

BAILING ON BALTIMORE:

VOICES FROM THE FRONT LINES OF THE JUSTICE SYSTEM

JUSTICE POLICY INSTITUTE | SEPTEMBER 2012





The Justice Policy Institute is a national organization focused on reducing the use of incarceration and the justice system and promoting policies that improve the well-being of all people and communities.

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On February 13, 2012,
the jail population in the
Baltimore City jail was

3,605
PEOPLE

PART 1

INTRODUCTION

When a person is arrested, they are processed at a booking station and held in jail. In some cases, the court offers no conditions of release and detains a person in jail until their court date. This usually happens when a person is assessed to be a high flight risk or a threat to public safety.

In other cases, a person is offered bail, which is a condition of pretrial release. If a person detained in jail can meet the release condition or conditions, they may be released from jail until their court appearance. The legal purpose of bail is to protect public safety and ensure the released individual's return to court. There are two main types of release conditions: financial conditions and non-financial conditions.

One non-financial condition of pretrial release is own recognizance. When a person is released on their own recognizance, they promise to appear at court for their trial. Other non-financial conditions of release can be used in conjunction with own recognizance release, such as supervision and stay-away orders.

The most common form of bail used is a financial condition of release or money bail. For this type of bail, a set amount of money is determined that a person must pay to the court to be released prior to their court date. The money is refunded by the court if a person appears at all of his or her court hearings. In most jurisdictions, if a person cannot afford the entire bail amount, unless the court specifies that the bail

must be paid as a cash bond, he or she may seek the services of a bail bondsperson or for-profit bail bonding company. A bondsperson is a private agent unaffiliated with the judicial system and is typically contracted by a for-profit bail bonding company.

The for-profit bail bonding company will post a surety bond, which means that the person is released from jail and the company agrees to pay the full amount of the bail if the person fails to appear in court. In exchange for this service, the company collects a non-refundable fee from the person. The industry standard for this fee is 10 percent of the issued bail amount. So, if a person is issued a bail of \$10,000, they could contract with a for-profit bail bonding company and pay them a non-refundable fee of \$1,000. The company would then enter into an agreement with the court that, in the event that the person missed a court appearance, the company would owe the court the full bail amount of \$10,000.

For more information on the history and challenges of the bail system and bail reform in the United States, see the Justice Policy Institute's recent reports, *Bail Fail* and *For Better or For Profit*.

THE BALTIMORE BAIL SYSTEM

In Baltimore City, the bail system relies almost exclusively on financial conditions of release, or money bail. All adults who are arrested are processed at the Baltimore Central Booking and Intake Center (Central Booking). After they have been booked, people attend a bail hearing where a District Court bail commissioner sets the initial bail amount. The State's Attorney may make recommendations regarding the bail amount, but the commissioner is not required to accept these recommendations. In most cases, the bail commissioner has the authority to release people on their own recognizance, but in Baltimore City, this rarely occurs. In fact, most people in Baltimore City are not offered release under any conditions. On February 13, 2012, the jail population in the Baltimore City jail was 3,605 people, and 57 percent of the people were in custody due to not being offered bail on one or more of their charges.¹ Bail commissioners are appointed by the Administrative Judge and must hold a bachelor's degree but are not required to be lawyers or have any sort of certification or background in criminal justice.

If a person pays their bail amount in full or procures the services of a for-profit bail bonding company, they are released. If they are detained in jail because they cannot pay the initial amount, they go

before a judge during the next session of court for a bail review hearing. At the bail review hearing, the judge makes the final bail decision and may change the commissioner's initial decision, including modifying the amount of bail or releasing a person on their own recognizance. However, data show that judges change the decision of the commissioners in less than a fourth of all cases. In effect, bail commissioners most often decide who is released on personal recognizance, who receives bail or who is held without bail.

METHODS

This report is the product of interviews with thirteen individuals with knowledge about or direct experience with the pretrial justice systems in Baltimore City and Washington, D.C. From March to May 2012, researcher Jean Chung sat down with residents of Baltimore City who had been in jail as well as criminal justice advocates, attorneys, judicial officials, and pretrial services providers in Baltimore City and Washington, D.C. The purpose of this report is twofold: first, to document and make heard the perspectives and stories of people whose lives have been affected by the bail system in Baltimore City; second, to identify the policy reforms that are most relevant and needed to improve the Baltimore City bail system.

PART 2

MONEY BAIL DISCRIMINATES AGAINST LOW-INCOME COMMUNITIES

People living in impoverished communities are the most likely to be detained in jail because they can't afford to pay bail.

The Pretrial Release Project at the University of Maryland (UMD) conducted a study of bail review hearings in five Maryland counties, including Baltimore City, and found that 75 percent of people who were expected to pay a bond believed it would be “very difficult” or “difficult” to provide the money.² In addition, 70 percent of respondents indicated that paying bail would mean that they would

be unable to afford other important costs like rent, utilities or groceries.³ On February 13, 2012, 62 people in the Baltimore City jail were detained because they couldn't pay bail amounts totaling \$1,000 or less. These 62 people had been charged with offenses like trespassing, theft, driving on a suspended license, prostitution, failure to pay child support, minor drug charges and violations of probation.

The bail system has gotten so “This is how we do it” that it's become disconnected from its purpose and highly discriminatory against poor people. For example, take me and someone poor: say we are both arrested for the same crime, we have the same background, and we pose the same risk to public safety—but I have financial resources and the other person doesn't. I can post bail and get out of jail, and he can't.

—PAGE CROYDER, FORMER BALTIMORE CITY PROSECUTOR

LAMONT REDMAN

CASE MANAGER, JERICHO



The bail review process exists to determine flight risk and danger to the community at large.

There are some people out there who absolutely don't deserve bail. If you have been locked up numerous times for the same thing, you don't deserve bail. But if you have somebody who is a first-time offender and has no record and gets the book thrown at them, it shouldn't be like that.

Sometimes there's too much judgment involved instead of going by what is stated on paper. It's always dependant on how that person may feel that day. To me, there is no continuity in it. Depending on the mood the commissioner may be in, you may get a higher bail or lower bail. Or, this commissioner might go by the book; that commissioner might not go by the book. This judge might do it this way; another judge might not. I think that the way the law should be set up is that everything should be black and white. There shouldn't be paint involved in the bail process.

I've seen people basically having to put up houses or take out loans against their property to come up with bail amounts to get out of prison. And you are talking about a lot of people who just don't have that kind of money. A lot of the bail bondsmen in the city, they work with a lot of people. They even go down to one percent, as far as putting down to get people out. But like I said, they've got regular families putting houses down. They are not the ones getting locked up, but they've got to put their houses up, and if this person runs, you can lose your house. Or take out a loan, a payday loan from these predatory loan companies that try to get the money to bail somebody out of prison. And that's where it starts affecting everybody.

Like I said, this person is not a danger or flight risk, so why should they have to go through all this burden? Don't get me wrong; if somebody commits a crime, that's their fault. But, should there even be a bail in that case, or should it just be release? Major cases, I understand that—like murders, burglary, theft anything like that. But a lot of these guys are locked up for drug charges, and not for selling, but for using. What's the purpose of continuing to give them bails? It drains the system, it overcrowds the jails, and you put an unnecessary troublesome burden on their families. Put these guys in treatment.

So that's my problem with it all. That's why, depending upon the crime, sometimes bail doesn't seem needed. It's cumbersome, and it puts an unnecessary burden on family members. Nobody wants to see their child or mother or father behind bars, but sometimes, if you got to stay there, it does a lot to affect a family—especially in cases where it'd be more useful and helpful to the community at large to put these guys in treatment, not keep putting them behind bars. They get no treatment behind bars most of the time. So, how's this helping? The penal system is supposed to be about rehabilitation, but we know it's not. It's about cheap labor for rural areas; it's about getting the numbers in there so you can count them toward the federal census and get more money for that area.

It's a big racket. Like I said, the whole bail system has its pros and cons, but I believe that for lesser petty charges, there shouldn't even be a bail process for that. Lock them up, give them the charge, let them go.



TRAVON ALSTON

COMMUNITY MEMBER



I wound up getting caught in an incident with three friends. A fight broke out, someone got shot, and I got arrested for it.

The charges were attempted murder and first degree assault. That was my first time being charged as an adult. I was 18.

My bail was set at \$250,000—cash bond. I couldn't pay. No one in my family could pay that. I knew I was sitting. I cried the first night. It was rough, you know, that first experience. I'd heard so many stories about it, about people getting raped. It wasn't like that, but it was rough. It wasn't like your mother could come get you; you were there to stay. It was hard, especially the city jail because in the summer, it's extremely hot. The walls sweat. You're not living to your needs; you're living with what somebody else tells you to do. You're in the cell with another guy who's just chaotic, so it's a psychological game at the same time. I was stabbed and all. It was a bad experience. I'd been in street fights before—clean fights—but it's a whole other world in jail. It's animalistic. It takes a strong mind, a strong will, to deal with jail, but at the end of the day, I kept my faith. I knew I wasn't guilty, so I did a lot of praying.

My bail was set at \$250,000—cash bond. I couldn't pay. No one in my family could pay that.... I was in city jail for nine and a half months.

I was in city jail for nine and a half months. Then, one day, I got a bail reduction. They took my bail from \$250,000 to \$75,000 cash, so my family bailed me out. I wound up going to court about a month later and I beat the

charges. The guy who was shot altered his statement and signed an affidavit where he told the truth, that I didn't shoot him. The guy who said he saw me shoot him changed his statement, too. He said that he said I did it because he'd committed a crime and he was trying to protect himself; the police said they'd cut him a break if he gave them some information. In the end, they both got locked up for murder. When I came home in 2001, I had ambition. My ambition was to start working and definitely go back to school and get my diploma because you can't get no diploma in prison; at that time, they wouldn't let you. I was in city jail, not prison, so there was no school. That was the foremost thing. I wrote to the school board, then I enrolled and wound up going to the Houghton Institute. I graduated and obtained my high school diploma, so that was a plus. Then I started working.

The bail system should have bails set at levels that people can afford. If you get locked up for 100 pieces of crack, that doesn't mean you are Pablo Escobar. If I'm walking around with 100 pieces of crack, that's \$1,000. That means I'm a petty hustler. So if I got caught with \$1,000, why would you charge me \$250,000 to get out on bail? I might have put all my money there and then got locked up, so that's all I have. How can I afford that if I only have \$1,000? You're charging me \$249,000 more than I have.



JEROME LACORTE

CHIEF ATTORNEY, OFFICE OF THE PUBLIC DEFENDER



The legislative intent behind the pretrial release laws in Maryland is to ensure the appearance of the defendant at trial and to protect the community from an individual who might be dangerous.

In Maryland, the conditions of pretrial release, including requiring a bail to be posted, are set by a District Court commissioner. Individuals who are not able to meet these conditions have their cases reviewed by a District Court judge at the next session of the court. The District Court judge can raise, lower, or leave the commissioner-set bail the same, and add or remove other conditions of pretrial release.

The bail system works for people who are able to obtain release on recognizance and not so well for those who are not able to.

Once a bail is set, unless the commissioner or judge orders otherwise, it can be posted by cash, real property, or by hiring a bondsman to post a bail bond. The bail bond industry in Maryland is regulated by statute and court rules and by the Maryland Insurance Administration. Bail bondsmen must be licensed by the Insurance Administration, which sets premium rates for bail bonds.

The bail system works for people who are able to obtain release on recognizance and not so well for those who are not able to. The commissioner or judge has to decide bail in a very short time based on very limited information about a person. Many judges presume that the allegations against the arrestee are true. Poor people are generally much less able to secure pretrial release. Many young persons are charged with serious crimes and are unable to obtain release due to their financial circumstances. These defendants often spend more than a year in jail awaiting their trial. This is not the ideal place for someone still in their formative years to spend so much time.

Bail bondsmen are required to charge a total premium of 10 percent. This rate is set by the insurance commissioner, and a bondsman could lose his license or be otherwise sanctioned if he were to charge less. However, it is common practice (and not unlawful) for the bond to be posted with a down payment of as little as one percent. This practice was found to be legal by the Court of Appeals under existing insurance regulations in 1997.

I doubt it is ever a positive experience to be arrested and have to post bail.



Poor people are generally much less able to secure pretrial release.

Now I've got to sit in jail and wait for you all to come up with a deal so I can take the deal. It's all psychological warfare. You know I'm going to have to take the plea because I can't get out because I can't pay. And if I can't pay for bail, you know I can't pay for a lawyer; I've got to take a public defender. And then we negotiate. First, I get a hardball offer of prison time; you know I'm not gonna take that. You know I can't afford my bail, so you know I can sit for a couple months. Six months later or however long it takes, you decide to give me a nicer offer of two years, time served and then a year of probation. And now I've got a conviction.

—TRAVON ALSTON, BALTIMORE RESIDENT

PART 3

THE FOR-PROFIT BAIL BONDING INDUSTRY UNDERMINES THE JUDICIAL SYSTEM

The for-profit bail bonding industry is a private entity independent of the judicial system and is effectively a branch of the insurance industry. Bonding agents are not legally required to undergo any criminal justice training, but they have the power to make profit-motivated release and detention decisions in Baltimore City: the higher the bail amount, the greater the profit for the bonding company.

The industry is also making an impact on the release and detention decisions of judges. A recent National Public Radio series on the bail industry found that judges tend to set bail at rates as much as 10 times higher than the amount they believe people can afford to pay a bail bondsman.⁴ For instance, if a judge thinks \$1,000 is likely to bring a person back to court, they will set bail at \$10,000.⁵ As a result, a person may have no choice but to procure the services of a for-profit bail bonding company, paying a non-refundable fee

in order to attain release—a financial hardship for many people.

The for-profit bail bonding industry wields considerable financial and political power as it lobbies in opposition to pretrial release programs that rely on mechanisms other than money bail to ensure people return to court, as this would hurt their profits.⁶ In Maryland, the for-profit bail bonding industry has been successful in stopping state legislation that would more closely regulate the industry.



PAGE CROYDER

CASE MANAGER AT BALTIMORE OUTREACH SERVICES; FORMER BALTIMORE CITY PROSECUTOR



In Baltimore, the commissioner sets the bail, and if a defendant can't post it, he goes before a judge.

At that point, somebody from Pretrial Services will take another look at the case and make a recommendation to the judge. In practice, Pretrial doesn't decide whether the initial bail assessment was bad or good, but only whether to recommend that the bail go up or down. Most judges will go with whatever Pretrial says. So, the original bail amount is a big factor in the ultimate result.

I also think bail decisions get caught up in "the going rate." For example, if the charge is robbery with a deadly weapon, the going rate might be a \$50,000 bail. It becomes just a number, without any real thought into the public safety or flight risk the person may or may not pose. As a result, we don't think anymore about why we impose a particular bail amount.

The current bail system makes bail bondsmen rich off of people who are not a serious risk to public safety, all while further impoverishing the families of those who get arrested. I'm not saying there would never be any role for bondsmen in the system, but I would have to think long and hard about the appropriate circumstances. This industry has grown on the backs of the poor. The bondsmen have assumed the risk of the government. The public safety and flight risk determinations are decisions that the government, not bondsmen, should be making.

In the end, the risk that the bondsmen take is relatively low, and we see it in the fee percentages that have gone way down. It used to be a 10 percent fee, then 9 percent, and now you see it advertised as low as a "1 percent fee." This reflects the reality that in most cases bail bondsmen don't have to permanently forfeit the bails when defendants fail to appear in court, because their money is returned if the defendant is arrested by law enforcement sometime down the road.

Ultimately, the justification for bail is to provide an incentive for a defendant to return to court to face trial by imposing a monetary penalty if he doesn't. In a bail bonds system, once the bondsman is paid, the defendant no longer has any incentive to return to court, because he will not be getting any money back if he shows up for court, unlike if he posted bail himself. So the justification for bail is undermined by the bail bonds system.

No bail will ensure that a defendant won't commit another crime while waiting for trial, and that, to me, is the crux of the decision of whether or not to release a defendant. Is it a public safety risk to release this individual? The overall amount of bail is irrelevant to this decision. It is only relevant to the decision as to how much incentive this defendant needs to return for trial.

In a bail bonds system, once the bondsman is paid, the defendant no longer has any incentive to return to court, because he will not be getting any money back if he shows up for court, unlike if he posted bail himself.

Much more work needs to be done to assess who should be released. We should get more people out of pretrial detention, especially working people. I really hate the idea of somebody losing their job over an arrest on a minor case. If they are in jail because they are a risk to public safety, that's appropriate, but I don't think they should be in jail because they are too poor to pay bail. And when you lock people up, there is more of a tendency

to get a plea out of them, because they are already locked up. Again, this leads to different results for the poor and non-poor based on their available financial resources.

To me, the harder cases are the non-violent cases. If you have a guy going into McDonald's with a gun and robbing people, I'd be hard-pressed to say that person should be released pending trial. And yet those people are given bails. For non-violent crimes, we could make greater use of home detention enforced with electronic monitoring, daily reporting to somebody, and so forth. Instead of setting a bail, maybe the alternative is, you're confined to your house and you have to wear this bracelet. That's much better than locking somebody up.

The really hard decisions are not in the bail amounts, but in who is what kind of risk. As a system, we have almost stopped thinking about that, when it should be the first focus of bail reform.



DAVE WEISSERT

COORDINATOR OF COMMISSIONER ACTIVITY, DISTRICT COURT OF MARYLAND



The bail system could be effective if everybody would follow two simple goals: make the defendant come to their trial, and protect the public and the individual from safety concerns.

It's a matter of determining what set of conditions you would want to consider as a part of pretrial release. Bail is only one function of pretrial release. We could put [people] in the custody of somebody. If the threat was extreme, we could set no bail. For some offenses, Maryland statute says that there can be no release established by a commissioner. So, if you're a drug kingpin, and you're charged as such, the commissioner has no authority, by statute, to even offer pretrial release. But there's very few of those kinds of offenses.

In Maryland, it's quite simple. The rule says, you shall get a personal recognizance, unless there is a safety or an appearance issue. It's just that simple. It's only when individuals stray from those two goals or try to be punitive that it becomes a problem. If we followed those two things, I'd see much less bails being created.

Some players just don't follow the system. They have another agenda, I guess. Bail commissioners, judges, state's attorneys, everybody gets involved in that. If you had a penny for every state's attorney that said, "This person is probably going to be dangerous," or, "This person won't come to trial; put a bail on them," we'd be rich people. They're prosecuting the case, and they're looking for any strategic advantage they can get in the case.

Maryland still hangs on to this archaic business, the bail bond industry. Perhaps in the early days, it was important. I'm not so sure if it serves a real purpose today. In order to even determine that, it has to be standardized, it has to be licensed, it has to play by the same rules—and that it does not do, across collateral type or across political jurisdictions.

We see people now paying bondsmen a half percent, one percent... They do it all the time. Until the Maryland Insurance Administration takes action, there's nothing administratively we can do about that.

There are three main types of bondsmen: insurance insurers, real estate bondsmen, and cash bondsmen. If you're an insurance company that sells insurance to other insurance companies (what we call in Maryland a corporate insurer) you're using the power of attorneys based on insurance company policies to post the bond for a fee. They're licensed by the Maryland Insurance Administration, which has little control over the fees that are charged or the type of disclosure that they have to give. If you are a real estate professional, a real estate bondsman, you're licensed in four counties—in what they call the 7th Judicial Circuit of Maryland—by local rule, and you're not licensed anywhere else in the

state. If you are posting cash, you're only licensed by the Maryland Insurance Administration, which nobody can figure out yet, how that's an insurance instrument. But only one surety out of all the court sureties in Maryland is licensed to do that for cash only, and they get to charge an extra premium of 15% for that. The chief judge of the District Court, myself, and the judiciary tried to work out a system a couple of years ago in the legislature. We got the executive branch to support that, but the legislature killed it, and so we've got a system that is still basically free and wide open.

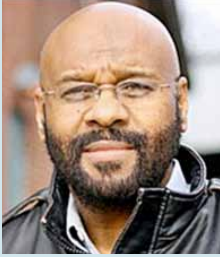
We see people now paying bondsmen a half percent, one percent, and the rest is in some sort of confessed judgment, or a lean on something. Let's say it's a \$10,000 bond. So they're going to charge a 10% fee, that's \$1,000. But they say to the person, "I'll take \$100, and a \$900 note."

My personal opinion is that the bail system is a relic of Maryland's colonial heritage and would benefit from legislative reform; however, the bail bond industry and insurance industry lobbies would be resistant to this type of reform.

—JEROME LACORTE, OFFICE OF THE PUBLIC DEFENDER

They do it all the time. Until the Maryland Insurance Administration takes action, there's nothing administratively we can do about that. We make them disclose that so we know what the actual collateral was. But how they go about collecting this and how they make any money, it just makes you wonder. It sort of defeats the purpose.





GREG CARPENTER

SITE DIRECTOR, SAFE STREETS—
MONDAWMIN (BALTIMORE, MARYLAND);
FORMERLY INCARCERATED INDIVIDUAL



I've experienced the criminal justice system firsthand. I spent approximately 20 years of my life in prison.

Bail is supposed to provide some temporary release from incarceration for the accused. Think about an individual who is surviving from hand to mouth. Their bail is set at \$5,000. Ten percent of that becomes \$500. For a person who doesn't have any money, whose family doesn't have any money, it becomes a hardship just to try to get that money together. We see it all the time. The kinds of people who are at Jericho do not have disposable income.¹ When someone gets locked up, everybody has to pool their resources, going from this family member to that family member, just to come up with the money to give to a bail bondsman. The bail bondman take the money and get the individual out, but the families never get that money back. So that becomes a burden.

Here in Baltimore, you can get out on bail by paying one percent of the bail to the bail bondsman. You make arrangements to pay the full ten percent to the bondsman over time. If you miss a payment, they snatch you up and put you back in jail. Whatever money you've given the bondsman, you lose. And bail bondsmen, they're just taking advantage of the situation. They do it because they know that the people that they're going to provide the service to have no other options. It's a hustle.

The other nuance here is that while the bail bondsman affords them the opportunity to get out, they had bills before they went in, but now they have this additional bill to deal with. In a lot of cases, it becomes a reason for an individual to commit more crime just so they can pay the bail bondsman. I've heard people say, "I've got this bail, and the only way that I can get the money to pay it is to do such and such. But as soon as I pay the bail off, I'm gonna stop." But it's never that easy, and it never happens like that.

There's so much that needs to be changed. Once you're arrested, you're put into a holding tank where you're subject to a lot of inhumane treatment. On any given night, you might be in one of those holding cells with eight or nine other people, when the cell's probably designed to hold four people. They only have one toilet, and everybody there is using that one toilet; you're exposed. It is demeaning and inhumane. You may be there for 24 hours. No matter what crime you committed, at the end of the day, you're still a human being and you should still be afforded some level of dignity and some level of respect.

I know we do not live in a society where morality is uppermost, so I cannot expect that the people who enforce and make the laws are going to be looking at it through my lens. I just think that if they were, they would realize that this is a serious opportunity to make some adjustments that would positively impact the lives of a lot more people. People say, "I don't ever want to go back," but a lot of times, the damage has been done. A lot of people are scarred. And they go back one way or the other.



¹ Jericho is a workforce development program for previously incarcerated men in Baltimore City.

PART 4

PRETRIAL DETENTION HAS NEGATIVE CONSEQUENCES FOR INDIVIDUALS AND FAMILIES

Some people are held pretrial for months, only to have their case dismissed, receive a shorter sentence than the time they have already served, or be acquitted. In the meantime, they may have had to rely on family or neighbors to care for their children and lost their jobs or homes.

Even a short stint in jail can jeopardize a person's employment, education and housing, and exacerbate health problems. According to a study by the Pretrial Release Project at the University of Maryland, of the individuals surveyed who could not

post bail, for 25 percent, their incarceration meant that they would lose their job; for 40 percent, it meant that they would lose their home.⁷ A study by the Center for Poverty Solutions found that while 63 percent of homeless people in Baltimore had owned or rented a house prior to their incarceration, only 30 percent had been able to access permanent housing when released.⁸

The living conditions are horrible. Just to eat is horrible. To sleep. Everything is horrible. Everything is disgusting. You actually have people that are getting skin bacterial diseases. I'm not sure if it is sores, but they have got all types of stuff. They have measles, scabies, lice, fleas. Your mattress might have 300 holes in it. They have the biggest roaches you've ever seen. I mean roaches that can pick up pea-sized rolls of bread and run off with them. And after he runs off with that, you watch the mouse eat him. It's ridiculous.

—TYRIEL SIMMS, BALTIMORE RESIDENT



ED SPENCE

COMMUNITY MEMBER



When I was first incarcerated, the charge was fraudulent documents, but actually, it was a violation of probation because I didn't show up for a probation hearing. I was 52 years old.

They put you in the holding cell—the bull pen, they called it—and leave you there until they figure out where they are going to put you. That's always the worst part, the bull pen. You can stay in there with 20 to 30 other people with no shower, no way to get clean. All they have there is a sink and a toilet, and I was in there for a couple days before they found me and took me somewhere I could actually lie down and sleep on a mattress.

I never met with a bail commissioner. One of the correctional officers at central booking told me that I had no bail and I just had to wait until my hearing came up. I was surprised because everybody kept asking me, all the prisoners in there, “What are you here for?”

“Fraudulent documents.”

“And you have no bail?!”

If you have “no bail” on your paperwork, you're not going anywhere until you go to trial. So, I just had to wait until my trial date, and there was no way to change it. I got incarcerated on January 6th, but I didn't get charged until February 8th, so it took one month for my court date to get set. My court date was February 18.

Ten years of experience that I had is gone because I couldn't get back before I was replaced.

When I got locked up and I spent forty days in jail, the first thing that was affected was my job. It's devastating. I'll tell you why: when you get relieved of your job because of time in jail, if you get out right away, you can go back and say, okay, these unfortunate circumstances happened. If you stay for a few days and you get bail, you can explain to your boss, and he'll put you back to work, especially if you have one of these companies that is ex-offender-friendly. Safeway was one of those companies because they get tax write-offs and that type of thing. After working ten years at a place, they know your work ethic, and they know that sometimes things occur that may take a day or two, even three or four. But after you're gone for a month and a half, you're done. There is a job that needs to be done. You can understand that they are going to have somebody do the job because you're not there. Ten years of experience that I had is gone because I couldn't get back before I was replaced. After ten years, my salary went up, my benefits were more, and retirement money was pretty stable. This jail time really changed the whole picture.

I know the criminal justice system is very overpopulated, but if there was some way that they could have reviewed it and looked over it in a more distinct manner before they decided “no bail,” that would have helped. I think maybe because it is so crowded, it causes problems. They should be very careful when setting high bails or no bails for nonviolent crimes because that kind of thing can destroy a person's future. Some people, when something like that happens, they end up as repeat offenders because they figure there is no way out and there is no other way to go.



KEVIN CAMPBELL

COMMUNITY MEMBER



I grew up going to church. My mom and grandma, they raised me. My father died when I was two years old.

I did pretty good in school before I started hanging in the street. I played basketball and football, and I liked to read—poetry, scary books, westerns. When I was about 17, I stole a car and got arrested. I went in front of the commissioner, and they gave me a \$5,000 bail. They explained it, but all of it was new; it was my first time coming through, and it was confusing. My mother and my aunt went to a bail bondsman and put the money up, \$500, and then I came home. They fussed about it; they didn't want to put that money up for something simple. I shouldn't have did it.

In '94 or '95, I had a drug charge and a probation violation. I think the bail was \$150,000. I went to a bail review, but they didn't lower it because of the probation violation. I didn't really try a bondsman because I knew my family didn't have money like that. I sat there for six months

while I waited for my trial. It burdened my family as far as not being there for my kids. It would have been better if, instead of setting my bail so high, they could have put me on home monitoring. The worst part is the average amount of time a bail commissioner spent with me was about five minutes.

I sat there for six months while I waited for my trial. It burdened my family as far as not being there for my kids.



If you sit in jail because you can't afford bail, there are a lot of consequences: If you have a job, you're likely to lose it. If you're providing for your family, your family is no longer going to be able to provide for itself. You're going to get all sorts of disruptions to whatever social connections that you have. You're also at a huge disadvantage in terms of your case. The research is very, very clear on this. If you are detained pretrial, you are much more likely to be convicted, and much more likely, if you are convicted, to get a stiffer sentence. So there are enormous consequences for whether you sit in jail pending trial or you get out.

—JOHN CLARK, PRETRIAL JUSTICE INSTITUTE

DARIAN WATSON

COMMUNITY MEMBER

I was in jail for one year before my trial.



The first thing I remember is getting off the paddy wagon and then the handcuffs being put on you. That's an experience in itself. The second thing I would say would be the whole routine, the strip search thing. That can be humiliating, stripping down in front of a bunch of guys; then, being put in solitary. It varies for different people, but for me, it was sixteen hours alone. I guess that was the procedure at the time, but I wouldn't really know any better anyway—I was young. That was my first time going through the adult system, but I was still seventeen. Then I was placed on juvenile intake detail. This is the time when they give you your first phone call. That was pretty much it for that first actual day.

I saw the bail commissioner when I was in that holding cell. There was no bail. So I was there for an entire year after that.

It would have been better if I had been released with some kind of supervision... being able to interact with my family, be in their physical presence and assure them that I'm okay all while still being able to attend school regularly.

As soon as I knew that I was denied bail, it just set in: well, you're not going anywhere. No chance. It was really devastating for my immediate family, and especially traumatic for my mother. There was no hope of me getting out and my parents pretty much had the same attitude. I saw my family maybe once or twice a week, if that, and only if the jail wasn't on lockdown. Lockdown means that something is happening in another section of the jail and everybody is locked in their cell as a result. It was up to the guard's discretion to put us on lockdown and it even happened when nothing was going on, no inmate violence or inmate activity. They did that plenty of times. It's in their power to do that so they do it.

It would have been better if I had been released with some kind of supervision. You know, not just let me out to do what I please, but have restrictions placed on me, like home detention. That would have been better for both me and my family, and other aspects of my life. You know, being able to interact with my family, be in their physical presence and assure them that I'm okay all while still being able to attend school regularly.

I think there should be a more defined measure for how they determine who gets bail. And if possible, it shouldn't just be one judge who primarily handles all the bail decisions. That's a lot for one person to handle, especially if all they are doing is handling bail cases all day long. Me, personally, I didn't have any legal counsel at the time. You should have some legal counsel when you approach your first bail hearing instead of just representing yourself. Everybody should be entitled to that, and even if you have a lawyer, there should still be one on standby in case your lawyer is not able to make it. If you are up there alone, you are going to get a whole lot of lip. You are as lonely as an island down there.



PART 5

THE CURRENT SYSTEM DOES NOT ASSESS RISK AND COSTS TAXPAYERS MORE

A popular misconception is that evidence-based risk assessments help to inform bail commissioners' pretrial release and detention decisions.

In reality, the Maryland Pretrial Release Services Program only reviews the cases of people who go before a judge for a bail review hearing after being detained because they couldn't post the initial bail amount. When a bail commissioner sets the initial bail, the decision is based on little more than a person's current charge and their previous

criminal history, if they have any. A risk assessment would collect information on a variety of factors proven to predict a person's flight risk and potential danger to community safety, such as residency status, employment, and mental health or drug issues, informing a commissioner's decision with evidence-based measures.

I saw the bail commissioner during those 16 hours when I was in that holding cell. It was very brief, first and foremost—I'm talking about 30 to 45 seconds. I thought things would be explained more in detail, but I was wrong. Based on that reading, they decide what your first bail amount will be. I wasn't asked anything except for my name simply to verify who I am - that was it. No questions pertaining to the case, no questions about the payment of the bail. Just looked at my wristband to make sure I am who I am by the numbers that were on it, and that was it.

—DARIAN WATSON, BALTIMORE RESIDENT



JOHN CLARK

SENIOR PROJECT ASSOCIATE, PRETRIAL JUSTICE INSTITUTE



The bail system, as it exists right now in most jurisdictions, is a cash-based system: if you've got the money, you can get out; if you don't have the money, you can't get out.

If you have some of the money, you can try to find a bail bondsman who will take your money. The bondsmen are in for the profit for themselves; the higher the bail, the higher their potential for profit, so they go after the high bail cases. High bail is usually set in the very serious cases. If I get arrested for disorderly conduct and the judge sets a \$500 bond on me, if the bondsman bailed me out, he'd get \$50. To a bondsman, that's not worth all the paperwork required to bail me out, so I'm going to sit in jail. Even though I've got \$50 to give to a bondsman, he's not interested in me. But if I get arrested for armed robbery, and I get a \$5,000 bond, that's a \$500 profit for the bondsman. That's the kind of case that would interest him. The system is built that way.

A lot of judges will even set bail low, intending for the person to get out. But a lot of those people end up sitting in jail because they don't have the money. The other side of it, too, is that judges sometimes set very high bonds, because they don't want someone to get out. And like I said, those are the financially attractive cases to bondsmen. So a lot of times, they do get out.

The bail bonding industry has no place in the criminal justice system. They, in effect, control who's in jail. We're ceding enormous amount of authority to a private, profit-motivated industry whose bottom line is to make money. That's not serving the public interest. Although bonding companies are technically liable to forfeit the bail bond if the defendant fails to appear in court, that doesn't always happen. In a lot of cases, they're able to get out of it.

People who don't need to be in jail are sitting in jail at taxpayer expense. They could be safely released, except nobody will take their \$50, or they don't have the \$50. They might sit in jail for two, three, four, five months, costing taxpayers thousands of dollars simply because they don't have fifty dollars to post bail.

Nationally, data show that in more than half of felony cases, defendants who do get money bail set by the court are never able to post it. They sit in jail throughout the entire time the case is pending. And even for those who do post it, it takes them an average of 12 days to post that bail. That's how much time it takes them, on average, to come up with the money and make their financial dealings with the bonding companies to get out.

Bail is supposed to maximize pretrial release while getting people back to court and protecting the safety of the community. But money does nothing to protect the safety of the community. On the other hand, higher risk defendants could be released on conditions that were designed to address community safety. They might be put on electronic monitoring, they might be tested for drugs, they might be given a curfew or stay-away orders—a number of things to monitor and curtail their activities in the community.





SPURGEON KENNEDY

DIRECTOR OF RESEARCH, ANALYSIS AND DEVELOPMENT, PRETRIAL SERVICES AGENCY OF THE DISTRICT OF COLUMBIA



There's no reason for money bail. It ought to be abolished.

One of the things that I get to do occasionally is ask judges across the country why they set bail. I get some of the inappropriate reasons that have nothing to do with why bail is supposed to be set. "Well, I know this guy is going to get probation, so I'm going to show him what the inside of a jail looks like." Or, "I want his parents and his family to feel some pain about this." Or, they like bail bondsmen; they've always set money, so why do anything different? Unfortunately, money bail is the prevalent type of release, or I should say detention, in this country. Most people in jail today are there because they cannot afford or will not post an amount of money that a judge set on them. Usually, that amount of money has absolutely nothing to do with your risk of getting back to court or being a danger to the community.

One of the things that D.C. has that most jurisdictions don't is a preventive detention statute. If you talk to judges who use money a lot, one of the things that they will tell you is, "I don't have an alternative. There's no other way for me to address a truly dangerous defendant." In D.C., we've given judges that option. Since 1970, we've had laws on the books that have allowed judges to hold those defendants pretrial, by statute, if they believe that those defendants are too dangerous to be released back into the community. That detention works in two stages: first, you make the initial decision that this person qualifies for preventive detention. Second, you have what is called a preventive detention hearing, where the defense and the prosecution present their sides and the judge decides whether the defendant warrants further detention.

About 15 percent of the defendants who come through our lockup here in D.C. are going to be detained pretrial by statute. So instead of a judge throwing out a cash amount and crossing his or her fingers that this is enough to keep you in jail, they have a statutory way of doing detention that respects the defendant's due process rights. It's taken some time to implement, but it's a much more honest way of identifying those defendants who pose a serious threat to community safety. It's a far more honest way of keeping them detained than money.

The other 85 percent are usually released on conditions of supervision. At some point, 5,500 or 6,000 defendants are under our supervision at any given time during the year. We supervise the majority of defendants who do get released, and usually those conditions of supervision are things such as drug testing; reporting to a case manager; for those defendants who we believe pose a greater threat to community safety, we have the options of electronic surveillance, or more reporting to case managers; we also have substance abuse treatment and mental health services connections when we assess defendants under our supervision as needed.



TYRIEL SIMMS

COMMUNITY MEMBER



It's not easy to stay out of trouble in Baltimore City. Even the best of us end up in trouble.

I have an extensive arrest history, but I do not have an extensive conviction rate. That's normal for living in Baltimore City. It's normal to be arrested for something that you didn't do, to be looked at as a problem. It's normal to be in the wrong place at the wrong time, which is everywhere. And it's normal for guys to accept convictions for things that they didn't do. People want to go home, and they can't afford proper representation. So they get the public defender. How does he represent you? You probably never met him until your court date. Probably didn't review your file until that morning. He doesn't know your name, and then you go to court, and he's asking you what you are going to do. You're saying,

You'd be surprised what a zip code can do to you in court. 21230 is a profile zip code. "Where does he live? 21230? Get him out of here."

"I'm innocent. I'm fighting this to the end. I really didn't do this." And he's like, "This is the state's offer." I have broken the law, but I would say 80% of my arrest history has been for something I didn't do. Of course I took the pleas. By the time you go in front of this judge, he's had 20 cases of the same charge. How different do you look?

You'd be surprised what a zip code can do to you in court. 21230 is a profile zip code. "Where does he live? 21230? Get him out of here." And then you are taking a plea to get out of the city jail, which is the worst place ever to be.

The last time I was arrested, I was initially offered \$150,000 bail, and then the judge changed it to no bail because he was in a bad mood. He said that. They say whatever they want to say to us. The toughest guy, the most confident person, is broken down in front of these judges, because they have the power to use that pen. It's not a sword; it's a nuclear bomb. They could ruin your life at any time, and you have to put in the work time and money to get it back. You'll be surprised how many guys come home after doing 80 percent of a 25-year sentence in the law library trying to find out their innocence. You have to put all those years in just to prove that you're innocent. You have to prove that yourself.

A guy might need \$500 to get home, and he might not be able to afford that. And he might be innocent. If you are to give someone bail, some of the guidelines need to be changed. It might need to be based on your house or income or something of that sort. They have some pretrial opportunities that I have heard of. I think that they might be able to go home, for pretrial home detention. But that standard is the highest. I've applied for it almost every time, and I have never gotten pretrial home detention. For some of the pettier charges, like simple possession charges, why wouldn't they be allowed to come home and be put in a work program? Or make them do some type of volunteer work. At least give them a step forward in some kind of way.

The last time I was arrested, I was initially offered \$150,000 bail, and then the judge changed it to no bail because he was in a bad mood. He said that. They say whatever they want to say to us.





CHERISE BURDEEN

CHIEF OPERATING OFFICER,
PRETRIAL JUSTICE INSTITUTE



Our jails are full of low-level, mostly nonviolent offenders who are in jail because our justice system has a one-size-fits-all approach to detention and bail.

We have one answer for everyone we arrest, whether it's for stealing food from a restaurant or a violent crime: we arrest you and put you in jail. We have one answer for anyone awaiting trial as well: how much money do you have? This one-size-fits-all approach doesn't work, and what's more, it's dangerous and expensive for society at large.

Every year there are 14 million arrests made across the country. A full 13 million of those are for misdemeanors, the vast majority of which result in detention rather than the issuance of a summons or citations. These are primarily nonviolent people who are held for bail amounts as low as \$400. It's a nominal fee for the state, but for many people, it's an entire month's rent, or an entire month of food for their families. Because these people can't afford their bond, they're stuck in jail until their court date, even if they have no criminal history. That means that for a single mother of three, she's got to hope that her neighbors can fill in to make sure her kids get to school on time, that they have enough to eat, etc. This is to say nothing of the potential consequences for this mother at work – she may well lose

Every year there are 14 million arrests made across the country. A full 13 million of those are for misdemeanors...These are primarily nonviolent people who are held for bail amounts as low as \$400.

her only source of income. By using risk assessment, this mother would be able to return home and maintain a stable home life under supervision until her court date. As it is now, her family, her home and her income are all at risk because of \$400.

Risk assessments will help cut costs and improve safety. Keeping people in jail while awaiting trial costs American taxpayers more than \$9 billion per year; that's roughly \$60 per person in jail per day. However, the cost of community-based monitoring for defendants awaiting trial ranges from \$1.50 to just over \$6 a day; that's a savings of at least \$4 billion per year. What's more, 25 percent of all felony cases are dismissed. Prosecutors should have an early screening process to determine the strength of a case. If a case is going to be dismissed, it should be done quickly, rather than after the average 30 to 60 days of jail time, which again, often unnecessarily costs taxpayers money and can have serious negative consequences for the person being held.

We know risk assessment works. For instance, in Kentucky, if the likely charge is probation, you may not be detained; you must be cited and released. Both Kentucky and Hawaii require and use pretrial risk assessments, and it's working to lower the number of nonviolent, low-level offenders who go to jail. That also means pretrial risk assessments are working to keep dangerous criminals locked up and lower the overall burden on American taxpayers.



PART 6

JURISDICTION SNAPSHOT: WASHINGTON, D.C.

Just 40 miles southwest of Baltimore City, another jurisdiction demonstrates that a different pretrial system is possible. Washington, D.C. is similar to Baltimore City in population size and demography, but it employs radically different pretrial release and detention practices, with striking results.

When the D.C. Bail Project was first established in 1963, most of the people occupying the Washington, D.C. jail were being held pretrial because they could not afford to pay bail, just like in Baltimore City today.⁹ Initially, the D.C. Bail Project, later called the D.C. Bail Agency, worked to connect those people with public defenders who would take their cases. In 1966, the Federal Bail Reform Act was passed, requiring judges to consider factors including employment, residence status, and ties to the community when making pretrial release or detention decisions.¹⁰ Although the court did not collect such information, the D.C. Bail Agency did. Within the next year, the agency began interviewing all people charged with felonies and reporting their findings to the court.

The Federal Bail Reform Act also called for the least restrictive conditions of release that provide reasonable assurance that people will appear for trial.¹¹ However, the court continued to rely on money bail to detain people considered “high risk,” rather than using non-financial conditions of release, such as supervision and monitoring.¹²

Then, in 1970, Congress passed the D.C. Court Reform and Criminal Procedure Act, which made

Washington, D.C. the first jurisdiction to mandate that judges consider risk to community safety as well as risk of failure to return to court in making pretrial release or detention decisions.¹³ In addition, the Act required that the D.C. Bail Agency supervise and monitor all people released pretrial, unless they were released through a for-profit bail bonding company. Perhaps the most groundbreaking provision of the Act was the preventive detention statute, which authorized judges to detain people pretrial without offering any means of release if they were believed to pose a serious threat to public safety.

Still, even after the passage of the Act, the court continued to set bail amounts for people who were eligible for pretrial detention, invoking the preventive detention statute infrequently.¹⁴ Over the next two decades, the agency—which was renamed the District of Columbia Pretrial Services Agency in 1978—worked hard to expand the options available to judges and increase the court’s confidence in non-financial conditions of release by creating measures such as drug testing people before their initial appearance in court and investigating failures to appear in order to prevent the issuance of

unnecessary bench warrants. Finally, in 1992, the D.C. Council passed legislation that expanded the criteria for preventive detention and prohibited the court from using money bail to detain people in jail.¹⁵ Today, Washington, D.C.'s pretrial system looks very different—and it works.

When a person is charged with a criminal offense in Washington, D.C., they are interviewed by the Pretrial Services Agency for the District of Columbia (PSA), as it is now named, no later than 48 hours following the arrest. Pretrial Services interviews all people charged with criminal offenses and serious traffic offenses using a 38-item risk assessment.¹⁶ The assessment includes factors such as a person's:

- Age
- Length of residency in Washington, D.C.
- Current charge
- Prior arrest history
- Current involvement with the criminal justice system
- Evidence of drug use
- Evidence of mental health issues

When the results of PSA's assessment indicate that a person may be a candidate for preventive detention (being held with no conditions of release), the court holds a preventive detention hearing. At the preventive detention hearing, the defense and the prosecution present their arguments to a judge, who makes the final pretrial release or detention

decision. Approximately 15 percent of people are detained in jail by statute.¹⁷

The other 85 percent of people are released on their own recognizance with supervision and monitoring conditions tailored based on PSA's assessment results.¹⁸ Some examples of non-financial conditions of release include:

- Drug testing
- Reporting to a case manager
- Stay-away orders
- Electronic surveillance
- Substance abuse treatment
- Mental health services

Washington, D.C.'s court appearance rate is 88 percent, meaning that individuals released pretrial return to court 88 percent of the time; furthermore, 88 percent of all individuals under PSA supervision and monitoring are not rearrested following release.

In the last 20 years, Washington, D.C. has ended its reliance on money bail through the growth of a strong pretrial services program. Washington, D.C.'s fruitful efforts to reform its bail system indicate that jurisdictions like Baltimore can also build a successful pretrial services program that can work to limit the number of people held pretrial, increase the number of people released on their own recognizance, and stop profiting the for-profit bail industry, all while maintaining a high return-to-court rate and protecting public safety.

PART 7

RECOMMENDATIONS

The individuals who participated in this project drew from their experiences and expertise as advocates, attorneys, judicial officials, pretrial services providers, and residents of Baltimore City to provide specific recommendations to improve the bail system in Baltimore City.

From their recommendations, three themes emerged: using evidence-based risk assessments, releasing more individuals on their own recognizance, and providing legal counsel to every person at their first bail hearing.

USE EVIDENCE-BASED RISK ASSESSMENTS TO ASSURE COURT APPEARANCE AND PROTECT COMMUNITY SAFETY.

CHERISE BURDEEN: “Risk assessments help cut costs and improve safety. Keeping people in jail while awaiting trial costs American taxpayers more than \$9 billion per year; that’s roughly \$60 per person in jail per day. However, the cost of community-based monitoring for defendants awaiting trial ranges from \$1.50 to just over \$6 a day; that’s a savings of at least \$4 billion per year.”

LAMONT REDMAN: “Like I said, this person is not a danger or flight risk, so why should they have to go through all this burden?Major cases, I

understand that—like murders, burglary, theft anything like that. But a lot of these guys are locked up for drug charges, and not for selling, but for using. What’s the purpose of continuing to give them bails? It drains the system, it overcrowds the jails, and you put an unnecessary troublesome burden on their families. Put these guys in treatment.”

JOHN CLARK: “Bail is supposed to maximize pre-trial release while getting people back to court and protecting the safety of the community. But money does nothing to protect the safety of the community. On the other hand, higher risk defendants could be released on conditions that were designed to address community safety.”

RELEASE MORE PEOPLE ON THEIR OWN RECOGNIZANCE, WITH SUPERVISION AND MONITORING CONDITIONS.

DAVE WEISSERT: “In Maryland, it’s quite simple. The rule says, you *shall* get a personal recognizance, unless there is a safety or an appearance issue. It’s just that simple. It’s only when individuals

stray from those two goals or try to be punitive that it becomes a problem. If we followed those two things, I'd see much less bails being created."

DARIAN WATSON: "It would have been better if I had been released with some kind of supervision. You know, not just let me out to do what I please, but have restrictions placed on me, like home detention. That would have been better for both me and my family."

KEVIN CAMPBELL: "I sat there for six months while I waited for my trial. It burdened my family as far as not being there for my kids. It would have been better if, instead of setting my bail so high, they could have put me on home monitoring."

TYRIEL SIMMS: "For some of the pettier charges, like simple possession charges, why wouldn't they be allowed to come home and be put in a work

program? Or make them do some type of volunteer work. At least give them a step forward in some kind of way."

ALL PEOPLE SHOULD HAVE LEGAL COUNSEL AT THEIR FIRST BAIL HEARING.

DARIAN WATSON: "Me, personally, I didn't have any legal counsel at the time. You should have some legal counsel when you approach your first bail hearing instead of just representing yourself. Everybody should be entitled to that, and even if you have a lawyer, there should still be one on standby in case your lawyer is not able to make it. If you are up there alone, you are going to get a whole lot of lip. You are as lonely as an island down there."

In short, what I believe is this:

- If a person is not a public safety risk and not a flight risk, don't use bail as a condition of release.
- If a person is not a public safety risk but a flight risk, consider alternatives to bail for the poor as well as bail options that return all the posted money.
- If a person is a public safety risk, consider no bail at all. If that is too draconian in light of the crime committed/criminal history, consider pre-trial detention alternatives to jail.

—PAGE CROYDER, FORMER BALTIMORE CITY PROSECUTOR

ENDNOTES

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Jean Chung is currently a Program Associate at The Sentencing Project. Prior to joining The Sentencing Project, Jean was a member of the 18th class of Emerson National Hunger Fellows. As a Fellow, she completed a landscape evaluation of Supplemental Nutrition Assistance Program (SNAP) access in the state of Wisconsin and authored this report during her policy placement at the Justice Policy Institute. The Emerson National Hunger Fellowship, a program of the Congressional Hunger Center, develops and supports the next generation of hunger and poverty leaders through partnerships with field and policy sites nationwide. Jean graduated Phi Beta Kappa from Emory University in 2011 with a degree in linguistics.

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