

Safe & Just Michigan

Testimony of Safe & Just Michigan in Support of H.B. 4655, 4656 & 4658-4661

*House Criminal Justice Committee, November 12, 2024; 9:00am
Room 519, House Office Building; Lansing, MI 48933*

Good morning. My name is John Cooper. I am the Executive Director of Safe & Just Michigan, a non-partisan criminal justice policy and research organization based in Lansing.

Safe & Just Michigan supports the pretrial reform package (H.B. 4655, 4656 & 4658-4661), which will limit the use of cash bail to detain people pretrial for low-level, non-violent charges due to an inability to pay. This change will make the bail system fairer, reduce its costs to individuals and society, and is likely to improve public safety as well. It should be a priority during this lame duck period, and we thank the committee for scheduling today's hearing.

Background

In Michigan, defendants have a constitutional right to pretrial release by paying bail for most criminal offenses.¹ If a person is unable to pay the full amount, they can either pay a 10% nonrefundable fee to a bail bonds company to post bail for them, or remain in jail until they plead guilty or stand trial.

The Joint Task Force on Jails and Pretrial Incarceration found that historically about 50% of Michigan's jail population statewide is pretrial, and that most of the pretrial population is held due to an inability to pay bail.² That means roughly 8,000 people on any given day and tens of thousands of Michiganders annually are detained in jail pretrial because they are poor, not because they are dangerous.³

The vast majority of criminal cases in Michigan are neither violent nor serious. Half of all criminal cases are traffic offenses, and hundreds of thousands more are non-serious misdemeanors. Yet all such cases are subject to bail and routinely result in the pretrial detention of poor and working class Michiganders.

These low-level, nonviolent cases are the focus of the pending bill package, which is based on the recommendations of the Joint Task Force on Jails and Pretrial Incarceration nearly 5 years ago. Since that time, this package has been refined with input from stakeholders, including the Prosecuting Attorneys Association of Michigan (PAAM).

With 12 session days remaining in the 2023-2024 Legislature, we ask the committee to move these bills forward with the speed and urgency that pretrial reform deserves. Tens of thousands of our neighbors are impacted by the pretrial system every year; we need to act.

¹ <https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-ARTICLE-I-15>. The Michigan Constitution authorizes preventative detention

² <https://www.courts.michigan.gov/48e562/siteassets/committees.-boards-special-initiatives/jails/jails-task-force-final-report-and-recommendations.pdf> at 7.

³ *Id.*

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Key Points

1. Cash Bail is Ineffective

Bail is commonly justified as (1) an incentive to return to court for trial, and (2) a system to protect the public through pretrial detention of people who pose a risk to public safety. However, research has shown that, in fact, a cash bail system does not materially or consistently advance either goal.

First, research shows that cash bail systems do not have better appearance rates than systems using non-financial conditions of release, and that there is “no evidence that money bail increases the probability of appearance.”⁴

Second, research suggests there is “no evidence” connecting pretrial reform to crime rates,⁵ and bail by definition does not protect the public from dangerous people *with* the means to pay, which often leads to tragic consequences.⁶

Simply put, cash bail does not do what it claims.

2. Cash Bail Harms Poor and Working People

Not only is cash bail ineffective, it is harmful. Pretrial detention is a harsh policy that can have devastating impacts on a person’s life even if it lasts for a few days. These impacts range from losing one’s job while in jail, to losing one’s housing, to losing custody of one’s children, and more.

Those looking to avoid these consequences are not spared, as the bond money can be kept by the court to offset a person’s fines and fees, and the 10% down payment is a nonrefundable fee collected by the bail bonds company. In a country where about half of families do not have \$500 in their savings accounts,⁷ the 10% fee alone can be financially crippling, yet bail is widely used even for low-level, non-violent charges. For these cases especially, the costs of cash bail far outweigh the benefits.

Eliminating the use of cash bail for low-level, non-violent charges will prevent negative outcomes in cases with the weakest public safety justification while leaving the current system in

⁴ Gupta, Hansman, & Frenchman, The Heavy Costs of High Bail: Evidence from Judge Randomization, 45 J Legal Stud 471, 475 (2016), available at www.law.nyu.edu/sites/default/files/upload_documents/Bail%20Draft-NYU.pdf; Jones, Unsecured Bonds: The As Effective and Most Efficient Pretrial Release Option, Pretrial Justice Institute (2013), p 11, available at <https://perma.cc/CEK4-WY97> (concluding that “unsecured bonds offer decisionmakers the same likelihood of court appearance as do secured bonds”).

⁵ <https://www.brennancenter.org/our-work/analysis-opinion/no-evidence-connecting-bail-reform-crime-rates>

⁶ <https://www.wzzm13.com/article/news/local/man-out-on-bond-allegedly-shot-mother-dead-left-her-2-sons-injured-grand-rapids/69-51e6a5d2-15e1-444f-b6da-06ea840c4961>

⁷ <https://www.cnbc.com/2024/01/24/how-much-money-americans-have-in-savings.html#:~:text=Nearly%20half%20of%20Americans%20have,adults%20conducted%20in%20November%202023.>

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place for more serious charges. This cautious, incremental approach to reform is the product of several years of discussions with stakeholders, and is intended to accommodate concerns about more significant changes.

3. Reform is Likely to Improve Public Safety, Not Hurt It

Bail's relationship to crime has long been debated, but research suggests there is "no evidence" connecting pretrial reform to crime rates.⁸ And experience shows that bail reform did not result in increased crime in any of the places that have limited the use of cash bail in recent years - including New Jersey, New Mexico, and Kentucky.⁹ The early returns on Illinois, which eliminated cash bail last year, appear to be positive as well.¹⁰ Further, there is a wealth of research finding that being detained pretrial makes a person *more likely* to commit a crime.¹¹

This makes sense: as noted above, pretrial incarceration can have significant destabilizing impacts on a person's life that increase risk factors for future involvement in the justice system - including job loss, housing instability, substance use disorder, mental illness, and the like. Avoiding these outcomes promotes public safety, and in the aggregate could meaningfully *improve* public safety if this package of bills passes.

Simply put, the public safety case against pretrial reform is not based in fact - the opposite is, and there are good reasons why.

4. The System Also Negatively Impacts Employers, Landlords, and Local Government

The current system also negatively impacts a range of stakeholders outside of the defendant and their loved ones - including employers, landlords, and local government agencies. Employers experience unexcused absences, increased turnover, and increased costs from both; landlords likewise see unpaid rent and unexpected tenant turnover, and increased costs from both.

The impact on local government is even greater. To begin, approximately half of all local jail beds in Michigan are pretrial detainees, and this has been the case for years. This has not only burdened local budgets and sheriffs departments (county sheriffs run the jails) year-over-year, it

⁸ <https://www.brennancenter.org/our-work/analysis-opinion/no-evidence-connecting-bail-reform-crime-rates>

⁹ <https://www.prisonpolicy.org/blog/2023/07/06/bail-reform/>

¹⁰ <https://www.cbsnews.com/chicago/news/cash-bail-illinois-one-year-later/>

¹¹ Lowenkamp, VanNostrand & Holsinger, *The Hidden Costs of Pretrial Detention*, Laura & John Arnold Foundation (2013), pp 19–20, available at <https://perma.cc/TCY7-5WCR> ("Defendants detained pretrial were 1.3 times more likely to recidivate compared to defendants who were released at some point pending trial."). See also Dobbie, Goldin & Yang, *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108 Am Econ Rev 201, 235 (2018), available at <https://perma.cc/V4JY-83CW> (finding that pre-trial detention continues to cause reduced rates of employment and increased recidivism three to four years after the arrest in question) and Heaton, Mayson & Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan L Rev 711, 736, 747 (2016), available at <https://www.law.upenn.edu/live/files/6467-harriscountybailstanford> (concluding that data "suggest that pretrial detention has a greater criminogenic than deterrent effect").

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has also factored into new jail construction in places like Wayne County, where the new justice center cost \$670 million.¹² Other units of local government, such as child protective services, also have workloads impacted by pretrial detention.

These costs are not typically part of a policy debate about cash bail, but they are real and tilt the cost-benefit test even further against the use of cash bail - especially in low-level, non-violent cases.

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In conclusion, the costs of a cash bail system are not always easy to see, but they are high and far outweigh the benefits - especially in low-level, non-violent cases where incarceration may not even be part of the punishment (it's often a fine and/or probation).

Consistent with this, the pending bill package would eliminate cash bail in many low-level, non-violent cases while leaving the existing system in place for more serious or violent cases. In doing so, it recognizes that pretrial detention should be reserved for people who pose a demonstrable threat to the public rather than those who are simply unable to pay, while acknowledging concerns about including serious and violent cases in the initial round of bills.

We urge you to act quickly on these bills given the limited time remaining in this session.

Thank you.

Respectfully submitted,

John S. Cooper /s/

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¹²<https://michiganchronicle.com/wayne-county-opens-its-new-criminal-justice-center-with-praise-from-local-leaders/#:~:text=Wayne%20County%20ushered%20in%20a,%24670%20million%20criminal%20justice%20center.>