

VISION FOR A JUST PRETRIAL SYSTEM IN ILLINOIS

How to End Money Bond and Increase Pretrial Freedom



**Coalition to
End Money Bond**

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INTRODUCTION

Since 2016, the Coalition to End Money Bond has been working to end the use of money bond and reduce pretrial jailing in Illinois. Our 14 member organizations include people who have been directly impacted by the existing unjust pretrial policies in Illinois as well as policy experts, community organizers, pastors, attorneys, and, collectively, tens of thousands of members and constituents. This policy vision lays out the specific principles and characteristics that would be the features of a fair, constitutional, and racially equitable system of pretrial practices in Illinois. Its recommendations are based on our extensive work speaking to a wide variety of stakeholders and community members throughout the state and nationally. **In short, this is our answer to the question, “What do we do after we eliminate money bond?”** We believe that everyone deserves access to pretrial freedom regardless of wealth and that ultimately, our system should work to prevent incarceration, provide resources for safety and stability in the community, and keep families and loved ones together. The following six principles provide a vision for how that system might look in Illinois.



PRINCIPLES FOR BOND REFORM

1 Release is the norm and detention is a carefully limited exception.

2 Money is never a determining factor in whether someone is free pending trial.

3 Accused people are viewed holistically and risk assessments are not used as substitutes for individualized decision-making.

4 Courts should help accused people attend court hearings and restrain people's freedom as little as possible while they are legally innocent and waiting for their trial.

5 Courts should only use restrictive pretrial conditions to ensure court appearance for people who have been proven to be willfully avoiding prosecution.

6 Pretrial practices should be transparent and accountable.

1

Release is the norm and detention is a carefully limited exception.

Everyone is entitled to the presumption of innocence. **In a just pretrial system, the vast majority of people who come into contact with law enforcement will remain free and able to continue their lives in their communities during the pretrial period.** Illinois' pretrial system should be designed to release as many people as possible with as few conditions (drug testing, electronic monitoring, etc.) as possible. Everyone accused of low-level charges not considered violent should be released directly from police custody shortly after arrest. The less time someone spends in police custody, the less likely they are to be harmed and destabilized. The goal in designing pretrial processes should be to avoid setting off a cycle in which people lose their jobs, housing, and other positive things in their lives. **People should be returned to their lives and communities as quickly as possible.**

In situations where a rigorous, adversarial hearing with evidence has proven that there is a high likelihood that someone may intentionally flee to avoid prosecution or cause physical danger to a specific person, and no other measures can sufficiently protect that person from harm, a judge may determine that a person should be incarcerated before their trial as a last resort. People accused of crimes should have the ability to call witnesses in their own defense to oppose their detention and should have access to as much information about the charges against them as possible to ensure a thorough, fair, and constitutionally sufficient detention hearing. No one factor, such as the charge a person is accused of, their history of being accused or convicted of a crime, or their score on a risk assessment tool should determine whether they can be jailed pretrial. **Detention decisions should be holistic and take into account each accused person's full life.**

The state must be held to a very high standard in proving that incarceration is absolutely necessary. When a judge decides to deny a person their freedom while awaiting trial, they should be required to record the specific, individualized reasons for this decision. In cases where an order to jail a person before trial is given, it must be immediately appealable and should be reviewed throughout the life of the case to determine if incarceration continues to be necessary or if a person should be released and provided with the resources they need to succeed in the pretrial period. **The harm caused by pretrial incarceration to an individual, their family, and community should be considered as serious as risk of harm to someone else.**

2

Money is never a determining factor in whether someone is free pending trial.

The amount of money a person has should never determine who is locked up and who is free while awaiting trial. **A just pretrial system should treat every person accused of a crime equally by completely eliminating the use of money bond.** The use of unaffordable money bonds to incarcerate people before they have been convicted of a crime is an unfair, ineffective, and unconstitutional practice. For decades, Illinois courts have set money bonds that are too high for people experiencing economic insecurity to pay, resulting in pretrial incarceration for the poor and pretrial freedom for the rich. **This is a form of wealth-based discrimination.** Lack of access to cash does not indicate that a person will miss a court date or be accused of a new crime while awaiting trial.

Unaffordable money bonds disproportionately harm Black, Brown, and impoverished people who are already disadvantaged by other forces in our criminal legal system. Money bond also hurts communities by removing their family members and friends from their homes while they are presumed innocent. Pretrial incarceration, even for as little as 24 hours, harms and destabilizes people in the long-term. Pretrial detention increases recidivism¹, causes people to lose their employment, and makes their housing situations more unstable.² Pretrial incarceration also warps our system of justice, pressuring accused people to plead guilty quickly in order to get out of custody, and increasing the leverage that prosecutors have to extract punitive plea deals.³

So-called “affordable” money bond is an ineffective and unfair pretrial condition that burdens Black and Brown families and impoverished families at alarming rates. Most money bonds are not paid by the accused people themselves but by their families. This means that when a person is arrested, their family is forced to sacrifice their financial safety net in order to bring their loved one home. Studies have shown that even when families can find the money to pay bond, these destabilizing factors can still lead to an increase in long-term recidivism for arrestees.⁴ **Money bond has also proven to be an ineffective means of guaranteeing appearance in court, therefore eliminating any reason for its use.**⁵

It is immoral and unjust to use money bond to fund the court system in Illinois. Funding our courts through fees, fines, and costs subtracted from money bonds is doubly unjust; not only does it burden innocent family members of accused people, it also acts as a regressive tax by funding an essential government function on the backs of the communities least able to afford it. Funding our criminal justice system with revenue gained through money bond is also bad policy because it allows legislators to underestimate the true costs of running our criminal justice system instead of appropriately funding it.

3

Accused people are viewed holistically and risk assessments are not used as substitutes for individualized decision-making.

Accused people must be provided with skilled counsel and given sufficient time to consult with their lawyer in advance of a bond hearing. They should be able to present the court with the factors in their lives that will help them attend all their court dates and avoid re-arrest before trial.

Risk assessment tools are more useful in evaluating how our criminal legal system will interact with a person based on racial identity and socio-economic status than they are in accurately anticipating the risk a person may pose to themselves or another. These tools gather data on how accused people have fared in attending court and avoiding rearrest. They should not be used as the primary or sole determinant of what conditions are placed on an accused person during the pretrial period and should never be used to order detention. **A just pretrial system looks at each individual accused of a crime holistically, using a variety of factors to determine what resources might be needed to support that person's success.**

A fair pretrial system does not rely on risk assessment tools that substantially over-predict “dangerousness” and risk of flight.⁶ The stakeholders in a just pretrial system must understand that the majority of accused people will attend all their court dates and not be re-arrested without any additional conditions placed on them by the court. Prosecutors, judges, and defense attorneys should be carefully trained on how risk assessments tools calculate scores and make predictions, including what they can and cannot predict and the actual likelihood of success predicted. The application of risk assessment tools must be reported in full transparency to the public.



4

Courts should help accused people attend court hearings and restrain people's freedom as little as possible while they are legally innocent and waiting for their trial.

A just pretrial system provides **voluntary pretrial services** to help accused people successfully navigate the pretrial process and appear at court dates. Pretrial services provided by the court should be non-restrictive and consist of evidence-based programs that have been shown to help people make court dates and avoid rearrest. **Some of the most promising pretrial services include text message reminders about court dates and transportation assistance to help accused persons get to and from the courthouse. These supportive services should be provided by a human services provider or community-based organization, not by a punitive or surveilling law enforcement agency, court, or probation department that oversees conditions of release as a form of punishment.**

Drug treatment programs should not be mandated by the court. Purely voluntary referrals to evidence-based services may be made, but there must not be consequences from the court regarding follow-through or "success" in programs. Studies show that mandated, coerced, or involuntary treatment run a much higher risk for both failure and, in the case of opioid use disorder, increased risk for fatal overdose than if the treatment is voluntary. Court-supervised treatment programs run the serious risks of giving the courts too much power over treatment decisions that should be made by healthcare providers and punishing people for return to substance use, which is a common part of recovery.

A fair pretrial system imposes the least restrictive pretrial conditions, which are requirements that constrain an accused persons' liberty. Pretrial conditions should only be imposed after a full and fair hearing, when a judge determines that the conditions are the least restrictive available to reasonably ensure someone's appearance at court or protect a specific, identifiable person from harm. **These conditions should be a last resort and never include conditions unrelated to the goals of ensuring appearance at court and protecting a specific person or persons from harm.**

Pretrial conditions should not prevent an accused person from performing basic personal responsibilities, impose direct or indirect economic costs, or unduly expose the accused person to new criminal charges. If conditions that substantially impede accused persons' freedom of movement and free participation in community life are used, the individual should be given pretrial detention credit for each day in those programs. **Under no circumstances should accused persons have to pay money in order to access conditions of release.**

5

Courts should only use restrictive pretrial conditions to ensure court appearance for people who have been proven to be willfully avoiding prosecution.

A just pretrial system responds reasonably and proportionately to missed court dates and does not incarcerate accused people for missing court unless there is proof that the person willfully fled to avoid prosecution. When a person misses court, the court should give the accused person at least 48 hours to appear in court before issuing an arrest warrant.

Many barriers exist for accused people who wish to follow all the conditions of their release and attend each court date, including poverty, lack of transportation, family and work obligations, and medical needs. **A fair pretrial system recognizes that the vast majority of accused people want to cooperate with the court process and are making reasonable efforts to attend all their court dates.**

If a person is brought to court on an arrest warrant after failing to appear, the court should conduct a full and fair hearing to determine whether the failure to appear was a result of willful flight. If it was not, the judge should allow the person to be re-released, and, if necessary, provide additional pretrial services to support future attendance at court. Pretrial detention should be used only as a last resort in cases in which the evidence is clear and convincing that a person has willfully fled prosecution and there are no less restrictive pretrial conditions that can prevent future flight.

6

Pretrial practices should be transparent and accountable.

A just pretrial system is transparent and accountable to the public. Illinois should have a statewide system of pretrial data collection for the courts. Statewide data on detention and release outcomes should be collected and made available for public review and system assessment purposes. Additionally, the public should have access to county-level information about bond decisions, how many individuals are being jailed pretrial and why, and what pretrial services and conditions exist in each county.

A fair pretrial system should give elected officials, court administrators, policy experts, and the public access to this information so that their practices can be consistently evaluated to make sure they are constitutional, that they follow Illinois law, that they conform with evidence-based research on effective pretrial services, and that they reflect principles of justice. A transparent and accountable pretrial system also helps ensure that pretrial practices are more reflective of community priorities and values.

CONCLUSION

Improving Illinois' pretrial justice system is an urgent and substantial project. Luckily it is an achievable one. The Pretrial Fairness Act would achieve all of the above reforms. Many different kinds of proposals exist that claim to or even do abolish money bond in Illinois, but that tagline alone is not enough. **Without ensuring other protections for accused people, eliminating money bond could actually increase the number of people jailed while awaiting trial.** We must ensure that any initiatives that reduce or eliminate the role of money in Illinois' pretrial justice system also abide by all of the above principles. **Bail reform in Illinois must lessen pretrial incarceration rates and racial disparities.**

And as we reduce the number of people in county jails, county budgets must also begin to shift from spending on incarceration toward spending on services and other resources in the community. Ultimately, a focus on prevention and meeting people's needs before they come into the criminal justice system is the best way to promote community safety and get better outcomes for individuals, communities, court systems, and the state. We call on the Illinois General Assembly, the Illinois Supreme Court Commission on Pretrial Practices, Governor JB Pritzker, and Lieutenant Governor Juliana Stratton to act swiftly to establish a just pretrial system as outlined in this vision.



ENDNOTES

- 1 | In one study, within 18 months of the resolution of their cases, detained people had a 20% increase in new misdemeanor charges and a 30% increase in new felony charges. See Paul Heaton, Sandra Mayson, Megan Stevenson, “The Downstream Consequences of Misdemeanor Pretrial Detention”, 69 Stan. L. Rev. 711 (March 2017).
- 2 | Accused people detained more than 3 days were 2.5 times less likely to be employed. They had a 40% higher rate of reporting that their arrest led to unstable housing situations, and they reported a 59% higher rate of negative effects on their dependent children than did people who were incarcerated for fewer than 3 days. See Holsinger, Alexander, Analyzing Bond Supervision Survey Data: The Effects of Pretrial Detention on Self-Reported Outcomes, Crime and Justice Institute, June 2016.
- 3 | See Paul Heaton, Sandra Mayson, Megan Stevenson. “The Downstream Consequences of Misdemeanor Pretrial Detention”, 69 Stan. L. Rev. 711 (March 2017) (observing a 25% higher rate of guilty pleas and a 43% higher rate of sentences to incarceration in Houston).
- 4 | See also Arpit Gupta, Christopher Hansman, and Ethan Frenchman. “The Heavy Costs of High Bail: Evidence from Judge Randomization”, 45 J. Legal Stud. 471 (June 2016).
- 5 | Paul Heaton, Sandra Mayson, Megan Stevenson. “The Downstream Consequences of Misdemeanor Pretrial Detention”, 69 Stan. L. Rev. 711 (March 2017).
- 6 | See Ethan Corey, “How a Tool to Help Judges May be Leading Them Astray,” *The Appeal* (Aug. 8, 2019), available at <https://theappeal.org/how-a-tool-to-help-judges-may-be-leading-them-astray/>.
- 7 | See The Editorial Board, “If Addiction Is a Disease, Why Is Relapsing a Crime?,” *The New York Times* (May 29, 2018), available at <https://www.nytimes.com/2018/05/29/opinion/addiction-relapse-prosecutions.html>.

All images in this document were taken at the Illinois Network for Pretrial Justice’s launch, the People’s Convening on Pretrial Freedom, in Springfield, Illinois on July 13, 2019.

ABOUT 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 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 Illinois.

The current members of the Coalition to End Money Bond are: ACLU of Illinois; A Just Harvest; Believers Bail Out, Chicago Appleseed Fund for Justice; Community Renewal Society; Illinois Justice Project; Justice and Witness Ministry of the Chicago Metropolitan Association, Illinois Conference, United Church of Christ; Nehemiah Trinity Rising; The Next Movement at Trinity United Church of Christ; The Shriver Center on Poverty Law; Southsiders Organized for Unity and Liberation (SOUL); The People’s Lobby; and Workers Center for Racial Justice.



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