

The Cost of Pretrial Justice

In the United States, pretrial decision making and money go hand in hand; there is a widely held assumption that criminals are arrested, they go to jail, and that asking them to pay for their release helps to keep the public safe. The use of money bail in U.S. courts is nearly universal, and it is a multi-million dollar endeavor for courts, defendants, and the commercial bail bond industry, despite the fact that there is no evidence that money bond works to protect public safety.¹

Beyond money bail, the pretrial system has an enormous economic impact. Nationally, the cost of detaining pretrial defendants in local jails is estimated at \$9 billion/year.² That doesn't include the costs of courts, law enforcement and pretrial supervision, nor does it account for the impact on defendants, their employers, and their families. This substantial expenditure raises significant questions: is the public getting a sufficient return on its investment in terms of justice for victims and fewer crimes? What types of policies can reduce the tangible and intangible costs of pretrial justice while maximizing benefits?

This issue brief outlines costs to consider when setting pretrial justice policy. While only some of these costs are quantifiable, they all have the potential to substantially impact communities. A consideration of costs and benefits also highlights

the notable deficits in our current system, and the benefits of new policies with the potential to reduce costs as well as public safety risk.

Dangerous Criminals Can Buy Their Way Out

One of the primary functions of bail is to protect the community from the most dangerous criminals. However, the current system doesn't achieve this goal, and it often saddles communities with the costs of avoidable crime as well as unnecessary incarceration. Individuals charged with serious crimes are frequently given high bond amounts with the hope that the cost of freedom will be prohibitive, but defendants with the financial means to post bond themselves or through a commercial bail bond agent are released. Additionally, bail bondsmen have a financial incentive to bail out those charged with serious offenses. Commercial surety fees are based on the total bond amount, so dangerous felonies mean higher bonds, and higher profits, for doing business with the most serious alleged offenders.

Contrary to popular opinion, posting bond does not increase the likelihood that these individuals will return to court. Recent research has shown no

¹ Justice Policy Institute. (2012). *Bail Fail: Why the U.S. should end the practice of using money for bail*. Washington, DC.: Justice Policy Institute; Pretrial Justice Institute (2010). *Responses to Claims About Money Bail for Criminal Justice Decision Makers*. Washington, DC: Pretrial Justice Institute.

² Holder, E. (2011). *Attorney General Eric Holder speaks at the National Symposium on Pretrial Justice*. June 1, 2011, US Department of Justice. Retrieved from <http://www.pretrial.org/download/infostop/AG%20Holder%20Remarks%20at%20NSPJ%20June%201%202011.pdf>.

difference in court appearance rates or public safety outcomes between defendants released on secured bond, non-secured bond (i.e., no money is required for release), and release on recognizance. However, it does show that, if released, defendants who score “high risk” on a risk assessment instrument are more likely to commit a new crime than their lower risk counterparts.³ With the higher risk of offending comes higher potential costs of victimization, as well as prosecution and re-incarceration.

For those serious defendants that do post large bond amounts, why isn’t that money an incentive to play by the rules? If a defendant pays a fee to a bail bond agent, that fee is not recouped if the defendant returns to court, so no incentive exists. Also, bond forfeiture is generally only tied to court appearance, not to the commission of a new offense. Thus, the public incurs the cost of the court response, as well as the cost of crime to individuals and the community.

The costs of incarcerating the most dangerous criminals are not insignificant, but the costs of allowing their release may be even higher. A risk-based approach to release decision making, discussed in more detail below, allows communities to more accurately predict who poses the most serious threat, and to target jail resources to those individuals.

More Days in Jail = Higher Risk of Crime

Jails are very expensive to build and maintain, but they are often seen as worth the investment since they keep criminals off the street. However, many

communities are surprised to find that when they look at who is actually in their jail, the population is predominately low-level, non-violent defendants who simply could not post their bond. In the short term, the community incurs the cost of incarcerating these individuals unnecessarily, but the long-term costs may be more significant. New research from the Laura and John Arnold Foundation has shown that incarceration itself is correlated with an increased likelihood that low-risk defendants will commit future crimes.⁴ In terms of the costs of new crime and victimization, as well as the cost of incarceration itself, communities benefit from either not incarcerating these individuals in the first place, or releasing them as quickly as possible from jail.

Pretrial Costs Don’t End with the Verdict

The decisions made during the pretrial stage have a domino effect on a defendant’s future, and consequently on costs to the community. Individuals incarcerated pretrial, with all other factors being equal, are more likely to be sentenced to prison, and more likely to receive a longer sentence. Prison costs are high, and a significant percentage of offenders who are released from prison commit a new crime within three years, beginning the cycle again.⁵

Incarcerated defendants also experience what are called “collateral consequences” resulting from their separation from family and community. A defendant may lose his job, creating costs for the defendant and the employer, and beyond losing income there is a risk of losing benefits and housing. A jailed defendant may be unable to care

³ Jones, M. (2013). *Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option*. Washington, D.C.: Pretrial Justice Institute.

⁴ Lowenkamp, C.T., VanNostrand, M, and Holsinger, A. (2013). *The Hidden Costs of Pretrial Detention*. New York: Laura and John Arnold Foundation.

⁵ National Institute of Justice (n.d.). *Impact of Prison experience on Recidivism*. <http://www.nij.gov/topics/corrections/recidivism/pages/prison-experience.aspx>

for his family or maintain a marriage, and may lose custody of children. These social and economic costs can persist beyond the defendant's court involvement, and in the case of children can have a multi-generational effect.

More Money for Jails, Less for Everything Else

Every taxpayer dollar spent on pretrial justice is a dollar less to spend on health care, education, and other core government services. This perpetuates a vicious cycle: lack of access to services in the community, such as behavioral health care, turns the criminal justice system into a de facto service provider, and these services are generally less effective and more expensive. Also, insufficient preventative interventions such as early childhood education can increase the likelihood of later criminal justice involvement.

An Effective and Efficient Solution

Fortunately, the science of pretrial justice offers an answer that protects public safety and minimizes costs. By assessing the risk defendants pose to public safety, and the likelihood that they will return to court, judges are able to make informed decisions as to who needs to be in jail, and who can safely stay in the community. A continuum of community supervision options can also allow communities to best respond to the risk that a defendant poses—and at a fraction of the cost of a jail bed.

Time is of the essence, however, and pretrial policy must also address system efficiency. As shown in

the Arnold Foundation research, unnecessary nights in jail have a real public safety cost, so systems must carefully consider how law enforcement makes arrest and booking decisions, and how courts, jails, and pretrial services agencies screen and hold or release defendants.

In addition, the Patient Protection and Affordable Care Act (ACA) creates a unique opportunity for the pretrial system to connect defendants to health services in the community. Often, jails become de facto providers of physical and behavioral health services, at a very high cost, and upon release defendants frequently relapse due to lack of care. To break the vicious cycle, several communities have begun enrolling defendants in Medicaid, allowing them to access physical and behavioral health services in the community, receive services at a lower cost than through the jail, and ideally avoid future arrest and conviction.⁶

Crunching the Numbers: A Pretrial Cost-Benefit Analysis

While the theoretical costs of pretrial justice are widely understood, sound information on true costs has not been available to guide policy decisions. Beginning in 2014, the Crime and Justice Institute (CJI) at CRJ and economist Michael Wilson are developing a cost-benefit model for pretrial justice with funding from the Public Welfare Foundation. The model will allow jurisdictions to understand and predict the fiscal impact of pretrial practices, encouraging better-informed policy decisions. For more information, contact Lisa Brooks at lbrooks@crj.org, or visit CJI's website at www.crj.org/cji.

⁶ National Association of Pretrial Services Agencies. (2014) *The Patient Protection and Affordable Care Act and the Pretrial System: A "front door" to health and safety*. Retrieved on May 20, 2014 from Holder, E. (2011). *Attorney General Eric Holder speaks at the*

National Symposium on Pretrial Justice. June 1, 2011, US Department of Justice. Retrieved from <http://www.pretrial.org/download/infostop/AG%20Holder%20Remarks%20at%20NSPJ%20June%201%202011.pdf>.