

## FINES, FEES, AND BAIL

### PAYMENTS IN THE CRIMINAL JUSTICE SYSTEM THAT DISPROPORTIONATELY IMPACT THE POOR

#### Introduction

Much of public discussion about the need for criminal justice system reform has focused on the dramatic growth in the size of the incarcerated population, as the number of Americans behind bars is now approximately 2.2 million.<sup>1</sup> At the same time, concerns are growing about the expanding use of [monetary penalties](#), which disproportionately impact poor defendants and offenders. Crime imposes real costs on society in terms of both the harm done to victims and in resources that must be allocated to policing, prosecution and incarceration. Increases in criminal justice [spending](#) have put a strain on local criminal justice budgets and led to the broader use of fine penalties and itemized criminal justice fees in an effort to support budgets. However, this practice places large burdens on poor offenders who are unable to pay criminal justice debts and, because many offenders assigned monetary penalties fall into this category, has largely been [ineffective](#) in raising revenues. Similarly, the growing use of fixed bail bonds as a condition for pretrial release has contributed to growth in [jail populations](#), and often results in localities detaining the poorest rather than the most dangerous defendants.

In this brief, we examine three common types of monetary payments in the criminal justice system:

- [Fines](#) are monetary punishments for infractions, misdemeanors or felonies. Fines are intended to deter crime, punish offenders, and compensate victims for losses.
- [Fees](#) are itemized payments for court activities, supervision, or incarceration charged to defendants determined guilty of infractions,

misdemeanors or felonies. Fee collections are intended to support operational costs in the criminal justice system and may also be used to compensate victims for losses.<sup>2</sup> Fees may also have a punitive and deterrent purpose, but are not designed to cater to specific offense categories.

- [Bail](#) is a bond payment for a defendant's release from jail prior to court proceedings, and the majority of a bail payment is returned to a defendant after case disposition. Bail payments are intended to incentivize defendants to appear at court and, in some cases, to reduce the criminal risk of returning a defendant to the community.

In jurisdictions throughout the United States, monetary payments for infractions, misdemeanors or felonies typically do not consider a defendant's [ability to pay](#), and instead are determined based on offense type, either statutorily or through judicial discretion. Fixed payments for a given offense create regressive penalties, or penalties more punitive for poorer individuals than for wealthier individuals. The disproportionate impact of these fixed payments on the poor raises concerns not only about fairness, but also because high monetary sanctions can lead to [high levels of debt](#) and even [incarceration](#) for failure to fulfill a payment. In some jurisdictions, approximately [20 percent](#) of all jail inmates were incarcerated for failure to pay criminal justice debts. Estimates indicate that a [third](#) of felony defendants are detained before trial for failure to make bail; and in one city, approximately 20 percent of defendants made bail at amounts less than [\\$500](#). High debt burdens for poor offenders in turn increase barriers to successful [re-entry](#) after an offense.

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<sup>1</sup> Carson, Ann. 2015. "Prisoners in 2014." Bureau of Justice Statistics, Department of Justice, Washington, D.C.; Minton, Todd and Zhen Zeng. 2015. "Jail Inmates at Midyear 2014." Bureau of Justice Statistics, Department of Justice, Washington, D.C.

<sup>2</sup> In the Federal system, fees are also called "special assessments" and contribute to compensation for victims. Office for Victims of Crime. "About OVC: Crime Victims Fund." Office of Justice Programs, Department of Justice, Washington, D.C.  
<http://www.ovc.gov/about/victimsfund.html>.

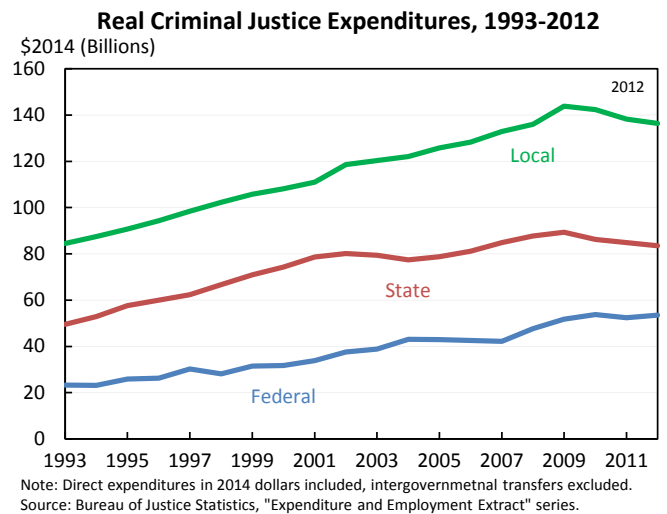
As the use of fixed monetary penalties has increased, many observers have raised concerns about the [equity](#), [legality](#) and [efficiency](#) of these regressive payments. At the same time, meaningful reforms could increase equity without sacrificing deterrent impacts of these payments or the goal of supporting criminal justice operations. Below, we discuss the use and impact of fines, fees and bail, and highlight potential options for reform.

## Fines and Fees

### *Rising Criminal Justice Budgets have Motivated Growth in Fines and Fees*

In the past two and a half decades, the U.S. criminal justice system has expanded dramatically. Between 1990 and 2014, incarceration rates increased by 61 percent,<sup>3</sup> and in 2014, over 2.2 million people were incarcerated in local [jails](#) or in State and Federal [prisons](#).

As part of the growth in the criminal justice system expenditures have risen substantially. Between 1993 and 2012, total real annual criminal justice expenditures grew by 74 percent from \$157 to \$273 billion, and local spending comprised approximately half of total expenditures.<sup>4</sup> State corrections expenditures represent [7 percent](#) of the total State general funds on average, and 11 States spent more on corrections than higher education in 2013.



As enforcement has increased, [budget pressure](#) has mounted. State and local court systems, which process the majority of low-level offenses, have also faced increasing budget pressure, reflected in criminal justice expenditure growth of 69 percent at the State level and 61 percent at the local level over the same period.

In the 1990s, policy makers began arguing that taxpayers should not bear responsibility for these increasing costs, but rather the individuals convicted of crimes. State and local governments, who pay many of the operational costs of the criminal justice system, have increasingly turned to monetary sanctions as a source of additional revenue. One [study](#) using data from North Carolina found that counties use traffic tickets and fines not only to ensure safety but also as a tool to raise revenue, responding to a 10 percent budget shortfall by issuing 6 percent more tickets. In a high-profile example of this practice, a [Department of Justice investigation](#) of the Ferguson Police Department in Missouri showed that the town of Ferguson set revenue targets for criminal justice fines and fees of over \$3 million in 2015, covering over 20 percent of the town's operating budget.

<sup>3</sup> Incarceration growth includes prisoners only. Bureau of Justice Statistics (BJS). 1990-2014. "Prisoners" Series. Department of Justice, Washington, D.C.

<sup>4</sup> Total spending refers to combined Federal, State and local spending. Between 1993 and 2012, total nominal spending on the criminal justice system grew from \$97 billion to \$265 billion, a growth rate of over 170 percent.

Real per-capita spending on the criminal justice system grew by 40 percent, a slower growth rate than real total spending, which grew by over 70 percent. Expenditures tabulated are direct spending, indirect transfers are excluded. Bureau of Justice Statistics (BJS). 1990-2014. "Expenditure and Employment Extract" Series. Department of Justice, Washington, D.C.

### *The Use and Size of Fines and Fees have Increased over Time*

A recent study estimates that [tens of millions](#) of individuals in the United States have been assessed fines or fees as part of the punishment for a criminal offense. The use of these practices has increased substantially over time; in 1986, 12 percent of those [incarcerated were also fined](#), while in 2004 this number had increased to 37 percent.<sup>5</sup> When including fees as well, the total rises to [66 percent](#) of all prison inmates. In 2014, [44 States](#) charged offenders for probation and parole supervision, up from [26](#) in 1990.

While the use of fines and fees has grown for all sentencing groups, they remain [more common](#) in cases of misdemeanors, infractions, and other relatively less serious crimes than in cases of felonies. Even among felony defendants, fines and fees are more common for individuals convicted to probation or jail than prison, because fines may be used as an alternative to incarceration. At all levels, fines and fees are more associated with less serious crimes.

[Within particular States](#), the number and type of fees has also risen substantially; for example, [Florida](#) has added 20 new categories of financial obligations since 1996. Examples of financial obligations include charges for representation by a [public defender](#), [court appearances](#), [room and board](#) for jail or prison stays, [parole](#) or probation services, court-required drug testing, counseling or community service, and [electronic monitoring](#). Fees can also be [directly linked](#) to fines when additional fees are triggered by failure to pay a fine for the original offense. In many States, the range of fees can impact and burden poor defendants at each step of the justice process.

In addition to monetary penalties for specific offenses or criminal justice operations, [surcharges for collecting criminal justice debt](#) have an extra impact on offenders unable to pay their initial charges, a group that likely

includes a large proportion of poor defendants. For example, in the State of Washington, individuals with criminal justice debt are subject to an initial flat charge of \$500 and an [interest rate](#) of 12 percent. Other States assess fees ranging from \$25 to \$300 for [late payments](#), [failure to pay fines](#), or to [set up a debt payment plan](#). In Florida, private collection agencies may add [processing fees](#) of up to a 40 percent.

Though each individual fee may appear a manageable sum, a charge of several hundred dollars can present a significant obstacle to poor offenders and the number of charges, processing fees, and high rates of interest can quickly compound debt into much larger sums. In 2011, the city of [Philadelphia](#) sent bills on unpaid criminal justice debts to more than 20 percent of residents, with a median debt of \$4,500. A 2008 study in the State of [Washington](#) found an average of \$1,406 in fines and fees owed. The same study found that non-violent drug offenders owed debts over 1.5 times greater than other offender groups, in part because drug offenders may be more likely to receive fines instead of incarceration sentences. Given an interest rate of 12 percent in Washington, an offender paying \$10 a month on the average debt would owe more than \$15,000 in 30 years.<sup>6</sup>

### *Fines and Fees are Regressive Payments that Disproportionately Impact the Poor*

While fines and fees serve different purposes in the criminal justice system, with the former intended as a direct form of punishment and the latter intended as a form of cost-sharing for operation of the system, they have a key similarity in the fact that both are typically assessed without consideration of the offender's [ability to pay](#). These monetary penalties often place a disproportionate burden on poor individuals who have fewer resources available to manage debt. They also serve as a regressive form of punishment as the same level of debt presents an increasingly larger burden as one moves lower on the income scale.

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<sup>5</sup> These percentages exclude fines specifically for restitution. About a quarter of felony defendants were ordered to pay restitution in 2004. Harris, Alexis, Heather Evans and Katherine Beckett. 2010. "Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States." *American Journal of Sociology* 115(6): 1753-1799.

<sup>6</sup> Beckett, Katherine A., Alexis M. Harris, and Heather Evans. 2008. "The Assessment and Consequences of Legal Financial Obligations in Washington State." Washington State Minority and Justice Commission, Olympia, WA; CEA calculations.

Statutory [caps](#) on fines and fees may attempt to ensure that payments are affordable for all, but payment ceilings often remain too high for impoverished offenders to afford. Caps on fines and fees can also perpetuate the regressive nature of the fine and fee system by reducing the relative punishment for wealthy defendants. For example, [experiments](#) varying the size of fines for running a red light find that larger fines reduce traffic violations, but that wealthier individuals are less responsive to changes in fine levels because fines are relatively less costly as income increases.

Though fines and fees represent fixed payments with respect to an individual's ability to pay, these payments show large [variance](#) across local jurisdictions, offense categories and offender characteristics due to judicial discretion. [Regression analysis](#) of criminal justice debt in the State of Washington found higher fines and fees for drug offenses, cases that went to trial, and for Hispanic and male offenders. Differences in criminal justice debt according to characteristics of the case may disproportionately impact certain groups or change the incentives that defendants face when choosing how to proceed with a case. Criminal justice debt also varied according to county characteristics; with higher fines and fees charged in counties with lower populations, counties with higher arrest rates for violent and drug offenses, and counties that spent a lower percentage of their budgets on criminal justice.

#### *Fines and Fees Impose Large Financial and Human Costs on Poor Offenders*

Fines and fees create large financial and human costs, all of which are disproportionately borne by the poor. High fines and fee payments may force the indigent formerly incarcerated to make difficult trade-offs between paying court debt and other [necessary purchases](#). Unsustainable debt coupled with the threat of incarceration may even encourage some formerly incarcerated individuals to [return to criminal activity](#) to pay off their debts, perversely increasing recidivism. Time spent in pre-trial detention as a punishment for failure to pay debts entails [large costs](#) in the form of personal freedom and sacrificed income, as well as increasing the likelihood of job loss.

Further, an arrest for inability to pay a fine is itself a criminal record offense and can exacerbate the consequences of the original criminal charge. A large

body of research shows that there is a substantial labor market penalty for having a [criminal record](#) or history of [arrests](#) or [incarceration](#), in terms of both [decreased employment and wage loss](#). Individuals unable to pay criminal justice debt may be further punished by having their drivers' licenses suspended, even for offenses unrelated to driving. In a recent [study](#), eight of 15 States surveyed suspend licenses for nonpayment of criminal justice debt. Loss of a driver's license can make it difficult to maintain employment, increasing the obstacles to paying off debt.

In some cases, judges issue warrants to arrest and jail indigent individuals for failure to pay debts, a practice that may violate [constitutional rights](#). In many States, payment of fines and fees is a [condition of parole or probation](#), and failure to pay criminal justice debt can result in a violation of parole or probation that can lead to additional incarceration. In [Pennsylvania](#), individuals unable to pay a \$60 fee for parole supervision are ineligible for parole release, leading to longer sentences for the poorest offenders. Because many States provide [credits toward debt for time spent in jail](#), convicted persons in some States may "choose" to serve time in jail to reduce their debts.

Though national data on incarceration for failure to pay criminal justice debt is not available; investigations of smaller jurisdictions are illustrative. In Rhode Island in 2008, [18 percent](#) of all incarceration commitments were for criminal justice debt and over 2/3 of individuals jailed for debt were first time offenders. In Huron County, Ohio in 2012, failure to pay fines and fees accounted for [20 percent](#) of all jail bookings.

#### *Collection of Fines and Fees is Often Inefficient*

Though some jurisdictions may be successful in raising revenue through fines and fees, growing evaluation [evidence](#) suggests that a policy that funds government through criminal justice fees and fines is often ineffective. State and local governments are likely to collect fines and fees at [low rates](#), in large part [because of low incomes among many offenders](#), making them unable to pay court debts assigned without consideration for ability to pay. Available data shows that approximately 65 percent of prisoners [did not complete high school](#) and 14 percent have less than an 8<sup>th</sup> grade education, indicating that they may have limited labor market prospects or incomes. Similarly, evidence

suggests that approximately 80 percent of felony defendants are [designated as indigent](#) and rely on court-appointed counsel.

As States have increasingly relied on fees and fines that do not take into account ability to pay, they have faced very low rates of collection on debt. For example, [Florida](#) and [Maryland](#) collected 14 percent and 17 percent of certain types of fees assessed, respectively. Additionally, the [collection rate](#) was zero in half of sentenced felonies in Washington over three years, and a large majority of sentenced cases had only collected 20 percent of funds charged. State and local governments appear to be responding to low collection rates by [contracting with private collection agencies](#) and [increasing the fines and fees charged](#), a response that often exacerbates existing challenges with the system [and raises serious due process concerns](#).

Despite their goal of increasing revenue to fund local criminal justice expenditures, in many cases, the costs of collection may exceed revenues from fines and fees due to the high direct costs of collecting debt and the low rate of collection. Direct costs of administering the program can be substantial, including staffing collectors, locating offenders, and administering collections. For example, the State of Washington collected over \$21 million in fee revenue in 2006, but saw a [net gain](#) of less than \$6 million.

The [inefficiency](#) of court debt collection is exacerbated by the high cost of imprisoning people who cannot pay these debts. When jurisdictions jail offenders for failure to pay, the cost of fee collection increases more; in Rhode Island in 2008, 2,446 individuals were incarcerated for unpaid debts at an average cost of \$505 per commitment, and in 13 percent of cases the cost of incarceration alone [exceeded](#) the debt assessed. These direct incarceration costs do not include other direct costs of collecting fees or the humanitarian and equity concerns of imprisoning those unable to pay criminal justice debts.

Inefficient debt collection practices persist because many States do not appropriately [track the costs or net gains](#) from collection of criminal justice debt. In a [study](#) of debt collection practices, none of the 15 States surveyed had any formal processes of tracking the costs associated with fee collection. When Massachusetts conducted an [impact analysis](#) of introducing a fee for room and board in prisons and jails in 2010, the State found that the proposed fee would not feasibly increase revenue and would create additional obstacles to successful reentry.

### *Reforming Fines and Fees Could Potentially Increase both Equity and Efficiency*

Though State and local governments face important budgetary challenges, equitable and commonsense reforms to monetary criminal justice punishments have the potential to improve fairness and efficiency without compromising public safety.

Over 25 countries in Europe and Latin America utilize progressive “day” fines instead of fixed fines of a certain dollar amount for a given offense.<sup>7</sup> In a [“day” fine system](#), judges use sentencing guidelines for offense types measured in a number of “days.” Then, the court determines the total fine by multiplying the number of “days” by an individualized income measure for the defendant. Often, the “day” value for a defendant equals the dollar amount he or she earns in day, allowing fine punishments to be equally punitive in terms of days of work across defendants of different means.<sup>8</sup>

Evaluation research has shown that “day” fine systems without statutory maximums have the additional potential to [increase collection rates](#), as all defendants should be capable of paying proportional fines, to [increase total fine revenue](#) collected, and to reduce arrest warrants for outstanding debt. In the early 1990s, enthusiasm for the wide array of benefits of “day” fines led to a number of pilot programs in jurisdictions in the United States, though these pilots had mixed results due

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<sup>7</sup> This count is compiled from several sources. Zedlewski, Edwin W. 2010. “Alternatives to Custodial Supervision: The Day Fine.” *National Institute of Justice*, Washington, D.C.; Jordans, Frank. 2010. “Speeding Fines Being Linked to Income in Europe.” *SFGate*, San Francisco, CA. <http://www.sfgate.com/news/article/Speeding-fines-being-linked-to-income-in-Europe-3275939.php>; Tonry,

Michael and Richard Frase (ed.). 2001. *Sentencing and Sanctions in Western Countries*. Oxford University Press, New York, NY.

<sup>8</sup> “Day” values may include other factors beyond income, such as an individual’s living expenses, cost of dependents, assets, or other forms of wealth.



to [implementation challenges](#). These challenges included high start-up costs, personnel training, and complications with easily accessing income data in the courts. Recognizing these challenges and capitalizing on modern technology, new forms of progressive fine systems may be more successful in today’s digital era.

Programs that increase the availability of exemption waivers for criminal justice fees for impoverished defendants have also shown promise. To qualify for an exemption, courts assess an individual’s poverty level based on an income threshold and provide an alternative to a fine, such as community service, for individuals below the threshold. In 2011, the State of Washington passed [legislation](#) to permit waivers for interest accrued while a person is incarcerated and Maryland passed a law that required the probation and parole officers to notify those on supervised release of available exemptions. Several [other reform ideas](#) have been suggested by academics and practitioners, including amnesty days, community service alternatives, and requiring [court hearings](#) to determine whether defendants are able to pay sanctions.

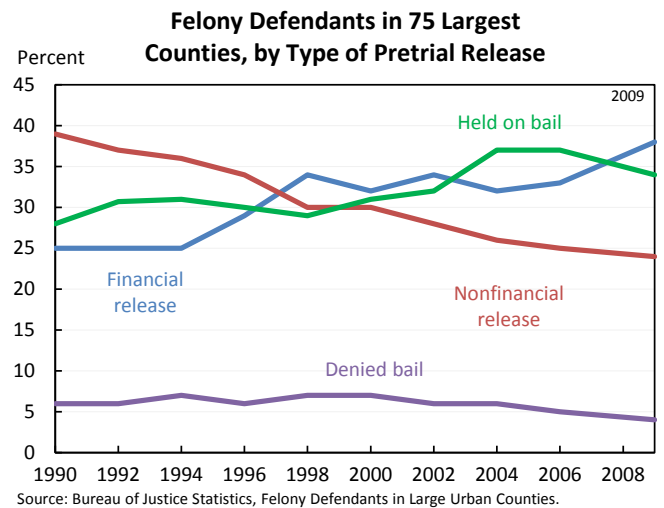
Given the high administrative costs and low or negative rates of return for fee collection programs, some localities have opted to abolish fee payments altogether. After [extensive review](#) of the net gains of fee collections, Leon County, Florida closed its Collections Court and terminated eight thousand outstanding arrest warrants. Following a similar review, Orange County, Florida cancelled outstanding nonpayment warrants for transient residents.

## Bail

### *The Use and Size of Bail Bonds has Increased over Time, Leading to Increased Pretrial Detention of Defendants*

Concurrent with the increase in fines and fees, the use of bail bonds in local criminal justice systems have also increased considerably over the past two decades: in 1990, 53 percent of felony defendants in large counties were assigned bail, and by 2009, this proportion had grown to 72 percent. As the use of bail has become more

frequent, the pretrial detention of felony defendants has depended more on their bail status, with 52 percent growth in the proportion of defendants released on bail, 21 percent growth in the proportion of defendants held on bail, and a concurrent decline in the proportion of defendants released without financial guarantees.<sup>9</sup>

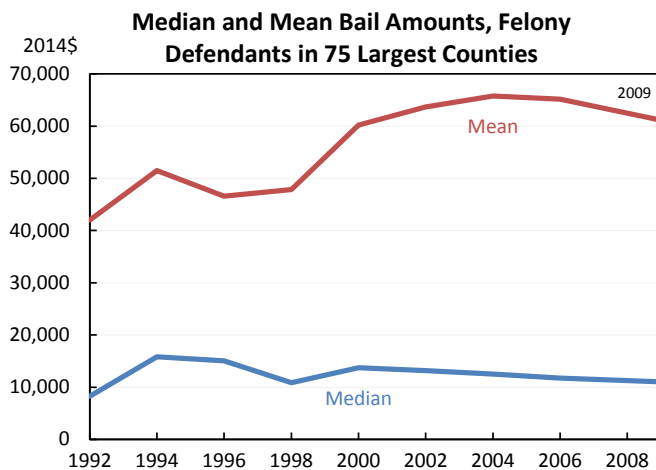


The average size of bail payments has also increased over time. Between 1992 and 2009, real median bail amounts stayed relatively constant at around \$10,000, but the average bail assignment increased by 46 percent to \$61,000, indicating that an upper tail of defendants now face bail payments in the hundreds of thousands of dollars.<sup>10</sup>

Even relatively low bail payments present substantial difficulties for poor defendants to pay, and growth in the use and size of bail payments has likely resulted in increased pretrial detention of the poor. For example, in [New York City](#) in 2010, only 21 percent of arrestees made bail at arraignment for bail amounts less than \$500. Similarly, in [Virginia](#) in 2012, 92 percent of defendants held on bail had bail bonds set below \$5,000.

<sup>9</sup> Bureau of Justice Statistics. 1990-2009. “Felony Defendants in Large Urban Counties” Series. Department of Justice, Washington, D.C.

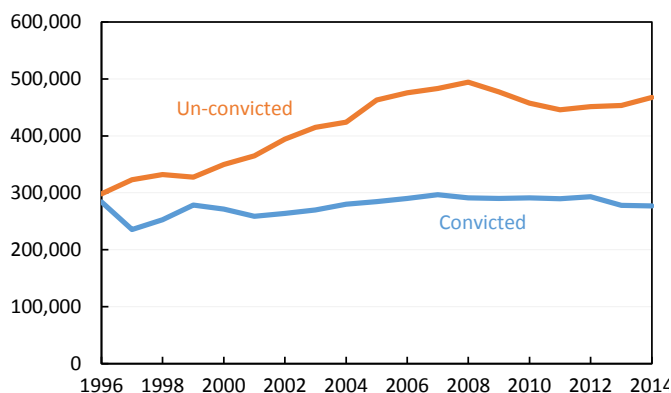
<sup>10</sup> Adjustment to 2014 dollars using CPI-U-RS levels by year from the Bureau of Labor Statistics. Bureau of Justice Statistics. “Felony Defendants in Large Urban Counties” Series. Department of Justice, Washington, D.C.



Source: Bureau of Justice Statistics, Felony Defendants in Large Urban Counties.

Restrictive bail policies that detain many defendants have partly driven growth in the number of pre-trial prisoners held without a conviction. Between 1996 and 2014, the number of un-convicted jail inmates grew by 59 percent.<sup>11</sup> Recent data show that about a [third](#) of felony defendants are held on bail prior to court proceedings.

Inmates in Jails by Conviction Status, 1996-2014



Note: Data for 2000, 2005 and 2005-2014 include all inmates. Data for all other years include only adult inmates.

Source: Bureau of Justice Statistics, Jail Inmates at Midyear.

<sup>11</sup> Bureau of Justice Statistics (BJS). 1996-2014. "Jail Inmates at Midyear" Series. Department of Justice. Growth in sentenced or convicted inmates has occurred in prisons, which detain offenders that typically have sentences longer than a year. The overall growth in the number of inmates in prisons was 32 percent between 1996 and 2014; Bureau of Justice Statistics (BJS). 1996-2014. "Prisoners" Series. Department of Justice, Washington, D.C.

<sup>12</sup> Judges can weigh a number of other factors in assigning bail including offense type, criminal history, history of

### *Bail Assignments are Regressive, Leading to Pretrial Detention of the Poorest rather than the Most Dangerous Defendants*

Bail payments aim to provide defendants with an incentive to [appear at court](#) and may also have the aim of [reducing the risks](#) of a defendant returning to the community. Typically, judges primarily base bail decisions on the offense charge, but the [flexibility](#)<sup>12</sup> in bail determination can make bail assignments [arbitrary](#). For example, a recent [study](#) found that judicial discretion leads to systematically higher levels of bail for Black defendants relative to White defendants, even when controlling for offense type and defendant characteristics.

As in the case of fines and fees bail determinations typically do not consider a defendant's [ability to pay](#) and create a disproportionate burden for low-income defendants. Many poor defendants who do not have sufficient funds to pay bail in full instead pay a bail bondsman a high [nonrefundable fee](#) of 10 to 15 percent of the bail amount. Poor defendants who manage to post bail may [deplete](#) their own savings and the savings of family members, or employ resources that may have been necessary to purchase other necessities.

These bail practices can result in [detaining the poorest rather than the most dangerous](#) defendants before trial. Bail assignments attempt to reduce risk of pretrial misconduct through financial incentives, though the strength of these incentives depends largely on defendant income. A fixed bail payment will provide a smaller incentive for a wealthy defendant, and a larger relative incentive for a poor defendant, conditional on his or her ability to post bail.

The growth in the use of bail and in bail payment size, however, has not been accompanied by uniform declines

appearing at court proceedings, community ties, employment and finances, citizenship, and character or reputation. Employment and finances are related to ability to pay, but are among several factors that a judge may use in setting bail. Having employment may be viewed as a strong community tie that reduces flight risk or re-arrest risk and leads to a lower bail assignment. In this case, individuals with employment, who are more likely to be able to post bail, would receive lower rather than higher bail.

in failure-to-appear rates for court proceedings or pretrial re-arrest rates. Though failure-to-appear rates declined from 25 to 17 percent between 1992 and 2009, pretrial re-arrest rates actually increased from 14 to 16 percent for released felony defendants in large counties.<sup>13</sup> The fact that pretrial re-arrest rates have not declined while pretrial detention has increased, suggests that current bail policies may not be improving the safety of communities.

#### *Pretrial Detention of Low Risk Offenders is Costly to Taxpayers and Defendants*

When defendants have a low risk of misconduct, pretrial detention is costly and inefficient. The [average daily cost](#) of jail per inmate per day ranges from \$50 to \$500 across jurisdictions, and the [total annual cost](#) of pretrial jail beds is estimated to be \$9 billion, or 11 percent of total spending on corrections.<sup>14</sup> In addition to direct government expenditures, individual defendants face [large costs](#) to pretrial detention in terms of lost freedom and income, as well as increased risk of job loss. Many advocates have also raised concerns about the equity of incarcerating disproportionate shares of low-income defendants before they have been convicted of a crime.

Though there are important public safety reasons for detaining many defendants prior to court proceedings, bail systems that are not focused on securing the safety of the public and appearance of the defendant, and fail to take into account a defendant's ability to pay can result in the detention of low-risk defendants simply because they are unable to post bail. Pretrial detention of these defendants can [hamper defense](#) in court by preventing incarcerated defendants from finding witnesses and gathering evidence. Because defendants with more serious charges may be more likely to be viewed as higher risk, detained pretrial and ultimately incarcerated, it is difficult to measure the impact of pretrial detention on sentencing outcomes. However, a recent study that was able to compare outcomes of defendants with similar characteristics and offense charges found that relative to defendants released before trial, defendants detained prior to case

disposition are [more likely](#) to receive an incarceration sentence and more likely to receive longer sentences. Defendants able to pay for [legal representation](#) at their bail hearings may also have a greater chance of obtaining a nonfinancial release.

#### *A Number of Bail Reform Options Could both Increase Fairness and Reduce Pretrial Misconduct*

As in the case of fines and fees, reforms to bail payments could explicitly consider defendant resources. Progressive bail systems have the potential to equalize pretrial incentives across defendants of different means, and reduce costly detention of low-risk poor defendants that cannot afford bail. For example, in [Wisconsin](#), judges are required to consider a defendant's ability to post bail and do not charge bail for indigent defendants of misdemeanor crimes.

Expanding pre-trial release for low risk defendants through other means, such as reducing collective bail levels and increasing non-financial releases, could also offer substantial savings. Several States [outlaw](#) the use of commercial bail, and in Illinois, all defendants assigned bail are eligible to pay a 10 percent cash alternative. Alternative low-cost initiatives aimed at decreasing failure-to-appear rates may also have merit; for example, a [field experiment](#) in Nebraska, found that sending reminder postcards to defendants about their court dates increased court appearance rates by 35 percent.

Many [advocates](#) and [researchers](#) argue that statistical modeling and data can inform release decisions and improve upon current bail schemes. These models use data on offense type and defendant criminal history to assess the risk of each defendant and provide recommendations about release. A recent study finds that over 20 percent of felony defendants held on bail are [very low risk](#), or have a one percent or lower estimated probability of re-arrest, suggesting that reforms to release decisions could reduce pretrial misconduct. Risk assessment models do face considerable [challenges](#) in implementation, particularly in evaluating and validating a risk assessment model,

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<sup>13</sup> Bureau of Justice Statistics. 1990-2009. "Felony Defendants in Large Urban Counties" Series. Department of Justice, Washington, D.C.

<sup>14</sup> Pretrial bed estimate is referenced against 2012 spending figures. Bureau of Justice Statistics (BJS). 2012.

"Expenditure and Employment Extract." Department of Justice, Washington, D.C.



ensuring model transparency, processing data in real time, and modifying statutory bail schedules. Some [observers](#) have raised concerns that risk assessment models may not offer fair and individualized justice as well. Despite these challenges, [several jurisdictions](#) have begun to [use risk-assessment](#) and are finding [positive results](#). In 2015, [more than 20](#) new city and State jurisdictions adopted risk assessment tools, joining the 10 percent of courts that use risk assessment. Some districts have replaced bail with non-financial release determinations from risk-assessment models, and others have complemented risk-assessment with [pretrial supervision](#).

## Conclusion

By disproportionately impacting the poor, fixed monetary penalties have generated concerns about fairness in the criminal justice system. At the same time, their use has been largely ineffective in reducing fiscal pressures on local criminal justice budgets, since it places large burdens on those least able to pay. The growing use of bail bonds, meanwhile, has often resulted in jurisdictions detaining the poorest defendants, rather than those most likely to pose a risk to public safety.

The Administration remains committed to making the criminal justice system fairer, smarter, and more cost-effective, including in the area of monetary penalties. With respect to fines and fees in particular, the [Department of Justice](#) has raised awareness about the harmful consequences of setting aggressive revenue targets for criminal justice payment collections. The 2011 [National Symposium on Pretrial Justice](#) has also outlined more equitable options for pretrial reform, with a focus on evidence-based policies like risk-assessment release models. The Bureau of Justice Assistance at the Department of Justice has supported the development and [evaluation](#) of risk-assessment tools through [grants](#) to State and local jurisdictions. Finally, in 2015, the Department of Justice issued a [Statement of interest](#) in a case protesting the legality of a bail scheme in Clanton, Alabama that raises concerns about the equity and legality of fixed bail payments. The Administration will continue to work with State and local jurisdictions to assess and implement new approaches designed to reduce inequities and inefficiencies of fines, fees, and bail while maintaining an effective criminal justice system.

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