

Cash Bail Issue Brief

- **The cash bail system punishes the poor simply because they are poor.** Across the country, a person's wealth determines who sits in jail before trial and who is able to go home.¹ For example, a wealthy person arrested for a violent felony that poses a potential safety risk to the community could be released from jail if they make bail. A person arrested for a nonviolent misdemeanor, such as shoplifting, could sit in jail for weeks or longer because they cannot pay a few hundred dollars for bail. Cash bail is perhaps the clearest example of our two-tiered criminal justice system.
- **Many jailed individuals are alleged to have committed low-level and nonviolent offenses.** In fact, 3 out of 4 criminal cases in state trial courts are for misdemeanors that, if proved, would result in fines and/or less than a year in jail.²
- **Wealth-based incarceration disproportionately targets people of color and women and creates harsher case outcomes.**
 - Research demonstrates that African Americans and Latinos are more likely to be detained than whites with similar charges and histories. Furthermore, African Americans and Latinos often face higher bail amounts and are less likely to be released on conditions that do not involve paying money.³ Compared to white men charged with the same crime and with the same criminal histories, African American men receive bail amounts that are 35% higher. For Hispanic men, bail is 19% higher than white men.⁴
 - Most women in jail are charged with nonviolent crimes, yet women are less likely to be able to afford cash bail. A study found that women in jail before trial earned barely more per year than the average bond amount of \$10,000.⁵

¹ <https://www.pretrial.org/get-involved/learn-more/why-we-need-pretrial-reform/>

² <http://www.courtstatistics.org/-/media/Microsites/Files/CSP/Criminal/PDFs/EWSC-2016-CRIM-Page-2-Comp.ashx>

³ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1990324.

⁴ *Id.*

⁵ https://www.prisonpolicy.org/blog/2017/02/07/pretrial_cost/

- People who cannot afford bond receive harsher case outcomes. They are three to four times more likely to receive a sentence to jail or prison, and their sentences are two to three times longer.⁶
- **Individuals face cascading damage to their lives** as they sit in jail and wait for their case to move through the system. Many individuals risk losing their jobs, homes, and custody of their children. If they go through a private bail bonds company, they also may face spiraling debt.⁷
- **Cash bail is costly for communities.** Local communities spend \$13.6 billion every year to detain people who have not been convicted of the charges against them.⁸ In fact, around 70% of those currently in jail have yet to be convicted of a crime.⁹
- **There is a drum beat for reform, both nationally and in Virginia.** Numerous jurisdictions across the country have instituted changes to the cash bail system. These reforms have been enacted at the local and state level through various approaches, including court rules, legislation, and local policy decisions by prosecutors. For example:
 - Although cash bail is still legal in DC, it is rarely used, and the federal Pretrial Services Agency releases 80% of defendants with only a pledge to return to trial. Even without bail, PSA has seen 90% of released defendants appear at all of their scheduled court dates and 91% remain arrest-free between pretrial release and their trial date. Based upon a risk-assessment tool that calculates each defendant’s real threat as a safety risk or flight risk, the system recommends the “least restrictive, non-financial release conditions.”¹⁰
 - In 2016, Maryland Attorney General Frosh issued an opinion raising constitutional questions about the state’s cash bail system. In 2017, Maryland’s highest court voted unanimously to require judges to impose the “least onerous” conditions when setting bail for a defendant who is

⁶ <https://university.pretrial.org/viewdocument/investigating-the-im>

⁷ <https://www.theatlantic.com/business/archive/2017/05/bail-bonds/526542/>

⁸ https://www.prisonpolicy.org/blog/2017/02/07/pretrial_cost/

⁹ https://d11gn0ip9m46ig.cloudfront.net/images/059_Bail_Report.pdf

¹⁰ https://www.psa.gov/?q=data/performance_measures

not considered a danger or a flight risk.¹¹ The court rule did not eliminate cash bail but instructed courts to look to other ways to ensure a defendant's appearance at trial.

- In January 2017, New Jersey virtually eliminated cash bail and replaced it with a system that assesses individual risk. Although some claimed the new system would result in increased crime, this has not come to pass. And far fewer people are sitting in New Jersey jails.¹²
- In Virginia, Richmond Commonwealth Attorney Herring recently stated that his office will stop seeking cash bonds for defendants.¹³ He commented that he is “unaware of any validation of the correlation of money conditions and risk.” Additionally, in Northern Virginia, Fairfax County Circuit Court Judge David Bernhard has moved to drop money bail in his courtroom.¹⁴
- **The cash bail system should be replaced with a fair, equitable, and transparent alternative that protects public safety.** Courts should obtain better information about arrested people and more options to choose from when courts set release conditions. This may include using pretrial assessments to help inform judges' decisions, though it is essential that these assessments include protections to prevent discriminatory outcomes. Court systems can also provide support, services, and supervision to help released people show up in court and avoid arrests on new charges. Experience shows that even seemingly small actions, such as calling released people to remind them of their court dates, can yield positive results.¹⁵
- **Virginia should continue to lead the way on this issue.** In 2003, Virginia led the way to become the first state to test and implement a pretrial risk assessment tool. But more can and should be done to reform the system. Governor Northam and Attorney General Herring have the power to act at the state-level to encourage an end to the two-tiered system of cash bail.

¹¹ https://www.washingtonpost.com/local/md-politics/md-attorney-generals-office-raises-constitutionality-questions-about-states-cash-bail-system/2016/10/11/b2b1ecb8-8f15-11e6-a6a3-d50061aa9fae_story.html?utm_term=.ff8dd58f2ead; <http://www.baltimoresun.com/news/maryland/bs-md-bail-rule-20170207-story.html>

¹² <https://why.org/segments/one-year-since-n-j-ditched-cash-bail-heres-going/>

¹³ https://www.richmond.com/news/local/crime/richmond-prosecutors-to-stop-seeking-cash-bonds-for-criminal-defendants/article_fc63528e-d5a6-5a23-8e20-118a0cc25def.html

¹⁴ https://www.washingtonpost.com/local/public-safety/a-judge-appears-to-be-the-first-in-northern-virginia-to-drop-cash-bonds/2018/06/14/848d9a4c-5ea0-11e8-b2b8-08a538d9dbd6_story.html?utm_term=.d7058fb5feab

¹⁵ <https://www.pretrial.org/get-involved/learn-more/how-to-fix-pretrial-justice/#replace-money-bail>