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# U.S. Bail, Pretrial Justice, and Charitable Bail Organizations: Strengthening Social Equity and Advancing Politics and Public Ethics of Care

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## ABSTRACT

The U.S. criminal legal system contributes to the oppression and harm of marginalized groups, calling into question ethical governance. The front end of this system, specifically bail and pretrial justice, exploits opportunities for resource generation and social control as a major driver of incarceration, yet receives limited attention in public administration or ethics. Disproportionate punishment and collateral penalties associated with bail and pretrial justice are causes and consequences of structural racism and administrative dysfunction. Excessive bail as a poverty penalty incurs risks to health, safety, financial security, and constitutional presumptions and protections. In light of civil and constitutional rights concerns, bail and pretrial-associated philanthropic solutions have proliferated. This article provides background on bail and pretrial justice policies and politics; outlines evidence of related consequences; describes select reform efforts and philanthropic tools, including the charitable bail organization The Bail Project; and contextualizes bail and pretrial justice within a public values framework, which centers social equity and incorporates critical race theory alongside politics and public ethics of care. Upholding the Constitution and the law, strengthening social equity, and ensuring procedural due process are core tenets of good governance, yet anathema to the current bail and pretrial justice system, which is a critical public ethics concern.

## KEYWORDS

Criminal justice, public ethics, ethics, race, civil rights, bail, governance, social equity, philanthropy

Under conditions of racial inequality and poverty, which formed a context for violence in homes and neighborhoods, incarceration became the ready answer to a range of challenging social problems.

—Bruce Western (2019)

## Introduction: Bail and pretrial justice

U.S. criminal legal and social welfare systems govern historically and structurally marginalized populations, as well as poverty itself. Poverty, violence, and racial inequities are primary characteristics of hyperincarceration (Crenshaw, 2011; Garland, 2012; Soss, Fording, & Schram, 2011; Wacquant, 2009). Scholars have traced political-economic transitions and coercive logics—from slavery, to the war on poverty, and to the war on crime—as hyperincarceration's antecedents (Beckett & Francis, 2020; Hinton, 2016; Muhammad, 2010).<sup>1</sup> The United States has the highest

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incarceration rate globally, alongside stark race- and class-related disparities regarding arrest, sentencing, detention, and collateral sanctions (CCR, 2022; Hernández, Muhammad, & Thompson, 2015; National Reentry Resource Center, 2022). Approximately 50% of adults surveyed report they or a relative have been arrested (Data for Progress, 2019; Pew Charitable Trusts, 2018) or incarcerated (FWD.us, 2018), reflecting the carceral state's effects on millions of individuals, families, and communities.<sup>2</sup>

Despite robust social-scientific research on the criminal legal system overall, bail and the pretrial system, as “incarceration’s front door,” receive decidedly less attention (Page & Scott-Hayward, 2022; Subramanian, Delaney, Roberts, Fishman, & McGarry, 2015).<sup>3</sup> In current bail and pretrial justice systems, the inability to afford bail is a decisive factor for being incarcerated or accepting a plea bargain regardless of guilt or innocence.<sup>4</sup> These systems raise pressing concerns for public values, namely upholding the Constitution and the law, strengthening social equity, and ensuring procedural due process (Plant, 2018).<sup>5</sup> Accordingly, bail and pretrial practices and policies, for which bipartisan support for reform exists, drive incarceration and undermine rights and liberties (CPS, 2022; Lipsky, 1984).

Additional harms associated with current bail and pretrial systems include risks to health, safety, economic security, statutory rights, and constitutional protections and presumptions (CCR, 2022; Kirk & Wakefield, 2018). Heightened disruptions to employment, education, housing, child care, and social networks comprise further collateral consequences (Pager, 2003; Travis, Western, & Redburn, 2014). Disproportionate harm befalls populations facing intersecting vulnerabilities and that are socio-legally constructed as less deserving, deviant, dangerous, or criminal, including Black, Indigenous, and People of Color (BIPOC), LGBTQ+, veterans, people living below the poverty level, and people with disabilities, mental health needs, or substance-use challenges (Gaynor, 2018; Johnson, Rivera, & Lopez, 2018; Schneider & Ingram, 1997).<sup>6</sup> Bail reform and philanthropic tools, including charitable bail organizations, mitigate existing and emerging inequities and harms, yet are only part of necessary substantive criminal legal system reforms.

In this article, we provide background on bail and pretrial system policies and politics; outline evidence of key consequences including attributable harms; discuss select reform efforts and



Figure 1. A client of The Bail Project.

philanthropic tools, including The Bail Project as a charitable bail organization; and contextualize cash bail within a public values framework centering social equity and incorporating critical race theory alongside politics and public ethics of care (Figure 1).

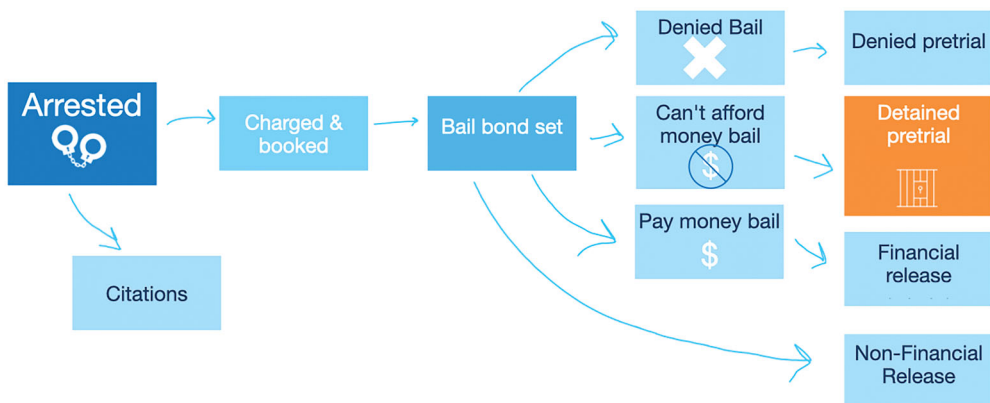
### **What is bail? Bail policies and politics**

Bail is the conditional release of a person charged with a criminal offense pending the outcome of their trial. Bail can include both financial and nonfinancial conditions of release. Cash bail is a financial condition of release; it is the amount of money required for an individual to be released from custody through the duration of their trial (Schnacke, 2014). Pretrial release associated with financial obligation can be substituted or combined with various nonmonetary release conditions, including community supervision, treatment services, and educational, training, or employment programs. The overuse of jails during pretrial processes as part of “assembly-line justice” inequitably detains people, particularly poorer BIPOC, based on their inability to pay rather than public health, welfare, or safety benefits (Data for Progress, 2019; Kohler-Hausmann, 2018, p. 4). Presumption of innocence and liberty is compromised by a lack of counsel, ample time and consideration for bail decisions, and the right to a speedy trial (Meares & Rizer, 2020).

State constitutions, statutes, and court rules guide local pretrial policies and practices; nevertheless, judges often have broad discretion to increase, decrease, or waive bail amounts and release an individual on their own recognizance (CEA, 2015; NCSL, 2020).<sup>7</sup> Bail acts as a deposit and is intended to be returned upon trial completion or if an individual is acquitted or has their charges dismissed (Onyekwere, 2021). The primary purpose of bail is to provide an incentive to ensure an individual appears for all required hearings and does not pose a public safety risk (Schnacke, 2014). Additional presumptive benefits include crime prevention, general deterrence, and court resource conservation, all of which are contradicted by empirical evidence (CCR, 2022; Digard & Swavola, 2019; Yang, 2017).

As Figure 2 illustrates, a person charged with a criminal offense who does not have the personal financial resources to pay bail, may:

1. Pay their bail by hiring a bail bondsperson to post a bail bond, which includes nonrefundable premiums of 10–20% of the total bail amount and other fees; or
2. Remain in jail throughout their trial; or
3. Accept a plea deal, enabling earlier release and a shorter sentence, often for a less serious offense.



**Figure 2.** The path from arrest to pretrial detention.<sup>8</sup>

Due to disproportionate commercial bail industry expansion, the United States, outside of the Philippines, has the only cash bail system dominated by commercial bondsmen (Jacobson, 2018; Feiler, 2022).<sup>9</sup> A few large insurance firms underwrite the \$2 billion private bail industry, inclusive of over 25,000 commercial bail agents nationwide (Gordon, 2021). The private bail industry's extreme concentration of economic and lobbying power and political influence, and low regard for consumer protection, constitute additional concerns (Highsmith, 2019; Schnacke, 2014). The Consumer Financial Protection Bureau (2022) underscores the duress people may be under when accepting costly, opaque, and unclear agreements, which financially incentivize the private bail industry to procure authority and undertake aggressive collection practices (Fisher, 2009; Schnacke, 2014).<sup>10</sup> The American Bar Association, too, strongly recommends abolishing this industry, within which regulation, transparency, and oversight vary widely (Gordon, 2021). As alternatives to private bail bondspersons, nonprofit charitable bail funds and organizations pay people's bail and provide support at no cost.

### ***Bail, pretrial justice, and “incarceration’s front door”***

Overwhelmingly, local bail practices drive jail incarceration rates. County and city governments typically administer and operate jails, which detain people newly arrested; accused of crimes awaiting trial, bail hearings, or sentencing; or serving short sentences for minor offenses.<sup>11</sup> Sufrin (2017, p. 25) describes jail as an “entry or reentry point into the criminal justice system, a holding place before prison, a chaotic, people-processing site.”<sup>12</sup>

Between 1970 and 2015, the number of people detained while awaiting trial increased by over 433%, from 82,922 to 441,790, despite decreases in overall crime rates (Digard & Swavola, 2019). One in three people incarcerated are detained in a jail, amounting to upward of 700,000 people on any given day; of this population, 200,000 people weekly, and 12 million people annually, cycle in and out of jails (Sawyer & Wagner, 2022; Zeng, 2020).<sup>13</sup> More than 80% of people in jail are not yet convicted of a crime and are legally presumed innocent, the vast majority of whom have been arrested for nonviolent offenses (Sawyer & Wagner, 2022).

Jail is a highly racialized organization within the criminal legal system, with BIPOC experiencing disproportionate rates of detention, denial of release on nonfinancial conditions, and financial sanctions (Friedman, 2021; Liu, Nunn, & Shambaugh, 2018, 2019; Ray, 2019). Bail and court-related legal financial obligations are exploitative, predatory dimensions of the criminal legal system (Blessett & Box, 2016; Harris, Pattillo, & Sykes, 2022; Page & Soss, 2021).<sup>14</sup> Vast increases in monetary release conditions and sanctions correlate with higher levels of income inequality, unemployment, and Black-majority communities (Hood & Schneider, 2019). Within and across states, extreme variation exists in the determination, use, and total amount of monetary bail set as a condition of release (ACLU in Nebraska, 2016; Gupta, Swanson, & Frenchman, 2016; Hood & Schneider, 2019).<sup>15</sup>

What is more, Black (35%) and Latinx (19%) men are frequently assessed higher bail amounts than White men (CCR, 2022). For example, Black people comprise 30% of Maryland's population, yet were charged premiums totaling at least \$181 million over a five-year period, whereas people of all other racial groups combined were charged \$75 million (Gupta et al., 2016). In many jurisdictions, such as Miami-Dade and Philadelphia, Black people also receive higher monetary bail amounts (Arnold, Dobbie, & Yang, 2018). Arnold et al. (2018, p. 1,885) “find suggestive evidence that this racial bias is driven by judges relying on inaccurate stereotypes that exaggerate the relative danger of releasing Black people facing charges.”

### ***Consequences of bail and pretrial justice policies and politics***

Detention in jail is associated with disproportionate sentencing lengths, fines and fees, guilty pleas, and higher conviction and recidivism rates (Stevenson, 2018; Yang, 2017). Research in

Harris County, Texas, reveals people detained in misdemeanor cases, compared to those similarly situated yet released, are 25% more likely to plead guilty, 43% more likely to be sentenced to jail, and are more likely to commit future crimes and receive twice as long sentences (Heaton, Mayson, & Stevenson, 2017). Relatedly, higher conviction rates may result from acceptance of plea deals, regardless of guilt or innocence, which may alleviate short-term financial and emotional costs of incarceration, yet incur criminal records and collateral consequences for housing, employment, and public benefits (Blessett & Pryor, 2013; CCR, 2022; Digard & Swavola, 2019; Stuntz, 2013; Travis et al., 2014).

Additional lines of evidence suggest that pretrial detention correlates with loss of public benefits and income and increased subsequent criminal legal involvement; in contrast, diversion correlates with a decreased likelihood of future criminal legal involvement, without local crime rate increases (Agan et al., 2021; Dobbie & Yang, 2021; Lowenkamp, VanNostrand, & Holsinger, 2013; Ouss & Stevenson, 2020; Yang, 2017).<sup>16</sup> Penalties for missing court appearances include bail forfeiture, release revocation, sanctions, and additional criminal charges (NCSL, 2018). To this end, the racial wealth gap combines with structural racism to further incapacitate BIPOC from absorbing compounded income loss, incarceration costs, sanctions, and discrimination associated with bail and pretrial systems (Darity et al., 2018; Friedman et al., 2022; Pager, 2003; Zaw, Hamilton, & Darity, 2016).

Pretrial detention costs taxpayers over \$38 million daily and \$140 billion annually when accounting for impacts on families, communities, and social services (Data for Progress, 2019). The “penal treatment of poverty” manages people and deprioritizes social safety-net investment (Sufrin, 2017, p. 8; Wacquant, 2010). Excessive cash bail remains a penal poverty penalty, whereas alternatively, upstream interventions, including treatment and diversion programs, drug policy reform, and decarceration, benefit individual and population-level health, alongside public budgets and safety (Dobbie & Yang, 2021; Miller & Yeung, 2020).

Community-driven public safety initiatives and infrastructure better inform broader reparations strategies that begin to “undo historical legacies of divestment and structural oppression” (Sakala & La Vigne, 2019, p. 262). The United States has the capacity to bolster its social safety net, alleviate associated racialized burdens, and limit the carceral state’s negative consequences (Ray et al., 2022). Yet, “organized abandonment,” resulting from state failure, frequently occurs when community “investment, regeneration, and cultivation” is forsaken for “carceral infrastructure” (Gillmore, 2007; Prins & Story, 2020, p. S35).

### ***Bail and pretrial justice health harms***

Incarceration is widely acknowledged as a social-structural driver of health inequities (Bacak et al., 2018; Bowleg, 2020; Williams, Lawrence, & Davis, 2019).<sup>17</sup> Communities, families, and individuals disproportionately face significant health challenges before, during, and after incarceration (Acker et al., 2019; Binswanger, Krueger, & Steiner, 2009; Binswanger et al., 2010; Wildeman & Wang, 2017).<sup>18</sup> Moreover, inequitable distribution of adversities and comorbid conditions may cluster together (Kajeepeta, Rutherford, Keyes, El-Sayed, & Prins, 2020; Willen, Knipper, Abadía-Barrero, & Davidovitch, 2017). In the case of the number of people diagnosed with serious mental illness in psychiatric hospitals, three times as many are detained in jails (Aufderheide, 2014). Simultaneously, excessive bail and pretrial detention put individuals at risk for care discontinuity; physical, emotional, and sexual injury and illness; and death (Schlanger, 2006; St. John, Blount-Hill, Mufarreh, & Lutgen-Nieves, 2022).

People who are incarcerated are the only population with a constitutional guarantee to health care, including protection from serious physical and psychological harm, yet standards and practices widely vary (Dolovich, 2009, 2022).<sup>19</sup> Additionally, the initial jail release period correlates with increased psychiatric symptoms, substance use, hospitalization, violence, and mortality (Russ



et al., 2021).<sup>20</sup> Collateral consequences, too, undermine health, employment, housing, civic engagement, family reunification, and healthy relationships (Kirk & Wakefield, 2018; Pager, 2003). On the whole, jail is a poor substitute for a much needed social safety net.<sup>21</sup>

Historically, local jails have been conducive to brutality (Dolovich, 2020). Moreover, detained people have experienced harm and unlawful public violence in jails and upon release (Kato, 2016; Lewis, 2021). Chattel slavery, nineteenth-century Black Codes, and hyperincarceration cohere with Gilmore's (2007, p. 247) conceptualization of racism as "state-sanctioned or extra-legal production and exploitation of group differentiated vulnerability to premature death" (Bailey et al., 2017).<sup>22</sup> The health and social costs of excessive bail reflect how poverty, racism, and bureaucratic disenfranchisement inordinately expose vulnerable people to harm (Arnold et al., 2018; Braveman, Arkin, Proctor, Kauh, & Holm, 2022; Sufrin, 2017; Wyatt-Nichol, 2011).

As an illustration, Jerome Murdough, a 56-year-old unhoused veteran, was arrested for sleeping in an enclosed stairwell atop a public housing building rooftop in below-freezing weather (Potter-Miller, 2018). Murdough was arraigned, processed, and charged with trespassing. The judge ordered bail of \$2,500 and set a hearing for 19 days later. After seven days in jail, Murdough was found dead (Venters, 2019). The medical examiner recorded Murdough's internal temperature as 103 °F four hours after being removed from his cell, which was recorded as having "unusually high temperatures."

Although Murdough's death was ruled an accident, contributing factors include staff neglect and malfunctioning heating equipment with previous repair requests. Adverse interactions between Murdough's anti-seizure and antipsychotic medications and heat likely exacerbated heat exposure effects.<sup>23</sup> Murdough's death was painful and preventable. His misdemeanor conviction history is common among unhoused people with mental illness, and best addressed through alternatives to incarceration, including veteran treatment courts (Potter-Miller, 2018).<sup>24</sup>

Sadly, Murdough's experience is not an anomaly (Carson, 2021). Less than a year before, Bradley Ballard, who also struggled with mental illness, died of infection and dehydration after being confined to a jail cell for a week (Venters, 2019). Kalief Browder died by suicide after experiencing physical abuse and solitary confinement while awaiting trial for three years for allegedly stealing a backpack, despite all charges later being dropped (Venters, 2019). More recently, Layleen Cubilette-Polanco died in solitary confinement due to epilepsy-related complications after being detained on misdemeanor charges and \$500 bail for missing court dates as part of a prostitution diversion program (Goldensohn, 2020).

Sandra Bland's in-custody death draws greater attention to race, gender, mental health, and class in association with bail, pretrial detention, and state violence (Blessett & Gaynor, 2017; Crenshaw, Ritchie, Anspach, Gilmer, & Harris, 2015).<sup>25</sup> Bland was pulled over for failing to signal a lane change on her way to a new job at her alma mater. She was then pinned to the ground, falsely charged with assaulting a police officer, and detained with a bail amount of \$5,000 (Carter, 2017). Three days after her arrest, she was found dead in her cell, apparently by suicide. Homer Venters (2019, p. 17) categorizes such "jail-attributable deaths" as systematic risks of incarceration resulting from victimization or inadequate care and protection inside jails.<sup>26</sup>

Such preventable harms prompt meaningful reexamination of public values, "important qualities and standards that have a certain weight in the choice of public action and decision making," critical to ethical administration (Plant, 2018; Van der Wal, De Graaf, & Lasthuizen, 2008, p. 468; van der Wal, Nabatchi, & de Graaf, 2015). In fact, across party lines, and inclusive of law enforcement and crime survivor households, public opinion overwhelmingly supports decreasing jail spending and increasing investments in substance use, mental health, and crime survivor services. The majority also agree that cash "bail does not keep our communities safe because with money bail, whether someone stays in jail depends on how much money they have, not whether they pose a danger to the public" (Pew Charitable Trusts, 2018). In brief, the potential benefits of pretrial detention belie its harms (Heaton et al., 2017).

### **Select bail and pretrial reform efforts**

Smith (2018) outlines the 1960s national bail reform efforts, the subsequent tough-on-crime countermovement, and the current coalition-based movement. Contemporary bail reformers include journalists, activists, celebrities, lobbyists, researchers, litigators, government actors, innovators, and people with criminal legal involvement that mobilize diverse forms of capital as organizational catalysts to reduce incarceration and rebuild communities (Smith, 2018; Sturm & Tae, 2017). Key strategies include seeking new and powerful positions to shift power and alter bail practices and norms, leveraging existing laws and enacting substantive reform, such as defunding and reinvesting in alternative resources and institutions (Clair & Woog, 2022; Page & Scott-Hayward, 2022).

The civil rights and racial justice implications of bail are reflected in several ongoing legal challenges involving the Eighth Amendment, prohibiting excessive bail and cruel and unusual punishment, and the Fourteenth Amendment due process and equal protection clauses. The 2021 landmark California Supreme Court decision involving Kenneth Humphrey concurs with the Department of Justice's 2015 statement on "unlawful bail practices" constituting bad public policy and violating the Equal Protection Clause (CCR, 2022; HLR, 2022).<sup>27</sup> The ruling is based in state and federal equal protection and substantive due process law; it requires judges to consider whether a person can afford a fixed bail amount and notes pretrial detention's harmful effects on housing, employment, and a fair and adequate defense (HLR, 2022). Underscoring the Fourth Amendment and Supreme Court's clarification regarding pretrial liberty, Commission on Civil Rights Chair Norma Cantú affirms pretrial detention is intended as a "carefully limited exception" rather than the norm that it has become.<sup>28</sup>

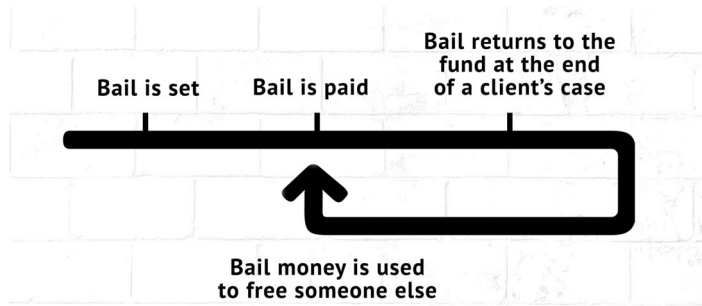
Texas Public Policy Foundation's Right on Crime (2022) conservative criminal justice reforms campaign and the National District Attorneys Association support bail reform across political divides (Smith, 2018; Zottola, Duhart Clarke, & Desmarais, 2022). The recently proposed End Money Bail Act prioritizes more equitable pretrial release systems: requiring a presumption of release in most cases; collecting, analyzing, and publicly sharing reporting data; and funding state and local government to implement just and effective programs (Data for Progress, 2019).<sup>29</sup> Bipartisan efforts in multiple states and local jurisdictions continually seek to reduce cash bail reliance and revise pretrial law and policy (CCR, 2022).

Federal criminal courts have operated without cash bail since 1984 and have additionally implemented alternatives to incarceration, including drug courts (CCR, 2022; Data for Progress, 2019). Since 1992, the D.C. Pretrial Services Agency has implemented measures to bar judges from setting cash bail and to connect people with social services and mental health and substance use treatment, resulting in limited pretrial detention and jail terms (PSA, 2022). As of 2017, 94% of people in the pretrial system in the District of Columbia were released without cash bail, of which 88% returned to court and 86% were not rearrested (Block, 2018; Data for Progress, 2019).

In 2017, the New Jersey legislature passed a law effectively eliminating mandatory cash bail and granting presumption of release to people charged with crimes. Arnold Ventures' evidence-based Public Safety Assessment (PSA) was implemented to provide more information to judges making decisions regarding release conditions (Grant, 2019).<sup>30</sup> Overall, MDRC et al. (2019) reported a 67% reduction in the proportion of people detained, alongside decreases in arrests, jail bookings, jail time following arrest, and violent crime.<sup>31</sup> In light of persisting racial disparities in pretrial release decisions, the New Jersey American Civil Liberties Union (ACLU) monitors the PSA's use and impact (CCR, 2022; Grant, 2019).

In 2018, Philadelphia District Attorney Lawrence Krasner's "prosecutor-led bail reform" removed cash bail requirements for eligible misdemeanor and nonviolent felony offenses (Ouss & Stevenson, 2020). Resultantly, 1,700 people awaiting trial were released, a record number appeared in court, and recidivism rates did not increase (Onyekwere, 2021). This decision is





**Figure 3.** A revolving bail fund.

supported by Ouss and Stevenson's (2020) related research in Philadelphia, which finds cash bail did not increase court appearances or decrease pretrial crime more than release on recognizance. Moreover, Stevenson's (2018) natural experiment findings indicate pretrial detention led to a 13% increase in conviction likelihood, 42% sentence length increase, and 41% increase in non-bail court fees owed.

### **Charitable bail organizations and funds**

Bail fund giving circles, donor-advised funds, and other giving platforms represent philanthropic tools informing contemporary "pretrial activism" as part of "struggles to transform the field of bail" (Benjamin, 2019; Never, Christensen, & Bushouse 2022; Page & Scott-Hayward, 2022, p. 107). For example, abolitionist tools such as Appolition, an app converting daily spare change into National Bail Out Fund donations, continue to proliferate in response to mass incarceration, monitorization, and surveillance (Benjamin, 2019). Goss (2007), along with Bushouse and Mosley (2018), demonstrate philanthropy's capacity to legitimize identity groups and their political claims as charitable agents and social innovation laboratories. Toward that end, charitable bail organizations constitute a shared resource often involving a revolving pool of money "used to continually free people who are jailed because of their poverty" (Simonson, 2017a, 2020); see Figure 3.<sup>32</sup>

Throughout slavery, Black communities collectively purchased freedom for loved ones (Steinberg, Kalish, & Ritchin, 2018). To this day, churches, community groups, and charitable bail funds pool resources to bail people out of jail (Simonson, 2017a, 2017b, 2020; Woodly, 2021). The National Bail Out collective (2022) emphasizes "the current system recycles the tactics, traditions, and aims of chattel slavery, convict leasing, the Black Codes, and Jim Crow" to "dispossess, oppress, and control" Black communities. Michael Brown and George Floyd's deaths at the hands of police, mass social protest, and the COVID-19 pandemic accompanied increased philanthropic resources toward bail reform and decarceration (Fisher & Rouse, 2022; Jung, Eikenberry, Webb Farley, & Brainard, 2021; Simonson, 2020).

Simonson (2017a, 2017b, 2020) and Robin Steinberg and The Bail Fund colleagues (Steinberg et al., 2018) provide helpful histories of charitable bail organizations and funds. Notably, the ACLU established one of the first national bail funds in 1920 amidst the First Red Scare. Throughout the 1960s and 1970s, the Civil Rights Congress leveraged community donations to "make bail available to those charged with political crimes" (Steinberg et al., 2018, p. 85). Thereafter, bail funds were either primarily politically motivated to release activists and dissidents, such as Black Panther and Act Up members, or to reduce jail overcrowding, often in partnership with local governments (Steinberg et al., 2018). In 2009, the Bronx Freedom Fund emerged from Bronx Defenders' holistic public defender office founded by Robin Steinberg, who then launched The Bail Project.

Contemporary charitable bail funds vary in function and scope, from public defender office-affiliated charities to local funds designated for specific communities, including Black Lives Matter

Oklahoma, LGBTQ Freedom Fund, Repro Legal Defense Fund, Midwest Immigration Bond Fund, and National Sex Worker Bail Fund (Simonson, 2017a). The National Bail Fund Network includes over 90 community bail funds and, together with The Bail Project's National Revolving Bail Fund, provides millions of dollars for bail and support (Simonson, 2020; Steinberg et al., 2018; Woodly, 2021). Collaboratively, the National Black Mamas Bailout annually frees Black caregivers for Mother's Day, while similar Father's Day and Juneteenth initiatives exist (Carter, 2017).

Bail, immigration, and abortion funds are conceptualized as radical acts of community care, civic dissent, and political resistance (Lockwood & Griffin, 2020; Monroe, 2019; Simonson, 2016; Woodly, 2021). Simonson (2017a, 2020) and Woodly (2021) posit bail funds' increasing legitimacy as a "wider tactic of change." Throughout 2020, community bail fund activity proliferated in bailing out arrested protestors and releasing various people from jails through COVID-related bailouts (COVID Bail Out NYC, 2022; Lockwood & Griffin, 2020). Reported client court appearance rates of 96% for the Bronx Freedom Fund, 92% for The Bail Fund, and 94% for Massachusetts Bail Fund reflect overall success (Burrell, 2018).<sup>33</sup>

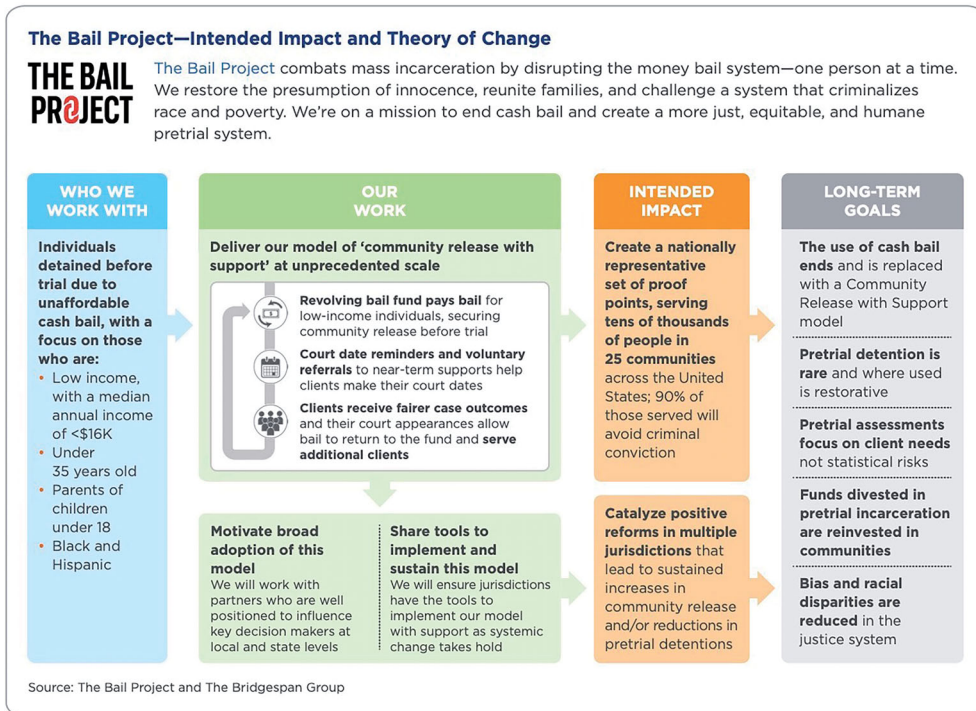
### **The Bail Project**

Founded in 2017, The Bail Project is a national nonprofit organization combining advocacy and direct service through a "community release with support" model with evidence-based, needs-focused components. The Bail Project provides bail assistance on an unprecedented scale and collaborates with community partners toward meaningful long-term reform, including a more just and equitable pretrial system grounded in the presumption of innocence for all, irrespective of race, economic status, or allegation. The Bail Project's National Revolving Bail Fund makes bail payments to courts and provides clients with free supportive services, which may include court reminders, technology and phone assistance, transportation, and connections to other services.

The Bail Project's Bail Disruptors are community-based advocates, often with lived experience of bail and pretrial systems, who support people in paying bail, returning to court, and accessing health and social services (Goldman, Diebboll, & Johnson, 2021). Bail Disruptors engage in boundary-spanning employment and activism across a wide range of institutions, networks, and systems as credible messengers and organizational catalysts, with local knowledge, influence, credibility, and experiential expertise (Sturm & Tae, 2017). The Bail Project's former Storytelling Associate, Asia Johnson, explains, "As a Bail Disruptor, when you sit with a client in the jail, there's something about that bond that happens. There's a tie—like a transference of energy—that's trust-based." (Goldman et al., 2021, p. 78). This community-release and support model aligns with the praxis of similar community-based peer workers in drawing on cultural and technical knowledge, navigating complex systems, overcoming challenges, advocating for clients, and achieving positive outcomes (Bakshi, 2021; Bedell, Wilson, White, & Morse, 2015; Delgado, 2020; Jacobs et al., 2021).

Evaluative data demonstrate that The Bail Project's National Revolving Bail Fund model yields high court return rates, fairer case outcomes, minimal public safety risks, and cost savings. Clients have returned to over 70,000 court dates for a 92% court appearance rate. Additionally, one in three clients had all cases dismissed. As of December 2021, The Bail Project operates in 32 jurisdictions across 20 states, providing over \$58 million in bail assistance to more than 22,000 people.<sup>34</sup>

As illustrated in [Figure 4](#), The Bail Project has five long-term goals to address an inequitable bail and pretrial system: (1) ending cash bail; (2) using pretrial detention as the rare, limited exception and, when used, ensuring it is restorative; (3) having pretrial assessments focus on client needs; (4) divesting funds from pretrial incarceration and reinvesting in communities; and (5) reducing bias and racial disparities in the criminal legal system. The Bail Project pursues these



**Figure 4.** The Bail Project: intended impact and long-term goals (The Bridgespan Group, 2020).

goals to foster a more just and equitable pretrial system in the long run, while concomitantly pursuing short-term work of assisting people day-to-day in avoiding incarceration due to an inability to afford bail.

The Bail Project raises support for reform and influences public perceptions of bail and pretrial justice through uniting multiple voices. Toward that end, The Bail Project has collaborated with Lizzo for Juneteenth and with Lil Nas X to leverage his platform in his 2021 “Industry Baby” music video filmed in a prison setting: “This isn’t just theoretical for me. It’s personal. I know the pain that incarceration brings to a family. And I know the disproportionate impact that cash bail has on Black Americans. ... Let’s bring people home and let’s fight for freedom and equality.” See Figure 5.

The Bail Project employs film, social media, and celebrity influencer messaging, all of which have come to prominence as contemporary elements of criminal legal reform (Abraham, 2021; Carter, 2017; Goldman et al., 2021; Smiley, 2019). Increasingly, scholarship documents popular culture as “important cultural modalit[ies] of movement,” remedying administrative failure and social inequities and capable of inspiring moral imagination regarding ethics pedagogy (Bharath, 2021; Isaac, 2008, p. 38; Jensen, 2021; Lopez-Littleton & Woodley, 2018; McCandless & Elias, 2021; Thomas & Wright, 2021).<sup>35</sup>

### Challenges facing charitable bail organizations

Despite widespread support, the recent growth and success of charitable bail organizations have garnered some opposition, especially from for-profit bail bond agencies (Highsmith, 2019; Page, Piehowski, & Soss, 2019; Scott-Hayward & Fradella, 2019; Stringer, 2018). According to the Justice Policy Institute, increases in cash bail reliance, bail amount, and pretrial detention dovetail with the formation of the private bail industry lobbying organization, American Bail Coalition, in



Figure 5. Bail X Fund: The Bail Project teams up with Lil Nas X.

BILL	STATUS	Limits posting bail by maximum monetary amount	Limits posting bail by type of offense	Limits posting bail by recipient's verified income limit	Requires certification, registration, or licensing
INDIANA HB 1376	DIED IN COMMITTEE	✓	✓	✓	✓
MINNESOTA HF 583/ SF 415	DIED IN COMMITTEE	✓	✓	✓	✓
NEW YORK SB 4901	DIED IN COMMITTEE	□	□	✓	□
NEW YORK SB 4902	DIED IN COMMITTEE	□	✓	□	□
PENNSYLVANIA HB 2046	DIED IN COMMITTEE	□	□	□	✓
TEXAS SB 21	DIED IN COMMITTEE	✓	✓	✓	□
TEXAS SB 6A	ENACTED INTO LAW	□	□	□	✓
VIRGINIA HB 2152	DIED IN COMMITTEE	✓	✓	✓	✓

Figure 6. Legislation introduced in 2021 with implications for charitable bail organizations.

1992 (CCR, 2022). As previously noted, commercial bail bond agencies profit from nonrefundable and often undisclosed fees, with limited accountability, whereas charitable bail organizations provide support at no cost (Gordon, 2021; Steinberg et al., 2018).

In 2021, seven states introduced legislation that affects charitable bail organizations (Indiana, Minnesota, New York, North Carolina, Pennsylvania, Texas, and Virginia). Figure 6 shows six states and eight proposed bills that would limit the maximum monetary amount or the offense for which bail may be posted, or for whom bail may be posted based on proof of income. Additionally, five bills listed in Figure 6 introduce novel certification, registration, or licensing requirements for charitable bail organizations.

These bills would limit the operations of charitable bail funds across four categories. For example, as proposed, Virginia Bill 2152 would limit the amount of bond that can be posted (\$2,000 or less), limit the offenses for which bond may be posted (misdemeanors only), limit for whom bond may be posted (individuals with limited financial means), and regulate and place limitations on the operations of charitable bail organizations by requiring registration as a charitable bail organization.

A Texas House committee removed “a controversial provision that would have restricted charitable groups from posting bail for defendants” before SB6 was enacted (McCullough, 2021). North Carolina Senator Danny Brit sponsored SB 550 at the request of the North Carolina Bail Agents Association, in order to increase commercial revenue opportunities and charitable bail organization information collected by courts (Fain, 2021). Overall, aspects of these bills raise concerns for charitable bail organizations and people and communities most impacted by the current bail system. Regulating eligibility for and creating barriers to bail assistance has the potential to increase pretrial detention and exacerbate inequities.

On the whole, high court appearance rates among community bail fund clients and jurisdictions limiting cash bail reliance demonstrate the vast majority of people released pretrial return to resolve cases without incident (Burrell, 2018; CCR, 2022; Grant, 2019).<sup>36</sup> Importantly, Clair and Woog (2022, p. 7) explain how grassroots efforts and new possibilities to shift power, defund, reinvest, and transform bail and pretrial justice systems are means by which to install “social institutions, such as community-based restorative justice and peacemaking programs, while investing in the robust provision of social, political, and economic resources in marginalized communities.”

### ***Administrative ethics and public values***

Bail and pretrial systems are consequential to public values, administrative responsibility, and ethical governance for people who are incarcerated, employed in carceral facilities, and living in communities to which these incarcerated people and workers return (Martin-Howard, 2022; Sears, Ahalt, Augustine, & Williams, 2020). Advancing the public interest in safety, health, and welfare rests on values including upholding the Constitution and the law, strengthening social equity, and ensuring procedural due process (Plant, 2018). Typically, public values comprise moral concepts and normative principles, which influence public action, decision making, and ultimately governance (Plant, 2018; Van der Wal et al., 2008).<sup>37</sup>

Consequently, public values inform political choices. Current bail and pretrial policies and practices exacerbate inequities and undermine rights and liberties, particularly for BIPOC. With this in mind, contemporary bail and pretrial interventions involving professional associations, directly impacted communities, and government agencies operationalize administrative power and ethics for the good of public safety, health, welfare, and democratic society (Blessett, 2018; Cooper & Menzel, 2013; Venters, 2019).

In general, various actors, interest groups, and professional standards are widely known to influence criminal legal policy. Public collaborative governance models for coordinating with non-state actors commonly exist to address civil rights and public safety concerns (Emerson et al., 2012; Milward & Provan, 2000; Sharkey, 2018). Significantly, community perspectives and embodied expertise inform cross-sectoral collaborations between nonprofit organizations and networks and philanthropic tools advancing bail and pretrial support and reform (Eikenberry, Mirabella, & Sandberg, 2019; Krieger, 2020; O’Leary, 2015).

The current coalition-based movement reflects dynamic, evolving forms of governance and social innovation prioritizing decentralized political decision-making processes and dispersal of power (Smith, 2018; van Doeveren, 2011). Diverse stakeholders—including people charged with crimes who have lived experience and their loved ones and neighbors, legal professionals involved in their defense, community-based nonprofit leaders, and client advocates—collectively catalyze immediate relief and long-term reform (Sturm & Tae, 2017).<sup>38</sup> The Bail Project (2020) innovatively exemplifies such collaboration, which continually seeks to shift policies and norms from unaffordable cash bail toward community release with support, thereby actualizing public values of upholding the Constitution and the law, strengthening social equity, and ensuring procedural due process. “Pretrial activism” embodying such collaborative “struggles to transform the field of



bail” (Page & Scott-Hayward, 2022, p. 107) reflects Clair’s (2021, p. 289) concept of *legal envisioning* as “a social process whereby criminalized people and communities imagine and build alternative futures within and beyond the current legal system.”

A legitimate administrative state, per Stivers (1990, p. 246), “requires a shared framework for the interpretation of basic values, one that must be developed jointly by bureaucrats and citizens in real-world situations, rather than assumed.” To that end, Stuntz (2013) suggests moderating penal policies through restoring local political control over public safety decisions, where neighbors balance the dual needs to be free from harm and minimize harmful effects of punishment on family and neighbors. Surely amidst carceral devolution, communities are well positioned to support, implement, and monitor administrative prescriptions, fixes, or transformation as part of enhancing public health and safety (Miller, 2014; PJI, 2020; Rosenbloom, 2007, 2013).<sup>39</sup>

Various expertise and theoretical interdisciplinarity have contributed to the emergent political salience of bail and pretrial justice (Clair, 2020; Page & Scott-Hayward, 2022; Scott-Hayward & Fradella, 2019). Likewise, public-values scholarship spans disciplinary boundaries (de Graaf & Zeger van der Wal, 2017; Nabatchi, 2018; Perry & Kraemer, 1986; Plant, 2018; Van der Wal et al., 2015). Ethical governance benefits from privileging interdisciplinary epistemic traditions, as well as stakeholder perspectives, including the experience and agency of criminalized people and communities (Bushouse, Never, & Christensen, 2016; Riccucci, 2010). Public safety and health governance constitute deep concerns for administrative responsibility and ethics as reflected in the National Academy of Public Administration’s (NAPA) 2006 report, “Public Health and Corrections: An Intergovernmental Perspective and the Need for Connectivity,” aiming to increase awareness of these complex issues among various stakeholders and develop recommendations for action, research, and a national model of interconnectivity.

### ***Social equity: Central to public safety, health, and welfare***

A public-interested policy orientation within a public-values framework, which strengthens social equity, facilitates analysis and mitigation of bail and pretrial policy controversies (Feeney & Bozeman, 2007). Social equity is a foundational public value, especially so for public safety, health, and welfare, given that everyone is to be treated with equality, fairness, and justice, and entitled to inalienable rights, freedoms, and respect regardless of differences (Gooden, 2015; Svava & Brunet, 2020).<sup>40</sup> For NAPA, social equity involves fair, just, and equitable public management, service distribution, policy formulation, and implementation (Johnson, 2012). Further, the American Society for Public Administration’s (ASPA) Code of Ethics includes values for advancing the public interest, promoting democratic participation, upholding the Constitution and law, and strengthening social equity.

In framing social equity as a “moral imperative of the field,” Guy and McCandless (2012, p. S12) ask, For whom is this program good? Social equity frameworks are inclusive of people potentially perceived as less deserving or powerful, and prompt interrogation of public safety, health, and welfare governance structures and practices toward structurally marginalized populations (Lofaro & McCue, 2020; McCandless, 2018; Schneider & Ingram, 1997). Moreover, Johnson et al. (2018, p. 617) maintain that “an intersectional lens is vital for advancing social equity because intersectionality corresponds to the complex dimensionality of social justice aims and claims.” Namely, intersecting forms of oppression, inclusive of racism, poverty, ageism, ableism, homophobia, and sexism, too, shape criminal legal system involvement and outcomes (Crenshaw, 1991; Lopez-Littleton, Blessett, & Burr, 2018; McCandless, 2018).

Yet few sites prove more vexing for public servants to advance social equity and fulfill their oath to uphold the Constitution than courts, jails, and prisons (Clair, 2020; Clair & Woog, 2022; Elias & Olejarski, 2020; Osorio & O’Leary, 2017). As Smart (2020, p. 175) notes, “the most important point about humanizing justice is related to how agents of justice use their power and



authority,” preferably to serve rather than master. As such, in running a Constitution, one “consistently strive[s] for the development of systems that ensure the equity of access and opportunity for all, despite previously constructed notions of Otherness” (Farmbry, 2009, p. 122).

Civil rights injunctions and responsible dissent, as policy change levers, reflect the constitutionalizing of pretrial administration (Dolovich, 2009; O’Leary, 2019; Rosenbloom, O’Leary, & Chanin, 2010; Schlanger, 2006). Strengthening citizen-state relations and negative constitutionalism is conducive to “a more ethically alert bureaucracy” as part of checks on government power to uphold the Constitution and the law, social equity, and procedural due process (Barber, 2018; Smart, 2020, p. 165).<sup>41</sup> Public-interested reform inclusive of employees, incarcerated people, and communities, along with prudence and structural oversight of ethical drift, are especially helpful in closed systems critical to bail and pretrial justice (Denhardt & Denhardt, 2000; Smart, 2020). Trusted sources, including Urban Institute and The Bail Project, bolster administrative ethics in such ways as providing recommendations on racial equity and criminal legal risk assessment within pretrial contexts (Freeman, Hu, & Jannetta, 2021; The Bail Project, 2022). Relatedly, over 100 civil rights, digital justice, and community-based organizations issued a statement of concern regarding substituting bail for algorithmic-based decision-making tools as part of enhancing social equity as well as accountability (LCCHR, 2018).<sup>42</sup>

Equity can be institutionalized through enhanced administrative decision-making (Blessett & Gaynor, 2017). Blessett and Gaynor (2017) discuss “choice points,” which are “decision-making opportunities that influence outcomes” (Keleher, 2014, as cited in Blessett & Gaynor, 2017, p. 277), as a framework for minimizing bias and advancing social equity among organizational leaders with discretionary power. For example, managers who administer court fines and fees can consider the many layers of formal and informal organizational policies and practices as unique choice points that may collectively burden Black communities disproportionately and contribute to racial bias (e.g., informal discretion used by White officials to write off tickets for White people they know, while not applying the same discretion to Black communities; Blessett & Gaynor, 2017). Choice points can serve as a practical framework in policy formulation, rulemaking, and outcomes to identify and address disproportionate punishment and collateral penalties and advance “fairness, right, and justice” as part of social equity (Blessett, Fudge, & Gaynor, 2017; Guy & McCandless, 2012, p. S6).

### ***Critical race theory: Transforming visions of justice***

Critical race theory (CRT) is a framework for advancing social equity in public administration (Ricucci, 2021). Situating bail and pretrial policies and practices within a CRT framework aids in assessing how and when state governance structures and practices perpetuate racial domination and exclusion, plus how to contribute toward more socially equitable transformation. Blessett and Gaynor (2021, p. 457) conceptualize CRT “as a tool for public administration to move beyond its traditional notions of neutrality, objectivity, and technical rationality into a discipline and practice that accurately contextualizes history, centers the lived experience, and values racial justice as worthy of prioritization and action.”<sup>43</sup> Markedly, public safety policies and pretrial systems have been successfully reformed through the promotion of democratic-constitutional values, which frame bail as a critical civil rights and racial justice concern (Clair & Woog, 2022; Sharkey, 2018).

In prioritizing race and racial transformation in the analysis of administrative policies and practices, CRT is an epistemological and methodological tool committed to intersectionality and anti-essentialism that is well suited for purposeful examination of power, marginalization, and taken-for-granted claims of truth and objectivity (Bell, 1995; Crenshaw, 1991; Ricucci, 2021). Bridges, Keel, and Obasogie, (2017, p. 181) emphasize CRT’s synthetic analysis, inclusive of multiple methods and disciplines, as conducive to “document[ing] the instability of legal protections and exposing the contradictions of rights discourse.”<sup>44</sup>

CRT scholars, including Kimberlé Crenshaw and Dorothy Roberts, trace the histories, legal frameworks, and consequences of the highly interrelated expansion of the carceral state alongside the welfare state's retrenchment (Bridges, 2019). Racial hostility, displeasure, resentment, and threat perception undergird policies and politics motivated by the racialization of social welfare, public health, and crime (Bridges, 2019; Crawford, 2021; Gaynor, 2018). Public policy and political choices are shaped by long-standing racialized, identity-based ideas of *deservingness, dangerousness, or deviance* (Arnold et al., 2018; Schneider & Ingram, 1997; Wacquant, 2022). For instance, limited supportive programs and infrastructure exacerbate financial and caregiving burdens for women, particularly BIPOC women, who also inordinately pay bail and premiums, cosign bonds, and assume financial and caregiving responsibilities. Hence, Page et al. (2019, p. 150) argue that "gendered care work and emotional labor are thus central to the field's logic of practice and to bail industry profits" (Jones, 2020).

Furthermore, abolitionist feminists have critiqued the carceral turn in feminist advocacy for pursuing women's rights in ways that elide and collaborate with carceral institutions that punish Black women and criminalize Black communities (Bernstein, 2012; Davis, Dent, Meiners, & Richie, 2022). Scholarship critiquing carceral feminism and carceral notions of justice continues to grow (Goodmark, 2018; Gruber, 2020). Abolition feminism, promoted by activist-scholars like Angela Davis and Ruth Wilson Gilmore, embodies radical freedom, mutual accountability, and passionate reciprocity. This paradigm is advanced by "[B]lack feminists [who] have had visions to change the structure of society in ways that would benefit not just Black women but everyone" (Kushner, 2019).

Public servants and organizations, within various communities, pursue and uphold social standards, ideals, and principles informing government and policy consensus around rights, benefits, prerogatives, and obligations (Nabatchi, 2018). Yet, CRT specifically incorporates lived experience and the relevance of people's lives into these social standards, ideals, and principles through scholarly and transformational enterprises useful to advancing public values (Bridges, 2019). For example, community-driven public safety models incorporating collective care have proven successful in engaging crime survivors and people experiencing threats to civil liberties, along with people charged with crimes who are often crime survivors themselves (Davis et al., 2022; Sakala & La Vigne, 2019; Sharkey, 2018).

Such antiracism praxis as theory-informed practice centers voices and experiences of the people most impacted, including people experiencing bail-attributable harms (Benjamin, 2019; Benjamin et al., 2019). This praxis is conducive to ethical governance and critical social equity components of promoting change along with public affairs education "preparing students to be effective change agents in nonprofit and research organizations" (Ford & Airhihenbuwa 2010; Ward, 2004, p. 160).

### **Public ethics and politics of care: Transcending punitive paradigms**

CRT not only informs our understanding of racialized inequities and punishment, but it also motivates the sort of politics necessary to pursue social equity: politics of care. Care is deeply rooted in Black collective struggle; for example, both Woodly (2021) and Moore (2018, p. 338) frame Black Radical Love as a "practice," whereby "iterations of the Black freedom movement have always been radical love and the desire for collective care." Politics of care humanizes justice amidst evolving governance and a racial justice reckoning calling for transcending the punitive paradigm and penal treatment of poverty (Smart, 2020; Woodly, 2021). In discussing hyperincarceration, Woodly et al. (2021, p. 891) maintain, "the politics of care for the contemporary era draw on rich interdisciplinary traditions and social movements to theorize and practice care as an inherently interdependent survival strategy, a foundation for political organizing, and a prefigurative politics for building a world in which all people can live and thrive."

For Woodly et al. (2021, p. 891), “care as a political theory, an ethic and a political praxis ... reorients people toward new ways of living, relating, and governing.”<sup>45</sup> Because politics of care inherently concerns relational interdependence, it is closely aligned with public ethics of care for advancing social equity (Stensöta, 2010, 2015; Woodly, 2021). Special merits of ethics of care include making “human dependency, care, and relations between people central,” both in theory and in practice (Stensöta, 2010, p. 296). Engster (2020) similarly argues for public ethics of care rather than orthodox values of Weberian technocratic domination (Feeney & Bozeman, 2007; Rosenbloom et al., 2010).

Stensöta (2015, p. 191) expands the scope of public ethics of care to bureaucratic policies not yet considered traditionally “care-oriented,” including law enforcement and correctional management, often entailing “care under coercion.” Engster (2020, p. 628) suggests care ethics, particularly within asymmetrical power contexts, facilitates “thinking about moral relations between persons in unequal states—mainly where one has more power, resources, or knowledge than the other and the other relies upon them.” In contrast to such contexts, the interdependent relationality of politics and ethics of care promote peer-based, cross-sectoral models, which mobilize diverse forms of capital, support, and understanding to aid people impacted by criminal legal systems in navigating coercive bureaucratic contexts (Sturm & Tae, 2017). Bearing that in mind, The Bail Project’s Community Release with Support model utilizes peer Bail Disruptors as part of wider community-based efforts to mitigate violence, poverty, recidivism, and despair (Goldman et al., 2021).

Disproportionate experiences of trauma, violence, poverty, and racism warrant politics and ethics of care grounded in interdependence and context sensitivity to optimally enhance public safety and citizen trust (Davis et al., 2022; Stensöta, 2015; Woodly, 2021). Trauma-informed social policy emphasizes empowering and collaborative relationships (Bowen & Murshid, 2016). Bail reform is included in the policy agenda of Movement for Black Lives (M4BL), which along with Radical Black feminist pragmatism, are “characterized by an acknowledgment of trauma and a commitment to healing, an understanding of interdependence, unapologetic Blackness, a defense of Black joy, an insistence on accountability, and an abolitionist perspective favoring restorative justice practices that deal with harm by focusing on accountability and reparation rather than punishment” (M4BL, 2020; Woodly, 2021, p. 91).<sup>46</sup>

Flexible, strengths-based interventions, engagements, and supportive services informed by ethics and politics of care can successfully replace disruptive, traumatic, and harmful pretrial system processes (Clair & Woog, 2022; PJI, 2020, 2021; Sakala & La Vigne, 2019). Anti-carceral feminists and abolitionists advocate for restorative or transformative justice, which seeks justice and accountability through circumventing traditional and punitive criminal legal processes (Bierria, Kim, & Rojas, 2011; Kaba, 2021; Kim, 2018, 2021).<sup>47</sup> Other BIPOC-led anti-carceral feminist strategies include raising awareness of the carceral state’s insidious reach, such as via family policing, dismantling jails and prisons, and imagining and creating something better in their place by and for communities (Davis et al., 2022; Kaba, 2021; Roberts, 2011, 2021).

## Conclusion

Cash bail and pretrial detention are major drivers of incarceration, about which limited public administration or ethics literature exists. The contemporary two-tier system treats two individuals charged with exactly the same crimes differently based on race, social, and economic factors. Excessive cash bail incurs risks to health, safety, financial security, and constitutional presumptions and protections. Cash bail determination processes are consequential and necessitate politics and public ethics of care in upholding the Constitution and law, strengthening social equity, and ensuring procedural due process, as key public values.

Ethical organizations and philanthropic tools, such as charitable bail organizations, collaboratively seek change that promotes and enhances the public good to reform inequitable bail and pretrial practices and policies. Collective aims include eliminating cash bail; limiting pretrial detention; returning people to their communities; strengthening social safety nets, and ensuring progress outlasts current public collaborative governance models. A more ethically alert bureaucracy is well suited to respond to disproportionate punishment and collateral penalties associated with bail and the pretrial system, which are causes and consequences of structural racism and administrative dysfunction.

## Notes

1. Sufrin (2017) explains that “mass incarceration” is widely used to reference the vast rise in incarceration. Wacquant’s term, “hyperincarceration,” clarifies that this surge at its inception, did not involve the masses but rather disproportionately targeted poor, Black men (Wacquant, 2010).
2. “The carceral state has roots that reach back to the early republic and was first consolidated during the early nineteenth century, ... [with] phenomenal expansion during the long twentieth century” (Hernández et al., 2015, p. 21).
3. The “front end” of the criminal legal system typically includes policing through sentencing; Page and Scott-Heyward’s (2022) synthetic review of bail and pretrial justice scholarship, which takes the field of bail as its focus, outlines a growing community of scholars generating important empirical findings, theoretical insights, and normative positions about bail and pretrial justice in the United States.
4. Specifically, in urban areas the national median bail amount is \$12,000, whereas the median annual income for people held on bail is \$16,000 (Liu et al., 2018).
5. Nabatchi (2018), de Graaf and ZegerVan der Waal (2017), and Plant (2018) further discuss public values in public administration and related fields.
6. “BIPOC” abbreviates Black, Indigenous, and People of Color. Where possible, we use specific racial and ethnic identifiers to provide more context and detail of experiences. Frequently, available demographic data is limited; people involved in the criminal legal system include people serving sentences in prisons and jails, awaiting trial or sentencing, and under community supervision. We try to use person-first and non-stigmatizing or pejorative language (NIJ, 2022; Tran et al., 2018).
7. Release on own recognizance enables an individual charged with a criminal offense to complete court proceedings outside of custody without any release conditions, including cash bail, solely on the promise that they will appear for all required hearings and trials.
8. Adapted from Rabuy and Kopf (2016).
9. Bail reform in the 1960s led four states, Illinois, Kentucky, Oregon, and Wisconsin, to limit the use of commercial bail, but still allow cash bail and other financial conditions of release (Gordon, 2021; Smith, 2018).
10. These agreements are in the form of surety bonds, which is a contract in which a bondsperson agrees to be liable for the full bail amount if the defendant fails to appear in court. If the defendant fails to appear in court, bond agencies may choose to utilize a bail recovery agent, sometimes known as a bounty hunter. Two types of bonds exist: (1) a secured bond is the money paid by a defendant or a property levied to secure the defendant’s release, and (2) an unsecured bond is a document stating that a particular sum of money will be paid if the defendant breaks the defendant’s bond conditions (CCR, 2022).
11. Jail space is sometimes leased to federal and state agencies.
12. Carolyn Sufrin (2017) proposes that jail is not simply a disciplinary institution that serves to punish. Rather, when understood in the context of the poverty, addiction, violence, and racial oppression characterizing some women’s lives and their reproduction, jail can become a safety net for women on the margins of society.
13. These annual jail population counts predate the COVID-19 pandemic. Sawyer (2020; Sawyer & Wagner, 2022) explains the sudden decrease in jail populations early in the pandemic.
14. Private bail bond companies agree to be responsible for the bail obligation in exchange for a nonrefundable fee, a bond premium, which is generally 10–15% of the bail amount. If the client for whom they posted bail does not make a required court appearance, the bail company can recoup the full amount of the bail regardless of whether the court orders bail to be forfeited (Onyekwere, 2021).
15. An identical offense associated with bail set at \$10,000 in Nebraska rural counties and only \$5,000 in Nebraska urban counties (ACLU of Nebraska, 2016).

16. An increase in future criminal legal involvement is more likely due to consequent contact with the system, including pretrial and post-incarceration monitoring and supervision, but also because of the overall destabilizing effects of being detained and incarcerated with collateral consequences.
17. Robert Wood Johnson Foundation (RWJF) tracks incarceration rates as part of assessing progress toward building a culture of health in the United States. RWJF supported a 2020 special issue of the *American Journal of Public Health* on incarceration and health (Brinkley-Rubinstein & Cloud, 2020; Miller & Yeung, 2020).
18. Parental incarceration increases risk of infant mortality by 47–49% and childhood homelessness by 94–99% (Wakefield & Wildeman, 2018).
19. *Estelle v. Gamble* established the constitutional mandate that institutions of incarceration address “serious medical needs” (Dolovich, 2009). Yet no mandatory standards exist regarding what services have to be provided or what conditions count as serious medical needs.
20. The risks of drug-related death and homicide in people formerly incarcerated in NYC jails were two times higher than those of city residents who had not been incarcerated in jails during the six-week post-release study period (Alex et al., 2017). These relative risks were greatly elevated during the first two weeks after release (Lim et al., 2012). Women are at increased risk of violence, mental health conditions, substance use, trauma, and STIs, including HIV (Meyer, 2013, 2014).
21. For instance, Simes and Jahn (2022) find that expanded Medicaid insurance correlates with reduced police arrests, particularly drug-related arrests.
22. The “Black Codes of Bail,” per the National Bail Out collective (2022), are practices and policies extending upon the restrictive nineteenth-century Black Codes.
23. Certain health conditions and common prescription medications, including psychotropics, interfere with the body’s capacity to regulate temperature (Westaway et al., 2015). This is a concern given the high number of comorbid physical and mental health conditions prevalent among jail populations; In 2020, approximately 45–52% of people detained in New York City jails on any given day were flagged for a potential mental health problem or need for treatment (Rempel, 2020).
24. Veteran treatment courts divert veterans with mental health challenges from incarceration and provide multidisciplinary, holistic support, often including other veterans as peer mentors (Potter-Miller, 2018).
25. The officer, Brian Encinia, who arrested Sandra Bland was later charged with perjury for falsely accusing her of assaulting a public servant and filing a false charge against Bland. Although the perjury charge was dropped after indictment, Encinia was fired and agreed to surrender his police license and never seek another job in law enforcement (Carter, 2017).
26. “Jail-attributable deaths” represent 10–20% of all annual deaths, and 50% or more of all deaths in some years at Rikers jails (Venters, 2019, p. 17); Ten people have died while in the custody of New York City jails between January and July 2022.
27. Under the Equal Protection Clause, cash bail systems are unconstitutional because they impermissibly discriminate against indigent persons and fail under heightened scrutiny. Simonson (2017a, p. 590) describes a “constitutional jurisprudence that has traditionally held that money bail systems do not violate the Excessive Bail or the Due Process Clauses, and has only just begun to consider the ramifications of modern money bail for Equal Protection.”
28. The US criminal justice system is founded on a presumption of innocence, where “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *U.S. v. Salerno*, 481 U.S. 739, 755 (1987); The international community has interpreted the US bail system as violating international human rights law per the International Covenant on Civil and Political Rights and the United Nations Center for Human Rights (Feiler, 2022).
29. No Money Bail Act of 2021, H.R. 1249, 117th Cong. (1st Sess. 2021).
30. The PSA developed by Arnold Ventures does not use questionnaires and relies on statistical variables, including age at current arrest, current offense, prior criminal history, prior failure to appear, and prior convictions (CCR, 2022). The tool was developed by compiling case data from approximately 750,000 cases from 300 jurisdictions across the nation. The PSA is free to any jurisdiction and evaluated by independent researchers “to maximize its accuracy and minimize its impact on racial disparities” (APPR, 2022).
31. MDRC is a nonprofit, nonpartisan education and social policy research organization based in New York City and Oakland, CA.
32. Simonson (2017a) likens community bail funds’ capacity for “bail nullification” to that of jury nullification, which essentially nullifies a judge’s determination that a certain amount of personal or family money was necessary to ensure public safety and prevent flight.
33. The Bronx Freedom Fund served people who would either be incarcerated on Rikers Island, which was over capacity, or a floating jail barge in the Hudson River (Steinberg et al., 2018).
34. Including partnership sites.

35. Janelle Monáe, Common, Alicia Keys, Chloe x Halle, Tierra Whack, Beyoncé, Jay-Z, T. I., Meek Mill, Malcolm Jenkins, and Anquan Boldin, plus more artists and athletes, have participated in various efforts directly related to criminal legal system reform (Abraham, 2021; Brand & Pishko, 2018; Carter, 2017; Selby, 2019; Smiley, 2019); A short documentary film features Ramel, a client of The Bail Project, whose charges were ultimately dropped: <https://vimeo.com/groups/787879/videos/244729509> (Friedman & Funk, 2017). Founder Robin Steinberg is featured in TED talks on the injustice of bail and how the United States can break its addiction to incarceration: [www.ted.com/speakers/robin\\_steinberg](http://www.ted.com/speakers/robin_steinberg). “A collection of videos featuring stories and voices from The Bail Project”: <https://bailproject.org/video/>.
36. Preliminary analysis reveals bail reform did not significantly contribute to recent crime and violence trends, whereas the role of guns, socioeconomic instability, and community life disruptions are likely explanatory factors (Grawert & Kim, 2022; Herring, 2020; Pfaff, 2022; Turner, 2022).
37. Rosenbloom (2005, p. 248) notes, “Justice, representation, political power, and the public interest are perhaps equally elusive” as social equity, which despite related debates regarding its conceptual clarity and analytic purchase, stands firm as a valuable pillar of public administration. Similar concerns have been raised regarding the concept of public values and many other principles or concepts related to public administration, ethics, and management (de Graaf & Zeger van der Wal, 2017; Nabatchi, 2018; Plant, 2018).
38. Sturm and Tae (2017) document the transformative role of the formerly incarcerated leading with conviction in reducing mass incarceration through transforming organizations and networks by (1) mobilizing varied forms of knowledge to promote change, (2) developing collaborations in strategic locations, (3) cultivating new organizational catalysts, and (4) maintaining pressure and support for action.
39. Miller (2014, p. 308) defines “carceral devolution” as “a set of interrelated policies that transfer carceral authority from federal and state-based institutions to local ones.”
40. An American Public Health Association (APHA) policy statement urges “advancing public health opportunities to address incarceration.” Evidence-based strategies include: (1) investing in communities and alternatives; (2) investing in transformative justice; (3) decarceration, including ending cash bail, with no conditions of electronic monitoring or use of risk assessments; and (4) investing in community-based mental health care.
41. Barber’s (2010, 2018) scholarship focusing on the “constitutional state” and its six principles of sovereignty, separation of powers, rule of law, subsidiarity, democracy, and civil society, interrogates legal and constitutional pluralism, while maintaining constitutionalism necessitates structuring the state so as to advance people’s well-being.
42. Significantly, Benjamin (2019) underscores how BIPOC are creating abolition and digital justice tools that mitigate legal system injustices enacted along the “carceral continuum.” *The New Jim Code*, as conceptualized by Benjamin to include risk assessment tools and electronic monitoring, is leveraged for the “management, control and ‘correction’ of the poor and racialized people” (Benjamin et al., 2019, p. 2, 4).
43. Blessett and Gaynor (2021) organized a special Public Integrity symposium examining CRT across public and nonprofit spaces to better understand the effects of denying race and racism within the spaces they govern.
44. For instance, Kimberlé Crenshaw initiated the #SayHerName campaign to call attention to and build a gender-inclusive agenda for addressing anti-Black state violence (Crenshaw et al., 2015). Janelle Monáe’s song, “Say Her Name,” was released in conjunction with the African American Policy Forum and the #SayHerName mothers’ network. “This work is too important to do alone and can only be sustained through our collective voices” (Abraham, 2001).
45. Nordic cultural models prioritizing health, safety, and welfare promotion through rehabilitation and reconciliation have been adapted in U.S. correctional contexts as part of efforts to “plac[e] health and well-being at the center” and eliminat[e] “dehumanizing practices and conditions of confinement” (Ahalt et al., 2020, p. S29).
46. The activist hashtag #BlackLivesMatter transitioned into an offline movement during the summer of 2020. Shortly thereafter the Movement for Black Lives (M4BL) evolved as the “name of a coordinating organization that helps to harmonize the autonomous efforts of individuals, groups, and organizations who take their mission to be defending Black lives from systematic oppression, domination, and premature death” (M4BL, 2020; Woodly, 2021, p. 18).
47. Gilmore (2022), Roberts (2021), Benjamin (2019), and Kaba (2021), among others, underscore how abolition is about not only dismantling oppressive systems, but building and creating something new in their place.



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