

BRING OUR NEIGHBORS HOME



ACLU
Colorado

Family of
**Michael
Marshall**





Mickey Howard was jailed for five days on a \$10 bond because he could not pay the additional \$80 in fees. He was only released from jail because the Colorado Freedom Fund bought his freedom by paying his booking and bonding fees. Mr. Howard's case was dismissed entirely,

but he was left with over \$500 in pretrial services fees. In response to an ACLU lawsuit, Denver paid Mr. Howard a monetary settlement and ended the practice of charging booking, bond and GPS monitoring fees.

Cover photo: Elisabeth Epps embraces ACLU client Mickey Howard. Ms. Epps is the founder of Colorado Freedom Fund (CFF), the state's only non-profit bail fund. She is also ACLU of Colorado's Pretrial Justice Organizer. CFF paid \$90 to secure Mr. Howard's freedom. July 2018. © Denver Post, Joe Amon.

Bring Our Neighbors Home

Overview

Bring Our Neighbors Home is a multi-year, community driven campaign to increase pretrial liberty while working to end wealth-based detention and combat racism at every stage of the criminal legal system. People accused of crimes must be afforded the presumption of innocence, and whenever possible should remain free while resolving their legal cases. Money bond unjustly forces people to stay in jail solely because they can't afford to pay for their freedom. The presumption of innocence is only a theory unless it is put into practice. Bring Our Neighbors Home will help make that possible.

Why is pretrial freedom so important?

- 1. Family. Jobs. Housing.** When people are locked behind bars, families are torn apart. Even short jail stays can cost people housing, jobs and custody of children.
- 2. Health.** Most people jailed pretrial face health challenges like mental illness, physical ailments and substance abuse disorders. Many of our neighbors suffer behind bars and, far too often, are seriously injured or die in Colorado cages.
- 3. Fairness.** People held behind bars pretrial are more likely to be convicted, sentenced to jail time and receive harsher sentences than those who are able to purchase their freedom pretrial.

Our Neighbors' Stories



Michael Marshall was killed by jail deputies while held on a \$100 bond.

Mr. Marshall was homeless when he was arrested and jailed in Denver over a simple trespass ticket. While in jail he endured a psychiatric episode. Deputies held Mr. Marshall down until he aspirated on his own vomit. Mr. Marshall died days later. In 2017, Denver paid \$4.65 million to his family and agreed to substantial policy changes.



Jasmine Still spent 26 days in jail because she couldn't pay a \$55 fee.

Facing a mother's worst nightmare, Ms. Still plead guilty only to secure her release from jail and keep custody of her newborn. The ACLU sued on her behalf. In a 2018 settlement, El Paso County agreed to stop holding people for inability to pay fees and compensated Ms. Still and 183 other people who were jailed a total of 1,043 days due to poverty.



M. Reynolds was jailed for 15 days while waiting for a bond setting.

She was arrested in Mesa County in 2019 and jailed without bond on a non-violent felony (DV) warrant. While she was caged on the Boulder warrant for alleged property destruction, the court in Mesa County would not set her bond or expedite her transfer to Boulder. After two weeks, Ms. Reynolds appeared before a Boulder County judge, was immediately released on personal recognizance and, soon after, all charges were dismissed. Her jail stay has caused lasting financial hardship for her family.



L.B. was jailed overnight for being one hour late to court. In 2018, he was scheduled for trial in Denver on a municipal charge. Because of problems with the bus from Westminster, Mr. B arrived less than an hour late to court. The judge had already issued a warrant for his arrest for failure to appear and set \$1,000 bond – far more than Mr. B could afford. Colorado Freedom Fund paid his bond, but Denver took more than 24 hours to process him out, forcing Mr. B to spend the night in jail. After release, all charges against Mr. B were dropped.



Michael Bailey was jailed for 52 days without seeing a judge. He was held in Teller County in 2015 with no bond due to a years old misdemeanor (DV) warrant from Pueblo County. Once he was finally transferred to Pueblo, the judge released him on a PR bond and shortly thereafter, all charges were dismissed. While in jail, Mr. Bailey lost his job and two months pay. The ACLU sued and won a substantial settlement on his behalf.



In 2016 Irene Pruitt gave birth alone on the floor of a jail cell in 2016. She was charged with drug possession and caged in Alamosa County on \$1,000 bond that she could not afford to pay. Ms. Pruitt, who was eight months pregnant, was kept in a cell with no running water and a hole in the floor for a toilet. She was in pre-term labor for two days after arrest until delivering her baby alone on the concrete floor. A lawsuit against Alamosa County is pending.

Money Bond Myths

MYTH #1

Colorado jails are full of people convicted of crimes.

TRUTH

Most people caged in Colorado jails are legally innocent and are incarcerated only because they can't afford to pay money bond.

- More than half of people in Colorado jails have not been convicted of a crime.
- Most people in Colorado remain there only because they cannot purchase their freedom by paying money bond.
- This means that Coloradans with money are routinely set free pretrial while people without money are forced to stay in jail.

MYTH #2

Money bond ensures people return to court and keeps communities safe.

TRUTH

Money bond neither increases court appearance rates nor decreases crime.

- Nationwide research, including Colorado studies from 2013 and 2018, consistently shows that defendants released on PR bonds (without payment of money) are *as* likely or *more* likely to return to court and to remain arrest-free than people who pay money bond.
- A 2016 Colorado study showed that money does not help people return to court – both PR bonds and money bonds have the same failure to appear (FTA) rate (19%).
- In the same study, people released on PR were less likely to be charged with a new crime (13%) compared to people required to post money bond (16%).

MYTH #3

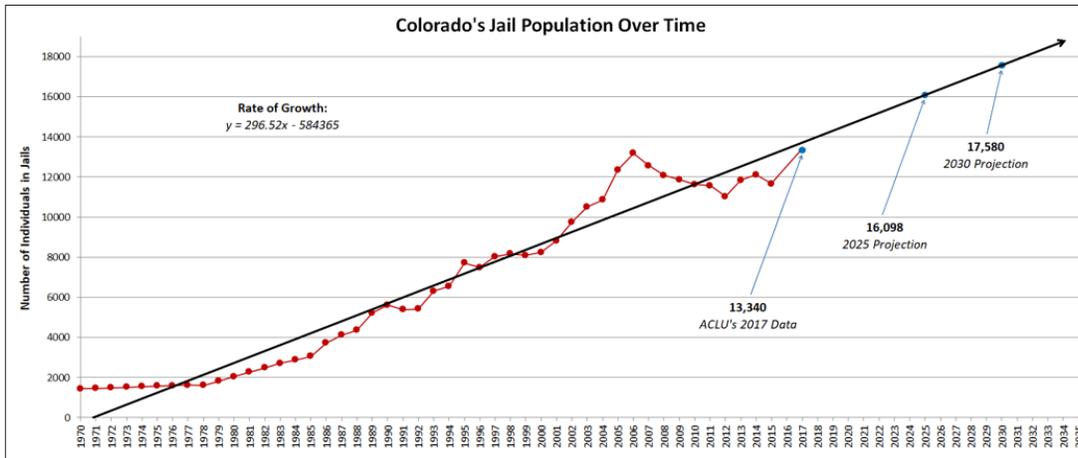
Money bond is constitutional, even when people can't afford to pay it.

TRUTH

Colorado's system of wealth-based pretrial detention is unconstitutional.

- Equal protection. The equal protection clause of the Constitution forbids the state from incarcerating people solely because of poverty. Yet, Colorado's pretrial system regularly grants freedom to people with money but incarcerates people without money. This wealth-based system violates equal protection.
- Due Process. The due process clause requires that the state provide appropriate process prior to depriving a person of liberty, including considering ability to pay when setting bond. Yet, Colorado judges routinely ignore an individual's financial status when setting bond, thereby violating due process.
- Innocence. People accused of a crime are constitutionally presumed innocent until proven guilty. When we lock up our neighbors upon mere accusation of a crime, that presumption of innocence is meaningless.

Colorado's Skyrocketing Jail Population



Colorado's jail population skyrocketed from 1,500 people in 1970 to over 13,000 in 2017.

- If current trends continue, Colorado's statewide jail population is expected to exceed 16,000 people by 2025 and 17,500 by 2030 — far beyond the capacity of our county jails.

Pretrial detainees are driving growth in Colorado's jail population.

- An estimated 95% of jail population growth is due to a rise in unconvicted people held in custody because they cannot afford to post money bond.
- More than 25% of Colorado's pretrial population are held on lower-level charges or simple failure to appear.

Who is held in jail pretrial?

- *People experiencing poverty and homelessness* – The poorest Coloradans are dramatically overrepresented in our jails because they can't pay even the smallest money bond. Example: 25% of people in Larimer County jail are homeless.
- *Disproportionately people of color* – Racial disparities persist at every stage of Colorado's criminal legal system and jails are no exception. Example: 10% of Denver residents are Black but 30% of the Denver jail population is Black.
- *People with disabilities* – It is estimated that people in jail are four times more likely to have disabilities than people in the general population, and that more than half of people in jail have psychiatric disabilities.

Pretrial incarceration is a huge financial burden on counties.

- The average daily cost to keep a person in jail is \$98.83. With over 6,500 pretrial defendants behind bars each day in Colorado, taxpayers spend at least \$23,400,000 per year to incarcerate people who simply can't pay bond.

The Path to Reform

3 BOLD GOALS OF OUR CAMPAIGN

- 1. Dramatically increase the number of people who are free pretrial**
95% of our neighbors should be home while their case is resolved.
- 2. End wealth-based pretrial incarceration**
No one should ever be held behind bars because of poverty.
- 3. Fight racism at every stage in the pretrial system**
From arrest to risk assessment to bond setting to bond revocations, we must acknowledge, study and eradicate racial disparities.

To achieve these goals, we must:

- 1. Increase public understanding of Colorado's pretrial system**
Coloradans should know who is in jail pretrial and why.
- 2. End wealth-based detention**
No one should be held in jail solely because they cannot afford to pay money bond, a fee or a fine.
- 3. Reduce arrests and increase summonses**
Whenever possible, an officer should avoid arresting someone and instead give them a summons to return to court.
- 4. Decriminalize low level offenses**
No one should be held in jail for low-level offenses that pose no danger to the public, such as sleeping on a park bench or having an open container. These offenses, if they remain on the books, should be handled as civil infractions.
- 5. Reduce revocations of bond**
Unless an individual clearly poses a substantial risk of violence to others or of flight from prosecution, they should remain free pretrial.
- 6. Ensure prompt pretrial release**
People who are arrested pretrial must have bond set within 48 hours and be released shortly after posting bond.
- 7. End profiteering in the pretrial system**
Governments and private businesses should not profit from pretrial detention or pretrial release.

8. Limit the role of pretrial services

Pretrial services should assist in helping people return to court through programs like court reminder and transportation assistance, rather than create a system of surveillance and control akin to probation or parole.

9. Challenge the use of discriminatory risk assessment tools (RATs).

RATs are algorithms that supposedly predict the likelihood that a person will miss court or commit a crime if released pretrial. Unfortunately, RATs are often no better at prediction than a coin toss. Worse, the algorithms are based on racially biased data related to arrests of over-policed black and brown communities. RATs also illegally penalize people with mental illness or substance abuse disorders.

10. Educate stakeholders on the dire need to transform our pretrial system.

This means educating the public, legislators, the judiciary, and prosecutors about the harms, illegality and frequency of pretrial detention. It also means educating stakeholders on the unrefuted, nationwide evidence that money bail is counterproductive and discriminatory; it does not serve the needs of the criminal legal system or the community.

2019 Pretrial Justice Legislative Successes

- 1. Ending money bond for low-level offenses.** HB19-1225 passed unanimously, and prohibits judges from setting money bond for low-level offenses.
- 2. Statewide court reminder.** SB19-036 establishes a statewide court reminder text program to help people attend court and avoid arrest warrants.
- 3. Jail data collection.** HB19-1297 requires all Colorado jails to report extensive data on their population every quarter, including the pretrial population, with a specific focus on collecting data on race, ethnicity and homelessness.
- 4. Prompt release from jail.** SB19-191 requires sheriffs to release people within four hours of posting bond, limits bond and kiosk fees, forbids pretrial detention for inability to pay fines or fees, prohibits using family-posted bond to pay fines or fees, and requires seven day per week GPS placement.

2020 Pretrial Justice Legislative Initiatives

1. **Prompt bond hearings.**

Legislation will require bond hearings within 48 hours of arrest, which is the time frame required by the Due Process Clause of the Constitution. Prompt bond hearings are essential to ensure presumptively innocent arrestees the opportunity to argue, through appointed counsel, for their pretrial freedom, and to avoid the harms of extended pretrial detention, including loss of jobs, housing and custody of children.

2. **FTA Grace Period.**

Legislation will provide defendants who miss court a three-day grace period to voluntarily return to court rather than have a warrant immediately issued for their arrest. Most people who miss court do so unintentionally. Right now, defendants risk an arrest warrant even if they are only a few minutes late to a court hearing, or due to emergencies like being in the hospital or car breaking down. The bill will increase predictably, fairness, and equal access to justice by bringing consistency to the extremely varied practices of judges across the state. It will also avoid the harms of incarceration for those people who quickly take personal responsibility to rectify their mistakes. Finally, the bill avoids unnecessary costs for sheriffs, law enforcement, and the judiciary, and preserves beds in overcrowded jails for individuals who pose a true public safety risk.

3. **End defendant-paid pretrial services.**

Legislation will prohibit charging people for pretrial services unless that individual is convicted and, at the time of the conviction, is not indigent. Presumptively innocent pretrial defendants currently bear enormous financial costs for their freedom, often being charged hundreds or thousands of dollars for ankle monitors or monitored sobriety and facing the possibility of pretrial detention for failure to pay. These costs follow people far past the resolution of their cases – even when cases is completely dismissed, defendants still must pay.

4. **No arrest for petty offenses.**

Legislation will prohibit law enforcement from arresting people for the lowest level offenses, such as sleeping on a park bench or having an open container of alcohol. Instead of being arrested, those individuals will be summonsed and released. This legislation expands the protections put in place last year by HB19-1225, which prohibits judges from setting money bond for the lowest level offenses.

95% OF JAIL
POPULATION
GROWTH IS DUE
TO A RISE IN
**UNCONVICTED
PEOPLE**

5. Decriminalize violation of bail bond conditions.

Colorado is one of only eight states that allows pretrial defendants to be charged with a new crime for violating any condition of bond (like missing a single court date or a single urinalysis test) or for being charged with any new crime (including traffic misdemeanors) while released on bond. Data shows that prosecutors use these “violation of bail bond charges” largely to leverage pleas in the underlying case. Legislation will decriminalize violation of bail bond conditions, while leaving in place the possibility of criminal charges for defendants who flee prosecution or fail to appear at hearings where witnesses or victims have appeared.

6. Limit use of monitored sobriety and ankle monitors.

Legislation will limit the offenses for which judges may require pretrial defendants to be subjected to monitored sobriety or ankle monitors, and will require judges to make individualized findings of need for these conditions. As the use of pretrial services increased in Colorado, so have orders of ankle monitors and monitored sobriety. Some judges and magistrates set these conditions routinely, without any individualized findings showing need or even usefulness of the onerous conditions. In one large county, 70% of the people released pretrial are on monitored sobriety. These expensive conditions set-up many defendants to fail pretrial without improving court appearance rates or decreasing arrest rates in the pretrial period.

7. Conduct bias study for pretrial risk assessment tools.

The vast majority of individuals arrested in Colorado will be assessed for pretrial release with a risk assessment tool (RAT). RATS have been widely criticized for their bias against people of color, people living in poverty and people with disabilities. Legislation will require any jurisdictions using RATs to provide robust data that will allow the state to study the RAT for bias in design and outcomes. The results of the study will be public and will allow legislators, advocates, public defenders, judges, criminal defendants and other actors within the criminal legal system to consider the proper role, if any, of RATs in making pretrial release decisions.

Acknowledgements

“Your neighbor is the man who needs you.”

- Elbert Hubbard

The American Civil Liberties Union of Colorado and Colorado Freedom Fund would like to thank all those who enabled us to launch the Bring Our Neighbors Home campaign. Thanks, first to the Family of Michael Marshall, who generously shared their memories of Michael, whose life was a light to his family and whose legacy inspires the fight for pretrial freedom.

The campaign is made possible through the power of community, collaboration with partner organizations and bipartisan support of committed legislators. We are grateful to those senators and representatives from both sides of the aisle who sponsored and continue to support critical pretrial legislation.

Finally, we thank the many brave neighbors who allowed us to share their personal, often painful experiences publicly. Thanks to Jasmine Still, M. Reynolds, L.B., Michael Bailey, and Irene Pruitt we were able to pull the curtain back on the problems of the pretrial system and highlight the need for reform. Your fortitude is the foundation of all future change.

This campaign is dedicated to the memory of Michael Marshall. May you rest in power.

ACLU

Colorado

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