

A RESOLUTION OPPOSING DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM,
ENCOURAGING COMPREHENSIVE REFORMS IN THE PRE-TRIAL PROCESS,
URGING THE ADOPTION OF EVIDENCE BASED PRACTICES IN THE PRE-TRIAL
PROCESS, SUPPORTING THE BIPARTISAN LEGISLATIVE PACKAGES IN THE
MICHIGAN HOUSE AND SENATE WHICH REFORM MICHIGAN'S CASH BAIL
SYSTEM, AND SUPPORTING THE MICHIGAN SUPREME COURTS PRETRIAL
PILOT PROGRAM AND ENCOURAGING ITS EXPANSION

WASHTENAW COUNTY BOARD OF COMMISSIONERS

July 10, 2019

WHEREAS, money bail, sometimes called cash bail or a secured bond, is a system of pretrial release in which an individual who has been accused but not yet found guilty of a crime can "temporarily" pay a fee to be released from custody prior to additional proceedings or trial; and

WHEREAS, the use of money bail in America has significantly increased over the past two decades. Proponents of the system have characterized the use of money bail as a way to enhance public safety and ensure prompt and regular appearances in court; however, money bail does neither of these things; and

WHEREAS, 62% of the individuals incarcerated in local jails across America are pretrial inmates, meaning that they have not been convicted of the alleged crime that led to their confinement and are merely awaiting some sort of court proceeding or trial. Three-fourths of these individuals are accused of property, drug or other nonviolent offenses. In all, pretrial inmates accounted for 95% of the growth in the jail population over the last twenty years; and

WHEREAS, 90% of the individuals who are incarcerated pretrial are not confined because they were denied bail due to being a flight risk or a danger to the public. Instead, the most common reason why an individual remains incarcerated pretrial is simply because he or she could not muster the financial resources needed to secure his or her freedomⁱⁱ; and

WHEREAS, an individual's inability to afford money bail is not an indicator of that individual's guilt, an accurate predictor of the risk of danger that individual poses to others, or an indicator of whether that individual will show up for a scheduled court proceeding; and

WHEREAS, recent court decisions have ruled that the incarceration of individuals who cannot afford money bail without meaningful consideration of other alternatives is a violation of due process and equal protection; and

WHEREAS, judicial decisions about release or detention of defendants before disposition of criminal charges have a significant, and sometimes determinative, impact on the thousands of individuals involved in the criminal justice system as well as the community; and

WHEREAS, research has shown that individuals who are incarcerated pretrial are more likely to plead guilty, be convicted of a felony, receive longer sentences, get less attractive plea bargain offers, and become “reentry” clients as a result of their pretrial detention, regardless of charge or criminal historyⁱⁱⁱ; and

WHEREAS, pretrial incarceration has profound effects on both the individuals who are incarcerated and the taxpayers. On the individual level, the loss of freedom during pretrial incarceration can result in the loss of employment, housing and child custody. On the societal level, the cost to taxpayers is astounding. Nationally, the total annual cost to state and local governments for pretrial incarceration is estimated to be \$14 billion, or 17% of total spending on corrections^{iv}; and

WHEREAS, race and gender influence whether defendants are released on recognizance and the amount of money bail set, which has long-lasting consequences throughout the justice system; and

WHEREAS, some of the most recent available data shows that in 2002, black defendants made up 43% of the pretrial inmate population despite constituting only 13% of the total population^v; and

WHEREAS, evidence-based pretrial assessment of a defendant’s likelihood to appear in court and remain arrest-free while awaiting trial can increase successful pretrial release outcomes and diminish racial disparities without imposing unnecessary financial conditions, impairing the judicial process, or jeopardizing public safety; and

WHEREAS, the National Association of Black County Officials, the National Association of Counties, the American Bar Association, the National District Attorneys Association, and others have condemned the money bail system as a system that discriminates against the poor^{vi}; and

WHEREAS, the International Association of Chiefs of Police has recognized the critical need for bail reform and in particular the urgent need for more robust pretrial services that conduct validated risk assessments for use by the judiciary when considering pretrial release^{vii}; and

WHEREAS, the Michigan Supreme Court launched a pretrial pilot program in five district courts (31st District Court in Hamtramck, 41B District Court in Clinton Township, 67th District Court in Flint, 94th District Court in Escanaba, and the Isabella County Trial Court in Mount Pleasant) to test a pretrial risk assessment tool designed to help judges make bond decisions by using statistically validated predictors of pretrial risk; and

WHEREAS, the Washtenaw County Board of Commissioners strongly believes that whether an individual remains in jail awaiting trial should not depend on his or her ability to pay for his or her freedom, but should instead be determined by whether he or she poses a threat to public safety or is a flight risk.

NOW THEREFORE BE IT RESOLVED that the Washtenaw County Board of Commissioners does hereby strongly oppose racial, gender, and socio-economic disparities in the criminal justice system and specifically encourages comprehensive reforms in the pretrial process to ensure the fair and equal treatment of all citizens regardless of race, gender, sexual orientation, color, creed, national origin, religion, or socio-economic status.

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners urges federal and state legislatures to adopt laws and policies that:

1. Prohibit a judicial officer from imposing a financial condition of release that results in the pretrial incarceration of a defendant solely due to the defendant's inability to pay;
2. Permit a court to order a defendant to be held without bail where public safety warrants pretrial incarceration and no conditions of pretrial release suffice, and require that the court state on the record the reasons for detention;
3. Use objective verifiable criteria that does not have a discriminatory or disparate impact based on race, ethnicity, religion, sex, or socio-economic status;
4. Promote training and development that addresses how using best practices and identifying sources of implicit bias can reduce racial, ethnic, and gender disparities;
5. Use the least restrictive conditions of release that protect the public safety and assure likelihood of appearance in court;
6. Use evidence-based locally validated pretrial assessments and management in making the bail determination;
7. Explore alternatives to pretrial incarceration through increased pretrial services such as drug rehabilitation and various forms of supervision such as GPS monitoring, drug tests, check-ins; and
8. Pursue further research on the efficacy of pretrial interventions and identify necessary improvements.

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners strongly supports the bipartisan legislative package (HB 4351 - HB 4360 and SB 207 - SB 215) introduced in the Michigan House and Senate aimed at reforming Michigan's cash bail system.

BE IT FURTHER RESOLVED that the Washtenaw County Board of Commissioners supports the Michigan Supreme Court's pretrial pilot program and encourages the expansion of the program into more courts throughout the State.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to all elected officials representing Washtenaw County communities at the state and federal levels of government; the Hon. Jerry L. Clayton, Washtenaw County Sheriff; the Hon. Brian Mackie, Washtenaw County Prosecutor; and the Hon. Carol Kuhnke, Chief Judge of the Washtenaw County Trial Court.

ⁱ Bureau of Justice Statistics, Jail Inmates at Midyear 2014 (June 2015), <https://www.bjs.gov/content/pub/pdf/jim14.pdf>; Stevenson, Megan and Mayson, Sandra G., *Bail Reform: New Directions for Pretrial Detention and Release* (2017). *Faculty Scholarship*. 1745. http://scholarship.law.upenn.edu/faculty_scholarship/1745 (Last visited September 5, 2018).

ⁱⁱ Reaves, Brian A., U.S. Dep't of Justice, *Felony Defendants in Large Urban Counties*, 2009, at 15 (2013).

ⁱⁱⁱ Lowenkamp, Christopher T., et al., *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* (2013); Phillips, Mary T., N.Y. City Criminal Justice Agency, *A Decade of Bail Research in New York City*, 115-17 (2012).

^{iv} Pretrial Justice: How Much does it cost?, 2 (Pretrial Justice Inst. 2017); Melissa S. Kearney et al., *Ten Economic Facts about Crime and Incarceration in the United States*, THE HAMILTON PROJECT 13 (May 2014).

^v Minton, Todd D. & Zeng, Zhen, Bureau of Justice Statistics, *Jail Inmates at Midyear 2014*, at supra note 11, at 2(2015).

^{vi} Bauer, Shane, *Inside the Wild, Shadowy, and Highly Lucrative Cash Bail Industry*, Mother Jones, (May 2014), available at <http://www.motherjones.com/politics/2014/06/bail-bond-prison-industry> (Last visited September 5, 2018).

^{vii} Research Advisory Committee Resolution 005.T14. (Alexandria, VA: International Association of Chiefs of Police, 2014)