



Solving Inequality: How the Elimination of Cash Bail Would Better Serve All Americans

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Key Points:

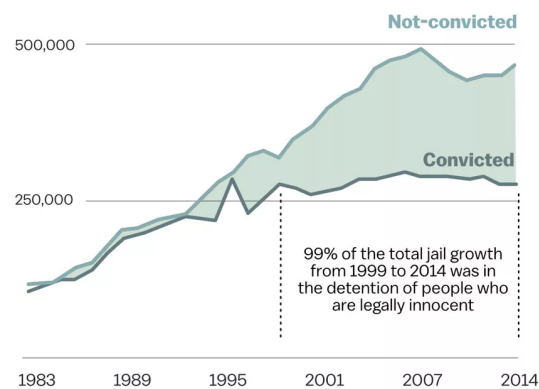
- America's system of cash bail in pretrial detainment systematically disadvantages lower-income individuals
- A disproportionate number of those detained because they cannot afford to pay cash bail are racial minorities
- The elimination of money bail in favor of greater pretrial supervision would be advised, as this is more ethical and less costly

The American criminal system's use of cash bail has drawn criticism in recent years for being systemically discriminatory against lower-income defendants who are disproportionately jailed before trial or otherwise forced to seek help to pay bail from predatory bail bondsmen. Cash bail is meant to disincentivize flight risk, or defendants fleeing rather than meeting their court case, however it often just ends up holding low-income defendants in jail. Simultaneously, many wealthy individuals who have committed crimes and may be threats to society are set free simply by paying their high bails. A more equitable system could allow for less discrimination against lower-income individuals, a system of release which better evaluates danger to society, and decreased tax dollars spent on housing defendants before trial.

The Problem

Over 3 in 4 of people residing in US jails have not been convicted of a crime. This can be attributed to the inability of many individuals to pay bail (Wagner 2018). In Philadelphia from 2008 to 2013, nearly 40 percent of those with bail set at \$500 or less stayed in jail for at least three days (Stevenson 2018). And cash bail has also shown to be racially problematic with prosecutors "over deterring" black and Hispanic males from fleeing court hearing by setting excessively high bails to keep these men in jail (Ayres 1994). Cash bail has also been linked to an increase in the likelihood of defendants being

Number of convicted and non-convicted people in local jails, 1983-2014



Source: Peter Wagner/Prison Policy Initiative

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convicted, longer sentences, and higher court fees (Stevenson 2018). However, the issues surrounding cash bail drew little press attention until a key focusing point emerged with the death of Kalief Browder in 2015. 16-year old Browder could not afford to pay his \$3000 bail and so was detained for three years on Rikers Island without trial before his charges were dropped. He then had trouble readjusting and committed suicide. His death led to many activists organizing rallies surrounding the issue of bail reform (Wykstra 2018).

Policy Alternatives

The cash bail reform movement has been a relatively recent development but has already shown moderate success nationwide. In fact, California and New Jersey have already taken measures to eliminate cash bail in their states. (SB-10 2018) If cash bail is to be replaced then it is assumed politically that a more effective system must take its place. Some potential solutions:

- California has replaced its cash bail system with Pretrial Assessment Services, which ranks suspects into three degrees of risk; low, medium, and high; based upon their perceived level of threat to society upon release (Fuller 2018).
- Colorado and West Virginia have improved pretrial services and supervision, such as using telephone reminders so fewer defendants miss court dates and end up detained. These nudges work.
- Over the second half of 2006, automated phone call reminders in Multnomah County

in Oregon, resulted in 750 people showing up in court who otherwise may have forgotten their date. (Harris & Paul 2017)

- Some advocates have called for house arrests, ankle bracelets, and phone monitoring, as more effective and equitable solutions to pretrial flight risk among detainees (Srikantiah 2018).

Policy Recommendation

I would ultimately advise state government officials to consider eliminating the discriminatory cash bail system in favor of greater pretrial supervision efforts. New Jersey's elimination of cash bail has already dropped the pretrial jail population by 20 percent (New Jersey Judiciary 2017). This saves taxpayers valuable dollars and does not disadvantage low-income minorities. Pretrial nudges and services are the best alternative, as many activist groups have made public statements in opposition to California's Pretrial Assessment Services. They believe it leads to more people behind bars and is algorithmically biased against black and brown individuals (Fuller 2018). Improved pretrial services, in contrast, have been successful in preventing flight risk without being discriminatory.



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