

Safe & Just Michigan

Written Statement of
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On "Pay to Stay"

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Thank you for the opportunity to present public testimony today here in beautiful Traverse City.

Safe & Just Michigan is a criminal justice policy organization that works to reduce the harm caused by both crime and unnecessary incarceration. We advance evidence-based reforms that can improve public safety and eliminate unnecessary and wasteful corrections spending. We hold in common the certainty that we can build both a safer and more just Michigan. I am a member of the policy team at SJM.

I am here today to discuss what has been called “pay to stay” fees in our county jails here in Michigan. In 1985, Macomb County, Michigan, became the first jail in the country to charge people for their time detained.¹ I myself was once detained the Macomb County Jail and ended up paying over \$1,000 in fees for the privilege of spending a little over a month in pretrial and post-trial incarceration in a jail where the kitchen had been closed for black mold.²

Despite the rent, bad food and dangerous environment,³ I was unquestionably lucky compared to the average person detained at the Macomb Jail or throughout our state. While I would end up losing my job over being arrested, I had the resources to fall back on and a supportive and economically stable family to help me when all else failed. These supports are rarely in place for people in our jails. Data from the 2017 Survey of Household Economics and Decision-making suggests that four in 10 households would have to borrow money, sell assets, or be unable to pay if faced with a \$400 emergency expense,⁴ but for most people detained pretrial, economic need is even more pronounced.⁵

Across our state, county jails charge the people they detain a daily rate. The Grand Traverse County Jail, for instance, charges a \$12 booking fee, \$40 for the first day of detention and \$20

¹ Jamie Thomas and Matthew Hayes, “Limiting “Pay-to-Stay” Housing Fees for Prisoners Without Work Opportunities, Roosevelt Institute, George Mason University, 2019 https://rooseveltinstitute.org/wp-content/uploads/2019/05/RN_Online-Ideas-Pay-to-Stay.pdf

² Macomb Daily, “Inmates Brown Bag It” https://www.macombdaily.com/inmates-brown-bag-it/article_88af383d-55aa-5bcd-bc0a-20cd9f7248b9.html

³ WXYZ “19 Inmates Have Died In Macomb Jail Since 2012: <https://www.wxyz.com/news/local-news/investigations/19-inmates-have-died-in-macomb-co-jail-since-2012-sheriff-says-we-do-our-best->

⁴ Survey of Household Economics and Decisionmaking (Federal Reserve System 2018) <https://www.federalreserve.gov/consumerscommunities/shed.htm>

⁵ The median pre-arrest income of inmates held on bail is about \$16,000 a year, in contrast to a median annual income of \$33,000 for their non-incarcerated counterparts. The annual income calculation relies on data from the Survey of Inmates in Local Jails and includes income from welfare, other public assistance, and illegal sources. The study focuses on inmates ages 23–39 (the 25th and 75th percentile of age for incarcerated people). Values are adjusted to 2018 dollars using the CPI-U-RS. https://www.hamiltonproject.org/assets/files/BailFineReform_EA_121818_6PM.pdf

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for every subsequent day detained.⁶ Other listed fees include, but are not limited to, medical (costs, expenses?), ID bands, and intake kits.⁷

To place this in a more easily understood context, if someone were detained for one year awaiting trial in Grand Traverse County, the cost would be approximately \$7,332, and if someone were detained pretrial for a full year at the Michigan statutory maximum rate of \$60 a day, they would be charged approximately \$21,900.⁸ Obviously, the majority of folks do not spend a full year in jail, but even the debt for small stays are not insignificant — especially not for people experiencing poverty. I suspect that many of us here in this room here today would struggle to bear the cost of even a few weeks in jail combined with the suspension of our earnings from employment.

We say that we believe that nobody should accrue comparatively greater punishment simply because they are poor, but under a “pay to stay” scheme, the people incurring the most debt are also those least able to procure release through bail.⁹ By moving the costs of pretrial incarceration from the general public onto the people detained pretrial, we create a cascade of poor outcomes.¹⁰ Saddling people with criminal justice debt often creates a long-term struggle between paying the county or taking care of their families with predictable intergenerational impacts.¹¹ Too often, criminal justice debt can never become fully retired and it becomes just another marker for ongoing criminal justice involvement and just another way in which the criminal justice system never leaves the lives of the people it impacts.¹²

Contrary to claims that these fees are critical, way too often debts remain largely uncollected while the debt burden remains and often complicates successful re-entry.¹³ In many cases, debt

⁶ <https://www.grandtraverse.org/2129/Jail-Fees>

⁷ See note 6

⁸ This amount was arrived at by multiplying the different per diem amounts by 365 days

⁹ PPI 2015 “Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned”
<https://www.prisonpolicy.org/reports/income.html>

¹⁰ See Alexes Harris et al., Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States, 155 Am. J. of Sociology 1753, 1777 (2010)

¹¹ Ella Baker Center, “Who Pays the True Cost of Incarceration on Families”
<https://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf>

¹² See Harris et al note 10

¹³ See Harris et al note 10

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makes recidivism more likely which becomes even more of a burden on taxpayers.¹⁴ This becomes the worst of both worlds, with facilities not collecting fees and impacted people never graduating from their debt burdens. Some counties have even found the administrative costs to be greater than what they collected in fees.¹⁵

Safe & Just Michigan recommends two easy ways to solve these problems: First, detain many fewer people by increasing our reliance on alternatives to incarceration and looking at incarceration as a last resort rather than the first response to crime. Second, stop charging per-diem fees for people incarcerated or detained in our county jails. This decision is appropriately handled at the state level. Fees were enabled by the Prisoner Reimbursement to the County Act¹⁶ and can also be fixed through amending or repealing that legislation. At the absolute least, the act should be amended to add an exception for indigency using a rule similar to that created by the Michigan Supreme Court on May 25, 2016, to prevent detention for the lack of payment for fees.¹⁷

Some will suggest that these fees are a necessary part of punishment or deterrence but I have seen no evidence supporting this as effective and certainly, we can find better and less counterproductive ways to accomplish these goals. The public makes the decision to suspend peoples liberty prior to trial and it is in the best interest of the public to bear the costs of those decisions.

Thank you for your time and consideration.

¹⁴ C.T. Lowenkamp, M. VanNostrand, and A. Holsinger, The Hidden Costs of Pretrial Detention, The Laura and John Arnold Foundation, November 2013

https://craftmediabucket.s3.amazonaws.com/uploads/PDFs/LJAF_Report_hidden-costs_FNL.pdf

¹⁵ Lauren-Brooke Eisen “Charging Inmates Perpetuates Mass Incarceration”

https://www.brennancenter.org/sites/default/files/blog/Charging_Inmates_Mass_Incarceration.pdf

¹⁶

[http://www.legislature.mi.gov/\(S\(ojxp1pvp4qo1s2pcej3zvvta\)\)/mileg.aspx?page=getObject&objectName=mcl-801-83](http://www.legislature.mi.gov/(S(ojxp1pvp4qo1s2pcej3zvvta))/mileg.aspx?page=getObject&objectName=mcl-801-83)

¹⁷ https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/court-rules-admin-matters/Court%20Rules/2015-12_2016-05-25_formatted%20order_various%20MCRs-ability%20to%20pay.pdf