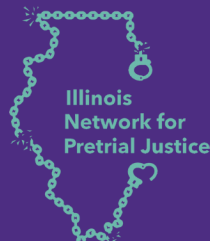

FROM POLICY TO PROGRESS:

A ROADMAP FOR THE SUCCESSFUL IMPLEMENTATION
OF THE PRETRIAL FAIRNESS ACT



JANUARY 2022

IN MEMORY OF MALIK JABRIL ALIM

1992 - 2021



CAMPAIGN COORDINATOR FOR THE COALITION
TO END MONEY BOND FROM 2019-2021

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INTRODUCTION

In February 2021, [Governor JB Pritzker signed](#) the [Pretrial Fairness Act](#) into law as part of the [SAFE-T Act](#),¹ a criminal justice omnibus bill crafted by the Illinois Legislative Black Caucus to expand access to justice and make our communities safer. The Pretrial Fairness Act will transform Illinois' pretrial system and make it the first state in the country to completely end the use of money bond. Legislators allotted two years for the state to prepare for the law's implementation, and on January 1, 2023, the Pretrial Fairness Act will go into full effect across Illinois.

County court systems and state agencies must work together with impacted communities and advocates to ensure successful implementation of the Pretrial Fairness Act. The experiences and insights of directly impacted communities were essential to shaping the Pretrial Fairness Act, and it is essential that their perspectives are meaningfully centered in the state's implementation efforts. Their first-hand knowledge of the previous system's failures is necessary to ensure that Illinois does not recreate previous pitfalls. To meaningfully engage with directly impacted communities, implementation efforts should include space to listen to people's lived experiences and also empower directly impacted people to be decision makers in ongoing policy development. Additionally, the advocates and community-based legal experts who helped draft the Pretrial Fairness Act spent years studying the pretrial legal system. They should be called on to provide expertise and necessary insights that will enhance the state's implementation efforts.

Communities across Illinois have organized and advocated for the end of wealth-based pretrial incarceration since 2014. This work was led by the [Coalition to End Money Bond](#) and the [Illinois Network for Pretrial Justice](#), both of which brought together impacted communities and policy experts to shape the Pretrial Fairness Act and support its passage. These efforts were guided by the [Principles of Bond Reform](#), a document developed by the Coalition and endorsed by elected officials, legal experts, and service providers, as well as community and policy organizations. The Principles were used to create the Network's "[Vision for a Just Pretrial System: How to End Money Bond and Increase Pretrial Freedom](#)," which served as a blueprint for drafting the Pretrial Fairness Act.

As a product of research, debate, and an alignment of values, the Pretrial Fairness Act was [endorsed by more than 100 organizations](#) representing tens of thousands of Illinoisans. The Principles of Bond Reform should serve as a foundation to guide the state's efforts to successfully implement this legislation and change the culture of Illinois' criminal courts.

These principles are united by a common goal: reducing the harms of pretrial incarceration and expanding the benefits of pretrial freedom to communities across Illinois. The Pretrial Fairness Act has the power to bring pretrial practices in line with the U.S. and Illinois constitutions, which require ample due process protections before taking someone's liberty while they are legally presumed innocent and awaiting trial. Though existing law already required pretrial release to be the norm and detention the carefully limited exception, various aspects of our pretrial system have undermined this standard to the detriment of over 250,000 Illinoisans every year. The Pretrial Fairness Act mitigates this problem and restores the presumption of innocence in our state. This report uses the lens of the Principles of Bond Reform to outline the Illinois Network for Pretrial Justice's recommendations for the full implementation of the Pretrial Fairness Act in 2023 and beyond.



Illinois Network for Pretrial Justice members gather for a legislative advocacy training in Bloomington-Normal on January 25, 2020.

EXECUTIVE SUMMARY

Pretrial incarceration has devastating impacts on our communities, causing the loss of housing, income, parental rights, public benefits, medication access, and physical and mental health care, along with mental and emotional stability. People who have experienced the harms of pretrial jailing provided guidance for bail reform efforts through the Principles of Bond Reform and shaped the Pretrial Fairness Act. It is critical that in implementation, the spirit of these reforms is not lost. There are three strategic approaches that can be taken to implement the Pretrial Fairness Act with fidelity to the Principles of Bond Reform, which will be covered in this report.

First, Illinois must not create or expand pretrial practices that further entrench the losses of liberty the Pretrial Fairness Act seeks to address. Pretrial incarceration is limited under the Pretrial Fairness Act due to the incredibly damaging effects that restrictions on freedom have on accused people and their communities. It is important that when people are granted pretrial release under the new law, our state does not subject them to other forms of surveillance and restrictions that would recreate similar difficulties. For example, pretrial services in Illinois should be offered on a voluntary basis and must not exceed what is affirmatively requested by accused people to help them attend their court dates and avoid rearrest. For many people, court reminders and transportation assistance would be helpful. Regularly mandated check-ins and other requirements that are difficult to meet or that heavily infringe on people's liberty while they are legally presumed innocent, however, would be harmful and make it more difficult for people to succeed while awaiting trial.

Second, Illinois should intentionally scrutinize and reduce reliance on tools such as risk assessment instruments and electronic monitoring that have been limited and regulated by the Pretrial Fairness Act. Risk assessment tools have not been able to accurately and reliably predict rearrest or willful flight during the pretrial period, and [ample evidence](#) has shown them to be rife with racial bias that leads

to inequitable outcomes. Electronic monitoring is similarly racially inequitable and also unreasonably restrictive, replicating the harms of pretrial jailing. Electronic monitoring has also not been shown to have any positive impact on pretrial outcomes.

Finally, Illinois must use data to rigorously assess how well its courts are conforming to the requirements of the Pretrial Fairness Act, and to ensure that the law is having its intended effects. The data collection requirements of the law are incredibly important, and Illinois agencies must collaborate to implement systems that support data sharing across different counties. Data about pretrial outcomes will be a tool to identify not only discrepancies in pretrial practices but also locations where there may be a greater need for education, training, and further culture change among system stakeholders.

Illinois' refusal to recreate the harms caused by past pretrial practices, willingness to limit programs that have proven detrimental to people awaiting trial, and commitment to faithfully collect and report all required data will ensure that the spirit of the Pretrial Fairness Act is upheld and will transform the lives of hundreds of thousands of people across our state.



Current Speaker of the House Emanuel "Chris" Welch with members of INPJ during the Pretrial Fairness Act Lobby Day at the state capitol on February 25, 2020.

PRINCIPLE #1

Access to money should not determine whether or not an accused person is detained in jail or subject to other conditions pending trial.

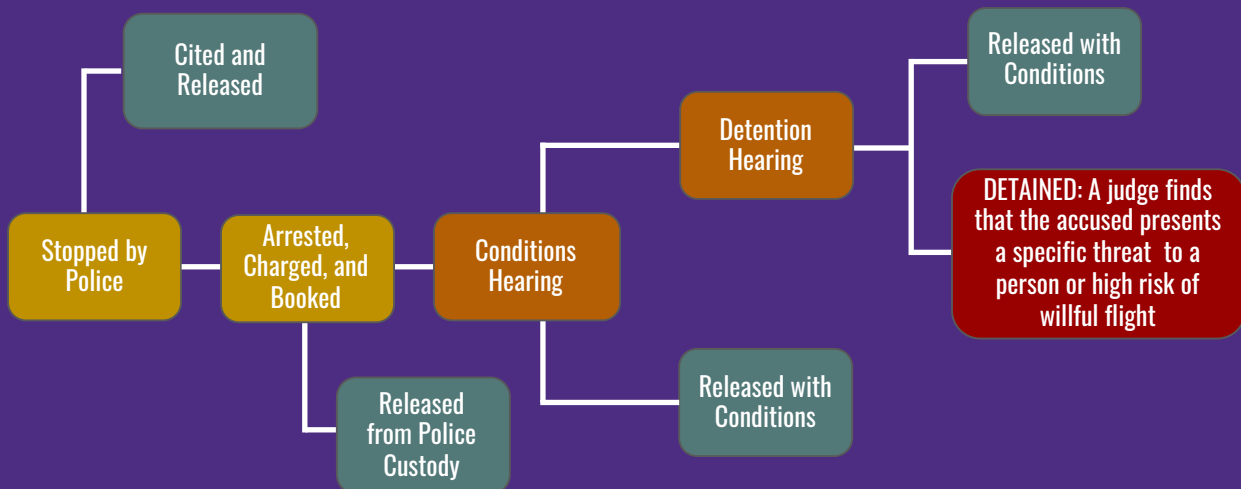
The Pretrial Fairness Act ends Illinois' reliance on access to money as the primary determinant of pretrial release or incarceration. This ensures that the presumption of innocence is available to everyone—not just those who can afford it. For decades, the amount of money an accused person had dictated whether they would be caged or permitted to return to their community while awaiting trial. Under the new system, a person's freedom will only be denied if they are facing a charge that makes them eligible for detention and if, after a robust and individualized hearing, the judge finds them to pose a specific threat to another person or have a high risk of willfully fleeing prosecution. Judges also retain the ability to place conditions of release on all accused people while they await trial.

One of the primary reasons that Illinois set out to reduce pretrial incarceration was because jail negatively impacts accused people by causing them to lose their jobs and housing while also erecting other barriers to stability. Financial conditions of release replicate some of the same harms by making it harder for accused people

and their loved ones to pay for rent, utilities, and other basic necessities. The destabilization of a person's life while awaiting trial can also increase the likelihood that a person will miss court or be arrested in the future.² It is essential that Illinois bars courts from charging accused people fees for any conditions placed on their pretrial release. Necessary pretrial reforms must not create new ways to criminalize poverty.

For these reasons, it is essential that any pretrial conditions, including electronic monitoring and treatment programs, present no cost to the person being subjected to them. Requiring accused people to pay for conditions placed on them by the court would amount to nothing short of a pretrial punishment similar to the current harm caused by money bond. In addition, pretrial fees raise concerns about inconsistent access to waivers based on ability to pay, possible disparate program access, and punishment based on financial resources. Inability to pay for or access paid pretrial conditions could become grounds for incarceration, recreating the wealth-based jailing the Pretrial Fairness Act seeks to eliminate.

How the Pretrial Fairness Act Works



ROBBIE'S STORY

When Robbie's family paid Champaign County \$2,000 to secure his freedom, they were informed that there was an additional \$200 fee to rent the GPS monitoring equipment that was required as a condition of his release. After that, \$75 was required every week that he was monitored while awaiting trial. If these payments weren't made on time, Robbie would immediately be taken back into custody.

At the time of his arrest, Robbie was living at home with his mother and two-year-old daughter. He was working as a sales representative for a cable company and doing violence prevention work in his community. Robbie was doing everything he could to prepare for the birth of his second child. Unfortunately, his arrest and the conditions of his release turned his entire world upside down.

Robbie's time in custody caused him to lose his job with the cable company, and the conditions of his monitoring left him unable to return to his home with his mother. While not in jail, electronic monitoring made Robbie and his daughter homeless. Over the next several months, they would live out of their car and stay on different friends' couches. The lack of stable housing made it very hard for Robbie to find new work. The weekly payments required to stay free also made it impossible for him to secure an apartment and made paying for necessities extremely difficult. By the time his case ended, Robbie had paid nearly \$1,000 in electronic monitoring fees to Champaign County.

The stress of being surveilled also triggered Robbie's post-traumatic stress disorder. In addition to needing to pay for the monitor, he had to ensure it stayed charged. If the monitor charged for more than six hours, the battery would fry, breaking the monitor and resulting in an additional \$1,000 fee that Robbie knew he would be unable to pay. This meant he needed to schedule two hours a day where he knew he wouldn't need to go anywhere so that he could safely charge the monitor. Scheduling this time impeded Robbie's ability to take care of essential life tasks like getting to job interviews.

The mounting fees, stress, and the challenges the monitor created in his attempts to stabilize his life eventually led to Robbie taking a plea deal. When the case finally ended, Robbie and his daughter were able to return home to his mother, and he was able to secure steady employment. Robbie is now focused on caring for his family and supporting violence prevention efforts in Urbana.



Community members rally outside the Illinois Supreme Court Commission on Pretrial Practices' listening session in Champaign-Urbana on May 6, 2019.

PRINCIPLE #2

Pretrial services programs should be used to promote court attendance and provide needed services on a voluntary basis without placing unnecessary conditions on the accused person.

The Pretrial Fairness Act emphasizes that conditions of release may be set only to achieve the following three goals:

*Judges must only impose conditions that “reasonably assure” (1) the appearance of an accused person in court as required, (2) the safety of any other person or persons, and (3) the likely compliance by the accused person with all the conditions of pretrial release.*³

Illinois is preparing to develop additional pretrial services programs for monitoring and enforcing the conditions of pretrial release set by judges. Some of these programs can, at times, serve an important function in removing barriers to court attendance and helping connect people with needed support. Currently, however, some conditions of release create unnecessary hurdles for people released pretrial, effectively becoming a form of pretrial punishment. Pretrial services programs should be voluntary, not mandatory, and must not include surveillance-like conditions that are unnecessary to achieve the narrow, legally-defined goals of pretrial conditions.



The focus of pretrial services must be limited to addressing the stated needs of accused people while respecting their liberty and autonomy.



Research has shown that the vast majority of people who are released pretrial without restrictive conditions return to court and are not rearrested. A study conducted by Loyola University of Chicago researchers of Cook County’s felony bond court found that 80.2% of people accused of felony charges appeared for every court date, 83% were not rearrested for any charge, and 97% were not rearrested for a violent charge.⁴ After New Jersey switched to

an almost exclusively no-cash bail system, its court appearance rates remained high: 90% of accused people in New Jersey appeared for every court date.⁵ It is important for judges to keep in mind that for most people, there is simply no need to impose any pretrial conditions at all.

For those who do need additional support, pretrial services should be focused on removing barriers to court appearance and, when requested, connecting people to voluntary community-based supports equipped to meet their needs. Barriers might include lack of transportation or childcare, unaddressed mental health or substance use issues, or inadequate access to other basic resources. Research suggests that pretrial services can provide assistance to accused people through court reminders in the form of texts, emails, or mailings.⁶ Although there is limited research on other types of support, direct links to mental health or substance use treatment providers (if desired by the accused person), childcare, and transportation may also increase court appearance.⁷

There are successful models all over the country for non-punitive, helpful pretrial supports that can reduce the use of pretrial jailing and help people attend their court dates. Many jurisdictions have successful text and court reminder systems, and research has been conducted that pinpoints the most effective ways to provide these reminders.⁸ The Pretrial Fairness Act also allows courts to provide grace periods without issuing warrants for failures to appear. Other jurisdictions, including Hamilton County, Ohio (Cincinnati), operate a failure to appear unit where people who have failed to appear in court for certain charges can have their court dates rescheduled without needing to go before a judge and without being arrested.⁹ These kinds of common-sense, helpful procedural reforms can increase court appearance rates without subjecting people to the harmful effects of arrest and jail.

LIVE4LALI'S STORY

Live4Lali is an overdose prevention, harm reduction, and substance use prevention and recovery nonprofit organization in the Chicago suburbs. Formed in 2009 after the overdose death of Alex Laliberte, its mission is to reduce stigma and prevent substance use disorder among individuals, families, and communities, and minimize the overall health, legal, and social harms associated with substance use. Live4Lali operates under a harm reduction model, which focuses on providing services in a non-judgmental and non-coercive manner while encouraging and supporting positive health decisions with respect for the dignity and well-being of all individuals. Harm reduction recognizes that everyone deserves connection, healing, and support, and that some people are not ready to stop using substances or enter treatment. Live4Lali meets people where they're at, regardless.

At Live4Lali, many outreach workers have personal experience with substance use disorders. Their diverse experiences and perspectives help inform Live4Lali's approach to peer support and recovery. One of the core tenets of the organization's work is meeting people where they are and supporting them to make positive health and behavioral choices for themselves. Autonomy and dignity are critical to the success of any service intended to support vulnerable individuals, and that includes decisions about substance use treatment and recovery.

This approach also recognizes that there are multiple pathways to recovery, with services available that range from mutual support groups to in-patient treatment, certified recovery coaching, and many others. Peer recovery coaches bring an additional layer of experience to their work as they are typically people in recovery themselves or people who have personal experience with substance use disorders. A key principle of recovery coaching, an evidence-based practice that comes with certification, is that it is non-coercive, meaning that these specialists are specifically trained in this model that recognizes people with substance use disorders should have the right to determine if and when to enter a treatment program for themselves.

This is consistent with best practices worldwide. In 2016, the United Nations Office on Drug and Crime and the World Health Organization published International Standards for the Treatment of Drug Use Disorders, which includes the principle that "Treatment should not be forced or against the will and autonomy of the patient."¹⁰ The Pretrial Fairness Act recognizes this and takes a critical step towards ensuring that Illinois' criminal legal system supports positive outcomes for individuals who use drugs while respecting their dignity and autonomy.



Live4Lali's table at a community outreach event.

PRINCIPLE #3

Conditions of pretrial release 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.

Returning to the community allows people awaiting trial to continue working, being caregivers, attending school, paying their rent or mortgage, and performing daily life activities. When people have the ability to live full lives, our communities are safer and people released pretrial are not at increased risk of rearrest or faced with new or additional economic barriers. The Pretrial Fairness Act takes critical steps toward guaranteeing that legally innocent people can maintain healthy lives and avoid the destabilizing impacts of onerous conditions of pretrial release, such as drug testing and electronic monitoring.

A major achievement of the Pretrial Fairness Act is that it reduces emphasis on drug testing as a condition of pretrial release. By deleting the explicit authorization of drug testing, as recommended by the Supreme Court in its [final report on pretrial practices](#), the Pretrial Fairness Act helps reduce the court's broad focus on compliance and the stigmatization of people who use substances. Incarcerating people who use substances is a dangerous practice that can lead to harmful and even deadly withdrawal symptoms, as well as increased risk of overdose death upon release because of decreased tolerance. The reduced emphasis on drug testing promotes the use of appropriate, voluntary, community-based treatment for substance use, rather than the continued criminalization of people for substance use.

While the use of electronic monitoring (EM) has [expanded in Cook County](#) since the state of the COVID-19 pandemic, there is no evidence to indicate that EM contributes to enhancing community safety, incentivizing court appearances after release, or reducing rearrests. In fact, EM likely increases the risk of further incarceration by removing released people's access to resources that support their success,

hindering efforts to get and maintain gainful employment, and replicating many of the most devastating impacts of pretrial incarceration in brick-and-mortar jails. Additionally, [technical violations and equipment malfunctions often result in additional charges](#), which cause people further financial and emotional stress, lead to more jail time, and negatively impact the final outcomes in their cases.

“ Ultimately, use of electronic monitoring as a condition of pretrial release threatens to undermine the spirit of the Pretrial Fairness Act. EM extends the harmful impacts of incarceration by maintaining inequity in the criminal legal system and allowing wealth and access to resources to affect a person's ability to comply with release conditions. ”

While the Pretrial Fairness Act limits the use of electronic monitoring (EM), electronic monitoring as a condition of release extends the reach of trauma caused by incarceration and deters efforts to address the root causes of harm in our communities. Given EM's inefficacy at reducing rearrest and its high likelihood of causing harm through further incarceration, Illinois should further limit its use with the goal of eventually eliminating pretrial electronic monitoring entirely. The same approach should be taken with any similarly punitive pretrial conditions that have the effect of making pretrial success more difficult—and pretrial incarceration more likely—for accused people.

TIMOTHY'S STORY

In June 2017, Timothy's wife had just given birth to a baby boy. At the time, they were living in suburban Glendale Heights with their two other children, and Timothy was working full time with a real estate company. Things were looking good for his family—at the age of 30, Timothy was able to move them out to the suburbs and was holding down a great job. Unfortunately, Timothy was arrested in October 2017 and given a \$100,000 D-bond, meaning he needed \$10,000 to purchase his freedom. Without the money, Timothy was stuck in jail. Within a month, their landlord had begun eviction proceedings against the family. His two oldest kids missed their father, and his partner was on her own taking care of the children and raising the newborn.

Timothy's attorney was able to get his bond reduced, but the judge added house arrest with electronic monitoring as a condition of his release. Most pretrial electronic monitoring in Cook County is operated by the Sheriff's Office, who will only monitor people on house arrest inside the county. The addition of electronic monitoring to Timothy's conditions of release meant that regardless of the outcome of the eviction, he and his family had to move back to Cook County in order for him to be released from jail.

Without his income, Timothy's family was unable to afford a new place in Cook County and had to move in with his sister. Timothy, his partner, their newborn, and two older children would be spending the next several months on an air mattress in the apartment's front room. Timothy's house arrest also forced his wife to return to work sooner than she had planned following her pregnancy.

Electronic monitoring was a horrible experience for Timothy and his family. He wasn't able to get movement to work for two months. One day, while on house arrest, Timothy thought his appendix was going to burst. He tried to bear the pain for several hours before finally deciding to call the Sheriff's Office to ask for permission to leave his home and go to the hospital. The Sheriff's Office told him that if he left the apartment, he would be subject to arrest for violating his electronic monitoring. He was told to call an ambulance, and that the Sheriff's Office would talk to the EMTs and then decide whether or not he actually needed to leave home for medical reasons. The fear of incurring medical debt from calling an ambulance led Timothy to wait the pain out instead of seeking the medical attention he would have taken advantage of had he not been on EM.



Timothy

In February 2018, Timothy began working again. Soon after, he was able to get a new apartment for his family. When they secured their new home, Timothy had to send his family ahead without him because it took over a week for the Sheriff's Office to move the electronic monitoring equipment to his new residence. By the time his case ended, Timothy had spent 345 days on electronic monitoring. His time on electronic monitoring was a major setback for his family. It has taken three years, but Timothy and his wife have now been able to rebuild the life they had before he was placed on electronic monitoring. Timothy is currently working full time running his own real estate business and happily living with his family in Chicago.

PRINCIPLE #4

Pretrial detention and other restrictions on liberty should be used only as a last resort to ensure community safety and the accused person's appearance in court.

The Pretrial Fairness Act outlines a decision-making process that prioritizes the right to pretrial freedom while protecting community safety. By creating a list of qualifying charges for detention, the law ensures that pretrial incarceration is only possible in cases where the safety of someone else is at risk or the accused person has a high likelihood of fleeing prosecution. Furthermore, the law creates new standards that must be met even before people charged with qualifying offenses can be denied pretrial release.

These limitations on the power to detain are crucial for protecting the pretrial freedom of people presumed innocent under the law. Historically, courts have liberally used the power to detain and have treated pretrial incarceration as a way to dole out punishment without conviction. It is vital that the limitations on the power to detain be retained as originally written in the Pretrial Fairness Act. Making changes to these limitations could undermine the purpose of the legislation by creating a system with higher—rather than lower—pretrial incarceration rates.

The Pretrial Fairness Act creates four key limitations on the court's ability to incarcerate people who are awaiting trial. Each of these must remain in place in order for the legislation to effectively reduce the number of people in jail and promote equity and justice.

- **First, pretrial incarceration must be limited to people charged with a small set of charges.**
- **Second, release and detention decisions must be made quickly.**
- **Third, for people charged with those qualifying offenses, the accused person must pose a specific, real, and present threat to another person.**
- **Fourth, the prosecutor must ask that a person be detained before the judge can deny them pretrial release.**

If the ability to incarcerate people pretrial is extended to more charges, or if the standard for dangerousness is loosened, people who pose no



Rep. Justin Slaughter speaks at the rally in the state capitol during the Pretrial Fairness Act Lobby Day on February 25, 2020.

threat to anyone will be jailed before trial. This needlessly removes them from their communities, destabilizes their lives, and traumatizes them. Most people who are criminally prosecuted are not sentenced to prison. We must minimize the number of people who can be subjected to the damaging effects of incarceration while awaiting trial.

It is also essential that decisions about pretrial release and detention are made as quickly as possible, since even two days in jail can have a damaging and destabilizing impact. Initial appearances in court should occur within 48 hours, which ensures that people who will be released are not unnecessarily jailed while awaiting a decision. The Pretrial Fairness Act also requires that if the prosecution seeks detention, that hearing be held within 24-48 hours of the accused person's initial appearance in court, depending on the charge. This strict timeline ensures that people who are not denied pretrial release do not spend excess time in jail awaiting the court's decision. It is essential that the time frame for detention hearings is not expanded or changed to refer to business days only; if that happened, people the state petitions to detain could end up spending more time in jail than before reforms—undermining the Act's goals.

Prosecutors must retain the sole decision-making power to initiate a detention hearing. At the beginning of a case, judges have no information about the facts of the case or the strength of the evidence against the person. The prosecutor is in the best position to determine whether the case warrants an attempt to detain someone—and then the judge must make the ultimate legal determination as to whether jail is necessary, after hearing all the arguments. This division of power makes sure that neither prosecutors nor judges have unilateral authority to detain a person. This is the structure used in the federal pretrial system¹¹ and in New Jersey's almost no-money system,¹² and it is essential that Illinois also adopt this system, as proposed in the Pretrial Fairness Act.

There is another common pitfall in pretrial decision-making that Illinois must also avoid: reliance on risk assessment tools (RATs). The Illinois Supreme

Court has announced plans to create an Illinois-specific risk assessment tool. The Illinois Network for Pretrial Justice does not believe that creating a fair risk assessment tool is possible, and we urge Illinois Courts to de-emphasize the use of RATs in pretrial decision-making.

In the past decade, proponents of RATs have argued that they reduce biased decision-making by judges, but the most recent research suggests that this may not be the case.¹³ Multiple national policy organizations who previously championed risk assessment tools, including the Pretrial Justice Institute, have released statements in the past two years opposing their use. As the Pretrial Justice Institute writes:

These tools are not able to do what they claim to do—accurately predict the behavior of people released pretrial and guide the setting of conditions to mitigate certain behaviors. [Risk Assessment Instruments] simply add a veneer of scientific objectivity and mathematical precision to what are really very weak guesses about the future, based on information gathered from within a structurally racist and unequal system of law, policy and practice.¹⁴

As courts consider their use of risk assessments, they must keep in mind that most people released pretrial simply are not particularly “risky”—even those who score in “high risk” categories on risk assessments. The vast majority of people released pretrial will appear at every court date and will not be arrested for another crime, regardless of their score on a risk assessment. One study found that nearly 85% of people designated “high risk” by Arnold Ventures’ PSA risk assessment made all scheduled court appearances and remained arrest-free pretrial.¹⁵ The most recent Standards from the National Association of Pretrial Services Agencies (NAPSA) note that court must be mindful that higher scores on risk assessments do not demonstrate a high likelihood of failing to appear or of being rearrested pretrial.¹⁶

Risk Assessment Tools inevitably draw their information from sources that have baked-in racial and economic bias, such as:

Age at First Arrest:

Police are more likely to arrest Black youth. Thirty percent of Black men have been arrested by age 18, as compared to 22% of white men.¹⁷

Failures to Appear in Court:

Failures to appear in court usually represent economic circumstances rather than a willful desire to miss court. Failures to appear should be addressed with increased support, like reminders and transportation help, rather than used as a reason for pretrial incarceration or restrictive conditions.

Employment:

The unemployment rate of Black people has been twice the rate of white people consistently since at least the 1950s.¹⁸

Prior Convictions:

Eight percent of all American adults have a felony conviction, but 33% of all Black men do. Black people are also more likely to be wrongfully convicted than white people.¹⁹

Prior Prison Sentences:

The cumulative effects of bias in the criminal legal system means that Black men are 26% more likely to go to prison than white men, and Latinx men are 30% more likely to go to prison than white men.²⁰

Current Charge:

The choice of initial charge is closely connected to the race and ethnicity of accused people. Black and Latinx people are more likely to be initially charged with more serious offenses.²¹

Housing Stability and Access:

Houselessness is a racially disproportionate issue. Black people are overrepresented in the houseless population. For example, in 2018, Black people comprised about 30% of Chicago's population but about 80% of its unhoused population,²² and homeownership rates are lower among Black Americans because of over a century of racial discrimination in housing policy.²³

There is no “shorthand” way to determine the level to which someone is likely to be rearrested or fail to appear in court. The most important thing for courts to remember is that the vast majority of people will be successful pretrial without any interference by the courts. Therefore, the vast majority of people should be released with minimal, if any, pretrial conditions. Judges and prosecutors must be educated on racial bias in decision-making and tracked and evaluated on their ability to make careful, individualized decisions about pretrial release and pretrial conditions that do not perpetuate racial discrimination in the pretrial legal system.

ULONDA'S STORY

Ulonda was incarcerated in the Sangamon County Jail for six months because she couldn't afford to pay her money bond. At the time, she was 30 years old, working for a moving company, and caring for her three children in an apartment in Springfield. Her incarceration caused her to lose her home and temporarily lose custody of her children. The experience turned her life upside down, exacerbating the problems she faced prior to her entanglement with the criminal legal system.



Community members rally outside the Sangamon County Jail in Springfield during the People's Convening for Pretrial Freedom on July 13, 2019.

Prior to her incarceration, Ulonda had been struggling with mental health issues and substance use. During her time in the Sangamon County Jail, she was cut off from her community because she could not afford to make phone calls and was unable to access her medication. Routine disrespect and mistreatment from jail guards, including the denial of access to menstrual pads, began to compound and sent Ulonda spiraling. Her situation ultimately led to her attempting to take her own life while in custody. In response, Ulonda was stripped of her clothes, held in isolation for months, and not given any support.



Ulonda

In the years following her incarceration, Ulonda has begun to work as a recovery support specialist, helping people with mental health needs and substance use disorders. Her work focuses on helping individuals set goals, providing crisis support, and linking them to services. Ulonda's own experience has led her to believe that effective mental health treatment could not have happened inside a jail because she needed the support of her community in order to heal. Ulonda's work as a recovery support specialist and her own journey has shown her how important a person's own investment in their recovery is.

PRINCIPLE #5

Data on detention and release outcomes should be collected and made available for public review and system assessment purposes. Risk assessments, if used, must be validated, transparent, and their impact must be tracked.

Transparency and accountability to the public are critical to a just pretrial system, but Illinois courts are currently unable to provide either sufficiently due to gaps in available data. The Pretrial Fairness Act establishes a system of data collection and reporting about pretrial practices across the state, allowing these practices to be evaluated to ensure that they follow the law, conform with evidence-based research, and reflect principles of fairness and justice.

The Pretrial Fairness Act provides that—for the first time—the public will have access to information about pretrial release and detention decisions, how many individuals are being jailed while awaiting trial and their demographics, and information about what pretrial services and conditions exist in each county. The law also requires counties to track their use of electronic monitoring, which will enable members of the public to review the extent to which this form of incarceration is imposed. Counties will be responsible for reporting data around case outcomes (e.g., convictions, dismissals, acquittals, sentences of prison or probation, etc.) for people incarcerated in their jails, as well as rates of rearrest and failure to appear among people released pretrial. With access to the data collected, elected officials, court administrators, policy experts, and the public will be able to consistently evaluate how well the system is working. Crucially, the law will provide insight into how pretrial practices impact different groups of people by requiring reporting of demographic data—race, sex, sexual orientation, gender identity, age, and ethnicity—for individuals incarcerated pretrial in county jails as well as those released on electronic monitoring.

Systems for reporting this data must be in place prior to the implementation of the Pretrial Fairness Act in January 2023. Data should be published

in a timely manner, regularly updated, and published in an accessible format online for the general public. Raw data should also be available to advocates and researchers. Documentation of the state’s use of pretrial incarceration prior to the Pretrial Fairness Act’s effective date will help measure the law’s impact and facilitate implementation across the state’s 102 counties. Being able to review data at the early stages of the Pretrial Fairness Act’s implementation will allow advocates and stakeholders to address harmful practices early on and increase access to justice across the state.

While Illinois law currently allows judges to use algorithmic risk assessment tools while making decisions about people’s pretrial freedom, there is ample evidence that these tools are racially biased and substantially over-predict “dangerousness” and risk of flight. The Pretrial Fairness Act will enable individuals and defense attorneys to scrutinize and challenge the use of pretrial risk assessment tools by requiring jurisdictions to report which tools they use as well as comparisons of judges’ pretrial decisions to the risk assessment scores of individuals. These tools and their impact need to be tracked so that any evidence of their role in perpetuating or exacerbating racially disparate outcomes can be addressed.

By ensuring the public is given appropriate access to data about its pretrial system, the Pretrial Fairness Act’s robust data collection provisions will help fill the void of transparency and accountability in Illinois’ courts and ensure that pretrial practices are more reflective of community priorities and values.

PRINCIPLE #6

Administrative reforms should be made to ensure court practices conform to the law. Judges should receive education and training consistent with existing law and these principles.

The Pretrial Fairness Act creates a decision-making framework for release and detention that limits pretrial incarceration and prioritizes community safety. This framework will only have its intended effect if criminal legal system stakeholders conform their practices to the letter and spirit of the law. For example, prior to the passage of the Pretrial Fairness Act, laws were in place that required judges to impose the least restrictive pretrial conditions on accused people, but they were often not followed. Now that the law has changed under the Pretrial Fairness Act, the Illinois Supreme Court should make administrative reforms to ensure that court practices across the state conform to the law, and judges should receive education and training consistent with the law and the principles listed in this report.

The Illinois court system must launch a robust effort to educate judges, prosecutors, and defense attorneys on the changes to the state's pretrial legal system. While the Pretrial Fairness Act has the potential to create a national model for a more just pretrial system,

it will only achieve its promise if all stakeholders thoroughly understand and adhere to the new practices and standards. The Illinois Supreme Court and Administrative Office of the Illinois Courts should work with advocates and policy experts to create educational resources and trainings to be shared with all Illinois court actors.

Additional state resources must also be dedicated to increasing funding for indigent defense in Illinois. The expanded protections for accused people enacted by the Pretrial Fairness Act are only made real in courtrooms when enforced by a defense attorney—most often, a public defender. A recently released report about indigent defense in Illinois revealed that some counties are not providing public defenders at all bail hearings as has been required for four years by the Bail Reform Act of 2017. At least one county is not appointing the public defender to represent accused people in any bail hearings. Some other counties have public defenders present at bail hearings in person on only one day or a few days



Chicagoans rally during the Pretrial Fairness Act Statewide Day of Action on September 26, 2020.

per week due to inadequate staffing, meaning public defenders are present by phone on other days.²⁴ Without adequate state funding for indigent defense, many counties across Illinois will remain unable to comply with the Pretrial Fairness Act's requirements or provide for basic elements of effective criminal defense, such as facilitating meaningful time for public defenders to consult with their clients in advance of pretrial release decisions. It is essential that the state of Illinois step in to ensure that indigent defense across the state meets the constitutional and statutory standards.

Furthermore, in order for the vision of the Pretrial Fairness Act to become a reality, our courts must fundamentally change their culture. Although the Supreme Court and the Illinois Constitution both make clear that pretrial release should be the norm and jail the “carefully limited exception,” the reality is that our courts frequently use pretrial jailing when it is not appropriate and in racially disproportionate ways. Our courts have inherited logics, policies, and practices that have their roots in racism dating back to the United States' earliest history, which has been exacerbated and entrenched by the “war on drugs” and “war on crime” over the past 50 years.²⁵ Far too often, our courts have lost sight of the presumption of innocence and used pretrial jailing and harsh pretrial conditions like electronic monitoring to dole out punishment before a person has been convicted of a crime. This practice is enabled by our current money bond system, and if courts do not change their culture, we will continue to see the same constitutional violations and abuses of power even under the Pretrial Fairness Act.

Across the state, our judges, court staff, law enforcement, prosecutors, and public defenders must grapple with the disconnect between how we currently use jail and what the law—and human dignity—requires. This will require training and conversation with impacted communities, particularly around issues of systemic racism and implicit bias.²⁶

“ **The culture change required of our courts cannot happen in closed rooms where judges and court personnel talk only to each other.** ”

As the Pretrial Fairness Act is implemented, it is essential that working groups, trainings, and other planning activities be open to the public and include meaningful participation from people who have been harmed by the criminal legal system. Judges and other court officials must be accountable to the people they are elected and appointed to serve.

It is also critically important that the increased data collection required by the Pretrial Fairness Act be used to actively evaluate judges and court systems. Data gathering is of no use if the information is not carefully analyzed to identify places in the system where bias and unfairness still have a strong foothold, and where the requirements of the Pretrial Fairness Act are not being upheld. The Illinois Supreme Court, Administrative Office of the Illinois Courts, and Illinois Criminal Justice Information Authority must work collaboratively with the public to use available data effectively to rigorously scrutinize Illinois' pretrial system as it undergoes this historic transformation.



Black Lives Matter supporters rally at the McLean County Jail in Bloomington on May 30, 2020.

CONCLUSION

For decades, wealth-based pretrial incarceration has persisted as one of the most glaring inequities in the U.S. criminal legal system. By signing the Pretrial Fairness Act into law, Illinois has taken a bold step towards ending this harmful practice. It is of the utmost importance that our state's effort to put this law into effect does not create new injustices. Illinois is poised to become a national model for pretrial reform, and the success of the Pretrial Fairness Act rests on our collective efforts to implement this monumental change with fidelity and commitment over the coming years.

Our commitment to truth and justice must be strong enough to overpower one of the greatest enemies of progress: rampant misinformation. It is inevitable that as these changes to the law go into effect, there will be some entities and individuals within media, law enforcement, and politics who will seek to weaponize individual

incidents to instill fear in the public and turn people against pretrial reforms that benefit thousands of people and make communities safer. Evidence has consistently shown that greater pretrial release does not lead to higher rates of crime or failures to appear. At the same time, there are countless benefits from increased pretrial release, such as the ability to maintain access to employment, housing, stable families, education opportunities, public benefits, mental and physical health care, and more. As we forge ahead with implementation of the Pretrial Fairness Act, we must pay attention to these less visible positive stories and use them to ground our work in the face of opposition. If we do, hundreds of thousands of Illinoisans will have greater and more equal access to the justice promised to them by our constitution and owed to them on the basis of truth, fairness, and equal protection under the law.



Chicagoans rally during the Pretrial Fairness Act Statewide Day of Action on September 26, 2020.

SPECIAL THANKS

Governor JB Pritzker

Lieutenant Governor
Juliana Stratton

Senator Elgie Sims

Senator Robert Peters

Representative Justin
Slaughter

The Illinois Legislative
Black Caucus

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Mariame Kaba

James Kilgore

Victoria Law

Emmett Sanders

Maya Schenwar

Pilar Weiss



Supporters of the Pretrial Fairness Act rally in the state capitol during the lobby day on February 25, 2020.

MEMBERS OF THE ILLINOIS NETWORK FOR PRETRIAL JUSTICE

A Just Harvest

Access Living

ACLU of Champaign County

ACLU of Illinois

Asian Americans Advancing Justice: Chicago

Believers Bail Out

Black Justice Project

The Center for Empowerment and Justice

Champaign County Bailout Coalition

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Chicago Community Bond Fund

Chicago Democratic Socialists of America

Clergy for a New Drug Policy

The Coalition to Reduce Recidivism in Lake County

Community Renewal Society

Decarcerate Bloomington Normal

Faith Coalition for the Common Good

Illinois Justice Project

The Illinois Prisoner Rights Coalition

IL-NOW (National Organization for Women)

Justice and Witness Ministry of Chicago
Metropolitan Association - Illinois
Conference of the United Church
of Christ

Masjid Al-Taqwa

Nehemiah Trinity Rising

The Next Movement at Trinity United Church
of Christ

The People's Lobby

Peoria Coalition to End Money Bond

Quad Cities Democratic Socialists of
America

Religious Action Center for Reform Judaism
(RAC-IL)

Restore Justice

Rockford Urban Ministries

Shriver Center on Poverty Law

Southsiders Organized for Unity and
Liberation

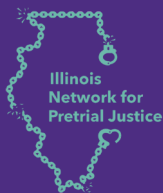
Students for Sensible Drug Policy - Illinois

Unitarian Universalist Advocacy Network of
Illinois

Unitarian Universalist Prison Ministry of Illinois

United Congregations of MetroEast

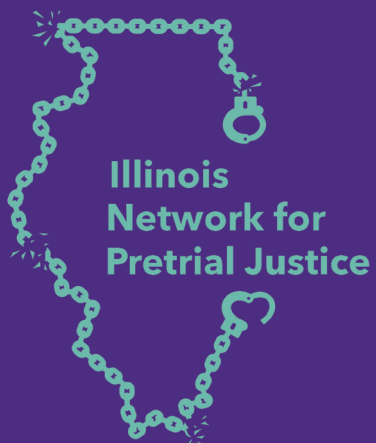
Workers Center for Racial Justice



Learn more at: endmoneybond.org

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