

# Pretrial's Money Problem

Perhaps the greatest obstacle to fair, equitable, and effective pretrial justice is, in a word, money. Financial release conditions—often called “money bond” or “cash bail”—keep hundreds of thousands of people in jail and increase racial and economic disparities without improving community safety or court appearances.

## What Are Financial Release Conditions?

After a person is arrested and placed into custody, a judicial officer decides whether to release or detain them in jail pending the disposition of their case. When the person is released, the judicial officer may require the person to abide by certain conditions. Standard release conditions include returning to court for all required hearings and remaining law-abiding. Any additional conditions must be the *least* restrictive to provide reasonable assurance a person attends court hearings and does not commit a new offense.

A **financial release condition** is an amount of money that, if ordered by a judicial officer, can be forfeited if a person fails to appear in court. Financial conditions are often “secured,” meaning that if a person has money to post the full amount—or, in most jurisdictions, to pay a bail bond agent to post it for them—the person is released. If the person can't afford to pay, they stay in jail.

## Do Financial Conditions Work?

**No.**

### Financial conditions do not improve community safety or court appearance

Multiple studies concluded that any kind of financial condition does not improve people's law-abiding behavior or their return to court.<sup>1</sup> To the contrary, the use of money often results in the release of people who can afford to pay but might pose a threat to community safety and well-being, and the detention of others who cannot afford to pay but would be likely to remain law-abiding if they were released.

*“The reliable, credible evidence in the record from other jurisdictions shows that release on secured financial conditions does not assure better rates of appearance or law-abiding conduct before trial compared to release on unsecured bonds or nonfinancial conditions of supervision.”<sup>2</sup>*

### Financial conditions often result in pretrial detention, which has negative impacts

Pretrial detention has documented negative effects: increased pressure to make a plea deal, greater likelihood of a guilty verdict, harsher sentences, higher rates of new arrest, and disruption or loss of housing, employment, and family support.<sup>3</sup>

## Financial conditions create racial and economic disparities in the criminal legal system

The disproportionate negative impact of financial conditions on people of color and people experiencing poverty is well documented. On average, Black and Latino people receive higher financial conditions than similarly situated white people<sup>4</sup> and, as a result, are more likely to be detained.

*Pretrial liberty must be the norm and detention prior to trial the carefully limited exception.<sup>5</sup> The Supreme Court has held that absent a right to pretrial release, “the presumption of innocence, secured only after centuries of struggle, would lose its meaning.”<sup>6</sup>*

### For Reporters

#### Terminology

Use the terms “pretrial release” and “financial release conditions” instead of “bail.” Historically and legally, “bail” is the process of pretrial release. However, reliance on financial release conditions has resulted in misuse of the term. To avoid confusion, refer to money as a “financial release condition” and the process of pretrial release as, simply, “pretrial release.”

#### Resources

To interview an APPR expert on the use of financial conditions in pretrial systems, email [media@cepp.com](mailto:media@cepp.com).

A number of prominent national organizations have articulated standards for least restrictive, nonfinancial conditions of release:

- [American Bar Association](#)
- [Conference of Chief Justices](#)
- [National Association of Pretrial Services Agencies](#)
- [National Institute of Corrections](#)

See APPR’s summary of [Pretrial Legal Principles](#).

## Notes

- 1 Brooker, C. M. B., Jones, M. R., & Schnacke, T. R. (2014). *The Jefferson County bail project: Impact study found better cost effectiveness for unsecured recognizance bonds over cash and surety bonds*. Pretrial Justice Institute. [http://clebp.org/images/Jefferson\\_County\\_Bail\\_Project-Impact\\_Study\\_-\\_PJI\\_2014.pdf](http://clebp.org/images/Jefferson_County_Bail_Project-Impact_Study_-_PJI_2014.pdf); Stevenson, M. T. (2017). Distortion of justice: How the inability to pay bail affects case outcomes. *Journal of Law, Economics, and Organization*, 34(4), 511–542. <https://doi.org/10.1093/jleo/ewy019>
- 2 *O’Donnell v. Harris County*, 251 F. Supp. 3d 1052 (S.D. Tex. 2017).
- 3 Dobbie, W., Goldin, J., & Yang, C. S. (2018). The effects of pretrial detention on conviction, future crime, and employment: Evidence from randomly assigned judges. *American Economic Review*, 108(2), 201–240. <https://pubs.aeaweb.org/doi/pdf/10.1257/aer.20161503>; Leslie, E., & Pope, N. G. (2017). The unintended impact of pretrial detention on case outcomes: Evidence from New York City arraignments. *Journal of Law and Economics*, 60(3), 529–557. [http://econweb.umd.edu/~pope/pretrial\\_paper.pdf](http://econweb.umd.edu/~pope/pretrial_paper.pdf); Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). *Investigating the impact of pretrial detention on sentencing outcomes*. Laura and John Arnold Foundation. [https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF\\_Report\\_state-sentencing\\_FNL.pdf](https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_state-sentencing_FNL.pdf); Phillips, M. T. (2012). *A decade of bail research in New York City*. New York City Criminal Justice Agency. <https://www.nyapsa.org/assets/files/DecadeBailResearch12.pdf>
- 4 Demuth, S. (2003). Racial and ethnic differences in pretrial release decisions and outcomes: A comparison of Hispanic, Black, and white felony arrestees. *Journal of Criminology*, 41(3), 873–908. <https://doi.org/10.1111/j.1745-9125.2003.tb01007.x>; Schlesinger, T. (2005). Racial and ethnic disparity in pretrial criminal processing. *Justice Quarterly*, 22(2), 170–192. [https://www.researchgate.net/publication/248967295\\_Racial\\_and\\_Ethnic\\_Disparity\\_in\\_Pretrial\\_Criminal\\_Processing](https://www.researchgate.net/publication/248967295_Racial_and_Ethnic_Disparity_in_Pretrial_Criminal_Processing)
- 5 *United States v. Salerno*, 481 U.S. 739, 750 (1987).
- 6 *Stack v. Boyle*, 342 U.S. 1, 4 (1951).