

ENDING CASH BAIL

By Representative Felix

March 2020

What is bail?

In the context of criminal law, bail refers to the posting of some form of security – often in the form of a sum of money – to be exchanged for the release of an arrested person to ensure the presence of that person’s appearance at subsequent judicial proceedings.ⁱ

What is wrong with cash bail?

The cash bail system criminalizes poverty, as people who are unable to afford bail are detained while they await trial for weeks or even months. Longstanding research suggests that **money bail has been imposed arbitrarily and results in unjustified inequalities in the criminal justice system.**ⁱⁱ

The U.S. Bureau of Justice Statistics data from the 75 largest counties show the following:ⁱⁱⁱ

- Nearly all felony defendants (9%) who are held pretrial had a monetary bail set and they would be released *if they had the means to post it.*
- 9 out of 10 *were unable to post it.*¹⁷
- Persons with low-income and persons of color have been *disparately impacted by being unable to pay bail and thus staying in jail.*¹⁸

Studies show that **even when bail amounts are low, rates of pretrial detention are still high.** For instance, analyzing bail practices in Philadelphia, researchers found over half of pretrial detainees would be able to secure their release by paying a deposit of \$1,000 or less; and many defendants remain incarcerated at even lower amounts of bail, with deposits to secure release set at \$50 or \$100.^{iv}

People of color also have higher bond amounts imposed and are more likely to be perceived as dangerous during bail hearings.^v

For example, researchers found that when Black defendants were assigned monetary bail, they received significantly greater amounts than White defendants.^{vi} The study also showed that judges were also more likely to perceive Black defendants as more “dangerous” compared to White defendants, and thus, denied bail and detained pretrial.^{vii}

Spending even a few days in jail can result in people losing their job, housing, benefits, and even custody of their children. Studies show that pretrial detention can actually increase a person’s likelihood of rearrest upon release, perpetuating an endless cycle of arrest and incarceration. What is more, the cash bail system often leads to the detention of people who do not pose a threat to public safety.

Jurisdictions with pretrial reform



Washington, D.C., was an early pioneer in pretrial reform, taking steps to eliminate the use of cash bail as early as the 1960s. The results have been extraordinary: 94 % of defendants are released pretrial, and 91 % of them appear in court for their trial.



New Jersey passed a suite of criminal justice reforms in 2016 that essentially eliminated cash bail and created a new pretrial services program. Since implementing these reforms in 2017, New Jersey saw a 20 % reduction in its jail population. In 2017, 95 % of defendants were released pretrial and 89 % of them appeared at their trial date.



Harris County, Texas, home to the third-largest jail system in the country, reformed its pretrial system as part of a consent decree to virtually eliminate the use of money bail for misdemeanor charges. Prior to these reforms, 40 % of people arrested on a misdemeanor charge were detained until their case was adjudicated. Experts estimate that reforms will result in pretrial release for 90 to 95 % of misdemeanor defendants.

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What is the cost of cash bail?

Taxpayers pay **\$14 billion each year to incarcerate people pretrial.**^{viii} Factoring in the impact of pretrial detention on families, communities, and social services, the true economic cost of this crisis has been estimated to approach **\$140 billion annually.**^{ix}

What is the controversy behind ending cash bail?

A common misperception is that ending cash bail and reforming the pretrial system could endanger the public even more than the status quo. However, studies of New Jersey and Washington, D.C., demonstrate that **defendants' rates of appearance for trial after reforms were implemented are similar or better to rates of appearance before the reforms.** Similarly, the rates of rearrest for people who were released pretrial are comparable to those before the reforms were instituted.

Why not just make cash bail affordable?

Legislation and court rules that have attempted to do so have proven unsuccessful and difficult to enforce. For example, in Cook County, IL, even when judges were required to set “affordable” bail amounts, they continued to set bail beyond what people could pay.^x The reality is that for most American families, any amount of bail will be a financial hardship. Four out of ten Americans cannot cover a \$400 unplanned expense.^{xi} There is no reason to continue to rely on cash bail when it is both financially oppressive and ineffective at actually returning people to court.

How can House Bill 7353 help?

In Rhode Island, we can follow the increasingly growing trend of getting rid of monetary conditions for pretrial release. Rather than imposing a monetary condition, this bill would permit the court to set a variety of non-financial release conditions, such as community supervision, attending treatment services, or maintaining or commencing an educational or employment program.

433%

The increase in the use of pretrial detention between 1970 and 2015

Medium annual pre-incarceration incomes for people in local jails unable to post a bail bond, ages 23-39 (2015)

	Men	Women
All	\$15,598	\$11,071
Black	\$11,275	\$9,083
Hispanic	\$11,449	\$12,178
White	\$18,283	\$12,954

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CITATIONS

ⁱ Lindsey Devers, “Bail Decisionmaking,” Jan. 24, 2011, Bureau of Justice Assistance, U.S. Dept. of Justice.

ⁱⁱ See, e.g., Bernadette Rabuy and Daniel Kopf, “Detaining the Poor: How money bail perpetuates an endless cycle of poverty and jail time,” <https://www.prisonpolicy.org/reports/incomejails.html>; Megan Stevenson, “Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes,” *Journal of Law, Economics, and Organization*, vol. 34, no. 4., 2018; Justice Policy Institute, “Bail Fail: Why the U.S. Should End the Practice of Using Money for Bail,” Sept. 2012, <http://www.justicepolicy.org/uploads/justicepolicy/documents/bailfail.pdf>; Tracey Meares and Arthur Rizer, “The ‘Radical’ Notion of the Presumption of Innocence,” The Square One Project, May 2020, <https://squareonejustice.org/wp-content/uploads/2020/05/CJLJ8161-Square-One-Presumption-of-Innocence-Paper-200519-WEB.pdf>.

ⁱⁱⁱ U.S. Commission on Civil Rights, “The Civil Rights Implications of Cash Bail” Jan. 2022, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=https%3A%2F%2Fwww.usccr.gov%2Ffiles%2F2022-01%2FUSCCR-Bail-Reform-Report-01-20-22.pdf&clen=4489976&chunk=true

^{iv} Megan Stevenson, “Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes,” *The Journal of Law, Economics, and Organization*, vol. 34, no. 4, 2018, <https://academic.oup.com/jleo/article/34/4/511/5100740>.

^v See, e.g., Katherine Hood and Daniel Schneider, “Bail and Pretrial Detention: Contours and Causes of Temporal and County Variation,” *RSF: Russell Sage Foundation Journal of the Social Sciences*, vol. 5, no. 1, Feb. 2019; Wendy Sawyer, “How race impacts who is detained pretrial,” Prison Policy Initiative, Oct. 9, 2019, https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race/; Stephan Demuth and Darrell Steffensmeier, “The Impact of Gender and Race-Ethnicity in the Pretrial Release Process,” *Social Problems*, vol. 51, no. 2, May 2004

^{vi} David Arnold, Will Dobbie, and Crystal Yang, “Racial Bias in Bail Decisions,” *Quarterly Journal of Economics*, 2018, vol. 133, no. 4, pp. 1885-1932, https://scholar.harvard.edu/files/cyang/files/ady_racialbias.pdf.

^{vii} See, e.g., Ibid.

^{viii} Pretrial Justice Institute, “Pretrial Justice: How Much Does It Cost?” January 2017, p. 2.

^{ix} Pretrial Justice Institute, *supra* n. 11 at 2.

^x The Coalition to End Money Bond, “Monitoring Cook County’s Central Bond Court: A Community Courtwatching Initiative, August–October, 2017.” February 2018, pp. 24, 32–33.

^{xi} Board of Governors of the Federal Reserve System, “Report on the Economic Well-Being of U.S. Households in 2017,” May 2018, p. 21.