

The Price of Justice: America's Unfair Bail and Prosecution System

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The Clear-Eyed Case for Pretrial Justice Reform

Spotlight on New York City

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Where are we right now?

PART I

Mass Incarceration Today

What does jail have to do with it?

National admissions in 2014 = 12,092,831

- ▶ State Prisons: 626,644 (5.2 percent)
- ▶ Federal Prisons: 50,865 (0.4 percent)
- ▶ Local Jails: 11,415,322 (94.4 percent)

(Bureau of Justice Statistics (BJS); Carson 2015; Kaeble et al. 2016; Minton et al. 2015)

Thus Spoke SCOTUS

- ▶ “[T]he modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused. Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is "excessive" under the Eighth Amendment” (*Stack v. Boyle*, 1951).
- ▶ “In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception” (*United States v. Salerno*, 1987).

Presumption of Innocence?

- ▶ Over 60 percent of the U.S. jail population consists of individuals awaiting trial – the accused, not the convicted
- ▶ Pretrial incarceration accounted for 95 percent of jail growth from 2000 to 2014

(Minton & Zeng 2015)

Jail in New York City

- ▶ 75 percent of the roughly 9,700 defendants held in jail are there pretrial
 - ▶ The vast majority cannot afford bail
- ▶ 9 out of 10 people behind bars in NYC are either Black (55 percent) or Latino (34 percent)

(Independent Commission on New York City Criminal Justice and Incarceration Reform 2017)

Typical Bail Practice in NYC

- ▶ The two most onerous forms of bail:
 - ▶ Cash (requires all money paid up front)
 - ▶ Insurance company bond (requires 10 percent deposited as collateral with a bail bond company, along with any other non-refundable fees)

- ▶ Median Bail Amounts in 2016
 - ▶ \$1,000 for Misdemeanors
 - ▶ \$5,000 for Nonviolent Felonies

(Independent Commission on New York City Criminal Justice and Incarceration Reform 2017)

Examples of Alternative Forms of Bail (Allowable in NYS)

- ▶ Credit card to pay bail of \$2,500 or less
 - ▶ Allowed in only 3 percent of eligible cases in 2013
- ▶ Partially secured bonds (payment of a percentage up front and the rest only if the defendant doesn't return to court)
 - ▶ Barely used at all... also barely used at all:
- ▶ Unsecured bonds (no up-front payment and only collected upon failure to appear)
 - ▶ Shown to be just as effective at securing court appearances – both nationally and in NYC (Jones 2013; Rahman 2017, forthcoming)

(Independent Commission on New York City Criminal Justice and Incarceration Reform 2017)

Examples of NYC Reform Strategies

- ▶ Launched citywide supervised release in March 2016
- ▶ Eliminated fees associated with paying bail
- ▶ ATM machines in courthouses
- ▶ Online bail payment system (in progress)
- ▶ Citywide bail fund (in progress)

Client's Background

- Raised in a single parent household
- Grew up in a low-income neighborhood (Southside Jamaica, Queens)
- Charged and convicted of a Robbery in the first degree in 2003
- Served six-and- half years in NYS prison
- Released to parole in 2010
- Detained by Immigrations Custom Enforcement (ICE) in 2014
- Married with two children
- Full-time employment
- High school diploma
- Some college
- Community ties

Exit the courtroom – what's the impact?

PART II

Jail Begets Jail

- ▶ As little as **48 hours** in jail can **increase** post-release recidivism risk (Lowenkamp et al. 2013)
- ▶ Defendants who spent 15 to 30 days in jail pretrial were found to have an **83 percent higher** likelihood of post-disposition criminal activity within 12 months, relative to those who spent just one day in jail (Holsinger 2016)

Increasing Risk in NYC

As of 2012, a sentence to jail increased re-arrest rates over a two-year period by **7 percentage points** among comparable defendants:

- ▶ Minimal risk: 9 percent increase
- ▶ Low, Moderate, or Moderate-High risk: 6 to 8 percent increase
- ▶ High risk: 4 percent increase

(Rempel et al. 2016)

Lasting Harms of Incarceration

- ▶ Reduced employment opportunities (Bushway 2011)
- ▶ Loss of housing (Subramanian et al. 2014)
- ▶ Other collateral consequences (Bradley 2001; Freisthler & Godsey 2004)
- ▶ Increased stigma and decreased “stakes in conformity” (Dejong 1996; Spohn 2007)
- ▶ Increased post-traumatic stress (Listwan et al. 2013)

And if a defendant manages to post bail...

- ▶ Logistical delays
- ▶ May require the use of scarce financial resources
- ▶ Fees and collection practices of bond agents

Upshot/Some Next Steps

- ▶ Strategic plan for pretrial reform in NYC
 - ▶ Study the full range of options for alternatives to the cash bail system in NYS
- ▶ Strategic plan for *earlier* behavioral health diversion
- ▶ Develop more responsive alternatives to incarceration
 - ▶ Trauma-Informed Care
 - ▶ Procedural Justice
- ▶ Report cards/system accountability mechanisms

Contact

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Prison is the Most Unaffordable Housing



Is Immigration Detention the New Incarceration Boom?



The Price of Justice: An Unfair Bail and Prosecution System



Discuss Closing Rikers

Funders Briefings

ENDING THE CRIMINALIZATION OF POVERTY SERIES

Fall 2017: Justice Reform Funders Summit

2015

2017

Justice Reform Programming at PNY

2016



37th Annual Meeting



A Conversation on LEAD and New York's Opioid Epidemic



End the Sexual-Abuse-to-Prison Pipeline



Unconnected Prisoner Re-Entry Services



School Discipline is Changing. For the Better?

Justice Reform Funders Summit

- Engage in a strategic conversation.
- Discuss high-value strategies that will move justice reform forward over the next 5 years or so.
- Capture the local moment in justice reform.
- Explore current funder alignment and also potential shifts in strategy among members.