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Resolved: Cash bail should be eliminated.

Connecticut Governor Again Seeks Revamp of Bail System

The Wall Street Journal, By Joseph De Avila, Feb. 23, 2017

Mr. Malloy called for legislation Thursday that would eliminate bail for anyone charged with a misdemeanor.

"The effect of a few days of detention, for people who have been accused of misdemeanors and not released simply because they do not have the ability to pay, can be devastating," Mr. Malloy said.

Misdemeanor offenses include disorderly conduct, drinking while operating a motor vehicle and criminal trespass. The bill makes exceptions in cases where the accused has a history of failing to appear in court or when a judge determines that the suspect poses a threat to another.

Mr. Malloy, a Democrat, unsuccessfully pushed for similar legislation last year. That effort was part of a package of proposals that included a measure to raise the maximum age of juvenile offenders for certain crimes from 17 years to 20. Apprehensive lawmakers in the Democratic-controlled state legislature never brought the proposals up for a vote.

Mr. Malloy plans to also reintroduce an updated version of the juvenile offenders proposal next week that is no longer tied to the bail initiative, according to the governor's office.

The American Civil Liberties Union of Connecticut applauded the governor's latest bail legislation. The Yankee Institute, a right-leaning think tank in Hartford, also supports the bill.

"Keeping low-risk defendants in jail before their trials because they cannot afford to post bail is not the best use of tax dollars," said Suzanne Bates, policy director for the Yankee Institute for Public Policy.

There are currently about 3,000 people in Connecticut being held in jail because they can't post bond, according to the governor's office. That figure, which includes felony suspects, is about 21% of the entire prison population.

Andrew Marocchini, the president of the Bail Association of Connecticut, opposes the legislation and said it could result in the elimination of the state's bail industry.

Mr. Marocchini also said only a small number of people remain in jail for a considerable amount of time because they can't afford to post bond, pointing to a report released earlier this month by the Connecticut Sentencing Commission. The report found that in instances when a financial bond is ordered, only 7% of people arrested in Connecticut are held in jail until their case has a verdict.

California Eliminates Cash Bail, Accelerating a National Trend

The Wall Street Journal, By Alejandro Lazo and Dan Frosch, Aug. 28, 2018 4:37

California Gov. Jerry Brown signed legislation eliminating cash bail for people accused of crimes, in a major step forward for a growing national movement.

Several U.S. cities and states have in recent years reduced their reliance on bail, arguing the system unfairly confines poor people, creating overcrowded jails and extra costs for taxpayers. California, which has historically set some of the highest bail amounts in the nation, is now the largest state to do so.

When the law goes into effect on Oct. 1, 2019, people accused of crimes in California will no longer be required to put up money in order to "make bail" and be released before trial. Instead, public employees will conduct a risk assessment and then recommend to a judge whether the accused should be kept in jail or be released either on their own recognizance or with conditions such as home detention or GPS trackers. Prosecutors will also be able to request detention.

Kentucky, New Jersey and the District of Columbia have already almost eliminated bail in practice, said Amber Widgery, a senior policy specialist for the National Conference of State Legislatures. California's new law goes further than those states have by officially ending the practice, rather than just ceasing its use in most cases, Ms. Widgery said.

She added that similar changes elsewhere have been largely viewed as successful. In New Jersey, for example, she noted that as more low-risk defendants are released without cash bail, the state's jail population dropped 20% during 2017.

The measure passed the California Assembly by a 42-31 margin on Aug. 20 and the state Senate by 26-12 the next day. All Republicans save for one state senator voted against the bill, as did seven Democrats in the Assembly.

David Quintana, a lobbyist for the California Bail Agents Association, said the new law would lead to those accused of crimes skipping out on their court dates while eliminating 7,000 jobs in the cash-bail industry.

Some critics of the current system also opposed the bill.

The executive directors of the American Civil Liberties Union's three California affiliates previously supported the measure but changed course following alterations that they said gave too much control to local courts and probation officers over who could remain in jail.

The law "would allow judges to lock up an accused on even minor charges and nonserious felonies," said San Francisco Public Defender Jeff Adachi, who also went from supporting to opposing the bail overhaul after it was changed amid negotiations in the Legislature.

In signing the bill on Tuesday, Mr. Brown, a Democrat, said, "Today, California reforms its bail system so that rich and poor alike are treated fairly."

The governor put the brakes on bail-overhaul proposals last year so that a working group convened by the chief justice of California could study the matter. The group called the state's bail system "unsafe and unfair" and recommended instead assessing the risk of people charged with crimes. The new law hews to the group's recommendations.

Other states are considering similar changes, though none appear poised to go as far as California has.

Texas Gov. Greg Abbott, a Republican, this month called for a new bail-overhaul proposal that would more strictly regulate how judges set bond based on the risk posed by the defendant. Last year, a bill that would have created a risk assessment system for defendants to supplement Texas' existing cash bail system cleared the state Senate but stalled in the House.

Ohio is weighing a legislative proposal that would provide a system for judges to evaluate the risks of defendants before setting bail. Utah has in recent months implemented a similar risk-based system and counties in several other states are also doing so, according to the Laura and John Arnold Foundation and the Justice Action Network, which work on criminal justice overhauls.

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The Bail System Evolved for a Good Reason

The Wall Street Journal, Opinion,June 21, 2018 10:51 a.m. ET

The commercial bail industry is under attack, and the consequences could be devastating ("Governments Throw Book at Bail Bonds," Business & Finance, June 8). Supporters of bail reform claim massive savings from reducing pretrial incarceration rates. However, their position fails to account for the billions of dollars in pretrial services that would become the responsibility of taxpayers.

Surety agents, like those who are members of United Bail of America, offer a series of pretrial services to defendants at a lower cost than government-funded programs can provide, including counsel on the conditions of bond, help finding employment, relocation, additional counseling, drug testing, office and home visits and review of defendant conduct while on bail. Personal interviews with potential clients—not artificial intelligence—ensure our agents have a personal financial interest in the successful behavior and appearance of their clients in court.

Justice is served when the accused obey the conditions of bail and show up for trial, and a judge or jury is able to determine innocence or guilt. The bail-bond system and surety agents protect the state by keeping the burden of funding pretrial services off the backs of taxpayers, protect citizens by making sure the accused comply with the conditions of bail and face the court, and protect the accused by providing counsel and support during what can be a confusing and trying time.

Scott Willis, Chief executive, Palmetto Surety, Charleston, S.C

Replacing One Bad Bail System With Another

The New York Times, By David Feige and Robin Steinberg, Sept. 11, 2018

California's new system appears to attack wealth-based detention. But it fails to redress the larger systemic problems of which bail was a symptom — mass incarceration and structural racism.

Bail reform is hot. From New Jersey to California, and Rand Paul to Bernie Sanders, there is widespread agreement that the cash bail system is broken. It privileges people with money, allowing them to buy their freedom. People who can't afford bail are forced to choose between taking a guilty plea or waiting for trial behind bars.

But while there is a broad consensus about the problem, there are substantial divisions about the solutions. After all, as any doctor will tell you, certain palliative treatments can still be lethal. So it is with bail reform: In our haste to right a profound wrong, we risk re-creating mechanisms of penal control that are nearly as destructive as bail once was.

Sound far-fetched? Consider California.

On Aug. 28, Gov. Jerry Brown of California, one of the bluest states in the nation, signed a bill heralded as "ending cash bail in California." Even better, it will essentially eliminate the predatory bail bond industry when it goes into effect on Oct. 20, 2019. That's the good news.

The bad news is that, like taking Advil for cancer, California has alleviated a symptom while ignoring the underlying malady. The state has created a new system that appears to attack wealth-based detention, but it fails to redress the larger systemic problems of which bail was a symptom — mass incarceration and structural racism.

California's new system will do two pernicious things: It will broaden the use of preventive detention — holding in jail people for whom no amount of bail is sufficient — by giving judges more flexibility about whom to hold. And the bill will expand the power of law enforcement by creating a system of pretrial release. This will institutionalize the imposition of probation-like conditions — mandatory drug testing, electronic surveillance, curfews and reporting requirements — before someone has been convicted. (Yes, these probation-like conditions are imposed and monitored by the probation department.)

These conditional releases functionally create an Alice-in-Wonderland, sentence-first-verdict-afterward world in which people presumed to be innocent are nonetheless subject to the very sanctions they'd face if actually convicted.

It has already happened in New Jersey. In 2017, after finally eliminating cash bail, prosecutors filed some 42,500 detention motions, which resulted in 39,000 people, or roughly 90 percent of those who had bail hearings, either held without bail or released with other probation-like conditions imposed on them as the price of their freedom.

If that doesn't sound onerous, bear in mind that if you can pay bail, you are generally released without any conditions. And worse, since only a small fraction of arrests result in jail or prison sentences, for a vast majority of people on pretrial release, these probation-like conditions are precisely what they would have been sentenced to if they had actually been proven guilty.

It doesn't have to be this way.

Indeed, by looking closely at the data and re-examining the assumptions undergirding our attempts at reform, we can create a more just system that strategically targets the harm we seek to mitigate. To do this, we must acknowledge that bail reform is not a zero-sum game, despite the entrenched economic and political interests of stakeholders. It's not cash bail versus electronic surveillance. It's not cash bail versus "risk assessments," algorithms that purport to predict an individual's behavior based on group data. And it's not cash bail versus preventive detention.

For over a decade, we operated a community bail fund in the Bronx. Now we do the same on a national level. We have shown that a vast majority of people (more than 95 percent) will return to court when they are given adequate notifications about court dates and offered social-services support. This is the problem bail was designed to address. Given those numbers, it is clear we can end the cash bail trap without resorting to onerous conditions of release or to justice by algorithm.

Next, we must face the following questions: Are we still committed to the presumption of innocence as a bedrock principle of the American legal system? And will this protection apply to everyone, regardless of race, citizenship, religion, class or accusation? If the answers are yes, then we must repudiate any system that transforms legal process into punishment. And that means ending wealth-based detention, but also rejecting electronic surveillance and the panoply of other unnecessary and onerous probation-like conditions of release.

There is already a template for a better way — one that does not rely on increasing state supervision of a group of people who are largely poor, disproportionately people of color and all presumed to be innocent:

Just let them go.

Honor the presumption of innocence, by releasing people on their own recognizance so that they can make decisions about their cases based on evidence and law rather than incarceration and desperation.

But what about that sliver of serious and scary cases? It's simple: If prosecutors are going to try to jail people before they've been proven guilty, they should at least be required to respect real procedural protections — the presence of defense attorneys, the right to call and cross-examine witnesses and the right to be heard at a real hearing. Not the kind of pro forma, minute-long farce that usually passes for a bail review.

We need to reimagine the criminal justice system from the ground up. Pretrial reform has the potential to move us closer toward decarcerating America and restoring a measure of justice to the legal process. But, as California has just made clear, it also has the potential to replace one bad system with another. We need to treat the symptoms of our criminal

justice disease without losing sight of the underlying malady.

We have locked up too many people for too long, stacking the deck against those least able to defend themselves and undermining, in the name of safety, foundational principles designed to make our nation a bulwark against tyranny and oppression. Ending the cruelty of unaffordable cash bail can begin to put some justice back into the criminal legal system, but only if we ensure that the system we replace it with doesn't make things worse.

Mr. Feige is the chairman of the Bronx Freedom Fund, the first licensed community bail fund in New York State and the author of "Indefensible: One Lawyer's Journey Into the Inferno of American Justice." Ms. Steinberg is the chief executive of the Bail Project and senior fellow of the criminal justice program at U.C.L.A. School of Law.

End money bail now

By John Legend and Rashad Robinson, CNN, Fri June 22, 2018

(CNN)No one should have to stay in jail because they lack the money to buy their freedom. Yet every night, according to the Justice Department's statistics, nearly 450,000 people who have not been convicted of a crime sit in jail, a large number trapped there simply because they don't have enough money to post bail.

For many, even a relatively modest bail amount is out of reach. Moreover, research shows that on average, black people are assigned higher bail amounts than other defendants arrested for the same offenses. Simply put, it is wrong to be forced by poverty to face an extensive stay in jail while awaiting a court date -- separated from children, family and home, and running the risk of losing employment.

If you believe TV crime shows, you might think that commercial money bail emerged as a solution to a problem of justice: a service that reasonably aided people in paying bail — the deposit that defendants leave with the court as collateral for their promise to appear at trial. The actual history: the first commercial bail bond business started in 1898 in San Francisco and functioned as a corrupt payoff racket among crime bosses, judges, lawyers and police.

This history is consistent with the reality of money bail today. If you are wealthy, you can post the bail amount and walk free, whether or not you pose a threat to society. But if you don't have the money, regardless of how small the alleged crime, giving in to the commercial money bail industry may be your only option to avoid a months-long wait behind bars.

Recently, momentum to reform the unjust bail system has gained steam. In January 2018, a California appellate court declared that no one can be jailed because they're too poor to pay their way to freedom. It also places stringent requirements on judges to demonstrate why someone should be held in jail rather than remain home with their family as they defend their case.

Even district attorneys, who have historically been some of the biggest advocates for money bail, have been stepping up. Brooklyn DA Eric Gonzalez, Manhattan DA Cy Vance, Chicago's State's Attorney Kim Foxx and Philadelphia's newly-elected DA Larry Krasner have all eliminated money bail for certain low-level offenses to end the system's reliance on unnecessary and harmful pretrial detention.

However, these successes don't fully mitigate the destruction caused by the commercial bail bond industry -- how it preys upon low-income communities and people of color, among many others -- or address the urgent need to dismantle it entirely.

The for-profit commercial bail bonds industry is built on predatory business practices. With bail bond agents working as proxies for large insurance corporations, they exploit poor communities, particularly black communities.

In exchange for a nonrefundable fee from defendants, a bail bond agent will secure a person's release from jail, often without having to deposit any money with the court themselves. When families cannot pay bond agents in cash, they may be forced to put up their car or home as collateral, which they can easily lose entirely if they do not make each and every payment installment.

With the potential threat of physical harm in jail looming, as well as the consequences of not returning to their lives, people often sign contracts filled with egregious terms that put their entire family at risk. These can include unannounced, armed home searches, vehicle tracking, body monitoring and phone surveillance — all conducted by private, poorly regulated bail bond agents. Unbelievably, even when the charges are dropped, the case is dismissed or a defendant is found innocent by the court, families remain on the hook to pay the full amount of exorbitant fees demanded by these agents.

The commercial bail industry generates nearly $2 billion each year. Last year, in New York City alone, there were 12,000 bonds secured through commercial bail bond companies for an aggregate amount of $280 million. Premiums, fees and illegally retained collateral from these products may have exceeded $25 million -- nearly all of it coming from low-income communities of color who are hit hardest by mass incarceration, the war on drugs, and other public policies that disproportionately target them. Many, including the New York City Comptroller, have called for an eradication of

the industry.

Dismantling the commercial bail industry is a steep hill to climb. In recent negotiations over bail reform in New York State, for example, the aggressive influence of the bail bond industry won the lobbying contest, while justice for our communities lost out.

But the fight is not over and there is hope. New York Governor Andrew Cuomo can make good on his own professed vision for reform by supporting new and improved bail reform legislation during the regular session this year. With so much happening in the shadows, Cuomo and other elected officials should push for follow-up investigation to an initial report from Color Of Change exposing the true ills of the commercial bail industry.

Cuomo recently sent a tweet announcing an investigation in response to a campaign by Color Of Change and our partners. But he needs to move quickly to implement it, as New Yorkers are still subject to the abuses of the bail industry.

Prosecutors, mayors, legislators and governors across the country are responding to the community-led movement for bail reform and reconsidering the role of money bail in our justice system. We must all add our voices to the call to #EndMoneyBail if we are going to finally put an end to the corrupt, destructive, and unnecessary industry that is commercial bail.

John Legend is a singer, songwriter, actor and activist. Rashad Robinson is executive director of Color Of Change, America's largest online racial justice organization.

Maryland's Bail Reform Is a Warning for Would-Be Moralizers

The Wall Street Journal, By Walter Olson, Sept. 22, 2017

Maryland's Bail Reform Is a Warning for Would-Be Moralizers: Rather than release more defendants pending trial, judges have erred on the side of locking them up.

Reformers on the left and right who worry about mass incarceration have argued lately for kicking private bail bonds out of America's criminal-justice system. New Jersey virtually eliminated cash bail earlier this year, instructing judges to decide whether to release defendants based on their risk factors. Arizona and Kentucky are doing the same. After a bail bill failed to pass California's Legislature this term, Gov. Jerry Brown and state Supreme Court Chief Justice Tani Cantil-Sakauye joined hands to advocate reform. On Capitol Hill, Sens. Rand Paul (R., Ky.) and Kamala Harris (D., Calif.) have introduced a bill that would provide federal grants to nudge states in this direction.

The argument is straightforward: A defendant who can't afford bail languishes in jail, maybe losing his job, simply because he is poor. But anyone who hopes bail reform will lower incarceration rates, making life better for defendants and their families, might want to hold off celebrating. Data from Maryland suggests that remaking the bail system in haste, without careful planning, can actually drive up incarceration rates.

The 24-hour bail-bond business is a peculiarly American institution. If you land in jail, these companies will pay the bond to get you out. The price is a steep nonrefundable commission, typically 10% of the total bond. If you skip town afterward, you'll be sorry when they send bounty hunters after you.

Bondsmen say they provide a socially useful service. They apply experience and local knowledge to assess the defendant's flight risk, while working with families to get loved ones out of jail quickly and with minimal hassle. When defendants flee, bounty hunters typically do better than sheriffs at tracking them down.

From a judge's perspective, the bail system provides a way to handle the wide range of middling cases. Defendants with low flight risk and minor offenses can be released on their own recognizance or a small personal bond. Those with high flight risk and serious charges can be held without bond. What about the people in between? The bail system provides a way to let them out of jail while applying pressure to show up in court.

Squeeze that middle option, and judges will reassign cases up or down—but there can be a bias toward up. If a judge releases a defendant who goes on to commit an atrocious crime, he faces a potentially career-ending furor. The incentive is to err on the side of lockup.

That might explain what has happened in Maryland. Last fall the state's attorney general, Brian Frosh, issued guidance that suddenly declared past bail methods unlawful, prodding the court system into an unplanned experiment. Judges may not set financial requirements if there is a reason to believe the defendant cannot pay, and unless they hold a suspect without bail, they must impose the "least onerous" conditions.

Now the results are coming in, and they can't be what Mr. Frosh had in mind. An early report in March by Kelsi Loos in the Frederick News-Post found that since October the share of Maryland defendants held without bail had increased from 10% to 14%. The Washington Post later reported that from September 2016 to May the figure had jumped from 7% to 15%.

Meanwhile, fewer released defendants are showing up for trial. The Post, confirming anecdotal reports, writes that the "failure to appear" rate in January was 14.5%, up five points from October. Failing to show up for court sets up a defendant for more-severe consequences down the road, which can include being held without bail.

This result has vindicated politicians who opposed the bail changes. Democratic state delegate C.T. Wilson, a criminal defense attorney and member of the Legislative Black Caucus, told the Post that the intent of reform "was to not have as many African-American males in jail until their trial date." He continued: "What has been done has had a more detrimental impact on African-Americans in the system."

If bail is taken away, judges need other tools to do the same job. Decades ago, when Congress steered the federal criminal-justice system away from bail bonds, lawmakers provided practical replacements, including systematic help in assessing a defendant's risk of flight or re-offense, options for pretrial supervision, and methods of home and electronic detention. Several states have done the same. New Jersey now uses a mathematical algorithm to assess a person's risk of fleeing or committing another crime. But the Maryland legislature, deeply split over Mr. Frosh's destabilizing changes, has failed to set up such alternatives.

Maryland's example doesn't refute the idea of bail reform. But it does suggest state leaders should work to build consensus for comprehensive changes, instead of charging ahead with moralizing experiments.

Mr. Olson is a senior fellow at the Cato Institute.

In Fight Over Bail's Fairness, a Sheriff Joins the Critics

The New York Times, By Michael Hardy, March 9, 2017

HOUSTON — It was an awkward scene for officials of Harris County, Texas, who are defending themselves in federal court against a claim that they keep poor defendants locked up just because they cannot afford bail.

On Wednesday a judge and the county sheriff testified for the other side.

"When most of the people in my jail are there because they can't afford to bond out, and when those people are disproportionately black and Hispanic, that's not a rational system," said Sheriff Ed Gonzalez, who was elected after the case was filed.

Both the judge and the sheriff are defendants in the suit. Their defections were yet another sign of the growing skepticism over the fairness of the long-used system of money bail, especially when it is applied to those who cannot afford it.

The class-action lawsuit contends that on any given night, several hundred people are in the Harris County jail on misdemeanor charges solely because they cannot make bail. If defendants with bail bond amounts of $500 or less had simply been released, the county would have saved $20 million over six years, according to a "very conservative" estimate by scholars at the University of Pennsylvania.

Videos played in court this week showed hearing officers imposing bonds on mentally disturbed detainees, or telling homeless defendants they could be released without paying if only they had an address. In one video, an officer sets a $5,000 bond for a man arrested on charges of illegally sleeping under a freeway overpass.

The lawsuit names the county, the sheriff, five hearing officers who make initial bail decisions and 16 criminal court judges as defendants.

The practice of setting money bail, particularly for low-level offenses, has come under heavy criticism, and states like New Jersey and Maryland have sharply curtailed its use in recent months. A growing body of evidence shows that even a brief detention before trial can disrupt lives and livelihoods, make case outcomes worse and increase the likelihood that the defendant will commit future crimes. Putting a price on pretrial liberty can allow those with money to go free even if they are dangerous, and keep the poor in jail even if they are not.

Civil rights lawyers have mounted a series of lawsuits against bail practices like those in Harris County, where people without ready money can spend up to four days in jail before getting a chance to even contest their bond amount. Almost a dozen similar cases across the country have been settled with significant changes to the local bail system.

But two of the biggest challenges, in Houston and San Francisco, are still in play. And in both places, key officials have sided with the bail critics.

In San Francisco, the city attorney, Dennis Herrera, and the state attorney general at the time, Kamala Harris, declined to defend against the lawsuit, saying the bail system was unfair. In Houston the district attorney, Kim Ogg, weighed in with an impassioned friend-of-the-court brief, writing, "It makes no sense to spend public funds to house misdemeanor offenders in a high-security penal facility when the crimes themselves may not merit jail time." Like Sheriff Gonzalez, Ms. Ogg is newly elected.

Those left to defend the system have had a lonely uphill fight. James Munisteri, a private lawyer hired by Harris

County, faced calls for his removal after he told the court at an earlier hearing that misdemeanor defendants might be in jail not because they couldn't afford to post bond, but because they "want" to be there. "If it's a cold week," he added.

The judge, Lee H. Rosenthal of Federal District Court, was skeptical of that contention, calling it "uncomfortably reminiscent of the historical argument that used to be made that people enjoyed slavery, because they were afraid of the alternative."

The case was filed last May on behalf of Maranda Lynn ODonnell, who was arrested on charges of driving with an invalid license. She spent over two days in jail because she couldn't afford to pay her $2,500 bond. Civil Rights Corps, the organization whose director, Alec Karakatsanis, has led the legal attacks on unaffordable bail across the country, joined with the Texas Fair Defense Project, a nonprofit legal defense organization, and Susman Godfrey, a law firm, to bring the case.

So far, the county has spent $1.2 million on outside lawyers to defend itself.

The Supreme Court has held that liberty before trial should be the norm, and that bail conditions must be set based on the individual's circumstances. Bail is not meant to be punitive; it is intended simply to ensure that defendants return to court. Texas law requires consideration of "the ability to make bail."

But the videos made it clear that bail was routinely set with no inquiry into defendants' ability to pay — or with the full knowledge that they could not. When suspects are first booked, their bail is set using a fee schedule based on the charge and on criminal history. At the probable cause hearing, where typically no lawyer is present, the hearing officer can raise or lower the bond, or grant a personal bond, which allows the defendant to go without an upfront payment.

The county argued that it began reforming its pretrial release system before the lawsuit was filed. It recently issued guidelines recommending the use of personal bonds for people accused of 12 low-level misdemeanors. Beginning on July 1, it plans to make public defenders available at the probable cause hearing. The bail fee schedule will disappear, to be replaced by a risk assessment, a more sophisticated method of determining an arrestee's likelihood of fleeing or of committing a new crime.

Any injunction striking down parts of its pretrial release system would hamper these ongoing reforms, county lawyers argued. They also contended that a court order would tie judges' hands, reducing their discretion and potentially allowing dangerous detainees back onto the streets. "There are a category of high-risk detainees who should not be released," Melissa Lynn Spinks, a lawyer representing the county, said.

Besides the sheriff, another star witness for the plaintiffs was Darrell Jordan, elected as a Harris County criminal court judge last November. At first, Mr. Jordan said, he followed the bail practices of his 15 fellow judges. But he radically changed his approach after learning of research showing that locking people up makes them more likely to be repeat offenders.

Mr. Jordan began releasing nearly all defendants, either on a personal bond or on one they could afford. .

A homeless man who recently came before Mr. Jordan was prepared to plead guilty to a misdemeanor charge just to gain release, but changed his mind when he realized that the judge was willing to let him out of jail immediately.

"He had never heard of a personal bond," the judge remembered. "He started crying when I told him he could go home."

After Release Under New Bail Rules, Suspect Is Again Arrested

The Wall Street Journal, By Kate King, March 9, 2017

The public safety director of New Jersey's largest city is calling for a review of the state's new bail rules after a man who had been arrested and released with a location-monitoring bracelet was again arrested Sunday after shots were fired at a house.

Joseph Brown of Irvington, N.J., was again taken into custody following a brief car chase with police. He was charged with assault and gun possession in connection with a March 2 shooting in which shots were fired at a Newark home. No one was hurt.

The 24-year-old was first arrested in January on gun and narcotics charges but released eight days later on the condition that he wear a location-monitoring device.

Mr. Brown "is another example of a released suspect who posed a public safety threat to the residents of Newark," Newark Public Safety Director Anthony Ambrose said, adding that the case indicates the new bail rules should be "re-examined."

Sweeping changes to New Jersey's bail system, which took effect in January, largely replaced monetary bail with a risk-based approach to determining whether defendants should be released from jail as they await trial. Elected officials and advocates have praised the overhaul as more fair and efficient, particularly for poor nonviolent offenders.

Some law-enforcement officials, however, worried the changes would endanger public safety by releasing criminals who may again commit offenses.

Alexander Shalom, senior staff attorney for the American Civil Liberties Union of New Jersey, said it was "disingenuous" to say the new rules pose a threat to public safety, and stressed that they increase the fairness factor for nonviolent defendants unable to afford cash bail.

"Under the old system, people who are dangerous were also frequently released…because they had enough money to buy their way out of jail," Mr. Shalom said. "No system of pretrial release is going to eliminate all risk."

Stuart Rabner, chief justice of the New Jersey Supreme Court, said Thursday that bail has been used in only a fraction of the cases heard by the court system this year. More than 875 defendants have been held in jail because they pose a substantial public-safety risk or risk of flight, he said.

New Jersey's bail overhaul was signed by Republican Gov. Chris Christie and approved by voters in a 2014 ballot referendum. In February, Connecticut Gov. Dannel Malloy, a Democrat, called for legislation that would eliminate bail for most defendants charged with misdemeanors.

Mr. Brown's attorney didn't immediately respond to a request for comment.

No, Maryland's cash bail system doesn't hurt the poor. It's a great equalizer.

By Sean Kennedy December 9, 2016

Maryland Attorney General Brian E. Frosh must have slept through his law school class on the roots of the American criminal justice system.

Frosh thinks, according to a letter his office released , that cash bail — the system of arraigned defendants putting up money to secure their pretrial release — is likely unconstitutional if the defendants cannot afford it.

Nothing could be further from the truth.

Frosh rests his assertion on the Eighth Amendment to the Constitution, which states clearly, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

In fact, bail is specifically allowed for by the constitutional clause that Frosh oddly suggests outlaws the practice. The key is the term "excessive" — used twice by the founders to delineate bail from extreme fines and burdens being imposed on innocent-until-proven-guilty defendants.

Bail has its roots in Anglo-Saxon and later medieval England, from which our own justice system is derived. To avoid the need for incarcerating all the accused, our forebears created a system that gave the accused an incentive to be available to face justice.

Because abuse of the bail system was a legitimate concern, the system was further codified and reformed in the Magna Carta, which accordingly took into account three criteria we still use today: whether the offense merited consideration of bail, the likelihood of conviction and the defendant's criminal history.

Heinous crimes and inveterate offenders were, and often remain, ineligible for bail for good reason. If you are a threat to the public, likely to be convicted or simply a repeat criminal, you are less likely to stay and face your peers (or a judge) if you can avoid it.

These sensible reasons seem to matter not to Frosh who, alongside the Open Society Foundation and a veritable who's-who of "social-justice" types, is clamoring for Maryland to eliminate cash bail because it hurts the poor.

On the contrary, cash bail is the great equalizer. Maryland's court commissioners (who set bail) already take into consideration the severity of the crime and the defendant's history and ability to pay and other relevant circumstances.

If a defendant has no means to pay, he or she is likely to have little else to stay for, either. Property (which can be used to seek bail bonds from third-party lenders) is an incentive for the accused to stay as much as cold, hard cash being bonded over to the state as security against a defendant skipping town.

Social connections and willingness to potentially sacrifice a loved one's home are steep but fair incentives to the defendant to not hurt others further by becoming a fugitive. That also functions to keep offenders on the straight and narrow while out on bail because the lender of last resort (family) has a strong incentive to keep a close watch on the accused to ensure they keep their house, car or life savings intact.

Furthermore, the alternatives to cash bail are to hold people throughout trial (often months and years, depending on the case's tortuous path) or to release them on their own recognizance — in other words: We trust you if you pinkie swear to show up for trial and likely punishment.

One analysis found that in Denver, 66 percent of accused heroin dealers failed to show up for their court dates when simply released without having to post bond.

The law already affords defendants the right to appeal an excessive bail amount and judges to determine the efficacy of ensuring a trial appearance.

The "alternatives" being proposed to money bail are foolish at best. An "individualized assessment" is already done by the sitting magistrate. These reforms would only give judges two bad options: release an offender who flees or hold unjustly the innocent in conditions that the social-justice do-gooders rightly deplore.

Now, there is already evidence Frosh and his kindred spirits are dangerously intimidating arraignment courts into releasing risky offenders onto the streets because they cannot jail them.

As the British statesman Lord Falkland observed, "When it is not necessary to change, it is necessary not to change."

Minor reforms to cash bail may be necessary to improve public safety and trial appearance rates, but eliminating a tried-and-true practice is foolhardy and dangerous.

The writer is a visiting fellow at the Maryland Public Policy Institute.

Too Many People in Jail? Abolish Bail

The New York Times, By Maya Schenwar, May 8, 2015

CHICAGO — HOW can we reduce the enormous populations of our country's local jails?

Last month, Mayor Bill de Blasio of New York unveiled a plan to decrease the population of the Rikers Island jail complex by reducing the backlog of cases in state courts. About 85 percent of those at Rikers haven't been convicted of any offense; they're just awaiting trial, sometimes for as long as hundreds of days.

Mayor de Blasio's plan is a positive step. Yet it ignores a deeper question: Why are so many people — particularly poor people of color — in jail awaiting trial in the first place?

Usually, it is because they cannot afford bail. According to a 2011 report by the city's Independent Budget Office, 79 percent of pretrial detainees were sent to Rikers because they couldn't post bail right away.

This is a national problem. Across the United States, most of the people incarcerated in local jails have not been convicted of a crime but are awaiting trial. And most of those are waiting in jail not because of any specific risk they have been deemed to pose, but because they can't pay their bail.

In other words, we are locking people up for being poor. This is unjust. We should abolish monetary bail outright.

Some will argue that bail is necessary to prevent flight before trial, but there is no good basis for that assumption. For one thing, people considered to pose an unacceptable risk of flight (or violence) are not granted bail in the first place. (Though the procedures for determining who poses a risk themselves ought to be viewed with skepticism, especially since conceptions of risk are often shaped, tacitly or otherwise, by racist assumptions.)

There is also evidence that bail is not necessary to ensure that people show up for trial. In Washington, D.C., a city that makes virtually no use of monetary bail, the vast majority of arrestees who are released pretrial do return to court, and rates of additional crime before trial are low.

In addition to being unjust and unnecessary, pretrial incarceration can have harmful consequences. Not only do those who are in jail before trial suffer the trauma of confinement, but in comparison with their bailed-out counterparts, they are also more likely to be convicted at trial. As documented in a 2010 Human Rights Watch report, the legal system is substantially tougher to navigate from behind bars. People in jail face more pressure to accept plea bargains — often, ones that aren't to their advantage — than do those confronting their charges from home.

Those who spend even a few days in jail can lose their jobs or housing during that time. Single parents can lose custody of their children. By exacerbating the effects of poverty, and by placing people in often traumatizing circumstances, pretrial incarceration may actually lead to more crime.

Bail also raises issues of racial injustice. A number of studies have shown that black defendants are assigned higher bail amounts than their white counterparts. This discrepancy is compounded by the fact that black people disproportionately live in poverty and thus unduly face challenges in paying bail.

Other burdens of bail also fall harder on people of color. For instance, black mothers face a particularly serious risk of losing custody of their children while incarcerated, because they are excessively targeted by child protective services.

Jails disproportionately confine mentally ill people, too — rates of mental illness are four to six times higher in jail than outside — and people with mental health problems often live in economic circumstances that make it difficult to afford bail. A study released in February by the Vera Institute of Justice found that one-third of jailed people with mental illness were unemployed before being arrested.

Finally, monetary bail is at odds with the legal ideal of the presumption of innocence. If we want to grant people this presumption, we must not punish them before their trials.

There is no getting around it: We are incarcerating people for being poor, at great cost to actual human lives. We have to stop.

Maya Schenwar, the editor in chief of Truthout, is the author of “Locked Down, Locked Out: Why Prison Doesn’t Work and How We Can Do Better.”

Bail

From Wikipedia, the free encyclopedia

Bail is a set of pre-trial restrictions that are imposed on a suspect to ensure that they comply with the judicial process. Bail is the conditional release of a defendant with the promise to appear in court when required.[1]

In some countries, especially the United States, bail usually implies a bail bond. This is money or some form of property that is deposited to the court by the suspect, in return for the release from pre-trial detention. If the suspect does not return to court, the bail is forfeited, and the suspect may possibly be brought up on charges of the crime of failure to appear. If the suspect returns to make all their required appearances, bail is returned after the trial is concluded.

In other countries, such as the United Kingdom, bail is more likely to consist of set of restrictions that the suspect will have to abide by for a set period of time. Under this usage, bail can be given both before and after charge.

For minor crimes, a defendant may be summoned to court without the need for bail. For serious crimes, or for suspects who are deemed likely to fail to turn up in court, they may be remanded (detained) while awaiting trial. A suspect is given bail in cases where remand is not justified but there is a need to provide an incentive for the suspect to appear in court. Bail amounts may vary depending on the type and severity of crime the suspect is accused of; practices for determining bail amounts vary.

United States

The 8th Amendment to the United States Constitution states, "Excessive bail shall not be required," thus establishing bail as a constitutional right.[5] What constitutes "excessive" is a matter of judicial discretion, and bail can be denied if the judge feels that it will not aid in forcing the accused back to trial. Money bail is the most common form of bail in the United States and the term "bail" often specifically refers to such a deposit,[6]:2 but other forms of pre-trial release are permitted; this varies by state.

Many states have a "bail schedule" that lists the recommended bail amount for a given criminal charge. At the first court appearance (the arraignment), the judge can set the bail at the amount listed on the schedule or at a different amount based on the specific facts of the crime and the person accused.[7]

A common criticism of bail in the United States is that a suspect's likelihood of being released is significantly affected by their economic status.[8] In response, since 2014 New Jersey and Alaska have abolished cash bail for all but a limited number of court cases, while California will abolish cash bail entirely with effect from October 2019.[9]

State laws

Bail laws vary from state to state.[2] Generally, a person charged with a non-capital crime can be expected to be granted bail. Some states have enacted statutes modeled on federal law that permit pretrial detention of persons charged with serious violent offenses, if it can be demonstrated that the defendant is a flight risk or a danger to the community.[25] Since 2014, New Jersey and Alaska have enacted reforms that have abolished cash bail for the majority of cases. These states now give defendants a supervised release or mandatory detention, with the conditions determined with a risk assessment.[26][27] California plans to eliminate cash bail entirely as of October 1st, 2019, replacing it with a court-determined risk assessment of the individual defendant.[28]

As of 2008, only four states, Illinois, Kentucky, Oregon and Wisconsin, had abolished commercial/for-profit bail bonds by bail bondsmen and required deposits to courts instead.[11] As of 2012 Nebraska and Maine in addition to the aforementioned Illinois, Kentucky, Oregon and Wisconsin prohibited surety bail bonds.[29][not in citation given]

Some states have very strict guidelines for judges to follow; these are usually provided in the form of a published bail schedule.[30] These schedules list every single crime defined by state law and prescribe a presumptive dollar value of bail for each one. Judges who wish to depart from the schedule must state specific reasons on the record for doing so. For example, California uses a bail schedule system, and judges in state court are directed to refer to the bail schedule while also taking into account the defendant's criminal record and whether the defendant poses a danger to the community.[31] Some states go so far as to require certain forfeitures, bail, and fines for certain crimes.[32]

In Texas, bail is automatically granted after conviction if an appeal is lodged, but only if the sentence is fifteen years imprisonment or less.[33] In Tennessee, all offenses are bailable, but bail may be denied to those accused of capital crimes.[34]

The following two articles were not distributed at the tournament, but provide additional human insight into the topic.

When Bail Is Out of Defendant's Reach, Other Costs Mount

The New York Times, By Shaila Dewan, June 10, 2015

BALTIMORE — Dominick Torrence, who has lived in this city all his life, has a long rap sheet for dealing drugs but no history of violence. So when he was charged with disorderly conduct and rioting on April 28, a night of unrest after Freddie Gray was fatally injured in police custody, he was shocked to learn the amount he would need to make bail: $250,000, the same amount as two of the officers facing charges over Mr. Gray's death.

Although a bail bondsman would charge only a fraction of that, normally 10 percent, for many defendants $25,000 is as impossible a sum as $250,000. "That's something you get for murder or attempted murder," Mr. Torrence, 29, said from Baltimore Central Booking. "You're telling me I have to take food out of my kid's mouth so I can get out of jail."

He spent a month in jail on charges that would later be dropped.

Defense lawyers, scholars and even some judges say the high bail amounts set for some Baltimore protesters highlight a much broader problem with the nation's money-based bail system. They say that system routinely punishes poor defendants before they get their day in court, often keeping them incarcerated for longer than if they had been convicted right away.

"It sets up a system where first there's the punishment, and then there's the opportunity to go to court for trial," said Paul DeWolfe, the Maryland state public defender.

Though money bail is firmly entrenched in the vast majority of jurisdictions, the practice is coming under new scrutiny in the face of recent research that questions its effectiveness, rising concerns about racial and income disparities in local courts, and a bipartisan effort to reduce the reliance on incarceration nationwide.

Colorado and New Jersey recently voted to revamp their bail systems, while in New Mexico last November, the State Supreme Court struck down a high bail it said had been set for the sole purpose of detaining the defendant.

This year, the Department of Justice weighed in on a civil rights lawsuit challenging bail amounts based on solely on the charge, calling them unconstitutional. In several states, including Connecticut, New York and Arizona, chief justices or politicians are calling for overhauls of the bail system.

The money bail system is supposed to curb the risk of flight by requiring defendants to post bond in exchange for freedom before trial. But critics say the system allows defendants with money to go free even if they are dangerous, while keeping low-risk poor people in jail unnecessarily and at great cost to taxpayers.

For those who cannot afford to post bail, even a short stay in jail can quickly unravel lives and families. Criminal defendants are overwhelmingly poor, many living paycheck to paycheck, and detention can cause job losses and evictions. Parents can lose custody of their children and may have a difficult time regaining it, even when cases are ultimately dropped. And people in jail who are not guilty routinely accept plea deals simply to gain their freedom, leaving them with permanent records.

The United States leads the world in the number of pretrial detainees, according to a report by the National Institute of Corrections, an agency of the Department of Justice. An estimated half a million people are in the country's jails on any given day because they cannot make bail. And even bail amounts much lower than those routinely seen in Baltimore can be prohibitive.

On a single day in New Jersey, one study found, more than 1,500 defendants were in jail because they could not come up with $2,500 or less. Mainstream groups including the American Bar Association recommend that money bail be used only as a last resort.

Yet judges continue to rely on money bail, calling it a flawed but crucial tool. Some say that commercial bail bondsmen are better than law enforcement agencies at getting defendants to court, and cost taxpayers less, and that the number of defendants who cannot afford bail is overstated. "Bail probably is the single most reliable assurance that somebody will show up," said Judge Steve White, president of the Alliance of California Judges.

Changes to the money bail system have been hard to achieve, in part because bail is set by magistrates and judges under little scrutiny in thousands of local courtrooms, each with its own rules and customs. Baltimore, with more than 50,000 arrests each year, may be as good a place as any to observe the often punitive impact of money bail on low-income defendants.

By the time Mr. Torrence was released from jail, for instance, his imprisonment had taken a toll on the family he shares

with his girlfriend, Markeisha Brown. Since Mr. Torrence normally takes care of Ms. Brown's two sons, she was forced, she said, to stop working and drop out of cosmetology school, losing the $18,000 she had borrowed on a student loan. The couple are still trying to come up with June's rent.

Higher Sums

On April 30, Mr. Torrence appeared in court via a video link for a review of his bail, initially set at $75,000. His lawyer, Todd Oppenheim, said that at the time of his arrest, Mr. Torrence had simply been walking home, and that the police statement did not describe any specific actions he had taken.

But the prosecutor, David Chiu, said Mr. Torrence had been spotted from a helicopter throwing rocks and bricks at firefighters. "They didn't have the manpower just to arrest random people for general acts of violence," Mr. Chiu said. "They were only detaining people who could be identified and apprehended."

When you are poor, sometimes it feels like the system is working against you. When I was finally caught up with all my bills, I get an letter from the tax of New Jersey, that said they audit my 2011 tax returns and I owed them $500. Then I had to borrow that money to pay them. That is how people feel. The system, the government, the cops are againts you. They want to keep you down.

Mr. Torrence's record and, in particular, several missed court dates in his past worked against him. The judge, Barbara Waxman, citing both the severity of the charges and the failures to appear, raised the bond to $250,000.

Four weeks later, prosecutors dropped the case for lack of evidence.

In the legal sense, the word "bail" refers to release before trial. The practice of requiring money to be posted before release did not become widespread until the 20th century. The United States Supreme Court has ruled that although the American presumption of innocence has inherent risks, "Liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."

Bail conditions are not supposed to be punitive. They are supposed to impose as little restriction as is needed to reasonably ensure that a defendant appears in court.

In practice, though, Baltimore public defenders say, judges here assume the defendant is guilty when setting bail, a particular problem in areas where the police focus disproportionately on African-Americans and when they bring charges backed by thin evidence. In the protests spurred by Mr. Gray's death, almost 500 adults were arrested. Fewer than 200 were charged with a crime.

A spokeswoman for the Maryland courts declined to make any judges available for an interview, saying they were prohibited from discussing their deliberations. But other judges acknowledged the defense lawyers' point.

Michael Littlefield was in jail for more than four months in Chilton County, Ala., unable to make a bail set at $100,000 on a charge of manufacturing methamphetamine. The grand jury, which meets only twice a year, ultimately did not indict him.

"The bail is really being set to keep the person in custody. You have to kind of concede that," said a California judge, W. Kent Hamlin of Superior Court in Fresno County. "It's not supposed to be that; it's supposed to guarantee their appearance in court. They're innocent until proven guilty, but the bail system assumes they're guilty."

At another recent bail hearing in Baltimore, a young man with no prior convictions had been picked up on a year-old warrant for allegedly damaging his mother's screen door and threatening to burn her house down. The mother came to court, prepared to testify that she had never complained of such an incident and that she did not even have a screen door. But the judge declined to let her speak, setting bail at $2,500 with a 10 percent cash deposit required, more than the family could afford.

At another hearing, a 26-year-old man, also with clean record, was charged with breaking into a house and attacking his sister. His lawyer said that the man actually lived in the house, and that the sister, who was mentally ill and had since been arrested on an attempted murder charge, had recanted her story to police. The judge set bail at $75,000.

Detention based on questionable evidence is not limited to Baltimore. In Chilton County, Ala., where a grand jury meets only twice a year, Michael Littlefield sat in jail for more than four months on a charge of making methamphetamine, his bail set beyond his reach at $100,000. The evidence against him, he said, was found in a garbage truck that picked up trash in front of his girlfriend's house. The grand jury declined to indict him.

In at least one of the Baltimore protest arrests, the judge was presented with abundant evidence. Images of Allen Bullock, 18, damaging police cars had been front-page news "He was out of control and he's a threat to public safety," said Judge Kathleen M. Sweeney of Maryland District Court, leaving his bail at $500,000. "There is no way that I can guarantee public safety, should he make bail."

Nonetheless, on May 7 Mr. Bullock was released, his bond posted anonymously.

Buying Freedom

Mr. Bullock's case illustrates the problem with money bail, in its critics' view. No amount of money, they say, should buy the freedom of someone who is truly dangerous. By the same token, the inability to pay should not keep defendants who pose little risk locked up. Instead, they should be released using a range of nonfinancial conditions like GPS monitors, pretrial supervision (similar to probation), or even unsecured bonds. With unsecured bonds, a defendant is released without having to pay but owes money if he or she fails to appear in court.

The critics say risk should be evaluated not in a quick, subjective hearing, but rather through a scientifically validated assessment that weighs such factors as the defendant's age, lifestyle and previous record. The use of risk assessments is also supported by law enforcement groups that include the National Sheriffs Association and the Association of Prosecuting Attorneys.

As an example of a model system, advocates for change point to Washington, D.C., where money bail was effectively eliminated in the 1990s. About 15 percent of defendants are deemed too risky to release and are held on what is called "preventive detention." Of the rest, very few fail to appear in court or are arrested on a new charge.

New Jersey is phasing in a system modeled on Washington's, but elsewhere, change has been blocked. In Maryland last year, a pretrial reform committee appointed by the governor at the time, Martin O'Malley, issued a host of recommendations, including the use of risk assessments and the elimination of money bail. None have been adopted — in part, said Mr. DeWolfe, the public defender, because of opposition from the powerful bail bond industry.

Equal Justice Under Law, a civil-rights group based in Washington, has been trying a novel legal tactic to dismantle money bail: going after jurisdictions that use bail fee schedules, in which the amount of bail is fixed based on the offense instead of the flight risk or public safety concerns resulting in the unconstitutional imprisonment of people solely because they cannot pay.

In one of the suits, against the town of Clanton, Ala., the federal Department of Justice filed a rare supporting brief, writing that setting bail in this fashion, and without regard for a defendant's ability to pay, "not only violates the 14th Amendment's Equal Protection Clause, but also constitutes bad public policy."

Two cases in St. Louis County, the second one filed on behalf of a homeless man held for six days on a $300 bond, have led to countywide talks about switching to unsecured bonds in all municipal courts, including Ferguson, Mo., whose court system's treatment of poor black residents was the subject of a Department of Justice report. The case was settled on June 3, when Velda City, Mo., agreed to stop using money bail.

The bail bond industry asserts that alternatives to money bail can be just as burdensome on the poor. Some jurisdictions charge defendants for ankle monitors or drug abuse classes, and a mistake can land them in more trouble, said Nicholas J. Wachinski, the executive director of the American Bail Coalition, an industry group. "I can't tell you how many cases there are where they are exonerated of the underlying crime, yet they're still going through the criminal proceeding of a technical violation of pretrial release," Mr. Wachinski said.

Another problem is that many states do not give judges the option of preventive detention; in Baltimore, for example, it can be used only in very limited circumstances. So judges often do what Judge Sweeney did in Mr. Bullock's case: set a very high, presumably unattainable bail.

Even judges who have seen bail-related horror stories say money bail is necessary. One Cleveland criminal court judge, Nancy Margaret Russo, said an infant died after being left in the care of the drug-addicted girlfriend of a defendant who could not come up with $171 to make bond. But, the judge said: "You're balancing risk. You can't throw the risk out the window just because somebody doesn't have any money."

Long-Term Debts

For a $75,000 bond in Baltimore, a commercial bondsman would typically charge 10 percent. Families typically have to scrape together 1 percent in cash, or $750, then go on a payment plan for the other 9 percent, or $6,750, more.

That is money they can never recover. Innocent or guilty, defendants can remain in hock to their bondsmen for years.

One 52-year-old woman said she had been falsely accused repeatedly of serious crimes including armed robbery and kidnapping by an abusive ex-boyfriend, a former police officer adept at using law enforcement to punish her. The last time he accused her, a public defender was able to win her release by demonstrating that the boyfriend had a pattern of making false accusations. But the woman, who lives on disability and food stamps, is still paying $100 a month for a $50,000 bond posted in 2012. All charges against her were ultimately dropped.

"I said, 'Y'all know this man is lying, so why you keep picking me up?'" said the woman, who asked that her name be withheld to avoid provoking her accuser. "They said they had to, because one day it might be real."

On a recent Thursday, William Cedric Wheeler met a visitor at the library in Waldorf, Md., where his children do their homework after school.

Mr. Wheeler, 39, was charged in 2009 with stealing from his employer of 12 years. He had no prior record and says he

was innocent. But fearing that he would be sent to prison and separated from his children (he has six: two now in college, two who live with his ex-wife, and two who live with Mr. Wheeler and his wife), he made a plea deal and agreed to pay restitution of $3,069.80.

The blot on his record made it hard to find a steady new job, and he fell behind on child support. His tax refunds were withheld, he said, once for child support and once for his wife's student loans. He managed to pay only $1,000 toward the restitution. By 2012, he and his wife had finally found decent jobs working for a hotel company, but in November he suffered a stroke and his medical bills began to mount.

When his failure to pay finally caught up with him last year, he was arrested and the judge set his bail at $2,069.80 — the same amount he had been unable to come up with in the first place. During the six weeks Mr. Wheeler spent in jail, he said, he lost his job, his family was evicted, one car was repossessed and the other one broke down. His family tried to hold bake sales to raise money for his bond, Mr. Wheeler said, but the police came asking if they had a license to sell food.

The couple and their children, Ayanna, 11, and Alijah, 9, were living out of a minivan on the nights when they could not afford a cheap motel room.

"Since I got locked up, this is all I have left," Mr. Wheeler said, gesturing at a collection of packed bags, a laundry basket and a basketball in the back of the van. "This is everything that we own."

The Bail Trap

The New York Times Magazine, By Nick Pinto, Aug. 13, 2015

Every year, thousands of innocent people are sent to jail only because they can't afford to post bail, putting them at risk of losing their jobs, custody of their children — even their lives.

On the morning of Nov. 20 last year, Tyrone Tomlin sat in the cage of one of the Brooklyn criminal courthouse's interview rooms, a bare white cinder-block cell about the size of an office cubicle. Hardly visible through the heavy steel screen in front of him was Alison Stocking, the public defender who had just been assigned to his case. Tomlin, exhausted and frustrated, was trying to explain how he came to be arrested the afternoon before. It wasn't entirely clear to Tomlin himself. Still in his work clothes, his boots encrusted with concrete dust, he recounted what had happened.

The previous afternoon, he was heading home from a construction job. Tomlin had served two short stints in prison on felony convictions for auto theft and selling drugs in the late '80s and mid-'90s, but even now, grizzled with white stubble and looking older than his 53 years, he found it hard to land steady work and relied on temporary construction gigs to get by. Around the corner from his home in Crown Heights, the Brooklyn neighborhood where Tomlin has lived his entire life, he ran into some friends near the corner of Schenectady and Lincoln Avenues outside the FM Brothers Discount store, its stock of buckets, mops, backpacks and toilet paper overflowing onto the sidewalk. As he and his friends caught up, two plainclothes officers from the New York Police Department's Brooklyn North narcotics squad, recognizable by the badges on their belts and their bulletproof vests, paused outside the store. At the time, Tomlin thought nothing of it. ''I'm not doing anything wrong,'' he remembers thinking. ''We're just talking.''

Tomlin broke off to go inside the store and buy a soda. The clerk wrapped it in a paper bag and handed him a straw. Back outside, as the conversation wound down, one of the officers called the men over. He asked one of Tomlin's friends if he was carrying anything he shouldn't; he frisked him. Then he turned to Tomlin, who was holding his bagged soda and straw. ''He thought it was a beer,'' Tomlin guesses. ''He opens the bag up, it was a soda. He says, 'What you got in the other hand?' I says, 'I got a straw that I'm about to use for the soda.' '' The officer asked Tomlin if he had anything on him that he shouldn't. ''I says, 'No, you can check me, I don't have nothing on me.' He checks me. He's going all through my socks and everything.'' The next thing Tomlin knew, he says, he was getting handcuffed. ''I said, 'Officer, what am I getting locked up for?' He says, 'Drug paraphernalia.' I says, 'Drug paraphernalia?' He opens up his hand and shows me the straw.''

Stocking, an attorney with Brooklyn Defender Services, a public-defense office that represents 45,000 indigent clients a year, had picked up Tomlin's case file a few minutes before interviewing him. The folder was fat, always a bad sign to a public defender. The documentation submitted by the arresting officer explained that his training and experience told him that plastic straws are ''a commonly used method of packaging heroin residue.'' The rest of the file contained Tomlin's criminal history, which included 41 convictions, all of them, save the two decades-old felonies, for low-level nonviolent misdemeanors — crimes of poverty like shoplifting food from the corner store. With a record like that, Stocking told her client, the district attorney's office would most likely ask the judge to set bail, and there was a good chance that the judge would do it. If Tomlin couldn't come up with the money, he'd go to jail until his case was resolved.

Their conversation didn't last long. On average, a couple of hundred cases pass through Brooklyn's arraignment courtrooms every day, and the public defenders who handle the overwhelming majority of those cases rarely get to

spend more than 10 minutes with each client before the defendant is called into court for arraignment. Before leaving, Stocking relayed what the assistant district attorney told her a few minutes earlier: The prosecution was prepared to offer Tomlin a deal. Plead guilty to a misdemeanor charge of criminal possession of a controlled substance, serve 30 days on Rikers and be done with it. Tomlin said he wasn't interested. A guilty plea would only add to his record and compound the penalties if he were arrested again. ''They're mistaken,'' he told Stocking. ''It's a regular straw!'' When the straw was tested by the police evidence lab, he assured her, it would show that he was telling the truth. In the meantime, there was no way he was pleading guilty to anything.

A Night in Brooklyn Criminal Court

The difference between Rikers and freedom can be a couple of hundred dollars.

When it was Tomlin's turn in front of the judge, events unfolded as predicted: The assistant district attorney handling the case offered him 30 days for a guilty plea. After he refused, the A.D.A. asked for bail. The judge agreed, setting it at $1,500. Tomlin, living paycheck to paycheck, had nothing like that kind of money. ''If it had been $100, I might have been able to get that,'' he said afterward. As it was, less than 24 hours after getting off work, Tomlin was on a bus to Rikers Island, New York's notorious jail complex, where his situation was about to get a lot worse.

''Criminal justice,'' President Obama said in a speech to the N.A.A.C.P. last month, ''is not as fair as it should be. Mass incarceration makes our country worse off, and we need to do something about it.'' Two days after the speech, Obama became the first sitting president to visit a federal prison, meeting with convicts in a corrections institution in El Reno, Okla. The setting was dramatic, but mass incarceration isn't actually a federal problem. Of the 2.2 million people currently locked up in this country, fewer than one in 10 is being held in a federal prison. Far more are serving time in state prisons, and nearly three-quarters of a million aren't in prison at all but in local city and county jails. Of those in jails, 60 percent haven't been convicted of anything. They're innocent in the eyes of the law, awaiting resolution in their cases. Some of these inmates are being held because they're considered dangerous or unlikely to return to court for their hearings. But many of them simply cannot afford to pay the bail that has been set.

Occasionally, these cases make the news. In June, Sandra Bland was found dead in her cell in Texas after failing to come up with $500 for her release. But often, they go unnoticed. The federal government doesn't track the number of people locked up because they can't make bail. What we do know is that at any given time, close to 450,000 people are in pretrial detention in the United States — a figure that includes both those denied bail and those unable to pay the bail that has been set. Even that figure fails to capture the churn of local incarceration: In a given year, city and county jails across the country admit between 11 million and 13 million people. In New York City, where courts use bail far less than in many jurisdictions, roughly 45,000 people are jailed each year simply because they can't pay their court-assigned bail. And while the city's courts set bail much lower than the national average, only one in 10 defendants is able to pay it at arraignment. To put a finer point on it: Even when bail is set comparatively low — at $500 or less, as it is in one-third of nonfelony cases — only 15 percent of defendants are able to come up with the money to avoid jail.

Bail hasn't always been a mechanism for locking people up. When the concept first took shape in England during the Middle Ages, it was emancipatory. Rather than detaining people indefinitely without trial, magistrates were required to let defendants go free before seeing a judge, guaranteeing their return to court with a bond. If the defendant failed to return, he would forfeit the amount of the bond. The bond might be secured — that is, with some or all of the amount of the bond paid in advance and returned at the end of the trial — or it might not. In 1689, the English Bill of Rights outlawed the widespread practice of keeping defendants in jail by setting deliberately unaffordable bail, declaring that ''excessive bail shall not be required, nor excessive fines imposed.'' The same language was adopted word for word a century later in the Eighth Amendment to the United States Constitution.

But as bail has evolved in America, it has become less and less a tool for keeping people out of jail, and more and more a trap door for those who cannot afford to pay it. Unsecured bond has become vanishingly rare, and in most jurisdictions, there are only two ways to make bail: post the entire amount yourself up front — what's called ''money bail'' or ''cash bail'' — or pay a commercial bail bondsman to do so. For relatively low bail amounts — say, below $2,000, the range in which most New York City bails fall — the second option often doesn't even exist; bondsmen can't make enough money from such small bails to make it worth their while.

With national attention suddenly focused on the criminal-justice system, bail has been cited as an easy target for reformers. But ensuring that no one is held in jail based on poverty would, in many respects, necessitate a complete reordering of criminal justice. The open secret is that in most jurisdictions, bail is the grease that keeps the gears of the overburdened system turning. Faced with the prospect of going to jail for want of bail, many defendants accept plea deals instead, sometimes at their arraignments. New York City courts processed 365,000 arraignments in 2013; well under 5 percent of those cases went all the way to a trial resolution. If even a small fraction of those defendants asserted their right to a trial, criminal courts would be overwhelmed. By encouraging poor defendants to plead guilty, bail keeps the system afloat.

‘‘What, did they arrest all of Brooklyn today?’’ one court officer asked another on a recent Sunday night in one of the two bustling arraignment courtrooms in Downtown Brooklyn. Defendants, a vast majority of them black, paraded past the judge in quick succession: Unlicensed operation of a motor vehicle. Open container of alcohol in public. Marijuana possession. Riding a bicycle on the sidewalk. Misdemeanors, many of them minor, some aggravated by an outstanding bench warrant for failure to appear in court on another case, failure to complete court-ordered community service or failure to pay a fine. Hundreds of people were awaiting arraignment, first in central booking across the street, then in cells on the ninth floor and finally in a small communal cell called ‘‘the pen’’ behind the arraignment courtrooms on the ground floor. On this night, there were more than a dozen men in the cell waiting to see a lawyer, pacing, sitting on benches, crouching in corners.

One man called out from the pen, saying that there was dried excrement in there from the day before. ‘‘Nobody comes in here to clean!’’ he exclaimed. ‘‘It’s mad dirty!’’ A guard approached the bars and briefly sprayed a can of air freshener. Around the corner, the pen opened onto a series of booths, where, separated by heavy metal screens, the defendants met with their lawyers. Scott Hechinger, a senior trial attorney with Brooklyn Defender Services, picked up a stack of case files, quickly scanned the charges and rap sheets, stepped down a short hallway behind the courtroom and started calling names through the mesh screen. The first client was charged with criminal mischief after getting in an argument with his girlfriend and breaking some bowls. It was more complicated than that, he told Hechinger. She came home drunk, threw his clothes out the window. It escalated. He left. They arrested him across the street. Hechinger called the girlfriend and left a message. He called the client’s mother, whom the man lived with. If bail was set, how much could she afford? At most $250. Time’s up. Next case.

A young man jumped a subway turnstile. Prosecutors were offering to make it go away and let him out that night if he did two days of community service and avoided being rearrested for the next six months. This one was easy. ‘‘Take the deal,’’ Hechinger said. It was better than paying a $120 fee.

Next up was a homeless teenager, charged with ‘‘obstruction of governmental administration.’’ The paperwork said the police saw him with a knife, and that he resisted arrest. He said there was no knife, that the cops stopped him for no reason and beat him. He showed Hechinger bruises on his arms and a fat lip. It was hard to see much through the screen. Hechinger promised to take a closer look in a few minutes when they were in front of the judge together. The final person was a man arrested for driving with a suspended license, a straightforward case.

After less than half an hour, Hechinger was back in the courtroom. The defendants he interviewed were marched out onto a bench against the left wall. First was the turnstile jumper. The prosecutor laid out the charges and the offer. The defendant took the deal and would have to complete community service. Next was the homeless teenager. The prosecutor asked for bail of $5,000. Hechinger argued that bail was unnecessary. The judge set it at $250. The teenager didn’t have it. He would be sleeping at Rikers. The guy with the suspended license was released on his own recognizance — without any bail — and would be due back in court in a couple of months. Next appeared the man who broke his girlfriend’s bowls. The prosecutor wanted bail set at $2,500. Hechinger argued that there was no reason to believe his client wouldn’t return to court on his own. The judge set it at $1,000. ‘‘Your honor, I called the mother, she said she could afford $250,’’ Hechinger said. ‘‘I’m sorry, counselor, that’s my bail decision,’’ the judge responded.

Another half-hour had elapsed. Hechinger went back to the case pile and picked up another stack. One of the three other defenders working the courtroom stepped up with her own cases. When court shut down for the night at 1 a.m., defendants were still waiting. They would stay in their cells and be arraigned when court started up again in the morning.

The sheer speed of the arraignment process makes it virtually impossible for the court to make informed decisions. Prosecutors have nothing to go on but a statement from the police and possibly a complaining witness, and defense lawyers know only what they’ve been able to glean from their brief interviews and perhaps a phone call or two. It’s in this hurried moment, at the very outset of a criminal case, before evidence has been weighed or even gathered, that a defendant’s freedom is decided. The stakes are high, and not only for the obvious reason that jail is an unpleasant and often dangerous place to be. A pretrial stretch in jail can unravel the lives of vulnerable defendants in significant ways.

The next hearing in Tyrone Tomlin’s drinking-straw case was scheduled for a week after his arraignment. He left the courthouse, was loaded onto a bus and crossed the narrow causeway that connects Queens to Rikers. Tomlin was assigned to the Anna M. Kross Center, one of 10 correctional facilities on the island.

Incarcerated people rarely have nice things to say about the places where they’re locked up, but an investigation by the United States attorney’s office this year found ‘‘a deep-seated culture of violence’’ among Rikers guards, who reported using force against inmates more than 4,000 times last year. Violence among inmates is also pervasive. A Department of Corrections document obtained by The Daily News reported 108 stabbings and slashings in the last year. ‘‘That place is miserable,’’ Tomlin said. ‘‘It’s dangerous. It’s every man for himself. You could get abused, you could get raped, you could get extorted. That stuff is all around.’’

Housed in a unit with more than 50 other prisoners, Tomlin tried to keep his head down, and he was able to get through a week without incident. Outside, his aunt worried about him. His employer had no idea where he was. On Nov. 25, he was back in court for a discovery hearing, during which prosecutors were supposed to turn over any relevant evidence. None was presented, but prosecutors repeated their offer for Tomlin to plead guilty. He still refused. ‘‘I wasn’t taking nothing, because I didn’t do nothing,’’ he says. His case was adjourned for another two weeks.

Tomlin’s willingness to hold out against the charges was unusual. Across the criminal-justice system, bail acts as a tool of compulsion, forcing people who would not otherwise plead guilty to do so. A 2012 report by the New York City Criminal Justice Agency, based on 10 years’ worth of criminal statistics, bears this out. In nonfelony cases in which defendants were not detained before their trials, either because no bail was set or because they were able to pay it, only half were eventually convicted. When defendants were locked up until their cases were resolved, the conviction rate jumped to 92 percent. This isn’t just anecdotal; a multivariate analysis found that even controlling for other factors, pretrial detention was the single greatest predictor of conviction. ‘‘The data suggest that detention itself creates enough pressure to increase guilty pleas,’’ the report concluded.

Still awaiting a trial, Tomlin returned to Rikers and quickly got into trouble with a group of younger inmates while on the phone with his aunt. ‘‘A young guy tells me, ‘Yo, pop, you gotta get off the phone,’ ’’ he said. ‘‘I said, ‘I’m in the middle of an important call.’ He wanted me to just hang up.’’ Tomlin quickly realized he’d made a mistake. That evening, in the shower, he was jumped by a group of young men. ‘‘Most of the punches went to the side of my head and my eye,’’ he said. ‘‘I was tussling one and had to worry about the other three, there was blows coming from everywhere.’’ Punched, kicked and stomped, Tomlin received medical attention, his face monstrously misshapen, his left eye swollen shut. ‘‘You’d think I was Frankenstein’s brother or something,’’ he said.

Tomlin’s eye was still swollen shut on Dec. 10, three weeks after his arrest, when he returned to court. At this hearing, prosecutors handed over a report from the police laboratory, which had tested the drinking straw. At the top of the report, in bold, underlined capital letters, were the words ‘‘No Controlled Substance Identified, Notify District Attorney.’’

The report had been faxed to the district attorney on Nov. 25, the same day as Tomlin’s last court hearing and days before his beating. The key to his freedom had been sitting unexamined. Conceding that the case had unraveled, the prosecutor asked that the charges be dismissed. ‘‘The judge says, ‘Mr. Tomlin, this is your lucky day, you’re going home,’ ’’ Tomlin recalls. ‘‘I just left the courtroom, signed some papers and that was it.’’

Tomlin had lost three weeks of income, was subjected to brutal physical violence and missed Thanksgiving dinner with his family. But he resisted the pressure to plead guilty. His previous convictions all came from pleas, most of them made with bail looming over him. He knows the bitter Catch-22 of pleading guilty to get out of jail. ‘‘It feels great to go home,’’ he says. ‘‘Anybody’s happy to go home. But at the same time, it feels bad, because that’s more damage on your record.’’

For defendants who would fight their cases and maintain their innocence if they had the money, a guilty plea involves a ritual of court procedure that verges on the Kafkaesque:

‘‘Your lawyer tells me you want to plead guilty to the charge. Is that correct?’’ the judge will ask. Yes, the defendant must reply.

‘‘You understand that by your plea of guilty you are giving up certain trial rights?’’ Yes.

‘‘The right to remain silent, the right to confront witnesses against you, the right to have the prosecutor prove your guilt beyond a reasonable doubt?’’ Yes, yes, yes.

And then: ‘‘Are you pleading guilty freely and voluntarily, because you are in fact guilty?’’

Hechinger, the lawyer with Brooklyn Defender Services, hates this part of the process. ‘‘A lot of times, at that last question, you feel the client beside you bristle,’’ he says. ‘‘Everyone in the room knows it’s not ‘freely and voluntarily.’ They’re making a decision coerced by money. In many cases, if they had money, they wouldn’t be pleading. But they put their heads down, and they say, ‘Yes.’ It’s a horrible, deflating feeling.’’

The long-term damage that bail inflicts on vulnerable defendants extends well beyond incarceration. Disappearing into the machinery of the justice system separates family members, interrupts work and jeopardizes housing. ‘‘Most of our clients are people who have crawled their way up from poverty or are in the throes of poverty,’’ Hechinger says. ‘‘Our clients work in service-level positions where if you’re gone for a day, you lose your job. People in need of caretaking — the elderly, the young — are left without caretakers. People who live in shelters, where if they miss their curfews, they lose their housing. Folks with immigration concerns are quicker to be put on the immigration radar. So when our clients have bail set, they suffer on the inside, they worry about what’s happening on the outside, and when they get out, they come back to a world that’s more difficult than the already difficult situation that they were in before.’’

This spring, a 24-year-old woman named Adriana found herself newly single in New York, trying to make a life for

herself and her daughter. Short and round, with oversize glasses that frequently slide off her nose, she has an easy manner and deadpan sense of humor that belie her past as a runaway from an abusive mother. Adriana arrived in New York in the middle of 2014 with her baby daughter, not yet 2, and knew no one but her boyfriend at the time, a controlling figure who lived off her earnings from massages she advertised on Craigslist. (Like many runaways, Adriana had sometimes relied on sex work to survive, though recently she was trying to avoid it.) After separating from her boyfriend, Adriana managed to secure a spot in a Brooklyn shelter for victims of domestic violence. ‘‘I was trying to get a job, trying to get my life together,’’ she says. She was focused on her daughter. ‘‘I just want to be the best mother for her that I can be,’’ she says. ‘‘That’s my priority. That’s my only priority.’’ (Because of safety concerns, Adriana asked not to be identified by her full name.)

On the night of March 18, Adriana realized she was running low on diapers. A friend at the shelter who also had a child agreed to keep an eye on her daughter, and Adriana headed to a nearby Target. This was after curfew, and when a staff member saw Adriana leaving without her daughter, she called the police. ‘‘When I got to Target, I started getting all these texts from my friend,’’ Adriana says. ‘‘She was saying, ‘You’ve got to get back here — there are staff in your room, and they won’t let me in to look after the baby.’ ’’ Adriana rushed home with the diapers. In the shelter’s courtyard, she was met by police officers, who had her daughter.

‘‘Where are you going with my baby?’’ she asked, according to court documents. ‘‘That’s my baby. I just went to the store to buy diapers.’’ It didn’t matter. The police placed her under arrest, charging her with endangering the welfare of a child. She gave one of the officers the diapers she’d just bought, in case her daughter needed to be changed. She was handcuffed and taken to the precinct. The police took her daughter to the station, too, where she was turned over to the city’s Administration for Children’s Services and eventually placed in a foster home.

Before her arraignment two days later, Adriana explained to her public defender what happened. Her friend could confirm that she was looking after the baby, she said. The lawyer told Adriana she’d do her best to get her released on her own recognizance. But when Adriana appeared in front of Judge Rosemarie Montalbano, the assistant district attorney asked for bail to be set at $5,000. Adriana had no criminal record and had never failed to make a court appearance, but the prosecutor cited an ‘‘A.C.S. history,’’ meaning that Adriana and her daughter had previous contact with the Administration for Children’s Services. This was true but misleading. The A.C.S. report involving Adriana had found that she wasn’t responsible for any neglect or abuse. What the A.C.S. did find was violence and coercion on the part of her boyfriend; this is how Adriana landed a spot in the domestic-violence shelter.

But arraignments happen quickly. Just as there was no time to track down Adriana’s friend to confirm that her daughter hadn’t been left unsupervised, there was no time to find out what the A.C.S. order actually said. The judge set bail at $1,500. Adriana’s public defender couldn’t believe it. ‘‘Judge, I’m going to ask you to state the reason for setting bail in this case,’’ she said, according to the court transcript. ‘‘Thank you, counsel,’’ was the judge’s only reply.

With no way to come up with $1,500, Adriana spent the next two weeks on Rikers Island. Her bail made it harder for her to fight her case, but it also effectively dismantled the new life she was trying to build for herself and her daughter. She lost her bed at the shelter, and her child was living with strangers. ‘‘It feels like they were kicking me when I was down,’’ she says.

Over subsequent hearings, Adriana’s lawyers tried to get her bail lifted, but they ran into another common problem facing defendants: Once a judge sets bail, other judges are often reluctant to second-guess their colleague’s decision. If they free a defendant who commits a crime while out on bail, the blowback from politicians, police unions and the tabloid press can be substantial. ‘‘I have no idea what motivated Judge Montalbano to set bail,’’ said Judge Andrew Borrok at one of Adriana’s hearings, four days after her arraignment. Still, he said, ‘‘I’m not inclined to change what’s been done.’’

Adriana’s lawyers managed to move her case to a court that specialized in sex-trafficking cases, hoping for a more sympathetic judge and prosecutors. In the trafficking court, however, prosecutors remained reluctant to lift bail, now citing concerns that Adriana’s safety could be at risk if her ex-boyfriend found out she was set free. Ultimately, after two weeks of hearings, prosecutors agreed to remove Adriana’s bail provided she complete weekly ‘‘life-skills coursework’’ administered by a group that serves arrested sex workers. ‘‘Congratulations on being in a place where a lot of people care about you,’’ Adriana remembers the judge telling her as she stood before him in handcuffs, quietly asking a court officer to push her glasses back up her nose. ‘‘There’s a lot of people in this room that want good things to happen to you. The fear is that you’re not ready for all of these great things.’’

The judge ordered Adriana released. She could begin reassembling her life, finding a new shelter, retrieving whatever remained of her possessions. But her baby was still in foster care, and her case still wasn’t resolved. In June, a judge finally agreed to dismiss her case if she wasn’t arrested for the next six months. As this story went to press, five months after her arrest, she was still fighting in family court to regain custody of her daughter.

Outside the courtroom after the hearing for her release, Scott Hechinger, who helped coordinate Adriana’s defense, was

exasperated. ‘‘Remember,’’ he said, ‘‘this is all about some diapers! Bail changes the conversation. If bail hadn’t been set, Adriana wouldn’t have to be negotiating to get out of Rikers. She’d just be released.’’

In early 2013, Jonathan Lippman, chief judge of the State of New York, decided that the business-as-usual approach to setting bail could not be tolerated any longer. ‘‘We still have a long way to go before we can claim that we have established a coherent, rational approach to pretrial justice,’’ he said in his annual State of the Judiciary address. ‘‘Incarcerating indigent defendants for no other reason than that they cannot meet even a minimum bail amount strips our justice system of its credibility and distorts its operation.’’ Lipp-man sent a package of proposed legislation to reduce the reliance on cash bail to lawmakers in Albany, and he lobbied for the reforms hard in the press. His efforts went nowhere. ‘‘Zero,’’ Lippman says, shaking his head. ‘‘Nothing.’’ Lawmakers had no appetite for bail reform.

Two years later, that may be changing. This summer, the New York City Council took a tentative step toward reform by earmarking $1.4 million for a citywide fund to bail out low-level offenders. The fund, proposed with much fanfare by Speaker Melissa Mark-Viverito in her State of the City address in February, is modeled on a number of smaller bail funds around the city. The oldest of these, the Bronx Freedom Fund, was established in 2007 in association with the Bronx Defenders, a public-defender organization. The founders shut down the fund after only a year and a half, after a judge argued that it was effectively operating as an unlicensed bail-bond business. But before they did, the fund bailed out nearly 200 defendants and generated some illuminating statistics. Ninety-six percent of the fund’s clients made it to every one of their court appearances, a return rate higher even than that of people who posted their own bail. More than half of the Freedom Fund’s clients, now able to fight their cases outside jail, saw their charges completely dismissed. Not a single client went to jail on the charges for which bail had been posted. By comparison, defendants held on bail for the duration of their cases were convicted 92 percent of the time. The numbers showed what everyone familiar with the system already knew anecdotally: Bail makes poor people who would otherwise win their cases plead guilty.

Armed with these statistics, as well as a 2010 Human Rights Watch report that calculated that New York City was paying $42 million a year to incarcerate nonfelony defendants, the Freedom Fund’s founders managed to persuade state lawmakers to pass legislation explicitly legalizing nonprofit bail funds. In 2013, the Freedom Fund resumed operation. Close behind was the Brooklyn Community Bail Fund, begun by Scott Hechinger and a colleague at Brooklyn Defender Services. It was opened this spring and has already bailed out more than 60 clients.

But even the staunchest supporters of bail funds are quick to say that they are, at best, temporary Band-Aids for a broken system. ‘‘They are a useful form of relief as long as people are being locked up because they’re poor,’’ says Hechinger, who is no longer affiliated with the Brooklyn bail fund. ‘‘They’re an intervention for an urgent need. But they’re not actual bail reform.’’

Earlier this summer, in the wake of the shocking suicide of Kalief Browder, a Bronx teenager arrested on suspicion of stealing a backpack and held on bail for three years in Rikers before his case was dismissed, Mayor Bill de Blasio unveiled his own initiative. ‘‘I wish, I deeply wish, we hadn’t lost him — but he did not die in vain,’’ de Blasio said. The centerpiece of de Blasio’s initiative is a $17.8 million citywide initiative based on pilot programs that have been running in Queens and Manhattan, offering something called ‘‘supervised release.’’ Under these programs, a small number of qualifying defendants, who might otherwise be held on bail, are instead set free and required to check in with caseworkers by phone and in person. The pilot programs have shown good results, but they have narrowly tailored eligibility requirements. Tyrone Tomlin, for example, would not have been eligible because he had too many previous convictions. Kalief Browder would not have been eligible, either, because the crime he was accused of, stealing a backpack, was charged as second-degree robbery, a violent felony. ‘‘If Kalief Browder’s death wasn’t in vain,’’ says Peter Goldberg, executive director of the Brooklyn Community Bail Fund, ‘‘it won’t be because of the proposals we’ve seen so far from the city.’’

The only truly meaningful reform, many observers agree, is to take money out of the bail process entirely. Lippman has been championing this idea for several years. ‘‘You have to eliminate cash bail,’’ he says. The ramifications of such a move are far-reaching. Without bail — and the quick guilty pleas that it produces — courts would come under significant strain. ‘‘The system would shut down,’’ Goldberg says. ‘‘A lot of the 250 people who were waiting to be arraigned in Brooklyn last night would all be coming back to court soon to go forward with a trial for a misdemeanor that no one has any interest in pursuing.’’ This crisis, Goldberg believes, would be a good thing. ‘‘You want pressure on the system. You want everyone involved to be reconsidering. Because of how much it could clog the system, you might have people on high telling cops to stop picking people up for an open-container violation, because ‘I don’t want to deal with it in my courtroom.’ ’’

The idea of eliminating cash bail is hardly unprecedented. When Washington overhauled its bail system in the 1980s and ’90s, it instituted a supervised-release program and other measures designed to reduce the number of people held on bail. But judges continued to set bail until the law was rewritten to effectively forbid the imprisonment of people on financial grounds. The number of people locked up on bail plummeted. ‘‘D.C. had all the tools in place,’’ says Cherise Fanno Burdeen, executive director of the Pretrial Justice Institute. ‘‘They just needed a way to change the court

culture.'' Kentucky, Colorado and, last year, New Jersey have joined Washington in adopting legislation severely curtailing bail's use.

The more modest reforms being proposed in New York City, Goldberg says, are hardly cause for celebration. ''Robert Kennedy, when he was attorney general, raised exactly the concerns with bail we're talking about now,'' he says. ''Fifty years later, we're still having the conversation. We can't be satisfied with cosmetic fixes. And the truth is, even meaningful bail reform is just the beginning. The real work is asking why we're arresting so many people on low-level offenses in the first place, and why so many of them come from poor black and brown communities. Bail is easy.''

In late June, Tyrone Tomlin sat at a picnic table in St. John's Park in Crown Heights, trying to cool down after a hot day of work and sipping bodega iced tea through a straw. Beneath his baseball cap, his left eye still looked askew, his gaze unfocused and hard to meet. ''My sight is still a little blurry,'' he said. ''I still feel the aftereffects. Pains in my eye, in my head.'' The whole situation could have been worse, he knows. He could have been hurt more seriously at Rikers. He could have been fired from his construction job, after being a no-show for the better part of a month while locked up. But even so, he was still angry about what happened last winter. ''I'm not no prince,'' he acknowledged. ''But I got a raw deal.''

The inability to make bail has been a virtual constant in Tomlin's life. His first encounter with the law came when he was 14 or 15 — he recalls being picked up on a robbery charge and sent to Spofford juvenile detention center in the Bronx because his family couldn't pay bail. After a few months, he says, he pleaded guilty and received probation. ''They said it's supposed to teach you a lesson,'' he said. ''It just got me worse.'' In two-thirds of the times he has pleaded guilty to misdemeanors in the last 14 years, he did so either at arraignment to avoid being sent to Rikers or after already spending as much as two weeks at Rikers. Not once has he been able to pay bail.

"I'm not Johnny Rich-Kid with a silver spoon," he says. For Tomlin, the historical evolutions of bail and pretrial jurisprudence are abstractions without meaning in his life. Bail is simply a feature of the landscape, the thing that means he is locked up when someone with more money wouldn't be. ''Sure, yeah, I'm mad about it,'' he said grudgingly. ''But that's the way it is. I've got to accept it. It's not right, but it's the way it is.'' He shrugged. ''What are you going to do?''

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