

There is no one right way to start a bail fund. For decades, bail funds have taken on different forms as communities come together to bring people back to their communities and restore their ability to fight their cases from places of freedom. More recently, bail funds in some places have taken on dual functions by accomplishing short-term harm reduction while also advocating for long-term systemic change to end money bail and pretrial incarceration.

This document is intended for organizers, legal advocates, and organizations contemplating starting a bail fund as an intervention in the criminal legal and/or immigration detention systems. The document is divided into two parts. Part One distills some of the core exploratory questions to consider before starting a bail fund. These questions will require a great deal of attention in your initial planning process to determine the viability and the potential impact of a bail fund in your community. Part Two poses additional questions focused on the mechanics of the bail process and operating a bail fund. These questions are not exhaustive and are intended to be helpful in mapping out the logistical feasibility of starting a bail fund in your community.



## PART 1: EXPLORE YOUR CONTEXT AND STRATEGY



When contemplating starting a bail fund, first it is necessary to tackle the big picture questions before jumping to logistics or technical feasibility. These questions get at the core of whether starting a bail fund is strategic within the larger pretrial reform context in your community.

### **AREA 1: What is the state of bail reform? (Clarity of Position)**

- Are there existing proposals for reform in your city, county, or state?
- Is there pending litigation or legislation that may impact your pretrial justice system?
- Has there been media coverage, published research, public hearings, or formation of taskforces or commissions to investigate and/or explore aspects of the pretrial justice system that influence your community? The focus of any of these could be money bail but also may include risk assessments, pretrial services or supervision, and/or diversion programs.

### **AREA 2: Who is involved? (Accountability and Collaboration)**

- Who is interested in starting a bail fund? Is this planning process being driven by an individual, an organization or group of organizers, a coalition of organizations, a public defender office, a legal service provider, or someone else? Who is missing from the planning process who should be included?

- What is the connection between those planning a bail fund and local organizing around racial justice, criminal justice reform, and mass incarceration?
- What is the connection between those planning a bail fund and any campaign or work to change the bail system? Is there a link to any work identified in Area 1?

### **AREA 3: Who will be helped? (Eligibility Criteria)**

- How many people are in the jail(s) you are focused on? How many could be released on bail (sometimes referred to as “bailable”)?
- What sorts of charges do people incarcerated in the jail(s) have? Are they mostly misdemeanors, felonies, or both?
- How many individuals are not eligible to be bailed out because of other “holds” or parole/probation “detainers”?
- What is the average bail amount people are held on? What is the range (lowest to highest)?

### AREA 4: What is the vision? (Commitment to Systems Change)

- What will the goals of the bail fund be? Is this bail fund a temporary intervention connected to a broader campaign to end money bail or is it a new/expanded organization that may exist for years?
- Who will the bail fund aim to bail out? Will the bail fund specify a population based on discrete issues or criteria or aim to bail out the largest number of individuals possible?
- How will the people helped by the bail fund relate to other changes being made to the pretrial system, such as pilot programs, risk assessment tools, diversion programs, etc.?
- Is the bail fund going to be specific to a local jurisdiction or connected to a regional or statewide effort?



## PART 2: LOGISTICAL & TECHNICAL FEASIBILITY QUESTIONS



After exploring your context and strategy, the next step is to map the logistical and technical feasibility of starting a bail fund in your community. This questions get into the nitty gritty details of how to start and operate a bail fund.

### AREA 1: Who can pay bail?

- Are there restrictions or rules on who can pay bail or limits on the number of bails that an individual can pay in a period of time?
- Will there be licensing or bonding requirements? How do these rules affect the possible structures for a bail fund?
- Is it possible to pay bail as an organization, or will an individual pay the bails?
- Are there personal liabilities incurred for the person who posts bail?
- Factoring in answers to the above, who will be able to pay bail for your group?

### AREA 2: What is the process for setting bail?

- When after arrest is bail set? Is it at arraignment, a special bail hearing, or another setting?
- Are new bail hearings provided as a matter of course or permitted at any point?
- Who sets bails? Is it a judge, a magistrate, a bail commissioner or someone else?
- Is a public defender present?
- Do the hearings happen in person or over video? Can you observe bail hearings?
- How is bail set? Is there a bail schedule or is it widely variable?

### AREA 3: What is the process for paying bail?

- When during the process can bail be paid (such as in the courtroom or only after someone is processed into the jail)?
- What is the actual process for paying bail? Do you know the physical location(s) where bail is paid and which forms of payment are accepted (cash, cashier's check, other)? Is bail accepted only during certain times of day or days of the week?

### AREA 4: What is the process for return of bails paid?

- What is the average timeline for cases to resolve and bail to be returned?
- What is the process for getting bail returned after a case is resolved?
- Are there fines/fees that are taken out of returned bails? How will this affect the revolving "rate" of a bail fund?

### AREA 5: How will you structure a bail fund?

- Where will the bail fund live? Will it be a separate organization or a project of an already established organization?
- How will the organizational structure be connected to campaigns around bail reform? How does the organizational structure/home relate to the bail fund's vision?

### **(AREA 5 continued)**

- Is the public defender involved in your planning? How will representation and referrals to a bail fund work?
- Is there a need to visit people inside the jail? If so, what is the process for gaining access to people inside?
- How will the bail fund's structure dictate staffing? Will a host organization/coalition provide staff? Will there be full-time staff or a coordinated volunteer structure?
- What will the relationship to the commercial bail bond industry be? Will the bail fund have to interact with the bail bond industry due to local or state laws or regulations?

### **AREA 6: How will you fundraise and budget for a bail fund?**

- What is the average amount of bail the fund will pay?
- What operating budget is needed to support the work of paying bail? How will the operating budget (staff, administration, etc.) be structured in relationship to the bail fund "corpus" (the money for bail)?
- Is the bail fund planning to be structured as a revolving fund? How much of the bail fund corpus will be a revolving fund (after deductions for fines, fees, forfeitures, etc.) and what is the average cycle for return?
- Is the bail fund planning to use one or more loans? If so, how will the loan structure and revolving cycle affect the amount of bail that can be paid?
- Is the bail fund planning to use local or state government funds in any way? If so, how will this impact the fund's ability to push for systemic change to the pretrial system?

For more information, contact us:

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