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\$ELLING OFF OUR FREEDOM

How insurance corporations have
taken over our bail system

**TOOLKIT FOR
ADVOCATES AND
ACTIVISTS**



SELLING OFF OUR FREEDOM

How insurance corporations have taken over our bail system



TALKING POINTS

1 Insurance corporations have created an unaccountable and unnecessary two-billion-dollar bail industry to profit from a system that takes away people's freedom – either by leaving them in jail or by locking them in to predatory contracts.

2 For-profit bail is an unjust and destructive force that impacts millions of families, especially in Black and low-income communities.

3 Every year, millions of people are coerced into paying money bail after they're arrested in order to remain free while their cases are processed. Even though people at this point are still innocent in the eyes of the law, they and their families are forced to pay non-refundable deposits to for-profit bail bonds companies to buy their release.

4 The money bail system perpetuates racial bias within criminal justice system, and only benefits the for-profit bail bonds industry and the big insurance companies that back it.

5 The big insurance corporations behind small bail bond agencies are profiting from a corrupt system that preys on people of color and poor communities.

- The bail bonds industry is a lot like the payday loan industry. The bail bonds industry is built on predatory business practices, preying on Black people and poor communities of color who are disproportionately exposed to the criminal justice system, and transfers huge amounts of money from everyday people to large corporations.
 - Bail insurers trap families in a debt trap with fees and installment plans, making millions off premiums alone. They coerce people into signing over their privacy rights and when it's not profitable, they leave people in jail.
 - A small and shrinking number of insurance companies collect their cut of nearly all the bail bond premiums collected by bail agencies. While there are still around 30 bail insurance companies, the top nine bail insurers that each underwrite a billion dollars in bonds cover the vast majority of the estimated \$14 billion in bond posted by for-profit bail each year.
 - The for-profit bail industry serves no discernible public good—all it does is allow Wall Street to profit from mass incarceration.
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6 There is enormous and arbitrary variation—as well as demonstrated racial disparity—in the bail amounts and conditions set for people.

- Release determinations and bail amounts vary widely judge by judge

and court by court – based on prosecutors' demands, bail schedules, and judicial choice, and local laws.

- Research shows that Black people are assigned higher bail amounts than other defendants, which only further compounds the disparity communities of color face at every stage in the criminal justice system.
 - People pass through jail more than 11 million times each year, and unaccountable corporations have become de facto gatekeepers that decide who is released from jail before trial.
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7 For-profit bail fuels mass incarceration and disproportionately impacts Black and low income communities.

- Bail creates a jail trap. Even when judges determine that a person can be released pending trial, thousands of people end up stuck in jail anyway just because they cannot afford bail.
 - There is increasingly bipartisan consensus that too many people are incarcerated at too high a cost for people and communities. The bail insurance industry fights reforms aimed at reducing unnecessary arrests, and pushes for increased enforcement that preserves their customer pipeline even as the consensus grows for criminal justice reform.
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8 These corporate enablers prop up and profit from racial bias in money bail.

- Bail insurers lead national efforts, through organizations like ALEC, to preserve the for-profit bail system. They fund lawmakers and lobbyists to keep their access and resist when courts, communities, and legislators demand change.
 - For example, bondsmen have successfully pushed back on reform and pretrial services that would help low-risk, poor people be released before trial in Texas – and have also done so in California and Maryland.
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9 We need to abolish the for-profit bail industry. Big companies whose only goal is profits should not be the gatekeepers of pretrial detention and release.

- Money shouldn't determine someone's freedom, and we need to work to limit its use in determining pretrial release. Local prosecutors, judges, and sheriffs should all be exploring every option possible to limit the use of money bail right now. City and state leaders must reform their bail systems to end the use of for-profit bail.
- Where for-profit bail continues, regulators, Attorneys General, and legislators must investigate the industry and increase ongoing oversight.

1 Q: What are the sources for industry financial info?

- Industry financial data came primarily from business analysts, as well as financial reports filed with California regulators, along with industry sites and other studies.
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2 Q: How did you determine how much money bail is circulated each year?

- The estimate of \$14 billion in bail bonds posted is widely cited, in places including this ["bail fact" from ExpertBail](#) (a site run by a major bail industry insurer).
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3 Q: How much is the industry taking in? How did you get that data?

- The disclosure is very variable and public estimates range from \$1.4 billion to more than \$2.3 billion in revenue taken in by Bail Agents.
 - The lower \$1.4 billion is based on the basic bail premium of 10 percent of the \$14 billion in bail bonds. The higher revenue range comes from a variety of estimates from industry observers - and is plausible due to additional revenue from fees, the larger premiums charged in immigration bail bond, and the much higher than 10% that may be charged for lower bails (for example, testified to in Harris County as part of the case there - that bail set at \$500 may charge as much as \$200 - \$250 in premiums).
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4 Q: How much do the bail insurers take in?

- As a rule of thumb, they collect around 10% of the bail agents' revenue and then collect and hold onto another roughly 10% for a "Build-Up Fund" - which they hold for the rare times when they end up responsible for paying a forfeited bond. But CA financial records include evidence that insurers collect -- but may go years without ever paying.
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5 Q: What are the particularly troubling provisions in the contracts we're describing as exploitative?

- We've reviewed contracts obtained publicly online (on bail websites and on state insurance regulators' sites), as well as from people using bail.
- Particularly bad terms:
- To pay ALL the costs associated with the bond, before they are even incurred if the Insurer demands it.
- To submit to searches, surveillance, property invasion, vehicle tracking etc like this provision for the indemnitor (family!) of the person released: "You irrevocably grant to Surety and its designees the right

to enter your residence, or any other property owned or occupied by you or Defendant, without notice, at any time, for the purpose of locating, arresting, and returning the Defendant to custody."

- To seek arrest and revocation of bail (they keep the premium money) for far more than not showing up in court - including for reduction in value of collateral, a disconnected phone or not telling the agent about a new job quickly enough.

- And these multi-part extensive contracts are signed under crisis - with someone sitting in jail. The family gets a price quote from the company and have to agree to get their person free. People do not have lawyers to review these lengthy debt agreements, time to take them home and look them over, or anything in the way of bargaining power even if they can figure out what they are signing.
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6 Q: What are the big companies?

- There are a few global financial conglomerates that have bought up multiple smaller bail insurance companies. They're so large that bail's barely a drop in the bucket. These include Tokio Marine (\$40 bill in revenue last fiscal year per its public filings) and Canada's Fairfax Financial (\$9.5 billion in revenue per its public filings)
- The most politically active insurers are the members of the American Bail Coalition: like Lexington National Insurance (which dominates Maryland bail); and Banker's Surety and AIA (which is out front arguing for bail).
- Then there's Aladdin - by far the dominant California bail bond company. It's private equity owner (Endeavour) owns both its own bail insurer and Aladdin - the bail agency.

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For-Profit Bail Bonds Industry & Insurance Corporations Trap People in Cycle of Debt

New Report from Color Of Change and ACLU Documents Toll of Money Bail on Communities of Color and the Poor

NEW YORK – [A report released today](#) by [Color Of Change](#) and the [American Civil Liberties Union's](#) Campaign for Smart Justice shows how the bail bonds industry deprives people of their constitutional rights. Every year millions are forced to pay money bail after arrest, but the insurance corporations that make money bail possible operate with little oversight as they profit from America's corrupt pretrial justice system.

The bail bonds industry portrays itself as small, "mom and pop" bail bonds agencies that secure release from jail for a nonrefundable fee – typically 10 percent of the bail amount paid in cash or through an installment plan with interest. In reality, multinational insurance corporations dominate the industry, underwriting each bond. The money bail system allows corporate insurers to operate with little risk, meaning the industry profits even when its customers do not show up for court.

"Big insurance is raking in huge profits by putting a price on people's freedom," said [Rashad Robinson](#), executive director of Color Of Change. "Bail bonds are the new payday loans. It's a predatory practice that traps Black families and poor people in debt. For too long, the corporations that reap massive profits from this unjust destruction of our communities have been allowed to operate unchecked. When taxpayers foot the bill for needlessly locking up poor people before trial, the government is essentially subsidizing a racist, unnecessary, and outright dangerous industry. This report makes it clear: our justice system cannot be fair until we end for-profit bail."

The report reveals that bail insurance corporations are increasingly held as under-the-radar subsidiaries of large multinational companies, **and fewer than 10 large insurers underwrite a majority of the approximately \$14 billion in bail bonds issued in the United States each year.**

"For too long, the bail bond industry has profited from a system that traps poor people in a cycle of incarceration and debt," said [Udi Ofer](#), Director of the ACLU's Campaign for Smart Justice. "It is time for states to abolish the for-profit bail system, which perpetuates racial bias within the criminal justice system and only benefits the bail industry's bottom line. Money shouldn't determine someone's freedom from incarceration. Wall Street must not be the gatekeeper of pretrial detention and release. Profits must be removed from playing any role in deciding whether a person is free or in jail."

The report exposes how the industry works, who is impacted by this corrupt system that drives mass incarceration, the corporations and enablers in government behind it, the inherent problems in allowing a for-profit industry to hold the key to the jail, and why the practice of for-profit money bail must be eliminated from the justice system. The report details how for-profit bail companies and insurance corporations subvert justice through:

- Determining who gets to have their freedom before trial and who must stay in jail for days, weeks, or months, and making these decisions based only on profit potential;
- Trapping families in cycle of debt through payment plans for bond premiums, which people can end up paying long after their case is dismissed or resolved;
- Rigging contracts to coerce people in dire circumstances to forfeit their rights, such as forcing customers and families to submit to invasive surveillance, and to pay long-term and unpredictable costs; and
- Influencing politicians and policy to sustain their ability to extract money from arrested people and their families.

The full report is available online [here](#).

Color Of Change is the nation's largest online racial justice organization. We help people respond effectively to injustice in the world around us. As a national online force driven by over one million members, we move decision-makers in corporations and government to create a more human and less hostile world for Black people in America. Visit www.colorofchange.org.

ACLU's Campaign for Smart Justice is dedicated to ending mass incarceration in the United States. It is an unprecedented, multiyear effort to reduce the U.S. jail and prison population by 50 percent and challenge racial disparities in the criminal justice system. Visit www.aclu.org.

“ I was 21 years old when my husband went away. There I was, pregnant with our daughter, and suddenly living on my own. I couldn't afford money to hire a lawyer, let alone come up with the \$250,000 his bail was set at. The second the judge set the bail amount, I knew it wasn't an option for us. There was no way I could do it on my own. I felt utterly alone and isolated during the 17 years that my husband was incarcerated. I felt responsible and guilty for not having enough money to bail him out and fight for his freedom.”

Anna Member, Essie Justice Group

“ When my brother was arrested, my mom had to put up our house for his bail. Now, it's like we owe them everything; otherwise we lose the house. We are forever in debt to the bail bondsman because of it. My mom has to work harder to keep up on the bills and stay out of debt, because they have so much control over our lives now.”

Le'Char Member, Essie Justice Group

“ We have to find ways to keep our families together. As a mother, I was separated from my family while in jail, not always having the money to bail out. Finding the money to bail out meant I was asking them to spend money on bail rather than on taking care of my loved ones. This system is not designed for women. Instead, it is destroying and dismantling our families.”

Dolores Family UNity Network

“ My son has struggled with his mental wellness for the last several years. When he turned 24, he was arrested. His bail was set at \$150,000. I did everything I could to come up with the 10% of \$150,000 it would take to get him out. But we couldn't make it happen. Because of his illness, in jail, he was put in solitary confinement. He gets worse and worse every day...I wish I could have pulled together the money, even for him to come home for a month; it would have changed so much.”

Lisa Member, Essie Justice Group

“ When my father was arrested they set the bail at \$500,000. My family was in a state of severe distress. We didn't have half a million dollars. We didn't even have the 10% needed to pay to the bail bondsmen. We barely had 1% of the bail amount. We had no assets and owned no property. Without having the 10% to pay to the bail bonds company, my father stayed in jail. In jail, my father missed out on my college graduation and his father's funeral. Money bail is harmful no matter what—you hurt when you pay, and everyone hurts when you can't.”

Tanea Member, Essie Justice Group

