

Safe & Just Michigan

Written Statement of
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On Bail Reform

Submitted to the
Michigan Task Force on Jails and Pretrial Incarceration
August 23, 2019,
Traverse City, Michigan

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Thank you for the opportunity to present public testimony today here in beautiful Traverse City.

Safe & Just Michigan is a criminal justice policy organization that works to reduce the harm caused by both crime and unnecessary incarceration. We advance evidence-based reforms that can improve public safety and eliminate unnecessary and wasteful corrections spending. We hold in common the certainty that we can build both a safer and more just Michigan. I am a member of the policy team at SJM.

I am formerly incarcerated and I was bailed out in 2010 prior to being sentenced. After being bailed out, I realized that the only difference between being released and remaining incarcerated was my ability to afford bail. At Safe & Just Michigan we do not believe freedom should be determined primarily by someone's bank balance, and urge the Task Force to reform the cash bail system in Michigan.

This is the case for a number of reasons:

First, bail reform reduces crime and recidivism. We have seen the aggregated evidence from Washington D.C.¹, New Jersey,² Philadelphia,³ and California⁴ and it supports reform. In general, we have seen criminal justice reform across 23 states and at the same time, we have seen crime decrease across all of those states.⁵ Instead of asking yourself if crimes occurred you should be asking if more or less crime happened after the passage of bail reform legislation.

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Second, the bail reform movement is mostly a challenge to someone being charged money as a condition of release, not a challenge to them becoming eligible for release. Bail decisions are

¹ "What Changed After D.C. Ended Cash Bail," NPR

<https://www.npr.org/2018/09/02/644085158/what-changed-after-d-c-ended-cash-bail>

² New Jersey Criminal Justice Reform Report 2018

https://www.scribd.com/document/404117087/New-Jersey-Criminal-Justice-Reform-Report-2018#from_embed

³ Ouss, Aurelie and Stevenson, Megan, Evaluating the Impacts of Eliminating Prosecutorial Requests for Cash Bail (February 17, 2019). George Mason Legal Studies Research Paper No. LS 19-08. Available at SSRN: <https://ssrn.com/abstract=3335138> or <http://dx.doi.org/10.2139/ssrn.3335138>

⁴ "With California's cash bail system in limbo, Compton pilot program serves as a 'petri dish'"

<https://www.latimes.com/local/lanow/la-me-ln-bail-project-compton-20181230-story.html>

⁵ Between 2007 and 2017, 34 States Reduced Crime and Incarceration in Tandem

<https://www.brennancenter.org/blog/between-2007-and-2017-34-states-reduced-crime-and-incarceration-tandem>

⁶ Marc Levin, "US Needs Bail Reform to Protect Constitutional Rights & Public Safety"

<https://www.texaspolicy.com/us-needs-bail-reform-to-protect-constitutional-rights-public-safety/>

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currently made by the exact same judges who would make release decisions after the passage of bail reform.

Third, there is very strong evidence that pretrial detention is criminogenic. In other words, the more people detained and the longer the duration of the detention, the more risk to public safety is generated.⁷

Fourth, the politics on this issue have shifted substantially. Recent data suggests that one out of every two people in the United States has a family member who has been incarcerated.⁸ Criminal justice reform is no longer a fringe issue and being tough on crime is no longer the default solution.

Sometimes, opponents of bail reform present specific examples of people who committed new crimes after being released in the states where bail reform already took place. However, the same judges in the same jurisdictions might have released the exact same people for the exact same reasons prior to bail reform as they did after passage of reform legislation.

Also, this type of testimony represents anecdotal evidence at best. According to the Uniform Crime Report in New Jersey,⁹ there were 37,243 arrests in that state in 2016, it would be wrong to judge the effectiveness of bail reform across that state using statistically atypical samples.

Another misconception is that bail reform results in people missing trial dates but the data here again does not back up this claim.¹⁰ In addition, there are, in the worst-case scenario, better solutions to encourage appearance without mandating cash bail.¹¹

⁷ See, Christopher T. Lowenkamp, Ph.D. Marie VanNostrand, Ph.D. Alexander Holsinger, Ph.D. "Investigating the Impact of Pretrial Detention on Sentencing Outcomes" https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_state-sentencing_FNL.pdf, or Christopher T. Lowenkamp, Ph.D. Marie VanNostrand, Ph.D. Alexander Holsinger, Ph.D. "The Hidden Costs of Pretrial Detention" https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf

⁸ "What Percentage of Americans Have Ever Had a Family Member Incarcerated?: Evidence from the Family History of Incarceration Survey" <https://journals.sagepub.com/doi/full/10.1177/2378023119829332>

⁹ COMPARISONS OF STATE ARRESTS - 2015/2016 Uniform Crime Report, New Jersey https://www.njsp.org/ucr/2016/pdf/2016_sect_3.pdf

¹⁰ See Ouss and Stevenson note 3

¹¹ Pretrial Assessment FAQ, Arnold Ventures

https://craftmediabucket.s3.amazonaws.com/uploads/Public-Safety-Assessment-101_190319_140124.pdf

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Often bail opponents suggest that bail reform creates unique risks to crime victims. But in New York, for instance, victims rights organizations were part of the coalition working for bail reform,¹² and victims concerns can be taken into account in many ways without insisting on the continuation of cash bail.¹³

Finally, opponents often signal opposition to the use of risk assessment instruments but it is important to remember that bail reform supporters are not usually asking for the use of risk assessment tools, they are asking for an end to cash bail. In all the jurisdictions where risk assessments have been implemented as part of bail reform to date, they were advisory, not mandatory. In other words, the same judges were and are still in charge of making the same decisions about the risk of defendants, the only difference is that they are provided with more information about how best to make those choices. We believe that if risk assessments are mandated, they should be tested rigorously for implicit bias.¹⁴

At the end of the day, when you evaluate evidence comparing unsecured to secured bail bond systems in terms of public safety, the only comparative evidence that has been produced supports bail reform.”¹⁵ Safe & Just Michigan supports efforts to limit or eliminate the use of cash bail in Michigan.

Thank you for your time and consideration.

¹² <http://www.nyjusticetaskforce.com/pdfs/ReportBailReform2019.pdf> also see Alliance For Safety and Justice “Crime Survivors Speak” <https://allianceforsafetyandjustice.org/wp-content/uploads/2019/04/Crime-Survivors-Speak-Report-1.pdf#targetText=Alliance%20for%20Safety%20and%20Justice.%2C%20research%2C%20education%20and%20advocacy>.

¹³ See Task Force report note 12

¹⁴ 131 Harv. L. Rev. 1125, February 9, 2018 “Bail Reform and Risk Assessment: The Cautionary Tale of Federal Sentencing”

<https://harvardlawreview.org/2018/02/bail-reform-and-risk-assessment-the-cautionary-tale-of-federal-sentencing/>

¹⁵ Timothy R. Schnacke Ph.D., “Money As a Criminal Justice Stakeholder” 2014

http://www.clebp.org/images/2014-09-04_Money_as_a_Criminal_Justice_Stakeholder.pdf