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Magic in the Pretrial Justice System

THE GRAND ILLUSION OF SAFETY AND FAIRNESS

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About the Author

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He has been actively engaged in national pretrial reform efforts for over a decade, serving as a member of the National Association of Pretrial Services Agencies (NAPSA) and serving as the Chair of the Education Committee since 2019. He has presented nationally on topics including pretrial risk assessment, leadership, and the implementation of evidence-based practices, and is the current President of the Texas Association of Pretrial Services (TAPS).

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Aaron earned a Bachelor of Science in Sociology with an emphasis on Crime and Delinquency Studies from the University of Kansas and a Master of Business Administration from MidAmerica Nazarene University. A U.S. Army Reserve veteran (1995–2003), he served as a combat field medic. He also completed the Pretrial Executive Training Program through the National Institute of Corrections in 2013.

He also started AKA Your Vision Coaching, LLC to provide leadership and executive level training to those new to the field or those just wanting to gain new knowledge and experience.

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Executive Summary

Magic in the Pretrial Justice System

The United States pretrial justice system—designed to balance public safety with the presumption of innocence—has instead evolved into an illusion of fairness based upon your financial resources. Much like a magician's sleight of hand, our system hides inequities behind outdated practices, particularly the use of monetary bail. This paper exposes how reliance on money-based release decisions distorts justice, inflates jail populations, and perpetuates racial and economic disparities.

Key Issues Identified

• Historical Drift: Since the 1960s Manhattan Bail Project, evidence has shown that financial conditions are ineffective at ensuring court appearance or public safety. Yet, secured bail remains the dominant factor in release decisions.
• Arbitrary Risk Assessment: Bail schedules assign monetary values based on charges rather than individualized assessments, creating de facto debtor's prisons outlawed since 1833. Defendants with means buy freedom; the poor remain detained regardless of risk level.
• Human and Social Costs: Pretrial detention—even for short periods—destabilizes families, employment, and housing. Those who plead to lesser charges or whose cases are dismissed still endure lasting harm from unnecessary incarceration.
• Judicial Inconsistency: Individuals deemed "too risky" to release pretrial often walk free after conviction or plea, revealing the subjective and inconsistent nature of bail decisions.
• Public Safety Myth: Jurisdictions claim monetary bail protects communities, yet research shows those released on unsecured bonds reoffend at similar or lower rates than those posting bail.

Models for Reform

States like New Jersey, New Mexico, and Illinois have implemented or are pursuing evidence-based systems that remove money as a determinant of liberty. Others, such as Texas, are taking incremental steps by improving transparency,

data access, and judicial guidance. Both approaches demonstrate that fairer, data-driven systems are possible.

Recommended Solutions

1. Adopt Validated Pretrial Assessments: Use empirically tested tools to evaluate flight and safety risk rather than wealth or charge type.
2. Establish Independent Pretrial Agencies: Separate from courts and law enforcement to ensure neutrality and accountability.
3. Implement Least-Restrictive Conditions: Detention should be the exception, not the rule, with supervision only as necessary to ensure court appearance and community safety.
4. Standardize Language and Metrics: Utilize national frameworks such as Measuring What Matters to track appearance rates, safety rates, and success rates.
5. Phase Out Money Bail: Replace with structured, evidence-based pretrial release systems that uphold constitutional rights and public trust.

Conclusion

Our current pretrial system undermines justice by equating money with safety. If liberty is to remain the norm—as the Supreme Court declared in U.S. v. Salerno—then detention must be reserved for truly exceptional cases. Reforming pretrial practices is not only a legal imperative but a moral one. The illusion of safety must give way to genuine justice grounded in law, evidence, and humanity.

Magic in the Pretrial Justice System: The Illusion of Safety and Fairness

The Grand Illusion: How Pretrial Justice Lost Its Purpose

One of the most powerful illusions ever witnessed by the public was the staged "disappearance" of the Statue of Liberty during a televised performance in the 1980s. This event was so precisely pulled off, millions of viewers genuinely believed they had seen something impossible occur. The success of the illusion had nothing to do with magic in the literal sense—it was about controlling perspective, environment, timing, and narrative. The audience was positioned exactly where they needed to be. The lighting was controlled. The framing was intentional. Every variable was managed to create a specific perception of reality.

Of course, the monument never truly disappeared. What vanished was the audience's ability to see it. The illusion did not change reality—it changed perception. By shaping what people could see and how they interpreted it, the illusion created the belief something extraordinary had happened.

There are striking similarities between that illusion and what has happened in the modern pretrial justice system. The focus of the system has been shifted, the narrative has been carefully reframed, and public perception has been guided toward believing that money equals safety and detention equals justice. Much

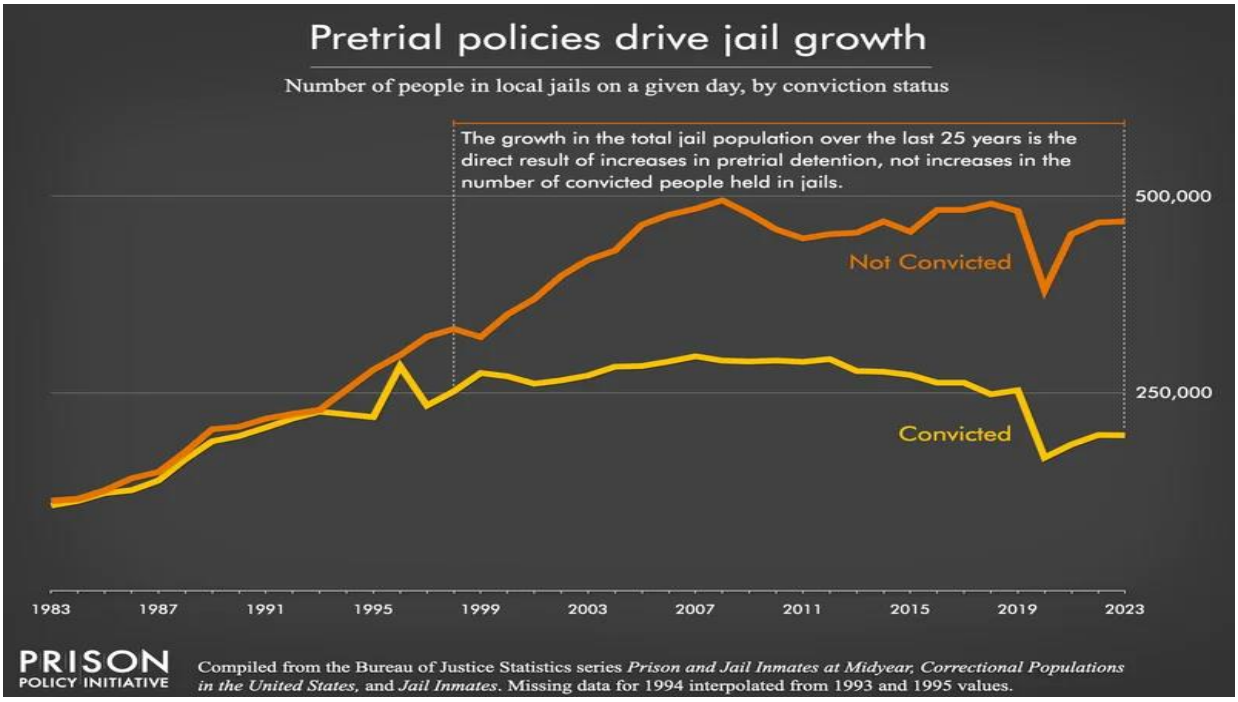
like a stage illusion, the system no longer reflects reality—it reflects a constructed version of it. We have reached a point in history where it is necessary to pull back the curtain and restore pretrial justice to a legal, evidence-based foundation.

Setting the Stage: Origins of the Pretrial Reform Movement

Pretrial Justice Reform is not a new movement. The recent foundations for reform were laid back in the 1961 with the Manhattan Bail Project and founding of the Vera Institute of Justice (1). The Manhattan Bail Project looked at "developing a practical and innovative solution to New York City's overreliance on cash bail" and showed those who were "too poor to post a bail amount but had strong community ties could be released and still show up for trial". Fast forward 64 years, and we're still talking about these same fundamental items: how we make the decision to keep our community members in custody pending trial rather than releasing them until their next court appearance, the appropriate use of very expensive jail bed space, and how money in our system of release and bail has been the focal point for much of the current discussion.

Smoke and Mirrors: Money as a Stakeholder in Justice

Tim Schnacke, Executive Director of the Center for Legal and Evidence-Based Practices, gives us an updated version of what money as a stakeholder looks like in our current pretrial justice system. "Secured financial conditions … have shown in their relatively short history to undermine the entire bail decision-making process. Put simply, secured financial conditions at bail skew judges' understanding of risk, delay and sometimes prohibit the release of bailable defendants, do not always prohibit the release of defendants who should rightfully be detained pretrial, and often are ineffective at achieving the very purposes for which they are ordered."(2) This has also increased the racial and ethnic disparity in our local jails and unfairly determines the risk an individual presents on the community by how much money or resources they have access to. As the push towards pretrial detention has evolved in the United States, pretrial polices in the United States are directly responsible for the increase in the jail population growth. (3)



The microscope has been increasingly focused on pretrial detention, the ways we don't follow the law, and the over-utilization of expensive jail bed space as an ever-increasing burden and expense in our local community's. Current reform efforts have brought to light many of the horrible condition's jails impose upon those held in custody. Common risks include exposure to dangerous bacterial infections, sexual assault, extreme overcrowding, and possible solitary confinement. (4) Reported problems have been so bad, there are many stories of why jails should be closed and the efforts to do so. One such jail is Rikers Island in New York. But just like those with drug addictions, it is proving very hard to actually break away from old habits. New York created a plan to close Rikers Island in 2017 and was scheduled to be completed by 2027. Due to the COVID

pandemic, political infighting and other issues - this does not appear to be anywhere close to happening by the original 2027 deadline. (5) We impose these inhumane conditions on those who are consistently marginalized and of the highest social need.

The Trick Behind the Curtain: Public Safety and Pretrial Detention

Public safety was not always an official consideration for the release or detention decision after arrest, but entered the conversation with the Federal Bail Reform Act of 1984. (6) As stated, "…the defendant must be released on personal recognizance or unsecured personal bond unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community." This ruling was challenged and confirmed in the 1987 *United States v. Salerno.* In this case, Judge Rehnquist was cited and giving the majority opinion of "*In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception. We hold that the provisions for pretrial detention in the Bail Reform Act of 1984 fall within that carefully limited exception."* (7) What this means is pretrial detention in our system should be very limited. But ironically, as shown earlier this has led to the pretrial population being the highest driver of jail

growth in the United States since this decision was upheld and is directly driving the renewed interest in building more jails and prisons. History, it seems, is repeating itself in multiple ways.

The Cost of the Show: Human and Social Consequences

Recently, there has been a tremendous push from public and other organizations to promote the impact and effect of keeping those likely to be successful defendants in custody and the impact of even short-term detention. For a time period as short as three days (8), arrested individuals and their families become destabilized. This greatly affects their ability to work, keep housing options, and support/receive support from their family and community ties while their case is pending. Those working in social services, and public and behavioral health agencies, as well as those serving in different public safety capacities have discovered we are all many of the same families and populations. How we respond to one community member in any of these aspects has a direct effect on the other members of their own families, communities, and victim services from job prospects and housing availability to educational opportunities and the cycle of impoverishment. My main point is this: if we know the effects our current laws and procedures are detrimental to our community at large, it is immoral to

continue our current practices when a better solution has been proven to work. Every effort then should be focused on making our communities both safer and better than we found it.

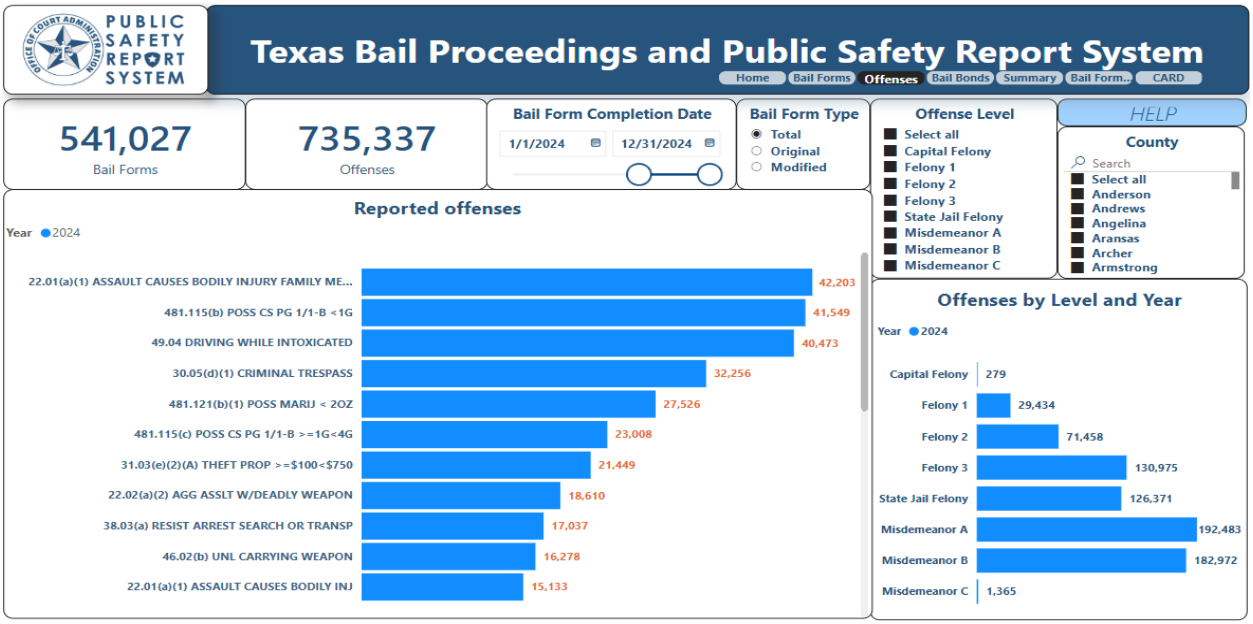
Federal and State Constitutions Regarding Bail

The Federal Constitution addresses the bail process in the 8th Amendment. This specifically *"prohibits the government from imposing excessive bail, fines, or cruel and unusual punishments."* Many states have adopted similar language and laws regarding pretrial release processes and who can be preventively detained due to the government's interest. These are typically set for capital charges such as murder, but even this seems to vary from state to state. The California Constitution in Article 1 Declaration of Rights, Section 12 (9) provides a baseline for pretrial release with the exception of "when the facts are evident or the presumption great" for capital crimes, felony offenses involving acts of violence or sexual assault, and there is a likelihood of or threat of great bodily harm to others which the court feels would be carried out. This is further defined in Section 28 (3) Public Safety Bail, stating a defendant has the right to release based on public safety, seriousness of the offense, previous criminal history, and the probability of appearing at court. For serious felony charges, this decision happens in open

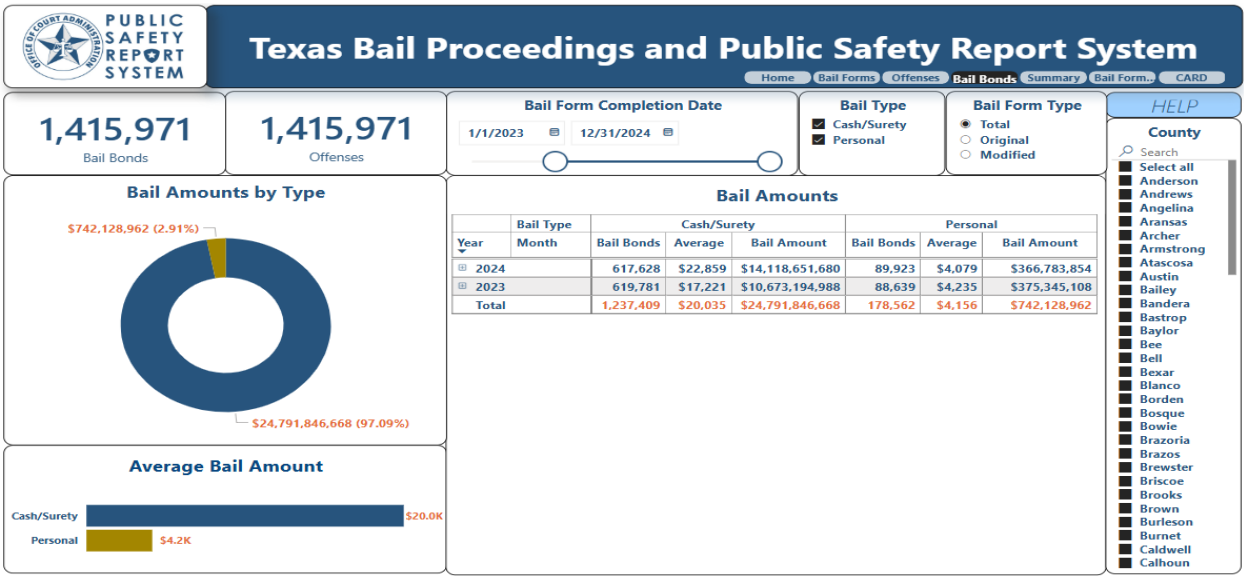
court after the prosecuting attorney and victim have an opportunity to be heard. Both sections refer to “a person may be released on his or her own recognizance in the court’s discretion” and the court having to make their decision a matter of record. The California penal code (10) contains similar language in PC 1270(a) and limitations set forth in 1270, 1275, and 1319 state who is eligible for own recognizance release. All of them state public safety should be the primary consideration, but does not establish what this criterion should look like statewide. California is not the only state with this issue.

The Sleight of Hand: When Charges Disappear or Transform

And even though such “limited exceptions” currently exist in statutes across the country – these are not the charges or typical pretrial defendants which we would assume are being arrested. In Texas, roughly 67% of all arrests are Misdemeanor or the lowest Felony classification. Many of these arrests will be dismissed or declined to prosecute, with the remainder likely to be plea agreements. But all of these charges are eligible for release on personal recognizance upon arrest, meaning they could be released without having to pay money bail or put up surety.



But in contrast, Texas has one of the highest money bond or surety averages in the nation – with an average Cash/Surety Bail amount of $20,000.



Personal Recognizance bonds are only utilized 13% of the time across the eligible population. This narrow usage of a statutorily eligible group is one of the largest

drivers of the jail populations in Texas and brings us to the topic of judicial discretion.

Bail Amounts and Judicial Discretion

The following graphic depicts what happens on a daily basis across the country.

What we have seen nationwide in practice is the massive increase of our pretrial population in local jails with many jurisdictions reporting these groups as low risk overall. (11) And many of these likely to be successful groups also happen to be overrepresented people of color coming from the poorest areas. A study In Los Angeles showed "the money bail system is a multi-billion-dollar toll that demands tens of millions of dollars annually in cash and assets from some of L.A.'s most economically vulnerable persons, families, and communities" (12). Other defendants simply can't afford this arbitrary amount of money to buy their freedom and defend their case from outside of a jail cell. Yet as a system, we

allow those who are not actually assessed for public safety risks but have the financial means to post the arbitrary bail amount and re-enter the community unsupervised, many times within hours of being arrested.

The Vanishing Act: Defendants Who Were Never Guilty

In many cases, the charges initially filed against a defendant differ significantly from the charges for which they are ultimately convicted or enter a guilty plea. This shift raises important questions about the consistency and fairness of the process. How can someone who was originally deemed a high public safety or flight risk—based on the initial charges and the monetary bail schedule—later be released as a much lower risk after their case is resolved? This discrepancy highlights the arbitrary nature of bail determinations, which are often based on preset financial schedules rather than any meaningful assessment of risk or behavior. The inflated bail amounts do not appear to reflect actual public safety concerns or any proven effectiveness in achieving their intended purpose.

When defendants accept plea deals, it is often less about admitting guilt and more about escaping the harsh and degrading conditions of pretrial detention. (13) The process creates the illusion that time spent in jail has somehow reduced a person's risk to the community, justifying their release after conviction. In

reality, incarceration under such conditions frequently strips individuals of what little stability they had—employment, housing, and family connections—leaving them worse off and less able to reintegrate successfully. Treating plea agreements and brief jail stays as evidence of "rehabilitation" not only distorts perceptions of risk but also perpetuates a cycle that undermines both fairness and public safety.

Another group often overlooked consists of community members who remain in custody during the pretrial phase—sometimes for weeks or months—only to have their charges ultimately dropped or never formally filed. These individuals endure the full trauma of arrest, booking, and incarceration, often under the same harsh conditions previously described. In the process, many lose employment, housing, or family stability. This unnecessary use of jail resources not only imposes immediate financial costs on the community but also generates long-term social costs. Once released, these individuals frequently rely on public assistance and community services to rebuild the stability they lost while detained—costs that could have been avoided had the system functioned more efficiently and fairly.

The Magician's Purse: Bail Schedules and Judicial Discretion

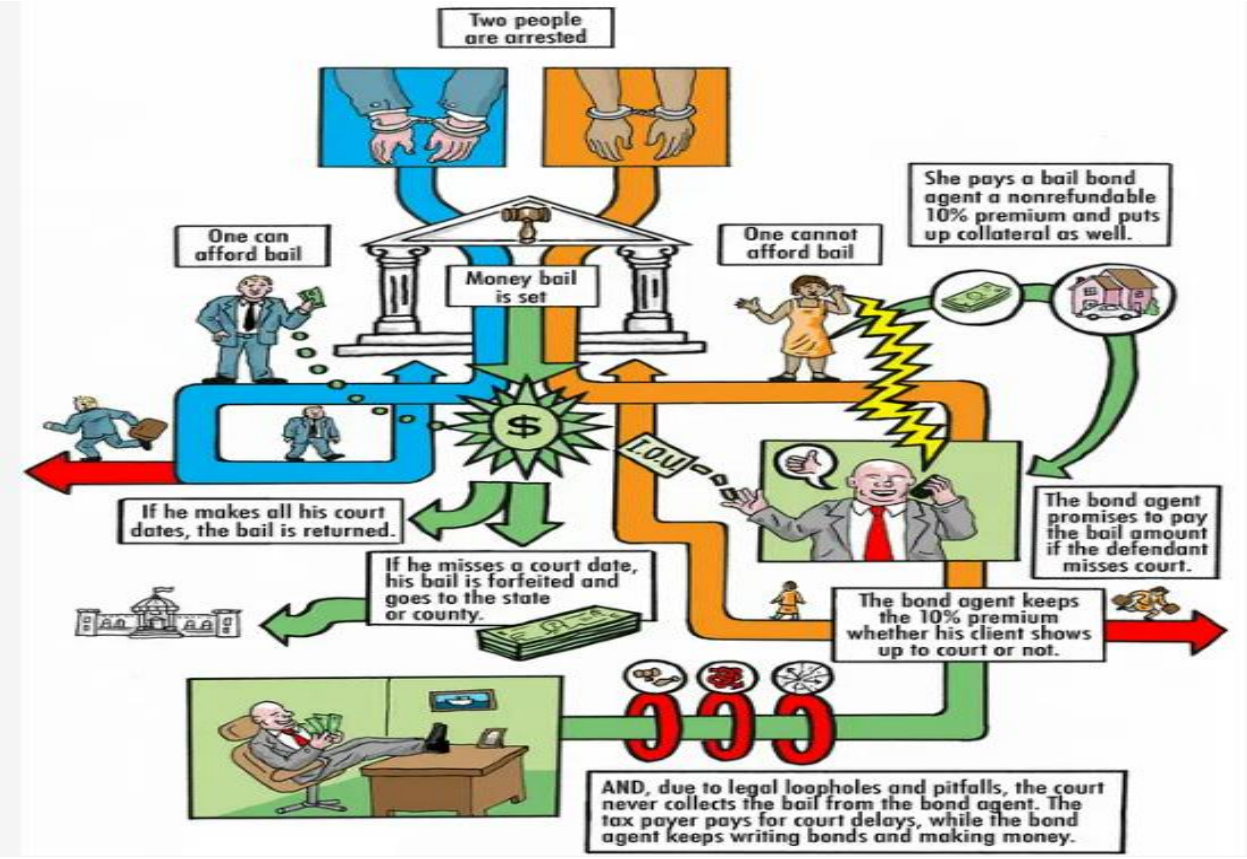
For those jurisdictions utilizing a bail schedule, these schemes currently assign a debt to a defendant regardless of their ability to pay (de facto to a debtor's prison/jail, which were outlawed by Federal law in 1833) (14) or taking in consideration their actual likelihood to be successful for court appearance or public safety. By doing so, we are subjecting our fellow community members to the most resource-intensive and what rational citizens would normally consider unpleasant environments because we, the public, have been falsely led to believe an arbitrary amount of money dictates the communities overall public safety. In the available research, those who had the means to post a cash or surety bail were arrested again at least 39-48% of the time prior to the disposition of their

original case from 2013-2015. (15) Bail schedule schemes are on their face a preventive detention mechanism with little regard for public safety and outside the bounds of what the jurisdiction has the political appetite to allow as well as a pre-sentence punishment. As shown, this will be especially true for people of color, homeless, and poor populations *just because* of their being people of color, homeless, or part of the poorest populations. A study conducted in Colorado showed there was little difference between the results of unsecured bonds and secured or money bonds and the effects on public safety and court appearance (16). This study further found when stakeholders "consider the likelihood of a defendant's conviction and the most likely type of sentence, they can further reduce pretrial jail bed use by using more unsecured bonds in lieu of secured bonds for defendants who will likely return to the community upon case disposition".

Preventive Detention and Public Safety

The current process for setting bail across the country has been shown to create the de-facto debtor's prison situation. A subjective amount of money is assigned to an individual's charge regardless of their ability to pay the amount. This is also subjective to the county or state where one is arrested and that jurisdiction's

stakeholders' comfort level with the amount of money being tied to public safety. Under the current system, an individual can be arrested for a crime and have few options: Pay the whole amount (which only a fraction of the people in any jurisdiction can do), pay a non-refundable bonding agent fee (which is typically 10-15% of the total bail amount), or sit in custody (which has very detrimental effects on one's job, housing, and other family members in as little as 2 days). Unfortunately, none of these options do anything to enhance public safety. These options lack the objective measure of likelihood of success to be provided by any of these individuals at any time in the process.



When jurisdictions make these decisions without a pretrial assessment or legal and evidence-based procedure, it is based purely upon the historical political or judicial comfort of the local stakeholder and what charges they believe they can work with. This is commonly referenced as the "eye-ball test" or "does this person look trustworthy test". Watching over any pretrial detention or Magistrate Court, this is usually vocalized by stating "In my many years of experience, I can just tell by looking at them they are not going to show up or stay out of trouble". What this process has led to is a fundamental switch from jails being used to house those who have been convicted and serving a sentence to those who haven't been and aren't likely to unless they plea.

Those with the means to pay their entire assigned bail amount up front are free to move about and resume their lives almost automatically. What does this mean for Public Safety or the safety of the original victim? Those who can pay their way out of jail return back to the community with very limited or no supervision. Those who post bail with a bonding agent pay a set percentage amount of the overall bail amount and other fees which are non-refundable (even if your charges are dropped or not filed). What does this mean for public safety? Those who post bail return back to the community with very limited supervision. It should be pointed out and stressed again - this is most jurisdictions' current

practice. Fernando Maldonado was a minister and given a $1.295 million bail for allegedly molesting a female member of his church in March 2016. He was released on $106,000 bond and has since failed to show up for court. Tiffany Li and two other men were arrested in 2016 for allegedly killing the father of her children, Keith Green. She has posted equity, property, and cash worth $70 million bail and is currently out of custody awaiting trial. Her co-defendants are still in custody. (17) We have also seen tragic results because of these practices. Blake Leibel posted a $100,000 bond for alleged sexual assault of two separate women on May 20th, 2016. Just 10 days later, he was arrested again for the alleged murder of his then girlfriend. (18) Thomas Yanaga posted a $1 million bond for his alleged involvement with the killing of Marshall Savoy. He was released on April 10th, 2015. He was arrested again and held without bond for attempted homicide on April 15th. (19) Kevin Neal was arrested for allegedly killing his wife and going on a shooting rampage in November 2017 after posting bail for allegedly stabbing a neighbor. (20)

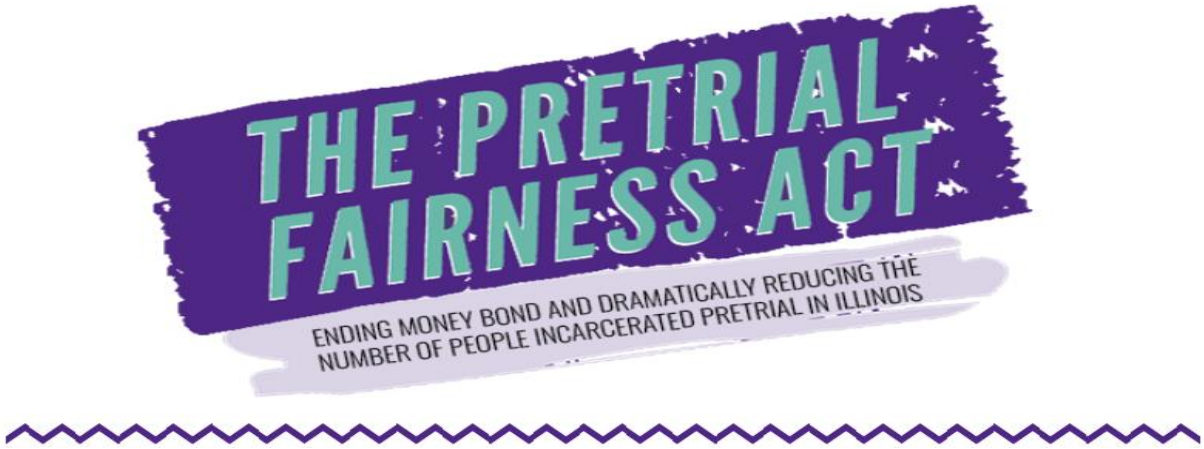
The money/surety individuals post is only connected to court appearance and as shown, all of these individuals had the means to post the bail amount. If this person fails to appear, the court can then keep the monies/sureties posted. These individuals represent extreme cases. But our current system allows others

with means to post the bail assigned or scheduled amounts (or bail agent premiums) to continue to commit new crimes with limited to no supervision. It is a vicious cycle when the person is arrested again and will be assigned a new bond amount based upon a schedule or arbitrary amount with which to bond out again (with another or same bail agent, profiting on another premium) regardless of actual risk presented to public safety.

The group who does have a likelihood to be successful in not picking up a new charge and showing up for their next court date can't post bail or don't have sufficient funds to utilize a bond agent sit in custody, needlessly being detained. This causes major socioeconomic issues for all involved and can put those already in a bad position to worse. (21) "Daniel Soto" was arrested on felony assault charges with a bond set at $30,000. His family could not afford the amount and could not find a bail agent willing to bond him out. (22) He spent 6 weeks of his life in custody but in the end, the court dismissed his case. He was exposed to the horrible nature of jail life and lost an entire semester worth of college. In addition to this, he was stabbed during the altercation leading to his arrest and spent his recovery in custody. Riana Buffin was arrested on suspicion of theft and conspiracy and was given a $30,000 bond. She spent 3 days in custody. Although

the charges were dropped, she lost her job due to being in custody and unable to report to work. (23)

These further examples show where the “magic” comes back into pretrial decision making. The system actors believe an individual is “too dangerous” to release pretrial or before plea, so they set the scheduled arbitrary amount. This results in roughly 64% of those people in custody across the state. (24) After the 24-72 hours it takes to get them to arraignment, they are now further destabilized. They have possibly lost their job, family stability and housing is now at risk, and we are exposing them to a life of being locked in a cage with other individuals deemed too dangerous to be released. But for those who have their charges dropped or not filed, they “magically” become safe enough to release and be citizens again. Instead, appropriate release recommendations could have been sought and they should never have had to go through this experience in the first place.



There is a better way to work with this population that is less intrusive and more responsive to the needs they are presenting. Many states are looking at their current practices with the view of helping their communities as a whole. New Jersey, New Mexico, and Illinois are all part of this movement of making changes to their pretrial systems. Money as a criminal justice stakeholder has been removed or is less of an issue, which has led to less preventive detention and artificially inflating our jails with people who are not likely to miss court, are not a danger to the public, or are likely to have their cases dismissed. Other jurisdictions and courts should be following their actual state laws and utilizing the best practices for release and detention. These often include the use of the least restrictive conditions and can be helped by using validated pretrial assessments to determine how likely to be successful an individual could be in staying arrest free and showing up for court, as well as providing alternatives to

incarceration while pending trial. (25) Currently, many jurisdictions in our country are using validated pretrial assessments as best practice.

The Science of Transparency: Success Assessments and Data

The pretrial justice reform movement is not new. In 2011, there was a National Symposium hosted by the Office of Justice Programs and PJI (26). The symposium specifically looked at how we have progressed on the national level since US Attorney General Robert F. Kennedy launched this movement back in 1964. Attorney General Eric Holder spoke at the event, saying, "By competently assessing risk of release, weighing community safety alongside relevant court considerations, and engaging with pretrial service providers … we can design reforms to make the system more equitable, while balancing the concerns of judges, prosecutors, defendants, and advocacy organizations. We can help those serving on the bench make informed decisions that improve cost-effectiveness and preserve safety needs, as well as due process. And we can spark, as Robert Kennedy did, not only a vital discussion – but unprecedented progress." Many of the recommendations presented in 2011 continue to be echoed in the reform efforts moving throughout the country currently. Pretrial assessments and limited supervision require high levels of stakeholder support to be successful.

The National Institute of Corrections also published "*A Framework for Pretrial Justice*" in 2017. (27) In this publication, it states "Pretrial services agencies should be independent, stand-alone entities, like other criminal justice agencies. This ensures the independence of operation needed to manage such essential elements as universal screening and recommendations for pretrial release or detention. It also helps emphasize the budget and other resources needed to effectively assess and manage a pretrial defendant population." Any stakeholder group which holds Pretrial as a division tints the lens through which Pretrial Agencies will function. As a neutral and independent agency, they would have the responsibility to research, create, and validate a legal and evidence-based pretrial assessment to provide appropriate recommendations for release and supervision conditions or detention based on each individual's likelihood of appearing at court and public safety through their own lens and be accountable to their County and public in general.

With this independence brings an accountability and duty to move pretrial justice reform in collaboration with the other criminal justice stakeholders. The recommendations provided by the National Symposium in 2011 as well as the more recent recommendations provided by states like New Jersey and Illinois become a shared responsibility by all to recognize the deficiencies in the current

system and take steps to correct them. Every day we wait to enact needed changes hurts our communities overall. Or in many instances, provides the means for litigation to occur because of our refusal to act.

Unmasking the Illusion: Legal Challenges and Accountability

"But the problem this case presents does not result from the sudden application of a new and unexpected judicial duty; it stems instead from the enduring unwillingness of our society, including the courts . . . to correct a deformity in our criminal justice system that close observers have long considered a blight on the system.

...[T]he highest judicial responsibility is and must remain the enforcement of constitutional rights, a responsibility that cannot be avoided on the ground its discharge requires greater judicial resources than the other two branches of government may see fit to provide. Judges may, in the end, be compelled to reduce the services courts provide, but in our constitutional democracy the reductions cannot be at the expense of presumptively innocent persons threatened with divestment of their fundamental constitutional right to pretrial liberty." – Humphrey on Habeas Corpus 2017; San Francisco City and County Superior Court

Sometimes knowing the disparate impact of jailing those who would otherwise be successful, and who are not a public safety or flight risk, and recognizing the impact and increasing costs to house these individuals have on this population, can move stakeholders to change. However, it is often litigation requiring a change of law which makes the most impact. Civil Rights Corps, a non-profit who have provided legal challenges across the country filed a writ of habeas corpus in the above-mentioned case. Mr. Humphrey had been held on a $600,000 money bail. At his bail hearing, his attorney presented alternatives to staying in custody in lieu of his current bail amount. The judge agreed these were good alternatives and agreed to reduce his bail to $350,000. Needless to say, he was not able to come up with that amount either and sat in custody for approximately 7 months before the above referenced decision was published in January 2018. Herein lies the problem with financial conditions of bail and bail schedules; the individual's ability to pay is not considered and the amount is usually so great it creates the preventive detention status statutorily designated for capital offenses. This continues to happen day after day across the country. Other litigation has resulted in further pretrial justice reforms in many other states across the country stemming from ability to pay issues. (28) As stated, the need to make these changes are recognized by all the criminal justice stakeholders. The foundations

to improve the overall performance of our pretrial justice system are available. Litigation should not be what drives this change, but rather the recognition of doing what is right and in the public interest of our communities.

Pretrial Assessments

Using algorithms as triage or likelihood predictors is not a new concept. Anyone who uses Facebook, Google search engine, or even Netflix becomes aware of how they intrinsically work. The stock markets use algorithms in financial modeling and forecasting. On-line dating and advertising companies use them to determine your similarities and preferences and compare them to others based on your search histories or criteria. Your credit worthiness, personal finances, and interest rates for car, life, and health insurance are all determined by algorithms. Your current history, preferences, and demographics as well as your current behaviors are compared against the likelihood you fit a certain historical outcome profile. Based on that profile you are assigned to different levels, groups, or provided different financial opportunities. This is also true for the medical field and the evolution of triage and treatment. Currently, one of the best algorithm examples was the creation of the chess playing computer Deep

Blue by IBM. The project took on many upgrades and changes until it was able to beat World Chess Champion Garry Kasparov in 1997.

Pretrial assessments are also based on algorithms. We have the benefit of knowing they have been in use over many different jurisdictions and with many different populations. These assessments are needed in order to provide the Courts with objective information regarding the client and different resources they may have access to or need. They should not be using pretrial assessments as their basis for release and detention decisions or the setting of arbitrary bond amounts. These recommendations are going to be linked to items which have shown statistical significance for an individual to be successful in returning to court and not being a public safety risk. The Center for Court Innovation provided an overview of their research of pretrial assessments and their use in 2017 (29). They provided a list of the most common factors related to Pretrial success and explanations of how these factors are measured.

Table 1. Risk Factors and Correlations

Not all potential risk factors had strong correlations with Failure to Appear (FTA), New Criminal Arrest (NCA), gender, or race.

Current age	Weak correlations for males or Alaska Natives
Current DUI	Weak correlations for FTA or NCA
Current drug	Weak correlations for FTA or NCA
Current public order	Weak correlations for NCA, females, whites, and Alaska Natives
Prior felony arrests	Weak correlation for Alaska Natives
Prior convictions	Weak correlation for FTA
Current probation charge	Weak correlation for FTA
Prior domestic violence arrests	Weak correlation for FTA

Source: *Crime and Justice Institute, 2017*

These factors were determined to be static (unchangeable by nature) or dynamic (can be changed). Pretrial assessments with dynamic factors were of more value to the criminal justice stakeholders as they provide an "opportunity to engage in risk mitigation and reduction strategies". Once these factors are determined, testing and validation must continue on an ongoing basis to make sure the tool is not promoting any racial or ethnic bias as well as making sure the tool is continuing to provide assessment results based on the criteria it was designed around. As stated, "the more validation tests conducted on diverse samples of defendants, the more reliable the pretrial assessment tool is ..."

While this is true, caution should be used when utilizing the tool. Pretrial service agencies are well within their scope of providing referrals to clients to help their clients be successful. But mandating presentenced defendants to treatment or

other risk mitigation and reduction initiatives as part of presentence compliance may lead to increased failure rates based on these technical violations. With the population served, agencies need to be responsive to the need – not just the punitive action for noncompliance. There should be an expectation with drug abuse relapse may/will occur. There should also be an expectation that with severe mental health cases there will be conditions they may not understand or be able to comply with, but that doesn't mean they should sit in jail as the better alternative. Pretrial service agencies should have the ability to respond to these technical violations rather than submit requests for revocation, especially if the needs presented are not affecting an individual's ability to show up for court or public safety.

A Common Script: Creating Consistency and Language

The discussion so far has centered around how holding in custody those who would otherwise be successful in pretrial custody creates less favorable outcomes for the public overall, and exacerbates these effects on different racial and ethnic groups. So, what does each county or jurisdiction have to do in order to enact the highest performing pretrial justice reform that benefits everyone? All the stakeholders need to be prepared to enact the legislative changes and judicial

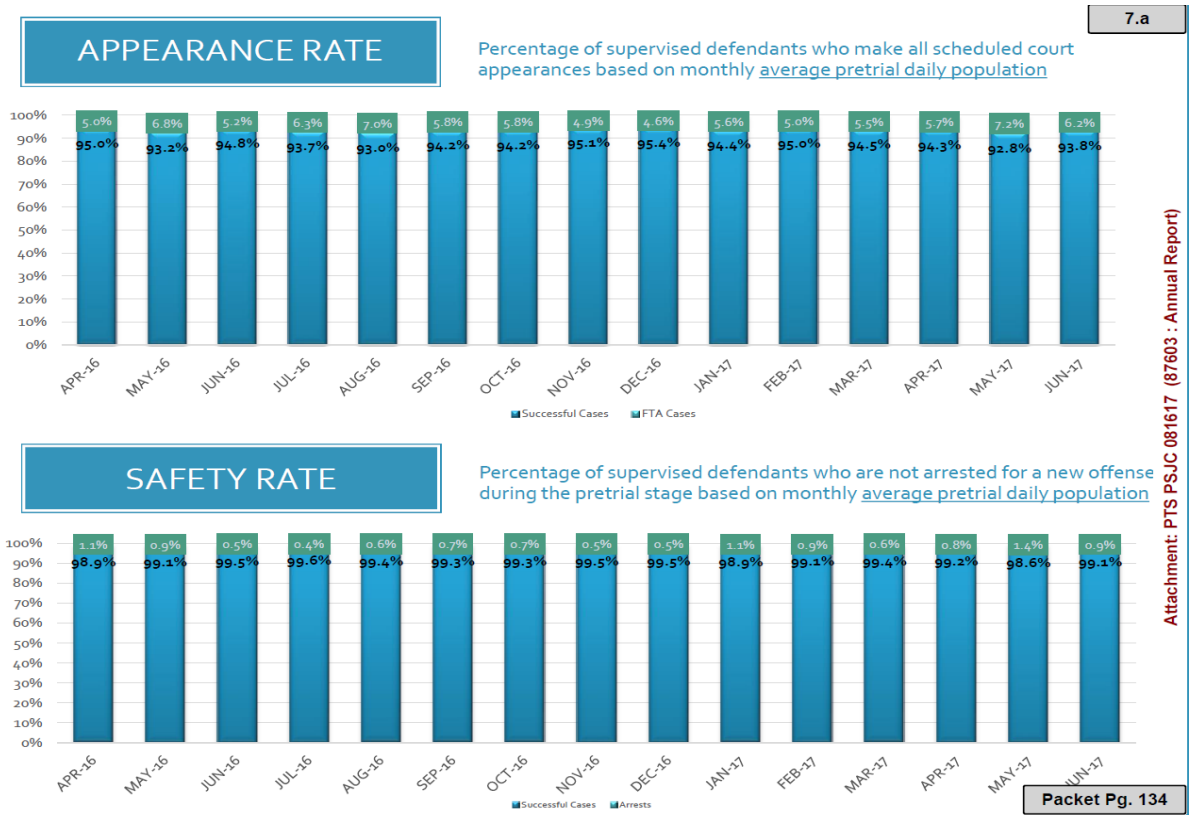
council recommendations as well as have a common baseline to work from. The thought process needs to follow the "release first" options, where detention is the limited exception. Instead of merely being given two choices (release with no supervision or *de facto* preventive detention with an unpayable monetary bond) jurisdictions should have the ability to determine under what conditions an individual could be released and be appropriately supervised (if needed) in the community by the least restrictive means to mitigate their risk to the public or for not showing up for court.

"Least Restrictive" is a term which is typically defined as "the minimal release terms necessary to reasonably assure the appearance of the specific person, the safety of the victim, and public safety, as determined by the court". They tend to vary from state to state and even county to county. These conditions often include a reporting mechanism (to a designated agency), keeping personal information updated, remaining in the jurisdiction the case reaches disposition, show up for court as scheduled, and do not commit new law violations. Additional conditions can be added in order to be responsive to the specific conditions of the alleged offense. Some examples of these include random drug testing, electronic monitoring, no driving, or stay away and protection from abuse orders. Over conditioning can create issues with ability to pay, especially if a

jurisdiction mandates pretrial defendant pays for these additional conditions until the disposition of their case. This is important to note since the Supreme Court has also ruled jurisdictions are obliged to refund fees, court costs, and restitution exacted from defendants whose cases are not filed/dropped or found innocent. (29).

Breaking the Spell: Evidence-Based Pretrial Reform

The National Institute of Corrections has published a document titled "Measuring What Matters". (30) This document presents multiple suggested outcomes high functioning pretrial release and diversion service agencies should be able to track within their populations. These outcomes are used in order to gauge the effectiveness of the program in general to others across the national landscape. The most common of these measurements are the Appearance Rate, Safety Rate, and Success Rate and can be presented to your local stakeholders and the public in a variety of ways.



(http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=8459&Inline=True)

Since it's initial publication in 2011, *Measuring What Matters* has become the standard in Pretrial literature and practice for understanding what is happening at the pretrial level of the system. It has been tested, publicly available, and is easily accessible to show how the system may be progressing or issues that need to be addressed. By contrast, the for-profit bail industry does not share any of their measurement outcomes or actual costs of doing business. Failure to appear rates, new law violations while out on bail with bail agencies, and the civil collection rate by local courts are not transparent.

Current Call: Policy Recommendations and Path Forward

California's 2018 S.B. 10 illustrates how hard statewide bail reform can be politically. Although the Legislature enacted S.B. 10 to replace money bail with pretrial success-based release and to encourage the creation of pretrial services, (32) the law was ultimately put to a public referendum (Proposition 25) and rejected by voters before S.B. 10 could be implemented. (33) In practice, S.B. 10 therefore serves as an important case study in reform **attempts**—showing how legislative change, implementation logistics (funding, Judicial Council rules, validated tools), and political opposition (including the bail industry's well-funded referendum campaign) interact — but it does **not** represent an implemented statewide model that counties actually put into operation.

By contrast, states and legislatures elsewhere have taken different paths. Texas has passed and implemented targeted statutory reforms aimed at strengthening the information available to magistrates and judges when setting bail and expanding procedures for bail review. Senate Bill 6 (the "Damon Allen Act," signed in 2021) tightened rules on magistrate advisements, created reporting and transparency requirements related to bond setting, encouraged charitable bail organizations, and mandated certain reporting to improve judicial decision-

making. (34) More recently, Texas' Senate Bill 9 updated bail-review procedures and expanded the Public Safety Report/System functionality to provide courts with richer, integrated criminal-history and supervision data to inform release decisions. (35) These Texas statutes are examples of a state altering *how* bail decisions are made (information, reporting, and review) rather than adopting an immediate, across-the-board elimination of secured financial conditions.

Illinois provides a contrasting model of wholesale change: The Pretrial Fairness Act (commonly discussed under the Safe-T Act reforms) abolished cash bail for any defendant and moved Illinois to a pretrial release framework, with the stated aim of eliminating poverty-driven detention. (36) The law's implementation produced fast, structural change, as well as legal and administrative challenges and litigation, but it is an example of a jurisdiction that moved from a money-based system to a statutory pretrial release regime. Comparing Texas' incremental, information-and-process reforms with Illinois' structural abolition of cash bail highlights a core tension in reform strategy: whether to pursue (1) information/process reforms aimed at producing better detention decisions while preserving money bail in some form, or (2) structural elimination of cash bail and creation of a non-financial pretrial release system — each approach carries different implementation, political, and equity tradeoffs.

The Final Reveal: Liberty, Justice, and the End of the Illusion

The televised illusion should be seen as a reflection on the meaning behind the performance. It has been said the Statue of Liberty symbolizes freedom, opportunity, and refuge for people who have been forced to flee oppression. The illusion was not meant to entertain alone—it was meant to remind people that freedom can disappear if it is not protected. This message applies directly to the modern pretrial justice system.

As this paper demonstrates, the pretrial system no longer functions as it was designed. It has been reshaped by financial conditions, political comfort, and institutional habit rather than law, evidence, and constitutional principle. In jurisdictions that continue to rely on monetary and surety-based detention, the system has been proven to produce more public harm than public safety. Many states now stand at the threshold of the most consequential pretrial justice reforms in their history. The evidence is available. The models exist. The data is clear. If we know that current laws and procedures harm communities, destabilize families, and undermine public trust, then continuing those practices is not just inefficient—it is immoral. Justice systems should not require tragedy to justify

reform. Good policy should be built on evidence, humanity, and constitutional values—not illusion.

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