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July 9, 2018

Jan Zekich
Secretary, Illinois Supreme Court Rules Committee
Administrative Office of the Illinois Courts
222 N. LaSalle Street, 13th Floor
Chicago, IL 60601

Re: Proposed Supreme Court Rule on Monetary Bond

Dear Ms. Zekich and Members of the Rules Committee:

We are members of the Illinois legal community—including former state and federal prosecutors, judges, assistant attorneys general, and U.S. Justice Department lawyers—who urge the Illinois Supreme Court to adopt the proposed rule submitted on October 13, 2017 by Cook County's criminal justice stakeholders regarding hearings on pretrial release. Among other provisions, the proposed rule would require an evidentiary hearing and a finding by a judge that an accused person is able to afford the amount of monetary bail set before permitting the setting of cash bail in any criminal case. A rule like the one proposed would ensure fairness and prevent wealth-based deprivations of liberty for those individuals in Illinois who are presumed innocent.

We are deeply concerned about public safety in the State of Illinois. But there simply is no credible evidence that the current application of money bond in Illinois makes our communities safer. If, based on Illinois law, an accused person is too dangerous to be released pending trial, judges in Illinois should hold a hearing and make sufficient written findings denying pretrial release. The current practice of setting of high, unaffordable monetary bonds to *de facto* ensure that an individual remains in custody pending trial does not promote public safety, and it raises serious questions of compliance with Illinois law and the U.S. Constitution. Further, such a practice increases the rate of pretrial detention at great financial cost to the State of Illinois and its counties during a time of fiscal crisis, when public funds can be better spent on community safety initiatives.

We are also deeply committed to ensuring that the courts in this state function efficiently and fairly. However, as found by former U.S. Attorney General Eric Holder in a July 2017 memo, studies have repeatedly shown that alternatives to cash bond can be equally effective at ensuring a defendant's appearance in court, without the negative consequences imposed by a

wealth-based system.[1] These studies have shown that alternative conditions of release, such as pretrial supervision, result in equally good, if not better, appearance rates.[2]

We encourage the Rules Committee to place the proposed rule on the public hearing agenda for a full and fair hearing on these important issues, and to submit the proposal to the Supreme Court Committee with a recommendation for adoption.

Sincerely,

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[1] *See* Memorandum from Eric H. Holder, Jr. *et al.*, to Amy J. Campanelli, Cook County Public Defender 21 (Jul. 12, 2017), *available at* https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=5cde3253-fd00-4e0e-66b3-94ec6f0b3f75.

[2] *Id.* at 21 n.114 (citing CHRISTOPHER T. LOWENKAMP &MARIE VANNOSTRAND, EXPLORING THE IMPACT OF SUPERVISION ON PRETRIAL OUTCOMES 17 (Nov. 2013) (finding that supervised defendants were significantly more likely to appear for court than unsupervised defendants) and TARA BOH KLUTE &MARK HEVERLY,REPORT ON IMPACT OF HOUSE BILL 463: OUTCOMES, CHALLENGES AND RECOMMENDATIONS 6 (2012) (finding legislation shifting Kentucky's system toward risk-based pretrial supervision, as opposed to reliance on money bail, resulted in lower FTA rates)).

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