

## Cash Bail

Bail is one of the first experiences of someone going through the American criminal “justice” system. The Marshall Project defines cash bail as, “a refundable, court-determined fee that a defendant pays—regardless of guilt or innocence—to await trial at home instead of in jail.” Cash bail allows those with the ability to pay to go home while those unable to must await trial in jail. The Marshall Project discusses that while “innocent until proven guilty” is ingrained in the American psyche, the use of bail means that if you can’t pay, you serve jail time.” When people are incarcerated before proper trials it outright opposes the idea of innocent until proven guilty. Although the intended use of bail was to hold those who may be viewed as a flight risk or may harm the community, it has only served to criminalize poverty and enable the rich. This issue like many others has become intersectional in its ways of affecting those marginalized. It has not remained one of just classism but also of racism. It targets these communities directly, but because it is seen as “equal” and the prices remain consistent for the same crimes people don’t see how it disproportionately affects others. This cover allows for the inequitable racist and classist treatment of people under the ironic justification of being equal treatment. The rich and wealthy can commit various crimes and be released before sentencing, while their poor counterparts end up in a jail cell for years on a \$1 bail. This is why the abolition of cash bail is necessary. It is unjust, inequitable, and criminalizes poverty and allows others to profit off of it. It has only existed to persecute those who can not afford it and hasn’t left the world any safer considering its own attack on poverty. Cash bail has failed to treat the American citizens equally and criminalized the poor for many reasons but, specifically, by allowing for too much judicial discretion, poor attorney representation, and a disproportionate impact on the poor.

Within the court system, judges play a large role in deciding what sort of pretrial sentencing you will encounter and tend to have far-reaching control over its outcome. They choose between setting your bail at a monetary amount, releasing you on your own recognizance without a fee, or denying you bail completely (which is called remand). This decision is based on a lot of factors but bail is usually denied if the judge deems the defendant a flight risk or danger to the community because of the nature of the alleged crime. Tierra Bradford, from ACLU PA, said that because of the way judges practice the law many more people end up in jails and it’s important to hold arraignment court judges accountable because they are the ones who set bail and issue arrest warrants. This happens for many different reasons, but often it’s in order to appear as holding defendants “accountable”. Some judges feel as if they must set a bail price and so they set it at one dollar assuming that the person will be able to pay it, but it instead keeps people in jail solely because of their economic status. Setting a one-dollar bail keeps those accused in jail even if they can afford the one dollar because “they are not given the opportunity to pay their own bail and may not even know about it until they’ve waited days or weeks for their court date.” (The Dollar Bail Brigade). People aren’t able to pay their own bails ever, they must have another individual do it for them, which further harms those who don’t necessarily have

family or friends who are able to assist. This is another example of how the system may seem “equal” because of the way the law is applied the same to everyone, but it isn’t at all just. One returning citizen, Afrika Owe, shared that there are minimum bail amounts that judges aren’t allowed to ignore, which also keeps people in jail even when a judge may believe there is no need. Judicial discretion isn’t the only issue; the lack of it, which can be seen as a “check” on judges, actually harms the accused much more than judges having total control would have. This is extremely important because even though the power judges have is extremely harmful, the system and rules that judges must comply with are even more harmful.

Poor attorney representation for those without financial stability is another way that this system is inequitable. Poor attorney representation has a lot to do with keeping people in jail when they really shouldn’t be or telling them to plead guilty when innocent in order to get out of pretrial jail. When describing his experience with attorneys in the system, one returning citizen from the Youth Art and Self Empowerment organization said that he had been in jail for 8 months awaiting trial and was advised by his attorney to plead guilty because he was accused of a low-level crime and if he plead guilty he could go home. The issue with this was that if he plead guilty this crime would be on the record. He decided to go against what his counsel had advised and wait until trial. The judge ended up completely dropping his charges. He was never tried and he was able to go home after sitting in a cell for 8 months as an innocent person. This is just one example of the experience of a poor Person of Color going through the jail and bail system without adequate counsel. Attorneys play a large role in your overall trajectory from arrest to prison and they guide you on whether to plead guilty or not. This importance of counsel pretrial is most important for defendants who are unable to pay their bail and have been put in jail because of it. Many of these issues pertaining to counsel pre-trial don't apply to wealthy counterparts because they can pay to go home, and even if they are unable to pay for a lawyer they are still able to await their trial outside of jail and don't face the pressure of possibly pleading guilty so they're just able to go home. Afrika Owe also stated that, if you make bail you can still retain your house, kids, etc. and they will use that time out to build up a “resume” for the judge, so they can say I did therapy while awaiting trial. But if you can't make jail then all the judge will know is what you're being charged for. Having an attorney that is looking out for your best interest is extremely important in surviving this system, but that is a luxury that so many people aren't afforded.

While all of these aspects of the system have a disproportionate impact on the poor, bail bondsmen and bonds take from those already marginalized and most vulnerable. Bondsmen aren't explicitly a part of the cash bail system, but they exploit those impacted by the system in order to gain a profit. When “choosing” to go through a commercial bail bondsman in order to meet your conditions of money bail, you pay a bondsman a portion of the bail amount (usually about ten percent) and they pay the full amount to the court. The ten percent fee is nonrefundable even after the trial or if your charges are dropped. (Rabuy & Kopf, 5/10/16) This gives way for

3rd parties, bondsmen, to profit off of this system and off of poverty. Bail bond businesses often have shops outside of jails and courthouses and offer the only possible solution for many to get out of jail. While this may seem like a good thing for those who are unable to initially get out of jail, in the future it makes things worse. These businesses work within the system, profit off of it, and take from those who already are unable to pay their bail. Community bail funds are one way that communities as a whole decide to push back against this system and support each other but the fund comes directly from community members and, therefore, aren't always accessible.

Abolition of cash bail necessary because of its blatant classist and racist procedures that impact the lives of those most marginalized. Abolition is the first step, and after that, we need to look at remand vs release onto one's own recognizance, because once cash bail is no longer an option those are what's left. Aside from the bail system, the entire criminal "justice" system needs to be reimagined, and getting rid of all pretrial jail time is one very small but extremely impactful step that is an important step in changing the way that "crimes", or alleged crimes, are handled and dealt with.

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Cash bail is a refundable, court-determined fee that a defendant pays—regardless of guilt or innocence—to await trial at home instead of in jail. While "innocent until proven guilty" is ingrained in the American psyche, the use of bail means that if you can't pay you serve jail time."

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