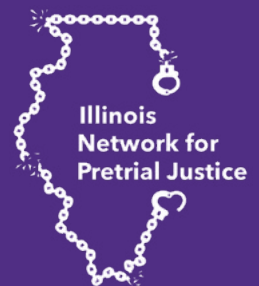


# INVESTING IN PRETRIAL JUSTICE IN ILLINOIS:



## A Vision for Supporting Communities After the End of Money Bond



# Table of Contents

<b>Introduction to Our Vision</b>	<b>2</b>
<b>The Pretrial Fairness Act</b>	<b>3</b>
<b>Foundations and Principles for Pretrial Funding</b>	<b>4</b>
<b>Public Defense Funding</b>	<b>5</b>
<b>Voluntary Services</b>	<b>8</b>
<b>Facilitating Court Appearance: Court Reminders, Transportation, and Child Care</b>	<b>10</b>
<b>Community Investment from Pretrial Fairness Cost Savings</b>	<b>12</b>
<b>Conclusion: Building Safe and Thriving Communities</b>	<b>14</b>
<b>About Us: The Illinois Network for Pretrial Justice</b>	<b>16</b>



# Introduction to Our Vision

On September 18, 2023, Illinois implemented the **Pretrial Fairness Act** and became the first state in the country to completely eliminate the use of money bond. Pretrial release decisions are now based on the circumstances of individuals and their respective cases, not their access to wealth. With the state no longer charging people awaiting trial money for their freedom, **millions of dollars** will remain in our most marginalized communities each year. Over time, the law is expected to dramatically reduce pretrial jailing, potentially saving counties and the state millions of dollars each year. Together, these changes will increase both fairness and safety in Illinois.



*Network members with Southsiders Organized for Unity and Liberation (SOUL) outside the Leighton Criminal Courthouse in Cook County following a community court watching event on September 15, 2022.*

of **Statewide Pretrial Services**, which has spent tens of millions of dollars on staff, electronic monitoring equipment, a court date reminder system, and more.

Rather than addressing these funding needs individually, the Illinois Network for Pretrial Justice encourages policymakers to review these related but diverse costs collectively. It is imperative that the state develop a holistic plan for how to allocate funds across court systems and community stakeholder agencies in response to the implementation of the Pretrial Fairness Act. This report provides decision makers with guidance on the funding priorities identified by the vast network of community-based, faith-based, and policy advocacy organizations that secured this historic change to our criminal legal system.

<sup>1</sup> Cook County is currently excluded by statute from receiving Public Defender Fund monies. 55 ILCS 5/3-4014.

# The Pretrial Fairness Act

The Pretrial Fairness Act is the comprehensive legislation that made Illinois the first state in the country to abolish money bond. To do so, it transformed the entire pretrial legal system in Illinois. The Act was passed in January 2021, following the largest civil rights uprising in the United States' history. In the summer of 2020, communities large and small took to the streets to decry the police murders of George Floyd and Breonna Taylor. Calls for policy changes that would address systemic racism were central to these demonstrations. The Illinois Legislative Black Caucus responded by boldly setting forth a plan to pass four omnibus bills aimed at addressing systemic racism in Illinois. One of the omnibus bills, **the SAFE-T Act**, focused on criminal legal system reforms, and the Pretrial Fairness Act was one of the most sweeping and comprehensive reforms included in that package bill.



*Members of the Illinois Network for Pretrial Justice rally inside the Illinois State Capitol in November 2022.*

The Illinois Legislative Black Caucus responded by boldly setting forth a plan to pass four omnibus bills aimed at addressing systemic racism in Illinois. One of the omnibus bills, **the SAFE-T Act**, focused on criminal legal system reforms, and the Pretrial Fairness Act was one of the most sweeping and comprehensive reforms included in that package bill.

Under the money bond system, most people **who were admitted to jail were released within a week after they paid their bonds**—annually placing hundreds of thousands of people at **risk of losing their jobs, housing, and even children**. The money bond system specifically disadvantaged our state's most marginalized communities by extracting money and people from poor communities. The Pretrial Fairness Act addresses this systemic inequity by removing the role of money in pretrial release and detention decisions and reducing the overall number of people admitted to Illinois jails each year. The law limits eligibility for pretrial incarceration to prevent people who pose no safety or flight risk from being incarcerated, especially on the basis of access to money.

Under the Pretrial Fairness Act, decisions about pretrial release and detention are made on the basis of safety and the facts of each individual case—not wealth. By implementing a more robust and fair hearing process that removes money as a factor standing between people and their pretrial freedom, the Pretrial Fairness Act helps more people avoid the destabilizing effects of wealth-based jailing and, in turn, increases access to justice and improves community safety.

# Foundations and Principles for Pretrial Funding

The Pretrial Fairness Act was designed to address systemic inequity by reducing the harm pretrial jailing has caused marginalized communities and thus increase community safety. Keeping people connected to resources in their communities is the best way to support their success during the pretrial period. This **evidence-based approach to creating community safety** for all residents should also inform how money is allocated to support the law's application and guide the use of any financial savings it produces.

**The Illinois Network for Pretrial Justice has adopted the following principles to ensure funding decisions align with the legislative intent of the Pretrial Fairness Act:**

**Equity:** State spending in response to the Pretrial Fairness Act should prioritize communities that were the most burdened by the money bond system and pretrial jailing.

**Non-coercion:** People awaiting trial are legally presumed innocent and should not be coerced into participating in services, including but not limited to substance use treatment, mental health treatment, and supports designed to facilitate court appearance.

**Community Engagement:** Services should be continually informed by community members, including people directly impacted by the criminal legal system, and delivered by organizations trusted by the community.

**Coordination:** The pretrial court system and related services should be easy to navigate and avoid the creation of new bureaucratic barriers to success during the pretrial period.

**Community Wellness:** The development and maintenance of community wellness services should be an integral part of pretrial funding priorities, including direct budget increases and more grant funding for the Department of Human Services, community-based organizations, and other health and wellness initiatives across state and local governments.

**Community Reinvestment:** Any costs saved by a decrease in the number of people incarcerated awaiting trial following the implementation of the Pretrial Fairness Act should be invested in the communities whose wealth was historically extracted by the money bond system and not into institutions that perpetuate cycles of incarceration.

# Public Defense Funding

In theory, the United States Constitution guarantees all indigent accused people the right to effective legal representation, but the reality in courtrooms is much more complicated. In jurisdictions across Illinois, public defenders are tasked with overwhelming caseloads and often deprived of the resources required to provide quality defense. With the robust pretrial hearing process now required by the Pretrial Fairness Act, increasing funding for public defense in Illinois is more important than ever.



*“In Illinois counties where public defenders have larger caseloads, more people are jailed awaiting trial than in counties whose public defenders have smaller caseloads.”*

In 1963, the landmark civil rights case *Gideon v. Wainwright* found it to be the “obvious truth” that fair representation was not possible without access to a lawyer. *Strickland v. Washington* further clarified that the “right to counsel” was a right to *quality* representation. Of course, effective counsel cannot be provided without sufficient funding to ensure reasonable workloads and adequate resources for public defenders. Nevertheless, chronic underfunding of public defense has long been identified as a “civil rights crisis” that disproportionately affects people of color. A 2020 study from the University of Illinois at Chicago’s Institute for Research on Race and Public Policy found that in Illinois counties where public defenders have larger caseloads, more people are jailed awaiting trial than in counties whose public defenders have smaller caseloads.



Now that money bond has been eliminated in Illinois, short hearings in which a judge arbitrarily chooses a dollar amount to attach to someone’s pretrial release are a thing of the past. Release and detention hearings are now considerably longer and more robust, with more evidence and preparation involved. Defense counsel are **required by the law** to be appointed in advance of court, review evidence being used by the prosecution, and be given time to consult with their clients.



*“Without adequate resourcing of public defense in Illinois, it is safe to say the rights enshrined in statute by the Pretrial Fairness Act will be unable to benefit the real people they are meant to protect in courtrooms across the state.”*

In order for these hearings to provide due process to accused people, it is essential that public defenders have adequate resources and support to provide high-quality representation to every client. Zealous representation by defense attorneys is a necessary element in reaching fair conclusions and enforcing new standards under the law. Defense attorneys serve as a safeguard to ensure that the rights of people in pretrial hearings are not violated, and that if they are, necessary objections and appeals are raised in a timely manner so that a resolution can be sought. Without adequate resourcing of public defense in Illinois, it is safe to say the rights enshrined in statute by the Pretrial Fairness Act will be unable to benefit the real people they are meant to protect in courtrooms across the state.

Fiscal Year 2024 Budgets in Selected Counties		
County	Public Defender	State’s Attorney
Cook	\$102,264,952	\$204,826,867
DuPage	\$6,591,509	\$14,879,590
St. Clair	\$1,045,555	\$2,321,910
Champaign	\$1,787,758	\$3,048,675
Lawrence	\$160,700	\$241,174
Dewitt	\$237,413	\$350,762

The public defender system in Illinois was already stretched beyond its capacity before the Pretrial Fairness Act took effect. According to a 2021 Sixth Amendment Center study commissioned by the Illinois Supreme Court, public defenders were struggling with excessive caseloads that negatively affected their clients. In the study, a public defender in Champaign County reported having 50 pretrial conferences in one day and 100 scheduled for the next day. In DuPage County, a public defender said he was only able to get through 70% of the evidence provided by the prosecution in any given case because of limited capacity. Unsurprisingly, the Sixth Amendment Center found these excessive caseloads created fears of burnout and depression among public defense attorneys.

Illinois state law only requires counties with 35,000 or more residents to establish public defender offices—and even then, they are not required to operate full-time. This threshold has not been updated since 1949. In 2023, when the state appropriated \$10 million towards public defense to help implement the Pretrial Fairness Act, 101 counties received between \$77,000 and \$147,555 each.<sup>2</sup> Counties had flexibility on how these one-time funds should be spent, meaning that the money could be spent on space renovations, software, office furniture, and training in addition to salaries or contracts for attorneys or other staff working on cases. Some Chief public defenders reported being hesitant to use the money to hire new full-time staff since renewal was not guaranteed. More sustained funding is needed to ensure increased public defense capacity for directly representing accused people.

The severe funding disparities between the state's attorney's and public defender's budgets in nearly every Illinois county further illustrate the need for increased public defense funding. In just one example, Madison County invested \$308,949 in its state's attorney's office in response to the Pretrial Fairness Act but only \$51,952 in its public defender budget.

With such massive and long-standing funding disparities between prosecution and defense, it is clear that small and one-time increases for public defense will be inadequate to close the gap. Until there is parity in spending on public defender's offices, Illinois will not meet its Sixth Amendment obligations to provide a right to counsel nor will it realize the Pretrial Fairness Act's promise of robust hearings to determine pretrial release and detention.

<sup>2</sup> Cook County is currently excluded by statute from receiving Public Defender Fund monies. 55 ILCS 5/3-4014.



# Voluntary Services



Before the Pretrial Fairness Act, many people who were arrested for issues related to substance use or mental health needs ended up incarcerated in jails while awaiting trial. This was commonplace despite the fact that there was often no reason to believe that their release would pose any public safety risk. Judges sometimes even openly acknowledged that someone could be safely released only to order them jailed anyway under the erroneous idea that treatment in custody would be a pathway towards rehabilitation. The exact opposite is true: many features of jails are inherently detrimental to people with substance use disorders and mental health needs. Overcrowding, exposure to violence, enforced solitude and isolation from support networks, lack of privacy, lack of meaningful activity, insecurity about future prospects, and inadequate health services—especially behavioral health services—are all common experiences in county jails.

Jails are not treatment centers, sheriffs are not clinicians, and incarceration dramatically worsens health outcomes. Drug overdose is the leading cause of death following release from prison: people within two weeks of their release from custody are **129 times more likely to die of overdose than the general population**. People who were previously incarcerated are **62% more likely to die by suicide** than the general public. Even **relatively short periods** of incarceration disconnect a person from family and friends, employment, education, and stable housing, undermining their social supports and increasing the chances that they will be rearrested in the future.

While incarcerated people do need access to necessary medical care, including evidence-based treatment for substance use disorder and mental health issues, no person should ever be incarcerated for the sole purpose of getting them into treatment. Among people

incarcerated in Illinois prisons, only an **estimated 17 percent** of those in need of clinical treatment services actually receive those services during their incarceration. Even when jails do offer treatment programs, those programs usually fall far short of clinical best practices. Furthermore, exposure to the traumatic environment of jail makes recovery difficult even in the rare instances when evidence-based treatment is available.



*“Drug overdose is the leading cause of death following release from prison: people within two weeks of their release from custody are 129 times more likely to die of overdose than the general population.”*

Voluntary, community-based pretrial supports and services are **generally more effective and far less harmful** than mandated or jail-based forms of treatment. The overwhelming majority of people who use drugs do not have a “substance use disorder,” nor do they require treatment. Coerced treatment undermines the trust between the participant and provider that is needed for successful care and increases the stress on participants. In some cases coerced treatment leads to increased rates of recidivism—both in terms of criminal involvement and drug use—due to participants not being invested in the program and the often unrealistic expectations for a “perfect” recovery with no setbacks. Voluntary treatment also can be provided at a fraction of the expense. Rather than paying **more than \$80,000 per person per year** to jail people who use drugs, the state should expand access to community-based treatment and harm reduction services—as well as other essential resources with a track record of success like housing, education, and jobs programs that help stabilize families and communities.

Navigating the healthcare and health insurance systems can be incredibly complicated under the best of circumstances. For individuals trying to attend to their legal case while managing their behavioral health care, a case manager can provide much-needed support in accessing services in the community. A case manager works directly with a client to assess their needs and strengths, develop a care plan, and link them to behavioral health care and other needed support. High-quality case management is individualized and trauma-informed. Many case managers have lived experience with substance use, mental health needs, and the criminal legal system. Case managers can help interested individuals find behavioral health treatment including detox and medication-assisted recovery in their community as quickly as possible, a critically important need given **shortages in the behavioral health workforce and the ongoing overdose crisis**.

This vision for a community-based network of care is realized in the Illinois Network for Pretrial Justice’s proposed legislation, **the Pretrial Success Act**. This policy proposal calls on the state to invest \$15 million in Fiscal Year 2025 to create a statewide grant program to fund system navigation, mental health and substance use treatment, and transportation and child care to reduce barriers to court appearance, with the ultimate goal of improving pretrial success and overall well-being.

# Facilitating Court Appearance: Court Reminders, Transportation, and Child Care

Court support services are essential to ensuring court appearances, reducing rates of rearrest, and preventing violations of pretrial release conditions. Providing voluntary services such as court reminders, child care, and transportation achieves both the courts' and accused people's goals as they reduce the likelihood of missed hearings.

Text message-based court reminder systems have helped improve court appearance rates both locally and nationally. However, courts should not rely solely on text-based reminders because many people impacted by the legal system do not have reliable access to phones.

Other forms of court-date reminders, including mailed letters and automated and live calls, have proven to be successful in reducing failures to appear in court. Postcard reminders have been proven to save counties \$20 to \$50 with each missed court appearance that is prevented, amounting to thousands of dollars in cost savings annually.



*“Postcard reminders have proven to save counties \$20 to \$50 with each missed court appearance that is prevented, amounting to thousands of dollars in cost savings annually.”*

Live phone call reminders also have been shown to reduce racial disparities in failure to appear rates. Increased funding for court reminder programs would allow for court systems across Illinois to adopt a variety of systems to meet the needs of accused people, increase court appearance rates, and reduce costs.



In many parts of Illinois, simply getting to court can be incredibly difficult. Even when public transit options exist in cities and suburbs, Illinois lacks accessible public transit and Illinoisans face some of the longest commuting times in the country. Transportation costs can also be a barrier, but evidence shows transportation subsidies can increase court appearance rates even in places where people lack transit options.



*“More often than not, when people miss court, it is due to*

*barriers caused by poverty—not because they are trying to evade prosecution.”*

in-court child-care services. Increased funding for child-care services would ensure fewer parents miss court because they are unable to afford a babysitter or child-care costs.

More often than not, when people miss court, it is due to **barriers caused by poverty**—not because they are trying to evade prosecution. Addressing these barriers is prudent: not only do these services increase cost efficiency, they provide support for those navigating the systemic issues that impact accused people before trial. All communities across Illinois deserve services that help ensure everyone has the ability to get to court despite economic and logistical limitations. By increasing funding for court appearance services, Illinois can make courts more accessible, improve appearance rates, and advance the Pretrial Fairness Act’s goal of ensuring poverty no longer disadvantages accused people.

With increased funding, counties can introduce more free transit options and transportation subsidies that will reduce the burden on accused people and decrease failure to appear rates.

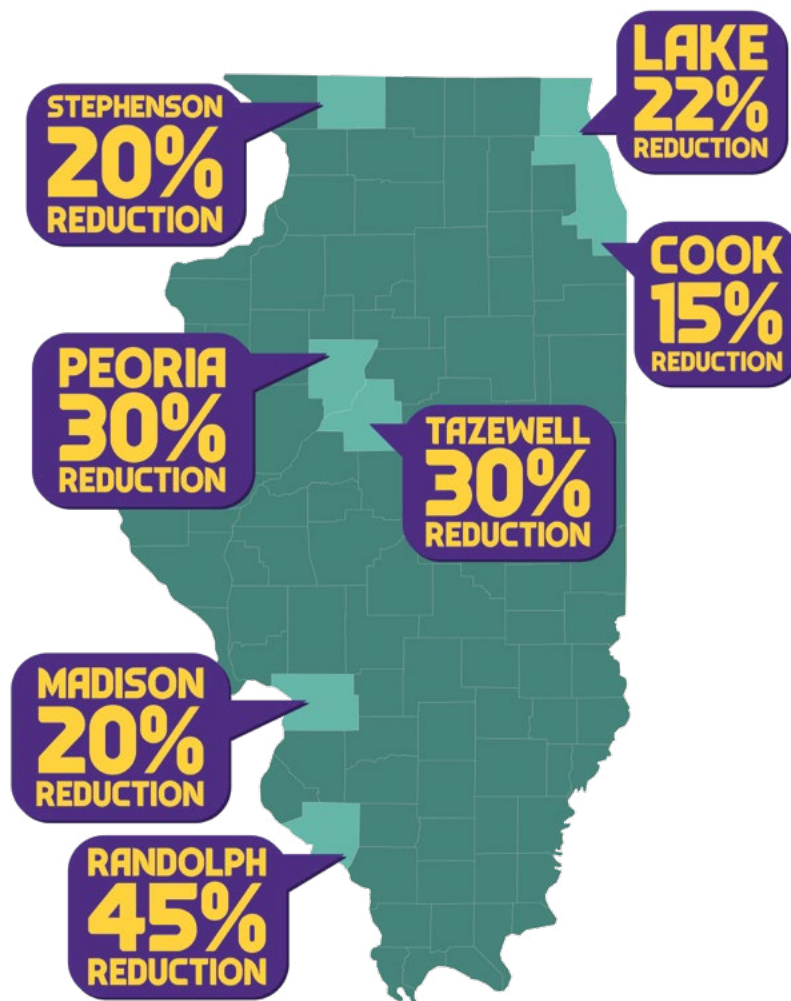
A lack of accessible child care puts an undue burden on accused people to either find a caretaker before court, miss court due to child care needs, or leave children unattended. Counties including **McHenry** and **Cook** already offer free



# Community Investment from Pretrial Fairness Cost Savings

By taking the price tag off of the presumption of innocence, the Pretrial Fairness Act stands to dramatically reduce the number of people incarcerated in county jails across the state. In the first months of implementation, many counties saw significant reductions in pretrial jailing. It is essential that money previously used to jail people who could not afford to pay for their freedom be redirected to the communities most harmed by decades of wealth-based jailing.

## Impact of Initial Implementation of the Pretrial Fairness Act on the Number of People Incarcerated in County Jails



For generations, the money bond system extracted millions of dollars from our state's most vulnerable communities. A 2021 study from the Civic Federation found that between 2016 and 2020, Illinois collected more than \$700 million in money bonds. Only 20% of that bond money was ever returned to the community members who paid it. Courts often claimed bond money to pay for various fines and fees, effectively funding their budgets on the backs of our state's most marginalized residents.

For impoverished and working class families, having to put up between several hundred and tens of thousands of dollars to free their loved ones from jail has been permanently devastating. Whether paying money bonds or sitting in jail because the bonds were not paid, the money bond system cost countless people their homes, cars, life savings, employment, custody of children, college funds, freedom, and sometimes their very lives. While these losses can never truly be repaired, the state must make a concerted effort to give back to communities that have been pillaged by the money bond system.



*“A 2021 study from the Civic Federation found that between 2016 and 2020, Illinois collected more than \$700 million in money bonds. Only 20% of that bond money was ever returned to the community members who paid it.”*

Reinvesting money into marginalized communities is not just a matter of righting the wrongs of the money bond system. It is also about interrupting the cycles of trauma and violence that lead people—disproportionately Black and Latine people—into contact with the criminal legal system in the first place. Many acts that are criminalized in our system are borne out of poverty, the desperation to survive, and the need to provide for one’s self and family amidst a lack of viable economic opportunities and resources in disinvested communities. Without investing in community support and resources that address the root causes of these issues, we only guarantee that many more hundreds of thousands of people will be routed into jails and prisons, where their problems will almost certainly worsen—only to eventually be released with worse prospects than before.



*Illinois Network for Pretrial Justice members host a press conference about implementation of the Pretrial Fairness Act in Springfield on September 18, 2023 Courthouse in October 2022.*

We know what keeps us safe: housing, mental and physical health care, quality education, jobs that pay living wages, community-based treatment, and supported and connected communities. When these things are provided in abundance, communities thrive. When they are withheld completely or provided only scarcely, people and communities suffer immensely, and cycles of violence and harm run rampant. By ensuring that the cost savings from the Pretrial Fairness Act are invested into the communities harmed by the money bond system, we can begin to address the damage done by mass pretrial jailing. If we do, our communities will reap enormous benefits for generations to come.

# Conclusion: Building Safe and Thriving Communities



The spirit and intent of the Pretrial Fairness Act is to interrupt the cycle of harm caused by pretrial jailing and mass incarceration. As such, it is critical that cost savings associated with the implementation of this law do not further entrench the very systems and mechanisms of harm that the policy seeks to mitigate.

Communities most impacted by harm and violence are also those that have experienced systemic disinvestment over the last several decades. We know that pretrial and other forms of incarceration cause significant harm to communities and exacerbate existing social problems. Additionally, state spending on incarceration and policing has long outpaced funding for social services. As a result of these dynamics, Black, Brown, and poorer communities have faced an uphill and often impossible battle to break the cycles of violence that have plagued them.

Studies have shown that pretrial jailing increases the risk that someone will be rearrested in the future and decreases their ability to find and keep gainful employment or **maintain economic stability**. As we advance our efforts to increase safety and wellness in our communities, we must remember that decreasing the number of people impacted by the criminal legal system is essential to achieving that goal.

**For too long, policing, prosecution, and incarceration have been the default responses to mental health, substance use, and other public health issues impacting our communities. It is important that we remember that law enforcement are trained to deal with these delicate community issues in ways that have proven to be coercive, harmful, and at times, deadly. The professionals best suited to provide treatment, case management, and other services are the community-based providers we advocate for throughout this report.**

**It is critical that the funding for community-based supports and services be granted to and routed through health and human services agencies and community based organizations trusted to provide these services in safe and non-coercive environments. Ensuring that community-based, non-law enforcement professionals are the primary providers of these services is crucial for protecting Illinois residents, especially Black and Brown residents, from encounters with law enforcement that are marked by discomfort, trauma, humiliation, and entanglement in the criminal legal system.**

**With the Pretrial Fairness Act, Illinois has the opportunity to reduce pretrial jailing and improve community safety. On its own, this historic reform will significantly reduce harm in our communities. When paired with proactive investments in the communities plagued by violence and incarceration, we have the chance to help more Illinois communities truly thrive.**

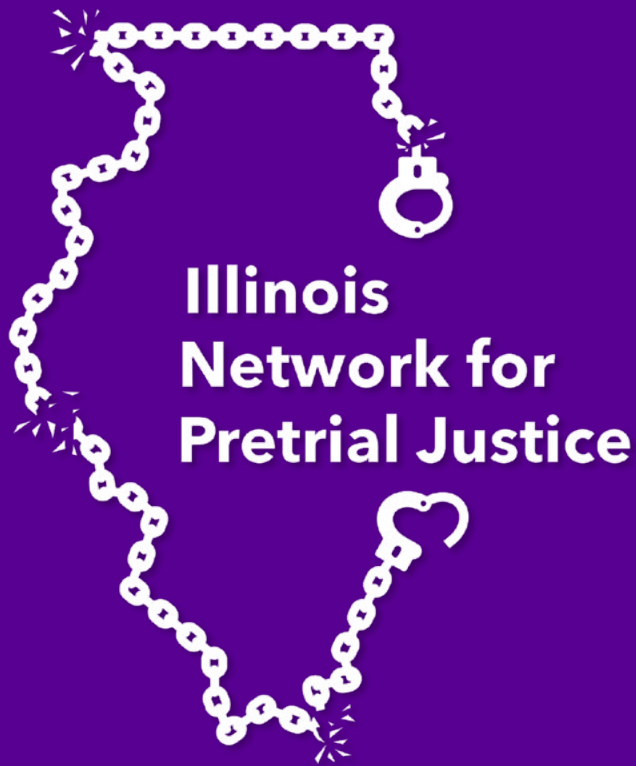


# About Us: The Illinois Network for Pretrial Justice

Member organizations of the **Illinois Network for Pretrial Justice** have been working to end money bond since 2016, when they formed the **Coalition to End Money Bond** in Cook County. In 2019, the Coalition joined additional community-based, policy advocacy, and service-providing organizations across the state to form the Illinois Network for Pretrial Justice. The Network is now made up of over 45 organizations statewide dedicated to ending wealth-based pretrial jailing and advancing pretrial justice. The Network was essential in developing and passing the **Pretrial Fairness Act**, which was signed into law in February 2021. In September 2023, the Pretrial Fairness Act went into effect and made Illinois the first state in the country to completely eliminate money bond and ensure no one is jailed because they or their loved ones lack access to cash. Our Network is grounded in **the Principles of Pretrial Reform in Illinois**. Together, we continue to work to reduce pretrial incarceration in Illinois and, more broadly, to end mass incarceration and address the root causes of socioeconomic and racial inequity in our legal system.



*Members of the Illinois Network for Pretrial Justice rally outside the Will County Courthouse in October 2022.*



**Illinois  
Network for  
Pretrial Justice**

**[EndMoneyBond.org](http://EndMoneyBond.org) | [PretrialFairness.org](http://PretrialFairness.org)  
[Info@EndMoneyBond.org](mailto:Info@EndMoneyBond.org)**