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.