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ENDING CASH BAIL

What's Wrong With Cash Bail and How To Fix It

By Lea Hunter March 16, 2020

■ What is cash bail?

Three out of 5 people in U.S. jails today have not been convicted of a crime. This amounts to nearly half a million people sitting in jails each day, despite the fact that they are legally innocent of the crime with which they have been charged. Most jurisdictions in the country operate a cash bail system, in which the court determines an amount of money that a person has to pay in order to secure their release from detention. The cash amount serves as collateral to ensure that the defendant appears in court for their trial.

■ What is wrong with cash bail?

In effect, 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. Cash bail perpetuates inequities in the justice system that are disproportionately felt by communities of color and those experiencing poverty.

Spending even a few days in jail can result in people losing their job, housing, 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.

■ How can jurisdictions fix the problem?

Many jurisdictions across the United States are rethinking the way they use jails, reforming pretrial practices to ensure that defendants' rights to be presumed innocent and treated equally under the law are preserved, regardless of their income. In ending cash bail, jurisdictions are redesigning their pretrial systems with the goal of reducing the overuse and misuse of jails. This starts with a presumption of release, which places the burden on prosecutors to prove the need for detention and limits qualifying offenses for detention to only the most serious offenses. Although it may seem counterintuitive, sending fewer people to jail and minimizing the use of pretrial detention shows promising results



Jurisdictions to watch



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 percent of defendants are released pretrial, and 91 percent 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 percent reduction in its jail population. In 2017, 95 percent of defendants were released pretrial and 89 percent 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 percent 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 percent of misdemeanor defendants.

toward making communities safer while shrinking the footprint of the criminal justice system and saving taxpayer dollars. Jurisdictions are also instituting practices to support defendants' successful appearance in court, such as providing court date reminders, transportation vouchers, flexible scheduling, and on-site child care.

■ What is the controversy behind ending cash bail?

One 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.

“There is no evidence you need money to get people back to court. It’s irrational, ineffective, unsafe and profoundly unfair.”

—D.C. SUPERIOR COURT JUDGE TRUMAN MORRISON

An additional point of contention for policymakers seeking to end cash bail is the use of actuarial risk assessments—formulas or algorithms used to predict an individual's likelihood of appearance at trial and their risk of reoffending pretrial. These tools premise that judges and prosecutors have too often relied on preconceived ideas and gut feelings to impose harsh pretrial conditions, including detention and exorbitant bail. But risk assessments have been criticized for a lack of transparency and validation as well as for perpetuating and exacerbating racial disparities, in large part by relying on historical, racially biased data.

In spite of these and other challenges, the movement for pretrial reform today is only gaining greater momentum. States and localities across the country are dramatically reducing or eliminating the use of money bail and rethinking their use of jails, leading to substantial reductions in unjust pretrial detention.

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433%

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

Read more:

“Bail Reform: A Guide for State and Local Policymakers,” February 2019 | A report from the Harvard Law School criminal justice policy program outlining principles for pretrial reform and highlighting jurisdictions with promising strategies

“The Use of Pretrial ‘Risk Assessment’ Instruments: A Shared Statement of Civil Rights Concerns,” July 2018 | Recommendations for jurisdictions to limit misuse of risk assessments

“Civil Rights and Pretrial Risk Assessment Instruments,” December 2019 | A report from the MacArthur Foundation Safety and Justice Challenge discussing the use and dangers of pretrial risk assessments

National Partnership for Pretrial Justice | A grant-funded community of practitioners working to combine research, policy development, and advocacy to reform the pretrial justice system

National Bailout Collective | A community-based, Black-led, and Black-centered collective dedicated to ending pretrial detention and ultimately mass incarceration

💡 This fact sheet will be periodically updated to account for new policy developments.

For a full list of sources, see the web version of this fact sheet at <https://www.americanprogress.org/?p=481543>.