

The logo for JUSTICELA, featuring the word in a bold, sans-serif font. The letters 'JUSTICE' are black, and the letters 'LA' are white, all set against a solid orange square background.

L.A. County's Bail Reform Proposal Lacks Actual Reform

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Executive Summary

Across Los Angeles County, California's money bail laws trap thousands upon thousands of legally innocent people in jail – primarily Black and Brown people, Immigrants, people experiencing poverty, and those residing in neighborhoods targeted by over policing and punitive criminal justice policy. In fact, 53% of people caged in Los Angeles jails have not been convicted, and their average bail is five times the national average. On any given day, Los Angeles jails are 2,600 people over capacity at the cost of \$177 per person per day. This bail system fuels discrimination and feeds mass incarceration at an exorbitant price to Angelinos.

Bail--A Million Dollar Industry

A recent study by [UCLA's Million Dollar Hoods Project](#)¹ reveals that \$19.4 billion of money bail was levied on persons arrested by the LAPD between 2012 and 2016. Of the \$198.8 million paid in nonrefundable bail bond deposits to bail bond agents, Latinos paid \$92.1 million, African Americans paid \$40.7 million, and Whites paid \$37.9 million. But most money bail was never paid, leaving 223,366 people in LAPD custody before arraignment during that four years span.

The study also found that Black and Latinx women disproportionately paid the nonrefundable bail bond deposits. Pretrial incarceration compromises the public safety of everyone and shifts the financial burden to vulnerable communities, but the answer is not an expansion of community surveillance. We will not accept a bail system or "reform" that continues to devastate lives while furthering home jailing through restrictive pretrial release conditions.

Grassroots efforts to overhaul bail systems and reduce the number of people who are incarcerated exist from coast to coast and have facilitated a moment of inevitable change. It forces us to ask the L.A. County Board of Supervisors and Los Angeles County Counsel--the Board of Supervisors legal advocates and advisers--what are the real goals of the "bail reforms" on the table?

¹ The Ralph J. Bunche Center for African American Studies. (2017). The Price For Freedom: Bail in the City Of L.A.

http://milliondollarhoods.org/wp-content/uploads/2017/10/MDH_Bail-Report_Dec-4-2017.pdf

Pseudo Reforms

Pseudo reforms like the use of algorithm-based risk assessment tools, electronic monitoring, and onerous systems-driven pretrial release conditions cannot replace a money bail system – because they are, in fact, an extension of it. These “reforms” made under the guise of equity, fairness, and efficiency, would only further entrench a pretrial system intent on the criminalization of low-income communities and communities of color. While SB 10, the California Money Bail Reform Act of 2017, seeks to address the inequities of money bail at the state level, it may fail to include proper protections against the expansion of surveillance and harmful risk assessment tools. L.A. County has the opportunity to lead California in genuinely restorative pretrial practices that focus on needs and community-based support.

Constituents and advocates directly impacted by the jail crisis know what meaningful bail reform looks like. The entities that the Board of Supervisor's County Counsel consulted in this process do not represent directly impacted voices or communities and seem to have one thing in common: an institutional commitment to the expansion and continued development and implementation of risk assessment tools. Included in this is the reality that in some cases there are fiscal commitments to furthering the use of algorithm-based risk assessment tools in the pretrial system.

We urge you to remove private interests from any negotiation or policy development related to the freedom of real people. We also demand a seat at the table of the conversations about reforms that do and will continue to impact our lives.

Bail reform must address the profound structural inequalities of our pretrial system rather than attempt to triage a flawed system that necessitates structural solutions. Risk assessment tools are not necessary for ending money bail and decarcerating county jails, and should not be seen as ‘equitable’ reform.

In addition, attempts to qualify “dangerousness” through risk assessment tools presents a false promise that we can accurately predict future harm. We can’t, and it creates perilous precedent. The presumption of innocence cannot be undermined or overshadowed by a presumption of future guilt.²

² Angwin, J. and Larson, J. (2016, December 30). *Bias in Criminal Risk Scores Is Mathematically Inevitable, Researchers Say*.
<https://www.propublica.org/article/bias-in-criminal-risk-scores-is-mathematically-inevitable-researchers-say>

What the Data Shows

The data and measures used to develop and test risk assessment tools stand on a bedrock of structural racism. Thus, the resulting outputs inevitably reflect and exacerbate racial disparities that exist in the criminal justice system under the guise of “neutrality” or “data.”³ See: “Fair Predictions with Disparate Impacts.” Promoting this as a scientific solution erodes the slivers of system accountability that harmed communities continue to fight so hard to sustain.

Transparency is a fundamental component of individual due process. The producers of risk assessment tools regularly hide their data and algorithms from the public. As a result, people are held in jail based on a prediction informed by mechanisms that are wholly and entirely lacking in any transparency while holding dominion over the lives of communities throughout the country.

These tools will also further entrench the already-widespread and unjustifiable stigma attached to someone's involvement in our system.⁴

There is nothing inherent to a risk assessment tool that guarantees decreases in pretrial detention. Risk assessment tools can be used to fill jails just as easily as to empty them. The research discussing what “should” happen as a result of risk assessment is hypothetical and largely ignores the complexities of implementation.⁵

Los Angeles must adopt a needs and strength-based approach to pretrial release that focuses on community-based supportive services. Homelessness, chronic unemployment, poverty, substance use and untreated mental health needs fuel the revolving door of incarceration in Los Angeles. Decades-long divestment from supportive services has left families with little to no safety net. Pretrial services is an opportunity to address the needs of the people of Los Angeles County, lift up their strengths, and ultimately, reduce recidivism and decarcerate.

³ Chouldechova, A. (2016). Fair prediction with disparate impact: A study of bias in recidivism prediction instruments. arXiv:1610.07524. Pittsburgh, Pennsylvania: Heinz College, Carnegie Mellon University.

⁴ Barry-Jester, A., Cassleman, B. and Goldstein, D. (2015, August 4). *Should Prison Sentences Be Based On Crimes That Haven't Been Committed Yet?*.

<https://fivethirtyeight.com/features/prison-reform-risk-assessment/>

⁵ Shalom, A. (2017, December 5). *ACLU-NJ: N.J. bail reform praised, but mass incarceration persists*. NJ Star-Ledger.

https://articles.nj.com/opinion/index.ssf/2017/12/aclu-nj_the_problem_with_njs_a_grade_on_bail_refor.am
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About JusticeLA

JusticeLA was formed by Patrisse Cullors, co-founder of Black Lives Matter and anchor organizations: Californians United for Responsible Budget (CURB), Community Coalition, Critical Resistance L.A., Dignity and Power Now, Immigrant Youth Coalition, JustLeadershipUSA, Revolve Impact, TransLatina Coalition and Youth Justice Coalition. JusticeLANow.org.

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References

1. The Ralph J. Bunche Center for African American Studies. (2017). The Price For Freedom: Bail in the City Of L.A. http://milliondollarhoods.org/wp-content/uploads/2017/10/MDH_Bail-Report_Dec-4-2017.pdf
2. Angwin, J. and Larson, J. (2016, December 30). *Bias in Criminal Risk Scores Is Mathematically Inevitable, Researchers Say*. <https://www.propublica.org/article/bias-in-criminal-risk-scores-is-mathematically-inevitable-researchers-say>
3. Chouldechova, A. (2016). Fair prediction with disparate impact: A study of bias in recidivism prediction instruments. arXiv:1610.07524. Pittsburgh, Pennsylvania: Heinz College, Carnegie Mellon University.
4. Barry-Jester, A., Cassleman, B. and Goldstein, D. (2015, August 4). *Should Prison Sentences Be Based On Crimes That Haven't Been Committed Yet?*.
5. Shalom, A. (2017, December 5). *ACLU-NJ: N.J. bail reform praised, but mass incarceration persists*. NJ Star-Ledger. https://articles.nj.com/opinion/index.ssf/2017/12/aclu-nj_the_problem_with_njs_a_grade_on_bail_reform