Race, Poverty, and Bail: An Annotated Bibliography

Clanitra Stewart Nejdl

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Race, Poverty, and Bail: An Annotated Bibliography

CLANITRA STEWART NEJDL

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I. INTRODUCTION

On June 9, 2017, Illinois’s Bail Reform Act of 2017 was signed into law by Governor Bruce Rauner. Among other important provisions, the Act creates a presumption that non-monetary release conditions will be granted for defendants, requires that a defendant be provided an attorney for bail determination hearings, provides a bail credit for certain offenses, and authorizes the Illinois Supreme Court to create a non-discriminatory statewide risk assessment tool that could be used to make bail determinations. Despite the crucial improvements to Illinois’s bail system achieved through the Act,
some advocates argue that further reforms are still needed to protect the rights of defendants related to bail and pretrial release.\textsuperscript{7}

In light of the recent bail reforms in Illinois and other states,\textsuperscript{8} it is important to consider the growing body of research addressing whether (and, if so, the extent to which) bail outcomes and related pretrial release decisions are connected to the race, ethnicity, and income level of a defendant. Even if the bail and pretrial release policies in a state are intended to be race and income-neutral, racial and income disparities may still result. By examining existing research on this topic, stakeholders in states considering bail reform (including judges, legislators, lawyers, and community members) can truly determine what reforms may be sufficient and what additional reforms may still need to be considered.

This annotated bibliography highlights selected articles and studies examining the effects of a defendant’s race and income level on bail determinations and the pretrial detention period. It is not intended to be a comprehensive list of all works available. Works selected for inclusion were published between the years 2000 and 2018 in law reviews and journals meeting specific ranking criteria.\textsuperscript{9} Although there are additional articles and studies available on this topic, the exclusion of any work from this annotated bibliography does not indicate any qualitative opinion of that work.

II. ANNOTATIONS\textsuperscript{10}


\textsuperscript{7} See Adult Justice, ILL. JUST. PROJECT, https://www.iljp.org/adult-justice/ [https://perma.cc/LUS7-3TL3] (last visited March 20, 2018) (“[T]he need to achieve comprehensive bond reform remains even after the passage of SB 2034, the Bail Reform Act of 2017, Public Act 100-0001.”); see also Grace, supra note 4 (“SB 2034 is just the first step along a long road toward transformative bail reform in Illinois.”).


\textsuperscript{9} Included works were selected from relevant articles published in 2000 or later within the Top 50 U.S., English-language law journals in the three categories of Criminal Law and Procedure; Criminology; and Public Policy, Politics, and the Law (2009-2016, by combined score), as well as the Top 50 U.S., English-language law journals for All Subjects (2009-2016, by combined score) according to the Washington and Lee Law Journals Submissions and Ranking index at http://go.wlu.edu/lawjournals. The 2010-2017 ranking data was not available at the time this article was written.

\textsuperscript{10} The works included are provided in chronological order by the year of publication. Works published in the same year are listed in alphabetical order. Some of the studies included in this annotated bibliography also analyzed and discussed data related to the trial and sentencing phases of a defendant’s case. Although the author has focused only on the
This frequently-cited 2003 study by Professor Demuth examines whether Hispanic defendants fare differently at the pretrial stage of the criminal justice process than White and Black defendants. Professor Demuth delineates five reasons for the urgency of this type of research: 1) since pretrial detention occurs before the defendant has been convicted, it is a punishment for the defendant without a conviction; 2) pretrial decisions involve judicial decision-making with "incomplete information and involve a great deal of prosecutorial and judicial discretion"; 3) racial and ethnic disparities in the outcomes of pretrial decisions can arise when judges and prosecutors exercise their discretion in areas that involve financial considerations; 4) decisions made at the pretrial stage of the criminal justice process are based on criteria that "are less restrictive than the criteria considered legally relevant for making sentencing decisions"; and 5) separately examining data on Hispanic defendants from data on Black defendants may provide a better understanding of how both groups are treated compared to one another and compared to White defendants.

For this study, Professor Demuth analyzed large urban area data on felony arrestees from the Department of Justice's State Court Processing Statistics for 1990, 1992, 1994, and 1996. The study looks at Hispanic, Black, and White male defendants who have been accused of property offenses, violent offenses, and drug-related offenses. Professor Demuth hypothesizes that Hispanic defendants fare worse at the pretrial stage than White defendants. He also hypothesizes that Hispanic defendants with alleged drug offenses may be more likely to be denied bail altogether. After analyzing the data, Professor Demuth finds that both Black and Hispanic defendants are more likely to be denied bail than White defendants (regardless of the type of offense) and that Hispanic defendants are more likely to be denied bail than both Black and White defendants. He also finds that Hispanic defendants are more likely to receive financial bail as opposed to being released on non-financial terms and that the bail amounts for Hispanic defendants are significantly higher than those for White or Black defendants. Finally, the author finds that Black and Hispanic defendants "are significantly less able
to post bail"\textsuperscript{14} than White defendants, resulting in their continued pretrial detention. According to Professor Demuth, the data indicates that Hispanic defendants face "a 'triple disadvantage' at the pretrial release stage."\textsuperscript{15}


Professor Schlesinger's study tests theories on the way courts make decisions about minority defendants (either consciously or unconsciously) by analyzing data from the Department of Justice's State Court Processing Statistics (SCPS), 1990-2000: Felony Defendants in Large Urban Counties.\textsuperscript{16} In this study, Professor Schlesinger limits her analysis to 36,709 White, Black, and Latino male defendants. She considers several variables relevant to pretrial criminal processing (e.g., whether bail is approved or denied, whether a non-financial release is granted, and whether defendants given bail are able to pay it).

According to Professor Schlesinger, the results of the study show that race and ethnicity are relevant to bail officials' decisions on pretrial release. The author found that the Black and Latino defendants in the data set were more likely to be denied bail and less likely to be given non-financial release than White defendants. She also found that Latino defendants in the data set received bail amounts that were 12% higher than Black and White defendants. The article also includes a concise review of three prior studies that address the effects of race and ethnicity on pretrial release.


Professors Turner and Johnson contend that studies on the effects of race and ethnicity in the criminal justice system should not lump individuals of various racial and ethnic groups into one category (i.e., "Non-White"\textsuperscript{17}). The authors address the need for researchers to examine the differences between how Hispanics and African-Americans are treated in the criminal justice system. Accordingly, their study examines whether Hispanics and African-Americans are treated differently with regard to pretrial release decisions. Specifically, the authors focus on whether the amount of bail set by a court is affected by the fact that the defendant is Hispanic. To determine this,

\begin{itemize}
  \item \textsuperscript{14} Demuth, supra note 11, at 897.
  \item \textsuperscript{15} Id. at 899.
  \item \textsuperscript{16} BUREAU OF JUST. STAT., supra note 13.
\end{itemize}
the authors examined data from 1996 for 812 defendants in the United States District Court of Lancaster County, Nebraska. They considered a variety of dependent and independent variables as part of the analysis, including the ethnicity of the defendant, the type of crime alleged, and the residency of the defendant.

The results of the analysis confirm that "extra-legal factors" such as ethnicity do affect the amount of bail set by bail officials. In this case, the results showed that the Hispanics in that data set receive "significantly higher bail amounts than either African-Americans or Whites." The results also showed that the location of the Hispanic defendants's residence (i.e., in-state or out-of-state) affects the bail amounts received and that older Hispanic defendants receive higher bail amounts than younger Hispanic defendants.


Professors Freiburger, Marcum, and Pierce examine potential correlations between a defendant's race and whether he or she is released pretrial. The authors first provide a discussion of the "focal concerns perspective" which proposes that judges have three primary concerns when making sentencing decisions: blameworthiness, dangerousness, and practical constraints. The authors contend that these concerns are also being considered with pretrial detention decisions. The authors then review prior studies that have addressed whether there is a racial disparity related to pretrial detention.

In this study, the authors analyze pre-sentence investigation reports and official court dockets for defendants facing drug charges in one Pennsylvania county. The authors report that there is strong evidence of racial disparity related to a judge's decision to grant pretrial release on recognizance and related to the decision to authorize pretrial release at all. Black defendants in the data set were less likely to be released on their own recognizance and were more likely to be refused pretrial release altogether. According to the study, factors such as employment status and the number of prior felony convictions also significantly affected pretrial decisions. The authors suggest that future research investigate which additional factors considered by bail officials when making pretrial release decisions.

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18. *Id.* at 40.
19. *Id.* at 49.

In her 2012 article, Professor Appleman provides a detailed analysis of the nexus between pretrial detention and a defendant’s lack of wealth and power. The author notes that “the current bail system is by-and-large unregulated and plagued with corruption.”\(^\text{21}\) She emphasizes the effect of this “unregulated”\(^\text{22}\) and “corrupt”\(^\text{23}\) bail system on low-income defendants, who are often held for long periods of time pretrial due to the inability to pay monetary bail. The author points out that during that pretrial detention period, those defendants may be more likely to plead guilty to crimes they did not actually commit in order to be released from jail. She then highlights how pretrial detention has inappropriately been used as a form of punishment rather than a protection from dangerous defendants. The author asserts that the pretrial detention period can lead to significant harm for defendants due to unhealthy jail conditions, the trauma caused by imprisonment, the financial and other consequences that accompany an arrest, and the violation of Sixth Amendment protections from punishment before a conviction.

The author provides a brief history of the bail system in the United States. She also discusses previous attempts at bail reform and key United States Supreme Court cases addressing the issue of pretrial detention and punishment. She concludes with proposals for reforming pretrial detention and bail processes. Her proposals include expanding the role of pretrial supervision programs, increasing the granting of bail, providing legal representation for defendants at bail hearings, and involving the community in bail hearings through the creation of “bail juries.”\(^\text{24}\)


The authors of this article discuss in detail the overcrowded jail conditions in Harris County, Texas and propose reforms to improve those conditions. They assert that changes to the state’s pretrial detention processes


\(^{22}\) Id.

\(^{23}\) Id.

\(^{24}\) Id. at 1366.
would lessen overcrowding, since "in December 2010, about half of the persons in Harris County jails were pretrial detainees." The Texas Commission on Jail Standards determined in 2009 that the jail population in Harris County was high due in part to the number of defendants in pretrial detention for "a single drug possession charge" and the number of people who were not given personal recognizance bonds even though they would have qualified for them. The authors turn their discussion to the Bail Reform Act of 1984 and the United States Supreme Court’s holding in United States v. Salerno, which they argue allow a large degree of discretion that could be "easily abused and applied in an impermissible discriminatory manner even if unintentional."

The authors suggest that statistics alone may indicate that Harris County’s bail system is unconstitutional, referencing the predetermined bail schedule used by the County to determine the bond amounts. They explain that these amounts are tied to the level of offense and that other factors are usually only considered when they could lead to increases in the bail amount. The authors argue that this process is not rationally related to a "legitimate government objective." The authors do reference the holding in McKleskey v. Kemp which indicates there must be more than statistics to support an argument of disparate treatment. However, they contend that for Harris County, in which "arrests are focused on largely poor African-American and Hispanic communities," statistics alone should at least lead the County to "reconsider its policies in light of the significant overrepresentation of African-Americans in its jails."

To alleviate jail overcrowding in the County, the authors suggest several measures, that would be particularly helpful for those in pretrial detention. For example, the authors suggest that for some misdemeanor crimes (e.g., graffiti, etc.), tickets or citations should be issued in lieu of an arrest. Further, more "nonfinancial personal recognizance bonds" should be granted by bail officials. Another suggestion is that Harris County’s pretrial services be removed from the direct oversight of the judges in the County. The authors

26. Id. at 52.
30. Id. at 66.
34. Id. at 78.
conclude that these and other changes would improve the circumstances that have led to the problems with the jails in Harris County.


In this brief article, Professor Jones discusses the important work of the American Bar Association (ABA) Criminal Justice Section and the Department of Justice in creating the Racial Justice Improvement Project. She explains how the two-year project allows officials and other stakeholders to "identify the discretionary decision points in the adjudication process where policies and practices have an adverse impact on minorities and to develop evidence-based policy reforms to correct these racial disparities." The Racial Justice Improvement Project taskforce in each location received funding, technical support, and training from the ABA to carry out the purpose of the Project. One requirement for the Project is that the work of each taskforce be supported by data and research specific to the jurisdiction. The taskforces were restricted from working on "purely legal reforms" that required legislative action or were meant to reverse legal precedent in the jurisdiction. The taskforces were also restricted from focusing on outcomes that would take longer than the two-year period to achieve.

Professor Jones provides an overview of the reforms undertaken by each jurisdiction. The Delaware taskforce focused on developing policies for probation officials to use in supervising offenders on probation. The Saint Louis County, Minnesota taskforce focused on "address[ing] racial disparities in pretrial detention." The Kings County, New York taskforce first focused on DUI-related reforms and later on drug treatment for immigrants. The New Orleans, Louisiana taskforce focused on a pretrial diversion program tied to drug treatment. Professor Jones notes the importance of creating "standing

35. See Cynthia Jones, *Confronting Race in the Criminal Justice System: The ABA's Racial Justice Improvement Project*, CRIM. JUST., Summer 2012, at 12, 14 (noting that the Project rules required each taskforce to include "the district attorney, the chief public defender, the police chief, the chief judge of the criminal court, and a representative from a community organization that focuses on criminal justice reform.").

36. See id. at 14 (noting that the four locations selected for the project were the state of Delaware; Saint Louis County, Minnesota; Kings County, New York; and New Orleans, Louisiana).

37. Id. at 14.

38. Id.

39. Id. at 15.
Racial justice task forces][40] to specifically address racial disparities in local criminal justice systems.


In this article, Professor Jones addresses the racial disparities that can be seen in bail determination outcomes across the country. In Part I of her article, Professor Jones gives detailed consideration of the legal basis for the nationwide racial disparities related to bail. Professor Jones begins with a brief review of the relevant federal law, discussing the Bail Clause of the Eighth Amendment to the United States Constitution.[41] From there she discusses the progressively restrictive United States Supreme Court cases and federal statutes related to bail, including *Stack v. Boyle*,[42] *Carlson v. Landon*,[43] *Bell v. Wolfish*,[44] *Schall v. Martin*,[45] the Bail Reform Act of 1984,[46] and *United States v. Salerno*.[47] She then addresses state laws and how the variances in state laws on bail processes (primarily state constitutions and state statutes) could pose a “grave risk of an erroneous and arbitrary deprivation of liberty.”[48]

Part II of Professor Jones’ article summarizes existing studies that have been completed on racial disparities in bail determination. These “first generation studies,”[49] which range from 1970 to 2000, generally conclude that African-American defendants are more likely than White defendants to receive less favorable bail outcomes and higher money bonds attached to pretrial release. The “second generation studies”[50] range from 2001 to 2012 and primarily show that African-Americans and Hispanics are “more likely to be in jail pretrial”[51] than similarly-situated defendants who were White. They also show that African-American and Hispanic defendants are more likely to be held on bail due to the inability to pay bond amounts twice as high as those for similarly-situated white defendants.

41. U.S. CONST. amend. VIII.
42. 342 U.S. 1 (1951).
43. 342 U.S. 524 (1952).
44. 441 U.S. 520 (1979).
47. 481 U.S. 739 (1987).
49. Id. at 939.
50. Id. at 941.
51. Id.
Part III of the article addresses the Saint Louis County, Minnesota’s Racial Justice Taskforce, which arose out of the American Bar Association’s Racial Justice Improvement Project. Professor Jones details the steps taken to address the “policies and practices in the bail determination process that produced unwarranted racial disparities in pretrial detention” during the two-year period between 2010 and 2012. In Part IV of her article, Professor Jones uses the success of this taskforce to propose four key policy reforms: 1) providing better instruction to bail officials; 2) requiring that bail determinations related to risk of flight be based on specific evidence about the defendant’s background; 3) requiring that the factual basis for such determinations be documented by the bail official; and 4) creating an oversight committee comprised of key stakeholders to regularly review reports on the specific bail determinations made by bail officials in that jurisdiction.


The authors suggest that prior studies on the effects of race on bail and pretrial release have reached “divergent conclusions” because there has been a “general failure of prior research to model the criminal justice system as a conglomeration of unique and distinct decisions points that are interconnected.” Accordingly, the authors suggest that empirical studies on the topic should avoid focusing on racial disparities at just one “decision point” in the criminal justice process (e.g., pretrial detention, sentencing, etc.) since those disparities may vary “depending on the decision point analyzed.” Because of this, researchers may miss “an overall race effect” that would be more apparent by analyzing multiple decision points. Based on these principles the authors’ study considers the “cumulative effect” of race at eight decision points in the criminal justice process.


52. Id at 949.
54. Id at 279.
55. Id at 278.
56. Id at 279.
57. Id at 281.
59. BUREAU OF JUST. STAT., supra note 13.
sixty-five of the most populous U.S. counties during the month of May in each of the years listed. The authors’ analysis compares the defendant’s race ("Black" or "White") and ethnicity (Hispanic or non-Hispanic) with the type of offense alleged, the number of prior misdemeanor and felony convictions, the number of previous "prison admissions" and other relevant factors. From the findings, several determinations were made. First, the authors found no significant evidence that the defendants’ race affected their pretrial release or the decision on monetary bail. However, they did find that Black defendants with "severe prior criminal record[s]" fared worse in terms of the amount of bail set. The authors conclude by reiterating the negative ramifications of racial disparities in the criminal justice process and expressing the need for additional research in this area to more clearly analyze any racial disparities that may be found.


Kutateladze et al. examine racial and ethnic differences at various "decision points" in the criminal justice system. For this study, they analyze data from the New York County District Attorney’s Office, which has a "large and diverse criminal caseload" and includes cases from a "racially diverse" population. The data was collected for a period of twenty (20) months between 2010 and 2011 and consisted of 159,206 misdemeanor cases and 26,069 felony cases involving White, Black, Latino, Asian, and "other" defendants. The authors investigate variables beginning with the decision to file charges through the imposition of a sentence. One of the variables addressed is whether or not the defendant received pretrial detention.

Regarding the bail and pretrial detention phase, the results of this study show that Asian defendants are the least likely to be detained pretrial and Black defendants are the most likely to be detained pretrial. Additionally, the results indicate that defendants who are given pretrial detention are less likely to have their cases ultimately dismissed than other defendants. This study also used race and ethnicity to examine whether charges are ultimately filed
against a defendant, whether cases are dismissed when charges are filed, whether a plea offer is made, and the type of sentence imposed.


In this study, the authors focus on how judges and bail officials make bail decisions. In particular, the authors examine the decision whether or not to grant bail and how much bail to set when financial bail is granted. The authors first provide a brief review of the prevalent theories about judicial decision-making by reviewing some of the earlier studies in the field, including those by Demuth and Schlesinger. Building on those studies, the authors reviewed 975 cases from the New Jersey Criminal Disposition Commission. These cases came from twenty-one counties within New Jersey, which according to the authors, represent "urban, suburban, and rural jurisdictions." In addition to the type of bail set and the amount of bail set, the authors also analyzed whether the defendants were White, Black, or Hispanic and the type of offense in the case (e.g., "person and weapons offenses," "property offenses," "drug offenses," etc.)

After a discussion of the data analysis process, the authors determine that the race of the defendant does impact pretrial decisions overall. For example, the authors find that Black defendants are more likely to be required to pay financial bail for release than both Hispanic and White defendants. Hispanic defendants, however, are more likely to be required to pay financial bail than White defendants. Further, the authors find that Black and Hispanic defendants are less likely to actually post bail than White defendants, which they assert may be due to potential causes: 1) Black and Hispanic defendants potentially having fewer financial resources, and 2) a bail bonds industry that may see some defendants as more of a "risk of flight or non-compliance" than others.

John Wooldredge, James Frank, Natalie Goulette & Lawrence Travis III, *Is the Impact of Cumulative Disadvantage on Sentencing*
This study analyzes the sentencing outcomes for 3,459 felony “Black, non-Latino”\(^{75}\) and “White Anglo”\(^{76}\) defendants in one large U.S. metropolitan area. The authors of this study examine the effects of “cumulative disadvantage[s]”\(^{77}\) on defendants of color from the pretrial detention phase through sentencing, hypothesizing that Black defendants (and specifically young Black male defendants) would receive higher bond amounts, higher rates of pretrial detention, and harsher case sentences than White defendants. In terms of bail decisions, the study examines the amount of bond set for defendants who were bond-eligible (3,365 of the 3,459 defendants). The authors find that in the jurisdiction studied, there were no significant differences in the amounts of bond received by the White and Black defendants overall, but that Black male defendants between the ages of 18 and 29 were given bond amounts that “were roughly $3,500 higher than the amounts assigned to all other suspects.”\(^{78}\) They also find a significant difference in whether Black and White defendants were released pretrial. As a result, the authors propose that courts rely less on monetary bail and consider the amounts of bail set for low-income defendants more carefully. The study also provides significant information on cumulative disadvantages related to racial bias in terms of charge reductions and prison sentences for the sample population.

**Stephen B. Bright, Rigged: When Race and Poverty Determine Outcomes in the Criminal Courts, 14 OHIO ST. J. OF CRIM. L. 263 (2016).**

In this article, Professor Bright excoriates the criminal justice system and the role it plays in disadvantaging those in poverty and people of color throughout the criminal justice process. The author details example after example of court cases and police interactions that have led to the wrongful convictions and even the deaths of defendants due to attorney and police misconduct. Professor Bright addresses the possibility that municipal courts are “cash cows”\(^{79}\) and are “in the business of generating revenue.”\(^{80}\) He provides statistics from various jurisdictions about the revenue gained by these courts,


\(^{76}\) *Id.* at 191.

\(^{77}\) *Id.* at 188.

\(^{78}\) *Id.* at 207.


\(^{80}\) *Id.* at 269.
comparing this revenue to the extensive costs that indigent defendants may face for relatively minor infractions. Such costs include fines, “fees, surcharges, and add-ons” that, should the defendant be unable to pay or fail to pay, can lead to the defendant’s continued incarceration or re-incarceration for substantial periods of time. Professor Bright proposes eliminating municipal courts in some instances and vesting authority to full-time courts in “urban-county governments.” He also argues that the “meet ‘em and plead ‘em” system in many jurisdictions contributes to long-term problems defendants face.

Professor Bright addresses the role that race can play in depriving defendants of their civil rights. Bright asserts that the lack of diversity in the criminal courts and the failure of some prosecutors to properly strike jurors under *Batson* without regard to race and without using false, race-neutral reasons to support the strikes contribute to disparities. He calls upon the legal community “to complain, to expose unfairness, and [to] engage with other members of society in ceaseless agitation for equality and justice in the courts” and by doing so to improve the plights of indigent defendants of color.

**Sarah Lustbader, The Right to an Attorney is Not Enough: Steps to Rid the Criminal Justice System of Its Poverty Tax, 44 FORDHAM URB. L. J. 1407 (2017).**

This compelling article shows how two hypothetical defendants arrested for the same crime might be treated differently and face different outcomes in the criminal justice system due to their disparate socioeconomic statuses. The reader is introduced to “Joe, an indigent, thirty-year old black man” from the South Bronx and to “Richard, a middle class, thirty-year old white man” from the Upper East Side of Manhattan. Both of the imaginary defendants are arrested for drug possession and their fates are traced from the arrest through the disposition of their cases. The author points out each step at which Joe would face a disadvantage that Richard would be less likely to face, making clear how bleak things would be for Joe as opposed to Richard. For example, the author notes that Joe was more likely to be stopped, searched, and arrested based solely on his race and the area in which he lives. She also notes that Joe is less likely to have the financial resources to pay his

81. Id. at 271.
82. Id. at 274.
83. Id. at 276.
87. Id.
bail, even if the bail amount set for the two defendants is the same. As the author mentions, if Joe is not released pretrial, he is both unable to assist in his own defense from outside of jail and more likely to face significant collateral consequences from his arrest (e.g., loss of employment, loss of housing, etc.).

After the paths of Joe and Richard through the court process are fully discussed, the author suggests several reforms that could help alleviate the disparities shown. First, she suggests that police practices that disadvantage low-income individuals be eliminated. She also suggests that judges be encouraged to make bail decisions with the defendant's actual income level in mind and that legal representation be provided for defendants at bail hearings. Other suggestions from the author include requiring defendants to attend only essential court dates, promoting alternatives to incarceration, and eliminating many of the collateral consequences to convictions.


Professor Yang provides an extremely comprehensive look at the bail system and the arguments for and against its reform in this 2017 article. She attempts to address the question of how "bail judges [should] decide how to make pre-trial release decisions" by suggesting a "cost-benefit" analysis be used to "maximiz[e] social welfare." According to the author, this framework has substantial potential to "improve decision-making at the bail stage of the criminal justice process."

The article begins with a history of the bail system in the United States. Next, the author outlines some of the most crucial costs and benefits to defendants and communities as a result of pretrial detention. Several costs are outlined, including loss of freedom during the pretrial phase, increased risk of wrongful conviction, the financial costs of pretrial detention, and collateral consequences for family members of defendants. Benefits outlined include preventing the flight of the accused, preventing the defendant from committing pretrial crime, deterring others from committing crime, and conserving the resources of the court. Professor Yang provides a very detailed framework for conducting the cost-benefit analysis. She analyzes data from Philadelphia, Pennsylvania and Miami-Dade County, Florida to further show the need for a cost-benefit framework for judges to follow. Finally, she discusses

89. *Id.*
90. *Id.* at 1404.
91. *Id.* at 1450.
how the cost-benefit framework can be used to assess issues related to monetary bail, the electronic monitoring of defendants, and risk assessment tools.


In 2011, the Kentucky legislature passed a law that included provisions for a "bail credit." In this brief article, the authors explain that implementing bail credit provisions would allow criminal defendants to earn credit for each day in which they are detained pretrial. As the authors point out, the Kentucky statute allows for a bail credit of one-hundred dollars ($100) per day. If the criminal defendant is eligible for bail but does not have the financial resources to pay bail, the bail credits earned would be applied to the bail. Under the statute, bail officials who do not authorize a defendant’s release must provide written verification of the reasons that the defendant is being detained without bail.

The authors argue in favor of other jurisdictions considering the implementation of bail credits. To support their arguments, the authors make several points. First, the authors point out the important liberty interests that pretrial detainees have and the need to protect those liberties since there has been no determination of guilt. Secondly, not all defendants in a jurisdiction would be eligible for the bail credit, as bail officials could determine that a defendant is a danger to others or a flight risk. Finally, a state’s legislature could designate specific crimes or types of crimes for which use of bail credits would not be allowed (e.g., violent crimes). The authors note that the implementation of bail credit provisions are not meant to eliminate or reduce the use of non-financial means for a defendant’s pretrial release.


In this brief article, Safiedine and Chung discuss potential overlaps between being “economically disadvantaged” and being a defendant of color. With regard to pretrial release, the authors argue that the racial disparities that lead to defendants of color being detained pretrial longer than White defendants have several negative effects on households of color. The immediate


effect is obvious: the defendant of color that is eligible for bail will have to stay in jail longer if he or she is not financially able to pay the bail. In the long term, the pretrial detention could affect the housing, education, and employment of economically disadvantaged defendants of color and their families. Other potential “collateral consequences” are added strain on the defendants’ families and problems with the continued receipt of federal benefits that the defendants’ households may be receiving at the time of the arrest.

According to the authors, economically disadvantaged defendants may be more likely to plead guilty to crimes they did not commit simply to avoid continued pretrial detention. Further, the authors argue that continued pretrial detention itself may lead to a higher likelihood of an ultimate sentence of imprisonment. The authors advocate for continued policy reform and legislation to reduce or eliminate unfair pretrial detention practices and the negative collateral consequences of those practices. The authors cite efforts undergone in New Jersey and Maryland, as well as through the ABA’s Racial Justice Improvement Project, as models of potential reforms.

94.  *Id.* at 41.