

# **Punishment Is Not a "Service"**

The Injustice of Pretrial Conditions in Cook County

Released October 24, 2017



**CHICAGO COMMUNITY  
BOND FUND**



## Acknowledgments

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**Chicago Community Bond Fund would like to thank the following for their roles in this report:**

James Kilgore and Emmett Sanders of the Challenging E-carceration Project for research on electronic monitoring. Learn more at [www.challengingecarceration.org](http://www.challengingecarceration.org).

The Coalition to End Money Bond (A Just Harvest; Hughes Socol Piers Resnick & Dym, Ltd.; Chicago Appleseed Fund for Justice; Illinois Justice Project; Justice and Witness Ministry of the Chicago Metropolitan Association, Illinois Conference, United Church of Christ; Nehemiah Trinity Rising; The Next Movement; The Sargent Shriver National Center on Poverty Law; Southside Organized for Unity and Liberation; and The People's Lobby) for being tireless partners in the fight for bail reform and pretrial freedom in Cook County.

Crossroads Fund, Polk Bros. Foundation, Robert R. McCormick Foundation, and Woods Fund Chicago for their generous support of CCBF's advocacy work and the thousands of individuals who have donated their time or money, hosted events for us, and otherwise supported CCBF's mission.

And the countless CCBF volunteers who contributed to this report.



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# Overview: Pretrial Conditions Are Currently Punitive and Not Supportive

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In the past two years, community organizers and advocates have made dramatic headway in the fight to end money bond and pretrial incarceration in Cook County. The most significant and recent victory is the introduction of General Order 18.8A by Cook County Chief Judge Timothy Evans, effective September 18, 2017.<sup>1</sup> Following litigation and public pressure to reduce the number of people locked up in Cook County Jail only because they cannot pay a monetary bond, the order is supposed to ensure that judges do not set money bond except in amounts that people can pay. If followed, the order represents a dramatic shift away from unpaid money bond as the primary driver of pretrial incarceration and toward a new respect for the presumption of innocence in Cook County. Chicago Community Bond Fund (CCBF) and our partners in The Coalition to End Money Bond are currently working to ensure that the order is fully implemented and that no one is incarcerated in Cook County Jail solely because they cannot pay a money bond.<sup>2</sup>

As more people are diverted from the jail, CCBF is increasing our focus on what is happening to those individuals who previously would have been incarcerated. Through our work posting bond for people who cannot afford it themselves and observing Central Bond Court, CCBF has consistently observed conditions of pretrial release that operate as a form of pretrial punishment. Since 2015, CCBF has posted bond to free 98 people. Of these people, more than one in four were subjected to punitive pretrial conditions, including electronic monitoring, overnight or 24-hour curfews, monthly check-ins with a Pretrial Services officer, and drug testing—all after we posted their significant monetary bonds. These conditions are ordered by the court, most often by judges in bond court, and overseen by either the Pretrial Services Division or the Sheriff's Office.

Under the guise of helping accused people come back to court and avoid re-arrest, pretrial conditions restrict the liberty of innocent people and even mimic the same harms as pretrial incarceration, causing loss of jobs, housing, access to medical care and putting severe strain on social support networks and family members. Pretrial conditions such as curfews actually place more severe restrictions on freedom than sentences received after conviction, such as probation, supervision, and conditional discharge. Furthermore, punitive pretrial conditions coerce people to plead guilty, undermining accused people's rights and recreating the negative impacts of incarceration in jail. These pretrial conditions violate the presumption of innocence that seeks to prevent punishment before conviction.

The current punitive approach of the Pretrial Services Division plays a key role in driving this troubling trend. Over the last six months, CCBF has repeatedly seen Pretrial Services impose punitive conditions on individuals for whom CCBF has posted bond. Through their observations of Central Bond Court from August to October 2017, volunteer courtwatchers with the Coalition to End Money Bond also documented regular imposition of onerous pretrial conditions such as curfews, as well as electronic monitoring operated by the Sheriff's Office. The full extent and impact of these punishments are not transparent: Advocates and the public are unable to access the most basic information about Pretrial Service's systemic impact because it is housed under the Office of the Chief Judge and thus not subject to Freedom of Information Act (FOIA) requests.

Instead of punishing individuals who have previously missed court or are repeatedly targeted for arrest, our court system should provide real support and services that address the underlying causes of these challenges and help individuals succeed. By punishing people with unmet needs instead, Cook County is contributing to the criminalization of vulnerable communities, further compounding racial inequity in the criminal legal system, and expanding incarceration beyond the walls of Cook County Jail.



## Jarrett's Story

*In September 2016, CCBF posted \$4,000 to free Jarrett, a 21-year-old Black Lives Matter activist, from Cook County Jail. A few days after he got out, Pretrial Services officers started showing up at Jarrett's grandparents' home around 3:00 a.m. for several nights in a row. The officers would demand to see Jarrett, but offered no explanation as to why. After a few nights of this, the officers told his alarmed grandparents that Jarrett had an 8:00 p.m. to 6:00 a.m. curfew and that a warrant would be issued as a result of his violation of that curfew. They then left a phone number for a contact in Pretrial Services.*

*At the time, Jarrett was living with his parents, and it is unclear how the officers obtained Jarrett's grandparents' address. In addition to mandating his presence at an incorrect address, the curfew requirement prevented Jarrett from continuing to work at UPS, because his shift ended at 11:00 pm—after his curfew began. Alarming, neither Jarrett nor his attorney were aware of these punitive pretrial conditions, and neither were provided with paperwork indicating these conditions at bond court or upon Jarrett's release from custody.*

*At his next court date, Jarrett was violated by Pretrial Services and, as a result, the judge placed Jarrett on 24-hour electronic monitoring with no movement. During this time, Jarrett was forced to stay at his grandparents' house rather than live with his parents. He lost both his jobs and was allowed no movement at all for four months. At his following court date, Pretrial Services reported to the court that Jarrett was out of range of his monitoring box for the entire month of November, and that he had not come in for required drug tests—despite the fact that no drug testing requirements were indicated on the Order for Special Conditions of Bail and Jarrett's charge did not involve drug or alcohol use or sales. Frustrated by these severe restrictions on his movement and liberty, Jarrett pleaded guilty and received two years probation. The terms of Jarrett's current probation are far less severe than the pretrial service requirements he was forced to endure before he was convicted.*



# Recommendations

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The Illinois bail statute now requires that any pretrial conditions of release imposed be “the least restrictive necessary” to assure attendance in court and protect the integrity of judicial proceedings.<sup>3</sup> All services provided by the courts as part of those pretrial conditions should therefore focus on ensuring that people are able to fully participate in the resolution of their cases.

Dealing with the impact of an arrest and the legal process that follows is challenging for anyone. Frequent court appearances for cases that can last for years are difficult to navigate. Arranging for the repeated days off of work, childcare, and travel to court can all make it difficult or impossible to attend every scheduled court date. Even if an accused person is able to overcome those challenges, the appearances themselves move quickly, with little effort made to ensure that people understand what occurs at each court date, what will happen at their next court date, and when they need to be in court again. There are many simple actions that can be taken to help people get to court and navigate the legal process.

Reminders and explanations of the legal process can help ensure that people have the information they need and make the process less intimidating. Attendance in court can be improved with simple, non-punitive measures such as ensuring that people leave each court date with written information about their next court appearance and receive reminders before each court date through phone calls, text messages, and/or emails.<sup>4</sup>

Other services that could be provided include assistance with transportation and childcare, two common barriers to attending court dates. Flexible scheduling can also help people attend their court dates.<sup>5</sup> Providing a range of dates for each court appearance and including evening scheduling can allow people to attend their court dates without missing work.<sup>6</sup>

There are also opportunities to connect people with truly supportive services based on their individual needs, including core needs like housing. In New York City, a program has been instituted to identify individuals who frequently cycle through the courts and are struggling with housing and health issues and connect them with supportive housing and other services.<sup>7</sup> Treating people with respect and dignity must be central to these services, and they should address needs identified in partnership with the accused individual.

To the extent that pretrial conditions such as electronic monitoring or curfews are imposed, these restrictions should not replicate the harms of incarceration, including loss of employment and economic stability, disruption of connections to family and support systems, and reduced access to safe and stable housing. Given the potential harms of electronic monitoring—not only to individuals but also to their families and communities—this form of punishment should be the absolute last option as a condition for pretrial release. Moreover, technical violations of electronic monitoring regulations should not cause a person to be sent back to jail.

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Sources: <sup>3</sup>[“The Bail Reform Act of 2017,” Public Act 100-0001 \(Senate Bill 2034\), signed into law June 9, 2017](#), <sup>4</sup>Cook County is currently preparing to roll-out automated phone call reminders for people released pretrial, but since the program has not started yet and there is no available information about its efficacy, we have left it in as a recommendation. <sup>5</sup>Though some courthouses in Cook County have childcare options available, not all do. The existing programs appear to be underutilized; more outreach may be necessary to ensure that people are aware of the childcare options available to them. <sup>6</sup>In announcing its Justice Reboot Initiative, New York City recognized “Flexible appearance date and night court” as two ways to increase court appearance. The announcement proposed a pilot program in Manhattan that would allow “individuals who have received summonses ... to appear any time a week in advance of their court appearance. The court will also be open until 8:00 p.m. on Tuesdays.” [New York City Office of the Mayor, “Mayor de Blasio and Chief Judge Lippman Announce Justice Reboot, an Initiative to Modernize the Criminal Justice System,” The Official Website of the City of New York](#), <sup>7</sup>[Christie Thompson, “A Fresh Take on Ending the Jail-to-Street-to-Jail Cycle,” The Marshall Project, May 10, 2017](#)

To reduce the harm done by electronic monitoring regimes, the county should consider guidelines for monitoring that guarantee the rights of the individuals. Given that multiple authorities supervise electronic monitoring in Cook County, these guidelines should apply regardless of the oversight body. In the interest of protecting individual rights, monitoring technologies should not unnecessarily collect and store personal information or engage in additional forms of surveillance.

As directed by law, electronic monitoring imposed through both the Sheriff’s Office and Pretrial Services Division should be recognized as home confinement that entitles people to credit for time served. Furthermore, because curfews without electronic monitoring impose similar limitations to home confinement, their recipients should also receive credit for the time during which they are subject to those conditions.

People subject to pretrial conditions should not be charged fees, as this exacerbates the financial challenges that many already face. The county would do much better to spend money on programs to keep people out of jail than on technology that all-too-frequently lands them back in jail.



## How Pretrial Conditions Are Set

In Cook County, everyone accused of a felony is screened by Pretrial Services Division staff using a risk assessment tool developed by the Laura and John Arnold Foundation. The Public Safety Assessment (PSA) uses the accused person’s age, current charge, past history of convictions, and past history of failures to appear in court to calculate two scores. A New Criminal Activity (NCA) score is related to likelihood of re-arrest and a Failure to Appear (FTA) score is related to likelihood of missing a court date.<sup>8</sup>

Factor	FTA	NCA	NVCA
Age at current arrest		X	
Current violent offense <sup>1</sup>			X
Pending charge at the time of the offense	X	X	X
Prior conviction <sup>2</sup>	X	X	X
Prior failure to appear pretrial in past 2 years	X	X	
Prior failure to appear pretrial older than 2 years	X		
Prior sentence to incarceration		X	

<sup>1</sup> A current violent offense receives additional weight if the person is 20 years old or younger.

<sup>2</sup> Prior convictions for misdemeanor, felony and violent offenses are given different weights.

The result is two numbers on a scale of one (lowest likelihood) to six (highest likelihood) and a flag for “New Violent Criminal Activity” (NVCA). It’s important to understand that the tool is not really able to make a prediction about whether the specific individual will fail to appear in court or be re-arrested, but rather is identifying similar characteristics and asserting that, generally, people in that

Sources: <sup>8</sup>[The Arnold Foundation has provided information about how scores are calculated, including all factors and their weights.](#) The actual mechanism by which scores are translated into recommendations for release with accompanying conditions, however, varies by jurisdiction and in Cook County this mechanism has not been made publicly available.

group have a certain chance of not appearing or being re-arrested.<sup>9</sup>

In addition, what constitutes a “low” or “high” risk is extremely subjective. “Depending on the instrument and the jurisdiction, a high-risk classification can correspond with a probability of re-arrest that’s as low as 10% or as high as 42%.”<sup>10</sup>

The tool is also not equipped to evaluate why someone failed to appear or what sort of offense they were arrested for. This is particularly important because vulnerable populations are more likely to be re-arrested. For example, if a person without stable housing is frequently arrested for misdemeanor trespass and also frequently misses court, that person may be considered “high risk” for both Failure to Appear and New Criminal Activity. Nevertheless, most people working in the system understand that such a person should not be incarcerated pretrial.

These two scores are also translated into specific recommendations about whether the accused person should be released on bail and what conditions, if any, should be required. This happens through use of the “Decision-Making Framework” developed by the Arnold Foundation for use by Cook County Pretrial Services and shown below. In Central Bond Court, a Pretrial Services Officer reads out both numbers and the recommendation for release. In setting pretrial conditions, judges may consider the PSA’s recommendations along with the more than 30 factors outlined by Illinois bail statute.<sup>11</sup> Judges are not bound by the tool’s recommendations, and a 2016 courtwatching study found that judges deviated from the PSA’s recommendations 85% of the time.<sup>12</sup>

	NCA 1	NCA 2	NCA 3	NCA 4	NCA 5	NCA 6
<b>FTA 1</b>	Release with No Conditions	Release with No Conditions	Tool expects greater likelihood of new criminal activity			
<b>FTA 2</b>	Release with No Conditions	Monitoring (Court Date Reminder)	Monitoring (Court Date Reminder)	Supervision Level I	Supervision Level II	
<b>FTA 3</b>		Monitoring (Court Date Reminder)	Supervision Level I	Supervision Level II	Supervision Level III with Curfew	Maximum Conditions
<b>FTA 4</b>		Supervision Level I	Supervision Level I	Supervision Level III	Court Ordered Electronic Monitoring	Maximum Conditions
<b>FTA 5</b>	Required Contact Phone 📞 Every Other Week	Supervision Level I	Supervision Level III	Court Ordered Electronic Monitoring	Maximum Conditions	Maximum Conditions
<b>FTA 6</b>	Face-to-Face 👤 Monthly 👤 Every Other Week			Maximum Conditions	Maximum Conditions	Maximum Conditions
	Tool expects greater likelihood of not appearing in court					

It is important to note that the PSA’s recommendations never include financial conditions of release such as money bond amounts. To the extent money bond is ordered by a judge in bond court, it may obscure the actual release outcome. For example, if someone is ordered released with pretrial

Sources: <sup>9</sup> Sandra G. Mason, “Bail Reform and Restraint for Dangerousness: Are Defendants a Special Case?”

<sup>10</sup> Megan T. Stevenson, “Risk Assessment: The Devil’s in the Details,” *The Crime Report* (August 31, 2017), citing Mason, <sup>11</sup> 720 ILCS 5/110-1, et seq,

<sup>12</sup> Sheriff’s Justice Institute, *Central Bond Court Report*, April 2016

supervision and a judge imposes a \$50,000 Deposit Bond (requiring payment of \$5,000 to get out of Cook County Jail), whether or not they were actually released with supervision or in fact detained is unknown. The PSA does recommend that some people be released with electronic monitoring, usually under the supervision of the Cook County Sheriff's Office. In addition, higher levels of "Pretrial Supervision" may include overnight or 24-hour curfews, which can also be accompanied by electronic monitoring overseen by the Pretrial Services Division.



## George's Story

*CCBF posted George's \$5,000 bond in March 2017. At that time, George had already spent six months incarcerated in Cook County Jail, which prevented him from attending the birth of his daughter. Once George was free, he received no indication that he was assigned pretrial conditions. It was not until a CCBF volunteer who was processing George's bond slip—which he had not been given at release—noticed the conditions written on the form that he became aware he was required to remain at his home 24 hours a day and report to a Pretrial Services officer.*

*Despite the lack of notice, Pretrial Services reported to George's judge that he had violated his 24-hour curfew, and George was then placed on electronic monitoring through Pretrial Services. For the next three months, he was confined to house arrest and was unable to work to support himself or his daughter. George was also required to pay \$50 per month when he reported to his Pretrial Services officer, who did nothing to support him during this ordeal. In July 2017, eight months after George was arrested, a jury found him not guilty. Only at that point was George able to regain his liberty, restricted first by the jail and then by pretrial conditions.*



## **Risk Assessments Are Racially Biased**

Despite claims of objectivity (and insistence that race and ethnicity are not considered), the PSA's scoring system itself is inevitably biased against people of color and the poor. This is due to the PSA's reliance on "risk factors" that include the current charges as well as prior convictions and periods of incarceration. Because of racial and economic segregation and racially biased policing practices, people of color and poor people are statistically far more likely to be arrested, prosecuted, convicted, and incarcerated than others, resulting in higher PSA scores. To a certain extent, the PSA score is measuring the criminal legal system's response to a person as much as any inherent quality of the person themselves.

Under this system, individuals are punished precisely because they have been previously targeted for policing and prosecution, further compounding the injustices endured by Black, Brown, and poor Chicagoans. As a result, risk assessments “reduce the lived experience of racialized inequality into an elevated risk score.”<sup>13</sup> Racial justice organizers with the Movement for Black Lives have also voiced concerns that risk assessments “are likely to ... recreate racial disparity in incarceration” and therefore “must include mechanisms to account for institutional and systemic racism.”<sup>14</sup>

The case of one person CCBF supports further illustrates the way that the PSA’s scoring calculations based on criminal history cannot capture the nuanced and essential parts of any individual’s particular circumstances. Sarah<sup>15</sup> struggles with her mental health and was a ward of the Department of Children and Family Services (DCFS) growing up. She is also a Black woman who lives in a highly policed neighborhood and had previously been arrested and convicted of a “violent” misdemeanor (battery). At bond court, Sarah received a New Criminal Activity score of 2, a Failure to Appear score of 3, and was flagged for having a risk of “New Violent Criminal Activity.” Pretrial Services recommended she be released with maximum conditions if she was released at all. The judge gave Sarah a \$100,000 I-Bond with electronic monitoring, meaning she had to post \$10,000 to get off of home confinement. Since she did not have \$10,000, she lost her job after her first day on electronic monitoring. In addition, Sarah was prevented from caring for her elderly mother. Despite the fact that she clearly needed support and community in order to succeed, all the criminal legal system gave her was punishment.

## **“Services” Are Punitive Rather Than Supportive**

Through CCBF’s work freeing people from jail and providing individualized support post-release, CCBF has consistently observed pretrial conditions operating in wholly punitive, non-supportive ways. Of the 98 people CCBF has posted bond for, more than one in four (27%) have been subjected to punitive pretrial conditions including electronic monitoring, overnight or 24-hour curfews, monthly check-ins with a Pretrial Services officer, and drug testing. These conditions undermine the most basic abilities of legally innocent people and their loved ones to survive and thrive while their cases are pending.

CCBF has observed such conditions repeatedly undermine the housing security of people in our community. Rather than offer people support with maintaining or securing stable housing, pretrial conditions impose penalties and punishments for having precarious housing. For example, in order to be approved as a host site for electronic monitoring under the Sheriff’s office, a household must have no residents who are on parole or on a monitor. This often divides families, forcing individuals to live with relatives who do not want them in their house or in areas that might create problems for them in terms of accessing employment or avoiding danger.

Furthermore, the Sheriff’s electronic monitoring program will not release anyone to a Section 8 housing unit, an arbitrary policy that causes people without other housing options to remain incarcerated in the jail. CCBF has posted bond for at least three people who were unable to return to their own homes due to this restriction. In one instance, CCBF posted bond to free a 19-year-old young man from electronic monitoring after he had already gotten out of Cook County Jail. Once granted permission to be on electronic monitoring, however, he was unable to return to his own

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Sources: <sup>13</sup> [Tim Goddard and Randolph R. Myers, “Against Evidence-based Oppression: Marginalized Youth and the Politics of Risk-based Assessment and Intervention,” \*Theoretical Criminology\* Vol 21, Issue 2, 2017,](#) <sup>14</sup> [Color of Change, Movement for Black Lives, Law for Black Lives, Brooklyn Community Bail Fund, Project Nia, and Southerners on New Ground, “Transformative Bail Reform: A Popular Education Curriculum,” 2017,](#) <sup>15</sup> Note that this person’s name has been changed to protect her privacy.

home because his family rented a Section 8 apartment. After weeks of searching for somewhere to stay so he could get out of the jail, a friend of his mother's allowed him to stay at her apartment—if they contributed to the rent. The young man was forced to sleep on the floor across town from his family's apartment until CCBF posted his bond, enabling him to return to his own bed.

Punitive pretrial conditions also complicate access to medical care. In one instance, a woman CCBF posted bond for went to the emergency room while on electronic monitoring to access needed medical treatment. After returning to her home, deputies from the Sheriff's Office stopped by to see why she had been away from her electronic monitoring box. Since she had left her hospital discharge paperwork in the car of a friend who gave her a ride to and from the hospital, she could not immediately prove that she had been at the hospital. The deputies took her into custody, and she remained in Cook County Jail for several weeks. She essentially spent weeks behind bars for seeking needed medical care, all while not having been convicted of anything.

Since pretrial conditions require people to reside within Cook County, those conditions create barriers not only to medical care, but also to accessing family support. The health of an elderly woman supported by CCBF deteriorated rapidly during and after her incarceration in Cook County Jail. She was hospitalized multiple times while on electronic monitoring. During one hospitalization, she worked with the hospital social worker to secure placement at a nursing home, since she needed daily living assistance. However, at least one nursing home denied her admittance because she was on EM, even after initially accepting her. As her health continued to deteriorate, she was unable to spend her last days in a facility closer to her family and friends who live outside of Cook County, and she eventually passed away relatively isolated.

Pretrial conditions like electronic monitoring violate the most basic right to freedom of movement. In some cases, individuals are required to call their supervisor each time they leave the house. In many cases, the people answering the phone have refused to allow the movement. Restrictions and unreasonable conditions to acquire movement often lead people to violate the terms of their release and cause them to go back to jail for minor technical violations. Punitive pretrial conditions also limit the individual's ability to participate in family activities, including parenting duties like walking children to school, attending parent-teacher meetings, or simply going to a public place with children.



## Gigi's Story

*In August 2017, CCBF posted \$6,000 to free Gigi, a 26-year-old Chicagoan, from jail. Gigi was assigned pretrial conditions even though she had never been arrested prior to her current case. Once she was out, she was required to report to Pretrial Services and submit to a 7:00 p.m. to 7:00 a.m. curfew. As part of these conditions, Pretrial Services put a GPS band on Gigi's leg to monitor whether she was complying with the curfew.*

*Being on a curfew negatively impacts Gigi's life. As a result of this pretrial punishment, Gigi cannot work all of the hours of her work schedule, which has decreased her income. Additionally, Gigi cannot spend time in the evening with her friends, other family members, or her partner, all of whom live on the other side of Cook County.*

*A few days after Gigi was released from jail, her sister got married. Despite the fact that Gigi was in the bridal party, she had to leave the festivities to return home before dinner even began as a result of her curfew. Though she asked for permission to extend her curfew for that one night, pretrial services never picked up the phone when she called. In fact, they have never picked up the phone on the dozens of other occasions that Gigi has tried to get in touch with them.*

## Lack of Communication and Accountability



CCBF consistently hears from people whose bond we posted, as well as their attorneys, that Pretrial Services is impossible to reach by phone for required check-ins or to request clarification or modification of a condition. A Chicago legal aid organization shared the following with CCBF:

*"In our worst case, a young man on electronic monitoring with day reporting at the jail was locked out of his house by his mother in the evening. After trying everything to get back in, he called day reporting and the electronic monitoring office to let them know the situation and slept at his girlfriend's house overnight. He then walked into day reporting the next morning and was arrested and charged with a Class 3 felony for 'escape.'"*

Many individuals are not provided with critical information about their pretrial conditions or receive incorrect and/or conflicting information. After CCBF posted bond for one woman who was placed on electronic monitoring through the Sheriff's Office, she received two different return court dates: one

from the Sheriff's Office and one from the court and her public defender. The Sheriff's Office had the wrong date and refused to approve her request for movement to go to court on the correct date. Thus, she was terrified that she would be arrested either for going to the correct court date and violating electronic monitoring or for missing her court date by complying with the Sheriff's Office's orders. She faced a seemingly impossible decision. Under the guidance of her public defender, she went to her correct court date, and the judge signed a motion stating that the Sheriff's Office should not take her into custody for leaving her home on that date.

While there is little transparency, the Pretrial Services Division does not seem to provide any real support services (other than phone call reminders of court dates) or connect people to services provided by others. Rather, the conditions impose restrictions that may actually prevent people from accessing services, working, attending school, and otherwise performing tasks that would benefit them and their communities. Moreover, the entire framework is based on a model of pretrial supervision that seeks to surveil and control instead of supporting people so that they can successfully exit the court's supervision.

Instead of punishing people for the resources and skills they lack, a better approach would aim to meet these needs through provision of actual supportive services. There are many ways to ensure that someone will appear in court for hearings and trial, such as reminding them of dates and times, providing transit passes, or making sure they are able to take time from work or other responsibilities. The Movement for Black Lives, Southerners on New Ground, Law for Black Lives, and other organizations that participated in the National Bail Out effort have emphasized the need to shift "the frame from 'risk assessment' to 'needs assessment'" and then meet those needs as a way to reduce re-arrest and overall incarceration.<sup>16</sup> As the Movement for Black Lives said in their policy platform released in 2014, it is critical to pursue "investments in the education, health, and safety of Black people, instead of investments in the criminalizing, caging, and harming of Black people."<sup>17</sup>

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Sources: <sup>16</sup> [Dani McClain, "Inside the Movement to Free People Who Are Only in Jail Because They Can't Afford Bail," Colorlines, Sept. 26, 2017,](#)  
<sup>17</sup> [Movement for Black Lives, "Invest-Divest," Policy Platform](#)



## Kenny's Story

*CCBF posted \$2,000 bond to release Kenny from Cook County Jail in July 2017. There was no indication during Kenny's bond hearing or release from jail that pretrial conditions would be imposed. However, during his first court appearance a few days later, Kenny was placed on electronic monitoring and given a 5:00 p.m. to 5:00 a.m. curfew on weekdays and a 24-hour curfew on weekends.*

*Kenny's attorney petitioned the court for a marginally later curfew so that Kenny's mother, Karla, would be able to transport him to and from work without interrupting her own work schedule. This request was denied by the judge. The family shares one vehicle, so Karla now makes six distinct car trips per day to transport Kenny, her partner, and herself between home and work. Kenny would also have been able to work more hours if given a later curfew, allowing him to better contribute to his and his family's economic situation.*

*Kenny's private attorney told him that none of his house arrest time would count toward credit for time served, and that he would be required to pay a \$50 monthly pretrial supervision fee, in accordance with the guidelines of the Adult Probation Department's Pretrial Supervision Fees Instructions.*

*Over the last three months, these pretrial conditions have significantly limited Kenny's ability to live a healthy life. He has not been allowed to go to the doctor or dentist or to seek counseling for his drug addiction. Of particular concern is Kenny's relationship with his seven-month-old son, who lives with Kenny's girlfriend a few miles away. Since the pretrial conditions were imposed, his involvement in his son's life has decreased considerably. Kenny's son is a special needs child with many important doctor's visits per month. Because of the restrictions on his movement, Kenny has been unable to attend any of these visits in support of his son and girlfriend. He has also missed several family celebrations, and his relationship with his girlfriend has suffered greatly due to his limited movement. All of these restrictions of Kenny's liberty amount to punishment before trial.*

# Onerous Pretrial Conditions Can Lead to Violations and Re-incarceration



Individuals are assigned pretrial conditions as part of their bond, and failure to meet any of the requirements can become a violation that leads to re-incarceration in Cook County Jail. Instead of providing a support system to ensure that people are able to successfully participate in the legal process, most of these conditions set up unnecessary obstacles for success and increase the likelihood that someone will be detained for an alleged violation of a condition. Public defenders in New York voiced concern that a similar increased use of pretrial supervision there would create “a new government apparatus that extends the reach of the criminal justice system and broadens government-administered social control of marginalized communities.”<sup>18</sup> At the most basic level, these extra requirements are additional burdens and obligations placed on people that undermine the presumption of innocence.

Accused people are also charged fees for the conditions imposed on them. Fees for electronic monitoring, drug testing, and other requirements are presented as simple reimbursements, but they represent additional expenses that can create difficulties for those already in financial crisis. For people who are awaiting trial and presumed innocent, such fees are another form of pretrial punishment. In addition, unpaid court fees and costs can cause extended periods of supervision and prevent people from later sealing their records and improving their access to employment, housing, and other opportunities.<sup>19</sup>

## David's Story

*David<sup>20</sup> is an 18-year-old resident of the North Lawndale neighborhood who had his bond reduced by a judge who also assigned him to Pretrial Services upon his release in August 2016. The court imposed a 24-hour curfew, but did not give him notice of this in writing or state it verbally in court. Pretrial Services came by David's house at random times, including at 1:00 a.m. and in the middle of the day when he was at school. They knocked on the first floor of the two-flat (though David lives on the second floor), demanding to know where he was without identifying themselves. Not knowing who they were, the neighbors and family did not answer their questions. Pretrial Services then sent a report to the courtroom detailing numerous “attempts” to contact David and claimed he was completely “non-compliant.” The report said nothing about when they had come by, who they had talked to, or how they had tried to contact them. They merely stated that David was “avoiding them” and listed a number of dates they had unsuccessfully “attempted contact.” As a result of the Pretrial Services reports, the judge ultimately revoked David's bond, despite his lawyers' protestations of injustice.*

# Electronic Monitoring and Home Confinement Replicate the Harms of Incarceration

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Cook County has one of the largest pretrial electronic monitoring programs in the country. According to the Sheriff's website, pretrial electronic monitoring has been applied in nearly 300,000 individual cases since 1989. At present, there are two pretrial electronic monitoring programs: one under the direction of the Sheriff and another under the jurisdiction of the Home Confinement Unit of Pretrial Services, operating as part of the Adult Probation Department and directed by the Office of the Chief Judge. The presence of two authorities overseeing electronic monitoring has resulted in some confusion among those involved in court cases and contradictions in the outcomes, most noticeably around the issue of whether people confined to their homes under the different programs receive credit for time served if and when they are sentenced.

While there does not seem to be a publicly available explanation of exactly how people are ordered to electronic monitoring under the authority of the Pretrial Services Division or the Sheriff's Office, both may be ordered directly from bond court. The majority of people ordered to electronic monitoring are overseen by the Sheriff's Office. Whenever someone has the option to post a bond to get off of electronic monitoring (commonly called an "IEM" or "EMI" bond), that electronic monitoring is overseen by the Sheriff's Office. It is also possible for judges in bond court to direct that someone be placed under electronic monitoring (home confinement) overseen by Pretrial Services if specified in the order, but the Sheriff's program seems to be the default.

A FOIA to the Cook County Sheriff's Office showed that the number of people placed on electronic monitoring under the Sheriff's authority has increased from 3,741 in 2010 to 9,035 in 2014 and 8,099 in 2015. The cost of the Sheriff's electronic monitoring program is borne by Cook County, and the "\$13.75 million three-year [covering 2013-2016] electronic monitoring contract was amended twice by 2016 ... increasing by more than 58 percent."<sup>21</sup>

While data for electronic monitoring through the Pretrial Services Home Confinement Unit remains incomplete, available evidence indicates that many fewer people are incarcerated under the Pretrial Service's Home Confinement Unit than under the Sheriff's program. While the Sheriff's program currently includes between 2,000 and 3,000 people at any given time, the Home Confinement Unit appears to have a capacity of only around 200 people.<sup>22</sup>

People of color and particularly Black people are overwhelming and disproportionately impacted by electronic monitoring, as they are everywhere in the criminal legal system. From 2010 to 2016, Black people as a percent of the total population of the people on electronic monitoring through the Sheriff's Office ranged from a high of 79.5% in 2012 to a low of 70.6% in 2016.<sup>23</sup> Since the Pretrial Services Division is housed under the Office of the Chief Judge, CCBF was unable to obtain information about racial and ethnic composition of people ordered to home confinement under Pretrial Services, but a courtwatching effort conducted in spring 2016 recorded that 75.3% of people in Central Bond Court were Black.<sup>24</sup> By comparison, the population of Cook County is only 25% Black.

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Sources: <sup>21</sup>Larry Green, "Home Is No Castle for Some Cook County Defendants; It's Jail," *Injustice Watch*, November 18 2016, <sup>22</sup>This conclusion is based on conversations with Cook County officials and a review of the county's electronic monitor leasing contract. The 2013-2016 contract with 3M for radio frequency-based electronic monitors called for 200 landline radio frequency monitors for the Adult Probation Department, to be administered through Pretrial Services, <sup>23</sup> Obtained through a Freedom of Information Act request submitted by the Challenging E-carceration project, <sup>24</sup> *Sheriff's Justice Institute, Central Bond Court Report, April 2016*.



## Lavette's Story

*CCBF posted \$9,500 in May 2016 to free Lavette after she had spent over 14 months in Cook County Jail. A 45-year-old single mother of two, this was Lavette's first arrest. Despite her caregiving responsibilities to her children, her job, and her lack of criminal history, a judge ordered her placed on electronic monitoring upon her release from the jail. Lavette spent the next five months on house arrest, without the ability to take her children to school, work to support her family, or even take out the trash. On electronic monitoring, Lavette could not leave the front steps of her house to help her 6-year-old son learn how to bike and skate. Her son would point to her ankle monitor, ask why sheriffs put that on her, and tell her those were meant for dogs. The extreme restrictions on Lavette's movements pretrial put enormous pressure on her to take a plea, which she eventually did. Nineteen months after her arrest, Lavette pleaded guilty and received a sentence for time considered served.*

## Conditions of Electronic Monitoring Are Onerous and Arbitrary

The rules a person subjected to electronic monitoring must follow are set by an overseeing agency, either the Home Confinement Unit of Pretrial Services or the Sheriff's Office. Although the rules for Pretrial Services Division's Home Confinement Unit are not transparent, CCBF has anecdotal evidence from people who have experienced these conditions that the Home Confinement Unit's program functions similarly to the Sheriff's program. The Sheriff's conditions are highly punitive and restrictive: Individuals are confined to the inside of their homes and not allowed on porches or in yards or driveways. This means they are unable to carry out simple but necessary household tasks, such as taking out the garbage, picking up the mail, or supervising children playing outside.

People on electronic monitoring through the Sheriff's Office must request permission to leave their home 48 to 72 hours in advance unless otherwise granted permission from a judge.<sup>25</sup> An individual may be allowed movement for work, but such permission is given on an unpredictable and arbitrary basis, often leading to missed shifts or opportunities when movement is denied. In addition, Sheriff's deputies may call an employer or prospective employer to verify shifts and interviews, or even show up in person—sometimes costing people their jobs. People on electronic monitoring are subject to unannounced search of their person, house, workplace or any location where they happen to be at any time of the day or night. In addition, people ordered to both Sheriff's electronic monitoring and Pretrial Services conditions (including but not limited to electronic monitoring through the Home Confinement Unit) may be ordered to pay fees for their monitoring.<sup>26</sup>

Sources: <sup>25</sup> People on electronic monitoring through the Sheriff's Office receive a handout that states 48 hours notice is required, but the Sheriff's website says 72 hours notice is required, <sup>26</sup> Fees for electronic monitoring through the Sheriff's Office can be as high as \$30 per day, and pretrial services fees appear to be a standard \$50 per month based on reports from people paying them.

# People Confined to Their Homes Should Get Credit for Time Served

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One consequence of the confusion between the two electronic monitoring programs and the general lack of understanding about how home confinement works under Pretrial Services plays out in whether or not people properly receive credit for time served. The issue of credit for time served is extremely crucial to people on pretrial release, who should obviously be given the benefit of enduring these significant restrictions on their liberty. Judges in Cook County appear to give credit for time served to people who were on the Sheriff's electronic monitoring program with relative consistency, but there is no clear practice for people on Pretrial Services home confinement with or without electronic monitoring. At least some judges and practitioners in Cook County believe that credit for time served does not apply to people who were supervised by Pretrial Services, which is a direct violation of the relevant law.

Since 2012, Illinois sentencing law has mandated that people confined in their homes pretrial (referred to in the law as "home detention") receive credit for that significant restriction of their liberty, as long as the home detention is conducted by an agency designated as a "supervising authority" by the law.<sup>27</sup> Because Pretrial Services is a part of the Probation Department, an agency specifically recognized as a "supervising authority" for purposes of electronic monitoring, it is thus required for people who experience home detention through Pretrial Services to receive credit for time served.<sup>28</sup> Further, as there is no specific mention of electronic monitoring as a requirement for what constitutes home detention, those who receive court-imposed curfews that mandate confinement to their residences fit the criteria of those experiencing home detention as well.<sup>29</sup> Thus, the time they spend on this curfew must also be credited.

In Cook County, then, it would appear that judges have been denying people credit for time served while in home detention under Pretrial Services, including when an electronic monitor is used. They have opted—either through ignorance of the law or willful disregard of it—to deny people credit for time spent in home detention when sentencing them. This practice must be stopped immediately and, where possible, credit for time served should be restored to any individuals who remain incarcerated and have been deprived of that credit.

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Sources: <sup>27</sup> "[T]he trial court shall give credit to the defendant for time spent in home detention on the same sentencing terms as incarceration as provided in Section 5-8A-3 (730 ILCS 5/5-8A-3)." 730 ILCS 5/5-4.5-100(b). <sup>28</sup> "'Supervising authority' means the Department of Corrections, the Department of Juvenile Justice, probation department, sheriff, superintendent of municipal house of corrections or any other officer or agency charged with authorizing and supervising electronic monitoring and home detention." 730 ILCS 5/5-8A-2(E), <sup>29</sup> "'Home detention' means the confinement of a person convicted or charged with an offense to his or her place of residence under the terms and conditions established by the supervising authority." 730 ILCS 5/5-8A-2(C).



## Conclusion

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The overwhelming experience of people supported by CCBF shows that pretrial conditions expand and compound the harms of incarceration by denying people access to their jobs, housing, social supports, and even medical care. These harms are neither abstract nor frivolous. Our organization has seen people drop out of high school, become homeless, and die in medical facilities not of their choosing—all because they were subjected to restrictive pretrial conditions while still presumed innocent.

At the very least, imposition of pretrial conditions must be subject to the highest standards of transparency and accountability to impacted communities and the public. There is a pressing need to collect more information about how frequently pretrial conditions are imposed, which communities are bearing the brunt, and how “success” is measured. The public deserves to know how pretrial conditions are affecting the wellness and stability of our fellow Cook County residents, particularly the poor and Black communities that are most impacted.

CCBF hopes that the difficult stories shared in this report will raise awareness and help move Cook County away from systems that rely on punishment and surveillance and towards real solutions that meet human needs. Community organizers and advocates have already gained tremendous ground in the local fight to end money bond and pretrial incarceration. That momentum must now be harnessed to start a conversation about how pretrial conditions are spreading harm and imposing punishment on individuals who are legally innocent.



## Endnotes

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1. "General Order No. 18.8A - Procedures for Bail Hearings and Pretrial Release," available at: <http://www.cookcountycourt.org/Manage/DivisionOrders/ViewDivisionOrder/tabid/298/ArticleId/2562/GENERAL-ORDER-NO-18-8A-Procedures-for-Bail-Hearings-and-Pretrial-Release.aspx>
2. For more information about The Coalition to End Money Bond, visit <http://www.chicagoappleseed.org/coalition-to-end-money-bond/>.
3. "The Bail Reform Act of 2017," Public Act 100-0001 (Senate Bill 2034), signed into law June 9, 2017, available at: <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=100-0001>.
4. Cook County is currently preparing to roll-out automated phone call reminders for people released pretrial, but since the program has not started yet and there is no available information about its efficacy, we have left it in as a recommendation.
5. Though some courthouses in Cook County have childcare options available, not all do. The existing programs appear to be underutilized; more outreach may be necessary to ensure that people are aware of the childcare options available to them.
6. In announcing its Justice Reboot Initiative, New York City recognized "Flexible appearance date and night court" as two ways to increase court appearance. The announcement proposed a pilot program in Manhattan that would allow "individuals who have received summonses ... to appear any time a week in advance of their court appearance. The court will also be open until 8:00 p.m. on Tuesdays." New York City Office of the Mayor, "Mayor de Blasio and Chief Judge Lippman Announce Justice Reboot, an Initiative to Modernize the Criminal Justice System," The Official Website of the City of New York <http://www1.nyc.gov/office-of-the-mayor/news/235-15/mayor-de-blasio-chief-judge-lippman-justice-reboot-initiative-modernize-the>.
7. Christie Thompson, "A Fresh Take on Ending the Jail-to-Street-to-Jail Cycle," The Marshall Project, May 10, 2017 <https://www.themarshallproject.org/2017/05/10/a-fresh-take-on-ending-the-jail-to-street-to-jail-cycle>
8. The Arnold Foundation has provided information about how scores are calculated, including all factors and their weights, on its website at: <http://www.arnoldfoundation.org/wp-content/uploads/PSA-Risk-Factors-and-Formula.pdf>. The actual mechanism by which scores are translated into recommendations for release with accompanying conditions, however, varies by jurisdiction and in Cook County this mechanism has not been made publicly available.
9. Sandra G. Mason, "Bail Reform and Restraint for Dangerousness: Are Defendants a Special Case?," U of Penn Law School, Public Law Research Paper No. 16-30, Yale Law Journal, Forthcoming, available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2826600](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2826600).
10. Megan T. Stevenson, "Risk Assessment: The Devil's in the Details," The Crime Report (August 31, 2017), citing Mason, above and available at: <https://thecrimereport.org/2017/08/31/does-risk-assessment-work-theres->
11. 720 ILCS 5/110-1, et seq.
12. Sheriff's Justice Institute, Central Bond Court Report, April 2016, available at: [https://www.chicagoreader.com/pdf/20161026/Sheriff\\_s-Justice-Institute-Central-Bond-Court-Study-070616.pdf](https://www.chicagoreader.com/pdf/20161026/Sheriff_s-Justice-Institute-Central-Bond-Court-Study-070616.pdf).

13. Tim Goddard and Randolph R. Myers, "Against Evidence-based Oppression: Marginalized Youth and the Politics of Risk-based Assessment and Intervention," *Theoretical Criminology* Vol 21, Issue 2, 2017, and available at: <http://journals.sagepub.com/doi/abs/10.1177/1362480616645172>.
14. Color of Change, Movement for Black Lives, Law for Black Lives, Brooklyn Community Bail Fund, Project Nia, and Southerners on New Ground, "Transformative Bail Reform: A Popular Education Curriculum," 2017, available at: <https://policy.m4bl.org/wp-content/uploads/2016/07/Transformative-Bail-Reform-5.pdf>.
15. Note that this person's name has been changed to protect her privacy.
16. Dani McClain, "Inside the Movement to Free People Who Are Only in Jail Because They Can't Afford Bail," *Colorlines*, Sept. 26, 2017, available at: <https://www.colorlines.com/articles/inside-movement-free-people-who-are-only-jail-because-cant-afford-bail>.
17. Movement for Black Lives, "Invest-Divest," Policy Platform, available at: <https://policy.m4bl.org/invest-divest/>.
18. Robin Steinberg and David Feige, "The Problem with NYC's Bail Reform," *The Marshall Project*, July 9, 2015, available at: <https://www.themarshallproject.org/2015/07/09/the-problem-with-nyc-s-bail-reform#.7AAejdFc0>.
19. Chicago Appleseed Fund for Justice and Chicago Council of Lawyers, "Statement on Excessive Court Fines, Fees, and Costs," May 2016, available at: <http://www.chicagoappleseed.org/wp-content/uploads/2016/05/Collaboration-for-Justice-Policy-Brief-Fines-Fees-and-Costs-May-2016.pdf>.
20. Note that this person's name has been changed to protect his privacy.
21. Larry Green, "Home Is No Castle for Some Cook County Defendants; It's Jail," *Injustice Watch*, November 18 2016, available at: <https://www.injusticewatch.org/news/2016/home-is-no-castle-for-some-cook-county-defendants-its-jail/>.
22. This conclusion is based on conversations with Cook County officials and a review of the county's electronic monitor leasing contract. The 2013-2016 contract with 3M for radio frequency-based electronic monitors called for 200 landline radio frequency monitors for the Adult Probation Department, to be administered through Pretrial Services.
23. Obtained through a Freedom of Information Act request submitted by the Challenging E-carceration project.
24. Sheriff's Justice Institute, Central Bond Court Report, April 2016, available at: [https://www.chicagoreader.com/pdf/20161026/Sheriff\\_s-Justice-Institute-Central-Bond-Court-Study-070616.pdf](https://www.chicagoreader.com/pdf/20161026/Sheriff_s-Justice-Institute-Central-Bond-Court-Study-070616.pdf).
25. People on electronic monitoring through the Sheriff's Office receive a handout that states 48 hours notice is required, but the Sheriff's website says 72 hours notice is required.
26. Fees for electronic monitoring through the Sheriff's Office can be as high as \$30 per day, and pretrial services fees appear to be a standard \$50 per month based on reports from people paying them.
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28. "'Supervising authority' means the Department of Corrections, the Department of Juvenile Justice, probation department, sheriff, superintendent of municipal house of corrections or any other officer or agency charged with authorizing and supervising electronic monitoring and home detention." 730 ILCS 5/5-8A-2(E).
29. "'Home detention' means the confinement of a person convicted or charged with an offense to his or her place of residence under the terms and conditions established by the supervising authority." 730 ILCS 5/5-8A-2(C).