


Bail Reform

OPTIONS FOR ARKANSAS

House Judiciary Corrections and Criminal Law Subcommittee
ISP 2019-027 | March 9, 2020



Three Numbers

100 million


The annual cost to Arkansas of pre-trial detention¹

10,000

The average felony bail amount²

5.5 million

The cost of President Trump's Super Bowl ad re: criminal justice reform³



Foundations of Bail

Bail must be available

- Arkansas Constitution: “All persons shall, before conviction, be bailable by sufficient sureties.”¹


Bail may not be excessive

- U.S. Constitution: “Excessive bail shall not be required...”²

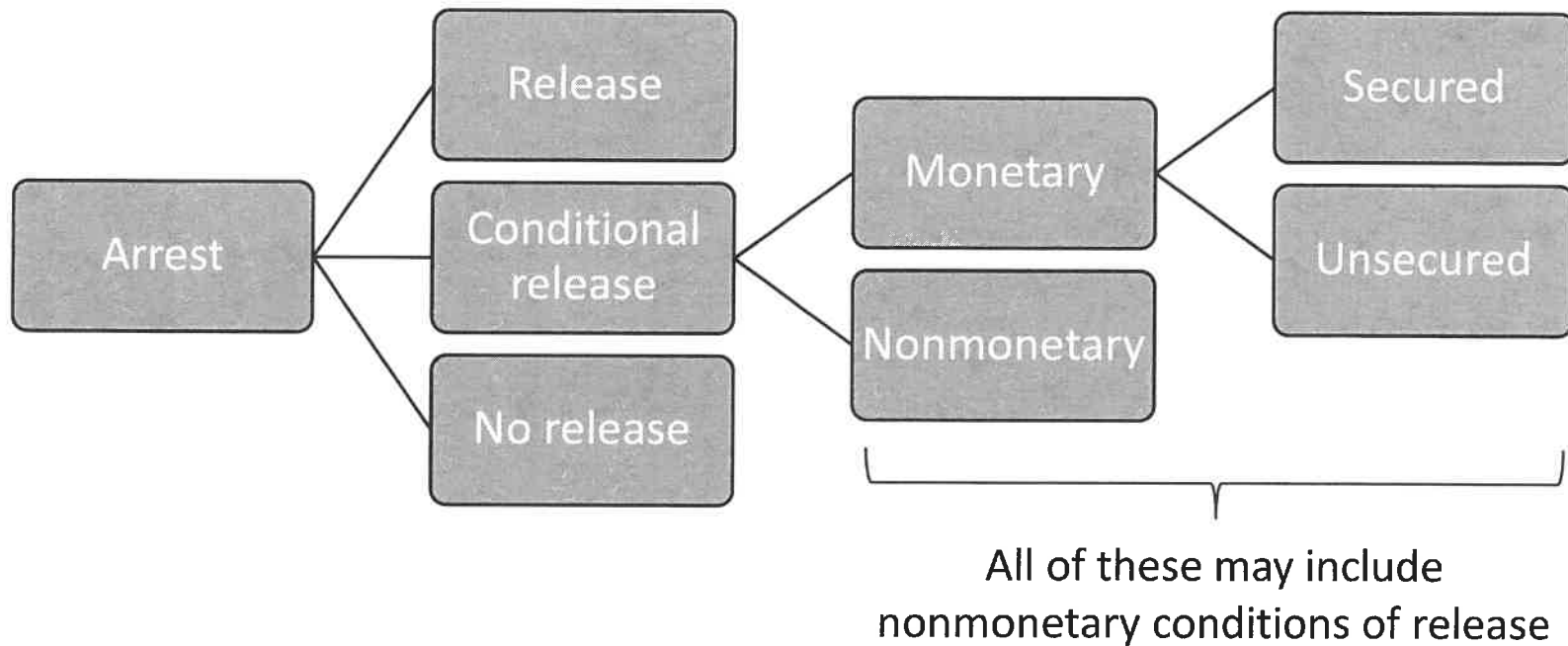
Monetary bail is only to be used as a last resort

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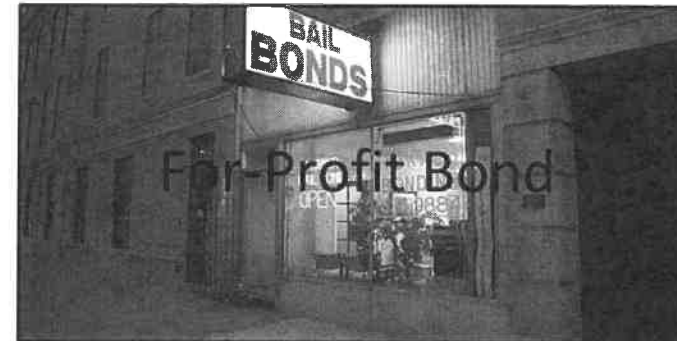
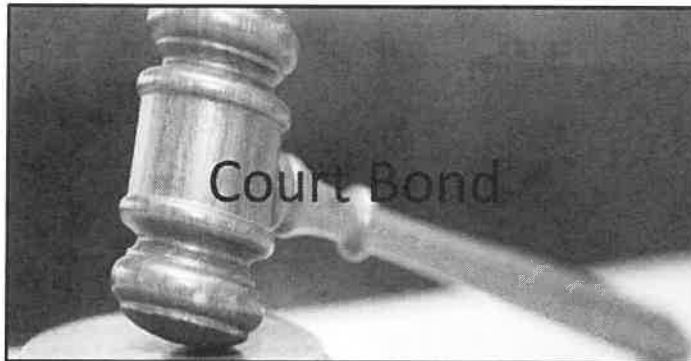
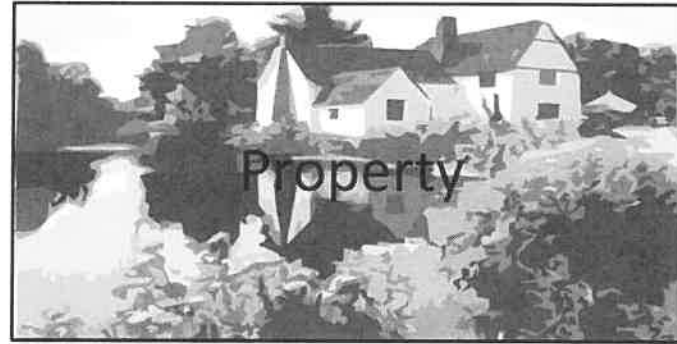
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- In some jurisdictions (not Arkansas) an additional purpose may be to reduce danger to the community
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The Process



Forms of Monetary Bail



Unsecured

Considerations in Setting Bail

In setting bail, an Arkansas court “should” consider a variety of factors, all of which deal with whether the accused will appear:¹

- The length and character of residence in the community
- Employment status, history and financial condition
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- Whether there are responsible members of the community to vouch for the reliability of the accused
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- Other factors indicating roots in the community

Problems with Bail



Fairness



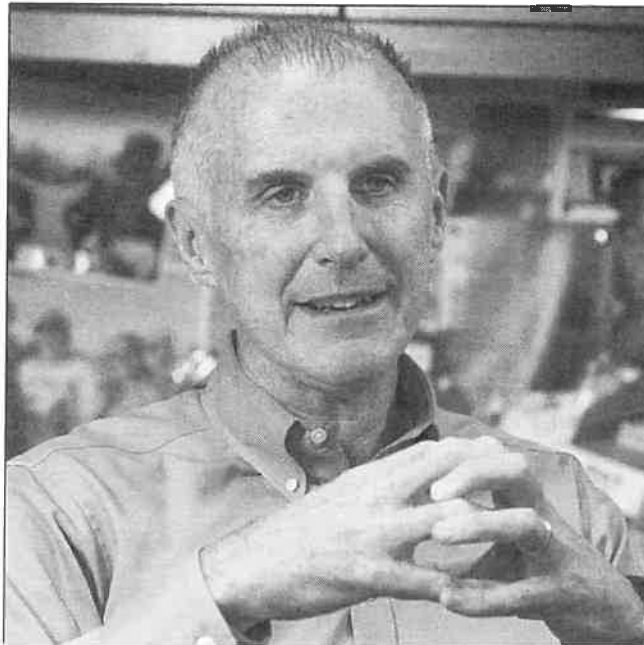
Cost to taxpayers



Public safety



Problem: Fairness



“I would say the criminal justice system is the biggest failed big government program. It's a pay-to-play system... and if you're rich and guilty, you get a better deal than if you're poor and innocent. That's fundamentally unjust.”¹

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Problem: Fairness


Some stay in jail because they lack resources to make bail

- The median felony bail in the United States is \$10,000¹
- 47% of felony defendants with bonds remain jailed before their cases are heard because they cannot make bail²
- Detention for lack of resources amounts to a jail sentence for being poor

Some make false guilty pleas to avoid paying bail

- When the choice is a long pre-trial detention or unacceptable expense, a guilty plea is a way out, whether the accused actually did it or not
- A guilty plea means conviction, and a conviction hurts career and personal prospects

Some research shows that bail decisions are racially biased against people of color, although the research is mixed³



Problem: Cost to Taxpayers



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Former Governor Phil Bryant (R-Miss.) on his 2014 criminal justice reform bill. It passed 114-4 House, 49-3 Senate

Problem: Cost to Taxpayers



Source: <https://www.prisonpolicy.org/global/2018.html>

When defendants cannot make bail and remained detained before trial, Arkansas taxpayers foot the bill

Arkansas spends an estimated \$100 million per year on pre-trial detention.²
The United States spends nearly \$140 billion a year³

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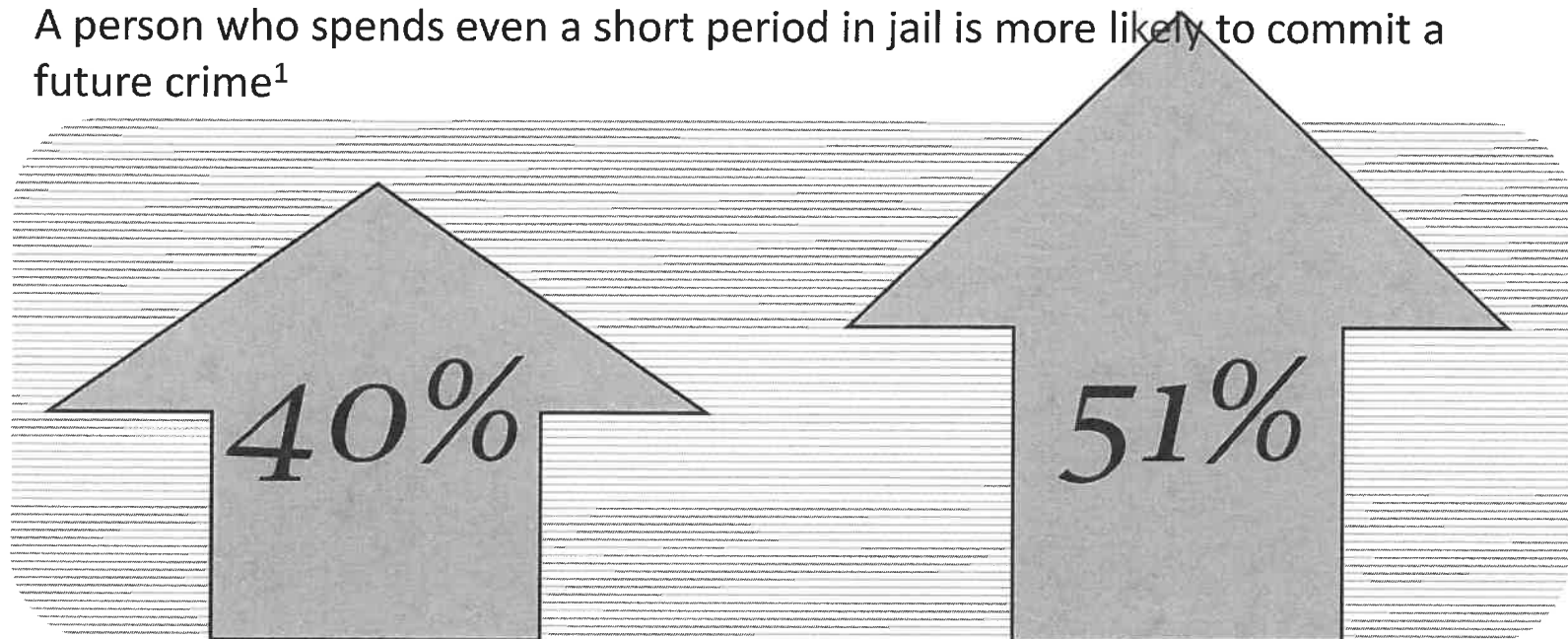


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A person who spends even a short period in jail is more likely to commit a future crime¹



Pre-trial detention of 2-3 days makes someone 40% more likely to commit another crime before trial²

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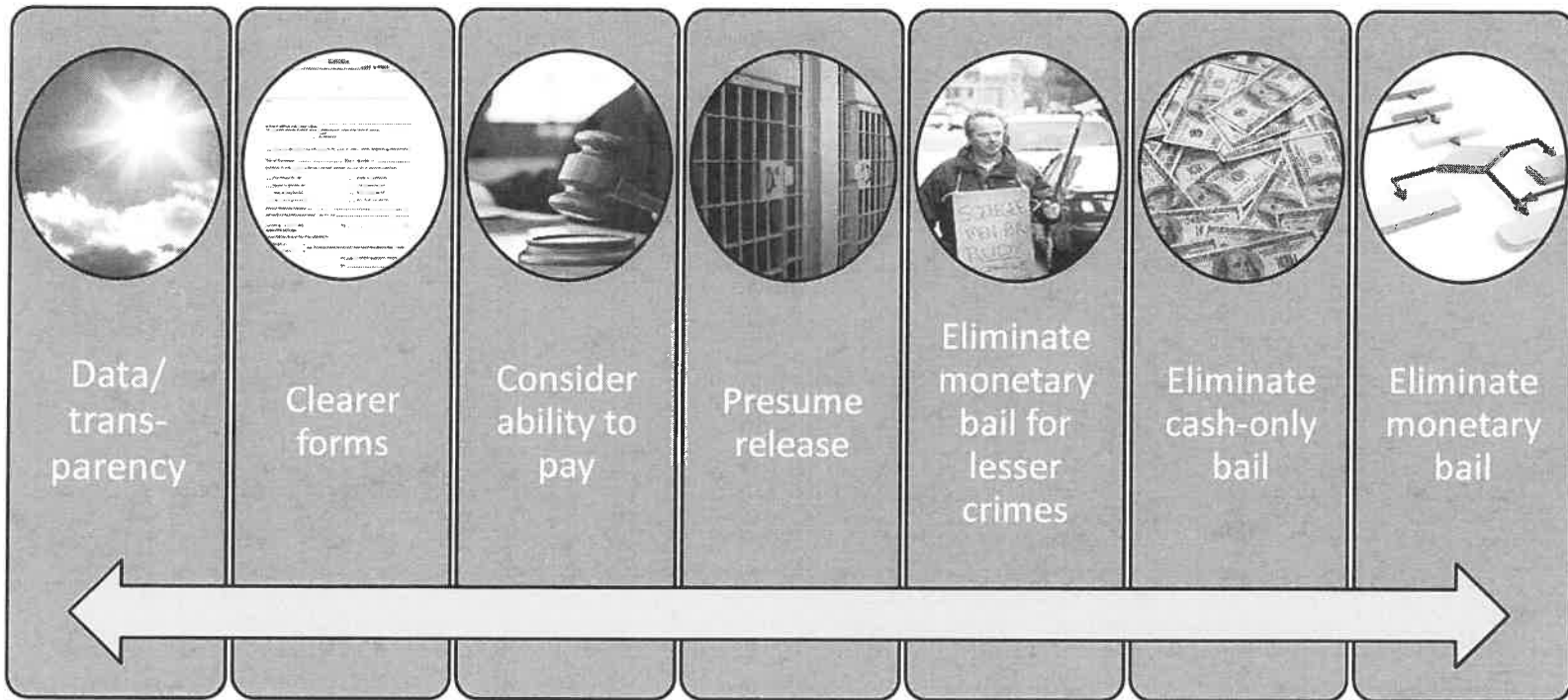
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Pre-trial detention itself causes destabilization:¹

- Job loss and financial destabilization
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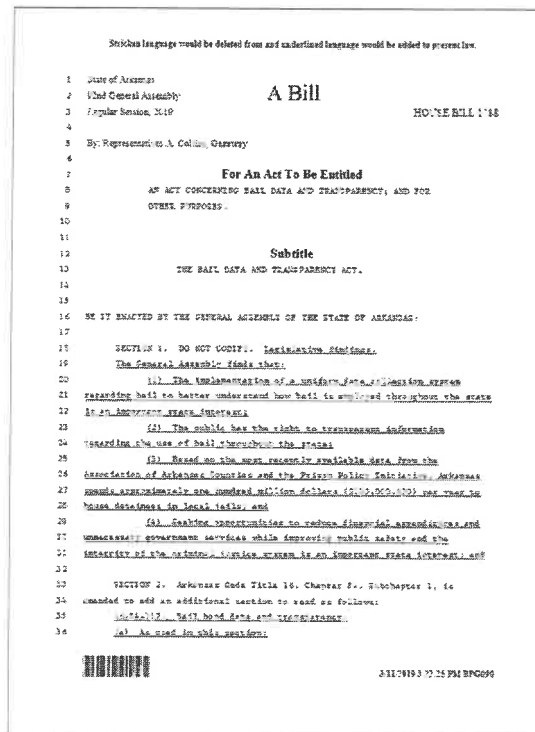
By destabilizing lives that are often already unstable, pre-trial detention undermines whatever exists of steady employment, housing, and family attachments. This leads defendants into more trouble, or new trouble²

Reform: Options



In place of sureties, courts can encourage appearance in court via supervised release, reminders (e.g., text), and algorithmic risk assessment tools

Reform: Data/Transparency



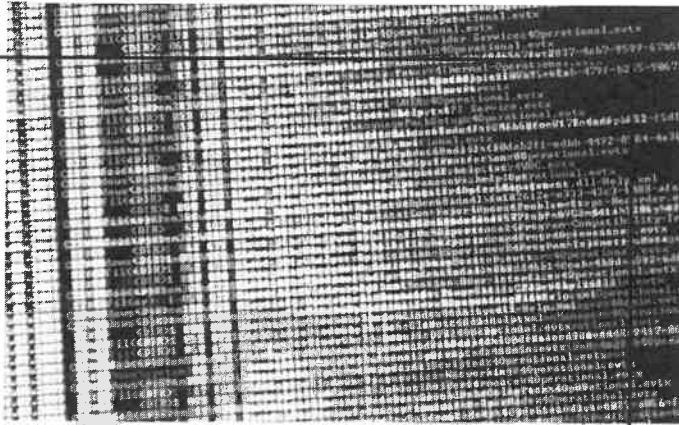
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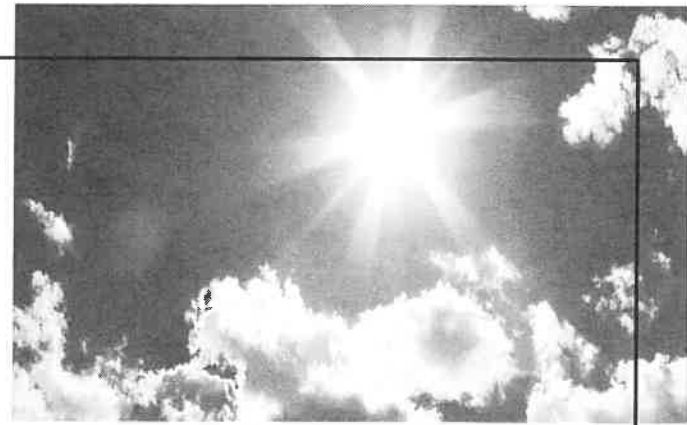


Reform: Data/Transparency



Data

Better data means better policy. Data can help the legislature and judiciary determine what policies around bail are worthwhile, which are inessential, and which are net harmful



Transparency

Transparency itself can improve behavior and lead to more thoughtful bail determinations. Sunshine is the best disinfectant



Reform: Clearer Forms

A 2018 study showed that designing clearer summons forms ordering a defendant to appear in court led to a 13% decrease in failure to appear¹

Clearer forms are based on behavioral science²

- Time and resource scarcity means limited time to read in detail
- Some defendants are uncomfortable with legalistic jargon
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GLUE LINE

The title describes the ticket's purpose from the defendant's perspective while maintaining its official character.

Since the personal information has been removed from the defendant's copy, recording the DOB upholds the legitimacy of the summons.

CRC-3206 (1/16)
Criminal Court Appearance Ticket

Name (Last, First, MI) _____ Date of Birth (mm/dd/yyyy) _____

Cell Phone Number (where court may contact you) () () Home Phone Number (where court may contact you) () ()

Show up to court on:
Court Appearance Date (mm/dd/yyyy): _____ at: **9:30 a.m.**

Your court appearance location: Other (specify) _____

Bronx Criminal Court
 Kings/Queens Criminal Court
 Manhattan Community Court
 Richmond Community Justice Center
 Westchester Criminal Court
 Richmond Criminal Court

****To avoid a warrant for your arrest, you must show up to court.****
At court, you may plead guilty or not guilty.
Please see back for exceptions for Public Consumption of Alcohol and Public Urination offense.

Court Locations: You must appear at the court location identified above.

Bronx Criminal Court 215 E 161st Street, Bronx, NY 10451
New York Criminal Court 346 Broadway, New York, NY 10013
Community Justice Center 88-94 Visitation Place, Brooklyn, NY 11234
Community Court 314 W 54th Street, New York, NY 10019
Queens Criminal Court 120-55 Queens Boulevard, Kew Gardens, NY 11424
Richmond Criminal Court 26 Central Ave, Staten Island, NY 10314

1

Court date, time and location information is the most important of all information on this form, so it is essential for it to be near the top.

The bubbles clearly specify the correct court location. This reduces hassle for the officer and defendant, and avoids confusion.

This statement makes it clear that appearing in court is not an admission of guilt.

Putting the default time in large font makes it clear to the defendant when their court appointment is.

This emphasizes the negative consequence of not showing up to court; people often respond more strongly to phrasing that focuses on losses.



The personal language connects the defendants with their charge. This encourages a serious and careful reading of the information on the form.

You are Charged as Follows:

1

Name of Offense:						
Time 24 Hour (hh:mm)	Date of Offense (mm/dd/yy)				County	
Place of Occurrence					Precinct	
In Violation of Section	Subsection	<input type="checkbox"/> VT <small>Code</small>	<input type="checkbox"/> Penal <small>Code</small>	<input type="checkbox"/> Para <small>Rules</small>	Other	



For Additional Information and Questions:

Visit the website or call the number below for additional information about your court appearance and translation of this document.

www.mysummons.nyc

OR

Call 646-760-3010

A website and phone number is now listed, making it easier for people to get additional information.

Defendant stated in my presence (<i>in substance</i>):		
I personally observed the commission of the offense charged herein. False statements made herein are punishable as a Class A Misdemeanor pursuant to section 210.45 of the Penal Law. Affirmed under penalty of law.		
Complainant's Full Name Printed	Rank/Full Signature of Complainant	Date Affirmed (mm/dd/yy)
Tax Registry #	Agency	Command Code

DEFENDANT'S COPY

Reform: Consider Ability to Pay

Many states require that a court consider a defendant's ability to pay in setting bail

Arkansas court rules allude to financial condition but do not require consideration of ability to pay: "In setting the amount of bail the judicial officer should take into account all facts relevant to the risk of willful nonappearance including... [the defendant's] financial condition...."¹

Problems with Arkansas's language:

- Too weak: "should" is aspirational, not mandatory. Courts can ignore "should" directives but cannot ignore "shall" mandates
- Courts are directed to consider financial condition as it pertains to "the risk of willful nonappearance," not as it pertains to the ability to pay

Court rules may preempt legislative action



Reform: Presume Release

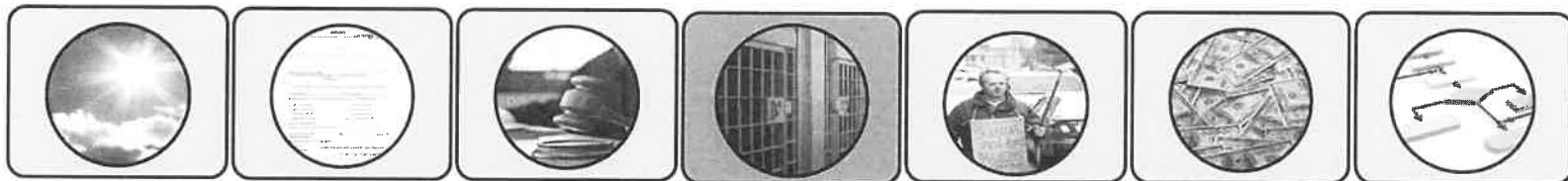
Some states provide for a presumption of release but leave courts with discretion to use other forms of bail; others are moving toward it

- Recommended by the Texas Judicial Council's Criminal Justice Committee in 2016¹

Arkansas frames it the opposite way: "The judicial officer shall set money bail only after he determines that no other conditions will reasonably ensure the appearance of the defendant in court."²

- If conditions don't do the job, the court "shall" (must) set money bail

Court rules may preempt legislative action



Reform: Eliminate Monetary Bail for Lesser Crimes

Some states have eliminated monetary bail for lower-level crimes. For example, in New York:¹

- Eliminated for most misdemeanors
 - Except sex offenses, criminal contempt for violating an order of protection in a domestic violence case
- Eliminated for most nonviolent felonies
 - Except witness intimidation, tampering, conspiracy to commit murder, certain offenses against children, sex offenses and criminal contempt involving domestic violence, major drug trafficking
- Retained for violent felonies

A challenge: When there are two tiers of crimes, it's unclear where to draw the line

- In New York, after several anti-Semitic incidents, some lawmakers are now calling for an exception to allow monetary bail for hate crimes²



Reform: Eliminate Cash-Only Bail

Sometimes, courts only allow cash, not even a bond. For a defendant who cannot come up with the cash, this amounts to a jail sentence on the basis of poverty

- In one recent Arkansas case, a court set bail at \$300,000 cash, with no bond accepted¹

Eliminating cash-only bail would require a constitutional amendment



Reform: Eliminate Monetary Bail

The most effective way to address the big problems of monetary bail—uneven justice based on wealth, high cost to taxpayers, and threats to public safety and society as a result of excessive pre-trial detention—is to eliminate it

Monetary bail does not work well enough to justify the costs

- For low-risk defendants, monetary bail makes no difference in appearance rates ¹
- For high-risk defendants, monetary bail makes no more of a difference than supervised release, a far less harmful and costly approach ²

Eliminating monetary bail would require a constitutional amendment



Alternative: Supervised Release

Supervised release works as well as monetary bail¹ with far fewer costs

Arkansas already allows for release conditions with or without bail including:

- Supervised release under the care of a qualified person or organization
- Supervised release under the care of a probation officer or other appropriate public official
- Restrictions on activities, movements, associations, residences
- Work release only
- Prohibition from possessing any dangerous weapon
- Prohibition from drinking or using drugs

Relying on supervised release and other conditions would require additional funding, some of which could be claimed from the savings realized by reducing the pre-trial jail population

Alternative: Reminders

Phone and text reminders to appear in court are effective

- A 2018 New York City study showed that text reminders reduced failure to appear (FTA) by 26%¹
- Scottsdale (AZ) Municipal Court found that text messages reduced FTA by 51.9% in three months²
- Contra Costa County (CA) reduced failure to appear rates from about 55% (misdemeanor) and 25% (felony) to a combined rate of 2.5% for defendants who received texts³
- A Multnomah County (OR) call program reduced FTA from 29% to 16%, saving \$1,320 per FTA warrant avoided and \$1 million (net) over 8 months⁴

The reminders are inexpensive

- One text program costs about \$20,000 to install and \$2 per defendant per year⁶

Alternative: Reminders

Pre-Court Messages

1

CONSEQUENCES MESSAGES

7 days before court

Helpful reminder: go to court Mon Jun 03 9:30AM. We'll text to help you remember. [Show up to avoid an arrest warrant.] Reply STOP to end texts. www.mysummons.nyc

3 days before court

Remember, you have court on Mon Jun 03 at 346 Broadway Manhattan. [Tickets could be dismissed or end in a fine (60 days to pay).] [Missing can lead to your arrest.]

1 day before court

At court tomorrow at 9:30AM [a public defender will help you through the process.] [Resolve your summons (ID#####) to avoid an arrest warrant.]

- 1 Makes the costs of FTA more salient to overcome present bias.
- 2 Reduces the ambiguity and perceived costs of attending court.
- 3 Highlights penalties to overcome present bias and the mental model that you don't need to go to court for minor violations.
- 4 Repeats the consequence to keep the cost of missing court top-of-mind, reinforcing that despite the mismatch between crime and punishment, you must attend to avoid a warrant.

Alternative: Reminders

Post-FTA Messages

1

CONSEQUENCE MESSAGE

- 1 [Since you missed court on Jun 03 (ID#####), a warrant was issued.]
- 2 [You won't be arrested for it if you clear it at 346 Broadway Manhattan.]
www.mysummons.nyc

Sent when a warrant is triggered by an FTA

- 1 Notifies of the serious consequence that has occurred.
- 2 Encourages action to resolve the open warrant.

SOCIAL NORMS MESSAGE

- 1 [Most people show up to clear their tickets but records show you missed court for yours (ID#####).]
Go to court at 346 Broadway Manhattan.
www.mysummons.nyc

Sent when a warrant is triggered by an FTA

- 1 Provides feedback that their behavior goes against the norm.

Alternative: Algorithms

Most states which have implemented bail reform have replaced reliance on sureties with algorithmic risk-assessment tools

These tools compare a person's characteristics to historical data to determine how likely someone is to appear at court

Issues:¹

- No tool, no matter how impressive the science, is perfect. Harm can arise when policymakers and courts overvalue risk-assessment tools.
- Bias is built into the historical data that powers the algorithms. Many studies have shown that for the same conduct, black and Latinx people are more likely to be arrested, prosecuted, convicted, and sentenced to harsher punishments. By mapping characteristics onto this data, the algorithm is apt to repeat the bias

Arguments Against Reform

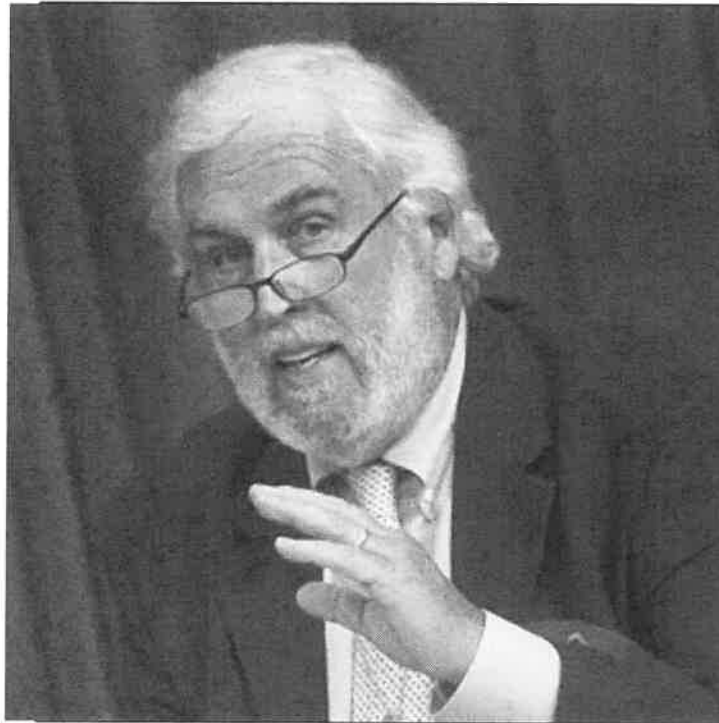
Argument	Response
The for-profit bail bond industry is indispensable, securing defendants' appearances because underfunded courts have abdicated the responsibility	Courts are indeed underfunded. But a for-profit bail bond industry is not essential, existing only in some U.S. states and The Philippines. Bail bond companies often do little to secure appearance. Even when they do perform a service, they could be substantially replaced with alternatives that cause less damage to the accused and society.
Reducing pre-trial detention means more violent people on the streets	The highest-risk accused people will not be released under any system. The only way to keep all potential criminals off the streets is detaining every accused person before trial, which is unconstitutional, cost-prohibitive, and ruinous. In DC, which has mostly done away with monetary bail, only 0.28% were rearrested for a violent crime. ¹ And the risk of pre-trial crime is higher when release is based on a factor like wealth that has no bearing on propensity to commit crimes.

Arguments Against Reform

Argument	Response
Certain types of bail reform come with costs, while others leave courts, cities, and counties with less bail revenue	Some reforms cost nothing. Others come with minimal costs. When there are significant costs, or reduced revenues, funding should be made available. As always, funding is available for priorities, and ensuring fairness for our people, a stronger society, smaller government, reduced spending, and safer communities should be high priorities.
Some reform tools, like algorithms, are biased	Some are. An algorithm should be controlled for bias and should not be exclusively relied upon.



Bail Reform Is Coming Here



“We’ve proven it can work without money, but the whole country continues as if in a trance to do what we know does not work.”¹

Judge Truman Morrison
D. C. Superior Court

Since virtually eliminating monetary bail in the 1990s, D.C. has seen a high appearance rate (88%) and very low pre-trial violent crime rate (0.28%)

Bail Reform Is Coming Here

For-profit bail bonds are illegal in all countries except the United States and The Philippines, as well as Illinois, Kentucky, Oregon, and Wisconsin.

Most countries use pre-trial detention sparingly. The United States has 4% of the world's population but 20% of its pre-trial jail population¹

Some states have moved to reform bail

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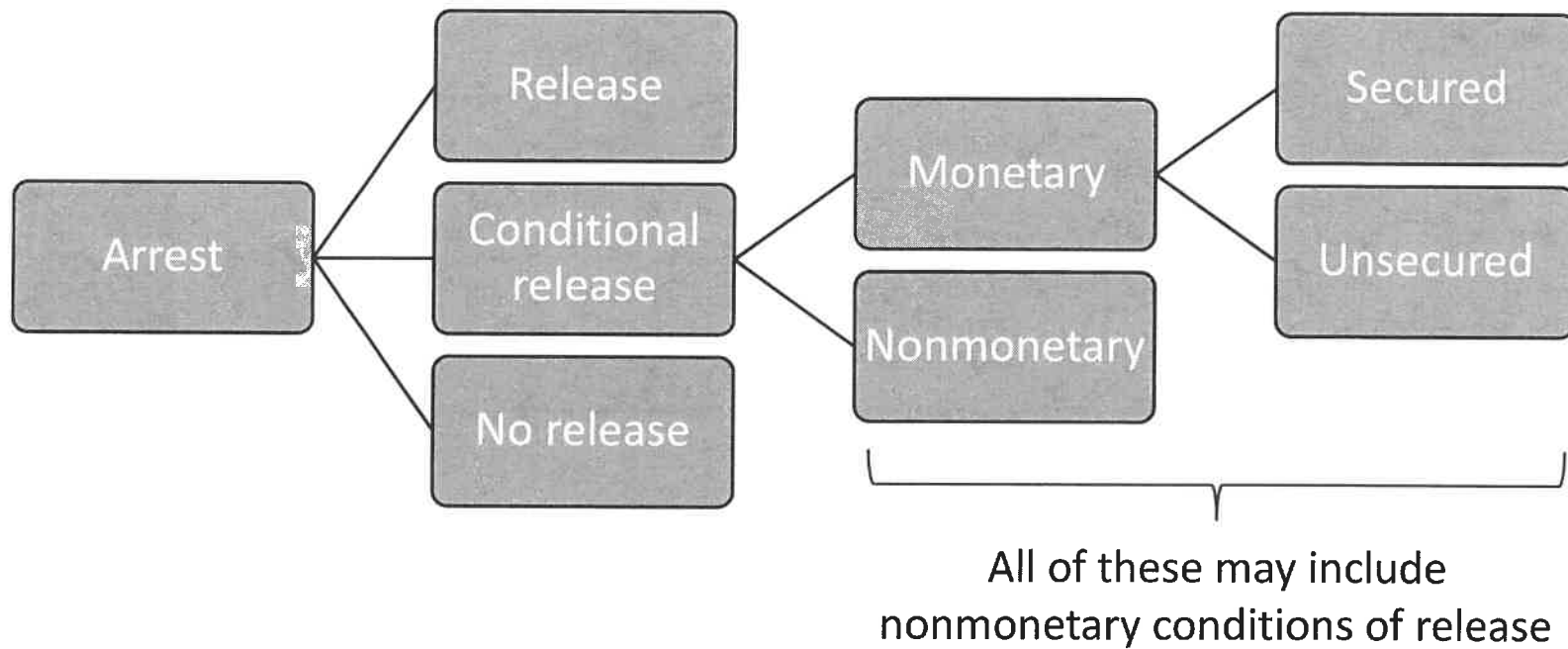
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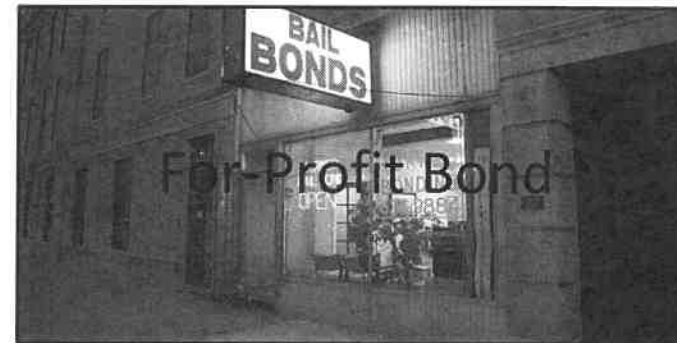
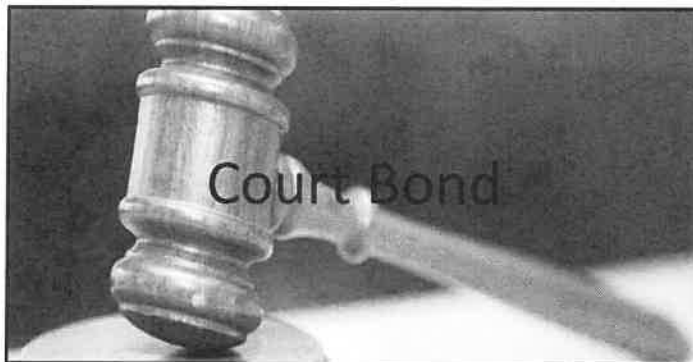
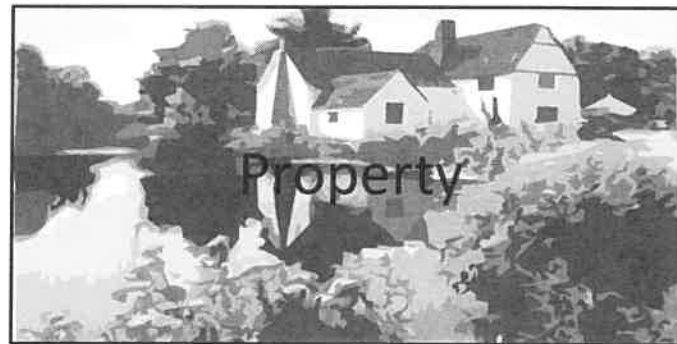
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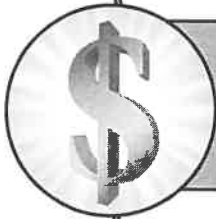
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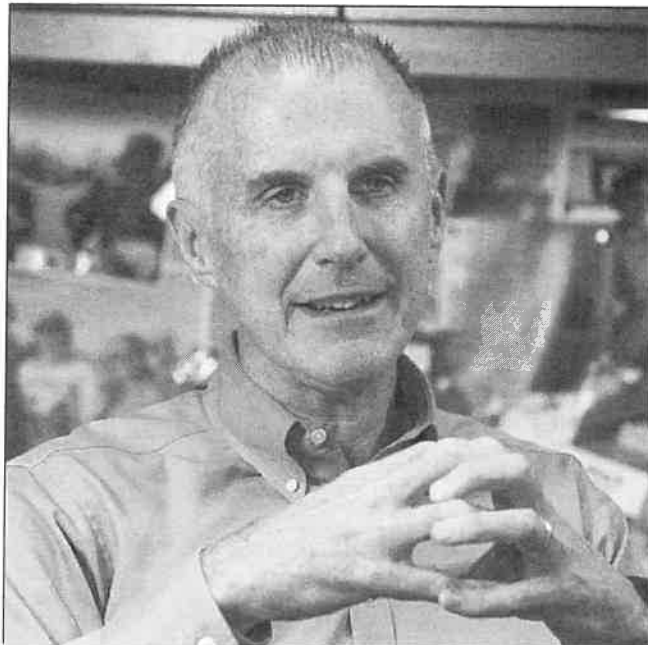
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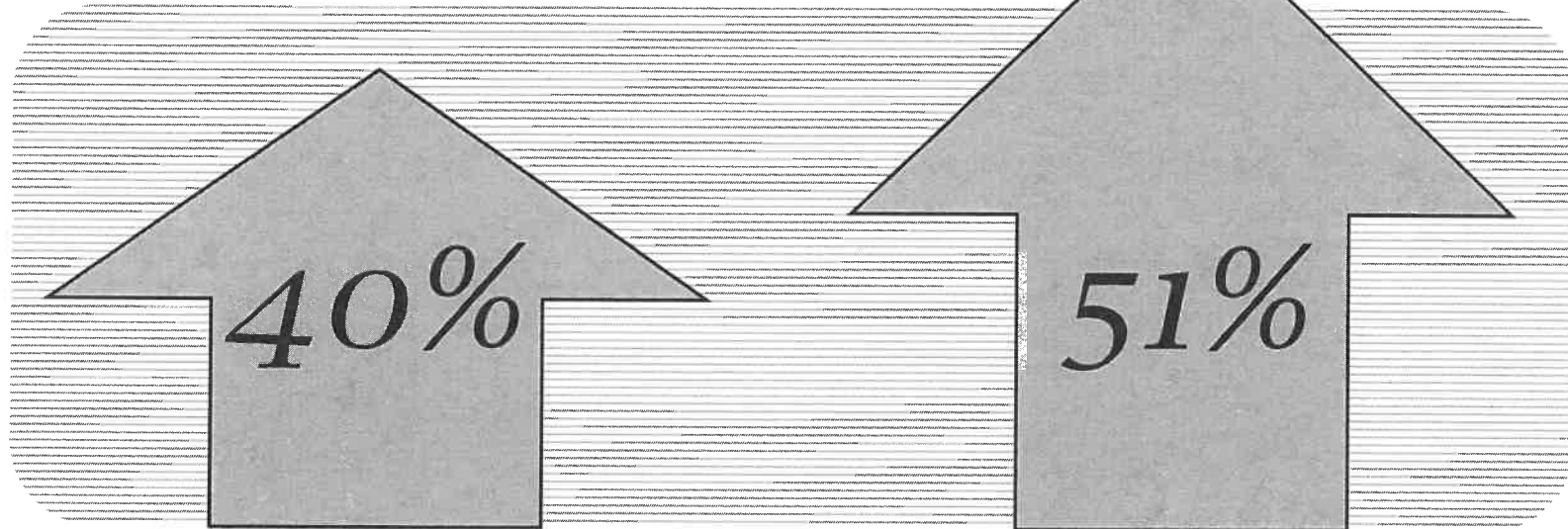


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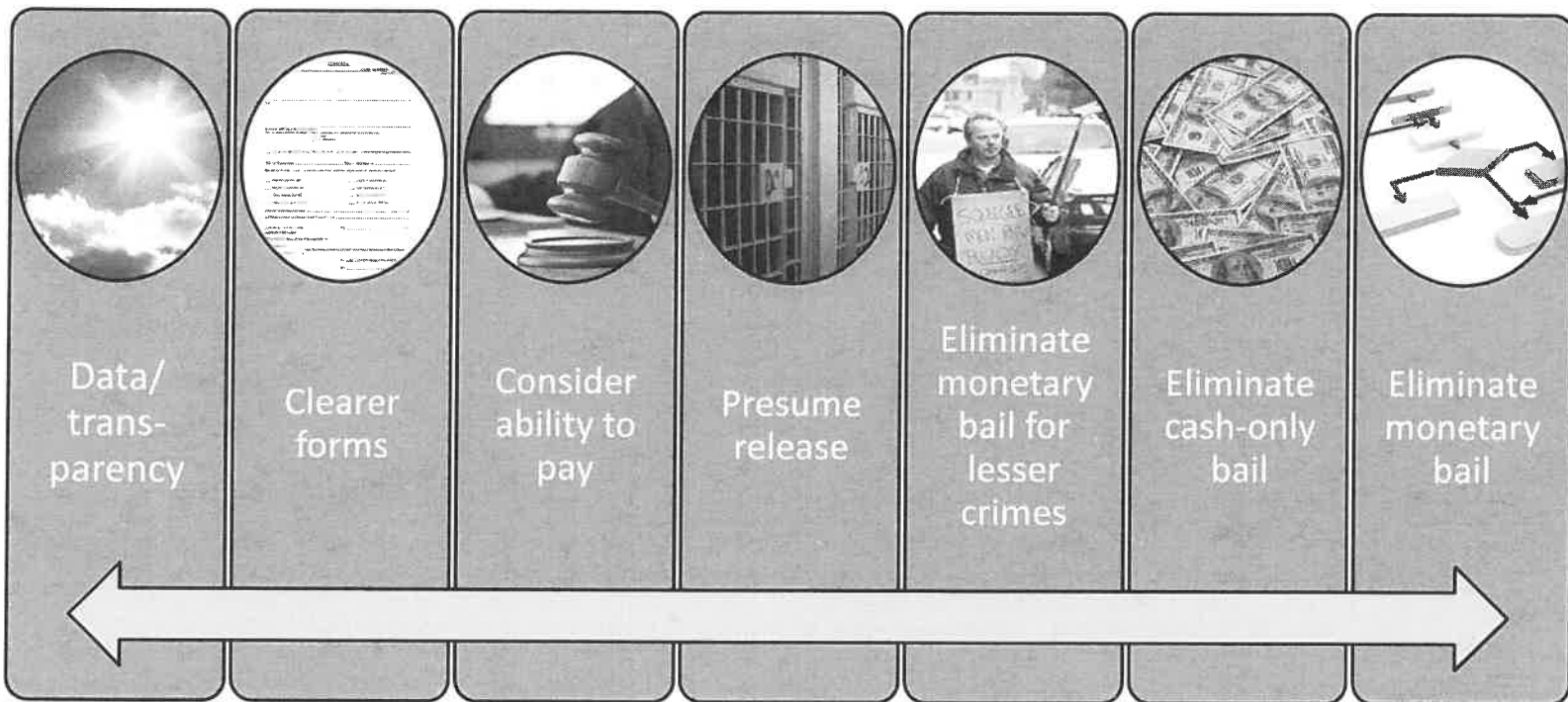
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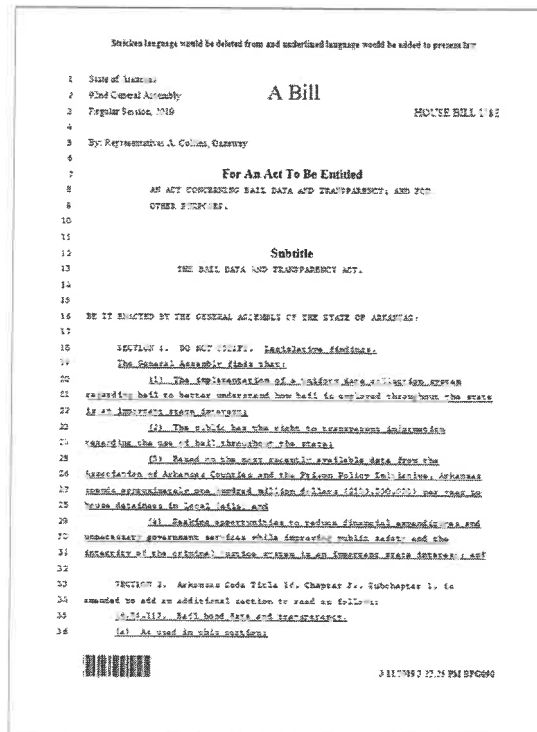
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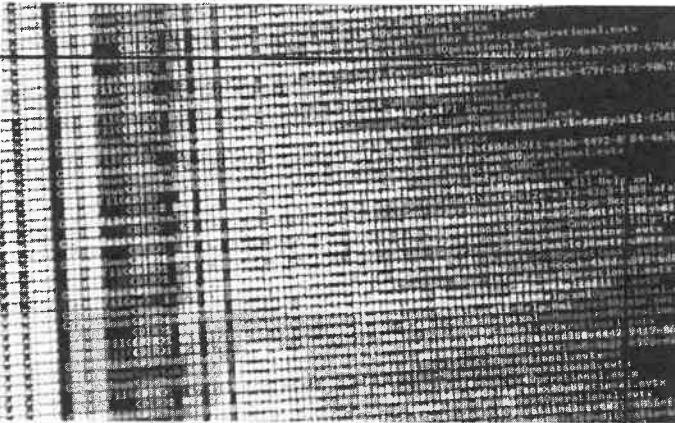
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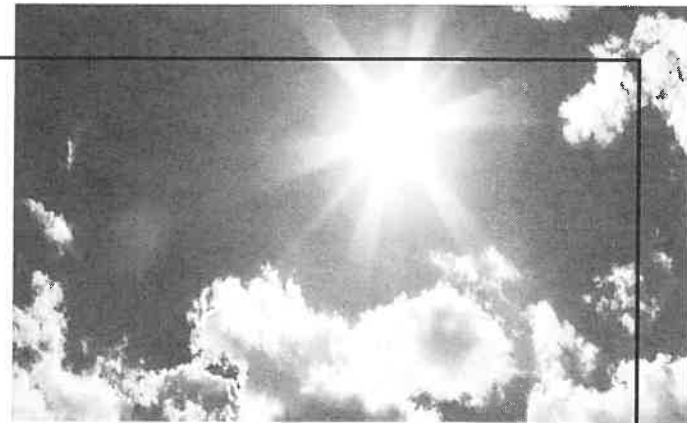


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CRC-3206 (1/16)
Criminal Court Appearance Ticket

Name (Last, First, MI)		Date of Birth (mm/dd/yy)
Cell Phone Number (where court may contact you) () ()	Home Phone Number (where court may contact you) () ()	

Show up to court on:
Court Appearance Date (mm/dd/yy) at: 9:30 a.m.

Your court appearance location: Other (specify)

<input type="radio"/> Bronx Criminal Court	<input type="radio"/> Kings & New York Criminal Court	<input type="radio"/> Manhattan Community Court	<input type="radio"/> Rochester Community Justice Center	<input type="radio"/> Queens Criminal Court	<input type="radio"/> Richmond Criminal Court
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****To avoid a warrant for your arrest, you must show up to court.****
At court, you may plead guilty or not guilty.
Please see back for exceptions for Public Consumption of Alcohol and Public Urination offe.

Court Locations: You must appear at the court location identified above.

Bronx Criminal Court	215 E 161 st Street, Bronx, NY 10460
New York Criminal Court	346 Broadway, New York, NY 10013
Community Justice Center	88-94 Visitation Place, Brooklyn, NY 11235
Community Court	314 W 54 th Street, New York, NY 10019
Queens Criminal Court	120-55 Queens Boulevard, Kew Gardens, NY 11414
Richmond Criminal Court	26 Central Ave, Staten Island, NY 10314

Court date, time and location information is the most important of all information on this form, so it is essential for it to be near the top.

Putting the default time in large font makes it clear to the defendant when their court appointment is.

The bubbles clearly specify the correct court location. This reduces hassle for the officer and defendant, and avoids confusion.

This statement makes it clear that appearing in court is not an admission of guilt.

This emphasizes the negative consequence of not showing up to court; people often respond more strongly to phrasing that focuses on losses.

The personal language connects the defendants with their charge. This encourages a serious and careful reading of the information on the form.

You are Charged as Follows:

1

Name of Offense:						
Time 24 Hour (hh:mm)	Date of Offense (mm/dd/yy)				County	
Place of Occurrence					Precinct	
In Violation of Section	Subsection	VTL <input type="checkbox"/>	Admin Code <input type="checkbox"/>	Penal Law <input type="checkbox"/>	Park Rules <input type="checkbox"/>	Other



For Additional Information and Questions:

Visit the website or call the number below for additional information about your court appearance and translation of this document.

www.mysummons.nyc
OR
Call 646-760-3010

A website and phone number is now listed, making it easier for people to get additional information.

Defendant stated in my presence (in substance):		
I personally observed the commission of the offense charged herein. False statements made herein are punishable as a Class A Misdemeanor pursuant to section 210.45 of the Penal Law. Affirmed under penalty of law.		
Complainant's Full Name Printed	Rank/Full Signature of Complainant	Date Affirmed (mm/dd/yy)
Tax Registry #	Agency	Command Code

DEFENDANT'S COPY

Reform: Consider Ability to Pay

Many states require that a court consider a defendant's ability to pay in setting bail

Arkansas court rules allude to financial condition but do not require consideration of ability to pay: "In setting the amount of bail the judicial officer should take into account all facts relevant to the risk of willful nonappearance including... [the defendant's] financial condition..."¹

Problems with Arkansas's language:

- Too weak: "should" is aspirational, not mandatory. Courts can ignore "should" directives but cannot ignore "shall" mandates
- Courts are directed to consider financial condition as it pertains to "the risk of willful nonappearance," not as it pertains to the ability to pay

Court rules may preempt legislative action



Reform: Presume Release

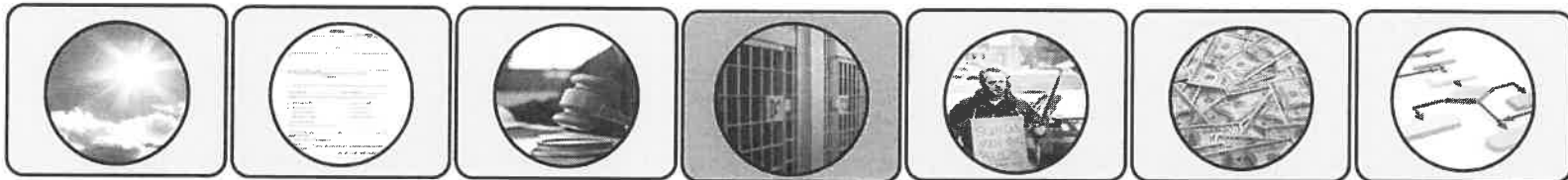
Some states provide for a presumption of release but leave courts with discretion to use other forms of bail; others are moving toward it

- Recommended by the Texas Judicial Council's Criminal Justice Committee in 2016¹

Arkansas frames it the opposite way: "The judicial officer shall set money bail only after he determines that no other conditions will reasonably ensure the appearance of the defendant in court."²

- If conditions don't do the job, the court "shall" (must) set money bail

Court rules may preempt legislative action



Reform: Eliminate Monetary Bail for Lesser Crimes

Some states have eliminated monetary bail for lower-level crimes. For example, in New York:¹

- Eliminated for most misdemeanors
 - Except sex offenses, criminal contempt for violating an order of protection in a domestic violence case
- Eliminated for most nonviolent felonies
 - Except witness intimidation, tampering, conspiracy to commit murder, certain offenses against children, sex offenses and criminal contempt involving domestic violence, major drug trafficking
- Retained for violent felonies

A challenge: When there are two tiers of crimes, it's unclear where to draw the line

- In New York, after several anti-Semitic incidents, some lawmakers are now calling for an exception to allow monetary bail for hate crimes²



Reform: Eliminate Cash-Only Bail

Sometimes, courts only allow cash, not even a bond. For a defendant who cannot come up with the cash, this amounts to a jail sentence on the basis of poverty

- In one recent Arkansas case, a court set bail at \$300,000 cash, with no bond accepted¹

Eliminating cash-only bail would require a constitutional amendment



Reform: Eliminate Monetary Bail

The most effective way to address the big problems of monetary bail—uneven justice based on wealth, high cost to taxpayers, and threats to public safety and society as a result of excessive pre-trial detention—is to eliminate it

Monetary bail does not work well enough to justify the costs

- For low-risk defendants, monetary bail makes no difference in appearance rates ¹
- For high-risk defendants, monetary bail makes no more of a difference than supervised release, a far less harmful and costly approach ²

Eliminating monetary bail would require a constitutional amendment



Alternative: Supervised Release

Supervised release works as well as monetary bail¹ with far fewer costs

Arkansas already allows for release conditions with or without bail including:

- Supervised release under the care of a qualified person or organization
- Supervised release under the care of a probation officer or other appropriate public official
- Restrictions on activities, movements, associations, residences
- Work release only
- Prohibition from possessing any dangerous weapon
- Prohibition from drinking or using drugs

Relying on supervised release and other conditions would require additional funding, some of which could be claimed from the savings realized by reducing the pre-trial jail population

Alternative: Reminders

Phone and text reminders to appear in court are effective

- A 2018 New York City study showed that text reminders reduced failure to appear (FTA) by 26%¹
- Scottsdale (AZ) Municipal Court found that text messages reduced FTA by 51.9% in three months²
- Contra Costa County (CA) reduced failure to appear rates from about 55% (misdemeanor) and 25% (felony) to a combined rate of 2.5% for defendants who received texts³
- A Multnomah County (OR) call program reduced FTA from 29% to 16%, saving \$1,320 per FTA warrant avoided and \$1 million (net) over 8 months⁴

The reminders are inexpensive

- One text program costs about \$20,000 to install and \$2 per defendant per year⁶

Alternative: Reminders

Pre-Court Messages

1

CONSEQUENCES MESSAGES

7 days before court

Helpful reminder: go to court Mon Jun 03 9:30AM. We'll text to help you remember. [Show up to avoid an arrest warrant.] Reply STOP to end texts. www.mysummons.nyc

3 days before court

Remember, you have court on Mon Jun 03 at 346 Broadway Manhattan. [Tickets could be dismissed or end in a fine (60 days to pay).] [Missing can lead to your arrest.]

1 day before court

At court tomorrow at 9:30AM [a public defender will help you through the process.] [Resolve your summons (ID#####) to avoid an arrest warrant.]

- 1 Makes the costs of FTA more salient to overcome present bias.
- 2 Reduces the ambiguity and perceived costs of attending court.
- 3 Highlights penalties to overcome present bias and the mental model that you don't need to go to court for minor violations.
- 4 Repeats the consequence to keep the cost of missing court top-of-mind, reinforcing that despite the mismatch between crime and punishment, you must attend to avoid a warrant.

Alternative: Reminders

Post-FTA Messages

1

CONSEQUENCE MESSAGE

- 1 [Since you missed court on Jun 03 (ID#####), a warrant was issued.]
- 2 [You won't be arrested for it if you clear it at 346 Broadway Manhattan.]
www.mysummons.nyc

Sent when a warrant is triggered by an FTA

- 1 Notifies of the serious consequence that has occurred.
- 2 Encourages action to resolve the open warrant.

SOCIAL NORMS MESSAGE

- 1 [Most people show up to clear their tickets but records show you missed court for yours (ID#####).]
Go to court at 346 Broadway Manhattan.
www.mysummons.nyc

Sent when a warrant is triggered by an FTA

- 1 Provides feedback that their behavior goes against the norm.

Alternative: Algorithms

Most states which have implemented bail reform have replaced reliance on sureties with algorithmic risk-assessment tools

These tools compare a person's characteristics to historical data to determine how likely someone is to appear at court

Issues:¹

- No tool, no matter how impressive the science, is perfect. Harm can arise when policymakers and courts overvalue risk-assessment tools.
- Bias is built into the historical data that powers the algorithms. Many studies have shown that for the same conduct, black and Latinx people are more likely to be arrested, prosecuted, convicted, and sentenced to harsher punishments. By mapping characteristics onto this data, the algorithm is apt to repeat the bias

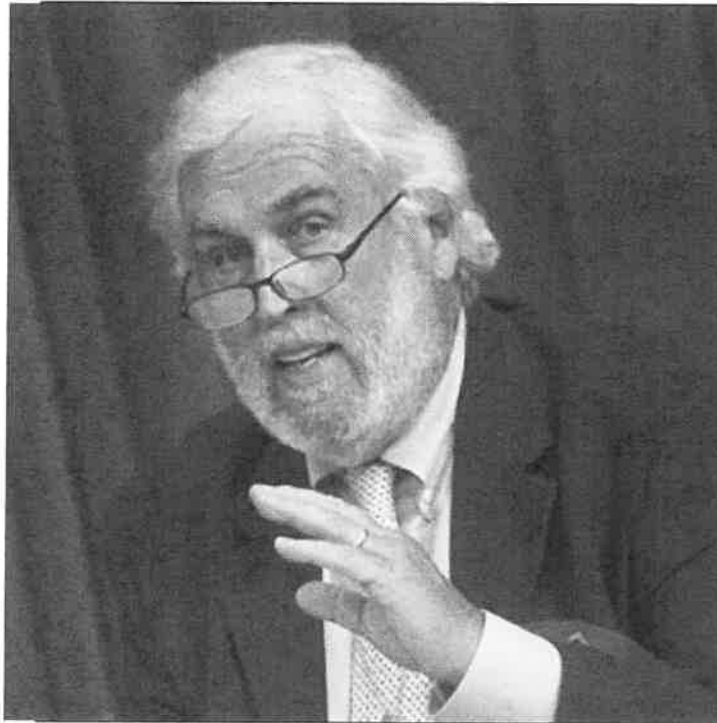
Arguments Against Reform

Argument	Response
The for-profit bail bond industry is indispensable, securing defendants' appearances because underfunded courts have abdicated the responsibility	Courts are indeed underfunded. But a for-profit bail bond industry is not essential, existing only in some U.S. states and The Philippines. Bail bond companies often do little to secure appearance. Even when they do perform a service, they could be substantially replaced with alternatives that cause less damage to the accused and society.
Reducing pre-trial detention means more violent people on the streets	The highest-risk accused people will not be released under any system. The only way to keep all potential criminals off the streets is detaining every accused person before trial, which is unconstitutional, cost-prohibitive, and ruinous. In DC, which has mostly done away with monetary bail, only 0.28% were rearrested for a violent crime. ¹ And the risk of pre-trial crime is higher when release is based on a factor like wealth that has no bearing on propensity to commit crimes.

Arguments Against Reform

Argument	Response
Certain types of bail reform come with costs, while others leave courts, cities, and counties with less bail revenue	Some reforms cost nothing. Others come with minimal costs. When there are significant costs, or reduced revenues, funding should be made available. As always, funding is available for priorities, and ensuring fairness for our people, a stronger society, smaller government, reduced spending, and safer communities should be high priorities.
Some reform tools, like algorithms, are biased	Some are. An algorithm should be controlled for bias and should not be exclusively relied upon.

Bail Reform Is Coming Here



“We’ve proven it can work without money, but the whole country continues as if in a trance to do what we know does not work.”¹

Judge Truman Morrison
D. C. Superior Court

Since virtually eliminating monetary bail in the 1990s, D.C. has seen a high appearance rate (88%) and very low pre-trial violent crime rate (0.28%)

Bail Reform Is Coming Here

For-profit bail bonds are illegal in all countries except the United States and The Philippines, as well as Illinois, Kentucky, Oregon, and Wisconsin.

Most countries use pre-trial detention sparingly. The United States has 4% of the world's population but 20% of its pre-trial jail population¹

Some states have moved to reform bail

Bail Reform Is Coming Here

Jurisdiction	Reform	Outcome
U.S. (Federal)	Eliminated monetary bail in 1984. Uses nonmonetary conditions	
District of Columbia	Eliminated most monetary bail in the mid-1990s, uses risk assessments	High appearance rate (88%) and very low pre-trial violent crime rate (0.28%) ¹
Kentucky	Required risk assessments since 2011. Eliminated but left monetary bail intact	High rate of appearance with no pre-trial crime (90%), but monetary bail system still “badly broken” ²
New Jersey	Eliminated most monetary bail in 2017, uses risk assessments	From 2015-2018, pre-trial jail population declined by 44%, ³ high appearance rate (89%), no change in pre-trial crime rate ⁴
Maryland	Created presumption of release in 2017	The number of people detained because they couldn’t post monetary bail declined (29.8 to 18.4% from 2016-2018), but there was an offsetting increase in courts holding people without bail (13.6 to 22.6%) ⁵
New Mexico	In 2017, stopped pre-trial detention based on inability to pay	Low pre-trial violent crime rate (4%) ⁶
New York	Eliminated monetary bail for most misdemeanors and nonviolent felonies in 2020	
California	Passed a bill to eliminate monetary bail in 2018, which requires popular vote in 2020	

Bail Reform Is Coming Here

Reform	States in Use
Judicial commission	27 states (plus 3 executive commission)
Curtailment of use of monetary bail	14 states
Creation of pre-trial release rules/guidelines	12 states
Education and training for judges and others who take bail	12 states
Statewide risk assessment tool	10 states (plus 25 in pilot project stage, 8 considering)
Local pre-trial risk assessment tools	10 states
pre-trial services programs	8 states
Elimination of bail schedules	3 states
Bail by credit card	1 state (New York)
Bail review hearings	1 state (Connecticut)
Elimination of cash-only bail	1 state (Connecticut)
Personal recognizance pilot project	1 state (Oklahoma)
Text/email/voice notification system	1 state (Arizona)

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A Path Forward

First step: Make bail fairer

- Gather data to allow further study
- Require use of clearer forms
- Amend court rules to require consideration of ability to pay (Supreme Court)
- Establish statewide reminder system

Second step: Eliminate monetary bail

- Constitutional amendment and corresponding court rules to eliminate monetary bail
 - Allocate some cost savings to supervised release
 - Integrate algorithmic risk-assessment tool adjusted for racial bias