# Monitoring Cook County's Central Bond Court

## A Community Courtwatching Initiative

August - October, 2017


**The Coalition to End Money Bond**

February 27, 2018

# Contents:

About the cover photo: Tyler Smith of Chicago Community Bond Fund speaks at a Coalition to End Money Bond rally outside Central Bond Court on September 18, 2017, the day a new court rule limiting the use of money bail took effect.

# Introduction

## The Coalition to End Money Bond

The Coalition to End Money Bond formed in May 2016 as a group of member organizations with the shared goal of stopping the large-scale jailing of people simply because they were unable to pay a monetary bond. In addition to ending the obvious unfairness of allowing access to money determine who is incarcerated and who is free pending trial, the Coalition is committed to reducing the overall number of people in Cook County Jail and under pretrial supervision as part of a larger fight against mass incarceration. The Coalition to End Money Bond is tackling bail reform and the abolition of money bond as part of its member organizations' larger efforts to achieve racial and economic justice for all residents of Cook County. The Coalition is also committed to engaging critically with proposed solutions such as increased use of electronic monitoring and risk assessment tools, which may offer relief from incarceration but also come at other social costs that must be made transparent, and then monitored and evaluated in practice.

Since forming, the Coalition has participated in numerous community organizing and policy initiatives that advanced bail reform in Cook County and throughout Illinois. In October 2016, Coalition members organized and spoke at a press conference announcing a lawsuit against Cook County's unconstitutional bond practices. People who had been jailed or held under house arrest in Cook County because they could not pay bond shared their stories, and faith leaders issued calls to action for the broader community. In November 2016, the Coalition helped shape and then participated in the Cook County Board of Commissioners' hearing on monetary bond and pretrial detention.

In February 2017, Coalition member The People's Lobby ("TPL") arranged to have the Equal Justice for All Act, a bill to eliminate monetary bond and reduce pretrial detention in Illinois, introduced in the Illinois General Assembly. Supported by other Coalition member groups, TPL organized a press conference with Chief Sponsor Representative Christian Mitchell. The Coalition worked on amendments that strengthened the bill, and TPL took busloads of supporters to Springfield to lobby legislators. At the time the 2017 session closed, there were 18 co-sponsors. The Equal Justice for All Act has been reintroduced in the 2018 session and is supported by the full Coalition to End Money Bond. That same spring, the Coalition drafted six concise Principles for Bail Reform in Cook County and secured the endorsement of more than 30 other organizations. In partnership with other allies, the Coalition also worked to make substantial improvements to the Bail Reform Act of 2017 (Senate Bill 2034), which was signed into law on June 9, 2017.

Together, Coalition members have been working on gaining the support of elected county officials through meetings with State's Attorney Kim Foxx, Chief Judge Timothy Evans, and Sheriff Tom Dart. The Coalition was asked to consult on development of a new court rule issued by Evans in July 2017, which has the potential to end pretrial detention based on inability to pay. At the same time, the Coalition has been actively shifting public opinion by organizing teach-ins, rallies, press conferences, and town halls, writing op-eds, creating original social media content, and being featured in more than 50 local and national news articles. The Coalition has also been instrumental in advocating for bond reform efforts among other organizations and individuals, gathering more than 70 signatories for a letter to the Illinois Supreme Court proposing a rule change that would mandate bonds be affordable across

the state.[1] The Illinois Supreme Court has since convened a Commission on Pretrial Practices to study the issue and make recommendations for reform.[2]

The Coalition to End Money Bond is made up of the following organizations: A Just Harvest; Chicago Appleseed Fund for Justice; Chicago Community Bond Fund; Illinois Justice Project; Justice and Witness Ministry of the Chicago Metropolitan Association, Illinois Conference, United Church of Christ; Nehemiah Trinity Rising; The Next Movement of Trinity United Church of Christ; The People's Lobby; The Sargent Shriver National Center on Poverty Law; and Southsiders Organized for Unity and Liberation (SOUL).

## The Community Courtwatching Initiative

In July 2017, the Coalition to End Money Bond organized and trained scores of volunteers to attend and observe Cook County's Central Bond Court as part of the Community Courtwatching Initiative. The goal was to evaluate the impact and efficacy of various reforms targeting Central Bond Court and the bail process, with a focus on a new court rule that went into effect on September 18, 2017 aimed at limiting monetary bonds to amounts that people could afford to pay.[3] Courtwatchers were in Central Bond Court every day during the month of August, before the rule took effect, and then again from September 18 through October 22, after the rule had taken effect. A total of 46 unique courtwatchers completed a total of 93 courtwatching shifts, 51 in August and 42 in September and October.[4]

[1] Sharlyn Grace, *More than 70 Organizations & Individuals Call for Supreme Court Rule on Bail*, CHICAGO APPLESEED FUND FOR JUSTICE (Nov. 14, 2017), *available at* http://www.chicagoappleseed.org/more-than-70-organizations-individuals-call-for-supreme-court-rule-on-bail/.

[2] Marcia M. Meis, *Pretrial Reform Efforts in Illinois*, ILLINOIS COURTS CONNECT (Dec. 27, 2017), *available at* http://illinoiscourts.gov/media/enews/2017/122817_director.asp.

[3] Note that “bail” and “bond” have different meanings in different jurisdictions. While “bail” commonly refers to an amount of money to be paid, this report uses bail to refer to the process of releasing someone pretrial. The Coalition to End Money Bond uses “bond” to refer to different types of release since that is the language used in the Illinois law and by practitioners. The Coalition uses “monetary bond” to refer to any kind of bond where money must be paid prior to release (also known as a secured bond).

[4] Courtwatching shifts were actually completed by more than 70 volunteers, but not all notes were turned in, and not all of the turned-in notes were ultimately used in the analysis because they were either illegible, incomplete, or redundant when multiple courtwatchers observed the same hearing. These numbers reflect the number of courtwatching volunteers and shifts used to generate the data included in this report.

# Executive Summary

On any given day, thousands of people in Cook County, Illinois, and hundreds of thousands more across the country, are incarcerated not because of a criminal conviction, but because they cannot afford to pay their monetary bond. Some of those people have been incarcerated for months or even years due to their poverty. Over the past several years, people impacted by incarceration have joined with community organizations and advocates in order to push for reform of the pretrial system in Illinois. As a result of this advocacy, the money bond system in Illinois has recently undergone several promising reforms. One of those reforms was General Order 18.8A, through which the Chief Judge of Cook County ordered that all monetary bonds be affordable, and that no one be incarcerated solely because they cannot pay a bond. General Order 18.8A was heralded by some advocates as a possible "turning point" in the fight to end unjust pretrial incarceration in Cook County.[5]

Coordinated by the Coalition to End Money Bond, more than 70 volunteers observed Central Bond Court between August and October of 2017 to collect data on bond court proceedings, record the decision-making process of judges, and track case dispositions of thousands of people accused of crimes. The data shows that while the recent reforms have led to some improvements in how judges issue bonds, many of the historical injustices of the money bond system persist. For reasons discussed in this report, these problems will likely persist unless Illinois abolishes secured monetary bond in its entirety.

## Money bond results in the unfair incarceration of legally innocent people.

Every person whose case is pending is legally innocent. People who are in the pretrial phase are supposed to be presumed innocent until proven guilty and should enjoy the legal privileges associated with innocence. In many cases, however, the court requires these people to pay large sums of money just to be free before trial, and those who cannot pay are jailed as if they had already been convicted.

Incarceration has a profound impact on the person in jail, their family and friends, and their larger community. Even brief periods of incarceration can lead to the loss of jobs, housing, and custody of one's children. In addition, pretrial incarceration affects legal outcomes by causing increased conviction rates and longer sentences. All of these negative consequences have a disproportionate impact on Black and Latinx[6] people, who generally receive higher bonds, have less access to pretrial diversion programs, and are less likely to be able to post a monetary bond than white people.[7]

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[5] Richard A. Oppel, Jr., *Defendants Can't Be Jailed Solely Because of Inability to Pay Bail, Judge Says*, NEW YORK TIMES (July 17, 2017) *available at* https://www.nytimes.com/2017/07/17/us/chicago-bail-reform.html.

[6] This report uses the term "Latinx" as a gender-neutral term in lieu of the masculine "Latino" or feminine "Latina" because many people affected by these issues are not represented by either a masculine or feminine identity. "Latinx" is meant to be an inclusive term representative of all people of Latin-American descent.

[7] Traci Schlesinger, *Racial Disparities in Pretrial Diversion: An Analysis of Outcomes Among Men Charged with Felonies and Processed in State Courts*, RACE AND JUSTICE 3(3): 210-238, *available at* http://journals.sagepub.com/doi/abs/10.1177/2153368713483320.

## Recent bail reforms in Cook County were long overdue and need evaluation.

Many individuals and groups are fighting for changes to the pretrial justice system. Reform efforts include advocacy and support by community groups for people facing unaffordable bail, legislative action at the state level, and changes in internal prosecutor's office policies. Limited access to court and jail data, however, have made it difficult to track the scope of the problems related to money bond and measure the impact of these reforms.

The data collected through the courtwatching effort discussed in this report suggests that some positive changes have occurred. As a result of General Order 18.8A, the rate of pretrial release has almost doubled, while the use of monetary bond has dropped by half. Judges in bond court are asking for and receiving more information from accused people about their ability to pay bond. Even with these improvements, however, many people are *still* receiving unaffordable bonds and facing indefinite pretrial incarceration as a result. Furthermore, substantial differences in the outcomes among the six Central Bond Court judges raise concerns about fairness and consistency for all accused people. Courtwatching data shows that additional oversight is required to ensure proper implementation of General Order 18.8A, and further changes will be required to truly end the unjust pretrial incarceration of legally innocent people.

## Recommendations for Fairer Outcomes

Based on the observations of courtwatchers, the following policy recommendations should be implemented:

1. *End the use of secured money bond in Illinois.*
2. *Stop unfairly funding the courts through bond money.*
3. *Improve access to Central Bond Court and jail data.*
4. *Facilitate attendance at future court dates with reminders and other supports.*
5. *Train judges and other court personnel on detention hearings and pretrial release procedures.*
6. *Ensure fair ordering and timing of bond court proceedings.*
7. *Improve Pretrial Services.*

# I. What's at Stake in Bail Reform?

## Pretrial incarceration harms accused people and their families.

Lavette Mayes missed "[t]wo Mother's Days, one Christmas, and so many moments in between" with her two children as a result of the 14 months she spent incarcerated in Cook County Jail.[8] Ms. Mayes was arrested for the first time in her life and had bond set at $250,000, requiring her to post $25,000 to get out of jail—an amount that neither Ms. Mayes nor her family could afford. She did not understand why her bond was set so high, and no explanation was provided in the seconds-long bail hearing she received in Central Bond Court. The attorney's fees and toll of being in jail strained her family and finances. Eventually, after her bond was reduced on two separate occasions, Ms. Mayes' family was able to work with the Chicago Community Bond Fund, a charitable bail fund, to bring her home to her children. Nevertheless, the damage was already done to Ms. Mayes and her family. She lost her housing, her business and source of income, and her children were traumatized by the long separation.

Stories like Ms. Mayes' are unfortunately far from unique. More than 70,000 people pass through Cook County Jail every year,[9] and nearly 450,000 people are incarcerated while awaiting trial in county jails across the country.[10] Perhaps most disturbingly, more than 90% of these individuals are incarcerated merely because they cannot afford to post a monetary bond.[11] This wealth-based jailing of people who are presumed innocent under the law carries dire consequences for accused people, their loved ones, and their communities.

Many studies reveal the harmful effects of the money bail system on accused people and their families.[12] Whether they plead guilty or are found guilty by a judge or a jury, people incarcerated pretrial are more likely to be convicted and receive longer sentences than people who are free pending trial.[13] People who are incarcerated pending trial are effectively coerced into pleading guilty in exchange for their release.[14] People in many different jurisdictions who are incarcerated pretrial are much more likely,

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[8] Lavette Mayes and Matthew McLoughlin, *I Spent 14 Months in Jail because I Couldn't Pay My Way Out*, TRUTHOUT (June 19, 2017) *available at* http://www.truth-out.org/opinion/item/40971-i-spent-14-months-in-jail-because-i-couldn-t-pay-my-way-out. All details of Lavette's experience are taken from this article.

[9] Based on a weekly average admission of 1,439 people, the year-to-date average weekly total number of "bookings" into CCJ as provided in the December 4, 2017 Cook County Sheriff's Weekly Report.

[10] Joshua Aiken, *Era of Mass Expansion: Why State Officials Should Fight Jail Growth*, PRISON POLICY INITIATIVE (May 31, 2017), *available at* https://www.prisonpolicy.org/reports/jailsovertime.html#fig_1.

[11] *Bail in America, Unsafe, Unfair, Ineffective*, PRETRIAL JUSTICE INSTITUTE, *available at:* http://www.pretrial.org/the-problem/.

[12] *See e.g.* Leonard M. Lopoo & Bruce Western, *Incarceration and the Formation and Stability of Marital Unions*, 67 JOURNAL OF MARRIAGE AND FAMILY 721 (2005); Bruce Western & Sara McLanahan, *Fathers Behind Bars: The Impact of Incarceration on Family Formation*, CENTER FOR RESEARCH ON CHILD WELLBEING (2000); Robert Apel, et al, *The Impact of Imprisonment on Marriage and Divorce: A Risk Set Matching Approach*, 26 JOURNAL OF QUANTITATIVE CRIMINOLOGY 269 (2009); *and* Nancy G. La Vigne, et al., *Broken Bonds: Understanding and Addressing the Needs of Children with Incarcerated Parents*, URBAN INSTITUTE: JUSTICE POLICY CENTER (2008).

[13] *See e.g.* J.C. Olseon, et al, *The Effect of Pretrial Detention on Sentencing in Two Federal Districts*, 33 JUSTICE QUARTERLY 1103 (2016).

[14] Emily Yoffe, *Innocence Is Irrelevant*, THE ATLANTIC (Sept. 2017), *available at* https://www.theatlantic.com/magazine/archive/2017/09/innocence-is-irrelevant/534171/; "Scott Hechinger," *We Are Witnesses*,

sometimes even three times more likely, to receive sentences that involve further incarceration in jail or prison.[15] Additionally, accused people who spend the entirety of their pretrial period incarcerated are more likely to receive longer jail and prison sentences if they are convicted.[16] One study found that the length of incarceration is at least two times longer for people incarcerated pretrial than for those who have spent at least some time out of jail pretrial.[17]

Pretrial incarceration also impacts the families of accused people in several ways.[18] Any arrest can put a family into financial crisis, especially low-income families who must choose between paying for basic necessities and posting bail, and who often lose a household wage earner.[19] Moreover, a person in jail is not able to physically pay their own bond, so family and community members must have access to sufficient money to post bond for the person. This can cause problems if a person has money to afford their bond, but family or community members do not have access to it. Additionally, when their loved one is incarcerated, family and friends are often called on to collect evidence and participate in the defense.[20] Because it is often difficult for incarcerated people to contact their attorney, family members are forced to act as significant intermediaries between the accused person and their attorney.[21] Thus, in addition to money, pretrial incarceration often requires the investment of significant amounts of time and other labor by family members. Research also indicates that incarceration strains family ties between the imprisoned and their loved ones,[22] who now have limited contact with each other.[23] As detailed above, there is also a clear link between pretrial incarceration and a future strain on family ties due to an increased likelihood of post-sentence incarceration if the arrestee is convicted, but the costs to a family are often substantial and long-lasting even if the person is found innocent or the charges are dismissed.

## Money bail is racially discriminatory.

The bail system disproportionately harms Black and Brown communities. Nationwide studies have shown that Black and Latinx people are less likely than white people to secure pretrial release due in large part to the role of monetary bail.

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THE MARSHALL PROJECT (accessed Nov. 22, 2017), *available at* https://www.themarshallproject.org/witnesses?page=scott; John Raphling, *Plead Guilty, Go Home. Plead Not Guilty, Stay in Jail*, LOS ANGELES TIMES (May 17, 2017), *available at* http://www.latimes.com/opinion/op-ed/la-oe-raphling-bail-20170517-story.html; Samuel R. Gross, *The Staggering Number of Wrongful Convictions in America*, THE WASHINGTON POST (July 24, 2015), *available at* https://www.washingtonpost.com/opinions/the-cost-of-convicting-the-innocent/2015/07/24/260fc3a2-1aae-11e5-93b7-5eddc056ad8a_story.html.

[15] J.C. Oleson, et al, *The Effect of Pretrial Detention on Sentencing in Two Federal Districts*, 33 JUSTICE QUARTERLY 1103 (2016)

[16] *Id. See e.g* C. Ares et al, *The Manhattan bail project: An interim report on the pre-trial use of pre-trial parole*, 38 N.Y.U. LAW REV. 67 (1963); J.C. Olseon, et al, *The Effect of Pretrial Detention on Sentencing in Two Federal Districts*, 33 JUSTICE QUARTERLY 1103 (2016); Meghan Sacks and Alissa R. Ackerman, *Bail and Sentencing: Does Pretrial Detention Lead to Harsher Punishment?*, 25 CRIM. JUSTICE POLICY REV. 59 (2012).

[17] J.C. Olseon, et al, *The Effect of Pretrial Detention on Sentencing in Two Federal Districts*, 33 JUSTICE QUARTERLY 1103 (2016).

[18] This section regarding the impact of incarceration on family members of accused people draws heavily (with permission) on the research done by Beth E. Richie, Erin Eife, and Delaina Washington in their paper, "The Impact of Bond Court on Family Members and Loved Ones," prepared for the Cook County Justice Advisory Council (2017).

[19] Samuel R. Wiseman, *Pretrial Detention and the Right to Be Monitored*, 123 YALE L.J. 1344 (2014).

[20] *Id.*

[21] *Id.*

[22] Leonard M. Lopoo & Bruce Western, *Incarceration and the Formation and Stability of Marital Unions*, 67 JOURNAL OF MARRIAGE AND FAMILY 721 (2005); Bruce Western & Sara McLanahan, *Fathers Behind Bars: The Impact of Incarceration on Family Formation*, CENTER FOR RESEARCH ON CHILD WELLBEING (2000).

[23] For an example of the difficulties of visiting a loved one at Cook County Jail, *see* Ruby Pinto, *Visitation at Cook County Jail – Part 1* (Video interview with Patty Cloud), COOK COUNTY JUSTICE WATCH (Feb. 11, 2016), *available at* https://cookcountyjusticewatch.wordpress.com/2016/02/11/visitation-at-cook-county-jail-1/.

Black and Latinx people are 25% and 24% respectively more likely to be denied bail, as well as 12% and 25% respectively less likely to be released on their own recognizance than white people.[24] When not denied bail, Black people receive significantly higher bail amounts.[25]

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Even when there is little difference in the bail amounts imposed on Black and white people, a greater percentage of Black people are incarcerated pretrial because they do not have the financial means to secure release.[26] The resulting effect is that the racially and economically oppressed become locked in a cycle of poverty as people already unable to afford bail are incarcerated pretrial and unable to maintain employment. The harm is felt immediately by the accused person's family, who must go without a caregiver and/or means to pay for food, rent, and bills. Moreover, it is not just the accused person's family that suffers from their removal, but their broader community when already struggling local businesses lose an employee or patron, schools and programs whose budgets have already been cut lose the support of a parent, and faith communities lose a member.

From August 18, 2017 to December 15, 2017, an average of 6,373 people were incarcerated in Cook County Jail, and an additional 2,211 people were incarcerated in their homes with electronic monitoring.[27] Of these 8,584 people, approximately 72% were Black.[28] As of 2016, the population of Cook County was just 24% Black.[29] This massive disparity confirms that Cook County is no exception to the well-documented reality that the criminal legal system disproportionately targets Black people.[30]

## Money bail and pretrial incarceration are wasting millions of taxpayer dollars that could be better spent investing in communities.

Monetary bail has a detrimental effect on the criminal legal system as a whole, adding to the cost of county and state prison systems and the courts themselves. Cook County annually spends over $330

[24] Traci Schlesinger, *Racial and Ethnic Disparity in Pretrial Criminal Processing*, 22 JUSTICE QUARTERLY 170 (2005).
[25] Shawn D. Bushway and Jonah B. Gelbach, *Testing for Racial Discrimination in Bail Setting Using Nonparametric Estimation of a Parametric Model,* (2011) *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1990324.
[26] *See, e.g.*, Stephen Demuth & Darrell Steffensmeier, *The Impact of Gender and Race-Ethnicity in the Pretrial Release Process* (2004); Meghan Sacks, Vincenzo A. Sainato & Alissa R. Ackerman, *Sentenced to Pretrial Detention: A Study of Bail Decisions and Outcomes* (2014) (accused Black and Latinx people more likely than their white counterparts to have to a money bail requirement and are less able to post bail, making them much more likely than their white counterparts to be incarcerated pretrial); Traci Schlesinger, *Racial Disparities in Pretrial Diversion: An Analysis of Outcomes Among Men Charged With Felonies and Processed in State Courts* (2013) (Black and Latinx people are less likely to receive pretrial diversion than white people with similar legal characteristics); Tina L. Freiburger & Carly M. Hilinski, *The Impact of Race, Gender, and Age on the Pretrial Decision* (Jan. 1, 2010).
[27] FOIA Data from the Sheriff's Office, available at chicagodatacollaborative.org.
[28] *Id.* The Sheriff's Office uses the term "Hispanic," which includes people who identify as white-Hispanic and Black-Hispanic.
[29] *Quick Facts:Cook County*, U.S. Census Bureau (2016), *available at* https://www.census.gov/quickfacts/fact/table/cookcountyillinois/PST120216.
[30] This racism affects the bond system in Cook County as well. In the months after General Order 18.8A was implemented, the number of people incarcerated due to an unpaid money bond decreased from 4,562 to 3,289 people. Black people, however, continued to comprise an average of 73% of these people held in jail because they could not pay bail. As the jail population hopefully declines further in the future, evaluation of the impact of changing policies must include close inspection of who is benefitting and who remains in Cook County Jail or on house arrest. All data obtained through FOIA requests and available at chicagodatacollaborative.org.

million on the jail, increasing each year.[31] Much of this money is spent incarcerating people pretrial or incarcerating people longer post-trial as a result of their pretrial incarceration. In short, the current reliance on monetary bond is massively expensive. In addition, the low-income Black and Latinx communities that are primarily targeted and disadvantaged by the criminal legal system are the very same communities that stand to gain the most from government investment in community-building programs such as education, public health, and jobs programs.

While "there is no evidence that the massive spending on incarceration reduces crime rates or keeps communities safer,"[32] the state and county continue to spend money on punitive responses to crime, rather than spending that same money to proactively support the people that have historically and systematically been denied state-sponsored resources. A more just bail system would result in significant monetary savings, which could then be proactively reinvested in criminalized communities. A wealth of studies "show that jobs and education make communities stronger and keep them safer. Investments in community-based drug and mental health treatment, education, universal pre-K, and other social institutions can make communities safer while improving life outcomes for all."[33] To actually prevent undesirable behavior and promote public safety, the massive amounts of government money going to support the criminal legal system and monetary bail should be reallocated to communities.

## Wealth-based jailing is unconstitutional.

This large-scale jailing of legally innocent people is a relatively recent practice in U.S. history, having increased from about 112,000 people in 1983 to more than 434,000 people in 2013.[34] In fact, the Eighth Amendment of the U.S. Constitution clearly states that "[e]xcessive bail shall not be required."[35] The fact that people are incarcerated pretrial due to their inability to pay a monetary bail also raises concerns of due process and equal protection under the Fourteenth Amendment. In *Bearden v. Georgia*, the U.S. Supreme Court determined that the Fourteenth Amendment of the U.S. Constitution does not allow a court to sentence a convicted person to imprisonment merely for failure to pay a certain amount of money.[36] The Court held that incarceration based solely on one's inability to pay was "fundamentally unfair"[37] and the equivalent of "punishing a person for his poverty."[38] Furthermore, in *United States v. Salerno*, in considering the constitutionality of a law that permits pretrial incarceration only when there is "clear and convincing" evidence that releasing the accused person could not assure

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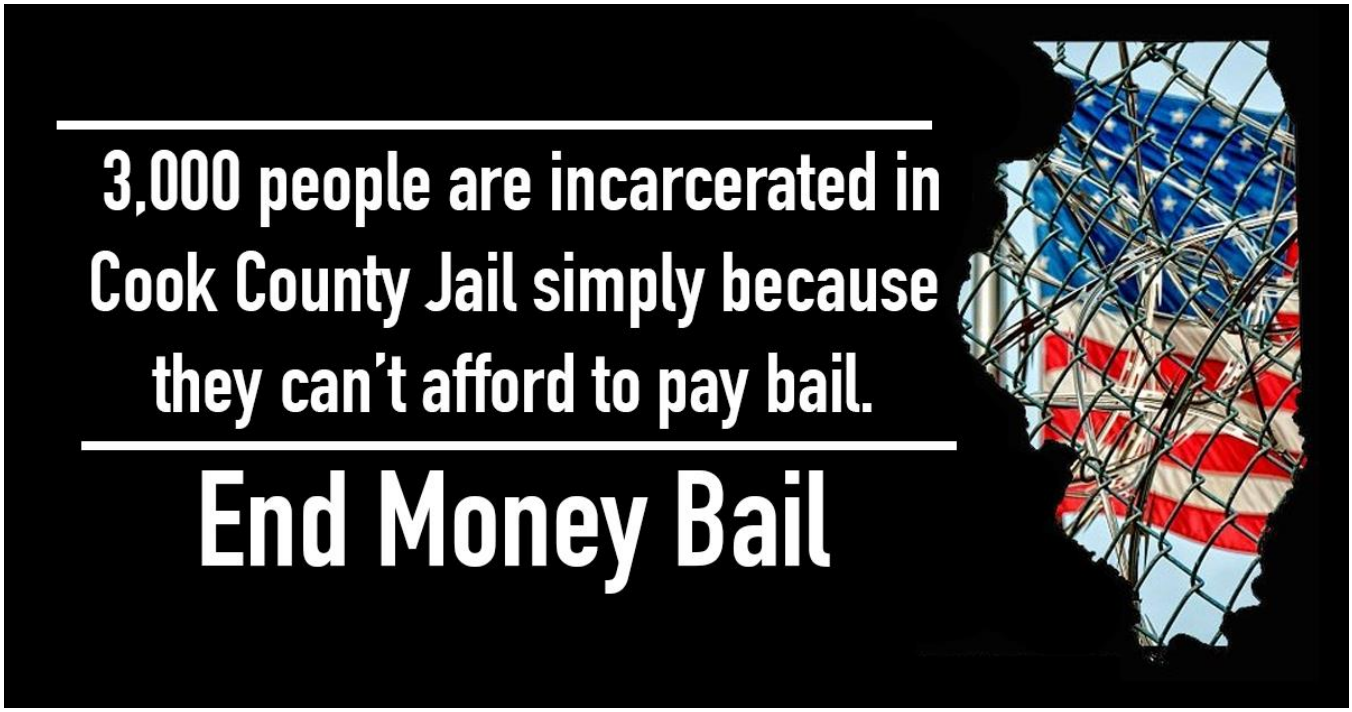
[31] Cook County Budget Report, Fiscal Year 2017, *available at* http://opendocs.cookcountyil.gov/budget/archive/2017-Adopted-Volume-1-Proposed_Expenditures.pdf.
[32] *Invest - Divest*, THE MOVEMENT FOR BLACK LIVES, *available at* https://policy.m4bl.org/invest-divest/.
[33] *Id.*
[34] Joshua Aiken, *Era of Mass Expansion: Why State Officials Should Fight Jail Growth*, PRISON POLICY INITIATIVE (May 31, 2017), *available at* https://www.prisonpolicy.org/reports/jailsovertime_table_1.html.
[35] US. Const. amend, VIII. This clause has been generally held to require "reasonable," but not specifically affordable, bail. *See Stack v. Boyle*, 342 U.S. 1 (1951). *See also* Tim Schnacke, Michael R. Jones, and Claire M.B. Brooker, *The History of Bail and Pretrial Release*, PRETRIAL JUSTICE INSTITUTE (Sept. 24, 2010), p. 8-9, *available at* https://www.pretrial.org/download/pji-reports/PJI-History%20of%20Bail%20Revised.pdf (discussing *Stack* as indicating that the amount of bail must be reasonable, but not necessarily affordable); Tim Schnacke, *"Model" Bail Laws*, CENTER FOR LEGAL AND EVIDENCE-BASED PRACTICE, p. 32 (April 18, 2017), *available at* http://www.clebp.org/images/04-18-2017_Model_Bail_Laws_CLEPB_.pdf.
[36] 461 U.S. 660 (1983). In the case, Danny Bearden, a man from Georgia, was imprisoned when he became unable to pay back a $500 fine and $250 in restitution when he lost his job after being convicted of robbery. Danny had been paying down the fine incrementally prior to losing his job. The ruling held that local governments "must inquire into the reasons for the failure to pay" when dealing with revocation cases for people who failed to pay a fine, and that only if the probationer "willfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay" can they be imprisoned or jailed. The ruling also held that courts must consider alternatives to imprisonment and determine that they are insufficient to "meet the state's interest in punishment and deterrence" before sending someone to prison for nonpayment of a fine.
[37] *Id.*
[38] *Id*. at 671.

the community's safety, the Supreme Court confirmed that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."[39] These decisions have provided much of the basis for the lawsuits successfully challenging monetary bond practices around the country and inform the lawsuit currently pending in Cook County.[40]




[39] *United States v. Salerno*, 481 U.S. 739, 755 (1987).
[40] *See* "Cash Bail," MACARTHUR JUSTICE CENTER, *available at* http://www.law.northwestern.edu/legalclinic/macarthur/projects/treatment/cashbail.html;Sharlyn Grace, "Media Advisory: Historic Lawsuit Challenges Practice of Jailing People Too Poor to Pay Bond," CHICAGO APPLESEED (Oct. 24, 2016), *available at* http://www.chicagoappleseed.org/media-advisory-historic-lawsuit-challenges-practice-of-jailing-people-too-poor-to-pay-bond/.

# II. How Bond Court Works in Cook County

## Fundamentals of Bail Law in Illinois

Illinois law provides for a number of different pretrial release, supervision, and incarceration decisions and, overall, discourages the use of secured money bond. For decades, the state bail statute has instructed judges to use non-monetary means of pretrial release, stating that "release on own recognizance ... shall be liberally [used] to effectuate the purpose of relying upon contempt of court proceedings or criminal sanctions *instead of financial loss* to assure the appearance of the defendant."[41] The statute additionally mandates that "Monetary bail should be set only when it is determined that no other conditions of release will reasonably assure the defendant's appearance in court."[42] In addition, Illinois law requires that any monetary bonds imposed be "not oppressive" and "considerate of the financial ability of the accused."[43]

In Illinois, individual recognizance bonds are referred to as I-Bonds. When an accused person is given an I-Bond, a dollar amount is set by the judge. This amount of money could be forfeited and ordered paid if the person later fails to appear for court, but no payment is necessary prior to being released.[44]

Judges may also assign "I-EM" bonds (also known variously as "IEM" or "EMI" bonds), which allow a person to be released directly into house arrest with electronic monitoring ("EM") through an ankle bracelet. An I-EM bond allows the accused person to pay 10% of the bond amount to have the EM condition removed, at which point the bond is effectively an I-Bond.[45] While some people avoid being jailed while on an I-EM bond, there are many reasons why a person who is given an I-EM bond may end up being incarcerated in the jail even though the conditions of their bond do not require it. In order for the Sheriff's office to allow someone's release on EM, their residence must meet certain qualifications, and people who are homeless or whose residence does not meet the Sheriff's requirements will remain in the jail for the duration of their case or until a suitable location for release on EM is obtained. Because of the serious restrictions of house arrest and the fact that I-EM bonds can, in practice, create drastically different outcomes than a true I-Bond, this report considers them as completely separate types of bond.

Illinois law permits judges to use two types of secured monetary bonds. The most common type of monetary bond is a D-Bond, which stands for "Deposit Bond." When an arrestee receives a D-Bond, they (or more likely a family member or other loved one) must post 10% of the D-Bond amount in order

[41] 725 ILCS 5/110-2 (emphasis added).
[42] *Id.*
[43] 725 ILCS 5/110-5(b)(2-3).
[44] An I-Bond is technically an unsecured monetary bond.
[45] Note that this is different from “electronic monitoring as a condition of bond,” which does not permit payment to get off of EM. EM can be assigned as a condition to an I-Bond, where a person is mandatorily incarcerated in their home, or to a D- or C-Bond, where a person will be mandatorily released from the jail onto EM. In both cases, the person cannot pay to have the EM condition removed.

to be released from jail. If the arrestee attends court for each required court date, this deposit usually is returned after a processing fee of 10% is deducted. In Cook County, the processing fee is capped at a maximum of $100.[46] If the arrestee fails to come to court, the 10% deposit may be forfeited and kept by the Clerk's Office. People in bond court may also receive C-Bonds, which are "Cash Bonds" that require payment of the entire C-Bond amount.

Finally, people in Illinois may be held "no bond," which means they are ordered incarcerated for the duration of their case without the ability to post an amount of money to get out. Denial of pretrial release is supposed to be a rarity and must be accompanied by the strongest due process protections.[47] Like many state constitutions, the Illinois Constitution's Bill of Rights purports to limit pretrial incarceration to a narrow group of people accused of offenses for which the penalty could be life imprisonment after stating that "all persons shall be bailable by sufficient sureties."[48] In addition, the same clause requires that "the proof is evident or the presumption great" before pretrial release is denied.[49] A court may also hold someone with no bond if they are charged with a non-probationable felony, and the court, at a hearing, finds that the accused person "would pose a real and present threat to the physical safety of any person."[50]

The Illinois legislature has additionally provided that people accused of stalking, aggravated stalking, certain unlawful possession of weapon charges, or terrorism may also be held without bond.[51] The government bears the burden of proving that the accused person "poses a real and present threat to the physical safety of any person or persons" by "clear and convincing evidence."[52] The Illinois Supreme Court, however, has indicated that "the right to bail is not absolute," and that "the denial of bail to an accused under [certain] circumstances is within the inherent power of the court."[53] Denying bail "must not be based on mere suspicion but must be supported by sufficient evidence to show that it is required."[54]

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[46] In other counties in Illinois, Clerks may keep a full 10% of any amount posted as a fee, in addition to any other fines, fees, or costs ordered by the court. 725 ILCS 5/110-7(f).

[47] *See United States v. Salerno*, 481 U.S. 739, 755 (1987); *Stack v. Boyle*, 342 U.S. 1, 4 (1951) (internal citations omitted) ("From the passage of the Judiciary Act of 1789, to the present Federal Rules of Criminal Procedure, federal law has unequivocally provided that a person arrested for a noncapital offense shall be admitted to bail. This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."). *See also e.g.* 725 ILCS 5/110-6.1 (requiring full adversarial hearing before holding an accused person with no bond for an alleged non-probationable felony offense).

[48] Ill. Const., art. I, § 9. Charges eligible for the death penalty are also included in this exception, but Illinois abolished the death penalty in 2011. 725 ILCS 5/119-1.

[49] *Id.*

[50] *Id.*

[51] 725 ILCS 5/110-4(a).

[52] *See* 725 ILCS 5/110-6.1(c) (codifying "clear and convincing" standard for non-probationable felony cases); 725 ILCS 5/110-6.3(c) (codifying "clear and convincing" standard for stalking and aggravated stalking offenses).

[53] *People ex rel. Hemingway v. Elrod*, 60 Ill.2d 74, 80 (1975).

[54] *Id.* at 79-80.

## The Bond Court Process in Cook County

Cook County is by far the largest county in Illinois and is home to the second largest prosecutor's office in the country.[55] In 2016, the Cook County State's Attorney's Office filed more than 30,000 felony cases and prosecuted more than 260,000 misdemeanor cases.[56] In Chicago, the vast majority of people charged with misdemeanors are released directly from police custody with I-Bonds.[57] As a result, people charged with misdemeanors make up a significantly smaller portion of both the people in bail hearings and people in Cook County Jail, compared to people charged with felonies.[58] For this reason, this report focuses exclusively on people charged with felonies.

In 2017, more than 33,500 people passed through Cook County's Central Bond Court.

Every person charged with a felony in Cook County is brought before a judge within 24-72 hours of arrest.[59] Monday through Friday, initial felony and misdemeanor bail hearings take place in numerous courthouses across Cook County, including suburban courthouses and branch courts.[60] Every person arrested in the City of Chicago and charged with a felony goes through Central Bond Court. On Saturdays and Sundays, every bail hearing for anyone arrested anywhere in Cook County happens in Central Bond Court. In 2017, more than 33,500 people passed through Central Bond Court.[61]

At Central Bond Court, a rotating set of six judges presides over a separate courtroom during a daily "call" where dozens of bail hearings are conducted one after another. These judges are appointed to Bond Court by the Chief Judge of the Circuit Court. Once the call starts, each accused person is brought before the judge individually, where they are represented by an attorney. Defense attorneys in bond court may be either a public defender or a private criminal defense lawyer, but the vast majority of people are represented by the public defender. When their loved one is in front of the judge, family members and friends often stand to show the judge that the person has supporters present.

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[55] Kimberly M. Foxx, *Cook County State's Attorney's Office Data Report*, p. 1, (Oct. 2017), *available at:* https://www.cookcountystatesattorney.org/sites/default/files/files/documents/ccsao-data-report-oct-2017.pdf.
[56] *Id*., pp. 1-2.
[57] 725 ILCS 195/1 authorizes certain police officers to make bond determinations for alleged traffic violation, quasi-criminal offenses, and misdemeanors. ILCS S. Ct. Rule 528 provides the bail schedule that those officers should adhere to. *See also Chicago Police Department Bail Bond Manual*, *available at* http://directives.chicagopolice.org/forms/CPD-11.909.pdf.
[58] People charged with misdemeanors have historically accounted for just 5-6% of the people in Cook County Jail. On September 30, 2017, 316 people (exactly 5% of the total 7,156 people) in Cook County Jail were accused of misdemeanors. This number includes people serving jail sentences as a result of a misdemeanor conviction.
[59] *Gerstein v. Pugh*, 420 U.S. 103 (1975); and *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991). *See also People v. Williams*, 230 Ill.App.3d 761, 779 (1992) ("Beyond 48 hours, the burden shifts to the State to show extraordinary circumstances justifying the delay.")
Police must request special permission from a judge to hold someone for investigation longer than 48 hours.
[60] A full schedule of all bail hearings can be found on the Circuit Court of Cook County's website: http://www.cookcountycourt.org/ABOUTTHECOURT/MunicipalDepartment/FirstMunicipalDistrictChicago/BondCourt.aspx.
[61] Central Bond Court Disposition Audit Statistics, obtained via FOIA request and available at chicagodatacollaborative.org.

For each person, the judge verifies their identity and sometimes reads the charges out loud. The judge usually also asks for any risk assessment scores and recommendations from the Pretrial Services officers.[62] The prosecutor speaks first and often reads information from the police report into the record.[63] The prosecutor also describes any past convictions and failures to appear in court and sometimes also mentions juvenile cases and mere arrests. For some cases, including people opting into certain diversion programs, the prosecutor will recommend release on an I-Bond. Prosecutors in Central Bond Court generally do not ask for monetary bonds, but have been observed to occasionally object to I-Bonds. The defense attorney then presents mitigating evidence about the accused person, such as their personal history, family ties, work experience, and educational background.

Both secured money bonds and orders for release on Electronic Monitoring appear on their face to be release decisions, but both commonly result in incarceration in the jail.

Based on this information, the judge will make a bail decision, including setting any conditions of release, such as a money bond. Conditions of release commonly include reporting to a department within the court's Probation Department called Pretrial Services, house arrest via the Sheriff's Electronic Monitoring program, and a general order to comply with the law and attend future court dates. In some instances, the judge will add other conditions, such as staying away from the alleged victim or a specific address, drug testing, not driving, GPS monitoring, or other constraints.

After the bail decision is made, people given I-Bonds are processed out and released, while people ordered held no bond are processed into Cook County Jail. Both secured money bonds and orders for release on Electronic Monitoring ("EM") appear on their face to be release decisions, but both commonly result in incarceration in the jail.

If the accused person cannot pay the amount required by their monetary bond or does not have a place to stay on EM, they will not be released from the jail and may remain incarcerated while their case is pending.[64] Furthermore, even if someone is released on EM, they are essentially incarcerated in their own home, with the default presumption being that the person cannot leave the house at all, even to work, provide care to their children, or buy groceries. People under house arrest as a result of EM are considered to be "in custody" and are entitled to credit for time served.[65]

Felony cases in Cook County commonly take many months and even years to resolve.[66] The long jail stays by people awaiting trial help make Cook County Jail the largest single-site jail in the country. Almost 95% of the thousands of people incarcerated there are incarcerated pretrial and have not been

[62] The “risk assessment” tool used in Cook County and what it measures is described in detail below.
[63] This unverified information is not admissible at any other time in the case, and is generally not challenged by the defense during bail hearings.
[64] It is important to note that lack of suitable housing has in some cases meant the only housing available to an accused person was a Section 8 residence. Though there is no law, official policy, or publicly available rationale that prevents someone from being on EM in subsidized housing, numerous advocates report that the Sheriff’s Office has refused to release people on EM to housing paid for using Section 8 vouchers.
[65] 730 ILCS 5/5-4.5-100(b).
[66] Spencer Woodman, *No-show Cops and Dysfunctional Courts Keep Cook County Jail Inmates Waiting Years for a Trial*, CHICAGO READER (Nov. 16, 2016), *available at* https://www.chicagoreader.com/chicago/cook-county-jail-pre-trial-detention-investigation/Content?oid=24346477 (“More than 1,000 Cook County inmates have been awaiting trial for more than two years, according to the Cook County sheriff's department. In some extreme cases, some have been held without trial for more than eight years.”).

convicted.[67] This far exceeds the national pretrial incarceration rate of 63%.[68] Further, of the people awaiting trial in Cook County, approximately 65% have been in jail only because they cannot afford to pay their monetary bonds.[69] Operating Cook County Jail costs the county more than $330 million every year,[70] with an average cost of $143 per person per day.[71]


Lavette Mayes of Chicago Community Bond Fund speaks at a press conference announcing the filing of the lawsuit against money bond in October 2016.

[67] On December 15, 2017, 94.88% of the 6,114 people in Cook County Jail were incarcerated pretrial, according to analysis of data obtained by FOIA. Data available at chicagodatacollaborative.org.
[68] Joshua Aiken, *Era of Mass Expansion: Why State Officials Should Fight Jail Growth*, PRISON POLICY INITIATIVE (May 31, 2017), *available at* https://www.prisonpolicy.org/reports/jailsovertime.html#fig_1.
[69] Based on data from the Cook County Sheriff's Office, obtained via FOIA. Specifically, on September 12, 2017, 4,655 people out of 7,204 total people incarcerated pretrial were in Cook County Jail only because they could not pay a monetary bond. Due to the impact of reforms, this percentage had dropped to 57% by December 15, 2017, according to data obtained by FOIA. FOIA data is posted at chicagodatacollaborative.org.
[70] Cook County Budget Report, Fiscal Year 2017, *available at* http://opendocs.cookcountyil.gov/budget/archive/2017-Adopted-Volume-1-Proposed_Expenditures.pdf.
[71] Bryant Jackson-Green, *Illinois Jails Incarcerate Many People Who Don't Need to Be There in the First Place*, ILLINOIS POLICY (Dec. 11, 2015), *available at:* https://www.illinoispolicy.org/illinois-jails-incarcerate-many-people-who-dont-need-to-be-there-in-the-first-place/.

# III. Bail Reform Efforts in Cook County

A number of recent changes in both local policy and state law have promised improvements in Central Bond Court and improved rates of non-monetary release in Cook County. This section provides background on each reform or effort and its specific terms, which are then evaluated in the "Assessments" section.

## Use of a Pretrial Risk Assessment Tool and Pretrial "Services"

In 2014 and 2015, community groups concerned about the overuse of money bonds and pretrial incarceration (and wide variation in outcomes across judges) approached Cook County's Chief Judge and asked him to make reforms, including the introduction of a validated pretrial risk assessment tool.[72] In 2014, at the request of the Cook County Board President, the Illinois Supreme Court stepped in to assess Cook County's pretrial system, including Central Bond Court, and issued a number of recommendations to improve its fairness and effectiveness, many of which mirrored the concerns expressed by community groups.[73] Chief Judge Evans agreed to adopt several important reforms, including the adoption of a risk assessment tool and a commitment to increase the usage of I-Bonds.[74] In July 2015, the Laura and John Arnold Foundation's Public Safety Assessment ("PSA") was integrated into Central Bond Court proceedings.[75]

The PSA was enacted with the twin purposes of helping to standardize the way that bond decisions were made and encouraging judges to issue more I-Bonds and fewer D-Bonds.[76] The PSA uses only a person's past criminal history—current charge, prior convictions, and past failures to appear in court—and their age to calculate two predictions: their risk of being rearrested (called "new criminal activity" or "NCA") and their risk of missing a future court date (called "failure to appear" or "FTA").[77] FTA and NCA scores are both calculated and assigned a value between 1 (low) and 6 (high). The PSA also calculates a flag for risk of re-arrest on charges considered violent (called the "new violent criminal activity" or "NVCA flag").[78] Pretrial Services officers in Central Bond Court translate the combination of PSA scores into release recommendations: release with no conditions, release with conditions ranging from

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[72] Community Renewal Society, *Cook County Bond Court Watching Project: Final Report*, pp. 23-24 (Feb. 2016), *available at:* http://www.communityrenewalsociety.org/sites/default/files/Court%20Watching%20Final%20Report%20February%202016.pdf. The Reclaim Campaign was a collaborative effort among Community Renewal Society, Southside Together Organizing for Power (STOP), and the Kenwood Oakland Community Organization (KOCO). Chicago Appleseed collaborated in design of the courtwatching effort documented in the report.

[73] Illinois Supreme Court, Administrative Office of the Courts. *Circuit Court of Cook County Pretrial Operational Review* (March 2014), *available at:* http://www.illinoiscourts.gov/SupremeCourt/Reports/Pretrial/Pretrial_Operational_Review_Report.pdf.

[74] Community Renewal Society, *Cook County Bond Court Watching Project: Final Report*, pp. 23. (Feb. 2016), *available at:* http://www.communityrenewalsociety.org/sites/default/files/Court%20Watching%20Final%20Report%20February%202016.pdf.

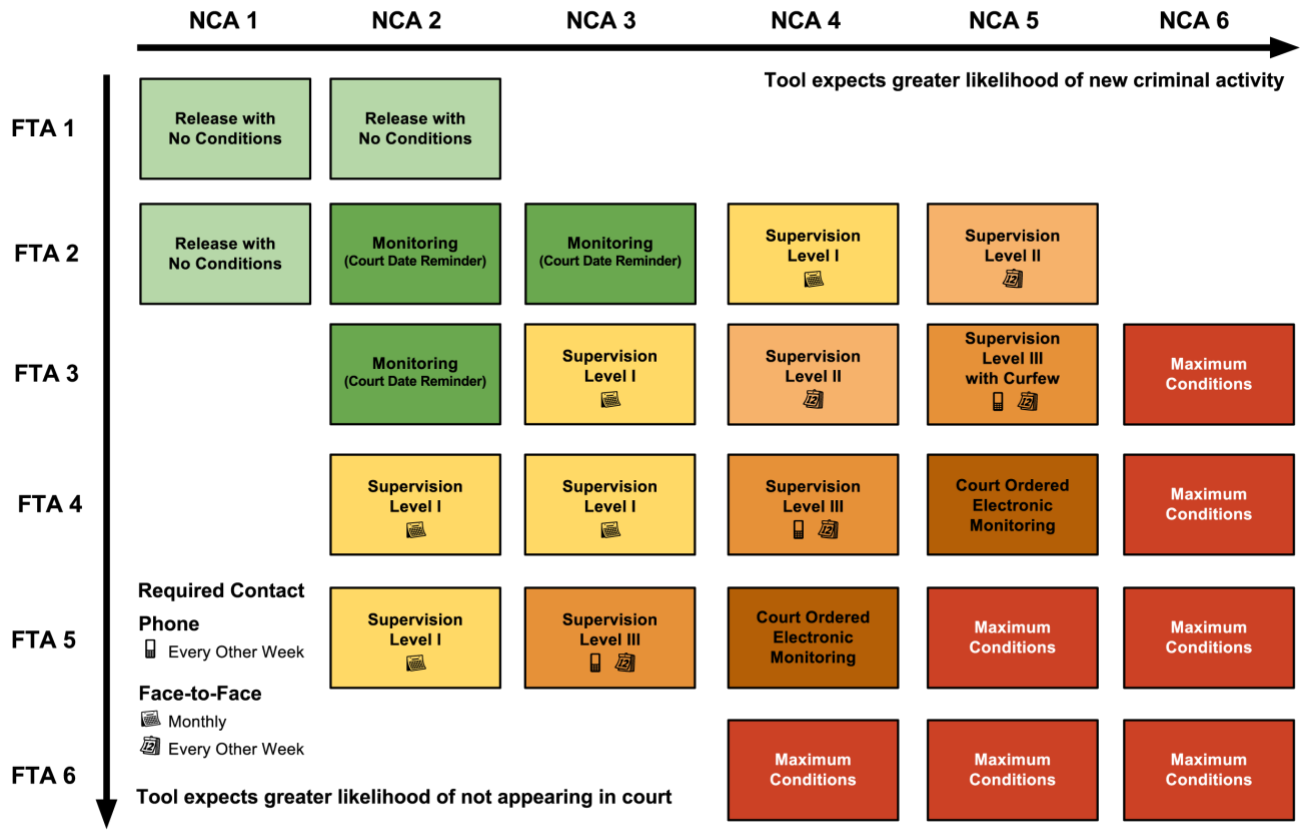
[75] Statement from Chief Judge Timothy C. Evans, October 24, 2016, available at http://www.cookcountycourt.org/MEDIA/ViewPressRelease/tabid/338/articleid/2485/Default.aspx.

[76] *Id.*

[77] *See Public Safety Assessment: Risk Factors and Formula*, LAURA AND JOHN ARNOLD INSTITUTE, *available at* http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf.

[78] *Id.*

telephone reminders to home confinement and/or electronic monitoring, and to "release with maximum conditions."[79] The PSA is administered by Pretrial Services, a division within the Adult Probation Department in the Office of the Chief Judge that, in addition to providing PSA scores during bond court, is also tasked with administering various forms of pretrial supervision.[80]




There have been many critiques of the PSA and other pretrial assessment tools, including their propensity for recreating racial and economic biases in policing and prosecution by considering prior criminal history in their predictions and labels.[81] It is important to consider these faults, and the PSA should not be seen as wholly "objective." Current bond court outcomes are, however, more severe than the PSA would recommend. If judges followed the PSA recommendations, fewer people would be incarcerated or punished with restrictive pretrial conditions.[82] Though courtwatchers observed an

[79] See Appendix, Item 5.
[80] Adult Probation Department: Pretrial Services, State of Illinois Circuit Court of Cook County (2017), *available at* http://www.cookcountycourt.org/ABOUTTHECOURT/OfficeoftheChiefJudge/ProbationDepartments/ProbationforAdults/AdultProbationDepartment/PretrialServices.aspx.
[81] *See* Hannah Jane Sassaman, "Artificial Intelligence Is Racist Yet Computer Algorithms are Deciding Who Goes to Prison, NEWSWEEK (Jan. 24, 2018), *available at* http://www.newsweek.com/ai-racist-yet-computer-algorithms-are-helping-decide-court-cases-789296 ("Studies are showing that algorithms trained on racist data have big error rates for communities of color—especially over-predicting risk of recidivism for black people.").
[82] *See* Bernard E. Harcourt, *Risk as a Proxy for Race,* UNIVERSITY OF CHICAGO LAW SCHOOL: CHICAGO UNBOUND (Sept. 2010), available at https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1265&context=public_law_and_legal_theory.

increase in I-Bonds for at least some accused people following the PSA's implementation,[83] there was also evidence that judges disregarded the tool's release recommendations as much as 85% of the time.[84] Furthermore, the PSA itself does not contemplate or make recommendations on the use of monetary bond—it only recommends release or detention. Monetary bond, especially if set without reference to ability to pay, obscures whether or not someone is actually released by leaving that up to their access to money.

PSA scores and recommendations by Pretrial Services also influence judges' imposition of "pretrial services." These are conditions that a person must follow after release or risk being in violation of their bond, and not supportive services, as the name might suggest.[85] These conditions are often cumbersome and sometimes punitive restrictions on pretrial liberty that can include overnight or 24-hour curfews with or without electronic monitoring, weekly or monthly check-ins with an officer, or any number of additional conditions that greatly inhibit a person's ability to both live their life and justly defend themselves in their case.[86]

Ideally, Pretrial Services can help people maintain relationships with their families and communities while also fulfilling their obligation to the court. In practice, however, this is rarely the case in Cook County. Often at great cost to the person and their family, Pretrial Services's restrictions prevent a person from working, having contact with their children, and living their life as a person presumed innocent under the law.[87] Inadequate notice procedures result in many people not knowing that they were given pretrial conditions until they are punished for violating them, raising due process concerns.[88] Evaluating the efficacy of the PSA's impact on outcomes for people passing through Central Bond Court requires a rigorous investigation into the role that Pretrial Services plays while a case is pending, including the rate of incarceration and other penalties due to alleged violations of conditions.

## Policy Changes in the Cook County State's Attorney's Office

In March 2017, the State's Attorney's Office announced that it was working with the Cook County Public Defender's Office to file agreed motions for I-Bonds for several dozen people held in Cook County Jail for "non-violent offenses" because they could not post $1,000 or less in bond.[89] While important in increasing the public awareness of the harms of unpayable money bonds, this effort had minimal

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[83] Statement from Chief Judge Timothy C. Evans, October 24, 2016, stating that I-Bonds had increased from 52% to 67% for "non-violent, non-weapons cases" after "the first two months of full PSA implementation."

[84] Frank Main, *Cook County Judges Not Following Bail Recommendations: Study*, CHICAGO SUN-TIMES (July 3, 2016), *available at* https://chicago.suntimes.com/politics/cook-county-judges-not-following-bail-recommendations-study-find/. *See also* Megan T. Stevenson, *Risk Assessment in Action*, GEORGE MASON LAW & ECONOMICS Research Paper No. 17-36 (Dec. 13, 2017), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3016088 (finding that "a 2011 law making risk assessment a mandatory part of the bail decision led to a significant change in bail setting practice, but only a small increase in pretrial release. These changes eroded over time as judges returned to their previous habits.").

[85] *See Punishment is not a "Service": The Injustice of Pretrial Conditions in Cook County*, CHICAGO COMMUNITY BOND FUND (Oct. 24, 2017) *available at* https://chicagobond.org/docs/pretrialreport.pdf.

[86] *Id. See also* Robin Steinberg and David Feige, *The Problem with NYC's Bail Reform*, THE MARSHALL PROJECT (July 9, 2015) *available at* https://www.themarshallproject.org/2015/07/09/the-problem-with-nyc-s-bail-reform#.7AAejdFc0 ("The problem with the pretrial-services model is that these 'services,' which are a condition of one's release, are often identical to, and sometimes far more onerous than the sentence one would receive for actually being guilty of the crime.").

[87] *Punishment is not a "Service": The Injustice of Pretrial Conditions in Cook County*, CHICAGO COMMUNITY BOND FUND (2017) *available at:* https://chicagobond.org/docs/pretrialreport.pdf.

[88] *Id.*

[89] Steve Schmadeke, *Foxx agrees to release of inmates unable to post bonds of up to $1,000 cash*, CHICAGO TRIBUNE (March 1, 2017) *available at* http://www.chicagotribune.com/news/local/breaking/ct-kim-foxx-bond-reform-met-20170301-story.html.

impact measured by absolute numbers and only resulted in the release of around 20 people in the first two months after it was announced.[90]

The State's Attorney's Office indicated in June 2017 that prosecutors would begin recommending I-Bonds in bond court for accused people who meet certain requirements: the current offense is a misdemeanor or low-level felony, the person has no prior violent criminal history, and there are no other risk factors suggesting a danger to the community or failure to appear for court.[91] This represents a change from prior practice, in which prosecutors participated in bond hearings only by reading a proffer of the alleged facts and the accused person's criminal history. This proactive support for pretrial freedom is an important public statement and crucial contributor to efforts to shift courtroom culture, but its impact has not yet been formally documented by the State's Attorney's Office or the court.

## Changes to State Law: The Bail Reform Act of 2017

As there have been reform efforts within Cook County, bail reform has also been addressed at the state level. In June 2017, the Illinois legislature passed the Bail Reform Act of 2017, which went into effect on January 1, 2018.[92] The Act, among other things, establishes a right to an attorney at bond hearings, requires judges to use the "least restrictive conditions" possible for pretrial release, and allows people accused of certain crimes to have their bond reconsidered by a judge if they are unable to pay. The Act does not prevent judges from setting bond at unaffordable levels in any cases and merely "recommends" certain practices. Despite its limitations, the Act was a step in the right direction insofar as it increased protections for accused people and reinforced the state law's pre-existing preference for non-monetary pretrial release.[93] The Bail Reform Act, and particularly its procedural review requirement also helped create the need for General Order 18.8A in Cook County.[94]

## Litigation Challenging Wealth-Based Pretrial Incarceration

In October 2016, two men incarcerated in Cook County Jail, represented by a team of lawyers from Civil Rights Corps, Hughes Socol Piers Resnick & Dym, Ltd., and the Roderick and Solange MacArthur Justice Center, sued several Cook County judges in Circuit Court, alleging that judges in Cook County routinely set monetary bond at unaffordable levels, resulting in incarceration that deprives accused people of their right to liberty. The lawsuit, filed on the heels of several other class actions in eight other states, lists as defendants a class of Cook County Judges that assign and affirm bond amounts.[95] The Plaintiffs' class consists of people who are eligible for pretrial release but are incarcerated at Cook County Jail simply because they cannot afford to pay monetary bonds set by Cook County judges. The lawsuit has two named Plaintiffs, Zachary Robinson and Michael Lewis, who were required to pay

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[90] Numbers provided by Foxx during a public event on May 22, 2017. *See* https://twitter.com/ChiAppleseed/status/866821148822130689.

[91] *State's Attorney Foxx Announces Major Bond Reform*, COOK COUNTY STATE'S ATTORNEY (June 12, 2017), *available at* https://www.cookcountystatesattorney.org/news/state-s-attorney-foxx-announces-major-bond-reform (accessed Nov. 22, 2017).

[92] "The Bail Reform Act of 2017," Public Act 100-0001 (Senate Bill 2034), signed into law June 9, 2017.

[93] For more information on the Act and its implications, *see* Sharlyn Grace, *Illinois Takes Small First Step Toward Bail Reform*, CHICAGO APPLESEED (June 9, 2017), *available at* http://www.chicagoappleseed.org/illinois-takes-small-first-step-toward-bail-reform/.

[94] While the Bail Reform Act provided this protection for some accused people, the General Order provides it for all people. The Order may have expanded the act in response to the ongoing lawsuit in Cook County, which would require such a review. *See* 725 ILCS 5/110-6(a-5) (mandating a review within seven calendar days for anyone accused of a "Category B" offense); General Order 18.8A(11) (requiring review within seven days for any person incarcerated due to an inability to pay a money bond).

[95] The original lawsuit also named Cook County Sheriff Tom Dart, who operates the jail, but his office was later dismissed from the litigation by the plaintiffs.

$1,000 and $5,000, respectively, in order to get out of Cook County Jail.[96] When the lawsuit was filed, Mr. Robinson had already been in jail for more than 10 months because he could not pay his required bond, and his request for release on electronic monitoring had also been denied.[97]

The lawsuit alleges that the current process of setting bail in Cook County violates the United States Constitution, Illinois' Constitution, and the Illinois Civil Rights Act. The lawsuit also alleges that the prevalent use of monetary bond is particularly discriminatory towards Black people, who are disproportionately incarcerated as a result of their inability to pay monetary bond. If the plaintiffs prevail, the case could result in more rigorous procedures that judges must follow to set monetary bonds, requiring detailed inquiries into accused people's ability to pay, or the effective end of monetary bond altogether. The thousands of people currently incarcerated for no other reason than their lack of money could be released, return to their lives, and have a fair opportunity to defend themselves in their cases.[98]

## Adoption of a Local Court Rule on Affordable Bail: General Order No. 18.8A

On July 17, 2017, Cook County's Chief Judge Timothy Evans issued General Order Number 18.8A, Procedures for Bail Hearings and Pretrial Release.[99] The Order both creates a presumption that monetary bond will not be used and prohibits judges from setting monetary bond at an amount higher than an accused person can afford to pay. It took effect for felony cases in Cook County on September 18, 2017, and for misdemeanor cases on January 1, 2018. The Order attempts to limit pretrial incarceration caused only by a person's lack of access to money and requires various concrete findings before monetary bond is ordered.

The announcement follows the lead of recent court rule changes in Maryland,[100] New Mexico,[101] and Arizona,[102] each of which requires that judges set monetary bails based on an accused person's ability to pay. Likewise, it conforms to directives put in place by the Attorney General of New Jersey[103] as part

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[96] Mr. Lewis, a Black man in his 40s, was accused of retail theft. Judge Adam Bourgeois Jr. gave Mr. Lewis a $50,000 D-Bond in Central Bond Court on October 3, 2016. Zachary Robinson, a Black man in his 20s, was accused of stealing a laptop from his college while on parole for a marijuana case. On December 10, 2015, Judge Peggy Chiampas gave Mr. Robinson a $10,000 D-Bond while presiding over Central Bond Court. From the original complaint (Oct. 14, 2016), available at: http://www.law.northwestern.edu/legalclinic/macarthur/projects/treatment/documents/Class%20Action%20Complaint%20Bail%20101416.PDF.

[97] *Id.*

[98] Additional details of the lawsuit, including the filed complaint, can be found at http://www.law.northwestern.edu/legalclinic/macarthur/projects/treatment/cashbail.html.

[99] General Order No. 18.8A - Procedures for Bail Hearings and Pretrial Release (July 17, 2017), *available at* http://www.cookcountycourt.org/Manage/DivisionOrders/ViewDivisionOrder/tabid/298/ArticleId/2562/GENERAL-ORDER-NO-18-8A-Procedures-for-Bail-Hearings-and-Pretrial-Release.aspx.

[100] Rule 4-216.1(d)(1)(B), effective July 1, 2017: "A judicial officer may not impose a financial condition in form or amount that the judicial officer knows or has reason to believe the defendant is financially incapable of meeting and that will result in the defendant being detained solely because of that financial incapability." The full text of the new rule is available at http://mdcourts.gov/rules/rodocs/ro192.pdf.

[101] Rule 5-401(E)(1)(c), effective July 1, 2017: "The court shall not set a secured bond that a defendant cannot afford for the purpose of detaining a defendant who is otherwise eligible for pretrial release." The full text of the new rule is available at http://www.nmcompcomm.us/nmrules/NMRules/5-401_6-5-2017.pdf.

[102] Rule 7.3(b)(2), effective April 3, 2017: "The court must not impose a monetary condition that results in unnecessary pretrial incarceration solely because the person is unable to pay the bond." The full text of the rule is available at http://www.azcourts.gov/Portals/20/2016%20December%20Rules%20Agenda/R_16_0041.pdf.

[103] Under the directive, prosecutors cannot seek money bail unless (among other conditions): "the defendant is reasonably believed to have financial assets that will allow him or her to post monetary bail in the amount requested by the prosecutor without having to purchase a bond from a surety company or to obtain a loan[.]" The full directives are available at http://www.state.nj.us/lps/dcj/agguide/directives/ag-directive-2016-6_v2-0.pdf.

of the recent overhaul of pretrial justice in New Jersey, which saw a 36% decrease in jail population in the first five months under the new system.[104] Cook County's new court rule also follows the American Bar Association's Criminal Justice Section Standards on Pretrial Release, which state, "The judicial officer should not impose a financial condition that results in the pretrial detention of the defendant solely due to an inability to pay."[105]

Under General Order 18.8A, if monetary bail is found to be "a necessary condition of release," its use must be accompanied by the court stating certain findings, together with sufficient supporting facts, on the record in open court. The required findings are that: "(a) no other conditions of release, without monetary bail, would reasonably assure the [person]'s appearance in court; (b) the amount of bail is not oppressive, is considerate of the financial ability of the [person], and the [person] has the present ability to pay the amount necessary to secure his or her release on bail; and (c) the [person] will comply with the other conditions of release."[106] In other words, the Order forces judges to use monetary bond as a last resort, with the added burden of having to show evidence of certain conditions precedent to the assignment of monetary bail.

If implemented correctly and fully, the Order should dramatically reshape pretrial justice in Cook County. No longer would the majority of people in Cook County jail be incarcerated solely because they cannot post bond. As with most policy changes, however, the test of the new Order's effectiveness will be in its implementation and its impact over time. The Court has made efforts to ensure the new order will be followed. In announcing General Order 18.8A, Judge Evans also announced that Central Bond Court would be removed from the general Municipal Division of the Circuit Court of Cook County and become a standalone Pretrial Division with a designated Presiding Judge.[107] On September 18, 2017, the day the Order went into effect, Chief Judge Evans also replaced the judges that had sat in Central Bond Court with an all-new group of six judges who were expected to adhere more closely to the law's requirements.

The remainder of this report memorializes courtwatchers' observations of Central Bond Court before and after implementation of the Order.

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[104] Numbers compared to 2015 population. Between January 1 and May 31, 2017, judges in New Jersey imposed monetary bail only nine times. *See* Drug Policy Alliance, "New Data on Jail Population Decline Under Bail Reform Shows New Jersey's Leadership on Pretrial Justice" (June 28, 2017), available at http://www.drugpolicy.org/press-release/2017/06/new-data-jail-population-decline-under-bail-reform-shows-new-jerseys.

[105] American Bar Association, Criminal Justice Section Standards: Pretrial Release, Standard 10-1.4(e), *available at* https://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk.html#10-1.4.

[106] General Order 18.8A, ¶ 7 (replacing "defendant" with "person").

[107] *See* Circuit Court of Cook County, "Evans Changes Cash-bail Process for More Pretrial Release (July 17, 2017) *available at*: http://www.cookcountycourt.org/MEDIA/ViewPressRelease/tabid/338/ArticleId/2561/Evans-changes-cash-bail-process-for-more-pretrial-release.aspx.

# IV.Findings: Assessment of Reforms

This section attempts to answer two questions regarding recent reforms to the bond system in Cook County: 1) Have recent reforms led to a decrease in the issuance of money bond and electronic monitoring?; and 2) In cases where money bond was issued, was the amount of the bond affordable to the accused person? To answer these questions, this section analyzes two datasets collected by volunteer courtwatchers with the Coalition to End Money Bond.[108] The analysis shows that fewer accused people are being assigned money bond as a result of the reforms, but it also reveals that in many cases, judges still assign money bail in amounts that are unaffordable.

Fewer accused people are being assigned money bond as a result of the reforms, but in many cases, judges still assign money bail in amounts that are unaffordable.

Courtwatchers observed thousands of bond court proceedings to create two datasets, which include quantitative survey items and qualitative notes for each accused person and qualitative observations of Central Bond Court for each day. Courtwatching occurred in two distinct sessions: August 2017, before General Order 18.8A went into effect, and September/October 2017, starting on September 18 when the order went into effect. The two datasets thus capture observations from Central Bond Court both pre- and post-implementation. A total of 46 unique courtwatchers completed a total of 93 courtwatching shifts, 51 shifts in August and 42 shifts in September and October.[109] A sample observation form that courtwatchers used to capture data can be found in the Appendix.

In this section, analysis of these datasets is used to evaluate the impact of the reform efforts described above, with an emphasis on the effect of General Order 18.8A. In addition, this report evaluates qualitative observations made by courtwatchers to compare the experience, process, and atmosphere of bond court before and after the Order went into effect. The observations were documented in a reflection sheet filled out by courtwatchers after their shifts concluded. This form can also be found in the Appendix.

## The People in Bond Court

Courtwatchers observed a total of 3,045 individuals who appeared in bond court during the August (1,696 people) and September/October (1,349 people) observation periods. Hardly any publicly

[108] Volunteer courtwatchers were required to attend a courtwatching training facilitated by lawyers experienced in bond court proceedings and organizers with community groups. In this training, volunteers learned the basics of bail law in Illinois, the Central Bond Court format, actors, and procedures, and practiced observing mock bail hearings. These trainings helped ensure that courtwatchers were prepared to take accurate notes during the fast-paced proceedings in Central Bond Court.
[109] Courtwatching shifts were actually completed by more than 70 volunteers, but not all notes were turned in, and not all turned in notes were ultimately used in the analysis. These numbers reflect the number of courtwatching volunteers and shifts used to generate the data included in this report.

available data about bond court outcomes includes a breakdown by gender and race, but it is commonly known that race and gender both affect how a person is treated in the criminal legal system. For this reason, courtwatchers attempted to record race and gender for everyone they observed. These observations reflect only what the courtwatcher perceived based solely on a person's name and physical appearance, and are not based on an accused person's self-identification.[110] The importance of racial and gender identities in the criminal system cannot be overstated. Black people and transgender people are particularly disadvantaged by discrimination in policing and prosecution. The more that proposed reforms to the pretrial justice system correct for these realities, the more effective and just those changes will be.

The quality of race and gender information in this data is limited by not having access to self identifications. Data on race and gender should be understood to reflect the courtwatchers' best guesses at the identities an individual might be perceived by the judge, attorneys, and other court personnel to have.

The granularity of racial identity for the purpose of this analysis is limited in a few ways. For race, courtwatchers recorded a race of Black, Latinx, white, or other, which encompassed Asian, Southeast Asian, Native American, Pacific Islander, South Asian, Indian, and Arab. Groups with small numbers were included in the "other" category to avoid identifiability issues.[111] In total, the "other" category includes 29 individuals. There are a small number of individuals in multiple categories either because a single observer recorded multiple races or because multiple observers recorded different races.

In these analyses, gender is described as a binary classification of man or not man. This second category includes individuals who were recorded as women, genderqueer, and trans-feminine.[112] As in the case of race, these categories have been combined to avoid identifiability issues for individuals in small groups.

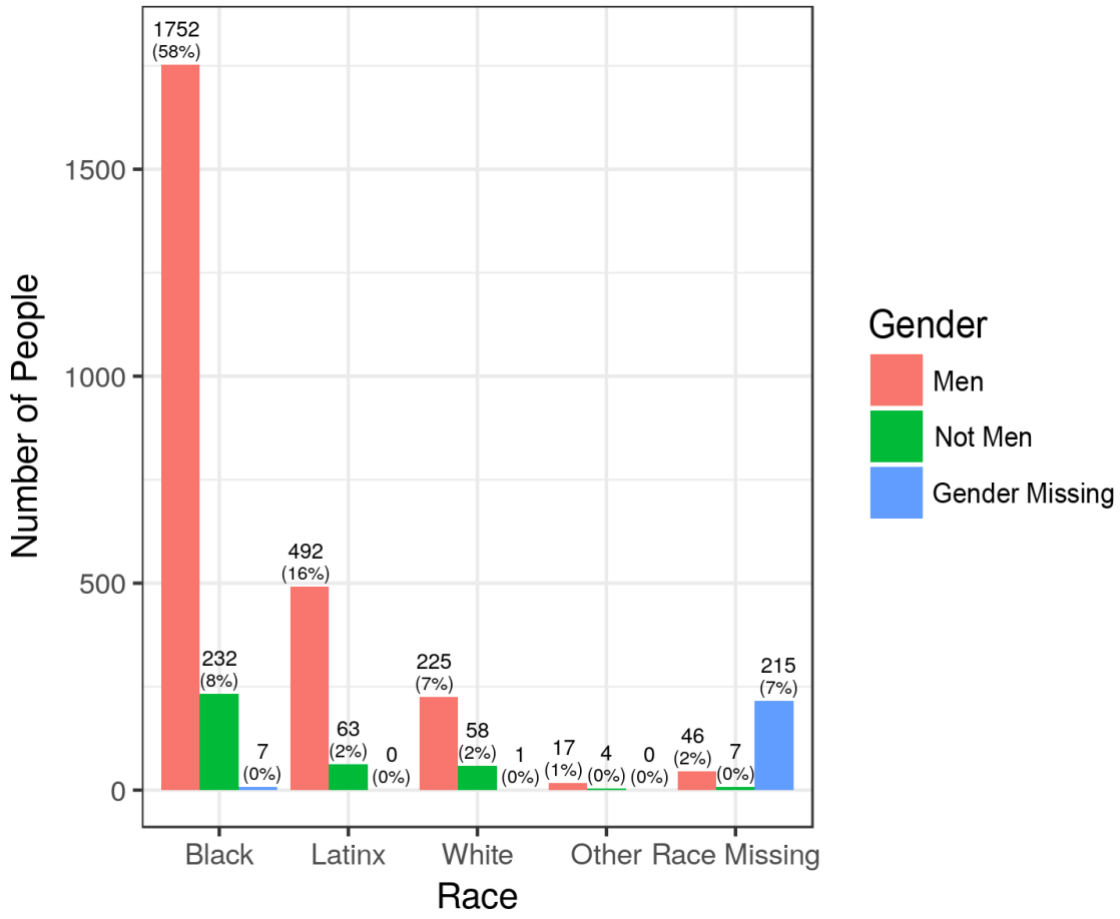
The question of how the experiences of transgender and non-binary people in bond court differ from those of cisgender people is important and under-studied. Unfortunately, the methods of data collection used in this report are not conducive to answering this question. Using only observers by courtwatchers, it is not possible to accurately record any individual's gender identity. Many of the transgender people in this data set may have been recorded as cisgender or their genders may have been left missing. This limitation highlights a need for more accurate data based on self-identification.

Almost everyone in Central Bond Court is represented by the Cook County Public Defender's Office; only 7% of people (or 178 of 2,706 people with information on type of attorney recorded) were represented by private criminal defense attorneys. Public defenders are provided by each county in Illinois and appointed as a matter of course in Central Bond Court for anyone who does not have a private criminal defense attorney present. The Bail Reform Act of 2017 now requires courts across the state to permit defense counsel at all bail hearings and appoint public defenders for any accused person who "desires counsel … but is unable to obtain counsel."[113]

[110] Courtwatchers recorded their observations on a standardized form, but the form was updated for the September/October observation period to include more gender options, so the gender data may not be completely standardized between the pre- and post-Order periods.
[111] Because there was such a small number of people who were not identified as either Black, Latinx, or white, the privacy of people identified as another race could be jeopardized if information about them was presented separately.
[112] There were no individuals identified by courtwatchers as trans-masculine.
[113] 725 ILCS 5/109-1(a-5).

## Race and Gender

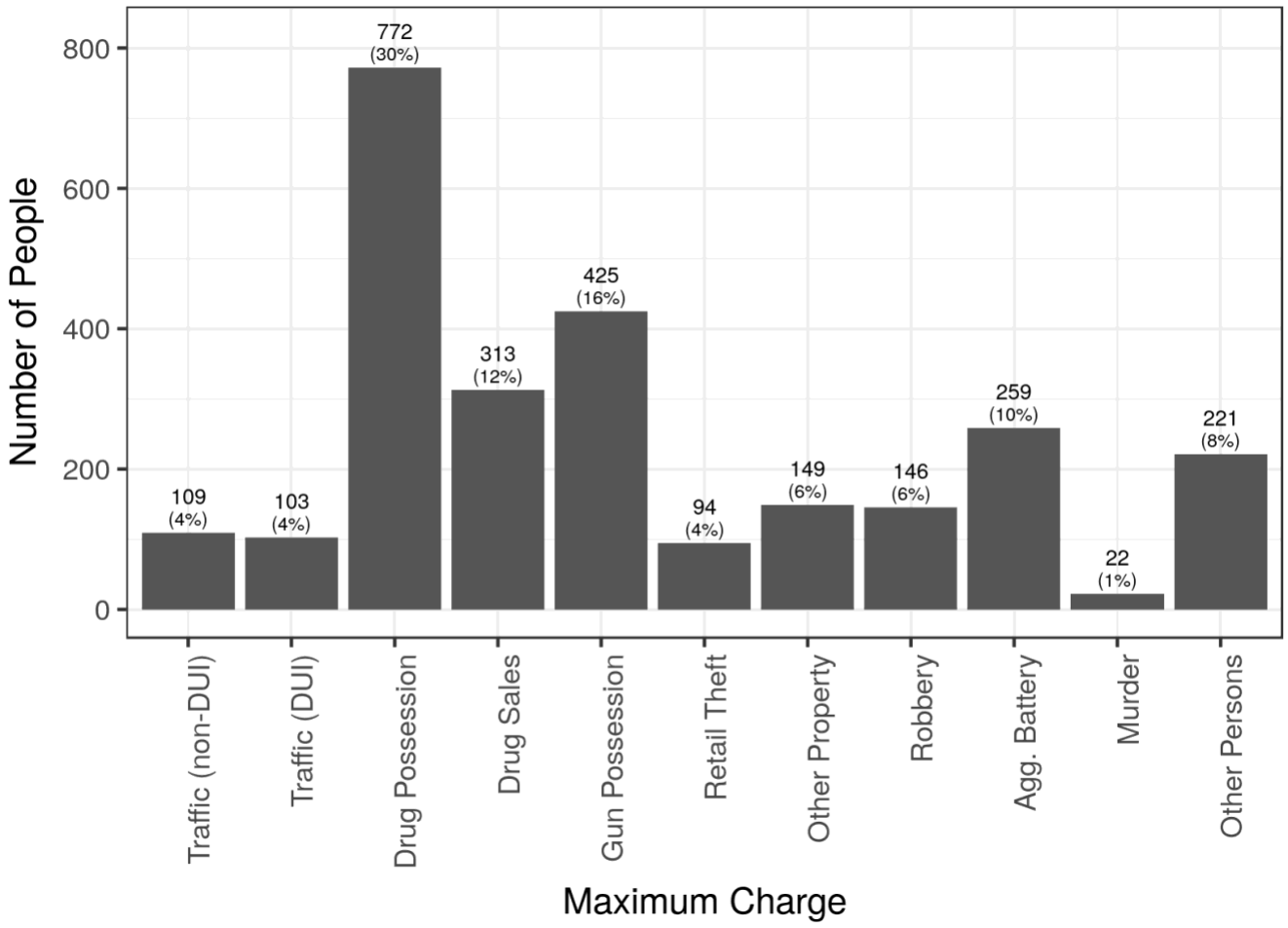
Three out of four people for whom courtwatchers were able to record race were Black and nearly 90% of all accused people were men.[114] The race distributions are similar between women and men, though a slightly higher proportion of men are Black.[115]




[114] Of the people for whom courtwatchers recorded race, 73% were Black.
[115] The majority of people recorded with missing gender information were also missing race information.

## Charges

Courtwatchers recorded charges for 2,613 total people across both the August and September/October time periods. Where a person was charged with multiple offenses, the most severe charge was considered for analysis purposes. As summarized in the chart below, the most frequent charges were for drug possession, gun possession, and drug sales.



# Bail Decisions: What kind of bonds did people receive?

## *Reform Measures Assessed in This Section*

Based on both General Order 18.8A and, to a lesser extent, the Bail Reform Act of 2017, the percentage of people in Central Bond Court released on their own recognizance (i.e. receiving I-Bonds) was expected to increase after September 18, 2017 and the percentage of people receiving monetary bonds (D- and C-Bonds) was expected to decrease.[116] In addition to bond type, courtwatchers also recorded whether Electronic Monitoring (EM), or house arrest, was ordered. It is extremely important not to equate house arrest with pretrial release because of the highly restrictive nature of EM; people on EM are generally prohibited from leaving their house for any purpose aside from attending court dates. Additionally, if the accused person does not have suitable housing available in Cook County, as determined by the Sheriff's Office, orders to be released on EM can still result in incarceration in the jail. The following analysis reports findings on type of bond, with a distinction between I-Bonds and I-EM (I-Bonds with EM as a condition that the accused person can pay money to have removed). I-Bonds may also have EM as a mandatory condition that a person cannot have removed except by a judge's order.

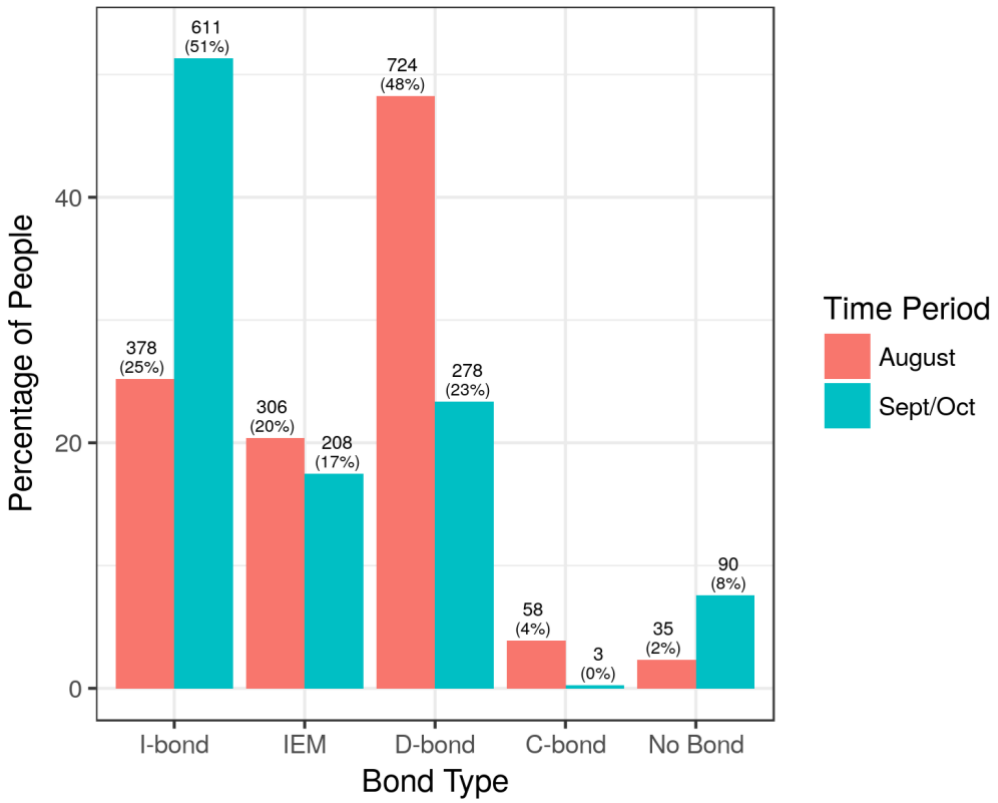
## *Before*

According to courtwatchers' observations before the General Order went into effect, 25% of bonds were I-Bonds, 30% were I-EM, 4% were C-Bonds, 48% were D-Bonds, and 2% were no bond.[117] Therefore, D-Bonds were the most common type of bond before September 18th, 2017. D-Bonds were given to almost half of all accused people, while I-Bonds were given to fewer than one out of four accused people.

## *After*

In the month after General Order 18.8A went into effect, 51% of bonds were I-Bonds, 17% were I-EM bonds, 0% were C-Bonds, 23% were D-Bonds, and 8% were no bond.[118] This indicates that while the percent of accused people given I-Bonds increased significantly after the Order, more than one in five accused people still received a money bond (278 people of all those observed).

[116] As described above, the Bail Reform Act of 2017 mandates that judges impose the “least restrictive conditions” of pretrial release. 725 ILCS 5/110-5(a-5).
[117] People held “no bond” have no opportunity to get out of the jail until their case is resolved or the conditions of their bond are altered. Of this sample, 11% of bond type are coded as missing. This includes all recorded data, but omits August 2nd and August 30th, for which no courtwatching forms were analyzed.
[118] In this sample, In this sample, information on bond type is missing for 12% of individuals.




## *Impact and Analysis*

Overall, the Order has had a substantial effect on the issuance of monetary bonds, cutting their rate of usage of D-Bonds in half and increasing the percentage of people receiving I-Bonds. The use of C-Bonds was almost completely eliminated. Nevertheless, the Order has not eliminated the use of monetary bonds in Central Bond Court. Other analyses of bond court after September 18, 2017 corroborate courtwatchers' observations that at least one in five people in Central Bond Court still received a D-Bond.[119]

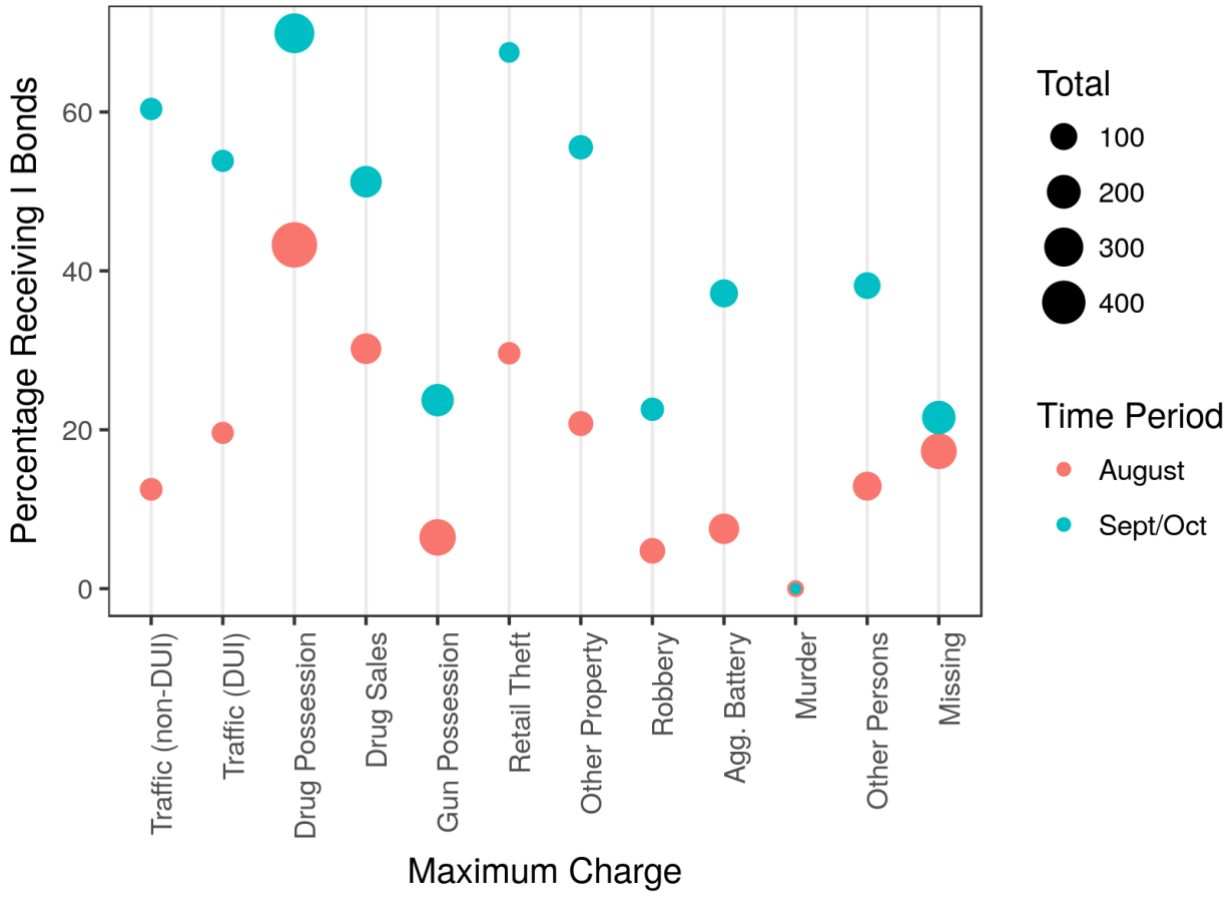
Because D- and C-Bonds before the Order were largely set at unaffordable amounts, the decrease in D-Bonds from 43% to 21% has had a substantial impact on the number of people in jail, dropping from 7,716 people on September 9, 2017 to 6,038 people on February 9, 2018. As of December 15, 2017, however, there were still 3,289 people in Cook County Jail who were incarcerated pretrial only because they could not afford to pay a monetary bond.[120] This indicates that while General Order 18.8A and replacement of all Central Bond Court judges has been effective in decreasing the number of people

[119] Reports from the Court itself and other observers all reflect a decrease in monetary bonds and an increase in I-Bonds after September 18, 2017. Chief Judge Evans, speaking at a County Budget hearing on October 27, 2017, shared the following statistics about the impact of the order: I-Bonds are now 49% of bonds given, up from 25%; D-Bonds are now 22% of bonds given, down from 46%, and orders of Electronic Monitoring are down from 27% to 14%. The timeframe for these comparisons was not clear. *See* Jonah Newman, tweets from budget hearing at: https://twitter.com/jonahshai/status/923986647410184193 and https://twitter.com/jonahshai/status/923986945977528321. A courtwatching study completed by the Cook County Sheriff's Office found that the percentage of I-Bonds issued increased from 20.5% to 54.7% of cases, the percentage of No Bonds increased from 0.6% to 7.8% of cases, and the rate of D-Bonds decreased from 53.0% of cases to 21.2% of cases. The Sheriff's Office compared 1,612 cases heard between August and December 2016 to 1,994 cases heard between September 18 and October 28, 2017. The Sheriff's Office Study did not publish rates of EM orders.

[120] All data on jail population is based on information obtained via FOIA and is available at chicagodatacollaborative.org.

entering Cook County Jail, it is still far from "ensur[ing] no defendant is held in custody prior to trial solely because the defendant cannot afford to post bail," as it aspires to do.[121]

Bond outcomes also vary across different types of charges. Below are the rates of I-Bonds broken down by types of charges, analyzing both pre- and post-Order observations. While I-Bonds increased across all charges, rates of I-Bonds still varied widely after September 18, 2017, from as low as 45% for people accused of gun possession to as high as 80% for people accused of drug-related charges.[122]




[121] General Order 18.8A.

[122] I-Bonds are bonds that, barring certain conditions, allow a person to be immediately released with no money necessary. These bonds are distinct from I-EM bonds, which allow a person's release only onto Electronic Monitoring. This report considers I-Bonds separately from I-EM bonds because they often function in completely different ways.

# Ability to Pay Determinations: Were money bonds set in amounts people could pay?

## *Reform Measures Assessed in This Section*

The primary reform in General Order 18.8A is its requirement that judges set monetary bonds only in affordable amounts. Money bonds that people can pay become merely a condition of release, whereas unaffordable bonds are, in reality, an order of indefinite pretrial incarceration. Many people will not be able to afford to pay anything, and should be released rather than be incarcerated simply because they lack a certain amount of money. Of the monetary bonds that are issued in Central Bond Court, the Order requires judges to "conduct an inquiry into the [accused person]'s ability to pay monetary bail" before setting an amount that is "considerate" of that ability.[123] In order to set bond only in amounts that people can pay, judges must both conduct the inquiry and then make a finding that the accused person "has the present ability to pay the amount necessary to secure his or her release on bail."[124] This section evaluates 1) whether judges had information about how much monetary bail a person could afford before setting bond, and also 2) whether bond was set in that amount or less.[125]

## *Before*

In the month of August, 40% of people received I-bonds or I-EM bonds and 2% were held without bond. Of the 58% who received a monetary bond, only 1% received affordable bonds.[126]

In August, courtwatchers recorded whether or not an individual was asked about ability to pay for 1,085 people (64% of all observed cases). Of these accused people, only 7.2% (or 79 accused people) were asked about their ability to pay. Of these 79 people, seven received I-bonds and three received I-EM bonds. Fifty-three of these people were given D-bonds, of which only 10 were affordable. Three people who were asked about their ability to pay received C-Bonds, none of which were affordable.[127] Thirteen people were asked about ability to pay, but courtwatchers were unable to record the bond outcome. Thus, while 75 people were asked about their ability to pay, only eight received affordable bonds. Information about ability to pay was not evenly obtained across judges. Of the four judges, Judge Maria Kuriakos Ciesel asked for or received information about ability to pay the most frequently by far: in 21% of cases compared to 4-6% for all other judges.

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[123] General Order No. 18.8A(6) - Procedures for Bail Hearings and Pretrial Release (July 17, 2017), *available at*: http://www.cookcountycourt.org/Manage/DivisionOrders/ViewDivisionOrder/tabid/298/ArticleId/2562/GENERAL-ORDER-NO-18-8A-Procedures-for-Bail-Hearings-and-Pretrial-Release.aspx.

[124] General Order No. 18.8A(7)(b) - Procedures for Bail Hearings and Pretrial Release (July 17, 2017), *available at* http://www.cookcountycourt.org/Manage/DivisionOrders/ViewDivisionOrder/tabid/298/ArticleId/2562/GENERAL-ORDER-NO-18-8A-Procedures-for-Bail-Hearings-and-Pretrial-Release.aspx.

[125] In the majority of cases, the criminal defense attorney (usually a public defender) offers how much, if anything, an accused person can afford to pay in bond. Though the Order's language describes an "inquiry" by the court, in most cases the judge is not explicitly asking a question about ability to pay because the information was offered by the defense attorney without prompting. Due to differences in data entry, the analysis below for the August and September/October periods are based on slightly different information. In August, we have information both about whether an individual was asked about ability to pay and about the amount they could afford to pay. In some cases, the volunteer could not hear the amount but did note that the person was asked or volunteered an amount. In September/October, we have access only to the amount recorded. For this report, we will assume that anyone with a missing amount in September/October was not asked. This means that the actual proportion of people asked in September/October may be slightly higher than reported.

[126] Unaffordable money bond is defined as any D-Bonds and C-Bonds that were set either without consulting the accused person or in amounts above what the accused person indicated they could afford to pay to secure their release.

[127] Twelve of these people have bond types marked as missing.

The following chart shows how often judges asked about a person's ability to pay based on the accused person's race. While the total numbers of people who are asked is small overall, some judges did exhibit disparities in who they asked about ability to afford a bond.

| Judge | Total | Black | Latinx | White | Other |
|---|---|---|---|---|---|
| Adam Bourgeois | 5%(19/357) | 5%(13/264) | 6%(5/77) | 12%(4/32) | 0%(0/1) |
| James Brown | 4%(12/273) | 5%(9/173) | 2%(1/54) | 7%(2/27) | NaN%(0/0) |
| Laura Sullivan | 6%(22/348) | 5%(13/240) | 9%(6/67) | 5%(2/40) | 0%(0/2) |
| Maria Kuriakos Ciesel | 21%(22/107) | 20%(14/70) | 27%(6/22) | 8%(1/12) | NaN%(0/0) |

Before the Order went into effect, the vast majority of observers did not record a judge in Central Bond Court asking how much an accused person could afford to pay for bond. Several observers indicated that, despite never being asked by the judge, the public defender occasionally (though not routinely) stated how much the accused person could afford to pay.

## *After*

After General Order 18.8A went into effect, courtwatchers observed 281 people who were given money bonds. Of these 281 people, 80% were asked what they could afford to pay, but of those who were asked, less than half (46%) were then given affordable bonds. Affordability varied widely across judges. Two judges (Clancy and Lyke) presided over the vast majority of bail hearings observed and were also most frequently observed giving people before them unaffordable money bonds. Two other judges (Atcherson and Miller) were not recorded setting any monetary bonds in amounts that accused people could not afford. While still far from perfect, the overall combined outcomes in Central Bond Court represent an improvement from before the Order.

| Judge | Total Money Bonds | Affordable | Unaffordable | Not Asked |
|---|---|---|---|---|
| David Navarro | 11 | 4 (36%) | 6 (55)% | 1 (9%) |
| John Lyke, Jr. | 111 | 57 (51%) | 20 (18%) | 34 (31%) |
| Mary Marubio | 31 | 26 (84%) | 2 (6%) | 3 (10%) |
| Michael Clancy | 101 | 17 (17%) | 68 (67%) | 16 (16%) |
| Sophia Atcherson | 8 | 8 (100%) | 0 (0%) | 0 (0%) |
| Stephanie Miller | 19 | 17 (89%) | 0 (0%) | 2 (11%) |

Courtwatchers also noticed qualitative improvements in some judges' assessment of accused people's ability to pay after General Order 18.8A went into effect. One observer noted:

"When people said what they could pay as bond, that was the amount set or they received an I-bond. The one time the judge issued a D-bond, he asked about ability to pay ($500) and set the bond accordingly (D-Bond at $5,000)."

Others observed different judges continuing to issue D-bonds in amounts that accused people could not pay. In one case, the judge even said, "You say he can post $500? Well, he'll need more than that!" Similarly, another judge, Judge Clancy, routinely set monetary bond in excess of what the accused person could pay, but each time read the required findings from General Order 18.8A into the record. The result was a disturbing proceeding in which the accused person said how much they could afford to

pay, and immediately after setting the bond in an unaffordable amount, the judge read out loud his findings that "the amount of bail is not oppressive, is considerate of the financial ability of the defendant, and the defendant has the present ability to pay the amount necessary to secure his or her release on bail." Judge Clancy was careful to schedule a next court date within 7 days for everyone given an unaffordable bond, which is a new review procedure required under the Order.[128]

Additionally, some public defenders were observed to be inconsistent about informing the judge how much their clients could pay and, in the absence of the public defender offering the information, the judges only rarely inquired about it.

## *Impact and Analysis*

The change from 4.1% to 80% of accused people being asked what they can afford marks a dramatic increase in judges' consideration of ability to pay, as required by General Order 18.8A, Illinois state law, and the United States Constitution. Even with these increases, there remains much room for improvement. After the order, of the people who were asked what they could afford, fewer than half (46%) received affordable bonds and a substantial percentage (23%) of accused people overall received unaffordable bonds.[129] Merely asking people what they can afford will not accomplish the goals of General Order 18.8A or bring Cook County bond practices into line with constitutional requirements if having information about ability to pay does not translate into affordable bonds. Of the 281 people who were given money bonds, 56 people were not asked about affordability at all, and 96 people were asked but given unaffordable bonds, meaning that, in total, the judges did not follow the measures of the Order for at least 152 people (or 54% of those that were given money bonds).

[128] Review of bond within seven days is required for any person who cannot afford to post their monetary bond. General Order No. 18.8A - Procedures for Bail Hearings and Pretrial Release, ¶ 11.
[129] 20% of bond affordability information is marked missing.

# State's Attorneys Recommending I-Bonds: What was the impact?

## *Reform Measures Assessed in This Section*

In June 2017, State's Attorney Kim Foxx provided guidelines for prosecutors to use in proactively recommending pretrial release for some people charged with misdemeanor cases and low-level felonies. While this reform is not directly related to General Order 18.8A, there is no public information about the success or failure of the State's Attorney's new guidelines. In order to evaluate the policy's impact, courtwatchers recorded whether the prosecutor recommended an I-bond for any individuals they observed. This section evaluates how many people received recommendations of I-Bonds, whether those recommendations were followed by judges in making the ultimate bail decision, and who benefitted from these recommendations.

| Time_Period | Recomended I Bond | Total | Gender Male | Gender Missing | Race Black | Race Latinx | Race White | Race Other | Race Missing |
|---|---|---|---|---|---|---|---|---|---|
| August | Yes | 75 | 55(73%) | 3(4%) | 48(64%) | 24(32%) | 4(5%) | 0(0%) | 4(5%) |
| August | No | 1621 | 1341(83%) | 107(7%) | 1063(66%) | 301(19%) | 171(11%) | 6(0%) | 137(8%) |
| Sept/Oct | Yes | 104 | 82(79%) | 2(2%) | 66(63%) | 22(21%) | 12(12%) | 2(2%) | 3(3%) |
| Sept/Oct | No | 1245 | 989(79%) | 111(9%) | 814(65%) | 208(17%) | 97(8%) | 13(1%) | 124(10%) |

*Before*

## *Before*

In the month of August, prosecutors in Central Bond Court recommended an I-bond for only 75 (4%) of the 1,696 accused people whose cases were observed. Of these, 56 (75%) received I-bonds, 12 (16%) received I-EM, 5 (7%) received D-bonds.[130]

## *After*

After September 18, 2017, prosecutors in Central Bond Court recommended I-bonds in 104 (or 8%) of cases observed. Their recommendations were followed by judges in 94 (90%) of these cases. Nine of the people who received recommendations for I-Bonds in the September/October period received I-EM Bonds, and one person was held without bond. As previously mentioned, due to limitations in the policy's applicability, it only applies to a small portion of the overall number of people who go through bond court.[131]

## *Impact and Analysis*

Across both time periods, nearly 64% of all accused people in Central Bond Court were identified as Black by courtwatchers. Only 61% of the people who received recommendations for I-Bonds, however, were Black. On the other hand, Latinx, white and people whose race was marked “other” all received a disproportionately high amount of I-Bond recommendations.[132] This is yet another example of racial disparities existing across Cook County's criminal system that disadvantage Black people.

[130] Courtwatchers were unable to record the bond outcomes for the remaining two people.
[131] We do not have any proposed explanation for the different rates of recommendations. This could be because a greater portion of hearings observed in August were on weekends, which include a broader array of charges, it could be a meaningful difference in charges or prosecutor behavior, happenstance, or it could be observer error.
[132] The ASA recommended I-Bonds for Latinx people at a rate that was 37% higher than proportional representation. For white people, the ratio was 5% higher. For Black people, the ratio was 4% lower. The number of people whose race was either

While this measure from the Cook County State's Attorney Kim Foxx is well intentioned and creates an unlikely ally and advocate for pretrial release by having prosecutors voice support for I-Bonds, the policy only applies to a small percentage of people in bond court: 8% at the highest period observed. In addition, it is important to note that there is no way to evaluate whether people who received a recommendation for an I-Bond from the prosecutor would have received an I-Bond without such a recommendation, making the policy's actual impact difficult to measure.

# Variation across Judges: How much does it matter?

## *Reform Measures Assessed in This Section*

As discussed above, wide variation in decisions between judges has been cause for concern for years. This leads to concerns about fairness, as people in Central Bond Court are subjected to a sort of "judge roulette" in which the judge that day is a primary determinant of their bail decision. This in turn has far-reaching consequences for their entire case. This section measures variation across judges by analyzing each judge's issuance of I-Bonds for different types of charges. If more judges follow the recommendations of the risk assessment tool, and/or there is more consistent training and feedback provided to judges in Central Bond Court, then variation across judges would be expected to decrease.

## *Before*

In August 2017, there was considerable inconsistency across judges measured by the rate at which they granted I-Bonds, even when controlling for type of charge. For example, Judge Laura Sullivan gave just 32% of people accused of drug crimes I-Bonds, while Judge Maria Kuriakos Ciesel gave 71% of people accused of drug crimes I-Bonds, showing that Judge Ciesel was more than twice as likely to give I-Bonds to people accused of drug crimes as Judge Sullivan.

Courtwatchers reported uniformly that the outcomes in bond court were highly subjective and even arbitrary. Numerous observers indicated that the bonds "seemed to be based on the judge's personal biases." Most observers could identify no perceptible patterns or consistency in decisions, even within a single court call, and many noted large differences in outcomes across judges.

Several observers witnessed unfair outcomes for accused people appearing late in the call, or immediately after a case involving graphic violent facts. As one observer described:

"There was a strangulation case, with a lot of painful details. After that, the judge was so caustic, so rude, to that defendant and everyone thereafter. He set a $1 million D-Bond in the strangulation case, and then other defendants after got much higher bonds for similar cases as had come earlier in the call. So, it's very arbitrary. And he was downright rude. It was like the judge got triggered. ... But the consequences fell on the subsequent defendants late in the call."

This observer also sensed that the judge's fatigue may have caused unfair outcomes late in the call. The courtwatchers' concerns about graphic facts and fatigue impacting judicial decision-making are also backed up by research finding that these and other factors influence outcomes.[133]

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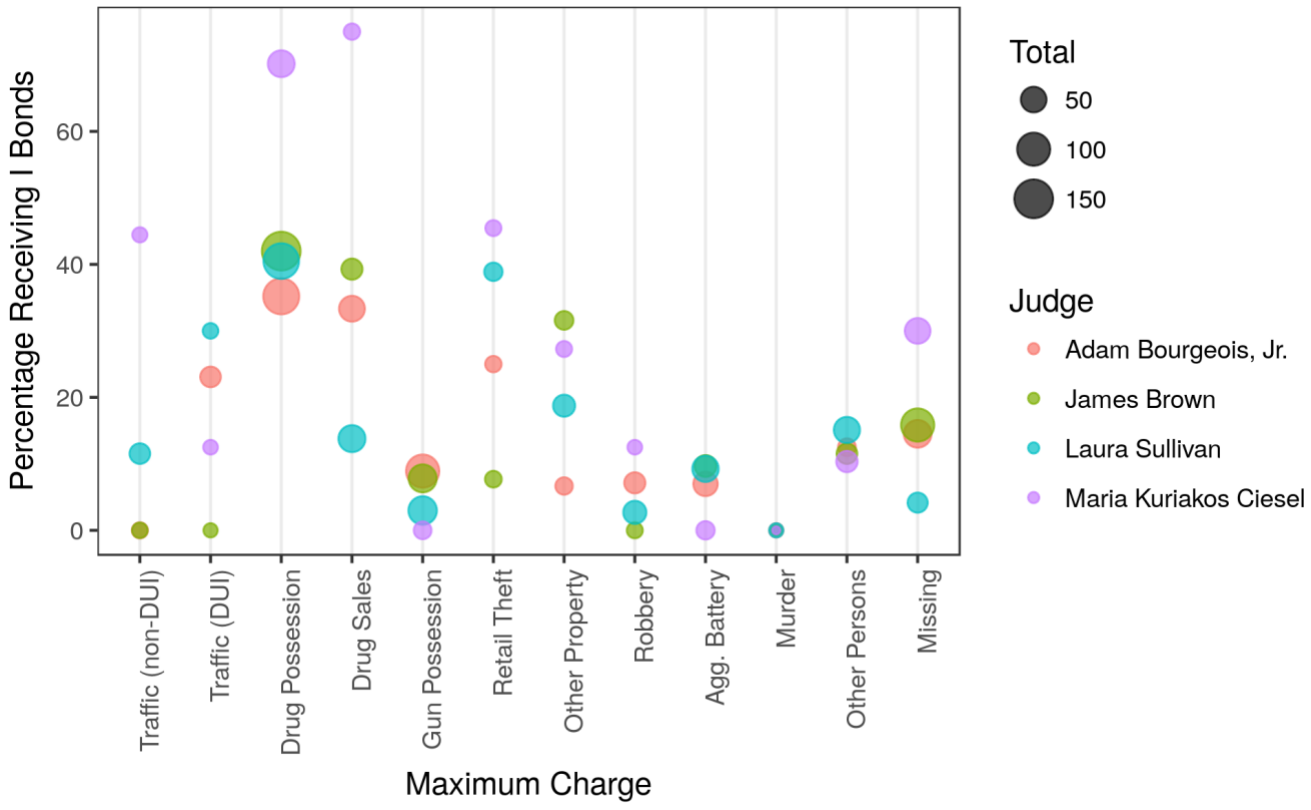
marked as “other” or was missing are too small for meaningful comparisons to be made, as an increase of even one or two additional recommended I-Bonds would substantially affect the data.

[133] *See e.g.* Shari Danziger et al., *Extraneous Factors in Judicial Decisions*, 108 PNAS 6889 (2011) (“Prior research suggests that making repeated judgments or decisions depletes individuals’ executive function and mental resources, which can, in turn, influence their subsequent decisions….These studies hint that making repeated rulings can increase the likelihood of judges to simplify their decisions. We speculate that as judges advance through the sequence of cases…they will be more likely to accept the default, status quo outcome: deny a prisoner’s request.”); Karl Ask and Afroditi Pina, *On Being Angry and Punitive:*

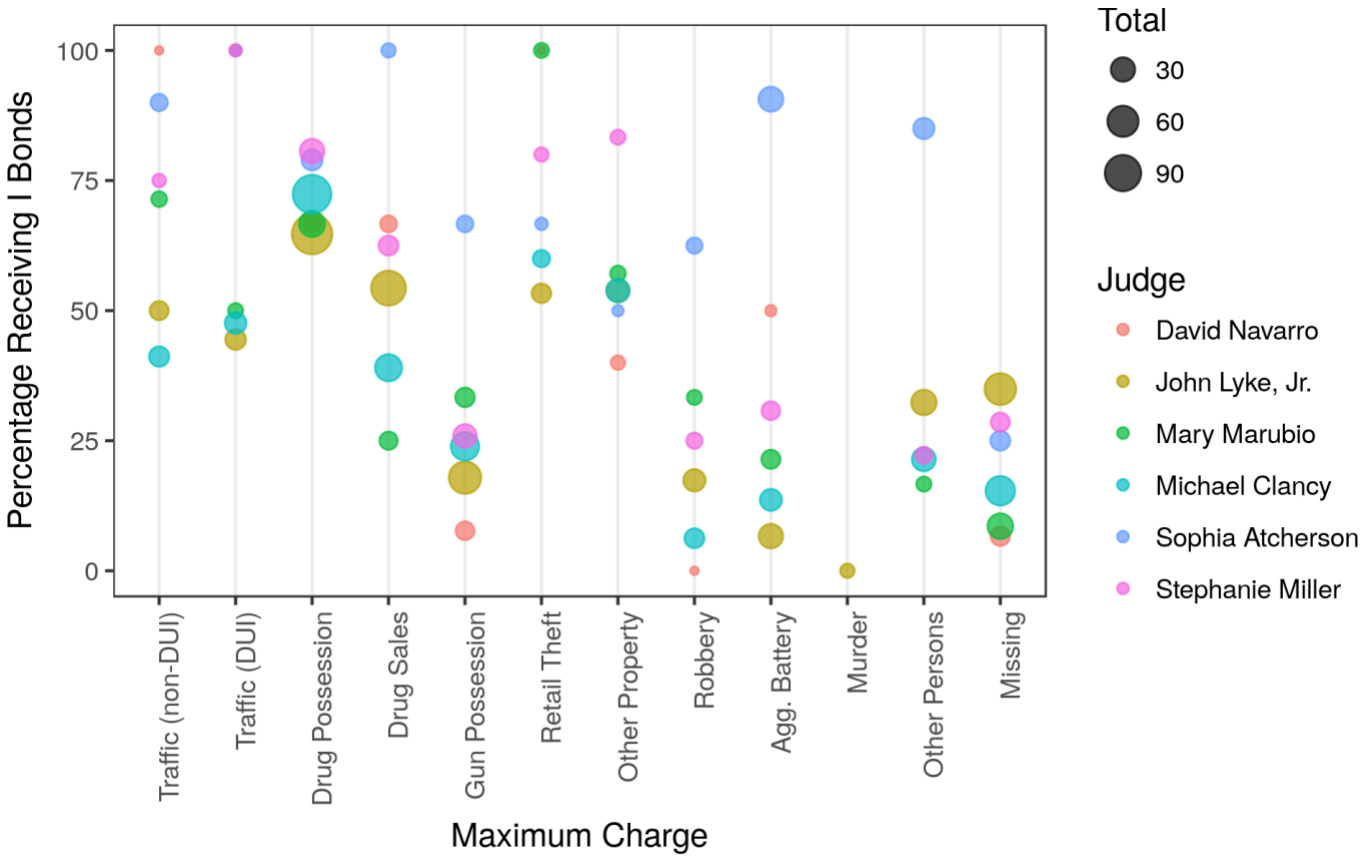



| Judge | Overall | Traffic (non-DUI) | Traffic (DUI) | Drug Possession | Drug Sales | Gun Possession | Retail Theft | Other Property | Robbery | Agg. Battery | Murder | Other Persons | Missing |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Adam Bourgeois | 19% (96/497) | 0% (0/11) | 23% (6/26) | 35% (44/125) | 33% (17/51) | 9%(9/101) | 25% (3/12) | 7%(1/15) | 7%(2/28) | 7% (3/43) | 0%(0/7) | 12% (2/16) | 15% (9/62) |
| James Brown | 23% (108/462) | 0% (0/10) | 0% (0/7) | 42% (63/150) | 39% (11/28) | 8%(5/64) | 8% (1/13) | 32% (6/19) | 0%(0/11) | 10% (3/31) | 0%(0/2) | 12% (3/26) | 16% (16/101) |
| Laura Sullivan | 18% (93/507) | 12% (3/26) | 30% (3/10) | 40% (49/121) | 14% (8/58) | 3%(2/67) | 39% (7/18) | 19% (6/32) | 3%(1/37) | 9% (5/54) | 0%(0/7) | 15% (8/53) | 4% (1/24) |
| Maria Kuriakos Ciesel | 35% (81/230) | 44% (4/9) | 12% (1/8) | 70%(40/57) | 75% (9/12) | 0%(0/16) | 45% (5/11) | 27% (3/11) | 12%(1/8) | 0% (0/18) | 0%(0/1) | 10% (3/29) | 30% (15/50) |

*How Anger Alters Perception of Criminal Intent*, 2 SOC. PSYCH AND PERSONALITY SCIENCE 494 (2011); Denny Chin, *Sentencing: A Role for Empathy*, 160 U. PA. L. REV. 1561, 1579 (2012) ("Sentencing is perhaps the most important responsibility of a trial judge, and surely the most difficult. Emotion is one reason it is so difficult. The competing considerations evoke strong sentiments— anger, indignation, shame, sorrow, grief, despondency, and hope. The sentencing judge is not immune from these emotions."); Jennifer S. Lerner and Larissa Z. Tiedens, *Portrait of the Angry Decision Maker: How Appraisal Tendencies Shape Anger's Influence on Cognition*, 19 J. BEHAV. DEC. MAKING, 115, 116 (2006) (discussing anger's "infusive potential" in that it "commonly carries over from past situations to infuse normatively unrelated judgments and decisions."); R.A. Posner, 86 B.U. L. REV. 1049, 1065 (2006) ("The role of emotion and intuition as important but inarticulable grounds of a judicial decision is concealed by the convention that requires a judge to explain his decision in an opinion. All the obvious reasons for the judges not offering an explanation in terms of an emotion or a hunch to one side, a judicial opinion couched in such terms would not provide helpful guidance to bench or bar."); Andrew J. Wistrich et al., 83 TEX. L. REV. 855, 863 (2015) ("Previous research we have conducted on the role of judicial intuition suggests that judges—like most adults—do not easily convert their emotional reactions into orderly, rational responses. Judges too often rely on their intuitive, emotional reactions without subjecting them to 'the light of intense study' that is supposed to produce rational choices.")

## *After*

After the Order, substantial inconsistencies remained present among the new judges. For example, all judges gave I-Bonds to more than 50% of people accused of non-DUI traffic offenses (such as driving on a suspended license) except for Judge Clancy, who gave only 41% of people I-Bonds. Judge Atcherson, on the other end of the spectrum, gave 90% of people charged with non-DUI traffic offenses an I-Bond. A second example of a large difference is in people charged with aggravated battery, where Judge Atcherson gave 91% of those accused I-Bonds, while Judge Lyke, Jr. gave just 7% of accused people I-Bonds.[134] Which judge was on the bench remained a significant predictor of whether or not an individual was given an I-bond even after adjusting for both charge and PSA score. This pattern was observed both before and after the Order took effect, indicating that the problem of inconsistent outcomes across judges has not been resolved. The practical implications of this are that individuals whose cases and backgrounds are otherwise similar may have different bond outcomes simply because they appear before different judges.[135]




[134] Note that in charge categories where small numbers of cases were observed, decisions in individual cases have an outsized impact on percentages represented. Some judges were observed more days than others, and judges or types of cases with a larger sample size provide more accurate insight into judicial decision-making patterns.

[135] This analysis is based on likelihood ratio tests comparing logistic regression models with and without including judge as a predictor. For both periods, a "full" model is fit that regresses the log odds of receiving an I-bond on judge, NCA, FTA, NVCA flag and charge. Interactions between judge and the other predictors is allowed. Additionally, a "reduced" model is fit that does not include the judge variable. The two models are then compared using a likelihood ratio test. The p-value testing that these models are equally good in the August period is 5.1e-5. In the September period the p-value is less than 1e-15. These results suggest that judge is a very strong predictor of whether an individual will receive an I bond, even after accounting for PSA scores and charge.

| Judge | Overall | Traffic (non-DUI) | Traffic (DUI) | Drug Possession | Drug Sales | Gun Possession | Retail Theft | Other Property | Robbery | Agg. Battery | Murder | Other Persons | Missing |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| David Navarro | 37% (22/59) | 100% (1/1) | 100% (3/3) | 67%(6/9) | 67% (6/9) | 8%(1/13) | 100% (1/1) | 40%(2/5) | 0%(0/1) | 50% (1/2) | NA (0/0) | NA (0/0) | 7% (1/15) |
| John Lyke, Jr. | 42% (209/495) | 50% (7/14) | 44% (8/18) | 65% (77/119) | 54% (44/81) | 18%(12/67) | 53% (8/15) | 54% (14/26) | 17% (4/23) | 7% (2/30) | 0%(0/5) | 32% (11/34) | 35% (22/63) |
| Mary Marubio | 39% (59/150) | 71% (5/7) | 50% (3/6) | 67%(24/36) | 25% (3/12) | 33%(5/15) | 100% (6/6) | 57%(4/7) | 33%(2/6) | 21% (3/14) | NA (0/0) | 17% (1/6) | 9% (3/35) |
| Michael Clancy | 41% (158/384) | 41% (7/17) | 48% (10/21) | 72% (76/105) | 39% (16/41) | 24%(11/46) | 60% (6/10) | 54% (14/26) | 6%(1/16) | 14% (3/22) | NA (0/0) | 21% (6/28) | 15% (8/52) |
| Sophia Atcherson | 75% (95/126) | 90% (9/10) | 100% (2/2) | 79%(15/19) | 100% (5/5) | 67%(6/9) | 67% (2/3) | 50%(1/2) | 62%(5/8) | 91% (29/32) | NA (0/0) | 85% (17/20) | 25% (4/16) |
| Stephanie Miller | 50% (68/135) | 75% (3/4) | 100% (2/2) | 81%(25/31) | 62% (10/16) | 26%(7/27) | 80% (4/5) | 83%(5/6) | 25%(2/8) | 31% (4/13) | NA (0/0) | 22% (2/9) | 29% (4/14) |

## *Impact and Analysis*

There has been wide variation in how judges have made bond decisions both before and after the Order went into effect on September 18, 2017. The varying use of I-Bonds and money bonds after the Order went into effect is a direct result of two judges, Clancy and Lyke, not consistently following the process for setting money bonds established by General Order 18.8A.

These ongoing differences between judges mean that an accused person's bond, and possibly the outcome of their entire case, can vary greatly depending on which day they are arrested and appear in court. While the variation alone is worrisome, it should also be noted that this inconsistency impacts whether a person receives a money bond or not, and if this money bond is unaffordable. These inconsistencies between judges can make a difference between a person's case outcome and, if found guilty and sentenced to incarceration, the sentence length, altering the trajectory of a person's life for years to come.[136] This type of decision, and the weight it carries, should not vary so widely depending on which judge someone appears in front of for a hearing lasting mere minutes.

[136] Charles Ares, et al., *The Manhattan Bail project: An interim report on the pre-trial use of pre-trial parole*, NEW YORK UNIVERSITY LAW REVIEW, 38, 67-95 (1963); J.C. Oleson, et al., *The Effect of Pretrial Detention on Sentencing in Two Federal Districts*, JUSTICE QUARTERLY 33(6): 1103-1122 (2014); Mary T. Phillips, *A decade of bail research in New York City,* NEW YORK CITY CRIMINAL JUSTICE AGENCY (2012).

# Impact of the Risk Assessment Tool: Was the PSA followed?

## *Reform Measures Assessed in This Section*

The Public Safety Assessment (PSA) tool was introduced to Central Bond Court in hopes of increasing I-Bond rates and improving consistency across judges. Previous studies of bond court have shown that the tool's recommendations were largely ignored, but improved training and commitment by judges to following its recommendations could both improve consistency and increase release rates. Primary effects of judges adhering to the PSA's recommendations would be an increase in I-Bonds and a lower rate of use of Electronic Monitoring. In order to evaluate this, the following analyses examine each judge's release rate (I-Bond rate) and rate of EM orders compared to the PSA's recommendations. The PSA uses the combination of New Criminal Activity (NCA) and Failure To Appear (FTA) risk assessment scores to generate a release recommendation according to the matrix below. Both the NCA and FTA scores are on a 1-6 scale, with 1 being considered "lowest risk" and 6 being considered "highest risk." Note that the PSA only recommends Electronic Monitoring for people who receive a score of 5 in either category and 4 in the second category. The PSA never recommends use of money bonds of any kind.

There is no procedure or rule, however, that prevents or even discourages judges from disregarding the PSA recommendations. Courtwatchers quickly realized that judges do not adhere to the PSA with any regularity. This may be because judges do not generally believe in the efficacy of risk assessments. At least one study indicates that fewer than 10% of judges believe risk assessment tools predict risk better than the judges themselves.[137]

The following charts compare the bond recommendations made by Pretrial Services with the actual decisions courtwatchers documented judges making. Recommendations were generated by using the FTA and NCA scores recorded by courtwatchers and comparing them to the decision-making framework used in Cook County.[138] It is important to note that all recommendations except "maximum conditions" are a recommendation of pretrial release with varying levels of supervision and/or conditions. The overwhelming majority of people in Central Bond Court receive a recommendation of release from the PSA.

Given the sometimes hectic and confusing environment in bond court, there are limitations to what observers are able to record. Gathering accurate outcomes data through courtwatching is particularly challenging when it comes to tracking Electronic Monitoring ("EM"). Some judges may assign I-EM bonds, that usually result in a person being placed immediately onto EM. Sometimes, however, judges assign I-Bonds with EM as a condition, which does not allow the person to post money to have the EM condition removed. EM can also be assigned as a condition of release for D- and C-Bonds. For these reasons, use of EM is probably underreported in the data gathered by courtwatchers. The need for accurate and timely data on EM usage and other metrics only underscores why the court itself should publicly provide this data so that communities and other stakeholders can accurately evaluate the impact of reforms.

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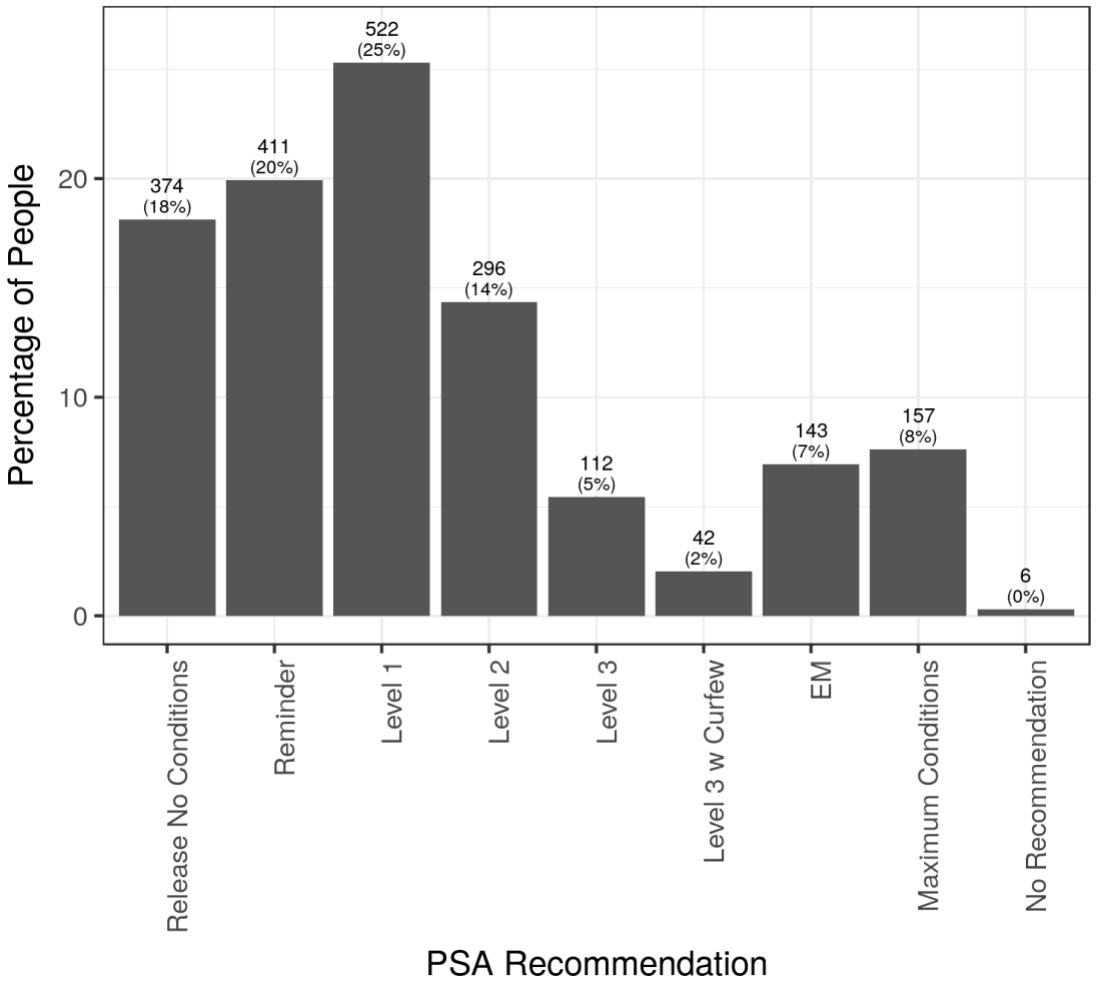
[137] Megan Stevenson, *Assessing Risk Assessment in Action*, p. 18 (Dec. 8, 2017), *available at:* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3016088.

[138] Note that Pretrial Services has the ability to override the automatic recommendations of the decision-making framework. As a result, in a small number of cases, the recommendation actually made in court may have been different than the automatically calculated recommendation we assume here.

The chart below shows the overall recommendations recorded by courtwatchers for both time periods.[139] The distribution of PSA scores was similar between the two periods, and illustrates that recommendations are highly concentrated at the less-restrictive end. Only 15% of people across both time periods received recommendations of release on EM or "maximum conditions."




[139] The “No Recommendation” category includes 6 people whose scores don’t fall into one of the recommendations on the chart. When multiple court watchers recorded different scores, the more strict/severe recommendation was used. Cases when one or both of the FTA and NCA scores was missing were excluded for all records. In August, there are 1,082 people with a non-missing PSA category (36% missing). In September/October, there were 981 people with a non-missing PSA category (27% missing).

## *Before*

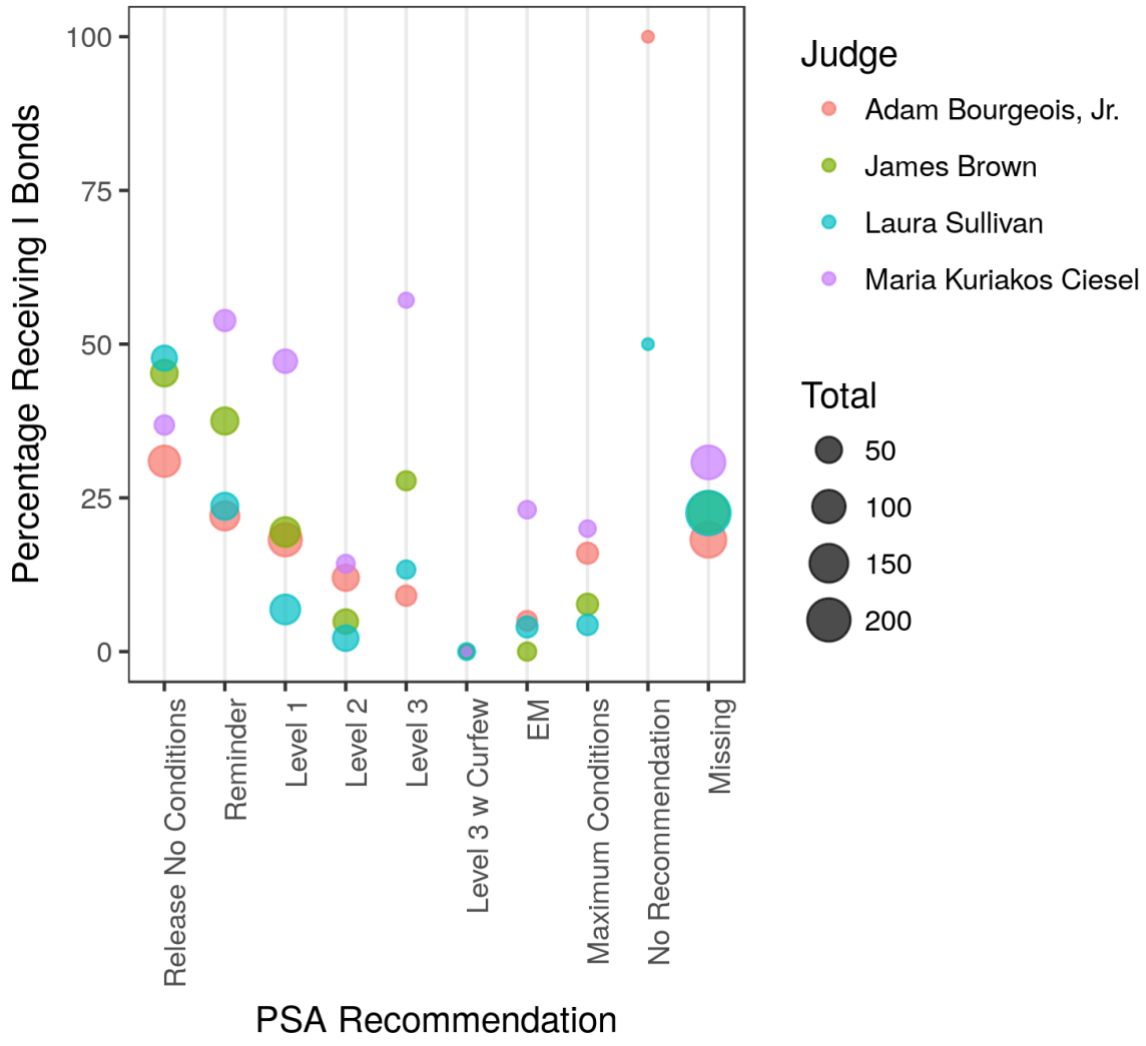
The overall rate of I-Bonds declined as people received higher risk scores, as expected. For most risk scores, Judge Sullivan issued I-Bonds at a lower rate than the other judges and Judge Kuriakos Ciesel issued I-Bonds at a higher rate. Still, for most people, including those with low risk scores that translated into a recommendation that they be released with no conditions, fewer than 50% of people received I-Bonds. Of the people who did not receive I-Bonds, most received money bonds, which means many of them were not released at all (if they could not pay their bonds), despite the PSA's recommendations that nearly everyone in Central Bond Court be released.[140] In fact, a D-Bond was the most common outcome for all PSA recommendations aside from the recommendation of release with no conditions.

Many courtwatchers also reported being unable to discern a correlation between an accused person's risk assessment score and their bond. One observer reported that it seemed as though the judge was reading bond amounts from a chart prepared in advance, and was not reacting to any of the information provided to her live: not the risk assessment, mitigating circumstances, or family support. Another judge ignored the risk assessments completely and gave monetary bonds in all weapons cases. As one observer put it, "nothing about this was predictable or fair."

Supporters pack the courthouse hallway in September 2017 during a court date for the lawsuit to end money bond in Cook County.

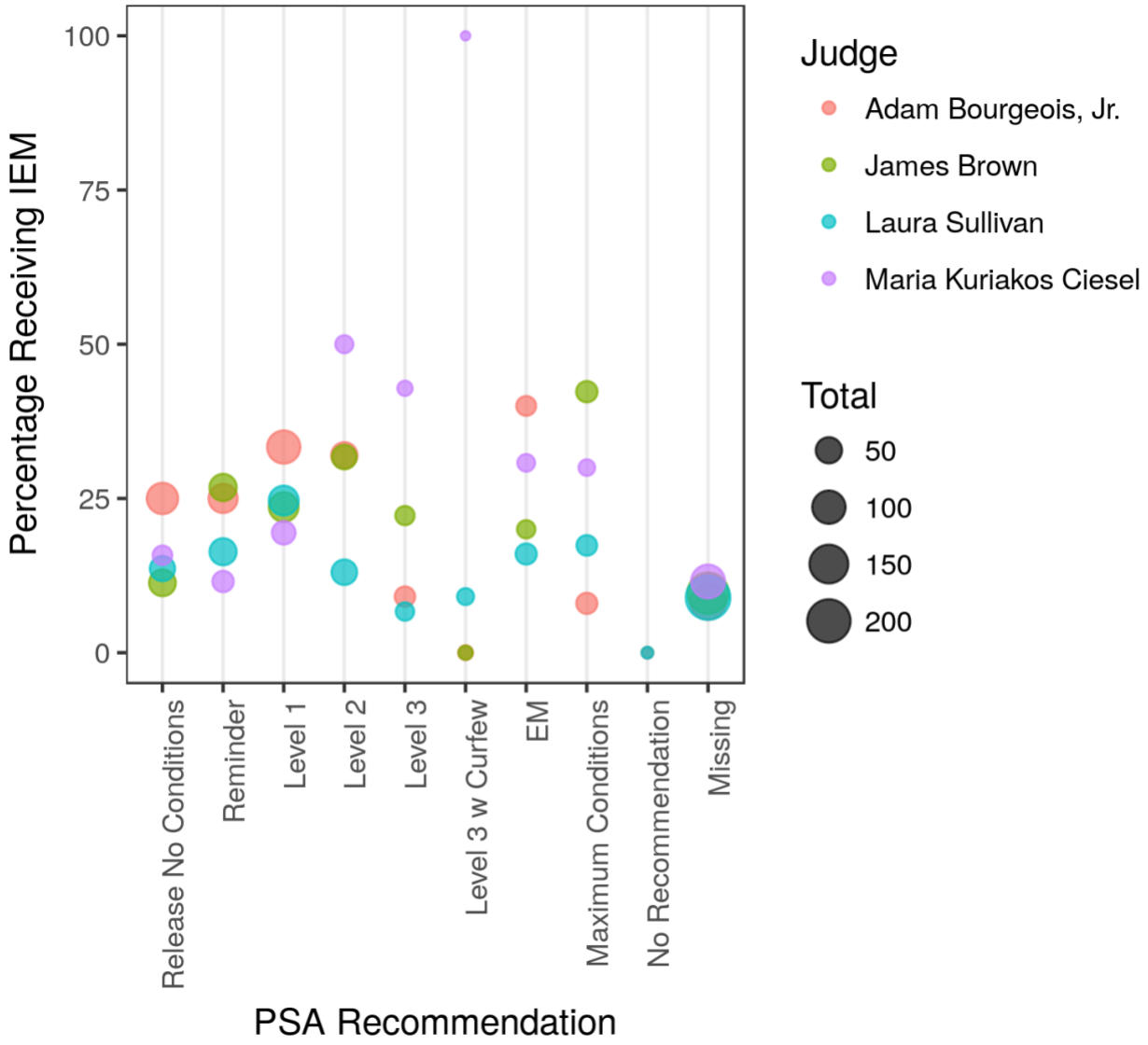
[140] According to a December 2016 Courtwatching study by the Cook County Sheriff's Office, the PSA recommended release (including with Electronic Monitoring) for more than 85% of all people appearing people in Central Bond Court. Sheriff's Justice Institute, Central Bond Court Report, p. 8 (April 2016), available at: https://www.chicagoreader.com/pdf/20161026/Sheriff_s-Justice-Institute-Central-Bond-Court-Study-070616.pdf.

***The following plot and table show the rate at which judges assigned I-Bonds based on the PSA recommendation in August.***




| Judge | Release No Conditions | Reminder | Level 1 | Level 2 | Level 3 | Level 3 w Curfew | EM | Maximum Conditions | No Recommendation | Missing |
|---|---|---|---|---|---|---|---|---|---|---|
| Adam Bourgeois, Jr. | 31%(26/84) | 22% (15/68) | 18% (18/99) | 12% (6/50) | 9% (2/22) | 0%(0/6) | 5% (1/20) | 16%(4/25) | 100%(2/2) | 18% (22/121) |
| James Brown | 45%(24/53) | 38% (21/56) | 19% (14/72) | 5% (2/41) | 28% (5/18) | 0%(0/5) | 0% (0/15) | 8%(2/26) | NA | 23% (40/176) |
| Laura Sullivan | 48%(21/44) | 24% (13/55) | 7% (5/73) | 2% (1/46) | 13% (2/15) | 0%(0/11) | 4% (1/25) | 4%(1/23) | 50%(1/2) | 23% (48/213) |
| Maria Kuriakos Ciesel | 37%(7/19) | 54% (14/26) | 47% (17/36) | 14% (2/14) | 57% (4/7) | 0%(0/1) | 23% (3/13) | 20%(2/10) | NA | 31% (32/104) |

***The following plot and table show the rate at which judges assigned I-EM bonds based on the PSA recommendation in August.***




| Judge | Release No Conditions | Reminder | Level 1 | Level 2 | Level 3 | Level 3 w Curfew | EM | Maximum Conditions | No Recommendation | Missing |
|---|---|---|---|---|---|---|---|---|---|---|
| Adam Bourgeois, Jr. | 25%(21/84) | 25% (17/68) | 33% (33/99) | 32% (16/50) | 9% (2/22) | 0%(0/6) | 40% (8/20) | 8%(2/25) | 0%(0/2) | 8% (10/121) |
| James Brown | 11%(6/53) | 27% (15/56) | 24% (17/72) | 32% (13/41) | 22% (4/18) | 0%(0/5) | 20% (3/15) | 42%(11/26) | NA | 10% (17/176) |
| Laura Sullivan | 14%(6/44) | 16%(9/55) | 25% (18/73) | 13% (6/46) | 7% (1/15) | 9%(1/11) | 16% (4/25) | 17%(4/23) | 0%(0/2) | 9% (19/213) |
| Maria Kuriakos Ciesel | 16%(3/19) | 12%(3/26) | 19% (7/36) | 50% (7/14) | 43% (3/7) | 100% (1/1) | 31% (4/13) | 30%(3/10) | NA | 12% (12/104) |

## *After*

As discussed above, rates of I-Bonds were generally higher after implementation of General Order 18.8A. Overall, most judges have increasing rates of EM and decreasing rates of I-Bonds for higher PSA scores. The rates at which the judges assigned I-EM bonds varied greatly. Judge Atcherson assigned I-EM bonds in only 6% of cases, while Judges Navarro, Clancy, and Miller all gave I-EM bonds at nearly three times that rate. This wide variation also applies to the rates at which judges set I-Bonds, ranging from 37% (Navarro) to 75% (Atcherson).

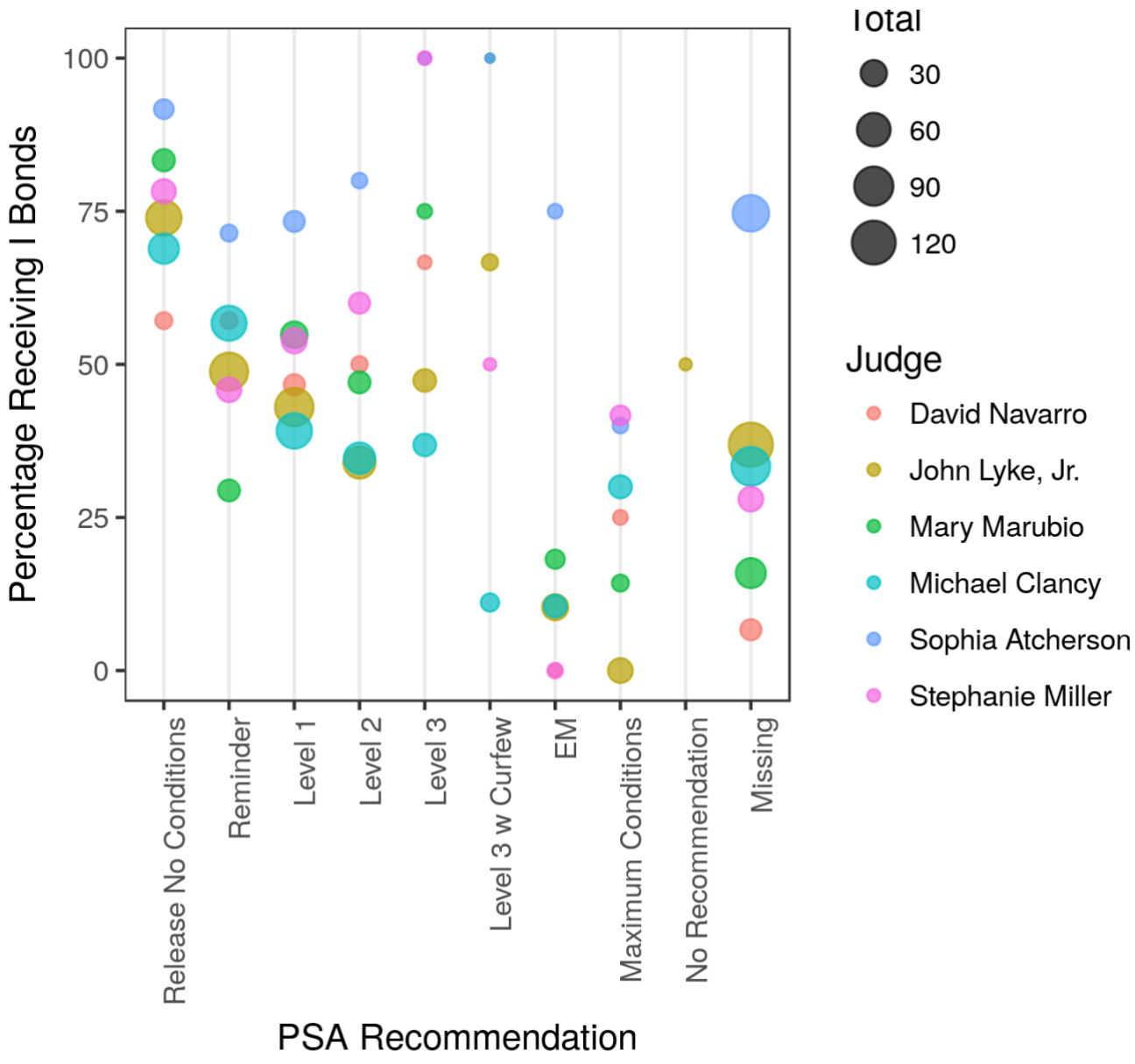
Unfortunately, overuse of Electronic Monitoring has continued since General Order 18.8A went into effect. According to the PSA's decision-making framework, EM is only recommended for accused people with an NCA or FTA score of 5 or higher. In September and October, however, fully one in five (21%) of people with both PSA scores lower than 5 were given EM. Both Judges Clancy and Lyke were also observed to place a high number of people onto Electronic Monitoring despite the fact that their risk assessment scores of 2 or less indicate they should be released without any conditions at all or released with only the lowest level of Pretrial Services "monitoring" (consisting of only court date reminder calls). This is a slight improvement over the one in four people (26%) given EM despite it not being recommended in August, but still presents a very disturbing overuse of Electronic Monitoring. This is especially true given the deleterious social impact of house arrest through EM on accused individuals and their families, and the fact that harshly restrictive supervision for people assessed to be "low-risk" has been shown to actually increase their future risk of criminal justice involvement.[141]

***The following table shows the rate at which judges assigned I-Bonds based on the PSA recommendation in September and October.***

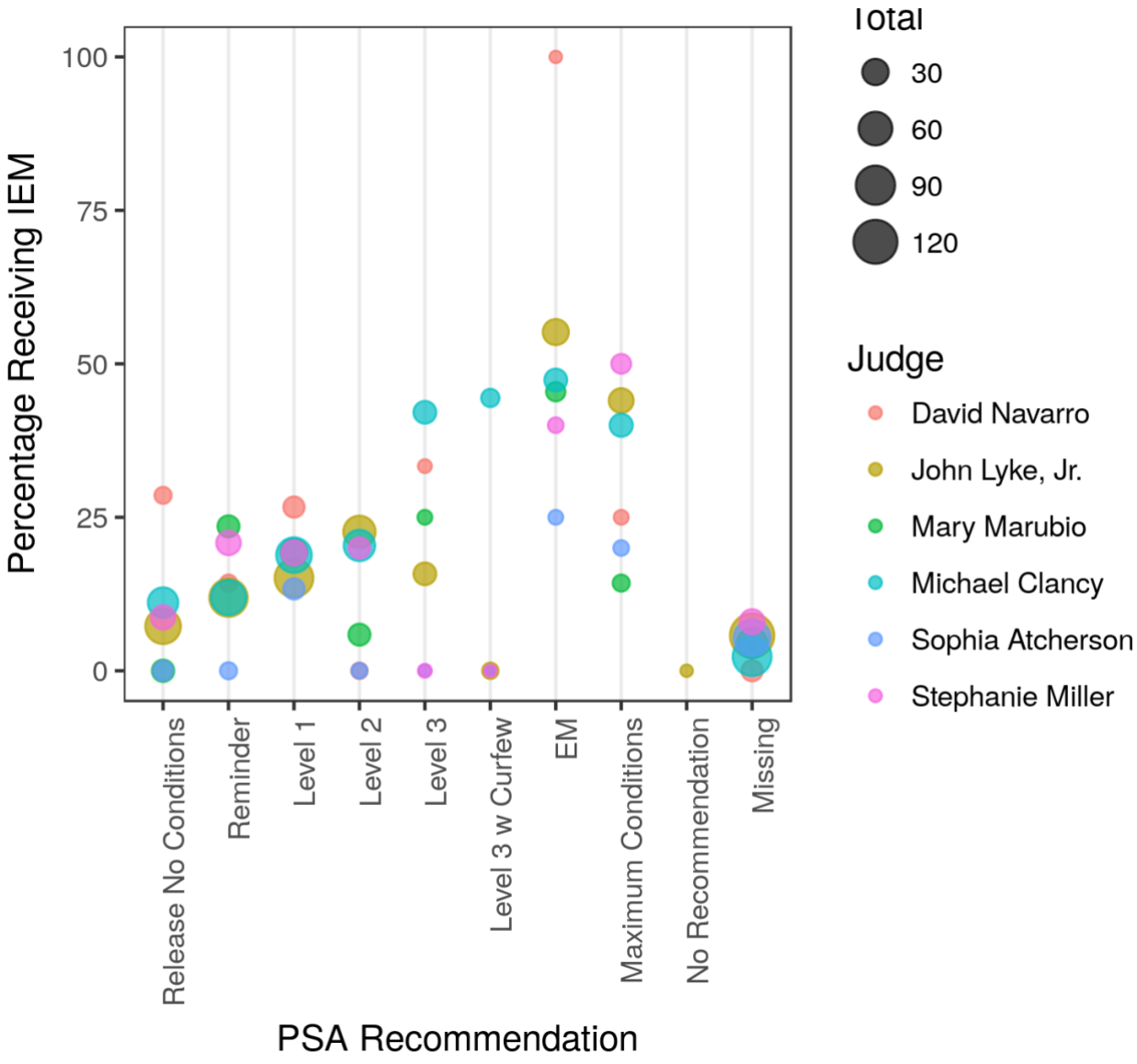
| Judge | Release No Conditions | Reminder | Level 1 | Level 2 | Level 3 | Level 3 w Curfew | EM | Maximum Conditions | No Recommendation | Missing |
|---|---|---|---|---|---|---|---|---|---|---|
| David Navarro | 57%(4/7) | 57%(4/7) | 47% (7/15) | 50% (3/6) | 67% (2/3) | NA | 0% (0/2) | 25%(1/4) | NA | 7% (1/15) |
| John Lyke, Jr. | 74%(51/69) | 49% (41/84) | 43% (37/86) | 34% (18/53) | 47% (9/19) | 67%(4/6) | 10% (3/29) | 0%(0/25) | 50%(1/2) | 37% (45/122) |
| Mary Marubio | 83%(15/18) | 29%(5/17) | 55% (17/31) | 47% (8/17) | 75% (3/4) | 100%(1/1) | 18% (2/11) | 14%(1/7) | NA | 16% (7/44) |
| Michael Clancy | 69%(31/45) | 57% (38/67) | 39% (27/69) | 35% (17/49) | 37% (7/19) | 11%(1/9) | 11% (2/19) | 30%(6/20) | NA | 33% (29/87) |
| Sophia Atcherson | 92%(11/12) | 71%(5/7) | 73% (11/15) | 80% (4/5) | 100% (2/2) | 100%(1/1) | 75% (3/4) | 40%(2/5) | NA | 75% (56/75) |
| Stephanie Miller | 78%(18/23) | 46% (11/24) | 54% (14/26) | 60% (9/15) | 100% (3/3) | 50%(1/2) | 0% (0/5) | 42%(5/12) | NA | 28% (7/25) |

[141] *See* Christopher T. Lowenkamp, et. al, *The Development and Validation of a Pretrial Screening Tool*, 72 FED. PROB. 2 (2008). *See also* Lisa Pilnik, et. al., *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*, THE NATIONAL INSTITUTE OF CORRECTIONS (2017) (indicating that electronic monitoring did not reduce the risk of re-offending).

***The following plot shows the rate at which judges assigned I-Bonds based on the PSA recommendation in September and October.***



***The following plot shows the rate at which judges assigned I-EM Bonds based on the PSA recommendation in September and October.***

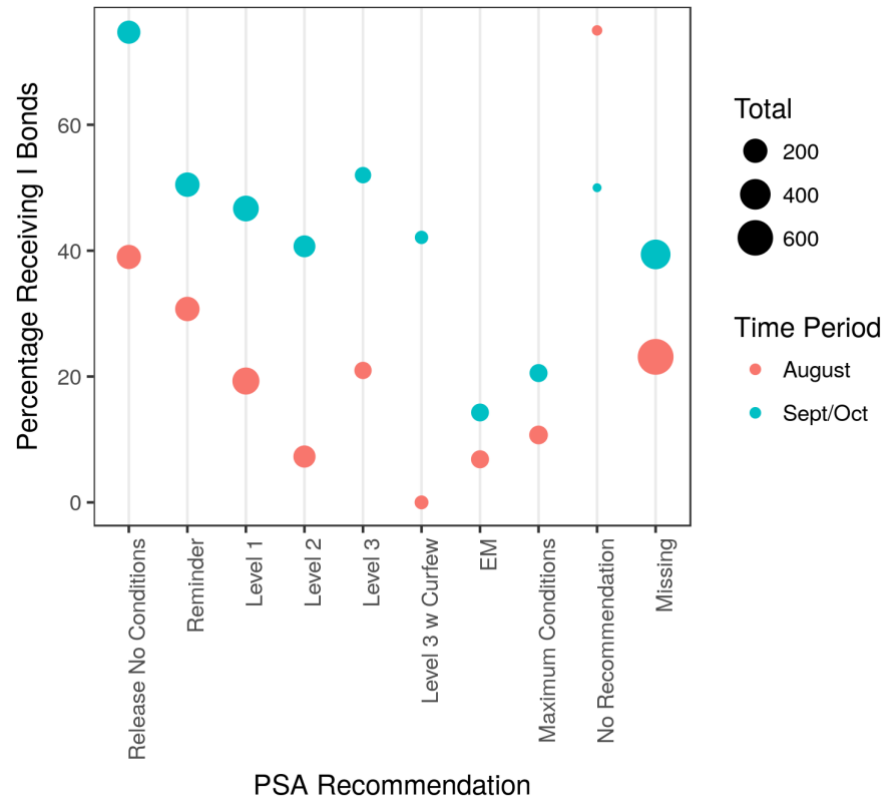


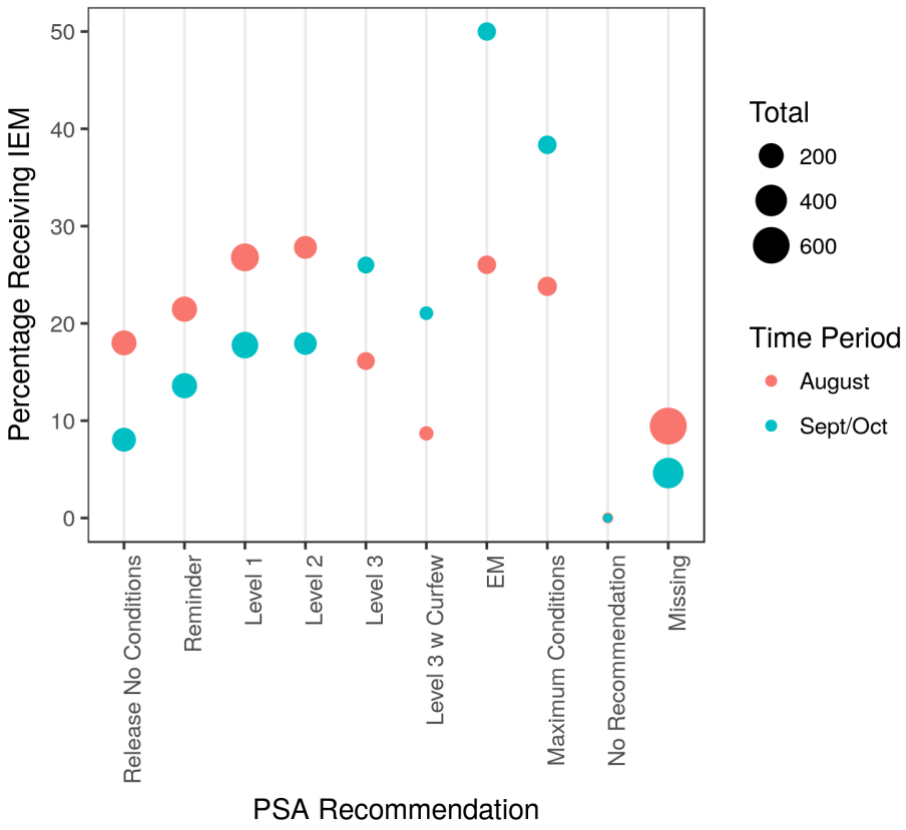
***The following table shows the rate at which judges assigned I-EM Bonds based on the PSA recommendation in September and October.***

| Judge | Release No Conditions | Reminder | Level 1 | Level 2 | Level 3 | Level 3 w Curfew | EM | Maximum Conditions | No Recommendation | Missing |
|---|---|---|---|---|---|---|---|---|---|---|
| David Navarro | 29%(2/7) | 14%(1/7) | 27% (4/15) | 0% (0/6) | 33% (1/3) | NA | 100% (2/2) | 25%(1/4) | NA | 0% (0/15) |
| John Lyke, Jr. | 7%(5/69) | 12% (10/84) | 15% (13/86) | 23% (12/53) | 16% (3/19) | 0%(0/6) | 55% (16/29) | 44%(11/25) | 0%(0/2) | 6% (7/122) |
| Mary Marubio | 0%(0/18) | 24%(4/17) | 19% (6/31) | 6% (1/17) | 25% (1/4) | 0%(0/1) | 45% (5/11) | 14%(1/7) | NA | 5% (2/44) |
| Michael Clancy | 11%(5/45) | 12%(8/67) | 19% (13/69) | 20% (10/49) | 42% (8/19) | 44%(4/9) | 47% (9/19) | 40%(8/20) | NA | 2% (2/87) |
| Sophia Atcherson | 0%(0/12) | 0%(0/7) | 13% (2/15) | 0% (0/5) | 0% (0/2) | 0%(0/1) | 25% (1/4) | 20%(1/5) | NA | 5% (4/75) |
| Stephanie Miller | 9%(2/23) | 21%(5/24) | 19% (5/26) | 20% (3/15) | 0% (0/3) | 0%(0/2) | 40% (2/5) | 50%(6/12) | NA | 8% (2/25) |

## *Impact and Analysis*

The PSA was adopted to achieve higher and more consistent use of I-Bonds, reduce use of EM, and improve consistency across judges. It is clear now, several years into its use, however, that significant training and education are still needed to ensure judges follow the PSA's recommendation more uniformly. In particular, given the continued overuse of EM and unaffordable bonds likely to result in incarceration, judges making bail decisions should be made aware of the counterproductive impacts of EM and pretrial incarceration. This training should be undertaken immediately to ensure that judges in Central Bond Court decrease their use of EM, particularly for people who are recommended released with no conditions or the lowest levels of pretrial conditions.


Percentage Receiving I Bonds
60
40
20
0
Release No Conditions
Reminder
Level 1
Level 2
Level 3
Level 3 w Curfew
EM
Maximum Conditions
No Recommendation
Missing
PSA Recommendation
Total
200
400
600
Time Period
August
Sept/Oct


Percentage Receiving IEM
50
40
30
20
10
0
Release No Conditions
Reminder
Level 1
Level 2
Level 3
Level 3 w Curfew
EM
Maximum Conditions
No Recommendation
Missing
PSA Recommendation
Total
200
400
600
Time Period
August
Sept/Oct

***The following tables shows the rate at which different bond outcomes were received sorted by PSA recommendation in August and September/October.***

Bond rates by PSA category in August

| PSA_Category | Total | I-bond | IEM | D-bond | C-bond | No Bond | Missing |
|---|---|---|---|---|---|---|---|
| Release No Conditions | 200 | 78(39%) | 36(18%) | 64(32%) | 15(8%) | 2(1%) | 5(2%) |
| Reminder | 205 | 63(31%) | 44(21%) | 80(39%) | 11(5%) | 2(1%) | 5(2%) |
| Level 1 | 280 | 54(19%) | 75(27%) | 134(48%) | 8(3%) | 0(0%) | 9(3%) |
| Level 2 | 151 | 11(7%) | 42(28%) | 88(58%) | 6(4%) | 2(1%) | 2(1%) |
| Level 3 | 62 | 13(21%) | 10(16%) | 33(53%) | 4(6%) | 1(2%) | 1(2%) |
| Level 3 w Curfew | 23 | 0(0%) | 2(9%) | 18(78%) | 3(13%) | 0(0%) | 0(0%) |
| EM | 73 | 5(7%) | 19(26%) | 43(59%) | 2(3%) | 2(3%) | 2(3%) |
| Maximum Conditions | 84 | 9(11%) | 20(24%) | 52(62%) | 1(1%) | 0(0%) | 2(2%) |
| No Recomendation | 4 | 3(75%) | 0(0%) | 1(25%) | 0(0%) | 0(0%) | 0(0%) |
| Missing | 614 | 142(23%) | 58(9%) | 211(34%) | 8(1%) | 26(4%) | 169(28%) |

Bond rates by PSA category in Sept/Oct

| PSA_Category | Total | I-bond | IEM | D-bond | C-bond | No Bond | Missing |
|---|---|---|---|---|---|---|---|
| Release No Conditions | 174 | 130(75%) | 14(8%) | 19(11%) | 1(1%) | 5(3%) | 5(3%) |
| Reminder | 206 | 104(50%) | 28(14%) | 62(30%) | 1(0%) | 6(3%) | 5(2%) |
| Level 1 | 242 | 113(47%) | 43(18%) | 69(29%) | 0(0%) | 11(5%) | 6(2%) |
| Level 2 | 145 | 59(41%) | 26(18%) | 44(30%) | 0(0%) | 14(10%) | 2(1%) |
| Level 3 | 50 | 26(52%) | 13(26%) | 8(16%) | 0(0%) | 3(6%) | 0(0%) |
| Level 3 w Curfew | 19 | 8(42%) | 4(21%) | 6(32%) | 0(0%) | 1(5%) | 0(0%) |
| EM | 70 | 10(14%) | 35(50%) | 16(23%) | 0(0%) | 6(9%) | 3(4%) |
| Maximum Conditions | 73 | 15(21%) | 28(38%) | 17(23%) | 1(1%) | 8(11%) | 4(5%) |
| No Recomendation | 2 | 1(50%) | 0(0%) | 0(0%) | 0(0%) | 0(0%) | 1(50%) |
| Missing | 368 | 145(39%) | 17(5%) | 37(10%) | 0(0%) | 36(10%) | 133(36%) |

# Experience of Bond Court

## *Reform Measures Assessed in This Section*

This report focuses primarily on quantitative analysis that sheds light on the bond court process and current reform efforts. Another critical aspect of bond court reform is people's ability to effectively understand what is happening in a process that is often fast-paced, riddled with legalese, and yet vitally important to people's immediate liberty and their long-term futures. Procedural justice requires that court processes be comprehensible to the people going through them, and common decency demands that the criminal courts assist family members and other loved ones in understanding the accusations against and decisions made about the person they are present to support. While the court processes dozens and sometimes hundreds of people per day, each individual is entitled to not just a meaningful hearing, but also a dignified hearing.

Even as far back as 2011, in a study conducted by Chicago Appleseed, courtwatchers noted that the bond court proceedings were often "demeaning," "disrespectful," and "generally rude and dismissive" toward accused people.[142] Furthermore, the pace was extremely fast, with many hearings being completed in under 30 seconds.[143] Courtwatchers noted that speed was often emphasized over accuracy and attention to individuals, with some accused people being chastised by sheriffs for not moving quickly enough.[144] Many people noted that the courtroom was so noisy that even accused people themselves had trouble hearing the judge, and family members or other observers struggled to hear the disposition of the rapid hearings.[145] Courtwatchers in August 2017 made similar observations, noting problems with the speed of hearings, the treatment of accused people and family members, and the physical conditions in the courtroom. Findings from courtwatchers' experiences in bond court both before and after the General Order took effect are reported in more detail below.

## *Before*

Before the Order, one courtwatcher described the atmosphere at Central Bond Court as an "odd mix" of tense and anxious families together with "detached" court personnel and staff treating the process as just another mundane day at work. Most families were confused about the process and were provided with little or no explanation. Some judges gave a quick explanation of terms at the beginning of court; others did not. Some family members received a one-page handout explaining bond types;[146] others did not, especially if they arrived after court had already started. Observers found the court to be "hectic" and "chaotic," especially on weekends when significantly more people's cases are heard. Several observers likened the atmosphere in Central Bond Court to "a factory line," with people treated "like cattle."

Additionally, before the Order was implemented, some observers found the court to be adversarial. The judge heavily influenced the general mood, and an angry judge contributed to a hostile, "scary" atmosphere in the court. Judge Adam Bourgeois, Jr. was observed to be "yelling at defendants based on their alleged charges." He regularly told people facing weapons charges: "You are a danger," and handed out six-figure C-Bonds. Once, when the State's Attorney recommended an I-Bond, the judge said to the State's Attorney: "Next time your car is stolen from valet parking, I am going to remind you

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[142] *Cook County Central Bond Court: Observations and Recommendations from the Chicago Appleseed Fund for Justice*, CHICAGO APPLESEED (November 2011) pp. 2-3, *available at* http://www.chicagoappleseed.org/wp-content/uploads/2012/06/Bond-Court-Report-Final-2011.pdf.
[143] *Id.* at 6.
[144] *Id.* at 7.
[145] *Id.* at 8.
[146] This sheet was prepared by the MacArthur Foundation. A copy is attached as Appendix 6.

that you recommended I-Bond in this case." One judge exhibited a lack of professional courtesy toward the public defender and pretrial services, even laughing at their recommendations. Other times, the judges joked with the other court personnel in manners inappropriate to the life-changing decisions that were being made. Overall, the atmosphere was described as "dehumanizing."

Before the implementation of the Order, virtually every observer found it difficult to hear the proceedings in Central Bond Court. Air conditioners and a printer created constant ambient noise, over which it was hard to hear. One public defender, in particular, was very soft spoken and even more difficult to hear than the other court personnel. On one occasion, a man supporting his loved one told the Sheriff's deputy that he was hard of hearing and asked to sit in the front row. This request was denied because the front row is reserved for attorneys and court personnel only, even when no private attorneys are present. The difficulty in hearing, combined with the fast pace of the proceedings, made it very difficult to understand what was happening even for the trained courtwatchers, but especially for supporters. Courtwatchers described the process pre-Order as chaotic and confusing. Cases were handled very quickly, and the "extreme speed made the entire process seem unfair and biased." As one observer put it: "The process is much too fast to be fair. I do not think it is possible to assess each case in under 30 seconds."

## *After*

Coinciding with the appointment of six new judges to bond court, new amplification devices were added to the courtroom, and judges have now been given a script to read at the beginning of bond court that explains some of the process for observers. Starting September 18, 2017, most observers found the atmosphere in Central Bond Court "calmer" and "quieter" than it had been in August, pre-Order. Judges generally gave a thorough explanation of the process to families and observers at the start of the call. Even so, the process still has its faults. Despite being "not as tension-filled" as in August, some observers found the atmosphere still to be "dehumanizing," "tense," and "depressing." Court staff still kept firm order over the gallery, removing family members for talking or for having a fussy baby.[147] Further, because more time is allotted to each accused person, the court calls were running much longer.[148]

Calls that used to take around two hours now take three or more hours from start to finish. As one member of court staff put it to an observer at the start of the call, "It's gonna take forever because they're spending more time now with each person because of the order." Most observers applauded the slower pace, finding the proceedings much more understandable, even easier to hear. Some judges were more "personable" or "gentle" with accused people, and took time to clearly explain their decisions. Nearly all judges made efforts to justify their decisions clearly on the record, though some merely read scripts without making unique factual findings or citing specific evidence.

## *Impact and Analysis*

Courtwatchers who were present both before and after the implementation of the Order observed that in September and October, the proceedings seemed more respectful, it was easier to hear, and some

[147] As of June 1, 2017, free childcare is now available for people attending Central Bond Court on Mondays through Fridays, but not on the weekends. Many people attending bond court may not be aware of this option. *See* Andy Grimm, *Day care center to open at Leighton Criminal Courthouse*, CHICAGO SUN-TIMES (May 31, 2017), *available at* https://chicago.suntimes.com/news/day-care-center-to-open-at-leighton-criminal-courthouse/.

[148] Hearings in Central Bond Court after September 18 are definitely longer, but still very fast. Measured on the day the Order took effect, one journalist found they averaged just 3 minutes and 29 second each. Maya Dukmasova, *Cook County's Tradition of Using Bail As Punishment May Be Hard to Change*, CHICAGO READER (Sept. 19, 2017), ***available at*** https://www.chicagoreader.com/Bleader/archives/2017/09/19/cook-countys-tradition-of-using-bail-as-punishment-may-be-hard-to-change.

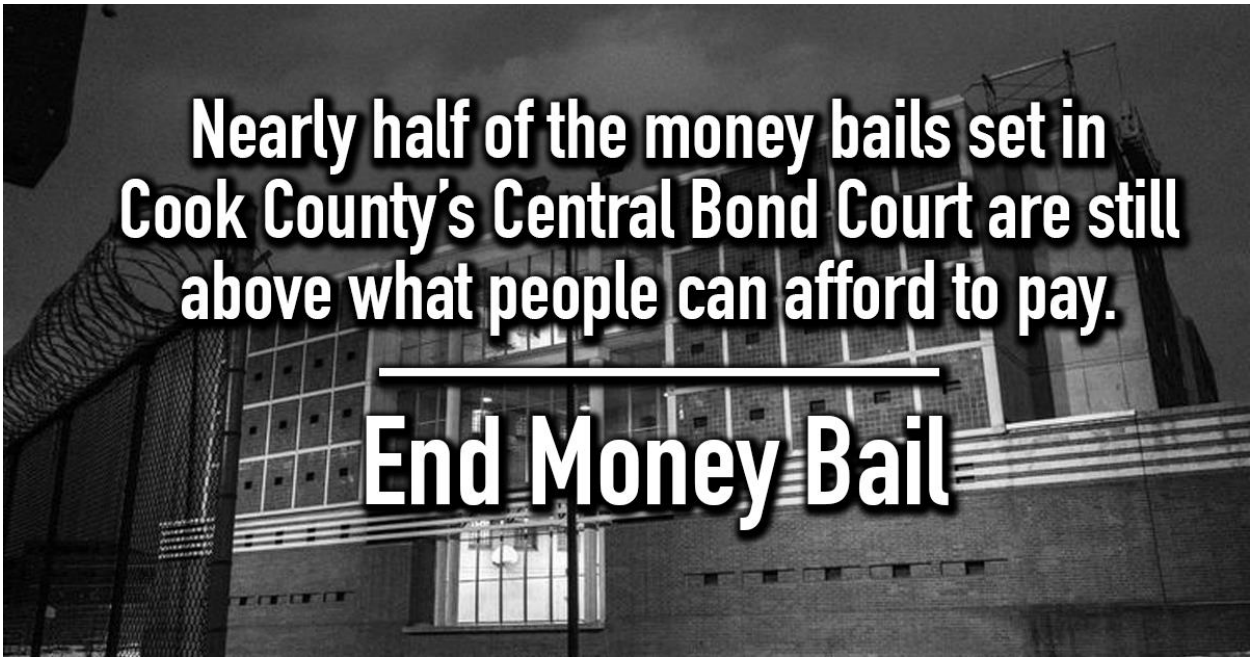
judges took more time to gather information about accused people before making their determinations. This is an indication that the courts can accomplish significant changes in bond court if they actually try to do so. While respectful proceedings do not necessarily improve outcomes for people who are held on monetary bonds or with no bond, treating people with respect is an important end goal in itself and has been shown to improve outcomes.[149]

Ebony Hagler of SOUL leads a courtwatching training at Trinity United Church of Christ in July 2017.

[149] "Research has shown that when court users perceive the justice process to be fair, they are more likely to comply with court orders and to follow the law in the future, regardless of whether they 'win' or 'lose' their case." Center for Court Innovation, *"To Be Fair*," (March 2017) *available at* https://www.courtinnovation.org/publications/be-fair.

# V. Conclusions

Despite the impact General Order 18.8A has had on bond outcomes in Central Bond Court and the number of people in Cook County Jail, there is still a tremendous amount of improvement needed. After the Order went into effect, one in five people were given money bonds without the judge ever receiving information about their ability to pay. Even when the judge did consider the person's ability to pay, about half of people still received unaffordable money bonds. Some of these violations of the Order are concentrated under certain circumstances, such as certain kinds of charges. In addition, an unacceptable level of inconsistency exists across judges, undermining the overall fairness of the court. The great discrepancies in bond decisions, based solely on which judge happens to be in the courtroom on any given day, is a critical area where further progress is needed. While some positive progress has been made with General Order 18.8A, additional actions must be taken to ensure that everyone is getting a fair chance at justice in Central Bond Court. The next section provides detailed recommendations for further progress.



# VI. Recommendations

The takeaways from this months-long project are wide-ranging and provide guidance on many aspects of the pretrial justice system that could be improved. Some recommendations are fixes that can easily be implemented, while others will take more time and resources to accomplish. As the number of people in jail remains in the thousands, even small improvements can make all the difference to the people who administer and are subject to Cook County's pretrial justice system.

## 1. End the Use of Secured Money Bond in Illinois

The only way to truly eliminate the racially discriminatory injustice of wealth-based pretrial incarceration is to completely and fully end the use of secured money bond. Money bond adds no value to the pretrial justice system, but rather facilitates the ongoing incarceration of legally innocent people for no other reason than their lack of wealth. While reform efforts that attempt to limit the use of money bond may be grounded in good intentions, they often fall short and lack effective mechanisms for enforcement, evaluation, and oversight. The simplest solution to the well-documented and agreed-upon problem of unjust pretrial detention is to end the use of money bond altogether.

Stakeholders from a wide variety of areas have long recognized that money bond does not help accomplish the goals of the pretrial justice system. The National Institute of Corrections, an agency within the United States Department of Justice Bureau of Prisons, concluded in 2017 that a proper pretrial framework should include "[p]rohibition or restrictions on the use of secured financial conditions," meaning money bonds.[150] In 2014, New Jersey made changes to its bail system such that now "money bail is virtually never used," resulting in "a dramatic decline in the rates of pretrial detention."[151] Other jurisdictions have also advocated for the prohibition of or severe limitations on use of money bond.[152]

Piecemeal efforts to reform the obvious injustice of pretrial incarceration are achieving partial results at best. Because the success of General Order 18.8A depends on individual judges choosing whether or not to implement it, the Order was destined to be inadequate from its inception. Judges appear to operate largely without any oversight or sanctions for violating either the order, state laws, or constitutional mandates. Even Chief Judges in each Illinois Circuit are limited in what they can do to further encourage judges to follow their administrative and general orders on an individual basis.[153] Thus, a more hard-line limitation on the use of money bond is needed in order to effectively stop wealth-based pretrial incarceration.

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[150] Lisa Pilnik, et. al., *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*, THE NATIONAL INSTITUTE OF CORRECTIONS, p. 10 (Feb. 2017), *available at* https://s3.amazonaws.com/static.nicic.gov/Library/032831.pdf.

[151] Megan Stevenson, *Assessing Risk Assessment in Action*, p. 23 (Dec. 8, 2017), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3016088.

[152] *See e.g.* Christine Blumauer, et al., *Advancing Bail Reform in Maryland: Progress and Possibilities* (initially released on Jan. 10, 2018); and JustLeadershipUSA, "Reform: Defined" *available at* https://www.justleadershipusa.org/wp-content/uploads/2017/12/FREEnewyork-ReformDefined_final.pdf.

[153] Chief Judges of the Circuit Court have only administrative power. They can only move judges who do not follow the law or perform well, but cannot fire or otherwise sanction them. *See also* Emily Hoerner and Zoe Rosenbaum, *In Illinois, punishment is slow and lenient for errant judges*, INJUSTICE WATCH (Dec. 4, 2015) *available at* https://www.injusticewatch.org/projects/2015/illinois-court-commission-judge-punishment/.

Some efforts are already underway to take pretrial justice out of the hands of individual judges who cling to discriminatory practices and to establish a system without money bond. There is currently a lawsuit pending in Cook County that seeks a court-ordered ban on unaffordable bonds.[154] If won, the lawsuit—litigated by a team of lawyers from civil rights organizations—would effectively prevent judges from setting money bonds that people are unable to pay. In 2017, multiple bills were introduced into the Illinois legislature that sought to entirely prohibit the use of money bond.[155] In December 2017, the Illinois Supreme Court convened a Commission on Pretrial Practices to "mak[e] recommendations for amendments to state laws, Supreme Court Rules, or Supreme Court Policies, as necessary."[156]

Whatever solutions come out of these efforts should also consider the people who are currently incarcerated pretrial across the state. While bonds are initially set in bond court, any judge has the power to make a bond affordable or give an incarcerated person an I-Bond at a later court date. Ending money bond, therefore, should consider the effects on people who are suffering from wealth-based incarceration in the present, not just in the future. The current efforts to end or severely limit money bail could result in a policy that offers relief to currently accused people in Illinois and not only those who will be accused in the future.[157] Additional efforts should be made across the state to ensure that money bond is eliminated.

## 2. Stop Unfairly Funding the Courts Through Bond Money

There are presently a multitude of ways that government agencies siphon money away from people who post bond. As discussed in this report, all counties in Illinois except for Cook County take a 10% processing fee out of every bond that is posted, regardless of the outcome of the case.[158] In Cook County, this fee is capped at $100, and this cap should be statutorily extended to the entire state. It is neither fair nor just to force accused people, who are disproportionately Black, Brown, and poor, to fund the very system that harms them. Accused people must frequently enlist help from their entire communities in order to post bond, relying on community groups, extended family, and religious institutions to collect enough money to post unaffordable bonds. Even if the person is later found innocent or the state drops the charges, 10% of that community's money is taken away permanently. This system amounts to a form of automatic punishment simply for being arrested and ordered to pay a monetary bond. Expanding the $100 cap to all counties would help end one area of unfair treatment that the money bond system imposes on accused people.

There is an additional myriad of fees that people must pay simply to post a bond. Sheriff's offices and third-party, for-profit companies charge fees that further disadvantage poor people and people of color.[159] These fees are not refunded if the person is found not-guilty or if their charges are dismissed. Nobody should have to literally pay for the privilege of being free, but the people who often end up paying are those who can least afford to do so. These fees, while a convenient source of revenue for county budgets, should be eliminated as an inherently unfair practice.

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[154] *See e.g. Cash Bail*, MACARTHUR JUSTICE CENTER (Oct. 16, 2016), *available at* http://www.law.northwestern.edu/legalclinic/macarthur/projects/treatment/cashbail.html.
[155] *See* 2017 IL H.B. 3421; 2017 IL H.B. 3717.
[156] Marcia M. Meis, *Pretrial Reform Efforts in Illinois*, ILLINOIS COURT CONNECT (Dec. 27, 2017), *available at* http://www.illinoiscourts.gov/Media/enews/2017/122817_director.asp.
[157] General Order 18.8A's process for review of anyone incarcerated on a money bond they cannot pay is not limited to people whose bonds were set after September 18, 2017. Many advocates believe that the Order grants a right of review to anyone who is incarcerated on an unaffordable money bond. *See* Shannon Heffernan, *No Strategy To Review Bail For Thousands In Cook County Jail*, WBEZ (Sept. 28, 2017), *available at* https://www.wbez.org/shows/wbez-news/no-strategy-to-review-bail-for-thousands-in-cook-county-jail/751b7b16-0265-405e-92c4-15e6206f7734; and General Order 18.8A (paragraph 11).
[158] 725 ILCS 5/110-7(f).
[159] *See* 55 ILCS 5/4-5001, authorizing Sheriffs to charge fees.

## 3. Improve Access to Central Bond Court and Jail Data

For those who have experienced the devastating consequences of wealth-based pretrial incarceration, the injustice of the current money bond system is self-evident. In order to more widely communicate the realities of the role that monetary bond plays in the criminal system, however, community groups have been actively involved in collecting and analyzing micro- and macro-level data. While this report describes one effort to collect such data, the insights gained would be more meaningful if substantiated and clarified by data from the courts and jail themselves. Other major urban jurisdictions such as New York City, Harris County, Texas (Houston), and Washington, D.C. have adopted policies of more fully disclosing data, and Cook County should adopt a similar policy.[160]

Community groups invested several hundred hours of work to collect the data reflected in this report, including time spent training volunteers, coordinating courtwatching shifts, commuting to and from the courthouse, observing court, and entering, cleaning, and analyzing the observation data. Even with this massive expenditure of effort, there is still missing data from the time period that courtwatchers were in bond court. In order to promote transparent and effective governance, the county itself should collect this data and make it publicly available. This would allow the public to play an active role in assessing and evaluating which reforms are actually effective and how further improvements can be made. Some community groups will continue to monitor bond courts to observe whether the changes under General Order 18.8A continue, but publicly available data will ensure that all stakeholders and members of the public have the opportunity to evaluate bond reforms.

Key data is currently held by the Sheriff's Office, the Circuit Court, and other Cook County offices that participate in aspects of the pretrial justice system, but is not widely available to the public. Bond court determinations should be made public so that the effect of the much-publicized reform efforts can be more fully analyzed. Additional data regarding the impact of bond, such as what percentage of people are able to pay their bonds after being assigned a D- or C-bond, and after how much time, could shed light on ways that even a reformed system continues to discriminate against people for being poor. Similarly, information about whether people incarcerated on unpaid bonds receive reviews within seven days is necessary to monitor compliance with both General Order 18.8A and state law. Frequent publication and analysis of data on demographics, final case resolution, time to disposition, new arrests, and other related topics will help community members and subject matter experts identify the most effective ways to promote public safety and eliminate the injustices that currently harm a tremendous number of Cook County communities.[161]

## 4. Facilitate Attendance at Future Court Dates with Reminders and Other Supports

The only legitimate purpose of monetary bond is supposed to be to ensure the accused person's future appearance in court.[162] Much simpler, cheaper, and more humane methods of supporting people in

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[160] *The Impact of Cook County Bond Court on the Jail Population: A Call for Increased Public Data and Analysis*, THE CIVIC FEDERATION (Nov. 15, 2017), p. 3, available at https://www.civicfed.org/sites/default/files/report_publicsafety.pdf.

[161] For more details on the importance of further data transparency, *see The Impact of Cook County Bond Court on the Jail Population: A Call for Increased Public Data and Analysis*, THE CIVIC FEDERATION (Nov. 15, 2017), available at https://www.civicfed.org/sites/default/files/report_publicsafety.pdf.

[162] *See* Tim Schnacke, Michael R. Jones, and Claire M.B. Brooker, *The History of Bail and Pretrial Release*, PRETRIAL JUSTICE INSTITUTE (Sept. 24, 2010), pp. 8-9, *available at* https://www.pretrial.org/download/pji-reports/PJI-History%20of%20Bail%20Revised.pdf.; Tim Schnacke, *"Model" Bail Laws*, CENTER FOR LEGAL AND EVIDENCE-BASED PRACTICE, p. 32 (April 18, 2017), *available at* http://www.clebp.org/images/04-18-2017_Model_Bail_Laws_CLEPB_.pdf.

getting to court have been found to be equally or even more effective, starting with simple phone call reminders.[163] Cook County has taken steps to establish a phone call reminder system for people released pretrial, but it is not yet operational.[164] Other services that could be provided include assistance with transportation and childcare, two common barriers to attending court dates.[165] Providing a range of dates for each court appearance and including evening scheduling can also allow people to attend their court dates without missing work.[166]

In addition, simple logistical improvements in Central Bond Court itself could improve future rates of court appearance and compliance with any conditions of release. Family, friends, and community members who attend bond court to support their loved ones are often unable to hear what decision has actually been made, including the next court date. While judges in Central Bond Court now appear to regularly use a microphone, microphones should be provided for other key personnel as well, including defense attorneys. The judge should emphasize the importance of making future court dates and announce the next court date in a volume audible to all present, and the court should provide written information about the date, time, and location that the accused person is next expected in court.[167]

## 5. Train Judges and other Court Personnel on Detention Hearings & Pretrial Release Procedures

As discussed in this report, many different people work in bond court on a daily basis, from the judge to attorneys to Pretrial Services staff. As bond reform efforts reshape the way that bond court functions, everyone involved with the process should receive effective training on new rules and procedures and also on the rationale behind those changes. The brief moments that a person spends in bond court can have a dramatic impact on the rest of their case and on their lives. Judges should receive training on implicit bias and the social science research that shows that even when made for allegedly helpful reasons, pretrial incarceration and other restrictions do not improve the safety of the community or increase the likelihood that a person shows up for court.[168] These trainings should also include the public defenders, assistant state's attorneys, and Pretrial Services staff. By incorporating the most relevant and comprehensive information in their decision-making processes, all of these actors can better promote the fairest and best long-term outcomes and ensure that all accused people's rights are protected.

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[163] *See generally* Justice Policy Institute, *For Better or For Profit* (Sept. 2012), available at http://www.justicepolicy.org/uploads/justicepolicy/documents/_for_better_or_for_profit_.pdf.

[164] This program should be operationalized, and in the future, reminder systems would ideally include options to receive text messages and/or emails in addition to phone calls.

[165] Though some courthouses in Cook County have childcare options available, not all do. The existing programs appear to be underutilized; more outreach may be necessary to ensure that people are aware of the childcare options available to them.

[166] In announcing its Justice Reboot Initiative, New York City recognized "Flexible appearance date and night court" as two ways to increase court appearance. The announcement proposed a pilot program in Manhattan that would allow "individuals who have received summonses ... to appear any time a week in advance of their court appearance. The court will also be open until 8:00 p.m. on Tuesdays." New York City Office of the Mayor, "Mayor de Blasio and Chief Judge Lippman Announce Justice Reboot, an Initiative to Modernize the Criminal Justice System," The Official Website of the City of New York.

[167] Accused people themselves, while presumably able to hear what is happening, are unable to take any notes or write down information about their next court dates.

[168] Lisa Pilnik, et. al., *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*, THE NATIONAL INSTITUTE OF CORRECTIONS (2017) (indicating that pretrial services such as email and text reminders drastically improved appearance rates, but restrictions such as drug testing and electronic monitoring did not reduce the risk of re-offending or improve appearance rates).

In addition, there are specific procedural and substantive legal requirements that must be followed to justify denying someone release entirely.[169] As the issuance of no-bonds increases in Central Bond Court due to implementation of General Order 18.8A, examining the detention hearing process will become even more important. Whether or not these detention hearings are constitutionally adequate has not yet been examined on a widespread scale, but providing thorough training for judges and attorneys on the constitutional and statutory rights of all accused people is a necessary component of effective bail reform.

Another method of training that the courts could implement is judicial mentorship, in which judges help each other learn the proper procedures and considerations in setting bond. Recently, in Harris County, Texas, the court assigned mentored training to particularly problematic judges and issued public admonitions citing their unlawful bond-setting practices.[170] Since judges operate largely without oversight or accountability, this type of practice may be effective in helping to ensure that judicial behavior changes along with the law, rather than allowing the reality of implementation lag behind key policy and legal changes.

## 6. Ensure Fair Ordering and Timing of Bond Court Proceedings

In addition to the significant discrepancies across judges described in this report, other factors present during a bond court "call" may also result in disparate treatment of accused people. For example, courtwatchers reported that near the end of a bond court call, judges tended to spend less time on each case. There are studies that show that the human brain becomes fatigued after performing the same procedure over and over, and some bond court sessions lasted well over three hours.[171] The court seems to have recognized this already to a certain degree by creating two separate bond court calls on the weekends to shorten the time that court staff and supporters must be engaged with highly technical yet somewhat repetitive proceedings.

Courtwatchers also observed on some occasions that judges seemed to not only set more restrictive bonds and conditions on people with allegations of violence, but to also set higher restrictions and bonds on people *whose cases came immediately after* a case of alleged violence. As if the judges were angered by certain proffered facts, they appeared to punish people whose cases coincidentally fell after those cases, even if the subsequent case was not violent.[172] By altering the order in which cases are presented to the judge and separating cases with violent allegations into a distinct call, such discrepancies might be avoided.

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[169] *See e.g.* 725 ILCS 5/110-6.1 (to incarcerate someone with no bail for a non-probationable felony, the judge must conduct a full adversarial hearing, where the state presents clear and convincing evidence that the accused person poses a real and present threat to the physical safety of a person).

[170] See e.g., Texas State Commission on Judicial Conduct CJC NO. 17-0350-AJ available at http://www.scjc.texas.gov/media/46656/hagstette17-0350-ajfinalpubadmandoae.pdf; CJC NO. 17-0351-AJ available at http://www.scjc.texas.gov/media/46657/wallace17-0351-ajfinalpubadmandoae.pdf; and CJC NO. 17-0352-AJ, available at http://www.scjc.texas.gov/media/46658/licata17-0352-ajfinalpubadmandoae.pdf. The website of the State Commission on Judicial Conduct shows the admonished judges in a featured position on the home page. Disciplinary Actions, State Commission on Judicial Conduct, http://www.scjc.texas.gov/.

[171] *See e.g.* Robert Langner and Simon B. Eickhoff, *Sustaining Attention to Simple Tasks: A Meta-Analytic Review of the Neural Mechanisms of Vigilant Attention*, Psychol Bull., (July 2013) 139(4): 870–900, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3627747/ (indicating that mental fatigue may occur faster when performing repetitve and monotonous tasks).

[172] There is evidence that judicial decisions can be far from legally objective and are influenced, sometimes substantially, by immediately preceding decisions that the judge made, as well as factors such as the time of day and how recently the judge had eaten. See e.g., Shai Danziger, et. al., Extraneous Factors in Judicial Decision-Making, Proceedings of the National Academy of Sciences of the United States of America (2011), *available at*: http://www.pnas.org/content/108/17/6889.

## 7. Improve Pretrial Services

Illinois law now requires that any conditions of pretrial release be "the least restrictive necessary" to help ensure attendance in court and protect the integrity of judicial proceedings.[173] In order to ensure that this mandate is being achieved, whatever pretrial services are assigned should be carefully tailored to promote fairness in the criminal system. Instead of the presently punitive conditions that are mandated, such as curfews and electronic monitoring, which inhibit an accused person's ability to work and adequately support their family and community, services should include reminders of court dates and resources explaining relevant aspects of the legal process.[174] The imposition of these conditions and any violations and resulting punishments must also be tracked by the court and released publicly so that community members and advocates can understand the functioning and consequences of pretrial conditions.

At the most basic level, reminders and information can be supplemented by basic services such as assistance with transportation to court and childcare.[175] When a person does not show up for their court date, nobody benefits. Thus, the more that existing resources can truly promote a person's investment in their own defense, and directly provide or connect them with supportive services, the more the criminal justice system protects people's rights and promotes a healthy society.

[173] "The Bail Reform Act of 2017," Public Act 100-0001 (Senate Bill 2034), signed into law June 9, 2017.
[174] Chicago Community Bond Fund, "Punishment is Not a Service: The Injustice of Pretrial Conditions in Cook County" (Oct. 24, 2017), available at https://chicagobond.org/docs/pretrialreport.pdf.
[175] *Id.*

# Acknowledgements

The Coalition to End Money Bond extends our sincerest gratitude to everyone who made this report possible, and in particular:

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- Annemarie Spitz, Rachel Lyons, and the dozens of volunteers with Showing Up for Racial Justice - Chicago and Chicago Community Bond Fund for their help with data entry;
- Jean Morrison, Erin Eife, Mariella Castaldi, and Traci Schlesinger for their help with data analysis and findings;
- Geoff Hing and Sarah Lazare for their assistance with FOIA requests; and
- Baker McKenzie for their assistance in drafting and formatting this report.

# Appendix

1. Courtwatching Observation Form used in August;
2. Courtwatching Observation Form used in September/October;
3. Courtwatching Narrative Reflection Form used in August;
4. Courtwatching Narrative Reflection Form used in September/October;
5. Central Bond Court Handout Explaining the PSA; and
6. Central Bond Court Handout Explaining the Types of Bond.

**Data**

***All data used in generating this report is publicly available through the Chicago Data Collaborative: www.chicagodatacollaborative.org.***

# Appendix

**GUIDELINES FOR USE:** ***Type of Charge:*** Insert the correct number (1-11) using this coding: (1) traffic, non-DUI; (2) traffic, DUI; (3) drug possession (PCS); (4) drug sales (manufacture/delivery, PCS with intent); (5) gun possession (all UUW charges); (6) retail theft; (7) other property crimes; (8) robbery; (9) aggravated battery; (10) murder; (11) other miscellaneous crimes against a person; ***Risk Assessment:*** if the risk assessment is not used, check "N/A," but if the risk assessment is used, write the FTA & NCA scores (1-6) in the appropriate column; if the person is flagged for NVCA, check that column; ***State's Attorney Recommendation:*** If the prosecutor makes a recommendation, note "I" for I-Bond and "0" for "no bond;" ***Bond Type:*** "I" indicates individual recognizance/I-bond; "D" indicates Deposit Bond/D-bond, "C" indicates Cash Bond/C-bond, "0" indicates No Bond; ***EM:*** Check this box if Electronic Monitoring was ordered, leave it blank if EM was not ordered; ***Conditions:*** Record any conditions of bond stated on the record, including curfews, weekly or monthly check-ins, or other requirements mentioned. ***Race:*** "B" indicates Black or African-American, "L" indicates Latino, "W" indicates White, "N" indicates Native American, "A" indicates Asian; ***Gender:*** "M" indicates male; "F" indicates female; "U" indicates transgender or unknown gender.

| **Judge:**_____ | **Date:**_____ | **Your Name:**_____ | **Sheet ___ of ____** | **Courthouse:** _____ |
|---|---|---|---|---|

| Case | Public Defender or Private? | Type of Charge | Risk Assessment | | | | State's Attorney Rec.? | Asked About Paying Bond? | Bond Type | Amount of Bond | EM? | Pretrial Conditions? | Race | Gender |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | N/A | FTA | NCA | NCVA | | | | | | | | |
| **Ex.** | PD | 3 | | 2 | 3 | ✓ | None | No | D | $10,000 | | "pretrial services" | B | M |
| **Name:** John Doe | | | | | **Misc. Notes:** Prosecutor read history, lots of previous drug cases; PD said only "lifelong resident of Chicago" & asked for "I-bond" | | | | | | | | | |
| **1** | | | | | | | | | | | | | | |
| **Name:** | | | | | **Misc. Notes:** | | | | | | | | | |
| **2** | | | | | | | | | | | | | | |
| **Name:** | | | | | **Misc. Notes:** | | | | | | | | | |
| **3** | | | | | | | | | | | | | | |
| **Name:** | | | | | **Misc. Notes:** | | | | | | | | | |
| **4** | | | | | | | | | | | | | | |
| **Name:** | | | | | **Misc. Notes:** | | | | | | | | | |
| **5** | | | | | | | | | | | | | | |
| **Name:** | | | | | **Misc. Notes:** | | | | | | | | | |
| **6** | | | | | | | | | | | | | | |
| **Name:** | | | | | **Misc. Notes:** | | | | | | | | | |
| **7** | | | | | | | | | | | | | | |
| **Name:** | | | | | **Misc. Notes:** | | | | | | | | | |
| **8** | | | | | | | | | | | | | | |
| **Name:** | | | | | **Misc. Notes:** | | | | | | | | | |

**GUIDELINES FOR USE:** ***Type of Charge:*** Insert the correct number (1-11) using this coding: (1) traffic, non-DUI; (2) traffic, DUI; (3) drug possession (PCS); (4) drug sales (manufacture/delivery, PCS with intent); (5) gun possession (all UUW charges); (6) retail theft; (7) other property crimes; (8) robbery; (9) aggravated battery; (10) murder; (11) other miscellaneous crimes against a person; ***Risk Assessment:*** if the risk assessment is not used, check "N/A," but if the risk assessment is used, write the NCA & FTA scores (1-6) in the appropriate column; if the person is flagged for NVCA, check that column; ***State's Attorney Recommendation:*** If the prosecutor makes a recommendation, note "I" for I-Bond and "0" for "no bond;" ***Bond Type:*** "I" indicates individual recognizance/I-bond; "D" indicates Deposit Bond/D-bond, "C" indicates Cash Bond/C-bond, "0" indicates No Bond; ***EM:*** Check this box if Electronic Monitoring was ordered, leave it blank if EM was not ordered; ***Conditions:*** Record any conditions of bond stated on the record, including curfews, weekly or monthly check-ins, or other requirements mentioned. ***Race:*** "B" indicates Black or African-American, "L" indicates Latino, "W" indicates White, "N" indicates Native American, "SA" indicates South Asian/Indian/Arab, "EA" indicates East Asian/Pacific Islander; ***Gender:*** "CM" indicates cis man; "CW" indicates cis woman, "TM" indicates trans-masculine person, "TF" indicates trans-feminine person, "GQ" indicates gender-queer or gender non-conforming person.

| **Judge:**_____ | **Date:**_____ | **Your Name:**_____ | **Sheet ___ of ____** | **Courthouse:** _____ |
|---|---|---|---|---|

| Case | Public Defender or Private? | Type of Charge | Risk Assessment | | | | State's Attorney Rec.? | Amount Person Can Pay | Bond Type | Amount of Bond | EM? | Pretrial Conditions? | Race | Gender |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | | N/A | NCA | FTA | NCVA | | | | | | | | |
| **Example Name:** John Doe | | | | | **Misc. Notes:** Prosecutor read history, lots of previous drug cases; PD said only "lifelong resident of Chicago" & asked for "I-bond" | | | | | | | | | |
| **Ex.** | PD | 3 | | 2 | 1 | ✓ | None | $1,000 | D | $10,000 | | "pretrial services" | B | M |
| **Name 1:** | | | | | **Misc. Notes:** | | | | | | | | | |
| **1** | | | | | | | | | | | | | | |
| **Name 2:** | | | | | **Misc. Notes:** | | | | | | | | | |
| **2** | | | | | | | | | | | | | | |
| **Name 3:** | | | | | **Misc. Notes:** | | | | | | | | | |
| **3** | | | | | | | | | | | | | | |
| **Name 4:** | | | | | **Misc. Notes:** | | | | | | | | | |
| **4** | | | | | | | | | | | | | | |
| **Name 5:** | | | | | **Misc. Notes:** | | | | | | | | | |
| **5** | | | | | | | | | | | | | | |
| **Name 6:** | | | | | **Misc. Notes:** | | | | | | | | | |
| **6** | | | | | | | | | | | | | | |
| **Name 7:** | | | | | **Misc. Notes:** | | | | | | | | | |
| **7** | | | | | | | | | | | | | | |
| **Name 8:** | | | | | **Misc. Notes:** | | | | | | | | | |
| **8** | | | | | | | | | | | | | | |

**Post-Courtwatching Notes & Reflection**

Date of Observation: _____ Date of Reflection: _____

Courtwatcher Name: _____ Court Observed: _____

Sample questions to answer:

1) What made the biggest impression on you during your court observation?

2) Was there anything that surprised you about what you saw in bond court?

3) Did you notice people being treated differently in court or by the judge? If so, described the different treatment and who it impacted.

Please use the space below to record issues observed and reflections on your courtwatching experience.

**COALITION TO END MONEY BOND**
**Community Courtwatch Initiative**
**Post-observation Worksheet**

**Logistics:** Please not any trouble you had getting into the building or court room, your experiences with court staff once inside, and any trouble you observed others having.

**Atmosphere:** What was the atmosphere of bond court like when you went? Did it vary if you went more than once? Was there any explanation offered by anyone?

**Process:** How well could you hear and understand what was being discussed? What could have been done to improve your understanding?

**Outcomes:** Did you understand why decisions were being made the way they were? Did the outcomes seem consistent? Fair?

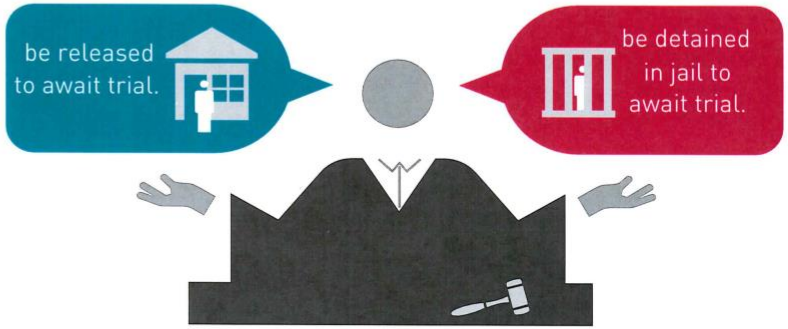
**Miscellaneous:** What is the most important thing you would tell someone about what you observed? Is there anything else we didn't discuss that you think is important to include in the report?

**Review of Community Courtwatching Initiative:** Was the training that you received adequate and effective? What recommendations do you have for us to improve the training or other parts of our process?

# The Public Safety Assessment (PSA)

You may hear discussion about the PSA in court today. Here is a brief explanation of the PSA and how it works.

Following a person's arrest, a judge must decide whether that person should:

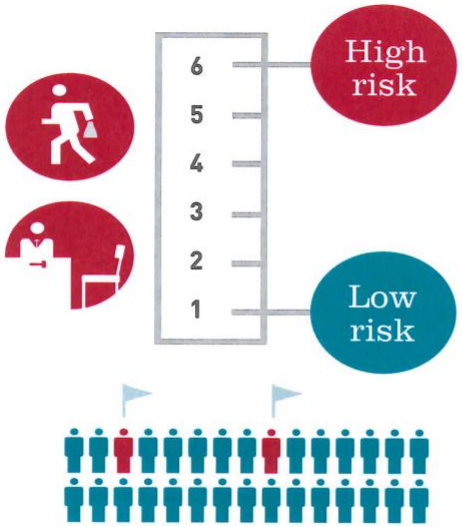



A judge considers many factors in making this decision. One tool that judges may use to help make this decision is the PSA.


The PSA score is not the only information that a judge considers, and the final decision will always be made by a judge.

For more information about the PSA, please visit www.arnoldfoundation.org.

The PSA produces a score that represents the likelihood that a defendant who is released before trial will commit a new crime or will fail to appear for a future court appearance.



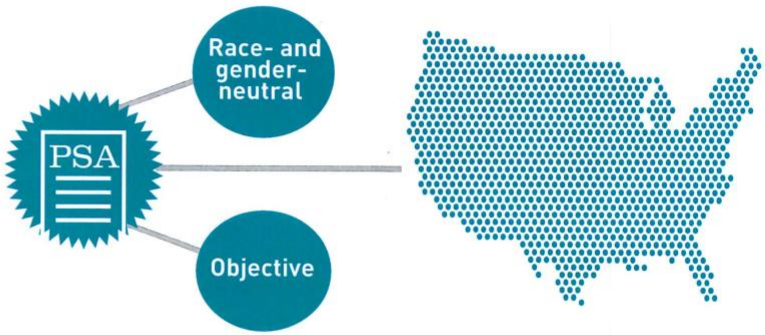

The PSA also flags the small number of defendants who pose an elevated risk of committing a crime of violence if released before trial.

The PSA does NOT look at any of the following factors:


The PSA score is calculated based on nine factors.

| | | |
|---|---|---|
| Current violent offense | Pending charge at the time of the offense | Prior misdemeanor conviction |
| Prior felony conviction | Prior violent conviction | Prior failure to appear pretrial in past 2 years |
| Prior failure to appear pretrial older than 2 years | Prior sentence to incarceration | Age at current arrest |

The PSA provides information that is race- and gender-neutral. It helps guide pretrial decision making in an effort to increase safety, reduce taxpayer costs, and enhance fairness and efficiency in the system.




The PSA was developed from research using data from across the United States.

# THERE ARE SEVERAL TYPES OF BONDS

## I-BOND

An I Bond means the defendant does not pay any money to be released.

*The defendant may have to report to Pretrial Services or be put on Electronic Monitoring to be released without a money bond.*

He or she promises to appear for each and every court date.

*If your friend or relative does receive an I Bond, he or she will be released within 1 1/2 hours of the end of the court and you may wait in the hall for him or her.*

## I-BOND WITH EM

An I-Bond with EM refers to Electronic Monitoring, or the defendant being restricted to their home with a monitoring bracelet on their ankle.

*Be available to take a phone call from the sheriff for the next:*

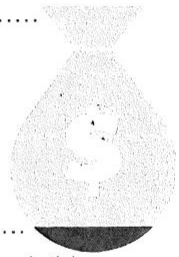
**24-48 HOURS**

so that the phone number can be verified for EM placement.

*This phone will need to be available to the defendant where he or she stays. If the phone number cannot be verified, the Electronic Monitoring option will be replaced by a money bond also known as a D-bond.*

## D-BOND

A D-bond is when the defendant must post an amount of money to be released.



**10%**

*The amount of bond as bail the defendant can usually pay if a D-bond is required.*

For example, if the bond is set at:

$10,000

The defendant must post:

$1,000

*The money will be returned if the defendant attends court every court date minus 3% for a processing fee.*

In the above example, if the defendant came to every court date, at the end of the case he would get back:

$900*

**Additional fees may be taken from this amount.*

*If the defendant does not appear in court, the money will not be returned.*

## A FINAL REMINDER

**If your friends or relatives are released, the most important thing is to help them get to each and every court hearing.**

Supported by the John D. and Catherine T. MacArthur Foundation
www.macfound.org