

We, as individuals and community members who are attorneys and employees in the Montgomery County Public Defender's Office, collectively issue this comment for two main reasons; the first being a renewal of our call for you to reinstate Dean Beer and Keisha Hudson as our Chief and Deputy Chief, and the second, and more important, being our need to clarify statements made by this Commission during your press conference on March 18, 2020.

Yesterday afternoon Commissioner Arkoosh answered a question related to our prison population here in Montgomery County, the efforts being made to maintain health, and efforts being made to **address pretrial detention during the COVID-19 outbreak. The Commissioner stated,**

**"I will tell you that as we reported the other day the President Judge issued an order to our Magisterial District Justices to order the least restrictive measures for anyone who's been accused of a crime. We are ensuring that for most crimes, inability to pay a cash bail would not during this emergency put you into the correctional facility, we would monitor you in some different way. And they have I know taken a look at the correctional facility to see if there is anybody who is eligible to be discharged from the correctional facility as long as all the appropriate legal guidelines are met."**

While it should go without saying, and without a directive from the President Judge, least restrictive measures should always be utilized in setting bail, be it by a district magistrate or Common Pleas judge. This is a legal mandate, and if it took a health crisis before this County was willing to publicly stand behind this legal requirement that should raise serious concerns. Inability to pay bail, for all crimes, should never be the reason someone is put into a correctional facility. The purpose of bail is twofold, to ensure public safety and the ensure appearance to court. When bail becomes so high while those considerations are ignored, bail is then punitive, regardless of the alleged offense.

As to the Commissioner's reference to steps being taken to look at the correctional facility to determine whether those who are eligible may be discharged, we can only assume this is in reference to inmates who are currently approved for work release being released on electronic supervision, or to the approximately ten people who were otherwise within a week of their parole date being granted early parole. Many other people still remain incarcerated at MCCF with absurd bail, leading to unnecessary pretrial detention. So, this seems like the perfect time to enlighten this Commission on the true state of bail reform in Montgomery County and to inform you of the efforts the Montgomery County Public Defender's Office has taken over the past week to secure pretrial release for our clients. **Beginning last Thursday, our office started a frantic push to obtain pretrial release for our clients who are being detained at MCCF.** On Friday, an all-hands-on-deck effort led to a review of every list we could obtain from the prison detailing who was detained, their bail, and their charges. We combed the lists for clients detained on non-violent offenses. We combed the lists for people being held on bail \$10,000 or less. On Friday we submitted 46 names to the District Attorney's office in an effort to obtain agreements for bail reduction or release. By the end of the day, the District Attorney's office agreed to release only 4 people.

On Monday we resubmitted a substantially reduced list of 26 people, in an effort to streamline and focus a process that, quite honestly, cannot be effectively streamlined in these circumstances. Twelve of those names were duplicates from the original list. These were the easy cases, our "first

wave” of names we believe should have taken little thought or review to agree upon. And we have many other names yet to submit. **Yet, as of last night, the Commonwealth has not responded to ANY of our requests from that list.** We have otherwise secured three agreements from assistant district attorneys to modify bail. However, when we attempted to have orders signed for agreed bail reductions, we were told we needed to submit emergency motion coversheets before we could obtain an order. Then we were told that we had to file full Motions to obtain an Order from the Court. Yes – we have to file full bail Motions for these clients even when we have reached an agreement with the Commonwealth for release. In a Twilight Zone-esque way, it is now substantially more difficult to secure release by agreement than it was before the emergency proclamation.

**We have spent the past three days preparing Bail Motions for our clients. We have tirelessly reached out to the District Attorney’s Office, and we have repeatedly been shut down or ignored on this bail modification effort. In some cases, we suddenly received time-served offers, which does nothing in this situation because the courts are not taking guilty pleas, so our clients will continue to sit until the emergency is over.** And in those same cases the Commonwealth refuses to agree to unsecured bail. One of our colleagues labeled this “extortion” – either plead guilty and get out, or stay in jail indefinitely – and we cannot agree more. With our public defender senses tingling throughout the day yesterday, the picture finally came into focus when a number of assistant district attorneys indirectly told us they are under directive not to agree to any bail modifications. And that, Commissioners, is the collaboration that we are accustomed to dealing with.

The idea that this county and all of its partners: our office, the district attorney’s office, probation, and the courts, are able to collaborate on pretrial bail reform has proven thus far to be false, and a borderline joke. We spent the last week untangling administrative red tape and ever-changing filing requirements in a time of crisis. We have been making good faith efforts to secure pretrial release for clients who we genuinely believe should not be detained, only to learn that our counterparts in the DAs office have likely been instructed to not agree to bail modifications and instead push guilty pleas. **We are facing a pandemic that will, should it infiltrate our prison, wreak havoc on our prison population and create potentially lethal consequences, and yet we’ve faced inexplicable roadblocks. At a minimum, this Commission needs to stop trying to convince the public that a happy, collaborative, and functional system exists to review bail in this County, because we will always show up to set the record straight on this issue.**

We will conclude with words borrowed from our Deputy Chief Keisha Hudson, who months before her shocking termination spoke on bail reform as it pertains to this county. Her words highlight not just the extreme importance and need for bail reform, but also the true state of pretrial detention in Montgomery County and the lack of collaboration that we deal with every single day, regardless of what the Commission or the Bench puts before the public:

“Jail is a lonely, dehumanizing, traumatic space. We warehouse people who are poor, people who are from marginalized communities, so they’re Black and they’re Latino, they’re mentally ill, they’re drug addicted...from the very outset their right to counsel is undermined because we’re not even in the room. I don’t think people have a concept of what it looks like for that client...”

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