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MEMORANDUM

To: Cook County Board of Commissioners

cc: Toni Preckwinkle, Cook County Board President

From: Andrea Gibson, Cook County Budget Director
Juliana Stratton, Executive Director of the Justice Advisory Council

Subject: Resolution Examining the Feasibility of Establishing a Revolving Bail Bond Fund for Cook County Jail Detainees

Date: March 10, 2014

The Cook County Board of Commissioners approved a Resolution Examining the Feasibility of Establishing a Revolving Bail Bond Fund for Cook County Jail Detainees (“Resolution”) on November 13, 2013. This Resolution requests the Justice Advisory Council and Department of Budget and Management to assess the feasibility and financial implications of a Revolving Bail Bond Fund (“Fund”) to provide prompt posting of bail for detainees charged with non-violent offenses.

The purpose of the Fund would be to provide no-interest loans to detainees at the Cook County Jail for payment of their court-ordered bail bond and to provide an ongoing source of funding through achieved savings.

Per the Resolution, detainees would be eligible for such loans provided that they meet certain requirements, including but not limited to:

- (1) Being charged with a non-violent misdemeanor or felony;
- (2) Not using loan proceeds for payment of private legal services;
- (3) Being eligible for a “c” bond equal to \$2,000 or less, or “d” bond equal to \$20,000 or less;
- (4) Being eligible for release from custody upon posting of such bond amount; and
- (5) Possessing health insurance at the time of release, or applying for CountyCare at the CCHHS

Executive Summary

Legal Issues: A review of the proposal for a Revolving Bail Bond Fund by Legal Counsel found that Cook County may have the legal authority to establish and administer a Revolving Bail Bond Fund, provided the establishment of such a Fund serves a public purpose by actually reducing the detainee population at the Cook County Jail and eliminating the County’s cost of housing pre-trial detainees in a demonstrable way.

Per Illinois statute, the offices of the Public Defender, State’s Attorney, Sheriff, Circuit Court Clerk and the Chief Judge would be prohibited from administering such a Fund. While the President’s Office may not be prohibited from administering such a Fund, an alternative approach involves contracting an outside agency to administer the program. This alternative would necessitate procurement in accordance with procedures established in the County Code and may produce discrete challenges for the County in terms of minimizing risk and loss to both the County and the outside agency.

Other Jurisdictions: Research concerning other jurisdictions indicates that no other large jurisdiction has implemented a Revolving Bail Bond Fund. A similar program in Philadelphia paid bails directly with no anticipation of repayment and provided pretrial services, but had no significant impact on jail population and was discontinued. Such a program would be more expensive and produce fewer returns.

Financial Sustainability: A review of the proposal for a Revolving Bail Bond Fund by the Cook County Budget Director found that such a Fund would not be financially sustainable by the County. The estimated total monthly cost of the program would be \$659,469, which would exceed the projected monthly savings and returns of \$643,260, by \$16,208. To maintain even this level of loss would require continual re-investment by the County to maintain solvency which would pose significant administrative and budgetary challenges.

Monthly Cost-Benefit Ratio				
Monthly Costs		Monthly Savings and Returns		
Loans	\$638,344	Tier and Direct Cost Savings	\$191,654	Surplus/Deficit per month
Administration	\$21,125	Loans repaid	\$451,906	
Total	\$659,469	Total	\$643,260	

Conclusion: The following analysis finds that the anticipated savings and returns of a Revolving Loan Fund are insufficient to sustain the program’s costs. The current review comes to the same conclusions as *The Judicial Advisory Council Feasibility Study Regarding A Revolving Bond Loan Fund Concept*, which was conducted in response to a similar proposal from the Board of Commissioners in 2010, the Executive Summary of which is attached.

However, current trends in jail population and Central Bond Court Decisions indicate that investments made by the County in Central Bond Court are contributing to an increase in I-bonds and use of electronic monitoring, ultimately resulting in a reduction of the jail population. This report recommends that the County continue these targeted investments in long term systems change and reduce the reliance on monetary bail in order to continue this trend.

LEGAL ISSUES

(1) Authority to establish and administer a Revolving Bail Bond Fund

Assuming Cook County (“County”) can establish that a Revolving Bail Bond Fund does not violate the public purpose clause of the Illinois Constitution, the Cook County Board of Commissioners would arguably have the authority to create a Revolving Bail Bond Fund by ordinance for the purpose of loaning funds to qualified arrestees awaiting trial in order to eliminate the cost of housing them in jail. Per a State’s Attorney’s Opinion dated July 12, 2010 (“SAO Opinion, July 12, 2010”), a copy of which is attached hereto, “[t]he Illinois Constitution prohibits the use of public funds for private purposes; however, there is no prohibition against the use of public funds which inure to the benefit of private interests so long as the money is utilized for a public purpose”. SAO Opinion, July 12, 2010; 1970 Ill. Const., Art. VIII., Section 1; *Clayton v. Village of Oak Park*, 117 Ill. App. 3d 560 (1st Dist. 1983). In order to withstand a legal challenge that such Fund is purely a private benefit and violates the Illinois Constitution, the County would have to be able to show that the establishment of a Revolving Bail Bond Fund serves a public purpose by reducing the detainee population at the Cook County Jail and eliminating the County’s cost of housing such pre-trial detainees; Cook County will have to be able to articulate and demonstrate such savings.

If Cook County elected to establish a Revolving Bail Bond Fund, a determination as to which Cook County agency would administer the Fund would have to be made. Per Illinois Statute, “[n]o attorney at law practicing in this State and no official authorized to admit another to bail or to accept bail shall furnish any part of any security for bail in any criminal action or any proceeding nor shall any such person act as surety for any accused admitted to bail.” 725 ILCS 5/110-13. As such, the offices of the Public Defender, State’s Attorney, Sheriff, Circuit Court Clerk and the Chief Judge would be prohibited from administering such a Fund. As previously addressed by the Office of the Cook County State’s Attorney, these Officers could not administer such a Fund; if they did, they “could be viewed as improperly furnishing a part of the bail.” SAO Opinion, July 12, 2010 and 725 ILCS 5/110-13.

(2) Authority to act a money lender for the purpose of establishing and administering a Revolving Bond Fund

Cook County currently is authorized to act as a money lender with regard to a few economic development programs that are funded by the federal government (i.e., HOME grants, Section 108/BUILT loans) and approved via enabling ordinances or County Board of Commissioner Grant acceptance. Cook County would not be authorized to establish and administer a Revolving Bond Fund without Cook County Board of Commissioner authorization; should such authorization be granted, the County would likely be subject to federal laws governing the extension of credit and collections. *See*, SAO Opinion, July 12, 2010.

(a) Charging fees in connection with revolving bond loans

In order to help defray the costs of administering a Revolving Bond Fund program, the Cook County Board of Commissioners could implement a fee on arrestees to utilize such a program. Any fees associated with the application of securing a revolving bond loan should be:

- (1) Voluntary, to the same extent that participation in the loan program should be voluntary;
- (2) Should approximate cost of providing the service of administering the loan program; and

- (3) Should not be based upon funds disbursed or collected. *See*, 1970 Ill. Const., Art. VII, Sec. 9(a).

Prior to seeking authorization to establish and implement fees, an assessment of anticipated costs is advised.

(b) Applicability of federal and state laws governing loans

Any loans issued by the County under a Revolving Bond Fund where the County was to act as a lender would likely subject the County to the federal laws governing the extension of credit and collections. *See*, SAO Opinion, July 12, 2010. If the County elected to loan the bail bond funds directly to the Defendant, the County would directly be involved in the extension of credit to the Defendant. Such lending practices by the County would likely implicate the County's compliance with the Truth in Lending Act, Fair Debt Collection Practices Act, Fair Credit Reporting Act, the Illinois Collection Agency Act and the Illinois Consumer Fraud Act. *See*, SAO Opinion, July 12, 2010.

(3) Authority to contract with an outside agency to administer a Revolving Bond Fund

In accordance with the Cook County Procurement Code, the Cook County Board of Commissioners could authorize the Chief Procurement Officer to contract with an outside agency to administer the Revolving Bond Fund on behalf of the County. However, any outside agency would likely be required to comply with applicable lending/collection laws and the County using agency overseeing such program may not include the Public Defender, State's Attorney, Sheriff, Circuit Court Clerk or Chief Judge. *See*, SAO Opinion, July 12, 2010.

(4) Mechanisms that could be used to ensure that bail money loaned by the County would be returned

In order for the County to recoup any funds loaned under a Revolving Bond Fund, the County or any outside agency utilized by the County to collect the loan, the County would have to abide by the various federal and state collection laws. In addition to the various collection laws, Cook County could look to establish voluntary garnishment by the Defendant in accordance with the Illinois Wage Payment and Collection Act if the Defendant was also a County employee. 820 ILCS 115/1 *et seq.*

In addition, the County could enter into an agreement with each Defendant seeking to access a loan under the Revolving Bond Fund calling for timely reimbursement as a condition of funds disbursement, and enforced through traditional collection methods. However, if a Defendant fails to repay the loan per the agreement, such traditional collection methods may require litigation, which could be costly and time consuming for the County and potentially jeopardizing the County's public purpose Constitutional arguments.

(a) Ability to recoup funds via wage deductions pursuant to the Illinois Wage Payment and Collection Act

Assuming that the County is not the Defendant's employer subsequent to the time of release from jail, it is unclear whether the Illinois Wage Payment and Collection Act ("WPCA"), which governs wage deductions *by employers*, would enable the County to recoup funds via wage deductions. *See*, 820 ILCS 115/1 *et seq.*, and SAO Opinion, July 12, 2010.

The WPCA allows employees to make voluntary wage deductions, and a deduction based on an agreement entered into by the Defendant as a condition of receiving loan funds may or may not be considered voluntary. If considered voluntary, the wage deductions

could be implemented; however, employers are not required to honor voluntary deductions and employees who may be Defendants' have the right to stop them.

Employers would not be *required* to deduct funds from the Defendant's wages in accordance with an executed County/Defendant Revolving Bond Fund agreement unless the employer opted to honor the employee's/Defendant's request; current law only requires employers to comply with court ordered deductions (i.e., wage garnishments).

Barring a change in state law, an employer could agree to deduct wages in accordance with an executed County/Defendant Revolving Bond Fund agreement, and failure to remit funds to the County would result in a possible cause of action by the employee/Defendant against his or her employer. However, the possible exposure to liability might discourage employers from honoring the employee's/Defendant's request, so cooperation might not be forthcoming. Additionally, in the event that the employee/Defendant elects to stop the voluntary deduction, the County would likely have to resort to traditional collection methods (i.e., litigation).

(b) Ability to recoup funds via wage deductions pursuant to the Illinois Wage Assignment Act

The Wage Assignment Act allows *a creditor*, to compel an employer to withhold an employees' pay without first obtaining a court order, provided that wage assignment was valid, the employee defaulted, and the employee failed to raise a valid defense. In the event that that all conditions are met, and the employer fails to withhold wages, the employer may be subject to legal action from the creditor for the full amount of the debt owed. *See*, 740 ILCS 170/1, et seq. Under the Wage Assignment Act, if the County was to loan bail funds, the County would likely be deemed a creditor. As such the County could seek recoupment of the loaned funds in accordance with the Wage Assignment Act. 740 ILCS 170/1, et seq.

(c) Maximum deduction allowed

The maximum deduction allowed would be 15% of gross wages per pay period for a Defendant who is not a County employee and 25% of gross wages per pay period for a Defendant who is also a County employee. *See*, 735 ILCS 5/12-803 and 820 ILCS 115/1 et seq.

(d) Ability to prohibit funds from being used to pay legal fees and other costs/fees related to pending criminal case(s)

The County would not be able to prohibit funds from being used to pay legal fees and other costs/fees related to pending criminal case(s). Barring a change in state law, 10% of the bail bond funds shall be retained by the court clerk as bail costs; and, the balance may be returned to the accused or his/her designee, or used to pay costs, attorney's fees, fines, or other purposes authorized by the court. In the event that the defendant fails to comply with the conditions of his or her bond, the entire amount may be forfeited. 725 ILCS 5/110-7.

(5) Ability to tender funds directly instead of conveying them to detainee for deposit with the court clerk

In order for the County to recoup any and all funds loaned under a Revolving Bond Fund and to avoid the risk of being liable for the entire amount of the bail should the Defendant who has been loaned funds fail to appear, the County may want to consider loaning the funds directly to the Defendant or a representative on behalf of the Defendant. Such a loan will likely trigger federal and state credit and collection laws. If the County elected to provide the bond funds as a surety, the County would be liable for the full amount of the Bond should the Defendant utilizing the Revolving Bond Funds fail to appear. It would probably be more challenging for the County to recoup the full amount of the Bond versus a bond deposit.

OTHER JURISDICTIONS

Staff researched whether other jurisdictions had success at impacting jail population through providing funds to pay bail for jail detainees. While two jurisdictions have taken a similar approach, neither used the model of loans made directly by government. Philadelphia, Pennsylvania contracted with a non-profit agency to pay pretrial detainees' bonds directly, with limited impacts to its jail population. The Bronx public defender, a non-profit agency, has implemented a program through which it pays its clients bonds in certain misdemeanor cases. The Bronx model is designed to help individual clients rather than have a significant impact on jail population.

While the two models vary greatly, they have three common characteristics that distinguish them from the current proposal:

1. Both Philadelphia and the Bronx's funds are operated by non-profit agencies;
2. The money is not loaned, rather bail is paid directly with no expectation of money being paid back by the individual; and
3. Both Philadelphia and the Bronx required that individuals whose bails are paid receive pretrial services and/or social services once released from jail.

The Philadelphia model was created under a federal consent decree to specifically reduce overcrowding in Philadelphia's jail. By identifying low risk individuals who could be released and providing them with pretrial services, the "People's Bail Fund" was one of many levers designed to reduce Philadelphia's jail population. *Harris v. City of Philadelphia*, 2000 U.S. Dist. Lexis 12579, p. 5. The fund required an annual investment by the County of \$1 million to continue operation. Ultimately the program was discontinued as a means of population reduction after failing to "lower the population to acceptable limits." *Id.*

The current proposal does not include the provision of pretrial services for loan recipients. The analysis assumes that some of the individuals who receive the loans will re-pay their loan to the County. Philadelphia's experience indicates that the inclusion of pre-trial services and paying the bail directly may not improve the program's impact on the jail population. Furthermore, paying for pretrial services and receiving no rate of loan repayment would increase the cost of the bail fund and is therefore not considered in the following financial analysis.

FINANCIAL SUSTAINABILITY

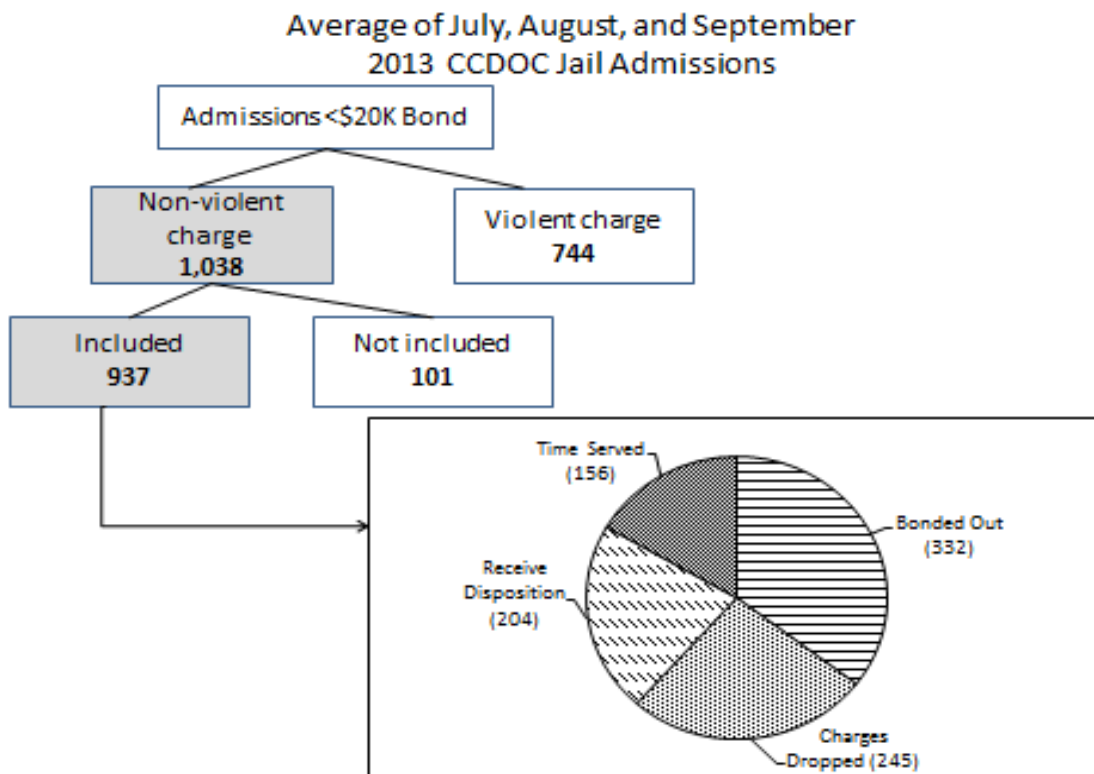
Using data provided by the Cook County Sheriff's Office, The Department of Budget and Management Services analyzed the potential impact to the Divisional Jail Population of providing bond loans for eligible inmates and the potential cost and savings of providing such loans.

Data Analyzed:

The data provided by the Sheriff's Office included admissions for the months of July, August and September. These data were averaged to create a one-month snapshot of Bond Loan eligible detainees who met the following criteria:

1. Bond amount set at less than \$20,000 (payment to be made is 10%, or less than \$2,000)
2. Non-violent charge
3. Misdemeanor offense

It was determined that only a subset of those meeting the criteria above would be eligible for the bond loans based on their dispositions. Excluded from the analysis are detainees whose dispositions were not able to be coded by the Sheriff's Office or who remained in the jail at the time the data was received. The total monthly eligible population is thus estimated to be 937 detainees.



* *Not Included (N=101) either had dispositions which were unable to be coded by the Sheriff's Office or remained in the jail for three months after their jail admission 4-6 months.*

Impact of Bond Loans on Average Daily Population:

Acceptance/Rejection Rate Estimate

A proportion of bond-loan eligible detainees may refuse to obtain a loan. Of the eligible population, 17% exit the jail with a disposition of “time served.” For this group, awaiting disposition is beneficial as they are not required to pay fees or fines and are essentially released from the system upon disposition free of charge. The financial analysis assumes that the same proportion (17% of the eligible population) would refuse to accept a bond-loan fund.

Length of Stay Reduction Estimate

The average length of stay for the eligible population is 14.9 days. The financial model assumes that loans will be provided at the time of bond court, eliminating the jail stay entirely. Length of Stay is therefore calculated as “0” in this analysis. It is important to note that this estimate may lead to an overstatement of the projected savings and daily population reduction.

Average Daily Population Reduction Estimate

Using the assumptions outlined above, the jail population should experience a reduction in the Average Daily Population of 389 in a given month.

Monthly Jail Bed Reduction	
Days in Month	30
Total Population Eligible	937
Average Length of Stay of Eligible Pop.	14.9
Loan Acceptance Rate	83%
Number of Loans Accepted	781
Days to Release	0
Total ADP Reduction per Month	389

Cost-Benefit Analysis:

Program Costs per Month

For the total eligible population (N=937), the average bond repayment is \$817. Should 781 of the 937 eligible individuals choose to accept the loan, the total loan cost per month is equal to \$638,344.

Costs to administer the program assume that each administrator could process 300 loans per month at an annual salary of \$65,000, with 30% in benefits (or \$7,042 per month). Three FTEs would be needed to process the 781 loans at a cost of \$21,125 per month.

Bond Loan Program Costs per Month	
Loans Disbursed	
Average Bond Amount	817
# of Loans	781
Total Loans Paid	\$638,344
Cost to Administer	
Cost per FTE (salary +	\$7,042

fringe)	
Quantity of FTEs	3
Total Administration Cost	\$21,125
Total Monthly Cost	\$659,469

Program Savings

Marginal Cost: On average, there are 45 detainees held in a tier at the Cook County Department of Corrections. The marginal cost of operating a tier includes the salaries and fringe of the Correctional Officers (\$35,733 per month), plus the cost for laundry, garbage removal and food services (\$124.50 per inmate per month).

Assuming the program will reduce the Average Daily Population of the Cook County Jail by 389 in one month, a maximum of eight tiers could be closed. However, the Sheriff’s Office may prefer to leave a portion of these tiers operable. The individuals removed from the average daily count would not necessarily have been housed in homogenous tiers. It would be necessary to shift several inmates to clear an entire tier, which is logistically challenging. Consideration must be made for individuals who present a danger to one another, and for inmates who require special attention for medical, mental health, or other reasons. The Sheriff’s Office may also require additional tiers remain operable to assess the sustainability of population reductions. It is for these reasons that the financial analysis assumes that 50% of the eight tiers would close, allowing the County to realize the marginal cost savings of four tiers per month.

Loans repaid

The financial analysis assumes that there will be two loan repayment groups: those who can afford to repay their loans and individuals whose charges are dropped. Costs of loan repayment enforcement are not built in to this analysis, although they may increase the collection rate.

The proportion of detainees who currently pay their own bonds is used as a proxy for those who can afford to repay. The model assumes that these individuals repay in full. Although they can afford to do so, a proportion of this group may choose not to repay their loans or not do so in full. Therefore the estimate of repayment for this group is most likely overstated.

The average number of detainees whose charges are dropped is used to estimate the amount that will be returned to the County for the second group. Each category would be subject to a 10% fee imposed by the Clerk of the Circuit Court. Although the Clerk technically represents Cook County, the 10% would not be refunded to the Revolving Loan Fund and is therefore deducted from the Savings and Returns projection.

Savings & Returns per Month	
Staffing and Tier Savings	
Inmates Per Tier	45
Max tiers available to close	8
Factor of tiers that will actually close	50%
Actual tiers that will close	4
Marginal Cost/Savings Per Tier	\$35,733
Total Tier Savings	\$142,930

Per Inmate Services Savings	
Scavenger Services	\$3.30
Laundry & Linen	\$6.30
Food Services	\$114.90
ADP Reduction	389
Total Per Inmate Services Savings	\$48,424.55
Loan Repayment	
Quantity Can Afford Repayment	332
Average Bond/Loan Amount	\$817
Total Repaid to Revolving Fund	\$271,514
Quantity Charges Dropped	245
Average Bond/Loan Amount	\$817
Amount Returned	\$200,436
10% Fee to the Clerk	-\$20,044
Total Returned to Revolving Fund	\$180,392
Total Savings & Returned per Month	\$643,260

Cost-Benefit Analysis

Using the assumptions described above, the monthly costs to administer the loan fund program are \$16,208 greater than the savings and returns combined, and the Revolving Loan Fund does not appear to be financial sustainable. For the fund to break even loan repayment would have to be increased or savings would have to be greater. Achieving a higher loan repayment rate may prove difficult without increasing the costs to track and enforce repayment. Increasing savings may also prove to be difficult. The current savings estimate is considered to be on the high-end. It assumes the County is able to reduce the average length of stay from 14.9 days to 0 and that several tiers will close.

For the fund to be sustainable at this level, with a loss every month, the County would need to transfer the savings realized into the Revolving Loan Fund. This may require calculated budgeting and agreements between the project participants during budget communications about expectations and projections.

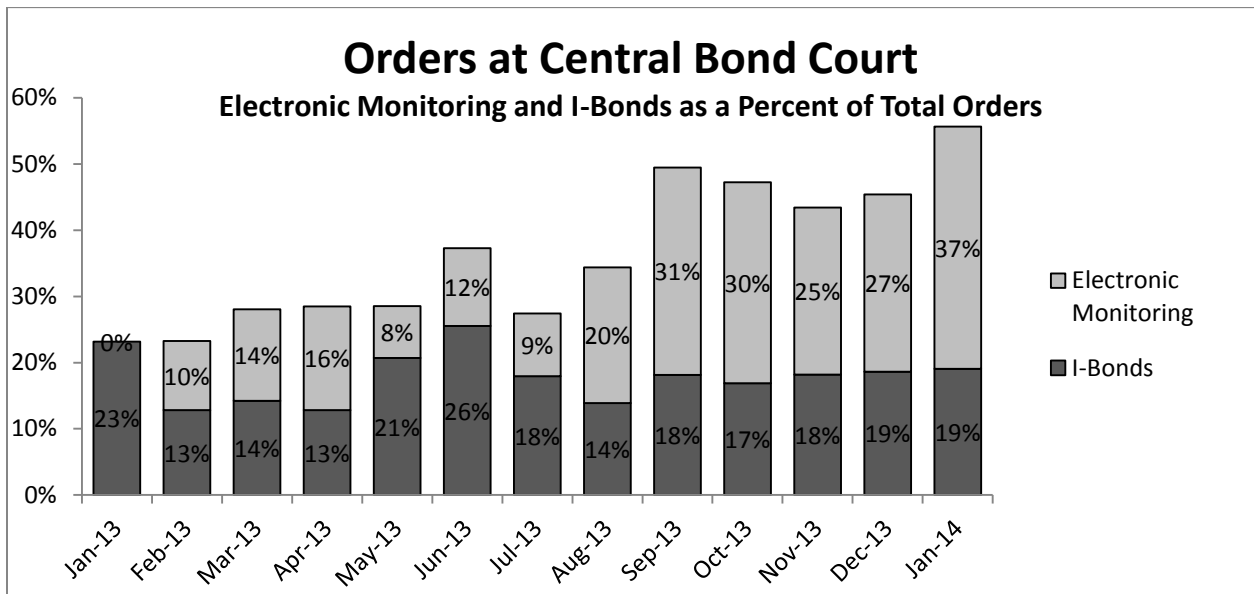
Monthly Cost-Benefit Ratio				
Monthly Costs		Monthly Savings and Returns		Surplus/Deficit per month
Loans	\$638,344	Tier and Direct Cost Savings	\$191,654	
Administration	\$21,125	Loans repaid	\$451,906	
Total	\$659,469	Total	\$643,560	

OTHER CONSIDERATIONS

Since the passage of the Resolution requesting this study in November, 2013, the daily population of the County jail has declined considerably. The Average Daily Population for the month of February, 2014, is 8,940, considerably lower than the February average of 9,675 in 2013. The population reduction can, in part, be attributed to changes in judicial orders at Central Bond Court which are now resulting in higher numbers of releases. The proportion of arrestees released on I-bonds or ordered to electronic monitoring has risen steadily from 23 percent in January of 2013 to 56 percent in January of 2014. In the same time period the number of orders to electronic monitoring increased from 0 to 1178.

These changes came about at the same time that the County invested in improving conditions at Central Bond Court and provided additional personnel to the Public Defender. Both of these investments were made with the purpose of providing more accurate and detailed information to the court in order to facilitate more informed decision-making by the judges.

The trends in jail population and Central Bond Court Orders indicate that targeted investments towards reducing the system’s reliance on monetary bonds can produce significant and lasting change. In contrast, creating a fund to pay monetary bonds of low risk pretrial detainees does not reform the system, but rather encourages the status quo, presents an array of legal issues and administrative burdens, has not proven an effective tool to reduce jail populations in other jurisdiction, and is ultimately not a sound financial investment.



CONCLUSION

Taking into account all of the factors discussed above the Budget Director and the Executive Director of the Justice Advisory Council find that the creation of a Revolving Bail Bond Loan Fund is not feasible. As a matter of policy, we find that the County would be better served by continuing to make targeted investments in long term systems change to reduce the County’s reliance on monetary bail ensuring that bond decisions are made based on risk informed by verified information.

APPENDIX

Appendix 1, States Attorney's Legal Opinion

Appendix 2, Feasibility Study of Proposed Revolving Bond Loan Fund Concept and Summary of Existing Bond Process