



September 13, 2016

Reforming the Bail System

Last summer, the governor signed a bill into law that I introduced and passed which reformed the bail bond system by limiting the amount to \$100 that the Cook County Clerk can retain as a bond processing fee if the defendant is cleared of a crime or if charges are dropped, rather than the previous 10% of the bail bond. In a bipartisan movement, both Democrats and Republicans voted for the bill, which is now in effect as Public Act 98-0412.

Reforming the bail system has also recently come to the forefront for the Obama administration. A few weeks ago, the Justice Department filed a “friend of the court” brief in a Georgia case, arguing that the Constitution forbids the common practice of keeping people in jail before their trial, even for minor offenses, just because they don’t have the money to pay for bail.

The case in Georgia, Walker v. Calhoun, involves a poor and disabled man who was arrested as a “pedestrian under the influence” and was held in jail for 6 days because he could not afford the standard \$160 bail.

The Justice Department argued that this common practice 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 argues 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”.

The Justice Department agreed that arrested people can be held if the judge believes that the person would pose a danger if released, or if they are likely to flee.

We should follow Walker v. Calhoun closely to see how it is decided, but the Obama administration has made it clear where it stands and how the system needs to be reformed. The Justice Department has summarized this by stating that, “The Fourteenth Amendment prohibits incarcerating individuals without meaningful consideration of indigence and alternative methods of achieving a legitimate government interest” and “Bail systems that keep indigent defendants in jail solely because they cannot pay bail result in unnecessary pretrial detention and impede the fair administration of justice.”

I have heard stories of people who are arrested, even for questionable reasons, and are held for weeks in jail because they could not post bail, and then are subject to all kinds of life-changing problems, such as losing their job and their housing. We know well the story of Sandra Bland, who died in a Texas jail because she could not pay her \$500 bond to get out. The prospect of being held in jail can also lead people to plead guilty for crimes that they did not commit, just to get out of jail, which creates a record that impacts their future lives.

I have been working with Dr. Willie Wilson on this issue, and this week he will go to Cook County Jail to bond out over 60 inmates. This is a sign that if man with resources and heart can come off of the street to bond someone out of jail for petty crimes, it is clear that we have to find a better way to spend tax payers' money, rather than jailing people and paying for their confinement just because they don't have the money to make bond. Dr. Wilson's humanitarian act of kindness and mercy should change the way we look at and deal with nonviolent offenders in Cook County.

As the Chairman of the House Restorative Justice Committee, my mission is to help reform the criminal justice system and ensure that everyone, regardless of their race or socio-economic status, is treated fairly. Reducing bail bond processing costs and making the whole bail system fairer for all are steps in that direction.

Sincerely,

A handwritten signature in black ink, appearing to read 'LSK', with a stylized flourish extending to the right.

La Shawn K. Ford
State Representative-Eighth District