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## **Working Toward Eliminating Unnecessary Bail Bonds**

The United States Supreme Court has stated that release before trial should be the norm and detention before trial should be the carefully limited exception. Detaining people simply because they cannot afford to post money bail violates a person's rights as guaranteed by two different amendments to the Constitution. The Eighth Amendment states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

And the Fourteenth Amendment states, in part, "...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The Justice Department has argued that this equal protection section should be read to prohibit "bail practices that incarcerate indigent individuals before trial solely because of their inability to pay".

Last week a lawsuit was filed in Cook County Circuit Court by two inmates who are challenging the constitutionality of the bond system at Cook County Jail. The lawsuit aims to be a class action lawsuit and to represent all people locked up in the jail only because they can't afford bail.

In Cook County, a judge sets bail following arrest, and if a monetary bond is assigned defendants are detained if they cannot post 10 percent of the bail amount in cash or property as bond. According to an investigation by Injustice Watch, the average Cook County detainee spends on average 59 days in custody – 33 days longer than the national average.

The system that we have right now says—whether you're a danger to society or not—if you have money, you can walk. Our current system doesn't make sense for public safety. That's because people charged with gun crimes are actually more likely to be able to come up with bail money than people charged with lesser crimes like retail theft.

And, there is evidence that locking people up just because they can't come up with bail greatly affects their ability to keep their jobs and support their families. Recent research suggests that for those who are at low risk for being a danger to the community or a flight risk actually may have INCREASED future criminal activity the longer that they are detained.

Just think of how much it costs taxpayers to detain low-risk individuals just because they cannot post bail.

Wouldn't it be better if we carefully and transparently assessed the person's actual pretrial risk of danger to community safety or of failing to appear in court, and base detention on that risk?

According to Cherise Fanno Burdeen of The Crime Report and the Pretrial Justice Institute, Washington, DC has virtually eliminated money from its pretrial system and detains only 12% of all arrested people. Combining a robust pretrial risk assessment program with community supervision for medium-risk individuals has led to a court appearance rate of 88% and a public safety rate (staying arrest-free before trial) of 89% in DC.

My ultimate goal would be to eliminate bail bonds for people in Illinois, but we have to first expose the fact that there are just too many people in Cook County Jail in pre-trial detention, and try to do something about it.

In 2013, Rep. Monique Davis introduced, and I was the Chief Co-Sponsor of, House Bill 130 which provided that if a first-time offender is charged with a non-violent offense, the court shall order him or her released on his or her own recognizance, unless the court makes a specific finding that a cash bond is necessary to secure his or her appearance, and in addition could order electronic monitoring. Unfortunately, that piece of legislation did not pass the House.

A step in the right direction is to allow the Cook County Sheriff make a direct request to the judge to have bail reduced. According to Cook County Sheriff Tom Dart, "We're seeing this in front of us all the time, where we have people in here who clearly don't belong in the jail and the only thing that was holding them in here was the fact that they were poor. More than 90 percent of the people in the jail are awaiting trial, most because they can't afford bail."

I am drafting and introducing legislation to do just that – to allow the sheriff to directly work with the judge to reduce or eliminate bail amounts. It's just logical that the sheriff should be able to weigh in on bond reductions. The sheriff and his staff meet individuals every day and can determine whether or not a person should be eligible for a bail reduction. This is just a small step in the right direction in the fight to eliminate unnecessary bail bonds, in the fight for justice, and for rights for all as guaranteed by our Constitution.



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