



MINNESOTA JUSTICE

RESEARCH CENTER

THE WIDE-REACHING CONSEQUENCES OF THE PRETRIAL SYSTEM IN HENNEPIN COUNTY

"I'm Suffering Along With Her"



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EXECUTIVE SUMMARY

Jailing a person before their trial has wide-reaching consequences for that individual, their family, and their communities. Is the practice of pretrial detention worth the widely documented harms? We sought to understand how people experience the pretrial process in Hennepin County, Minnesota. Our goal was to determine whether cash bail supports or undermines commonly and communally held values of justice, fairness, and safety.



To understand how cash bail operates in Hennepin County from a legal and practical point of view, we sought input from system actors who hold different roles in and goals for pretrial justice, including judges, prosecutors, and public defenders. As part of this effort, we also attempted to include the perspectives of people working at bail bond companies (though, as we detail below, they declined to participate in our study). Our largest participant population comprised people who have experienced cash bail first-hand, paying for another person's bail and/or having it set for themselves. In total, we interviewed 58 participants, 14 of whom were system actors and 44 of whom were community members with direct cash bail experience.

To provide context for our qualitative findings, we sought to identify significant trends and patterns within the population of individuals held in pretrial detention in Hennepin County.

In analyzing data obtained from the Minnesota Department of Corrections spanning from 2017 to 2021, we focused on pretrial bookings.

There we found significant racial disparities both in numbers of bookings and lengths of stay.

Black individuals comprised the largest proportion of bookings (52%), followed by white individuals (38%), American Indian or Alaskan Native (7%), Asian or Pacific Islander individuals (3%), and individuals categorized as other or unknown (0.2%). We find that most pretrial stays lasted two days or less (67%), and yet the average pretrial stay was 9.3 days. Black individuals had the longest average pretrial detention period of 11 days, followed by American Indian or Alaskan Native individuals (10 days), Asian or Pacific Islander individuals (8 days), and white individuals (7 days).

We divide our qualitative findings into three sections. **First, we analyze the pretrial process.** We show how it degrades and acts as a punishment before a finding of guilt. Participants described the harms associated with booking and detention, the daunting pace of the first court appearance, and the fact that, for many, an unreachable cash bail amount was its own kind of guilty verdict.

Next, we examine the wide-reaching impacts of cash bail. We focus on the experiences of community members—primarily Black women—who supported the release of an important person in their life: a sibling, a child, or a romantic partner.

Community members shared how their experiences with courts, jails, and bail agencies pulled them into deepening contact with the criminal justice system and saddled them with a series of financial and legal consequences that long outlasted the cases against their loved ones. Importantly, though they bear the burdens of paying bail, ensuring court appearance, and making long-term sacrifices to do both, support people have no form of guaranteed legal representation or recourse themselves.

Finally, we examine the claim that cash bail is necessary for ensuring that defendants appear in court. We focus on the views of system actors alongside the perceptions and experiences of community members. We find that by exacerbating already precarious situations, cash bail can actually hamper court appearance for many community members in Hennepin County.

Taken together, our findings demonstrate how the pretrial system in Hennepin County undermines rather than supports commonly held values of justice, fairness, and safety. This system causes widespread harm, destabilizing defendants' lives and draining their support networks of their already limited resources. Some of the most important lessons about how the pretrial system works come from community members who experience it directly.

Encounters with the pretrial system documented in this report undercut a mother's ability to provide housing for her children, prevented a nurse from having reliable transportation to her job, and derailed a defendant on their path to recovery from addiction.

Our findings also raise questions about how we define "affordability" when it comes to cash bail, and how useful affordability is as a metric to understand and reform pretrial practices. According to a [one-day snapshot](#) produced by Hennepin County Sheriff's Office in 2019, 88% of people in jail reported that they could not afford to pay their bail. At the same time, our interview sample was replete with community members who could, in the technical sense, "afford" cash bail for themselves or their loved ones. But this came at great cost. What does it mean to say that someone can "afford" bail when it means foregoing basic necessities like housing and transportation?

By shedding any assumptions about how cash bail *should* work—and examining how it *does* work—we can move toward a system that more closely adheres to commonly shared values of justice, fairness, and safety.

PART 1

SETTING THE STAGE

INTRODUCTION

Jailing a person before their trial has enormous consequences for that individual, their family, and their communities. According to the Prison Policy Initiative ([2023](#)), on any given day approximately half a million people—all presumed innocent—are held pretrial in jails in the United States. Many of these individuals are incarcerated pretrial for weeks, months, or even years before having the opportunity to defend themselves against their charges. And many are there because they cannot afford their bail. Across the country, intensifying scrutiny of our reliance on incarceration has led states and local governments to reform policies and procedures that govern the pretrial process. “Pretrial” refers to the period in a criminal case between arrest (or citation) and resolution of the case, and it often includes a period of detention in jail. “Bail” is the process of releasing a person from detention prior to trial, and can occur with or without monetary conditions.

In practice, the wealth of an accused person often plays a central role in determining whether they are released pretrial. In nearly all cases, courts can release someone from pretrial detention without any conditions. This is called a “release on personal recognizance.” However, they routinely rely on monetary conditions or “cash bail.” Cash bail is the amount of money the accused person must pay to be released from jail while their case is pending. This sum of money, set by a judge at a hearing, is meant to operate as an incentive to get people to return to court. If you pay bail and you show up for your court date, you’ll get your money back. Those who cannot pay, on the other hand, remain incarcerated.

This pretrial system leads to adverse outcomes for the person accused, and it actually seems to adversely impact court appearance rates. Research demonstrates that being held in pretrial detention for any period of time short of a case resolution leads to higher failure to appear rates and greater likelihood of re-arrest during the pretrial court process ([Keyser, 2022](#)). While remaining incarcerated pretrial, people may lose jobs, experience inadequate healthcare, and feel significant pressure to plead guilty simply to end their confinement. Indeed, people often experience cash bail as punishment, a price you pay for being arrested. Being held in pretrial detention causes significant disruption and harm to both those detained and their families. The harms associated with cash bail are exemplified in heartbreaking stories like that of Kalief Browder, a Black teenager from the Bronx who was arrested for stealing a backpack. Though he maintained his innocence, his family was unable to afford his \$3,000 cash bail— so he spent three years in Rikers Island Jail while his case was pending. His case was ultimately dismissed, but Browder suffered from depression and PTSD as a result of his time incarcerated and he died of suicide in 2015.

Given the widely documented harms associated with pretrial detention and recent efforts to reform pretrial practices across the country, we sought to understand how people experience the pretrial process in Hennepin County, Minnesota.



The Minnesota Justice Research Center (MNJRC) is an independent, nonpartisan, nonprofit organization dedicated to driving meaningful change to Minnesota’s criminal legal system through rigorous and community-centered research, education, and policy development.

We at the MNJRC believe an understanding of how the system currently operates must be guided by those closest to the problem. We ground our work in values and engage in deeper thinking with community members about what justice means and looks like while putting data behind creative ideas for solutions.

Our goal in this project was to determine whether cash bail supports or undermines commonly and communally held values of justice, fairness, and safety. This report begins with an overview of the project methodology, including our outreach and recruitment of participants, our interview protocol, and our approaches to data collection and analysis. Next, we present our findings in four sections.

First, using data from the Hennepin County Sheriff's Office, we examine trends in pretrial incarceration from 2017-2021. Then, we present the findings from our interviews with system actors and community members. Our data demonstrate that community members feel degraded and punished throughout the pretrial process and that the consequences of cash bail extend far beyond the individual arrested. In addition, despite commonly held beliefs about the purpose of the cash bail system, we find that cash bail is not necessarily an effective way to get people to return to court. We conclude with recommendations for shifting Minnesota’s pretrial system in ways that are responsive to our findings and to data accrued from successful reform efforts across the country.

METHODOLOGY

We sought to understand pretrial practices from a number of perspectives. In order to understand how cash bail operates in Hennepin County from a legal and practical point of view, we sought input from system actors who hold different roles and goals for pretrial justice, including judges, prosecutors, and public defenders. As part of this effort, we also attempted to include the perspectives of people working at bail bond companies, though they declined to participate in our study. The majority of interview participants were people who have experienced cash bail first-hand, whether by paying for another person and/or having it set for themselves.

At the MNJRC, we connect with participants through an outreach process, inviting community members into a broader conversation about the topic as we learn from their experiences (rather than taking a more traditional and often distant participant recruitment approach). To begin our outreach for this project, we first contacted system actors in Hennepin County via existing networks and snowball sampling. We gathered a diverse range of participants across legal roles including judges, city and county prosecutors, public defenders, legal system non-profit employees, and researchers who have developed tools used in pretrial proceedings. As part of our system actor outreach, we also attempted to contact via email and phone eight bail bond companies located in Hennepin County. We were unable, in the end, to schedule any interviews with representatives from bail bond companies, despite continued outreach efforts.¹

Talking with system actors helped us understand the technical intricacies of cash bail and their perceptions of the pretrial system, and it prepared us for our next stage of interviews with community members with firsthand experiences of cash bail. Our hope was to hear from as many system-impacted community members as possible to understand the tangible effects of the pretrial experience on their lives.

We began outreach by contacting community organizations via phone, email, and flyers, and we tabled at local events geared toward our target population (for instance, at the Volunteer Lawyers Network's (VLN) "Second Chance Saturdays"). In a second wave of outreach, we strategically identified and contacted local direct service nonprofits whose work likely brought them into contact with people who have experienced cash bail. Finally, we conducted open house/drop-in interview sessions with harder-to-reach populations at a number of local organizations, including Agate Housing and Services and Damascus House. As with system actor data collection, we used snowball sampling methods to expand our interview pool.

¹ In an initial round of phone calls, one company's phone number was out of service, three companies agreed to get back to us, one owner requested our interview questions be sent before scheduling anything, one company declined outright, and individuals from the last two companies agreed to schedule interviews. We sent two rounds of email follow-ups to everyone and three then declined with one individual explaining he was not interested in something that would "jeopardize [his] livelihood," and another individual explaining their boss "wouldn't like [employees] to discuss that."

Our community member outreach was challenging, as the topic of paying bail probed the intersection of two stigmatized statuses—indebtedness and criminality. As a result, our outreach process took roughly nine months.

In the course of this work, we experienced several of what [Owens \(2022\)](#) describes as “implausible” virtually-mediated interviews with interviewees who described false accounts² of paying cash bail in Hennepin County. As a result, we established a more rigorous screening process to confirm that the individuals we interviewed had cases in Hennepin County by locating their cases in the Minnesota Court Information System (MNCIS). All the data and vignettes that appear in this report come from interviews that we verified in MNCIS.

PARTICIPANT DEMOGRAPHICS

In total, we analyzed the interviews of 58 participants, 14 of whom were system actors and 44 of whom were community members with direct cash bail experience. The system actors included three judges (two semi-retired), three public defenders, three prosecutors, one court research staff, and four staff from nonprofits that do work in the pretrial space.

Demographically, the system actors ranged in age from 33 to 73 years old, were mostly women, mostly white, and most had advanced degrees. See Tables 1-3 for more detail.

The community member participant population was a diverse mix of individuals who live across the Twin Cities. Their occupations ranged widely; we interviewed law students, construction workers, nonprofit advocates, service employees, and people who were unemployed. The majority of community members we interviewed lived in South Central and North Minneapolis zip codes. About two-thirds (64%) of the community members we interviewed had experienced bail processes themselves, and the rest paid cash bail for someone else (36%). The average age of the community members we interviewed was 40 years old, the majority were BIPOC, and about half were women. Nearly all community members we interviewed (98%) were themselves eligible (or the person they helped pay cash bail for was eligible) for a public defender and just under half (43%) had a high school degree or less. See Tables 4-6 for more detail.

Table 1. SA Gender

Women	64%
Men	36%

Table 2. SA Race/Ethnicity

White	79%
Black	21%

Table 3. SA Education Level

PHD	7%
Some college	7%
BS/BA	14%
Masters	64%
JD	7%



²When conducting these interviews, the research team flagged discussions that seemed implausible both knowing how the pretrial system works in Hennepin County and noting oddly similar names or emails (e.g., several with firstnamelastname1234@gmail.com emails). Some participants described paying amounts that seemed unlikely, others described the court process incorrectly, and others gave names of bail bond companies or lawyers from states other than Minnesota. Taken together, we ended up discarding 16 interviews as deceptive accounts of paying cash bail in Hennepin County (that is, their stories were either likely invented or from jurisdictions outside of Minnesota, as we could not locate their cases in the MNCIS).

Participant Demographics

CM = Community Member

Table 4. CM Gender

Women	41%
Men	49%

Table 5. CM Race/Ethnicity

White	32%
Black	45%
Southeast Asian	2%
Native American ³	7%
Two or more	9%
Hispanic	2%
N/A	2%

Table 6. CM Education Level

Less than HS	11%
GED	16%
HS	16%
Some college	41%
BS/BA	11%
More (grad)	2%
Unknown	2%

INTERVIEW PROTOCOL & ANALYSIS

Both the system actor and community member protocols followed a similar progression. Interviews began with questions about values and what participants saw as the purpose of cash bail. The research team then asked interviewees to get more detailed about the process of cash bail itself, with system actors providing insight into pretrial processes and community members expanding on their lived experiences. Both protocols concluded with a demographic questionnaire.

The MNJRC research team conducted individual interviews via Zoom, over the phone, and in person. Priority was placed on meeting people in person or having them turn on their cameras during a Zoom meeting in order to verify that they were a real person and not a repeat interviewee. Interviews were securely recorded and transcribed using a transcription service. The team then coded the data in multiple rounds. First, we used inductive coding, noting and keeping track of all important themes that arose in the data. For example, many participants used the term “skin in the game” which we pulled out and used to code and categorize the data related to that topic. Second, we used a focused coding approach, re-examining each coded category to identify patterns across the entire data set. For example, we used code categories like “bail as punishment” to process the data. Multiple team members independently coded the same data to ensure themes were reliably and consistently tracked throughout the analysis process. Everyone quoted in this report was given a pseudonym to protect their anonymity.

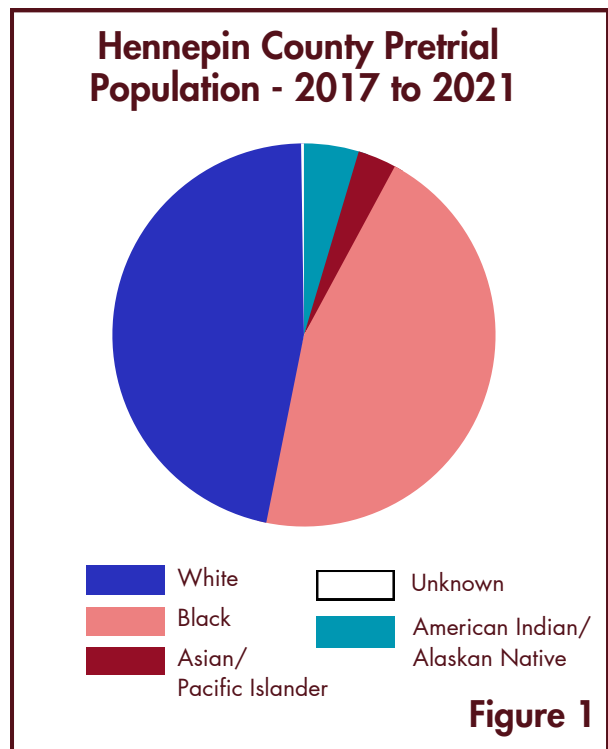
³ Throughout this report, we use the terms Native American and Native for our data. The terms ‘Native American’, ‘American Indian’, and ‘Native’ are often used interchangeably among Native people, and no single term is agreed upon across tribal communities. Most Native Americans do not use the term ‘Indigenous’ to describe themselves, so we do not use it here. Each tribal nation is a sovereign nation, therefore distinct tribal identifiers are generally preferred over these labels, but we did not collect this level of detail. We also capitalize these terms following other proper nouns used in reference to groups of people (Canadian, Mexican, and Minnesotan). When we use alternative data sources, we use their terms (e.g., in the section that follows we use Minnesota Department of Corrections data which uses “American Indian or Alaskan Native” as a racial category).

PRETRIAL DETENTION IN HENNEPIN COUNTY

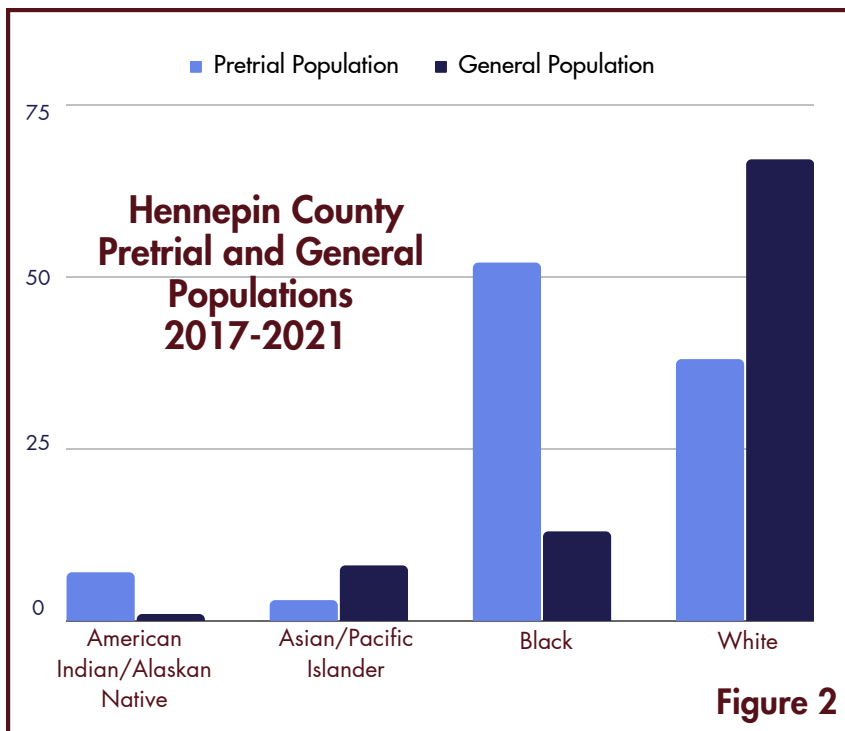
To provide context for our qualitative findings, we sought to identify trends and patterns within the population of individuals held in pretrial detention in Hennepin County. To do so, we analyzed data obtained from the Minnesota Department of Corrections (DOC) spanning from 2017 to 2021. We present the data below by first setting the context for the whole jail population and then focusing primarily on pretrial bookings—records of when people are booked and held in jail prior to the “completion” of a case either through a trial proceeding, settlement, or dismissal of charges. In the DOC data set, we isolated pretrial bookings by examining individuals held in jail for the following listed reasons: 1) “bench warrants,” those held due to an outstanding warrant issued by a judge, i.e. arrested for missing a court date; 2) “pending charge/investigation,” individuals who were held prior to being charged with a crime or while an investigation was still ongoing; 3) “pending trial,” individuals who were charged but not yet dismissed or convicted and were awaiting their trial; and 4) “pending court disposition,” individuals waiting for the outcome of their court case either during their trial or awaiting a settlement.

PRETRIAL POPULATION

In the Hennepin County Adult Detention Center (ADC), the total jail population between the years 2017 and 2021 was approximately 62,094 individuals. The majority of the population in jail, 88 percent (n=54,758), is there pretrial. When examining the racial breakdown of the pretrial population, white individuals and Black individuals each make up close to half of the population (47% and 45%, respectively) followed by American Indian or Alaskan Native individuals at 5%, Asian or Pacific Islander individuals at 3%, and individuals categorized as other or unknown at 0.2% (See Figure 1). The pattern shifts slightly, however, when examining the racial composition of the jail population by bookings (rather than at the individual level).



The total number of bookings at the Hennepin County ADC from 2017 to 2021 was 107,494. Bookings represent individuals taken into jail at any given time, counting every instance in which an individual is booked. Thus, this number better captures the experiences of individuals who are booked repeatedly. When examining the racial breakdown of the pretrial population based on bookings, Black individuals comprised the largest proportion, accounting for 52% of the total population. White individuals comprised the second largest group at 38%, followed by American Indian or Alaskan Native individuals at 7%, Asian or Pacific Islander individuals at 3%, and individuals categorized as other or unknown also at 0.2% (see Figure 2, unknown not included).



To better understand the racial disparities in the Hennepin County pretrial population, we compare the pretrial population to the broader Hennepin County population. While in 2021 white people made up 66% of the county population, they made up only 38% of the pretrial bookings from 2017-2021. Conversely, Black individuals made up 13% of the general population in Hennepin County in 2021, compared to 52% of the pretrial bookings, and Native Americans made

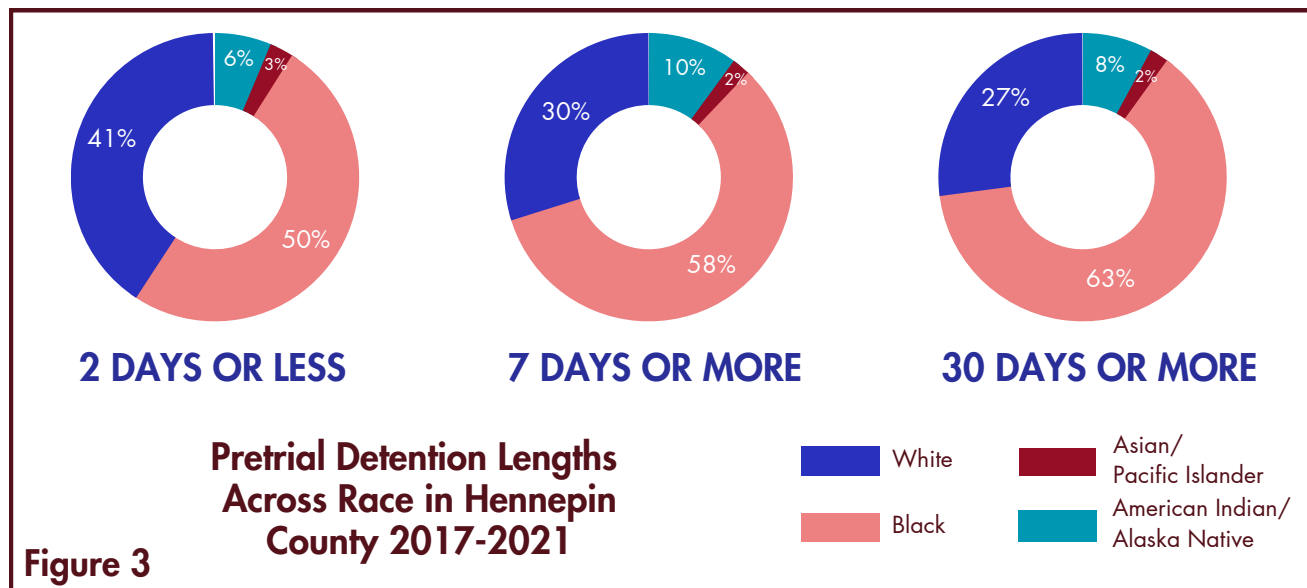
up less than 1% of the general Hennepin County population but 7% of the pretrial bookings at the ADC (see Figure 2).

LENGTH OF STAY

In Hennepin County, pretrial detention can vary in duration, and there is no specific formula or predetermined length of stay based on the charges a person is facing. Research findings from other jurisdictions, as well as our interviews, show that any amount of time spent in detention has negative effects ([Keyser, 2020](#); [Smith, n.d.](#); [Subramanian et al., 2015](#)).

When examining the length of stay for pretrial detention in Hennepin County, we find most pretrial bookings resulted in a length of stay between one and two days (71% of the bookings exceeding one day and 67% lasting two days or less). Fewer bookings lasted longer than one week (16%) or one month (7%).

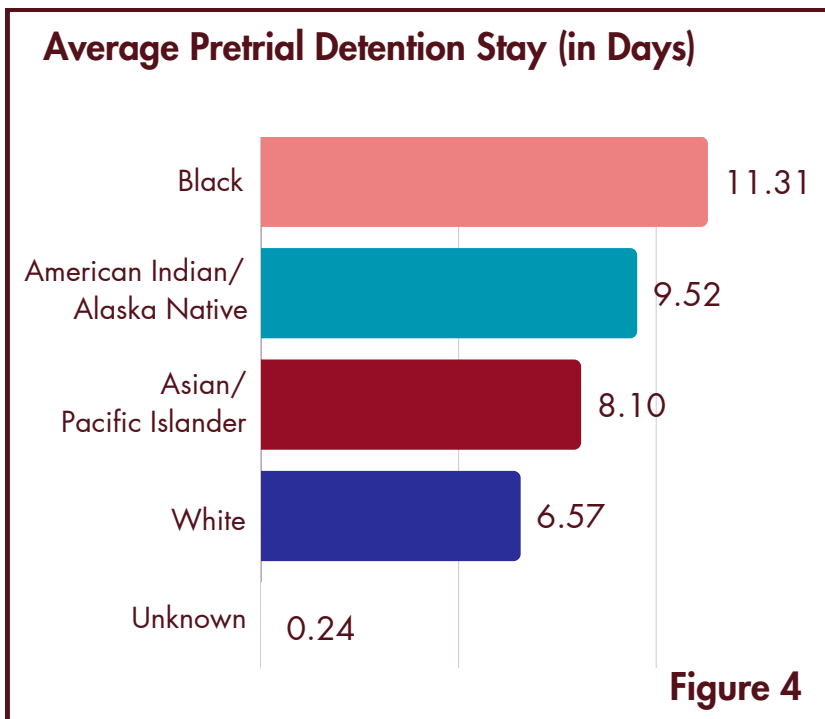
Considering those longer stays in raw numbers, 7% of bookings (over the 5-year period) equates to nearly 8,000 instances in which an individual was in jail for over a month pretrial, and many of those stays were much longer. In fact, the average length of stay for the Hennepin County pretrial bookings from 2017 to 2021 (including the nearly 30% that were there less than one day) was 9.3 days. While the majority of the pretrial population has shorter stays, a significant number of individuals have long enough stays to pull the average up to 9.3 days.



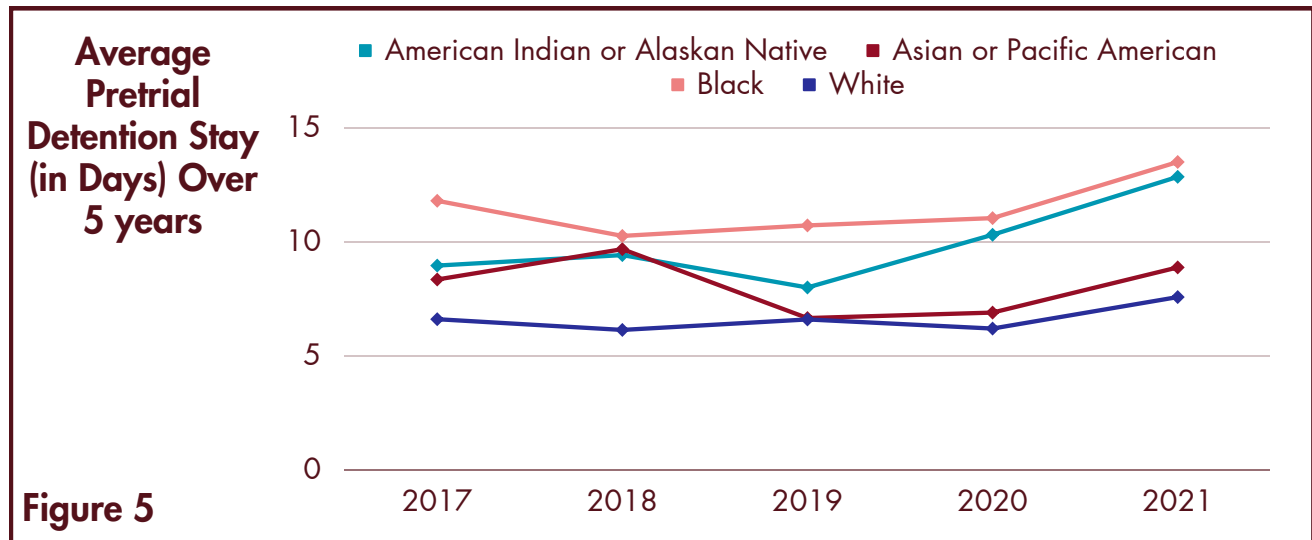
Our analysis reveals statistically significant differences in pretrial detention lengths across racial groups. Furthermore, as the length of stay increases, the proportion of bookings for Black individuals rises from 50% to 63% while the proportion of bookings for white individuals decreases from 41% to 27%. (See Figure 3, unknown less than 1% not included.)

When examining the average lengths of stay by race, we again find disparities: Black individuals had the longest average pretrial detention period of 11 days, followed by American Indian or Alaskan Native individuals (10 days), Asian or Pacific Islander individuals (8 days) and white individuals (7 days) (see Figure 4).

The length of stay remained relatively stable when broken down by race from 2017-2021 (see Figure 5 on the next page).



Over the course of the 5-year period, the average stay for Black individuals hovered around 11 days. Despite massive societal shifts during this time—COVID-19, the uprising following the murder of George Floyd, some policy changes at the county level—the pretrial detention system continued to produce similarly disparate outcomes for community members.



In sum, for most people detained pretrial in Hennepin County jail from 2017 to 2021, their lengths of stay were between one and two days, while the average stays were closer to a week. No matter how we examined the data, the racial disparities remained significant. These figures suggest that pretrial practice in Hennepin County disproportionately leads many people to spend considerable time in jail before they've had their day in court.

Hennepin County's reliance on pretrial incarceration undermines the presumption of innocence and does not reflect the will of most Americans. A [2018 Pew survey](#) found that 83% of people said the following statement most closely aligned with their view on pretrial: "Just because someone is arrested doesn't mean they've done anything wrong, so the justice system should treat them more like innocent citizens than like criminals while they're awaiting trial." Importantly, this finding held across the political spectrum, suggesting that for most Americans, pretrial liberty interests are a core value.

As we document in the following section, the experience of people arrested in Hennepin County departs significantly from this ideal and, even for the majority of individuals who had one- or two-day stays, the impact was consequential.

PART 2

HOW THE PRETRIAL PROCESS DEGRADES AND PUNISHES

*"So you're basically paying...
saying I'm guilty of something before you even get a chance"*

For the people we interviewed, pretrial detention constituted a punishment before a finding of guilt. The pretrial process can be experienced as a series of what scholars have called “degradation ceremonies,” or processes that humiliate people and remove them from the community ([Van Cleve, 2022](#)). The sense of guilt inculcated by the “degradation ceremonies,” and the panic surrounding being treated as guilty, shapes how people view the pretrial process, and in turn, the choices they make regarding their cases.

In this section we describe each stage in the pretrial process, sharing respondents’ firsthand perspectives. We detail booking, holding, first appearance, and finally, the moment of bailing out (or not). **It is important to note that everything that we detail in this section— the degradations, the costs, the hardships— occurs before someone is found guilty of any crime.** Cumulatively, the pretrial process hinders people from fully participating in their defense, functioning as pretrial punishment. As Levi, a man in his forties said, the legal process treats people “as guilty until proven innocent.”

THE DEGRADATIONS OF BOOKING AND PRETRIAL DETENTION

“You sit there and wait, wait, wait, while you don't hear nothing about nothing”

Arrest and booking into jail kick off an important, and deeply disruptive, transition for those accused of criminal activity. People go from being able to control their day-to-day activities to becoming completely under the control of law enforcement. The procedures of the booking process forcefully mark this degradation of status and lack of autonomy. Mark, a man in his fifties, said the booking process and pretrial detention harmed his soul:

*I mean their mission, I believe, is to make it the most awful experience ever so that you maybe won't want to go back. But treating people the way that they treat you doesn't... **I don't think the outcome is, "I don't ever want to go back." I think the outcome is, "I'm not a good person." And I think that's really detrimental to one's soul.***

For people we interviewed, one of the most consequential features of transitioning into the rhythms of incarceration was the loss of control over time. Our interviewees described an experience that scholar Michael Walker ([2021](#)) has described as a conflict between “clock time” and “event time,” that is, an incongruity between the way time works inside the jail versus outside the jail.

Outside jail, people have to meet demands at scheduled times, such as going to work at a certain hour or picking up kids “on time.” This relationship to time gives people a kind of agency over their day and their actions.

Once incarcerated, however, people are forced into the “event time” of jail, through which time is organized by the completion of events or transactions. There is, for instance, no set amount of time it takes to get through the booking process at the jail. Thus, while people continue to feel the pressure of demands of their outside life on clock time, they are bound to the slow and unpredictable processes that structure life in jail.

The booking process exemplifies the way jail procedure alienates people from their attachment to clock time. Booking itself can take several hours, depending on how quickly (or slowly) deputies move people through the process. Interviewees described sitting in rooms for hours, just waiting to be moved to the next part of the booking process. Samantha, a woman in her fifties who had been arrested multiple times for misdemeanor theft charges, explains her experience in Hennepin County:



It's just like 9 to 12 hours every time I've been through Hennepin. It's ridiculous.... And if you were gonna be bonded out, you wouldn't even be able to start that bonding process till that 9 hours of booking. Wouldn't even be able to start the process till you're booked in and you're in the system, 'cause they can't look you up, the bondsman can't look you up or find out what you're going on. So... that's time you just wasted for whatever reason.

Those hours people spent being processed are precious. Levi, mentioned above, explained the anxiety he felt while waiting for the opportunity to be released:

I need to get out [of jail] because I need to gather my information for my defense. And in my defense, I had a lot of evidence out there as far as concerning my case that I wanted to put together. Plus, I wanted to take care of some of my affairs too, like to pay my bills, to make sure my house, my place, everything is in order.

People who are arrested without a warrant, and therefore, without formal charges, face a different kind of limbo period. Until a specific charge is filed, the jail and the prosecuting authority can hold a person without the option to post monetary bail and achieve release. This period may be anywhere from 36 to 48 hours. On two separate occasions, Rochelle, a woman in her thirties, was detained for two days without charges being filed against her. In both cases, without being charged with a crime, Rochelle lost her job and had to scramble to find other means to support herself after she was released.

As people go from the booking process to temporary holding, they experience a marked change in their sense of time. With little information regarding their legal case, and with limited ability to contact those outside the jail, people who are detained feel disoriented. At this point, for most cases, authorities will set an initial bail amount. Therefore, most people will have the opportunity to bail out before a judge hears their case. But since many defendants cannot afford the initial bail, they remain in jail until their preliminary hearing (usually the following day), hoping that the judge will reduce their bail amount. As Levi explains, after intake “everybody there is... the concern is: How are they gonna make bail?” Terri, a woman in her thirties, expressed a sentiment echoed by many people we interviewed: “it gives you this sense of panic, like I'm not gonna be okay unless I find someone to bring money to this jail right now.”

People experience this fear and disorientation within decidedly poor conditions. Consequently, participants described the jail as taking a significant toll on their physical health. Rashid, a man in thirties, explained how the jumpsuits caused skin problems for him and others:

The conditions in the jail were very bad. When we put on their uniform, the orange scrubs, never in my life was I diagnosed with eczema until that day. I noticed, like, some itching on my skin, and other inmates did as well.

Rashid went on to explain that the first deputy he saw refused to give him a meal without pork, even though he is an observant Muslim. Other people described the inability to sleep in the chaotic environment, in which fights and other disturbances are common. Derek, a man in his forties, says: “So the police always come in there zapping people when they don’t act right. Man, it's hard to sleep in there with all the noise. The lights are on all night.” Other people in our sample, particularly those who were detained during the pandemic lockdowns, described being locked in their cells for 23 hours a day; furthermore, the one hour they were allowed out of their cells came at unpredictable times, according to the scheduling needs of the jail.

THE FIRST COURT APPEARANCE

“You're better off being rich and guilty than poor and innocent”

The next event in the pretrial process is the first appearance before a judge, wherein judges consider prosecutors' bail requests. After considering defense attorneys' responses to the bail request, the judge makes a ruling (either releasing the defendant with or without conditions, or setting cash bail).

This process moves very quickly, especially in a large urban county like Hennepin County, which only contributes to defendants' sense of confusion and injustice. On the day we interviewed Claire, a seasoned public defender, she informed us there were 21 felony cases that had to be heard by a judge in just three hours, leaving less than ten minutes per case. Frustrated, Claire explained, “In three hours, there's just no chance that we have the time to do the work that we need to do to get that done... more than anything, we are asked to do a ton of work with a limited amount of time.”

Prior to appearing in front of the judge, most people have the opportunity to talk to a public defender or a private defense attorney if they can afford representation. But this time, too, is short. Samantha described liking her public defender: “He's young... the system hasn't ruined him, yet.” But despite their rapport, Samantha reported only having about five minutes with the attorney before seeing the judge. During this time, she had to explain her complex circumstances, including experiencing homelessness and having been recently diagnosed with terminal cancer.

Samantha was particularly candid with her attorney. But there are many reasons it is difficult for people to be as open during this process, such as limited understanding of what is relevant, intense time pressure, and reticence to share intimate information with a complete stranger. As a result, public defenders may go before the judge without the information they need to make robust arguments for pretrial release.

For other interviewees represented by public defenders, the process seemed pro forma. Ray, a man in his thirties, explained:

They [the Public Defender] do come and talk to you... 'Cause most of us go in there, we don't have a [private defense] lawyer. So, without a lawyer you don't have nothing. You can't do nothing. You don't have nothing. So, you have to listen to that person. So, if they tell you you gonna have to pay this much in order to get out, most of the time you're not gonna argue with it, because you want to get out.

Ray describes how panic at the thought of having to return to the degrading conditions of jail puts people in a position of acquiescence, having to agree with whatever they are presented by the public defender.

While the public defenders we interviewed described a lack of resources and time to do their job effectively, those accused of crime largely expressed the sense that their public defender was just going through the motions, rather than advocating for them. As Jeremiah, a man in his thirties explained, "I just feel like he just was saying what they were supposed to say... 'cause you will sit right there and then you'll see the next public defender say the same thing for his client. Like, 'Well he's not a risk to the community. He's not a flight-risk.' That's it."

Once the hearing starts, the prosecutor has the first opportunity to request a cash bail amount and address any other conditions of release. Their goal is to persuade the judge to follow their request by arguing that the person charged is a flight risk or a public safety risk. Often, this means that prosecutors delve into the backgrounds of the people charged, bringing up past cases and experiences with law enforcement. Some of the people we interviewed were baffled at what prosecutors brought up in court, unsure how it was relevant to the current case. Tony, a man in thirties, described a bail hearing in which the cash bail amount was set at \$200,000:

They were bringing up smoking tickets that I got when I was 13 years old to affect my bail. They went back. The prosecutor started with my controlled substance charges from seven years prior to stuff that happened when I was way [younger]. Like a smoking ticket—why would a smoke ticket when I'm 15 years old affect me when I'm a grown man in court?

These efforts to make the person charged appear prone to criminal activity were experienced as deeply degrading, and increased the perception of those charged that the deck was stacked against them. The defense attorney then has the opportunity to argue for a lower bail, using the materials they have available at that time. Kate, a public defender, explained:

At a bail hearing, I don't have the discovery, I don't have a police report, I don't have videos, I don't have any of that stuff. I basically have this complaint which tells me, "Okay, where were you, what maybe sort of happened, is this a drug case or is this a theft case, is this a murder, what is this?"

Ultimately, the judge decides on pretrial release conditions, including cash bail. When making a bail decision, the judge considers the circumstances of the alleged offense; the safety of both the community and alleged victim; and the defendant's criminal history, community ties, and prior history of appearing in court. Benjamin, a man in his forties, described the judge's demeanor when he gave the order:

He didn't even look at me when he said it. He just treated me like I wasn't human or something. Like he had no respect, no regards for my life or something, I don't know. [I] tried to explain to him like, "Look man, I just did this. I mean, I got a good job and this and that and I'm working, I got kids and a family. I need to be home so I can support them." Stuff like that... [The judge] didn't even budge. Looked at my past record and decided on that

After this experience, people for whom bail has been set must decide whether to contact friends and family members to get help with payment or remain incarcerated until their next court date.

CASH BAIL VERSUS JAIL ON THE INSIDE

*"Nobody wanna stay there.
And they know that."*

Having the opportunity to bail out of jail has become a key arbiter of guilt and innocence in American courts. This is because of how deeply pretrial detention undermines a person's ability to assist in their own defense. Considerable research demonstrates that pretrial detention can have downstream negative effects. People who remain detained pretrial have less time to prepare for their cases, have challenges providing evidence for their cases, and are often coerced into plea deals that scholars suggest may factor into worse case outcomes ([Chevrier 2021](#), [Euvrard & LeClerc 2017](#), [Heaton et al. 2017](#), [Lerman et al. 2021](#)).

Studies show when comparing individuals incarcerated pretrial with those released for similar charges, those who are locked up are more likely to plead guilty, to be sentenced to prison, and receive longer sentences ([Dobbie et al. 2018](#), [Heaton et al. 2017](#), [Kellough & Wortley 2002](#), [Phillips 2012](#), [Stevenson & Mayson, 2017](#)). They cannot get adequate rest or have access to healthcare. When they appear at subsequent court appearances, they are brought in by deputies and dressed in orange jumpsuits—neither of which suggests innocence. What's more, people who are not released pretrial face the prospect of serving an unknown amount of time—sometimes, a lot of time—before ever having been found guilty of anything. As the people we interviewed explained, the awareness of this protracted jail time deeply shaped their decisions regarding their cases.

Our interviewees were well aware of the connection between pretrial detention and negative case outcomes, and this knowledge weighed heavily on them after arrest. For many, this meant that an unreachable cash bail amount was its own kind of guilty verdict. Levi described:

The purpose of bail is to have a chance, I think, to get out and prepare yourself to face the case and gather evidence and something to prove your innocence, basically, because you're presumed guilty, as far as I saw how the system is. You were presumed guilty until proven innocent. They say it's the other way around, of course, but it's not the case. And sometimes, the bail is just to make it difficult for you to fight your case. [emphasis added].

From Levi's perspective, cash bail is a tool the prosecution uses to weaken the prospects of the accused, by adding another obstacle in the efforts to build a proper case.

Those unable to pay cash bail for a release have no choice but to wait out their case in jail. Because of the high number of cases before the court and the long court processing times, this wait can be long (and, as we show in Figure 4, longer on average if you're BIPOC in Hennepin County). The disruptions of the pandemic exacerbated an already overburdened system. Susan, a prosecutor, summarized the situation regarding wait times:

...[T]he backlog builds and builds and builds, and then the backlog factors into a lot of this as well, and even before the backlog though, it was not unusual, if you were cited for an offense, by the time that citation got processed in the court and you were set a court date, it could be six to eight weeks later. [emphasis added].

Our interviewees described how facing these wait times, in combination with the poor conditions of the jail, increased their sense of panic and helplessness. Terri, a woman in her thirties, described her feelings the first time she couldn't find someone to help pay her cash bail:



It gives you this sense of panic, like, 'I'm not gonna be okay unless I find someone to bring money to this jail right now.' ...[I]t takes you out of defending yourself. You're no longer treating yourself as an innocent person who doesn't deserve to be here, 'cause you just, like I said, you just panic. And it makes you feel like you're a bad person. It makes you feel unworthy.

Luke, a man in his twenties, described how seeing the cash bail amount (which he labeled as a "price") "kind of kill[s] you on the inside." He knew that he could never pay his \$3,000 cash bail amount, and that no one in his family or networks had that kind of money either. The number was crushing.

Staying in jail can have significant consequences on an individual's health and economic prospects. Among individuals who are arrested for the first time and for low-level offenses, many experience long-term consequences due to separation from their families, interruptions to work, and loss of housing. Indeed, pretrial detention decreases the probability of employment three to four years after the bail hearing by 9.4% ([Dobbie & Yang, 2021](#)). Pretrial detention also disproportionately impacts people with mental health needs ([Fader-Towe & Oscher, 2015](#)), and in-custody deaths are most likely to occur during pretrial detention, not after conviction ([Wang, 2021](#)). The leading cause of death in pretrial detention is suicide ([Bilyeau, 2021](#)), but other common causes include illness, violence, and drug overdoses ([Carson, 2021](#)). Hennepin County is not immune to these nationwide trends. Between 2009 and 2019, ten people died in the Hennepin County Jail. Six of those people died by suicide, one died by illness, and for three people the cause of death was marked as "drugs/alcohol" ([Smith, 2020](#)).

The desperation that arises in pretrial incarceration directly affects how people make decisions about their defense. Omar, a man in his twenties, explained how, in his view, the coerciveness of these conditions led to speedy guilty pleas:

So, it's torture, basically. It's a way of trying to get somebody to submit to or just do what you want them to do because they don't have any other option of getting out of there, other than to take a shitty deal. Even if they're not guilty, they'll say that they're guilty.

Omar and others in our sample described how they took guilty pleas themselves or saw others do so, simply to get out of jail. Research demonstrates that individuals who cannot afford to purchase their freedom are more likely to enter guilty pleas when a guilty plea will result in being released from jail ([Sacks & Ackerman, 2012](#)). Indeed, individuals who plead guilty have their cases disposed of faster than those who are released, and many people reason that pleading guilty is a way to have certainty in otherwise wildly unpredictable circumstances ([Kellough & Wortley, 2002](#)). As compared to similarly situated people who are released pretrial, people in pretrial detention are more likely to be convicted ([Lee, 2019](#)), sentenced to prison instead of probation ([Tartaro & Sedelmaier, 2009](#)), and receive longer sentences when convicted ([Sacks & Ackerman, 2014](#); [Spohn, 2009](#); [Tartaro & Sedelmaier, 2009](#)).

The stories in this section demonstrate that community members experience each stage of the pretrial process in Hennepin County as punishing and degrading. People who go through this process feel guilty before they are convicted of a crime, and this guilt shapes their perceptions and choices around cash bail. Their knowledge of the poorer outcomes awaiting those held in custody pretrial also influences their decisions regarding pleas. Part of the guilt that people experience comes from being forced to rely on individuals from the outside in order to be released. In the next section, we detail what those support people experience as they attempt to navigate the same pretrial process from the outside.

PART 3

HOW THE PRETRIAL SYSTEM PUTS FAMILIES AND COMMUNITIES ON THE HOOK

"I'm suffering along with her."

The pretrial system in Hennepin County requires the participation of *support people*: families and loved ones who can facilitate release from the degrading conditions of detention ([Page et al., 2019](#)). This requirement of support from the outside is built into the organizational procedures of the jail and bail bond industry. Even those who have the resources to pay their own cash bail cannot access personal items, including bank cards, and thus are reliant on either giving bail agents permission to access their property or support people to secure payment and carry out the transaction at a moment's notice. And while this transaction itself is fraught with difficulty, the need for support extends far beyond the moment of initial release.

In this section, we focus on the experiences of community members who have supported the release of a person in their life: a sibling, a child, or a romantic partner. We feature the stories of people who used a bail bond agency in order to secure their loved one's release. As we interviewed support people, we sought to learn how they made the decision to bail out their loved ones and how it impacted them. Community members shared with us how their experiences with courts, jails, and bail agencies pulled them into deepening contact with the criminal justice system and saddled them with a series of financial and legal consequences that long outlasted the cases against their loved ones.

In our interviews, we saw a pattern of Black women predominantly taking on support roles for people needing to pay cash bail. **This reflects a larger reality beyond our study: that women from race-class subjugated communities are more likely to bear the responsibility of support in the pretrial process** ([deVuono-powell et al., 2015](#)). As women, who are often positioned as caregivers in their familial and social networks, and as people of color, who are subject to greater levels of policing and criminalization, BIPOC women more often find themselves in the position of having a loved one jailed and in need of their help in particular ([Page et al. 2019](#))

In what follows, we share the three interconnected moments at which support people experience this deepening involvement with the criminal legal system in the context of providing pretrial support: First, at the moment of bailing out a loved one; second, in the course of providing support throughout the case; and third, in grappling with the sprawling consequences of paying cash bail. Importantly, while bearing a number of serious consequences, support people have no form of guaranteed representation or recourse themselves. They are left to navigate entanglements with the criminal legal system on their own, while also working to support their loved ones ([Page, 2017](#)).

CASH BAIL VERSUS JAIL ON THE OUTSIDE

“I gotta get him out of there”

Arrests are unpredictable events, for both the person arrested and the community members that support them. As soon as support people get the information that their loved one has been arrested, they need to answer two questions in short order: Do I bail this person out? If yes, how? In this consequential decision-making process, time is paramount.

Many support people expressed that they felt a deep responsibility to remove their loved ones from the harsh and potentially dangerous conditions of jail as quickly as possible. Our interviewees felt this responsibility so deeply that our framing of this support as “a choice” elicited confusion. When we asked support people, “How did you decide whether or not to bail your loved one out?” they often answered that it did not, in fact, feel like a choice at all. Instead, bailing someone out was part of a larger duty of care to their loved ones, an urgent necessity intensified by their knowledge of the conditions of the Hennepin County Jail. In an answer reflective of many in our sample, Mary, a woman in her sixties who bailed out her daughter, responded, “That was the one little thing I could do... no questions about it.”

Thus, like their incarcerated loved ones, support people experienced panic and a painful temporal disorientation. The experience of Gabrielle, a woman in her twenties who used a bail agency to bail out her brother, demonstrates this pressure well. Gabrielle told us the story of her brother, who was arrested for a felony-level robbery charge. The cash bail that the court set was out of reach for Gabrielle, so she immediately began contacting bail companies, who informed her she would need to pay a \$5,000 premium, which was 10% of her brother’s cash bail. But Gabrielle did not have this money on hand. As she was trying to figure out what she was going to do, she began receiving 15-minute phone calls from her brother that increased her panic:

[H]e was like, ‘Get me out. I might kill myself.’ So, I just was like, I knew I had to do whatever it took... I could just hear it in his voice. ‘I don't know when I'm gonna be able to call you again,’ and stuff like that. So, I just was like, ‘I gotta get him out of there.’

Gabrielle’s brother could only call her when the jail allowed him to, making these brief moments of insight into his well-being sporadic and unpredictable. She went through a frantic process of soliciting help from family members and thinking about what she could sell to make the \$5,000 premium. Gabrielle explained how she grappled with a competing set of concerns over the course of the week it took to come up with the money for the bail agency:

And then, I just was like, "If I have to sell my car, I'll just sell my car." It was so many things going through my head and it was just like, "Okay, I am a mother and I do need my vehicle for transportation." But... I wasn't thinking like that at the moment. I just was like, "I want to get him out for his mental health," just safety-wise, because I never heard my brother talk like that.

Fearing for her brother's life, Gabrielle decided to sell all of the living room furniture she had just bought, which brought her funds up to just shy of \$4,500. When Gabrielle couldn't make the full \$5,000 premium, multiple bail bond companies rejected her outright. After a flurry of phone calls and intense negotiations, Gabrielle found an agency willing to work with her on a slightly lower premium. The agent got her brother released the same day. He'd already been incarcerated for nearly two weeks.

"[H]e was like, 'Get me out. I might kill myself.' So, I just was like, I knew I had to do whatever it took... I could just hear it in his voice. 'I don't know when I'm gonna be able to call you again,' and stuff like that. So, I just was like, 'I gotta get him out of there.'"



Among our sample, Gabrielle's experience is common. In the end, Gabrielle lost out. Her brother was rearrested for a probation violation and convicted on multiple charges. The premium she paid to the bond company was gone—she would never have gotten that back anyway, even if her brother hadn't been rearrested—and she was left picking up the pieces of her own life while continuing to worry about her brother's.

In many ways, the current pretrial system forces families like Gabrielle's into using for-profit bail bond agencies during moments of crisis. The court orders high cash bail amounts, making direct payments to the court unthinkable for many middle- and working-class families—particularly at a moment's notice ([Rabuy & Kopf, 2016](#)). And so, in desperation, these families turn to local bail agencies to secure their loved one's release.

Bail agents get to interact with the court system differently than private citizens do. Rather than having to put down large sums of money, like a family member would have to do, bail bond companies file a document with the court (a bond) saying that they will insure the person's appearance in court and pay the court if that person fails to appear. Backed by large insurance companies (called "sureties"), local bail agencies can write bonds "far in excess of the money they have in their reserves" (Minneapolis Foundation, 2019). The sureties typically make large profits from this process. For their passive role, they collect approximately 10% of every premium paid by an accused person or their loved one, and, in turn, pay out less than 1% of their revenue in bond losses (Bauer, 2014). Courts rarely force bail agencies to pay the full amount, even when they fail to bring a person to court (Bauer, 2014). Thus, in practice, the sureties assume very little financial risk.

The current pretrial system also enables bail agencies to sidestep barriers that support people face when trying to pay cash bail. Bail agents have access to a number of resources that enable them to smooth over and exploit the inefficiencies and communication gaps that families experience when they are trying to learn about their loved one's well-being in jail. Mary, who we quoted above, found this out when her daughter was detained on warrants in multiple counties. Mary struggled for hours to find the holding location of her daughter but couldn't get a straight answer from anyone. But the bail agent she called for help was able to find out her daughter's location instantly, while she was still on the phone.

Thus, for scared support people fed up with the run-around of supporting a loved one in jail, the service of a bail agent felt like a welcome reprieve from a bureaucratic nightmare ([Page, 2017](#)). Rochelle, a woman in her thirties who bailed out her boyfriend, shared with us her pleasant surprise at the round-the-clock service of the bail agent she worked with. She contrasted the responsiveness of the bail agent with her knowledge of how the county typically operates:

And it was a holiday, so no one was working. So, this one guy that happened to help me out and pick me up at my home and drive me to the jail... He issued the bail bond to the judge in the middle of the night, and I waited eight more hours for that person to be released.... I assumed that [the bail process] functioned a lot like the court system that was pretty much Monday through Friday and 9:00 to 5:00 kind of thing... it just didn't occur to me that I was gonna actually get help, and then that [the bail agent] was gonna come to my house.

Here, Rochelle describes how the bail agent picked up where court and jail officials left off, enabling her to get her boyfriend released much more quickly than she would have if she paid cash herself. This shaped her understanding of bail agents as providing an appealing service that aided her in carrying out her responsibility for her boyfriend, rather than a for-profit business exploiting the urgency of the moment.

As welcome as the services of a bail agent were to some families in dire straits, using a bail agency had serious consequences for those we interviewed. There is, at the beginning, the roughly 10% premium that families pay up front and never get back. This is the cost of the “service” of the bail agency, and a tall order in and of itself for many families with whom we spoke. But a number of consequences also come from the contract that people sign when they act as a cosigner, a requirement for most bail agencies.

These contracts may hold them responsible for more than just the 10% premium; they may also be responsible for fines and fees incurred by the bail company. For instance, if the person the bond company bonded out fails to appear in court, the bail company may charge cosigners costs associated with locating them (e.g., expenses for bounty hunters).



These investigators can be extremely expensive, with some companies charging cosigners rates of \$250 per staff hour, plus expenses ([UCLA Criminal Justice Reform Clinic, 2017](#)). Family and friends end up on the hook for these expenses, regardless of the outcomes of the cases. This means that a case could be dismissed, or the person could be found not guilty after trial—but the amount they paid to the bond agency will never be refunded or returned to them. In this way, bond companies pass much of the risk of bonds on to the support people who act as cosigners.

Thus, while support people in our sample like Gabrielle and Rochelle often engaged the services of bail agents with more singular focus on their loved one’s release from jail, they soon found out their role was far more involved. Indeed, because support people were now financially liable for their loved one’s court attendance, they often spoke of feeling coerced to track and control the actions of their loved one.

THE STRUGGLE OF GETTING A LOVED ONE TO COURT

“There’s a lot at stake here”

The steep costs of being accountable for a loved one missing court put support people in the stressful position of surveilling their loved ones and making sure they go to court. There are virtually no resources for support people as they grapple with this labor. Lynette, a woman in her forties, described the elaborate plans she makes with people when she bails them out:

You make an agreement and say, 'Okay, I'm gonna be at your house at this time for this court date. You need to make sure that you're ready and that you show up to court. You need to make sure that whatever you have to follow through that you follow through. And if that means that I'm at your doorstep... if I have to monitor you like a child, I'm gonna monitor you like a child because there's a lot at stake here'

Lynette had a uniquely extensive understanding of the potential ramifications of cosigning on a bond. When she was a child, Lynette's mother cosigned on a bail, putting their house down as collateral. When that person did not return to court, Lynette's family lost the home they had lived in for 17 years. This painful history is always on her mind as she makes decisions on whether or not to cosign, and it's part of the reason that she recently decided not to bail her eldest daughter out of jail.

Lynette's daughter suffered from brain cancer and had a series of surgeries in her early twenties. After the surgeries, her daughter's behavior took a turn, leading to multiple arrests. Knowing how difficult it would be to keep her daughter compliant with the court orders, Lynette agonized over the decision to bail her daughter out:

Do I allow her to get out, or make her wait 'til August? And maybe she will learn something from this, even though her lashing out and her things that she's done, really is a mental illness, and I've tried to get her help and it's been impossible. So, you play with that game of, 'Do I, do I not? Do I risk it? Do I have to follow after [her] all the time to make sure she goes to court, knowing her mental state?' So, to me, when you're bailing someone out or someone's incarcerated, you have to look at all of the what ifs. You have to really sit and look and challenge those things, because you're saying you get bailed out, but if the person doesn't go to court, if they don't go to treatment, if they don't do all of these things, then I'm responsible to pay \$5,000. I don't have \$5,000 sitting around. I don't have \$5,000 to waste because I still have three younger children at home that I need to take care of. So being a parent on one hand, I'm like, 'Oh, I don't want her to be there,' but then in reality, I'm like, 'But it might be the best place for her right now.'

Lynette decided, hesitantly, that jail was the "best" place for her daughter because she had no other resources to address what her daughter was going through. Like her, families with vulnerable loved ones who were incarcerated found their decisions about cash bail took place within a larger context of the lack of meaningful social supports for people with serious mental illness. Lynette struggled with this decision, ultimately concluding that the harm that would come to her daughter for failing to comply with court orders would exceed the harm of remaining incarcerated pretrial.

Nevertheless, research shows that incarceration is especially harmful to those in the midst of mental or physical health crises, by isolating them and increasing their exposure to violence (Toman et al., 2018; Quandt & Jones, 2021). On a day-to-day basis, families must balance these harms against the legal and financial risks that come from a loved one missing court. Lynette feared what could happen while her daughter was on pretrial release because she knew that she would be unable to give her daughter the support she needed to fulfill her legal obligations. More missed court means more legal trouble in the future. Ultimately, this is what held Lynette back from paying bail.

Unlike Lynette, Jasmine, a woman in her forties, knew nothing about cosigning responsibilities until her boyfriend was arrested on a robbery charge. She found out when her boyfriend's sister called and asked her to act as a cosigner on a bail bond.

After cosigning and attempting to get her boyfriend released, Jasmine was informed that her boyfriend was facing charges in another county and thus would be transferred to a different jail instead. She proceeded to bail him out of two other counties, using the same bail agency and signing two more contracts with them. At that point, Jasmine's boyfriend's behavior became more difficult to predict. He was physically and emotionally abusive toward her. He stole money from her and stopped showing up for court.

Even though their romantic relationship was over, Jasmine was nevertheless responsible, as a cosigner, for getting him to court. She did her best to keep track of him, showing up to his court dates even though he did not. After leaving one court date at which the judge issued a warrant for his arrest, Jasmine realized he was at her house. She immediately called the police and the bail agent to inform them of his whereabouts. They both informed her that the warrant was not in the system yet, so there was nothing they could do. Jasmine expressed her understandable frustration in her interview. She had done everything she could have, only for the court to fail to follow through on its responsibilities. The consequences for this, however, fell directly on her: "And I'm like, 'Are you kidding me?' It's like, 'you want him to roam free and penalize me?' When I was trying to be cooperative for them to pick him up."

Jasmine's experience is especially concerning, as this financial pressure associated with cosigning put her in the position of having to surveil someone who had harmed her, putting her at risk of continued abuse. In simpler terms, the system of cash bail pressured her to remain in a destructive relationship, lacing the experience with steep financial consequences. Even though her ex-boyfriend was eventually apprehended and is now in court-ordered treatment, the consequences of her support lasted well beyond his apprehension.

THE LONG-TERM EFFECTS OF PAYING CASH BAIL

“When you take money from yourself, you take the money from your children”

Despite no longer having contact with her ex-boyfriend, Jasmine said she still regularly heard from the bail agency she used to bail him out. During her interview, Jasmine told us about the impact of the significant debt on these three separate contracts with the bail agency. At the time of the interview, she was still getting three bills a month, which she dutifully filed but could not pay. We asked her how this whole ordeal has impacted her:

I was already playing catch-up. So, it really set me far behind. I ended up being like two months behind on my mortgage. When I was only a month behind on my mortgage, they're already talking about foreclosure. I got two months behind my car's payment. When it comes up to 60 days, they wanna repo your car. If I don't have a car, I can't work.... So, I might try to figure out a way to block my car in the driveway, so it doesn't get repoed.... It was a really hard struggle.

Jasmine had to deal with the distress of ending an abusive relationship and managing a new form of financial precarity. She worried about losing both her house and her car, losses that would devastate her and her children. In addition to these large-scale concerns, Jasmine mourned the small things. For instance, because of these financial hardships, she wasn't able to afford her son's senior pictures. The effects of cash bail range from seemingly small to large, but they affect communities in serious ways. As Lynette, whose story we told above, reflected on her family's loss of her childhood home due to bail, she said, “When you take money from yourself, you take the money from your children.”

One common way this happened across our sample was through the loss of a car. Jeremiah, a man in his thirties, described how his family shouldered this burden when his brother was arrested. Though the family worked together to come up with the premium in time, Jeremiah's mother, a nurse, ultimately co-signed and put her car up as collateral. When Jeremiah's brother missed court, the bail agent showed up at the local hospital where his mother worked in the middle of her shift, demanding she hand over her car. Jeremiah's mother called the police. But when they arrived, the police viewed the contract she had signed with the bail agency and confirmed that she had to hand over her car. Jeremiah's family then scrambled to pay the rest of what they owed to the bail company so that his mother could regain her only transportation to work. The experience illustrates how quickly the impact of cash bail can travel through the social and relational networks of a person who is arrested.

Like Jeremiah's family, most support people don't fully understand the contracts they sign with bail agencies. It's hard, in a moment of distress, to pore over details written in complex jargon. But even if the signers do understand and have discomfort with the terms, they have no real avenue to oppose them, assuming they want to see their loved one released from jail. As noted earlier, when cosigning, support people become liable for a number of the costs that the bail company can incur in the context of the service. Mark, a man in his fifties, found this out the hard way when he bailed out a boyfriend, Erick, using a bail agency. When Erick, who was struggling with addiction, skipped court, the bail agency sent bounty hunters out after him. In the contract Mark signed, he agreed to be responsible for any costs that the bail agency incurred in tracking Erick down—and bounty hunters have significant legal privileges to pursue defendants (Burns et al., 2005). The toll for Mark was significant:

They actively pursued him and they charged me a ton of money, thousands of dollars to pursue him and find him. They actually came to a friend of mine's house where we were, and [Erick] was hiding in the attic and they came in that house and tore it apart looking for him. And they had people in the backyard, the front yard. They had their security vehicles that look like undercover cars. Yeah, and they billed me for every bit of that.

The stories in this section demonstrate the long reach of the pretrial system, into families and communities themselves struggling to manage the precarity wrought by criminal legal contact. There is no form of redress for people like Jasmine, who faced high pressure decisions and will grapple with the consequences for years to come. Given that the pretrial process significantly harms not only those charged with a crime but also their support systems, how is the system justified? In the next section, we focus on the perceptions of system actors and contrast these to the perceptions and experiences of community members.



PART 4

THE CLAIM THAT CASH BAIL IS A NECESSARY INCENTIVE

"We call it 'skin in the game'"

The pretrial process for community members in Hennepin County functions as a kind of punishment, degrading those who encounter it and saddling them and their support systems with long-lasting consequences. Can we say the benefits of this system outweigh its harms? The primary justification for the pretrial process, and particularly its heavy reliance on cash bail, is to ensure court appearance ([Funk, 2019](#)). Under this rationale, requiring people to put money down for their release, which they are supposed to get back if they attend their court dates, ensures that they have “skin in the game,” or a financial incentive to return to court.

Public safety is a second common justification for cash bail and is a factor for judges as they set bail. Setting unreachable bail enables the court to detain people it believes are a risk to public safety, while at the same time technically abiding by the constitutional right to bail. We do not address the purported goals of public safety in this section, as our research with community members did not specifically address this. However, we return to the question of public safety in our conclusion, arguing that extant research does not support the idea that the pretrial system is necessary to secure public safety.

The belief that cash bail serves the role of providing some “skin in the game” is held by many system actors we interviewed. For example, in describing the purpose of cash bail, one judge explained,



We call it skin in the game, so they do have an incentive to come back to court to get their money that they would be entitled to. That would be the incentive, it's more of a carrot and a stick. Well, again, there's some people who can hardly rub two pennies together and just don't have anything, so I got more and more comfortable in my later years setting an amount that was a lot less.

Even as this judge adjusts their expectations about the quantity of cash bail, it is common to retain the notion that *some* money serves to incentivize returning to court. Another system actor we spoke to thought that higher cash bail may actually be more effective noting, “Somebody might be lot more willing to take off once the money's put up if it's not a significant amount of money and that there's not a collateral.” This prosecutor explained that, in their experience, the 10% amount required by a bonds person is not the same kind of “security” as more cash and additional conditions. In addition, bail companies exist based on this assumption alongside the reality that many people cannot afford the amount of “skin in the game” required of them.

As we describe in sections two and three, bail does incentivize court appearance and causes support people to surveil their loved ones. Critically then, we must explore the assumption that cash bail is necessary considering the significant harms it can also cause. The research does not support the assumption that it is necessary. For example, when the city of Philadelphia enacted a “no-cash-bail” policy, researchers were able to examine whether the monetary cost of cash bail was in itself a financial incentive to show up to court. They find no evidence that cash bail improved appearance rates ([Ouss & Stevenson, 2022](#)). In D.C., a jurisdiction that has used cash bail minimally for over 50 years, the conditions of release for nearly all defendants are non-monetary. Even so, research shows appearance rates from 2009 to 2017 remained at or above 87% and rearrest rates at or below 12%—far better than national averages ([Stevenson & Mayson, 2017](#)). Our interviews with community members help to further explain why cash bail is not necessary to secure court appearance.

THE SACRIFICES TO PAY CASH BAIL

“It kind of spiraled us further, ‘cause that was one more resource that we didn’t have.”

We find that the “skin in the game” aspect of cash bail does not function as the incentive to return to court that system actors think it does. Indeed, by exacerbating already precarious situations, cash bail can actually hamper court appearance.

Summoning the money to pay cash bail is itself a destabilizing experience that may jeopardize one’s ability to return to court. The experience of Julie, a thirty-year-old woman, speaks to this bind. Julie and her boyfriend Tom were living at a homeless shelter when Tom was arrested. She “just kind of panicked” thinking of him in jail, remembering her own time in Hennepin County Jail—an experience she describes as “the worst three days [she’s] ever experienced.” She immediately engaged the services of a local bail bond agency. To come up with a \$500 premium payment, Julie sold the only possession of value she had: her car. At the time, the only income Julie had was from working at Doordash, so the loss of her car was the loss of her livelihood as well.

She explains, “And when I sold the car...it kind of spiraled us further, ‘cause that was one more resource that we didn’t have.” This destabilized both Julie and her partner, making it much harder to make the probation meetings and court dates that resulted from the arrest. While Julie felt “partially responsible” for ensuring her partner got to court, she was clear that having “skin in the game” was not why:

I feel the fact that like money is involved in this kind of stuff anyway, is kind of a, it’s not a good solution.... I’m grateful for it and it sounds kind of like hypocritical or a paradox or whatever, but, I mean, it’s nice to be able to get your people out, but then at the same time, like after we got him out, he still missed his court dates.

Having to sacrifice their vehicle to make cash bail was, in fact, a destabilizing event for Julie and her boyfriend, making it more difficult for him to be successful during the pretrial process. As she stated, she was just happy to get him out any way she could. Many people we interviewed who had been incarcerated were skeptical of the idea of having skin in the game. Brianna, a woman in her forties, shared her thoughts on racial bias in cash bail and this idea of needing “skin in the game”:

Skin in the game? It looks like Black people's skin is the game to me.... We can't afford to bail out or buy our freedom because we have no skin in the game, but you're making money off our skin all the time in every way and everything... So, people, so basically the poor should be locked up because they don't have any skin in the game. And the rich, why don't you just say the rich should never be locked up, which is what you do anyway.

Brianna articulates what **many people in our sample felt: that cash bail was not an “incentive” to return to court but rather a ransom, a profit-based function of the system that further deepened its racial inequalities.** In this way, the pretrial system both reflects and exacerbates existing racial and economic inequalities. Research backs up Brianna’s perspective: one study, for instance, showed that judges in two counties in Pennsylvania were more likely to assign cash bail to Black defendants than white defendants given identical “likelihood of skipping a court appearance” ([Williams & Kolter, 2021](#)). Black people are also less likely to be able to afford to pay bail ([Prison Policy Initiative, 2016](#)).

GETTING YOUR BAIL MONEY BACK

“I don’t even know where you’re mailing it to.”

The financial incentive to return to court also does not work for anyone who knows they do not have the ability to get their bail money back at the end of their case. This is true even if they do show up because they have no address to have their check sent to. Many of the participants we interviewed (and many people who are detained pretrial) did not have stable housing. When the incentive system for showing up to court requires an address to return the funds, those without an address are not incentivized to show up. Samantha, a woman in her forties, had been experiencing homelessness going on six years and had no permanent address.



A recent case of hers was recently dropped, and she was told she would be refunded through the mail: “I said, ‘Can I come get it?’ They’re like, ‘That’s already gonna be mailed to you.’ I said, ‘I don’t even know where you’re mailing it to.’”

Evelyn, a woman in her twenties, also reported that the \$500 she paid for her boyfriend’s cash bail last year was supposedly returned by the court in the mail but never came. It’s possible that the money was, in fact, sent somewhere—but current court rules stipulate that bail money goes back to the defendant, rather than the person who paid it. At the time of the interview, Evelyn was couch-surfing and struggling to figure out how to pay for her basic necessities. Furthermore, courts typically deduct money for fines and fees before returning bail to the defendant. Therefore, even for those who can get their money back, many people often get much less back than what they deposited with the court.

THE COMPLICATIONS OF RETURNING TO COURT

Paying cash bail is “not to go to court, it’s to be home.”

Finally, our interviews revealed that returning to court is shaped by a number of considerations and difficulties, of which getting one’s payment back is just one small factor. The description of cash bail as an incentive did not resonate with most of the people we interviewed. Instead, like Brianna above, most people we interviewed described cash bail as a price—the cost of freedom. Once they pay, people consider that cash gone. Participants described cash bail as a “transaction,” “collateral for freedom,” and even compared it to a bribe. As Jasmine described, paying cash bail is “not to go to court, it’s to be home.”

Once they paid this cost, what they did with their “freedom” depended on their circumstances. Participant experiences were complex and demonstrated the reality of individual calculus about whether returning to court was the best choice for them. This decision-making process was highlighted across our sample. Curtis, a man in his thirties, had several bench warrants issued for not appearing in court. He explained why he chose not to appear:

I recently was supposed to make a first appearance, and I had an outstanding warrant. And I didn’t go because I knew I had an outstanding warrant in another county. And that’s just something I’m not, at the current time, ready to take care of. So just because when I go, I’m gonna end up executing my sentence, and I only have three months over my head, but that’s three months out of my life, you know? Not to mention a new felony charge.

For Curtis, it was never about how much money was put up for his cash bail. Other things mattered more to him than getting that money back to whoever paid it. Curtis acknowledged that his history of nonappearance has damaged his relationships—he even found out he cost a pregnant friend her vehicle she put up for collateral to bond him out. He was also well aware of the legal consequences of avoiding court, knowing his choices would eventually land him in jail with an unpayable bail.



Curtis is exactly the type of person the court hopes to compel to return to court. There is no doubt he needed both the money and social support he lost by skipping court—at the time we interviewed him, he was unhoused and unsure when he would be able to afford his own place. But cash bail did not operate as an incentive for him, because other considerations mattered more. Quinton, a man in his sixties, summarized things this way: “I think people are gonna show up for court if they wanna show up for court, no matter if they're on bail or out of their own common sense, it's up to them to be there. There's other ways to monitor people to be accountable, to show up to court.”

Sometimes, skipping court was not a decision at all. It was simple one among many responsibilities lost in the shuffle of busy, challenging lives. When we interviewed Jessica, a woman in her thirties, she was living in a shelter and had just found out that she was pregnant. She had several doctors' appointments related to the pregnancy and a number of other health conditions, and she was struggling to keep up. She explained, “I don't [go to court] 'cause... One of the main reasons is because I have short term memory loss, so I forget a lot of times... I'll just end up with a warrant out for my arrest. And then I'll find out then I'm like, 'Oh yeah, you missed court. Oh shit, okay.'” For Jessica, the imposition of cash bail and intermittent jail stays did nothing to improve her court attendance, only destabilizing her further at a critical moment.

Some of our system actors described similar experiences and perspectives from the other side of the bench. For example, one system actor we interviewed believed that “Money as a stakeholder in the justice system... perverts the driving responsibilities of stakeholders, and it obfuscates the decisions that core commissioners and judges and magistrates are really trying to make.” Another judge we interviewed explained,

...And people have this... idea that if you make people post bail even a small amount that they're gonna come back well for petty stuff, for minor crimes, you know... Like they'll set the bail at \$50 or \$100, those people might scrap together money from friends or family or something. And the reason they don't show up the second or third, the second time, they fail to appear. It's not because the \$50 or the \$100 is not important to them, it's usually they don't have any money to get downtown, they don't have a phone, they don't keep their mail, they have some mental illness or cognitive issues. So, this whole thing, this whole idea that bail's gonna make people, if you set bail it's gonna make people come to court—I'm very skeptical of.

Other research supports what we find here: cash bail is an at times unreliable, unnecessary, and harmful means of getting people back to court. If the goal is court appearance, the research is clear on what works without causing harm: reminders and supports for defendants to get to court. Common civil summons methods (like phone or online reminders) outperform criminal summons methods (like bench warrants). Some research suggests that “phone-call reminders can increase appearance rates by as much as 42%, and mail reminders can increase appearance rates by as much as 33%” (Schancke et al., 2012 as cited in [Stevenson & Mayson, 2017](#)). Importantly, the stronger predictor of non-appearance rates in one study was actually residential stability or the lack thereof ([Cuevas et al., 2019](#)).



CONCLUSION

**PRETRIAL AS IT IS AND
AS IT COULD BE**

This report has shown the way people experience pretrial processes, with a focus on Hennepin County, Minnesota. **The pretrial system subjects people to punishment prior to findings of guilt; its social impacts sprawl out into the community, jeopardizing the stability of people not even accused of a crime; and finally, it consistently fails to support court appearance.** When looked at from this perspective, the pretrial system, ostensibly operating in the name of justice, fairness, and safety, does much to undermine these commonly held values. In the process, this system causes widespread harm, destabilizing those accused and draining their support networks of their already limited resources.

The numbers paint a clear picture of how deeply the government relies on pretrial incarceration in Hennepin County, even as a global pandemic spurred conversations about the public health hazards associated with county jails. What's more, as illustrated in Figure 5, the average number of days that individuals were held in Hennepin County between 2017 and 2021 has remained largely consistent. Racial disparities, too, remained constant, as Black Minnesotans make up 52% of the pretrial bookings, despite only being 13% of the state population.

Detention in jail, even for just 24 hours, exposes those facing charges to a number of social, physical, and financial hardships. The statistics in this report just scratch the surface. Moving forward, greater data transparency is critical to understanding how the courts set these cash bail amounts, what disparities exist at the level of court processing, and if and how pretrial conditions correlate to appearance rates and case outcomes.

While we have taken a step toward quantifying the problems with the current pretrial system, we assert that some of the most important lessons about how it works come from community members who experience it directly. The damage of this system on families and communities is untallied: when you look at the rates of pretrial detention in Minnesota, or at the high cash bail amounts ordered in the courts, you cannot see the families and loved ones who stand behind those accused of a crime. Though uncounted, these experiences shape communities and neighborhoods in indelible ways. In only this one small study, encounters with the pretrial system impact a mother's ability to provide housing for her children, deprive a nurse of reliable transportation to her job, and derail a person on their path to recovery from addiction. These events, and many more, enact serious financial and social tolls. In turn, **most of the wealth that goes to cash bail leaves communities entirely, primarily accruing to bail companies and the large insurance companies that are the greatest financial beneficiaries of the pretrial system.**

Our findings also raise questions about how courts define "affordability" when it comes to cash bail, and how useful affordability is as a metric to understand and reform pretrial practices. Minnesota's constitution prevents judges from imposing "excessive" bail, yet it does not require judges to set affordable bail as is often proposed by reform measures.

According to [a one-day snapshot](#) produced by the Hennepin County Sheriff's Office in 2019, 88% of people in jail reported that they could not afford to pay their bail. But even that is an incomplete measure. As we saw, our interview sample was replete with community members who could, in the technical sense, "afford" cash bail for themselves or their loved ones. But this came at a great cost. What does it mean to say that someone can "afford" bail when it comes at the cost of the most basic necessities like housing, transportation, and more?

There are different ways to organize a pretrial system, already operating in other states, and in some cases, in our own. Right here in the Twin Cities, Ramsey County is attempting to shift from a wealth-based pretrial process to one focused on making decisions based on "pretrial success." Pretrial success in this context means community safety and well-being as well as court appearance. In order to achieve pretrial success, the county created a working group to redesign the pretrial process. Their ongoing work focuses on reducing the reliance on cash bail, redesigning how court personnel ascertain risk in pretrial, and making sure no one is held pretrial because they cannot afford to bail out.

The working group hopes to accomplish these goals by engaging community members and partner organizations to develop alternatives to cash bail for pretrial success, including and beyond those listed above.

Crucially, it *is* possible to pursue pretrial reform and support public safety at the same time. Cash bail reform in other states has shown that meaningful policy change can be achieved without increasing crime rates. The case of Philadelphia shows no increases in pretrial crime after the application of a no-cash-bail policy ([Ouss & Stevenson, 2022](#)).



In fact, research analyzing eleven jurisdictions that enacted bail reform policies (all of which reduced the rates of pretrial detention) finds no consistent crime patterns in those places—in seven of the jurisdictions violent crime decreased following reform efforts, in four, violent crime increased but followed national trends (that is, increased at a rate similar to places which maintained more widespread monetary bail) ([Stemen & Olsen, 2023](#)). One study found those released under New York 2020 bail reform laws were less likely to be rearrested, with the exception of those with a history of violent crime ([Ropac & Rempel, 2023](#)), demonstrating how important it is that we remove the question of wealth from complex conversations about violence and risk. As Herring ([2020](#)) notes, **"No matter the type of pretrial reform, the results were the same: Releasing people pretrial did not negatively impact public safety."**

There are reasons to believe, in fact, that Hennepin County's current reliance on pretrial detention makes us *less* safe overall. Some studies have found that pretrial detention is associated with modest increases in recidivism after later release ([Ropac & Rempel, 2023](#)). Although our research does explicitly analyze public safety, the experiences of those we interviewed gives clues as to why this may be. Our interviewees described pretrial detention as destabilizing, detrimental to their mental and physical health, and harmful to their finances. These factors can fuel crime in neighborhoods and communities.

These findings are important, and they offer a lesson for policymakers. But we also caution that crime rates, as a measure, tell only one piece of a much bigger story of public safety. Indeed, public safety encompasses questions of health, community connection, and access to housing and employment. According to this broader perspective, we should approach pretrial justice reform by examining how inequality and instability fuel crime, how communities support people victimized by crime (particularly at moments of heightened risk), and how the systems used to combat crime can end up undermining their own goals.

The Minnesota Justice Research Center aims to continue this work and build on this research. Moving forward, we will examine pretrial release best practices in Minnesota and across the country and provide legislative recommendations for advancing pretrial justice in Minnesota. **A basic tenet of the judicial system is that all people, regardless of race or class, are presumed innocent until proven guilty of a crime in the court of law.** Pretrial release practices must be aligned with the presumption of innocence (regardless of financial means) while also serving the goals of ensuring reappearance in court and protecting public safety.

The findings of this report demonstrate how Minnesota's pretrial system falls far short of this legal expectation. Our future research will examine practices that local, state, and federal jurisdictions have developed for reducing costly pretrial detention of low-risk defendants, monitoring and assisting released defendants, addressing victims' needs and concerns, and reducing disparities based on race and economic status. **By shedding any assumptions about how cash bail should work and examining how it does work, we can move toward a system that more closely adheres to commonly shared values of justice, fairness, and safety.**

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TRANSFORMING OUR JUSTICE SYSTEM

The Minnesota Justice Research Center reimagines a criminal legal system that is fair, equitable, accountable, and restorative in delivering justice.

The MNJRC Mission: Through research, education, and policy development, we give our community the information and tools needed to create a criminal justice system that aligns with our commonly-held values.



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