



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 Arizona¹⁴ 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,

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](http://www.azcourts.gov/Portals/20/2016%20December%20Rules%20Agenda/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