The Leadership Conference Education Fund

The Leadership Conference

FREQUENTLY ASKED QUESTIONS ON BAIL REFORM

END "MONEY BAIL"!

Frequently asked questions about our position on "money bail" and the devastation that it causes for low-income communities and communities of color.

1. **Do you oppose "money bail" as a way to determine pretrial detention or release?**

Yes. We unequivocally oppose the use of secured financial conditions ("money bail") to determine whether someone should be released before trial. We support efforts to end this unfair and discriminatory practice. As organizations with a focus on civil and human rights, we further note that judges assign heavier secured financial conditions to Black defendants, and that Black, Brown, and poor people are incarcerated pretrial at disproportionate rates, largely because of the high cost of money bail. Reforms to America's harsh, punitive, and racially biased money bail system are urgently needed, and must be judged by how they reduce incarceration and improve racial equity. Financial conditions (including costs of monitoring or supervision) should never be imposed on the presumptively innocent. Pretrial detention should be reserved for the rarest of cases and only after individualized due process. The overwhelming majority of accused people should be free to return to their families, jobs, and lives while awaiting trial ***without*** a financial obligation.

2. **What is your position on the commercial bail industry?**

The commercial bail industry profits from the criminalization of low-income people and people of color and is actively working to protect and maintain money bail at the expense of some of the most vulnerable communities in our society. There is an urgent debate among criminal justice reformers regarding what role, if any, algorithms should play in the system that replaces money bail. In response, lobbyists for the American Bail Coalition are trying to suggest that concerns raised about the risk assessment somehow makes money bail morally tolerable. Nothing could be further from the truth. Their messaging is not only misleading, but it minimizes the human suffering that drives profits for this industry. **We are opposed to the existence of any industry that profits off of the processing of poor people and people of color through the criminal legal system.** We are in no way aligned with the commercial bail bond industry, or their strategies or tactics, which have work as a roadblock to long-needed reforms to our country's pretrial systems.

3. **Do you agree with recent statements by the American Bail Coalition that suggest civil rights groups support money bail?**

No. We reject assertions by the commercial bail bond industry that suggest our concerns about pretrial risk assessments equate to support for money bail. **Our recent statement calls for an increased focus on racial justice, community involvement, and transparency improvements to those jurisdictions that use risk assessment algorithms.** As organizations that have fought to eradicate money bail and advance racial equity, we strongly disagree with any suggestion that we condone the status quo in pretrial justice.

4. **Why do you oppose the use of pretrial risk assessment tools as a part of pretrial decisionmaking?**

As we explained at length in our statement of concern and its accompanying documents, "pretrial risk assessment instruments – although they may seem objective or neutral – threaten to further intensify unwarranted discrepancies in the justice system and to provide a misleading and undeserved imprimatur of impartiality for an institution that desperately needs fundamental change."

5. **What are the lessons from reforms in New Jersey?**

We favor reforms that dramatically reduce the use of pretrial detention, end secured money bail (also known as wealth-based incarceration), and vindicate individual due process rights. New Jersey's reformed pretrial system, which took effect as a result of statute on January 1, 2017, increased pretrial release, established robust due process, and ensured that almost everyone starts from a presumption of freedom pending trial. The key lesson that should be drawn from New Jersey is that jurisdictions can preserve individual constitutional rights, provide speedy individualized hearings, and ensure that jailing prior to trial is the 'carefully limited exception' as the United States Supreme Court has mandated.

To the extent New Jersey continues to use a risk assessment tool, our shared statement of concerns offers suggestions as to how its system, and similar systems currently underway in other jurisdictions, might be further improved, particularly to better promote racial equity and transparency.

Our statement should *not*, however, be taken to suggest that the system in New Jersey prior to these reforms would in any way have been preferable to the current system that includes a tool.