

Have you asked them?

Talking to defendants about money bond and pretrial release

Policymakers and system stakeholders make many assumptions about people who are arrested and booked into America's jails. One of the most common is the belief that people won't return to court without having to pay money in advance as a condition of their pretrial release—a practice referred to here as “money bail.”

To test this assumption, in 2016 PJI helped fund a small research project at George Mason University's (GMU) Department of Criminology, Law and Society and the Center for Evidence-Based Crime Policy to learn what people who go through the system had to say about their motivations and the impact of the system. The researchers surveyed two groups: inmates who were in jail pending trial and those who had been released pretrial under supervision.

The full study report explores these issues in depth.¹ This brief highlights and provides context for key findings of interest to policymakers and system stakeholders who may be seeking to make their pretrial justice systems fairer and more effective.

The study

Researchers administered surveys to arrested people who were given the option of paying money bail but remained in jail (220 individuals, referred to as the “jailed group”) and others who had been released without financial conditions or through the payment of money bail (146 individuals, referred to as the “released group”) in four counties across three states. Participants self-reported demographic and case information and answered questions regarding the circumstances of their pretrial status.

Participants' ages were nearly identical between the two groups, with 29% of jailed participants younger than age 25 compared to 27% of the released group. Males accounted for 76% of both groups. Released participants reported higher education levels (52%

reported some college or above compared to 33% of jailed participants). Jailed participants were slightly more likely to be non-white (69% combined) than were released participants (62%).

Findings

The study surfaced three key findings of interest to stakeholders and policymakers:

- Money is the primary factor keeping people in jail before trial,
- Money bail has a negative impact on families, and
- Arrested people have low confidence in money bail and consider it unfair.



Money bail is the primary factor keeping people in jail before trial

Some skeptics of bail reform have argued that people jailed before trial may remain in jail for a variety of reasons other than an inability to pay.² Among the other reasons cited by study participants were family or legal advice not to post bail and court-related issues such as other holds or warrants. However, the GMU researchers found that the most common explanation—by far—provided by jailed participants for their continued detention before trial was that they (56%) or their family (34%) could not afford to post the money bail amount set by the court.



*multiple responses were possible per participant, so totals exceed 100%

Because of the historical connection between poverty and race in the United States, policies and practices that discriminate based on wealth disproportionately impact communities of color. The GMU study did not find a correlation between race or ethnicity and bond amounts that would suggest one group suffers or benefits more from the money bail system. However, survey results showed African Americans within the jailed group were less likely to “plan to post bond” (50%) than white (66%) or Hispanic (61%) participants. Also, African American respondents experienced more varied bond amounts than white or Hispanic respondents.

Money bail has a negative impact on families

Requiring arrested people to buy their way out of jail before trial has punitive effects that extend beyond the defendant. For example, families and friends of arrested people may sacrifice other critical expenses to raise bail money, may enter into risky financial agreements with for-profit bail bonding companies, may suffer from defendants’ loss of employment, and may experience disruptions in housing.



- **75%** of jailed group participants planning to post bail said the money would come from family and friends.
- **68%** of the released group said the money already paid for their release had come from family and friends.
- **77%** of individuals released through money bail indicated that they—or their family and friends—used a for-profit bail bondsman to pay for their release.
- **84%** of jailed defendants who were employed at the time of their arrest said they may lose their jobs because of pretrial incarceration.
- **30%** of released individuals indicated they had lost their jobs while in jail (more than half of these people had only been incarcerated between one and three days).
- **61%** of detained participants indicated they would not live in the same place when released from jail or were unsure if their housing would change. By comparison, **75%** of released participants said their housing had *not* changed after their arrest.
- **56%** of jailed participants and **54%** of released participants said they were parents or guardians of children.
- **57%** of the detained group said that pretrial incarceration would or may change the living situation for their children, compared to only **40%** of the released group.

The risks of for-profit bonding

For-profit bail bonding companies may offer low rates or payment plans to encourage arrested people and their families and friends to sign for bail amounts that are beyond their reach.

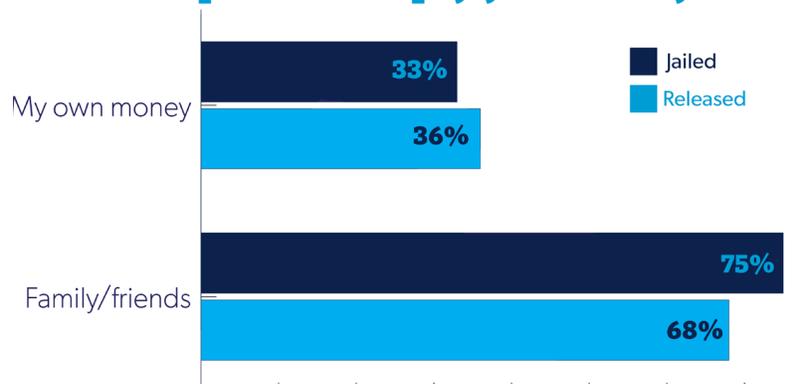
This industry has been compared to predatory lenders that target vulnerable people and leave them with never-ending debt.*

For example, in a jurisdiction near several of those in this study, Demorra Tarver's family entered a payment plan with a bondsman for charges that were eventually dismissed. When the Tarvers were unable to make payments, the debt was sent to a collection agency. Because of interest and the Tarvers' low income, at the resulting rate of payment the debt will never be resolved.†

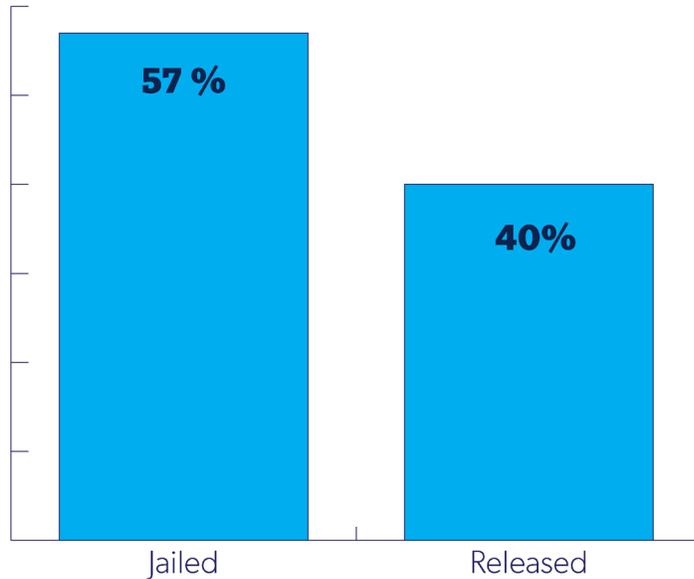
* Spike Bradford, "For Better or For Profit: How the Bail Bonding Industry Stands in the Way of Fair and Effective Pretrial Justice," Justice Policy Institute, September 2012.

† Annalies Winny, "Demorra Tarver's charges were dropped, but the 10 percent fee he promised a bail bondsman on his \$275,000 bail has him drowning in debt," City Paper, July 20, 2016.

Who paid or will pay your money bail?



Pretrial detention may impact or has impacted my children's housing



Arrested people have low confidence in money bail and see it as unfair

Requiring an arrested person to pay money prior to release from jail is meant to encourage court appearance and lawful behavior. However, belief in these outcomes was relatively low among study participants in both groups.

- Only 53% of jailed participants and 48% of released defendants indicated they believe money bail provides an incentive for defendants to return to court for all proceedings.
- Only 42% of the jailed group and 41% of the released group believed money bail encourages lawful behavior during pretrial release.

Facts about money-based pretrial justice in the U.S.

- Pretrial incarceration costs the country an estimated \$14 billion each year.*
- Pretrial incarceration accounted for 95% of jail growth from 2000 to 2014—currently 63% of jail inmates are unconvicted, awaiting trial.†
- African Americans and Latinos receive higher bail amounts—sometimes twice as high—than white people with identical backgrounds and are subsequently detained pretrial at significantly higher rates‡.
- Compared to identical people who are released before trial, detained people are convicted more, sentenced to prison more and for longer terms—this feeds mass incarceration.§
- Many people incarcerated before trial plead guilty—regardless of actual guilt or their chances at trial—simply to go home to their families.¶
- Even short stints of pretrial incarceration lead to an increased likelihood of recidivism.**

* Ram Subramanian, Ruth Delaney, Stephen Roberts, Nancy Fishman, Peggy McGarry. *Incarceration's Front Door: The Misuse of Jails in America*. Vera Institute of Justice. New York, NY, 2015.

† Todd D. Minton & Zhen Zeng. *Jail Inmates at Midyear 2014*. Bureau of Justice Statistics. U.S. Department of Justice. Washington, DC: Office of Justice Programs, 2015.

‡ Cynthia E. Jones. "Give Us Free": Addressing Racial Disparities in Bail Determination. *Legislation and Public Policy*, Vol. 16:919 (2013).

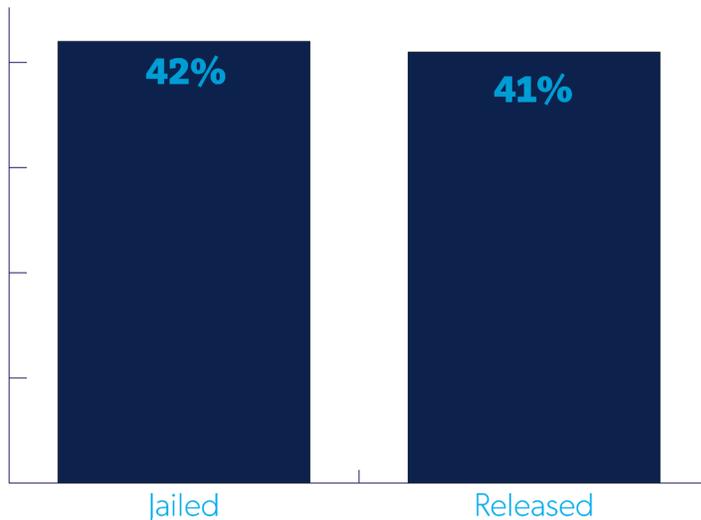
§ Christopher T. Lowenkamp, Marie VanNostrand, Alexander Holsinger. *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*. Laura and John Arnold Foundation. New York, 2013.

¶ Megan Stevenson. *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*. University of Pennsylvania Law School. Philadelphia, 2016.

** Laura and John Arnold Foundation. *Pretrial Criminal Justice Research: Research Summary*. New York, 2013. 6. Federal study validates risk-assessment tool used by Kentucky courts for pretrial release. <http://migration.kentucky.gov/Newsroom/kycourts/NR06202011|B1.htm>. Pretrial Services Agency for the District of Columbia: Research and Evaluation Efforts. https://www.psa.gov/?q=data/research_evaluation_efforts.

A growing body of research shows that pretrial practices that require people to pay money prior to release do not improve pretrial outcomes. Court appearance and public safety—the only two factors relevant to pretrial decisions—can be achieved as well or better by practices that minimize or remove financial conditions, such as release on recognizance, supervised release and unsecured bond (in which a person pays money only if he or she fails to appear in court).

Confidence in money bail to discourage crime is low among jailed and released defendants



These findings suggest that the use of money bail could actually create a dis-incentive for people to appear in court.

Conclusion

The findings of this study underscore that current money bail practices have consequences that can make it more difficult for people who have been arrested to fulfill their legal, family, and community obligations, even if they can post the bond. In many ways, these practices may also contradict the aims of pretrial justice—which are to get people to come to court and stay arrest free before trial. They seem, also, to conflict with key tenets of procedural justice, a field of study that has shown that fair treatment contributes to compliance with court orders. As we work to advance legal and evidence-based pretrial justice in America, PJI is committed to ensuring that community voices, victims' voices, voices of those directly impacted, and voices of those we may not realize are impacted, have an opportunity to be

Other research has shown that people are more likely to comply with law enforcement and courts when they believe the system operates fairly—in other words, when they perceive higher levels of what researchers call “procedural justice.”³ The GMU study measured both participant groups’ perceptions of procedural justice⁴ and found:

- Jailed group participants with higher money bail amounts and those not planning to post bond saw the pretrial system and process as less fair, while
- Released group participants who had been freed without financial conditions and those with lower money bail amounts saw the process and the system as more fair.

heard. This was a small study of a few jails. It is our hope that policymakers and system stakeholders will also begin using similar survey instruments as part of their overall work in collecting data about their jurisdiction and the outcomes associated with their policies and procedures.

Endnotes

1 Catherine S. Kimbrell and David B. Wilson, “Money Bond Experiences and Perceptions,” August 2, 2016, George Mason University, Department of Criminology, Law and Society, <https://university.pretrial.org/viewdocument/money-bond-process-experiences-and>.

2 “The Issues,” American Bail Coalition, www.americanbailcoalition.org/criminal-justice/.

3 T. R. Tyler, *Why People Obey the Law*. (New Haven, CT: Yale University Press, 1990). pg. 56.

4 An overall fairness score was calculated from the responses to the following items: “My most recent bond hearing was fair; I was treated with respect during my most recent bond hearing; The current bond amount set for me was fair.”

