THE PRETRIAL FAIRNESS ACT: EQUITY, BUT AT WHAT COST?

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ABSTRACT

This Note traces the evolution of bail from its origins to modern commercial bail, highlighting how the system has disproportionately affected low-income defendants. In 2023, Illinois became the first state to eliminate cash bail with the enactment of the Pretrial Fairness Act, which attempted to remedy longstanding inequities. The Note situates Illinois's approach between New Jersey's successful risk-based reform and California's oversimplified and harmful "zero bail" experiment. While Illinois's reform represents a meaningful step toward fairness, this Note argues that its reliance on a categorical approach and its limited use of pretrial assessments may unintentionally undermisne its effectiveness. The Note concludes that Illinois must go further by expanding judicial discretion and mandating the use of risk assessment tools.

INTRODUCTION

Criminal law and criminal procedure are largely the province of state law: This includes bail policies.[1] Bail is defined as "the money a defendant pays as a guarantee that they will show up in court at a later date."[2] This definition describes the traditional American approach to bail—a judge weighs a variety of considerations, determines whether to issue bail, and if

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1. *See, e.g.*, SHIMA BARADARAN BAUGHMAN, THE BAIL BOOK: A COMPREHENSIVE LOOK AT BAIL IN AMERICA'S CRIMINAL JUSTICE SYSTEM 1–18 (2017) (an introduction to bail concepts and procedures).

2. *Bail*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/bail [https://perma.cc/4B46-4FCE].

so, at what cost to the defendant.[3] In making such an evaluation, the judge attempts to weigh aggravating factors (such as the severity of the underlying offense and the defendant's criminal record) against mitigating factors (such as the defendant's life circumstances or their role in the crime).[4] If the judge grants bail and the defendant pays the amount set by the court, often with the assistance of a bail-bond company, the state relinquishes the defendant from jail.[5]

Americans have begun voicing their criticisms of this traditional approach to cash bail in an increasingly popular movement towards bail reform.[6] These critics cite several issues with the traditional system, most notably arguing that cash bail effectively bifurcates criminal defendants into two classes: "[O]ne for those who have money and one for those who do not."[7] In particular, the emergence of the commercial bail bond industry in the twentieth century has served to antagonize the financial disparity that cash bail has on wealthy defendants as compared with defendants of lesser means.[8]

State legislatures have enacted bail reform statutes in recent years.[9]

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3. *See* Lea Hunter, *What You Need To Know About Ending Cash Bail*, CTR. FOR AM. PROGRESS (Mar. 16, 2020), https://www.americanprogress.org/article/ending-cash-bail/ [https://perma.cc/U2MA-RS48] (describing cash bail as a system "in which the court determines an amount of money that a person has to pay in order to secure their release from detention").

4. *Aggravating and Mitigating Factors in Criminal Sentencing Law*, JUSTIA, https://www.justia.com/criminal/aggravating-mitigating-factors/ [https://perma.cc/VQB4-XC4W] (discussing how a defendant's "minor role in the offense" may lessen the bail cost).

5. *See Bail, Bonds, and Relevant Legal Concerns*, JUSTIA, https://www.justia.com/criminal/bail-bonds/ [https://perma.cc/NW83-NT8B].

6. *See, e.g.*, Mark F. Bernstein, *How New Jersey Made a Bail Breakthrough*, PRINCETON ALUMNI WKLY., Nov. 2020, at 26–30, https://paw.princeton.edu/article/how-new-jersey-made-bail-breakthrough [https://perma.cc/2F8F-RMJ9]; *see* Hunter, *supra* note 3; Nicole Zayas Manzano, *The High Price of Cash Bail*, AM. BAR ASS'N (Apr. 12, 2023), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/economic-issues-in-criminal-justice/the-high-price-of-cash-bail/?login [https://perma.cc/R2PP-4PG9].

7. Manzano, *supra* note 6; *see also* Natasha Brown, *Innocent Until Proven Guilty: Unless You're Poor. Righting a Systemic Wrong Under the Pretrial Fairness Act*, 57 UIC L. REV. 291, 298 (2024) ("Black and Latinx individuals have higher rates of pretrial detention than any other demographic based not on their potential harm to a community, but inability to pay bail.").

8. *See* Jake Feiler, *America's Cash Bail Crisis: Learning from Our Common-Law Roots*, 45 LOY. L.A. INT'L & COMP. L. REV. 114, 116 (2022) (explaining that "people who are able to pay their own bail receive all their money back from the court, [while] people who utilize a bail bondsman—and are thus subjected to high charges—do not get back the fees they must pay for the service").

9. *See, e.g.*, Michaela Brant, *Cash Bail Ends in Illinois, How Will Things Change?*, THE PROGRESSIVE MAG. (Oct. 4, 2023, 2:24 PM), https://progressive.org/latest/cash-bail-ends-in-illinois-how-will-things-change-brant-20231004/ [https://perma.cc/G7HM-4GPS]; Brown, *supra* note 7, at 304

Most recently in September 2023, Illinois enacted the Pretrial Fairness Act ("the Act"), making Illinois the first state to eliminate cash bail altogether.[10] This Note discusses the likelihood that this groundbreaking legislation will achieve Illinois's goals in seeking a more equitable approach to bail. This Note ultimately concludes that the state's bail reform lacks the thoroughness necessary to adequately protect the public. Additionally, it recommends that Illinois increase the rigor of its statute by mimicking the structure of the New Jersey bail reform statute.

Part I of this Note provides relevant historical information on the ancestry, inception, and evolution of cash bail—leading up to the present status of cash bail in America. Part II discusses more popular approaches to bail reform among the states, with a focus on solutions that New Jersey, California, and (most recently) Illinois have enacted. Part III attempts to analyze the evolution of bail through a critical lens. Using this lens, this Note critiques the statute and makes recommendations for more effective reform. This Note concludes with a short summary of the progression of cash bail and the ramifications for future efforts at reform.

I. HISTORY

A. Earliest Roots

The modern American concept of cash bail is traceable to a jurisprudential evolution beginning in modern Great Britain in the fifth century.[11] During this period, German tribes began migrating to Britain, bringing with them a "brute force" method of handling disputes between private parties.[12] This style of "frontier justice" often aroused familial feuds

("The growing trend of the elimination of cash bail sparked a nationwide movement across the country.").

10. *See* Jessica D'Onofrio & Sarah Schulte, *Illinois Becomes First State to Eliminate Cash Bail as Pre-Trial Fairness Act Takes Effect*, ABC 7 CHI. (Sept. 18, 2023), https://abc7chicago.com/no-cash-bail-illinois-abolish-eliminates/13796013/ [https://perma.cc/XEA4-WFFG]; *see also* Brown, *supra* note 7, at 305 (explaining the Act provides that "[d]etention will only be imposed when the defendant is charged with a violent crime, poses a specific real and present threat to a person, or has a high likelihood of willful flight").

11. *See* Caitlin Hill, *A Brief History of Cash Bail*, ACLU OHIO (Dec. 12, 2017, 12:35 PM), https://www.acluohio.org/en/news/brief-history-cash-bail [https://perma.cc/KR32-MX8V].

12. *Id. See generally* TIMOTHY R. SCHNACKE ET AL., PRETRIAL JUST. INST., THE HISTORY OF BAIL AND PRETRIAL RELEASE 1 (2010), https://cdpsdocs.state.co.us/ccjj/Committees/Bail Sub/Handouts/HistoryofBail-Pre-TrialRelease-PJI_2010.pdf [https://perma.cc/G9LN-B6V2]

that led to "private wars between the victim and the accused's families resulting in physical harm and loss to both groups."[13] Society gradually became weary of the waste generated by this system, leading to the substitution of monetary compensation instead of physical harm.[14]

Pursuant to this new monetary system, the victim or victim's family would agree to not seek physical retribution against the accused if the accused individual agreed to pay the victim or the victim's family over a defined period.[15] These payments were known as "bots," or "payments designed to compensate grievances."[16] However, because accused individuals had a strong incentive to flee and skip out on their payments, a surety was required to ensure "that the accused paid the debt by agreeing to stand in the place of the accused if the debt wasn't paid by him."[17]

Thus, if the accused fled while awaiting trial, the surety was obligated to appear in court and pay the bot upon the conviction of the accused.[18] In such a case, the surety's financial obligation to the victim (or family) would be equal to the bot (i.e., "[T]he amount of the pledge was identical to the amount of the fine upon conviction.").[19] In rare instances, the community could deem the accused a "danger to society," and mutilate or execute them.[20] Alternatively, if the accused was unable to pay the bot, the courts

(explaining that "[e]ssentially, crimes were private affairs . . . and suits brought by persons against other persons typically sought remuneration as the criminal penalty").

13. Hill, *supra* note 11; *see* SCHNACKE ET AL., *supra* note 12, at 1 (discussing contemporary notions of "outlawry or 'hue and cry,' both processes allowing the public to hunt down and deliver summary justice to offenders").

14. Hill, *supra* note 11.

15. *See id.*; Feiler, *supra* note 8, at 123 (describing the system of bots as "an alternative to avoid blood feuds"). *See generally* SCHNACKE ET AL., *supra* note 12.

16. SCHNACKE ET AL., *supra* note 12, at 1.

17. Hill, *supra* note 11; *see also* SCHNACKE ET AL., *supra* note 12, at 2 (quoting F. POLLOCK & F. MAITLAND, THE HISTORY OF ENGLISH LAW (2d ed. 1898)) (noting "[p]risons were 'costly and troublesome'"); JOHN-MICHAEL SEIBLER & JASON SNEAD, HERITAGE FOUND., THE HISTORY OF CASH BAIL 2 (2017), https://www.heritage.org/courts/report/the-history-cash-bail [https://perma.cc/S3Z6-YMH5] (describing jails during the development of old English law as "impractical").

18. *See* SCHNACKE ET AL., *supra* note 12, at 2.

19. *Id*. ("The Anglo-Saxon bail process was perhaps the last entirely rational application of bail." (quoting June Carbone, *Seeing Through the Emperor's New Clothes: Rediscovery of Basic Principles in the Administration of Bail*, 34 SYRACUSE L. REV. 517, 520 (1983))); *see also* Hill, *supra* note 11 (explaining that, in old English law, sureties could not profit from their arrangement with the accused); SEIBLER & SNEAD, *supra* note 17, at 3–4 ("This early system of bail killed two birds with one stone: It simultaneously provided strong incentives to sureties to ensure their charges appeared in court, and guaranteed payment to victims if they fled.").

20. *See* SCHNACKE ET AL., *supra* note 12, at 1–2.

would often hand them over to the victim (or family), who would then enslave or execute the accused.[21]

This system dramatically changed in 1066 with the Norman Conquest.[22] The Norman Conquest largely did away with the existing system of bots, instead relying on a judicial system of "punitive fines with no set rates."[23] In assigning a given fine, justices considered three factors: "[T]he defendant's rank, the seriousness of the crime, and an ardent desire to deter flight."[24] In theory, this oppressive fine system gave sureties ample incentive to keep a close watch on the accused for whom they were a guarantor.[25] Under this new system, criminal justice came to be an "affair of the state" rather than one between two private parties.[26] Notably, sheriffs had great discretion in deciding whether to release the accused, leading to corruption.[27]

Parliament responded to this corruption, and inconsistent administration of bail across England in the Middle Ages,[28] with the Statute of Westminster.[29] The statute "set forth a detailed enumeration of those offenses that were bailable and those that were not."[30] This list included

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21. *See id.* at 2 n.6 (citing June Carbone, *Seeing Through the Emperor's New Clothes: Rediscovery of Basic Principles in the Administration of Bail*, 34 SYRACUSE L. REV. 517, 521 n.18 (1983)).

22. *See id.* at 2.

23. *See* Sara M. Butler, *Freedom Comes at a Price: The Medieval History of Bail*, LEGAL HIST. MISCELLANY (May 19, 2021), https://legalhistorymiscellany.com/2021/05/19/freedom-comes-at-a-price-the-medieval-history-of-bail/ [https://perma.cc/74S2-RYWQ] (referring to bots as "wergeld"); *see also* SCHNACKE ET AL., *supra* note 12, at 2 (discussing increased use of corporal punishment).

24. Butler, *supra* note 23.

25. *See id.*; SCHNACKE ET AL., *supra* note 12, at 2 (discussing relationship between increased use of corporal punishment and "a greater incentive to flee"); Feiler, *supra* note 8, at 124 (connecting increasing government control in criminal law to an increasing use of corporal punishment and greater incentive to flee).

26. *See* SCHNACKE ET AL., *supra* note 12, at 2 (quoting June Carbone, *Seeing Through the Emperor's New Clothes: Rediscovery of Basic Principles in the Administration of Bail*, 34 SYRACUSE L. REV. 517, 521 (1983)).

27. *See id.* at 3.

28. *See id.* ("'[B]ail law developed in the twelfth and thirteenth centuries as part of an assertion of royal control over the authority of the sheriffs,' which had grown increasingly corrupt." (quoting June Carbone, *Seeing Through the Emperor's New Clothes: Rediscovery of Basic Principles in the Administration of Bail*, 34 SYRACUSE L. REV. 517, 522 n.29 (1983))).

29. *See id.*; *see also* June Carbone, *Seeing Through the Emperor's New Clothes: Rediscovery of Basic Principles in the Administration of Bail*, 34 SYRACUSE L. REV. 517, 523 (1983).

30. *Excessive Bail*, JUSTIA, https://law.justia.com/constitution/us/amendment-08/01-excessive-bail.html [https://perma.cc/5CHS-6GEQ]; *see* Butler, *supra* note 23; SCHNACKE ET AL., *supra* note 12, at 3 ("[T]he Statute departed from traditional Anglo-Saxon customs by establishing three criteria to

those accused of homicide, those arrested "upon command of the King," and those accused of "forest offenses."[31] The list also included arsonists, counterfeiters, and those who "had previously been outlawed"—among others.[32] If an accused was not barred by one of these categories, they were eligible for bail "provid[ed] they were capable of finding sureties to guarantee their appearance at trial."[33] The Statute of Westminster remained in effect for the next 500 years with minimal changes,[34] with the exception of the addition of the Petition of Right in 1627,[35]which prohibited the detention of "persons without bail merely upon the order of the King."[36]

In response to further efforts by judges to undermine rights of the accused,[37] Parliament passed the Habeas Corpus Act, which set forth procedures designed to prevent undue delay between an individual's arrest and a bail hearing.[38] Judges, however, engineered a workaround to keeping individuals in jail for prolonged periods of time without any formal charges:[39] By setting a defendant's bail at a very high amount, the defendant could be jailed indefinitely.[40] Parliament, in turn, addressed this obstacle with the English Bill of Rights of 1689, which demanded "excessive bail ought not be required."[41]

govern bailability: (1) the nature of the offense; (2) the probability of conviction; and (3) the criminal history of the accused." (cleaned up)).

31. Butler, *supra* note 23. *See also* Carbone, *supra* note 29, at 523 n.30 ("Forest offenses referred to violations, such as poaching, of the royal forests."); SCHNACKE ET AL., *supra* note 12, at 2.

32. Butler, *supra* note 23, at 1–2.

33. *Id.* at 2; *see also* SCHNACKE ET AL., *supra* note 12, at 3 ("Despite the overlapping and conflicting concerns of the statute's criteria, each criterion can be reduced to a simple standard: the seriousness of the offense offset by the likelihood of acquittal." (quoting Carbone, *supra* note 29, at 526)).

34. *See* SCHNACKE ET AL., *supra* note 12, at 3 (explaining the law was updated to add safeguards for the accused and "to protect persons from political abuse and local corruption"—which included requiring an additional royal justice to certify bailments).

35. *See id.* (explaining Petition of Right required the court to charge an individual with a crime before imprisoning them); *Excessive Bail*, *supra* note 30.

36. *Excessive Bail*, *supra* note 30.

37. *See id.*; *see also* SCHNACKE ET AL., *supra* note 12, at 3–4.

38. *See* Carbone, *supra* note 29, at 528; SCHNACKE ET AL., *supra* note 12, at 3–4.

39. *See* SCHNACKE ET AL., *supra* note 12, at 3–4.

40. *See id.*

41. *See id.* at 4 (noting the role of William and Mary); Carbone, *supra* note 29, at 528–29.

B. Progress in America

In their early development, the American colonies followed the system of bail established in England very closely.[42] This began with the Massachusetts Body of Liberties of 1641 which "guarantee[d] bail to every accused person except those charged with a capital crime or contempt in open court."[43] Pennsylvania granted even more progressive bail reform in 1682, stating "all prisoners shall be Bailable by Sufficient Sureties, unless for capital Offenses, where proof is evident or the presumption great."[44] Pennsylvania's bail reform was quickly emulated, becoming "the model for almost every state constitution adopted after 1776."[45]

Soon after independence from England was achieved, the newly-formed United States ratified the Eighth Amendment in 1791,[46] providing that "[e]xcessive bail shall not be required."[47] While the Eighth Amendment does not expressly guarantee a right to bail,[48] the Judiciary Act of 1789 adopted the stance of the Massachusetts Body of Liberties, thus guaranteeing bail at the federal level.[49] By considering the relevant provisions of the Constitution in tandem with the Judiciary Act of 1789, one can discern that the "principles of the early [federal] American bail system . . . were: (1) Bail should not be excessive; (2) [a] right to bail exists in non-capital cases; and (3) [b]ail is meant to assure the appearance of the accused at trial."[50]

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42. *See* SCHNACKE ET AL., *supra* note 12, at 4; Carbone, *supra* note 29, at 529.

43. *Excessive Bail*, *supra* note 30; *see also* SCHNACKE ET AL., *supra* note 12, at 4; Carbone, *supra* note 29, at 530 (explaining that Massachusetts "replace[d] the welter of particular rules and exceptions of English bail law with an unequivocal right to bail for non-capital offenses").

44. SCHNACKE ET AL., *supra* note 12, at 4 (quoting Carbone, *supra* note 29, at 531).

45. *Id.* at 5 (quoting Carbone, *supra* note 29, at 532).

46. *See Constitutional Amendments – Amendment 8, "Freedom from Excessive Bail, Fines, and Cruel Punishments."*, RONALD REAGAN PRESIDENTIAL LIBR. AND MUSEUM, https://www.reaganlibrary.gov/constitutional-amendments-amendment-8-freedom-excessive-bail-fines-and-cruel-punishments [https://perma.cc/4BL4-ZPYK]; *see also* SCHNACKE ET AL., *supra* note 12, at 5.

47. U.S. CONST. amend. VIII. *See also* SCHNACKE, ET AL., *supra* note 12, at 5; *see also* SEIBLER & SNEAD, *supra* note 17, at 3 (noting ratification of the Eighth Amendment was unsurprising given its parallels in existing state constitutions and the English Bill of Rights).

48. SCHNACKE ET AL., *supra* note 12, at 5; Carbone, *supra* note 29, at 533 ("The Constitution . . . guarantees only a right to have bail determined in accordance with law.").

49. *See Excessive Bail*, *supra* note 30; SCHNACKE ET AL., *supra* note 12, at 5.

50. SCHNACKE ET AL., *supra* note 12, at 5 (quoting SPURGEON KENNEDY ET AL., PRETRIAL SERVS. RES. CTR., PRETRIAL RELEASE AND SUPERVISION PROGRAM: TRAINING SUPPLEMENT 2 (1997)).

C. Regression in Equity

This guaranteed right to bail, along with other uniquely American practices,[51] led to significant growth in cash bail and the genesis of the commercial bail bonds industry.[52] The first commercial bail-bond practice in America likely arose in San Francisco in the late nineteenth century.[53] Peter and Thomas McDonough "began putting up bail money as a favor to lawyers who drank at their father's saloon . . . Once the lawyers' clients showed up for court, the brothers got their money back."[54] Eventually, the brothers began charging a fee for this service.[55] Over time, a rising number of defendants "facing increasingly higher money bail bond amounts" contributed towards a rapidly growing commercial bail-bond industry.[56] This coincided with the federal government's decision to "gradually discard[] the longstanding rules against profit and indemnification at bail."[57]

American courts did not address the issue of bail in any meaningful way until the Supreme Court's 1951 decision, *Stack v. Boyle*.[58] In that case, the Court considered federal defendants' complaint that their bail amounts were

51. *See id.* at 6 (quoting WAYNE H. THOMAS, JR., BAIL REFORM IN AMERICA 11–12 (1976)).

52. *See id.*; *see also* Feiler, *supra* note 8, at 136; Kurt X. Metzmeier, *Preventative Detention: A Comparison of Bail Refusal Practices in the United States, England, and Canada and Other Common Law Nations*, 8 PACE INT'L L. REV. 399, 406 (1996) ("As the nation grew and urbanized in the late 19th and early 20th centuries, gross inequities developed in the bail system."); SEIBLER & SNEAD, *supra* note 17, at 4 ("America's expansive and unexplored frontier, for one, afforded criminal suspects far more opportunity to flee and evade justice than the English islands."); SEIBLER & SNEAD, *supra* note 17, at 4 ("[T]he 'unrooted' and rural life of many early American settlers simply made it harder to find a surety to take responsibility for a defendant in the pre-trial period. . . . By posting a bond on a defendant's behalf in exchange for a fee, underwriters could turn a profit.").

53. *See* SCHNACKE ET AL., *supra* note 12, at 7; SEIBLER & SNEAD, *supra* note 17, at 4.

54. Feiler, *supra* note 8, at 136 (quoting Shane Bauer, *Inside the Wild, Shadowy, and Highly Lucrative Bail Industry*, MOTHER JONES, May–June, 2014, https://www.motherjones.com/politics/2014/06/bail-bond-prison-industry/ [https://perma.cc/P4KF-XZL2]); SCHNACKE ET AL., *supra* note 12, at 7 ("By 1898, the firm of McDonough Brothers, established as a saloon, found its business niche by underwriting bonds for defendants who faced charges in the nearby Hall of Justice, or police court.").

55. SCHNACKE ET AL., *supra* note 12, at 7; *see also* Feiler, *supra* note 8, at 137 (explaining that, because many defendants could not afford cash bail, a commercial bail bond company could step in and pay the full bail in exchange for a percentage fee).

56. SCHNACKE ET AL., *supra* note 12, at 7.

57. Timothy R. Schnacke, *A Brief History of Bail*, THE JUDGES' J., Summer 2018, at 4, https://www.americanbar.org/groups/judicial/publications/judges_journal/2018/summer/a-brief-history-bail/ [https://perma.cc/5UWB-BRN4].

58. *See* SCHNACKE ET AL., *supra* note 12, at 8; Stack v. Boyle, 342 U.S. 1, 7 (1951).

excessive and therefore in violation of their Eighth Amendment rights.[59] Significantly, the defendants set forth undisputed evidence that the trial court had set bail at an amount "much higher than that usually imposed for offenses with like penalties."[60] The Court held that the bail was unconstitutional,[61] "determin[ing] that courts must make individualized assessments when determining bail amounts."[62]

Less than a year later, in *Carlson v. Landon*, the Court "clarified that people's right to bail is not absolute in every case,"[63] stating that "[t]he bail clause was lifted with slight changes from the English Bill of Rights Act. In England, that clause has never been thought to accord a right to bail in all cases, but merely to provide that bail shall not be excessive in those cases where it is proper to grant bail."[64] The aggregate of these two cases, then, can be understood to state that "while a right to bail is a fundamental precept of the law, it is not absolute," but when a court does grant bail, that court must set bail at "'an amount reasonably calculated' to assure the defendant's return to court."[65]

Meanwhile, bail studies began to emerge and "[b]y the 1960s, Americans began seriously criticizing the country's bail system [which] bondsmen were starting to dominate."[66] These studies reflected the power that district attorneys had in recommending and setting bail (i.e., 95% of the time).[67] Further, the studies highlighted the disparity in treatment between the poor and everyone else, noting that defendants with meager financial means were less likely to be able to pay bail.[68] Disturbingly, this disparity

59. *See* SCHNACKE ET AL., *supra* note 12, at 8.

60. *Stack*, 342 U.S. at 5.

61. *Stack*, 342 U.S. at 7.

62. Feiler, *supra* note 8, at 138. *See also Stack*, 342 U.S. at 5–6; SCHNACKE ET AL., *supra* note 12, at 8 (noting that "the case includes ample language to support the notion that bail should only be based on an individualized assessment of each defendant").

63. Feiler, *supra* note 8, at 138. *See also Stack*, 342 U.S. at 4 ("[T]he traditional right to freedom before conviction in the federal system was not, in fact, absolute.").

64. Carlson v. Landon, 342 U.S. 524, 545–46 (1952).

65. SCHNACKE ET AL., *supra* note 12, at 9.

66. Feiler, *supra* note 8, at 139 (noting other factors underlying this critique, including that "[C]ourts were using bail as a means of punishing defendants; and jails were becoming overcrowded because courts were detaining defendants—who they should have otherwise released—for not paying bail.").

67. *See* SCHNACKE ET AL., *supra* note 12, at 10 ("For major offenses, a bail bond was set based on the District Attorney's recommendation approximately 95% of the time.").

68. *See id.*; *see also* Brown, *supra* note 7, at 311 ("Studies reveal that pretrial detention for even a short amount of time can disrupt employment and family ties.").

in income also correlated to increased conviction rates and harsher sentences.[69]

D. Attempts at Change

The Manhattan Bail Project (the "Project"), a particularly noteworthy 1961 study conducted by the Vera Foundation ("Foundation"), examined potential alternatives to a cash bail system.[70] The Project conducted interviews with defendants, upon which the Foundation would either recommend release or confinement before trial.[71] In the first few months, the Project recommended only about a quarter of interviewees for release.[72] However, over the coming months and years, that percentage gradually rose to sixty-five percent, with "less than one percent of releases fail[ing] to appear for trial."[73] News of the Project's success travelled quickly, leading to similar programs emerging in other cities throughout the country.[74]

The Illinois legislature capitalized on this progressive momentum with the Illinois Ten Percent Deposit Plan ("Plan"), passed in 1963.[75] The Plan eliminated the role of commercial bail bondsmen, instead relying on the court to collect the "[ten] percent bonding fee."[76] In addition, per the Plan, courts were "now required to release the defendant on less than full bond."[77] At the same time, some courts were "questioning the desirability of a system that was based on secured bonds and dominated by commercial money bail bondsmen."[78]

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69. *See* SCHNACKE ET AL., *supra* note 12, at 10.

70. *See id.* (quoting WAYNE H. THOMAS, JR., BAIL REFORM IN AMERICA 4 (1976)) (explaining the purpose of the study was "to provide information to the court about a defendant's ties to the community and thereby hope that the court would release the defendant without requiring a bail bond (i.e., release on the defendant's own recognizance)").

71. *See id.*; *see also* Feiler, *supra* note 8, at 139 (quoting Metzmeier, *supra* note 52, at 407 (explaining that the group "posted bail for defendants with strong community ties and tracked whether they made their court appearance. The experiment proved that defendants released on their own recognizance had a lower non-appearance rate than those under the old money bail system.")).

72. *See* SCHNACKE ET AL., *supra* note 12, at 10 (quoting EVIE LOTZE ET AL., PRETRIAL SERVS. RSCH. CTR., THE PRETRIAL SERVICES REFERENCE BOOK 4 (1999)).

73. *Id.* (quoting EVIE LOTZE ET AL., PRETRIAL SERVS. RSCH. CTR., THE PRETRIAL SERVICES REFERENCE BOOK 4–6 (1999)).

74. *See id.*

75. *See id.*

76. *Id.* at 10–11 (quoting WAYNE H. THOMAS, JR., BAIL REFORM IN AMERICA 7 (1976)).

77. *Id.*

78. *Id.* ("The effect of such a system is that the professional bondsmen hold the keys to the jail

These local and state efforts, combined with shifting attitudes in the courts, led to United States Attorney General Robert Kennedy's recommendation to all U.S. Attorneys: "The release of defendants on their own recognizance 'in every practicable case.'"[79] Bail reform remained a hot topic in the 1960s[80] and, in 1966, Congress passed the Federal Bail Reform Act, "creat[ing] a presumption of pretrial release that could be predicated, in many instances, on nonmonetary conditions."[81] That progress was derailed by the Federal Bail Reform Act of 1984, which itself arose in the wake of "many political actors . . . [adopting] law and order rhetoric, and ultimately tougher criminal procedures."[82] The Federal Bail Reform Act of 1984 "led to an increase in pretrial detention, expanding judicial power at the expense of pretrial defendants."[83]

II. STATE EFFORTS AT BAIL REFORM

Illinois is not the first state to implement drastic measures to combat perceived inequities with the traditional system of cash bail in America.[84] Most notably, New Jersey and California have recently enacted their own solutions to bail.[85] New Jersey instituted a framework involving a risk-based assessment, with the goal that "access to money will no longer determine pretrial detainment."[86] Under this risk-based system, judges have the option

in their pockets. They determine for whom they will act as surety—who, in their judgment, is a good risk. The bad risks, in the bondsmen's judgment, and the ones who are unable to pay the bondsmen's fees, remain in jail." (quoting Pannell v. U.S. 320 F.2d 698, 699 (D.C. Cir. 1963) (Wright, J., concurring))).

79. *Id.* (quoting NAT'L CONF. ON BAIL AND CRIM. JUST., PROCEEDINGS AND INTERIM REPORT 297 (1965)).

80. *See id.* at 11–12.

81. William M. Carlucci, *Death of a Bail Bondsman: The Implementation and Successes of Nonmonetary, Risk-Based Bail Systems*, 69 EMORY L.J. 1205, 1213 (2020). *See also id.* at 12.

82. Carlucci, *supra* note 81, at 1213–14. *See also* SCHNACKE ET AL., *supra* note 12, at 17 (quoting PRETRIAL SERVS. RSCH. CTR., THE SUPERVISED PRETRIAL RELEASE PRIMER 5 (1999) ("The 1970s ushered in a new era for the bail reform movement, one characterized by heightened public concern over crime, including crimes committed by persons released on a bail bond. Highly publicized violent crimes committed by defendants while released pretrial prompted calls for more restrictive bail policies and led to growing dissatisfaction with laws that did not permit judges to consider danger to the community in setting release conditions.")).

83. Carlucci, *supra* note 81, at 1214.

84. *See* Brant, *supra* note 9.

85. *See id.*

86. *See Criminal Justice Reform*, N.J. CTS., https://www.njcourts.gov/public/concerns/criminal-justice-reform [https://perma.cc/A9LB-PA5B].

to detain defendants with a "serious risk of danger or flight" until trial.[87] Alternatively, "Low-risk defendants who can't afford bail will be released."[88] By enacting these reforms, New Jersey sought to put itself on the "forefront of fairness," by "address[ing] real consequences for poor defendants—often members of minority groups—who pose little risk."[89]

A. New Jersey's Success

New Jersey's innovative assessment technique is incredibly thorough and robust.[90] Underlying New Jersey's radical new system is a public safety assessment (PSA).[91] This assessment "uses nine risk factors to assess the risk of new criminal activity (NCA), including new violent criminal activity (NVCA), and failure to appear (FTA) pending case disposition."[92] Indeed, the PSA relies principally upon those two factors: the "likelihood of appearance in court and probability of the accused committing a crime while on pretrial release."[93] Once the assessment returns a result on the defendant's risk to public safety, the judge may rely on his or her discretion in recommending confinement or release.[94] In making this determination, the judge may consider "[t]he history and characteristics of the eligible

87. *Id.*
88. *Id.*
89. *Id.*
90. *See* Carlucci, *supra* note 81, at 1235.
91. *See Criminal Justice Reform*, *supra* note 86.
92. *Id*. *See also* Stuart Rabner, *NJ Criminal Justice System Becoming More Just*, ASBURY PARK PRESS (May 2, 2018 3:16 PM), https://www.app.com/story/opinion/columnists/2018/05/02/nj-criminal-justice-reform/573422002/ [https://perma.cc/M2H4-NGHM] (explaining two-level approach New Jersey adopted); *see also New Jersey Risk Factor Definitions – December 2018*, N.J. CTS., https://www.njcourts.gov/sites/default/files/psariskfactor.pdf [https://perma.cc/N74D-HW7Q] (nine risk factors are: age at current arrest; current violent offense; pending charge at the time of the offense; prior disorderly persons conviction; prior indictable conviction; prior violent conviction; prior failure to appear pretrial in past two years; prior failure to appear pretrial older than two years; and prior sentence to incarceration).
93. Carlucci, *supra* note 81, at 1227–28 (quoting N.J. STAT. ANN. § 2A:162-15 (West 2017)) (noting New Jersey's assessment includes the third factor of "chance that the accused will 'obstruct or attempt to obstruct the criminal justice process'").
94. *See id.* at 1236 (noting New Jersey's system "appears to allow for great judicial discretion"). *See also* Fact Sheet, Chief Justice Stuart Rabner & Glenn A. Grant, Acting Admin. Dir. of the Cts., N.J. Judiciary, Criminal Justice Reform in New Jersey—Myth v. Fact (2024), https://www.njcourts.gov/sites/default/files/forms/12132_cjr_mythvsfact_brochure.pdf [https://perma.cc/8JMA-ZNJT] ("Only a judge can determine if a defendant should be released pretrial and what the conditions of the release should be.").

defendant [and] [t]he nature and seriousness of the risk of obstructing . . . the criminal justice process," among several other factors.[95]

New Jersey has also received national attention and applause for its trailblazing new approach to bail.[96] In the Pretrial Justice Institute's 2017 "report cards" for each state, New Jersey was the only state to achieve an "A."[97] During the first half of 2017, New Jersey witnessed a 15% decrease in pretrial jail populations and an overall decrease in crime (violent and otherwise).[98]

New Jersey's bail reform is aimed at preventing unjust applications of bail, including situations like Craig Mallon's in 2016.[99] Police arrested Mallon for fourth-degree joyriding.[100] Because Mallon could not afford bail, he sat in jail for four months awaiting trial.[101] Mallon maintained his innocence throughout, before the state offered him a plea deal that would release him immediately.[102] Mallon "recanted his denial and pleaded guilty in exchange for a sentence that amounted to time served and no probation."[103] In this case, Mallon's inability to post bond served as leverage against in him securing a guilty plea; had Mallon been able to afford bail, he would have had less incentive to accept freedom at any cost.[104]

B. California's Failure

California implemented its own radical bail reform in April 2020 to limit the spread of the coronavirus in jails.[105] In response to the COVID-19

95. N.J. STAT. ANN. § 2A:162-20 (West 2022). *See* Carlucci, *supra* note 81, at 1231 ("The requirement for objectivity entails that the assessment not factor in race, ethnicity, gender, or socio-economic status.").

96. *See* Dave Nyczepir, *Most States Given Lousy Pretrial Justice Grades*, ROUTE- FIFTY (Nov. 1, 2017), https://www.route-fifty.com/management/2017/11/pretrial-justice-grades/142189/ [https://perma.cc/74ZH-9SN2].

97. PRETRIAL JUST. INST., THE STATE OF PRETRIAL JUSTICE IN AMERICA 12 (2017), https://www.prisonpolicy.org/scans/pji/the_state_of_pretrial_in_america_pji_2017.pdf [https://perma.cc/FF77-PYTZ]; *see id.* (using the three criteria of "pretrial detention rate," "use of validated pretrial assessments," and "elimination of money bail").

98. *See id.*

99. *See* Rabner, *supra* note 92.

100. *See id.*

101. *See id.*

102. *See id.*

103. *Id.*

104. *See id.*

105. *See Zero Bail*, YOLO CNTY. DIST. ATT'Y'S OFF., https://yoloda.org/zero-bail/

pandemic, California eliminated cash bail statewide "for most misdemeanors and non-violent felonies"—a policy that would remain in effect until ninety days after the governor lifted the state of emergency in California.[106] The California Judicial Council repealed the "zero bail" policy in June 2020, but some counties continued the practice after this date.[107] California intended the policy to "quickly depopulate jails, which were home to numerous outbreaks of the then-new coronavirus,"[108] but this policy also had the unintended consequence of drastically increasing the "rate of crimes committed by repeat offenders."[109]

As mentioned, some counties continued enforcing the policy even after substantial evidence accumulated to show that defendants released under the zero bail policy were recommitting crimes at a staggering rate.[110] In Yolo County, for example, police rearrested 70.6% of individuals released under the zero bail policy, and 29% of those rearrests were for crimes of violence.[111] One shocking example of this policy failure is the tragic killing of Mary Kate Tibbitts in September 2021.[112] The murderer was Troy Davis, who authorities had arrested and then released several months earlier for car theft.[113] Further exacerbating public opinion of the reforms, Davis's criminal record included an assault with a deadly weapon and one other felony.[114]

[https://perma.cc/FL7H-9U29]; *see also* Yael Halon, *'Outrageous' $0 Bail Policy to Blame for Staggering Rate of Crimes Committed by Past Offenders: California DA*, FOX NEWS (Aug. 24, 2022, 6:27 PM), https://www.foxnews.com/media/outrageous-0-bail-policy-blame-staggering-rate-crimes-committed-past-offenders-california-da [https://perma.cc/ZG2F-D8RF].

106. *Zero Bail*, *supra* note 105.

107. *See* Halon, *supra* note 105.

108. Zusha Elinson, *California Efforts to Reduce Jail Population During Covid come to End as Crime Rises*, WALL ST. J. (Aug. 13, 2022, 7:00 AM), https://www.wsj.com/articles/california-efforts-to-reduce-jail-population-during-covid-come-to-end-as-crime-rises-11660361898 [https://perma.cc/3VKV-XXQK].

109. Halon, *supra* note 105.

110. *See id.*

111. *See* Press Release, Yolo Dist. Att'ys Off., 70% of Those Released on $0 Bail Commit New Crimes (Aug. 22, 2022), https://yoloda.org/70-of-those-released-on-0-bail-commit-new-crimes/ [https://perma.cc/5WEB-ARPS]; *see also* Halon, *supra* note 105.

112. *See* Sam Stanton, *Land Park Murder Suspect to Face Trial. He Admitted to Attacking Mary Kate Tibbitts, Detective Says*, THE SACRAMENTO BEE (Nov. 15, 2023, 4:03 PM), https://www.sacbee.com/news/local/crime/article281818178.html [https://perma.cc/CH79-YEGV].

113. *See id.*

114. *See id.*

C. Illinois's Attempt

This extended history leads to the Pretrial Fairness Act ("the Act"),[115] which effectively eliminates cash bail in the state of Illinois.[116] The Act's road to adoption was not entirely smooth, with roughly two years between Governor Pritzker's signing of the Act in January 2021 and its taking effect in September 2023.[117] Notably, several opponents to the reform challenged its constitutionality, greatly prolonging the delay before the Act could take effect.[118] These cases were ultimately consolidated into one case before the Illinois Supreme Court.[119] In upholding the validity of the Act, the Court held in part that the Illinois state constitution "does not mandate that monetary bail is the only means to ensure criminal defendants appear for trials or the only means to protect the public."[120]

Under the Act, pretrial release is presumed unless the defendant is charged with one of a specific list of "forcible felonies" or other enumerated crimes—including murder, sexual assault, and burglary.[121] A defendant charged with one of these crimes will still be eligible for release, unless the judge determines that the defendant poses either a "public safety risk" or a "flight risk."[122] In other words, judges may no longer require that defendants

115. *See* Brant, *supra* note 9 ("The Pretrial Fairness Act is a provision of the Safety, Accountability, Fairness, and Equity-Today (SAFE-T) Act, an expansive criminal justice reform bill signed by Governor J.B. Pritzker in 2021.").

116. *Cash Bail Ends in Illinois Monday. Here's What You Need to Know*, NBC5 CHI. (Sept. 17, 2023), https://www.nbcchicago.com/news/local/cash-bail-ends-in-illinois-monday-heres-what-you-need-to-know/3229962/ [https://perma.cc/JB4U-KLUB].

117. *See* Brant, *supra* note 9.

118. *See id.*

119. *See id.*

120. *Id.* (quoting Rowe v. Raoul, 223 N.E.3d 1010, 1023 (Ill. 2023)).

121. *See* COAL. TO END MONEY BAIL, PRETRIAL FAIRNESS ACT POLICY SUMMARY 3 (2023), https://docs.google.com/document/d/1Jf3O7bDt-NKDOTPgrPHBzMhBIsq0n2F1M8KWJ9bGH9M/edit [https://perma.cc/KVJ2-HNBJ]; *Cash Bail Ends in Illinois Monday. Here's What You Need to Know*, *supra* note 116; *see also* 725 ILL. COMP. STAT. 5/110-6.1(a) (2023) (providing complete list of charges that render a defendant ineligible for release).

122. *Correcting Misinformation about Illinois Pretrial Reforms: What the Pretrial Fairness Act Does and Does Not Do*, THE CIVIC FED'N (Sept. 16, 2022), https://www.civicfed.org/civic-federation/blog/correcting-misinformation-about-illinois-pretrial-reforms-what-pretrial [https://perma.cc/CYP8-9E7V] ("This means that the current system . . . will be replaced with a system designed to detain people charged with more serious, violent crimes and to release people charged with non-violent, less serious crimes."); *see also Cash Bail Ends in Illinois Monday. Here's What You Need to Know*, *supra* note 116; 725 ILL. COMP. STAT. 5/110-6.1 (2023).

pay to get out of jail until their trial date.[123] Detention hearings will facilitate this new method of determining whether to release defendants, wherein the judge will have the opportunity to evaluate the factors described already.[124] In addition to the obvious options of incarceration or release, judges also have the discretion to electronically monitor defendants who they release.[125]

This judicial discretion is guided by section (a) of the Act, which outlines the circumstances under which a judge may detain a defendant before trial.[126] A common thread among all of the subsections is that, even if the defendant commits a "forcible felony," the court must also find that the defendant poses a continuing threat either to an individual or to the community at large before the court may detain the defendant.[127] The statute channels judicial determination of a defendant's "dangerousness" through section (g), which provides a list of factors to consider "in determining whether the defendant poses a real and present threat to the safety of any person or persons or the community."[128] Among others, these include:

> (1) The nature and circumstances of any offense charged, including whether the offense is a crime of violence, involving a weapon, or a sex offense.
>
> (2) The history and characteristics of the defendant . . .
>
> (3) The identity of any person or persons to whose safety the defendant is believed to pose a threat, and the nature of the threat.[129]

Section (e) of the statute determines eligibility.[130] In essence, section (e) provides that pretrial release is presumed, unless the state can show three things: (1) that the proof is clear or the presumption of guilt of a subsection

123. *See* Brant, *supra* note 9.

124. *See id.* ("In each case, the prosecutor needs to persuade the judge that, based on the type of crime alleged, the surrounding circumstances, history of violence or flight, or collateral evidence of vengeance that continued incarceration is appropriate." (quoting Harold J. Krent, Professor at Chicago-Kent College of Law)); *see also* 725 ILL. COMP. STAT. 5/110-6.1(f) (2023).

125. *See* Brant, *supra* note 9 (discussing how, as an example, "for someone arrested for felony possession of narcotics, the prosecutor may have no reason to predict violence upon release if there was no prior whiff of violence" (quoting Harold J. Krent, Professor at Chicago-Kent College of Law)).

126. *See* 725 ILL. COMP. STAT. 5/110-6.1(a) (2023).

127. *See id.*

128. *Id.* at 5/110-6.1(g).

129. *Id.*

130. *See id.* at 5/110-6.1(e).

(a) offense is great; (2) that the defendant poses a threat to the safety of person(s) in the community; (3) that there are no mitigating circumstances.[131]

A few other aspects of the Pretrial Fairness Act are worthy of a mention. Under the Act, Risk Assessment Tools, like the one New Jersey uses, are permitted (but not required).[132] Similarly, the court is now permitted (but not required) to mandate that defendants remain in Illinois before their trial.[133] Finally, if a judge decides to detain a defendant pretrial, that "judge must make a written finding as to why less restrictive conditions would not assure safety to the community and avoid the accused's willful flight."[134]

New Jersey and California both instituted zero bail policies, yet their results were drastically different.[135] These contrasting results illustrate the simple fact that no singular outcome is guaranteed to accompany Illinois's elimination of cash bail. Rather, any number of results are possible, ranging along a spectrum between California, as the worst case, and New Jersey, as the best case. Thus, by analyzing Illinois's reform in greater depth, we may be able to identify some indicia of success or failure via a comparison back to New Jersey and California.

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131. *Id.* The full language of sections (e)(3)-(4) reads:

> (3) no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate (i) the real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, for offenses listed in paragraphs (1) through (7) of subsection (a), or (ii) the defendant's willful flight for offenses listed in paragraph (8) of subsection (a), and
>
> (4) for offenses under subsection (b) of Section 407 of the Illinois Controlled Substances Act that are subject to paragraph (1) of subsection (a), no condition or combination of conditions set forth in subsection (b) of Section 110-10 of this Article can mitigate the real and present threat to the safety of any person or persons or the community, based on the specific articulable facts of the case, and the defendant poses a serious risk to not appear in court as required.

Id.

132. *See* COALITION TO END MONEY BAIL, *supra* note 121, at 8; Brown, *supra* note 7, at 307 (quoting 725 ILL. COMP. STAT. 5/110-5 (2023)).

133. *See* COALITION TO END MONEY BAIL, *supra* note 121, at 2.

134. *Id.* at 4.

135. *Compare* Halon, *supra* note 105 *with* Nyczepir, *supra* note 96.

III. ANALYSIS

A. Historical Context

The earliest history of criminal common law tradition highlights a key concern over criminal proceedings: What should be done with accused individuals during the time interval between when someone accuses them and when the trial commences? Even before the Norman Conquest in 1066, native Anglo Saxons relied on their method of "bots" from the accused to the victim.[136] Given that this system created very strong incentives for the accused to flee before payment was complete,[137] the ensuing development of guarantors is entirely rational. Indeed, the guarantor system represents perhaps the earliest representation of our modern understanding of bail.[138] Significantly, however, criminal law was largely a private affair at that time.[139] Considering how this logical and seemingly fair predecessor to cash bail devolved into its current state, this implies that at some point the logic ran afoul.[140]

The Norman Conquest substantially altered early bail doctrine, most notably transforming criminal law into a public matter.[141] Sheriffs in charge of pretrial detention exercised "widespread abuse," and change was badly needed. This led to the Statute of Westminster,[142] an early example of a quasi-categorical approach to bail, where only certain, explicitly enumerated crimes were eligible for pretrial detention.[143] This is a straightforward approach, but its application in the modern world is suspect.

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136. *See* SCHNACKE ET AL., *supra* note 12, at 2.

137. *See* SCHNACKE ET AL., *supra* note 12, at 2; Manzano, *supra* note 6 (explaining logical origins of cash bail in Anglo-Saxon civilization as "cash bail served a distinct purpose: incentivizing return to court and avoiding unsanctioned bloodshed from the mere accusation of a crime"). *See generally* Hill, *supra* note 11.

138. *See* Hill, *supra* note 11 ("Many historians agree that this system of justice was the precursor to early and modern American bail practices."); *see also* SCHNACKE ET AL., *supra* note 12, at 1–2.

139. *See* Hill, *supra* note 11; SCHNACKE ET AL., *supra* note 12, at 1.

140. *See* Manzano, *supra* note 6 ("[T]he continued use of cash bail has corrupted the system from within—steering it far from a mere incentive to return for a trial. . . . People detained pretrial now make up more than two-thirds of America's jail population.").

141. *See* SCHNACKE ET AL., *supra* note 12, at 2 (citing Carbone, *supra* note 29, at 521).

142. SCHNACKE ET AL., *supra* note 12, at 3.

143. *See* Carbone, *supra* note 29, at 523–24 (recognizing the Statute of Westminster as "the first statute to define bailable and unbailable 'offenses,'" to be considered alongside other criteria); *see also* SCHNACKE ET AL., *supra* note 12, at 3.

During the Middle Ages, however, a categorical approach like the Statute of Westminster made more sense. It provided greater consistency in application during a time where monitoring the practices of many different magistrates would be very difficult, if not impossible.[144] Therefore, the use of a categorical approach during this time likely served to prevent disparate or inconsistent applications of bail, enforcing notions of equity in bail application and helping to explain why it remained good law for nearly 500 years.[145]

The subsequent developments of the Petition of Right, the Habeas Corpus Act, and the English Bill of Rights represent a back-and-forth between Parliament and the judiciary.[146] As Parliament would guarantee some right to the people, the judiciary would engineer a loophole to undermine that right.[147] This process repeated itself several times,[148] underlining the need for equitable guarantees to emanate from the people's elected representatives, rather than the courts. Indeed, by the time of American independence, "English criminal law had become a much harsher affair than it had been at the time the Anglo-Saxons invented the bot. The advent of severe penalties caused pretrial detention to become more frequent and bail to become more important."[149]

The early American Colonies inherited the English system of bail but made it their own.[150] Pennsylvania took a significant step forward in guaranteeing bail in non-capital cases,[151] thereby limiting the authority of judges to act in a discriminatory fashion when deciding whether to issue bail. Indeed, during America's colonial era, access to bail appeared to be mostly fair.[152] After gaining its independence from Britain, the newly

144. *See* Carbone, *supra* note 29, at 524 ("Parliament sought not to liberalize bail practice, but to codify existing law in order to ensure greater certainty in its administration and to protect bailable prisoners from the abuses of the sheriffs."); SCHNACKE ET AL., *supra* note 12, at 3 ("Because of the broad discretion given to these sheriffs to hold persons pretrial, bail administration varied from county to county, and instances of abuse became more frequent.").

145. *See* Carbone, *supra* note 29, at 524; SCHNACKE ET AL., *supra* note 12, at 3.

146. SCHNACKE ET AL., *supra* note 12, at 3–4.

147. *See id.* at 4 ("[The Habeas Corpus Act of 1679] was only a minor hurdle for some of the stubborn and unruly judges of that time, who learned that the monetary amount of a bail bond could also be used to detain a defendant indefinitely.").

148. *See id.*

149. Carbone, *supra* note 29, at 529.

150. *See* SCHNACKE ET AL., *supra* note 12, at 4.

151. *See id*. at 4–5.

152. *See* SEIBLER & SNEAD, *supra* note 17, at 3 ("[R]ather than a mere *pro forma* act, bail was to

formed United States ratified the Constitution, including the Bill of Rights and the Eighth Amendment (prohibiting excessive bail).[153] Congress's inclusion of guarantees regarding equal access to bail in the Bill of Rights is strong evidence of bail's political importance at this time.[154] However, even after the implementation of these two measures, "arbitrary bail bond amounts" and "a growing number of defendants who were unable to pay [bail]" remained pervasive.[155] Unfortunately, rather than deriving more equitable guarantees regarding fair access to bail from the government, the private sector stepped in to fill the gap via bail bonds.[156]

The genesis of the commercial bail bonds industry represents perhaps the gravest departure from equity in America's system of bail. When a court sets bail, the defendant has three options: pay the bail, go to jail, or contract with a commercial bail company.[157] Even a brief stay in jail can have lasting consequences on a person's life—leaving a defendant in a particularly vulnerable situation where their bargaining power is diminished.[158] Indeed, by effectively privatizing cash bail, the presence of commercial bail companies undermines the purpose of cash bail: "Commercial bail companies select clients based on their potential for profit rather than concern for community safety."[159] This compounds the preexisting issue of inequitable treatment on the basis of the defendant's financial means.[160] The

be set at an amount judged to be sufficient to incentivize appearance at trial, without becoming excessive.").

153. *See* SCHNACKE ET AL., *supra* note 12, at 5; *id.*

154. *See* SEIBLER & SNEAD, *supra* note 17, at 3 (noting that the Eighth Amendment "passed with broad support and virtually no debate").

155. SCHNACKE ET AL., *supra* note 12, at 6.

156. *See id.*

157. *See* Fact Sheet, Allie Preston, Ctr. for Am. Progress, Profit Over People: Inside the Commercial Bail Bond Industry Fueling America's Cash Bail Systems (July 6, 2022).

158. *See id.* ("[R]emaining incarcerated pretrial can result in lifelong consequences for arrested individuals, their families, and their communities."); *id.* ("Bail agents take advantage of vulnerable clients, trapping them in predatory contracts with conditions that 'violate common notions of fairness and justice.'" (citing UCLA CRIM. JUST. REFORM CLINIC, THE DEVIL IN THE DETAILS: BAIL BOND CONTRACTS IN CALIFORNIA (2017))). *See generally* Bernstein, *supra* note 6.

159. Preston, *supra* note 157 ("Bail agents have complete discretion over who they contract with and tend to make their decisions based on one factor: the ability to make a profit."); *see also* Metzmeier, *supra* note 52, at 407 ("Unbound by any law, [bail bondsmen] set bail based on experience, gut instincts, and long-developed prejudices.").

160. *See* Preston, *supra* note 157 ("[P]eople with the financial means can pay for their release, while others remain incarcerated because they cannot afford the cost of cash bail. High cash bail amounts are regularly set for even nonviolent arrests, yet 80 percent of people involved with the criminal legal system are legally indigent.").

Supreme Court's decisions in *Stack* and *Carlson* represent a false start in fixing this problem. The cases' combined message seemed to guarantee that bail would not be imposed far in excess of what is required,[161] but the continuing disparities in pretrial incarceration based on wealth undermine their equitable value.[162]

B. Modern American Approaches

Arguably, the Manhattan Bail Project has had a more lasting legacy, and its parallels with modern reform efforts are quite clear. Under the Manhattan Bail Project's methodology, instead of setting bail at a dollar amount, the court would interview the defendant before deciding whether to recommend release or confinement.[163] The most obvious benefit of this system is that money plays no role.[164] However, simple logic would seem to dictate that, absent some form of pledge, the defendant would have no "skin in the game," and thus no incentive to appear for trial. Indeed, this is the fundamental notion underlying cash bail and its doctrinal ancestors.[165]

Yet, despite uprooting the very essence of cash bail, the Manhattan Bail Project was a success; under one percent of all defendants released pretrial failed to appear for trial.[166] But how could this be? If cash bail is meant to ensure that defendants appear for trial, then why did the abolition of cash bail not have adverse effects on the likelihood of a defendant to appear for trial? I propose two possible explanations. First, failing to appear for trial has its own negative consequences apart from losing bail money already paid to the court.[167] Second, the intervention of private bail companies in the administration of bail has substantially undermined its original purpose—the bail company, not the defendant, assumes the liability for failing to appear.[168]

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161. *See* SCHNACKE ET AL., *supra* note 12, at 9.
162. *See* Manzano, *supra* note 6.
163. *See* SCHNACKE ET AL., *supra* note 12, at 10.
164. *See id.*
165. *See* Hill, *supra* note 11.
166. *See* SCHNACKE ET AL., *supra* note 12, at 10.
167. *See Bail Jumping Laws: Failing to Make a Required Court Appearance*, JUSTIA, https://www.justia.com/criminal/bail-bonds/bail-jumping/ [https://perma.cc/U3J5-LZ7H] ("[A] defendant who fails to appear in court will continue to face their original charge, may forfeit bond, and may face a separate bail jumping charge.").
168. *See* Preston, *supra* note 157 ("In exchange for a nonrefundable premium—a fee typically

The Illinois Ten Percent Deposit Plan and the Federal Bail Reform Act of 1966 represent state and federal legislative manifestations of a rising public concern over bail reform.[169] They also present a clear warning of the negative effects of instituting progressive reforms without sufficient caution.[170] Indeed, "The 1984 Act was the culmination of nearly two decades of criticism of the perceived leniency of its predecessor, the 1966 Act."[171] This sway in public opinion shows that aggressive reform may lead to failure, real or perceived, and that failure may be magnified and weaponized by politicians seeking more votes, thus totally undoing hard-fought progress.[172]

In 2017, New Jersey implemented a new system of bail that relies in large part upon a public safety assessment (PSA).[173] The PSA is an algorithm that relies upon nine risk factors to determine whether to jail or release a defendant.[174] Despite the presence of the PSA, judges still retain discretion to "consider a number of factors not in the PSA, including a defendant's juvenile history, the weight of the evidence against the defendant, and the risk to the safety of the community."[175] New Jersey's approach has been largely successful, with crime rates and jail populations both decreasing.[176] Indeed, New Jersey appears to have struck a fine balance between granting fairer access to bail and maintaining public safety.

California implemented its own bail reform in 2020 as a response to the

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equal to 10 percent to 15 percent of a cash bail assignment—a commercial bail agent enters into an agreement with the court to pay an individual's full cash bail amounts if they fail to appear for their required court dates.").

169. *See* SCHNACKE ET AL., *supra* note 12, at 10–12; Carlucci, *supra* note 81, at 1214–15.

170. *See* Carlucci, *supra* note 81, at 1213–19.

171. *Id.* at 1218.

172. *See id.*; *see also* Brown, *supra* note 7, at 298 ("Since the Bail Reform Act of 1984 took effect, there has been a 430% increase in the number of individuals detained pretrial in the United States between 1970 and 2015.").

173. *Criminal Justice Reform*, *supra* note 86.

174. *See* Carlucci, *supra* note 81, at 1228, 1232 (explaining that the PSA "was developed through a survey of 750,000 cases from roughly 300 jurisdictions to determine the data points that best predict an accused's risk to public safety and likelihood of flight").

175. Rabner & Grant, *supra* note 94.

176. *See* N.J. DEP'T L. & PUB. SAFETY, DIV. OF STATE POLICE, UNIFORM CRIME REPORTING UNIT, CRIME TREND REPORT 22 (2018), https://www.nj.gov/njsp/ucr/pdf/current/20181019_crimetrend_2018.pdf [https://perma.cc/67QC-2AJA] (first page of PDF with chart labeled "State of New Jersey Department of Law and Public Safety Division of State Police Uniform Crime Reporting Unit"); *New Jersey*, VERA, https://trends.vera.org/state/NJ [https://perma.cc/YQ5J-7B2X] (updated Oct. 16, 2024, 11:16 AM) (discussing New Jersey's decline in jail population in years after implementing new bail policy).

spread of COVID-19 within crowded jails.[177] This was only designed to be a temporary fix to address the pandemic, and the state-wide mandate was lifted in June 2020.[178] However, several counties kept the reforms in place long after the state lifted the mandate.[179] As opposed to the progressive societal benefits that New Jersey has witnessed in the years since enacting its bail reform, California has experienced increased crime and public outcry.[180]

The failure of California's bail reform appears to lie in its oversimplicity. It mandated that "bail for all misdemeanor and felony offenses must be set at $0."[181] In a vain attempt to keep at least some dangerous individuals behind bars, the California Schedule ("the Schedule") set out thirteen exceptions.[182] These include persons charged with a "serious felony" or a "violent felony," contempt of court, intimidation of witnesses, spousal rape, and several others.[183] However, simplicity is not necessarily a hallmark of inadequacy or, as Occam's razor dictates, "plurality should not be posited without necessity."[184] Thus, to understand how the Schedule actually performed, we must delve into California's crime facts and statistics for the period when the Schedule was in effect.

A cursory glance of these figures reveals a terrible result. One study found that, out of 100 randomly selected individuals who the state released per the Schedule on zero bail, 78 were arrested again within the following 18 months.[185] In contrast, out of 100 randomly selected individuals who posted bail between 2018 and 2019, only 46 were arrested again in the following 18 months.[186] Arrests for violent felonies were also far more

177. *See* YOLO COUNTY DISTRICT ATTORNEY'S OFFICE, *supra* note 105.
178. *See id.*; Halon, *supra* note 105.
179. *See* Halon, *supra* note 105.
180. *See id.*
181. L.A. CNTY. SHERIFF'S DEP'T, COVID-19 STATEWIDE EMERGENCY BAIL SCHEDULE 1 (2020), https://lasd.org/pdf/Covid_Statewide_Emergency_Bail_Schedule_042920.pdf [https://perma.cc/4SRG-73EL].
182. *See id.*
183. *Id.*
184. Brian Duignan, *Occam's Razor*, BRITANNICA, https://www.britannica.com/topic/Occams-razor [https://perma.cc/PF2B-GDVM] (last updated Feb. 3, 2025).
185. *See* YOLO CNTY. DIST. ATT'YS OFF., YOLO COUNTY: POSTED BAIL VS ZERO BAIL ANALYSIS 3 (2023), https://yoloda.org/wp-content/uploads/2023/02/Zero-Bail-vs-Posted-Bail-Study-2023-FINAL.pdf [perma.cc/244R-VFVA].
186. *See id.*

prevalent under the Schedule, rising from 33% to 63%.[187] The total number of arrests incurred by the samples of 100 rose from 98 to a shocking 258.[188] Beyond these overwhelmingly negative statistics, the Schedule also allowed for some truly heinous failures that dramatically swayed public opinion away from bail reform—including the 2021 killing of Mary Kate Tibbitts.[189] Even giving California some decisional leeway due to the sudden emergence of the coronavirus pandemic, California's remedy is still woefully inadequate given the obvious negative ramifications that it would impose on public safety.

What truly pains the rational mind, however, is the decision of several counties within California to keep the act in effect even after California lifted the state-wide mandate.[190] These counties, including Yolo County, made the inexplicable assessment that the mandate was good policy. Yolo and other counties gambled with innocent lives, and far too many were lost.[191] It goes without saying that progress demands a fee, or as Charles Ketting once said, "[p]roblems are the price of progress."[192] It must be true, then, that there is a price beyond which progress, at least in this moment, is unaffordable. Yolo County and its sister counties overspent in this case.

C. The Illinois Act—Sink or Swim?

As the discussion of New Jersey and California illustrated, reformers must not rush headlong towards what they perceive as "easy" answers, first because such easy answers do not exist, and second because getting bail

187. *See id.*

188. *See id.*; *see also* Halon, *supra* note 105 ("[F]rankly it shocks the conscience to think that many new crimes were committed by the people released on $0 bail, and all of the new victims." (quoting Jeff Reisig, Yolo County District Attorney)).

189. *See* Stanton, *supra* note 112; *see also* Carlucci, *supra* note 81, at 1218–19 ("George H. W. Bush launched a critical ad campaign which told the story of Willie Horton . . . who was serving a life sentence without the possibility of parole for a brutal murder, was granted weekend furloughs, which allowed him to escape prison and rob, stab, and rape a couple. Against this social backdrop, the government passed legislation that overhauled the criminal justice system, including pretrial detention.").

190. *See* Halon, *supra* note 105.

191. *See id.* ("Of the 595 individuals released on $0 bail between 2020 and 2021 in Yolo County, 420—or 70.6%—were rearrested for new crimes, and 123—or 20%—were arrested for a violent crime such as murder, attempted murder, kidnapping, robbery, carjacking, or domestic violence.").

192. *Quotes*, FORBES, https://www.forbes.com/quotes/1583/ [perma.cc/YS6R-94H4] (quoting Charles F. Kettering).

reform wrong will inevitably come at the cost of innocent lives. When such high stakes are involved, the proper approach must embrace the precision-minded attitude of defusing a bomb, like New Jersey, rather than a headlong plunge, like California. So where does Illinois's Pretrial Fairness Act fall between these two poles?

An analysis of California's and New Jersey's bail reforms reflect the importance of thoroughness.[193] New Jersey's reform is thorough, and this thoroughness appears to represent the New Jersey legislature's appreciation for the fact that human beings are incredibly nuanced and complicated creatures, not capable of being cast into one category or another based solely on the severity of their most recent alleged criminal act. In contrast, the simplicity of California's reform either ignores or rejects the existence of this nuance by categorizing accused individuals based entirely upon their most recent act. This is a farce, and it only requires reference to the example of Mary Kate Tibbitts, whose killer the state released for a nonviolent crime, despite the presence of at least one violent felony on the killer's record.[194] For better or worse, humans are more than their most recent act, a fact that New Jersey embraces, and that California rejects.

Illinois's Pretrial Fairness Act certainly appears more thorough than California's reform,[195] but there are some considerable similarities. Significantly, both reforms begin with a categorical approach: Certain crimes are presumed eligible for release, while others are presumed ineligible.[196] This facet of California's statute has been its most criticized. Indeed, the categorical approach was indirectly responsible for the tragic slaying of Mary Kate Tibbitts.[197] In that case, the court released Tibbitts's killer "not on bail but on a simple promise to return to court several days later to face charges related to the auto theft."[198] Although, any rational person would have understood that—considering the killer's violent past—that promise would likely prove an empty one.

Under the Pretrial Fairness Act ("the Act"), a court may order pretrial

193. *See* Carlucci, *supra* note 81, at 1235–36.
194. *See* Stanton, *supra* note 112.
195. *See generally* LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, *supra* note 181.
196. *See id.* at 1–2; *see also* 725 ILL. COMP. STAT. 5/110-6.1 (2023).
197. *See* Stanton, *supra* note 112; John McGinness, *Senseless, Predictable Tragedy*, INSIDE SACRAMENTO (Oct. 2021), https://insidesacramento.com/senseless-predictable-tragedy/ [perma.cc/39FG-VG7T].
198. McGinness, *supra* note 197; *see also* Stanton, *supra* note 112.

detention of the defendant only if, among other things, the defendant is charged with a crime from a list of mostly forcible felonies.[199] By adopting the same categorical approach as California, the Act commits the same error in ignoring the fact that criminal defendants cannot be understood simply by reference to their most recent accusation. This categorical approach elucidates another related issue with the Act: In addition to channeling judicial discretion, the Act also *restricts* judicial discretion by denying judges the ability to detain an accused individual pretrial unless charged with a crime from a predetermined list.[200]

By allowing judges to maintain their discretion in *unrestricted* terms, New Jersey's reform does not make this mistake.[201] Indeed, New Jersey fully allows for and encourages judges to exercise their intuition and experience in making decisions regarding pretrial release.[202] Logically, however, this increased discretion presents a drawback: Different judges, acting in good faith, may come to different decisions on individual defendants. This is where the PSA comes into play by providing an objective guide for judges to rely on.[203] The PSA may serve to mitigate the possibility of a judge releasing or jailing a defendant because of the judge's own, likely subconscious, propensities.[204]

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199. *See* 725 ILL. COMP. STAT. 5/110-6.1 (2023) (examples of nonviolent felonies that would render a defendant eligible for pretrial detention include stalking and gunrunning); *Cash Bail Ends in Illinois Monday. Here's What You Need to Know*, *supra* note 116.

200. 725 ILL. COMP. STAT. 5/110-6.1 (2023) (noting how the statute does not provide judges with an avenue for detaining a defendant unless that defendant has been charged with a crime that is specifically enunciated in the statute).

201. *See* FAQ, Chief Justice Stuart Rabner & Glenn A. Grant, Admin. Dir. Of the Cts., N.J. Cts., Criminal Justice Reform Frequently Asked Questions (Apr. 2023), https://www.njcourts.gov/sites/default/files/forms/12058_cjr_faq_brochure.pdf [https://perma.cc/HZY8-5567].

202. *See* Carlucci, *supra* note 81, at 1236; Rabner & Grant, *supra* note 94 ("Under Criminal Justice Reform, judges assess the level of risk each defendant presents and impose conditions of release using an objective risk-assessment tool.").

203. *See* Rabner & Grant, *supra* note 94 ("The PSA looks at bias-free factors—such as the defendant's age, the current charge, pending charges, prior convictions, and the number of times a defendant missed a court date in the past—to measure the risk that a defendant might commit a crime or flee while on release."). *But see*, *Shedding Light on AI Bias with Real World Examples*, IBM (Oct. 16, 2023), https://www.ibm.com/think/topics/shedding-light-on-ai-bias-with-real-world-examples [https://perma.cc/7PMP-6XLA] (discussing AI bias or "algorithm bias," wherein some algorithms may "produce biased results that reflect and perpetuate human biases within a society, including historical and current social inequality").

204. In addition to race (among others), another bias is recency bias. For example, if the last three defendants a particular judge released on bail for assault went on to commit murder while released, the judge may be biased in ruling on the bail of the next defendant who committed assault. *See, e.g.*, *Why Do We Better Remember Items at the End of a List?*, THE DECISION LAB,

Admittedly, the implementation of a more thorough system of review costs money.[205] In New Jersey, this proved to be a legitimate concern, as the increased complexity of the Criminal Justice Reform demanded more court resources to operate[206] and, in 2019, New Jersey passed legislation to fund the Pretrial Services Program with state money.[207] While at first this may seem like New Jersey is bailing out a progressive reform that has proven to be a financial failure, it actually makes good financial sense for the state to ensure that the Pretrial Services program remains afloat.[208]

First, consider New Jersey's decrease in non-sentenced jail population between the Criminal Justice Reform's enactment in January 2017, and the latest figures available in December 2023. Across all of New Jersey, that number is down by 605 inmates, a decrease of 8.3%.[209] Further, the average daily cost of incarcerating an individual in 2019 was $107.85.[210] Thus, these numbers suggest that the Criminal Justice Reform is leading to decreased incarceration costs.[211] Second, New Jersey's Criminal Justice Reform

https://thedecisionlab.com/biases/recency-effect [https://perma.cc/BF3H-NG8A] ("The recency effect refers to our tendency to better remember and recall information presented to us most recently, compared to information we encountered earlier.").

205. *See* Carlucci, *supra* note 81, at 1243–44.

206. *See* GLENN A. GRANT, N.J. CTS., REPORT TO THE GOVERNOR AND LEGISLATURE 35–37 (2019), https://www.njcourts.gov/sites/default/files/cjrannualreport2019.pdf [https://perma.cc/XR3F-K72D]; *see also* CIVIC FED'N FOR THE ILL. SUP. CT. PRETRIAL PRACS. IMPLEMENTATION TASK FORCE, ELIMINATION OF CASH BAIL IN ILLINOIS: FINANCIAL IMPACT ANALYSIS 3 (2021), https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/ec87b403-6f59-485a-a78d-12caf1cf92f8/Financial%20Impact%20Eliminating%20Cash%20Bail%20Report.pdf [https://perma.cc/4ED9-5HGM] (noting that Illinois's "abolition of cash bail" will result in "revenue generated from bond processing fees being eliminated"); GLENN A. GRANT, N.J. CTS., ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE 46–47 (2021), https://www.njcourts.gov/sites/default/files/courts/criminal/criminal-justice-reform/cjr2021.pdf___[https://perma.cc/N7J4-7A6J] (citing electronic monitoring costs and per diem payments to judges conducting hearings, among other expenses).

207. *See* GRANT, N.J. CTS., REPORT TO THE GOVERNOR AND LEGISLATURE, *supra* note 206, at 35.

208. *See* Carlucci, *supra* note 81, at 1243–44 ("The increased economic costs of administering nonmonetary bail systems is more than made up for when by decreased expenditure on housing detained pretrial defendants.").

209. N.J. CTS., CRIMINAL JUSTICE REFORM STATISTICS: JAN. 1, 2023–DEC. 31, 2023, https://www.njcourts.gov/sites/default/files/courts/criminal/criminal-justice-reform/cjrreport2023.pdf [https://perma.cc/LRP3-U5A8].

210. *See* Annual Determination of Average Cost of Incarceration Fee (COIF), 86 Fed. Reg. 49060, Chart C (Sept. 21, 2021).

211. *See* Carlucci, *supra* note 81, at 1243–45 (explaining a more detailed breakdown of the financial ramifications of New Jersey's Criminal Justice Reform).

quickly led to drastically reduced crime rates.[212] In the first nine months of 2018, the statewide crime rate dropped by 16.9% (compared to the first nine months of 2017).[213] The financial impact of lower crime rates is less readily calculated than the financial impact of lower jail populations, although the two are substantially related. Clearly, less crime entails a lower burden on police, prosecutors, and the community. Most importantly, less crime means less victims of crime, and this alone is sufficient to justify the state's willingness to financially support the continuation of the Criminal Justice Reform.

Bail reforms, like New Jersey's Criminal Justice Reform, are costly.[214] They are complex and require substantial alteration of the status quo since the cash bail system has dominated American criminal procedure for hundreds of years. Above all else, this Note has shown that the twin aims of bail reform—increased public safety and fairer treatment of the accused—are not incompatible. New Jersey evaluates defendants from a holistic, data-driven perspective, which promotes fair treatment of the defendant while simultaneously reducing crime rates and jail populations. California views defendants strictly via the nature of their crime, reducing equitable treatment and increasing crime.

D. Recommendations

Illinois has already made the leap of ending cash bail. Therefore, it might as well go all out and do its reform the right way. As it stands, Illinois's Pretrial Fairness Act does not do enough to balance the interests of society and the criminally accused. Illinois should modify the Act in two ways. First, it should free up judicial discretion to consider pretrial detention for all defendants, regardless of whether their most recent accusation is for a prescribed, "forcible felony."[215] Second, Illinois should mandate the use of pretrial assessments as an objective tool for judges to rely on as part of a holistic determination of the dangers that the accused presents to society if released. Illinois already permits judges to use these assessments,[216]

212. *See* UNIFORM CRIME REPORTING UNIT, *supra* note 176.
213. *See id.*
214. *See* Carlucci, *supra* note 81, at 1243–44.
215. *See* Manzano, *supra* note 6.
216. *See* COALITION TO END MONEY BAIL, *supra* note 121, at 8.

demonstrating that the assessments already exist and suggesting that very little, if any, additional cost would be incurred in making the assessments mandatory.

CONCLUSION

Cash bail arose as a simple but ingenious way of handling a real problem: Individuals accused of criminal acts have strong incentives to run away before facing trial.[217] However rudimentary its origins may have been, cash bail steadily evolved alongside society's improving standards of fairness and equity for the accused. This is readily apparent and traceable through the English Bill of Rights, Colonial state constitutions, and the Eighth Amendment. Ruinously, that progress abated with the advent of commercial bail bonds companies, who interposed their own financial interests over society's interests in equitable treatment of the accused.[218]

Somewhat counterintuitively, the prevalence of commercial bail bonds has precipitated a heightened conversation about bail reform.[219] Indeed, the very thing that derailed cash bail's progress may ultimately prove to be its primary catalyst for progressive revision. But that vision of a better tomorrow rests on the success of new and aggressive state reforms. As discussions of California and New Jersey have shown, these reforms do not guarantee success. To the extent that any lesson may be drawn from their efforts on the frontline, Illinois must listen: for the safety of the community and justice to the accused alike are at stake.[220]

217. *See* SCHNACKE ET AL., *supra* note 12, at 2.
218. *See* Preston, *supra* note 157.
219. *See id.*
220. *See* Brown, *supra* note 7, at 315–21 (discussing the political weaponization of the tragedy of Darrell Brooks, who was released on cash bail and later drove through his car through a crowd, killing six people).