



## E10S3 Where the COVID-19 Pandemic Might Finally Ignite Change in the Bail Bonds System

When jails across the country began releasing thousands of people amid the COVID-19 outbreak earlier this year, and mass demonstrations against police brutality brought millions out of their homes, criminal reform advocates wondered if they'd finally see significant and lasting reform. Journalist Renata Sago reports on two Florida jails that are having very different responses to the possibility of change

A PODCAST BY

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# The Story

The danger COVID-19 presents for incarcerated individuals has brought pretrial detention to the forefront



Anthony Swain poses for a portrait outside his home. Photo: Maria Alejandra Cardona

**“Now inmates are sending letters and everything up under the door to our unit, letting us know we need to be careful because inmates next door have COVID-19 and they’re not segregated or moving the individuals out. One inmate wind up turning into 10 inmates, 10 inmates wound up turning into 12 inmates, and now we have a pandemic going on that’s right next door to our unit.”**

**-Anthony Swain**

One of the unexpected consequences of the COVID-19 pandemic has been increased scrutiny of the pre-trial detention system, which keeps nearly half a million Americans who are presumed innocent in custody every day. The pandemic has motivated judges, jails and police to change their methodology in some cases to get people out of harm’s way as they await trial.

Anthony Swain was approaching his fourth year in custody as he awaited trial at the Metro West Detention Center in Miami when the pandemic hit. Soon, inmates in the next unit began to contract COVID-19 and he worried for his safety. Swain, who is paralyzed from the waist down, was among those especially vulnerable in a facility that advocates called a “petri dish for viral infection.” A federal court refused to take action on releasing inmates there, and soon Anthony had contracted the coronavirus. He was only released after the group Dream Defenders partnered with a public defender advocacy organization called Zealous to fundraise for his bail. But that required an extraordinary effort and thousands of donors to achieve. Critics say it’s unfair that only those who have the money to pay their way out of jail are able to return home.

In Broward County, Florida, Dwayne Simon also waited in detention for his case to be heard, and his health problems put him at higher risk. But because of the nature of the risk assessment tool that is used to evaluate pre-trial release, as well as the serious nature of his charges, he remains in jail, where he prays for cases of other incarcerated people.

# The Mission

Find equitable alternatives to pretrial detention and money bail



Marq Mitchell poses for a portrait outside the Broward Jail Center. Marq constantly works from his car to provide support to those who leave the system with resources available at hand. Photo: Maria Alejandra Cardona

**“We are operating completely at the mercy of (the jails). They change the schedule. They’ll cancel visitations. They even said our account was fraudulent because of the number of transactions on our account and shut the account down.”**

**-Marq Mitchell, Chainless Change**

While the cash bail system has been widely criticized as unfair, the quest for equitable alternatives has also been fraught with potential inequities. Risk assessment software, which takes factors such as previous convictions into account, tends to reinforce the same racial disparities found inside of jails and prisons. Critics say that when people of color are released instead of being made to wait for court dates in jail, they are often subject to a higher level of supervision. They may also be more likely to come into contact with law enforcement as they await trial, or find it more difficult to find transportation to hearings, causing them to miss court dates and face penalties.

The mission is to find alternatives to money bail that are equitable to all communities, and do not reinforce the injustices present in the current system. But realizing that mission is complex, given the history it works against and the way those disparities are embedded in the logic of courts, policing and jails.

But advocates say that a shock to the system can result in positive, even surprising side-effects, a phenomenon that we’ve witnessed during the COVID-19 pandemic.

# The Strategy

With community support, common-sense protocols and preventative investments, more people can be kept out of jails



**“The alternatives need to be thought about, about complete reorientation and reinvestment of resources in our society, right? We need investment in housing, right? You need mental health care services, healthcare services, childcare, right. Jobs. If we look at what are the issues that people need assistance with, you know, none of these are gonna be solved with incarceration.”**

**-Pilar Weiss, National Bail Fund Network**

Ending money bail means finding a better replacement that is equitable, provides people with the resources they need to avoid incarceration and manage issues related to addiction, domestic relationships and mental health.

## **Fewer Arrests, More Citations**

In the state of New Jersey, which ended money bail in 2017, police now let 70 percent of those eligible for arrest go with a citation. Alexander Shalom of the ACLU says that's partly because police believed arrests to be a deterrent to crime, but when they knew people would immediately be released without bail, the process no longer seemed worth the effort. Shalom said that the state was successful in getting rid of money bail because of a convergence of agreement among state officials. “Other states can benefit by looking at the principles that animated the big picture: racial justice had to be top of mind, along with liberty. No one could be incarcerated without due process first.”

## **Engage the Community**

The concept of Participatory Justice, which originated in Santa Clara, California, is a community-organizing model that rallies families and community allies impacted by incarceration to collaborate with public defenders. Silicon Valley De-Bug offers trainings on participatory defense both to organizations and defense attorneys. De-Bug organizers come to every felony hearing and have relatives and friends fill out a form offering information about the defendant, as well as offers of housing or other support that can help convince the judge that pre-trial detention is not necessary.

## **Practical Measures**

Finally, Meghan Guevara of the Pretrial Justice Institute, says that common-sense practices, like sending out court reminders or creating a buddy-system to provide rides to court, can play a major role in ensuring that people don't miss their court dates and therefore are successful in making it past the hurdles of pretrial supervision.

Anthony Swain's ankle bracelet keeps him confined to his home most days. Photo: Maria Alejandra Cardona



# Resources

Silicon Valley De-Bug offers trainings in participatory defense, both for community organization and defense attorneys:

<https://www.participatorydefense.org/trainings>

To learn more about New Jersey's successful bid to end money bail, and the system that replaced it, visit the NJ chapter of the ACLU:

<https://rb.gv/rdkbge>

For more information on the Pretrial Justice Institute, and the diversion strategies that can be used to keep people out of courts and jails:

<https://www.pretrial.org/get-involved/learn-more/how-to-fix-pretrial-justice/>

For more on the Dream Defenders and their Free the Block project to end money bail and pre-trial detention, visit:

<https://dreamdefenders.org/projects/free-the-block/>

And to sign their petition to end money bail in Miami:

[https://secure.everyaction.com/el1wleCteEiir1WbcWm\\_mg2](https://secure.everyaction.com/el1wleCteEiir1WbcWm_mg2)

Anthony Swain outside his home, where he is currently on house arrest. His home in Miami, FL., is being renovated to adjust to his disability. Photo: Maria Alejandra Cardona



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