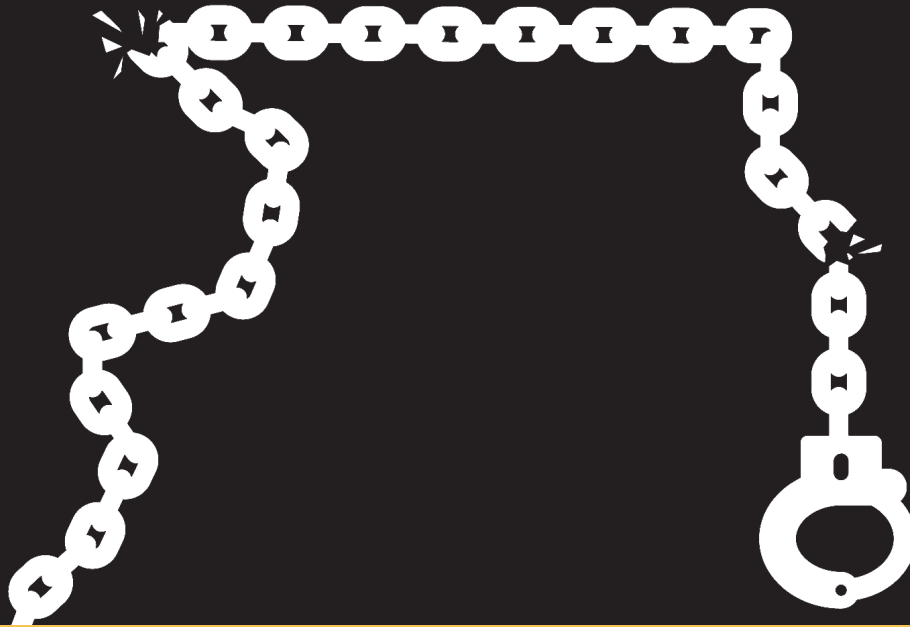




Coalition to End Money Bond



Pursuing Pretrial Freedom

The Urgent Need for Bond Reform in Illinois



June 17, 2019

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Illinois' 102 counties are home to 92 different jails. More than a quarter of a million people pass through their doors annually, and 90% of them are incarcerated pretrial. Every day, thousands of people are caged in Illinois, not because of a criminal conviction, but simply because they cannot afford to purchase their freedom. Secured money bond, a payment required to obtain release from jail when someone is awaiting trial

“Pretrial incarceration causes people to lose their jobs, housing, and even custody of their children.”

and presumed innocent, is intended to be a last resort¹. Illinois law states that “There shall be a presumption that any conditions of release imposed shall be non-monetary in nature”² and that the amount of money bond imposed shall not be “oppressive.”³ Nevertheless, people are ordered to pay money bonds in courtrooms across Illinois each and every day. Those who cannot afford to pay can be jailed for days, weeks, months, and even years. The rise of money bond has caused a 300% increase in pretrial incarceration since the 1980s and is now resulting in the annual jailing of 11 million people nationally.⁴

Pretrial incarceration in Illinois aligns with the national trend. Over the past four decades, the number of people incarcerated while awaiting trial in Illinois has more than doubled. The number of people incarcerated pretrial in central Illinois in 2014 was over 85,000, nearly twice the approximately 44,000 people in jails in 1981.⁵ Downstate, the number of people incarcerated pretrial more than doubled to over 47,000 from 22,000 during that same period.⁶ This is not just an increase of injustice, it's also an added financial burden to counties across the state. For instance, incarcerating a person pretrial in Cook County costs \$143 per day.⁷ Every year, counties across Illinois are spending thousands of dollars unconstitutionally detaining people on unaffordable money bonds.

The United States Supreme Court declared in *U.S. v. Salerno* that “In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”⁸ Pretrial incarceration causes people to lose their jobs, housing, and even custody of their children. The individuals and communities harmed by these practices are disproportionately Black, Brown, and impoverished. As a result, around the country, a vibrant grassroots movement has developed with the goal of holding the court system to the basic promise of pretrial freedom and bringing our people home. We know the solution to poverty and racial disparities is investment in our communities, not increased spending on criminalization and incarceration.



HISTORY OF RECENT REFORM EFFORTS IN ILLINOIS

Illinois was a leader in bail reform in the 1960s, including eliminating the predatory private bail bond industry in 1963.⁹ Most recently, pressure from grassroots organizations led the Illinois legislature to pass the Bail Reform Act of 2017,¹⁰ a modest piece of legislation that has still met with resistance from some prosecutors and their allies.¹¹ The Act's most important provisions establish the right to a court-appointed lawyer at bond hearings, require that judges set the "least restrictive conditions" possible for pretrial release, and allow people accused of certain crimes to have their bond reconsidered by a judge if they were unable to pay the original amount of a money bond in seven days. It also dictates that, for certain types of charges, people are to be credited \$30 towards their bond amount for each day they spend in jail.¹²

All of these reforms were instituted in order to protect the constitutional rights of people who are presumed innocent. Evidence suggests, however, that the Bail Reform Act of 2017 has resulted in very little progress toward ending unnecessary and unconstitutional pretrial incarceration. When someone is jailed, even for a short amount of time, their lives and the lives of their families and communities are destabilized. Just 24 hours spent in jail can mean termination from a job. Within weeks, a person may lose housing, healthcare and other vital basic needs, while connections to support networks deteriorate and the ability to participate in their own defense decreases.

In November 2017, more than 70 advocates and community organizations, including former United States Attorney General Eric H. Holder, Jr., joined the Coalition to End Money Bond to request that the Illinois Supreme Court adopt a proposed court rule that would effectively end wealth-based pretrial incarceration in the state.¹³ The simple rule requires an evidentiary hearing and a finding by the judge that an accused person is able to afford the bond amount before allowing a money bond to be set in any criminal case. This call from advocates came one month after Cook County

Public Defender Amy Campanelli sent a letter requesting adoption of the same rule on behalf of her office and other Cook County stakeholders, including Board President Toni Preckwinkle, Commissioner Jesus "Chuy" Garcia, Chief Judge Timothy Evans, State's Attorney Kim Foxx, and Sheriff Tom Dart.¹⁴ An early evaluation of Cook County's bail practices prepared by Eric Holder's firm, Covington & Burling had also recommended the enactment of a new Supreme Court Rule to prevent Illinois' pretrial justice system from jailing people for simple inability to pay a money bond.¹⁵

In December 2017, the Illinois Supreme Court convened a Commission on Pretrial Practices to provide guidance and recommendations regarding pretrial practices in Illinois, with findings and recommendations scheduled to be published by December 2019. For the first 16 months of this process, statewide leaders, including Cook County Sheriff Tom Dart, Chief Judge of the Cook County Circuit Court Timothy Evans, and various appointees from the Illinois Legislature, held a series of closed-door meetings with very little oversight or input from constituents and people who are directly impacted by the criminal legal system.

In February 2019, the Coalition to End Money Bond and our partners began a concerted campaign to create an avenue for public input into the Commission's recommendations. Working with people in different parts of the state, the Coalition sent hundreds of postcards requesting a public hearing to the Commission and submitted a petition with over 900 signatures calling for the public to have a voice in this process. In April 2019, the commission announced three "listening sessions" to take place in April, May, and July 2019.¹⁶ A fourth listening session was announced in May 2019.¹⁷ Advocates, policy experts, and—most importantly—impacted communities have organized oral and written statements to be delivered to the Commission through this opportunity.

WHAT IS AT STAKE

There have been some significant wins in the fight for more pretrial freedom in Illinois. Most notably, the number of people incarcerated in Cook County Jail has been cut nearly in half in the past five years.¹⁸ The reduction in the number of people in jail has been accompanied by a decrease in the crime rate, yet there has been no decrease in court appearance nor an increase in rearrest rates.¹⁹

“The reduction in the number of people in jail has been accompanied by a decrease in the crime rate, yet there has been no decrease in court appearance nor an increase in rearrest rates.”

The Illinois Supreme Court Commission has the opportunity to help cement the progress in Cook County and help bring better practices to the rest of the state. By calling for the implementation of the Supreme Court rule proposed in 2017, the Commission could dramatically reduce the number of people incarcerated pretrial in our state and make our pretrial justice system fairer and more equitable for all Illinoisans.

The benefits of drastically reducing pretrial incarceration would be significant. Studies have shown that people released pretrial have better case outcomes and are less likely to be arrested again in the future.²⁰ Ending unaffordable

money bond in Illinois and increasing the number of people released pretrial will stop the extraction of wealth from the state’s most marginalized communities and will also help stabilize the communities that have been most greatly harmed by mass incarceration.

Conversely, the Commission also has the authority to call for more restrictive forms of pretrial incarceration. For instance, it could recommend the use of risk assessment tools formulated using racially biased data from past criminal justice system contact, electronic monitoring that turns homes into jail cells, and other punitive pretrial conditions that punish and surveil instead of meeting needs.²¹ All of these so-called “reforms” would negatively impact the same marginalized communities currently harmed most by money bond and pretrial incarceration. Electronic monitoring, in particular, has been shown to have negative impacts on housing stability, job retention, and other important life outcomes.²² Adoption of these policies would stand in stark contrast to the voices of the public and directly impacted people, the intent of the Bail Act of 2017, the stated intentions of the court itself, and other local and national movements aimed at ending mass incarceration.

It is clear that the reforms in the Bail Reform Act of 2017 were not as far reaching as the changes for which many individuals and organizations had advocated. The Supreme Court Commission on Pretrial Practices can expand upon its progress by making meaningful proposals to increase protections for accused people that honor the presumption of innocence. It is imperative that recommendations are designed to decrease pretrial incarceration, which is the only path toward truly improving community health and safety while addressing the racism and classism that has historically characterized the criminal legal system in the United States.

The Coalition to End Money Bond and the Illinois Network for Pretrial Justice are currently organizing to help ensure that Illinois implements transformative bond reform that results in greater freedom for our friends and neighbors across the state. The Coalition to End Money Bond formed in May 2016 with the shared goal of stopping the large-scale jailing of people simply because they are unable to pay a monetary 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 is committed to reducing the overall number of people in Cook County Jail and under pretrial supervision as part of a larger fight against mass incarceration. The Coalition is tackling bail reform and the abolition of money bond as part of its member organizations’ larger efforts to achieve racial and economic justice for all residents of Illinois. In spring 2019, the Coalition established the **Illinois Network for Pretrial Justice** to facilitate collaboration between organizations working toward pretrial justice reform across the state.



STATE LEGISLATION

The Coalition to End Money Bond has also written two pieces of legislation that were introduced in the 2019 Illinois General Assembly. The Equal Justice for All Act (HB 3347) would abolish money

to court-appointed lawyers in bond hearings) became part of the Bail Reform Act of 2017. The bill was reintroduced in 2019 as the “North star” for transformative, progressive bond reform legislation, but did not advance out of committee. The Equal Justice for All Act was also discussed as part of a subject matter hearing held by a House of Representatives committee in April 2019.²³

“Despite the tremendous impact bond decisions have on hundreds of thousands of people’s lives, there is currently no statewide data collection of bond outcomes.”

In 2019, the Coalition also introduced the Pretrial Data Act (HB 2689), which would require counties to track bond decisions, jail population information, and the revenue they receive from bonds paid. The Illinois Criminal Justice Information Authority would then collect this data and issue public reports. Despite the tremendous impact bond decisions have on hundreds of thousands of people’s lives, there is currently no statewide data collection of bond outcomes or jail admissions. The Pretrial Data Act would ensure that future, substantive statewide bond reforms are informed by data and facts, resulting in increased fairness for individuals and more equitable court systems.

bond, regulate the use of risk assessment tools, and create increased protections for accused people. An earlier version of this bill was introduced in 2017, and some provisions (such as the right

PEOPLE'S CONVENING FOR PRETRIAL FREEDOM

On July 13, 2019, the Coalition to End Money Bond will host The People's Convening for Pretrial Freedom in Springfield, Illinois. This event will bring together impacted people, organizers, and advocates from around the state to share priorities and learn from each other as we demand an end to wealth-based incarceration in Illinois. The convening will also allow for the development of a shared strategy to ensure that courts across Illinois effectively and consistently implement progressive reforms.



Join us by registering at:

bit.ly/pretrial-freedom

Currently, there is little oversight regarding bond decisions and jail admissions despite the serious detrimental impacts of pretrial incarceration. In spring 2019, Chicago Community Bond Fund (a member organization of the Coalition to End Money Bond) submitted over 40 Freedom of Information Act (FOIA) requests to a diverse set of Illinois counties. Not a single county outside of Cook County seems to track bond data in a systematic way. The FOIA response

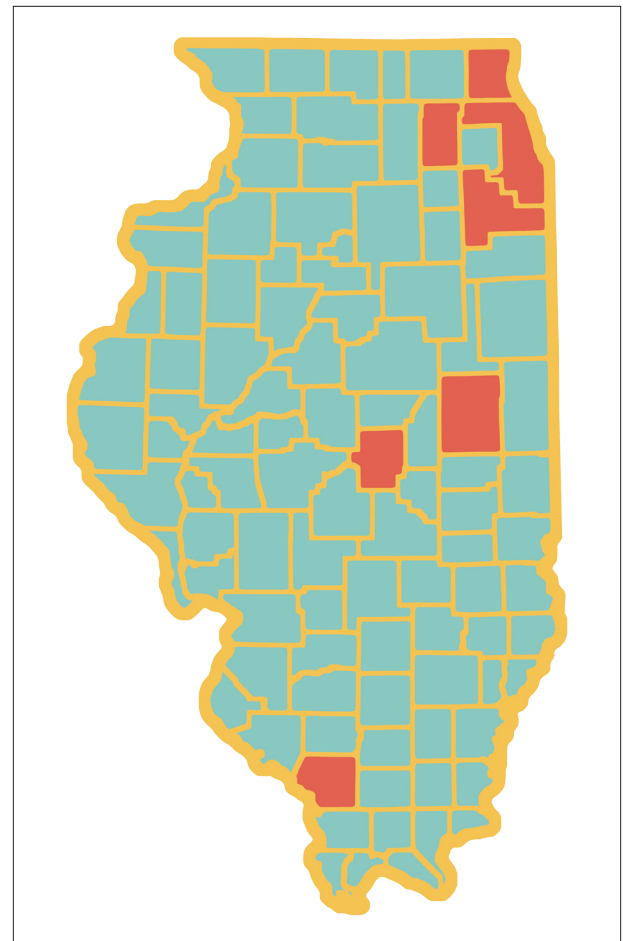
“Not a single county outside of Cook County seems to track bond data in a systematic way.”

from Madison County is illustrative of the issues faced by local governments regarding their capacity to understand the operations of their own courts and jails. Madison County is located on the border of Illinois and St. Louis, Missouri and has a population of approximately 269,000. Of the 102 counties in Illinois, Madison is the 9th largest. In response to the FOIA request for the number of people in the Madison County Jail with a “10% bond,” a term referring to the amount of money a person has to pay to be released, or a “no bond” order, the Sheriff’s Office stated:

[Our] reports don’t specifically address daily confined pretrial populations who must pay a 10% bond or full amount of Bond, or daily confirmed pretrial population held on No Bond... to obtain the records requested... [we] would have to individually search each inmates court/jail records for each day for more than 300 inmates a day...[which] would greatly reduce our ability as a policing agency to provide protection to the public and/or services and protections of our jail facilities [sic] inmates.²⁴

In other words, Madison County has no mechanism by which to efficiently review why it is detaining hundreds of people in its jail or how many of them have technically been cleared for release by receiving a money bond. This lack of data severely restricts the ability of community members and other system stakeholders to evaluate the impact of pretrial decision-making on Madison County residents.

Although the tracking of available data from around the state is lacking and in many ways underdeveloped, it is clear that many counties continue to incarcerate people by setting unaffordable money bonds at significant rates, and thousands of people across the state are incarcerated while they are supposed to be presumed innocent. The minimal data that counties did provide offers a snapshot of the way the pretrial justice system is currently operating and the harms inflicted by money bond and pretrial incarceration. Included in the following pages are profiles of some counties for which information was available.



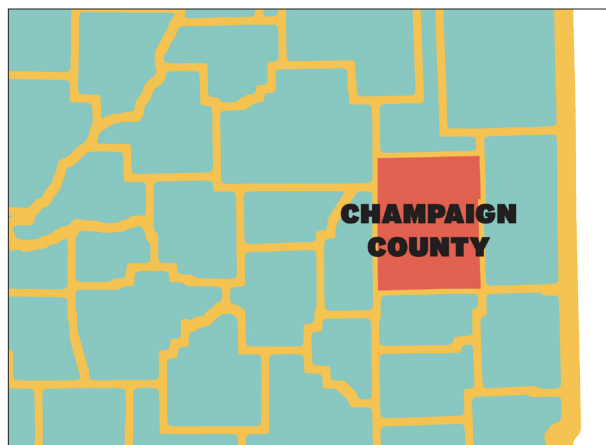
CHAMPAIGN COUNTY

Champaign County is located in central Illinois and is the tenth-biggest county in the state by population. It is home to the twin cities of Champaign-Urbana and the University of Illinois' flagship campus. Aggregate data on how the use of money bond is currently harming people in Champaign County is not easily publicly available. Community groups and policy advocates, however, have compiled information about Champaign County's pretrial criminal legal system and identified serious concerns in recent years.²⁵

There is a severe racial disparity in people caged in the Champaign County Jail. In late 2016, 71% of the people in the jail were Black, compared to only 13% of the people in Champaign County as a whole.²⁶ This racism is even more severe when viewing statistics of those incarcerated pretrial.

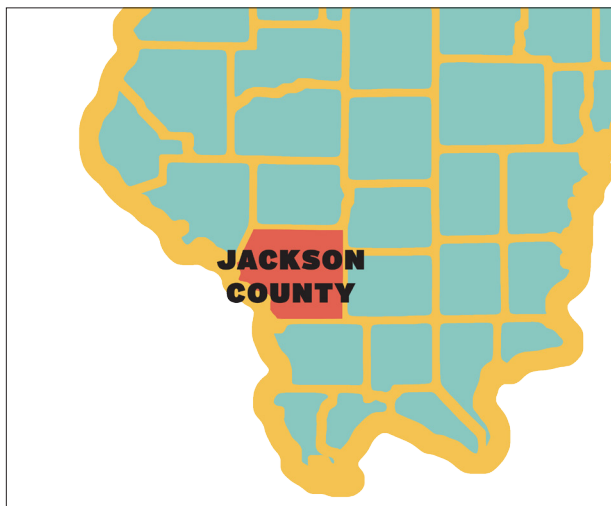
As with most jurisdictions, pretrial incarceration also targets low-income and class-disadvantaged

people. People incarcerated pretrial were more likely to be unemployed and less likely to have a high-school degree or a GED.²⁷ As the Champaign County Racial Justice Task Force concluded, "the people incarcerated in the county jail are not only disproportionately African American but typically people with low, if any, incomes before their arrest."²⁸ This makes money bond particularly dangerous, as it explicitly discriminates against people based on their access to wealth.



JACKSON COUNTY

Jackson County, home to the city of Carbondale, is located at the far South end of Illinois and has a population of 60,000. The data that Jackson County keeps on how it uses money bonds and their relationship to pretrial incarceration is sparse.



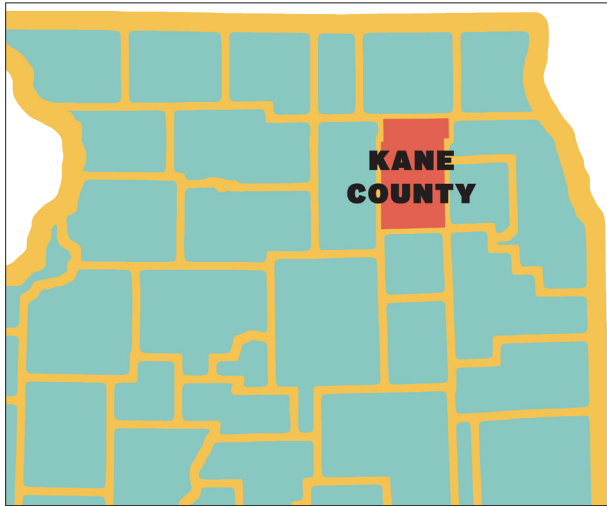
It does demonstrate, however, that money bond is a prominent part of Jackson County's pretrial system, and that the majority of people in the jail are currently incarcerated not because they have been deemed dangerous or a flight risk, but because they cannot afford to pay a money bond.

Despite the passage of the Bail Reform Act of 2017, the proportion of people locked up in Jackson County Jail on an unaffordable money bond actually rose from 50% in January 2018 to 74% in December 2018.²⁹

Even as the number of people in Jackson County Jail declined slightly from 104 people in January 2018 to 94 people in December 2018, the number of people incarcerated because they couldn't afford to pay a money bond increased throughout 2018 by more than 30%.³⁰

KANE COUNTY

Kane County in Northwest Illinois has one of the largest populations in the state and borders Cook County. Kane County's jail is also one of the biggest in the state; thousands of people each year pass through its gates. In 2018, the majority of people incarcerated in Kane County jail were there due to



their inability pay money bonds. Although some improvements may be slowly occurring, there were still 261 people (83% of everyone in the jail) incarcerated on unaffordable money bonds as of December 31, 2018.³¹

In 2018, more than 3,800 people in Kane County were ordered to pay money bonds to secure their

freedom while awaiting trial. Nearly half of those people (49%) could not afford to pay and were incarcerated because they lacked access to wealth.³²

There are signs that the situation has improved of late. After peaking at 56% in July, the rate at which people were incarcerated on unaffordable money bonds decreased in four of the next five months, bottoming out at 37% in December. Yet 101 people were incarcerated on unpayable money bonds in December 2018, one year after the Bail Reform Act of 2017 made money bond presumptively inappropriate.³³

The U.S. Constitution requires that high standards be met before someone's liberty is taken away pretrial. Such significant decisions should be done in a reviewable and transparent way and cannot legally be determined by access to money alone. In Illinois, pretrial detention orders are called "no bonds." In 2018, Kane County judges denied people release through no bonds in 260 cases, compared to the 1,882 cases in which people were ordered to pay money bonds and then incarcerated.³⁴ This means that people in Kane County were over seven times more likely to lose their freedom without due process because they lacked money rather than because a judge made the required findings and ordered them detained.

MACON COUNTY

Macon County, located in central Illinois, has the 19th highest population of all counties across the state. It is difficult to draw conclusions from their data, but it is clear that Macon County judges frequently use money bonds to incarcerate people who are presumed innocent.

The data for Macon County is sparse, but it appears that in 2018, people were more than nine times more likely to be booked into the Macon County Jail on a money bond (77 people) than because they had been denied release (8 people).³⁹ Even though conditions of release are by law

supposed to be non-monetary, Macon County judges continued to force people to purchase their pretrial freedom.

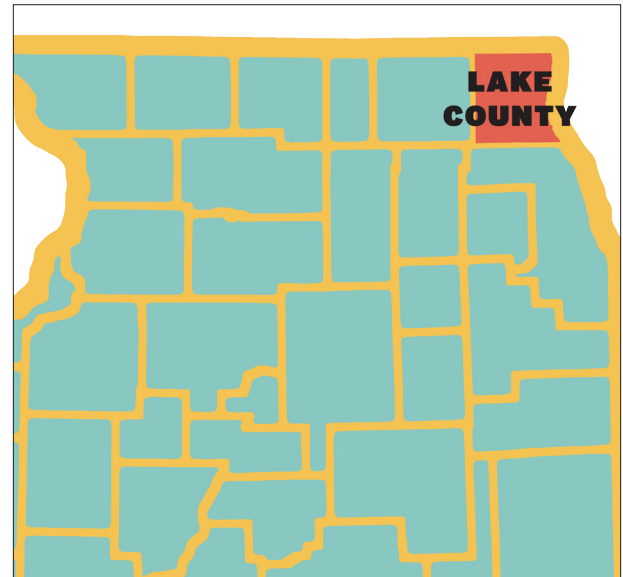


LAKE COUNTY

Lake County is in the very Northeast corner of Illinois, bordering Cook County, Lake Michigan, and Wisconsin. With over 700,000 residents, it is the third most populous county in Illinois. In 2017, more than 8,200 people were booked into Lake County Jail. In 2017 and 2018, the Lake County Sheriff's Office received \$750,000 through the MacArthur Foundation's Safety + Justice Challenge "to reduce the local jail population by at least 10% over the next two years."³⁵ Despite this significant investment and stated commitment to reform, there was little publicly available information about Lake County Jail and the people in it.

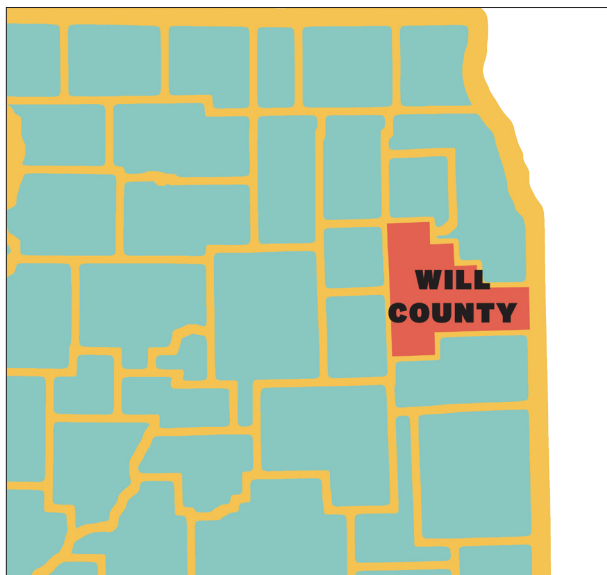
People in Lake County jail are overwhelmingly awaiting trial, and the vast majority of those people are incarcerated for at least three days.³⁶ As of May 17, 2018 (four and a half months after the Bail Reform Act of 2017 went into effect), 236 people—nearly 44% of all the people in the jail—were incarcerated on

an unaffordable money bond over \$50,000.³⁷ As in virtually every criminal jurisdiction in the country, Black and Brown people are being disproportionately harmed in Lake County. While 29% of people in Lake County are Black or Latinx, 54% of people in the Lake County Jail are Black or Latinx.³⁸



WILL COUNTY

Will County, located Southwest of Chicago, is the fourth most populous county in Illinois with more than 675,000 residents. In 2017



and 2018, an average of 6,463 people per year had bond hearings in Will County.⁴⁰ While the Bail Reform Act of 2017 may have had some positive impact there, it has been small. Judges in Will County continue to issue money bonds in nearly two-thirds of cases.

In 2017 and 2018, more than 8,500 people were ordered to pay money bonds in Will County. The average amount of money needed to purchase someone's freedom was nearly \$1,800, far beyond what many people are able to pay.⁴¹

From 2017 to 2018, the rate at which judges issued money bonds decreased slightly from 68% to 64%, but the majority of people in Will County still only obtained their pretrial liberty if they had access to wealth.⁴²

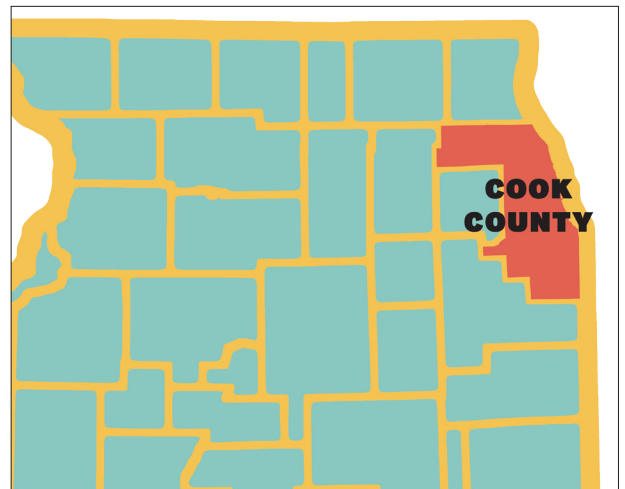
COOK COUNTY

Bond reform in Cook County has had a significant impact on the pretrial system over the last twenty months. The number of people in the Cook County jail has declined, primarily driven by a decrease in the use of money bonds. There is still a long way to go, however, as thousands of people remain incarcerated because they are poor,⁴³ and judges across Cook County continue to order people to pay unaffordable money bonds each day.

Reforms in Cook County have resulted in the rate of I-bonds nearly doubling from 26% in 2017, before General Order 18.8A went into effect, to 51.8% after.⁴⁴ This has resulted in approximately 1,600 fewer people being incarcerated in Cook County Jail on any given day, while accused people continue to arrive on time for their court dates and avoid rearrest.⁴⁵

While the rate at which judges are issuing money bonds has declined in Cook County, they still

ordered more than 1,800 people to pay money bonds in the first three months of 2019.⁴⁶ Nearly two months after their bonds were set, fully one third of people ordered to pay money bonds remained in Cook County Jail.⁴⁷ Of the people ordered to pay money bonds who were eventually released, an additional unknown percentage were incarcerated for an unspecified duration before they paid their bonds.⁴⁸



ICE DETENTION IN KANKAKEE, McHENRY, AND PULASKI COUNTIES

People awaiting trial in state criminal cases are not the only unconvicted people in Illinois jails. Local jails in Kankakee, McHenry, and Pulaski counties maintain contracts with Immigration and Custom Enforcement (ICE) to cage hundreds of immigrants in exchange for millions of federal dollars.⁴⁹ McHenry County receives \$95 per person per day, for a total income of over \$10 million in 2018 alone.⁵⁰ Kankakee County entered in an agreement with ICE in late 2016, and there were 138 people detained through the ICE contract on Nov. 7, 2017.⁵¹ Kankakee County earns million of dollars through the ICE contract.⁵² In 2012,

the Pulaski County Jail incarcerated an average of 224 migrants per day.⁵³ Although the people in these jails as part of ICE contracts are not detained under Illinois' bond law, we thought it important to highlight the hundreds of people locked up through this parallel form of federal pretrial incarceration. After all, people detained by ICE are awaiting resolution of their immigration cases, which are a civil matter. In addition, the millions of dollars in income from ICE detention contracts constitutes a particularly grotesque form of direct profit from pretrial imprisonment.

DARNELL'S STORY



Darnell has lived in Winnebago County for the past 15 years. Last year, money bond almost derailed his chance for a new life. He had struggled to find steady work, but two years ago found a good job and was saving money to rent his own apartment after experiencing homelessness and being supported by family and friends. But when he was arrested and incarcerated on a \$25,000 D bond, requiring him to pay \$2,500 for his freedom, all the progress he made was jeopardized. Due to the high cost of phone calls from jail, he was often unable to afford to stay in touch with his family, who had always supported him. His family talked about getting money together to pay his bond, but it was too expensive. Darnell worried, as most incarcerated people do, that he would lose the job he had worked so hard to find and keep.

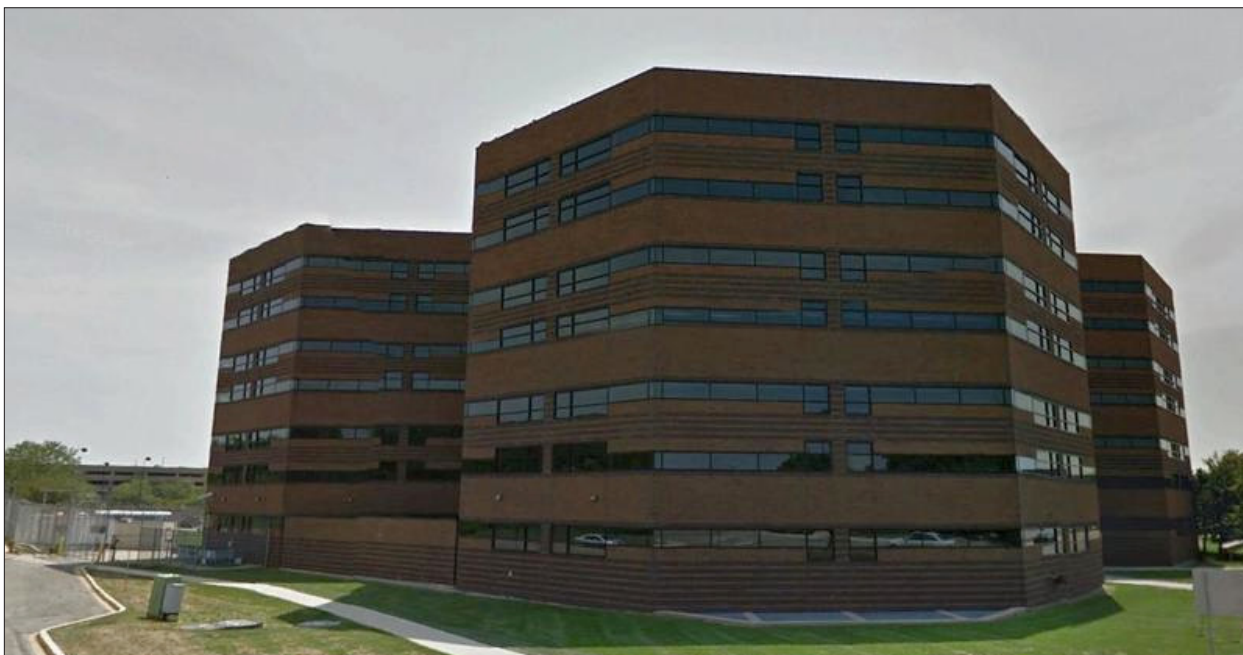
Darnell draws strength from his faith and church community, and this faith carried him through four months in Winnebago County Jail. When he was first arrested, his church reached out to some other affiliates around the state to see if anything could be done about Darnell's incarceration and his money bond.

The community advocated for him and was eventually able to connect him with the New Zion Missionary Baptist Church in Rockford, IL. Working with other congregations in the community, they paid Darnell's bond in December 2018. Since he has been released, life is still hard but he was such a good employee that he was able to return to his job

“Due to the high cost of phone calls from jail, he was often unable to afford to stay in touch with his family.”

and continue building a good life for himself. He is also able to attend church every Sunday and trusts in God and his church community to support him. If Darnell had had enough money to pay his money bond, he would never have had to spend those four months in jail and risk losing everything he had been building for himself, his family, and his community.

KAM'S STORY



For Kam and Kaylen, pretrial incarceration on a money bond was devastating, and its lasting impact continues to this day. Kam was arrested in the fall of 2018 in DuPage County and ordered to pay a \$150,000 D bond. The \$15,000 he needed to secure his freedom was well beyond what his partner and the mother of his child, Kaylen, could afford to pay. Even

“For Kam and Kaylen, pretrial incarceration on a money bond was devastating, and its lasting impact continues to this day.”

when Kam’s bond was reduced to \$75,000 D, Kaylen still couldn’t afford to pay the 10% amount of \$7,500. This meant that Kam has now spent nearly six months in jail pretrial, and the consequences for Kaylen and the kids they are raising (Kam’s daughter and Kaylen’s son from a previous relationship) have been just as challenging.

Kam and Kaylen’s daughter is 18 months old and has health conditions that have resulted in hospitalization several times. With Kam in jail, Kaylen has been responsible for taking their daughter to all of her appointments and hospital stays. As a result, she ended up losing her job because she could not work enough hours. Kaylen now has to drive for a rideshare company to pay her daughter’s medical bills and put food on the table. Because Kam is not around to pick the kids up from daycare and school, Kaylen’s childcare responsibilities restrict the kinds of part-time work she can obtain. Even everyday household activities, such as getting the kids ready in the morning or putting them to bed have become significantly more burdensome because Kaylen is the only parent present. Kam and Kaylen’s daughter currently sees her father only once a week through a plate glass window at the jail. Kaylen’s son, who Kam has helped raise as his own, is struggling without a father-figure in his life.

If Kam or Kaylen were wealthier, Kam would be home right now, helping to take care of the people he cares about most while his case proceeds.

RONALD'S STORY

Molly's son has never seen his father outside of institution walls. At the time of his birth, his father was incarcerated in the Champaign County Jail. Molly and her son would visit his father, Ronald (a pseudonym), while he was incarcerated on a \$75,000 D bond. The entire time Ronald was in jail, they were only able to visit him either through video or through glass, and the visits were so short it was very difficult for Ronald to build a relationship with his son while his case was pending. To stay as connected as possible, Molly paid for expensive phone calls almost every night, spending hundreds of dollars each month on top of the bills she was already struggling to pay. Phone calls and visits were the only way that Ronald could stay connected with his son. If Ronald had been free, instead of incarcerated on an unaffordable money bond, he could have helped take care of the family and earn money for an attorney. The money they would have saved on the jail phone calls alone would have made a significant difference in their lives.

People often have worse outcomes in their criminal cases if they are incarcerated pretrial, and that was undoubtedly true for Ronald. He had pending conditions of probation for a

previous case that he was unable to complete because he was incarcerated. (Judges often treat probation cases more favorably if a person displays a commitment to completing the terms.) A person who could afford to post

“If Ronald had been free, instead of incarcerated on an unaffordable money bond, he could have helped take care of the family and earn money for an attorney.”

bond could have purchased the privilege of another chance to make a good impression to the judge by completing the terms of their probation, but because Ronald couldn't afford his bond, he didn't have that option. If Ronald had enough money to purchase his pretrial freedom, he would have a much stronger relationship with his partner and son, and might have avoided a conviction altogether.



WHAT WE DON'T WANT

Public opposition to the use of money bond continues to grow for multiple reasons. First, money bond creates a system in which people's financial circumstances dictate their access to freedom. It's easy to understand why such a system is unjust. Second, money bond and pretrial incarceration reproduce and deepen racial disparities that put Black and Brown people at disproportionate risk of further harm, compounding the damage done by economic disadvantage, divestment in community resources, and racial profiling by police. Third, pretrial incarceration leads to worse outcomes for people accused of crimes in virtually every aspect of their lives: in their legal cases, their health and safety and that of their families, and their housing and employment prospects. The current system ensures that people are less stable and less likely to succeed when they exit the system than when they entered it. Finally, money bond causes all the aforementioned harms without providing any

tangible safety benefits to the broader community; it neither contributes to public safety nor increases the likelihood that people will appear in court.⁵⁴

Proposals for reforming the pretrial justice system must address each of these harms. Real solutions must eliminate the role of wealth in the criminal legal system, reduce racial disparities, dramatically decrease pretrial incarceration, and improve the health, employment, and housing outcomes of marginalized communities. Unfortunately, many of the most common proposed reforms fail to address these essential issues and instead reproduce many of the same problems as money bond through new mechanisms.

In this section, we outline the problems with several of these false solutions and lay out a blueprint for what transformative bond reform will entail.

INCREASED USE OF PRETRIAL INCARCERATION

While a number of pretrial policy reforms across the United States have attempted to limit or even eliminate monetary conditions of release, data has shown that if not accompanied by adequate safeguards, they may actually increase the use of pretrial incarceration rather than reduce it. In Maryland, for example, a statewide court rule very similar to Cook County's sought to limit the use of secured money bail and ensure that when a judge sets a money amount, it is affordable for the accused person. As of February 2018, implementation of the rule had led to a 21% decrease in the use of money bail, and average amounts were also lower. The number of people released on their own recognizance (without payment of money) also increased slightly. The percentage of people detained without bail, however, increased at an even higher rate.⁵⁵

More recently, California enacted SB 10, a piece of state legislation addressing money bail and pretrial policy. As it was originally drafted, the bill ended

the use of money bail in order to decrease pretrial incarceration, and it was supported by advocates and dozens of community organizations. Amendments made late in the legislative process, however, moved away from a presumption of pretrial release for all accused people. Nearly all civil rights advocates and community organizations withdrew their support over concern that the bill gives too much power to the same judges whose discretionary decision-making was a large part of the old problem.⁵⁶ Many worry that the bill will actually expand the court's ability to detain and surveil people awaiting trial, ultimately increasing the number of people in jail in California.⁵⁷

At the core of the demand from organizers and impacted communities to end money bond is a desire for more freedom for our communities. Reforms that replace unaffordable monetary conditions of release with a turn towards higher rates of pretrial incarceration are thus wholly unacceptable.

RISK ASSESSMENT TOOLS

Many court systems are turning to risk assessment tools in the hopes of finding “data-driven” and/or “objective” ways to evaluate the chance that someone who has been arrested will miss court or be arrested again while their case is pending. In general, these tools use sets of data about people who have already been through the criminal legal system (their characteristics, current and past charges, and their ultimate court appearance and re-arrest outcomes). They create algorithms that aim to predict future outcomes based on this historic data by comparing individuals to similar groups of people previously studied.

Such tools, however, tend to mirror the racial bias that is inherently manifested in all aspects of the criminal legal system, from racial profiling in policing and arrests to conviction and incarceration rates. This bias is inherent when examining people’s records of past criminal legal system involvement. Racial bias on the part of police and court systems is precisely how Black and Brown people disproportionately enter and are sent deeper into the criminal punishment system. As a result, algorithms using this data are simply codifying patterns of racial bias under a guise of impartiality. A 2016 study of a privately-developed risk assessment tool in Florida found that Black people were more likely to be incorrectly labeled “high-risk” while white people were more likely to be labeled “low-risk.”⁵⁸

Current risk assessment tools are also simply ineffective at telling judges or the public what we want to know because they lack context. These tools are largely unable to distinguish between different kinds of past or future “failures to appear” in court, such as when someone forgot their court date versus when someone flees prosecution. Actual flight is very rare, and forgotten court dates have been shown to be significantly mitigated through provision of simple supports such as court date reminders and transportation assistance. (It is worth noting that the vast majority of people come back to court even without any assistance.) Risk assessment tools look at how someone fared in the past

without supports and make predictions based on that. A more effective and supportive model would identify unmet needs that prevented someone from succeeding in the past and ensure those needs are met moving forward, changing the likelihood of success instead of just predicting it.

Similarly, very few people are rearrested on new charges considered “violent” while they are in the community pending trial. In Cook County, after reforms dramatically increased the number of people released pretrial, about one half of one percent of the more than 30,000 people released pretrial have been rearrested on a charge considered violent.⁵⁹ Most people released pretrial are not going to be rearrested at all.⁶⁰ Many of the situations in which people are most likely to be rearrested are reflections of our social policies more than any inherent “risk” or behavior by the person. For example, new drug possession arrests of people with addictions and new trespassing charges against people experiencing homelessness are reflections of our criminalization of addiction, mental health needs, and homelessness. An accurately predicted high risk of rearrest in these and many other situations should still not be the basis for a decision to incarcerate someone pretrial.

In a recent report detailing recommendations for pretrial reform, the American Civil Liberties Union (ACLU) cautioned against using actuarial risk assessment tools, citing “significant concerns about actuarial algorithms’ potentially detrimental racial impact, lack of transparency, and limited predictive value.”⁶¹ The Coalition to End Money Bond has proposed specific protections around the use of risk assessment tools, including requirements that their calculations be transparent, subject to dispute by accused people, and not used as the sole basis for detention. With or without an algorithmic risk assessment tool, any assessment of pretrial “risk” must focus on identifying unmet needs likely to increase failure and referral to voluntary, community-based services that could help accused people succeed in their community.

ELECTRONIC MONITORING

Criminal court systems are increasingly turning to use of electronic monitoring (EM) as a condition of release for people awaiting trial, serving sentences, and on parole after release from prison. According to the Challenging Incarceration campaign, the number of people on EM has increased by 140% over the past decade.⁶² Many people who have been subjected to electronic monitoring, however, clarify that it is not a true alternative to incarceration but rather a different form of incarceration—a digital prison located in your own home.

Frequently, EM is used to enforce house arrest or curfews that prevent someone from leaving their home without permission, sometimes for months or years. To make matters worse, people ordered onto EM are frequently charged for the cost of their tracking device and supervision, in some cases paying fees that provide profits for the private corporations that build and operate many EM systems. The GEO

Group, the largest for-profit private prison company, also owns the largest EM company in the world. Due to harsh and often unrealistic restrictions on movement and frequent technological glitches, many people eventually end up in jail for violating the terms of their release with EM. Those who do manage to comply still struggle to find and keep employment, care for their families, and meet other basic needs while under electronic supervision.

Electronic monitoring has not been proven to improve public safety or court appearance rates,⁶³ but other tools such as text messages and phone reminders, referrals to non-mandatory social services, and reducing fines and fees associated with supervision have been proven to help ensure that people fulfill their court appearance requirements and decrease recidivism.

PUNITIVE PRETRIAL CONDITIONS DISGUISED AS “SERVICES”

More court systems are turning to “pretrial services” programs as alternatives to pretrial incarceration. These programs often mandate that people check-in with pretrial officers, perform community service, participate in educational or vocational training, or attend outpatient drug treatment. In Illinois, “Pretrial Services” agencies are required to be administered by the circuit court in each county.⁶⁴ This generally means that pretrial “services” are part of probation departments and their oversight is frequently punitive and surveillant rather than supportive.

Because people typically face re-incarceration if they fail to complete all requirements, program requirements can create serious hardships, particularly for people with inflexible working hours, limited financial resources, and/or mental health concerns. Many requirements are time-intensive, presenting difficulties for participants with jobs or significant family responsibilities. Required programs

often also force participants to pay fees and provide their own transportation, resulting in serious barriers for people with financial constraints. Frequent in-person appointments and drug screenings may also be required. Both can prove difficult for people with addictions and/or mental health concerns. The demands of the programs, together with the stress generated by the constant threat of punishment, mean that these “services” are often experienced as a form of punishment in themselves.

In order to avoid continued disproportionate punishment of people on the basis of poverty or poor health, participation in any pretrial services should be voluntary and never backed with the threat of re-incarceration. Furthermore, services should be community-based, rather than being provided by the courts, probation departments, or other law enforcement entities.

WHAT WE WANT

The Illinois Supreme Court Commission on Pretrial Practices, guided by the National Institute of Corrections' Essential Elements of an Effective Pretrial System, currently has the authority to make recommendations to drastically reduce jail populations throughout the state. These recommendations must include:

- **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 everyone else;**
- **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).**



PRINCIPLES OF BOND REFORM IN ILLINOIS

In April 2017, the Coalition to End Money Bond drafted the below Principles for Bond Reform in Illinois. We believe these principles should be at the foundation of all proposed bail reform in the state of Illinois:

1

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

2

Pretrial services programs should be used to promote court attendance and provide needed services and not place unnecessary conditions on the accused person.

3

Conditions of bail 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.

4

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

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.

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 time to reform Illinois’ pretrial justice system is now. In order to create a more just pretrial system, we must eliminate pretrial incarceration resulting from unaffordable money bonds. Unpaid money bonds are currently the largest cause of pretrial detention in Illinois. Every day, they needlessly destroy the lives of individuals and damage entire communities across the state. Currently, thousands of people are losing their freedom while presumed innocent without any of the protections they are guaranteed by the U.S. Constitution, simply because they don’t have the financial resources needed to pay their money bond. This is both unconstitutional and morally reprehensible.

It is essential that proposed reforms result in increased pretrial freedom of our friends and neighbors. Too often, criminal legal system reforms have amounted to little more than a transformation of incarceration. Electronic monitoring and other forms of pretrial surveillance should not be used as a trade-off for ending the use of money bonds. It is essential that reforms result in decreasing the reach and impact of these oppressive institutions.

If transformative bond reform is implemented, the money saved by diverting people from pretrial incarceration must be invested into the Black, Brown, and impoverished communities that have been disproportionately harmed by mass incarceration. Additionally, the state must invest in resources to support people who have been harmed by time spent involved with the criminal punishment system. Finally, in order for reforms to be truly effective, the state must put resources, time, and money into the implementation and oversight of these changes. Those efforts must also be transparent so that the public can ensure they are successful.

Cook County’s recent reduction in the use of money bonds has shown that we can successfully reform the pretrial justice system in Illinois without negatively impacting community safety. Over the past year and a half, Cook County has released thousands of people (both without money bonds and with affordable money bonds) who would have been jailed while awaiting trial under previous practices. All this increased pretrial freedom has resulted in no

“Currently thousands of people are losing their freedom while presumed innocent without any of the protections they are guaranteed by the U.S. Constitution.”

decrease in court appearance rates and no increase in re-arrest rates.⁶⁵ At the same time, violent crime rates in Chicago declined by 8%.⁶⁶ People released pretrial overwhelmingly succeed when given the chance.

By reforming the pretrial justice system and dramatically reducing the number of people incarcerated in Illinois jails, we have the opportunity to begin to undo the harm caused by mass incarceration, and start the process of dismantling the prison industrial complex.

1. Money bond is one of a three types of bond decisions in Illinois. People can also be released without having to pay money or can be detained in jail pretrial without any chance for release (called “no-bond”).
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4. Joshua Aiken, “Era of Mass Expansion: Why State Officials Should Fight Jail Growth,” Prison Policy Initiative (May 31, 2017), available at: <https://www.prisonpolicy.org/reports/jailsovertime.html>.
5. Bryant Jackson Green, “Illinois Jails Incarcerate Many People Who Don’t Need to Be There in the First Place,” Illinois Policy Institute (Dec. 11, 2015), available at: <https://www.illinoispolicy.org/illinois-jails-incarcerate-many-people-who-dont-need-to-be-there-in-the-first-place/>.
6. Ibid.
7. Ibid.
8. *United States v. Salerno*, 481 U.S. 739, 755 (1987).
9. Timothy R. Schnacke, Michael R. Jones, Claire M. B. Brooker, “The History of Bail and Pretrial Release,” Pretrial Justice Institute (2010), available at: https://b3cdn.net/crjustice/2b990da76de40361b6_rzm6ii4zp.pdf.
10. Public Act 100-0001, available at <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=100-0001>.
11. Katie Smith, “Kenneally, Reick writing bill to opt out of new bail reform requirements,” Northwest Herald (Jan. 26, 2019), available at: <https://www.nwherald.com/2019/01/25/kenneally-reick-writing-bill-to-opt-out-of-new-bail-reform-requirements/ad7rrbn/>.
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28. Ibid.
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30. Ibid.
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33. Ibid.
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