

## **REVISION**

### **CASH BAIL: FLOGGING THE POOR?**

(DISCLAIMER: This article is not meant to be an exhaustive study of cash bail, but rather a source of food for thought with a number of citations for further study)

Nearly half a million people languish in jail in the U.S., two-thirds of the overall jail population, and they have not been convicted of a crime. The inability to post cash bail keeps them locked away. This reality denigrates the hallowed principle of the “presumption of innocence”, the centerpiece of our criminal justice system. It also makes a mockery of the directives against “excessive bail” contained in both the U.S. and PA Constitutions.

While they wait for their cases to resolve, sometimes for months or even years, citizens lose their jobs and homes, suffer disruptions to family relationships including with their children, often suffer deteriorating physical and mental health, and endure the lasting trauma of being incarcerated. Robin Steinberg calls out the destructive dynamics of money bail as creating a “two tier” system of justice in her moving TedTalk

[https://www.ted.com/talks/robin\\_steinberg\\_what\\_if\\_we\\_ended\\_the\\_injustice\\_of\\_bail](https://www.ted.com/talks/robin_steinberg_what_if_we_ended_the_injustice_of_bail), where she reports that 90% of those held in jail on bail plead guilty, while those similarly situated but not held in jail had 50% of their cases dismissed and less than 2% received jail sentences.

The perils of money bail are not just a danger to those living in abject poverty. Consider that 6 in 10 Americans don't have \$500 in savings for an emergency.

<https://money.cnn.com/2017/01/12/pf/americans-lack-of-savings/index.html>

For some that means worn car tires don't get replaced, but for many others it means they sit behind bars, while those with means go free. Clearly, those who sit in jail for lack of money include the working poor and those who live paycheck to paycheck. Freedom is up “for sale”—a justice abomination.

Even the right-leaning conservative think tank, The Heritage Foundation, states that using “bail for public safety purposes is demonstrably ineffective, as evidenced by the many poor, low-risk defendants who are detained.” Even more compelling on the issue of fairness, that same report laments that the current system allows allegedly violent “higher-risk defendants with access to more money” to be released.

<https://www.heritage.org/crime-and-justice/report/path-forward-pretrial-justice-reform> Thus, the poor person charged with a non-violent misdemeanor theft sits behind bars, while the person of means charged with felony aggravated assault remains free.

#### **The financial cost to society of cash bail:**

The Pretrial Justice Institute estimates that as a nation we spend \$14 billion annually on this pretrial detention. Even worse, when we factor in the financial impact upon families and communities the cost of this crisis approaches \$140 billion per year.

<https://www.documentcloud.org/documents/3439051-Pretrial-Justice-How-Much-Does-it-Cost.html>. Locally, Lehigh County Jail cost taxpayers approximately \$80 per day per inmate,

with an overall budget of \$42 million annually.

<https://www.lehighcounty.org/Portals/0/PDF/Fiscal/2021%20Adopted%20Budget.PDF?ver=2020-12-08-082122-617>

While it is difficult to calculate the savings of reducing the jail population by fixing cash bail in our local jails, Philadelphia City controller, Alan Butkovitz, gives us some indication. He estimates that by eliminating the cash bail system, the city would save over \$75 million annually and provide a viable alternative to jail for a significant number of those arrested in Philadelphia in a given year. <https://www.phillyvoice.com/philly-could-save-75-million-eliminating-cash-bail/> Research has found current systems can cause more damage (including in financial terms) to the incarcerated and their families than benefit, whereas alternatives may be just as effective, yet provide better futures for those in the criminal justice system.

**Cash bail derails poor and working poor trying to fend for themselves and their families:**

Cash bail's draconian impacts set defendants up for failure not only at the moment of incarceration, but also for the future and even for generations to come. The Illinois Supreme Court Commission on Pretrial Practices Report, April, 2020 sums up the multi-faceted devastation foisted upon individuals, families and communities by the abuses of cash bail. The Commission cites studies showing "that individuals held in jail before trial, even for short periods of detention, have worse outcomes, such as higher risk of unemployment, higher rates of sentence disparity, and a great likelihood of reoffending."

<https://www.documentcloud.org/documents/20466754-illinois-supreme-court-commission-on-pre-trial-practices>

In poor, over-policed communities, this has a devastating impact that continues generation after generation. The cash bail system derails already poor people in their desperate efforts to find an economic footing in life and makes them more likely to commit future crime. The American Bar Association pans our current cash bail system as follows:

"Under the current bail system, far too many people arrested for minor crimes remain incarcerated solely because they are unable to post bail...there is no data to support perpetuating the current system and, in fact, data shows overwhelming negative outcomes for detained arrestees eligible for release—lost jobs, lost homes, increased recidivism, increased costs on taxpayers, etc...we have created a system that is the complete antithesis of what was intended, a system that bears no causal nexus between money bail and guaranteed appearance. Simply put, we have created a system that is ineffective at best, and a harm to public safety at worst." [https://www.americanbar.org/groups/judicial/publications/appellate\\_issues/2020/winter/stop-assuming-money-bail-is-an-effective-tool-for-criminal-justice/](https://www.americanbar.org/groups/judicial/publications/appellate_issues/2020/winter/stop-assuming-money-bail-is-an-effective-tool-for-criminal-justice/)

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The Pennsylvania Supreme Court recently reported that Pretrial Detention "increased conviction rates, unrelated to the culpability of defendants," and the Court noted that "misdemeanor defendants subject to pretrial detentions were 25% more likely to be convicted than otherwise similar defendants who had been released

pretrial. <http://www.pacourts.us/assets/files/setting-6834/file-8451.pdf?cb=cb4dff>

For the local connection, consider the Morning Call report that many who start out in county jails wind up not being found guilty of any crime, or at least not being sentenced to a jail term by the Judge. In Northampton County Nina Reynard, the Director of Pretrial Services at the time (2018), conducted a study of 51 defendants sitting in jail for lack of bail money. She tracked

them from arrest to the conclusion of their cases. Disturbingly, 47 of them eventually attained dispositions of their cases that called for no jail. Yet the average time spent in jail was 16.5 days, with just four of them actually being Court Ordered to any jail time at all.

<https://apnews.com/article/ffa8fb470fd84b2cb5a4ea8946c95138>

### **Pennsylvania Rule 523: Bail Criteria and the lack of transparency:**

Magisterial District Judges (MDJ's) set bail in nearly all new cases. It is not clear whether MDJ's are following uniform standards in setting bail. This absence of clarity is due to the near total lack of transparency in the process. ACLU lawyer, Nyssa Taylor, relates that "there are around 500 district judges setting bail in courtrooms and offices [in PA] with no records, few lawyers present, and virtually no scrutiny" and "almost no one is actually following the rules as they're written. So how do we encourage people to follow the rules is the larger question." I have witnessed this in my criminal practice. The mode of operation often seems to be a "gut instinct" approach, with little in the way of a reasoned, scientific or evidence-based approach. Just as mysterious is the opaque process by which our Pretrial Services offices determine recommendation of bail. A troublesome lack of transparency and rules are not being followed create significant freedom making this a matter of the greatest urgency.

<https://www.inquirer.com/news/aclu-pennsylvania-philadelphia-cash-bail-reform-criminal-justice-20200219.html#loaded>

Across our state there is often no oversight of this bail process by anyone or any office or department.

In Pennsylvania 234 Pa. Code Rule 523 contains "Release Criteria", but no system effectively compels District Judges to use these criteria, nor to mandate that they create reports as to if and how they use them. The public and even defendants are often left in the dark as to why a certain amount of bail is set. No consistent or standardized system exist in practice to monitor how MDJ's set bail. This is of particular concern because though they are, for the most part, dedicated professionals trying to do the right thing, nonetheless few are attorneys and they are not highly trained in the criminal law.

We need total transparency as to how, or even whether, District Justices are employing the Rule

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523 Release Criteria they are legally compelled to use when setting money bail. Publicly available reports on each and every case where cash bail is set should be available for review by defendants, their counsel, the press and the public in general. In that regard, a further protection against secretive and onerous proceedings would be that every bail hearing be recorded, so that even those hearings that occur with an "on call" magistrate at 3 in the morning can be subject to review by defendants, their families, defense counsel, Common Pleas Judges, the press, and the public at large. Open courtrooms remain the ideal. Consider that courtrooms by law are open to the public, but this first and critical stage—the Preliminary Arraignment—arguably the most critical for a defendant seeking to retain his or her freedom, is rarely witnessed by the general public, or for that matter, even by an attorney for the defendant.

The ACLU reports that MDJ’s “consistently set bail in amounts too steep for people to afford.”  
<https://aclupa.org/en/events/trapped-cash-bail-america>

Theoretically bail determinations are on the public record. As such, MDJ’s should be required to file written reports on any and all cases where they set money bail. Total transparency is the only path to uncovering abuses and correcting them.

A recent report from the Department of Corrections of Northampton County reports that 304 inmates are locked up in the Prison “for pre-trial/failure to make bail.” We must have complete transparency as to the charges against these 304 people, the amount of bail, how and why it was set, what analysis of “ability to pay” was performed, and whether they are indeed dangerous to the community and/or a threat to flee the jurisdiction.

### **Money Bail should not be required for misdemeanors and non-violent felonies:**

Some District Attorney offices have adopted a policy of not requesting bail for misdemeanors and non-violent felonies, in the absence of unusual circumstances. Northampton County has done so.

<https://www.mcall.com/news/elections/mc-nws-northampton-county-da-race-issues-cash-bail-20191021-wwaypw5atzeexcojbwo5gggiq4-story.html>

The Philadelphia District Attorney has also set a policy of not asking for money bail for 26 misdemeanors and non-violent felonies.

<https://theappeal.org/the-successes-and-shortcomings-of-larry-krasners-trailblazing-first-term/>  
Numerous other jurisdictions throughout the nation have instituted similar policies.

### **We need not wait for the PA Legislature to act; local measures can correct many flaws:**

Many argue that changes in bail practices are only within the province of the state legislature and the Pennsylvania Supreme Court. It may be true that the most thorough comprehensive changes would and should come from those centers of policy and law, but many changes can occur at the county level and can occur immediately without the concurrence or involvement or approval of the legislature or the Supreme Court. We do not need to wait for statewide legislation to act for changes so obviously needed, changes permitted under the current legal scheme. Philadelphia has already agreed to certain encouraging actions:

1. Adopting a presumption that a defendant be released before trial;
2. Requiring magistrates to consider defendant’s ability to pay before imposing money bail;
3. Ensure that defendants have a chance to speak confidentially with an attorney *before* the Preliminary Arraignment.

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Other immediate changes to procedure should be adopted, including but not limited to:

1. Requiring district justices to prepare a written report on all cases where money bail is set;
2. Record all proceedings regarding bail, which is as easy as clicking a button, since Preliminary Arraignments are invariably performed by video/zoom;

3. Establishing a policy of no bail for misdemeanors and non-violent felonies.

### **New Jersey's Successful Bail Reform:**

The state was one of the first to acknowledge that the use of money bail discriminated against the poor. The legislature and then Governor Chris Christie took action to overhaul bail practices, with the new law taking effect in January, 2017. By the end of 2018 the pretrial jail population declined by 43.9%. Research reported that court appearances remained high, dipping slightly from 92.7% to 89.4%, and “the rate of alleged new criminal activity stayed low (a statistically insignificant increase from 24.2% to 26.9% in 2017). Defendants released under bail reform were no more likely to be charged with a new crime or fail to appear in court than defendants released on bail under the old system.”

<https://www.arnoldventures.org/stories/new-jersey-set-out-to-reform-its-cash-bail-system-now-the-results-are-in/>

The good news continued, as an FBI report states that violent crimes in New Jersey decreased from 21,914 in 2016 to 18,357 in 2019, serving to debunk the notion that bail reform increases crime.

<https://www.legalexaminer.com/legal/study-jailing-people-on-bail-does-not-make-communities-safer/>

Moreover, New Jersey has seen a 29% drop in violent crime since the reforms took effect. A significant added bonus is that “New Jersey taxpayers save hundreds of millions of dollars by not having low-risk, nonviolent offenders needlessly incarcerated.”

<https://www.chicagotribune.com/opinion/commentary/ct-opinion-bail-reform-new-jersey-model-porrino-honig-20200214-yrho7khot5glvn3mv4u4qxeihu-story.html>

Washington D.C. has long enjoyed the same benefits from its bail reform initiated way back in the 1990's. D.C. Judge reports that no appreciable negative effects have occurred in the wake of the reforms. Failures to Appear (FTA's) have not been adversely affected, nor has crime increased as a result of the bail reforms.

<https://www.npr.org/2018/09/02/644085158/what-changed-after-d-c-ended-cash-bail>

### **No lawyer when bail is set:**

Defendants most often are not represented by an attorney when bail is set. So the most critical

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phase of a criminal case—the determination to incarcerate or not after charges are brought—a defendant is left to his or her own devices in efforts to stay out of jail. As the ACLU reports this places poor people at a distinct disadvantage:

“In many city and county courts, a judge sets bail before the defendant is appointed a lawyer. This puts poor people accused of crimes at a disadvantage from the very beginning of their case. Even in jurisdictions that do have a public defender representing an accused person at this initial appearance, the public defender is often covering a full case docket and lacks specific knowledge of a client’s needs. The attorney handling the docket usually has less than one minute to meet with each person before the court hearing and bail determination, which is an insufficient time to prepare adequately on behalf of the accused.” The use of money bail also “poses inherent disadvantages to people of color living in poverty.” Lack of a stable residence or job, for example, are less a product of criminality and more one of poverty. Furthermore, these “considerations do not reliably determine whether someone will appear for their court dates.” <https://www.aclu-wa.org/sites/default/files/media-legacy/attachments/Bail%20Position%20Paper%2C%20Final%20II.pdf>

### **Mental Illness and Bail:**

“A 2017 U.S. Bureau of Justice Statistics report found that nearly 44% of people held in jails had been told they had mental health disorders. Other studies estimate the number of people with mental health needs in jail is likely closer to 65% because of those who have undiagnosed issues.” <https://apnews.com/article/pennsylvania-lawsuits-medication-archive-af91b3e6a4462d3173cb4b800ec16c08>

The mentally ill are sad victims of the process of “cycling in and out of jails that has become the government’s tragic default response to mental health needs, particularly for poorer people who cannot access adequate care.” <https://www.nydailynews.com/opinion/ny-oped-a-tale-about-mental-illness-not-bail-20200203-3he4kpsvdzbtfoq7vtwwyusix4-story.html>

The Harvard Political Review dubs jails and prisons the “new asylums”:

“Keeping the seriously mentally ill in such settings has costly consequences. Correctional facilities often struggle to recruit enough mental health professionals to meet the needs of their population, given limited budgets and a small pool of qualified applicants. This harsh reality leads to real consequences: a 2017 study found that offenders with a serious mental illness were nine percent more likely to recidivate within one year and 15 percent more likely to

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recidivate within five years. Perhaps even more troublingly, more than half of inmate suicides are committed by the mentally ill. Ultimately, correctional institutions are not designed for treatment, and continuing to use the criminal justice system for this purpose will cause great harm.”

In Pennsylvania many persons who are mentally ill are held in jails due to the lack of systems for diverting them into humane treatment facilities. The ACLU sued the Department of Human Services in 2015, alleging that Pennsylvania had “the longest wait times [for treatment] for incompetent criminal defendants in the country.” As Witold Walczak, Legal Director, ACLU of Pennsylvania says about the mentally ill in our legal system and jails: “If a society is judged by how it treats its most vulnerable citizens, Pennsylvania is not doing very well.”

<https://www.aclu.org/blog/disability-rights/pennsylvania-jailing-mentally-ill-people-who-belong-treatment>

We must do much more to prevent the warehousing of citizens behind bars who are suffering mental illness. Cash bail reforms would greatly reduce this shameful scourge.

### **Cash bail results in more crime in the future:**

There is evidence mounting that pretrial detention actually results in more commission of crime. In other words, if we compare the person who sits in jail for lack of money bail to the similarly situated person who gets released, the former is “1.3 times more likely to recidivate. Moreover, this harmful effect occurs with as little as two to three days of incarceration. The sad irony is that even “low-risk individuals who were detained for as little as two to three days were up to 40 percent more likely to engage in new criminal activity before trial and 1.22 times more likely to fail to appear for court appearances than individuals held for less than 24 hours.

[https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF\\_Report\\_hidden-costs\\_FNL.pdf](https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf)

A Vera Institute Evidence Brief also corroborates that those who are imprisoned now for lack of bail money are more likely to commit future criminal acts, as opposed to those who make bail.

This is true even after other factors were controlled for in their study. Studies also “have suggested that the effect is greater for people who pose a lower risk of recidivism.”

<https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>

This should come as no surprise when we consider that it takes as only a short time in jail for a person to lose employment, interrupt education, disrupt family and community ties, lose a lease

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or miss a mortgage payment. Short stints of jail can turn a person’s world upside down. We must reckon with the high likelihood that holding people in jail, even for short periods, and especially for low level crimes, may very well be turning otherwise minor offenders into more serious criminals.

Opponents of bail reform erroneously state, without evidence, that reducing the use of monetary bail and increasing the number of people released pretrial will cause defendants to commit more crimes while on pretrial release. Evidence-based evaluations, using actual case studies from

jurisdictions that have reformed bail, consistently refute this notion. Bail reforms instituted in Cook County Chicago, New Jersey, Philadelphia, New York, and Washington D.C., just to name a few, have shown no such shortcomings.

<https://www.tspr.org/post/ending-cash-bail-doesnt-increase-crime-report> Results from New Jersey’s statewide bail reform show that violent crime has actually plummeted.  
[https://www.njsp.org/ucr/pdf/current/20181019\\_crimetrend\\_2018.pdf](https://www.njsp.org/ucr/pdf/current/20181019_crimetrend_2018.pdf)

Lehigh County reportedly has the 3<sup>rd</sup> highest rate of pretrial incarceration among Pennsylvania counties, in a state that had the ninth highest rate according to a 2015 study. Due to a severe lack of transparency in Lehigh County it is difficult to discern whether that trend has abated or worsened, though anecdotal evidence suggests it has not improved.

<https://www.mcall.com/news/police/mc-nws-pennsylvania-bail-reform-cash-bail-questioned-20180613-story.html>

Pennsylvania was touted as the 9<sup>th</sup> worst state on cash bail, in a nation where “in the past 45 years the number of pretrial detainees in jails has increased 433% due in large part to the increased use of money bail.”

<https://www.civilbeat.org/2021/02/restore-justice-end-the-bail-system/>

### **Cash bail impacts the outcomes of cases**

Megan Stevenson summarized the various ways that cash bail—and more specifically in the inability to pay it—affects case outcomes. Stevenson reports:

“a 13% increase in the likelihood of being convicted, an effect largely explained by an increase in guilty pleas among defendants who otherwise would have been acquitted or had their charges dropped. I find also that pretrial detention leads to a 42% increase in the length of the incarceration sentence and a 41% increase in the amount of non-bail court fees owed.”

She also quotes a Philadelphia Public Defender, whose few words sum up the real world of justice for poor people:

“I have had the ‘you can wait it out or take the deal and get out’ conversation with way too many clients.”

<https://www.econ.pitt.edu/sites/default/files/Stevenson.Jmp2016.pdf>

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### **The grossly uneven playing field: Public Defenders Office vs. District Attorney’s Office**

As we have seen in this discussion, cash bail is an ally of the prosecution in that it helps position and even coerce poor defendants into the inevitable guilty in order to gain their freedom. This is a tool the District Attorney’s Office hardly needs, but resorts to voraciously. Public Defenders and District Attorneys Offices throughout Pennsylvania (and throughout the nation) have grossly disparate resources and manpower. This reality results in a playing field greatly favoring the



prosecution side of what, in theory at least, is supposed to be an equal adversarial battle on the field of criminal justice.

Lehigh County Controller Mark Pinsley cites the standard of the “75% Rule, which is that the Public Defenders office budget should never be less than 75% of what the District Attorney’s budget is. The Lehigh County Public Defender’s budget right now is approximately 38% of the District Attorney’s budget as of the last budget passed, and Pinsley reports that a nearly \$2.3 million increase in the Public Defender’s budget is needed to achieve “parity.”

<https://www.mcall.com/opinion/mc-opi-lehigh-county-budget-systemic-racism-inmates-public-defender-20200903-5nh3h2755nelripuaj2g6kqhaq-story.html>

As we will see in the next section, this fiscal advantage is hardly needed, given the systemic advantages the District Attorney enjoys by virtue of cash bail abuses and the injustices it spawns in the area of coerced guilty pleas. By funding the Public Defender better attorneys would be available to assume duties on cases immediately upon an arrest being made. In this way, attorneys would be better able to combat the cash bail abuses that occur at the very beginning of a case.

### **Cash bail coerces defendants into pleading guilty just to get out of jail:**

It is not uncommon for defendants to plead guilty just to get out of jail. An Oklahoma man pleaded guilty to selling cocaine because he thought he would gain his freedom by doing so. The Judge had a different idea and sentenced him to 15 years. Just days later the supposed cocaine was tested and found to be powdered milk.

<https://www.nbcnews.com/news/us-news/innocent-man-pleaded-guilty-drug-charge-get-out-jail-1t-n1067321>

In an article provocatively titled, “The ‘Radical’ Notion of the Presumption of Innocence”, The Square One Project reported that the pressures of being in jail bear heavily upon individuals so that they are “susceptible to pressure to accept plea bargains, as they are desperate to be released.” Their report concludes that “It should therefore be of little surprise that study after study has shown that pretrial detention often increases an individual’s chance of conviction—in part, due to the greater number of plea deals *many of which are likely wrongful convictions.*” [emphasis added]

<https://www.safetyandjusticechallenge.org/wp-content/uploads/2020/05/CJLJ8161-Square-One-Presumption-of-Innocence-Paper-200519-WEB.pdf>

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Some prosecutors believe that defendants pleading guilty to get out of jail is extremely rare. A number of Lehigh Valley defense attorneys this author has asked disagree, stating that defendants’ pleading guilty to gain release from jail is “typical”, “routinely happens”, “happens all the time.” None of the attorneys asked said it was a “rare” occurrence.

Studies show that due to the inability to pay bail, coupled with the long period of time for a case to get to trial, many people do in fact plead guilty, even though they are innocent, just in order to

get out of a jail cell.

<https://www.brennancenter.org/our-work/research-reports/how-cash-bail-works> Every defense attorney knows this from first hand experience. We also see the pressures defendants operate under. Indeed, defendants pleading guilty to get out of jail is an everyday occurrence, and it is also an embarrassing abomination and stain upon our justice system.

The underpinnings of this nefarious process of pleas for freedom are cash bail's ugly cousins:

1. The over-charging by District Attorneys officed in order to generate plea bargains to dispose of cases. District Attorneys sometime cite the "conviction rate" of their offices, but what they sometimes fail to mention is that perhaps 99% of those convictions come by way of guilty pleas, not jury trials, and most emanate from plea deals. Also, many of those plea deals are generated by defendants being stuck in jail. Needless to say, those pressures to plead guilty to get out of jail have intensified during the pandemic;
2. The "time-served" sentence: a person is offered to be released immediately and have their cases disposed up at the same time. A common scenario is an offer of release along with, for example, dropping a felony charge in return for a guilty plea to a lesser misdemeanor charge. The long-term wisdom of this decision by a defendant is doubtful, given that the defendant will have a criminal conviction on his or her record. But what would you do if your family awaits you, your job is in jeopardy, you are going stir crazy living in a cell with people you've never met before, perhaps actually developing mental health symptoms, and, given Covid-19, now concerned for your very life.

A 2017 study found that in New York City, the effects of pretrial detention on conviction rates were particularly pronounced for people facing minor charges, who could expect to receive credit for the time spent in jail pretrial in exchange for a guilty plea—known as a sentence to "time served"—and avoid additional jail time.

<https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>

Another insidious effect of over-charging, especially with felonies, is that it tends to increase the amount of bail that is set for defendants. An illustrative example frequently occurs in domestic violence cases. In such cases, often a defendant is charged not only with simple assault, but also

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felony strangulation if there was any part of the encounter where defendant placed his or her hands on the "victim's" neck. This scenario all too often leads to a plea agreement where the felony is dropped in return for a plea of guilty to the misdemeanor. In the meantime, however, due to the felony charge at the start of the case, immediate arrest and extended incarceration becomes highly likely for a person of limited means because the felony will lead to bail being set much higher than a misdemeanor simple assault.

Such guilty plea deals can occur even if the defendant continues to maintain his or her innocence, in a so-called *nolo contendere* ("no contest") plea. Always lurking in this

unwholesome process is the specter of innocent people entering into a plea regardless, thereby having the taint of a criminal conviction that will haunt their days to the grave.

“Research by the PBS NewsHour and Capital News Service identified more than 100 cases where suspects pleaded guilty, but there was strong evidence of innocence. The National Registry of Exonerations says 15 percent of exonerees pleaded guilty. If just 1 percent of the people who entered *Alford* pleas in the 1997 study were factually innocent, then 676 of those prisoners suffered a grave injustice in the name of keeping an overburdened and underfunded court system functioning.”

<https://www.criminallegalnews.org/news/2019/apr/12/plea-bargaining-prosecutors-leave-trail-injustice-when-playing-hardball-defendants/>

The report goes on to say that “prosecutors can wreak havoc on the life of a person who insists he or she is innocent and wants to exercise the right to a jury trial. Sentencing guidelines, like mandatory minimums, provide prosecutors with weapons to bludgeon defendants into effectively coerced plea bargains.”

In the cash bail context, the pressures mentioned above are greatly alleviated by a person being out of jail, as opposed to being detained due to lack of money, and having only a vague sense of how very long it will take to get to trial. Again, the pressures are enormous to plead guilty or accept any plea bargain that achieves freedom.

The [Illinois Supreme Court Commission in Pretrial Practices](#), which strongly urged bail reform in its report last spring, found that a defendant who can't afford bail sees his or her life unravel within days — loss of a job, loss of child custody, health problems without access to medication. What's more, it tends to generate spurious plea deals. Someone charged with a crime, although innocent, can plead guilty to a lesser charge to get out of jail, having completed the sentence for the less-serious offense.

<https://apnews.com/article/breonna-taylor-police-chicago-crime-poverty-4eed3b04464f5fca79be0f2356148019>

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### **Why do we have these Constitutions anyway?**

What better topic to end with than our Constitutions. Let's begin with the United States Constitution:

Amendment VIII (1791)

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

Then consider the Pennsylvania Constitution:

Bail, Fines and Punishments

Section 13.

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted. ”

That’s not a typo. The US and PA Constitutions use exactly the same language on bail. It also should be noted that both constitutional provisions juxtapose the bail proscription right next to “excessive fines imposed”. Clearly the framers, mostly wealthy citizens, in both instances were cognizant of the deleterious effects poverty could have on their poorer brothers and sisters. Sadly, our legal system has evolved to a point where we all too frequently fail to embrace such considerations.

“Excessive bail” can only be interpreted in relative terms, with the result being that poor people, those who are penniless, must not be plagued with the oppression of money bail.

Again, this discussion above was designed to begin a conversation. We hope that this writing, along with the Forum, will spur all of on to more study and understanding of this profoundly important subject of pretrial cash bail.

Ettore J. Angelo, Esquire