



## MARION COUNTY BAIL SYSTEM (2022)

### BACKGROUND

In 2021, more than 600,000 individuals were held in county jails across the country. Seventy-four percent of these individuals were incarcerated while they awaited trial.<sup>1</sup> Many individuals—especially those who are Black and Latinx—may be held pretrial due to biases that occur during initial contact with the justice system, often through law enforcement.<sup>2</sup> Research shows a clear link between racial and economic disparities and pretrial detention—a link that has lasting negative implications on the people involved and the broader community.<sup>3</sup>

Across 75 of the largest counties in the United States, 96% of all felony defendants held in pretrial detention<sup>A</sup> could have been released had they been able to pay their cash bail.<sup>4</sup> However, 90% of them could not afford to do so.<sup>5</sup> Nationally, bail amounts vary widely, averaging \$10,000 for felonies and \$2,000 for misdemeanors.<sup>6</sup> In addition to the cost of bail, individuals in Marion County also must pay additional fees prior to release. These extra costs make it even more difficult for someone to afford bail.

Research shows incarceration while awaiting trial can harm the defendant, their family, and the community. Pretrial detention disrupts an individual's life, negatively impacting their mental and physical health, as well as their ability to retain a job, housing, and child custody. Further, evidence shows these issues are compounded by racial disparities and COVID-19 pandemic health concerns.

As more states move toward implementing pretrial reform, it is important to analyze the potential effects of Indiana's most recent bail legislation, House Enrolled Act 1300. This brief presents evidence on the policy and practices of the

### KEY FINDINGS

- Marion County's court fees and bail bond companies' nonrefundable fees increase the amount defendants must pay to be released.
  - Additional fees affect whether someone can afford bail.
  - Pretrial detention can have negative long-term effects on defendants who cannot post bail, including job loss, housing instability, child custody issues, and reincarceration.
- Beginning July 1, 2022, Indiana House Enrolled Act 1300 will limit charitable organizations' ability to bail out defendants with a violent offense in their history.
  - These limitations create a dependency on the private bail bond industry.
  - Private bail bond companies do not provide services that increase the likelihood a defendant will appear in court, such as court date reminders, referrals to services, or transportation.
- Indiana does not have systems in place to track bail information.
  - The bail bond industry does not publicly share data.
  - The lack of data makes it impossible to compare outcomes for individuals who use the bail bond industry against those who use charitable organizations.

Marion County cash bail system, implications of cash bail, and considerations for reducing racial disparities in pretrial detention.

A Pretrial detention refers to detaining an individual accused of a crime before the trial has taken place.

# PRETRIAL DETENTION

## CASH BAIL

Cash bail is used to facilitate the release of individuals from jail as they await trial. The purpose of bail is to increase the likelihood that defendants will appear at all pretrial hearings—or any hearings that inform decisions on the defendant’s conviction.<sup>7,8</sup> Judges and magistrates determine bail amount based on factors such as risk of fleeing and type of alleged crime.<sup>7</sup> Bail money can be returned to the defendant once the trial ends under certain conditions—such as paying court and other processing fees.

## MARION COUNTY BAIL SYSTEM

The Marion Superior Court in Marion County, Indiana uses a bail schedule to determine bail amounts (Table 1). The bail schedule is based on case circumstances such as the defendant’s criminal history, type of alleged crime, and the extent to which violence was involved in the alleged crime. Bail amounts can be modified in some cases—or even doubled—depending on severity of the case. According to these guidelines, bail should not exceed \$200,000.<sup>9</sup>

**TABLE 1. Bail amounts by conviction**

CONVICTION	BAIL AMOUNT
Murder	No bail
Class A felony Level 1 felony Level 2 felony	\$50,000
Domestic violence: Class C felony Level 5 felony	\$25,000
Class B felony Level 3 felony Level 4 felony	\$20,000
Class C felony Level 5 felony	\$7,500

### Paying for bail

In Marion County, individuals must pay 10% of their total bail costs.<sup>9</sup> For example, if a defendant’s alleged charge is a Class C felony unrelated to domestic violence, they must

pay \$750 to be released on bond. These amounts are often beyond the financial capacity of most individuals. As a result, many defendants rely on for-profit bail bond companies to pay bail.<sup>10</sup> In Marion County, the bail bond industry typically charges a nonrefundable fee averaging 10% of the defendant’s total bail amount.<sup>5</sup> Once the individual is released on bond, they will have to pay additional court fees and the 10% bond fee for using the bail bond agency.

Alternatively, there are charitable organizations that provide bail assistance. For example, The Bail Project posts bond for people who are legally presumed innocent and are eligible for release. Trained staff, known as Bail Disruptors, provide court date reminders, transportation assistance to required appointments, and referrals to support services. After a client’s court appearances and case resolution, bail dollars are refunded to the organization and returned to the fund to help other clients in the future.<sup>11</sup>

### Bail data

In 2020, the state legislature passed a bill requiring the Indiana Criminal Justice Institute (ICJI) to report rearrest rates for people who had posted bond of less than \$1,000. The report indicated Indiana does not have systems in place to track bail information. Specifically, Indiana lacks data on cash bail amounts, how often cash bail is used, demographic information, and whether defendants were rearrested prior to trial. ICJI attempted to rely on local jail data, but local jails also do not collect this information.

### Pretrial services

In recent decades, jurisdictions across the country have implemented pretrial services to improve defendant outcomes and reduce jail overcrowding and costs. In Indiana, Criminal Rule 26 attempts to use risk assessment tools to provide guidance around pretrial services and limit the use of cash bail.<sup>13</sup>

In 2010, Indiana adopted the Indiana Risk Assessment System (IRAS) which assesses a defendant’s risk of fleeing, their likelihood of reoffending, and their Criminogenic Needs.<sup>B</sup> The Indiana Risk Assessment Pretrial Assessment Tool (IRAS-PAT) is used by trained staff during pretrial detention to assess the likelihood of the defendant attending court appearances and/or reoffending.<sup>14</sup>

B Criminogenic Needs are six factors related to an individual’s likelihood of reoffending. These include low self-control, anti-social personality, anti-social values, criminal peers, substance abuse, and dysfunctional family.

## INDIANA LEGISLATION

The Indiana General Assembly (IGA) introduced several bills related to bail in the 2022 legislative session. Table 2 describes the bills and their status as of March 2022. House Enrolled Act 1300 will go into effect on July 1, 2022. The bill will limit charitable organizations' ability to bail out a defendant with a violent offense charge in their history. It also requires organizations to register with the Department of Insurance and pay additional fees.<sup>15</sup> Other states—such as Kentucky and Texas—have passed similar bills during the past two years.<sup>16,17</sup>

## IMPLICATIONS

### IMPACT OF THE BAIL BOND INDUSTRY

As more states move toward implementing pretrial reform and providing more community-based services, researchers have questioned whether the effects of the bail bond industry align with reform efforts.<sup>18</sup> The bail bond industry is transaction based, meaning it does not offer court date reminders, referrals to services, or transportation. These services can help increase the chances that a defendant will appear in court.<sup>19</sup> Given that bail bond companies charge a 10% nonrefundable fee, individuals already at risk for being low income may be forced to use their rent or mortgage money to pay this fee. This, in turn, leads to an increased risk of homelessness.<sup>18</sup>

The bail bond industry does not publicly share data. However, local charitable organizations—such as The Bail Project (TBP)—have collected data to help understand the impact of their work. According to Marion County's chapter of TBP, individuals bailed out by TBP have a 95% court appearance rate. TBP pays an average bond amount

of \$2,215, the equivalent of about two months' income for many Marion County residents.<sup>20</sup>

The lack of comprehensive data makes it hard to understand the full landscape of the cash bail system in Indiana, especially when it comes to comparing outcomes for those who use the bail bond industry and those who rely on charitable organizations.

### RACIAL DISPARITIES IN PRETRIAL DETENTION

Racial and economic disparities further compound issues within the cash bail and criminal justice system.<sup>21</sup> Nationally, bail is often set higher for Black and Latinx individuals compared to white individuals. On average, bail amounts are 35% higher for Black men and 19% higher for Latino men than for white men accused of similar crimes.<sup>22</sup> In fact, median bail amounts are often about \$10,000 higher for Black individuals.<sup>23</sup>

Furthermore, Black and Latinx defendants are more likely to receive harsher punishments for lower-level offenses.<sup>24</sup> Researchers using data from the Bureau of Justice Statistics found Latinx individuals were more likely to be detained pretrial in drug cases than their white counterparts.<sup>25</sup> These outcomes of systemic racism permeate throughout the criminal justice system and are often experienced before an individual is even held pretrial.<sup>26</sup>

Pretrial reform efforts like risk assessments often do not address racial biases. Examining the fidelity of pretrial risk assessment tools has yielded mixed results.<sup>27</sup> In recent years, researchers found pretrial risk assessments are inherently biased against Black, Indigenous, Latinx, and low-income individuals.<sup>28,29</sup> These individuals are more likely

**TABLE 2. Indiana bail legislation in 2022**

BILL	DESCRIPTION	PASSED?
Senate Bill 6	Eliminates the use of surety bonds	X
Senate Bill 8	Restricts charitable bail organizations' ability to bail out individuals accused of felonies	X
House Bill 1084	Bans public funding of charitable bail organizations	X
House Bill 1300	Restricts charitable bail organizations' ability to bail out individuals with a history of violent offense(s), no matter how old the offense is	✓
House Bill 1414	Prohibits use of bail unless individual is deemed a flight risk, charged with murder, or on parole	X

to be placed in higher risk categories due to unaddressed biases, leading to higher bail amounts and longer waits in pretrial detention.<sup>30</sup> This is especially troubling, as these risk assessment tools are one of the only avenues individuals have for accessing support services.<sup>31</sup>

Given these biases and financial disparities, the cash bail system disproportionately impacts the lives of Black and Latinx individuals with lasting consequences.<sup>32</sup> Inequities in detention rates translate into disparities in conviction rates, courtroom debt, and incarceration.<sup>21</sup>

## DOWNSTREAM EFFECTS

Remaining in jail while awaiting trial destructively impacts the person facing charges, their family, and the broader community. Pretrial detention—even for short periods of time—leads to an increased risk of job loss, housing insecurity, and loss of child custody.<sup>3</sup> Findings from the Prison Policy Initiative (2018) indicate justice-involved individuals are 10 times more likely to experience homelessness.<sup>33</sup>

Pretrial detention also negatively impacts individuals' physical and mental health. A loss of stable housing, income, and familial support due to incarceration can lead to higher levels of anxiety and depression.<sup>34</sup> Further, due to the ongoing pandemic, individuals kept in detention are at a greater risk for exposure to COVID-19 which may have lasting health effects.<sup>35</sup>

Lastly, there is a lack of empirical evidence that pretrial detention is necessary to ensure public safety.<sup>21</sup> On the other hand, research does show that detaining people before their trials increases their risk of future criminal behavior.<sup>3</sup> In 2013, a study assessing pretrial outcomes in Kentucky found that people who were detained leading up to their trials were 1.3 times more likely to reoffend.<sup>36</sup> This association is due—in part—to a disruption in community ties, loss of employment, and an inability to find new employment with a criminal record.<sup>3</sup>

## CONSIDERATIONS

Eliminating a wealth-based pretrial system in Marion County could create a more equitable process for all defendants. While there are inconclusive findings about

how to best accomplish this goal,<sup>37</sup> some states have successfully reduced the use of cash bail and the burden of pretrial services on individuals.

Yet oftentimes, assessments of bail reform focus solely on whether proposed changes could reduce the local jail population and provide a cost savings to the local government. While these are important components, addressing racial disparities is key to ensuring a more just system.<sup>38</sup>

## REDUCING USE OF CASH BAIL

Some states are taking steps to reduce the use of cash bail. In 2017, the New Jersey legislature passed the New Jersey Criminal Justice Reform Act to implement the assumption that anyone charged with a crime—excluding those facing life imprisonment—are deemed innocent and should not be held in jail while they await their trial. Instead of arresting individuals for lower-level offenses, officers give them a summons which instructs the person when to appear in court. Individuals charged with higher-level offenses are taken into custody but must have their appearance hearing within 48 hours of arrest.<sup>39</sup> The ACLU of New Jersey found that after the Reform Act's first year, 70% of defendants received a summons for lower-level offenses and only about 6% of those people were actually detained.<sup>40</sup> This shift helped decrease the state's jail population by 35%.<sup>41</sup> However, Black and Hispanic/Latinx individuals continued to be detained at disproportionately high rates.<sup>38</sup>

## ADDRESSING RACIAL DISPARITIES

There is limited research on bail reforms that reduce racial disparities. Many advocates and researchers support eliminating cash bail systems as the only means of disrupting racial disparities at this stage in the criminal justice system. Yet racial inequity must be addressed across the entire criminal justice system to reduce pretrial racial disparities.

One way to do this is to increase access to quality services that address social issues which are often criminalized and disproportionately affect Black and Hispanic/Latinx Americans. These issues—such as substance use and a lack of income—often lead individuals to commit lower-level offenses for which they are unnecessarily incarcerated.<sup>42</sup> In

fact, in 2019, the Treatment Advocacy Center found it was 2.5 times faster for law enforcement to transport someone to jail compared to transporting them to a hospital or treatment facility. Investing in treatment services to ease accessibility can prevent higher pretrial detention rates and individual encounters with law enforcement.<sup>43</sup>

## CONCLUSION

Overall, there are many approaches to rethinking pretrial detention. Since few jurisdictions have rigorously evaluated the bail reforms they have implemented, there is not a clear blueprint for what works. However, it is important to ensure that racial equity is embedded into all reform work across the criminal justice system to ensure a more fair and just system.

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