

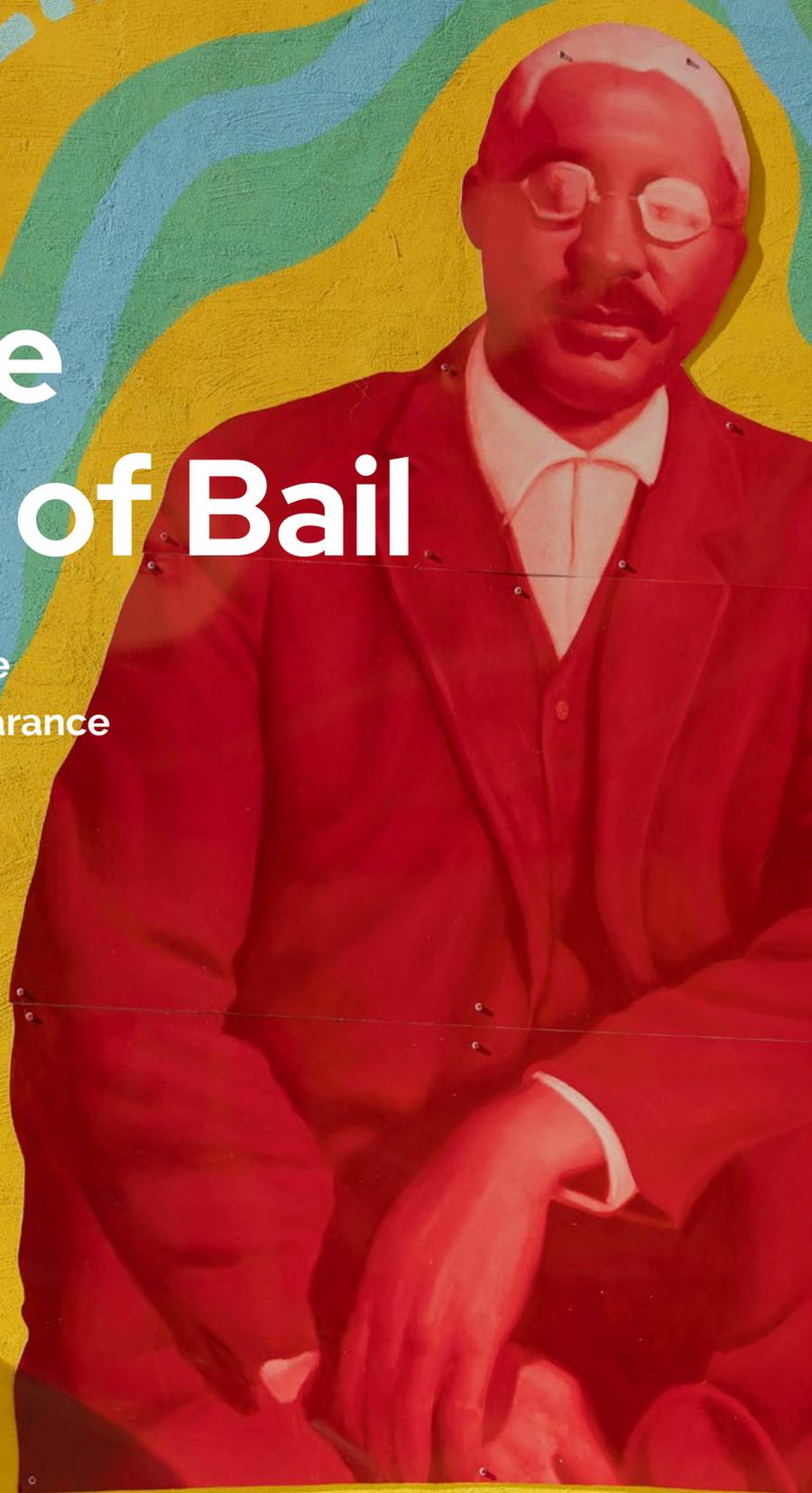
THE BAIL PROJECT

The False Promise of Bail

An Analysis of Pretrial Release Mechanisms and Court Appearance in Tulsa County, Oklahoma



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About The Bail Project

The Bail Project is a national nonprofit that provides free bail assistance and pretrial support to thousands of low-income people every year while also advancing policy change at the local, state, and national levels. Our mission: to combat mass incarceration by eliminating reliance on cash bail and demonstrating that a more humane, equitable, and effective pretrial system is possible. Through our Community Release with Support model, we provide our clients with return-to-court services including court notifications, free transportation assistance, and referrals to voluntary services. To date, these interventions have helped nearly 30,000 people across 30 jurisdictions return to court 91% of the time with none of their own money on the line, preserving the presumption of innocence and demonstrating the efficacy of needs-based pretrial support. Learn more about The Bail Project at bailproject.org.

Acknowledgments

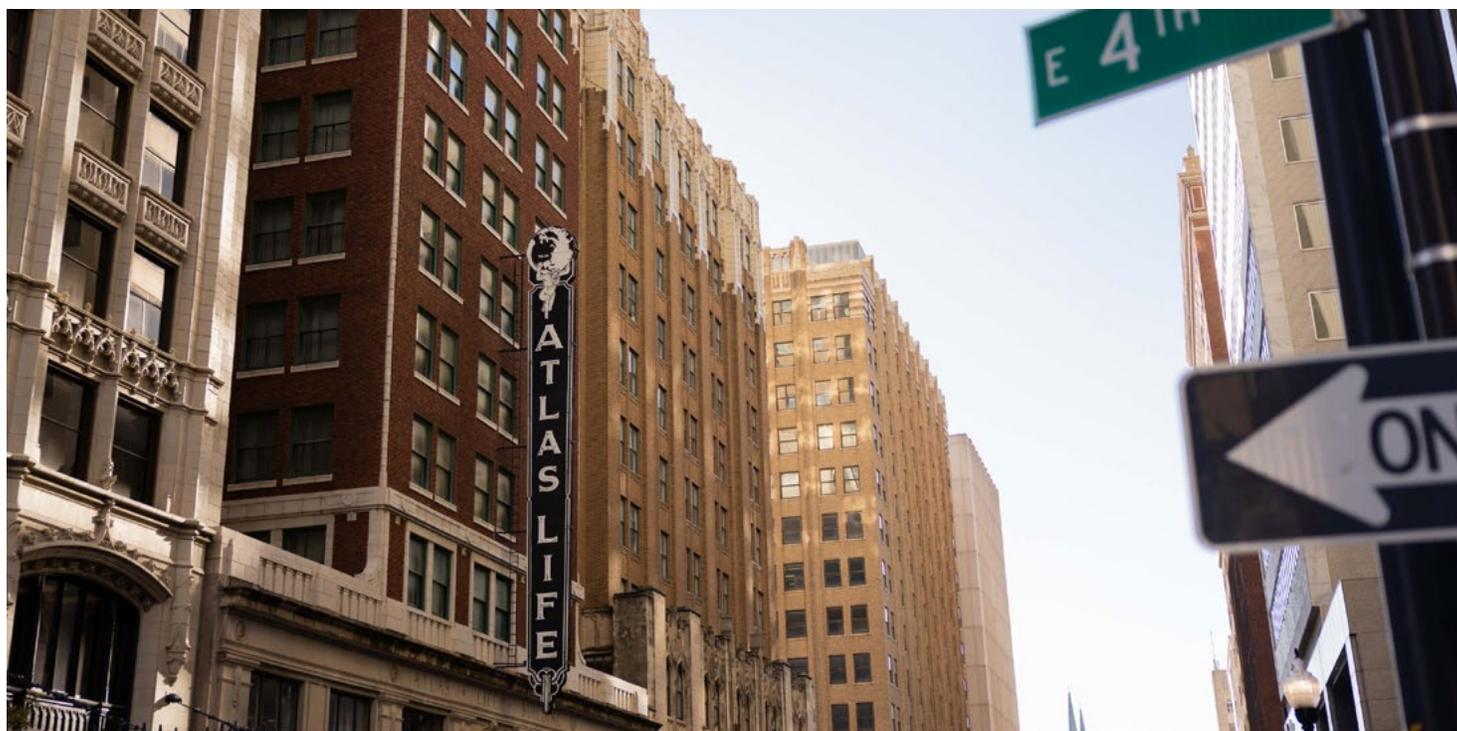
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Jails are America's dark way stations where the presumption of innocence is undermined every day by the price of freedom. The vast majority of people in jails across the country have not been convicted of a crime,¹ and nearly three out of four are accused of nonviolent traffic, property, drug, or public order offenses.² They are unlikely to flee or be a danger to anyone, yet judges routinely set bail in amounts they cannot afford — a practice that puts them at risk.³

Jails are unsafe, unhealthy environments. Even a few days in jail is destabilizing and can spark a life crisis that reaches beyond the person incarcerated to also harm those who depend on that individual for care and support. Detaining people pretrial also increases the pressure to plead guilty as the quickest way out of jail, resulting in a criminal record that can have lasting negative effects on a person's life.⁴ And those who manage to scrape together the cash to pay bail in full or purchase a bail bond are often using money they need to pay rent, put food on the table, and cover other essential expenses.

These dynamics disproportionately harm Black people and women. Judges are more likely to require bail in cases involving Black defendants and to set larger bail amounts, research shows.⁵ Women, especially women of color, experience higher rates of poverty relative to men and are therefore even less likely to be able to afford bail⁶ — one reason why the number of women in jail is rising faster than the number of men.⁷

Despite these and other consequences, cash bail remains an entrenched feature of the criminal justice system in the United States in part because many judges and the citizens who elect them believe it provides an essential incentive for people to return to court — often multiple times — while their cases move through a slow and cumbersome legal system.⁸ This report and the research underlying it contribute to debunking that belief.

Researchers at The Bail Project retrospectively studied more than 3,000 people arrested and booked into jail in Tulsa, Oklahoma over the period of a year. A slim minority posted bail in cash; a far larger number paid a nonrefundable fee to a commercial bail bond agent to secure their release. Some had their bail posted with financial assistance from The Bail Project; others were released without any upfront payment or financial obligation; the rest were detained throughout the pendency of their case. The researchers reviewed each group's scheduled and actual court appearances and ultimate case outcomes.

By far, the most important finding to emerge from the study is that money bail is not associated with better court appearance rates, a conclusion that contributes to a mounting number of studies⁹ — research that, unfortunately, still hasn't penetrated public awareness. Indeed most people in this study returned to court regardless of their release mechanism. In other words, money, in the

The most important finding to emerge from the study is that money bail is *not* associated with better court appearance rates.

form of cash bail or a bail bond, is neither necessary nor an effective way to incentivize people to participate in the resolution of their court cases.

While these and other key findings emanate from a single American city, their implications are far broader, given growth in the pretrial jail population,¹⁰ and reactionary backlash to bail reform in cities and states across the country. The data demonstrate such opposition is rooted in myth and emotion, not facts.





Building a Powerful Evidence Base in Tulsa

Now operating nationally and with a track record of paying bail for people in 30 different jurisdictions, The Bail Project began serving individuals in Tulsa, Oklahoma in January 2018. Like many cities across the county, Tulsa has experienced a rapid growth in its jail population – increasing 150% in the previous two decades, typically surpassing the state and national averages, and costing taxpayers more than \$30 million per year.¹¹ Since establishing a presence in Tulsa, The Bail Project has paid bail for more than 2,200 residents who could not afford it on their own.¹²

The financial and other assistance The Bail Project provides comes with no strings attached. No contract. No debt. No requirements at all. Nevertheless, the vast majority of individuals The Bail Project helps attend most or all of their required court hearings — proof that people will participate in the court process without any of their own money on the line or other coercion.

While The Bail Project has helped thousands of Tulsa residents in ways that facilitated the resolution of their court cases, it hasn't changed the pretrial system in Tulsa. Judges continue to set bail in excessive amounts, causing considerable financial strain for individuals and families. The practice also delays or prevents release for

In 2023, the commercial bail bond industry generated \$2.4 billion dollars in revenue, up 4.3% since 2018.



all but the few who are able to quickly pay in full, which is costly beyond dollars to the people directly impacted and is a drain on public resources.

The only beneficiaries are bail bond companies. In Tulsa and elsewhere, the bail bond industry comprises a powerful lobbying group keeping alive the belief that money provides an essential incentive for people to return to court. No surprise, given the profits at stake. In 2023, the commercial bail bond industry generated \$2.4 billion dollars in revenue, up 4.3% since 2018.¹³ Their financial interest now aligns with renewed calls for the kind of “tough on crime” policies shown to have virtually no impact on crime rates¹⁴ but many negative repercussions for the mostly poor people those policies affect.¹⁵

Researchers at The Bail Project set out to challenge the entrenched faith in cash bail by marshaling the kind of data the public rarely or never sees: court appearance rates corresponding to various pretrial release mechanisms. They also examined case outcomes, comparing people released pretrial with those detained. The remainder of this paper describes the study, its most important findings, and the implications of those findings.

Study Approach and Sample

The study is a retrospective analysis of 3,320¹⁶ people arrested and booked into the David L. Moss Criminal Justice Center (Tulsa County Jail) and either released or detained pretrial between June 12, 2020 and June 11, 2021, and whose cases were resolved by December 19, 2022.¹⁷ The study was limited to individuals arrested for a new alleged offense (i.e., not arrested for violating conditions of pretrial release or probation) within the one-year period, and whose bail amount did not exceed \$15,000.¹⁸ The 3,320 individuals that comprise the study sample generally reflect the demographic make-up of the Tulsa County Jail population: their median age is 36; the majority are male; and more of them identify as white than as Black, Latino, Native American, or another race. In line with trends nationally, the majority of people studied (68%) were arrested and charged with nonviolent offenses.¹⁹

MASS INCARCERATION'S FRONT DOOR: GROWTH IN THE NUMBER OF PEOPLE DETAINED PRETRIAL

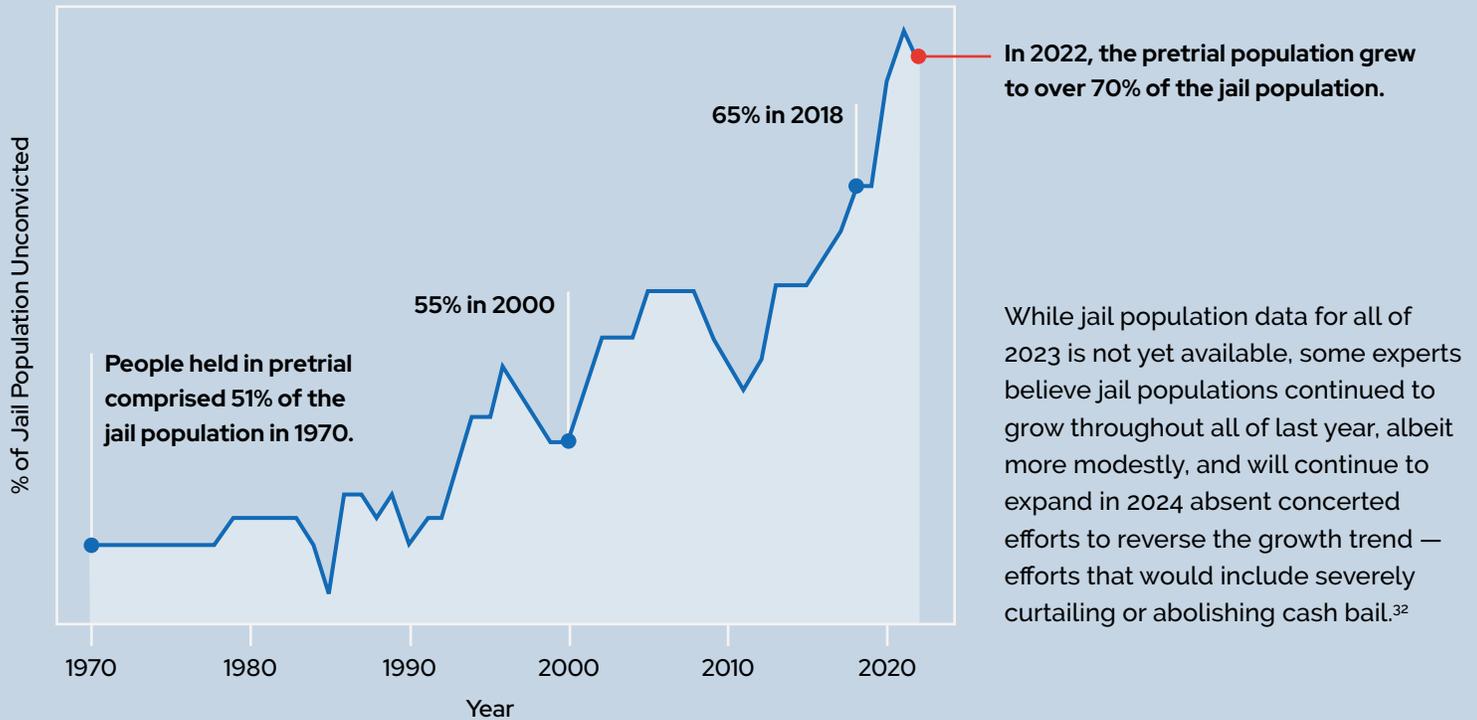
For every person sent to prison over the course of a year, 19 people are booked into a local jail — the “front door” to mass incarceration in America.²³ The cost to taxpayers, in dollars alone, of jailing so many Americans is extreme: more than \$22 billion annually.²⁴ When collateral costs such as lost wages, reduced economic mobility, health care costs, and impact to families and communities are accounted for, the price tag is estimated to be roughly ten times higher.²⁵

After contracting during the height of the Covid-19 pandemic, jail populations nationally began to expand, reaching 90% of their pre-pandemic level in 2022 in a “return to business as usual.”²⁶ Jails held 4% more people at the end of June 2022 than at the end of June 2021, and women were the fastest-growing segment of the population.²⁷ Recent growth in the jail population nationally has occurred without a corresponding rise in crime. Indeed, crime remains at or near historic lows.²⁸

Law enforcement policies and decisions by individual police officers and district attorneys influence who ends up in jail, but courts and judges decide whether they are quickly released pending the resolution of their cases or detained for some or all of the pretrial period. Even a few days in jail can be long enough to lose a hard-won job, to worsen symptoms associated with a chronic physical or mental health condition, and to increase the likelihood of sexual or physical victimization, to list just some potential consequences. The longer someone is detained, the greater the risk and the consequences. Repercussions can include eviction, losing a child to the foster care system, malnourishment, and even death.²⁹

In 2022, more than 70% of people in local jails had not been convicted of a crime.³⁰ The share of people in jail being held pretrial has been on the rise for years — it was 55% in 2000, but by 2018 had grown to 65% before surpassing 70% in 2022.³¹ Relying on cash bail as opposed to other mechanisms of release is by far the single greatest factor fueling the increase in pretrial incarceration.

FIGURE 1: Driven by Cash Bail Policies, Pretrial Incarceration Has Soared in Recent Decades



Source: "Bail Reform," (New York, NY: Vera Institute of Justice, n.d.), <https://www.vera.org/ending-mass-incarceration/criminalization-racial-disparities/bail-reform>; Zhen Zeng and Todd D. Minton, Jail Inmates in 2019, (Washington, D.C.: U.S. Bureau of Justice Statistics, 2021), <https://bjs.ojp.gov/content/pub/pdf/ji19.pdf>

To assess the relative outcomes associated with different pretrial release mechanisms and detention, researchers assigned each person to one of the following subgroups reflecting their pretrial status:²⁰

- 1. BAIL POSTED BY INDIVIDUAL** Released following payment of bail in full to the court by an individual or a related third-party and without assistance from a bail bond agent or The Bail Project (no court-mandated supervision)
- 2. BAIL SECURED BY BAIL BOND AGENT** Released after paying a nonrefundable fee to a commercial bail bond agent for a surety bond (indebted to and under the supervision of the bonding agency)²¹
- 3. BAIL POSTED BY THE BAIL PROJECT** Released with financial assistance from The Bail Project (no financial obligation to The Bail Project and basic supports for returning to court provided)
- 4. RELEASED ON PRETRIAL SUPERVISION** Released under the supervision of Tulsa County Court Services (court-mandated supervision, no financial obligation for release)²²
- 5. RELEASED ON RECOGNIZANCE** Released without payment on "personal recognizance" (no financial obligation for release)
- 6. DETAINED PRETRIAL** Detained throughout the pretrial period, typically because they were denied bail or may not have been able to post bail.

Drawing on Tulsa County court data, the researchers reviewed each person's scheduled and actual court appearances and final case disposition. All findings are descriptive in nature, not the product of rigorously matched comparison groups nor statistical analyses comparing differences among subgroups that rise to the level of statistical significance. Notwithstanding this methodological limitation, the key findings reported below offer an important look at the pretrial landscape in Tulsa, Oklahoma, and strongly suggest the meager returns of cash bail.

TABLE 1: Descriptive Characteristics by Pretrial Release Type (n=3,320)

	Bail Posted by Individual	Bail Secured by Bail Bond Agent	Bail Posted by The Bail Project	Released on Pretrial Supervision	Released on Recognizance	Detained Pretrial
Sample Size	133	1,604	117	220	298	948
Race/Ethnicity						
Black	7%	29%	40%	22%	24%	36%
White	76%	66%	57%	75%	67%	59%
Latino/a	11%	2%	–	<1%	3%	2%
Other	6%	3%	3%	3%	6%	4%
Gender						
Male	81%	78%	71%	68%	64%	91%
Female	19%	24%	29%	32%	36%	9%
Age (Median)	36	34	34	35	34	34
Case Types(s) at Release³³						
Misdemeanor only	83%	49%	30%	51%	51%	20%
Felony only	16%	48%	61%	46%	46%	70%
Felony and Misdemeanor	1%	3%	9%	3%	3%	10%
Bail Amount (Average)³⁴	\$1,024	\$3,644	\$3,171	\$1,962	–	–
Days Detained (Average)³⁵	1	4	12	7	22	105
Required Court Appearances (Average)	4	4	3	3	3	–

³³Stats rounded to the nearest whole number

For every person sent to prison over the course of a year, 19 people are booked into a local jail – the “front door” to mass incarceration in America.

**Freedom
should be
free.**

THE BAIL PROJECT

The Rise of Bail

“Bail” technically refers to any mechanism of pretrial release.

➤ Up until the 20th century, judges routinely granted bail without payment, while denying bail and detaining individuals who appeared to present a significant risk of flight. But in the United States today, bail is virtually synonymous with money.³⁶

There are two ways to buy your way out of jail.

1 **You can pay the required bail amount in full to the court,** a considerable financial drain on most individuals and their families even when they can raise the funds — and most can't. Roughly one-third of Americans do not have enough savings to cover an unexpected expense of \$400 or more, and 18% of Americans lack even \$100 in savings.³⁷

2 **You can purchase services from a bail bond agency** that guarantees payment in full if you fail to show up in court. A typical fee to access this service is 10% of the total bail amount — \$100 for a \$1,000 bail bond; \$200 for a \$2,000 bond, for example.³⁸ For some, this fee is also beyond reach; others cannot access commercial bail bonds because they lack a co-signer or the collateral the bonding agency is likely to require if the bail amount is more than \$25,000 or \$50,000. Collateral matters because bail bond agencies can sue individuals to then garnish future wages and take other aggressive measures to collect the full bail amount if the person fails to show up in court. Bail paid in full to the court is returned when your case is resolved, but any fee you or your loved one pays to a bonding agency is money gone forever.

In theory, money bail increases the odds that people released from jail pretrial will return to court, and higher bail amounts raise the stakes in that regard. In reality, bail amounts are not calibrated to reflect risk of flight, or the ability to pay and associated financial stress on low-income and poor families. As a result, even relatively small bail amounts frequently delay release and in some cases keep people in jail until their case is resolved instead of quickly facilitating release as intended.

Key Findings



1. Commercial Bail Bond Agencies Dominate the Pretrial Release Landscape in Tulsa

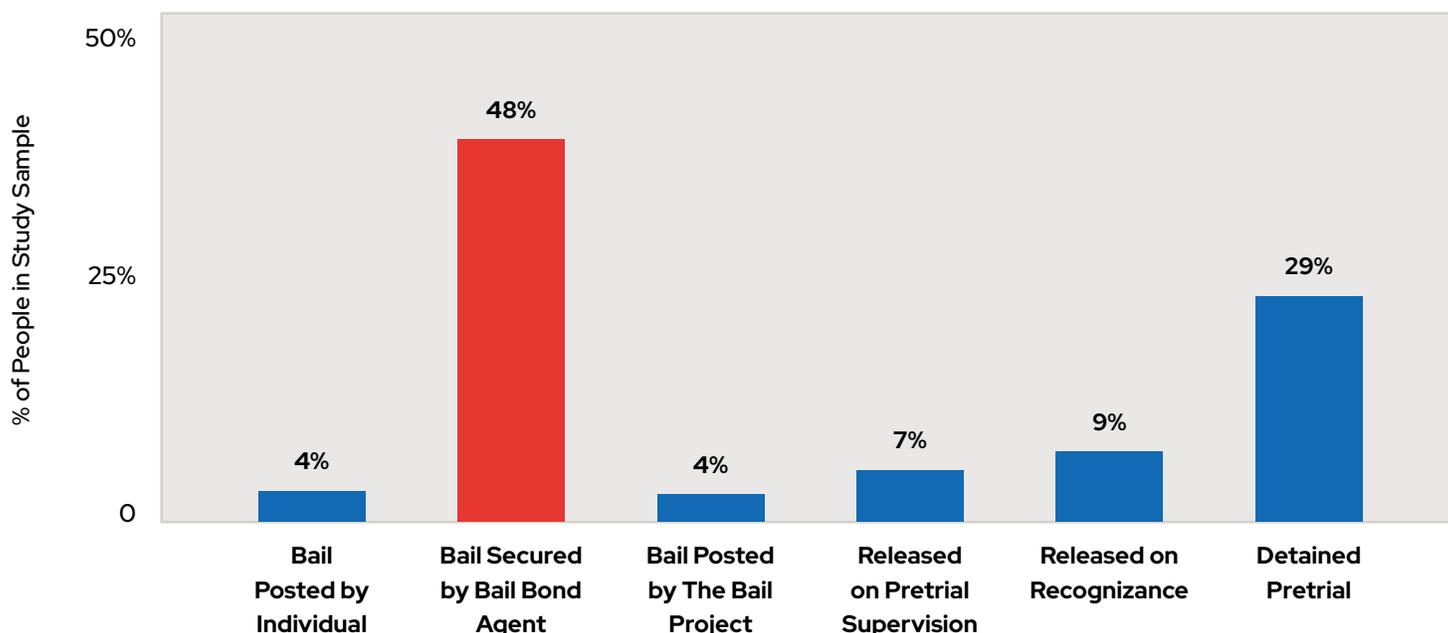
Approximately half (48%) of the study sample bought their way out of jail by paying a premium to a commercial bail bond agent for a surety bond. While researchers did not have access to the nonrefundable fees they paid, their average bail amount (\$3,644) and common practice among bail bond companies in Tulsa suggests they paid \$364 on average. While that may not sound like a lot of money, it is for many people. Moreover, the process of raising the cash and purchasing a bond delayed their release, as we discuss below.

No other avenue for pretrial release was nearly as common as commercial bail bonds. Just 133 (4%) people paid their own bail in full, at an average cost of \$1,024; another 117 people (3.5%) were bailed out by The Bail Project, at an average cost of \$3,171.

Nonmonetary avenues for release were the exception, not the rule: 298 people (9%) were released on their own recognizance, and 220 people (7%) were released under the supervision of Tulsa County Court Services.³⁹

Notably, 29% of the study sample (n=948) were detained for their entire pretrial period. Of these, all but a handful, were preventatively detained with no option of paying bail, even though more than half of them (53%) were charged with nonviolent crimes — a concerning trend that merits future study.

FIGURE 2: Commercial Bail Bond Agencies Were the Predominant Release Mechanism for Those Detained



2. Release Mechanisms Other Than an Individual Paying Bail In Full are Slower to Activate, Leaving People in Jail for Longer Periods of Time

Every additional day in jail increases the risk of harm, both for the person incarcerated and, by extension, anyone who relies on that person for care and support.⁴⁰ While using cash to pay bail in full is a quick way out of jail, few people can afford it. In this study, even those who secured release through a commercial bail bond agent were detained for four days on average, and other pretrial release mechanisms were also slow to take effect — seven days in jail, on average, for people later released under the supervision of Tulsa County Court Services, and up to an average of 22 days in jail among those eventually released on recognizance.⁴¹

Within the study, Black individuals and women were over-represented in the release mechanisms that were slow to activate, resulting in several days spent in jail. Research indicates that just 48 hours of pretrial detention can have harmful effects.⁴² The slowness is doubly damaging

because people who lack the resources to pay bail or purchase services from a bail bond agent are generally more vulnerable to the consequences of prolonged detention: more likely to lose a crucially needed job and/or housing, more likely to decline mentally or physically, all with repercussions for their families as well. And with each passing day in jail, that compounded vulnerability increases the pressure they feel to plead guilty as charged, regardless of the facts and even though a criminal record has its own collateral consequences.⁴³

It is also important to underscore that the 948 people who were detained throughout the pretrial period spent an average of 105 days in jail before their release. As mentioned earlier, most of these individuals were arrested on nonviolent allegations.

People who lack the resources to pay bail or purchase services from a bail bond agent are generally more vulnerable to the consequences of prolonged detention: more likely to lose a crucially needed job and/or housing, more likely to decline mentally or physically, all with repercussions for their families as well.



3. Cash Bail and Bonds Purchased from Commercial Bail Bond Agents are Not Associated with Better Court Appearance Rates

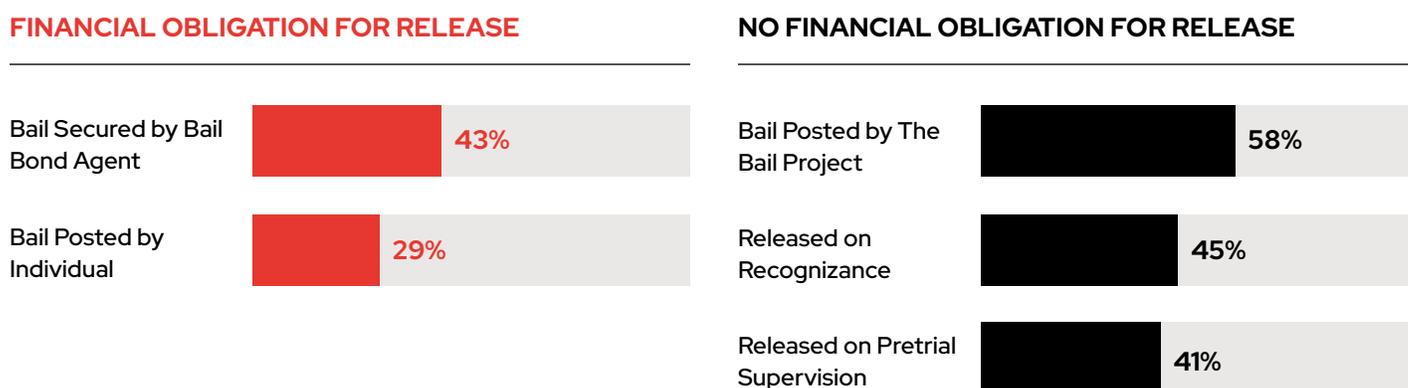
Just 29% of people who paid their own bail in cash attended all required court hearings after their release.⁴⁴ The rate among those who secured their release through a commercial bail bond agent was 43% (see Table 2).⁴⁵

The study was not designed to allow for “apples-to-apples” comparisons among subgroups, instead it focused on trends and patterns within groups. Nevertheless, these outcomes strongly suggest that cash bail and commercial bail bonds are no more effective at incentivizing people to return to court than less onerous pretrial release mechanisms.

This should come as no surprise. Research and experience consistently show that minimal support and encouragement is more effective than money in getting people back to court.⁴⁶ In particular, advance reminders about upcoming hearings and transportation assistance when needed — both of which The Bail Project provides — are useful, relatively inexpensive ways to help people meet their court obligations without financial burden or the potentially negative consequences of formal supervision.⁴⁷

The percentage of individuals attending all of their court appearance dates is lower across the subgroups than one might expect, a result which might be attributable to the period of observation: this study overlapped with the Covid-19 pandemic, which significantly delayed court operations across the country through increased pandemic-related restrictions. For individuals required to attend court, physical illness, lack of access to public transportation, difficulty navigating caretaking responsibilities, and other increased health-related precautions are all factors that might have interfered with one's ability to attend court. While more research is needed on the impact of the Covid-19 pandemic on court processing

FIGURE 2: Financial Obligations Do Not Impact Court Return Rates
Percentage of people in Tulsa that attended all required court dates by release type



and court attendance, these findings highlight patterns that should continue to be monitored post-pandemic.

Since appearing at every court date might have been challenging during this pandemic period, another way to measure court appearance rates is to look at the percentage of required hearings attended, as opposed to the percentage of individuals who attended all hearings. In the former case, the baseline is the total number of required hearings post-release, and the performance variable is the number of hearings attended. This is a useful measure because resolving cases, even those involving nonviolent, often low-level crimes, typically requires multiple hearings,⁴⁸ and legitimate life circumstances can prevent people from making it to court on a particular day and time.⁴⁹

People who used cash to pay bail in full and those who purchased services from a commercial bail bond agent — mechanisms that in theory incentivize return to court — do not have especially high court appearance rates by this measure either: 62% and 74%, respectively.

The court appearance rate among people released under the supervision of Tulsa County Court Services is 69%; the court appearance rate among those released

Research and experience consistently show that minimal support and encouragement is more effective than money in getting people back to court.

METRICS MATTER: MEASURING COURT APPEARANCE

Court appearance rates provide an essential baseline measure of the efficacy of the court system and are essential for assessing to what extent policies and practices designed to incentivize or support return to court, like cash bail, actually make a difference.

Unfortunately, that data is rarely monitored, even by direct stakeholders. Broadly, this means that policy-makers and researchers lack the baselines and trends to make claims, backed by evidence, about when, where, and for whom court return is a problem. And judges, clerks, public defenders, and prosecutors are relying on anecdotal information and convention to make release decisions in individual cases instead of relying on evidence-based best practice.

To complicate matters further, there's no standard approach to tracking, measuring, and reporting court appearance rates; each jurisdiction does it their own way. Moreover, most court information systems track cases, not people. Because an individual can have more than one case attached to a single arrest, and more than one appearance for each case, this method can inflate court appearance rates and reveal little about who is more or less likely to come to court and what prevents people from showing up as required.

For this study, researchers used two different measures: the proportion of individuals who consistently returned to court and also the proportion of required hearings attended. While not perfect, these metrics in combination provide a more full and reliable picture of attendance and highlight the reality that people are more often required to attend multiple hearings to resolve their cases.

The study also highlights the importance of how attendance is defined within appearance metrics. When individuals fail to appear, judges can issue a failure-to-appear bench warrant but are not required to do so. Measures that define "appearance" as the absence of a bench warrant may inflate appearance rates and also mask judicial discretion (i.e., deciding not to issue a bench warrant when someone doesn't show up as required) and any judicial decision-making patterns in terms of who is treated with more or less leniency.

with assistance from The Bail Project is 78%; and the rate among those ultimately released on their own recognizance is 69%.

It is also worth noting that people supervised by Tulsa County Court Services had relatively low court appearance rates by both measures, suggesting that the supervision provided may not be well aligned with peoples' needs in ways that promote return to court.

Because courts in Tulsa and elsewhere experienced pandemic-related slowdowns from March 2020 throughout 2021, likely increasing the time it took to resolve cases, it is possible that court appearance rates by any measure would be higher if the study were conducted today or prior to the pandemic. The longer a case lingers in the system, the harder it is for people to balance court obligations with other life obligations.⁵⁰ But a pandemic-related slowdown does not explain the variation in court appearance rates across subgroups because courts were operating slower across all cases.

People who used cash to pay bail in full or who purchased services from a commercial bail bond agent – mechanisms that in theory incentivize return to court – do not have especially high court appearance rates.

In addition to reliably and routinely monitoring court appearance rates in ways that also capture judicial discretion, research should connect appearance rates with study of barriers that impede people from showing up in court as required. This should include elements of procedural justice within the courts – the efficiency and fairness of the court process from the perspective of defendants.

FIGURE 3: Financial Obligations Do Not Impact Court Return Rates
Percentage of required appearances in Tulsa that were attended by release type

FINANCIAL OBLIGATION FOR RELEASE



NO FINANCIAL OBLIGATION FOR RELEASE



4. Judges are Punitive When Someone Released Without Money Misses a Court Date

In our analysis, judges frequently issued a failure-to-appear (FTA) bench warrant for people who were released without any upfront payment after missing at least one court appearance. Nearly half of people assisted by The Bail Project and nearly half of people released on recognizance received a bench warrant after failing to appear in court. More than one-third of people under the supervision of Tulsa County Court Services received the same punitive response from judges. Individuals released via commercial bail bond agents who missed at least one court appearance were typically not issued a bench warrant (21%). Nor were those that missed at least one court date and were released by paying cash bail themselves (11%) (see Table 4).

This disparate treatment, resulting in harsh punishment without clear rationale, has its own potential consequences, including reincarceration, new charges for missing a court appearance, and court costs and fees.⁵¹ It's also notable in the context of understanding judicial discretion.

5. Release By Any Means is Associated with Fewer Guilty Pleas

The study also underscores the well-documented association between pretrial release and case outcomes. Only half of the people released pretrial pleaded guilty. That's significant in the context of a legal system, and cash bail in particular, that pressures people to plead guilty as the quickest way out of jail and easiest way to resolve their case, despite the consequences of a criminal conviction.⁵²

Also notable, more than one-third (36%) of people released pretrial had their cases dismissed for lack of merit or evidence, possibly due to greater ability to contribute to their own defense: to work closely with their attorney without the strict visitation rules and lack of privacy in jail and to have the freedom to marshal information that supports their case.⁵³

FIGURE 4: Percentage of People with Guilty Pleas by Custodial Status

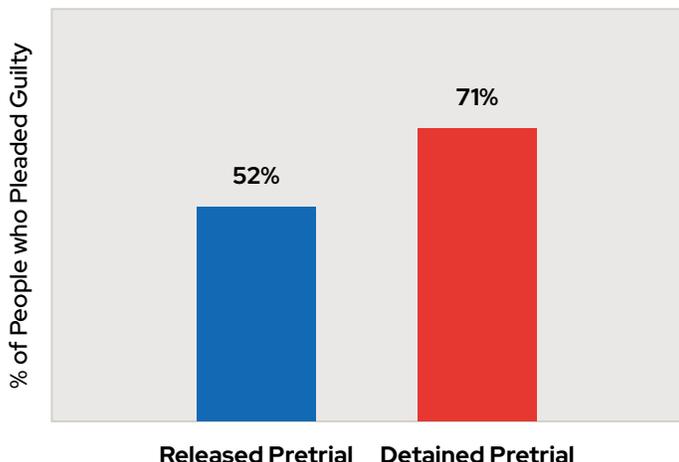
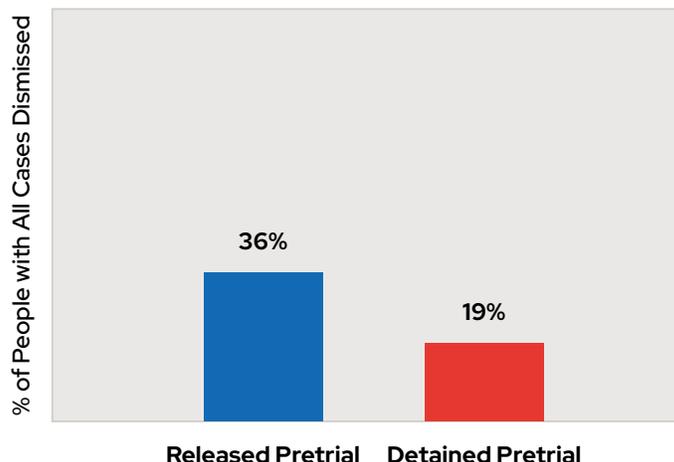


FIGURE 5: Percentage of People with All Cases Dismissed by Custodial Status



Discussions about bail are often conflated with debates about public safety, as if having money on the line discourages people from committing new crimes.





Policy Implications for Tulsa and Beyond

The findings of this study make a compelling case

for relying far more on nonmonetary, supportive mechanisms of pretrial release in lieu of cash bail in most or all cases.

Reaping the full rewards of such a shift — improving court appearance rates and life outcomes — depends on developing a reliable, easy to understand process for providing every individual with advance notice about upcoming court dates, along with additional information and support for those who need it. The

experience of The Bail Project over the past six years and findings of this study show that people will return to court without any financial obligations. More recent research suggests that providing individuals with notifications coupled with minimal support, such as free transportation to and from court, can lead to better court appearance rates and more efficient systems.⁵⁴

With support from the MacArthur Foundation's Safety and Justice Challenge, officials in Tulsa tested a notification system and embedded case managers in the

Public Defender's Office prior to the pandemic. County officials should recommit to that work and improve on it. Receiving notifications was a problem for people without cell phones and not all of them were able to access the information using other devices, and lack of childcare and transportation remained barriers for at least one out of three people.⁵⁵

Officials in Tulsa also should look closely at whether people currently subject to pretrial supervision by Tulsa County Court Services have adequate support to return to court — our findings suggest they may

not. Additionally, the courts should take steps to speed pretrial decision-making and release, especially regarding the use of release on recognizance, which according to this study, judges are especially slow or perhaps reluctant to use. Speeding up an inherently slow system is a challenge, of course, but the measures described above to improve court appearance rates and decrease violations can help.

Even so, well-meaning people will occasionally miss court dates.⁵⁶ This study not only raises concerns about an overuse of failure-to-appear bench warrants in Tulsa, but also indicates potential bias in the application of this punitive response. Reasonable grace periods and leniency in response to a missed court date is not only humane;

it will save the criminal justice system and people involved from the costly repercussions of issuing failure-to-appear bench warrants and then arresting and detaining people. In some jurisdictions, the use of "bench warrant clearance" or "safe surrender" allows people with an outstanding warrant to return to court without fear of arrest.⁵⁷

These and other reforms should be accompanied by routine monitoring and reporting of court practices and outcomes — data that can allow for comparisons across release mechanisms.

These same lessons apply to localities across the country experiencing growth in the pretrial jail population, low court appearance rates, and jail churn.

The findings of this study make a compelling case for relying far more on nonmonetary, supportive mechanisms of pretrial release in lieu of cash bail in most or all cases.

JAIL CHURN

Research suggests that approximately 25% of individuals booked into jail will be detained again within the span of a year.⁵⁸ It might be for an alleged new offense, or more commonly, for a noncriminal violation: failing to appear in court or pay court-mandated fines and fees, or for violating conditions of pretrial release, probation, or parole. Such violations are a major contributor to the growth of jail populations nationally.⁵⁹ Experts refer to this phenomenon as "jail churn." It mostly affects people living in poverty and people of color. Understanding the scope and nature of jail churn in Tulsa was not the subject of this study — and indeed jail churn made it more difficult for researchers to assess the relative impact of different pretrial release mechanisms since 17% of people returned to jail over the course of the study.⁶⁰

What is clear: cash bail — both the financial strain on those to pay and prolonged pretrial incarceration for those who can't pay — makes it more difficult for people to change the life circumstances and dynamics that are the root cause of jail churn. In this regard as in many others, the criminal justice system itself works against the better outcomes it aspires to.



Coda: Bail Reform and Public Safety

Discussions about bail are often conflated with debates about public safety, as if having money on the line discourages people from committing new crimes, much like it supposedly encourages them to return to court. Within that erroneous framework, bail reform ends up being positioned in opposition to public safety when no such evidence exists. In fact, there's considerable evidence to the contrary.

When New Jersey passed bail reform in 2017, opponents warned that violent crime would skyrocket. But fewer than 3% of people released pretrial were subsequently rearrested for a serious violent felony or for gun possession.⁶¹ After Washington, DC abolished cash bail, only 2% of people released pretrial were rearrested for a violent crime, and 90% made all scheduled court dates.⁶²

One of the largest studies to date — an analysis of 16 cities across the country involved in the MacArthur Foundation's Safety and Justice Challenge — showed no correlation between declining jail populations and rises in crime. Releasing more people pretrial was not associated with any increase in crime, and although violent crime did rise in some of these places, especially during the first year of the pandemic, it did not rise among people released pretrial.⁶³

Evidence, not fear mongering, must inform public opinion, building on the belief common among Americans that people should not be incarcerated solely because they cannot afford bail.⁶⁴ By debunking the myth that cash bail leads to better court appearance rate, this report makes an important contribution to a growing base of evidence in support of bail reform.

Endnotes

- 1 Wendy Sawyer and Peter Wagnor, *Mass Incarceration: The Whole Pie 2024* (Northampton, MA: Prison Policy Initiative, 2024), <https://www.prisonpolicy.org/reports/pie2024.html>.
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- 9 Jake Monaghan, Eric Joseph van Holm, and Chris W. Surprenant, "Get Jailed, Jump Bail? The Impacts of Cash Bail on Failure to Appear and Re-Arrest in Orleans Parish," *American Journal of Criminal Justice* 47 (February 2022): 59 - 60, 69, <https://doi.org/10.1007/s12103-020-09591-9>; Aurelie Ouss, and Megan Stevenson, "Does Cash Bail Deter Misconduct?" *American Economic Journal: Applied Economics* 15, no. 3 (July 2023): 150 - 182, <https://www.aeaweb.org/articles?id=10.1257/app.20210349>.
- 10 Leon Digard and Elizabeth Swavola, *Justice Denied: The Harmful and Lasting Effects of Pretrial Detention* (New York, NY: Vera Institute of Justice, 2019), <https://www.vera.org/publications/for-the-record-justice-denied-pretrial-detention>; see also Matthew DeMichele, Ian A. Silver, Ryan M. Labrecque, Stephen Tueller, and Pamela K. Lattimore, *The Benefits of Early Release from Pretrial Detention* (Research Triangle, NC: RTI International, 2023), <https://cdn.filestackcontent.com/security=policy:eyJleHBpcnkiOjQwNzg3NjQwMDAsImNhbGwiOjlsicGjJayiInJlYWQILC-J3cmloZSIsIndyaXRlVXJslwic3RvcmlUilCjJb-252ZXJoliwicmVtb3ZlliwicnVuV29ya2Zsb3ciXX-0=signature:gdf63ee50143fbd862145c8fb4ed-2fcc17d068183103740b1212c4c9bc858f63/NPfbpQtCQzyQFam13VLU>.
- 11 Between 1970 and 2014, jail incarceration rates grew by over 150% in Tulsa County. The Tulsa County Jail's pretrial detention rate was 83% higher than the national average in 2014. Nancy Fishman, Rebecca Silber, Kelsey Reid, Stephen Roberts, and Navena Chaitoo, *Report to Tulsa County Stakeholders on Jail Reduction Strategies* (New York, NY: Vera Institute of Justice, 2017), <https://www.vera.org/publications/report-to-tulsa-county-stakeholders-jail-reduction-strategies>. An estimated \$4,524,770.10 of fees were paid to bail bond agents for initial pretrial bonds for all offenses in Tulsa District Court in FY2018. Those who could not post bail stayed for a median of 30 days on misdemeanor cases and 33 days on felony cases, and of those who could, 40% put up their own money or paid a bail bond agent. Ryan Gentzler, *SB 252 Bail Reform Could Save Counties and Communities Millions* (Tulsa, OK: Oklahoma Policy Institute, 2019), <https://openjustice.okpolicy.org/wp-content/uploads/sites/4/2019/02/Bail-Fact-Sheet-2019-Full-Report-Final.pdf>.
- 12 As of April 30, 2024, The Bail Project in Tulsa, OK supported 2,241 unique bail releases. Among those supported, 32% identify as Black, 7% identify as Native American, 55% identify as white. Fifty percent identify as female. The median age of clients served is 34 years old. The Tulsa Bail Project site has supported clients for over 7,000 required court appearances.
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- 16 The initial sample included 6,081 individuals in which jail and court data could be reasonably matched. This sample was then filtered down by certain criteria to maintain accuracy and consistency. Notably, we excluded 484 individuals whose release mechanism, date, or bail amount was unspecified in available records and 380 individuals who had any pending court case with a disposition date beyond December 19, 2022. We also filtered out individuals who had any type of federal or out-of-state holds (n=255); whose initial jail release

- and associated case was related to a specialty court case (n=612); whose highest alleged offense was a mere violation or post-disposition violation (n=756); or whose bail amount was above \$15,000 (n=274) so that bond amounts would be in the same range for those released through a financial mechanism.
- 17 Individuals with multiple releases during the study period were identified based on their first release for a new allegation, marking the beginning of the pretrial period. Subsequent bookings and releases were considered reincarcerations during this period, though this was not a focus of the current study. Categorizing individuals into various release mechanisms, especially in Oklahoma where bond decisions are made at the charge-level, added complexity, as more than one release mechanism may be associated to different charge bonds (e.g., personal recognizance, cash bail). Releases were categorized based on a hierarchy of restrictiveness: detention, bail bond agent, cash bail, pretrial supervision release, and personal recognizance. Future research could explore how the intersection of various mechanisms influences court decision-making and impacts individuals navigating complex court trajectories.
 - 18 The capped bail amount allowed the researchers to identify individuals similar to those served that The Bail Project provides bail assistance to within the Tulsa County Jail.
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 - 20 For individuals released via financial or non-financial obligations, the courts can impose general and specific conditions of pretrial release that individuals must comply with. These are typically restrictions (e.g., electronic monitoring, drug testing, no contact orders, curfew, limiting travel) or what are deemed as necessary for public safety and victim safety, and may sometimes include mandated provision of assessments or services by the courts. "Pretrial Release Conditions," American Bar Association, accessed March 30, 2024, <https://www.ncsl.org/civil-and-criminal-justice/pretrial-release-conditions>; "Pretrial Release," American Bar Association, accessed March 30, 2024, https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_pretrialrelease_blk/.
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 - 25 Calculating the collateral costs of pretrial incarceration is practically difficult, for example, estimating the social cost of pretrial incarceration. Pretrial Justice Institute, "Pretrial Justice: How Much Does it Cost?" accessed March 20, 2024, <https://www.documentcloud.org/documents/3439051-Pretrial-Justice-How-Much-Does-it-Cost>; Sam McCann, *How 'Collateral Consequences' Keep People Trapped in the Legal System* (New York, NY: Vera Institute of Justice, 2023) <https://www.vera.org/news/how-collateral-consequences-keep-people-trapped-in-the-legal-system>.
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 - 27 Wendy Sawyer, *Why Did Prison and Jail Populations Grow in 2022 – and What Comes Next?* (Northampton, MA: Prison Policy Initiative, 2023), https://www.prisonpolicy.org/blog/2023/12/19/bjs_update_2022/.
 - 28 According to the Prison Policy Initiative, "...the rate at which people reported any personal victimization in 2022 (23.5 per 1,000 people aged 12 or older) was almost exactly what it was five years ago, before the pandemic. Similarly, when we look at crime statistics reported by the FBI over a timeframe longer than one or two years, the rate of violent crime has held remarkably steady (and actually declined). In general, the fluctuations that have made headlines are within the range of what we have observed for the past 15 years or so. We see a similar story with property crime (with the exception of auto theft), which has also remained near its historic low, and is trending more steeply downward overall. Wendy Sawyer, *Why Did Prison and Jail Populations Grow in 2022 – and What Comes Next?* (Northampton, MA: Prison Policy Initiative, 2023), https://www.prisonpolicy.org/blog/2023/12/19/bjs_update_2022/; for overall statistics on crime rates and crime victimization rates, see also "Jail Inmates in 2022 - Statistical Tables," Bureau of Justice Statistics, <https://bjs.ojp.gov/document/jiz2st.pdf>; "The Federal Bureau of Investigation Crime Data Explorer," Bureau of Justice Statistics, last modified May 14, 2024, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/home>; "National Crime Victimization Survey Data Dashboard," Bureau of Justice Statistics, last modified May 31, 2024, <https://ncvs.bjs.ojp.gov/Home>; Richard Rosenfeld, Bobby Boxerman, and Ernesto Lopez, *Pandemic, Social Unrest, and Crime in U.S. Cities* (Washington, D.C.: Council on Criminal Justice, 2023), <https://counciloncj.org/wp-content/uploads/2024/05/CCJ-Crime-Trends-Year-End-2022-Word-for-PDF.pdf>; John Gramlich, *What the Data Says About Crime in the U.S.* (Washington, D.C.: Pew Research Center, 2024), <https://www.pewresearch.org/short-reads/2024/04/24/what-the-data-says-about-crime-in-the-us/>
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- 39 In the past, less than 500 people a year are released to Tulsa County Court Services for pretrial supervision; however, large exclusionary provisions (e.g., certain offenses) incorporated into state law for pretrial release minimize the population who can be released, though judges have the discretion to release someone with an excluded offense to Court Services. Some judges refuse to release individuals with certain charges, despite similarly situated people being released due to their ability to post bond. See Nancy Fishman, Rebecca Silber, Kelsey Reid, Stephen Roberts, and Navena Chaitoo, *Report to Tulsa County Stakeholders on Jail Reduction Strategies* (New York, NY: Vera Institute of Justice, 2017), <https://www.vera.org/publications/report-to-tulsa-county-stakeholders-jail-reduction-strategies>.
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- 44 We did not calculate court appearances for those detained pretrial, as their appearance is predicated on jail and court actors to bring them to court for appearances, largely outside of the detained individual's control
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- 64 According to a 2018 national poll of bipartisan team pollsters, researchers found 83% of individuals supported people's presumption of innocence after arrest while awaiting trial; another 8 out of 10 believe law enforcement should not arrest, but cite and release individuals for alleged nonviolent crimes. Further, 80% agreed that most crimes are minor and therefore, people should not be held in jail while awaiting trial. The Pew Charitable Trusts, *Americans Favor Expanded Pretrial Release, Limited Use of Jail* (Philadelphia, PA: The Pew Charitable Trusts, 2018), https://www.pewtrusts.org/-/media/assets/2018/11/pspp_public_favors_expansion.pdf.



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