

The background of the entire page features a stylized illustration of a diverse group of people of various ages and ethnicities. They are depicted from the chest up, facing forward, and are positioned behind vertical green bars that represent prison walls. The illustration uses a color palette of greens, browns, and purples. The title text is overlaid on a solid dark brown horizontal band that spans the width of the page.

Liberating Our Health:

Ending the Harms of Pretrial Incarceration and Money Bail

Executive Summary

Almost half a million people who are locked in jails across the United States today have not been found guilty of the charges against them. Through the system of pretrial incarceration, people are separated from their loved ones, unable to go to work, forced to face economic insecurity, and placed at risk of the health harms of incarceration — all without a conviction.

In the US, pretrial incarceration is a practice that goes hand in hand with money bail. This is made clear by the fact that 90% of those who are incarcerated pretrial — specifically, 430,000 people — are locked up because they cannot afford bail. Theoretically, money bail is a policy that's meant to ensure that people return to their court dates after release from jail. Yet the majority of people who are released without bail still return to trial.

26 days:

Average length of
pretrial incarceration
in the US

In this report, we map out the pathways through which pretrial incarceration impacts health. We use a public health analysis to understand how the experience of pretrial incarceration factors into health and to assess the inequities inherent in money bail as a policy. Our ultimate goal is to address the root causes of incarceration in order to achieve community health and safety for all.

The current system disproportionately incarcerates people who are structurally marginalized

Because of the inequitable application of policies that criminalize activities associated with poverty and other forms of marginalization, jails are disproportionately filled with people who are historically and structurally marginalized. These inequities in incarceration are not because of any distinguishing individual behavior but because of racist policies and policing practices such as “broken windows” policing and stop-and-frisk. Such policies arose as a way to exert social control over Black people and have paved the way for mass incarceration.

Pretrial risk assessment tools perpetuate racial bias

9 out of 10

people return to every
court appearance in
Washington DC, which
eliminated bail

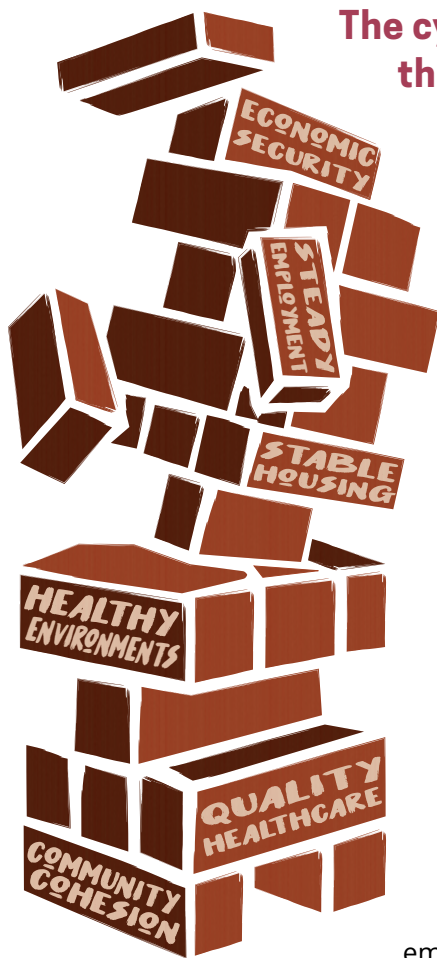
States and local jurisdictions are turning to risk assessment instruments¹ in their attempts to reform pretrial incarceration. However, the data that are used in risk assessment algorithms are neither reliable nor neutral. The incorporated information is impacted by the racist systems of over-policing, mass incarceration, poverty, and segregation.

¹ Risk assessment tools use information about a person who has been arrested — such as age at arrest, prior conviction record, prior failure to appear in court, family background, neighborhood of residence, and employment status — to categorize people's level of risk and inform a judge's decision on bail.

Pretrial incarceration harms health via 6 pathways

“I lost everything I owned while I was in jail — all my clothes, everything. Everything my mom was spending on me, putting money on my phone, I had to pay back. And then I never got paid by the job to pay her back, so that sent me even farther into debt. . . . Everything you think about is just how to get out. And the more you realize you can’t, the more depressed you get and the more anxiety.”

— Nick, formerly incarcerated pretrial in Florida



The cycle of debt and pretrial incarceration threatens economic security

Half of the people released from jail pretrial have had to use a for-profit bail bond company to secure their release. In a nation where nearly half of us experience financial fragility, our criminal legal system² effectively punishes those who experience poverty, as well as their loved ones, through the system of money bail.

Financial stress is strongly associated with a number of negative health outcomes — including higher perceived stress and depression and worse self-reported general health — due to the psychological burden and limited access to resources for those who experience a lower socioeconomic status.

Pretrial incarceration threatens steady employment

When someone is arrested or incarcerated, they are at risk of losing their job(s). Pretrial incarceration could also affect their future employment opportunities due to discrimination against those with an arrest record or workplace legal restrictions against those who are formerly incarcerated.

We know that loss of employment for any reason is damaging to health, and these negative health impacts can be compounded by the fact that loss of employment might also result in loss of employer-provided health insurance, and therefore, reduced access to needed medical care.

2 Criminal legal system: We use this term to refer to the US system of laws and the actors who enforce them — including police, prosecutors, and judges.

Pretrial incarceration can lead to loss of stable housing

23%

of people facing pretrial incarceration lose their rental housing

Alongside potential job loss, people who are incarcerated pretrial are also at risk of losing their housing through missed rent checks or home equity loan payments. When someone experiences incarceration of any form, their odds of experiencing houselessness increase from 1 in 200 for the general population to 1 in 11 for individuals recently released from incarceration.

Moving is stressful even under the best circumstances.

Being forced to move can throw people's lives and health into turmoil and is especially harmful to children's well-being and educational outcomes.

Jails are not healthy environments

People who are incarcerated pretrial are often exposed to poorly maintained and constructed jails, which are toxic to people's health. Overcrowding results in more rampant and more rapid spread of infectious diseases due to concentrated exposure. Harmful conditions include extreme temperatures, toxic water, and food prepared without regard for safety and hygiene standards.

The experience of confinement can also impact mental health. The particular instability of pretrial incarceration, with high turnover of both the staff and incarcerated population, limited access to health care, and the shock of transition from freedom to incarceration could result in a heightened level of stress and trauma.

Jails do not provide quality health care

The understaffing of medical professionals on site, lack of resources, inability of those who are incarcerated to afford copays, and the overall dehumanization of incarcerated people hinder receipt of quality care. Jails are poorly equipped to provide mental health services and substance use treatment. Copays in jail can further restrict access to medical care.

Beyond the medical neglect of those within jails, incarceration can also lead to interruption of needed medical care and prescription medication. This disruption can be especially harmful to transgender people who are incarcerated.

Pretrial incarceration threatens community cohesion

Another consequence of pretrial incarceration is the disruption to social support networks while a person is incarcerated. Financial barriers, such as the cost of phone calls and visits, and legal barriers, such as those that might remove a child from the care of the incarcerated parent via family court, result in further separation from one's community during pretrial incarceration.

Loss of social support harms both the mental and physical health of those who are incarcerated pretrial. Forced separation also affects the health of family members.

People who are undocumented face particular harm

People who are undocumented are at particular risk in the conversation around ending money bail. With the use of ICE detainers³, people who are undocumented are often shifted into the immigration enforcement system after they are released from pretrial incarceration. The system of immigration enforcement is even harder to get out of than the criminal legal system, and people can be detained for long periods without recourse and then eventually deported.

Fear of deportation damages mental and physical health. The stress of fear of deportation exacerbates chronic diseases such as depression, high blood pressure, sleep disturbances, and anxiety while producing a range of physical symptoms, such as hair loss and headaches.

Alternatives to incarceration often recreate jail-like conditions

Some jurisdictions are implementing alternatives to incarceration, like electronic monitoring or other conditions of ‘supervised release,’ which can include mandatory drug and alcohol testing or regular check-ins with a case manager or probation officer.

It’s critical to ensure we are not replacing the harmful bail system with a harmful system of surveillance, which also generates fees and/or undue burden that can continue to put a person’s health at risk.

Solutions exist to protect community health and safety

Policymakers at the local, state, tribal, and federal levels urgently need to address pretrial incarceration to advance health equity and racial justice. Our full report includes detailed recommendations that include:

- Ending money bail in favor of presumption of release
- Providing the pretrial support people need to live healthy lives
- Mandating data collection and transparency

Visit HumanImpact.org/HealthNotBail to read the full report and view references.

³ Immigration and Customs Enforcement (ICE) can request state or local law enforcement to hold someone in custody for up to 48 hours after they would otherwise be released so they can be transferred into federal immigration custody.

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About Human Impact Partners

Human Impact Partners (HIP) brings the power of public health to campaigns and movements for a just society through research, advocacy, capacity building, and field building. Our mission is to transform the policies and places people need to live healthy lives by increasing the consideration of health and equity in decision making.

Table of Contents

Executive Summary	i
Acknowledgments	v
Introduction	1
How money bail fits into the system of pretrial incarceration	1
Immigration bond operates under similar principles as money bail	2
A public health approach to ending pretrial incarceration and money bail	3
About this report	3
“Criminal legal system” and other important terms	4
The Money Bail System Is Unnecessary, Ineffective, and Biased	5
Pretrial incarceration and the bail system are historically inequitable	5
Without money bail, people still show up to court	6
Jails disproportionately incarcerate people who are structurally marginalized	7
Pretrial risk assessment instruments perpetuate racially biased results	8
The Cycle of Debt and Pretrial Incarceration Threatens Economic Security	11
“Pay-to-stay” and other exorbitant fees add undue burden	11
Financial stress contributes to poor health	12
Pretrial Incarceration Threatens Steady Employment	13
Lack of employment results in harsher sentencing.....	14
Job loss is damaging to both physical and mental health.....	14
Pretrial Incarceration Can Lead to Loss of Stable Housing	15
Housing insecurity puts health at risk	15
Jails Are Not Healthy Environments.....	17
Environmental conditions within jails are toxic.....	17
Alternatives to incarceration often recreate jail-like conditions	20
Jails Do Not Provide Quality Health Care.....	22
Copays in jail further restrict access to health care	23
Pretrial incarceration can also lead to loss of health insurance	23
Pretrial Incarceration Threatens Community Cohesion	25
Forced separation also affects the health of family members	26
People Who Are Undocumented Face Particular Harm	27
Fear of deportation damages health	28
Undocumented people get caught in the crosshairs of multiple harmful systems.....	29
Daisy & Niño’s Story	30
Considerations to Protect Health and Families	32
End money bail in favor of presumption of release	32
Provide the pretrial support people need to live healthy lives	33
Mandate data collection and transparency	34
Conclusion	36
References	37

Introduction

“They say you’re innocent until proven guilty, but this is guilty until proven innocent. It’s really how it works.”

— Tressa, formerly incarcerated pretrial in Florida

On any given day in the United States, around 482,000 people — 65% of the total national jail population — are incarcerated in jails without having been convicted of the charges against them. This is called *pretrial incarceration*.¹ Some of those people are incarcerated pretrial because they have just been arrested and are awaiting their bail amount to be set and paid. But 90% of people in jail pretrial are there because they can’t afford the bail amount that was set for them.²

As a result, many of the people who will suffer the harms of the system of pretrial incarceration — including job loss, housing loss, poor health care, and social isolation — are those who are poor. That poverty is then only compounded by the costs of being incarcerated and of paying money bail. In this way, pretrial incarceration cyclically feeds the criminalization of poverty.

How money bail fits into the system of pretrial incarceration

When a person is arrested and incarcerated pretrial, their release is at the discretion of varying actors in the criminal legal system. Their decisions are often inconsistent and can take several forms.

Citation release

During the arrest process, a law enforcement officer can issue someone a citation mandating that they attend a court date and then release them rather than taking them to a local jail.

Being released on your own recognizance

When someone is *released on their own recognizance*, they are released from jail with the promise to return to court dates on their own in the future. This can occur immediately after arrest while they are in a holding cell or at their arraignment, or after a short period of time in pretrial incarceration. By avoiding any substantial jail time before their court date and trial, people released on their own recognizance are able to continue working, maintain housing and health care, and stay with their families.

Conditional release

With *conditional release*, a person is released without any bail under conditions that range from minorly to highly supervisory, including pretrial supervision with a case manager, mandatory substance use treatment, restrictions on travel, educational or vocational programs, or electronic monitoring.

Money bail

When someone is required to pay *money bail*, they can still be released with or without additional conditions of supervision. Money bail payment can take three forms³:

1. A **secured bond**, where a person must pay some or part of the assigned bail amount either in cash or with a lien on some property prior to release
2. An **unsecured bond**, where a person pays the assigned bail amount only if they fail to return to a court date in the future
3. A **surety bail bond**, where a person is unable to afford the cost of bail and contracts with a bail bond agent to make the payment for them

With a secured bond, the bail amount is typically returned to the person after they have attended all of their court dates.

The person responsible for setting bail, as well as how bail amount is determined, varies by location. Some places use a bail schedule, which assigns a dollar amount depending on the offenses a person is being charged with (e.g., types of felonies or misdemeanors). The timing of a bail hearing and the existence or structure of bail schedules vary by jurisdiction — and a judge, bail commissioner, or magistrate may choose to reduce the set bail amount at their own discretion.³

Preventive detention

In some cases, a judge may decide to deny bail to those they deem a threat to public safety. These people would then be placed in *preventive detention*, or pretrial incarceration, until their court case is completed.⁴

Immigration bond operates under similar principles as money bail

In recent decades, immigration law has posed increased challenges for people detained by Immigration and Customs Enforcement (ICE). Like the US legal court system, bonds issued in the immigration court system operate under the same principle as bail in the criminal legal system — that is, to ensure that a defendant returns for future immigration court hearings. However, in practice, criminal bail and immigration bond are distinct for a variety of reasons.

While people may be granted bond to gain release from ICE custody until their cases are resolved, there is no guaranteed right or process for immigration bond hearings. In 2018, about 1 in 5 detained individuals (19%) received a bond hearing — and less than half of these cases (47%) were granted bond.⁵ Of those granted bond, only 1 in 4 individuals detained by ICE were successful in obtaining an Immigration Court custody decision that allowed them to be released, due to either inability to pay for bond or inability to meet other conditions of release.⁶

Immigration bond is set by an immigration judge at a bond hearing at a minimum of \$1,500, often varying by judge and the nationality of the person being detained.⁷ Currently, the average immigration bond is \$10,000 nationally, which has increased significantly in the past decade.⁸

As of 2019, the average wait time for a case to be resolved is 2 years, with about one million immigration cases waiting to be resolved — a number that has doubled since 2015.⁹

A public health approach to ending pretrial incarceration and money bail

This report uses a public health approach to understanding and addressing pretrial incarceration in the US. Public health as a field “promotes and protects the health of people and the communities where they live, learn, work and play.”¹⁰ Public health emphasizes environmental factors — such as access to healthy housing and robust public transportation options — as the primary drivers of health status and seeks to shape policies that support people’s wellness.

There is a growing analysis of how entanglement with the criminal legal system is itself a social determinant of health,^{11,12} and this report adds to this body of evidence by focusing primarily and narrowly on pretrial incarceration. We understand that all aspects of the criminal legal system — including criminalization, policing, prosecution, incarceration, re-entry, immigration enforcement, and deportation — are interconnected in inextricable ways.

As advocates around the country organize campaigns to end money bail, we highlight the health impacts of the existing system. We also offer recommendations for a vision of pretrial liberation that addresses the root causes of incarceration and the inequities therein in order to achieve community health and safety.

About this report

This report is informed and shaped by the experiences of those who are affected by or affecting the system of pretrial incarceration — namely, people who are currently or formerly incarcerated pretrial, their loved ones, organizers/advocates, and public policy decision makers. Quotes from those we interviewed individually and in a focus group are included throughout.

In this report, we rely on the general literature about the effects of incarceration, and when available, provide research on the pretrial period. The few specific studies about pretrial impacts mirror findings in the general literature and allow us to generalize more broadly in the absence of specific data. Due to the lack of transparency of government data, especially on policing and incarceration, we often rely on journalists or non-profit organizations who are filling the gap in data with their work.

Given the pervasiveness of the issues, the main body of this report addresses pretrial incarceration and money bail at a national level. It’s our hope that local campaigns to end money bail can see themselves and their work in this report and use it to educate their bases and their local elected officials. Given that these reforms largely need to happen at the city, county, and/or state level, we partnered with — and intend to continue partnering with — local advocates to focus in on local-level statistics, policies, and opportunities for organizing. The first example of this type of partnership was with Faith in Florida — to read the full brief about Hillsborough County, visit HumanImpact.org/HealthNotBail.

“Criminal legal system” and other important terms

In this report, we use the following terms:

- **Criminal legal system:** This term encompasses the US system of laws and the actors who enforce them — including police, prosecutors, and judges — with the recognition that those actors often enforce the law inequitably and unjustly. Given deeply entrenched inequities seen in racial profiling, over-policing, and mass incarceration of people of color and poor people, we use this term rather than “criminal justice system” because there is little “justice” to be found within the system.
- **Money bail:** We use this term rather than the more well-known “cash bail” to clarify that bail doesn’t always take the form of cash. For example, it can also take the form of bank checks, liens on homes or cars, or bond from a bail bond agent.
- **Pretrial incarceration:** The US criminal legal system uses the term “incarceration” to mean long-term time in prison after someone is convicted, while “detention” is used to imply temporarily holding those who are pretrial or awaiting deportation.¹³ We use “pretrial incarceration” here rather than “pretrial detention” to challenge this distinction. People who can’t afford bail often spend a long time in jail pretrial. In addition, using the term “incarceration” highlights that those pretrial are still experiencing the very real and destructive harms of life behind bars. Following the lead of immigration justice organizers, we continue to use the word “detention” in reference to those who are detained by immigration enforcement.
- **People-first language:** People who are incarcerated have a lot of labels applied to them — “felon,” “convict,” “inmate,” “detainee,” “criminal,” and “offender,” to name a few. We reject these dehumanizing labels and use people-first language to emphasize the humanity of persons who are incarcerated. We also reject the labeling of any human as “illegal” and use people-first language when naming those who are undocumented. Finally, we use the phrase “people experiencing houselessness” to identify those who are living without a house, both to name that this is a changeable experience and not an innate characteristic, and to highlight that “home” can mean many different things not necessarily tied to housing.
- **People who are historically and structurally marginalized:** We use this descriptor for those who have been intentionally or unintentionally excluded from beneficial social, political, or economic policies and institutions or actively oppressed by harmful social, political, or economic policies and institutions. In the context of this report, we specifically mean those who are disproportionately targeted by the criminal legal system and the immigration enforcement system, both historically and currently. This includes people experiencing houselessness, LGBTQ people, people with disabilities, people with mental health needs, immigrants, people who use drugs, sex workers, women, people of color — and those who hold multiple of these identities.

The Money Bail System Is Unnecessary, Ineffective, and Biased

It's important to understand the historical origins of the systems that incarcerate so many people every day in the United States in order to understand those systems' continued inequitable and ineffective application. Pretrial incarceration is one such system that is both racially biased in its application and unnecessary for fulfilling its intended purpose.

Pretrial incarceration and the bail system are historically inequitable

The bail system has its roots in the Anglo-Saxon legal process of medieval England. Under this process, those who committed lesser offenses were granted a system of pretrial release whereby they were freed while awaiting a magistrate to hear their case. Sheriffs accepted "personal surety" in the form of a friend or family member who agreed to stand in for the accused person if they did not return to trial, and who agreed to pay a monetary penalty to the injured.

While a similar system was implemented in the US, by the mid to late 19th century, the need arose for sureties among those who did not have friends or family members nearby to serve in this capacity. In this context, the bail bond industry flourished, with the first commercial money bail bond agency established in San Francisco in 1898.

For those unable to pay, inequities were built into the system from the outset. A 1927 study found that bail in Chicago was set solely on an alleged offense, which resulted in about 20% of people unable to afford bail, as well as endemic abuses of bail bond agents.¹⁴

By the 1960s, the Vera Institute of Justice was running the Manhattan Bail Project to test what would happen if people were released from jail with no bail conditions. Results found that out of 3,505 people who were released pretrial without bail, "only 1.6 percent of them failed to show up for their trials for reasons within their control."¹⁵ Shortly after, Congress passed the Bail Reform Act of 1966, which required that all people be released under the "least restrictive conditions" that would still ensure their return to court.¹⁶

Subsequent policies, however, enabled pretrial incarceration to expand to new heights, particularly for people of color. In the midst of civil unrest and uprisings against racial discrimination in policing, housing, employment, and education, judges began to suspend the normal rules of bail and punish the mostly Black people participating in civil disobedience.¹⁷

Alongside the implementation of “tough on crime” policies like “broken windows” policing, Congress passed the Bail Reform Act of 1984. This allowed a judge to incarcerate someone pretrial if they were deemed to be either a flight risk or a threat to public safety. The act gave judges wide discretion to decide who was and who was not “dangerous,” allowing the possibility of both implicit and explicit racial discrimination.¹⁷

Pretrial incarceration is a global issue, but money bail is not

Many of the issues described in this report mirror conditions in pretrial incarceration throughout the world.¹⁸ While there is no comprehensive database of pretrial incarceration globally, one analysis found that as many as 10 million people may be incarcerated on a pretrial basis in the world annually, with an estimated 3 million people incarcerated pretrial on any given day.¹⁹

However, the United States is unique in at least one way: it is one of only two countries globally where the bail system is dominated by commercial bail bond agencies. Indeed, only the United States and the Philippines have perpetuated a system that profits from people’s inability to pay for their own freedom.²⁰

Without money bail, people still show up to court

“Any amount of leeway [in bail reform] will always be used more aggressively on people of color and more impacted communities. I really don’t think [money bail] should exist anywhere, period.”

— Jacob Tillotson, organizer with Dream Defenders

Theoretically, the money bail system is meant to ensure that people return to their court dates after release from jail. However, the majority of people who are released on their own recognizance without bail still return to trial.

For example, Washington DC, which eliminated money bail in 1992, releases 94% of all people arrested without using money bail, and 9 out of 10 people return to every court appearance.²¹ The Bronx Freedom Fund, a community bail fund that pays bail for those who cannot afford it, found that 96% of the people they bailed out of jail returned to their court dates.²²

Although this is the initial historical purpose of bail, the Bail Reform Act of 1984 introduced the idea that a person could be incarcerated pretrial when a judge determines there is a “risk of danger to the community” if the person is released.²³ Thus, a judge could set exceptionally high bail or no bail for a person deemed “dangerous.”

However, again, data tell us otherwise. In Washington DC, less than 2% of people released pretrial are rearrested for what courts consider a “violent crime.”²⁴ In Kentucky, around 70% of people arrested are released pretrial, with only half of one percent of those people rearrested for a “violent crime.”²¹

Instead, the money bail system criminalizes poverty by incarcerating those who have not been convicted of any crime and simply cannot afford to pay the bail set by the court. Bail practices, as with the entire criminal legal system, result in the disproportionate incarceration of people experiencing houselessness, LGBTQ people, people with disabilities, people with mental health needs, immigrants, people who use drugs, sex workers, women, and people of color.¹²

Jails disproportionately incarcerate people who are structurally marginalized

“It all starts when they get arrested. So how that person was racially profiled when they were arrested can make the difference about whether this person is going to get the \$250 bond, the \$500 bond, maybe \$1,000, or maybe no bond. Because it all depends on the charge that they put, and most of the time race does play a significant role.”

— Nanci Palacios, Deputy Director of Faith in Florida

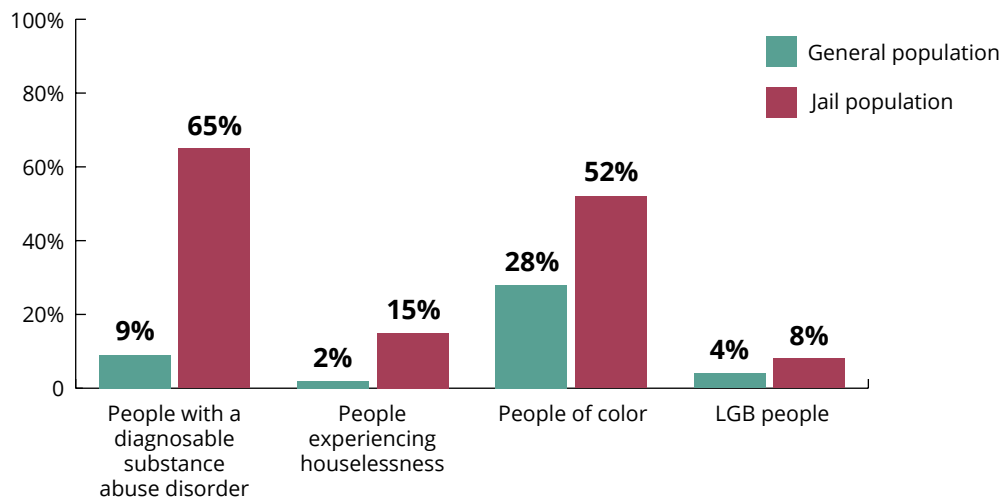
Because of the inequitable application of policies that criminalize activities associated with poverty and other forms of marginalization, jails are disproportionately filled with people who are historically and structurally marginalized. These inequities in incarceration are not because of any distinguishing individual behavior but because of racist policies and policing practices such as “broken windows” policing and stop-and-frisk. Such policies arose as a way to exert social control over people of color and have paved the way for mass incarceration.²⁶

Jail populations have more than tripled since the 1980s, with 99% of that growth due to an increase in the pretrial population.²⁵

The most recent data on the self-identified demographics of those incarcerated pretrial are significantly outdated, collected by survey in 2002.²⁷ The percentage of people who are incarcerated pretrial has increased from 29% to 65% of the jail population since 2002, meaning these demographic data are severely in need of updating. However, even the 2002 data still show the pervasiveness of inequities: nearly 7 in 10 (69%) of the people in jail pretrial were people of color, with Black (43%) and Hispanic (20%) people disproportionately overrepresented and White (31%) people disproportionately underrepresented compared to general population demographics. The data also show that Black people are more likely to receive a higher money bail amount and less likely to be able to afford it.²⁸

The criminalization and targeted policing of structurally marginalized people means that jail populations nationally — both pretrial and otherwise — disproportionately consist of people who hold these marginalized identities. For instance, data show that Black people are jailed at 4 times the rate of White people²⁵ and that 60% of women in jails have not yet been convicted of any crime and are awaiting trial.²⁹ See Chart 1 below for a more detailed comparison of the general population in the US to the population in jail, pretrial or otherwise.

Chart 1. Demographics of in-jail population compared to general population^{25,30}



Pretrial risk assessment instruments perpetuate racially biased results

“[T]he risk assessment industry, led by private corporations, foundations, and hedge-fund billionaires, seeks a new way to profit from mass incarceration, while claiming to support reform. Policymakers, drawn to its promise of technological efficiency, continue to ignore evidence of the mechanized racial profiling of the risk assessment tools.”

— Ivette Alé, Senior Policy Lead of Dignity and Power Now & Campaign Coordinator of The JusticeLA Coalition³¹

Almost all of the states and counties that have ended money bail have replaced it with risk assessment instruments, which are algorithms intended to determine whether a person is at risk of flight or rearrest. However, this perpetuates the disproportionate incarceration of people who are historically and structurally marginalized.

There’s a variety of risk assessment instruments that states and local jurisdictions have used to reform pretrial incarceration, some proprietary and others public. Information about a person who has been arrested — such as age at arrest, prior conviction record, prior failure to appear in court, family background, neighborhood of residence, and employment status — is used to categorize people into “low,” “medium,” or “high” risk. A judge then uses that categorization to determine whether to set bail or not, and if so, at what amount.³²

However, the data that are used in risk assessment algorithms are neither reliable nor neutral. The incorporated information is impacted by the racist systems of over-policing, mass incarceration, poverty, and segregation. As Dr. Ruha Benjamin notes, the data measure how much a person’s life has been impacted by structural racism without ever including an explicit datapoint about a person’s race. While advocates for the use of risk assessments tout their objectivity, Dr. Benjamin highlights how such algorithms are an “insidious combination of coded bias and imagined objectivity.”³³

This leads to the algorithms producing racially biased results:

- A study of risk assessment scores in Broward County, Florida by ProPublica in 2016 found that one popularly used risk assessment instrument designed by Northpointe was two times more likely to wrongly label a Black person as “high risk” for rearrest pretrial, compared to a White person.³⁴
- Another study of judges in the US found that the use of risk assessment algorithms in a judge’s decision making about pretrial incarceration increased judges’ likelihood of incarcerating relatively poor people, while it reduced the likelihood of incarceration for the relatively affluent.³⁵ This means that richer people had a 44% chance of spending time in jail pretrial, while poorer people had a 61% chance.³⁵

New Jersey, which mostly eliminated money bail in 2017, has been using the Public Safety Assessment (PSA) risk assessment tool. While overall pretrial incarceration numbers have dropped, with 6,000 fewer people in jail pretrial in 2018 than in 2012, racial disparities have persisted. In 2018, Black women made up 34% of the female pretrial jail population, and Black men made up more than 50% of the male pretrial jail population, despite Black people only being 15% of the New Jersey general population.^{36,37}

Kentucky passed a criminal legal system reform bill in 2011 that mandated judges to use risk assessment tools in pretrial decision making. Prior to this reform, there was a difference of 2% between the proportion of White people and the proportion of Black people who were sentenced to pretrial incarceration. After risk assessments were mandated in 2011, that inequity actually *increased* to 10% and remained stable through January 2016, despite Kentucky changing the risk assessment they used twice in that time. While some of this gap decreases once gender, age, criminal history, and the charges at hand are accounted for, Black people are still more likely to be incarcerated pretrial than White people.³⁸

Jails and prisons have significant differences

Although the words “jail” and “prison” are often used interchangeably, there are actually substantial differences between the two institutions.

Jails are typically short-term facilities that predominantly incarcerate people who are either pretrial or who are convicted of misdemeanors and serving relatively short sentences, generally less than one year. Unless they are private jails run by corporations, jails are run and operated by local governments and county sheriff’s departments. More recently, jails have also been used for immigration detention sites.

Prisons, on the other hand, are typically run by state or federal government and are meant for people who have been convicted of more serious offenses and who have received longer sentences.

As of 2019, there are 3,163 local jails, 1,719 state prisons, and 109 federal prisons operating in the US.³⁹

PRETRIAL INCARCERATION & MONEY BAIL DESTABILIZE OUR COMMUNITIES



Pretrial incarceration wreaks havoc on what we know makes us healthy. Due to structural oppression, people of color, people living in poverty, and people who are undocumented face disproportionate harm.

The Cycle of Debt and Pretrial Incarceration Threatens Economic Security

“When [the bail bond company] went off my bond, they said, ‘Well, it’s because you’re behind on your payments.’ So they said, ‘If you come down here and bring us the money, we’ll go back on your bond.’ So I borrowed some money from my family, my dad, and then I went down there. They took the money and then they said, ‘Well, we’re not going to go back on your bond,’ and they took me to jail. So, they flat out lied to me.”

— Bryan, formerly incarcerated pretrial in Texas

Many families and individuals throughout the US go into debt in order to meet the costs of pretrial incarceration. This is doubly difficult because people incarcerated in jail or prison already tend to struggle financially due to the widespread criminalization of activities related to poverty and marginalization in the US, such as writing a bad check or theft to meet survival needs.

We know that half of people released from jail pretrial are on for-profit bail, meaning that those families have had to pay a portion of the total bail to a private bail bond company in order to secure their loved ones’ release.⁴¹ While families that pay bail directly to the court get their money back after a case is over, families that pay a bail bond company do not get their money back. Bail bond companies don’t make systematic data available and are not transparent about their money bail practices, earnings, and outcomes. Subsequently, more exact numbers are hard to obtain and research typically relies on other sources to assess impacts.

\$10,000:

The median bail amount nationally, which represents about 8 months of income for the average person incarcerated pretrial.⁴⁰

“Pay-to-stay” and other exorbitant fees add undue burden

Many parts of the country also charge people who are incarcerated pretrial a daily jail fee, known as “pay-to-stay.” At the state level, these fees range in cost. For example, fees are \$3 per day in Virginia, but \$50 per day in Kentucky. A judge can waive these fees, but the fees

can also be deducted from a person's commissary account or leave a person in debt after they are released.⁴²

In addition to the costs of bail, jail fees, and court fees, people in jail and their families also pay to meet the exorbitant costs of staying in touch with their loved ones and their defense attorneys. Nationally, the average cost of a 15-minute telephone call from jail is \$5.74.⁴³ At the highest end of the range, phone calls from Arkansas county jails can cost up to almost \$24.82 per 15-minute phone call. A 2015 study found that more than 1 in 3 families went into debt paying for phone calls and visits alone.⁴⁴

Furthermore, if families want to send in money for food and toiletries from the jail commissary, there are often markups on basic necessities. For example, in San Francisco jails, items such as hygiene products are marked up by 43%.⁴⁵ Since those who are in jail pretrial often remain there because they cannot afford bail, this price gouging can cause them and their families to go even further into debt.

A person might stay in debt, or go even further into debt, due to criminal legal system fees over the course of a lifetime. A study conducted in Philadelphia found that a total of 82% of people who were charged court fees were still in debt five years later after their release.⁴⁶ Because pretrial incarceration disrupts current employment and often affects earnings years after release due to barriers to regaining employment, a person's ability to recover from debt remains substantially impacted in the long term.

Financial stress contributes to poor health

"I lost everything I owned while I was in jail — all my clothes, everything. Everything my mom was spending on me, putting money on my phone, I had to pay back. And then I never got paid by the job to pay her back, so that sent me even farther into debt. . . . Everything you think about is just how to get out. And the more you realize you can't, the more depressed you get and the more anxiety."

— Nick, formerly incarcerated pretrial in Florida

Financial stress in the US is strongly associated with a number of negative health outcomes.⁴⁷ While there are numerous studies that examine the association between socioeconomic status and health, there are far fewer that look specifically at the health impacts of financial debt.⁴⁸ The existing research that does explore this relationship focuses mostly on the psychological burden of being indebted,⁴⁹ though more recent work has found that being in debt harms mental well-being and is associated with higher perceived stress and depression, worse self-reported general health, higher diastolic blood pressure, sleep deprivation, and anxiety.⁵⁰

This burden is compounded for families of people who are incarcerated pretrial if financial burdens already exist because a family member is no longer earning wages at their job or has difficulty finding employment again after they are released from jail. When jail time challenges a family's economic security, there may also be the added stress of loss of housing, loss of child care, and loss of their ability to afford other resources that are vital to health, such as health care and healthy food.

Pretrial Incarceration Threatens Steady Employment

“I’ve lost jobs almost every time I’ve got arrested — every time I was stuck there overnight. I’ve lost places and cars going through jail even if it was just for a week or two. Most places don’t understand where you’re going for two weeks to be in jail.”

— Tressa, formerly incarcerated pretrial in Florida

Part of the cycle of poverty and debt arising from pretrial incarceration comes from the loss of employment that often occurs when a person is arrested or incarcerated. People might lose their job(s) due to missing work while incarcerated pretrial, and due to the price of phone calls from jail, might not even be able to call their workplace to let them know about their situation. Time in pretrial incarceration could then also affect future employment opportunities due to discrimination against those with an arrest record or workplace legal restrictions against those who are formerly incarcerated.⁵¹

Indeed, due to the structural barriers in place for those with an arrest record, those who are incarcerated pretrial are found to be less likely to be employed and significantly less likely to have any household income up to four years after their bail hearing.⁵² One study found that only 37.9% of those who were incarcerated pretrial were employed in the formal labor market 3 to 4 years after their bail hearing, compared to 48.9% of those who were released pretrial.⁵²

This barrier to employment is likely even more pronounced for Black people incarcerated pretrial than White people incarcerated pretrial. Research about those who have been incarcerated post-trial shows that the ratio of callbacks from employers for White people with no criminal record compared to White people with a criminal record is 2:1, while for Black people the ratio is 3:1. This means that the effect of a criminal record for Black people is 40% greater than it is for White people.⁵³ Given the racism inherent in the criminal legal system, as well as the racism that often occurs in hiring processes, it is reasonable to believe this inequity would hold true for those incarcerated pretrial.

Lack of employment results in harsher sentencing

Stable employment is also a factor that judges often consider in sentencing decisions. If a person loses their job due to pretrial incarceration, that lack of employment and resultant financial instability is associated with harsher sentencing when compared to those who are released pretrial and able to maintain stable employment.⁵¹

In fact, research shows that people who are incarcerated pretrial are 15% more likely to be convicted and are sentenced to prison for 264.6 days longer on average compared to those who are released pretrial.⁵² This translates to more convictions and longer sentences, which means more time away from the families, communities, and resources needed to live a healthy life.

Job loss is damaging to both physical and mental health

We know that loss of employment for any reason is damaging to health, though the particularities of the health impacts of job loss due to pretrial incarceration are not well documented:

- Workers who are laid off from their jobs have higher total cholesterol levels and higher blood sugar levels⁵⁴
- Studies show job loss is also associated with worse self-reported health, more cardiovascular disease, an increase in hospitalization, higher use of medical services, and higher rates of mortality⁵⁵
- Job loss also takes a toll on mental health and psychological well-being, resulting in higher levels of stress, depression, and anxiety⁵⁶

All of these negative impacts can be compounded by the fact that loss of employment might also result in loss of employer-provided health insurance, and therefore, reduced access to needed medical care.

Pretrial Incarceration Can Lead to Loss of Stable Housing

“I’ve been on the border of getting evicted. I struggled. It wasn’t something I was expecting to happen. My world turned upside down completely.”

— Daisy, wife of someone who was deported after being bailed out of pretrial incarceration in Massachusetts

Alongside potential job loss, people who are incarcerated pretrial are also at risk of housing loss through missed rent checks or home equity loan payments. Research indicates that approximately 23% of people facing pretrial incarceration lose their rental housing.⁵⁷

Research also shows that when someone experiences incarceration of any form, their odds of experiencing houselessness increase from 1 in 200 for the general population to 1 in 11 for individuals recently released from incarceration.⁵⁸ This impact extends to families with someone who is incarcerated, 48% of which have difficulty meeting basic housing needs because of the loss of income due to a family member being incarcerated.⁴⁴

After someone loses their housing, it can be hard to get it back with an arrest record. Federal housing regulations require a background check for all public housing applicants and denies public housing to those with a conviction.⁵⁹ This can also include evicting residents of a house where a family member with a record of a conviction is staying or living. Pertinent to those who have experienced pretrial incarceration, some states deny housing based on arrest record, regardless of conviction.⁵⁹

Housing insecurity puts health at risk

When people experience unstable housing and chronic houselessness, it can seriously harm their health.

- Home foreclosure is shown to dramatically worsen the psychological well-being of affected adults, including outcomes such as depression, anxiety, increased alcohol use, psychological distress, and suicide⁶²
- Those experiencing houselessness are more likely to become ill, have greater hospitalization rates, and die at a younger age than the general population⁶³
- Houselessness, in particular, can result in respiratory conditions, depression, anxiety, unintentional injury, excess winter mortality, and skin irritation⁶⁴
- Loss of housing also has a health impact for children and families. Being behind on rent has been linked to fair and/or poor caregiver health, maternal depressive symptoms, child lifetime hospitalizations, fair and/or poor child health, and household material hardships⁶⁵

Safe and stable housing is also crucial to an individual's sustained employment. In fact, one study finds that people are 11% to 22% more likely to lose their jobs after they have involuntarily lost their housing, compared to those with stable housing.⁶⁶ Though there are multiple pathways by which job loss and housing loss are linked, one potential pathway is that the stress and turmoil of losing one's home might result in an inability to perform one's job, as well. Furthermore, it can be hard to obtain a new job without an address on one's job application. Thus, pretrial incarceration often leaves affected individuals and their families susceptible to the health risks of housing insecurity, with little assistance to recover.

Efforts that focus on pretrial release only for some (such as misdemeanors associated with houselessness) can feed a false violent/non-violent dichotomy

"As we see a wave of bail 'reform' policies being proposed across the political spectrum, it is critical that we avoid falling into traps that dichotomize categories like violent/non-violent. Policies that set up judgmental categories for individuals and create lists of exceptions that leave people detained only perpetuate the bias in the system."

— Pilar Weiss, Director of the National Bail Fund Network

Advocates of ending mass incarceration often focus on policies that reduce or eliminate sentences for people charged with or convicted of nonviolent misdemeanors, such as laws that criminalize sleeping outside. A majority of people incarcerated in state prisons (54.5%) and a large percentage of people incarcerated pretrial (31.5%) are charged with or convicted of a "violent crime."³⁹ As Michelle Alexander, author of *The New Jim Crow*, notes in a recent *New York Times Magazine* article, "Those of us who are committed to ending the system of mass criminalization have to begin talking more about violence. Not only the harm it causes, but the fact that building more cages will never solve it."⁶⁰

Some solutions to reforming pretrial incarceration propose that certain charges — often nonviolent misdemeanors — be treated with a presumption of release where a person spends no time in pretrial incarceration, while other charges — often felony charges or charges that involve violence — be met with pretrial jail time, provided that a judge finds clear evidence that the person is a danger to public safety.

The system of classification of offenses as "violent" also raises concern. Many offenses that a court defines as "violent" in fact don't cause physical harm to others, or they involve actions done in self-defense, often against physical or sexual abuse. No agency collects data on how many abuse survivors are arrested and prosecuted for actions in response to abuse. But what we do know from US Department of Justice data is that nearly half of women incarcerated in jails and prisons had been abused prior to their arrest, and among those women, the majority convicted of murder had killed intimate partners or family members.⁶¹ Rather than addressing the root causes of violence, the criminal legal system freezes people into a single action forever by placing them in the category of "violent."

Jails Are Not Healthy Environments

"There are two scratches on my window. If I lean over to look through the scratches, I can see the sky."

— Zara, currently incarcerated pretrial in California

Millions of people annually are exposed to conditions within jails that have a negative, direct impact on health. Nationally, around 482,000 people are incarcerated in jails pretrial on any given day, with an average stay lasting 26 days.¹ However, because people cycle in and out of jails so often, it is also important to note that there are an astounding 11 million jail admissions per year.⁶⁷

A report tracking the deaths of 816 people in jails across the country from 2015 to 2016 found that most died within the first week of custody. Knowing that over 65% of the people in jails are pretrial, it is likely that most of the people who died were not yet convicted of the crime for which they were incarcerated.¹ Of these 816 people, 31% died from apparent suicide and 27% died due to natural causes or medical emergencies.⁶⁸

Environmental conditions within jails are toxic

People who are incarcerated pretrial are often exposed to poorly maintained and poorly constructed jails, which are toxic to people's health.

Jail conditions are even worse than one might find in a prison because they are usually constructed for short-term incarceration. For example, jails are often overcrowded, with people who are incarcerated pretrial making up 99% of the growth in the jail population in the last 20 years.³⁹ Overcrowding, which by definition means that a jail is holding more people than it was designed to, can result in more rampant spread of infectious disease due to concentrated exposure to the disease, heightened negative effects on mental and physical health, inability to provide needed programming for people's mental and physical health, and more rapidly deteriorating conditions in aging jail structures.⁶⁹ Some of these deteriorating conditions include poor ventilation, extreme temperatures,^{70,71} black mold on the walls, or poor plumbing infrastructure, resulting in blackened water coming from the taps, overflows of raw sewage, and leaky or clogged toilets.

There are also more and more reports of prisons, jails, and ICE detention centers built on toxic waste sites, where pollutants can result in gastrointestinal, respiratory, and skin conditions.⁷²

Jails allow for the rapid spread of infectious disease

Studies show the high prevalence of Methicillin-resistant *Staphylococcus aureus* (MRSA), scabies, lice, influenza, the varicella-zoster virus that causes chickenpox and shingles, tuberculosis, hepatitis, and HIV in jail settings.⁷³ Overcrowding is not the only mechanism by which disease spreads rapidly through jail populations. Many jails inhibit proper hygiene by limiting access to showers and hand-washing stations, proper health care and vaccinations, soap and tampon supplies, and clean clothing and linens. Blood-borne pathogens can spread via shared razor use, sexual encounters, or injection drug use, as jails fail to provide adequate hygiene products, condoms for protection, or needle exchange programs and substance use treatment.⁷³

The food and water jails provide are toxic

“We’ve paid bonds for people with all sorts of health issues that are made worse in jail by the food that they’re served and the lack of control they have over the diet. Diabetics that weren’t able to keep food on them that they might need, or if they did, they would have to buy it special through commissary because you can’t just hold on to an apple after lunch when your blood sugar becomes low because that becomes contraband.”

— Sharlyn Grace, Executive Director of the Chicago Community Bond Fund

Participants in our project who were incarcerated pretrial describe the jail food as sometimes moldy, sometimes frozen, and prepared without regard for food preparation safety and hygiene standards. A study of foodborne disease outbreaks in correctional institutions, including both jails and prisons, from 1998 to 2014 revealed 200 foodborne outbreaks, resulting in 20,625 illnesses, 204 hospitalizations, and 5 deaths.⁷⁴ These numbers are more than six times higher than the number of outbreak-associated foodborne illnesses in the non-incarcerated population.⁷⁴

Poor water quality in jails and prisons is also well documented across the country. In California prisons, several people came down with a deadly type of pneumonia called Legionnaires’ disease due to contaminants in the water.⁷⁵ In Connecticut prisons, several people became ill with *helicobacter pylori*, a waterborne bacteria caused by sewage leaking into the water supply.⁷⁶ In Texas, a Consumer Confidence Report found that the water supply in one prison had double the safe level of arsenic in it, which could cause skin damage, circulatory problems, and cancer.⁷⁷ In Massachusetts, the Department of Environmental Protection found one prison’s water to have elevated levels of manganese, a mineral that can cause long-term neurological damage.⁷⁸ The problem of water with high levels of contaminants is identified in correctional facilities across the country.⁷⁹

Conditions of confinement impact mental health

“While I was in there, I ended up having an anxiety attack. They started prescribing me something for anxiety because of all of the stress — I still had another 20 days before my court date. It’s that not knowing what’s going to happen — once you’re sentenced and all the other stuff, you know when you’re getting out, you know when the end is. There’s always that. But until then, it messes with your head.”

— Nick, formerly incarcerated pretrial in Florida

With 31% of people who die in jails dying from suicide, it is evident just how harmful the experience of incarceration is to mental health.⁶⁸ Within populations of incarcerated people, there is a body of literature that hypothesizes that incarceration is harmful for mental health due to its inherently isolating, stressful, and stigmatizing nature. In addition, the neglect, abuse, and violence people face while behind bars damages both physical and mental health.

The particular instability of pretrial incarceration, with high turnover of staff and incarcerated population, limited access to healthcare, and the shock of transition from freedom into incarceration, could result in an even more heightened level of stress and trauma.⁸⁰ Because of this unique environment, some studies are now exploring the specific mental health impact of incarceration in jails as compared to prisons.

For example, one study found that people incarcerated in jails reported more depression, heavy alcohol use, and illicit drug use than people incarcerated in prison, and that those incarcerated in jail were more likely to report life dissatisfaction than those not incarcerated at all.⁸¹ The environment, paired with lack of quality treatment provided within jails, means that any period of incarceration is likely to only exacerbate the conditions of those with mental illness.

People with mental health needs are also often criminalized and therefore overrepresented within jails. A landmark 1984 study observed 1,382 police encounters with civilians and found that for similar offenses, people with diagnosed mental illnesses had a significantly higher chance of being arrested than those without one.⁸²

Within jails, the Bureau of Justice Statistics found that 23% of unsentenced people incarcerated in jail reported serious psychological distress in the 30 days prior, compared to 5% of the general population. Furthermore, 44% of people unsentenced in jail had ever been told by a mental health professional that they had a mental illness.⁸³ It is essential to recognize that these statistics are the result of the over-policing and criminalization of those with mental health needs.

The “deinstitutionalization” of people with mental health needs from psychiatric hospitals in the 1960s and 1970s only shifted the institutionalization of people with mental health needs from hospitals to jails. The National Alliance for the Mentally Ill and the Public Citizen’s Health Research Group released a report in 1992 that found that 29% of the jails they surveyed were holding people with a diagnosed mental illness without any criminal charges against them.⁸⁴

Alternatives to incarceration often recreate jail-like conditions

“We need to be careful, as a movement, to make sure we’re not making concessions that are actually going to be increasing the police state. Where it’s like, ‘Okay, yeah, you can be free — you just need to pay \$99.99 for this ankle monitor.’ So I wouldn’t want that to be a part of the solution, where, okay, you’re not in jail, but you’re still being monitored. That’s a new form of bondage. That’s not freedom.”

— Bernice Lauredan, community organizer in Florida

Jurisdictions that are implementing alternatives to pretrial incarceration are increasingly using methods that recreate conditions of confinement outside of the institution of a county jail. This includes electronic monitoring, usually with a GPS ankle monitor, as well as conditions of surveillance under the name of “supervised release,” such as mandatory drug and alcohol testing or regular check-ins with a case manager or probation officer.

As more places push for an end to money bail, electronic monitoring is more and more commonly used. After San Francisco passed a bail reform policy in 2018, the number of people released from jail on an ankle monitor tripled.⁸⁵ However, the use of electronic monitoring threatens to replace a harmful bail system with a harmful system of surveillance that can just as easily result in debt, job loss, and social isolation. While a 2014 NPR report found that every state except Hawaii required people to pay at least some of the costs of their own electronic monitoring,⁸⁶ more and more states are eliminating fees for people in order to maintain the use of electronic supervision.

The fee for an ankle monitor averages around \$10 to \$15 a day, which, for many people, adds up to more than the cost of bail would have been.⁸⁷ On top of this debt, a 2011 survey conducted by the National Institute of Justice found that among 5,034 people classified as “high” or “medium” risk who were on electronic monitors, 22% said they had been fired or asked to leave a job because of electronic monitoring.⁸⁸ If a person is unable to afford the ankle monitor, they can be sent back to jail pretrial.

“Supervised release” still expands the reach of the criminal legal system

Another alternative that has been attempted in places trying to reduce pretrial jail populations is “supervised release.” While the idea of having a case manager who facilitates a connection to necessary treatment or provides reminders for upcoming court dates holds the potential to be a healthy and supportive alternative to pretrial incarceration, some current forms of supervised release, particularly those that involve law enforcement officers, still expand the reach of the criminal legal system into the lives of people who have not been convicted of any crime.

One way in which this occurs is through regular mandatory drug or alcohol testing. Research shows mixed results about whether this mandatory testing works for the purposes of ensuring a person returns to court or avoids rearrest. The National Institute of Justice evaluated mandatory drug testing programs in five jurisdictions nationally and in Washington DC, and found no conclusive difference across drug type and jurisdictions in failure-to-appear rates or likelihood of rearrest among people assigned to mandatory drug testing and people without that condition of release.⁸⁹ Still, failure to maintain compliance with total abstinence from drugs or alcohol, or failure to submit oneself for testing or a check-in with one's case manager for those with mandatory testing and supervision as a condition of release, can lead to being sent back to jail pretrial.

As Robin Steinberg, executive director of the Bronx Defenders, and David Feige, board chair of the Bronx Freedom Fund, note, "In effect, the pretrial-services model imposes supervisory oversight on the innocent in ways that are more onerous than what one would face if actually guilty. The system thereby replicates (albeit in a more benign fashion) the very problem it seeks to solve: inverting innocent until proven guilty, and placing punishment before adjudication."⁹⁰

Jails Do Not Provide Quality Health Care

“They don’t care about our health, they don’t care about our baby’s health — including our grown babies.”

— Jazz, currently pregnant and incarcerated pretrial in California

Despite high rates of health concerns within prisons and jails, it’s a struggle for those who seek medical care behind bars to receive the health care they need. Corrections staff are often the ones who decide whether a person who is incarcerated receives medical care. The understaffing of medical professionals on site, lack of resources, inability to afford copays, and overall dehumanization of incarcerated people hinder receipt of quality care.

According to a 1998 Bureau of Justice Statistics report, less than half (41%) of people incarcerated in jail with mental health needs received any help while incarcerated.⁹¹ Another study showed that among those with persistent medical conditions, 68% of people incarcerated in local jails had received no medical examination since incarceration. Though more than 20% of people were taking prescription medication for any reason prior to incarceration in jails, 42% of those people stopped that medication since incarceration.⁹²

Perhaps one of the most concerning issues with health care provision in jails is the interruption to treatment being received prior to incarceration. For instance, while 65% of all people in jail have a diagnosable substance use disorder,²⁵ comprehensive substance use treatment is often substituted for something like a self-help program.

Transgender people in jail face particular health consequences

Transgender people also suffer from a particular interruption to health care during incarceration. A report by the National Center for Transgender Equality notes that while 58% of respondents to their survey reported being on hormone therapy prior to incarceration, 37% of those respondents were prohibited from taking their hormones while incarcerated.⁹⁴ Denying this treatment can result in increased depression, anxiety, and suicidality — a particular concern given that many states don’t provide psychotherapy to transgender people while incarcerated, and given that transgender people experience psychological distress at 8 times the rate of the general population.⁹⁵

Two-thirds of jails don't offer any substance use treatment at all, aside from self-help groups and educational programming.⁹³ Only 13% of people incarcerated in jails who reported ever using drugs had participated in any sort of treatment since their admission, and most of those reported were self-help groups.⁹³

Copays in jail further restrict access to health care

The problem of access to health care is further amplified due to restrictive copays for any medical or dental care within jails. Despite the fact that people incarcerated pretrial are making no money, many jails still charge copays between \$2 and \$8 for medical or dental care.⁹⁶ This cost is prohibitive to seeking treatment, forcing people who are incarcerated to either go without treatment at all — which could contribute to the spread of untreated disease — or to let the illness sit until they can no longer go without treatment — which could result in death or in more aggressive or expensive care for an advanced-stage illness.

California is the first state to eliminate medical copays in jails

As of January 1, 2020, California will be the first state in the US to eliminate medical copays in both jails and prisons (9 other states have eliminated medical copays in prisons). Previously, there was a \$3 copay for medical, mental, or dental care in California jails — a cost that inhibited those who are incarcerated from seeking health care.

In the press release announcing the signing of the legislation marking this change, policy associate Derick Morgan of the Ella Baker Center for Human Rights noted, “What we saw with these copays was a two-tiered system — those incarcerated with family able to send money could see a doctor, while those with less means were effectively barred from accessing health care.” The elimination of copays in jails removes a barrier to health care for those incarcerated pretrial.⁹⁷

Pretrial incarceration can also lead to loss of health insurance

Any period of incarceration also results in interruption to medical care access once a person is released. Despite the fact that many people who are incarcerated are provided health insurance via Medicaid, many states have implemented policies where an individual's enrollment in Medicaid is terminated upon incarceration, whether a person is pretrial or not.⁹⁸

Only recently has there been a shift among states to enact policies to suspend Medicaid enrollment, rather than terminate it. Currently, 34 states suspend rather than terminate Medicaid upon incarceration, with more states in the process of passing similar policies.⁹⁹ This is essential, especially to those requiring continuous treatment for chronic conditions, mental illness, or substance use.

“

Every time he gets arrested, he doesn't get his ID or his driver's license back, so then you have issues finding a job. If you're in for a while and nobody can pay for your house, you no longer have a place to stay. If he's not working and he has no place to stay, he can't help take care of his daughter. And after a while, you're trying, then you get depressed. Then you give up. And that's usually when he ends up getting in a minor scrape again.

— Maureen

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Maureen (left) is the mother of Nick (center) and Tressa (right). Nick and Tressa have both cycled in and out of the criminal legal system in Florida since their youth. They have struggled with anxiety and debt due to money bail and have lost jobs, housing, and family connections during pretrial incarceration.

Pretrial Incarceration Threatens Community Cohesion

“From his 4-year-old daughter’s perspective, after he was in that last time, it was months that she wouldn’t talk to him. . . . They talked regularly on the phone, and she was so angry because her father hadn’t called her. It was about 3 months that she wouldn’t talk to him at all because she felt abandoned.”

— Maureen, mother of two people who were incarcerated pretrial in Florida

One consequence of pretrial incarceration is the disruption to social support networks while a person is incarcerated. Social support is interrupted by financial barriers — by the high cost of phone calls or emails and by the cost of travel to visit loved ones in jail. Support is also interrupted by barriers put in place by the criminal legal system — namely, that the arrest can be used to justify a restraining order or the permanent or temporary removal of parental rights of a child by a family court, even before a conviction occurs.¹⁰⁰ Finally, the stigma of being incarcerated may lead to shame in reaching out to loved ones or even intentional distancing by loved ones.

Lack of social support is deeply harmful to health, across a number of outcomes:

- One study shows that people without strong social connections to others were 2 to 3 times more likely to die from ischemic heart disease, cerebrovascular disease, or cancer over a nine-year period compared to individuals with stronger social support¹⁰¹
- Poor social support is associated with depression, including the co-occurrence of depression with physical illnesses, such as multiple sclerosis, cancer, and rheumatoid arthritis¹⁰²
- Physically, social isolation can lead to increased heart rate, increased cortisol levels, and increased blood pressure¹⁰²

Forced separation also affects the health of family members

“It’s just inhumane to see how folks are caught up in these cages. . . . And it’s so traumatic. It’s traumatic to the [people who are incarcerated] and it’s traumatic to the families and everyone involved in that whole system and process. They think they’re just punishing one individual, but they’re actually punishing everyone that’s in relationship with that person.”

— Susy, sibling of someone who was incarcerated pretrial in Florida

Separation of families damages the health not only of the person being incarcerated, but of their families, as well:

- A 2002 Survey of Inmates in Local Jails by the Bureau of Justice Statistics finds that over 150,000 children had a parent in jail because their parent couldn’t afford bail¹⁰³
- A small 2016 study by researchers at George Mason University found that 56% of their 220 respondents who were incarcerated pretrial were parents, and that nearly 40% of those respondents noted that their incarceration has changed or will change their child’s living arrangements¹⁰⁴

Family separation is a stressful and traumatizing experience for children in any situation:

- Separation due to incarceration can have lifelong consequences for child development, including increased attention difficulties and aggressive behavior¹⁰⁵
- Even a temporary separation has an enormous negative impact on the health of children later in life — in one study, separation for as short as a week within a child’s first 2 years of life was related to higher levels of child negativity and aggression¹⁰⁶
- Many parents struggle to restore the parent-child bond once it has been disrupted by a separation, with the attachment bond between parents and children threatened by fear and lack of safety¹⁰⁷

Pretrial incarceration harms youth

Young people can also be more directly harmed by pretrial incarceration if they themselves are criminalized and/or arrested. Recent data showed there are more than 9,000 youth in juvenile facilities nationally awaiting trial.¹⁰⁸ This excludes youth being held in adult facilities — a major issue given that states permit people under 18 to be prosecuted as adults in serious cases, and as many as 13 states have no minimum age for doing so.¹⁰⁹

People Who Are Undocumented Face Particular Harm

“We must acknowledge and act on the parallel criminalizing frameworks that funnel people from pretrial incarceration to detention and deportation.”

— Sandy Valenciano, community organizer in California

The pathways outlined above impact anyone who experiences pretrial incarceration, including those who are undocumented. Pretrial incarceration does additional harm specifically to those who are undocumented and who face the added threat of deportation.

The system of pretrial incarceration is also tied to the US system of immigration enforcement and deportation:

- **Some state and local law enforcement agencies have contracts with the Department of Homeland Security to detain and deport people themselves.** There are 89 jurisdictions across 21 states that, under Section 287(g) of the US Immigration and Nationality Act, have a contract between the Department of Homeland Security (DHS) and state and local police departments under which certain state and local law enforcement officers act as Immigration and Customs Enforcement (ICE) surrogates to detain and deport people who are undocumented.¹¹⁰
- **ICE can request state or local law enforcement to hold someone in custody so they can go into federal immigration custody.** Federal policy also allows immigration detainers or ICE holds, whereby ICE requests that a state or local law enforcement agency holds a person in custody for up to 48 hours after they would otherwise be released, in order for ICE to take the person into federal immigration custody. That person's intended release could be because charges are dropped, the person is acquitted, the person has completed a jail or prison sentence, or because they have paid bail or been released pretrial on their own recognizance.¹¹¹

ICE holds interact with pretrial incarceration in two ways:

- 1. Some governmental agencies deny bail to those with ICE holds to finish the criminal proceedings before deportation.** Some government agencies argue that a person for whom ICE has issued a detainer should be denied bail, because once they are released, ICE will detain and deport the person, interrupting the court procedure to settle criminal charges. This means that people with an ICE hold will be held in pretrial incarceration for no reason other than that ICE seeks to detain them.¹¹²
- 2. Some people choose to stay in pretrial incarceration to avoid deportation.** If a person with an ICE hold is released on bail or on their own recognizance, they are often transferred immediately to immigration detention rather than being released. The fear of being transferred to the system of federal immigration enforcement, which is very hard to escape and often leads to deportation and separation of families, means that many immigrants do not even attempt to meet bail.¹¹²

In Hillsborough County, Florida, activists are organizing to prevent their county sheriff from partnering with ICE

Seventeen counties in the state of Florida currently have an understanding with ICE known as a “Basic Ordering Agreement” (BOA), where ICE agrees to pay local sheriffs \$50 for every immigrant they detain for 48 hours after their scheduled release so that ICE can come pick them up. ICE intends to expand this program outside of Florida unless activists and organizers are able to put a stop to it.

One of the counties that announced they would be signing BOAs with ICE in January 2018 was Hillsborough County. However, local activists organized against the policy and called upon elected officials to put pressure on the sheriff to end BOAs. As of June 20, 2018, a public records request placed by the Southern Poverty Law Center found that the county had not executed a BOA with ICE.¹¹³

Fear of deportation damages health

More and more researchers have been exploring the impact of the fear of deportation on mental and physical health over the past two decades. In a 2010 study, fear of deportation was the strongest predictor of stress among undocumented immigrants.¹¹⁴ That stress exacerbates chronic health conditions, such as depression, high blood pressure, sleep disturbances, and anxiety while producing a range of physical symptoms, such as hair loss or headaches.^{115,116}

Not only does this fear impact health directly, it also affects immigrant access to health care services. Undocumented immigrants might forego seeking medical care in a hospital or even a doctor’s office for fear of putting their families at risk of immigration enforcement.^{117,118} After a law passed in Arizona in 2010 that allowed law enforcement to stop anyone they suspected of being undocumented, mothers of Mexican origin were less likely to access health care for their children,¹¹⁹ and residents in a Latinx neighborhood also changed their health-seeking behaviors due to fear and distrust of officials.¹²⁰ A qualitative study of Asian and Pacific Islander young adults noted that the fear of deportation was a constant source of stress, which resulted in disengagement from health care settings.¹²¹

Congress now requires ICE to keep track of data on how many people they deported had children who were US citizens. According to data reviewed by the Center for Public Integrity, ICE deported a total of 87,351 people between 2015 and the end of 2017 who reported having at least one child who is a US citizen.¹²² Separation due to deportation or immigration detention has been associated with trauma and toxic stress in children.¹⁰⁷

Undocumented people get caught in the crosshairs of multiple harmful systems

“People get arrested, and that shouldn’t be the reason they get deported. If either we eliminate bail or if there is bail and they pay their bail, that should automatically cancel that ICE hold. Because technically if you had not arrested them or even racially profiled them, you would not be assisting ICE in this process of deporting them.”

—Nanci Palacios, Deputy Director of Faith in Florida

People who are undocumented are at particular risk in the conversation around ending money bail. With the use of ICE detainers, people who are undocumented are often shifted into the immigration enforcement system after they are released from pretrial incarceration. The system of immigration enforcement is even harder to get out of than the criminal legal system, and people can be detained for long periods without recourse and then eventually deported.

But tension exists between the constitutional rights guaranteed to a person by the Bail Reform Act, which protects the right of a person to be released while awaiting a criminal trial, and the Immigration and Nationality Act, which allows ICE to detain and deport people who are undocumented after a release from jail or prison. Though several district courts have argued that release on bail constitutes a release from jail, a judge ruled in the 2012 case *United States v. Trujillio-Alvarez* that a person cannot simultaneously be prosecuted with criminal charges and detained in the immigration system. Therefore, the government must choose — either criminal charges must be dropped if a person is detained for deportation by ICE upon release from pretrial incarceration, or they must be freed from ICE custody for the duration of the prosecution on criminal charges.¹²³

Any reform to pretrial incarceration or money bail must take this into account. If money bail is eliminated, when an undocumented person is released pretrial after an arrest, they could instead be detained and deported by ICE. Thus, pretrial liberation must be tied to immigration reform.

Daisy & Niño's Story

On March 8, 2019, Daisy got the phone call that turned her life upside down. Her husband, affectionally known as Niño, had been arrested in South Boston for an alleged traffic violation. His bail was initially set to \$2,040. Daisy was already waiting at the jail, ready to pay the bail in cash loaned from friends and family. But after hours more of waiting, an officer returned to her with the message: "Your husband cannot be bailed out. ICE has a detainer on him."

ICE detainers (also known as immigration holds) are tools ICE uses to funnel people from the criminal legal system to the deportation system. When they are honored, the law enforcement agency holds the person for an additional 48 hours after their release date so that ICE can pick them up.

Daisy went home to await Niño's first court date. When the day of the hearing arrived, Daisy recalls, "The attorney that was appointed to him came to me and said, 'If I was you, I wouldn't pay the bail. ICE is here waiting for him.'" Indeed, ICE agents were sitting in the back of the room in plain clothes, waiting to detain Niño upon his release on bail.

Upon learning this, Daisy and her attorney devised a plan to free Niño without ICE interference. On April 11, Daisy and her daughter attended a second hearing in Niño's case and paid the court clerk's office to bail him out. But about an hour later, a man in plain clothes passed Daisy outside the clerk's office. She recalled: "As soon as I saw him, I said, 'You're here for him, aren't you?' And he said, 'I am.'"

Sure enough, the ICE officer took Niño — handcuffed at the wrists and at the feet — into custody, without even allowing Daisy to hug him goodbye.

The clerk's office would not return the bail money, claiming Daisy had to return to court to get it. When Daisy went back to court weeks later, the judge said she couldn't return the bail money until the case was over or until Niño was deported.

Niño was deported on June 4.

Now, the court is claiming they can't return the bail money without written documentation of Niño's deportation from ICE. ICE claims they can't and don't give such documentation to families. To add insult to injury, since the bank check is in Daisy's daughter's name, they are both required to attend the court hearings.

The repeated need to take work off for court dates hurts Daisy's financial situation even more. She now faces eviction as she tries to get the bail money back, keep her job, pay for her daughter's schooling, and pay bills — all added to the trauma and anxiety she still carries from her husband's deportation.

"He was treated like trash, and I was treated like trash from day one," Daisy recalls.

“ The attorney that was appointed to him came to me and said, ‘If I was you, I wouldn’t pay bail. ICE is here waiting for him.’ ”

— Daisy, wife of someone who was deported after being bailed out of pretrial incarceration in Massachusetts



Considerations to Protect Health and Families

“If we don’t have a strong abolitionist frame to how we go about these things, we might be actually giving in to things that we think are solutions but actually add to the problem.”

— Susy, sibling of someone who was incarcerated pretrial in Florida

Our research indicates that pretrial incarceration and money bail are biased systems that negatively impact people’s financial status, employment, housing, living environment, health care, and community connections — and thus, their health. These harms extend beyond those who directly enter the system to their families and communities, with the highest burden faced by communities of color, people living in poverty, and people who have been historically marginalized.

To better promote health equity and racial justice, policymakers at the local, state, tribal, and federal levels urgently need to address this issue in ways that prevent pretrial incarceration. This includes addressing the root causes of arrest in the first place (e.g. over-policing and criminalization of poverty), as well as creating the conditions that would help those who have been arrested to return to their court dates (e.g. transportation vouchers and child care stipends).¹²⁴ Such policies and investments have been passed or considered in jurisdictions throughout the country and must be expanded.

End money bail in favor of presumption of release

“I think one [challenge] is that these are all local ordinances, they’re all local systems. . . . There’s a cognizance that [money bail] affects people nationally, but there’s a challenge that we’re talking about many, many, many policy changes at the county and the state and even sometimes the city level.”

— Pilar Weiss, Director of the National Bail Fund Network

As noted earlier, in places that have eliminated money bail and routinely release people as they await trial, the vast majority of people return to court. In other words, money bail is unnecessary and solving a non-issue.

Washington DC eliminated money bail in 1992 and now releases 94% of all people who are pretrial. New Jersey virtually eliminated money bail in 2017, and California ended money bail in 2018, though the policy is now delayed in implementation.¹⁶ These reforms are already happening at a national level, and organizing around ending money bail has been happening for decades longer. This report has highlighted the health impacts of pretrial incarceration and the inefficacy and injustice of money bail. People incarcerated pretrial are at risk of losing their jobs, their homes, and their families. They are subjected to inhumane jail conditions and inadequate health care.

We also cannot rely on risk assessment instruments to separate those who will and will not be released as they await trial. These tools perpetuate the disproportionate incarceration of people who are historically and structurally marginalized because of biased data sources. By paying attention to people who are directly impacted and by following the lead of organizers nationally, local, state, tribal, and federal government can take the necessary steps to end money bail and pretrial incarceration for all people and promote health without further entrenching inequities.

Provide the pretrial support people need to live healthy lives

“More often, [people] don’t show up to court because their lives are difficult. Because they don’t have child care, because they can’t arrange transportation, or any number of other things. But rarely because they are fleeing.”

— Alexander Shalom, Senior Supervising Attorney and Director of Supreme Court Advocacy with the American Civil Liberties Union (ACLU) of New Jersey

As noted earlier in this report, most people (more than 90%) who are released from jail pretrial return for their court dates, and less than 2% are rearrested. Failure-to-appear rates are calculated differently across jurisdictions, by different agencies, at different times. Corey and Lo write, “In many jurisdictions, failure-to-appear rates make no distinction between a person who arrives five minutes late for a hearing and one who flees the country.”¹²⁵

Therefore, alternatives to pretrial incarceration that focus on ensuring that people have what they need to thrive have the potential to accomplish far more than alternatives that focus solely on ensuring a person returns to court. Bolstering health-affirming investments that are designed to benefit those who are historically and structurally marginalized — including those awaiting trial — can have cascading effects that end up benefitting all of society.¹²⁶

Specific to the legally stated purposes of money bail — to ensure return to court and to protect public safety — there are several alternative ways these purposes could be addressed.

Eliminate barriers to showing up for court

One essential way to ensure that people return to court for their trial dates is to help eliminate barriers preventing a person from being able to return. In interviews with those who had experienced pretrial incarceration first-hand, most of the people we spoke to made it

clear that they would never imagine missing a court date because they knew the repercussion would be incarceration. But following that, suggestions for support services that would have helped them return to court dates included reminders, transportation, flexible work hours, and child care. This resonates strongly with our public health vision of a system of pretrial liberation: a system where we're investing public resources to address the root causes of rearrest and failure-to-appear rates.

Create an expedited process for court proceedings

Consistency in provision of transportation, child care, and flexible work hours becomes especially important in court cases that go on for months or years, requiring people to take multiple days off work or find child care repeatedly.¹²⁵ One way to address this concern would be for local policymakers to institute policies that expedite court proceedings, so that people do not have to continually return to court.

Use reminder systems to ensure people return to court

For the small percentage who don't already return to their court dates, reminder systems — including postcards, telephone calls (both live and automated), and text messages — remain a promising possibility in helping people return to court. Research shows a reduction in failure-to-appear rates by 4% to 10% regardless of reminder type.^{127,128}

As of 2019, several jurisdictions across the United States have adopted some form of court reminder systems to improve failure-to-appear rates, such as in Coconino County (AZ), Jefferson County (CO), Lafayette Parish (LA), Reno (NV), New York City (NY), Multnomah and Yamhill Counties (OR), Philadelphia (PA), King County (WA), and the states of Arizona, Kentucky, and Nebraska.¹²⁹ Community organizations like the Bronx Freedom Fund and The Bail Project are also already successfully using text messages to remind those they bail out to return to their court dates.¹³⁰

Mandate data collection and transparency

“I think justice systems could do a better job to actually ensure that information that we have about the people in our care is accurate. For example, data specific to race and ethnicity . . . usually that's collected through the perceptions of a person who works for the criminal justice system, as opposed to how a person who comes into contact with the criminal justice system might self-identify. We need to be very careful of our analyses on that topic because it's basically informed by data that we can't be 100% confident in.”

— Dr. Oren Gur, Director of Research and District Attorney's Transparency Analytics (DATA) Lab, Policy Advisor in the Philadelphia District Attorney's Office

Data from the criminal legal system is often exempt from state public records laws.¹³¹ However, these data are necessary to identify the scope of the problem of pretrial incarceration and to assess the most effective and equitable solutions. This includes transparency around how many people are incarcerated pretrial, the reasons they are incarcerated pretrial, the demographics of people incarcerated pretrial, the bail amount that is set, and the process by which these decisions occurred.

For example, those who work in a jail might conflate race and ethnicity, meaning that a person who identifies their ethnicity as Latinx might be miscategorized by their racial identity (e.g., as Black or White). Among the many harms of this misclassification, researchers don't have good data on how many Latinx people are harmed by pretrial incarceration. It also means that the experiences of people who have multiple marginalized racial/ethnic identities — someone who identifies as Afro-Latinx, for instance — are erased.

The last time the government collected survey data on the demographics of people in pretrial incarceration was with the Survey of Inmates in Local Jails in 2002. The pretrial population in jails has since increased from 29% to 65% of the total jail population, meaning publicly available information on inequities in pretrial incarceration is seriously out of date.²⁸

This recommendation also includes systematically collecting data to evaluate reforms from start to finish, and making that data publicly available. For instance, for proprietary reasons, some risk assessment developers are not transparent about the weights, items, or algorithms used in the instrument.¹³² This lack of transparency inhibits input from data scientists and advocates who could offer input on the tool's design to reduce or eliminate potential racial bias. This both erodes trust among advocates and creates the risk of an unjust and biased process of decision making, with no means to assess or improve the process.

Conclusion

“[We need to change] the idea that the criminal justice system should be punitive, when really we should be trying to heal people and reform them in transformative ways that they would actually be able to be out in society.”

— Bex, organizer with Dream Defenders

The system of pretrial incarceration is but one piece of the entangled structures that make up the criminal legal system in the US. This one piece has far-reaching impacts to the 11 million people who cycle through the jail system every year as they await trial, and to the families and communities that love them.⁶⁷

This report highlights some of the pathways through which pretrial incarceration impacts health — including by threatening one’s economic security, employment, housing, environment, access to health care, and community ties. Our goal is to deepen the understanding of how incarceration is a social determinant of health, with a specific emphasis on the ways that historically and structurally marginalized communities disproportionately suffer.

Our public health vision is of a system of pretrial liberation: a system where we’re investing public resources to address the root causes of rearrest and failure-to-appear rates as a way to build toward a future that does not rely on incarceration. As such, the solutions we offer use a public health framework to address safety, healing, and well-being for *everyone*. This framework centers health as a means of creating community safety.

We recognize that the system of pretrial incarceration holds even further legal, economic, moral, and political complexity in the way that it harms people, and we acknowledge that any solution requires equal complexity of thought and care. We hope that policymakers take seriously the stories of those who have been directly impacted by the system, the decades-long work of advocates on this issue, and the public health implications of investing in our communities instead of systems of punishment.

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