

LAURA FLANDERS & FRIENDS

ILLINOIS SUCCESSFULLY ENDS CASH BAIL: WHY IS NO ONE TALKING ABOUT IT?

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LAURA FLANDERS: You hear a lot about cash bail and bail reform, but what is it exactly and what happened when one state stopped using cash bail? That's the question before us today. The US, it turns out, is almost alone in the world using a for-profit cash bail system. It's a practice that allows those who can muster the cash to buy their freedom while those who can't languish in jail. It also makes a mountain of money for a handful of private bail corporations. Does bail keep the most dangerous criminals behind bars before sentencing, as we're kind of led to believe? Well, according to the [Harvard Kennedy School](#), 2/3 of the more than 750,000 people held in locally run jails across the US have not yet even been convicted of any crime. Some states, like New York, are moving to reform pretrial bail, but none had achieved outright abolition until Illinois did back in 2021. Governor Pritzker signed the Pretrial Fairness Act in February of that year. It went into effect in September '23. So how did Illinois take that step, and what's been the surprising result? To talk about that, we have journalist [Bryce Covert](#) who wrote about Illinois' experience, with support from the Pulitzer Center and the Economic Hardship Reporting Project. [Her article](#) appeared recently in "The Nation" magazine. And joining us from Illinois are two people directly involved in the passage of the Pretrial Fairness Act. Sharone R. Mitchell, Jr., Cook County chief public defender, was the lead policy expert for the Coalition to End Money Bond. He heads the state's largest [public defender office](#). And state Senator [Robert Peters](#), who's actually joining us from Germany, represents Illinois' 13th District and chairs the state Senate Labor Committee there, which just passed legislation expanding worker protections for Black and Latino temporary workers. Welcome, everybody. I am so glad to have you. First, let's start with you, Bryce. What drew you to this important story?

BRYCE COVERT: Thank you for having me on. I have been following efforts to reform bail for years now. [I wrote a story](#) for "The Nation" magazine back in 2017 about the harms that it caused and the nascent, at the time, efforts to try to change the practice or even get rid of it. And so when I saw that Illinois had in fact taken this historic step to abolish it completely, I really wanted to just go see it for myself. So I was able to go to Illinois and sit in courtrooms and observe what was happening in Cook County, where Chicago is, and in some outlying areas, just to get a sense of how it's all playing out. And essentially what I found out is that it's working really well.

LAURA FLANDERS: Well, we're going to hear more details about what that looks like in just a minute, but let's start with what cash bail actually is, and for that, I'm going to come to Chief Public Defender Sharone Mitchell. For those who have been fortunate enough not ever to be wrapped up in the system, how does it work? What is it?

SHARONE R. MITCHELL JR.: Before 2023, in Illinois and across most of the country, when a person is arrested for an offense, they quickly will go before a judge. And a judge makes a decision about what happens to that person during the pendency of their case. And oftentimes, that decision is based upon a cash bail amount, where a judge will say, "You are eligible to be released, but only if you pay X amount of dollars." And what we know is whether you are a person who believes that the criminal legal system is far too big, you know, you see that people languish in jail not because they've been determined to be too risky, just because they can't pay. If you're a person who maybe looks on another side of it, thinks, well, people are getting out not because they've been deemed to be safe to get out, whatever that means, but only because they have the access to money. So you saw really critiques from multiple sides, so that's why Illinois decided, through the leadership of both elected officials, community members, you know, policy experts, and really just regular folks, the system was broken and it needed to change, and that's what we did with the passage of the Pretrial Fairness Act.

LAURA FLANDERS: State Senator Peters, what brought you to this story?

ROBERT PETERS: In Illinois, we're the first state to eliminate cash bail. And what brings me to this work is before I was a state senator, I was an organizer. I like to put it best that my existence is really caught up in mass incarceration. My biological mom struggled with drug addiction. I got adopted. My dad was a civil rights lawyer and a criminal defense attorney. And so I was both, you know, sort of see this in my blood, in my DNA, and also see this in how I was raised, having gotten calls from Cook County Jail almost every dinner for someone trying to talk to my dad as they were facing a desperate situation. And so then that led me into, you know, through a series of many different things, into organizing, and I was proud to be early on in a coalition that included an amazing leader like Sharone Mitchell and so many others.

(NARRATOR): For decades, communities across Illinois have been destabilized by unjust pretrial incarceration. Unaffordable money bonds have led to people losing jobs, housing, and even custody of their children, not because they were a danger to anyone but because they couldn't afford to buy their freedom. On January 1st of 2023, that all changes. After years of organizing in communities across Illinois, the Pretrial Fairness Act will take effect, ending wealth-based jailing, making all of our communities safer.

LAURA FLANDERS: So how did it work before '23, Sharone? What normally happened there in the courtroom?

SHARONE R. MITCHELL JR.: Typically a judge had three options. The judge could either, one, release that person with little or no conditions. A judge could hold the person, but that only happened in a very, very small minority of cases where there had to be lots of legal hurdles to be kind of jumped through. And the vast majority of people that came through court got a cash bond. So essentially said, a judge said, "You're eligible to be released, but you have to pay X dollars." And not only were the kind of options limited to those three options, or beyond those three options, the time that it took to make these decisions were, you know, some people described it as if, you know, judges and lawyers were acting as if they were renting the courtroom by the minute, right? So these hearings would happen in 30 seconds, one minute, two minutes. There wasn't this deep kind of exploration of what should happen in this case, especially noting that the decision about what happens to a person before trial is probably the second most important decision to guilt and innocence. We know that the outcomes of a criminal case are significantly determined by whether that person is either in custody or out of custody, and we can talk about that a little bit later. And I think the only other point to put to this is when we had a decision where so many folks were making decisions based upon money, it really, it wasn't congruent what the reality of the system is, and that is the vast majority of people in the criminal legal system are poor, and the vast majority of people who do pay bail are not paying bail out of their own pockets. They're essentially trying to find an aunt or uncle or family member, a church member, to pay that bail, right? So it's kind of this Hunger Games of freedom, which is horrible, noting that we're talking about all types of really, really, really serious concerns on all sides.

LAURA FLANDERS: So while poor people are playing Hunger Games of freedom, as you put it, coming to you state senator, there are some people making a lot of money off this system. Can you talk about that side of the story?

ROBERT PETERS: Yeah, so I mean, Illinois was unique. In fact, our bail system was not a private bail system, which you have in other parts of the country. We in, I believe, in the '70s got rid of that system, and it was a public bail system. And so I would point out, no matter what, it's equally as bad, whether it's a private system or a public system, because it would just incentivize bad actors within the government or within the state to, you know, basically charge bail on people. And in fact, the people who might have benefited would be possibly the criminal, the defense lawyer, or the public defender's office or court services, which doesn't actually incentivize safety. It doesn't incentivize making sure that someone has their freedom. What it incentivizes is what they have to do to pay for their budget or a deficit. And what we don't want is to make decisions based off of people's safety, based off of whether you're going to be able to fill a budget gap or whether you're going to get more money in your pocket. And so it's slightly different than it is in other parts of the country, but it's equally just, it was equally just as bad.

LAURA FLANDERS: I was recently in Los Angeles and saw the cash bail offices right outside the jail. Bryce, there are some private corporations making a boatload of money here, right? You say the origins of this whole system are medieval.

BRYCE COVERT: Yeah, it dates back to Medieval England, and it came to our country with the British colonizers, again, under the same idea, that it was about having people return to court, not flee their court dates. It's in the 1980s in the tough-on-crime era where it starts to take on this different purpose of protecting the public, of trying to detain people who are supposedly going to go do something dangerous or harmful when they're out. And as you pointed out, you know, Illinois is unique. It did not have a bail bond system, but in most parts of the country when someone is given a bail amount by a judge, as Sharone pointed out, most people are poor. Most people do not have this money. So they go to a bail bond agency, and that person, that agency pays their bail but makes the person who went to them pay 10% that they will never see again. It's pretty predatory. As you saw in Los Angeles, these offices are typically all crowded around right outside the jail. That's true in New York, where I live, as well. And they do. They make a lot of money off the system and have a vested interest in it. And so when other places have tried to change the system, the bail bond industry typically shows up and lobbies pretty hard against those efforts.

LAURA FLANDERS: Now we have seen this story be discussed in broad terms in our political system. Even in this last election, we heard a lot of to and fro about whether Kamala Harris's position on bail reform hurt or helped her campaign. One of the things that I would love you to talk to, State Senator, is whether there, or how did you ascertain the public opinion on this? Or did you, before you get involved? I guess my question is, how popular an issue is reform? Because we hear a lot that it's problematic for politicians to take up this mantle and run with it; not you.

ROBERT PETERS: Yeah, I mean, unlike other Democrats, I understand that you have to shape public opinion around policy. Too many Democrats are a little bit too cowardly when it comes to the public. Meanwhile, when you look at Republicans and what they've done, particularly around immigration, is that they've created an ecosystem that has changed public opinion. I fundamentally believe that if I'm going to take on this issue, which is something that I believe in, I've got to do the work, and I've got to be part of a coalition, and I've got to organize to create the conditions to make this happen. I mean, look, I will just say, when we think about, you know, this past election, there were a lot of people who were involved in January 6th. The president was involved in criminal behavior. Rudy Giuliani was involved in criminal behavior. They had no problem being able to either pay out or deal, you know, pay within the legal system. Working class people, on the other hand, many of them who are innocent, many of them who are just trying to live their life, are trying to move on, they can't. So the difference is a billionaire who's able to game the court system and being able to get out has no business trying to lecture the

working class of this country. And so, for me, unlike other Democrats, I'm clear about that, I'm able to have that conversation, and I think that the public very much agrees.

LAURA FLANDERS: Well, I really appreciate that. So not just kind of finger in the air, what's a popular issue, but how do you create the constituency to support change? You were part of that creating process, Sharone. Talk about it, if you will. What did it take to bring together the forces to support this, and, yeah, who were they?

SHARONE R. MITCHELL JR.: You know, it was certainly unique in the sense that you had lots of folks from lots of different places coming together to fight for this issue. So whether you're talking about members of the community, not just like people who are professional community activists, just folks that touch this issue, whether you're talking about legal experts, whether you're talking about folks that want to see their communities more safe and their justice system more just, there were just a large group, starting first in in Cook County, but as we spread out to the entire state, you saw there were people all across the state that just did not support this practice. You know what? I think you brought up a great point about kind of the perceptions of reform and the perceptions of bail reform. And I actually hate the word bail reform because it's not very descriptive of anything. When I say the word bail reform, you can get a thousand different answers. What we did here in Illinois is said that judges should not be using money, should not be using guesses about how much money a person has when they make this incredibly important decision about what happens to a person before, during the pendency of their case. And really, judges should be looking at all the details, spending their time listening to arguments, having a clear set of rules before they make that decision. Now listen, I'm a public defender. You know, we argue for people to be released. We argue for the presumption of innocence. But I also know there are times when there's evidence to where a judge decides that that person should be held. The money bond system stopped us from making those real, rational decisions and basically amounted to just guesses. Do you have \$1,000? Do you have \$2,000? Maybe you can contact your aunt. Maybe you can't contact your aunt. Maybe you paid your light bill, and you don't have any money in your pocketbook. Maybe you haven't paid it yet, and you can forego those things. It was a crapshoot. So when you talk about popularity, you know, when you got an opportunity to talk to people, they really understood it. And really that was across the political spectrum, where you're talking about folks to the very, very Left, to the center, to the Right. It was an issue that people really understood why it didn't make sense.

LAURA FLANDERS: So Bryce, you were in the courtrooms, in the hearing rooms this fall, and you watch some of this process play out. If they're not deciding on the basis of who has the money, what are judges using to decide whether to let people out on bail? What did you see?

BRYCE COVERT: What I saw looked nothing like bail hearings I'd ever seen before. I mean, first of all, it was just the time taken. You know, as said before, in Cook County, it used to take a

matter of seconds. I went to New Orleans in 2017 and saw 20 hearings in an hour. There was no explanation as to why people were given bail or how much they were given. Everyone was given a bail amount. They ranged from \$2,500 to \$30,000 without a whole lot of explanation. And no one was really able to push back. The defendants themselves weren't even allowed to talk. So I sat in these courtrooms in Cook County, Joliet, in outlying counties, and what I saw was people really grappling with the evidence. You know, essentially if the state wants to keep someone in jail who's been charged with a more serious crime, before they have a trial, in Illinois, what they now have to do is they have to prove, first of all, that there is evidence that this person likely did what they're being accused of. They also have to prove that they would cause harm to either a person or a community specifically, and/or that they would flee their court dates intentionally, which is important, because it's not just about forgetting or not being able to get out of work or not having bus fare. And that if those things are the case, there's no other conditions other than putting someone in jail that could ensure public safety or ensure they return to court. These hearings took, I saw some that took more than 15 minutes, which maybe doesn't sound like much, but compared to seconds... You know, there was one set of hearings where I saw three in the span of two hours. These are really deliberative and substantive. And also, the defendants have a lawyer at their side and the chance to rebut the arguments being made against them, to present their own evidence. And after all of that, if the judge says, for instance, that they should be put in jail, the defendant has the opportunity to appeal that decision. So there's also a check on judges and a further step that people have to assert their rights.

LAURA FLANDERS: Coming to you, Senator Peters, it sounds like this new situation has changed life a bit for judges and maybe made their work a little bit more interesting. They're learning a little bit more perhaps about the people in front of them. How is post-'23 Illinois, your community feeling the change?

ROBERT PETERS: Well, I mean, I'll just say, we had a primary election this year where we had a candidate for state's attorney who, I guess, you would describe as more tough on crime than another candidate. And what they both agreed was that we needed to keep the Pretrial Fairness Act, which is very different than what you see in other parts of the country. And so I think it's become, you know, sort of the norm, and yet there's still challenges. You know, there are people who want to continue to play games with it because they don't have really much else to offer to the community, and so they keep going back to this well. Fundamentally, I think, one, A, we created a higher standard to detain somebody pretrial. The fact that people have to do a little bit extra work to do so, I think, is because the burden needs to be higher if you're going to try to detain somebody. Number two, a hundred-plus million dollars is coming back into the community or staying in people's pockets instead of going to, you know, to a county government or to county governments. It's going specifically to people, and that is important because we have been dealing with higher prices for groceries. So instead of someone having to pay to get themselves out of jail even though they are not a threat to anybody or to a community, they now

are able to go and buy groceries or they're able to buy their kid a backpack or they're able to get clothes to put on their back. So like, to me, that's the most important thing here, is that we created a higher burden, the political environment has shifted, and working class people have more money in their pockets to pay for things like groceries, to help their kid get to school, and to be able to pay for the gas bill.

LAURA FLANDERS: So has the political atmosphere shifted? Coming back to you, Sharone, looking to the nation, I know that the, you know, the movement for criminal justice reform, especially the movement that took off after the killing of George Floyd, the Black Lives Matter movement and so on, I know that that had a lot of wind underneath its wings. Some people feel that that has sort of drifted away or gotten sapped away in the years since. What's your sense, and what's your sense of the national appetite for change, for learning from Illinois?

SHARONE R. MITCHELL JR.: This isn't just something that comes from just the Left or just the Right; it just makes sense. You know, one of the things that we learned, I've learned as a lawyer, one of the things I've learned as a policy person is many things that exist in the criminal legal system, they don't exist because we've decided it was the right thing to do, that people sat around a table and decided that this was the best way of getting the job done. It was done because a person that was in this job before taught me that it was had to be done that way, and the person before me taught me that was the way, right? This is a great example of a system that was broken and an opportunity to get it right, and I think you've seen over numerous tests, despite people's efforts, that this is going to be a long lasting change.

LAURA FLANDERS: So what's your sense of the national picture, Bryce? You've been out around the country. You mentioned New York, New Jersey, I think Tennessee. What is happening on this front nationally?

BRYCE COVERT: I do think that there has been a severe backlash to the Black Lives Matter movement, to criminal justice reform, that's pretty nationwide. The Pretrial Fairness Act has survived the attacks that have been brought against it, but it also was passed in a moment of opportunity just after the uprisings of 2020. And I think a lot of people nationally feel like that huge window that was opened has been shut, at least a little bit. You know, a lot of states are going in the opposite direction, making bail more draconian, requiring it more often. Tennessee made it so that judges can't even take a person's financial condition into account when they set bail. They just have to set it without even looking at that question. That said, Illinois is out there doing this, and I think people are taking note. You know, the folks I talked to in the state said they are getting phone calls. They're getting knocks on their door. People are curious about what's going on. When I was out observing court, there was someone from another state there observing as well to go back and report to her government. So as long as this stays in place, and we have good data about the outcomes, and people keep supporting it and don't give into the

opposition that wants to push to roll it back, then we will have a proof that this can happen, that this work. And I think when the political tides shift a little bit more, there will be opportunity to do this in other places as well.

SHARONE R. MITCHELL JR.: We were forcibly extracting money out of the people that needed it the most, and I'm so glad that we are now in a system where we realized that we can make these really important decisions without, quite frankly, putting ransoms on people's heads.

LAURA FLANDERS: Well, we're going to leave it there. I want to thank you all, Bryce Covert and "The Nation" for bringing this story to our attention; Senator Robert Peters, thank you so much for making the time to join us, even from your trip to Germany; and Sharone Mitchell, keep up the great work. Thank you all for being with us here on "Laura Flanders & Friends." It's an important story and an important victory.

Anyone who knows me knows I like digging around in history, so mention Medieval British bail law, and I get curious. Sure enough, our system has its roots in hostage taking, kidnapping, failure to show up in court, and someone could lose their head. Soon enough, though, money and wealth and land come into the picture, and if you can put up enough resources, pretty much anyone could be released on bail in Medieval Britain, except if they were charged with very serious offenses, things like homicide or rape or any charge that the king himself had brought or ravishing a maiden the king had his eye on or trying to kidnap a nun out of a convent or crimes of the forest, cutting down a tree or poaching a deer. Unless you were charged with those very serious things, if you could put up the money, you were out on bail. Still, if you couldn't, you could be languishing in jail for years because courts weren't often in session. And it was that prospect of injustice that prompted 13th century barons in Britain to write the right of due process, right there into the Magna Carta. You could not be denied due process or required to pay for it. They may not always have abided by it, but I think those barons would be shocked to see that most US states still embrace cash bail as a formal part of their system. Yay to Illinois, you have emerged from the Middle Ages, but what is holding back the rest of the states? There's more work to be done. We'll keep following the story. If you want our full uncut conversation from today's show, you can through a subscription to our free podcast. All the information's at the website. Till the next time, stay kind, stay curious. For "Laura Flanders & Friends," I'm Laura. Thanks for joining us.

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