NO. 17-20333

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MARANDA LYNN ODONNELL,

Plaintiff – Appellee,

v.

HARRIS COUNTY, TEXAS; ERIC STEWART HAGSTETTE; JOSEPH LICATA, III; RONALD NICHOLAS; BLANCA ESTELA VILLAGOMEZ; JILL WALLACE; PAULA GOODHART; BILL HARMON; NATALIE C. FLEMING; JOHN CLINTON; MARGARET HARRIS; LARRY STANDLEY; PAM DERBYSHIRE; JAY KARAHAN; JUDGE ANALIA WILKERSON; DAN SPJUT; JUDGE DIANE BULL; JUDGE ROBIN BROWN; DONALD SMYTH; JUDGE MIKE FIELDS; JEAN HUGHES,

Defendants – Appellants.

LOETHA SHANTA MCGRUDER; ROBERT RYAN FORD,

Plaintiffs – Appellees,

v.

HARRIS COUNTY, TEXAS; JILL WALLACE; ERIC STEWART HAGSTETTE; JOSEPH LICATA, III; RONALD NICHOLAS; BLANCA ESTELA VILLAGOMEZ,

Defendants – Appellants.

On Appeal from the United States District Court for the
Southern District of Texas, Case Nos. 4:15-CV-1414 and 4:16-CV-1436

BRIEF OF CONFERENCE OF CHIEF JUSTICES AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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CERTIFICATE OF INTERESTED PARTIES

No. 17-20333

The undersigned counsel of record certifies that the following listed persons and entities described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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Dated: August 9, 2017

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Conference of Chief Justices (CCJ) is a non-profit organization that seeks to improve the administration of justice throughout the United States.[1] Its membership consists of the highest judicial officer of each U.S. state, the District of Columbia, and each U.S. commonwealth and territory. Since its founding in 1949, CCJ has addressed numerous issues of significance to the fair and impartial administration of justice nationwide. This *amicus* brief is being filed pursuant to a policy unanimously approved by CCJ's Board of Directors. The policy authorizes the filing of a brief if critical interests of state courts are at stake, as they are in this case. This brief has been reviewed by the members of a special committee of CCJ chaired by the Chief Justice of North Dakota and composed of the current or former Chief Justices of Arizona, Indiana, New Hampshire, New Jersey, North Carolina, Pennsylvania, Texas, Wisconsin, and Utah, a majority of whom, along with the members of CCJ's executive committee, have approved the brief for filing.

CCJ has long been involved, along with its sister organization, the

[1] All parties, through their counsel of record, have consented to the filing of this *amicus* brief, which complies with the deadline in this Court's order signed by Judge Graves on July 20, 2017. *Amicus* affirms that no counsel for any party authored this brief in whole or in part. No party, counsel for any party, or any other person other than the *amicus*, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

Conference of State Court Administrators (COSCA), in studying and implementing improvements in American bail systems. CCJ thus has a strong interest in this appeal, which could have significant ramifications for how release from pretrial detention is determined in jurisdictions far beyond the misdemeanor courts of Harris County, Texas.

In 2016, CCJ and COSCA, with the assistance of the National Center for State Courts, formed the National Task Force on Fines, Fees and Bail Practices (the Task Force) to address the impact of these financial obligations on the economically disadvantaged and to propose reforms. The Task Force is co-chaired by Ohio Chief Justice Maureen O'Connor and Kentucky State Court Administrator Laurie K. Dudgeon. Multiple CCJ members are part of the Task Force, including Texas Chief Justice Nathan L. Hecht, who co-chairs the Transparency, Governance & Structural Reform working group.

SUMMARY OF ARGUMENT

CCJ takes no position with respect to the specific features of the Harris County bail system or as to any particular relief that the district court afforded. Nor does it propose a detailed framework to govern every aspect of pretrial detention. Indeed, there is considerable diversity of opinion among the Chief Justices regarding the details of bail systems and there should be a wide array of solutions appropriately tailored to local conditions. But CCJ does submit that, for criminal defendants who are indigent and pose no serious risk of flight or injury to others, the design and operation of pretrial bail systems have federal constitutional implications.

Multiple concerns underlie any system of pretrial detention, some of which may be of constitutional magnitude:

- individual liberty—is it infringed upon no more than necessary?
- potential distortion of the criminal process—does pretrial detention itself contribute to unreliable guilty pleas or increase the likelihood of recidivism?
- fiscal concerns—could resources now devoted to pretrial detention be dedicated to more essential aspects of the criminal-justice system?
- public safety—does the system reliably deny pretrial release to

those defendants who, if released, would threaten the safety and property of others or intimidate witnesses?

- integrity of judicial proceedings—does the system reliably deny pretrial release to those who, if released, would likely abscond?

Any pretrial detention system clearly involves multiple considerations, and it is almost certain that the Constitution does not require a one-size-fits-all solution. But the Constitution imposes *some* meaningful limits to protect the pretrial rights of indigent defendants because, as with other constitutional rights, an unconvicted person's right to liberty may not be infringed solely because of an inability to pay.

The precise contours of each state's or locality's bail system should remain with policymakers, of course. But such efforts need to be made against the backdrop of a settled understanding of the minimum federal constitutional requirements. To date, bail reform efforts across the nation have on the whole been too slow, too sporadic, and too often stillborn, at least in part because of uncertainty in distinguishing what *must* be done from what merely *can* be done. This clarity will not merely guarantee at least minimum constitutional rights to every detainee, but may encourage the "laboratories of democracy" to enact further reforms in systems across the country.

ARGUMENT

I. Clear constitutional principles that protect public safety and the pretrial rights of indigent defendants are essential for achieving comprehensive bail reform.

The issues before the Court are not novel. They are, however, of increasingly grave consequence to the administration of criminal justice within the United States. As the district court noted below, "[t]wenty years ago, not quite one-third of [Texas's] jail population was awaiting trial. Now that number is three-fourths." ROA.5555 (quotation marks omitted) (quoting Hon. Nathan L. Hecht, Chief Justice of the Texas Supreme Court, State of the Judiciary Address to the 85th Texas Legislature, Feb. 1, 2017). This marked increase in pretrial detention is, unfortunately, by no means unique to Texas.

Nearly half a century ago, the Supreme Court held in *Williams v. Illinois* that an indigent defendant, due to failure to pay a fine, may not be imprisoned beyond the statutory maximum for the underlying offense. 399 U.S. 235, 243 (1970). In reaching this result, *Williams* observed that "new cases expose old infirmities which apathy or absence of challenge has permitted to stand. But the constitutional imperatives of the Equal Protection Clause must have priority over the comfortable convenience of the status quo." *Id*. at 245. The district court concluded that the bail system in America's third largest county was similarly defec-

tive, not for novel reasons, but under bedrock constitutional principles.[2] An appellate decision articulating the extent to which this ruling was right or wrong will provide valuable guidance to state and local jurisdictions and perhaps to other federal courts as well.

A. Current bail practices result in widespread discrimination against indigent defendants.

1. The nationwide rate of pretrial detention has increased significantly.

Instances of detention for inability to pay bail have occurred since the nation's founding, but both the extent of pretrial detention and our knowledge regarding its effects have markedly increased in recent times. Over the past thirty years, the percentage of jail inmates detained pretrial rather than serving adjudicated sentences has risen from approximately 40% to over 60%. Ram Subramanian, et al., Vera Institute of Justice, *Incarceration's Front Door* 10 (updated July 29, 2015) (hereinafter "Vera Institute"), https://storage.googleapis.com/vera-web-assets/downloads/Publications/incarcerations-front-door-the-misuse-of-jails-in-america/legacy_downloads/incarcerations-front-door-report_02.pdf. In absolute terms, this means that well over 400,000 individuals—a population approaching Wyoming's—are on any given day incarcerated while awaiting trial somewhere in

[2] The lower court's opinion applies only to misdemeanor offenses; this brief discusses principles that are relevant to all criminal defendants.

the United States. Todd D. Minton & Zhen Zeng, *Jail Inmates in 2015* 1, 5 (Bureau of Justice Statistics, Dec. 2016), https://www.bjs.gov/content/pub/pdf/ji15.pdf (since 2005, the pretrial detention rate has remained above 60%; in 2015, there were 10.9 million admissions to jails and an average daily population of 721,300 inmates).[3]

This increase logically traces to another development: Release on non-financial conditions has become rarer. Just between 1990 and 1998, for example, non-financial releases decreased from 40% to 28% of all releases for felony defendants. Thomas H. Cohen & Brian A. Reaves, *Pretrial Release of Felony Defendants in State Courts* 1 (Bureau of Justice Statistics, Nov. 2007), https://www.bjs.gov/content/pub/pdf/prfdsc.pdf. Unsurprisingly, as release without financial requirements has become rarer, the use of commercial security bonds has proliferated.[4] *See, e.g.*, Justice Policy Institute, *Bail Fail: Why the U.S. should*

[3] The increase in the pretrial population has occurred against the larger backdrop of increased incarceration rates nationally. *See* National Research Council, *The Growth of Incarceration in the United States* 4 (Jeremy Travis et al. eds., The National Academies Press, 2014), http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf (following a fifty-year period of stability, the rate of incarceration in the U.S. has more than quadrupled since the early 1970s); Minton & Zeng, *supra* at 1 (2,168,400 total persons in custody in prison or jail in 2015).

[4] One study reveals that the Philippines is the only other country in the world that utilizes commercial bondsmen. F.E. Devine, *Commercial Bail Bonding, A Comparison of Common Law Alternatives* 9-13 (Praeger Publishers, 1991). In England and many other countries, commercial bond contracts are illegal. *Id*. at 41-58.

end the practice of using money for bail 2 (September 2012), http://www.justicepolicy.org/uploads/justicepolicy/documents/bailfail.pdf (the use of financial release, primarily through commercial bonds, increased by 32% from 1992 to 2006).

2. Pretrial detention exacts considerable costs on individual defendants and our criminal justice system.

Most jail inmates are not being held for violent offenses. *See* Doris J. James, *Profile of Jail Inmates, 2002* 3 (Bureau of Justice Statistics, 2004) https://www.bjs.gov/content/pub/pdf/pji02.pdf (in 2002, 74% of jail inmates were being held for nonviolent offenses). But most jail inmates do come from the most disadvantaged segments of our society.[5] As discussed below, the effects of pretrial detention frequently compound pre-existing disadvantages.

CCJ has recognized that the decision to release or detain a defendant has a "significant, and sometimes determinative" impact on individual defendants and their families. *See* Conference of Chief Justices, *Resolution 3, Endorsing the*

[5] *See*, *e.g.*, Travis et al., *supra* at 2, 5-7 (the incarcerated "comprise mainly minority men under 40, poorly educated, and often carrying additional deficits of drug and alcohol addiction, mental and physical illness, and a lack of work preparation or experience"); Vera Institute, *supra* at 11 (47% of jail inmates lack high-school diploma or GED); Jennifer Bronson, Laura M. Maruschak & Marcus Berzofsky, *Disabilities Among Prison and Jail Inmates, 2011-12* 1 (Bureau of Justice Statistics, Dec. 2015), https://www.bjs.gov/content/pub/pdf/dpji1112.pdf (40% of jail inmates report having at least one disability, a rate 4 times greater than the general population).

Conference of State Court Administrators Policy Paper on Evidence-Based Pretrial Release (January 30, 2013), http://www.pretrial.org/wp-content/uploads/2013/05/CCJ-Resolution-on-Pretrial.pdf. Detention often entails loss of employment, home, and social-support structures. *Id*. CCJ is also concerned that defendants detained pretrial may "receive more severe sentences, [be] offered less attractive plea bargains and [be] more likely to become reentry clients because of their pretrial detention regardless of charge or criminal history." *Id*. (citation and quotation omitted); *see also* Justice Policy Institute, *supra* at 3.

Beyond the frequently crippling effects on individual defendants and their families, burgeoning pretrial-detention systems place great strain on jails and consume ever-increasing proportions of state and local budgets. *See* Tracey Kyckelhahn, *Local Government Corrections Expenditures, FY 2005-2011* 1-4, 7 (Bureau of Justice Statistics, Dec. 2013), https://www.bjs.gov/content/pub/pdf/lgcefy0511.pdf (in 2011, local governments spent $26.2 billion on corrections); Minton & Zeng, *supra* at 6 (in 2015, 24% of jail jurisdictions with an average daily population of 1,000 to 2,499 inmates were operating at over 100% capacity). The estimated annual cost of incarcerating pretrial defendants is $9 billion. Laura and John Arnold Foundation, *Pretrial Criminal Justice Research* 1 (Nov. 2013), https://www.pretrial.org/download/featured/Pretrial%20Criminal%20Justice%20Research%20Brief%20-%20LJAF%202013.pdf.

While the purpose of bail is to facilitate release while ensuring future appearance and public safety, in practice most current systems inflict immense human and financial cost while selectively and increasingly denying pretrial liberty to society's most vulnerable members. As a singularly outstanding prosecutor and jurist once observed:

> The practice of admission to bail, as it has evolved in Anglo-American law, is not a device for keeping persons in jail upon mere accusation until it is found convenient to give them a trial. On the contrary, *the spirit of the procedure is to enable them to stay out of jail until a trial has found them guilty*. Without this conditional privilege, even those wrongly accused are punished by a period of imprisonment while awaiting trial and are handicapped in consulting counsel, searching for evidence and witnesses, and preparing a defense.

Stack v. Boyle, 342 U.S. 1, 7-8 (1951) (Jackson, J., concurring) (emphasis added). Taken together, these concerns pose a further concern for CCJ—that reliance on money-bail systems without appropriately considering risk erodes public trust in the administration of justice.[6]

[6] *See*, *e.g.*, Lake Research Partners, Support for Risk Assessment Programs Nationwide (July 19, 2013), https://www.pretrial.org/download/advocacy/Support%20for%20Risk%20Assessment%20Nationwide%20-%20Lake%20Research%20Partners.pdf (while 70% of those surveyed support replacing money bail with risk assessments, "the majority of voters are uninformed of the current situation - 33% of voters believe risk assessment already exists and 30% are unsure," while 36% "know risk assessment programs are not happening.").

B. Despite general consensus and some notable reform, the promise of equal pretrial treatment for indigent defendants remains elusive.

1. Early bail reform efforts identified the fundamental flaws that characterize current bail practices in many state and local jurisdictions.

The shortcomings of a bail system predicated solely on monetary conditions of release have been long recognized.[7] In signing the Bail Reform Act of 1966, for example, President Lyndon Johnson stated that "[the bail] system has endured—archaic, unjust, and virtually unexamined—ever since the Judiciary Act of 1789. Because of the bail system, the scales of justice have been weighted for almost two centuries not with fact, nor law, nor mercy. They have been weighted with money." *Remarks at the Signing of the Bail Reform Act of 1966* (June 22, 1966), http://www.presidency.ucsb.edu/ws/?pid=27666.

The 1966 Act's stated purpose was "to revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not needlessly be detained . . . when detention serves neither the ends of justice nor the pub-

[7] In 1927, Dr. Arthur Beeley's research on Chicago's bail system concluded that "[t]he alternative bail processes are employed altogether too sparingly," and that bail "is determined arbitrarily and with little or no regard to the personality, the social history, and financial ability of the accused." Arthur L. Beeley, *The Bail System in Chicago* 155 (Univ. of Chicago Press, 1927). Beeley lamented that standardized bail "according to the offense charged is diametrically opposed to the spirit and purpose of the bail law." *Id*.

lic interest."[8] Bail Reform Act of 1966, Pub. L. No. 89-465, 80 Stat. 214, § 2 (1966).[9] To that end, the Act established a presumption in favor of release on personal recognizance or unsecured bond in federal courts for noncapital offenses. *Id.* § 3(a) (adopting new version of 18 U.S.C. § 3146(a)).[10] The Act also required consideration of alternative conditions of release and an individualized assessment to determine which conditions of release would reasonably assure a defendant's appearance, including consideration of financial resources. *Id.* (new 18 U.S.C. § 3146(a) & (b)).[11] Following the Act's passage, pretrial detention rates in the states also fell with increased reliance on non-financial release conditions. *See* Timothy R. Schnacke, Michael R. Jones and Claire M. B. Brooker, *The History of Bail and Pretrial Release* 12-13 (Pretrial Justice Institute, Sep. 2010), http://www.pretrial.org/download/pji-reports/PJI-History%20of%20Bail%20Revised.pdf.

This era of reform, however, was soon replaced by public concern

[8] Nearly seventy years earlier, the British Parliament addressed this problem in the Bail Act of 1898, which authorized judicial officers to "dispense with sureties, if, in [their] opinion, the so dispensing will not tend to defeat the ends of justice." Hermine Herta Meyer, *Constitutionality of Pretrial Detention*, 60 Geo. L. J. 1381, 1159 (June 1972) (quotations omitted) (quoting the Bail Act of 1898).

[9] Repealed by Bail Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1978 (1984) (codified as amended at 18 U.S.C. §§ 3141-56).

[10] Now codified, as amended, at 18 U.S.C. § 3142(b).

[11] Now codified, as amended, at 18 U.S.C. § 3142(c) & (g).

over rising crime rates. Congress passed the District of Columbia Court Reform and Criminal Procedure Act of 1970 and the Bail Reform Act of 1984 (part of the Comprehensive Crime Control Act of 1984), which established "the safety of any other person or the community" as a basis for limiting pretrial freedom. Pub. L. No. 91-358, 84 Stat. 473, § 23-1321(a) (1970); Pub. L. No. 98-473, 98 Stat. 1977, § 3142(b) (1984). The 1984 Act also expanded the availability of pretrial detention for certain categories of offenses and offenders. Pub. L. 98-473, 98 Stat. 1979, § 3142(d) & (e) (1984). Since the 1984 Act, the general trend in most federal and state courts has been an increase in pretrial detention. *See*, *e.g.*, https://www.bjs.gov/content/pub/pdf/prd-bra84.pdf (documenting increase after the 1984 Act).

2. Current bail reform practices will remain largely stalled pending clearly articulated constitutional principles that protect public safety and the pretrial rights of indigent defendants.

While pretrial-detention rates have increased and non-financial conditions have plummeted, broad support has developed among many who study the criminal-justice system for evidence-based pretrial decisions, including "risk assessment and fair and transparent preventive detention." Timothy R. Schnacke, *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform* 93 (National Institute of Corrections, Aug. 2014), http://static.nicic.gov/UserShared/2014-11-05_final_bail_fundamentals_

september_8,_2014.pdf. Prominent supporters include the National Association of Counties, International Association of Chiefs of Police, Association of Prosecuting Attorneys, American Council of Chief Defenders, National Association of Criminal Defense Lawyers, American Jail Association, American Bar Association, National Judicial College, National Sheriff's Association, American Probation and Parole Association, and National Association of Pretrial Services Agencies, as well as CCJ and COSCA. *Id*.

Many, although not all, studies have confirmed the effectiveness of alternative ways to ensure indigent defendants' appearance. *See, e.g.*, Pretrial Services Agency for the District of Columbia, Research and Data, https://www.psa.gov/?q=data/performance_measures (in fiscal year 2015, 90% of released defendants made all court appearances, 91% were not rearrested while on release, and 98% were not arrested for a violent crime while on release). Responding to this impetus, various state and local jurisdictions have enacted, or are considering, comprehensive or partial pretrial-bail reform. On paper, this movement appears impressive, but it is hampered by disagreement about whether various proposals are constitutionally required or merely good policy. If the constitutional paradigm were settled, all states could use those principles as a baseline, while being free to experiment, improvise, and adjust to local conditions as appropriate.

Just this year, Connecticut, Illinois, Montana, and Nebraska have

passed pretrial justice reform legislation.[12] Other states mounted serious attempts at reform; some may yet pass. Most efforts have been legislative initiatives, but the highest courts of Arizona and Maryland have reformed the pretrial process by judicial rule,[13] and the highest courts in Missouri and Washington have created pretrial-reform task forces.[14] U.S. Senators Kamala Harris and Rand Paul recently introduced legislation to provide grants to states to "encourage the replacement of the use of payment of secured money bail as a condition of pretrial release in criminal cases, and for other purposes."[15]

State-court judicial leaders, keenly aware of the potential injustices and systemic costs of excessive reliance on monetary bail, have been at the forefront of reform. In New Mexico, bail reform was sparked by a state supreme court decision holding that the use of bail to detain a defendant when less restrictive conditions of release would protect the public violated New Mexico's constitution

[12] H.R. 7044, Gen. Assemb., Jan. Sess. (Conn. 2017); S.B. 2034, 100th Gen. Assemb., 1st Reg. Sess. (Ill. 2017); S.B. 59, 65th Leg., 2017 Sess. (Mont. 2017); L.B. 259, 105th Leg., 1st Reg. Sess. (Neb. 2017).

[13] Supreme Court of Arizona, Order No. R-16-0041, Dec. 14, 2016 (effective April 3, 2017); Court of Appeals of Maryland, Rules Order, Feb. 17, 2017 (effective July 1, 2017).

[14] Patricia Breckenridge, C.J. Sup. Ct. Mo., State of the Judiciary Address (Jan. 24, 2017), https://www.courts.mo.gov/page.jsp?id=109213; *Washington Pretrial Reform Task Force launched to review risk assessment and release practices*, Washington Courts (June 22, 2017), https://www.courts.wa.gov/newsinfo/?fa=newsinfo.pressdetail&newsid=12727.

[15] Pretrial Integrity and Safety Act of 2017, S. 1593, 115th Cong. § 2 (2017).

and court rules.[16] The voters amended the New Mexico Constitution in 2016 to enshrine that holding, with Chief Justice Charles Daniels lending active support to the campaign.[17] New Jersey Chief Justice Stuart Rabner chaired the Joint Committee on Criminal Justice that recommended sweeping bail reforms that were enacted in 2014, and he has remained a vocal proponent of the reforms.[18] Arizona's new rules were based on recommendations of a task force on fines, fees, and pretrial-release policies appointed by Arizona Chief Justice Scott Bales.[19]

Despite these advances, both longtime state and local practices and the newly-enacted reforms vary widely. Only Arizona, Maryland, and New Mexico expressly forbid imposing financial conditions of release on a defendant if the result is continued detention solely because of inability to pay.[20] In twenty-one states and the District of Columbia, there is a statutory presumption that any de-

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[16] *State v. Brown*, 338 P.3d 1276, 1278 (N.M. 2014).

[17] Dave Tomlin, *New Mexico Chief Justice Daniels Backs Bail Reform Amendment*, Albuquerque Journal (July 20, 2016), https://www.abqjournal.com/811174/nm-chief-justice-daniels-backs-bail-reform-amendment.html.

[18] *Report of the Joint Committee on Criminal Justice* (March 10, 2014), https://www.judiciary.state.nj.us/courts/assets/criminal/finalreport3202014.pdf; Stuart Rabner, Opinion, *Chief justice: Bail reform puts N.J. at the forefront of fairness*, NJ.com (Jan 9, 2017), http://www.nj.com/opinion/index.ssf/2017/01/nj_chief_justice_bail_reform_puts_nj_at_the_forefr.html).

[19] Supreme Court of Arizona, Order No. R-16-0041 (Dec. 14, 2016); Supreme Court of Arizona, Administrative Order No. 2016-16 (March 3, 2016).

[20] ARIZ. R. CRIM. P. 7.3(b)(2); Md. Rule 4-216.1(e)(1)(A); N.M. CONST. art. III, § 13.

fendant eligible for pretrial release shall be released on personal recognizance or unsecured bond unless the court determines that the defendant is a flight risk or a danger to the community.[21] Other states have made more modest reforms in recent years. Connecticut requires that most misdemeanor defendants be released on personal recognizance or unsecured bond.[22] Colorado has similarly eliminated secured money bond for certain classes of low-risk defendants.[23] Nebraska now requires judges to consider a defendant's ability to pay as one factor when setting bond and to impose the "least onerous" conditions of release.[24] And Indiana's Criminal Rule 26 advises courts that they "should" release low-risk defendants without money bail and "should" use a risk assessment tool in setting conditions of release.[25]

More telling than these success stories, however, are reports from jurisdictions where reform has been thwarted. In Texas, an ambitious bail-reform bill with wide bipartisan support based on two years of research from the Texas

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[21] *Guidance for Setting Release Conditions*, National Conference of State Legislatures (May 13, 2015), http://www.ncsl.org/research/civil-and-criminal-justice/guidance-for-setting-release-conditions.aspx.

[22] H.R. 7044, Gen. Assemb., Jan. Sess. (Conn. 2017).

[23] COLO. REV. STAT. § 16-4-113; § 16-4-103 (amended by 2013 pretrial reform legislation).

[24] L.B. 259, 105th Leg., 1st Reg. Sess. (Neb. 2017).

[25] IND. R. CRIM. P. 26 (adopted by 2016 rules order).

Judicial Council passed the Senate but failed to advance to the floor of the lower house.[26] In California, a bail reform bill introduced in the Assembly was voted down by a narrow margin, and a nearly identical bill that passed the Senate appears doomed to fail.[27] In those states, achieving bail reform was *a* priority for many individuals and groups, but defeating it was *the* priority for those whose livelihood depends on widespread impositions of monetary bail. And while some states use task forces or pilot programs as a precursor to larger reforms, others use such techniques to deflect systemic change. In more than a few states, indeed, the political culture keeps bail reform entirely off the policy agenda.

Even in states where pretrial reforms are well underway, their permanency is far from assured. Just four months after New Jersey's historic bail-reform act took effect, for example, the Attorney General successfully convinced the Supreme Court to change the decision-making framework so that pretrial detention would be automatically recommended for most gun crimes and for certain repeat

[26] S.B. 1338, 85th. Leg., R.S. (Tex. 2017).

[27] A.B. 42, 2016-2017 Reg. Sess. (Cal. 2017); S.B. 10, 2016-2017 Reg. Sess. Jazmine Ulloa, *Legislation to overhaul bail reform in California hits a hurdle in Assembly*, Los Angeles Times (June 1, 2017), http://www.latimes.com/politics/essential/la-pol-ca-essential-politics-updates-legislation-to-overhaul-bail-reform-in-1496385464-htmlstory.html.

offenders.[28] In Maryland's 2017 legislative session, multiple bills were introduced to repeal or modify the Court of Appeals' rule prohibiting money bail for most indigent defendants.[29]

Without clear constitutional principles establishing the conditions under which indigent arrestees may be held pending trial, state and local bail reforms will continue to be haphazard and uneven. Absent state court decisions mandating definite rights under state or federal constitutional provisions, many policymaking bodies and many individual judges will never muster the will to change local rules and practices which automatically default to money bail. Conversely, those reforms that local jurisdictions do undertake may prove too ambitious to secure permanent approval or too timid to rectify real constitutional deficiencies. Clarifying what the Constitution requires will facilitate reform initiatives, giving confidence to policymakers that their efforts will not be in vain.

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[28] *Supreme Court Approves Changes to Pretrial Release Recommendations for Gun Crimes, Repeat Offenders*, New Jersey Courts News Release (May 25, 2017), https://www.judiciary.state.nj.us/pressrel/2017/pr051725a.pdf); *Attorney General Strengthens Bail Reform Directive to Better Ensure that Dangerous and Recidivist Criminals are Kept in Jail Pending Trial*, Office of the Attorney General of the State of New Jersey News Release (May 24, 2017), http://nj.gov/oag/newsreleases17/pr20170524c.html).

[29] *Changes to Md. bail system appear unlikely to pass General Assembly this year*, Washington Post (March 16, 2017), http://wapo.st/2nsVpui?tid=ss_mail&utm_term=.1c753337ebb3.

II. The Fourteenth Amendment prohibits the use of monetary bail that results in the detention of indigent defendants solely due to inability to pay.

CCJ takes no position on whether the district court reached the right result or imposed the right remedy on the particular record in this case. But it does believe that one essential premise should accompany any analysis: some bail systems do violate the constitutional guarantees of indigent defendants.

A. The Supreme Court has long held that special burdens cannot be imposed on indigent criminal defendants.

The Supreme Court has consistently reaffirmed the principle that due process and equal protection serve "the central aim of our entire judicial system—all people charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of justice in every American court,'" such that "at *all stages* of the proceedings the Due Process and Equal Protection Clauses protect persons like [indigent defendants] from invidious discriminations." *Griffin v. Illinois*, 351 U.S. 12, 17-18 (1956) (citations omitted; emphasis added). In practice, "[p]roviding equal justice for poor and rich, weak and powerful alike is an age-old problem." *Id*. at 16. Some factors contributing to the problem may be beyond the reach of the U.S. Constitution, but others may be rooted in practices that, whether by long-standing custom or recent innovation, violate the fundamental principle of equal justice under the law.

In *Griffin*, the petitioners' indigence left them unable to purchase a

transcript of the trial proceedings, which Illinois required for direct appellate review by writ of error. *Id*. at 13-14. Although Illinois was not required to provide appellate review, it could not choose to "do so in a way that discriminates against some convicted defendants on account of their poverty." *Id*. at 18. In so holding, the Court emphasized that "to deny adequate review to the poor means that many of them may lose their life, liberty or property because of unjust convictions which appellate courts would set aside." *Id*. at 20. The Court remanded to the Supreme Court of Illinois to develop procedures for securing "adequate and effective appellate review to indigent defendants." *Id*. at 20.

Thereafter, the Court reaffirmed its commitment to these principles in the context of nonpayment of a fine, which operated to extend the sentence of an indigent defendant beyond the maximum term otherwise allowed by law. *Williams v. Illinois*, 399 U.S. 235 (1970). Applying *Griffin*, the Court held that involuntary nonpayment—indigence—could not lead to imprisonment beyond the maximum term. *Id*. at 241, 244. As in *Griffin*, the facially neutral statute at issue "work[ed] invidious discrimination solely" due to inability to pay, with the result that "the State has visited different consequences on two categories of persons since the result is to make incarceration in excess of the statutory maximum applicable only to those without the requisite resources to satisfy the money portion of the judgment." *Id*. at 242.

In *Tate v. Short*, 401 U.S. 395 (1971), the Supreme Court held that a state may not establish fine-only offenses and then "convert the fine into a prison term for an indigent defendant without the means to pay his fine." *Id*. at 399. Imprisonment of an indigent defendant who is unable to pay a fine does not advance the state's interests in punishment or revenue generation, and the state has alternative methods for securing its interest in payment of fines. *Id*. at 399.

In *Bearden v. Georgia*, 461 U.S. 660 (1983), the Court explained that "[d]ue process and equal protection principles converge in the Court's analysis" of cases involving indigent criminal defendants, so that the inquiry under either clause is "substantially similar." *Id.* at 665-66. Applying this framework, the Court held that "in revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay." *Id*. at 672. If the Court finds that the probationer was unable to pay, it "must consider alternate measures of punishment other than imprisonment." *Id*. A probationer who has made bona fide efforts to pay may not be imprisoned, as to do so "would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment." *Id*. at 672-73.

In reaching this conclusion, the Court closely examined Georgia's stated interests in restitution, rehabilitation, public safety, punishment, and deter-

rence. As to restitution, the Court noted that revoking probation "will not make restitution suddenly forthcoming." *Id*. at 670. With respect to rehabilitation and protecting society, the Court held that "[g]iven the significant interest of the individual in remaining on probation, [] the State cannot justify incarcerating a probationer . . . solely by lumping him together with other poor persons and thereby classifying him as dangerous. This would be little more than punishing a person for his poverty." *Id*. at 671 (internal citations omitted).

B. If special burdens cannot constitutionally be imposed on indigents *convicted* of a crime, still less should they be imposed on indigents merely *charged* with a crime.

While the Supreme Court has not explicitly extended the *Bearden* lines of cases to pretrial criminal proceedings, at least one justice long ago "conclude[d] that no man should be denied release because of indigence. Instead, under our constitutional system, a man is entitled to be released on 'personal recognizance' where other relevant factors make it reasonable to believe that he will comply with the orders of the Court." *Bandy v. United States*, 82 S. Ct. 11, 13 (1961) (Douglas, J.) (denying applications for release on personal recognizance because "question of whether a single Justice had power to fix bail pending disposition of petition for certiorari to review denial of reduction of bail" was unresolved). As explained in *Bandy*, the use of bail "is based on the assumption that a defendant has property. To continue to demand a substantial bond which the defendant is un-

able to secure raises considerable problems for the equal administration of the law." *Id*. at 12.

Thus, all the concerns that attend post-conviction deprivations based on indigence apply with even greater force where a defendant has not been convicted of a crime. *See Id.* at 12-13 (in addition to the denial of pretrial liberty, if the defendant's case is reversed, "he will have served all or part of a sentence under an erroneous judgment. Imprisoned, a man may have no opportunity to investigate his case, to cooperate with his counsel, to earn the money that is still necessary for the fullest use of his right to appeal."). If a state may not imprison convicted indigent defendants solely "on account of their poverty," how can a state constitutionally detain presumably innocent persons for the same reason? An en banc Fifth Circuit decision acknowledged the heightened constitutional concerns at stake in this precise context:

> At the outset we accept the principle that imprisonment solely because of indigent status is invidious discrimination and not constitutionally permissible. The punitive and heavily burdensome nature of pretrial confinement has been the subject of convincing commentary. We view such deprivation of liberty of one who is accused but not convicted of crime as presenting a question having *broader effects and constitutional implications than would appear from a rule stated solely for the protection of indigents*. . . . [S]uch individuals remain clothed with a presumption of innocence and with their constitutional guarantees intact.

Pugh v. Rainwater, 572 F.2d 1053, 1056 (5th Cir. 1978) (en banc) (citations omit-

ted; emphasis added). *Pugh* declined to hold that Florida's bail rule was facially unconstitutional for failure to include a presumption against monetary bail in the case of indigent defendants because the "rule mandates that 'all relevant factors' be considered in determining 'what form of release is necessary to assure the defendant's appearance.'" *Id*. at 1058. But, the Court added, "[w]e have no doubt that in the case of an indigent, whose appearance at trial could reasonably be assured by one of the alternate forms of release, pretrial confinement for inability to post money bail would constitute imposition of an excessive restraint." *Id*. at 1058. Applying *Pugh*, then-Chief Judge Mills concluded that "the right to equal protection requires the court to consider all factors when setting bail, and requires that an indigent, whose appearance at trial could reasonably be assured by one of the alternate forms of release, not suffer pretrial confinement because of his inability to post monetary bail." *Carlisle v. Desoto Cnty., Miss.*, No. 2:09CV212-M-A, 2010 WL 3894114, at *5 (N.D. Miss. Sept. 30, 2010) (citing *Pugh*, 572 F.2d at 1058).

Courts across the nation have similarly concluded that it is unconstitutional to detain an indigent defendant pretrial solely due to inability to pay monetary bail. *See*, *e.g*., *Jones v. City of Clanton*, No. 215CV34-MHT, 2015 WL 5387219, at *2 (M.D. Ala. Sept. 14, 2015); *Martinez v. City of Dodge City*, No. 2:15-cv-09344, 2016 WL 9051913, at *1 (D. Kan. April 26, 2016) (slip op.); *Lee v. Lawson*, 375 So.2d 1019 (Miss. 1979); *Robertson v. Goldman*, 369 S.E.2d 888,

891 (W.Va. 1988). Moreover, using monetary bail to detain indigent defendants implicates the Eighth Amendment, which instructs that "[e]xcessive bail shall not be required[.]" U.S. CONST. amend. VIII. While the plaintiffs here did not bring an Eighth Amendment complaint, its strictures are clearly implicated when liberty is denied solely because of indigence.[30] "Since the function of bail is limited, the fixing of bail for any individual defendant must be based upon standards relevant to the purpose of assuring the presence of *that defendant*." *Stack*, 342 U.S. at 5. Thus, "[b]ail set at a figure higher than an amount reasonably calculated to [assure the presence of the accused] is 'excessive' under the Eighth Amendment." *Id*.

Therefore, a financial condition of release that operates to detain an indigent defendant must be based on a finding that such condition is necessary to

[30] While not directly addressing the issue, the Supreme Court has indicated that the Eighth Amendment's prohibition against excessive bail applies to the states through the Fourteenth Amendment. *See McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 764 n.12 (2010) (listing the excessive bail clause among the Bill of Rights provisions incorporated by the Supreme Court); *Schlib v. Kuebel*, 404 U.S. 357, 365 (1971) ("Bail, of course, is basic to our system of law . . . and the Eighth Amendment's proscription of excessive bail has been assumed to have application to the States through the Fourteenth Amendment."). Other circuits have explicitly held that the clause is incorporated to the states. *See Meechaicum v. Fountain*, 696 F.2d 790, 791 (10th Cir. 1983); *Sistrunk v. Lyons*, 646 F.2d 64, 70-71 (3d Cir. 1981); *Hunt v. Roth*, 648 F.2d 1148, 1156 (8th Cir. 1981), vacated *Murphy v. Hunt*, 455 U.S. 478 (1982) (vacated on other grounds); *U.S. ex rel. Goodman v. Kehl*, 456 F.2d 863, 868 (2d Cir. 1972). In this vein, this Court has stated that "[t]he right to be free from excessive bail underlies the entire structure of the constitutional rights enumerated in the Bill of Rights." *United States v. Abrahams*, 604 F.2d 386, 393 (5th Cir. 1979).

secure the state's interest in ensuring appearance at trial or public safety. Further, because a defendant has a protected interest in pretrial liberty, any deprivation of that liberty must comport with the requirements of procedural due process. *See United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."); *Dodds v. Richardson*, 614 F.3d 1185, 1192 (10th Cir. 2010) ("the right of an accused to freedom pending trial is inherent in the concept of a liberty interest protected by the due process clause of the Fourteenth Amendment.") (citation and quotation omitted). In *Salerno*, the Court rejected a facial challenge to the adequacy of the pretrial detention procedures required by the 1984 Act and held that the Act's "extensive safeguards" satisfied the requirements of due process. *Salerno*, 481 U.S. at 751-52 (describing procedures). *Salerno* upholds procedural safeguards for defendants "arrested for a specific category of extremely serious offenses," that "Congress specifically found . . . more likely to be responsible for dangerous acts in the community after arrest." An indigent defendant deprived of pretrial liberty is no less entitled to the safeguards of due process.

CONCLUSION

For the foregoing reasons, CCJ respectfully requests that the Court address the significant and pressing constitutional issues in this appeal by articulating the constitutional principles that, while protecting public safety, likewise pro-

tect the pretrial rights of indigent defendants.

Dated: August 9, 2017

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the length limits of Fed. R. App. P. 29(a)(5) and the type-volume limits of Fed. R. App. P. 32(a)(7) because, excluding the items exempted by Fed. R. App. R. 32(f), this brief contains 6,258 words.

I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2017, I electronically filed a copy of the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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ADDENDUM TO BRIEF OF *AMICUS CURIAE* CONFERENCE OF CHIEF JUSTICES

Public Law 89-465

June 22, 1966
[S. 1357]

AN ACT

To revise existing bail practices in courts of the United States, and for other purposes.

Bail Reform Act of 1966.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Bail Reform Act of 1966".

SEC. 2. The purpose of this Act is to revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not needlessly be detained pending their appearance to answer charges, to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest.

62 Stat. 821; 68 Stat. 747.

SEC. 3. (a) Chapter 207 of title 18, United States Code, is amended by striking out section 3146 and inserting in lieu thereof the following new sections:

"§ 3146. Release in noncapital cases prior to trial

"(a) Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or, if no single condition gives that assurance, any combination of the following conditions:

"(1) place the person in the custody of a designated person or organization agreeing to supervise him;

"(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

"(3) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release;

"(4) require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof; or

"(5) impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours.

"(b) In determining which conditions of release will reasonably assure appearance, the judicial officer shall, on the basis of available information, take into account the nature and circumstances of the offense charged, the weight of the evidence against the accused, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

"(c) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release and shall advise him that a warrant for his arrest will be issued immediately upon any such violation.

"(d) A person for whom conditions of release are imposed and who after twenty-four hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer in the district may review such conditions.

"(e) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release: *Provided*, That, if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (d) shall apply.

"(f) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

"(g) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

"§ 3147. Appeal from conditions of release

"(a) A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to section 3146(d) or section 3146(e) by a judicial officer, other than a judge of the court having original jurisdiction over the offense with which he is charged or a judge of a United States court of appeals or a Justice of the Supreme Court, may move the court having original jurisdiction over the offense with which he is charged to amend the order. Said motion shall be determined promptly.

"(b) In any case in which a person is detained after (1) a court denies a motion under subsection (a) to amend an order imposing conditions of release, or (2) conditions of release have been imposed or amended by a judge of the court having original jurisdiction over the offense charged, an appeal may be taken to the court having appellate jurisdiction over such court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not so supported, the court may remand the case for a further hearing, or may, with or without additional evidence, order the person released pursuant to section 3146(a). The appeal shall be determined promptly.

"§ 3148. Release in capital cases or after conviction

"A person (1) who is charged with an offense punishable by death, or (2) who has been convicted of an offense and is either awaiting sentence or has filed an appeal or a petition for a writ of certiorari, shall be treated in accordance with the provisions of section 3146 unless the court or judge has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose

a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, or if it appears that an appeal is frivolous or taken for delay, the person may be ordered detained. The provisions of section 3147 shall not apply to persons described in this section: *Provided*, That other rights to judicial review of conditions of release or orders of detention shall not be affected.

"§ 3149. Release of material witnesses

"If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpena, a judicial officer shall impose conditions of release pursuant to section 3146. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

"§ 3150. Penalties for failure to appear

"Whoever, having been released pursuant to this chapter, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for his release, and, in addition, shall, (1) if he was released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari after conviction of any offense, be fined not more than $5,000 or imprisoned not more than five years, or both, or (2) if he was released in connection with a charge of misdemeanor, be fined not more than the maximum provided for such misdemeanor or imprisoned for not more than one year, or both, or (3) if he was released for appearance as a material witness, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

"§ 3151. Contempt

"Nothing in this chapter shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.

"§ 3152. Definitions

"As used in sections 3146–3150 of this chapter—

"(1) The term 'judicial officer' means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the District of Columbia Court of General Sessions; and

"(2) The term 'offense' means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress."

(b) The analysis of chapter 207 of title 18, United States Code, is amended by striking out the last item and inserting in lieu thereof the following:

"3146. Release in noncapital cases prior to trial.
"3147. Appeal from conditions of release.
"3148. Release in capital cases or after conviction.
"3149. Release of material witnesses.
"3150. Penalties for failure to appear.
"3151. Contempt.
"3152. Definitions."

SEC. 4. The first paragraph of section 3568 of title 18, United States Code, is amended to read as follows: 74 Stat. 738.

"The sentence of imprisonment of any person convicted of an offense shall commence to run from the date on which such person is received at the penitentiary, reformatory, or jail for service of such sentence. The Attorney General shall give any such person credit toward service of his sentence for any days spent in custody in connection with the offense or acts for which sentence was imposed. As used in this section, the term 'offense' means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress."

SEC. 5. (a) The first sentence of section 3041 of title 18, United States Code, is amended by striking out "or bailed" and inserting in lieu thereof "or released as provided in chapter 207 of this title". 62 Stat. 815.

(b) Section 3141 of such title is amended by striking out all that follows "offenders," and inserting in lieu thereof the following: "but only a court of the United States having original jurisdiction in criminal cases, or a justice or judge thereof, may admit to bail or otherwise release a person charged with an offense punishable by death."

(c) Section 3142 of such title is amended by striking out "and admitted to bail" and inserting in lieu thereof "who is released on the execution of an appearance bail bond with one or more sureties".

(d) Section 3143 of such title is amended by striking out "admitted to bail" and inserting in lieu thereof "released on the execution of an appearance bail bond with one or more sureties".

(e)(1) The heading to chapter 207 of such title is amended by striking out "**BAIL**" and inserting in lieu thereof "**RELEASE**".

(2) The table of contents to part II of such title is amended by striking out "207. Bail" and inserting in lieu thereof "207. Release".

SEC. 6. This Act shall take effect ninety days after the date on which it is enacted: *Provided*, That the provisions of section 4 shall be applicable only to sentences imposed on or after the effective date. Effective date.

Approved June 22, 1966.

Public Law 89-466

AN ACT

June 22, 1966
[H. R. 3177]

To amend title 38, United States Code, to increase dependency and indemnity compensation in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection 412(b), title 38, United States Code, is amended to read as follows: Veterans. Dependency and indemnity compensation. 75 Stat. 566.

"(b) In any case where the amount of dependency and indemnity compensation payable under this chapter to a widow who has children is less than the amount of pension which would be payable to (1) such widow, or (2) such children if the widow were not entitled, under chapter 15 of this title had the death occurred under circumstances authorizing payment of death pension, the Administrator shall pay dependency and indemnity compensation to such widow in an amount equal to such amount of pension." 38 USC 501 *et seq.*

Approved June 22, 1966.