

The Economics of Bail and Pretrial Detention

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ACKNOWLEDGEMENTS

We thank Lauren Bauer, Jennifer Doleac, Alex Tabarrok, Emily Weisburst, and Crystal Yang for insightful feedback, as well as Yared Lingo, Jimmy O'Donnell, and Areeb Siddiqui for excellent research assistance.

MISSION STATEMENT

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DECEMBER 2018

BROOKINGS

Abstract

Two thirds of the jail population and one quarter of the total incarcerated population consist of pretrial detainees. These shares have risen over time, fueling questions about the impacts of pretrial detention and the system of monetary bail that largely governs it. New research indicates that pretrial detention has a substantially negative economic impact on individuals, disrupting their labor market activities and causing increased recidivism. In addition to summarizing this research, we characterize key trends in pretrial detention and the bail system: increasing use of monetary bail, increasing time from arrest to adjudication, and rising median bail requirements, all of which have occurred across major offense categories. We conclude by discussing costs and benefits of monetary bail and the bail bonds industry.

Introduction

On any given day, roughly 460,000 people occupy county and city jails despite not having been convicted of a crime (Zeng 2018). These unconvicted detainees constitute about 65 percent of the jail population and 24 percent of the total incarcerated population at the state and local level. Though some defendants are held because a judge has ruled that they pose a significant flight or safety risk, most others are held because they cannot afford bail (Reaves 2013).¹

When an individual is arrested, the court holds a pretrial release hearing during which a judge decides whether to release the individual and whether to set any conditions for that release (see box 1 for more details). The conditions for release are often financial: the judge sets a bail amount that the defendant must provide in exchange for pretrial release. The funds are returned if the defendant presents themselves in court as required, but are forfeited otherwise. Those who are able to secure financial release typically rely on the services of private bail bondsmen, who will post bail on their behalf in exchange for a nonrefundable premium. In many cases, defendants are required to post bail that they cannot afford (or they are unable to afford the premium); this results in their detainment for weeks or even months until trial (Krupnick 2017).

Pretrial detention can sometimes be necessary to protect the public from serious safety risks and to ensure that defendants appear in court. However, pretrial detention comes at a heavy cost to defendants, who are less able to prepare a defense for themselves and whose lives (including employment activities) are severely disrupted (Pinto 2015). Detention is also costly to society, which bears the direct burden of incarcerating additional people along with the costs incurred by families, communities, and the labor market.

Proponents of the bail system argue that it enables courts to maintain pretrial accountability, avoiding unnecessary incarceration while providing defendants with an incentive to be present for any subsequent trials (Kennedy 2016). Critics of the bail system argue that it criminalizes poverty, and recent bail reform movements have resulted in legislation that would either reform or eliminate monetary bail altogether (Chávez 2018). In this economic analysis, we evaluate the evidence behind these arguments and consider the consequences of a monetary system of bail for both individuals and society.

To provide context, we first characterize the prevalence of bail in the pretrial system, looking specifically at how courts' usage of bail has evolved over time. We observe that, regardless of offense type, both the usage of bail and the duration of pretrial detention has increased since the 1990s.

BOX 1.

The Pretrial Process

When a person is arrested, they are either written a citation or booked into jail and charged. Those that are booked will then have an initial bail hearing, in which the judge will inform the accused of the charges they are facing and make a decision regarding pretrial release. Given the caseload of the courts, judges typically only have a few minutes to make this decision, which entails an evaluation of the defendant's likelihood to flee from court, whether they pose a threat to society, and their ability to pay (Stevenson and Mayson 2017). If a judge does not consider the defendant a risk, the judge can decide to release the defendant and trust that they will show up to court (release on recognizance). The judge can also decide to set conditions on release, ranging from the financial (bail) to the nonfinancial (pretrial supervision). If the risk is high enough, the judge can decide to deny release outright.

If bail is set, a defendant typically has the following options:

1. **Cash bond:** the defendant posts the full bail amount.
2. **Commercial bond:** a defendant can pay a nonrefundable fee (typically 10 percent of the bail amount or collateral) to a private bail bond agent, who will post bail and assume liability if the defendant fails to appear.
3. **Deposit bond:** the defendant is only required to post 10 percent of the bail amount, while being liable for the full bail amount if they fail to appear at court.

Deposit bonds are offered at the discretion of the judge, and are not always available options (Rahman 2017). Other types of release include unsecured release, in which the defendant is released and only required to pay the full bail amount if they either abscond or violate any conditions placed on them.

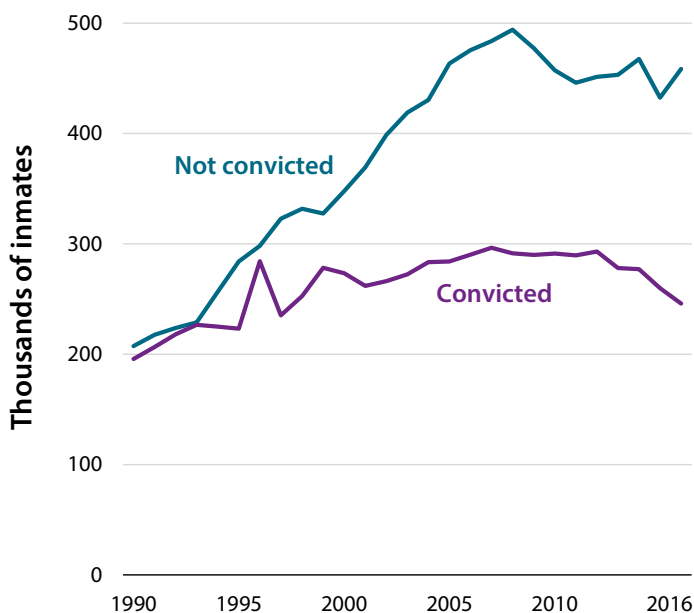
We then examine the financial implications of bail and of the bail bonds industry more specifically, as a substantial share of defendants rely on the latter to afford bail. Finally, we discuss the costs and benefits of monetary bail, highlighting new research that finds that pretrial detention can have a substantially negative economic impact on individuals.

As with previous Hamilton Project analyses of criminal justice policy, this paper aims to support an evidence-based discussion that leads to improved public policy. A better understanding of the economic costs and benefits of bail and pretrial detention is essential to guiding ongoing reform.

Pretrial Incarceration

For nearly two decades, the number of inmates who have not been convicted of a crime has been increasing. Figure 1a shows the number of convicted and unconvicted inmates on a given day each year. This is in one way an underestimate of pretrial incarceration, as it does not capture the total number of instances in which people are admitted into jail during the

FIGURE 1A.
Number of Jail Inmates by Conviction Status, 1990–2016



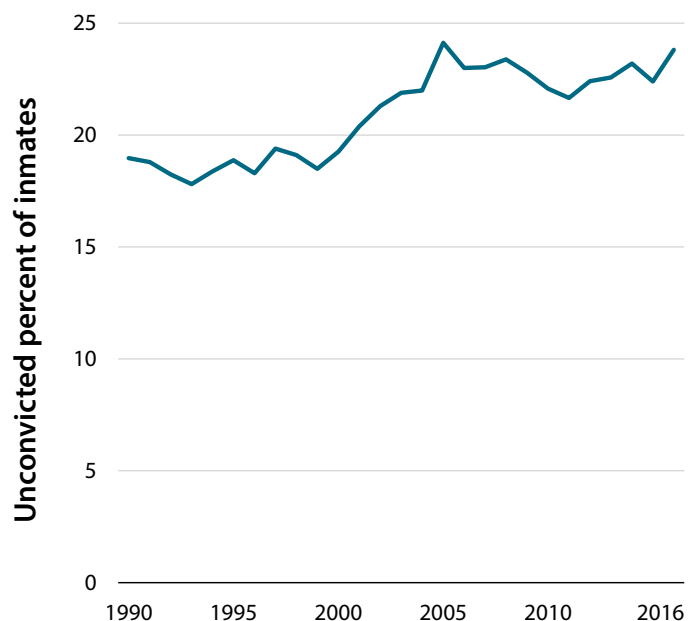
Source: Jail Inmates (Bureau of Justice Statistics [BJS] 1991–2018).
Note: The data show the jail inmate population confined on either the last weekday in June or on December 31. An individual is defined as not convicted if they are awaiting court action on their current charge, and as convicted if they are serving a sentence in jail, awaiting a sentence, or serving time for a probation or parole violation. Data are not available in 1994.

course of a year. There were about 10.6 million admissions into jail in 2016 (Zeng 2018).

The share of jail inmates who are unconvicted is high and has also increased, rising from about half the total jail population in 1990 to 65 percent in 2016. This might be unsurprising if crime and arrests were increasing, resulting in a temporary backlog of pretrial detainment. However, the number of arrests has fallen since the mid-1990s and crime has declined since the early 1990s (Snyder, Cooper, and Mulako-Wangota n.d.; Kearney et al. 2014).²

The increasing share of jail inmates who are unconvicted could be partially attributable to state prisons absorbing convicted inmates who might have otherwise served their sentences in jail. State prisons have more long-term inmates than local jails, and as such hold a greater number of people on any given day. As state prisons are not meant to hold pretrial inmates, adding them to the analysis lowers the overall share of pretrial inmates, but the increase remains substantial. The unconvicted share of all state and local inmates rose by 5 percentage points from 1990 to 2005, and has since remained steady, at nearly one-quarter (figure 1b).

FIGURE 1B.
Unconvicted Share of Inmates in State Prisons and Local Jails, 1990–2016



Source: Jail Inmates (BJS 1991–2018); Correctional Populations in the United States (BJS 1992–2016); authors' calculations.

Note: Data for jail populations are taken from the jail inmate population confined on either the last weekday in June or on December 31. Data for state populations are taken from the prison inmate population confined on December 31. State prisoners being held in local jails are excluded from local jail populations to avoid double-counting. Data are not available in 1994.



Given that incarceration rates have been rising through the mid-2000s (Schanzenbach et al. 2016), unconvicted inmates were a rising share of an inmate population that was itself growing in size. This trend might be explained by an increase in the number of inmates held before trial or an increase in the amount of time that inmates have to spend in jail before trial—we explore these possibilities below.

THE GROWTH OF MONETARY BAIL

One explanation for the increasing number of pretrial detainees is a shift by the courts toward monetary bail and away from nonfinancial release options. Figure 2a depicts this trend, breaking down the population of felony defendants in large urban counties by their pretrial release outcome from 1990 to 2009, the latest year available. The overall share of defendants who needed to meet financial conditions (e.g., were required to post bail) to avoid pretrial detention increased from 53 percent in 1990 to 72 percent in 2009, while the share of defendants released without bail dropped by 15 percentage points. The share of defendants who were denied bail decreased slightly during this period, while those held on bail increased by 6 percentage points.

Figure 2b separates defendants by the type of offense with which they have been charged. From 1990 to 2009, we observe a general shift toward bail and away from nonfinancial release for defendants accused of violent and nonviolent offenses alike.³ The increased use of bail was not exclusive to violent offenses. Figure 2b is helpful for understanding how the use of bail is changing after taking the seriousness of an alleged offense into consideration. Given that nonfinancial release is becoming less common in each offense category—and by

a very similar amount for property and violent offenses—it appears that defendants who were previously considered sufficiently low risk to be released without bail are now being assigned bail instead, and this has contributed to the rise in the share of the incarcerated who are not convicted. Furthermore, the share of felony defendants viewed as significant risks—and who therefore are not eligible for release—has remained below 10 percent since 1990. The fact that 40 percent of felony defendants are not released pretrial is not primarily a safety issue, but a financial one.

THE DURATION OF PRETRIAL DETENTION

The high level and increased use of bail and the increase in pretrial incarceration have important implications for detainees. Most directly, the amount of time that a person is detained if they are unable to afford bail is substantial, ranging from 50 to 200 days, depending on the felony offense. The pretrial detention period is also growing, compounding the costs to those who cannot afford bail. Figure 3 shows the median number of days that a detained felony defendant spends in jail, presented separately by offense type. From 1990 to 2009, the median duration of pretrial detention increased for every offense, ranging from an increase of 34 percent for burglary to 104 percent for rape. These trends suggest that part of the increase in the unconvicted share of inmates can be attributed to the fact that defendants are now held in jail for a longer period of time.

Even for durations that are relatively short—for example, 54 days for those accused of a driving-related felony—pretrial detention represents a nearly two-month period during which individuals are separated from their families and financial

BOX 2.

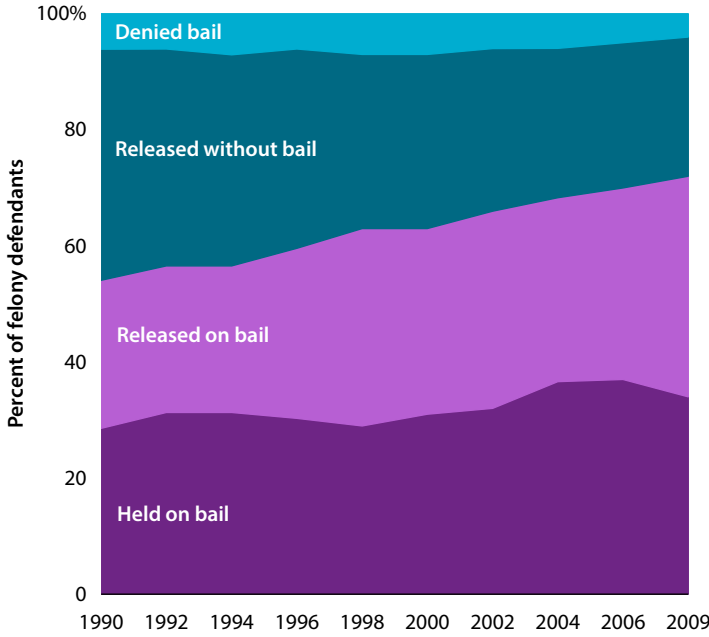
Misdemeanor Cases in the Pretrial System

Thus far, we have mainly characterized the pretrial system for defendants charged with felonies. Though defendants charged with misdemeanors go through the same pretrial process, misdemeanors are almost always lighter offenses than felonies; the nature of their pretrial experiences are therefore likely to be different. Available data for 31 states show that, in 2016, three of four criminal cases processed in state trial courts were misdemeanor cases (National Center for State Courts 2018).

Though national pretrial statistics are not available for defendants charged with misdemeanors, the current literature does provide some insights. A study performed in New York City from 2009 to 2013 found that 12 percent of defendants in misdemeanor cases were detained, compared with 43 percent of defendants in felony cases—and for both groups, more than 90 percent of detained defendants were held on bail (Leslie and Pope 2017). Given that misdemeanor charges are more common, this implies a sizable population of detainees who are charged only with misdemeanors and who tend to constitute a relatively small public safety risk. Both the expected length of one's time in pretrial detention and the expected length of one's sentence were also considerably shorter for misdemeanor cases. These results are similar for counties like Harris County, Texas, though there is still considerable cross-jurisdictional variation (Heaton, Mayson, and Stevenson 2017).

FIGURE 2A.

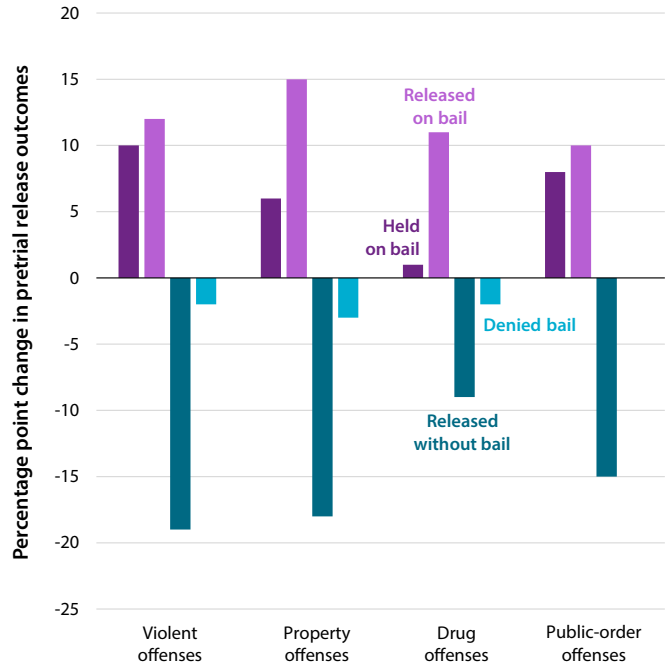
Share of Felony Defendants by Pretrial Release Outcome, 1990–2009



Source: Felony Defendants in Large Urban Counties (BJS 1990–2009).
 Note: Data are for felony defendants from the 75 largest urban counties. Defendants who were released due to jail overcrowding are not included. Shares may not evenly balance one another due to rounding. "Released without bail" includes both release on recognizance and supervised release.

FIGURE 2B.

Change in Pretrial Release Outcomes by Most Serious Arrest Charge, 1990 to 2009

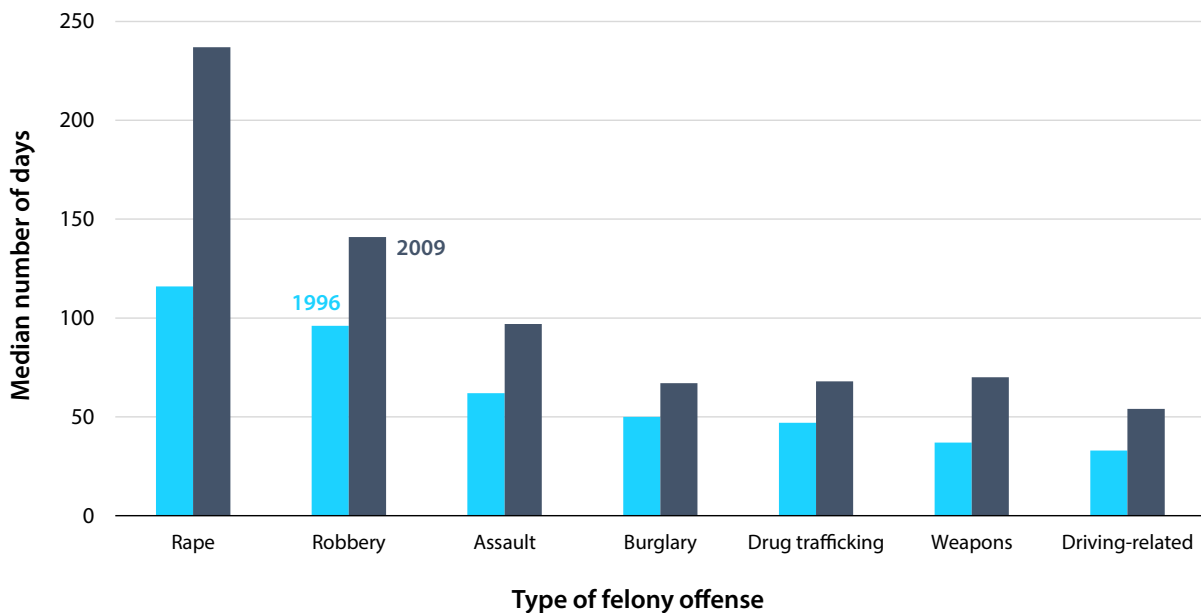


Source: Felony Defendants in Large Urban Counties (BJS 1990, 2009).
 Note: Defendants released through emergency release are not shown. Shares may not evenly balance due to rounding. Nonfinancial release includes both release on recognizance and supervised release. Public-order offenses include weapons offenses (e.g., unlawful sale, possession, or use of a deadly weapon or accessory), driving-related offenses (e.g., driving under the influence or driving with either a suspended or revoked license), and parole or probation violations.



FIGURE 3.

Median Time from Arrest to Adjudication for Detained Felony Defendants, 1996 versus 2009



Source: Felony Defendants in Large Urban Counties (BJS 1996–2009).
 Note: Data are for detained felony defendants from the 75 largest urban counties. Data are shown for offense types that were consistent across years. Driving-related offenses include driving under the influence, driving with either a suspended or revoked license, and any other felony in the motor vehicle code.



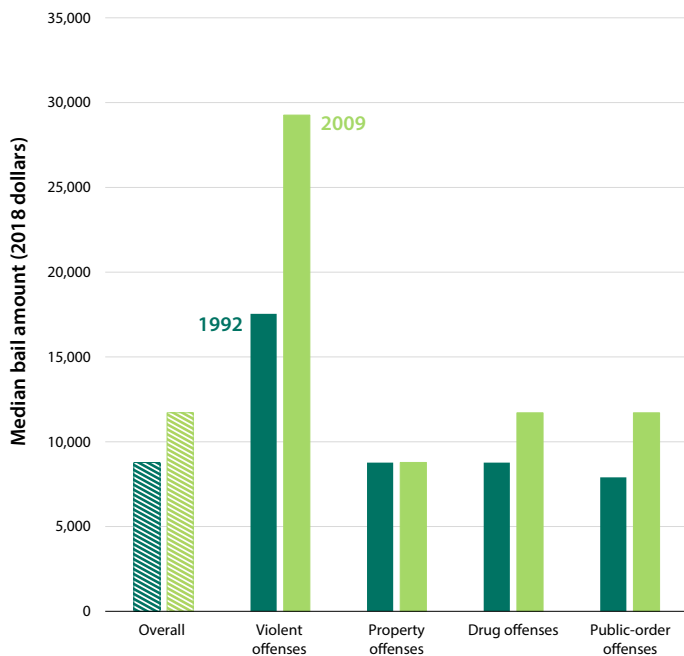
hardships are exacerbated (Sanders 2018). Moreover, the typical wait until trial is much longer in some places than others (e.g., 200 days in one sample of Pennsylvania counties) (Gupta, Hansman, and Frenchman 2016). See box 2 for details on misdemeanor cases more specifically.

How Affordable Is Bail?

The median bail that urban courts set for felony defendants in the United States is about \$11,700 (Reaves 2013; authors' calculations). Figure 4a highlights the changes in median bail amounts by offense type between 1992 and 2009 (measured in inflation-adjusted dollars). Though median bail remained roughly the same for property offenses, it increased by 33 percent and 48 percent, respectively, for drug and public-order offenses. Median bail for violent offenses increased by nearly 67 percent.

To the extent that bail is being used more frequently (and for defendants who would have qualified for nonfinancial release in earlier years), these increases in typical bail amounts may

FIGURE 4A.
Median Bail Amounts, by Most Serious Arrest Charge, 1992 versus 2009



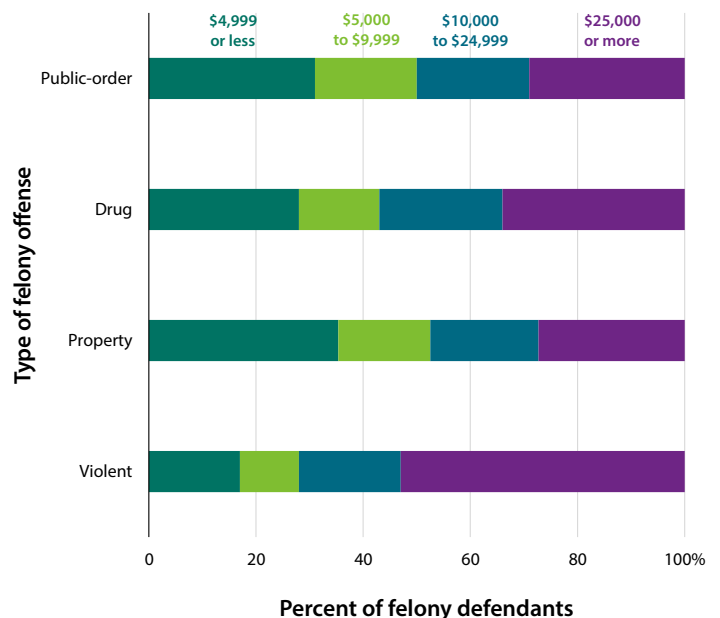
Source: Felony Defendants in Large Urban Counties (BJS 1992–2009).
Note: Data are for state court felony defendants in the 75 largest urban counties. Median bail amounts are shown in 2018 dollars using the Consumer Price Index research series using current methods (CPI-U-RS). Public-order offenses include weapons offenses (e.g., unlawful sale, possession, or use of a deadly weapon or accessory), driving-related offenses (e.g., driving under the influence or driving with either a suspended or revoked license), and parole or probation violations.

understate the true shift that has occurred. If the schedule of bail amounts had remained constant, one would have expected the median bail amount to have decreased as relatively low-risk defendants were shifted from nonfinancial to financial release.

Though bail amounts are higher for more-severe alleged offenses, bail can be quite high, even for those accused of nonviolent crimes. Figure 4b shows the distribution of bail amounts by offense type for urban felony cases in which bail was set. The dark purple bars represent the share of defendants who had bail set at \$25,000 or higher; this share was above one-quarter for every offense category. Over two-thirds of defendants charged with nonviolent felonies had bail set at \$5,000 or higher.

Misdemeanor charges can also result in substantial bail. In several New York counties, 40 percent of misdemeanor defendants held on bail for longer than a week were charged with either petty larceny (minor theft), criminal possession of a controlled substance (which does not include sales), or criminal contempt in the second degree (New York Civil Liberties Union [NYCLU] 2018). For detained defendants

FIGURE 4B.
Distribution of Bail Amounts for Felony Defendants, by Most Serious Arrest Charge



Source: Felony Defendants in Large Urban Counties (BJS 2009).
Note: Data are for state court felony defendants in the 75 largest urban counties. Bail amounts are in 2009 dollars. Public-order offenses include weapons offenses (e.g., unlawful sale, possession, or use of a deadly weapon or accessory), driving-related offenses (e.g., driving under the influence or driving with either a suspended or revoked license), and parole or probation violations.

charged with misdemeanors in Harris County, the average bail was about \$2,800 (Heaton, Mayson, and Stevenson 2017).

Bail can be prohibitively expensive for many people. Figure 5 contrasts median bail for felony offenses with various measures of assets that would be available to typical Americans. The light-green line represents the minimum threshold that defendants typically need to meet to avoid pretrial detention. This lower threshold is possible due to private bail bondsmen, who can post bail on a defendant’s behalf in exchange for a nonrefundable premium (usually ten percent of the bail amount). Because median bail amounts (the dark-green line) far exceed the liquid savings of a typical household, this ten percent premium is an unavoidable cost for a substantial portion of the population.

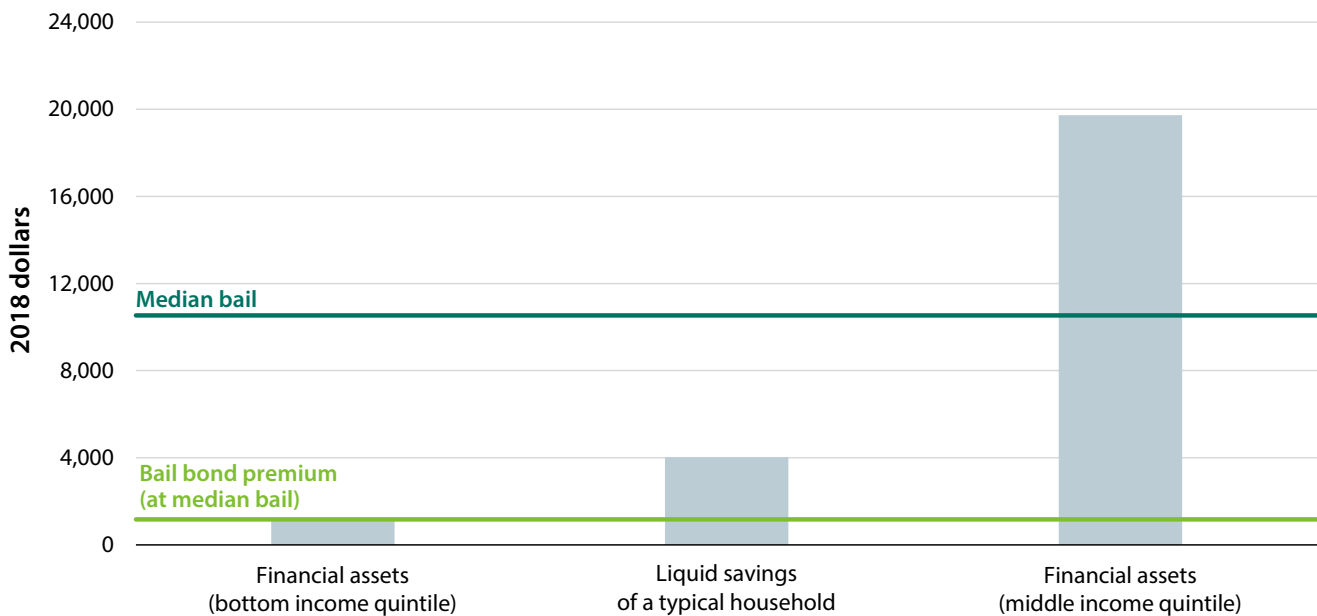
Of course, some households are able to access assets that are less liquid, including financial assets, such as stocks or retirement accounts, and nonfinancial assets, such as vehicles or residential property. Defendants may also be able to borrow funds from various sources. Data from the 2017 Survey of Household Economics and Decisionmaking suggest that four in ten households would need to borrow money, sell some of their assets, or would be unable to pay if faced with a \$400 emergency expense (Federal Reserve System 2018). Figure 5 shows that those at the bottom of the income distribution do not have the financial assets to meet the minimum threshold

for pretrial release—and even if they did, they would still be required to use those assets to pay for the bail bond premium. For households at the middle of the distribution, bail still poses a substantive cost that might require them to access illiquid financial assets or pay a nonrefundable premium. Judges might deliberately set a high bail amount to detain defendants they do not think should be released, but in such cases even ruling that a defendant cannot be released is likely preferable to only letting out those who can pay an exorbitant bail amount.

Whether one can afford to post bail depends on one’s location as well as one’s wealth. There is substantial state variation in the amount of bail a typical felony defendant is required to pay, ranging from \$5,000 in New York City to \$20,000 in Pennsylvania to \$50,000 in California prior to its reforms (Reynolds, Weckerly, and Armstrong 2016; Stringer 2018; Tafoya 2015). Bail also varies within states; across different counties in Nevada, the median bail ranges from \$2,115 to \$10,000 (Austin and Allen 2016).

States also differ in their use of deposit bonds, which serve as a public analogue to private bail bonds. Though deposit bonds are not widely used (as explained in box 1), they constitute a desirable option due to their affordability: in states like New York, defendants are only expected to pay a three percent fee (New York 2017).

FIGURE 5.
Indicators for Ability to Post Bail



Source: Felony Defendants in Large Urban Counties (BJS 2009); Survey of American Family Finances (Pew Charitable Trusts 2015); Survey of Household Economics and Decisionmaking (Federal Reserve System 2018).

Note: Median bail is for felony defendants and comes from BJS (data from 2009); a typical household’s liquid savings come from Pew Charitable Trusts (data from 2015); and available financial assets come from the Federal Reserve System (data from 2016). Median bail when using private bail bonds is calculated by taking 10 percent of the median bail. Dollar amounts are adjusted using the CPI-U-RS.

THE PRETRIAL SYSTEM IMPOSES HIGHER BURDENS ON LOW-INCOME DEFENDANTS

Low-income individuals experience the pretrial system differently than other defendants, and defendants overall tend to have low incomes. The median prearrest income of inmates held on bail is about \$16,000 a year, in contrast to a median annual income of \$33,000 for their non-incarcerated counterparts (Rabuy and Kopf 2016; authors' calculations).⁴ The 2016 Survey of Consumer Finances reports that the median value of financial and total assets for households in the bottom income quintile is about \$1,100 and \$11,700, respectively (Federal Reserve System 2016).⁵ A recent study of counties in the Philadelphia and Miami metropolitan areas found that the typical defendant earned less than \$7,000 in the year prior to arrest, and that more than half of defendants were unable to post bail set at \$5,000 or less (Dobbie, Goldin, and Yang 2018). In a group of New York counties, 46 percent of defendants charged with misdemeanors and held on bail for longer than a week had bail set at \$1,000 or less (NYCLU 2018). This means that some detainees have committed a minor offense, have been determined by a judge to be able to leave jail safely, were given a relatively low bail amount—likely signaling the judge's view of their risk and likelihood to reappear—and still remain incarcerated.

Defendants are not guaranteed an attorney at their bail hearings in every state, which can disproportionately affect low-income defendants (Colbert 2011). This is relevant because the presence of an attorney during a bail hearing is

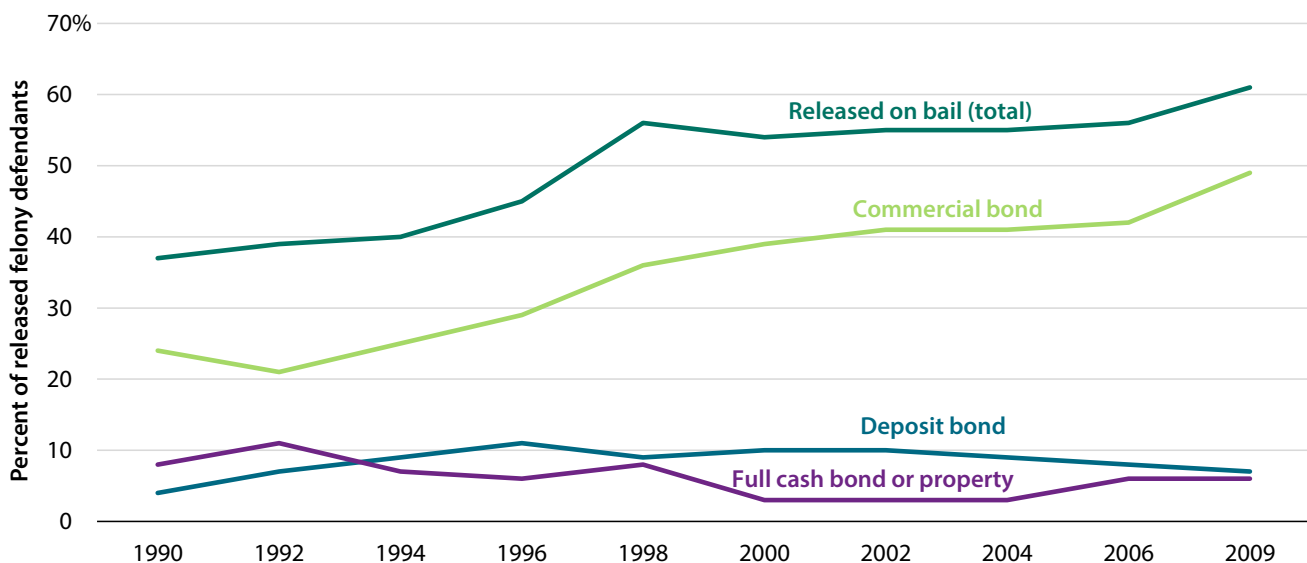
associated with an increased likelihood of being released on recognizance as well as lower assigned bail amounts (Worden et al. 2018; Colbert, Paternoster, and Bushway 2002). Given that initial bail hearings typically only last for a few minutes (Stevenson 2018), it can be difficult for a defendant to effectively advocate for themselves.

Because judges have considerable discretion and are expected to make quick evaluations of risk for each bail candidate, there is also potential for racial bias in the pretrial system. Research by economists David Arnold, Will Dobbie, and Crystal Yang (2018), exploiting random variation in the assignment of judges to different cases, finds that, compared to white defendants, black defendants are 3.6 percentage points more likely to be assigned bail and on average receive bail amounts that are about \$10,000 higher.

PRIVATE BAIL BONDS

In light of the challenges that bail presents for a substantial share of the population, private bail bonds (also called commercial bonds) are often used in lieu of direct bail payments from individuals. Figure 6 shows how the different ways in which felony defendants obtain financial release have changed over time. From 1990 to 2009, the share of released defendants who relied on commercial bail bonds more than doubled, rising from 24 to 49 percent. Commercial bonds account for all the increase in total defendants who are able to secure financial release. Conversely, the share of defendants who are able to post a bond using their own assets (whether

FIGURE 6.
Use of Financial Conditions for Pretrial Release, 1990–2009



Source: Felony Defendants in Large Urban Counties, 1990–2009.
Note: Data are for state court felony defendants in the 75 largest urban counties.

through cash or deposit bonds, as described in box 1) has remained consistently low. This also means that a far higher share of those released on bail have relied on commercial bonds. In 1990, 65 percent of those released on financial bond were using commercial bonds; by 2009, that figure was 80 percent.

The private bail bond industry has been a key part of the pretrial justice system since the early 1900s, and today it constitutes an economically significant industry (Dabney, Page, and Topalli 2017). In 2017 private bail bond companies secured \$15.9 billion in bonds, collecting about \$1.3 billion in premiums (Williams 2018). Commercial bonds provide an alternative to defendants who are not able to post bail on their own. In exchange for a nonrefundable premium (typically 10 percent of bail),⁶ a private bail bond company will post bail on behalf of the defendant and assume the risk of losing the posted bail if the defendant fails to appear in court (Widgery 2013). This exchange allows defendants to avoid pretrial detention, while creating incentives for the bail bond agent to screen applicants (rejecting those deemed excessively high risk) and take actions that raise the probability of defendants appearing in court.

Private bond agents can take financial steps to minimize their risk exposure. One is to require a cosigner (normally a friend or family member) who will be obligated to pay the posted bail in the event that a defendant does not appear in court (Clipper, Morris, and Russell-Kaplan 2017). In addition, bond agents often accept property as collateral, either from defendants or cosigners (Helland and Tabarrok 2004), which allows agents more flexibility when bailing out defendants. Private bond agents can also take nonfinancial steps to reduce their risk exposure. Bond agents will maintain regular contact with defendants to notify them about upcoming court dates and can serve as a well-informed guide for those who have difficulty navigating the pretrial process on their own. Many will also collect extensive data on each defendant and their network so that defendants can be easily tracked down if they flee.

Evaluating the Social Impact of the Bail Bond Industry

The main social benefit of the private bail bond industry is that it screens and monitors defendants, facilitating a more efficient selection of defendants for pretrial release, and raising the likelihood that those released will be accountable to the criminal justice system. Indeed, commercial bonds appear more effective than other forms of release when it comes to ensuring that defendants appear in court (Helland and Tabarrok 2004).⁷ In comparison with courts, bail bond agents might have more capacity and a more direct incentive to screen for defendants who are low flight risks. Where courts assign bail that is disproportionate to a defendant's risk level, bail bond agents might be able to counterbalance these

effects by offering actuarially fair rates (Ayres and Waldfoegel 1994). Bail bond agents also have significantly more scope for action than do courts when monitoring and compelling the appearance of defendants (Helland and Tabarrok 2004). For example, bail bond companies can hire bail recovery agents (sometimes called bounty hunters) to capture fleeing defendants (Johnson and Stevens 2013).

Proponents of the bail bond industry argue that it gives judges an additional tool so that they can avoid having to choose between the potentially high-risk option of releasing a defendant on recognizance and the overly punitive option of detaining a defendant (Tabarrok 2011). To the extent that commercial bonds substitute for pretrial detention, the increasing prevalence of commercial bonds could be generating substantial cost savings. Importantly, however, commercial bonds are not the only alternatives available to courts; programs that feature pretrial supervision or pretrial services might also serve as an accountable form of release (functioning somewhat like a nonfinancial analogue to commercial bonds) (Arnold Foundation 2013; Schnacke, Jones, and Wilderman 2012).

Of course, the most direct cost associated with commercial bonds is the 10 percent fee attached to most contracts. This means that any defendant assigned a bail amount that they cannot post out of their own assets is left to effectively pay a 10 percent fine for having been arrested, whether they were guilty or not. In cases where the median bail—\$11,700—is set, a 10 percent fee would exceed the median financial assets of those defendants in the bottom quintile. Simply being required to post bail could impose substantial financial hardship on families, regardless of guilt. Whether a commercial bond system allows the government to efficiently shift some costs of decisionmaking and monitoring out of the justice system, these costs wind up being borne by those who are arrested, including those that are not guilty.

There are also other potential costs, albeit ones that can be difficult to study comprehensively. For example, there are numerous reports of bail bond agents intimidating a defendant's cosigners and family members to ensure compliance or payment (Covert 2017). Bail bond companies have also been criticized for coercing vulnerable defendants and cosigners into predatory contracts; a review of bail bond contracts in California found that many impose extra fees on top of the premium, including late fees and compensation for expenses incurred while searching for the defendant (which, in some cases, includes employee salaries) (UCLA School of Law 2017). Given the difficult circumstances—defendants must choose between accepting offered terms or remaining in jail for an indeterminate length of time—defendants and their cosigners may not always be in the position to negotiate fairly over these conditions.⁸

Commercial bonds may also crowd out nonfinancial forms of release that could potentially be effective alternatives to monetary bail. Reports by both the American Civil Liberties Union and the Justice Policy Institute document how lobbying by the private bail bond industry may have played a role in the failure of legislation that would have funded alternative pretrial services for defendants in California, Colorado, North Carolina, and Hawaii (ACLU 2017; Justice Policy Institute 2012). Even without any changes to state law, courts may be more willing to impose bail when commercial bonds are available.

Evaluating the Impact of Bail and Pretrial Detention

Having described the increasing prevalence of bail and some implications of this growth, we now turn to the research literature that evaluates the impact of bail for individuals and the overall economy.

APPEARANCE IN COURT AND PRETRIAL MISCONDUCT

The primary purpose of bail is to ensure that defendants successfully show up to court when required. Beginning in the 1970s, the use of bail was expanded to address public safety concerns (Dabney, Page, and Topalli 2017). As mentioned

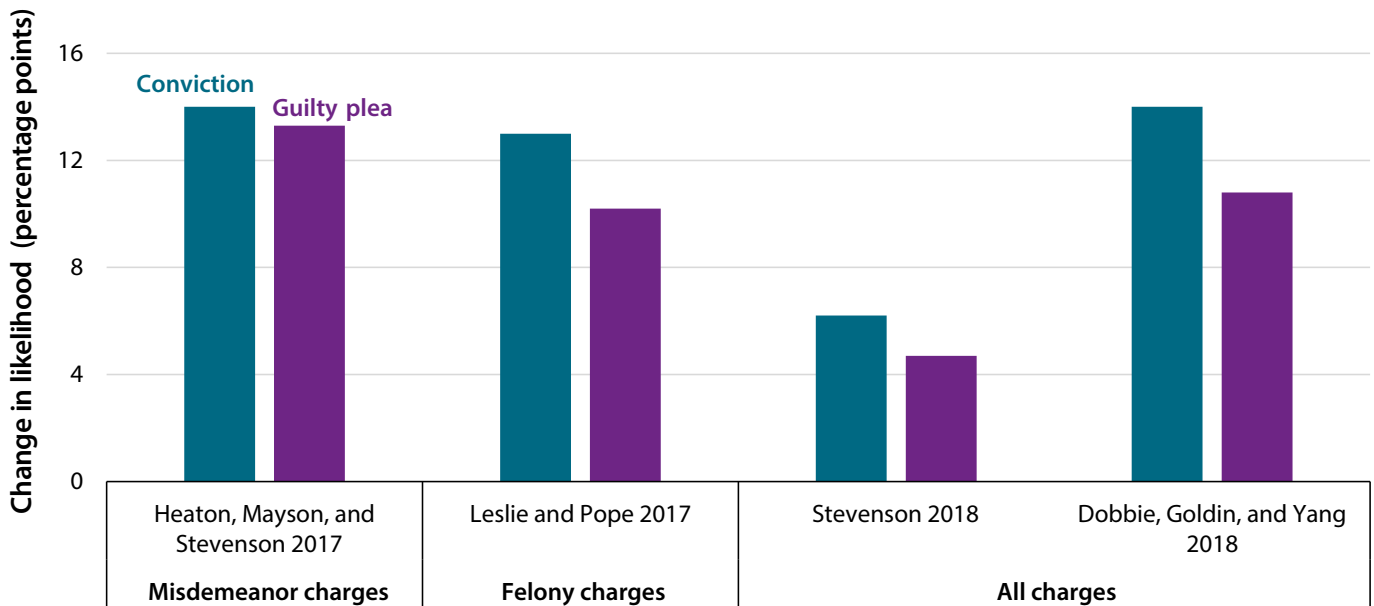
above, commercial bonds tend to be associated with the highest court appearance rates, followed by cash bonds, which are in turn followed by nonfinancial release (Clipper, Morris, and Russell-Kaplan 2017; Helland and Tabarrok 2004). These relationships are consistent with the incentives of the bail bonds agents and defendants.

It is less clear how bail and bail bonds should affect pretrial misconduct. In some states, bail is not necessarily forfeited when a defendant commits a new crime (Pirius 2018), implying that private bail bondsmen do not often have an incentive to prevent rearrests. A rearrest might even be preferable for bond agents because it safeguards their initial investment and could result in new bonds being posted.

CONVICTION RATES

The difference between being detained or released pretrial has important consequences for the rest of a defendant’s trial outcomes. As shown in figure 7, several recent studies spanning a variety of jurisdictions use rigorous, quasi-experimental methods—generally rooted in the assignment of judges to cases—to find that pretrial detention leads to a higher likelihood of conviction (Dobbie, Goldin, and Yang 2018; Heaton, Mayson, and Stevenson 2017; Leslie and Pope 2017; Stevenson 2018). This effect is almost exclusively driven by an increased likelihood of pleading guilty. Given the uncertainty that detained defendants face while in jail, there are strong incentives to plead guilty and thereby shorten or

FIGURE 7.
Effects of Pretrial Detention on Case Outcomes



Source: Dobbie, Goldin, and Yang 2018; Heaton, Mayson, and Stevenson 2017; Leslie and Pope 2017; Stevenson 2018.
Note: Heaton, Mayson, and Stevenson (2017) do not rely on the same methodology as the other papers, and instead estimate a linear probability model with a comprehensive set of controls.

end one's time in jail (Blume and Helm 2014). This may be particularly true for defendants whose jobs are at risk or whose children require care (Leslie and Pope 2017). In addition, if defendants are credited for time served, those that have been incarcerated for a prolonged period may in some cases be able to secure their own release by pleading guilty sooner than waiting for a trial. Finally, imprisoned defendants are much less capable of preparing an adequate defense for themselves and communicating with their counsel.

These insights highlight the risk of a monetary system of bail that naturally detains the more disadvantaged. In their 2016 study of criminal cases in Philadelphia, Arpit Gupta, Christopher Hansman, and Ethan Frenchman (2016) find that the assignment of monetary bail increases the likelihood of conviction by 6 percentage points. Looking only at indigent defendants in New York City, Kristian Lum, Erwin Ma, and Mike Baiocchi (2017) find that assigning bail to 100 defendants results in 34 additional convictions or guilty pleas than if the defendants are released. In addition, detained defendants are less likely to get their charges reduced as part of plea deals, which significantly affects their criminal record and consequently worsens their pretrial outcomes in any future hearings (Leslie and Pope 2017).

An increased number of convictions caused by monetary bail carries its own array of social costs. Past incarceration decreases wages by 11 percent, reduces annual employment by nine weeks, and decreases annual earnings by 40 percent (Pew Charitable Trusts 2010).

The Broader Impact of Pretrial Release or Detention

Recent research by Will Dobbie, Jacob Goldin, and Crystal Yang (2018) addresses pretrial outcomes more specifically and shows that released defendants are 11.3 percentage points more likely to have any income two years after their bail hearing and 9.4 percentage points more likely to be formally employed 3 to 4 years after conviction. Released defendants also receive, on average, an additional \$293 in unemployment insurance benefits as well as \$209 more from the Earned Income Tax Credit. These effects are linked to the assignment of monetary bail, which the authors find to be the primary mechanism that determines whether the marginal defendant is released.

Dobbie, Goldin, and Yang attribute the benefits of pretrial release to the resulting decreased likelihood of having a criminal record. Criminal records limit economic opportunity in a variety of ways that go beyond the response of employers. Public policies often restrict the civil rights, employment opportunities, and eligibility for public benefits of people with criminal records (Chin 2012). Previous Hamilton Project papers and proposals have discussed the long-lasting consequences that follow a criminal conviction, along with ways to reduce excess punitiveness in the criminal justice system (Schanzenbach et al. 2016; Doleac 2016; Piehl 2016).

Pretrial detainees are also more likely to be charged with a new offense in subsequent years (Gupta, Hansman, and Frenchman 2016; Lowenkamp, VanNostrand, and Holsinger

TABLE 1. Calculations for the Direct Cost of Bail

	Calculation	Estimate
Daily count of inmates held on bail	Number of pretrial detainees [458,600] × percent of detainees held on bail [0.9]	412,740 inmates
Annual cost of incarceration per prisoner	CoreCivic revenue per compensated person-day [\$77.67] × 365	\$28,382
Annual lost output per prisoner ⁹	Average pretrial earnings [\$4,873] ÷ labor share [0.567]	\$8,590
Annual cost of bail	Daily count of inmates held on bail × (annual cost of incarceration per prisoner + annual lost output per prisoner)	\$15.26 billion

Source: BLS 2018; CoreCivic 2018; Dobbie, Goldin, and Yang 2018; Jail Inmates (BJS 2018); authors' calculations.



2013). One study finds that pretrial detention can lead to a 32.2 percent increase in the likelihood of future felony charges (Heaton, Mayson, and Stevenson 2017). Importantly, labor market outcomes and recidivism are not wholly unrelated to one another, because recidivism can be a response to economic hardship. People with criminal records who receive clearances to work experience a decrease of 2.2 and 4.2 percentage points, respectively, in the likelihood of a subsequent arrest within 1 and 3 years (Denver, Siwach, and Bushway 2017).

COSTS AND BENEFITS OF PRETRIAL DETENTION AND THE USE OF BAIL

Over 90 percent of felony defendants who are detained pretrial are eligible for financial bail, but have not posted bail (Reaves 2013).¹⁰ Assuming that the same share of pretrial detainees in general are held on bail, there are more than 400,000 people in jail whom a judge would have allowed to be released had they been able to post bail.

The direct cost of keeping this many people in jail is nontrivial. Average daily costs per inmate can widely vary:

the average daily cost per jail inmate was reported to be as low as \$48 in Cherokee County, GA and as high as \$571 in New York City (Henrichson, Rinaldi, and Delaney 2015).¹¹ An earlier estimate maintained that pretrial detainees cost taxpayers about \$9 billion annually (DOJ 2011). One simple way to estimate the cost of each pretrial detainee is to look at how much state governments compensate private prisons to keep one individual for one day. One of the largest private corrections companies, CoreCivic (2018), reported receiving \$77.76 on average for each compensated person-day in 2018. At this price point, the pretrial detainee population costs taxpayers roughly \$11.71 billion each year. If we also consider the amount of output that is forgone due to imprisonment, these costs rise to \$15.26 billion each year (see table 1 for the calculations).

The direct costs of pretrial detention are sizable, but it is important to remember that pretrial release comes with its own costs. When defendants fail to appear, courts need to allocate extra resources to resolve the resulting warrants. Moreover, pretrial release carries the risk of allowing defendants the freedom to commit new crimes. These

BOX 3.

Recent Reform Movements

In the early 1990s, Washington, D.C., was one of the first jurisdictions to limit the use of bail. Over the past few years, a number of states—such as Alaska, Kentucky, and New Jersey—have begun to follow in Washington’s footsteps and now rely more exclusively on pretrial risk assessment than on bail in an effort to reduce the pretrial population (Marimow 2016; Foderaro 2017; Mayse 2018; Brooks 2017). Most recently, California voted to fully abolish bail, with changes set to begin in October 2019 (Fuller 2018).

Bail reform typically encompasses more than simply outlawing the practice. Often, reforms are bundled with pretrial risk assessment technology or pretrial services that can maintain contact with defendants. Without the proper infrastructure to supplant monetary bail, reforms might have unintended consequences. After a 2017 rule change instructing Maryland judges to use bail only as a last resort, the pretrial jail population in Maryland actually increased because judges switched from assigning bail to holding defendants without the possibility of bail (Blumauer et al. 2018). Both proponents and critics of monetary bail in California have expressed concerns that a similar phenomenon might occur after the most recent reforms (Raphling 2018).

Giving judges access to more accountable forms of release might prevent overly cautious detainment practices. Reforms in New Jersey have included a suite of changes, including a Pretrial Services Program, with varying levels of supervision for defendants depending on their assessed riskiness (New Jersey Courts 2017). Since their implementation in 2017, these changes have been followed by reductions in the pretrial jail population as well a decrease in violent offenses (though causal results have not yet been established) (Ibarra 2018).

On a more local level, communities and public defender networks have also worked to minimize the cost of bail through the establishment of bail funds. Serving somewhat like a nonprofit (and sometimes government-sponsored) bail bond entity, bail funds post bail and provide pretrial assistance for indigent defendants without requiring any premiums. Though many of these local bail funds were established in recent years and thus have a limited history, they report high rates of court appearances (Abernathy 2017–18).

are difficult to compare directly with the costs of pretrial detention, but they are important considerations nonetheless. Indirect effects from pretrial detention must also be accounted for—namely, the increased likelihood of conviction. Among other collateral consequences, a criminal conviction increases an individual’s likelihood of future crime and severely limits their future earnings (Schanzenbach et al. 2016).

Though all these factors are difficult to measure, some studies have attempted to estimate the social value of a decision to release, rather than detain, a defendant. Dobbie, Goldin, and Yang (2018) consider the direct costs of jail avoided, the increased likelihood of crime pretrial, the decreased likelihood of future crime, the increased lifetime earnings, and the increased likelihood of failures to appear as a result of pretrial release. With each defendant released, these costs and benefits balance out to a social benefit ranging from \$55,143 to \$99,125.

Yet another study, by Shima Baughman (2017), evaluates pretrial detention and balances, among other factors, a decreased likelihood of crime pretrial and a decreased likelihood of failures to appear with costs to detainees and society that include a loss of housing (typically, in the form of forfeited deposits), child-care costs, and operational detention costs. Baughman finds that 28 percent fewer defendants could be detained pretrial without significant risk to the public, thereby generating substantial net social benefits. See box 3 for a discussion of recent initiatives to reform the system of monetary bail.

Conclusion

Bail has been a growing part of the criminal justice system. Nonfinancial release has been shrinking, and more and more defendants are using commercial bonds as a way to secure their release while awaiting trial. Bail can make it more likely that defendants will reappear in court, and as such reduce costs for the criminal justice system. There are, however, extensive costs. Beyond the direct costs of posting the bail, either from paying a fee or having to liquidate assets, widespread use of bail has meant that many people are incarcerated because they are unable to post bail.

Nearly half a million people are in jail at any given time without having been convicted of a crime. The overwhelming majority of these people are eligible to be released—that is, a judge has deemed that they are safe to be released—but are unable to raise the funds for their release. The impact of monetary bail falls disproportionately on those who are low-income, cannot post bail out of liquid assets, and thus often remain in jail for extended periods. Furthermore, as a growing body of literature has shown, the assignment of financial bail increases the likelihood of conviction due to guilty pleas, and the costs—to both individuals and society—from extra convictions can be quite high.

Endnotes

1. Some judges might set high bail amounts—rather than deny bail altogether—when a defendant is a flight or safety risk. We address this possibility later on in our discussion of bail and the burden it places on low-income defendants.
2. Though the decline in crime coincided with an increase in incarceration, the relationship between the two factors is complicated, as evidenced by the fact that many states with similar rates of violent crime have different rates of incarceration (Schanzenbach et al. 2016).
3. In 1990 and 2009, the distribution of offense type was roughly similar, with property and drug offenses being more common and public-order offenses being the least common.
4. The annual income calculation relies on data from the Survey of Inmates in Local Jails, and includes income from welfare, other public assistance, and illegal sources. The study focuses on inmates ages 23–39 (the 25th and 75th percentile of age for incarcerated people). Values are adjusted to 2018 dollars using the CPI-U-RS.
5. Values reported are conditional on holding the relevant type of asset. It is important to note that many financial and nonfinancial assets are not easily used to pay for bail. Frequently, these assets are either difficult to liquidate into cash (e.g., a house or a vehicle) or have already been earmarked to cover a different debt. An individual's total assets are consequently a generous estimator of their ability to pay. The median net worth of families in the bottom quintile of income is \$6,700.
6. The provisions for bail bond premiums differ by state. Some states, such as Arkansas (2017) and Mississippi (2017), require that the premium be 10 percent of the bail set. Other states, such as Michigan (2017) and Tennessee (2017), simply require that the premium not exceed 10 percent. Still others, such as Virginia (2017), require at least 10 percent with a maximum of 15 percent.
7. An important caveat is that not all failures to appear in court constitute an intentional effort to avoid a trial. In many cases, defendants miss court dates due to inattention or difficulty commuting to court (Schnacke, Jones, and Wilderman 2012).
8. These problems may be exacerbated by a lack of industry regulation. When recovering missing defendants, bail recovery agents are often not restricted by strong procedural safeguards (Johnson and Stevens 2013).
9. We use the average earnings for detained prisoners listed in table 1 of Dobbie, Goldin, and Yang (2018). The average earnings are strikingly low, but this is because only 32 percent of the sample is employed. Conditioning on employment, the average detainee has a pretrial income of roughly \$14,000. While not based on a nationally representative sample, this is the only earnings estimate to our knowledge that captures the correct pretrial population.
10. The percentage of detainees held on bail is taken from a 2009 Bureau of Justice Statistics report on felony defendants in the pretrial system. More representative national statistics are not available, but this rate matches that of the sample used by Leslie and Pope (2017), who report a rate of 93 percent for felony defendants and 95 percent for misdemeanor defendants, as well as that of Dobbie, Goldin, and Yang (2018), who report a rate of 94 percent for all defendants.
11. Reported jail costs might vary due to differences in reporting—for example, Cherokee County does not include capital expenditures or medical care costs whereas New York City does.

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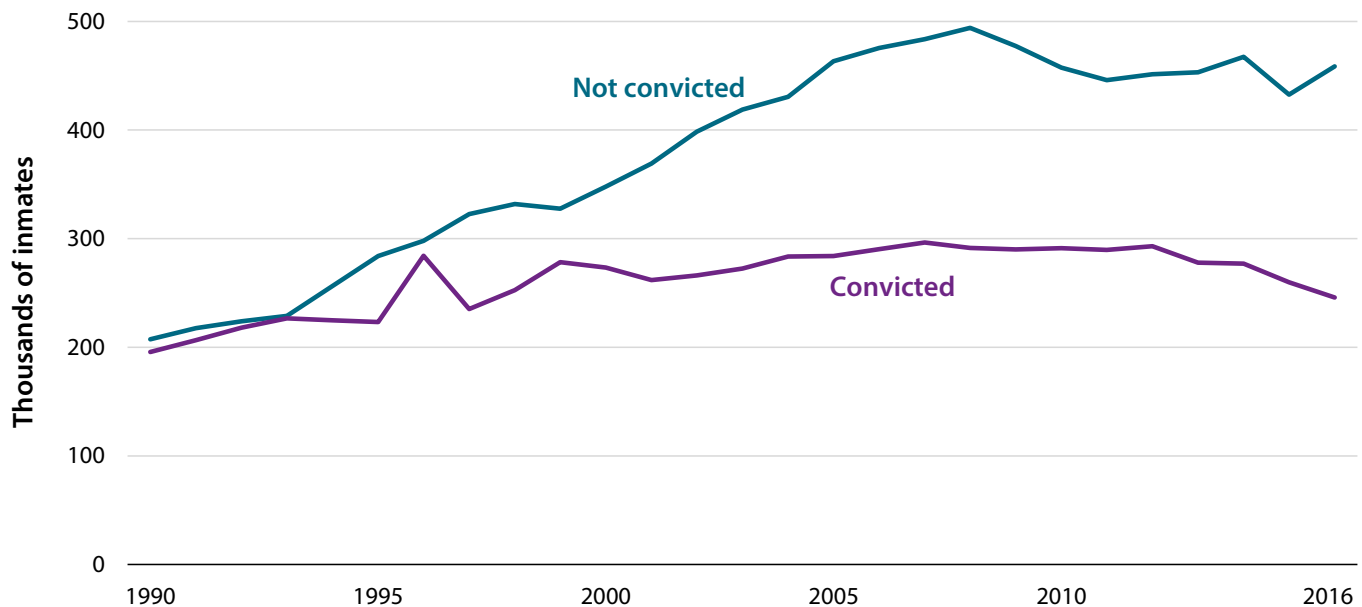
JAY SHAMBAUGH
Director

Abstract

Two thirds of the jail population and one quarter of the total incarcerated population consist of pretrial detainees. These shares have risen over time, fueling questions about the impacts of pretrial detention and the system of monetary bail that largely governs it. New research indicates that pretrial detention has a substantially negative economic impact on individuals, disrupting their labor market activities and causing increased recidivism. In addition to summarizing this research, we characterize key trends in pretrial detention and the bail system: increasing use of monetary bail, increasing time from arrest to adjudication, and rising median bail requirements, all of which have occurred across major offense categories. We conclude by discussing costs and benefits of monetary bail and the bail bonds industry.

FIGURE 1A.

Number of Jail Inmates by Conviction Status, 1990–2016



Source: Jail Inmates (Bureau of Justice Statistics [BJS] 1991–2018).

Note: The data show the jail inmate population confined on either the last weekday in June or on December 31. An individual is defined as not convicted if they are awaiting court action on their current charge, and as convicted if they are serving a sentence in jail, awaiting a sentence, or serving time for a probation or parole violation. Data are not available in 1994.

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