



EXECUTIVE SUMMARY

This report tells the rarely heard and even less understood story of how the bail industry has corrupted our constitutional freedoms for profit: the freedom from exploitation in bail, the guarantee of being recognized as innocent until proven guilty, and the guarantee of the equal application of the law to all people.

Corporate opportunists have hijacked public authority and created an unnecessary and largely unaccountable \$2 billion bail industry that profits from trapping people both inside and out of jail, often for long after their charges with the courts have been resolved. It may seem paradoxical to learn that bail—a process meant to guarantee freedom and fairness in the criminal justice system for people who have not been convicted of a crime—is being used by corporations in this way. Yet it happens daily nationwide, typically with little resistance from the politicians, judges, and prosecutors sworn to protect public rights.

The for-profit bail industry has reinforced and profited from the racially biased nature of our criminal justice system, which routinely targets low-income people, Black people, and other people of color for reasons that have nothing to do with their guilt or innocence.

This report exposes how the industry works, the corporations and enablers in government that are behind it, who they impact and the extent of their damage, the inherent problems with allowing a for-profit industry to hold the key to the jailhouse gates, and why this practice of for-profit money bail must end.

The Basics of Money Bail

Each year, millions of people are forced to pay money bail after they are arrested.

Just over two decades ago, most people arrested for felonies were released without having to pay bail. But today, millions of people must pay bail in order to avoid detention in jail while their case is underway, though they are still innocent in the eyes of the law. If they cannot pay the amount set for their bail, they remain in jail for their inability to pay. Many plead guilty regardless of the case against them and suffer the long-running consequences of convictions in order to be released. To come up with the money for release,

far too many people and their families are lured into exploitative arrangements with bail bond corporations that typically charge a nonrefundable fee of 10 percent of the full bail amount. Many are trapped in a cycle of debt and fees related to their payments, and even people whose charges are dropped or who are determined to be innocent do not get their money back. Their debt and financial losses, and the resulting problems in their lives, can persist long after their court case is resolved. Unsurprisingly, there is racial bias in determining who needs to pay and who does not, and in how high bail is set. Corporate insurance companies are largely responsible for the way the bail system works today, and they are also the largest beneficiaries of it.

Who Profits From the Corporate Takeover of Our Bail System?

In most of America, the insurance corporations and local bond agents that make up the private for-profit bail industry operate in the shadows—little understood and with inadequate oversight. Yet, in another sense, they operate very much out in the open—portrayed to the public at large by news and entertainment media as a nearly automatic and inherently necessary part of the system. In reality, for-profit bail is actually a global anomaly used only in the Philippines and the United States.

This report shows how corporate insurers operate with little risk, even leading some of them to boast of going years without paying any losses. Fewer than 10 main insurers underwrite a significant majority of the approximately \$14 billion in bail bonds issued in the United States each year. Bail insurance corporations are increasingly held as under-the-radar subsidiaries of large global companies. Traded in London, Tokyo, and Toronto, or

registered in tax havens like the Cayman Islands and Bermuda, these corporations and their executives operate far from the influence of the people and communities over whom they hold so much power.

Laws the industry often helps write and the politicians it has helped fund work to sustain the ability of bail corporations to extract money from arrested people and their families. And a combination of insufficient and ineffective government oversight enables the many abuses they perpetrate. In particular, the big insurance corporations behind bail have been very effective at crafting and institutionalizing laws, regulations, and practices that protect their profits; they have cultivated a more than 20-year relationship with the American Legislative Exchange Council (ALEC), the pro-privatization lobby group, to successfully write and pass their own custom laws in state legislatures nationwide, while very effectively derailing alternatives and reforms.

How Bail Corporations Control People's Freedom

The result of bail corporations' control is that millions of people are no longer free: people stuck in jail and families stuck in debt to create profit for these corporations.

Leaving People in Jail. With only its bottom line to answer to, the bail industry determines who it will accept as customers and who it will leave detained while their cases slowly make their way through a complicated and extremely flawed criminal justice system.

Trapping Families in Debt and Loss. People who post bail directly with courts get their money returned at the end of a case, regardless of its outcome. But bail corporations keep families' payments, even when charges are dropped or people are found innocent. They also collect money from installment plans and fees long after they have any financial risk. In Maryland, the bail industry kept at least \$75 million over five years just in premiums from people whose cases were resolved without a conviction in District Court alone.

Rigging Contracts to Forfeit People's Rights. Bail insurers' contracts with people seeking bail—and their families or friends who co-sign—contain exploitative terms. Common provisions require people and their families to sign away their privacy,

including by submitting to invasive surveillance, and to pay sweeping and unpredictable costs.

With little accountability, the for-profit bail industry has thus created a way to profit from usurping the role and function of the courts, trapped families in debt while escaping scrutiny for consumer practices, made armed arrests and surveilled people without meaningful oversight by police, and evaded insurance regulators. This report includes original and secondary research and stories from news media across the country about individuals harmed by bail corporations and the for-profit bail system overall.

Calls to eliminate the for-profit bail industry have persisted for a century, from publicly published studies in the 1920s to Robert F. Kennedy to advocates and community leaders today.¹ Many jurisdictions across the country are now trying to minimize or eliminate both the destructive role of money bail and the bail corporations that sustain it. Yet on the whole, though the corruption and impact of this system have been widely exposed, the industry persists.

In light of these findings, we call on state and federal regulators, attorneys general, and legislators to immediately investigate the industry and bring it out of the shadows, building on the evidence offered by this report. State and local governments must respond to this wealth-based detention crisis and work to create a stronger and fairer criminal justice system that neither depends on the for-profit bail industry nor supports it.
