



REDEFINING JUSTICE:

Reporting on Survivors of Gender Based Violence and The Pretrial Fairness Act





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Introduction

Throughout the fight to end money bond and reduce pretrial jailing in Illinois, opponents weaponized survivors of gender based violence and **misinformation** to try and stop the passage and implementation of the **Pretrial Fairness Act**. These attacks ignored the ways in which wealth-based jailing has failed to keep survivors safe and erased the central role that survivors and anti-gender based violence advocates played in drafting and passing the Pretrial Fairness Act. The new law makes strides towards granting survivors more opportunities to be a part of the pretrial process. It will also help victims that are criminalized for their survival in being able to share the complex ways power and control played a role in their experience of interpersonal violence.

It is important that we collectively avoid playing a role in creating a false dichotomy of justice and healing. All too often, victims' advocates are pigeonholed as being "anti-criminal justice reform" and that reforms to the criminal legal system are simply "anti-victim". Survivors of violence have often been used as pawns to maintain a legal system that does not center them, their stories or their needs. These needs go far beyond jailing- they include housing, food, transportation, childcare, and even the ability to heal without harming the person who abused them through the criminal legal system.

Media and culture often perpetuate the myth of the "perfect victim," understood as people (most often, white women) who are passive, meek, and not engaging in any concerning or risky behavior. This myth has created an idea of who in our society is worthy of protection and care, and who can be blamed and traumatized for experiencing violence. It also hides the reality that survivors can be **criminalized for protecting themselves against abusers**. This dichotomy hurts BIPOC (Black, Indigenous, and other People of Color) survivors of violence in particular. We cannot view being a victim and being criminalized as mutually exclusive - they are often inextricably linked, with a cyclical impact of being harmed, not having support and services to meet needs and address trauma, and then further criminalization.



"Surveys of the female prison population in Illinois have shown that more than 90% of those incarcerated report a history of domestic or sexual violence, experiences that experts say put women at risk for incarceration as they struggle to live with the pain."

SOURCE

This victim blaming and the expectation of "perfect victims" also extends to the advocacy community for survivors of gender-based violence at large: when some groups support addressing harm through school or workplace accommodations, restorative processes, or resources to meet material needs like housing, transportation, childcare, etc. for survivors outside the criminal legal system, the groups have at times been/often are get castigated as being "not for victims." This is rooted in the belief that all survivors only want justice through the harshest punishment possible in the criminal legal system. The anti-gender based violence community's expertise has been routinely denied by opponents to reforms like the Pretrial Fairness Act, or are marginalized in news media in favor of uplifting sources more closely connected to law enforcement and prosecutors.

But the reality is, survivors are individuals from all identities and backgrounds with different needs and ideas of safety and justice, that often differ from what those in law enforcement want.

This guide aims to provide context to the intersections between gender-based violence (which includes domestic violence, sexual violence, and trafficking), and the impact of the Pretrial Fairness Act on survivors within the criminal legal system in Illinois. We hope this guide can be used to help media professionals:

- **Better understand and report on the complexities of gender-based violence, and what justice and safety mean for survivors individually and the community at large.**
- **Report accurately about gender-based violence and survivors' experiences, without contributing to the many myths and false narratives stemming from victim blaming, rape culture and systemic racism, to better inform communities about the realities of the criminal legal system and what real safety means for survivors.**
- **Join a conversation and reflection about the complexities survivors face and how it intersects with the criminal legal system, especially the pretrial phase here in Illinois.**

How Money Bond Perpetuates Injustice Against Survivors

Abolishing money bond is not just about finances.

Any time spent incarcerated pretrial can have adverse effects on people's lives. Within 72 hours of incarceration, people can lose their jobs, housing, and even custody of children. Pretrial incarceration puts people into the system regardless of the outcome of their cases, increasing the likelihood that they will face ongoing criminalization and surveillance.

The criminal legal system doesn't always create justice for survivors.

The criminal legal system does not always prioritize safety or healing, even in instances of gender-based violence. The role of law enforcement and states' attorneys is in their titles – they represent the law and the state, not the victim and their needs. As a result, victims and survivors are often silenced, misinterpreted, or misled by law enforcement and prosecutors focused on punitive responses, rather than a holistic approach to accountability and healing.

Pretrial incarceration and money bond destabilizes survivors' livelihoods.

Many people incarcerated are parents and caregivers, and any time spent incarcerated is disruptive to their relationships, routines, and life plans. For example, the incarceration of an abusive partner may impact a survivor's household income or child care needs, and cause additional harm. Additionally, many loved ones do not have access to large sums of money or charitable bail funds and often have to consider partaking in the shadow economy to get the money they need to free their loved ones. Oftentimes, it is mothers, grandmothers, partners or girlfriends having to pay bail for their loved ones inside.

The criminal legal system extracts funds from loved ones and charitable organizations.

This creates greater divestment from communities in need of resources for harm reduction, violence prevention, restorative justice, and healing. It is not uncommon for families to refinance their homes, sell cars or forego paying rent or utilities to pay a loved one's bond. When an individual is able to pay their own bond, they are often left in a financially precarious state, increasing the likelihood that they may turn to the shadow economy to survive. In 2020, more than \$120 million was taken from communities and families, including survivors, to pay for money bonds.. The majority of money bonds are not returned.

Incarceration is violent.

People who are incarcerated within jails are at increased rates of violence due to their gender, sexuality, disability. Nearly 90% of women incarcerated in prison are survivors of sexual violence. Women are also the fastest growing group of people being incarcerated. Incarcerated people are also at risk for retaliation from guards and other staff, as many as 1 in 30 people incarcerated in county jail experience sexual assault.

It is hard for people to actively collaborate on their defense while incarcerated.

This is especially true if they have a public defender who is managing an extensive caseload with limited support. People incarcerated pretrial are more likely to take plea deals, which can often reveal more about the misery of pretrial incarceration rather than the actual circumstances involved in their case. For criminalized survivors of domestic violence or trafficking, this can mean taking a plea deal to avoid more jail time and disruption to their lives immediately, rather than better defending themselves against their cases.

The Money Bond System:

Under the money bond system, when a person is arrested and charged with a criminal offense, they go through what is called a “bond hearing.” That hearing is used to determine what a person’s “bond” should be ahead of future hearings. Although “money bonds” are the most widely known form of bond, the term “bond” applies to all conditions of release placed on a person while they await trial. When a person is given an I-bond, or released on their own recognizance, they receive non-monetary conditions to abide by while they await trial, such as required regular check-ins with pretrial service officers, electronic monitoring, or an agreement to not leave the jurisdiction and return to court. Alternatively, judges will often set a dollar amount that a person must pay in order to be released from jail while awaiting trial, which is called a money bond. Bond hearings happen very quickly under the money-based system– decisions that have the potential to impact survivor safety and the accused’s access to freedom occur in just a few minutes. While judges have the ability to deny bond altogether, they will more often set a high money bond. This makes access to wealth the main factor determining who is released and who is caged while awaiting trial.

Under the Pretrial Fairness Act, a person’s release pretrial will be determined by a comprehensive hearing and evaluation, called a detention hearing, instead of being dictated by access to wealth (also known as the ability to pay a bond). These hearings will account for a person’s charges, past history, whether they pose a real and present threat to a person or community or show a high likelihood of flight.

How the Money Bond System Impacts Survivors of Gender-Based Violence

- Survivors of domestic violence can face pressure to pay bond for the people that harmed them and pose a threat to their safety.
- Survivors of gender-based violence are often not properly communicated with or protected in the pretrial criminal legal system.
 - ▶ All crime victims have rights under the [Rights of Crime Victims and Witnesses Act \(RCVWA\)](#), but those rights are not routinely followed.
 - ▶ For example, victims have a right to be notified by the state’s attorney’s office of court hearings and appearances, but these notices are not routinely given and can impact a victim’s safety during the pretrial period. Initial hearings were previously exempt from the required notification for court hearings and appearances, but now, under the Pretrial Fairness Act, all pretrial hearings require notification to victims from state’s attorneys.

- ▶ Victims also have a right to be protected from harassment or harm by the defendant during the duration of the legal process, but due to the hasty bond hearing process and unpredictable speed at which someone accused of harm can post a money bond, survivors have often found their lives actively threatened during the pretrial process.
- Bond hearings are quick and are not comprehensive enough to account for whether a person should be released pretrial.
 - ▶ These hearings happen in a matter of minutes. Victims and their safety are not sufficiently accounted for in the decision about whether to issue bond, or to jail someone pretrial or not.
- Bond hearings with charges of violence and victims usually lead a judge to issue special conditions of bond (SCOB) to prohibit contact with the victim and/or their family.
 - ▶ Special conditions of bond are not often reflective of what a victim needs to remain safe if a person is released pretrial, whereas protective orders (OPs, CNCOs, SNCOs) can be individualized for each survivor.
 - ▶ Protective orders are also accounted for in the sheriff's system of monitoring orders and enforcing orders, whereas SCOBs are not.

Pretrial Fairness Act Changes Related to Gender Based Violence:

- **Creates a Detention Eligibility Net & Mandates Release for Many**

The creation of a detention eligibility net (pretrial detention limited to only certain charges) is new under Illinois law, which currently allows for the pretrial jailing of people accused of any charge. There are no presumptions of detention under existing Illinois law or the Pretrial Fairness Act. (Pages 370-382.)

- ▶ **Mandatory Release for Most People:** The Pretrial Fairness Act makes sure that many arrested people will be given a chance to succeed on pretrial release before pretrial incarceration becomes an option for the state. Most arrested people will not be eligible for detention when they are first arrested, unless they are already on some form of court supervision (or have an existing case). This means that the majority of people who are arrested will go home after their first appearance in court; the court will not have the authority to detain them. These people may still be ordered to comply with conditions of release, as they can be now. (Some people will also be cited and released [not arrested], and some will be released by law enforcement without being sent to court. More details on those provisions are below.)
- ▶ **Specific Language:** All persons charged with an offense shall be eligible for pretrial release before conviction. Pretrial release may only be denied when a person is charged with an offense listed in Section 110-6.1 or when the defendant has a high likelihood of willful flight, and after the court has held a hearing under **Section 110-6.1**.
- ▶ **Evidence-Based Best Practices:** This “Detention Eligibility Net” approach is based on best practices from around the country as well as on the **Illinois Supreme Court Commission on Pretrial Practices**’ recommendations and the Illinois Constitution.
- ▶ **Detainable Charges for Safety Concerns:** A limited number of felonies (and a small number of misdemeanors) will be eligible for detention after a first arrest ***if*** the state proves that the arrested person poses a specific, real, and present threat to someone else. These charges are:
 - All non-probationable, forcible felonies (the most common are murder, attempted murder, armed robbery, home invasion, and vehicular hijacking);
 - All sex crimes (all forms of criminal sexual assault, criminal sexual abuse, child pornography related charges, and various charges relating to sexual misconduct with children and human trafficking);
 - All domestic violence charges (misdemeanor and felony domestic battery and violations of orders of protection); and
 - All non-probationable gun-related felonies (including all forms of discharge of a firearm, sale of firearms, and most forms of possession of a firearm).

- ▶ **Detainable Charges for Willful Flight Concerns:** If a prosecutor alleges that a person is highly likely to willfully flee prosecution, they may seek detention of someone charged with any class 3 felony or above. See below for more details on the “willful flight” standard.
- ▶ **Rigorous Hearing Process:** It’s important to remember that *detainable* does not mean *detained*. If the prosecutor wants to jail someone, the following steps occur:
 - The prosecutor must file a written petition stating what threat the person poses or why they believe the person is highly likely to intentionally evade prosecution, and formally request a detention hearing;
 - The judge may grant up to a 48 hour continuance for both sides to prepare for this hearing (24 hours for class 4 felonies and misdemeanors). The arrested person can be held or released during this time as decided by the judge; and The state must succeed at the detention hearing, and meet the standards for detention listed below.
- **Notifications**
 - ▶ Notifications to victim of hearings are required by the state’s attorneys office (SAO)
 - This was required through the Rights of Crime Victims and Witnesses Act, but is not regularly followed. The pretrial release statute mandates prosecutors notify victims of hearings, allowing prosecutors to better implement victim notification during pretrial decisions.
 - Citation: **(725 ILCS 5/110-6) (h)**
 - ▶ Victims must also be informed of a protective order (domestic violence order of protection, civil no-contact order, stalking no-contact order) at any of these hearings by SAO.
 - ▶ This is stronger language because while the Code of Criminal Procedure allows for protective orders at the bond hearings, this expands that notice to all court proceedings for the victim to access this remedy – not just bond hearings (now includes: initial appearance, detention hearing, change in conditions hearing, and status hearings).
 - ▶ The protective order should be able to be obtained from the same judge during that same hearing where it was requested.
 - ▶ Citation: **(725 ILCS 5/110-6) (m)(1)**
- **Notification of change to pretrial conditions**
 - ▶ In addition to the other notification requirements, the victim must be notified of any changes to pretrial conditions and hearings about pretrial conditions, like electronic monitoring changes, etc.
 - ▶ Citation: **(725 ILCS 5/110-5(a)(6) and (7))**

- **Enhanced process for calling victims as witnesses in detention hearings**
 - ▶ **Victims cannot be subpoenaed to testify in pretrial hearings unless the judge makes a finding with clear and convincing evidence that the defendant would be materially prejudiced if the victim/witness did not testify.**
 - ▶ **Previous law allowed for a victim/witness to be called to the stand without this justification, subject to judicial discretion.**
 - ▶ **The previous law did not have a requirement for the defendant and their counsel to make a motion to call the victim/witness, require the judge to apply a certain standard of evidence, nor did the judge need to make a finding on the record.**
 - ▶ **Citation: NEW 725 ILCS 5/110-6.1(f)(4)**
- **Victim participation in risk assessments**
 - ▶ **Under previous law, victim interviews are not allowed to be included in pretrial risk assessments to help determine if a person should be released pretrial.**
 - ▶ **The Pretrial Fairness Act now allows this, ensuring that victims can better participate in the decision-making process and have their voices heard with regards to their safety.**
 - ▶ **Citation: NEW 725 ILCS 5/110-5(d)**

Survivor Stories: The Impact of the Money Bond System

Bria's Choice to Survive

In 2019, Bria was living on the West Side of Chicago with her abusive partner and two year old son. The relationship with her partner had been volatile for some time, but she had avoided getting him arrested fearing that it would make his abuse worse. One night in October, he was intoxicated so she called the police to help remove him from the apartment. No one came. As he continued to violently attack her, she realized that if she didn't do something fast, she might not make it through the night. Had she not taken action, she and her child might not be here today.

Because she chose to survive, Bria was punished with a \$20,000 money bond that would leave her incarcerated in Cook County Jail while she awaited trial. Her time in jail would cause her to lose her home and employment.

A month into her incarceration, Bria learned that she was pregnant. The jail was no place to prepare to give birth. Every day, she was fed bologna. Although the jail was supposed to provide a special diet to support her pregnancy, oftentimes the vegetables were spoiled. As time passed, the fear and stress became insurmountable. As Bria put it: "[I] was going through so much, I can't even remember that time. I was so sick and not eating..it's a wonder my baby was born healthy."

Several more months would pass before a Sheriff's employee told her about the Chicago Community Bond Fund (CCBF). In November, CCBF paid her bond and Bria was discharged from Cook County Jail, but she was still not free. Even after paying for her freedom, Bria would be incarcerated in her home on electronic monitoring.

The severe restrictions of the Sheriff's program made it impossible for Bria to find work, go grocery shopping, pick her son up from school or even step outside for a breath of fresh air. Bria explains: "We are put on house arrest and made dependent on other people. The person you stay with is responsible for all of your bills." Bria's mother had to take on all of the expenses for three people – herself, Bria, and her grandchild – because Bria was made unable to work. When her mother's work schedule changed, she tried asking the judge for movement to pick her son up from school; although the judge granted it, he made clear that it was temporary. Bria recalls the judge saying: "Remember, you're in custody. You wouldn't be able to pick up your kids if you were in jail."

Bria would ultimately spend more than a year on electronic monitoring before her court case ended. It's taken time, but Bria is piecing her life back together. Today, she has her own apartment, custody of her kids, a job, and recently she saved enough money to buy her own car. Although her incarceration and time on electronic monitoring is over, it has had a lasting impact on her family.

Placed in Danger By the Courts

In 2018, the Cook County State's Attorneys Office charged a survivor's rapist with two counts of sexual assault. His bail for each of the counts was set at \$100,000 each, or \$200,000 total. He later posted \$20,000 (10% of the \$200,000 total) to get out and be on electronic monitoring.

While on electronic monitoring a few months later, he was accused of robbing and assaulting another woman. His bail was set for that case at \$80,000, and he would have needed \$8,000 to get out. Then COVID arrived.

The man's defense attorney filed a motion to get him released because of COVID concerns, in front of a new judge assigned to this case. This judge then reduced his bond to \$5,000, allowing him to bail out for \$500. This man later fled and went missing.

If we had the Pretrial Fairness Act in place sooner, this perpetrator would likely still be detained awaiting trial. He would have been held for up to 48 hours upon arrest. His offenses were detainable under the law, and there would have been a risk assessment conducted and proper database searches completed identifying his past sex offense convictions. Prosecutors would have filed a petition to detain him. Instead, the judge set bail arbitrarily and the perpetrator fled upon release. Our client wasn't given notification about his release and subsequent flight in time for her to plan for her safety. The current system left her in the dark. Under the new system, she would have been kept informed every step of the way. This change for survivors is long overdue.

Survivor-Centered Reporting Guidance

It is important to talk about victims of gender based violence in a manner that is rooted in acknowledgement and respect for human dignity. For those experiencing gender-based violence, autonomy is taken away through mental and physical anguish that can be furthered by the media and criminal legal system. By making intentional choices about what sources to include, what words/language to use, and what research and context to highlight, reporters can meaningfully provide accurate news that centers survivors and models compassion for all incarcerated people. When it comes to issues of public safety and criminal legal system reform, most often, quotes from opponents will ask in news stories or at press conferences, “But what about the victims?” It’s a narrative that is continually pushed – that victims of harm and people accused and/or those who have caused harm always have different interests when it comes to criminal legal system reform. And yet, the Pretrial Fairness Act was supported by most major anti-gender-based violence organizations across the state of Illinois.

Anti-gender based violence communities’ support of the Pretrial Fairness Act stands in stark contrast to many opponents’ insistence on pitting victim’s rights against those of the accused. While the idea that the survivors of violence want closure through the criminal punishment system may fit preconceived notions, it contradicts the wishes of many survivors. **A study by the Alliance for Safety and Justice found that 61 percent of crime victims support shorter prison sentences and more spending on prevention and rehabilitation over long prison sentences.**

Here are some common issues in journalism about gender-based violence and safety:

- Police and prosecutors are too often held up as the voice of victims. Police and prosecutors must abide by victims’ rights outlined in state law, but their obligation is to represent the government, not victims. Interrogate narratives and perceptions about what a survivor and community needs to achieve safety. What a survivor wants can often conflict with what prosecutors want for the survivor’s case. Good reporting on individual cases or the issue broadly should reflect this nuance, and make these distinctions clear.
- Be cognizant of how “victim” and “survivor” are used, and always look at how people with lived experience of violence and harm frame their own story, instead of labeling it for them. “Victim” also refers to a legal status, in which a person should be afforded rights in the criminal legal system through the Illinois Constitution and the Rights of Crime Victims and Witnesses Act.
- Reporters must avoid using language that passes implicit judgment or inherently demonizes segments of people who are directly impacted by the criminal legal system, both survivors and those that cause harm.

- Recognize how your narrative centers stories about crime, rather than public safety. Safety means something different for each survivor, and it may involve the court system (either civil protective orders, or pursuing a criminal case), but it may involve many things outside the criminal legal system: access to safe housing, economic support, child care, and more. Incarceration of a person who harmed them is not the only option for survivors seeking safety.

Critical Questions for Journalists

In addition to consulting experts on victims' rights, and working to understand the reality of the criminal legal system and how survivors are treated in the system, here are critical questions to ask yourself as you report on issues of public safety and criminal legal system reform when it comes the stories and experiences of survivors and victims:

Sources

1. If a source is representing a public agency or department, ask yourself:
 - a. What system(s) is my source trying to uphold?
 - b. How might this story further their agenda, unintentionally or intentionally? For example, consider how law enforcement often uses distorted or skewed "facts" to drive a punitive, tough on crime agenda.
2. Are the sources in this story representative of a wide range of perspectives from survivors, victim advocates, and/or victims' rights attorneys? Does this story confirm the purported "victims' rights versus criminal justice reform" paradigm, or does it adequately reflect the nuance and complexity of how our criminal legal system functions in response to survivors and impacted people?
3. *When Interviewing Directly Impacted People*
 - a. How does an impacted person describe their experience? For example, do they not label an experience specifically as domestic violence or sexual assault? Directly ask them how they want to label or describe their experience, and make clear a survivor's distinction and what the legal system (i.e. charges) calls it. For example, a survivor of sexual assault may call their case sexual assault, while prosecutors charge the case as a misdemeanor battery. Or, a survivor of domestic violence says she acted in self defense, while a prosecutor says it was "mutual combat."
 - b. How does your story understand an impacted person's full humanity and experience? For example, not defining or limiting an impacted person to the harm they've experienced, or their previous contact with the legal system, but as a person in their community who needs support and wants better for themselves like everyone else.

Providing Context

1. A quick glance at any newspaper makes clear that particularly sensational or seemingly egregious cases of gender-based violence make the headlines. **But, how does an individual incident align or not align with a public health understanding of the commonalities and intricacies that most often occur in gender-based violence?** For example, more than **80 percent of sexual assault survivors** know the person who harmed them, and yet it is more common for news media to amplify stories where the survivor does not know the person who harmed them. These stories create fears about serial rapists, “predators” in the community, etc., that are not rooted in evidence and research about sexual harm.

Interrogating Common Narratives

1. What victim-blaming tropes or stereotypes exist within my reporting? For example, does your story uphold the stereotype of a “perfect victim,” that a survivor of harm cannot have any “damaging” things in their background in order to be deemed “worthy” by our community and worthy of “protection” by the criminal legal system? What about aspects of a person’s past have anything to do with the harm they experienced?

Looking Forward

It is important to remember that reporting has the potential to not only reshape narratives but also contribute to the broader efforts of fostering a safer and more supportive environment for survivors. Efforts to improve media reporting on gender-based violence and the Pretrial Fairness Act must be multi-faceted. This includes ongoing collaboration between media professionals, advocacy organizations, policymakers, and survivors themselves. With the materials provided, advocacy organizations are always a resource not only for survivors but for the broader community. If you are interested in learning more, you can reach out to following organizations:

Apna Ghar help@apnaghar.org

CAASE info@caase.org

Illinois Coalition Against Domestic Violence policy@ilcadv.org

KAN-WIN info@kanwin.org

Mujeres Latinas En Accion mail@mujereslat.org

The Network apyron@the-network.org

YWCA McLean info@ywcamclean.org

Additional Resources & Glossary

1. [Rights of Crime Victims and Witnesses Act, 725 ILCS 120](#)
2. [From Obscuring the Truth: How Misinformation is Skewing the Conversation about Pretrial Justice](#), October 2022
3. [“Why the end of cash bail is good for Illinois survivors,”](#) Rockford Register-Star. (May 2021)
4. [“Letters: Crime victims need better protection in Cook County,”](#) Chicago Tribune. (March 2022)
5. [“Victim voices heard in new law ending cash bail,”](#) Daily Herald. (April 2022)
6. [Sen. Peters ‘SAFE-T Act’ Town Hall with Survivor Advocates](#) (March 2022)
7. [“When writing about crime victims, maybe check in with groups that help those victims everyday,”](#) Capitol Fax. (February 2021).
8. [Letters: \\$10k ride Metra board members took is an example of an important practice in the railroad industry,”](#) Chicago Tribune (August 2023)