

# ELIMINATE CASH BAIL FOR LOW LEVEL MISDEMEANORS

## May 10, 2021

**We call for reform of our criminal justice system, led by the Quaker testimonies of Peace and Equality and in support of our FCNCL minute on anti-racism.**

*The Governor's Task Force on Racial Equity in the Criminal Justice System* has recommended legislation to eliminate cash bail for Class I, II, and III misdemeanors unless "it is made apparent to the satisfaction of the court that there exists danger to another person or intimidation of a witness". ([See report here](#)).

**What is cash bail?** Cash bail, or money bail, is the money paid to get someone out of jail after their initial arrest. The national median bail amount for felony charges is \$10,000, though the cost varies widely depending on how it is set. The amount of bail varies and is determined by whether the charge is a felony or misdemeanor, the seriousness of the offense, and whether the defendant is a "flight risk".

**What happens in North Carolina and what is the impact on jail and prison populations?** When someone is criminally charged in North Carolina, one of their first stops is before a magistrate judge, who sets the conditions for release until the person goes to trial. North Carolina law gives magistrates several options. In practice, they often assign a secured bond, typically a sum to be paid in cash. The person must pay a portion of this to get out of jail and will owe the entire amount if they fail to appear in court on the day of their trial. (Read more [HERE](#)).

Secured bonds are the most imposed pretrial condition in North Carolina (*Jessica Smith, 2019 North Carolina Conditions of Release Report, University of North Carolina School of Government, North Carolina Criminal Law Blog (Feb. 24, 2020), (See [reference](#))*)

The trends in local jail populations show that since 1970, the total jail population in North Carolina has increased 615%. In 2015, pretrial detainees constituted 82% of the total jail population in North Carolina ([See reference](#)).

The average daily local jail population in NC is 19,412, or a rate of 1,253 per 100,000 residents ([See reference](#)). Annually, there are 128,000 unique local jail admissions in NC.

- Most jail bookings do not improve public safety. Research shows that only 5% of arrests every year are for violent offenses ([See reference](#)).
- The vast majority (88%) of people arrested multiple times per year don't pose a serious public safety risk ([See reference](#)).
- The rate of incarceration – both local and state level – has risen dramatically since 1978 driven by the adoption of pre-trial policies (See [reference 1](#) and [reference 2](#)).

- The rate of incarceration in North Carolina and United States in general greatly exceeds the rate in other NATO Founding countries ([See reference](#)).

**What is the impact of cash bail on individuals?** North Carolina law does not require first appearances for in-custody misdemeanor defendants (*N.C.G.S. § 15A-601*). Current cash bail laws for low level crimes seriously impact people without ability to pay. In many counties throughout the state, defendants can be held for 60 days, potentially losing their jobs, custody of their children, etc. Even short stays in jail pretrial can have destabilizing effects on an individual's employment, health, and recidivism.

- Christopher T. Lowkenkamp, et al., *The Hidden Costs of Pretrial Detention* (2013), <https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=61863907-cf0d-3c0c-55a2-b8ee73f86829&forceDialog=0>

- Paul Heaton, et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 *Stanford Law Review* 711,717–19, 737 (2017), <https://www.stanfordlawreview.org/print/article/the-downstream-consequences-of-misdemeanor-pretrial-detention/>.

*Rep. Marcia Morey in the Indy ( )*: “As a former judge, I saw too many people spend weeks in jail simply because they could not afford a \$500 bond or 15 percent of a posted bond to pay a bondsman on minor charges like trespassing, shoplifting, simple possession of marijuana. By the time the person came to court, they had already served more time in jail than a judge would have sentenced them to.”

- These practices disproportionately impact people of color. Research finds that judges overpredict the risk of Black defendants committing crimes on pretrial release and underpredict the risk of white defendants committing crimes on pretrial release (*David Arnold et al., Racial Bias in Bail Decisions*, 133 *The Quarterly Journal of Economics* 1885, at 1889–90 (2018), <https://academic.oup.com/qje/article-abstract/133/4/1885/5025665?redirectedFrom=fulltext>).
- Money bail is imposed more often on Black defendants than white defendants, and Black defendants receive higher bail amounts than white defendants for the same crime. A study has also found that Latinx and Black defendants “are more likely to be detained [pretrial] than similarly situated white defendants” (*Stephen Demuth & Darrell Steffensmeier, The Impact of Gender and Race-Ethnicity in the Pretrial Release Process*, 51 *Social Problems* 222, 222 (2004), <http://www.jstor.org/stable/10.1525/sp.2004.51.2.222>)
- In 2015 in North Carolina, Black people constituted 23% of state residents, but 48% of people in jail and 52% of people in prison. Discriminatory criminal justice policies and practices at all stages of the justice process have unjustifiably disadvantaged Black people, including disparity in the enforcement of seemingly race-neutral laws. Studies have found that Black people are more likely to be stopped by the police, detained pretrial, charged with more serious crimes, and sentenced more harshly than white people—even when controlling for offense

severity

<https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-north-carolina.pdf>.

- Since 1980, the number of women in jail has increased 1,067%, and the number of women in prison has increased 386%  
<https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-north-carolina.pdf>.
- On a per capita basis, the most rural places in the state often lock up the most people in jail and send the most people to prison, with the highest rates of prison admissions in rural counties  
<https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-north-carolina.pdf>.