# Resolved: In the United States criminal justice system, pre-trial detention for non-violent crimes is unjust.

## Topic analysis

### Overview

Pre-trial detention is most often rationalized via the Bail Reform Act of 1984 which allows federal courts to detain defendants if the prosecutor motions for it. This is regularly done on the grounds that the defendant is a risk to society or a flight risk, meaning that if they are not detained they might not appear in court on their trial date. If a defendant is decidedly not a flight risk or severe danger they may be released until their trial in exchange for money, property, or more infrequently a promise to complete a task like attend a form of rehabilitation or therapy while awaiting the court date. If the cost of bail is set too high the defending counsel may request a reduction in the amount, but more often the defendant remains imprisoned until trial. As of 2015 Six out of ten people in prison are awaiting trials across the United States, having been neither convicted nor found innocent (Morris, 2015). Legal scholars argue that the pre-trial detention system violates a notion of justice for three main reasons then. First, it discriminates. Those with the financial resources to do so are allowed to have an experience of innocent until proven guilty, or presumption of innocence whereas those without massive amounts of excess capital are held in custody. Second, the system uses money in place of risk or nature of crim in determining whether or not a defendant should be held prior to trial. Third, it increases social disparities more often imprisoning those with little money, and in the United States such defendants are usually not white. The affirmative debater then can argue that pre-trial detention violates foundational principles of justice like innocent until proven guilty, or a nondiscriminatory notion of justice. In the context of the US justice system this would mean that when evaluating the relative innocence or guilt of a person they would be judged by the same legal standards regardless of their wealth.

The bail system is not the only way pre-trial detention hampers the process of justice however. Will Dobbie, Jacob Goldin, and Crystal S. Yang (2017) contend that the system of pre-trial detention leads to more pleas of guilty than would otherwise occur because the time spent in detention allows the prosecution to create a sort of pressure on the defendant. Further, those in detention have less time to collect evidence and prepare their case with their counsel than the prosecution does. Pre-trial detention then grants an edge to the prosecution in any trial. Finally, pre-trial detention presumes guilt. Members of a jury may think that only someone who is guilty would be held behind bars prior to a trial. In sum, the affirmative debater should value a form of processual justice, articulate its significance, and provide warrants for pre-trial detention being a violation of that justice.

The word non-violent in the resolution limits the pragmatic negative ground in this debate. The most frequently forwarded arguments in favor of pretrial detention assert that if a defendant is not in custody until trial they can commit additional crime, this is of course more compelling if the defendant is alleged to have committed a violent crime. It is still possible for additional non-violent crimes to be committed but the most empirical evidence isn’t really on this argument’s side. See (Dobbie, Goldin, & Yang, 2017). The negative’s most persuasive argument in the realm of pragmatism might be court clog, or the idea that the process of pre-trial detention allows courts to run smoothly because it is what allows the plea-bargain system to exist. In other words, not every charge sees trial. Otherwise courts get a back log of cases that need to be heard, tried, and decided. The court infrastructure, resources, and personal don’t exist to do this in a timely manner. The negative could argue that either justice would be delayed, or more people would be indefinitely held in custody. The negative can isolate specific cases that might be too timely to wait in the court line, but would have to anyway. The negative may also argue that there is a flight risk associated with the elimination of pre-trial detention. However, the less severe the crime the more unlikely this is. It is also a hard argument to win in the context of the magnitude of the claims the affirmative will be making. To hedge against this, you may hear some negatives read a few isolated stories of defendants who achieved bail and went on to hurt others. These negative teams will adopt a zero-risk like doctrine to utilitarian theories of justice.

The negative may take a more critical approach that argues for prison abolition. Here the negative is able to strategically make up for their loss of pragmatic ground by critiquing the affirmatives logic of reformism. These arguments would question the role trial, detention, and incarceration play in our future by advocating for the destruction of the current incarceration system in favor of the liberation of the peoples it disproportionately and unjustly targets. The abolitionist may argue for new forms of rehabilitation and justice that meets the needs of both the prisoner and society. Whereas the nonviolent clause in the resolution makes some negative argument more difficult, it makes abolition more persuasive by defending the right to rehabilitation while taking a position against inhuman practices of contemporary prisons for nonviolent criminals. The negative may parameterize to abolition for nonviolent crimes all together, dodging the common criticism that we should not have murders released.

In sum, pre-trial detention is commonly used to prevent flight or additional crime. Practically speaking it is the glue that holds the bail system and more loosely the plea-bargain system together. The affirmative gets to leverage a theory of justice that suggest nobody should be held until proven guilty. They may also argue that the bail system corrodes justice. Whereas the negative may contend the plea and bail systems prevent court clogs. Finally, the negative may argue for prison abolition, though the affirmative may well say that pre-trial detention is unjust because incarceration is unjust, beating the negative to the critical ground.

### Citations and Further Reading

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## AFF

The system of pre-trial detention delays justice, increases poverty, recidivism rates, and entrenches a corrupt bail system. For these reasons I affirm the resolution; Resolved: In the United States criminal justice system, pre-trial detention for non-violent crimes is unjust.

### 1AC

First, I offer the following definition for the sake of clarity

#### Definition of pretrial detention

US Legal, Law Dictionary, 2018, Pretrial detention, https://definitions.uslegal.com/p/pre-trial-detention/ (accessed 8/8/18)

Pretrial detention refers to detaining of an accused person in a criminal case before the trial has taken place, either because of a failure to post bail or due to denial of release under a pre-trial detention statute. Bail Reform Act of 1984 (18 USCS § 3142) authorizes a judge to detain a federal criminal defendant pending trial. This section allows a judge to detain a defendant if the judge determines that conditions exist that raise doubt as to whether the defendant will appear at trial or whether the defendant may cause harm to the community. However, in determining whether the accused constitutes a danger to the community, each case must be considered on its own merits and a court must determine whether the need to protect the community becomes so sufficiently compelling that detention is appropriate.

#### I value distributive justice which provides the moral guidance to equal distribute the benefits and burdens of a society

Julian Lamont and Christi Favor, philosophy scholars, 2017, "Distributive Justice", The Stanford encyclopedia of philosophy, <https://plato.stanford.edu/archives/win2017/entries/justice-distributive/>. (accessed 8/8/18)

The economic, political, and social frameworks that each society has—its laws, institutions, policies, etc.—result in different distributions of benefits and burdens across members of the society. These frameworks are the result of human political processes and they constantly change both across societies and within societies over time. The structure of these frameworks is important because the distributions of benefits and burdens resulting from them fundamentally affect people’s lives. Arguments about which frameworks and/or resulting distributions are morally preferable constitute the topic of distributive justice. Principles of distributive justice are therefore best thought of as providing moral guidance for the political processes and structures that affect the distribution of benefits and burdens in societies, and any principles which do offer this kind of moral guidance on distribution, regardless of the terminology they employ, should be considered principles of distributive justice.

**The guiding principle of distributive justice demands criminal justice reform, thus is my criterion**

#### Justice requires criminal justice reform

Southern Poverty Law Center, 2018, “Criminal Justice Reform,” SPLC, https://www.splcenter.org/issues/mass-incarceration (accessed 8/8/18)

This vast expansion of the corrections system – which has been called “the New Jim Crow” – is the direct result of a failed, decades-long drug war and a “law and order” movement that began amid the urban unrest of the late 1960s, just after the civil rights era. It’s a system marred by vast racial disparities – one that stigmatizes and targets young black men for arrest at a young age, unfairly punishes communities of color, burdens taxpayers and exacts a tremendous social cost. Today, African-American men who failed to finish high school are more likely to be behind bars than employed. We’re using litigation and advocacy to help end the era of mass incarceration, to root out racial discrimination in the system, and to ensure humane, constitutional standards for prisoners: Reforming policies that lead to the incarceration of children and teens for minor crimes and school-related offenses; Working to transform a juvenile system that subjects children to abuse and neglect without providing necessary medical, mental health, educational and rehabilitative services. Ensuring that prisoners are not subjected to unconstitutional, inhumane conditions and that they receive proper medical and mental health care. Seeking to stop the prosecution of children in the adult criminal justice system and their incarceration in adult prisons and jails. Advocating for rational policies and laws that keep communities safe while vastly shrinking the prison population and reducing the social and economic impact of mass incarceration on vulnerable communities.

### Contentions:

**Reform necessitates the declaration that pretrial detention is unjust because pretrial detention is a violation of distributive justice**

#### Pretrial detention leads to harsher punishments, determines the credibility of the defendant based on finances, and overwhelmingly harms African Americans

Jessica Morris, Senior Fellow for Equal Justice, 2015, ALTERNATIVES TO PRETRIAL INCARCERATION: CREATING A MORE JUST JUSTICE SYSTEM THROUGH BAIL REFORM IN MASSACHUSETTS, Roosevelt Institute, http://rooseveltinstitute.org/wp-content/uploads/2015/10/JessicaMorris.WhitePaper.Web\_.pdf (accessed 8/7/18)

The U.S. – which comprises only five percent of the world’s population – incarcerates almost a quarter of the world’s prisoners. Over the past forty years, the number of people incarcerated in the United States has escalated by 700 percent, due in large part to privatization and expansion of prisons and racially biased campaigns, such as the War on Drugs and Stop and Frisk. In 2012, there were more than 1.5 million drug arrests in the United States with more than 80 percent associated with possession only.2 These campaigns, while on one hand lauded by many for ridding urban streets of crime, strongly target people of color, specifically Black people and Latinos. 31 percent of people arrested for drug law violations are Black, though they are documented by the U.S. government to use drugs at similar rates to people of other races.3 A study by the Justice Policy Institute shows that lack of financial support disadvantages opportunities for education, job, and home security for pretrial detainees. The study reveals harsher treatment for African Americans for pretrial outcomes; they are less likely to be released than their white counterparts, and African Americans ages 18 to 29 receive higher bail amounts than all other types of defendants. The rise of pretrial incarceration is a product of an unjust criminal justice system. Pretrial incarceration costs the United States over $9 billion annually. The current bail system has made pretrial detention pervasive: today, 60 percent of individuals in jail have not been convicted and are still awaiting trial. The Pretrial Justice Institute shows that judges are inclined to order harsher punishments for pretrial detainees than for those who are released on bail. Therefore, a defendant’s credibility is determined by money, no matter the verdict. A case study in Kentucky found that in 2009 and 2010, defendants detained pretrial were three times more likely to be sentenced to prison and twice as likely to have longer prison sentences.

#### Pretrial detention perpetuates poverty

Jessica Morris, Senior Fellow for Equal Justice, 2015, ALTERNATIVES TO PRETRIAL INCARCERATION: CREATING A MORE JUST JUSTICE SYSTEM THROUGH BAIL REFORM IN MASSACHUSETTS, Roosevelt Institute, http://rooseveltinstitute.org/wp-content/uploads/2015/10/JessicaMorris.WhitePaper.Web\_.pdf (accessed 8/7/18)

Those who can afford to pay their bail are able to continue working, supporting their families, or continuing their education. This is not the case for individuals who are detained. Normal Wassel, founder of Bail Fund, an organization in Massachuse!s that advocates for a reformed bail system, told Boston Magazine these detainees are at risk of losing public housing, “custody of children, even if it’s temporary, public benefits, treatment slots in drug programs, and jobs.”7 In a March 2014 article in Truthout, Wassel described one Bail Fund member’s experience defending a homeless teenager: Wassel recounted the experience of one member, who, during her first week as an attorney, defended a 19-year-old. The judge set the teenager's bail at $200. "He was homeless. He had no family. So $200 could have been $2,000," Wassel said. The evidence pointed to the teen's innocence, but, after several days in jail, he decided to plead guilty rather than spend additional time in jail while his case wound through the trial process. "'But you didn't do it,' the attorney argued. He took the papers, signed them and said, 'I did it now,'" Wassel told Truthout. "She saw this over and over again. Bail is a very flawed system that perpetuates inequality. Poor people are punished for their inability to pay."8

#### Pretrial detention is the single greatest predictor of conviction

Nick Pinto, journalist, 2015, The Bail Trap, The New York Times, https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html (accessed 8/8/18)

Tomlin’s willingness to hold out against the charges was unusual. Across the criminal-justice system, bail acts as a tool of compulsion, forcing people who would not otherwise plead guilty to do so. A 2012 report by the New York City Criminal Justice Agency, based on 10 years’ worth of criminal statistics, bears this out. In nonfelony cases in which defendants were not detained before their trials, either because no bail was set or because they were able to pay it, only half were eventually convicted. When defendants were locked up until their cases were resolved, the conviction rate jumped to 92 percent. This isn’t just anecdotal; a multivariate analysis found that even controlling for other factors, pretrial detention was the single greatest predictor of conviction. ‘‘The data suggest that detention itself creates enough pressure to increase guilty pleas,’’ the report concluded.

#### Pretrial detention is coercive-leads to guilty pleas despite innocence

Nick Pinto, journalist, 2015, The Bail Trap, The New York Times, https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html (accessed 8/8/18)

For defendants who would fight their cases and maintain their innocence if they had the money, a guilty plea involves a ritual of court procedure that verges on the Kafkaesque: ‘‘Your lawyer tells me you want to plead guilty to the charge. Is that correct?’’ the judge will ask. Yes, the defendant must reply. ‘‘You understand that by your plea of guilty you are giving up certain trial rights?’’ Yes. ‘‘The right to remain silent, the right to confront witnesses against you, the right to have the prosecutor prove your guilt beyond a reasonable doubt?’’ Yes, yes, yes. And then: ‘‘Are you pleading guilty freely and voluntarily, because you are in fact guilty?’’ Hechinger, the lawyer with Brooklyn Defender Services, hates this part of the process. ‘‘A lot of times, at that last question, you feel the client beside you bristle,’’ he says. ‘‘Everyone in the room knows it’s not ‘freely and voluntarily.’ They’re making a decision coerced by money. In many cases, if they had money, they wouldn’t be pleading. But they put their heads down, and they say, ‘Yes.’ It’s a horrible, deflating feeling.’

#### Pretrial detention has long-term consequences on defendants

Nick Pinto, journalist, 2015, The Bail Trap, The New York Times, https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html (accessed 8/8/18)

The long-term damage that bail inflicts on vulnerable defendants extends well beyond incarceration. Disappearing into the machinery of the justice system separates family members, interrupts work and jeopardizes housing. ‘‘Most of our clients are people who have crawled their way up from poverty or are in the throes of poverty,’’ Hechinger says. ‘‘Our clients work in service-level positions where if you’re gone for a day, you lose your job. People in need of caretaking — the elderly, the young — are left without caretakers. People who live in shelters, where if they miss their curfews, they lose their housing. Folks with immigration concerns are quicker to be put on the immigration radar. So when our clients have bail set, they suffer on the inside, they worry about what’s happening on the outside, and when they get out, they come back to a world that’s more difficult than the already difficult situation that they were in before.’’

### Value Extensions

#### Institutions key to distributive justice

Julian Lamont and Christi Favor, philosophy scholars, 2017, "Distributive Justice", The Stanford encyclopedia of philosophy, <https://plato.stanford.edu/archives/win2017/entries/justice-distributive/>. (accessed 8/8/18)

Throughout most of history, people were born into, and largely stayed in, a fairly rigid economic position. The distribution of economic benefits and burdens was normally seen as fixed, either by nature or by a deity. Only when there was a widespread realization that the distribution of economic benefits and burdens could be affected by government did distributive justice become a live topic. Now the topic is unavoidable. Governments continuously make and change laws and policies affecting the distribution of economic benefits and burdens in their societies. Almost all changes, whether they regard tax, industry, education, health, etc. have distributive effects. As a result, every society has a different distribution at any point in time and we are becoming increasingly more adept at measuring that distribution. More importantly, at every point in time now, each society is faced with a choice about whether to stay with current laws, policies, etc. or to modify them. The practical contribution of distributive justice theory is to provide moral guidance for these constant choices.

#### Distributive justice is the most moral guiding principle and seeks to improve the lives of the least advantaged

Julian Lamont and Christi Favor, philosophy scholars, 2017, "Distributive Justice", The Stanford encyclopedia of philosophy, <https://plato.stanford.edu/archives/win2017/entries/justice-distributive/>. (accessed 8/8/18)

Many writers on distributive justice have tended to advocate and defend their particular principles by describing or considering ideal societies operating under them. They have been motivated to do this as an aid to understanding what their principles mean. Unfortunately though, as a result of this practice, some readers and the general public have been misled into believing that discussions of distributive justice are merely exercises in ideal theory—to be dismissed as a past-time of the academic elite rather than as something that is crucially relevant to current political discussion. This misunderstanding is unfortunate because, in the end, the main purpose of distributive justice theory is not to inform decisions about ideal societies but about our societies. To help correct this misunderstanding it is important to acknowledge that there has never been, and never will be, a purely libertarian society or Rawlsian society, or any society whose distribution conforms to one of the proposed principles. Rather than guiding choices between ideal societies, distributive principles are most usefully thought of as providing moral guidance for the choices that each society faces right now. So, for instance, advocates of Rawls’ Difference Principle are most constructively understood as arguing for changes to our basic institutional structures which would improve the lifetime prospects of the least advantaged in society. Other theorists are arguing for changes to bring economic benefits and burdens more in accordance with what people really deserve. Libertarians are arguing that reductions in government intervention in the economy will better respect liberty and/or self-ownership of its citizens. Sometimes a number of the theories may recommend the same changes to our current practices; other times they will diverge. It is best to understand the different theorists, despite the theoretical devices they sometimes employ, to be speaking to what should be done in our society—not about what should be done in some hypothetical society. Of course, ensuring that philosophical principles be effective for the purpose of guiding policy and change in real societies involves important and complex methodological questions. For a review of work specifically addressing this issue, in ideal and nonideal theory, see Zofia Stemplowska and Adam Swift (2012), and Valentini (2012).

#### Distributive justice forwards the difference principle which privileges alleviating the burdens of the most marginalized first

Julian Lamont and Christi Favor, philosophy scholars, 2017, "Distributive Justice", The Stanford encyclopedia of philosophy, <https://plato.stanford.edu/archives/win2017/entries/justice-distributive/>. (accessed 8/8/18)

The most widely discussed theory of distributive justice in the past four decades has been that proposed by John Rawls in A Theory of Justice, (Rawls 1971), and Political Liberalism, (Rawls 1993). Rawls proposes the following two principles of justice: 1. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value. 2. Social and economic inequalities are to satisfy two conditions: (a) They are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and (b), they are to be to the greatest benefit of the least advantaged members of society. (Rawls 1993, pp. 5–6. The principles are numbered as they were in Rawls’ original A Theory of Justice.) Where the rules may conflict in practice, Rawls says that Principle (1) has lexical priority over Principle (2), and Principle (2a) has lexical priority over (2b). As a consequence of the priority rules, Rawls’ principles do not permit sacrifices to basic liberties in order to generate greater equality of opportunity or a higher level of material goods, even for the worst off. While it is possible to think of Principle (1) as governing the distribution of liberties, it is not commonly considered a principle of distributive justice given that it is not governing the distribution of economic goods per se. Equality of opportunity is discussed in the next section. In this section, the primary focus will be on (2b), known as the Difference Principle. The main moral motivation for the Difference Principle is similar to that for strict equality: equal respect for persons. Indeed, since the only material inequalities the Difference Principle permits are those that raise the level of the least advantaged in the society, it materially collapses to a form of strict equality under empirical conditions where differences in income have no effect on the work incentive of people (and hence, no tendency to increase growth). The overwhelming economic opinion though is that in the foreseeable future the possibility of earning greater income will bring forth greater productive effort. This will increase the total wealth of the economy and, under the Difference Principle, the wealth of the least advantaged. Opinion divides on the size of the inequalities which would, as a matter of empirical fact, be allowed by the Difference Principle, and on how much better off the least advantaged would be under the Difference Principle than under a strict equality principle. Rawls’ principle, however, gives fairly clear guidance on what type of arguments will count as justifications for inequality. Rawls is not opposed in principle to a system of strict equality per se; his concern is about the absolute position of the least advantaged group rather than their relative position. If a system of strict equality maximizes the absolute position of the least advantaged in society, then the Difference Principle advocates strict equality. If it is possible to raise the absolute position of the least advantaged further by having some inequalities of income and wealth, then the Difference Principle prescribes inequality up to that point where the absolute position of the least advantaged can no longer be raised.

### Extensions: Release good

#### Pre-trial release strengthens the defendant’s ability to create obtain evidence and create a case-that is key to the integrity of the justice system

Will Dobbie, Jacob Goldin, Crystal S. Yang, faculty at Princeton, Stanford, and Harvard respectively, 2017, The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, https://www.princeton.edu/~wdobbie/files/bail.pdf (accessed 8/7/18)

Pre-trial release could affect case outcomes through at least three main channels. First, pre-trial release may strengthen a defendant’s bargaining position during plea negotiations. For example, it is possible that pre-trial release decreases a defendant’s incentive to plead guilty to obtain a faster release from jail. Along the same lines, it is also possible that pre-trial release affects a defendant’s ability to prepare an adequate defense or negotiate a settlement with prosecutors. For example, a defendant may have a harder time gathering exculpatory evidence if he is detained. Second, pre-trial release may increase the ability of both prosecutors and defendants to strategically delay the resolution of a case, such that it could strengthen the bargaining position of both parties. The third way that pre-trial release could impact conviction rates is that seeing detained defendants in jail uniforms and shackles may bias judges or jurors at trial. For example, jurors may assume that only guilty defendants are detained before trial. While there is no conclusive evidence on this issue, two pieces of evidence suggest that our results are likely driven by changes in a defendant’s bargaining position. First, as discussed previously, we find that released defendants are substantially less likely to be convicted of any offense due to a reduction in guilty pleas, not changes in conviction rates at trial where jury bias may come into play. Second, we find that those who are released pre-trial receive more favorable plea deals than those who are detained. For example, we find that released defendants are substantially more likely to be convicted of a lesser charge and are convicted of fewer total offenses (Appendix Table A11). The fact that so many of our results are driven by changes in the plea-bargaining phase, and not the trial phase, suggests that pre-trial release affects case outcomes primarily through changes in bargaining power. While we cannot rule out that pre-trial release may affect case outcomes by increasing strategic, and potentially socially costly, delays by both parties, the fact that we find pre-trial release yields case outcomes that are more favorable from the perspective of the defendant (and less favorable from the perspective of the prosecutor) suggests that our results are at least in part driven by an improvement in defendants’ bargaining power.

#### Pre-trial release reduces future crimes

Will Dobbie, Jacob Goldin, Crystal S. Yang, faculty at Princeton, Stanford, and Harvard respectively, 2017, The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, https://www.princeton.edu/~wdobbie/files/bail.pdf (accessed 8/7/18)

Pre-trial release may decrease future crime following case disposition through two main channels. First, pre-trial release may decrease crime if pre-trial detention is criminogenic because of harsh prison conditions and negative peer effects (e.g., Chen and Shapiro 2007, Bayer, Hjalmarsson and Pozen 2009). Second, pre-trial release can reduce future crime through an increased likelihood of employment, which subsequently discourages further criminal activity. To assess whether pre-trial release reduces future crime through the channel of increased employment, we explore whether those who are more likely to be employed in the formal labor market are also those less likely to commit future crime. In Appendix Table A23, we present estimates of the joint probability of future crime and employment in the several years after the bail hearing. These joint estimates provide partial evidence on whether reductions in future crime are driven by defendants who are employed or whether the decline in future crime occurs independently of employment. If the decrease in future crime occurs independently of employment, we would expect to see similar reductions in future crime among those who are employed and those not employed. We find suggestive evidence that in the first two years after the bail hearing, pre-trial release increases the joint probability of not being rearrested and of being employed, although our estimates are not precisely estimated. Similarly, we find an increase in the joint probability of not being rearrested and being employed in the third to fourth years after the bail hearing. These results indicate that decreases in future crime may be driven by the same defendants who are employed, suggesting that pre-trial release may decrease future crime through the channel of increased labor market attachment.

#### Pre-trial release improves labor markets

Will Dobbie, Jacob Goldin, Crystal S. Yang, faculty at Princeton, Stanford, and Harvard respectively, 2017, The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, https://www.princeton.edu/~wdobbie/files/bail.pdf (accessed 8/7/18)

Pre-trial release could improve labor market outcomes through at least three main channels. First, pre-trial release might increase labor market attachment through an incapacitation effect since defendants cannot work in the formal sector while detained pre-trial or incarcerated post-conviction. Defendants who are imprisoned are also ineligible to claim UI benefits and EITC benefits for wages earned while incarcerated. Second, pre-trial release might affect outcomes because detention is highly disruptive to defendants’ lives, potentially leading to job loss which makes it harder for defendants to find new employment. Finally, pre-trial detention could independently lower future employment prospects through the stigma of a criminal conviction (e.g., Pager 2003, Agan and Starr 2016), which could in turn limit defendants’ eligibility for employment related benefits like UI and EITC.

#### A cost benefit analysis concludes that pretrial release increases overall social welfare when compared to pre-trial detention

Will Dobbie, Jacob Goldin, Crystal S. Yang, faculty at Princeton, Stanford, and Harvard respectively, 2017, The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, https://www.princeton.edu/~wdobbie/files/bail.pdf (accessed 8/7/18)

An important open question is whether the benefits of pre-trial release documented in our analysis are, on net, larger than the costs of apprehending individuals who fail to appear in court and the costs of future criminality. While a comprehensive cost-benefit analysis is beyond the scope of this paper, we consider a partial back-of-the-envelope calculation that takes into account the administrative costs of jail, the costs of apprehending individuals who fail to appear, the costs of future criminality, and the economic impact on defendants.24 See Online Appendix D for a description of this exercise. Based on these tentative calculations, we estimate that the total net benefit of pre-trial release for the marginal defendant is anywhere between $55,143 and $99,124. Intuitively, pre-trial release on the margin increases social welfare because of the significant long-term costs associated with having a criminal conviction, the criminogenic effect of detention which offsets the incapacitation benefit, and the relatively low costs associated with apprehending defendants who miss court appearances.25 These calculations suggest that unless there is a large general deterrence effect of pre-trial detention (which we are unable to measure in our paper), detaining more individuals on the margin is unlikely to be welfare-improving. However, we caution that this partial cost-benefit analysis is speculative for at least two reasons. First, rearrests may be an imperfect proxy for true criminal behavior if there is substantial underreporting of new crime and/or if the probability of detection is affected by conviction.26 Second, many of our estimates are imprecise and, as a result, the confidence interval surrounding our cost-benefit calculation is large.

### AT: Flight and crime risk

#### Alternatives exist to prevent flight-electronic monitoring

Jessica Morris, Senior Fellow for Equal Justice, 2015, ALTERNATIVES TO PRETRIAL INCARCERATION: CREATING A MORE JUST JUSTICE SYSTEM THROUGH BAIL REFORM IN MASSACHUSETTS, Roosevelt Institute, http://rooseveltinstitute.org/wp-content/uploads/2015/10/JessicaMorris.WhitePaper.Web\_.pdf (accessed 8/7/18)

Six out of ten people in prison are awaiting trials across the United States, having been neither convicted nor found innocent. This rate has not changed in the last decade. Pretrial incarceration costs U.S. taxpayers $9 billion annually, and in Massachusetts, the costs associated with hosting each inmate amount to approximately $47,000 per year. Massachusetts is one of many states across the country in which the bail system is not determined by the risk of the defendant's release and is instead reliant on who can pay the price of their freedom in the bail system. In order to address the social and economic issues associated with pretrial incarceration in Massachusetts, pretrial detainees of low and medium risk should be enrolled in an electronic monitoring program (EMP) and a social services unit, if advised by a judge. In a number of states, bail reform has been shown to be cost-effective and socially responsible. Some courts in Massachusetts have already chosen to take this approach, while others offer the program, but at a high cost to defendants that makes it as out-of-reach as bail. An alternative to pretrial incarceration not only ensures that the people who should be incarcerated will be, but also that those who need support will have the access to services needed to make transformative progress in their lives.

#### Alternatives solve: no risk of flight or additional crime

Jessica Morris, Senior Fellow for Equal Justice, 2015, ALTERNATIVES TO PRETRIAL INCARCERATION: CREATING A MORE JUST JUSTICE SYSTEM THROUGH BAIL REFORM IN MASSACHUSETTS, Roosevelt Institute, http://rooseveltinstitute.org/wp-content/uploads/2015/10/JessicaMorris.WhitePaper.Web\_.pdf (accessed 8/7/18)

In Massachusetts, pretrial incarceration is a serious problem, but by implementing better pretrial programs like risk assessment, social services and, EMPs, we can reduce costs, improve peoples' lives and guarantee fairer trials. Fewer than 10 percent of courts use any risk assessment during the pretrial period, which means they do not have an unbiased and methodical process to making orders.21 The Federal Pretrial Risk Assessment Instrument22 categorizes three types of defendants depending on their risk to themselves and their communities: low, medium, and high-risk defendants. Characteristics that determine one's risk of flight or being rearrested are age, employment status, substance abuse, and mental health. Pretrial detainees of medium risk, whose needs and risk factors can be more adequately addressed by social services, should be enrolled in an EMP and advised to a social services unit if necessary. Low risk pretrial defendants should only receive a reminder to return to court, and high-risk defendants will need to be incarcerated, due to risk of flight from trial and potential harm to their communities. Mike Jones of the Pretrial Justice Institute suggests that about 45 percent of detainees are of low risk, 45 percent of medium risk, and the remaining 10 percent of high risk. If these predicted estimates are valid, about 633 inmates (of the total 703 pretrial detainees under the Massachusetts jurisdiction) could be alleviated and released. The average cost to house an inmate in the Massachusetts s DOC is $47,102.03,23 so releasing these pretrial detainees would save about $30 million, minus the cost of associated social services. Massachusetts EMP, first established in April 2001, has two types of electronic bracelets, the Radio Frequency Bracelet and the GPS Bracelet. The Radio Frequency Bracelet limits offenders to the home and if an offender leaves his or her home, an auditory or visual alert will indicate that they are out of range. The GPS bracelet is not limited to house arrest and uses 24 satellites orbiting the earth. The GPS Bracelet receives information on the location of the offenders 24/7, and if they enter a restricted area, the alert will go off and a probation officer will contact them. The GPS unit is more suitable for a defendant of medium risk, who should still be able to interact with their community. The GPS unit costs $4.30 to $5.50 per day, depending on whether two-way voice communication is included.24 This is inexpensive compared to the roughly $129 per day it costs to house an inmate in the Massachusetts DOC.25 Additional costs of the EMP include social services to help people with substance abuse, finding jobs, or leaving abusive and domestic violent relationships. Since there has been no use of risk assessment in Massachusetts state courts, there is no sure way to determine how many current inmates are at low, medium, or high risk. Therefore, the cost calculations can only be determined by the aforementioned standard estimate from the Pretrial Justice Institute.

#### Alternatives solve-Kentucky case study

Jessica Morris, Senior Fellow for Equal Justice, 2015, ALTERNATIVES TO PRETRIAL INCARCERATION: CREATING A MORE JUST JUSTICE SYSTEM THROUGH BAIL REFORM IN MASSACHUSETTS, Roosevelt Institute, http://rooseveltinstitute.org/wp-content/uploads/2015/10/JessicaMorris.WhitePaper.Web\_.pdf (accessed 8/7/18)

Several states have effectively reformed their bail systems with alternatives to pretrial incarceration including Kentucky, Virginia, and most recently New Jersey. On July 1, 2013, the Commonwealth of Kentucky implemented a “Public Safety Assessment,” a risk assessment-based model by the Laura and John Arnold Foundation, for all 120 counties.27, 28 Since the implementation of this pretrial reform legislation, Kentucky has been able to reduce crime by about 15 percent. New criminal activity has dropped as well. The average arrest rate for released defendants has declined from 10 percent to 8.5 percent. Circuit Court Judge David Tapp of Rockcastle, Pulaski, and Lincoln counties of Kentucky also saw a benefit to this reform: Thanks in large part to the risk assessment tool, Kentucky judges have a pretty good grasp on making appropriate release decisions. When used correctly and in conjunction with other factors which may appear, the instrument is extremely helpful in aiding courts with making good release decisions.29 Kentucky avoided spending a predicted $161 million to cover future prison growth by 2020 and $50 per day to host each low risk offender. The Kentucky legislature then spent $172,000 on a social services unit to assist in pretrial treatment and rehabilitation for low risk offenders

#### Alternatives solve and are bipartisan-New Jersey case study

Jessica Morris, Senior Fellow for Equal Justice, 2015, ALTERNATIVES TO PRETRIAL INCARCERATION: CREATING A MORE JUST JUSTICE SYSTEM THROUGH BAIL REFORM IN MASSACHUSETTS, Roosevelt Institute, http://rooseveltinstitute.org/wp-content/uploads/2015/10/JessicaMorris.WhitePaper.Web\_.pdf (accessed 8/7/18)

In August 2014, Governor Chris Christie of New Jersey signed a bail reform package that included EMP as an alternative to pretrial detention. At the midterm election a few months later, 61.58 percent of voters voted yes on Ballot Question Number 1, which proposed that dangerous suspects can be held in jail without bail, while nondangerous suspects can be released through alternatives to bail.31 New Jersey also plans to build a social services unit, modeled after Kentucky's. New Jersey’s legislation will alleviate this issue through a long-term solution, unlike Massachusetts proposal to build a bail jail. New Jersey, which has a Republican governor and a Democratic-controlled legislature, has shown that bail reform is a bipartisan issue that can be solved through intentional policy

### Extensions: pretrial detention bad

#### The US leads the world in pre-trial detention. This is largely due to the monetary bail system

Will Dobbie, Jacob Goldin, Crystal S. Yang, faculty at Princeton, Stanford, and Harvard respectively, 2017, The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, https://www.princeton.edu/~wdobbie/files/bail.pdf (accessed 8/7/18)

Each year, more than eleven million individuals around the world are imprisoned prior to conviction. The United States leads all other countries with approximately half a million individuals detained before trial each year, nearly double the next highest country – China (Walmsley 2013). The high rate of pre-trial detention in the United States is due to both the widespread use of monetary bail and the limited financial resources of most defendants. Nationwide, less than 25 percent of felony defendants are released without financial conditions, and the typical felony defendant is assigned a bail amount of more than $55,000 (Reaves 2013). Furthermore, we find in our data that the typical defendant earned less than $7,000 in the year prior to arrest, likely explaining why less than 50 percent of defendants are able to post bail even when it is set at $5,000 or less.

#### Pretrial detention hampers the rule of law domestically and internationally

Penal Reform International, nonprofit, 2018, The issue, https://www.penalreform.org/priorities/pre-trial-justice/issue/ (accessed 8/8/18)

Pre-trial detention undermines the chance of a fair trial and the rule of law in a number of ways. The majority of people who come into contact with criminal law know little about their rights. Many countries do not have an adequate legal aid system, and many people cannot afford to pay for a lawyer. Even when they can, it is much harder to prepare well for a trial in a prison cell. People in pre-trial detention are particularly likely to suffer violence and abuse. As well as the risk of violence from guards and fellow prisoners, police sometimes use illegal force or torture to gain a statement or confession. Without the protection of legal assistance, and isolated from their family and friends, it is not easy to withstand such pressure. High rates of pre-trial detention are also contributing to widespread prison overcrowding, exacerbating poor prison conditions and heightening the risk of torture and ill-treatment. The pre-trial stage (from arrest to trial) of the criminal justice process is also particularly prone to corruption. Unhindered by scrutiny or accountability, police, prosecutors, and judges may arrest, detain, and release individuals based on their ability to pay bribes. Pre-trial detention has a hugely damaging impact on defendants, their families and communities. Even if a person is acquitted and released, they may still have lost their home and job. They face the stigma of having been in prison when they return to the community. Because of its severe and often irreversible negative effects, international law states that pre-trial detention should be the exception rather than the rule and that if there is a risk, for example, of a person absconding, then the least intrusive measures possible should be applied. A range of non-custodial measures are available, including bail, confiscation of travel documents, reporting to police or other authorities, and submitting to electronic monitoring or curfews.

#### Pre-trial detention leads to guilty pleas and additional convictions

Will Dobbie, Jacob Goldin, Crystal S. Yang, faculty at Princeton, Stanford, and Harvard respectively, 2017, The Effects of Pre-Trial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, https://www.princeton.edu/~wdobbie/files/bail.pdf (accessed 8/7/18)

We begin by estimating the impact of initial pre-trial release on case outcomes. We find that initial pre-trial release decreases the probability of being found guilty by 14.0 percentage points, a 24.2 percent change from the mean for detained defendants, with larger effects for defendants with no prior offenses in the past year. The decrease in conviction is largely driven by a reduction in the probability of pleading guilty, which decreases by 10.8 percentage points, a 24.5 percent change. Conversely, initial pre-trial release has a small and statistically insignificant effect on post-trial incarceration, likely because detained defendants plead to time served and because most charged offenses in our sample carry minimal prison time. These results suggest that initial pre-trial release affects case outcomes primarily through a strengthening of defendants’ bargaining positions before trial, particularly for defendants charged with less serious crimes and with no prior offenses

#### Pretrial detention increases recidivism

Jessica Morris, Senior Fellow for Equal Justice, 2015, ALTERNATIVES TO PRETRIAL INCARCERATION: CREATING A MORE JUST JUSTICE SYSTEM THROUGH BAIL REFORM IN MASSACHUSETTS, Roosevelt Institute, http://rooseveltinstitute.org/wp-content/uploads/2015/10/JessicaMorris.WhitePaper.Web\_.pdf (accessed 8/7/18)

Recidivism rates are six times higher for those incarcerated during the pretrial period, thanks in large part to the challenges low-income people experience after incarceration. Even when defendants are held for only two or three days, they are nearly 40 percent more likely to commit new crimes before their trial compared to those held for just one day. Defendants who were incarcerated during the pretrial period for a month or more reoffended 74 percent more frequently. Similar results exist for medium risk defendants.11 The inadequacies of the bail system reflect the failure of the U.S. prison system as a whole. Prisons should serve to punish and treat criminals, while protecting citizens from their potential to commit the crime again. But under that assumption, the U.S. prison system today is failing.

#### Pretrial detention puts defendants in way of abuse of and violence

Nick Pinto, journalist, 2015, The Bail Trap, The New York Times, https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html (accessed 8/8/18)

The next hearing in Tyrone Tomlin’s drinking-straw case was scheduled for a week after his arraignment. He left the courthouse, was loaded onto a bus and crossed the narrow causeway that connects Queens to Rikers. Tomlin was assigned to the Anna M. Kross Center, one of 10 correctional facilities on the island. Incarcerated people rarely have nice things to say about the places where they’re locked up, but an investigation by the United States attorney’s office this year found ‘‘a deep-seated culture of violence’’ among Rikers guards, who reported using force against inmates more than 4,000 times last year. Violence among inmates is also pervasive. A Department of Corrections document obtained by The Daily News reported 108 stabbings and slashings in the last year. ‘‘That place is miserable,’’ Tomlin said. ‘‘It’s dangerous. It’s every man for himself. You could get abused, you could get raped, you could get extorted. That stuff is all around.’’

### Narrative: story of Tyrone

#### The story of Tyrone Tomlin

Nick Pinto, journalist, 2015, The Bail Trap, The New York Times, https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html (accessed 8/8/18)

On the morning of Nov. 20 last year, Tyrone Tomlin sat in the cage of one of the Brooklyn criminal courthouse’s interview rooms, a bare white cinder-block cell about the size of an office cubicle. Hardly visible through the heavy steel screen in front of him was Alison Stocking, the public defender who had just been assigned to his case. Tomlin, exhausted and frustrated, was trying to explain how he came to be arrested the afternoon before. It wasn’t entirely clear to Tomlin himself. Still in his work clothes, his boots encrusted with concrete dust, he recounted what had happened. The previous afternoon, he was heading home from a construction job. Tomlin had served two short stints in prison on felony convictions for auto theft and selling drugs in the late ’80s and mid-’90s, but even now, grizzled with white stubble and looking older than his 53 years, he found it hard to land steady work and relied on temporary construction gigs to get by. Around the corner from his home in Crown Heights, the Brooklyn neighborhood where Tomlin has lived his entire life, he ran into some friends near the corner of Schenectady and Lincoln Avenues outside the FM Brothers Discount store, its stock of buckets, mops, backpacks and toilet paper overflowing onto the sidewalk. As he and his friends caught up, two plainclothes officers from the New York Police Department’s Brooklyn North narcotics squad, recognizable by the badges on their belts and their bulletproof vests, paused outside the store. At the time, Tomlin thought nothing of it. ‘‘I’m not doing anything wrong,’’ he remembers thinking. ‘‘We’re just talking.’’ Tomlin broke off to go inside the store and buy a soda. The clerk wrapped it in a paper bag and handed him a straw. Back outside, as the conversation wound down, one of the officers called the men over. He asked one of Tomlin’s friends if he was carrying anything he shouldn’t; he frisked him. Then he turned to Tomlin, who was holding his bagged soda and straw. ‘‘He thought it was a beer,’’ Tomlin guesses. ‘‘He opens the bag up, it was a soda. He says, ‘What you got in the other hand?’ I says, ‘I got a straw that I’m about to use for the soda.’ ’’ The officer asked Tomlin if he had anything on him that he shouldn’t. ‘‘I says, ‘No, you can check me, I don’t have nothing on me.’ He checks me. He’s going all through my socks and everything.’’ The next thing Tomlin knew, he says, he was getting handcuffed. ‘‘I said, ‘Officer, what am I getting locked up for?’ He says, ‘Drug paraphernalia.’ I says, ‘Drug paraphernalia?’ He opens up his hand and shows me the straw.’’

#### Pretrial detention lead to Tyrone Tomlin being imprisoned despite being innocent

Nick Pinto, journalist, 2015, The Bail Trap, The New York Times, https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html (accessed 8/8/18)

Stocking, an attorney with Brooklyn Defender Services, a public-defense office that represents 45,000 indigent clients a year, had picked up Tomlin’s case file a few minutes before interviewing him. The folder was fat, always a bad sign to a public defender. The documentation submitted by the arresting officer explained that his training and experience told him that plastic straws are ‘‘a commonly used method of packaging heroin residue.’’ The rest of the file contained Tomlin’s criminal history, which included 41 convictions, all of them, save the two decades-old felonies, for low-level nonviolent misdemeanors — crimes of poverty like shoplifting food from the corner store. With a record like that, Stocking told her client, the district attorney’s office would most likely ask the judge to set bail, and there was a good chance that the judge would do it. If Tomlin couldn’t come up with the money, he’d go to jail until his case was resolved. Their conversation didn’t last long. On average, a couple of hundred cases pass through Brooklyn’s arraignment courtrooms every day, and the public defenders who handle the overwhelming majority of those cases rarely get to spend more than 10 minutes with each client before the defendant is called into court for arraignment. Before leaving, Stocking relayed what the assistant district attorney told her a few minutes earlier: The prosecution was prepared to offer Tomlin a deal. Plead guilty to a misdemeanor charge of criminal possession of a controlled substance, serve 30 days on Rikers and be done with it. Tomlin said he wasn’t interested. A guilty plea would only add to his record and compound the penalties if he were arrested again. ‘‘They’re mistaken,’’ he told Stocking. ‘‘It’s a regular straw!’’ When the straw was tested by the police evidence lab, he assured her, it would show that he was telling the truth. In the meantime, there was no way he was pleading guilty to anything.

#### Despite winning his case in trial, pretrial detention hurt Tyrone Tomlin financially, legally, and physically

Nick Pinto, journalist, 2015, The Bail Trap, The New York Times, https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html (accessed 8/8/18)

Still awaiting a trial, Tomlin returned to Rikers and quickly got into trouble with a group of younger inmates while on the phone with his aunt. ‘‘A young guy tells me, ‘Yo, pop, you gotta get off the phone,’ ’’ he said. ‘‘I said, ‘I’m in the middle of an important call.’ He wanted me to just hang up.’’ Tomlin quickly realized he’d made a mistake. That evening, in the shower, he was jumped by a group of young men. ‘‘Most of the punches went to the side of my head and my eye,’’ he said. ‘‘I was tussling one and had to worry about the other three, there was blows coming from everywhere.’’ Punched, kicked and stomped, Tomlin received medical attention, his face monstrously misshapen, his left eye swollen shut. ‘‘You’d think I was Frankenstein’s brother or something,’’ he said. Tomlin’s eye was still swollen shut on Dec. 10, three weeks after his arrest, when he returned to court. At this hearing, prosecutors handed over a report from the police laboratory, which had tested the drinking straw. At the top of the report, in bold, underlined capital letters, were the words ‘‘No Controlled Substance Identified, Notify District Attorney.’’ The report had been faxed to the district attorney on Nov. 25, the same day as Tomlin’s last court hearing and days before his beating. The key to his freedom had been sitting unexamined. Conceding that the case had unraveled, the prosecutor asked that the charges be dismissed. ‘‘The judge says, ‘Mr. Tomlin, this is your lucky day, you’re going home,’ ’’ Tomlin recalls. ‘‘I just left the courtroom, signed some papers and that was it.’’ Tomlin had lost three weeks of income, was subjected to brutal physical violence and missed Thanksgiving dinner with his family. But he resisted the pressure to plead guilty. His previous convictions all came from pleas, most of them made with bail looming over him. He knows the bitter Catch-22 of pleading guilty to get out of jail. ‘‘It feels great to go home,’’ he says. ‘‘Anybody’s happy to go home. But at the same time, it feels bad, because that’s more damage on your record.’’

## NEG

Pretrial detention is the means of the plea system in the US which prevents courts from becoming overwhelmed with trials. A clogged court delays justice, leads to bad decisions, and harms the economy. Thus I negate.

#### My value is consequentialism which demands an evaluation of effects rather than questions of morality

Walter, Sinnott-Armstrong, scholar, 2015, "Consequentialism", The Stanford Encyclopedia of Philosophy (Winter 2015 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/win2015/entries/consequentialism/>. (accessed 8/8/18)

The paradigm case of consequentialism is utilitarianism, whose classic proponents were Jeremy Bentham (1789), John Stuart Mill (1861), and Henry Sidgwick (1907). (For predecessors, see Schneewind 1990.) Classic utilitarians held hedonistic act consequentialism. Act consequentialismis the claim that an act is morally right if and only if that act maximizes the good, that is, if and only if the total amount of good for all minus the total amount of bad for all is greater than this net amount for any incompatible act available to the agent on that occasion. (Cf. Moore 1912, chs. 1–2.) Hedonism then claims that pleasure is the only intrinsic good and that pain is the only intrinsic bad. These claims are often summarized in the slogan that an act is right if and only if it causes “the greatest happiness for the greatest number.” This slogan is misleading, however. An act can increase happiness for most (the greatest number of) people but still fail to maximize the net good in the world if the smaller number of people whose happiness is not increased lose much more than the greater number gains. The principle of utility would not allow that kind of sacrifice of the smaller number to the greater number unless the net good overall is increased more than any alternative. Classic utilitarianism is consequentialist as opposed to deontological because of what it denies. It denies that moral rightness depends directly on anything other than consequences, such as whether the agent promised in the past to do the act now. Of course, the fact that the agent promised to do the act might indirectly affect the act's consequences if breaking the promise will make other people unhappy. Nonetheless, according to classic utilitarianism, what makes it morally wrong to break the promise is its future effects on those other people rather than the fact that the agent promised in the past.

**Thus my criteria is an examination of the potential effects and opportunity costs to the affirmation of the resolution**

### Court Clog DA

#### Pretrial detention and bail are integrally connected

Human Rights Watch, 2010, The Price of Freedom, https://www.hrw.org/report/2010/12/02/price-freedom/bail-and-pretrial-detention-low-income-nonfelony-defendants-new-york (accessed 8/8/18)

Decades ago New York City pioneered bail reforms that have been enormously successful in reducing the number of people detained in jail while awaiting trial: each year judges order the pretrial release without bail of tens of thousands of men and women accused of crimes who are then able to remain in their homes and communities pending conclusion of their cases. When judges believe defendants might not otherwise return to court, however, they set money bail as a condition of release.

#### Plea bargains are a necessary release valve on the US criminal justice system

Dylan Walsh, freelance writer for The Atlantic ,2017, Why U.S. Criminal Courts Are So Dependent on Plea Bargaining, https://www.theatlantic.com/politics/archive/2017/05/plea-bargaining-courts-prosecutors/524112/ (accessed 8/8/18)

Ninety-seven percent of federal cases are settled the way Church’s was, by plea bargain. State-level data suggest similar numbers nationwide. Though access to a public trial is enshrined in the Sixth Amendment, taking a plea forecloses that possibility. “This constitutional right, for most, is a myth,” U.S. District Judge John Kane wrote in 2014—one voice among a chorus of jurists, advocates, and academics all calling for reform. Some want tweaks to the regulation and oversight of pleas; others urge more ambitious overhaul of the way trials are conducted, streamlining the process to make it accessible to greater numbers of people. Plea bargains were almost unheard of prior to the Civil War. Only in its aftermath, as waves of displaced Americans and immigrants rolled into cities and crime rates climbed, did appellate courts start documenting exchanges that resemble the modern practice. The plea became a release valve for mounting caseloads. Appellate courts “all condemned it as shocking and terrible” at the time, said Albert Alschuler, a retired law professor who has studied plea bargains for five decades. The courts raised a range of objections to these early encounters, from the secretiveness of the process to the likeliness of coercing innocent defendants. Pleas, wrote the Wisconsin Supreme Court in 1877, are “hardly, if at all, distinguishable in principle from a direct sale of justice.” The practice nonetheless continued, and, by the turn of the century, a minor economy had settled in its orbit. “Fixers” could be hired to arrange for alternatives to a prison sentence. Police regularly toured jails to “negotiate” with the inmates. One New York City defense attorney and friend to local magistrates loitered in front of night court hawking 10 days in jail for $300, 20 days for $200, and 30 days for $150. By the 1920s, as violations of the federal liquor prohibition flooded court dockets, 88 percent of cases in New York City and 85 percent in Chicago were settled through pleas. When the Supreme Court in 1969 finally heard a case concerning the legality of the issue, it unanimously ruled that pleas are constitutionally acceptable. They are “inherent in the criminal law and its administration,” the Court declared.

#### High case volume prevents due process and hampers justice

John R. Emshwiller and Gary Fields, criminal justice journalists, 2014, Justice Is Swift as Petty Crimes Clog Courts, The Wall Street Journal, https://www.wsj.com/articles/justice-is-swift-as-petty-crimes-clog-courts-1417404782 (accessed 8/8/18)

What that means for the nation’s crowded courts is a topic of debate among judges around the country. Jean Hoefer Toal, chief justice of the South Carolina Supreme Court, said courts “simply don’t have the funding” to supply lawyers in every misdemeanor case envisioned by the U.S. Supreme Court. She acknowledged her state can’t always do so, and that chief justices from other states have told her the same. Some jurists say many misdemeanor defendants simply want to get the matter over with. “If counsel were appointed on every rinky-dink misdemeanor case,” said Judge Jeffrey Middleton of St. Joseph County, Mich., the public’s cost for indigent defense would soar and “it would slow courts to a halt.” Justice Is Swift as Petty Crimes Clog Courts Government and academic researchers estimate that about one in every four misdemeanor defendants facing jail time isn’t represented by a lawyer. The Texas Indigent Defense Commission, a state body, estimated that 27% of the nearly 560,000 misdemeanor defendants in that state in fiscal-year 2013 didn’t have a lawyer. Commission research indicates that in many of the state’s 254 counties, the percentage exceeds 50%. Sharon Keller, presiding judge of the Texas Court of Criminal Appeals, said the state has made “a lot of progress” in assuring that indigent misdemeanor defendants have access to counsel, but “there is still plenty to do.” The 2011 study by the National Association of Criminal Defense Lawyers of about 1,600 misdemeanor cases in Florida found over one-third of defendants didn’t have a lawyer at their court arraignment. Of those, 80% pleaded guilty or no contest at that time—two pleas that are effectively identical—compared with 64% of those with court-appointed counsel and 61% of those who hired lawyers. The hearings took less than three minutes to complete, on average, with more than one-third finished within one minute, the study found. High-volume misdemeanor courts can be chaotic places. In one conversation overheard by a reporter, lawyer John Dixon, who was doing court-appointed defense work, discussed a plea to a theft charge with 19-year-old Aaron Brown. Mr. Dixon told the young man he represented his co-defendant, who had agreed to plead guilty, and he couldn’t ethically represent both men if they had different pleas. “Are you going to accept responsibility, be a man?” Mr. Dixon asked. When the teenager hesitated, Mr. Dixon walked away. He soon returned, only to walk away again when he didn’t get an answer. Finally, on a third visit, Mr. Brown agreed to plead guilty. He subsequently received probation from Judge Fields. In a later interview, Mr. Brown said he had planned to plead guilty and initially hesitated because he didn’t understand what Mr. Dixon was saying. Mr. Dixon said he wasn’t trying to pressure Mr. Brown. “I was just trying to explain to him his choices and their consequences,” he said.

#### Clogged courts lead to bad decisions from judges, turns their notion of justice

Toby Stern, JD, 2003, Federal Judges and Fearing The ‘Floodgates of Litigation’, https://www.law.upenn.edu/journals/conlaw/articles/volume6/issue2/Stern6U.Pa.J.Const.L.377(2003).pdf (accessed 8/8/18)

There are myriad effects of the rise in litigation over the past forty years. This section considers some of the effects that the caseload rise has had on federal judges and their work. In analyzing the results of a survey sent to federal judges by the Federal Courts Study Committee,2 Lauren Robel found that court of appeals judges increasingly were doing away with oral arguments because their dockets were so crowded. Furthermore, Robel found that some appellate judges' adaptations to their caseloads had limited their contact with litigants and attorneys.84 In response to their crowded dockets, judges indicated that they increasingly relied on unpublished, nonprecedential opinions. 5 Nonprecedential opinions have the potential to undermine the judicial process in that they reduce the opportunity for outside scrutiny and peer review from other judges.86 The survey responses revealed also that many judges simply do not have the time to reflect on their own work or read preceden- tial opinions from their circuit, and in some cases, the Supreme Court.' Robel found also that district court judges had increased their involvement in case management in order to dispose of more cases in a smaller amount of time."' This increased case management included time-saving tactics like encouraging settlement, 9 limiting discovery,0 using pretrial conferences to guide the litigation, 9 ' and increasing reliance on magistrate judges to handle pretrial matters.92 These changes do not necessarily have a detrimental effect on the judiciary. This Part is meant only to establish that the rising federal caseload has had tangible effects on judges' behavior. Judge Posner has considered the effects of the caseload rise on federal judges (especially federal appellate judges such as himself) . 9 In addition to those topics discussed in the preceding paragraph, 94 Posner has long been wary of judicial reliance on law clerks to maintain a proper level of functioning. Posner notes that the increased reliance on law clerks has pushed judges more into the position of an editor rather than that of a writer.96 Posner argues that this reliance, especially at the appellate level, has had several negative effects: (1) judges' increasing lack of recognizable writing style, (2) increases in opinion lengths,; (3) less likelihood that judges will recognize that they are presented with a novel case,9 9 (4) less expansive research,9 0 0 (5) lower credibility,'l1 and (6) a lack of judicial "greatness..102 Posner notes also an increased trend in appellate court jurisprudence toward "ruledness"-that is, finding explicit, more easily implemented rules as opposed to more elastic interpretations of vague constitutional doctrines. 103 Finally, Posner argues that the "least visible but probably most important way in which the pressure of a growing caseload has resulted in streamlining or corner cutting" is the "redefinition of the standards for granting summary judgment and for dismissing a complaint for failure to state a claim" in the district courts."' He suggests that these standards have been "watered down,o-' such that "[t]he tendency, though it is only that, is to make summary judgment a substitute for trial, and judgment on the pleadings a substitute for summary judgment."0 6 Thus, while the rise in federal caseload appears to be leveling off, 0 7 the future of the federal court caseloads remains in a "setting of profound uncertainty."0 8 s

### Counter Advocacy

#### The USFG should fully fund and implement a public bail system for people charge with nonviolent offenses

#### Government funded bail funds solve for low level offenders-no flight

Nick Pinto, journalist, 2015, The Bail Trap, The New York Times, https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html (accessed 8/8/18)

Two years later, that may be changing. This summer, the New York City Council took a tentative step toward reform by earmarking $1.4 million for a citywide fund to bail out low-level offenders. The fund, proposed with much fanfare by Speaker Melissa Mark-Viverito in her State of the City address in February, is modeled on a number of smaller bail funds around the city. The oldest of these, the Bronx Freedom Fund, was established in 2007 in association with the Bronx Defenders, a public-defender organization. The founders shut down the fund after only a year and a half, after a judge argued that it was effectively operating as an unlicensed bail-bond business. But before they did, the fund bailed out nearly 200 defendants and generated some illuminating statistics. Ninety-six percent of the fund’s clients made it to every one of their court appearances, a return rate higher even than that of people who posted their own bail. More than half of the Freedom Fund’s clients, now able to fight their cases outside jail, saw their charges completely dismissed. Not a single client went to jail on the charges for which bail had been posted. By comparison, defendants held on bail for the duration of their cases were convicted 92 percent of the time. The numbers showed what everyone familiar with the system already knew anecdotally: Bail makes poor people who would otherwise win their cases plead guilty.

#### Case study-nonprofit bail funds work (New York)

Nick Pinto, journalist, 2015, The Bail Trap, The New York Times, https://www.nytimes.com/2015/08/16/magazine/the-bail-trap.html (accessed 8/8/18)

Armed with these statistics, as well as a 2010 Human Rights Watch report that calculated that New York City was paying $42 million a year to incarcerate nonfelony defendants, the Freedom Fund’s founders managed to persuade state lawmakers to pass legislation explicitly legalizing nonprofit bail funds. In 2013, the Freedom Fund resumed operation. Close behind was the Brooklyn Community Bail Fund, begun by Scott Hechinger and a colleague at Brooklyn Defender Services. It was opened this spring and has already bailed out more than 60 clients.

### Extensions: Economy

#### Clogged courts harms the US economy

 Paul R. Michel, federal judge, The Court of Appeals for the Federal Circuit Must Evolve to Meet the Challenges Ahead, American University Law Review 48, no.6 (August, 1999): 1177-1203, http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1339&context=aulr (accessed 8/8/18)

Consider the position of a business executive in such a circumstance. His own highly paid lawyers cannot tell him [them] with realistic probabilities, much less any kind of certainty, whether the particular product infringes the patent in question. Therefore, the business leader is unable to make secure judgments about what steps he [they] should take and faces compounded dangers. He faces not only the unpredictability of the litigation process from the standpoint of its ultimate outcome, but also from the standpoint of how long it will take, how much it will cost, and how much disruption company employees will suffer in the process of discovery, trial preparation, and trial. Whether a given case from start to finish will take two, four, six, or eight years is very difficult to assess. Similarly, whether it will cost half a million, a million, two million, or four million dollars may be equally hard to predict and depends on many variables. Such variables include the judge in question, the number of cases on that judge’s docket, the nature and complexity of the case, the number of patents being asserted, the tactics of the opposition, the relative strength of the companies, and many additional factors. The essential reality for the business leader, however, is that he is facing a process that can be enormously expensive, disruptive, entirely uncontrollable, and unpredictable. Therefore, it is likely that as business leaders become more aware of such risks and uncertainties, they will insist on arbitration clauses, or other such contractual provisions, in an attempt to avoid the risk of becoming victims of the uncertainties of the U.S. litigation process.49

#### Economic recession reproduces racism and poverty

Dr. Peter Dreier, professor of politics and director of the Urban & Environmental Policy program at Occidental College, June 16, 2005. Tikkun Magazine. www.tikkun.org/rabbi\_lerner/news\_item.2005-06-16.4482156665 (accessed 7/24/18)

If there is one truism about race relations, it is that overt bigotry, hate crimes, and discrimination flourish during economic hard times. These acts of racism decline when the economic improves, when almost everyone who wants to work has a job at decent wages, and when people have economic security.

#### Economic decline leads to conflict and global war

Jedediah Royal, director of Cooperative Threat Reduction at the U.S. Department of Defense, 20**10**, Economics of War and Peace: Economic, Legal, and Political Perspectives, pg 213-215

Less intuitive is how periods of economic decline may increase the likelihood of external conflict. Political science literature has contributed a moderate degree of attention to the impact of economic decline and the security and defence behaviour of interdependent stales. Research in this vein has been considered at systemic, dyadic and national levels. Several notable contributions follow. First, on the systemic level. Pollins (20081 advances Modclski and Thompson's (1996) work on leadership cycle theory, finding that rhythms in the global economy are associated with the rise and fall of a pre-eminent power and the often bloody transition from one pre-eminent leader to the next. As such, exogenous shocks such as economic crises could usher in a redistribution of relative power (see also Gilpin. 19SJ) that leads to uncertainty about power balances, increasing the risk of miscalculation (Fcaron. 1995). Alternatively, even a relatively certain redistribution of power could lead to a permissive environment for conflict as a rising power may seek to challenge a declining power (Werner. 1999). Separately. Pollins (1996) also shows that global economic cycles combined with parallel leadership cycles impact the likelihood of conflict among major, medium and small powers, although he suggests that the causes and connections between global economic conditions and security conditions remain unknown. Second, on a dyadic level. Copeland's (1996. 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Mom berg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write. The linkage, between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict lends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession tends to amplify the extent to which international and external conflicts self-reinforce each other (Hlomhen? & Hess. 2(102. p. X9> Economic decline has also been linked with an increase in the likelihood of terrorism (Blombcrg. Hess. & Wee ra pan a, 2004). which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate external military conflicts to create a 'rally around the flag' effect. Wang (1996), DcRoucn (1995), and Blombcrg. Hess, and Thacker (2006) find supporting evidence showing that economic decline and use of force arc at least indirecti) correlated. Gelpi (1997). Miller (1999). and Kisangani and Pickering (2009) suggest that Ihe tendency towards diversionary tactics arc greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked lo an increase in the use of force. In summary, rcccni economic scholarship positively correlates economic integration with an increase in the frequency of economic crises, whereas political science scholarship links economic decline with external conflict al systemic, dyadic and national levels.' This implied connection between integration, crises and armed conflict has not featured prominently in the economic-security debate and deserves more attention.

### Extensions: Court clog

#### A moratorium on pretrial bargains clogs courts

Diane Henry, journalist, 1979, Plea‐Bargaining Ban Is Clogging Courts in New Haven, State Says, The New York Times Archives, https://www.nytimes.com/1979/09/05/archives/pleabargaining-ban-is-clogging-courts-in-new-haven-state-says-plea.html (accessed 8/8/18)

STAMFORD, Conn. Sept. 4 — An eightmonth moratorium on plea bargaining in criminal cases in the State Judicial District headquartered in New Haven has produced the largest backlog of cases a year or more old in any judicial district in the state, according to the state's chief court administrator. The number of such cases in the New Haven district rose from 181 to 310 between the imposition of the ban and Aug. 1, according to John A. Speziale, the chief administrator of the state's court system and a justice of the State Supreme Court. However, Arnold Markle, the State's Attorney .for the district, who instituted the ban, and Frank J. Kinney Jr., the district's presiding judge, say that those figures do not reflect the successes of the program. The New Haven district, which covers the City of New Haven and 13 neighboring towns, is the only one of the state's 11 districts with such a moratorium, although similar bans have been imposed in other areas of the country. Mr. Markle said he imposed the ban because of charges from the public that criminals were not being treated severely enough. Plea bargaining is used in most courts in the United States to expedite cases. Usually the defendant agrees to plead guilty to reduced charges in exchange for a recommendation from the prosecutor for a relatively lenient sentence.

#### Courts are have been heavily packed for nearly a decade-they are on the brink of clog now

Russell Goldman, journalist, 2008, What's Clogging the Courts? Ask America's Busiest Judge, ABC, https://abcnews.go.com/TheLaw/story?id=5429227&page=1 (accessed 8/8/18)

Judge Robert Brack is the busiest federal judge in the United States. From his bench in the bordertown of Las Cruces, N.M., Brack expects to hear between 1,000 and 1,200 cases this year, more than twice the average number tried by district court judges. Almost all of his cases have one thing in common: they involved illegal immigrants reentering the United States, looking for work and finding jail time instead. "I'm on the bench every morning of every day for several hours, sentencing defendants. A very high percentage of those involve Mexican citizens charged with felony reentry. Then I take a break, come back and do it some more," said Brack, who was ranked No. 1 in the country in overall caseload, according to federal statistics and Syracuse University. Immigration-related felony trials have been on the rise for several years, straining the resources of courts and prisons from Texas to California and illustrating the difficulties of policing the country's primary point of entry for illegal immigrants and drugs. All along the 2,000-mile U.S.-Mexico border, courts are clogged with immigration-related cases. As a result, the region's courtrooms handle a disproportionate amount of the country's crime. Just five of the country's 94 districts -- South California, New Mexico, Arizona, West Texas and South Texas -- handle 75 percent of all the criminal cases in federal district courts around the country.

#### Courts are flooded now they can’t handle a large influx of trials

John R. Emshwiller and Gary Fields, criminal justice journalists, 2014, Justice Is Swift as Petty Crimes Clog Courts, The Wall Street Journal, https://www.wsj.com/articles/justice-is-swift-as-petty-crimes-clog-courts-1417404782 (accessed 8/8/18)

Years of aggressive policing tactics and tough-on-crime legislation have flooded the American court system with misdemeanor cases—relatively small-time crimes such as public drunkenness, loitering or petty theft. The state courts that handle such charges often resemble assembly lines where time is in short supply, according to judges and lawyers who work in the courts. Many poor defendants, despite their right to court-appointed legal counsel, don’t get lawyers, and those who do often receive scant help in the rush to resolve cases.

### Pretrial release bad

#### No pretrial detention risks violent crime even if the charge is nonviolent

RON DAVIS, OPINION CONTRIBUTOR, 2017, Stop jailing those accused of low-level, nonviolent crimes before trial, The Hill, http://thehill.com/opinion/criminal-justice/350336-stop-jailing-those-accused-of-low-level-non-violent-crimes-before (accessed 8/8/18)

Money bail systems allow violent and high-risk individuals to end up back on the street. On average, research shows nearly half of defendants who are likely to commit crime before trial or skip court are released under effectively no oversight – simply because they could afford bail. In Chicago, for instance, a recent study from Cook County Sheriff Tom Dart showed that defendants facing gun charges — most alleged gang members — have access to the cash necessary to quickly gain freedom even when judges set high bail amounts. Many of these dangerous defendants returned to communities plagued by violence. According to the study, the neighborhoods where gun defendants posted the highest amount of collective bail were also the ones most prone to repeated shootings.

#### Pretrial release leads to security risks for the surrounding community

Ronald L Goldfarb, attorney and author, 1970 A Brief For Preventive Detention, The New York Times Archives, https://www.nytimes.com/1970/03/01/archives/a-brief-for-preventive-detention-a-brief-for-preventive-detention.html (accessed 8/8/18)

A 19 year old drug addict with a long criminal record—his initials are P.D.—robs a savings and loan association in Washington, D. C., with the aid of two companions. As they leave, there is a gun battle with police and a bystander is wounded but not killed. Several blocks away, the getaway car crashes into a bus and the three men are captured. Arrested on assault and armed robbery charges, P.D. posts a $5,000 bond and is released while awaiting trial. Eleven days after that a local liquor store is held up, a janitor recognizes P.D. and he is re arrested at a friend's home. At his presentment a few days later, bail is set at $10,000; again P.D. is able to bond and free. Before he comes to trial on any of the charges, he attempts to rob neighborhood gas station at gun point, but an off‐duty policeman who happens to be present subdues him after a struggle. This time, bail is set at $25,000. But P.D.'s lawyer pleads that his client cannot afford it and therefore will be incarcerated just because of his poverty. He also argues that P.D. has good ties in the community—for example, he is employed locally and has lived there all his life—and that he has never failed to show up in court when ordered in the past. Moreover, members of P.D.'s family and a clergyman appear to say that they will assure his presence in the future. Bail is reduced to $15,000, which P.D. can afford, and he is re Less than a month later, two men stick up a bank; when an alarm goes off, they panic and shoot‐ into the crowd of customers, killing one per son and wounding two others. Photo graphs taken by the bank's concealed camera identify P.D. as one of the robbers and he is arrested once again. Now, since he is charged with a capital offense, P.D. is denied bail and, during a court appearance, an angry judge tells him: “It is a disgrace that my colleagues on this court have had their hands tied and were unable to lock you up before this. Untold and unnecessary ravage has been wreaked upon this community as a result of our impotence. EXAGGERATED as it may sound, this kind of case has happened countless times in just about every American city. It illustrates problem which has been occurring in American courts with increasing fre quency and which has provoked passionate debate about criminal law

### Extensions: Consequentialism

#### An evaluation of consequences protects marginalized groups

Lawewnce Hinman, professor of philosophy at the University of San Diego, 1998 Ethics: A Pluralistic Approach to Moral Theory, http://www.cs.cmu.edu/~illah/CLASSDOCS/Hinman1.pdf (accessed 8/8/18)

As we have already seen, utilitarianism is, at heart, an impartial moral doctrine, and as such it does not give any special weight to the concerns of any particular group, whether racial, ethnic, or cultural. But its impartiality is, in many ways, also its potential strength for minority groups with little power, for utilitarianism when properly applied says that their suffering and unhappiness counts just as much as the suffering and unhappiness of those who do hold the power and influence in society. Strict adherence to utilitarian impartiality alone could sometimes bring significant advantages to minority groups, but this is not always so. Consider a typical situation in which the interests of minority groups have not counted on a par with those of the majority group. Imagine the planning of a new highway for which private lands have to be appropriated. Often the lands appropriated for such projects are those that belong to poorer groups that have less political influence. Does this violate utilitarian principles? Utilitarianism states that everyone’s suffering is of equal weight (presuming it is of equal intensity). That means that the suffering that a poor person of color experiences when uprooted is of equal value to the suffering that a rich, white corporate executive experiences when uprooted, again presuming both have equally intense feelings about being relocated.

#### Moral absolutism justifies oppression, not utilitarianism

Will Kymlicka, Professor of Philosophy at the University of Toronto, 1990 “Contemporary Political Philosophy” p.11

A distinct but related attraction is utilitarianism’s ‘consequentialism.’ I will discuss what exactly that means later on, but for the moment its importance is that it requires that we check to see whether the act or policy in question actually does some identifiable good or not. We have all had to deal with people who say that something – homosexuality, for example (or gambling, dancing, drinking, swearing, etc.) – is morally wrong, and yet are incapable of pointing to any bad consequences that arise from it. Consequentialism prohibits such apparently arbitrary moral prohibitions. It demands of anyone who condemns something as morally wrong that they should show who is wronged. i.e. they must show how someone’s life is made worse off. Likewise, consequentialism says that something is morally good only if it makes someone’s life better off. Many other moral theories, even those motivated by a concern for human welfare, seem to consist in a set of rules to be followed, whatever the consequences. But utilitarianism is not just another set of rules, another set of ‘do’s’ and ‘don’ts’. Utilitarianism provides a test to ensure that such rules serve some useful function.