

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”—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?

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. An unsecured condition means a person pledges to pay if they do not appear in court, but they do not post money upfront.

Money's Dual Use

Financial conditions of release are meant to be just that: conditions of *release*. In practice, however, financial conditions are the primary means used to detain.

When a judge releases a person pending the disposition of their case, they 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—including financial conditions—must be the *least* restrictive to provide reasonable assurance, not certainty, that a person attends court hearings and does not commit a new offense.

Often, however, financial conditions operate not as a way to facilitate someone’s release, but rather to keep them in jail. Judges rarely order detention outright. (In many states, judges can detain only a narrowly defined group of people, such as those charged with capital offenses.) Rather, the vast majority of people in jail are there because they cannot afford a money bond. Sometimes, judges set a high financial amount knowing the person will not be able to pay; their intent is to detain the person. At other times, they set an amount that they think is affordable, but the person is unable to pay.

Setting a high financial condition not only runs counter to the purpose of a release condition (facilitating release while promoting better outcomes) but it is ineffective as well. People who pose a risk to community safety often have the resources to pay, while those the court never intended to detain remain in jail because they cannot afford their bond. Alternatives to a money-based system can be found in the District of Columbia, Illinois, New Jersey, and New Mexico. Those jurisdictions use a rational legal framework where prosecutors may request a detention hearing, and judicial officers must make an intentional “in-or-out” decision.

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.¹

"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."²

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.³ When pretrial detention is arbitrarily determined by a person's

access to money rather than an intentional decision by the judge, large numbers of people who would have succeeded on pretrial release experience these impacts.

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 people⁴ and, as a result, are more likely to be detained.

For Reporters

Resources

To interview an APPR expert, email media@cepp.com.

Several 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](#)

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; 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; 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; Philips, 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_Pretial_Criminal_Processing