

COURT WATCH

THE PROCESS IS THE PUNISHMENT

INTRODUCTION

Since April 2022, the St. Louis Circuit Attorney's Office, the 22nd Judicial Circuit Court, and the St. Louis City Justice Center (CJC) killed 11 legally innocent people.





Although the specific causes of death differ and some remain shrouded in unnecessary mystery, each death is a product of a system that punishes people regardless of their guilt or innocence. For far too many, once cuffed into government custody, the countdown to the end of their lives begins. For others, the criminal legal process might not end in death, but research has shown it will take years off their lives and the lives of their family members.¹ At the front door to this death machine, in what is commonly known as bond hearings, defense attorneys, prosecutors and judges hold the fate of our community members in their hands.

Freedom Community Center's CourtWatchers witness these pivotal bond hearings each day in St. Louis' 22nd Judicial Circuit Court. **From July of 2022 to July of 2023, Freedom Community Center's Courtwatchers, witnessed 1,710 people in 3,040 hearings.** We saw 1,710 people's lives and futures dramatically altered by a hearing that lasted an average of 10 minutes. Although some might argue these hearings are simply one among many hearings during a criminal case, **the stakes of the bond hearing are tremendously high.** The decisions made at those hearings can have devastating consequences down the line by significantly impacting case outcomes. People who are in jail while awaiting trial are 4 times as likely to be convicted of a crime.² On top of that, their sentence, if convicted, is likely to be 3 times as long as people convicted on the same charges simply because they are detained.³

1,710 
LIVES AND FUTURES ALTERED
IN TEN MINUTES

BAIL HEARINGS EXPLAINED

People arrested in Missouri are entitled to a hearing to consider their pretrial release within forty-eight business hours of arrest and another one seven days after that, assuming they were not released. At these hearings, defense attorneys and prosecutors make arguments about whether an accused person should be held in jail before their trial or not. Judges take those arguments into account and make a decision about whether to release or detain someone. If they choose to release someone, judges also have the power to assign "conditions" to that release which can include:

-  Requiring an accused person to pay money for their release from custody. This is commonly known as bail or bond.
-  Requiring that a family member, loved one or other third party "sign-out" a person. This is known as "sponsored recognizance."
-  Requiring that after release a person be shackled with a GPS monitoring device on their ankle or in their phone. This is known as electronic monitoring.
-  Requiring that after release a person stay away from certain locations, neighborhoods, abide by a curfew or in some cases stay at home all day and night. This is known as house arrest.

Judges are supposed to choose the "least restrictive conditions" that will 1) ensure a person's appearance in court or 2) secure the safety of the community or other person.

4x 4 TIMES AS LIKELY
TO BE CONVICTED
OF A CRIME

3x SENTENCE IS
LIKELY TO BE 3
TIMES AS LONG



JAIL HARMS OUR COMMUNITY...

Not only does pretrial detention impact case outcomes, but even a stay of 3 days in jail can mean that people lose their jobs, housing, means of transportation, and in some cases custody of their children. Those who support pretrial detention often say that they are doing so to promote public safety. Research shows, however, that people who are released after some period of pretrial incarceration are much more likely to be rearrested and to be rearrested for more serious accusations than the first arrest.⁴ Pretrial detention actually decreases public safety rather than promoting it.

Our CourtWatchers witness these hearings each day because we are dedicated to bringing light to the shadowy corners of the 22nd Judicial Circuit Court where officials, in the name of public safety, **enact repeated violence on our communities.** As the chorus of voices demanding action in the face of tortuous conditions at St. Louis City Justice Center (CJC) has grown louder, the actors in the 22nd Judicial Circuit have turned their backs on the people they supposedly represent. **They have doubled down on inhumane pretrial practices.**

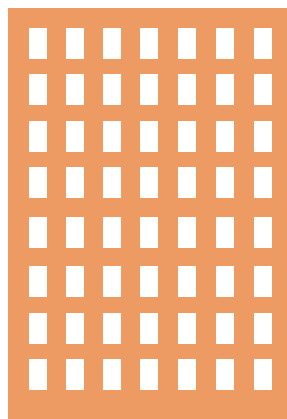
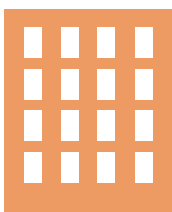
PROSECUTOR BOND RECOMMENDATIONS

1,922
PEOPLE: NO BOND

328 PEOPLE: BOND

For example, the Circuit Attorney's Office (CAO) recommended that people be held without bond 88% of the time from July of 2022 to July of 2023. In fact, if it were up to the CAO at least 494 more people would have been jailed without bond during this time, which would have nearly doubled the jail population.

THE JAIL POPULATION WOULD BE 2X TIMES AS LARGE AS A YEAR AGO.



Disproportionately, the people targeted by this system are Black and poor. Over 82% of the accused people were Black despite Black people making up only 45% of St. Louis City's population. The criminal legal system continues to target Black and poor people at alarming rates.

RACIAL BREAKDOWN (PER PERSON)



During bail hearings, Judges and prosecutors consistently cite "public safety" as justification for denying any possibility of release. There is little evidence, however, that pretrial detention and incarceration produces public safety. In fact, there is growing evidence that incarceration makes interpersonal violence even more likely in our communities.⁵ **Incarceration makes our communities less safe.**

PRETRIAL DATA

NO BOND - 1,140 PEOPLE

PR - 564 PEOPLE

SR - 359 PEOPLE

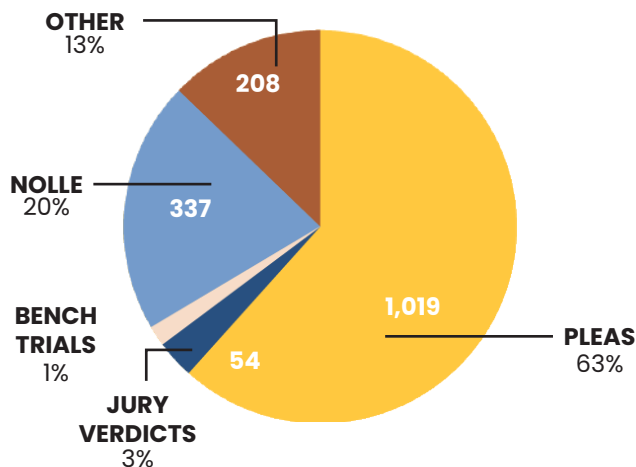
CASH BOND - 113 PEOPLE

*Data collected July 2022-July 2023

At bail hearings, we observe prosecutors argue against any form of pretrial release and, more often than not (52% of the time), judges side with prosecutors to deny bond. Nationally, research has shown for decades that people who are detained while fighting criminal charges are more likely to accept plea bargains.

FINAL CASE DETERMINATIONS

How were criminal cases resolved during this time?



During this report's timeframe, only 4% of criminal cases went to trial while five times as many were dismissed. 63% of all cases dispositioned during this time were reached via plea bargains, agreements made between the defense and the prosecution, in which the accused waives their right to trial and admits guilt in exchange for reduced charges or a shorter sentence. **Plea bargaining is essential to keeping the system running because prosecutors have decided to charge far more people than they could ever actually take to trial.** Legal experts across the political spectrum acknowledge that if even approximately five-percent more cases went to trial, the whole system would come to a screeching halt.

While this segment of the criminal courts process is often referred to as "pretrial," trial is a privilege afforded to very few. Instead people find themselves in a system that is **brutal by design** in order to snatch up as many people as possible and continue their cases while they languish in jail or under strict surveillance to secure as many convictions as possible by coercing guilty pleas. At every stage of the process from arrest to grand jury indictments to trial, the accused and defense attorneys agree that people are more often treated as "guilty until proven innocent." Guilt and innocence become secondary to the resources that someone has to fight their case and the risks that they are willing to take in order to go to trial. **It is not a matter of guilt or innocence, this system is designed to punish people as soon as they enter its gates.**

GUILTY UNTIL PROVEN INNOCENT.

The experiences and statistics examined in this report demonstrate how the criminal legal system **targets marginalized people** and **exacerbates their vulnerability** so that it can criminalize as many people as possible. Through the voices of the current and formerly incarcerated, we detail in this report the unwarranted punishment officials continue to enforce by examining the relationship between disability and incarceration, the widespread use of electronic monitoring and its failures, and the prosecutorial practice of dismissing and refiling charges.

THIS REPORT HOPES TO OFFER MORE PEOPLE A GLIMPSE INTO THE ROUTINE INJUSTICES CARRIED OUT BY THE COURTS AND TO UPLIFT THE PERSPECTIVES OF THOSE TRAPPED WITHIN IT.



COURT WATCH

THE PROCESS IS THE PUNISHMENT

DISABILITY AND INCARCERATION

We cannot understand incarceration and punishment without understanding the ways that disability operates within the system. While reliable data on how many disabled people are incarcerated is difficult to find and most approximations underestimate the reality of the situation, one study found that in the United States, 42% of disabled people, 55% of disabled Black people, and 65% of disabled Black men have been arrested by the time they are 28.^{6,7} Nationwide, the disabled, and particularly disabled Black people, are disproportionately incarcerated and segregated.

ARRESTED BY THE TIME THEY ARE 28:

42% DISABLED PEOPLE

55% DISABLED BLACK PEOPLE

65% DISABLED BLACK MEN

Here, disability is defined as a social condition created by economic, political, and social barriers rather than as a medical condition to be cured or fixed. According to this definition, people are disabled not by their physical or mental conditions, but by the structures surrounding them that create these conditions and privilege certain bodies and minds over others. This, in turn, leads to exclusion, abuse, and violence towards those bodies that are considered abnormal or defective.

Disability is not a static category. Our conceptions of disability change over time and are shaped by race, gender, and class. And disability is a continuum that we travel throughout over the course of our lives, as our mental and physical health ebb and flow, and as the systems around us manufacture and amplify these shifts.

SOCIAL MODEL OF DISABILITY

Traditionally, people understand a disability to be a “problem” that exists in someone’s body or functioning in the world. This is known as the “medical model of disability.” In this model, “disability is primarily an individual’s medical problem in need of treatment.”⁸

People with disabilities and disability scholars have introduced a new theory known as the “social model of disability.” In this model, which we use in this report, there is a distinction between impairment and disability. “Impairment is the functional limitation within the individual caused by physical, mental or sensory impairment. Disability, on the other hand, is the loss or limitation of opportunities to take part in the normal life of the community on an equal level with others because of physical and social barriers.”⁹

Imagine someone with cerebral palsy. We are told that this person has a disabled body, and “solutions” are designed to treat that individual’s body.

Instead, our framework of disability argues that the person has an impairment which is cerebral palsy, but they are disabled by social and political choices such as buildings that are inaccessible, asset limits on social security disability insurance (SSDI), and healthcare systems that exploit physical or mental impairments for profit.

From arrest through the brutal conditions of jailing, the pretrial system **codifies and weaponizes ableist standards, criminalizes mental health status, and produces further impairment and disability.** At FCC, we have witnessed and experienced these interconnected tools of punishment. They represent a pretrial system defined by violence, with devastating and deadly consequences for disabled people and everyone in our communities.

MANUFACTURED BY THE SYSTEM

THE CRIMINAL LEGAL SYSTEM, INCLUDING THE PRETRIAL PROCESS, IS A KEY SITE OF DISABILITY INJUSTICE. IT TARGETS DISABLED PEOPLE, FURTHER DISABLES THOSE IN ITS WEB, AND DISAPPEARS THEM AS SOCIAL PROBLEMS.¹⁰

WEAPONIZATION OF ABLEIST STANDARDS

Our legal system is built on a set of rules, written and unwritten, about what behavior is and isn't allowed. It is widely prohibited, for instance, for homeless people to sleep outside, but it is encouraged for hedge funds to purchase blocks of homes.¹¹ The rules of our criminal legal system – and the ways they are unequally enforced – are deeply ableist. As TL Lewis writes, ableism is a “system of assigning value to people’s bodies and minds based on societally constructed ideas of normality, productivity, desirability, intelligence, excellence, and fitness. These constructed ideas are deeply rooted in eugenics, anti-Blackness, misogyny, colonialism, imperialism, and capitalism.”¹² Judges, prosecutors, police, and the criminal legal system as a whole project their ableist standards onto the primarily Black and frequently disabled folks they incarcerate.

Through our programs and court watching, we see the way ableist norms play out at every stage of the pretrial process. This includes who is brought into the court system to begin with – often those charged with acts of poverty that our society creates and then deems criminal. Poverty itself is an often disabling condition that prevents people from meeting their basic needs and is linked to forms of survival that are criminalized including trespassing, stealing, and driving without a license. 27% of disabled adults in the U.S. live in chronic poverty and nearly 40% of disabled Black adults do.¹³

The pretrial system’s ableist standards play out not only through codified criminal laws, but through court rules of procedure and unspoken norms. For instance, we often see people removed for making noise or even falling asleep in the courtroom while waiting for the day’s proceedings to move along. As a result, their hearings are continued as they remain in jail, leaving the possibility of release hanging in the balance. We also frequently see people show up for hearings in which the court fails to provide adequate interpretation services. This disadvantages people who do not speak English, including those who are d/Deaf or hearing impaired. Through our courtwatching, we found that even when the court does provide interpretation, it is often delayed. People who do not speak English routinely have their initial bail hearings continued until the court eventually employs its meager interpretation services, causing them to be jailed longer than their English-speaking peers.

This pervasive ableism does not merely point to a need for greater accommodations, but for the abolition of a system that codifies and punishes deviance from ableist standards. Disciplining people through brutal punishment is characteristic of a system that aims to order the world based on a profoundly narrow understanding of how people “should” operate. As Mia Mingus writes, “We must understand and practice an accessibility that moves us closer to justice, not just inclusion... We don’t want to simply join the ranks of the privileged; we want to dismantle those ranks and the systems that maintain them.”¹⁴

PERSPECTIVE FROM THE INSIDE

One of our clients who is d/Deaf was censured multiple times for laughing and talking in court. His behavior did not harm anyone, but violated unspoken standards and social norms that he hadn’t internalized. In fact, in an assembly-line criminal legal system, our client’s initial bail hearings were conducted without an interpreter. The court did not take the time to realize that he was d/Deaf and that he communicated primarily via American Sign Language (ASL).

Unable to fully participate in his own case without interpretation, our client was incarcerated on bail he couldn’t afford. The court invisibilized and punished his disability, a symptom of a crushing system that projects its ableist standards onto all those it ensnares. After he was jailed, we paid our client’s bail and learned that his charges appeared to stem in part from his inability to understand what the court demanded of him and the court’s unwillingness to consider the issue more expansively. In relationship, we also learned that he became disabled after a traumatic brain injury caused by a physical assault that happened when he was robbed.

After securing his release, we connected our client with short-term housing, food, and a phone. Connecting him to basic services, however, was much more difficult than it typically is for English-speaking clients because of the ways the world is structured without d/Deaf disabled people in mind. For example, we struggled to connect him to shelter services and ride-sharing services because they required direct communication that he could not respond to, especially without interpreter services, which are rarely readily available.



CRIMINALIZATION OF MENTAL HEALTH STATUS

389

233

63% OF PEOPLE PRESENTING A **MENTAL HEALTH NEED** RECEIVED “**NO BOND**” DETERMINATIONS

396

223

63% OF PEOPLE PRESENTING A **MEDICAL NEED** RECEIVED “**NO BOND**” DETERMINATIONS

299

219

57% OF PEOPLE PRESENTING A **SUBSTANCE ABUSE NEED** RECEIVED “**NO BOND**” DETERMINATIONS

*Data collected July 2022-July 2023

The criminal legal system’s punishment of disabled people is particularly apparent in our analysis of pretrial medical and mental health needs. **People who expressed a medical or mental health need were denied bond 11% more often than the overall bond denial rate.**

This criminalization of mental health and disability extends deep into the pretrial system, particularly in the court’s determinations of who is and isn’t “competent.” According to the Department of Mental Health (DMH), competency restoration involves “psychiatric stabilization and treatment” in order for the accused “to participate competently in the criminal proceedings against them.”¹⁵ Here, the criminal legal system weaponizes the “medical model” of disability.¹⁶ In concert with DMH, the courts view mental health as something requiring a cure – often through extreme doses of psychotropic drugs – so that, in the judge’s eyes, the accused is temporarily “healthy” enough to be moved from a psychiatric facility into a cage.

There are 253 people in pretrial detention across Missouri who have been found unfit to stand trial and, per the court’s orders, remain detained in DMH custody to undergo competency restoration.¹⁷ There are, however, fewer spaces in such programs than there are people ordered to them. While waiting for a bed to open up, people are held in jail, where their conditions are likely to deteriorate. We spoke with someone at the City Justice Center who lived on the same floor as a man who refused to leave his cell, threw his meal trays out, and defecated on himself. After his condition deteriorated for weeks, correctional officers maced him, dragged him out of his cell, and put him in a restraining chair where he continued to soil himself. It is no wonder DMH admits that while people languish in jail, “they are more than likely getting sicker... they’re not getting the support that they need.”¹⁸

In the summer of 2023, the average wait time between a court order to DMH and transportation to their custody was nearly a year long. During this wait, cases stall completely and the duration of incarceration grows indefinitely, as it is unknown when a bed might become available or, after that point, when someone might be deemed “competent” enough to understand the proceedings. As of writing, there is someone incarcerated at the City Justice Center who was ordered to the custody of DMH in December 2022 and still has yet to be transferred. For a year, no hearings have been scheduled, no new discovery has been shared, and no progress has been made on a case in which the accused remains innocent in the eyes of the law. For a year, his loved ones have been left without answers and without recourse. Ultimately, competency restoration is another euphemism for punishment, reforming those that society deems too dangerous and deviant to be a part of public life.



PRODUCING IMPAIRMENT AND DISABILITY IN JAIL

Whether or not people are disabled when they were initially incarcerated, the everyday practices of jail disable those in its custody. The City Justice Center incubates illness with poor ventilation, unsanitary conditions, and the culture of jailing itself. The jail also manufactures disability through negligent or non-existent medical care.



POOR VENTILATION



UNSANITARY CONDITIONS



NEGLIGENT OR NON-EXISTENT MEDICAL CARE



CULTURE OF JAILING



INCUBATED ILLNESS & MANUFACTURED DISABILITY



This negligence has been on full display during the ongoing COVID-19 pandemic. Overall, the jail's COVID protocol during 2020-21 was characterized by arbitrary, punitive quarantine measures ranging from the use of solitary confinement for those who were merely believed to be COVID-positive to the placement of new people (who could bring COVID from the outside) in cells with people who had been incarcerated. As one man put it, if you tested positive, you would "get removed from the unit you were in, placed in a cell by yourself in the medical wing, and maybe get out to shower to then lock down for the rest of the day."

CJC's deadly mishandling of the pandemic is but one example of the jail's negligent responses to medical needs. Once enmeshed in the criminal legal system, the accused are subject to abusive treatment and social abandonment that is itself a disabling condition.

At FCC, we hear frequent reports about CJC withholding basic medical care as well as physical and verbal retaliation against those who request medical attention.

“ONE PERSON REPORTED BEING TESTED ONCE OVER THREE YEARS OF THE PANDEMIC AND BEING GIVEN ONE MASK EVERY TWO WEEKS.”

Unsurprisingly, the CJC became a COVID-19 hotbed, producing impairment and further disabling those in its custody. Take, for example, a woman who contracted COVID inside the jail, causing her second bail hearing to be postponed for two weeks. During this time, she missed two chemotherapy appointments and was denied her seizure medications – even after the presiding bail judge ordered the jail to fill her prescriptions. Another man we observed in court was shot in the leg by an officer and then contracted COVID-19 inside the jail. At his second bail hearing, the state-appointed attorney argued that he should be granted immediate release because his bandages were not being changed correctly or frequently enough by the jail's medical staff, which can cause blood poisoning, amputation, or death. He was again denied any form of release and, as of the publication of this report, he is still incarcerated.

PERSPECTIVE FROM THE INSIDE

One man shared that CJC denied him his ADHD medication despite his existing prescription because it was a controlled substance. He described regressing behaviorally during this time, as feeling "back at square one ... a whole eleven-year-old in a pod full of grown men" and being locked down twenty-four hours some days as a punishment for his behavioral changes. One woman we spoke with shared that, as a consequence of being denied her diabetes medication, she "actually fainted in the room and busted the bottom of (her) chin. (She) didn't get any medical assistance ... it just healed on its own." Even worse, she was later prescribed a different medication to treat her diabetes with no explanation as to why she couldn't receive what she had been taking prior to her incarceration. Abrupt discontinuation of prescription medications can cause painful and sometimes even fatal side effects.

MACE IN JAIL

While unprepared and unwilling to offer proper medication, the jail is always equipped with mace. For years, people incarcerated at CJC have spoken about the facility's routine, indiscriminate and often retaliatory use of chemical agents like pepper spray and bear mace. Combined with the isolating conditions of incarceration, these chemical agents can further disable those who are caged.

Multiple people interviewed for this report shared that, in the summer of 2020, in the midst of the jail uprisings and the pandemic, their entire wing was notified that they would be transferred to the now-shuttered Medium Security Institute, also known as the Workhouse—a jail with black mold, overflowing sewage, snake infestations, and temperatures that reached 125°. ¹⁹ Detainees objected and, in response, jail staff sprayed inside the cells of those who refused to be transported. The chemicals traveled through the HVAC system throughout the floor. People were transferred to the Workhouse without their belongings and without medical treatment. When used often enough in large enough volumes, these chemical agents hurt and threaten all detainees, as described by an anonymous survivor who stated:

“

I suffer from various health conditions including diabetes, heart problems, blindness and a punctured lung from the police... Macing causes me to experience shortness of breath, a pounding heart, burning in my eyes and lungs. I'm afraid the mace will affect my one good eye and cause me to go totally blind.

”

Research supports that repeated exposure to mace can cause respiratory and cardiac arrest in those with pre-existing conditions including cardiovascular or respiratory disease, which can be brought on by COVID. ²⁰ One person we spoke with shared that their preexisting skin condition was worsened by being maced and cited increased sensitivity to things like holding a hot mug or touching cold water. The City of St. Louis has no policy against the use of chemical agents on people with medical conditions.

DEADLY CONSEQUENCES

Every day, we see people in court attesting to the jail's hellish conditions and pleading for any form of release. Every day, people in court and jail are fighting for their lives. Sometimes, they lose. **For Robert Lee Miller, Dennelle Johnson, Augustus Collier, Donald Henry, Courtney McNeal, Ashley Davis, Carlton Bernard, Terrence Smith, Juwon Carter, Dejuan Cole, Javon White and countless others whose names have gone unrecorded, the process was the end. Innocence cannot bring them back and guilt cannot justify the State leaving them for dead.**

YesCare, the CJC's private health care provider until December 2023, was sued over 1,300 times by jails and prisons across the country for wrongful death and sexual abuse allegations from 2011 to 2016. ²¹ The City itself has sued the company for negligence in the 2014 jail killing of Dejuan Brison.

YESCARE WAS SUED OVER

1,300

TIMES FOR WRONGFUL DEATH
& SEXUAL ABUSE ALLEGATIONS

Death in the carceral system is not an anomaly, but an inevitability—the natural byproduct of a system built to punish. Even those who survive their time in jail face shorter lifespans once released. Two years of incarceration are proven to take one year off of someone's life. ²² The question of death by the carceral system is not a matter of if, but of how and when. This violence falls disproportionately on disabled people, particularly disabled Black people, who sit at the intersection of so much State violence.

By attacking the systems that punish disabled Black people, we can topple the systems that punish everyone. We can build communities without police and prisons, communities where we are all recognized. We can move forward, as Mia Mingus writes, “to a model of disability that embraces difference, confronts privilege and challenges what is considered ‘normal’ on every front.” ²³ Our collective liberation depends on it.

COURT WATCH

THE PROCESS IS THE PUNISHMENT SOMEWHERE BETWEEN JAIL AND FREEDOM: ELECTRONIC MONITORING

741 DENIED BOND

684 RELEASED

48% OF PEOPLE RELEASED FROM JAIL

396 CONFINED TO EM

288

58% OF THOSE RELEASED WERE CONFINED TO ELECTRONIC MONITORING

*Data collected July 2022-July 2023

In St. Louis, most people are denied bond in their two initial bail hearings. From July 2022 to July 2023, judges decided 52% of the time that someone should remain in jail. The lucky few who are given a shot at fighting their case from a position of supposed freedom are then saddled by a different kind of confinement—electronic monitoring (EM.) Electronic monitoring is increasingly becoming a default condition for those who are granted pretrial release. Out of 684 releases, we observed 396 people be confined by GPS monitoring (58%.) While EM is often marketed as a more compassionate and humane alternative to incarceration, the impacts that it has on those in its web prove that it is simply an alternative form of incarceration.

ELECTRONIC MONITORING EXPLAINED

The two forms of EM that are assigned by judges to the accused in the 22nd Circuit include GPS monitoring and Smartphone monitoring. This report will focus on the overwhelming majority who are confined to GPS. Within 24 hours of release from the jail, those conditioned to GPS have a black box strapped to their ankle that tracks and records their location around the clock. More often than not, we see electronic monitoring conditioned in tandem with other restrictive measures relying on its surveillance including exclusion zones, stay away orders, curfews, and house arrest. An exclusion zone is an area, decided by a judge, with an often poorly or undefined radius surrounding the address where they believe the complaining witness resides. Oftentimes the exclusion zone surrounds an individual's residence, but sometimes includes the address(es) of a business and even chain stores if the State alleges retail theft. Curfews require that the accused be home by a certain time and forbid them from going out into the world before a certain hour, most often from 9 pm to 9 am. House arrest is the most restrictive form of EM, limiting people to a single residence and transforming it into another jail.

ELECTRONIC MONITORING IS NOT AN ALTERNATIVE TO INCARCERATION, BUT AN ALTERNATIVE FORM OF INCARCERATION

369

PEOPLE CONFINED FROM JULY 2022 TO JULY 2023



58% OF RELEASES

Judges and prosecutors argue that EM helps ensure the safety of the community and to ensure the return of the accused to court. The research supporting the claims that EM achieves this is sparse and dubious. For example, a study published in the Federal Probation Journal found that EM produced “no effect on rates of re-arrest for new offenses.”²⁴ Put another way, judges could have simply released people and achieved the same effect. Despite the lack of evidence that EM promotes public safety, there has been an explosion in the use of EM across the country and in St. Louis. A recent Vera Institute of Justice study found that the explosion in the use of EM is a nationwide phenomenon. Since 2005 the population of people confined to EM has increased tenfold. The 22nd Judicial Circuit Court further encouraged this growth in early 2024 by allocating \$500,000 to pay for the costs of electronic monitoring for people who couldn’t afford those costs. The Circuit might argue that they are doing the accused a favor by paying for their EM costs. Instead, they could decide to reduce the use of EM thereby saving the Circuit money in EM costs. Even though EM has been shown not to create more safety, the court has doubled down on its usage by allocating money to pay for its costs. The large growth in the usage of EM by the 22nd Judicial Circuit has allowed prosecutors and judges to weave their web of surveillance deeper and deeper into people’s lives. Without evidence that this unnecessary and cruel surveillance creates more safety, prosecutors and judges have successfully expanded the walls of jail into legally innocent people’s homes.



10x
INCREASE IN
PEOPLE CONFINED
TO EM SINCE 2005

Those who have never been subject to this punishment may be inclined to believe that any GPS violation represents bad behavior. We know, however, that technical violations like dead batteries, WiFi disconnection, and exclusion zone detections, comprise a majority of GPS violations resulting in an increased chance of rearrests simply because of a technological flaw.

Strict limits on travel time and one’s home radius mean that getting stuck in traffic, running an errand en route, or tending to an emergency constitute violations and can lead to arrest, even though they pose no threat to public safety. Arbitrary rules and technical violations are not incidental systematic defects, but integral to a system premised upon control and punishment.

If GPS is used to help ensure the safety of the community and especially to protect victims, as judges and prosecutors argue, it is premised upon over-simplistic ideas about community, safety, and relationships. For many, electronic monitoring is an indefinite bond, imposed with no end time and no guarantee that a judge will accept their attorney’s motion to have it removed.

E-CARCERATION, LIKE ANY FORM OF CONFINEMENT, EXACERBATES A PERSON’S EXISTING VULNERABILITY, WHICH CAN MAKE THEM MORE SUSCEPTIBLE TO INTERPERSONAL ABUSE, HARM, AND HARMFUL BEHAVIORS AND ENVIRONMENTS.

One person we spoke with was incarcerated at the CJC when he was a minor and was granted pretrial release over three years later on house arrest. Before he was locked up, he was living with his mother. When he got out, he went to live with his father because his mother had since been incarcerated. Though he was initially grateful and relieved to get house arrest, he soon felt isolated and held back, in part, because “without a job, I don’t have any means to do anything for myself, at all. I depend on someone for everything.”

ELECTRONIC MONITORING IS NOT EFFECTIVE IN MANY CASES

EM is a retroactive measure that can only reveal someone’s whereabouts after the fact. Especially in a city where the majority of households are rented, courts often maintain outdated records of people’s residences and unless the alleged victim in a case is in contact with the prosecution, they lack the means to inform the courts of such a change. Moreover, people go many places besides their home so banning someone from a single address doesn’t actually prohibit them from finding or running into a person elsewhere. In a digital world, plenty of interaction takes place without physical movement and cannot, ironically, be detected by this emergent, high-tech surveillance. We also often see people confined to GPS in cases where there is no alleged victim, where the accused doesn’t know where the victim resides, and where the victim speaks to the court and does not request GPS monitoring. Sometimes, electronic monitoring cannot even identify someone’s whereabouts as in cases we have observed where monitors incorrectly flagged inclusion zone violations due to operating system errors.



Being unemployed is sometimes used as grounds to justify pretrial detention while maintaining employment is also a bond condition that can be made near impossible by EM restrictions. In St. Louis City, most people’s electronic monitoring fees are waived, which is not to speak to the indirect, collateral financial consequences that they bear. Chief among these costs are lost job opportunities. The contract requires people to obtain approval to accept a new job, to verify existing employment, or to change their work hours. This can make it near impossible to do part-time, low-wage work that often comes with late and unpredictable hours or unplanned overtime, which is the very kind of work that is most accessible to many who are targeted by this system.

Once, for example, we observed Judge Perkins tell an accused person “that’s your problem,” after they requested GPS monitoring without two exclusion zones and without a curfew in order to resume food delivery work, which was their main form of income. Furthermore, those who have experienced EM often cite feelings of stigma and discrimination by employers based on their monitor. As one woman put it,

“When I walk into a place with a big box on my leg, what are you going to think? ... It took me six months to find a job. I used to go to job interviews four times out of the week and every time I went, I got turned down. I’m getting stared at. I’m getting asked questions like ‘why do you have a box on your leg?’”

Electronic monitoring is not an alternative to incarceration, but an alternative form of incarceration that displaces the financial burden of incarceration onto the prisoner while depriving them of the full breadth of opportunity afforded to those on the outside. The maze of legal and technical requirements imposed upon people conditioned to electronic monitoring creates a revolving door of always jailable, legally innocent people. Electronic monitoring is characteristic of a system that uses alienation to coerce people into guilty pleas and imposes harsh consequences upon those who fail to acquiesce.



COURT WATCH

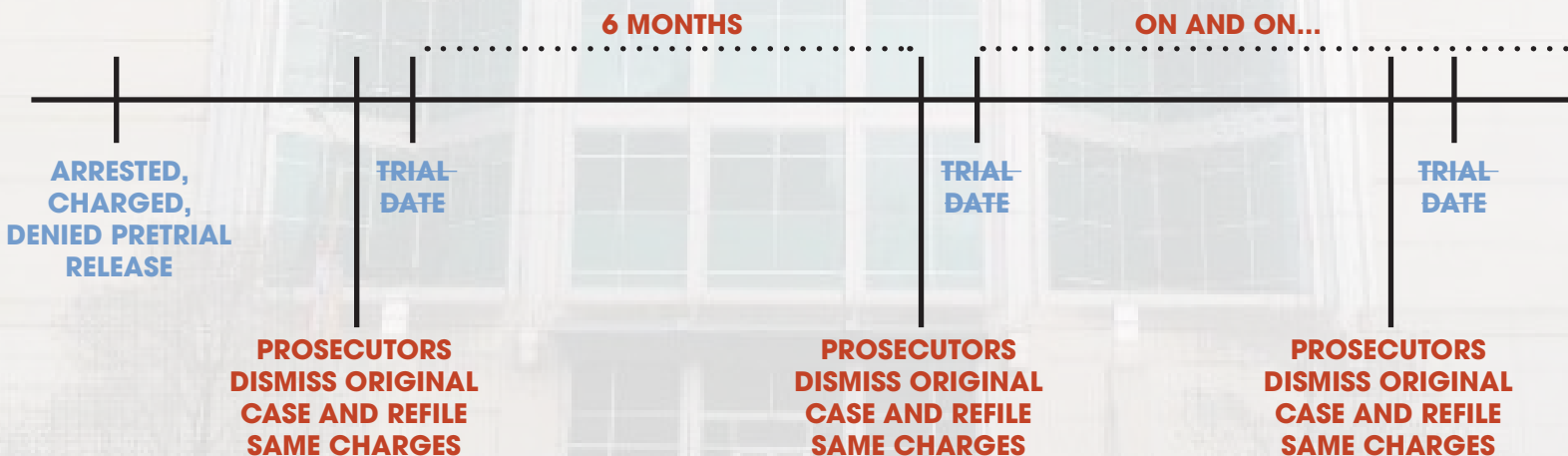
THE PROCESS IS THE PUNISHMENT

NOLLE AND REILING

Imagine being arrested, charged, and denied pretrial release in a criminal case, awaiting trial in jail away from your family, friends, and the life you once knew. You enter a plea of “not guilty” and invoke your speedy trial rights that, in theory, should entitle you to a trial within 180 days. You and your lawyer spend months preparing your defense when, finally, the day before your trial is set to begin, prosecutors dismiss the original case and refile the same charges on a new case thereby resetting the clock back to day one. Six months later, the same thing happens again and, potentially, again and again. This is a reality for some who are accused of crimes in St. Louis in cases that are dismissed and refiled by the prosecution, also known as “nallying.” FCC CourtWatch has observed the St. Louis Circuit Attorney’s Office destroy people’s lives through a systematic use of nolle and refile. This has kept people trapped in the legal process when prosecutors have lacked the evidence, timeliness, and resources to argue cases through the first time.

The practice of dismissal and refile itself is perfectly legal and its use is only limited by the statute of limitations associated with the charges. In Missouri, class A felonies have no statute of limitations, meaning that people charged with crimes under this category could, in theory, be repeatedly charged with the same crime without ever being tried to no end. By dismissing and refile charges on the same complaint, prosecutors reset the clock on someone’s speedy trial rights, often right before trial is set to begin, buying themselves more time on the newly refiled case. Furthermore, they dismiss the original charges on the same day that they refile the new case so that the person cannot be released from jail. Nolle and refile does not technically constitute double jeopardy because the accused person never goes through a full trial in the original case. The practice contradicts what people believe they are protected against and exemplifies that criminal law is not fair or coherent, but instead is a practice focused on incarceration, conviction, and surveillance.

A NOLLE AND REILING TIMELINE



DENIED ACCESS TO MEDICAL CARE

Take, for example, the case of then-seventeen-year-old Joshua Amerson. On November 1st, 2020, Amerson was charged with assault, first-degree murder, second-degree murder, and unlawful use of a weapon and detained on no bond at the CJC after being shot in both legs. On the eve of trial on July 8th, 2022, former Circuit Attorney Kim Gardner's office dismissed and refiled the charges, leading to Amerson being re-processed and re-incarcerated again on the same complaint. The bail judge acknowledged the defense's concerns, especially concerning the weakness of the case and the fact that his client wasn't receiving medication to treat his bullet-related injuries in the jail, but still decided to detain him. On July 5, 2023, Circuit Attorney Gabriel Gore's administration filed a second dismissal the day before Amerson's trial was set to begin. Amerson's is one in a handful of cases we have identified in which minors were or are being charged as adults on cases that were dismissed and refiled. None such cases have been disposed of via a jury trial. During this period, Amerson was denied access to much-needed medical care while the surviving loved ones of Elijah McKinney, Dajion Nearing, and Malik Taylor were continually strung along, used as evidence in the prosecution's case and given nothing in return.

STRUNG ALONG

Suketha Rankin, the mother of Darrion Rankin-Fleming and grandmother of Dmyah Fleming who were killed in January 2021, described the injustice she felt was done in their thrice nallied cases by prosecutors "like killing my son and granddaughter all over again." While the criminal legal system claims to be a method of redress for survivors, it is ultimately the government that controls the path of the case often at the expense of the victims' wishes.



NEAR-ABSOLUTE POWER

The use of nolle and refile specifically demonstrates the near-absolute power that prosecutors can maintain, as defense attorneys cannot stop them and judges cannot override a prosecutor's motion to dismiss or refile. Adofo Minka, who represented Sturgeon Stewart, reflected on this concentration of prosecutorial power stating, "I don't know if we could go so far as to call this prosecutorial misconduct, but that's just what this system allows unfortunately." Stewart was charged in September 2020 by St. Louis prosecutors for the killing of two men during an alleged home invasion. He was denied bond on the initial case that was dismissed and refiled in November 2022. His bond was again denied on the first refile, which was set for trial the day after Kim Gardner resigned abruptly. After continuing the case for two weeks, prosecutors dismissed and refiled the case again two days before trial was set to begin. Five months later, the St. Louis Circuit Attorney's Office dismissed the charges for the third time. Stewart has now begun the criminal process again on the same complaint, but now against federal prosecutors. In total, he was incarcerated for 1,149 days on state-issued charges he was never tried for. If sentenced on federal charges, Stewart cannot receive credit for time served from his state-issued cases due to federal sentencing rules.





Nallying is merely one example of prosecutors’ immense power. Prosecutors decide who, how, what, and when to charge. Prosecutors strategically overcharge, hitting people with higher-level charges or adding on many more charges than the facts can support. This matters especially in initial bail hearings where the most commonly cited reason that judges offer in denying bond is based on the nature of the charges. While the initial charges may not remain, the consequences of being denied bond in one’s initial bail hearings can be long-lasting. Former Circuit Attorney Kim Gardner’s office made the practice of nallying notorious, but the tradition has also continued under Gabriel Gore’s administration with CourtWatch noting at least fifteen cases that were dismissed and refiled during the first five months of his tenure.

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CASES DISMISSED AND REFILED IN 5 MONTHS OF CIRCUIT ATTORNEY GORE’S TENURE



As one attorney we spoke with shared, understanding this issue as limited to one administration neglects the fact that:

Individuals don’t dictate institutions. Institutions dictate individuals, so the institutional power that is at hand, regardless of whose hands it’s in, still operates the same way because its focus and function is the same. Fundamentally, the criminal justice system, and particularly the prosecutor’s office, is a State institution that by its very nature is coercive.

CONCLUSION

While the law generally regards “punishment” as a practice exclusively reserved for those who have been convicted of a crime, we find that the pretrial criminal process is so incredibly punishing that most never see trial. Whether or not someone is responsible for exactly what prosecutors allege becomes secondary to what the accused has and what they are willing to risk. This analysis does not reflect a conspiracy between judges, cops, prosecutors, and other court actors, but is the ever-evolving by-product of a culture and history that is concerned with punishment and “order.” The relationship between disability and incarceration demonstrates how disabled people are targeted by the criminal legal system, are further disabled within it, and are disappeared by it. Many of those who are “lucky” enough to be released from the City Justice Center while fighting criminal cases still remain tethered to it by a monitor that can, at any point, lead to their re-arrest and reincarceration. Even those whose cases are dismissed can find themselves back in jail if their cases are refiled by prosecutors who are always working to secure convictions or, as one person put it, “just want something to stick.” The criminal legal system is part of a larger machine that benefits from policing, surveillance, and other mechanisms of control. Outlasting these systems and surviving their violence requires that we accept that they cannot be reformed. The more that we disinvest from the criminal legal system, the more we can put towards efforts that get us closer to justice. The work includes and extends beyond formal institutions into the hard work of learning how to live in new ways together.

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ENDNOTES

¹Sundaresh R, Yi Y, Harvey TD, et al. Exposure to Family Member Incarceration and Adult Well-being in the United States. *JAMA Netw Open*. 2021;4(5):e2111821. doi:10.1001/jamanetworkopen.2021.11821

²Lowenkamp, VanNostrand, and Holsinger, "Investigating the Impact of Pretrial Detention on Sentencing Outcomes," 2013, 10.

³ *Ibid.*

⁴Lowenkamp, VanNostrand, and Holsinger, The Hidden Costs of Pretrial Detention, 2013, 20.

⁵ *Ibid.*

⁶McCauley, Erin J. "The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender." *American Journal of Public Health* 107, no. 12 (December 2017): 1977–81. <https://doi.org/10.2105/AJPH.2017.304095>.

⁷ In this text, we use the term "disabled people" to refer to people who are oppressed by structures that value certain body-minds over others. Being "disabled," by this definition, is a process where one's ability to self-determine and live freely is diminished by society. People who experience this may wish to be referred to with "person-first" language, like "person who is blind" or "people with autism," while others may opt for "identity-first" language like "Blind person" or "autistic people." Respecting how individuals identify and name themselves is key to upholding their autonomy and agency.

⁸ Goering, Sarah. "Rethinking disability: the social model of disability and chronic disease. *Curr Rev Musculoskelet Med*. 8(2) (June 2015): 134-138. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4596173/#:~:text=Disability%20is%20commonly%20viewed%20as,body%20and%20its%20social%20environment>.

⁹ Oliver, Michael. "Theories of disability in health practice and research." *BMJ* 317 (Nov. 1998): 1446-1449. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1114301/#:~:text=Disability%20is%20understood%20as%20a,sought%2C%20to%20challenge%20disabling%20discrimination>.

¹⁰ While this report focuses on the criminal legal system, the targeting of disabled people extends to all parts of our culture that, for example, accepts abuse in nursing homes, forces psychotropics onto patients, refuses the self-determination of people through guardianship, allows for disabled people to be paid below minimum wage, and abandons masses of disabled people in moments of collective crisis as we have witnessed during the COVID-19 pandemic.

¹¹ https://www.stltoday.com/news/local/metro/how-out-of-state-companies-are-buying-up-homes-and-changing-the-st-louis-area/article_279a03be-7944-5bd9-8d22-2a4eb436bbe3.html

¹² Belt, Rabia. "Ableism" (in Moving Toward Antiracism), Boston University Antiracism Center. <https://www.bu.edu/antiracism-center/files/2022/06/Ableism.pdf>

¹³ Goodman, Nanette, Michael Morris, Kelvin Boston, and Donna Walton. *Financial Inequality: Disability, Race and Poverty in America*, 2017. <http://www.advancingstates.org/sites/nasquad/files/Disability-Race-Poverty-in-America.pdf>.

¹⁴ Mingus, Mia. *Changing the Framework: Disability Justice*. February 12, 2011. <https://leavingevidence.wordpress.com/2011/02/12/changing-the-framework-disability-justice/>

¹⁵ Missouri Department of Mental Health. "Programs," <https://dmh.mo.gov/ftc/programs>

¹⁶ See explainer on page 4 above for more information on the medical and social models of disability.

¹⁷ Bayless, Kacen. "Why Are Hundreds of Missourians Stuck in Jail, Not Treated for Mental Health Issues?" *The Kansas City Star*, September 24, 2023. <https://www.kansascity.com/news/politics-government/article277744498.html>.

¹⁸ Bayless.

¹⁹ Fenske, Sarah. "'Unspeakably Hellish' St. Louis Workhouse Targeted in Class-Action Suit." *Riverfront Times*, November 13, 2017. <https://www.riverfronttimes.com/news/unspeakably-hellish-st-louis-workhouse-targeted-in-class-action-suit-10834589>

²⁰ Smith, C. G., and W. Stopford. "Health Hazards of Pepper Spray." *North Carolina Medical Journal* 60, no. 5 (1999): 268–74.

²¹ Fenne, Michael. "YesCare Dodges Liability for Prison Conditions: Merger, Division, and Bankruptcy." *Private Equity Stakeholder Project*, October 2023

²² Prison Policy Initiative. "Incarceration Shortens Life Expectancy." https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/.

²³ Mingus.

²⁴ Karla Dhungana Sainju, "Electronic Monitoring for Pretrial Release: Assessing the Impact." *Administrative Office of the United States Courts*, 82, no. 3 (2018), 4, 8, https://www.uscourts.gov/sites/default/files/82_3_1.pdf (finding that those on EM were significantly more likely to have a technical violation but that there was no effect on rates of rearrest).