



Facts on Money Bail

- **Every Year, Over Half a Million People Are Detained Pretrial.** Across the United States, 731,000 people are incarcerated in local jails each day.¹ Nearly two-thirds of this population – some 476,000 individuals – are pretrial detainees who have not been convicted.² The federal system incarcerates a further 51,000 people pretrial.³
- **Pretrial Detention Costs Billions Each Year.** Since 2000, pretrial detention has driven 95% of growth in the United States jail population.⁴ As a result, 17% of corrections spending is now wasted incarcerating pretrial defendants.⁵ Every year, we spend approximately \$13.6 billion to imprison over half a million people who have not been convicted of anything – \$38 million each day.⁶
- **The Use of Secured Money Bail Has Increased Dramatically.** Compared to the 1990s, we require money bail in *more* cases and set *higher* money bail amounts. A study of the 75 largest counties found that from 1990 to 2009, the proportion of felony pretrial releases with financial conditions grew from 37% to 61%.⁷ Compounding this trend, the average amount of money bail has *doubled* over twenty years.⁸ Now more than 70% of felony defendants receive money bail that is \$5,000 or more.⁹ This increase has profited bond agencies nationwide, padding *their* bottom lines, but has wreaked havoc on our communities.
- **Even When Secured Money Bail Is Low, Many Low-Income People Cannot Pay.** In 2017, 4 in 10 adults would either not be able to cover a \$400 emergency expense or would have to sell something or borrow money.¹⁰ For pretrial detainees, access to immediate cash is particularly challenging. In New York City, only 26% of defendants who received bail under \$500 posted bail at arraignment, while only 7% made bail that was set at \$5,000.¹¹ In a recent study covering Philadelphia and Miami-Dade, only half of defendants could post bail that was \$5,000 or less.¹²
- **Secured Money Bail Is Ineffective at Assuring Reappearance *or* Keeping Communities Safe.** The bail system is designed to purportedly serve two purposes – to ensure that defendants make court dates *and* to keep the community safe. Cash bail does neither. A study of unsecured bonds showed that unsecured bonds were as effective as secured bonds at ensuring court appearance.¹³ Meanwhile, low-risk defendants who are detained on money bail – even for 2-3 days – are 40% *more* likely to commit new crimes pending trial than are low-risk defendants who are detained for 24 hours or less.¹⁴ Expanding the time frame to two years, low-risk defendants jailed for 2-3 days are 17% more likely to commit new crimes, while those jailed for 4-7 days are 35% more likely.¹⁵
- **Pretrial Detention Has Devastating Consequences for Individuals and Their Families.** When we jail people, we trigger cascading consequences. In many cases, wages are foregone. Jobs are lost. Housing is jeopardized. Child custody is removed. Individuals, snatched from their homes and families, forfeit the social and community supports that matter so much.

Once inside jail, pretrial detainees are exposed to new risks. Jails are notorious sources of infection and disease, and lack adequate resources for addressing health needs. Though mental illness affects

jail inmates at rates four to six times higher than the general population, 83% of jail inmates who need these services do not receive appropriate care.¹⁶ Between July 2015 and July 2016, more than 815 inmates died in local jails, with at least 207 of these deaths occurring within the first three days.¹⁷ As many as 1 in 30 jail inmates reported experiencing sexual assault.¹⁸

- **Secured Money Bail Creates Two Tiers of Justice – One for the Poor and One for the Rich.** People who have been detained pretrial, even when innocent, suffer worse case outcomes. One study in Harris County, TX found that pretrial detainees were 25% more likely to plead guilty than similarly situated defendants who could fight their cases from a position of freedom.¹⁹ It also found that Harris County would have avoided almost 6,000 criminal convictions if it released all misdemeanor arrestees pretrial.²⁰ Pretrial detainees – in danger of losing jobs, access to healthcare, children, and housing – face enormous pressure to plead guilty and hasten their release. And when detained arrestees are convicted, they face longer sentences.²¹

The result is that money bail creates two tiers of justice. More than a third of felony defendants – all of them presumptively innocent – face job loss, housing instability, health risks, longer sentences, and higher rates of conviction *only* because they lack money, while wealthier counterparts have an increased chance of going free and never experiencing a life disruption.²²

- **Secured Money Bail Particularly Hurts Communities of Color.** Besides devastating the poor, cash bail has particular consequences for minorities. Controlling for various factors, people of color receive higher bonds and are detained at disproportionately higher rates. This means that besides fueling mass incarceration, cash bail is exacerbating racial injustice.
- **Pretrial Detention Hurts Local Economies.** A recent study of Miami Dade and Philadelphia found that three to four years post-bail hearing, pretrial detainees are 9.4% *less* likely to be formally employed.²³ Evaluating the costs and benefits of pretrial detention, including employment, detention and other costs, researchers found that pretrial release creates a net benefit of approximately fifty-five to one hundred thousand dollars – \$55,143 to \$99,124 – per defendant.²⁴
- **Alternatives to Money Bail Are Cheaper, More Humane, and Better at Mitigating Risk.** While money bail may make defendants less likely to make their court appearances, other approaches are equally and even more effective. As compared to “secured” money bail, which is bail that requires an upfront payment, “unsecured” bail is equally effective at assuring appearance, maintaining public safety, and encouraging court reappearances after an initial missed appointment.²⁵ Meanwhile, reminder services can have significant impact: In New York City, the most effective texts reduced failure to appear (FTA) rates by 26%.²⁶ Thirty days after the court date, the most effective messaging reduced open warrants by 32%, as compared to receiving no messages.²⁷ Uptrust, a company providing two-way text reminders, reports that in some jurisdictions, it has reduced the FTA rate by 75 percent.²⁸

Reduced recidivism further brings down costs. A study of Harris County, Texas found that releasing all misdemeanor defendants between 2008 and 2013 would have caused 1,600 fewer felonies and 2,400 fewer misdemeanors by individuals within 18 months of their release.²⁹

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- ¹ Zhen Zhang, Bureau of Justice Statistics, *Jail Inmates in 2016*, 2 (Feb 2018).
- ² See *id.* at 4.
- ³ Peter Wagner and Wendy Sawyer, *Mass Incarceration: The Whole Pie 2018*, Prison Policy Initiative (2018), <https://www.prisonpolicy.org/reports/pie2018.html>.
- ⁴ Todd D. Minton & Zhen Zeng, *Jail Inmates at Midyear 2014*, Bureau of Justice Statistics, 1 (2015).
- ⁵ Megan Stevenson & Sandra G. Mayson, *Bail Reform: New Directions for Pretrial Detention and Release*, Public Law and Legal Theory Research Paper Series Research Paper No. 17-18, 2.
- ⁶ Peter Wagner and Bernadette Rabuy, *Following the Money of Mass Incarceration*, Prison Policy Initiative, January 25, 2017, n. 5.
- ⁷ Brian A. Reaves, *Felony Defendants in Large Urban Counties, 2009 - Statistical Tables*, Bureau of Justice Assistance (2013).
- ⁸ Will Dobbie, Crystal Yang and Jacob Goldin, *The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, AMERICAN ECONOMIC REVIEW, 108 (2018), available at https://scholar.harvard.edu/files/cyang/files/dgy_bail_aug2017.pdf?m=1504036081.
- ⁹ See *id.*
- ¹⁰ *Report on the Economic Well-Being of U.S. Households in 2017*, Board of Governors of the Federal Reserve System, 2 (2018).
- ¹¹ Mary T. Phillips, *A Decade of Bail Research in New York City*, New York City Criminal Justice Agency, Inc., 51 tbl. 7 (2012).
- ¹² Dobbie, *supra* note 8, at 1.
- ¹³ Michael R. Jones, *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release System*, Pretrial Justice Institute (2013).
- ¹⁴ Laura and John Arnold Foundation, *Research Summary: Pretrial Criminal Justice Research* (2013).
- ¹⁵ See *id.* at 5.
- ¹⁶ Ram Subramanian et al., Vera Inst. of Justice, *Incarceration's Front Door: The Misuse of Jails in America*, July 29, 2015 https://www.huffingtonpost.com/entry/jail-deaths-statistics_us_58518e13e4b0ee009eb4f1a9
- ¹⁷ Allen Beck & Marcus Berzofsky, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12*, Bureau of Justice Statistics, U.S. Department of Justice Office of Justice Programs Bureau of Justice Statistics (2013), 6.
- ¹⁸ Paul Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. 711, 711 (2017). See also Criminal Justice Policy Program, *Moving Beyond Money: A Primer on Bail Reform*, Criminal Justice Policy Program at Harvard Law School, 7 (October 2016).
- ¹⁹ Pretrial Justice Institute, *Pretrial Justice: How Much Does It Cost?* (2017), 6.
- ²⁰ See *id.* at 7.
- ²¹ Bernadette Rabuy & Daniel Kopf, *Detaining the Poor*, Prison Policy Initiative (2016).
- ²² Dobbie, *supra* note 8, at 24.
- ²³ See *id.* at 30.
- ²⁴ Jones, Michael R., *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release System*, Pretrial Justice Institute (October 2013).
- ²⁵ Brice Cooke et al., *Using Behavioral Science to Improve Criminal Justice Outcomes Preventing Failures to Appear in Court*, Ideas41 and The University of Chicago Crime Lab (2018), 4.
- ²⁶ See *id.* at 4.
- ²⁷ <http://www.uptrust.co/what-we-do#our-results-section>
- ²⁸ See *id.* at 6.
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