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**Analyzing Racial and Economic Disparities in the United States' Pretrial Detention
Policies**

A Thesis Submitted in Partial
Fulfillment for Graduation with Honors Distinction and
the Degree of Bachelor of Arts

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December 2021

Signature Page

ANALYZING RACIAL AND ECONOMIC DISPARITIES IN THE UNITED STATES’
PRETRIAL DETENTION POLICIES

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Abstract

Racial injustices and economic inequalities are evident throughout the criminal justice system. These are attributed to many factors such as the pretrial and detention process. The foundation of bail and pretrial policies in colonial times began the cycle of racial and economic disparities in the justice system. To reduce these disparities, currently practiced pretrial policies must be analyzed and adjusted to combat these insecurities that develop. The purpose of this study is to suggest pretrial policies that reduce racial and economic insecurities in the criminal justice system because these negatively impact the lives of people of color in the United States.

research topic, research questions, participants, methods, results, data analysis, and conclusions.

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Table of Contents

List of Tables.....	7
Introduction.....	8
Literature Review.....	9
Pretrial process summary.....	10
Pretrial and Bail history in the United States	10
Relation to racial and economic disparities	14
Case Study.....	15
Decision-making.....	16
Financial Bail.....	17
Evidence-based decision making.....	17
Risk assessment bail policies.....	18
Bail with supervision	19
Release on Own Recognizance.....	19
Effects.....	20
Financial Bail.....	20
Non - Financial Bail.....	21
Risk Assessment tools	21
Methods/ Research Approach.....	23
Results.....	26
Conclusion	26
Limitation.....	27
References.....	29

List of Tables

Table 1: Financial Bail Policies.....	25
Table 2: Non- Financial Bail Policies.....	25

Introduction

Minorities and low-income people have been hurt by the criminal justice system throughout U.S. history. Within the last 40 years there has been a 500% increase in the prison and jail population in the United States. According to the Sentencing project, in 2016 there were approximately 2.2 million people in U.S prisons. Following the War on Drugs in the 1980s, incarceration rates for drug offenses grew dramatically from 40,900 to 452,964 in 2017 (Nellis, 2016). This report explains the history and modern-day practices of bail and pretrial policies in the United States and make the connection of how these policies negatively impact people of color and lower income populations in the justice system. It is important to resolve this issue because although there is extensive research on the negative effects of the criminal justice system on economic and racial inequalities, there is less known about the ways to counteract these effects. A solution to this problem will better the lives of people across the country and establish a more equitable and fair justice system for all.

In addition to these economic and racial insecurities that arise is the influx in the jail population and certain jail practices. The increase in jail populations has unequally impacted communities of color. In fact, according to Nellis (2016), “people of color make up 37% of the U.S. population but 67% of the prison population”. African American men are six times more likely to be incarcerated while Hispanic men are two times more likely to be incarcerated than white men. This goes to show that not only have prison populations in the United States grown exponentially however, the growth also unfairly impacts communities of color over any other race. This paper will analyze pretrial

policies to suggest the best reform strategies or actions that can be taken to minimize the economic and racial disparities created in the United States criminal justice system today.

Literature Review

Pretrial process summary

To better understand how the pretrial process works in United States, a brief overview of the process will be provided. It is important to note that often these processes can differ by jurisdiction. In the United States the criminal justice system is broken down into three main categories: pretrial, trial, and post-trial. Once the authorities become aware of a crime and find a suspect, law enforcement makes an arrest, and the individual is put into custody. (A brief description, n.d.). The time between an arrest and the case being brought to court is known as the pretrial process (Lowenkamp, 2013). In this process the suspect makes an initial appearance in front of a magistrate judge who informs the suspect of his or her charges and rights. This process includes the determination of whether the defendant should await trial in custody or not (A brief description, n.d.). For a judge to make a pretrial release decision, several different case factors are used to determine the danger and risk of the defendant on society and likelihood that they will reappear in court.

The court system uses bail and bail bonds to avoid imprisonment before trial. Bail bonds are a fixed amount of money usually accompanied with additional conditions that must be paid or completed to allow a defendant to be released from custody prior to appearing in court. There are two types of potential bail: financial, a set sum of money that will be held by the court as collateral to reasonably assure the defendant's appearance for subsequent court hearings, and non-financial (Jones, 2013).

When a defendant is brought in front of the court, the judge has four options on how to proceed. They must either release the defendant on their own until trial, impose a bond to be released before trial, impose some type of bond if conditions are broken, or lastly impose a financial only bail (Donnelly & MacDonald, 2018). Bail determination is used to predict whether the defendant, if released, will commit a criminal act that poses a danger to the community, or whether the defendant will flee the jurisdiction and fail to return to court for trial (Jones, 2013).

Pretrial and Bail history in the United States

To understand how the pretrial process developed into its modern-day use, it is helpful to understand the history behind pretrial and bail in the United States. Pretrial and bail history in the United States helps preface how this system contributes to the economic and racial disparities that are evident today. Pretrial detention and bail in the United States has a long history. In early U.S. history, the Eighth Amendment of the U.S. Constitution and the Judiciary Act of 1789 were both enacted to establish an unprejudiced bail system. The Eighth Amendment states that “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” (U.S. Const. amend. VIII). This prevents judges from inflicting excessive bail or cruel punishments on criminal defendants whose alleged crimes do not justify harsh treatment. The Judiciary Act of 1789 created the structure of the federal court system that we see today with the division of courts into district courts, circuit courts, and the Supreme Court. This act also stated that bail must be admitted to arrestees in all criminal cases unless there is a possibility of punishment by death (Stat. 73). This automatically gives all defendants accused of a non-capital crime a right to bail. However, the act also grants the magistrate

judge the right to decide whether a defendant accused of a capital crime should be granted bail at all. The Judiciary Act of 1789 allowed individuals to pursue pretrial release even for a capital crime. In fact, these bail payments were by default and not based on one's financial situation. Although these first pretrial bail laws were enacted without the influence of an individual's wealth, the Constitution of the United States does not explicitly state the right to pretrial release which developed the money bond system for bail as it is seen in modern day (Van Brunt & Bowman, 2018).

These two laws caused concern regarding how they might allow a judge to unfairly punish people based on their economic status or a reason unrelated to the facts of their case. Critics worried that these laws still led to an unjust bail system against those who were not able to afford their bail. This left the poor in jail and the rich able to be free simply because they could afford to pay bail and not because of the severity of the allegations against them. Opponents wanted an unbiased bail system, rather than a system based on one's socioeconomic status. Consequently, in 1966, the U.S. Legislature passed a law that substantially changed the bail process. This new law, called the Bail Reform Act of 1966, required courts to determine a defendant's bail solely on their flight risk, or likelihood of fleeing the country before their trial or bail hearing. The law intended to prevent defendants' financial status from influencing whether they were granted bail.

Although the Judiciary Act of 1789 (1 Stat. 73) protected defendants against abuses of judicial authority, Congress revised the Act in 1966 to grant additional power to judges to guarantee an equitable bail system. These revisions ensured that "(1) a person's financial status should not be a reason for denying pretrial release; and (2) that danger of nonappearance at trial should be the only criterion considered when bail is

assessed.” (Miller, 1970, 24). Although this law helped improve the bail system to protect the rights of defendants, it was not enough to protect the concerns of the general public. Citizens feared that the Bail Reform Act of 1966 would fail to keep dangerous and violent criminals out of their communities. Accordingly, Congress passed the Bail Reform Act of 1984 that provided a judge with a stricter set of assurances to determine a defendant’s possible bail. This new act included several revisions and additions to the Bail Reform Act of 1966 that eased the communities of their worries about the bail system and their safety from potentially dangerous defendants.

The Bail Reform Act of 1984 gave judges the authority to hold detention hearings to determine if a defendant has enough evidence against them to not only be considered a flight risk, but also a threat to the community if released on bail. This new act added many factors for a judge’s consideration on whether a defendant should be subject to pretrial bail. One factor for a judge to consider is “the nature and circumstances of the offense charged” (Adair, 2006). Another consideration is the probative value of the evidence against the defendant. This means there must be strong and credible evidence against the defendant for it to be used against them in their case. The characteristics or historic behavior of the defendant is also used to determine the status of a defendant’s detention. This ensures that a defendant’s criminal history and mental condition are considered when granting bail. Lastly, a judge must consider the defendant’s danger or risk to the community. The risk of danger is not limited to physically violent acts but can also include offenses such as drug trafficking. Overall, the Bail Reform Act of 1984 established a more precise method for judges to determine a defendant’s bail sentence fairly and safely (Schnacke, Jones, Brooker 2010). Minimal studies have evaluated the

Bail Reform of 1984, however, Scott (1989) conducted impact studies to evaluate the operation of the Act. Scott found holes in the act such as rates of detention, average detention length, failure to appear in court rates, and more. However, Scott concluded that the advantages of the Act outweigh the potential negative factors if the government works together to improve the bail decision process.

This not only made evidence a consideration in determining bail but also extended the right to bail by defining capital crimes as murder. Pennsylvania's law would eventually be used as a template for other bail provisions across the country. Although the United States Constitution does provide the right of habeas corpus and prohibits excessive bail, it does not specifically describe a right to bail and under what conditions one should receive bail (Schnacke, Jones, Brooker 2010). Similarly, when the Northwest Ordinance of 1787 passed, it asserted that "all persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption great" (Van Brunt & Bowman, 2018).

Beginning in late 1961 to 1962, bail reform policy and evaluations began by the Vera Institute of Justice. VERA instituted recommendations to New York City judges to consider how defendants can be released prior to trial if they promise to return to court. The mission of this project was to decrease the number of defendants that are in jail solely because they cannot afford bail. This project resulted in the beginning stages of pretrial release programs like NAPSA (National Association of Pretrial Services Agencies). Pretrial release has many conditions and benefits. To receive this, defendants must promise to appear at all court dates and not commit any law violations. Pretrial release also allows defendants who are not a threat to society to return to their

communities and families. After the passing of the Bail Reform Act of 1966, pretrial service programs changed from only helping defendants who could not afford their bond to having judges review all defendants to determine if they would apply for pretrial release. Pretrial service programs from then on helped defendants during the release process. For example, NAPSA (National Association of Pretrial Services), which still runs today, promotes pretrial justice and public safety by using evidence to ensure fair pretrial decision-making practices (“NAPSA” website).

Bail reform is critical to assessing the consequences of high bail bonds and those who are incarcerated. High bail bonds are a factor in the high incarceration rate of economically disadvantaged people and people of color. Donnelly & MacDonald (2018) found that not only were poorer defendants more likely to receive harsher consequences, but poor minorities who cannot afford bail could end up pleading guilty and serving longer sentences. Another notable study conducted by Arthur L. Beeley on the bail and detention practices in Cook County in 1927 found that defendants who were held in jail typically did not pose any threat to society, instead, they could not afford their bail. He found that excessive bail was progressively keeping individuals in jail. Clearly, unaffordable bail bonds keep defendants who are not necessarily a threat to be detained pretrial.

Commercial bail in the United States developed because of money bail bonds that a significant percentage of the defendant population could not afford. Under the new system, defendants either pay a bond to be released from custody or await their trial in jail. According to Schnacke et al (2010), several factors helped create this system including two commercial bondsmen, the McDonough brothers, who “began under-

writing bonds as favors to lawyers who drank in their father's bar" (7) and eventually created a business that underwrote bonds for defendants. This business paved the way for the commercial bond industry.

Starting in 1951, several U.S. Supreme Court cases assessed the issue of bail. In *Stack v. Boyle* (1951), the court decided to reduce bail amounts under the Eighth amendment prohibiting "excessive bail". These defendants provided financial history, criminal records, family history, and other information which were used to set their bail amount. This case found that these defendants received higher bail amounts than should have been for their particular crimes (Schnacke et al, 2010). This revealed that even with no evidence defendants could end up with large bails even for petty crimes.

Relation to racial and economic disparities

The disproportionate number of people of color in the jail population combined with the court's reliance on money bail has certainly led to racial and economic disparities within the justice system. Several aspects of court cases cause both disadvantages for minorities and lower income people prior to trial, during trial, and in the long run. Being detained prior to trial can pose many threats to the defendant. Several studies have found the connection between this pretrial process and racial and economic disparities in the justice system.

Case Factors

Prior to trial many factors affect whether the defendant will be incarcerated before and even after trial. Both legal case factors and the judge's and police officers' discretions affect if the defendant will be detained prior to trial. A defendant initially being detained is the beginning of a lengthy process in the criminal justice system. The detainment

process is infiltrated with inequalities that can have long term effects. For example, Demuth (2003), conducted a data analysis of the State Court Processing Statistics (SCPS) program of the Bureau of Justice Statistics on the processing of a sample of formally charged felony defendants. He discovered that Hispanics were more likely to be detained in drug cases compared to their white and black counterparts. This study revealed racial disparities in the detainment process.

In terms of legal case factors, a study conducted by Omori & Petersen (2020), studied whether racial and ethnic disparities are institutionalized by legal case factors. This study tested 84,000 people arrested in Miami-Dade County for four racial-ethnic groups (White non-Latinos, White Latinos, Black non-Latinos, and Black Latinos). The authors found that differences in criminal history, pretrial detention, and charging resulted in White non-Latino and Black disparities in pretrial detention, conviction, and prison. One half to three quarters of the inequalities between White non- Latinos and Black Latinos and non- Latinos were due to differences in case factors. Further, Donnelly & MacDonald (2018) conducted a study that researched how many of the differences in bail and pretrial detention decisions caused black and white disparities in the criminal system. In fact, about 30% of racial disparities in incarceration sentencing and time in jail are impacted by pretrial decisions. In addition, the paper found that black defendants with similar crimes to white defendants were more likely to plead guilty. Overall, it was concluded that there are unfair disparities in white-black sentencing.

Inequalities in the pretrial detention process cause a defendant's likeliness of serving prison sentences in the future to increase. When a defendant does not have the resources to pay off a bond, this can indirectly send a signal of danger or guilt to the

judge leading them to be detained. While detained, defendants lose their income and the means to support their family. Further, case preparations are much harder to get done while detained in jail (Donnelly & MacDonald 2018).

The judge's discretion in the determinations of release can indirectly lead to unfair racial and economic outcomes. Arnold et al. (2018), also tested for racial bias in bail settings by conducting a study from bail judges in Miami and Philadelphia to identify any misconduct. Using models of racial bias, the study discovered that misconduct of judges in pretrial decisions leads to racial disparities.

Decision-making

In the court system, pretrial decision-making involves bail officials such as judges, bail commissioners, or others depending on the jurisdiction, determining if a defendant should be released pretrial. Pretrial decision making is a major factor in the fate of a defendant leading up to their trial. Jones (2013) conducted a policy review of pretrial policies in different states across the country and found that criminal justice authorities like commissioners and judges have a lot of discretion when it comes to determining bail. Often, these determinations are influenced by the bond imposed, a defendant's financial history, and implicit racial biases which negatively impact the bail decision-making process.

Schlesinger (2005) analyzed data of defendants in large urban counties and found that legal characteristics of defendants impact the pretrial decision for that defendant. In addition to this, stereotypes of race and ethnicity also influence criminal processing. In fact, defendants subject to pretrial detention are four times more likely to go to prison.

Financial bail policies

Financial bail is a method of offering bail in the criminal justice system that uses monetary values to guarantee a defendant will return to court for trial. Under these policies the defendant is given a bail schedule which lists the amount they must pay to be released from custody prior to trial (Baughman, 2017). If a defendant cannot afford their set bail, they must either be detained or have the option to use a private bail bond company that pays the bail. In return the defendant must pay a fee or bond premium (typically 10-15% of the bail amount) along with secured collateral for any missed appearances (Onyekwere, 2019). The goal of this type of policy is to ensure the defendant will return to court by making them pay a financial fee. For example, in Rhode Island money bail may be imposed to secure the future attendance of the defendant in court if the defendant is accused of a serious crime or has a criminal background.

Evidence-based decision making

The justice system can also use data and research to aid in pretrial decision-making using evidence-based decision making (EBDM). This process analyzes current practices, research findings, and other strategies to better the outcomes of individuals in the system (n.a., 2017). The objective of EBDM is to provide a framework for collaborative decision-making practices in criminal justice systems. This process uses past and current research on factors related to pretrial and post-conviction processes to reduce harm in the community resulting from crime. One part of EBDM is determining the defendant's level of risk to the community if released. Therefore, one common form of EBDM is risk assessment tools to help judges and attorneys appropriately determine a defendant's risk. (Pilnik, 2017). The intended outcome of this type of policy is to aid the

judge in determining if a defendant should be released pretrial so these defendants are not unnecessarily detained.

Risk assessment bail policy

In response to the injustices in the cash bail system, criminal justice systems have begun to stray away from financial policies to implement non-financial ones. Non-financial pretrial policies refer to policies that do not put monetary conditions on a defendant but rather provide other conditions that the defendant must meet in the pretrial process. One example of this type of policy is risk assessments in which algorithmic tools are used to predict analytics of a defendant to determine the likelihood of a defendant returning for trial or their threat to public safety. Risk assessments are put in place to ensure greater transparency and accountability in the bail system. The algorithms are made by humans and imperfect data and the computer performs steps to provide a risk score. Human judgment is used in conjunction with actuarial risk assessments which rely on statistical models with no human judgment. Most of the assessment tools use a combination of court records along with a questionnaire of the criminal's history, education, and more to calculate a numerical risk score (Henry, 2019). Further, some jurisdictions such as New Jersey have gone as far as prohibiting the use of financial bail all together. In 2017 the New Jersey Criminal Justice Reform Act was passed making it increasingly difficult to detain a defendant. Under this legislation a public-safety assessment tools aid the judges in deciding a defendant's release. This assessment tool does not consider an individual's demographics such as race and socioeconomic status to determine the defendants risk score. The elimination of financial bail has given

defendants much more economic security as they can continue to make an income for them and their family (“Pretrial Justice Reform”, 2018)

Release with Supervision

One type of non-financial pretrial release is release with supervision. This type of release requires the defendant to participate in pretrial monitoring or pretrial supervision to ensure they follow the conditions of release set by the judge. Release with supervision helps increase court attendance in those who otherwise would have been less likely to appear in court. Release with supervision can include court date notification systems that text, call, or use other communication tools to remind people when and where they must arrive in court (Mintz, 2020). For example, California’s penal code provides four options for pretrial release including release with supervision and release on own recognizance. This law explains that “defendants are often under the supervision of a pretrial services agent, and the supervision is generally accompanied by other conditions such as drug and alcohol testing” (California Penal Code §1320.7(j)). This kind of release is intended to establish accountability for the defendant in the hope that they will not be involved in any other criminal or fail to appear in court. Smith and Hatton (2020) examined 8 studies to test the effectiveness of supervised pretrial. Four of eight of their studies that used release with supervision had significant results that decreased the defendant’s failure to appear in court. The limited data suggests that release with supervision has the potential to reduce FTA rates.

Release on Own Recognizance

Another form of non-financial release used by judges in the justice system is release on own recognizance (O.R or R.O.R). Those released on O.R sign an agreement

with the court promising to reappear in court without having to pay bail. This process can also include conditions provided by the judge (Barrett, n.d). California's Penal Code establishes that “a defendant released on his own recognizance must agree to appear at all times ordered by the court, comply with all reasonable conditions imposed by the court, not depart the state without leave and waive extradition if he is apprehended outside of California” (California Penal Code § 1270(a)). The goal of this form of release is for judges to give defendants some individual responsibility to the court while not having to be detained. In turn, the defendant typically has rules and regulations they must follow to receive this release.

Effects of Policies

Financial bail policies

Bail and pretrial policies are often biased against people of different socio-economic status. Financial pretrial policies rely on the idea that capital cases should all use a monetary system based on the seriousness of the crime. These presumptions discriminate against impoverished individuals who are disproportionality to people of color. According to Sawyer (2019), “Black and brown defendants are 10-25% more likely to be detained pretrial or to receive financial conditions of release.” Therefore, the increased likelihood of a person of color being detained increases their chances of going to jail.

A study by Martinez, Peterson, & Omori (2019) used data from defendants arrested in Miami-Dade County, Florida to study the relationship between pretrial decisions and case outcomes. They found that defendants of color have higher bonds than White defendants which also leads to unequal detention times in defendant of color as

well. Also, defendants with higher bonds tend to not be able to afford them and spend longer time in detention. Once detained, black and Latinx defendants are more likely to be incarcerated. This study finds that pretrial detention time has a positive relationship with likelihood of conviction and being sent to prison. On the other hand, lower income defendants may have higher likelihood of being detained but lower likelihood of being incarcerated.

Olesen et al. (2016) found that detention seemed to increase the chances that someone ends up in prison and extends the time they may serve. Therefore, even after the economic and racial inequalities in the pretrial and bail systems, these effects push further into the incarcerations. So, these racial and economic gaps are persistent throughout the entire justice process.

Non-financial bail policies

Many organizations like the American Bar Association have advocated for the removal of commercial bail bonding to reduce the disparities in the pretrial process. Dobbie, Goldin, & Yang (2018) paper tested how pretrial release affects case outcomes, future crime, and labor market outcomes. First, the study found that conviction significantly decreases when pretrial release is offered. Further, pretrial crime and neglecting to appear in court increases with pretrial release. However, future crime after the case decreases. Lastly, employment for defendants subject to pretrial release increases for those not included in criminal convictions. Overall, this paper revealed the many benefits of pretrial release for the defendant which supports the use of non-financial bail policies in the pretrial process.

Risk assessment tools

Risk assessments are an increasingly popular tool in replacement of financial bail policies. The risk assessment of a defendant must ensure that it does not discriminate based on race (Nellis, Greene, & Mauer 2008). Risk assessments are an important part of the pretrial process. Risk assessments use a defendant's criminal history and severity of the crime to determine bail. Pretrial risk assessment tools have been used to help judges in pretrial decision making (Terranova, Ward, Azari, & Slepicka, 2020). Cadigan, Johnson, & Lowenkamp (2012) tested the predictive validity of pretrial risk assessment tools. The study found that PTRAs (pretrial risk assessment) is an adequate tool in predicting a defendant's risk. However, opponents of these assessments argue that they often lead to racial discrimination because the models used for the assessment were created off racial stereotypes that influence their outcomes (Menefee, 2018). Lowder, Diaz, Grommon, & Ray (2021) also tested the impact of pretrial risk assessment on pretrial release and misconduct outcomes. The paper found that defendants who received risk assessments guided decisions were more likely to get non-financial pretrial release and had less time in pretrial detention. However, risk assessments coincided with a slightly higher rate of nonviolent convictions but not with failure to appear in court. A shorter time in pretrial detention and risk assessments were also seen as connected in a study by Marlowe, Carey, & Chadick (2020). Although these studies find evidence of risk assessment improving the pretrial process in the criminal justice system several studies have found shortcomings. Viljoen, Jonnson, Cochrane, Vargen, & Vincent (2019) and Desmarai, Zottola, Duhart Clarke, & Lowder (2021) researched the legitimacy of risk assessment. Viljoen et al. (2019) conducted a meta-analysis and risk of bias tool over several studies of convicted or accused individuals. This study found that there is low

evidence that risk assessment tools can decrease restrictive placements although they suggest more research on the impact on racial and ethnic disparities. In Desmarai's et al. (2021) reviewed multiple studies that examined validity of 6 pretrial risk assessment instruments. The authors found that risk assessment tools can be very accurate, however, more research must be done to more accurately test how risk assessment impacts inequalities on the pretrial system.

Methods/ Research Approach

In order to discover what pretrial detention policies reduce economic and racial insecurities, the chosen methodology in this study will compare the implementation and effect of several policies across the United States. Each policy will help reveal what aspects of these policies must be reformed to minimize the economic and racial disparities created in the United States criminal justice system. The proposed strategy is the best way to analyze pretrial detention policies because it examined the effects and outcomes of the policies. This revealed how policies impact defendants in the pretrial process that often contribute to economic disparities throughout the system.

The limited data on the impact of pretrial policies on specific economic and racial groups made it challenging to find a lot of research on the topic. This study was split into two sections. The first part consisted of collecting data. The data for this study was found by examining different pretrial detention policies within different states in the U.S. In this study a pretrial policy is defined as a law or piece of legislature that impacts a defendant by changing some part of the pretrial decision-making process outcome. The data came from several diverse sources. First, the Pretrial Justice Institute's (PJI) website was used to learn more about money bail and pretrial reform. Then, NCSL's "Pretrial Policy: State

Laws” provided a better idea of different states policies (particularly if they had more financial bail or non-financial bail policies). Then a general google search of states (“state name + pretrial detention policies”) with financial versus non-financial policies in place was searched. This search produced 8 policies that explicitly included financial bail or risk assessment aspects. These policies came from a variety of states. To keep track, all the policies were put into an excel document.

The second part of the study was conducted by researching typical policy evaluation criteria on google. Caputo (2014) had evaluation criteria that considered a policy’s effectiveness, efficiency, equity, liberty/freedom, political feasibility, social acceptability, administrative feasibility, and technical feasibility. This study simplified this list to the most relevant and accessible criteria for the topic including effectiveness and equity, measured by effects, and intended and unintended outcomes. The list of 8 policies was simplified to the ones that had either quantitative research and information about them or were enacted into law. This information allowed for the comparison of the actual effects and intended outcomes of the policies and how they differently impact either racial or economic populations. An excel table was used to keep track of the evaluation criteria that applied to every policy. This table summarized the changes the policy made, the effects of the study, unintended or negative effects, and the intended outcome of each policy. The effectiveness of the policy was recorded to compare the pros and cons of the policies to eventually offer best practices for policies that limit the racial or economic disparities in the United States criminal justice system.

Table 1: Financial Bail Policies

Policy Type	State (scope)	Policy Name	Description	Intended outcome	Effects	Unintended effects
Financial Bail	Georgia (statewide)	Georgia Senate Bail Refrom Bill 402	Requires authorities to consider a person's finances when setting bail	Improving fairness in misdemeanor cases	<ol style="list-style-type: none"> 1. Evaluation of the individual's ability to pay when setting bail (48.7 percent of counties studied complied) 2. Holding of an individualized bail hearing that evaluates a person's finances within 48 hours of their arrest (41.3 percent) 3. Guaranteed release within 48 hours of arrest of a misdemeanor (8.3 percent) 4. Availability of public defender when bail is set (11.9 percent) 	Not one of the counties in this study was in full compliance with the law
Financial Bail	Texas (statewide)	Texas Cash Bail Policies(S.B.A.No.A532)	<ol style="list-style-type: none"> 1. Prohibits courts from releasing a defendant on a no-cash bond if he or she were already out of jail on a no-cash bond and then arrested again 2. requires a new minimum cash bail of \$10,000 in each case for someone accused of three or more felonies 	Keep "dangerous criminals" in jail before they're convicted for public safety	n/a	n/a

Table 2: Non-financial Bail Policies

Policy Type	State (scope)	Policy Name	Description	Intended outcome	Effects	Unintended effects
Risk Assesment Bail	New York (all misdemeanor and nonviolent felony charges in state)	New York's Amended Bail Law on Pretrial Detention	Restricts the use of money bail and pretrial detention and adds additional non-monetary conditions (mandatory programming, ect.)	Minimize economic circumstancea partaking in a person being denied pretrial release	1. More than 1,600 additional cases in NYC became eligible for bail compared to original reform 2. 40% reduction in pretrial detention (April 1 to May1)	n/a
Risk Assesment Bail	New Jersey (statewide)	New Jersey Criminal Justice Refrom Law	Transformed the money bail system into a modern risk-based system	Correct monetray inequalities inherent in money bail system	<ol style="list-style-type: none"> 1. 6,000 fewer people incarcerated on Oct. 8, 2018 than on the same day in 2012 2. Only 4.6% of individuals in jail were held on bail of \$2,500 or less 3. The average time a person spent in jail pretrial dropped from 62.4 days in 2014 to 37.2 days in 2017 (40% decrease) 4. New Jersey's pretrial jail populations had declined 43.9% from the end of 2015 to the end of 2018. The rate of criminal activity stayed low (statisticly insignificant) 	Research showed that court appearance rates remained high (a slight decrease from 92.7% in 2014 to 89.4% in 2017)
Non- Financial Bail	Illinois (Cook County)	General Order 18.8 A	Requires judges to make monetary bonds required for release affordable to the individual	Ensure that individuals are not held in detention soley because they cannot afford bail	<ol style="list-style-type: none"> 1. Increased use of I-bonds (Individual recognizance bond) for which defendants are released without having to post monetary bail 2. Increased % and number of people released pretrial 	<ol style="list-style-type: none"> 1. No effect on new crime 2. 3% increase in failure to appear in court

Results

The results from the data were limited as research on the effect of the policies was also limited. The effects of the policies were found comparing the actual effect compared to the intended and unintended outcome of each policy. The intended outcome was the reason behind the policy change or what the policy was put in place to accomplish. The unintended outcomes were the outcomes of the policies that were unpredicted when it was enacted. Of the 5 of policies evaluated, 2 were regarded as financial bail policies as found in *Financial Bail Policies* (see Table 1). The financial policies offered limited results in terms of effectiveness of its intended outcomes of creating fairer cases and keeping dangerous criminals off the street. The effects of the policies can be seen in the “effects” section of *Financial Bail Policies*. On the other hand, *Non-financial Bail Policies* (see Table 2) reveals the effects of the 3 non-financial or risk assessment policies. Several of the studies revealed that using risk assessments decreased the number of detained individuals before trial therefore, decreasing jail populations. Several of these policies indicated that the use of risk assessment policies can help decrease the bail amounts for defendants. Further, in New York more cases became eligible for bail under these policies while in New Jersey the time a defendant spent in jail before trial fell drastically. Two studies found small increases in the failure to appear in court and new criminal activity which seemed insignificant overall. From the research conducted, policies that do not rely on money bail reduce detention population and limit economic insecurities for those defendants. The two major trends in the findings were the decrease in jail population and bail amounts with the introduction of non-financial policies.

Conclusion

After extensive research, to reduce the inequalities and disparities developed from the United States criminal justice system, bail reform must be addressed to limit the monetary system that unnecessarily incarcerates defendants. Of the 5 policies analyzed, this study found that the 3 non-financial/risk assessment bail policies decreased jail population and the monetary strain on the defendant. The financial bail policies presented narrow results of the policy versus the intended outcome. Overall, the use of non-financial pretrial detention practices can potentially reduce economic inequities in the criminal justice system by using non-monetary conditions on defendants.

Limitations

This study was able to find limited results on how financial bail policies affect a defendant compared to non-financial bail policies. Previous literature reveals the disproportionate impact the criminal justice system, particularly the pretrial process, has on racially and economically disadvantaged groups. In addition, past research reveals that the use of cash bail hurts defendants financially, which is even more for those who are low-income.

The major limits in this study arose from the lack of access of quantifiable data on the effects of certain policies on different socio-economic groups. Further research is needed for compiling data on how both financial and non-financial pretrial detention policies specifically affect different racial groups. Current research reveals that African Americans and Hispanics are unproportionally effected by financial bail as a whole, however there is no data on specific effects from financial and non-financial policies that

have been passed. This data can be used to find solutions to the unequal impact the pretrial process has on people of color in the United States. In addition, the long-term effects of defenders who receive non-financial pretrial detention policies should be researched to see how they are economically impacted compared to defendants who have received financial bail. There was no research on the effect of other forms of pretrial release such as R.O.R or Release with Supervision on defendants. All additional research will better reveal the effects of financial bail policies on underrepresented groups in the United States.

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