

# Unpacking Willful Flight:

## *Roundtable Summary*





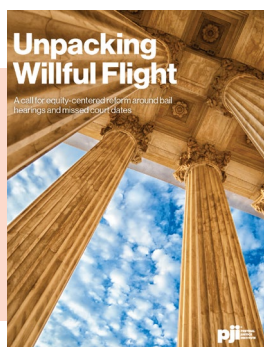
# Introduction

Most people who are charged with a crime come back to court to resolve their case. Even those who miss a court appointment at some point in the process usually return to see their case through to conclusion.

Willful flight—when someone intentionally flees prosecution—is a very rare event, and poses little threat to the integrity of the court process. If bail decisions focused on the likelihood that someone will actually flee, and if judicial officers released everyone who did not pose a specific risk of flight, the pretrial process would look very different.

PJI authored a report on the issue, [Unpacking Willful Flight: A Call for Equity-centered Reform around Bail Hearings and Missed Court Dates](#). Then we brought together a roundtable of community advocates, legal scholars and system stakeholders to explore what changes to law, culture and practice are required to adhere to a willful flight standard when considering pretrial detention and release conditions.

During this dynamic, 90-minute virtual roundtable, our panelists covered a range of issues, from Illinois' new statutory willful flight standard to the need to improve trust between courts and communities. This recap summarizes key themes from the discussion and offers some suggested next steps.



To read the **Unpacking Willful Flight** report and watch the roundtable, visit [pretrial.org](https://pretrial.org).

# Roundtable Speakers

Special thanks to our distinguished guests for sharing your professional expertise, your lived experiences, and your bold vision for pretrial justice!



**Lauryn Gouldin, Crandall Melvin Professor of Law, Syracuse University College of Law**

Lauryn teaches constitutional criminal procedure, evidence, constitutional law, privacy law, and criminal justice reform at the Syracuse University College of Law. Since 2016, she has written extensively on willful flight, including *Defining Flight Risk* in the *University of Chicago Law Review* (2018). She also contributed a chapter on new perspectives on nonappearance to the *Handbook on Pretrial Justice* (2021). In 2022, Syracuse University named her a Laura J. and L. Douglas Meredith Professor of Teaching Excellence.



**Meghan Guevara, Executive Partner, Pretrial Justice Institute**

Meghan is driven by a passion for building community wellness and dismantling structures of oppression. Over the past 17 years, she has worked on a broad range of national, state and local training and technical assistance initiatives that critically examine and improve the way public systems function—most recently helping local coalitions and jurisdictions develop antiracist solutions for pretrial policies and practices.



**Mike Milton, Founder & Executive Director, Freedom Community Center**

Mike is the founder of the Freedom Community Center, built on the radical Black faith tradition of nonviolence and civil rights. Prior to his work at FCC, Mike started The Bail Project's inaugural site in St. Louis, which led to three more sites. He also supported grassroots Black-led groups in founding their own bail funds. The Bail Project was one of the anchor organizations of #CloseTheWorkhouse, a successful abolitionist campaign to close a local jail in St. Louis.



**Sharone R. Mitchell, Jr., Cook County Public Defender**

Sharone began his legal career in the Law Office of the Cook County Public Defender, first working as a clerk in law school and later as an assistant public defender. Sharone previously served as the Director of the Illinois Justice Project (ILJP), a policy reform organization dedicated to reducing incarceration and improving community safety. ILJP helped lead the Coalition to End Money Bond's successful effort to outlaw wealth-based pretrial incarceration in Illinois.



**Nicole Zayas Manzano, Deputy Director of Policy, The Bail Project**

In her role at The Bail Project, Nicole devises and leads policy and systems change campaign strategies to eliminate cash bail and reduce pretrial incarceration, advance national pretrial reform strategic planning, and execute day-to-day operations of the policy department. Before joining The Bail Project, Nicole served as Advocacy and Policy Counsel for the ACLU's Campaign for Smart Justice.



# 01

## **We need to precisely define willful flight, including how we determine what is considered “willful,” and how those determinations are documented.**

While nonappearance and willful flight both result in an absence in court, the system’s anticipation and response to such issues requires differentiation. Most absences are due to real-life needs such as illness and job demands, and logistical issues like childcare, transportation and poor communication from the court. In spite of these issues, most people conscientiously try to comply with the court’s demands, even if it might risk their own health.

“I remember a Bail Project client who was admitted to the ER the night before his court hearing,” said Nicole Zayas Manzano of The Bail Project. “He was scheduled for life-saving surgery the next morning—and, even in that context, he reached out to his public defender and said, ‘What do I do?’ The public defender told him, ‘Look, you need to stay in the hospital and get your surgery. Just miss the appearance. I’ll go and explain the situation.’ The next day, the judge was extremely empathetic and did not issue a warrant. However, it was still written down as a failure to appear, and moving forward, that client had that mark against him.”



Most state and federal statutes require courts to use the least intrusive means to accomplish their objectives. That requires being precise about what your objectives are—and what the problems are.



— LAURYN GOULDIN

The lack of precise distinction between nonappearance and willful flight means that willful flight is not clearly identified or documented. “Most state and federal statutes require courts to use the least intrusive means to accomplish their objectives,” said legal scholar Lauryn Gouldin. “That requires being precise about what your objectives are—and what the problems are.”

In this case, when the problem is not about flight, but about legitimate barriers to returning to court, the system should respond accordingly—helping people to immediately reschedule their court dates, and ensuring that nonappearance does not count against them in the future.

“Issues like poverty and homelessness, childcare and elder care, these really matter in a person’s life—especially in a system like Cook County where people are having to appear dozens of times in an area that’s not really accessible to public transportation, and where you may have to deal with safety concerns,” said Cook County Public Defender, Sharone Mitchell. “Acknowledging that reality is very important when we’re talking about willful flight.”

## Taking the Next Step

- Review how failure to appear and flight are defined in your statute and court rule. What do your policies say about determining willfulness?
- Discuss a local definition of willful flight and how it would impact bail decision making. What do judicial officers need to make informed decisions about someone’s history and future likelihood of flight?
- Bring together stakeholders to examine how distinguishing between nonappearance and flight would affect record-keeping and data tracking.

# 02

## **Broadly defining risk of non-appearance has significant implications for people facing charges, their families, and their communities.**

Currently, the system's inability to discern types of absences means that people will be treated as a higher risk than they actually are. When people are considered "riskier" due to a broad FTA definition, it increases the likelihood that they will be subjected to pretrial detention or onerous conditions, such as drug testing or electronic monitoring, at future bail determinations.

Research on the usefulness of pretrial conditions to ensure appearance is inconclusive at best; the only proven practice is court reminders. However, the research on detention is clear: detention is dangerous, and it has long-term consequences.

"One of our first bails was for a young lady who was held in pretrial confinement for \$750. We posted that bail and took her home. When she went up to her door the key didn't work, so she came back to my car and asked if she could use my phone. She didn't even have a phone. When she called her landlord, he told her 'Unless you pay back the back rent you owe me since you've been incarcerated, I have put all of your things out and you can no longer live in this residence,'" said Mike Milton, founder of the Freedom Community Center in St. Louis. "One of the things we don't consider is the violence of the legal system—how the legal system is also one of the perpetrators of why people don't return to court."





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— MIKE MILTON

Even though the law makes a distinction between risk of flight and risk of committing a new crime, in the real world of bail decision making, the two are closely intertwined. Many people have a concern that if we start releasing more people because they don't pose a flight risk, those people could subsequently commit a crime while in the community.

"Sometimes we frame these pretrial decisions as if there's no cost-benefit analysis, just a benefit analysis—like if we incarcerate this person, then we avoid X harm," said Sharone Mitchell. "The reality is when we make a detention decision, we are harming the community."

"Addressing this issue is really about interrogating our values," added PJI's Meghan Guevara. "The question becomes: how many people do we want to deprive of their liberty to potentially prevent one high-profile crime in our community? How many people should be denied their constitutional rights to make that happen?"

In actuality, a willful flight standard promotes public safety, because people who are detained pretrial are more likely to commit a crime in the future, while the vast majority of people who remain in the community do so safely. If we, as community members, commit to supporting our neighbors facing charges, instead of locking them up, we will all be safer in the long run.

## Taking the Next Step

- Explore the impact of current bail decision making on your jail population. Who is being detained, and on what charges? Who is being released? Are they fleeing the jurisdiction or committing violent crimes?
- Explore the perspective of people facing charges. If they've missed court, why? What's been the impact of pretrial detention, conditions, or release on their lives and families? What contributes to their success?
- Explore the perspectives of crime survivors. Does the failure to appear standard contribute to their sense of safety and accountability?



# 03

## **We know how to get people back to court.**

While high-profile instances of flight might make for splashy headlines, they are exceedingly rare—and they distract us from the true needs and motives of people facing charges. “I’ve represented thousands of people, and not one of them fled to Morocco,” said Sharone Mitchell. “Most people aren’t running off with their passports to flee their class three drug charge. It’s just that some [real-life issue] did not allow for them to be there. Oftentimes, those situations are easily remedied.”

Some jurisdictions have experimented with ways to address absences *after* the fact—by having grace periods before issuing bench warrants, or offering evening and weekend court to quash outstanding warrants. Courts also showed remarkable flexibility during the pandemic, by switching to online hearings and increasing communications. The panelists suggested that a similar mindset could be brought upstream to the initial bail hearing.

The experience of The Bail Project shows that people do not require money or coercion to appear in court; they need support. By providing transportation, court reminders and connections to voluntary resources and services, their more than 27,000 clients have achieved a 91% appearance rate.



Courts need to understand that it's their responsibility to figure out why people might miss court and help them get there.



— NICOLE ZAYAS MANZANO

Those results are consistent regardless of the charge, emphasizes Mike Milton, who launched the inaugural Bail Project site in St. Louis. “In fact, the data shows that the more serious the case is, the more likely people are to return to court,” he says. “Most people just want to get it over with.”

While access to community-based services is an essential part of an equitable pretrial process, the panelists agreed that jurisdictions must decide what role they can—and should—play in reducing barriers to court appearance.

Some ideas include providing free rides or child care, flexible scheduling, or having shorter court sessions so that appearing in court for a few minutes doesn't require a full-day commitment. Also consider providing a customer service line where people can ask questions or request assistance.

Nicole Zayas Manzano hopes court reminders will become “more of a two-way conversation” so people can share urgent information like: “Hey, I'm in the ER. I have a hearing tomorrow. I don't know what to do,” she says, referring to her earlier story. “Courts need to understand that it's their responsibility to figure out why people might miss court and help them get there,” she says.

## Taking the Next Step

- Talk to people about getting to court. How many hours did it take? How much did it cost? Did they have to hire a babysitter or miss work? What was the most stressful part? What could have made it easier?
- Are your court reminders easy to read? In multiple languages? How do you know you have the right address? Do you offer text, phone and email reminders? Can people reply? How else can people ask questions?
- What flexibility or logistical support does your jurisdiction already provide? What else could you be doing to help more people—or different populations with unique needs—get to court safely?



# 04

## **Shifting to a willful flight standard will require a new perspective and approach.**

Equity requires recognizing that systemic inequalities exist, and that by dismantling the structures that allow for inequality, people have a greater opportunity to thrive. As shown throughout this discussion, much of court appearance relies on overcoming systemic barriers. The current bail process is also a systemic barrier itself, since bail decision making is grounded in a person's history with the criminal legal system. The increased likelihood that a person of color will have perceived risk factors means they will have less access to the presumption of innocence and the default to pretrial liberty.

Pretrial risk assessment instruments (RAIs) are one factor that both perpetuate the failure-to-appear standard and have the potential for racial bias. These tools are not designed to predict willful flight, as it's simply too rare an event to predict with accuracy.

"I'm cynical about risk assessment tools, in part, because they just try to predict any future non-appearance," said Lauryn Gouldin. "Instead of trying to predict and punish failure, why don't we try to predict what supportive interventions will help people show up to court, then reorient the system to become more flexible—adapting to people's needs and focusing on their success?"



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Risk assessments are just one symptom of a broader issue, though, of how we define “risk” and how broad of a net we cast when deciding whether to release someone, and on what conditions. Whether we trust people—and which people we trust—to remain safely in the community requires us to explore our values and our biases, and the information we weigh when making decisions.

Applying a willful flight standard—and applying it equitably—means we first have to challenge and change our approach to bail decisions, then develop a new set of tools to support that approach.

“We in the pretrial field often fall into the trap of trying to make things better, and then creating new policies that still have racist impact,” said Meghan Guevara. “There is the possibility that could happen with a willful flight standard as well; so we need to anticipate this—commit to figuring out up front how to mitigate racist or inequitable outcomes.”

## Taking the Next Step

**These are big questions—and part of a long equity journey—but they are fundamental to how bail decisions are made, and how others judge those decisions in public forums and the media.**

- Explore your personal and institutional beliefs on pretrial freedom. What factors influence your perceptions of who is deserving of release or requires correctional control? Do you believe jurisdictions have a responsibility to help people get to court?
- How many times must people appear in court to resolve their cases? If some are unnecessary, question what those appearances may be serving as a proxy for: compliance? obedience? remorse?
- What would it take to shift your court culture to trust and support vs. control and punishment? What changes do courts need to make to earn the trust of people facing charges and the community? (Ask them.)



## The Conversation Continues...

[Unpacking Willful Flight](#) was just the beginning of a broader and much needed conversation in the field. Our team has been energized by the positive reception we've received for the report—and by many things that have transpired since the [roundtable](#), including exciting news out of Illinois and ongoing conversations with colleagues across the country.

**July 18, 2023, was a historic day for bail reform.** The Illinois Supreme Court issued a ruling in *Rowe v. Raoul* that allowed the Pretrial Fairness Act to go into effect in September. This new law includes the standard that willful flight is “intentional conduct with a purpose to thwart the judicial process to avoid prosecution.” The law further states that “isolated instances of nonappearance in court alone are not evidence of the risk of willful flight. Reoccurrence and patterns of intentional conduct to evade prosecution, along with any affirmative steps to communicate or remedy any such missed court date, may be considered as factors in assessing future intent to evade prosecution.”

People from several states have also reached out to us about how a willful flight standard might fit in their legal framework—and we learned of a recent precedent-setting case in Washington State. In [State v. Gelinias](#) (15 Wn. App. 2d 484, 478 P.3d 638 (2020)), the Court of Appeals found that a court may not mandate physical court appearance as a condition of release—and consequently issue a warrant for failure to appear—when the hearing is not deemed “necessary” or the person’s appearance is not necessary for the case to make progress. This begs a broader question about when, why, and how often we require people to appear in court, and where we can eliminate the potential for nonappearance altogether.

Research regarding nonappearance has also been proliferating in recent months. A new report from the Prison Policy Initiative (PPI), with help from the National Conference of State Legislatures, has found on balance, state [responses to failure to appear are focused on punishment, not improving appearance](#). Forty-one states impose additional penalties for FTA, including 20 states allowing jail or prison time, 17 jurisdictions (including D.C.) allowing fines and fees, and 4 states imposing a strict liability standard for FTA.

Though the PPI study shows there’s still a lot of work to be done, many communities are implementing solutions, including jurisdictions working with the National Center for State Courts and the Pew Charitable Trusts on their [Appearance Rates project](#). Flexible and non-punitive approaches to get people back to court are an essential accompaniment to a willful flight standard.

All of us at PJI are excited to see how recent policy changes play out in terms of local decision making—and hopeful that systems will use this as an opportunity both to live up to constitutional standards and to remove barriers to safety and freedom for all.

## Let’s connect!

If you’re doing local work on willful flight—or would like support from PJI—we’d love to hear from you. Contact Meghan Guevara at [meghan@pretrial.org](mailto:meghan@pretrial.org).



*Unpacking Willful Flight* is the first in a series of 2023 reports and roundtables grounded in PJI’s [Local Antiracist Pretrial Justice](#) framework. To learn more, visit [pretrial.org](https://pretrial.org).