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Cover: March to the Sangamon County Jail during the People’s Convening on Pretrial Freedom on July 13, 2019.
Left: The Coalition to End Money Bond hosts a teach-in at the North Shore Unitarian Church in Lake County on October 6, 2019.
Center: The Illinois Supreme Court Commission on Pretrial Practice’s Chicago Listening Session on June 17, 2019.
Right: Rally outside the Champaign County Jail before the start of the Illinois Supreme Court Commission on Pretrial Practice’s Urbana Listening Session on May 7, 2019.
In Illinois, as across the country, many people are incarcerated while awaiting trial only because they cannot pay a certain amount of money. In May 2016, the Coalition to End Money Bond formed in Chicago 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 money bond. In addition to ending the obvious unfairness of allowing access to money to determine who is incarcerated and who is free pending trial, the Coalition 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 understands 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.

In 2018, the Coalition began connecting with community groups and individuals in other parts of Illinois who also wanted to end money bond. After a series of collaborative educational events and lots of conversation, we decided to form a statewide coalition. The Illinois Network for Pretrial Justice officially launched in July 2019 with over 30 member organizations. The Network serves to connect organizations working to reduce pretrial incarceration in Illinois and, more broadly, to end mass incarceration and address the root causes of socio-economic and racial inequity in our legal system. By sharing information about local efforts, generating opportunities for collaboration, and developing shared strategies, the Network generates more power and leverages local work to achieve transformative pretrial policy changes for all Illinoisans. The Network is grounded in the Principles of Bond Reform in Illinois. All members of the Coalition to End Money Bond are member of the Illinois Network for Pretrial Justice.
In October 2016, the Coalition to End Money Bond supported a historic lawsuit challenging the practice of jailing people too poor to pay their bond. That lawsuit prompted Cook County Chief Judge Timothy Evans to issue General Order 18.8A, a groundbreaking court rule aimed at ending wealth-based incarceration in Cook County. After the Order was announced, in 2017, more than 70 community organizations called on the Supreme Court of Illinois to issue a Supreme Court rule that would prohibit incarceration due solely to the inability to afford a money bond. This call was supported by the Cook County Chief Judge, Public Defender, State’s Attorney, Board President, and Sheriff, as well as former U.S. Attorney General Eric Holder. These diverse constituencies all agreed that access to wealth should not determine pretrial freedom and that unaffordable money bonds undermine the presumption of innocence guaranteed by the U.S. Constitution.

A few months later, in December 2017, the Illinois Supreme Court established a Commission on Pretrial Practices to make factual findings and recommend pretrial reforms. The Commission was composed of judges and representatives from different parts of the criminal justice system, such as law enforcement, court clerks, and public defenders. Just one directly impacted person was appointed, and no advocates or other community members were included on the commission itself, though several advocates were invited to join working groups.

We called for the Illinois Supreme Court Commission on Pretrial Practices to recommend that the Supreme Court of Illinois adopt the proposed rule to end wealth-based pretrial incarceration in Illinois. This short report evaluates the Commission’s final report and recommendations, issued in April 2020.

**OUR CAMPAIGN FOR PUBLIC INPUT**

The Commission held four “listening sessions” in April, May, and June 2019 and provided the opportunity to submit written comments. Advocates, policy experts, faith leaders, elected officials, and—most importantly—impacted community members provided oral and written statements about the harms of pretrial incarceration. Communities from across Illinois attended the hearings in Springfield, Champaign-Urbana, Chicago, and Freeport. In total, more than 50 people testified at the hearings—almost all in support of bond reform. The majority spoke about the need to end money bond and reduce pretrial jailing. Many, including several Cook County elected officials, specifically requested that the commission adopt the proposed supreme court rule. Hundreds more people participated in the rallies in Champaign-Urbana and Chicago or attended the hearings to show their support.

Written comments were submitted from a diverse group of organizations and individuals, addressing the many ways in which money bond and pretrial incarceration harm our communities. In addition to a letter from the Coalition to End Money Bond, written comments were submitted by Access Living, the ACLU, the Challenging E-Carceration Campaign, Chicago Jobs Council, Chicago Recovery Alliance, Chicago Teachers Union, the Civic Federation, the Criminal Justice Advisory Committee, the Criminal Justice Policy Program at Harvard Law School, Human Rights Watch, The Leadership Conference on Civil and Human Rights, Love & Protect, Metropolitan Planning Council, NAMI Chicago, TASC, civil rights attorneys, and a diverse group of researchers and scholars concerned about the technical flaws in pretrial risk assessments. Cook County Board President Toni Preckwinkle, Cook County Health & Hospitals System, State Representative Will Guzzardi, and State Representative Justin Slaughter also submitted written comments.

The submissions explored the impact of money bond and pretrial incarceration on issues ranging from education and employment to mental health, disability, and drug treatment. Policy experts explored the use of secured money bail, risk assessment tools, due process requirements, and detention eligibility.
A number of the statements focused on the urgent need to decrease racial disparities and ensure, above all, that fewer people are jailed in Illinois. Additionally, over 1,500 people signed an online petition in support of the proposed supreme court rule.

In June 2019, the Coalition released Pursuing Pretrial Freedom: The Urgent Need for Bond Reform in Illinois. This report explored the impact of money bond and pretrial incarceration across the state and made recommendations to reform Illinois’ pretrial justice system. We urged the Commission to recommend:

- Mandatory non-monetary release for as many people as possible, including increased opportunities for citations in lieu of arrest;
- Presumption of non-monetary release for all other people who face arrest;
- Limitations on the role of risk assessment tools, if they are used at all;
- Use of less restrictive, more supportive means to ensure success during the pretrial period. People awaiting trial should be offered assistance getting to and from court along with real social services to help prevent future interactions with the criminal justice system;
- More flexible court dates and times (such as evenings or weekends).

The campaign to influence the Supreme Court Commission culminated with the People’s Convening on Pretrial Freedom in Springfield, Illinois on July 13th. More than 170 people from 11 counties across Illinois, including a representative of the Illinois Supreme Court Commission on Pretrial Practices, gathered to share knowledge, build relationships, and develop strategies to end unjust pretrial practices and work toward a more just future in Illinois. The event also launched the Illinois Network for Pretrial Justice, a network of organizations across the state working to reform our pretrial criminal legal system.

In sum, our campaign called for transformative pretrial reforms to restore the presumption of innocence for all accused people and eliminate the vast racial and socioeconomic disparities that currently define our criminal justice system. Our goal was to ensure that any proposed reforms would greatly reduce the number of people jailed in Illinois.
The Illinois Supreme Commission on Pretrial Practices’ final report was released in April 2020. In total, the Commission report made 54 recommendations, broken into eight subgroups. Overall, there is broad alignment between the Illinois Network for Pretrial Justice’s policy vision and the Commission’s recommendations to reduce pretrial incarceration and bring more fairness to the pretrial system. The Commission recommended the following policy changes that are also supported by the Coalition to End Money Bond and the Illinois Network for Pretrial Justice. We have summarized each for accessibility.

**Expand the ability of law enforcement to issue citations instead of arresting people.**

*Report recommendation #2*

Upon arrest, most people are detained by police until they are brought before a judge. This may take up to 72 hours. Studies show that many of the worst effects of incarceration, such as losing employment and child welfare interventions, occur within the first 24 hours. Longer term, people detained for short periods of time may lose their housing and access to benefits. All this instability also means they are more likely to miss court and be arrested in the future than someone who was promptly released. Thus it is critical to avoid arrest whenever possible.

**Prevent people from being incarcerated pretrial because they cannot pay a money bond.**

*Report recommendation #10*

Creating a fairer pretrial justice system starts with eliminating the use of money bond in the state of Illinois. Wealth-based pretrial incarceration must become a thing of the past. The size of a person’s bank account should never determine whether or not they walk free or are caged while fighting their case.

Ninety percent of people in jails across Illinois are incarcerated while awaiting trial. A majority of these people are incarcerated only because they can’t afford to pay a money bond. Ending money bond will dramatically reduce the number of people incarcerated in jails across the state and eliminate a major source of unfairness.

**Ensure many people are not eligible for pretrial incarceration at all by limiting eligible offenses.**

*Report recommendation #14*

Currently, in Illinois, people accused of any crime are at risk of being jailed while awaiting trial. This includes ordinance violations, misdemeanors, and low-level felonies for which people are unlikely to receive a sentence of incarceration even if convicted. We can and should decide that there are certain accusations that will never result in the loss of freedom while someone is still presumed innocent. This will ensure more people are released from custody as quickly as possible and preserve court resources for the smaller number of cases in which rigorous, adversarial detention hearings are necessary.

**Increase the burden the state must meet before pretrial detention is possible.**

*Report recommendation #19*

The Commission and the Network all agree that the judge should have to find by clear and convincing evidence that no conditions of release will assure safety or appearance before denying someone pretrial release. Right now in Illinois, there is no clear standard that must be met. In bond hearings across Illinois, people’s freedom is taken away from them in a matter of minutes, and sometimes even seconds. Such brief hearings do not reflect the seriousness of the decision to take away someone’s freedom while they are presumed innocent and are also constitutionally inadequate. If pretrial incarceration is to be ordered at all, it must only happen after a robust, adversarial detention hearing.
Require that release conditions and pretrial supervision relate directly to ensuring community safety and an accused person’s appearance in court.

Report recommendation #28

Right now, many pretrial conditions are punitive and simply create a higher likelihood that a person will be accused of a violation and end up incarcerated while their case is still pending. Pretrial conditions create rules that people cannot succeed under, and the more rules are applied, the more likely someone is to fail to meet them all.

The pretrial justice system should refer people to real supportive services while awaiting trial. This means providing what people need to get to court, such as bus passes or rideshare rides, offering more flexible court dates and rescheduling, and connecting people with voluntary social services in the community. These 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. All services must be voluntary, and people awaiting trial must never be punished for not taking advantage of them.

Limit the use of electronic monitoring.

Report recommendation #35

Many false alternatives to incarceration are being offered up in response to calls to reform our pretrial justice system. At the forefront is electronic monitoring (EM). Electronic monitoring is not an alternative to incarceration; it is an alternative form of incarceration. Electronic monitoring in people’s homes moves the jail into our communities and turns homes into cells. The restrictions of electronic monitoring are incredibly severe and can cause serious harm to individuals on it and their loved ones. People on EM are routinely denied the ability to go to work or are given restrictions that make it impossible for them to work. The restrictions can be so serious that people are unable to leave their homes to go to the grocery store or laundromat. People on EM have been prevented from going to the doctor or even taking their kids to school because they were unable to leave their homes.

Many counties in Illinois do not currently have pretrial electronic monitoring programs, but they may try to establish them if money bond is eliminated. We must work to prevent this. Data collection provisions should ensure that we monitor how many people are on EM and prevent its expansion. People can work in their individual counties to oppose the creation or expansion of EM and GPS monitoring programs and demand no new investment in pretrial surveillance. Furthermore, if fewer people are in jail, counties should take money from their jail budgets to fund any relevant pretrial services or conditions, not receive money from the state to expand probation or pretrial departments.

Create and implement a robust, individual-level data collection system for uniform statewide reporting and a central repository for information available to the public on the Illinois Supreme Court’s website.

Report recommendations #44 & 53

We know that current pretrial practices are harming people across the state, but we cannot get good information about what exactly is happening in Illinois’ 102 counties and 92 jails. Bond decisions and jail populations across the state are not currently being tracked. That means there is no meaningful oversight as to how many people are incarcerated while awaiting trial, who is being jailed, and why. Data collection will be essential to ensuring that any future reforms are properly implemented. It is what will allow us to ensure fewer people are jailed, racial disparities decrease, and that counties do not just replace money bond and incarceration in jail with incarceration at home on electronic monitoring or other punitive conditions.
We agree with the Commission that these changes are necessary to reduce the number of people incarcerated pretrial and to create a fairer pretrial justice system in Illinois. Without these changes, we risk maintaining the status quo, which all too often unnecessarily defaults to incarceration.

It should be noted though, that we have several concerns about the report.

The first is that the Commission set up four public hearings across the state to receive public comment on the pretrial justice system, but not a single comment was included in this report. This comment period was key to democratic change and inclusion of impacted communities, since no members of the general public were appointed to the Commission and only one impacted person was appointed. The vast majority of those comments from all four sites focused on how Illinois’ use of pretrial incarceration and money bond is incredibly damaging to the community and how the state is urgently in need of reforms.

Despite the participation of more than 50 people in these public hearings, not a single substantive reference to them is included in the report.

The failure of the Commission to reflect the consensus of the public hearings—that money bond should be eliminated and that pretrial jailing is a crisis in Illinois requiring urgent and bold reforms—relates to our second primary issue with the Commission’s report: It minimizes the intrinsic harms of money bond and pretrial incarceration.

The report does make clear that the use of money bond as a way to jail people pretrial is antithetical to the constitutional guarantees of due process and the presumption of innocence. However, instead of clearly calling for the elimination of money bond, the report chooses to rationalize why judges use it. In the end, the Commission’s report is unclear about what conditions must be met before money bond can be abolished in Illinois.

We fear that the Commission’s report could be interpreted to mean that the end of money bond should be conditioned on the creation of a statewide risk assessment tool, pretrial services program, or both. Ending the use of money bond does not need to coincide with an expansion of pretrial surveillance or the use of racist risk assessment tools.

Risk assessment tools (RATs) are already permitted in Illinois law and used in several counties. They are heavily relied on by system actors who want to move away from money bond. We must limit their use and reduce the harm they could cause by creating new protections for accused people if a RAT is used. These tools were developed to help reduce the chance that judges make release decisions based on their own biases. However, they are also inherently problematic as they are based on people’s criminal records, which we know start with racist policing practices and contain massive racial disparities.

People need resources, not surveillance and monitoring. There are thousands of people incarcerated in jails across Illinois, and if these individuals or their loved ones had more money, they would be free today. Many of these individuals would be released without onerous pretrial conditions. Numerous studies have shown that the payment of a money bond does not increase the likelihood that a person will return to court. In turn, people should not be saddled with conditions on their release if the payment of a money bond is no longer required to secure pretrial release.

There is no doubt that the Coalition and Network agree with the report’s assertion that the end of money bond should be paired with a systematic overhaul of the bond statute. This is why the legislative proposals supported by the Coalition and Network have always been holistic and do not stop with simply ending money bond. Without those systematic changes, guaranteeing accused people their presumption of innocence and proper due process rights is impossible.
CONCLUSION

The use of money bond must end now. It should be done in a way that assures pretrial detention is the carefully limited exception and that liberty is the norm. To that end, we agree with the vast majority of the specific reforms outlined in the report and look forward to working with all branches of the government to achieve those ends. However, the lack of community input in the document and its muddled approach to ending money bond is concerning.

The Illinois Network for Pretrial Justice and the Coalition to End Money Bond remain committed to ending money bond and creating a fairer pretrial justice system. While we did not win the Supreme Court Rule we began demanding over two and a half years ago, our organizing efforts had a significant impact on the Commission’s findings. Now, their report will be a helpful tool in furthering the conversation surrounding pretrial justice reform in our state.

In addition, the campaign to influence the outcome of this commission has brought communities across Illinois closer together and put us in a better position to win the changes our communities deserve. Together, we will end money bond and create a fairer pretrial justice system for all Illinoisans.

The Coalition to End Money Bond published our policy paper, Vision for a Just Pretrial System in Illinois\(^3\), in January 2020. It lays out the specific principles and characteristics of a fair, constitutional, and racially equitable system of pretrial practices in Illinois. Essentially, it is our answer to the question, “What do we do after we eliminate money bond?” 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 following principles:

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.

The Illinois Network for Pretrial Justice and Coalition to End Money Bond will continue to build our campaign to significantly reduce the number of people jailed in Illinois. We urgently call on the Illinois General Assembly, Governor JB Pritzker, and Lieutenant Governor Juliana Stratton to end money bond and establish a just pretrial system.
THE CURRENT MEMBERS OF THE ILLINOIS NETWORK FOR PRETRIAL JUSTICE ARE:

A Just Harvest
ACLU of Champaign County
ACLU of Illinois
Believers Bail Out
Black Justice Project
The Center for Empowerment and Justice
Champaign County Bailout Coalition
Change Peoria
Chicago Appleseed Fund for Justice
Chicago Democratic Socialists of America
The Coalition to Reduce Recidivism in Lake County
Community Renewal Society
Decarcerate BloNo
Faith Coalition for the Common Good
Illinois Justice Project
Illinois Religious Action Center of Reform Judaism (RAC-IL)
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
NOW (National Organization for Women)-IL
The People’s Lobby
Peoria Coalition to End Money Bond
Rockford Urban Ministries
The Shriver Center on Poverty Law
Southsiders Organized for Unity and Liberation (SOUL)
Students for Sensible Drug Policy-IL
TASC (Treatment Alternatives for Safe Communities)
United Congregations of Metro East
Unitarian Universalist Advocacy Network of Illinois
Unitarian Universalist Prison Ministry of Illinois
Workers Center for Racial Justice.
ENDNOTES

8. https://endmoneybond.org/
10. https://www.aclu.org/
11. https://www.challengingecarceration.org/
12. https://cjc.net/
15. https://www.civicfed.org/
17. http://cjpp.law.harvard.edu/
18. https://www.hrw.org/
22. https://www.namichicago.org/
Illinois Network for Pretrial Justice
www.endmoneybond.org