

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE**

**Just City, Inc.**, and class representatives  
**Deangelo Towns** and  
**Marshawn Barnes**,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

Floyd Bonner Jr.,  
**Shelby County Sheriff;**

Lee Wilson,  
**Presiding Shelby County General  
Sessions Criminal Court Judge;** and

John Marshall, Robert Barber, Rhonda Harris,  
Kevin Reed, Christopher Ingram, Shayla  
Purifoy, Ross Sampson, Serena Gray, Terita  
Hewlett, Mischelle Best, Kenya Smith, Zayid  
Saleem, Kathy Kirk Johnson, Leslie Mazingo,  
**Shelby County Judicial  
Commissioners,**

in their official capacities,

Defendants.

Case No. 2:24-cv-2540-TLP-tmp

Hearing Requested

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56, Plaintiffs, by and through undersigned counsel, respectfully move this Court for summary judgment on all three of their claims: first, that HB 1719 is void for vagueness in violation of the Fourteenth Amendment; second, that HB 1719 results in fundamentally unfair bail proceedings in violation of the Fourteenth Amendment; and third, that HB 1719 causes discriminatory wealth-based detention in violation of the Fourteenth Amendment. Discovery is now closed, and the record makes clear that there is no genuine dispute as to any material fact and that Plaintiffs are entitled to judgment as a matter of law on all three of their claims.

In support of their Motion, Plaintiffs rely on their Statement of Undisputed Material Facts and attached exhibits, as well as a Memorandum in Support, all of which have been filed contemporaneously with this Motion.

WHEREFORE, Plaintiffs Just City Inc., Deangelo Towns and Marshawn Barnes respectfully request that the Court grant its Motion for Summary Judgment and enter an order declaring that HB 1719 violates the Fourteenth Amendment; an order permanently enjoining the Shelby County Sheriff from enforcing secured bail orders that are issued without a determination of ability to pay; and an order granting reasonable attorneys' fees and costs under 42 U.S.C. §1988; and any other relief the Court deems just and proper.

Dated: January 22, 2026

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, David Elbaum, certify that on January 22, 2026, I caused a true and correct copy of the foregoing document to be filed electronically via the ECF system.

Respectfully submitted,

/s/ David Elbaum

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**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

**TABLE OF CONTENTS**

PRELIMINARY STATEMENT ..... 1

STATEMENT OF FACTS ..... 3

    A. How Shelby County’s Bail Practices Changed Because of HB 1719 ..... 3

    B. Considering Ability to Pay Did Not Lead to Increased Administrative Burden..... 7

    C. Considering Ability to Pay Did Not Lead to Increased Public Safety Risk ..... 9

    D. HB 1719 Is Unprecedented, Undefined, and Incompatible With the Statutory Scheme ..... 9

    E. HB 1719 Causes Wealth-Based Detention and Risks Unnecessary Detention..... 11

    F. HB 1719 Harms Just City’s Ability to Provide Services to Clients ..... 15

ARGUMENT ..... 18

I. HB 1719 IS UNCONSTITUTIONALLY VAGUE AND VIOLATES THE DUE PROCESS CLAUSE..... 18

II. HB 1719 PREVENTS ARRESTEES FROM RECEIVING A “MEANINGFUL” OPPORTUNITY TO BE HEARD UNDER *MATHEWS V. ELDRIDGE* ..... 23

III. HB 1719 CAUSES DISCRIMINATORY WEALTH-BASED DETENTION IN VIOLATION OF *BEARDEN*..... 28

IV. THE COURT SHOULD ENTER PERMANENT INJUNCTIVE RELIEF AGAINST THE SHERIFF AND DECLARATORY RELIEF AGAINST ALL PARTIES ..... 32

    A. A Permanent Injunction Against the Sheriff Is Warranted..... 32

    B. Declaratory Relief Against All Parties Is Warranted..... 34

CONCLUSION..... 35

**TABLE OF AUTHORITIES**

**Cases**

*ACLU Fund of Mich. v. Livingston Cty.*,  
796 F.3d 636 (6th Cir. 2015)..... 34

*ACLU of Ky. v. McCreary Cty.*,  
354 F.3d 438 (6th Cir. 2003)..... 33

*Alkire v. Irving*,  
330 F.3d 802 (6th Cir. 2003)..... 28

*Ass’n of Cleveland Fire Fighters v. City of Cleveland*,  
502 F.3d 545 (6th Cir. 2007)..... 18, 19

*Audi AG v. D’Amato*,  
469 F.3d 534 (6th Cir. 2006)..... 32

*Bearden v. Georgia*,  
461 U.S. 660 (1983) ..... 1, 28, 29

*Belle Maer Harbor v. Charter Twp. Of Harrison*,  
170 F.3d 553 (6th Cir. 1999)..... 19, 20, 21

*Bill Johnson’s Rests. v. NLRB*,  
461 U.S. 731 (1983) ..... 19

*Brangan v. Commonwealth*,  
477 Mass. 691 (2017)..... 30

*Cardinal Health, Inc. v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*,  
29 F.4th 792 (6th Cir. 2022)..... 35

*Carolina Youth Action Project v. Wilson*,  
60 F.4th 770 (4th Cir. 2023)..... 21

*Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*,  
363 F.3d 427 (6th Cir. 2004)..... 34

*Cole v. City of Memphis, Tenn.*,  
108 F. Supp. 3d 593 (W.D. Tenn. 2015)..... 33

*Cunney v. Bd. of Trs. of Grand View*,  
660 F.3d 612 (2d Cir. 2011)..... 21

*Daves v. Dallas Cnty.*,  
22 F.4th 522 (5th Cir. 2022)..... 29

*Daves v. Dallas Cnty.*,  
63 F.4th 616 (2023) ..... 29

*FDA v. All. For Hippocratic Med.*,  
602 U.S. 367 (2024) ..... 15

*Fowler v. Benson*,  
924 F.3d 247 (6th Cir. 2019)..... 23

*Hill v. Colorado*,  
530 U.S. 703 (2000) ..... 18

*In re Humphrey*,  
11 Cal. 5th 135 (2021)..... 30

*Islamic Soc’y of Basking Ridge v. Twp. of Bernards*,  
226 F.Supp.3d 320 (D.N.J. 2016) ..... 19

*Johnson v. City of Cincinnati*,  
310 F.3d 484 (6th Cir. 2002)..... 23

*Kolender v. Lawson*,  
461 U.S. 352 (1983) ..... 18, 21

*Konikov v. Orange County*,  
410 F.3d 1317 (11th Cir. 2005)..... 22

*Maben v. Thelen*,  
887 F.3d 252 (6th Cir. 2018)..... 18

*Mathews v. Eldridge*,  
424 U.S. 319 (1976) ..... 1, 23

*McNeil v. Cmty. Prob. Servs., LLC*,  
945 F.3d 991 (6th Cir. 2019) (“*McNeil II*”)..... 32, 33, 34

*McNeil v. Community Probation Services, LLC*,  
2019 WL 633012 (M.D. Tenn. Feb. 14, 2019),  
*aff’d*, 945 F.3d 991 (6th Cir. 2019) ..... 28, 29, 30, 31

*Memphis Ctr. for Reprod. Health v. Slatery*,  
14 F.4th 409 (6th Cir. 2021)..... 19

*Miller v. City of Cincinnati*,  
622 F.3d 524 (6th Cir. 2010)..... 19

*N.C. A. Philip Randolph Inst. v. N.C. State Bd. of Elections*,  
730 F.Supp.3d 185 (M.D.N.C. 2024), *aff’d*, 155 F.4th 298 (4th Cir. 2025) ..... 22

*ODonnell v. Harris Cty.*,  
892 F.3d 147 (5th Cir. 2018), *aff'g* 251 F. Supp.3d 1052 (S.D. Tex. 2017)..... 29, 31

*Planned Parenthood Ass’n of Cincinnati v. City of Cincinnati*,  
822 F.2d 1390 (6th Cir. 1987)..... 33

*Republican Nat’l Comm. v. N.C. State Bd. Of Elections*,  
120 F.4th 390 (4th Cir. 2024)..... 15

*Rodriguez v. Providence Cmty. Corr., Inc.*,  
155 F. Supp. 3d 758 (M.D. Tenn. 2015) ..... 25, 33, 34

*Springfield Armory v. City of Columbus*,  
29 F.3d 250 (6th Cir. 1994)..... 19, 20, 23

*Stack v. Boyle*,  
342 U.S. 1 (1951) ..... 24, 26

*Torres v. Collins*,  
2023 WL 6166523 (E.D. Tenn. Sept. 21, 2023) ..... 24, 25, 29

*United States v. Bogle*,  
855 F.2d 707 (11th Cir. 1988)..... 33

*United States v. Brandon*,  
158 F.3d 947 (6th Cir. 1998)..... 23

*Valdez-Jimenez v. Eighth Judicial Dist. Court of Nev.*,  
136 Nev. 155 (2020)..... 30

*Walker v. City of Calhoun*,  
901 F.3d 1245 (11th Cir. 2018)..... 28, 30

*Weatherspoon v. Oldham*,  
2018 WL 1053548 (W.D. Tenn. Feb. 26, 2018) ..... 28, 29

*Youngberg v. Romeo*,  
457 U.S. 307 (1982) ..... 23

**Statutes**

2024 Tenn. Pub. Acts Ch. 869 (May 1, 2024) ..... 10

Tenn. Code Ann. § 40-11-102 ..... 24

Tenn. Code Ann. § 40-1-111(a)(1)(A)(iv) ..... 7

Tenn. Code Ann. § 40-11-118 ..... 4

Tenn. Code Ann. § 40-11-118(a)(2) ..... passim  
Tenn. Code Ann. § 40-11-118(b)(2) (1996) (amended 2024) ..... 3, 10  
Tenn. Code Ann. § 40-11-119(b)..... 12  
Tenn. Code Ann. § 8-8-201(a)(1)(3)..... 12  
TENN. CONST. art. I, § 15 ..... 24

**Rules**

Fed. R. Civ. P. 56(a) ..... 18

**Webpages**

*Analysis of the Pretrial Detention System in Shelby County, Tennessee: 2025 Report*,  
University of Memphis, School of Urban Affairs and Public Policy, available at:  
[https://www.memphis.edu/ccre/pretrial\\_ccre\\_commission\\_20250326.pdf](https://www.memphis.edu/ccre/pretrial_ccre_commission_20250326.pdf) ..... 9

### **PRELIMINARY STATEMENT**

By prohibiting judicial officers setting bail from considering an arrestee's ability to pay, HB 1719 results in pretrial detention of arrestees based on fundamentally unfair bail proceedings that violate the arrestee's constitutional rights. The Tennessee legislature passed this unprecedented law in reaction to agreed-upon reforms to Shelby County's bail system. Before the law, Shelby County implemented a process that required judicial officers to consider and make findings regarding an arrestee's ability to pay bail. Seeking to overturn that practice, HB 1719 adopted a vague rule that entirely prohibits judicial officers from considering ability to pay at all. The amended statute is now internally inconsistent and undermines the ability of judicial officers to satisfy the statute's specific requirement that bail must be set at the lowest amount necessary to reasonably ensure an arrestee's court appearance and public safety.

Plaintiffs are two individuals who were detained on unfair bail orders issued by judicial officers who did not consider the amount of bail they could afford, a certified class of similarly situated individuals, and Just City, a mission-driven non-profit organization that operates a charitable bail fund. They are entitled to summary judgment as a matter of law on three constitutional claims. First, HB 1719 violates due process because it is unconstitutionally vague. Second, HB 1719 violates due process because it prevents arrestees from receiving a meaningful opportunity to be heard under *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Third, HB 1719 violates *Bearden v. Georgia*, 461 U.S. 660 (1983), because it causes discriminatory wealth-based detention.

More specifically, HB 1719 is unconstitutionally vague because it simultaneously requires that judicial officers setting bail "shall" consider an arrestee's "financial condition" and prohibits them from considering the arrestee's "ability to pay." The undisputed overlap between the two terms invites arbitrary enforcement by judicial officers who are not provided with any reasoned

basis to distinguish between the information they must consider and the information they must not consider when setting bail. HB 1719 also results in unfair bail proceedings that violate *Mathews* because the law prevents arrestees from presenting—and judicial officers from considering—arguments about whether a potential bail amount is affordable or would serve as a de facto detention order before depriving arrestees of their physical liberty. The undisputed record establishes that these arguments are standard practice in bail hearings around the country and impose no meaningful administrative burden. Indeed, Tennessee is the only state relying on money bail that prohibits judicial officers from considering ability to pay. As the undisputed record shows, the law risks erroneous pretrial detention without serving, and, in fact, undermining the statutory mandate to set the lowest bail that reasonably assures the arrestee’s court appearance and public safety. Finally, HB 1719 violates *Bearden* because judicial officers cannot reliably set bail at the lowest amount necessary to ensure court appearance and public safety without considering the amount of bail a person can afford. Lacking this essential information, judicial officers more frequently set bail amounts that indigent arrestees cannot afford, resulting in increased wealth-based detention.

As a direct result of HB 1719, Shelby County locks up arrestees who are too poor to afford their bail amounts following bail proceedings that violate their constitutional rights. Permanent injunctive relief is therefore warranted against the Sheriff, who enforces unconstitutional bail orders. Plaintiffs are also entitled to declaratory relief against all Defendants.

## **STATEMENT OF FACTS**

### **A. How Shelby County’s Bail Practices Changed Because of HB 1719**

Under Tennessee law, judicial officers<sup>1</sup> must set bail “as low as the court determines is necessary to reasonably ensure the safety of the community and the appearance of the defendant as required.” Tenn. Code Ann. § 40-11-118(a)(2). Judicial officers setting bail must know the amount of bail a person can afford to comply with the statute.

Tennessee law always permitted consideration of ability to pay—until HB 1719. Tenn. Code Ann. § 40-11-118(b)(2) (1996) (amended 2024). Even so, before 2023, judicial officers setting bail in Shelby County did not consider the amount of bail arrestees could afford. Ex. 1, Shelby County Jail Monitor Report, *Busby v. Bonner*, No. 20-cv-2359 (W.D. Tenn.) (“*Busby* report”) at 3, 30. This practice led to the widespread detention of people “who simply cannot afford even a minimum bond” even though this system was “not necessary to ensure future court appearances or to protect public safety.” *Id.* To address these ongoing constitutional violations, Shelby County implemented a new Standing Bail Order in February 2023. Ex. 2, Standing Bail Order (“SBO”). The SBO was the result of negotiations between Shelby County entities (including Shelby County, the General Sessions Criminal Court Divisions, and the Sheriff’s office) and advocacy groups, including Plaintiff Just City, a Memphis-based nonprofit organization that operates a charitable bail fund and the ACLU, ACLU-TN, Stand for Children TN, and the Official Black Lives Matter Memphis Chapter. Ex. 3, June 9, 2022 Memorandum of Understanding (“MOU”) ¶¶ 1, 9.

The SBO requires judicial officers to make findings regarding the amount of bail a person

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<sup>1</sup> This brief uses the term “judicial officers” to refer to any individual who has the authority to set bail, including General Sessions judges and judicial commissioners.

can afford to comply with the statute's mandate to set bail at the lowest amount necessary to reasonably ensure the safety of the community and the appearance of the defendant. Ex. 2, SBO at 3-4; Ex. 4, June 30, 2025 Rule 30(b)(6) Deposition of John Marshall ("Marshall Dep.") at 27:10-28:1; *see* Tenn. Code Ann. § 40-11-118(a)(2). Judicial officers may set unaffordable bail that serves to detain the arrestee only if no other combination of release conditions would reasonably ensure the goals of public safety and court appearance. Ex. 2, SBO at 4; *see* Tenn. Code Ann. § 40-11-118.

The bail process in Shelby County under the SBO follows four stages. First, after a person is arrested and booked into the Shelby County jail, a Pretrial Services employee interviews the arrestee about their background, including arrest history and pending cases. Ex. 5, June 30, 2025 Rule 30(b)(6) Deposition of Llana Greer ("Greer Dep.") at 23:12-23. Pretrial Services also asks arrestees questions about their income, assets, and expenses. *Id.* at 27:10-28:1. Pretrial Services staff enter this information into an affordable bail calculator, a tool created by the Vera Institute that calculates the amount of bail the arrestee can afford. *Id.* at 27:6-9; Ex. 6, Sample Affordable Bail Calculator. The interview takes seven to twelve minutes, Ex. 5, Greer Dep. at 25:6, and using the affordable bail calculator takes an additional three to four minutes. *Id.* at 36:13-16.

Second, Pretrial Services completes a bail packet and notifies the on-call judicial officer that the arrestee is ready for bail setting at an initial bail screening proceeding. *Id.* at 33:3-4. The bail packet includes the completed interview form, pretrial case records, and bail forms for the judicial officer to complete. *Id.* at 31:5-11, 31:18-19. The judicial officer and Pretrial Services employee then discuss by phone each arrestee's situation, including prior criminal history, pending cases, and personal circumstances including employment status. *Id.* at 41:2-13; 42:2-6. Pretrial Services then sends the judicial officer the bail forms to complete and part of the bail packet. *Id.*

at 44:3-13. The other bail packet documents are available in each arrestee's case file upon request from a judicial officer. *Id.* at 58:18-59:4.

Before the passage of HB 1719, the judicial officer and Pretrial Services also discussed the amount of bail that the arrestee can afford. *Id.* at 37:15-38:2. After HB 1719, Pretrial Services still asks the arrestee questions about their income, assets, and expenses and determines an affordable bail amount using the affordable bail calculator. *Id.* at 24:5-24. However, because of HB 1719, Pretrial Services no longer provides the affordable bail amount to the judicial officer, either on the phone or through paperwork. *Id.* at 25:1-3, 37:15-22. Other than employment status, Pretrial Services does not provide any other information about an arrestee's ability to pay or financial condition to the judicial officer nor does the judicial officer inquire into the arrestee's ability to pay or financial condition. *Id.* at 41:20-42:10. Instead, Pretrial Services merely stores the information in its own files. *Id.* at 24:23-24.

Third, the judicial officer sets bail using an initial screening form. *Id.* at 53:7-55:16. The form lists all the statutory factors that judicial officers must consider when setting bail, and judicial officers check boxes to indicate the factors upon which they rely when making their bail decisions. Ex. 7, Revised Bail Screening Form.

Before HB 1719, judicial officers considered the arrestee's maximum affordable bail amount when deciding the lowest bail amount necessary to ensure public safety and court appearance. Ex. 4, Marshall Dep. at 27:20-28:1; Ex. 5, Greer Dep. at 53:12-54:14; Ex. 8, Sample Bail Screening Form. This information auto-populated into the initial screening form that they completed. Ex. 5, Greer Dep. at 53:20-23. After HB 1719, the form no longer includes the arrestee's maximum affordable bail amount. *Id.* at 81:7-10; *compare* Ex. 8, Bail Screening Form *with* Ex. 7, Revised Bail Screening Form. Judicial officers no longer consider an arrestee's

affordable bail amount when setting bail nor do they inquire about or enter findings regarding an arrestee's ability to pay bail. Ex. 4, Marshall Dep. at 57:15-21.

Fourth, once a judicial officer sets bail, arrestees who can afford to pay bail or who do not have bail set are released, and those who cannot afford to pay bail remain detained. Ex. 5, Greer Dep. at 56:15-57:4. Arrestees who are detained are arraigned, usually the day after arrest, and they are appointed counsel if the court deems them indigent. *Id.* at 78:11-19. If they have not posted bail, they then receive a bail hearing before a judicial officer. *Id.* at 61:21-62:2. The arrestee, defense counsel, the District Attorney, and Pretrial Services are present at the bail hearing. *Id.* at 63:21-64:4. Judicial officers presiding at the hearing must set bail at the lowest amount necessary to ensure court appearance and public safety. Tenn. Code Ann. § 40-11-118(a)(2); Ex. 2, SBO at 5.

Before HB 1719, judicial officers inquired into and entered findings regarding the arrestee's ability to pay during bail hearings. Pretrial Services often provided information about an arrestee's ability to pay in response to inquiries from the judicial officers. Ex. 5, Greer Dep. at 68:12-69:1. Defense counsel also presented arguments that their clients could not afford to pay bail. *Id.* at 70:5-8. Judicial officers referenced the arrestee's ability to pay approximately 30% of the time when setting bail, *id.* at 69:13-21, and entered findings regarding the arrestee's ability to pay in the bail hearing order form they completed, Ex. 4, Marshall Dep. at 106:19-107:4. After HB 1719, judicial officers no longer inquire into the arrestee's affordable bail amount, income (other than employment status), benefits, expenses, or finances during bail hearings. Ex. 5, Greer Dep. at 65:10-66:2. Pretrial Services does not bring up the arrestee's ability to afford bail. *Id.* at 68:1-4. Defense counsel do not argue that their clients cannot afford bail as often as they did before. *Id.* at 70:5-11. Judicial officers no longer enter findings regarding the arrestee's ability to

pay bail either on the record, *id.* at 67:20-24; Ex. 4, Marshall Dep. at 107:5-12, or when completing the bail hearing order form, *id.* at 107:1-4.

The General Sessions judges made the decision to stop using the affordable bail calculator solely to comply with HB 1719. *Id.* at 51:16-20, 53:14-18. The presiding or administrative judge is responsible for deciding on any changes to the forms, *id.* at 21:14-18, and judicial commissioners must follow bail guidelines set by that judge. *Id.* at 20:10-12; Tenn. Code Ann. § 40-1-111(a)(1)(A)(iv). The administrative judge convened a meeting right before passage of HB 1719, Ex. 4, Marshall Dep. at 53:4-7, 51:23-52:7, and ordered the judicial commissioners to stop getting information from Pretrial Services regarding the affordable bail calculator and change the forms to “take any discussion about affordable and unaffordable out.” *Id.* at 57:15-21. The judicial commissioners followed these instructions. *Id.* at 51:1-7; Ex. 9, May 23, 2024 Email from Commissioner Purifoy to judicial commissioners and Pretrial Services (“Please do not include affordable bail information, numbers, or Vera calculator information. Gov. Lee signed law prohibiting us from considering it effective immediately”).

**B. Considering Ability to Pay Did Not Lead to Increased Administrative Burden**

HB 1719 did not identify administrative or fiscal burden as a reason for the law. Ex. 10, February 12, 2024 Fiscal Memorandum on HB 1719 (“Fiscal Memorandum”). Indeed, Shelby County implemented processes ensuring that judicial officers considered an arrestee’s ability to pay with minimal added burden. Even before the SBO, Shelby County’s longstanding practice involved Pretrial Services interviewing arrestees upon booking, Ex. 5, Greer Dep. at 27:1-5, preparing bail packets, *id.* at 33:5-7, and providing information to judicial officers setting bail, *id.* at 46:7-13; Ex. 4, Marshall Dep. at 19:1-5. The SBO merely added a step by which Pretrial Services also asked questions to obtain the affordable bail amount, which they provided to the

judicial officers setting bail. Ex. 5, Greer Dep. at 28:4-6, 33:15-22; Ex. 4, Marshall Dep. at 31:4-10. It took only an additional three to four minutes to complete these additional questions and obtain the affordable bail amount. Ex. 5, Greer Dep. at 36:13-16. Pretrial Services employees were able to successfully implement the affordable bail calculator after “two or three trainings.” *Id.* at 28:24-29:9. The SBO also added forms for judicial officers to complete both at the initial release screening and at the bail hearing to show they considered the amount of bail a person can afford before setting the lowest amount necessary to ensure public safety and court appearance. Ex. 2, SBO at 3-4; Ex. 4, Marshall Dep. at 27:8-14. Overall, Shelby County was able to successfully implement the SBO, *id.* at 36:2-4, and did not incur any additional costs, Ex. 5, Greer Dep. at 81:15-18.

Shelby County worked with pretrial consultant Spurgeon Kennedy to implement these reforms. Ex. 11, Expert Report of Spurgeon Kennedy (“Kennedy Expert R.”) ¶¶ 21-23 & Ex. A ¶ 2. He has 44 years of experience in the pretrial services field, providing consulting services to state and local justice systems interested in improving their bail systems. *Id.* at Ex. A ¶¶ 1-2. In Kennedy’s experience, courts consider arrestees’ ability to pay with little or no fiscal or administrative burden. *Id.* ¶¶ 7, 15, 20, 24. Shelby County was no exception. When facilitating discussions between Shelby County and the advocacy groups, Kennedy did not hear any concerns or complaints from judicial officers, Pretrial Services employees, or court staff that administering the calculator would lead to increased costs or administrative burden. *Id.* ¶ 23.

Further, Commissioner Marshall testified that the affordable bail calculator was a straightforward device that represented a person’s disposable income. Ex. 4, Marshall Dep. at 48:10-12. Judicial officers were able to use the information from the affordable bail calculator to determine the lowest amount of bail necessary to comply with the bail statute. *Id.* at 70:19-71:11.

**C. Considering Ability to Pay Did Not Lead to Increased Public Safety Risk**

Implementation of the SBO did not lead to increased public safety risk or failures to appear in court, according to undisputed data analysis. The Center for Community Research and Evaluation (CCRE) at the University of Memphis found that the SBO did not result in increases in rates of rearrest, broader recidivism, or failure to appear.<sup>2</sup>

Commissioner Marshall affirmed the CCRE’s report’s conclusions. Ex. 4, Marshall Dep. at 44:8-9. His testimony reaffirmed statements he had made publicly before HB 1719 to address what he perceived as incorrect assumptions about the SBO’s impact on public safety risk. *Id.* at 46:19-47:18. He stated: “Bottom line is [rearrests] didn’t change very much one way or the other” after the SBO. *Id.* at 44:6-9. He also stated that “the jail did not become a revolving door because of the standing bail order.” *Id.* at 47:16-18. He clarified that, based on his review of the data, “it seemed a lot of the rearrest cases were domestic violence where you have a lot of rearrests and misdemeanor thefts.” *Id.* at 45:5-8. Regarding violent rearrests, he stated: “There are some violent rearrests, but not as many as the public has perceived.” *Id.* at 46:1-6. By way of example: “I did not see a pattern of someone committing a violent crime like carjacking, bonding out, and committing another carjacking.” *Id.* at 44:12-16.

**D. HB 1719 Is Unprecedented, Undefined, and Incompatible With the Statutory Scheme**

HB 1719 modified TN Code § 40-11-118(b)(2) to maintain the requirement that judicial officers consider the defendant’s “financial condition,” but added: “provided, that the defendant’s ability to pay shall not be considered.” 2024 Tenn. Pub. Acts Ch. 869 (May 1, 2024).

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<sup>2</sup> *Analysis of the Pretrial Detention System in Shelby County, Tennessee: 2025 Report*, University of Memphis, School of Urban Affairs and Public Policy, available at: [https://www.memphis.edu/ccre/pretrial\\_ccre\\_commission\\_20250326.pdf](https://www.memphis.edu/ccre/pretrial_ccre_commission_20250326.pdf), at 29-36.

“Tennessee is the only state that expressly prohibits courts from considering ability to pay when setting bail.” Ex. 11, Kennedy Expert R. ¶ 6. Other state laws explicitly require or permit judges to consider ability to pay or financial condition or resources. *See* Order Denying PI and MTD, ECF 64 at 27 n.11 (collecting laws). In practice, courts generally rely on pretrial services agencies or court staff to collect information about arrestees’ ability to pay, Ex. 11, Kennedy Expert R. ¶¶ 7, 15, defense counsel often present arguments regarding the amount of bail their clients can afford, judges generally consider such representations when making bail decisions, and judges may reduce bail orders to affordable amounts upon finding that a lower bail amount is sufficient to meet the purposes of bail. *Id.* ¶¶ 6-8, 10-11. Some jurisdictions use affidavits that collect information about an arrestee’s income, dependents, and expenses, *id.* at ¶ 24, and some specifically document the affordable bail amount, *id.* at ¶ 16. Regardless of the specific process, it is “standard practice for judges to consider an individual’s ability to pay or financial resources when setting bail in all other states that rely on money bail.” *Id.* ¶ 6. HB 1719 is the first law to prohibit it.

HB 1719 does not define “financial condition” or “ability to pay” nor does it explain how judicial officers must consider one but not the other. In fact, its legislative history treats “financial condition” as an aspect of a defendant’s “ability to pay.” Ex. 10, Fiscal Memorandum at 1-2 (noting that the law would “require the magistrate to not consider [the defendant’s financial] condition in the context of the defendant’s ability to pay”).

HB 1719 also does not explain how judicial officers can comply with the bail statute without considering ability to pay. Tennessee law requires judicial officers to set bail “as low as the court determines is necessary to reasonably ensure the safety of the community and the appearance of the defendant as required.” TN Code § 40-11-118(a)(2). As Kennedy states, “If a

judge does not know—and indeed, is prohibited from eliciting—information about the amount of bail that a person can afford, that judge would not have the information they need to adequately assess the least restrictive condition necessary to meet the purposes of bail.” Ex. 11, Kennedy Expert R. ¶ 13. Further, “[w]ithout that information, there is a risk that judges will set higher bail amounts than necessary to meet the purposes of bail, resulting in erroneous detention of people who are too poor to afford the amount of bail set.” *Id.* ¶ 14. “When judges set bail at an amount that exceeds what a person can afford, that bail acts as a de facto detention order.” *Id.* ¶ 12.

Shelby County’s experience illustrates the law’s problems. Shelby County officials have been unable to make sense of how to apply the law, leaving judicial officers to interpret the law as they see fit. Commissioner Marshall testified that “financial condition” is “a very broad vague term,” Ex. 4, Marshall Dep. at 76:22-77:1, and that “ability to pay . . . means different things to different people . . . that’s the whole problem,” *id.* at 75:9-12. Distinguishing between financial condition and ability to pay is “an individual decision, [left to] each magistrate and judicial official.” *Id.* at 87:13-20. Every judicial commissioner could have their own interpretations of what ability to pay and financial condition mean. *Id.* at 77:15-23. Shelby County has issued no policies or training on how to apply the law or what the terms mean. *Id.* at 77:2-14, 87:17-21. All it has done is prohibit use of the affordable bail calculator. *Id.* at 51:16-20, 53:14-18.

**E. HB 1719 Causes Wealth-Based Detention and Risks Unnecessary Detention**

HB 1719 increases the number of arrestees who are detained because they cannot afford their bail. Shelby County judicial officers enforce HB 1719 by detaining arrestees without considering ability to pay, and the Sheriff enforces bail detention orders. Tenn. Code Ann. § 8-8-201(a)(1)(3) (“It is the sheriff’s duty to take charge and custody of the jail . . . and of the prisoners therein; receive those lawfully committed, and keep them . . . until discharged by law . . .”); Def. Ans. to Am. Compl. (ECF 81) ¶ 5.

Plaintiffs (and class representatives) Deangelo Towns and Marshawn Barnes were detained on secured bail orders that they could not afford to pay. Ex. 12, Towns Decl. ¶¶ 2, 3; Ex. 13, Barnes Decl. ¶¶ 2, 3. When they were arrested, they were subject to an initial screening where the judicial officers did not inquire into or enter findings regarding their ability to pay. Ex. 12, Towns Decl. ¶ 7; Ex. 13, Barnes Decl. ¶ 7. Instead, the judicial officers set their bails at amounts exceeding what they could afford. Ex. 12, Towns Decl. ¶ 5; Ex. 13, Barnes Decl. ¶ 5. They were each then scheduled for a bail hearing, where the judicial officers again did not inquire into or enter findings regarding their ability to pay and maintained their bails at the same unaffordable amounts. Ex. 12, Towns Decl. ¶¶ 8-10; Ex. 13, Barnes Decl. ¶¶ 8-10. They therefore remained in jail because they could not afford bail. *Id.* They represent a certified class of all people in the custody of the Shelby County Sheriff who are detained under bail orders issued by Shelby County judges pursuant to Tenn. Code Ann. § 40-11-119(b), as amended by HB 1719, without considering their ability to pay. Order Granting Class Cert. (ECF 113) at 19.

Plaintiff retained Ryan Carroll to provide expert testimony on HB 1719's impact on pretrial detention, including wealth-based detention rates. Ex. 14, Expert Report of Ryan Carroll ("Carroll Expert R.") ¶ 14. Carroll holds an M.S. in mathematics and serves as Chief Technology Officer for a technology startup building a case management system. *Id.* ¶¶ 1, 11. He is an expert in analyzing large volumes of criminal legal data using standard statistical analysis. *Id.* ¶¶ 1-2. His expert report relies on publicly available data from Shelby County's Odyssey case management system and booking information from the Sheriff's Office. *Id.* ¶ 20. To evaluate impacts on indigent arrestees, he used two proxies for indigency: (1) whether they were provided court-appointed counsel and (2) residential ZIP code, matched to ZIP Code Tabulation Area poverty rates from the U.S. Census. *Id.* ¶ 21.

Carroll first examined wealth-based disparities in pretrial detention in Shelby County before HB 1719 to set a baseline from which to analyze the impacts of HB 1719. *Id.* ¶ 23. He found significant wealth-based disparities in pretrial detention that implementation of the SBO reduced. *Id.* ¶¶ 24-29, 32-35. Specifically, he found that implementation of the SBO led to more indigent defendants obtaining release on their own recognizance, affordable bail orders, and shorter stays in jail. *Id.* Non-indigent defendants also received better outcomes, including greater rates of release on their own recognizance. *Id.* The disparities between indigent and non-indigent defendants in ability to afford bail, release rates, and lengths of stay all reduced. *Id.* Carroll’s analysis and the CCRE report show that considering ability to pay reduced wealth-based detention without increasing public safety risk or failure to appear rates. *Id.* ¶ 35; *see* Section C, *supra*.

From that baseline, Carroll analyzed the impact of HB 1719. He found that HB 1719 led to increased unaffordable bail amounts; increased pretrial detention despite decreases in charge levels, past convictions and past failures to appear; and increased wealth-based detention. *Id.* ¶ 23.

Carroll first examined whether any changes to bail amounts post-HB 1719 could be explained by the nature of the charges, arrestees’ criminal histories, or past failures to appear. *Id.* ¶ 39. He found that violent charges, maximum charge levels, and past convictions decreased significantly after HB 1719. *Id.* ¶ 40. In addition, failures to appear decreased, though not significantly. *Id.* ¶ 39. That means that if judicial officers were setting bail solely based on “risk level”—as measured by charge levels, criminal histories, and past failures to appear—bail amounts should have decreased after HB 1719 because risk levels decreased. *Id.* at ¶ 40.

Instead, HB 1719 led to significantly higher bail amounts that fewer arrestees could afford to obtain release across all charge levels, prior convictions, and failure-to-appear histories. *Id.*

¶¶ 42-43, 49. As a result of HB 1719, more people were detained pretrial and for longer periods of time than before HB 1719. *Id.* ¶¶ 51-52. The number of indigent arrestees post HB 1719 also increased. *Id.* ¶¶ 39-40. Indigent arrestees who could not afford to pay bail remained in jail for much longer periods than before HB 1719 across all charge levels, prior convictions, and failure-to-appear histories. *Id.* ¶¶ 56-57.

HB 1719 led to increased detention untethered from the state's interests in public safety and court appearance because more people remained in jail for longer periods of time despite presenting less risk on average. *Id.* ¶¶ 47-53. HB 1719 also led to more wealth-based detention because indigent defendants were particularly unlikely to be able to afford bail and, as a result, remained in jail for much longer than their non-indigent counterparts not because of their risk level, but because of their inability to pay. *Id.* ¶¶ 54-57.

Carroll's conclusions are further supported by the testimony of Ms. Greer, the executive director of Pretrial Services. Pretrial Services collects data on bail setting and stores that information in Odyssey. Ex. 5, Greer Dep. at 88:1-90:1. On behalf of Shelby County, Ms. Greer testified that, since HB 1719, bail amounts have increased and pretrial release has decreased. *Id.* at 92:10-15. She further stated that there was no explanation for the change other than passage of the law. *Id.* at 93:1-4.

Carroll's conclusions and Ms. Greer's testimony directly contradict the assumptions underlying the fiscal memorandum accompanying HB 1719 (FM1542). The fiscal memorandum stated that, given that judicial officers consider other bail statutory factors: "it is assumed that the amount of bail set will not ordinarily deviate significantly . . . were the ability of the defendant to pay included in the consideration. Accordingly, it is not estimated to result in a significant number of additional defendants failing to meet bail, that otherwise would have, due to the bail being set

at an unattainable amount.” Ex. 10, Fiscal Memorandum at 1-2. The fiscal memorandum did not identify how the law served state interests. *Id.* Its assumptions are false: Bail amounts and, as a result, pretrial detention increased significantly after HB 1719. Ex. 14, Carroll Expert R. ¶ 23. As Shelby County must shoulder the costs of unnecessary detention, HB 1719 risks overburdening Shelby County’s jails and criminal courts. *See* Ex. 15, August 9, 2022 Shelby County Board of Commissioners Resolution at 5 (supporting consideration of ability to pay in part because the “Board of Commissioners find it fiscally prudent to reduce the cost of unnecessary pretrial detention”); Ex. 11, Kennedy Expert R. ¶ 26.

Increased unnecessary pretrial detention also harms communities. Not only are individuals who are detained subject to jail conditions, they also experience a higher risk of unemployment and higher rates of unfair convictions, sentencing disparities, and reoffending. Ex. 11, Kennedy Expert R. at ¶¶ 26, 26 n.3-5.

#### **F. HB 1719 Harms Just City’s Ability to Provide Services to Clients**

Just City’s core mission is operating a charitable bail fund to fight discrimination based on race, ethnicity, and income in Shelby County criminal proceedings.<sup>3</sup> Ex. 16, Declaration of Josh Spickler in Support of Plaintiffs’ Motion for Summary Judgment (“Spickler Decl.”) ¶ 3. Just City has been operating its bail fund since 2017—long before Tennessee passed HB 1719. *Id.* ¶ 5. It has been posting bail for arrestees who cannot afford their bail amounts for more than eight years, paying more than \$4,500,000 in cash bail for more than 2,000 people. *Id.* ¶ 7.

The purpose of the bail fund is to post bail for as many indigent arrestees who cannot afford

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<sup>3</sup> Plaintiffs include this section to address the Court’s questions about Just City’s standing. The undisputed record establishes that Just City has organizational standing because HB 1719 has “directly affected and interfered with [its] core business activities.” *FDA v. All. For Hippocratic Med.*, 602 U.S. 367, 395 (2024); *see also Republican Nat’l Comm. v. N.C. State Bd. Of Elections*, 120 F.4th 390, 396-97 (4th Cir. 2024).

to pay their bails as possible. *Id.* ¶ 6. If Just City has available funds, it will pay the full bail amount for qualifying indigent arrestees referred by the Shelby County Public Defender's office. *Id.* Just City does not have unlimited funds to post bail to obtain release for qualifying arrestees. *Id.* ¶ 20. It relies on fundraising and grant funding, *id.*, and sets limits on when it posts bail, including a cap on the maximum bail amount it will post for each arrestee, *id.* ¶¶ 22-24.

In Josh Spickler's experience overseeing Just City's bail fund, judicial officers set higher bail amounts and fewer release orders for individuals whose circumstances indicate that they would have received lower bail amounts or release before HB 1719. *Id.* ¶ 10. After HB 1719, Just City more frequently posts bail for clients with charges related to food insecurity and theft of household items such as toiletries, clothes, and paper towels. *Id.* ¶¶ 11-12. For example, Just City posted a \$100 bail for a client charged with trespass for standing in the Wendy's drive-through asking for food. *Id.* at ¶ 11. Based on Spickler's experience, a similarly situated client would likely have been released before HB 1719. *Id.*

Just City's experiences illustrate what Shelby County data shows. After HB 1719, judges set higher bail amounts and released arrestees less frequently. Ex. 14, Carroll Expert R. ¶¶ 42-43, 46-49; Ex. 5, Greer Dep. at 92:10-15; Section E, *infra*. This trend cannot be attributed to a change in risk levels. Ex. 14, Carroll Expert R. ¶¶ 39-40; *see* Ex. 5, Greer Dep. at 93:1-4; Section E, *infra*.

Higher bail amounts and fewer release orders post HB 1719 directly increase the costs to Just City of serving similarly situated clients as before, thereby inhibiting its ability to serve as many indigent clients as possible. Ex. 16, Spickler Decl. ¶¶ 16, 18. When bail amounts increase, posting bail for each client costs more, and more indigent people cannot afford to post bail, therefore requiring Just City's services to obtain release. *Id.* ¶¶ 13-14. The group of arrestees who qualify for Just City's bail fund post-HB 1719 are assigned higher bail amounts than their risk

levels indicate they would have received pre-HB 1719. Ex. 14, Carroll Expert R. ¶¶ 81-85. This means that Just City would need to spend more money now—approximately \$393,000—to serve the same group of qualified arrestees as it did pre-HB 1719, thereby limiting its ability to serve clients. *Id.* Another group of arrestees whose risk levels indicate that they would have received bail amounts at or below Just City’s maximum bail amount cap pre-HB 1719 now receive bail amounts exceeding that cap. *Id.* ¶¶ 86-89. Just City can therefore no longer serve that group of approximately 310 arrestees. *Id.* ¶ 88.

Also, when fewer arrestees are released, more indigent clients need Just City’s services of posting bail to obtain release. Ex. 16, Spickler Decl. ¶ 15. Judicial officers released fewer arrestees post HB 1719 despite no change in their average underlying risk, which means that a group of low-risk arrestees whose risk levels indicate that they would previously have obtained release before HB 1719 now require Just City’s services. Ex. 14, Carroll Expert R. ¶ 61. It would cost Just City an estimated additional \$1,370,624 to serve this group. *Id.* ¶ 79.

Increased costs and increased client demand harm Just City’s longstanding mission of posting bail for as many indigent arrestees as possible to fight wealth-based discrimination. Ex. 16, Spickler Decl. ¶¶ 18-19. HB 1719 therefore makes it harder for Just City to engage in its core activities of operating a bail fund. *Id.* After HB 1719, Just City spends more money posting bail and serves more clients than before. *Id.* ¶ 17. For the twelve months preceding HB 1719, Just City posted \$281,273 in bail for 162 clients. *Id.* For the twelve months following HB 1719, Just City posted \$441,650 in bail for 216 clients, and in the last eight months, Just City posted \$388,720 in bail for 229 clients. *Id.*

To counteract the harm resulting from HB 1719, Just City conducted more fundraising and adjusted its policies to ensure it maintains the necessary funds for its bail fund to operate in light

of increased costs after HB 1719. *Id.* ¶¶ 21-24. It requested and obtained more grant funding to post bails on December 6, 2024. *Id.* ¶ 21. Absent this infusion, it would have been able to serve fewer clients post HB 1719. *Id.* It also set a weekly limit on the amount of cash bail it can post and lowered the maximum bail amount cap from \$5,000 to \$4,000 and then to \$3,000 to serve more arrestees with low bail amounts. *Id.* ¶¶ 22, 24.

### **ARGUMENT**

A procedural due process claim includes two elements: "(i) deprivation by state action of a protected interest in life, liberty, or property, and (ii) inadequate process." Order Granting Class Certification (ECF 113) at 8 (citing *Novak v. Federspiel*, 140 F.4th 815, 821 (6th Cir. 2025)). The Court should grant Plaintiffs' motion for summary judgment because there are no genuine disputes as to any material facts and Plaintiffs are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Maben v. Thelen*, 887 F.3d 252, 261 (6th Cir. 2018).

#### **I. HB 1719 IS UNCONSTITUTIONALLY VAGUE AND VIOLATES THE DUE PROCESS CLAUSE**

Due process requires that "laws must provide explicit standards for those who apply them" to avoid "arbitrary and discriminatory enforcement." *Ass'n of Cleveland Fire Fighters v. City of Cleveland*, 502 F.3d 545, 551 (6th Cir. 2007) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972)). "A statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). "[T]he more important aspect . . . is the requirement that a legislature establish minimal guidelines to govern law enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357-58 (1983). The doctrine "protects citizens against the impermissible delegation of basic policy matters for resolution on an *ad hoc* and subjective basis,

with the attendant dangers of arbitrary and discriminatory application.” *Miller v. City of Cincinnati*, 622 F.3d 524, 539 (6th Cir. 2010) (internal quotations omitted). A law that is “fundamentally irrational and impossible to apply consistently” is unconstitutionally vague and therefore void. *Springfield Armory v. City of Columbus*, 29 F.3d 250, 252 (6th Cir. 1994).

HB 1719 is subject to a stringent vagueness test requiring a “high level of definiteness” because it implicates several constitutional rights. See *Belle Maer Harbor v. Charter Twp. Of Harrison*, 170 F.3d 553, 557 (6th Cir. 1999); *Ass’n of Cleveland Fire Fighters*, 502 F.3d at 551; *Memphis Ctr. for Reprod. Health v. Slatery*, 14 F.4th 409, 429 (6th Cir. 2021) (“The most stringent vagueness test applies when a law threatens to inhibit the exercise of constitutionally protected rights.”) (internal quotations omitted) (abrogated on other grounds); *Islamic Soc’y of Basking Ridge v. Twp. of Bernards*, 226 F.Supp.3d 320, 354 (D.N.J. 2016) (applying the stringent vagueness test where challenged ordinance implicated the constitutional right of free exercise of religion). HB 1719 threatens to inhibit an arrestee’s rights to pretrial liberty, against wealth-based detention, against excessive bail, and to bail under the Tennessee constitution. Section II, *supra*. It also interferes with an arrestee’s First Amendment right to petition the court for release on a lower, affordable bail amount. See *Bill Johnson’s Rests. v. NLRB*, 461 U.S. 731, 741 (1983) (“the right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances”). The undisputed record shows that defense counsel across the country often raise arguments about the amount of bail arrestees can afford, Ex. 11, Kennedy Expert R. ¶ 11, and, after passage of the law, defense counsel in Shelby County raise them less often, Ex. 5, Greer Dep. at 70:5-11. HB 1719 imposes a content-based restriction that chills these constitutionally protected arguments by barring judicial officers from considering them. Therefore, HB 1719 must have a “high level of definiteness” to “withstand facial constitutional

scrutiny.” *Belle Maer Harbor*, 170 F.3d at 557. There is no “definiteness” in HB 1719.

Indeed, under any standard of review, HB 1719 is unconstitutionally vague because there is no reasoned basis for judicial officers to apply a statute that simultaneously requires them to consider an arrestee’s financial condition and prohibits them from considering the arrestee’s ability to pay bail. The Sixth Circuit’s decision in *Springfield Armory* is instructive. In that case, the Court of Appeals struck an ordinance banning unspecified assault weapon models with “slight modifications or enhancements of firearms listed” because there was “no reasoned basis” to determine which assault weapons were subject to the ban. *Springfield Armory*, 29 F.3d at 251-53. The law did not provide a statement of purpose or explanation for the way it was drafted, did not include definitions of unclear terms, and did not achieve the stated goal of the legislature. *Id.* at 252-53. HB 1719 suffers from the same flaws. The statute does not define either term, the ordinary meanings of the terms overlap, and the legislative history, far from clarifying the difference, treats “financial condition” as an aspect of a defendant’s “ability to pay.” Ex. 10, Fiscal Memorandum at 1-2 (noting that the law would “require the magistrate to not consider [the defendant’s financial] condition in the context of the defendant’s ability to pay”).

In addition, there is no reasoned basis to apply HB 1719 because it does not serve—and indeed, undermines—the rest of the bail statute. Tennessee law requires judicial officers to set bail at the lowest amount necessary to reasonably assure public safety and court appearance. Tenn. Code Ann. § 40-11-118(a)(2). HB 1719 prevents judicial officers from complying with the statute because it prohibits them from considering whether bail is affordable. *See* Ex. 11, Kennedy Expert R. ¶ 13. Without that information, judicial officers cannot assess whether a bail amount is affordable and will function as an effective release condition, *see* Ex. 4, Marshall Dep. 70:12-71:20, or whether a bail amount is unaffordable and will instead function as a detention order, *id.*

at 67:7-12. Shelby County’s experience exemplifies the risks inherent in this irrational framework, as the levels of pretrial detention and wealth-based detention have increased since HB 1719. Ex. 14, Carroll Expert R. ¶¶ 37-53. HB 1719 is therefore not only internally inconsistent but also inconsistent with the bail statute as a whole.

The lack of guidelines invites arbitrary enforcement by delegating a policy matter to judicial officers for resolution on an *ad hoc* and subjective basis. The undisputed record shows that determining how to consider financial condition without considering ability to pay is “an individual decision” for “each magistrate and judicial official.” Ex. 4, Marshall Dep. at 87:13-20. As “ability to pay . . . means different things to different people”, *id.* at 75:9-12, and “financial condition” is “a very broad, vague term,” *id.* at 76:22-77:1, the statute permits each judicial officer setting bail to adopt different interpretations. *Id.* at 77:15-23. “Where the legislature fails to provide such minimal guidelines . . . policemen, prosecutors, and juries” are allowed “to pursue their personal predilections.” *Kolender*, 461 U.S. at 358. The Sixth Circuit and other courts around the country have invalidated statutes where the record shows that vague language invites inconsistent interpretations by those enforcing it and risks arbitrary enforcement. *See, e.g., Belle Maer Harbor*, 170 F.3d at 557-59 (holding that ordinance restricting open water areas to a “reasonable radius” invited arbitrary enforcement, citing testimony from enforcement officer that “one person’s idea of a reasonable radius would vary from another’s”); *Carolina Youth Action Project v. Wilson*, 60 F.4th 770, 784 (4th Cir. 2023) (finding statute void where it lacked “any meaningful standards” and the record showed police officers “deploy[ed] a glorified smell test to determine whether a student’s disorder was disorderly enough to be criminal”); *Cunney v. Bd. of Trs. of Grand View*, 660 F.3d 612, 621-22 (2d Cir. 2011) (“Defendants’ various interpretations of [the ordinance’s] requirements serve only to reinforce our view that the ordinance’s vagueness

authorizes arbitrary enforcement.”); *Konikov v. Orange County*, 410 F.3d 1317, 1330-31 (11th Cir. 2005) (finding evidence of an “inherent risk of discriminatory enforcement” when those enforcing the challenged code had different opinions on what would trigger a violation); *N.C. A. Philip Randolph Inst. v. N.C. State Bd. of Elections*, 730 F.Supp.3d 185, 201-02 (M.D.N.C. 2024) (finding statute void based on “[r]ecord evidence demonstrating [an] inconsistency in District Attorneys’ interpretation and enforcement of the Challenged Statute,” which “compels the conclusion that the Challenged Statute permits a ‘standardless sweep’ that allows prosecutors to ‘pursue their personal predilections’”) (quoting *Kolender*, 461 U.S. at 358), *aff’d on other grounds*, 155 F.4th 298 (4th Cir. 2025). HB 1719 fails this well-established test.

Defendants’ attempt to rationalize the statute only highlights its constitutional flaws. Defendants argued during the class certification hearing that, “[e]ssentially, what the new bail statute says is that you cannot discuss your client’s height in feet. If your client is 5 feet tall, you can’t tell the court that. You can tell the Court your client is 60 inches tall and let them – let the Court come to the conclusion of how tall your client is.” Ex. 17, Hearing on Motion for Class Certification (Transcript) at Tr. 39:12-39:17. This analogy to different units of the same measurement demonstrates the impossibility of applying HB 1719. Defendants’ proposed reading makes no sense and has no basis in the statutory text, the legislative history or the factual record of how the statute is being applied in practice. Just as an individual’s height is the same whether measured in inches and centimeters, an analysis of an individual’s “financial condition” and “ability to pay” involves the same inquiry. Merely converting a measurement from inches to centimeters, or more aptly from dollars to euros, changes nothing of substance or meaning under the statute. The statutory text and undisputed record confirm that judicial officers have no reasoned basis to distinguish between the information they *must* consider related to financial condition and

the information they *must not* consider related to ability to pay. HB 1719 is therefore void for vagueness. *See, e.g., Springfield Armory*, 29 F.3d at 251-53.

## **II. HB 1719 PREVENTS ARRESTEES FROM RECEIVING A “MEANINGFUL” OPPORTUNITY TO BE HEARD UNDER *MATHEWS V. ELDRIDGE***

“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). HB 1719 deprives arrestees of a meaningful opportunity to be heard by prohibiting judicial officers from considering their ability to pay bail when setting bail. HB 1719 subjects Mr. Barnes, Mr. Towns, and all class members to pretrial detention based on fundamentally unfair proceedings that violate the due process clause.

To determine the procedural safeguards required before the government may deprive an individual of a liberty interest, the Sixth Circuit balances the *Mathews* factors: (1) “the private individual’s interests,” (2) “the value of the suggested procedural requirements,” (3) “the risk of erroneous deprivation of the individual’s rights that is inherent in current procedures,” and (4) “the government’s interests, including the fiscal and administrative burdens at stake.” *United States v. Brandon*, 158 F.3d 947, 953 (6th Cir. 1998) (citing *Mathews*, 424 U.S. at 335). Here, all four factors weigh against HB 1719.

First, the private interest at stake here is the right to physical liberty, which is “the core of the liberty protected by the Due Process Clause from arbitrary governmental action.” *Youngberg v. Romeo*, 457 U.S. 307, 316 (1982) (quoting *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 18 (1979)). Pretrial bail setting directly implicates the “fundamental” rights to pretrial liberty and against wealth-based detention. *Johnson v. City of Cincinnati*, 310 F.3d 484, 503 (6th Cir. 2002) (citing *United States v. Salerno*, 481 U.S. 739, 750 (1987)) (pretrial liberty); *Fowler v. Benson*, 924 F.3d 247, 260–61 & n.7 (6th Cir. 2019) (wealth-based detention). HB 1719’s prohibition

against considering ability to pay also implicates the right against excessive bail under the Eighth Amendment, *Stack v. Boyle*, 342 U.S. 1, 4-5 (1951), the First Amendment right to petition the court, Section I, *supra*, and the right to bail under the Tennessee Constitution, TENN. CONST. art. I, § 15 (other than people charged with capital offenses, “all prisoners shall be bailable by sufficient sureties”). The strength and number of these private interests weigh heavily against HB 1719.

For the second and third factors, courts emphasize the value in allowing judicial officers to consider an arrestee’s ability to pay and the risk of erroneous deprivations when judicial officers are prohibited from doing so. Under Tennessee law, before a judicial officer decides to set an amount of bail as a condition to pretrial release, the judicial officer must have already determined that bail is appropriate under the circumstances. *See* Tenn. Code Ann. § 40-11-102. Without considering an arrestee's ability to pay, the judicial officer cannot determine if the bail amount will function as an incentive to appear in court or as a de facto detention order. Kennedy Expert R. ¶¶ 12-14. Nor can the judicial officers determine if the bail amount is the lowest amount necessary to reasonably ensure the arrestee's court appearance and public safety, as specifically required by Tennessee law. *Id.*; Tenn. Code Ann. 40-11-118(a)(2).

Accordingly, courts recognize that a bail order that an arrestee cannot pay “acts as a barrier to release, and additional procedural safeguards must be provided ‘to minimize the risk of substantive error, to assure fairness in the decision-making process, and to assure that the [arrestee] has a participatory role in the process.’” *Torres v. Collins*, 2023 WL 6166523, at \*9 (E.D. Tenn. Sept. 21, 2023) (quoting *Howard v. Grinage*, 82 F.3d 1343, 1349 (6th Cir. 1996)). Due process therefore requires, among other safeguards, notice to an arrestee that they can “put forth [their] own evidence for a lower bail amount” and an “opportunity to show . . . that they cannot afford the bail amount.” *Id.* at 10; *see also Rodriguez v. Providence Cmty. Corr., Inc.*, 155 F.Supp.3d

758, 770 (M.D. Tenn. 2015) (finding violation of due process because probationers “never get the chance to raise indigency”). Consideration of other factors, such as charges, criminal history, and information contained in the affidavit of indigency, *see Torres*, 2023 WL 6166523, at \*2, is of course also essential, but does not alter these requirements, which are themselves necessary for arrestees to have the “opportunity to be *heard* in a *meaningful* manner.” *Torres*, 2023 WL 6166523, at \*2, \*10 (emphasis in original). Depriving arrestees of an opportunity to be heard creates “a substantial risk that arrestees will be erroneously deprived of their pretrial liberty.” *Id.* at \*10.

The undisputed record confirms that HB 1719 deprives Plaintiffs of notice and opportunity to be heard. Because of the law, Plaintiffs Barnes and Towns, like all class members, did not receive meaningful notice or opportunity to present arguments about their ability to pay bail at either the initial screening or a later bail hearing before being detained on unaffordable bail orders. Ex. 13, Barnes Decl. ¶¶ 2-10; Ex. 12, Towns Decl. ¶¶ 2-10; Ex. 5, Greer Dep. at 37:15-24, 41:20-42:10, 65:10-66:2. The law’s denial of a meaningful opportunity to argue that the Plaintiff class members cannot afford bail necessarily risks erroneous detention. Kennedy further explains: “Without that information, there is a risk that judges will set higher bail amounts than necessary to meet the purposes of bail, resulting in erroneous detention of people who are too poor to afford the amount of bail set.” Ex. 11, Kennedy Expert R. ¶ 14.

The risk of erroneous detention occurs because, under Tennessee law, judicial officers are required to set bail as low as they determine is necessary to reasonably assure the arrestee’s appearance in court and the safety of the public. Tenn. Code Ann. § 40-11-118(a)(2). “If a judge does not know—and, indeed, is prohibited from eliciting—information about the amount of bail that a person can afford, that judge would not have the information they need to adequately assess the least restrictive condition necessary to meet the purposes of bail.” Ex. 11, Kennedy Expert R.

¶ 13. Kennedy’s opinions are undisputed.

The value of considering ability to pay bail is also clear from the resounding national consensus on this issue. Every other state relying on money bail recognizes this value. Kennedy is “aware of no state other than Tennessee that relies on money bail but prohibits judges from considering the amount of bail a person can afford when making a bail decision.” *Id.* ¶ 8.

The undisputed record shows that, at a minimum, the risk of unnecessary detentions has increased under HB 1719. Carroll’s undisputed analysis of Shelby County data shows an increase in pretrial detention. Ex. 14, Carroll Expert R. ¶¶ 37-53. Specifically, in the wake of HB 1719, bail amounts have increased and fewer defendants have been able to afford release, even though the average “risk level” of defendants (as indicated by current charge levels, history of failure to appear, and past convictions) has declined. *Id.* The post-HB 1719 untethering of bail amounts and detention from actual risk strongly indicates that unnecessary pretrial detention has increased. *Id.* There is no plausible explanation for the increase in bail amounts other than HB 1719. Ex. 14, Carroll Expert R. ¶ 94; Ex. 5, Greer Dep. at 92:20-93:4. This increase represents a regression to the pre-SBO historical norm, where judicial officers’ failure to consider ability to pay resulted in widespread detention of people who “simply cannot afford even a minimal bail,” even if this system was “not necessary to ensure future court appearances or to protect public safety.” *See* Ex. 1, Busby Report at 3, 30.

The risk of excessive bails also increased. *See Stack v. Boyle*, 342 U.S. 1, 5 (1951) (bail is excessive if it is set higher than “an amount reasonably calculated to fulfill th[e] purpose” of bail—namely, “assurance of the presence of an accused.”) Arrestees whose charge levels, failure to appear history, and past convictions indicate they would have received lower bail amounts or release before HB 1719 received higher bails after HB 1719, regardless of whether they were

ultimately detained. Ex. 14, Carroll Expert R. ¶¶ 75-89. Wealth-based detention, i.e., detention due solely to inability to pay rather than other valid factors, also increased. *See* Section III, *supra*. For all the reasons above, the second and third factors weigh against HB 1719.

The fourth factor also weighs against HB 1719. Prohibiting judicial officers from considering ability to pay does not serve the statute's express requirement to set the lowest bail amount that reasonably assures court appearance and public safety. *See* Tenn. Code Ann. § 40-11-118(a)(2). Instead, the undisputed record shows that it undermines that interest because judicial officers do not have the information they need to set bail at the lowest amount necessary. *See* Ex. 11, Kennedy Expert R. ¶ 13. Nor is there any evidence that HB 1719 otherwise advances the interests of court appearance and public safety in some general manner. To the contrary, it is undisputed that every other State that uses monetary bail either requires or allows judicial officers to consider ability to pay. *Id.* ¶ 8.

Further, the undisputed record shows that considering the amount of bail an arrestee can afford is not administratively or fiscally burdensome. The affordable bail calculator tool used in Shelby County prior to HB 1719 was a “pretty straightforward device,” Ex. 4, Marshall Dep. at 48:8-12, that takes no longer than three to four minutes to use, Ex. 5, Greer Dep. at 30:5-6, 36:7-15. Implementing the tool was not costly. *Id.* at 29:6-9, 81:15-18. The record shows that Pretrial Services has continued to collect this information after HB 1719 was enacted but does not provide it to the judicial officers. *Id.* at 24:5-25:3, 37:15-22. There would be no additional burden in providing information that is already collected. Setting aside the calculator, obtaining information about an arrestee’s income, assets, expenses, and/or other aspects of their financial condition through other means would similarly present no added burden to bail proceedings. Indeed, Kennedy is not “aware of any jurisdiction in which the consideration of ability to pay has led to

an increase in administrative or fiscal burden.” Ex. 11, Kennedy Expert R. ¶ 7. A more plausible and wasteful source of fiscal burden is the increased cost of unnecessary detention that flows from *not* considering ability to pay. *See id.* ¶ 26.

Weighing the *Mathews* factors establishes that HB 1719 deprives arrestees of due process. HB 1719 unconstitutionally subjects Plaintiffs and class members to unfair proceedings and prevents them from receiving a “meaningful” opportunity to be heard before they are detained.

### **III. HB 1719 Causes Discriminatory Wealth-Based Detention In Violation of *Bearden***

The Fourteenth Amendment guarantees the “right not to lose [one’s] liberty due to indigency.” *Alkire v. Irving*, 330 F.3d 802, 819 (6th Cir. 2003); *see also Bearden*, 461 U.S. 660, 672 (1983) (holding unconstitutional the revocation of probation for failure to pay absent consideration of ability to pay and alternatives to detention). HB 1719 violates this principle by preventing judicial officers from making the ability to pay determination that is necessary to avoid detention due to indigency.

Though the Supreme Court has not addressed the specific question of whether *Bearden* applies to pretrial bail setting, every court to consider the issue has held that it does. Pl. Opp. to State MTD (ECF 62) at 13-16 (collecting circuit court, district court, and state high court cases). The Sixth Circuit affirmed that *Bearden* governs the “imposition of secured bail for pretrial release.” *McNeil v. Community Probation Services, LLC*, 2019 WL 633012, at \*7 (M.D. Tenn. Feb. 14, 2019), *aff’d*, 945 F.3d 991 (6th Cir. 2019) (addressing bail proceedings similar to those in Shelby County). Other courts have reached the same conclusion, holding that *Bearden* applies to criminal proceedings where judges set bail upon arrest, and arrestees are detained pending payment of bail. *See, e.g., Weatherspoon v. Oldham*, 2018 WL 1053548, at \*4-7 (W.D. Tenn. Feb. 26, 2018); *Walker v. City of Calhoun*, 901 F.3d 1245, 1259-60 (11th Cir. 2018).

This consensus is not surprising, as *Bearden*’s logic is readily transferable to the bail

context. *Bearden* set forth procedures intended to prohibit criminal systems from detaining individuals only because they are unable to pay a financial requirement. 461 U.S. at 672-73. Applying these requirements to bail practices, *McNeil* held that the bail system there violated *Bearden* in large part because judges did not inquire into, nor make findings related to, an arrestee's ability to pay bail. *McNeil*, 2019 WL 633012, at \*13. Courts have consistently held that bail systems that similarly fail to consider ability to pay violate *Bearden*. See, e.g., *ODonnell v. Harris Cty.*, 892 F.3d 147, 161-63 (5th Cir. 2018), *aff'ing* 251 F. Supp. 3d 1052, 1150-55 (S.D. Tex. 2017), *overruled on other grounds by Daves v. Dallas Cnty.*, 22 F.4th 522 (5th Cir. 2022) and *Daves v. Dallas Cnty.*, 63 F.4th 616 (5th Cir. 2023); *Weatherspoon*, 2018 WL 1053548, at \*4-7.

“Due process and equal protection principles converge” in *Bearden* claims. 461 U.S. at 665. Whether applying due process or equal protection, courts must inquire into “the nature of the individual interest affected, the extent to which it is affected, the rationality of the connection between legislative means and purpose, and the existence of alternative means for effectuating that purpose.” *Id.* at 666-67. A bail system that fails to “provide notice and an opportunity for the arrestee to be heard” regarding ability to pay violates due process. *McNeil*, 2019 WL 633012, at \*15. Wealth-based detention violates *Bearden* when the bail system does not further the state's interests in ensuring public safety and court appearance, which results in individuals being detained based solely on their access to wealth. *Id.* at \*14-15 (finding *Bearden* violation where defendants “presented no proof to suggest that the current bail system furthers those interests,” such as statistical evidence of court appearance or re-arrest rates).

Heightened scrutiny applies under *Bearden* when judges do not consider ability to pay at any point in the pretrial proceedings. *Id.* at \*13 (applying heightened scrutiny where judges do not consider ability to pay at initial screenings nor at later hearings); *Torres*, 2023 WL 6166523,

at \*6; *Cf. Walker*, 901 F.3d at 1261-62 (heightened scrutiny may not apply when wealth-based detention occurs only *pending* an ability to pay hearing). Under heightened scrutiny, courts examine whether the bail system is narrowly tailored to the state’s interests. HB 1719 must therefore satisfy heightened scrutiny because it expressly bars judicial officers from considering ability to pay at any point in the process.

Failing to assess ability to pay violates *Bearden* even if judges evaluate other factors relevant to setting bail under Tennessee law, such as financial circumstances. *McNeil* is again instructive. There, judges sometimes considered “materials and financial information available in the probationer’s case file” when setting bail. 2019 WL 633012, at \*3. The court nonetheless found that the bail system did not serve “any compelling governmental interest” because, by failing to consider ability to pay, it perpetuated arbitrary wealth-based discrimination, namely, effectuating the release of wealthy defendants while detaining indigent defendants, all without any connection to court appearance or public safety. *Id.* at \*13-14. Thus, while other factors are certainly relevant to assessing appropriate release conditions, assessing ability to pay is necessary to protect against arbitrary discrimination based on wealth. *See also Brangan v. Commonwealth*, 477 Mass. 691, 699-700 (2017) (holding that, even if the judge considered other relevant factors, the judge must still consider the amount of bail a defendant can afford to comport with due process and equal protection); *Valdez-Jimenez v. Eighth Judicial Dist. Court of Nev.*, 136 Nev. 155, 165 (2020) (same); *In re Humphrey*, 11 Cal. 5th 135, 154 (2021) (same).

The record from Shelby County demonstrates how HB 1719 violates *Bearden*. Arrestees do not receive notice or opportunity to be heard regarding their ability to afford bail at any point in the process. Further, HB 1719 results in the release of non-indigent defendants and the detention of indigent defendants without any connection to state interests in court appearance or public

safety. If two defendants, one wealthy and one indigent, with the “same charge, same criminal backgrounds, same circumstances” receive the same bail amounts that the wealthy defendant can pay but the indigent defendant cannot pay, that results in a violation of equal protection. *McNeil*, 2019 WL 633012, at \*10 (quoting *O'Donnell v. Harris County*, 892 F.3d 147, 163 (5th Cir. 2018)). After HB 1719, there was a statistically significant increase in bail amounts that fewer people could afford across all charge levels, prior convictions, failure-to-appear histories, and demographics. Ex. 14, Carroll Expert R. ¶¶ 42-44, 49; *see* Ex. 5, Greer Dep. at 92:20-93:4 (stating that bail amounts and pretrial detention increased post HB 1719 with no other explanation than passage of the law). As a result, indigent defendants who could not afford bail remained in jail for longer periods of time, Ex. 14, Carroll Expert R. ¶¶ 56-57, despite presenting on average *lower* risks of public safety or flight than those pre-HB 1719, *id.* ¶¶ 39-40 (measuring risk levels by charge level, history of failure to appear, and past convictions). The increase in bail amounts despite a corresponding decrease in average risk levels shows that, because of HB 1719, judicial officers are more often setting bail exceeding the amount needed to ensure court appearance in violation of *Bearden*. *See McNeil*, 2019 WL 633012, at \*8 (finding that setting bail in excess of “what is necessary to reasonably assure defendant’s presence at trial” violates due process and equal protection) (citing *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978)).

Neither the defendants nor the State have proffered contrary evidence. The undisputed evidence shows that the law undermines rather than serves state interests. *See McNeil*, 2019 WL 633012, at \*14 (relying on Plaintiff’s expert evidence to find that the bail system did not serve state interests); *O’Donnell*, 892 F.3d at 154. HB 1719 therefore causes arbitrary wealth-based detention in violation of *Bearden*.

As in *McNeil*, judicial officers’ consideration of other statutory bail factors does not save

the statute. To the contrary, HB 1719’s prohibition on considering ability to pay undermines judicial officers’ individualized assessment of the other statutory factors. The statute has predictably caused tremendous confusion in Shelby County over how judicial officers are to consider factors such as employment, financial condition, family ties and relationships, or ties to the community without considering ability to pay. *See* Ex. 4, Marshall Dep. at 77:2-14, 85:20-86:17, 87:13-21, 89:10-14; Ex. 5, Greer Dep. at 53:3-6. Judicial officers are therefore prevented from tying their bail orders to the state’s purposes of ensuring public safety and return to court because HB 1719 affirmatively prohibits them from determining the lowest amount of bail necessary to meet the state’s interests. Ex. 11, Kennedy Expert R. ¶ 13; *see* Ex. 4, Marshall Dep. at 70:16-71:10 (testifying that the affordable bail calculator enabled him to exercise his discretion to release a defendant on affordable bail).

#### **IV. The Court Should Enter Permanent Injunctive Relief Against the Sheriff and Declaratory Relief Against All Parties**

##### **A. A Permanent Injunction Against the Sheriff Is Warranted**

The Court should permanently enjoin the Shelby County Sheriff from detaining arrestees subject to bail orders issued pursuant to HB 1719. “A plaintiff seeking a permanent injunction must demonstrate that it has suffered an irreparable injury, there is no adequate remedy at law, and that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted, and that it is in the public’s interest to issue the injunction.” *Audi AG v. D’Amato*, 469 F.3d 534, 550 (6th Cir. 2006) (cleaned up). The Sheriff enforces the challenged law and therefore “can be sued in an injunction action.” *McNeil v. Cmty. Prob. Servs., LLC*, 945 F.3d 991, 995 (6th Cir. 2019) (“*McNeil II*”).

As this Court previously concluded, arrestees detained under unconstitutional bail orders suffer irreparable harm. Order (ECF 64) at 35 (“The right to be free from unconstitutional

detention thus amounts to an irreparable injury.”); *see also United States v. Bogle*, 855 F.2d 707, 710-11 (11th Cir. 1988). Not only does an unconstitutionally detained person lose their freedom, they also face “loss of work, separation from family, undue pressure to plead guilty, and other negative consequences.” *McNeil*, 2019 WL 633012 at \*16. Notwithstanding these specific harms, a finding of irreparable injury is “mandated” where a constitutional right is “being threatened or impaired,” as it is here, and no further showing of harm is necessary. *ACLU of Ky. v. McCreary Cty.*, 354 F.3d 438, 445 (6th Cir. 2003) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

As this Court also previously concluded, injunctive relief is the proper remedy for this irreparable harm. Order (ECF 64) at 35 (“[T]he relief Just City seeks here would terminate allegedly unconstitutional detentions and preclude the state court from ordering additional unconstitutional detentions, which favors injunctive relief”). The class of plaintiffs and Just City have established systemic and ongoing deprivations of arrestees’ constitutional rights. For that reason, “legal remedies by themselves” are “inadequate to resolve the [County’s] constitutional violations” and permanent injunctive relief is warranted. *Cole v. City of Memphis, Tenn.*, 108 F. Supp. 3d 593, 607 (W.D. Tenn. 2015), *aff’d sub nom. Cole v. City of Memphis*, 839 F.3d 530 (6th Cir. 2016) (permanently enjoining unconstitutional practice by City).

In contrast to the irreparable harm that arrestees suffer, Defendants suffer no harm by losing the ability to enforce an unconstitutional law. *Planned Parenthood Ass’n of Cincinnati v. City of Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987); *Rodriguez v. Providence Cmty. Corr., Inc.*, 155 F. Supp. 3d 758, 771-72 (M.D. Tenn. 2015) (“[T]he Court declines to categorize the need to erect the proper constitutional safeguards as an injury.”). Further, merely reverting to pre-HB 1719 bail processes would pose minimal administrative burden. *See Section II, supra*.

The public interest also weighs in favor of permanent injunctive relief because “the public

interest is served by preventing the violation of constitutional rights.” *Chabad of S. Ohio & Congregation Lubavitch v. City of Cincinnati*, 363 F.3d 427, 436 (6th Cir. 2004); *see also ACLU Fund of Mich. v. Livingston Cty.*, 796 F.3d 636, 649 (6th Cir. 2015); *Rodriguez*, 155 F.Supp.3d at 771-72.

Under binding Sixth Circuit precedent, injunctive relief is warranted against the Shelby County Sheriff. Where, as here, the “constitutional violation is an improperly determined bail amount” and the sheriff “detains the [arrestee] until she pays the bail amount,” the sheriff is a proper party against whom injunctive relief should be issued. *McNeil II*, 945 F.3d at 996. The Sheriff enforces unconstitutional bail orders issued pursuant to HB 1719 by detaining arrestees who cannot afford to pay their bail, and this Court should therefore permanently enjoin the Sheriff’s wrongful detention of the plaintiff class.

**B. Declaratory Relief Against All Parties Is Warranted**

In addition to issuing a permanent injunction against the Sheriff, the Court should grant a declaratory judgment against the presiding Judge, the judicial commissioners, and the Sheriff. Declaratory relief against the judicial Defendants is warranted because they are “actively involved with administering” HB 1719, and when a “judge determines a bail amount without considering ability to pay,” they play a “part in carrying out the alleged harm.” *McNeil II*, 945 F.3d at 995-96. Declaratory relief against the presiding judge is further warranted because of his administrative enforcement of HB 1719 by ordering that judicial officers no longer consider nor inquire into ability to pay. *See Ex. 4, Marshall Dep. at 57:15-21.* Declaratory relief against the Sheriff is warranted for the same reasons warranting a permanent injunction.

When deciding to issue declaratory relief, the court should consider: “(1) whether the declaratory action would settle the controversy; (2) whether the declaratory action would serve a useful purpose in clarifying the legal relations in issue; (3) whether the declaratory remedy is being

used merely for the purpose of ‘procedural fencing’ or ‘to provide an arena for a race for res judicata[‘;] (4) whether the use of a declaratory action would increase friction between our federal and state courts and improperly encroach upon state jurisdiction; and (5) whether there is an alternative remedy which is better or more effective.” *Cardinal Health, Inc. v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*, 29 F.4th 792, 796 (6th Cir. 2022) (quoting *Grand Trunk W. R.R. Co. v. Consol. Rail Corp.*, 746 F.2d 323, 326 (6th Cir. 1984)).

As this Court found, “A ruling that the statute is unconstitutional—which is the declaratory relief Just City requests—would essentially decide the ultimate issue in this case and ‘settle the controversy.’” Order (ECF 64) at 38. The Court also found that *Younger* abstention by the federal court is not warranted. *Id.* at 5-12. Thus, for the same reasons, a declaratory order would not “increase friction between federal and state courts” nor “encroach upon state jurisdiction.” *Cardinal Health*, 29 F.4th at 796. Likewise, there is no better alternative remedy. Declaratory relief would decide the ultimate issue in this case and provide the systemic relief Plaintiffs seek.

### **CONCLUSION**

For the foregoing reasons, the Court should issue a permanent injunction against the Shelby County Sheriff and grant a declaratory judgment against all Defendants that HB 1719 violates due process.

Dated: January 22, 2026

Respectfully submitted,

/s/ David Elbaum

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**CERTIFICATE OF SERVICE**

I, David Elbaum, certify that on January 22, 2026, I caused a true and correct copy of the foregoing document to be filed electronically via the ECF system.

Respectfully submitted,

*/s/ David Elbaum*

\_\_\_\_\_  
David Elbaum

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE**

**Just City, Inc.**, and class representatives  
**Deangelo Towns** and  
**Marshawn Barnes**,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

Floyd Bonner Jr.,  
**Shelby County Sheriff;**

Lee Wilson,  
**Presiding Shelby County General  
Sessions Criminal Court Judge;** and

John Marshall, Robert Barber, Rhonda Harris,  
Kevin Reed, Christopher Ingram, Shayla  
Purifoy, Ross Sampson, Serena Gray, Terita  
Hewlett, Mischelle Best, Kenya Smith, Zayid  
Saleem, Kathy Kirk Johnson, Leslie Mazingo,  
**Shelby County Judicial  
Commissioners,**

in their official capacities,

Defendants.

Case No. 2:24-cv-2540-TLP-tmp

**PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF  
THEIR MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, by and through undersigned counsel, submit the following statement of undisputed material facts upon which Plaintiffs rely in support of their Motion for Summary Judgment:

**A. How Shelby County’s Bail Practices Changed Because of HB 1719**

1. Under Tennessee law, judicial officers<sup>1</sup> must set bail “as low as the court determines is necessary to reasonably ensure the safety of the community and the appearance of the defendant as required.” Tenn. Code Ann. § 40-11-118(a)(2).

2. Tennessee law always permitted consideration of ability to pay—until HB 1719. Tenn. Code Ann. § 40-11-118(b)(2) (1996) (amended 2024).

3. Before 2023, judicial officers setting bail in Shelby County did not consider the amount of bail arrestees could afford. Ex. 1, Shelby County Jail Monitor Report, *Busby v. Bonner*, No. 20-cv-2359 (W.D. Tenn.) at 3, 30. This practice led to the widespread detention of people “who simply cannot afford even a minimum bond” even though this system was “not necessary to ensure future court appearances or to protect public safety.” *Id.*

4. To address these ongoing constitutional violations, Shelby County implemented a new Standing Bail Order in 2023. Ex. 2, Standing Bail Order (“SBO”). The SBO was the result of negotiations between Shelby County entities (including Shelby County, the General Sessions Criminal Court Divisions, and the Sheriff’s office) and advocacy groups including Plaintiff Just City, a Memphis-based nonprofit organization that operates a charitable bail fund. Ex. 3, June 9, 2022 Memorandum of Understanding (“MOU”) ¶¶ 1, 9.

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<sup>1</sup> As in the Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment, the term “judicial officers” is used to refer to any individual who has the authority to set bail, including General Sessions judges and judicial commissioners.

5. The SBO requires judicial officers to consider and enter findings regarding the amount of bail a person can afford to comply with the statute's mandate to set bail at the lowest amount necessary to reasonably ensure the safety of the community and the appearance of the defendant. Ex. 2, SBO at 3-4; Ex. 4, June 30, 2025 Rule 30(b)(6) Deposition of John Marshall ("Marshall Dep.") at 27:10-28:1 (June 30, 2025); *see* Tenn. Code Ann. § 40-11-118(a)(2).

6. Judicial officers may set unaffordable bail that serves to detain the arrestee only if no other combination of release conditions would reasonably ensure the goals of public safety and court appearance. Ex. 2, SBO at 4; *see* TN Code § 40-11-118.

7. Under the SBO, after a person is arrested and booked into the Shelby County jail, a Pretrial Services employee interviews the arrestee about their background, including their arrest history and pending cases. Ex. 5, June 30, 2025 Rule 30(b)(6) Deposition of Llana Greer ("Greer Dep.") at 23:12-23.

8. In addition to the interview questions, the Pretrial Services employee also asks arrestees questions about their income, assets, and expenses. *Id.* at 27:10-28:1. Pretrial Services staff enter this information into an affordable bail calculator, a tool created by the Vera Institute, that calculates the amount of bail the arrestee can afford. *Id.* at 27:6-16; Ex. 6, Sample Affordable Bail Calculator. The interview takes seven to twelve minutes, Ex. 5, Greer Dep. at 25:6, and using the affordable bail calculator takes an additional three to four minutes, *id.* at 36:13-16.

9. Next, Pretrial Services completes a bail packet and notifies the on-call judicial officer that the arrestee is ready for bail setting at an initial bail screening proceeding. *Id.* at 33:3-4. The bail packet includes the completed interview form, pretrial case records, and bail forms for the judicial officer to complete. *Id.* at 31:5-11, 31:18-19.

10. The judicial officer and Pretrial Services employee then discuss by phone each arrestee's situation, including prior criminal history, pending cases, and personal circumstances including employment status. *Id.* at 41:2-13; 42:2-6. Pretrial Services then sends the judicial officer the bail forms to complete and part of the bail packet. *Id.* at 44:3-13. The other bail packet documents are available in each arrestee's case file upon request from a judicial officer. *Id.* at 58:18-59:4.

11. Before the passage of HB 1719, the judicial officer and Pretrial Services also discussed the amount of bail that the arrestee can afford. *Id.* at 37:15-38:2.

12. After HB 1719, Pretrial Services still asks the arrestee questions about their income, assets, and expenses and determines an affordable bail amount using the affordable bail calculator. *Id.* at 24:5-24. However, because of HB 1719, Pretrial Services no longer provides the affordable bail amount to the judicial officer, either on the phone or through paperwork. *Id.* at 25:1-3, 37:15-22.

13. Other than employment status, Pretrial Services does not provide any other information about an arrestee's ability to pay or financial condition to the judicial officer nor does the judicial officer inquire into the arrestee's ability to pay or financial condition. *Id.* at 41:20-42:10.

14. Instead, Pretrial Services merely stores the information in its own files. *Id.* at 24:23-24.

15. Next, the judicial officer sets bail using an initial screening form. *Id.* at 53:7-55:16. The form lists all the statutory factors that judicial officers must consider when setting bail, and judicial officers check boxes to indicate the factors upon which they rely when making their bail decisions. Ex. 7, Revised Bail Screening Form; Ex. 5, Greer Dep. at 53:7-55:16.

16. Before HB 1719, judicial officers considered the arrestee's maximum affordable bail amount when deciding the lowest bail amount necessary to ensure public safety and court appearance. Ex. 4, Marshall Dep. at 27:20-28:1; Ex. 5, Greer Dep. at 53:12-54:14; Ex. 8, Bail

Screening Form. This information auto-populated in the initial screening form that they completed. Ex. 5, Greer Dep. at 53:20-23.

17. After HB 1719, the form no longer includes the arrestee's maximum affordable bail amount. *Id.* at 81:7-10; *compare* Ex. 8, Bail Screening Form, *with* Ex. 7, Revised Bail Screening Form.

18. Judicial officers no longer consider an arrestee's affordable bail amount when setting bail nor do they inquire about or enter findings regarding an arrestee's ability to pay bail. Ex. 4, Marshall Dep. at 57:15-21.

19. Once a judicial officer sets bail, arrestees who can afford to pay bail or who do not have bail set are released, and those who cannot afford to pay bail remain detained. Ex. 5, Greer Dep. at 56:15-57:4. Arrestees who are detained are arraigned, usually the day after arrest, and they are appointed counsel if the court deems them indigent. *Id.* at 78:11-19. If they have not posted bail, they then receive a bail hearing before a judicial officer. *Id.* at 61:21-62:2.

20. The arrestee, their counsel, the District Attorney, and Pretrial Services are present at the bail hearing. *Id.* at 63:21-64:4. Judicial officers presiding at the hearing must set bail at the lowest amount necessary to ensure court appearance and public safety. Tenn. Code Ann. § 40-11-118(a)(2); Ex. 2, SBO at 5.

21. Before HB 1719, judicial officers inquired into and entered findings regarding the arrestee's ability to pay during bail hearings. Pretrial Services often provided information about an arrestee's ability to pay in response to inquiries from the judicial officers. Ex. 5, Greer Dep. at 68:12-69:1.

22. Defense counsel also presented arguments that their clients could not afford to pay bail. *Id.* at 70:5-8. Judicial officers referenced the arrestee's ability to pay approximately 30% of the

time when setting bail, *id.* at 69:13-21 and entered findings regarding the arrestee's ability to pay in the bail hearing order form they completed. Ex. 4, Marshall Dep. at 106:19-107:4.

23. After HB 1719, judicial officers no longer inquire into the arrestee's affordable bail amount, income (other than employment status), benefits, expenses, or finances during bail hearings. Ex. 5, Greer Dep. at 65:10-66:2.

24. Pretrial Services does not bring up the arrestee's ability to afford bail. *Id.* at 68:1-4. Defense counsel do not make arguments that their clients cannot afford bail as often as they did before. *Id.* at 70:5-11. Judicial officers no longer enter findings regarding the arrestee's ability to pay bail either on the record, *id.* at 67: 20-24; Ex. 4, Marshall Dep. at 107:5-12, or when completing the bail hearing order form. Ex. 4, Marshall Dep. at 107:1-4.

25. The General Sessions judges made the decision to stop using the affordable bail calculator solely to comply with HB 1719. *Id.* at 51:16-20, 53:14-18.

26. The Presiding General Sessions Judge, also the administrative judge, is responsible for deciding on any changes to the forms, Ex. 4, Marshall Dep. at 21:14-18, and judicial commissioners must follow bail guidelines set by that judge. *Id.* at 20:10-12; Tenn. Code Ann. § 40-1-111(a)(1)(A)(iv).

27. The administrative judge convened a meeting right before passage of HB 1719, Ex. 4, Marshall Dep. at 53:4-7, 51:23-52:7, and ordered the judicial commissioners to stop getting information from Pretrial Services regarding the affordable bail calculator and change the forms to "take any discussion about affordable and unaffordable out." *Id.* at 57:15-21. The judicial commissioners followed these instructions. *Id.* at 51:1-7; Ex. 9, May 23, 2024 Email from Commissioner Purifoy to judicial commissioners and Pretrial Services, ("Please do not include

affordable bail information, numbers, or Vera calculator information. Gov. Lee signed law prohibiting us from considering it effective immediately”).

**B. Considering Ability to Pay Did Not Lead to Increased Administrative Burden**

28. Even before the SBO, Shelby County’s longstanding practice involved Pretrial Services interviewing arrestees upon booking, Ex. 5, Greer Dep. 27:1-5, preparing bail packets, *id.* at 33:5-7, and providing information to judicial officers setting bail, *id.* at 46:7-13, Ex. 4, Marshall Dep. at 19:1-5.

29. The SBO merely added a step by which Pretrial Services also asked questions to obtain the affordable bail amount, which they then provided to the judicial officers setting bail. Ex. 5, Greer Dep. at 28:4-6, 33:15-22; Ex. 4, Marshall Dep. at 31:4-10. Completing these additional questions and obtaining the affordable bail amount took only an additional three to four minutes. Ex. 5, Greer Dep. at 36:13-16.

30. Pretrial Services employees were able to successfully implement the affordable bail calculator after “two or three trainings.” *Id.* at 28:24-29:9.

31. The SBO also added forms for judicial officers to complete both at the initial release screening and at the bail hearing to show they considered the amount of bail a person can afford before setting the lowest amount necessary to ensure public safety and court appearance. Ex 2, SBO at 3-4; Ex. 4, Marshall Dep. at 27:8-14.

32. Overall, Shelby County was able to successfully implement the SBO, Ex. 4, Marshall Dep. 36:2-4, and did not incur any additional costs, Ex. 5, Greer Dep. at 81:15-18.

33. Shelby County worked with pretrial consultant Spurgeon Kennedy to implement these reforms. Ex. 11, Expert Report of Spurgeon Kennedy (“Kennedy Expert R.”) ¶¶ 21-23 & Ex. A ¶ 2 .

34. In Spurgeon Kennedy's experience, courts consider arrestees' ability to pay with little or no fiscal or administrative burden. Ex. 11, Kennedy Expert R. ¶¶ 7, 15, 20, 24.

35. When facilitating discussions between Shelby County and the advocacy groups, Kennedy did not hear any concerns or complaints from judges, Pretrial Services employees, or court staff that administering the calculator would lead to increased costs or administrative burden. *Id.* ¶ 23.

36. The affordable bail calculator was a straightforward device that represented a person's disposable income. Ex. 4, Marshall Dep. at 48:10-12.

37. Judicial officers were able to use the information from the affordable bail calculator to determine the lowest amount of bail necessary to comply with the statute. *Id.* at 70:19-71:11.

### **C. Considering Ability to Pay Did Not Lead to Increased Public Safety Risk**

38. Implementation of the SBO did not lead to increased public safety risk or failures to appear in court, according to undisputed data analysis. The Center for Community Research and Evaluation (CCRE) at the University of Memphis found that the Standing Bail Order did not result in increases in rates of rearrest, broader recidivism, or failure to appear. *Analysis of the Pretrial Detention System in Shelby County, Tennessee: 2025 Report*, University of Memphis, School of Urban Affairs and Public Policy, available at: [https://www.memphis.edu/ccre/pretrial\\_ccre\\_commission\\_20250326.pdf](https://www.memphis.edu/ccre/pretrial_ccre_commission_20250326.pdf), at 29-36. Commissioner Marshall affirmed the CCRE's report's conclusions. Ex. 4, Marshall Dep. at 44:6-9 ("Bottom line is [rearrests] didn't change very much one way or the other" after the Standing Bail Order). *Id.* at 44:6-9.

**D. HB 1719 Is Unprecedented, Undefined, and Incompatible with the Statutory Scheme**

39. HB 1719 modified TN Code § 40-11-118(b)(2) to maintain the requirement that judicial officers consider the defendant’s “financial condition,” but added: “provided, that the defendant’s ability to pay shall not be considered.” 2024 Tenn. Pub. Acts Ch. 869 (May 1, 2024).

40. “Tennessee is the only state that expressly prohibits courts from considering ability to pay when setting bail.” Ex. 11, Kennedy Expert R. ¶ 6. It is “standard practice for judges to consider an individual’s ability to pay or financial resources when setting bail in all other states that rely on money bail.” Kennedy Expert R. ¶ 6. Defense counsel often present arguments regarding the amount of bail their clients can afford, judges generally consider such representations when making bail decisions, and judges may reduce bail orders to affordable amounts upon finding that a lower bail amount is sufficient to meet the purposes of bail. *Id.* ¶¶ 6-8, 10-11.

41. HB 1719’s fiscal memorandum states that the law would “require the magistrate to not consider [the defendant’s financial] condition in the context of the defendant’s ability to pay”). Ex. 10, HB 1719 Fiscal Memorandum at 1-2.

42. “If a judge does not know—and indeed, is prohibited from eliciting—information about the amount of bail that a person can afford, that judge would not have the information they need to adequately assess the least restrictive condition necessary to meet the purposes of bail.” Ex. 11, Kennedy Expert R. ¶ 13.

43. “Without that information, there is a risk that judges will set higher bail amounts than necessary to meet the purposes of bail, resulting in erroneous detention of people who are too poor to afford the amount of bail set.” *Id.* ¶ 14.

44. “[F]inancial condition” is “a very broad vague term,” Ex. 4, Marshall Dep. at 76:22-77:1, and “ability to pay . . . means different things to different people . . . that’s the whole problem,” *id.*

at 75:9-12. Distinguishing between financial condition and ability to pay is “an individual decision, [left to] each magistrate and judicial official.” *Id.* at 87:13-20. Every judicial commissioner could have their own interpretations of what ability to pay and financial condition mean. *Id.* at 77:15-23. Shelby County has issued no policies or training on how to apply the law or what the terms mean. *Id.* at 77:2-14, 87:17-21.

#### **E. HB 1719 Increases Unnecessary and Wealth-Based Detention**

45. “When judges set bail at an amount that exceeds what a person can afford, that bail acts as a de facto detention order.” Ex. 11, Kennedy Expert R. ¶ 12.

46. Shelby County judicial officers enforce HB 1719 by detaining arrestees without considering ability to pay, and the Sheriff enforces bail detention orders. Tenn. Code Ann. § 8-8-201(a)(1)(3) (“It is the sheriff’s duty to take charge and custody of the jail . . . and of the prisoners therein; receive those lawfully committed, and keep them . . . until discharged by law . . .”). Def. Ans. to Am. Compl. (ECF 81) ¶ 5.

47. Plaintiffs (and class representatives) Deangelo Towns and Marshawn Barnes were detained on secured bail orders that they could not afford to pay. Ex. 12, Towns Decl. ¶¶ 2, 3; Ex. 13, Barnes Decl. ¶¶ 2,3. When they were arrested, they were subject to an initial screening where the judicial officers did not inquire into or enter findings regarding their ability to pay. Ex. 12, Towns Decl. ¶ 7; Ex. 13, Barnes Decl. ¶ 7. Instead, the judicial officers set their bails at amounts exceeding what they could afford. Ex. 12, Towns Decl. ¶ 5; Ex. 13, Barnes Decl. ¶ 5. They were each then scheduled for a bail hearing, where the judicial officers again did not inquire into or enter findings regarding their ability to pay and maintained their bails at the same unaffordable amounts. Ex. 12, Towns Decl. ¶¶ 8-10; Ex. 13, Barnes Decl. ¶¶ 8-10. They therefore remained in jail because they could not afford bail. *Id.*

48. They represent a certified class of all people in the custody of the Shelby County Sheriff who are detained under bail orders issued by Shelby County judges pursuant to Tenn. Code Ann. § 40-11-119(b), as amended by HB 1719, without considering their ability to pay. Order Granting Class Cert. (ECF 113) at 19.

49. Ryan Carroll is an expert in analyzing large volumes of criminal legal data using standard statistical analysis. Ex. 14., Expert Report of Ryan Carroll (“Carroll Expert R.”) ¶¶ 1-2. He analyzed the impact of HB 1719 using publicly available Shelby County data. *Id.* ¶ 20.

50. Carroll first examined whether any changes to bail amounts post-HB 1719 could be explained by the nature of the charges, arrestees’ criminal histories, or past failures to appear. *Id.* ¶ 39. He found that violent charges, maximum charge levels, and past convictions decreased significantly after HB 1719. *Id.* ¶ 40. In addition, failures to appear decreased, though not significantly. *Id.* ¶ 39. That means that if judicial officers were setting bail solely based on “risk level”—as measured by charge levels, criminal histories, and past failures to appear—bail amounts should have decreased after HB 1719 because risk levels decreased. *Id.* ¶ 40.

51. Instead, HB 1719 led to significantly higher bail amounts that fewer arrestees could afford to obtain release across all charge levels, prior convictions, and failure-to-appear histories. *Id.* ¶¶ 42-43, 49. As a result of HB 1719, more people were detained pretrial and for longer periods of time than before HB 1719. *Id.* ¶¶ 51-52. The number of indigent arrestees post-HB 1719 also increased. *Id.* ¶¶ 39-40. Indigent defendants who could not afford to pay bail remained in jail for much longer periods than before HB 1719 across all charge levels, prior convictions, and failure-to-appear histories. *Id.* ¶¶ 56-57.

52. HB 1719 led to increased detention untethered from the state's interests in public safety and court appearance because more people remained in jail for longer periods of time despite presenting less risk on average. *Id.* ¶¶ 47-53.

53. HB 1719 also led to more wealth-based detention because indigent defendants were particularly unlikely to be able to afford bail and, as a result, remained in jail for much longer than their non-indigent counterparts not because of their risk level, but because of their inability to pay. *Id.* ¶¶ 54-57.

54. Pretrial Services collects data on bail setting and stores that information in Odyssey. Ex. 5, Greer Dep. at 88:1-90:1. On behalf of Shelby County, Ms. Greer testified that, since HB 1719, bail amounts have increased and pretrial release has decreased. *Id.* at 92:10-15. She further stated that there was no explanation for the change other than passage of the law. *Id.* at 93:1-4.

55. The fiscal memorandum did not identify how the law served state interests. Ex. 10, Fiscal Memorandum at 1-2.

56. As Shelby County must shoulder the costs of unnecessary detention, HB 1719 risks overburdening Shelby County's jails and criminal courts. *See* Ex. 15, August 9, 2022 Shelby County Board of Commissioners Resolution at 5 (supporting consideration of ability to pay in part because the "Board of Commissioners find it fiscally prudent to reduce the cost of unnecessary pretrial detention"); Ex. 11, Kennedy Expert R. ¶ 26.

57. Not only are individuals who are detained subject to jail conditions, they also experience a higher risk of unemployment and higher rates of unfair convictions, sentencing disparities, and reoffending. Ex. 11, Kennedy Expert R. ¶¶ 26, 26 n.3-5.

**F. HB 1719 Harms Just City's Ability to Provide Services to Clients**

58. Just City's core mission is operating a charitable bail fund to fight discrimination based on race, ethnicity, and income in Shelby County criminal proceedings. Declaration of Josh Spickler in Support of Plaintiffs' Motion for Summary Judgment ("Spickler Decl.") ¶ 3. Just City has been operating its bail fund since 2017—long before Tennessee passed HB 1719. *Id.* ¶ 5. It has been posting bail for arrestees who cannot afford their bail amounts for more than eight years, paying more than \$4,500,000 in cash bail for more than 2,000 people. *Id.* ¶ 7.

59. The purpose of the bail fund is to post bail for as many indigent arrestees who cannot afford to pay their bails as possible. *Id.* ¶ 6.

60. If Just City has available funds, it will pay the full bail amount for qualifying indigent arrestees referred by the Shelby County Public Defender's office. *Id.* Just City does not have unlimited funds to post bail to obtain release for qualifying arrestees. *Id.* ¶ 20. It relies on fundraising and grant funding, *id.*, and sets limits on when it posts bail, including a cap on the maximum bail amount it will post for each arrestee, *id.* ¶¶ 22-24.

61. In Josh Spickler's experience overseeing Just City's bail fund, judicial officers set higher bail amounts and fewer release orders for individuals whose circumstances indicate that they would have received lower bail amounts or release before HB 1719. *Id.* ¶ 10. After HB 1719, Just City more frequently posts bail for clients with charges related to food insecurity and theft of household items such as toiletries, clothes, and paper towels. *Id.* ¶¶ 11-12. For example, Just City posted a \$100 bail for a client charged with trespass for standing in the Wendy's drive-through asking for food. *Id.* ¶ 11. Based on Spickler's experience, a similarly situated client would likely have been released before HB 1719. *Id.*

62. Higher bail amounts and fewer release orders post HB 1719 directly increase the costs to Just City of serving similarly situated clients as before, thereby inhibiting its ability to serve as many indigent clients as possible. *Id.* ¶¶ 16, 18. When bail amounts increase, posting bail for each client costs more, and more indigent people cannot afford to post bail, therefore requiring Just City’s services to obtain release. *Id.* ¶¶ 13-14.

63. The group of arrestees who qualify for Just City’s bail fund post HB 1719 are assigned higher bail amounts than their risk levels indicate they would have received pre-HB 1719. Ex. 14, Carroll Expert R. ¶¶ 81-85. This means that Just City would need to spend more money now—approximately \$393,000—to serve the same group of qualified arrestees as it did pre-HB 1719, thereby limiting its ability to serve clients. *Id.* ¶¶ 81-85.

64. Another group of arrestees whose risk levels indicate that they would have received bail amounts at or below Just City’s maximum bail amount cap pre-HB 1719 now receive bail amounts exceeding that cap. *Id.* ¶¶ 86-89. Just City can therefore no longer serve that group of approximately 310 arrestees. *Id.* ¶ 88.

65. Also, when fewer arrestees are released, more indigent clients need Just City’s services of posting bail to obtain release. Ex. 16, Spickler Decl. ¶ 15. Judicial officers released fewer arrestees despite no change in their average underlying risk, which means that a group of low-risk arrestees whose risk levels indicate that they would previously have obtained release before HB 1719 now require Just City’s services. Ex. 14, Carroll Expert R. ¶ 61. It would cost Just City an estimated additional \$1,370,624 to serve this group. *Id.* ¶ 79.

66. After HB 1719, Just City spends more money posting bail and serves more clients than before. Ex. 16, Spickler Decl. ¶ 17. For the twelve months preceding HB 1719, Just City posted \$281,273 in bail for 162 clients. *Id.* For the twelve months following HB 1719, Just City posted

\$441,650 in bail for 216 clients, and in the last eight months, Just City posted \$388,720 in bail for 229 clients. *Id.*

67. Just City conducted more fundraising and adjusted its policies to ensure it maintains the necessary funds for its bail fund to operate in light of increased costs after HB 1719. *Id.* ¶¶ 21-24. It requested and obtained more grant funding to post bail on December 6, 2024. *Id.* ¶ 21. Absent this infusion, it would have been able to serve fewer clients post HB 1719. *Id.*

68. It also set a weekly limit on the amount of cash bail it can post and lowered the maximum bail amount cap from \$5,000 to \$4,000 and then to \$3,000 to serve more arrestees with low bail amounts. *Id.* ¶¶ 22, 24.

Dated: January 22, 2026

Respectfully submitted,

/s/ David Elbaum

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\*Admitted *pro hac vice*.

### **CERTIFICATE OF SERVICE**

I, David Elbaum, certify that on January 22, 2026, I caused a true and correct copy of the foregoing document to be filed electronically via the ECF system.

Respectfully submitted,

/s/ David Elbaum  
David Elbaum

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE**

**Just City, Inc.**, and class representatives  
**Deangelo Towns** and  
**Marshawn Barnes**,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

Floyd Bonner Jr.,  
**Shelby County Sheriff;**

Lee Wilson,  
**Presiding Shelby County General  
Sessions Criminal Court Judge;** and

John Marshall, Robert Barber, Rhonda Harris,  
Kevin Reed, Christopher Ingram, Shayla  
Purifoy, Ross Sampson, Serena Gray, Terita  
Hewlett, Mischelle Best, Kenya Smith, Zayid  
Saleem, Kathy Kirk Johnson, Leslie Mozingo,  
**Shelby County Judicial  
Commissioners,**

in their official capacities,

Defendants.

Case No. 2:24-cv-2540-TLP-tmp

**DECLARATION OF JARED QUIGLEY IN SUPPORT OF PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT**

I, Jared Quigley, state as follows:

1. I am an adult over the age of 18 and am competent to testify as to all matters contained in this Declaration. All matters contained in this Declaration are based on my personal knowledge.

2. I am an attorney admitted to practice law in the state of New York and am an Associate at Simpson Thacher & Bartlett LLP. I am one of the attorneys representing Plaintiffs in this action.

3. Attached as Exhibit 1 is a true and correct copy of the Shelby County Jail Monitor Report from *Busby v. Bonner*, No. 20-cv-2359 (W.D. Tenn.). This exhibit was attached as Exhibit 2 to the July 31, 2024 Declaration of Josh Spickler in Support of Plaintiff's Motion for Preliminary Injunction and Expedited Declaratory Judgment (ECF 2-4).

4. Attached as Exhibit 2 is a true and correct copy of the Standing Bail Order issued by Shelby County General Sessions Criminal Court Judges on August 15, 2022. This exhibit was attached as Exhibit 5 to the July 31, 2024 Declaration of Josh Spickler in Support of Plaintiff's Motion for Preliminary Injunction and Expedited Declaratory Judgment (ECF 2-7).

5. Attached as Exhibit 3 is a true and correct copy the June 9, 2022 Memorandum of Understanding between the American Civil Liberties Union, the American Civil Liberties Union of Tennessee, Just City Memphis, the Wharton Law Firm, Stand for Children Tennessee, the Official Black Lives Matter Memphis Chapter, and Shelby County, Tennessee. This exhibit was attached as Exhibit 4 to the July 31, 2024 Declaration of Josh Spickler in Support of Plaintiff's Motion for Preliminary Injunction and Expedited Declaratory Judgment (ECF 2-6).

6. Attached as Exhibit 4 is a true and correct copy of excerpts from the June 30, 2025 30(b)(6) deposition of Lead Judicial Commissioner John Marshall taken by Plaintiffs in this action.

7. Attached as Exhibit 5 is a true and correct copy of excerpts from the June 30, 2025 30(b)(6) deposition of Pretrial Services Executive Director Llana Greer taken by Plaintiffs in this action.

8. Attached as Exhibit 6 is a true and correct copy of the Affordable Bail Calculator created by the Vera Institute. It is available online at: <https://vera-institute.github.io/bail-calculator/>.

9. Attached as Exhibit 7 is a true and correct copy of a bail screening form. This exhibit was attached as Exhibit 9 to the July 31, 2024 Declaration of Josh Spickler in Support of Plaintiff's Motion for Preliminary Injunction and Expedited Declaratory Judgment (ECF 2-11). Mr. Spickler described this exhibit in his Declaration as "[a] blank version of the revised bail forms the Judicial Commissioners are currently using to set bail."

10. Attached as Exhibit 8 is a true and correct copy of a bail screening form. This exhibit was attached as Exhibit 7 to the July 31, 2024 Declaration of Josh Spickler in Support of Plaintiff's Motion for Preliminary Injunction and Expedited Declaratory Judgment (ECF 2-9). Mr. Spickler described this exhibit in his Declaration as the form that was in place prior to HB 1719.

11. Attached as Exhibit 9 is a true and correct copy of a May 23, 2024 email correspondence sent by Judicial Commissioner Shayla Purifoy, which Defendants produced in this action bearing Bates numbers SC00411-SC00412.

12. Attached as Exhibit 10 is a true and correct copy of the February 12, 2024 Fiscal Memorandum on HB 1719 published by the Tennessee General Assembly Fiscal Review Committee. It is available online at <https://www.capitol.tn.gov/Bills/113/Fiscal/FM1542.pdf>.

13. Attached as Exhibit 11 is the Expert Report of Spurgeon Kennedy. The exhibit contains a declaration from Mr. Kennedy affirming that he was retained as an expert by Plaintiffs in this matter and that a true and correct copy of his expert report is attached and incorporated by reference. It also affirms that he continues to hold the opinions expressed in his report and believes them to be true and accurate.

14. Attached as Exhibit 12 is a true and correct copy of the Declaration of Deangelo Towns, which Plaintiffs filed as Exhibit 4 (ECF 76-2) to their March 5, 2025 Motion for Class Certification (ECF 76).

15. Attached as Exhibit 13 is a true and correct copy of the Declaration of Marshawn Barnes, which Plaintiffs filed as Exhibit 7 (ECF 76-2) to their March 5, 2025 Motion for Class Certification (ECF 76).

16. Attached as Exhibit 14 is the Expert Report of Ryan Carroll. The exhibit contains a declaration from Mr. Carroll affirming that he was retained as an expert by Plaintiffs in this matter and that a true and correct copy of his expert report is attached and incorporated by reference. It also affirms that he continues to hold the opinions expressed in his report and believes them to be true and accurate.

17. Attached as Exhibit 15 is a true and correct copy of an August 9, 2022 resolution of the Shelby County Board of Commissioners. This document was attached as Exhibit 6 to the July 31, 2024 Declaration of Josh Spickler in Support of Plaintiffs' Motion for Preliminary Injunction and Expedited Declaratory Judgment (ECF 2-8).

18. Attached as Exhibit 16 is a true and correct copy of the Declaration of Josh Spickler in Support of Plaintiffs' Motion for Summary Judgment, which Plaintiffs are filing with their January 8, 2026 Motion for Summary Judgment. In the Declaration, Mr. Spickler affirms his personal knowledge of the facts set forth therein.

19. Attached as Exhibit 17 is a true and correct copy of an excerpted version of the transcript of the October 30, 2025 hearing on Plaintiffs' Motion for Class Certification (ECF 111).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 22, 2026 in New York, NY.

  
\_\_\_\_\_  
Jared Quigley

**CERTIFICATE OF SERVICE**

I, David Elbaum, certify that on January 22, 2026 I caused a true and correct copy of the foregoing document to be filed electronically via the ECF system.

Respectfully submitted,

/s/ David Elbaum

# Exhibit 1:

Shelby County Jail Monitor  
Report, *Busby v. Bonner*, No.  
20-cv-2359 (W.D. Tenn.)



SHELBY COUNTY MENS JAIL  
COVID19 FOLLOW-UP INSPECTION  
MARCH 17, 2021 FINAL REPORT

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## **First Covid-19 Follow Up Inspection of the Shelby County Men’s Jail at 201 Poplar Avenue, Memphis TN 38103 On March 17, 2021**

### **Final Report**

#### **Submitted to:**

Andrea Woods  
Attorney at Law  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor  
New York, New York 10004

Nathan Tilly  
Attorney at Law  
162 Murray Guard Drive, Suite B  
Jackson Tennessee 38305

#### **Produced by:**

Mike Brady  
Director  
Sabot Consulting

April 11, 2021

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SHELBY COUNTY MENS JAIL  
COVID19 FOLLOW-UP INSPECTION  
MARCH 17, 2021 FINAL REPORT

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## TABLE OF CONTENTS

<b>INTRODUCTION .....</b>	<b>1</b>
<b>THE JAIL SETTING.....</b>	<b>6</b>
<b>INSPECTION OBSERVATIONS – March 17, 2021.....</b>	<b>7</b>
<b>COVID-19 SCREENING FOR EMPLOYEES .....</b>	<b>8</b>
<b>INTAKE/BOOKING/RELEASE.....</b>	<b>9</b>
<b>MEDICAL.....</b>	<b>10</b>
<b>MENTAL HEALTH.....</b>	<b>11</b>
<b>MEDICAL ISOLATION LOWER LEVEL PODS A-K.....</b>	<b>12</b>
<b>FLOORS 1-4.....</b>	<b>14</b>
<b>FLOORS 5-6.....</b>	<b>16</b>
<b>POPULATION MANAGEMENT .....</b>	<b>17</b>
<b>STAFFING SHORTAGES.....</b>	<b>19</b>
<b>JAIL VENTILATION SYSTEM.....</b>	<b>20</b>
<b>PREVIOUS RECOMMENDATIONS .....</b>	<b>21</b>
<b>CURRENT FINDINGS AND RECOMMENDATIONS.....</b>	<b>28</b>
<b>CONCLUSION.....</b>	<b>32</b>



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## INTRODUCTION

My name is Michael K. Brady, and I am the Director of the Criminal Justice Division for Sabot Consulting. I am a nationally recognized expert in prison and jail operations, the Americans With Disabilities Act, and the prevention and mitigation of the spread of infectious diseases and public health in the correctional setting from an operational and non-clinical perspective.

On June 18, 2020, in the matter of Busby V Bonner ( No. 2:20-cv-2359-SHL), pursuant to Federal Rule of Evidence 706, United States District Judge For The Western District of Tennessee, Western Division, The Honorable Sheryl H. Lippman, appointed me as the neutral expert witness in the field of jail and prison operations as it relates to the prevention and mitigation of the spread of infectious diseases and public health in the correctional setting.

The Inspection Order states in pertinent part:

**“...The appointed expert shall provide information to the Court responsive to Plaintiffs’ Motion for Temporary Restraining Order (ECF No. 2) and render an expert opinion on the current health and safety of medically-vulnerable Plaintiff-detainees at the Shelby County Jail (“the jail”) in light of the Covid-19 pandemic, including but not limited to the Facility’s compliance with the pertinent CDC and Shelby County Public Health guidelines and other applicable standards. The expert’s findings shall include, if warranted, recommendations regarding corrective measures that, in his expert opinion, should be implemented at the jail, to protect the medically-vulnerable from the COVID-19 virus at the facility....”**

The medically-vulnerable detainees to which the inspection order applies are defined as follows:

1. People 65 years and older
2. People with chronic lung disease or moderate to severe asthma (including chronic obstructive pulmonary disease (COPD) (including emphysema, and chronic bronchitis),
3. Idiopathic pulmonary fibrosis and cystic fibrosis;
4. People who have serious heart conditions (including heart failure, coronary heart disease, congenital heart disease, cardiomyopathies, and pulmonary hypertension);
5. People who are immunocompromised (including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications);
6. People with severe obesity (body mass index [BMI] of 40 or higher);
7. People with Diabetes;
8. People with chronic kidney disease undergoing dialysis;
9. People with chronic liver disease, including cirrhosis; and



10. People with hemoglobin disorders, including sickle cell disease and thalassemia.
11. All persons currently or in the future held at the jail in pretrial custody during the COVID-19 pandemic who are at increased risk of Covid-19 complications or death because of disabilities as defined in the Americans With Disabilities Act (ADA) and Section 504 of the Rehabilitation Act.

On the 28<sup>th</sup> of January, Judge Lipman signed an order preliminarily approving the Class Action Settlement between the parties to this action in which it was agreed that I would continue in my role as the Rule 706 Court-Appointed Independent Inspector pursuant to the agreed upon terms and conditions contained in the Consent Decree attached to the Court's January 28, 2021 order.

Pursuant to paragraph 4. **Reporting** on page 2 of the Consent Decree, Defendants are required to provide me with a report containing certain information. Defendants did comply with the paragraph 4 provision except as to a subpart of 4(b). Defendants gave me the data on the number of Covid-19 tests conducted on detainees and for staff at the jail in the aggregate, but Defendants did not provide me with the information "by pod and the results of those tests" by pod.

In addition, in paragraph 5 on page 2 of the Consent Decree, Defendants did provide me with lists of the Class and Subclass as defined by the Court, and they did specify whether the class or subclass member is housed in a single cell, shared cell, or dormitory, but I find that information of little value without additional information and sorted in a different way. I will make recommendations on what additional information I will need on how it should be displayed to make my time more efficient and cost effective, and my report more valuable to the parties going forward.

I also reviewed my prior recommendations with Lt. Styles and found that some have been implemented, some have been implemented in a manner that the Defendants determined works best for them, and some have not been implemented because of population size and physical plant restrictions. I will cover what has been implemented and what has not in the recommendations section of this report.

There are several issues that are of great concern to me:

1. The inability of the Shelby County Jail to properly social distance inmates because of population size and physical plant restrictions in the higher security level units.
2. The manner in which the Court Expeditor interprets her responsibilities to present information to the Court regarding the inmates in the Class and Subclass as defined in the June 18, 2020 order, in subsequent orders, and in the proposed Consent Decree is limited to those inmates over 60 years of age, and those inmates who are medically fragile that Wellpath brings to the Court Expeditor's attention on occasion. There is not a systematic or uniform process of review, analysis or presentation of Class Member or Subclass member medical conditions that put them at risk of serious illness or death from Covid-19, nor is there any information regarding the ability of the inmate to be safely placed in alternative forms of



custody in the community. The manner in which the limited information she gathers is presented to the court is not uniform, nor is it organized, and as a result, I could not determine the process or the outcome of the few cases about which she was able to provide documentation. The Court Expeditor does not have a tracking system developed that allows me to look at the number of Class or Subclass member cases that have been presented to the court with a recommendation for release or placement into an alternative form of custody. The Court Expeditor must go back through her emails to try and find information on cases she has presented to the Court and even then it is very difficult to discern what information she presented and what her recommendations were. The failure or inability to provide me with the work she did on behalf of the Class and Subclass members for the previous 60 days from the date of my inspection leads me to the conclusion that very little has been done.

3. The number of at risk Class and Subclass members who remain in custody in Housing Units when there is no ability to social distance in accordance with CDC guidelines, and, as a result, are subjected to an unreasonable risk of serious illness or death.
4. Gaps in the contract tracing process as a result of contract tracing occurring in what appears to be silos vs an integrated fashion.
5. Staffing shortages at the Shelby County Jail cause Class and Subclass members to be locked in their cells oftentimes for days if not weeks at a time. In addition, Class and Subclass members have not gotten any outdoor large muscle group exercise since my last inspection in June of 2020. The lack of large muscle group exercise, and being confined in their cells for extended periods of time negatively impacts the mental and physical well being of this already immunocompromised Class and Subclass population.
6. When bail is considered in Shelby County, the judicial commissioner setting bail does not take into account the economic ability or inability of the detainee to post bond. Nor does the Court Expeditor uniformly present to the Court health information about all at risk Class and Subclass members who could be placed in alternative structured and supervised environments thereby reducing their risk of serious illness or death without jeopardizing the safety of the public. Thus, in my expert opinion, the manner in which bond amounts are set discriminates against Class Members and Subclass members who may not be a current threat to public safety, but who are people of color and who simply cannot afford even a minimal bond. The current system is not necessary to ensure future court appearances or to protect public safety. Under this system, the Class Members and Subclass Members, most of whom are poor and people of color, are disproportionately held in custody simply because of their inability to afford to post a bond, and they are not being considered for alternative placements in structured and supervised environments despite their underlying health issues. This discrimination results in a disproportionate number of Class and Subclass, immunocompromised poor people of color, being subject to an unreasonable risk of serious illness or death from the



Sars-COV-2 virus because they are held in custody solely because they are economically disadvantaged. According to data I reviewed, as of September 2020, there were 351 inmates housed in the Shelby County Jail with bonds of less than \$2,000. While, I do not have the most recent data, I have no reason to believe the numbers are substantially different.

I was originally scheduled to conduct my first unannounced follow up inspection of the Shelby County Jail on March 8, 2021, but because of an extraordinarily cold winter storm in the south that caused damage to the water pipes in the Shelby County Jail and surrounding community, I was unable to conduct my follow-up inspection on that date.

The water issues in the jail and in Shelby County were largely resolved that week, and on March 17, 2021, I was able to complete my first follow-up Covid-19 inspection of the Shelby County Jail.

I arrived at the Shelby County Jail at 0830 hours on March 17, 2021 where I was met by Lt. Styles and Captain Harris who were my security escorts and resources for any and all matters related to my follow-up Covid-19 inspection.

During the course of my independent onsite Covid-19 inspection on March 17, 2021, I requested relevant documents from Custody and Wellpath at the Shelby County Pre-Detention Jail located at 201 Poplar Avenue, Memphis, Tennessee, 38103.

Moreover, from 0830hrs until approximately 2130hrs on March 17, 2021, I conducted multiple in depth interviews with key personnel with the Shelby County Jail, key personnel with the contract medical provider, key personnel with the Government Maintenance Crew, walked the decks on each floor of the jail, inspected each of the living units, dayrooms, common areas, showers, toilets, medical clinic, intake/booking/release, interviewed staff and inmates on the first (0600-1400hrs) and second watch (1400hrs-2200hrs), inspected the holding cells, the court tunnel, the upstairs court holding cells, and from the control center on the lower level observed inmates being escorted through the court tunnel, placed in the holding cells, escorted upstairs to and from the General Sessions Court and Criminal Courts, and back to through the tunnel toward their living units.

I continue to be very fortunate to have Lieutenant Styles as my security escort and guide along with the new Compliance Unit Captain, Captain Harris. They are intimately familiar with all aspects of the Shelby County Jail operations and were responsible for the seamless scheduling of staff and inmate interviews, escorting me through any and all parts of the jail, gathering documents that I needed as a result of my interviews and observations throughout the day of my inspection. They were my security escorts, schedulers, facilitators, problem solvers, and reservoirs of knowledge, from 0830 to 2230hrs during my March 17, 2021 onsite inspection. We continue to communicate as needed for any additional information I may need or questions I need answered as I pen this report. Without their assistance, it would have been impossible for me to have accomplished what I needed to accomplish for this Covid-19 follow-up inspection. Thank you Captain Harris and Lt. Styles.

I also want to acknowledge Chief Fields, his staff, Wellpath's Medical Director, Dr. Donna Randolph, and HSA Jeremy Sanders, for allowing me to repeatedly take time away from



their busy schedules to answer my questions and provide me with the documents I needed to verify that the policies, procedures and practices about which they spoke were in writing. They are consummate professionals who care deeply about the inmates in the Shelby County Jail.

At all times of the day or night, I had unrestricted access to key personnel and the jail facility. Shelby County Jail command staff and Wellpath leadership continue to be transparent, responsive and open to new approaches in addressing the opportunities for improvement that I discovered during my court ordered inspection.



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## THE JAIL SETTING

County Jail operations have many unique characteristics:

- Jails operate continuously, 24 hours per day, 365 days per year.
- Jails provide a wide spectrum of services, activities, and programs for inmates.
- Jails are high-risk settings where inmates are often dangerous to themselves and others.
- Jail populations have a significant percentage of inmates with chronic diseases serious medical conditions, serious mental illness, and disabilities
- Jail populations can fluctuate widely throughout the year, and even on a day-to day basis.
- Many jail inmates spend only a few hours in jail or a few days especially in light of pretrial release programs, and other court actions.
- Many other inmates remain in jail for months or years because of the serious nature of their charges, their inability to make even the lowest bail amount, and the delays of trial calendars.
- Admission and release procedures require much staff effort, but the peak periods of admission are often difficult to anticipate (special events, parole/probation sweeps, gang sweeps, homeless camp sweeps, demonstrations, DUI checkpoints, etc.).
- Extensive Documentation is required for all activities and procedures at the jail.
- Perimeter security and internal movement must be controlled at all times.
- Supervision needs vary for different classifications of inmates.
- Jail staff, administrators, and funding officials can be held liable for substandard/constitutional deficient jail operations and conditions.
- Transportation to and from outside medical appointments, inpatient hospitalizations are difficult to anticipate and staff.
- Jails now are one of the largest and most challenging mental health treatment facilities in the country.
- The provision of quality medical care to an older, sicker, inmate population is incredibly expensive and challenging.

In recent years, recruiting and maintaining adequate badge staff has been extremely difficult in jails across the country, and current events have exacerbated the problem. Many jails are short staffed and have to employ robust mandatory overtime initiatives that are unsustainable.

Couple these challenges with the current attempts to limit the spread of the highly contagious and deadly Covid-19 virus in the Shelby County Men’s Pre-Detention Facility (hereinafter “the jail”), and it becomes exponentially more difficult.



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## INSPECTION OBSERVATIONS – March 17, 2021

It goes without saying that these are extraordinarily difficult and dangerous times in which we continue to find ourselves thrust today. Operating a large county jail such as the Shelby County Jail is challenging, complex, and labor intensive.

Attempting to prevent/mitigate/eradicate the Covid19 virus within the secure perimeter of the jail, adds an additional daunting and extraordinarily labor intensive layer of multidisciplinary work that must be implemented with precision, armed with the flexibility to adapt to new discoveries, guidance and directives from the CDC and Public Health in real time, and monitored with hypervigilance to ensure its effectiveness.

As you can imagine, each county jail is unique and there is not a single Covid-19 operational response model that is effective for all jails. The core principals of social distancing, testing, tracing, and isolation must be present, but how those four core principals are implemented are oftentimes restricted because of the physical plant, population size, and staffing. Shelby County is no different.

On Wednesday morning, March 17, 2021 at approximately 0730hrs, I notified my security escort, Lt. Styles that I would be conducting my inspection of the Shelby County Jail and that I would be arriving at the Shelby County Detention Facility at 0830. The date and time of my inspection was officially unannounced until one hour prior to my arrival. However, because of the deep freeze and extraordinary snow storm in the southern part of the United States, it was necessary for me to ensure that the Shelby County Jail was not on a “boil water alert”. As a result, I was in contact with Lt. Styles on Friday to make sure that the water issues at the jail were resolved. While she did not know the exact date I was coming, it wasn’t hard to figure out a three or four day window in which I would be arriving. So it was only partially an unannounced inspection. I do not believe the lack of surprise negatively impacted my ability to witness an honest picture of daily operations at the jail. I am a very experienced corrections operations expert, and I can tell when somebody is trying to put lipstick on a pig. Chief Fields directed his staff to let me see and have whatever I needed, and I believe that Chief Fields wants to fix any problems that are identified, and he will adopt any recommendations that will make their operation better where possible. Lt. Styles and Captain Harris met me at a secure parking lot off Washington Street and we entered the jail through the employee entrance. I was wearing a surgical mask, as were Captain Harris and Lt. Styles.



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## COVID-19 SCREENING FOR EMPLOYEES

As it was last June, immediately upon entering the jail outside the secure perimeter, there was an employee/contractor screening table. I was asked to fill out a “Coronavirus Screening” questionnaire which posed the following questions:

1. In the past 14 days, have you been outside of the United States and/or, on a cruise or been in contact with anyone who has? Yes\_ No\_ If so, When \_\_\_ Where \_\_\_
2. In the past 14 days have you been in crowded areas, (for example Airports, Conferences, Concerts, etc.) YES\_ NO\_ If so, When\_\_ Where\_\_
3. Have you or anyone you have had close contact with been diagnosed with or quarantined for Coronavirus? (The incubation period is 2-14 days) YES\_ NO\_
4. Do you have a fever, cough, difficulty breathing, diarrhea, headache, loss of taste or smell or symptoms of lower or upper respiratory illness? YES\_\_ NO\_\_

My temperature was taken and recorded on the questionnaire.

At the bottom of the questionnaire, the final statement was “If answered yes to any of the questions above, please see the immediate Supervisor of the area.”

The Supervisor of the area cleared me for entry into the secure perimeter of the jail.

While in the employee screening area, I paused and observed several employees enter the facility through that entrance and all were wearing face masks, filled out the questionnaire and had their temperatures taken. I was provided with the temperature logs from the employee screening area for the last 90 days.

I was provided with the appropriate PPE including an N95 mask, a Tybex Suit, goggles, gloves, and hand sanitizer.

Once inside the secure perimeter, I met with Chief Fields. I informed Chief Fields who I wanted to speak with and what documents I needed from them. We made arrangements for me to meet with Medical, Mental Health, Public Health, Transportation, the Court Expeditor, the Court Tunnel Lt., and the Facility Maintenance crew responsible for maintaining the ventilation system.



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## INTAKE/BOOKING/RELEASE

I began my facility inspection in the Intake/Booking area and the Sally Port where all law enforcement are required to bring arrestees for screening and booking. There are a few changes that have been made to this process that are consistent with CDC guidelines.

24 hours a day, 7 days a week, 365 days a year all arresting agencies who enter the sally port are required to keep the inmate in the agency vehicle until it is their turn to present the arrestee for a pre-booking Covid19 healthcare screening. They are asked a series of healthcare questions about any symptoms they may be experiencing related to Covid19, and they are administered a temperature strip which is then passed back through a glass barrier to the nurse on the other side.

If the inmate is asymptomatic, they are issued a mask and placed in a holding cell inside the secure perimeter, and they go through the normal booking process. The inmate is searched, photographed, fingerprinted, and interviewed by pretrial services. Pretrial Services administers the Public Safety Assessment tool, an algorithmic risk assessment, along with an assessment questionnaire to determine if the inmate is eligible for release on his own recognizance (ROR). If he is not released on recognizance, he will have a bond set by the Commissioner. The bond is set within 24 hours.

If they are not eligible for ROR or they cannot make bond, the inmate will be dressed out, processed through classification and housed in a general population isolation unit that is cohorted for 14 days. (Lower Level A-G).

If the inmate is symptomatic, the inmate is escorted immediately over to a tent area on the far end of the Sally Port, and healthcare staff and security staff come out in full hazmat PPE and conduct a more in depth healthcare screening to determine if the arrestee is suitable for confinement (Not in acute respiratory distress or suffering from some other medical condition that requires the inmate to be transferred to the ER at Region1 Medical). If the inmate is suitable for confinement, the inmate is placed in full PPE including a hazmat jumpsuit, booties, facemask and eye protection and escorted to a medical quarantine area where he will remain for 14 days. Inmate is tested immediately with the nasal pharyngeal test for Covid19. While in quarantine, the positive inmates' temperatures and vitals are taken daily. Unfortunately, the refusal rate for the PCR is approximately 66 percent.

If an inmate is a confirmed positive, his clothing is placed in a hazmat bag and disposed of as hazardous material.

Previously, Wellpath had a non-test based strategy for asymptomatic inmates, but based on my previous recommendation, they are now offering PCR Covid-19 tests to all newly booked inmates who are "keepers" on day 12 of their incarceration. Unfortunately, there is a refusal rate of approximately 66 percent. The 14 day medical isolation with or without a Covid-19 test is consistent with the current CDC guidelines.



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## MEDICAL

The next area I re-inspected was the medical clinic area. There is no outpatient housing unit or infirmary in the jail. Anyone requiring those services must be transported to an outside facility. The Wellpath staff conduct regular sick call. During the early stages of the pandemic Wellpath used telemedicine for much of their physician appointments. They have now returned to face to face sick call appointments. I observed the clinic area, and, at a different location, I spoke with several nurses. The area was clean. All participants were wearing appropriate PPE and were properly social distancing.

During this inspection, when asked about outside specialty appointments for chronic diseases and serious medical conditions, Wellpath's Medical Director, Dr. Donna Randolph, and HSA Jeremy Sanders told me that Regional One Health were accepting chronic care appointments again. There is a dialysis clinic that occurs at the jail regularly, and the dialysis patients have not experienced any recent delays in their care. I spent a considerable amount of time with Dr. Randolph and Mr. Sanders, and I continue to find them to be well informed and passionate about delivering competent, patient centered, medical care to the inmate population.

Finally, contact tracing is occurring in silos. Custody is conducting their own contact tracing, Wellpath is conducting their own. Public Health is conducting an unknown amount. I got several different answers regarding who is actually conducting contract tracing and when. I am concerned that there are gaps in contract tracing. The various disciplines are relying solely on schedules and anecdotal information about who has been exposed rather than cameras, logs and other records.

I recommend a representative from Medical, Public Health, and Custody meet whenever there is an exposure to review the various mediums of information to determined who was exposed, when and where, and public health should contact those exposed individuals to inform them of their exposure and the need to quarantine.



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## MENTAL HEALTH

I spoke with Ms. Geeter regarding the Mental Health Program, and she stated that the Mental Health Treatment Program continues to function in the manner as outlined in my previous report. One interesting fact is that with the SMI population Ms. Geeter has assembled a multi-disciplinary group to regularly meet with and encourage the SMI population to take the Covid-19 PCR test when offered and according to Ms. Geeter, the refusal rate is approximately 1 percent. Ms. Geeter is to be commended for her creativity and success in working with this extremely vulnerable population regarding taking the Covid-19 tests when offered. I am hopeful this group will do the same with regard to vaccinations.



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## MEDICAL ISOLATION LOWER LEVEL PODS A-K

Previously, in their Covid-19 response policies, procedures and practices, Wellpath and the jail represent that asymptomatic newly incarcerated inmates are medically isolated for 21 days and then released to general population living units commensurate with their security level.

However, as noted in my June 29, 2021 inspection report, that was not actually occurring because the Shelby County Criminal Courts were requiring inmates to be brought to the holding cells for the courts in large numbers even if they were in medical isolation.

During this follow-up inspection, as explained below, I found that practice has been discontinued and a new much safer practice of a combination of video court appearances and in person court hearings has been implemented. I also found that the medical isolation practice has been reduced to 14 days consistent with CDC guidelines.

I met with Lt. Lee from the Shelby County Sheriff's Office who oversees the holding cells, inmate movement through the court tunnel for court appearances, and inmate appearances for video arraignments. We discussed the changes that were made based on my previous findings.

Currently, there are not large numbers of inmates occupying the court holding cells awaiting their court appearances from general population as well as medical isolation as was the prior practice. Rather inmates who are on the court's calendar are only called down to appear for a video appearance as and if the court needs them. The court's bailiff emails the deputy in the court muster area who is in charge of calling the housing units to ask that an inmate be sent down for a court appearance/video arraignment. The Housing Unit officer then sends the inmate from the Housing Unit down through the court tunnel to the court muster area. The inmate(s) must wear a mask properly and if there is more than one inmate coming from a Housing Unit, those inmates must properly social distance as they walk from their Housing Units to the court muster area. The inmates are greeted by Deputies who place them in the appropriate holding cells that are designated for specific courtrooms. The holding cells have markers on the bench upon which the inmates are instructed to sit. Those markers are 6 feet apart. The inmates are required to wear their masks properly over their nose and mouths at all times. There is a Deputy assigned to each holding cell, and those Deputies are charged with enforcing the social distancing, mask compliance and coordination for video arraignment appearances/court appearances. Outside the holding cells are a series of chairs properly spaced six feet apart. Those chairs are occupied by inmates come out of the holding cells and take their place in line for their video court appearance or face to face court appearance. The inmates are called into the video arraignment booths or to the upstairs courtroom by a Court Bailiff one at a time as the court needs them. Once the inmate is finished with their court appearance, they are sent back to their Housing Unit. If the inmate is a higher security inmate, they are escorted back to their Housing Unit by one or more Deputies depending on the inmate's security classification.



Inmates from the medical isolation are only called for court appearances if they can potentially be released and those decisions are made by the court and counsel for the defendants. If an inmate in medical isolation is brought down to court, all movement is stopped, and the medically isolated inmate is brought directly to the video court appearance by a Deputy and then immediately escorted back to the medical isolation unit by a Deputy. There are no Covid-19 positive inmates brought to a video arraignment or in person court appearances. The video arraignment areas are sanitized after every use.

Court remands are taken outside and booked through the sallyport through the normal booking process. They are not co-mingled with the inmates who are from the Housing Units.

On this follow up inspection, I was able to observe both a morning court calendar and an afternoon court calendar inmate movement and video arraignment process. I also inspected the holding cells that were occupied by inmates during both the morning and afternoon court calendars. I found they were properly wearing masks, were properly social distanced, and that the new process was much safer and more efficient than the previous process. It would be fundamentally unfair to the inmates who can potentially be released from jail to not be allowed the opportunity to appear in court via video or in person in an effort to secure their own release. My understanding from Lt. Lee is that this process will remain in place even after the court resumes normal operations.



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## FLOORS 1-4

During this follow-up inspection, I inspected random Housing Units on these floors for the presence of adequate soap, masks, cleaning supplies, cleaning schedules and cleaning schedules. There was adequate soap, masks, cleaning supplies, and hand sanitizers. I continue to be concerned about the cleaning schedules in these units. From the schedule of DeWayne Johnson, the person in charge of disinfecting these Housing Units, it appears that these Housing Units are not disinfected on a daily basis. In addition, I found at least one Housing Unit by the Nurses Station that houses the most medically fragile inmates to be dirty. The floors were not clean, the showers were not clean, the entire unit was dirty. This simply cannot happen in an area where medically fragile, immunocompromised inmates are being housed.

Moreover, in virtually all of the Housing Unit Pods on these floors, social distancing was not occurring, nor is it possible for it to occur at the current population levels. These Housing Units contain higher security level inmates and many are at 85 percent plus occupancy. I observed some units out for dayroom time and there were 14-16 inmates seated in the dayroom right next to each other at the dayroom tables playing cards, games, or watching TV.

I asked Chief Fields about the issue of social distancing and Chief Fields was very candid about the inability of the Shelby County Jail to properly social distance inmates on these floors because of physical plant restrictions and the size of the inmate population. He also stated that if they were to try and social distance inmates on these floors, the inmates would get even less out of cell time than they are getting.

If the jail would use the rooftop recreation yards it may help with this issue some, but, in my expert opinion, there would still be insufficient space in the Housing Units on these floors to properly social distance. Because these very same Housing Units contain many, if not most of the Class and Subclass medically vulnerable inmates, the inability to properly social distance these inmates creates a heightened risk of serious illness or death as the Sars-COV-2 (Covid-19) virus is introduced into these Units.

As I mentioned earlier in my report, because of staffing shortages, the inmates in the Shelby County Jail are not getting their regular out of cell time and are locked down days at a time if not weeks at a time because of a lack of staff to supervise these Housing Units. See my June 29, 2021 report regarding staffing shortages at the Shelby County Jail.

The inability of inmates to get out of their cells regularly for dayroom time and large muscle group exercise, negatively impacts their physical health as well as their mental health. This creates an increased risk of suicide, and further deterioration of their physical health from the lack of large muscle group exercise. The ACA core standards recommends at least 7 hours of recreation time per week for inmates in general population and 5 hours a week for inmates who are in restrictive housing. The Department of Justice 2016 Study on



Restrictive Housing recommends 2 hours of out of cell time per day of out of cell time. The Shelby County Jail is out of compliance with these standards.

It is a well settled fact that extended periods of inmate's being locked in their cells 23-24 hours a day, is harmful to their physical and mental health.

Given the staffing shortages that currently exist at the Shelby County Jail, there is little chance that inmates could have access to the rooftop recreation yards, nor can the inmates expect regular out of cell time in the dayrooms. I recommend that they Shelby County Jail institute a mandatory overtime program for all posted positions.



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## FLOORS 5-6

These floors are dormitory style housing and inmate have sufficient space to properly social distance, and they have access to the dayrooms within the dormitory settings for the vast majority of each day.

Having said that, inmates, even when assigned bunks that are 6 feet apart and they are instructed to social distance, tend to cluster in groups to talk, play cards, games, and watch TV throughout the day.

The inmates on floors 5-6 do not have access to the rooftop recreation yards either.



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## POPULATION MANAGEMENT

As of March 5, 2021, the inmate population of the Shelby County Jail is 1,926 inmates. On June 29, 2020, the population was 1,854. The jail has a capacity of 2600. The jail currently books approximately 38 inmates a day on average and releases 24 inmates a day on average. The jail is an older jail that was built in the 1980's and as a result, most of the cell doors are open bars at the top and are operated electronically via a control panel and Folger keys. Since my last inspection, plexiglass has been installed on some cells so they are similar to solid door cells. Approximately 8 different law enforcement departments within Shelby County book arrestees in the jail. Additionally, surrounding counties will request that the jail take some of their inmates when they reach capacity. The jail also currently houses Tennessee Department of Correction inmates who come back to Shelby County for court matters.

Reducing the population of the jail in these unprecedented times is challenging but is necessary to comply with CDC guidelines on social distancing and to prevent/mitigate serious illness or death of Class and Subclass members. The jail, as a matter of law, cannot refuse to book an arrestee who is medically fit for incarceration. Further, it has been represented to me by the Shelby County Jail Command staff that the Sheriff does not have the authority to release inmates to alternative forms of custody such as active GPS, supportive housing in the community, shelters, recovery homes, home detention, work release, etc. Currently the jail has a Case Expeditor to try and move cases along, but she is not providing the court with the necessary information for Class and Subclass members to be seriously considered for placement in alternative structured and supervised environments in the community. The Court Expeditor function is short staffed and the manner in which this important service is being handled has proven ineffective and dysfunctional. In addition, from my observations during my follow up inspection, the current practice of the Shelby County Courts and the attorneys representing the inmates continues to create a significant backlog that is contributing to the size of the jail population. Cases continue to be postponed multiple times for lengthy periods of times allegedly without the consent or time waiver of the inmates. The inmates are not being provided their discovery packets until months after their arrest and detention. Attorneys are not visiting their clients and discussing their cases. Offers are not being made in an effort to resolve cases. The vulnerable inmates that I interviewed during my inspection continue to complain about the lack of information, the failure of their defense attorneys to visit them, and the failure of their attorneys to consult with them regarding waiving their constitutional right to a speedy trial. The court allegedly is refusing to release inmates who have committed non-violent crimes and are not a current threat to public safety. Defense attorneys are allegedly failing to present medical evidence of their client's serious medical condition to the court that would demonstrate the inmate is not currently a threat to public safety or to argue for placement in alternative forms of custody. They cannot present the evidence because they allegedly are not meeting with their clients and gathering the necessary evidence to present to the court.



Moreover, towns in Shelby county continue to bring inmates to the Shelby County Jail when their jails reach capacity, and surrounding counties also bring inmates to the jail when their jails are allegedly at capacity.

As a result, the population has grown to over nineteen hundred and twenty five with no room to enforce social distancing within the living units in the jail. I am concerned that it will slowly creep up making controlling the Covid-19 virus even more difficult. At certain periods of time over the last six months, the jail population has increased to over two thousand inmates. With the jail population at these levels, social distancing is not possible. Couple that with severe staffing shortages, and the problem has reached critical mass.



## STAFFING SHORTAGES

Currently the jail has 157 security staff vacancies, and the Sheriff’s Department is experiencing difficulty in their recruitment efforts to fill those vacancies. In addition, a recent staffing study that was completed found that the actual need for security staff is over 300 positions. Having significant staffing shortages like these is a contributing factor to consistently providing routine services to the vulnerable inmates in the jail. On this follow-up inspection, the staffing shortages were clearing the major contributing factor to the Class and Subclass members being locked down for days if not weeks at a time.



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## JAIL VENTILATION SYSTEM

I met with the men who are responsible for the Shelby County Jail ventilation system. Shelby County has spent 1.1 million dollars on the installation of Global Plasma Ionizers in the ventilation system. According to the marketing materials the Ionizers are 98 percent effective in killing the Covid-19 virus. I am unqualified to make that determination, but I did review the marketing materials and contract with the vendor. The ventilation expert contemplated by the consent decree should be consulted in determining whether the GPS ionizers are sufficient to render the air quality in the jail safe. I understand there may be concerns, including within the CDC and ASHRAE, that these ionizers are not sufficient to mitigate the risk of aerosol spread of COVID-19.



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## PREVIOUS RECOMMENDATIONS

These findings and recommendations are not in order of importance.

### RECOMMENDATION #1

1. It is recommended that Wellpath move to a 14-day medical isolation with a nasal pharyngeal test-based strategy for symptomatic and asymptomatic inmates who are newly booked in the jail. The tests should occur between day 3 and day 6 for the initial test, and between day 10 and day 12 for the second test. All inmates in medical isolation must be asymptomatic for two consecutive days subsequent to the final test results being received before they can be released to general population. Covid-19 test refusals should be considered positive tests and subject to a 21 day isolation with no movement. **Implemented w a single PCR Test at day 12. This date was chosen because of high inmate turnover from day 2-11. Unfortunately, the refusal rate is approximately 66%.**
2. It is recommended that Wellpath and the jail command staff identify living units where the vulnerable population can be sequestered away from the rest of the general population inmates without losing their privileges or dayroom time consistent with their security level. The most medically fragile inmates and the inmates that are at the highest risk of serious illness or death if they contract the Covid-19 virus should be housed near the medical unit in case there is a white alarm. Areas that could be considered are the third floor and the Annex. Custody might be able to open the sixth floor living units which have 192 beds for the Level 7 inmates currently housed on the 3<sup>rd</sup> floor, and move some 3<sup>rd</sup> floor inmates to the empty cells in the Annex. **Implemented to the best of their ability given the physical plant limitations. Some of the most medically fragile inmates are located by the nursing station on the second floor of the jail. Some have been moved to a solid door setting in the Jail Annex. Some remain in Housing Units where there are open bars, but the jail has placed plexiglass over the open bars to emulate a solid door cell. The majority remain in Housing Units with open bars.**

### RECOMMENDATION #2

1. Consult with Dr. Bruce Randolph, Shelby County Health Officer, to see if he would be amenable to adding detention facilities to Shelby County Health Directive #7 or issuing a separate health directive for detention facilities in Shelby County. The language in the directive could read that “Any person detained in a detention facility should be isolated from the rest of the inmate population for 14 days if they are not eligible for ROR and cannot make bond. If the detained person is eligible for ROR or can make bond, they should be released, provided with a copy of Shelby County Health Directive #7 dated June 22, 2020 and instructed to follow that directive upon release. Nothing in this directive is intended to delay or impede the release of



detained individuals if they are eligible to be released”. This is in the best interest of public health. Detained people are members of the Shelby County community and should be protected from unreasonable risks of infection just like non-detained persons in Shelby County. **The Jail in consultation with the Courts, have implemented a new process by which inmates are only brought down to the court holding cells when they are needed for their court appearance in person or via video conference. No positive inmates are making court appearances of any kind, and only inmates who may have a chance to be released on their own recognizance are brought to the holding cells in small numbers for video or in person visits. I am satisfied that this practice is much safer.**

2. Consult with the General Sessions Court and Criminal Court and ask the Judges to use the existing video technology located in holding tanks LLR and LLS for arraignments, bond hearings, and other court proceedings that would not violate the inmate’s 5<sup>th</sup> or 6<sup>th</sup> amendment rights. In March, the Tennessee State Supreme Court issued an emergency order suspending in person court appearances for two weeks, but I am unaware of the validity of this order today. Technology such a Skype, Zoom, Microsoft Team, and Webex are also available and could be deployed in a cost effective and efficient manner while limiting the exposure of vulnerable inmates to infection. Ms. Best, the Sheriff’s Office Expeditor, is a former judge and an attorney and could be very helpful in explaining the risk of spreading the Covid-19 virus among the inmate population if the court continues to demand the inmates appear in, at, or near the Courts in large holding tanks. The use of video arraignments, bond hearings, and other appearances would go a long way in reducing the risk of vulnerable inmates getting infected with the Covid-19 virus. **The jail and the Courts have substantially increased video court appearances. However, the Courts resumed normal operations on March 15, 2021, and this could increase the risk of inadvertently introducing the virus into the jails. Having said that, from my observations during the follow-up inspection, I believe that a good faith effort has been made to mitigate the introduction of the Covid-19 virus into the jails.**
3. Wellpath leadership needs to be more aggressive and more vocal about protecting the vulnerable inmates in their care. There are several practices that take place in the jail that are potentially harmful to their patients, and they should not be allowed to continue. I recognize that Wellpath leadership feels powerless to insist that those harmful practices be discontinued, but in my expert opinion, Wellpath should have brought those harmful practices, at a minimum, to the attention of Dr. Bruce Randolph and documented that those harmful practices were brought to the attention of whatever entity they notified including the Court. Judges can be dismissive, but it is the responsibility of the medical provider to protect the health of the inmates in their charge and to speak up and advocate for the safety of their patients. I know this is an uncomfortable recommendation, but it is the right thing to do. Doing the right thing is not always easy, but it is always the right thing to do. **See above. This is a difficult situation to be in, but I believe that Wellpath is now**



more of an active participant than on my last visit. The Court Expeditor does not seek information from Wellpath on the Class and Subclass members on a regular basis. She only looks at inmates over 60 and those that are the most medically fragile that Wellpath brings to her attention. This needs to change.

### FINDING #3

1. The Shelby County Jail is not maximizing its efforts to enforce social distancing in its living units and should consider rethinking how it programs inmates in all areas of the jail. Unfortunately, except in the dormitories on the 5<sup>th</sup> and 6<sup>th</sup> floors, social distancing is not possible at the current population levels. Severe custody staffing shortages limit the Jail Command Staff from using the rooftop exercise yards simultaneously with dayroom time in the Housing Units. Even if that were to occur regularly, proper social distancing would not be achievable in my expert opinion.

### RECOMMENDATION #3

1. Jail Command Staff could consider allowing fewer inmates in the dayroom area at the same time. By reducing the number of inmates in the dayroom at one time while continuing to enforce the mandatory mask order for staff and inmates who are in the dayroom, the risk of infecting others with the Covid-19 virus will be reduced. As an example, only allowing 6-8 inmates out in the dayroom at the same time on the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> floors vs allowing 20 inmates out in the dayroom at the same time will substantially reduce the risk of person to person infection. In the dormitory living units, staff can put some inmates on bunk status until it is time for them to program in the dayroom. It is critical that the security officers enforce the directive that inmates properly wear masks. I did not physically go into the asymptomatic medical isolation units, but those inmates should only be coming out alone with masks properly worn until their medical isolation is lifted. Social distancing compliant with CDC guidelines is not possible in this jail given the size of the inmate population and the physical plant limitations. Social distancing consistent with CDC guidelines will only be possible by reducing the jail population to 50% of design capacity if then. There are a significant number of inmates in the Shelby County Jail that could be safely placed in structured and supervised environments in the community, and some that only remain in jail because they are economically disadvantaged people of color who cannot afford even a minimal bond.

### RECOMMENDATION #4

1. At the daily shift supervisors meeting, jail command staff should issue a directive to the floor Sergeants, Lieutenants, and Captains requiring them to direct living unit security staff to distribute free soap to the inmates in every unit twice a week until further notice. Furthermore, living unit security staff should provide each new inmate who enters the living unit with an information sheet that provides the inmate



with Covid-19 education materials and a statement that they are entitled to free soap twice a week and that they will not be written up if they have more than one bar of soap in their possession. If security staff do not follow this directive, they should be disciplined. Soap, Mask, and Hand Sanitizer availability has improved dramatically. I did not see any evidence of systemic problems with the distribution of these materials. I will review again on my next follow-up inspection.

#### RECOMMENDATION #5

1. Twice a week, every living unit in the jail should have a deep cleaning overseen by the security officer and the living units should be inspected by the floor sergeant. Inmates should have the opportunity to clean their cells every day at a specified time that does not take away from their dayroom time. If the living unit is not spic and span, the inmate's dayroom time should be suspended until such time as the living unit is spic and span. In addition, the living unit security officer should be disciplined for not keeping their living unit clean. Taking pride in your work area is a fundamental principal and best practice for a paramilitary organization. While there was some improvement in this area, during my follow-up inspection, I still found Housing Units and showers that were unsanitary including one right across from the 2<sup>nd</sup> floor Nursing Station that housed medically fragile inmates. This is inexcusable. The newly appointed Compliance Captain, Captain Harrison, should routinely inspect the Housing Units, common areas and showers to ensure they are clean and disinfected regularly.

#### RECOMMENDATION #6

1. Floor Sergeants, Lieutenants, and Captains need to be hypervigilant in enforcing the mandatory mask directive for staff and inmates. In fact, they need to be hypervigilant in enforcing all of the Covid-19 policies, procedures, and practices. There was a vast improvement in this area. I did not see any custody staff or healthcare staff with their masks down below their noses. All staff and 95 percent of inmates were mask compliant in the Housing Units and in the Court holding cells. No jail will ever be perfect in this area, and the Shelby County Jail is no different, but the Command staff should be commended for the increased compliance in this area.
2. It is critical that supervisors maintain their professional distance from subordinates. Overfamiliarity breeds contempt and as a result supervisors become unwilling to enforce policy and discipline non-compliant subordinates. This will poison the well, and all the great work that management has done to fight the spread of this virus will go for naught. Many of the vulnerable inmates will unnecessarily become seriously ill and die. This issue has been resolved. I did not see any overfamiliarity or clustering of staff during the course of my follow-up inspection.



3. I recommend that Chief Fields and Assistant Chief Hubbard increase their presence on the decks and spot check compliance with the Covid-19 policies, procedures, and practices including the cleanliness of the living units, dayrooms, and bathrooms. While I did not ask about this directly, from the source documents I reviewed, it is clear that Chief Fields' and Assistant Chief Hubbard's presence and active participation in the day to day operations of the Shelby Jail are seen and felt.
4. I recommend that the jail consider creating a compliance unit whose sole responsibility is to audit compliance with department policies, procedures, and practices. This unit can develop an internal audit tool and audit the jail quarterly for compliance. A quarterly report then should be filed with command staff and a corrective action plan should be developed to correct any identified deficiencies. This is important to protect the vulnerable inmates from an unreasonable risk of harm due to policy violations. A Compliance Unit of one has been created and Compliance Captain Harris accompanied me throughout my follow-up inspection. This Unit will go a long way to ensure consistent compliance with the Covid-19 policies, procedures and directives, and she will be able to immediately address any episodic violations that are occurring.

#### RECOMMENDATION #7

1. Create a Covid-19 information sheet that is at a 6<sup>th</sup> grade reading level. This information sheet should be provided to every inmate who is booked in the county jail and again when they reach their assigned housing unit after being taken off medical isolation. It should also be posted on the wall of every living unit. The living unit security officer should make sure the inmate understands the information on the sheet when they orient the inmate to the living unit rules and regulations. This information sheet should be available in audio and large print for the visually impaired, hearing impaired, and blind. I did see Covid-19 fact sheets and educational materials on the wall, but I did not inquire about the 6<sup>th</sup> grade reading level materials on this follow-up inspection. I will examine this issue more closely on my next follow-up inspection.

#### FINDING #8

1. Cleaning supplies for high touch surfaces such as telephones and kiosks are not readily available for inmates to use after each inmate uses those high touch items. I did see cleaning supplies in bottles in each Housing Unit available for inmate use.

#### RECOMMENDATION #8

1. Place an EPA approved cleaning solution in a spray bottle with a supply of paper towels in an area in the living unit where inmates can readily access it for cleaning the phone, kiosk and other high touch surfaces after every use. The jail is a direct supervision jail, and security staff are in the living units and can easily supervise its



use or assign a pod worker to that responsibility. Many inmates are indigent and assigning inmates with a pay number at .20 to .50 cents an hour will allow the inmate pod worker job to be attractive. First Watch and Second Watch can each have their own pod workers to assist the housing unit security officer with the management of the cleaning supplies. **The cleaning supplies were readily available.**

#### RECOMMENDATION #9

1. Issue the inmate population two cloth masks one of which can be exchanged with the weekly laundry exchange. During laundry, the masks should be inspected and replaced if they are in disrepair. Masks should not be sprayed with Biovex. The manufactures warnings state that Biovex is considered to be a mild irritant and can cause irritation of the eyes, ears and throat. Vulnerable inmates may have an adverse reaction to this substance being sprayed on their masks especially those with COPD or moderate to severe asthma. **Inmates I interviewed had adequate cloth masks and they can be exchanged during laundry exchange. Biovax is no longer used on masks. Some inmates choose to launder their own masks.**

#### RECOMMENDATION #10

1. Wellpath may want to consider hiring a Clinical Psychologist to test for intellectual disabilities and learning disabilities. Some experts have found that there may be as many as 2-4% of the inmate population that are intellectually disabled with a much smaller percentage being profoundly intellectually disabled needing high adaptive supports and protection from victimization. **This recommendation was not adopted.**

#### FINDING #11

1. During my inspection and interviews, I came to the conclusion that there is no concentrated and coordinated effort to assemble and present information to the courts regarding an inmate's medical conditions that may make him vulnerable to serious illness or death while housed in the jail. Moreover, while I find Mischelle Best, the Court Expeditor, to be hard working and passionate about her job, I am concerned she is spread too thin and has to do the job of a competent criminal defense attorney in addition to her other duties. Nor is there any consistent multi-disciplinary effort within the jail to secure alternative custody venues for vulnerable inmates. I found that a significant number of these inmates had very serious charges, but some have been charged with garden variety felonies and, in my expert opinion, because of their medical condition, they are not a current threat to public safety if they were placed in a structured and supervised environment.

#### RECOMMENDATION # 11

1. Create a multi-disciplinary task force within the jail to present the medical conditions of the inmates who along with their non-violent offenses make then good



candidates for release to alternative custodial settings. Technology has come a long way and alternatives custodial environments work well in many other states and jurisdictions. I left this finding AND recommendation in because this is such a critical component to not exposing Class and Subclass members to an unreasonable risk of serious illness or death from being exposed to the Covid-19 virus or any of the significantly more contagious and more deadly variants like the B.1.1.7 variant or others from South Africa, Brazil, etc.

The Court Expeditor function is understaffed, and the manner in which the data is collected is unorganized, sporadic, and ineffective. The manner in which the information regarding the medical conditions of the immunocompromised is monitored, collected and presented to the Courts with recommendations for alternative placements in the community is dysfunctional, unorganized, inconsistent, and ineffective.

The Court Expeditor has many tasks and has received little or no guidance on how to interface with medical and mental health on a daily basis, the breadth and depth of what information to collect, what information to present, what recommendations to make, how store and display that information, and how to track what if any action the Court has taken in response to her recommendations if she is making recommendations.

As a result, many Class and Subclass members who are immunocompromised with serious medical/mental health conditions and disabilities who could be safely placed in structured and supervised programs in the community instead are exposed to an unreasonable risk of serious injury or death in a jail that cannot enforce social distancing or provide the out of cell time and large muscle group exercise critical to the physical and mental well being of this vulnerable population.

Again I strongly recommend that Court Expeditor function be reimaged and restructured into a larger office with more personnel charged with gathering and presenting information regarding the Class and Subclass healthcare conditions, available alternative community based structured and supervised placements including but not limited to board and care facilities, residential treatment programs for substance abuse and dual diagnosis, GPS, home confinement, mental health treatment programs or being released on their own recognizance for those who are being held in jail because they are economically disadvantaged people of color.



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## CURRENT FINDINGS AND RECOMMENDATIONS

### FINDING #1

1. The Shelby County Jail, because of population size and physical plant limitations, does not have the ability to properly social distance inmates in the higher security levels. If social distancing did occur consistent with CDC guidelines it would result in inmates receiving little or no out of cell time for recreation time/large muscle group exercise. Inmates receiving adequate out of cell time/large muscle group exercise has already been cut severely because of staffing shortages.

### RECOMMENDATION #1

1. The size of the Shelby County Jail inmate population needs to be reduced by up to 50% in order to achieve social distancing consistent with CDC guidelines in order to effectively prevent/mitigate serious illness or death in the inmate population. Time is of the essence given the high vaccine refusal rate which is approximately 75%, The high refusal rate according to high ranking officials in the Shelby County Jail is in part because of the distrust of government by the African-American population stemming back to the "Tuskegee Experiment" and other civil rights atrocities. Moreover, at the time of my inspection only 22 inmates had been vaccinated.

### RECOMMENDATION #2

1. The Shelby County Jail and Wellpath should create a comprehensive, culturally competent vaccine education program for current and future inmates that will demonstrate to the inmate population that the vaccines are safe and effective. Until the majority of inmates have been vaccinated at the Shelby County Jail, the prevention/mitigation effect is de minimis.

### FINDING #2

1. The Court Expeditor function is completely ineffective in presenting Class and Subclass member healthcare information to the Court for them to consider in ROR decisions, Bond decisions, and safe alternative placements in structured and supervised environments in the community. The Court Expeditor function is severely understaffed, and the manner in which data is collected, presented, and preserved is dysfunctional and unreliable. Less than 1% of the Class and Subclass healthcare information has been submitted to the Court for consideration. This is a serious problem that places Class and Subclass members at an unreasonable risk of serious illness or death while in the Shelby County Jail.



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#### RECOMMENDATION #1

1. I recommend that the Shelby County Jail add at least two additional positions to the office of the Court Expeditor to assist in gathering the healthcare data of Class and Subclass members as well as available community based programs for presentation to the court in making its release, bond, and alternative placement decisions (such as GPS, mental health treatment programs, substance abuse treatment programs, board and care facilities, home detention, etc.)

#### FINDING #3

1. Contract tracing occurs in silos in the Shelby County Jail, and there is a significant reliance on schedules and self-reporting of exposure and significantly less on cameras and other real time comprehensive contact tracing. As a result, there is a serious risk of missing individuals who have been exposed to the Covid-19 virus, and an inadvertent introduction of the virus into the jail or the community.

#### RECOMMENDATION #1

1. It is my expert opinion that there should be an integrated approach to contract tracing involving reviewing camera footage, interviewing staff, reviewing schedules etc. in order to mitigate this problem.

#### FINDING #4

1. Staffing shortages at the Shelby County Jail cause Class and Subclass members to be locked in their cells oftentimes for days if not weeks at a time. In addition, Class and Subclass members have not gotten any outdoor large muscle group exercise since my last inspection in June of 2020. The lack of large muscle group exercise, and being confined in their cells for 24 hours a day for extended periods of time negatively impacts the mental and physical well-being of this already immunocompromised Class and Subclass population.

#### RECOMMENDATION #1

1. The Shelby County Jail Command Staff should institute a mandatory overtime program that fills all of the posted positions required to ensure the inmates in the jail get the minimum out of cell time recommended by the ACA while properly socially distancing. Inmates should have access to the rooftop yards and dayrooms from 0800hrs -2200hrs every day of the week. Giving the inmates their dayroom time and yard time will assist with their mental and physical well-being during this stressful time.



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## FINDING #5

1. When bail is considered in Shelby County, the judicial commissioner setting bail does not take into account the economic ability or inability of the detainee to post bond. Nor does the Court Expeditor uniformly present to the Court health information about all at risk Class and Subclass members who could be placed in alternative structured and supervised environments thereby reducing their risk of serious illness or death without jeopardizing the safety of the public. Thus, in my expert opinion, the manner in which bond amounts are set discriminates against Class Members and Subclass members who may not be a current threat to public safety, but who are people of color and who simply cannot afford even a minimal bond. The current system is not necessary to ensure future court appearances or to protect public safety. Under this system, the Class Members and Subclass Members, most of whom are poor and people of color, are disproportionately held in custody simply because of their inability to afford to post a bond, and they are not being considered for alternative placements in structured and supervised environments despite their underlying health issues. This discrimination results in a disproportionate number of Class and Subclass, immunocompromised poor people of color, being subject to an unreasonable risk of serious illness or death from the Sars-COV-2 virus because they are held in custody solely because they are economically disadvantaged. According to data I reviewed, as of September 2020, there were 351 inmates housed in the Shelby County Jail with bonds of less than \$2,000. While, I do not have the most recent data, I have no reason to believe the numbers are substantially different.

## RECOMMENDATION #1

1. The Court, with the assistance of the Shelby County Jail Expeditor, should take into consideration an inmate's financial ability to post a bond as well as if they are a current threat to public safety when making release decisions, bond decisions, and placements in structured and supervised environments in the community. There is a significant number of inmates in the Shelby County Jail whose bonds are \$2,000 dollars or less.

## FINDING #6

1. I met with the men who are responsible for the Shelby County Jail ventilation system. Shelby County has spent 1.1 million dollars on the installation of Global Plasma Ionizers in the ventilation system. According to the marketing materials the Ionizers are 98 percent effective in killing the Covid-19 virus. I am unqualified to make that determination, but I did review the marketing materials and contract with the vendor.



## RECOMMENDATION #1

1. The ventilation expert contemplated by the consent decree should be consulted in determining whether the GPS ionizers are sufficient to render the air quality in the jail safe. I understand there may be concerns, including within the CDC and ASHRAE, that these ionizers are not sufficient to mitigate the risk of aerosol spread of COVID-19. I am unqualified to make that determination, but I applaud the Shelby County Jail Command Staff for pursuing this solution.



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## CONCLUSION

During the course of my initial and follow-up independent Covid-19 jail inspection, I have come to believe that the Shelby County Jail leadership team are consummate professionals who do embrace and promote the “care” component of the inmates in their custody, care, and control. They repeatedly told me that they were open to making any changes that would improve their operation and increase the health and safety of all the inmate population but especially the vulnerable inmate population. Their ability to decrease the size of the inmate population in the jail is limited commensurate with their authority to limit the intake of new inmates and by their complete lack of authority to place any inmates in alternative custodial environments. The fact that the Shelby County Jail is accredited by the ACA and the National Commission on Correctional Health Care is evidence of their desire to have a well-run jail that delivers patient centered healthcare. What I continue to find during my follow-up inspection are opportunities for improvement in some critical areas that are plagued by severe staffing shortages exacerbated by employees off with Covid-19 illnesses or exposure, lack of systemic and multi-disciplinary approaches, episodic violations of well-intentioned and well thought out policies procedure and practices designed to maximize the protection of the vulnerable inmate population.

The Shelby County Jail medical provider, Wellpath, is also dedicated to delivering patient centered, competent medical care to all the inmates but especially to the medically fragile inmates who are the most vulnerable to serious illness or death from the Covid-19 virus. The effort of Wellpath to deliver consistent care to the inmates with chronic illnesses and serious medical conditions is hampered by the limitations of the physical plant in the Shelby County Jail, and the Community based providers that limit the number of appointments available to inmates.

During this follow-up inspection, I observed many positive changes to the Shelby County Jail Covid-19 response which is reflected in the low number of Covid-19 positive inmates. It should be noted that there are zero Covid-19 positive cases in the jail as of today.

However, because of the physical limitations of the Shelby County Jail, the severe custody staffing shortages, and the ever-increasing number of inmates housed therein, it is simply not possible for the Shelby County Jail to be CDC compliant in social distancing, and ACA compliant with out of cell time and large muscle group exercise.

I strongly recommend that the inmate population at the Shelby County Jail be reduced to 50 percent of design capacity through releases to alternative forms of confinement in the community, a re-examination of Court bond practices, and a reimagining/restructuring of the Court Expeditor’s function which will add tremendous value to the Court’s ability to make informed decisions about Class and Subclass members’ custodial status.

Thank you for the opportunity to work on this very important project.



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**Signature**

Respectfully submitted,

A handwritten signature in blue ink that reads "Mike Brady". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

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Mike Brady  
Director  
Sabot Consulting

April 11, 2021

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Date

# Exhibit 2:

# Standing Bail Order

**IN THE GENERAL SESSIONS CRIMINAL COURT OF SHELBY COUNTY,  
TENNESSEE**

**STANDING BAIL ORDER**

Consistent with its statutory authority under Tenn. Code Ann. § 40-1-111(a)(1)(A)(iv), the Court hereby issues the following Standing Bail Order establishing a procedure by which General Sessions Courts and Judicial Commissioners will determine the appropriate, least restrictive conditions of pretrial release for each individual arrestee.

This Order is contingent upon final signature of a County Resolution in Order to Establish a New Bail Hearing Room that provides, *inter alia*, the necessary funding to fully operationalize the requirements of the Order. This Order takes effect on August 15, 2022.<sup>1</sup> This Order shall continue unless superseded by another order approved by a majority of General Sessions Criminal Court Judges and also adopted by the Shelby County Commission as part of its funding arrangement for bail reform in Shelby County.

The procedures set forth below shall apply to all persons arrested in Shelby County for non-capital crimes. These procedures are to be adhered to for new charges, even if the individual is subject to other detention holds from any authority. In cases where a detention hold is capable of being adjudicated by the local judiciary (e.g., bench warrant, contempt order, alleged probation or parole violation), judicial officers shall act promptly to adjudicate the hold as set forth below. In cases where a detention hold is issued by another authority (e.g., federal detainer, extradition hold), the procedures below shall be adhered to with respect to the new arrest in Shelby County notwithstanding the hold.

The procedures set forth below outline a system in which judicial officers have discretion to act appropriately in every individual case consistent with the requirements of the U.S. Constitution and factors and considerations set forth by Tennessee law. In enacting and administering these procedures, judicial officers make note of guidance from the U.S. Supreme Court that “in our society, pretrial liberty is the norm,” and detention prior to trial the “carefully limited exception.” *United States v. Salerno*. These procedures distinguish between an unaffordable bail order and an affordable bail order, because an unaffordable bail order serves to detain an individual and an affordable bail order does not. These procedures contemplate that in certain instances, an unaffordable bail order may be appropriate, but only after a proper review of the statutory steps for determining the release or detention of any individual, which include careful consideration of less restrictive alternatives, adequate procedural safeguards, and sufficient written findings.

After an individual is booked into a Shelby County Jail facility, they will first be interviewed by a representative of Shelby County Pretrial Services, who will, amongst other

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<sup>1</sup> The necessary County Resolution was signed on August 10, 2022.

things, use a financial assessment tool to determine an amount that is financially affordable for the individual. This amount produced by the financial assessment tool shall be referred to as an “affordable bail amount.” After being interviewed by Pretrial Services, individuals will be screened by an on-duty Judicial Commissioner to evaluate them for recognizance release or release on other conditions (“release screening”), which may or may not include an affordable bail amount. If the Judicial Commissioner does not elect to release the individual on their recognizance, release with conditions, or release with an affordable bail amount, the Judicial Commissioner shall set the individual’s case for a bail hearing in a designated Bail Hearing Courtroom as quickly as possible, generally within 48 hours after a probable cause determination and no later than 72 hours after seizure within the meaning of the Fourth Amendment.

### **I. Timing and Format of Initial Release Screening**

For the purposes of this Order, an individual’s “entry into the Jail” shall be defined as the earlier of (1) when the probable cause/charging determination is made to facilitate an individual’s booking or (2) when an individual is arrested on a warrant, the time at which the individual physically arrives at the sally port at Jail East or 201 Poplar. Within 12 hours of entry to the Jail, an individual’s case will come before a Judicial Commissioner for an evaluation of whether they shall be released on their own recognizance, released subject to additional conditions, released on an affordable bail amount (as defined below), or held for a further hearing to determine whether no conditions, or combination of conditions will reasonably assure their future court appearance and/or the safety of persons in the community. This initial process before the Judicial Commissioner shall be known as the “release screening.”

Prior to the release screening:

1. The arrested individual shall be given notice, by a representative of the Pretrial Services Division, of the purpose of the release screening and the fact that their financial information will be collected for the purpose of determining the least restrictive conditions for their pretrial release. The individual will be notified that, if a Judicial Commissioner does not order their release (as described below), she will appear before a judge for a bail hearing (such hearing to be scheduled as quickly as possible). All reasonable accommodations shall be made to ensure the individual understands this release screening and notice of future potential hearings, including, but not limited to, any needed language interpretation, moving to a quieter space, and providing extra time to review and acknowledge oral and written notice;
2. A representative from Pretrial Services shall administer the Vera Institute Bail Calculator to determine the individual’s financial resources, which will produce a calculation of the arrestee’s income, expenses, debts, and other relevant factors, for use by a Judicial Commissioner to evaluate the arrestee’s ability to pay bail or for any other conditions of pretrial release that carry a financial cost. The amount

produced by the tool is referred to herein as the “affordable bail amount” for that individual, and should generally be understood to mean an amount the individual could pay in its entirety within 24 hours (as determined by the Vera Calculator) without borrowing money,

3. Pretrial Services will also provide arrestees with an indigency affidavit at intake for the court to use in determining whether the arrestees are eligible for indigent defense counsel. This form will be promptly shared with the on-call judicial commissioner. For persons set for further hearings as described below, this form will be promptly shared with the Public Defender’s office to ensure counsel is appointed as quickly as possible for eligible individuals. For persons eligible for the public defender’s services who are released, the indigency affidavit will be placed in their legal jacket and utilized at their next court appearance for the purposes of appointing counsel; and
4. Pretrial Services shall provide relevant information to the on duty Judicial Commissioner, including, but not limited to, an individual’s affordable bail amount and the costs associated with other potential release conditions. Pretrial Services is empowered to note whether, in their experience, the individual’s circumstances (including risk score) make the person a likely candidate for particular release conditions or supervision by Pretrial Services.

At the release screening:

1. Pursuant to Tenn. Code Ann. § 40-11-115 and consistent with due process principles, all arrestees shall be presumed to be released on their own recognizance absent compelling evidence that recognizance release will not reasonably assure their future appearance in court and/or the safety of the community.
2. The operation of this presumption shall mean that, absent evidence that recognizance release will not reasonably assure future court appearance and the safety of the community based on the factors in Tenn. Code Ann. § 40-11-115, an individual will be released on recognizance. Only upon a written determination that recognizance release will not reasonably assure an individual’s future court appearance, may the Judicial Commissioner proceed to consider additional conditions of release.
3. For those not released on their own recognizance, Judicial Commissioners must next impose only the least restrictive conditions on release necessary to reasonably assure the individual’s future court appearance, consistent with Tenn. Code Ann. § 40-11-116. In cases involving a charge that carries a statutorily-required condition of pretrial release (i.e. vehicular assault, vehicular homicide, or aggravated vehicular homicide with a prior alcohol-related conviction, mandatory bail requirements under Tenn. Code Ann. § 40-11-148), the Judicial Commissioner

shall impose at least those mandatory conditions but take into consideration their imposition in determining the least restrictive conditions necessary to assure future court appearance. Through the Vera Calculator, the Judicial Commissioners will also consider any financial costs associated with conditions of release and ensure that the imposition of the condition will not cause continued incarceration due to unaffordability.

4. In lieu of recognizance release or release on other conditions, the Judicial Commissioner may set an affordable bail as a condition of release if in accordance with the factors outlined in Tenn. Code Ann. §§ 40-11-115 through 118 if the Judicial Commissioner believes that affordable bail is necessary to reasonably assure the appearance of the arrestee and the safety of the public.<sup>2</sup> The Judicial Commissioner may set a bail at or below the affordable bail amount.
5. Finally, if the Judicial Commissioner believes that no combination of available conditions will serve to reasonably assure the individual's future court appearance and the safety of the public, considering all of the factors found in Tenn. Code Ann. § 40-11-118, the Judicial Commissioner may hold the individual over for a subsequent hearing in the bail hearing courtroom. Any such orders to put an individual on for a further hearing will be in writing and may be accomplished either via setting a bail amount in excess of the affordable bail amount or temporarily setting no bail until such time as the bail hearing is held ("NBS").
6. For any person who is set for a bail hearing, the Judicial Commissioner shall immediately review the indigency affidavit for the purpose of appointing public defense or conflict counsel, and appoint counsel for those all eligible.

Based both on judicial officers' statutory obligations to consider an individual's "financial resources," Tenn. Code Ann. § 40-11-118(b)(2), as well as their constitutional obligation to ensure no one is detained due to their poverty or without adequate due process protections, judicial officers setting conditions of pretrial release must know what amount of bail is affordable to a given individual. An affordable bail amount will be determined by the Vera Institute financial resources assessment tool adopted by the Court. It is understood that through this tool:

1. A secured financial requirement will be considered "affordable" if an individual could pay it in its entirety within 24 hours (as defined by the tool) without borrowing money; and
2. The Judicial Commissioner will consider any financial costs associated with other conditions of release, i.e. drug monitoring or treatment, and only impose the

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<sup>2</sup> As noted above, the Judicial Commissioner is also bound by mandatory conditions of Tenn. Code Ann. § 40-11-148 if the release screening occurs in a case in which the arrestee was already out on pretrial release.

conditions if they are deemed affordable to the individual, using the same definition and methodology as described above, if need be by pursuing fee waivers or other cost reductions.

## **II. Subsequent Bail Hearings for Persons Not Released**

In cases where the Judicial Commissioner has a good faith basis to believe that no conditions or combination of conditions will reasonably assure the safety of the public and/or the individual's future court appearance, the Judicial Commissioner shall set the case for a Bail Hearing on the next-available calendar date. The Judicial Commissioner's decision to set a case for a future hearing shall be clearly stated in writing, indicating that the Commissioner believes these criteria are met.

The Bail Hearing shall generally occur within 48 hours of entry to the Jail (as defined above), and no longer than 72 hours after the person is seized into physical custody. Under the below-defined extenuating circumstances, a Judicial Commissioner may extend the 72-hour hearing requirement via a written finding stating the reason and setting forth the next-available date for a hearing:

1. The arrestee is receiving necessary medical treatment while in custody such that they are not physically able to proceed to either a live or videoconference hearing;
2. Emergency or unplanned circumstances outside court staff's control (i.e. related to extreme weather, sick judicial officer, etc.) prevent the Bail Hearing Courtroom from operating for the day.

At the Bail Hearing, the judicial officer will evaluate the least onerous conditions that will reasonably assure the individual's future court appearance and the safety of persons in the community as set forth in Tenn. Code Ann. §§ 40-11-115 through 118. If and only if the Bail Hearing Judicial Officer determines that, by clear and convincing evidence, no condition or combination of conditions will suffice to reasonably prevent flight or reasonably assure the safety of the public pursuant to the analysis set forth in Tenn. Code Ann. § 40-11-118, shall a Bail Hearing Judicial Officer impose a secured bail amount above the affordable bail amount or, if the individual is accused of a capital case per Tenn. Const. Art. I, § 15, the officer may order no bail.

The Bail Hearings shall contain the following features:

1. The arrested individual will have the right to be heard and to present evidence;
2. If the arrestee qualifies for appointment of counsel via an Indigency Affidavit, legal counsel shall be made available to the arrestee, via a representative from the Shelby County Public Defender's office. Conflict counsel will be made available

if representation by the Public Defender's office represents a conflict. The individual will retain the right to represent themselves if she chooses;

3. If an individual does not qualify for appointment of counsel or declines to be presented by legal counsel free of charge, the individual may represent themselves or have private counsel present at the bail hearing. Individuals may also elect to waive the bail hearing or request a continuance of their bail hearing, and/or proceed to their arraignment;
4. The individual's counsel and counsel for the District Attorney shall have access to all documents prepared by Pretrial Services and presented to the Judicial Commissioner for the Release Screening.
5. A representative of the Shelby County District Attorney's office shall be present and shall bear the burden of justifying, by clear and convincing evidence, the imposition of an unaffordable bail order, or other conditions beyond recognizance release;
6. The burden of proof will not shift from the prosecuting attorney;
7. The Bail Hearing Judicial Officer shall review the initial findings made during the Release Screening regarding the individual's affordable bail amount or other conditions of release considered. If an individual has remained in custody after a Judicial Commissioner previously set an affordable bail amount or other condition of release, the Bail Hearing Judicial Officer will review the bail amount and/or condition and ensure affordable bail is in fact affordable;
8. The Bail Hearing Judicial Officer shall review *de novo* the Judicial Commissioner's screening determination that recognizance release was not appropriate. If the Bail Hearing Judicial Officer believes recognizance release is appropriate, they shall order recognizance release in accordance with Tenn. Code Ann. § 40-11-115;
9. The Bail Hearing Judicial Officer shall review *de novo* the Judicial Commissioner's screening determination that release on other conditions was not appropriate. If the Bail Hearing Judicial Officer believes release on conditions is appropriate, they shall order such release in accordance with Tenn. Code Ann. § 40-11-116;
10. The Bail Hearing Judicial Officer shall review *de novo* the Judicial Commissioner's screening determination that release on an affordable bail condition was not appropriate. If the Bail Hearing Judicial Officer believes release on an affordable bail condition is appropriate, they shall order such release in accordance with Tenn. Code Ann. §§ 40-11-117-118;
11. If the screening Judicial Commissioner used an unaffordable bail amount as the method of setting an individual case for a Bail Hearing, the reviewing Bail

Hearing Judicial Officer shall not give weight to the dollar amount imposed, but shall undertake a *de novo* review as to whether the individual is appropriate for release.

12. The Bail Hearing Judicial Officer must consider all the factors expressed in Tenn. Code Ann. §§ 40-11-115 through 118, along with the individual's presumed innocence and constitutional right to pretrial liberty;
13. The Bail Hearing Judicial Officer must explain on the record the reason for finding clear and convincing evidence that no condition or combination of conditions will reasonably assure the individual's future court appearance or the safety of the public. Clear and convincing evidence must be based on the totality of the circumstances, and cannot be justified solely by any one factor such as the nature of the pending charge or the individual's Public Safety Assessment score;
14. In weighing all the relevant factors to the bail inquiry in Tenn. Code Ann. §§ 40-11-115 through 118, including failures to appear, the Bail Hearing Judicial Officer should note in particular the conditions available to address risks of failure to appear, including court reminders and/or transportation assistance, and evidence that risks of failure to appear are frequently manageable with such tools;
15. The Bail Hearing Judicial Officer will examine whether the individual is detained due to a hold from another case or authority (e.g., probation or parole holds, warrants from other jurisdictions). The Bail Hearing Judicial Officer shall instruct the clerk to docket a prompt hearing in the appropriate Court to resolve any holds that are within the jurisdiction of the Shelby County Courts to address (e.g., probation or parole holds, bench warrants, contempt orders). The presence of another hold will not be a basis to ignore the Court's obligations to set appropriate and least-restrictive conditions on the new pending case; and
16. The Bail Hearings shall be open to the public, recorded via audio recording, and include appropriate videoconference capability for witnesses and other approved remote participation.

If the Bail Hearing Judicial Officer determines that detention is necessary and the least restrictive means to reasonably prevent the individual's willful flight and/or to prevent a serious risk of danger to the community, they may enter a secured bail requirement in a knowingly unaffordable amount, which will function as a detention order. If the individual is accused of a capital case per Tenn. Const. Art. I, § 15, the Bond Hearing Judicial Officer may order no bail.

### **III. Additional Safeguards**

The individual will have an opportunity to appeal a secured bail order as provided in court rules or state law. The individual may request a review of the secured bail order or other conditions of their pretrial release at any point while their case is pending.

If an individual who is ordered released on their own recognizance, with conditions, or at or below the affordable bail amount (either during the Release Screening or at a Bail Hearing) remains incarcerated seventy-two (72) hours after their release order, the circumstances of their case shall be promptly reviewed: (1) by any judicial officer or Judge at an arraignment or first appearance or at the request of defense counsel for a court setting, or (2) if neither an arraignment or first appearance occurs within seventy-two (72) hours of their release order, the Clerk of Court, at defense counsel's request, shall set the matter for a bail hearing at the next available date. The purpose of the bail hearing review will be to examine why, notwithstanding the court's prior release order, the individual remains detained. If their detention is due to a condition of release proving to be unattainable despite the Court's release order, the Bail Hearing Judicial Officer shall adjust the condition to effectuate their release. If their detention is due to a hold from another case or authority that is within the jurisdiction of the Shelby County Courts to address (e.g., probation or parole holds, bench warrants, contempt orders), the Bail Hearing Judicial Officer shall refer the matter to the appropriate court for that court's prompt resolution of any such holds.

#### **IV. Notices Upon Release from Jail**

Persons ordered released shall be given notice of the time and place of their next court date, and a clear explanation (orally or in writing) of how to connect with any services or conditions imposed as a requirement of release. All reasonable accommodations shall be made to ensure the individual understands these notices and information, including but not limited to any needed language interpretation, moving to a quieter space, and providing extra time to review oral and written notices.

#### **V. Implementation Timeline**

While this Order is effective on August 15, 2022, it is understood that the County, courts, and other offices required to implement the system contemplated here—including but not limited to the Public Defender's Office, District Attorney General's Office, Court Clerk, and Pretrial Services—shall have a period of six (6) months from August 15, 2022 to ensure that all elements of this Order are implemented and operational. All elements of this Order should be fully operational and compliant by February 15, 2023.

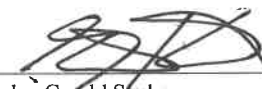
It is therefore ORDERED, ADJUDGED, AND DECREED, this 15th day of August, 2022



Judge Bill Anderson  
Division VII

Judge Loyce Lambert Ryan  
Division XV

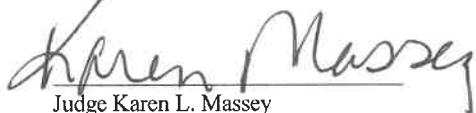
Judge Tim J. Dwyer  
Division VIII



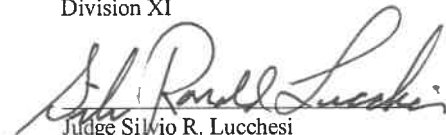
Judge Gerald Skahan  
Division IX



Judge Chris Turner  
Division X



Judge Karen L. Massey  
Division XI



Judge Silvio R. Lucchesi  
Division XII



Judge Louis J. Montesi, Jr.  
Division XIII



Judge Patrick Dandridge  
Division XIV

**Exhibit 3:**  
**June 9, 2022 Memorandum of  
Understanding**

## MEMORANDUM OF UNDERSTANDING REGARDING CRIMINAL PRETRIAL PROCESS IN SHELBY COUNTY, TENNESSEE

### I. Introduction and Background

1. *Parties.* The Parties to this Memorandum of Understanding (“MOU” or “Agreement”) are the American Civil Liberties Union (“ACLU”), American Civil Liberties Union of Tennessee (“ACLU-TN”), Just City Memphis (“Just City”), the Wharton Law Firm, Stand for Children Tennessee, and the Official Black Lives Matter Memphis Chapter (collectively “advocacy groups”); and Shelby County, Tennessee through the County Mayor and the County Attorney, the General Sessions Criminal Court Divisions of Shelby County, the Shelby County Public Defender’s Office (“PD”), the District Attorney General’s Office for the Thirtieth Judicial District of Tennessee (“DA”), the Shelby County Community Services Division, and the Shelby County Sheriff’s Office (“SCSO”) (collectively “local stakeholders”). This MOU is entered to address the administration of criminal pretrial processes in Shelby County from arrest through release or detention pending trial.

2. *Scope.* This MOU addresses allegations by the advocacy groups that post-arrest processes in Shelby County were constitutionally infirm, failed to adhere to state law, and did not adequately serve the citizens of Shelby County. While the Parties agree to enact changes to Shelby County’s post-arrest practices to provide for the equal protection, procedural and substantive due process rights of arrestees, this Agreement is not intended to be used to prove deficiencies in Shelby County’s post-arrest practices in any proceeding other than an enforcement action pertaining to this Agreement. Neither the Agreement nor any term hereof constitutes or shall be considered an admission of any liability or wrongdoing on the part of any Local Stakeholder. This MOU is entered into as it is in the best interest of the taxpayers to avoid costly litigation and ensure that every arrestee who enters the criminal justice system in Shelby County, Tennessee receives adequate constitutional protection.

3. *Background.* On December 1, 2021, the legal representatives of the advocacy groups notified local Shelby County stakeholders via letter that, after an 18-month investigation, they had concluded that the County’s practices around bail setting and pretrial detention violated state and federal law.<sup>1</sup> The advocacy groups requested a facilitated discussion in an effort to avoid litigation to address their legal concerns.

4. The local stakeholders, through the County Attorney and District Attorney General, accepted the advocacy groups’ request for a discussion. The Parties engaged the Justice Management Institute (“JMI”) to facilitate a series of discussions to determine whether the advocacy groups’ concerns could be resolved without filing litigation.

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<sup>1</sup> A copy of the letter is available here: [https://www.aclu-tn.org/wp-content/uploads/2021/12/FINAL-Demand-Letter-signed-12\\_1\\_21.pdf](https://www.aclu-tn.org/wp-content/uploads/2021/12/FINAL-Demand-Letter-signed-12_1_21.pdf).

5. On February 8, 2022, the advocacy groups provided their proposals to remedy the legal deficiencies they had identified within Shelby County's pretrial justice system, as well as to ensure that adopted reforms would work effectively and fairly. Those proposals included a draft county resolution, an administrative judicial order, and a range of suggestions for divesting from the costs of pretrial incarceration and investing in supportive services for persons released pretrial to ensure their success.

6. On February 11, 2022, the County Attorney arranged for counsel from the ACLU, ACLU-TN, and the Wharton Firm to directly observe post-arrest bond-setting by shadowing staff members from the Pretrial Services Agency, asking questions, and touring the jail facilities at 201 Poplar and Jail East.

7. On March 3, 2022, the County Attorney provided feedback to the advocacy groups on their proposal documents. On March 14, 2022, the advocacy groups responded in writing to that feedback. On March 22, 2022, attorneys from the ACLU and Just City spoke with attorneys from the County Attorney to discuss how to move forward. In light of that discussion, the advocacy groups sent updated proposal documents on March 25, 2022.

8. On April 19th, 26th, and 27th, 2022, the Parties met to discuss the advocacy groups' proposals. At the conclusion of the meeting on April 27, 2022, the Parties had reached agreement in principle both regarding substantive changes to the systems through which Shelby County officials evaluate arrested persons for pretrial release or detention, as well as a timeline and process by which the Parties agree to operationalize this agreement through longstanding, official policy changes, implementation, and monitoring.

9. *Agreement.* As a result of local stakeholders' cooperation and willingness to implement substantive change without the need for contested litigation, the Parties enter this MOU and commit to crafting, enacting, and implementing longstanding policy changes to address the advocacy groups' allegations regarding the due process, equal protection, and state law deficiencies in the prior system of bail setting and pretrial detention in Shelby County. So long as (1) official policy changes that effectuate the Parties' agreement and address the alleged legal deficiencies under the existing system are fully adopted on the timeline discussed below, (2) those policy changes are implemented and adhered to, and (3) those policy changes are not later amended or withdrawn, the advocacy groups agree not to pursue litigation related to the subject of their December 1, 2021 letter against any of the addressees of that letter, and agree to be so bound for a period of thirty-six (36) months from the date this MOU is executed.

10. This MOU reflects the Parties' agreement and intent to enact and implement the changes discussed below. The Parties understand that the final approval of the Shelby County Board of Commissioners and the Administrative Judge of the General Sessions Criminal Court will be required to convert this MOU into official local policy.

11. The advocacy groups, along with their staff, agents, and consulting partners, remain committed to working with local stakeholders to ensure that the agreements outlined in this

MOU are adopted efficiently, effectively, and fairly, as well as partnering in the implementation and operation of agreed-upon policies.

12. The local stakeholders remain committed to ensuring that every arrestee who enters the criminal justice system in Shelby County, Tennessee receives adequate constitutional protections.

## II. Agreed-Upon Remedial Measures

13. *Revised Intake Measures.* Immediately after booking and processing into a jail facility, **all persons** will be interviewed by a representative of the Pretrial Services office, with the interview/screening to be updated as follows:

- a. Pretrial Services will conduct a written assessment (e.g., the Vera Institute Bail Calculator) to evaluate the arrestee's financial condition, which includes a calculation of the arrestee's income, expenses, debts, and other relevant factors, and will provide that information to the judicial commissioner. This financial information will be used by the commissioner to evaluate the arrestee's ability to pay bail or for any other conditions of pretrial release that carry a financial cost. The Parties will agree to the specific terms of this assessment during the Implementation Period, but agree that the purpose of the assessment will be to evaluate the individual's own personal resources and obligations.
- b. Pretrial Services will also provide arrestees with an indigency affidavit at intake for the court to use in determining whether the arrestees are eligible for indigent defense counsel. This form will be promptly shared with the on-call judicial commissioner. For persons set on for further hearings as described below, this form will be promptly shared with the Public Defender's office to ensure counsel is appointed as quickly as possible for eligible individuals. For persons eligible for the public defender's services who are released, the indigency affidavit will be placed in their legal jacket and utilized at their next court appearance for the purposes of appointing counsel.
- c. The on-duty judicial commissioner will evaluate individuals for immediate pretrial release via the following procedure:(1) first the commissioner will determine whether under Tenn. Code Ann. § 40-11-115, and consistent with due process principles, recognizance release will reasonably assure the future appearance of the person and the safety of the community; (2) second, if not released on recognizance, the commissioner will assess whether under Tenn. Code Ann. § 40-11-116, and consistent with due process principles, release subject to other attainable conditions will reasonably assure future court appearance and the safety of the public; (3) third, in lieu of recognizance release or release on other conditions, the judicial commissioner may set an affordable bond as a condition of release if in accordance with the factors outlined in Tenn. Code Ann. §§ 40-11-115–118, the judicial commissioner believes that affordable bond is necessary to reasonably assure the appearance of the arrestee and the safety of the public; (4) finally, if the judicial

commissioner believes that no combination of available conditions will serve to reasonably assure the individual's future court appearance and the safety of the public, considering all of the factors found in Tenn. Code Ann. § 40-11-118, the judicial commissioner may hold the individual over for a subsequent hearing in the bond hearing courtroom by requesting that the Court Clerk set the matter for the next available hearing date. Any such orders to put an individual on for a further hearing will be clearly designated in writing (and may be accomplished either via setting an unaffordable bond or no bond). For those persons being set on for a subsequent bond hearing, the judicial commissioner shall immediately review the indigency affidavit for the purposes of appointing public defense or conflict counsel, and appoint counsel for those eligible.

14. *Bond Hearing Courtroom.* Shelby County will establish a courtroom and hearing procedure by which persons arrested who are not released upon an initial screening by a judicial commissioner are evaluated to determine whether continued pretrial detention is necessary. The court will also serve as a forum for bond reviews, including in cases where an individual was ordered released on their own recognizance, released with special conditions, or released on what was intended to be an attainable bond but for whatever reason does not in fact speedily obtain their release.
15. The detention/bond hearings will be open to the public and recorded.
16. The Parties agree to provide a mechanism for witnesses to participate in the bond hearings via videoconference if witnesses desire to attend the hearings and require or prefer remote participation.
17. The bond hearing court will operate 9a to 5p Monday-Friday, with the goal of ensuring no arrestee waits in custody longer than 48 hours after the Shelby County Jail accepts custody, and in no circumstances more than 72 hours after arrest, to proceed to a hearing. On holiday weekends, Shelby County officials will supplement the regular docket to ensure that the limit on post-arrest detention prior to a hearing is 72 hours.
18. The bond hearing court will be staffed by the Public Defender's Office and the District Attorney Generals' Office, along with the necessary judicial officers, appointed and private defense counsel, clerks, Pretrial Services staff, and Sheriff's deputies.
19. The State will bear the burden of justifying continued pretrial detention at bond hearings.
20. The Parties agree that additional details about the procedures and forms that will govern detention hearings will be finalized during the "Official Policy Drafting" and "Implementation" stages contemplated below.
21. The Parties agree that bond hearings must be crafted and conducted in a manner that protects all arrestees' constitutional and statutory rights, along with the enumerated rights of alleged victims of crime.

22. *No delay of initial appearance.* The establishment of the Bond Hearing Courtroom should not serve to delay an arrestee receiving their advisement of charges, appointment of counsel, or other matters addressed at their initial appearance in General Sessions Court. So long as those persons requiring a bond hearing are heard generally within 48, and no more than 72 hours, after being taken into custody, it is immaterial whether they proceed to initial appearance or bond hearing first. However, in order to streamline calendaring, transports, and other logistics, the judicial officer presiding over the Bond Hearing Courtroom shall be empowered to handle the subject matter traditionally addressed at an initial appearance (i.e. advisement of charges).

23. *Court Reminders.* Shelby County will implement a system of universal electronic (including but not limited to text message) reminders that notify persons released of the time, date, and location of any upcoming court dates.

### **III. Additional Goals the Parties Agree to Pursue**

24. Local stakeholders agree to explore, in discussion with advocacy groups and their partners, the following. A firm commitment to these goals is not required by this Agreement:

- a. *Transportation Assistance.* Through the Department of Community Services, the Parties agree to explore the possibility of providing transportation assistance to persons released pretrial (i.e. longstanding transit passes, designated transit passes on court dates, or an agreement with the transit authority that court summons are good for a free ride on public transportation).
- b. *Social Worker to Assist.* The Parties agree to explore whether to hire a designated social worker to assist persons released pretrial, to be housed in either the Department of Community Services and/or the Pretrial Services Agency.
- c. *Housing.* The Parties agree to discuss the subject of housing and the needs of the population released pretrial, whether adequate resources/referrals exist in the surrounding community to support the level of need, and to determine whether additional resources should be sought in the long-term. This evaluation may occur on an ongoing basis.
- d. *Streamlining Releases.* For persons brought to court for a bond hearing who are not ordered detained on an unattainable condition, i.e. who are cleared for release, the Parties agree to evaluate ways to streamline the manner in which such persons are released from jail custody rather than require all persons to be transported back to a jail facility and processed.

### **IV. Agreed-Upon Process to Effectuate Policy Changes**

25. *Official Policies.* The Parties agree to jointly draft official policy documents to operationalize this Agreement. The policies will encompass the above-mentioned remedial measures and must be drafted in a manner that resolves the advocacy groups' constitutional

and legal concerns as outlined in their December 1, 2021 letter. The Parties anticipate drafting: (1) a County Resolution and accompanying budget, to be passed by the Shelby County Board of Commissioners, and (2) an administrative judicial order, to be enacted by the judges of the General Sessions Criminal Court divisions (either through the presiding Administrative Judge or unanimously).

26. *Timeline and Process for Official Policy Drafting.* The Parties agree that they will finalize drafts of the County Resolution and Judicial Order by June 1, 2022, with a grace period of ten (10) total days. To collaboratively draft these documents, the Parties agree that the advocacy groups will present drafts for discussion and feedback from the local stakeholders and County Attorney. The Parties will meet via videoconference weekly to discuss any areas of disagreement or confusion with respect to the policy document drafts, with facilitation from JMI. If the need for additional stakeholder input or approval arises during this drafting process, the County Attorney will act diligently to seek sign-off or input from any necessary stakeholders not already party to the discussion.

27. *Fiscal Note.* Local stakeholders, coordinated by the County Attorney, will work to identify the fiscal resources and staff/actors needed to implement the policies agreed to under this MOU by June 1, 2022, with a grace period of ten (10) days.

28. *Enactment.* From the date on which the official policies are agreed-upon by the Parties, local stakeholders will have one (1) month to enact the policies as drafted. Enactment will constitute, at least: (1) passage of a resolution and budget by the Shelby County Board of Commissioners, and (2) passage of a judicial order by the judges of the General Sessions Criminal Court divisions and/or the Administrative Judge of the General Sessions Criminal Court.

29. *No Modification During Enactment.* The official policy proposals will not be modified during the enactment period without express, written approval by the advocacy groups for any changes. The advocacy groups will not approve changes that alter the substance of the Parties' agreement or which, in their view, undermine the legality and constitutionality of the policies.

30. *Commitment to Policy Changes.* The local stakeholders agree that they are committed to the success and longevity of the policy changes drafted and enacted pursuant to this Agreement.

31. *Implementation Timeline.* From the date on which both official policies have been passed, not to be later than one (1) month after the Parties approve the draft policies, the Parties will have a period of six (6) months to ensure that all elements of this Agreement and the policies as passed are implemented, with a grace period of one (1) month. As discussed below, implementation shall be a collaborative process between the Parties. At the conclusion of the six-month implementation period, all elements of this MOU and the official policies should be in operation and adhered to, unless the grace period is invoked.

32. *Extensions of Implementation Timeline.* Any extension beyond the one-month grace period of the Implementation Timeline discussed above must be expressly agreed to by the advocacy groups. If local stakeholders anticipate requiring additional time for an element of implementation of the terms of this Agreement and the agreed-upon official policies, they agree to notify advocacy groups in writing immediately upon discovering the need for an extension. Extension periods may be requested in increments of no greater than two (2) weeks. The advocacy groups will not unreasonably withhold approval of requests for extensions, but reserve the right to inform members of the public and the media of the fact that an extension was requested and on what grounds. The advocacy group's media advocacy is covered further in Paragraph 39 below and includes statements regarding extensions.

## V. Implementation and Monitoring

33. *Implementation.* The Parties agree to work together, along with their staff, agents, partners, colleagues, or consultants, throughout the implementation period. The Parties anticipate that implementation will include, but not be limited to, the following:

- a. *Hiring.* Hiring of adequate staff in the offices of the PD, DA, court, and Pretrial Services Agency.
- b. *Courtroom logistics.* Opening the courtroom for the bond hearing court and ensuring it is publicly-accessible and has recording and videoconferencing capability.
- c. *Training.* The Parties agree that training will be provided to the Judicial Commissioners, Pretrial Services staff, courtroom staff, PD staff, and DA staff to explain the new procedures adopted by this Agreement and the official policies. The advocacy groups will be invited to provide and/or co-facilitate these trainings, and will do so at no cost to any of the local stakeholders being trained. The advocacy groups will attempt to satisfy the requirements to make trainings CLE-eligible and fit within the annual training requirements of the judicial commissioners. With permission from the County Attorney, the advocacy groups may invite knowledgeable persons from partner organizations (i.e. the Vera Institute) to attend and/or co-facilitate trainings. The Parties agree that staff from the Justice Management Institute ("JMI") may also be invited to co-facilitate and attend trainings provided under this Agreement. The advocacy groups' curriculum for these trainings must be approved by the County Attorney or her designee.
- d. *Forms and notices.* The Parties agree to jointly draft all notices, forms, and order templates to be used as part of the system envisioned by this Agreement. This includes, but is not limited to: (1) notice forms to be issued to arrested individuals regarding their pretrial release determinations and possible bond hearing, (2) notice forms to be issued to alleged victims regarding possible bond hearings, (3) the updated questionnaire used at intake by Pretrial Services staff, (4) the form generated by Pretrial Services staff to provide to the judicial commissioner

conducting the initial release screening, (5) any order template for the judicial commissioner conducting the initial release screening, and (6) any order template for the judicial officer presiding over bail hearings and bail reviews.

- e. *Court reminders.* Within the implementation period, a system of automated court reminder notices must be adopted so that all persons released pretrial will have the ability to receive notice of the time and place of their next court date(s).

34. *Monitoring.* The advocacy groups, through their staff and other legal agents, will serve as monitors to this MOU and the official policies promulgated pursuant to this MOU. The advocacy groups will be given the means to monitor the implementation and administration of the policies contemplated in this MOU by: (1) receiving any data collection and reporting done by the County with respect to the practices contemplated by this Agreement, (2) receiving a quarterly dataset to enable the advocacy groups to observe trends in the number of cases, the release decisions being made, and outcomes; (3) being provided regular access to court orders and hearing audio, and (4) the ability to observe public court proceedings. During the Implementation period, the Parties will agree to the specifics around the quarterly dataset, what variables it collects, and ensuring it is sufficient to enable the advocacy groups to observe trends, decisions, and outcomes under the system contemplated by this Agreement.

35. If the grace period or any extensions to the Implementation Timeline are requested, local stakeholders agree to explain in writing why additional time is being requested.

## **VI. General Provisions**

36. *Preclusion.* This MOU is not intended to have any preclusive effect except between the Parties, and only with respect to the subject matter raised in the advocacy groups' December 1, 2021 letter. Should the issue of the preclusive effect of this Agreement be raised in any proceeding other than a civil action between the Parties, the Parties agree to certify that this Agreement was intended to have no such preclusive effect.

37. *Agreement to Discuss Alleged Noncompliance.* If the advocacy groups believe that the local stakeholders have failed to substantially comply with any term under this Agreement, the advocacy groups shall give thirty (30) days' written notice of the perceived alleged failure and an opportunity for the local stakeholders (either directly or through counsel at the local stakeholders' discretion) to engage in a dialog with the advocacy groups regarding whether the local stakeholders have in fact failed to substantially comply, and/or to take steps within that thirty-day window to attain substantial compliance, prior to the advocacy groups seeking judicial enforcement of this Agreement. If the change requires approval from SCG and/or the County legislative body, the notice period shall be ninety (90) days.

38. *Failure to Enact.* If, for whatever reason, the Parties are unable to adopt the official policy changes contemplated in this MOU, such failure will trigger the notice period described in Paragraph 35. If the Parties are unable to resolve their dispute, and/or for

whatever reason policies commensurate with this Agreement are not adopted at the conclusion of the notice and discussion period, the advocacy groups reserve the right to seek judicial enforcement of this agreement and/or pursue independent litigation on the subject matter raised in their December 1, 2021 letter. Under such circumstances, the MOU will have no preclusive effect.

39. *Courtesy Notice Prior to Public Comment.* The advocacy groups are commonly engaged in public advocacy, including statements on social media and to the press, with respect to matters of the administration of criminal justice. The Parties understand that the local stakeholders cannot restrict the content of the advocacy groups' speech, nor that of their staff or membership. By entering this Agreement, the advocacy groups do not limit their, their staff, or their members' rights to speak publicly about the administration of pretrial justice in Shelby County. However, as part of this Agreement, prior to publicly commenting on matters that pertain to the subject matter of this Agreement, the advocacy groups agree to give a courtesy notice to the County Attorney and, if applicable, the DA. Barring a situation of extreme urgency, the advocacy group making the public comment will attempt to provide the County 24 hours' advance notice of the statement and an opportunity to respond.

40. *Policy and Procedure Review.* To the extent Shelby County or any of its officials have existing policies or procedures not otherwise contemplated in this MOU that require revision to ensure compliance with the substantive terms of this MOU, Shelby County officials and the District Attorney General agree to review and/or revise said policy to ensure compliance and consistency with this MOU. Unless otherwise agreed, this policy and procedure review shall occur within the Implementation Timeline.

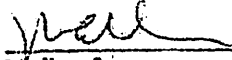
41. *Modification.* Should the Parties choose to modify this MOU, they may do so by mutual agreement. Any such modifications or amendments to this MOU shall be memorialized in writing and executed by representatives for all Parties.

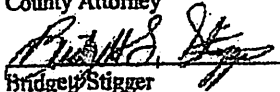
42. *Additional Legislative Approvals.* To the extent that implementation of provisions of this MOU require additional appropriation of funds and/or budgetary amendments not otherwise contemplated in this Agreement, the local stakeholders agree to present such funding requests to the Shelby County Board of Commissioners within thirty (30) days of becoming aware of the need for such requests.

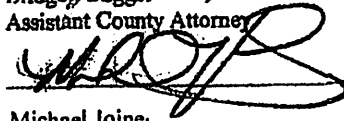
This MOU captures discussions had on April 26th and 27th, 2022, among county stakeholders and advocacy groups (as identified in Section I.1 above), during a mediated conversation led by the Justice Management Institute. At the conclusion of the meeting on April 27, 2022, the Parties reached a consensus regarding the principles set forth above. Through representation from the County Attorney's Office, the Parties continued to meet via videoconference on May 6th, 13th, 20th, 25th, and June 3rd and 10th, 2022 to reach agreement about the matters detailed in this MOU. Therefore, so as to not cause undue delay in implementing these principles via: 1) a Standing Order and 2) a County Commission Resolution, this MOU is entered contingent upon final approval of


the Standing Order and the County Commission Resolution. Further, once adopted by those with authority to do so, the Standing Order and County Commission Resolution shall control.

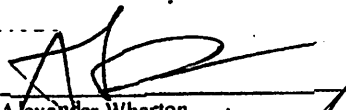
Approved as to form and legality this 9th day of June, 2022

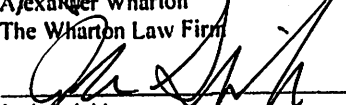
  
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Marlinee Iverson  
County Attorney

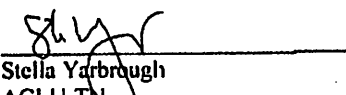
  
\_\_\_\_\_  
Bridget Stigger  
Assistant County Attorney

  
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Michael Joines  
Assistant County Attorney

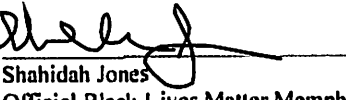
  
\_\_\_\_\_  
Andrea Woods  
ACLU

  
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Alexander Wharton  
The Wharton Law Firm

  
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Josh Spickler  
Just City Memphis

  
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Stella Yarbrough  
ACLU-TN

  
\_\_\_\_\_  
Cardell Orrin  
Stand for Children Tennessee

  
\_\_\_\_\_  
Shahidah Jones  
Official Black Lives Matter Memphis  
Chapter

# Exhibit 4:

June 30, 2025

Rule 30(b)(6) Deposition of  
Lead Judicial Commissioner

John Marshall

(Excerpted)

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE

---

JUST CITY, INC. and CLASS  
REPRESENTATIVES DEANGELO TOWNS  
and MARSHAWN BARNES, on Behalf  
of Themselves and All Others  
Similarly Situated,  
Plaintiffs,

v.

Case No.

FLOYD BONNER JR., SHELBY COUNTY  
SHERIFF; LEE WILSON, PRESIDING  
SHELBY COUNTY GENERAL SESSIONS  
CRIMINAL COURT JUDGE, and JOHN  
MARSHALL; ROBERT BARBER; RHONDA  
HARRIS; KEVIN REED; CHRISTOPHER  
INGRAM; SHAYLA PURIFOY; ROSS  
SAMPSON; SERENA GRAY; TERITA  
HEWLETT; MISHELLE BEST; KENYA  
SMITH; ZAYID SALEEM; KATHY KIRK  
JOHNSON; and LESLIE MOZINGO,  
SHELBY COUNTY JUDICIAL  
COMMISSIONERS,

2:24-cv-2540-TLP-tmp

1 in Their Official Capacities,  
2 Defendants.

3  
4 DEPOSITION OF 30(b)(6) CORPORATE REPRESENTATIVE FOR  
5 DEFENDANTS - JOHN MARSHALL

6 DATE: Monday, June 30, 2025

7 TIME: 2:30 p.m.

8 LOCATION: Remote Proceeding

9 Memphis, TN 38103

10 REPORTED BY: Jay Frederick

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS JUST CITY, INC.; DEANGELO  
TOWNS; AND MARSHAWN BARNES:

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A P P E A R A N C E S (Cont'd)

ON BEHALF OF DEFENDANTS FLOYD BONNER JR., LEE WILSON,  
JOHN MARSHALL, ROBERT BARBER, RHONDA HARRIS, KEVIN  
REED, CHRISTOPHER INGRAM, SHAYLA PURIFOY, ROSS  
SAMPSON, SERENA GRAY, TERITA HEWLETT, MISHELLE BEST,  
KENYA SMITH, ZAYID SALEEM, KATHY KIRK JOHNSON, AND  
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A P P E A R A N C E S (Cont'd)

ALSO PRESENT:

Clio Gates, Paralegal, ACLU (by videoconference)  
Davianna Velasco Valdivieso, Intern, ACLU (by  
videoconference)

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I N D E X

EXAMINATION:	PAGE
By Mr. Quigley	10
By Ms. Verriest	58

E X H I B I T S

NO.	DESCRIPTION	PAGE
Plaintiff:		
Exhibit 1	Notice of Rule 30(b)(6) Deposition of Defendants	12
Exhibit 2	Action News 5 Article	43
Exhibit 3	Daily Memphian Article, "Re-Arrests Down After New Standing Bail Order, Report Shows"	45
Exhibit 4	Daily Memphian Article, "It's All About a Balance"	47

QUESTIONS INSTRUCTED NOT TO ANSWER

PAGE	LINE
87	3
88	14

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I N D E X (Cont'd)

D O C U M E N T S R E Q U E S T E D

NO.	DESCRIPTION	PAGE
1	Sample of Completed Bail Hearing Order Forms and Bail Hearing Recordings	111

1 P R O C E E D I N G S

2 THE REPORTER: Good afternoon. My name  
3 is Jay Frederick. I'm the reporter assigned by  
4 Veritext to take the record of this proceeding. We  
5 are now on the record at 2:30 p.m.

6 This is the deposition of John Marshall  
7 as 30(b)(6) representative for Defendants, taken in  
8 the matter of Just City, Inc., et al. vs. Floyd Bonner  
9 Jr., et al., case number 2:24-cv-2540-TLP-tmp on  
10 Monday, June 30, 2025, via remote Zoom.

11 I'm a licensed court reporter  
12 authorized to take acknowledgements and administer  
13 oaths in Tennessee. Parties agree that I will swear  
14 in the witness remotely.

15 Additionally, absent an objection on  
16 the record before the witness is sworn, all parties  
17 and the witness understand and agree that any  
18 certified transcript produced from the recording of  
19 this proceeding:

20 - is intended for all uses permitted  
21 under applicable procedural and  
22 evidentiary rules and laws in the  
23 same manner as a deposition recorded  
24 by stenographic means; and

1 - shall constitute written stipulation  
2 of such.

3 At this time, will everyone in  
4 attendance please identify yourself for the record,  
5 beginning with the witness.

6 MR. MARSHALL: I'm John Marshall, lead  
7 Shelby County judicial commissioner.

8 MR. QUIGLEY: I'm Jared Quigley  
9 representing Plaintiffs.

10 MR. DURRENCE: Jasen Durrence, Shelby  
11 County Attorney's Office, representing the defendants.

12 MS. VERRIEST: Ashika Verriest, ACLU  
13 National Criminal Law Reform Project, representing the  
14 plaintiffs.

15 MS. YARBROUGH: Stella Yarbrough from  
16 ACLU of Tennessee, also here for the plaintiffs.

17 MR. ENRIGHT: Brian Enright on behalf  
18 of the Attorney General's Office here for the third  
19 party intervenor, State of Tennessee

20 MS. GATES: Clio Gates, paralegal at  
21 ACLU National Criminal Law Reform Project, here for  
22 the plaintiffs as well.

23 THE REPORTER: Thank you. Hearing no  
24 objection, I will now swear in the witness.

1 Please raise your right hand.

2 WHEREUPON,

3 JOHN MARSHALL,

4 called as a witness and having been first duly sworn  
5 to tell the truth, the whole truth, and nothing but  
6 the truth, was examined and testified as follows:

7 THE REPORTER: Thank you.

8 You may proceed.

9 EXAMINATION

10 BY MR. QUIGLEY:

11 Q Good afternoon, Commissioner Marshall. My  
12 name is Jared Quigley. I'm with the law firm of  
13 Simpson Thacher & Bartlett LLP. And we represent  
14 Plaintiffs in this proceeding.

15 Can you state your full name for the record?

16 A Full name is John Walker Marshall.

17 Q Is there any reason why you can't testify  
18 fully and completely today?

19 A No, there's not.

20 Q Have you had your deposition taken before?

21 A No, I have not. Never.

22 Q But I assume you're familiar with deposition  
23 procedure?

24 A A little bit. I have mostly been in

1 of the time, they're already going to be set before  
2 the person is arraigned.

3 Q Let me just clarify that slightly. She said  
4 that, like, a decision on bail could be made at an  
5 arraignment, like the bail could be altered?

6 A Well, it could, yeah. Well it could  
7 be -- it could be. Yeah. Just to --

8 Q I don't want to mischaracterize her  
9 testimony.

10 A Yeah. Right.

11 Q How does Shelby County establish bail  
12 setting practices?

13 A There is no per se set practice for setting  
14 bail. It's an individual decision by that magistrate  
15 or that judge. There's -- there's no instruction  
16 how -- how to set bail.

17 Q How did Shelby County come up with the  
18 procedures used?

19 A How did they come up with the procedures  
20 used?

21 Q Yes.

22 A Well, that procedure -- that basic procedure  
23 has been in use since before I was commissioner. So  
24 as long as 2006.

1 I mean, the basic where Pretrial calls us to  
2 set the bond, that was going on before my time working  
3 as a commissioner. So that has been going on at -- at  
4 least 20 years, that -- that procedure of doing it  
5 that way.

6 Q Understood. In terms of the -- like, what  
7 appears on the different forms, who makes decisions  
8 about changing, for example, the bail screening form?

9 A Changing the form? Well, there was no form  
10 before the standing bail order. The standing bail  
11 order is what created all the paperwork we have to do.

12 And that comes from the standing bail order.  
13 So that -- that's a direct product of that. That's  
14 basically the ACLU forms that we've taken and modified  
15 with -- with them, with the ACLU.

16 Q Who at Shelby County is responsible? Like,  
17 who's the decision maker on the Shelby County side  
18 with respect to bail forms, et cetera?

19 A The forms -- what, the language on the  
20 forms?

21 Q Yeah.

22 A Well, that was essentially negotiated  
23 between the County Attorney's office and the ACLU and  
24 myself, and myself representing the judges and the

1 commissioners. It was a back -- back and forth  
2 negotiation.

3 I -- I would -- I went back to the judges  
4 from time to time when we were working out the  
5 language.

6 I mean, I didn't -- I didn't have the  
7 authority to -- you know, I had to get the judges.  
8 Let's be clear. The general session judges are our  
9 bosses.

10 The judicial commissioners are essentially  
11 an arm of the general session judges. We work under  
12 them. Everything we do is under them.

13 Q So when you were working on the standing  
14 bail order --

15 A Yes.

16 Q -- did you have decision making ability to,  
17 like, finalize the standing bail order? Or was that a  
18 general sessions judge? Who's defining --

19 A Not -- not without running it by the general  
20 sessions judges first.

21 Q So the ultimate decision maker is --

22 A The general sessions judges.

23 Q Is there, like, a head of the judges who's  
24 the decision maker? Is it, like, a general consensus

1 among the judges? How does that work?

2 A There's a -- they have two positions.  
3 There's an administrative judge who is -- that's a  
4 position that rotates every year.

5 And then we -- there's a judge who is what  
6 we call the supervising judge of the judicial  
7 commissioners.

8 And at the time when I became the lead  
9 commissioner, Judge Lee Wilson was the lead  
10 commissioner. And he was elected in August of '22.

11 And then I was elected by the judges to  
12 replace him. And there wasn't a judge supervising us  
13 at first.

14 So I went to Judge Montesi, who was the  
15 administrative judge, when we were working out the  
16 language with the forms. So I -- I went to the  
17 administrative judge to get him to sign off on the  
18 forms and the language.

19 Usually, County Attorney Iverson would email  
20 me and Judge Montesi or ask me to talk to Judge  
21 Montesi about the forms.

22 Q Understood. We're going to discuss the  
23 standing bail order and HB1719. Are you familiar with  
24 HB1719?

1           A       Well, I get them mixed up, that and 1642.  
2       Is that -- is that the one about the ability to pay?

3           Q       It is, yes.

4           A       Okay. Yeah. Okay. That's 1719?

5           Q       Yeah.

6           A       Yeah.

7           Q       When I use the term HB1719, I'm referring to  
8       the Tennessee law that prohibits consideration of  
9       ability to pay when setting bail.

10          A       Okay -- okay.

11          Q       And when we reach those, we'll discuss, you  
12       know, the details of who was responsible for, you  
13       know, setting the Shelby County bail practices with  
14       respect to both the standing bail order and the  
15       decisions made after HB1719.

16                    But we can start with some more basic  
17       questions. Who makes bail decisions in Shelby County?

18          A       Generally, the judicial commissioners. It  
19       can also be a judge. Sometimes judges will do what's  
20       called preset a bond.

21                    Law enforcement will go directly to a judge  
22       when they're getting an arrest warrant. And the judge  
23       will go ahead and put a bond on the warrant. So  
24       that's done occasionally.

1 setting bail and a process -- a process so that all  
2 defendants would get a bail hearing to have  
3 their -- have their bond reviewed shortly after their  
4 arrest, that they would have a bail hearing with an  
5 attorney and a chance to produce witnesses and  
6 evidence and whatnot.

7 And the State would have the burden to show  
8 why the bond needed it to be as it was. And so  
9 that -- that was an agreement, an order that the judge  
10 has signed.

11 Q And you said you were not involved in  
12 negotiating the standing bail order?

13 A No.

14 Q Who was involved on behalf of Shelby County?

15 A The County Attorney. And I suppose the  
16 judges -- general sessions judges somewhat. But  
17 I -- I wouldn't be able to speak to that because I  
18 don't have direct knowledge of that.

19 Q Were you involved in implementing the  
20 standing bail order?

21 A I was involved in -- I would say in  
22 implementing it because, when I became the lead  
23 commissioner in September 2022, it was to go into  
24 effect on February the 15th of 2023.

1           So there was a lot to do to -- as you could  
2 say -- implement it, to get it set up, to get the bail  
3 hearing room set up, how's it going to work, the forms  
4 we're going to use, et cetera.

5           So I -- I was involved in a number of Zoom  
6 meetings with the parties and trying to get it worked  
7 out.

8           Q     What processes did Shelby County adopt  
9 through the standing bail order?

10          A     That we would use the -- the main thing is  
11 that the initial bail screening form, which is -- is  
12 essentially written findings that we would produce,  
13 written findings on our decision, both at initial bail  
14 and at the bail hearing review stage.

15                 And the affordable bail calculator was  
16 introduced at that point. We were given a number by  
17 Pretrial of -- essentially the affordable bail  
18 calculator was essentially net income, net expenses,  
19 spit out a number.

20                 Pretrial gave us that number. That was what  
21 the person said they could afford. That was a number  
22 for us to consider if we felt that was sufficient to  
23 set the bond.

24                 If we could, it would be deemed an

1 affordable bail. If we did not think that was  
2 sufficient, if it was a number higher than that, it  
3 would be what was considered an unaffordable bail.

4 And then it was automatically flagged to go  
5 ahead and have a bail review hearing set  
6 automatically, if it was deemed to be unaffordable.

7 So that was all, you know, built into the  
8 paperwork. And that was part of the process. And  
9 then the person -- the way it was first set up, it  
10 wasn't that well-thought through in my opinion, in  
11 some ways.

12 It had people going to have a bail hearing  
13 first, which wasn't going to work. And it was decided  
14 among all the parties that the person needed to be  
15 arraigned first because we do not see the defendant  
16 when we do the initial bail.

17 We cannot appoint counsel because, under the  
18 statute, they have to be present in front of us. And  
19 I kept telling everyone that, and nobody would listen  
20 to me.

21 And then the judges, once it started, said,  
22 "No, you can't be appointing counsel down in the jail  
23 when you're not seeing the defendant."

24 So anyway, it was all arranged that the

1 person would have the arraignment first, at which time  
2 they would be appointed counsel. And then the  
3 following day, the bail hearing would be scheduled the  
4 following day.

5 But it's actually automatically -- as soon  
6 as the person is booked in and charged, they're given  
7 an arraignment date. And the following day, they're  
8 automatically set for bail hearing.

9 Q Understood. Let's speak briefly about the  
10 implementation of the standing bail order. How did  
11 you implement the process under the standing bail  
12 order?

13 Were there trainings for the judicial  
14 commissioners? What was done? You know, what did you  
15 do to implement the standing bail order?

16 A Well, the -- the County, we had a couple of  
17 different County Attorneys' offices put on a couple  
18 of -- I guess you would say seminars,  
19 presentations -- that all the judicial commissioners  
20 had to come to.

21 I believe I can't remember. I think there  
22 were a couple of them at least. And so there was  
23 quite a bit of discussion on going over it. And I'm  
24 sure at some point we -- we went over the forms. And

1 we just started doing it.

2 Q When you say we went over the forms, who is  
3 we?

4 A The judicial commissioners. I don't  
5 remember if we had a specific meeting. I'm sure we  
6 did to go for -- I -- I'm quite sure we did.

7 We probably had -- we probably had a Zoom  
8 meeting or maybe it was a couple of Zoom meetings to  
9 kind of go over -- go over the forms and see if anyone  
10 had, you know, questions about -- about them 'cause it  
11 was a lot of check boxes in places. It was -- it was  
12 kind of confusing what went where. A lot of it was  
13 redundant.

14 And so I'm sure we had some Zoom meetings  
15 probably just to discuss it and go over, make sure  
16 everybody understood, you know, the different parts of  
17 the form such as that.

18 Q Earlier Ms. Greer testified that the  
19 calculator figure, the figure that the calculator spit  
20 out for affordable bail, would auto-populate onto a  
21 blank bail screening form that would be received by  
22 the judicial commissioner. Is that accurate?

23 A That's accurate. They also, when they were  
24 talking to us on the phone -- because we -- we don't

1 even see that form while we're talking to Pretrial and  
2 making that decision. We usually don't have that form  
3 in front of us.

4 So they would tell us verbally, "The  
5 affordable bail calculator for this person is \$100."  
6 And we jot that down in our notes, generally how we  
7 did it.

8 But then when the form came to us, it -- it  
9 would have that figure on it. But just to be clear,  
10 we already knew.

11 That's why this whole process is so -- and  
12 time-consuming because we -- we have to double up. We  
13 have to listen to it all. And then get the forms,  
14 fill them out, turn it around, et cetera, et cetera.

15 But they would tell that to us verbally. So  
16 we would have that number when we were making our  
17 decision.

18 Q Understood. And are you familiar with how  
19 many questions Pretrial Services had to ask people who  
20 were arrested to fill out the calculator?

21 A Well, we would see when they would send us  
22 the packet, what we call the packet for us to sign,  
23 when we fill out the initial bail screen, it included  
24 the affordable bail calculator sheet.

1           So we saw the actual sheet, which, you know,  
2           how it was -- the questions they were asking. So  
3           we -- we saw that for everyone. So we -- we actually  
4           got a copy of that in the packet. So -- so yes,  
5           somewhat we were.

6           Q       So the -- in the email from Pretrial  
7           Services to the judicial commissioner, there would be  
8           a printout of the ability to pay calculator inputs?

9           A       Yes -- yes. There's two emails in  
10          this -- the process. They would email us first the  
11          affidavit.

12          That's our cue. They used to just call us  
13          on the phone and say, "I have four bonds I need to be  
14          set; we've got four defendants." And we'd sit down  
15          with our notebook, and we'd go over it.

16          Once we have to start working with standing  
17          bail order and there was so much paperwork, we had to  
18          go back, needed a copy of the affidavit to actually be  
19          able to refer back more carefully.

20          So we asked them to start emailing us a copy  
21          of the affidavit. So we changed our procedure with  
22          them where they would email us the affidavits.

23          Let's say they have four defendants ready.  
24          They would email us those four affidavits. So we

1 would have a chance to print them out and look at  
2 them.

3 And then we would call them when we're ready  
4 to set the bond. And then after we set the bond, then  
5 they would email us back with the initial bail  
6 screening, the affordable bail calculator sheet, and  
7 two or three other pieces of paper.

8 And we would fill that out electronically.  
9 And then we send that back to them and to the clerk's  
10 office.

11 Q But the bail decision was made before you  
12 received those documents?

13 A Correct because they had already -- those  
14 documents didn't have any -- that -- that affordable  
15 bail number was on those documents. But they had  
16 already told us what that number was when we -- when  
17 we made our decision.

18 Q But today, they no longer tell you what that  
19 number is when they call?

20 A No.

21 Q Before HB17 was -- went into effect and was  
22 implemented -- strike that. Sorry.

23 Let's move on to my next set of questions.  
24 You said the -- who trained the judicial commissioners

1 regarding how to follow the standing bail order?

2 A Well, as I said before, the County, Shelby  
3 County, had a couple of different seminars or sessions  
4 about it.

5 And then I went over with them. I'm sure in  
6 a couple of different Zoom meetings we went over the  
7 forms.

8 And then some of it, of course, was just,  
9 you know, trial and error and trying to get the forms  
10 right 'cause, as I said, it was kind of confusing,  
11 different parts of it.

12 So we probably had to meet again and -- and  
13 talk about it, make sure we all understood it, that we  
14 were putting the right number in the right place, that  
15 sort of thing.

16 I think the basic concept, you know, the  
17 commissioners are all lawyers have been in criminal  
18 law for some time. They understood what the basic  
19 concept was.

20 It -- it was just a matter of the  
21 technicality of forms that we had to talk about, make  
22 sure the right box was checked so that it would ensure  
23 that it was going to automatically be assigned to the  
24 bail room, you know, things like that.

1           You're dealing with 13 other people. You  
2 know, you got to get everybody on the same page. So  
3 in terms of training, it was probably just some  
4 meetings between ourselves.

5           Q     Do you think everyone did get on the same  
6 page eventually?

7           A     Oh, sure. Yeah.

8           Q     And how long do you think that took?

9           A     I don't -- I -- I don't know. Maybe a  
10 couple of months or so. We started using the  
11 affordable bail number a few months before just so we  
12 would get used to it just as a trial run.

13                   So that -- that's why I said that whole  
14 concept was familiar. We -- we started. They started  
15 giving us that number a little bit ahead before it  
16 started so we would get used to that.

17                   But the forms was a whole different ball  
18 game. That completely changed how we're structured,  
19 how we schedule ourselves, everything.

20           Q     By the time of HB17 last May, was -- were  
21 things running smoothly? You know, was there -- was  
22 it burdensome for the judicial commissioners to, you  
23 know, consider ability to pay? I'm sorry. Let me ask  
24 that --

1 A We did not --

2 Q Were the judicial commissioners able to  
3 successfully implement the standing bail order?

4 A Yes, I think so, yeah.

5 Q And what was your role in making -- like, in  
6 making sure that happened?

7 A With just answering their questions. And  
8 often I would see the -- the forms and see where they  
9 might have checked something in the wrong place, just  
10 making sure that they, you know, were -- as I said,  
11 everybody was on the same page about how the forms are  
12 filled out. So I -- I think, yeah, by -- by that  
13 time.

14 But there's always -- you know, things  
15 always -- as the lead commissioner, you know,  
16 there -- there are issues and things that come up from  
17 time to time that you just don't plan on.

18 I've had commissioners who've been with us  
19 for two years. And then they encounter some new  
20 situation that has ever come up before.

21 So from time to time, things come up.  
22 There's something on the forms to this day  
23 that -- that probably needs to be changed. It's kind  
24 of redundant.

1           But it took an arm and a leg every time we  
2 wanted to change something. We'd have to go through  
3 County Attorney Iverson and go through your client, go  
4 through all this rigamarole.

5           So it's just not worth it sometimes. But  
6 there -- there's still things about it that probably  
7 need to be clarified.

8           Q     Do you know if there's any recordings of the  
9 trainings you mentioned?

10          A     No.

11          Q     No, there are not; or no, you don't know?

12          A     No, there are not.

13          Q     Any PowerPoints, document handouts,  
14 meeting --

15          A     I don't know how to do a PowerPoint. I'm  
16 very low tech.

17                   MR. DURRENCE: No PowerPoints from  
18 Commissioner Marshall.

19                   THE WITNESS: It was -- purely have  
20 been Zoom -- Zoom conversations that weren't recorded.

21 BY MR. QUIGLEY:

22          Q     Did the documents judicial officers receive  
23 change after the standing bail order was put into  
24 place? And if so, how?

Page 43

1 (Plaintiff Exhibit 2 was marked for  
2 identification.)

3 This is a document titled "Data shows fewer  
4 rearrests since implementing new Shelby County bail  
5 system."

6 This is a -- I'll share my screen. This is  
7 an article in Action News 5 dated September 19, 2023.  
8 Do you see this document?

9 A Yes.

10 Q And it speaks about how those -- the title  
11 says "Data shows fewer rearrests since implementing  
12 new Shelby County bail system."

13 Is that an accurate statement regarding how  
14 rearrests were affected by the new Shelby County bail  
15 system?

16 MR. DURRENCE: Object to the form.

17 You can go ahead and answer.

18 THE WITNESS: Well, it later proved not  
19 to be because the way they had calculated that was not  
20 exactly correct.

21 And the Pretrial Services along with  
22 County IT, we had created these massive spreadsheets  
23 of every case.

24 And they calculated the rearrest for

1 the period before the standing bail order and the  
2 period after the standing bail order.

3 But later on, we realized that the two  
4 periods didn't -- didn't exactly match up. So there  
5 were some problems with that ultimately.

6 I -- I think the U of M studies have  
7 later showed -- they showed one thing; Just City  
8 showed it was a little bit different. Bottom line is  
9 it didn't change very much one way or the other.

10 BY MR. QUIGLEY:

11 Q On this page, we have a statement from you.  
12 It says "I did not see a pattern of someone committing  
13 a violent crime like carjacking, bonding out, and  
14 committing another carjacking." Is that an accurate  
15 statement?

16 A Yes.

17 MR. DURRENCE: I'm going to object to  
18 the form.

19 But you can go ahead and answer.

20 THE WITNESS: Yes. I think  
21 from -- from my -- just looking at the spreadsheet,  
22 which showed the rearrest cases, a lot of those were  
23 misdemeanor thefts.

24 //

1 BY MR. QUIGLEY:

2 Q I lost the audio.

3 A Can you hear me?

4 Q Yes.

5 A From -- from just my looking at the -- the  
6 spreadsheet, it seemed a lot of the rearrest cases  
7 were domestic violence where you have a lot of  
8 rearrests and misdemeanor thefts. So yes,  
9 that -- that was my observation from just looking at  
10 the spreadsheet.

11 Q Would that observation be different based on  
12 the error you referred to in the spreadsheet?

13 A No, not necessarily because the -- the error  
14 that we found was a matter of numbers, percentages.

15 Q Understood. I'm going to take this exhibit  
16 down.

17 I'd like to introduce another exhibit. This  
18 is a Daily Memphian article titled "Re-arrests down  
19 after new standing bail order, report shows."

20 (Plaintiff Exhibit 3 was marked for  
21 identification.)

22 And there's a picture of yourself. Do you  
23 see this document?

24 A Yes.

1 Q On page 3, you said "There are some violent  
2 rearrests, but not as many as the public has  
3 perceived."

4 A Yes.

5 Q Is that an accurate statement?

6 A Yes.

7 Q And would that be affected by the error that  
8 you referred to earlier?

9 A No, not necessarily.

10 Q And down here, we have a statement where an  
11 individual refers to the jail as a, quote, "revolving  
12 door," end quote.

13 And then it says that you disagreed with  
14 that statement. And you said that the rearrest is  
15 lower than you thought. But, you know, this, you  
16 thought is only a snapshot. Is that an accurate  
17 statement?

18 A Yes.

19 Q So you do not believe the jail to be a  
20 revolving door; is that right?

21 A Not to the extent the public believes. It  
22 is for some people. But the public had the perception  
23 with the standing bail order -- they had the wrong  
24 perception because of this affordable bail calculator

1 number.

2 And I've been in seminars, people in the  
3 public had the impression that we were just setting  
4 bonds whatever the person said they could afford,  
5 whether it was a hundred dollars or whatever, which  
6 was of course totally inaccurate. And I made that  
7 statement to try to show this -- that that's not what  
8 is happening.

9 Now, it is a revolving door for some people.  
10 About 25 percent of the cases we have had for the last  
11 several years are people who are being rearrested.

12 We have too many people in the system who  
13 already have a pending case. That -- that's not new.  
14 That's been the case. Standing bail order doesn't  
15 really have anything to do with that.

16 Q But you agree that the jail did not become a  
17 revolving door because of the standing bail order?

18 A Yes, I would agree with that statement.

19 Q I'll take this document down.

20 I'm going to introduce another exhibit.

21 This one is called "It's all about a balance."

22 (Plaintiff Exhibit 4 was marked for  
23 identification.)

24 It is a Daily Memphian article titled "'It's

1 all about a balance: ' Lead Judicial Commissioner on  
2 affordable bail, public criticism". And it's a  
3 picture of you. Do you see this article?

4 A Yes.

5 Q If we go to page 3, you discuss the  
6 calculator. You say: "It's nothing more than a  
7 person's monthly disposable income. There's no great  
8 magic about it." Is it your view that the calculator  
9 is a pretty straightforward device?

10 A Yes. Yeah, my point being there was it was  
11 just a simple -- essentially the person's disposable  
12 income.

13 Q Do you think it was difficult for Pretrial  
14 Services to get the information for the calculator and  
15 put the information into the calculator?

16 A I don't know if my personal opinion really  
17 matters. I think it was a waste of time.  
18 Essentially, they have enough to do.

19 In my opinion, if we want to reform our  
20 system, we need to have a jail that has the facilities  
21 where we could interview the defendant in person and  
22 get that kind of information.

23 Instead, we have this hugely clunky system  
24 that has been complicated with all this paperwork and

1 emails. And yeah, I think it's a burden for Pretrial  
2 to have to collect that information.

3 We only use -- only 7 percent of the cases  
4 did it even matter, did we even do an affordable bail.  
5 Only 7 percent, two thirds of the cases that we set,  
6 the number was unaffordable.

7 About 25 percent, we released the person.  
8 So only about 7 percent got an affordable bail in the  
9 first study that we did and we looked at.

10 So yes. I think there could be a much  
11 better way to do this than the affordable bail  
12 calculator.

13 Q Do you think it's possible to consider  
14 someone's ability to pay?

15 A I think we can consider their -- I think we  
16 can consider their financial circumstances. We find  
17 out about their employment all the time. We find out  
18 about their employment or their own public assistance.

19 But a -- but a number you just come up with  
20 that's not just what somebody says, I think that's  
21 the -- the public had a lot of distrust of it because  
22 of that, which caused huge perception problems and a  
23 lot of criticism from the public.

24 I think we, in a bail hearing, find out more

1 about the defendant's circumstances than what's on a  
2 little sheet that's taken Pretrial's time to collect.

3 Q Do you think judicial commissioners should  
4 be able to ask questions regarding a defendant's  
5 ability to pay at their bail hearing?

6 MR. DURRENCE: Object to the form.  
7 Go ahead and answer.

8 THE WITNESS: I think -- I think we  
9 should follow the law. We will follow the Tennessee  
10 State law.

11 BY MR. QUIGLEY:

12 Q Why don't we talk about the law for a  
13 second. When you say financial condition, what do  
14 you -- what does Shelby County -- how does Shelby  
15 County interpret the term financial condition?

16 A I can't speak for Shelby County. We've  
17 never had -- it's each individual magistrate or judge.  
18 There is no policy or direction about how to consider  
19 that.

20 Q Shelby County conducted no training  
21 regarding the implementation of HB17?

22 A You mean 1719?

23 Q 1719.

24 A No. About the implementation of it?

1 Q Why don't we back up a step? Did Shelby  
2 County make any changes to its bail setting practices  
3 after the passage of HB1719?

4 A Yes.

5 Q What were those changes?

6 A We took out the language and the forms that  
7 referred to affordable and unaffordable bail.

8 Q Who was responsible for making those  
9 changes?

10 A The judges directed us to do that. I spoke  
11 to the County Attorney's office. All the changes have  
12 always been made by the County Attorney's office.

13 The -- the physical going in and changing  
14 the form with the knowledge of the ACLU, every time  
15 we've changed the form.

16 The forms were changed because the judges  
17 told us in the court as of the new state law to change  
18 the forms to take out that language.

19 Q When you say the judges, who are the judges?

20 A The general sessions criminal court judges.

21 Q And when you say you, you mean yourself and  
22 who else?

23 A The general sessions criminal court judges  
24 instructed me to get back with the County Attorney's

1 office to make sure the forms were changed.

2 Q How did they instruct you to do so?

3 A In a meeting.

4 Q When was the meeting?

5 A An in-person meeting. I have no idea what  
6 date the meeting was. I would assume it was  
7 right -- right as the law was about to go into effect.

8 Q Can you just describe the meeting to me?  
9 Tell me about the meeting.

10 A It was in a -- one of the divisions  
11 downstairs in general sessions -- I can't remember  
12 which division -- with the judges and myself and  
13 possibly County Attorney Iverson was there. I'm  
14 pretty sure she was.

15 Q You said that there were judges there.  
16 Which judges?

17 A All -- all of them. All, to my knowledge.  
18 All eight of them. If not all eight of them, most of  
19 them.

20 Q And then yourself and then --

21 A I -- I believe County Attorney Iverson was  
22 there. I believe she was.

23 Q Were any other judicial commissioners there?

24 A No.

1 Q How long did the meeting last?

2 A Not long. Probably 30 minutes at the most,  
3 probably.

4 Q Who led the meeting?

5 A Whoever the administrative judge would have  
6 been at that time, which I can't remember exactly if  
7 that was May of '24.

8 Can't remember if that was still Judge  
9 Montesi or -- or who it would've been. It might've  
10 been -- there was a year that Judge Anderson was both  
11 administrative judge and supervising judge with the  
12 commissioners. So it might've been Judge Anderson  
13 that called the meeting.

14 Q And what did Judge Anderson say at the  
15 meeting?

16 A I can't remember exactly straightforward.  
17 But the state law has been changed. So we've got to  
18 comply with it.

19 Q And this was Judge Anderson telling the room  
20 that State law has changed and we need to comply with  
21 this?

22 A Yeah.

23 Q And then was there a debate at all? Like,  
24 what --

1           A       There was very, very little debate from what  
2 I recall. It's pretty much unanimous consent. This  
3 is the law; this is what we have to do.

4           Q       And how did Shelby County decide what to do?

5           A       When you say Shelby County, who do you mean  
6 exactly?

7           Q       The judicial commissioners and the judges,  
8 the people at the meeting.

9           A       From what I can recall, I can't really  
10 recall. Like I said, it was pretty straightforward  
11 straight.

12                    They just all agreed. I don't -- I don't  
13 think there was a vote or anything like that 'cause  
14 there was no debate about it really.

15                    I think it was just, like I said, unanimous.  
16 I -- I was told you need -- you need to change the  
17 forms.

18           Q       Was there any more specific instruction  
19 about how you needed to change the forms?

20           A       Just to take out, you know, the references  
21 to affordable and unaffordable, that -- any references  
22 to that to take out.

23           Q       Was that the only instruction from the  
24 meeting?

1 A Yeah, it was pretty general.

2 Q Did anyone take notes during the meeting?

3 A Not to my knowledge.

4 Q Are there minutes of the meeting?

5 A No.

6 Q Was there any discussion at the meeting  
7 about what financial condition meant versus what  
8 ability to pay meant?

9 A I can't recall exactly.

10 Q Do you recall anything on this topic?

11 A About that, about exactly discussion about  
12 that, no. Not -- no, I -- I can't recall anything  
13 specifically. I can't recall anything about whether  
14 there was discussion about that or not.

15 Q I guess, I'm just confused about how the  
16 meeting took half an hour if it was just an  
17 instruction to change the forms.

18 A Well, that may not have been all we were  
19 talking about. Let me tell you. The general session  
20 judges don't -- they're very hard to get to sit down  
21 at a table and meet.

22 They don't do it very often. And -- and  
23 it's not the easiest thing in the world to get them  
24 all together.

1           And usually it's in the early afternoon or  
2 whenever they can try to get together. So it doesn't  
3 happen very often.

4           And it could be that that was not the only  
5 topic of the meeting -- meeting. Very likely it  
6 probably wasn't.

7           Now I'm not privy to, of course, all -- all  
8 of their meetings. I usually know when they're  
9 meeting. But they don't meet very often.

10           So I'm pretty sure that was not the only  
11 topic of conversation. And I could be wrong about it.  
12 It might have been 20 minutes. But I'm pretty sure  
13 there were other things to talk about besides that.

14           Q     And do you know how long was spent talking  
15 about HB1719?

16           A     I couldn't say to that.

17           Q     Could you ballpark it?

18           A     I -- I don't know. Five or ten minutes.  
19 Again, it's pretty straightforward of a State law's  
20 been passed; we're going to follow the law.

21           Q     Do you remember what other topics were  
22 discussed at this meeting?

23           A     No.

24           Q     Does -- did one person at the meeting have

1 final decision making authority?

2 A I'm sorry. Did you say, "Did one person  
3 have final" --

4 Q Decision making authority.

5 A No, it was -- it was as a body of judges.  
6 All of them.

7 Q And there was --

8 A There was no dissent.

9 Q There was no discussion about the meaning of  
10 HB1719 and what was necessary?

11 A About what?

12 Q Like, the meaning of the law and what was  
13 necessary. It was a -- either five minutes or half an  
14 hour conversation about --

15 A They interpreted it to mean that we were to  
16 stop using the affordable bail calculator and that  
17 that was the clear intent of it.

18 And therefore we needed to stop getting that  
19 information from Pretrial and to change our forms to  
20 take any discussion about affordable and unaffordable  
21 out.

22 Q Do you remember who spoke at the meeting?

23 A No, not specifically.

24 Q Did you speak at the meeting?

1 A I'm sure I did at -- at some point.

2 MR. QUIGLEY: I -- can we take a  
3 five-minute restroom break and hop back on?

4 MR. DURRENCE: That'll be fine.

5 MR. QUIGLEY: Thank you.

6 MR. DURRENCE: All right.

7 THE REPORTER: All right. The time is  
8 now 4 p.m. And we are off the record.

9 (Off the record.)

10 THE REPORTER: The time is now 4:08  
11 p.m. And we are back on the record.

12 EXAMINATION

13 BY MS. VERRIEST:

14 Q Good afternoon, Commissioner Marshall.

15 A Hi, Ms. Verriest.

16 Q Nice to see you again.

17 A Good to see you too.

18 Q You stated earlier that Pretrial Services  
19 provided you a printout of the ability to pay  
20 calculator before HB1719. Is that right?

21 A Yes, that's right.

22 Q Can you tell me about the ability to pay  
23 calculator?

24 A The ability to pay calculator, from what I

1 paperwork, not how it was logistically and practically  
2 going to work.

3 All it's done is clog our system up more.  
4 So yes, it would be much better if the commissioner  
5 could just ask, cut out all the steps. Yes.

6 Q What would the commissioners ask in this  
7 ideal system you are envisioning?

8 A We would -- we could ask questions. We know  
9 so much more in a bail hearing. I will -- I will give  
10 you this.

11 Having the bail hearings, when we see the  
12 defendant and can talk to them or -- or their counsel,  
13 you can get so much more about what their real living  
14 situation is like.

15 Who are they living with? Are they  
16 supporting dependents, or is someone supporting them?  
17 You can get a feel for the person.

18 It's so much more than just this piece of  
19 paper that, is again, more paperwork for Pretrial  
20 Services that is burdened with all of this. Yes. It  
21 would be much more efficient.

22 Q You said that you ask about their living  
23 situation. Is that right?

24 A That's right.

1 Q So would their living situation be relevant  
2 to the judicial commissioners in making their  
3 decisions?

4 A I want to know as much information as I can.

5 Q So is that a yes, that the living situation  
6 would be relevant to the judicial commissioners in  
7 making a decision?

8 A Yes.

9 Q You also said you'd like to know about, I  
10 believe, who they support. Is that right?

11 A Yes.

12 Q So is the support they provide people  
13 relevant to the judicial commissioner's decision  
14 making?

15 A The bail setting decision is a very  
16 individual process. For each magistrate, it's  
17 different.

18 I would say for me -- this is not about me.  
19 But when I'm setting the bail, I want to get a feel  
20 for all of that.

21 Q The questions in the Vera calculator, such  
22 as income, is that something you would like to ask the  
23 defendant before you set bail?

24 A I don't think I need to ask it exactly like

1 that. I'd like to know what kind of job they have.  
2 We understand that the vast majority of our defendants  
3 don't have any money.

4 We already know that. We're spending a lot  
5 of time worried about that. We know that most of our  
6 defendant -- the majority of the defendants on the  
7 affordable bail calculator reported zero. And the  
8 vast majority of the others, it was less than a few  
9 hundred dollars.

10 My point is, we're spending so much time  
11 worried about this little calculator sheet when  
12 it's -- it's really irrelevant.

13 Nobody is going to report more than a few  
14 hundred dollars anyway. They didn't. We did it for a  
15 year and a half or whatever. Overwhelmingly, there  
16 was hardly anybody that ever could afford more than,  
17 like, \$300.

18 Q Are you saying --

19 A All it was doing was taking a lot of time to  
20 find out what we already know.

21 Q Is the fact that the person can afford \$0  
22 relevant for the judge -- excuse me -- the judicial  
23 commissioner on setting bail?

24 A It is sometimes and sometimes it's not.

1 MR. DURRENCE: I'm sorry. Object to  
2 the form.

3 And now you can go ahead and answer,  
4 Commissioner.

5 THE WITNESS: Sometimes it's not.  
6 Sometimes it is. And that small percentage, so many  
7 of our cases, they already have a pending case.

8 About 25 percent of the cases, they  
9 already have a pending case. We have to set a bond  
10 twice what we would normally set, which is just about  
11 always more than what they said they could pay; all  
12 right?

13 So like I said, there was about 7  
14 percent of the cases where it actually factored in  
15 when we -- we were using. There are other times when,  
16 no, it does not matter.

17 BY MS. VERRIEST:

18 Q Can you explain --

19 A If it's a violent -- if it's a violent  
20 offender, no. If it's someone who's missed court 20  
21 times, no.

22 Q Can you explain why the bail amount  
23 doesn't -- excuse me. Let me start again. Can you  
24 explain why the amount a person can afford to pay bail

1 does not matter for violent cases?

2 A Because if we want to make a decision --

3 MR. DURRENCE: I'm sorry. Objection to  
4 the form.

5 Now you can answer, Commissioner.

6 THE WITNESS: If we want to detain them  
7 regardless, why is that really going to matter?

8 BY MS. VERRIEST:

9 Q Are you saying that if you want to detain  
10 someone regardless, the amount they can afford doesn't  
11 matter?

12 A I'm saying we know the vast majority of  
13 people are only going to say a few hundred dollars.  
14 They are not going to pay the bond.

15 You know, we know their relatives -- there  
16 are other people are probably going to pay the bond.  
17 If it's someone dangerous, you don't want them to get  
18 out. So whether they can say they're going to pay \$30  
19 or \$300 is really irrelevant

20 Q If you don't want them to get out, do you  
21 set bail intended to detain them?

22 A Right. 'Cause that's what your standing  
23 bail order said. If -- if we were to make a decision  
24 to set money bail, it's because -- right -- because we

1 felt that they should be detained, that's what the  
2 standing bail order said.

3 Q So is that a yes?

4 A Yes.

5 Q How -- do you know how -- let me start  
6 again.

7 How do you know the bail amount required to  
8 detain them if you don't know how much they can  
9 afford?

10 A Well, we don't really. We're -- I'm not  
11 going to sit there and pretend. I would prefer we had  
12 a federal -- like the federal system.

13 But we don't. So we have to work with what  
14 we have. And it's like a sliding scale. The more  
15 dangerous they are, the higher the bond's going to be.  
16 The more we think they're a flight risk, the higher  
17 it's going to be.

18 I'm not going to argue -- you know, dispute  
19 with you. It's not a perfect science. It's not a  
20 great system.

21 We're not going to sit here and argue, you  
22 know -- argue about that. But it's what we have. And  
23 we are the ones making the decision. It's on us.

24 That is on the -- the magistrate or the

1 judge to make that decision to protect the public or  
2 ensure that person returns back to court.

3 And we have to work the best with what we  
4 have. The best I can explain, it's like a sliding  
5 scale.

6 Q So let me just make sure I understand this.  
7 When a person is violent, the judicial commissioner  
8 sets bail intended to detain them.

9 That means they need to set a bail higher  
10 than the amount that the person can afford. Is that  
11 that right?

12 A That's right.

13 Q Are they guessing as to the amount that a  
14 person can afford before setting a bail higher than  
15 that amount?

16 A They are speculating. That's the way it's  
17 always been. You know, there's a certain amount.  
18 You're -- you're right.

19 I've already stated I -- I wish we had a  
20 system. But I think be careful what you asked for.  
21 If you want a system of just up or down, we'd still  
22 have a lot of people to detained in our Shelby County  
23 jail.

24 Q I just want to make sure I understand that.

Page 69

1 Without the information about the amount of bail a  
2 person can afford, judges are detaining people without  
3 knowing the amount they can afford. Is that right?

4 A The reality is, you know and I know a lot of  
5 people, what that person can afford, and the kind of  
6 bond someone -- their relative or someone will come  
7 and make their bond.

8 If we have a 19-year-old carjacker who  
9 obviously doesn't have any income and says zero, no,  
10 we don't -- we don't know.

11 You all don't want us to consider what the  
12 relatives or anybody could pay. But we know the  
13 relatives or possibly some other gang -- fellow gang  
14 members or somebody can come up with some money to get  
15 them out.

16 So yes, there is a certain guess factor.  
17 There's no mystery about that. Judges have been doing  
18 it for ages.

19 But if we feel like that person's a real  
20 danger, we need to set that bond high enough to detain  
21 them.

22 Q When you set that bond high enough to detain  
23 them, how do you know what that bond would need to be  
24 without knowing the bail amount?

1           A       I don't know 100 percent. But I'm pretty  
2       sure that what that 19-year-old is going to say is  
3       zero.

4           Q       Okay. Now let's talk about when a  
5       judge -- excuse me -- when a judicial commissioner  
6       intends to release the person.

7                     You said that the bail amount is relevant in  
8       some percentage of cases. Can you tell me more about  
9       those types of cases?

10          A       Say -- rephrase that. I think I know what  
11       you're --

12          Q       Sure. Earlier you stated that the bail  
13       amount is relevant in a certain percentage of cases.  
14       Can you tell me more about when it would be relevant?

15          A       Well, let me see if this is -- is what you  
16       meant. The only time I found the affordable bail  
17       calculator worth anything was when we had -- say you  
18       had someone at a pending case; okay?

19                     We have to set a money bond. Their  
20       affordable bail calculator might have said they could  
21       afford a hundred dollars; okay? You with me?

22                     Okay. And in that position, perhaps they  
23       didn't have -- it was not a violent offense. They  
24       didn't have hardly any failure to appears. They

1 really didn't have much record.

2 I looked at it and said, "By law I've got to  
3 give this person a bond"; right? Because the law says  
4 I have to.

5 In those cases, it was -- it was helpful  
6 because the person is saying they can afford a hundred  
7 dollars. I can set it at a hundred dollars.

8 I'm fulfilling my obligation for the law,  
9 giving them a money bond. And I know because this is  
10 not someone I feel really needs to be detained. Most  
11 of our cases are not like that.

12 Q In that scenario that you just described, is  
13 that a scenario where the judicial commissioner is  
14 setting a bond that is intended to release the person?

15 A Well, that was intended to be affordable,  
16 yes, when we were using that category.

17 Q To determine whether a bail is affordable,  
18 do you need to know what -- the amount that the person  
19 can afford?

20 A To be a hundred percent sure, yes. But we  
21 know that most people are going to be able to come up  
22 with a \$100 bond.

23 Q How do you know that?

24 A I know that from working 25 years in the

1 system. If it's someone homeless, no. I can tell  
2 you -- I can -- if some homeless vagrant, criminal  
3 trespass, I know. I'm experienced. I've been in -- I  
4 know I know they can't afford anything probably. I  
5 know that from experience.

6 But if it's someone -- it's a first time,  
7 you know, shoplifter, doesn't have any record, has a  
8 job, you know, we know they can probably afford that.

9 Q You stated that you know how much a general  
10 person can afford based on your 25 years of  
11 experience. Is that right?

12 A I didn't say I know what a general person.  
13 I said I know from the type of cases and from their  
14 history, I can -- I can have a pretty good feel, a  
15 pretty good idea.

16 Q From -- let me try again then. From their  
17 cases and from their history, you -- and based on your  
18 25 years of experience, you have a generally good idea  
19 of what that person can afford to make in terms of  
20 bail. Is that right?

21 A I said specifically with someone who is  
22 homeless, who's been arrested for criminal trespass,  
23 for ten times in one year, I've got a pretty good  
24 idea. Common sense tells me that person probably

1 doesn't have a penny.

2 Q How about for other scenarios? How do you  
3 know how much that person can afford?

4 A I -- I don't know 100 percent. But  
5 you -- if someone has a job, you usually know if -- if  
6 they're stable, they haven't been in trouble, and they  
7 have a job, you -- you know, again, common sense would  
8 tell you that person's probably able to make a small  
9 bond at least.

10 Q You said earlier that when HB1719 went into  
11 effect that you had a meeting to discuss changes to  
12 the bail setting processes. Is that right?

13 A [No audible response.]

14 Q And during that meeting, the judges and  
15 judicial commissioners agreed to stop using the Vera  
16 calculator. Is that right?

17 A [No audible response.]

18 Q I'm sorry. I can't hear you.

19 A The -- the only -- I was the only --

20 Q I hate to interrupt. But you're still very  
21 quiet.

22 A You can't hear me?

23 THE REPORTER: The audio is very low.  
24 It just -- it seems to do that every now and then.

1 THE WITNESS: Well, I'm sorry. I --

2 THE REPORTER: That's better.

3 THE WITNESS: I'll try to talk as loud  
4 as possible. I don't want to scream at you, though.

5 BY MS. VERRIEST:

6 Q Sometimes it's, like, depending on where you  
7 sit. It's when you move forward, I can hear you. And  
8 then when you sit back, I can't. I don't know if  
9 that's why.

10 A Okay. All right. I'm sorry. I'll try  
11 to -- I don't know if there's a way I can adjust it or  
12 not. Okay. I'm sorry. Ask -- do you mind repeating  
13 questions?

14 Q Sure. You said earlier that, after HB1719  
15 went into effect, the judicial commissioners and  
16 judges had a meeting about changes to bail setting  
17 processes. Is that right?

18 A Right.

19 Q And as part of the -- that meeting, everyone  
20 agreed to stop using the ability to pay calculator; is  
21 that right?

22 A Right. Well -- and -- and I think what I  
23 was saying was I was the only actual commissioner  
24 there.

1           It was the judges. But to my recollection,  
2 all the judges were there. And they basically said  
3 they all agreed you need to stop using the calculator.

4           Q     As part of stopping using the calculator,  
5 that information was no longer provided to the  
6 judicial commissioners when setting bail amounts. Is  
7 that right?

8           A     That's correct.

9           Q     What does ability to pay mean?

10          A     I guess it means different things to  
11 different people. I -- I guess you know  
12 that -- that's the whole problem.

13                 But I think it was pretty clear what the  
14 State law's intent was. You know, why -- why -- it's  
15 the State -- the State passed a law, which seemed  
16 pretty clear to me.

17                 And now you're suing us because we're  
18 following the State law. You're picking on us, the  
19 low fruit, the judicial commissioners who work for the  
20 general sessions judges.

21                 Why aren't they named in this this lawsuit?  
22 Why are you picking on the judicial commissioners who  
23 don't even make the final decisions, who are following  
24 the State law?

1 Q Is this a good moment to say it's not  
2 personal?

3 A Well, you've dealt with me before. Well, it  
4 just makes no sense to us. And it doesn't seem fair.  
5 And I -- I will stand up because I always -- the  
6 judicial commissioners.

7 Q You said that the State law seemed clear.  
8 Can you say more about that?

9 A It was very clear what the authors of the  
10 bill intended. It was all over the news. It -- it  
11 was very clear.

12 We put Shelby County -- you put the Shelby  
13 County Judicial Commissioners on the map -- thank  
14 you -- with all of this.

15 It was very clear in the media constantly.  
16 It was very clear what their intent was, that we  
17 stopped using the affordable bail calculator.

18 Q So you believe the intent of the law was  
19 that Shelby County stops using the affordable bail  
20 calculator; is that right?

21 A Absolutely.

22 Q What does financial condition mean?

23 A I would take financial condition to mean  
24 someone's assets. Did they have a job? It -- it's a

1 very broad, vague term.

2 Q Did Shelby County provide a definition of  
3 financial condition to the commissioners and general  
4 sessions judges?

5 A No.

6 Q Did Shelby County provide a definition of  
7 ability to pay to the judicial commissioners and the  
8 general sessions judges?

9 A No.

10 Q Did Shelby County provide instructions on  
11 how judicial commissioners and general sessions judges  
12 should consider financial condition without  
13 considering ability to pay?

14 A No.

15 Q You stated earlier that these bail setting  
16 decisions are individual. Does that mean that every  
17 judicial commissioner may have a different  
18 interpretation of what ability to pay means?

19 A Yes.

20 Q Does that mean that every judicial  
21 commissioner could have a different interpretation of  
22 what financial condition means?

23 A Yes.

24 Q Could every judge have a different

1 interpretation of what ability to pay means?

2 A Yes.

3 Q I'm sorry. You got quiet again.

4 A Yes.

5 Q Could every judge have a different  
6 interpretation of what financial condition means?

7 A Yes.

8 Q You said earlier that financial condition is  
9 a very vague term. Is that right?

10 A Yes.

11 Q You also said earlier that financial  
12 condition would include someone's income and their  
13 assets. Is that right?

14 A Yes.

15 Q How is that different from the questions  
16 that the ability to pay calculator asks?

17 A Well, I think the problem with the ability  
18 to pay -- well, I -- I -- let me rephrase that.

19 I think -- I think the distrust of the  
20 ability to pay calculator is it is information that is  
21 given by the defendant who's not sworn in.

22 And the problem with it is it's a huge  
23 perception problem. Huge. And the public doesn't  
24 trust it 'cause they don't think the defendant just

1 again.

2 Q Let's say a judicial commissioner doesn't  
3 have your level of experience, how would they know  
4 whether the person is likely to make their bond or  
5 not?

6 MR. DURRENCE: Object to the form.

7 THE WITNESS: I -- I don't know. But  
8 again, I think most of the judicial  
9 commissioners -- our judicial commissioners  
10 have -- maybe not in my years of experience but just  
11 about all of us have years work -- some years working  
12 not just in criminal justices but working at 201  
13 Poplar.

14 BY MS. VERRIEST:

15 Q And based on those experiences, they have a  
16 general sense of who will make their bond and won't;  
17 is that right?

18 A I'm not going to -- I'm not going to speak  
19 for the other commissioners.

20 Q I'll return one more time to when you stated  
21 that the financial condition includes someone's income  
22 and someone's assets. Is that right?

23 A I think that's what I said.

24 Q How is that --

1           A     Again, it's -- it -- that's just my  
2     personal -- it's not defined.

3           Q     Not what?

4           A     It's not -- it's not defined -- it's not  
5     defined anywhere. I -- I'm just -- I'm saying that's  
6     my personal opinion.

7                     That's not Shelby County's. That's not the  
8     judicial commissioners. I'm just saying I  
9     personally -- that that's how I would interpret it.

10                    I think it's broader than -- ability to pay  
11     I think it's more specific and has to do with their  
12     income.

13                    The way I would interpret financial  
14     condition is a -- is a broader, overall, more  
15     encompassing overall picture of that person's -- but  
16     again, it's vague; it's general. I didn't write the  
17     statutes.

18           Q     I understand that, Commissioner Marshall.  
19     As a person implementing the statutes, what is the  
20     difference between financial condition and ability to  
21     pay?

22                    MR. DURRENCE: Object to the form. I'm  
23     also going to point out that we're getting outside of  
24     the 30(b)(6) topics. And this is veering into topics

1 covered by Commissioner Marshall's deliberative  
2 process privilege.

3 So I'm going to instruct Commissioner  
4 Marshall to not answer.

5 THE WITNESS: All right. I won't  
6 answer that.

7 BY MS. VERRIEST:

8 Q I'll return to the topic, topic 3, which is  
9 Shelby County's policies -- I'm sorry. It's topic 4.  
10 Shelby County's policies concerning bail setting  
11 practices, including any policies concerning how  
12 judicial officers should make bail decisions.

13 In the context of that topic, any policies  
14 concerning how judicial officers should make bail  
15 decisions, how are judicial officers distinguishing  
16 between financial condition and ability to pay?

17 A I don't know if I can answer that.  
18 We're -- we're not -- again, I -- I can't speak. It's  
19 an individual decision, each magistrate and judicial  
20 official. I -- I cannot -- there is no official  
21 County policy on that. So I can't answer that.

22 Q So just to make sure I understand, you can't  
23 answer a question about what Shelby County's process  
24 is to consider ability to pay without -- excuse me.

1 Let me start that again.

2 Just to clarify, you can't answer a question  
3 about what Shelby County's process is to consider  
4 financial condition without considering ability to  
5 pay?

6 MR. DURRENCE: I'm going to object.  
7 Asked and answered. I believe at the end of the  
8 commissioner's answer was Shelby County does not have  
9 a policy going to defining ability to pay or financial  
10 condition.

11 MS. VERRIEST: Are you instructing your  
12 witness not to answer?

13 MR. DURRENCE: Oh, I'm sorry. Yes.  
14 Do not answer, Commissioner.

15 BY MS. VERRIEST:

16 Q Does Shelby County have a policy instructing  
17 judicial commissioners on how to follow HB1719?

18 A It's pretty clearcut and straightforward.  
19 Real simple. We -- we stopped using the affordable  
20 bail calculator. Nothing complicated about it.

21 Q The text of HB1719 is that judicial officers  
22 must consider a financial condition as long as ability  
23 to pay is not considered. Is that right?

24 MR. DURRENCE: I'm going to object.

1 THE WITNESS: Yes.

2 MR. DURRENCE: I'm sorry. I'm going to  
3 object to that answer. If we want to discuss the text  
4 of HB1719, let's display it on the page, display it on  
5 the screen.

6 I'm not going to have my witness answer  
7 to Opposing Counsel's interpretation of what the  
8 statute says.

9 BY MS. VERRIEST:

10 Q Commissioner Marshall, does Shelby County  
11 have a policy on how judicial commissioners and judges  
12 should consider financial condition without  
13 considering ability to pay?

14 A No.

15 MS. VERRIEST: Okay. Let's go off the  
16 record and come back in five minutes.

17 THE REPORTER: All right. The time is  
18 now 4:51 p.m. And we are off the record.

19 (Off the record.)

20 THE REPORTER: The time is now 4:59  
21 p.m. And we are back on the record.

22 BY MS. VERRIEST:

23 Q So you said earlier that the email traffic  
24 between judicial commissioners and Pretrial Services

1 employment over the phone to judicial commissioners.  
2 Is that right?

3 A Just employment.

4 Q Just employment. I'm sorry. And you said  
5 that, at bail hearings, defense counsel may raise  
6 information about employment. Is that right?

7 A They -- they could. And --

8 Q And you also said earlier that questions  
9 that are about income are included in the ability to  
10 pay calculator; is that right?

11 A They were.

12 Q After judges and judicial commissioners  
13 conduct bail hearings, do they complete any documents?

14 A Yes, there's a bail hearing order.  
15 It's -- it's very similar to the initial bail  
16 screening release form. There's some differences.  
17 But it's a very similar form that's completed.

18 Q What are the differences?

19 A Well, I think -- I'm trying to think.  
20 They're -- they're very similar. But a lot of it has  
21 to do with the -- the language, maybe some of the  
22 boiler plate -- what I would call the boiler plate  
23 language.

24 They are -- they are essentially your forms

1 that you provided to us that we modified and changed  
2 because it -- it's -- it's different than the initial  
3 bail.

4 I think there's very little difference now.  
5 Now actually the affordable and unaffordable language  
6 has been taken out.

7 They're -- they're actually very similar,  
8 now that I think about it. But it's -- it's not  
9 much -- it's not much difference.

10 I can tell you I can fill it out a heck of a  
11 lot quicker when I'm just sitting there on that bench  
12 than all that emailing back and forth nightmare.

13 Q And just to confirm, the affordable bail  
14 amount is not included in the bail hearing form that  
15 is currently being used; is that right?

16 A No.

17 Q Are bail hearings recorded?

18 A Yes.

19 Q I just asked you whether the affordable bail  
20 amount is included in the bail hearing forms now.  
21 Were they previously -- was it previously included on  
22 the bail hearing form?

23 A I -- I believe it was. Yeah, I'm pretty  
24 sure it was.

1 Q So the bail hearing form used to include a  
2 section to include the affordable bail amount. And  
3 now it does not, post HB1719; is that right?

4 A That's correct.

5 Q Okay. When judges or judicial commissioners  
6 make bail decisions at the time of bail hearing, do  
7 their decisions reference ability to pay?

8 A No. Again, I -- I can only speak for -- you  
9 know, I can only speak -- speak for myself.  
10 There's -- there's no language in the bail hearing  
11 order about it. So I can't speak for other  
12 magistrates or judges.

13 Q Has there been a change -- let me start that  
14 again.

15 Other than the change you described where  
16 the affordable bail amount has been removed from the  
17 forms, have there been any other changes to bail  
18 hearings now compared to bail hearings before HB1719  
19 was in effect?

20 A You mean the form -- the language in the  
21 form?

22 Q The bail hearing process overall.

23 A The bail hearing process? No, it's -- it's  
24 exactly -- exactly the same. It has changed in -- in

1 terms of, you know, some of the judges, you know, as I  
2 stated earlier, do their own bail hearings.

3 And shortly, I -- I think it was a few  
4 months after we implemented the standing bail order,  
5 you know, the Tennessee legislature passed a law  
6 saying judicial commissioners could not ROR. Well,  
7 effectively only a judge -- that ROR certain types of  
8 offenses.

9 And so certain judges will hear those type  
10 of cases and send their misdemeanor and lower class  
11 felonies to us in the bail hearing room.

12 And from time to time, some judges have  
13 changed their policy a little bit. Some have given us  
14 a little more; some have taken more of theirs under  
15 their own wing, that -- that sort of thing.

16 So it -- it's changed a little bit over time  
17 in terms of which judges are hearing which cases. And  
18 so that -- that has fluctuated and changed a little  
19 bit over time.

20 Q Have you noticed any other changes to bail  
21 hearings now compared to when before HB17 was in  
22 effect?

23 A Not really. I'd say they're very -- very  
24 much the same.

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THE REPORTER: Very good. The time is  
now 5:38 p.m. And we are off the record.

(Whereupon, at 5:38 p.m., the  
proceeding was concluded.)

---

JOHN MARSHALL

Subscribed and sworn to before me

this \_\_\_ day of \_\_\_\_\_, 2025.

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Notary public

CERTIFICATE OF DEPOSITION OFFICER

I, JAY FREDERICK, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



JAY FREDERICK

Certified Reporter in and for the  
State of Tennessee

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**CERTIFICATE OF TRANSCRIBER**

I, **ANDREW TINGLEY-BARRAZA**, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



**ANDREW TINGLEY-BARRAZA**

Exhibit 5:  
June 30, 2025  
Rule 30(b)(6) Deposition  
of  
Pretrial Services Executive  
Director Llana Greer  
(Excerpted)

1 in Their Official Capacities,  
2 Defendants.

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3  
4 DEPOSITION OF 30(b)(6) CORPORATE REPRESENTATIVE FOR  
5 DEFENDANTS - LLANA GREER

6 DATE: Monday, June 30, 2025

7 TIME: 10:55 a.m.

8 LOCATION: Remote Proceeding

9 Memphis, TN 38103

10 REPORTED BY: Jay Frederick

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A P P E A R A N C E S (Cont'd)

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A P P E A R A N C E S (Cont'd)

ALSO PRESENT:

Clio Gates, Paralegal, ACLU (by videoconference)  
Davianna Velasco Valdivieso, Intern, ACLU (by  
videoconference)

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I N D E X

EXAMINATION:	PAGE
By Mr. Quigley	10
By Ms. Verriest	96

E X H I B I T S

NO.	DESCRIPTION	PAGE
Plaintiff:		
Exhibit 1	30 (b) (6) Deposition Notice	12
Exhibit 2	Bail Packet	26
Exhibit 3	Hearing Transcript of Preliminary Injunction	47
Exhibit 4	Previous Bail Screening Form	51
Exhibit 5	Current Bail Screening Form	53
Exhibit 6	Shelby County Judicial Annual Report	74
Exhibit 7	Resolution of the Shelby County Board of Commissioners	90
Exhibit 8	Bail Hearing Order Form	97

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I N D E X (Cont'd)

D O C U M E N T S R E Q U E S T E D

NO.	DESCRIPTION	PAGE
1	Documents in Front of Witness During Deposition	94
2	Documents From Bail Packets Sent to Judicial Commissioners	94
3	Bail Hearing Orders for Individuals Discussed in Deposition	95
4	Recordings of Bail Hearings for Individuals Discussed in Deposition	96
5	Sample of Completed Bail Hearing Order Forms	97

1 P R O C E E D I N G S

2 THE REPORTER: Good morning. My name  
3 is Jay Frederick. I'm the reporter assigned by  
4 Veritext to take the record of this proceeding. We  
5 are now on the record at 10:55 a.m.

6 This is the deposition of Llana Greer  
7 as 30(b)(6) representative for Defendants, taken in  
8 the matter of Just City, Inc., et al. vs. Floyd Bonner  
9 Jr., et al., case number 2:24-cv-2540-TLP-tmp on  
10 Monday, June 30, 2025, via remote Zoom.

11 I'm a licensed court reporter  
12 authorized to take acknowledgements and administer  
13 oaths in Tennessee. Parties agree that I will swear  
14 in the witness remotely.

15 Additionally, absent an objection on  
16 the record before the witness is sworn, all parties  
17 and the witness understand and agree that any  
18 certified transcript produced from the recording of  
19 this proceeding:

20 - is intended for all uses permitted  
21 under applicable procedural and  
22 evidentiary rules and laws in the  
23 same manner as a deposition recorded  
24 by stenographic means; and

1 - shall constitute written stipulation  
2 of such.

3 At this time, will everyone in  
4 attendance please identify yourself for the record,  
5 beginning with the witness.

6 MS. GREER: Llana Greer.

7 THE REPORTER: Yes, ma'am. Could you  
8 please speak up a little bit?

9 MS. GREER: Llana Greer, administrator  
10 of Pretrial Services.

11 MR. QUIGLEY: Jared Quigley, Simpson  
12 Thacher & Bartlett, for Plaintiffs.

13 MR. DURRENCE: Jasen Durrence, Shelby  
14 County Attorney's Office, for the defendants.

15 MS. VERRIEST: Ashika Verriest, ACLU  
16 National Criminal Law Reform Project, for the  
17 plaintiffs.

18 MS. YARBROUGH: Stella Yarbrough, ACLU  
19 of Tennessee, for the plaintiffs

20 MR. ENRIGHT: Brian Enright with the  
21 Attorney General's Office in Tennessee on behalf of  
22 the State of Tennessee Interveners.

23 MS. VELASCO VALDIVIESO: Davianna  
24 Velasco Valdivieso, ACLU Nationwide Criminal Law

1 Reform Project, on behalf of the plaintiffs.

2 MS. GATES: Clio Gates, ACLU Criminal  
3 Law Reform Project, on behalf of the Plaintiffs.

4 THE REPORTER: Thank you. Hearing no  
5 objection, I will now swear in the witness.

6 Please raise your right hand.

7 WHEREUPON,

8 LLANA GREER,

9 called as a witness and having been first duly sworn  
10 to tell the truth, the whole truth, and nothing but  
11 the truth, was examined and testified as follows:

12 THE REPORTER: Thank you.

13 You may proceed.

14 MR. QUIGLEY: Thank you.

15 EXAMINATION

16 BY MR. QUIGLEY:

17 Q Good morning. My name is Jared Quigley.  
18 I'm with the law firm of Simpson Thacher & Bartlett,  
19 LLP. We represent the plaintiffs in this proceeding.

20 Now that we're on the record, can you please  
21 state your full name?

22 A My full name? Llana Renee [ph] Greer.

23 Q Thank you. Is there any reason why you  
24 can't testify fully and completely today?

1 Pretrial Services employee interviews the person who  
2 was arrested?

3 A Just the employee and the arrestee.

4 Q How long after booking do these interviews  
5 typically take place?

6 A I can't say.

7 Q And can you estimate? Is there a general  
8 ballpark?

9 A Roughly about four hours, anywhere from two  
10 to four hours.

11 Q But sometimes it can be longer than that?

12 A Yes -- yes.

13 Q And sometimes shorter; right?

14 A Yes.

15 Q When the Pretrial Services employee arrives  
16 to conduct the interview, do they bring anything with  
17 them?

18 A No, they're not -- they're not -- they're  
19 stationed there.

20 Q Got it. And what do they have with them?

21 A Just the computer and the paperwork.

22 Q What paperwork?

23 A During the course of the interview, the  
24 arrestee is asked additional questions as to whether

1 or not they want a head start for their children. We  
2 do referrals for that. So if they do, they will sign  
3 off on that.

4 And also courtesy text messaging, if they  
5 want to be -- to receive a text message, they can sign  
6 a form saying they want a text message.

7 Q So those are the two, like, physical paper  
8 forms and then everything else is on the computer?

9 A Correct.

10 Q What questions are asked during this initial  
11 interview?

12 A Their address; residency; how long they've  
13 been in Shelby County; how long they've lived at that  
14 address; who do they live with; telephone numbers;  
15 references; employment; highest education; if they  
16 have arrests in any other jurisdiction; do they have  
17 anything that they would like to report; again, are  
18 they interested -- if they have children 3 to 5, would  
19 they like a referral to Head Start; if they would like  
20 text messaging; if it's a domestic violence case, how  
21 are they related to the victim; are they on parole or  
22 probation; and do they have any other cases pending;  
23 and military.

24 Q Are the same questions asked every time?

1 A Yes.

2 Q And those are all of the questions?

3 A Those are all the questions that I can think  
4 of right now. Yes.

5 Q So there -- are there any questions asked  
6 about the person's income?

7 A Oh, well, I said employment. But yes,  
8 that's not the interview itself. That's the  
9 affordable bail calculator. We still complete that.

10 Q So you still complete the affordable bail  
11 calculator even today?

12 A Yes.

13 Q What do you do with the information once  
14 you've received it for the affordable bail calculator?

15 A Nothing.

16 Q So you ask the questions, you collect  
17 the -- like, the answers to the questions about the  
18 affordable bail calculator.

19 And then it just -- it -- that's recorded on  
20 the, like, interview sheet. But that's it. There's  
21 no further action?

22 A It is not a part of the actual interview.  
23 It is a separate document. And it is just, you know,  
24 stored in the file, in the Pretrial file.

1 Q But it is not transmitted to the judicial  
2 commissioners?

3 A No.

4 Q How long do the interviews typically take?

5 A It really depends on the -- the employee.  
6 So I'm going to average it out to say 7 to 12 minutes  
7 based on whether they're senior employees or new  
8 employees.

9 Q Got it. What documents are filled out  
10 during the initial screening?

11 A During the initial bail interview?

12 Q Yeah, the bail interview we were just  
13 discussing.

14 A The interview itself is completed. And the  
15 affordable bail calculator is completed. The courtesy  
16 text messaging, if they elect to do that, and the  
17 referral to Head Start if they want that as well.

18 Q I'm going to introduce -- I'm going to mark  
19 as an exhibit a document that was produced in this  
20 litigation, which is a bail packet we've received  
21 those produced by the defendants. And I'm going to  
22 show it on my screen right now. I believe this is  
23 Exhibit 2.

24 //

1 (Plaintiff Exhibit 2 was marked for  
2 identification.)

3 This is a bail packet. Does this -- not  
4 this specific one, but does this generally look like a  
5 bail packet, the -- you have the order on the first  
6 page?

7 A Yes.

8 Q This form. So this form is called the  
9 Shelby County Pretrial Services Bail Setting Form. Is  
10 this filled out during the initial interview?

11 A No.

12 Q What -- when is it filled out?

13 A When they complete the bail packet.

14 Q Got it. And the same thing is true for this  
15 report, the Offender Interview and Public Safety  
16 Assessment, PSA report?

17 A That is the interview itself.

18 Q So is this form filled out during the  
19 initial interview?

20 A Yes, that is the interview.

21 Q Got it. And this is the only form that is  
22 filled out during the interview other than Head Start  
23 and text messaging, I believe you said.

24 A And the affordable bail.

1 Q And the affordable bail. Correct. And  
2 Shelby County has conducted these initial interviews  
3 both before and after the passage of HB17; is that  
4 correct?

5 A Yes.

6 Q Earlier you mentioned the ability to pay  
7 calculator. What is the ability to pay calculator?

8 A It is a -- the affordable bail calculator  
9 developed by the Vera Institute.

10 Q What questions do the Pretrial Services  
11 employees ask about the bail calculator during the  
12 initial interview?

13 A They ask the -- how much an arrestee makes,  
14 whether it is per week, per month, per year, and then  
15 ask questions regarding itemized expenses, checking  
16 account, savings account, any other additional income.

17 Q How many questions approximately?

18 A Twenty, I'm guessing twenty.

19 Q And the questions include questions about  
20 the arrested person's income and benefits?

21 A Yes. Any income.

22 Q And about the arrested person's assets?

23 A Yes.

24 Q And about the arrested person's expenses?

1 A Yes.

2 Q Are there any other questions that I missed?

3 A No.

4 Q Why does Pretrial Services continue to ask  
5 these questions during the initial interview?

6 A Because of the standing bail order.

7 Q Is it difficult to ask these questions?

8 A No.

9 Q How long does it typically take to ask the  
10 questions?

11 A Three to four minutes.

12 Q Were there any changes in the PSA report  
13 before or after HB1719 was passed?

14 A The PSA report? No.

15 Q Were there any changes at all to the initial  
16 interviews after HB1719 was passed?

17 A No.

18 Q You oversaw Pretrial Services while the  
19 standing bail order was implemented; is that correct?

20 A Yes.

21 Q So you oversaw Pretrial Services while the  
22 ability to pay calculator was part of the process?

23 A Yes.

24 Q Did you conduct any trainings related to the

1 implementation of the ability to pay calculator?

2 A Yes.

3 Q How many?

4 A How many trainings? I really couldn't say.  
5 Each staff was trained until they were able to do it.

6 Q Can you give a ballpark, an estimate?

7 A It is fairly simple. So I would say two to  
8 three times. And then monitoring for accuracy  
9 afterwards.

10 Q How would you monitor for accuracy?

11 A Have the supervisor sit with them and/or  
12 review the information after they've completed it.

13 Q Do you think the trainings were successful?

14 A Yes.

15 Q Were the employees able to understand what  
16 they had to do regarding the ability to pay  
17 calculator?

18 A The lawyers?

19 Q The employees. Sorry.

20 A Yes.

21 Q Were they able to successfully implement the  
22 ability to pay calculator?

23 A Yes.

24 Q Would you agree that the Pretrial Services

1 employees were able to easily incorporate the ability  
2 to pay calculator into the Pretrial process?

3 A I would agree that we were able to do it,  
4 yes. I did not -- I wouldn't use easily.

5 Q But it was not difficult to implement?

6 A It was not difficult to complete the form  
7 itself. No.

8 Q So after the initial interview, what happens  
9 next?

10 A I hesitate to say next in that things are  
11 happening kind of simultaneously. The 24-hour clerks  
12 are -- well, the sheriff's department is verifying  
13 fingerprints.

14 Once fingerprints are verified, the clerks  
15 are charging, which is giving them a court date and a  
16 division.

17 All of that is going on while we are doing  
18 the interview. So once we've interviewed and we see  
19 that that person has a court date or division -- and  
20 division, then we begin completing the bail packet.

21 Q And what is -- what does the bail packet  
22 consist of?

23 A The information you just showed on the  
24 screen, that was the bail packet.

1 Q Well --

2 A Yes, that was a bail packet.

3 Q And for the record, what documents are  
4 included in the bail packet?

5 A The interview, the PSA bail setting, the  
6 criminal arrest history locally, the criminal arrest  
7 history from the NCIC, warrant checks from both  
8 Odyssey -- well, not -- from Odyssey and from OMSE,  
9 affidavit, arrest tickets, and an order granting bail  
10 if it's a domestic, and the bail screening form for  
11 the judicial commissioners.

12 Q Are any other documents included in the bail  
13 packet?

14 A That's what makes up the bail packet.

15 Q Are any other documents ever included in the  
16 bail packet?

17 A Oh, I'm sorry. The -- we now have a  
18 conviction summary, which is -- we have the full  
19 criminal history.

20 But we also have a conviction summary that  
21 some -- that lists all the convictions. And we also  
22 have -- have access to a pending case summary. But  
23 all that information is also listed in the full  
24 criminal history.

1 Q Where does the Pretrial Services employee  
2 put together the packet?

3 A In the same general area where the interview  
4 is completed. And we also have the ability to do it  
5 from our main office on the eighth floor.

6 Q And the person who was arrested,  
7 they -- where do they go after the interview room?

8 A They return to the intake area. They're  
9 seated there until classification assigns them to a  
10 housing pod.

11 Q And then they get transferred into that  
12 housing pod?

13 A Yes.

14 Q How long does it take the Pretrial Services  
15 employee to prepare the bail packet?

16 A It really depends on the length of the  
17 record. I'm going to say anywhere from 15 minutes to  
18 35 minutes depending on how long of a criminal history  
19 they have.

20 Q And what is the Pretrial employee doing  
21 during this time?

22 A They're printing out all of the paperwork.  
23 They're reviewing the criminal history. For instance,  
24 I would say domestic cases, you have to determine how

1 many prior domestic charges.

2 They're summarizing it for the judicial  
3 commissioners. And once they compile the packet, then  
4 they notify the commissioners.

5 Q How long has Shelby County been preparing  
6 these bail packets?

7 A Estimated year around 1993, '94, estimated.

8 Q Is the packet -- is the bail packet  
9 different now than it was before HB1719 went into  
10 effect?

11 A No.

12 Q Did the bail packet formerly include a  
13 sent-out of the ability to pay calculator?

14 A I'm sorry. Say again?

15 Q How was the ability to pay calculator  
16 information transmitted to judicial commissioners  
17 before HB1719?

18 A It was -- it would -- it was on the  
19 screening document, the bail -- the bail screening  
20 form that the judicial commissioner gets that -- the  
21 amount that that arrestee could afford would appear on  
22 that document.

23 Q So the Pretrial Services employee would  
24 input it somewhere. And it -- how would it -- sorry.

1 Strike that.

2 How would it appear on that document?

3 A We would enter it into the events tab in  
4 Odyssey so that when that document is printed, it  
5 would print out on the document.

6 Q But it would not be included in the bail  
7 packet?

8 A No. We would not send it over to the  
9 judicial commissioner. No.

10 Q How long does it take to enter the ability  
11 to pay questions into the calculator?

12 A Three to four minutes.

13 Q And does that happen simultaneously with  
14 when the interview is being conducted?

15 A We complete the interview first. And then  
16 the packet is the last thing most staff will do. It's  
17 individual. I mean, they could do it first if they so  
18 choose. But most times it's the last thing.

19 Q And specifically with the ability to pay  
20 calculator, is the standard practice that the Pretrial  
21 Services employee who conducts the interview would  
22 fill out the calculator while they were conducting the  
23 interview?

24 Or would they conduct the interview, get the

1 answers to the questions, and then fill out the  
2 calculator?

3 A The proper steps would be to conduct the  
4 interview. Once you finish the interview, then  
5 complete the calculator.

6 Q So it would be, you know, I think you said  
7 three to four minutes of questions and then three to  
8 four minutes of entering the answers into the  
9 calculator. Is that accurate?

10 A The -- the calculator and the questions are  
11 entered at the same time. The calculator's on the  
12 screen. So when you ask the question, you are  
13 entering it at the same time. It's so --

14 Q So it is filled out during the interview?

15 A I'm not sure how to answer that. So I'm  
16 going to say the same person that completes the  
17 interview does the affordable bail calculator. Yes.

18 Q Let me try it a different way.

19 A Okay. Yeah.

20 Q Sorry. How many minutes total does it take  
21 to do the Vera -- calculate the ability to pay  
22 calculator when you take both the questions asked and  
23 putting the answers into the calculator? How long  
24 does that add total to the total time of the

1 interview?

2 A From the time we sit down and ask, "Where do  
3 you live?" until the time we complete the affordable  
4 bail calculator? Is that what you're asking?

5 Q I'm -- let me try it one more time.

6 A Okay.

7 Q The number -- the -- it takes three to four  
8 minutes to answer the questions. Is that correct?

9 A To ask and enter the questions. Let me say  
10 it like that. "How much do you make?" Enter it.  
11 "How much do you" -- enter it. So to ask and enter,  
12 I'm going to say three to four minutes.

13 Q So the whole ability to pay calculator  
14 process takes three to four minutes total?

15 A Yes. Estimate.

16 Q Okay. Thank you. How does -- let me just  
17 make sure that I have the -- what is in the bail  
18 packet down before we move on to the next step.

19 It's the criminal arrest history, NCIC,  
20 warrant checks from Odyssey and OMSE, the affidavit,  
21 the arrest tickets, and then the order granting bail  
22 if it was a domestic violence incident. What did I  
23 miss?

24 A Did you say the PSA bail setting form and

1 the screening document?

2 Q Right. Those two documents as well.  
3 Anything else?

4 A I don't think you missed anything else. No.  
5 Oh, the -- I'm sorry. The conviction summary and the  
6 pending case summary.

7 Q And what databases are those pulled from?

8 A Say again?

9 Q What databases are those pulled from?

10 A Odyssey. Navigator now.

11 Q Is there anything different about the  
12 packet -- bail packet preparation process that is  
13 different now compared to before HB1719?

14 A Can you repeat that?

15 Q Is there anything different about the bail  
16 packet preparation compiling that is different now as  
17 compared to before HB1719 went into effect?

18 A The only difference is that we don't include  
19 any information about the affordable bail.

20 Q Was that included in the bail packets  
21 previously?

22 A Prior to the new law, yes.

23 Q Where was it included?

24 A On the bail screening form.

1 Q That is sent to the judicial commissioner?

2 A Yes.

3 Q And other than that one area where the  
4 number appeared, were there any other locations where  
5 that would -- where ability to pay would be  
6 considered?

7 A No -- no.

8 Q Is any information about an arrested  
9 person's financial condition included on the -- in the  
10 bail packets today?

11 A Yes. We ask about employment and salary,  
12 how long you've worked there.

13 Q Where is that reflected?

14 A In the interview.

15 Q Is there any other information other than  
16 current employment and current salary?

17 A Employer's name, how long you've worked  
18 there, whether it's full-time, part-time, or seasonal.

19 Q So other than current employment, are there  
20 any pieces of information that go to financial  
21 condition in the bail packets?

22 A No.

23 Q I think we've been going for about an hour.  
24 I think a five-minute break might be in order if you

1 would like, Ms. Greer. Otherwise we can keep going.

2 A We can keep going.

3 Q Okay. I think I realized I'm using two  
4 terms that we haven't really spoke about yet. One is  
5 ability to pay and one is financial condition. What  
6 is financial condition?

7 A What is financial condition? I couldn't  
8 tell you at this moment. I'm not clear on your  
9 question.

10 Q When you hear the term financial condition,  
11 what do you think I mean by that term?

12 A The amount of bail that a commissioner will  
13 place on an individual prior to release.

14 Q When -- I'm trying to speak in terms of the  
15 arrested person.

16 A Okay.

17 Q What is an arrested person's financial  
18 condition?

19 A Are you talking about their employment  
20 status?

21 Q So I -- earlier I said is there any  
22 information about financial condition on the  
23 bail -- in the bail packets? When I asked you that  
24 question, what did you think I meant by financial

1 condition?

2 A Employment status.

3 Q And are there any other factors that come to  
4 mind?

5 A No.

6 Q And when I use the term ability to pay, what  
7 does that mean?

8 A How much that individual can afford to pay  
9 to be released.

10 Q So after the packet is prepared, what  
11 happens next?

12 A The judicial commissioner is notified that  
13 that particular person is ready for bail setting.

14 Q How are they notified?

15 A Through the email.

16 Q Who sends the email?

17 A Pretrial.

18 Q And is it sent to -- what email address is  
19 it sent to?

20 A To the judicial commissioner group email  
21 account.

22 Q And who monitors that email account?

23 A All on-duty commissioners.

24 Q And once they receive that email, what

1 happens next?

2 A They will at -- when they're ready, contact  
3 Pretrial so that the bail can be set.

4 Q And how do they contact Pretrial?

5 A By phone.

6 Q What is discussed in that conversation?

7 A Pretrial Services goes through the bail  
8 packet over the phone with the commissioner  
9 summarizing the number of convictions, felonies,  
10 misdemeanors, other criminal history information, if  
11 there are any pending cases, give them the bond  
12 amounts, court dates, whether they're on parole or  
13 probation.

14 The commissioner asks questions during that  
15 bail setting process to which we provide the answers  
16 if they're available.

17 And they then -- they already have the  
18 affidavit, so we don't read that to them any. And  
19 then they set the bail.

20 Q Is that -- are there any -- is there any  
21 discussion of the person's financial condition or  
22 ability to pay?

23 A No.

24 Q How long do these conversations usually

1 take?

2 A Again, can I back up one -- when you say  
3 discussion of -- of whether they're employed or not,  
4 that question may be asked by some commissioners,  
5 whether they're employed. But discussion of their  
6 ability to pay, no.

7 Q Is there any discussion of their financial  
8 condition other than some commissioners asking about  
9 their current employment?

10 A No.

11 Q How long after the initial interview do  
12 these phone calls take place?

13 A That varies depending on the commissioner.

14 Q Is there a ballpark?

15 A Once we notify the commissioner that a  
16 packet is ready, they're also doing the intake where  
17 they're signing off on affidavits and so it kind of  
18 depends on how busy they are. It could be ten minutes  
19 to an hour.

20 Q Got it. And how do they receive the packet  
21 of documents from the Pretrial Services employee?

22 A Once they have made a determination of the  
23 bond, that bond is entered into the paperwork. And  
24 then we print it and email it to the commissioner for

1 signatures.

2 Q Well, I was trying to ask, they received the  
3 bail packet that we were just talking about that was  
4 prepared by Pretrial Services. Do they receive that  
5 in the email that is sent by Pretrial Services?

6 A That is discussed verbally over the phone.

7 Q The -- how did -- how do the judicial  
8 commissioners receive the packet that Pretrial  
9 Services puts together?

10 A They don't get the actual hard copy. That  
11 is done -- presentation is done over the telephone.

12 Q So the judicial commissioners do not review  
13 the bail packet. The Pretrial Services employee  
14 summarizes the bail packet to the judicial  
15 commissioner; is that correct?

16 A Correct. They get the criminal case summary  
17 convictions. But they do not actually get the hard  
18 copy of the bail pack.

19 Q And I believe you said criminal history is  
20 kind of the primary topic of conversation; is that  
21 correct?

22 A No, I'm -- I'm --

23 Q Maybe I missed --

24 A Sorry. Primary topic of conversation? No,

1 we discussed the whole packet. They get a copy of the  
2 printed criminal history.

3 Q What do they receive copies of? What  
4 documents?

5 A They receive copies of the bail -- the PSA  
6 bail setting form. They receive copies of the bail  
7 screening form, the criminal conviction summary, and  
8 the order granting bail if it's a domestic violence.

9 Q So what documents from the bail packet do  
10 they not receive?

11 A They do not physically get through the email  
12 a copy of the interview, the full criminal history  
13 printout, the warrant screen checks, and the NCIC.

14 Q Are the interview and the PSA report  
15 different documents?

16 A Yes.

17 Q I'm going to pull up on the screen. I  
18 believe this is Exhibit 2, which is the bail packet  
19 we've received as a sample.

20 I'm just going to scroll through this  
21 slowly. And can you tell me to stop when you see the  
22 interview?

23 A That's the interview.

24 Q This is?

1 A Yes.

2 Q And then what is the PSA report?

3 A Scroll up. That's the PSA bail report.

4 Q Okay. Thank you very much. How do the  
5 judicial commissioners receive those documents?

6 A How do they receive the warrants that they  
7 get? They get them through the email.

8 Q Got it. After the phone call, how long does  
9 it generally take for the judicial commissioner to  
10 fill out the bail screening form?

11 A Again, it -- it varies on the commissioner.  
12 But it can be anywhere from 15 minutes to an hour  
13 depending on what other things they have that they're  
14 doing.

15 Q Are there any other documents the judicial  
16 commissioners fill out other than the bail screening  
17 form?

18 A Not that I'm aware of, no.

19 Q Is anyone else present when the judicial  
20 commissioners make their bail decision?

21 A Anyone else present with Pretrial?

22 Q With the judicial commissioner.

23 A They're offsite. I wouldn't know.

24 Q If an arrested person doesn't have a lawyer,

1 have they been appointed a lawyer by this point?

2 A No.

3 Q How long have the judicial commissioners  
4 been conducting these internal screenings?

5 A How long have they been using the bail  
6 screening form?

7 Q How long have they been receiving  
8 information from Pretrial Services and setting a bail  
9 at this initial stage before, like, a bail hearing,  
10 for example, down the line?

11 A Since roughly around 1993, '94. No, I'm  
12 sorry. Judges, before we got commissioners, did that  
13 back then.

14 I -- I honestly can't tell you when,  
15 whenever the commissioners were hired. It started  
16 with judges. So I can't tell you when the  
17 commissioners were hired.

18 Q Do judges still do this screening ever, or  
19 is it only judicial commissioners?

20 A Commissioners, judicial commissioners.

21 MR. QUIGLEY: I've reached a point  
22 where it makes sense to take a short break. I think  
23 maybe five, ten minutes.

24 And then we can maybe go for another

1 hour and then take a lunch if that sounds good to  
2 everybody.

3 MR. DURRENCE: That's fine with me.

4 THE WITNESS: That's fine.

5 THE REPORTER: All right. The time is  
6 now 11:58. And we are off the record.

7 (Off the record.)

8 THE REPORTER: The time is now 12:10  
9 p.m. And we are back on the record.

10 BY MR. QUIGLEY:

11 Q I'm going to ask a couple additional  
12 questions about the steps we've already spoken about.  
13 And then we can go back to moving forward through the  
14 remaining few steps.

15 I'm going to start with marking another  
16 exhibit. This is going to be Exhibit 3.

17 (Plaintiff Exhibit 3 was marked for  
18 identification.)

19 And I'm going to share it on my screen.  
20 I'll represent to you that this is a transcript from a  
21 hearing that we had in this action. There was a  
22 preliminary injunction hearing. And both sides  
23 presented argument.

24 On page 29, we have -- this is the counsel

1 public. And it's about whether the arrested person  
2 poses a risk of safety to the public.

3 And it has this line here, which is about  
4 the defendant's employment status and history and  
5 financial condition.

6 What does the term financial condition mean  
7 right here in this statement?

8 A That would have to be responded to by a  
9 judicial commissioner. Pretrial wouldn't determine  
10 that.

11 Q Do you understand you're here to testify on  
12 behalf of Shelby County today?

13 A Yes.

14 Q How does Shelby County interpret the term  
15 financial condition?

16 A When we are looking at it from the release,  
17 the Pretrial bail set, if someone's condition -- sets  
18 a financial condition, it is dealing with their  
19 release from custody.

20 Q What does -- how does Shelby County  
21 interpret the term financial condition as it is used  
22 on the bail screening form in the sentence  
23 "Defendant's employment status and history and  
24 financial condition"?

1 A I can't answer that.

2 Q I'm going to take that document down.

3 Has Shelby County had any trainings about  
4 what the term financial condition means since the  
5 passage of HB1719?

6 A Not to my knowledge.

7 Q The next point was we were speaking about  
8 how the affordable bail -- I'll actually introduce  
9 another exhibit, which I believe is Exhibit 5.

10 (Plaintiff Exhibit 5 was marked for  
11 identification.)

12 And I'll represent to you that we believe  
13 this to be the bail screening form that was in effect  
14 before the passage of HB1719. Does this document look  
15 like a bail screening form?

16 A Yes.

17 Q And then when we scroll down to section 3,  
18 it says "Affordable bail amount"?

19 A Yes.

20 Q Is the -- is this where the information that  
21 we were discussing earlier would auto-populate on the  
22 form once it was entered by Pretrial Services?

23 A Yes.

24 Q So the judicial commissioner would receive

1 or would open the form on their computer. And it  
2 would be a blank form. But it would have the  
3 affordable bail amount listed?

4 A Yes.

5 Q I'm going to take this down for a second.  
6 I'd like to speak briefly about the two bail screening  
7 forms, which I have just marked as exhibits.

8 This is the one we were just looking at,  
9 which has the section 3 release on affordable bail.  
10 And this would auto-populate.

11 So the -- it did not take any time for the  
12 judicial commissioners to enter this information on  
13 the form; is that correct?

14 A Correct.

15 Q And this says "3A. Affordable Bail Amount."  
16 And then there's "A. Maximum affordable bail amount as  
17 calculated by Vera Tool."

18 Then there's "B. Actual affordable bail  
19 amount ordered, if different from Vera Tool." And  
20 then there's "C. Defendant was unavailable." Did I  
21 read that correctly?

22 A Can you repeat that?

23 Q It says "3A. Affordable Bail Amount." And  
24 then it says: "A. Maximum affordable bail amount as

1 calculated by Vera Tool. B. Actual affordable bail  
2 amount ordered, if different from Vera Tool."

3 And then: "C. Defendant was unavailable,  
4 which prevented Pretrial from determining an  
5 affordable bail amount. Therefore, affordable bail  
6 amount is unknown." Did I read that correctly?

7 A Yes.

8 Q And now I'm going to show the current  
9 version of the bail screening form. I'm going to  
10 scroll to where that part used to be. That part is no  
11 longer on the bail screening form; is that correct?

12 A Yes.

13 Q Is that information anywhere else on the  
14 version of the bail screening form that is currently  
15 being used by Shelby County?

16 A No.

17 Q Before HB17 was passed, would the Pretrial  
18 Services employee discuss the affordable bail number  
19 with the judicial commissioner during the phone call  
20 they would have, the initial screening call sometimes,  
21 ever?

22 A We would give them the information. If they  
23 had questions, we would reply to that. That  
24 was -- yes.

1 Q Okay. So the answers the arrested person  
2 gave in response to the questions related to their  
3 income, assets, and expenses was sometimes discussed?

4 A If it was available and the judicial  
5 commissioner requested or had questions about it, yes.

6 Q Are the conversations between the judicial  
7 commissioners and Pretrial Services the same length  
8 now as they were before HB1719 was passed?

9 A They would approximately be the same. Yes.

10 Q So after the -- what options does the  
11 judicial commissioner have when they're considering  
12 whether to set bail or not after they've completed the  
13 bail screening form?

14 A What options do they have?

15 Q Let me rephrase. Can a judicial  
16 commissioner set bail through the bail screening form?

17 A Yes.

18 Q What are the other options if they do not  
19 set bail? Can they release the individual?

20 A Oh, okay. Yes. Pretrial considers that  
21 bail. So just ROR bail. Okay. I understand that.  
22 Yes, they can release a defendant on their own  
23 recognizance. It's still using the bail screening  
24 form.

1           They can set a money bail, or they can  
2 set -- indicate no bail set, which means it would go  
3 to court before they get a bail. But all of that is  
4 using the screening form.

5           Q     How does the person who was arrested find  
6 out what the judicial commissioner did on the bail  
7 screening form?

8           A     If the person receives an ROR bail, then  
9 Pretrial will call them back to the office and go over  
10 any conditions of their release so that they'll be  
11 aware of it.

12                     If it's with supervision, we will set them  
13 up for orientation so they'll know when they're to  
14 report to their supervising counselor.

15                     If it's without supervision, we would just  
16 simply give them the information for the automated  
17 call-in to remind them of their court dates and things  
18 like that.

19                     If it's a money bond, the officers in the  
20 jail would normally be the ones that would relay that  
21 information.

22           Q     For the people who are being released, what  
23 happens next?

24           A     Once we receive the paperwork back from the

1 judicial commissioner, we call the defendant down. We  
2 have -- we go over the rules and regulations of any  
3 supervised release.

4 Again, we tell them about non-supervision  
5 and the automated system where they can get their  
6 court dates and check in.

7 We then -- if they are domestic, we will get  
8 them to sign the order granting bail, also explaining  
9 those conditions to the person.

10 Once they've received copies of all of  
11 that -- well, I'm sorry. Not copies. Once they've  
12 signed all of that information, they are escorted  
13 around to release where they will be processed out.

14 Release will give them copies of all of  
15 their documents. We give them the OR paperwork.  
16 Release will give them the order granting bail  
17 paperwork.

18 Q And what happens to the bail packets that  
19 the judicial commissioner reviewed? Or excuse me.  
20 What happens to the bail packets that Pretrial  
21 Services put together?

22 A It is stored with our department. If that  
23 person has a bail hearing, those packets are taken to  
24 the bail hearing room.

1           And at that time, whoever the presiding  
2           commissioner, if they want to physically see the  
3           packet at that time, they can see hard copies of  
4           everything that we verbally went over with them.

5           Q     Does Pretrial Services upload those packets  
6           onto a database?

7           A     Yes. They're stored in our Odyssey  
8           supervision database -- Navigator. I'm sorry. They  
9           just recently switched over. Navigator database.

10          Q     And if a judicial officer sets bail, meaning  
11          the person is not being released, is the person  
12          appointed counsel?

13          A     Not at that time, no. That is done during  
14          their arraignment.

15          Q     Got it. How does Shelby County decide  
16          whether to appoint counsel?

17          A     That is the judge's decision at arraignment.  
18          They fill out an indigency form in court and swear  
19          before the judge. And then the judge makes the  
20          determination.

21          Q     How does Shelby County notify the appointed  
22          counsel that they were appointed?

23          A     The general sessions court clerks will  
24          normally notify the appointed counsel to come to court

1 at that time.

2 Q And how long has Shelby County been  
3 following these procedures for the appointment of  
4 counsel?

5 A I couldn't tell you. I don't know.

6 Q Are there any differences in how counsel is  
7 appointed now compared to before HB1719 when it went  
8 into effect?

9 A Not to my knowledge, no.

10 Q So then the next -- is the next step the  
11 arraignment?

12 A Yes. The arraignment happens at the same  
13 time, usually, when a counsel is appointed. And the  
14 bail hearing comes after that.

15 Q And how long between when the judicial  
16 commissioner makes that decision that's reflected on  
17 the bail screening form and the arraignment? How much  
18 time is between those two events?

19 A If they are charged, given a court date and  
20 division prior to midnight, they go to court at nine  
21 o'clock that morning for arraignment. Anyone charged  
22 after midnight will go to court the following business  
23 day for arraignment.

24 Q And what happens at the arraignment?

1           A       The courts or the judge will go over their  
2 charges and determine whether or not to appoint them a  
3 public defender, decide whether or not they will  
4 remain on bail review hearing if they are still in  
5 custody, and then set them for report date.

6           Q       Who speaks at the arraignment?

7           A       I can't say for sure. We are in and out of  
8 court. So in some courtrooms, the prosecutor and the  
9 defendant may be allowed to say something. I can't  
10 say for sure because we're not always in the  
11 courtrooms.

12          Q       Where does the arrested person go after the  
13 arraignment?

14          A       If they have not posted bond, they'll be  
15 returned to their housing unit.

16          Q       Are there any differences in how  
17 arraignments are conducted now as opposed to before  
18 HB1719?

19          A       Not to my knowledge.

20          Q       And then what happens next?

21          A       If the -- if the arrestee, the person,  
22 individual has not posted bond, they will remain on  
23 the bail review hearing docket.

24                   And depending on the charge, they will go to

1 the bail review hearing room or they will have a bail  
2 review hearing in the courtroom the following day.

3 Q How long after amendment do generally the  
4 bail hearings happen?

5 A They're scheduled for the next day.

6 Q And where do the bail hearings take place?

7 A Some take place on the second floor in the  
8 bail review hearing room. And others take place in  
9 the actual court.

10 Q Who is the bail hearing in front of?

11 A The second floor bail review hearing is in  
12 front of a judicial commissioner. The courtroom  
13 hearings bail reviews are done based on the assigned  
14 judge for that courtroom.

15 Q Who decides which room an arrested person  
16 goes to?

17 A It depends on the charge that the person  
18 has, whether or not they will -- can be seen in bail  
19 review hearing and also the judge themselves. Some  
20 prefer to see their own cases and not send them to  
21 bail review.

22 Q So there are certain categories of crimes  
23 that are not eligible for the bail hearing room?

24 A Correct.

1 Q And what are those?

2 A Murder charges. I want to say class A and  
3 class -- anything that's a class A and aggravated  
4 assault charges. There may be others that I can't  
5 remember right now. But those are the charges.

6 Q How are judicial commissioners scheduled for  
7 the bail hearing room?

8 A The lead commissioner makes out their  
9 schedule.

10 Q Does the same judicial commissioner that did  
11 the initial screening conduct the bail hearing for the  
12 arrested person, or is it a different judicial  
13 commissioner?

14 A Depending on the schedule, it could possibly  
15 be. But majority of the time, I've never seen it  
16 happen. But it could possibly be, yes.

17 Q So the scheduling is unrelated?

18 A Correct.

19 Q Got it.

20 A Yes.

21 Q Who is present at the bail hearing other  
22 than the arrested person and the judge or judicial  
23 commissioner?

24 A In the bail review hearing room, the judge;

1 the arrestee; the DA; the appointed attorney, whether  
2 it's a public defender or private; clerk; general  
3 sessions court clerk; and Pretrial in the bail review  
4 hearing; and the bailiffs.

5 Q How does Pretrial decide who is in the bail  
6 hearing room on behalf of Pretrial?

7 A Rotation schedule staff.

8 Q And what does the Pretrial Services  
9 individual who's in the bail hearing room -- what do  
10 they do during the bail hearing?

11 A We are there to respond to any other  
12 questions that the judicial commissioners or the DA or  
13 PD may have.

14 Basically to provide information, we have  
15 the packet. And once the hearing starts, if they have  
16 questions, they will ask us. And we will provide  
17 those answers.

18 If a person is released on their own  
19 recognizance, then we do the same thing that would  
20 happen in the jail where we would go to the defendant  
21 before they leave the courtroom, explain their RORs,  
22 have them sign the paperwork, set them up for their  
23 orientations.

24 Q -- Pretrial Services employee asked about in

1 the bail hearing room?

2 A By the commissioner, this is where  
3 they -- they will go into more detail. So they will  
4 ask to actually see the hard copy of the criminal  
5 history.

6 Review -- if there are any warrants out,  
7 review that information. They may want to see the  
8 hard copies of that. Walk through their interview  
9 again, things like that.

10 Q Does the judicial commissioner ever ask  
11 questions about the ability to pay calculator?

12 A No.

13 Q Does the judicial commissioner ever ask  
14 questions about the arrested person's income?

15 A Whether they're employed, yes.

16 Q Do they -- does the judicial commissioner  
17 ask any questions about the arrested person's  
18 expenses?

19 A No.

20 Q Does the judicial commissioner ask any  
21 questions about the arrested person's benefits?

22 A No.

23 Q Other than questions about current  
24 employment, does the judicial commissioner ask any

1 questions about the person's finances?

2 A No.

3 Q Who speaks at the bail hearing?

4 A The DA, the public defender, and the  
5 judicial commissioner are the main three.

6 The -- there may be questions asked of Pretrial. And  
7 if so, then we will.

8 There also may be questions asked of the  
9 arrestee as they're there at the hearing. And if so,  
10 they will.

11 Q What types of arguments do Defense Counsel  
12 make at the bail hearings?

13 A It varies. One is the likelihood of  
14 fleeing, you know, reliability to come to court.  
15 Discussion of limited arrest histories -- you know,  
16 community ties, things like that.

17 Q Do defense counsel make arguments about a  
18 person's ability to pay the bail?

19 A There are comments made saying that -- what  
20 I have heard: "He can't afford that," based on the  
21 beginning of the bail hearing. "The reason that we  
22 are here is he can't afford that original bond."  
23 So --

24 Q So do defense counsel sometimes makes

1 arguments about whether the person can afford the bail  
2 that has been set?

3 A Yes.

4 Q When defense counsel makes that argument, do  
5 the judicial commissioners ever tell them to stop  
6 making that argument?

7 A I can't answer that. I don't know.

8 Q Have you ever been in a courtroom where a  
9 judicial commissioner asked or told defense counsel  
10 they could not argue regarding a person's ability to  
11 pay?

12 A I personally have not, no.

13 Q Have you -- are you aware of any Shelby  
14 County Pretrial Services employees who have?

15 A Not to my knowledge, no.

16 Q Do judicial commissioners and judges  
17 reference a person's ability to pay when they make  
18 bail decisions?

19 A Could you repeat that?

20 Q Do judicial commissioners and judges  
21 reference a person's ability to pay when they make  
22 bail decisions at the bail hearing?

23 A Not to my knowledge. I haven't heard them  
24 do that. Not since the law changed.

1 Q Tell me more about that. How has the bail  
2 hearings changed since the law changed?

3 A The commissioner for Pretrial's interaction  
4 does not mention bail affordability anymore.

5 Q And how else has the bail hearing -- how  
6 else have the bail hearings changed since HB1719, if  
7 at all.

8 A That's basically it.

9 Q Are there any other ways that the bail  
10 hearings have changed since HB1719 went into effect?

11 A Not to my knowledge.

12 Q Before HB1719, was Pretrial Services often  
13 providing information regarding the arrested person's  
14 ability to pay the bail?

15 A Yes.

16 Q And was that in response to questions from  
17 the judicial commissioner?

18 A Yes.

19 Q What kinds of questions were the judicial  
20 commissioners asking Pretrial services?

21 A Prior to?

22 Q Yeah, prior to HB17, with respect to ability  
23 to pay.

24 A They would ask how much did the

1 defendant -- is the defendant able to pay.

2 Q Would they ask any other questions related  
3 to the interview answers given related to ability to  
4 pay?

5 A Not -- not regarding the ability to pay.  
6 They would -- they may ask the defendant a question,  
7 but not at Pretrial.

8 Q Would judicial commissioners ask Pretrial  
9 about a defendant's income?

10 A Whether they're working or employed, yes.

11 Q Would they ask about the person's expenses?

12 A No.

13 Q Would judicial commissioners reference the  
14 defendant's ability to pay before HB1719 while making  
15 their decisions?

16 A Yes.

17 Q And approximately how often would they do  
18 so?

19 A Thirty percent of the time maybe.

20 Q And they no longer do so?

21 A No.

22 Q So other than the judicial  
23 commissioners -- sorry. Strike that.

24 Did defense counsel make arguments regarding

Page 70

1 ability to pay more often before HB1719?

2 A Before, yes.

3 Q Tell me more about that. How so?

4 A I'm not sure what you mean.

5 Q How would defense counsel argue regarding  
6 ability to pay before HB1719?

7 A Just basically say their client can't afford  
8 the bond.

9 Q Is that different from how they argue now?

10 A I think the difference is they don't mention  
11 it as often.

12 Q Are there any other differences with respect  
13 to defense counsel?

14 A Not that I'm aware of right now, no.

15 Q So to summarize, before HB1719, Pretrial  
16 Services would answer questions regarding the ability  
17 to pay.

18 Defense counsel would make arguments  
19 regarding ability to pay more often. And judicial  
20 commissioners -- bail determinations. Is that  
21 correct?

22 A Yes.

23 Q Are there any other ways --

24 THE REPORTER: I'm sorry, Mr. Quigley.

1       Could you repeat that question? It buffered out on my  
2       end.

3                       MR. QUIGLEY: Yeah.

4       BY MR. QUIGLEY:

5               Q       To summarize, before HB1719 went into  
6       effect, judicial commissioners would mention ability  
7       to pay while entering bail orders during bail  
8       hearings.

9                       Defense counsel would more often raise  
10      arguments regarding ability to pay. And Pretrial  
11      Services would answer questions regarding ability to  
12      pay. Is that correct?

13              A       Yes.

14              Q       Other than that, are there any other  
15      differences between how a bail hearing is conducted  
16      now as opposed to before HB1719 went into effect?

17              A       Not that I'm aware of, no.

18              Q       Do judicial commissioners fill out any forms  
19      at the bail hearing?

20              A       They fill out the bail review form.

21              Q       Is that the only form they fill out?

22              A       If it's a domestic violence, the order  
23      granting bail.

24              Q       What documents are in front of the judicial

1 commissioner at the bail hearing?

2 A At which time?

3 Q At the bail hearing.

4 A At the beginning of the bail hearing, there  
5 are none. They will request if they -- they can  
6 request to see the full history, criminal history.

7 They can request to see the documents from  
8 the previous -- the initial bail screening that was  
9 done by the jail commissioner.

10 They can request the jacket from the clerk,  
11 which is seated there, which has the affidavits and  
12 other document -- other documents that I'm not aware  
13 of. But they can also request that.

14 And that's the beginning of the hearing.  
15 At -- throughout the process, at the end, they will  
16 receive the bail review form from the clerks. And  
17 they will have that in the front of them to fill out.

18 And then if it's a domestic, we will give  
19 them the order granting bail to fill out and to sign.  
20 And then there's a waiver if they decide. Either  
21 consent or waiver forms are also available.

22 Q And what happens to those documents after  
23 the bail hearing?

24 A The keepers of the record, general sessions

1 A No.

2 Q And what's the name of that document?

3 A Bail review -- bail review order, not form.  
4 I'm sorry. Bail review order. It is prepared  
5 by -- it is given to the commissioner by general  
6 sessions court clerk.

7 Q I'd like to introduce as the next exhibit.  
8 I've lost track of the numbers. This is the Shelby  
9 County Judicial Commissioner's Annual Report.

10 THE REPORTER: I'm sorry, Mr. Quigley.  
11 So you just introduced 6. But I didn't get a  
12 description of 6 before.

13 MR. QUIGLEY: Okay. So let's call this  
14 6.

15 THE REPORTER: Okay.

16 BY MR. QUIGLEY:

17 Q This is the Shelby County Judicial  
18 Commissioner's Annual Report. Are you familiar with  
19 this document?

20 A I've seen it, yes.

21 Q I'm going to scroll down. This is a  
22 description of the bail hearing room and bail  
23 hearings.

24 And then in this last paragraph, it states

1 that "These hearings are recorded and at their  
2 conclusion a bail hearing order is completed by the  
3 Judicial Commissioner with written findings of  
4 fact" -- are of the bail hearing order, or are they a  
5 separate document?

6 A They're on the order, yes.

7 MR. QUIGLEY: Before we move on, I'd  
8 just like to state for the record that we have not  
9 received copies of these completed bail hearing order  
10 forms or any other written finding of fact or  
11 recordings.

12 Plaintiffs have requested these several  
13 times and have recently filed a motion to compel these  
14 records, completed forms. And so to summarize,  
15 the -- completes a bail packet.

16 THE REPORTER: I'm sorry. On your  
17 summary, you buffered out and froze through the whole  
18 thing. When you said, "To summarize," it froze.

19 MR. QUIGLEY: To summarize the process  
20 we've been discussing today -- then next --

21 THE REPORTER: I'm sorry. It froze  
22 again.

23 MR. QUIGLEY: I'm not sure. I'll give  
24 it one more try. And then maybe we can have lunch and

1 come back.

2 THE REPORTER: Okay.

3 BY MR. QUIGLEY:

4 Q Okay. To summarize the process we discussed  
5 today, a person is booked into the jail.

6 Then Pretrial Services does an interview  
7 with that person. Pretrial Services next completes a  
8 bail packet. Then Pretrial Services has a phone call  
9 with a judicial commissioner.

10 After which time, the judicial commissioner  
11 completes the bail screening form. After that form is  
12 complete, there is an arraignment.

13 And at the arraignment, counsel is appointed  
14 for those who need counsel. And then after the  
15 arraignment, there is a bail hearing.

16 Is that a correct summary of the -- of how  
17 an arrested person moves through the Pretrial process  
18 in Shelby County?

19 A Yes, that's the major points. Yes.

20 MR. QUIGLEY: I think I have half an  
21 hour maybe left on this witness. I think a lunch here  
22 makes sense. And then we can wrap up. Does that work  
23 for everybody else?

24 MR. DURRENCE: That works for me,

1 provided it works for Ms. Greer.

2 THE WITNESS: Yeah, that's fine.

3 MR. QUIGLEY: Okay. So why don't we  
4 take a, let's say, 45-minute lunch, come back at  
5 2:40 -- 2:45 -- make it an even 2:45.

6 MR. DURRENCE: You mean 1:45 Central  
7 Time?

8 MR. QUIGLEY: Sorry. Yes. Thanks.  
9 Appreciate it.

10 MR. DURRENCE: So 1:45 Central Time,  
11 we'll be back with Ms. Greer. And then -- so that  
12 I've got the next person on deck, who would you like  
13 to go to next?

14 MR. QUIGLEY: I think Marshall next  
15 would be great.

16 MR. DURRENCE: Okay. I'll have him  
17 standing by then.

18 MR. QUIGLEY: Perfect.

19 THE REPORTER: All right. The time is  
20 now 1:04 p.m. And we are off the record.

21 (Off the record.)

22 THE REPORTER: The time is now 1:47  
23 p.m. And we are back on the record.

24 //

1 BY MR. QUIGLEY:

2 Q Good afternoon, Ms. Greer. Just a handful  
3 of more questions. And then we'll be all done.

4 I'm going -- but there are a couple  
5 questions on each step that I kind of would like to  
6 quickly touch up on.

7 The first is, how long after the interview  
8 with Pretrial Services -- how long after the interview  
9 between Pretrial Services and the arrested person does  
10 the phone call between Pretrial Services and the  
11 judicial commissioner happen?

12 A That's hard to say. But I'm going to say an  
13 estimate would be around five to six hours.

14 Q Does the judicial officer have anything else  
15 in front of them when they make a decision other than  
16 the documents that are emailed to them from Pretrial  
17 Services?

18 A Not to my knowledge.

19 Q When we spoke about the entering of the  
20 calculator number that auto-populated on the bail  
21 screening form before HB1719, I think you said that  
22 the Pretrial Services person enters that information  
23 into the events tab. Is that accurate?

24 A [No audible response.]

1 Q Oh, I didn't hear you.

2 A It is in the Odyssey Navigator system.  
3 Correct.

4 Q And is that still entered today after  
5 HB1719?

6 A Yes.

7 Q Do the judicial commissioners -- but then it  
8 doesn't auto-populate onto the form because there's  
9 nowhere for it to auto-populate; is that right?

10 A Correct.

11 Q Does the -- and do the judicial  
12 commissioners ever see that number in Odyssey?

13 A No. They don't have access to our side of  
14 Odyssey.

15 Q Are you aware of any costs to Shelby County  
16 that resulted from the addition of the ability to pay  
17 calculator?

18 A Not to my knowledge, no.

19 Q How long does it generally take the judicial  
20 commissioners to fill out the bail screening form?

21 A We would normally get it back within, say,  
22 15 minutes to an hour.

23 Q Is anyone else present with the judicial  
24 commissioners when they make their decision?

1 A Not to my knowledge, no.

2 Q And where are the judicial commissioners  
3 when they make that decision?

4 A Sometimes on site in the judicial  
5 commissioner's office and sometimes remotely.

6 Q And how long has Shelby County had judicial  
7 commissioners filling out these screening forms?

8 A The initial screening form started with bail  
9 review court -- bail review hearing room in '23.

10 Q So judicial commissioners were filling out  
11 these screening forms both before HB1719 and after  
12 HB1719?

13 A Yes.

14 Q Does the post-HB1719 bail form include a  
15 different section other than the section we discussed  
16 being removed to -- for the judicial officer to list a  
17 person's ability to pay?

18 A Can you repeat that?

19 Q Yes, will do. Does the currently-used bail  
20 form include a section where the judicial commissioner  
21 can enter the arrested person's ability to pay?

22 A No.

23 Q Does it include a section where the judicial  
24 commissioner can enter the person's financial

1 condition?

2 A No.

3 Q So let's move on to arraignment. Can the  
4 judge make a change to bail at arraignment?

5 A Yes.

6 Q And what would that change be based on?

7 A Any new information that they may receive in  
8 the courtroom.

9 Q And what kind of information would that be?

10 A It could vary. At that point, they may have  
11 an attorney.

12 Q Is Pretrial Services present at  
13 arraignments?

14 A Not at all arraignments, no.

15 Q Some arraignments?

16 A Yes.

17 Q Does ability to pay ever -- is ability to  
18 pay ever discussed at arraignments?

19 A No.

20 Q Is someone's financial condition ever  
21 discussed at arraignments?

22 A No. Other than employment status.

23 Q Earlier you stated that judicial  
24 commissioners conducting the bail hearings can request

1 A Can you repeat that?

2 Q The bail hearings we were discussing, those  
3 have occurred in Shelby County both before HB1719 went  
4 into effect and now after HB1719 went into effect?

5 A Yes.

6 Q The process that we spent most of the  
7 morning discussing, the general process from booking  
8 to the bail hearing, that's generally the same as it  
9 was before HB1719 even though the -- some different  
10 information considering along the way, like the  
11 general steps has been the same since before and after  
12 HB1719; is that correct?

13 A [No audible response.]

14 Q Have you discussed the --

15 THE REPORTER: I'm sorry. Can the  
16 witness repeat the answer for that question?

17 THE WITNESS: Yes.

18 THE REPORTER: Thank you.

19 BY MR. QUIGLEY:

20 Q Have you discussed the ability to pay  
21 calculator over email since January 2023?

22 A Yes.

23 Q Have you discussed HB1719 over email since  
24 January 2023?

1 A I can't recall.

2 Q Have you discussed the changes that had to  
3 take place because of HB1719 over email since January  
4 2023?

5 A Yes.

6 Q And the email you're referring to, is that  
7 your work email address?

8 A Can you repeat?

9 Q What email address are you referring to when  
10 you say --

11 A Yes.

12 Q -- emails.

13 A Yes. Work -- my work address -- email  
14 address.

15 Q Do you -- does Pretrial Services collect  
16 data on the number of people who are under Pretrial  
17 Services's supervision?

18 A Yes.

19 Q Does it collect data on bail amounts?

20 A Yes.

21 Q Does it collect data on the number of people  
22 detained on unaffordable bail?

23 MR. DURRENCE: Object to the form.

24 You can answer, Ms. Greer.

1 THE WITNESS: We collect the bail  
2 amounts, yes.

3 BY MR. QUIGLEY:

4 Q Do you collect any data related to whether  
5 those bail amounts are unaffordable for the people who  
6 were arrested based on their calculator score?

7 A Yes.

8 MR. DURRENCE: Object to the form.

9 THE WITNESS: I'm sorry.

10 MR. DURRENCE: You can go ahead and  
11 answer, Ms. Greer.

12 THE WITNESS: Yes.

13 BY MR. QUIGLEY:

14 Q And do you continue to collect that data to  
15 this day?

16 A Yes.

17 Q Do you collect data on the number of people  
18 who qualify for appointed counsel?

19 A Can you repeat?

20 Q Do you collect data on the number of people  
21 who qualify for appointed counsel?

22 A No.

23 Q So for the data that you do collect that we  
24 were just discussing, where is that data stored?

1 A In Pretrial's database, Odyssey.

2 Q I'd like to show another exhibit.

3 MR. QUIGLEY: What number are we on,  
4 Jay?

5 THE REPORTER: This will be 7.

6 (Plaintiff Exhibit 7 was marked for  
7 identification.)

8 BY MR. QUIGLEY:

9 Q I am nearing the end. Ms. Greer, this is  
10 the last document. Do you see this document?

11 A Yes.

12 Q This is a document titled Resolution of the  
13 Shelby County Board of Commissioners. And it is dated  
14 August 9, 2022. Do you recognize this document?

15 A I -- no. I'm not going to say I do. I may  
16 have seen it, but --

17 Q If you scroll down to this paragraph here,  
18 there's a discussion about --

19 A Is there any way you can make it a little  
20 larger?

21 Q Yeah. Oh, that's too big. Last paragraph  
22 reads "Reports containing the information defined  
23 below from the judicial commissioner's court, clerk of  
24 the court, and/or the Shelby County Pretrial officer's

1 offices that deemed necessary to review the progress  
2 of the judicial commissioner program and are due every  
3 six months for the first two years after adoption of  
4 this resolution and annually thereafter."

5 And then there's different categories of  
6 data on this page. I'll give you a moment to review.

7 A What year was this signed?

8 Q This was 2022.

9 A '22. Okay.

10 Q So some of the categories are the total  
11 number of people arrested over reporting period, a  
12 breakdown of the outcomes of the initial screening,  
13 additional case information that can be summarized,  
14 race of the defendants, et cetera, release outcomes,  
15 information about subsequent bail hearings, the timing  
16 that individuals are receiving bail court hearings,  
17 the rates of Pretrial success/failure. Is this data  
18 collected?

19 A Some of it is, yes.

20 Q Which is -- what data is not collected from  
21 this page?

22 A I would actually have to have the document  
23 where I could review it. I can't tell just from the  
24 screen.

1 Q I'll take this down.

2 Do you know if bail amounts have increased  
3 since HB17 was passed?

4 A Some have, yes.

5 Q Do you know the -- like, if the average or  
6 median bail amount has increased since HB1719?

7 A No.

8 Q By some have, what do you mean?

9 A Some bails have increased.

10 Q What do you -- what? When you say some  
11 bails, what do you mean?

12 A Generally speaking, there are not as many  
13 RORs as there were previously. So the flip side would  
14 indicate that some bails are probably in -- higher  
15 than they were.

16 Q Has anything changed since the passage of  
17 HB1719 other than the passage of HB1719 that would  
18 explain why there have been less RORs?

19 A Could you repeat that?

20 Q I will. You just testified that more people  
21 have been detained on bail as opposed to being ROR  
22 since the passage of HB1719. Is that correct?

23 A Yes. That's what it -- it appears to be.  
24 It seems like that, yes.

1 Q And is there -- has anything happened since  
2 the passage of HB1719 that would explain that change  
3 other than the passage of HB1719?

4 A Okay. No. I missed the sentence. No.

5 Q Thank you. And the information -- the data  
6 to show that would be stored in Odyssey; is that  
7 correct?

8 A Odyssey and our Pretrial database.

9 Q Has the number of people on supervised  
10 release increased since the passage of HB1719?

11 A It fluctuates. But overall it's -- it has  
12 not increased.

13 Q Has it decreased? Has there been any  
14 change?

15 A It's stable. Like I said, some months are  
16 higher; some months are lower. But it's pretty  
17 stable.

18 Q At the beginning of the deposition, you  
19 testified that you had some documents in front of you  
20 today while you take the deposition?

21 A Yes.

22 Q What documents do you have?

23 A It looks like packets, some bail packets,  
24 the workflow, and some bail packets, an analysis by

1 the University of Memphis, and the -- I guess this is  
2 the -- for Just City versus Floyd Bonner and Lee  
3 Wilson.

4 MR. QUIGLEY: Jasen, will you produce  
5 those documents?

6 THE WITNESS: Can you repeat?

7 MR. DURRENCE: We certainly will. And  
8 I'll go ahead and tell you it's all our discovery  
9 responses. I just had it there. They're in hard copy  
10 in case she needed to reference them. But I'll send  
11 it again if y'all need me to.

12 BY MR. QUIGLEY:

13 Q Did you take any notes on those documents?

14 A Uh-uh.

15 Q No notes?

16 MR. QUIGLEY: I think we would like to  
17 have those documents produced regardless, Jasen.  
18 Appreciate it.

19 BY MR. QUIGLEY:

20 Q The other category of documents I think we  
21 would like produced based on the deposition is  
22 the -- we heard that there's a packet that goes to the  
23 judicial commissioners which is different from the  
24 bail packets which were produced.

1 five minutes to switch Ms. Greer out and bring  
2 Commissioner Marshall in.

3 THE REPORTER: Okay. Just before we go  
4 off the record, Mr. Quigley, would you like to order  
5 the transcript?

6 MR. QUIGLEY: Yes.

7 THE REPORTER: Mr. Durrence, would you  
8 like to order a copy of the transcript?

9 MR. DURRENCE: Yes, please.

10 THE REPORTER: Is there anyone else who  
11 needs to order a copy of the transcript? Thank you.

12 The time is now 2:22 p.m. And we are  
13 off the record.

14 (Whereupon, at 2:22 p.m., the  
15 proceeding was concluded.)  
16  
17

18 \_\_\_\_\_  
19 LLANA GREER

20 Subscribed and sworn to before me

21 this \_\_\_\_ day of \_\_\_\_\_, 2025.  
22  
23

24 \_\_\_\_\_  
Notary public

CERTIFICATE OF DEPOSITION OFFICER

I, JAY FREDERICK, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



JAY FREDERICK

Certified Reporter in and for the  
State of Tennessee

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CERTIFICATE OF TRANSCRIBER

I, ANDREW TINGLEY-BARRAZA, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



ANDREW TINGLEY-BARRAZA

# Exhibit 6:

# Sample Affordable Bail Calculator

# Affordable Bail Calculator

## Earnings

What is your average monthly take home pay (after taxes)?

Monthly Take Home Pay: \$

**Total Monthly Earnings: \$0**

## Income From Benefits

Cash Benefits: \$

Unemployment: \$

SSI: \$

SSD: \$

Social Security: \$

Pension/Retirement: \$

Any Other Income?: \$

**Total Monthly Benefits: \$0**

## Liquid Assets

How Much Do You Have In:

Checking Account: \$

Savings Account: \$

How Much Cash Do You Have Available Right Now?: \$

**Total Liquid Assets: \$0**

### Expenses

How Much Do You Personally Pay For Each Month:

Housing: \$

Utilities: \$

Food & Grocery: \$

Public Transit: \$

Car Payment/Insurance: \$

Gasoline: \$

Phone: \$

Student Loans: \$

Child Support: \$

Medical: \$

TV & Internet: \$

Other: \$

**Total Monthly Expenses: \$ 0**

### Calculations

Total Monthly Earnings: \$ 0 + Total Monthly Benefits: \$ 0 + Total Liquid Assets: \$ 0 - Total Monthly Expenses: \$ 0 =

**Total Disposable Income: \$ 0**

### Affordable Bail Amount

**Affordable Bail Amount: \$ 0**

Clear Form



# Exhibit 7:

# Revised Bail Screening Form

IN THE GENERAL SESSIONS CRIMINAL COURT OF SHELBY COUNTY

STATE OF TENNESSEE

Division: \_\_\_\_\_

ODY Case No.: \_\_\_\_\_

vs

RNI / SO #: \_\_\_\_\_

DEFENDANT

**\*\* BAIL SCREENING FORM \*\***

I, **Judicial Commissioner/Judge**, \_\_\_\_\_, hereby find:

In accordance with the powers vested in me by Tennessee law and the United States and State of Tennessee Constitutions, have reviewed the Shelby County Pretrial worksheet attached hereto and the Standing Bail Order (SBO) of the Shelby County General Sessions Courts and have considered the factors under United States and Tennessee law. Tennessee and federal law require the presumption of release of a defendant prior to trial and the imposition of the least restrictive conditions of release that will reasonably ensure the appearance of the person as required and the safety of the community. In light of the above and all relevant factors, I hereby impose the following conditions for the release of Defendant \_\_\_\_\_:

Considering the above and all relevant factors, **the Court hereby finds and orders** the following:

**PART I**

- 1. **Release on Recognizance or Unsecured Bail** (T.C.A. § 40-11-115)
  - ROR release ordered
  - Unsecured bail set at \$ \_\_\_\_\_

**AFTER ORDERING ROR OR UNSECURED RELEASE UNDER PART I, PROCEED TO PART V.**

**PART II**

- 2. **Release on Conditions or Release to Pretrial Services for Conditions Evaluation**
  - Pursuant to T.C.A. § 40-11-116, if the defendant does not qualify for release under T.C.A. § 40-11-115, the Court shall impose the least onerous conditions reasonably likely to assure the defendant's appearance in court. The Court finds that the costs of the required conditions are believed to be affordable or required by law.

**IT IS ORDERED** that the defendant's release is subject to the following conditions:

- Statutorily Mandated Condition(s), to be imposed if the defendant is charged with DUI, Vehicular Assault, Aggravated Vehicular Assault, Vehicular Homicide, Aggravated Vehicular Homicide:
  - Interlock Device
  - Random Alcohol or Drug Screens
  - Transdermal Monitoring Device
  - Pre-trial residency in an in-patient alcohol or drug rehabilitation center

Release to Pretrial Services for further supervision at the following level:

- PSA 1    PSA 2    PSA 3    PSA 4    PSA 5

Other conditions imposed, if any:

- |   |  |
|---|--|
| <input type="checkbox"/> AA/NA Meetings                 | <input type="checkbox"/> Alcohol Monitoring Device     |
| <input type="checkbox"/> Individual Counseling          | <input type="checkbox"/> Interlock Device              |
| <input type="checkbox"/> Random Drug Screens            | <input type="checkbox"/> Transdermal Monitoring Device |
| <input type="checkbox"/> Stay away from Victim/location | <input type="checkbox"/> Other (see below):            |

Other conditions imposed: \_\_\_\_\_

AFTER ORDERING RELEASE ON CONDITIONS UNDER PART II, PROCEED TO PART V.

### PART III

**3. Release Subject to Payment of Bail Under T.C.A. § 40-11-148**

Defendant is being charged for commission of crime while released on bail for a previous offense. Bail must be set according to T.C.A. § 40-11-148.

**Bail Amount Ordered**

- a. Bail Amount Set: \$ \_\_\_\_\_  
b. Information on Pending Case: \_\_\_\_\_

### PART IV – RELEASE ON BAIL

Pursuant to T.C.A. § 40-11-118 and T.C.A. § 40-11-150, bail shall be set as low as the court determines is necessary to reasonably assure the defendant's appearance in court and the safety of the public and/or community.

**4. Risk of Nonappearance by the Defendant and/or Safety of the Public**

#### 4A. Threat to Public Safety

Presuming the individual's innocence, based on the totality of circumstances and after careful examination of each of the factors outlined in Part IV that would reasonably assure public safety, the Court finds that the individual poses a threat to the safety of the public that cannot be managed with less-restrictive conditions. The Court has considered the conditions short of detention available to the individual, as outlined in Part II, and found them insufficient.

#### 4B. Risk of Nonappearance

Presuming the individual's innocence, based on the totality of circumstances and after careful examination of all of the factors outlined in Part IV and the alternative conditions outlined in Part II that would reasonably assure the individual's future court appearance, the Court finds that the State has proven, by clear and convincing evidence, that bail

is warranted because the individual poses a risk of nonappearance that cannot be managed with less-restrictive conditions. The Court has considered the conditions short of detention available to the individual, as outlined in Part II, and found them insufficient.

The Court finds that a Risk of Nonappearance and/or the Safety of the Public as the basis for not ordering Release on Recognizance without supervision based on the following factors:

**Safety of the Public** (required, if applicable):

- Length of residence in the community, family ties and relationships
- Defendant's employment status and history and financial condition
- Defendant's reputation, character, and mental condition
- Defendant is the subject of a protective order
- Used or displayed a deadly weapon
- Nature of offense, probability of conviction and likely sentence as it relates to risk of nonappearance
- Defendant's prior criminal record, record of appearance at court proceedings, record of flight to avoid prosecution or failure to appear at court proceedings; likelihood that defendant's prior criminal record will pose a risk of danger to the community
- Criminal history involving domestic violence convictions and/or violations of protective orders
- Threat to alleged victim
- Pretrial, probation, parole, or supervised release status and compliance
- Any other factors bearing on the defendant's risk to public safety:

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**Risk of Nonappearance** (required, if applicable):

- Length of residence in the community
- Defendant's employment status
- Family ties and/or relationships
- Defendant's prior criminal record including prior releases on recognizance or bail
- Apparent probability of conviction and likely sentence
- Whether at time of being charged with offense, the defendant was on release pending trial, sentencing or appeal in connection with another offense
- Nature of offense, probability of conviction and likely sentence as it relates to risk of nonappearance
- Substance use or mental health issues that would be better addressed in a community-based treatment program
- Any other factors indicating defendant's ties to community or bearing on defendant's risk of willful failure to appear:

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**4C. Bail Required**

I, Judicial Commissioner/Judge \_\_\_\_\_, considered all the factors found in T.C.A. § 40-11-118 and T.C.A. § 40-11-150 and reviewed the list of conditions short of detention available to the individual. After my review, I **find** that no combination of available conditions will serve to reasonably assure this individual's future court appearance and the safety of the public.

**4D. Bail Ordered**

I hereby find the following:

**Further Bail Hearing Required Pursuant to Standing Bail Order:**

Bail Amount Set: \$ \_\_\_\_\_

---

**PART V**

The Court hereby **ORDERS**:

Bail Amount Set: \$ \_\_\_\_\_

\_\_\_\_\_  
Judicial Commissioner / Judge Signature

\_\_\_\_\_  
Date

Exhibit 8:  
Sample (Pre-HB 1719) Bail  
Screening Form

IN THE GENERAL SESSIONS CRIMINAL COURT OF SHELBY COUNTY

STATE OF TENNESSEE

Division: \_\_\_\_\_

ODY Case No.: \_\_\_\_\_

vs

RNI / SO #: \_\_\_\_\_

DEFENDANT

**BAIL SCREENING FORM**

I, **Judicial Commissioner/Judge**, \_\_\_\_\_, hereby find:

In accordance with the powers vested in me by Tennessee law and the United States and State of Tennessee Constitutions, have reviewed the Shelby County Pretrial worksheet attached hereto and the Standing Bail Order (SBO) of the Shelby County General Sessions Courts and have considered the factors under United States and Tennessee law. Tennessee and federal law require the presumption of release of a defendant prior to trial and the imposition of the least restrictive conditions of release that will reasonably ensure the appearance of the person as required and the safety of the community. In light of the above and all relevant factors, I hereby impose the following conditions for the release of Defendant \_\_\_\_\_:

Considering the above and all relevant factors, THE COURT HEREBY FINDS AND ORDERS the following:

**SECTION I**

- 1. Release on Recognizance or Unsecured Bail (T.C.A. § 40-11-115)
  - ROR release ordered
  - Unsecured bail set at \$ \_\_\_\_\_

**AFTER ORDERING ROR OR UNSECURED RELEASE UNDER SECTION I, PROCEED TO SECTION VI.**

**SECTION II**

- 2. Release on Conditions or Release to Pretrial Services for Conditions Evaluation
  - Pursuant to T.C.A. § 40-11-116, if the defendant does not qualify for release under T.C.A. § 40-11-115, the Court shall impose the least onerous conditions reasonably likely to assure the defendant's appearance in court. The Court finds that the costs of the required conditions are believed to be affordable or required by law.

**IT IS ORDERED** that the defendant's release is subject to the following conditions:

- Statutorily Mandated Condition(s), to be imposed if the defendant is charged with DUI, Vehicular Assault, Aggravated Vehicular Assault, Vehicular Homicide, Aggravated Vehicular Homicide:
  - Interlock Device
  - Random Alcohol or Drug Screens
  - Transdermal Monitoring Device
  - Pre-trial residency in an in-patient alcohol or drug rehabilitation center

Release to Pretrial Services for further supervision at the following level:

- PSA 1    PSA 2    PSA 3    PSA 4    PSA 5

Other conditions imposed, if any:

- |   |  |
|---|--|
| <input type="checkbox"/> AA/NA Meetings                 | <input type="checkbox"/> Alcohol Monitoring Device     |
| <input type="checkbox"/> Individual Counseling          | <input type="checkbox"/> Interlock Device              |
| <input type="checkbox"/> Random Drug Screens            | <input type="checkbox"/> Transdermal Monitoring Device |
| <input type="checkbox"/> Stay away from Victim/location | <input type="checkbox"/> Other (see below):            |

Other conditions imposed: \_\_\_\_\_

**AFTER ORDERING RELEASE ON CONDITIONS UNDER SECTION II, PROCEED TO SECTION VI.**

### SECTION III

**3. Release on Affordable Bail**

Pursuant to T.C.A. § 40-11-118 and T.C.A. § 40-11-150, bail shall be set as low as the court determines is necessary to reasonably assure the defendant's appearance in court and the safety of the public and/or community.

**3A. Affordable Bail Amount**

a. Maximum affordable bail amount as calculated by Vera Tool: \$ \_\_\_\_\_

b. Actual affordable bail amount ordered, if different from Vera Tool: \$ \_\_\_\_\_

c. Defendant was unavailable, which prevented Pretrial from determining an affordable bail amount. Therefore, affordable bail amount is unknown.

**AFTER ORDERING AFFORDABLE BAIL UNDER SECTION III, PROCEED TO SECTION VI.**

### SECTION IV

**IF ORDERING BAIL UNDER T.C.A. § 40-11-148, IT MAY BE UNAFFORDABLE. IF BAIL IS UNAFFORDABLE, YOU MUST FIRST COMPLETE SECTION 5 (SD), THEN PROCEED TO SECTION VI. IF T.C.A. 40-11-148 DOES NOT APPLY, GO TO SECTION V.**

**4. Release Subject to Payment of Bail Under T.C.A. § 40-11-148**

Defendant is being charged for commission of crime while released on bail for a previous offense. Bail must be set according to T.C.A. § 40-11-148.

**Bail Amount Ordered**

a. Maximum affordable bail amount as calculated by Vera Tool: \$ \_\_\_\_\_

b. Bail amount ordered, if different from Vera Tool maximum bail amount: \$ \_\_\_\_\_

## SECTION V

### 5. Risk of Nonappearance by the Defendant and/or Safety of the Public

#### 5A. Threat to Public Safety

Presuming the individual's innocence, based on the totality of circumstances and after careful examination of each of the factors outlined in Section V, and the alternative conditions outlined in Section II that would reasonably assure public safety, the Court finds that the individual poses a threat to the safety of the public that cannot be managed with less-restrictive conditions. The Court has considered the conditions short of detention available to the individual, as outlined in Section II, and found them insufficient.

#### 5B. Risk of Nonappearance

Presuming the individual's innocence, based on the totality of circumstances and after careful examination of each of the factors outlined in Section V, and the alternative conditions outlined in Section II that would reasonably assure the individual's future court appearance, the Court finds that the individual poses a risk of nonappearance that cannot be managed with less-restrictive conditions. The Court has considered the conditions short of detention available to the individual, as outlined in Section II, and found them insufficient.

The Court finds that a Risk of Nonappearance and/or the Safety of the Public as the basis for not ordering Release on Recognizance without supervision based on the following factors:

##### **Risk of Nonappearance** (required, if applicable):

- Length of residence in the community
- Defendant's employment status
- Family ties and/or relationships
- Defendant's prior criminal record including prior releases on recognizance or bail
- Apparent probability of conviction and likely sentence
- Whether at time of being charged with offense, the defendant was on release pending trial, sentencing or appeal in connection with another offense
- Nature of offense, probability of conviction and likely sentence as it relates to risk of nonappearance
- Substance use or mental health issues that would be better addressed in a community-based treatment program
- Any other factors indicating defendant's ties to community or bearing on defendant's risk of willful failure to appear:

##### **Safety of the Public** (required, if applicable):

- Length of residence in the community, family ties and relationships
- Defendant's employment status and history and financial condition
- Defendant's reputation, character, and mental condition
- Defendant is the subject of a protective order
- Used or displayed a deadly weapon
- Nature of offense, probability of conviction and likely sentence as it relates to risk of nonappearance
- Defendant's prior criminal record, record of appearance at court proceedings, record of flight to avoid prosecution or failure to appear at court proceedings; likelihood that defendant's prior criminal record will pose a risk of danger to the community
- Criminal history involving domestic violence convictions and/or violations of protective orders

\_\_\_\_\_  
\_\_\_\_\_

- Threat to alleged victim
- Pretrial, probation, parole, or supervised release status and compliance
- Any other factors bearing on the defendant's risk to public safety:

\_\_\_\_\_  
\_\_\_\_\_

**5C. Bail Required**

I, Judicial Commissioner \_\_\_\_\_, considered all the factors found in T.C.A. § 40-11-118 and T.C.A. § 40-11-150 and reviewed the list of conditions short of detention available to the individual. After my review, I **find** that no combination of available conditions will serve to reasonably assure this individual's future court appearance and the safety of the public.

**5D. Unaffordable Bail Ordered**

**IF ORDERING UNAFFORDABLE BAIL, THIS PART MUST BE COMPLETED.**

**I hereby find the following:**

- Further Bail Hearing Required Pursuant to Standing Bail Order:**
  - a. Unaffordable Bail Amount Set: \$ \_\_\_\_\_
  - b. No Bail Set Until Further Hearing

---

**SECTION VI**

**The Court hereby ORDERS:**

**Bail Amount Set: \$** \_\_\_\_\_

\_\_\_\_\_  
Judicial Commissioner / Judge Signature

\_\_\_\_\_  
Date

## Exhibit 9:

May 23, 2024 Email from  
Commissioner Purifoy to  
Judicial Commissioners and  
Pretrial Services

**From:** Bramley, Jacquelyn on behalf of Bramley, Jacquelyn <Jacquelyn.Bramley@memphistn.gov>  
**Sent:** Thursday, May 23, 2024 12:03 AM  
**To:** Purifoy, Shayla  
**Subject:** Re: Good morning

Good Morning

Jacquelyn Bramley  
Memphis Police Department  
Office Support Clerk  
ADE Office  
201 Poplar Avenue  
Memphis TN 38103  
Room 1056A  
jacquelyn.bramley@memphistn.gov  
Office # 901-636-3565  
Cell # 901-864-7356

---

**From:** Purifoy, Shayla <Shayla.Purifoy@shelbycountytn.gov>  
**Sent:** Thursday, May 23, 2024 12:00 AM  
**To:** Peppers, DAsia <DAsia.Peppers@memphistn.gov>; GS 24 HR Clerk <GS24HRCLerk@shelbycountytn.gov>; PTS Jail <PTS\_Jail@shelbycountytn.gov>; Judicial Commissioners <JC@shelbycountytn.gov>; Bramley, Jacquelyn <Jacquelyn.Bramley@memphistn.gov>; Haymond, Tera <Tera.Haymond@memphistn.gov>; Sykes, Cassandra <Cassandra.Sykes@memphistn.gov>; Moses, Sheila <Sheila.Moses@memphistn.gov>; Leake, Stacy <Stacy.Leake@memphistn.gov>  
**Subject:** Good morning

**CAUTION:** This email originated outside of the **City of Memphis** organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

---

Good morning everyone. I am logged in. Have a great night.

Please note:

Please do not include affordable bail information, numbers, or Vera calculator information. Gov. Lee signed law prohibiting us from considering it effective immediately.

Please include all MPD bond recommendation sheets with your packets. If you prefer, you may just note the MPD bond amount number in your case history. If they did not make a recommendation, I would like to know that information. You will only see bond recommendations for felonies.

After 3 am, 3 bonds at a time unless defendant has multiple charges.

Thank you.

Sincerely,

SC00411

Judicial Commissioner, Shayla Purifoy

9012223720; 8211187

Go to meetings link: <https://global.gotomeeting.com/join/648144381>

Exhibit 10:  
February 12, 2024  
Fiscal Memorandum on  
HB 1719

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL MEMORANDUM**

**HB 1719 - SB 2565**

February 12, 2024

**SUMMARY OF BILL AS AMENDED (013684):** Requires a magistrate to not consider the defendant's ability to pay when determining the amount of bail necessary to reasonably assure the appearance of the defendant while protecting the safety of the public.

**FISCAL IMPACT OF BILL AS AMENDED:**

**NOT SIGNIFICANT**

Assumptions for the bill as amended:

- The proposed legislation does not change any considerations or requirements regarding whether or not a defendant should be released on bail. It is only relevant to the process of determining the amount of bail to be set.
- Pursuant to Tenn. Code Ann. § 40-11-118(a)(2), bail must be set as low as the court determines is necessary to reasonably assure the appearance of the defendant.
- Pursuant to Tenn. Code Ann. § 40-11-118(b), the factors a magistrate must consider when determining the amount of bail to be set:
  - the defendant's length of residence in the community;
  - the defendant's employment status and history and financial condition;
  - the defendant's family ties and relationships;
  - the defendant's reputation, character and mental condition;
  - the defendant's prior criminal record, record of appearance at court proceedings, record of flight to avoid prosecution or failure to appear at court proceedings;
  - the nature of the offense and the apparent probability of conviction and the likely sentence;
  - the defendant's prior criminal record and the likelihood that because of that record the defendant will pose a risk of danger to the community;
  - the identity of responsible members of the community who will vouch for the defendant's reliability; however, no member of the community may vouch for more than two (2) defendants at any time while charges are still pending or a forfeiture is outstanding; and
  - any other factors indicating the defendant's ties to the community or bearing on the risk of the defendant's willful failure to appear.
- The proposed legislation would not remove any of the current considerations, but would add a stipulation related to the consideration of the defendant's financial condition that

would require the magistrate to not consider that condition in the context of the defendant's ability to pay.

- Given the number and breadth of additional factors under mandatory consideration, and the requirements of Tenn. Code Ann. § 40-11-118(a)(2), it is assumed that the amount of bail set will not ordinarily deviate significantly from the amount at which it would have been set were the ability of the defendant to pay included in the consideration.
- Accordingly, it is not estimated to result in a significant number of additional defendants failing to meet bail, that otherwise would have, due to the bail being set at an unattainable amount.
- Any fiscal impact to state or local government related to increased incarceration is therefore estimated to be not significant.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

/jj

Exhibit 11:  
Expert Report of  
Spurgeon Kennedy

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE**

**Just City, Inc.**, and class representatives  
**Deangelo Towns** and  
**Marshawn Barnes**,  
on behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

Floyd Bonner Jr.,  
**Shelby County Sheriff;**

Lee Wilson,  
**Presiding Shelby County General  
Sessions Criminal Court Judge;** and

John Marshall, Robert Barber, Rhonda Harris,  
Kevin Reed, Christopher Ingram, Shayla Purifoy,  
Ross Sampson, Serena Gray, Terita Hewlett,  
Mischelle Best, Kenya Smith, Zayid Saleem,  
Kathy Kirk Johnson, Leslie Mazingo,  
**Shelby County Judicial  
Commissioners,**

in their official capacities,

Defendants.

Case No. 2:24-cv-2540-TLP-tmp

**DECLARATION OF SPURGEON KENNEDY**

I, Spurgeon Kennedy, hereby declare as follows:

1. I was retained as an expert by Plaintiffs in this matter.
2. A true and correct copy of my expert report in this case is attached as Exhibit A and incorporated by reference. I continue to hold the opinions expressed in my report and believe them to be true and accurate.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on the 6 day of January, 2026.



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Spurgeon Kennedy

# Exhibit A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE**

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**Deangelo Towns** and  
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on behalf of themselves and all others  
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John Marshall, Robert Barber, Rhonda  
Harris, Kevin Reed, Christopher Ingram,  
Shayla Purifoy, Ross Sampson, Serena  
Gray, Terita Hewlett, Mischelle Best,  
Kenya Smith, Zayid Saleem, Kathy Kirk  
Johnson, Leslie Mazingo,  
**Shelby County Judicial  
Commissioners,**

in their official capacities,

Defendants.

Case No. 2:24-cv-2540-TLP-tmp

**EXPERT REPORT OF SPURGEON KENNEDY**

1. I am the former Vice President of the Crime and Justice Institute and former President of the National Association of Pretrial Services Agencies (NAPSA). I have personal knowledge of, and could testify to, the facts set forth in this report.
2. I have been retained by counsel to Plaintiffs to provide expert testimony concerning my knowledge of standard bail-setting practices nationwide, including how and whether courts consider a defendant's ability to pay. It also presents my opinion on whether an ability to pay requirement places an undue resource burden on courts.
3. I am not being compensated for the preparation of this report.
4. I reserve the right to amend this report as more information comes to my attention.

**I. Background**

5. I have spent 44 years in the pretrial services field. During this time, I have watched thousands of bail hearings across the country and have spoken to a variety of people involved in the process regarding the bail setting process, including judges, public defenders, prosecutors, sheriffs, and pretrial services agencies. I have provided consultant services to state and local justice systems interested in improving their bail systems and pretrial services agencies. I have authored or co-authored several publications related to bail decision-making and best practices for the pretrial field. I attach a full list of my relevant experience in Exhibit A.

**II. Overview**

6. Based on my experience in the pretrial field, Tennessee is the only state that expressly prohibits courts from considering a defendant's ability to pay when setting bail. It is standard practice for judges to consider an individual's ability to pay or financial resources when setting bail in all other states that rely on money bail. Judges and other system involved people such as pretrial agency staff, defense counsel, and prosecutors use both terms interchangeably. Defense counsel often present arguments that the prosecutor's recommended bail amount is unaffordable for their client, and judges generally consider such

arguments when making a bail decision. Judges often accept evidence and arguments concerning ability to pay and may reduce bail findings to affordable amounts as is sufficient under the circumstances. Tennessee is the only state which prohibits judges from even considering information about a defendant's ability to pay when setting bail.

7. Based on my experience in the pretrial field, it is my opinion that other jurisdictions obtain income and financial resource information for judges to use when setting bail with little or no fiscal or administrative burden to the courts or other agencies. Most jurisdictions rely on court staff or pretrial services agencies to collect information about a defendant's employment status and income. Some jurisdictions implement a financial affidavit or ability to pay form (I use both terms interchangeably). For example, in Harris County, Texas, I oversaw the implementation of an ability to pay affidavit, which did not lead to increased fiscal or administrative burden. I am not aware of any jurisdiction in which the consideration of ability to pay has led to an increase in administrative or fiscal burden.

### **III. Tennessee Is The Only State That Disallows Consideration of Ability to Pay.**

8. I am aware of no state other than Tennessee that relies on money bail but prohibits judges from considering the amount of bail a person can afford when making a bail decision. In practice, judges generally consider that information when reaching a bail decision.
9. According to the NAPSA standards and other documentation that illustrate best practices when setting money bail, judges must set the least restrictive condition necessary to ensure the purposes of bail: court appearance and public safety.<sup>1</sup> Best practices dictate that the least restrictive condition necessary is a non-

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<sup>1</sup> National Association of Pretrial Services Agencies. (2024). *Pretrial Standards*. Washington, D.C.:NAPSA. Center for Effective Public Policy et al. (2010). *A Framework for Evidence-Based Decision Making in Local Criminal Justice Systems: Third Edition*. Washington, D.C.: National Institute of Corrections. Pilnik, L., Hankey, B., Simoni, E., Kennedy, S., Moore, L.J., Sawyer, J. (2017). *Essential Elements of an Effective Pretrial System and Agency*. Washington, D.C.: National Institute of Corrections. NIC Accession Number: 032831. Schnacke, T.R. (2018). *Changing Bail Laws: Moving From Charge to "Risk:" Guidance for Jurisdictions Seeking to Change Pretrial Release and Detention Laws*. Center for Legal and Evidence Based Practices. [http://www.clebp.org/images/Changing\\_Bail\\_Laws\\_9-23-2018\\_TRS\\_.pdf](http://www.clebp.org/images/Changing_Bail_Laws_9-23-2018_TRS_.pdf). p. 2. American Bar Association. (1992) *Standards for Criminal Justice: Providing Defense Services*, 3d ed. Washington, D.C.: American Bar Association. National District Attorneys Association. (2023). *National Prosecution Standards, Fourth Edition*. Arlington, VA: National District Attorneys Association.

financial condition, such as supervised release. However, if a judge sets money bail intended to facilitate releasing the defendant, the bail amount must be affordable.

10. I have conducted one-on-one meetings with judges across the country to discuss how they make bail decisions. I have also led trainings for judges on bail setting practices. Based on these conversations and judges' feedback during training sessions, it is standard practice for judges to consider whether a person can afford bail when making bail decisions.
11. I have watched bail hearings in courtrooms across the country. Based on this experience, most judges consider the amount that a person can afford when setting bail. Defense counsel often raise arguments that their client is unable to afford the prosecutor's recommended bail amount and, therefore, that the bail amount exceeds the amount necessary to ensure return to court and public safety. Judges may reduce the bail amount from the prosecutor's recommendation upon finding that a lower bail amount is sufficient to meet the purposes of bail.
12. I have interviewed system-involved people across the country, including public defenders, prosecutors, sheriffs, court staff, pretrial services agencies, community members, and system-impacted people. Based on these conversations and my other experiences, when judges set bail at an amount that exceeds what a person can afford, that bail acts as a de facto detention order.
13. Based on my experiences, consideration of the amount of bail a person can afford enables judges to assess the least restrictive condition necessary to ensure court appearance and public safety. If a judge does not know—and, indeed, is prohibited from eliciting—information about the amount of bail that a person can afford, that judge would not have the information they need to adequately assess the least restrictive condition necessary to meet the purposes of bail.
14. Without that information, there is a risk that judges will set higher bail amounts than necessary to meet the purposes of bail, resulting in erroneous detention of people who are too poor to afford the amount of bail set.

#### **IV. Consideration of Ability to Pay Does Not Lead to Increased Burden.**

15. Courts generally rely on court staff or pretrial services agency staff to conduct interviews with defendants to collect information about employment status and

income, as well as information about criminal history. These conversations generally last about 10 to 15 minutes. Based on my experience, these conversations do not pose a fiscal or administrative burden to courts.

16. Some jurisdictions implement a specific ability to pay form or financial affidavit to document the information about employment status and income for presenting to the judge setting bail. In some jurisdictions, these forms document the amount of bail that the person can afford.
17. Based on my personal experience overseeing the implementation of an ability to pay affidavit for courts to use when setting bail, it is my opinion that consideration of ability to pay is not administratively or fiscally burdensome.
18. For approximately 14 months from 2021-2022, I served as the interim co-Acting Director at the Harris County (Houston), Texas pretrial services agency as part of my work with the Justice Management Institute. In this role, I co-managed the day-to-day operations of the agency.
19. During that time, I oversaw the implementation of an ability to pay affidavit in Harris County. Pursuant to its settlement in *O'Donnell v. Harris County* (4:16-cv-01414), Harris County added a requirement that its pretrial services agency fill out an ability to pay affidavit during interviews with defendants. The Harris County pretrial services agency was then able to provide the ability to pay affidavit to the judges setting bail.
20. Our internal review of this process found that it added little extra time or expense to pretrial processes. The pretrial services agency was already interviewing defendants. The additional time they needed to fill out an ability to pay affidavit only added 5 or 10 minutes to the interviews. Pretrial services agency staff were easily able to incorporate completing the affidavit as part of their duties. During my conversations with the judges, the staff conducting the interviews, and their supervisors, I did not hear any complaints or concerns regarding the administrative burden of adding the affidavit. Harris County did not have to hire any extra staff due to the addition of the financial affidavit, and there were no other increased costs to Harris County as a result of the addition of the financial affidavit.
21. From 2021-2023, I facilitated discussions between Shelby County (Memphis), Tennessee, ACLU National, ACLU of Tennessee, and Shelby County community organizations to reform Shelby County's pretrial system. As a result of these

discussions, the parties agreed to a Standing Bail Order and signed a Memorandum of Understanding (“MOU”) agreeing to implement constitutional bail-setting processes, which included using an ability to pay calculator to determine a defendant’s ability to pay bail. I facilitated further discussions about the logistics of implementing these processes and trained judges on how to follow these processes when setting bail.

22. As part of the Standing Bail Order and MOU, Shelby County implemented an ability to pay calculator to assess a defendant’s income and expenses. Shelby County’s pretrial services staff were responsible for administering the calculator by gathering information from defendants during interviews and passing along the information to judges setting bail.
23. During the process of facilitating discussions between Shelby County, the ACLU, and certain Shelby County community organizations, no one raised concerns to me that administering the ability to pay calculator would be administratively or fiscally burdensome. I have heard no concerns or complaints from judges, pretrial services staff, or court staff that administering the calculator would lead to increased costs or administrative burden.
24. Most pretrial services agencies that conduct investigative interviews of defendants obtain current employment and financial resource information to include in a report that goes to the courts at bail setting. For example:
  - The Galveston, Texas pretrial services agency automated the process of determining ability to pay and the financial affidavit also is used for appointment of counsel determination. A paper version of this form is attached as Exhibit B. According to the agency director, this process does not add any substantial financial or administrative cost to the agency.<sup>2</sup>
  - The settlement in *Ross v. Blount* (2:19-cv-11076 U.S. District Court for the Eastern District of Michigan), which affects bail setting in Wayne County (Detroit) Michigan, permitted defense attorneys to determine a client’s ability to pay and to present that information to the court at bail setting. A form used by the Wayne County public defender is attached as Exhibit C. This effort is assisted in Oakland County (Pontiac), Michigan through the pretrial services agency’s obtaining of defendant’s employment status and financial abilities prior to the initial bail setting hearing.

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<sup>2</sup> April 21, 2025 email correspondence with Aaron Johnson, Director, Galveston County Personal Bond, Magistrate Court and Collections.

25. I am not aware of any jurisdictions where the consideration of a detainee's ability to pay led to increased administrative or fiscal burden.
26. The experiences of these counties, including my experiences in Harris County and Shelby County, show that methods exist to gauge ability to pay that do not create an unreasonable burden on justice systems. These costs also would be far less substantial than the costs placed on individuals who face bail amounts beyond their means. For example, research shows that individuals held in jail before trial, even for short periods of detention, have worse outcomes such as higher risk of unemployment,<sup>3</sup> higher rates of sentencing disparity,<sup>4</sup> and a greater likelihood of reoffending.<sup>5</sup> There is also the cost to Shelby County of unnecessary detention.

Date: May 30, 2025



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Spurgeon Kennedy

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<sup>3</sup> Schönteich, M. (2010) *The Socioeconomic Impact of Pretrial Detention*. New York, NY: Open Society Foundation.

<sup>4</sup> Leipold, A.D. (2005). "How the pretrial process contributes to unfair convictions." *The American Criminal Law Review*, 42 Amer. Crim. L. Rev. 1123, 1123-1165 (2005); Gerstein, C. *Plea Bargaining and the Right to Counsel at Bail Hearings*, 111 Mich. L. Rev. 1513 (2013). Available at: <http://repository.law.umich.edu/mlr/vol111/iss8/4.>; Stephenson, M. (2016). *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*. Available at <https://www.econ.pitt.edu/sites/default/files/Stevenson.jmp2016.pdf>.

<sup>5</sup> Lowenkamp, C., VanNostrand, M., and Holsinger, A. (2013). *The Hidden Cost of Pretrial Detention*. New York, NY: Laura and John Arnold Foundation.

**Exhibit A**

1. I have spent 44 years in the pretrial services field, including:
  - Crime and Justice Institute, 2022-2025 (Vice President).
  - Justice Management Institute, 2017-2022 (Senior Program Director).
  - Pretrial Services Agency for the District of Columbia, 2001-2015 (Deputy Director of Operations and Director of the Office of Strategic Development) and 1981-1988 (Training Officer).
  - The United States Department of Justice, National Institute of Justice, 1998-2001 (Senior Programs Manager).
  - Pretrial Services Resource Center, 1988-1998 (Senior Associate).

In addition, I served as a member of the National Association of Pretrial Services Agencies' Board of Directors, the National Institute of Corrections' Pretrial Executives Network from 2021-2023 and the American Bar Association's Diversion and Problem-Solving Courts Standards Task Force from 2007-2012.

2. I have provided consultant services to state and local justice systems interested in improving their bail systems and pretrial services agencies. These have included:
  - 2023, *Shelby County Bail Improvement*: Facilitated discussions between Shelby County (Memphis), Tennessee and the national and state offices of the American Civil Liberties Union to create a pretrial detention system that included due-process protections for justice involved individuals. These discussions resulted in a standing bail order and memorandum of understanding that outlined the new bail procedure.
  - 2021, *Evaluation of the Washington County, MN Pretrial System*: Assessed Washington County's bail decision-making and pretrial supervision procedures, using the National Institute of Correction's "Essential Elements Framework" as ratings criteria.
  - 2019, *Assessing Pretrial Risk: The Science of Pretrial Risk Assessment*: Presented on the developing science of pretrial risk prediction to the Missouri State Committee on Pretrial Reform.
  - 2019, *Evaluation of the City of New Orleans Pretrial Services*: Assessed the New Orleans Pretrial Services Agency under the John D. and Catherine T. MacArthur Foundation's Safety and Justice Challenge. Evaluation used criteria established by the NIC and the National Association of Pretrial Services Agencies' *Standards for Pretrial Release, Third Edition*.
  - 2019, *Evaluation of the Maricopa County Pretrial Services Division*: Assessed the Maricopa County (Phoenix), AZ Pretrial Services Division as Program Director with the Justice Management Institute. The evaluation used criteria established by the NIC and NAPSA.

- 2017, *Cook County Pretrial Services Staffing and Operations Analysis*: Hired under contract with Justice System Partners to analyze the Cook County pretrial agency's staffing needs and policies following changes to the county's bail setting protocol.
- 2017, *Review of Medina County, OH Pretrial Justice System*: Assisted local justice stakeholders on improving bail setting and supervision of pretrial defendants.
- 2017, *Statewide Training on Pretrial Evidence Based Practices*: Presented findings regarding pretrial risk assessment and supervision for the Arizona Administrative Office of the Arizona State Courts.
- 2016 and 2014, *Pretrial Racial Justice Institute*: Served as speaker and facilitator for a non-profit group dedicated to addressing racial disparity in pretrial decision-making.
- 2020-2012, *American Bar Association Racial Disparity Project*: Served as a consultant with the American Bar Association to assist the New Orleans Parish LA develop and expand pretrial diversion options for low to medium risk defendants and arrestees.
- 2012, 2008-2011, *American Bar Association Task Force on Diversion and Specialty Court Standards*: Served as liaison member of the ABA Task Force developing draft standards on diversion programming and problem-solving courts.
- 2011, *National Institute of Corrections Outcome and Performance Measures for Pretrial Release Agencies*: Facilitated a publication by NIC's Pretrial Executives Network on suggested outcome and performance measures for pretrial services agencies. The publication concentrated on measuring program effectiveness in the evidence-based practices areas of risk assessment, matching supervision and services to identified need, and integrating treatment and social services into pretrial case management.
- 2010, *Bureau of Justice Assistance*: Assessed pretrial release and pretrial diversion practices in five counties as part of an evaluation of the State of Kentucky's Department of Pretrial Services.
- 2010, *Bureau of Justice Assistance*: Co-developed a modular training session on pretrial diversion. Training modules included a review of current diversion practices, a history of pretrial diversion, significant legal issues in the field, developing a pretrial diversion program, outcome and performance measures, and best and promising diversion practices.
- 2009, *Bureau of Justice Assistance*: Analyzed court case processing and pretrial release and detention policies and practices correlated to unnecessary detention in Durham County, North Carolina.

- 1998, *National Council on Crime and Delinquency*: Developed and analyzed corrections population databases to determine appropriate classification level for persons in the Puerto Rico and District of Columbia corrections systems.
  - 1997, *National Institute of Justice*: Reviewed pretrial information gathering, risk assessment, and pretrial supervision procedures adopted by the University of Alabama at Birmingham TASC program under the National Institute of Justice's "Breaking the Cycle" Demonstration Project.
  - 1994, *Edna McConnell Clark Foundation*: Assisted the Delaware Department of Corrections in analyzing how the state's pretrial services policies affected jail population.
  - 1992-1996, 1998, *National Institute of Corrections*: Served as part of a consulting team assessing jail crowding and alternatives to incarceration in Shiawassee County, Michigan (1998); Omaha, Nebraska (1996); Davidson County, Tennessee (1995); Fayette County, Georgia and San Miguel County, Colorado (1994); Sullivan County, New Hampshire and Hampton, Virginia (1993); and Natchitoches County, Louisiana (1992).
  - 1991-1993, *System Wide Drug Testing*: Helped develop and run regional workshops on coordinating drug testing throughout the criminal justice system. Monitored the activities of two model drug testing sites and provided technical assistance to jurisdictions interested in coordinated drug testing.
3. I have submitted expert testimony in several cases involving bail practices and testified before county and state legislative bodies. Testimony include:
- 2020, *Russell et al v. Harris County, Texas et al, 4:2019cv00226*  
Submitted virtual deposition in support of defendants.
  - 2019, *Schultz et. al. v. Alabama, Case No. 5:17-cv-00270-MHH*: Submitted expert testimony and deposition in support of plaintiffs.
  - 2019, *Xochitl v. Barr, Case No. 5:16-00620-JGB-KK*. Submitted written expert testimony in support of plaintiffs.
  - 2019, Presented on the field-accepted critical elements of pretrial services agencies before the Wisconsin State Committee on Pretrial Reform.
  - 2017, *O'Donnell, et al. v. Harris County, Tex. et al., No. 16-cv-01414 (S.D. Texas)*: Submitted testimony in support of plaintiffs. Sat for follow-up deposition in 2018.
  - 2017, *Philadelphia, PA City Council*: Testified on possible racial disparity in the use of pretrial risk assessments.

- 2016, *Philadelphia, PA City Council's Special Committee on Criminal Justice*: Testified on bail reforms efforts nationwide and in the state of Pennsylvania.
  - 2015, *Maryland Governor's Commission to Reform Maryland's Pretrial System*: Provided testimony on Washington, D.C.'s pretrial system and early research on racial disparity in pretrial risk assessment instruments.
  - 2014, *New Jersey General Assembly Appropriations Committee*: Testified in support of a comprehensive bail reform measure.
  - 2010, *National Association of Criminal Defense Lawyers*: Provided testimony to the NACDL during their review of drug courts and other problem-solving initiatives.
4. I have authored or co-authored several publications related to bail decision-making and best practices for the pretrial field. These include NAPSA Standards for Pretrial Release, publications on the relationship between pretrial release options and pretrial outcomes (public safety and court appearance), and descriptions of best and promising practices in the pretrial field.
- *Pretrial Standards: Revised 2024*. (Co-editor). National Association of Pretrial Services Agencies.
  - *Promoting Pretrial Success: A New Model for Pretrial Supervision*. NIC (2022).
  - *Court Nonappearance and New Case Filings: Redefining Pretrial Misconduct*. NIC (2022).
  - *Measuring What Matters: Outcome and Performance Measures for the Pretrial Release Field. 2<sup>nd</sup> Edition*. NIC (2021).
  - *Incorporating Services and Support into Pretrial Supervision: Is There a Best Model?* (Co-editor). NIC (2022).
  - *National Association of Pretrial Services Agencies Standards for Pretrial Release: Revised 2020*. (Co-editor). National Association of Pretrial Services Agencies.
  - *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*. (Co-author). NIC (2017).
  - *Measuring for Results: Outcome and Performance Measures for the Pretrial Diversion Field*. NIC (2014).
  - *Measuring What Matters: Outcome and Performance Measures for the Pretrial Release Field*. NIC (2011).
  - *Charge Specialty and Re-victimization by Defendants Charged with Domestic Violence Offenses* Topics in Community Corrections, NIC (2008).
  - *Pretrial Diversion in the 21<sup>st</sup> Century: A National Survey of Pretrial Diversion Programs*. Bureau of Justice Assistance (2010).

- *Promising Practices in Pretrial Diversion* (Co-Author). BJA (2010).
- *Pretrial Release and Supervision Program Training Supplement*. Pretrial Services Resource Center (1997).
- *Commercial Surety Bail: Assessing Its Role in the Pretrial Release and Detention Decision*. PSRC (1996).
- *Integrating Drug Testing into a Pretrial Services System: Monograph* (co-Author). BJA (1999).

**Exhibit B**

**Galveston Texas Ability to Pay Determination Form:**

**NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA.**

THE STATE OF TEXAS CAUSE NO. \_\_\_\_\_  
vs. \_\_\_\_\_  
SPN. NO. \_\_\_\_\_

**Affidavit of Financial Condition**

Name: \_\_\_\_\_ Phone No. \_\_\_\_\_  
Address: \_\_\_\_\_ D.O.B. \_\_\_\_\_  
City, State: \_\_\_\_\_  
Zip Code: \_\_\_\_\_

The significance of this form has been explained to me. I understand that I am not required to complete this form. I understand that the information I provide on this form will become part of a public record, and it will be used by judges who determine **my bail amount and/or my eligibility for a court appointed attorney** if I request one.

I declare under penalty of perjury that the information in this affidavit is true and correct.

I am \_\_\_ married or \_\_\_ not married and I/we support \_\_\_\_\_ dependents who are:

Name	Relationship	Age

I have no other assets or income except for the following:

Present cash available:

Type	Myself	My Spouse	Financial Institution
<b>Cash</b>			
<b>Checking</b>			
<b>Savings</b>			
<b>Safety Deposit Box</b>			
<b>Other</b>			
<b>TOTAL:</b>			

Amounts of money I am owed:

Debt type & who owes it?	To Myself	To My Spouse	When expected?

I have the following opportunities to borrow money:

Type	Available amount	Lender/Financial Institution
<b>Credit cards</b>		
<b>Credit line</b>		
<b>Personal loan</b>		
<b>Other</b>		
<b>TOTAL:</b>		

I own the following assets:

Type	Value	Monthly Pmt.	Loan balance	Location
<b>Home</b>				
<b>Other Real Estate</b>				
<b>Motor vehicle 1</b>				
<b>Motor vehicle 2</b>				
<b>Furniture</b>				
<b>Notes, Mortgages, Trust &amp; Deeds</b>				
<b>Stocks/Bonds</b>				
<b>Animals of Value</b>				
<b>Jewelry</b>				

<b>Other:</b>			
<b>Monthly Income (Gross)</b>	<b>Myself</b>	<b>My Spouse</b>	<b>Total</b>
<b>Employment</b>			
<b>Real Property</b>			
<b>Interest &amp; Dividends</b>			
<b>Gifts</b>			
<b>Alimony</b>			
<b>Child Support</b>			
<b>Retirement</b>			
<b>Disability</b>			
<b>Unemployment</b>			
<b>Public Assistance</b>			
<b>Other Sources</b>			
<b>TOTAL:</b>			

Estimation of itemized monthly expenses:

<b>Expense</b>	<b>Monthly Amount</b>
<b>Rent/Housing</b>	
<b>Car Payment &amp; Insurance</b>	
<b>Utilities</b>	
<b>Food, clothing, toiletries</b>	
<b>Child care</b>	
<b>Health Insurance</b>	
<b>Medical expenses</b>	
<b>Credit card</b>	
<b>Court-ordered payments</b>	
<b>Child support</b>	
<b>Phones, internet &amp; cable</b>	
<b>Cigarettes, alcohol, &amp; drugs</b>	
<b>Other:</b>	
<b>TOTAL</b>	

<b>Owed to</b>	<b>Amount</b>

Taxes and legal costs I owe:

Expected changes in income or expenses:

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**My employment history for the prior two years:**

Current or last job:

Employer name: _____	Gross monthly pay: _____
Address: _____	Start mo./yr.: _____
Phone number: _____	End mo./yr.: _____

Prior job(s):

Employer name: _____	Gross monthly pay: _____
Address: _____	Start mo./yr.: _____
Phone number: _____	End mo./yr.: _____
Employer name: _____	Gross monthly pay: _____
Address: _____	Start mo./yr.: _____
Phone number: _____	End mo./yr.: _____

**My spouse's employment history for the prior two years:**

Current or last job:

Employer name: _____	Gross monthly pay: _____
Address: _____	Start mo./yr.: _____
Phone number: _____	End mo./yr.: _____

Prior job(s):

Employer name: _____	Gross monthly pay: _____
Address: _____	Start mo./yr.: _____
Phone number: _____	End mo./yr.: _____
Employer name: _____	Gross monthly pay: _____

Address: \_\_\_\_\_ Start mo./yr.: \_\_\_\_\_

Phone number: \_\_\_\_\_ End mo./yr.: \_\_\_\_\_

If unemployed, list the last job you had and efforts to gain employment:

\_\_\_\_\_  
\_\_\_\_\_

Additional information you want to provide to explain why you may not be able to pay for bail or an attorney:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What is the highest amount you could reasonably pay within 24 hours of your arrest, from any source, including the contributions of family and friends?

\$ \_\_\_\_\_

I am \_\_\_ or \_\_\_ am not free on bond in another case. Amount of bond: \$ \_\_\_\_\_

Name of person who paid for bond: \_\_\_\_\_

Bondsman's/Company Name: \_\_\_\_\_

I am \_\_\_ or \_\_\_ am not represented by attorney \_\_\_\_\_ in another criminal case. My attorney is currently \_\_\_ RETAINED or \_\_\_ APPOINTED.

Name & Phone Number of Nearest Relative: \_\_\_\_\_

The information listed above is accurate and I will immediately notify the court of any changes in my financial situation. **I understand that all information in this affidavit is subject to verification and that falsifying this information is a criminal offense.**

Date: \_\_\_\_\_ Defendant Signature: \_\_\_\_\_

SUBSCRIBED and SWORN to before me pursuant to 602.002 of the Texas Government Code,  
on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

Peace Officer / Personal Bond Officer / Magistrate / Notary

**Certification Required to Request Appointed Counsel:**

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I have been advised by the \_\_\_\_\_ Court of my right to representation by counsel in the trial of the charge pending against me. I am without means to employ counsel of my own choosing and I hereby request the court to appoint counsel for me. By signing my name below, I swear, that all of the above information about my financial condition is current, accurate, and true. By signing below, I understand that a court official can verify any of the information for accuracy as required to determine my eligibility.

Date: \_\_\_\_\_ Defendant Signature: \_\_\_\_\_

SUBSCRIBED and SWORN to before me pursuant to 602.002 of the Texas Government Code,

on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signature: \_\_\_\_\_

Peace Officer / Personal Bond Officer / Magistrate / Notary

After reviewing this sworn pauper's oath application I find that this defendant:

\_\_\_\_\_ is indigent under the guidelines of Galveston County and IS entitled to appointment of an attorney.

\_\_\_\_\_ does not meet the guidelines of Galveston County and IS NOT entitled to appointment of an attorney.

\_\_\_\_\_ application needs to be reviewed further by the court that this case is to be filed in.

\_\_\_\_\_ is partially indigent under the guidelines of Galveston County and is ORDERED to pay \$100 for a misdemeanor or \$200 for a felony prior to the appointment of an attorney.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
MAGISTRATE

**Exhibit C**

**Wayne County Public Defender Ability to Pay Determination Form**

**FINANCIAL INFORMATION INTAKE FORM (April 2022)**

Name: \_\_\_\_\_

Are you receiving government assistance such as disability, food stamps, housing vouchers, social security, Bridge card? (Check one) Yes \_\_\_\_\_ No \_\_\_\_\_

MONTHLY INCOME		MONTHLY EXPENSES	
	AMOUNT		AMOUNT
Monthly Income	\$	Rent / Mortgage / Utilities	\$
Income of Other Household Members Available and Accessible to You (such as spouse)	\$	Loan Payments / Credit Card Payments	\$
	\$	Child Care / Child Support / Alimony	\$
		Health Care/ Medical / Dental	\$
		Fines, fees, restitution, bail in other cases	\$
		Other (such as gas, insurance, food)	\$
<b>Total Estimated Monthly Income</b>	<b>\$</b>	<b>Total Estimated Monthly Expense</b>	<b>\$</b>

**Please explain any other current conditions (examples: marital status, kids/dependents, length of residency, mental health, disability, loss of income):**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2022 Poverty Level			
Household size	100%	140%	200%
1	\$13,590	\$19,026	\$27,180
2	\$18,310	\$25,634	\$36,620
3	\$23,030	\$32,242	\$46,060
4	\$27,750	\$38,850	\$55,500

For a **personal bond**, without other disqualifying factors, anything below 200% of the poverty level is a presumptive qualification.

For an **appointed attorney**, income level below 140% of the poverty level is a presumed qualification.

For Poverty Level: each additional person add: \$4,720 for 100% | \$6,608 for 140% | \$9,440 for 200%

**CERTIFICATE OF SERVICE**

I certify that the foregoing has been served on all counsel of record by email on May 30, 2025.

/s/ Ashika Verriest

Ashika Verriest\* (DC Bar No. 90001468)  
American Civil Liberties Union Foundation  
Criminal Law Reform Project  
125 Broad Street, 17th Floor  
New York, NY 10004  
(347) 302-2797  
averriest@aclu.org

*Attorney for Plaintiffs*



# Exhibit 12:

# Declaration of

# Deangelo Towns

DECLARATION OF Deangelo Towns

I, Deangelo Towns, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. § 1746.

1. I am over the age of 18 and am competent to make this declaration.
2. I am currently detained in the Shelby County jail.
3. I cannot afford to pay the amount of bail that has been ordered for me to pay.
4. On Oct 8, 2024, I was arrested and booked into the Shelby County Jail.
5. I was told by intake officer that the amount of bail I would need to pay is \$10,000.
6. I did not see a judge before this bail amount was set.
7. No one at the jail asked me what I was able to pay before this bail amount was set.
8. On about Oct. 10, 2024, I went to court and appeared before a judge.
9. The judge did not ask me whether I could afford to pay my bail amount.
10. The judge set my bail at \$ 25,000.
11. I still cannot afford that bail amount.
12. If I could pay, I would pay the bail and be released from custody.
13. I met with Ashika Verriest and Nathan May, who explained this case and the responsibilities of a class representative. They answered all my questions.
14. I will fulfill the responsibilities of a class representative in this case.

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.  
Executed this 4 day of March, 2025 in Memphis, Tennessee.

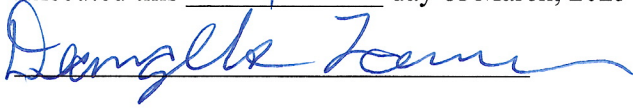
A handwritten signature in blue ink, appearing to read "Danyelle Jeanne", written over a horizontal line.

Exhibit 13:  
Declaration of  
Marshawn Barnes

DECLARATION OF Marshawn Barnes

I, Marshawn Barnes, certify under penalty of perjury that the following statement is true and correct pursuant to 28 U.S.C. § 1746.

1. I am over the age of 18 and am competent to make this declaration.
2. I am currently detained in the Shelby County jail.
3. I cannot afford to pay the amount of bail that has been ordered for me to pay.
4. On Aug 14, 2024, I was arrested and booked into the Shelby County Jail.
5. I was told by Public Defender that the amount of bail I would need to pay is 15,000.
6. I did not see a judge before this bail amount was set.
7. No one at the jail asked me what I was able to pay before this bail amount was set.
8. On about Aug. 15, 2024, I went to court and appeared before a judge.
9. The judge did not ask me whether I could afford to pay my bail amount.
10. The judge set my bail at 15,000.
11. I still cannot afford that bail amount.
12. If I could pay, I would pay the bail and be released from custody.
13. I met with Ashika Verrast, who explained this case and the responsibilities of a class representative. They answered all my questions.
14. I will fulfill the responsibilities of a class representative in this case.

I declare under penalty of perjury that the foregoing is true and correct to the best of my ability.  
Executed this 5 day of March, 2025 in Memphis, Tennessee.

Marshall Barnes

**Exhibit 14:**  
**Expert Report of**  
**Ryan Carroll**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE**

**Just City, Inc., and class representatives  
Deangelo Towns and  
Marshawn Barnes,**  
on behalf of themselves and all others similarly  
situated,

**Plaintiffs,**

v.

**Floyd Bonner Jr.,  
Shelby County Sheriff:**

Case No. 2:24-cv-2540-TLP-tmp

**Lee Wilson,  
Presiding Shelby County General  
Sessions Criminal Court Judge; and**

**John Marshall, Robert Barber, Rhonda Harris,  
Kevin Reed, Christopher Ingram, Shayla Purifoy,  
Ross Sampson, Serena Gray, Terita Hewlett,  
Mischelle Best, Kenya Smith, Zayid Saleem,  
Kathy Kirk Johnson, Leslie Mozingo,  
Shelby County Judicial  
Commissioners,**

in their official capacities.

**Defendants.**

**DECLARATION OF RYAN A. E. CARROLL**

I, Ryan Carroll, hereby declare as follows:

1. I was retained as an expert by Plaintiffs in this matter.
2. A true and correct copy of my expert report in this case is attached as Exhibit A and incorporated by reference. I continue to hold the opinions expressed in my report and believe them to be true and accurate.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on the 6th day of January, 2026.



---

Ryan A. E. Carroll

# Exhibit A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE**

**Just City, Inc.**, and class representatives  
**Deangelo Towns** and  
**Marshawn Barnes**,  
on behalf of themselves and all others similarly  
situated  
  
Plaintiffs.

Case No. 2:24-cv-2540-TLP-tmp

v.

Floyd Bonner Jr.,  
**Shelby County Sheriff**;  
Lee Wilson,  
**Presiding Shelby County General Sessions  
Criminal Court Judge**; and  
John Marshall, Robert Barber, Rhonda Harris, Kevin  
Reed, Christopher Ingram, Shayla Purifoy,  
Ross Sampson, Serena Gray, Terita Hewlett,  
Mischelle Best, Kenya Smith, Zayid Saleem,  
Kathy Kirk Johnson, Leslie Mozingo,  
**Shelby County Judicial Commissioners**,  
in their official capacities,  
  
Defendants.

**EXPERT REPORT OF RYAN A. E. CARROLL**

Plaintiff's counsel retained me to provide expert testimony on HB 1719's impact on wealth-based detention rates and Just City's Bail Fund's ability to post bail for clients based on publicly available Shelby County data. This report summarizes my findings, which were as follows:

- (1) Before HB 1719, wealth-based disparities in pretrial detention rates were significant. People who could afford bail were often able to buy their freedom and people who could not afford bail stayed in jail for longer periods of time. However, data post-dating the Standing Bail Order, which required judges to consider a defendant's ability to pay, showed a reduction of those disparities without any increase in rates of rearrest, broader recidivism, or failure to appear, as confirmed by an independent report<sup>1</sup> conducted by the University of Memphis's Center for Community Research and Evaluation (CCRE).
- (2) After HB 1719, bail amounts increased and fewer defendants were able to afford release. Pretrial detention became longer overall, with the greatest increases in length of stay observed among indigent defendants. These changes occurred even though the average "risk level" of defendants (as indicated by current charge levels, history of failure to appear, and past convictions) declined.

As a result, (1) unnecessary detention increased: more people were held in jail for longer periods despite presenting less risk; and (2) wealth-based detention increased: indigent defendants were disproportionately impacted and experienced greater increases in time spent in detention.

- (3) These changes in bail practices post HB 1719 impose new financial burdens on Just City's Bail Fund, reducing its ability to serve the same group of low-risk defendants detained pretrial as it could before HB 1719.

The data, excluding certain personal identifying information (PII), is available at this [link](#). A secure link to the data containing PII and/or a PDF of all data is available upon request.

I am being compensated at the rate of \$250 per hour for my substantive work. This compensation is not contingent on the conclusions I reach in this report or the outcome of the above-captioned action.

I reserve the right to amend this report as more information comes to my attention.

---

<sup>1</sup> Center for Community Research and Evaluation (CCRE). 2025. *Analysis of the Pretrial Detention System in Shelby County, Tennessee: 2025 Report*. University of Memphis, School of Urban Affairs and Public Policy. Available at: [https://www.memphis.edu/ccre/pretrial\\_ccre\\_commission\\_20250326.pdf](https://www.memphis.edu/ccre/pretrial_ccre_commission_20250326.pdf)

**Table of Contents**

**I. Background..... 1**

**II. Focus of this Report..... 3**

**III. Data and Methodology..... 3**

**IV. Findings..... 6**

    A. Before HB 1719, wealth-based disparities in pretrial release were significant. However, data post-dating the Standing Bail Order, which required judges to consider a defendant’s ability to pay, showed a reduction of those disparities without any increase in rates of rearrest, broader recidivism, or failure to appear..... 7

        A.1 Lengths of pretrial detention vary widely even at the same bail amount..... 7

        A.2 Time to Attain Pretrial Release Is Stratified by Poverty Indicators..... 8

            Table 1. Low-level, non-zero bail amounts have disparate impacts on indigent defendants..... 8

        A.3 The impacts of the Standing Bail Order demonstrated how considering the ability to pay does not compromise “public safety” but can potentially mitigate wealth-based disparities..... 8

            Table 2. Pretrial Outcomes for Indigent Defendants Before and After the SBO..... 9

            Table 3. Wealth-Based Disparities Before and After the SBO..... 10

        A.4 Implications for HB 1719 Impact Analysis..... 10

    B. After HB 1719, overall bail amounts, detention rates, and lengths of stay increased significantly despite defendants’ lower average risk profiles. These increases disproportionately impacted length of stay for indigent defendants..... 10

        B.1 Risk profiles of defendants in the Post-HB 1719 period were slightly lower than in the Pre-HB 1719 period..... 11

            Table 4. Comparison of Defendant Risk and Demographic Indicators Before and After HB 1719..... 11

        B.2 Bail amounts increased overall for all offense levels and risk levels despite defendants’ lower average risk profiles post HB 1719..... 12

            B.2.1 Ordinary Least Squares Regression: Bail Amount..... 12

            B.2.2. Logistic Regression: Probability of ROR..... 13

        B.3 Increased bail amounts post-HB 1719 corresponded with decreases in affordability and increases in pretrial detention length of stay. This means that fewer defendants could afford bail post HB 1719 and more defendants remained in pretrial detention despite demonstrating lower average risk profiles..... 13

            B.3.1 Logistic Regression: Declines in Affordable Bail..... 13

            B.3.2 Ordinary Least Squares Regression: LOS..... 14

        B.4 Defendants with fewer financial resources were disproportionately impacted and experienced longer lengths of stay in pretrial detention, even after controlling for risk levels..... 14

            B.4.1 Regression Analysis: Persistent and Growing Disparities..... 15

C. Post-HB 1719 changes to bail practices impose new financial burdens on Just City’s Bail Fund, reducing its ability to serve the same group of low-risk defendants detained pretrial as it could before HB 1719..... 15

    Table 5. Balance Tests for Qualified Bookings..... 17

    Table 6. ROR Rates for Qualified Defendants..... 18

    Table 7. Average Bail Amounts for Qualified and Eligible Defendants..... 20

    Table 8. Shifts in Mission-Scoped Population..... 21

    C.1 Declines in non-monetary release have created a new pool of clients who need the Bail Fund’s services to obtain release..... 22

        Table 9. New Financial Burden from HB 1719’s Decline in Pretrial Release..... 22

    C.2 Some Low-Risk Defendants Remain Eligible but Now Require More Financial Support..... 23

        Table 10. Increase in Financial Burden for Eligible Bookings After HB 1719..... 24

    C.3 Some Defendants Who Would Have Been Eligible Before HB 1719 Are Now Excluded From Bail Fund Assistance Due to Higher Bail..... 25

        Table 11. Estimate of Bookings Pushed Out of Eligible Bail Range..... 25

    C.4 Net Effect: The increased use of monetary bail and the increase in bail amounts have led to increased client demand and an increased financial burden on the Bail Fund..... 26

**V. Conclusions..... 27**

**VI. Appendix..... 28**

    A. Data Sources & Collection..... 28

        Table A1. Shelby County Criminal Justice System Portal (“Odyssey”)..... 28

        Table A2. Limitations & Mitigation Strategies of the Odyssey Data..... 29

        Table A3. Shelby County Inmate Lookup (“Jail Roster”)..... 31

        Table A4. Limitations & Mitigation Strategies of the Jail Roster Data..... 32

    B. Datasets..... 34

        B.1 Case-Level Data..... 34

            Table B1. Comparing Risk Profiles between Study Periods for Case-Level Data..... 34

        B.2 Booking-Level Dataset..... 35

            Table B2. Comparing Risk Profiles between Study Periods for Booking-Level Data 36

    C. Descriptive Tables..... 37

        C.1 Pre-HB 1719..... 37

            Table C1. LOS Distribution for Fixed Bail Amounts..... 37

        C.2 Disaggregated Comparisons of Pre/Post Outcomes..... 38

            C.2.1 Bail Amounts & ROR Rates..... 38

                Table C2. Bail Amount Distribution vs Violent Offense..... 38

                Table C3. Bail Amount Distribution vs Offense Level..... 38

                Table C4. Bail Amount Distribution vs Offense..... 39

C.2.2 Length of Stay (LOS).....	40
Table C5. LOS Distribution & ROR rate vs Offense Level.....	41
Table C6. LOS Distribution & ROR rate vs Violent Offense.....	42
Table C7. LOS Distribution & ROR rate vs Offense.....	42
C.2.3 Wealth-Based Disparities.....	43
Table C8. Descriptive Evidence of Post-HB 1719 Disparities.....	43
C.3 Impacts to Just City’s Bail Fund.....	45
Table C9. Qualified Bookings for Just City’s Bail Fund.....	45
Table C10. Balance Tests for Qualified Bookings.....	45
Table C11. ROR Rates for Qualified Defendants.....	46
Table C12. Average Bail Amounts for Bookings that are Qualified/Eligible for Just City’s Bail Fund.....	47
D. Regressions.....	47
D.1 Model Selection, Validation, & Interpretation.....	47
D.2 Data Preparation.....	48
D.3 Booking Regression Data: To ensure analytic validity and reduce bias from missing or extreme values, the following data cleaning steps were performed on the regression dataset:.....	49
D.4 Case Regression Data: To ensure analytic validity and reduce bias from missing or extreme values, the following data cleaning steps were performed on the regression dataset:.....	50
Table D1. Regression Results - Bail Amount.....	50
Table D2. Model Fit and Summary Statistics.....	51
Table D3. Regression Results - ROR.....	53
Table D4. Model Fit and Summary Statistics.....	54
Table D5. Regression Results - Affordable Bail.....	55
Table D6. Model Fit and Summary Statistics.....	57
Table D7. Regression Results - LOS.....	58
Table D8. Model Fit and Summary Statistics.....	59
Table D9. Regression Results - LOS with Interaction.....	61
Table D10. Model Fit and Summary Statistics.....	62
<b>CERTIFICATE OF SERVICE.....</b>	<b>64</b>

## **I. Background**

1. My primary occupation is serving as Chief Technology Officer (CTO) for Paradigm Case Management, a technology startup building a modern case management system for prosecutors. Our platform is designed to streamline prosecutorial workflows, support decision-making, and enhance public safety through better data infrastructure and analytics. I lead the design and implementation of systems that structure and analyze large volumes of criminal legal data across jurisdictions. This work demands both technical fluency and domain expertise to ensure that data is interpreted accurately, policy impacts are measurable, and system-wide patterns are rigorously understood.
2. I am a Co-Founder of Data-Driven Justice LLC, a consultancy formed in partnership with Dan Bernstein in 2024. Since 2021, Dan and I have collaborated on projects to expand access to and effective use of public and proprietary data for policy evaluation and program design. Our work has included developing data infrastructure, analytic tools, and statistical analysis across domains such as housing, public health, criminal justice, and municipal governance, supporting a range of nonprofit and government clients, including the U.S. Department of Health and Human Services' Administration for Community Living. Dan Bernstein contributed to the initial exploration and organization of the analysis presented in this report.
3. From 2018 to 2019 and again from 2022 to 2025, I served as a Data Scientist at Just City, one of the plaintiffs in this case. In my initial tenure, I managed the operations of Just City's Bail Fund, gaining firsthand experience with the practical challenges of securing pretrial release for indigent defendants. During the interim between roles, I built automated data pipelines to systematically collect and integrate publicly available criminal justice data to develop the foundational dataset used in this report. Upon rejoining Just City, my focus shifted toward applying that data to analyze policy impacts and institutional practices.
4. While at Just City, I supported Shelby County in improving data quality and validation processes. Shelby County has passed county resolutions seeking more transparency for pretrial practices. I had several meetings with Pretrial Services staff and IT staff to offer suggestions on how to improve Shelby County's data collection and storage practices to meet Shelby County's goals for transparency.
5. I also collaborated with the University of Memphis's Center for Community Research and Evaluation (CCRE), an independent research institution, throughout its evaluation of the Standing Bail Order's impact on pretrial outcomes. After implementing the Standing Bail Order, Shelby County requested Arnold Ventures funding for an independent evaluation of pretrial outcomes. I helped with securing and administering the Arnold

- Ventures funding, and I met with CCRE researchers and Shelby County staff to discuss the available data, quality issues within that data, and validated analysis techniques.
6. Through my experiences working with CCRE and Shelby County and systematically collecting and structuring Shelby County's publicly available data, I have developed deep technical knowledge of the structure, limitations, and nuances of Shelby County's pretrial data.
  7. From late 2020 to early 2022, I served as a consultant Data Scientist for the World Bank's Data and Evidence for Justice Reform (DE JURE) program, where I led the design and implementation of data-driven applications within the criminal justice sector. While working in this capacity, I built machine learning pipelines to triage and accelerate investigations into human trafficking and labor exploitation for foreign national prosecutorial offices. I also developed scalable data infrastructures for justice-sector randomized controlled trials in Latin America, Asia, and Africa. My work also included the design and deployment of adaptive experimental tools to evaluate prosecutorial and court-based interventions, employing advanced methods in causal inference, counterfactual modeling, and applied machine learning. During this time, I assisted in developing New York University's advanced graduate course Topics in Machine Learning, which covered cutting edge techniques at the intersection of causal inference and machine learning.
  8. From 2018 to late 2020, I led strategic evaluation initiatives at the Formanek Foundation, a mid-sized philanthropic family foundation focused on poverty reduction in Shelby County. My work included designing and overseeing program evaluations across education, health, arts, economic development, and criminal justice. I developed data-driven systems to measure impact, supported NGOs in upgrading their data infrastructure, and worked with grantees to identify objectives, address operational challenges, and implement rigorous outcome measurement. During the COVID-19 crisis, I guided the foundation's rapid and targeted resource deployment, managed cross-sector partnerships, and ensured an evidence-based approach to all philanthropic activities. Since 2021, I have served on the board of directors, joining the executive committee in April 2025, where I continue to promote data-driven decision-making and accountability.
  9. From 2015 to 2018, I led instruction and administration of adult education in Shelby County's correctional facilities, first independently and later as the corrections program lead with HopeWorks, a 501(c)(3) workforce development organization. In this role, I taught High School Equivalency classes, managed and trained instructional staff across all jail facilities, and oversaw the collection and reporting of educational attainment data. This work gave me a grounded understanding of conditions inside the jail.
  10. My experience working in Shelby County's correctional facilities and collaborating with

both Shelby County and CCRE, has deepened my commitment to empirically grounded, methodologically rigorous analysis. This report is built on transparent, reproducible methods and is guided by a commitment to fairness, integrity, and public accountability.

11. I received my Master of Science in Mathematics from the University of California, Santa Cruz and my Bachelor of Science in Mathematics from Rhodes College.
12. A copy of my curriculum vitae, summarizing my professional experience and education, is attached as Exhibit A.
13. I have not previously testified as an expert at trial or by deposition.

## **II. Focus of this Report**

14. Plaintiffs' counsel asked me to analyze the impacts that the Tennessee House Bill 1719<sup>2</sup> (HB 1719) has had on wealth-based detention rates and Just City's Bail Fund's ability to post bail for clients. HB 1719 was enacted in 2024 and altered pretrial bail procedures by prohibiting judges from considering a defendant's ability to pay when setting bail.
15. Just City, a nonprofit that operates a community bail fund in Shelby County, along with individual plaintiffs, challenges the constitutionality of HB 1719. The lawsuit alleges that HB 1719 violates due process and imposes discriminatory wealth-based detention.
16. In this report, I provide an empirical analysis to evaluate the impact of HB 1719 on bail amounts, detention rates, and Just City's Bail Fund operations in Shelby County. I use publicly available Shelby County data to examine system-level changes in bail setting practices and pretrial detention outcomes before and after HB 1719. By rigorously measuring outcomes over time for defendants with differing socioeconomic circumstances, my analysis seeks to identify whether HB 1719 has, in practice, exacerbated pre-existing wealth-based disparities in pretrial detention rates.
17. To ensure that observed changes are not the result of shifts in the underlying risk profile of defendants, I conduct balance tests comparing key pre- and post-HB 1719 covariates such as past convictions, history of failure to appear, and current charge levels. In addition, my regression analyses control for these and other observable factors to further isolate the effect of the policy change on monetary amounts and detention outcomes. Together, these methods provide a robust basis for attributing observed differences to HB 1719 rather than to changes in the defendant population over time.

## **III. Data and Methodology**

18. As a basis for my analysis, I used multiple data sources, preprocessing steps, analytic

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<sup>2</sup> Enacted in 2024, [HB 1719](#) is a Tennessee law that amended the bail statute by prohibiting judicial discretion to consider a defendant's ability to pay when setting bail, thereby reversing prior law and Shelby County practice.

cohorts, and statistical models to assess the impact of HB 1719 on bail practices in Shelby County. A data dictionary is attached as Exhibit B.

19. *Study Period Definition:* To evaluate the impact of HB 1719, this analysis compares a pre-policy period (May 1, 2023 to January 31, 2024) with a post-policy period (May 1, 2024 to January 31, 2025). These periods were selected to provide matched, three-quarter observation windows in each year, allowing for fair before-and-after comparisons that account for both seasonality and the data available as of the report's completion.
20. *Data Sources:* I used the following primary data sources in this analysis.
  - a. **The Shelby County Criminal Justice System Portal (“Odyssey”):** This website was used to create a dataset of case-level data, including defendants’ charges, demographics such as address, attorney history, and bail orders. More information on how to access the data source and how I collected the data can be found in **Appendix A Table A.1**. I list the data limitations and how I mitigated those limitations in **Appendix A Table A.2**.

I use case-level data to examine the initial bail-setting in each case, providing a closer look at judicial decision-making. Each case can have multiple charges, dispositions, bail orders, and other events.
  - b. **The Shelby County Inmate Lookup:** I used this website to create a dataset of jail bookings. This data includes pretrial lengths of stay, associated charges, and demographics. More information on how to access the data source and how I collected the data can be found in **Appendix A Table A.3**. I list the data limitations and how I mitigated those limitations in **Appendix A Table A.4**.

I use booking-level data to analyze cumulative bail exposure and key detention outcomes, such as whether a person was able to afford bail and how long a person remained detained pretrial. Because a single booking can encompass multiple charges and cases, this unit of analysis allows me to capture the full financial threshold a person would need to meet to secure release.
  - c. **U.S. Census ZCTA Poverty Data:** I used this to assign a poverty percentile based on the defendant's ZIP code at booking. I only assigned a poverty percentile to defendants with zip codes in Shelby County. Defendants with zip codes outside Shelby County remained in the data set; however, they just did not receive a poverty percentile.
21. *Estimating Economic Hardship:* To assess the impact of HB 1719 on economically disadvantaged populations, this analysis employs multiple proxies for economic hardship. While direct, individual-level financial information is not available from the existing

data, reliable indicators of economic status can be constructed from case information and census data.

- a. First, the type of defense counsel assigned to a defendant serves as a primary proxy for indigency; defendants represented by court-appointed counsel, such as public defenders or court-appointed private attorneys, are assumed to be indigent because they are unable to afford to retain private counsel. Assuming indigency status based on whether counsel is appointed or retained is a widely accepted approach in criminal justice research. Throughout this report, I refer to defendants who were appointed counsel as “indigent,” and defendants who retained private counsel as “non-indigent.”
  - b. Second, each defendant’s most recent residential ZIP code is matched to ZIP Code Tabulation Area (ZCTA) poverty rates from the U.S. Census, allowing assignment of a relative poverty percentile. This geographic indicator complements the attorney type proxy by reflecting broader neighborhood-level barriers to financial stability, which are closely linked to limited access to financial resources.
22. *Outcomes:* My analysis focuses on several primary outcomes, each operationalized using standardized definitions to ensure consistency and comparability across pre- and post-policy periods:
- a. **Initial Bail Amount** refers to the monetary value of the initial bail setting in a case or booking.<sup>3</sup> This measure captures the baseline financial hurdle facing defendants at the earliest stage of court involvement.
  - b. **Release on Recognizance (ROR)** refers to defendants who were released on their own recognizance after the initial bail setting, rather than being assigned monetary bail. This outcome is an indicator of Shelby County’s reliance on financial conditions for determining pretrial release.
  - c. **Length of Stay (LOS)** refers to the total number of days an individual remains in pretrial detention from booking until release. In all analyses, I impose a uniform 90 day cap on the LOS.<sup>4</sup> This measure captures the practical consequences of bail

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<sup>3</sup> One booking can include multiple cases, so I define a booking’s “initial bail amount” as the sum of the initial bail amounts on all active cases associated with the booking to get an aggregate bail amount. This “initial bail amount” value is “null” for bookings and cases where any bail setting reflects a “No Bond Set”/“Not Assessed” status on the Jail Roster or Odyssey and for cases where a person is released on citation (ROC) without being booked into the jail.

<sup>4</sup> Capping (or “right-censoring”) LOS at 90 days is necessary to ensure valid comparisons between pre and post policy cohorts. Without censoring, LOS calculations are structurally biased toward the pre-policy period because of differences in the maximum possible detention time. For example, a person booked in May 2023 (pre policy) and continuously detained could accumulate nearly two years of LOS (730 days) by May 2025, whereas the longest possible LOS for anyone booked in the post policy period (for instance, someone booked on May 1, 2024 and remaining in jail until the data cutoff date, April 30, 2025) is 365 days. By

setting and release practices for defendants, serving as a direct indicator of exposure to the harms of pretrial incarceration.

- d. **Affordable bail** refers to a composite outcome that identifies defendants who were able to secure release, either through recognizance (ROR) or by posting monetary bail, within three days<sup>5</sup> of booking. This measure captures the intersection between bail amounts and the actual ability to achieve prompt pretrial release. While increased bail amounts might not always translate into longer jail stays if they remain affordable, this metric directly tests whether changes in bail practices had a meaningful effect on timely release for defendants.

#### IV. Findings

23. My analysis on the impacts of HB 1719 include the following primary findings:

- a. Before HB 1719, wealth-based disparities in pretrial detention rates were significant. However, data post-dating the Standing Bail Order, which required judges to consider a defendant's ability to pay, showed a reduction of those disparities without any increase in rates of rearrest, broader recidivism, or failure to appear.
- b. After HB 1719, bail amounts increased and fewer defendants were able to afford release. Pretrial detention became longer overall, with the greatest increases in length of stay observed among indigent defendants. These changes occurred even though the average "risk level" of defendants (as indicated by charge level, history of failure to appear, and past convictions) declined. As a result, (1) unnecessary detention increased: more people were held in jail for longer periods despite presenting less risk; and (2) wealth-based detention increased: indigent defendants were disproportionately impacted and experienced greater increases in time spent in detention.
- c. These changes in bail practices post HB 1719 impose new financial burdens on Just City's Bail Fund, reducing its ability to serve the same population of low-risk defendants detained pretrial as it could before HB 1719.

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imposing a uniform 90 day cap, which corresponds to the approximate maximum follow up window available for post policy bookings, the analysis avoids overstating average detention times in the pre policy group and ensures fair, seasonally matched comparisons across cohorts. This approach aligns with standard practice in pretrial detention research and mitigates the impact of outliers or unresolved cases that extend far beyond the period of observation.

<sup>5</sup> The three day threshold reflects widely adopted practice in pretrial detention research, which identifies the initial days following booking as critical for avoiding lasting harm related to employment, housing, and family disruption. The majority of pretrial releases occur within this period, and even brief detention can have significant long term consequences. See Dobbie, W., Goldin, J., and Yang, C. S. (2018). "The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges." *American Economic Review*, 108(2), 201–240.

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A. **Before HB 1719, wealth-based disparities in pretrial release were significant. However, data post-dating the Standing Bail Order, which required judges to consider a defendant’s ability to pay, showed a reduction of those disparities without any increase in rates of rearrest, broader recidivism, or failure to appear.**

24. I began by analyzing the bail system in Shelby County prior to the enactment of HB 1719 in order to establish a baseline. My analysis showed that prior to the enactment of HB 1719, the bail system in Shelby County already exhibited significant disparities based on economic status. Even though judges could use their discretion to consider a defendant’s ability to pay bail, in practice, many low-income individuals remained in jail solely due to inability to afford even modest bail amounts.

**A.1 Lengths of pretrial detention vary widely even at the same bail amount.**

25. In Tennessee, as in most jurisdictions, bail amounts are set to reflect the court’s assessment of risk<sup>6</sup> that a defendant will fail to appear for court or reoffend if released. Bail amounts are therefore used as a proxy for risk. When two individuals with similar charges and criminal histories are assigned the same bail amount, it indicates that the court considers them to have similar risk profiles.

26. **Appendix Table C1, LOS Distribution for Fixed Bail Amounts**, presents the distribution of length of stay in percentiles at different initial bail amounts. The data show that individuals who have access to sufficient financial resources are generally able to post bail and secure release quickly, often the same day, regardless of the bail amount. This is reflected in the mode and lower percentiles for length of stay, which are consistently at or near one day across all bail levels.

27. In contrast, individuals who do not have access to sufficient financial resources may remain incarcerated for longer periods, even when bail amounts are relatively low. The mean and upper percentiles for length of stay increase as bail amounts rise, but prolonged detention is observed even at the lowest bail levels. For example, among those assigned bail of \$150, the mean length of stay is four days, but one person in our study period remained in the Shelby County jail for 35 days because he did not have access to \$150 to

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<sup>6</sup> In this report, the term “risk” refers collectively to the risk of failure to appear for court, the risk of new criminal activity prior to trial, and, where relevant, broader concerns about public safety or recidivism. The phrase “risk profile” refers to the set of observed characteristics used to assess these risks, including but not limited to charge type, criminal history, and failure to appear indicators. Unless otherwise specified, any reference to “risk” or “risk profile” should be interpreted as encompassing these components as they are considered in monetary and nonmonetary release decisions.

pay his bail. Higher bail amounts are associated with significantly longer average pretrial detention periods.

28. These patterns suggest that, even when controlling for assigned risk via bail amount, access to financial resources remains a primary determinant of pretrial detention length. Full details by bail amount are provided in **Appendix Table C1, LOS Distribution for Fixed Bail Amounts**.

**A.2 Time to Attain Pretrial Release Is Stratified by Poverty Indicators**

29. The time a defendant spends in jail before posting bail is closely tied to economic resources. Table 1 shows that among single-case bookings<sup>7</sup> with indigent defendants assigned cash bail, only 53% were able to post monetary bail of \$5,000 or less within 3 days. Indigent defendants remained in jail for an average of 6 days before release. In contrast, 96% of non-indigent defendants were able to post bail, typically within just 1.7 days. This gap underscores that even when bail amounts are relatively low, pretrial detention is primarily determined by a defendant’s timely access to financial resources, not the offense itself or assigned risk via bail amount.

**Table 1. Low-level, non-zero bail amounts have disparate impacts on indigent defendants.**

<b>Status</b>	<b>Affordable Bail (%)</b>	<b>Average LOS (days)</b>	<b>Sample Size (Bookings)</b>
Indigent	57%	6.3	1981
Non-Indigent	96%	1.7	1123

**A.3 The impacts of the Standing Bail Order demonstrated how considering the ability to pay does not compromise “public safety” but can potentially mitigate wealth-based disparities.**

30. A central argument made in support of HB 1719 was that eliminating consideration of a defendant’s ability to pay would promote public safety. In light of this, I assessed whether data post-dating the Standing Bail Order (SBO), which required consideration of ability

<sup>7</sup> To ensure that estimates of length of stay and affordability are not artificially inflated by cases involving multiple simultaneous charges or reoffenses, I restrict the dataset to bookings associated with a single criminal event or case group. This approach eliminates many confounding factors, such as bail or probation violations, and provides a more dependable and conservative estimate of typical outcomes. Including multi-case bookings tends to exaggerate disparities and introduce additional variance, so limiting the analysis in this way strengthens the robustness of the findings. This reasoning applies to all instances of this restriction throughout the report.

to pay and implemented other pretrial processes designed to promote fairness, showed increases in failure to appear (FTA) or new offenses while on release.

31. The evidence regarding the impacts of the SBO, as analyzed in the independent 2025 CCRE report,<sup>8</sup> suggests otherwise:
  - a. **Failure to Appear (FTA) rates:** The CCRE found that FTA rates declined substantially beginning in 2022, which coincided with the implementation of the SBO. The report found no statistically significant increases in FTA rates associated with bail reform, even when using long-term observation windows of 120, 300, or 500 days.
  - b. **Rearrest and recidivism:** The rate of rearrest and recidivism during the pretrial period did not increase after the SBO was implemented. Using rigorous regression discontinuity and time trend analyses, CCRE found no evidence that the SBO resulted in an increase in new criminal activity or violations while on release.
  - c. **Post-HB 1719 Effects:** When HB 1719 prohibited judges from considering a defendant’s ability to pay in May 2024, CCRE found no immediate impact on FTA or rearrest rates following its enactment. However, it did identify a statistically significant drop in ROR rates after HB 1719, which corresponds with a modest increase in time spent in custody.
32. The following table builds upon the results of Table 1, which highlighted differences in outcomes for defendants who were assigned a monetary amount rather than granted release. By comparing affordability, rate of non-monetary release, and average length of stay (LOS) outcomes for indigent defendants before and after the SBO,<sup>9</sup> Table 2 illustrates how discretionary release practices that allow judges to consider ability to pay can help close the gap between indigent and non-indigent defendants.

**Table 2. Pretrial Outcomes for Indigent Defendants Before and After the SBO**

Status	SBO	Affordable Bail (%)	ROR Rate (%)	Average LOS (days)	Sample Size (Bookings)
Indigent	pre	53%	25%	15.3	6285
Indigent	post	56%	33%	11.8	6579

<sup>8</sup> Center for Community Research and Evaluation (CCRE). 2025. *Analysis of the Pretrial Detention System in Shelby County, Tennessee: 2025 Report*. University of Memphis, School of Urban Affairs and Public Policy. Available at: [https://www.memphis.edu/ccre/pretrial\\_ccre\\_commission\\_20250326.pdf](https://www.memphis.edu/ccre/pretrial_ccre_commission_20250326.pdf)

<sup>9</sup> Utilizing the same base dataset, definitions, and data cleaning as the HB 1719 booking dataset, I compare 12,647 pre-SBO bookings (entry dates between February 16, 2022 and November 2, 2022) with 11,247 post-SBO bookings (entry dates between February 16, 2023 and November 2, 2023).

Non-Indigent	pre	92%	33%	3.11	5357
Non-Indigent	post	92%	39%	2.7	3691

33. While the disparities remained large, Table 3 shows that implementation of the SBO narrowed the gaps between indigent and non-indigent clients across all three indicators, signaling some potential of reducing pretrial wealth disparities.

**Table 3. Wealth-Based Disparities Before and After the SBO**

<b>Indicator</b>	<b>Disparity Pre-SBO</b>	<b>Disparity Post-SBO</b>
Affordable Rate	38%	36%
ROR Rate	8%	6%
Average LOS (days)	-12.22	-9.16

34. Although indigent defendants continued to face lower rates of affordable bail and ROR, along with longer pretrial detention compared to their more resourced counterparts, the differences between these groups declined following the SBO. Specifically, the disparity in the ability to afford bail narrowed from 38 to 36 percentage points. The gap in ROR rates decreased from 8 to 6 percentage points, and the difference in average length of stay in jail was reduced by more than three days.

35. These results indicate that the SBO’s explicit requirement that judges consider ability to pay was associated with a reduction in wealth-based disparities in both bail affordability and pretrial detention, without negatively impacting rates of ROR. In other words, the SBO promoted greater equity in pretrial outcomes without leading to increases in failure to appear rates or new offenses while on release.

**A.4 Implications for HB 1719 Impact Analysis**

36. Analyzing pre-HB 1719 trends is important to establish the existing disparities in length of stay (LOS) and bail affordability, providing a baseline for evaluating the effects of HB 1719. In the next section, I demonstrate how HB 1719’s elimination of judicial discretion has amplified these preexisting disparities.

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**B. After HB 1719, overall bail amounts, detention rates, and lengths of stay increased significantly despite defendants’ lower average risk profiles. These increases disproportionately impacted length of stay for indigent defendants.**

37. Using post-HB 1719 data, I evaluate how the policy has altered bail-setting practices in

Shelby County, focusing first on how bail amounts have shifted in both direction and magnitude.

38. My analysis uses regression models and descriptive statistics to isolate changes in bail levels before and after HB 1719, holding constant key factors like offense type, criminal history, and attorney representation.

**B.1 Risk profiles of defendants in the Post-HB 1719 period were slightly lower than in the Pre-HB 1719 period.**

39. Before exploring the shifts in bail practices (which may be explainable by shifts in risk), I utilize t-tests to detect statistical differences<sup>10</sup> in the distributions of key risk and demographic variables across the pre- and post-policy periods, shown in the following table. Descriptions of each column are provided in the data dictionary in Exhibit B.

**Table 4. Comparison of Defendant Risk and Demographic Indicators Before and After HB 1719**

<b>Variable</b>	<b>Pre Mean</b>	<b>Post Mean</b>	<b>t-statistic</b>	<b>p-value</b>
<i>Past Bookings</i>	2.942	2.883	0.864	0.388
<i>Past Violent Convictions</i>	0.181	0.178	0.311	0.756
<i>Past Nonviolent Convictions</i>	3.154	2.831	3.111	0.002*
<i>Past Total Convictions</i>	3.335	3.009	3.066	0.002*
<i>Weighted FTA</i>	0.090	0.087	0.497	0.619
<i>Raw FTA Count</i>	0.422	0.428	-0.366	0.715
<i>Max Offense Level</i>	3.170	3.053	5.143	0.000*
<i>Poverty Rate</i>	26.777	26.979	-1.190	0.234
<i>Indigent</i>	0.549	0.568	-2.799	0.005*
<i>Violent</i>	0.162	0.149	2.517	0.012*
<i>Past Misdemeanor Convictions Total</i>	2.442	2.169	3.020	0.003*
<i>Past Felony Convictions Total</i>	0.894	0.840	1.696	0.090

\*  $p < 0.05$ <sup>11</sup>

<sup>10</sup> Variables marked with a star (\*) in the table indicate a statistically significant difference between the pre- and post-periods. To interpret the direction of the change, compare the “Pre Mean” and “Post Mean” columns to see whether the value increased or decreased following the policy change. A starred row signifies that the observed difference is unlikely to have occurred by random chance.

<sup>11</sup> In this report, a  $p$  value indicates the probability that an observed difference between groups is due to random

40. Violent charges and measures of criminal history, including past nonviolent convictions, total convictions, and maximum offense level,<sup>12</sup> decreased significantly in the post-policy period, indicating a shift toward a lower-risk defendant profile. Simultaneously, the increase in indigency status from 0.549 to 0.568 was statistically significant, suggesting that the average defendant was more likely to hold the status of indigent post-policy compared to pre-policy. Therefore, the post-policy period was characterized by a combination of decreased risk and increased indigence among defendants, which should be correlated with lower bail amounts if decisions were driven by risk alone.

**B.2 Bail amounts increased overall for all offense levels and risk levels despite defendants' lower average risk profiles post HB 1719.**

*B.2.1 Ordinary Least Squares Regression: Bail Amount*

41. To evaluate how bail-setting practices changed following the implementation of HB 1719, I estimated a linear regression using the natural logarithm of the initial bail amount as the dependent variable. This transformation is standard in bail research, as it reduces the influence of extreme values and accommodates the skew introduced by zero-dollar bail amounts, such as release on recognizance. Full regression model specifications and results can be found in **Appendix Tables D1, Regression Results - Bail Amounts** and **Appendix Table D2, Model Fit and Summary Statistics**.

42. The key finding from this model is that cases processed after the implementation of HB 1719 were associated with significantly higher bail amounts. As shown in **Appendix Table D1, Regression Results - Bail Amounts**, the estimated coefficient for the post-policy period is 0.73, which, when exponentiated, implies that bail amounts were approximately 110 percent higher, on average, than in comparable cases filed before the law went into effect.

43. This estimate is not derived in isolation. The model controls for a comprehensive set of statutory and risk-related factors, including the seriousness of the charged offense, whether the charge was violent, prior convictions (both violent and nonviolent), and prior failures to appear. Demographic variables such as race, sex, and age at filing are also included. These covariates account for the most salient features that typically influence judicial bail decisions.

44. The statistically significant increase in bail amounts after adjusting for demographic and risk variables is notable. It suggests that the shift in bail amounts cannot be explained by

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chance rather than a real effect. In this context, the reader can look at the table for “Indigent” and check the “p-value” column to determine significance. Lower  $p$  values (commonly below 0.05) provide stronger evidence that the difference is statistically significant and unlikely to have occurred by chance.

<sup>12</sup> For a case or booking, the “max offense level”, or simply “offense level” is defined to be the highest level (e.g. Misdemeanor C, Felony B, etc...) of a charge associated to that case or booking respectively. See Exhibit B for more information on the methodology of how these variables are defined.

a change in the underlying risk profile of defendants entering the system. In other words, cases did not become more serious, more violent, or have more flight-prone defendants during the post-policy period in a way that would account for this difference.

### *B.2.2. Logistic Regression: Probability of ROR*

45. To better understand how non-monetary release practices may relate to the observed increase in initial bail amounts, I estimated a logistic regression predicting whether a defendant was granted release on recognizance as the initial bail decision. The model includes the same set of covariates as the previous analysis (e.g. offense severity, whether the charge involved violence, prior convictions, failure-to-appear history, age, sex, and race) allowing for a comparison of pre- and post-policy patterns while controlling for relevant statutory, demographic, and risk factors.
46. The results, presented in **Appendix Table D3, Regression Results - ROR**, indicate that following the implementation of HB 1719, the odds of ROR decreased significantly. The coefficient for the post-policy period is negative and statistically significant, indicating that the odds of ROR release were reduced by approximately 34% after the policy took effect,<sup>13</sup> even when accounting for the seriousness of the charge and the defendant's risk profile.

### **B.3 Increased bail amounts post-HB 1719 corresponded with decreases in affordability and increases in pretrial detention length of stay. This means that fewer defendants could afford bail post HB 1719 and more defendants remained in pretrial detention despite demonstrating lower average risk profiles.**

47. The rise in bail amounts after HB 1719 is associated with clear and measurable shifts in pretrial detention patterns. This section assesses whether the increased bail led to reduced access to affordable release and longer jail stays for defendants unable to pay.

### *B.3.1 Logistic Regression: Declines in Affordable Bail*

48. To assess the changes in the ability of defendants to afford bail after HB 1719, I modeled the likelihood of a defendant posting bail or obtaining non-monetary release within 72 hours of arrest, a period shown in prior research to be vital for preserving employment, housing, and family stability (Dobbie et al., 2018). The results of the regression can be found in **Appendix Table D5, Regression Results - Affordable Bail**.
49. After HB 1719 took effect, the odds of posting bail within the 72-hour window decreased by approximately 13%, even after adjusting for charge levels, past convictions,

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<sup>13</sup> In the logistic regression, the coefficient for the post-policy period ( $\beta$ ) was  $-0.135$  with a p-value less than 0.001, indicating strong statistical significance. The odds ratio was computed as  $\exp(-0.135) \approx 0.874$ , meaning the odds of release on recognizance decreased by approximately 34% after the policy's implementation.

failure-to-appear history, and representation.<sup>14</sup> This effect is both statistically and practically significant, indicating that fewer defendants were able to afford bail post-HB 1719 across all charge levels and past conviction histories.

50. Indigent defendants were substantially more likely to remain in jail past 72 hours compared to non-indigent defendants, with their odds of release approximately 90% lower,<sup>15</sup> even after controlling for charge severity, criminal history, and other relevant factors. This disparity underscores the significant barriers faced by low-income defendants in securing timely release.

### *B.3.2 Ordinary Least Squares Regression: LOS*

51. Since pretrial detention is influenced by many factors, I isolated the impact of HB 1719 by modeling the length of stay (LOS) in custody using a log-linear regression, capped at 90 days. The model controls for initial bail amount, charge level, whether the offense was violent, age, race, sex, criminal history, and failure to appear risk. This allows a more accurate estimate of whether time spent in jail changed after the policy, controlling for differences in risk and charge levels. The results of the regression can be found in **Appendix Table D7, Regression Results - LOS**.
52. After HB 1719 took effect, the length of stay in custody increased significantly, resulting in an approximate 7.4 percent increase<sup>16</sup> in average detention time, adjusting for risk and charge type. This effect is meaningful, particularly in a system where most people are held for days or weeks, not months.
53. My regression analyses also showed that even after controlling for risk and charge levels, fewer defendants could afford bail after HB 1719 and more defendants experienced longer lengths of stay in detention despite demonstrating lower average risk profiles. This shows that more defendants experience unnecessary detention after HB 1719.

## **B.4 Defendants with fewer financial resources were disproportionately impacted and experienced longer lengths of stay in pretrial detention, even after controlling for risk levels.**

54. As shown in my analysis above on the pre-HB 1719 outcomes, the bail system already produced disparate outcomes based on wealth. These disparities were revealed by wide

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<sup>14</sup> In the logistic regression model, the coefficient for the post-policy period ( $\beta$ ) was  $-0.393$  with a p-value  $< 0.001$ , indicating strong statistical significance. The odds ratio is calculated as  $\exp(-0.393) \approx 0.675$ , meaning the odds of posting bail within 72 hours decreased by approximately 32.5% after the policy's implementation ( $1 - 0.675 = 0.325$ ).

<sup>15</sup> In the logistic regression model, the coefficient for indigent status ( $\beta$ ) was  $-2.294$  with a p-value  $< 0.001$ , indicating strong statistical significance. The odds ratio is calculated as  $\exp(-2.294) \approx 0.101$ , confirming the approximately 90% lower odds of release for indigent defendants.

<sup>16</sup> In the log-linear regression model, the strongly significant coefficient for the post-policy period was  $0.071$  with a p-value less than  $0.001$  where the percent increase is computed by  $(\exp(0.071) - 1) \times 100 \approx 7.4\%$

variations in lengths of detention even at the same bail amount, showing that those with access to money were able to secure release quickly while those without access remained in jail. Reforms like the SBO had begun to narrow some of these gaps, demonstrating that when financial barriers are removed, outcomes begin to equalize. However, post-HB 1719 data indicate that disparities in pretrial detention have increased since its implementation.

*B.4.1 Regression Analysis: Persistent and Growing Disparities*

55. To examine whether pretrial detention disparities changed following HB 1719, I estimated a linear regression model predicting the natural log of length of stay (LOS), capped at 90 days. The model includes 23,980 observations and adjusts for bail amount, charge severity, prior convictions, failure to appear history, and demographics. **Appendix Table D9, Regression Results - LOS with Interaction**
56. The results show a substantial difference in detention length based on economic status. Following the implementation of HB 1719, the overall length of stay in custody increased significantly for all defendants by about 10.6%, adjusting for risk and charge type. This disparity widened further after HB 1719, with indigent defendants experiencing an *additional 5.7% increase*<sup>17</sup> in average length of stay compared to non-indigent defendants.
57. My regression analysis confirms that indigent defendants were disproportionately impacted by the increased bail amounts post HB 1719 and faced even longer detention periods across all offense types and risk levels, underscoring the unequal burden of the policy change on low-income defendants.

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**C. Post-HB 1719 changes to bail practices impose new financial burdens on Just City's Bail Fund, reducing its ability to serve the same group of low-risk defendants detained pretrial as it could before HB 1719.**

58. The preceding analysis establishes that HB 1719 has led to higher bail amounts, reduced affordability of pretrial release, and longer periods of detention for those unable to pay. These shifts in pretrial practices impact Just City's Bail Fund's ability to serve clients.
59. Just City's Bail Fund (the "Bail Fund") continues to operate under consistent eligibility rules, providing assistance only to individuals who have (1) bail amounts at or below \$5,000, (2) no domestic violence-related charges, and (3) representation by a public defender. These eligibility criteria have not changed across the periods studied.

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<sup>17</sup> In the log-linear regression, the statistically significant coefficient for the interaction term (HB 1719 and indigent status) was 0.055 ( $p = 0.005$ ). The percent change was computed as  $(\exp(0.055)-1) \times 100 \approx 5.7\%$ .

60. To accurately assess the operational and financial impact of HB 1719 on Just City’s bail fund, I organize the defendant population into three nested groups: *qualified*, *mission-scoped*, and *eligible*. Each of these groups serves a distinct purpose in the analysis, reflecting a different aspect of Just City’s potential exposure and mission:
- a. The “*qualified*” population consists of defendants who meet the core criteria for Bail Fund assistance. Specifically, these are individuals represented by a public defender and not charged with a domestic violence offense. Restricting the analysis to this group helps to avoid sample bias, as both attorney type and offense category are associated with systematic differences in bail amounts and pretrial release practices. By focusing on the qualified group, I provide a more accurate and consistent estimate of the average costs the Bail Fund would actually face if it served all clients who meet these baseline criteria.
  - b. Within the qualified group, the “*mission-scoped*” subpopulation is defined as those assigned an amount at or below \$5,000, including \$0 non-monetary releases, and serves to estimate the full market of low risk individuals Just City aims to serve in alignment with its mission. This threshold has historically reflected both the organization’s risk tolerance and financial capacity. However, as documented in this report, after HB 1719, individuals with similar or even lower risk levels are now receiving higher bail amounts on average. As a result, the group of defendants with bails at or below the \$5,000 cutoff no longer include the entire scope of defendants with the same low risk profile as before. Therefore, we define this group in order to provide clear language for quantifying these shifts and estimating the change in burden and client composition faced by the Bail Fund.
  - c. Within the mission-scoped group, “*eligible*” defendants are those who are assigned a nonzero monetary bail amount. This population is important because it captures the cases that generate direct financial liability for the bail fund, representing individuals for whom Just City may need to provide payment to secure release. By focusing on eligible defendants, the analysis provides a practical estimate of the fund’s potential financial liability under current policy.
61. To understand the operational impact of HB 1719 on the Bail Fund, it is essential to assess how changes in release practices, bail amounts, and number of eligible defendants have altered both the size and composition of the population the Bail Fund is able to serve. By focusing on the mission-scoped population, the analysis isolates three main channels through which HB 1719 has affected the fund’s capacity to support the same group of low risk, low income defendants:
- a. First, the systematic reduction in release rates after HB 1719 has created a new

group of defendants who would have been released on their own recognizance before HB 1719 but now must post bail to obtain release, making them newly reliant on the Bail Fund for assistance despite no change in their average underlying risk.

- b. Second, for the group of defendants who would have been eligible for assistance before HB 1719 and remain eligible after HB 1719, the assigned bail amounts are now higher than before. This means that even for the same risk profiles relative to earlier periods, the cost to secure pretrial release has increased, raising the fund’s financial liability and reducing its capacity to serve as many clients as in the past.
- c. There are more qualified defendants with bail amounts that exceed the \$5,000 cap after HB 1719 than before. Those defendants are no longer mission-scoped or eligible and are therefore excluded from the Bail Fund’s services after HB 1719.

- 62. By separately quantifying the financial and operational impact of each of these channels, the following sections provide a conservative assessment of how HB 1719 has impacted the Bail Fund’s ability to serve clients. The actual impact could be greater.
- 63. For estimating the change in burden on Just City’s bail fund, I restrict the analysis to the subset of *qualified* bookings. This approach provides a conservative and policy-relevant estimate of how HB 1719 has affected Just City’s ability to serve qualified defendants. Results are further disaggregated by charge level to clarify trends across the full range of eligible cases.

*There were no changes in the risk profiles of qualified defendants between the pre and post HB 1719 periods.*

- 64. Before analyzing trends in release practices and monetary amounts, I first examined whether the risk profile of qualified defendants changed between the pre and post HB 1719 periods. As shown in Table 5, there is no evidence that the group of defendants qualifying for Just City’s bail fund after HB 1719 exhibited higher risk than those served before the policy change.

<b>Table 5. Balance Tests for Qualified Bookings</b>				
<b>Variable</b>	<b>Pre Mean</b>	<b>Post Mean</b>	<b>t-statistic</b>	<b>p-value</b>
<i>Past Bookings</i>	4.55	4.27	2.34	0.02
<i>Past Violent Convictions</i>	0.25	0.24	0.77	0.44
<i>Past Nonviolent Convictions</i>	5.07	4.36	3.70	0.00

<b>Table 5. Balance Tests for Qualified Bookings</b>				
<i>Past Total Convictions</i>	5.32	4.60	3.69	0.00
<i>Weighted FTA</i>	0.22	0.21	1.12	0.26
<i>Raw FTA Count</i>	0.78	0.78	0.03	0.98
<i>Max Offense Level</i>	3.55	3.46	2.56	0.01
<i>Poverty Rate</i>	27.75	27.88	-0.59	0.56
<i>Violent</i>	0.22	0.22	-0.25	0.80

65. In fact, several risk indicators declined in the post-policy period: the average number of past bookings, past nonviolent convictions, total convictions, and charge level all decreased significantly. Other key indicators, such as failure to appear risk and indigent status, showed no meaningful difference across periods. No risk metric increased after the policy change; if anything, the post HB 1719 group appears modestly lower risk on several dimensions. Thus, the observed increases in monetary amounts and pretrial detention following HB 1719 cannot be attributed to a higher risk defendant pool. This pattern is consistent with the interpretation that any increased burden on Just City is attributable to the effects of HB 1719, rather than changes in the underlying case mix. A table with more granular balance tests for past conviction history across offense levels is available in **Appendix Table B1, Comparing Risk Profiles Between Study Periods for Case-Level Data.**

*There were declines in release rates of mission-scoped defendants post HB 1719.*

66. Across all charge levels, the proportion of qualified defendants who were released on their own recognizance (ROR) declined substantially following the implementation of HB 1719. As detailed in Table 6, the ROR rate decreased for every category of charge level, from Misdemeanor C through Felony A, when comparing the pre and post HB 1719 periods.

<b>Table 6. ROR Rates for Qualified Defendants</b>			
	<b>Pre-HB 1719</b>	<b>Post-HB 1719</b>	
<b>Severity</b>	<b>ROR Rate</b>	<b>ROR Rate</b>	<b>Difference</b>
<i>Misdemeanor C</i>	0.494	0.354	-0.14

**Table 6. ROR Rates for Qualified Defendants**

<i>Misdemeanor B</i>	0.538	0.376	-0.16
<i>Misdemeanor A</i>	0.464	0.348	-0.12
<i>Felony E</i>	0.358	0.248	-0.11
<i>Felony D</i>	0.278	0.191	-0.09
<i>Felony C</i>	0.179	0.110	-0.07
<i>Felony B</i>	0.075	0.034	-0.04
<i>Felony A</i>	0.074	0.058	-0.02

67. As seen in the “Difference” column, declines in ROR rate occurred across all other charge levels, with reductions ranging from two to sixteen percentage points. This consistent downward trend demonstrates that after HB 1719, more individuals who previously would have been released without financial conditions were instead required to post monetary bail.
68. Because eligibility criteria and charge profiles remained constant across periods, these declines represent a structural shift in pretrial release practices, not a response to changes in client risk. The uniform decrease across all charge categories supports the assumption used in our burden estimates that any defendant released on ROR after HB 1719 would also have been eligible for ROR before the policy change. More concretely, the “Difference” represents the proportion of qualified bookings at each offense level that are eligible for Just City’s Bail Fund. In the next subsection, I estimate the financial cost of this newly eligible subset of the population.

*After HB 1719, there was an increase in average bail amounts for qualified and eligible defendants.*

69. To estimate per booking costs, I present average bail amounts for each charge category using two approaches in Table 7:
- a. The *overall* average, which includes all bookings regardless of eligibility or release type.
  - b. The *eligible* average, which includes only cases with bail amounts between \$1 and \$5,000, representing the population that Just City could actually serve.

<b>Table 7. Average Bail Amounts for Qualified and Eligible Defendants</b>				
<b>Offense Level</b>	<b>Pre-HB 1719</b>		<b>Post-HB 1719</b>	
	<b>Overall</b>	<b>Eligible</b>	<b>Overall</b>	<b>Eligible</b>
<i>Misdemeanor C</i>	\$606	\$1,051	\$807	\$1,213
<i>Misdemeanor B</i>	\$906	\$1,656	\$991	\$1,441
<i>Misdemeanor A</i>	\$1,644	\$1,848	\$2,268	\$2,119
<i>Felony E</i>	\$6,694	\$2,325	\$8,595	\$3,088
<i>Felony D</i>	\$12,438	\$2,935	\$13,531	\$3,367
<i>Felony C</i>	\$25,564	\$3,397	\$28,558	\$3,893
<i>Felony B</i>	\$86,128	\$3,140	\$83,835	\$3,238
<i>Felony A</i>	\$121,776	\$3,219	\$104,636	\$3,176

70. **Table 7, Average Bail Amounts for Qualified and Eligible Defendants** presents average bail amounts by charge category for the pre- and post-HB 1719 periods, reporting both the overall average and the eligible average, which is limited to cases with bail between one and five thousand dollars. Across nearly all charge levels, both the overall and eligible average bail amounts increased after HB 1719. The rise in the eligible average is particularly important for Just City, since it directly determines the fund’s per-client costs. For example, the eligible average bail for Misdemeanor C charges increased from \$1,051 before the policy to \$1,213 after, with similar increases in most other categories.
71. Misdemeanor B charges are an exception. For this category, the average eligible bail amount decreased after HB 1719, while the overall average increased. This reflects a change in how cases are handled. In the pre-policy period, many defendants with Misdemeanor B charges received release on recognizance with a bail of zero. Following HB 1719, more defendants with Misdemeanor B charges are assigned low monetary bails rather than being released without financial conditions. The inclusion of these new, lower bail amounts in the eligible average reduces the mean, even as the overall average, driven by higher bail amounts, increases.
72. It is important to note that for Felony A and Felony B categories, the number of overall

and eligible cases is much smaller than for lower-level charges. As a result, average values for these groups are less precise and more sensitive to individual case variation than the higher-volume categories.

*The proportion of qualified defendants who are mission-scoped shrinks post HB 1719.*

73. The proportion of qualified defendants who are mission-scoped, meaning those with bail amounts at or below \$5,000, decreased across most charge levels after HB 1719.

**Table 8. Shifts in Mission-Scoped Population**

<b>Offense Level</b>	<b>Pre-HB 1719</b>	<b>Post-HB 1719</b>	<b>Change</b>
<i>Misdemeanor C</i>	1.000	1.000	0.000
<i>Misdemeanor B</i>	1.000	1.000	0.000
<i>Misdemeanor A</i>	0.923	0.884	-0.038
<i>Felony E</i>	0.699	0.617	-0.082
<i>Felony D</i>	0.540	0.465	-0.075
<i>Felony C</i>	0.297	0.216	-0.081
<i>Felony B</i>	0.108	0.108	0.000
<i>Felony A</i>	0.163	0.096	-0.067

74. After HB 1719, more qualified defendants received bail amounts that exceeded the Bail Fund’s \$5,000 cap, thereby rendering them ineligible for the Bail Fund. The “Change” column denotes the share of defendants who have been pushed over this threshold and are now excluded from Bail Fund support, even though their risk profile has decreased on average. As a result, more individuals who would have previously been eligible are left without community support and face a greater likelihood of remaining in pretrial detention. The decline in the mission-scoped share means that, under the current eligibility criteria, the Bail Fund cannot continue to assist the same population of low risk defendants it served prior to HB 1719. As explained by Table 5, Balance Tests for Qualified Bookings, there were no changes in the risk profiles of qualified defendants between the pre and post HB 1719 periods.

**C.1 Declines in non-monetary release have created a new pool of clients who need the Bail Fund’s services to obtain release.**

75. After the implementation of HB 1719, the share of defendants released on their own recognizance or by citation declined substantially across all charge levels. Individuals who would have previously secured release without financial conditions are now being assigned monetary bail, often with bail amounts below the Bail Fund’s \$5,000 cap. This shift has created a new pool of low-risk clients who now potentially require support from the Bail Fund to obtain release.
76. To estimate the size and financial impact of this new demand, as shown in Table 9, I compared release on recognizance rates before and after HB 1719 for each charge level. This analysis relies on the assumption of monotonicity, which means that any defendant released on recognizance after the policy change would also have been released under the previous system. Since there were no increases in risk profiles across periods, the observed decrease in release rates can be attributed directly to the effects of the policy change.

**Table 9. New Financial Burden from HB 1719’s Decline in Pretrial Release**

<b>Charge Level</b>	<b>Post-HB 1719 Bookings</b>	<b>Change in ROR Rate</b>	<b>Newly Eligible Bookings</b>	<b>Pre HB1719 Burden (\$)</b>	<b>Post HB1719 Avg. Eligible Bail (\$)</b>	<b>New Financial Burden (\$)</b>
<i>Misdemeanor C</i>	302	0.14	42	\$0.00	\$1,213	\$51,187
<i>Misdemeanor B</i>	109	0.16	18	\$0.00	\$1441	\$25,375
<i>Misdemeanor A</i>	1487	0.12	174	\$0.00	\$2,119	\$367,675
<i>Felony E</i>	960	0.11	106	\$0.00	\$3,088	\$326,707
<i>Felony D</i>	587	0.09	51	\$0.00	\$3,367	\$171,342
<i>Felony C</i>	1433	0.07	98	\$0.00	\$3,893	\$381,568
<i>Felony B</i>	268	0.04	11	\$0.00	\$3,238	\$36,204
<i>Felony A</i>	208	0.02	3	\$0.00	\$3,176	\$10,566
<b>Total</b>			<b>503</b>		<b>—</b>	<b>\$1,370,624</b>

77. The data show that after HB 1719, Just City faces significant new client demand. The “Change in ROR %” column, carried over from the previous subsection and calculated in Table 6, represents the percentage of defendants who previously would have been released without financial support from Just City but now require the Bail Fund’s assistance. For this reason, the “Pre Burden (\$)” column is zero for all charge levels. To illustrate how the table’s estimates are calculated, I walk through the computation for newly eligible defendants whose most serious charge is Misdemeanor A.
78. For example, among defendants whose most serious charge is Misdemeanor A, the rate of release on recognizance dropped by about 12 percentage points after HB 1719, from 46.4 percent to 34.8 percent, as shown in Table 6. With 1,487 such bookings, this means approximately 174 additional cases now require the Bail Fund’s assistance. Using the average eligible amount for Misdemeanor A in the post-policy period (\$2,119), this subgroup alone represents an estimated new liability of \$367,675. Before HB 1719, these same cases required no support from Just City, as they were released without financial conditions.
79. Repeating this calculation for each charge level and summing the results gives a total estimated new financial burden of \$1,370,624 associated with 503 additional defendants who would previously have been released without monetary conditions but now rely on the Bail Fund.
80. As explained above, there were no changes in the observed risk profiles of qualified defendants between the pre and post HB 1719 periods. Therefore, these increases in burden reflect structural changes in pretrial release practices, not changes in the underlying risk of the defendant pool. The result is a substantial increase in the number of low risk individuals who now need the Bail Fund’s services to secure release due to the policy change.

**C.2 Some Low-Risk Defendants Remain Eligible but Now Require More Financial Support.**

81. After HB 1719, defendants who remain eligible for Just City’s assistance are now assigned higher bail amounts across most charge levels than those eligible pre HB 1719. That means that for similar types of low-risk cases, courts set higher bail amounts post HB 1719 than they did pre HB 1719.
82. To measure this impact, I compare the average eligible amount for all qualified defendants with amounts at or below \$5,000 before and after the policy change in Table

10. The difference in averages for each charge level represents the additional burden per eligible booking. By multiplying this value by the number of eligible bookings after HB 1719, I estimated the total additional financial burden for each group.

**Table 10. Increase in Financial Burden for Eligible Bookings After HB 1719**

<b>Charge Level</b>	<b>Eligible Bookings (Post-HB 1719)</b>	<b>Average Increase in Eligible Bail Amount (\$)</b>	<b>Total Additional Burden</b>
<i>Misdemeanor C</i>	151	<b>\$162</b>	<b>\$24,464</b>
<i>Misdemeanor B</i>	46	<b>-\$215</b>	<b>-\$9,907</b>
<i>Misdemeanor A</i>	462	<b>\$271</b>	<b>\$125,026</b>
<i>Felony E</i>	209	<b>\$762</b>	<b>\$159,342</b>
<i>Felony D</i>	100	<b>\$431</b>	<b>\$43,114</b>
<i>Felony C</i>	103	<b>\$496</b>	<b>\$51,093</b>
<i>Felony B</i>	6	<b>\$98</b>	<b>\$589</b>
<i>Felony A</i>	8	<b>-\$42</b>	<b>-\$338</b>
<b>Total</b>	<b>1,085</b>		<b>\$393,383</b>

83. The data show that, after HB 1719, the average bail amounts for eligible clients increased by several hundred dollars in most categories,<sup>18</sup> resulting in substantial aggregate cost increases. For example, for bookings which the max offense is Misdemeanor A, the average bail amount increased by \$271 per case, leading to an additional burden

<sup>18</sup> Misdemeanor B is an exception, where the average eligible amount decreased after the policy change. This is likely due to the distribution shift described in Paragraph 71 indicated by an increase in overall mean bail amount but decrease in average bail amount for eligible bookings. For Felony A, the small decrease in means is likely due to low sample size in both the pre- and post-HB 1719 periods. To ensure a conservative estimate, I reduce the total burden by these amounts for both charge levels.

exceeding \$125,000. The total additional cost to serve all eligible bookings in the post-HB 1719 period is estimated at approximately \$393,000.

84. This analysis provides a conservative estimate, focusing only on the population that remains within the Bail Fund's reach and excluding those with bail amounts above the cap. As explained earlier in this section, there were no changes in the risk profiles of qualified defendants between the pre and post HB 1719 periods. The observed rise in bail amounts for most groups is best explained by changes in bail-setting practices following HB 1719.
85. In practical terms, each eligible defendant now requires more funds to secure release, placing additional pressure on Just City's resources and increasing the risk of longer detention for some qualifying individuals. The Bail Fund would have to spend an additional \$393,000 to serve similarly low-risk eligible individuals post HB 1719 than it would pre HB 1719.

**C.3 Some Defendants Who Would Have Been Eligible Before HB 1719 Are Now Excluded From Bail Fund Assistance Due to Higher Bail.**

86. The post-HB 1719 increase in bail amounts means that a substantial share of qualified defendants (those represented by a public defender and not charged with domestic violence) are now assigned bail amounts exceeding Just City's \$5,000 cap. As explained earlier in this section, there were no changes in the risk profiles of qualified defendants between the pre and post HB 1719 periods. Therefore, the exclusion of these qualified defendants from Bail Fund eligibility is a direct consequence of the policy-driven upward shift in bail, not a change in underlying risk or eligibility.
87. If the Bail Fund were to maintain its prior level of service to this population, it would be forced to raise its cap substantially. It is possible to estimate the new cap; however, even with a raised cap, the Bail Fund likely would not have the funds to absorb this additional burden. Accordingly, the more complex estimation methodology is not warranted.
88. Instead, in Table 11, I present the estimated number of post-HB 1719 bookings which would have previously qualified for bail assistance and are now excluded solely because their bail exceeds \$5,000.

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**Table 11. Estimate of Bookings Pushed Out of Eligible Bail Range**

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<b>Table 11. Estimate of Bookings Pushed Out of Eligible Bail Range</b>			
<b>Charge Level</b>	<b>Post Bookings (Actual)</b>	<b>Difference in Mission-Scoped %</b>	<b>Bookings No Longer Mission-Scoped in Post Period</b>
<i>Misdemeanor C</i>	302.00	0.000	0
<i>Misdemeanor B</i>	109.00	0.000	0
<i>Misdemeanor A</i>	1487.00	-0.038	57
<i>Felony E</i>	960.00	-0.082	79
<i>Felony D</i>	587.00	-0.075	44
<i>Felony C</i>	1433.00	-0.081	116
<i>Felony B</i>	268.00	0.000	0
<i>Felony A</i>	208.00	-0.067	14
<b>Total</b>			<b>310</b>

89. In the post-HB 1719 period, an estimated 310 bookings involve qualified defendants who are now excluded from Bail Fund eligibility due to higher bail alone. As explained earlier in this section, there were no changes in the risk profiles of qualified defendants between the pre and post HB 1719 periods. Therefore, these are similarly low-risk, low-income individuals who would have previously been eligible for the Bail Fund. The human impact of this shift is clear: each of these cases represents a person who remains incarcerated—not due to a change in their actions or risk, but because policy has erected a higher barrier to release.

**C.4 Net Effect: The increased use of monetary bail and the increase in bail amounts have led to increased client demand and an increased financial burden on the Bail Fund.**

90. Taken together, these findings demonstrate that HB 1719 has substantially increased the financial and operational burdens on Just City’s Bail Fund. The law has driven up bail amounts, reduced the likelihood of non-monetary release, and narrowed the pool of defendants Just City can serve, even when the risk and characteristics of those defendants remain unchanged.

91. A new group of clients who would previously have obtained release pre HB 1719 now

require Just City's services to obtain release. For those who remain eligible, the average per-case cost to secure pretrial release has risen by ten to thirty percent. At the same time, an increased number of low-risk defendants are now excluded entirely from eligibility for the Bail Fund, not because of higher risk or more severe charges, but solely due to higher bail amounts resulting from HB 1719.

92. These changes make it more difficult for Just City to fulfill its mission to address wealth-based detention in Shelby County. The Bail Fund faces increased client demand and an increased financial burden to serve the same group of low-risk defendants as it could before HB 1719.

## V. Conclusions

93. The analysis in this report demonstrates that HB 1719 has fundamentally reshaped pretrial release practices in Shelby County, increasing disparities in wealth-based detention. After HB 1719 took effect, bail amounts increased across most charge categories, and far fewer individuals were released without monetary conditions. Pretrial release has become less affordable, and the length of time spent in jail before trial has increased, especially for those unable to pay.
94. Importantly, these findings are not explained by changes in risk, offense severity, or defendant profile. This conclusion is supported by analyses of the overall population, by focused analysis on the subset of defendants served by Just City, and by regression models that control for these factors. More individuals now remain in jail prior to trial based not on risk, but on their inability to pay, underscoring the extent to which HB 1719 has increased unnecessary pretrial detention.
95. HB 1719 has narrowed the population that Just City's Bail Fund can serve because increased bail amounts and decreased release rates lead to more client demand. In order to serve the same group of low-risk defendants detained pretrial as it could before HB 1719, the Bail Fund would need close to an additional \$2 million (\$1,370,624 + \$393,000), without even counting the funds necessary to serve those who are no longer eligible for the Bail Fund.

Date: May 30, 2025



Ryan A. E. Carroll

**VI. Appendix**

**A. Data Sources & Collection**

<b>Table A1. Shelby County Criminal Justice System Portal (“Odyssey”)</b>	
<b>Title</b>	Shelby County Criminal Justice System Portal
<b>URL</b>	<a href="https://cjs.shelbycountyttn.gov/CJS/">https://cjs.shelbycountyttn.gov/CJS/</a>
<b>Owner</b>	Shelby County IT
<b>Vendor/Product</b>	Tyler Technologies, <i>Odyssey Portal</i> <sup>TM</sup>
<b>Classification</b>	All information is accessible with an account, and <a href="#">registration</a> for an account is open to anyone.
<b>Validation Artifacts</b>	All data from this source can be corroborated/supported with the raw, unaltered HTML case profiles. These versioned artifacts are time stamped and dated to allow a complete history of every time a case’s data was collected.

In Odyssey, the following data are collected for each case upon availability

- *Metadata*: unique identifier (“case number”), type, status, judge, and courtroom
- *Defendant*, including name, DOB, demographics, address
- *Attorney* history including attorney name and role on case
- *Charges* including offense dates, statutes, level (e.g. Felony A, Misdemeanor C, City Ordinance, etc)
- *Bail Orders/Posting of Bail*, including data entry comments, bail amounts, bond company information, and corresponding dates
- *Charge dispositions* and *sentences*
- *Events*, including attorney appointments, bail reviews and resettings, arraignment, appearance dates, mental evaluations, bookings, and corresponding dates
- *Documents*, such as affidavits and other documents posted to the case profile stored and linked in the form of PNG scans.

**Collection:** Data can be queried through the Odyssey portal using two interfaces:

- **“Smart Search”**: All non-expunged cases are available through searching for
  - A single case by its unique Shelby County-assigned “case number”
  - A defendant’s criminal history by their name and date of birth
- **“Search Hearings”**: All dockets of (non-expunged) cases are available for all dates on and after November 4, 2016. These can be queried by Judicial Officer or Courtroom.

Allows search by courtroom + date: returns a list of all cases that have an event associated with that courtroom on that date.

Each morning, the Odyssey portal is systematically queried and the response data is collected for the dataset used in this report.

- Search the docketed cases in each court room for (1) that day and (2) the previous day.
- For each new person in the dataset, search that person’s name and date of birth and collect their non-expunged Shelby County criminal history.
- For each case in the database that does not already have Odyssey data collected, search Odyssey by the case number.
- All active cases that have not been seen within the past month are searched for dispositions and updates that occurred outside of a formal, recorded hearing.

**Limitations:** The following are general limitations of the data along with how each is addressed.

<b>Table A2. Limitations &amp; Mitigation Strategies of the Odyssey Data</b>		
<b>Name</b>	<b>Description</b>	<b>Mitigation</b>
<i>Quality</i>	Some data is missing from cases or out of date due to entry error or oversight.	For missing attorney information, the primary issue in this dataset, I use Case Events in Odyssey, a consistent secondary indicator, to infer whether attorney was appointed
<i>Expungement</i>	Some cases may be removed from the portal upon conclusion of the expungement process, removing them from a query response of Odyssey moving forward.	Not an issue in our dataset because of the daily querying and data collection

**Table A2. Limitations & Mitigation Strategies of the Odyssey Data**

<i>Overwriting</i>	The Shelby County employees which update the underlying data will often overwrite case events and bail information as opposed to creating new entries. Concretely, this means that on some cases, an initial bail amount can be obscured upon a new bail setting after a rebooking associated with the same case.	Not an issue in our dataset because of the daily querying and data collection. Even if a clerk overwrites a bail amount or a case event, the original will remain in my dataset
<i>Response Limits</i>	Any query response can only return 100 cases, so if your query is too generic or there is too many cases associated to a specific query (e.g. high docket volume courtroom with over 100 cases seen in a single day) then the query is truncated to the first 100 cases in the response.	All cases which appear on booking are later searched, so no gaps during this time period on criminal cases, except for release on citation which are not considered (due to the result of policing practice and not judicial)
<i>Implicit Case Linkages</i>	If a defendant is indicted on charges initiated in General Sessions court, a new case entry is created in Indicted General Sessions (aka the “H case”) and subsequently in Criminal Court (aka the “C case”) without noted linkages in Odyssey.	Cases in a “case group” are reliably joined in the dataset by looking at the defendant, the offense date of the associated charges, the case number/file date. Because I focus on the General Session starting case of the case group, this has little to no impact on the analysis in this report.
<i>Duplicates</i>	Due to poor internal database structure, there are many instances where the same person has multiple entries in Odyssey. Concretely, this means that searching for a person’s full name and DOB can return	When searching for the history of each person with the defendant’s full name and date of birth, entries returned are combined in my dataset

Table A2. Limitations & Mitigation Strategies of the Odyssey Data	
	multiple results.

Table A3. Shelby County Inmate Lookup (“Jail Roster”)	
<b>URL</b>	<a href="https://imljail.shelbycountyttn.gov/IML">https://imljail.shelbycountyttn.gov/IML</a>
<b>Owner</b>	Shelby County
<b>Vendor/Product</b>	Digital Solutions, Inc, <i>Inmate Lookup</i>
<b>Classification</b>	All information is public and available without login.
<b>Validation Artifacts</b>	All data from this source can be corroborated/supported with the raw, unaltered HTML booking profiles downloaded from this data source at the time of collection. These versioned artifacts are time stamped and dated to allow a complete history of every time a booking’s data was collected and updated.

**Data:** Booking-level data including but not limited to:

- *Metadata:* unique identifier (“case number”), commitment date, release date
- *Defendant* name, DOB, demographics, address, aliases
- *Associated cases:*
  - *Charges* including offense dates, statutes, severity (e.g. Felony A, Misdemeanor C, City Ordinance, etc...)
  - *Bail Settings/Posts*, including notes, dates, amounts, bond company information
- Current location inside of jail
- Detainers (holds on booking)
- Next court date

**Collection:** Roster of current and recent (released in last 3 days) bookings in the CJC (adult men) or Jail East (women and juveniles awaiting bindover)

To find specific people/bookings, the roster can be searched using a defendant’s name, DOB, Shelby County assigned “Booking Number”, “Permanent Number”, or “State ID”.

A complete roster, including people who have been released in the past 3 days, can be returned by leaving all search parameters blank and checking the “Include released inmates” box.

Data collection began June 13, 2019 and has occurred daily since that date, including weekends and holidays. A small percentage of days were missed due to website outages and collection issues, but there are no outages within the policy study periods.

**Limitations:** The following are general limitations of the data along with how each is addressed.

<b>Table A4. Limitations &amp; Mitigation Strategies of the Jail Roster Data</b>		
<b>Name</b>	<b>Description</b>	<b>Mitigation</b>
<i>Ephemerality</i>	A booking only appears on the website if they are actively in jail or were released within the last three days. If a booking is not seen while active or recently released, data from the roster will not be collected.	Data is collected every day and remains for 3 days after release with an explicit release date. This ensures that all bookings are captured by the data collection methods outlined above.
<i>Imprecise Bail Amounts</i>	Sometimes bail amounts are inflated (e.g. if someone posts bail comes back and another bail is set, then it displays an inflated number which is not indicative of the bail set.	We “correct” the bail amount by replacing the inflated bail amount with the correct one (aligning with bond setting date and case number).
<i>Bookings without Data</i>	There are 8,088 (2.6%) of bookings between June 13, 2019 and April 30, 2025 dates that do not have any case information at all. There are no bonds, associated case numbers, or indications for why they are being held.	These are dropped, but I am concerned by the lack of insight as to why they are in jail if there is no public record as to why. Assuming agreement to CJI data handling compliance, a list of relevant bookings can be provided upon request.



**B. Datasets**

**B.1 Case-Level Data**

**Policy Evaluation Filters:** The policy-relevant 27,241 cases are the subset (out of 1,451,271 distinct Odyssey cases in my data) resulting from the following filters:

- a. The file date falls within one of the two study periods.
- b. At least one associated offense classified as criminal<sup>19</sup> in nature: This eliminates traffic charges like speeding or other city ordinances that are not relevant to the policy being evaluated.
- c. Is created in General Sessions court: Because many General Sessions cases either resolve at that level or proceed to Criminal Court through indictment, I treat the initial bail set in General Sessions as the analytically relevant point, even when cases are later bound over to higher courts<sup>20</sup>. This allows us to assess how initial judicial discretion in lower court settings has changed before and after HB 1719.
- d. Not initially a release on citation: Because “release on citation” is related to policing practices and not judicial discretion, we drop “Misdemeanor Citations” in which the defendant was not initially arrested for the criminal incident.

**Table B1. Comparing Risk Profiles between Study Periods for Case-Level Data**

<b>Variable</b>	<b>Pre Mean</b>	<b>Post Mean</b>	<b>t-statistic</b>	<b>p-value</b>
<i>Past Violent Convictions</i>	0.221	0.227	-0.625	0.5321
<i>Past Nonviolent Convictions</i>	4.154	3.713	4.198	0
<i>Total Past Convictions</i>	4.374	3.939	4.048	0.0001*
<i>Weighted FTA</i>	0.178	0.175	0.595	0.5517
<i>Raw FTA Count</i>	1.737	1.681	1.589	0.1122
<i>Max Offense Level</i>	2.984	2.954	1.591	0.1117

<sup>19</sup> We define an offense as “criminal” if it corresponds with Title 39 Criminal Offenses of the Tennessee Code or Driving Under the Influence charge from Title 55.

<sup>20</sup> In Shelby County, when a criminal matter is heard in General Sessions Court and the judge finds probable cause, the case is typically “bound over” to the Grand Jury — a process also referred to as a case being “held to state” — unless the defendant waives that step. This creates a second, distinct case number, usually starting with “H” and referred to colloquially as the “H case”. If the Grand Jury returns a true bill (i.e., an indictment), a third case is then initiated in Criminal Court under yet another case number, beginning with “C” and analogously called the “C case”. I refer to this sequence of case numbers — each corresponding to the same underlying criminal incident as it moves through different stages of adjudication — as a “case group.”

<i>Poverty Rate</i>	27.023	27.053	-0.221	0.8254
<i>Indigent</i>	0.589	0.603	-2.437	0.0148*
<i>Violent</i>	0.141	0.140	0.254	0.7997
<i>Total Past Misdemeanor</i>				
<i>Convictions</i>	3.238	2.878	3.922	0.0001*
<i>Total Past Felony Convictions</i>	1.136	1.062	2.431	0.0151*

\* p < 0.05

## B.2 Booking-Level Dataset

**Size:** Out of in my raw booking data, the base booking-level dataset used in this report contains 24,288 bookings (11,644 in the pre-HB 1719 period and 12,644 post).

**Policy Evaluation Filters:** The 27,241 cases that are policy relevant are the subset of the 308,919 bookings in the raw bookings table resulting from the following filters:

- The date of arrest falls within the designated study windows.
- It was the result of a new offense and not *solely* for technical violations of probation (VOP), failures to appear (FTA), or administrative holds.
- The max\_offense\_level on the booking is a specified level of misdemeanor (A, B, or C) or felony (M, A, B, C, D, E) which excludes bookings that were for a city ordinance, civil petition, etc...
- The booking profile is not blank, as described above where there are 8,088 (2.6%) of bookings that have no information on why the person is being held.
- The defendant is not detained for a fugitive from justice hold, inferred by “Fugitive from Justice” charge on an associated case which is a common reason for LOS outliers.
- A 'No Bond Set' bail setting reflects the absence of a recorded bail amount for the associated case during the booking interval.

### Subsets:

- **Single-Case Bookings:** In some situations, I check the robustness of descriptives and regressions by removing some of the variance and outliers that come with a person being booked on a reoffense while out on bail. To filter out these qualitatively, as opposed to statistically, we restrict the booking dataset to bookings associated to a single criminal event or case group, which eliminates many confounding factors, such as bail or probation violations.

### Comparing Risk Profiles between Study Periods:

**Table B2. Comparing Risk Profiles between Study Periods for Booking-Level Data**

<b>Variable</b>	<b>Pre Mean</b>	<b>Post Mean</b>	<b>t-statistic</b>	<b>p-value</b>
<i>Past Bookings</i>	2.942	2.883	0.864	0.388
<i>Past Violent Convictions</i>	0.181	0.178	0.311	0.756
<i>Past Nonviolent Convictions</i>	3.154	2.831	3.111	0.002*
<i>Past Convictions Total</i>	3.335	3.009	3.066	0.002*
<i>Fta Exp Decay</i>	0.090	0.087	0.497	0.619
<i>Fta Raw Count</i>	0.422	0.428	-0.366	0.715
<i>Max Offense Level Ord</i>	3.170	3.053	5.143	0.000*
<i>Indigent</i>	0.549	0.568	-2.799	0.005*
<i>Violent</i>	0.162	0.149	2.517	0.012*
<i>Past Misdemeanor C Convictions</i>	0.528	0.421	2.853	0.004*
<i>Past Misdemeanor B Convictions</i>	0.198	0.168	2.833	0.005*
<i>Past Misdemeanor A Convictions</i>	1.516	1.406	2.040	0.041*
<i>Past Felony E Convictions</i>	0.347	0.330	1.026	0.305
<i>Past Felony D Convictions</i>	0.173	0.156	1.800	0.072
<i>Past Felony C Convictions</i>	0.271	0.254	1.327	0.185
<i>Past Felony B Convictions</i>	0.078	0.076	0.253	0.801
<i>Past Felony A Convictions</i>	0.007	0.009	-0.584	0.559
<i>Past Felony M Convictions</i>	0.000	0.000	0.647	0.517
<i>Past Misdemeanor Convictions Total</i>	2.442	2.169	3.020	0.003*
<i>Past Felony Convictions Total</i>	0.894	0.840	1.696	0.090

\* p < 0.05

**Linking Jail Roster Data with Odyssey Data:** Bookings are linked to Odyssey through the associated Shelby County-assigned case numbers which are consistent across both sources. Some booking columns depend on Odyssey’s more granular case data. The methodology for how these are determined are described in the Exhibit B.

**C. Descriptive Tables**

**C.1 Pre-HB 1719**

**Table C1. LOS Distribution for Fixed Bail Amounts**

<b>Initial Bail (\$)</b>	<b>Mean</b>	<b>Min</b>	<b>Percentiles</b>				<b>Mode</b>	<b>Count</b>
			<b>25%</b>	<b>50%</b>	<b>75%</b>	<b>95%</b>		
<i>0</i>	1	0	1	1	1	2	1	3486
<i>150</i>	4	1	1	2	3	12	1	23
<i>250</i>	3	0	1	1	2	14	1	127
<i>500</i>	5	0	1	2	3	13	1	369
<i>1000</i>	4	0	1	1	2	9	1	523
<i>1500</i>	4	0	1	2	2	16	1	328
<i>2000</i>	5	0	1	2	3	17	1	169
<i>2500</i>	5	0	1	2	3	16	1	379
<i>5000</i>	7	0	1	2	4	22	1	618
<i>7500</i>	5	0	1	2	4	20	1	256
<i>10000</i>	5	0	1	2	4	22	1	486
<i>15000</i>	8	0	1	2	5	27	1	279
<i>20000</i>	12	0	1	2	5	60	1	209
<i>25000</i>	7	0	1	2	4	23	1	263
<i>30000</i>	11	0	1	2	7	24	1	141
<i>35000</i>	24	0	1	3	16	85	1	68
<i>40000</i>	10	0	2	3	7	31	1	100
<i>50000</i>	23	0	1	3	9	111	1	211
<i>60000</i>	42	0	2	5	19	264	2	49
<i>75000</i>	27	0	2	6	23	134	1	145
<i>100000</i>	32	1	4	8	24	136	4	130
<i>125000</i>	59	3	5	9	39	351	4	20
<i>150000</i>	55	2	6	24	62	210	3	73
<i>200000</i>	83	2	6	17	68	415	3	38
<i>250000</i>	62	1	8	23	46	354	23	25
<i>500000</i>	86	3	9	24	70	307	3	26
<i>1000000</i>	134	21	26	30	190	318	21	3

**C.2 Disaggregated Comparisons of Pre/Post Outcomes**

**C.2.1 Bail Amounts & ROR Rates**

*Violent vs. Nonviolent Offenses*

The table below presents changes in the mean, median, and interquartile range (i.e., upper and lower quartiles) of bail amounts before and after HB 1719, disaggregated by violent and nonviolent offenses. Across metrics, bail amount increased for both violent and non-violent crimes, as indicated by increases in the average, median, and interquartile range of bail post-HB 1719 implementation. The increase in bail amount across metrics for non-violent crime is most notable, given that the primary justification for bail is often framed around the concern for public safety, which is less at risk from non-violent offenses.

**Table C2. Bail Amount Distribution vs Violent Offense**

<b>Violent</b>	<b>HB 1719</b>	<b>Mean</b>	<b>Median</b>	<b>q25</b>	<b>q75</b>	<b>Count</b>
<i>False</i>	<i>Pre</i>	6901.4	1000	0	5000	11271
<i>False</i>	<i>Post</i>	9687.2	2500	0	7500	11667
<i>True</i>	<i>Pre</i>	58082.8	25000	7500	75000	2031
<i>True</i>	<i>Post</i>	63355.9	25000	10000	75000	2075

*By Offense Level*

The table below shows changes in the mean, median, and interquartile range of bail amounts before and after HB 1719, disaggregated by the maximum offense level on each case. Across all offense levels, bail amounts increased following the implementation of HB 1719. Notably, bail amounts for Misdemeanor C and D-level felonies increased across quartiles, even though these typically involve nonviolent or technical offenses.

**Table C3. Bail Amount Distribution vs Offense Level**

<b>Offense Level</b>	<b>HB 1719</b>	<b>Mean</b>	<b>Median</b>	<b>q25</b>	<b>q75</b>	<b>Count</b>
<i>Misdemeanor C</i>	<i>Pre</i>	380.55	100	0	500	555
<i>Misdemeanor C</i>	<i>Post</i>	480.93	250	0	500	671
<i>Misdemeanor B</i>	<i>Pre</i>	1066.38	500	0	1500	235
<i>Misdemeanor B</i>	<i>Post</i>	1382.85	500	0	1500	277

<i>Misdemeanor A</i>	<i>Pre</i>	1913.21	500	0	2500	5994
<i>Misdemeanor A</i>	<i>Post</i>	2794.98	1000	0	3500	6291
<i>Felony E</i>	<i>Pre</i>	7640.00	2500	0	8500	1670
<i>Felony E</i>	<i>Post</i>	10762.59	5000	1500	15000	1763
<i>Felony D</i>	<i>Pre</i>	9902.34	5000	0	12500	1311
<i>Felony D</i>	<i>Post</i>	14214.27	7500	2500	20000	1202
<i>Felony C</i>	<i>Pre</i>	23276.88	12000	5000	33750	2646
<i>Felony C</i>	<i>Post</i>	27343.29	15000	7500	40000	2534
<i>Felony B</i>	<i>Pre</i>	72113.95	75000	20000	100000	545
<i>Felony B</i>	<i>Post</i>	87395.12	75000	25000	125000	557
<i>Felony A</i>	<i>Pre</i>	125761.83	75000	20000	175000	317
<i>Felony A</i>	<i>Post</i>	138749.41	75000	20000	200000	425
<i>Felony M</i>	<i>Pre</i>	597310.34	500000	250000	750000	29
<i>Felony M</i>	<i>Post</i>	599999.95	550000	250000	1000000	22

### *By Offense*

Bail amounts for charges commonly associated with economic marginalization—including theft, trespassing, and low-level drug possession—also increased across metrics. These types of offenses often result from or are exacerbated by poverty<sup>21</sup>, and higher bail on such charges could increase the likelihood that low-risk indigent defendants are detained pretrial due to inability to afford low-level bail amounts.

**Table C4. Bail Amount Distribution vs Offense**

<b>Max Offense</b>	<b>HB 1719</b>	<b>Mean</b>	<b>Median</b>	<b>q25</b>	<b>q75</b>	<b>Count</b>	<b>ROR Rate</b>
<i>Criminal Trespass</i>	pre	406.5	100.0	0.0	500.0	416.0	0.3
<i>Criminal Trespass</i>	post	513.7	250.0	0.0	500.0	463.0	0.2

<sup>21</sup>Sciandra, M., Sanbonmatsu, L., Duncan, G. J., Gennetian, L. A., Katz, L. F., Kessler, R. C., Kling, J. R., & Ludwig, J. (2013). Long-term effects of the Moving to Opportunity residential mobility experiment on crime and delinquency. *Journal of experimental criminology*, 9(4), 10.1007/s11292-013-9189-9. <https://doi.org/10.1007/s11292-013-9189-9>

<i>Poss Of Cont Substance Marijuana</i>	pre	977.4	0.0	0.0	1000.0	54.0	0.2
<i>Poss Of Cont Substance Marijuana</i>	post	1480.6	500.0	0.0	1500.0	90.0	0.2
<i>Theft Of Merch 1000 - 2500</i>	pre	4639.0	2500.0	250.0	5000.0	127.0	0.2
<i>Theft Of Merch 1000 - 2500</i>	post	12000.0	6000.0	2500.0	19000.0	91.0	0.1
<i>Theft Of Merch Less Than 1000</i>	pre	1869.7	1000.0	200.0	2500.0	1047.0	0.1
<i>Theft Of Merch Less Than 1000</i>	post	3031.7	1500.0	500.0	4250.0	1031.0	0.1
<i>Theft Of Property 1000 - 2500</i>	pre	4325.9	1500.0	0.0	5000.0	264.0	0.4
<i>Theft Of Property 1000 - 2500</i>	post	6715.0	3000.0	0.0	7875.0	214.0	0.3
<i>Theft Of Property 1000 Or Less</i>	pre	1216.4	500.0	0.0	1500.0	479.0	0.2
<i>Theft Of Property 1000 Or Less</i>	post	2253.3	1000.0	200.0	2500.0	368.0	0.1
<i>Theft Of Services Less Than 1000</i>	pre	768.0	500.0	100.0	1000.0	25.0	0.2
<i>Theft Of Services Less Than 1000</i>	post	3173.1	500.0	500.0	5000.0	13.0	0.1

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### C.2.2 Length of Stay (LOS)

To understand whether this increase varied by legal exposure, I disaggregated the LOS distribution by charge level. Serious charges are associated with longer stays, as expected. Offense severity, prior convictions, and failure to appear history were all strong and statistically significant predictors of detention.

**Table C5. LOS Distribution & ROR rate vs Offense Level**

<b>Max Offense Level</b>	<b>HB 1719</b>	<b>Mean</b>	<b>Median</b>	<b>q25</b>	<b>q75</b>	<b>Count</b>	<b>ROR Rate</b>
<i>Misdemeanor C</i>	<i>Pre</i>	3.2	1.0	1.0	2.0	461.0	0.6
<i>Misdemeanor C</i>	<i>Post</i>	4.1	1.0	1.0	3.0	584.0	0.4
<i>Misdemeanor B</i>	<i>Pre</i>	3.6	1.0	1.0	1.0	222.0	0.6
<i>Misdemeanor B</i>	<i>Post</i>	4.1	1.0	1.0	2.0	249.0	0.4
<i>Misdemeanor A</i>	<i>Pre</i>	3.4	1.0	1.0	2.0	4528.0	0.5
<i>Misdemeanor A</i>	<i>Post</i>	4.0	1.0	1.0	3.0	5344.0	0.4
<i>Felony E</i>	<i>Pre</i>	6.0	1.0	1.0	3.0	1688.0	0.4
<i>Felony E</i>	<i>Post</i>	6.7	2.0	1.0	4.0	1824.0	0.3
<i>Felony D</i>	<i>Pre</i>	9.2	2.0	1.0	5.0	1177.0	0.4
<i>Felony D</i>	<i>Post</i>	12.1	2.0	1.0	7.0	1163.0	0.3
<i>Felony C</i>	<i>Pre</i>	10.9	2.0	1.0	8.0	2555.0	0.2
<i>Felony C</i>	<i>Post</i>	11.6	3.0	1.0	13.0	2549.0	0.2
<i>Felony B</i>	<i>Pre</i>	26.4	8.0	2.0	41.0	633.0	0.2
<i>Felony B</i>	<i>Post</i>	19.9	6.0	2.0	27.0	541.0	0.1
<i>Felony A</i>	<i>Pre</i>	30.1	11.0	3.0	58.5	371.0	0.2
<i>Felony A</i>	<i>Post</i>	24.1	9.0	3.0	34.8	386.0	0.2
<i>Felony M</i>	<i>Pre</i>	45.6	21.0	16.0	90.0	9.0	0.2
<i>Felony M</i>	<i>Post</i>	38.8	35.5	13.5	60.8	4.0	0.3

**Table C6. LOS Distribution & ROR rate vs Violent Offense**

<b>Violent</b>	<b>HB 1719</b>	<b>Mean</b>	<b>Median</b>	<b>q25</b>	<b>q75</b>	<b>Count</b>	<b>ROR Rate</b>
<i>False</i>	<i>Pre</i>	6.3	1.0	1.0	3.0	9594.0	0.5
<i>False</i>	<i>Post</i>	6.8	2.0	1.0	4.0	10620.0	0.4
<i>True</i>	<i>Pre</i>	16.9	3.0	1.0	18.0	2050.0	0.2
<i>True</i>	<i>Post</i>	14.0	3.0	2.0	17.0	2024.0	0.1

These increases are particularly pronounced among individuals facing low-level charges, suggesting a heightened detention risk for individuals who previously may have been eligible for release or able to post bail more easily.

**Table C7. LOS Distribution & ROR rate vs Offense**

<b>Max Offense</b>	<b>HB 1719</b>	<b>Mean</b>	<b>Median</b>	<b>q25</b>	<b>q75</b>	<b>Count</b>	<b>ROR Rate</b>
<i>Criminal Trespass</i>	<i>Pre</i>	3.37	1.00	1.00	2.00	289.00	0.54
<i>Criminal Trespass</i>	<i>Post</i>	5.13	2.00	1.00	3.00	333.00	0.33
<i>Poss Of Cont Substance Marijuana</i>	<i>Pre</i>	1.29	1.00	1.00	2.00	38.00	0.66
<i>Poss Of Cont Substance Marijuana</i>	<i>Post</i>	1.79	1.00	1.00	2.00	56.00	0.38
<i>Theft Of Merch 1000 - 2500</i>	<i>Pre</i>	7.03	1.00	1.00	3.00	59.00	0.47
<i>Theft Of Merch 1000 - 2500</i>	<i>Post</i>	9.92	2.00	1.00	8.00	62.00	0.26

<i>Theft Of Merch Less Than 1000</i>	<i>Pre</i>	4.82	1.00	1.00	3.00	350.00	0.41
<i>Theft Of Merch Less Than 1000</i>	<i>Post</i>	5.07	2.00	1.00	5.00	515.00	0.28
<i>Theft Of Property 1000 - 2500</i>	<i>Pre</i>	5.56	1.00	1.00	2.00	235.00	0.56
<i>Theft Of Property 1000 - 2500</i>	<i>Post</i>	5.95	2.00	1.00	4.00	189.00	0.39
<i>Theft Of Property 1000 Or Less</i>	<i>Pre</i>	2.53	1.00	1.00	2.00	218.00	0.61
<i>Theft Of Property 1000 Or Less</i>	<i>Post</i>	3.54	1.00	1.00	3.00	206.00	0.46

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### C.2.3 Wealth-Based Disparities

[*Descriptive Evidence of Post-HB 1719 Disparities*] Post-HB 1719 outcomes reveal that indigent defendants are less likely to post bail, even for modest amounts, and are more likely to remain detained pretrial, even when charged with the same charge types, levels, and offenses.

**Table C8. Descriptive Evidence of Post-HB 1719 Disparities**

<b>Offense Level</b>	<b>Indigent</b>	<b>Pre/ Post HB 1719</b>	<b>Avg LOS</b>	<b>Bail Affordabil ity Rate</b>	<b>ROR Rate</b>	<b>Post Bail</b>	<b>Bookings</b>
<i>Misdemeanor C</i>	True	Pre	4.419	0.558	0.535	0.070	258
<i>Misdemeanor C</i>	True	Post	5.388	0.466	0.373	0.149	322
<i>Misdemeanor C</i>	False	Pre	1.127	0.964	0.691	0.273	55
<i>Misdemeanor C</i>	False	Post	1.395	0.975	0.630	0.346	81

<i>Misdemeanor B</i>	True	Pre	5.385	0.670	0.587	0.138	109
<i>Misdemeanor B</i>	True	Post	6.856	0.541	0.414	0.216	111
<i>Misdemeanor B</i>	False	Pre	0.984	0.984	0.603	0.381	63
<i>Misdemeanor B</i>	False	Post	1.243	0.959	0.500	0.500	74
<i>Misdemeanor A</i>	True	Pre	3.948	0.757	0.578	0.275	2287
<i>Misdemeanor A</i>	True	Post	5.040	0.689	0.455	0.359	2771
<i>Misdemeanor A</i>	False	Pre	1.172	0.980	0.539	0.451	1380
<i>Misdemeanor A</i>	False	Post	1.276	0.962	0.466	0.512	1513
<i>Felony E</i>	True	Pre	6.971	0.631	0.482	0.341	765
<i>Felony E</i>	True	Post	7.317	0.575	0.384	0.419	804
<i>Felony E</i>	False	Pre	1.564	0.963	0.432	0.556	516
<i>Felony E</i>	False	Post	1.913	0.945	0.328	0.660	577
<i>Felony D</i>	True	Pre	9.179	0.581	0.411	0.409	496
<i>Felony D</i>	True	Post	13.595	0.493	0.322	0.489	513
<i>Felony D</i>	False	Pre	1.775	0.952	0.412	0.586	374
<i>Felony D</i>	False	Post	2.575	0.920	0.319	0.674	386
<i>Felony C</i>	True	Pre	11.244	0.522	0.305	0.520	1102
<i>Felony C</i>	True	Post	12.453	0.458	0.211	0.536	1257
<i>Felony C</i>	False	Pre	2.462	0.907	0.183	0.796	840
<i>Felony C</i>	False	Post	3.039	0.907	0.125	0.854	719
<i>Felony B</i>	True	Pre	26.265	0.273	0.186	0.508	264
<i>Felony B</i>	True	Post	21.197	0.272	0.174	0.493	213
<i>Felony B</i>	False	Pre	6.790	0.760	0.168	0.814	167
<i>Felony B</i>	False	Post	6.389	0.688	0.083	0.847	157

<i>Felony A</i>	True	Pre	32.425	0.250	0.181	0.475	160
<i>Felony A</i>	True	Post	27.162	0.157	0.218	0.371	197
<i>Felony A</i>	False	Pre	15.198	0.519	0.094	0.811	106
<i>Felony A</i>	False	Post	11.290	0.598	0.065	0.888	107

### C.3 Impacts to Just City's Bail Fund

The table below shows the number of qualified bookings by charge severity before and after HB 1719.

**Table C9. Qualified Bookings for Just City's Bail Fund**

<b>Severity</b>	<b>Pre-HB 1719</b>	<b>Post-HB 1719</b>
<i>Misdemeanor C</i>	253	302
<i>Misdemeanor B</i>	106	109
<i>Misdemeanor A</i>	1320	1487
<i>Felony E</i>	860	960
<i>Felony D</i>	609	587
<i>Felony C</i>	1321	1433
<i>Felony B</i>	332	268
<i>Felony A</i>	190	208

**Table C10. Balance Tests for Qualified Bookings**

<b>Variable</b>	<b>Pre Mean</b>	<b>Post Mean</b>	<b>t-statistic</b>	<b>p-value</b>
Past Bookings	4.55	4.27	2.34	0.02
Past Violent Convictions	0.25	0.24	0.77	0.44
Past Nonviolent Convictions	5.07	4.36	3.70	0.00
Total Past Convictions	5.32	4.60	3.69	0.00
Weighted FTA	0.22	0.21	1.12	0.26
Raw FTA Count	0.78	0.78	0.03	0.98
Max Offense Level	3.55	3.46	2.56	0.01

**Table C10. Balance Tests for Qualified Bookings**

Indigent	1.00	1.00		
<i>Violent</i>	0.22	0.22	-0.25	0.80
<i>Past Misdemeanor C Convictions</i>	0.88	0.67	2.98	0.00
<i>Past Misdemeanor B Convictions</i>	0.34	0.27	3.15	0.00
<i>Past Misdemeanor D Convictions</i>	2.51	2.27	2.28	0.02
<i>Past Felony E Convictions</i>	0.54	0.46	2.84	0.00
<i>Past Felony D Convictions</i>	0.28	0.22	3.87	0.00
<i>Past Felony C Convictions</i>	0.38	0.33	2.28	0.02
<i>Past Felony B Convictions</i>	0.10	0.11	-0.57	0.57
<i>Past Felony A Convictions</i>	0.01	0.01	-0.88	0.38
<i>Past Felony M Convictions</i>	0.00	0.00	1.73	0.08
<i>Total Past Misdemeanor Convictions</i>	3.99	3.45	3.15	0.00
<i>Total Past Felony Convictions</i>	1.34	1.15	3.51	0.00

**Table C11. ROR Rates for Qualified Defendants**

Severity	Pre-HB 1719	Post-HB 1719	Difference
	ROR Rate	ROR Rate	
<i>Misdemeanor C</i>	0.494	0.354	0.14
<i>Misdemeanor B</i>	0.538	0.376	0.16
<i>Misdemeanor A</i>	0.464	0.348	0.12
<i>Felony E</i>	0.358	0.248	0.11
<i>Felony D</i>	0.278	0.191	0.09
<i>Felony C</i>	0.179	0.110	0.07
<i>Felony B</i>	0.075	0.034	0.04

**Table C11. ROR Rates for Qualified Defendants**

<i>Felony A</i>	0.074	0.058	0.02
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**Table C12. Average Bail Amounts for Bookings that are Qualified/Eligible for Just City’s Bail Fund**

Severity	Pre-HB 1719		Post-HB 1719	
	Overall	Eligible	Overall	Eligible
<i>Misdemeanor C</i>	606.32	1050.68	807.12	1212.69
<i>Misdemeanor B</i>	906.13	1656.03	991.28	1440.67
<i>Misdemeanor A</i>	1644.19	1847.89	2267.78	2118.51
<i>Felony E</i>	6694.26	2325.16	8595.36	3087.56
<i>Felony D</i>	12438.10	2935.44	13530.58	3366.58
<i>Felony C</i>	25563.57	3397.14	28558.37	3893.19
<i>Felony B</i>	86127.56	3140.00	83834.70	3238.10
<i>Felony A</i>	121775.79	3218.75	104636.06	3176.47

**D. Regressions**

**D.1 Model Selection, Validation, & Interpretation**

All regression models in this report are specified and validated according to best practices in the applied policy and econometric literature. The following principles and steps are applied consistently across analyses:

**Covariate Selection:** Covariates (such as age, race, sex, charge severity, criminal history, failure-to-appear risk, attorney type, and ZIP code poverty) are included based on their established importance in predicting pretrial outcomes, as supported by prior research (Dobbie et al., 2018; Heaton et al., 2017; Stevenson, 2018; Leslie & Pope, 2017).

### **Model Choice:**

- **Logistic regression** is used for binary (dichotomous) outcomes (e.g., whether bail was affordable or a defendant was released on ROR).
- **Ordinary Least Squares (OLS)** is used for continuous outcomes (e.g., bail amount, length of stay). All models employ robust (Huber-White) standard errors to address potential heteroskedasticity (White, 1980).

**Variable Construction:** Multiple operationalizations of criminal history and risk are considered, including exponentially weighted FTA counts, raw and binned prior convictions, and categorical indicators for offense severity. Final model selection is guided by predictive value, parsimony, and precedent in the literature.

**Diagnostics and Model Validation:** Each regression is accompanied by a standard battery of diagnostic tests:

- **Multicollinearity:** Assessed via Variance Inflation Factor (VIF); predictors with  $VIF > 5$  are flagged for review.
- **Influential Observations:** Assessed via Cook's Distance and leverage; influential points are documented but generally retained given the policy relevance of rare but important cases.
- **Residual Analysis:** Normality (Jarque-Bera), heteroskedasticity (Breusch-Pagan), and autocorrelation (Ljung-Box) are evaluated for OLS models; calibration (Hosmer-Lemeshow) and discrimination (ROC AUC) for logistic models.
- **Model Specification:** The RESET test is used to screen for omitted nonlinearities or mis-specification in OLS models.
- **Robustness Checks:** Core results are replicated after excluding the top and bottom 1% of outcome variable values and, where feasible, using alternate codings of key variables.
- **Model Calibration and Fit:** For logistic regression, Hosmer-Lemeshow goodness-of-fit and AUC (area under ROC curve) are reported; for OLS, R-squared and information criteria (AIC, BIC) are documented.

## **D.2 Data Preparation**

We have “regression datasets” corresponding to data level. To ensure analytic validity and reduce bias from missing or extreme values, the following data cleaning methods were performed on the regression dataset. The impact of each transformation is logged in the subsequent sections.

- **Dropping Missing Values:** Observations with missing values in key variables (e.g., attorney type, sex) were excluded. This ensures that regression models are fit only on

cases with complete data for all covariates of interest, which avoids introducing bias from imputation or listwise deletion during model fitting.

- **Dropping Underutilized Categories:** Observations with categorical values that appear infrequently (e.g., certain race categories with insufficient sample size) were excluded from regression analyses to ensure stable estimation and prevent high-leverage influence from sparse groups.
- **Winsorization:** Continuous covariates exhibiting extreme values were winsorized at the 1st and 99th percentiles. Winsorization caps extreme values by replacing those outside specified percentile bounds with the nearest values at those thresholds. This method retains all data points while reducing the disproportionate influence of outliers, thereby improving robustness and interpretability of regression estimates. Winsorization is preferred over trimming when sample sizes are moderate and the goal is to minimize leverage from outliers without discarding data.
- **Log Transformations:** Variables exhibiting strong positive skewness (e.g., count variables, monetary amounts) were log-transformed prior to analysis. Log transformation reduces skewness, brings extreme values closer to the mean, and helps to meet regression assumptions of normality and homoscedasticity. This is particularly useful when variables span several orders of magnitude or when multiplicative rather than additive relationships are plausible.
- **Normalization:** Where appropriate, variables were normalized, or standardized, to mean zero and unit variance to facilitate interpretability and comparability of regression coefficients, especially in models that combine predictors with differing units and scales.

**D.3 Booking Regression Data:** To ensure analytic validity and reduce bias from missing or extreme values, the following data cleaning steps were performed on the regression dataset:

1. **Handling Missing Values and Underutilized Categories**

- Dropped 2,092 records with missing values for *attorney\_type* (required for assessing indigence and counsel effects).
- Dropped 10 records with missing *person\_sex*.
- Excluded 43 records with *person\_race* categorized as "ASIAN" or "OTHER" to ensure sufficient sample size in each group.
- Drop FELONY\_M bookings due to low number

2. **Winsorization of Continuous Covariates**

- *age\_at\_booking*: Min shifted from -2.102 to -1.304, max from 7.233 to 2.765 (standardized units).
- *fta\_exp\_decay*: Max shifted from 5.033 to 1.823.
- *past\_violent\_convictions*: Max shifted from 22 to 3.
- *past\_nonviolent\_convictions*: Max shifted from 142 to 36.

**3. Log Transformation of Skewed Variables**

- *past\_violent\_convictions*: Skewness reduced from 3.75 to 3.08.
- *past\_nonviolent\_convictions*: Skewness reduced from 3.23 to 1.11.
- *fta\_exp\_decay*: Skewness reduced from 3.36 to 2.81.
- *censored\_los*: Skewness reduced from 4.35 to 1.45.
- *initial\_bail\_amount*: Skewness reduced dramatically from 141 to -0.66.

**D.4 Case Regression Data:** To ensure analytic validity and reduce bias from missing or extreme values, the following data cleaning steps were performed on the regression dataset:

**1. Handling Missing Values and Underutilized Categories**

- Dropped 2,529 records with missing values for *initial\_bail\_amount*.
- Dropped 281 records with missing *person\_sex*.  
Excluded 47 records with *person\_race* categorized as "ASIAN" or "OTHER" to ensure sufficient sample size in each group.

**2. Winsorization of Continuous Covariates**

- *age\_at\_filing*: Min shifted from -2 to -1, max from 7 to 2 (standardized units).
- *fta\_exp\_decay*: Max shifted from 6.046 to 2.164.
- *initial\_bail\_amount*: Max shifted from 750,000 to 200,000.

**3. Log Transformation of Skewed Variables**

- *past\_violent\_convictions*: Skewness reduced from 8.24 to 3.12.
- *past\_nonviolent\_convictions*: Skewness reduced from 5.00 to 1.00.
- *fta\_exp\_decay*: Skewness reduced from 2.87 to 2.28.
- *initial\_bail\_amount*: Skewness reduced from 3.79 to -0.75.

**Linear Regression: Bail Amount**

**Purpose:** To estimate the effect of HB 1719 and key defendant characteristics on initial bail amount set at the court case level.

**Outcome:** The dependent variable is the (log-transformed) initial bail amount set for each criminal court case.

**Dataset:** Analyses were performed at the court case level, with each observation corresponding to a unique case filed during the study window. See Appendix A for sample and cleaning details.

**Table D1. Regression Results - Bail Amount**

Variable	Coefficient	Std. Error	t/z-stat	p-value	CI Lower	CI Upper
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<i>Intercept</i>	0.3665	0.0838	4.3711	0.0000*	0.2021	0.5308
<i>Post-HB 1719</i>	0.7279	0.0391	18.6383	0.0000*	0.6513	0.8044
<i>Indigent</i>	0.8414	0.0448	18.7948	0.0000*	0.7537	0.9292
<i>Black</i>	0.0905	0.0648	1.3980	0.1621	-0.0364	0.2175
<i>Hispanic</i>	-0.1871	0.1154	-1.6203	0.1052	-0.4133	0.0392
<i>Male</i>	1.1542	0.0491	23.4941	0.0000*	1.0580	1.2505
<i>Age at Filing</i>	0.2208	0.0432	5.1163	0.0000*	0.1362	0.3054
<i>Age<sup>2</sup> at Filing</i>	-0.2399	0.0271	-8.8583	0.0000*	-0.2930	-0.1868
<i>Max Offense Level</i>	1.1400	0.0113	100.7415	0.0000*	1.1178	1.1622
<i>Weighted FTA</i>	1.4550	0.0636	22.8893	0.0000*	1.3304	1.5796
<i>Past Violent Convictions</i>	0.5892	0.0436	13.5261	0.0000*	0.5038	0.6746
<i>Past Nonviolent Convictions</i>	0.7216	0.0195	37.0394	0.0000*	0.6834	0.7598

\*  $p < 0.05$

**Interpretation:** The regression results provide clear and statistically robust evidence that bail amounts increased following the enactment of HB 1719, controlling for other factors. The coefficient for the post-HB 1719 period is 0.74 (SE = 0.04,  $p < 0.001$ ), which is both statistically significant and substantial in magnitude. This coefficient can be interpreted as the expected difference in the (log-transformed) initial bail amount assigned after HB 1719 took effect, relative to the pre-HB 1719 period, holding all other covariates constant. In exponentiated terms, this suggests an increase in assigned bail amounts of approximately 110% ( $\exp(0.74) \approx 2.10$ ), other things equal.

All other major covariates (e.g. offense severity, violent charge status, prior convictions, and failure-to-appear risk) have expected signs and are statistically significant. Male defendants and those with higher-risk or more severe charges are assigned higher bail amounts, consistent with established literature and policy expectations. The quadratic term for age is negative and significant, indicating a nonlinear or concave relationship with bail amount.

**Table D2. Model Fit and Summary Statistics**

Model Statistic	Value
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<i>AIC</i>	137497.3157
<i>BIC</i>	137595.6071
<i>Log-Likelihood</i>	-68736.65783
<i>No. Observations</i>	26661
<i>DF Model</i>	11
<i>DF Residuals</i>	26649
<i>R-squared</i>	0.351624833
<i>Adj. R-squared</i>	0.3513572009
<i>F-statistic</i>	1664.054913
<i>Prob (F-statistic)</i>	0

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### Model Robustness and Validation

To validate the robustness of the estimated effects, we conducted standard diagnostic checks:

- **Multicollinearity:** All variance inflation factors (VIFs) were below 5, indicating no concerning multicollinearity among covariates.
- **Influential and High-Leverage Observations:** Leverage and Cook’s distance metrics were examined. No observations exceeded conventional cutoffs (Cook’s  $D > 4/n$ , leverage  $> 2k/n$ ), suggesting no undue influence on the results.
- **Residual Diagnostics:** Plots of residuals against fitted values and normal Q-Q plots confirmed approximate normality and homoscedasticity of residuals.
- **Model Fit:** The  $R^2$  and adjusted  $R^2$  values (0.36) indicate that the model explains a substantial proportion of the variance in log-transformed bail amounts.

These diagnostics support the robustness of our regression results and the substantive interpretation that HB 1719 significantly increased initial bail amounts.

### Logistic Regression: ROR

**Purpose:** To evaluate whether HB 1719 was associated with a change in the likelihood of being released on recognizance (ROR), controlling for key defendant characteristics.

**Outcome:** The dependent variable is *ror*, an indicator for whether the defendant was released on recognizance (1 = ROR, 0 = otherwise).

**Dataset:** Analyses were conducted at the court case level. Each observation corresponds to a unique criminal case filed during the study period (N = 26,661). See data cleaning log for treatment of missing values and transformations.

**Table D3. Regression Results - ROR**

Variable	Coefficient	Std. Error	t/z-stat	p-value	CI Lower	CI Upper
<i>Intercept</i>	1.7047	0.0686	24.8344	0.0000*	1.5701	1.8392
<i>Post- HB 1719</i>	-0.4080	0.0325	-12.5387	0.0000*	-0.4718	-0.3442
<i>Indigent</i>	-0.5100	0.0331	-15.4233	0.0000*	-0.5748	-0.4452
<i>Black</i>	0.0679	0.0536	1.2664	0.2054	-0.0372	0.1730
<i>Hispanic</i>	0.1257	0.0800	1.5722	0.1159	-0.0310	0.2825
<i>Male</i>	-0.5895	0.0349	-16.8770	0.0000*	-0.6579	-0.5210
<i>Age at Filing</i>	-0.1541	0.0292	-5.2712	0.0000*	-0.2114	-0.0968
<i>Age<sup>2</sup> at Filing</i>	0.1670	0.0208	8.0461	0.0000*	0.1263	0.2077
<i>Max Offense Level</i>	-0.5026	0.0118	-42.6463	0.0000*	-0.5257	-0.4795
<i>Weighted FTA</i>	-2.0196	0.1108	-18.2252	0.0000*	-2.2367	-1.8024
<i>Past Violent Convictions</i>	-0.8728	0.0971	-8.9840	0.0000*	-1.0632	-0.6824
<i>Past Nonviolent Convictions</i>	-0.7292	0.0251	-29.0833	0.0000*	-0.7783	-0.6800

\*  $p < 0.05$

**Interpretation:** Controlling for relevant factors, the results indicate that the odds of being released on recognizance (ROR) decreased following the enactment of HB 1719. The coefficient for the post-HB 1719 period is -0.408 (SE = 0.033,  $p < 0.001$ ), which is statistically significant and suggests a meaningful decline in the likelihood of ROR. In terms of odds ratios, this corresponds to an approximate 33% decrease in the odds of release on recognizance (ROR) following HB 1719 ( $\exp(-0.408) \approx 0.665$ ), holding other factors constant.

Other covariates generally show expected relationships; indigent and male defendants are less likely to be RORed, and risk factors (prior convictions, FTA risk, and more serious offenses)

significantly decrease the odds of ROR. A quadratic relationship for age suggests that ROR likelihood varies nonlinearly across the age spectrum.

**Table D4. Model Fit and Summary Statistics**

<b>Model Statistic</b>	<b>Value</b>
<i>AIC</i>	23046.30785
<i>BIC</i>	23144.59933
<i>Log-Likelihood</i>	-11511.15392
<i>Null Log-Likelihood</i>	-14755.83981
<i>LR statistic</i>	6489.371776
<i>LR p-value</i>	0
<i>Pseudo R-squared</i>	0.2198916449
<i>No. Observations</i>	26661
<i>DF Model</i>	11
<i>DF Residuals</i>	26649
<i>Converged</i>	TRUE

**Model Robustness and Diagnostics**

- **Multicollinearity:** All predictors were assessed for multicollinearity using variance inflation factors (VIFs), none of which exceeded 5, suggesting no issues of concern.
- **Influential Observations:** Leverage and Cook’s distance were evaluated. A total of 251 high-leverage points were identified, which is expected in large policy data. None of these had a disproportionate effect on the key results.
- **Residual Diagnostics:**
  - **Jarque-Bera test** for residual normality showed  $p < 0.05$ , indicating residuals are not perfectly normal (common in binary models).
  - **Breusch-Pagan test** for heteroscedasticity showed  $p < 0.05$ , indicating heteroscedasticity; this is addressed with robust (HC3) standard errors.
  - **Ljung-Box test** for autocorrelation was not flagged as significant, suggesting no autocorrelation concerns.

- **Model Specification:** RESET test suggests possible model misspecification ( $p < 0.05$ ), though the primary HB 1719 result is robust to this.
- **Calibration:** Hosmer-Lemeshow test was not flagged as significant ( $p > 0.05$ ), indicating no evidence of poor calibration.
- **Model Fit:**  $R^2$  and adjusted  $R^2$  are not applicable here due to the binary outcome; instead, Pseudo  $R^2$  of 0.22 suggests that the model explains a moderate proportion of variation in ROR outcomes.

**Summary of Robustness Implications:** While some mild heteroscedasticity and potential model misspecification were detected, the primary finding—that HB 1719 was associated with a significant decrease in the odds of being RORed—remains robust. Use of robust (HC3) standard errors mitigates heteroscedasticity concerns. Overall, these diagnostics support the reliability of the conclusion that HB 1719 substantially reduced the likelihood of ROR.

### Logistic Regression: Affordable Bail

**Purpose:** To evaluate whether HB 1719 was associated with a change in the likelihood that defendants could afford the initial bail amount set in their criminal cases, controlling for key defendant characteristics.

**Outcome:** The dependent variable is *affordable\_bail*, a binary indicator for whether the defendant’s bail amount was considered affordable (1 = affordable, 0 = not affordable).

**Dataset:** Analyses were conducted at the court case level. Each observation corresponds to a unique criminal case filed during the study period ( $N = 21,106$ ). See the data cleaning log for treatment of missing values and variable transform. After HB 1719 took effect, the odds of posting bail within the 72-hour window decreased by approximately 13%, even after adjusting for charge levels, past convictions, failure-to-appear history, and representation. This effect is both statistically and practically significant, indicating that fewer indigent and non-indigent defendants were able to afford bail post-HB 1719 across all charge levels and past conviction histories.

### Model Summary:

**Table D5. Regression Results - Affordable Bail**

Variable	Coefficient	Std. Error	t/z-stat	p-value	CI Lower	CI Upper
<i>Intercept</i>	6.779	0.131	51.671	0.000*	6.522	7.036
<i>Post-HB 1719</i>	-0.135	0.040	-3.367	0.001*	-0.214	-0.057

<i>Indigent</i>	-2.294	0.050	-45.904	0.000*	-2.392	-2.196
<i>Black</i>	0.585	0.067	8.770	0.000*	0.455	0.716
<i>Hispanic</i>	-0.106	0.108	-0.978	0.328	-0.317	0.106
<i>Male</i>	-0.427	0.050	-8.521	0.000*	-0.525	-0.329
<i>Age at Filing</i>	-0.488	0.013	-38.122	0.000*	-0.513	-0.463
<i>Age<sup>2</sup> at Filing</i>	-0.025	0.031	-0.802	0.422	-0.086	0.036
<i>Max Offense Level</i>	-0.025	0.019	-1.335	0.182	-0.062	0.012
<i>Weighted FTA</i>	0.014	0.015	0.939	0.348	-0.015	0.044
<i>Past Violent</i>						
<i>Convictions</i>	-1.898	0.093	-20.358	0.000*	-2.081	-1.715
<i>Past Nonviolent</i>						
<i>Convictions</i>	-0.054	0.063	-0.862	0.389	-0.178	0.069

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\*  $p < 0.05$

**Interpreting Coefficients:** In logistic regression, coefficients represent changes in log odds of an outcome per unit change in the predictor variable. For lay readers, this means that a negative coefficient, like  $-0.135$  for "Post-HB 1719," indicates that the odds of defendants being able to afford bail decreased after the law was enacted. More precisely, I calculate the odds ratio (OR) by exponentiating the coefficient:

$$\text{Odds Ratio (OR)} = \exp(-0.135) \approx 0.874$$

This means that the odds of affordable bail post-HB 1719 are about 87.4% of the odds prior to the law's implementation. In other words, the odds of affording bail decreased by approximately 13% ( $100\% - 87.4\%$ ), controlling for other factors like indigency, race, gender, and criminal history. This approach to interpretation is standard practice in translating logistic regression results.

**Interpretation:** Controlling for relevant factors, the results indicate that the likelihood of defendants being able to afford their bail amount decreased after the enactment of HB 1719. The coefficient for the post-HB 1719 period is  $-0.135$  ( $SE = 0.040$ ,  $p = 0.001$ ), which is statistically significant and negative in direction. In odds-ratio terms, this translates to an approximate 13% decrease in the odds of affordable bail post-HB 1719 ( $\exp(-0.135) \approx 0.874$ ), holding other factors constant.

Other covariates show expected and important relationships; indigent defendants and male defendants are significantly less likely to afford bail, while Black defendants have a higher probability of affordable bail when controlling for other factors. The initial bail amount is a strong negative predictor, as expected.

**Table D6. Model Fit and Summary Statistics**

<b>Model Statistic</b>	<b>Value</b>
<i>AIC</i>	15821.7
<i>BIC</i>	15925.1
<i>Log-Likelihood</i>	-7897.8
<i>Null Log-Likelihood</i>	-13130.2
<i>LR statistic</i>	10464.6
<i>LR p-value</i>	0.0
<i>Pseudo R-squared</i>	0.4
<i>No. Observations</i>	21106.0
<i>DF Model</i>	12.0
<i>DF Residuals</i>	21093.0
<i>Converged</i>	TRUE

**Model Robustness and Diagnostics**

- **Multicollinearity:** All predictors were assessed for multicollinearity using variance inflation factors (VIFs), none of which exceeded 5, suggesting no issues of concern.
- **Influential Observations:** Leverage and Cook’s distance were examined. A total of approximately 200 high-leverage points were identified, which is expected in policy data. These do not unduly influence the primary result.
- **Residual Diagnostics:** No major issues were detected in residual normality, heteroscedasticity, or autocorrelation.
- **Model Specification:** RESET test did not indicate any misspecification concerns.
- **Hosmer-Lemeshow test:** was not significant ( $p > 0.05$ ), suggesting no significant calibration issues.

- **Model Fit:** a Pseudo R<sup>2</sup> of 0.398 suggests the model explains a substantial proportion of the variation in affordable bail outcomes.

**Summary:** The diagnostic checks support the robustness of the primary result: HB 1719 was associated with a significant decrease in the likelihood of affordable bail for defendants. No major diagnostic concerns were identified, and robust (HC3) standard errors were used throughout. Overall, these findings confirm the reliability of the conclusion that HB 1719 made it harder for defendants to afford their bail.

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**Linear Regression: LOS**

**Purpose:** To assess whether HB 1719 was associated with an increase in the length of stay (LOS) in jail, controlling for key defendant and case characteristics.

**Outcome:** The dependent variable is *censored\_los*, the (log-transformed) length of stay in jail, right censored at 90 days..

**Dataset:** Analyses were conducted at the court case level. Each observation corresponds to a unique criminal case filed during the study period ( $N = 21,106$ ). See the data cleaning log for treatment of missing values and variable transformations.

**Table D7. Regression Results - LOS**

Variable	Coefficient	Std. Error	t/z-stat	p-value	CI Lower	CI Upper
<i>Intercept</i>	-0.138	0.021	-6.590	0.000*	-0.179	-0.097
<i>Post-HB 1719</i>	0.071	0.010	7.115	0.000*	0.051	0.090
<i>Indigent</i>	0.502	0.010	51.424	0.000*	0.483	0.521
<i>Black</i>	-0.130	0.016	-8.001	0.000*	-0.162	-0.098
<i>Hispanic</i>	0.067	0.025	2.675	0.007*	0.018	0.117
<i>Male</i>	0.215	0.011	19.622	0.000*	0.193	0.236
<i>Initial Bail Amount</i>	0.078	0.001	66.193	0.000*	0.076	0.080

<i>Age at Booking</i>	-0.034	0.007	-4.856	0.000*	-0.048	-0.021
<i>Age<sup>2</sup> at booking</i>	0.006	0.004	1.298	0.194	-0.003	0.015
<i>Max Offense Level</i>	0.119	0.004	31.913	0.000*	0.112	0.126
<i>Weighted FTA</i>	0.522	0.028	18.374	0.000*	0.466	0.578
<i>Past Violent Convictions</i>	0.073	0.021	3.402	0.001*	0.031	0.115
<i>Past Nonviolent Convictions</i>	0.089	0.007	12.363	0.000*	0.075	0.103

\*  $p < 0.05$

**Interpretation:** Controlling for relevant factors, the regression results provide clear evidence that the length of stay (LOS) in jail increased following the enactment of HB 1719. The coefficient for the post-HB 1719 period is 0.071 ( $SE = 0.010, p < 0.001$ ), which is statistically significant and positive in magnitude. This suggests that defendants experienced a 7% increase in log-transformed length of stay post-HB 1719, controlling for other covariates.

Other covariates have expected relationships: indigent status, male gender, higher initial bail amounts, more serious charges, and prior convictions are associated with longer LOS. Black defendants, on the other hand, have a statistically significant shorter LOS compared to White defendants when controlling for other factors.

**Table D8. Model Fit and Summary Statistics**

<b>Model Statistic</b>	<b>Value</b>
<i>AIC</i>	45758.03803
<i>BIC</i>	45861.4831
<i>Log-Likelihood</i>	-22866.01902
<i>No. Observations</i>	21106
<i>DF Model</i>	12
<i>DF Residuals</i>	21093

<i>R-squared</i>	0.4275708921
<i>Adj. R-squared</i>	0.427245232
<i>F-statistic</i>	1137.969944
<i>Prob (F-statistic)</i>	0

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### Model Robustness and Diagnostics

- **Multicollinearity:** Variance inflation factors (VIF) were examined for all predictors. No predictors had  $VIF > 5$ , indicating no concerning multicollinearity.
- **Influential Observations:** Leverage and Cook’s distance were examined. A total of approximately 150 high-leverage points were identified, which is expected in policy datasets. These do not unduly influence the primary result.
- **Residual Diagnostics:**
  - Jarque-Bera test for residual normality showed  $p < 0.05$ , indicating residuals are not perfectly normal.
  - Breusch-Pagan test for heteroscedasticity showed  $p < 0.05$ , indicating heteroscedasticity. This is acceptable here because robust (HC3) standard errors were used.
  - Ljung-Box test for autocorrelation showed  $p < 0.05$ , indicating some autocorrelation in residuals.
- **Model Specification:** RESET test suggested potential model misspecification ( $p < 0.05$ ), though the main result (the effect of HB 1719) remains robust.
- **Calibration:** Hosmer-Lemeshow test was not applicable for this continuous outcome.
- **Model Fit:** The  $R^2$  of 0.428 suggests the model explains a substantial portion of the variation in length of stay.

**Summary:** Although some mild heteroscedasticity, autocorrelation, and residual normality issues were detected, the main result that HB 1719 was associated with a significant increase in length of stay in jail remains robust. Robust (HC3) standard errors mitigate heteroscedasticity concerns. Overall, these diagnostics confirm the reliability of the substantive conclusion that HB 1719 led to longer stays in jail.

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### OLS Regression: LOS with Interaction

**Purpose:** To assess whether, controlling for bail amounts and other relevant factors, defendants identified as indigent—struggling with poverty and typically represented by public defenders—remained in jail longer, and whether HB 1719 further exacerbated this relationship

**Outcome:** The dependent variable is *censored\_los*, the log-transformed length of stay in jail.

**Dataset:** Analyses were conducted at the court case level. Each observation corresponds to a unique criminal case filed during the study period ( $N = 21,106$ ). See the data cleaning log for treatment of missing values and variable transformations.

**Table D9. Regression Results - LOS with Interaction**

Variable	Coefficient	Std. Error	t/z-stat	p-value	CI Lower	CI Upper
<i>Intercept</i>	-0.051	0.023	-2.171	0.030	-0.097	-0.005
<i>Post-HB1719</i>	0.101	0.013	7.617	0.000*	0.075	0.127
<i>Indigent</i>	0.506	0.015	34.392	0.000*	0.477	0.535
<i>Black</i>	-0.135	0.018	-7.667	0.000*	-0.169	-0.100
<i>Hispanic</i>	0.062	0.027	2.275	0.023*	0.009	0.116
<i>Male</i>	0.315	0.011	27.536	0.000*	0.293	0.338
<i>Violent</i>	0.205	0.021	9.890	0.000*	0.165	0.246
<i>HB1719*Indigent</i>	0.055	0.020	2.798	0.005*	0.017	0.094
<i>Age at Booking</i>	-0.018	0.008	-2.387	0.017*	-0.033	-0.003
<i>Age<sup>2</sup> at booking</i>	-0.011	0.005	-2.237	0.025*	-0.020	-0.001
<i>Max Offense Level</i>	0.190	0.005	40.887	0.000*	0.181	0.199
<i>Past Violent Convictions</i>	0.127	0.022	5.656	0.000*	0.083	0.170
<i>Past Nonviolent Convictions</i>	0.156	0.008	20.770	0.000*	0.141	0.171
<i>Weighted FTA</i>	0.660	0.030	21.843	0.000*	0.601	0.720

\*  $p < 0.05$

**Interpretation:** Controlling for bail amounts, charges, and other relevant factors, the analysis shows that indigent defendants stay in jail longer. Specifically:

- Indigent defendants have an average 51% higher log-LOS compared to non-indigent defendants (*coefficient* = 0.506,  $p < 0.001$ ).
- Post-HB1719, the indigent penalty further increased by 0.055 ( $p = 0.005$ ).
- Translating the interaction term into a real-world effect: post-HB 1719, the *additional* LOS increase for indigent defendants is about 5.7% ( $\exp(0.055) \approx 1.057$ ), controlling for all other variables.
- The primary HB 1719 coefficient (0.101) and the indigent main effect (0.506) are also significant, confirming an overall increase in LOS for indigent defendants, and a greater gap post-reform.

Other covariates show expected and significant effects: male defendants, those with more severe charges, or more prior convictions have longer stays. Black defendants show a shorter LOS compared to White defendants.

**Table D10. Model Fit and Summary Statistics**

<b>Model Statistic</b>	<b>Value</b>
<i>AIC</i>	48317.56457
<i>BIC</i>	48428.96694
<i>Log-Likelihood</i>	-24144.78228
<i>No. Observations</i>	21106
<i>DF Model</i>	13
<i>DF Residuals</i>	21092
<i>R-squared</i>	0.3538289645
<i>Adj. R-squared</i>	0.3534306986
<i>F-statistic</i>	762.9912385
<i>Prob (F-statistic)</i>	0

### Model Robustness and Diagnostics

- **Multicollinearity:** Variance inflation factors (VIF) were examined for all predictors. No predictors had  $VIF > 5$ , indicating no concerning multicollinearity.
- **Influential Observations:** A total of ~100 high-leverage observations were identified (common in large datasets), but none unduly influenced the main results.
- **Residual Diagnostics:**
  - **Jarque-Bera test** for residual normality showed  $p < 0.05$ , indicating residuals are not normally distributed (common with log-transformed outcomes).
  - **Breusch-Pagan test** for heteroscedasticity showed  $p < 0.05$ , indicating heteroscedasticity; robust (HC3) standard errors address this.
  - **Ljung-Box test** for autocorrelation showed  $p < 0.05$ , indicating some autocorrelation.
- **Model Specification:** RESET test suggested possible model misspecification ( $p < 0.05$ ), though the main result remains robust.
- **Hosmer-Lemeshow test** was not applicable for this continuous outcome.
- **Model Fit:**  $R^2$  of 0.354 suggests the model explains a substantial portion of the variation in LOS

**Summary:** While mild heteroscedasticity, autocorrelation, and residual non-normality were detected, the primary finding—that indigent defendants stay in jail longer and this effect increased after HB 1719—remains robust. Robust (HC3) standard errors mitigate heteroscedasticity concerns, and the model captures key policy-relevant relationships.

**CERTIFICATE OF SERVICE**

I certify that the foregoing and the two accompanying exhibits have been served on all counsel of record by email on May 30, 2025.

*/s/ Ashika Verriest*

Ashika Verriest\* (DC Bar No. 90001468)

American Civil Liberties Union Foundation

Criminal Law Reform Project

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*Attorney for Plaintiffs*

**Exhibit A**

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# RYAN CARROLL

raec901@gmail.com — +1-901-603-4825 — LinkedIn — GitHub

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## EDUCATION

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**University of California at Santa Cruz**, Santa Cruz, CA USA

M.S., Mathematics

**September 2012–March 2014**

**Rhodes College**, Memphis, TN USA

B.S., Mathematics, Honors

**August 2008–May 2012**

## EMPLOYMENT HISTORY

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**Paradigm Case Management**, Remote

*Chief Technology Officer (CTO)*

**April 2025–Present**

Technical co-founder of a mission-driven legal technology startup building a modern, scalable case management system for prosecutors. Responsible for cloud infrastructure, data modeling, analytics, and product design in direct collaboration with DAs and staff.

- (1) Design and implement infrastructure for case ingestion, enrichment, and longitudinal tracking across jurisdictions, covering bookings, charges, bail, case outcomes, and system events.
- (2) Architect secure, CJIS-aligned cloud environments on AWS GovCloud using Terraform, ECS-based deployments, and CI/CD with GitHub Actions.
- (3) Build pipelines to normalize complex legal datasets, designed schemas to reflect procedural nuance, and created tools for data validation, tagging, and auditability.
- (4) Lead product development on structured prosecutor workflows—e.g., plea/bail recommendations, diversion tracking, and timeline-based navigation.
- (5) Direct data strategy and analytics to support pattern recognition, equity monitoring, and evaluation of prosecutorial decision-making.

*Technologies:* FastAPI, PostgreSQL (SQLAlchemy), Next.js (TypeScript), Apache Airflow, AWS (GovCloud), Terraform, GitHub Actions, Docker

**Data-Driven Justice (formerly Freelance Consultant)**, Memphis, TN / Remote

*Co-Founder and Principal Consultant*

**February 2019–Present**

Provide data engineering, statistical analysis, and software development services to nonprofits, legal advocacy organizations, and local governments to improve justice system transparency and equity.

- (1) Developed ETL infrastructure and case management tools for criminal justice nonprofits, including eviction, bail, and court reminder systems.
- (2) Designed litigation support analyses and visualizations for ACLU lawsuits on pretrial detention and bail.
- (3) Led consulting engagements with Just City, Colorado Freedom Fund, Hester Street, and Neighborhood Preservation Inc. on jail audits, policing/mental health data, and service workflows.
- (4) Built court data scraping and integration pipelines using Python, Django REST, and Airflow.

*Technologies:* Python, PostgreSQL, Django, Apache Airflow, AWS (Lambda, ECS, RDS, S3), Terraform, Docker, React, Dash/Plotly

### **Just City, Memphis, TN USA**

*Data Scientist*

**March 2022–March 2025**

Led data infrastructure and analysis for a nonprofit advancing bail reform and public accountability in Shelby County. Work included case-level database engineering, applied research, and development of tools to support public defenders, journalists, and community programs.

- (1) Built and maintained a database of 1.3M+ criminal cases, including associated bonds, charges, dispositions, bookings, sentences, and documents, sourced via automated scraping and normalized across disparate systems.
- (2) Developed the Public Data Accountability Project to inform journalists, policymakers, and researchers; produced reports and collaborated with academic partners to advance systemic transparency.
- (3) Designed and deployed court reminder systems for clients of the Public Defender and Community Bail Fund, as well as tools supporting Clean Slate and Court Watch programs.
- (4) Authored report on: *Pretrial Reoffense after the "Standing Bail Order"* and guest column in the Daily Memphian: *New bail law returns us to wealth-based justice system.*

*Technologies:* Python (requests, pytest), React, PostgreSQL, Airtable, AWS (Lambda, SQS, RDS, S3, CloudWatch), Terraform, Docker, GitHub Actions

*Reference:* Yonée Gibson ([yonee@justcity.org](mailto:yonee@justcity.org))

### **World Bank: Data and Evidence for Justice Reform Unit, Washington, DC USA**

*Data Scientist (STC)*

**December 2020–February 2022**

Applied machine learning, natural language processing, and causal inference to justice-sector challenges across multiple international contexts.

- (1) Built machine learning pipelines to triage and accelerate investigations into slavery and labor exploitation for a foreign national prosecutor's office.
- (2) Analyzed race, gender, and ethnic bias in federal judicial language using NLP on district court opinions; engineered judge-specific embeddings and improved bootstrap variance to link previously disjoint corpora.
- (3) Developed CI/CD infrastructure for R Shiny dashboards supporting RCTs in Peru; led ETL design, implemented adaptive experimental pipelines, and co-developed new ML-to-policy interventions.
- (4) Investigated "predicted self" theory in prosecutorial screening decisions in New Orleans (1989–1999) using randomization checks, error analysis, and counterfactual modeling.
- (5) Authored technical grant sections on adaptive learning, combinatorial experimentation, and reinforcement learning for initiatives in Kenya and India.

*Technologies:* Dask, PySpark (Databricks), TensorFlow/Keras, XGBoost, cuML, NLTK, Gensim, Django ORM, R Shiny, Docker, AWS (Fargate, RDS, S3, Lambda, Route53, IAM), Terraform, GitHub Actions

*Reference:* Sandeep Bhupatiraju ([sbhupatiraju@worldbank.org](mailto:sbhupatiraju@worldbank.org))

## **New York University, New York, NY USA**

*Course Research Assistant*

**January 2021–June 2021**

Collaborated with David Rosenberg on the first iteration of his second-year graduate course "Topics in Machine Learning."

- (1) Implemented and evaluated multiple approaches to covariate shift and selection bias; estimated conditional treatment effects; applied Thompson sampling and gradient methods to contextual bandits; conducted counterfactual evaluations on simulated data.
- (2) Designed homework frameworks and code for lab assignments.
- (3) Advised a student project applying bandit algorithms to criminal sentencing under fairness constraints.

*Reference:* David Rosenberg ([dr129@nyu.edu](mailto:dr129@nyu.edu))

## **Just City, Memphis, TN USA**

*Program and Impact Coordinator*

**July 2018–February 2019**

Designed tools to automate client services and improve workflows for expungement and bail fund programs.

- (1) Built an automated expungement tool that scraped and parsed criminal histories, assessed eligibility, pre-filled paperwork, and sent personalized notifications; integrated Airtable-based workflow for staff alerts.
- (2) Developed a court reminder system to improve appearance rates for bail fund clients.

*Technologies:* Python, Airtable API, Twilio API, Gmail API, AWS EC2, Selenium WebDriver

**HopeWorks Adult Education, Memphis, TN USA**

*Lead Instructor and Coordinator of Shelby County Corrections*

**June 2016–June 2018**

Managed a county-wide adult education program in correctional facilities. Taught HiSET math, supervised instructors, developed curriculum, and oversaw educational data tracking.

**University of California, Santa Cruz, Santa Cruz, CA USA**

*Lecturer (Department of Mathematics)*

**June 2014–December 2014**

Taught undergraduate mathematics courses, developed instructional materials, and evaluated student performance as a full-time departmental lecturer.

COMMUNITY INVOLVEMENT

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**Vera Institute of Justice, Brooklyn, NY USA**

*Data Engineer (Pro Bono)*

**June 2020–January 2021**

Supported the In Our Backyards data team by maintaining jail roster scrapers, improving code-base stability, validating data quality, enriching geographic tagging, and building BigQuery views to monitor coverage across jurisdictions.

*Technologies:* pandas, SQLAlchemy, Docker, Google Cloud Platform BigQuery

**Shelby County Election Commission, Memphis, TN USA**

*Deputy Registrar at Shelby County Jail*

**March 2018–November 2018**

Led a voter registration drive inside Shelby County Jail for the 2018 election, registering over 100 incarcerated voters and coordinating with the Election Commission to support in-person ballot access.

**Memphis/Shelby County Jail, Memphis, TN USA**

*Volunteer HiSET/ACT Instructor*

**March 2015–August 2017**

Taught mathematics courses to adults preparing for HiSET exams as part of the jail's first education program in over a decade (450+ hours).

Provided ACT prep instruction to incarcerated youth pursuing high school diplomas (40+ hours).

JOURNAL PUBLICATIONS

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R. Carroll, C. Seaton, *Extensions of the Euler–Satake characteristic and point singularities of orientable 3–orbifolds*, *Kodai Mathematical Journal*, 2013.

R. Carroll, C. Seaton, *Extensions of the Euler–Satake characteristic for nonorientable 3–orbifolds and indistinguishable examples*, *Involve: A Journal of Mathematics*, 2013.

**Exhibit B**

## BOOKING-LEVEL DATA DICTIONARY

column_name	dtype	description	notes	sample_values	methodology
hb1719	categorical	Indicates whether the booking occurred before or after the implementation of HB1719.		pre, post	The hb1719 variable is determined by comparing the booking's entry_date against four fixed policy period dates. Bookings with an entry_date from May 1, 2023 through January 31, 2024 are labeled "pre". Bookings with an entry_date from May 1, 2024 through January 31, 2025 are labeled "post". Bookings outside these ranges are not assigned an hb1719 label and are excluded from pre/post analyses.
exit_type	object	When collecting data from Odyssey, if it detects that bond was posted or a case was disposed, it looks for the exit_date associated with those events and if a booking was ended on one of those dates, it labels this column with that information.	BOND_POSTED: whether bail associated to the booking is paid preceding release  RELEASED_ON_RECOGNIZANCE: if released on non-monetary bail preceding release  SENTENCED: if defendant exits jail following a guilty conviction on an associated offense  CASE_DISPOSED: if exit follows dismissal/nolle pros of case(s) associated to booking	BOND_POSTED, CASE_DISPOSED, RELEASED_ON_RECOGNIZANCE, SENTENCED	Upon release from jail, query all cases related to the booking (and to the defendant) for events related to ROR, bail posting, disposition, or sentencing directly preceding the release date.
violation_of_probation	bool	Whether a VOP event directly preceded this booking		False, True	If one of the following are true: (1) Looking at Case Events from Odyssey, a "Violation of Probation" event directly preceded the booking or (2) a "Violation of Probation" offense is listed on a case associated to the booking.
failure_to_appear	bool	Whether arrest was associated with a "Bench Warrant Arrest" event on an associated case		False, True	If "Bench Warrant Arrest" event on Odyssey happens is recorded on the same day as arrest
fugitive_from_justice	bool	Whether booking was related to fugitive from justice (inferred from the charges of associated cases)		False, True	If a "Fugitive from Justice" offense is associated to a case on the booking.
los_final		Length of stay in jail (days)	Null if defendant is still in jail.		Subtract the booking's entry date from its exit date, setting it to null if the defendant remains in jail.
los_capped	float	Length of stay in jail (capped at 90 days)		2.0, 8.0	LOS capped to 90 days max to ensure right-censoring for pre period bias toward long LOS
case_groups_count	integer	Number/count of case groups	If a General Sessions case and the corresponding Criminal Court case show up on a booking, it counts these as a single "case group" and will be 1	0, 1, 2, ...	Number of cases with distinct charges (determined by offense date) associated to the booking.
male	bool	Whether the defendant is male		False, True	Whether "Sex" field in Jail Roster is labeled as "M"
black	bool	Whether the race of the defendant is characterized as "Black"		True, False	Aggregate value from Jail Roster/Odyssey race and ethnicity from the Jail Roster
hispanic	bool	Whether the ethnicity of the defendant is listed as "Hispanic or Latino"		True, False	Whether jail roster booking displays ethnicity = "Hispanic or Latino"
age_at_booking	float	Age in years at the time of arrest (Normalized to mean = 0 and variance = 1)	Normalized the mean/variance. Added benefit of obscuring potential PII.	0.00123, -0.43	Compute (entry_date - person_dob).days // 365 then shift the mean to 0 and normalize the variance

<b>attorney_type</b>	categorical	Indicates the type of legal counsel for cases associated with the booking.	<p>"appointed" denotes appointed counsel and includes both Public Defender appointments and court-appointed private attorneys.</p> <p>"private" denotes that an attorney is associated to a case on the booking but there is no indication of attorney appointment.</p> <p>Null if no attorney information on case (in Odyssey "Attorney" or "Case Events" fields)</p>	"appointed", "private"	Set to "appointed" if any case associated with the booking has an appointed attorney, as defined in the "cases" data dictionary tab. Otherwise, set to "private" if a private attorney is associated. If no attorney information is present, the field remains null.
<b>indigent</b>	bool	Indicates whether the defendant is considered indigent, meaning they are unable to afford private legal counsel.		False, True	'True` if has_attorney_appointment is `True` for any case associated to the booking
<b>max_offense_level</b>	categorical	Highest level of offense associated to the case.		MISDEMEANOR_C, FELONY_A	Offense levels are ranked according to the following hierarchy: Misdemeanor C < Misdemeanor B < Misdemeanor A < Felony E < Felony D < Felony C < Felony B < Felony A < Felony M.
<b>max_offense_level_ord</b>	integer	Ordinal integer (0–8) representing the most serious offense level associated with the booking. Higher values correspond to more serious charges (e.g., Felony A, M).	Provides a standardized numeric scale to quantify charge severity for analysis.	0, 1, 2, ..., 8	Offense levels are ranked according to the following hierarchy: Misdemeanor C < Misdemeanor B < Misdemeanor A < Felony E < Felony D < Felony C < Felony B < Felony A < Felony M. Each charge's severity is mapped to this ordinal scale, assigning 0 to the least serious (Misdemeanor C) and 8 to the most serious (Felony M).
<b>max_offense</b>	object	The name(s) of the offense(s) corresponding to the highest offense level in the booking. If multiple charges share this highest level, they are sorted alphabetically and concatenated with a ``	Captures the specific offense(s) at the highest severity level for each booking. This helps contextualize risk and exposure to potential sentencing or pretrial detention outcomes.	THEFT OF PROPERTY LESS THAN \$1000, CRIMINAL TRESPASS	All offenses linked to the booking are reviewed to determine the highest offense level. Offenses sharing this highest level are deduplicated and sorted alphabetically. If multiple offenses have the same highest level, they are concatenated using a " " separator to present a comprehensive summary of the most serious charges within the booking.
<b>violent</b>	bool	Whether there is a violent charge (according to FBI UCR) on any case associated to the booking		False, True	`True` if a case on the booking includes at least one charge that aligns with the FBI Uniform Crime Reporting (UCR) definition of violent crimes, including aggravated assault, rape, murder, or robbery.
<b>initial_bail_amount</b>	integer	The sum of all of the initial bail amounts associated to the booking's cases		0, 100000, pd.Nan	For each case on a booking, select the first bail setting amount on all active cases and sum them together to get the aggregate bail amount. If there are any settings which indicate "No Bail Set" (i.e. True for has_nbs_during_booking column) then set to null
<b>eligible</b>	boolean	Eligibility for Just City bail fund	Booking has case with public defender appointment, nonzero bail amount <= \$5,000, and no case associated to the booking has a domestic violence charge	True, False	Derived from (1) has a public defender appointed on an associated case (2) aggregate initial_bail_amount ≤ \$5000, and (3) Domestic Violence is not on an associated case
<b>bail_category</b>	categorical	Binned bond amount		ROR, <=1k, <=5k, etc...	The initial_bail_amount is grouped into ordered bins reflecting affordability and risk exposure:  'ROR': Exactly 0 (released on recognizance). '<=1k': Amounts greater than 0 up to and including 1,000. '<=5k': Amounts greater than 1,000 up to and including 5,000. '<=25k': Amounts greater than 5,000 up to and including 25,000. '<=100k': Amounts greater than 25,000 up to and including 100,000. '>100k': Amounts exceeding 100,000.
<b>bail_category_los_outlier</b>	boolean	Whether a booking's length of stay is above the 95th percentile within a bail category		True, False	Group by bail category and label the top 5% of los lengths as True
<b>bail_posted</b>	boolean	Whether defendant secured pretrial release through paying a monetary bail amount		True, False	'True` if booking exit type equals 'BOND_POSTED'
<b>ror</b>	boolean	Whether defendant secured pretrial release through ROR	Does not differentiate whether the person was RORed initially (just eventually)	True, False	'True` if booking exit type equals 'RELEASED_ON_RECOGNIZANCE'

<b>affordable_bail</b>	boolean	Defendant is able to secure pretrial release by posting bail or non-monetary release within 3 days of booking.		True, False	'True' if (bail_posted == True or ror == True) and LOS <= 3 days
<b>initial_ror</b>	boolean	Released on recognizance within 3 days of release	This allows a check to whether ROR was set in a timely manner (as opposed to someone who is detained for 20 days on nonzero bail amount and then is RORed due to lack of affordability)	True, False	'True' if exit_type == RELEASE_ON_RECOGNIZANCE and los_final <= 3
<b>has_nbs_during_booking</b>	boolean	Whether the defendant was held pretrial without bail during the booking.	Bookings in which this is True often correspond with outliers due to NBS being a strong indicator of confounding factors with the booking or an associated case.	True, False	Whether there is an explicit "HOLD WITHOUT BOND"/"No Bail Set"/"Not Assessed" indicator on a case with set date within the bookings entry_date and exit_date
<b>past_nonviolent_convictions</b>	integer	Number of guilty convictions on non-violent charges prior to booking	Criminal history	0, 1, 2, ...	Count of all distinct offenses for which the defendant was found guilty, the disposition date strictly predates the arrest, and the offense is "violent" = False
<b>past_violent_convictions</b>	integer	Number of guilty convictions on violent charges prior to booking	Criminal history	0, 1, 2, ...	Count of all distinct offenses for which the defendant was found guilty, the disposition date strictly predates the arrest, and the offense is "violent" = True
<b>past_convictions_total</b>	integer	Sum of all criminal misdemeanor/felony convictions where the disposition date is strictly before the booking entry_date	Criminal history	0, 1, 2, ...	The sum of all convictions prior to the booking entry_date: past_nonviolent_convictions + past_violent_convictions
<b>fta_raw_count</b>	integer	Number of FTAs on cases associated to the defendant with dates prior to entry_date	Criminal history	0, 1, 2, ...	Count of the number of "Bench Warrant Issued"/"Conditional Forfeiture" events associated to the defendant (deduplicated by date) prior to booking arrest date
<b>fta_exp_decay</b>	float	This column represents a weighted measure of a defendant's history of failing to appear (FTA) in court.	Each previous FTA event is counted, but events further in the past carry less weight than more recent ones.	0.00123, 2.456	Specifically, each FTA event is weighted using an exponential decay function, based on the amount of time that passed between the FTA event and the current booking. FTAs exactly one half-life period (default = 365 days) before the booking date receive half the weight of an FTA that occurred at the booking date. As a result, this metric places greater emphasis on recent FTAs, reflecting the defendant's recent behavior more prominently while still capturing the longer-term FTA history.
<b>num</b>	string	Unique Shelby County-assigned identifier	PII (available upon request and agreement to CJI data handling standards)		Raw "Booking Number" from Jail Roster
<b>entry_date</b>	object	The date the person was booked into the jail.	PII (available upon request and agreement to CJI data handling standards)		Raw "Commitment Date" from Jail Roster
<b>exit_date</b>	object	The date that the defendant was released and null if the defendant is still in custody.	PII (available upon request and agreement to CJI data handling standards)		Raw "Release Date" from Jail Roster
<b>person_name</b>	string	Defendant's name	PII (available upon request and agreement to CJI data handling standards)		Cleaned "Name" from Odyssey/Jail Roster
<b>person_dob</b>	string	Defendant's date of birth	PII (available upon request and agreement to CJI data handling standards)		Raw "Date of Birth" from Odyssey/Jail Roster
<b>case_groups</b>	string	Collection of Odyssey case groups associated to the booking. A "case group" is a collection of Odyssey cases tracking a single criminal event (and associated charges) as it moves from General Sessions -> Indicted General Sessions -> Criminal courts upon if indicted	PII (available upon request and agreement to CJI data handling standards)		Determined by cases that share defendant and related offenses with single offense_date

## CASE-LEVEL DATA DICTIONARY

column_name	dtype	description	notes	sample_values	methodology
hb1719	categorical	Indicates whether the case was filed before or after the implementation of HB1719.	"pre": Case filed before HB1719 implementation.  "post": Case filed after HB1719 implementation.	pre, post	The hb1719 variable is determined by comparing the case's file date against four fixed policy period dates. Cases with an entry_date from May 1, 2023 through January 31, 2024 are labeled "pre". Cases with a file date from May 1, 2024 through January 31, 2025 are labeled "post". Cases outside these ranges are not assigned an hb1719 label and are excluded from pre/post analyses.
age_at_filing	float	Age in years at the time that the case is filed (Normalized to mean = 0 and variance = 1)	Normalized the mean/variance	0.00123, -0.43	Compute the days between the case filing date and the defendant's date of birth, dividing by 365. The column is then normalized as a whole.
black	bool	Whether the defendant's race is identified as Black		True, False	`True` if the Jail Roster/Odyssey labels the defendant as "Black"
hispanic	bool	Whether the defendant's ethnicity is identified as Hispanic		True, False	`True` if the Jail Roster labels the defendant with ethnicity "Hispanic or Latino"
male	bool	Whether the defendant is male.		True, False	`True` the Jail Roster labels defendant as a male
has_public_defender_appointment	bool	Whether the defendant was appointed a public defender in the case.		True, False	Public Defender appointments are identified explicitly through a "Public Defender Appointed" event, by explicit attorney labeling (e.g., role/title contains "Public Defender"), or inferred when the attorney consistently appears in other cases marked with "Public Defender Appointed" events within a relevant date range.
has_attorney_appointment	bool	Whether the defendant has a public defender or a private attorney assigned to the case.		True, False	True if counsel was assigned by the court, including both Public Defender (PD) and court-appointed private attorneys.  appointed private attorneys are identified when a case explicitly includes a "Private Attorney Appointed" event.  Public Defender appointments are identified using the methodology for has_public_defender_appointment column
indigent	bool	Indicates whether the defendant is considered indigent, meaning they are unable to afford private legal counsel.		True, False	`True` if has_attorney_appointment is `True`
max_offense_level	categorical	Highest level of offense associated to the case.	private if attorney associat	MISDEMEANOR_C, FELONY_A	Offense levels are ranked according to the following hierarchy: Misdemeanor C < Misdemeanor B < Misdemeanor A < Felony E < Felony D < Felony C < Felony B < Felony A < Felony M.
max_offense_level_ord	integer	An ordinal integer variable ranging from 0 to 8 that represents the severity of the most serious charge associated with the case. Higher values correspond to more serious offense levels, with 0 for Misdemeanor C and 8 for Felony M. This mapping is based on the hierarchy of charges used in the dataset.		0, 1, 2, ..., 8	Offense levels are ranked according to the following hierarchy: Misdemeanor C < Misdemeanor B < Misdemeanor A < Felony E < Felony D < Felony C < Felony B < Felony A < Felony M. Each charge's severity is mapped to this ordinal scale, assigning 0 to the least serious (Misdemeanor C) and 8 to the most serious (Felony M).
max_offense	object	Highest-level offense(s) on the case	Null if no attorney on case.	THEFT OF PROPERTY LESS THAN \$1000, CRIMINAL TRESPASS	The offense(s) that correspond to the maximum offense level on the case, sorted alphabetically and deduplicated. If there are multiple offenses corresponding to the highest offense level, they are concatenated with a " " separator.
criminal	bool	Indicates whether the case includes at least one criminal charge.		True, False	`True` if at least one offense on the case corresponds with Title 39 Criminal Offenses of the Tennessee Code or a Driving Under the Influence (Title 55).
violent	bool	Indicates whether the case contains a violent offense.		True, False	`True` if the case includes at least one charge that aligns with the FBI Uniform Crime Reporting (UCR) definition of violent crimes, including aggravated assault, rape, murder, or robbery.
fta_raw_count	integer	Number of FTAs on cases associated to the defendant with dates prior to file_date	Criminal history	0, 1, 2, ...	Count of the number of "Bench Warrant Issued"/"Conditional Forfeiture" events associated to the defendant (deduplicated by date) prior to case file date

<b>fta_exp_decay</b>	float	This column represents a weighted measure of all failures to appear prior to the case's filing date, applying exponential time decay.	Each previous FTA event is counted, but events further in the past carry less weight than more recent ones.	0.00123, 2.12, -0.12	Specifically, each FTA event is weighted using an exponential decay function, based on the amount of time that passed between the FTA event and the current case. FTAs exactly one half-life period (default = 365 days) before the file date receive half the weight of an FTA that occurred at the filing date. As a result, this metric places greater emphasis on recent FTAs, reflecting the defendant's recent behavior more prominently while still capturing the longer-term FTA history.
<b>past_nonviolent_convictions</b>	integer	Number of past convictions for crimes not including violent offenses.		0, 1, 2, ...	Count of all distinct offenses for which the defendant was found guilty, the disposition date strictly predates the arrest, and the offense is "violent" = False
<b>past_violent_convictions</b>	integer	"Number of past convictions for violent offenses only."		0, 1, 2, ...	Count of all distinct offenses for which the defendant was found guilty, the disposition date strictly predates the arrest, and the offense is "violent" = True
<b>initial_bail_amount</b>	integer	The initial bail amount assigned in the case.		0, 100000, pd.Nan	For each case, select the bail amount associated to the first bail setting according to the bail settings date and time
<b>bail_category</b>	categorical	Binned categories of the initial bail amount		ROR, <=1k, <=5k, etc...	The initial_bail_amount is grouped into ordered bins reflecting affordability and risk exposure:  'ROR': Exactly 0 (released on recognizance). '<=1k': Amounts greater than 0 up to and including 1,000. '<=5k': Amounts greater than 1,000 up to and including 5,000. '<=25k': Amounts greater than 5,000 up to and including 25,000. '<=100k': Amounts greater than 25,000 up to and including 100,000. '>100k': Amounts exceeding 100,000.
<b>rор</b>	bool	Whether ROR was the initial bail set		True, False	`True` if the initial_bail_amount on the case is \$0 and `False` otherwise.
<b>roc</b>	bool	Whether the defendant was initially "released on citation"		True, False	`True` if initial_bail_amount is null and the case type is "Misdemeanor Citation"
<b>release</b>	bool	If defendant was initially released on citation or recognizance (aka non-monetary release)		True, False	`True` if the defendant was initially ROCed or RORed on this case and `False` otherwise
<b>case_num</b>	string	The unique, Shelby County-assigned identifier for a case.	PII (available upon request and agreement to CJI data handling standards)		Raw from Odyssey/Jail Roster
<b>file_date</b>	datetime	Date that the case was filed	PII (available upon request and agreement to CJI data handling standards)		Raw from Odyssey
<b>person_name</b>	string	Defendant's name	PII (available upon request and agreement to CJI data handling standards)		Cleaned "Name" from Odyssey/Jail Roster
<b>person_dob</b>	string	Defendant's date of birth	PII (available upon request and agreement to CJI data handling standards)		Raw "Date of Birth" from Odyssey

Exhibit 15:  
August 9, 2022  
Shelby County Board of  
Commissioners Resolution

**SHELBY COUNTY BOARD OF COMMISSIONERS**

SUITE 600 • 160 N. MAIN STREET • MEMPHIS, TENNESSEE 38103

August 9, 2022

Honorable Mayor Lee Harris  
Room 1150 - 160 N. Main  
Memphis, TN 38103

Dear Mayor Harris:

In accordance with Section 2.06(F)(1) of the Shelby County Charter, attached is the attested original Resolution **IN ORDER TO ESTABLISH A NEW BAIL HEARING COURTROOM**, adopted by the Board of County Commissioners on August 8, 2022. I am on this date submitting to you for your signature or veto.

I would appreciate if you would return to me, as soon as possible, the Resolution approved or vetoed by you, and indicating the date of such action, in order that I might make the required distribution.

**Please return this cover letter with this document.**

Sincerely,

Rosalind Nichols  
Clerk of County Commission

Attachment

Item #: 32Moved by: JONESPrepared by: Andrea Woods &  
Marlinee IversonSeconded by: LOWERYReviewed by: Marlinee Iverson  
County Attorney

RESOLUTION OF THE SHELBY COUNTY BOARD OF COMMISSIONERS TO AMEND THE FISCAL YEAR 2023 OPERATING BUDGET AND POSITION CONTROL BUDGET TO ADD AN ADDITIONAL EIGHTEEN (18) FTES AND OTHER NON-RECURRING EXPENSES, IN A TOTAL AMOUNT OF \$2,088,397.89. ALSO TO AMEND THE FY 2023 CAPITAL IMPROVEMENT BUDGET IN AN AMOUNT NOT TO EXCEED \$1,450,000.00, IN ORDER TO ESTABLISH A NEW BAIL HEARING COURTROOM. THIS ITEM REQUIRES THE APPROPRIATION AND EXPENDITURE OF FY 2023 GENERAL FUND BALANCE IN AN AMOUNT NOT TO EXCEED \$2,088,397.89 AND AMENDMENT OF FY 2023 CAPITAL IMPROVEMENT FUNDS IN AN AMOUNT NOT TO EXCEED \$1,450,000.00. SPONSORED BY CHAIRMAN WILLIE F. BROOKS, JR., COMMISSIONER VAN D. TURNER JR., COMMISSIONER TAMI SAWYER, COMMISSIONER EDDIE S. JONES, JR, COMMISSIONER MICKELL M. LOWERY, COMMISSIONER REGINALD MILTON, AND COMMISSIONER MICHAEL WHALEY.

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WHEREAS, The Shelby County Board of Commissioners seeks to increase public safety, reduce County costs, and promote equitable treatment among arrested individuals regardless of financial status; and

WHEREAS, The Shelby County Board of Commissioners seeks to collaborate with Shelby County Judges, Judicial Commissioners, and other criminal justice partners to effectuate the above-stated goals; and

WHEREAS, Pretrial detention should be based on whether the arrested individual is likely to fail to appear in court or poses a threat to public safety rather than the individual's ability to pay money as a condition of pretrial release; and

WHEREAS, Data from diverse jurisdictions around the country show that, in lieu of detention, resources that are made available to arrested individuals, such as court reminders, transportation assistance, housing, medical treatment, and, where necessary, pretrial supervision/monitoring are highly effective measures for assuring future court appearances and public safety<sup>1</sup>; and

WHEREAS, The Constitution for the State of Tennessee affirmatively grants an arrestee the right to pretrial release on bail pending adjudication of criminal charges,<sup>2</sup> and “[a]lthough this right may be forfeited by a defendant’s conduct, every non-capital defendant that enters the Tennessee criminal justice system at least begins with a right to establish some conditions pursuant to which he can obtain his freedom until he is, if ever, convicted”<sup>3</sup>; and

WHEREAS, Tennessee law further requires that judicial officers setting conditions of pretrial release first consider whether to release a non-capital arrestee on their own recognizance or an unsecured bail requirement, and thereafter, proceed to impose a

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<sup>1</sup> Ross Hatton, “Research on the Effectiveness of Pretrial Court Date Reminder Systems,” UNC School of Government Criminal Justice Innovation Lab (Mar. 2020), <https://cjl.sog.unc.edu/wp-content/uploads/sites/19452/2020/03/Court-Date-Notifications-Briefing-Paper.pdf> (providing an analysis of available data on pretrial court date reminder systems finding that most state’s programs resulted in statistically significant improvements for failure to appear rates); Adam Uren, “Low-income Suspects to Get Free Rides to Court under Minneapolis Pilot,” Bring Me The News (Jan. 4, 2019), <https://bringmethenews.com/minnesota-news/low-income-suspects-to-get-free-rides-to-court-under-minneapolis-pilot>; Stephen Metraux, et. al, “Incarceration and Homelessness,” National Symposium on Homelessness Research, 9-6 (Mar. 1-2 2007), <https://www.huduser.gov/publications/pdf/p9.pdf> (“[T]he number of persons exiting jails who become homeless is ... large[]). Metraux and Culhane (2003) found that, among 76,111 persons released from New York City jails in 1997, 5.5 percent entered New York City shelters for single adults in the subsequent two-year period.”).

<sup>2</sup> See *State v. Burgins*, 464 S.W. 3d 298, 304 (Tenn. 2015); *Swain v. State*, 527 S.W.2d 119, 120 (Tenn. 1975); *Goins v. State*, 237 S.W.2d 8 (1950); *Hicks v. State*, 168 S.W.2d 781 (1943); *Butt v. State*, 175 S.W. 529 (1914).

<sup>3</sup> *Nashville Cmty. Bail Fund v. Gentry*, 496 F. Supp. 3d 1112, 1118 (M.D. Tenn. 2020).

secured money bail requirement “[o]nly if the court determines that ‘conditions on a release on recognizance’ have not been shown to reasonably assure the defendant’s appearance.”<sup>4</sup>; and

WHEREAS, Numerous courts across the country, including in Tennessee,<sup>5</sup> have determined that unaffordable bail may only be set upon a finding that detention is necessary upon considering less restrictive alternatives at an adversarial bail hearing and that wealth-based detention otherwise violates the Fourteenth Amendment to the United States Constitution; and

WHEREAS, Electronic data collection and processing systems currently exist to allow for reporting information about the people brought before the criminal courts of Shelby County and into the Shelby County Jail, and such data is critical to understanding the impact, outcomes, and costs of the current pretrial detention scheme in Shelby County; and

WHEREAS, The Board of Commissioners is the legislative body of Shelby County Government and is, in part, responsible for appointing judicial commissioners, annually reviewing the judicial commissioner program, creating an annual report regarding the

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<sup>4</sup> Tenn. Code Ann. § 40-11-115(b); *Graham v. Gen. Sessions Court*, 157 S.W.3d 790, 793 (Tenn. Ct. App. 2004), *Nashville Cmty. Bail Fund*, 496 F. Supp. 3d at 1119; Tenn. Code Ann. § 40-11-117; *Graham*, 157 S.W.3d at 793.

<sup>5</sup> See *McNeil v. Cmty. Prob. Servs., LLC*, 2019 WL 633012, at \*13 (M.D. Tenn. Feb. 14, 2019), *aff'd*, 945 F.3d 991 (6th Cir. 2019) (enjoining Giles County from detaining individuals on money bail for probation violations without adequate findings); *Torres v. Collins*, 2020 WL 7706883, at \*8 (E.D. Tenn. Nov. 30, 2020) (bail system in Hamblen County enjoyed for violating due process rights as “detention infringes upon the fundamental right of an individual’s personal liberty.”); *Rodriguez v. Providence Community Corrections, Inc.*, 155 F. Supp. 3d 758 (M.D. Tenn. 2015) (enjoining Rutherford County’s practice of jailing individuals on unaffordable bail).

“overall evaluation” of the judicial commissioner program, and setting the salaries of judicial commissioners;<sup>6</sup> and

WHEREAS, The Board of Commissioners finds it has a legal and fiscal interest in ensuring that the judicial commissioners, who are appointed and annually reviewed by this body, comply with Tennessee and federal law in pretrial detention issues; and

WHEREAS, The Board of Commissioners is also responsible for approving the County's annual fiscal budget, including the annual costs allocated to the Shelby County Sheriff Office's for the provision and maintenance of pretrial detention facilities for youth and adults; and

WHEREAS, The Board of Commissioners finds it fiscally prudent to reduce the costs of unnecessary pretrial detention; and

WHEREAS, The Honorable Judges for the Criminal Division of the Shelby County General Sessions Courts have been asked to adopt a Standing Bail Order, consistent with the Constitutions of the United States and State of Tennessee as well as all applicable state and federal law, setting forth a fair and constitutionally-adequate process for the consideration and setting of bail; and

WHEREAS, The Board of Commissioners commits to providing funding for Shelby County's new pretrial release and bail system as set forth in the Standing Bail Order; and

WHEREAS, Following two days of a guided mediated discussion, Shelby County and various advocacy groups executed a Memorandum of Understanding to work collectively to avoid unnecessary and costly litigation; and

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<sup>6</sup>Tenn. Code Ann. § 40-1-111.

WHEREAS, The Board of County Commissioners finds it necessary to amend the FY 2023 Operating Budget and Position Control Budget, contingent upon adoption of the Standing Bail Order, to appropriate funding necessary to carry out the parameters of this Resolution for the establishment of a new bail hearing courtroom, as more specifically referenced in Exhibit A and to transfer funds consistent with Exhibit B.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That this Resolution amending the Fiscal Year 2023 Operating Budget and Position Control Budget to fund expenses and personnel and that this Resolution amending the Fiscal Year 2023 Capital Improvement Budget as seen in attached Exhibit A and B hereby incorporated by reference and contingent upon enactment of the Standing Bail Order moving Judicial Commissioners of Shelby County, Tennessee, to impose the requirements of the Standing Bail Order and with select terms defined below, is hereby approved:

1. Pursuant to the Standing Bail Order, Judicial Commissioners may only impose a secured money bail requirement after finding and affirming on the record that in each arrested individual's case, release on recognizance or an unsecured bail, with or without other conditions, will not reasonably assure their future court appearance or the safety of the public, based on all factors articulated in Tenn. Code Ann. § 40-11-115(b);
2. Pursuant to the Standing Bail Order, Judicial Commissioners may only impose a secured money bail requirement after considering an individual's ability to pay the amount of money imposed as bail, considering all income, assets, expenses, debts, and dependents, and determining what amount is affordable to the individual, where "affordable" generally means the individual can pay the amount within a period of 24 hours without borrowing money. This determination may be made by a financial assessment tool administered by Pretrial Services;
3. Pursuant to the Standing Bail Order, if a Judicial Commissioner intends to set an unaffordable bail amount, they may only do so upon a finding that a) pretrial detention is necessary to reasonably assure future court appearance and the safety of the community and b) detention is the "least restrictive condition" available to reasonably assure the individual's future court appearance and the safety of the community. Further, any such finding must be made at a public bail hearing as prescribed by the Standing Bail Order.

BE IT FURTHER RESOLVED, That the Board of County Commissioners supports the Standing Bail Order, which will positively reform bail setting practices and avoid unnecessary and threatened litigation, thereby ensuring that time and resources that would otherwise be spent in such litigation are devoted to improving systems and outcomes for Shelby County residents.

BE IT FURTHER RESOLVED, That the Board of County Commissioners desires to support efforts made to further the goals of increasing the pretrial release rate as provided by state and federal law.

BE IT FURTHER RESOLVED, That there will be an implementation period of six (6) months from the date that both this Resolution is passed and the Standing Bail Order is enacted in order to adopt systems that fully comply with both this Resolution and the Standing Bail Order.

BE IT FURTHER RESOLVED, That the Board of Commissioners will continue to seek regular reporting of data from the Judicial Commissioners' program and review such information for its consistency with the terms of the Standing Bail Order and this Resolution in making its annual fiscal decision as to whether to renew and continue to fund the program.

BE IT FURTHER RESOLVED, That, in order to facilitate the Board of Commissioner's review of the Judicial Commissioners program, reports containing information defined below from the Judicial Commissioners, Clerk of Court, and/or the Shelby County Pretrial Services Office are deemed necessary to review the progress of the judicial commissioner program and are due every six months for the first two years after adoption of this Resolution and annually thereafter:

1. *Initial Pretrial Release Screening:* information showing the total number of persons arrested over the reporting period, a breakdown of the outcomes of the initial screening done by the on-duty judicial commissioner across all cases, and any additional case information that can be summarized (i.e. screening outcomes by charge, race of defendant and other metrics collected by Pretrial Services).
  - a. Release outcomes should demonstrate the number of people released on recognizance, the number released on conditions (and, if possible, which conditions imposed), the number of people for whom bail was set at initial screening (and if so, in what amounts), and the number of people set on for a further bail hearing.
  - b. Release outcomes should be reported as to each individual judicial commissioner.
  - c. This body should also be able to review the number of cases in which the on-call judicial commissioner appoints the Public Defender's office as counsel, as well as the number of cases in which conflict counsel is appointed.
2. *Subsequent Bail Hearings:* information showing the total number of persons who proceed to a full bail hearing, a breakdown of the outcomes of the bail hearings, and confirmation of whether counsel was made available for all those eligible, and any additional case information that can be summarized (i.e., bail court outcomes by charge, race of defendant, and/or by other metrics collected by Pretrial Services).
  - a. Bail court outcomes information should show the total number of people who proceed to a bail hearing who are: released on recognizance, released on conditions (and, if possible, which conditions imposed), the number of people released on a bail amount deemed affordable to them, and the number of people detained on an unaffordable bail amount.
  - b. Bail court outcomes data should include the name of the presiding judge or judicial commissioner.
  - c. Bail court outcomes should also show the number of people who required a review of a release condition or bail setting that inadvertently kept them in custody (and if possible, the circumstances of their inadvertent detention).
3. *Timing:* Information showing that individuals are receiving bail court hearings no later than 72 hours after arrest and flagging any cases in which that did not occur.
  - a. Information demonstrating the total length of pretrial detention by category: those released on their own recognizance, those released on other conditions, those released on bail, and those detained on unaffordable bail.
4. *Rates of Pretrial Success/Failure:* Information showing longer-term case outcomes among the population of people released, including, for the reporting period:
  - a. The total number of persons released pretrial;
  - b. The total number of persons who subsequently failed to appear for a required court appearance;
  - c. The total number of persons who are subsequently arrested while on pretrial release.

- d. If possible, the case information captured in this section should include: (a) the method of the individual's release, i.e. recognizance, other conditions, a secured or unsecured bail; (b) the pending charge; and (c) the race and other demographic data of the defendant.

BE IT FURTHER RESOLVED, That the Judicial Commissioners, the General Sessions Court Clerk, and/or the Shelby County Pretrial Services Division are to compile and report to this body a baseline data set of the foregoing metrics from the September 1, 2022 through February 31, 2023, no later than March 30, 2023.

BE IT FURTHER RESOLVED, That these funds provided herein shall be appropriated in accordance with this Resolution and relevant law.

BE IT FURTHER RESOLVED, The Board of County Commissioners find it necessary to transfer \$2,088,397.89 from Account No. 010-201201-9999 to various accounts identified in Exhibit A and to further amend the FY 2023 Capital Improvement Plan Budget to approve \$1,450,000.00 in capital expenditures necessary to further the program defined by this Resolution.

BE IT FURTHER RESOLVED, That the Purchasing Department is hereby authorized to issue purchase orders pursuant to purchases, subject to the availability of funds at the time the purchase orders are issued.

BE IT FURTHER RESOLVED, That the County Mayor and the Director of Administration and Finance are authorized to issue their warrant or warrants in amounts not to exceed \$2,088,397.89 in Personnel and Operating and Maintenance expenses, and \$1,450,000.00 in Capital Improvements and to take proper credit in their accounting therefor.

BE IT FURTHER RESOLVED, That the County Mayor is hereby authorized to execute any and all documents on behalf of Shelby County Government necessary to

comply with the purpose and intent of this Resolution, executed copies of which shall be placed on file in the Contracts Administration section of the County Attorney's Office.

BE IT FURTHER RESOLVED, That if any clause, section, paragraph, sentence or part of this Resolution shall be held or declared to be unconstitutional and void, it shall not affect the remaining parts of this Resolution, it being hereby declared to be the legislative intent of the Shelby County Board of Commissioners to have passed the remainder of this Resolution notwithstanding the part so held unconstitutional and void, if any.

BE IT FURTHER RESOLVED, That this Resolution shall become effective in accordance with the Shelby County Charter, Article II, Section 2.06(B).



\_\_\_\_\_  
Lee Harris  
Shelby County Mayor

Date: 8/10/2022

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED: August 8, 2022

## SUMMARY SHEET

### I. Description of Item

Resolution to amend the FY 2023 Operations, Personnel, and CIP Budgets in order to fund the creation of a bail hearing room.. This item requires the expenditure of FY 2023 General Fund-Fund Balance funds in an amount not to exceed \$2,088,397.89 and the amendment to the FY 2023 Capital Improvement funds in an amount not to exceed \$1,450,000.00.

### II. Source and Amount of Funding

FY 2023 General Fund Balance funds in an amount of \$2,088,397.89 and FY 2023 Capital Improvement funds in an amount of \$1,450,000.00.

### III. Communicate How the Resolution Affects:

A. Sub-awards- None.

B. Personnel- 18 FTEs

C. Equipment- None

D. Contracts- None.

### IV. Additional Information Relevant to Approval of this Item

Administration recommends approval of this resolution.

EXHIBIT A - General Fund

SHELBY COUNTY GOVERNMENT  
 BUDGET AMENDMENT

FY 2023  
 July 1, 2022 - June 30, 2023

Fund	Section	Account Description	Current Budget	Budget Amendment	Amended Budget
		Planned use of Fund Balance		(2,088,397.89)	
<b>10</b>	<b>481101</b>	<b>Pretrial Services</b>			
		5102 - Salaries & Labor	2,716,405.00	39,007.39	2,755,412.39
		5254 - Overtime	-	-	-
		5510 - Retirement Benefits - County	651,122.00	9,350.00	660,472.00
		5516 - Medicare Employer Contributions	39,624.00	566.00	40,190.00
		5520 - Group Life Insurance Benefit	22,818.00	328.00	23,146.00
		5542 - Group Health Insurance - HRA	70,071.00	8,040.00	78,111.00
		5560 - Long Term Disability Benefit	10,322.00	148.00	10,470.00
		5591 - On-Job-Injury Benefit Expense	10,931.00	156.00	11,087.00
		5592 - Unemployment Compensation Benefit	2,733.00	39.00	2,772.00
		6016 - Computer Supplies	11,430.00	34,700.00	46,130.00
		6023 - Educational Supplies & Materials	-	-	-
		<b>Total</b>	<b>3,535,456.00</b>	<b>92,334.39</b>	<b>3,627,790.39</b>
<b>31</b>	<b>630101</b>	<b>Jail Administration</b>			
		5102 - Salaries & Labor	1,752,846.00	500,829.00	2,253,675.00
		5254 - Overtime	1,000.00	-	1,000.00
		5510 - Retirement Benefits - County	420,157.00	120,049.00	540,206.00
		5516 - Medicare Employer Contributions	25,416.00	7,262.00	32,678.00
		5520 - Group Life Insurance Benefit	14,724.00	4,207.00	18,931.00
		5542 - Group Health Insurance - HRA	42,101.00	64,320.00	106,421.00
		5560 - Long Term Disability Benefit	6,661.00	1,903.00	8,564.00
		5591 - On-Job-Injury Benefit Expense	7,011.00	2,003.00	9,014.00
		5592 - Unemployment Compensation Benefit	1,753.00	501.00	2,254.00
		6016 - Computer Supplies	47,000.00	-	47,000.00
		6023 - Educational Supplies & Materials	-	-	-
		<b>Total</b>	<b>2,318,669.00</b>	<b>701,074.00</b>	<b>3,019,743.00</b>
<b>35</b>	<b>704111</b>	<b>General Sessions Criminal Court Clerk</b>			
		5102 - Salaries & Labor	3,972,336.00	76,956.00	4,049,292.00
		5254 - Overtime	-	-	-
		5510 - Retirement Benefits - County	952,169.00	18,446.00	970,615.00
		5516 - Medicare Employer Contributions	59,718.00	1,116.00	60,834.00
		5520 - Group Life Insurance Benefit	33,368.00	646.00	34,014.00
		5542 - Group Health Insurance - HRA	67,870.00	16,080.00	83,950.00
		5560 - Long Term Disability Benefit	15,095.00	292.00	15,387.00
		5591 - On-Job-Injury Benefit Expense	16,474.00	308.00	16,782.00
		5592 - Unemployment Compensation Benefit	4,118.00	77.00	4,195.00
		6016 - Computer Supplies	20,075.00	1,863.00	21,938.00
		6023 - Educational Supplies & Materials	-	-	-
		<b>Total</b>	<b>5,141,223.00</b>	<b>115,784.00</b>	<b>5,257,007.00</b>
<b>35</b>	<b>704112</b>	<b>Gen Sessions Criminal Court Judges</b>			
		5102 - Salaries & Labor	3,561,859.00	488,120.00	4,049,979.00
		5254 - Overtime	-	-	-
		5510 - Retirement Benefits - County	853,778.00	117,002.00	970,780.00
		5516 - Medicare Employer Contributions	51,647.00	7,078.00	58,725.00
		5520 - Group Life Insurance Benefit	29,920.00	4,100.00	34,020.00
		5542 - Group Health Insurance - HRA	47,397.00	32,160.00	79,557.00
		5560 - Long Term Disability Benefit	13,535.00	1,855.00	15,390.00

5591 - On-Job-Injury Benefit Expense	14,247.00	1,952.00	16,199.00
5592 - Unemployment Compensation Benefit	3,562.00	488.00	4,050.00
6016 - Computer Supplies	1,800.00		1,800.00
<b>Total</b>	<b>4,577,745.00</b>	<b>652,755.00</b>	<b>5,230,500.00</b>

**10 708001 Public Defender**

5102 - Salaries & Labor	8,641,317.00	248,593.00	8,889,910.00
5254 - Overtime	-	1,397.00	1,397.00
5295 - Salary Changes	553,124.00	-	553,124.00
5510 - Retirement Benefits - County	2,071,324.00	59,588.00	2,130,912.00
5516 - Medicare Employer Contributions	128,980.00	3,605.00	132,585.00
5520 - Group Life Insurance Benefit	72,587.00	2,088.00	74,675.00
5542 - Group Health Insurance - HRA	212,712.00	40,200.00	252,912.00
5560 - Long Term Disability Benefit	32,837.00	945.00	33,782.00
5591 - On-Job-Injury Benefit Expense	35,581.00	994.00	36,575.00
5592 - Unemployment Compensation Benefit	8,895.00	249.00	9,144.00
6016 - Computer Supplies	8,000.00	-	8,000.00
6023 - Educational Supplies & Materials	-	1,504.50	1,504.50
<b>Total</b>	<b>11,765,357.00</b>	<b>359,163.50</b>	<b>12,124,520.50</b>

**38 709001 Attorney General**

5102 - Salaries & Labor	8,866,654.00	105,553.00	8,972,207.00
5254 - Overtime	8,560.00	15,000.00	23,560.00
5510 - Retirement Benefits - County	2,125,337.00	25,301.00	2,150,638.00
5516 - Medicare Employer Contributions	132,299.00	1,531.00	133,830.00
5520 - Group Life Insurance Benefit	74,480.00	887.00	75,367.00
5542 - Group Health Insurance - HRA	278,110.00	16,080.00	294,190.00
5560 - Long Term Disability Benefit	33,693.00	401.00	34,094.00
5591 - On-Job-Injury Benefit Expense	36,496.00	422.00	36,918.00
5592 - Unemployment Compensation Benefit	9,124.00	106.00	9,230.00
6023 - Educational Supplies & Materials	-	2,006.00	2,006.00
<b>Total</b>	<b>11,564,753.00</b>	<b>167,287.00</b>	<b>11,732,040.00</b>

\$ 2,088,397.89

Net Resolution

\$ -

**EXHIBIT A - CIP  
SHELBY COUNTY GOVERNMENT  
BUDGET AMENDMENT  
FY2023**

ACCT NO	DESCRIPTION	CURRENT BUDGET	BUDGET ADJUSTMENT	BUDGET AS AMENDED
<b>911-630178</b>	<b>CJC Interior Renovation</b>			
7076	CIP - Construction Contracts	\$7,460,000.00	\$1,450,000.00	\$8,910,000.00
7079	CIP - Other Project Costs	\$740,000.00		\$740,000.00
	Net Operations	<u>\$8,200,000.00</u>	<u>\$1,450,000.00</u>	<u>\$9,650,000.00</u>
<b>911-201299</b>	<b>Contingency</b>			
7079	CIP - Other Project Costs	\$850,000.00	(\$850,000.00)	\$0.00
	Net Operations	<u>\$850,000.00</u>	<u>(\$850,000.00)</u>	<u>\$0.00</u>
<b>911-307391</b>	<b>PEAB Upgrades/Renovations</b>			
7072	CIP - Architectural & Engineering Services	\$600,000.00	(\$600,000.00)	\$0.00
	Net Operations	<u>\$600,000.00</u>	<u>(\$600,000.00)</u>	<u>\$0.00</u>
			<u>\$0.00</u>	

**FY23 FRINGE CALCULATION WORKSHEET**

Fund-Section: 038-709001 Cost Center # E0501 Date: 07/26/22

*\*For vacant positions (>=30 hours per week), include \$8,040 for health insurance.*

ACCOUNT 5102 - PERMANENT OR DURATIONAL EMPLOYEES					Pension	OPEB	FICA	MQFE	Group Life	LTD	OJI	Unemploy	Total
Position Number	Position Title	# of Positions	Enter Salary	Health Insurance	23.97% 5510	0.00% 5511	6.200% 5515	1.450% 5516	0.840% 5520	0.380% 5560	0.400% 5591	0.100% 5592	Fringe Cost
1)	TBD	1	52,776	8,040	12,651	0	N/A	765	443	201	211	53	22,364
2)	TBD	1	52,776	8,040	12,651	0	N/A	765	443	201	211	53	22,364
3)					0	0	N/A	0	0	0	0	0	0
4)					0	0	N/A	0	0	0	0	0	0
5)					0	0	N/A	0	0	0	0	0	0
6)					0	0	N/A	0	0	0	0	0	0
7)					0	0	N/A	0	0	0	0	0	0
8)					0	0	N/A	0	0	0	0	0	0
9)					0	0	N/A	0	0	0	0	0	0
10)					0	0	N/A	0	0	0	0	0	0
11)					0	0	N/A	0	0	0	0	0	0
12)					0	0	N/A	0	0	0	0	0	0
<b>TOTAL PERMANENT:</b>		<b>2</b>	<b>105,553</b>	<b>N/A</b>	<b>25,301</b>	<b>0</b>	<b>N/A</b>	<b>1,531</b>	<b>887</b>	<b>401</b>	<b>422</b>	<b>106</b>	<b>44,727</b>

PCB-1

ACCOUNT 5109 - TEMPORARY EMPLOYEES					5510	5511	5515	5516	5520	5560	5591	5592	FRINGE
1)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
2)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
3)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
4)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
5)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
<b>TOTAL TEMPORARY:</b>		<b>0</b>	<b>-</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>0</b>	<b>0</b>	<b>N/A</b>	<b>N/A</b>	<b>0</b>	<b>0</b>	<b>0</b>

**GRAND TOTAL:**

<b>2</b>	<b>105,553</b>	<b>N/A</b>	<b>25,301</b>	<b>0</b>	<b>0</b>	<b>1,531</b>	<b>887</b>	<b>401</b>	<b>422</b>	<b>106</b>	<b>44,727</b>
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**FY23 FRINGE CALCULATION WORKSHEET**

Fund-Section: 010-708001 Cost Center # A0701 Date: 07/26/22

*\*For vacant positions (>=30 hours per week), include \$8,040 for health insurance.*

ACCOUNT 5102 - PERMANENT OR DURATIONAL EMPLOYEES					Pension	OPEB	FICA	MQFE	Group Life	LTD	OJI	Unemploy	Total
Position Number	Position Title	# of Positions	Enter Salary	Health Insurance	23.97% 5510	0.00% 5511	6.200% 5515	1.450% 5516	0.840% 5520	0.380% 5560	0.400% 5591	0.100% 5592	Fringe Cost
1)	TBD Assistant Pub Def	1	67,542	8,040	16,190	0	N/A	979	567	257	270	68	26,371
2)	TBD Assistant Pub Def	1	67,542	8,040	16,190	0	N/A	979	567	257	270	68	26,371
3)	TBD Litigation Assist	1	37,500	8,040	8,989	0	N/A	544	315	143	150	38	18,218
4)	TBD Litigation Assist	1	37,500	8,040	8,989	0	N/A	544	315	143	150	38	18,218
5)	TBD Client Serv Spec	1	38,510	8,040	9,231	0	N/A	558	323	146	154	39	18,492
6)					0	0	N/A	0	0	0	0	0	0
7)					0	0	N/A	0	0	0	0	0	0
8)					0	0	N/A	0	0	0	0	0	0
9)					0	0	N/A	0	0	0	0	0	0
10)					0	0	N/A	0	0	0	0	0	0
11)					0	0	N/A	0	0	0	0	0	0
12)					0	0	N/A	0	0	0	0	0	0
<b>TOTAL PERMANENT:</b>		<b>5</b>	<b>248,593</b>	<b>N/A</b>	<b>59,588</b>	<b>0</b>	<b>N/A</b>	<b>3,605</b>	<b>2,088</b>	<b>945</b>	<b>994</b>	<b>249</b>	<b>107,668</b>

PCB-1

ACCOUNT 5109 - TEMPORARY EMPLOYEES					5510	5511	5515	5516	5520	5560	5591	5592	FRINGE
1)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
2)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
3)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
4)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
5)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
<b>TOTAL TEMPORARY:</b>		<b>0</b>	<b>-</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>0</b>	<b>0</b>	<b>N/A</b>	<b>N/A</b>	<b>0</b>	<b>0</b>	<b>0</b>

**GRAND TOTAL:**

<b>5</b>	<b>248,593</b>	<b>N/A</b>	<b>59,588</b>	<b>0</b>	<b>0</b>	<b>3,605</b>	<b>2,088</b>	<b>945</b>	<b>994</b>	<b>249</b>	<b>107,668</b>
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**FY23 FRINGE CALCULATION WORKSHEET**

Fund-Section: 035-704112 Cost Center # J0501 Date: 07/26/22

*\*For vacant positions (>=30 hours per week), include \$8,040 for health insurance.*

ACCOUNT 5102 - PERMANENT OR DURATIONAL EMPLOYEES					Pension	OPEB	FICA	MQFE	Group Life	LTD	OJI	Unemploy	Total
Position Number	Position Title	# of Positions	Enter Salary	Health Insurance	23.97% 5510	0.00% 5511	6.200% 5515	1.450% 5516	0.840% 5520	0.380% 5560	0.400% 5591	0.100% 5592	Fringe Cost
1)	TBD Judicial Commissione	4	488,120	32,160	117,002	0	N/A	7,078	4,100	1,855	1,952	488	164,636
2)					0	0	N/A	0	0	0	0	0	0
3)					0	0	N/A	0	0	0	0	0	0
4)					0	0	N/A	0	0	0	0	0	0
5)					0	0	N/A	0	0	0	0	0	0
6)					0	0	N/A	0	0	0	0	0	0
7)					0	0	N/A	0	0	0	0	0	0
8)					0	0	N/A	0	0	0	0	0	0
9)					0	0	N/A	0	0	0	0	0	0
10)					0	0	N/A	0	0	0	0	0	0
11)					0	0	N/A	0	0	0	0	0	0
12)					0	0	N/A	0	0	0	0	0	0
<b>TOTAL PERMANENT:</b>		<b>4</b>	<b>488,120</b>	<b>N/A</b>	<b>117,002</b>	<b>0</b>	<b>N/A</b>	<b>7,078</b>	<b>4,100</b>	<b>1,855</b>	<b>1,952</b>	<b>488</b>	<b>164,636</b>

PCB-1

ACCOUNT 5109 - TEMPORARY EMPLOYEES					5510	5511	5515	5516	5520	5560	5591	5592	FRINGE
1)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
2)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
3)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
4)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
5)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
<b>TOTAL TEMPORARY:</b>		<b>0</b>	<b>-</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>0</b>	<b>0</b>	<b>N/A</b>	<b>N/A</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>GRAND TOTAL:</b>		<b>4</b>	<b>488,120</b>	<b>N/A</b>	<b>117,002</b>	<b>0</b>	<b>0</b>	<b>7,078</b>	<b>4,100</b>	<b>1,855</b>	<b>1,952</b>	<b>488</b>	<b>164,636</b>
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Total Position Cost
652,756
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652,756

TOTAL
-
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652,756

**FY23 FRINGE CALCULATION WORKSHEET**

Fund-Section: 031-630101 Cost Center # L3101 Date: 07/26/22

*\*For vacant positions (>=30 hours per week), include \$8,040 for health insurance.*

ACCOUNT 5102 - PERMANENT OR DURATIONAL EMPLOYEES					Pension	OPEB	FICA	MQFE	Group Life	LTD	OJI	Unemploy	Total
Position Number	Position Title	# of Positions	Enter Salary	Health Insurance	23.97% 5510	0.00% 5511	6.200% 5515	1.450% 5516	0.840% 5520	0.380% 5560	0.400% 5591	0.100% 5592	Fringe Cost
1)	TBD	4	278,992	32,160	66,874	0	N/A	4,045	2,344	1,060	1,116	279	107,878
2)	TBD	4	221,837	32,160	53,174	0	N/A	3,217	1,863	843	887	222	92,367
3)					0	0	N/A	0	0	0	0	0	0
4)					0	0	N/A	0	0	0	0	0	0
5)					0	0	N/A	0	0	0	0	0	0
6)					0	0	N/A	0	0	0	0	0	0
7)					0	0	N/A	0	0	0	0	0	0
8)					0	0	N/A	0	0	0	0	0	0
9)					0	0	N/A	0	0	0	0	0	0
10)					0	0	N/A	0	0	0	0	0	0
11)					0	0	N/A	0	0	0	0	0	0
12)					0	0	N/A	0	0	0	0	0	0
<b>TOTAL PERMANENT:</b>		<b>8</b>	<b>500,829</b>	<b>N/A</b>	<b>120,049</b>	<b>0</b>	<b>N/A</b>	<b>7,262</b>	<b>4,207</b>	<b>1,903</b>	<b>2,003</b>	<b>501</b>	<b>200,245</b>

PCB-1

ACCOUNT 5109 - TEMPORARY EMPLOYEES					5510	5511	5515	5516	5520	5560	5591	5592	FRINGE
1)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
2)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
3)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
4)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
5)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
<b>TOTAL TEMPORARY:</b>		<b>0</b>	<b>-</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>0</b>	<b>0</b>	<b>N/A</b>	<b>N/A</b>	<b>0</b>	<b>0</b>	<b>0</b>

**GRAND TOTAL:**

<b>8</b>	<b>500,829</b>	<b>N/A</b>	<b>120,049</b>	<b>0</b>	<b>0</b>	<b>7,262</b>	<b>4,207</b>	<b>1,903</b>	<b>2,003</b>	<b>501</b>	<b>200,245</b>
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**FY23 FRINGE CALCULATION WORKSHEET**

Fund-Section: 010-481101 Cost Center # S1101 Date: 07/26/22

*\*For vacant positions (>=30 hours per week), include \$8,040 for health insurance.*

ACCOUNT 5102 - PERMANENT OR DURATIONAL EMPLOYEES					Pension	OPEB	FICA	MQFE	Group Life	LTD	OJI	Unemploy	Total	
Position Number	Position Title	# of Positions	Enter Salary	Health Insurance	23.97% 5510	0.00% 5511	6.200% 5515	1.450% 5516	0.840% 5520	0.380% 5560	0.400% 5591	0.100% 5592	Fringe Cost	
PCB-1	1) TBD	Court Facilitator	1	39,007	8,040	9,350	0	N/A	566	328	148	156	39	18,627
	2)				0	0	N/A	0	0	0	0	0	0	0
	3)				0	0	N/A	0	0	0	0	0	0	0
	4)				0	0	N/A	0	0	0	0	0	0	0
	5)				0	0	N/A	0	0	0	0	0	0	0
	6)				0	0	N/A	0	0	0	0	0	0	0
	7)				0	0	N/A	0	0	0	0	0	0	0
	8)				0	0	N/A	0	0	0	0	0	0	0
	9)				0	0	N/A	0	0	0	0	0	0	0
	10)				0	0	N/A	0	0	0	0	0	0	0
	11)				0	0	N/A	0	0	0	0	0	0	0
	12)				0	0	N/A	0	0	0	0	0	0	0
<b>TOTAL PERMANENT:</b>		<b>1</b>	<b>39,007</b>	<b>N/A</b>	<b>9,350</b>	<b>0</b>	<b>N/A</b>	<b>566</b>	<b>328</b>	<b>148</b>	<b>156</b>	<b>39</b>	<b>18,627</b>	
ACCOUNT 5109 - TEMPORARY EMPLOYEES					5510	5511	5515	5516	5520	5560	5591	5592	FRINGE	
TEMP	1)			N/A	N/A	N/A	0	0	N/A	N/A	0	0	0	
	2)			N/A	N/A	N/A	0	0	N/A	N/A	0	0	0	
	3)			N/A	N/A	N/A	0	0	N/A	N/A	0	0	0	
	4)			N/A	N/A	N/A	0	0	N/A	N/A	0	0	0	
	5)			N/A	N/A	N/A	0	0	N/A	N/A	0	0	0	
<b>TOTAL TEMPORARY:</b>		<b>0</b>	<b>-</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>0</b>	<b>0</b>	<b>N/A</b>	<b>N/A</b>	<b>0</b>	<b>0</b>	<b>0</b>	
<b>GRAND TOTAL:</b>		<b>1</b>	<b>39,007</b>	<b>N/A</b>	<b>9,350</b>	<b>0</b>	<b>0</b>	<b>566</b>	<b>328</b>	<b>148</b>	<b>156</b>	<b>39</b>	<b>18,627</b>	



**FY23 FRINGE CALCULATION WORKSHEET**

Fund-Section: 035-704111 Cost Center # J4002 Date: 07/26/22

*\*For vacant positions (>=30 hours per week), include \$8,040 for health insurance.*

ACCOUNT 5102 - PERMANENT OR DURATIONAL EMPLOYEES					Pension	OPEB	FICA	MQFE	Group Life	LTD	OJI	Unemploy	Total	
Position Number	Position Title	# of Positions	Enter Salary	Health Insurance	23.97% 5510	0.00% 5511	6.200% 5515	1.450% 5516	0.840% 5520	0.380% 5560	0.400% 5591	0.100% 5592	Fringe Cost	
1)	TBD	Principal Court Clerk	1	39,874	8,040	9,558	0	N/A	578	335	152	159	40	18,862
2)	TBD	Deputy Court Clerk II	1	37,082	8,040	8,889	0	N/A	538	311	141	148	37	18,104
3)					0	0	N/A	0	0	0	0	0	0	0
4)					0	0	N/A	0	0	0	0	0	0	0
5)					0	0	N/A	0	0	0	0	0	0	0
6)					0	0	N/A	0	0	0	0	0	0	0
7)					0	0	N/A	0	0	0	0	0	0	0
8)					0	0	N/A	0	0	0	0	0	0	0
9)					0	0	N/A	0	0	0	0	0	0	0
10)					0	0	N/A	0	0	0	0	0	0	0
11)					0	0	N/A	0	0	0	0	0	0	0
12)					0	0	N/A	0	0	0	0	0	0	0
<b>TOTAL PERMANENT:</b>		<b>2</b>	<b>76,956</b>	<b>N/A</b>	<b>18,446</b>	<b>0</b>	<b>N/A</b>	<b>1,116</b>	<b>646</b>	<b>292</b>	<b>308</b>	<b>77</b>	<b>36,966</b>	

ACCOUNT 5109 - TEMPORARY EMPLOYEES					5510	5511	5515	5516	5520	5560	5591	5592	FRINGE
1)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
2)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
3)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
4)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
5)				N/A	N/A	N/A	0	0	N/A	N/A	0	0	0
<b>TOTAL TEMPORARY:</b>		<b>0</b>	<b>-</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>0</b>	<b>0</b>	<b>N/A</b>	<b>N/A</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>GRAND TOTAL:</b>		<b>2</b>	<b>76,956</b>	<b>N/A</b>	<b>18,446</b>	<b>0</b>	<b>0</b>	<b>1,116</b>	<b>646</b>	<b>292</b>	<b>308</b>	<b>77</b>	<b>36,966</b>
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**PLAN C BUDGET – IN-PERSON HEARINGS, MON-FRI, 9AM – 5PM, OCCASIONAL WEEKEND TO COVER 3-DAY WEEKENDS**

OFFICE	ESTIMATED BUDGET	NOTES
District Attorney	<p><u>Recurring:</u>                      \$150,280 for 1 ADA and 1 V/W                      \$15,000 for 2 supplements per year (i.e., \$7,500.00 x 2)</p> <p><u>One-time expenses:</u>                      \$2,006.00 for resources that would be needed for staff</p>	<ul style="list-style-type: none"> <li>• Hire: 1 ADA and 1 Victim Witness Coordinator</li> <li>• Provide county supplement to exist staff to cover Saturday/Sunday/holidays that extend 3 days</li> </ul>
Public Defender	<p><u>Recurring:</u>                      \$356,261 (for 2 Asst PDs at \$187,825; 1 client services specialist; 2 litigation assistants)                      \$1,397 (for civil service employees to cover 3-day weekends/holidays)</p>	<ul style="list-style-type: none"> <li>• Appointed employees do not receive civil service pay to cover 3-day weekends/holidays. They will be provided AWS</li> <li>•</li> </ul>
Judicial Commissioners	<p><u>Recurring:</u>                      \$652,756 (for 4 judicial commissioners)</p> <p><u>One-time:</u></p>	<ul style="list-style-type: none"> <li>• Hire: 4 Judicial Commissioners</li> <li>•</li> </ul>
SCSO	<p><u>Recurring:</u>                      \$386,870 (for 4 officers)                      \$314,204 (for 4 jailers)</p> <p><u>One-time:</u></p>	<ul style="list-style-type: none"> <li>• Note: recurring expenses include benefits</li> </ul>

<p>Pretrial Services / Community Services</p>	<p><u>Recurring:</u>                  \$25,000/year for court reminder system                  \$57,634 for personnel to assist in completing revised forms and attend hearings, acting as liaison/facilitator to get ROR defendants releases as soon as possible (i.e. within an hour of bond change), conduct on the spot orientations and programing referrals as needed.</p> <p><u>One-time:</u>                  \$ 2,200 for video conference equipment for victims or witnesses to attend remotely (see notes)                  \$7,500 estimated one-time cost for vendor to make any changes, Implementation of Indigency Affidavit, updated PSA, updated interview form to include financial condition, etc.</p>	<ul style="list-style-type: none"> <li>• 3 forms will be used for pretrial interviews with detainees: Indigency Affidavit, PSA, financial condition form (will be regular part of business, not specifically for courtroom only).</li> <li>• Text messaging court reminder starting with grant funds, requesting general funds to cover going forward.</li> <li>• Video conference equipment may need to be under either the AG or PD or both as it pertains to victims and witnesses. Pretrial would not be required to communicate with either during the hearing. Cost is estimated in the event it is left with Pretrial Services for laptop.</li> </ul>
<p>General Sessions Court Clerk</p>	<p><u>Recurring:</u>                  \$58,736 (for 1 principal court clerk)                  \$55,186 (for 1 deputy court clerk II)</p> <p><u>One-time:</u>                  \$1,863 additional equipment (Dell, monitor, camera, antivirus, Microsoft pro)</p>	<ul style="list-style-type: none"> <li>•</li> </ul>
<p>Support Services</p>	<p><u>One-time:</u>                  \$1.5m for use of an existing 2<sup>nd</sup> floor courtroom to be the detention hearing room while modifying the renovations for Environmental Court and G.S. Criminal Courts</p>	<ul style="list-style-type: none"> <li>• Costs associated with revised plan for courtroom renovations for bail hearing room, Environmental Court, and G.S. courtrooms</li> </ul>
<p>TOTAL</p>	<p><u>Recurring:</u> \$2,073,324</p> <p><u>One-time:</u> \$13,569 (plus \$1.5 support services courtroom renovation)</p>	<ul style="list-style-type: none"> <li>•</li> </ul>

**Exhibit 16:**  
**Declaration of Josh Spickler**  
**in Support of Plaintiffs'**  
**Motion for Summary**  
**Judgment**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE**

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**Just City, Inc.**, and class representatives  
**Deangelo Towns** and  
**Marshawn Barnes**,  
on behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

Floyd Bonner Jr.,  
**Shelby County Sheriff;**

Lee Wilson,  
**Presiding Shelby County General  
Sessions Criminal Court Judge;** and

Case No. 2:24-cv-2540-TLP-tmp

John Marshall, Robert Barber, Rhonda Harris,  
Kevin Reed, Christopher Ingram, Shayla Purifoy,  
Ross Sampson, Serena Gray, Terita Hewlett,  
Mischelle Best, Kenya Smith, Zayid Saleem, Kathy  
Kirk Johnson, Leslie Mazingo,  
**Shelby County Judicial  
Commissioners,**

in their official capacities,

Defendants.

**DECLARATION OF JOSH SPICKLER IN SUPPORT OF PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT**

I, Josh Spickler, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am preparing this Declaration in support of Plaintiffs' Motion for Summary Judgment. I have personal knowledge of the facts set forth in this Declaration and could testify competently to those facts and exhibits if called as a witness.

2. I live in Memphis, Tennessee and am a licensed attorney in the State of Tennessee.

3. I am the founder and executive director of Just City, Inc., a mission-driven nonprofit organization dedicated to fighting discrimination based on race, ethnicity, and income in Shelby County criminal proceedings. Just City is headquartered in Memphis, Tennessee, and has advocated to reform Shelby County's pretrial detention practices for years.

4. Just City launched a charitable bail fund in 2017. In my role as executive director, I oversee the operation of Just City's charitable bail fund.

5. The purpose of the bail fund is to post bail for as many people as possible who are referred by the Shelby County Public Defender's Office and who have been determined to be indigent by a Shelby County judicial officer. By doing so, the bail fund helps reduce the harm caused by wealth-based detention. Just City pays the full cash bail amount to the clerk, and after the arrestee attends required court appearances and their case concludes, Just City receives a full refund of the bail amount. Just City then recycles this refund to pay bail for other qualifying arrestees.

6. The bail fund has been posting bail for those who cannot afford it for more than eight years. In that time, Just City has paid more than \$4,500,000 in cash bail for more than 2,000 people.

7. On June 9, 2022, Just City entered into a Memorandum of Understanding ("the Agreement") with Shelby County Officials. I am signatory to the Agreement on behalf of Just City and am familiar with its terms. Per the Agreement, Pretrial Services began administering an affordable bail calculator, Judicial Commissioners began using a bail-setting form, and Judicial Commissioners began explicitly determining arrestees' ability to pay secured bail amounts. These policy changes remained in effect until the passage of HB 1719.

8. Following the enactment of HB 1719 and administrative enforcement decisions by the Presiding Judge, Shelby County is no longer complying with the requirements of the Agreement. Just City's reasonable expectations that Shelby County officials, including the Presiding Judge, other General Sessions Criminal Court Judges, the Judicial Commissioners, and the Sheriff, would implement and continue to follow the pretrial bail reforms established in the Agreement have been substantially frustrated and harmed.

9. Based on my experience overseeing the bail fund, judicial officers set higher bail amounts and fewer release orders for individuals whose circumstances indicate that they would have received lower bail amounts or release before HB 1719.

10. For example, post HB 1719, Just City more frequently posts bail for people arrested for conduct relating to obtaining food. On August 3, 2025, Just City posted \$100 bail for a client charged with trespass for standing in the Wendy's drive-through asking for food. On September 2, 2025, Just City posted \$2,500 bail for a client charged with stealing a cheeseburger and two chocolate milks worth \$4.85 from Family Dollar. On September 29, 2025, Just City posted \$2,000 bail for a client charged with theft of snacks worth \$6.33. Bail was set at \$20,000 at the initial screening before it was reduced to \$2,000 at the bail hearing. Based on my experience overseeing the bail fund, similarly situated clients would likely have been released before HB 1719.

11. Post HB 1719, Just City also more frequently posts bail for people arrested for theft of merchandise, often consisting of necessary items worth less than the bail amount set. On September 12, 2025, Just City posted \$4,000 bond for a client charged with theft of vitamins and glasses worth around \$100. Bail was originally set at \$50,000 at the initial screening before it was reduced to \$4,000 at the bail hearing. On several other occasions, Just City posted bails

ranging from \$750 to \$3,500 for clients charged with thefts of items such as toiletries, clothes, and paper towels.

12. When bail amounts increase, posting bail for each client costs more.

13. When bail amounts increase, more indigent people cannot afford to post bail and therefore need Just City to post bail in order to obtain release. Without Just City's services, they remain in jail.

14. When fewer arrestees are released on their own recognizance or with non-monetary conditions, more clients need Just City's services of posting bail to obtain release.

15. Higher bail amounts and lower release rates post HB 1719 directly increase the costs of posting bail for similarly situated clients compared to before HB 1719. Just City must post bail at higher amounts and for more people to serve the same pool of individuals it was able to serve before HB 1719.

16. HB 1719 went into effect in May 2024. During the previous 12 months, from May 1, 2023 to April 30, 2024, Just City paid \$281,273 in bail for 162 clients. During the following 12 months after HB 1719, from May 1, 2024 to April 30, 2025, Just City posted \$441,650 in bail for 216 clients. These rates are only increasing: From May 1, 2025 to January 5, 2026, Just City posted \$388,720 in bail for 229 clients.

17. Increased costs harm Just City's longstanding mission of posting bail for as many indigent arrestees as possible as a means of fighting wealth-based discrimination. HB 1719 therefore makes it harder for Just City to engage in one of its core activities - operating a bail fund.

18. Increased client demand also harms Just City's mission and makes its core activities more difficult.

19. As a 501(c)(3) mission-driven nonprofit organization, Just City does not have unlimited funds to post bail. It relies exclusively on charitable donations and grant funding to support its operations.<sup>1</sup>

20. To counteract the harm resulting from HB 1719, Just City conducted more fundraising efforts. Observing the trends of increased bail amounts and lower release rates after HB 1719, Just City requested and obtained more grant funding to post bail for clients on December 6, 2024. Absent these additional funds, Just City would have been able to serve fewer clients post HB 1719.

21. Just City has also adjusted its policies to counteract the harms resulting from HB 1719. In February 2025, Just City decided to set a temporary limit of \$15,000 on the amount of cash bail it posts per week. In December 2025, Just City lowered this limit to \$10,000. When Just City reaches that limit, it cannot post any more cash bails that week. This policy ensures that Just City maintains funds necessary to operate in light of increased costs after HB 1719.

22. Just City has also adjusted its policies by setting limits on whether it posts bail. Because Just City does not have unlimited funds to post bail, it has always maintained policies governing which clients to serve. It prioritizes clients with community support because Just City's experiences show that those clients are likely to return to court. It also prioritizes clients with medical needs. As a general policy, Just City does not post bail for clients with multiple domestic violence charges involving the same complaining witness and sets a cap on bail amounts it will post for any type of offense.

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<sup>1</sup> After September 2024, the General Sessions' Court Clerk's office has been unable to quickly return previously posted cash bail amounts to Just City at the conclusion of its clients' underlying cases. These delays resulted in a gap in Just City's ability to provide services from October 2024 to February 2025 and continue to impact Just City's access to funding.

23. From the bail fund's launch in 2017 to February 2025, the cap on bail amounts was \$5,000. In February 2025, Just City lowered the cap to \$4,000 so that it can serve more clients with low bail amounts. In December 2025, Just City temporarily lowered the cap to \$3,000.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 8, 2026.

  
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Josh Spickler

Exhibit 17:  
Transcript of  
Hearing on Motion for Class  
Certification  
(Excerpted)



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A P P E A R A N C E S

Appearing on behalf of Just City, Inc.:

Ashika Verriest  
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Lucas Cameron-Vaughn  
AMERICAN CIVIL LIBERTIES UNION OF TENNESSEE  
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Appearing on behalf of Sheriff Floyd Bonner, Jr.:

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Julia Marie Hale  
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Email: Jasen.durrence@shelbycountyttn.gov  
Julia.Hale@shelbycountyttn.gov

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THURSDAY

OCTOBER 30, 2025

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THE COURT: Good afternoon. This is in the matter of *Just City v. Sheriff Floyd Bonner* and others. Let's see, who all do we have for the plaintiffs?

MS. VERRIEST: Good afternoon, Your Honor. Ashika Verriest at the ACLU National for the plaintiffs.

THE COURT: All right.

MR. QUIGLEY: Jared Quigley from Simpson, Thacher & Bartlett for the plaintiffs.

THE COURT: Okay.

MR. CAMERON-VAUGHN: Lucas Cameron-Vaughn for the plaintiffs with ACLU of Tennessee.

THE COURT: All right. I think you just filed a notice of appearance; is that right?

MR. CAMERON-VAUGHN: That's correct, Your Honor, yes.

THE COURT: Great. All right.

And Mr. Durrence?

MR. DURRENCE: Jasen Durrence on behalf of the Shelby County defendants.

THE COURT: And Ms. Hale?

MS. HALE: Julia Hale on behalf of the Shelby

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02:36:49

1 pattern and practice types of claims and in its citing of 03:47:14  
2 *Doster* recognizes the existence of different types of 03:47:19  
3 claims such as those brought here that can be analyzed as 03:47:21  
4 a whole. I'll just repeat that point, as well. 03:47:24

5 But other than that, there was nothing else from me. 03:47:26

6 THE COURT: All right. 03:47:30

7 So, Mr. Durrence, during your argument, you pointed 03:47:36  
8 out that the Court in *Speerly* says that the district 03:47:43  
9 court must not defer merits questions. And that's a fair 03:47:48  
10 point, but the sentence goes on to say common 03:47:53  
11 questions -- excuse me, merits questions bearing on 03:47:58  
12 commonality and predominance. 03:48:00

13 And so let's go back to your argument, so how does 03:48:03  
14 that bear on commonality? Predominance doesn't really 03:48:13  
15 apply to this case. 03:48:18

16 MR. DURRENCE: And I'll stand right here if 03:48:19  
17 that's all right with Your Honor. 03:48:21

18 THE COURT: Perfectly fine. 03:48:22

19 MR. DURRENCE: And so the way merits line up 03:48:23  
20 with commonality, Your Honor, as that as I understand the 03:48:26  
21 plaintiffs' claims, it's that HB117 in denying 03:48:28  
22 consideration of ability to pay for everyone necessarily 03:48:35  
23 generates constitutional harm. So they will prevail on 03:48:40  
24 the merits of their due process claim, whatever of their 03:48:44  
25 claim, simply because of the common thread created by 03:48:48

1 HB117 and its prohibition on consideration of ability to 03:48:54  
2 pay. 03:48:57

3 The defense's position is we can't accept that. I 03:48:59  
4 don't believe the Court can accept that as true at this 03:49:06  
5 point. HB1 -- first of all, again, the Constitution does 03:49:08  
6 not mandate consideration of ability to pay. It 03:49:13  
7 prohibits wealth-based detention. 03:49:17

8 Secondly, even HB117 does not forbid what I call the 03:49:20  
9 money conversation, which was at issue in *Bearden*. 03:49:26  
10 HB117 -- the new bail statute allows for the money 03:49:33  
11 conversation in the context of financial condition. 03:49:37

12 Essentially, what the new bail statute says is that 03:49:40  
13 you cannot discuss your client's height in feet. If your 03:49:44  
14 client is 5 feet tall, you can't tell the Court that. 03:49:48  
15 You can tell the Court your client is 60 inches tall and 03:49:52  
16 let them -- let the Court come to the conclusion of how 03:49:56  
17 tall your client is. 03:49:59

18 If a detainee can have the money conversation, can 03:50:02  
19 put information about their financial condition in front 03:50:09  
20 of the Court, the defense's position is that satisfies 03:50:12  
21 due process. Essentially, every detainee -- 03:50:16

22 THE COURT: How does that affect commonality, 03:50:22  
23 the question of commonality? 03:50:26

24 MR. DURRENCE: That means that commonality cuts 03:50:28  
25 in favor of every potential class member having gotten 03:50:30

1 their procedural due rights; therefore, if the plaintiff 03:50:35  
2 wants to hang their hat on something, wants to prevail on 03:50:41  
3 the merits, they're not going to be able to prevail 03:50:44  
4 solely on this question -- or this issue of not being 03:50:47  
5 able to consider ability to pay. 03:50:52

6 They're going to have to weigh into each 03:50:53  
7 individualized consideration, each individualized bail 03:50:56  
8 order to show how this individual person was not able to 03:51:01  
9 obtain their due process under the statute, if they're 03:51:06  
10 going to prevail on the merits. 03:51:09

11 Now, if all the plaintiff intends to do is stand up 03:51:12  
12 and say -- 03:51:15

13 THE COURT: Well, I mean, it seems to me that 03:51:18  
14 really what you're talking about may boil down to a legal 03:51:22  
15 question of whether *Bearden* stands for ability to pay or, 03:51:29  
16 as you say, as long as you're having the money 03:51:34  
17 conversation, you're complying with *Bearden*. There is no 03:51:37  
18 *Bearden* claim. 03:51:42

19 MR. DURRENCE: (Moving head up and down.) 03:51:45

20 THE COURT: But they're saying, we just want to 03:51:45  
21 know who gets to make this argument. We want 2,500 03:51:47  
22 people over at the jail to make the argument. You're 03:51:51  
23 saying, well, no, it should only be the named plaintiffs 03:51:55  
24 if they're going to bring it at all. 03:51:59

25 MR. DURRENCE: And the reason is, Your Honor, is 03:52:02

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C E R T I F I C A T E

I, TINA DuBOSE GIBSON, do hereby certify that the foregoing 43 pages are, to the best of my knowledge, skill and abilities, a true and accurate transcript from my stenotype notes of the motion to certify class hearing held on the 30th day of October, 2025, in the matter of:

JUST CITY, INC.

vs.

FLOYD BONNER, JR., SHELBY COUNTY SHERIFF, ET AL.

Dated this 11th day of November, 2025.

s/Tina DuBose Gibson

TINA DuBOSE GIBSON, RPR, RCR  
Official Court Reporter  
United States District Court  
Western District of Tennessee