicago Tribune this week is highlighting women who have been victimized and some killed, by intimate others whom courts sent back to the community with misdemeanors.

But we know that in Ferguson, Missouri poor people, mostly those who are black or brown, are arrested in order to pad funding for a municipality. Their arrests fund city operations, in effect.

In 2014, I went to Washington, D.C. to participate in an act of civil disobedience regarding children crossing our southern border. I walked past the Supreme Court with its stone wording about equal justice for all. As I passed the Supreme Court, I thought, "Ha, if one is of European ancestry, maybe, but otherwise this phrase is a cliché and not based in truth."

Until we have a legal system that indeed assures justice for all, bail bond stands a great chance of ruining a potentially innocent person's life, or being used to punish a person who is culturally different from the judge.

Janice Gintzler

To: the Commission on Pre-trial issues
From: Barbara Kessel, constituent of Rep. Carol Ammons

As a volunteer doing program at the Urbana County Jail for ten years, I have gotten to know some of the people who are there the longest - gun charges and people charged with sexual crimes.They are there for a long time, primarily because they have to wait six months for the results of the State Lab for prints and DNA analysis. It used to be four months a few years ago but has gotten worse.

This time lag could be so easily cured by additional resources from the State of Illinois to the Crime Laboratory.

The consequence of this lag is that when the evidence is exonerating, the case is dismissed and the person, generally a man, has just spent months to years in jail for nothing. Call it an Innocence tax.

On some occasions, the States Attorney does not send the material in to the lab, as they are attempting to sweat a plea out of the defendant; only when the defendant's lawyer indicates they are willing to go to trial do they send it in to the State Lab, and six months later, discover that the State has no case. This is an abuse of detainee's rights.

Barbara Kessel

State of Illinois
JB Pritzker
Governor

IGAC
Illinois Guardianship and Advocacy Commission

Dr. Mary L. Milano
Director

Human Rights Authority
Legal Advocacy Service
Office of State Guardian

June 26, 2019

Via email: **Pretrialhearings@illinoiscourts.gov**
Pretrial Comments
AOIC Probation Division
3101 Old Jacksonville Road
Springfield, IL 62704

Re: **Legal Advocacy Service**
Illinois Guardianship & Advocacy Commission,
Statement on Pretrial Reform in the Illinois Criminal Justice System

Stakeholder Interest

Legal Advocacy Service ("LAS"), is a division of the Illinois Guardianship and Advocacy Commission. When an individual with mental illness is arrested and awaiting adjudication of his or her criminal matter, a treatment team within the jail may initiate a civil proceeding to involuntarily treat that person with psychotropic medication if certain statutory criteria are met. Our agency serves as appointed counsel for those individuals in such contested proceedings at Cermak Health Services within Cook County Jail.[1] In other counties throughout the state, it is unclear what, if any, mental health treatment is provided while defendants await trial.[2]

As set forth herein, LAS is in favor of pretrial reform but encourages the Commission to develop any risk-based system of justice without stigma and without prejudice towards those with mental illness. As explained below, any meaningful reform of pretrial practices should acknowledge the urgent need to provide necessary training and infrastructure for mental health services in conjunction with this much-needed modernization. A mindful approach to the intersection of mental illness and the criminal justice system at the earliest point-of-contact is not

[1] In Cook County Jail, it is estimated that between 20 and 30 percent at any given time have a mental illness. *See* https://www.cookcountysheriff.org/departments/mental-health-policy-advocacy/

[2] The consensus is that access to psychiatric care appears to be worse in jails than in prisons. *See, e.g.*, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661478/

only warranted for the dignity of our clients but it would promote judicial economy and save costs at various inflections points.

Statement in Support

Pretrial reform is overdue. With the passage of the Bail Reform Act of 2017 and the formation of Illinois Supreme Court Commission on Pretrial Practices, an opportunity is here to finally meet an important obligation. Individuals with mental illness "are among the most disadvantaged members of our society, and when they end up in the criminal justice system, they tend to fare worse than others. People with mental illness are less likely to make bail and more likely to face longer sentences."[3] One recent study reports that "in every county in the United States with both a county jail and a county psychiatric facility, more seriously mentally ill individuals are incarcerated than hospitalized."[4] For those with a psychiatric condition, it is estimated that only about 40% of jail inmates were taking medication for their illness at the time of their arrest.[5] This jarring statistic reinforces the need for better community care and more robust linkage among providers to increase medication compliance and reduce recidivism. We expect that sheriffs at jails all across Illinois would concur that many of their "repeat" offenders would benefit from mental health services and substance abuse treatment (not additional jail time or compounded criminal charges).

Mental illness plays a significant role in how long an individual remains awaiting disposition of their criminal matter. "In Florida's Orange County Jail, the average stay for all inmates is 26 days; for mentally ill inmates, it is 51 days. In New York's Riker's Island, the average stay for all inmates is 42 days; for mentally ill inmates, it is 215 days."[6] Here, in Illinois, the statistics are likely similar or worse. Too often, individuals with mental illness languish in jail, awaiting results of a behavioral clinical exam ("BCX") so they can "be made fit" to resolve a minor offense (*e.g.* trespassing or shoplifting) – when that individual is eventually "restored to competency" to engage in a simple plea over a minor offense, months and months have elapsed; worse, as they wait for their next court date to finally resolve said matter, they sometimes cease taking medication and the fitness process starts all over again. Put another way, what would usually take days or weeks for someone to resolve his or her pending criminal matter, takes months and months due to the systemic dysfunction of how our criminal justice system handles mental illness. It is expensive and inhumane.

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[3] Alisa Roth, Insane: America's Criminal Treatment of Mental Illness 4 (2018).

[4] Serious Mental Illness (SMI) Prevalence in Jails and Prisons, (2016), https://www.treatmentadvocacycenter.org/storage/documents/backgrounders/smi-in-jails-and-prisons.pdf

[5] Andrew P. Wilper, MD, MPH, corresponding author Steffie Woolhandler, MD, MPH, J. Wesley Boyd, MD, PhD, Karen E. Lasser, MD, MPH, Danny McCormick, MD, MPH, David H. Bor, MD, and David U. Himmelstein, MD, The Health and Health Care of US Prisoners: Results of a Nationwide Survey (2009), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661478/

[6] Serious Mental Illness (SMI) Prevalence in Jails and Prisons, (2016), https://www.treatmentadvocacycenter.org/storage/documents/backgrounders/smi-in-jails-and-prisons.pdf

While we support the Commission's interest in pivoting to a risk-based form of pretrial assessment, we urge those involved to disenthrall themselves from any implicit or explicit biases associated with mental illness when designing such risk-based computations for purposes of pretrial release and bonds. "Having a mental health condition does not make a person more likely to be violent or dangerous. The truth is, living with a mental health condition makes you more likely to be a victim of violence, four times the rate of the general public. Studies have shown that 1 in 4 individuals living with a mental health condition will experience some form of violence in any given year."[7] Furthermore, if the central factor of assessing someone's "risk" for release into the community is his or her mental illness (and lack of medication compliance), the criminal court's remedy should not be further detention but engagement with local mental health facilities and providers. There are *civil* remedies and routes available (but not widely utilized) that can solve many of the ostensible dilemmas of the stakeholders in the criminal courts. So, for a meaningful development of a risk-based pretrial system, we urge the Commission to involve various mental health organizations that can help dispel various myths, prejudices, and misconceptions.

Given the above, is entirely unclear what "justice" is achieved when defendants with mental illness are subject to disproportionate pretrial practices. Their bonds are unfairly different, their disposition window is longer, and they are released with little-to-no community linkage. The cycle repeats and compounds until our jails have begun to look more and more like mental health facilities (in form only and not in substance). It has become the norm and it cannot continue.

Respectfully submitted,

Matthew R. Davison
Legal Advocacy Service
Illinois Guardianship & Advocacy Commission
Matthew.Davison@illinois.gov
312-520-7270

[7] Sarah Powell, Dispelling Myths on Mental Illness, (2015), https://www.nami.org/blogs/nami-blog/july-2015/dispelling-myths-on-mental-illness

COOK COUNTY HEALTH

Toni Preckwinkle
President, Cook County Board of Commissioners

John Jay Shannon, MD
Chief Executive Officer, Cook County Health

June 25, 2019

Attn: Pretrial Comments
AOIC Probation Division
3101 Old Jacksonville Road
Springfield, IL 62704

Dear Commission Members:

On behalf of Cook County Health, we appreciate the opportunity to submit comments to the Illinois Supreme Court's Commission on Pretrial Practices.

Cook County Health (CCH) is one of the largest public health systems in the nation. We have a longstanding history of providing care to all Cook County residents, regardless of their ability to pay or insurance status, through our network of hospitals, regional outpatient centers, community health centers, a comprehensive HIV and infectious disease specialty center, and at the Cook County Jail and Juvenile Temporary Detention Center. CCH also includes the Cook County Department of Public Health, serving most of suburban Cook County, and CountyCare, the largest Medicaid managed care plan serving Cook County Medicaid beneficiaries.

CCH has a unique perspective on the health needs of the justice-involved, both as a provider of care within Cook County's correctional facilities, and more recently in collaborative efforts with justice-system partners to leverage CCH's resources and expertise to divert individuals from and provide alternatives to the justice-system.

Thanks to the leadership of Cook County Board President Toni Preckwinkle, the daily population at the Cook County Jail has been reduced to historic lows. However, the number of detained individuals with significant behavioral health needs, including but not limited to opioid use disorder (OUD), remains high. While CCH is proud to provide high-quality health care to those at the Jail, including Medication Assisted Treatment (MAT) for those with OUD, we know that this and other health care is best delivered in the community, as arrest and admission to correctional facilities is a destabilizing event correlated with a risk for overdose mortality, and justice-involvement can exacerbate trauma for detained individuals and their families.

As such, we urge the Commission to adopt recommendations that move Illinois further towards an evidence-informed, risk-based approach when it comes to conditions of release for the justice-involved. Thank you for the opportunity to comment.

Sincerely,

John Jay Shannon, MD
Chief Executive Officer

CHICAGO COMMUNITY BOND FUND

June 30, 2019

Judge Robbin J. Stuckert
DeKalb County Courthouse
133 W. State Street
Sycamore, IL 60178

RE: Illinois Supreme Court Commission on Pretrial Practices

Dear Honorable Judge Robbin J. Stuckert,

This is a written submission of my story, which I also shared in testimony at the Commission's public listening session in Chicago on June 17, 2019. My name is Lavette Mayes, and I am an advocate for ending money bond and reducing pretrial incarceration. I've lived in Chicago all of my life. I have two children ages 9 and 18. In 2015, I had an altercation with a family member, and as a result, I was arrested. I was 45 years old at the time and had never been arrested before. I was incarcerated in Cook County Jail for 426 days because I could not afford my $250,000 D-bond. Because of my time in jail, I almost lost custody of my kids. I lost my housing, my savings and my business. After nine months, my bail was reduced to $9,500. Eventually, the Chicago Community Bond Fund and my family paid my bond.

Even though I was released from jail, I was still being punished. I spent another 145 days on electronic monitoring (EM), during which time I missed my kids' first day of school and was not able to play with them in front of our house. I have an autistic son, and if he had run away, I wouldn't have been able to chase after him. The fact that I could only go a very short distance from my house meant my kids were incarcerated in the house with me. Electronic monitoring also kept me from doing simple housekeeping tasks like hanging my clothes in the back yard or even taking out my garbage. While I was in jail, I had surgery and was given stitches. I wasn't able to get the stitches removed when I came home because I couldn't even get permission from Sheriff's Office to go to the hospital.

I wanted to contribute to the household where my children and I were staying, but I was not able to work. The Sheriff's Office claims people are able to work while on EM but if you don't already have a job, it's nearly impossible to get one while on house arrest. My family also had to be exposed to Sheriff's deputies coming into the home to check the monitoring equipment. Ultimately, I decided to sit my family down and let them know I was considering taking a plea because I couldn't stand to stay on house arrest. When you incarcerate a mother,

you incarcerate the entire family. This experience caused my children intense anxiety is still impacting them today.

Had there been a Supreme Court Rule in place that prevented wealth-based incarceration, my family never would have had to experience this. When people are released from jail, they shouldn't be placed on electronic monitoring, which is just another form of incarceration. People should be free while they fight their cases.

I'm asking this Commission to please recommend implementing a Supreme Court Rule to prevent pretrial incarceration due to unaffordable money bail and bring people home to their communities.

Sincerely,

Lavette Mayes
Advocate & Organizer

CHICAGO TEACHERS UNION

Jesse Sharkey
President
Stacy Davis Gates
Vice President
Michael E. Brunson
Recording Secretary
Maria T. Moreno
Financial Secretary

Affiliations
American Federation of Teachers, Illinois Federation of Teachers, American Federation of Labor - Congress of Industrial Organizaions, Illinois Federation of Labor - Congress of Industrial Organizations, and Chicago Federation of Labor, Industrial Union Council

June 27, 2019

Honorable Robbin J. Stuckert
Presiding Judge, 23rd Judicial Circuit
DeKalb County Courthouse
133 West State Street
Sycamore, IL 60178

Re: Supreme Court Commission on Pretrial Practices

Dear Honorable Robbin J. Stuckert:

The Chicago Teachers Union represents more than 25,000 teachers, paraprofessional and school-related personnel, and school clinicians working in the Chicago Public Schools and, by extension, the students and families they serve. Our members are responsible for educating the more than 396,000 students that attend Chicago Public Schools. We greatly appreciate the opportunity to address this commission regarding the impact that money bond and pretrial incarceration have on our students.

Approximately 85% of Chicago Public Schools students are Latinx or Black, and 87% of the student body resides in low-income households. Our students thus mirror those most greatly impacted by pretrial incarceration and money bond. The pretrial incarceration of CPS students and their family members disrupts their education and other positive connections to their communities. A short period of pretrial incarceration can cause students to fall behind in their studies and even force them to drop back an entire grade level. A 2018 study by the Prison Policy Institute found that formerly incarcerated people were eight times less likely to complete college than the general public.[1] That same study found that formerly incarcerated people were twice as likely to have no high school credential at all.

The pretrial incarceration of parents and other family members of CPS students also disrupts the lives of students and is a barrier to their short- and long-term academic success. Numerous studies have shown ties between parental incarceration and lower school performance. Pretrial incarceration can cause job loss, housing instability, increased stress, income loss, disruptions in caregiving and even the loss of parental custody. All of these factors impact a student's ability to perform well. One study found that 49% of children aged 9 to 14 with an incarcerated parent experienced behavioral problems at school which

[1] Lucius Couloute, "Getting Back on Course: Educational exclusion and attainment among formerly incarcerated people," *Prison Policy Institute* (Oct. 2018), available at: https://www.prisonpolicy.org/reports/education.html.

led to their suspension, and 45% expressed little or no interest in school.[2] Another study examined school performance among students aged 13 to 20 years old with currently incarcerated mothers and found that, compared to their best friends, adolescents with an incarcerated mother were more likely to be suspended, fail classes, drop out of school, and/or have extended absences from school.[3] Even a single day in police custody or jail can destabilize families' housing and their ability to meet basic financial needs. Furthermore, pretrial incarceration resulting from unaffordable money bonds immediately harms students and educational communities in a way that does not affect wealthier families who can afford to purchase their freedom.

Other forms of pretrial surveillance and control, such as electronic monitoring, do not provide a more just alternative to current pretrial practices. When a parent or other family member is confined to their home under curfews or house arrest, they are often unable to support students in the most basic and necessary ways, such as taking young people to medical appointments and interacting with educators through parent-teacher conferences. Rather than pretrial punishment, our students and their communities would benefit from increased resources and supportive services in the community. The court could also provide assistance in the form of phone call and text message reminders about court dates, childcare during court, and transportation assistance to get to court. These resources have been shown to be effective at increasing court appearance and also promote strong youth, families, and communities.

We are calling on the Illinois Supreme Court Commission on Pretrial Practices to recommend the implementation of the proposed supreme court rule that would end wealth-based pretrial incarceration and dramatically reduce the number of people jailed in the state of Illinois. No one should be incarcerated pretrial simply because they cannot afford to pay a money bond, and everyone should be granted maximum freedom in the community while awaiting trial. Thank you for the opportunity to submit this comment and for your commitment to increased justice for CPS students and their loved ones.

Sincerely,

Jesse Sharkey
President
Chicago Teachers Union

JS:yv

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[2] Thomas E. Hanlon, Robert J. Blatchley, Terry Bennett-Sears, Kevin O'Grady, Jason M. Callaman, Marc Rose, "Vulnerability of children of incarcerated addict mothers: implications for preventive intervention," *Children and Youth Services Review* (2005) 27:67–84.

[3] Ashton D. Trice and JoAnne Brewster, "The effects of maternal incarceration on adolescent children," *Journal of Police and Criminal Psychology*, 2004;19(1):27–35.

Honorable Robbin J. Stuckert
DeKalb County Courthouse
133 W. State Street
Sycamore, IL 60178

June 30, 2019

RE: Illinois Supreme Court Commission on Pretrial Practices

Dear Hon. Judge Stuckert:

Love & Protect is a Chicago-based community organization that supports women and gender non-conforming persons of color who are criminalized or harmed by state and interpersonal violence. We are pleased to submit a written comment to the Illinois Supreme Court Commission on Pretrial Practices. Due to the criminalization of survivors of domestic and sexual violence, we write in support of pretrial reform and ending the use of money bond.

Criminalization as a response to domestic violence often results in the arrest and prosecution of survivors themselves. A survey of DV survivors reported that 1 in 4 respondents were arrested or threatened with arrest during an incident or when reporting an incident to the police, even when they were injured. Additionally, the ACLU reports that close to 60 percent of people in women's prisons nationwide had a history of physical or sexual abuse prior to their incarceration. The potential for misarrest or dual arrest of both a survivor and their abuser is high, and this only further harms individuals striving for safety and stability in their lives.

In particular, people of color, people who are low-income, and members of the LGBTQ community are disproportionately affected by the criminalization of survivors. A divide runs along the marginalized aspects of one's identity between who is considered an "ideal victim" and who is viewed as a “dangerous criminal” rather than a survivor of violence. Because of stereotypes painting Black women as "aggressive," they are more likely to be seen as perpetrators when defending themselves, for example. A New York City study found that 66 percent of survivors who were arrested alongside or instead of their abusive partner were Black or Latinx, and 43 percent of them were living below the poverty line. Additionally, a national study of DV incidents reported by LGBTQ survivors showed that police misarrested the survivor as the perpetrator of violence 57.9 percent of the time. It is clear that practices leading to the incarceration of survivors have an outsized negative impact on those who are most vulnerable.

Besides disrupting a survivor's own life, pretrial incarceration of survivors does irreparable harm to their families and children. Women disproportionately experience severe intimate partner violence, with one in four women being survivors compared to one in nine men. Incarcerated women are often the primary caregivers for their families, and 80 percent of women in jails are mothers. When they are incarcerated, their children often experience a serious trauma. Some are funneled into the foster care system. Even those who live with another parent, grandparent, or known caregiver experience a severe disruption in their lives that can have lasting effects.

Sixty percent of women in local jails nationwide are being held pretrial. Due in part to the wage gap based on gender and race, exorbitant money bail is even more unaffordable for these women, who are disproportionately Black and Brown. When considering loss of income, loss of housing,

the monetary costs of incarceration (including, for example, expensive phone calls and commissary purchases), and the incalculable emotional and psychological toll it takes, the pretrial incarceration of survivors leads to great hardship for the families and communities who depend on them.

In order to rebuild their lives and move on from abuse and violence, survivors need resources like access to mental and physical health care and affordable long-term housing. Being incarcerated pretrial does not keep survivors safe, nor does it keep the rest of our communities safe. We ask that the Commission deeply consider the harm inflicted on survivors by pretrial incarceration and recommend the end of money bond in Illinois.

Signed,

The Members of Love & Protect

NAMI CHICAGO
Mental health advocacy, education and support.

Honorable Robbin J. Stuckert
Chief Judge
DeKalb County Courthouse
133 W. State Street
Sycamore, IL 60178

06/20/2019

RE: Illinois Supreme Court Commission on Pretrial Practices

Dear Honorable Robbin J. Stuckert:

On behalf of NAMI Chicago, a local affiliate of the National Alliance on Mental Illness (NAMI), I am pleased to submit testimony to the Illinois Supreme Court's Commission on Pretrial Practices. NAMI Chicago is encouraged by the Illinois Supreme Court's commitment to reforming the pretrial practices in the state, which disproportionately impact people living with mental health conditions.

Ensure Mental Health and Substance Use Treatment Will Always Be Voluntary

The Commission should recommend that mental health or substance use treatment always be voluntary when included as a condition of pre-trial release. Requiring compliance to a treatment regimen as a condition of release will lead some individuals with a mental health condition or substance use disorder to be incarcerated simply for failing to comply because as medical conditions, individuals are prone to periods of relapse. The National Institute of Corrections recommends as best practice that mental health and substance use treatment only be voluntarily imposed when recommended as conditions of pre-trial release.[1]

Identify and Support Individuals with Mental Health Conditions through Pretrial Services

The Commission should encourage and support local courts, as they develop pretrial services agencies, to employ and empower trained staff that provide evidence-based universal screenings, referrals, and recommendations to the court. The goal of these services should be to divert individuals with mental health conditions from the criminal court system. Utilizing clinicians to screen individuals for diversion at the earliest possible stage in the pre-trial process is imperative to increase the likelihood of appearance at court dates and long-term stability, as is currently done in Cook County Jail.

In addition to receiving screening, all defendants who need mental health care should receive high quality mental health services in a clinically appropriate setting, whether accessed within the community or in custody pending trial.[2] Pretrial services must provide individualized support with person-centered services. Many individuals, particularly those with serious mental health conditions, can benefit from individualized, clinically informed case management services to ensure appearance at court dates, connect with services, and reduce future criminal court involvement. Judges also need training and guidance from the Illinois Supreme Court to successfully recognize and understand behavioral health needs of individuals who stand before them.

Build Partnerships with Community-Based Providers as Criminal Court Diversion

Roughly seventeen percent of individuals entering jails live with serious mental illness, compared to about five percent of the general population.[3] Individuals living with mental health conditions are less likely to make bail or may take longer to make bail, resulting in even greater disproportionate representation of this population in

[1] Pilnik, L. (2017). *Essential Elements of a High Functioning Pretrial System and Agency*. Washington, DC: National Institute of Corrections.
[2] VanNostrand, M. and Lowenkamp, C. (2013). *Exploring the Impact of Supervision and Pretrial Outcomes*. New York: Laura and John Arnold Foundation.
[3] Fader-Towe, H. (2015). "Improving Responses to People with Mental Illness at the Pretrial Stage," Council of State Governments.

average daily jail populations.[4] To address this stark overrepresentation, the Commission should encourage courts in the state to form strong partnerships with community-based treatment providers to connect individuals with needed mental health services throughout system involvement.

Invest in Court Diversion Programs

The Commission should encourage local law enforcement and municipalities to support diversion models to reduce the criminalization of mental health conditions while maintaining public safety. To achieve this goal, the Commission should advocate for expanded investment in evidence-based criminal court diversion programs in the state, which are central to protecting the civil rights of people living with mental health conditions and connecting individuals to treatment and support services. Mental health courts, for both juveniles and adults, have been proven to reduce recidivism and improve connections to mental health and other support services.[5] Additionally, the Commission should advocate for pre-arrest diversion. For example, community triage centers, of which there are currently two in Chicago, offer law enforcement an alternative to arrest for individuals in need of mental health treatment.

Advocate for Increased State Investment in Mental Health Treatment Services

Discussions about pretrial best practices for individuals living with mental health conditions must acknowledge the shortage of mental health treatment options available in many communities across the state, particularly in communities of color. The Commission should advocate for increased availability of community-based mental health and substance use treatment to reduce reliance on the criminal court system, which currently acts as the largest provider of mental health services in the state.[6] The resources spent providing services to individuals in jails would be better utilized if redirected to providing care in the community.

Reduce All Pretrial Detention to Reduce Community Trauma

Jails are not an appropriate treatment setting for individuals with mental health conditions. The trauma of incarceration can aggravate symptoms of mental health conditions. Incarceration for any period of time disconnects individuals from their community and support systems, and often causes the loss of housing and employment, which continues a cycle of crisis that underlies previous justice involvement. Any amount of pretrial detention increases the likelihood of future criminal activity, both pretrial and years after case disposition.[7]

NAMI Chicago appreciates the Illinois Supreme Court's commitment to improving pretrial practices across the state. We encourage the Court to continue collaboration with a wide range of stakeholders to develop policies that will lead to life-changing outcomes for thousands of individuals living with mental health conditions across the state. Thank you for the opportunity to provide written testimony.

Sincerely,
Rachel Bhagwat
Coordinator of Growth and Engagement
NAMI Chicago

[4] Fader-Towe (2015).
[5] Council of State Governments Justice Center (2008). *Mental Health Courts: A Primer for Policymakers and Practitioners*. New York: Council of State Governments Justice Center.
[6] Ford, M. "America's Largest Mental Hospital is a Jail." *The Atlantic*. June 8, 2015. Accessed June 5, 2019. LINK.
[7] VanNostrand, M. (2013).

I am here today to express my support and gratitude for the improvements in Cook County bond court. Over the past four years, the Cook County Jail daily general population has declined substantially from about 10,000 people to 5, 462 as of last Friday, **without creating a negative impact on public safety.**

I would be remiss if I did not star by thanking those who have helped us achieve those gains. Our efforts have been aided by Justice Ann Burke, retired federal judge Davis Coar, the Civic Consulting Alliance and the Supreme Court of Illinois who worked with us early on to take a critical look at the practices in Bond Court and supported our efforts to work more collaboratively as a system, implement better pre-detention screenings and increase our transparency through the Chief Judge's quarterly report on pretrial outcomes. Chief Judge Evan's Order 18.8A has dramatically impacted pretrial detention in Cook County.

We are also greatly to MacArthur Foundation which has invested in our bail reform efforts including our work under the Safety and Justice Challenge and which previously funded projects in our central bond court that helped improve the quality of information provided to judges and the consistency of judicial decision making.

I want to thank Judge John Kirby and his entire team who have worked hard to fully implement Illinois law that permits cash bail only as a last resort. We have seen how the use of a risk assessment tool has helped us to safely release more defendants to await their trial at home. I have been pleased to help provide the funds for, and collaborate with our partners, to improve the physical space where pre-bond court interviews are held, as well as implement call and text court reminders.

I want to address a disturbing falsehood that is circulating about the changes in bond court and community safety. We are being told that defendants are being released in a manner that imperils public safety. This is not true. 85% of felony defendants appeared for ALL of their scheduled court dates and only one half of one percent of felony defendants acquired a new violent criminal charge. These rates have not increased despite the substantial reductions we have made to the jail population.

The efforts made so far in Cook County are important because they make Cook County safer, are fiscally responsible, and comply with the law. However, our work is not done here. We still have stark racial and ethnic disparities in our jail population and there are still people in the jail who can be safely released. For that

reason, we will continue to work to make the justice system more equitable and truly just.

I urge the Illinois Supreme Court to join with us in this mission by adopting these new rules under discussion, which require that monetary bond, if imposed, be set only in amounts that the accused can afford. Thank you for your time and for considering this important issue across all of Illinois' communities.

MetropolitanPlanningCouncil

Hon. Robbin J. Stuckert
Chief Judge, 23rd Judicial Circuit DeKalb County Courthouse
133 W. State Street
Sycamore, IL 60178

Honorable Robbin Stuckert:

For more than 85 years, the Metropolitan Planning Council has worked to create prosperous, equitable and sustainable communities throughout the Chicago region by implementing solutions that result in vibrant neighborhoods, quality housing, and a strong economy. **Because of our interest in a thriving Chicago region and our deep knowledge of the costs of racial inequity, MPC supports reforms to pretrial detention, including eliminating money bail, waivers for inequitable fines and fees, and implicit bias training for representatives of the criminal justice system**.

Throughout the U.S., hundreds of thousands of people languish in local jails simply because they lack the financial means to pay bail. The results are lost jobs, lost housing, and severed families and community ties.[65] In addition, court fines, fees and costs that people simply cannot afford to pay regularly lead to lost opportunities, whether through jobs, housing, suspension of driver's licenses and even re-incarceration.[66]

As of December 2017, we estimate that 3,300 people are incarcerated in Cook County Jail (CCJ) due to an inability to pay their bail.[77] These 3,300 people represent approximately 57 percent of the current jail population, and a yearly total of $198 million ($60,000 per detainee) in county taxpayer dollars due to unnecessary pretrial detention.[78]

These statistics are grim, but they become even more so in light of their **racially inequitable distribution**. Racial disparities have been documented in nearly every aspect of the criminal justice system, from traffic and street stops to arrests to sentencing. As we documented in our report *The Cost of Segregation*, racial inequity, perpetuated in part by the criminal justice system, **costs Chicago alone approximately 4.4 billion dollars and 229 lives per year**. These are unacceptable costs for all Chicagoans, and demonstrate the need for decisive policy action.

Thankfully, momentum is growing to address these racially and economically inequitable outcomes. The State should act swiftly to ensure that the criminal justice system does its part to rectify the problem. As we argued in *Our Equitable Future*, the State should take the following actions to address racial inequity in pretrial penalties:

- Eliminate wealth-based pretrial detention by prohibiting the use of secured money bail;

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- Create a statutory waiver for the imposition of criminal court fees and costs on the poor;
- Require implicit bias training for judges, prosecutors, public defenders, pretrial services officers and all criminal court system staff.

These changes are in line with Illinois State law, which already requires judges to consider the ability of accused people to pay a monetary bond.[74] In 2017, Cook County Chief Judge Timothy Evans created a process for judges to follow this law with the goal of eliminating pretrial detention based only on poverty.[75]

In taking these actions, the State can strive toward racial and economic equity while ensuring the safety of Illinois' residents and saving money. We know this because of the experience of other governments. For example, in Washington D.C., 85 percent of defendants are released without bail, yet 90 percent of them show up for their court dates and 91 percent of them stay out of trouble while free. The district also saves at least $398 million a year—more than $1 million a day—by releasing defendants into supervision programs that are far less expensive than keeping the defendants behind bars.[76]

We are heartened to see that the State takes the issue of pretrial detention seriously enough to solicit input from stakeholders and community groups. We thank you for the opportunity to speak on this matter, and we welcome the opportunity for further discussion.

Sincerely,

MarySue Barrett
President
Metropolitan Planning Council

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June 30, 2019

JUSTIN SLAUGHTER
State Representative • 27th District

VICE CHAIRPERSON
- Economic Justice & Equity
- Health & Healthcare Disparities

COMMITTEES
- Judiciary - Criminal
- Appropriations Elementary & Secondary Education
- Restorative Justice
- Police & First Responders
- Business Incentives For Local Communities

Honorable Robbin J. Stuckert
Presiding Judge, 23rd Judicial Circuit
DeKalb County Courthouse
133 W. State Street
Sycamore, IL 60178

RE: Illinois Supreme Court Commission on Pretrial Practices

Dear Hon. Judge Stuckert:

As the Chair of the Illinois House of Representatives Judiciary-Criminal Committee and sponsor of HB3347, the Equal Justice for All Act, I am pleased to submit testimony to the Illinois Supreme Court Commission on Pretrial Practices. I strongly oppose the continued use of secured money bond in Illinois and recently convened a subject matter hearing on bond reform in Springfield. I urge the Commission to recommend the adoption of the proposed Supreme Court Rule that would prohibit pretrial incarceration based on the inability to pay a money bond.

As you know, more than 90% of people in Illinois jails are incarcerated pretrial—a considerably higher rate than the national rate of 67%. Every year, more than 267,000 people are admitted to 92 county jails in Illinois even though they have not been convicted of a crime and are presumed innocent. The majority are jailed only because they cannot afford to pay a money bond. It is time for Illinois to end this unjust practice of money bond.

HB3347 will make the system fairer and safer for all Illinois residents. This bill will ensure that access to money will not determine whether or not an accused person is detained in jail or subject to other conditions before their trial. By replacing a wealth-based system with a common-sense approach to justice for those presumed innocent, HB3347 will provide that all Illinoisans, regardless of their income, are treated fairly by the courts. I am proud to sponsor this important legislation and to work together with the Coalition to End Money Bond.

I commend the Commission and your steadfast work to improving pretrial practices across Illinois. I urge you to recommend the adoption of the proposed Supreme Court Rule that would prohibit pretrial incarceration based on the inability to pay a money bond. Because ending money bond and reducing pretrial incarceration in Illinois is of the utmost importance, I am ready to advance HB3347 with my colleagues in the Illinois General Assembly if the Commission does not recommend the adoption of the proposed rule. Thank you for the opportunity to submit written testimony.

Sincerely,

Justin Slaughter
Illinois State Representative, 27th District
Chair of the Illinois House Judiciary-Criminal Committee

ILLINOIS HOUSE OF REPRESENTATIVES

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60641

Springfield Office:
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Springfield, IL
62706

June 25, 2019

Honorable Robbin J. Stuckert
Presiding Judge, 23rd Judicial Circuit
DeKalb County Courthouse 133 W.
State Street Sycamore, IL 60178

RE: Illinois Supreme Court Commission on Pretrial Practices

Dear Hon. Judge Stuckert:

On behalf of myself and the Progressive Caucus of the Illinois House of Representatives , I am pleased to submit testimony to the Illinois Supreme Court Commission on Pretrial Practices. Our caucus strongly opposes the continued use of secured money bond in Illinois and is working with our colleagues in Springfield to put an end to the practice. I urge the Commission to recommend the adoption of the proposed Supreme Court Rule that would prohibit pretrial incarceration based on the inability to pay a money bond.

A common argument in opposition of ending money bond is that funds collected from bonds posted currently provide necessary funds for the operation of important programs such as public defenders and victims' services programs. We also believe these services are vital—so vital, in fact, that they should be funded reliably and fairly through Illinois' state budget process. There are ample alternative sources of funding for these services, such as increasing taxes on corporations and closing current tax loopholes. The Progressive Caucus is committed to finding money to pay for these services without threatening legally innocent people with incarceration.

The presumption of innocence is a cornerstone of our criminal justice system. The practice of locking up individuals who are presumed innocent for weeks or even months unless someone who cares about them pays a sum of money is exploitative and unjust. Using bond money to fund vital government services is immoral and creates a perverse incentive for its ongoing use by the courts. Nevertheless, we continue to hear that funding these services is an excuse to continue the extortion of family members of people in jail. In fact, at a legislative subject matter hearing in April of this year, guaranteeing income to both fund services and collect on other court fines, fees, and costs was the primary objection raised to abolishing secured money bond. This is a shameful motivation for bad policy, and we are looking forward to changing it.

The Progressive Caucus of the Illinois House of Representatives appreciates your commitment to improving pretrial practices across Illinois. We urge you to consider alternative ways to raise revenue to pay for the vital programs that revenue from money bonds is currently funding, and we urge you to completely abolish secured money bond. Thank you for the opportunity to provide this written testimony.

Sincerely,
Will Guzzardi Illinois State
Representative, 39th District
Co-Chair of the Illinois House
Progressive Caucus

Law Office of the
COOK COUNTY PUBLIC DEFENDER

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Amy P. Campanelli • Public Defender

June 28, 2019

Sent via email to: Pretrialhearings@illinoiscourts.gov

Illinois Supreme Court Commission on Pretrial Practices
Pretrial Comments
AOIC Probation Division
3101 Old Jacksonville Road
Springfield, IL 62704

Re: **Recommendations re: Pretrial Reform in Illinois**

Dear Commission Members,

I am writing to urge you to recommend that the Illinois Supreme Court implement the proposed rule entitled *Hearings on Pretrial Release* that I submitted to the Administrative Office of the Illinois Courts on October 13, 2017, on behalf of the Cook County Criminal Justice stakeholders and numerous local and national community organizations.

The proposed rule seeks to eliminate wealth-based pretrial detention and ensure that judicial decisions about pretrial detention and release of presumptively innocent individuals are based on legitimate considerations rooted in evidence, providing in essence that:

1) In any case in which a court imposes a financial condition of pretrial release, the court shall conduct an inquiry into the accused person's financial resources and ability to pay.

2) The court shall not impose a financial condition of release unless the court finds, in writing on the record, that the accused has the present ability to pay the financial condition.

The proposed rule is very similar to General Order 18.8a, which was issued in Cook County by the Honorable Chief Judge Timothy C. Evans in September 2017. Since that order was implemented, Cook County has seen a drastic reduction in the number of defendants who are incarcerated pretrial. According to a recent report issued by the Office of the Chief Judge, bond court reform has helped to close the racial gaps in pre-trial decisions. Specifically, there was a 117% increase in the number of black defendants receiving I-Bonds and an 80% increase in the number of Hispanic defendants receiving them. Additionally, the report reflects that 83% of released defendants appear for court appearances, and a very small fraction -- 0.6% -- were charged with a new violent offense while released pre-trial. This data shows that bond court reform can be done in a safe and effective manner.

Thankfully, my clients in Cook County have benefitted from bond court reform. However, this benefit should not be limited to cases pending in Cook County; defendants throughout Illinois should also benefit. It is imperative that the Illinois Supreme Court act to ensure uniformity in practice throughout the state. Time is of the essence. If a new Chief Judge is elected in Cook County, we run the risk that General Order 18.8a may be not exist beyond Chief Judge Evans' tenure, potentially undoing the

progress that has been made thus far in Cook County.

The proposed Supreme Court rule would ensure that the success of bond court reform we have experienced in Cook County would be implemented for the benefit of defendants throughout the state, and without jeopardizing public safety.

Therefore, I hope you will consider recommending that the Illinois Supreme Court implement the proposed rule as a part of its overall pretrial reform strategy. If you have any questions or require any additional information, please do not hesitate to contact my Deputy of Policy & Strategic Planning, Era Laudermilk at Era.Laudermilk@cookcountyil.gov or (312) 603-8389.

Sincerely,

Amy P. Campanelli
Public Defender of Cook County

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June 26, 2019

Illinois Supreme Court Commission on Pretrial Practices
AOIC Probation Division
3101 Old Jacksonville Road
Springfield, IL 62704
Via email: pretrialhearings@illinoiscourts.gov

RE: Pretrial Reform Comments

TASC appreciates the opportunity to provide comments on pretrial reform to the Commission. Our comments are informed by extensive experience working with **people involved in the justice system who have substance use conditions,** often co-occurring with other behavioral and medical conditions and social service needs.

For over 40 years, TASC has connected people involved in the justice system to substance use treatment and other services in the community. Through our statewide alternative-to-prison program, collaborations with problem-solving courts, and community reentry services for people leaving state prisons who have received facility-based treatment, we provide substance use assessments, planning, linkage to treatment, and ongoing case management**.** We also partner with the Cook Co. Sheriff's office and other provider organizations on the Supportive Release Center Program (SRC), which offers an overnight stay and linkage to care for men leaving the jail who are struggling with substance use disorders, mental illness, and/or homelessness and need a safe place to go. Program partners are currently working to open the program and distribute naloxone (opioid overdose reversal medication) to people who bond out of jail.

As the Commission considers issues related to pretrial reform, **we strongly recommend meaningful consideration and incorporation of current scientific knowledge related to substance use and mental health conditions, symptomology, access to care, and appropriate delineation of roles and responsibilities related to such care.**

Across the country, nearly two-thirds of individuals sentenced to jail meet diagnostic criteria for a substance use disorder, compared to 5 percent in the general population.[1] A survey of substance use among people who were arrested found that over 80 percent in Chicago tested positive for at least one illicit substance.[2] These statistics reflect the results of decades of the stigmatizing of addiction, exemplified in punitive laws, funding decisions, and sparse availability of and access to community-based treatment and care. In other words, substance use disorders and their symptoms have long been criminalized rather than medicalized,[3] with people who have substance use disorders concentrated and managed in criminal justice rather than healthcare systems.

In recent years, recognition of the elevated prevalence of substance use disorders among justice-involved populations—and of their associated costs to governments and taxpayers—has grown, along with leaps in scientific understanding of addiction as a treatable biopsychosocial condition. This recognition has coalesced with widespread acknowledgement of iatrogenic effects of incarceration on the health and well-being of individuals and families[4,5] and correlation with recidivism, even short jail stays,[6] as well as with coordinated campaigns to reduce the overuse of pretrial detention. Some jurisdictions have engaged in efforts to better identify treatment needs among justice-involved populations, and to provide or facilitate connections to appropriate care, often in community settings rather than jail.

As these efforts continue and expand, policymakers, judges, and jail administrators are called upon to broaden and deepen their collective understanding of substance use conditions, their symptoms, and evidence-based treatment, and their roles and responsibilities in addressing addiction.

For example, stigma and misunderstandings about addiction remain persistent[7] and pernicious problems, influencing public policy and impeding treatment access[8] (i.e., criminalization of drug use and possession, drug treatment and diversion programs that discharge individuals for even briefly returning to use as they navigate early recovery). Stigma and misunderstandings contribute to over-imposition of pretrial and sentence-based jail time when criminal behaviors are divorced from an understanding of the symptomology underlying them, as well as to misguided efforts to fund criminal justice system operations through fines and fees imposed upon those whose offenses are related to undertreated substance use disorders.

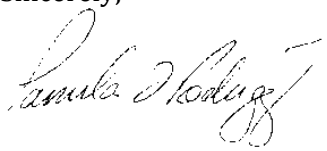
Further, while jails are required to provide necessary healthcare,[9] and should be lauded for increased efforts to do so and to improve the quality and scope of care, **it is a misuse of incarceration when individuals are sent to or kept in jail longer than legally required *as a means of* connecting them with care.** While perhaps well-intended, this function falls well outside of the fundamental purpose of jail, and may well do more harm than good. Facility-based treatment remains sparse—only 14 percent of sentenced people in jail and 15 percent of people in prison who needed treatment get it. Outside of treatment, what is available is often self-help group or peer counseling, and even that is very limited (accessed by only 17 percent of sentenced people in jail and 25 percent of people in prison meeting criteria for a substance use disorder).[10] Since even short stays in jail can have harmful, long-lasting effects on individuals, families, and communities, any among us who might be inclined to hold people in jail so they can get treatment should ask ourselves whether we would make the same choice in order to help someone get treatment for diabetes or hypertension.

Incarceration is not the advised setting for medical care.

Instead, challenges related to addressing substance use disorder among justice populations should be addressed through a systems-based, collaborative approach, with efforts to grow community capacity for a full range of evidence-based substance use treatment and services, including withdrawal management, FDA-approved medications, counseling, distribution of overdose reversal medication to individuals (and their family and friends), recovery/peer support, cross-discipline referral networks, and robust diversion options that redirect individuals early and throughout criminal justice involvement to community-based treatment. **People in jails in prisons who need substance use treatment should certainly have access to it, but should not be held there as a way to facilitate it.**

Thank you for your consideration, and please feel free to contact me at (312) 573-8372 or prodriguez@tasc.org for any reason.

Sincerely,



Pamela F. Rodriguez
President & CEO

[1] Bronson, J. and Stroop, J. (2017). *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009.* Bureau of Justice Statistics, Office of Justice Programs, Publication No. NCJ 250546. Washington, DC: U.S. Department of Justice.

[2] Office of National Drug Control Policy (2014). *2013 Annual Report, Arrestee Drug Abuse Monitoring Program II.* Washington, DC: Executive Office of the President.

[3] National Research Council. (2014). *The Growth of Incarceration in the United States: Exploring Causes and Consequences. Committee on Causes and Consequences of High Rates of Incarceration,* J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

[4] National Research Council. (2014). *NOTE: See chapter 7 for a discussion of the consequences of incarceration on health and mental health, chapter 8 for a discussion of the consequences related to future employment and earning potential, and chapter 9 for a discussion of consequences for families and children.*

[5] Martin, E. (2017). Hidden Consequences: The Impact of Incarceration on Dependent Children. *NIJ Journal,* No. 278.

[6] Lowenkamp, C. T., VanNostrand, M., and Holsinger, A. (2013). *The Hidden Costs of Pretrial Detention.* Houston: Laura and John Arnold Foundation.

[7] Perrone, M. (5 April 2018). *AP-NORC Poll: Most Americans See Drug Addiction as a Disease. U.S. News and World Report.* Retrieved from https://www.usnews.com/news/news/articles/2018-04-05/ap-norc-poll-most-americans-see-drug-addiction-as-a-disease.

[8] Yang, L., Wong, L. Y., Grivel, M. M., and Hasin, D. S. (2017). Stigma and Substance Use Disorders: An International Phenomenon. *Current Opinion in Psychiatry, 30*(5):378–388.

[9] National Research Council. (2014).

[10] Bronson, J. and Stroop, J. (2017).

To,
Honorable Robbin J. Stuckert,
Chair, Illinois Supreme Court Commission on Pretrial Practices,
AOIC Probation Division,
3101 Old Jacksonville Road,
Springfield, IL 62704, United States of America.
Submitted via e-mail to pretrialhearings@illinoiscourts.gov

June 30, 2019

Sub: Illinois Supreme Court Commission on Pretrial Practices Public Comments

Dear Honorable Judge Robbin Stuckert and members of the Commission:,

We write this letter in our personal capacities as researchers in the fields of statistics,machine learning and artificial intelligence, law, sociology, and anthropology. In recent years, an increasing number of court systems have adopted actuarial pretrial risk assessments.Recognizing the importance of a defendants constitutional presumption of innocence, as well as the practical impact of pretrial detention, the Illinois Supreme Court Commission on Pretrial Practices is evaluating current pretrial decision-making practices in Illinois in order to provide recommendations for reform.

Pretrial risk assessment tools are often promoted as an essential part of bail reform that can help judges make more informed, objective pretrial decisions, thereby mitigating racial bias and reducing pretrial incarceration rates without increasing rates of pretrial crime or missed court appearances. We have closely watched the development and deployment of these tools,conducted independent research, and carefully studied other research in this field.

We include with this letter a statement of grave concerns with the technical flaws of pretrial risk assessments. These tools suffer from serious methodological flaws that undermine their accuracy, validity, and effectiveness. As academic researchers in relevant fields, we feel obligated to communicate these concerns to assist the Illinois Supreme Court Commission on Pretrial Practices as it continues to consider pretrial reforms.

Thank you for your consideration.

Enclosure:
Statement re: ***Technical Flaws of Pretrial Risk Assessments Raise Grave Concerns***.

TECHNICAL FLAWS OF PRETRIAL RISK ASSESSMENTS RAISE GRAVE CONCERNS

SUMMARY

Actuarial pretrial risk assessments suffer from serious technical flaws that undermine their accuracy, validity, and effectiveness. They do not accurately measure the risks that judges are required by law to consider. When predicting flight and danger, many tools use inexact and overly broad definitions of those risks. When predicting violence, no tool available today can adequately distinguish one person's risk of violence from another. Misleading risk labels hide the uncertainty of these high-stakes predictions and can lead judges to overestimate the risk and prevalence of pretrial violence. To generate predictions, risk assessments rely on deeply flawed data, such as historical records of arrests, charges, convictions, and sentences. This data is neither a reliable nor a neutral measure of underlying criminal activity. Decades of research have shown that, for the same conduct, African-American and Latinx people are more likely to be arrested, prosecuted, convicted and sentenced to harsher punishments than their white counterparts. Risk assessments that incorporate this distorted data will produce distorted results. These problems cannot be resolved with technical fixes. We thus strongly recommend turning to other reforms.

ACTUARIAL RISK ASSESSMENTS DO NOT ACCURATELY MEASURE PRETRIAL RISKS

When making pretrial release decisions, judges must impose the least restrictive conditions of release necessary to secure the presence of a person at trial and protect the safety of the community. To accomplish this task, judges must identify and mitigate specific pretrial risks, specifically of a person causing serious harm to the community or fleeing the jurisdiction prior to their trial. Today's pretrial risk assessments are ill-equipped to support judges in evaluating and effectively intervening on these specific risks, because the outcomes that these tools measure do not match the risks that judges are required by law to consider. For example, many risk assessments only provide a pretrial failure risk score, which is a combined outcome of missing a court appearance or being rearrested. Many scholars have warned that such a composite score could lead to an overestimation of both flight and danger, and can make it more, not less, difficult to identify effective interventions.[1]

Even when pretrial risk assessments break out risk scores into distinct categories, the data used to define and measure flight and danger are inexact and overly broad. For example, risk assessments frequently define public safety risk as the probability of arrest.[2] When tools conflate the likelihood of arrest for any reason with risk of violence, a large number of people will be labeled a threat to public

[1] E.g., Lauryn P. Gouldin, *Disentangling Flight Risk from Dangerousness*, 2016 **BYU L. Rev.** 837, 88788 (2018). The interventions which improve an individuals likelihood of appearing in court (text reminders, transportation services, flexible scheduling) are often quite different from interventions designed to ensure community safety (stay-away orders, curfews, drug testing).

[2] For example, the Colorado Pretrial Assessment Tool (CPAT) defines a risk to "public safety" as any new criminal filing, including for traffic stops and municipal offenses. **The Colorado Pretrial Risk Assessment Tool Revised Report** 18 (2012).

safety without sufficient justification. Risk assessments that include minor offenses, such as driving on a suspended license, in their definition of danger, run the risk of increasing pretrial incarceration rates and further exacerbating racial inequalities in pretrial outcomes.[3]

Some risk assessments define public safety risk more narrowly as the risk that a person will be arrested for a violent crime while on pretrial release. But because pretrial violence is exceedingly rare, it is challenging to statistically predict. Risk assessments cannot identify people who are more likely than not to commit a violent crime. The fact is, the vast majority of even the highest risk individuals will not go on to be arrested for a violent crime while awaiting trial. Consider the dataset used to build the Public Safety Assessment (PSA): 92% of the people who were flagged for pretrial violence did not get arrested for a violent crime and 98% of the people who were not flagged did not get arrested for a violent crime.[4] If these tools were calibrated to be as accurate as possible, then they would predict that every person was unlikely to commit a violent crime while on pretrial release. Instead, risk assessments sacrifice accuracy and generate substantially more false positives (people who are flagged for violence but do not go on to commit a violent crime) than true positives (people who are flagged for violence and do go on to be arrested for a violent crime).[5] Consequently, violence risk assessments could easily lead judges to overestimate the risk of pretrial violence and detain more people than is justified.[6]

Finally, current risk assessment instruments are unable to distinguish one person's risk of violence from another's. In statistics, predictions are made within a range of likelihood, rather than as a single point estimate. For example, a predictive algorithm might confidently estimate a person's risk of arrest as somewhere between a range of five and fifteen percent. Studies have demonstrated that predictive models can only make reliable predictions about a person's risk of violence within very large ranges of likelihood, such as twenty to sixty percent.[7] As a result, virtually everyone's range of likelihood overlaps. When everyone is similar, it becomes impossible to differentiate people with low and high risks of violence. At present, there is no statistical remedy to this challenge.

DATA USED TO BUILD PRETRIAL RISK ASSESSMENTS ARE DISTORTED

Risk assessments are frequently posited as a solution to judges' implicit biases. Yet the data used to build pretrial risk assessments are deeply flawed and racially biased. Pretrial risk assessments rely on historical records of arrests, charges, convictions, and sentences to generate predictions about an individuals propensity for pretrial failure. These tools assume that criminal history data are a reliable and neutral measure of underlying criminal activity, but such records cannot be relied upon for this purpose. Arrest records are both under- and over-inclusive of the true crime rate. Arrest records are

[3] For decades, communities of color have been arrested at higher rates than their white counterparts, even for crimes that these racial groups engage in at comparable rates. As a result, people of color are more likely to be labeled as dangerous than their white counterparts when arrest data is used to measure public safety risk. Thus, they will bear a disproportionate amount of the burdens that stems from these harmful conflations between arrest and danger.

[4] **Public Safety Assessment, PSA Results** (2019).

[5] Julia Angwin et al., *Machine Bias*, **Propublica** (May 23, 2016), https://www.propublica.org/article/machinebias-risk-assessments-in-criminal-sentencing. These inaccuracies are very much mediated by race African Americans were twice as likely to be mislabeled as high risk than their white counterparts.

[6] For example, a recent study found that people significantly overestimate the recidivism rate for individuals who are labeled as moderate-high or "high" risk on a risk assessment. Daniel A., Krauss, Gabriel I. Cook & Lukas Klapatch, *Risk Assessment Communication Difficulties: An Empirical Examination of the Effects of Categorical Versus Probabilistic Risk Communication in Sexually Violent Predator Decisions*, **Behav. Sci. & L**. (2018). (Participants greatly overestimated the true recidivism rate for those assessed as moderate-high risk category – the true rate was less than fifty percent of what participants predicted.)

[7] Stephen D. Hart & David J. Cooke, *Another Look at the (Im–)Precision of Individual Risk Estimates Made Using Actuarial Risk Assessment Instruments*, 31 **Behav. Sci. Law** 81, (2013).

under-inclusive because they only chart law enforcement activity, and many crimes do not result in arrest.[8] Less than half of all reported violent crimes result in an arrest, and less than a quarter of reported property crimes result in an arrest. Arrest records are also over-inclusive because people are wrongly arrested and arrested for minor violations, including those that cannot result in jail time. Moreover, decades of research have shown that, for the same conduct, African-American and Latinx people are more likely to be arrested, prosecuted, convicted and sentenced to harsher punishments than their white counterparts. [9] People of color are treated more harshly than similarly situated white people at each stage of the legal system, which results in serious distortions in the data used to develop risk assessment tools:

- **Arrests**: For decades, communities of color have been arrested at higher rates than their white counterparts, even for crimes that these racial groups engage in at comparable rates.[10] For example, African-Americans are 83% more likely to be arrested for marijuana compared to whites at age 22 and 235% more likely to be arrested at age 27, in spite of similar marijuana usage rates across racial groups.[11] Similarly, African-American drivers are three times as likely as whites to be searched during routine traffic stops, even though police officers generally have a lower "hit rate" for contraband when they search drivers of color.[12] This leads to an overrepresentation of people of color in arrest data. Predictive algorithms that rely on this data overestimate pretrial risk for people of color.

- **Charges**: Empirical research has found that African-American defendants face significantly more severe charges than white defendants, even after controlling for a multitude of factors.[13] Persistent patterns of differential charging make prior charges an unreliable variable for building risk assessments.

- **Convictions & Sentences**: Compared to similarly situated white people, African-Americans are more likely to be convicted[14]and more likely to be sentenced to incarceration.[15]

[8] **FBI, 2017 Crime in the United States: Clearances**, https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/clearances (last visited June 28, 2019).

[9] See generally **The Sentencing Project, Report of the Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance Regarding Racial Disparities in the United States Criminal Justice System** (2018); **Lynn Langton & Matthew Durose, U.S. Dep't of Justice, Police Behavior During Traffic and Street Stops**, 2011 (2013); Stephen Demuth & Darrell Steffensmeier, *The Impact of Gender and Race-Ethnicity in the Pretrial Release Process*, 51 **Soc. Probs.** 222 (2004); **Jessica Eaglin & Danyelle Solomon, Brennan Center for Justice, Reducing Racial and Ethnic Disparities in Jails: Recommendations for Local Practice** (2015); Sonja B. Starr & M. Marit Rehavi, *Racial Disparity in Federal Criminal Sentences*, **J. Pol. Econ**. 1320 (2014); **Marc Mauer, Justice for All? Challenging Racial Disparities in the Criminal Justice System** (2010).

[10] Megan Stevenson & Sandra G. Mayson, *The Scale of Misdemeanor Justice*, 98 **B.U. L. Rev.** 731, 769-770 (2018). This comprehensive national review of misdemeanor arrest data has shown systemic and persistent racial disparities for most misdemeanor offences. The study shows that "black arrest rate is at least twice as high as the white arrest rate for disorderly conduct, drug possession, simple assault, theft, vagrancy, and vandalism." Id. at 759. This study shows that "many misdemeanor offenses criminalize activities that are not universally considered wrongful, and are often symptoms of poverty, mental illness, or addiction." Id. at 766.

[11] "[R]acial disparity in drug arrests between black and whites cannot be explained by race differences in the extent of drug offending, nor the nature of drug offending." Ojmarrh Mitchell & Michael S. Caudy, *Examining Racial Disparities in Drug Arrests*, **Just. Q.**, Jan. 2013, at 22.

[12] Ending Racial Profiling in America: Hearing Before the Subcomm. on the Constitution, Civil Rights and Human Rights of the Comm. on the Judiciary, 112th Cong. 8 (2012) (statement of David A. Harris).

[13] Sonja B. Starr M. Marit Rehavi, *Racial Disparity in Federal Criminal Charging and its Sentencing Consequences*, U. (Mich. L. Econ. Working Paper Series, Working Paper No. 12-002, 2012).

[14] Shamena Anwar, Patrick Bayer & Randi Hjalmarsson, *The Impact of Jury Race in Criminal Trials*, 127 **Q. J. Econ**. 1017, 1019 (2012).

[15] David S. Abrams, Marianne Bertrand & Sendhil Mullainathan, *Do Judges Vary in Their Treatment of Race*, 41 **J. L. Stud**. 347, 350 (2012)

Risk assessments that incorporate this distorted data will produce distorted results.[16] There are no technical fixes for these distortions.

CONCLUSION

Pretrial risk assessments do not guarantee or even increase the likelihood of better pretrial outcomes. Risk assessment tools can simply shift or obscure problems with current pretrial practices. Some jurisdictions that have adopted risk assessment tools have seen positive trends in pretrial outcomes, but other jurisdictions have experienced the opposite. Within jurisdictions that have achieved positive outcomes, it is uncertain whether the risk assessment tools were responsible for that success or whether that success is due to other reforms or changes that happened at the same time. Given these mixed outcomes, it is impossible to predict the impact of pretrial risk assessments in any jurisdiction.

Beyond the technical flaws outlined in this statement, a broader and growing body of research questions the validity, ethics, and efficacy of actuarial pretrial risk assessments. For example, most risk assessments are proprietary technology, and defendants assessed by these tools are not allowed the opportunity to inspect and critique the algorithms or their underlying data. Poor implementation and lack of judicial training and buy-in can undermine reforms. Validity and fairness questions arise when tools are trained on data from one jurisdiction but deployed in a jurisdiction with different demographics, judicial culture, and policing practices.

This letter specifically addresses fundamental, technical problems with actuarial risk assessment instruments. These technical problems cannot be resolved. We strongly recommend turning to other reforms.

Chelsea Barabas
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MIT Media Lab

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Princeton University

John Bowers
Research Associate
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Meredith Broussard, PhD
Associate Professor
New York University

Joy Buolamwini
Founder
Algorithmic Justice League

Karthik Dinakar, PhD
Research Scientist
MIT Media Lab

[16] There have been attempts to solve this problem on the back end by mitigating outcome disparities in risk assessment predictions, but they overlook and do not address the fundamental distortions outlined above.

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Black in AI

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Professor & Elting E. Morison Chair
Anthropology, MIT

Joichi Ito, PhD
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Doctoral Candidate, HASTS
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Cathy O'Neil, PhD
Author
Weapons of Math Destruction

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Harvard Law School

June 30, 2019

Illinois Supreme Court Commission on Pretrial Practices
Pretrial Comments
AOIC Probation Division
3101 Old Jacksonville Road
Springfield, IL 62704
Submitted via email to: Pretrialhearings@illinoiscourts.gov

Re: Chicago Jobs Council Comment on Pretrial Reform in Illinois

Esteemed members of the Illinois Supreme Court Commission on Pretrial Practices,

For the past four decades, the Chicago Jobs Council has focused on connecting people who face barriers and labor market marginalization with high-quality, accessible skill-building and employment opportunities. Our approximately 70 member organizations are community-based providers of workforce development services. Many of them work with job seekers who have interacted in various ways with the criminal legal system.

Based on the on-the-ground expertise of low-income job seekers and the frontline workforce professionals who work alongside them, we know that excellent job training and skill-building programs may not be sufficient to move people out of poverty and into high-quality employment. Many job seekers face barriers to employment and discrimination because of structural barriers. Specifically, a felony conviction or a prison or jail term can have a substantial negative impact on future job prospects. We submit this comment because we believe the structure our current pretrial system leads to unfair outcomes that harm the employment prospects and economic opportunities of people accused of crimes and results in disparities that exacerbate racialized economic inequality in our state. We recommend reforming Illinois' pretrial system to eliminate secured money bond and drastically reduce the use of pretrial detention. Finally, we request that your commission use its platform to advocate for increased state investments in workforce development and other important supportive services that strengthen communities.

Eliminate Money Bond and Reduce Pretrial Detention

First, the use of money bond as a condition of pretrial release leads many people to be incarcerated solely because they cannot afford to pay for their release. This can result in lengthy periods of pretrial incarceration that can lead to rapid economic destabilization of an accused person and their families. One quasi-experimental study which compared the outcomes of people who were released versus detained pretrial found significant economic benefits to pretrial release. Two years out from their respective bail hearings, people who were initially

released experienced higher rates of employment (50.9% compared to 37.8%) and greater reported annual earnings than those who were detained.[1] Furthermore, we know that many of the people who find themselves unable to pay money bond come from economically vulnerable communities who face persistent marginalization from the labor market. Pretrial incarceration would only exacerbate those challenges.

Second, pretrial detention increases the likelihood of conviction based solely on an increased likelihood of pleading guilty.[2] A criminal conviction is one of the most notorious barriers to employment. Past incarceration reduces annual income by as much as 40%.[3] Furthermore, according to a literature review conducted by John Schmitt and Kris Warner:

> *"Researchers have identified several distinct channels for this effect. Time behind bars can lead to deterioration in a worker's "human capital," including formal education, on-the-job experience, and even "soft skills" such as punctuality or customer relations. Incarceration can also lead to the loss of social networks that can help workers find jobs; and, worse, provide former inmates with new social networks that make criminal activity more likely. Incarceration or a felony conviction can also impart a stigma that makes employers less likely to hire ex-offenders. In many states, a felony conviction also carries significant legal restrictions on subsequent employment, including limitations on government employment and professional licensing."*[4]

Illinois law creates significant barriers to economic advancement based on a criminal conviction. The National Inventory of Collateral Consequences of Convictions maintained by the Council of State Governments lists 941 limits on employment and volunteering, business and professional licensure, and occupational certification in Illinois based on criminal convictions.[5] For these reasons, the Commission's recommended reforms to Illinois' pretrial system must focus on reducing levels of pretrial incarceration overall.

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[1] Will Dobbie, Jacob Goldin, and Crystal S. Yan, "The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges." American Economic Review 2018, 108(2): 201–240. https://www.aeaweb.org/articles?id=10.1257/aer.20161503

[2] Ibid.

[3] The Pew Charitable Trusts, "Collateral Costs: Incarceration's Effect on Economic Mobility."Washington, DC: The Pew Charitable Trusts, 2010. https://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf

[4] John Schmitt and Kris Warner, "Ex-offenders and the labor market." Center for Economic and Policy Research, 2010. http://cepr.net/documents/publications/ex-offenders-2010-11.pdf

[5] Based on a search of the National Inventory of Collateral Consequences of Convictions, a project of the Council of State Governments. Database available at https://niccc.csgjusticecenter.org.

Advocate for Increased State Investment in Workforce Development Services

Our state, county, and municipalities appropriate very little towards workforce development services. The vast majority of funding for workforce comes from the federal government and is distributed to states and localities through the Workforce Innovation Opportunity Act (WIOA). Unfortunately, WIOA funding has decreased by 40% over the past two decades[6], leaving many programs sorely underfunded. On the other hand, pretrial detention is extremely costly to local taxpayers in Illinois. Through meaningful pretrial reforms, Illinois counties can divert funds from unnecessary pretrial incarceration and instead increase investments in workforce development and wraparound supportive services to improve the underlying conditions that foment crime and violence in our communities.

At a time with record low unemployment rates, employers in Illinois are desperate for talent, and report difficulties in filling open positions within their companies. Our state also faces a skills gap, meaning that there are more "middle skills jobs" (jobs that require more than a high school diploma but less than a college degree) than there are workers to fill them.[7] Unaffordable money bond and attendant pretrial incarceration effectively shrink the labor force in our state. Inflated conviction rates due to pretrial detention erect barriers that reduce prospects for workers to enter employment that offers family-sustaining wages. Investing in skills training and workforce development rather than costly pretrial detention would benefit employers, job seekers, and our state's economy as a whole.

The Jobs Council is eager to support the work of this commission, and happy to answer any questions that you may have. Thank you for your consideration.

Sincerely,

Mari Castaldi
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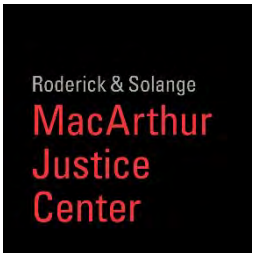
Chicago Jobs Council
mari@cjc.net
(312) 489-8544

[6] National Skills Coalition, "Funding Cuts Fact Sheet." https://www.nationalskillscoalition.org/resources/publications/file/Funding-Cuts-Fact-Sheet-March2019.pdf

[7] JP Morgan Chase, "Growing Skills for a Growing Chicago: Strengthening the Middle Skill Workforce in a City that Works." JP Morgan Chase, 2015. https://www.jpmorganchase.com/corporate/Corporate-Responsibility/document/54841-jpmc-gap-chicago-aw3-v2-accessible.pdfhttps://www.jpmorganchase.com/corporate/Corporate-Responsibility/document/54841-jpmc-gap-chicago-aw3-v2-accessible.pdf



June 30, 2019

VIA U.S. MAIL AND EMAIL

Hon. Robbin J. Stuckert
Chief Judge, 23rd Judicial Circuit DeKalb County Courthouse
Chair, Supreme Court Commission on Pretrial Practices
133 W. State Street
Sycamore, IL 60178

Supreme Court Commission on Pretrial Practices
Pretrial Comment
AOIC Probation Division
3101 Old Jacksonville Road
Springfield, IL 62704
Pretrialhearings@illinoiscourts.gov

Re: Submission to Illinois Supreme Court Commission on Pretrial Practices

> "Providing equal justice for poor and rich, weak and powerful alike is an age-old problem. People have never ceased to hope and strive to move closer to that goal." *Griffin v. Illinois*, 351 U.S. 12, 16 (1956) (citing Leviticus, c. 19, v. 15; Magna Carta).

Dear Members of the Commission:

We write as attorneys who represent individuals subject to wealth-based discrimination in the criminal legal system. The current practices of setting financial conditions of pretrial release in Illinois include widespread and systemic violations of the Equal Protection Clause and Due Process Clause of the Illinois and federal constitutions. No person may, consistent with the Equal Protection Clause, be detained in custody after an arrest because the person is too poor to pay a monetary bond. Unless a court makes a fact-based determination that alternatives are inadequate to meet compelling state interests, imprisonment due to inability to pay "would be contrary to the fundamental fairness required by" both the Equal Protection Clause and Due Process Clause. *Bearden v. Georgia*, 461 U.S. 660 (1983).

Because of the critically important constitutional considerations at issue, it is imperative that the Commission make recommendations that would further the constitutional promise of equal justice for all and decrease the social and financial cost of prolonged pretrial detention. Those recommendations must include adoption of a Supreme Court Rule, proposed in October 2017 by Cook County's Chief Judge, State's Attorney, Sheriff, Board President, Public Defender and the Chair of the County Board Criminal Justice Committee,[1] that would eliminate pretrial incarceration due solely to the inability to pay a money bond.

Throughout the state, including in Cook County, individuals remain in pretrial detention because they cannot pay financial conditions of release imposed by the court system.[2] While the state has a legitimate interest in individuals appearing for future court dates, imposing a financial condition of release that an individual cannot pay does not and cannot incentivize future court appearances; rather, it operates as a detention order. When money bail functions as a *de facto* detention order, the state has a high burden to meet in proving that such a policy is necessary. In *United States v. Salerno*, 481 U.S. 739, 755 (1987), the U.S. Supreme Court stated that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." Because of what *Salerno* held to be the "fundamental" interest in pretrial liberty, a person can only be detained prior to trial if (1) certain essential procedures are followed (including notice of the crucial issues, an opportunity to be heard and to submit and confront evidence, and findings on the record by clear and convincing evidence explaining why detention is necessary), and (2) if the person is such an immitigable risk that no alternative to detention exists. Otherwise, our federal and state constitutions require that people must be released on the least restrictive conditions possible to mitigate against any specifically identified risks.

A court analyzing a future challenge to Illinois' bail-setting practices[3] must, following precedent, apply "heightened scrutiny" to any conduct that infringes on an

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[1] The October 13, 2017 cover letter and proposed Illinois Supreme Court Rule, as well as a July 9, 2018 letter in support by members of the Illinois legal community, are attached as Exhibit A.

[2] See Office of the Chief Judge, "Bail Reform in Cook County: An Examination of General Order 18.8A and Bail in Felony Cases (May 2019), available at http://www.cookcountycourt.org/Portals/0/Statistics/Bail%20Reform/Bail%20Reform%20Report%20FINAL%20-%20%20Published%2005.9.19.pdf (indicating that more than 18 months after General Order 18.8A went into effect, over 2,000 people remained in Cook County Jail because they could not afford a money bond).

[3] The undersigned previously represented a class of individuals in *Robinson et al. v. Martin et al.*, No. 2016 CH 13587 (Cir. Ct. of Cook Cnty.), which challenged the practices of setting money bond in Cook County. During the pendency of that lawsuit, the Chief Judge of Cook County issued General Order 18.8A, and the case was dismissed on procedural grounds—the Court never reached the question of whether the constitution requires adequate findings that a person can afford the amount of bail being set, or, if making a detention order, the requisite findings under *Salerno*.

individual's fundamental right to bodily liberty.[4] A system that conditions release on the payment of money, without findings on the record either that the accused has the current financial ability to pay the proposed amount or that the resulting detention is necessary, would not survive such scrutiny. The practice of *considering* ability to pay or alternatives to detention, although necessary, is insufficient to satisfy the requirement that the court make *an actual finding* on the record, after having considered alternatives, that detention is necessary because no less-restrictive conditions are adequate to serve the state's interests.

Even under the more forgiving "rational basis review," current practices in Illinois fall short of constitutional standards—that is, the state cannot articulate any governmental interest in detaining indigent individuals while releasing moneyed individuals facing the same charges. In fact, as set forth in both published studies and sworn expert testimony in cases challenging cash bail practices throughout the country, detention due to inability to pay actually *causes* later failures to appear and new criminal activity.[5] It is not rational to pursue a policy that makes it more difficult for the government to achieve its interests.

At the Commission's public hearing on June 17, 2019, Mr. Heaton inquired whether the constitutional analysis would be different in the case of an individual who fails to appear for a court date. The answer to that question is that the same constitutional provisions are applicable. A previous failure to appear would, however, be relevant evidence in a court's inquiry into whether there exist alternative conditions short of pretrial detention of a presumptively innocent person reasonably available to further the court's compelling interest in the person's appearance.

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[4] *See San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 20-21 (1973); *ODonnell v. Harris County*, 892 F.3d 147, 161– 62 (5th Cir. 2018) (ODonnell I), (relying on *San Antonio Independent School District* in applying heightened scrutiny to wealth-based pretrial detention); *M.L.B. v. S.L.J.*, 519 U.S. 102, 125-127 (1996) (noting that such scrutiny applies where the sanction is "wholly contingent on one's ability to pay, and thus 'visi[ts] different consequences on two categories of persons' . . .[ ]; they apply to all indigents and do not reach anyone outside that class."); *Frazier v. Jordan*, 457 F.2d 726, 728 (5th Cir. 1972) (holding that wealth-based detention is permissible, but only if a court has determined that "imprisonment of an indigent defendant . . . is 'necessary to promote a compelling governmental interest.'" (citation omitted)).

[5] *See* Ex. B, Memorandum of Eric H. Holder, Jr. to Cook County Public Defenders ("Holder Memo"), July 12, 2017, at 20, 22 ("'Studies show that those who remain in pretrial detention for longer than 24 hours and are then released are less likely to reappear as required than otherwise similar defendants who are detained for less than 24 hours.'") (citations omitted); *see also* Ex. C, Expert Report of Michael R. Jones, Ph.D. ("Jones Report"), *McNeil et al., v. Community Probation Services, et al.*, No. 18-cv-33 (M.D. Tenn.), Dkt. No. 176-61, at ¶ 28 ("Defendants who are released within 2 to 3 days are 17% more likely to engage in new criminal activity up to two years later compared to comparable defendants released within 24 hours.") (citations omitted); Ex. D, Declaration of Stephen Demuth, Ph.D, M.A., B.S., *Daves v. Dallas County, et al.*, No. 18-cv-154 (N.D. Tex.), Dkt. No. 93-6 at ¶ 19 ("[P]retrial detention for more than 24 hours increases the likelihood that the person will fail to appear or will engage in new criminal activity while on pretrial release.").

With regard to this inquiry about nonappearance, it should first be noted that there are jurisdictions that do not impose financial conditions of release, and they have high rates of court appearances.[6] Research in other jurisdictions shows that that the vast majority of people who miss court dates have not fled the jurisdiction, rather, they miss court for reasons such as being unable to secure transportation or child care, or failing to understand the consequences of failing to appear.[7] Additionally, there are alternatives to imposing (or increasing) a bond to ensure appearances at future court dates, which are also more effective. Many studies show that court date reminders are the single most effective pretrial risk management intervention for reducing (including preventing) failures to appear.[8]

As a matter of law, a practice of simply imposing (or raising) a financial condition of release in response to missing a court date would not comport with Illinois law or the Illinois and federal constitutions, especially if such an increase would *de facto* serve as a detention order without the requisite findings. A record of a failure to appear *could* inform the non-monetary conditions of release imposed by a judge, including the requirement of regular and in-person reporting. 725 ILCS 5/110-5(a-5). In an extreme case of willful flight, supported by sufficient evidence and proper findings, the Illinois Supreme Court has held that "if a court is satisfied by the proof that an accused will not appear for trial regardless of the amount or conditions of bail, bail may properly be denied." *People ex rel. Hemingway v. Elrod*, 60 Ill. 2d 74, 80, 322 N.E.2d 837, 841 (1975). Such a denial, however, must comport with *Salerno's* requirement of adequate written findings that no alternative to detention exists. Nothing in the proposed rule prevents the issuance of an arrest warrant for a person who willfully fails to appear so that a hearing applying these constitutional standards may be conducted.

"Both equal protection and due process emphasize the central aim of our entire judicial system—all people charged with crime must, so far as the law is concerned, stand

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[6] *See* Ex. E, Declaration of Judge Truman Morrison, Senior Judge on the Superior Court of the District of Columbia, *Daves v. Dallas County, et al.*, No. 18-cv-154 (N.D. Tex.), Dkt. No. 93-47 at ¶ 12 ("In 2017, 94% of arrestees were released, and 98% of released arrestees remained free from violent crime re-arrest during the pretrial release period. 86% of released defendants remained arrest-free from all crimes. 88% of arrestees released pretrial made *all* scheduled appearances during the pretrial period. The District accomplishes these high rates of non-arrest and court appearances, again, without using money bonds."); *see also* Ex. B, Holder Memo at 21 ("Studies have repeatedly shown that alternatives to cash bond can be equally effective at ensuring appearance, without the negative consequences of forcing detainees to purchase their freedom or languish in pretrial detention.")

[7] Ex. F, Declaration of Jacob Sills, *Daves v. Dallas County, et al.*, No. 18-cv-154 (N.D. Tex.), Dkt. No. 93-53 at ¶ 4 ("Our research has shown that the vast majority of people who miss court have not fled the jurisdiction. Instead, they miss court for reasons that can be solved: for example, they forgot the court date, were unable to secure transportation or child care, were unable to take time off work or forgot to ask in advance, were scared or confused about going to court, or did not understand the consequences of failing to appear.").

[8] Ex. C, Jones Report, at ¶ 54 (citing studies).

on an equality before the bar of justice in every American court." *Griffin*, 351 U.S. at 17 (citations and quotations omitted). In accordance with the aims of our criminal justice system, this Commission should recommend adoption of the proposed Supreme Court Rule that would require a court to enter a written finding on the record that the accused has the current financial ability to pay the proposed amount of monetary security, or, where the court finds pre-trial release not appropriate under the relevant factors, an order denying pretrial release that includes sufficient written findings supporting that denial, including a finding that there is no condition or combination of conditions that could reasonably mitigate any specific danger posed. And, in order to ensure that these findings are sufficiently accurate, due process requires the robust procedural safeguards upheld in *Salerno*. Any recommendation that did not include these essential findings and procedures would fail to eliminate pretrial incarceration due solely to the inability to pay, and would continue the harms on individuals prohibited by the Illinois and federal constitutions.

Thank you for your time and consideration of this important issue.

Sincerely,

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Enclosures: Exhibits A-F

Exhibit A

Law Office of the

COOK COUNTY PUBLIC DEFENDER

69 W WASHINGTON • 16TH FLOOR • CHICAGO, IL 60602 • (312) 603-0600

Amy P. Campanelli • Public Defender

October 13, 2017

Jan Zekich
Secretary, Illinois Supreme Court Rules Committee
Administrative Office of the Illinois Courts
222 N. LaSalle Street, 13th Floor
Chicago, IL 60601

Sent via email to JZekich@illinoiscourts.gov

Dear Ms. Zekich and Members of the Rules Committee:

Pursuant to Illinois Supreme Court Rule 3, enclosed for your review and consideration is a proposed Illinois Supreme Court Rule which would require an evidentiary hearing and a judicial finding that an accused is able to afford the amount of bail set as a predicate for the setting of monetary bail in criminal cases.

On behalf of the public officials, organizations and individuals listed as signatories at the end of this letter, we hereby request that the Illinois Supreme Court adopt a new rule to eliminate wealth-based pretrial detention and to ensure that judicial decisions about pretrial detention and release of presumptively innocent individuals are based on legitimate considerations rooted in evidence, and provide in essence that:

1) In any case in which a court imposes a financial condition of pretrial release, the court shall conduct an inquiry into the accused person's financial resources and ability to pay.

2) The court shall not impose a financial condition of release unless the court finds, in writing on the record, that the accused has the present ability to pay the financial condition.

We appreciate your consideration of this important reform. Should you have any questions or desire any additional information, please do not hesitate to contact Era Laudermilk, Deputy of Policy & Strategic Planning, Law Office of the Cook County Public Defender at Era.Laudermilk@cookcountyil.gov or (312) 603-8389.

Sincerely,

Amy P. Campanelli

Amy P. Campanelli
Public Defender of Cook County

On behalf of:

Hon. Timothy C. Evans
Chief Judge
Circuit Court Of Cook County

Toni Preckwinkle
President
Cook County Board

Kim Foxx
Cook County State's Attorney

Tom Dart
Cook County Sheriff

Jesus "Chuy" Garcia
7thDistrict Commissioner
Chair of the Criminal Justice Committee
Cook County Board of Commissioners

A Just Harvest
Ali R. Malekzadeh, President, Roosevelt University
Action Now
Adler University Institute on Public Safety & Social Justice
ACLU of Illinois
Asian Americans Advancing Justice | Chicago
Bluhm Legal Clinic at Northwestern Prtizker School of Law
Business and Professional People for the Public Interest (BPI)
Cabrini Green Legal Aid
Representative Carol Ammons, Illinois 103rd District
Centro De Trabajadores Unidos (CTU)
Chicago Appleseed Fund for Justice
Chicago Area Fair Housing Alliance
Chicago Community Bond Fund
Chicago Council of Lawyers
Chicago Lawyers' Committee for Civil Rights
Chicago Urban League
Chicago Votes
Children and Family Justice Center at Northwestern Prtizker School of Law
The Coalition to End Money Bond
Community Activism Alliance
Community Renewal Society
Criminal Justice Task Force, First Unitarian Church
Hughes Socol Piers Resnick & Dym
Illinois Justice Project
Imago Dei
Inner-City Muslim Action Network
John Howard Association
Justice and Witness Ministry of the Chicago Metropolitan Association, Illinois Conference, United Church of Christ
Juvenile Justice Initiative
Kenwood Oakland Community Organization
League of Women Voters of Cook County
League of Women Voters of Illinois
Mothers 4 Peace
Nehemiah Trinity Rising
The Next Movement
Office of the State Appellate Defender
Padres Angeles
The People's Lobby
Pretrial Justice Institute
Robinson Law Group
Roderick and Solange MacArthur Justice Center
Safer Foundation
Sargent Shriver National Center on Poverty Law
Southside Indivisible
Southsiders Organized for Unity and Liberation
TKK Law Firm
Thresholds
Treatment Alternatives for Safer Communities (TASC)
UCC Justice Ministry
Unitarian Universalist Advocacy Network of Illinois
United Congress of Community and Religious Organizations (UCCRO)
Uptown People's Law Center
Workers Center for Racial Justice

cc: Marcia M. Meis, Director, Administrative Office of the Illinois Courts
Enclosures

Rule _____. Hearings on Pretrial Release.

(a) Determination of Entitlement to Pretrial Release. In making a determination of whether an accused is entitled to pretrial release, the court shall impose the least restrictive conditions or combination of conditions necessary to reasonably assure the appearance of the accused, the safety of any person or the community, and the integrity of judicial proceedings.

(1) Upon presentment of the accused after arrest, the court shall conduct a hearing to determine whether pretrial release is appropriate pursuant to the provisions of 725 ILCS 5/110 et seq.

(2) Where the court determines that pretrial release is not appropriate pursuant to 725 ILCS 5/110-4, 6.1, and 6.3 because of the nature of the offense charged, for which the proof is evident or the presumption great that the defendant is guilty, and because the State has presented clear and convincing evidence in an adversarial hearing to support a finding that release of the accused would pose a real and present threat to the physical safety of any person or the community, the court shall enter an order denying pretrial release that includes sufficient written findings supporting that denial, including a finding that there is no condition or combination of conditions that could reasonably mitigate any specific danger posed.

(b) Setting Conditions of Pretrial Release. Where the court determines that pretrial release is appropriate:

(1) Monetary Conditions. There shall be a presumption that any condition of release shall be non-monetary in nature, and no monetary condition may be imposed unless:

A. The court conducts an inquiry into the accused's financial resources and ability to pay monetary security, and

B. The court enters a written finding on the record that the accused has the current financial ability to pay the proposed amount of monetary security.

(2) Nonmonetary Conditions. The court shall impose the least restrictive non-monetary conditions that the court determines are necessary to assure the accused's appearance, protect the community from the accused or ensure the orderly administration of justice pursuant to 725 ILCS 5/110-10. Where the court determines that non-monetary conditions of release are necessary and the accused is indigent or otherwise qualifies for appointment of counsel, the accused will not be charged financial costs in connection with such conditions.

(c) Findings of record. All written findings required by this Rule shall be recorded in an approved form and made a part of the record in every case.

Roderick & Solange
MacArthur
Justice
Center

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July 9, 2018

Jan Zekich
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Administrative Office of the Illinois Courts
222 N. LaSalle Street, 13th Floor
Chicago, IL 60601

Re: Proposed Supreme Court Rule on Monetary Bond

Dear Ms. Zekich and Members of the Rules Committee:

We are members of the Illinois legal community—including former state and federal prosecutors, judges, assistant attorneys general, and U.S. Justice Department lawyers—who urge the Illinois Supreme Court to adopt the proposed rule submitted on October 13, 2017 by Cook County's criminal justice stakeholders regarding hearings on pretrial release. Among other provisions, the proposed rule would require an evidentiary hearing and a finding by a judge that an accused person is able to afford the amount of monetary bail set before permitting the setting of cash bail in any criminal case. A rule like the one proposed would ensure fairness and prevent wealth-based deprivations of liberty for those individuals in Illinois who are presumed innocent.

We are deeply concerned about public safety in the State of Illinois. But there simply is no credible evidence that the current application of money bond in Illinois makes our communities safer. If, based on Illinois law, an accused person is too dangerous to be released pending trial, judges in Illinois should hold a hearing and make sufficient written findings denying pretrial release. The current practice of setting of high, unaffordable monetary bonds to *de facto* ensure that an individual remains in custody pending trial does not promote public safety, and it raises serious questions of compliance with Illinois law and the U.S. Constitution. Further, such a practice increases the rate of pretrial detention at great financial cost to the State of Illinois and its counties during a time of fiscal crisis, when public funds can be better spent on community safety initiatives.

We are also deeply committed to ensuring that the courts in this state function efficiently and fairly. However, as found by former U.S. Attorney General Eric Holder in a July 2017 memo, studies have repeatedly shown that alternatives to cash bond can be equally effective at ensuring a defendant's appearance in court, without the negative consequences imposed by a

wealth-based system.[1] These studies have shown that alternative conditions of release, such as pretrial supervision, result in equally good, if not better, appearance rates.[2]

We encourage the Rules Committee to place the proposed rule on the public hearing agenda for a full and fair hearing on these important issues, and to submit the proposal to the Supreme Court Committee with a recommendation for adoption.

Sincerely,

Sergio E. Acosta
Bonnie E. Allen
John M. Bouman
Locke E. Bowman
David J. Bradford
Thomas M. Breen
Jack Carey
Stuart J. Chanen
Robert A. Clifford
Jeffrey D. Colman
William F. Conlon
Vincent J. Connelly
Jeffrey H. Cramer
Matthew C. Crowl
Thomas A. Demetrio
Shari Seidman Diamond
Steven A. Drizin
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John N. Gallo
Thomas F. Geraghty
Cynthia Giacchetti
Robert L. Graham
Adam Gross
Ted S. Helwig
Scott Hodes
Patricia Brown Holmes
Gary V. Johnson

[1] *See* Memorandum from Eric H. Holder, Jr. *et al.*, to Amy J. Campanelli, Cook County Public Defender 21 (Jul. 12, 2017), *available at* https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=5cde3253-fd00-4e0e-66b3-94ec6f0b3f75.

[2] *Id.* at 21 n.114 (citing CHRISTOPHER T. LOWENKAMP &MARIE VANNOSTRAND, EXPLORING THE IMPACT OF SUPERVISION ON PRETRIAL OUTCOMES 17 (Nov. 2013) (finding that supervised defendants were significantly more likely to appear for court than unsupervised defendants) and TARA BOH KLUTE &MARK HEVERLY,REPORT ON IMPACT OF HOUSE BILL 463: OUTCOMES, CHALLENGES AND RECOMMENDATIONS 6 (2012) (finding legislation shifting Kentucky's system toward risk-based pretrial supervision, as opposed to reliance on money bail, resulted in lower FTA rates)).

Thomas E. Johnson
Marc R. Kadish
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Roger J. Kiley, Jr.
Scott R. Lassar
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Lori E. Lightfoot
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Steven Lubet
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The Hon. Dom J. Rizzi (Ret.)
Leonard S. Rubinowitz
Ronald S. Safer
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William S. Singer
Samuel K. Skinner
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Geoffrey R. Stone
Jeffrey E. Stone
Mary Stowell
James R. Streicker
Jeanette Sublett
Thomas P. Sullivan
Tara Thompson
René A. Torrado, Jr.
Alexander S. Vesselinovitch
The Hon. William A. Von Hoene, Jr.
Daniel K. Webb
Hon. Ann Claire Williams (Ret.)
Standish E. Willis
The Hon. Warren D. Wolfson (Ret.)
Sheldon T. Zenner

Exhibit B

COVINGTON & BURLING LLP

July 12, 2017

Memorandum

To: Amy J. Campanelli, Cook County Public Defender

From: Eric H. Holder, Jr.
Kevin B. Collins
Ryan O. Mowery
Kyle Haley

Re: Cook County's Wealth-Based Pretrial System

> "The defendant with means can afford to pay bail. He can afford to buy his freedom. But the poorer defendant cannot pay the price. He languishes in jail weeks, months, and perhaps even years before trial. He does not stay in jail because he is guilty. He does not stay in jail because any sentence has been passed. He does not stay in jail because he is any more likely to flee before trial. He stays in jail for one reason only – he stays in jail because he is poor."
>
> – President Lyndon Johnson, 1966 –

At any given time, nearly half a million people in the United States who have not been convicted of any crime are imprisoned for one simple reason—they cannot afford to purchase their freedom.[1] The moral and economic effects of wealth-based pretrial detention schemes, in use in the great majority of U.S. states, are devastating. Incarcerated for weeks, months, or even years until trial, presumptively innocent individuals frequently lose their jobs, their homes, and even custody of their children. Numerous studies have shown that defendants who are detained before trial are less able to participate in their defense, have a greater likelihood of being convicted (and if convicted, are likely to receive longer sentences), and are also more likely to commit additional crimes upon release than defendants who were not imprisoned before trial. These consequences are vastly more likely to be visited upon persons of color, who are detained until trial at rates significantly higher than their white counterparts. The burden also falls on taxpayers in these states, who pay the high costs that result from an inflated prison population. And despite these costs, pretrial systems that rely heavily on secured money bail do not achieve

[1] Alec Karakatsanis, Remarks at Cook County Board of Commissioners Meeting (Nov. 17, 2016), *available at* http://cook-county.granicus.com/MediaPlayer.php?view_id=2&clip_id=1676.

more favorable outcomes when it comes to protecting public safety or ensuring the appearance of defendants at trial.

Across the country, momentum is building for reform of pretrial systems in which defendants, otherwise eligible for release, are incarcerated until trial simply because they cannot afford to pay bail. But despite growing critiques of these illogical and illegal schemes, Cook County has continued to operate an unconstitutional wealth-based pretrial system that is irrational, unjust, costly, and disproportionately affects minority communities.

This memorandum addresses Cook County's problematic pretrial practices. Part I reviews Cook County's troubling wealth-based pretrial detention practices. Part II explains why Cook County's current bail practices are illegal and vulnerable to challenge on both state law and federal constitutional grounds. Part III articulates why Cook County's wealth-based pretrial detention practices are not only illegal, but are also irrational, unjust, and inefficient as a matter of public policy. The memorandum closes by setting forth several commonsense reforms Cook County could initiate immediately to improve its pretrial detention practices.

Any scheme in which a defendant's liberty hinges primarily on his or her financial means, and which detains individuals solely because they cannot pay bond, is antithetical to the core principles of our nation's justice system. As the below analysis demonstrates, reform in Cook County is sorely needed.

I. COOK COUNTY'S WEALTH-BASED PRETRIAL DETENTION SCHEME

Pursuant to the Illinois Bail Statute, 725 ILCS 5/110-1 *et seq*., Circuit Court judges in Cook County have several options for handling accused persons. For those defendants eligible for release on bond, two primary options are available: (1) Release on personal recognizance, meaning that the defendant is released without having to deposit funds (an "I-bond"); or (2) Release upon the deposit of cash bail, where the defendant deposits 10 percent of the total bond amount set by the judge (a "D-bond").[2] Some defendants are not eligible for release under any conditions—in the limited circumstances set forth in the statute, judges may deny bond to defendants who have been charged with serious felonies punishable by death, life imprisonment, or (under certain conditions) mandatory prison time. In these cases, the defendant is entitled to a hearing, at which the State must demonstrate by clear and convincing evidence that the defendant poses an immediate threat to the safety of other persons, and that no conditions of release would effectively protect the public.

In recent years, the Cook County pretrial system has garnered increasing attention for its overreliance on a middle option not contemplated by the statute—the pretrial confinement of defendants solely because they cannot afford to pay the bail required to secure their freedom. In these cases, a defendant is eligible for release under the statute, but bail is set at an amount that the defendant cannot afford to pay. As a result, the defendant remains in jail for weeks, months,

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[2] The Illinois Bail Statute also allows detainees to deposit stocks, bonds, or real estate valued at the amount of the total bond (or for real estate, double the amount of the total bond) in lieu of making a cash deposit of 10% of the bail amount to secure release. 725 ILCS 5/110-8.

or even years until trial, without the hearing, evidentiary showing, and written findings required to order pretrial detention under the statute. Multiple studies from the last five years have reported that more than 90 percent of individuals admitted to the Cook County Jail are pretrial detainees.[3]

Despite the Bail Statute's requirement that money bond be a last resort, and that when necessary, it be "not oppressive" and set in consideration of the financial resources of the accused, Cook County judges set financial conditions for numerous defendants as a matter of course. In 2007, one federal court described Cook County's bond process in this way:

> The holding pens for men are crowded well beyond their capacity. Prisoners are unable to sit, the sick and infirm are not isolated, noise levels are too high, and, at times, temperatures are uncomfortable. The great majority of people are represented by the public defender and have no chance to speak with a lawyer before their cases are called. Instead, each is briefly interviewed by a defense investigator who calls each one forward by name and records information about their residence, employment, family and military service. The information is given to the assistant public defender assigned to the bond court. The crowded conditions preclude private, confidential interviews. Moreover, the investigators, usually two or three, are allowed only 105 minutes to interview 100–150 prisoners. . . .
>
> The usual hearings are short—30 seconds or less. The prosecutor states the charges, and the judge makes a finding of probable cause. The prosecutor asks for high bond, reciting, if possible, prior criminal history and prior failures to appear. The public defender uses the information in the chart to ask for a lower bond. The judge sets bond and continues the case for two to three weeks. As in most courts, including this one, bond hearings are very short. In Central Bond Court, they are sometimes so fast that "it is not uncommon for the proceedings to commence" before the next defendant gets to the podium.[4]

This account is corroborated by more than thirty years of government reports, academic articles, and media coverage exposing the alarming rate at which accused persons are continuously imprisoned until trial in Cook County. In 1987, supported by a grant from the

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[3] *See, e.g.*, DAVID E. OLSON & SEMA TAHERI, POPULATION DYNAMICS AND THE CHARACTERISTICS OF INMATES IN THE COOK COUNTY JAIL, COOK COUNTY SHERIFF'S REENTRY COUNCIL RESEARCH BULLETIN 5 (Feb. 2012); JUSTICE ADVISORY COUNCIL OF COOK COUNTY, EXAMINATION OF COOK COUNTY BOND COURT (July 12, 2012), *available at* https://www.slideshare.net/cookcountyblog/justice-advisory-council-bond-report-7122012 [hereinafter JAC REPORT].

[4] *Mason v. Cty. of Cook, Ill.*, 488 F. Supp. 2d 761, 762 (N.D. Ill. 2007).

Department of Justice, the Illinois Criminal Justice Information Authority published a report on the pretrial process in Cook County to help inform the creation of pretrial services agencies in Illinois.[5] Describing the pretrial process, the report observed that "the typical bond hearing does not last longer than two minutes (and is frequently shorter)," and added that "[t]he brevity of this procedure highlights the fact that the bond decision rests on one or two determining factors"—namely, criminal history and whether the charged offense is violent or non-violent.[6] The report's analysis of a sample of arrestees reflects the prevalence of money bond. Although only 22.9% of the arrests in the sample were for violent offenses, the report noted that D-bonds were "by far the most frequent bond type, applied in nearly 82 percent of the cases."[7] On the other hand, only 6% of arrestees in the sample received I-bonds, and were released without having to deposit funds.[8]

The report noted that "[i]n a bond system dominated by cash deposits as the means to secure pretrial release, as is the case in Cook County, the ability to secure pretrial release depends not only on the judge's assessment of the likelihood of the defendant's future appearance in court, but also on the defendant's financial resources."[9] In the sample studied for the report, less than half of the defendants assigned D-bonds were able to post the required bond deposit; the rest remained in custody following the bond hearing. Of those defendants unable to afford bail, 20% remained incarcerated because they could not afford a deposit of less than $500.[10]

Nearly 20 years later, in 2005, the Department of Justice (in partnership with American University) released a study reinforcing that the determining factor in the pretrial detention of numerous Cook County defendants is neither the danger they pose to society nor the risk that they will flee prior to their trial, but simply their inability to post bond.[11] The study described bond hearings as "a mass production operation," at which "judges receive no information from a disinterested interviewer as to the relevant facts about the defendant."[12] Once bond is set, judges "have made it clear to defense counsel that bond review applications are not favored and will rarely be granted."[13] Although the investigators noted that increases in statutory penalties

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[5] *See* CHRISTINE A. DEVITT & JOHN D. MARKOVIC, ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY, THE PRETRIAL PROCESS IN COOK COUNTY: AN ANALYSIS OF BOND DECISIONS MADE IN FELONY CASES DURING 1982–83 (1987).

[6] *Id.* at 16.

[7] *Id.* at 37, 45.

[8] *Id.* at 45.

[9] *Id.* at 55.

[10] *Id.* at 56.

[11] *See* BUREAU OF JUSTICE ASSISTANCE: CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT, AMERICAN UNIVERSITY, A REVIEW OF THE COOK COUNTY FELONY CASE PROCESS AND ITS IMPACT ON THE JAIL POPULATION (Sept. 26, 2005).

[12] *Id.* at 21.

[13] *Id.* at 22.

resulted in fewer defendants eligible for pretrial release, they "were told by prosecutors, defenders, and court staff that bonds tended to be set at a high level *even in those cases in which the defendants were eligible for release* on bond."[14] Specifically, 2004 data showed that almost half of defendants for whom a bond was set were required to deposit $10,000 or more in order to secure pretrial release. The researchers noted that "many whom the study team interviewed commented on what they perceived to be excessively high bonds frequently set," and given that 72% of the inmates sampled were unemployed, the study concluded that "high cash requirements for release guarantees that many are held in jail until disposition of their case because they cannot raise the money to get out."[15] Even for those defendants that are in the workforce, the high bond amounts set by Cook County judges would frequently require them to deposit a substantial portion of their annual income in order to secure their release—as of November 2016, the average monetary bond in Cook County was over $70,000, significantly more than the $54,648 median household income in the county.[16]

Reports from the last five years show that this disturbing trend has continued. A 2012 report on the bond system by the Justice Advisory Council of Cook County found that over two-thirds of pretrial detainees had a cash bond set at their bond hearing, and the "large majority . . . are unable to post the necessary bond to achieve release."[17] A 2012 research bulletin put out by the Cook County Sheriff's Office showed that rates of release on personal recognizance were strikingly similar to those in the 1987 study: only 8% of those who appeared in Cook County bond court in 2011 received an I-bond.[18] Perhaps even more alarming, the bulletin showed that of those defendants eligible for release on bond, approximately half were required to post $10,000 or more to secure their release.[19]

A 2014 operational review of Cook County's pretrial system undertaken by the Illinois Supreme Court and Administrative Office of the Illinois Courts found that despite the statute's direction "to set monetary bail only when no other conditions of release" are sufficient, money bond was often set as a matter of course, in a process that "generally takes 30 seconds or less per defendant—oftentimes less than 10 seconds."[20] The report noted that although there was at one time an initiative to review the "significant percentage" of cases in which defendants remained

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[14] *Id.* (emphasis added).

[15] *Id.* at 37–38.

[16] *See* Board of Commissioners of Cook County, Criminal Justice Committee, Public Hearing Notice and Agenda 3 (Nov. 17, 2016), *available at* http://cook-county.granicus.com/MediaPlayer.php?view_id=2&clip_id=1676.

[17] JAC REPORT, *supra* note 3, at 3.

[18] OLSON & TAHERI, *supra* note 3, at 5.

[19] *Id.* at 6.

[20] ILLINOIS SUPREME COURT & ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS, CIRCUIT COURT OF COOK COUNTY PRETRIAL OPERATIONAL REVIEW 15, 45 (Mar. 2014) [hereinafter PRETRIAL OPERATIONAL REVIEW].

in custody due to their inability to post a relatively low cash bond (and thus were detained "due to indigence"), that activity was "phased out."[21]

Although a 2016 review of Cook County's Central Bond Court showed modest improvement in the percentage of defendants released pretrial (largely due to the increased use of electronic monitoring as a condition of release), it also showed staggeringly high bond amounts for defendants for whom financial conditions were set.[22] The study showed that the average D-bond was $71,878, and of the 880 defendants who received D-bonds, less than 5% had a bond of less than $10,000.[23] It is therefore unsurprising that only 220 of those defendants (25%) were able to post bond and secure their release within 31 days.[24] Perhaps most discouragingly, the study revealed "a wide disparity in outcomes" depending on the presiding judge, finding that "[b]ond type and bond amount proved to be inconsistent even when controlling for defendants' backgrounds and charges."[25]

New risk assessment measures rolled out in 2015 and 2016 have led to some improvement in the proportion of Cook County defendants released without monetary conditions, and in 2016, Circuit Court Chief Judge Timothy Evans described Cook County as "in a transition period regarding pretrial detention."[26] But other reports from 2016, including the Central Bond Court review, have shown that Cook County judges are not following the recommendations of the pretrial services office.[27] This has prompted concern from Illinois Supreme Court Chief Justice Anne Burke about bond court judges' "unwillingness to apply the risk assessments," and her observation that Cook County judges continue to "refuse to allow eligible individuals to be released on their own recognizance and, instead, continue to require large cash bonds, even for relatively minor, nonviolent crimes."[28]

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[21] *Id.* at 50.

[22] SHERIFF'S JUSTICE INSTITUTE, CENTRAL BOND COURT REPORT 2 (Apr. 2016) [hereinafter 2016 BOND COURT REPORT].

[23] *Id.* at 1, 2.

[24] *Id.* at 1.

[25] *Id.*; *see also id.* at 13–16 (directly comparing bond outcomes for defendants with similar charges and backgrounds).

[26] Press Release, Statement from Chief Judge Timothy C. Evans (Oct. 24, 2016), *available at* http://www.cookcountycourt.org/MEDIA/ViewPressRelease/tabid/338/ArticleId/2485/Statement-from-Chief-Judge-Timothy-C-Evans.aspx.

[27] 2016 BOND COURT REPORT, *supra* note 22, at 9–10 (demonstrating the disparity between recommendations of pretrial services and bond decisions made by Cook County judges).

[28] Frank Main, *Cook County Judges Not Following Bail Recommendations: Study*, CHICAGO SUN TIMES, July 3, 2016, http://chicago.suntimes.com/news/cook-county-judges-not-following-bail-recommendations-study-find/.

Fortunately, momentum is growing in Cook County for meaningful reform of the pretrial process. In November 2016, the Cook County Board of Commissioners' Criminal Justice Committee held a public hearing focused on the prevalence of monetary bond, at which a number of reform advocates testified about the legal and policy shortcomings of Cook County's wealth-based pretrial system.[29] Major Cook County stakeholders have also publicly advocated for reform, including Cook County Sheriff Tom Dart, who has proposed abolishing cash bond in Cook County altogether.[30] Most recently, State's Attorney Kim Foxx and the Illinois Supreme Court each announced significant reforms in hopes of reducing the number of indigent defendants detained until trial.[31] Under the reform announced by State's Attorney Foxx in June, prosecutors would recommend I-bonds (i.e., release on personal recognizance) for defendants who do not present a risk of violence or flight.[32] And a bill introduced in the Illinois House in February 2017, HB3421, would abolish money bail in Illinois. However, despite these steps forward, significant work remains to be done to ensure that defendants in Cook County are no longer jailed solely because they are poor.

II. COOK COUNTY'S WEALTH-BASED PRETRIAL DETENTION SCHEME IS ILLEGAL

Discussing the well-publicized overcrowding of the Cook County Jail, a three-judge panel of one federal district court recently observed that "[m]any of the pretrial detainees in the Cook County Jail would . . . be bailed on their own recognizance, or on bonds small enough to be within their means to pay, were it not for the unexplained reluctance of state judges in Cook County to set affordable terms for bail."[33] Although the court found that the constitutionality of Cook County's bail practices was not before it, it appears highly likely that Cook County's wealth-based approach to pretrial release violates the U.S. and Illinois constitutions, as well as Illinois state law.

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[29] For a video of the full hearing, a list of speakers, and key documents presented at the meeting, see http://cook-county.granicus.com/MediaPlayer.php?view_id=2&clip_id=1676.

[30] Frank Main, *Get Out of Jail Free? Sheriff Proposes Scrapping Cash-Bond System*, CHICAGO SUN TIMES, Nov. 15, 2016, http://chicago.suntimes.com/news/sheriff-tom-dart-proposing-to-scrap-illinois-cash-bond-system/.

[31] *See* Steve Schmadeke, *Foxx Agrees to Release of Inmates Unable to Post Bonds of Up To $1,000 Cash*, CHICAGO TRIBUNE, Mar. 1, 2017, http://www.chicagotribune.com/news/local/breaking/ct-kim-foxx-bond-reform-met-20170301-story.html; Press Release, Illinois Supreme Court, Illinois Supreme Court Adopts Statewide Policy Statement for Pretrial Services (Apr. 28, 2017), *available at* http://www.19thcircuitcourt.state.il.us/ArchiveCenter/ViewFile/Item/1203.

[32] Press Release, State's Attorney Foxx Announces Major Bond Reform (June 12, 2017), *available at* https://www.cookcountystatesattorney.org/news/state-s-attorney-foxx-announces-major-bond-reform. Although this policy is undoubtedly a positive step, it applies only to a defined list of charges and may still result in the recommendation of unaffordable cash bail in some cases. And of course, the policy is not binding on Cook County judges, who may continue to set high cash bail notwithstanding the recommendations of the prosecutor in a given case.

[33] *United States v. Cook Cty., Ill.*, 761 F. Supp. 2d 794, 800 (N.D. Ill. 2011).

Both federal and state judicial and legislative bodies have abolished schemes that systematically discriminate against and imprison accused persons solely because they cannot afford bail. The federal government has endorsed these reforms, and in March 2016 issued guidance explicitly instructing judicial and executive officers nationwide that "*any* bail practices that result in incarceration based on poverty violate the Fourteenth Amendment."[34] Consequently, Cook County's current practices expose it to significant litigation risks. In fact, Cook County's bail practices are already the subject of at least one lawsuit—in October 2016, a putative class of pretrial detainees filed suit against county judges and the county sheriff, alleging that Cook County's practice of detaining release-eligible defendants solely because they cannot afford to post the required bail violates the federal and Illinois constitutions, as well as Illinois state law.[35]

Importantly, the legal infirmities of Cook County's pretrial system persist in spite of the fact that Illinois is one of several states to have eliminated commercial bail bonds. Under Illinois law, a defendant's bond may not be paid by a professional bail bondsman.[36] Instead, and as described in more detail below, defendants eligible for bail in Illinois are required in most cases to deposit ten percent of their total bail directly with the court to secure their release.[37] While this system may not suffer from all of the same legal infirmities as those in states with commercial bail bonds, the results are the same: indigent and low-income defendants who cannot afford to pay the required deposit are frequently detained for weeks or months pending trial, despite being otherwise eligible for pretrial release. This practice conflicts sharply with one of the primary purposes of the abolition of commercial bail bonds in Illinois—as the Illinois Supreme Court has explained, "the object of the statutes was to reduce the cost of liberty to arrested persons awaiting trial."[38]

Unsurprisingly, numerous criminal justice, municipal, and legal professional organizations have taken positions opposing wealth-based bail practices similar to those used in

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[34] U.S. Dep't of Justice, Civil Rights Division, Dear Colleague Letter (Mar. 14, 2016), at 7 (emphasis added), https://www.justice.gov/crt/file/832461/download.

[35] *See Robinson, et al. v. Martin, et al.*, Case No. 2016-CH-13587 (Cook Cty., Ill. Oct. 14, 2016). Sheriff Dart was subsequently dismissed from the case.

[36] *See* 725 ILCS 5/110-15 ("The provisions of Sections 110-7 and 110-8 of this Code are exclusive of other provisions of law for the giving, taking, or enforcement of bail."); 725 ILCS 5/110-13; 725 ILCS 5/103-9 (prohibiting the practice of "bounty hunting" in Illinois); *Schilb v. Kuebel*, 46 Ill. 2d 538, 544, aff'd, 404 U.S. 357 (1971) (explaining that "the central purpose of the legislature in enacting sections 110-7 and 110-8 was to severely restrict the activities of professional bail bondsmen").

[37] 725 ILCS 5/110-7(a) ("The person for whom bail has been set shall execute the bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10% of the bail, but in no event shall such deposit be less than $25.").

[38] *Schilb*, 46 Ill. 2d at 544.

Cook County, including the American Bar Association,[39] National Association of Pretrial Services Agencies,[40] National Association of Counties,[41] American Jail Association,[42] International Association of Chiefs of Police,[43] American Council of Chief Defenders,[44] American Probation and Parole Association,[45] the Conference of State Court Administrators,[46] and the

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[39] AM. BAR ASS'N, STANDARDS FOR CRIMINAL JUSTICE: PRETRIAL RELEASE, Standard 10-1.4(e)–(f) (3d ed. 2007), at 44 (prohibiting "the imposition of financial conditions that the defendant cannot meet"), http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/pretrial_release.authcheckdam.pdf.

[40] NAT'L ASS'N OF PRETRIAL SERVICES AGENCIES, STANDARDS ON PRETRIAL RELEASE 4 (3d ed. 2004) (citing as a "key principle[]" the use of financial conditions "only when no other conditions will reasonably assure the defendant's appearance and at an amount that is within the ability of the defendant to post"), https://www.pretrial.org/download/performance-measures/napsa%20standards%202004.pdf.

[41] NAT'L ASS'N OF COUNTIES, THE AMERICAN COUNTY PLATFORM AND RESOLUTIONS 2011–2012: JUSTICE AND PUBLIC SAFETY 5 (2012) ("Counties should establish written policies that ensure . . . the least restrictive conditions during the pretrial stage," including release on recognizance, non-financial supervised release, and preventive detention.), http://www.naco.org/sites/default/files/documents/American%20County%20Platform%20and%20Resolutions%20cover%20page%2011-12.pdf.

[42] AM. JAIL ASS'N, RESOLUTION ON PRETRIAL JUSTICE (Oct. 24, 2010) (acknowledging the benefits of pretrial supervision as an alternative to incarceration), https://www.pretrial.org/download/policy-statements/AJA%20Resolution%20on%20Pretrial%20Justice%202011.pdf.

[43] INT'L ASS'N OF CHIEFS OF POLICE, LAW ENFORCEMENT'S LEADERSHIP ROLE IN THE PRETRIAL RELEASE AND DETENTION PROCESS 3, 6 (2011) (noting that "financial bail has little or no bearing on whether a defendant will return to court and remain crime-free"), http://www.pretrial.org/wp-content/uploads/2013/02/IACP-LE-Leadership-Role-in-Pretrial-20111.pdf.

[44] AM. COUNCIL OF CHIEF DEFENDERS, POLICY STATEMENT ON FAIR AND EFFECTIVE PRETRIAL JUSTICE PRACTICES 14 (2011) (noting that "when financial conditions are to be used, bail should be set at the lowest level necessary to ensure the individual's appearance and with regard to a person's financial ability to post bond"), https://www.pretrial.org/download/policy-statements/ACCD%20Pretrial%20Release%20Policy%20Statement%20June%202011.pdf.

[45] AM. PROBATION & PAROLE ASS'N, RESOLUTION, PRETRIAL SUPERVISION (June 2010) ("[P]retrial supervision has been proven a safe and cost effective alternative to jail for many individuals awaiting trial."), https://www.appa-net.org/eweb/Dynamicpage.aspx?site=APPA_2&webcode=IB_Resolution&wps_key=3fa8c704-5ebc-4163-9be8-ca48a106a259.

[46] *See generally* CONFERENCE OF STATE COURT ADMINISTRATORS, 2012–2013 POLICY PAPER: EVIDENCE-BASED PRETRIAL RELEASE (2013), http://cosca.ncsc.org/~/media/Microsites/Files/COSCA/Policy%20Papers/Evidence%20Based%20Pre-Trial%20Release%20-Final.ashx.

Conference of Chief Justices.[47] As noted by Alec Karakatsanis, founder of the Civil Rights Corps and Co-Chair of the ABA Committee on Pretrial Justice, "[t]he absurdity, unfairness, and unconstitutionality of the cash bail system has been definitively condemned by the American Bar Association, the Department of Justice, leading scholars, police chiefs, public defenders, prosecutors, the Cook County Sheriff, the CATO Institute, and a long line of Presidents, Attorney Generals, distinguished judges."[48] Nevertheless, unjust and unconstitutional wealth-based pretrial systems persist across the United States, including in Cook County.

A. Cook County's Judicial Officers Routinely Violate the Illinois Bail Statute

Pretrial release and bail in Illinois are governed primarily by the Illinois Bail Statute, 725 ILCS 5/110-1 *et seq*. For all but a handful of specified—mostly violent—charges, the statute establishes a presumption of release. Thus, the law states that "[a]ll persons shall be bailable before conviction," *except* in the case of certain offenses, and even then, only "where the proof is evident or the presumption great that the defendant is guilty."[49] Those crimes include capital offenses, offenses for which life imprisonment may be imposed, and felony offenses carrying mandatory prison sentences where the court, after a hearing, determines that release of the defendant "would pose a real and present threat to the physical safety of any person or persons."[50] In determining whether a defendant charged with one of these offenses poses the "real and present threat" required for pretrial detention, the Bail Statute explicitly places the burden of proof on the State, which must demonstrate by clear and convincing evidence that "no condition or set of conditions . . . can reasonably assure the physical safety of any other person or persons."[51] If the court determines that pretrial detention is necessary, it must include in its order for detention a summary of the evidence of the defendant's culpability and its reasons for holding the defendant without bail.

For defendants whose offenses do not fall into the above categories, the court must determine the appropriate conditions of release (either financial or non-financial) by taking into account a list of 36 factors set out in Section 110-5(a) of the statute. The stated purpose of these factors is to aid the court in determining the conditions, if any, necessary to reasonably assure the appearance of the defendant and the safety of the community. In addition to a number of factors focused on the nature and circumstances of the charged offense, the statute requires that courts consider the characteristics and circumstances of the defendant, including the

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[47] CONFERENCE OF CHIEF JUSTICES, RESOLUTION 3 (Jan. 30, 2013) (endorsing the 2012–2013 COSCA policy paper), http://www.pretrial.org/wp-content/uploads/2013/05/CCJ-Resolution-on-Pretrial.pdf.

[48] Karakatsanis, *supra* note 1.

[49] 725 ILCS 5/110-4(a).

[50] *Id.* The statute also specifies three additional crimes that may be non-bailable: stalking, weapons charges taking place in or near a school under Ill. Crim. Code 24-1(a)(4), and making or attempting to make a terroristic threat under Ill. Crim. Code 29D-20.

[51] 725 ILCS 5/110-4(c); 725 ILCS 5/110-6.1(b)(3) & (c)(2); *see also* 725 ILCS 5/110-6.3 (setting forth a nearly identical procedure for defendants charged with stalking offenses).

defendant's financial resources and employment, and the source of any bail funds that the defendant might tender.[52] The court must also consider the sentence or fine that would be applicable if the defendant were convicted of the charged offense.[53]

Illinois courts have broad authority to release defendants on personal recognizance, without additional conditions. When the court determines "from all the circumstances" that the defendant "will appear as required . . . and the defendant will not pose a danger to any person or the community and that the defendant will comply with all conditions of bond," "the defendant may be released on his or her own recognizance."[54] Where the court finds that additional conditions of release are reasonably necessary "to assure the defendant's appearance in court, protect the public from the defendant, or prevent the defendant's unlawful interference with the orderly administration of justice," the court may impose additional, non-financial conditions of release set forth in the statute. Section 110-10(b) provides courts with a variety of options in this regard, from more minor conditions (curfews, work or study requirements, drug testing, or limitations on possession of weapons) to those that are more significant (medical or psychiatric treatment, electronic monitoring, remaining in the custody of a person or organization, restraining orders, or limitations on travel).

The statute specifically states that money bail is to be used as a last resort: "Monetary bail should be set *only* when it is determined that *no other conditions of release* will reasonably assure the defendant's appearance in court, that the defendant does not present a danger to any person or the community and that the defendant will comply with all conditions of bond."[55] In the event the court finds that financial conditions are necessary, the Bail Statute sets out explicitly in Section 110-5(b) the requirements for money bail. Those requirements make clear that money bail is not intended to be used in a manner that results in the pretrial detention of any defendant. First, the statute provides that the defendant's address be provided, kept up to date, and remain "a matter of public record with the clerk of the court." Second, the statute requires that any financial condition be "[n]ot oppressive." Third, financial conditions must be "[c]onsiderate of the financial ability of the accused." The statute provides that defendants for whom money bail is set "shall execute the bail bond and deposit with the clerk of the court . . . a sum of money equal to 10% of the bail."[56] After making this deposit, "the person shall be released from custody subject to the conditions of the bail bond."[57]

None of these provisions suggest that financial conditions may be set at a level that results in the pretrial incarceration of a person because he or she cannot afford to pay the required amount. To the contrary, the statute sets forth in great detail the procedures that must

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[52] 725 ILCS 5/110-5(a).

[53] *Id.*

[54] 725 ILCS 5/110-2.

[55] *Id.* (emphases added).

[56] 725 ILCS 5/110-7(a). The statute provides that the deposit must not be less than $25.

[57] 725 ILCS 5/110-7(b).

be undertaken to detain a defendant until trial. Namely, for the serious crimes identified in the statute as "non-bailable," the court may impose pretrial detention only where the State demonstrates at a hearing, by clear and convincing evidence, that the defendant poses a risk of dangerousness, and the court makes written findings to that effect. For all other "bailable" offenses, the court may release the defendant on his or her own recognizance or—where necessary to reasonably assure the appearance of the defendant, the safety of the community, and compliance with the conditions of bond—impose additional conditions of release. If "no other conditions of release" would suffice and the court determines that money bail is required, the statue contemplates that it will be set in an amount that is within the means of the defendant to post.[58] The statute does not provide for the protracted, pretrial incarceration of a defendant solely because that defendant cannot afford to pay the required bail deposit.

Courts in Cook County routinely fail to follow the Bail Statute's requirements in two primary ways. First, many courts have failed to observe the statute's requirement that monetary bail "be set *only* when it is determined that *no other conditions of release*" would sufficiently protect the public and assure the appearance of the defendant at trial. As explained above, Cook County judges set secured money bail in the vast majority of cases in which defendants are eligible for release, following bond hearings that last only a matter of seconds. Financial conditions are thus set reflexively, without meaningful consideration of alternative, non-financial conditions of release that would suffice to protect the public and ensure the appearance of the defendant.

Second, courts consistently set money bail in amounts beyond the ability of defendants to afford without consideration of the individual circumstances of each defendant. This practice runs afoul of Section 110-5(a)'s requirement that courts consider the financial resources of the accused before setting conditions of release, and also violates the statute's requirement that any monetary bail be set in an amount that is "[n]ot oppressive" and "[c]onsiderate of the financial ability of the accused."[59] As a result, arrestees in Cook County habitually face extended periods of pretrial detention not as a result of their dangerousness to the community or their risk of non-

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[58] Many other provisions of the statute reinforce this conclusion. Section 110-10, which sets out the conditions of *release* that a court may impose on a defendant, is titled "Conditions of bail bond." Other parts of the statute refer to "releas[ing] the person on bail," 725 ILCS 5/110-5.1(c), individuals being "free on bail," *see, e.g.*, 725 ILCS 5/110-6(e), and the possibility of an "offense committed on bail," 725 ILCS 5/110-6(b). Even when a defendant is charged with a crime while released on bail, the statute requires that the court hold a hearing on the bond violation "within 10 days from the date the defendant is taken into custody or the defendant may not be held any longer without bail." 725 ILCS 5/110-6(f)(1).

This interpretation is also supported by the Illinois Supreme Court Rules regarding bail, which prescribe limited preset bail schedules "to avoid undue delay *in freeing* certain persons accused of an offense when, because of the hour or the circumstances, it is not practicable to bring the accused before a judge." Ill. Sup. Ct. R. art. V, pt. B. (emphasis added). The Rules also specifically allow for defendants to whom bail schedules would apply to be released on unsecured "individual bonds" if they are "unable to secure release from custody" under the applicable bail schedule. *Id.* at art. V, pt. D, R. 553(d).

[59] 725 ILCS 5/110-5(b).

appearance, but solely because they are unable to pay bail. The extreme levels at which bail amounts are consistently set (and correspondingly high rates of pretrial detention) expose Cook County judicial officers to the claim that they are using unlawfully high bail amounts as a replacement for the hearing, clear and convincing evidence, and written findings required to order pretrial detention under the statute. Courts across the country have found such approaches illegal,[60] and indeed this is one of the specific practices the federal government sought to abolish when it reformed the federal bail system.[61]

The Illinois Supreme Court has held that using high bail as a tool to effect the pretrial detention of defendants violates state law. In *People ex rel. Sammons v. Snow*, the petitioner's bail was set at $50,000 for a charge of vagrancy, which carried a maximum punishment of up to six months' imprisonment and a $100 fine.[62] In setting the bail, the judge explicitly stated: "If I thought he would get out on that I would make it more." The court found that "[t]he amount of $50,000 could have no other purpose than to make it impossible for him to give the bail and to detain him in custody, and is unreasonable."[63] Because setting bail "for the purpose of keeping [the defendant] in jail" effectively "disregarded" the defendant's right to bail, the court vacated and reduced the petitioner's bail.[64] Other courts in Illinois have come to the same conclusion.[65]

The Illinois legislature has made clear that in implementing a pretrial bail system, the law "shall be liberally construed to effectuate the purpose of relying upon contempt of court proceedings or criminal sanctions *instead of financial loss*" to assure the appearance of the

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[60] *See, e.g.*, *State v. Anderson*, 127 A.3d 100, 127 (Conn. 2015) (quoting *State v. Olds*, 370 A.2d 969 (Conn. 1976)) (noting that Connecticut's bail clause "prevents a court from fixing bail in an unreasonably high amount so as to accomplish indirectly what it could not accomplish directly, that is, denying the right to bail"); *Mendonza v. Commonwealth*, 673 N.E.2d 22, 25 (Mass. 1996) (noting that the similar Massachusetts rule "should end any tendency to require high bail as a device for effecting preventive detention because it directs that all decisions based on dangerousness be made under the procedures set forth for that specific purpose"); *State v. Brown*, 338 P.3d 1276, 1292 (N.M. 2014) ("Intentionally setting bail so high as to be unattainable is simply a less honest method of unlawfully denying bail altogether.").

[61] *See, e.g.*, *United States v. Orta*, 760 F.2d 887, 890 (8th Cir. 1985) (noting that changes to federal law "eliminate the judicial practice of employing high bail to detain defendants considered dangerous and substitute a procedure allowing the judicial officer openly to consider the threat a defendant may pose"); s*ee also United States v. McConnell*, 842 F.2d 105, 109 (5th Cir. 1988) (explaining that the Bail Reform Act "proscrib[ed] the setting of a high bail as a de facto automatic detention practice").

[62] 340 Ill. 464 (1930).

[63] *Id.* at 469.

[64] *Id.*

[65] *See, e.g.*, *People v. Ealy*, 49 Ill. App. 3d 922, 934 (1977) ("Believing defendant to be a danger to the community, Judge Wendt stated that he purposely set bond high enough to detain defendant until 'some medical people do something with the man.' Yet excessive bail should not be required for the purpose of preventing a prisoner from being admitted to bail.").

defendant and the safety of the community.[66] Cook County's pretrial bail practices routinely fail to follow these principles.

On June 9, 2017, Governor Bruce Rauner signed a bill into law reinforcing the Illinois Bail Statute's existing preference for non-monetary conditions of release.[67] While the bill bolsters existing requirements by stating a "presumption that any conditions of release imposed shall be non-monetary in nature" and requiring courts to "consider the defendant's socio-economic circumstance" [68] and "impose the least restrictive conditions or combination of conditions necessary," it falls short of setting clear limitations on the use of money bail.[69]

Unfortunately, while this law might appear to take a step toward reform, it places no limits on the imposition of unaffordable bail and is unlikely to curb the use of money bail as a means to detain individuals pretrial. Instead, the law will merely serve as another reminder that the existing provisions of Illinois' Bail Statute disfavor imposing money bail absent consideration of an individual's ability to pay—without forcing any tangible changes in the way bond courts actually function.

B. Cook County's Wealth-Based Pretrial Detention Scheme Violates the Fourteenth Amendment

It is evident from the reports and studies cited above, as well as the daily realities of courtrooms and jails in Cook County, that the county's approach to bond disproportionately and irrationally affects the poor. The Supreme Court has long held that such practices violate the Fourteenth Amendment of the U.S. Constitution. Specifically, the Court has found that in criminal proceedings, "a State can no more discriminate on account of poverty than on account of religion, race, or color."[70] These practices likely also violate Illinois' own constitution.[71]

In *Griffin v. Illinois*, the Supreme Court invalidated an Illinois law that prevented indigent defendants from obtaining a trial transcript to facilitate appellate review, explaining that "[t]here can be no equal justice where the kind of trial a man gets depends on the amount of

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[66] 725 ILCS 5/110-2 (emphasis added).

[67] Bail Reform Act of 2017, Ill. Legis. Serv. P.A. 100-1 (West).

[68] *Id.* § 110-5(a-5).

[69] *Id.*

[70] *Griffin v. Illinois*, 351 U.S. 12, 17–18 (1956).

[71] The Illinois Constitution contains a due process and equal protection clause, Ill. Const. 1970 art. I, § 2, and the Supreme Court of Illinois has made clear that because "[o]ur due process and equal protection clauses are nearly identical to their federal counterparts," they are interpreted coextensively unless there is a specific reason to depart from the federal interpretation. *Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶ 49, 991 N.E.2d 745, 758 (Ill. 2013).

money he has."[72] Since *Griffin*, the Supreme Court has held in a long line of cases that individuals may not be incarcerated solely because of their inability to pay.

In *Williams v. Illinois*, the Court confirmed that a state may not subject a defendant to a prison sentence longer than the statutory maximum because he or she cannot afford to pay a fine.[73] The Court explained that "once the State has defined the outer limits of incarceration necessary to satisfy its penological interests and policies, it may not then subject a certain class of convicted defendants to a period of imprisonment beyond the statutory maximum solely by reason of their indigency."[74] The Court extended its holding in *Williams* the following year, holding that a state may not impose a prison term solely because a defendant is indigent and cannot afford to pay a fine imposed under a fine-only statute.[75]

In *Bearden v. Georgia*, the Court further held that a defendant's probation may not be revoked for failure to pay a fine or restitution, absent evidence that the failure to pay was willful or that alternative forms of punishment would be inadequate.[76] The Court explained that "[t]o do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment."[77] As a result, the Court held that both the Equal Protection and Due Process Clauses of the Fourteenth Amendment prohibit "punishing a person for his poverty."[78]

The longstanding principle that the criminal justice system should not operate differently depending on the financial resources of the defendant applies with even greater force in the pretrial detention context. In *United States v. Salerno*, the court considered the constitutionality of the Bail Reform Act of 1984, which permits pretrial detention after an adversarial hearing in the face of "clear and convincing" evidence that no conditions of release would adequately assure the safety of the community.[79] Upholding the constitutionality of the statute, the Court made clear that individuals have a constitutionally recognizable "strong interest in liberty" when it comes to pretrial release.[80] The Court further confirmed that "[i]n

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[72] 351 U.S. at 19.

[73] 399 U.S. 235, 240–41 (1970).

[74] *Id.* at 241–42.

[75] *See Tate v. Short*, 401 U.S. 395, 398 (1971).

[76] 461 U.S. 660, 665 (1983).

[77] *Id.* at 672–73.

[78] *Id.* at 671.

[79] 481 U.S. 739 (1987).

[80] *Id.* at 750.

our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."[81]

Courts across the country have invoked this line of cases to find that wealth-based pretrial detention schemes are unconstitutional.[82] Most recently, in April 2017, a federal district court in Texas ruled that Harris County's practice of detaining misdemeanor defendants until trial solely because they cannot afford cash bail violates the Fourteenth Amendment.[83] The court explained that its ruling did not amount to a "right to affordable bail." To the contrary, it acknowledged that Texas judges might in limited cases arrive at a high bail amount after weighing the required state law factors. But the court held that judges "cannot, consistent with the federal Constitution, set that bail on a secured basis requiring up-front payment from indigent misdemeanor defendants otherwise eligible for release, thereby converting the inability to pay into an automatic order of detention without due process and in violation of equal protection."[84] Finding that the plaintiffs had a clear likelihood of success at trial, the court issued an injunction prohibiting Harris County from continuing its "consistent and systematic policy and practice of imposing secured money bail as de facto orders of pretrial detention in misdemeanor cases."[85]

The United States Department of Justice has repeatedly taken a similar position, and has filed statements of interest and amicus briefs in support of the proposition that certain wealth-based bail practices violate the Fourteenth Amendment. For example, in *Walker v. City of Calhoun*, pretrial detainees challenged the City of Calhoun's bail system, which mandated payment of a fixed amount without consideration of other factors, including risk of flight, risk of dangerousness, and financial resources.[86] The trial court invoked the *Griffin* and *Bearden* line of cases, finding that the principle of those cases was especially applicable "where the individual being detained is a pretrial detainee who has not yet been found guilty of a crime."[87] The court found that the system violated the Equal Protection Clause since "incarceration of an individual

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[81] *Id.* at 755.

[82] *See, e.g.*, *Pugh v. Rainwater*, 572 F.2d 1053, 1056–57 (5th Cir. 1978) (en banc) (recognizing that bail should serve the limited function "of assuring the presence of [the] defendant" at trial, and thus "imprisonment solely because of indigent status is invidious discrimination and not constitutionally permissible"); *see also Williams v. Farrior*, 626 F. Supp. 983, 985 (S.D. Miss. 1986) ("[I]t is clear that a bail system which allows only monetary bail and does not provide for any meaningful consideration of other possible alternatives for indigent pretrial detainees infringes on both equal protection and due process requirements."); *Alabama v. Blake*, 642 So. 2d 959, 968 (Ala. 1994) (also finding that a wealth-based pretrial bail scheme "violates an indigent defendant's equal protection rights guaranteed by the United States Constitution").

[83] *O'Donnell v. Harris County, Texas*, No. 16-cv-01414, 2017 WL 1735456 (S.D. Tex. Apr. 28, 2017).

[84] *Id.* at 89.

[85] *Id.* at 3.

[86] No. 4:15-cv-0170, Order Granting Preliminary Injunction, Dkt. No. 40 (N.D. Ga. Jan. 28, 2016), at 48–50.

[87] *Id.* at 51.

because of the individual's inability to pay a fine or fee is impermissible," and issued a preliminary injunction halting the city's unconstitutional bail practices.[88] The city appealed to the Eleventh Circuit Court of Appeals, where the Justice Department filed a brief taking the position that bail practices that result in the pretrial incarceration of defendants due to their indigence violate the Fourteenth Amendment.[89]

The Justice Department likewise filed a statement of interest in *Varden v. City of Clanton*.[90] There, the district court approved a settlement agreement creating a new bail scheme and confirmed that the previous scheme was unconstitutional because it allowed for secured bail "without an individualized hearing regarding the person's indigence and the need for bail or alternatives to bail."[91] In doing so, the court observed that "[c]riminal defendants, presumed innocent, must not be confined in jail merely because they are poor. Justice that is blind to poverty and indiscriminately forces defendants to pay for their physical liberty is no justice at all."[92]

As these cases make clear, Cook County's current pretrial scheme is ripe for constitutional challenge under the Fourteenth Amendment and such an attack could very well garner the support of the Justice Department. Indeed, and as noted above, an October 2016 class action lawsuit has raised precisely this claim, arguing that Cook County's pretrial practices violate the Due Process and Equal Protection clauses of the Fourteenth Amendment.[93] The suit also challenges Cook County's bail practices on Eighth Amendment grounds, and in light of Cook County's consistent imposition of extremely high bail amounts, it appears likely that the county's practices routinely violate the Eighth Amendment's right against excessive bail.

C. Cook County's Wealth-Based Pretrial Detention Scheme Violates the Eighth Amendment

In addition to the Fourteenth Amendment's Equal Protection and Due Process clauses, wealth-based pretrial detention schemes like the one used in Cook County contravene the

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[88] *Id.* at 49–50 (citing *Tate*, 401 U.S. at 397–98).

[89] *See* U.S. Amicus Br., *Walker v. Calhoun*, No. 16-1052 (11th Cir.) (filed Aug. 18, 2016), *available at* https://www.schr.org/files/post/files/2016.08.18%20USDOJ%20AMICUS%20BR.pdf. On March 9, 2017, the Eleventh Circuit remanded the case to the district court for further proceedings, finding that the language of the injunction did not comply with Federal Rule of Civil Procedure 65. *Walker v. City of Calhoun*, No. 16-10521, 2017 WL 929750 (Mar. 9, 2017). The Court of Appeals did not address the substantive propriety of the injunction. *Id.* at *2.

[90] U.S. Dep't of Justice, Statement of Interest of the United States, No. 2:15-cv-34, Dkt. No. 26 (M.D. Ala. Feb. 13, 2015), *available at* https://www.justice.gov/file/340461/download.

[91] No. 2:15-cv-34, Opinion, Dkt. No. 76 (M.D. Ala. Sept. 14, 2015), at 8.

[92] *Id.* at 11.

[93] *Robinson, et al. v. Martin, et al.*, Case No. 2016-CH-13587 (Cook Cty., Ill. Oct. 14, 2016).

Eighth Amendment's proscription of excessive bail.[94] Again, this practice likely violates Illinois' constitution as well.[95]

The seminal case interpreting the Excessive Bail Clause is *Stack v. Boyle*.[96] In *Stack*, the Supreme Court considered the meaning of "excessive" bail, and confirmed that bail has a single purpose: to assure the presence of the accused at trial.[97] Thus, "[b]ail set at a figure higher than an amount reasonably calculated to fulfill this purpose is 'excessive' under the Eighth Amendment."[98]

Under *Stack*, "the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of that defendant."[99] Other courts have thus held that bail amounts are excessive when they are not narrowly tailored to this purpose.[100] Available evidence suggests that this standard is not being met in Cook County. This reality is more than a legal technicality; it gets to the very heart of judicial fairness and integrity. As Justice Vinson wrote in *Stack*, "[t]o infer from the fact of indictment alone a need for bail in an unusually high amount is an arbitrary act. Such conduct would inject into our own system of government the very principles of totalitarianism which Congress was seeking to guard against."[101]

III. COOK COUNTY'S WEALTH-BASED PRETRIAL DETENTION SCHEME IS IRRATIONAL, INEFFECTIVE, UNNECESSARILY COSTLY, AND DISPROPORTIONATELY AFFECTS RACIAL MINORITIES

While the adoption of a validated risk assessment tool has led to modest improvements in Cook County's pretrial system, arrestees continue to face an arbitrary, expensive, and biased system in which their freedom depends more on the judge they appear before and their own financial means than on whether their release would threaten public safety or result in a failure

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[94] U.S. Const. amend. VIII. The Supreme Court has held that the Eighth Amendment's proscription of excessive bail applies to the States through the Fourteenth Amendment. *Schilb v. Kuebel*, 404 U.S. 357, 365 (1971).

[95] Ill. Const. 1970, art. I, § 9 (providing that "[a]ll persons shall be bailable by sufficient sureties" with limited exceptions). Illinois courts have held that "[a] defendant has a constitutional right to reasonable bail," under both the Illinois and federal constitutions. *People v. Valentin*, 135 Ill. App. 3d 22, 46 (citing Section 9 of the Illinois Constitution and the Eighth Amendment of the U.S. Constitution).

[96] 342 U.S. 1 (1951).

[97] *Id.* at 5.

[98] *Id.*

[99] *Id.*

[100] *See, e.g., United States v. Arzberger,* 592 F. Supp. 2d 590, 605 (S.D.N.Y. 2008) ("[I]f the Excessive Bail Clause has any meaning, it must preclude bail conditions that are (1) more onerous than necessary to satisfy legitimate governmental purposes and (2) result in deprivation of the defendant's liberty.").

[101] 342 U.S. at 6.

to appear. As a 2016 review by the Cook County Sheriff's Office demonstrated, judges rarely follow the risk assessment-based release recommendations made by pretrial services, and frequently reach wildly different release decisions for similarly situated arrestees.[102] Without meaningful reforms, Cook County's pretrial detention scheme will continue to unnecessarily deprive individuals of their liberty, at great cost to taxpayers, while failing to advance the goals of reducing flight and protecting public safety.

A. Cook County's Wealth-Based Pretrial Detention Scheme is an Illegitimate, Ineffective, and Irrational Method of Protecting Public Safety

Cook County's pretrial bail scheme, as currently operated, is not properly or rationally related to the goal of protecting public safety for at least three reasons.

First and foremost, money bail is *never* an appropriate tool for protecting public safety. If the government believes that an arrestee poses a legitimate threat to the community, the proper course is to hold a hearing to determine whether pretrial detention is necessary. Using money bail as an end run around established pretrial detention procedures is inappropriate, both from a legal and a policy standpoint.[103]

Furthermore, when release outcomes hinge on a detainee's access to money, wealthy defendants are able to secure release regardless of the threat they may pose to public safety. As a result, Cook County's current wealth-based system can actually lead to the release of higher-risk detainees, thus compromising public safety.[104] For example, a recent analysis by the Chicago Tribune found that "gang members facing felony gun charges often had little problem coming up with the cash to get out of jail, while nonviolent thieves and others languished behind bars, unable to post much lower bonds."[105] The Superintendent of the Chicago Police Department, Eddie Johnson, has echoed this concern, noting: "[i]f you had an organization, and your enforcers were your best people to get done what you wanted to do, wouldn't you spend every resource you had to keep them out?"[106]

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[102] 2016 BOND COURT REPORT, *supra* note 22, at 8-10.

[103] *See supra* Part II.A (discussing, in part, the pretrial detention procedures outlined in the Illinois Bail Statute).

[104] *See* INT'L ASS'N OF CHIEFS OF POLICE, RESEARCH ADVISORY COMMITTEE RESOLUTION 005.T14, at 15 (2014) (noting that money-based pretrial release systems enable over 50% of defendants who are rated higher risk to be released pretrial).

[105] Todd Lighty & David Heinzmann, *How a Revolving Door Bond System Puts Violent Criminals Back On Chicago's Streets*, CHICAGO TRIBUNE, May 5, 2017, http://www.chicagotribune.com/news/local/ breaking/ct-bond-witness-murder-20170504-story.html.

[106] Bill Ruthhart, *Chicago Police Superintendent Supports Bond Reforms For Gun Crimes*, CHICAGO TRIBUNE, May 7, 2017, http://www.chicagotribune.com/news/ct-eddie-johnson-bond-reform-met-20170507-story.html; *see also* Eddie T. Johnson, Superintendent, Chicago Police Dep't., Remarks at the City Club of Chicago: A

(continued...)

Second, bail amounts are often set without appropriate consideration of an individual's actual risk to the community. As a result, the majority of individuals held on bond were arrested for non-violent offenses,[107] and many detainees rated as low-risk by a pretrial services risk assessment nevertheless face significant bail amounts. For example, during a 2016 review of bond hearings, the Cook County Sheriff's Office observed that 40% of the detainees who were recommended for "release with no conditions" under the County's risk assessment metric instead received D or C bonds,[108] requiring them to post part or all of the bond amount to secure release.[109] In fact, only 11% of these lowest-risk detainees were actually released as recommended—on their own recognizance, with no conditions attached. Moreover, the Sheriff's Office found that judges, when deciding whether to impose bail, only follow the County's risk-based assessment recommendations 15% of the time.[110] As a result, judges often fail to adequately assess each detainee individually and frequently reach unjustifiably different release decisions for similarly situated individuals.[111] This arbitrary and irrational system inflicts considerable harm on individual detainees and their families without advancing the County's interest in ensuring community safety.

Finally, in addition to the profound consequences of depriving individuals of their fundamental right to liberty, pointlessly jailing low-risk individuals can actually deteriorate community safety by increasing the likelihood that they will commit new crimes once released. A 2013 study by the Laura and John Arnold Foundation revealed that, "when held 2-3 days, low-risk defendants were almost 40 percent more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours, [and] low-risk defendants who were detained for 31 days or more offended 74 percent more frequently than those who were released within 24 hours."[112]

Candid Conversation with Tom Dart and Eddie Johnson (Dec. 6, 2016) (explaining that no matter how high bail is set, gangs will pay to get their members out).

[107] *See Jail Roulette: Cook County's Arbitrary Bond Court System*, INJUSTICE WATCH (Nov. 29, 2016), http://injusticewatch.org/interactives/jail-roulette/ [hereinafter *Jail Roulette*] ("Thirty to 40 percent of the cases each judge set bonds for involved defendants charged with felony possession of drugs, and close to three-quarters of the cases per judge were for nonviolent crimes.").

[108] Unlike D-Bonds which require detainees to post 10% of the bond amount, C-Bonds require detainees to pay the full cash value of the bond to secure release pending resolution of their cases. COMMUNITY RENEWAL SOCIETY, COOK COUNTY BOND COURT WATCHING PROJECT: FINAL REPORT 15 (Feb. 2016).

[109] 2016 BOND COURT REPORT, *supra* note 22, at 9; *see also Jail Roulette*, *supra* note 107, at 14 (providing examples of low-risk detainees receiving substantial cash bonds).

[110] 2016 BOND COURT REPORT, *supra* note 22, at 8.

[111] *See id.* at 13–16, 25 (comparing release determinations).

[112] *Pretrial Criminal Justice Research*, LJAF RESEARCH SUMMARY (Laura & John Arnold Found.), Nov. 2013, at 4 [hereinafter *Pretrial Criminal Justice Research*], *available at* http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief_FNL.pdf.

The fact is that Cook County's current reliance on cash bonds frequently deprives individuals of their fundamental rights with no corresponding benefit to the community. At best, individuals are needlessly denied liberty with no resulting improvement in public safety. At worst, public safety is actually eroded by the perverse results of the indiscriminate imposition of money bail. There is simply no justification for continuing to operate a system that exacerbates one of the very concerns it was purportedly established to address.

B. Cook County's Wealth-Based Pretrial Detention Scheme is Not Rationally Related to the Goal of Reducing the Risk of Flight

An individual's wealth does not determine how likely he or she is to appear in court. Studies have repeatedly shown that alternatives to cash bond can be equally effective at ensuring appearance, without the negative consequences of forcing detainees to purchase their freedom or languish in pretrial detention. For example, a 2013 study by the Pretrial Justice Institute found that "unsecured bonds are as effective at achieving court appearances as are secured bonds."[113] Additional studies have reached similar conclusions and noted that alternative conditions of release such as pretrial supervision result in equally good, if not better, appearance rates by defendants.[114]

The lack of a connection between low failure-to-appear ("FTA") rates and secured bail can be seen in the FTA rates of jurisdictions that have already moved away from (or tested alternatives to) money bail systems. For example:

- In the District of Columbia, approximately 85% of arrestees are released pretrial under the District's long-established supervised release program. Of all arrestees, nearly 90% return to appear in court.[115]

- In Kentucky, the court system saw FTA rates remain constant or decrease when it moved away from reliance on traditional money bail and toward a risk assessment and pretrial services system.[116]

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[113] JUSTICE POLICY INST., UNSECURED BONDS: THE AS EFFECTIVE AND MOST EFFICIENT PRETRIAL RELEASE OPTION 3 (Oct. 2013).

[114] *See, e.g.*, CHRISTOPHER T. LOWENKAMP & MARIE VANNOSTRAND, EXPLORING THE IMPACT OF SUPERVISION ON PRETRIAL OUTCOMES 17 (Nov. 2013) (finding that supervised defendants were significantly more likely to appear for court than unsupervised defendants); *see also* TARA BOH KLUTE & MARK HEVERLY, REPORT ON IMPACT OF HOUSE BILL 463: OUTCOMES, CHALLENGES AND RECOMMENDATIONS 6 (2012) (finding legislation shifting Kentucky's system toward risk-based pretrial supervision, as opposed to reliance on money bail, resulted in lower FTA rates).

[115] Clifford T. Keenan, *We Need More Bail Reform*, THE ADVOCATE FOR PRETRIAL JUSTICE (Pretrial Servs. Agency, D.C.), Sept. 2013.

[116] Klute & Heverly, *supra* note 114, at 6.

- A Colorado study found that a simple reminder call to defendants reduced FTA rates from 21% to 12%.[117]

- A Nebraska study found that even postcard reminders noticeably reduced FTA rates.[118]

- In Multnomah County, Oregon, a significant decrease in FTA rates was achieved by using automated call reminders. This approach resulted in a 41% reduction in non-appearances among individuals who received an automated call.[119]

The use of money bail is not just an ineffective mechanism for improving FTA rates—it may actually *increase* FTA rates in some situations. According to the Laura and John Arnold Foundation, "[s]tudies show that those who remain in pretrial detention for longer than 24 hours and are then released are less likely to reappear as required than otherwise similar defendants who are detained for less than 24 hours."[120]

C. Cook County's Wealth-Based Pretrial Detention Scheme Imposes Significant and Unnecessary Costs on Illinois Taxpayers

Cook County's wealth-based pretrial detention scheme is not only illogical, it is also highly inefficient. These inefficiencies, which are not supported by any rational policy considerations or goals of the criminal justice system, come at a considerable cost to Illinois taxpayers. The estimated cost of housing the average pretrial detainee in Cook County is $143 per day.[121] While the jail population is in constant flux, on any given day around 8,000 individuals are detained in the Cook County Jail[122]—approximately 90% of whom are being held pretrial.[123] Based on these estimates, it costs roughly $1.1 million per day to detain pretrial

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[117] JEFFERSON COUNTY, COLORADO COURT DATE NOTIFICATION PROGRAM FTA PILOT PROJECT (2005).

[118] Mitchel Herian & Brian Bornstein, *Reducing Failure to Appear in Nebraska: A Field Study*, THE NEBRASKA LAWYER, Sept. 1, 2010, at 12.

[119] Matt O'Keefe, *Court Appearance Notification System: 2007 Analysis Highlights* (Local Pub. Safety Coordinating Council, Multnomah Cty., OR), June 2007, *available at* http://www.pretrial.org/download/research/Multnomah%20County%20Oregon%20-%20CANS%20Highlights%202007.pdf.

[120] *Pretrial Criminal Justice Research*, *supra* note 112, at 5 (finding that "[l]ow risk defendants held for 2-3 days were 22 percent more likely to fail to appear than similar defendants (in terms of criminal history, charge, background, and demographics) held for less than 24 hours.").

[121] Res. 16-6051, Crim. J. Comm., Bd. of Comm'rs of Cook Cty. (2016) [hereinafter Res. 16-6051].

[122] *See* Emily Hoerner & Jeanne Kuang, *Cook County Sheriff Proposes an End to Cash Bail*, INJUSTICE WATCH (Nov. 15, 2016), https://www.injusticewatch.org/news/2016/cook-county-sheriff-proposes-an-end-to-cash-bail/ ("This year, the daily jail population has hovered at just above 8,000"); *see also* Res. 16-6051, *supra* note 121 (noting that "8,248 individuals were being detained at Cook County Jail as of October 17, 2016").

[123] Res. 16-6051, *supra* note 121.

defendants in Cook County. Given that the majority of these individuals are non-violent offenders who pose little to no risk to the community,[124] Illinois taxpayers are left paying a hefty price for an ineffective, irrational, and deeply harmful pretrial system.

Pretrial supervision, on the other hand, is dramatically less expensive than the exorbitant costs of detaining individuals pretrial. For instance, an assessment by the United States Courts determined that "[p]retrial detention for a defendant was nearly *10 times more expensive* than the cost of supervision of a defendant by a pretrial services officer in the federal system."[125] Similar disparities in cost can be found in jurisdictions across the country. For example, in Washington, D.C. the cost of pretrial supervision is approximately $18 per person per day, compared to about $200 per day to detain an individual in jail. Likewise, a 2010 study revealed that Broward County, Florida spent an estimated $107.71 per day to detain each arrestee pretrial, while the cost of providing pretrial services was only $1.48 per person per day.[126]

It is not surprising that those charged with managing local detention facilities have made clear that any conversation about controlling costs must begin with a focus on reducing pretrial detention rates.[127] As one observer noted, "[t]he net result [of] a system that relies on money to determine pretrial release is that when defendants cannot pay, the costs shift to the jail."[128] Given that "[j]ails are becoming more and more facilities whose primary role is to hold persons while the charges against them are resolved," this observer concluded that the current practice "is an antiquated approach that our new economic realities can no longer sustain."[129]

Another costly consequence of Cook County's current money bail system can be found in the legal expenses and settlement payments the County has incurred due to overcrowding and unconstitutional jail conditions.[130] In 2011, a federal court found that overcrowding at the Cook

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[124] *See supra* Part III.A (arguing that Cook County's pretrial detention scheme, as operated, is not rationally related to the goal of protecting public safety).

[125] *Supervision Costs Significantly Less than Incarceration in Federal System*, United States Courts (July 18, 2013), http://news.uscourts.gov/supervision-costs-significantly-less-incarceration-federal-system (emphasis added).

[126] Adrienne Hurst & Camille Darko, *Reforming Cook County Bail System May Have Side Benefit: Lower Cost*, INJUSTICE WATCH (Nov. 16, 2016), https://www.injusticewatch.org/news/2016/reforming-cook-county-bail-system-may-have-side-benefit-lower-cost/.

[127] *See* NAT'L ASS'N OF COUNTIES, COUNTY JAILS AT A CROSSROADS: AN EXAMINATION OF THE JAIL POPULATION AND PRETRIAL RELEASE 10 (2015) ("The jail population, and especially the pretrial population, is growing, while county corrections costs are registering a steep upward trajectory . . . . County jails understand the need to reduce the jail population, including for particular groups within the jail population that drive up jail costs.").

[128] John Clark, *The Impact of Money Bail on Jail Bed Usage*, AMERICAN JAILS, July-Aug. 2010, at 47, 54.

[129] *Id.* at 48, 54.

[130] *See Change Difficult as Bail System's Powerful Hold Continues Punishing the Poor*, INJUSTICE WATCH (Oct. 14, 2016), https://www.injusticewatch.org/projects/2016/change-difficult-as-bail-systems-powerful-hold-

(continued...)

County Jail was leading to conditions that violated inmates' constitutional rights.[131] The court made clear that the use of unaffordable money bail significantly contributes to the problem of overcrowding, noting that "the unexplained reluctance of state judges in Cook County to set affordable terms for bail" is a significant contributor to the overcrowding.[132]

In sum, wealth-based pretrial policies have an overwhelmingly negative impact on Cook County's finances—the County wastes substantial resources to detain presumptively innocent, low-risk individuals, which in turn increases the rate of recidivism (at great cost to the County) and exacerbates inmate overcrowding (leading to expensive litigation and settlement payments). From a purely financial perspective, Cook County's approach to pretrial justice is clearly unsound and irresponsible.

D. Cook County's Wealth-Based Pretrial Detention Scheme Disproportionately Harms Racial Minorities

Overwhelming evidence shows that Cook County's wealth-based pretrial detention scheme disproportionately affects persons of color. In secured bail schemes minorities are less likely to be released on their own recognizance,[133] and are assessed bail amounts that can often double the amounts imposed on white defendants, even when controlling for severity of offense, number of felony charges, and criminal history.[134] The result is that minorities are more likely to be detained. For example, one analysis determined that African-Americans are 66% more

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continues-punishing-the-poor/ [hereinafter *Punishing the Poor*] (noting that "Cook County is paying millions each year to settle lawsuits brought by current and former inmates. And so far this year, over 200 federal lawsuits are pending in Chicago, alleging some kind of trouble at the jail.").

[131] *United States v. Cook Cty., Ill.*, 761 F. Supp. 2d at 794.

[132] *Id.* at 800.

[133] JUSTICE POLICY INST., BAIL FAIL: WHY THE U.S. SHOULD END THE PRACTICE OF USING MONEY FOR BAIL 15 (2012) (citing John Wooldredge, *Distinguishing Race Effects on Pre-Trial Release and Sentencing Decisions*, JUSTICE QUARTERLY (2012)); Tina Freiburger, Catherine Marcum, & Mari Pierce, *The Impact of Race on the Pretrial Decision*, 35 AM. J. CRIM. JUSTICE 76 (2010) (finding that race has a strong impact on the probability that a defendant will be released on personal recognizance, with African-Americans being less likely to be released on that basis).

[134] Cynthia Jones, *"Give Us Free": Addressing Racial Disparities in Bail Determinations*, 16 N.Y.U. J. OF LEGIS. & PUB. POL'Y 919, 950 (2013) (citing ROBERT R. WEIDNER, RACIAL JUSTICE IMPROVEMENT PROJECT, PRETRIAL DETENTION AND RELEASE DECISIONS IN SAINT LOUIS COUNTY, MINNESOTA IN 2009 & 2010 (2011)) (finding that median bail for minority defendants was twice the amount set for white defendants); *see also* ISAMI ARIFUKU & JUDY WALLEN, RACIAL DISPARITIES AT PRETRIAL AND SENTENCING AND THE EFFECT OF PRETRIAL SERVICES PROGRAMS 7 (2013) (finding that among defendants charged with a felony, Hispanics had an average bail amount of $67,000, African Americans had an average bail amount of $46,000 and Whites had an average bail amount of $37,000); K.B. Turner & James Johnson, *A Comparison of Bail Amounts for Hispanics, Whites, and African Americans: A Single County Analysis*, 30 AM. J. CRIM. JUSTICE 35, 36 (2005) (finding that the average bail for Hispanic defendants was 2.5 times greater than for the average white defendant).

likely to be detained than their white counterparts, and Hispanic defendants are 91% more likely to be detained than white defendants.[135] Other studies have found that racial minorities are more likely than white defendants to be detained because they are unable to post bail, and that the inability to "make bail" is the primary explanation for African-American and Latino defendants' greater likelihood of pretrial detention.[136]

These trends appear to have taken hold in Cook County. As Chicago Appleseed recently reported, "[s]eventy-three percent of the people incarcerated in the Cook County Jail are African American despite the fact that African Americans make up only 25% of Cook County's population."[137] Contributing to this disparity in jail population is a significant shortfall in the number of African American defendants released on bond compared to individuals of other races. Data from 2011 to 2013 analyzed by the MacArthur Justice Center demonstrated that "only 15.8 percent of African Americans charged with Class 4 felonies were released on bond before their trials, as compared to 32.4% of non-African American defendants."[138] Furthermore, studies have shown that minorities represent the vast majority—93%—of individuals who have been detained pretrial for more than *two years* at the Cook County Jail.[139]

Making this disproportionate detainment of minorities even more insidious is the fact that pretrial detention has a ripple effect on a defendant's case. Multiple studies have shown that defendants detained through their pretrial period are more likely to be convicted and more likely to be sentenced to longer periods of incarceration than their released counterparts.[140]

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[135] Stephen Demuth, *Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees*, 41 CRIMINOLOGY 873, 895 (2003); *see also* Cassia Spohn, *Race, Sex and Pretrial Detention in Federal Court: Indirect Effects and Cumulative Disadvantage*, 57 KAN. L. REV. 879, 888–89 (2009) (finding that detention rates were higher among African-American defendants than white defendants).

[136] Demuth, *supra* note 135, at 899.

[137] Sharlyn Grace, *Principles of Bail Reform in Cook County*, CHICAGO APPLESEED (Apr. 25, 2017), http://www.chicagoappleseed.org/introducing-principles-for-bail-reform-in-cook-county.

[138] Sarah Lazare, *Hundreds of Thousands Are Languishing in Jails Because They Can't Afford Bail Bonds: A National Movement Is Building to End This*, JUSTICE POLICY INSTITUTE (Dec. 22, 2016), http://www.justicepolicy.org/news/11103.

[139] Spencer Woodman, *No-Show Cops and Dysfunctional Courts Keep Cook County Jail Inmates Waiting Years for a Trial*, CHICAGO READER, Nov. 16, 2016, http://www.chicagoreader.com/chicago/cook-county-jail-pre-trial-detention-investigation/Content?oid=24346477 (noting that "[m]ore than 1,000 Cook County inmates have been awaiting trial for more than two years").

[140] Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes* 3 (Univ. of Pa. Sch. of Law 2016), https://ssrn.com/abstract=2777615 (pretrial detention leads to a 6.6% increase in the likelihood that a defendant will be convicted); Will Dobbie, Jacob Goldin, & Crystal Yang, *The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges* 26 (NBER Working Paper No. 22511), http://www.nber.org/papers/w22511 (finding that "pre-trial release significantly decreases the probability of conviction, primarily through a decrease in guilty pleas");
(continued…)

This disparity of outcomes stems from a number of factors, including defendants' limited access to defense counsel and inability to participate in the preparation of their defenses. A more troubling but equally prevalent explanation for this disparity is that defendants facing the economic hardship of pretrial detention are more likely to enter guilty pleas regardless of actual guilt or innocence. This is especially true for those charged with lower level crimes.[141]

To understand the pressure a detainee may feel to plead guilty—regardless of his or her actual guilt—one need only look at the number of detainees in Cook County whose length of pretrial incarceration eclipses the sentence they would likely face if convicted. According to Cook County Sheriff Tom Dart, in 2016, approximately 1,203 detainees were entitled to immediate release following their convictions because they had already served their full sentences while awaiting trial.[142] In fact, many of these individuals served time well *in excess* of their sentences, resulting in what Sheriff Dart has referred to as "dead days." In 2015 alone, defendants being held in the Cook County Jail served nearly 80,000 days (218 years) in excess of their eventual sentences, with some defendants serving hundreds of excessive days.[143] In 2016, this number increased to a total of 251 years of excessive time served, costing taxpayers around $14.7 million.[144] Given the choice between immediate release upon entry of a guilty plea or indefinite pretrial detention, is it any wonder that individuals would choose to plead guilty to secure their release?

Apart from the moral impetus for reforming Cook County's pretrial system, the County should also be concerned about significant legal liability for its continued operation of a wealth-based bail scheme that disproportionately harms racial minorities. According to a class action lawsuit filed last year, Cook County's bail practices violate not only the federal constitution but also the Illinois Civil Rights Act of 2003, 740 ILCS 23, "because the monetary criterion used to determine whether [detainees] will be released prior to the disposition of their case results in the disproportionate pretrial incarceration of African Americans."[145] In addition to the

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CHRISTOPHER LOWENKAMP, MARIE VANNOSTRAND, & ALEXANDER HOLSINGER, INVESTIGATING THE IMPACT OF PRETRIAL DETENTION ON SENTENCING OUTCOMES 11 (2013) (low-risk defendants detained pretrial received sentences that were 2.8 times as long as released defendants).

[141] *See, e.g.*, Vanessa Edkins, *The Innocent Defendant's Dilemma: An Innovative Empirical Study of Plea Bargaining's Innocence Problem*, 103 J. CRIM. L. & CRIMINOLOGY 1 (Winter 2013); *see also* Nick Pinto, *The Bail Trap*, THE N.Y. TIMES MAGAZINE, Aug. 13, 2015 (noting that data from the New York Criminal Justice Agency indicate that detention itself creates enough pressure to increase guilty pleas).

[142] *Cook County Jail Population Down About 700 People*, DAILY HERALD, Jan. 3, 2017, http://www.dailyherald.com/article/20170103/news/170109830/ [hereinafter *Cook County Jail Population*].

[143] Justin Glawe, *Chicago's Jail Kept Inmates Locked Up for 218 Years Too Long*, THE DAILY BEAST, June 8, 2016, http://www.thedailybeast.com/chicagos-jail-kept-inmates-locked-up-for-218-years-too-long.

[144] *See Cook County Jail Population*, supra note 142.

[145] Class Action Complaint at 31, *Robinson, et al. v. Martin, et al.*, Case No. 2016-CH-13587 (Cook Cty., Ill. Oct. 14, 2016).

constitutional and statutory violations discussed earlier in this paper,[146] violations of the Illinois Civil Rights Act—as alleged in this recent class action complaint—may expose the County to costly litigation and liability absent serious reforms.

E. Cook County's Wealth-Based Pretrial Detention Scheme Increases Recidivism

The empirical evidence shows that pretrial bail schemes further harm communities by increasing recidivism. According to one study, defendants who are detained pretrial are 30% more likely to recidivate when compared to defendants released sometime before trial.[147] Even defendants who are released prior to trial but were detained for several days while securing enough money for bail are 39% more likely to commit a new crime prior to trial than defendants who were never incarcerated.[148] As the authors of this study explained, "[d]etaining low- and moderate-risk defendants, even just for a few days, is strongly correlated with higher rates of new criminal activity both during the pretrial period and years after case disposition; as length of pretrial detention increases up to 30 days, recidivism rates for low and moderate-risk defendants also increases significantly."[149]

The correlation between pretrial detention and recidivism is supported by a recent Texas study on the consequences of pretrial detention for misdemeanor offenses. Based on the results of this study, the researchers estimated that:

> [A] representative group of 10,000 misdemeanor offenders who are released pretrial would accumulate an additional 2,800 misdemeanor charges in Harris County over the next 18 months, and roughly 1,300 new felony charges. If this same group were instead detained they would accumulate 3,400 new misdemeanors and 1,700 felonies, an increase of 600 misdemeanors and 400 felonies. While pretrial detention clearly exerts a protective effect in the short run, for misdemeanor defendants it may ultimately serve to compromise public safety.[150]

Inmate release statistics show that over 50% of detainees released from the Cook County Jail following conviction and sentencing returned to jail within three years.[151] Because these

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[146] *See supra* Part II (assessing the legality of Cook County's wealth-based pretrial detention scheme).

[147] CHRISTOPHER LOWENKAMP, MARIE VANNOSTRAND, & ALEXANDER HOLSINGER, THE HIDDEN COSTS OF PRETRIAL DETENTION 19 (2013).

[148] *Id.* at 4.

[149] *Id.* at 3.

[150] Paul Heaton, Sandra G. Mayson, & Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 768 (2016).

[151] DAVID E. OLSON, CHARACTERISTICS OF INMATES IN THE COOK COUNTY JAIL, COOK COUNTY SHERIFF'S REENTRY COUNCIL RESEARCH BULLETIN 7 (Mar. 2011).

statistics do not include individuals who were released because they were acquitted, posted bail, or had the charges against them dropped, the actual recidivism rate is, in fact, higher.[152] This high rate of recidivism comes at a great cost. For example, a 2015 study by the Illinois Sentencing Policy Advisory Council found that, over the next five years, recidivism will cost Illinois more than $16.7 billion.[153] As Cook County and other jurisdictions struggle to reduce recidivism rates, continuing to operate a pretrial system that increases the likelihood that detainees will reoffend upon release is clearly illogical.

F. Cook County's Wealth-Based Pretrial Detention Scheme Creates Harmful Externalities

Cook County's money bail scheme not only unnecessarily and irrationally increases pretrial incarceration and long-term recidivism rates, it also wreaks havoc on the social networks of the accused.

A recent article in the Chicago Tribune provides an example of the all too common consequences of Cook County's pretrial system. The article describes the 2015 arrest of a Chicago man who was detained, pretrial, for over a year because he could not come up with $1,000 to buy his way out of jail. During his year behind bars, the man lost his job and his car, missed the birth of his son, and his sister passed away. All of this for the charge of selling $40 worth of cocaine.[154] Unfortunately, this story is far from unique.

The Cook County Sheriff's Office estimates that as many as 300 individuals are detained pretrial because they are unable to scrape together $100 to purchase their release.[155] These individuals, and numerous others who are unable to pay varying amounts in excess of $100, have their lives upended. Detaining a defendant until trial often means a loss of income for the defendant's family, and can lead to much more serious consequences like the loss of a car or home, lost custody over a child, and a host of other negative consequences.

For example, at the opening of the Department of Justice's 2011 National Symposium on Pretrial Justice, it was noted that pretrial detention also impacts health and healthcare costs:

> This link between financial means and jail time is troubling in its own right. But it's compounded by the fact that many inmates

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[152] *Id.*

[153] *The High Cost of Recidivism*, ILL. RESULTS FIRST (State of Ill. Sentencing Policy Advisory Council), Summer 2015, at 2, *available at* https://www.macfound.org/media/files/Illinois_Results_First.pdf.

[154] Steve Schmadeke, *Cash Bail Under Fire as Discriminatory While Poor Inmates Languish in Jail*, CHICAGO TRIBUNE, Nov. 15, 2016, http://www.chicagotribune.com/news/local/breaking/ct-cook-county-cash-bail-met-20161114-story.html.

[155] *Id.* (citing Sheriff's Office officials); *cf.* BERNADETTE RABUY AND DANIEL KOPF, PRISON POLICY INITIATIVE, DETAINING THE POOR (May 10, 2016) (finding that "most people who are unable to meet bail fall within the poorest third of society").

> become ineligible for health benefits while they're in jail – imposing an additional burden on taxpayers when they're released, and often are forced to rely on emergency rooms for even the most routine medical treatments.[156]

Furthermore, in addition to healthcare concerns, detainees in Cook County may face serious other threats related to the conditions of their confinement. Over the years, Cook County has been subjected to numerous lawsuits alleging poor or unsafe conditions as a result of overcrowding.[157] In fact, a federal investigation into conditions at the Cook County Jail "found that when the [jail] was overcrowded, there was a corresponding increase in fights, uses of force, and weapons, exposing inmates to harm and depriving them of their constitutional rights to safe and humane conditions of confinement."[158]

Frequently, the only way defendants can hope to mitigate these harsh realities is by relying on family and friends to carry the financial burden, often in amounts that are a significant portion of their annual incomes.[159] Our system of justice is predicated on the notion that punishment should not precede a finding of guilt. Imposing on presumptively innocent individuals and their networks unnecessary debt, joblessness, homelessness, and further financial duress prior to trial when the result neither protects communities nor meaningfully impacts trial appearance rates is unconscionable.

IV. REFORMS FOR IMPROVEMENT OF COOK COUNTY'S PRETRIAL DETENTION SCHEME

As detailed above, Cook County's wealth-based pretrial detention scheme, as currently operated, is illegal, harmful, and fails to adequately advance any legitimate policy goals. However, unlike some other jurisdictions around the country in which inadequate statutory schemes and the powerful influence of the bail bond industry have served as obstacles to change, Cook County is well-positioned for meaningful reform today. The deficiencies identified are not inherent in the Illinois Bail Statute, but in how its terms are applied at bond court. Money bond is not currently viewed as a last resort, nor is ability to pay considered on any regular basis. Meaningful reforms to the current system will require the stakeholders in Cook County to accept that money bail is not a guarantee for public safety or appearance in court. Such recognition will lead to significant strides in the application of a bond structure that avoids the negatives of the current wealth-based system. The Illinois Bail Statute—if properly implemented—contains the necessary elements for an effective and equitable pretrial system, and the majority of key stakeholders in Cook County appear to agree that change is necessary. In this context, there are several reforms Cook County should consider to dramatically improve its pretrial system and

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[156] Eric Holder, Remarks at the National Symposium on Pretrial Justice (June 1, 2011).

[157] *Punishing the Poor*, *supra* note 130, at 8 (discussing various legal actions against the County).

[158] *United States v. Cook Cty., Ill.*, 761 F. Supp. 2d at 798.

[159] *See supra* note 16 and accompanying text (discussing bond amounts relative to the median income in Cook County).

end the practice of needlessly punishing presumptively innocent defendants because they are poor.

A. Judicial Rules

As previously noted, the Illinois Bail Statute includes a provision requiring that any financial conditions of release must be "[c]onsiderate of the financial ability of the accused."[160] Notwithstanding this provision, Cook County judges frequently set bail in amounts that exceed the financial capacity of detainees, resulting in the continued pretrial detention of these individuals based on their inability to pay. The Illinois Supreme Court and the Circuit Court of Cook County should each consider adding provisions to their rules to address this disconnect between what the statute requires and what actually takes place in the courtrooms of Cook County.[161] For example, the following two provisions would help ensure compliance with the law by requiring judges to meaningfully assess the financial capacity of individuals when imposing financial conditions of release:

- *In any case in which a judicial officer imposes a financial condition of pretrial release, the judicial officer shall conduct an inquiry into the accused person's financial resources and ability to pay.*

- *A judicial officer shall not impose a financial condition of release unless the record indicates and the judicial officer finds, in writing on the record, that the accused has the present ability to pay the financial condition without hardship.*

The purpose of these rules is to make clear that judges may not impose a financial condition of release that results in the pretrial incarceration of a person. In combination with effective judicial education, these provisions are designed to shift the focus of pretrial release determinations away from the financial means of the accused, and toward alternatives that are more effective, efficient, just, and consistent with the law.

B. Judicial Education

Educating Cook County judges is critical to the effectiveness of any effort to reform Cook County's pretrial detention scheme. Numerous studies, media reports, and court-watching initiatives have concluded that, despite the increasing availability of risk assessments and other information about defendants, Cook County judges have continued to reflexively impose money bond on defendants without consideration of their ability to pay, and in violation of the Illinois

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[160] 725 ILCS 5/110-5(b); *see supra* text accompanying note 58 (discussing the statutory requirement to consider the financial ability of detainees when setting financial conditions of release).

[161] The Illinois Supreme Court has the authority to adopt rules and amend its rules pursuant to the procedures outlined in Illinois Supreme Court Rule 3. The Circuit Court of Cook County may make rules "regulating their dockets, calendars, and business" and "governing civil and criminal cases consistent with rules and statutes." Cook Cty. Cir. Ct. R. 0.1(a); *see also* Ill. Sup. Ct. R. 21(a) (requiring agreement of a majority of the circuit judges to adopt a rule).

Bail Statute. Perhaps even more disturbingly, these same sources have revealed dramatic inconsistencies in outcomes among Cook County judges, even when controlling for criminal history and other factors. To create meaningful change, the Circuit Court should educate its members on the efficacy and availability of alternatives to D-bonds, including I-bonds, pretrial supervision or monitoring, drug treatment, and other alternatives set forth in the statute. Judicial education on this topic should incorporate data from all Cook County judges to increase awareness of disparities in bail setting practices and to encourage uniform best practices that are consistent with the goals of an effective and fair pretrial scheme.

C. Data Monitoring

The Circuit Court of Cook County is the largest judicial circuit in Illinois, and one of the largest unified court systems in the world. Although many media outlets, academic researchers, and reform advocates have collected data related to the imposition of money bail in Cook County, the size of the court system makes accessing reliable information about pretrial release outcomes difficult. In order to ensure compliance with the requirements of the Bail Statute, and to avoid the substantial inconsistencies that currently plague the system, the court should track and publically disclose data on pretrial detention and release. Specifically, the court should aim to identify disparities in pretrial release outcomes for similarly situated defendants, including significant differences in the amount of money bail imposed and racial disparities in pretrial release outcomes. The court should also track pretrial release outcomes to determine whether the current system is working effectively to release low-risk defendants while detaining the most dangerous defendants. Enhanced data monitoring will facilitate judicial education and improvements to pretrial services by allowing Cook County officials to identify where the pretrial system is falling short, and effectively focus available resources in those areas.

D. Reforms to Pretrial Services

In addition to the above reforms, the pretrial system in Cook County could benefit enormously from commonsense reforms to Cook County's existing Pretrial Services Division. Cook County's shortcomings in this area are not novel. Three years ago, a report by the Illinois Supreme Court raised concerns about pretrial services in Cook County, explaining that the Pretrial Services Act had "become largely aspirational, rather than a model for everyday procedure."[162] Inadequacies in pretrial services are part of a vicious cycle that undermines pretrial justice in Cook County: "because of a lack of confidence in the credibility of risk assessment and community living information," "reliance upon the work of pretrial services is generally dismissed or minimized" by Cook County judges, which in turn leads to less investment in pretrial services.[163]

Although some changes have already been implemented, effective reform will require a well-funded, independent, social service-oriented pretrial services program. While the details of

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[162] PRETRIAL OPERATIONAL REVIEW, *supra* note 20, at 5.

[163] *Id.*

pretrial services reform are beyond the scope of this paper, a number of stakeholders have advocated for the following changes:

- Increased training, funding, and organizational structure to enhance the ability of pretrial services to conduct effective pretrial supervision of released individuals;
- Improving conditions for bail hearings, including alleviating overcrowding and providing more private settings for initial interviews;
- Continuing investment in risk assessment and other methods for maximizing the information available to the court at bail hearings; and
- Implementing text message or telephone reminders of upcoming court dates, which have proven to be a low cost method of reducing failures to appear.

These and other possible changes are detailed in the Illinois Supreme Court's 2014 Pretrial Operational Review of Cook County. In response to the Supreme Court's 2014 Review, Cook County Chief Judge Timothy Evans expressed his hope that the report "will serve as a blueprint for the Circuit Court and all of the stakeholders in the system to move forward."[164] But despite the agreement of most Cook County stakeholders that these reforms are essential, many of the same problems continue to plague pretrial services years later. In combination with the other reforms advocated above, enhancing Cook County's pretrial services capabilities will provide meaningful and necessary support to ensure the safety of the community and the appearance of defendants while reducing the pretrial incarceration of individuals who cannot afford their bail.

V. CONCLUSION

During testimony before the Senate Judiciary Committee in 1964, Attorney General Robert F. Kennedy noted that bail practices in the federal system had "become a vehicle of systemic injustice," under which "the rich man and the poor man do not receive equal justice in our courts."[165] Sadly, those comments apply with full force to Cook County's bail practices, under which pretrial detention outcomes have long been detached from valid criminal justice concerns, and have instead been based primarily on the financial means of the accused. Over fifty years after Attorney General Kennedy's words, the time to correct this injustice in Cook County is long overdue.

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[164] Press Release, Chief Judge Evans Responds to Illinois Supreme Court Report (Mar. 21, 2014), *available at* http://www.cookcountycourt.org/MEDIA/ViewPressRelease/tabid/338/ArticleId/2278/Chief-Judge-Evans-responds-to-Illinois-Supreme-Court-Report.aspx.

[165] *Hearing on S. 2838, S. 2839, and S. 2840 Before the Subcomm. on Constitutional Rights and Improvements in Judicial Machinery of the S. Comm. on the Judiciary*, 88th Cong. (1964) (statement of Robert F. Kennedy, Attorney General).

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COLUMBIA DIVISION

KAREN MCNEIL, et al., On behalf of themselves and all others similarly situated, Plaintiffs, v. COMMUNITY PROBATION SERVICES, LLC, et al., Defendants.	Case No. 1:18-cv-00033 Judge Campbell / Frensley

EXPERT REPORT OF MICHAEL R. JONES, Ph.D.

I. Background

1. I am the President of Pinnacle Justice Consulting, which I began in 2017. My associates and I (1) provide training and technical assistance for states, localities, and various justice system stakeholder organizations to enable them to improve their pretrial justice policies and practices based on the most recent research and legal developments; (2) assist states and local jurisdictions to design and implement strategic initiatives to modernize their pretrial justice systems; and (3) perform empirical research, data analysis, system and program evaluation, and expert testimony for criminal justice systems.

2. I have been working since 2004 as a consultant for the U.S. Department of Justice's National Institute of Corrections, providing criminal justice and pretrial training and technical assistance to dozens of jurisdictions nationwide.

3. From 2010 to 2017, I worked at the non-profit Pretrial Justice Institute (PJI) where I served as a Senior Project Associate and then the Director of Implementation. At PJI, I directed the Bureau of Justice Assistance's three-year Smart Pretrial Demonstration Initiative, which was a three-jurisdiction project to test the cost savings and public-safety enhancements that can be achieved by moving to a pretrial justice system that uses research-based risk assessment and risk management strategies to improve pretrial outcomes; provided pretrial training and technical assistance to hundreds of jurisdictions; conducted numerous workshops at national and state conferences; performed empirical research; and developed several resource materials for decision-

makers and practitioners.

4. Before my work at PJI, I served for nine years as a county employee working for a local criminal justice coordinating committee in Jefferson County, Colorado, where I provided information, ideas, and analyses to justice-system decision-makers for local system improvements, including in pretrial justice.

5. During my career, I have written numerous criminal justice, pretrial, and psychological articles that have appeared in peer-reviewed journals and elsewhere.

6. I received my Ph.D. in Clinical Psychology from the University of Missouri-Columbia.

7. A copy of my curriculum vitae summarizing my professional experience and education is attached as Exhibit A. It includes a list of all publications I have authored.

8. I have provided expert testimony on the subjects of this declaration in: *Little v. Frederick*, 17-cv-724 (W.D. La. 2018); *Mock, et al., v. Glynn County, Ga.,* 2:18-cv-0025 (S.D. Ga. 2018); *Daves v. Dallas County, et al.*, 3:18-cv-0154 (N.D. Tex. 2018); *Booth, et al. v. Galveston County, Tex.*, 3:18-cv-0104 (S.D. Tex. 2018); *Schultz, et al. v. State of Alabama, et al.*, 5:17-cv-00270-MHH (N.D. Ala. 2018); *Knight v. Sheriff for Leon County, Fla.*, No. 4:17cv464 (N.D. Fla. 2018); *Buffin v. Hennessy*, 4:15-cv-4959 (N.D. Cal. 2018); *ODonnell v. Harris County*, 251 F. Supp. 3d 1052 (S.D. Tex. 2017).

9. I am being compensated at the rate of $300 per hour for preparation of this report and other substantive work and $150 per hour for travel related to this case. Any court testimony I provide in this case is pro bono.

II. Materials Reviewed and Methodology

10. I have attached as Exhibit B a list of materials that I reviewed when preparing this report. The studies I reviewed evaluate the effects of pretrial release and detention on multiple pretrial and case processing outcomes and the effectiveness of different risk management strategies on several pretrial outcomes.

11. In forming my opinions expressed in this report, I rely on the findings from multiple studies authored by various researchers and scholars in the pretrial justice field, who used data from numerous local and state jurisdictions throughout the United States. These studies use acceptable research methodology[1] and were performed in jurisdictions that have many similarities

[1] Some studies were published in peer-reviewed journals that target academic audiences. Other studies, sometimes by the same researchers, were published in other venues (e.g., by a non-profit organization). Although the academic, peer-review process can improve the quality of empirical research, it is not always necessary. Relevant, high-quality studies have been published elsewhere (see, e.g., Bechtel et al., 2016). Furthermore, the venue of publication (e.g., peer review journal) does not guarantee the usefulness of the study to an issue at hand – in this case, helping local justice system practitioners achieve the best pretrial results they can in their jurisdiction (see, e.g.,

in their policies and practices. Frequently, the results from these studies either complement or replicate one another. I also rely on the knowledge and experience I have gained over the last decade as a national expert and researcher in pretrial justice implementation and evaluation. Because of the research methods used and jurisdictions' similarities, and based on my experience working with hundreds of jurisdictions, I believe and have found that the research findings and practices described below are largely generalizable to other jurisdictions.

12. It is also my belief that the findings and practices described below are generalizable to the probation context, including when a warrant is issued because of an alleged violation of misdemeanor probation.

13. In particular, I believe and have found that the findings from the studies in this report are relevant to persons who are on probation because: (1) several studies referenced in this report include persons who were on community-based supervision, including probation, when they were accused of committing a new offense; and (2) I cannot identify, based on my professional knowledge and experience, any factors or circumstances that would render the studies' findings not applicable to persons who are under probation supervision when they are accused of a new crime or a technical violation. Additionally, I have assisted many jurisdictions in implementing evidence-based practices for pretrial defendants. These jurisdictions have measured the pretrial risk of, and delivered various interventions designed to improve the court appearance and law-abiding performance of, defendants in the community. Neither these jurisdictions' practitioners nor I have identified a difference in these interventions' effectiveness for persons who are or are not on probation or other community-based supervision or release status (e.g., parole, in-home detention, pretrial release, community service) at the time of the new alleged offense.

III. Opinions

14. Plaintiff's counsel asked me to express my opinion on the following five topics:

a) Does pretrial[2] detention for time periods more than 24 hours have adverse consequences for detained persons and for the community?

b) Does pretrial detention for time periods more than 24 hours have an adverse effect on the likelihood that a person will make all court appearances or remain law-abiding while on pretrial release?

Clipper et al., 2017). Researchers' understanding of the relevant issues (e.g., the legal parameters of pretrial decision-making, hypotheses tested, sampling methods used, data collected, and statistical tests used) are useful to assessing the comprehensiveness, validity, generalizability, and usefulness of a study, separate from the venue of publication.

[2] The word "pretrial" is used in this report to refer to the time period of a criminal case prior to adjudication or case disposition.

c) Is there any empirical evidence that secured money bail is more effective than unsecured money bail or non-monetary conditions of release at assuring appearance in court?

d) Is there any empirical evidence that secured money bail is more effective than unsecured money bail or non-monetary conditions of release at assuring public safety?

e) How does secured money bail and unsecured money bail or non-monetary conditions of release affect the speedy release of arrested persons?

f) Are these findings generalizable to the post-arrest, pre-hearing context after a person is accused of violating a condition of probation and before the allegation is adjudicated?

15. In many cases, criminal defendants are ordered released (i.e., they are "bailed") pretrial, but because their release is conditioned on the payment of secured money bail, they nevertheless remain in jail because they are not able to pay secured money bail. In many of these cases, the arrestees do not pose a risk sufficient to justify an order of pretrial detention. For these defendants, a less-restrictive, non-secured-money-bail alternative to pretrial detention would reasonably achieve the government's interests in promoting speedy pretrial release, reasonably assuring public safety, and reasonably assuring court appearance. When guided by empirical research on pretrial release and detention and pretrial risk management, local governments can more effectively manage defendants' pretrial risk without resorting to unaffordable secured money bail that results in unnecessary pretrial detention.

IV. Findings

A. Secured Money Bail Results in Unnecessary Pretrial Detention

16. I express the opinion that the use of secured money bail increases pretrial detention by detaining more defendants for the duration of the pretrial phase of their case and by increasing the length of their detention, because defendants who are unable to afford secured money bail (and thus remain detained prior to trial) would otherwise be eligible and able to obtain prompt release if the jurisdiction instead used unsecured bonds or non-monetary conditions of release.

17. Several studies have shown that secured money bail contributes to unnecessary pretrial detention. Specifically, defendants required to obtain pretrial release with secured money bail (whether in the form of cash, surety, property, or deposit to the court) have lower release rates compared to defendants who are not required to pay secured money bail prior to release. Moreover, people who are required to pay secured money bail to be released wait in jail longer than defendants who are released without being required to make a money payment. Not surprisingly, the higher the money bail amount, the greater the number of defendants who remain in pretrial detention (Reaves, 2013; M. Jones, 2013; Cohen & Reaves, 2007). Phillips (2012) also found a strong link between secured money bail requirements and increased pretrial detention. This is

notable given that approximately 50% of never-released defendants with secured money bail returned to the community at the time of their case adjudication or sentencing (M. Jones 2013). Brooker et al. (2014) found similar results.

18. To test whether secured money bail indeed is the cause of pretrial detention for many defendants, researchers asked defendants *why* they had not posted their money bail. When defendants in four counties in three states were asked, 56% reported that they could not afford the amount set, and 34% reported that their family could not afford the amount set. Only 15% of defendants reported that they had other court issues (e.g., a hold from another jurisdiction) keeping them in detention (defendants could select more than one reason) (Kimbrell & Wilson, 2016). Similarly, other researchers found that nationally in 2002 (the most recent year the U.S. Bureau of Justice Statistics conducted the survey) 128,000 persons were in jail on any given day because they could not afford the monetary amount of their bond, and that pretrial detention has increased by 31% since that time frame (Sawyer, 2018; Rabuy & Kopf, 2016). These results match the findings of a small investigation my staff and I conducted at the request of county-level decision-makers (i.e., local judges, sheriff, city police, defense attorneys, pretrial services) in Jefferson County, Colorado. We found that approximately 75% of defendants who had not posted their bonds within 48 hours said they or their family members were not able to meet their bond's financial condition, and 20% had not posted bond because they had a hold from another case or were serving a sentence on another case. The remaining approximately 5% indicated "other" reasons.

19. The findings of these studies are not surprising given that about 4 in 10 adults in U.S. households would not be able to pay for an unexpected expense of $400 or more unless they sold something, borrowed the money from others, or charged it to a credit card to pay off over time (Federal Reserve Board, 2018).

20. Current pretrial practices, especially ones that are driven largely by the high use of secured money bail, contribute heavily to the nation's prison and jail crowding. Wagner and Sawyer (2018) found that (a) the United States has the world's highest incarceration rate; and (b) all of the increase in the nation's jail population from 2000 to 2016 was caused by an increase in the number of unconvicted persons; the number of convicted/sentenced persons was not a contributing factor.

21. Thus, secured money bail either denies release to, or delays release for, many defendants who otherwise would be releasable immediately on non-monetary conditions and whose risk could be adequately managed in the community. Because Giles County uses secured money bail for many defendants booked into jail, it is likely that these defendants unnecessarily remain in the county jail until they are released on non-monetary conditions (if they are released on non-monetary conditions) or they resolve the allegations against them. Giles County's practices of using secured money bail is likely contributing to higher than necessary pretrial detention.

22. Defendants of color (e.g., African American; Latino) are more frequently ordered to pay money bail prior to release than are white defendants, while controlling for other factors, such as current charges and criminal history. Also, the amounts of money they must pay for release are often higher than the money bail that white arrestees are required to pay. Consequently, persons of color are more often detained than are white arrestees (C. Jones, 2013; Schlesinger, 2005;

Demuth, 2003). Because Giles County uses secured money bail, it is likely that local defendants of color spend more time in local pretrial detention because of money bail than do similarly situated white defendants.

B. Unnecessary Pretrial Detention Often Has Strong Negative Consequences for the Community, the Justice System, and Defendants

23. Multiple studies, as summarized below, have shown that pretrial detention, including for time periods more than 24 hours, leads to negative outcomes for the justice system, the community, and defendants, such as:

a) Decreased rates of court appearance and law-abiding behavior during the shorter-term, pretrial period;

b) Increased rates of recidivism in the longer-term, post-pretrial period;

c) Increased likelihood of convictions, guilty pleas, sentences to incarceration, longer sentence length, and greater jail and prison crowding; and

d) Increased collateral harm to defendants, including negative effects on employment, housing, and the ability to care for dependent family members.

i. Pretrial detention is associated with decreased rates of court appearance and law-abiding behavior during the shorter-term, pretrial period

24. I express the opinion that pretrial or pre-probation-revocation-hearing detention for more than 24 hours increases the likelihood that a person will fail to appear or will engage in new criminal activity while on pretrial / pre-hearing release.

25. Even just a few days in post-arrest / pre-hearing custody can have a negative effect on pre-disposition success. Lower-risk defendants who are detained for two to three days after arrest are 39% more likely to be arrested for new pre-hearing criminal activity than are comparable lower-risk defendants who are released immediately (within one day).[3] As the delay in release becomes longer (5-7 days), the chance of pretrial failure (new arrest) becomes 50% more likely. This likelihood increases to 56% when release is delayed for 8 to 14 days (Lowenkamp et al., 2013a). This study included defendants who were on probation at the time of their post-arrest / pre-hearing release, rendering the findings generalizable to these persons.

[3] The two groups are comparable because they were matched (i.e., they did not statistically differ) on relevant characteristics such as age, race, gender, current charges, and pretrial risk level. Because the groups were matched on the characteristics that could potentially affect the outcome of interest (i.e., new pretrial arrest), the chances that these characteristics could have influenced the observed outcomes are greatly reduced. Thus, the characteristic they did differ on – length of time in pretrial detention – most likely affected the new-pretrial-arrest outcome and accounts for the different rates of new arrest between the two groups. This research method of matching enables researchers to make inferences about causation that would otherwise not be possible.

26. Further, the longer that lower-risk defendants are kept in pretrial detention beyond one day, the greater the likelihood that they will fail to appear in court after they are eventually released, again, when controlling for other relevant characteristics. This pattern of increased likelihood of arrest and decreased likelihood of court appearance as release is delayed also applies to moderate-risk defendants. In contrast, delays in time to release do not affect the behavior of higher-risk defendants; they tend to demonstrate pretrial failure at equal rates whether they are released immediately or after several days or weeks of pretrial detention (Lowenkamp et al., 2013a). Holsinger (2016a) found similar results three years later when studying defendants in a separate jurisdiction near Kansas City, Missouri.

27. As discussed previously, the posting of money bail delays the pretrial release of defendants who eventually are released. Giles County's practices of setting secured money bail for defendants and then releasing these defendants after more than 24 hours of pretrial incarceration likely contributes to these released defendants exhibiting more failures to appear in court and more criminal behavior for which they are arrested during pre-hearing release.

ii. Pretrial Detention is Associated With Increased Longer-Term Recidivism

28. Detaining lower-risk defendants for longer than one day affects the likelihood of criminal activity up to two years later. Defendants who are released within 2 to 3 days are 17% more likely to engage in new criminal activity up to two years later compared to comparable defendants released within 24 hours. For those held 4 to 7 days, this longer-term recidivism worsens to 35%, and when release is delayed for 8 to 14 days, the recidivism rate further increases to 51%. This pattern of worsening recidivism as release is delayed is observed for moderate-risk defendants as well (Lowenkamp et al., 2013a).

iii. Pretrial Detention is Associated With Increased Convictions, Pleas, Sentences to Incarceration, and Sentence Length

29. There is strong evidence from several studies with rigorous research designs that have demonstrated that defendants detained pretrial, often because they did not post their secured money bail, were more likely to plead guilty and/or be convicted than were released defendants with similar demographics, charges, and criminal history (see Heaton et al., 2017; Stevenson, 2017; Leslie & Pope, 2017; Lum et al., 2017; Dobbie et al., 2016; Gupta et al., 2016). Given the strength of this research finding, Giles County's use of secured money bail that leads to unnecessary pretrial detention is likely contributing to harsher outcomes for people who are detained because they do not post the money bail.

30. The rigorous studies above were conducted by different researchers on different populations of defendants, yet they yielded similar findings about the strengths of the relationship between pretrial detention and harsher outcomes for defendants. I summarize a few of them in more detail here:

31. Stevenson (2017) used a natural, quasi-experimental experiment in Philadelphia to test the causal effects of pretrial detention associated with high money bail amounts on pretrial release and detention rates, pleading guilty, and receiving harsher sentences. Stevenson used the natural, by-chance assignment of misdemeanor and felony defendants to different bail magistrates

who made bail decisions based on their personal preferences. That is, these magistrates saw similar defendants but made different money bail decisions differently – some magistrates set higher monetary bail amounts for their defendants while some magistrates set lower amounts. Stevenson found that the likelihood of being detained depended on which bail magistrate presided over the bail hearing. When defendants were detained, that pretrial detention led to an increase in the likelihood that persons would be convicted (up to 30% more), mostly through guilty pleas among people who would have otherwise had charges dropped or been acquitted. These persons also received harsher sentences because their sentences were for longer lengths of time (up to 18 months longer). This study's design and findings provides support for the causal relationship between higher money bail amounts and the resulting pretrial detention, and increased convictions through guilty pleas and harsher sentences.

32. Heaton et al., (2017) similarly measured the effects of pretrial detention on case outcomes as well as on future crime using a naturally occurring, quasi-experimental experiment. They analyzed court data on the nearly every one of the available 380,000+ misdemeanor cases filed in Harris County, Texas, over a five-year period, and compared persons who were booked into jail on Tuesday vs. Thursday. This method simulated random assignment because persons booked into jail on these days are similar on various characteristics, (demographics, current charges, criminal history, money bail amount), but differed only in the day of the week in which they had their bail hearing (i.e., the Thursday group had a higher chance of posting because the bail hearing was closer to the weekend when family members could more easily post money bail. Heaton et al., (2017) found that persons who were more often detained pretrial (the Tuesday group) were 25% more likely to plead guilty and 43% more likely to be sentenced to jail. These jail sentences also were twice as long as the jail sentences for the Thursday group. Finally, they found that detained defendants were more likely to be charged with new felonies and misdemeanors after they were eventually released, showing a criminogenic effect of pretrial detention. Because the researchers ruled out factors that could otherwise explain these findings, these results suggest a causal link between pretrial detention and pleading guilty, harsher sentences, and future crime.

33. Gupta et al. (2016) also used a quasi-experimental approach that took advantage of the equivalent-to-random-way all cases were assigned to different judicial officers in Pittsburgh and Philadelphia during a five-year period. They compared 1) defendants who saw bail-setting judicial officers who were more likely to use secured money bail to 2) defendants who saw judicial officers who less often used money bail. Gupta et al. found that defendants required to pay money bail had a 6% greater chance of conviction and a 4% higher likelihood of committing future crime. They also failed to find a link between money bail and court appearance.

34. Pretrial detention results in a greater likelihood that a defendant will be sentenced to jail and that the sentence will be longer. A recent study compared similar defendants who were detained pretrial to those who were released, finding that detained defendants were four times as likely to be sentenced to jail and three times as likely to be sentenced to prison than those who were released. Furthermore, the jail sentences for the detained group, as compared to the released group, were three times longer and the prison sentences were two times longer (Lowenkamp et al., 2013b).

35. The above finding of harsher sentencing for those who are not able to obtain pretrial release replicates the findings of many other studies (e.g., Oleson et al, 2014; Sacks & Ackerman,

2014; Phillips, 2012; Williams, 2003). Because these studies used methods to ensure the groups did not differ on factors most likely to have influenced the observed outcomes (e.g., demographics, current charge, criminal history), it is most likely that the harsher sentences given are related to defendants' remaining in detention pretrial rather than the other factors.

iv. Pretrial Detention is Associated With Increased Collateral Harm to Defendants

36. Pretrial detention for three days or less has been shown to negatively influence defendants' employment, financial situation, and residential stability, as well as the well-being of dependent children. This negative impact worsened for defendants who were detained pretrial for more than three days (Holsinger, 2016b). Similarly, another recent study found that many defendants who could not afford money bail lost their jobs and/or housing, even when they were detained for three days or less (Kimbrell & Wilson, 2016).

C. Studies That Have Analyzed the Effectiveness of Secured Money Bail and Financially Unsecured Risk Management Conditions Demonstrate That Unsecured Conditions of Pretrial Release are More Effective at Meeting the Government's Three Interests Than is Secured Money Bail

37. All pretrial release conditions can be divided into two types: (1) non-financial (e.g., court date reminders, pretrial monitoring, no contact orders, substance testing, electronic monitoring, car breathalyzers, curfew, etc.); and (2) money bail. Money bail can be further divided into either (a) secured (cash, surety, property, or deposit to the court provided prior to the defendant's release from custody), or (b) unsecured (a promise by the defendant to make a monetary payment to the court if the defendant fails to appear).

38. In 2012, I co-authored with three other researchers and pretrial experts a literature review of the effectiveness of money bail as a tool for managing the risk of new pretrial arrest and failure to appear (Bechtel et al., 2012). We reviewed the studies that had been published to date and that were, at the time, the most relevant, most inquired about, or most cited in the national discussion about using money bail to manage pretrial risk.

39. We found that although a few published studies considered whether a connection existed between money bail and pretrial outcomes, all of them had at least one of the following three serious limitations that impede their usefulness for informing pretrial policy-making and practice.

a. First, some studies (e.g., Helland & Tabarrok, 2004) relied exclusively on data from the Bureau of Justice Statistics' State Court Processing Statistics data series, even though the Bureau itself later cautioned in a Data Advisory that its data should not be used for evaluating the effectiveness of various pretrial release methods (see Bureau of Justice Statistics, 2010). Thus, these studies should not be relied upon for evaluating the effectiveness of secured money bail.

b. Second, some studies investigated the link between secured money bail and only one (court appearance) or occasionally two (court appearance and public safety) pretrial outcomes. Yet, no study looked at the link between money bail and the third goal of any bail determination: pretrial release. Thus, we concluded that these studies were insufficient for guiding pretrial policy-making and practice because they failed to show that money bail could simultaneously and effectively address a jurisdiction's three legally required goals: (1) maximize court appearance, (2) maximize public safety, and (3) maximize release from custody. [4]

c. Third, the methodological design of some other studies did not meet minimal social science standards needed to evaluate the effectiveness of pretrial release conditions.

40. Less than one year after the literature review in 2012, one additional study that purported to investigate the link between money bail and pretrial outcomes was published (see Morris, 2013).[5] Morris' 2013 study—including the data update in 2014 and the 2017 publication of the 2013 study (i.e., Clipper, Morris, & Russell-Kaplan, 2017)—had some of the same shortcomings as the studies in our 2012 literature review.

41. First, the Clipper et al. study only investigated the effects of different pretrial release mechanisms—secured money bail versus non-monetary conditions—on one pretrial goal: maximizing court appearance. However, it did not simultaneously investigate the impact of these release mechanisms on pretrial *release itself*, which is a second legally necessary goal of pretrial release. The authors did acknowledge the importance of pretrial release: They state on page 6 while summarizing the findings of the Austin et al. (1985) study that provides empirical evidence for the effectiveness of pretrial services in ensuring court appearance, "Also worthy of note, all defendants included in the study [i.e., the Austin et al. (1985) study] were previously unable to be released before their trial. As a result, this study [i.e., the Austin et al. (1985) study] provides evidence of the possibility for an effective non-financially based program to achieve the goals of pretrial release (e.g., improving release rates), while additionally preserving community safety and compelling the defendant to return to court." Thus, although the authors of the Clipper et al. study claim to have evaluated the effectiveness of different pretrial release mechanisms, they could not have, because they limited their inquiry to just studying the impact on court appearance while omitting any analysis of the release mechanisms' impact on release itself.

42. Second, the Clipper et al. study purported to analyze which mechanism of release was the most cost-effective. However, as described above, because the study did not investigate

[4] See the American Bar Association's (2007) discussion, citing to U.S. Supreme Court case law and other federal resources, for why release, court appearance, and public safety are all important goals of the pretrial justice system.

[5] This report condenses Morris' study in 2013, the study's data update in 2014 (Morris, 2014), and later publication of the 2013 study (Clipper et al., 2017) into a single discussion because the studies rely on the same or very similar data from the same jurisdiction (Dallas, Texas) in adjacent years, used the same statistical methods, and yielded near-identical findings.

the effect of secured money bail or any other release mechanism on *release rates*, the costs of detention were not included in the cost-analyses. These costs would need to be included to determine which form of release is the most cost-effective. Details on how to properly compute a pretrial cost-benefit analysis can be found in the Crime and Justice Institute's (2015) publication, "A Cost-Benefit Model for Pretrial Justice."

43. Third, the Clipper et al. study did not use the same failure-to-appear outcome measures for each release mechanism because the jurisdiction (Dallas, Texas) uses a form of bail forfeiture for monetary-related release mechanisms and a finding of "insufficiency" for non-monetary pretrial services bonds. Thus, instead of comparing the different release mechanisms on the same outcome, the study used the unusual methodology of comparing different outcome measures for the different release mechanisms. Therefore, the study's claims about the link between the different release mechanisms and failure to appear could be caused by measuring different outcomes rather than the use of different release mechanisms.

44. Fourth, the Clipper et al. study did not report on the link between the different release mechanisms and releasees' criminal activity, even though the Morris (2013) study did. The Morris study found that secured money bail and the other monetary and non-monetary release mechanisms did not differ on their effects on defendant's criminal activity (and a difference would not be expected given that in Texas a monetary bond amount cannot be forfeited when a releasee is arrested for a new crime, rendering any potential incentivizing value of the monetary bond non-existent).

45. To answer important research questions about the effectiveness of secured money bail and non-secured or non-financial release, three studies that address the important shortcomings of the previously discussed studies were conducted. In 2013, I conducted a study that simultaneously looked at all three outcomes (court appearance, public safety, and release/detention rates). To ensure that the two groups of defendants who were compared to one another (those who were released on secured money bail and those who were released on unsecured recognizance) were the same, I did what no other study had done to date: I matched defendants in the different release-type groups (money bail vs. unsecured recognizance) on their pretrial risk levels as measured by an actuarial pretrial assessment tool—the Colorado Pretrial Assessment Tool. Additionally, because this study included defendants who were on probation at the time of their arrest for an alleged new offense, the findings of this study are likely generalizable to people arrested for alleged misdemeanor violations of probation, such as the plaintiff class in this case.

46. I found that for defendants of all pretrial risk levels (lower, moderate, or higher):

a. Releasing a defendant on an unsecured bond (the court may require the defendant to pay money if he/she fails to appear) is as effective at achieving public safety as is secured money bail.

b. Unsecured bond is as effective as secured money bail at achieving court appearance.

c. Unsecured bond frees up more jail beds than does secured money bail because: (a) more defendants with unsecured bonds are released; and (b) defendants with unsecured bonds have faster release-from-jail times, when compared to secured money bail.

d. The higher the secured money bail amount, the greater the pretrial jail bed use; but the higher money bail amounts did not result in higher court-appearance rates.

e. Among the small percentage (approximately 10%) of people in the study who were at-large on a failure to appear warrant up to 19 months after release from jail, people who had been released on unsecured bond and on secured money bail were at-large at equal rates. This finding indicates that the use of secured money bail did not increase the likelihood that a person who missed court would be located and returned to custody. This finding matched another finding I observed a few years prior to this study, following a brief investigation my staff and I conducted at the request of county-level decision-makers (i.e., local judges, sheriff, city police, defense attorneys, pretrial services) in Jefferson County, Colorado. We found that commercial bail bondsmen rarely, if ever, brought defendants who had failed to appear back to jail or court, as evidenced by: (1) Approximately 99% of arrests of people with outstanding FTA warrants were effected by local law enforcement, with the remaining 1% effected by commercial bail bondsmen; (2) in a one-month sample, out of approximately 250 contacts between bail bondsmen and the local criminal court, 100% involved one of the following: bondsmen asking to be absolved of the bond, asking the court for the defendant's current address or contact information, or asking when their client's next court date was scheduled; not one of the contacts involved a bondsman returning to court a defendant who had failed to appear; and (3) law enforcement leaders (including the Sheriff's Patrol Division Chief, several police chiefs from the county's largest municipalities, and the police chiefs' senior staff members) reported that they could not recall any instance in their careers when a bondsman had contacted them to arrest one of their clients.

f. Finally, as the M. Jones (2013) study showed, over half of the defendants who were incarcerated for the pretrial duration of their case were released to the community almost immediately after their case was dropped or not filed or they were sentenced.

47. Based on these results, I concluded that jurisdictions can make data-guided changes to local pretrial case processing that would achieve their desired public-safety and court-appearance results without unnecessarily using jail beds for people who are neither convicted nor sentenced yet on their pending charges. I reached this conclusion because the data show that *if* financial release conditions of any kind were to enhance defendants' court appearance, unsecured bond would achieve the same benefit, but it would accomplish that appearance rate while

increasing defendants' pretrial / pre-hearing release rates, reducing delays in release times, and using far fewer jail beds, all of which avoid economic and social costs to the local justice system and local community (M. Jones, 2013).

48. Brooker et al. (2014) conducted a separate study to answer the same research questions as the M. Jones (2013) study. Brooker was the primary researcher and author of this study, and I served as a contributor. This study used a dataset and methodology different from the M. Jones (2013) study, but found similar results regarding the comparative link between secured or unsecured money bail, and court appearance, public safety, and release from custody, after studying all three simultaneously in one study.

49. Brooker and I found that for defendants who did not differ in their charge level (i.e., the research groups did not differ in the number of arrestees who had felony or misdemeanor charges) and who were ordered to pretrial monitoring:

a. Judges who more frequently authorized release on unsecured bonds achieved the same public-safety rates (defendants with no new arrest or filing while on pretrial release) as did judges who more frequently required secured money bail as a condition of release.

b. Judges who more frequently authorized release on unsecured bonds achieved the same court-appearance rates as did judges who more frequently required secured money bail as a condition of release.

c. Judges who more frequently authorized release on unsecured bonds had a higher release-from-jail-custody rate than did judges who more frequently required secured money bail as a condition of release, thus using fewer jail beds and avoiding the associated cost to the justice system.

d. Judges who more frequently authorized release on unsecured bonds had faster release-from-jail-custody times than did judges who more frequently required secured money bail as a condition of release, thus using fewer jail beds and avoiding costs (see Brooker et al., 2014).

50. These two latter studies (Brooker, 2014; M. Jones, 2013) show that secured money bail detains more defendants in jail and delays their release, if they are released, than does unsecured bail, and does so without improving either public safety or court appearance.

51. Additionally, Brooker (2017) later found a similar pattern of results in Yakima County, a rural jurisdiction in Washington. For a large number of defendants, judges in Yakima County replaced secured money bail with several practices informed by empirical research (e.g., authorizing release on recognizance instead of secured money bail and/or requiring pretrial monitoring for some released defendants). After these changes were made, the jurisdiction observed an increased pretrial-release rate of 20 percentage points with no decrease in public safety or court appearance. Furthermore, racial/ethnic equity in release was improved, with the release

rates for persons of color increasing significantly to become equivalent to the release rates of white people.

D. Secured Money Bail Is No More Effective at Managing Pretrial / Pre-Hearing Risk Than Is Unsecured Money Bail

52. Some judges use secured money bail in an attempt to manage defendants' pretrial / pre-hearing risk of nonappearance and/or new criminal activity. Nationally, judges or other officials set money bail amounts in one of two ways: (1) They use (and/or authorize the local jail to use) a printed secured money bail schedule that assigns a bail amount to the defendant usually based on the defendant's charge(s); or (2) they assign a secured monetary amount in court or on a warrant based on their own judgment, and not from a printed schedule, after considering the defendant's charge(s) and/or sometimes other factors when they are known, such as criminal history. The money bail amounts used in Giles County, which are apparently determined according to the process described in #2 above, do not effectively manage pretrial / pre-hearing risk for several reasons:

a. First, monetary conditions of release can only potentially incentivize court appearance if the monetary amount is posted and the person is released. If the secured financial condition of *release* operates instead to *detain* because the amount is not posted, then whatever incentive the secured financial condition theoretically provides cannot operate. In contrast, when non-financial conditions (e.g., court date reminders or community-based monitoring, as discussed below) are imposed, they are always operative because they do not impede release. Thus, secured money bail is an irrational way to try to incentivize court appearance when it instead results in a person's detention, and research does not support that it incentivizes appearance even when it is posted and the person is released. Secured money bail results in haphazard releases because, at the time the judicial officer sets the amount, whether and when the person will post the monetary amount is unpredictable and outside the control of the judicial officer. Indeed, the posting often depends on whether the person (or person's family) has enough financial resources to pay the monetary amount. In contrast, when judicial officers order persons released on recognizance with individualized, non-financial release conditions as appropriate, or order persons detained pursuant to federal and state law, the judicial officer is in full control of who is released and when.

b. Second, conditions of release—whether monetary or non-monetary—that are based primarily on the person's charge and criminal history, are not well-tailored to address the individual's pretrial risk of nonappearance or new criminal activity. In contrast, actuarial pretrial risk assessment tools, which account for defendants' charges and a variety of other statistically relevant predictive factors, are more accurate tools for predicting pretrial risk of nonappearance or new arrest. They also help a judicial officer to identify appropriately tailored conditions of release that can be expected to mitigate the particular risk(s) the person presents. If current charge is predictive of pretrial risk of nonappearance or new arrest *at all*, it plays an incomplete and relatively small role compared to other characteristics of

defendants (Laura and John Arnold Foundation, 2016). Moreover, there is no evidence that secured money bail as a condition of release incentivizes law-abiding behavior or is otherwise relevant to public safety. This is especially true in jurisdictions like Giles County and other Tennessee jurisdictions where money bail is not forfeited as a result of new criminal activity. Therefore, there is no legal or scientific basis to require a secured payment as a condition of release if the person's risk is to community safety. In contrast, community-based/pretrial monitoring is designed to reduce both failures to appear and new pretrial arrest, and it does not contribute to unnecessary pretrial detention like secured money bail does.

c. Third, higher secured money bail amounts for more serious charges assume that those defendants pose a greater pretrial risk of nonappearance or new criminal activity, and that higher money bail amounts are needed to manage this risk. As discussed in the Risk Management section below, this assumption is flawed and/or is unsupported by empirical research (see also Gouldin, 2018). Specifically, there is no evidence from any study from within Giles County (of which I am aware) or outside of Giles County that particular money bail amounts, compared to other specific amounts (e.g., $250 vs. $325; $1,000 vs. $800) are either necessary for or effective in reducing pretrial / pre-hearing misconduct. The various money bail amounts used in Giles County are not derived from statistical analyses to determine whether they actually are associated with managing pretrial risk. In contrast, as discussed below, there is empirical support that non-financial release conditions are effective at mitigating the risk of pretrial / pre-hearing misconduct.

E. Nonfinancial Conditions of Release Effectively Manage Pretrial / Pre-Hearing Risk Without the Significant Costs Associated With Secured Money Bail

53. In my professional career, I have reviewed and become familiar with several research studies, most of them published in the past four to five years by reputable academic criminal justice researchers, so that I can provide data-guided technical assistance to decision-makers who want to make their pretrial justice systems more cost-effective through non-monetary risk management practices.

54. Many research studies have collectively shown that court date reminders are the single most effective pretrial risk management intervention for reducing (including preventing) failures to appear. These reminders, which can be delivered through in-person meetings, letters, postcards, live callers, robocalls, text messages, and/or email, have improved court appearance by approximately 30 to 50% (VanNostrand et al, 2011; Cooke et al., 2018; National Center for State Courts, 2017; Bornstein et al., 2012; Rosenbaum et al., 2012; Schnacke et al., 2012).

55. Specifically, Bornstein et al. (2012) and Rosenbaum et al. (2012) tested the effectiveness of different written reminders to improve misdemeanor defendants' court appearance rates in Nebraska. Using bilingual postcards, they found that all reminder messages improved court appearance rates, with messages about the potential negative consequences of failing to appear the most effective. They also found that the reminders also improved appearance rates for defendants

who had low trust in the justice system indicating that the reminder worked well for persons who typically have more failures to appear.

56. Cooke et al. (2018) studied the benefit of two interventions to improve court appearance in New York City: (1) redesign of the summons form so that more relevant information (court date and location; negative consequences of failing to act) is included and more noticeable; and (2) delivery of text reminders of upcoming court dates. They found that the redesigned summons reduced failures to appear by 13%. They also found using a randomized control trial that the text notifications reduced failures to appear by 26%. The notifications included information about the consequences of failing to appear as well as prompts on how to plan to appear (e.g., by marking one's calendar, looking up directions, and allowing for sufficient travel time). Lastly, they found that many warrants were avoided when people who had failed to appear were notified to come in to court before the warrant was issued.

57. I have worked with practitioners in multiple jurisdictions who have implemented such reminder systems. They have reported to me that they prefer reminder systems to secured money bail because, as compared to secured money bail, court reminders are relatively low-cost to provide, do not result in unnecessary and expensive pretrial detention by preventing or delaying defendants' release, are not associated with bias on the basis of race and ethnicity, and/or greatly improve the desired outcome of court appearance.

58. Recent research has also indicated that defendants receiving pretrial / pre-hearing monitoring have fewer failures to appear, with higher-risk defendants and then moderate-risk defendants, respectively, benefitting the most. Pretrial monitoring may also mitigate the risk of new arrests (Bechtel et al., 2016; Danner et al., 2015; Lowenkamp & VanNostrand, 2013; Goldkamp & White, 2006; Austin et al., 1985). Risk-informed and research-based pretrial monitoring is more effective than secured money bail at mitigating the risk of new arrest among higher-risk defendants because secured money bail has no relationship to public safety in almost every state, including Tennessee, and because pretrial monitoring, unlike secured money bail, does not result in unnecessary pretrial detention by preventing or delaying defendants' release. Indeed, Phillips (2012) reported that New York City experienced fewer failures to appear when higher-risk defendants posted money bail (for all other defendants, there was no link between money bail and court appearance rates); however, she concluded after her review of the research literature published at the time, and after a decade of empirical research on New York City's pretrial practices, that any benefit in court appearance demonstrated by these select defendants could also be achieved through their receiving pretrial monitoring, which New York City did not regularly use during the study period.

59. Additionally, government officials from New York City (Stringer, 2018) and San Francisco (Cisneros, 2017) and an independent research and educational institution in Ohio (Buckeye Institute, 2018) have recently produced reports that demonstrate the high financial cost of a pretrial system that relies on money bail compared to a system that uses the non-monetary risk management practices discussed previously. The City and County of Denver has also recently realized a net savings of $2 million per year because of a significant reduction in the use of secured money bail and its increased use of risk-informed pretrial monitoring (Pretrial Justice Institute, 2017). Baughman (2017) estimated cost savings in the tens of billions annually for the United States if current pretrial policies were to be similarly changed.

V. Conclusions

60. Empirical studies show that secured money bail is associated with increased pretrial detention, including for lower-risk defendants, because defendants are either never released pretrial or their release is delayed for days or weeks. This increased pretrial detention is further associated with decreased court appearance and increased rates of arrest; increased longer-term recidivism up to two years later; increased rates of conviction, guilty pleas, and jail and prison crowding; and increased collateral harm to defendants.

61. Empirical studies also show that unsecured bond conditions are at least as effective as secured money bail at achieving court appearance, and more effective than secured money bail at achieving public safety, while doing so with much less pretrial jail bed use and fewer costs to the legal system. Furthermore, interventions such as court date reminders and pretrial monitoring for select defendants have been shown to improve court appearance and/or public safety, and they do so without the unnecessary pretrial jail bed use that accompanies the use of secured money bail. Because of this robust research, many local jurisdictions and states are amending their practices and laws or court rules to reduce or eliminate secured money bail and replace it with cost-effective, research-informed practices that effectively manage defendants' pretrial risk.

62. Because Giles County relies on secured money bail and does not rely on research-based risk management practices, including court date notifications or risk-informed pretrial monitoring, County officials and practitioners are missing the opportunity to reduce unnecessary pre-hearing incarceration, its costs, and its associated harm to the community, the justice system, and defendants, while also increasing court appearance and decreasing pre-hearing criminal activity.

63. Overall, I conclude that pretrial / pre-hearing justice practices that include non-monetary (a) research-informed release and detention policies; and (b) research-based risk management strategies, often when used in combination with other practices,[6] are more effective at simultaneously achieving court appearance, protecting public safety, and maximizing the release

[6] Other supporting practices typically include: law enforcement's use of citations instead of custodial arrests to the maximum extent possible; an experienced prosecutor reviewing law enforcement's arrest documents and making a charging decision prior to the first bond setting; defense counsel's representing defendants at all proceedings to determine conditions of release or detention (*see* Colbert et al., 2002, for research showing the benefits to defendants and the justice system when defense counsel participates in bond setting); judicial officers making an intentional, purposeful release-or-detention decision pursuant to federal and state law; and measurement and evaluation of important process-and-outcome measures to inform potential improvements to future practices. All or many of these practices are recommended by the U.S. Department of Justice's National Institute of Corrections (National Institute of Corrections, 2017) and Bureau of Justice Assistance (Bureau of Justice Assistance, 2014); and the American Bar Association (American Bar Association, 2007). Furthermore, as can be seen in Stevenson (2018), when a jurisdiction implements several non-monetary pretrial practices but leaves secured money bail operational, desired pretrial outcomes such as court appearance and reduced jail use are diminished.

of individuals from pretrial custody when compared to pretrial practices based largely on the use of secured money bail. Additionally, I conclude that the robustness of the research summarized above demonstrates that any local and state justice system in the United States, including the system in Giles County, Tennessee, can cost-effectively replace its secured-money-bail-based pretrial policies and practices with non-monetary ones.

64. Based on the research and reports reviewed above, I express the following opinions:

a) Opinion 1: Pretrial detention for time periods more than 24 hours has adverse consequences for detained persons and for the community.

b) Opinion 2: Pretrial detention for time periods more than 24 hours has an adverse effect on the likelihood that a person will make all court appearances or be law-abiding while on pretrial release.

c) Opinion 3: Secured money bail is no more effective than unsecured money bail or non-monetary conditions of release at assuring appearance in court.

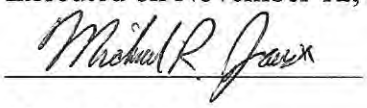
d) Opinion 4: Secured money bail is no more effective than unsecured money bail or non-monetary conditions of release at assuring public safety.

e) Opinion 5: Secured money bail increases pretrial detention, whereas unsecured money bail or non-monetary conditions of release do not.

f) Opinion 6: These findings are generalizable to the post-arrest, pre-hearing context after a person is accused of violating a condition of probation and before the allegation is adjudicated.

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.

Executed on November 12, 2018



Michael R. Jones

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SHANNON DAVES, *et al*., On behalf of themselves and all others similarly situated, FAITH IN TEXAS, TEXAS ORGANIZING PROJECT, On behalf of themselves, Plaintiffs, v. DALLAS COUNTY, TEXAS, *et al.*, Defendants.	Case No. 3:18-cv-154

DECLARATION OF STEPHEN DEMUTH, Ph.D, M.A., B.S.

I. Background

1. My name is Stephen Demuth. I have been asked to review empirical studies about forms of pretrial bail, detention, and release in connection with *Daves, et al. v. Dallas County, et al*. I am not being compensated for my preparation of this declaration.

2. I earned a Master's degree in Sociology in 1997 and a Ph.D. in Sociology with a Major in Criminology and a Minor in Methods/Statistics in 2000 from The Pennsylvania State University. I graduated Phi Beta Kappa from Virginia Tech with a B.S. in Sociology and Psychology in 1995.

3. I am a tenured Associate Professor of Sociology at Bowling Green State University, a position I have held since 2006. I was an Assistant Professor of Sociology at Bowling Green from 2000-2006. From 2010-2018, I also served as the Director of Graduate Studies in the Department of Sociology, a doctoral program ranked in the top 20 nationally in research productivity by the National Research Council.

4. My research has primarily focused on the influence of race/ethnicity, gender, and social class on decisions and outcomes at the pretrial and sentencing stages of the criminal case

process. More recently, I have begun to examine the collateral consequences of criminal justice involvement on later-life outcomes. My research on pretrial detention finds that black and Latino arrestees are more likely to be detained pretrial than similarly-situated white arrestees (Demuth 2003). The greater likelihood of detention among non-white arrestees appears to result in part from an accumulation of adverse decisions during the pretrial stage. Minority arrestees are more likely to be denied bail, more likely to receive financial conditions of release, and more likely to be required to pay higher money bail amounts compared to similar white arrestees. But, most of all, pretrial detention is more likely because of a greater inability to "make bail" among non-white arrestees. The use of money bail disproportionately detains arrestees with limited financial means.

5. More recently with a colleague (Dennison and Demuth 2017), we found that the relationship between criminal justice system involvement and social mobility was negative and non-linear. That is, there was an increasingly negative, or accelerating, rate of downward mobility the deeper one's involvement in the system (e.g., conviction versus arrest only). The findings reinforce how readily system involvement undermines future life chances and why we need to be proactive in trying to keep people from being pulled deeper into the system. A detailed summary of my professional experience, training, and subject-matter knowledge is attached to this Declaration.

6. I served as an expert witness in *ODonnell v. Harris County*, No. 4:16-cv-01414 (S.D. Tex.) and *Hester v. Gentry, et al*., No. 5:17-cv-00270 (N.D. Ala). I testified in preliminary injunction hearings in those cases. I provided expert testimony on how the bail system operated in those jurisdictions and also provided opinions about the efficacy of secured money bail.

7. I am not being compensated for my work in this case.

II. Material Reviewed and Methodology

8. I have attached as Exhibit 7 a list of materials that I reviewed in preparing this declaration. The studies I reviewed evaluate the efficacy and effects of different forms of pretrial release and detention.

9. I have reviewed the reports and studies listed in Exhibit 7 and assessed the reliability, accuracy, and generalizability of these studies based on my professional knowledge, training, and experience of statistical methods. My assessment of each of these studies takes into account the statistical models used by the authors, the study design, metrics accounted for (and not) in the statistical models employed by the authors, and the statistical significance of findings in each study, measured by the p-value. The p-value is a widely accepted method of evaluating statistical models and results. The p-value is the probability of finding the observed results when the null hypothesis (i.e., no effect) is true.

10. I have formed opinions about the efficacy and effects of different pretrial detention and release practices based on my review of these studies and my own training and research on these statistical methods and topics. Though my opinions could change in light of new statistical research not evaluated in preparation of this declaration, my opinions are supported by the most robust and reliable empirical findings in current research.

III. Opinions

Opinion 1: The use of secured money bail increases pretrial detention.

11. I am of the opinion that the use of secured money bail increases pretrial detention, i.e., the number of defendants who are detained pretrial and the length of detention, because defendants who are unable to afford secured money bail (and thus, would remain detained prior to trial) would be eligible and able to obtain prompt release if the jurisdiction relied instead on unsecured bond or non-monetary conditions of release.

12. I base my opinion on the following: Jones (2013) showed that release rates were higher for people given unsecured bail than for people required to pay secured bail. While release rates were uniformly high (88% to 96%[1]) for people given unsecured bail across all levels of risk, release rates for people given secured bail dropped from 83% for the lowest risk to 46% for the highest risk. The pre-release payment of money required when a person must post secured bail resulted in a lower likelihood of release. And, as greater amounts of money were required to post secured bonds, release rates dropped. This was not an issue for people who were approved for release on unsecured bail. And, the difference in average time it took to be released on secured bonds as compared to the time it took to be released on unsecured bonds was substantial and resulted in fewer available jail beds at greater cost. This is notable when you consider that at least 50% of never-released, secured bond defendants returned to the community at the time of disposition. Brooker et al. (2014) found similar results. Release rates were higher for people on unsecured bail and the average number of days it took to post bond was considerably greater for people given secured bail.

13. The unaffordability of secured bail for many arrestees translates into higher detention rates for arrestees and higher costs for taxpayers, but with no better court appearance or public safety outcomes than unsecured bail. Furthermore, there is a large and growing literature that demonstrates convincingly that pretrial detention has serious negative consequences for the lives of the detained as well as the broader society (Opinion 2).

Opinion 2: Pretrial detention has severe consequences for the detained and for the community.

14. I am of the opinion that pretrial detention has severe negative consequences for people who are detained and for the community, including (1) increasing the likelihood of a defendant receiving a greater punishment, including an increased likelihood of conviction, and, when convicted, an increased likelihood of being sentenced to prison, given a longer sentence, and higher court fees; (2) increasing the likelihood of wrongful convictions; (3) increasing the likelihood of recidivism while released pretrial and after conviction; and (4) increasing the cost of jailing individuals both pretrial and after conviction, to the extent a longer sentence is likely.

[1] There are a variety of reasons that the release rate for people approved for unsecured bonds does not equal 100%. For example, some of those people may have had holds or immigration detainers, preventing their release, or they may have pled guilty before actually being released. The study does not identify the specific reasons, but the sub-100% release rates for this group are not unexpected.

15. I base my opinion on the following: There is a large and growing research literature that shows quite robustly that pretrial detention has deleterious consequences for the detained, the community at large, and the criminal justice system itself. Several recent studies have been able to leverage the naturally-occurring random assignment of cases to judges or the random nature of when crimes are committed to make what are essentially causal claims about the effect of pretrial detention on various outcomes. Heaton et al. (2017) analyzed misdemeanor cases in Harris County, TX using an instrumental variable approach that took advantage of the essentially equivalent distribution of arrestees across days of the week. The instrumental variable technique is a popular approach in statistics and econometrics for estimating causal relationships when controlled experiments are not feasible or ethical. It relies on a variable (the instrument) that induces variation in another variable (the "treatment"), but has no direct effect on the outcome variable of interest. Despite average case characteristics (including bail amount) being statistically the same across the middle days of the week, it was clear that defendants with bail hearings on Tuesdays were significantly less able to obtain pretrial release than defendants with bail hearings on Thursdays, likely because of greater difficulty accessing friends with cash during earlier days of the week. In this study, the day of the week on which the bail hearing was held was the instrumental variable which was related to the likelihood of remaining detained pretrial (the treatment). The authors then examined a number of outcomes (e.g., the likelihood of future offending) that had no direct relationship to the day of the week (instrument) other than through the variation of the treatment.

16. The easiest way to visualize the natural experiment is to imagine that defendants are randomly assigned to two groups, Tuesday and Thursday. The average characteristics of defendants with bail hearings on Tuesday are statistically equivalent to those of defendants with bail hearings on Thursday. The only difference between the two groups is the likelihood of obtaining release; people with hearings on Tuesday are less likely to obtain release. The "pretrial-detention disadvantage" for Tuesday is the "treatment" compared to Thursday, which serves as the "control group." Because the groups on those two days are statistically equivalent except for their likelihood of pretrial release, the only logical explanation for any differences in later outcomes between the two days can be the difference in detention. Using this natural experiment approach, they found that detained defendants were 25% more likely than equivalent released defendants to plead guilty. Detained defendants were 43% more likely to be sentenced to jail and received sentences that were twice as long. Defendants detained pretrial were more likely to commit crimes upon release than defendants released pretrial. Heaton et al. (2017) used a powerful and novel research design along with many statistical "checks" to ensure robustness of results, providing among the strongest possible evidence that a causal relationship exists between pretrial detention and later case and criminal outcomes. Furthermore, the authors suggest that better pretrial release policies in Harris County could save millions of dollars, increase public safety, and reduce wrongful convictions.

17. Stevenson (2017) and Gupta et al. (2016) also used natural experiment designs to examine the effect of pretrial detention on case outcomes in Philadelphia and Pittsburgh, PA. They relied on a fortunate aspect of the way cases are assigned to judges: they are assigned randomly. In these studies, the judges have different propensities to set high bail amounts that result in higher levels of pretrial detention. So, while the average characteristics of cases assigned to judges are statistically equivalent, the likelihood of pretrial detention varies by judge. Stevenson (2017) found that pretrial detention led to a 13% increase in guilty pleas among defendants who otherwise would

have been acquitted or would have had their charges dropped. Pretrial detention resulted in non-bail court fees that were 41% higher than the fees for people who were released, and in sentence lengths that were 42% longer. Gupta et al. (2016) showed that the use of money bail increased the likelihood of conviction by 12 percent. These robust findings are consistent with the findings of other studies. Using multivariate regression analysis, Phillips (2012) found that pretrial detention had an adverse effect on every case outcome that she examined after controlling for relevant legal and extralegal factors. Defendants who were detained pretrial were more likely to be convicted, less likely to have their charges reduced, and more likely to be sentenced to jail or prison than their similarly situated released counterparts.

18. There are many other studies that add to the overwhelming empirical evidence that pretrial detention creates serious negative consequences for the detained and the community that would not occur with pretrial release. All else being equal, detention is more deleterious to the arrestee, more criminogenic for the community, and costlier for the criminal justice system and taxpayers.

Opinion 3: Pretrial detention for more than 24 hours increases the likelihood that the person will fail to appear or will engage in new criminal activity while on pretrial release.

19. I am of the opinion that pretrial detention for more than 24 hours increases the likelihood that the person will fail to appear or will engage in new criminal activity while on pretrial release.

20. I base my opinion on the following: Although there is less research focusing on the effect of pretrial detention during this initial window of time, the totality of the evidence and my knowledge of the broader literature on the collateral consequences of criminal justice involvement strongly suggest that every effort should be made to release arrestees as soon as possible after contact. Arrest and detention are highly disruptive and can quickly snowball into negative consequences that "punish" the detainee, hurt their future life chances, and create the conditions for future FTA and criminal activity. Lowenkamp et al. (2013a) showed that after controlling for relevant legal and extralegal factors, arrestees detained for 2-3 days were slightly more likely to miss court appearances than were arrestees detained for only one day. The effect was aggravated for the lowest-risk arrestees: among the lowest-risk arrestees, the odds of not appearing were 22% higher among those who were held 2-3 days instead of one day. They found similar results with respect to rates of new criminal activity ("NCA") while on pretrial release. Particularly for the lowest-risk arrestees, the odds of NCA were 39% higher among people detained 2-3 days as compared to the odds of NCA among people detained one day. In sum, although there are limited studies that examine the effect of the shortest periods of pretrial detention on FTA and future offending, I believe the available evidence suggests that detention for longer than 24 hours is likely to contribute to higher levels of FTA and NCA, especially for the lowest risk arrestees.

Opinion 4: Simple court-date-notification systems such as text messaging and call services decrease FTA rates among people released pretrial.

21. There is considerable evidence that court date reminders are effective at increasing appearance rates among people released pretrial. For example, Bornstein et al. (2013), using an experimental design, found that written reminders to appear in court and about the consequences

of nonappearance reduced FTA rates substantially. They also showed that, even though defendants who had more confidence in and felt more fairly treated by the criminal justice system were more likely to appear in court, the effectiveness of reminders was greatest for people with the lowest levels of trust in the courts. Nice (2006) used a quasi-experimental design to show that phone call reminders significantly reduced nonappearance in court. Even without full implementation and only a fraction of all possible calls because of a lack of available phone numbers, the FTA rate was reduced by 37% overall and by between 43% and 45% for people who successfully received calls. The program resulted in significant net cost savings. Rosenbaum et al. (2012) also found significant FTA rate reductions and cost savings with a postcard reminder system. More recently, with technological advances and the wide availability of cell phones, there is growing evidence of the effectiveness of text message reminders to reduce nonappearance. Cooke et al. (2018) used an experimental design to test the effectiveness of text messages to reduce FTA rates and found that the most effective reminder messaging reduced FTAs by 26%. This was in addition to improvements resulting from a redesign of the summons form sent to defendants (which yielded an additional 13% reduction in FTAs). The most effective messaging included information about the consequences of not showing up, what to expect in court, and plan-making information. This messaging helps to overcome many of the reasons that people fail to appear in court, including forgetting, misunderstanding that they need to go to court even for more minor offenses, and overweighing the short-term hassle of appearance and underestimating the long-term consequences of nonappearance. Court notification systems represent a relatively easy and cost effective strategy to reduce FTA rates pretrial.

Opinion 5: Secured money bail is no more effective than unsecured bail or non-monetary conditions of release at promoting appearance in court.

22. I am of the opinion that secured money bail is no more effective than unsecured bail or non-monetary conditions of release at promoting appearance in court.

23. I base my opinion on the following: There are several recent empirical studies that compare the effectiveness of different kinds of release in assuring appearance in court. The majority find no difference in the effectiveness of secured and unsecured bonds (Jones 2013; Brooker et al. 2014; Lowenkamp et al. 2013a), one provides mixed findings concerning the difference between secured bonds and release on recognizance (Phillips 2012), and one problematic study finds that secured bonds are more effective than release without any unsecured or non-financial conditions (Clipper et al. 2017). The balance of the evidence supports the conclusion that secured money bail is no more effective than unsecured bail or non-monetary conditions at assuring appearance in court. Furthermore, unsecured bonds and non-monetary conditions provide additional benefits (e.g., higher rates of release) that help to reduce the negative collateral consequences of pretrial detention (discussed above in Opinion 2).

24. Looking first at the studies that show no difference, Jones (2013) examined differences in court appearance rates between arrestees released on secured and unsecured bonds in ten Colorado counties. After controlling for pretrial risk to ensure an apples-to-apples comparison, he found no statistical difference in average appearance rates between the unsecured bond and secured bond groups. This was notable in that the use of unsecured bonds had the added advantage of higher and faster release rates thus freeing up more jail bed space. Brooker et al. (2014) found similar results in a more focused study of Jefferson County, CO appearance rates.

Taking advantage of the near-random assignment of cases to judges, they showed that the average court appearance rate did not differ statistically between judges who issued more secured bonds and judges who issued more unsecured bonds. They also found that unsecured bonds facilitated pretrial release. This is important in light of multivariate statistical regression findings by Lowenkamp et al. (2013a) that showed in Kentucky that detaining people for longer periods of time pretrial increased the risk of failure to appear before adjudication, especially for the lowest risk arrestees.

25. Analyzing cases in New York City courts, Phillips (2012) provided mixed results. Her study compared arrestees released on recognizance (ROR) with those released on money bond. She found no difference in failures-to-appear (FTA) between ROR and secured money bond cases for low-risk arrestees. However, high-risk arrestees released on money bond had lower FTA rates than high-risk ROR arrestees. But there is an important limitation to this conclusion about high-risk arrestees: the arraignment decisions in New York City were generally limited to "straight" ROR (with no supervision or non-financial conditions) or secured money bail. As such, the conclusion did not take into consideration any "middle ground" options like unsecured money bail or non-financial release with restrictions. Without a comparison to these middle-ground options, the Phillips study does not provide a meaningful analysis of whether other non-financial conditions, or unsecured money bail, may have been equally effective and is therefore not inconsistent with the above studies.

26. Lastly, Clipper et al. (2017) found that arrestees in Dallas County, TX released on commercial bonds had better FTA outcomes than arrestees released on pretrial services bonds, which is a type of personal recognizance bond (Morris 2013). Before discussing my serious concerns about the reliability and validity of this study's findings, I have some fundamental concerns about the measurement of the key outcome.

a. Dallas County did not track FTAs (Morris 2013). The study is predicated on using bond "forfeiture" as a proxy for FTA. There are numerous fatal flaws with this proxy. While forfeiture findings were used to indicate FTAs for surety bonds, a proprietary data-scraping algorithm was used to identify when a pretrial services bond was held "insufficient." That is, there was no record of an FTA for pretrial services bonds. There is no way to verify the accuracy of this proprietary algorithm, which Morris created. I have serious concerns about the rigor of Morris's analysis for the reasons explained by Judge Rosenthal in her April 2017 preliminary injunction decision.

b. Perhaps more importantly, many FTAs did not result in forfeitures at all, and forfeitures are not a good proxy for FTAs because different judges may have very different practices relating to forfeitures. For example, my analysis in Harris County showed that judges treated those released on secured bonds less harshly than those released on unsecured bonds with respect to forfeitures. *See* Exhibit 12, Doc. 402-1, 8–10; Doc. 402-4, 2–4, 5. FTAs represent an objective data point, while forfeitures represent a decision based on judicial discretion. In sum, a fair comparison of FTAs for commercial and pretrial services bonds cannot be made in

this study because there was insufficient underlying data, and the shortcuts used to approximate the data are questionable and were not shown to be reliable.

27. Most importantly, even if FTAs were measured accurately in Dallas County, the results of this study would not tell us anything about the relative effectiveness of secured and unsecured bonds because the study has a more basic flaw: pretrial services bonds in Dallas County were not unsecured bonds, but rather recognizance bonds involving no penalty for nonappearance. Thus, the study does not, even on its own terms, purport to compare secured bonds with unsecured bonds. This same flaw is significant for another reason: Dallas County did not employ other alternative non-financial conditions (such as pretrial supervision, monitoring, text messaging, court reminders, etc…). Thus, the study does not purport to compare secured bonds to pretrial supervision or to compare secured bonds to even the most basic non-financial conditions of release, such as phone and text message reminders, let alone the wide range of alternative non-financial conditions available to modern jurisdictions. Thus, even if the study were methodologically rigorous—and it does not appear to be—it would not provide any meaningful evidence on the question of whether secured bonds outperform available alternatives.

28. Turning to statistical limitations, Clipper et al. (2017) used an approach called propensity score matching to attempt to match cases released on the different bond types across other legal and extralegal case characteristics. The goal was to create "equal" groups and to compare the groups' respective FTA rates. While this method of statistical analysis can, in theory, be quite sophisticated, as a general matter, it is not clear from the evidence provided that the matching was indeed successful. For example, the authors did not provide basic information, typically provided by researchers who use propensity score matching, about the percent of cases that were successfully matched, the equivalence of covariates between the two matched groups, or the size of the final analytic sample used in the analysis. Additionally, the authors used very stringent criteria to match commercial bond and pretrial services bond cases, which likely resulted in a significant percentage of cases going unmatched and, thus, being excluded from the analysis. We therefore cannot tell whether the desired matching was achieved and produced meaningful results.

29. Furthermore, based on my training and experience, I do not believe the statistical technique would be able to adequately overcome the biased process by which cases in Dallas County are "selected" into the commercial and pretrial services bond groups. In most jurisdictions across the country, the decision to assign a secured or unsecured bond, or non-monetary conditions is made at the same time. At the time of this study, the decision in Dallas County was sequential (Morris 2013). Arrestees only became eligible for pretrial services bonds after they had waited in jail overnight (or over the weekend) because they were unable to pay commercial money bail. Furthermore, the pretrial agency in Dallas consisted of only four people working during normal business hours and did not provide any meaningful services or use any non-financial conditions. Also, Dallas County did not use a risk assessment tool to assist in making release decisions. As such, the higher bond-forfeiture rates (Dallas County did not track actual failures to appear) of arrestees released on pretrial services bonds are not surprising, and are not particularly informative about the relative effectiveness of secured and unsecured bonds. Frankly, this unusual system seemed designed to provide commercial bail bondsmen first pick of the least "risky" arrestees,

leaving only the poorest arrestees most in need of services and alternative assistance eligible for pretrial services bonds.

30. Thus, there is no valid basis to conclude that the authors could eliminate this bias through the use of propensity score matching.

31. For all of these reasons, I have no confidence in the ability of the Clipper et al. (2017) findings to inform our understanding of the relative effectiveness of secured and unsecured bonds, let alone the relative effectiveness of secured money bail and other forms of release on various alternative non-financial conditions.

32. Overall, the evidence supports the conclusion that secured money bail is no more effective than unsecured money bail in assuring appearance in court. While the findings of the studies reviewed above are particular to their specific jurisdictions (Colorado, Kentucky, New York City), they suggest that unsecured bail and non-financial conditions of release are likely to be as effective as secured money bail across multiple jurisdictions.

Opinion 6: Secured money bail is no more effective than unsecured bail or non-monetary conditions of release at promoting public safety.

33. I am of the opinion that secured money bail is no more effective than unsecured bail or non-monetary conditions of release at promoting public safety.

34. I base my opinion on the following: Two of the studies I discussed in Opinion 5 (Jones 2013, Booker et al. 2014) also compared the effectiveness of unsecured and secured bonds in achieving public safety. Using the same methodologies as those used to examine court appearance, the authors found that secured money bail is no more effective than unsecured bail at assuring public safety. Jones (2013) showed that unsecured bonds offered the same public safety benefits as secured bonds at each of four levels of risk as determined by the Colorado Pretrial Assessment Tool (CPAT). That is, there was no statistically significant difference in the percentage of defendants charged with a new crime during pretrial release. Brooker et al. (2014) found that there was no statistical difference in the "public safety rate" between two groups of judges with different propensities for assigning secured bonds. On average, the judges using more secured bonds did not have lower arrest or new filing rates than judges using more unsecured bonds.

35. Another study I discussed earlier (Lowenkamp et al. 2013a) speaks to the relationship between the length of pretrial detention and new criminal activity in Kentucky. It is relevant in light of our knowledge that arrestees with secured bonds are less likely to be released (and, if released, are released less quickly) than those with unsecured bonds (see Opinion 1). Lowenkamp et al. (2013a) found that longer periods of pretrial detention were associated with a greater likelihood of new criminal activity pending trial. Among the lowest risk arrestees in particular, individuals detained 2-3 days are 39% more likely than people released within a day to be arrested for new criminal activity during the pretrial period; individuals detained for a month before being released are 74% more likely than those release within a day to be arrested for new criminal activity during the pretrial period. These findings are consistent with a report from Heyerly (2013) that showed that while Kentucky significantly increased the proportion of

defendants released on non-financial conditions, the state saw a decrease in the proportion of defendants re-arrested following pretrial release.

36. In sum, the evidence supports the conclusion that secured money bail is no more effective than unsecured money bail at assuring public safety. And, as noted in Opinion 5, though the studies reviewed above are particular to specific jurisdictions (Colorado, Kentucky), they suggest that unsecured bail and non-financial conditions of release are likely to be as effective as secured money bail across multiple jurisdictions. In any event, because Texas law does not permit forfeiture of money bonds for the commission of a new crime, it would seem impossible for secured money bonds to incentive people to remain crime-free because there is not even a theoretical risk of losing money for committing a new crime while released on secured money bond.

Additional Studies

37. Attached to this declaration as Exhibit 13 is a true and correct copy of the study: Emily Leslie and Nolan G. Pope, The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from NYC Arraignments, published in the peer-reviewed journal, *Journal of Law and Economics*, in 2017. The study measured the impact of pretrial detention on case outcomes in over one million cases in New York City. The study found that being pretrial detention increases the probability of conviction by 13 percentage points for felony defendants. It also found that pretrial detention increases the chances that a person would commit a crime within two years of disposition.

38. Attached to this declaration as Exhibit 14 is a true and correct copy of the study: Kristian Lum, Erwin Ma, and Mike Baiocchi, The causal impact of bail on case outcomes for indigent defendants in New York City, published in the peer-reviewed journal, *Observational Studies*, in 2017. The study measured the impact of pretrial detention on case outcomes in over 60,000 cases handled by the New York Legal Aid Society in 2015. The study found strong evidence of a causal relationship between setting bail and case outcomes. Specifically, it found that setting bail results in a 34% increase in the likelihood of conviction for the cases in their analysis. And the effect of setting bail is likely stronger among vulnerable populations, such as those who rely on public defenders.

I declare under the pains of perjury that the foregoing is true and correct to the best of my ability.

7-16-18
Date

Stephen Demuth, Ph.D., M.A., B.S.

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SHANNON DAVES, *et al*., On behalf of themselves and all others similarly situated, FAITH IN TEXAS, TEXAS ORGANIZING PROJECT, On behalf of themselves, Plaintiffs, v. DALLAS COUNTY, TEXAS, *et al.*, Defendants.	Case No. 3:18-cv-154

DECLARATION OF JUDGE TRUMAN MORRISON

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 a determination of whether and which conditions of release are adequate to meet the government's legitimate interests in court appearance and community safety.

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 of release are almost never used for any purpose.

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 post-arrest process for arrestees 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 a formal hearing, the judge can order a person detained pretrial if she 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 United States. In 2017, 94% of arrestees were released, and 98% of released arrestees remained free from violent crime re-arrest during the pretrial release period. 86% of released defendants remained arrest-free from all crimes. 88% of arrestees released pretrial made *all* scheduled 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 using a variety of lawful, science-based strategies, 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. Last year, we preventively detained only 6% of all arrestees.

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 order (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.

Conclusion

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

I swear under penalty of perjury that the foregoing is true and correct to the best of my ability.

Judge Truman Morrison

Date 7/15/18

Exhibit F

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SHANNON DAVES, *et al*., On behalf of themselves and all others similarly situated, FAITH IN TEXAS, TEXAS ORGANIZING PROJECT, On behalf of themselves, Plaintiffs, v. DALLAS COUNTY, TEXAS, *et al.*, Defendants.	Case No. 3:18-cv-154

DECLARATION OF JACOB SILLS

1. My name is Jacob Sills. I earned an M.B.A. from the Wharton School, University of Pennsylvania, and a B.A. from Cornell University.

2. I have previously worked as a Senior Associate with TEM Capital, a private equity fund focused on renewable energy and as an Investment Banking Analyst at Bank of America Securities. In each of these positions I conducted financial analysis, provided strategic advice, and analyzed potential investments.

3. I am Co-Founder and CEO of Uptrust, a company that uses cutting edge technology and behavioral research to help people charged with crimes show up for their court dates.

4. Our research has shown that the vast majority of people who miss court have not fled the jurisdiction. Instead, they miss court for reasons that can be solved: for example, they forgot the court date, were unable to secure transportation or child care, were unable to take time off work or forgot to ask in advance, were scared or confused about going to court, or did not understand the consequences of failing to appear.

5. Failure-to-appear risk is different from flight risk. Although flight risk is difficult to mitigate, most FTAs, and the bench warrants that issue as a result of failing to appear, can be avoided if assistance is provided to defendants to help them get to court.

6. Uptrust accomplishes this by sending text message reminders to people's cell phones.

7. In the counties where we are operating, we integrate our software with the jurisdiction's pre-existing case management system. Arrestees provide their name, cell phone number, court date and time, whether they have a daily obligation, whether they have children under the age of 10, and how they plan to get to court (or if they are not sure).

8. Using that information, Uptrust sends a series of text messages to defendants about a week, and then a few days, before their court dates, reminding the person of the court date and the fact that failing to appear could result in a bench warrant.

9. Uptrust is a fully customizable system. It can text referrals and reminders about anything. For example, if someone lacked employment, Uptrust can refer them to county job opportunities. If a defendant has a young child, Uptrust can refer them to a local childcare facility. In two counties, Uptrust alerts defendants with children of the availability of childcare at the courthouse.

10. The technology permits two-way communication, so the person can text back to provide information about any conflict that has come up or any anticipated problems getting to court. That response will be forwarded to a case manager or the defendant's lawyer. In the event that the client does not have an attorney, Uptrust can send 1-way text reminders to the client.

11. Uptrust has historically worked with county and statewide public defender and alternative defender offices. However, Uptrust can also work with any assigned counsel, assuming it receives accurate information on the attorney and their client.

12. This simple technology has provided dramatic improvements in appearance rates in jurisdictions where Uptrust is currently operating.

13. In Contra Costa County, CA (population: 1,049,025), the FTA rate of Public Defender clients receiving text messages decreased from approximately 20% to below 5%. A 95% court appearance rate is a stellar accomplishment given my examination of typical appearance rates in American jurisdictions.

14. In Luzerne County, Pennsylvania (population: 320,918), the FTA rate of low-income defendants (clients of the public defender) dropped from an estimated 15% to less than 6%. Put another way, people showing up for court increased from approximately 85% to 94%.

15. Uptrust engages low-income defendants; approximately 30% of recipients of our text reminders reply to our messages. The top responses from defendants are "Thank You" and "Ok."

16. Uptrust is expanding its services to a variety of new jurisdictions, large and small, across the United States. We recently launched with the Office of the Public Defender of Maryland to provide court reminders to Baltimore (population: 611,648). In April 2018, Uptrust launched its service with the statewide Virginia Indigent Defense Commission in two locations, Richmond (population: 223,170) and Petersburg (population: 32,420). Uptrust is currently completing integrations with 7 counties, including Spokane, WA (population: 471,221) and San Bernardino, CA (population: 2,035,210). Uptrust is currently in discussions with several other counties and states to provide its services. By 2019, Uptrust hopes to be operational in jurisdictions representing 25 million in population and with over 500,000 low-income defendants per year.

17. Uptrust utilizes software to remind people of court; this allows counties and states to provide pretrial assistance at a cost much lower than probation or court-run pretrial services / supervision. The cost to operate our services is $2 per client inclusive of unlimited messaging and referrals. We also charge a one-time fee of $20,000 to customize our service to a given location and integrate with the local case management system(s).

18. Eliminating bench warrants can save a county money by eliminating the costs associated with the subsequent, avoidable incarceration. Also, law enforcement can spend more time on higher-priority matters when the number of people arrested for non-violent, technical violations such as an FTA is minimized.

19. Around the country, Uptrust is collaborating with local community bail funds and participatory defense networks. In any jurisdiction where it operates, Uptrust will donate a version of its software to non-profit organizations helping people attend court.

20. We are also preparing to provide additional services in jurisdictions where we operate, such as connecting people with free rides to Court or childcare on the day of court. Even in a large county such as Dallas, the cost of coordinating these services (to only those that require assistance) is far cheaper than the cost of incarcerating someone for days or weeks prior to trial. Uptrust has experience identifying which defendants require extra assistance.

21. Attached to this declaration as **Exhibit 54** is a true and correct copy of the study: Brice Cooke et al., *Using Behavioral Science to Improve Criminal Justice Outcomes Preventing Failures to Appear in Court*, Ideas41 and The University of Chicago Crime Lab. The study found that redesigning summons forms to promote plain, understandable language reduced the FTA rate by 13%, while text message court date reminders reduced FTA rates by as much as 26%.

22. Attached to this declaration as **Exhibit 55** is a true and correct copy of the paper: Pretrial Justice Center for Courts, *Use of Court Date Reminder Notices to Improve Court Appearance Rates*, Pretrial Justice Brief 10, 2010. The paper discusses how in Coconino County, AZ, live phone call reminders reduced FTA rate from 25.4% to 5.9% when caller received the live call. In Jefferson County, Colorado, a pilot court reminder program increased court appearance rate to 92%.

23. These two exhibits further suggest the value of straightforward reminders to improve court appearance rates.

I declare under penalty of perjury that the foregoing is true and correct.

Jacob Sills — 7/16/18

Jacob Sills — Date