



April 21, 2020

VIA ELECTRONIC MAIL

The Honorable Greg Abbott
Office of the Governor
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Cc Chief of Staff Luis Saenz, Luis.Saenz@gov.texas.gov

Dear Governor Abbott,

We, the undersigned, write to express concern regarding Executive Order, GA-13, which, among other provisions, restricts the use of personal bonds, electronic monitoring, and release on earned good time credit for those with pending or prior charges of crimes involving physical violence or the threat of physical violence; and strips crucial speedy trial protections for those in custody. With the far-reaching impact of the COVID-19 pandemic on our nation’s jail and prison systems, considerations should be given to state and local efforts that will reduce incarceration populations. We therefore urge you to rescind GA-13 and allow local judges and officials to act in the best interests of their communities.

The fundamental rights and protections provided under the Constitution are not items of convenience, to be supported when times are good, but cast aside in times of crisis. Rather, it is in the most difficult of times that we must ensure that these core protections are zealously guarded.

Federal, state, and local governments owe a duty to their communities to protect their health, safety and well-being and in the current environment those challenges are especially difficult. However, the efforts to meet those obligations should not be accomplished by diminishing basic American values. In the name of promoting public safety, GA-13 erodes core constitutional tenants, most notably, the rights to liberty and equal protection.

By eliminating personal bonds (release without posting bail) for individuals who currently are charged with or who have previously been convicted of a crime involving violence or the threat of violence, GA-13 places wealth and access to wealth as the determining factor of pretrial liberty. Despite the lack of evidence that money bail itself enhances

public safety, GA-13 places the ability to pay ahead of assessed risk to the community. Expansive use of pretrial detention erodes the presumption of innocence, which is one reason pretrial detention is to be a carefully limited exception, utilized only when no reasonable alternatives exist. Today, as medical and correctional professionals across the country have expressed grave concerns about the heightened dangers in our jails and prisons,¹ the return to wealth-based detention decisions takes on an added dimension of concern.

At a time when many more people are experiencing economic challenges, the Order serves to force those arrested and their families to choose between using their limited resources to secure their liberty or to use that money to buy food and pay rent. Fears of being held in facilities in which access to sanitary precautions is non-existent, medical care is limited, and social distancing impossible, coupled with the uncertainty borne from the suspension of speedy trial protections, will undoubtedly drive many to accept plea agreements in an effort to save themselves and their families. This erosion of the presumption of innocence and the protections of due process cannot be justified in the name of a pandemic.

Importantly, GA-13 removes discretion from local judges, elected and entrusted to fulfill the community's vision of fairness, equity, and justice; it impedes their fulfillment of their responsibility to adhere to the constitutional principles of equal treatment; and it minimizes their role as an independent, co-equal branch of government. Texas judges are already bound to review each case individually and detain those who pose a significant risk to the community or the alleged victim. Nothing about the COVID-19 pandemic alters that responsibility but the broad reach of GA-13 represents a usurpation of the lawful authority of the state's judges, upending the constitution's system of checks and balances and violating a core principle, the separation of powers.

Broadly classifying all persons whose past or pending charges involve a crime of violence as inherently dangerous, fails to allow consideration of individual facts and circumstances. The Order's broad strokes will capture an individual with a decade's old misdemeanor conviction for a bar fight as a community danger today, regardless of their current charges or years of exemplary behavior.

Further, GA-13's suspension of release opportunities for those who have properly earned them through their good conduct and productivity merely because of the nature of their present or past charges, undermines not only recommended efforts to reduce the size of jail populations, but our core values of redemption and rehabilitation. The individuals impacted by this provision are persons who have otherwise earned these credits over weeks and months. They have abided by the rules set for them by the local detention facility and fulfilled the expectations placed upon them by the judges who sentenced them.

¹ [Interim Guidance on Management of Coronavirus Disease 2019 \(COVID-19\) in Correctional and Detention Facilities](#), CTRS. FOR DISEASE CONTROL AND PREVENTION (Mar. 23, 2020) and [Preparedness, prevention, and control of COVID-19 in prisons and other places of detention](#), WORLD HEALTH ORG. (Mar. 15, 2020).

GA-13 will likely have the effect of enhancing existing racial, ethnic, and gender-based disparities². Across the country people of color are disproportionately arrested, detained pretrial and sentenced to lengthier terms of incarceration³. Communities of color and women have less overall access to wealth and are thus more likely to be unable to afford money bail.⁴ In Texas there is an overrepresentation of people of color, especially African-Americans, in the state's jail population.⁵ Simultaneously, persons of color in Texas are more than twice as likely to live at or near the poverty level.⁶ As a result, women and people of color are most likely to suffer extended periods of detention as a result of the various provisions of GA-13. Increasing racial, ethnic, gender, and socio-economic disparities is antithetical to the national message that "we're all in this together."

Allowing local law enforcement officials and judges -- charged with the responsibility to protect the well-being of those arrested and incarcerated in their jails, the officers and staff that work there, and the community they serve -- to exercise their judgment and expertise to make the best decisions about who should be released on electronic monitoring, under earned good conduct credits, and on personal bonds, does not harm public safety, but rather enhances it. No one knows better about local needs and local values than those who are in the community most directly impacted by the release and detention decisions.

Governor Abbott, we therefore call upon you to rescind GA-13, restore decision-making to individual judges and communities, and help alleviate the unnecessary health risks to those detained in local jails, the people who work there, and the surrounding community.

² Nationally African Americans were incarcerated in local jails at a rate 3.5 that of non-Hispanic whites in 2016. See, The Sentencing Project, [Report to the United Nations on Racial Disparities in the US Criminal Justice System](#), (April 19, 2018).

³ [Trends in Correctional Control by Race and Sex](#), Report by The Council on Criminal Justice (December 2019). See also, [Demographic Differences in Sentencing: An Update to the 2012 Booker Report](#) (on average black males received sentences 19.1% greater than their white peers; Hispanic males received sentences 5.3% greater than their white peers) US Sentencing Commission (November 2017)

⁴ Sixty percent of the women in custody nationally are being held pretrial. Women are more likely to be unemployed at the time of their arrest than men, and are less likely to have someone who can post their bond. Myesha Braden and Phylcia Hill, ["Women are More Likely to be Unable to Afford Bail,"](#) Baltimore Sun, May 13, 2018.

⁵ [Incarceration Trends in Texas](#), Vera Institute for Justice (2019)

⁶ According to data from the Prison Policy Institute, 8% of non-Hispanic white people live at or below the poverty level, with an additional 15% of that population living within twice the poverty level. By contrast, 25% of people of color live at or below the poverty level, with an additional 27% living within twice the poverty level.

Respectfully Submitted:

Due Process Institute

Just Future Project

Law Enforcement Action Partnership (LEAP)

National Association for Public Defense (NAPD)

National Association of Criminal Defense Lawyers (NACDL)

National Employment Law Project (NELP)

National Legal Aid & Defender Association (NLADA)

Pamela Metzger, Professor of Law & Director, Deason Criminal Justice Reform Center
at Southern Methodist University

Pretrial Justice Institute (PJI)