



# PRETRIAL JUSTICE:

*A Report on the  
Cash Bail System*



MINNEAPOLIS  
FOUNDATION

---

October 2019

# “INJUSTICE ANYWHERE IS A THREAT TO JUSTICE EVERYWHERE.”

- Dr. Martin Luther King Jr.

What if you could live in a strong, vibrant community where there were no barriers holding inequity in place? Imagine a community where all people have equal access to social welfare and the opportunity to realize their full potential. Imagine a criminal justice system that affords the same rights to all people, regardless of the color of their skin.

Today, freedom is restricted for many people within our community. Sadly, this has been true for generations. The Fifth and 14th Amendments to the United States constitution, accompanied with the UN’s Universal Declaration of Human Rights, presumes the innocence of citizens. Although this principle is commonly cited as a right of all citizens, for many, this principle does not apply. We know the vast majority of defendants have limited financial resources. We also know being a defendant in America with limited financial resources means being confined to a cold, concrete cell before being proven guilty or innocent by way of a just trial.

In our current criminal justice system, defendants with financial means can pay their way out of this pretrial confinement. This is an injustice that threatens lives and has a ripple effect that is perilous to our communities.

To realize our vision for strong, vibrant communities, it is critical to reform a system that ties freedom to wealth. At the Minneapolis Foundation, we partner every day with community, philanthropists, advocates, and elected officials to address challenging issues that hold our community back. We commissioned this report to shed light on one of those issues: pretrial justice. Inside, you will learn more about the institution of bail and the efforts of local and national leaders to reform a historically unjust system.



## *Introduction*

---

Across the United States, there are countless campaigns to transform criminal justice. The goals of reform are as diverse as the people trying to achieve them: reducing prison sentences, addressing police misconduct, and curtailing the harms of a criminal record, to name just a few. These campaigns highlight how legal practices and racial and economic inequalities shape each other. The advocates, scholars, and practitioners behind the campaigns also push us to question assumptions about how criminal justice works—and how it should work. Legal scholar James Forman, Jr. asks in *Locking Up Our Own*, his book about how black communities responded to crime and drug addiction in the late 20th century:

“What if we came to see that justice requires accountability, but not vengeance? What if we came to understand that equal protection under the law, including equal protection for black victims too long denied it, doesn’t have to mean the harshest available punishment? What if we endeavored to make the lives of black victims matter without policies that lead to the mass incarceration of black defendants? What if we strove for compassion, for mercy, for forgiveness? And what if we did this for everybody, including people who have harmed others?”<sup>1</sup>

Increasingly, people are asking similar questions about pretrial justice. “Pretrial” refers to processes that take place between arrest (or citation) and the resolution of a case. “Bail” is part of the pretrial process; it refers to the release of a defendant pretrial, with or without monetary conditions. Efforts to change the pretrial process are often referred to as “bail reform.”

Across Minnesota, advocates, legal professionals, and people directly impacted by the criminal justice system are discussing bail reform and, in some cases, implementing important changes. They are raising concerns about racial fairness in pretrial proceedings, financial impacts on already disadvantaged populations, and the growth of jail populations. In general, these conversations are happening without the benefit of extensive data about pretrial practices, either because the government does not collect the data or does not make it available to the public.

Even though we lack data, we know some basic facts about Minnesota's pretrial system. We know that judges routinely set monetary bail that defendants cannot afford without turning to bail bond companies. We know that many defendants remain in jail because they cannot make bail; we just don't know how many. Because racial disparities exist throughout the criminal justice system, we know that people of color are overrepresented in the pretrial process and, therefore, disproportionately experience pretrial detention, restrictive release conditions, and financial loss. And we know that defendants' families and communities lose a great deal of money paying for bail.

Data is important, but it's not a substitute for values. Rarely do system actors realize that the questions they ask and the ways they interact with the data are based on their personal values. Likewise, policymakers and task forces rarely ask "Does the administration of pretrial justice reflect our values as a community?" or "What changes do we need to make to better align our practices with our values?" A misalignment of values is often at the core of pretrial justice dysfunction, and it can help explain why potential partners in reform are sometimes unable to agree on a path forward.

This report and the Bail Reform Summit aim to jumpstart a conversation about values. In addition to identifying shared values, it's essential that we collectively define those values, rather than assume that they have universal meanings. For example, "public safety" may encompass safety from crime as well as safety from over-policing and dangerous jail conditions. "Accountability" may encompass individuals being accountable to the court for compliance with bail conditions, as well as courts being accountable to the public for lawful, fair, and transparent bail decisions.

*Starting the conversation with values can change the direction of collaborative reform efforts, making them inclusive of community needs. These conversations, while challenging, are essential for attaining effective pretrial reform.*



## *Bail in Minnesota*

---

In Minnesota, defendants have a constitutional right to unconditional bail except in cases charged as first-degree murder. If a judge has determined that bail should be set, they must set an unconditional bail amount as well as a conditional bail amount. “Unconditional bail” means that there are no other release conditions imposed upon the defendant aside from payment of the monetary bail amount. “Conditional bail” is usually a lower bail amount that, if posted, also requires the defendant to comply with certain conditions, such as adhering to a no-contact order or submitting to random drug testing. Minnesota’s constitution prevents judges from imposing “excessive” bail, yet it does not require judges to set affordable bail. If an individual is unable to pay the bail amount imposed, that person will remain in custody until their case is resolved.

After an individual is charged with a crime, there is an arraignment hearing at which release is argued by the prosecution and the defense. The official purposes of bail are to ensure that a defendant appears in court and does not harm him or herself or others during the pretrial process. When making a bail decision, the judge considers the nature and circumstances of the alleged offense; safety of the community and alleged victim; and the defendant’s criminal history, ties to the community, and prior history of appearing in court. The judge makes the final determination and has three options: 1) release the defendant with no bail and no conditions (also known as release on recognizance), 2) conditional release, or 3) monetary bail.

## The Role of Bail Bond Companies

The vast majority of defendants have limited financial resources. Roughly 80% of criminal defendants nationwide are indigent enough to qualify for publicly provided legal counsel.<sup>2</sup> Yet judges routinely set bail amounts that are out of reach for low-income defendants. When defendants cannot afford to post bail, they turn to bail bond companies for assistance with pretrial release.

In order to “bail out,” defendants must pay bond companies a non-refundable premium (legally set at 10% of the bail in Minnesota). For example, a defendant with a \$1,000 bail must pay a \$100 premium to the bail company. Along with the premium, defendants must arrange for a co-signer (typically a family member or friend), who assumes responsibility for ensuring the defendant makes it to court—and for forfeiting money or property should the defendant not appear in court.

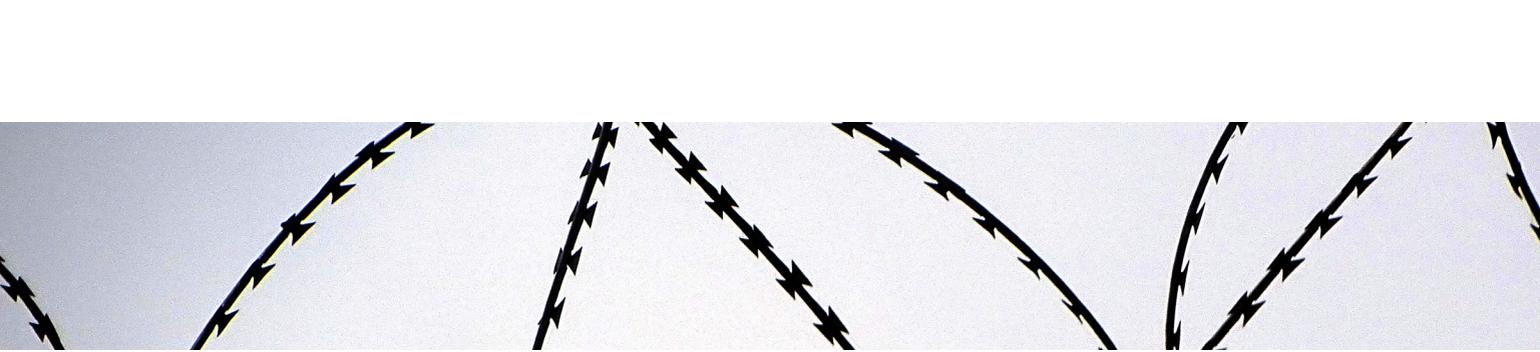
Not everyone can access the services of a bail agent. Bail companies deny assistance for all sorts of reasons, such as a defendant’s court appearance history, or stereotypes about groups based on race, class, and national origin.

| *Profit—not justice—is a central factor in these determinations.*

Most agents avoid taking on clients with low bond amounts (e.g., those under \$250), which they view as risky and unprofitable. Bail companies regularly deny assistance to defendants who are unable to secure a co-signer that the company views as reliable—preferably a person with a decent job, bank account, credit history, and valuable property, such as car or home. So, defendants who have enough money to pay the premium may—and often do—remain in jail because they do not have a willing co-signer deemed acceptable by a bail bond agent or their company.

When a company bails out a defendant, the company is on the hook for the full amount of the bond. If the accused fails to appear for court, a judge may require the company to pay the forfeited bond (i.e., the full \$1,000, not the \$100 premium). In theory, this threat motivates bail companies to return defendants to custody, sometimes through the use of “bounty hunters.” However, research and media investigations show that courts rarely require bail companies to pay the full bail amount, even if a defendant never returns to court.<sup>3</sup> Typically, a judge will make the company pay a fine that’s roughly equivalent to the premium the company collected from the defendant.

The big money-makers in this pretrial system are not the individual bond agents or “mom and pop” bail companies, but the large insurance companies that underwrite bail bond businesses (the “surety”). With backing from the surety, bail companies can write bonds for amounts far in excess of the money they have in their reserves. In exchange, sureties receive approximately 10% of each premium that bail companies collect. These profits are very low-risk. In the rare case that courts demand the full amount of a forfeited bond, the bail companies—not the sureties—typically cover these costs. Records show that sureties pay out less than 1% of their revenue in bond losses.<sup>4</sup> By comparison, insurance companies typically pay out 40 to 60% of their revenue in losses each year in auto and property cases.<sup>5</sup>



## *Problems with the Current System*

---

The commercial bail system produces wealth-based inequality, drains resources from poor communities and communities of color, leads to negative legal outcomes, and does little to promote public safety.

### **It Promotes Wealth-Based Inequality**

The pretrial system contributes to a “two-tiered” justice system that disadvantages people with limited financial resources and social connections.

Financially, it is harder to make bail now than ever before. Nationally, from 1990 to 2009, judges in large counties assigned monetary bail to a growing number of felony defendants, rising from 53% to 72% of all cases.<sup>6</sup> In the same 20-year period, mean bail amounts rose 46% nationwide, up to an average of \$61,000.<sup>7</sup>

As courts have ramped up the use and costs of monetary bail, the number of people in pretrial detention has grown 433% since 1970.<sup>8</sup> Of America’s total jail population today, roughly two-thirds (450,000 people) are non-convicted defendants.<sup>9</sup> Most of those individuals are detained because they cannot afford bail, bail companies refuse to bond them out, or the court will not allow them to post bail because of probation violation hearings, mandatory in-custody drug assessments, or other legal matters.

Low-income people make up the majority of those detained pretrial. In 2002, women awaiting trial in local jails typically earned \$8,052 per year—far below the poverty line for a family of three (\$15,020) and even below the line for a single person (\$8,860).<sup>10</sup> Men in this group typically earned \$12,732, with white men (\$14,852) leading Hispanic men (\$13,368) and black men (\$10,800).

Most defendants turn to family and friends when they can’t afford bail on their own. However, poor people’s social networks tend to consist mainly of other poor people. In December 2015, roughly 63% of a representative sample of Americans said they would be unable to afford the sudden arrival of a \$500 car repair or \$1,000 emergency room bill.<sup>11</sup> Importantly, criminal defendants and their social networks tend to be far poorer than Americans on average. Indeed, even after scouring their social networks, low-income defendants can rarely come up with more than a few hundred dollars for bail on short notice.

Pretrial detention results in serious legal, financial, and social hardships. Research shows that defendants who are unable to “make bail” have a much harder time navigating the legal system. They are much more likely to be convicted, receive longer prison sentences, and have much less success in plea bargaining compared to similarly situated defendants.<sup>12</sup>

Locked up, defendants cannot fulfill their parenting obligations and quickly accrue absences at work or school that can have dire consequences. As legal scholar Bill Quigley notes: “Once a person has spent more than 12 hours in jail, even if they are later determined to be innocent, they start losing ground. [In the worst cases, people] lose their job, after losing their job they lose their apartment, with no job and no apartment they lose custody or visiting rights to their kids.”<sup>13</sup> A recent study even finds that people released pretrial fare far better on the labor market than those who remain incarcerated, with a 10% greater probability of being employed 3 years after the initial bail decision.<sup>14</sup>

## It Heightens Racial Disparities

The pretrial process is an important driver of racial disparities in the criminal justice system, as studies from other states demonstrate.

For starters, courts give white defendants more opportunities to avoid pretrial incarceration. A study of bail decisions in three urban counties found that judges were 25% more likely to deny bail to black defendants than to white defendants.<sup>15</sup> Among those granted some opportunity for bailing out, whites were more likely to receive favorable release conditions (e.g., release on recognizance) than both blacks and Hispanics. Indeed, black defendants were 12% less likely and Hispanics were 25% less likely to be released on their own recognizance than white defendants.<sup>16</sup> Studies also show that black defendants receive substantially higher bail amounts compared to white defendants with comparable charges.<sup>17</sup>

Unfortunately, Minnesota data on racial disparities in the pretrial process is not readily available. However, based on other established racial inequalities in the state’s criminal justice system, it is likely that racial disparities also exist pretrial.

Racial disparities start from the initial criminal justice contact. Policing plays an important role in feeding the pretrial system. The ACLU found that, in 2014, black people in Minneapolis were 8.7 times more likely than white people to be arrested for low-level offenses, while Native Americans were 8.6 times more likely.<sup>18</sup> These disproportionate arrest rates mean that black and Native American Minnesotans experience the pretrial process more often than white residents. We also see the downstream effects of racial disproportionality in Minnesota’s correctional facilities.

*Among U.S. states, Minnesota has the 4th highest disparity in incarceration rates between black and white residents.<sup>19</sup> Black Minnesotans are 10 times more likely than white Minnesotans to do time in prison.<sup>20</sup>*



## It Drains Wealth From Poor Individuals, Families, and Communities

Pretrial injustice doesn't just impact the person accused of crime. When someone is arrested, *their family* becomes responsible for a variety of costs associated with their care. They pay high rates for telephone conversations with their detained loved ones, supply them money for commissary items, and marshal funds for legal representation and court fees.

They also pay for bail. Often, defendants rely on family and friends to contract with private bail agencies. When family members get involved as bail co-signers, they typically put their own money and property on the line.

These sacrifices begin with the bail contract itself. The responsibilities and conditions taken on by the co-signer are far more extensive than many expect. Contracts may hold co-signers responsible for fines and fees incurred by the bail company. For instance, if a defendant fails to appear in court, the bail company may charge co-signers costs associated with locating the defendant (e.g., expenses for bounty hunters). These investigations can prove costly, with some companies charging co-signers rates of \$250 per staff hour, plus expenses.<sup>21</sup>

Importantly, families are on the hook for these expenses, regardless of the outcomes of the cases. For example, the Maryland Public Defender undertook an extensive review of bail in that state, finding that in a five-year period, Maryland families paid more than \$75 million in bail bond premiums for cases that ultimately concluded *without any finding of guilt*.<sup>22</sup>

Rafiq Shaw and his family, of Baltimore, Maryland, experienced this first-hand.<sup>23</sup> Shaw was arrested based on a case of mistaken identity and charged with gun possession. To get out of jail, Shaw and his family agreed to pay a non-refundable \$10,000 to a bail bond company (\$2,000 down and \$8,000 in payments). He took his case to trial and was found not guilty after a short jury deliberation. But the consequences of his arrest did not end there. Though he, his mother, and his fiancée had already paid \$2,000 to the bail

bondsman, Shaw still owed the bail company \$8,000 after the conclusion of his case. His mother, the bail cosigner, gets regular calls from the bail agent who threatens to garnish her wages.

Taxpayers, too, share the burden of supporting this costly system. The Pretrial Justice Institute estimates that the annual cost of pretrial incarceration nationwide is a startling \$14 billion.<sup>24</sup> Minnesota has not produced recent cost estimates for pretrial detention, but Minneapolis city officials estimate that it costs \$144 per day to house each person in jail.<sup>25</sup>



## It Doesn't Promote Public Safety

The bail system is intended to keep defendants from committing crimes during the pretrial process and to incentivize them to appear at court. Advocates for commercial bail argue that bond companies keep close tabs on defendants and ensure their presence at court proceedings.

It is unlikely that our bail system, even as it is supplemented by commercial bail entities, promotes public safety in these ways.

A system that relies so substantially on financial bail ensures that ability to pay trumps considerations of dangerousness. In the existing system, wealthy people are released once they pay their bond, no matter the risk they pose. They are more likely to pay the unconditional bail amount rather than accept conditional bail and its various stipulations and supervisions. On the opposite end of the spectrum, low-income defendants risk incarceration because they cannot afford bail (or secure a co-signer) even if they do not pose a risk to public safety, and if they can bail out, they are more likely to choose the lower-cost conditional bail, along with its additional costs and surveillance.

Bail bond companies do not contribute to public safety. Once defendants are out on bail, the company's main concern is protecting its investments, not the public's safety. Bail agents do not monitor released defendants; they typically only contact a client if they miss court—or a payment to the bail company. Indeed, if one of their clients is arrested, it makes no difference to the bail company's bottom line. Defendants who are locked up don't miss court, ensuring that companies will not be held to account for the remainder of the bail amount.<sup>26</sup>

# *The State of Bail Reform*

---

This is an exciting time for pretrial justice reform. The “bail reform” movement is generating meaningful changes in every region of the country. In a recent report, The Pretrial Justice Institute identifies ongoing efforts in more than 30 states that are enacting “major pretrial improvements.” The sources, goals, and outcomes of reform vary greatly from place-to-place (and sometimes even within the same place).<sup>27</sup>

In some places, *pretrial litigation* has illuminated unconstitutional bail practices, generating important changes. For example, Harris County, Texas recently settled a lawsuit charging that local courts wrongly detained poor defendants based on inability to pay bail. Because of the settlement, approximately 85% of people charged with misdemeanors in Harris County will now be released without monetary bail.<sup>28</sup>

In other places, *system actors*—public defenders, prosecutors, and judges—have instituted reforms. For example, Philadelphia’s district attorney instructed his lawyers not to seek financial bail in misdemeanor and felony cases for which courts had been setting low bails. The head prosecutor in Alexandria, Virginia implemented a policy of not asking for cash bail in misdemeanor cases. And juvenile court judges in Orleans Parish, Louisiana decided to no longer require financial bail.<sup>29</sup>

A growing number of states have also implemented systematic pretrial reform through the *legislative* process. In the remainder of this section, we describe how New Jersey changed its laws and, subsequently, its pretrial system, with generally positive results. We then provide a case study of *community-based* reform in Santa Clara, California, highlighting De-Bug’s efforts to redefine pretrial justice through community empowerment.





## A State-Wide Pretrial Overhaul: New Jersey

In 2017, New Jersey implemented statewide reforms that overhauled its pretrial system, moving away from a system that relies on money bail and toward one that employs a mix of preventive detention, conditional release, and release on recognizance. Importantly, the reform also increased the state's use of summons (instead of warrants), greatly reducing the numbers of people arrested and sent to jail.

The reform process unfolded over several years. In 2013, the Drug Policy Alliance released a report showing that 1,547 people—12% of New Jersey's entire jail population—were detained because they could not afford \$2,500 or less in bail.<sup>30</sup> About 800 of these people could not pull together \$500. In 2014, the New Jersey Commission of Investigation issued a report documenting widespread corruption in the bail industry, including widespread use of “jail runners” (inmates that recruit customers for bail companies).<sup>31</sup>

A broad coalition of government agencies, advocacy organizations, and state officials—including the Judiciary, Office of the Attorney General, Office of the Public Defender, Republican Governor Chris Christie, and the ACLU-NJ—spearheaded efforts to transform the state's pretrial system. In 2014, voters were asked to approve a constitutional amendment to replace the right to bail with the right to be considered for pretrial release and to allow a court to order a defendant charged with certain crimes to be detained prior to trial.

Approved by over 60% of the electorate, the ballot measure also authorized the legislature to develop new statutory provisions about pretrial release and preventive detention. Implemented in 2017, the new model (called “Criminal Justice Reform”) had several main features:

- » Creation of pretrial services agencies statewide to conduct pretrial assessments and make release recommendations to the court.
- » Implementation of a risk-based system that presumes release with the least restrictive conditions for all defendants except 1) those charged with or having been convicted of specified serious crimes or 2) when the prosecutor believes there is a serious risk the defendant (a) will not appear in court or (b) poses a danger to any person or the community.
- » Implementation of preventive detention hearings in which a prosecutor arguing for pretrial detention must convince a judge that no conditions could protect the public or ensure that the defendant would return to court. The prosecutor must file a motion for pretrial detention and the detention hearing generally must occur no later than the defendant's first appearance. Defendants have the right to counsel. If the court orders detention, it must produce a written explanation for its decision.

One of the most impactful elements of New Jersey’s reform package actually doesn’t concern bail. A key way to shrink the population of detained defendants, reformers reasoned, was to reduce the number of people sent to jail in the first place. Therefore, statutory changes instructed police and the courts to make greater use of summons orders (which order the accused to appear in court) in lieu of arrest warrants. In general, arrest warrants are now reserved for defendants who, based on the criminal complaint, pose “a moderate or high risk of flight, new criminal activity or violence, or threat to the criminal justice process that should be managed by monitored release conditions, if not by the defendant’s pretrial detention.”<sup>32</sup>

In Spring 2019, New Jersey’s Administrative Office of the Courts (AOC) published a systematic analysis of the first two years of reform,<sup>33</sup> finding that:

- » In 2017, the first year of reform implementation, the pretrial jail population decreased 19%, from 7,058 to 5,718 defendants. In 2018, the pretrial jail population declined an additional 13% to 4,995 defendants.
- » Court appearance rates remained high under bail reform.
- » There was no significant increase in new offenses committed by defendants on pretrial release under bail reform. In 2014, 12.7% of defendants were charged with a new indictable crime while on pretrial release, a number that remained consistently low, at 13.7% in 2017.<sup>34</sup>
- » In 2018, only 102 of 44,383 defendants had money bail set in their cases.
- » 81.9% of defendants were released within 24 hours of arrest, and 99.6% were released within 48 hours of arrest.
- » In the first two years of reform, more than 70% of defendants received summons without being booked into jail.

Analyses of the New Jersey reform also highlight several reasons for concern. First, the changes have not significantly reduced racial disparities in pretrial detention. It’s unclear if the use of the risk assessment tool *contributes* to this disparity—given the growing understanding of the race-based effects of ostensibly race-neutral risk assessment tools, there’s good reason to raise this issue<sup>35</sup>—but it’s clear that the risk assessment tool has not *reduced* racial disparities.

Second, a large proportion of “warrant issued” defendants are detained or released with conditions. As noted earlier, the vast majority of defendants now receive summonses and, therefore, are not subject to pretrial monitoring or detention. However, the courts continue to restrict the freedom (either through detention or monitoring) of the vast majority of “warrant-issued” defendants.

Lastly, New Jersey’s pretrial system is not funded sufficiently. The state currently funds the program with civil filing fees. The AOC report states that this practice “has created a structural deficit and is not a permanent workable solution. The resulting funding imbalance has increased each year.”<sup>36</sup> Without dedicated resources from the state’s general fund, it’s difficult to see how New Jersey will be able to financially sustain its pretrial system.



## Redefining Pretrial Justice and Empowering Community: California's De-Bug Program

In Santa Clara, California, the non-profit organization Silicon Valley De-Bug is reconceptualizing pretrial justice through community empowerment.<sup>37</sup> Often, criminal justice reforms include community members by soliciting their input through surveys, forums, and other mechanisms. De-Bug goes further: it brings the community directly into the legal process. The model has two main features:



### **Arraignment intervention**

California's bail system is similar to Minnesota's (the California legislature recently passed a major reform bill, but reform has not been fully implemented). After hearing from the defense and prosecutor, a judge releases the defendant on recognizance or sets bail with financial and/or non-financial conditions. At arraignment, a team of De-Bug organizers intervenes to help public defenders make a strong case for release with the least restrictive conditions. The organizers connect with family and friends of defendants in the court, then, together, they fill out a community support form that De-Bug provides to the public defender. De-Bug co-founder Raj Jayadev explains:

The form is designed for those filling the courtroom pews, who want their support of their loved one facing charges to have value, a rightful place in the deliberation. The form asks them — someone's aunt, friend, child, organization advocate — more about who their loved one is, the various ways they are part of this community, what's at stake for them and others with another day of confinement, and also what roles they see themselves playing to assist that person in getting to court. Someone will say, "They can stay at my house," or "I will give them a ride if they need it," or explain how the person detained is who is responsible for taking the kids to school.<sup>38</sup>

Of course, not all defendants have family and friends who come to court. For these cases, De-Bug created a Community Release Project, which connects defendants with providers who assist with housing, programming, employment, or other services; provides automated text message reminders for court dates; and gives defendants rides to court. In these and other ways, De-Bug provides “community connections” that give judges confidence that the defendant will show up for court and not commit crimes if released. De-Bug’s community-centered intervention has proven effective, Jayadev explains:

In a comparative study, we looked at 100 cases before we started [intervening] at arraignment, and there was an 85% rate of judges imposing the set bail schedules. When we measured the impact of another 100 cases where we used the forms at arraignment, the reliance on the bail schedule dropped to 48%. The non-monetary release rate increased from 9% to 37%—four times the rate of people being released without having to pay money bail.<sup>39</sup>

### **Participatory release**

If a defendant isn’t able to bail out after arraignment, De-Bug continues to work on their case. Specifically, organizers collaborate with family and community members to prepare for bail hearings. (Santa Clara public defenders regularly request such hearings.) Jayadev explains:

In preparation for the bail hearing, family and community employ participatory defense tactics—such as a social biography packet (a collection of letters, pictures, relevant documents)—particularly tailored to the decision-making arenas of the bail hearing. The social biography packet is given to the public defender who adds it as an exhibit in their bail motion. If there are needs that help make the case for release that is beyond the scope of the family — the defender and the Community Release Project coordinate to secure the programmatic support to strengthen the bail motion.... Together—family, public defender, Community Release Project Navigator—all prepare for and are present at the bail hearing.<sup>40</sup>

This participatory defense approach has been effective in getting the court to reduce bail amounts and, in some cases, getting defendants released on non-monetary bail (even when the initial bail was hundreds of thousands of dollars).<sup>41</sup>

De-Bug’s model is spreading beyond Santa Clara County. Organizations in over 20 U.S. cities are adapting and implementing De-Bug’s participatory defense practices and principles.

## *Current Efforts*

---

Pretrial justice reform is happening in Minnesota. Community groups, legally impacted people, criminal justice professionals, and lawmakers are addressing some of the problems with the current system. Here are a *handful* of examples:



### **Community Advocacy:**

Since 2016, The Minnesota Freedom Fund, a community-based nonprofit, has posted bail for low-income individuals. Beyond posting bail, the organization “seek[s] to end discriminatory, coercive, and oppressive jailing.”<sup>42</sup>



### **Criminal Justice Professionals:**

Hennepin County rolled out a text-and-email reminder system to ensure appearance in court. Chief public defender Mary Moriarty has said her office has seen an approximately 25% reduction in failure-to-appear rates among those who are reached with these reminders.<sup>43</sup>



### **The City of Minneapolis:**

The City Attorney's Office has helped lead several reform efforts to reduce pretrial detention. At the Office's request, Mayor Frey has recommended funding a new program for people charged with misdemeanors who are likely to have cash bail imposed because of a history of failure to appear for court hearings. The city prosecutor's office will not seek financial bail if defendants charged with non-violent misdemeanor offenses meet with a city-funded social worker and develop a check-in plan to ensure that they will make it to required court hearings. The social worker may also offer social services if desired by the defendant.<sup>44</sup>



### **Minnesota Legislature:**

In the 2019-2020 legislative session, Rep. Mohamud Noor (DFL-Minneapolis) sponsored HF741, aimed at reducing bail for low-level offenses. Although the bill did not pass, it raised actionable ideas for making Minnesota's pretrial system more equitable.<sup>45</sup>

The Bail Summit is intended to build on this momentum. The forum is an opportunity for a wide range of groups—law enforcement, community members, judges, advocates, attorneys, impacted individuals and families, academics, and more—to discuss and debate the core values that should guide reform. This conversation, we hope, will serve as a springboard for collective action.

## **Contributors**

Thank you to our partners who helped create this report and are supporting the Foundation's bail reform efforts. Contributors include Joshua Page and Victoria Piehowski from the University of Minnesota, Minneapolis City Attorney Susan Segal, and Chanda Smith Baker and Brandon Williams from The Minneapolis Foundation.

---

## References

- <sup>1</sup> Forman, James, Jr. (2017). *Locking Up Our Own: Crime and Punishment in Black America*. New York: Farrar, Straus, and Giroux. p. 236.
- <sup>2</sup> Rabuy, Bernadette and Daniel Kopf (2016). “Detaining the Poor: How Money Bail Perpetuates an Endless Cycle of Poverty and Jail Time.” Northampton, MA: Prison Policy Initiative.
- <sup>3</sup> Bauer, Shane (2014). “Inside the Wild, Shadowy, and Highly Lucrative Bail Industry: How \$550 and a Five-day Class Gets You the Right to Stalk, Arrest, and Shoot People,” *Mother Jones*. Retrieved from <https://www.motherjones.com/politics/2014/06/bail-bond-prison-industry/>
- <sup>4</sup> Bauer, Shane (2014).
- <sup>5</sup> Bauer, Shane (2014).
- <sup>6</sup> Council of Economic Advisers (2015). “Issue Brief: Fines, Fees, and Bail: Payments in the Criminal Justice System that Disproportionately Impact the Poor,” p. 6. Retrieved from: [https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215\\_cea\\_fine\\_fee\\_bail\\_issue\\_brief.pdf](https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf)
- <sup>7</sup> Council of Economic Advisors (2015).
- <sup>8</sup> Vera Institute (2019). “Justice Denied: The Harmful and Lasting Effects of Pretrial Detention.” Retrieved from: <https://www.vera.org/publications/for-the-record-justice-denied-pretrial-detention>
- <sup>9</sup> Santo, Alysia (2015). “When Freedom Isn’t Free: The Bail Industry Wants To Be Your Jailer,” *The Marshall Project*. Retrieved from: <https://www.themarshallproject.org/2015/02/23/buying-time>.
- <sup>10</sup> Rabuy, Bernadette and Daniel Kopf (2016). p. 10.
- <sup>11</sup> Steiner, Sheyna (2016). “Survey: How Americans Contend with Unexpected Expenses,” *Bankrate*. Retrieved from: <https://www.bankrate.com/banking/savings/survey-how-americans-contend-with-unexpected-expenses/>
- <sup>12</sup> See Phillips, Mary T. (2010). “Making Bail in New York City: Commercial Bonds and Cash Bail,” New York City Criminal Justice Agency; Oleson, J. C., Marie VanNostrand, Christopher T. Lowenkamp, and Timothy P. Cadigan (2014). “Pretrial Detention Choices and Federal Sentencing,” *Federal Probation* 78(1):12-18; Gupta, Arpit, Christopher Hansman and Ethan Frenchman (2016). “The Heavy Costs of High Bail: Evidence from Judge Randomization,” *Columbia Law and Economics Working Paper*. New York: Columbia Law School; Dobbie, Will, Jacob Goldin, and Crystal S. Yang (2018). “The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges,” *The American Economic Review* 108(2):201-240.
- <sup>13</sup> Shen, Aviva (2016). “Bail Money Funds Louisiana Courts. Now This Powerful Industry Is Fighting Reform,” *The Guardian*. Retrieved from: <https://www.theguardian.com/us-news/2016/dec/14/new-orleans-criminal-justice-system-bail-bonds>
- <sup>14</sup> Dobbie, Will, Jacob Goldin, and Crystal S. Yang (2018).
- <sup>15</sup> Schlesinger, Traci (2005). “Racial and Ethnic Disparity in Pretrial Criminal Processing,” *Justice Quarterly: JQ/ Academy of Criminal Justice Sciences* 22(2):170-192.
- <sup>16</sup> Schlesinger, Traci (2005).
- <sup>17</sup> Gelbach, Jonah B. and Shawn D. Bushway (2011). “Testing for Racial Discrimination in Bail Setting Using Nonparametric Estimation of a Parametric Model,” Social Science Research Network. Retrieved from: <http://dx.doi.org/10.2139/ssrn.1990324>
- <sup>18</sup> American Civil Liberties Union (ACLU) (2015). “Picking Up the Pieces: A Minneapolis Case Study,” Retrieved from: <https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/picking-pieces>
- <sup>19</sup> Data from the U.S. Bureau of Justice Statistics (2016), as compiled by The Sentencing Project. For more information, see <https://www.sentencingproject.org/the-facts/#rankings?dataset-option=SIR>.
- <sup>20</sup> Sauter, Michael B. (2017). “Black and White Inequality in All 50 States,” *24/7 Wall St*. Retrieved from: <https://247wallst.com/special-report/2017/08/18/black-and-white-inequality-in-all-50-states-2/>
- <sup>21</sup> UCLA School of Law Criminal Justice Reform Clinic (2017). “The Devil in the Details: Bail Bond Contracts in California.” Retrieved from: [https://static.prisonpolicy.org/scans/UCLA\\_Devil%20in\\_the\\_Details.pdf](https://static.prisonpolicy.org/scans/UCLA_Devil%20in_the_Details.pdf).
- <sup>22</sup> ACLU and Color of Change (2017). “Selling Off Our

- 
- Freedom: How Insurance Corporations Have Taken Over Our Bail System.” Retrieved from: <https://www.aclu.org/report/selling-our-freedom-how-insurance-corporations-have-taken-over-our-bail-system>
- <sup>23</sup> Blumauer, Christine, Alessandra Brown, Mariella Castaldi, Seleeke Flingai, Phillip Hernandez, Stefanie Mavronis, Kalie Pierce, Tom Stanley-Becker, and Jordan Stockdale with Ben Jealous (2018). “Advancing Bail Reform in Maryland: Progress & Possibilities.” Prepared for the Baltimore City and Prince George’s County Branches of the NAACP. Retrieved from: <https://www.ma4jr.org/wp-content/uploads/2018/03/Advancing-Bail-Reform-In-Maryland-2018.pdf>
- <sup>24</sup> Pretrial Justice Institute (2017). “Pretrial Justice: How Much Does It Cost?” p. 2.
- <sup>25</sup> Collins, Jon (2019). “Minneapolis Introduces No-bail Alternative,” *MPR News*. Retrieved from: <https://www.mprnews.org/story/2019/09/18/minneapolis-introduces-nobail-alternative>
- <sup>26</sup> Page, Joshua. (2017). “False Claims Stoke Fears about Reforming California’s Bail System,” *Sacramento Bee*. Retrieved from: <https://www.sacbee.com/opinion/op-ed/soapbox/article151392712.html>
- <sup>27</sup> Pretrial Justice Institute (2019). “What’s Happening in Pretrial Justice?”
- <sup>28</sup> Pretrial Justice Institute (2019): p. 6-7.
- <sup>29</sup> Pretrial Justice Institute (2019): p. 2-3.
- <sup>30</sup> Drug Policy Alliance (2013). “New Jersey Jail Population Analysis.” Retrieved from: [https://www.drugpolicy.org/sites/default/files/New\\_Jersey\\_Jail\\_Population\\_Analysis\\_March\\_2013.pdf](https://www.drugpolicy.org/sites/default/files/New_Jersey_Jail_Population_Analysis_March_2013.pdf)
- <sup>31</sup> State of New Jersey Commission of Investigation (2014). “Inside Out: Questionable and Abusive Practices in New Jersey’s Bail-Bond Industry.” Retrieved from: <https://www.state.nj.us/sci/pdf/BailReportSmall.pdf>
- <sup>32</sup> Porrino, Christopher S. (2016). “Attorney General Law Enforcement Directive NO. 2106-6.” Retrieved from: [https://www.nj.gov/oag/dcj/agguide/directives/2016-6\\_Law-Enforcement.pdf](https://www.nj.gov/oag/dcj/agguide/directives/2016-6_Law-Enforcement.pdf)
- <sup>33</sup> Grant, Glenn A. (2019). “New Jersey Judiciary: 2018 Report to the Governor and the Legislature.” Retrieved from: <https://njcourts.gov/courts/assets/criminal/2018cjrannual.pdf>
- <sup>34</sup> The report states that, “Because of certain challenges in compiling data from 2014, small changes in outcome measures should be interpreted with caution and likely do not represent meaningful differences,” Grant, Glenn A. (2019): p. 5.
- <sup>35</sup> See, for example, Schwartzapfel, Beth (2019). “Can Racist Algorithms Be Fixed? A New Study Adds to the Debate Over Racial Bias in Risk Assessment Tools Widely Used in Courtrooms,” The Marshall Project. Retrieved from <https://www.themarshallproject.org/2019/07/01/can-racist-algorithms-be-fixed>; and Angwin, Julia, Jeff Larson, Surya Mattu, and Lauren Kirchner (2016). “Machine Bias: There’s Software Used across the Country to Predict Future Criminals. And It’s Biased against Blacks,” Pro Publica. Retrieved from <https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing>.
- <sup>36</sup> Grant, Glenn A. (2019): p. 8.
- <sup>37</sup> For more information, see [siliconvalleydebug.org](http://siliconvalleydebug.org).
- <sup>38</sup> Jayadev, Raj (2019). “The Future of Pretrial Justice Is Not Money Bail or System Supervision—It’s Freedom and Community,” SV De-Bug. Retrieved from: <https://siliconvalleydebug.org/stories/the-future-of-pretrial-justice-is-not-money-bail-or-system-supervision-it-s-freedom-and-community>.
- <sup>39</sup> Jayadev, Raj (2019).
- <sup>40</sup> Jayadev, Raj (2019).
- <sup>41</sup> Jayadev, Raj (2019).
- <sup>42</sup> For more information, see [minnesotafreedomfund.org](http://minnesotafreedomfund.org).
- <sup>43</sup> Hutton, Rachel (2019). “Bail Industry Faces Pressure to Change,” *Star Tribune*. Retrieved from: <http://www.startribune.com/bail-industry-faces-pressure-to-change/505157672/>
- <sup>44</sup> Collins, Jon (2019).
- <sup>45</sup> For more information on HF741, see [house.leg.state.mn.us/SessionDaily/Story/13609](http://house.leg.state.mn.us/SessionDaily/Story/13609).



MINNEAPOLIS  
FOUNDATION