



# BIASED

# BAIL

Bail systems across the U.S. are coming under fire for being unfair and unnecessarily costly, particularly for poor defendants and people of color. The following account of one individual's experiences with cash bail reveals some of its impact.  
By Elwin Green

Mass incarceration has gained increasing public attention in recent years, with the fact that the U.S. incarcerates more of its citizens than any other nation on earth becoming a common talking point. In a report issued in March of this year, the Prison Policy Initiative revealed that America incarcerates 698 people per 100,000 residents, for a current total of 2.3 million.

What is less commonly noted is how many of those people are held in the nation's 3,000-plus local jails, rather than in state or federal prisons. The Prison Policy report puts that number at 612,000. Of that group, 462,000, or 75%, are legally innocent.

These individuals have not been found guilty in a trial. They are being held in "pretrial detention," awaiting their trial. They are not locked away for committing a crime. They are locked away for being unable to pay bail—and risk losing jobs, homes and even long-term freedom, regardless of innocence or guilt.

African Americans are disproportionately represented among the jail population.

Terrell Thomas' first experience with the bail system was during his freshman year at Geneva College.

It was fall of 2002, and then—18-year-old Terrell Thomas was on his way home to Pittsburgh with two of his teammates from Geneva's football team when their vehicle was pulled over and searched. The police officer found marijuana in the car, and the three young men were arrested.

"They took everybody to jail, but those two guys were released on their own recognizance, and I was released on cash bail," recalled Mr. Thomas, now 35. "I had never been convicted of any crime in my life. There was no good reason why I shouldn't have [been released on] my own recognizance."

The difference in treatment may have been related to the fact that one of the other two young men was white and the second Hispanic. Mr. Thomas is black.

Today, Mr. Thomas heads his own youth development nonprofit organization, The Isaiah Project, and serves as a senior field organizer with the American Civil Liberties Union, which released a report in October on the use of cash bail in Allegheny County.

In a review of two five-month periods—February through June of 2018 and the same time frame in 2019—the ACLU found that cash bail was used in 28% of cases in 2019, down from 36% a year earlier. But black defendants in the months reviewed for 2019 were assigned monetary bail at a rate 12.5% higher than white defendants; in 2018, the rate for black defendants was 17.1% higher. The report also noted that although black people make up just over 13% of Allegheny County's population, they make up 60% of the jail population.

The disparity echoes findings elsewhere in the country. In a 2018 paper, "Racial Bias in Bail Decisions," researchers David Arnold and Will Dobbie, both of Princeton University, and Crystal S. Yang of Harvard Law School reported conclusions drawn from a study of bail decisions made by judges in Miami and Philadelphia. They found that both white and black judges demonstrated bias against black defendants, a bias that was not demonstrated against either whites or Hispanics.

The results, they wrote, were "driven by bail judges relying on inaccurate stereotypes that exaggerate the relative danger of releasing black defendants."

In Mr. Thomas' 2002 case, bail was set for him at \$1,500. That is not a huge sum, but it is more than many Americans have available for an emergency. In its 2016 survey of consumer finances, the Federal Reserve learned that nearly half of Americans—47%—would need to either sell something or borrow money to handle a \$400 emergency. As a college freshman, Thomas certainly didn't have \$1,500 handy with him.

Fortunately, his mother was able to help, but only because she had recently taken out a mortgage on her home.

"She was using the mortgage for a company that she had started," he said. "It just so happened that she had the extra cash."

When Mr. Thomas' court date came, he was encouraged to take a misdemeanor plea deal, and did. The arrangement required him to go through the county's Accelerated

Rehabilitative Disposition program, which commonly offers the promise of having one's record expunged.

"Everything was supposed to come off my record, but it did not," he said.

Plea deal aside, bail money is supposed to be returned to the payor once a defendant shows up for their court date. Mr. Thomas said that he doesn't know whether his mother, now deceased, ever received back the borrowed money she used to free him after his first arrest.

Mr. Thomas was arrested a second time after transferring to Indiana University of Pennsylvania. Again, he was with two friends on a visit to Pittsburgh.

They had just pulled into a gas station in the city's Lawrenceville neighborhood when they were approached by police officers who told them that they "looked suspicious." According to Mr. Thomas, the only thing that made them look suspicious was that they were three men in a late model SUV.

"But this time, I did have the marijuana in my pocket," Two dime bags, or grams.

He was charged with possession. Bail was set at \$1,500.

This time, his mother didn't have extra money handy. To put up his bail, she had to borrow money, and that took extra time—time that Mr. Thomas spent in the Allegheny County Jail.

"I sat in jail for 29 hours," he said.

The arrest happened on a Thursday evening. The jail time meant that Mr. Thomas, who both attended college full time and held down a full-time job, missed a day of work at an AT&T call center, where he was a supervisor, on pace to earning \$40,000 to \$50,000 a year.

When he returned to work that Saturday, he was fired for being a "no call, no show."

"I felt like an epic failure at that point, because I lost my job over something that was stupid," he said. The arrest had happened during the fall semester; he didn't get another job until the following semester, selling T-shirts for \$8.50 an hour.

After the disposition of his case, which required the payment of a fine, he tried to help his mother get her money back.

"There was an issue with the courts," he said. "They were saying they couldn't figure out how the money was paid, if it was paid through a bail bondsman or was paid directly. So, I never got the money back."

The mystery surrounding Mr. Thomas' bail money was not unusual. Katie R. Nelson, spokesperson for the Pretrial Justice Institute, said she did not know of any national data on the percentage of fees that are returned or held.

Mr. Thomas was still a student at IUP—indeed, he had advanced to the dean's list, with a double major in political science and sociology—when his third arrest happened.

He was at a friend's house, and police came in response to a noise complaint because of the volume at which they were playing music. Upon arrival, the officers smelled the marijuana that Mr. Thomas and his friends were smoking, and placed them all under arrest.

"They beat us all up, but not too bad, though. Just a couple of kicks on the ground," he said.

They were jailed overnight before he had the opportunity to bail himself out by paying "about \$500." He also paid a friend's bail.

Combine the three arrests, with bail required for each, and Mr. Thomas or his mother paid more than \$3,000 into the cash bail system. Despite that loss, and on one occasion, the loss of a job, his work with the ACLU, which includes advocacy for criminal justice reform, has helped him to see that the consequences of his youthful indiscretions were not only harsher than they needed to be, they also were symptomatic of a larger problem.

"My story clearly highlights how the criminal justice system targets and negatively impacts people of color," he said. "Our kids are not afforded the luxury of making mistakes and learning from them. Instead our children's infractions are used to perpetuate the ongoing cycle of mass incarceration."



Terrell Thomas, a senior field officer with the American Civil Liberties Union, emphasizes the need for criminal justice reform as part of a criminal justice panel discussion organized in March by Pennsylvania state Rep. Dan Miller in the Pittsburgh suburb of Mt. Lebanon.



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**Terrell Thomas**, senior field officer, American Civil Liberties Union

"The premise of innocence until proven guilty is no more or never was. Our schools are over-saturated with cops. Our communities have suffered from displacement and gentrification and have more police officers than residents. We shouldn't keep people in cages because they are poor. We should use that money to ensure our criminal legal system is fair and just for all."

Mr. Thomas also realizes that on any of those occasions, things might have been much worse.

For instance, for someone who is married or has children, pretrial detention—especially if the individual can't communicate with family—can become an unexplained disappearance that traumatizes an entire household. As far as that person's family is concerned, "you're kidnapped," he said.

For someone who is not a college student, but who bears a full roster of adult responsibilities—a job, a car payment, a mortgage—the loss of a job might mean losing a home. Homelessness itself then becomes a barrier to employment—imagine filling out a job application with no address—as well as heightening one's risk of re-arrest, for such charges as trespassing.

Most tragically, when pretrial detention stretches into days and weeks rather than hours, it can become fatal.

According to the ACLU, three-quarters of jail deaths nationwide occur among people in pretrial detention, and more than one-third of deaths occur within seven days of incarceration. People in jail who have not been convicted of their current charges have about twice the mortality rate of those who have been convicted, and the suicide rate

among pretrial detainees can be nine to 14 times higher than in the general population. Nationally, 82% of all jail suicides occur among people whose status is "unconvicted."

When someone who has been arrested is assigned cash bail—when they join the queue of those moving through that part of the justice system—"basically, you're at a risk of losing your child care, losing your employment, losing your car," Mr. Thomas said.

"And losing your life." **h**