



2021 Policy Platform

REFORM BAIL

Every day, nearly two-thirds of people in Florida's local jails are legally innocent. They have not been convicted of a crime, but are locked up waiting for their trial. In many cases, they are detained only because they could not afford a sum of money as bail.

Bail is intended to ensure that a person charged with a crime will appear in court and not commit other offenses in the meantime. In Florida's system of money bail, the vast majority of people arrested have to pay a certain amount as a pledge to follow these terms. If they cannot afford that amount on their own or through a commercial bail bondsman, they stay in jail until their case is resolved or dismissed—a process that can take months or even years. Meanwhile, others arrested for the same crime can gain release before trial, not because they are more likely to appear in court or less dangerous to the community, but because they are able to pay. The result is wealth-based detention and a two-track system of justice, in which the cost of pretrial liberty is much higher and often out of reach for people with lower incomes.

THE PROBLEMS

- **Requiring cash bail (and incarceration for those who can't pay) wastes money.** Holding people in jail has a steep cost, and money bail and pretrial detention are the main culprits. Nationally, it costs taxpayers \$38 million each day to jail people awaiting trial, many of whom are only there due to bail. Also, compared to similarly situated people who are released before trial, detained individuals are much more likely to be sentenced to incarceration and receive longer sentences, both of which lead to even higher jail populations and the need for more, bigger jails.
- **Locking up people who can't afford bail does not help public safety.** The reality is that most people who are arrested are not risky and can be safely released within hours. In fact, evidence suggests that *keeping* people in jail—even for just a few days—makes our communities less safe by increasing the likelihood that they will fail to appear in court and commit crime in the future.
- **Holding people in jail destabilizes their lives.** Many people awaiting trial in jail fall behind in school and lose their jobs, housing, and even custody of their children. This system pressures Floridians who are detained to accept plea bargains just to get out. In addition to the short-term consequences of being incarcerated, taking these plea deals affects a person's criminal record and earns them a harsher sentence if they are arrested again in the future.
- **Pretrial detention and supervision violate people's rights.** By setting high bail amounts that people cannot afford, courts restrict the freedoms of the legally innocent. In Florida, these constitutional rights "are often simply ignored." Even people who are released face limits on their physical liberties. Conditions like electronic monitoring are often unnecessary and contradictory, restricting movement and "creating serious barriers to successful reentry."
- **The system is set up to fail: courts and jails impose costs that most people can't pay.** The median bail bond amount in this country, \$10,000, represents 8 months of income for the typical detained person. Even smaller amounts like \$400 are unaffordable to nearly half of all Americans. Other costs besides bail are also high. For people released under supervision in Jacksonville, ankle monitors cost \$12 per day. Meanwhile, Floridians who cannot afford bail and must stay in jail are charged for room and board through pay-to-stay programs.
- **Processes for determining bail and pretrial release are often flawed.** Due to judges' arbitrary decisions and the use of bond schedules—generic bail amounts based on offense—a person's likelihood of being assigned bail and the cost varies wildly. Meanwhile, algorithmic "risk assessment tools" used in decisions on bail and release are unreliable. A study of this tool in Broward County found that only 20% of people predicted to commit violent crimes actually did.
- **These problems and their consequences especially hurt communities of color.** Racial disparities are evident in every stage of the money bail system. As a result of the risk assessment tools used in Broward County, Black individuals there are almost twice as likely as whites to be labeled a high risk but not actually re-offend. Black and Latino men pay higher bail than white men charged with the same crime. Black and Latino individuals are also more likely to be held in jail before trial and are kept there longer than their white counterparts: in Jacksonville, the average length of stay for Black individuals is more than a week longer than for white individuals.

THE SOLUTIONS

- **End the use of cash bail and provide alternatives that help people succeed.** The easiest way to stop our current system's unjust outcomes based on wealth is to eliminate the use of financial conditions for pretrial release. Providing alternative measures such as reminder services are cheaper, easier, more humane, and more effective at ensuring court appearances and public safety without detention. For example, two-way text reminders have proven to greatly improve court appearance rates, while costing just \$2 per person per year. In Alaska, ending the use of money bail is expected to save taxpayers \$380 million.
- **Cite and release individuals for low-level offenses rather than arresting them.** The most effective way to reduce costly incarceration is to keep people out of jails in the first place. Allowing law enforcement to give people a citation instead of taking them into custody decreases the current resources and taxpayer dollars spent on low-level cases and unnecessary detention. Meanwhile, the person cited can wait for their trial at home, continue working, and prepare their defense without having to post money bail or experience the harms of incarceration.
- **Hold people in jail only as a last resort.** The U.S. Supreme Court has affirmed that "in our society, liberty is the norm, and detention prior to or without trial is the carefully limited exception." To truly make pretrial detention the exception rather than the norm, it should only occur in the rare cases when the court finds that no other condition or combination of conditions would reasonably ensure court appearance or public safety. Similar approaches have already proven to work in the juvenile justice system. Since it launched in the 1990s, the Juvenile Detention Alternatives Initiative has reduced the number of youths detained by 43% in more than 300 sites across 39 states, including Florida. During this period, juvenile crime also decreased by over 40%.
- **Maximize liberty for people who are released before trial.** While ending wealth-based detention is a big step toward making our system more fair and effective, imposing excessive conditions on people who are released can produce some of the same harms as money bail. Therefore, people who are awaiting trial at home should only face conditions like supervision, travel restrictions, and electronic monitoring if these conditions are the least restrictive necessary to prevent intentional nonappearance in court or serious injury to others.
- **Remove other costs from the system.** In addition to ending cash bail, courts and jails should not reproduce the inequities of that system by charging people for pretrial conditions or detention. Floridians currently pay for their own electronic monitors, pretrial supervision, public defense, and room and board in jails; even worse, these costs have gone up since 2010, and individuals can be fined or re-incarcerated if they cannot pay. Individuals who are legally innocent and awaiting trial should not be required to pay for any imprisonment or supervision imposed on them. And if we continue to impose these fees, our state and local governments risk spending more on the administrative costs of collection than the little revenue they would earn. For example, 2 years after implementing a pay-to-stay program in Riverside County, California, the county had collected less than 1% of the revenue it hoped to generate through the program.
- **Use a rigorous, individualized process to assess risk and set pretrial conditions.** Decisions about conditions for release or pretrial detention should never be arbitrary or one-size-fits-all. Risk assessment tools cannot replace individualized assessments, and decisions must be based on specific, clear, and convincing evidence and findings for a person's particular case. When determining pretrial release, courts must provide legal representation to the person charged with a crime, allow the person to present evidence, and state the reasons explaining their decisions.
- **Collect and respond to data to prevent racial disparities and ensure accountability.** Eliminating cash bail is not enough to fix the inequalities produced by our current system. Effective data collection on people's individual circumstances and pretrial outcomes will ensure more note-taking and decision-making, which may help to make outcomes more equitable. Meanwhile, evaluating and publicly reporting the data can raise awareness on implicit bias and identify "decision points where inequalities persist." To realize this goal, Florida can utilize the database already being developed by our Department of Law Enforcement. Numerous stakeholders have noted that using this tool would make our state's criminal legal system a national model in transparency.