

CASH BAIL REFORM

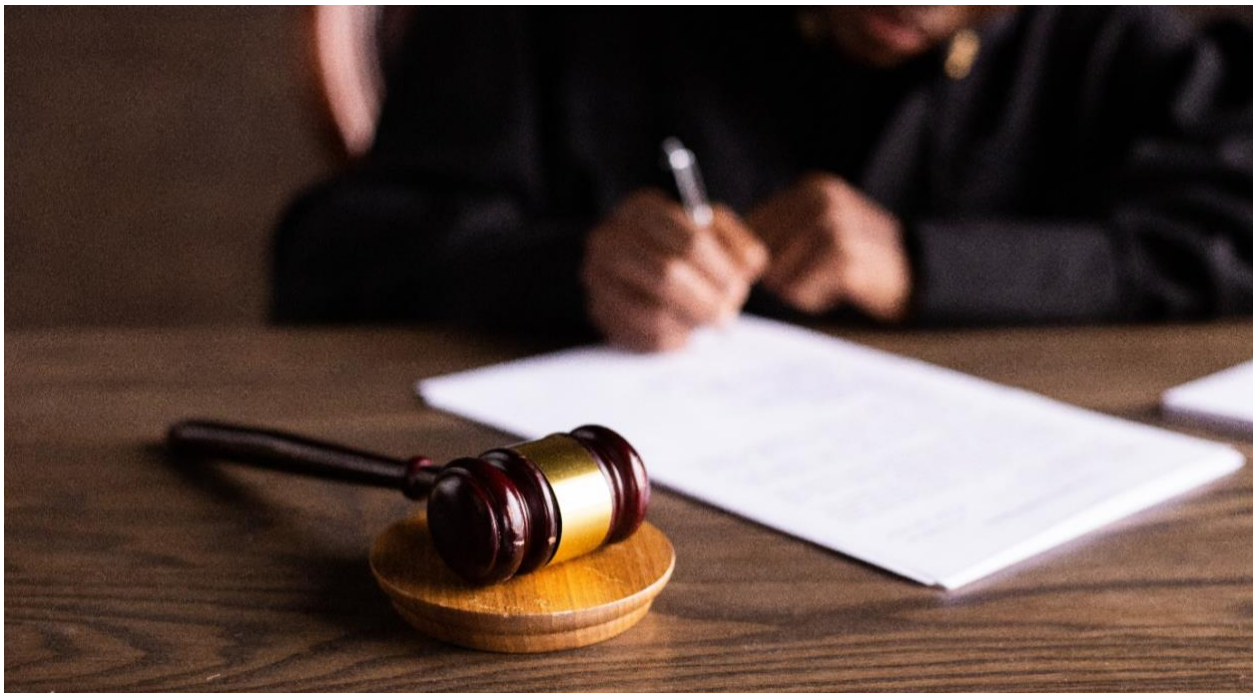
How Cash Bail Works, Why It's a Flawed System and How It Can Be Reformed



CASH BAIL REFORM:

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The cash bail system used throughout every state in the U.S. leaves many innocent people incarcerated. That's one of the reasons why so many advocacy groups are pursuing cash bail reform efforts to replace the discriminatory system with one that works.



HOW CASH BAIL WORKS TODAY

The term “cash bail” describes the funds that someone has to pay to be released from pretrial detention. Generally, the amount of cash bail that must be posted is based on the characteristics of the charged crime and alleged offender. But judges may raise or lower that amount as well.

Once the amount is paid, it serves as a promise that the person will show up for their trial or hearing. If the person consistently appears for court, the money is returned. In they don't

appear, the money is not returned. And, if someone cannot afford to pay the cash bail, they won't be released until their case is resolved.

There are certain alternatives for when someone cannot come up with the bail amount on their own. For example, someone could get the money through a bail-bond company. The bond company covers the fee but will typically also charge a certain percentage of the bond to be paid back to them. If someone goes this route and does not show up to their trial or hearing, the bond company will use collateral to get its money back.

WHY THE CASH BAIL SYSTEM IS FLAWED

If you're thinking that it seems unfair for someone to have to pay their way out of jail — whether that involves the fee alone or the cost of going through a bond company — other criminal justice advocates and allies would agree with you. Overcrowding in jails and prisons is already an issue in and of itself, so individuals being placed into that population simply because they don't have the money to post bail only furthers the problem. There are two other significant reasons why the cash bail system is flawed, ultimately leading to an unnecessary burden on those in jail: racial and socioeconomic discrimination and psychological impacts.

Racial and Socioeconomic Discrimination

One of the most apparent ways the cash bail system is flawed is its voluntary favor of the rich. Those who are wealthy are able to get out easier than those who are not, regardless of the their dangerousness or the charges against them. In addition, the cash bail system is racially discriminatory. According to the Brennan Center, Black and Latino men have 19 percent to 35 percent higher bail amounts than their White counterparts for similar crimes. Such forms of discrimination hold individuals from getting back to their daily lives for circumstances beyond their control. By holding individuals back from their daily lives through pretrial detention, those individuals can lose child custody, their jobs and even their homes.

Psychological Impacts

If someone is not able to afford their bail, they must remain in pretrial detention. While waiting

for their trial, studies have shown that there are significant psychological impacts that people may endure. For example, one research study found that women are often left to be “forgotten inmates,” and they have resulting physical and mental pain as result. The same study also found that many inmates struggle with some form of neurodivergence. When in a pretrial detention setting, their condition’s impact is only exacerbated. Lastly, youth are considered a group behaviorally impacted because of their impressionability and vulnerability.

INTERROGATING JUSTICE FIRST STEP INITIATIVE

These issues, in addition to others, provide reason enough to seek cash bail reform. Several states have picked up on the need for reform and have changed their laws to avoid the complications that the cash bail system causes.

- **Washington, D.C., eliminated cash bail.** Washington, D.C., has a unique system that is unlike any other in the United States. In the 1990s, leaders determined that cash bail should be eliminated entirely. Rather than having to post bail as a promise to return to trials or hearings, the individual must sign a contract saying that they will show up to their trial or hearing. While there are a few exceptions in which cash bail is used for extremely serious crimes, virtually no people are in pretrial detention because they could not afford to post bail.
- **New Jersey created a new pretrial program.** In 2017, New Jersey substituted the cash bail system for a risk assessment system. Instead of having to post bail, a judge decides whether an individual should remain in pretrial detention based on the risk they pose to the general population. Some individuals have concerns about discrimination becoming more prevalent when algorithms are involved in determining risk assessments. The reason for such worries comes from algorithms using historical — and inevitably biased — data. But the program has shown success. According to [American Progress](#), there was a 20 percent reduction in the jail population, and out of the 95 percent of people

released pretrial, 89 percent showed up to their hearing or trial.

- **Harris County, TX, removed cash bail for misdemeanor cases.** In 2019, Harris County, Texas, changed its cash bail policies to no longer include misdemeanor cases. As a result, in cases where only a misdemeanor is charged, the defendant is now allowed out of jail on no-cash bonds. According to the [Texas Tribune](#), the reform has narrowed pretrial detention rates between Black and White people. Further, despite worries, crime rates did not increase from before and after the cash bail reform was implemented. 