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 2000-2014.¹ 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.”² By law, pretrial detention may be ordered only if an arrested person presents an unmanageable risk to public safety or risk of flight.³ 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,⁴ 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.\textsuperscript{v} Another study concluded that simply being Black increases an accused person’s odds of being jailed pretrial by 25 percent.\textsuperscript{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.\textsuperscript{vi} 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.\textsuperscript{viii} Finally, money bail practices do not appear to make the public any safer.\textsuperscript{x}

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.\textsuperscript{v} RAIs also carry the potential to increase racial disparities in pretrial detention under the guise of objectivity.\textsuperscript{x} 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.
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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vi Ibid.


