

BONDING OUT

Illinois has eliminated cash bail. Could your state be next? A Q&A with Jim Kaitschuk, executive director of the Illinois State Sheriffs' Association

By Ian P. Murphy



Under a landmark ruling issued in July, Illinois has become the first state in the United States to abolish cash bail. The Illinois Supreme Court upheld the Illinois Pretrial Fairness Act, which abolishes cash bail and specifies the procedures judges must use to impose pretrial detention, placing the burden on government to prove any person should be detained.

Law enforcement officials filed multiple lawsuits against the act, claiming that abolishing cash bail violates the right to bail, the rights of crime victims, and the separation of powers under Illinois law. But the Illinois Supreme Court rejected these arguments, holding that

bail doesn't require the exchange of money and there are other ways to ensure people return to court. Pursuant to the ruling, the law went into effect Sept. 18, 2023.

While it's still too soon to know the effects the shift will have on the preexisting bail arrangements working their way through the courts, more people will be released pretrial. *Sheriff & Deputy* asked Jim Kaitschuk, executive director of the Illinois State Sheriffs' Association, what the criminal justice landscape in Illinois might look like now that cash bail is no longer an option—and what sheriffs in other states might do if similar legislation is proposed.



Sheriff & Deputy: What did the Illinois ruling say?

Kaitschuk: The Illinois Supreme Court said the state constitution doesn't specifically outline monetary surety, [which has] always been interpreted to mean cash. In the court's opinion, surety could be a variety of things—it could be electronic monitoring or a combination of different things that hold people accountable and make sure they come back to court.

[Before the ruling,] if I arrested somebody for driving while their license was revoked and took them to jail, they would have the ability to cash bond out immediately. They would pay the fine if they had

the money, and they would be processed, booked, and released, unless they had a prior criminal history, were a specific threat to someone, or were a flight risk.

Today, there would be no cash involved. In other words, we're eliminating what I consider a user-pay system and going to a taxpayer-funded system, so your taxes and my taxes are going to go up to pay for this. COVID-19 spurred a lot of this because we weren't looking to hold people if we didn't have a reason to hold them.

Sheriff & Deputy: What are the arguments against the elimination of cash bail?

Kaitschuk: The reason for cash bail is that whether people are giving you the money or you're using money out of your own pocket, it helps ensure your attendance in court because you don't want to lose that money. If you're found not guilty or the case drops, the only amount of money you're going to lose is the 10% that automatically goes to the circuit clerk to help fund the system. Outside of that, all of that money would come back to you or be used to pay your attorney fees.

One of the challenges moving forward, I think, is that if I'm a defense attorney, am I likely to pick up cases for people I know don't have any money? If they don't have any bond money, can I make sure that I'm going to get paid? Or am I solely going to be relied upon as a public defender?

“One of the concerns is that if low-level drug offenders are no longer going to be held in custody, we may not be able to provide them access to the type of treatment they may need.”

*—Jim Kaitschuk, Executive Director,
Illinois State Sheriffs' Association*

Sheriff & Deputy: How did this reform come about? Isn't one of the pro-bail reform arguments that jail time disrupts lives, makes it difficult to earn a living, and has ripple effects later?

Kaitschuk: The impetus behind this is the belief that people were continuing to serve time in jail—not prison, just jail—because they weren't able to pay the money to get themselves out. The solution to that is don't commit the crime and don't get arrested. There has to be some level of consequence.

The example our governor gave is the mom who stole diapers and served six months in jail because she couldn't pay the bond. That would never happen—she would have timed out. Illinois has a Bond Reduction Act in place that came into effect in 2017, so for every day you sit in jail for a Category B offense, it's \$30. So,

she would have, at maximum, had to serve five days and would have paid the bond.

Sheriffs and state's attorneys meet on a regular basis to talk about the people who are sitting in their jails. Then they go and talk to the judge and say, "Hey, Jim's in jail. He's been here for three days, and we arrested him for simple possession of meth. We don't need him in the jail. Can we go ahead and release him?"

Sheriff & Deputy: What changes will the elimination of cash bail bring to law enforcement and criminal justice?

Kaitschuk: What's going to happen is we're not going to be able to process for detention. It's going to be more difficult because nobody has any skin in the game. How are we going to force people to come back to court? It's kind of like going to a conference: I'm much more likely to go if I put \$200 down versus signing up without paying any money.

I think we're going to be trying to find more people. We will arrest them and take them to the jail, but the state's attorney's office is going to have to make a decision immediately. Are they going to be held until they get a detention hearing, or are we going to provide them with a notice to appear? It's a risk to law enforcement to arrest and

physically place people in handcuffs to take them to jail; then, they only get the opportunity to coordinate the arrestee coming back. I don't want to put our folks at more risk.

Sheriff & Deputy: What effect will the elimination of cash bail have on the jails?

Kaitschuk: I think what we're going to see is a reduction in the population in our jails right out of the gate. But then I think it will climb because you will have people who will re-offend at that offense level or higher, and the state's attorneys and judges will be more likely to hold them. I'm fearful that will mean an increased jail population at the end of the day—not a decrease.

Sheriff & Deputy: What about the law's impact on funding and budgeting?

Kaitschuk: The state did not provide funding to help support this. Our local court systems are almost exclusively funded by local revenues and local taxes. So, they will have to pick up the slack for the decrease of dollars that are available here. The other challenge with no longer getting monetary bail is restitution—money that goes back to the victims of the crime.



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Taking away additional dollars without a new funding stream is going to have an effect on overall county revenue, which does have the potential to affect sheriff's office funding. Smaller counties that have limited revenue sources are probably going to be more significantly impacted. [Courts] probably represent about the same percentage of either one's budget, but the impact a smaller county feels is much more significant because they don't have anything to help make up the differences.

Sheriff & Deputy: Are other states attempting to eliminate cash bail?

Kaitschuk: New Jersey partially eliminated cash bail but did not eliminate it for more serious crimes. It's similar to Illinois from the standpoint that we won't be taking low-level offenders into detention. They will arrest and process inmates, but then they'll be released with a court date, whereas if you committed something like a forcible felony, there would still be the potential of a cash bond.

New York tried this and immediately found that it wasn't working and made some modifications to put cash bail—at least to some degree—back in the criminal justice system. The more progressive the state is, the more they look at [proposals like this].

While low-level drug offenses may be regarded as a victimless crime, I would argue that they're not victimless because the person who is taking the drug is a victim. I also think that drug use breeds other crimes—particularly burglaries or theft. They may not necessarily commit a violent crime, but there is an impact on others and in the community they live in.

Sheriff & Deputy: What other impacts might the elimination of cash bail have?

Kaitschuk: Good, bad, or otherwise, we don't know what we don't know. This is going to have to roll out, and we'll try to address it where significant modifications need to occur. And that's at the approval of the Illinois General Assembly, which passed this law despite our objections.

I'm not going to tell you that there were not people who didn't have funds for low-level crimes held in jail longer than they otherwise might have been, but I don't think the problem has existed recently. There have been changes made like the Bail Reduction Act, and sheriffs and state's attorneys are doing a really good job of assessing the folks who are in their custody.

I don't think it's any secret that jails have become the *de facto* mental health and rehabilitation facilities for those who are dependent upon substances. One of the concerns we have as an organization is that if low-level drug offenders are no longer going to be held in custody, we may not be able to provide them access to the type of treatment they may need. I don't know how we will get that window



of opportunity to help those folks and try to get them on a path while they're in the jail and after they leave.

I'm concerned that we may see fewer people seeking and getting treatment as a result of not being in our jails. We were never intended to be treatment facilities, but the last thing we want to have to do is to rearrest people that we otherwise could be helping and get them to the treatment they need to avoid the criminal justice system and get their lives back together.

Sheriff & Deputy: What should sheriffs do to present an argument against this sort of reform?

Kaitschuk: We're the first state in the country to go all-in, so if I'm in another state, I would take a look at Illinois and ask what's going wrong as the law takes effect. Those would be the points that I would make with members of the general assembly.

Start researching and tracking the number of people who come into custody for low-level offenses now. Have you been successful in getting them to appropriate treatment programs that reduce recidivism? Moving forward, [Illinois sheriffs] will need to track their success in getting people to show up for their court dates. Are you issuing significantly more warrants? Is "the stick" enough to be able to get people to come back?

We get into law enforcement for the purpose of helping our communities, and that doesn't just mean throwing people in jail. We certainly don't want to rearrest the same person 30 times. If we can get them help, we'd like to be able to do that. Sheriffs' offices are a much more comprehensive system than ever before, and I'm fearful that the elimination of cash bail has taken away one of the abilities for us to be successful in keeping people out of jail. 🌟

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