

THE BAIL PRO²JECT

Inside Bail Reform

Six Core Components of Safe, Fair, and
Effective Pretrial Policy

Introduction

States and localities across the United States have taken significant steps to create safer, fairer pretrial systems through policies broadly termed “bail reform” – newly referred to by opponents as “cashless bail” policies. In the face of political attacks and misinformation, it’s more important than ever to understand what these reforms truly look like.

Real bail reform builds a more effective justice system by encouraging judges to base pretrial decisions on safety, not wealth. Effective reforms reduce the number of people unnecessarily in jail pretrial, fight racial and economic disparities, and invest in community-based solutions that address the root causes of crime.

Components of Effective Bail Reform

Here are the six essential components of strong, effective, and fair bail policy.

1. Eliminating Cash Bail

The core of good bail reform is ending the practice of requiring money for pretrial release. In a reformed system, no one is forced to stay in jail simply because the price of their freedom is out of reach. Rather, pretrial release decisions are based on evidence of a person’s risk of willful flight (intentionally trying to evade prosecution) or danger to others.

Illinois became the first state to fully eliminate cash bail in 2023. Since the law went into effect, pretrial incarceration rates have dropped by [14% in Cook County and 25% in rural counties](#), all without compromising public safety.

2. Clear Release and Detention Guidelines

In most courtrooms across the country, a defendant’s ability or inability to pay cash bail is the deciding factor in whether they are released or detained pretrial. In order to eliminate cash bail, judges will need new policies and procedures through which to make these release or detention determinations. To accomplish this, states and localities should adopt clear guidelines, built on a presumption of release, that help judges and other system actors determine when detention is necessary. Only when there is clear and convincing evidence that detention is warranted should someone be held in jail while awaiting trial.

These guidelines can include:

- **Alternatives to arrest:** Options like “cite and release” or “desk appearance tickets” allow people charged with nonviolent, low-level offenses to avoid jail altogether, minimizing disruption to their jobs, housing, and families. These are similar to receiving a traffic ticket – instead of being arrested and booked into jail, a person is issued a citation with instructions to appear in court later. Such measures save time and resources for police, jail staff, and courts.

- **Evidentiary standards:** When a judge does consider detention, they should use a high legal standard to determine risk. The recommended standard is “clear and convincing evidence,” which means a judge must have a strong belief – an 80-85% likelihood – that a person will intentionally flee or pose a danger to the public. This is a far higher threshold than the preponderance of the evidence standard (essentially “more likely than not,” or just over 50%), which is barely better than a coin flip and places unnecessary burdens on the system.
- **Needs assessments:** Instead of relying solely on flawed risk assessment tools that can perpetuate racial biases, judges should use needs-based assessments. These tools give judges a holistic view of the person, helping them understand what elective supportive services – like housing, mental health, or substance use treatment – might help the person succeed on pretrial release.

3. Conditions of Release

Most people can be released pretrial with little to no conditions. For others, judges may find that limited supervision or support outside of jail can help them succeed. Conditions of release often range from standard conditions (appearing in court as required, remaining in the state, and informing the court of any address changes) to liberty-restrictive conditions (electronic monitoring or home confinement). Conditions should always be affordable, accessible, and the least restrictive necessary.

Liberty-restricting conditions like electronic monitoring should be rare, time-limited, and used only when someone poses a specific risk of harm or willful flight. People should have the right to a review hearing after a period of compliance to reassess whether the condition remains necessary.

Needs-based services – such as substance use or mental health treatment – should always be voluntary, ensuring individuals aren't penalized for life circumstances that may disrupt treatment.

4. Strengthening Due Process

Good bail reform strengthens legal rights for all. This includes ensuring people have the right to counsel at their very first court appearance. Currently, four out of five people facing criminal charges can't afford a lawyer. Legal representation helps ensure judges have all the facts and prevents people from being held unnecessarily.

Due process also includes:

- **Timely and substantive hearings:** Detention hearings should be held within 24 hours of booking, even on weekends. They should include the presentation of available evidence and an opportunity from defense counsel to confront it.
- **Speedy trials:** No one should have to wait months or years in jail for a trial.
- **Graduated sanctions:** For minor violations of release conditions, courts should use a system of warnings or reminders rather than immediately issuing a warrant for rearrest.

5. Court Return Supports

Most people who miss court dates aren't intentionally evading justice; they face challenges like a lack of transportation, work conflicts, or health issues. Good reform provides supportive measures to help people succeed.

Programs that offer support can significantly improve outcomes:

- **Court reminders:** Text, email, or phone call reminders about upcoming court dates increase appearance rates.
- **Transportation assistance:** Providing bus passes or rideshare vouchers helps people get to court on time. Some jurisdictions even provide court shuttles or give people direct rides to hearings as needed.
- **Referrals to voluntary services:** Connecting people with community resources for mental health, employment assistance, child care, substance use, or housing can address the root causes of their justice involvement.

6. Collecting and Analyzing Data

Real reform depends on transparency and accountability. That starts with collecting and publicly reporting data on pretrial practices – including who is detained or released, how long people are held, how quickly cases move through the courts, and the associated costs to jails and courts. To measure whether bail reform efforts are effective, independent and qualified researchers should conduct rigorous evaluations. These assessments should examine whether reforms were implemented as intended, how they affect people navigating the pretrial system, and what impact they have on community safety. With this information, policymakers, criminal justice stakeholders, and the public can see what's working, identify areas for improvement, and ensure that pretrial reforms are both safe and effective.

Effective Implementation and Funding

Passing a reform bill is only the first step. For reforms to be effective, they must be properly funded and implemented with buy-in from local leaders and stakeholders. This includes educating judges, law enforcement, and court staff on the new policies, and allocating funds to community-based services that support people on pretrial release.

The Evidence Is Clear: Bail Reform Works

Fearmongering about bail reform is a distraction from the facts. The data clearly shows that jurisdictions with reforms are not only safe, but many have seen significant drops in crime. For example:

- In **New Jersey**, sweeping bipartisan bail reforms implemented in 2017 led to a [20%](#) drop in violent crime and a [25%](#) drop in property crime by 2020.

- In **Harris County, Texas**, the end of cash bail for most misdemeanors led to [no corresponding increase in violent crime](#).
- Nationally, an analysis of **33 cities** with bail reform from the Brennan Center for Justice found [no statistically significant link](#) between bail reform and increases in crime.

These outcomes show that bail reform is not a threat; it's an opportunity to build a justice system that is fairer, safer, and smarter for everyone.

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