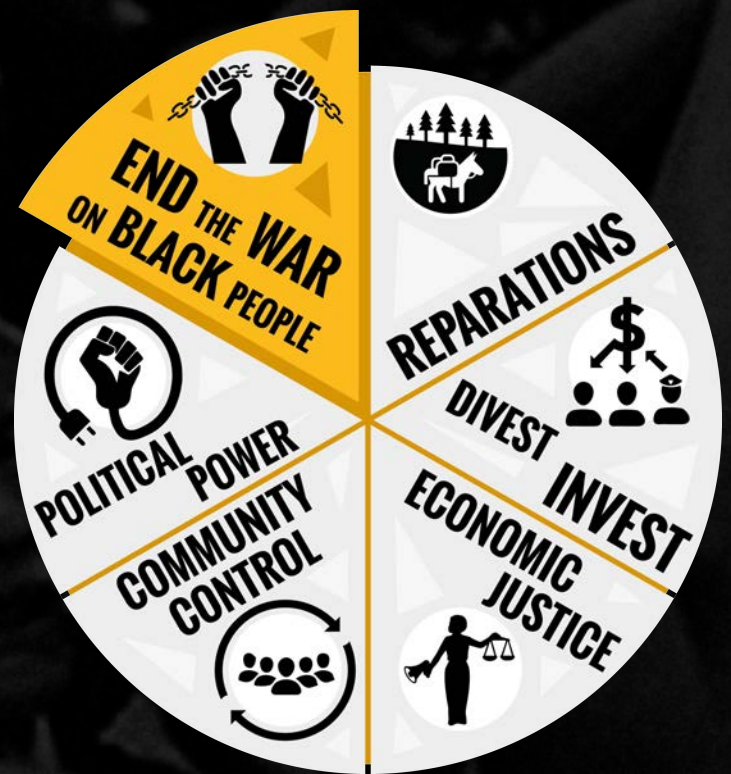


A VISION FOR BLACK LIVES

POLICY DEMANDS FOR BLACK POWER, FREEDOM, & JUSTICE

AN **END** TO **PRETRIAL**
DETENTION, MONEY BAIL,
RISK ASSESSMENT,
MANDATORY FINES, **FEES**,
COURT SURCHARGES,
AND “**DEFENDANT**
FUNDED” **COURT**
PROCEEDINGS



POLICY PLATFORM 1 OF 6

POLICY BRIEF 11 of 13

M4BL

THE MOVEMENT
FOR BLACK LIVES

AN END TO PRETRIAL DETENTION, MONEY BAIL, RISK ASSESSMENT, MANDATORY FINES, FEES, COURT SURCHARGES, AND “DEFENDANT FUNDED” COURT PROCEEDINGS SUMMARY



THE ISSUE:

The use of pretrial detention and money bail has contributed to the 500% explosion in U.S. jail populations over the last forty years. Tonight around 600,000 people will sleep in a local jail, even though over 75%, or about 462,000 people, have not been convicted of any crime. Most are caged, in some cases for periods of months or years, because they are unable to post bail. Others are there because they were deemed a risk to themselves or their communities, often by racially biased risk assessment tools. Still others are there because they were unable to pay a fee or fine imposed by a judge in a criminal or civil proceeding.

People incarcerated pretrial without bail are often held based on presumptions of dangerousness rooted in anti-Blackness, ableism, homophobia, and transphobia, risk assessments that rely on data that is based on - and reinforces - existing racial and economic disparities in policing, employment, and housing, and mandatory detention of undocumented migrants. Once held on bail, people are more likely to plead guilty to avoid long pretrial detention.

Pretrial detention takes a devastating toll on criminalized people and communities, including severe financial hardship; physical, sexual, and other forms of violence in jails and detention centers; denial of necessary health care or treatment; contact with immigration authorities leading to potential detention and deportation; and loss of housing, employment, and child custody.

It also costs communities \$38 million dollars a day.

In addition to the financial burdens of bail, criminalized populations are subject to criminal fees and fines, further impoverishing working class, low- and no-income Black people and creating additional risks of incarceration, loss of licenses, asset seizure, and credit and child welfare as a consequence of inability to pay.

THE DEMAND:

- ❖ End money bail and pretrial detention
- ❖ Eliminate risk assessments
- ❖ Eliminate criminal punishment fees and fines

KEY FEDERAL LEGISLATION:

- ❖ *People's Justice Guarantee*



WHAT IS THE PROBLEM?

BAIL AND PRETRIAL DETENTION

Today, the United States is a global leader in caging people. The use of pretrial detention and money bail has contributed to the 500% explosion in U.S. jail and prison populations over the last forty years.

Tonight around 600,000 people will sleep in a local jail. Over 75%, or about 462,000 people, have not been convicted of any crime.

The majority of these people are in cages because they could not afford to pay bail. Others are there because they were deemed a risk to themselves or their communities. Still others are there because they were unable to pay a fee or fine imposed by a judge in a criminal or civil proceeding.

Pretrial detention creates immeasurable harm, including periods of prolonged incarceration, accompanied by physical, sexual, and other forms of violence, such as denial of necessary health care or treatment, and loss of housing, employment, and child custody.

Pretrial detention has been shown to limit the ability of people accused of a crime to fight the charges against them, adversely influence judges and juries, and reduce the chances of a favorable resolution of a case.

Pretrial detention also creates pressure to plead guilty in the hopes of avoiding long periods of incarceration before a case is even heard: 90% of people held pretrial plead guilty to an offense. Pretrial detention also costs us \$38 million every day.

Bail is a guarantee (usually in the form of money or property as collateral) required by a judge, magistrate, or bail commissioner as a condition of release from pretrial detention to ensure that a person accused of a crime will return to court to answer the charges against them. If the person is unable to post the bail set, they will be incarcerated until their case comes to trial, or is resolved by a plea or dismissal, in some cases a period of months or years. The U.S. Constitution guarantees that any bail set shall be “reasonable,” and should not result in pretrial detention simply due to inability to pay. However, most jurisdictions do not conduct evaluations to determine whether bails set by judges are “reasonable” for any given individual.

Many factors contribute to unequal bail outcomes for Black people including: judicial bias, where judges believe racial stereotypes that Black people are more dangerous; to centuries of economic discrimination and hardship that make it less likely for Black people be able to afford bail; to prosecutors trumping up charges for Black people.

Judges are 2.4 times more likely to detain Black people than white people who face the same charges. And when judges do set bail, on average it is \$7,281 higher for Black people than white people for the same charges. Additionally, Black and Latinx people are twice as likely as white people to remain in jail because they cannot afford to pay their bail.

The burden of posting bail and paying exorbitant fees to bail bonds agencies falls on individuals already struggling to survive.

Low- and no-income people who are arrested spend an average of 23 days in a cage before their day in court, simply because they often cannot afford to pay bail.

For instance, according to a 2010 Human Rights Watch report, bail was set at \$1,000 or less in 72.3% of misdemeanor cases in New York. Many defendants still could not post bail, and were incarcerated pretrial as a result. For homeless, no- or low-income people, disabled people, migrants, and people who live paycheck to paycheck, even low bails can pose insurmountable obstacles to release. Even a short stint in jail can have devastating financial and other consequences, including losing a job, shelter bed, home, or having children taken away, regardless of whether a person is ultimately convicted.

Women bear a disproportionate burden of paying bail for themselves and their family members and loved ones, often sacrificing food and other basic needs, education, and working multiple jobs in order to cover the costs.

- ❖ **A national community-based survey found that in 63% of cases**, family members on the outside were primarily responsible for court-related costs associated with conviction. Of the family members primarily responsible for these costs, 83% were women.
- ❖ According to the same survey, 35% of women who have paid bail or court fees or missed economic opportunities due to incarceration (their own or that of a loved one) have faced homelessness, eviction, or the inability to pay rent or a mortgage as a result. Fifty percent (50%) of women who have owed money to a bail bond agency have faced housing insecurity as a result.

Migrants, who may be unable to access employment in formal economies, are subject to higher bonds in immigration proceedings, averaging \$8000–\$10,000.

In most cases, migrants are required to pay cash up front instead of being able to pay 10% to a bail bond agency in the same way defendants can in criminal proceedings, and only U.S. citizens or lawful permanent residents can post it. Migrants often face significant obstacles to retrieving the funds at the conclusion of their cases: **ICE is currently holding over \$200 million in bonds posted by migrants**, a \$57.3 million increase between September 2014 and July 2018. Additionally, migrants may successfully post bond in a criminal case only to be taken into custody for an immigration proceeding and lose the bond posted in the criminal case.



Bail is unnecessary to achieve its stated purpose—to ensure that people return to court to answer charges against them. *Study after study shows that most people come back to court whether they pay bail, are released on their own recognizance, or are released with conditions.* For example, in Santa Clara County, California, more than 95% of defendants returned to court when they were released on their own recognizance, and in Washington, DC, at least 87% of defendants released pretrial, without bail, make their court dates. Studies show that easily implemented practices such as text reminders and transportation and childcare support dramatically increase the chances that people will be able to return to court.

Bail can also be denied and pretrial detention mandated on the grounds that a person presents a danger to the community. Pretrial detention decisions, **including those based on “risk assessment tools” (RATs) and algorithms** rely on data that is based on - and reinforces - existing racial and economic disparities in policing, employment, and housing. As a result, use of RATs has discriminatory impacts: Black people accused of a crime are 44% more likely to be denied bail and incarcerated in jail pretrial than white defendants under similar legal circumstances.

Black migrants, homeless and low-income, disabled, and LGBTQ people are particularly likely to be subject to pre-trial detention because they experience high levels of police contact and arrest, structural exclusion

from housing and employment, and may be less likely to be able to demonstrate family and community ties. People with mental disabilities and unmet mental health needs are often detained on the grounds that they pose a danger to themselves—even though a jail cell is *literally the worst place to be when experiencing a mental health crisis.* Disabled people experience high levels of violence and abuse and medical neglect in jails, including torturous use of chemical and physical restraints, physical and sexual violence, and extended solitary confinement, all of which only aggravate conditions that led to contact with the criminal punishment system.



Since the Vision for Black Lives was first released in 2015, many jurisdictions across the country have embarked on bail reform. However, most “reforms” only further entrench the current racist and classist system. *Reforms that include risk assessment tools fall short of our demands to drastically decrease the number of people held pretrial and to eliminate racial disparities in the pretrial system.* Additionally, even when people are released pretrial, *many jurisdictions continue to impose controlling, coercive, costly and often impossible pretrial conditions, including electronic shackling, which simply make people’s homes into jails at their own expense.* Still other reforms create for profit pretrial services, where the same companies that have made billions off of the caging of Black people are now administering drug tests and other mandated “services” paid for by people charged with crimes, who are then often forced to choose between supporting their families and paying their pretrial bills.

FEES AND FINES

The Department of Justice investigation into the Ferguson police department prompted by the Ferguson Uprising uncovered the growing practice of funding the operation of the criminal punishment system using funds extracted from people accused of crimes—the majority of whom are low- or no-income and working class people of color, representing yet another form of structural economic oppression and exclusion imposed on Black communities.

According to a 2017 U.S. Commission on Civil Rights report, municipalities that rely heavily on revenue from fines and fees have a higher than average percentage of Black populations, and residents living in the poorest zip codes of a city, who are disproportionately Black, account for the vast majority of traffic infractions. The Commission also noted that *60% of people in the U.S. do not have enough money in savings to cover a \$500 emergency.* For people who cannot afford to pay for fees and fines imposed in criminal cases, *the consequences of criminal punishment debt can impact credit scores, result in the loss of a driver’s license, and lead to incarceration, job loss, and family separation.* The consequences of fees and fines *persist even when particular offenses are decriminalized where civil penalties are substituted.*



THE DEMAND

WE DEMAND THAT POLICYMAKERS:

- ❖ End pretrial detention and money bail, electronic shackling, and unnecessary, burdensome, restrictive, and often impossible conditions as a condition of release from pretrial detention.
- ❖ Ensure that people have the support they need to return to court to fight the cases against them, including text reminders of court dates, transportation, and childcare support.
- ❖ Redirect funds used to incarcerate people pretrial to addressing individual and community conditions that led to contact with the criminal legal system in the first place. This includes creating space and resources for communities to drive investments into long-term funding of community-based providers of needed services, in ways that do not turn community organizations into enforcers of burdensome and unnecessary legal restrictions, or collectors of intrusive data for the court.
- ❖ Reduce racial disparities throughout the system. Any reform worth supporting must address the long history of racial disparities in the criminal punishment system and work to reverse them.
- ❖ Enact comprehensive pretrial reforms including: speedy assessment and release within 24 hours; the right to a speedy trial; the right to counsel at first appearances; and improvement in conditions for anyone who is detained; and decriminalization.





THE DEMAND

- ❖ Ensure clear and transparent enforcement mechanisms that include data collection, public posting of all rules, public education campaigns that ensure impacted communities are aware of any changes, and a commitment to writing all policy in plain language.
- ❖ Eliminate criminal and civil fees and fines, including costs imposed in connection with pretrial conditions of release.
- ❖ Prohibit all law enforcement collaboration with ICE, including courts, jails, and detention centers, and ban immigration authorities from all government offices, courthouses, schools, daycares, religious institutions, and medical facilities.

HOW DOES THIS SOLUTION ADDRESS THE SPECIFIC NEEDS OF SOME OF THE MOST MARGINALIZED BLACK PEOPLE?

- ❖ Black women suffer disproportionately from the trappings of bail. Seventy-two percent of incarcerated women made less than \$22,000 annually prior to arrest, as compared to 51% of men; and the median income of incarcerated Black women prior to arrest was \$12,735 in 2014.
- ❖ Homeless, low- and no-income people, including disabled and LGBTQ people and migrants, are among the most likely to be subject to pretrial detention.
- ❖ After paying bail (if they are offered the opportunity to post bail), undocumented people are often funneled into the hands of ICE.



FEDERAL ACTION:

- ❖ Pass federal legislation to eliminate federal pretrial detention and bail, and use savings to fund strategies for pretrial release which have been proven to show no increased risk to public safety or risk of failure to appear at a designated court date, and to meet the needs of criminalized individuals and communities. *Legislation should not include the use of risk assessments.* The federal government can also encourage states, through funding incentives, to end local practices of pretrial detention and money bail.
- ❖ Pass the ***People's Justice Guarantee***, which would end the use of money bail and the imposition of unaffordable fines and fees.
- ❖ Substantially increase funding for indigent defense.
- ❖ Pass legislation mandating DOJ investigations of courts and district attorney offices that seek and impose unreasonable bail fines and fees, as well as restrictive and expensive conditions of pretrial release, or who jail individuals for their failure to post bail or pay fines and fees in an unconstitutional manner.
- ❖ DOJ should coordinate and publicly share data collection and analysis of court fines and fees across the country. Such data collection should include the race, gender, and other relevant demographic information for people assessed fines and fees, to determine whether the assessment practices have a disparate impact particular communities.



STATE ACTION:

- ❖ Ban pretrial detention, cash bail, electronic monitoring, and profiteering in the pretrial context. Savings from abolishing pretrial detention should be captured to fund strategies for pretrial release and community-based responses to harm. Legislation should not include risk assessment. Alternatively, legislation can require local and county officials to reduce local jail populations by eliminating the bail schedule and instead put in place policies like pretrial release and pre-arrest diversion strategies.
- ❖ Mandate judges to prioritize pretrial release strategies while protecting the employment, housing, and education of persons awaiting trial.
- ❖ Pass legislation eliminating suspension of driver's licenses, asset seizures, or adverse credit reports for failure to pay criminal fines and fees.
- ❖ Establish and fully fund a program to provide counsel at no cost at the point of imposition of a fine or fee, and at the point of indigency determination as appropriate.
- ❖ Institute clear and effective procedures to provide notice to individuals of their rights when charged fines and fees, including the right to request appointed counsel, to a determination of ability to pay, to fine and fee alternatives, and to legal processes such as compliance hearings. Where community service is used as an alternative to paying fines and fees, effective accountability mechanisms should apply to ensure that associated conditions, such as transportation to such service or availability of child care, sexual harassment, and occupational health and safety violations do not operate as bars to completion of the service, and that service opportunities that fit with existing jobs or other such constraints are actually available.



LOCAL ACTION:

- ❖ **Pass laws that ban pretrial detention, cash bail, and electronic monitoring for municipal offenses. Savings from abolishing pretrial detention should be captured to fund strategies for pretrial release and community based responses to harm. Legislation should not include risk assessment. Alternatively, legislation can require local and county officials to reduce local jail populations by eliminating the bail schedule, and instead put in place policies like pretrial release and pre-arrest diversion strategies.**
- ❖ **Establish a standard for evaluating an individual's ability to pay fees and fines, including a presumption of inability to pay for people who are homeless, incarcerated, locked in a mental health facility, juveniles, or whose income is below the poverty level. Municipalities should have effective, readily available, and readily understandable processes for determining indigency before imposing any fines, including provisions for the appointment of counsel as appropriate. Judges should use bench cards to ensure consistent application of ability to pay standards.**
- ❖ **Remove the potential for or existence of incentives to cite or arrest and assess fines and fees by ensuring that any revenue generated from fines and fees goes to the municipality's general fund rather than to fund law enforcement or courts.**
- ❖ **States and municipalities should eliminate the use of for-profit companies to collect court fines and fees.**

MODEL LEGISLATION

- ❖ **Civil Rights Corps created model legislation, which, although not perfect, includes many of the principles advocated for by organizers and advocates across the country.**
- ❖ While not perfect, Washington, D.C. releases approximately 88% of defendants. There are several components—from statutes to police department and court practices—that make this possible:
 - A **bail statute** that emphasizes least restrictive release for eligible defendants, statutory-based detention for those who would pose an unacceptable risk to the community, and an absolute prohibition on money-based detention.
 - Use of “cite-and-release” procedures by the Metropolitan Police Department for low-risk defendants charged with misdemeanors. Citation release has helped increase the proportion (about 20% of people securing release) of lower-risk defendants released on personal recognizance without supervision.
 - Quick assignment of defense counsel prior to initial appearance.
 - Prosecutorial charging decisions made within 24 hours of arrest. By statute, the U.S. attorney must decide whether to charge arrestees or dispose of the complaint. Quick charging decisions ensure that release or detention decisions are based on the most accurate charges, and that defendants are not detained on charges that eventually are dismissed days or sometimes weeks later.

RESOURCES

- ❖ M4BL [Bail Curriculum](#)
- ❖ [Arifuku, I. and Wallen, J. \(2013\). Racial Disparities at Pretrial and Sentencing and the Effects of Pretrial Services Programs. National Council on Crime & Delinquency](#)
- ❖ Huffington Post: [Fourteen Examples of Racism in Criminal Justice System](#)
- ❖ Huffington Post: [Why Bail Reform Should Be an LGBT Movement Priority](#)
- ❖ Prisons of Poverty: [Uncovering the pre-incarceration incomes of the imprisoned](#)
- ❖ New York Times: [Too Many People in Jail? Abolish Bail](#)
- ❖ Christian Science Monitor: [Get out of jail free: US cities eye bail reform, other efforts to help poor](#)
- ❖ Essie Justice Group, [Opposition to SB10 Action Kit](#)
- ❖ The Appeal Podcast: [The History and Promise of the Bail Abolition Movement](#)
- ❖ Law for Black Lives: [End Money Bail Webinar](#)
- ❖ U.S. Commission on Civil Rights, Targeted Fines and Fees Against Communities of Color: [Civil Rights and Constitutional Implications](#)
- ❖ Mapping Pretrial Injustice: [A Community Database](#)
- ❖ [Fees and Fines Justice Center](#)
- ❖ Black Lives Matter Chicago: [Epicenter Chicago](#)

ORGANIZATIONS CURRENTLY WORKING ON POLICY

BRONX
FREEDOM FUND

CHICAGO
COMMUNITY BOND
FUND

CIVIL RIGHTS
CORPS

COLOR OF CHANGE

DETROIT
JUSTICE CENTER

ESSIE JUSTICE
GROUP

FEES AND FINES
JUSTICE CENTER

LAW FOR BLACK
LIVES

NATIONAL BAILOUT

SOUTHERNERS
ON
NEW GROUND

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RELATED BRIEFS

**END SURVEILLANCE
OF BLACK
COMMUNITIES**

**END THE WAR ON
BLACK COMMUNITIES**

**END THE WAR ON
BLACK WOMEN**

**END TO JAILS,
PRISONS AND
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