



**The Intersection Between Poverty and Florida’s Criminal Justice System:
Homeless Rights, Bail Reform, Indigent Defendants’ Right to Counsel, and Restoration of
Past Offenders’ Right to Vote¹**

**Submission to the United Nations Special Rapporteur on Extreme Poverty and Human
Rights in Preparation for his Official 2017 Visit to the United States**

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I. Introduction

The American Civil Liberties Union (“ACLU”) is a non-profit, non-partisan organization that defends and protects individual rights and liberties that are guaranteed to all individuals by the United States Constitution and its laws. The ACLU of Florida seeks to end policies that cause widespread constitutional and human rights violations. The Miami Law Human Rights Clinic works for the promotion of social and economic justice globally and in the U.S. The Clinic uses international human rights laws and norms, domestic law and policy, and multidimensional strategies, such as community organizing, political activism, and global networking, to draw attention to human rights violations, develop practical solutions to those problems, and promote accountability on the part of state and non-state actors.

**II. How Florida’s Criminal Justice System Contributes to and Exacerbates Poverty,
Resulting in Human Rights Violations**

This report will address the issues of homeless rights, bail reform, indigent defendants’ right to counsel, and voting rights—all of which the ACLU of Florida believes are related to unprecedented levels of discrimination, incarceration, and other harms to low-income Floridians. Our goal is to demonstrate how each of these issues contributes to and exacerbates the struggles of impoverished citizens in the state of Florida, with a specific focus on South Florida.

A. Criminalization of Homelessness and Homeless Rights

Nationwide, local governments increasingly face shortages in resources to combat homelessness. Instead of attempting to resolve the root causes of homelessness, many of these governments have enacted laws that penalize homeless people for their survival activities, such

¹ The following University of Miami School of Law students principally drafted this report under the supervision of Professor Caroline Bettinger-López and in collaboration with the ACLU of Florida: Andrea Ezell, Luis Inclan, Nicole Masri and Sandra Cordoba.

as sleeping in public places.² The National Law Center on Homelessness and Poverty currently estimates that each year at least 2.5 to 3.5 million Americans sleep in shelters, transitional housing, and public places not meant for human habitation.³ The U.S. Department of Housing and Urban development (“HUD”) uses a narrow definition of “homeless”⁴ that is limited to people living in shelters, in transitional housing, and in public places. Many people experiencing homelessness have no other option but to live outside and in public places; yet social stigma, laws, and law enforcement practices continue punishing these individuals.

i. Homelessness in Florida – the Numbers

The *State of Florida 2016 Homeless Census Estimates and Funding Need to End Chronic Homelessness Report* estimates that there are currently around 33,000 homeless people living in the state; roughly 18,000 live in shelters, while 15,000 are completely unsheltered.⁵ According to the Report, 4,235 homeless people lived in Miami-Dade County in 2016— the highest number in the state, while the second highest, St. Petersburg/Clearwater, had about 2,777 total homeless. Further, the Report found that in Miami-Dade County there are: 447 people chronically homeless; 1,963 in emergency shelter facilities; 982 people that are unsheltered homeless; 337 that are chronically unsheltered homeless; and over 28,000 people on the waiting list for public housing alone.⁶

ii. Penalization of Homelessness

A leading cause of homelessness is a lack of affordable housing.⁷ Despite the undisputed lack of affordable housing and shelter space, many municipalities in Florida criminally or civilly punish people living on the street instead of creating initiatives to provide affordable housing options. For example, Broward County criminalizes sleeping in public spaces⁸ with penalties that

² *Criminalization of Homelessness Increases in U.S. Cities*, National Low Income Housing Coalition, November 2016. <http://nlihc.org/article/criminalization-homelessness-increases-us-cities>.

³ The National Law Center on Homelessness & Poverty, *Homelessness in America: Overview of Data and Causes* (2015) https://www.nlchp.org/documents/Homeless_Stats_Fact_Sheet.

⁴ The McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11302(a)-(b) (2012). The HUD definition of “homeless” is an individual who is exiting an institution where he or she temporarily resided; an individual or family who is at the imminent risk of losing their housing and has no resources to secure new permanent housing; unaccompanied youth and homeless families with children and youth who are defined as homeless under other federal statutes; and an individual or family who is experiencing domestic violence and other dangerous or life-threatening conditions such as dating violence, sexual assault, and stalking, etc.

⁵ *The State of Florida 2016 Homeless Census Estimates and Funding Need to End Chronic Homelessness Report*, National Homeless Information Project, October 2016. http://www.nhipdata.org/local/upload/file/Florida%20Homeless%20Report%202016%20%2009_30_16%20-%20final%20report.pdf.

⁶ Miami Dade, Public Housing & Community Dev., Waiting List Ranking/Position List Number, (2014), <http://www.miamidade.gov/housing/waiting-list-rankings.asp>.

⁷ Florida Coalition for The Homeless: The Issue, Florida Coalition For the Homeless, (2015). <http://fchonline.org/the-issue/>, *Out of Reach*, National Low Income Housing Coalition (2017). http://nlihc.org/sites/default/files/oor/OOR_2017.pdf.

⁸ Broward County, Florida Code of Ordinances Sec. 21-143. - Disorderly conduct. No person shall commit any act of disorderly conduct at the facility. An act of disorderly conduct shall be any of the following acts: (a) Littering, dumping of garbage or liquids or any other matter, or creating a nuisance or hazard or unsanitary condition by doing any act including but not limited to spitting or urinating (except in facilities provided). (b)

include a fine not to exceed five hundred dollars (\$500.00), or by imprisonment in the county jail not to exceed sixty days.⁹

The National Law Center on Homelessness and Poverty reported that laws criminalizing homelessness have dramatically increased over the past ten years. Legislation specifically targeting homeless individuals (i.e. restrictions on where and how charitable groups can feed the homeless in the city¹⁰) has transformed entire communities into “no homeless zones,” causing homeless people to be left with no choice but to break the law or to leave town. These laws are unjust because they target and punish homeless people for conduct inextricably linked to their homeless status. Further, these policies are ineffective and actually make escaping homelessness harder due to the consequences of being criminally penalized. In other words, the time and cost of interacting with the criminal justice system set people further back from having the resources to escape homelessness.

In addition, criminal records make it even harder for people experiencing homelessness to find jobs or housing.¹¹ As stated by the U.S. Department of Justice in its statement of interest brief in *Bell v. Boise*, “[i]f a person literally has nowhere else to go, then enforcement of the anti-camping ordinance against that person criminalizes her for being homeless,” in violation of the Eighth Amendment’s prohibition against cruel and unusual punishment.¹²

Furthermore, homelessness impacts minority and marginalized groups at a disproportionate rate. African-Americans, while only making up 12 percent of the nation’s population, are an estimated 45 percent of the homeless population, while 40 percent of homeless youth are members of the LGBTQ+ community.¹³ Moreover, over fifty percent of women report being homeless due to domestic violence.¹⁴

iii. Recommendations

Laws, policies, and practices that prohibit or limit the use of public space by homeless people for life-sustaining activities should be repealed and defunded. Instead, policies should be created to increase access to and availability of affordable housing. Moreover, homeless people should not be subjected to, or threatened with, civil or criminal sanctions or harassment by law enforcement, other state actors, and/or private security personnel for conducting life-sustaining

Sleeping or dozing in any place where this may be hazardous to oneself or to others or may interfere with the operation of the transit system or the comfort or convenience of transit passengers.

⁹ Broward County, Florida Code of Ordinances Sec. 21-144. (“Penalty. Violations of this article shall be prosecuted in the same manner as misdemeanors are prosecuted. Such violations shall be prosecuted in the name of the state in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof, and upon conviction shall be punished by a fine not to exceed five hundred dollars (\$500.00), or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.”).

¹⁰ *Fort Lauderdale commissioners pull all-nighter and approve homeless feeding restrictions*, Sun-Sentinel, (2014). <http://www.sun-sentinel.com/local/broward/fort-lauderdale/fl-lauderdale-homeless-feeding-sites-20141021-story.html>.

¹¹ National Law Center on Homelessness and Poverty, *Housing Not Handcuffs: The Criminalization of Homelessness in U.S. Cities* 10-11, (2016), <https://www.nlchp.org/documents/Housing-Not-Handcuffs>.

¹² U.S. Dep’t of Just. Statement of Interest brief in *Bell v. Boise* (2015), <https://www.justice.gov/crt/file/761211/download>.

¹³ U.S. Interagency Council on the Homeless, *Homelessness: Programs and the People They Serve*, Findings of the National Survey of Homeless Assistance Providers and Clients (1999).

True Colors Fund, *Our Issue*, <https://truecolorsfund.org/our-issue/>.

¹⁴ *Pressing Issues Facing Families Who Are Homeless*, The National Center on Family Homelessness, (2013). <http://fliphtml5.com/xsgw/ijjt/basic>.

activities in public places. Federal, state, and local governments should dedicate funding streams to housing and services for homeless people. Specifically, local governments should adopt constructive policing protocols, supported by police training designed to improve interactions with homeless and mentally ill people.

B. Bail Reform

Pretrial detention and the bail system are meant to ensure that defendants make their court appearances. Unsecured appearance bonds (personal recognizance bonds with a monetary amount set if the defendant does not appear in court) are as effective at achieving court appearances as secured bonds (surety and cash bonds).¹⁵ Alarming, however, judges generally only set secured bonds, causing Florida jails to overflow with people who simply cannot afford to make bail—rather than convicted defendants. High money bails allow dangerous criminals to go free back into the community, while less dangerous defendants sit in jail.¹⁶ It is more often those who do not pose any additional risk to the general public that are held in pretrial detention because they cannot pay their bail.¹⁷ The cash bail system disproportionately affects low-income and indigent defendants, creating two systems of criminal justice where the rich are favored.¹⁸

Thousands of people in Florida are detained because they cannot afford bail.¹⁹ For example, in a Miami-Dade County jail, which averages more than 2,000 inmates daily, more than 80 percent of those detained were pretrial inmates.²⁰ As a result, even if pretrial detainees are ultimately not convicted, even a short stay in jail exacerbates problems that low-income citizens already face, such as possible loss of employment and an inability to pay fees associated with their detention.²¹

i. Due Process Concerns

Florida law has a presumption in favor of release on nonmonetary conditions for any person granted pretrial release.²² In practice, however, release often requires bail. Releases on a person's own recognizance ("R.O.R.s") are exceptions, despite the actual law.²³ This practice

¹⁵ *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*, Pretrial Justice Institute, October 2013.

<http://www.pretrial.org/download/research/Unsecured+Bonds,+The+As+Effective+and+Most+Efficient+Pretrial+Release+Option++Jones+2013.pdf>.

¹⁶ *Smart Jail for Escambia, Factsheet and Recommendations*, ACLU-FL, August 2017 page 5.

https://www.aclufl.org/sites/default/files/field_documents/smart_jail_for_escambia_factsheet_and_recommended_solutions.pdf.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Florida County Detention Facilities July 2017*, Florida Department of Corrections, *Table 2 County Detention Facilities Pretrial Inmate Report for July 2017*. <http://www.dc.state.fl.us/pub/jails/2017/jails-2017-07.pdf>.

²⁰ *Id.* at 4.

²¹ *ACLU Recommends 14 Ways Escambia County Can Fix Jail Overcrowding*, Press Release, August 2017.

<https://www.aclufl.org/en/press-releases/aclu-recommends-14-ways-escambia-county-can-fix-jail-overcrowding>.

²² §907.041(3), Fla. Stat.

²³ *John Oliver says Florida is a model for pretrial services*, Politifact, June 2015.

<http://www.politifact.com/punditfact/statements/2015/jun/12/john-oliver/john-oliver-hails-pretrial-services-florida-progre/>.

infringes upon arrestees' due process rights because instead of being presumed innocent, they are incarcerated and treated as if they are guilty even before their criminal case is resolved.

ii. Poverty and Excessive Bail

The monthly reports of incarceration rates published by the Florida Department of Corrections reveal striking percentages of pretrial detention throughout the state.²⁴ For example, a close look at Broward County exemplifies the disproportionate impact of pretrial detention on low-income and indigent criminal defendants.²⁵ See appendix 1. In July 2017, about 170 pretrial inmates were being detained on misdemeanor offenses, with an average bond of \$2,500.²⁶ On average, these 170 pretrial detainees cost taxpayers \$23,800 per day to house in detention.²⁷ Broward County also has a high pretrial detention rate overall, at 86% of their inmate population.²⁸ The majority of these detainees remain incarcerated because of their inability to post a monetary bond.²⁹ Even a short stay in jail can result in serious consequences for low-income and indigent pretrial inmates, such as losing their jobs and losing their children to state custody.³⁰ Moreover, the longer they stay in jail, the more likely the pretrial defendant will commit a future crime.³¹

iii. Recommendations

An ACLU of Florida report on pretrial detention in Escambia County, Florida—where roughly half of the people detained by the county were not convicted—offers several alternatives to the cash bail system, which could serve similar purposes and would be more aligned with the intent of Florida law.³² The report suggests that major improvements can be attained through three categories: improving pretrial services, tailoring monetary bail to serve its actual purpose, and streamlining the arrest process.³³

1. Pretrial Services

Pretrial services, such as pretrial release programs where court staff notifies defendants and their families of court dates, work to ensure defendants appear in court.³⁴ Revising and expanding pretrial services could reduce the overflow of pretrial detainees. For example, revising how danger to society is assessed (“Risk Assessment”) to include a more evidence-based, strategic system could help judges make better determinations on who should actually remain

²⁴*Florida County Detention Facilities Average Inmate Population*, Florida Department of Corrections. <http://www.dc.state.fl.us/pub/jails/>.

²⁵ *Letter from Public Defender Howard Finkelstein to Mayor Sharief: Pretrial Detention in Broward County*, Law Office of the Public Defender, July 2017. Appendix 1.

²⁶ *Id.* at 2.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 3.

³¹ *Id.*

³² See *Escambia Report*.

³³ *ACLU Recommends 14 Ways Escambia County Can Fix Jail Overcrowding*, Press Release, August 2017.

³⁴ *Smart Jail* at 11.

detained.³⁵ Implementing a system of court-notifications through email or texting in order to minimize the chance of defendants forgetting court dates could also reduce the overflow of incarcerated people.³⁶ GPS tracking and drug testing conditions of pretrial release should be eliminated or limited to high-risk defendants and only used as an alternative to pretrial detention.

2. Tailoring Monetary Bail

Instead of using monetary bail to keep defendants detained, the system should be more narrowly tailored to ensure defendants will appear in court.³⁷ There are several ways to achieve this goal. For example, judges may permit the use of unsecured appearance bonds instead of cash or professional bonds.³⁸ These types of bonds are just as effective, provide similar incentives for criminal defendants to appear in court, and are financially more accessible for low-income and indigent defendants.³⁹

Additionally, where defendants are facing multiple charges, judges should only impose monetary bail on the most serious charges.⁴⁰ Florida law requires judges to set separate monetary bail amounts for each charge against the defendant.⁴¹ This often results in duplicative monetary bail amounts.⁴² However, the same goal applies to each separate bail amount (ensuring the defendant appears in court); a single monetary bail achieves the desired goal without imposing additional monetary restraints on low-income and indigent defendants.⁴³

Challenges to excessive bail amounts should be heard before the court as soon as possible.⁴⁴ When a criminal defendant believes the pretrial judge set a bail bond amount that is excessive, he or she may file a motion in the trial court to make a redetermination.⁴⁵ This process, however, can take two to three months, because of the time it takes to assign the case to a public defender, meet with the defendant about the case, and set a hearing date.⁴⁶ To expedite this process, the public defender's office can flag excessive bails immediately during the first appearance and file a motion to reduce bail.⁴⁷ Judges can also modify their hearing schedules to include bond motions with higher frequency.⁴⁸

³⁵ *Id.* at 10.

³⁶ *Id.* at 9, 10. (“In Escambia, 31% of no bond inmates are held without bond because they violated the terms of release and their bond was revoked. Often, they simply forgot and missed a court date.”)

³⁷ *ACLU Recommends 14 Ways Escambia County Can Fix Jail Overcrowding, Press Release, August 2017.*

³⁸ *Escambia* at 12.

³⁹ *Id.* at 13; *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*, Pretrial Justice Institute, October 2013.

<http://www.pretrial.org/download/research/Unsecured+Bonds,+The+As+Effective+and+Most+Efficient+Pretrial+Release+Option++Jones+2013.pdf>.

⁴⁰ *Escambia* at 13.

⁴¹ § 903.02(4), Fla. Stat.

⁴² *Escambia* at 13.

⁴³ *Id.*

⁴⁴ *Id.* at 16, 17.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

3. Streamline the Arrest Process

Finally, expediting the criminal justice process through other meaningful reforms could result in the reduction of pretrial detention.⁴⁹ For example, when a police officer observes a misdemeanor crime in progress, the officer can either arrest the defendant or issue a notice to appear.⁵⁰ The notice to appear binds the accused to appear in court, so long as they have identified themselves, do not pose an unreasonable danger to society, and are not a flight risk.⁵¹

Criminal defendants who violate the conditions of their pretrial release or probation risk re-arrest with “no bond.”⁵² Judges tend to issue “no bond” arrest warrants instead of issuing summonses for violation of probation and failure to appear.⁵³ Rather than automatically issuing arrest warrants for violators of pretrial release and probation, an additional court hearing could be used to make a determination as to the extent of the violation (e.g. did the defendant have a good cause to violate, such as being in the hospital?) and make appropriate recommendations that do not include detention—such as extending probation.⁵⁴

C. Right to Counsel

Another prevalent issue in Florida is the denial of indigent defendants’ right to counsel for misdemeanor offenses. Florida Rule of Criminal Procedure 3.111 authorizes courts to remove defendants’ appointed counsel when a written Order of No Incarceration (“ONI”) is entered at least fifteen days prior to trial.⁵⁵ Courts certify ONIs after prosecutors decline to seek incarceration of the defendant.

On their face, the rules allow courts to remove appointed counsel *only if* the judge determines that the defendant would not be substantially disadvantaged by the removal. However, in practice, judges often misuse their discretion by removing defendants’ appointed counsel without evaluating the defendant’s case individually or the potential prejudice that the defendant might face. Consequently, hundreds of indigent defendants have been stripped of their right to counsel after their appointed counsels have spent weeks, even months, preparing their case.⁵⁶

The Supreme Court recognized more than half a century ago that every defendant in a felony case has the right to an attorney. Moreover, the Supreme Court recognized that indigent defendants charged with misdemeanor offenses should not be afforded less constitutional protection than any other defendant.⁵⁷ Judges violate indigent defendants’ Sixth Amendment right to counsel by removing counsel simply because the prosecutors decide not to seek jail time.

⁴⁹ *Id.* at 15.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Fed. R. Crim. P. 3.111. <https://floridacriminalprocedure.com/3-111-providing-counsel-to-indigents/>.

⁵⁶ *Rodriguez v. Hague*, No. CV-23563 (S.D. Fla. Sept. 28, 2017). <https://www.acluf.org/en/cases/rodriguez-v-hague>.

⁵⁷ In *Argersinger v. Hamlin*, the Supreme Court held that that the Sixth Amendment right to counsel constituted a fundamental right that extended to indigent defendants in state criminal proceedings. *Argersinger v. Hamlin*, 407 U.S. 25 (1972). “Absent a knowing and intelligent waiver, no defendant may be imprisoned for any offense, whether petty, misdemeanor, or felony, without representation by counsel at trial”. *Id.*

This practice gives prosecutors unwarranted authority to determine whether defendants charged with misdemeanors will have representation.⁵⁸

As a result, indigent defendants are forced to represent themselves in trial, and are vastly overmatched by prosecutors. The defendants do not know how to effectively investigate, defend themselves, or ask proper cross-examination questions. Additionally, defendants inadvertently waive their rights to jury trials and accept plea offers that waive their rights to appeal. Such practice is unethical and unacceptable because it discriminates against indigent defendants and strips them of their constitutional rights to counsel, due process, and equal treatment under the law.

Only indigent defendants—the majority of whom are racial minorities—are affected by this unjust rule.⁵⁹ Wealthier defendants have the means to hire private counsel and enjoy their assistance until the conclusion of their case. Unrepresented indigent defendants, however, are deprived of their fundamental right to counsel and a meaningful opportunity to defend themselves.

Moreover, the collateral consequences of a defendant’s conviction are a significant concern because they can be more debilitating than a modest jail sentence. The collateral consequences include immigration detention and/or removal, the loss of employment, housing, custody of their children, public benefits, professional licenses, drivers’ licenses, and more. Furthermore, some defendants are forced to serve jail time for failing to pay fines because of their financial circumstances.

Recommendations

A criminal justice system that does not respect the rights of indigent citizens is a flawed system. As the ACLU of Florida addresses in *Rodriguez v. Hague*, courts should recognize that *all* criminal defendants have a right to counsel even when they do not face jail time.⁶⁰ Florida Rule of Criminal Procedure 3.111 does not adequately protect indigent defendants’ Sixth and Fourteenth Amendment rights because judges fail to consider the undue prejudice and the collateral consequences that result from removing defendants’ counsel as required. At a minimum, a policy that ensures that judges accurately consider the defendants’ individual circumstances needs to be implemented so that judges cannot remove counsel merely because the prosecutor does not seek jail time. Moreover, this would help prevent judges from considering improper factors, such as race, when making decisions.

D. Voting Rights

⁵⁸ *Rodriguez v. Hague*, No. CV-23563 (S.D. Fla. Sept. 28, 2017). <https://www.acluf.org/en/cases/rodriguez-v-hague>.

⁵⁹ “The poverty rate is roughly 25% for both black and Hispanic Americans, compared to 9% for white Americans. In the criminal justice context, such statistics mean that black and Hispanic defendants are often more likely than white defendants to rely on an indigent defense system of overworked, underpaid attorneys—therefore increasing their chances of being convicted.” See <http://www.sentencingproject.org/publications/shadow-report-to-the-united-nations-human-rights-committee-regarding-racial-disparities-in-the-united-states-criminal-justice-system/>

⁶⁰ *Rodriguez v. Hague*, No. CV-23563 (S.D. Fla. Sept. 28, 2017). <https://www.acluf.org/en/cases/rodriguez-v-hague>.

Felon disenfranchisement is the loss of one of the most essential and fundamental rights in a democracy, the right to vote. In Florida, a person convicted of a felony loses the right to vote, as well as the right to sit on a jury, hold public office, possess a firearm, and eligibility for more than 100 state occupational licenses.⁶¹ More than 6 million people are denied the right to vote in the U.S. because of a prior felony conviction.⁶² Florida has the highest disenfranchisement rate in the country, as there are now more than 1.6 million Floridians who are barred from exercising their right to vote.⁶³

i. The Scope of Impact

The racialized effects of felon disenfranchisement are significant in the state of Florida. Over 7.4 percent of the adult African-American population in the U.S. is disenfranchised compared to 1.8 percent of the non-African-American population.⁶⁴ In Florida, African-Americans account for nearly one-third of those who have lost the right to vote despite making up just 16 percent of the state's population.⁶⁵ This figure amounts to an alarming 21% percent of the total African-American voting-age population in Florida.⁶⁶

The Latino community constitutes a significant portion of the U.S. prison population, and it is also severely affected by felon disenfranchisement.⁶⁷ It is estimated that Florida's total disenfranchised population is 12.4 percent Latino.⁶⁸ It is projected that at least 119,100 members of the Latino community cannot vote in Florida.⁶⁹

While the above figures indicate that felon disenfranchisement affects the state in a racially disproportionate manner, the effects are widespread across Florida. Data gathered by the Sentencing Project demonstrates that three out of four Floridians who have lost their right to vote as a result of a felony conviction are white.⁷⁰

ii. The Inadequacy of the Clemency Process

Clemency is the constitutionally authorized process through which convicted felons may seek restoration of their civil rights, including the right to vote.⁷¹ In theory, clemency provides a remedy for the restoration of rights, but, in practice, clemency fails to adequately rectify the

⁶¹ *Clemency Overview*, Florida Commission on Offender Review, (2014).
<https://www.fcor.state.fl.us/clemencyOverview.shtml>.

⁶² *Florida: An Outlier in Denying Voting Rights*, Brennan Center for Justice, (2016).
https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf.

⁶³ *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement*, The Sentencing Project, (2016).
<http://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf>.

⁶⁴ *Id.*

⁶⁵ *Florida: An Outlier in Denying Voting Rights*, Brennan Center for Justice, (2016).
https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf.

⁶⁶ *Id.*

⁶⁷ *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement*, The Sentencing Project, (2016).
<http://www.sentencingproject.org/wp-content/uploads/2016/10/6-Million-Lost-Voters.pdf>.

⁶⁸ *Diminished Voting Power in the Latino Community: The Impact of Felony Disenfranchisement Laws in Ten Targeted States*, MALDEF, (2003). <https://maldef.org/assets/pdf/feb18-latinovotingrightsreport.pdf>.

⁶⁹ *Id.*

⁷⁰ *Florida leads nation in disenfranchising former felons*, Miami Herald, (2016). (2016).
<http://www.miamiherald.com/news/politics-government/election/article95076927.html>.

⁷¹ *Executive Clemency Timeline: 1991-2015*, Florida Commission on Offender Review, (2015).
<https://www.fcor.state.fl.us/docs/clemency/ClemencyTimeline.pdf>.

disenfranchisement that countless Florida residents face. Florida Governor Rick Scott has imposed a five, and, in some cases, a seven year waiting period after the completion of the sentence before anyone is allowed to petition for clemency.⁷² If an individual is arrested for even a misdemeanor during the waiting period, even if no charges are filed, he or she will be forced to begin a new waiting period for another five or seven years.⁷³ Under Governor Scott's administration, the requirements for clemency have become more burdensome than in prior administrations. For example, under former Governor Charlie Crist's administration, the formal application process was eliminated for some categories of individuals who wished to have their rights restored.⁷⁴ This administrative change served to streamline the restoration of voting rights and greatly increased the number of individuals who could once again participate in the democratic election process. Under the Florida Constitution, the clemency board has total discretion over its decisions.⁷⁵ However, under Governor Scott, the clemency board has done away with the advances of Crist's administration.⁷⁶ Now an individual may be denied the restoration of their voting rights and the board need not provide any justification.⁷⁷ As a result, the number of individuals who are granted clemency each year has been greatly reduced. In 2015, only 427 citizens had their voting rights restored.⁷⁸

iii. Effects on Low-Income Communities

The effects of felon disenfranchisement are particularly damaging on low-income communities across the state of Florida. The state requires all individuals with felony convictions to pay all fines, fees, and restitution before they are eligible to seek restoration of voting rights.⁷⁹ The average restitution debt in Florida is estimated to be around \$8,000.⁸⁰ Florida permits courts to enter liens against the real and personal property of individuals who owe a debt associated with a criminal conviction and, consequently, the amount owed by these individuals can multiply significantly over the years.⁸¹ As a result of these unfair policies, wealthy individuals who can afford these high fees can have their voting rights restored much faster than low-income individuals who must spend years struggling to pay these exorbitant fees in order to become eligible for the restoration of their rights.⁸² Most importantly, the burden of having the restoration of voting rights contingent on the payment of these high fees can exacerbate the effects of poverty and alienate vulnerable communities from the democratic process.

iv. Recommendations

⁷²*Florida: An Outlier in Denying Voting Rights*, Brennan Center for Justice, (2016).

https://www.brennancenter.org/sites/default/files/publications/Florida_Voting_Rights_Outlier.pdf.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ FL Const. Art. IV, Section 8a.

⁷⁶ *Voting Rights Restoration Efforts in Florida*, Brenna Center for Justice, (2017).

<https://www.brennancenter.org/analysis/voting-rights-restoration-efforts-florida>.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

We are now at a crucial turning point for the millions of disenfranchised Floridians who have been excluded from the democratic process. The ACLU is a coalition member of Floridians for a Fair Democracy, which is gathering signatures for a ballot initiative to amend Florida's constitution and restore voting rights to those individuals who have completed their sentence.⁸³ We ask that this initiative receive the attention of the Special Rapporteur in order to bolster the efforts of the Florida community. The right to vote is vital to the state and the nation's democratic process, and it a fundamental right of every individual.

III. Legal Relation to International Treaties

Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR) ensure that all individuals, regardless of race or status, are treated equally under the law.⁸⁴ Article 7 of the same treaty seeks to prevent the type of inhumane and degrading treatment currently faced by the homeless population of Florida.⁸⁵ Similarly, Article 9 speaks against the detention of persons awaiting trial (who, in Florida, often must post high bail).⁸⁶ The state of Florida violates its obligations under Articles 2, 7, 9, and 26 of the ICCPR by creating and perpetrating policies that allow the aforementioned disparities in its criminal justice system. Moreover, numerous U.N. Special Rapporteurs,⁸⁷ as well as the U.N. Human Rights Council,⁸⁸ have denounced the criminalization of homelessness as cruel, inhumane, and degrading treatment in violation of the United States' treaty obligations.

IV. Conclusion

In conclusion, we urge you to highlight the importance of reforming practices in the state of Florida regarding the criminalization of homelessness, excessive bail, right to counsel, and

⁸³ *Id.*; Say Yes To Second Chances, ACLU of Florida, (2017). <https://www.aclufl.org/en/campaigns/say-yes-second-chances/>.

⁸⁴ Article 2(1) of the ICCPR states that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, . . . or other status." Article 26 states that "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, . . . or other status." <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

⁸⁵ Article 7 of the ICCPR states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. . . ." *Id.*

⁸⁶ Article 9(3) states that "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment." *Id.*

⁸⁷ UN Human Rights Council, Report of the Special Rapporteur on the human right to safe drinking water and sanitation, ¶9 A/HRC/33/49 (2016), <http://bit.ly/2drD7GJ>.

⁸⁸ Human Rights Council, Draft report of the Working Group on the Universal Periodic Review, United States of America, 30, A/HRC/WG.6/22/L.10 (May 21, 2015) (recommendation 176.310: "[a]mend laws that criminalize homelessness and which are not in conformity with international human rights instruments").

felon disenfranchisement. These practices violate the human rights of some of the most vulnerable citizens of Florida and perpetuate poverty across the state.

Appendix A

Letter from Public Defender Howard Finkelstein to Mayor Sharief: Pretrial Detention in Broward County, Law Office of the Public Defender, July 2017



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Seventeenth Judicial Circuit

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July 27, 2017

Mayor Barbara Sharief
Broward County Commission
115 South Andrews Avenue
Room 421
Fort Lauderdale, Florida 33301

Re: Pretrial Incarceration in Broward County

Dear Mayor Sharief:

The current pretrial release practices in the Broward County criminal justice system result in lengthy incarcerations that not only cost taxpayers millions of dollars, but more importantly establish two systems of justice in this county. Most of my incarcerated clients remain so because they are too poor to post bond and not because they pose a threat to the community or are a flight risk. Their continued pretrial incarceration affects both their families, who exist on the brink of homelessness, and their ability to assist in their defense. Defendants who post bond can better assist their attorneys and are not pressured to enter guilty pleas. Indigent defendants plead guilty, even though innocent, because it is the only way to secure their release from jail. Indigent defendants who remain incarcerated due to poverty start down a much different and more unjust path. Pretrial incarceration practices based on monetary bond lock in two unequal systems of justice in Broward County.

Data shows that the double standard of justice starts well before defendants arrive at the jail. This office uncovered institutional racism in the police practices of arrests for walking, biking and driving while black. A recent study by the St. Pete Herald Tribune proved that minorities are sentenced more harshly across the state. These police and judicial practices are compounded by pretrial incarceration unrelated to dangerousness or ties to the community. Together, this is the definition of institutional racism.

Broward has used a "convenience" bond schedule for decades. Bonds are set according to the offense charged and without any regard for a defendant's ties to the community or criminal history. A defendant with money charged with a felony who has an extensive violent criminal record and no ties to Broward County can simply walk out of the jail after posting bond without first seeing a judge. An indigent defendant charged with a misdemeanor who is a lifelong Broward resident and has no criminal history remains incarcerated waiting for a magistrate hearing. At that hearing, the judges routinely apply the convenience bond schedule, which perpetuates the unfair treatment of poor defendants. The use of monetary bonds and the convenience bond schedule ignore the

legal “presumption in favor of release on nonmonetary conditions.” *Fla R. Crim P. 3.131(b) (1)*. Nonmonetary pretrial release options include the release of an individual on her own recognizance; execution of an unsecured appearance bond (whereby the accused is released and agrees to pay a specified sum of money for any subsequent failure to appear in court); imposition of residential, association, and/or travel restrictions; and pretrial supervision by the Broward Sheriff’s Office.

Monetary bonds are especially indefensible in misdemeanor and non-violent felony cases. Connecticut Governor Dannel Malloy recently signed legislation prohibiting money bail for misdemeanor charges except in limited circumstances, stating:

The system of pretrial justice that we have been operating under for many decades has resulted in many unintended consequences that often have adverse effects on public safety... The effect of a few days of detention for people who have been accused of misdemeanors and not released simply because they do not have the ability to pay can be devastating and far reaching – possibly leading to the loss of employment and housing, which only exacerbates the kind of instability that can lead to a life of crime. If we want to continue the progress we’ve made in lowering crime, reducing recidivism, and making our communities safer, then we must focus on what happens at the front-end of the justice system.^[1]

According to the Broward Sheriff’s Office, as of July 18, 2017, there were 170 individuals held on only misdemeanor offenses, with an average bond of roughly \$2,500. This includes municipal ordinance violations, where Broward County is paying to house municipal offenders without reimbursement from cities contrary to the law, which is an illegal burden on taxpayers. This figure represents more than 4% of the total current jail population. An additional nearly 82% of current inmates are detained pending resolution of felony charges. Our total of 86% of all inmates detained pretrial is dramatically higher than the statewide amount (58%) and higher than our neighboring counties (Miami-Dade 73%, Palm Beach 64%).^[2] While the specific data is yet unavailable from B.S.O., experience dictates that a large percentage of pretrial felony detainees are charged with third or second degree offenses and are not a danger to the community or a flight risk. They remain incarcerated as a result of their inability to post a monetary bond. Per B.S.O., the cost to house an inmate in our jails on average is \$140 per day. That means for the current population of 170 detainees, taxpayers are paying roughly \$23,800 per day to house those facing only misdemeanor charges, and significantly more to house those accused of non-violent felonies. This is untenable, fiscally irresponsible, and unnecessary.

This sum is compounded greatly by the average length of stay per inmate.^[3] In 2016, the average length of stay in the Broward County Jail was 39.6 days, compared with a

^[1] <http://portal.ct.gov/Office-of-the-Governor/Press-Room/Press-Releases/2017/06-2017/Gov-Malloy-Signs-Legislation-Reforming-the-States-Pretrial-Justice-System>

^[2] [Evaluation of Broward County Jail Population Current Trends and Recommended Options Updated Report, Dr. James Austin, October 2016.](#)

^[3] All length of stay numbers in this paragraph were taken from Dr. Austin’s report.

national average of 23 days. If not released within the first week after arrest, the average length of stay skyrockets to 96 days. Of the 170 individuals in jail on only misdemeanor charges, roughly 98 have been incarcerated for longer than a week. Extrapolating the daily cost to house a person charged with a misdemeanor, a conservative estimate of the cost of housing 100 people charged with misdemeanors is \$5,110,000 per year. These figures do not include persons charged with non-violent third and second degree felonies, which would increase costs by millions of dollars, all to further institutionalize racism. Eliminating monetary bonds for non-violent offenses will reduce our inmate population, reducing the number of injuries, medical costs, and civil lawsuits. A reduced inmate population will require fewer detention officers and maybe allow for fewer jails at taxpayer expense.

While the monetary cost of pretrial incarceration is outrageous, the human cost to indigent defendants on the edge of homelessness and hopelessness is incalculable. It does not have to be this way. Other states and jurisdictions have taken steps to reform their pretrial incarceration practices. As mentioned earlier, Connecticut has barred courts from setting monetary bail for misdemeanor charges except in limited circumstances. New Jersey has virtually eliminated money as a consideration in determining pretrial release.^[4] In January 2017, the New Orleans City Council unanimously approved an ordinance that eliminated bail for most nonviolent municipal offenses.^[5] Over 70% of defendants in New York City are released without any monetary conditions after their first appearance before a judge.^[6] In Washington, D.C., where money is not considered in determining conditions of release, that figure is around 90%.^[7] Maryland recently adopted court rules that severely limited the use of financial release conditions.^[8] Furthermore, the National Association of Counties adopted a policy resolution urging the Department of Justice to “continue efforts to advise state, county and municipal courts to acknowledge that the principles of due process and equal protection require that courts not employ bail and bond practices that cause indigent defendants to remain incarcerated even for a few days solely because they cannot afford to pay for their release.”^[9] And just last week, the bipartisan “Pretrial Integrity and Safety Act of 2017” bill was introduced that would incentivize and encourage states to end the practice of money bail.^[10]

The consequences of pretrial incarceration are greater for the poor. In her State of Judiciary address, Missouri Chief Justice Patricia Breckenridge recently stated:

^[4] <https://www.nytimes.com/2017/02/06/nyregion/new-jersey-bail-system.html>

^[5] http://www.theadvocate.com/new-orleans/news/courts/article_eb41d288-d90b-11e6-b99c-4bb3e5442d1b.html

^[6] <http://www1.nyc.gov/office-of-the-mayor/news/171-17/mayor-de-blasio-18-drop-city-jail-population-since-taking-office>

^[7] <https://www.marketplace.org/2016/10/21/walth-poverty/washington-dc-has-figured-out-way-around-money-bail>

^[8] https://www.washingtonpost.com/local/md-politics/jury-still-out-on-marylands-new-bail-rules/2017/07/03/db57a084-5a8c-11e7-9b7d-14576dc0f39d_story.html?utm_term=.f7f7e1fad40b

^[9] <http://www.naco.org/blog/naco-board-directors-approves-2017-interim-policy-resolutions>

^[10] <http://www.cnn.com/2017/01/20/politics/criminal-justice-reform-bills-kamala-harris/index.html>

Our cities and counties incur costs for pretrial incarcerations of people who simply are poor. There are individual and societal consequences from these unwarranted pretrial incarcerations. The consequences impact the defendants, their families and, ultimately, the state. Defendants lose not only their freedom but also their ability to earn a living and to provide for loved ones. Children may even come into state custody, because incarcerated parents are not home to care for them. And – after only three days in jail – the likelihood that an individual will commit future crimes also increases.^[11]

In determining whether a person should be released pending trial, we should only consider the possibility that they will return to court or harm the community. Nonviolent, low-risk people should not remain incarcerated simply because they cannot pay a minimal bail amount. If a judge has already decided that an individual is bond-eligible, then he has already determined that they are not a flight risk or a threat to public safety. By ending the practice of setting monetary bonds for non-violent offenses, we can save the county millions in unnecessary incarceration costs, allow accused individuals to return to their families, jobs and communities, and foster a healthier, more equitable, more just judicial system.

Thank you for your immediate attention to this matter.

Sincerely,



Howard Finkelstein
Public Defender

cc:

Broward County Commissioners
Michael Satz, State Attorney
Scott Israel, Sheriff
Hon. Jack Tuter, Chief Judge

^[11] <http://www.courts.mo.gov/page.jsp?id=109213>