

BEST PRACTICES  
FOR ESTABLISHING A  
**Legal Defense Fund**



**NATIONAL  
BAIL FUND  
NETWORK**

OCTOBER 2021

# overview

Legal defense funds are used to pay for legal expenses which can span a large range including such things as court filing fees, legal representation, and client transportation to and from court. In contrast, bail funds are specifically used to post bail or bond<sup>1</sup> either regularly or in rapid response situations. There is no one “right” way to set up a legal defense fund or rapid response bail fund, and these definitions can be fluid depending on the needs of your local community. For decades, organizers and legal support teams have come up with creative and powerful ways to respond to arrests, criminalization, and incarceration resulting from protest and direct action.

Historically, legal activists have employed a variety of approaches when creating and operating these funds, often specific to political circumstances and differences in local legal systems. Some funds are created to respond only to the need to post bail or bond, while others are structured to support a wider range of legal defense needs. Rapid response funds have been created to respond to larger movement needs, as well as to support specific individuals or groups.

When preparing for planned civil disobedience or responding to mass arrests, cash to pay for money bail is often the first or most urgent need. Longer term, however, resources for legal defense and sustained defense campaign organizing soon become the main need. If you are responding to an emergency situation in

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<sup>1</sup> We use the terms bail and bond interchangeably in this document.



If you are an individual in need of legal support for a protest-related charge, including help paying bail, we strongly encourage you to first [contact your local NLG chapter](#). Very frequently, NLG chapters are already coordinating with local bail funds and the intake process for help paying protest-related bail may be through the NLG. A directory of NLG Chapter Mass Defense arrest hotlines can be found [here](#).

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which bail money is needed, we strongly encourage you to search the [National Bail Fund Network \(NBFN\) directory](#) for a community bail fund near you. Local bail funds have developed in the majority of states over the last five years and are often able and willing to pay bail for progressive and left-wing political arrests or assist with support for bail-posting. If there is no established fund near you in the NBFN Directory or that fund is unable to help in your situation, please [contact NBFN](#) as NBFN organizers may also be able to connect you to existing protest-related resources in your area.

Even if money for bail is provided by an existing fund, significant and long-term financial support may be needed to support the people who are charged as their court cases continue for potentially years. This document, developed by the [National Bail Fund Network](#) and the [National Lawyers Guild](#), provides an overview of some of the best practices distilled from decades of legal defense fund experiences. This document is focused on funds that are created for rapid response and as part of movement campaigns or direct actions. Notably, our recommendations and practices differ from recommendations and guidance for revolving community bail and bond funds that regularly free community members from pretrial incarceration and immigration detention.

The National Bail Fund Network has developed separate resources for revolving bail and bond funds, which are available [here](#).

This document is not intended to be legal advice. It is intended to provide only general guidance on the relevant issues, and we encourage users of this guide to consult with a lawyer licensed in their jurisdiction for more specific legal advice.

# best practices

There are many specific decisions to make that are unique to the particular circumstances a legal defense fund is responding to or anticipating. In addition, there are certain legal processes specific to the jurisdiction(s) where help is needed. Understanding that there will be unique aspects necessary for any legal defense fund, some general guidelines and best practices for consideration are described below.

## Connecting with Existing Movement Defense Resources

**#1**

**CONFIRM THE RESOURCE YOU ARE HOPING  
TO CREATE DOES NOT ALREADY EXIST**

First, it is important to confirm you are not duplicating existing resources or efforts when considering starting a legal defense fund. Competing or redundant efforts to raise money for the same causes can be confusing and cause unnecessary strife, even when it occurs accidentally.

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## #2

### CONNECT WITH NATURAL ALLIES AND ALIGNED ORGANIZATIONS

We strongly encourage you to explore whether you have an NLG chapter or community bail fund in your state before you begin planning to launch a legal defense fund. Can you ask around and confirm with other organizers that there is not an existing fund or a community organization that has played this role in the past? Sometimes, groups operate funds on an as-needed basis. Just because a fund has not been active recently, that does not mean it may not still have the infrastructure and sometimes even resources to help when a new need arises.

## #3

### TAKE ADVANTAGE OF EXISTING SYSTEMS

Very frequently, NLG chapters are already coordinating with local bail funds and the intake process for help paying protest-related bail may be through the NLG. Often, NLG chapters and local bail funds are both all-volunteer operations. They also frequently work in tandem: NLG members tracking arrests, charging decisions, and bond needs, and bail funds providing financial and operational support in freeing people. A directory of NLG Chapter Mass Defense arrest hotlines can be found [here](#). Make sure you factor in currently available resources and processes that support political arrestees in setting up any new legal defense fund.

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## Goals & Structure

### #1

#### DEFINE YOUR PURPOSE AND MISSION

Defining the fund's goals will help inform a number of key structural decisions. Transparency and clarity on what the fund's mission will be as well as any initial goals around timeline and scope will help with many of your subsequent decisions.

### #2

#### INTENTIONALLY PLAN FOR A RANGE OF SCENARIOS

Legal defense funds may end up responding to a number of scenarios depending on the actions and the legal system's response. Funds that are formed quickly in response to the immediate needs of activists (with less time for advance planning) may also want to have some flexibility over time and the ability to adjust priorities once needs are clearer. We recommend that funds plan for a range of scenarios and do not restrict themselves to using money only for paying bail – particularly when it is not yet clear whether funds will be needed to cover other necessary aspects of effective legal defense.

### #3

#### MAKE SURE THE ORGANIZATION HOSTING THE FUND OR RECEIVING MONEY SHARES THE VALUES AND MISSION OF THE LEGAL SUPPORT EFFORT

Finding a host organization (see below for fundraising discussion) is often critical to the support of fundraising and administrative functions. Operating a legal defense fund, even in the short-term, will take coordination. Sharing a vision for why the fund exists and clarifying at the outset to whom it will provide support is key.

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## #4

### BE EXPLICIT ABOUT GOVERNANCE AND TRANSPARENT IN DECISION-MAKING

Even when creating legal support funds to respond to a fast-moving crisis, organizers need to think about governance structures and transparency for collectively raised funds. Some questions to consider include:

- \* Is there a clear decision-making process or set of processes you can communicate to people or organizations requesting help, possible partner groups, and donors?
- \* Does the governance structure anticipate a process for making hard decisions together and potentially over a longer period of time?
- \* What methods of communication will be used to share the fund's decision-making?
- \* How are you seeking to be accountable to the people you are providing support to?
- \* Is there information you will not want to share for any reasons, including security?

We recommend you be upfront with organizers about your limitations and capacity, including known unknowns.

## #5

### PROVIDE FOR ADMINISTRATIVE CAPACITY

Creating a legal defense fund requires administrative work, even in cases where the fund's lifecycle is short or limited in scope. Whether through a host organization or a collective of volunteers, there will be a range of administrative tasks and the fund's structure should be able to absorb them. Administrative capacity is directly tied to accountability and should be given that same focus.

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## Eligibility Criteria and/or Prioritization of Assistance

### #1

#### REFERRALS AND ELIGIBILITY

It is important to establish a process for determining who the fund will support. There may be a specific referral process through organizers or the legal support team, or a plan may be developed as part of the larger response strategy that includes the fund. If you are defining eligibility based on group membership or participation in an action, consider defining when and how support of additional supporters (or bystanders) would be appropriate.

### #2

#### PRIORITIZATION

In addition to establishing general criteria for eligibility, the fund may want to clarify how it prioritizes assistance among people who are all eligible if there is more need than can be immediately met. (See Appendix for examples.)



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## #3

### SCOPE OF ASSISTANCE PROVIDED

It is important to establish an agreed-upon policy regarding acceptable uses of the money raised for setting both internal and external expectations. This may develop out of an established mission and clear goals, but it is always best to be as explicit as possible. Organizers should consider whether the fund will pay for: money bail (and if so, will it pay full cash amount or use bail bondsmen); fines, fees, or other court costs; restitution, if ordered; compensation for defense attorneys or other legal defense needs such as investigators or experts (and the scope of this, such as initial legal representation only or for the entire length of the cases), with consideration to the availability of public defenders in the jurisdiction(s); travel and housing costs for accused people coming from out of town to attend ongoing court dates; expungement costs; and other miscellaneous costs associated with criminal prosecution and defense in the relevant jurisdictions.

Most community bail funds are committed to not using commercial bail bond companies so as not to perpetuate the industry and its predatory practices. Sometimes in unique situations, a bail fund may make an exception because of the sheer amount required up front, urgent release needs, and/or procedural barriers where a court has set release conditions that favor payment from a bail bond. It is important for a legal defense/rapid response fund to clarify internally if and when an exception would be considered and on what terms.

Be sure to consult with the attorneys for accused people who may be required to pay restitution about any possible court requirements that the money used come from the person alone. Sometimes, courts object to third parties paying restitution costs.



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## #4

### CONSIDERATION OF LEGAL IMPACT

Sometimes the activities of a legal defense fund can be used against an individual in their legal case. Planning and operating a fund should include an awareness and plan for how its actions may affect eligibility for representation (including eligibility for a public defender), bond assignment, restitution burdens, etc. Be aware that prosecutors and judges may (improperly) use the presence of a fund as justification to set higher money bail, remove court-appointed counsel, argue that someone is a “flight risk” because of their access to funds, and/or impose higher restitution burdens during sentencing based upon the accused person’s “ability to pay.” In some jurisdictions, funds have established bail assignment agreements or other documentation to protect individuals from this sort of action. (See Appendix for examples.)

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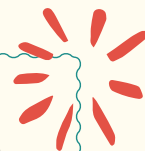
## Fundraising

### #1

#### PERSONAL VS. ORGANIZATIONAL FUNDRAISING

In rapid response conditions, an individual may end up taking on fundraising and banking responsibilities. We recommend being thoughtful about personal tax liability and exposure (such as whether funds raised will impact the organizer's personal finances or tax liabilities), and whenever possible, having an organizational host for the financial component of the fund. Organizations that agree to house the money raised should be clear about any limitations on funds in their possession and any internal decision-making processes (separate from the legal defense fund) that must be involved in disbursing money to individuals or organizations.

The [National Bail Fund Network](#) and [Big Door Brigade](#) have specific resources that may be helpful for organizers and individuals who are navigating how to consider accounting and tax issues when working towards urgent freedom needs.



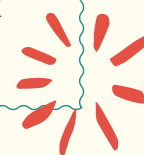
# best practices

## #2

### ACCOUNTING FOR LOGISTICS

It can take several days to transfer money from crowdfunding platforms and “personal” payment apps like CashApp or Venmo into a bank account from which it can be withdrawn and used. In situations where there is an urgent need for access to the money (such as when someone is in jail and waiting to be bailed out), organizations may be able to withdraw money from available resources before the newly raised money is deposited. Sometimes, individuals have chosen to pay money and then be reimbursed from the funds raised. It is important for anyone navigating these choices to carefully consider the possible tax repercussions of any option and to consult with local attorneys. Any explicit loans should be documented to ensure repayment.

The potential impact on individual organizer’s finances should be considered in the context of how much is externally tracked. For example, banks are legally required to report money transfers, withdrawals, or deposits over \$10,000 to the IRS. Some jails, sheriff’s offices, clerks, or other collectors of bail money may also issue tax documents upon return of bail money.



## #3

### FUNDRAISING PLATFORMS

Choose a funding platform that permits fundraising for money bail and legal defense of a criminal case. Many popular crowdfunding websites do not allow for fundraising that supports the work of a legal defense or bail fund and will shut down fundraisers that have already collected donations if they are discovered or reported. We strongly recommend reviewing the terms of service before setting up a crowdfunding campaign because crowdfunding companies’ positions on fundraising for “criminal” cases change often. The preference (for access to funds and minimizing loss to fees) is always using a platform that you have control of, such as a special page or function on an organizational website. (See Appendix for examples.)

# best practices

## #4

### FACTOR IN FEES

When calculating the amount that you need to raise to cover known expenses, it is important to factor in fees taken by any fundraising platforms you are using as well as any fees incurred upon payment of bail or other expenses. Crowdfunding websites often have both a transaction fee (taken out of each donation) and a processing fee. Processing fees of 1.5-3.5% are standard for donations made by credit card, but some fundraising platforms charge additional fees on top of those required by the credit card companies. Depending on how fees are taken out and how the fundraising totals are displayed, you will want to account for this in your fundraising plans and the total amount needed to raise.

## #5

### SOLICITATION LANGUAGE & DISCLAIMERS

On any fundraising platform, it is important to use solicitation language that allows for flexibility later on or for changing the scope of the fund as legal needs become clearer. This ensures that donors do not feel misled, improves transparency and accountability, and avoids having problems with restricted funds that are not accessible down the road. (See Appendix for examples.) Depending on the legal status of the fund, disclaimers about tax deductions (or not) should be made.

## #6

### LONGEVITY

Some legal defense funds will use all of their funds for their stated purpose, but others may end up with remaining assets. Because this can be very hard to predict, we recommend intentional planning for how any unused or future returning funds (such as bail) will be used. An important part of planning is the creation of an agreement that ensures that any returned and/or surplus funds go back into movement work and do not end up restricted or kept by the host organization in a way that is or appears to be non-transparent or unaccountable.

# appendix

## LEGAL DEFENSE FUND BEST PRACTICES

*The following examples are not designed to be authoritative or exhaustive*

### Examples of Criteria for Eligibility and Prioritization

*The following are examples of different types of criteria that could inform a fund's internal practices.*

**Eligibility for funds based on issue/organization:** It is important to indicate whether your legal defense fund is limited to supporting people connected with a certain issue or event. This could be a broad mission and limitation such as racial or environmental justice, or limited to a specific event such as “supporting people arrested on April 15th in the effort to remove the confederate statute.” Some funds may even limit their support to members of certain organizations. No matter the case, it is important to be clear about the fund's scope and who will or will not be supported by it.

**Type of expenses:** Here is an example of the types of expenses that a legal defense fund may want to plan for or authorization coverage for. Costs arising from:

- Payment of money bail or bond;
- Commissary or other costs of support for people who remain incarcerated without bail;
- Travel expenses for witnesses or individual accused people;
- Criminal defense of persons arrested in connection with [issue];
- Defense or prosecution of civil lawsuits arising from [issue], such as defending against lawsuits brought against [target], or bringing lawsuits against [corporate target], law enforcement, or private security firms, etc.

# appendix

- Court filing fees in any litigation, as well as costs incurred with investigation, discovery, and necessary expert witnesses;
- State and Federal bar admission costs, travel and lodging for attorneys acting pro bono (as volunteers) in support of [issue];
- Physical or virtual infrastructure necessary to operate the fund, including costs of administration such as bookkeeping, preparation of tax returns, and the costs of any required regulatory filings; and
- Translation services for clients who don't speak English- both oral translation and getting important documents translated
- Childcare costs for clients in order for clients to make court appearances
- Recompensing lost income due to court appearances for clients
- Other needs as they may arise and as approved by [legal fund].

**Prioritization for Individual Assistance:** Sometimes, urgent needs greatly outweigh available resources. We encourage funds to always attempt to help everyone possible and never play into the false “good protester/bad protester” dichotomy that benefits the state and undermines movements. Nevertheless, there may occasionally be a need to triage needs and prioritize some people for support. This is not a process of exclusion but rather a process of responding to the most urgent needs or most vulnerable first. Below are some examples of criteria that could be considered in this circumstance:

# appendix

Funds will be provided to bail out individuals arrested at actions in connection with [issue]. Given resource limitations, it may not be possible to immediately bail out all individuals arrested at a given action. In such situations, [legal fund] will have discretion as to who will benefit from the use of bail funds first, consistent with the following criteria. These are guiding principles, not rules, and are listed in no particular order.

**A. Priorities.** The committee will prioritize use of funds to provide bond for individuals who:

- \* Are injured, have medical needs, have specific mental health needs;
- \* May face immigration holds or have other immigration status issues;
- \* Have children for whom they are primary caregivers;
- \* Have other emergencies not designated.

**B. Other Criteria.** The following factors may also be considered:

- \* An individual's ability to pay bond, including access to family or community resources;
- \* The amount of bond to be paid and the likelihood that bond will be reduced at a court hearing;
- \* Risk of abuse or victimization in jail, including but not limited to people with disabilities; youths or elders; Two-Spirit, transgender, or LGBTQ people; etc.;
- \* Special health needs such as pregnancy, chronic medical conditions, or regular treatment needs
- \* Dependents or other family members who may be harmed by the individual's detention;
- \* Anticipated impact of detention on individual's employment, housing, educational attainment, and/or custodial rights; and/or
- \* Position in relation to structural violence and oppression.



# appendix

**Maintain Flexibility:** Especially early on in a fundraising effort, both the amount of need and how much money can be raised are likely to be unclear. It's important to give yourself flexibility so that you can use the money how it is ultimately needed. It is also important legally that donors contribute knowing how the money may be used. You can always include language such as this in your fundraising appeals or on your fundraising site: "If not all of the funds raised are needed to pay bail and legal fees for people charged in connection with [issue/event], we will work to ensure they are used [elsewhere/by local partners/to support the mission of XYZ Organization]."

## Fundraising Platforms

If an organizational host already has an established fundraising platform, a specific fundraising page through that service or on that website is ideal.

If you are not working with an organization or need to set up independent fundraising immediately, it may make sense to use a crowdfunding website. Since different fundraising websites have different fees, be sure to compare costs, in addition to confirming that the platform's Terms of Service permit (or at least do not prohibit) fundraising for causes associated with "criminal activity" or criminal cases.

For specific fundraising platforms that may be useful within the legal defense fund context, here are just a few options that currently allow fundraising in connection with criminal prosecutions:

- [PayItSquare](#)

*Note: Choose “Keep it all” to access funds immediately on this platform*

- [fundrazr.com](#)

## Documentation of Source of Funds for Bond

It is often necessary to provide evidence of the source of any bail or bond money paid to the judge or other court system actors - this will depend on the jurisdiction and is something that is needed to protect individuals from having legal representation or restitution requirements changed (it is not a recommendation to perpetuate any sort of carceral requirement on individuals). Options for creating documentation to protect an individual from having the source of bond funds be used against them include:

- 1) Having the person bailed out sign an acknowledgement (contract) stating that the funds are not their own and they promise to return them to the entity who paid bond at the end of the case
- 2) Creation of an affidavit by the organization that paid the bond. You can view an example of one such affidavit, which is used by Chicago Community Bond Fund, [here](#).

## **For more information:**

[National Bail Fund Network](#)

[National Lawyers Guild Mass Defense](#)