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: Pretrialhearing@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
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

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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

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\(^3\) 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.\textsuperscript{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,\textsuperscript{11} Maryland,\textsuperscript{12} New Mexico,\textsuperscript{13} and Arizona\textsuperscript{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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\textsuperscript{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.

\textsuperscript{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.

\textsuperscript{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.

\textsuperscript{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.

\textsuperscript{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 Loewy, Jon Loewy 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)
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