

## **Bailing on Bail**

***By Aryna Ryan***

*April 9, 2021*

Lavette Hayes, a Chicago resident and mother of two, was jailed for 571 days—on a charge for which she was legally innocent—because she could not afford 10% of the \$250,000 bail imposed by the judge.

Ms. Hayes eventually took a plea deal—which negated her right to trial—because in the eighteen months she was incarcerated, she incurred thousands of dollars in fees and payments to the jail. She lost her housing, her job, her business, and nearly lost custody of her children.

Research shows that people who cannot afford bail are more likely to plead guilty, to be sentenced to jail time, and to receive longer sentences than people who can afford to pay. The economic reality is that many Black and Latinx defendants have fewer resources than whites, so the cash bail system disproportionately affects them, wreaking devastation on their lives. Because they are consistently less likely than white defendants to be released without financial conditions, their inability to pay bail has often resulted in egregious damage, such as that suffered by Ms. Hayes.

Being held without bail is not only injurious to finances and freedom—it can damage health and even cost lives. In Cook County, Illinois, the presence of COVID in jails over the past year led to more than 600 positive cases, resulting in seven deaths. At the end of 2020, 275,000 COVID cases and 1,700 deaths in U.S. jails and prisons were reported.

Across the globe, only the Philippines and the United States still rely on cash bail. While Liberia and Canada have some limited bail provisions, in practice, the Philippines and the U.S. are the only nations that rely on commercial bail bond companies to provide bail for their citizens.

Change is taking place, if slowly.

In November 2020, the Illinois' state legislature enacted a landmark bill which addressed racial inequality in cases such as Ms. Hayes. While the "Pretrial Fairness Act" retained bail for capital cases, violent offenses, and high flight risks, it eliminated previously set bail requirements. Illinois people of color, who are most negatively affected by the cash bail system, now have large-scale assistance to help them keep not only their freedom but their livelihoods, assets, and families.

"All it [cash bail] does is reinforce the idea that if you're poor, you're supposedly more dangerous," explained State Senator Robert Peters (D-Chicago), adding that the previous cash bail policy sat "at the intersection of race, class, and gender." Peters' statement reflects research conducted in New Jersey, Washington, D.C., and elsewhere that bail reform shows no appreciable difference in crime rates and only small increases in people

failing to show for court. Cash bail reform has been instituted in Alaska, which offers a third-party custodial option, and New Jersey, which severely limited the use of bail in 2017.

Contrary to predictions from police and certain legal circles, a report by the New Jersey courts for the years 2015-2018 showed that rates of rearrests and court appearances remained steady and the populations in the state's jails decreased by approximately 44 percent. "Concerns about a possible spike in crime and failures to appear did not materialize," according to the report.

California has also been active in bail reform, putting a referendum on the November 2020 ballot, which voters defeated. California bail reformers prevailed, however, and on March 29 of this year, they had reason to celebrate when the California Supreme Court declared, "conditioning freedom solely on whether an arrestee can afford bail is unconstitutional." The court cited the 14<sup>th</sup> amendment's provisions regarding due process and equal protection. Following Illinois' lead, cash bail will be required in capital and violent offense cases; otherwise, it will be used only when necessary to prevent the accused from flight or if strong evidence exists that the accused will harm another individual (i.e. in a domestic violence case). Judges are now required to impose *the least restrictive conditions* to ensure a defendant will appear at trial.

Clearly there is a trend toward justice in bail policy, which if adopted by other states, will enormously alleviate the negative effects of systemic racism in bail procedures. As Senator Peters concluded, "What we have right now is a lot of momentum, a lot of organizing. And we have the case to be made that after forty years of failed tough-on-crime policies, that it's time for us to go in a new direction."

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