

A Charge for Your Freedom

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Abstract

This research project takes a look at the United States history of bail bonds, bail reform, and reviewed changes that could take place. The Eighth Amendment of the United States Constitution provides, “excessive bail shall not be required.” However, the United States Supreme Court has ruled that bail is not a right and that a court can hold you without bond. The two have proven to be a major dilemma for courts weighing the safety of society as a whole versus an individual rights and their likelihood to return to court. Decades of studies have determined best practices with this dilemma. Data was gathered through surveys given to various county jails across the state of Florida in order to compare various sizes of agencies to ensure that a cross section of the state was considered. Survey questions were designed to determine the agencies basic demographics (gender and ethnicity), bond amounts, average length of stay, and the implication one has on the other.

Introduction

A person is arrested by police and taken to jail. They go before the judge for initial appearance / arraignment where they have an opportunity to post bail and be released; however, their options are limited and can change the course of their life.

Most jurisdictions in the United States have two (2) ways to gain release from jail during the pre-trial period of their case. Either pay what is known as a “cash bond” or pay a “surety bond.” Cash bond is the option to pay the entire amount required from the court. A surety bond is when a bondsman is paid 10% of the bail and the defendant provide some form of collateral to the bondsman for the balance of the amount. Considering most citizens cannot afford to pay cash bond, this has created a profitable business for the bondsman, also creating an unfair system for the poor in a country where one is presumed innocent until proven guilty.

We have all heard stories of people that have spent days, weeks, months, even years in custody trying to prove their innocence. This has caused a disruption in both their lives and their families' lives. As a result of being in custody they may have lost their jobs, homes, or if young enough unable to finish school or simply missed out on having life experiences. One prime example of this would be the story of Kalief Browder. He was a sixteen-year-old whom was walking down the street when he was stopped by the police in Bronx, NY and accused of robbing a man. He was searched and nothing found, however was arrested, went to initial appearance where a judge set his bond at \$3,000. This amount was more than his family could afford and therefore he spent the next three years of his life in custody. Browder spent the entire time maintaining his innocence, refusing to plea, and awaited trial. After suffering what has been called an “unimaginable

abuse from the inmates and staff," the charges were dropped by the prosecution four days after his 20th birthday. (Gonnerman, 2014)

Browder during his interview with ABC News stated, "The way the system is, you're guilty 'till proven innocent. (Harrison, 2018)" The consequences are severe and often unforeseen when dealing with pretrial detention. Two years after his release Kalief Browder committed suicide. The inability to pay a \$3,000 bond placed Browder on a path that could have been preventable (Santo, 2015). This paper will take a close look at the history of bail in this country and its opportunity to reform, but also raise the question where do we go from here.

Literature Review

Bail bond began in England as common law during the Middle Ages as a method to ensure a defendant's return to court instead of incarcerating them. The defendant or their relative would pledge either money or property as collateral. Without the use of bond, jails would be overcrowded beyond measure. "Excessive bail shall not be required, nor excessive fines imposed," was the term used in England in 1689 when they banned the practice of incarcerating defendants before trial. The United States adopted similar language in the Eighth Amendment almost a century later. (Harrison, 2018)

America borrowed the concept of bail from England; however, with its capitalistic spirit America decided to add the additional step of commercial bail (bondsman). It was adopted early due to the landscape of America which was mostly frontier land, therefore no community ties were had by that nomadic nature of the country. Defendants at that time could easily skip town, so the commercial bail bonds became an effective tool in preventing overcrowding jails and securing a defendants return to court. (Harrison, 2018)

The Federal Bail Reform Act of 1966 was passed after years of hard work from the Vera Foundation. In 1961, after visiting a Manhattan jail, journalist Herbert Sturz and businessman Louis Schweitzer realized that many of the inmates were in only because they could not afford to bond out. Sturz and Schweitzer founded the Manhattan Bail Project (now the Vera Foundation). They were able to persuade local judges to run an experiment which would compare the recommendation of the Project's against the judge's normal decisions. Judges recommended that 14% of the defendants are released while the Project recommended 60%. Out of the 60% that were released by the Project's recommendation (without monetary bond), 98.4% returned to court for trial. These numbers caused all five boroughs to institutionalize this risk assessments system. (Smith, 2018)

This result not only inspired change in the five boroughs, but also nationally. The stories that were shared showed that regardless of innocence the poor suffered. People released during pretrial are 250% more likely to be acquitted. This reduced incarceration numbers of the innocent. National attention was gained between the stories and the study, to include the White House, the Congress, news media and more scholars. (Smith, 2018)

The Manhattan Bail Project served as the motivation for the federal bail reform movement, which pressured legislators around the country to rewrite statutes to reflect a preference for releasing arrestees on their own recognizance or on non-financial conditions of release before trial. However, reform was not uniform. Differing jurisdictional

goals had led to divergent release criteria, including recognizance, supervision, and financial conditions. Some jurisdictions aimed to reduce populations of their jails, others wanted to provide supervision to arrestees pending trial. Some jurisdiction only aimed at certain groups of defendants versus others whom interviewed all arrestees. (Rohrer, 2017)

To combat inconsistencies, the Department of Justice created two programs: the National Association of Pretrial Services Agencies and the Pretrial Service Resource Center, to develop national professional standards for pretrial programs and to compare these programs nationwide. Both programs are still in place today and currently look at issues involving the administrative locus, program scope and size, program funding and staffing, and specific program practices. (Rohrer, 2017)

The Manhattan Bail Project was concluded to be successful when looking at defendants not determined to be flight risk or a concern to public safety were released. It gained the support of the then Attorney General Robert Kennedy. With his support Congress pass the Federal Reform Act of 1966. (Harrison, 2018)

President Lyndon B. Johnson, just before signing the Federal Reform Act of 1966, stated that poor defendants “languishes in jail weeks, months, and perhaps even years before trial. He does not stay in jail because he is guilty...He does not stay in jail because he is any more likely to flee before trial. He stays in jail for one reason only – he stays because he is poor.” He expressed his hope that this Act would remedy this. (Smith, 2018)

The Federal Reform Act of 1966 gave the presumption that all federal defendants were to be released without posting bail and that the use of money would only be used in nonfinancial conditional release. Multiple states took upon this same approach, however it ended swiftly when President Nixon was elected. He took a “law and order” approach to the criminal justice system. The focus was no longer on poverty but on crime, which brought a lasting change to the criminal justice system. (Harrison, 2018)

Since President Nixon’s changes on the criminal justice system, various jurisdictions have attempted to reform their bail systems. However, overwhelmingly the majority still use a monetary bail system. To date, four states have completely banned the commercial bond system: Illinois, Kentucky, Oregon and Wisconsin. With the influence of the federal system the District of Columbia has a system where pretrial detainees are released just on their signature. Both Arizona and New Mexico have tackled the problem also. Arizona essentially banned the bail system, while New Mexico updated their pretrial system making it a violation to detain defendants that are low-risk but cannot afford to bond out; New Mexico took this to the polls in 2016. This freed 40% of the defendants that could not afford their bonds but posed no risk. (Harrison, 2018)

Between 1962 and 1971, a third of felony defendants were reduced from the jail population. In some places the number was even higher. A look at Minneapolis shows the pretrial detainee population was reduced from 54% to 13%. However, with the success of this reform it ultimately failed. Beginning in the 1970s, the rise in crime began to sweep the country. This pushed for more preventative detention laws allowing for judges to detain people they felt posed a risk to the safety of citizens. By 1984, thirty-four states adopted preventive detention law in some form or another. (Smith, 2018)

With this new push the Bail Reform Act of 1984 was passed. This act allowed for money bail to become more popular and growth of the bail bond industry. By 1990s, money bail bond was more common than the use of release on recognizance, causing a

steady climb in jail populations. With this rise, the need to reduce jail population was back in the forefront. (Smith, 2018)

Bail bond reformers saw the system as one of inequality for those whom cannot afford to pay. It created multiple negative effects from being detained for a prolonged period of time. In a 2013 study, researchers found that “defendants who are detained for the entire pretrial period are much more likely to be sentenced to jail and prison.” The same study also determined that the same individuals receive longer sentences. (Walters, 2018)

The International Covenant on Civil and Political Rights (ICCPR) established international guidelines regarding pretrial detainees. Its sections on the treatment of pretrial detainees reads:

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage or the judicial proceedings, and, should occasion arise, for execution of judgement.

To apply these guidelines, the United Nations created a handbook providing more specific instructions. (Rohrer, 2017)

The handbook interprets the ICCPR as dictating that pretrial detention should only be used to ensure a suspect’s appearance at trial, prevent the interference with evidence, and prevent further offenses. While our federal system has adopted some of these goals, state systems in general have not. When evaluating whether someone will return to court, the handbook suggest courts look at family ties, employment status, and criminal history as risk factors. (Rohrer, 2017)

When comparing standards proposed by the United Nations to what is currently happening in the United States, they are not close which has drawn criticism from humanitarian organizations and academic commentators. The United States generally holds a “hard on crime” attitude, making legislature unwilling to draft laws that allow more of those arrested back into the public. The Supreme Court has held that the ICCPR is not judicially enforceable here in the United States, stating, “although the Covenant does bind the United States as a matter of international law, the United States ratified the Covenant on the express understanding that it was not self-executing and so did not itself create obligations enforceable in the federal courts.” (Rohrer, 2017)

The United States developed its own constitutional standards instead when regulating pretrial detention. These limitations are based off the Eighth and Fourteenth Amendments. Eighth Amendment states that excessive bail shall not be required for release; while the Fourteenth Amendment discusses “due process.” The Fourteenth Amendment requires that laws imposing pretrial detention be narrowly tailored to serve a “sufficiently compelling governmental interest.” In federal criminal proceeding, release and detention decisions are governed by the Bail Reform Act of 1984. (Rohrer, 2017)

When looking at America’s State Systems, New Jersey is considered a prime example of the abuse of the cash-bail system. Just over 73% of its jail population

comprises pretrial detainees. Of these pretrial detainees, 38.5% had an option to post bail, but could not afford to. Twelve percent of the jail population in New Jersey is in custody solely on the fact they could not pay \$2500 or less to secure pretrial release. These figures do not accord with humanitarian guideline set forth in the ICCPR or the bail reform principles that gave rise to the Bail Reform Act of 1984. This is at what cost? (Rohrer, 2017)

According to journalist Andrew Pantazi, Florida's prison and jails budget are higher than ever despite Florida's low crime rates and decline of prison admissions over the past nine of ten years. Due to long sentences, the inmate population has stayed stubbornly near its all-time high, in the past year. The Department of Corrections 2018 state budget was \$2.3 billion, leaving a deficit of nearly \$79 million. This issue became an issue during the race for Florida's Governor in 2018. Andrew Gillum, former mayor of Tallahassee, FL, called bail reform as a top priority while he was running for governor. He stated that, "those who have not been found guilty who are sitting in jail...that's where I will put my focus." He goes on and says that he would want to use a risk-assessment tool that would only allow for prosecutors and judges to automatically allow nonviolent defendants that didn't pose a flight-risk out of jail. He states that individual circumstances would determine if they would have to pay money to get out. (Pantazi, 2018)

While opposing mandatory minimums and supporting bail reform Governor Ron DeSantis, while running for office, stated that he felt that Florida was not incarcerating too many people. He also stated that, "our job is to protect the public," and incarcerating people was a way to do that. DeSantis went on to say that he would need more data to know what changes would need to be made. (Pantazi, 2018)

Multiple jurisdictions are dealing with both the current cost of incarcerating and trying to find ways to reform it. According to the sheriff's office of Alachua County, it cost \$185 per day to house an inmate. In 2017 there were 710 defendants in custody with the bond of \$1,000 or less in Alachua County, considering most could not afford to pay a cash bond in that amount and for bondsman it would not be profitable to do so. This leaves Alachua County in a situation that may similar to other counties, what to do? (Swirko, 2018)

On April 13, 2018, Eighth Circuit Chief Judge Toby Monach approved an order to allow for some defendants to go free as soon as they are booked in. This was with the support of both the Public Defender Stacy Scott and State Attorney Bill Cervone. Judge Monach stated that, "conceptually, this would allow some people, who would likely be released on their own recognizance or on a small bond at first appearance, to be released before first appearance without the need to post bond if they are eligible...after an interval review and consultation with the Alachua County Sheriff, I agreed to the change." This is a change from defendants having to stay in jail until they attend first-appearance the next morning where a judge can decide if they will be release, held until bail is posted or until the case is resolved. (Swirko, 2018)

"One of the issues with monetary release is it benefits the wealthy while it is an impediment to people with lesser means," was the words of Ninth Circuit Chief Judge Frederick Lauten as he signaled his approval of the reform that State Attorney Armais Ayala calls for. She has a plan to release people on their own recognizance as an alternative to bail. This would be set for those arrested on low-level offense. The other alternative would be for them to be released on supervised release. Both reforms have

been deemed good, with the essential need for manpower and resources being available to keep up with the demand. ("Ayala's bail," 2018)

Another proposal to reform the bail system is the elimination of the bail schedule. The bail schedule pertains to the bond set for an alleged offenders prior to First Appearance, when a judge has not previously established conditions of release (for example, in an arrest warrant). The First appearance judge may increase or decrease/eliminate the amount the bail and set other conditions for release. However, the schedule is legislatively set. The U.S. Supreme Court, in *Stack v. Boyle*, held that setting a blanket bail for all codefendants were improper because the Federal Rules for Criminal Procedures call for bonds to be individually based. (Rohrer, 2017)

The Supreme Court went on to emphasize that judges must identify a specific future danger stemming from a defendant's release pending trial as a prerequisite to ordering preventative detention. Despite this, many jurisdictions throughout the country rely on uniform bail schedules based solely on the offender's charges to provide guidance to judicial officials in determining a bail amount and to free up court dockets more quickly. However well these bail schedule intended were, they have serious negative consequences for arrestees according to Kyle Rohrer (Juris Doctorate candidate at the University of Oregon). According to a different study conducted in New York City revealed that, in 2008, of those arrested on non-felony charges who were given a bail of \$1000 or less, only 13% were able to post bail by the time of their arraignment. (Rohrer, 2017)

Bail schedules effectively impose an arrest tax on those charged with low-risk offenses and result in *de facto* detention of those who cannot afford the amount set in the bail schedule. This creates a system that detains indigents and permits the release of potentially dangerous, wealthy defendants or career criminals whom can afford to pay their bail. This system is opposite of the goal of judicial discretion with focus on pretrial services. (Rohrer, 2017)

While jurisdictions use a standard bail schedule, some have been looking at better use of the pre-trial release / supervision. This comes at a cost and requires a proper risk assessment. Pretrial risk assessment tools typically use actuarial data to predict how likely it is that someone will miss an upcoming court date or commit a crime before trial. A checklist of risk factors are used to correlate with the commission of a crime during pretrial or nonappearance in court. One of the most popular being the Public Safety Assessment (PSA) created by Laura and John Arnold Foundation (in partnership with New Jersey). This takes in account nine risk factors: age at current arrest, current violent offense, pending charges, prior misdemeanor conviction, prior felony conviction, prior violent conviction, prior failure to appear in past two years, prior failure to appear older than two years, and prior sentence to incarceration. Based on these risk factors, three prediction scores are derived: a "failure to appear" score, a "new criminal activity" score, and a "new violent criminal activity" score. Combined it is determine a defendant's risk factor. ("Bail Reform," 2018)

Risk assessment tools have had substantial criticism also. Risk assessments depend upon criminal justice data that is considered neither neutral nor objective. American criminal justice has had a legacy of slavery and racial discrimination, by decades of mass incarceration, by preventative policing and profiling that targets minority communities, by a gulf between those who vote on criminal justice and those who are affected by it, and by the explicit and implicit biases of people working in the system, all

which have shaped it. Former Attorney General Eric Holder has shared concerns that risk assessments will result in greater racial disparities. Professor Sonja Starr contends that actuarial tools dependent on “demographic, socioeconomic, family, and neighborhood variables” are unconstitutional, unwise and inaccurate. Risk assessment tools may also be deficient because the data that inform the tools come from an environment where the only pretrial options are jail and personal recognizance. An example is that predicting that someone will miss a court date doesn’t consider how a text message reminder or bus pass from pretrial services could improve their chances of getting to court. (“Bail reform,” 2018)

Proponents of pretrial risk assessment tools argue that algorithms cannot fully shed the race or class bias inherent in the data, they are a net improvement over the current system in which judges’ and persecutors’ biases are unclear and unknown. However, accurate predictions of pretrial risk are better than inaccurate ones, but even if accurate predictions are achievable, they can only be one part in meaningful reform. For better or worse, it is a central part of ongoing reform across the country. Independent of risk assessment’s limitations, errors, and biases, safeguards are need to prevent manipulation of these tools toward an unequal ends. Standard bail or risk assessment, I will compare and contrast these uses across the State of Florida, while comparing it to current studies that have been used. This is with the hope of providing a proper recommendation of where do we go from here. (“Bail reform,” 2018)

Methods

The purpose of this research was to identify whether or not there is a need for bond reform due to the correlation of an individual’s conviction rate and their socioeconomic status within our society.

Data was gathered through surveys given to various county jails across the state of Florida using the Florida Department of Law Enforcement’s Training Region March count. This was done in order to compare various sizes of agencies and ensure that a cross section of the state was considered. Survey questions were designed to determine the agencies basic demographics (gender and ethnicity), bond amounts, average length of stay, and the implication one has on the other.

The survey was confidential in order to encourage participation from all agencies surveyed. The survey was deployed via e-mail and the use of survey monkey link. A weakness in the data collected was limited resources, legislative and judicial mandates.

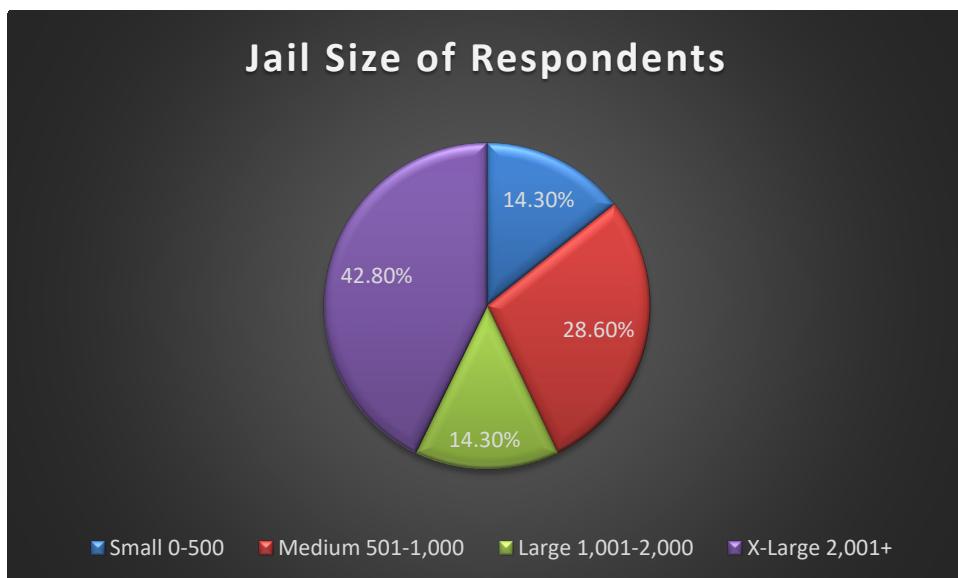
Results

The survey was sent to twenty-six (26) county jails. I received seven (7) responses, for a response rate of 26.9%. Of the 7 responses, some respondents were unable to answer some of the questions.

The first question was used to determine jail size. One respondent (14.3%) reported a jail population of 0-500 inmates. Two respondents (28.6%) reported a jail population of 501-1,000 inmates. One respondent (14.3%) reported a jail population of

1,001-2000. Three respondents (42.8%) reported a jail population greater than 2,000 inmates. For the purpose of this paper, jail population of 0-500 will be considered small, 501-1,000 will be considered medium, and 1,001-2,000 will be considered large, while population greater than 2,001 will be considered extra-large.

TABLE 1: Jail Size



The second question requested the average number of felony inmates sentenced in the various jails. For one respondent, this information was unavailable. The small jail reported 14 (6%) inmates were sentenced on felonies. The two medium jails averaged 103 (21%) inmates sentenced on felonies. The large jail reported 375 (16.6%) inmates were sentenced felons. Of the three extra-large jails, one was unable to determine while the other two averaged 2,507.5 (63.8%) sentenced felons.

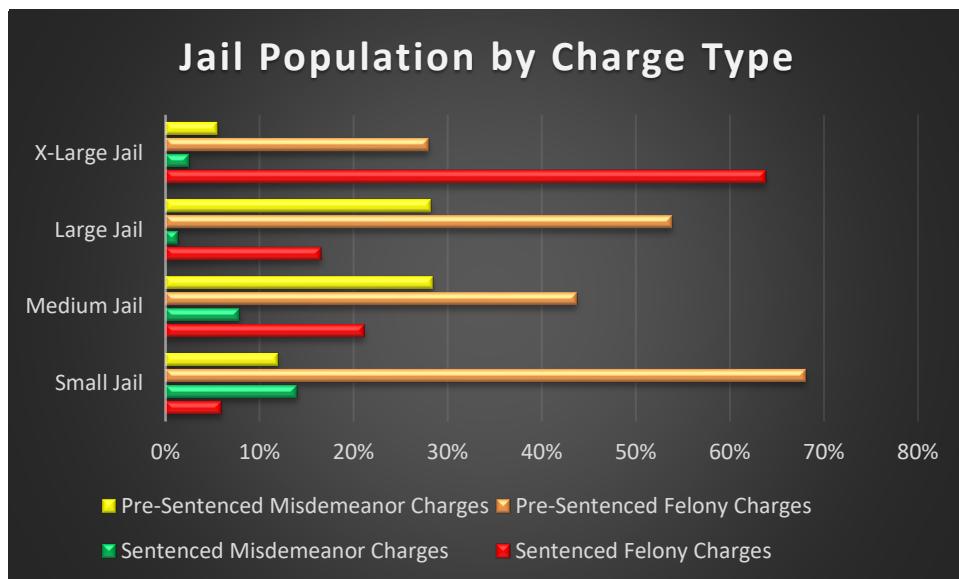
The third question requested the average number of inmates sentenced on misdemeanors in the various jails. The small jail reported 32 (14%) inmates sentenced on misdemeanor charges. The medium jails averaged 38.5 (8%) inmates sentenced on misdemeanor charges. The large jail reported 31 (1.4%) inmates sentenced on misdemeanor charges. Of the three extra-large jails, two were unable to provide their numbers while the other one stated that they housed 100 (2.6%) inmates sentenced on misdemeanor charges.

Question 4 requested the average number of pre-sentenced inmates housed on felony charges. The small jail reported 157 (68%) inmates pre-sentenced on felony charges. The medium jails average 212 (43%) inmates pre-sentenced on felony charges. The large jail reported 1,212 (53.8%) inmates pre-sentenced on felony charges. Of the three extra-large jails, two were unable to provide their numbers while the other one stated that they housed 1,100 (28%) inmates pre-sentenced on felony charges.

Question 5 requested the average number of pre-sentenced inmates housed on misdemeanor charges. The small jail reported 28 (12%) inmates pre-sentenced on

misdemeanor charges. The medium jails average 138 (28%) inmates pre-sentenced on misdemeanor charges. The large jail reported 636 (28.2%) inmates pre-sentenced on misdemeanor charges. Of the three extra-large jails, two were unable to provide their numbers while the other one stated that they housed 220 (5.6%) inmates pre-sentenced on misdemeanor charges.

TABLE 2: Jail Population by Charge Type



Question 6 requested to provide the number of inmates with no active charges within the jail. Two jails stated they had zero inmates with no active charge and the other jails did not provide a response.

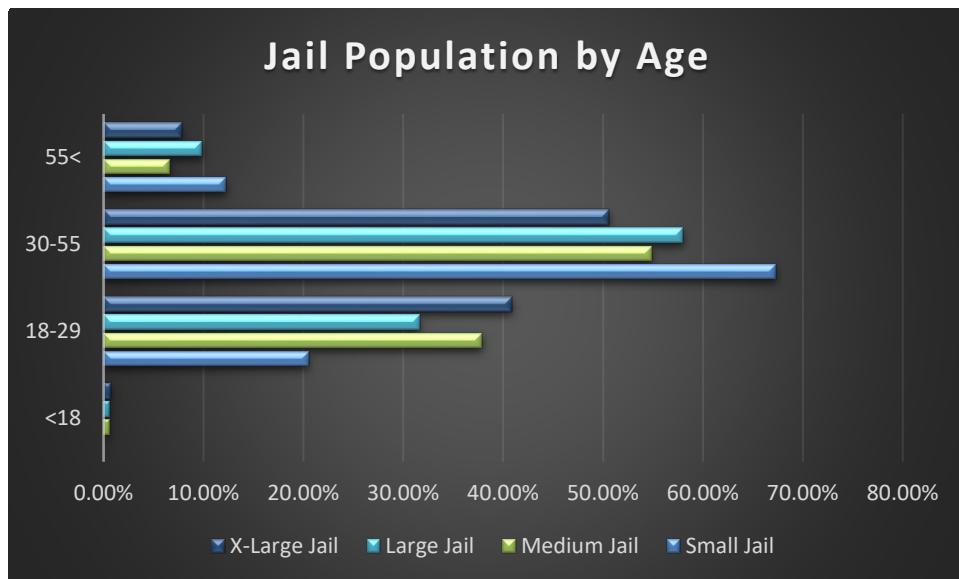
Questions 7 to 10 requested a break-down of ages of the inmates within the jails. Question 7 asked for the number inmates under the age of 18. The small jail reported zero (0%). The medium jails averaged 4.5 (.6%) between them. The large jail reported 8 (.6%) inmates. Of the three extra-large jails, one was unable to provide an answer while the other two averaged 24.5 (.7%) inmates

Question 8 requested the number of inmates between the ages of 19 and 29 years old. The small jail reported 35 (20.5%) inmates. The medium jails averaged 300.5 (37.9%) inmates. The large jail reported 469 (31.6%) inmates. Of the three extra-large jails, one was unable to provide an answer while the other two averaged 1,573 (40.9%) inmates.

Question 9 requested the number of inmates between the ages of 30 and 55 years old. The small jail reported 115 (67.3%) inmates. The medium jails averaged 435.5 (54.9%) inmates. The large jail reported 861 (58%) inmates. Of the three extra-large jails, one was unable to provide an answer while the other two averaged 1,943.5 (50.6%) inmates.

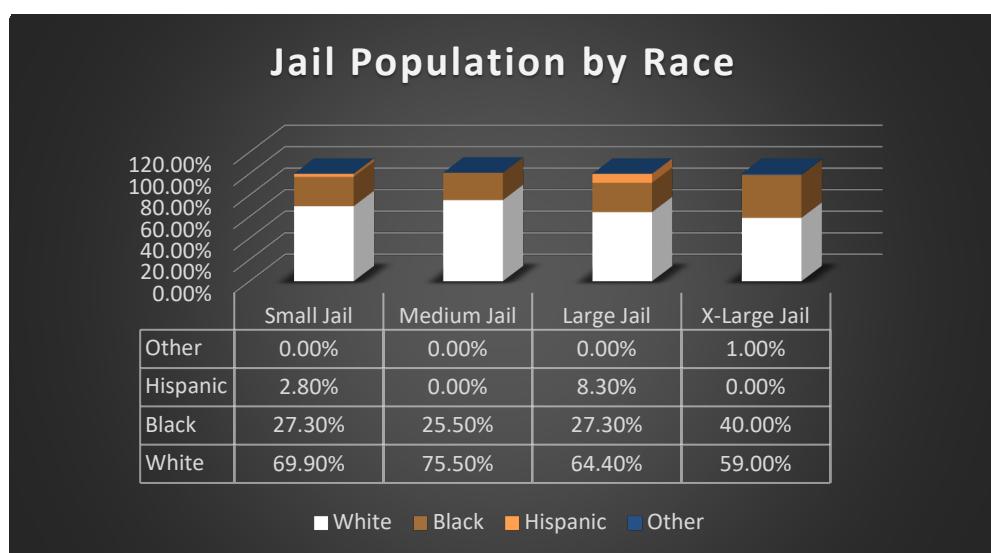
Question 10 requested the number of inmates over the age of 55. The small jail reported 21(12.2%) inmates. The medium jails averaged 51.5 (6.6%) inmates. The large jail reported 146 (9.8%) inmates. Of the three extra-large jails, one was unable to provide an answer while the other two averaged 300 (7.8%) inmates.

TABLE 3: Jail Population by Age



Question 11 requested that average number of inmates by race. The small jail reported 123 (69.9%) Whites, 48 (27.3%) Blacks, 5 (2.8%) Hispanics, and 0 (0%) others. The one medium jails reported 620 (74.5%) Whites, 212 (25.5%) Blacks, 0 (0%) Hispanics, and 0 (0%) others, while the other medium jail did not report any differences in races. The large jail reported 725 (64.4%) Whites, 307 (27.3%) Blacks, 93 (8.3%) Hispanics, and 0 (0%) others. Of the three extra-large jails, two were unable to provide an answer while the other one reported 2,206 (59%) Whites, 1,499 (40%) Blacks, 0 (0%) Hispanics, and 28 (1%) others.

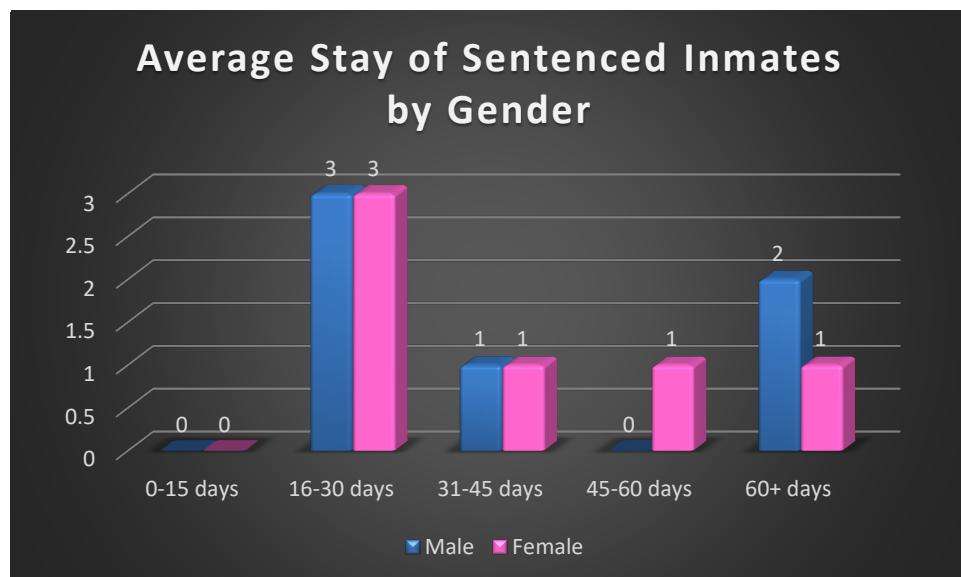
TABLE 4: Population by Race



Question 12 requested that average length of stay of sentenced male inmates. The small jail reported that their average length of stay as 60+ days. One medium jail reported their average length of stay ranged from 16 to 30 days, while the other ranged from 31 to 45 days. The large jail reported that their average length of stay as 60+ days. Of the three extra-large jails, one was unable to provide an answer while the other two both reported their average length of stay ranged from 16 to 30 days.

Question 13 requested that average length of stay of sentenced female inmates. The small jail reported that their average length of stay as 60+ days. One medium jail reported their average length of stay ranged from 16 to 30 days, while the other ranged from 31 to 45 days. The large jail reported that their average length of stay ranged from 46 to 60 days. Of the three extra-large jails, one was unable to provide an answer while the other two both reported their average length of stay ranged from 16 to 30 days.

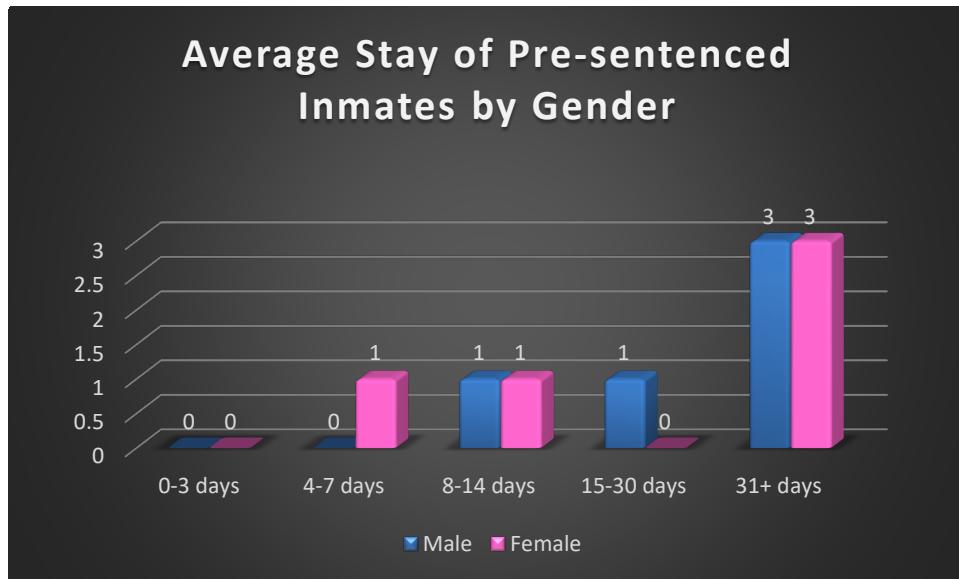
TABLE 5: Length of Stay Sentenced Inmates by Gender



Question 14 requested that average length of stay of pre-sentenced male inmates. The small jail reported that their average length of stay as greater than 31 days. One medium jail reported their average length of stay ranged from 15 to 30 days, while the other reported it as greater than 31 days. The large jail reported that their average length of stay ranged from 8 to 14 days. Of the three extra-large jails, two were unable to provide an answer while the other one reported their average length of stay was greater than 31 days.

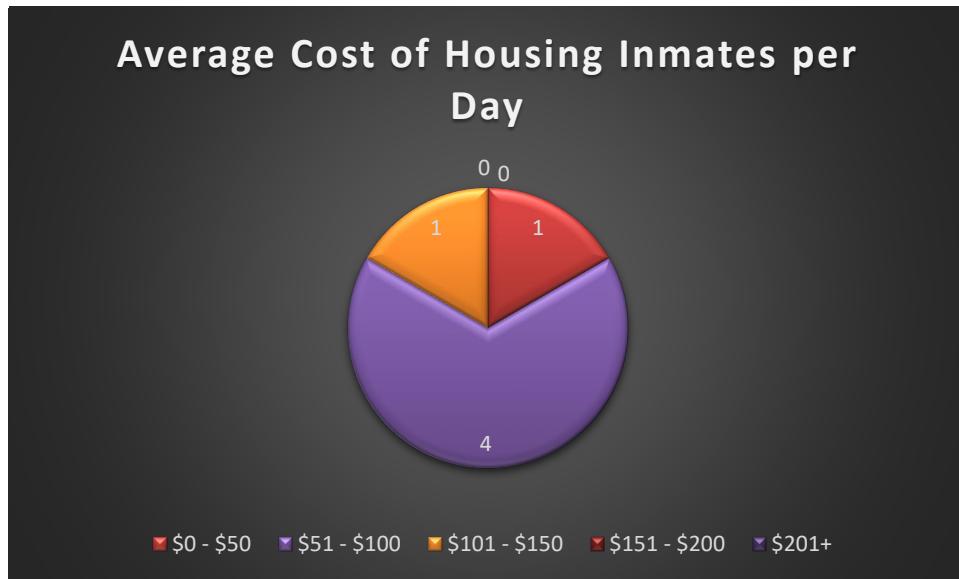
Question 15 requested that average length of stay of pre-sentenced female inmates. The small jail reported that their average length of stay as greater than 31 days. One medium jail reported their average length of stay ranged from 8 to 14 days, while the other reported it as greater than 31 days. The large jail reported that their average length of stay ranged from 4 to 7 days. Of the three extra-large jails, two were unable to provide an answer while the other one reported their average length of stay was greater than 31 days.

TABLE 6: Length of Stay Pre-sentenced Inmates by Gender



Question 16 requested that average cost per day per inmate to house in the jails. The small jail reported cost as \$51 to \$100. One medium jail reported the cost to range between \$0 to \$50, while the other reported it to between \$101 to \$150. The large jail reported cost being \$51 to \$100. One of the extra-large jails reported it to cost between \$101 to \$150 and the other two extra-larges jails reported it to range between \$51 to \$100.

TABLE 7: Average Cost of Housing



Question 17 requested the average bond amounts of inmates housed within their facilities. The large jail reported that the average bond amount to be \$2,379. No other jail was able to provide this information.

Question 18 asked if their jail had a process of releasing inmates on ROR or PTR without court order. The small jail responded in the affirmative. One extra-large jail did not answer. All other jails stated they did not have a process without a court order.

Question 19 asked when does the ROR or PTR process takes place within their jails. One extra-large jail did not answer question. All other jails reported that it takes place after initial appearance or with court order.

Discussion

When comparing the results of the survey to the research of others listed, four things were found worthy of further discussion. First, with just over 73% of New Jersey jail population comprising of pre-trial detainees, of the surveyed respondents they averaged 53.6% a 20% difference from New Jersey. This difference could be from an array of reasons, from types of pre-trial release opportunities in New Jersey versus Florida to the use of the bond schedule (amounts) in Florida.

Secondly, when looking at the average stay of inmates the majority of pre-sentenced detainees stay was greater than seven days. Of these pre-sentenced detainees the majority of those surveyed noted them as males. However when reviewing the sentenced detainees their average stay for half were between 16 and 30 days, while the other half was greater than 30 days. Of those between 16 and 30 days they were even with male and female, but had a two to one ratio male to female when sentenced to greater than 60 plus days.

Thirdly, when reviewing the average cost to house detainees, they varied with all the difference sizes of jails responding. The majority reported cost ranges from \$51 to \$100 per day. This differs from Alachua County, whom reported \$185 per day. Lastly, when considering most bond reformers focused on release on own recognizance (or Pre-Trial Release), but only one jail surveyed stated that they had a process for this to be done prior to seeing a judge or without a court order.

Recommendations

The original direction of the paper was to take a closer look at the history of bail in this country, its opportunities for reform, and where do we go from here. The history of bail has transitioned from its influence from England, the initial use of commercial bail (bondsman), the Manhattan Bail Project, to a combination of thereof. This has impacted our society positively and negatively, based on where you sit or whom was in charge at the time. Is there a need for bond reform due to the correlation of an individual's conviction rate and their socioeconomic status was the question for which an answer was sought.

Attempting to survey twenty-six of the sixty-seven (38.8%) counties in Florida, yielded only seven respondents (10.5%). Of the confidential respondents, they ranged in size and potential locations. However based on those responding the majority of inmates

housed within the jails were pre-sentenced inmates, with limited ways to access their freedom without providing monetary transactions. It has been reported that the average American does not have \$400 they can come up with in a moment's notice. This again coincides with the survey as to potentially why the average stay was over a week for a pre-sentenced inmate.

The inability to pay a \$3,000 bond placed Kalief Browder on a path that could have been preventable (Santos, 2015). The words of President Lyndon B. Johnson, "he does not stay in jail because he is any more likely to flee before trial...he stays in jail for one reason – he stays because he is poor," may still reign true today. With only one respondent having a system to release an arrestee on ROR or PTR prior to seeing a judge, raises the question of why. Is it that it is more profitable for the bondsmen or the arrestees are a threat to society? Without looking at individual on individual basis (pre-trial programs), it gives the optics of being about the money. My recommendation is for the expansion of pre-trial release programs and avoid another catastrophe like Kalief Browder.

Cordney Battle began his criminal justice career in 2001 and is currently a Lieutenant with the Orange County Corrections Department. After graduating from Florida A&M University with a Bachelor of Criminal Justice (minor in Psychology) he began his career with the Orange County Clerk of Courts as a Deputy Clerk. He then joined the Orange County Corrections Department as Correctional Release Specialist in 2003. In 2004 he became a Correctional Officer, later promoting to Classification Officer (2005) at which time attended and graduated from Troy University with a Master's Degree in Public Administration (concentration in Management). In 2009, he was promoted to Correctional Corporal, Unit Supervisor SRk (2010), and Lieutenant (2014). Cordney currently serves as the President of the Central Florida Chapter of the National Association of Blacks in Criminal Justice. He is a past president of Chapter 7 of the Florida Council on Crime and Delinquency, along with various active roles and board position in other professional and service organizations. He is certified by Florida State University as a Public Manager, American Jail Association as a Jail Manager, and American Corrections Association as a Correctional Supervisor.

References

- Bail reform and risk assessment: The cautionary tale of federal sentencing. (2018, February 09). *Harvard Law Review*, 131(4). Retrieved from <https://harvardlawreview.org/2018/02/bail-reform-and-risk-assessment-the-cautionary-tale-of-federal-sentencing/>
- Gonnerman, J. (2014, October 06). Before the law. *The New Yorker*. Retrieved from <https://www.newyorker.com/magazine/2014/10/06/berfore-the-law>
- Gonnerman, J. (2015, June 07). Kalief Browder, 1993-2015. *The New Yorker*. Retrieved from <https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015>
- Harrison, K. (2018). SB 10: Punishment before conviction? Alleviating economic in justice in California with bail reform. (Doctoral dissertation). *The University of the Pacific Law Review*. Retrieved from <https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1169&context=uoplawreview>
- Orlando Sentinel Editorial Board. (2018, May 18). Orange-Osceola State Attorney Aramis Ayala's bail-reform initiative is worth pursuing throughout Florida. *The Orlando Sentinel*. Retrieved from <https://www.orlandosentinel.com/opinion/os-ed-aramis-ayala-bail-reform-20180517-story.html>
- Pantazi, A. (2018, October 19). Gillum, DeSantis present contrasting views on criminal justice. *Gainesville Sun*. Retrieved from <https://www.gainesville.com/news/20181019/gillum-desantis-present-contrasting-views-on-criminal-justice>
- Rohrer, K. (2017). Why has the bail reform act not been adopted by the state systems? (Juris Doctorate dissertation). *Oregon Law Review* 95(2), 517. Retrieved from <https://scholarsbank.uoregon.edu/xmlui/handle/1794/22327>
- Santo, A. (2015, June 09). No bail, less hope: The death of Kalief Browder. *The Marshall Project*. Retrieved from <https://www.themarshallproject.org/2015/06/09/no-bail-less-hope-the-death-of-kalief-browder#.CXkb6jApz>
- Smith, R. (2018, Spring). Condemned to repeat history? Why the last movement for bail reform failed, and how this one can succeed. *Georgetown Journal on Poverty Law and Policy*, 25(3). Retrieved from <https://www.law.georgetown.edu/poverty-journal/in-print/volume-25-number-3-spring-2018/condemned-to-repeat-history-why-the-last-movement-for-bail-reform-failed-and-how-this-one-can-succeed/>

Swirko, C. (2018, April 25). A crack in the system: For some any bail is out of reach. *The Gainesville Sun*. Retrieved from <https://www.gainesville.com/news/20180421/crack-in-system-for-some-any-bail-is-out-of-reach>

Walters, J. (2018, December 14). Taxpayers lose big in pretrial jail costs, justice advocates call for bail reform. *The Daily Universe*. Retrieved from <https://universe.byu.edu/2018/12/14/taxpayers-lose-big-in-pretrial-jail-costs-justice-advocates-call-for-bail-reform/>

Appendix A

Survey Questions

Introduction:

Greetings,

My name is Cordney Battle, and I am a Lieutenant with Orange County Corrections Department in the Security Operations Division. I am participating in the Senior Leadership Program hosted by FDLE in Tallahassee, FL. As a part of this program, we are required to perform a research study on an approved topic.

I am conducting my research on “Bond Reform.” This a topic that has a direct impact on our jail system both historically and present day. I am seeking your assistance to see what impacts has it had in Florida and potential remedies to this issue (if any).

If you would please take a moment to click on the link provided below and take part in this anonymous survey. The survey is both multiple choice and fill in the blank. I am seeking statistics on both your male and female populations. Thank you in advance.

Jail Demographics:

What is your average monthly population?

- 0-500
- 501-1000
- 1001-2000
- 2001+

Please provide the monthly average number of felony sentenced inmates (males and females) housed at your facility?

Please provide the monthly average number of misdemeanor sentenced inmates (males and females) housed at your facility?

Please provide the monthly average number of felony un-sentenced inmates (males and females) housed at your facility?

Please provide the monthly average number of misdemeanor un-sentenced inmates (males and females) housed at your facility?

Please provide the monthly average number of inmate with no active charges (males and females) housed at your facility?

How many inmates (males and females) do you have housed <18 years of age?

How many inmates (males and females) do you have housed 18-29 years of age?

How many inmates (males and females) do you have housed 30-55 years of age?

How many inmates (males and females) do you have housed 55< years of age?

What is your average number of inmates (male and female) by race?

What is the average length of stay of your sentenced male inmates?

- 0-15 days
- 16-30 days
- 31-45 days
- 46-60 days
- 60+ days

What is the average length of stay of your sentenced female inmates?

- 0-15 days
- 16-30 days
- 31-45 days
- 46-60 days
- 60+ days

What is the average length of stay of your un-sentenced male inmates?

- 0-3 days
- 4-7 days
- 8-14 days
- 15-30 days
- 31+ days

What is the average length of stay of your un-sentenced female inmates?

- 0-3 days
- 4-7 days
- 8-14 days
- 15-30 days
- 31+ days

What is your average cost per day per inmate to be housed?

- \$0-\$50
- \$51-\$100
- \$101-\$150
- \$151-\$200
- \$201+

What is the average bond amounts for your inmates (male and females)?

Do you have a process of releasing inmates ROR or PTR without court order?

- Yes
- No

When does your ROR or PTR process takes place?

- After booking prior to Initial Appearance
- After Initial Appearance
- Do not release inmates on ROR or PTR without court order
- Do not release inmates on ROR or PTR