TO: Honorable Members of the Senate Law and Public Safety
FROM: Roseanne Scotti, New Jersey State Director, Drug Policy
DATE: July 24, 2010
RE: SCR128

Drug Policy Alliance strongly supports the move to reform New Jersey’s broken bail system. New Jersey’s jails are packed with individuals who are incarcerated solely because they cannot afford their often nominal bail amounts. On any given day, nearly seventy-five percent of the 15,000 individuals in New Jersey jails are awaiting trial rather than serving a sentence. The average length of incarceration for pretrial inmates is more than ten months. Nearly forty percent of the total jail population has the option to post bail but lacks the financial resources to do so. More than ten percent of individuals could secure their release pending trial with $2,500 or less. More than half of these individuals are being held on nonviolent charges.

It makes no sense, morally or economically, to warehouse thousands of individuals for months on end while they await trial if they pose no risk to the community. It costs New Jersey taxpayers around $30,000 to keep one individual incarcerated for ten months while awaiting trial. Thus, the inability of an individual to pay a few hundred dollars bail can cost New Jersey taxpayers tens of thousands of dollars. In addition, the jailed person is separated from his or her family physically, emotionally and financially, further exacerbating the challenges this individual and family face.

As the system currently operates, those with money can obtain release no matter how serious their crime or how much of a danger they pose to public safety. Those without money sit in jail for months on end no matter how minor their offense and no matter that they pose no danger to public safety. This system helps no one and hurts us all.

SCR128 is a step towards fixing these problems but is insufficient standing on its own—SCR128 addresses one piece of the problem by allowing for the pretrial detention of high-risk defendants. This resolution must move forward with legislation that implements comprehensive bail reform. Real comprehensive bail reform includes:

- Removing money as the primary mechanism of pretrial release and basing pretrial release decisions on risk rather than resources.
- Requiring the use of risk assessments on arrestees with higher level charges.
- Authorizing the release of low-risk individuals under the least restrictive conditions possible.
- Permitting the detention of those who are judged to be truly dangerous.

For this reason, Drug Policy Alliance will only support SCR128 if it is balanced with comprehensive bail reform legislation that moves the current broken bail system away from using money bail and replaces it with a system that bases pretrial release decisions on risk.

We have been working with the chairman who is the sponsor of Senate Bill 946 and believe that we are very close to a version of that bill that includes these key elements. If S946 does include these elements and does encompass real reform--and it is moved along with SCR128 we support this resolution as part of a comprehensive bail reform package. Thank you.
Statement of Jerome C. Harris, Jr.
Interim President and CEO, New Jersey Institute for Social Justice

on

SENATE CONCURRENT RESOLUTION NO. 128
before the

SENATE LAW AND PUBLIC SAFETY COMMITTEE

Committee Room 10, 3rd Floor, State House Annex, Trenton
July 24, 2014, 10:30 AM

Thank you, Chairman Norcross and other Honored Members of the Law and Public Safety Committee. My name is Jerome C. Harris, Jr., and I am the Interim President and CEO of the New Jersey Institute for Social Justice, a social justice “think and do tank.” In our fifteen year history, the Institute has produced research, presented policy analysis, and collaborated with government on reform projects in areas of criminal and juvenile justice to ensure public safety and fiscal responsibility. We also run model programs aimed at expanding employment opportunities for vulnerable populations, including individuals with criminal records. I know, based on the work the Institute does every day, that comprehensive bail reform is an important part of ensuring safe communities and reducing the negative economic impact of the criminal justice system on those who are presumed innocent. The Institute applauds the Legislature for its continuing work on this incredibly important issue, and we want to emphasize that we too are committed to seeing this project through to its completion.

The importance of comprehensive bail reform is underscored by the testimony that my colleague, Scott Welfel, gave before the Budget and Appropriations Committee on June 5. Scott recounted the story of his client Mustafa, who has only been arrested twice as an adult, and in both cases the charges were ultimately dismissed. Even though Mustafa was innocent, he was held for many months before he could make bail, was fired from his job because he could not report to work while in jail, and accrued nearly $10,000 in bail bondsman fees. This is why we need to work together to get bail reform done.

I would like to thank Senator Rice and Senator Gill for pushing to ensure that the final constitutional amendment and implementation bill are crafted to provide the greatest possible protection for New Jersey’s low income communities and people of color. Their work and advocacy have led to several recent, significant improvements in S946, for which we are grateful.

Proposed Modification of Senate Concurrent Resolution 128

Turning to SCR 128, we would prefer to see the proposed constitutional amendment include the right to a speedy trial in the text of the amendment, while leaving the specific time requirements to be spelled out by the Legislature in a statute. We recognize that the New Jersey Supreme Court acknowledged in State v. Szima that New Jersey defendants have a right to a speedy trial guaranteed by the due process clause of the Fourteenth Amendment of the U.S. Constitution, and that New Jersey Court Rule 3:25-3 allows for dismissing a case if there is unreasonable delay. However, these protections do not specify the number of days or months within which a trial must commence. Amending the New Jersey Constitution to allow for pretrial detention requires that the Legislature enact speedy trial

1 70 N.J. 196 (1976).
guarantees that are more specific than the vague constitutional principles. While S946 includes these proposed speedy trial provisions, we believe the speedy trial principle should be enshrined in the constitutional amendment; this would ensure that the statutory speedy trial provisions could never be eliminated entirely.

We propose the following language be added to the end of the proposed constitutional amendment in SCR 128:

"Every person to whom pretrial release is denied or who remains incarcerated after monetary bail is ordered shall be guaranteed the right to speedy proceedings, and the Legislature shall enact legislation to give effect to this right."  

Proposed Amendments to SCR 128

Additionally, our support of SCR 128, authorizing pretrial detention, is contingent upon the enactment of an acceptable version of the implementation bill. We have reviewed the latest version of S946 as prepared by the Office of Legislative Service (document attached hereto). We are greatly appreciative of the changes that have been made in response to the concerns raised by Senators Rice and Gill, particularly with respect to the definition of "eligible defendant" and the language regarding the risk assessment instrument. After review, we recommend that the following additional revisions to S946 be adopted in order for the Institute to extend our full support to the bill:

1. **Extend Speedy Trial Guarantees to Defendants Who Cannot Make Bail**

While S946 is structured to attempt to prevent anyone from remaining in jail pretrial due to an inability to make bail, it is likely that there will continue to be some number of defendants who cannot make bail. We believe that these defendants should also be guaranteed a speedy trial, as there is no principled reason to argue that defendants who are subject to pretrial detention deserve speedy proceedings while those who are held because of an inability to afford bail do not. In sum, the speedy trial mandate should apply to all defendants behind bars. To implement this suggestion, we recommend that the first sentence in Section 2.a. be amended to apply both to a defendant subject to pretrial detention as well as to a defendant who remains incarcerated after monetary bail is ordered.  

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2 Thus, the entire language of the proposed amendment would read as follows:

11. No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be liable to punishment for crimes when the proof is evidence or presumption great, eligible for pretrial release. Pretrial release may be denied to a person if the court finds that no amount of monetary bail, non-monetary conditions of pretrial release, or combination of monetary bail and non-monetary conditions would reasonably ensure the person's appearance in court when required, or protect the safety of any other person or the community, or prevent the person from obstructing or attempting to obstruct the criminal justice process. It shall be unlawful for the Legislature to establish by law procedures, terms, and conditions applicable to pretrial release and the denial thereof authorized under this provision. Every person to whom pretrial release is denied or who remains incarcerated after monetary bail is ordered shall be guaranteed the right to speedy proceedings, and the Legislature shall enact legislation to give effect to this right.

(cf: Art. I, par. 11)

3 File: G:\Cmu\J207\Bills\Bills 2014-2015\J207_0046-BOLD-D.doc.

4 Thus, we recommend that the entirety of the first sentence in Section 2.a. read as follows: "Concerning an eligible defendant subject to pretrial detention as ordered by a court pursuant to sections 5 and 6 of P.L. , c. (C. ) (pending before the Legislature as this bill) or who remains incarcerated after monetary bail is ordered:"
2. Amend the “Substantial and Unjustifiable Risk” Exception to Speedy Trial to Require a Finding that There Has Not Been Unreasonable Delay by the Prosecution

We remain concerned about the extent to which S946’s current speedy trial provisions will be able to actually guarantee swift process for the majority of New Jersey defendants due to the numerous exclusions from the calculation of speedy trial time as well as the “substantial and unjustifiable risk” exception to the speedy trial protections. We are concerned for the potential overuse of the “substantial and unjustifiable risk” exception. Given the fact that an order of pretrial detention will in most cases include a finding that releasing the defendant, even subject to conditions of release, would present a risk to the safety of the community or a risk of obstruction of justice, it seems a small leap for a judge to subsequently conclude later that later release of the defendant under the speedy trial provision would result in “a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process.” As such, we recommend that the language of the exceptions to speedy trial protection be amended to require a finding by the court “that the failure to indict the defendant or commence trial within the specified time period is not due to unreasonable delay by the prosecution.”

3. Decrease the Maximum Period to Commence Trial from Two Years to One Year

In the face of the “substantial and unjustifiable risk” exception to the speedy trial provisions, we were glad to see the addition of a time limit to this exception. If the court grants an exception to the speedy indictment provision, the prosecution gets a maximum of an additional 45 days to indict. If the court grants an exception to the speedy trial provision, the prosecution must still begin trial within 2 years of the initial pretrial detention order.

While we appreciate the addition of these upper limits, the two year time period still strikes us as too long. We have not seen any data on which the two year limit was based, and would like to request an explanation of the origin of this number. While we acknowledge that we have incomplete information on this specific provision, we propose that the Legislature consider a maximum time limit of one year between the initial pretrial detention order and the commencing of trial.

4. Mandate the Risk Assessment Instrument Be Evaluated to Ensure Neutral Application And Neutral Effect

While we applaud the addition of subsection c.(2) to Section 11, specifying that “[t]he approved risk assessment instrument may not include as a factor race, ethnicity, gender, financial resources or socio-economic status,” we are concerned with the possibility that the Risk Assessment Instrument will assign greater risk based on these impermissible factors, even if unintentionally, or could be applied unevenly to defendants based on their race, ethnicity, gender, financial resources or socio-economic status. Thus, we recommend that the triennial evaluation of the risk assessment instrument include an

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5 Thus, the full language of the exceptions in subsections (1)(a) and (2)(a) of Section 2 would read as follows:
“[t]he eligible defendant shall be released from jail upon motion of the defendant or on the court’s own motion, unless the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result from the eligible defendant’s release from custody, so that no appropriate conditions for the eligible defendant’s release could reasonably address that risk, and that the failure to indict the defendant/commence trial within the specified time period is not due to unreasonable delay by the prosecution.”
evaluation of whether the instrument is being applied neutrally to defendants and whether these impermissible factors are exerting inappropriate influence in the assignment of risk.

**Recommendation to Fully Staff Courts to Ensure Their Ability to Fulfill Speedy Trial Provisions**

Finally, as a point separate from the statutory language, there are concerns about the courts’ ability to meet the speedy trial provisions without a fully staffed judiciary. Without pointing fingers or assigning blame, we urge the Legislature and the Governor to work together to ensure that judicial vacancies, both now and in the future, be filled forthwith.
New Jersey State Senator Ronald L. Rice – 28th Legislative District
Statement to the Senate Law and Public Safety Committee

Dear Colleagues:

THE SIXTH AMENDMENT OF THE UNITED STATE CONSTITUTION –
GUARANTEE RIGHT TO A SPEEDY TRIAL

I want to preface my remarks by stating that most of us in the legislature and the community want the same thing, that is, the ability to keep the hard core violent criminal in detention until there is a trial. What we do not want is legislation that is well meaning but violates the constitutional and civil rights of people in this state after years of fighting, struggling and in many instances dying to obtain the rights.

As civil rights leaders many of us have argued for years that the bail system as it has been for years is unfair and unjust in application for the poor and for blacks and minorities in particular. We all are aware that we have to fix this injustice while at the same time give the courts the ability to detent our most vicious criminals who continue to commit violent crimes.

The way to accomplish this goal is to make certain that we do not violate the right of citizens to due process of the law and to ensure that those who are charged with an offense and are arrested maintain their constitutional right to a speedy trial.

As legislators we have the responsibility to make laws that would not only protect the rights of all citizens today but must protect the rights of the generations coming behind us and babies not yet born. This is what the civil rights movement was and still is all about.

Speedy Trial amendments to SCR 128

To turn back the hands of time to the days of Bull Connor, George Wallace, racist advocates of segregation and injustice is wrong and should not be tolerated by any one, particularly not tolerated by people of color, black civil rights leaders and black clergy members.

Why is it important to have speedy trial dates in the constitutional amendment as opposed to the bill?

- The answer is enforcement. If the constitution amendment (SCR 128) requires specific dates for speedy trial, then those dates must be abided by. In other words, the specific dates for speedy trial in the constitution amendment, establishes certainty and those dates can not be changed unless the constitution is repealed by another constitutional amendment.
• If the speedy trial dates are in the bill (§ 9§6) then there is no certainty and the speedy trial dates can be altered "ignored" for good cause and subjected to all kinds of changes and modifications. The speedy trial dates in a bill is akin to a promise to do something, however, that promise can always be altered. For example, it is similar to the pension and benefits issue. We thought that a contract had been created and the Governor was contractually required to make pension payments on time. But, the court said that the contract is trumped by the constitutional requirement to have a balanced budget.

• The reason we have continued litigation with respect to thorough and efficiency is because it is a general term and thus subject to all the whims of government and not fully funding education.

• If we are amending the constitution to permit pretrial detention then there must be a certainty in the constitution for specified dates for speedy trial.

**Speedy Trial for All**

Track the Language of the Supreme Court Task Force.

Asking us to support a SCR 128 as written would intentionally create two tiers, one tier has the right of speedy trial and the other doesn’t. This is such a clear denial of equal protection.

**There is no need to rush ... the need is to continue to work on the legislation to get it right! Nothing can happen before 2017.**

“Bail Reform” legislation should not be fast - tracked through the Legislature to satisfy the special interest groups when the constitutional amendment as written will violate the constitutional and civil rights of citizens in general and blacks and other ethnic minorities in particular who are detained or released on a charged due to a complaint filed in the court.

There have been several meetings with the sponsors of the Bail Reform bills in both houses of the Legislature, Glen Grant and staff from the Administrative Office of the Courts, Civil Rights Leaders and with the special interest groups that are pushing for the reform to explain and to get them to understand that there are serious constitutional, civil rights and fiscal problems with the legislation as initially written and presented to members of the legislature and public.

There have also been informal conversations with clergy members who said that they were not aware of the constitutional and civil rights issues because the “Alliance” (mainly the Drug Policy Alliance) members who asked them to support the legislation never brought the issues to their attention. They were only asked to testify to the fact that there are more blacks in jail who cannot make bail and are being treated unjustly more so than any other ethnic groups, which is a true statement. They said that individually and organizationally there was no legal analysis done for constitutional and civil rights violations because they relied on and assumed that it was done by those of us in the Legislature. As one civil rights leaders stated “he was presented with a cake that looked real good out side until he cut it and looked at the inside, only to find that it was bad.
There is no fiscal note and/or means indentified to pay for “Bail Reform” at this time. To remove the constitutional right and authorization for bail and speedy trial from the constitution without the ability to pay for the reform changes not only would violate citizens constitutional rights, it would also over-populate unnecessarily and maybe unintended our jail cells that are presently already over-crowded. Members of the Legislature and the public have a right to know what the cost is going to be and how we are going to fund it. The cost we believe will be $80 million to $100 million or more. The next Governor under the legislation would be stuck with raising the money to pay for the program.

I want to thank Senator Nia Gill and Assemblywoman L. Grace Spencer for taking time out of their busy schedules to attend meetings to educate the sponsors and others about the problems that the bills have as written. Senator Gill has gone far and beyond, even while on vacation working with me at night and on the weekend to draft the language necessary to correct the issues in the bills that negatively impacts the constitutional and civil rights of people who are entitled to release from pre-trial detention, entitled to a speedy trial and entitled to due process of the law.

The amendments reflects the concerns and recommendations raised in the “Joint Committee on Criminal Justice” report and those raised by Chief Justice Stuart Rabner regarding speedy trial, (setting strict time frames for moving cases along to indictments and then to trial). The right to a speedy trial must be afforded to everyone.

According to the time-frame in the legislation, there is no need to rush this legislation through to get on the ballot this year. However, regardless of what year the ballot question is presented to the voters, it cannot and should not be supported with a vote by the members of the Legislature until such time the amendments guaranteeing the constitutional right to all citizens a speedy trial.
Legal Services of New Jersey
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Suite 402, P.O. Box 1357
Edison, New Jersey 08818-1357
Phone: (732) 572-9100
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STATEMENT OF
LEGAL SERVICES OF NEW JERSEY
TO THE SENATE LAW AND PUBLIC SAFETY
COMMITTEE
CONCERNING SCR128

Presented by:
Melville D. Miller, Jr.
President and General Counsel

Accompanied by:
Claudine M. Langrin
Senior Vice President
Akil S. Roper
Vice President

July 24, 2014
We appear today to express our support for SCR128, and for the current version of the accompanying substantive bail reform legislation, not on this Committee's agenda today. Together they would constitute the most sweeping and important improvements in New Jersey's bail and pretrial incarceration policies in the modern, post-1947 era.

Legal Services opens nearly 50,000 new civil cases annually, and through that representation and our other activities provides legal assistance and information to several hundred thousand low-income New Jerseyans each year. Compared to the general population, a significantly disproportionate number of people in poverty in New Jersey are people of color, a disproportion mirrored in Legal Services' caseloads.

This disproportion is also mirrored in the makeup of the incarcerated pretrial population, languishing chiefly in county jails. We know, from our own work on the civil side, that the primary reason most of these people remain incarcerated while awaiting trial is their financial inability to make bail, no
matter how low it may be set, and not because they present risks to public safety.

We strongly support the combined constitutional amendment and accompanying bail reform legislation because it will redress this wrong. Poverty will no longer be the sole reason for pretrial incarceration. The combined amendment and legislation initiative, as currently proposed, will both enhance public safety and end a huge injustice that harms people living in poverty – people who are disproportionately of color. Regardless of whatever differences may exist on other aspects of the legislation, this consequence alone compels passage of this current bail package, including the amendment under consideration today.

We attach to this statement our prior recent testimony to the Senate Appropriations Committee, concerning the overall status of Legal Services funding. This funding is also a subject addressed in the companion bail legislation.
STATEMENT OF
LEGAL SERVICES OF NEW JERSEY
TO THE SENATE BUDGET AND
APPROPRIATIONS COMMITTEE
CONCERNING S.946

Presented by:

Melville D. Miller, Jr.
President
June 5, 2014
We appreciate the opportunity to appear today to offer perspectives on S.946, and to update you on the current status and funding situation of the Legal Services of New Jersey (LSNJ) statewide civil legal assistance delivery network. As most term Committee members well know, for nearly 48 years Legal Services has been the system through which New Jersey residents unable to afford an attorney can obtain legal help in civil cases. Within the limits of available funding, and as appropriate to the particular case, Legal Services provides telephone advice through its statewide Hotline, 1-800-LSNJLAW (1-800-576-5529), limited service, and full representation. In 2013 we handled nearly 48,000 cases, with a direct effect on over 140,000 New Jerseyans who were our clients and their family and household members. In addition, over 450,000 New Jerseyans received help through the legal information accessible through our public websites. These cases involve the most critical of legal cases, involving shelter, food, physical safety, health care, education, and other basic human needs.

As impressive and important as these numbers are, it is the limits on our funding and capacity that we want to emphasize to you today. As context, in 2008 Legal Services of New Jersey had over $70 million in total funding,
handled nearly 70,000 cases annually, and had over 700 staff state wide. Today, it has lost $15 million (50%) in state funding, $34 million (85%) in IOLTA (Interest on Lawyer Trust Accounts) funding, and more than half of its staff. Still more layoffs, now of critically experienced staff, will occur in July, if the funding decline is not immediately reversed and some restoration begun.

The legislation you consider today would begin that restoration process. The filing fee increases authorized in this bill would support $10.1 million for Legal Services of New Jersey. This amount will not come close to fully closing the civil legal assistance gap facing those who live in poverty: 2.1 million New Jerseyans live below 200% of the federal poverty level, and under any measure are unable to afford to hire a lawyer on their own. They experience over 800,000 legal problems a year. Legal Services can provide representation for less than one-tenth of the cases in which legal assistance is needed. That said, an appropriation supported under this bill will provide an essential first step in restoring our capacity, enabling Legal Services to handle significantly more of the most critical cases.

Legal Services fully supports in concept the bail reform and electronic filing also addressed in this legislation. We do, however, caution that unlike
these other two important purposes, Legal Services has an immediate need for – and can promptly put to excellent use – the $10.1 million. Indeed, immediate availability of funding on July 1 is necessary to stave off yet another wave of layoffs – another 10% of Legal Services’ most experienced and proficient staff, roughly 40 people – starting this July. We need an appropriation of $10.1 million in the FY 2015 budget, supported by this filing fee increase, to avoid further crippling staff losses and client service cuts.

There is clear precedent. In very similar circumstances in 1996, the Legislature passed and Governor Whitman signed a bill authorizing a filing fee increase, with an accompanying $8 million Legal Services appropriation in the FY 1997 budget, to create immediate availability of the funds for Legal Services and the Judiciary.

To conclude: unlike the criminal justice system, there is no right to a lawyer in civil matters. Yet for people with lower incomes, civil cases frequently present life-altering issues: can those involved keep their home; will they have enough to eat or buy clothes; will they be able to get essential health care; can they be safe from domestic abusers? These are the types of issues making up a Legal Services caseload. Far too often, lower income people must
face them without the help of a lawyer. There is great urgency, and injustice, here. This legislation can begin to reverse that situation.
TESTIMONY ON SENATE CONCURRENT RESOLUTION 128

SENATE LAW AND PUBLIC SAFETY COMMITTEE

submitted by the

AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY

July 24, 2014

The American Civil Liberties Union of New Jersey (ACLU-NJ) has long supported comprehensive reform of New Jersey’s broken bail system that would end discrimination against poor people. As Chief Justice Rabner’s Joint Committee on Criminal Justice found, our current bail system is unjust and results in many New Jerseyans, particularly black and Latino New Jerseyans, being kept in jail for months or years because they cannot afford to pay even low bail amounts of $2,500 or less. This is an injustice that must not continue; being poor is not a crime. Comprehensive bail reform would be a tremendous civil rights advance for our state, and end an injustice disproportionately faced by communities of color.

The ACLU-NJ has been clear from the beginning of this process: amending our Constitution is not a step to be taken lightly. In the context of bail reform, we must not amend our constitution without accompanying legislation that will fundamentally shift our bail system from a money-based one to a risk-based one, and guarantee a defendant’s right to a speedy trial. The proposed constitutional amendment being heard today, without such an accompanying statute, would be unjust and the ACLU-NJ would vigorously oppose it if it passed on its own.

However, if the most recent version of the bail reform legislation that the ACLU-NJ has seen, S946, is passed without significant change, the ACLU-NJ is prepared to support passage of this constitutional amendment. That version of the legislation, coupled with the Amendment, will transform our bail system and make our entire criminal justice system fairer while improving public safety. It deserves our complete support. That being said, without passage of strong bail reform legislation, we will seek defeat of the proposed Amendment. We thank all of the stakeholders for their commitment to this issue and for working to make sure that New Jersey’s criminal justice system gives everyone a fair shot, regardless of their financial status.
Lutheran Office of Governmental Ministry, and its 186 Lutheran congregations are committed to building up all of God’s people by providing opportunities for meaningful work and possibilities for a life in community. Individuals impacted by the criminal justice system often experience a lifetime of discrimination.

New Jersey’s bail system is broken. Over half of the people being warehoused in our jails are there awaiting trial rather than serving a sentence, and their average length of stay is about ten months. Almost half of these defendants are incarcerated solely because they cannot afford often nominal amounts of bail.

The current system is unfair and unsafe. Those with money can obtain release no matter how serious their crime or how much of a danger they pose to public safety. Those without money sit in jail for months on end no matter how minor their offense and no matter that they pose no danger to public safety. We as Lutherans believe that all persons should be treated with the same standard.

The resolution before you is a step towards fixing these problems but is insufficient standing on its own—SCR128 only allows for the pretrial detention of high-risk defendants; it does not implement a mechanism to allow for pretrial release of low-risk arrestees.

For this reason, we support this resolution for a constitutional amendment when it is balanced with comprehensive bail reform legislation that moves the current broken bail system away from using money bail and replaces it with a system that bases pretrial release decisions on risk.

Real, comprehensive bail reform promotes both safety and justice.

SCR128, paired with a version of A1910/S946 that includes these key elements, would better protect the rights of countless individuals who are incarcerated simply because they cannot afford to pay their way out of jail. It would guarantee safer communities by authorizing the detention of dangerous defendants. And it would benefit the state by mitigating the major financial burdens associated with unnecessary detention and excessive rates of incarceration.

We support SCR128 if it is paired with such legislation.

Sincerely,

[Signature]
The Rev. Sara E Lilja, Director
Lutheran Office of Governmental Ministry
New Jersey Synod-ELCA
July 24, 2014

Re: SCR128 and S946

Chairman and Members of the Senate Law and Public Safety Committee,

Good morning. My name is Anna Cuqui Rivera and I am the Administrative Chair of the Integrated Justice Alliance. Founded in 2008, the IJA is a statewide network working toward a fair, effective criminal justice system: one that promotes public safety, the restoration of individuals and families, protects and safeguards the rights of individuals in custody, promotes transparency, ensures accountability and spends taxpayer dollars wisely.

As we are well aware, New Jersey’s bail system is broken. Three quarters of the people being held in our jails today are there awaiting trial rather than serving a sentence. We know their average length of stay is 10 months, but for many it is much longer. Almost half of these defendants are in jail solely because they cannot afford a nominal sum of money bail.

The current system is both unfair and unsafe. Those with money can obtain release no matter how serious their crime; those without money sit in jail for months on end even though they pose no danger to public safety.

The resolution before you is one step towards fixing these problems, but it is insufficient standing on its own—SCR128 only allows for the pretrial detention of high-risk defendants; it does not implement a mechanism to allow for the pretrial release of low-risk arrestees.

For this reason, the IJA and its member organizations will only support this resolution for a constitutional amendment if it is balanced with comprehensive bail reform legislation that moves the current broken bail system away from using money bail and replaces it with a system of pretrial release based on risk.

Real, comprehensive bail reform promotes both safety and justice. We urge you to enact real, comprehensive bail reform that includes the following key elements.

- It must remove money as the primary mechanism of pretrial release, basing pretrial release decisions on risk rather than resources.
- It must require the use of risk assessments on arrestees with higher-level charges.
- It must authorize the release of low-risk individuals under the least restrictive conditions possible.
- It must permit the detention of those who are judged to be truly dangerous.

SCR128, paired with a version of A1910/S946 that includes these key elements, would much better protect the rights of countless individuals who are incarcerated simply because they cannot afford to pay their way out of jail. It would guarantee safer communities by authorizing the detention of dangerous defendants. And it would benefit the state by mitigating the major financial burdens associated with unnecessary detention and excessive rates of incarceration. We support SCR128 only if it is paired with such legislation.

Integrated Justice Alliance c/o New Jersey Institute for Social Justice
60 Park Place, Suite 511 ● Newark, NJ 07102 ● Phone: 973.624.9400 x30 ● RGgreenberg@NJJSJ.Org

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STEERING COMMITTEE MEMBERS (2014)

Organizational Members:
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American Friends Service Committee
Building One New Jersey
Community Education Centers
Community Education Centers Alumni Association
Drug Policy Alliance of New Jersey
International Youth Organization
Latino Action Network
National Council on Alcoholism and Drug Dependence (NCADD-NJ)
Nehemiah Group
New Jersey Association on Correction
New Jersey Institute for Social Justice
New Jersey Re-Entry Coalition
New Jersey Working Families
Urban Renewal Corporation
Volunteers of America Delaware Valley
Women Build Too
Women Who Never Give Up

Individual Members:
Bonnie Kerness
Jean Ross Esq.
July 24, 2014

New Jersey’s bail system is broken. Three quarters of the people being warehoused in our jails are there awaiting trial rather than serving a sentence, and their average length of stay is about ten months. Almost half of these defendants are incarcerated solely because they cannot afford often nominal amounts of bail.

The current system is unfair and unsafe. Those with money can obtain release no matter how serious their crime or how much of a danger they pose to public safety. Those without money sit in jail for months on end no matter how minor their offense and no matter that they pose no danger to public safety.

The resolution before you is a step towards fixing these problems but is insufficient standing on its own—SCR128 only allows for the pretrial detention of high-risk defendants; it does not implement a mechanism to allow for pretrial release of low-risk arrestees.

For this reason, we will only support this resolution for a constitutional amendment if it is balanced with comprehensive bail reform legislation that moves the current broken bail system away from using money bail and replaces it with a system that bases pretrial release decisions on risk.

Real, comprehensive bail reform promotes both safety and justice. Legislation to enact real, comprehensive bail reform must include several key elements.

- It must remove money as the primary mechanism of pretrial release, basing pretrial release decisions on risk rather than resources.
- It must require the use of risk assessments on arrestees with higher level charges.
- It must authorize the release of low-risk individuals under the least restrictive conditions possible.
- It must permit the detention of those who are judged to be truly dangerous.

SCR128, paired with a version of A1910/S946 that includes these key elements, would better protect the rights of countless individuals who are incarcerated simply because they cannot afford to pay their way out of jail. It would guarantee safer communities by authorizing the detention of dangerous defendants. And it would benefit the state by mitigating the major financial burdens associated with unnecessary detention and excessive rates of incarceration.

We support SCR128 if it is paired with such legislation.

Mary Ellen Marino  
NJ Chair of Progressive Democrats of America  
President of New Jersey Progressive Democratic Caucus
July 24, 2014

To the Honorable Members of the Senate Law and Public Safety Committee:

New Jersey’s bail system is broken. Three quarters of the people being warehoused in our jails are there awaiting trial rather than serving a sentence, and their average length of stay is about ten months. Almost half of these defendants are incarcerated solely because they cannot afford often nominal amounts of bail.

The current system is unfair and unsafe. Those with money can obtain release no matter how serious their crime or how much of a danger they pose to public safety. Those without money sit in jail for months on end no matter how minor their offense and no matter that they pose no danger to public safety.

The resolution before you is a step towards fixing these problems but is insufficient standing on its own—SCR128 only allows for the pretrial detention of high-risk defendants; it does not implement a mechanism to allow for pretrial release of low-risk arrestees.

For this reason, we will only support this resolution for a constitutional amendment if it is balanced with comprehensive bail reform legislation that moves the current broken bail system away from using money bail and replaces it with a system that bases pretrial release decisions on risk.

Real, comprehensive bail reform promotes both safety and justice. Legislation to enact real, comprehensive bail reform must include several key elements.

- It must remove money as the primary mechanism of pretrial release, basing pretrial release decisions on risk rather than resources.
- It must require the use of risk assessments on arrestees with higher level charges.
- It must authorize the release of low-risk individuals under the least restrictive conditions possible.
- It must permit the detention of those who are judged to be truly dangerous.

SCR128, paired with a version of A1910/S946 that includes these key elements, would better protect the rights of countless individuals who are incarcerated simply because they cannot afford to pay their way out of jail. It would guarantee safer communities by authorizing the detention of dangerous defendants. And it would benefit the state by mitigating the major financial burdens associated with unnecessary detention and excessive rates of incarceration.

We support SCR128 if it is paired with such legislation

Faithfully,
The Reverend Gregory Bezilla+
Episcopal Chaplain to Rutgers
July 24, 2014

To the Honorable Members of the Senate Law and Public Safety Committee:

My name is Pastor Leroy Scott; I run the Faith Christian Counseling Center based in Beverly. Our center serves Burlington, Camden, and Mercer counties, providing comprehensive and effective services which are life enriching, and wholly integrated and consistent with positive beliefs and values. We service all people regardless of age, race, sex, religion, ethnicity, or socio-economic status and treat each client with respect, empathy, and acceptance.

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I support SCR128 if it is paired with such legislation.
July 24, 2014

To the Honorable Members of the Senate Law and Public Safety Committee:

Women Who Never Give-Up (WWNG) is a New Jersey based non-profit organization dedicated to helping families get justice in our criminal justice and prison system. Our board, officers and members have countless years of experience working on issues such as: prison health care, prison conditions, prisoner treatment, prisoner jobs, training and education, parole and reentry issues and sentencing reform.

New Jersey’s bail system is broken. Three quarters of the people being warehoused in our jails are there awaiting trial rather than serving a sentence, and their average length of stay is about ten months. Almost half of these defendants are incarcerated solely because they cannot afford often nominal amounts of bail.

The current system is unfair and unsafe. Those with money can obtain release no matter how serious their crime or how much of a danger they pose to public safety. Those without money sit in jail for months on end no matter how minor their offense and no matter that they pose no danger to public safety.

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We support SCR128 if it is paired with such legislation.
July 24, 2014

RE: SCR128/S946

To the Honorable Members of the Senate Law and Public Safety Committee:

My name is Mustafa Willis, I am a twenty-eight year old native of Newark, New Jersey and a victim of its failed bail system. I here today advocating for support of pretrial justice reform and S946/A1910 with the amendments proposed by the Drug Policy Alliance and the New Solutions Campaign coalition.

I was arrested in 2010 and 2012. Neither of these arrests resulted in any criminal convictions, yet I suffered and continue to endure the consequences of an unjust system. When I was first arrested in 2010, I sat in jail for four months solely because of my inability to pay a bail of $3,000 guaranteeing my release. In this time, I lost my job, I lost a family member, and I lost hope in a broken system that is supposed to protect its citizens. I was wronged again in 2012 due to a similar arrest. I have to stress again that both cases against me were dismissed! This time, my bail was set at $6,500 (of which I am still trying to pay off). My situation is a prime example of how New Jersey’s bail system is broken. While unjustly incarcerated, I was treated as less than human. I was subjected to not only mistreatment from the prison personnel, but also unhealthy conditions. My family and I were given the run around multiple times trying to secure my release; as this depended not only on my ability to pay, but also an arduous paperwork process that is begun at the convenience of the bail bondsman.

In 2013, the Drug Policy Alliance released a report in partnership with Luminosity that shows that the state’s prisons are overpopulated by individuals who cannot afford to post bail. I’m not just speaking on behalf of myself, because the same is true for the majority of other incarcerated people throughout the state. Thousands of people in New Jersey are subject the harsh consequences of unfair laws: unnecessary time spent in jail, loss of and difficulty to find employment, and loss of financial support. The countless burdens that were placed on myself and my family are practically irreparable. We are victims, too. My cases were dismissed, one by way of videotaped evidence that proved my innocence! I was never convicted of any criminal charges; and yet, I am (literally and figuratively) paying for the consequences of an action I did not commit. This is inexcusable.

The state’s bail system needs more sensible and responsible reform. Nonviolent, and otherwise law abiding citizens should not be subject to unfair treatment. New Jersey should focus on risk over resources in terms of criminal justice.
July 24, 2014

My name is Patrick Gallahue and I am a supporter of the New Solutions Campaign and a proud resident of Weehawken. I want to thank the Chairman and Members of the Judiciary Committee for considering the incredibly important issue of bail reform and for giving me the opportunity to speak today.

Our current bail system is broken and unfair. Whether intended or not, it disproportionately leads to the detention of people based on their class rather than the severity of the offense for which they are charged. The impact of this system is clearly discriminatory, with minorities bearing the brunt of our state’s current policy. It needs to change.

For this reason, I applaud the legislature’s efforts to reform bail practice in New Jersey.

However, I want to want to echo the concerns of the Drug Policy Alliance and other members of the New Solutions Campaign. This proposal must be matched with Assembly bill 1910 to help us depart from a bail system that uses money as the primary instrument of ensuring pretrial release. If this is not part of the bill, it will fail to address the biggest problem with the current system. Our ineffective and dangerous resource-based bail system exacerbates the disproportionate impact of the pretrial system on poor people.

Defendants are not identical and imposing a table of values to their alleged offenses grossly oversimplifies what is just and proper case-by-case analysis requires. What we need are individualized determinations of whether monetary release is necessary in order to further public safety or guarantee an individual’s appearance in court.

In other words, what is supposed to matter is whether a person is likely to show up for court or if they present a public safety risk. But currently it is frankly only about someone’s ability to pay.

For my peace of mind, I want to know that a person who presents a danger to me and my family is in custody. But I take no solace in knowing that poor, low-level drug offenders are in detention because they cannot afford bail. The time spent in jail comes with incredible costs to person’s family and his or her community. Apartments are lost. Families may be broken apart. This unjust system comes with extraordinary costs. Some suffer immensely. Some feel this system in small ways. But everyone pays in some way.

You have a chance to fix that.

A risk-assessment on all arrestees, would steer dangerous individuals into custody, while establishing a pretrial services agency to monitor low- and moderate-risk defendants who are released pending trial.

SRC128 must be paired with an acceptable version of A1910/S946 that conditions pretrial release on risk, not the ability to pay. As a citizen of New Jersey, my top priorities are a system that ensures the safety of
my family and that remains fundamentally fair and just. However, a system that puts people in jail for their inability to pay—while letting others go free due to their financial wellbeing—does neither.

Thank you.

Patrick Gallahue
RE: SCR128

My name is Vanessa Wilson and I am the Senior Pastor of Magnolia Road United Methodist Church in Pemberton, New Jersey. I have served in this capacity since July 1, 2013. I also serve as the Chair of the Commission of Religion and Race of the Greater New Jersey Conference of the United Methodist Church. Prior serving as a Pastor, I have over 20 years’ experience in executive leadership in higher education in New Jersey and non-profit organizations.

New Jersey’s bail system is broken. Three quarters of the people being warehoused in our jails are there awaiting trial rather than serving a sentence, and their average length of stay is about ten months. Almost half of these defendants are incarcerated solely because they cannot afford often nominal amounts of bail.

The current system is unfair and unsafe. Those with money can obtain release no matter how serious their crime or how much of a danger they pose to public safety. Those without money sit in jail for months on end no matter how minor their offense and no matter that they pose no danger to public safety.

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I support SCR128 if it is paired with such legislation.

Respectfully submitted,

Vanessa M. Wilson, J.D.
Senior Pastor, Magnolia Road U.M.C.

229 Magnolia Road · Pemberton, New Jersey 08068 · (609) 894-0770

www.magnoliaroadumc.org
welcome@magnoliaroadumc.org
The New Jersey State Bar Association respectfully supports SCR-128 (Norcross) which proposes a constitutional amendment to authorize, under certain circumstances, pretrial detention of persons in criminal cases.

The New Jersey State Bar Association supports this legislation because it provides a balanced approach to reforming New Jersey’s bail system which is long overdue. However, the Association urges that this approach be holistic in nature requiring simultaneous enactment of implementing legislation which specifically enumerates the crimes where a defendant would not be eligible for pretrial release, the adoption of a speedy trial statute, and full funding for not only the courts to create a pretrial release system, but also county prosecutor offices and state and county public defender offices who must deal with the procedural requirements attendant to this amendment’s adoption.

For the reasons set forth above, the New Jersey State Bar Association supports this bill.
July 24, 2014

RE: SCR128

My name is Doris Glaspy; I am a Pastor at Roseville Presbyterian Church in Newark.

New Jersey’s bail system is broken. Three quarters of the people being warehoused in our jails are there awaiting trial rather than serving a sentence, and their average length of stay is about ten months. Almost half of these defendants are incarcerated solely because they cannot afford often nominal amounts of bail.

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I support SCR128 if it is paired with such legislation.
TO: Members of the Senate Law and Public Safety Committee
FROM: Rev. Errol Cooper, First Baptist Church of Lincoln Gardens
DATE: July 24th
RE: SCR128

My name is Errol Cooper. I am an Associate Pastor at First Baptist Church of Lincoln Gardens located in Somerset, NJ. I also lead our re-entry ministry, a faith-based program that mentors incarcerated individuals and those returning to communities in Somerset and Middlesex counties by providing support, resources and guidance to succeed following their term of incarceration.

New Jersey’s bail system is broken. Three quarters of the people being warehoused in our jails are there awaiting trial rather than serving a sentence, and their average length of stay is about ten months. Almost half of these defendants are incarcerated solely because they cannot afford often nominal amounts of bail.

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SCR128, paired with a version of A1910/S946 that includes these key elements, would better protect the rights of countless individuals who are incarcerated simply because they cannot afford to pay their way out of jail. It would guarantee safer communities by authorizing the detention of dangerous defendants. And it would benefit the state by mitigating the major financial burdens associated with unnecessary detention and excessive rates of incarceration.

I support SCR128 if it is paired with such legislation.
July 24, 2014

Chairman and Members of the Senate Law and Public Safety Committee,

I am the pastor of Westminster Presbyterian Church; we have been serving the city of Trenton for over 115 years by converting our worship space into an educational facility. Westminster is only one block from the historic Hedgepeth-Williams Elementary School (HWS), named in honor of two African American mothers who sued Trenton’s Board of Education over racial discrimination against their children. In 1944 the Supreme Court of New Jersey ruled in their favor and abolished segregation in the state. A decade later, the US Supreme Court cited the Hedgepeth-Williams case in the famed *Brown v. Board of Education* decision to overturn the doctrine of “separate but equal.”

Since the 70’s we have dedicated our classrooms to education i.e. early childhood education, after school, and summer programming, parenting skills, English classes, and Spanish classes. For almost 20 years, I been supporting the parents of our children who have been incarcerated. I have witnessed firsthand that the New Jersey’s bail system is broken! The negative impact that it has had on our innocent children from low income families is deplorable and a scandal to our “so called” justice system.

Three quarters of the people being warehoused in our jails are there awaiting trial rather than serving a sentence and their average length of stay is about ten months. Almost half of these defendants are incarcerated solely because they cannot afford often nominal amounts of bail.

The current system is unfair and unsafe. Those with money can obtain release no matter how serious their crime or how much of a danger they pose to public safety. Those without money sit in jail for months on end no matter how minor their offense and no matter that they pose no danger to public safety.

The resolution before you is a step towards fixing these problems but is insufficient standing on its own—SCR128 only allows for the pretrial detention of high-risk defendants; it does not implement a mechanism to allow for pretrial release of low-risk arrestees.

For this reason, we will only support this resolution for a constitutional amendment if it is balanced with comprehensive bail reform legislation that moves the current broken bail system away from using money bail and replaces it with a system that bases pretrial release decisions on risk.

Real, comprehensive bail reform promotes both safety and justice. Legislation to enact real, comprehensive bail reform must include several key elements.

- It must remove money as the primary mechanism of pretrial release, basing pretrial release decisions on risk rather than resources.
- It must require the use of risk assessments on arrestees with higher level charges.
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• It must permit the detention of those who are judged to be truly dangerous.

SCR128, paired with a version of A1910/S946 that includes these key elements, would better protect the rights of countless individuals who are incarcerated simply because they cannot afford to pay their way out of jail. It would guarantee safer communities by authorizing the detention of dangerous defendants. And it would benefit the state by mitigating the major financial burdens associated with unnecessary detention and excessive rates of incarceration.

We support SCR128 if it is paired with such legislation.

Seeking the Shalom of the City & the Nation,

Karen Hernández-Granzen
Pastor/Head of Staff

Westminster Presbyterian Church
A House of Prayer and Praise for People of All Nations

Westminster Community Life Center
1140 Greenwood Avenue, Trenton, NJ 08609
(1 block from East Trenton Police Department)
Testimony to Senate Law and Public Safety Committee Concerning Support of SCR128
July 24, 2014

Honorable members of the Senate Law and Public Safety Committee, thank you for considering very important and needed changes in bail reform. My name is Rev. Craig Hirshberg, and I am the Executive Director of the Unitarian Universalist Legislative Ministry of New Jersey, representing Unitarian Universalist congregations throughout our state. I am here to express conditional support for SCR128.

Thousands of such prisoners are being held for non-violent offenses and would otherwise be released on bail at no risk to the community were it not for their inability to pay even relatively small bail amounts. Since ability to pay is the existing overriding standard in granting stipulated bail, many high risk offenders with access to financial resources may be released and those who pose little risk to society are forced to remain incarcerated on an average of ten months, due simply to a lack of funds.

New Jersey’s bail system is broken. Three quarters of the people being warehoused in our jails are awaiting trial rather than serving a sentence. SCR128 is a step in the right direction. However, to have the full support of our NJ congregations it must do two things. It must clearly articulate the intention of the constitutional amendment and it must clearly continue to protect the rights of the accused under the law. Changing the New Jersey Constitution with this amendment has long term implications and can lead to abuse without specific wording in the amendment that clearly states that all persons shall, before conviction, be entitled to be released from custody pending trial under the least restrictive conditions as possible that will reasonably assure the person’s appearance before the court as required, protect the safety of any person or of the community, or prevent the defendant from obstructing or attempting to obstruct the criminal justice process.

In the absence of such wording in SCR128, we will support this amendment only if it is paired with comprehensive bail reform legislation that addresses necessary protections under the law and that moves the current broken bail system away from using money bail and replaces it with a real comprehensive reform system that bases pretrial release decisions on risk. Essential comprehensive bail reform includes the following elements:

- It must remove money as the primary mechanism of pretrial release, basing pretrial release decisions on risk rather than resources.
- It must require the use of risk assessments on arrestees with higher level charges.
- It must authorize the release of low-risk individuals under the least restrictive conditions possible.
- It must permit the detention of those who are judged to be truly dangerous.

SCR128, paired with a version of A1910/S946 that includes these key elements, would define and clarify the intention of the general language of this constitutional amendment. It would better protect the rights of countless individuals who are incarcerated simply because they cannot afford to pay bail. It would guarantee safer communities by authorizing the detention of dangerous defendants. Our Unitarian Universalist faith communities would only support this resolution with these stipulations in order to bring about a more fair and just bail system.
July 23, 2014

Honorable Members of the Senate Law and Public Safety Committee:

The Nehemiah Group is a non-profit community development and social service organization based in South Jersey committed to serving the underserved and empowering the underprivileged.

New Jersey’s bail system is broken. Three quarters of the people being warehoused in our jails are there awaiting trial rather than serving a sentence, and their average length of stay is about ten months. Almost half of these defendants are incarcerated solely because they cannot afford often nominal amounts of bail.

The current system is unfair and unsafe. Those with money can obtain release no matter how serious their crime or how much of a danger they pose to public safety. Those without money sit in jail for months on end no matter how minor their offense and no matter that they pose no danger to public safety.

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For this reason, we will only support this resolution for a constitutional amendment if it is balanced with comprehensive bail reform legislation that moves the current broken bail system away from using money bail and replaces it with a system that bases pretrial release decisions on risk.

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SCR128, paired with a version of A1910/S946 that includes these key elements, would better protect the rights of countless individuals who are incarcerated simply because they cannot afford to pay their way out of jail. It would guarantee safer communities by authorizing the detention of dangerous defendants. And it would benefit the state by mitigating the major financial burdens associated with unnecessary detention and excessive rates of incarceration.

We support SCR128 if it is paired with such legislation.

Sincerely,

Micah Khan

Micah Khan
Director of Operations
www.nehemiahgroup.org
July 22, 2014
Senate Law & Public Safety Committee
RE: SCR128

Dear Senate Members

I am writing as President of the New Jersey Chapter of the American Correctional Association. The mission of the chapter is to provide to criminal justice system personnel throughout New Jersey, information, training and a forum for professional networking that supports sharing exemplary practices and promotes individual growth, organizational effectiveness and interagency cooperation.

Our current bail system is broken; three quarters of our county jail inmates are awaiting trial and on the average spend ten months in those jails. Fifty percent of them are there because they lack the financial resources to meet minimum bail requirements. That translates to over 5000 people on the average day.

The current system is both unfair and a public safety issue. Those who potentially present serious public safety concerns can be released if they have the financial resources. Many of the others, who present little or no threat to public safety, sit there at a tremendous financial cost to the taxpayer because they cannot afford their bail.

SCR128 is a partial step in resolving these issues but an incomplete one. It detains high risk offenders but fails to provide an appropriate means of developing a system for the non monetary release of the low risk offender.

Our organization can only support the constitutional amendment if it is balanced with bail reform legislation that replaces the dependence on money with a risk assessment system that bases release on public safety risks. Real bail reform will promote both justice and public safety.

Bail reform should include removing money as the primary method of release and base it on risk rather than resources. It needs to use risk assessments prior to release. It needs to release low risk offenders with community supervision that matches their risk factors. And it detains the truly dangerous.

SCR128 paired with a version of A1010/S946 that includes these elements would better protect the rights of low risk offenders while maintaining public safety through the selective detention of high risk detainees.

Sincerely,

James A. Hemm, President
Chairman and Members of the Senate Law and Public Safety Committee,

Thank you for the opportunity to testify in regards to SCR 128, which is a step toward bail reform in the state of New Jersey. This resolution however, is insufficient on its own and only allows for the pretrial detention of high-risk defendants and does not implement the critical mechanism to allow for pretrial release of low-risk arrestees.

Since 1896 and each day since then, our staff and volunteers have worked directly with the community and with county, municipal, and state governments to develop services and programs that provide immediate and long-term benefit to those most in need. We currently operate 43 separate programs serving individuals living with chronic mental illness and intellectual disabilities, experiencing homelessness, seeking permanent housing, struggling with addictive behavior, and returning to our communities from the criminal justice system.

As we have previously testified, pretrial detention wastes taxpayer dollars and unfairly penalizes individuals with little to no resources. Under our current money bail system, individuals who cannot afford to make bail typically languish behind bars for a year awaiting trial costing an average of $30,000 per person. Ironically, confinement comes at a much greater financial cost to the state than the cash benefit that their often small bail amounts would provide. Therefore, we can only support SCR128 if it is balanced with comprehensive bail reform legislation that moves the current broken bail system away from using money bail and replaces it with a system that bases pretrial release on risk.

True reform of the bail system includes the removal of money as the primary mechanism of pretrial release, instead basing release decisions on risk rather than monetary resources. Bail reform must also require the use of risk assessments and authorizes the release of low-risk individuals under the lease restrictive conditions possible.

For these reasons I urge you to pair SCR 128 with a version of A1910/S946 that includes these very important elements.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Daniel L. Lombardo
July 24, 2014

Chairman and Members of the Senate Law and Public Safety Committee,

The New Jersey Association on Correction (NJAC), established in 1961, is a private not-for-profit organization whose mission is to enable social justice and human dignity to be manifest in the policies and institutions governing victims of crime and offenders through rehabilitative, educational, and legislative programs. NJAC’s program locations range from Camden to Paterson, with numerous sites in between.

New Jersey’s bail system is broken. Three quarters of the people being warehoused in our jails are there awaiting trial rather than serving a sentence, and their average length of stay is about ten months. Almost half of these defendants are incarcerated solely because they cannot afford often nominal amounts of bail.

The current system is unfair and unsafe. Those with money can obtain release no matter how serious their crime or how much of a danger they pose to public safety. Those without money sit in jail for months on end no matter how minor their offense and no matter that they pose no danger to public safety.

The resolution before you is a step towards fixing these problems but is insufficient standing on its own—SCR128 only allows for the pretrial detention of high-risk defendants; it does not implement a mechanism to allow for pretrial release of low-risk arrestees.

For this reason, I will only support this resolution for a constitutional amendment if it is balanced with comprehensive bail reform legislation that moves the current broken bail system away from using money bail and replaces it with a system that bases pretrial release decisions on risk.

Real, comprehensive bail reform promotes both safety and justice. Legislation to enact real, comprehensive bail reform must include several key elements.

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SCR128, paired with a version of A1910/S946 that includes these key elements, would better protect the rights of countless individuals who are incarcerated simply because they cannot afford to pay their way out of jail. It would guarantee safer communities by authorizing the detention of dangerous defendants. And it would benefit the state by mitigating the major financial burdens associated with unnecessary detention and excessive rates of incarceration.

I support SCR128 if it is paired with such legislation.

Sincerely,

Angel M. Perez, Executive Director

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WILLIAM CARR
ANN MINER ELLIOT
Chairman and Honorable Members of the Law and Public Safety Committee:

New Jersey’s bail system is broken. Three quarters of the people being warehoused in our jails are there awaiting trial rather than serving a sentence, and their average length of stay is about ten months. Almost half of these defendants are incarcerated solely because they cannot afford often nominal amounts of bail.

The current system is unfair and unsafe. Those with money can obtain release no matter how serious their crime or how much of a danger they pose to public safety. Those without money sit in jail for months on end no matter how minor their offense and no matter that they pose no danger to public safety.

The resolution before you is a step towards fixing these problems but is insufficient standing on its own—SCR128 only allows for the pretrial detention of high-risk defendants; it does not implement a mechanism to allow for pretrial release of low-risk arrestees.

For this reason, we will only support this resolution for a constitutional amendment if it is balanced with comprehensive bail reform legislation that moves the current broken bail system away from using money bail and replaces it with a system that bases pretrial release decisions on risk.

Real, comprehensive bail reform promotes both safety and justice. Legislation to enact real, comprehensive bail reform must include several key elements.

- It must remove money as the primary mechanism of pretrial release, basing pretrial release decisions on risk rather than resources.

- It must require the use of risk assessments on arrestees with higher level charges.

- It must authorize the release of low-risk individuals under the least restrictive conditions possible.

- It must permit the detention of those who are judged to be truly dangerous.

SCR128, paired with a version of A1910/S946 that includes these key elements, would better protect the rights of countless individuals who are incarcerated simply because they cannot afford to pay their way out of jail. It would guarantee safer communities by authorizing the detention of dangerous defendants. And it would benefit the state by mitigating the major financial burdens associated with unnecessary detention and excessive rates of incarceration.

We support SCR128 if it is paired with such legislation

Sincerely,

Bonnie Kerness, MSW
Director
Prison Watch Program
973-643-3192
To: Honorable Members of the Senate Law and Public Safety Committee
From: People's Organization for Progress (POP)
Date: July 24, 2014
Re: SCR128

POP is an independent, Newark-based, human and civil rights organization, with chapters in other northern communities of New Jersey. We work with like-minded groups for the improvement of conditions in our communities, and for racial, social, political and economic justice. We are highly critical of the conditions in our state's jails and prisons, and gravely concerned about the negative impacts of these institutions on individuals, families and the low-income communities whose residents fill their cells.

Therefore, we strongly support bail reform in our state. It is clear to us that money bail discriminates against the low-income people we serve, and further marginalizes already-struggling families and communities. We see that our county jails are overflowing with individuals who would not pose a risk to others, but are incarcerated solely because they cannot afford even nominal bail amounts. Moreover, predicating per-trial release on wealth rather than risk, exposes people in the crime-ridden communities we serve, to further violations of the law, during the extended periods between arrest and resolution of a criminal case.

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July 24, 2014

RE: SCR128

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We support SCR128 if it is paired with such legislation.

Sincerely,

Evan Nison
Executive Director, NORML New Jersey
July 24, 2014

To the Honorable Members of the Senate Law and Public Safety Committee:

We greet you in love and in the name of our Lord and Savior Jesus Christ. Fathers and Men United for a Better Trenton strongly supports real, comprehensive bail reform for many reasons. As a faith-based grassroots organization, we have seen the devastating impact that the current pretrial process can have on families and communities.

New Jersey’s bail system is broken. Three quarters of the people being warehoused in our jails are there awaiting trial rather than serving a sentence, and their average length of stay is about ten months. Almost half of these defendants are incarcerated solely because they cannot afford often nominal amounts of bail.

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out of jail. It would guarantee safer communities by authorizing the detention of dangerous defendants. And it would benefit the state by mitigating the major financial burdens associated with unnecessary detention and excessive rates of incarceration.

We support SCR128 if it is paired with such legislation.

Prayerfully Submitted:

Jayson Rodgers
July 24, 2014

Chairman and Members of the Senate Law and Public Safety Committee,

My name is Dorothea Hoffner. I regret that I cannot appear in person to present my testimony. I am a member of the Church and Society Committee of First Presbyterian and Trinity Church in South Orange, NJ. We strongly support REAL BAIL REFORM, meaning we will ONLY support the resolution for a constitutional amendment IF it is paired with legislation that moves the current system away from using money bail and replaces it with a system that bases pretrial release on risk.

The resolution before you is a step towards fixing these problems but is insufficient standing on its own—SCR128 only allows for the pretrial detention of high-risk defendants; it does not implement a mechanism to allow for pretrial release of low-risk arrestees.

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We support SCR128 if it is paired with such legislation. Thank you or all you do.

Dr. Dorothea R. Hoffner

358 Montrose Ave.

South Orange, NJ 07079
TO: The Honorable Members of the Senate Law and Public Safety Committee

FROM: Avron Stoloff, Verona

RE: SCR128

DATE: July 24, 2014

My name is Avron Stoloff and I am a member of the Unitarian Congregation at Montclair, part of the larger UULMNJ that has many members testifying before you.

I began working on bail reform earlier this year when I attended a service the Sunday before Martin Luther King Day at Bethany Baptist Church in Newark. During the sermon, the Reverend Howard enlightened the congregation about the problems with the current bail system. I subsequently attended a work session in April, working on coming up with an action plan to educate more people about the issues and to effect change through legislation.

While I am thrilled that the legislature is trying to address bail reform, the bill that came out of Assembly Appropriations Committee was not even close to the same one that came out of earlier committee sessions. The current form of the bill does NOT reform bail in meaningful ways because it maintains monetary bail as the primary mechanism of pretrial release. In order for me to support SCR128, it needs to be paired with a better version of A1910/S946.

The only group that believes monetary bail is good for justice is the bail lobby. Please don't give in to their pressure - remove monetary bail, which only benefits those wealthy enough to afford it and doesn't consider risk sufficiently. Risk assessments and supervised release for low-risk individuals under the least restrictive conditions possible are better for all involved and would save the state money, as it is far more expensive to keep people in jail. Please note that Attorney General Holder also supports the reforms mentioned above and has urged states to adopt them to help reduce overcrowding of our prisons and jails and provide real justice.

I can only support SCR128 if it is paired with a version of A1910/S946 that replaces the current resource-based system with one based on risk. Thank you for your interest in this important issue.

Avron Stoloff
102 Fairway Ave.
Verona, NJ 07044-1013
Testimony to the Senate Law and Public Safety Committee on SCR 128
July 24, 2014

Honorable members of the Senate Law and Public Safety Committee, my name is Elise Linden and I am submitting my testimony as a Licensed Clinical Social Worker, a Drug Policy Alliance advocate and representative of the Anti-Racist Alliance of Northern New Jersey. I live and work in Essex County. As a social worker I practice under a Code of Ethics that guides my work, a codification that includes a core Value of social justice and a Principal that social workers challenge social injustice. To that end, I am compelled to testify on behalf of real, comprehensive bail reform.

Resolution SCR128 is a step towards fixing the current bail system; however, on its own it is insufficient. Therefore, I support resolution SCR 128 for a constitutional amendment only if it is paired with a version of A1910/S946 that moves away from money as a primary mechanism and instead uses risk assessment to determine pretrial release decisions. Our current bail system uses money as the primary mechanism for pretrial release without assessment for risk and danger. We need to fix our bail system, making it safe and just.

Every resident in New Jersey does not have access to the same amount of money. Every arrestee does not carry the same level of charges. Being detained in jail because of inability to pay one’s way out is not indicative of guilt, it is indicative of poverty. Thus, if you are poor in the State of New Jersey, your punishment begins upon arrest. In addition, statistics indicate that persons of color are disproportionately represented in our jails, intensifying the injustice of our current bail system. Detainees who can pay their way out do so regardless of the dangerousness of their behavior, growing unsafe conditions in our communities. We need bail reform that authorizes the release of low-risk individuals under the least restrictive conditions possible while permitting the detention of those who have been assessed to be truly dangerous.

Having a system that uses money as the primary mechanism of pretrial release is unfair. We must stop punishing people for being poor. We must stop systems that perpetuate racial disparity. Having a system that does not assess for risk is unsafe. Real, comprehensive bail reform will help New Jersey to be a State that provides equity for its citizens rather than a State that perpetuates inequity and injustice. Real, comprehensive bail reform protects our individuals, our families and our communities. Real comprehensive bail reform promotes social justice and is good for our State.
TESTIMONY TO THE SENATE LAW AND PUBLIC SAFETY COMMITTEE
July 24, 2014

To the Honorable Members of the Senate Law and Public Safety Committee:

The Latino Action Network is a 501c4 organization with a Steering Committee comprised of Latino leaders from across the State, including unions, community organizations, academia and professional backgrounds. Our testimony and other documents can be accessed at our website and on our Facebook page.

New Jersey’s bail system is broken. Three quarters of the people being warehoused in our jails are there awaiting trial rather than serving a sentence, and their average length of stay is about ten months. Almost half of these defendants are incarcerated solely because they cannot afford often nominal amounts of bail.

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SCR128, paired with a version of A1910/S946 that includes these key elements, would better protect the rights of countless individuals who are incarcerated simply because they cannot afford to pay their way out of jail. It would guarantee safer communities by authorizing the detention of dangerous defendants. And it would benefit the state by mitigating the major financial burdens associated with unnecessary detention and excessive rates of incarceration.

We support SCR128 if it is paired with such legislation.

Presented by Frank Argote-Freyre, President
Latino Action Network, PO Box 943, Freehold, NJ 07728
July 23, 2014

Senator Ronald Rice  
New Jersey State Senate  
New Jersey State Capital  
West State Street  
Trenton NJ

Re. Unlawful Passage of Preventive Detention Constitutional Amendment

Senator Rice;

It has been brought to my attention that there is an effort to pass the newly introduced constitutional amendment identified as Senate Concurrent Resolution 128 and Assembly Concurrent Resolution 177. Upon review of the language of these documents, the language fails to include the provisions for a timely trial for those persons subject to detention as has been previously identified on a number of occasions. Further, the provisions of these proposed amendments allows for a person to be detained for ANY crime, which has been a primary point of contention of the Southern Christian Leadership Conference since the inception of our involvement in the bail reform discussion in New Jersey.

Since it is clear that the language of these amendments has reverted to a form that is unacceptable to SCLC due to the widespread disparate impact this language will have on minorities and poor people, I am compelled to identify a concern regarding the legality or rather the illegality of this attempt at final passage. Below follows my analysis and argument, after consultation with local counsel.

SCR 128 was introduced in the Senate on July 10, 2014, where it received first reading an assignment to committee. On July 11, 2014, SCR 128 was placed on the desks of the members of both the Assembly and the Senate, having never received any further treatment in the Senate, either in committee or as a matter of second reading upon the Senate Floor.

On July 11, 2014, as has been reported by the New Jersey Star Ledger and subsequently confirmed by discussions with our contacts in New Jersey, the Assembly was recessed for the summer. However, despite this recess, a quorum call was issued and ACR 177 was introduced. Moreover, SCR 128 was laid on the desk of the Assembly members in an open meeting through such a quorum call.
It is my understanding that to change the New Jersey Constitution certain, mandatory
procedures need to be followed by the Legislature. Prior to any vote, three conditions
must be satisfied. Firstly, the proposed amendment must be printed and placed on the
desks of members of each house. Second, at least “twenty calendar days” must pass.
Finally, a public hearing must be held on the actual language of the proposed
amendment.

According to my reading of the Rules of the Senate and consultation with local
Counsel. Amendments to the New Jersey Constitution that originate in the Senate are
required to be introduced as a concurrent resolution. After second reading of a concur-
rent resolution the Senate “shall” place a copy of the proposed language of the amend-
ment to be considered on the Senators’ desks, in an open meeting, which shall be noted
in the “Journal.” See e.g. Rules of the Senate of the State of New Jersey, Rule 24:2. This
rule specifically states, inter alia:

Copies of the concurrent resolution shall be forwarded by
the Secretary to the General Assembly with the request that
they be placed on the desks of the members of that House in an
open meeting.

SCR 128 has not received Second Reading and thus, should not have been placed on the
desks of the Senators. However, even assuming that such requirement is arguable, it is inargu-
able that SCR 128 should have been referred to the General Assembly in an open meeting.
This has not been done.

Pursuant to the Rules of the General Assembly of New Jersey as enacted this year, in
order for a quorum to be present 41 of the Assembly’s 80 members are required to be
present. See Rules of the General Assembly, Rule 2:2 Quorum. This rule specifically states,
inter alia:

“[members] must be in the Chamber to answer the quorum
call and vote on any question.”

On July 11, 2014, the New Jersey Star Ledger reported that only one (1) member
of the assembly was physical present in the Chamber; Assemblyman Reed Gusciora (D-
Mercer). Also reported was that unnamed, unknown and unelected legislative staffers
walked through the empty chamber to vote “present” for the absent members. Despite only
one member beig physically present as per the rules, a recorded “present vote” for seventy (70)
members was taken. According to the Star Ledger, Assemblyman Declan O’Scanlon (R-
Monmouth) and Assembly Tom Giblin (D- Essex) had not given permission to anyone to cast a
vote for them.
James Wilson, assistant legislative counsel for the nonpartisan Office of Legislative Services the Assembly, has been quoted by the Star Ledger as stating that the Assembly, "need[s] 41 or more members actually there to constitute a quorum to do business." This could be construed as an admission that the rules of the Legislature were not followed, specifically that the proposed SCR 128 be laid upon the desks of both houses in an open meeting.

The method of the legislature in moving this particular proposal is troubling. Even more troubling is that there seems to be a sense to get this proposal on the ballot for this November at all costs, even if it means ignoring the concerns of the Black Caucus, the rules governing the Senate and the Assembly and the opinions of my organization. I am deeply troubled by this information and believe that any amendment to the New Jersey Constitution that is adopted in violation of the rules of the legislature is a violation of the constitution itself and must be stricken. It appears to be a lot of effort for naught.

Respectfully Submitted;

Charles Brooks, Esquire
General Counsel, SCLC
PRELIMINARY POSITION STATEMENT OF THE
ASSOCIATION OF CRIMINAL DEFENSE LAWYERS OF NEW JERSEY
REGARDING JUDICIAL AND LEGISLATIVE PROPOSALS FOR
BAIL REFORM

The Association of Criminal Defense Lawyers of New Jersey (ACDL-NJ), an organization founded for the primary purposes of providing a collective voice for the criminal defense bar and protecting the individual rights of those charged with criminal offenses, respectfully submits these comments in response to recent calls for fundamental changes to the criminal justice system in New Jersey.

The ACDL-NJ has reviewed the March 10, 2014 Report of the New Jersey Supreme Court Joint Committee on Criminal Justice, tasked with exploring issues relating to bail and delays in bringing criminal cases to trial. The ACDL-NJ is also aware of proposed pending legislation, including a proposed constitutional amendment, that advocates sweeping alteration of the pre-trial process in this State, particularly the principles and procedures governing pre-trial detention and release.

All stakeholders in our criminal justice system have identified the common goal of relieving the scourge in this State of incarcerating poor and indigent defendants, who present virtually no risk of flight or to the community, due solely to their financial inability to make bail. The ACDL-NJ shares that concern and joins in the call for change. Change, however, must come in a narrowly-tailored form that addresses that important issue without unnecessarily colliding with the fundamental constitutional protections afforded to every individual faced with criminal prosecution in this State. The ACDL-NJ staunchly opposes any measure or proposal that eliminates, alters, or erodes in any way the absolute and fundamental constitutional right to bail guaranteed to each and every individual under the New Jersey Constitution.

That pretrial incarceration exacts harsh consequences for those facing the threat of criminal prosecution is undeniable, as the Committee on Criminal Justice report cogently observes. These individuals, still presumed innocent, are separated from their homes, their families, and their livelihoods, and forced to live without freedom under sometimes dangerous conditions. Further, pretrial incarceration hampers severely an accused’s ability to effectively prepare a defense. Defendants jailed before and during trial are convicted more frequently and receive harsher sentences than those released pretrial. Perhaps even more disturbing is the reality that prolonged pretrial detention often leads incarcerated defendants to abandon previous claims of innocence, and enter guilty pleas simply to escape their
necessity, assess risk to others. Thus, safety concerns can be addressed under the present framework without a costly whole-scale revision of the pretrial release system. Detaining an accused without bail based on the filing of a charge is antithetical to bedrock principles of justice in this state.

The ACDL-NJ harbors no doubt that the list of offenses and offenders who will be subject to pretrial detention without bail will inevitably expand. One need only look to a sampling of the pending legislation to understand the expansive scope of offenses for which preventive detention will likely be authorized. For example, the broad list of offenses enumerated in Assembly Bill A1910 encompasses virtually every first or second degree crime. It reaches any charge in which a minor is the alleged victim. When the court or prosecutor deems the defendant a risk, the legislation would require hearings based on evaluations through use of yet-to-be-determined risk assessment tools utilized by a yet-to-be-created agency. Strikingly absent from A1910 is any speedy trial component that provides for relief in the predictable event an accused languishes in pretrial confinement. Equally disturbing is the proposed constitutional amendment (ACR 22), placing unfettered control in the legislature to set the standard and parameters for preventive detention. The legislation is self-described as proposing a “constitutional amendment to provide that release on bail may be denied to certain offenders.” This will be the pitch to garner the public support needed to pass a constitutional amendment abolishing the right to bail – a pitch which will be silent as to the monumental cost to liberty and to taxpayers.

2 Rule 3:26-1(a), codifying the factors set forth by the New Jersey Supreme Court in State v. Johnson, 61 N.J. 351, 364-65 (1972), enumerates bail considerations as follows:

(a) Persons Entitled; Standards for Fixing. All persons, except those charged with crimes punishable by death when the prosecutor presents proof that there is a likelihood of conviction and reasonable grounds to believe that the death penalty may be imposed, shall be bailable before conviction on such terms as, in the judgment of the court, will ensure their presence in court when required. The factors to be considered in setting bail are: (1) the seriousness of the crime charged against defendant, the apparent likelihood of conviction, and the extent of the punishment prescribed by the Legislature; (2) defendant's criminal record, if any, and previous record on bail, if any; (3) defendant's reputation, and mental condition; (4) the length of defendant's residence in the community; (5) defendant's family ties and relationships; (6) defendant's employment status, record of employment, and financial condition; (7) the identity of responsible members of the community who would vouch for defendant's reliability; (8) any other factors indicating defendant's mode of life, or ties to the community or bearing on the risk of failure to appear, and, particularly, the general policy against unnecessary sureties and detention. In its discretion the court may order the release of a person on that person's own recognizance. The court may also impose terms or conditions appropriate to the defendant's release including conditions necessary to protect persons in the community. When a defendant is charged with a crime or offense involving domestic violence, the court authorizing the release may, as a condition of release, prohibit the defendant from having any contact with the victim. The court may impose any additional limitations upon contact as otherwise authorized by N.J.S.A. 2C:25-26.
more pressing issue of the pretrial detention of those of modest economic means facing low-level criminal charges.

Our model jury charges instruct juries that “the indictment is not evidence of the defendant's guilt on the charge(s). An indictment is a step in the procedure to bring the matter before the court and jury for the jury's ultimate determination as to whether the defendant is guilty or not guilty on the charge(s) stated in it.” The ACDL-NJ cannot subscribe to a process that allows for a potentially lengthy period of incarceration to be based on the allegations of a charge, untested by the rigors of the adversarial process of a trial. A detention hearing conducted shortly after the filing of the charges is no substitute.

It is beyond the scope of this preliminary position statement to address the specific procedures recommended in the Joint Committee Report or the proposed legislation as we oppose the imposition of a system that includes preventive detention. Clearly, any such system would necessitate meaningful speedy trial requirements for those detained before trial and conviction. Such mandates, however, should be crafted for the benefit of the incarcerated defendants and carve out exceptions only as they relate to the overwhelming limitations and impediments that attend preparing a defense while confined.

Dated: May 19, 2014

DARREN M. GELBER, President
Association of Criminal Defense Lawyers of New Jersey