

Cash Bail

In most of the United States, when someone is arrested and is waiting for their court date, they face a choice. On one hand, they can post bail. This means that they can temporarily deposit money with the court to assure that they will show up to their future court date, and that they will not leave the area. This money is then returned after the person attends their court date. On the other hand, they can stay in jail while waiting for their trial. Depending on the crime the person is accused of, and other factors, bail can be as much as thousands—or in some cases, even millions of dollars.¹ Many people can't afford bail and instead pay a percentage of their bail to a third-party, who then puts up the rest of the money, keeping the initial percentage as a fee. This is known as a bail bond.

Civil liberties groups think that we should get rid of the cash bail system. A major complaint with this system is that it significantly harms poor and disadvantaged people who can't afford to pay bail or bond. According to the ACLU, "more than half a million people are in jail today awaiting trial, many of them incarcerated because they are too poor to afford cash bail."² And, like other aspects of U.S. criminal justice, people of color are disproportionately harmed by this system. People can spend weeks, months, or even years in jail waiting for trial, and might end up losing their jobs, homes, or custody of their children in the process—all without ever being convicted of a crime. In one especially tragic case, 16-year-old Kalief Browder was held at Riker's Island in New York for three years, most of which was spent in solitary confinement. Browder was accused of theft of up to \$700 in goods, and his bail was set at \$3,000, which his family could not afford.³ After his case was eventually dismissed, he committed suicide.⁴ One additional worry is that some people who cannot afford bail decide to plead guilty simply to avoid indefinite detention while waiting for trial, regardless of whether or not they are innocent.⁵

Many people defend the money bail system as an important tool for administering justice and promoting public safety. According to one argument, the money that defendants pay for bail is a significant incentive to show up for their court date—without this incentive, it could be much harder to ensure that offenders actually stand trial. Moreover, the bail system helps to keep dangerous people off the streets. If someone has been arrested for murder, robbery, or assault, they might continue to pose a threat to other people in the community.

In response to these arguments, critics of cash bail point out that people in pre-trial detention have not been convicted. It is wrong to punish people before they even stand trial. Besides, there are other strategies that we can use to help keep people safe and to make sure that defendants show up to court. For example, some states are using algorithms to determine how much threat a defendant poses—and whether they should be released (with or without electronic monitoring) or stay in jail until their trial. But these alternative systems are not perfect either. Jules Black was released under New Jersey's reformed pre-trial system after being charged with felony gun possession; he then went on to murder Christian Rodgers.⁶ Moreover, some of these reformed systems still continue to hold people in pre-trial detention for too long.⁷

STUDY QUESTIONS

1. What are the central goals, values, or principles that should guide the criminal justice system? To what extent is the cash bail system (or the alternative systems that use threat assessments) consistent or inconsistent with these goals, values, or principles?
2. How do we weigh the competing goals of protecting citizens from violent crime and protecting citizens from prolonged pre-trial detention?
3. Is any bail system that uses monetary deposits unjust given widespread wealth inequality in the U.S.? Why or why not? If so, how could this be mitigated?

¹ https://www.washingtonpost.com/news/monkey-cage/wp/2018/08/31/california-abolished-money-bail-heres-why-bail-opponents-arent-happy/?utm_term=.51c20cdf774a

² <https://www.aclu.org/blog/smart-justice/we-cant-end-mass-incarceration-without-ending-money-bail>

³ <https://www.newyorker.com/magazine/2014/10/06/before-the-law>

⁴ <https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>

⁵ <https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html>

⁶ <https://theatl.com/culture/should-the-u-s-abolish-the-bail-system>

⁷ https://www.washingtonpost.com/local/public-safety/reforms-intended-to-end-excessive-cash-bail-in-md-are-keeping-more-in-jail-longer-report-says/2018/07/02/bb97b306-731d-11e8-b4b7-308400242c2e_story.html

