New Solutions Campaign

#002

Promoting Fair & Effective Criminal Justice • Strengthening Families & Communities

May 27, 2016

The Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625-0037

Re: Comments Regarding Pretrial Release/Pretrial Detention/Speedy Trial Rules

Dear Judge Grant,

On behalf of the undersigned organizations concerned with the implementation of *The Bail Reform Law*, we respectfully submit the following comments in response to the Supreme Court's Committee on Criminal Practice Report Part 1 and Part 2. We also join in concurrence with the more detailed comments submitted by the named organizational members of the Pretrial Services Program Review Commission established by *The Bail Reform Law*.[1]

We begin by commending the Committee for recognizing the inconsistencies between the use of bail schedules and the intent of *The Bail Reform Law*. We join the Committee in urging the Administrative Office of the Courts to reconsider the continued viability of bail schedules within New Jersey. We go further than the Committee however, in arguing that the complete and immediate elimination of bail schedules is appropriate, even in those cases that arise prior to January 1, 2017, because the use of bail schedules violates the Equal Protection Clause of the United States Constitution.[2]

We also commend the Committee for addressing the issue of affordable bail in its non-rule recommendation. We share the concern that there is no explicit language in *The Bail Reform Law* that restricts the court from imposing a monetary bail that results in pretrial detention. Nevertheless, we are confident that the intent and totality of *The Bail Reform Law* to favor release, while providing a mechanism for the State to detain truly dangerous individuals, supports the interpretation that individuals shall not be detained in New Jersey solely because of their inability to pay monetary bail. Further, these factors support an interpretation that any such detention could only be the result of intentional action by the courts to detain a person and that such intent is strictly forbidden by the law. Additionally, the United States Constitution explicitly protects individuals from being detained solely because of their inability to pay for their

[1] See statement submitted on behalf of the named organizational members of the Pretrial Services Program Review Commission established by *The Bail Reform Law*, including the New Jersey State Conference of the National Association for the Advancement of Colored People, the Latino Action Network, the American Civil Liberties Union of New Jersey, the Drug Policy Alliance, and the New Jersey Institute for Social Justice.
[2] Statement of Interest of the United States filed in *Varden v. City of Clanton*, No. 2:15-cv-34-MHT-WC (2015).

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A Drug Policy Alliance campaign.

release.[3] For these reasons, we do not see a need for the legislature to revisit this issue.

We, along with many other advocates, faith leaders and community members supported the historic and comprehensive bail reform legislation enacted in 2014. However, we are concerned that some of the proposed rules, discussed below, will not only undermine the intent of the law, but will also make some of the protections afforded to individuals under the law meaningless.

Of particular concern is the Committee's recommendation to the legislature to expand the number of offenses for which a presumption of detention should apply. This recommendation is not only beyond the scope of the Committee, but is also bad public policy. As the United States Supreme Court wrote in *United States v. Salerno*, "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."[4] The intent of *The Bail Reform Law* is to limit pretrial detention, not to expand it. *The Bail Reform Law* provides a mechanism for the State to seek preventative detention in the interest of public safety, and there is no reason to include additional presumptions to facilitate this process.

Additionally, we have significant concerns with many of the proposed speedy trial rules. When passed, *The Bail Reform Law* included speedy trial safeguards to address the substantial criminal case processing issues in New Jersey. While *The Bail Reform Law* provided some absolute time frames, the court rules are supposed to work within those time frames to further define certain processes. We are concerned that these proposed rules not only fail to impose limits on the amount of time that can be excluded, but also allow excessive and unreasonable time periods in some instances. These proposals undermine the intent of *The Bail Reform Law* and fail to protect defendants' rights to a speedy trial.

New Jersey became a national leader when it passed comprehensive bail reform. We supported the reform because it was grounded in fairness and equity. Some of the rules proposed by this Committee threaten the principles of the law, and we respectfully request that you consider our comments when finalizing the rules.

Sincerely,

- African Methodist Episcopal Church, Orange
- AFSC Prison Watch Program
- Alpha Kappa Alpha Sorority, Inc.
- American Civil Liberties Union of New Jersey
- American Correctional Association, NJ Chapter
- Anti-Poverty Network of New Jersey
- Bethel African Methodist Episcopal Church, Woodbury
- Building One New Jersey
- Camden Dream Center
- New Jersey Center For Empowerment and Community Development
- New Jersey County Jail Wardens Association
- New Jersey Evangelical Pastors Association-North Region
- New Jersey Institute for Social Justice
- New Jersey Parents Caucus, Inc.
- New Jersey Policy Perspective
- New Jersey Progressive Democratic Caucus
- New Jersey Working Families
- The New Jim Crow Project

[3] Id.
[4] *United States v. Salerno*, 481 U.S. 739, 755 (1987).

- The Campaign to End the New Jim Crow, Princeton/Trenton
- Casa Del Alfarero Evangelical Church
- Church of God, Jersey City
- ColorOfChange.org
- Coalition of Latino Officers
- Corporation for Supportive Housing
- Defender of Christian Faith, Bayonne
- Dominican American Organization, Inc.
- Drug Policy Alliance
- The Evangelical Pastors Association of Hudson County
- Faith Is Our Pathway, Inc.
- Fathers and Men United for a Better Trenton
- First Unitarian Universalist Fellowship of Hunterdon Co.
- Fundacion Casita de Legui, Inc.
- Good News Home
- Hispanic USA
- Horizons Community Development, Inc.
- Iglesia Cristiana Avivamiento Pentacostal Church, Jersey City
- Iglesia Del Avivamiento, Union City
- Iglesia El Shaddai, Jersey City
- Iglesia Fuente De Salvacion, Jersey City
- Integrated Justice Alliance
- Justice Strategies
- Latin American Community Action
- Latin American Democratic Association
- Latino Action Network
- Lutheran Episcopal Advocacy Ministry of NJ
- Mayor Myra Campbell, Asbury Park
- Monte Sinai, Newark
- Morris County Aftercare Center
- Multicultural Poder Hispano
- NAACP New Jersey State Conference
- NAACP, Bergen County Chapter
- NAACP, Morris County Chapter
- National Association of Social Workers, NJ Chapter
- National Council on Alcoholism and Drug Dependence—NJ
- New Psalmist Worship Center
- National Organization for Women—NJ
- NeighborCorps Re-entry Services
- Newark Trust for Education
- NJ Ecuadorian Chamber of Commerce
- NORML New Jersey
- National Religious Campaign Against Torture-NJ Chapter
- The Nazarine Church, Jersey City
- Nehemiah Group
- New Jersey Association on Correction
- Omicron Xi Omega Chapter of Alpha Kappa Alpha Sorority
- The Path to Heaven, Long Branch
- People's Organization for Progress
- PerDiem Plus
- Probation Association of New Jersey
- Recovery Advisory Group
- Reentry Coalition of New Jersey
- Rev. Peter Sanfilippo, The Reformed Church of Metuchen
- Roseville Presbyterian Church, Newark
- Rutgers-Camden College Democrats
- Shiloh Baptist Church, Trenton
- Sojourn Institute, LLC
- St. James Somerset AME Church
- St. John Lutheran Church, Union City
- Students for Prison Education and Reform: Princeton
- Students for Sensible Drug Policy
- Telequest, Inc.
- Transitioning to Transformed LLC
- Tremain Blaney Strategy Group, LLC.
- United Salvadorian Leadership
- Unitarian Universalist Legislative Ministry of New Jersey
- Volunteers of America Delaware Valley
- We Are United and Organized
- Women Who Never Give Up
- YOBILU, Women Against Domestic Violence