

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.