



JAIL REFORM TOOLKIT & RESOURCE GUIDE

EPISODE 9

How New Orleans Could Set a New Course for Bail Reform

A PODCAST BY



MacArthur
Foundation

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Hello!

Thanks for listening to 70 Million. Whether you're a seasoned criminal justice reform advocate, private citizen, educator, public or private sector leader, we appreciate your interest in finding solutions to the incarceration quagmire.

We've assembled this 70 Million Criminal Justice Toolkit for those ready to turn interest into action.

This resource guide draws from practical tactics shared by those who launched the initiatives chronicled in our episodes, including:

- How to access and deploy public and private sector databases and legislative bodies to build reform solutions.

- How to highlight individual stories of the incarcerated in order to drive organizational and grassroots action.

- How to harness citizens' willingness to engage in methodical, trial-and-error pilot efforts in order to build effective reform programs and movements.

Our hope is that this Toolkit can help get you started. Keep in mind that steps do not have to happen strictly chronologically. Use them and the questions to frame and shape change in your community and let us know about it.

WHAT IS BAIL?

Understanding its role in our justice system

Bail refers to the conditions you have to meet in order to be released before trial.

It can be financial, like paying a bond, or non-financial, like taking drug tests or checking in with court officials regularly. The use of cash bail has skyrocketed over the last two decades, keeping more and more people in jail before their trial.

According to the Department of Justice, nearly 450,000 people not yet convicted of a crime are sitting in jail on any given day in the United States. Many of them are there because they are too poor to afford their bail.

Commercial bail
is a \$20 billion
industry in the
United States.

WHAT DOES A CASH BAIL SYSTEM LOOK LIKE?

New Orleans, LA

Residents pay nearly \$6.5 million every year into the bail system.

New Orleans has one of the highest incarceration rates per capita. Like in many other jurisdictions, the people who go through the criminal justice system in Louisiana's largest city are, by and large, poor.

About a quarter of New Orleans residents live in poverty. But over 80 percent of the accused who appear before New Orleans' court judges are considered indigent.

According to a [Data Center report](#), 97 percent of New Orleanians who post bail go through a professional bail-bonds agency. They pay an average of 13% of their bail amount as a fee to the agency.



“The first thing they do is they set your bond too high. ... You wouldn't give a homeless man a million dollar bond now, would you?” -**Reynard Oliver**, New Orleans citizen.

Above: A bail bonds agency sits adjacent to the courthouse. Photo: Sonia Paul.

WHAT DOES A CASH BAIL SYSTEM LOOK LIKE?

New Orleans, LA

Cash bail allows for the quick processing of arrestees.

Instead of having lengthy hearings for each person arrested, cash bail systems assign a monetary amount to each defendant. If they can pay that amount, they're free to go. If not, they must stay in jail until their case is resolved.

Many states, including Louisiana, use bail schedules to help determine that monetary amount. Bail schedules -- which often take the form of a worksheet or chart -- may take into consideration the crime a person is accused of or their past involvement in the criminal justice system.

Here's an example of a [Bail Schedule](#) from California from before its cash bail reforms.



“We came up with a system that allowed for a decision to be made in a few seconds.” -Alec Karakatsanis, Founder of Civil Rights Corps.

**Above: Orleans Parish Criminal District Court.
Photo: Sonia Paul.**

WHAT ARE PEOPLE DOING ABOUT IT?

New Orleans, LA

Lawyers filed a class-action lawsuit challenging cash bail.

In January 2017, attorneys with the MacArthur Justice Center and the Civil Rights Corps argued in the lawsuit of *Caliste v. Cantrell* that:

- Orleans Parish Criminal Court Judge Harry Cantrell is setting bond amounts that are unaffordable for defendants and that this violates their constitutional right of equal protection under the law.
- Judge Cantrell is violating due process by taking almost 2% of the 13% premium defendants are paying on their bonds. The money goes into a judicial expense fund that Cantrell helps manage, which brings in over a million dollars every year.



“The public defender tried to get it where I was released on my own recognizance... But the judge said no. He said \$2,500 is the lowest bond he sets in his courtroom.” -**Brian Gisclair, a plaintiff in the lawsuit *Caliste v. Cantrell*. Photo: Sonia Paul.**

HOW HAS THE LAWSUIT AFFECTED THE COURT SYSTEM?

New Orleans, LA

The lawsuit reached a declaratory agreement in August 2018.

The judge overseeing the lawsuit ruled in favor of the plaintiffs, who argued that Judge Cantrell's bond policy resulted in the creation of a "modern debtor's prison." He also ruled that the cash bail system violated the constitutional rights of the accused and presented a financial conflict of interest because the court was taking a portion of the fee defendants pay on their bond.

Judge Cantrell's lawyers say they will appeal the verdict, but he says he has adjusted his bail procedures since the lawsuit was filed. He says he will no longer set a minimum monetary bail amount, and he will state on the record his reasoning whenever setting bail.



"Sooner or later they're going to be picking these poor homeless people up and giving them a high bond. And they can't get out of there." -Adrian Caliste on why he leant his case -- and name -- to the lawsuit.

HOW ARE OTHER PLACES REFORMING THEIR BAIL SYSTEMS?

California

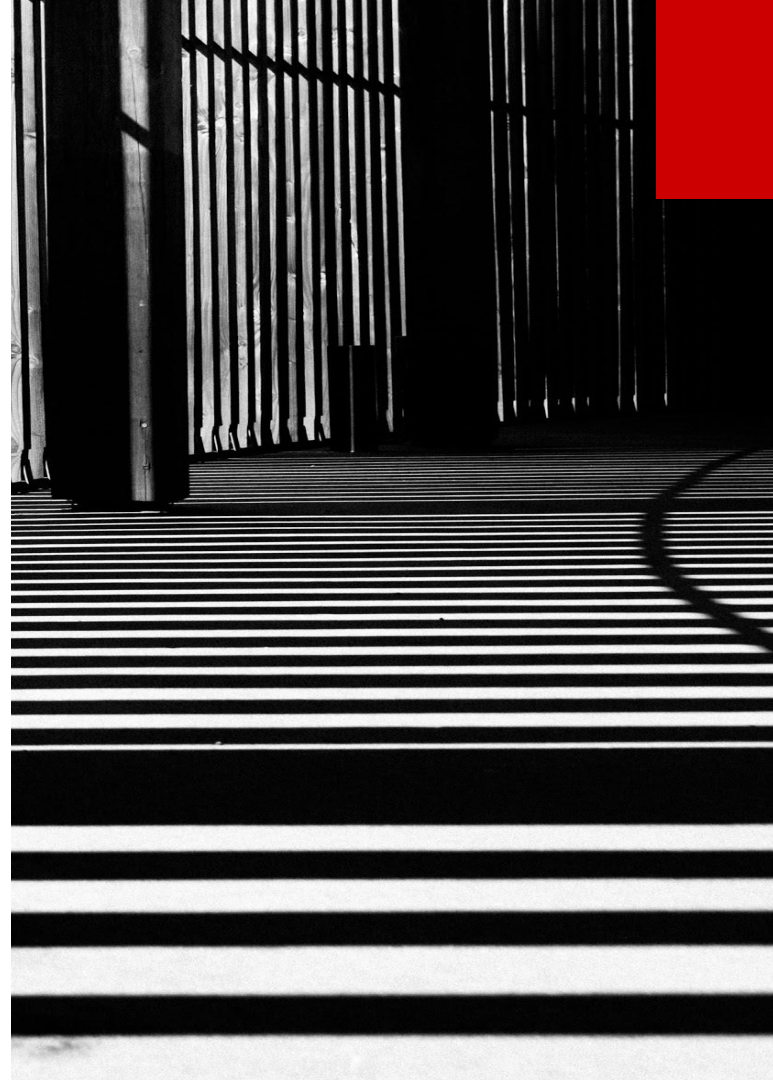
- Gov. Jerry Brown signed SB10 in August 2018
- The law replaces cash bail with risk assessments

While the ACLU of California originally co-sponsored the measure, they ultimately opposed it. They and other groups argue that it will cause prosecutors to file more “preventive detentions,” blocking a defendant's release before trial because of fears about public safety. The governor argued that the law ensures that [“rich and poor alike are treated fairly.”](#)

New Jersey

- The Criminal Justice Reform Act went into effect in January 2017
- The law eliminated cash bail for most defendants

A few months after the law went into effect, it was challenged with a lawsuit from a man who was forced to wear an ankle bracelet instead of being allowed to pay bail. The bond industry backed the lawsuit, but in July 2018 a federal appeals court [upheld the constitutionality of the law.](#)



HOW ARE OTHER PLACES REFORMING THEIR BAIL SYSTEMS?

Washington, D.C.

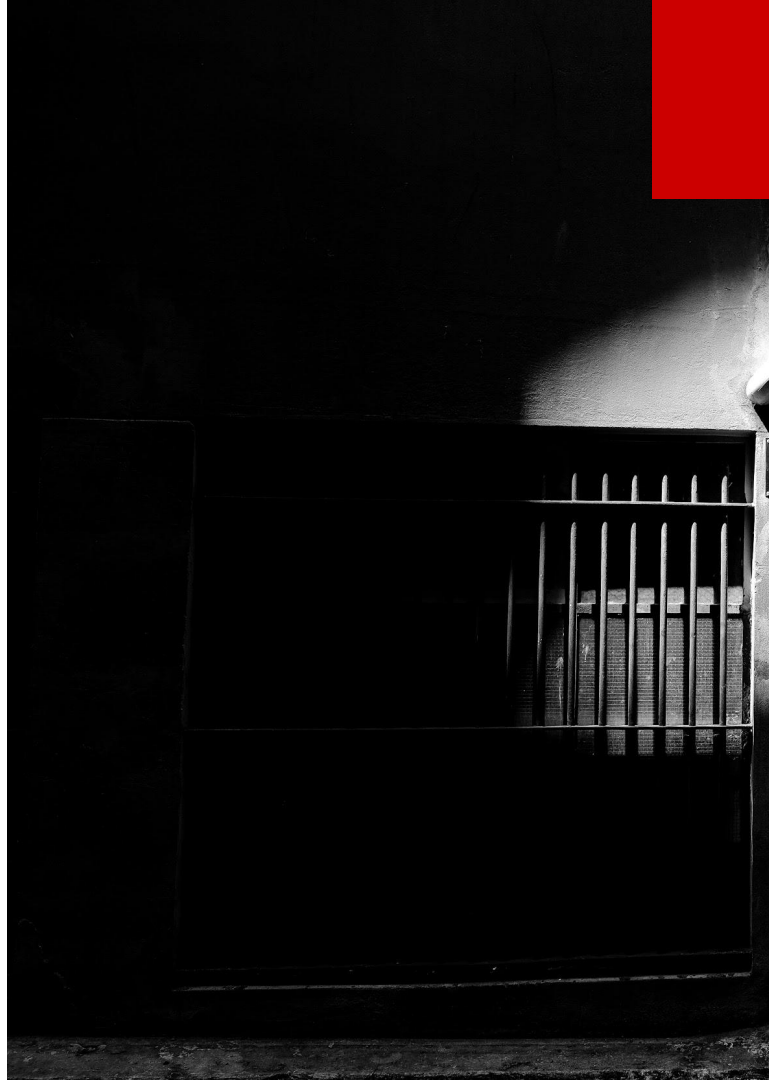
- D.C. Council members passed the Bail Reform Act in 1992, which prohibited courts from imposing a “financial condition” defendants couldn’t pay
- The law ended the bail-bond business in D.C.

D.C. is now considered the gold-standard for bail reform. A 2016 report found that the court saves [\\$398 million dollars a year](#) by releasing defendants into supervision programs instead of holding them in jail. Close to 90 percent of defendants are released before their trial.

Alaska

- The Senate passed SB91 in 2017, a broad criminal justice reform bill
- As part of the bill, courts stopped using cash bail on Jan. 1, 2018

Alaskan courts now use a risk assessment system to determine whether a person is likely to return to court for their hearing or recidivate. However, [some lawmakers](#) remain concerned that the SB91 is encouraging crime and have called for its repeal.



RESOURCES

To get started developing a reform project on issues similar to those addressed by the New Orleans lawsuit:

- Learn more about the Civil Rights Corps and their approach to [making legal challenges](#) around bail and court fees.
- Browse one of the [Pretrial Justice Institute's primers](#) on the issue.
- Or join the free online learning community they run, the [University of Pretrial](#).
- Catch up on the state of bail nationwide by reading [this Vera Institute report](#).

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