



Insight

The Implications of Relying on Monetary Penalties in the U.S. Criminal Justice System

TARA O'NEILL HAYES | JULY 27, 2020

Executive Summary

- The many costs associated with being arrested create disparities in people's experiences with the criminal justice system based on their income.
- The past decade has seen a significant increase in the use of cash bail, the imposition of fines and court fees, and the number of laws criminalizing behavior related to homelessness.
- Seeking justice through the imposition of monetary penalties is often inefficient and ineffective, particularly when those fines are imposed on low-income individuals, and can result in wasteful spending of taxpayer dollars.

Introduction

Recent conversations about reforming the U.S. criminal justice system offer the opportunity to consider the appropriateness of standard law enforcement practices. Previous [research](#) from the American Action Forum (AAF) highlights some of the connections between poverty and incarceration. This paper further highlights ways in which the many costs associated with being arrested—even before being convicted of a crime—create disparities in people's experiences with the criminal justice system based on their income. Over the past several decades, as states and localities have struggled to maintain sufficient revenues, they have increasingly turned to greater use of monetary penalties and higher fees in the criminal justice system rather than raising taxes.^[1]^[2] As the evidence shows, however, this tactic often fails to yield the two desired results: increased revenue and crime reduction.

Cash Bail

The use of cash bail has grown significantly over the past few decades with significant consequences. The share of defendants required to pay bail in order to be released from jail pretrial rose from 52 percent in 1990 to 72 percent in 2009.^[3] The amount that must be paid has also grown: Median bail amounts for non-violent drug offenses increased 33 percent from 1992 to 2009; for non-violent property offenses, the increase was 48 percent.^[4]

Roughly one-fourth of all those detained in the United States are being held pre-trial because of their inability to afford their bail or the bond premium, despite the Supreme Court ruling in 1983 that imprisoning someone simply for their inability to pay fines is a violation of the Equal Protection Clause of the Fourteenth Amendment.^[5] A study of 15 states found that none had established policies for adjusting bail amounts based on a person's ability to pay.

Besides the physical and mental toll of being detained for an extended period of time, it also increases the likelihood that individuals will lose their job and their housing and strain relationships with family. Further, numerous studies found that spending more than 3 days in pretrial detention increased the likelihood of being convicted by between 13 and 24 percent.[6] A significant share of this difference is attributable to people pleading guilty—even to crimes they **did not commit**—in exchange for sentences of “time served” in pretrial detention since that agreement allows for their quickest release.[7] This sort of agreement results in poorer people more often pleading guilty—up to 25 percent more often than those who could afford their bail—and accepting a criminal record even when they have not committed a crime because they cannot otherwise afford their release.[8] Ironically, by accepting a guilty plea to escape prison and return to their life, the accused may then be less likely to be able to get or return to their job or qualify for public assistance, thereby worsening their financial situation.

Fines and Fees

The use and amount of fines and fees has also been growing at a rapid pace.[9] In 2010, 10 million people across the United States owed a collective \$50 billion in fees, fines, and charges to the criminal justice system.[10] For those on a payment plan, they may face interest charges of up to 12 percent, as well as annual surcharges, until the debt is fully paid.[11] States also charge collection fees as high as 40 percent of the amount owed.[12] Oftentimes, failure to pay these fines or other debts results in imprisonment. Besides being unconstitutional, as previously mentioned, the subsequent costs of detention are usually greater than the debt owed, and imprisonment rarely results in the debt being paid.[13] The Brennan Center found that a county in New Mexico spent \$1.17 in collection costs for each dollar collected, and counties that imprisoned people for failure to pay spent as much as 115 percent of the amounts collected on jail costs.[14] In Washington in 2006, the state collected \$21 million in fee revenue, but it cost more than \$15 million to do so, resulting in a net gain of less than \$6 million.[15]

Alternatively, failure to pay may result in one’s driver’s license being suspended in 42 states and Washington, DC; 11 million people have had their license suspended for this reason.[16] Paradoxically, a license suspension may hinder one’s ability to get to work, which makes it more difficult to be able to pay the debt. For example, in New Jersey, one-third of license suspensions were the result of unpaid fees, and 42 percent of individuals who lost their license lost their jobs; 45 percent were not able to find a new job, and of those who did, 88 percent saw a decline in income.[17]

Pay-for-Probation

Low-income individuals are much more likely to be on probation, and 44 states charge daily monitoring fees.[18] Nearly two-thirds of people on probation earned less than \$20,000 in 2016-2017.[19] Probation fees, which typically must be paid in full before removal, can include a \$50 initiation fee and then accrue at a rate of \$10 per day, and may require up-front payment for the first month, resulting in a significant up-front payment owed the moment someone is released from jail.[20] Failure to pay probation fees can lead to returning to prison. With average annual costs of supervision around \$4,000, it is much more expensive to imprison someone than to cover the costs associated with monitoring an individual on probation.[21]

Criminalizing Homelessness

Homelessness has increasingly indirectly become a crime over the past decade in localities across the country, affecting up to 552,000 people.[22] [23] Not only can criminalizing homelessness result in jailing people for

being poor and imposing fines on people who cannot afford to pay them, but it also results in significant costs to taxpayers without providing a solution. In fact, numerous [studies](#) have shown that it is more cost-effective to house people than to jail them. After accounting for the annual costs of imprisoning someone as well as the health care costs associated with frequent visits to the emergency room, one study estimates the average homeless individual costs taxpayers nearly \$36,000 in 2014.^[24] It is often cheaper to provide housing for a year and a social worker. For example, the Housing First program in Utah saved the state \$5,670 per person annually; the same program in Central Florida could save \$21,000 per person, a 68 percent cost reduction.^[25] Providing housing to a homeless person can eliminate the problem at hand while better enabling individuals to secure employment and to take care of their basic needs. Of course, there are challenges that providing housing alone will not solve, and this approach will not work for all homeless individuals. Further, policymakers must be careful to not create perverse incentives; a program of this sort requires thoughtful consideration of each individual's circumstances and strong metrics for evaluating its success.

Conclusion

The U.S. criminal justice system increasingly imposes monetary penalties on individuals accused and convicted of crimes. Low-income individuals are more likely to be accused and convicted, and such financial penalties create a disproportionate burden on their ability to receive justice. One-fourth of the currently incarcerated population was detained as a result of their inability to pay fees, fines, or debts. Imprisoning people directly or indirectly as a result of their poverty decreases their ability to escape poverty and the likelihood of being able to pay their debt; thus, such punishment—particularly for the innocent—is neither rehabilitative nor deterring. Consequently, this method for imposing justice is highly ineffective and an inefficient use of taxpayer dollars. Finally, to the extent that localities are both trying to reduce crime and raise revenue through monetary penalties on accused and convicted individuals, they will, at least in principle, fail on at least one front. Policymakers should carefully consider their goals and evaluate the extent to which those goals are being achieved through current policies; perhaps other means will yield more desirable results.

[1] <https://www.governing.com/columns/public-money/gov-court-fees-fines-debt.html>

[2] https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf

[3] https://www.hamiltonproject.org/assets/files/BailFineReform_EA_121818_6PM.pdf

[4] https://www.hamiltonproject.org/assets/files/BailFineReform_EA_121818_6PM.pdf

[5] <https://finesandfeesjusticecenter.org/articles/bearden-v-georgia/>

[6] <http://www.safetyandjusticechallenge.org/wp-content/uploads/2019/04/Justice-Denied-Evidence-Brief.pdf>

[7] <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>

[8] <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>

[9] https://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf

[10] <https://jjrec.files.wordpress.com/2014/08/debtpenalty.pdf>

- [11] <https://theappeal.org/fines-and-fees-explained-bf4e05d188bf/>
- [12] <https://jjrec.files.wordpress.com/2014/08/debtpenalty.pdf>
- [13] <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>
- [14] <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>
- [15] https://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf
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- [21] <https://www.uscourts.gov/news/2017/08/17/incarceration-costs-significantly-more-supervision>
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