

The information in this electronic folder is the initial information on Money Bail Reform Efforts prepared by members of the North Carolina Council of Churches and representatives of the Bishop's Committee on Prison Ministry for the Episcopal Diocese of North Carolina.

The folder will be updated and expanded as work continues on this project. It is hoped that this information will be helpful as you become more familiar with this work.

WHY?

Why has Pretrial Justice Reform become a topic of discussion in North Carolina?

- The North Carolina Commission on the Administration of Law and Justice (NCCALJ) has recommended that North Carolina undertake pretrial justice reform.
- Currently, those with resources avoid pretrial detention while those without resources are detained.
- Indigent defendants remain incarcerated for the same offenses for which wealthy defendants walk free. Inherent unfairness is built into our current system.
- Jail populations are made up of predominantly low income people of color.
- Pretrial detention costs continue to rise.

¹ Jesse Smith, Pretrial Justice Reform in North Carolina, YouTube, Oct 3, 2018, 33:33

WHY US?

Pretrial Reform and Our Christian Call

As Christians, we are compelled to heed Jesus' Sermon on the Mount (Mt. 5-7), and as Episcopalians, we are bound by our Baptismal Covenant (BCP p. 304-5) — both of which require our concern for the care and equitable treatment of others.

Therefore, we are unable to dismiss this issue as either unimportant or inapplicable. As followers of Jesus who seek and serve Christ in others — all others — we have a responsibility to learn and discern how we are called to respond.

A CALL FOR PRETRIAL JUSTICE REFORM



MYTH VS. FACT

- **Myth:** When a person is arrested for a criminal offense, money bail is always required for release.
- **Fact:** In North Carolina, there are five possible options that can be imposed:
 - (1) Release the defendant on his written promise to appear.
 - (2) Release the defendant upon his execution of an unsecured appearance bond in an amount specified by a judicial official.
 - (3) Place the defendant in the custody of a designated person or organization which agrees to supervise him/her.
 - (4) Require the execution of an appearance bond in a specified amount secured by a cash deposit of the full amount of the bond, by a mortgage pursuant to G.S. 58-74-5, or by at least one solvent surety.

(5) House arrest with electronic monitoring.

MYTH VS. FACT (continued)

- **Myth:** Requiring a cash bond is a legally acceptable means of punishment for being charged with a crime.
- **Fact:** The purpose of setting pretrial release procedures is to assure the defendant appears in court on his/her assigned court date and to try to prevent the defendant from reoffending in the future. Bond is forbidden from being used as punishment.
- **Myth:** Secured bond is the statutorily preferred method of setting pretrial release. • **Fact:** The NC Statutes 15A-533 and 534 express a preference for release without secured bond.
- **Myth:** Secured Bonds in North Carolina are set commensurate with a defendant's ability to pay the bond.
- **Fact:** Secured Bond is set through the use of a predetermined bond table that suggests bond amounts within a monetary range. This range corresponds to a specific criminal offense.
- **Myth:** Using a system of secured bond ensures a defendant's appearance in court and deters the likelihood of the defendant reoffending. This keeps society safer.
- **Fact:** A secured bond system of pretrial release does nothing to protect society from dangerous criminals who are financially affluent. As long as they are able to post the bond, they are released from custody.
- **Myth:** Incarcerating low-risk defendants prior to trial lessen the likelihood that they will reoffend.
- **Fact:** Some research indicates that incarcerating low-risk defendants even for a short period of time increases the likelihood that they will reoffend.
- **Myth:** The majority of defendants being incarcerated pretrial are the most dangerous criminals. • **Fact:** Research has shown that nearly half of all misdemeanor defendants have been detained pretrial.
- **Myth:** Defendants incarcerated pretrial and those who are able to post bond and remain free until trial typically receive the same types of sentences.
- **Fact:** Research indicates that pretrial detention increases the likelihood of conviction as well as receiving an active prison sentence and increases the length of sentence received. Additionally, pretrial detention increases the likelihood that the defendant will plead guilty.

MOVING FORWARD

Changes in pre- or post-arrest protocol that may affect the current system in a positive manner.

- Increase the use of citations or court summonses instead of arrest for low-risk defendants that don't pose a danger to the community.
- Involve defense council in both misdemeanor and felony cases before the pretrial conditions are decided by the magistrate. Currently, parties representing the prosecution and defense are not present when conditions of pretrial release are determined.

Both felony and misdemeanor defendants should have their pretrial release procedures reviewed by a judge within a reasonable time after they are set. Currently, only felony defendants are entitled to a first appearance before a district court judge within 96 hours. There is no statutorily-mandated review process for misdemeanor defendants. Consequently, some misdemeanor defendants may spend more time incarcerated pretrial than they would receive if convicted.

- Implement a court date reminder system. There are many reasons a defendant may not appear in court. These could include child care issues, medical issues, transportation issues, or confusion about the required hearing date, particularly if the case has been continued several times. Reminder systems utilizing text messaging or automated telephone calls have shown to be effective in assuring a defendant's appearance in court.

DEFINITIONS

- 1) **Defendant:** A person who has been charged with a crime.
- 2) **Felony:** A crime, typically involving violence, regarded as more serious than a misdemeanor and usually punishable by imprisonment for more than one year or by death. 3) **Misdemeanor:** A lesser criminal act.
- 4) **Pretrial Release:** Requirements set by a judicial official governing the period of time between a defendant's arrest and trial date. 5) **Secured Bond:** Cash or property secured prior to the release of the defendant from custody.
- 6) **Unsecured Bond:** A bond that allows a person to return home upon a promise to pay a predetermined amount if he/she fails to return for court.

Cash Bail Reform: Why This, Why Us, Why Now, and Myths Versus Facts

There are currently many groups that are looking at the current cash bail system. In fact, the North Carolina Commission on the Administration of Law and Justice has recommended that North Carolina undertake pretrial justice reform. There are many faith communities across North Carolina that are studying this cash bail system now and are working towards reform and alternatives to cash bail.

The Episcopal Diocese of North Carolina is one of those groups. At the 203rd Annual Convention in 2018, a resolution was passed calling for reform in the nation's money bail system. Since that time the work across the diocese has turned to focus more on the fundamental issue of justice in our society. At the 204th Annual Convention in 2019, an additional resolution was approved aimed at raising awareness through education.

How does this issue impact us, people of faith, in today's world? As Christians, we are compelled to heed Jesus' Sermon on the Mount (Mathew: 5-7), and as Episcopalians we are bound by our Baptismal Covenant (BCP, pgs 304-305) – both of which require our **concern for the care and equitable treatment of others**. Let us look at several additional Biblical imperatives that provide direction and explanation why we must intervene in this unjust system. Leviticus 19:18 (NRSV), we learn that "You shall not take vengeance or bear a grudge against any of your people, but **you shall love** your neighbor as yourself." Proverbs 10:12 (NRSV) reminds us that "hatred stirs up strife, but **love covers all offenses**."

In Matthew 23: 36-40 (NRSV), we read that when Jesus was questioned by the Pharisees ... "Teacher, which commandment in the law is the greatest? He said to him, '**You shall love the Lord your God with all your heart, and with all your soul, and with all your mind.**' **This is the greatest and first commandment. And a second is like it: You shall love your neighbor as yourself.** On these two commandments hang all the law and the prophets". Jesus has been very clear that all others are our neighbors. Showing love to your neighbor includes working to ensure that all are treated fairly. A similar statement from Jesus is found in John 13:34 (NRSV): "**I give you a new commandment, that you love one another. Just as I have loved you, you should also love one another.**"

If there is still any doubt, you need look no farther than Matthew 25: 34 – 40 (NRSV): "Then the king will say to those at his right hand, 'Come, you that are blessed by my Father, inherit the kingdom prepared for you from the foundation of the world; for I was hungry and you gave me food, I was thirsty and you gave me something to drink, I was a stranger and you welcomed me, I was naked and you gave me clothing, I was sick and you took care of me, I was in prison and you visited me.' Then the righteous will answer him, 'Lord, when was it that we saw you hungry and gave you food, or thirsty and gave you something to drink? And when was it when we saw you a stranger and welcomed you, or naked and gave you clothing? And when was it that we saw

you sick or in prison and visited you?’ and the king will answer them, **‘Truly I tell you, just as you did it to one of the least of these who are members of my family, you did it to me.’**

Now is a time to really work towards becoming a Beloved Community – a place where everyone can experience what it feels like to be a beloved child of God. Working to achieve reform of the current bail system is a tangible project where all persons of faith can have major impact.

As Christians we were taught from an early age the Golden Rule. “In everything do to others as you would have them do to you; for this is the law and the prophets” (Matthew 7:12, NRSV). All of the great religions have a statement that corresponds to the Golden Rule. Now is the time for all of us as people of faith to “measure” policies, procedures and practices related to the criminal justice system against the Golden Rule. We are unable to dismiss this issue as either unimportant or inapplicable. As followers of Jesus who seek and serve Christ in others – all others – we have a responsibility to learn and discern how we are called to respond.

In the summer 2020 edition of the ACLU Magazine, Jay Fernandez discussed the cash bail system in the United States. As people of faith, I imagine that most of us were not aware that the United States imprisons 2.3 million people annually, almost 25% of the world’s incarcerated population! There are many factors impacting this situation. Imposing cash bail is filling jails and prisons with people who cannot afford to pay fines or bail. While people of relative wealth can pay the fines or post bail, the poor and people of color cannot and are disproportionately caught up in this system. This leads to overcrowding in most facilities.

More than 70% of those incarcerated are pre-trial detainees who have not been convicted of any crime, and many are there only because they cannot afford bail. The United States has long had a tradition of “innocent until proven guilty”, but these persons are being treated as if they were guilty!

Racial injustice and systemic racism have impacted the cash bail system for far too long. Black and Latino men are assigned on average higher bail amounts than white men for similar crimes, and those who cannot pay land in jail. Not only do they spend time incarcerated pre-trial, they are also four times more likely to be sentenced to prison than those who were granted pre-trial release. But it is not only the ones accused of a crime – the families and community are impacted as well. “Detention of any length has profound impacts on people’s families and their ability to pick up when they are released, and trying to do that in the context of massive unemployment is impossible, especially for those communities that were already struggling to access the resources and opportunities they deserve.” (Hayden Nelson-Major, Independence Foundation fellow, ACLU of Pennsylvania).

The COVID-19 pandemic has impacted incarcerated populations dramatically. It is nearly impossible to practice social distancing and proper hygiene in a jail or a prison. There have been outbreaks in many jails and prisons. There have been executive actions taken in 15 states that led to the release of over 35,000 people from jails and prisons. “In some ways, the pandemic demonstrates to stakeholders that not only is decarceration possible, it’s actually safer; and that it’s not only possible, but possible quickly. The pandemic has brought some moral clarity to just

how important decarceration is and how the misuse of cash bail has always been a matter of life and death for poor people and communities of color” (Hayden Nelson-Major).

Money Bail: Myth vs Fact

What is money bail and why should you care about its use? Money bail is one of the ways that a court can use to ensure that a defendant appears for their court date. It is intended to retain defendants who are flight risks and increase public safety. What it does is retain defendants who are poor and increase crime rates.

First let’s talk about the pretrial process in America. In most jurisdictions, when someone is arrested, they are held until their arraignment hearing. Usually, the individual is held for a few hours or a few days. The arraignment hearing is an initial hearing where several important things happen. First, the judge decides the appropriate way to ensure that the individual appears for all future court dates in their trial. Second, the individual who has been arrested finds out what they have been formally charged with. Finally, if the defendant needs a public defender, they are assigned one. Because this hearing is not considered part of the individual’s trial, no public defender is present.

In most cases a judge will assign secured bail to the defendant. This is an amount of money that the defendant must pay to the court. If they pay it, they are released until their court date. If they appear for all court dates in the trial, that money is refunded to them. However, most defendants cannot afford to post bail on their own, so they use the services of a bail bonds company. These companies charge a premium, usually some percentage of the bail, and then pay the full bail for the individual in question. When the person appears for their court dates the company collects the money from the court and keeps the premium as payment.

The problem with this system is that it exacerbates inequalities. As we will see, poor and wealthy defendants face similar bail amounts, which means the poor stay in jail while the rich go free until their trial. As Christians we must stand against injustice and fight for the oppressed. Campaigning for the end of cash bail is one way that we can do both.

Now that we have a basic understanding of what bail is and how it works, let’s address several common myths about bail and talk about the truth these myths obscure.

Myth #1: Money bail is always required for the release of individuals arrested and charged with a criminal offense.

Truth #1: In North Carolina there are five options for pretrial release:

1. Release the defendant on their written promise to appear.
2. Release the defendant upon execution of an unsecured bond.
 - a. In this case, the defendant agrees to pay a fine if they do not appear in court but does not need to pay prior to their release.

3. Place the defendant in the custody of an individual or organization that agrees to supervise them.
 - a. This can be a family member or an approved organization, and that person or organization agrees to ensure that the defendant appears for all court dates.
4. Require that the defendant pay a cash deposit in the full amount of a secured bond
5. Place the defendant under house arrest with electronic monitoring

Myth #2: Secured bonds are the preferred method of pretrial release according to the law.

Truth #2: In North Carolina, state law specifically expresses a preference the first three conditions listed over secured bonds. Again, the first three conditions are: Release on a written promise to appear, release upon execution of an unsecured bond, or place into the custody of an individual or organization. The law says that an official “must” impose one of these three conditions except for certain specific situations. If the official has reason to believe that conditions one, two, or three will put the public at risk, will fail to ensure that the defendant appears in court, or risks the contamination of evidence or witnesses, then they can consider options 4 and 5.

Myth #3: Judicial officials consider a defendant’s ability to pay when setting bail.

Truth #3: There is a predetermined bail table that most officials use when setting bail. As a result, the wealth of the defendant, not their assessed risk to society, has a greater impact on their ability to secure pretrial release. If you were arrested for drug possession, at your bail hearing it is likely that the judge will determine your bail by consulting the bail table entry for drug possession with the appropriate number of prior convictions. However, this method would ignore your contributions to your community, your ability to pay, the weight of the evidence against you, or your mental condition at the time. North Carolina law mandates that judges and magistrates consider all of these factors and several more when setting bail, but many judges do not.

Myth #4: Requiring a cash bond is a legally acceptable form of punishment for being charged with a crime.

Truth #4: Pretrial release procedures are intended to ensure that the defendant appears in court for their trial. Bond is not a legal way to punish defendants. In fact, pretrial release conditions are set before the trial, therefore the defendant is still presumed to be innocent at that time. Imagine if you were in a store when it was robbed, and the police arrest you on suspicion that you were an accomplice. You’re positive that the evidence will exonerate you, but the judge sets bail so high that there is no chance for you to pay it and your court date is two months away. You are now stuck in jail because you were in the wrong place at the wrong time. You will have to try to explain to your boss why you will not be at work for the next 8 weeks. This is the problem with using high bail as a form of punishment. You are punished before you have any chance to defend yourself in court.

Myth #5: Secured bonds protect the public.

Truth #5: Secured bonds undermine public safety. First, wealthy defendants are under supervised. They can leave jail even when they pose a threat to public safety. The law does not require supervision of defendants who have been released on a secured bond. Second, poor defendants are over supervised. Even low risk defendants frequently cannot afford their release leaving them reliant on bail bond companies or in jail until their trial. Unfortunately, many low risk defendants face excessive pretrial restrictions like drug tests and mandatory check-ins. This over supervision of low-risk defendants is expensive. Nationwide, about 500,000 people are held in jails pretrial every day. This amounts to \$14 billion per year spent on incarcerating defendants who are supposed to be presumed innocent. In North Carolina, 86% of people incarcerated in jails have not been convicted. And cost is not the only concern the state should have with over-supervision and incarceration. This brings us to myth number 6.

Myth #6: Incarcerating low-risk defendants prior to trial lessens the likelihood that they will reoffend.

Truth #6: Incarcerating low-risk defendants increases the likelihood that they will reoffend, even if their detention was short. This may seem counterintuitive but consider what happens when an individual is arrested and accused of a crime. First, they must wait for their initial hearing, where the judge decides what pretrial conditions to set, and tells the defendant what they are being charged with. If the defendant is assigned a secured bond, they must produce the money before they can go. If they cannot afford to pay a company to bail them or post bail themselves then they have two choices, wait in jail until their trial or plead guilty. If they wait until their trial they could be in jail for weeks or even months, for misdemeanors the pretrial detention can even exceed the maximum possible jail time for the charge. This means that many people spend days or weeks in jail before their trial. It only takes a matter of days for most defendants to lose their jobs, which leaves them in a precarious financial situation even if they are found innocent. It is also possible for people to lose their home or lose custody of their children. This means that even someone who is found innocent can have their life ruined simply because they could not afford their pretrial release.

Myth #7: The majority of defendants being detained pretrial are the most dangerous criminals.

Truth #7: Research has shown that nearly half of all misdemeanor defendants have been detained pretrial. In North Carolina, secured bonds are used in a shocking number of misdemeanor cases. All but five counties assign secured bonds to more than half of their misdemeanor defendants, with the top ten counties assigning secured bonds to over 80% of their misdemeanor defendants.

Myth #8: Pretrial incarceration has no impact on convictions or sentencing.

Truth #8: Research shows that defendants who have been incarcerated pretrial are more likely to be convicted, more likely to be receive a prison sentence, and receive longer prison sentences than defendants who were not incarcerated pretrial. Additionally, pretrial detention increases the likelihood that an individual will plead guilty to a crime, regardless of actual guilt. To understand why, here's an example. Let's say you are arrested for drug possession, but you're innocent. The

judge sets your bail at \$5,000 dollars. You can't afford to pay the bail yourself or pay a bail bonds company to bail you out. The prosecutor offers you a plea deal that includes probation, but no jail time. You know that your trial is months away, maybe even over a year. If you fight the case, you'll lose your job after a couple of missed days, you won't be able to make rent, which means you'll lose your apartment, and then you'll lose custody of your children. If you take the plea deal you can return to your job, make rent, and make sure that your kids get to school on Monday. From that perspective, it's easy to see why people choose to plead guilty when they cannot afford bail.

Myth #9: Pretrial detention is applied equally to all defendants.

Truth #9: There are racial disparities in the way that judges assign bail and release defendants. One study found that black defendants were 3.6% more likely to be assigned bail than white defendants and that their bail was on average \$10,000 higher than white defendants. Another study, found that, when charged with a misdemeanor offense, black defendants were 20% more likely to be detained than white defendants.

Now that you have the facts about money bail, it may not surprise you to learn that the Fifth Circuit Court of Appeals found that the bail system in Harris County, Texas violated its citizen's rights to equal protection under the law. Specifically, the decision cited that if two defendants that are identical in every way except wealth, one will be much more likely to be held pretrial. Therefore, the poor defendant will be more likely to plead guilty, suffer the negative consequences of incarceration, and serve a longer sentence than the wealthy defendant, solely because they cannot afford to pay bail.

In North Carolina, there is an active lawsuit against Alamance County over their bail practices. The county has already agreed to ensure that individuals will have access to legal representation during their first court appearance. They also agreed to consider an individual's ability to pay and to ensure that defendants get their first court date quickly. However, other aspects of the lawsuit are ongoing.

Too often, in ways that are both intentional and unintentional, our communities are arranged in ways to create different rules for the rich and the poor, compounding inequality. Money bail is just one example of the ways in which this is true of our criminal justice system. There is nothing truly just about a system that compounds inequality and values some human lives more than others. Whatever the intentions of a money bail system might be, the result is clearly an injustice. And as Christians, we cannot turn a blind eye towards injustice. The words of scripture tell us again and again that God hears the cry of the oppressed, those who suffer under the heel of an unjust system. To join the work of God in the world, then, is to listen for these cries too, standing in solidarity and working to change these systems. Changing the money bail is just such an opportunity to join this kind of work.



Money Bail: Myths and Truth

North Carolina Council of Churches



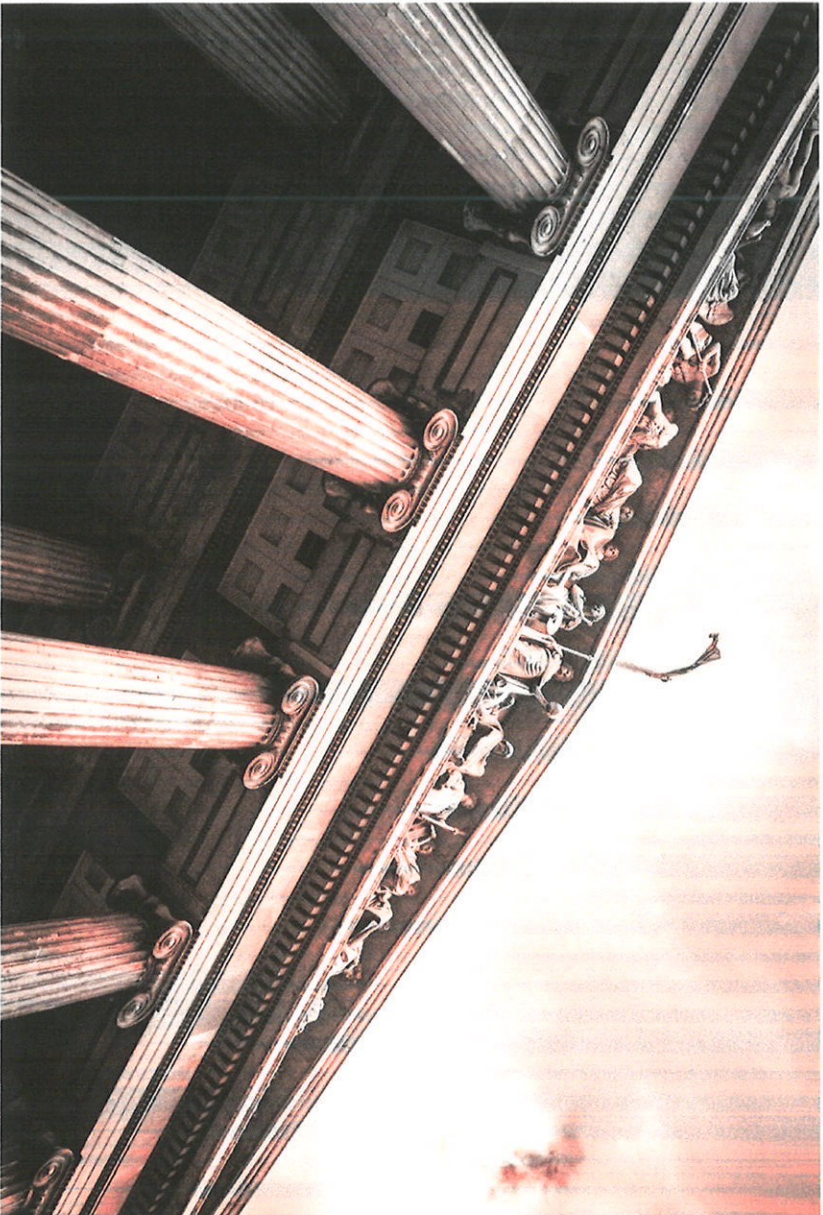


Why should I care
about its use?



What is money bail?

**Myth #1: Money bail is always required
for the release of individuals arrested
and charged with a criminal offense**



**Truth #1:
In North
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Options for Pretrial Release

1. Release the defendant on their written promise to appear
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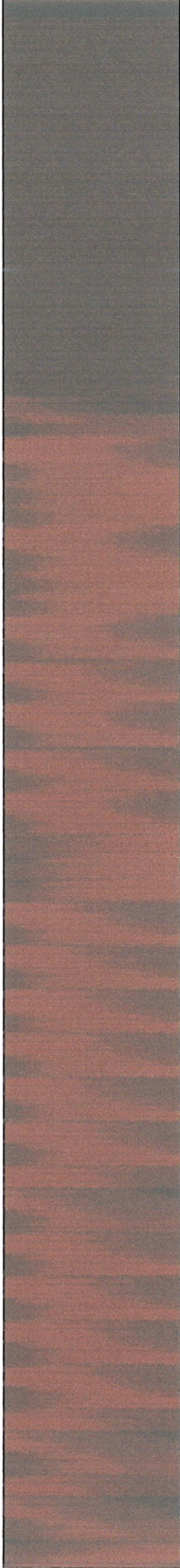
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Options for Pretrial Release


1. Release the defendant on their written promise to appear
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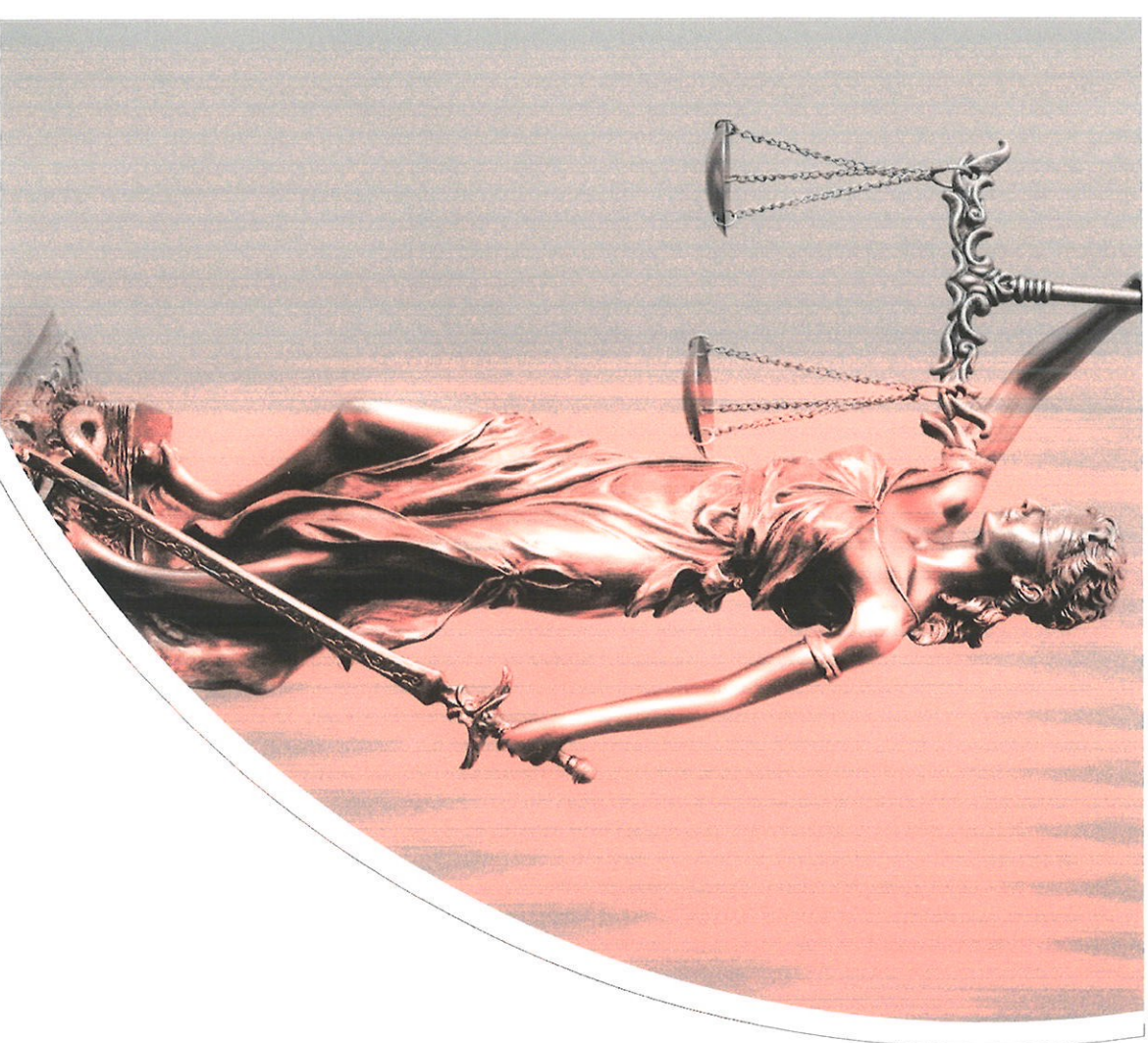
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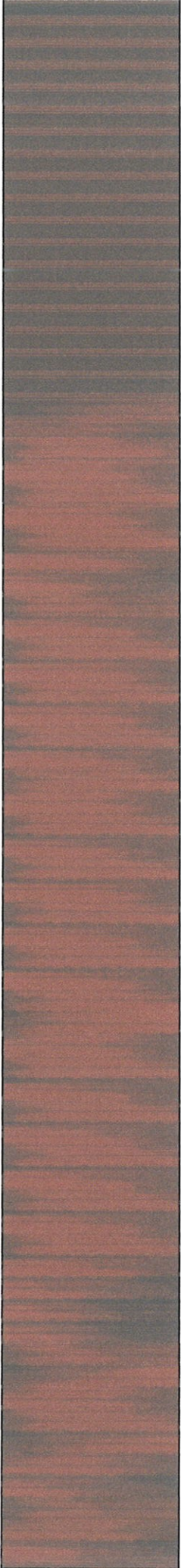




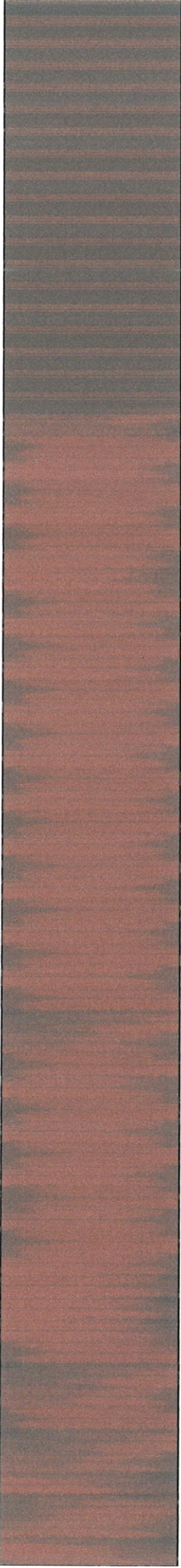
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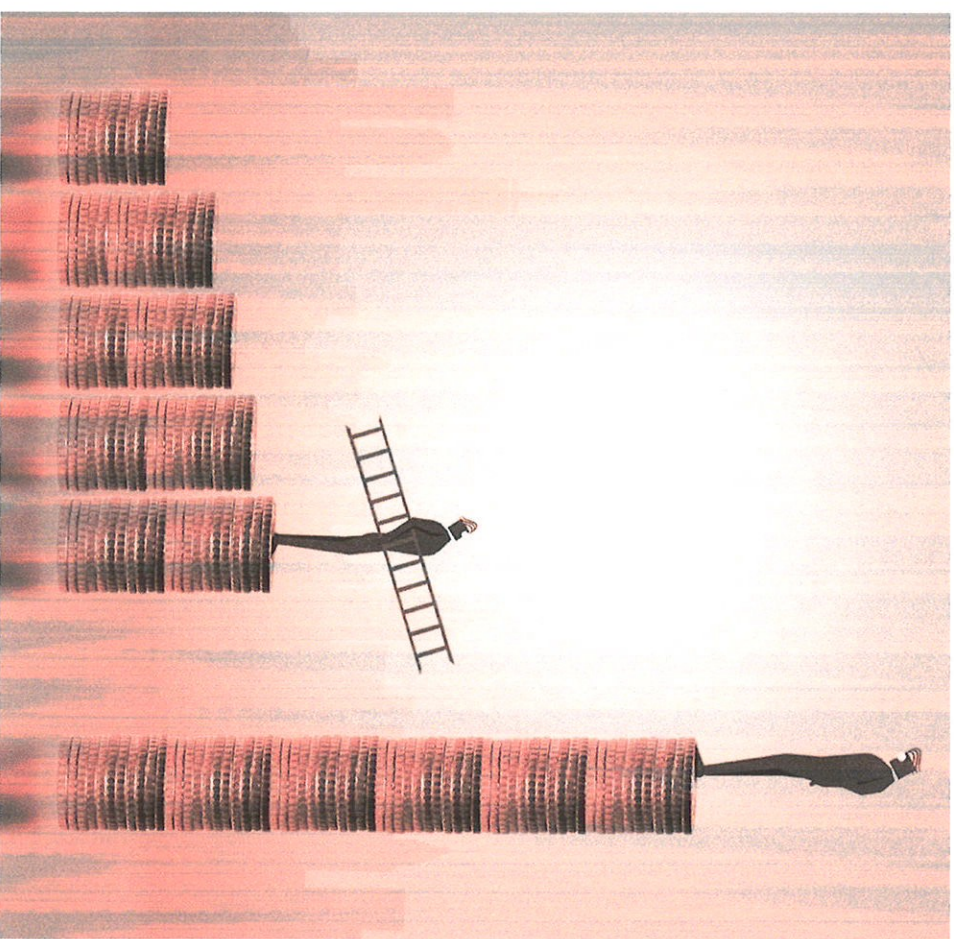
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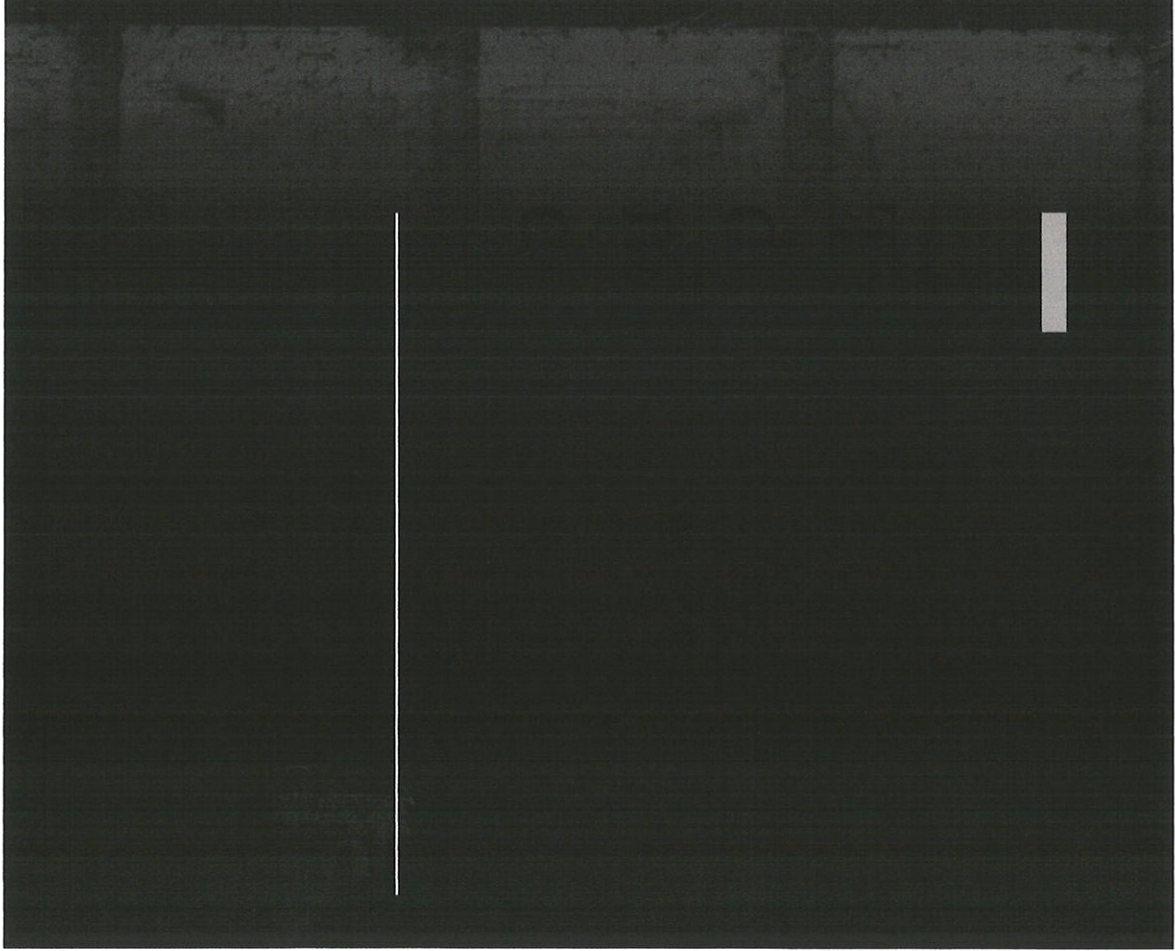
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**Myth #7: The majority of defendants
being detained pretrial are the most
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NOT
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Myth #8: Pretrial incarceration has no impact on convictions or sentencing



Truth
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**Myth #9: Pretrial detention is
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Truth #9: There are racial disparities in pretrial detention



Bail in the Courts

