

AFFIDAVIT OF TIM MURRAY

Tim Murray, having been duly sworn according to law, deposes and states as follows:

Background

1. My name is Tim Murray, and I currently serve as Director Emeritus of the Pretrial Justice Institute. I have worked as a criminal justice practitioner at the local, state, and federal levels for 40 years. I have held management and executive positions with the pretrial services systems in Washington, D.C. and Miami-Dade County, Florida. While in Miami, I was the principal architect and administrator of the nation's first drug court. I served as the first director of the Drug Court Program Office for the United States Department of Justice. Following that appointment, I held the positions of Director of Policy and Planning and Director of Program Development at the Bureau of Justice Assistance. I also worked as part of the start-up team for the Transportation Security Administration (now part of the United States Department of Homeland Security).

2. In 2006, I was selected to be director of the Pretrial Justice Institute. I am a lifetime member of the National Association of Pretrial Services Agencies and the proud recipient of the Association's most prestigious honor, the Ennis J. Olgiati Award. I have served as faculty at the National Judicial College and numerous State Judicial Training Institutes over the past three decades. I have testified before the United States Congress as well as state and local legislatures across the nation on the issues of pretrial justice and bail.

Overview

3. In this affidavit, I will express opinions on the harm caused to criminal defendants by the use of money bail, the lack of harm to jurisdictions that forego the use of money bail, and the public interest that is served by the eradication of money bail.

4. In forming my opinions, I have relied on personal experience gained during my 40 years of work as a criminal justice practitioner as well as numerous studies authored by researchers and scholars in the field of pretrial justice.

5. I am receiving no compensation for the preparation of this affidavit.

Analysis

A. The Use of Money Bail to Detain People Based on Wealth Status Causes Harm to Indigent Arrestees

6. Detention due to money bail leads to worse outcomes at trial and sentencing. A recent study¹ that analyzed records of over 60,000 arrestees in Kentucky in 2009 and 2010 found that

¹ Christopher T. Lowenkamp *et al.*, *Investigating the Impact of Pretrial Detention on Sentencing Outcomes*, Laura and John Arnold Foundation, 3 (November 2013) available at http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf.

defendants who were detained for the entire pretrial period were over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial — even when charged with the same offenses. These defendants’ sentences were also significantly longer: defendants sentenced to jail received sentences almost three times longer if they were detained pretrial; those sentenced to prison were sentenced more than twice as long if detained pretrial — again, even for the same offenses as their peers who were released pretrial.

7. Another study² examined similar questions in the context of federal courts. Drawing on 1,798 cases from two United States District Courts, the research found that defendants detained pretrial are given longer sentences than those released pretrial, even when charged with the same offenses. Indeed, detained defendants’ sentences are, on average, nearly two times longer than those of released defendants. And while defendants who were released and later revoked received longer sentences than defendants who completed pretrial release without incident, their sentences were still shorter than defendants who were never released at all. These findings were obtained while controlling for known variables.

8. Other research confirms that pretrial detention alone leads to harsher treatment and outcomes than pretrial release. Relatively recent research from both the Bureau of Justice Statistics³ and the New York City Criminal Justice Agency⁴ continues to confirm studies conducted over the last 60 years demonstrating that, controlling for all other factors, defendants detained pretrial are convicted more often, and are sentenced to prison and receive harsher sentences than similar defendants who are released. Perhaps most disturbingly, defendants who are detained pretrial are more likely to plead guilty, suggesting that even some defendants who are innocent plead guilty solely because of their pretrial detention.

9. Being incarcerated prior to trial makes it more difficult for arrestees to take an active role in preparing their defense. For incarcerated arrestees, it is more difficult to meet with their attorneys and to gather witnesses and evidence.

10. Being incarcerated pretrial can have disruptive or disastrous consequences for arrestees. People detained pretrial experience instability in employment, housing, and care for dependent relatives.

11. Added to these costs are dollars associated to lost wages, economic mobility (including intergenerational effects), possible welfare and foster care costs for defendants’ families, and a variety of social costs, including the possibility of imposing punishment prior to conviction,

² James C. Oleson *et al.*, *The Sentencing Consequences of Federal Pretrial Supervision*, Crime & Delinquency, 1:21, 2014.

³ See Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics Online, Table 5.22.2010, <http://www.albany.edu/sourcebook/pdf/t5222010.pdf>; and S. Rosenmerkel, M. Durose, and D. Farole, *Felony Sentences in State Courts, 2006—Statistical Tables* (Washington, DC: Bureau of Justice Statistics, 2009), 1.

⁴ Mary T. Phillips, *Pretrial Detention and Case Outcomes, Part I: Nonfelony Cases*, New York Criminal Justice Agency, Inc., 55–56 (November 2007) available at http://www.nycja.org/lwdcms/docview.php?module=reports&module_id=669&doc_name=doc.

denying the defendant the ability to assist with his or her own defense, and eroding justice system credibility due to its complacency with a wealth-based system of pretrial detention.

12. Very few persons arrested or admitted to jail are ultimately sentenced to significant incarceration post-trial. Indeed, some studies⁵ suggest that only 3–5% of jail inmates nationally are sent to prison. In one statewide study,⁶ only 14% of those defendants detained for the entire duration of their case were sentenced to prison. Thirteen percent had their cases dismissed (or the cases were never filed), and 37% were sentenced to noncustodial sanctions. This means that half of arrestees detained pretrial were never sentenced to jail as punishment — their only period of incarceration was, ironically, while they were presumed innocent pending trial. Another study⁷ showed that more than 25% of felony pretrial detainees were acquitted or had their cases dismissed, and approximately 20% were ultimately sentenced to a noncustodial sentence. Despite the fact that these detainees are never sentenced to any jail time, all of them languish in jail awaiting disposition of their cases simply because they lack the financial means to secure their release.

B. Non-Financial Pretrial Release Policies Will Not Harm Cities and Counties that Currently Rely on Money Bail

13. In 1968, the American Bar Association⁸ openly questioned the presumption that money bail serves as a motivator for court appearance. Since then, no valid study has suggested that money bail improves court appearance rates. Instead, the best research to date suggests what criminal justice leaders have long suspected: secured money bail does not improve either public safety or court appearance rates.

14. The Lowenkamp study⁹ demonstrated that keeping low-risk defendants in jail pre-trial correlates with *increased* likelihood that they will fail to appear at court hearings. Low-risk defendants held for 2–3 days are 22% *more likely* to fail to appear than similar defendants (in terms of criminal history, charge, background, and demographics) held for less than 24 hours. The increased failure-to-appear rate jumps to 41% for defendants held 15–30 days. For low-risk defendants held for more than 30 days, the study found a 31% increase in failure to appear. In other words, pretrial detention actually hurts court appearance rates. The arrestees most likely to show up for their court dates are those detained for the shortest amount of time.

15. Money bail is not necessary to protect public safety or ensure court appearance. A comprehensive study by the Pretrial Justice Institute¹⁰ of nearly 2,000 arrests in Colorado found that unsecured bonds are as effective as secured bonds at achieving public safety and ensuring court appearance. In fact, when relevant statistical factors are controlled, defendants who are

⁵ Department of Justice, National Institute of Corrections, *Fundamentals of Bail*, 26 (2014) available at http://www.clebp.org/images/2014-09-04_Fundamentals_of_Bail.pdf.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Lowenkamp, *supra*, note 1.

¹⁰ Michael R. Jones, *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*, 16, available at <http://www.pretrial.org/download/research/Unsecured%20Bonds,%20The%20As%20Effective%20and%20Most%20Efficient%20Pretrial%20Release%20Option%20-%20Jones%202013.pdf>.

detained 2 to 3 days pretrial are more likely to fail to appear than defendants who are detained 1 day.

16. Ending the use of money bail would actually benefit jurisdictions by saving them money. Pretrial detention imposes costs on counties, and unnecessary pretrial detention does so wastefully. In a purely monetary sense, these costs can be estimated, such as the comparative cost of incarceration (from \$50–\$150 per day) versus community supervision (from as low as \$3–\$5 per day). Other monetary costs — such as the loss of jobs, instability in housing, lack of care for dependent relatives, and higher recidivism rates resulting from pretrial detention— are harder to calculate, but are still borne by the community as a whole.

17. Some jurisdictions successfully operate their criminal justice systems without using money bail. For example, Washington, D.C. uses virtually no money at all in its bail setting process. Instead, using an “in or out,” “bail/no bail” scheme, the District of Columbia releases over 85% of all defendants — detaining the rest through rational, fair, and transparent detention procedures — and yet maintains high court appearance and public safety (no new crime) rates.¹¹ Rather than using money bail to determine who is detained, Washington, D.C. releases everyone who is not determined to be an unmanageable flight risk or a danger to others.

18. The federal system also eschews money bail. The federal system employs a risk-based model, detaining only those individuals who show either a flight risk or danger to others. The federal system forbids wealth-based detention by prohibiting the imposition of any monetary condition that would result in detention.

C. Ending Reliance on Money Bail Benefits the Public Interest

19. The use of money bail actually has a negative impact on public safety. Even for relatively short periods of detention, the longer a low-risk defendant is detained before trial, the more likely she is to commit a new crime within two years of case disposition.¹² Pretrial detention increases long-term recidivism, particularly for low-risk defendants.

20. Evidence suggests that an alarming percentage of those arrestees who are empirically measured as most likely to fail to appear and/or to reoffend during the pretrial phase of their cases easily secure their release under the current system. Even more disturbingly, once these high-risk defendants have purchased their freedom, they return to the community unfettered by appropriate supervision or monitoring.

21. Secured money bail also leads to significantly higher pretrial detention rates at taxpayer expense. Pretrial detainees account for more than 60% of the inmate population in our jails.¹³ The cost to incarcerate defendants pretrial has been estimated at over \$9 billion per year.¹⁴

¹¹ Fundamentals of Bail, *supra*, note 5, at 25–26.

¹² Lowenkamp, *supra*, note 1.

¹³ Laura and John Arnold Foundation, *Pretrial Criminal Justice Research Summary*, 1, available at http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief_FNL.pdf.

¹⁴ *Id.*

22. Given the volume of defendants and their varying lengths of stays, an individual jail can spend millions of dollars per year simply to house low-risk defendants who are also presumed innocent by the law. Jails that are crowded can create an even more costly scenario for taxpayers, as new jail construction can easily reach \$75,000 to \$100,000 per inmate bed.

Conclusions

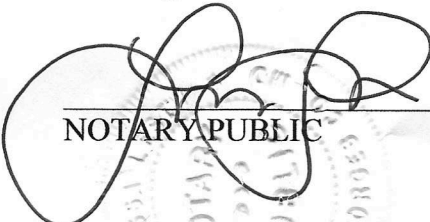
23. The use of money bail to detain people causes irreparable harm. Detention due to money bail leads to worse outcomes at trial and sentencing. Being incarcerated prior to trial makes it more difficult for arrestees to take an active role in preparing their defense. People detained pre-trial experience instability in employment, housing, and care for dependent relatives. Pretrial detention results in real dollar costs and social costs as people are kept from their jobs and families.

24. A jurisdiction that ends its reliance on money bail is unlikely to suffer any irreparable harm. Unsecured bonds are as effective as secured bonds at achieving public safety and ensuring court appearance. Because pretrial detention imposes costs on cities and counties, ending the use of money bail would actually benefit jurisdictions by saving them money. The lack of harm is demonstrated by jurisdictions such as Washington, D.C. and the federal system, both of which operate successfully without relying on secured money bail to detain people who are poor.

25. The current system of money bail is neither safe, fair, nor effective. For the most part, pretrial release under cash-based systems is reserved for the privileged few who have the means to purchase their liberty, regardless of their risk of flight or their threat to the community, while pretrial detention is inevitable for even the safest defendant who lacks the financial means to post bond. Cash-based pretrial release is fundamentally incapable of achieving the purposes of bail by its very design. Ending reliance on money bail benefits the public interest. The use of money bail has a negative impact on public safety because pretrial detention increases long-term recidivism, particularly for low-risk defendants. Conversely, an alarming percentage of those classified as the most dangerous risks are simply purchasing their release under the current system, making the public less safe. Secured money bail leads to significant and needless pretrial detention rates that far exceed the risk of many who are detained at considerable taxpayer expense.


Tim Murray

SWORN AND SUBSCRIBED BEFORE ME
This 14 day of March, 2016
Washington, D.C.


NOTARY PUBLIC

LARISSA LESIW
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires October 30, 2018