



**Department of Public Advocacy
Justice & Public Safety Cabinet**

FOR IMMEDIATE RELEASE

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Kentucky's System of Pretrial Release is Badly Broken

FRANKFORT, Ky. (January 21, 2019) - In an important step towards the goal of ensuring a constitutional pretrial release system in Kentucky, the Department of Public Advocacy, acting on behalf of 10 named clients who are representative of hundreds of clients throughout the Commonwealth, asked the Supreme Court of Kentucky on Friday to use its authority over the Court of Justice to establish clear constitutional rules for pretrial release decisions by trial and appellate courts in the Commonwealth. In the 39-page petition signed by Public Advocate Damon L. Preston, Deputy Public Advocacy B. Scott West, and Post-Trial Division Director Timothy G. Arnold, the Department raises numerous challenges to pretrial release practices across the state and argues that Supreme Court action is necessary to fix the problems. Of the request, Public Advocate Preston said, "As our petition makes clear, Kentucky's system of pretrial release is badly broken. As legal counsel to most of the thousands of Kentuckians who are held in jails pretrial, we have to act to protect our clients' presumption of innocence and constitutional right to reasonable bail."

Both the Kentucky and United States Constitutions prohibit excessive bail, but the petition outlines the facts and bail decisions in ten specific cases to show that excessive bail is common. Rather than fulfill the original intention of being security to ensure attendance at trial and public safety while a case is pending, bail is being used as a means to keep presumed innocent defendants in jail, often until

they plead guilty to be released. Deputy Public Advocate B. Scott West noted the irony of this current system and said, "In many cases, it's this simple. As long as we presume you are innocent, you'll stay in jail, but the moment we know you are guilty, you're free to go. That's just backward."

With this petition, for the first time in Kentucky, the Supreme Court is being asked to decide if "money bail," the practice of conditioning someone's freedom on whether they can come up with a certain amount of cash, is constitutional. Five of the clients in the petition are currently in jail with cash bail, meaning if they only had more money, they would be free. The Department argues that this system violates the Constitutional mandates of due process and equal protection under the laws because someone's wealth cannot be a valid basis to distinguish between incarceration and freedom.

To take this case directly to the Supreme Court, DPA's petition invokes Section 110 of the Kentucky Constitution, which gives the court the authority to issue "all writs necessary ... as may be required to exercise control over the Court of Justice." Though this power is very rarely used, DPA argues that the urgency of fixing the broken pretrial release system should lead the Court to act. Post-Trial Division Director Tim Arnold said, "Litigators have been attempting to get review of these issues for many years, but the appellate process has proven to be poorly suited to address issues of pretrial release. The Supreme Court has constitutional authority to act on matters which will bring the entire Court of Justice into alignment. In the area of pretrial release, the court system is badly out of alignment from county to county and with constitutional requirements. Only the Supreme Court can restore the bail system to what it was intended to be."

Bail reform has been a topic of conversation in Kentucky and around the country for years. DPA's petition is filed as the Kentucky General Assembly begins a session in which it will again be considered, but Public Advocate Damon Preston says DPA's clients cannot wait any longer. "Kentucky's jails are overflowing. Many clients, presumed innocent, are sleeping on a concrete floor in a jail cell waiting for their day in court. They're there because they've simply been accused of a crime and do not have enough money to buy their freedom. We've talked about bail reform without action for too long. Something has to be done now."

A copy of the petition is available at <http://dpa.ky.gov>