



MICHIGAN'S BROKEN BAIL SYSTEM

Why is the ACLU of Michigan taking on the broken bail system? Bail Reform is part of our Smart Justice Campaign to end racism in the criminal legal system and cut incarceration in half. We plan to do this by reforming the broken bail system, ending extreme sentencing, and holding prosecutor's accountable.

What is the purpose of bail and how is the bail system broken? Bail was originally intended to ensure a person returns to court to face charges against them. But instead, the money bail system has morphed into mass incarceration of the poor. It punishes people not for what they've done, but whether have money to pay for their freedom while waiting for their case to go to trial.

How is bail decided? When a person is arrested and charged with a crime, a hearing, called an arraignment, is held. At an arraignment, a judge or magistrate reads the person's rights and the charges against them and determines what type of bail to impose. If a person can pay bail or the judge decides not to impose any money bail, they go free until their trial. If they cannot pay bail, they are locked in jail until their trial.

What if two people are charged with the same crime, and one can pay bail and the other cannot? The person who can pay bail goes free until their trial. The person charged with the same crime stays locked up because they can't afford bail.

What factors must a judge consider at an arraignment when deciding if bail should be imposed?

Michigan's Court Rules mandate judges and magistrates to:

- Ensure the arrested person has an attorney, and appoint one if they are unable to afford legal representation (which is also required by the Michigan Indigent Defense Commission);
- Inquire and review all evidence about the person's ability to pay bail
- Inquire and review all evidence presented to determine if the arrested person is truly a flight risk;
- Inquire and review all evidence presented to determine if the person poses a true danger to the community;

When should bail be imposed? Only when a person is a flight risk or poses a specific danger to the community. And even then, the judge or magistrate must review all the evidence presented to make this determination. The person charged with a crime must have an attorney present to present all evidence.

If bail is not imposed, won't that make our communities less safe? No. In fact, one study shows that people who are locked up before their trial are more likely to reoffend in the future.

How many people are locked up waiting for their day in court nationwide? There are about 462,000 people locked up in jail before their trial, according to a 2019 report by Prison Policy Initiative.

How many people are locked up in Michigan jails waiting for their day in court? Over 8,000 people day.

What are the consequences of locking up people who can't pay bail impact plea deals and convictions?

People who are unable to pay bail are 25% more likely to plead guilty and 43% more likely to be convicted of their charges than people with similar charges who posted bail, according to a 2017 study in the Stanford Law Review.

What are the consequences of locking up people who cannot pay bail?

People who are locked up because they cannot pay bail face harsh consequences. They cannot pay their bills on time, go to work or school, or take care of their children. They face eviction, failed classes, job termination, child custody loss, and more.

Does pretrial detention affect certain communities more than others?

Yes. Poor people and people of color are disproportionately impacted by our broken bail system. In five Michigan counties, Black people make up 42% of all people sitting in jail unable to pay bail, but only represent 14% of the local community, according to data given to the ACLU of Michigan.

How will fixing our bail system keep the community safe? How will we afford it?

Washington, D.C. has relied heavily on alternatives to cash bail for more than twenty years. The District of Columbia enjoys a reappear rate of 90%, with no rearrests for violent crime for over 98% of people. The cost of release is approximately \$18 per person per day, compared with the cost of approximately \$165 per person per day to keep someone locked up in Wayne County Jail.