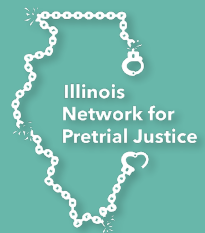


# ***\$tate of Injustice:*** A Community Review of Bond Courts in Illinois



**OCTOBER 2022**

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## INTRODUCTION

In February 2021, Illinois adopted the SAFE-T Act ([Public Act 101-0652](#)), the Illinois Legislative Black Caucus' landmark criminal justice, police accountability, and violence reduction omnibus bill. This monumental legislation was passed in response to the largest civil rights protests in our nation's history which occurred following the police murders of George Floyd, Breonna Taylor, and far too many others. At the center of this legislation is the Pretrial Fairness Act. In January 2023, these provisions will take effect and eliminate the widespread practice of wealth-based pretrial incarceration that disproportionately harms Black, Brown, and low-income Illinoisans. Decisions about who is jailed pretrial and who is able to return to their community will be based on the facts of a person's case and not the size of their bank account. Pretrial jailing will become the carefully-limited exception and will no longer be the norm.

Despite the demonstrated harm caused by the current system, conservatives, prosecutors, and police have fought tooth and nail to preserve a system that perpetuates great injustices and provides no benefit to community safety. The Illinois Network for Pretrial Justice undertook a statewide court-watching program to document the real human costs of the current system and demonstrate the absolute necessity of implementing the Pretrial Fairness Act.

Courtrooms are generally intimidating environments where efficiency and proper procedure are often prioritized over the well-being and humanity of people. Criminal courtrooms are even worse. People in bond court must fight desperately for their freedom while struggling to convey their humanity to a system that is often indifferent to their suffering. Every week in Illinois—and at bond hearings across the country—you can expect to find mostly White court actors – judges, state's attorneys, and defense lawyers – preparing for another day of bond court while mostly Black, Brown, and poor people in handcuffs are shuffled toward the front of the courtroom (or appear via video conference while still in jail) to have their freedom adjudicated.

The majority of people who are unable to afford the bond amounts set by judges fall within the [poorest third](#) of society. Nationally, [people are held pretrial](#) in city and county jails at a rate hovering around 67%, but in Illinois, [that average reaches almost 90%](#)—with the vast majority jailed simply because they [cannot afford to pay](#) their bond. Those unable to pay their way out of jail are far more likely to accept guilty pleas offered by prosecutors just to limit their incarceration and imprisonment time. As a result, poor people and people of color are exceedingly more likely than wealthier and White individuals to carry the collateral consequences of convictions throughout their lives.

Our court-watchers witnessed court personnel yell at accused people and their families, sometimes for things as simple as waving at someone they knew or yawning. Court-watchers consistently noted patterns of confusion, inaccessibility, and unfairness in court proceedings. What was most shockingly unfair were the legal decisions being made in people's cases; accused people being ordered to pay much more than they could afford to purchase their freedom. Right now in Illinois, the presumption of innocence is not free; it comes at a price. The Pretrial Fairness Act will end wealth-based incarceration, an urgently needed first step toward ensuring that our constitutional right to fairness and the presumption of innocence is for everyone in Illinois, not just the wealthy.

## METHODOLOGY

In order to understand how the state's bond courts function before the implementation of the Pretrial Fairness Act, we conducted a court-watching project in seven courthouses between June and September of 2022. Our court-watchers observed bond courts at the Circuit Courthouses in Champaign, DuPage, Kane, McLean, Peoria, Sangamon, and Winnebago Counties.

The sites for court-watching were selected based on the locations where our member organizations were able to recruit court-watching volunteers. The INPJ partner organizations that recruited volunteers include the ACLU of Champaign County, Champaign County Bailout Coalition, Faith Coalition for the Common Good (Sangamon County), Rockford Urban Ministries (Winnebago County), Black Lives Matter Bloomington-Normal (McLean County), and The People's Lobby (DuPage and Kane Counties). Volunteers were given a 1-hour training, facilitated either by Black Lives Matter Bloomington-Normal or by Chicago Appleseed Center for Fair Courts, to prepare for court-watching.

When scheduling permitted, court-watchers were dispatched in pairs so that there would be two records of the factual information observed. Court-watchers were given standardized forms to record quantitative data: factual information about cases, which included: the name of the accused, the perceived race and gender of the accused, the charges, the bond amount and type, and whether the person had a lawyer. In total, 56 court-watchers watched 1,026 cases where a bond was discussed:

- 208 cases in Champaign County on 15 days;
- 125 cases in DuPage County on 13 days;
- 138 cases in Kane County on 15 days;
- 209 cases in McLean County on 20 days;
- 20 cases in Peoria County<sup>1</sup> on 3 days;
- 89 cases in Sangamon County on 9 days; and
- 244 cases in Winnebago County on 13 days.

The earliest court date observed was June 10, 2022 and the latest court date observed was September 8, 2022.

In addition to recording the quantitative data, court-watchers were asked to collect and record qualitative information that reflected their impressions of the whole day's worth of cases. Using a standardized Google Form, they provided answers to four qualitative questions and were asked to answer each with at least two sentences of commentary. We received 92 qualitative responses from 39 court-watchers.<sup>2</sup> The questions asked were:

1. Was there any case that struck you as a particularly fair or particularly unfair example of the bond court process?
2. What were court actors (judges, prosecutors, public defenders, bailiffs, etc.) like? How did they treat accused people and their families?

<sup>1</sup>In some of our analyses in this report, Peoria County is not included because of the comparatively small number of observed cases recorded by court-watchers.

<sup>2</sup>McLean County developed and supervised their own data collection processes and did not participate in the qualitative portion of the reporting, although they shared their quantitative observations.

3. What would you want other people in your community to know about what you observed in bond court?
4. Is there anything else you would like to say?

The quantitative data and qualitative court-watching reports were collected and analyzed by INPJ partner organization Chicago Appleseed Center for Fair Courts. We conducted coding of qualitative data using the flexible coding method of thematic analysis by trained Appleseed staff and volunteers, a method of analysis well-suited to a study in which we entered with questions informed by existing literature and our prior knowledge about bond courts. Survey data from court-watching was reviewed by staff and compiled for analysis to discern trends among survey entries and establish a series of index codes. The purpose of index coding is to use broad codes that establish an “anchor” to provide an opportunity to explore initial themes and findings. During this phase, researchers collectively identified emergent findings and themes well-suited for further analysis. We reviewed court-watcher responses through the specific lens of the research questions, then identified the findings that follow.

As part of our work to examine the demographics of jail populations in Illinois, Chicago Appleseed Center for Fair Courts sent Freedom of Information Act requests to all 102 counties, asking for information about everyone admitted and released from their jails between January 2021 and June 2022, as well as “snapshot” information about who was in their jail on June 1, 2022. In both cases, we requested accused people’s names, races, genders, charges, bond types, bond amounts, conditions of bond, and reasons for release. We received responses from 43 counties; in an additional five counties, some “snapshot” information was available on their websites for analysis. There are eight Illinois counties that do not have a jail. The analysis of this information and the quantitative data collected through court-watching was done using the R program for statistical computing.<sup>3</sup>

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<sup>3</sup>The code that produced the graphs and tables in this report is available upon request to Chicago Appleseed Center for Fair Courts at [faircourts@chicagoappleseed.org](mailto:faircourts@chicagoappleseed.org).

## THE NEED FOR PRETRIAL DATA ACCESS REFORM

The fact that court-watching was needed to gather basic information about the demographics of people going through bond court and the outcomes of their cases is a sign that the Illinois courts are not sufficiently transparent to the public. Basic data about our courts needs to be more readily available.

The Illinois Courts are **not subject** to the Freedom of Information Act or any other law or rule requiring disclosure of basic information about criminal cases. This makes Illinois an outlier among states; it is one of only a few states with no public access to court records. Although county jails are subject to FOIA, our efforts to get responses from those counties with basic information about the populations of their jails revealed that there is wide variation in what information jails keep about the people in their jails, and whether it is kept in a format that is easily shareable and analyzable. Only 43 of 102 counties responded to our FOIA requests at all; of those, 18 provided information in formats that were impossible to reasonably tabulate or analyze,<sup>4</sup> and many more could only provide some of the data requested.

As a result, in most counties, ordinary citizens wanting information about the kinds of data points explored in this report have no real way to access that information other than the extremely time-consuming process of physically going to court and observing what happens. This is not an acceptable level of transparency for any government.

The Pretrial Fairness Act attempts to remedy this problem through its **data collection** provisions. The Administrative Office of the Illinois Courts (AOIC) is required under the new law to convene a data oversight board to “oversee the collection and analysis of data regarding pretrial practices in circuit court systems.” The Act goes on to define multiple data points that county courts will be required to gather and provide to the AOIC, including data on pretrial release and pretrial conditions outcomes, the demographics of people moving through the courts and people incarcerated, and data on whether individuals are re-arrested or are accused of violating the conditions of their pretrial release while their cases are pending. The Pretrial Oversight Board met throughout 2021 and 2022, and released its **preliminary report** in July. Although the report did not **specify** how the Board intended to meet some of the requirements of the Act in a timely fashion, it did detail plans for a major overhaul of Illinois’ approach to court data that should provide more transparency in the future. The Pretrial Fairness Act is already succeeding in its goal of providing the public with more information about the way their courts function every day.

<sup>4</sup>For example, White county provided information about who was booked into their jail through 413 pages of individual booking records that were not text searchable; in several counties, including Clay and Moultrie Counties, records were handwritten.

# THE BOND COURT PROCESS IN ILLINOIS

## Under Current Law

Although procedures vary by county, the basic structure of bond setting is the same across Illinois. The criminal legal process starts with an arrest. All people charged with felonies are required to be held overnight and typically appear before a judge for bond court within 24-72 hours of arrest. For misdemeanor arrests, some people are released from police stations, either without having to pay bond or by paying a monetary bond; if a person cannot pay bond or if they are charged with certain misdemeanors (such as most domestic violence charges), they are held to appear before a judge in bond court.

At bond court, a person appears before a judge who makes one of a few possible decisions:

1. The judge releases the person without them having to pay any money up front; this is called alternatively an "I-Bond," a release on recognizance (ROR), or a release on signature.
2. The judge can release the person on the condition that they pay a monetary bond. In Illinois, there are currently two **kinds of monetary bonds**: the "D-Bond" (Deposit Bond), which is the most common type of bond in Illinois and requires that the accused person pay 10% of the bond amount in cash before being released, or the "C-Bond" (Cash Bond), which requires that the full amount is paid in order to be free or on electronic monitoring while awaiting trial.
3. In certain rare circumstances, when the state specifically requests that a person be incarcerated pretrial without the opportunity for bond, a judge can order a person to be held "no bond" so they will not have the ability to pay to be released from jail. Although prosecutors currently have the ability to request no bond detention, they rarely do, instead opting to rely on the **unlawful** practice of requesting high money bonds knowing that accused people will not be able to pay them as a way of holding them in jail.

In addition to the determination of whether someone will need to post a monetary bond, judges can add additional conditions to someone's release. Some of the most common pretrial conditions include supervision by a pretrial services agency, electronic monitoring (house arrest), and protective orders prohibiting accused people from going to a certain place or being near a certain person.

Illinois law prohibits the use of bail bondsmen, so any bond payments must come directly from the accused individual or their friends and family. Every county is different in terms of what forms of payment they accept; most commonly, bond payments are required in cash, but some counties allow people to use credit cards or certified checks to bond themselves or loved ones out of jail. After being released on bond, the accused person must come to all court dates and meet all pretrial conditions or risk forfeiting the money they posted or having their bond revoked, which could result in incarceration until trial.

Illinois has an important and significant history of reforming its bail policy in response to national movements. Illinois **outlawed bail bondsmen** in 1963 in response to the civil rights movement and rampant corruption in the bail bonds industry. In 2021, Illinois continued this legacy by ending money bond in response to the 2020 uprisings and calls made by the Black Lives Matter movement.

## ***Under the Pretrial Fairness Act***

After the Pretrial Fairness Act goes into effect on January 1, 2023, finances will no longer determine people's freedom. Instead, the decision of whether someone is in or out of custody while awaiting trial will depend on whether a judge has made the specific finding that they either are highly likely to willfully flee the jurisdiction or that they pose a specific, real, and present threat to the safety of any person or persons.

Under the Pretrial Fairness Act, first appearances in court will **no longer** be places where any person can be detained if they don't have enough money to bond out. Instead, only people who are either (1) charged with certain serious crimes or (2) are already on pretrial release, probation, or parole for another charge can be held in custody. Not everyone who meets one of those two criteria will be jailed; instead, the prosecutor will make a decision at each person's first appearance in court whether they want to ask that the person be jailed. If they ask the court to jail the person, the judge will hold a **hearing**, where the prosecution and the defense will have the opportunity to present evidence and witnesses. A person will only be held in custody if they are found to either pose a safety risk to another person or are likely to willfully flee.

The vast majority of arrested people will not be jailed under the Pretrial Fairness Act. At their first appearances in court, judges will decide whether there are any conditions of release that are necessary to ensure the safety of others or ensure the accused person comes to court. People will no longer be left waiting in suspense during their bond hearings to hear whether or not the judge will order a bond they or their family can afford, or whether they will be stuck in jail.



***Pretrial Fairness Act lobby day, March 2020***



## QUANTITATIVE DATA ON BOND COURT PRACTICES

As part of our court-watching, volunteers recorded specific information about each case they observed, including the perceived race and gender of the accused person, the charges against the person, the type of bond given, and the bond amount. To supplement the court-watching data, Freedom of Information Act (FOIA) requests were sent to 102 Illinois counties seeking information about their jail populations, including the same information being collected by court-watchers.

### Racial Disparities in Bond Courts and Jails

In 2015, Black individuals in Illinois were jailed at **6.9 times the rate** of their White counterparts—a 13% percent increase since 1990. These disparities are a result of bias at many points of the criminal legal system. Black people are more likely to be stopped by the police, are more likely to be arrested, are charged with more serious crimes, and are more often given bonds they cannot post, which ultimately leave them jailed pretrial. The racial disparities observed in bond court are not the result of any one factor or bias by any one system player; instead, a combination of biases at many layers of the criminal legal system create substantial disparate harm on Black Illinoisans.

“ In 2015, Black individuals in Illinois were jailed at 6.9 times the rate of their White counterparts—a 13% percent increase since 1990. ”

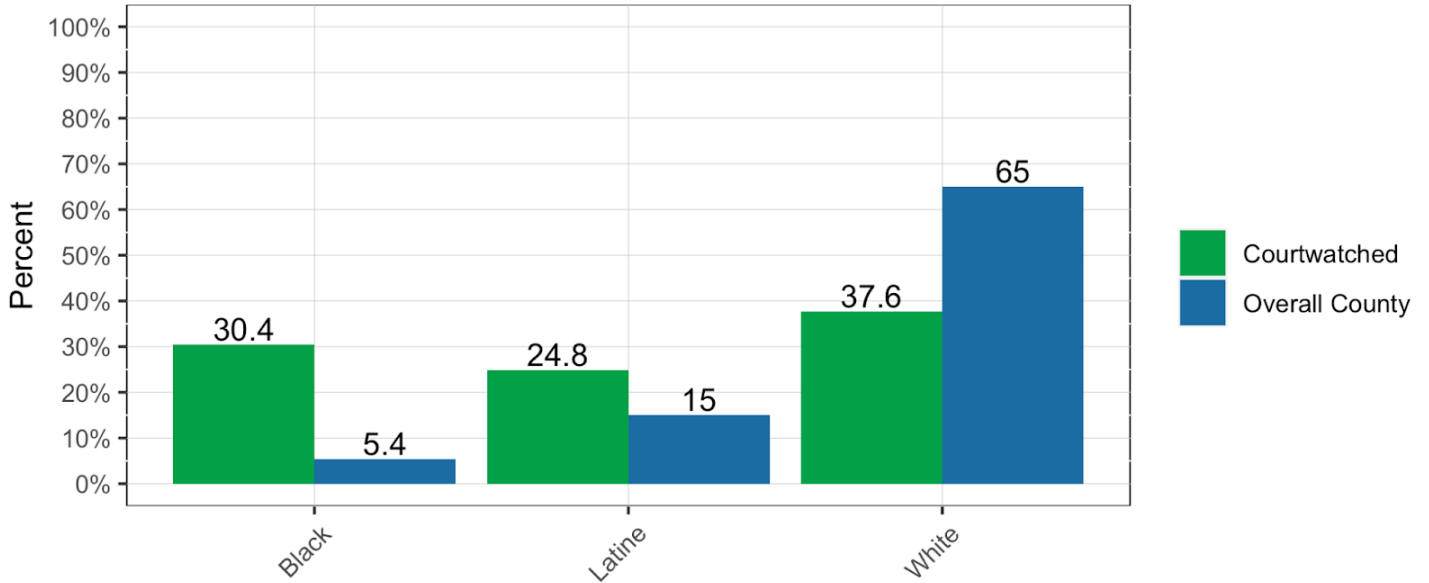
### In Court-Watched Counties

Throughout the court-watched counties, major racial disparities were observed in who was moving through bond court. Universally, White people were underrepresented in the number of people moving through bond court in comparison to the counties' populations as a whole. In all areas, Black people were substantially over-represented in bond court; in DuPage and Kane Counties, Latine people were also overrepresented. Overall, 9.15% of people living in the seven counties are Black, but 43.7% of the people we observed in bond court were Black.

The most extreme disparities for Black residents were in DuPage County. Black people were 5.6 times more likely to appear in the bond court population than the overall county population; Latine people were 1.6 times more likely to appear in the bond court.

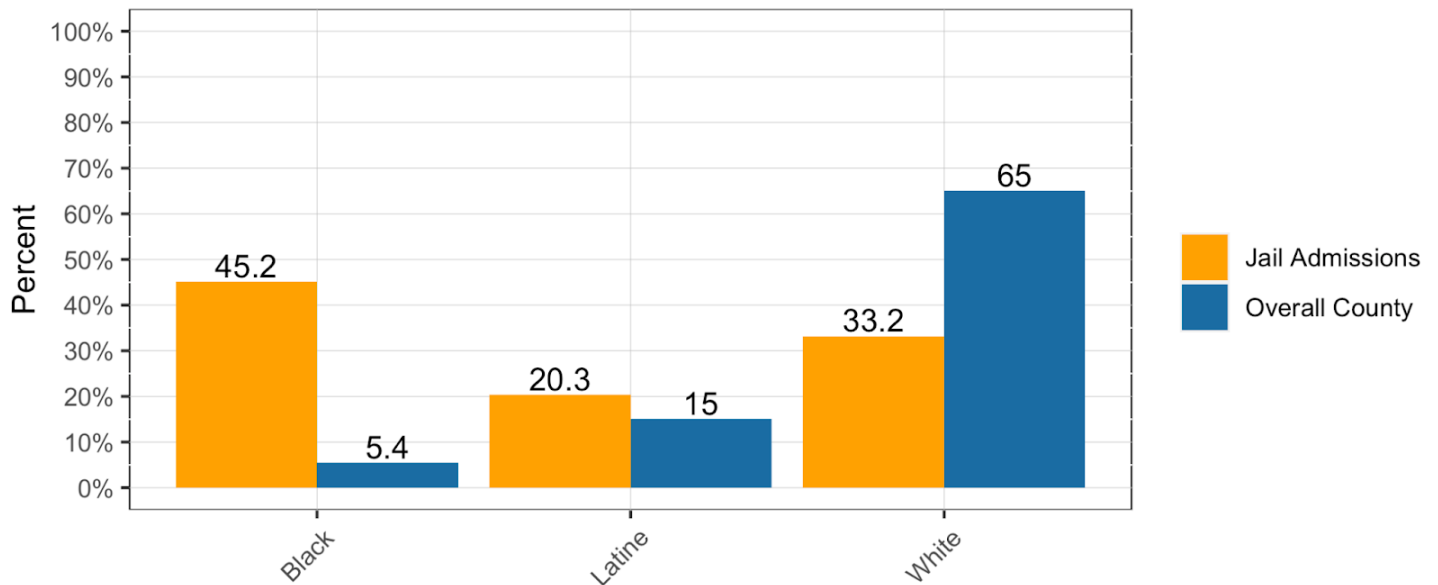
“ Overall, 9.15% of people living in the seven counties are Black, but 43.7% of the people we observed in bond court were Black. ”

## Racial Demographics of Courtwatched Cases vs. Overall DuPage County



The disparities evident in court-watched cases also appear in data from the DuPage County Jail. Even though Black people represent only 5% of the population of DuPage County, the racial disparities in jail data are even more stark than what was observed by court-watchers: Black people make up almost half of admissions to DuPage County Jail.

## Racial Demographics of DuPage County Jail Admissions vs. Overall DuPage County



The table below uses U.S. Census data from 2020 to show the percentage of Black, Latine, and White individuals in the overall county populations, the percentage of people of each race observed by our court-watchers, and, when available, the percentage of people admitted to the jails of each county who were Black, Latine, or White between January 2021 and June 2022. There were substantial racial disparities in all counties, with Black people being over-represented in court-watched cases and in county jails compared to the county population as a whole.

	Overall County Population	Percentage of Court-Watched Cases	Percentage of Jail Admissions
<b>Champaign County</b>			
Black	14.4	62.4	56
Latine	6.6	4.9	0†
White	65.7	27.8	37.7
<b>DuPage County</b>			
Black	5.4	30.4	45.2
Latine	15	24.8	20.3
White	65	37.6	33.2
<b>McLean County</b>			
Black	8.8	48.3	52*
Latine	5.4	5.7	5.5*
White	78.6	48.3	42.6*
<b>Peoria County</b>			
Black	19	80	Not available
Latine	5.4	5	Not available
White	68.8	10	Not available
<b>Sangamon County</b>			
Black	13.5	44.8	Not available
Latine	2.6	0	Not available
White	79.1	54	Not available
<b>Winnebago County</b>			
Black	14.3	45.1	62.1*
Latine	14.4	11.8	4.7*
White	66.3	39.8	31.3*
† It is likely that Champaign County Jail does not record whether individuals are of Latine origin. * These statistics are taken from snapshots of a single day in custody (8/11/22 for McLean and 9/28/22 for Winnebago) rather than overall jail admissions.			

These racial disparities were noticed by court-watchers who recorded their experiences. One court-watcher, who is White, noted:

*When I approached the courtroom, the bailiff asked if I was there to court-watch. When people of color approached, they were asked if they were there for their own case or someone else's.*

The casual assumption that a White person would not be related to someone or appearing themselves in bond court, but that a person of color would be, is indicative of the norm in the counties we court-watched; people of color are often the majority of people who appear in bond court, despite not being the majority of people who live in the county.

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**“ There were substantial racial disparities in all counties, with Black people being over-represented in court-watched cases and in county jails than in the county population as a whole. ”**

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### **Throughout Illinois Jails**

Racial disparities loom large in Illinois jails. Of the 32 counties where we obtained racial demographic data, 30 counties had jail populations that were disproportionately Black as compared to their county populations as a whole. In 21 counties, Black people were over three times as prevalent in the jail as in the county as a whole.

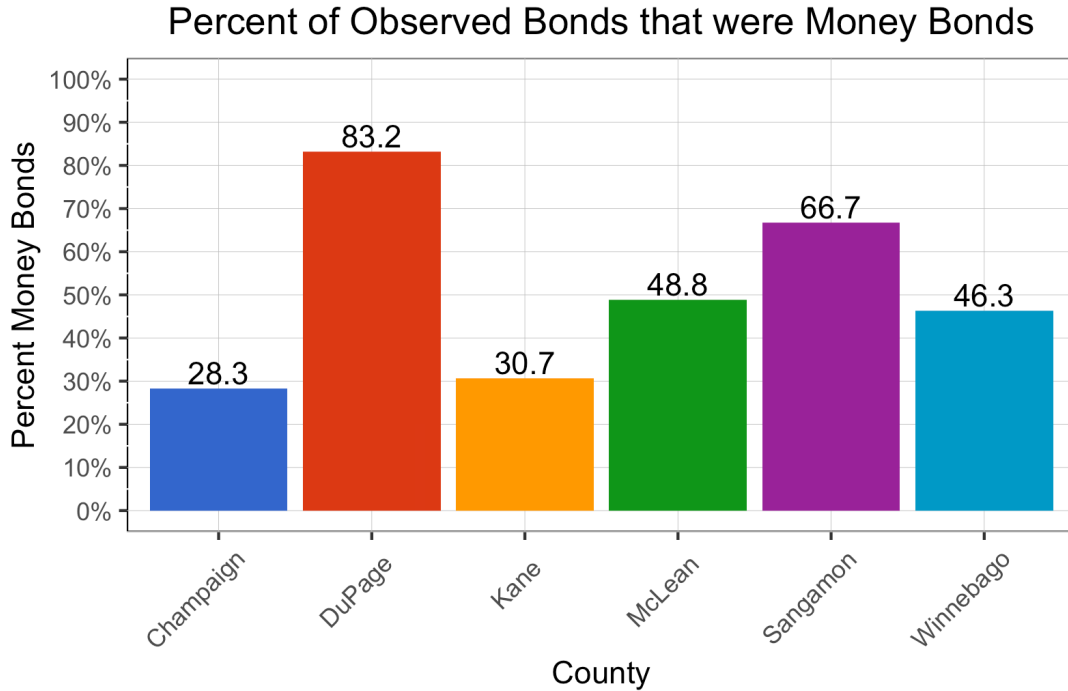
- The most extreme disparity we observed was in Woodford County, where on August 10, 2022, 26% (20 out of the 77) of people in their jail were Black, when less than 1% of all people living in Woodford County is Black.
- In Macoupin County, 25% (13 of the 53) of people admitted to their jail between January 2021 and June 2022 were Black when only 1% of Macoupin County's population is Black.
- Of the counties for which we had data where the population was over 100,000 people, the greatest disparity between the jail and the county population was Tazewell County, where 16.4% of the jail was Black, compared to only 1.6% of the county population.

In 2019, **Loyola University Chicago** found that 50% of people in Illinois jails were Black, 14% were Latine, and 33% were White, although in the state as a whole, 14.7% of people are Black, 18% are Latine, and 60% are White. These findings mirror **national numbers** that show that Black and Brown people are disproportionately incarcerated pretrial. **One study** found that across the country, Black and Brown accused people are between 10% and 25% more likely than White accused people to be detained pretrial or have to post a money bond. **Another study** found that this effect is particularly severe among young Black men, who were 48% more likely to be jailed pretrial than White people.

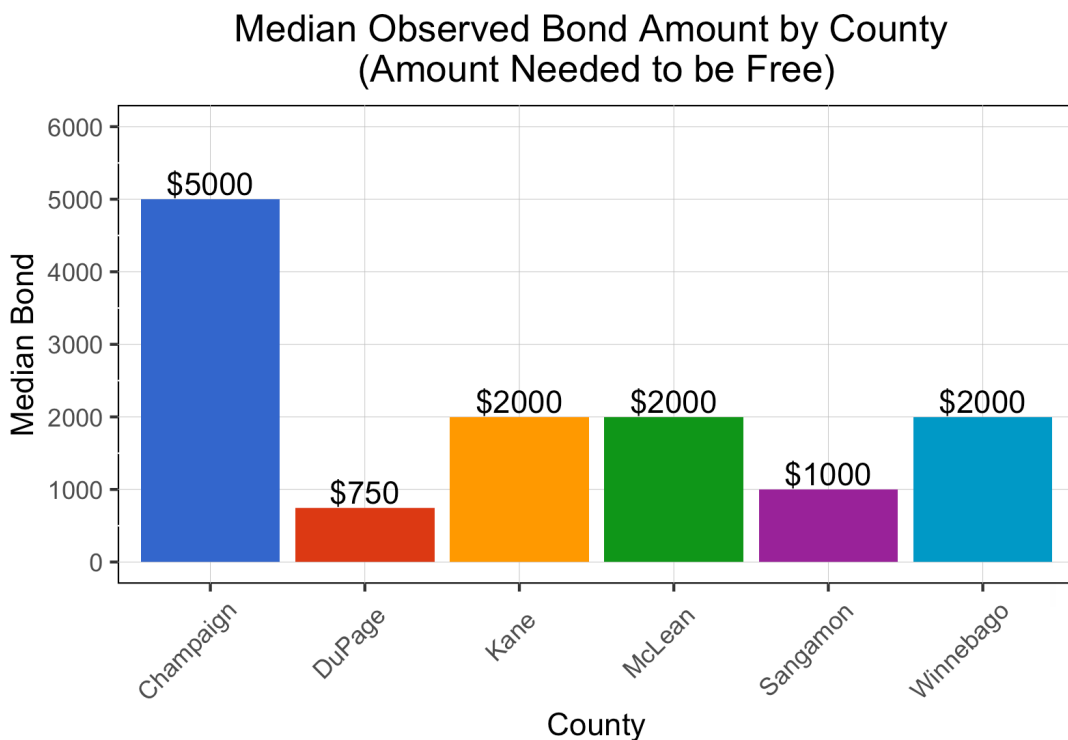
These pretrial disparities lead to further disparities within the criminal legal system. People who are jailed pretrial are more likely to eventually plead guilty and be sentenced to prison. These disparities perpetuate cycles of systemic racism, economic alienation and further mass incarceration. One way to combat the devastating and disproportionate effect that mass incarceration has had on Black and Brown people in the United States is to reduce the number of people in our jails overall which the Pretrial Fairness Act accomplishes.

## Inconsistency in Bond Amounts

There is considerable inconsistency across cases and between counties on bond types and bond amounts given to people throughout Illinois. In DuPage County, 83.2% of people whose cases we observed had to pay some money for pretrial release; right next door in Kane County, only 30.7% of people had to pay.



Likewise, the bond amounts people were required to pay varied considerably between counties—though, in general, counties that used fewer money bonds overall tended to set higher money bonds.



These results point to the arbitrary nature of bond decisions. **The Kane and DuPage County courthouses are 13 miles apart, but people who appear in court in each building have extremely different experiences**—in DuPage, accused people are likely to have to post cash to get out of jail, but will have to pay a relatively small amount; in Kane County, they are much less likely to have to post cash, but if they do, it is on average \$1,000 more expensive to do so than 13 miles away.

It's important to note that all of the average bonds are still well above what many people appearing in court are likely to be able to afford. According to the **Federal Reserve**, in 2021, 38% of Americans would have difficulty covering a \$400 expense — half of even the lowest median bond — and these rates of poverty are higher among Black and Latine people: 40% of Black adults and 35% of Latine adults had difficulty paying monthly bills, compared to 19% of White adults. People appearing in bond court were disproportionately Black and Latine. As noted later in this report, court-watchers observed many instances of people appearing in court expressing that they could not afford the bond set for them by the judge.

## Charge Composition - Domestic Violence and Non-Violent Crime

Across all court-watched counties, the most common types of cases appearing in bond court were domestic violence (DV) cases — 22% of cases across all counties were domestic battery or violation of order of protection cases. The people with these cases were slightly more likely to be released without having to post a monetary bond than non-DV cases: 43.8% of DV cases received recognizance bonds compared to 39.6% of non-DV cases.

In comparison, instances of serious community violence (robbery, aggravated battery, murder, carjacking etc.) were relatively rare. Only 7.2% of observed cases involved instances of serious community violence.<sup>5</sup> Almost two-thirds (63.4%) of cases (where a charge was recorded in the data) were non-violent charges. The most common non-violent charge was simply an arrest on a previous warrant; the second most common was possession of drugs. This is an important reminder that most people who go through bond court are not often charged with serious violent crimes. The most common reasons that people are in bond court are because of violations of previous releases - often missing court- or because of arrests for non-violent crimes.

Court-watchers observed many people who were incarcerated solely because a warrant had been issued for their arrest after they had missed court in another case. Under current law, judges almost always issue an arrest warrant when someone misses court. Once people realize that they have missed court, it can also be difficult for them to remedy the problem and get their case back on track. By returning to the courthouse voluntarily, they risk possible incarceration on the warrant, which understandably disincentivizes people from coming in to resolve their warrants. The Pretrial Fairness Act creates an **optional system** for judges to respond to failures to appear by issuing notices to people telling them to come into court rather than issuing warrants; if a person appears after receiving the notice, they are not subject to re-arrest, and the failure to appear is not counted against them in future cases.

<sup>5</sup>We included the following charges in our definition of serious community violence: aggravated battery, robbery, murder, attempted murder, criminal sexual assault, home invasion, residential burglary and carjacking.

# COURT-WATCHERS' EVALUATION OF BOND COURT PRACTICES

We gathered court-watchers' responses at the conclusion of each day's bond court proceedings and thematically sorted them to describe the treatment of accused people and the ways in which they were affected by the bond court process. These themes were derived from specific and recurrent phrasing used by court-watchers. Specific, recurring themes including "substantive unfairness," "confusion and inaccessibility", and "dehumanizing" were used to organize and capture court-watchers' perceptions of the negative aspects of the court-watching experience. Additionally, the theme "reasonable and polite" was constructed to capture responses in which court-watchers used phrases and terms to explain the circumstances where court actors treated litigants with a clear sense of respect. The decision to categorize certain responses under particular themes depended upon the degree to which each response aligned with the definitions associated with a given theme. Each theme and the corresponding definition, created solely for the purposes of our analysis, can be further explored in our Appendix.

While all of the accounts discussed below are useful in documenting courtroom proceedings and the behavior of court actors when interacting with accused people, our data does not include direct accounts from accused people. The perceptions from court-watchers may differ from the experiences of the accused.

## **Confusing, Inaccessible, and Difficult to Follow**

Almost one-third – 28% – of court-watchers' reports described the bond proceedings as confusing, inaccessible, or difficult to follow. This was due to two main factors: the pace of hearings and the use of video technology.

### **Pace of Hearings**

In Illinois, bond court proceedings usually take place daily from Monday through Friday and last an hour or longer, depending on the jurisdiction and how many people are on the bond court call for that particular day. The fast pace of these hearings leaves accused people with little time to explain their circumstances or clarify any uncertainties with judicial decisions and the outcomes of their bond hearings.

Based on our court-watchers' experiences, the lengths of hearings varied by jurisdiction. One court-watcher noted that on the day they observed court, judges heard 15 cases in just over an hour, and set a money bond in every case. Another court-watcher noted:

*[Bond Court] goes remarkably fast. Like 3-5 minutes per case.  
That's a short amount of time to find out if you're staying in jail or not!*

These observations match observations from [Loyola University Chicago](#), which studied bond hearings across four Illinois counties. In particular, they studied two counties that were court-watched for this report, McLean and Winnebago, and found that McLean had a median hearing length of 3 minutes and Winnebago had a median hearing length of 5.5 minutes.

**Making decisions about whether someone is incarcerated for days, weeks, or years in a matter of minutes creates fundamental unfairness in Illinois' pretrial system.** One court-watcher in Sangamon County noted that bond court "moves way too fast for defendants to understand exactly what is going on." The quick pace of decisions may explain court-watchers' perceptions that accused people "seemed to not always understand charges." Of particular concern was a practice observed in Sangamon County of prosecutors offering guilty plea deals as part of these extremely short hearings. Asking a person to make a decision on whether to plead guilty in a matter of minutes is fundamentally coercive, especially when their freedom is conditioned on them accepting the deal and they do not have time to carefully consider their options with an attorney.

The Pretrial Fairness Act ensures that decisions about whether someone is jailed or released pretrial will be afforded the time it deserves. Because few cases will have a detention hearing, there will be more time to spend on each case where jail is on the table. There are also explicit protections in the law that allow the accused person to present evidence and call witnesses if they wish to so that accused people can counter the prosecution's argument that they should be held in jail pretrial.

### **Video Hearings**

Seventy-one percent of the court-watchers' responses that noted the confusing and inaccessible nature of bond court mentioned the use of video hearing technology as a contributing factor to that confusion and inaccessibility. Since the onset of the COVID-19 pandemic in early 2020, courts across the country and state have transitioned to holding bond hearings virtually to limit the spread of coronavirus. Courts adopted this technology in order to continue court operations amidst dangerous public health conditions, but its use has been shown to lead to unfavorable bond hearing outcomes for accused individuals. **One study** of bond hearings conducted in 2010 found that accused people whose hearings were conducted over video had substantially higher bond amounts than their in-person counterparts, with increases ranging from 54% to 90% depending on the offense. Since that time, the use of video hearing technology has increased **dramatically** in pretrial systems.

Unfortunately, the courts have hastily welcomed these changes at the expense of due process rights and access to justice. While convenient for judges and some attorneys, virtual hearings can have disastrous consequences for accused people. Studies have shown that video hearings make it **harder for judges to empathize** and avoid bias toward people appearing before them in court through a computer screen; technology issues and virtual appearances in court can cause judges to perceive people as disengaged, unbelievable, or even disrespectful. Without appearing in-person, an accused person's credibility is hindered, their engagement is misunderstood, and their humanity is obscured, which can cause judges to be biased against them in their decision-making during hearings. This ultimately results in more jailing and harsher conditions for people who are presumed innocent.

Video hearings were seen by court-watchers as having a major effect on the right to counsel. One court-watcher noted:

*I worry that having the accused Zoom into court, they may be unaware that they have a public defender for the bond hearing. Also, even if they are aware, they can only communicate in open court in front of the prosecutor...*



Concerningly, court-watchers observed a lack of privacy for attorney-client communications in video hearings. Having a defendant speak to their attorney in open court, rather than in a private conversation, opens them up to disadvantaging themselves legally. One court-watcher wrote:

*Public defenders will ask client on video in open court how much cash they can put up. Video bond court really puts defendants at a disadvantage.*

Another court-watcher described a similar issue:

*The judge and the defense attorney were yelling at [the accused person] to stop talking. They actually ended up muting her on Zoom because she kept talking. I don't think she fully understood why she shouldn't talk about what happened, but at one point the defense said, "If you keep talking - it's hurting you more than it is helping!" When they muted the accused, you could still see her mouth moving.*

The use of video hearings adds another layer of complexity to the issue of how accused people participate in their own hearings. The ability of court actors to mute participants denies accused people the basic autonomy to make decisions about how to participate in their own case. Although it may not be advisable for accused people to speak during proceedings, they undoubtedly have a right to, and using technological means to silence accused people raises serious ethical and legal concerns.

Video hearings also seemed to influence the way that judges viewed defendants. One court-watcher noted:

*It was interesting to see everything via Zoom. The first accused [person] had his attorney [show] up late and had connection issues. You could tell the judge was peeved and this reflected poorly for both the accused and their attorney.*

A **significant share of court systems** relying on video hearing technology often have no provisions to enable private communications between attorneys and clients in separate locations. Individuals not physically present at the courthouse also face more difficulty obtaining legal representation. Alarming, an **analysis** of the use of video hearing technology in Cook County between 1991 and 2007 found that after the Circuit Court of Cook County began using closed-circuit television for most felony cases in 1999, the average bond amount for impacted cases rose by 51%, while cases handled in-person were found to have no statistically significant change in bond amounts over the same time period.

Under the Pretrial Fairness Act, the inaccessibility and unfairness resulting from the use of video hearings will be curtailed by significantly limiting the use of fully remote proceedings. Courts will instead be required to ensure the physical appearance of accused people, except in circumstances where the accused person waives their right to an in-person hearing or an in-person hearing would place the accused person's health at risk.

## Substantive Unfairness

About two-thirds of court-watchers (63%) identified some aspect of the court process they watched as “unfair.” Within the responses that detailed unfairness, a few sub-themes emerged: the lack of consideration for the accused person’s ability to pay the bond set by the court; callousness and unfairness towards those with mental illnesses and those who used substances; and a sense of arbitrariness in what bonds were set in different cases.

### Consideration of the Ability to Pay

A number of court-watchers noted that judges in bond court seemed indifferent to the ability of individuals to pay the bonds they set. It is important to remember that giving someone a money bond is meant to be a release decision – that is, when a judge sets a money bond, they are saying that a person is safe to return to the community and conditioning that return on paying a certain amount of money. Judges are supposed to set money bonds at levels that people can actually pay so that their release is facilitated.

**Illinois law** already requires that bond be set at a level that is “not oppressive” and “considerate of the financial ability of the accused.” Unfortunately, our court-watchers observed many judges not complying and instead setting bonds that people directly told them they were unable to pay because they were unaffordable. One court-watcher in Kane County noted:

*In one case, the person arrested stated that they would be unable to pay bond and they needed to work to support their family. Bond was still set and they will be incarcerated.*

A DuPage County court-watcher observed an unaffordable money bond set for a woman charged with “prostitution” and possession of a controlled substance, stating: “She lives in a shelter. It’s obvious that she would not be able to post \$1,000 for the 10% of \$10,000 bond.” **Loyola University Chicago** found similar results in their study of bond hearings in four counties. In McLean County, Loyola found that defense attorneys mentioned the inability of their clients to pay bond in 24% of cases, but not a single judge mentioned that accused person’s inability to pay in their final bond decision.

In general, our court-watchers did not observe judges asking accused people whether they could afford bond before setting the bond, with the limited exception of two judges in Sangamon and Champaign counties. Even if judges had consistently ensured that money bonds were set at a level where a person could post bond, however, money bonds still cause harm. Even if an accused person can technically pay a money bond, paying that money bond can majorly impact a person’s life and family. **The setting of a money bond** - whether or not bond is posted - can lead to a 12% higher rate of conviction and up to a 9% higher rate of re-arrest in the future.

Money bond extracts money from the state's poorest communities. Courts are **allowed** to keep 10% of every bond posted<sup>6</sup>, but in reality, keep much more, by extracting fines and fees from bond amounts before returning them to accused people at the conclusion of their cases. In 2018, clerks of circuit courts collected **\$13.3 million** in bond processing fees, but an additional \$42.8 million in fines and fees extracted from bonds before they were given back to accused people. Illinois **requires** counties to waive fines and fees for indigent people; when counties take those fines and fees out of people's bonds before returning them, they circumvent this protection and extract millions from the families of accused people. In 2020 alone, the state of Illinois collected more than **\$120 million in bond money**, and funding government operations should not happen through the incarceration of low-income communities and people of color.

If these millions of dollars remained in communities instead of being extracted by the court system, families would have more money to pay for housing, to pay for basic necessities, and to save for their futures. Ending money bond is not just needed criminal legal system reform; it is economic justice reform as well.

### **Arbitrariness**

Court-watchers that detailed a theme of unfairness in their responses also noted that bond amounts were seemingly set randomly and arbitrarily. One court-watcher noted, "It is wild to me how they seem to [throw] around numbers for bond." Another court-watcher noted their confusion with the judges' and prosecutors' justifications for bond amounts, writing:

*One person (woman) had no criminal history and got recognizance bond because of it, but another person (man) with no criminal history did not get recognizance bond.*

A court-watcher in DuPage County wrote:

*There does not seem to be much rhyme or reason to what the judge sets the bond amount at. The prosecutor would generally ask for a high [dollar] amount, the public defender would ask for a lower [dollar] amount, and the judge would throw out a number either somewhere in between the two, or up to the full [dollar] amount the prosecutor first mentioned.*

Multiple court-watchers communicated that court actors may have made apparently arbitrary bond decisions based on individuals' employment backgrounds or social circumstances. Another court-watcher observed a Black female litigant "who is a dancer," describing:

*It seems unfair that her bond was set at \$10,000. Why so high? She violated an Order of Protection by requesting money from her ex-boyfriend who owed her money. She put a note in the memo of the request, not realizing that this would be a violation of the Order of Protection...Her bond of \$10,000 seems unfair and excessive.*

<sup>6</sup>Except in Cook County, where 1% of each bond is retained.

There was also wide variation between counties and between judges in the same county in what kinds of bonds were set. As noted above, there were substantial differences in both the percentage of people who had to pay money bonds and the amounts of those money bonds among the different counties we observed. Even within the same county, however, which judge was sitting on the bench on a given day could make a difference in whether a person received a money bond or not. A court-watcher wrote:

*The judges – and their individual style, temperament and biases – seem to be a big factor during hearings. The differences are vast and the way they approach cases is equally unique. The system seems to lack consistency. Bond seems to be set in a very arbitrary manner... the judge sets bond somewhere in the middle but his/her logic and reasoning are unclear to me.*

The elimination of money bond under the Pretrial Fairness Act will directly prevent thousands of individuals from being stranded in local jails purely because of their financial status or lack of access to wealth. The law includes specific delineations which limit pretrial incarceration to a much narrower set of charges, and then allows pretrial jailing only where there is a specific safety risk or risk of willful flight. This will not only reduce the criminalization of poverty, but also ensure greater consistency in release decisions. Under the current system, two individuals facing the same charges can have wildly different bond hearing outcomes. Starting January 1, 2023 under the Pretrial Fairness Act, money will no longer be a determining factor in release decisions, and courts will no longer irrationally determine who goes free and who stays in jail by assigning arbitrary bond amounts.

## **Mental Illness and Substance Use**

When asked to highlight cases they thought were particularly fair or unfair, a number of court-watchers noted cases where mental health issues or substance use were clear factors in why accused people were in bond court. Judges had a range of responses to people with obvious mental health or substance use challenges. Some were sensitive to the issue; a judge in Winnebago County noted the mental health crisis of an accused person and asked the prosecutor to review the charges in light of the mental health concern, leading to the dismissal of charges.

Other judges ignored or were hostile to mental health and substance use concerns. In reviewing a previously set bond, a court-watcher reported that a judge in DuPage County upheld a bond that a woman could not post; the woman had “obvious mental illness” and had “tried to commit suicide... because a hospital said she couldn’t be admitted unless she was suicidal.” Rather than ensuring that the woman received treatment, the court-watcher noted that the judge “treated [her] only as a criminal and kept [her] in jail.”

In 2017, **44% of people** incarcerated in jails across the country had a mental health diagnosis. Once caught in the pretrial system, particularly vulnerable individuals—such as those experiencing homelessness and or dealing with serious mental health conditions—face a **higher likelihood** of pretrial incarceration, especially when housing instability is often factored into risk assessment scores to justify jailing people to ensure appearance at future court dates.

In contrast with the current system, the Pretrial Fairness Act creates more avenues for pretrial release. By reducing the role the criminal legal system plays in addressing issues related to mental health and substance use, the new law will allow more people to voluntarily obtain community-based supports and services rather than forcing individuals who use substances or have mental health struggles into dangerous and toxic environments like jails, where their conditions are likely to worsen.

Only **17% of people** who are recommended to receive drug treatment in jail actually receive it. Jails are not treatment centers, and the immediate forced abstinence imposed by jails increases the likelihood that people will die from overdose once released. **One study** found that people recently released from incarceration were 129 times more likely to die of an overdose than the general population. Jails are dangerous and counter-productive places for people who want mental health treatment or substance use treatment. The Pretrial Fairness Act will keep more people out of jail and in communities where they have the opportunity to receive real help that they want and need.

## **Dehumanization**

At least 43% of our court-watchers recorded some features of courtroom demeanor as “dehumanizing.” Our analysis considers “dehumanizing” behaviors as judges rudely interrupting an accused person when they are speaking or preventing them from speaking on their own behalf, including when courtroom procedures or technology are employed by court actors to ignore the presence of accused people and any of their verbal protestations. “Dehumanization” includes when court actors are perceived to be cold, condescending, too “business-like,” or lacking compassion when dealing with accused people and their circumstances.

The bulk of the responses which identified court actors as “dehumanizing” specifically referenced the behavior of judges in administering bond court proceedings. Some court-watchers described inconsiderate behavior in how judges responded to the socioeconomic needs of accused people or their health. A court-watcher in Champaign County recounted:

*The judge was dismissive of one of the accused who was female, visibly upset, crying, and trying to have her say. Upon hearing the date of her pretrial [hearing], she interjected saying that she was trying to go to rehab and had an appointment at the center here. He rolled his eyes and did not change the date...*

The commentary from several judges was also often described as particularly dismissive of the gravity of the situations facing accused individuals. As one court-watcher described:

*[The] judge was making jokes and trying to be lighthearted, but this often seemed condescending. He ended each case with a boisterous “have a nice day,” which seemed inappropriate to the circumstances.*

Despite the confusing nature of bond hearings, some judges were also reportedly quick to shut down an accused person's attempt to ask clarifying questions, as one respondent explained:

*The judge...is short with defendants often. She wants them to only answer the questions that she asks. Often they ask her, "can I speak?" "No" is her common response.*

That same judge was the subject of multiple court-watchers' responses criticizing judicial behavior, including one who outlined her treatment of individuals seated in the gallery:

*The judge...is very short with defendants trying to ask questions. She yelled at a man in the gallery for yawning, [stating] "if this is to boring for you go out in the hallway until your case is called."*

Prosecutors were also a common subject of remarks categorized as "dehumanizing" by our court-watchers. Given the extreme power and discretion prosecutors wield in criminal court, their conduct when addressing or interacting with accused people and their families can compound the inaccessibility of the bond court process—and as a result, can be consequential to an individual's ability to navigate the system. The following account reflects on an encounter between the defense and prosecution while defense counsel attempted to provide legal advice to their client. An older couple in Champaign County was accused of stealing groceries; the husband was blind and may have had dementia, according to the court-watcher:

*Before court started, the public defender was...trying to explain [the process] to [the accused person's spouse, who]...was struggling to listen while explaining things to [the accused person]... This is when [prosecutor] very angrily interrupted the public defender and said, "that's not how the system works," and "the state can't do whatever it wants" and she's "tired of people getting away with saying whatever they want." When the other prosecutor murmured something in response, she threw her files down on the table and half-yelled, "well, it makes me angry!" before stomping up to the bench to talk to someone up there. I was staggered that a state's attorney would interrupt someone who was already vulnerable (in any number of ways) while they're working with their lawyer.*

Although less common, certain forms of conduct pertaining to defense attorneys were also characterized as "dehumanizing" in responses from court-watchers. One court-watcher explained an alarming account of the indifference of the defense attorney, recounting the apparent lack of compassion from one public defender toward her clients, stating:

*This was my first time in a courtroom, and it was the public defender who surprised me most. While she was friendly at the beginning...she spent a fair amount of time before court and after talking and laughing with the prosecutor and throughout court they'd catch each other's eye and either laugh, smile, or roll their eyes at the accused people, many of whom were her clients and some of whom seemed lost and overwhelmed...what I saw of her during bail court was concerning.*

It is important to note that public defenders in Illinois are chronically under-resourced and overworked, which in some instances contributes to substandard performance. A **2021 report** by the 6th Amendment Center noted that “Illinois is one of only seven states that do not have any state-level mechanism to oversee any aspect of trial-level right to counsel services.” and that “The funding provided is frequently inadequate to ensure effective assistance of counsel”. As part of ongoing pretrial reform, Illinois must prioritize better funding and oversight for its public defenders throughout the state so that they can be properly trained, supported, and can provide high quality representation to every accused person.

One of the more complex issues of procedural justice in the courtroom was how judges and defense attorneys handled questions and comments by the accused. Defense attorneys often advised their clients in open court that it was unwise for them to speak when they tried to interject in the conversation about their cases. This is undoubtedly true in many cases; anything a person says in court can be used against them in future proceedings, and talking about the facts of a case, in particular, can lead accused people to inadvertently disadvantage themselves. But the effect of the rushed nature of bond hearings and the often short way that defense attorneys and judges communicated this advice combined to make court-watchers feel that accused people were being silenced, not listened to, and not given adequate information about their cases. While the dehumanization of the bond court process is multifaceted, the lack of effective access or communication between defense lawyers and their clients adds barriers to accused people’s ability to participate in their own defense. This contributes to a rushed experience in which accused people are often admonished or silenced for trying to speak with their attorney, often for the first time, about their case. The Pretrial Fairness Act responds to this form of dehumanization by providing that accused individuals have **time to confer** with their attorneys before first appearance hearings begin.

## **Procedural Justice & Positive Courtroom Behavior**

While the vast majority of responses from court-watchers highlighted the issues in bond court, they were by no means universally critical of the behavior of court personnel. Contrasted with many of the more critical themes discussed previously, of the 92 total survey responses, 53 percent had comments reflecting reasonability and politeness, a theme defined in our analysis by court actors adopting a neutral approach in their communication with accused people, regardless of the charges, personal backgrounds, or any inherent characteristics of the accused, and when court actors were regarded as polite or respectful in their communication with accused people and their families. “Reasonable” and “polite” court actors worked to accommodate accused people and their families as they navigated the system or assisted them in their understanding of bond court proceedings. In our analysis, the use of this theme as an analogy for the more broadly known concept, **procedural justice**, (the idea that the way in which court actors interact with accused people and the public can promote a person’s acceptance of court outcomes) enabled us to examine its perceived application in bond court and its relationship to substantive outcomes.

Many of the responses that positively commented on the conduct of judges mentioned specific judges in Champaign and Kane Counties. As one response illustrated:

*[The] Judge [was] excellent. Many times defendants tried to interrupt during proceedings. Rather than get defiant that defendants were challenging his authority, Judge [censored]...took a protective attitude...even with a hostile defendant who wanted to represent himself, [the judge] remained calm and friendly. [The judge's] primary concern was always, did defendants understand their rights, their options, and what they stood accused of and the penalties—all the while reminding defendants today at arraignment is not the day we're discussing the details of their case.*

Several other comments reiterated similar perspectives regarding judicial behavior, stating things like, “I found Judge [censored] to be very patient, compassionate and reasonable with those who came before him.” Other court-watchers highlighted how a judge’s background informed their approach to addressing accused people, with comments like, “Black judge, former defense attorney, seemed lenient in assessing bond and sensitive to family impacts of bond assignments with no contact orders.”

While it is valuable to find court actors interested in interacting with accused people and their families in a consistently respectful and neutral manner, court actors incorporating procedural justice practices do not necessarily produce substantively fair bond hearing outcomes. As a concept, procedural justice shifts focus away from outcomes and instead toward proceedings and procedures. Court actors are often lauded for their efforts toward fostering courtrooms where accused people feel heard, respected and clearly communicated with. While outside observers may express appreciation for judicial behavior and courtroom conduct of this nature, the danger of assessing court actors on this metric is that it often stifles further investigation of court outcomes. Consider the following response from a court-watcher in Sangamon County, “judge interacted in a respectful way with all defendants, informing them of charges and procedures, communicating with them.” Despite this positive description of courtroom demeanor categorized in our analysis as “reasonable and polite”, as shown earlier, judges in Sangamon County made the second most frequent use of money bond among all seven jurisdictions where court-watching took place, and oversaw many coercive plea deals.

Procedural Justice can be an important method of ensuring that all people interacting with the courts are treated with dignity and respect, but it alone cannot solve the harm caused by the criminal legal system. The Pretrial Fairness Act stands in recognition of the harm caused by the substantive outcomes in court cases, not just the harm caused by disrespectful treatment in court. By eliminating the use of money bond and creating a set of charges for which pretrial incarceration is not on the table, the new law ensures that politeness, clear communication, neutrality, and respectfulness are not the only standards by which we assess the quality and fairness of court actors.



## CONCLUSION

Our observations of over 1,000 cases in Illinois reveal a court system that too often decides cases arbitrarily and that focuses primarily on how much money someone has in their bank account. No county and no courtroom, no matter how polite court actors were, was free of the fundamental injustices caused by the money bond system. Throughout our court-watching, the harms of the current system were on full display, with court-watchers observing judges and prosecutors demean and yell at court participants, ignoring their pleas for freedom, and consistently setting money bonds above the level that most people could afford. In every county, the people moving through the courts were disproportionately Black and Brown, showing how the harm perpetuated by the current system falls most heavily on communities already impacted by racism in housing, employment, and a myriad of other areas.

Our observations make clear that transformation of Illinois' pretrial legal system is long overdue. Fortunately, change is coming: The Pretrial Fairness Act will completely transform how the courts we watched operate. After January 1, 2023, finances will simply no longer be mentioned in courts, because money bonds will be fully removed from the system. Instead, people who pose no safety concerns will be released without having to pay a ransom.

The Pretrial Fairness Act cannot fix everything unjust about our courts; fundamental problems of racism and disrespect for court participants will persist. But Illinois' courts will no longer have the power to jail people solely because they are poor. Given what our court-watchers observed across Illinois, this change will prevent mostly Black and Brown people from bankrupting themselves just to purchase the presumption of innocence – but beyond that, will reduce the number of people unnecessarily jailed. The new law will save lives, prevent the separation and destruction of countless families and communities, and move us further from systemic racism and a bit closer to equality. We will not get there quickly, but the transformative changes won in the passage and implementation of the Pretrial Fairness Act will help set us on the path to justice.



***Members of the Illinois Network for Pretrial Justice outside the Will County Courthouse.***

## APPENDIX

Below are the themes and corresponding definitions developed for our qualitative analysis of survey data. Every survey response was analyzed to evaluate the degree to which they aligned with each of the following definitions corresponding to a particular theme. If, through our analysis a response was determined to be a 'best fit' for the theme "confusion and inaccessibility" that response would be assigned to that particular theme. Responses could and often were assigned to multiple themes based on their alignment with multiple thematic definitions.

Confusion and Inaccessibility was defined in our analysis in the following manner: *"The pace of individual hearings and many of the statements made by courtroom actors are perceived to be difficult for accused people to follow or understand. The use of video hearings limits an accused person's ability to contribute to their defense and creates communication barriers between accused people and court actors"*

*"Substantive Unfairness", was defined in our analysis in the following manner: The treatment or experience of the accused person in bond court does not seem appropriate given the nature of the alleged offense, and their financial, social, health and wellness, employment, or familial background . The treatment or experience of the accused person seems to differ based on the accused person's race, ethnicity, or some other inherent characteristic. Judicial determinations pertaining to bond amounts and bond type, are inconsistent and do not appear to be correlated with case/charge severity.*

*"Dehumanizing", was defined in our analysis in the following manner: The accused person is interrupted when speaking, or prevented from speaking on their own behalf. Courtroom procedures and/or the technology used to conduct video hearings limit an accused person's participation in their own defense, or allow court actors to ignore the presence of the accused and any of their verbal protestations. Court actors are perceived to be cold, condescending, business-like or lacking compassion when dealing with accused people.*

*"Reasonable and Polite" was defined in our analysis in the following manner: Court actors adopt a neutral approach in their communication with accused people, regardless of the charges, personal backgrounds, or any inherent characteristics of accused people. Court actors are regarded as polite or respectful in their communication with accused people and their families. Court actors work to accommodate accused people and their families as they navigate the system or assist them in their understanding of bond court proceedings.*