

Bail Reform in the Age of Mass Incarceration

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What is the problem and how did we get here?



What is bail?

- Traditionally = temporary release secured by monetary payment
- Definition expanded over time
- Based on recognition that there is a time lapse between arrest and case resolution
- Pre-trial incarceration inconsistent with presumption of innocence

What's the problem?

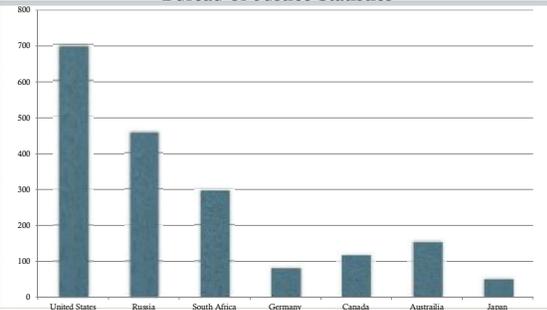


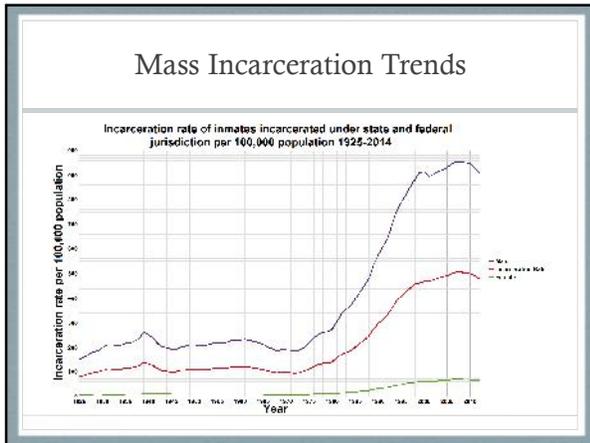
Mass Incarceration

- 2.4 million people incarcerated in the U.S.
- U.S. has almost 5% of the world's population and almost 25% of the world's prisoners
- Annual cost of incarceration = \$60 billion
- African Americans incarcerated at a rate 5 times that of whites

Incarcerated population per 100,000

Bureau of Justice Statistics





- ### Mass Incarceration Trends
- The war on drugs
 - Mandatory minimum sentencing policies
 - Abolishment of parole/truth in sentencing
 - Broken windows sentencing
 - Policies and practices involving monetary bail

- ### Pre-trial detention based upon ability to pay
- 60% of U.S. jail population composed of people who have not been convicted of any crime, but are too poor to post bond
 - Disparate impact on minority populations
 - Leads to job and housing loss
 - More children in foster care
 - Overcrowding and unsustainable budgets (\$38 million per day)
 - Forces guilty pleas
 - Higher recidivism rates

Kalief Browder



Legal Overview

- Eighth Amendment – prohibits the use of “excessive” bail
- *Stack v. Boyle*, 342 U.S. 1 (1951) – bail must be individualized; to assure def. appearance
- Fourteenth Amendment – due process and equal protection?
- Federal Bail Reform Act of 1984
- *United States v. Salerno*, 481 U.S. 739 (1987)

Ohio Bail System

- Ohio Rule of Criminal Procedure 46
- O.R.C. 2937 (and others)
- Ohio Constitution Article I, Section 9
- Purpose = protect the public & ensure defendant's appearance in court
- O.R.; 10%; Surety
- Conditions of bail
- Denial of bail

Ohio Bail System

- Five factors must be considered:
 - Nature and circumstances of the charge
 - Weight of the evidence
 - Confirmation of defendant's identity
 - Defendant's ties to the community
 - Whether defendant is under court control
- Missing from the list?

Bail Reform Movement: Litigation

- *Pierce, et al. v. City of Velda City*, No. 4:14-cv-570, (E. D. MO, April 2, 2015).
- *Varden, et al. v. Clayton*, No. 2:15-cv-34, (M.D. AL., filed Jan. 15, 2015).
- *Robinson, et al v. Martin, et al.*, No. 2016CH13587 (Cook County, Ill.)
- *McGruder, et al v. Harris County*, No. 4:16cv01436 (filed May 21, 2016)

Alternatives to Litigation

- Barriers to litigation
- Legislative reform
- Community Bail Funds
- Collaboration with stakeholders
- Training
- Public education

Solutions . . .

- Ability to pay determinations/eliminate money bail
- Eliminate bail schedules
- Pre-trial services
- Risk assessment tools

Reform Efforts in Ohio

- Ohio Criminal Sentencing Commission
 - Ad Hoc Committee on Bail and Pre-trial Services
 - Report and Recommendation March 2017
- 1. Establish a risk based pretrial system, using an empirically based assessment tool, with a presumption of nonfinancial release and statutory preventative detention.
- 2. Data collection
- 3. Maximize detention alternatives

Reform Efforts in Ohio

- 4. Mandate the presence of counsel at the initial appearance
- 5. Training for judges, clerks, lawyers
- 6. Ongoing monitoring

Reform Efforts Nationally

- New Mexico – voters approved a measure prohibiting detention of low risk offenders
- New Jersey – bail reform legislation 2017
- Maryland – proposal to eliminate money bail
- Colorado – legislation to reduce reliance on money bail
- Washington, D.C.

Finally at a tipping point?

- “What has been made clear today, in the last two days, is that our present attitudes toward bail are not only cruel, but really completely illogical. What has been demonstrated here is that usually only one factor determines whether a defendant stays in jail before he comes to trial. That factor is not guilt or innocence. It is not the nature of the crime. It is not the character of the defendant. That factor is, simply, money. How much money does the defendant have?”
– Robert F. Kennedy, 1964.
