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:

![FIG 27. Poverty Percentage, People with and without Disabilities, 2009-2016](chart)

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).

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2. [https://www.bjs.gov/content/pub/press/dpj1112pr.cfm](https://www.bjs.gov/content/pub/press/dpj1112pr.cfm)
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.

\(^6\) [https://www.ssa.gov/reentry/benefits.htm](https://www.ssa.gov/reentry/benefits.htm)
\(^7\) [https://www.ssa.gov/reentry/benefits.htm](https://www.ssa.gov/reentry/benefits.htm)
\(^8\) [https://www.ssa.gov/reentry/benefits.htm](https://www.ssa.gov/reentry/benefits.htm)
\(^9\) [https://www.ssa.gov/reentry/benefits.htm](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.\(^\text{10}\)

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 disability to find a paid or unpaid personal assistant or caretaker.\(^\text{11}\) 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

\(^\text{10}\) https://www.americanprogress.org/issues/criminal-justice/reports/2016/07/18/141447/disabled-behind-bars/

\(^\text{11}\) 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.\textsuperscript{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 disproportionately 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.”\textsuperscript{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.

\textsuperscript{12} https://www.housingactionil.org/downloads/Locating_Accessible_Hsg_IHARP%2007.pdf  
\textsuperscript{13} http://www.illinoiscourts.gov/Probation/12-18.pdf