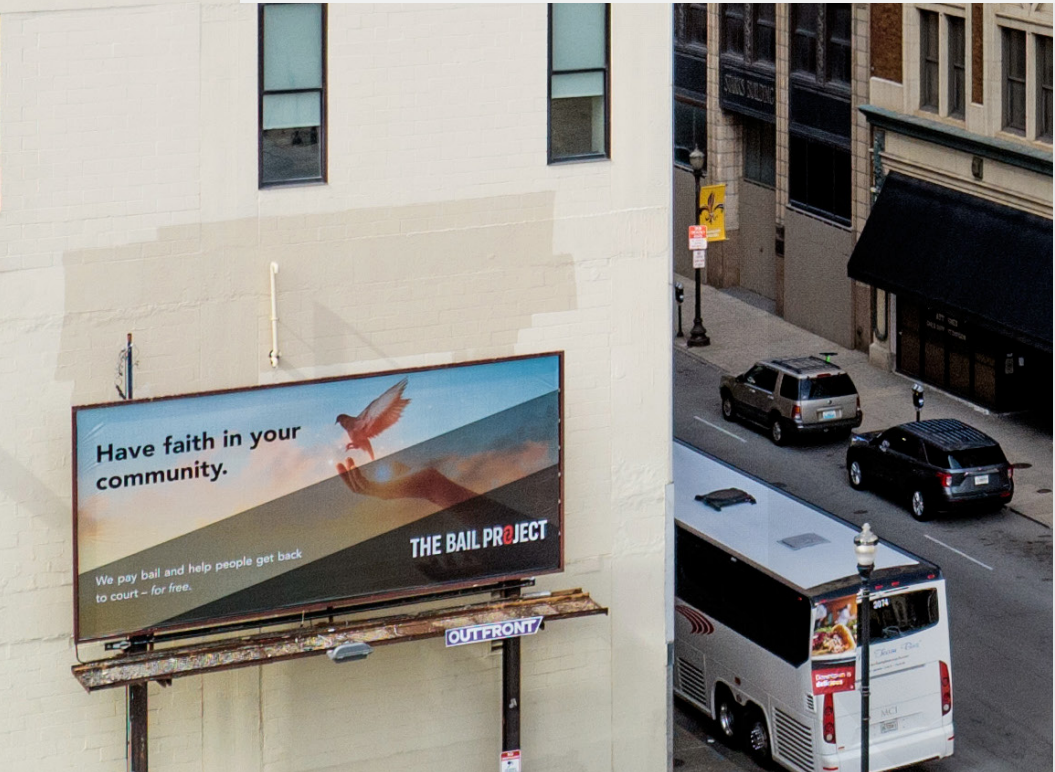




THE BAIL PROJECT

LOUISVILLE TRANSITION REPORT

Recommendations to Improve Pretrial Justice in
Louisville, Kentucky



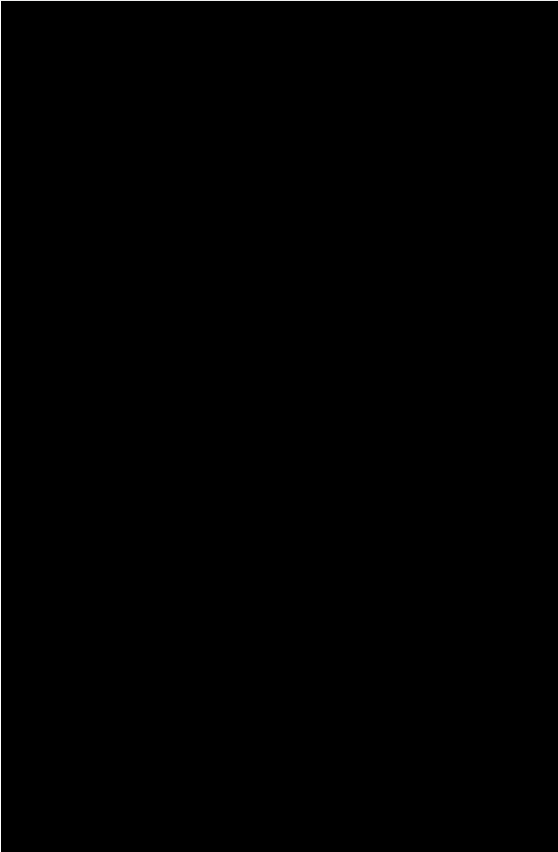
June 2023



Introduction

About This Report

The Bail Project is a national nonprofit organization that is dedicated to restoring the presumption of innocence by advocating for the elimination of cash bail – the practice of tying a person's pretrial liberty to money. The Bail Project currently operates branches in over two dozen cities across the United States and has provided free bail assistance to more than 27,000 low-income residents nationally. In addition to posting bail for free for low-income individuals, The Bail Project gathers evidence from its intervention to inform policy making on matters of pretrial justice and pretrial detention.



One of The Bail Project's first sites was in Louisville, Kentucky, where we have provided bail assistance to more than 4,200 Kentuckians who returned to more than 91% of their court dates. After nearly 5 years of service in Louisville, The Bail Project's regional branch will phase out its bailout operations to focus on policy advocacy based on its local evidence and learnings.

This report provides an overview of The Bail Project's impact in Louisville to-date and offers recommendations for policymakers on how to mitigate the harms of wealth-based pretrial policies, as well as potential reforms that can help begin a transition to more effective approaches.



People in pretrial detention now make up more than two-thirds of America's jail population.

The State of Cash Bail

On any given day, nearly half a million Americans languish in jail cells across the United States, waiting for their day in court while severed from their lives and communities, even though they have not been convicted of a crime. People in pretrial detention now make up more than two-thirds of America's jail population. They are presumed innocent under the law, yet they will suffer the harms of incarceration unless they have enough money to pay bail and buy their freedom. This two-tier system criminalizes poverty and is a structural linchpin of mass incarceration and racial disparities in the criminal justice system. It affects entire communities, devastates families for generations, and undermines the presumption of innocence.

The human toll of this crisis is catastrophic, levied almost exclusively on the poor, and disproportionately on communities of color. People who are jailed pretrial often wait months, and sometimes years, for their cases to resolve. In the meantime, they can lose their jobs, homes, children, and critical community ties. Inside jails, people risk sexual violence, the deterioration of their mental and physical health, and the infliction of lasting trauma. They feel enormous pressure to accept an unjust or wrongful conviction just so they can go home. Nationwide, fewer than 92% of criminal cases ever go to trial, with the vast majority ending with a plea bargain.

The financial costs that this system generates are staggering. American taxpayers pay \$14 billion each year to incarcerate people who have not been convicted of a crime, rather than investing these resources in solutions to the problems that contribute to crime in the first place, such as lack of affordable housing, access to substance use treatment, and mental health care. Meanwhile, the \$2 billion bail bonds industry, with its well-documented predatory and exploitative practices, extracts money from precisely those communities that have the fewest resources. Factoring in the impact of pretrial detention on families and the cost of related social services, the true economic cost of this crisis has been estimated to approach \$140 billion annually.

The scope of the incarceration problem in Kentucky is immense. Each year in Kentucky, there are an average of 89,000 different people who are booked into jail. Across the state, on any given day, there are on average 22,000 people in city and county jails. Relative to other states in the country, Kentucky has a high rate of incarceration: According to the United States Department of Justice, in 2019, the year of the most recently available data, Kentucky ranked fifth in states across the nation for per capita incarceration, and compared to neighboring states, Kentucky has the highest jail admission rate and the second largest pretrial population. As of July 2018, 73% of Kentucky jails were at- or over-capacity, with many operating at- or over 200% capacity. In August 2018, then Kentucky Justice and Public Safety Secretary John Tilley reported that people were sleeping “on the floors in 76 jails and 12 prisons” throughout the state.

The cost of the mass incarceration crisis in Kentucky is also significant, with counties spending more than \$400 million in Fiscal Year 2019 alone to operate the state’s jails. On average, each county in Kentucky spends \$3.4 million each year for jail administration, which in most counties accounts for about one-sixth

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of the total budget. Altogether this contributes to the deepening of economic disparities throughout the state, a fact that has been affirmed by Kentucky’s former Chief Justice of the Supreme Court, John Minton Jr., who noted in a speech that the current bail system disproportionately affects low-income defendants who aren’t able to pay for release after being charged with low-level, non-violent offenses. In some jails throughout the state, there are people who are detained because they cannot afford to pay bails that are set as low as \$250.

Rates of pretrial incarceration and bail setting determinations vary dramatically by county. The share of cases with defendants released pretrial without monetary conditions ranges from just 5% in McCracken County to 68% in Martin County. Just 17% of cases subject to monetary bail in Wolfe County result in the defendant finding a way to make the payment, while in Hopkins County, 99% manage to pay their bail. The highest rates of jail admissions are in rural counties, a disparity that is widening: Since 2000, the pretrial incarceration rate has increased 66% in the state’s 85 rural counties, 48% in the state’s 21 small/medium counties, and 122% in the state’s 13 suburban counties. It has decreased 75% in the state’s one urban county. The ten largest Kentucky counties are home to 45% of the state’s residents but only 38% of the state’s pretrial jail population. All other counties are home to 55% of the state’s residents, but 62% of the pretrial jail population.

There are significant disparities that are perpetuated by pretrial incarceration in the state. Black Kentuckians are jailed at three times the rate of white residents and since 1990, the Black incarceration rate has increased 130%. In Louisville, 51% of the clients that The Bail Project has been able to assist are people of color, though people of color make up 32% of the city's general population. These disparities exist by gender, also. Kentucky has the [second-highest rate of female incarceration in the nation](#), and since 1980, the number of women in jail in Kentucky has increased by nearly 1700%.

As we have seen across the nation, the jails in Kentucky have also become go-to treatment facilities to address issues with substance dependence and serious mental illness. In the Louisville Metro Department of Corrections, at least 25% of people detained there are being treated for a serious mental illness. Most jails throughout the state are [not equipped nor authorized](#) to provide treatment for substance use disorders.

The bottom line is simple: Pretrial liberty should not be a question of money.

Americans are taught that the bedrock of the criminal justice system is that you are presumed innocent unless proven otherwise. Pretrial detention upends this basic legal protection by turning the process into the punishment, thus coercing people into taking a plea deal and forfeiting their right to due process and trial. It is also counter-productive – jails don't rehabilitate, they harm, and often they exacerbate the circumstances driving a person into contact with law enforcement in the first place. When you consider the destabilizing and traumatic impact that incarceration can have on a person and their family, it is no surprise that, as research shows, the longer someone is held in pretrial detention, the more likely they are to be rearrested later.

The Bail Project's Work in Louisville and Its Impact

The Bail Project pools donations of all sizes into a national revolving bail fund that disburses bail capital to the organization's branches across the country. These branches are staffed by local community members who receive requests for free bail assistance from families, employers, public defenders, and others looking to help people trapped behind bars before conviction because they cannot afford bail. The Bail Project's local staff pays bail for thousands of people living in poverty every year and offers a variety of voluntary supportive services to them throughout the duration of their cases. Because the principal stated purpose of cash bail is to incentivize court appearance, our staff asks clients questions about potential obstacles to court return (e.g., transportation, unstable housing, health concerns) and designs a support plan to help overcome these barriers through ongoing communication, effective court notifications, transportation assistance, and support in navigating social services and community-based programs. The result speaks for itself: At the vast majority of our sites, our clients appear for over 90% of their court dates.

Our needs-focused approach removes the financial incentive of bail and creates the equivalent of releasing people on personal recognizance. We call this model Community Release with Support, and our experience and track record with tens of thousands of bailouts shows that it works. Despite not having any of their own money on the line, our clients consistently return for their court dates, laying waste to the myth that cash bail is effective or needed. They show up because they're provided with the support they need and because they want to resolve their cases. Occasional failures to appear are usually due to involuntary circumstances, such as housing instability, work schedule conflicts, and



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health or childcare crises. Cash bail does not make these kinds of obstacles go away; the financial burden of cash bail can, in fact, worsen them.

Our experience demonstrates that simple measures such as text or phone call reminders about court dates, transportation assistance to and from court, and problem-solving around childcare substantially improve court appearance rates. At our Louisville

site, for example, 22% of our clients tell us they need some transportation support and nearly 40% have children or are pregnant at the time of their arrest. Sometimes all that is needed is a little conversation to talk through plans to get to court. As noted, at the vast majority of our sites, and in Louisville, our clients appear for over 91% of their court dates after receiving these voluntary, supportive interventions.

Some people's needs may go beyond court reminders. For example, in Louisville, nearly 20% of our clients report a history of substance misuse or dependence, more than 25% say they are unemployed, and about 3% say they are homeless or have unstable housing. Addressing the complex needs of some clients often requires a tapestry of care, and in Louisville, as well as across the country, The Bail Project works to empower our clients by cultivating relationships with existing community-based organizations, networks, and nonprofits who can receive voluntary referrals for them. This aspect of our work – building community connections and a referral network – is a crucial addition to the landscape of pretrial services, where often, this type of navigation is not provided.

There is also a common misconception that court non-appearance is at crisis proportions and that people who miss court do so deliberately. Our experiences tell a very different story. In Louisville, our clients have appeared at 91% of their court dates, at a rate that is consistent with our other sites nationally and our national average. In reality, most non-appearance results from common obstacles that include work schedules, childcare responsibilities, lack of access to adequate transportation, and difficulty navigating confusing court systems. This is why The Bail Project's work focuses on addressing these obstacles and making it easier for people to return to court.

The pretrial system can either be a profound disruption or a positive intervention point for

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connecting people with supportive services such as housing assistance, job training, and treatment for substance dependence. Our main objective in the Louisville pretrial system has been to facilitate return to court and be responsive to the potential barriers to court return that an accused person may identify, which is, perhaps also, the way an ideal pretrial system should function. Instead of coercing or mandating services, we have been able to prioritize developing trusting relationships with our clients, which supports most pretrial objectives. As a result, people are far more likely to have honest conversations with our staff about their circumstances and needs than they are to have similar conversations with law enforcement.

Our experience providing free bail assistance and support to thousands of people across the United States and in Louisville demonstrates that, where additional support is needed, addressing people's needs is not only the most humane way to run a pretrial system: it's also effective at ensuring high rates of court appearance and creating opportunities for meaningful interventions that can prevent further criminal justice involvement.



The Bail Project's Louisville Clients

Since 2018, The Bail Project's Louisville site has facilitated the release of more than 4,200 legally innocent individuals, more than three times the current daily population of the Louisville Metro jail. With basic support, our Louisville clients – individuals who would have otherwise been jailed pretrial as the result of unaffordable bail – have made 91% of their court appearances and attended more than 16,000 court dates. Our work demonstrates the potential success of a pretrial system that relies on support and services such as court reminders, transportation assistance, as well as voluntary referrals to housing, employment, mental health, and drug treatment services rather than on money bail.

After several years of operations, we can offer a fairly comprehensive picture of our client base, and state with certainty that our clients represent the populations that are most impacted by lack of economic opportunity, underfunded social services and healthcare, and over-policing.

Demographics and Client Needs

Our client population in Louisville is 49% Black, 48% white, and 2% Latinx. The vast majority of our clients are male (78%), most are under 40 (72%), and more than two-thirds have children (67%). Fully half (50%) of our clients indicate that they have some unmet need at intake or during a subsequent conversation with a member of our site team. The five most commonly identified needs are as follows: transportation assistance (20%), employment assistance (15%), mental health services (13%), housing assistance (13%), and drug treatment services (11%).

Referrals, Bail Amounts, Case Duration, and Case Outcomes

In Louisville, the vast majority of the referrals we received were from public defenders and private attorneys (42%), followed by a high percentage of referrals (30%) from family and friends of people in need of bail. During the period we operated in Louisville, the range of bail paid was from as little as \$250 to \$28,000. The median bail amount was \$3,500. The average number of days in jail served by one of our clients was 37 days, a length of time that can easily lead to loss of employment, housing, and family stability when spent in jail awaiting court dates rather than in one's community. Some of our clients were detained for longer than three years before we posted bail for them. In Louisville, more than 3,500 of our clients have had their cases disposed to-date. Of those, 16% had their cases dismissed, which suggests that, absent our intervention, those individuals would have remained unnecessarily incarcerated until their cases made their way to completion. Over 85% of the clients we served faced no additional jail time at disposition.

These case outcomes are instructive and crucial. They suggest that, absent The Bail Project's intervention, thousands of Kentuckians would have remained incarcerated unnecessarily pretrial.

Equally of note is the portion of those individuals would have had their cases ultimately dismissed: These are individuals who without our intervention would have been forced to remain incarcerated, where they would be subjected to the traumatizing and destabilizing conditions of jail, only to have the charges ultimately dropped. When individuals are incarcerated and their cases are later dismissed, it is easy to surmise that they were detained unnecessarily. Additionally, the fact that the overwhelming majority of our clients whose cases are disposed face no additional jail time at sentencing suggests that, primarily, those individuals who are charged and convicted of crimes do not merit any additional punishment and that, essentially, their pretrial incarceration is punishment.

The Bail Project's work in Louisville and across the country demonstrates that courts can mitigate the harms of cash bail and that systems should ensure that when people are released pretrial they maintain access to critical supportive services. This way, our justice system can be more effective and safer than it would be when it simply relies on cash bail, which only produces the inevitable result of incarceration when bail is set at amounts people cannot afford.



The Bail Project's Future in Louisville

Since beginning in 2018, The Bail Project has been modeling Community Release with Support across dozens of cities of varying demographics, geography, and political contexts. The Commonwealth of Kentucky is unique in that it is one of only a handful of states that has made the operation of the for-profit bail bonds industry illegal throughout the state. Additionally, in recent years, Louisville has been at the forefront of movements for racial justice. Shortly after we began our operations in Louisville, George Floyd and Breonna Taylor were both killed by police, leading to mass protests and growing awareness about the need for criminal justice reform, including bail.

In Louisville, after five years of operations and the provision of critical help to many Kentuckians, we have decided that it is time to transition from bailout operations to direct advocacy that builds on our local evidence base and learnings. We have bailed out 4,215 people who have returned to 91% of their court dates without having any of their own money on the line. We have made a strong case that cash bail is not necessary to ensure high rates of court return. There are better, more humane, and more effective alternatives. Over the next phase of The Bail Project – Louisville, we will work with government and community stakeholders to achieve progress toward those solutions.

We often refer to our work as “sunsetting,” which means that after some period of time, the work and the way we provide it will change. Sometimes, this includes the decision to transition our services away from the provision of direct services through our bailout operations and invest more heavily in the advocacy work that can accomplish the systemic reforms we seek to achieve. With limited resources, we cannot deliver improved pretrial outcomes to



the full range of people affected by the system at the individual level. Instead we transition our work and strategy in some jurisdictions, like Louisville, towards changing the policies, practices and laws that govern the system as a whole. The reasons for operating in this manner are driven out of recognition that The Bail Project, which is a 501(c)3 nonprofit organization with limited resources, has a duty to demonstrate the effectiveness of a system without cash bail as broadly as possible across this nation.

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Recommendations

Transformative pretrial change will inevitably require up-front investment. However, jurisdictions can expect to see cost-savings over time, as the size of the pretrial detention population decreases. Research shows that shifting resources away from incarceration and toward long-term investments that actually make communities safer, such as education, health care, and employment services, helps people thrive. Investments in organizations focused on interrupting violence and building stronger communities leads to better public safety outcomes than policing and punishment.

Louisville has the opportunity to build lasting, locally-centralized infrastructure to improve the pretrial system, and better address individual needs to prevent crime. Local governments across the country have demonstrated that pretrial systems can be made more fair, while simultaneously improving public safety. By investing in solutions that meet community needs, we can address the root problems of crime. By making Louisville's pretrial system more fair, equitable, and effective, we can also make the city more safe.

1. Reduce unnecessary jail bookings by expanding use of summons arrests.

Summons arrests, which are commonly known as “cite and release” procedures, reduce jail administration costs and address jail overcrowding by keeping those charged with low-level violations and nonviolent offenses, and who pose no harm to the community, out of jail. By minimizing the use of custodial arrests and increasing the use of summons arrests, law enforcement officers and resources become more available to focus on more serious crimes.

Kentucky statutorily requires that police issue citations rather than physical arrest for misdemeanors committed in their presence if there are “reasonable grounds to believe that the person being cited will appear to answer the charge.” In addition, the Louisville Metro Police Department has a regulation where they direct the usage of citations except where the person poses a “risk of danger,” if the person failed to follow “reasonable instructions,” where they believe the person won’t appear in court, or for a number of specific charges. In practice, however, we know that custodial arrests are still typically made in lieu of citation.

Louisville should promote greater adherence to the statutory requirements and local directives. Given the mandates already in place, it is worth investing resources to analyze the reasons why custodial arrests are still being prioritized and to determine if people who present none of the qualified risks are still being brought into custody. Through further analysis, and with stricter adherence to the mandates and guidelines, Louisville can reduce the jail population without compromising public safety by increasing the frequency with which police issue summons arrests with a notice to appear in court instead of effectuating custodial arrests that require booking people into jail pre-arraignment, particularly for low-level, non-violent city offenses.

2. Advocate for higher utilization of own recognizance release at first appearance and encourage judicial officers to weigh the harms of pretrial detention when making pretrial decisions.

The Bail Project’s work offers critical evidence that people can be released on recognizance and the vast majority will return to their future court dates without any of their own money on the line. This is in-line with outcomes seen in many jurisdictions across the country that have implemented bail reforms. For example, researchers for the [Harry Frank Guggenheim Foundation](#) looked at bail reform in eleven jurisdictions and found that there was no meaningful impact on public safety. Additionally, researchers in [Cook County, IL](#) and [New York](#), using rigorous statistical analysis, confirmed these results. Advocacy efforts that seek to promote greater rates of release on recognizance should focus on ensuring that awareness of this existing research is widely-known and understood. Abundant research exists that suggests that detention not only worsens court outcomes, it also potentially impacts an individual’s health and well-being. [Several studies](#) have been released confirming that just 48 hours in jail can result in increased rates of future recidivism, which is likely the result of the incredible destabilization that occurs when someone is detained pretrial. Experts can be consulted and seminars conducted to ensure interested parties, and particularly the judiciary, understand the evidence-based impacts of both pretrial detention and reform.



3. Reduce the imposition of cash bail as a condition of release through city ordinance or judicial rulemaking.

The Louisville Metro Council can issue an ordinance eliminating the use of cash bail as a condition of release from jail for people charged with municipal violations. This has been successfully and safely implemented in cities like [Atlanta, GA](#) and [New Orleans, LA](#). Alternatively, a presumption of release without cash bail for most people can be established through judicial rulemaking, which is the process by which the chief judge for the county court or the state establish a new process for pretrial decision making that favors due process protections and discourages the setting of bail amounts that exceed a person's ability to pay. This has proven successful in other jurisdictions, such as [Harris County, TX](#), where the majority of people arrested on misdemeanors automatically qualify for non-monetary release, leading to reductions in racial disparities without increasing rearrests.

4. Address the root causes of crime by expanding funding for community-based services that support people who are released pretrial.

Louisville can increase funding for a variety of services that are known to prevent crime from occurring in the first place. If implemented at-scale, these programs would reduce incarceration resulting from economic insecurity, housing instability, and untreated health needs, while strengthening community health and public safety. Expanded services can include, but need not be limited to: expanded provision of mental health services that address varying levels of severity (e.g., ACT teams); developing and fully funding alternative crisis response models to minimize police encounters with people facing mental health

crises; the provision of summer youth employment programs; and expanded access to and provision of supportive and transitional housing. Additionally, there is a critical need for the provision of "navigation" services – that is, the provision of a supportive peer or case manager with knowledge of the criminal justice system and the existing landscape of service providers to help steer someone through the complex pretrial process towards success. When provided, these services should be voluntary, and if developed, the city should make efforts to ensure equitable dispersal of funds, with a particular focus on organizations with impacted staff or leadership. In San Francisco, [94% of people](#) in pretrial programs were not arraigned on a new charge or a supervision violation.

5. Improve coordination between court actors and those who may provide supportive services to people who are released pretrial.

The Metro Council could establish a pretrial coordination body which would ensure that new and existing programs that support people's return to court are effectively coordinated and optimized. Such a body could expend resources to enhance local court notifications, operate or facilitate transportation assistance, and develop a framework to ensure that people are connected to voluntary supportive services in the community. Additionally, this body could be made responsible for the assessment and evaluation of pretrial service providers to ensure that they are effectively coordinated and functioning efficiently. Developing an office would have only a small financial impact, but significant and long-term benefits.

6. Prioritize judicial education about new and existing in-community resources.

Judicial education around the availability of existing and new in-community services is not commonly prioritized. Without introductory seminars, and ongoing opportunities for community-based providers to offer information and education on their services to judges, there is a potential for gaps in understanding and awareness of non-custodial alternatives that could support an accused person in successfully returning to court and avoiding future arrest. Investments in judicial education around these programs should be facilitated by a centralized coordinating body, either within the courts or within the office of the Mayor who could liaise between the community-based organizations and the courts to ensure that judicial officers have the most up-to-date and accurate understanding of the existing tapestry of program services that are available.

7. Improve the provision of court return support, like court notifications and travel assistance, to decrease failures to appear.

Court notification systems are a simple and powerful tool to support return to court and facilitate a more cost-effective pretrial process. Notifications have been shown to reduce court non-appearance by as much as [26% in New York City](#) and by [35% in Hennepin County, MN](#), which resulted in an estimated cost savings of \$3 million per year there. Louisville can dramatically improve local court appearance rates and save money by working with the Administrative Office of the Courts to improve the city's coordination and implementation of the existing statewide court notification system.

In addition, the provision of transportation assistance where needed to support court return would remedy one of the most common causes of non-appearance:

lack of access to transportation. Court users without reliable transportation face multiple barriers to attending court: Public transportation is often [unreliable, inaccessible, or inconvenient](#); rideshare services are expensive and only available for those with smartphones; and, for people with access to cars, court parking can be costly. [Over half](#) of Jefferson county residents live in areas with low and below average public transportation services. People living below the poverty line are more likely to live in low service areas, suffering the consequences of the county's uneven distribution of public transportation services. In addition to the real time impacts shown through The Bail Project providing free rideshare transportation to clients, accessible court transportation programs have been implemented in [Hennepin County, MN](#), where free Lyft rides are provided to and from court and court-related appointments for people with no reliable access to transportation, and [Massachusetts](#), where the Department of Justice granted funding for transportation to court and court-mandated treatment.

8. Establish data collection and public reporting on pretrial jail populations.

Comprehensive pretrial data collection informs future decision making and highlights successes and areas for improvements within the pretrial system. States like Florida and Utah have enacted legislation in recent years to require criminal court data collection and reporting, citing the importance of studying bail determinations and other pretrial data for system improvement. Louisville has taken the important first step of rolling out a publicly accessible jail data toolkit and data dashboard.



Conclusion

The Bail Project's work offers a blueprint for how jurisdictions can move away from cash bail, creating a more equitable process and ultimately eliminating the need for bail funds, including our own. Since launching in 2018, The Bail Project has prevented the unnecessary incarceration of thousands of Americans in 44 jurisdictions. We've done this by providing free bailout assistance, sending court reminders, offering travel assistance, and making referrals to voluntary supportive services like supportive housing, treatment for substance misuse and dependence, mental health services, and employment assistance to address their unmet needs.

The Bail Project's work offers a blueprint for how jurisdictions can move away from cash bail, creating a more equitable process and ultimately eliminating the need for bail funds, including our own.

We cannot truly reimagine pretrial justice without investing more deeply in our communities. We best ensure public safety when our children can get a good public education, when our families have access to safe, affordable housing, when all community members have access to mental health services and addiction treatment, and when we respond to violence in ways that restore and heal. Our intentions in Kentucky are as they have been nationally: To offer charitable bail assistance as a stop-gap measure; to offer solutions that enhance return to court; to gather evidence of best practices for pretrial support, and to advocate with stakeholders for comprehensive reforms that make our intervention no longer necessary. All of this is possible. Starting with the evidence we've amassed over the five years of operations, and coupled with strong policy advocacy, a pretrial system where people are not harmed by cash bail can be achieved.